

# Business Insurance

November 7, 2005

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\$5

## Late News

### Senate approves hike in PBGC premiums

The Senate last week approved a measure—part of a broader budget bill—that would increase to \$46.75 from \$19 per plan participant the annual PBGC premium paid by employers with defined benefit plans. In addition, the bill calls for imposing a hefty new premium surcharge on employers that dump their pension plans during bankruptcy, and it would index future PBGC premium hikes to increases in the national average wage. The premium increase and bankruptcy pension fee would not take effect if Congress passes comprehensive pension funding reform legislation this year.

### New York governor proposes comp reforms

New York Gov. George E. Pataki has proposed a comprehensive plan to reform New York's workers compensation system that he says will reduce employers' costs by more than 15% while boosting some benefit levels for injured workers. The plan, which has not yet been

See **LATE NEWS**/page 43

## RenRe founder quits as probe continues

### Currie succeeds Stanard as CEO of Bermuda reinsurer

By RUPAL PAREKH

**PEMBROKE, Bermuda**—RenaissanceRe Holdings Ltd.'s longtime chairman and chief executive officer, James N. Stanard, stepped down last week amid investigations into the reinsurer's use of finite risk coverage and concerns over charges he and the company may face from U.S. securities regulators.

Mr. Stanard, who has led Pembroke, Bermuda-based RenaissanceRe since its formation in June 1993, has been closely associated with the reinsurer's success. The company reported his resignation in a statement last week, not-



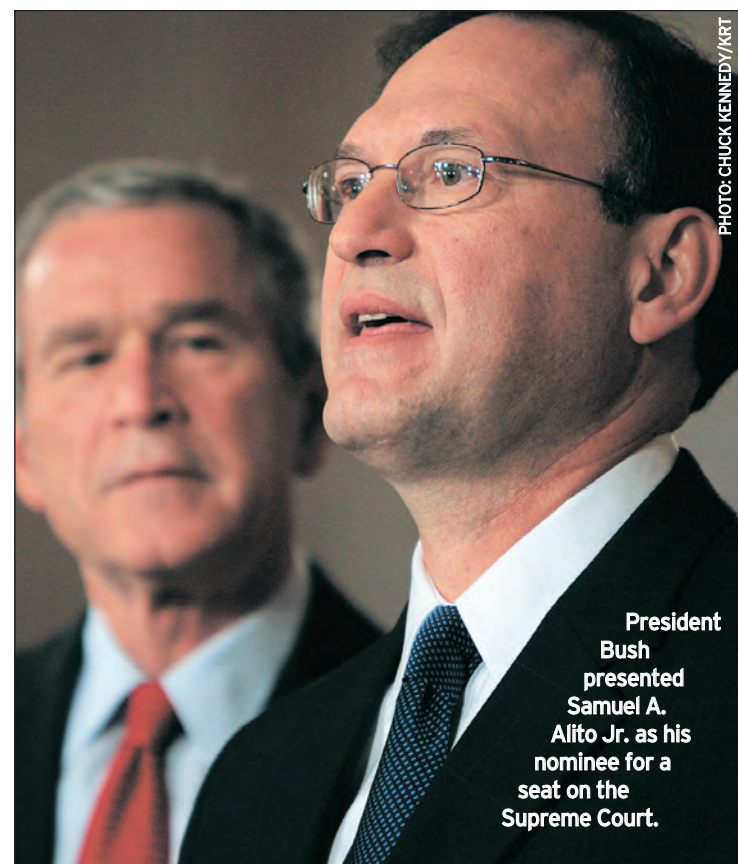
Mr. Currie

ing that the move stemmed from ongoing probes linked to RenaissanceRe's restatement of its financial results earlier this year.

Replacing Mr. Stanard as CEO is Neill A. Currie, a founding executive who rejoined RenaissanceRe in July, after most recently serving as director of Platinum Underwriters Holdings Ltd. In addition, James MacGinnitie, a director since 2000, has been named nonexecutive chairman. Both appointments are effective immediately.

"The board has been monitoring

See **RENRE** / page 42



President Bush presented Samuel A. Alito Jr. as his nominee for a seat on the Supreme Court.

## High court nominee has favorable record on business issues

By MARK A. HOFMANN

If what's past is prologue, U.S. Appeals Court Judge Samuel A. Alito Jr.'s elevation to the Supreme Court could be good news indeed for employers.

That's subject, of course, to the Senate giving its approval to President Bush's nominee. But where some observers claimed that the president's other two Supreme Court nominees—now-Chief Justice John G. Roberts and White House Counsel Harriet Miers—lacked a sufficient paper trail, Judge Alito's paper trail is copious. As a judge on the 3rd U.S. Circuit Court of Appeals in Philadelphia since 1990, Judge Alito has been involved in hundreds of cases involving employment practices, insurance and liability.

"He's certainly as open minded

on business issues as Chief Justice Roberts appears to be," said Glenn Lammi, chief counsel-legal studies division at the Washington Legal Foundation in Washington. "I think he appreciates the need for businesses to find ways to deal with litigation costs," Mr. Lammi said.

"Predicting a nominee's long-term decision-making proclivities on likely issues to come before the Supreme Court is like handicapping horse races; one can hope to predict the nominee's inclinations, but it's educated guesswork until the race is run and the decision is issued," said Gerald L. Maatman Jr., a partner in the Chicago law firm of Seyfarth Shaw L.L.P.

Nonetheless, "employers likely

See **ALITO** / page 40

## Buyers more cautious on brokers, poll finds

By MICHAEL BRADFORD

Risk managers are more satisfied that brokers are disclosing all compensation arrangements, but the issues of steering and bid rigging that

The survey of more than 500 U.S. and Canadian corporations and government entities released last week by Advisen Ltd. shows that risk managers' attitudes toward their brokers have drastically changed since investigations into contingent compensation arrangements by New York Attorney General Eliot Spitzer began last year.

"There has been a reversal in attitude of 180 degrees about compensation issues," said David Bradford, New York-based editor-in-chief at Advisen and a co-author of a commentary on the survey. "In the prior surveys, there was a real sense of frustration at the lack of information" that brokers were providing to

brought about greater transparency have also caused insurance buyers to become more involved in placing their coverages, a new survey reveals.

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Uncertainty was a theme during the PCI meeting.

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Less than half **45%** of respondents rely solely on their brokers to handle their insurance placements.

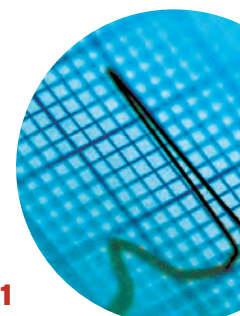


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### Virtually free health care no longer an option at GM

The automaker's workers must face facts on benefit costs, an editorial says. Page 8

### U.K. seeks to cut lawsuits with tort reform bill

A proposal would curb the activities of claims management services firms. Page 37

### Online poll - [ 10/31 - 11/4 ]

Is your company prepared for the risk of an avian flu outbreak?



Participate in BI's online polls at [www.businessinsurance.com](http://www.businessinsurance.com).

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### REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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# More startup capital heads to Bermuda

## New entities plan to take advantage of hardening market

By DOUGLAS McLEOD  
and BARBARA COCKBURN

Startup activity in the reinsurance market continued last week, as more investors sought to take advantage of rising rates in the wake of this year's massive hurricane losses.

Former Lloyd's of London underwriter Richard Brindle and Capital Z Financial Services Partners are working to raise up to \$1 billion to form a Bermuda-based insurer and reinsurer to write marine and energy and other risks.

The company, to be named Lancashire, is expected to be up in time to write Jan. 1 renewal business after completing a private placement that is expected to raise between \$750 million and \$1 billion, a person familiar with the plan said. Lancashire will write aviation, marine and energy, property catas-

trophe and direct property business, as well as retrocessional reinsurance risks.

Mr. Brindle, formerly an underwriter at Charman Underwriting Agencies Ltd. in London, will be Lancashire's chief executive officer. Insurance Partners, a predecessor of New York-based Capital Z, acquired Charman holding company Tarquin P.L.C. in 1994 and sold it to ACE Ltd. in 1998. Mr. Brindle recently resigned as a director of Ascot Underwriting Ltd., a Lloyd's agency formed in 2001.

Meanwhile, Amlin P.L.C. has formed a reinsurer in Bermuda with expected capital of \$1 billion. Amlin Bermuda, which expects to be running by Jan. 1, will focus on regional U.S. and international catastrophe reinsurance, Amlin said in a statement. The capital is being raised through share issues and from Amlin's resources. Amlin said it expects the operation to generate premiums of \$350 mil-

lion in 2006 and \$500 million in 2007.

Charles Philipps, chief executive of Amlin, said, "We believe this is an opportune time to make this move in view of the significant rating increases which are expected as a result of the unprecedented windstorm losses incurred in 2005 and 2004."

Other Bermuda startups have formed in recent weeks and are working to operate in time for January renewals (BI, Oct. 31).

In addition, A.M. Best Co. last week assigned an A- rating to New Castle Reinsurance Co. Ltd., a new Bermuda-based property cat reinsurer capitalized with \$500 million from funds managed by Chicago-based Citadel Investment Group L.L.C. New Castle Re will be headed by Christopher R. McKewon, former CEO of ACE Tempest Reinsurance Co. and now CEO of Citadel's unit CIG Reinsurance Co., Best reported. A Citadel official declined to comment for the record.

# Aon extends opt-in deadlines on commission settlements

By SALLY ROBERTS

**CHICAGO**—Aon Corp. says it is extending the deadlines of two separate yet related settlements of litigation over contingent commissions to give eligible policyholders more time to sign up.

Some attorneys say, though, that Aon's move may be in response to the fact that so many policyholders have objected to the \$38 million class action settlement in Alan S. Daniel vs. Aon Corp.

Aon's announcement closely follows New York-based Marsh & McLennan Cos. Inc.'s decision to also give its affected clients more time to respond to the \$850 million settlement it reached in January with New York Attorney General Eliot Spitzer, attorneys say. Chicago-based Aon extended by one



month the period for eligible U.S. clients to opt into the \$190 million compensation fund it established as part of its settlement with authorities in New York, Connecticut

and Illinois. Aon clients with policies that inception or renewed between Jan. 1, 2001, and Dec. 31, 2004, on which Aon collected contingent commissions now have until Nov. 30 to decide whether to participate in fund. The deadline was originally Oct. 30.

Members of the certified class in the Daniel litigation now also have until Nov. 30 to decide whether to participate in the \$38 million fund Aon established to settle that case. Lead plaintiff Alan S. Daniel brought the suit in 1999, alleging that Aon had breached its fiduciary duty by collecting contingent commissions from insurers without disclosing them to clients.

Aon settled the Daniel suit shortly after the joint settlement with the state regula-

See AON / page 43

# Storm losses leave questions about extent of reinsurance rate increases

By JUDY GREENWALD

**CHICAGO**—Uncertainty is the prevailing opinion among reinsurance executives as to how the January renewals will shape up.

While property catastrophe rates for insurers hit by the hurricanes clearly will increase, few are willing to guess by how much. Also unclear is the outlook for property cat rates for accounts unaffected by the storms, as well as the direction casualty rates may take.

Some observers say the renewal season will be later than usual in part because of this uncertainty. This means there will be a big push to complete programs by Dec. 31, and if there is a loss early in the new year, any exposure that remains unreinsured falls to the ceding company.

But others say factors including concern over provisions of the Sarbanes-Oxley Act and the World Trade Center litigation, which resulted from a nonfinalized contract, mean the renewals are likely to be wrapped up on time (see story, page 31).

Meanwhile, in light of the impact of the spate of recent hurricanes on their balance sheets, the industry is expected to turn more to alternative financial techniques to better manage its books of business. Some reinsurance officials also say they are



Reinsurers, brokers and cedents met at the Property Casualty Insurers Assn. of America annual meeting in Chicago last month to discuss market conditions and negotiate renewals.

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# Massachusetts House passes payroll tax to cover uninsured

*Levy would be offset by health contributions*

By **JERRY GEISEL**

**BOSTON**—Massachusetts once again is moving to impose a surcharge on employers that don't heavily subsidize their health insurance plans in order to help fund an ambitious program to cover the uninsured.

Last week, the Massachusetts

House of Representatives overwhelmingly approved a bill, 131-22, that would impose a new payroll tax on all but very small employers.

The tax would be 5% of payroll for employers with 11 to 99 employees and 7% of payroll for employers with at least 100 employees. Employers with 10 or fewer employees would be exempt from the tax.

To encourage employers to offer and pay a substantial portion of

health care premiums, the surcharge would be offset by employers' health insurance costs. For example, offsetting costs would include an employer's premium contributions as well as contributions to health savings accounts for those companies with high-deductible health insurance plans.

Additionally, as part of several last-minute changes made in response to complaints from business

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PHOTO: AP WIDE WORLD



PHOTO: ALLAN TANNENBAUM/GAMMA PRESSE

A February 1993 bombing that killed six people at the World Trade Center prompted litigation in which the WTC owner recently was found liable.

## Port Authority liable for 1993 WTC bomb losses

By **DOUGLAS MCLEOD**

**NEW YORK**—Several insurers are among the roughly 400 plaintiffs who won a verdict that found the Port Authority of New York & New Jersey negligently failed to prevent the 1993 truck bombing of the World Trade Center.

Units of six insurers filed subrogation claims against the Port Authority for losses to commercial tenants damaged in the attack. Their claims were consolidated with those of hundreds of individuals and WTC tenants in a massive action that resulted in the jury's verdict late last month.

The New York State Supreme Court jury found the Port Authority liable for failing to secure the underground parking garage, where Islamic terrorists detonated explosives packed in a rental truck on Feb. 26, 1993. The blast killed six people, injured about 1,000 others and caused extensive damage to tenants in the WTC complex from smoke and power outages.

The Port Authority is expected to appeal the verdict. A separate phase of the trial will determine damages owed to the various plaintiffs, though it is unclear whether the damages phase will be stayed pending an appeal of the liability verdict.

While lawyers for individual and other plaintiffs have said they will seek up to \$1.8 billion in damages

for physical and emotional suffering, the insurer plaintiffs are seeking a total of about \$21 million for losses paid to policyholders, said Gerard F. Belz, a lawyer with Cozen O'Connor, which represents the insurers.

Insurer plaintiffs in the 12-year-old action include units of St. Paul Travelers Cos. Inc.; Aetna Casualty & Surety Co., business of which was later acquired by Travelers; CIGNA Corp., now part of ACE Ltd.; Fireman's Fund Insurance Co.; Royal Indemnity Co.; and Atlantic Mutual Cos.

St. Paul Travelers has the largest share of the claim at about \$13 million, while CIGNA's claims total about \$5 million, according to Mr. Belz. St. Paul Travelers' policyholders included stockbroker Dean Witter Reynolds Inc. and reinsurance intermediary Guy Carpenter & Co. Inc., while CIGNA policyholders included companies involved in operating the WTC's heavily damaged Vista International Hotel.

Guy Carpenter is also a plaintiff in the action, seeking to recover its policy deductible and uninsured losses, Mr. Belz said.

Trial of the case was delayed for years by a series of discovery disputes. In addition, the Port Authority's own records in the case were lost in the Sept. 11, 2001, terrorist attack that destroyed the WTC complex, delaying the litigation for more than a year, Mr. Belz noted.

## Patient anti-dumping law raises hospital liability concerns: Doctor

By **DAVE LENCKUS**

**SAN ANTONIO**—Final regulations and guidelines for a federal law that protects the rights of emergency room patients could create significant liability problems for hospitals, according to an attorney who also is an emergency room physician.

To protect themselves from potential liabilities, hospitals should ensure that they have policies and procedures in place to comply with the often-confusing requirements, he said. Litigation stemming from the regulations already has started, he said.

The regulations and guidelines cover when an emergency patient is considered stabilized, when hospitals can transfer emergency patients and how a hospital should create its

on-call list of physicians who would aid emergency room doctors, according to Dr. Ronald A Bitterman, a physician and independent attorney in Charlotte, N.C.



Dr. Bitterman outlined concerns with the law during a session at the American Society for Healthcare Risk Management's annual conference, held in San Antonio last month.

The Emergency Medical Treatment & Active Labor Act, the so-

called patient anti-dumping law, primarily imposes three legal duties on emergency room departments at hospitals that accept Medicare payments. Those emergency rooms must:

- Provide appropriate medical screenings to each patient to determine whether he or she is experiencing an emergency medical condition, or EMC.
- Either stabilize a patient or, if unable to do so, transfer the patient to a hospital qualified to treat his or her medical condition.
- Accept transfers of patients with special medical conditions if the hospital has the capabilities to treat those patients and the capacity to accept them.

See **PATIENTS** / page 26

## States' voters to decide fate of insurance-related initiatives

By **MEG FLETCHER**

Voters in California and Washington state will consider several insurance-related ballot measures on Election Day.

All are citizen initiatives that were brought to the polls through petitions, rather than by legislative referral.

Nationally, voters in eight states will consider 41 ballot measures, 44% of which are citizen initiatives. That is a "remarkably high" number of initiatives for an odd-year ballot, according to a spokeswoman for the Denver-based National Conference of State Legislatures.

According to official ballot information, voters in California will choose between two competing measures—Proposition 78 and 79—that both would create discount prescription drug plans for eligible low- and moderate-income residents through state-negotiated re-

bates with drug manufacturers.

Proposition 78, which has a slightly lower threshold for eligibility, would rely more on voluntary participation by drugmakers and could be terminated under specified conditions.

Proposition 79, which requires federal approval, would prohibit state Medicaid contracts with manufacturers that do not provide the best price under that program, except for drugs without therapeutic equivalent.

It also would offer assistance to small businesses and labor organizations that pay more than 50% of the cost of health care coverage for employees and dependents. The measure would establish an advisory board and prohibit drugmakers and affiliated companies from engaging in "profiteering," which is generally defined as exacting an un-

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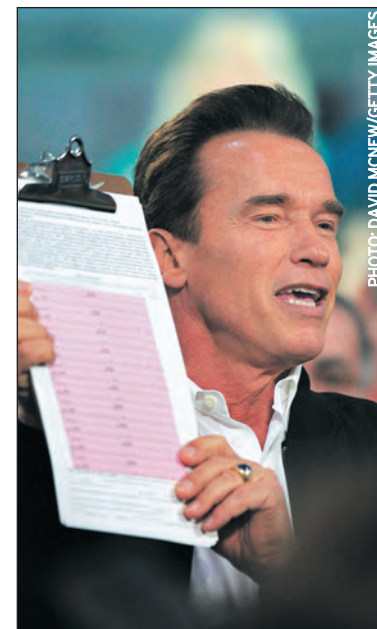


PHOTO: DAVID MCNEW/GETTY IMAGES

California Gov. Arnold Schwarzenegger touted proposed ballot initiatives in March in Burbank, Calif.

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## PAUL WINSTON

Editorial Director

## Events alter future

I had an opportunity last week to speak at a gathering of the three Chicago-area CPCU Society chapters. The purpose was two-fold: an educational seminar on regulatory reform proposals and a conferment ceremony for a individuals who had completed the requirements for the CPCU designation.

As the end of 2005 is fast approaching, I was asked to speak on the major events of the year and their impact on the industry. To me, there are two developments that eclipse all the rest:

- Hurricane Eliot.
- And Hurricanes Dennis, Katrina, Rita, Wilma, Fred, Betty, Barney, Alpha, Beta and Omega.

Obviously, there was plenty else on the industry's plate in 2005—from TRIA reauthorization efforts, to asbestos reform debates, to softening market conditions, to terrorist attacks in London, and more—but week after week, the main news of the year revolved around the ongoing investigations into industry practices, the industry's response, and the fallout from both of those developments. And once September rolled around, it was hurricane, hurricane, hurricane.

So let me share some of the thoughts I offered to those CPCUs, new and old, last week.

### Hurricane Eliot

I think an analogy between Eliot Spitzer's impact on the industry and a hurricane's impact on a community is apt. Mr. Spitzer was as unpredictable as a hurricane, with those in his path never certain of his investigations' intensity, course or duration.

As with New Orleans and Katrina, the insurance industry was caught mostly unprepared for the force of Hurricane Eliot. And, like New Orleans and its windstorm risk, the insurance industry—particularly in a post-Enron climate of heightened scrutiny of business practices and corporate governance—should have done more to put its own house in order.

As with local, state and federal officials' response to Katrina, the industry's reaction to the initial impact of Hurricane Eliot was slow, disorganized and ultimately made the damage worse.

And just as Katrina exposed serious and longstanding problems in the social fabric of New Orleans, Hurricane Eliot exposed problems in industry practices that had long gone unaddressed.

However, just as the problems

uncovered by Katrina will result in improvements in protecting communities from catastrophes, and in managing and underwriting such risks, I also believe that, despite the pain the industry is now feeling from Hurricane Eliot, it will emerge stronger and in better shape to serve its customers.

### Where is the silver lining?

Almost every line of insurance was probed in the past year, from property/casualty insurance, to group benefit plans and annuities, to reinsurance. And dozens of companies were swept up in the subpoenas, charges and settlements resulting from the Spitzer probe. These have yielded criminal charges against some, large settlements with a few states, investigations by others, new liability exposures for the affected companies, volatile stock prices, job cuts in the thousands and so on.

How, you might ask, could anything good come of this?

For starters, it has exposed and driven out a handful of bad actors who gave the entire industry a bad name. The investigation also has spurred the industry to revise or eliminate certain practices that, while perhaps not illegal, were close to crossing that line.

The probe also is giving new impetus to improving an inefficient regulatory system, prompting officials to seek greater uniformity or, barring that, a push for an optional federal charter.

It has prompted brokers to re-examine their role, the value of their services and how they should be fairly compensated. Indeed, it is resulting in greater transparency and communication among all parties—buyers, brokers, insurers and reinsurers—which can only be a good thing.


There are no doubt other positive outcomes from the trials and tribulations, but perhaps the biggest is a clear message that everyone in the industry is responsible for assuring they conduct themselves ethically, and that their colleagues and companies operate in the same manner.

The CPCU Society, in fact, requires its designees to pledge to abide by a code of ethics. That is not new, but as I told that group last week, perhaps now that there is precedent for holding the industry accountable, individuals will feel more confident working to make that more than a pledge, and instead establish it as standard industry practice.

Editorial Director Paul Winston's commentary appears fortnightly. He can be reached at [pwinston@businessinsurance.com](mailto:pwinston@businessinsurance.com)

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## Editorial

## GM pact needs makeover

IF THERE EVER WAS A CASE of reality not meshing with rhetoric, the new proposed contract between General Motors Corp. and the United Auto Workers union is it.

To judge by the headlines when the agreement was announced, one would have thought it was a landmark in the area of health care coverage.

Certainly, the initial impression was that GM was making deep cuts in the gold-plated health care plans offered to UAW-represented employees and retirees.

While the contract does shift more costs—through, for example, higher co-payments for prescription drugs for active employees and new premium contributions by retirees—from GM to plan participants, it would be an exaggeration to say the changes are anything more than very modest.

Indeed, if the contract is ratified, active UAW members still will not pay any health care premiums, while retirees will pay \$10 a month for individual coverage and \$21 a month for family coverage.

Obviously, this agreement does not put off by very much the day of reckoning that GM and the UAW inevitably will face.

When employees have such a low exposure to costs, logic says they are not going to seek the most cost-effective care.

That means continued big increases in health care costs. We don't see how GM, given the competition it faces from other automakers with lower costs, will be able to afford to offer the benefits it now provides.

The result will be either bankruptcy—and big health care cuts imposed as part of bankruptcy—or the complete failure of the company.

We don't think that is a pie-in-the-sky scenario. All one has to do is look at other industries—steel perhaps being the best example—where competition and the inability to rein in health care costs were the key culprits in their collapse.

Nonetheless, given GM's considerable, if rapidly declining, financial resources, there still is time—and we hope the will—on the part of GM and the UAW to agree on a real and fundamental redesign of GM's health care plans so the plans will not be a virtually free commodity, and instead employees and retirees will have strong financial incentives to use health care services carefully.

## Renew focus on contracts

While few would dispute that the insurance industry has faced a challenging past 18 months, there are some important challenges ahead that still must be addressed.

Notably, with the upcoming renewal season, insurers and reinsurers will face a tough time getting coverage contracts in place on time. The industry is still tallying its losses from the devastating hurricanes that hit the United States over past several months, and many of those estimates will still be nothing more than guesswork well into next year.

In addition, the reinsurance market is clearly entering a period of change, with several reinsurers suffering downgrades and with new capital flooding to existing players and startups. As a result, many insurers could see significant changes to their reinsurance programs, which will affect how they decide to direct their own capacity over the coming months.

It will be tough for underwriters to assess appropriate rates without knowing how much they have lost or what shape their own protection will take. Given such circumstances, it would be tempting to fall back on the traditional approach of agreeing

to renew but then working out the details later.

Such an approach, though, would ignore several other changes that have taken place in the industry.

The trial over coverage for the World Trade Center, for one, should dispel any notions that insurance remains an industry of handshake agreements where coverage issues can be sorted out between parties after the coverage inception date. And the insistence by regulators in the United Kingdom that the London market, which covers a significant amount of U.S.-based exposures, achieve contract certainty prior to coverage inception adds another dimension to the issue.

Many buyers, brokers, insurers and reinsurers are already aware of the need to drastically change what has at times been a relaxed approach to contract agreements, and they have made efforts to speed up the renewal process. Despite the obvious challenges of 2004 and 2005, the need to follow through on those efforts remains urgent if the industry is to avoid more expensive litigation and regulatory intervention.

## Schillerstrom



## Letters

## Recommendation to limit tax break on health care benefits is just wrong

To the editor: I thought I had seen it all.

Regarding the recent recommendation of a presidential panel to place a cap on the amount of tax-free health care coverage that employers can provide to their employees, I am astonished that such a reckless move is even on the table at a time when Americans, both employers and employees, are struggling with affording health care in record numbers.

Additionally, this proposal would impose another regulatory system that will be difficult to administer and will further complicate an already-complicated tax system for employers.

Who are these people?

**Steven Jones**

Managing Senior Partner  
Employee Benefit Consulting Group  
San Francisco

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# Spotlight

## Bermuda Market Report

Bermuda captive owners form networking association / 20

Insurers and reinsurers seeking profit opportunities / 22

### Bermuda regulators discuss challenges

Cheryl-Ann Lister is chairman of the Bermuda Monetary Authority—the independent regulatory body governing insurance companies on the island—while Jeremy Cox is supervisor of insurance for the BMA’s Insurance Department. The island’s top two regulators sat down with Business Insurance Staff Reporter Rupal Parekh to talk about the Bermuda market, including the unique advantages of and challenges faced by Bermuda companies and the future role of this domicile as part of the worldwide insurance industry.



PHOTOS: DAVID SKINNER



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challenges faced by Bermuda companies and the future role of this domicile as part of the worldwide insurance industry.

**Q: What don’t people outside of the Bermuda market generally know about the Bermuda insurance market? What are some common misconceptions?**

**CL:** One of the things that I think is probably not well known or understood is the actual makeup of the market. It’s not your traditional retail market; it’s very much captive-based on the one hand and large commercial insurers and reinsurers on the other.

**JC:** I think a lot of people don’t feel it’s possible to have a sophisticated financial services sector, sophisticated infrastructure for business or credible regulation in a tourist spot.

See Q&A / page 14

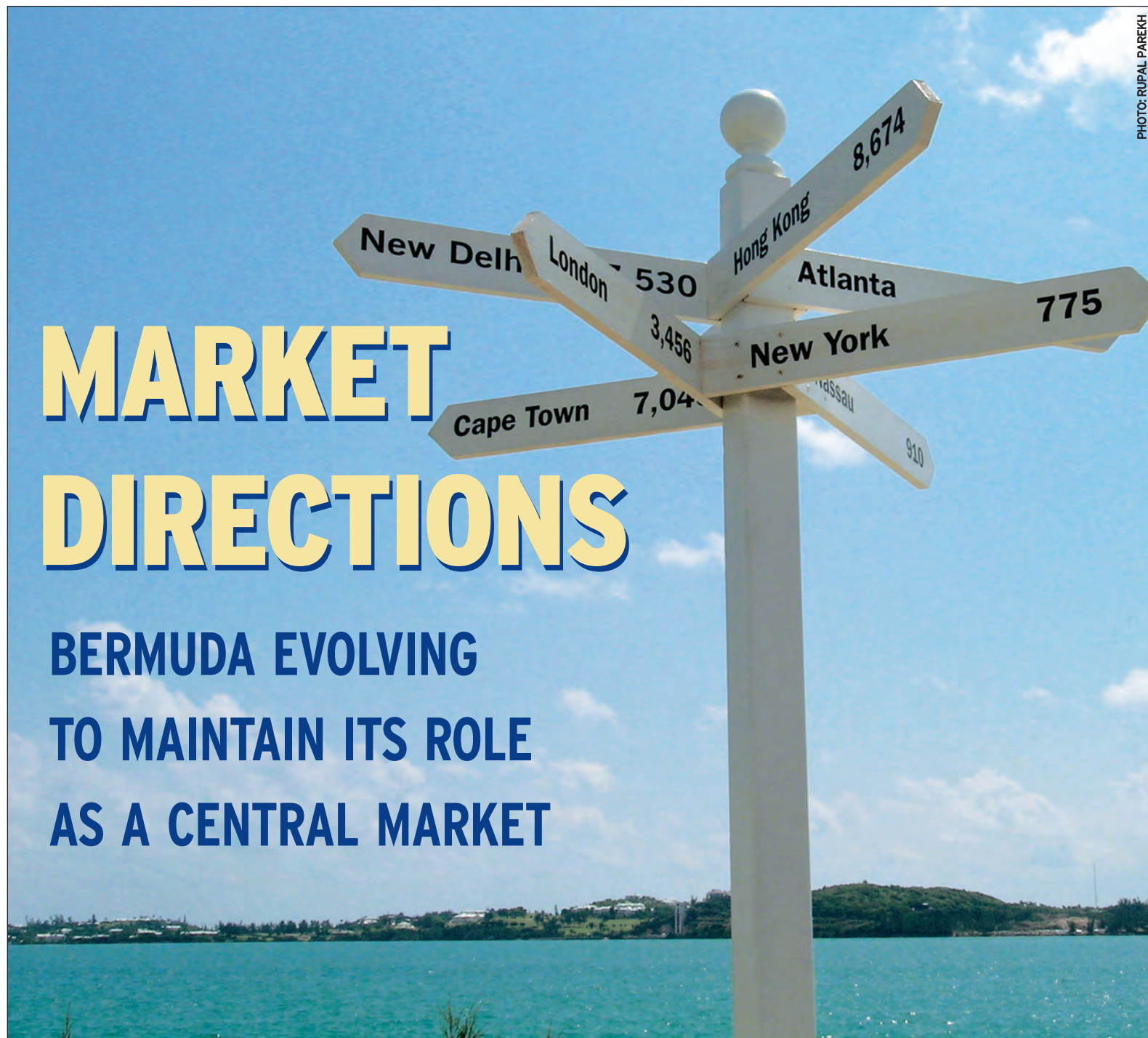


PHOTO: RUPAL PAREKH

# MARKET DIRECTIONS

## BERMUDA EVOLVING TO MAINTAIN ITS ROLE AS A CENTRAL MARKET

### Bermuda’s insurance department revamps, expands industry oversight

By RUPAL PAREKH

In order to keep pace with evolving standards for insurance regulation—as well as with Bermuda’s growing and increasingly complex marketplace—the Bermuda Monetary Authority is boosting its resources and overhauling the structure of its insurance department.

As part of its efforts, the BMA, which serves as the independent regulatory body overseeing Bermuda’s financial services sector, is taking a number of steps to revamp the regulation of insurance companies on the island, including bolstering staffing at the insurance department, dividing the department’s structure, and revising and strengthening Bermuda’s existing framework for insurance supervision.

The changes come partly as a response to the domicile’s growth in recent years, BMA officials say. Marketing a number of steps to revamp the regulation of insurance companies on the island, including bolstering staffing at the insurance department, dividing the department’s structure, and revising and strengthening Bermuda’s existing

framework for insurance supervision. The changes come partly as a response to the domicile’s growth in recent years, BMA officials say. Marketing a number of steps to revamp the regulation of insurance companies on the island, including bolstering staffing at the insurance department, dividing the department’s structure, and revising and strengthening Bermuda’s existing

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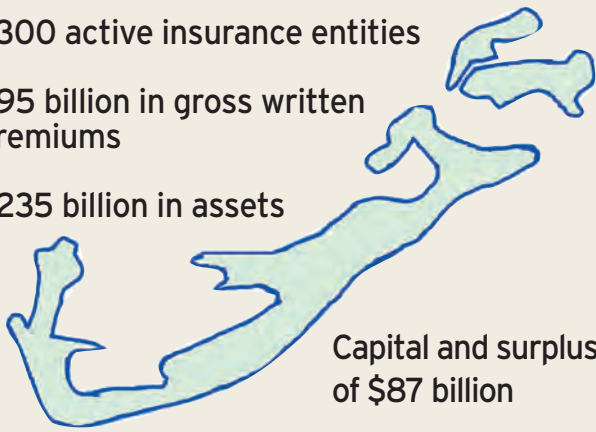
## Bermuda market facts

1,300 active insurance entities

\$95 billion in gross written premiums

\$235 billion in assets

Capital and surplus of \$87 billion



Source: Bermuda Monetary Authority

## Direction: Recent storms driving more startups

Continued from previous page

ket conditions following 1992's Hurricane Andrew and the Sept. 11, 2001, terrorist attacks spawned a number of Bermuda startup reinsurers, while an overactive hurricane season seems to be attracting another wave of startups to the island this year (*BI*, Oct. 31). Currently, the BMA regulates approximately 1,300 active insurance companies that write gross premiums totaling \$95 billion and have assets of more than \$235 billion and capital and surplus of more than \$87 billion, according to the agency.

The Bermuda market's growth has prompted the insurance department

to increase its staff by recruiting individuals from the island and abroad, said Jeremy Cox, supervisor of insurance at the BMA. "By 2008, we hope to have around 40 people dedicated to the insurance department," Mr. Cox said. In contrast, the former registrar of companies in 1992 had a team of only four. By 2001, when the department relocated to the BMA, it had 13 staffers.

But Mr. Cox acknowledged that the changes are not related only to the burgeoning number of businesses on the island; the revamping is also necessary for Bermuda to continue to meet international standards for insurance regulation, he

said. Mr. Cox noted that the International Assn. of Insurance Supervisors over the past couple of years has issued new core principles and methodology applicable to worldwide insurance markets, particularly regarding the supervision of reinsurers.

Furthermore, two comprehensive reviews of the laws governing Bermuda's financial services industry conducted by the International Monetary Fund and auditing firm KPMG also prompted several recommendations for improvements at the insurance department, BMA officials said. As a result, recent changes to the department's regulatory model include amendments to the island's Insurance Act and the ongoing issuance of guidance notes to insurance companies and service providers regarding corporate governance procedures and market conduct.

The insurance department will split into "one area that is going to be focused on onsite supervision... and the other focused on licensing and authorization."

Jeremy Cox  
Bermuda Monetary Authority

Amid an increasingly complex and scrutinizing business environment, the BMA has said it is making a greater commitment to ensuring that companies on the island are in compliance with insurance laws. The BMA is stepping up onsite inspections of insurance entities, which in turn is leading to a split in the structure of the insurance department. "There is one area that is going to be focused on onsite supervision and noncompliant companies and the other focused on licensing and authorization of companies," Mr. Cox said.

Deputy Director Shelby Weldon will now focus on the on-site supervision of insurers and reinsurers, making regular visits to companies, with a particular emphasis on those with larger operations. Despite the strengthening of oversight, the new "supervisory program" will focus more on companies that classify as Class 3 and Class 4 companies as part of Bermuda's four-class system, rather than on smaller single-parent and multiowner captive companies, the agency has said.

Meanwhile, the insurance department in July appointed Shanna Lespere co-deputy director with responsibility for the licensing and authorization of companies. According to the BMA, increasingly complex structures are being seen at the licensing stage due to more innovative forms of alternative risk transfer in the marketplace. This, combined with the growing volume and complexity of the regulatory approvals, has necessitated the creation of the new, dedicated division.

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## Q&A: Bermuda market has developed own regulatory infrastructure

Continued from page 11

I don't know if people fully believe that it's possible to have all of that on a small island. But we've created it. We're unique. And we're not small in terms of ability to regulate the market or small in terms of the capacity that the market has. If you look at some of the recent disasters, whether it be (the Sept. 11, 2001, terrorist attacks), or the four hurricanes from last year, Bermuda has been a major contributor in aiding the United States in dealing with these catastrophes from a reinsurance perspective. That in itself is a testament to the quality and the security of the companies here.

I'm not going to stand up here just to say, "We're great regulators, and we've done a fabulous job," ... but I think you can't deny that our regulation has been appropriate for the type of companies we have here. It has to be accepted as appropriate for the type of companies we have here. Even in the current climate, where you have companies being put under tremendous scrutiny by (New York Attorney General) Eliot Spitzer and the (U.S. Securities and Exchange Commission)—even through all of that—the Bermuda market has demonstrated a commitment to working with regulators, to making sure that they are

comfortable with (companies') internal operations by having independent reviews done.

**CL:** Also, in Bermuda, we've developed our regulations over the years. Our development has been gradual and as the result of experience, as opposed to us suddenly being required to do something and create a framework that potentially had excesses in it. I think all of that coming together is the story of Bermuda, and it's a story that just no other country can tell. No other country has the type of business that we have, and no other country has it all in such a very concentrated

place. People think of the city of London as small; Bermuda's even smaller. And that is an advantage as well, because there is a lot of intellectual capital—and also financial capital—packed into one little tiny place, and, as a result, we can interrelate to one another at a level that a larger jurisdiction just couldn't.

**Q: What is it that has made Bermuda such a magnet for the industry?**

**JC:** I think it starts with industry having a desire to come up with some sort of solution to a challenge. And there have been a number of

challenges that you can look to—one of them was Hurricane Andrew and another was Sept. 11. Bermuda has been a place where the industry has been able to respond.

I think it's a responsiveness that has really put us in that leading-edge position—and that's industry responsiveness, government responsiveness and our responsiveness from a regulatory perspective.

**CL:** There is a commitment to quality here that has made it easy for the industry to grow. Companies know the environment in which they are going to be expected to operate. The basic approach that we've taken is that we want quality business here. So, if you don't want to be part of a quality environment where people are going to know what you're all about and they're going to evaluate whether you're worthy of coming here ... we're not interested. Very early in the game, we set these rules, and that itself became an attraction, because (companies) knew that they were coming to an environment that wanted to do things right.

When you come in, we're not only going to vet the individuals that want to set up the business, we're going to vet the business proposition. There are times that we've had to take the decision that we don't think this type of business is right for Bermuda. We've managed to keep, therefore, the quality and type of business consistent with what we feel is right for the development of Bermuda.

**JC:** There have been tremendous changes in the past two, three, four years on the insurance side, and our responsiveness as regulators has allowed us to adapt to those changes and position ourselves for success going forward. I think the climate that we're in today, we will not keep the business that we have here and grow further business if Bermuda is not seen to be a solid, credible jurisdiction. We have a tremendous role in that respect as the independent regulators here.

**Q: One of the key differences you've stressed between Bermuda and other domiciles is the partnership between those in the insurance community and the regulatory authority that governs them. What might you say to those who might see some sort of conflict of interest in that?**

**CL:** The industry has to be responsible for running its business. It's not our responsibility to run their business. It is our responsibility to understand their business and to make sure they understand the risks and are dealing with them appropriately. And it is our responsibility to ensure that the environment within which they run their businesses is appropriate and that the standards that are required to be set are being set. If both of us have the same overall commitment to quality and to making sure that the jurisdiction is credible, you can



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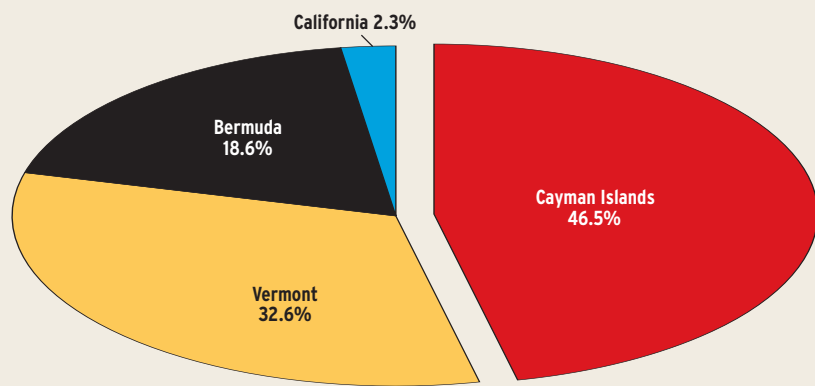
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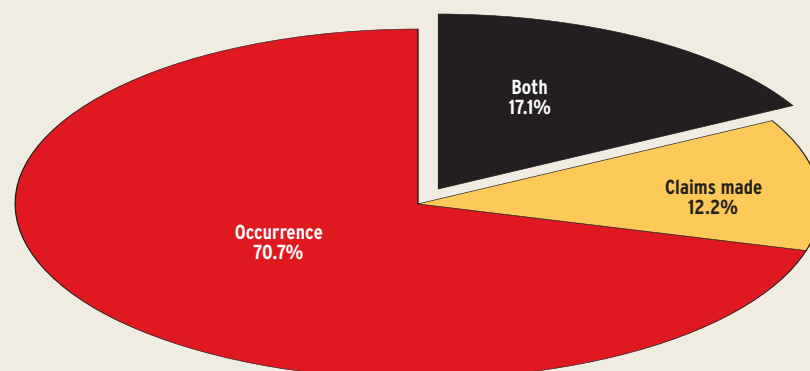
Policyholder-owned facilities by domicile



Source: BI survey

**Liability triggers**

Coverage forms used by policyholder-owned facilities



Source: BI survey

# Largest policyholder-owned alternative risk facilities

## Ranked by 2004 gross premiums written

Rank	Facility	Domicile	2004 gross premiums written	2004 participants	Business conducted by participants	Risks insured	Management company /Address	Phone /Fax /Web site	Contact
<b>1</b>	Associated Electric & Gas Insurance Services Ltd.	Bermuda	\$1,038,274,000	469	Utility and related energy industries	D&O, excess liability, employment practices, excess workers compensation, fiduciary liability, professional liability, property	AEgis Insurance Services Inc. 10 Exchange Place, Jersey City, N.J. 07302	201-521-1200 Fax: 201-521-9555 <a href="http://www.aegislink.com">www.aegislink.com</a>	Gilbert Gould, senior vp
<b>2</b>	Oil Insurance Ltd.	Bermuda	\$442,835,000	83	Chemicals and mining, oil and gas exploration and production, petrochemicals, utilities	Control of well and third-party pollution liability, physical damage to property	OIL Management Services Ltd. ACE Tempest Re Building, 30 Woodbourne Ave., Third Floor, Pembroke, HM 08 Bermuda	441-295-0905 Fax: 441-295-0351 <a href="http://www.oil.bm">www.oil.bm</a>	Douglas A. Kline, senior vp/COO
<b>3</b>	Raffles Insurance Ltd.	Cayman Islands	\$154,709,122	225	Contractors, distributors, manufacturers	Auto liability, auto physical damage, general liability, workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands B.W.I.	345-946-2100 Fax: 345-946-2110 <a href="http://www.rafflesinsurance.com">www.rafflesinsurance.com</a>	Michael Gibbs, president-Kensington Management Group Ltd.; Jennifer Beard, executive vp-Captive Resources L.L.C.
<b>4</b>	American Contractors Insurance Group	Bermuda	\$90,325,000	35	Construction contractors	Auto liability, general liability, workers compensation	ACIG Insurance Co. 12222 Merit Drive, Suite 1660, Dallas, Texas 75251	972-702-9004 Fax: 972-687-0603 <a href="http://www.acig.com">www.acig.com</a>	William S. McIntyre, chairman; <a href="mailto:wsmcintyre@acig.com">wsmcintyre@acig.com</a>
<b>5</b>	Oil Casualty Insurance Ltd.	Bermuda	\$90,100,000	80	Chemicals and mining, oil and gas exploration and production, petrochemicals, utilities	Excess general liability	OIL Management Services Ltd. ACE Tempest Re Building, 30 Woodbourne Ave., Third Floor, Pembroke, HM 08 Bermuda	441-295-0905 Fax: 441-295-0351 <a href="http://www.ocil.bm">www.ocil.bm</a>	George Hutchings, senior vp/COO
<b>6</b>	Affinity Insurance Ltd.	Cayman Islands	\$73,521,486	164	Contractors, distributors, manufacturers	Auto liability, auto physical damage, general liability, workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands B.W.I.	345-946-2100 Fax: 345-946-2110 <a href="http://www.affinityinsuranceltd.com">www.affinityinsuranceltd.com</a>	Michael Gibbs, president-Kensington Management Group Ltd.; Tom Ullrich, senior vp-Captive Resources L.L.C.
<b>7</b>	Churchill Casualty Ltd.	Cayman Islands	\$72,546,477	95	Contractors, distributors, manufacturers	Auto liability, auto physical damage, general liability, workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands B.W.I.	345-946-2100 Fax: 345-946-2110 <a href="http://www.churchillcasualty.com">www.churchillcasualty.com</a>	Michael Gibbs, president-Kensington Management Group Ltd.; Sam Meccia, senior vp-Captive Resources L.L.C.
<b>8</b>	Temporary Services Insurance Ltd.	Cayman Islands	\$50,924,509	106	Temporary employment companies, staffing firms	Workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands B.W.I.	345-946-2100 Fax: 345-946-2110 <a href="http://www.tempsinsurance.com">www.tempsinsurance.com</a>	Michael Gibbs, president-Kensington Management Group Ltd.; Luan Lee, vp-Captive Resources L.L.C.
<b>9</b>	American Excess Insurance Exchange, Risk Retention Group	Vermont	\$49,685,000	18	Nonprofit hospital systems	Excess hospital professional liability and general liability	Premier Insurance Management Services 150 Dorset St., Suite 238, South Burlington, Vt. 05403	802-863-4400 Fax: 704-733-4700 <a href="http://www.premierinc.com">www.premierinc.com</a>	Robert Dowdy, president
<b>10</b>	Traffic Insurance Ltd.	Cayman Islands	\$47,199,190	56	Trucking companies	Auto liability, auto physical damage, general liability, workers compensation	Kensington Management Group Ltd. P.O. Box 10027APO, Grand Cayman, Cayman Islands B.W.I.	345-946-2100 Fax: 345-946-2110	Michael Gibbs, president-Kensington Management Group Ltd.; Tim Gallagher, vp-Captive Resources L.L.C.

Source: BI survey

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## Q&A: Bermuda strives to keep operations transparent and credible

Continued from page 14  
never have conflict.

**JC:** I wouldn't call the relationship today necessarily one of partnership. I think if (companies here were) asked today, we would very much be seen today to be the independent regulator who periodically consults with the industry, as opposed to a partner with industry. And I think that's the way that it needs to be. We don't want to just impose change on your market without getting some feedback from that market.

**Q:** Can you describe what

**types of financial services and insurance-related business Bermuda wants to attract and would be a good fit for the market here?**

**CL:** At the end of the day, Bermuda is very cognizant of its reputation. Therefore, we want to ensure that the types of businesses that come here will fit that reputation. I would also say that we are, obviously, a small jurisdiction, and there's obviously limits to how much we can expand. A lot of the business that will probably be coming here will be those that put less of a strain on our infrastructure—so, small com-

panies that may not require a lot of people. Having said that, if it's a good business, we're not going to turn it away. We are trying to find the balance in terms of making sure that we're getting the right business here and that it's not going to ultimately put too much of a strain on our infrastructure.

**Q:** What are some of the changes that the Bermuda marketplace has to make over the next few years?

**JC:** Certainly, from a regulatory perspective, we're going to continue to push to enhance our regulation of

the insurance industry here. The industry is going to be challenged too....I think that there may be some additional requirements from an international perspective that will be imposed on the industry, and the industry will have to respond. You're going to see change that takes place based on world events, based on scrutiny from regulators and based on the maturity of the market. We're going to continue to adapt to that change and make sure that Bermuda continues to be known to be credible. Transparency is key—making sure that people know that this jurisdiction is clean, that's it's credible, and we're going to take the steps

that are necessary to make sure that that is understood.

**Q:** Finite reinsurance and related problems at companies have fueled a lot of questioning of Bermuda as a domicile recently. Do you think that these industry issues will have an impact—or perhaps already have had an impact—on the Bermuda market in terms of the businesses that want to set up here or remain here on the island?

**JC:** This is not a Bermuda issue; this is an issue for a number of jurisdictions. It's more of a U.S. issue than anything, and it's a Swiss issue, it's a U.K. issue. I think that we've done a tremendous job—we being the regulators, the government and the Bermuda market overall—of withstanding all of that. To me, it's almost good when you have a test like that, because then you really get to see how your participants respond. And they've responded extremely well. Everybody, from what I have seen and from what I'm hearing from my deputies, has been extremely responsive to our queries, and they also have been extremely responsive to U.S. investigators. If Bermuda players had turned a blind eye, and said, "We're in another jurisdiction; we don't care," then it would be a different story, but they've done the opposite.

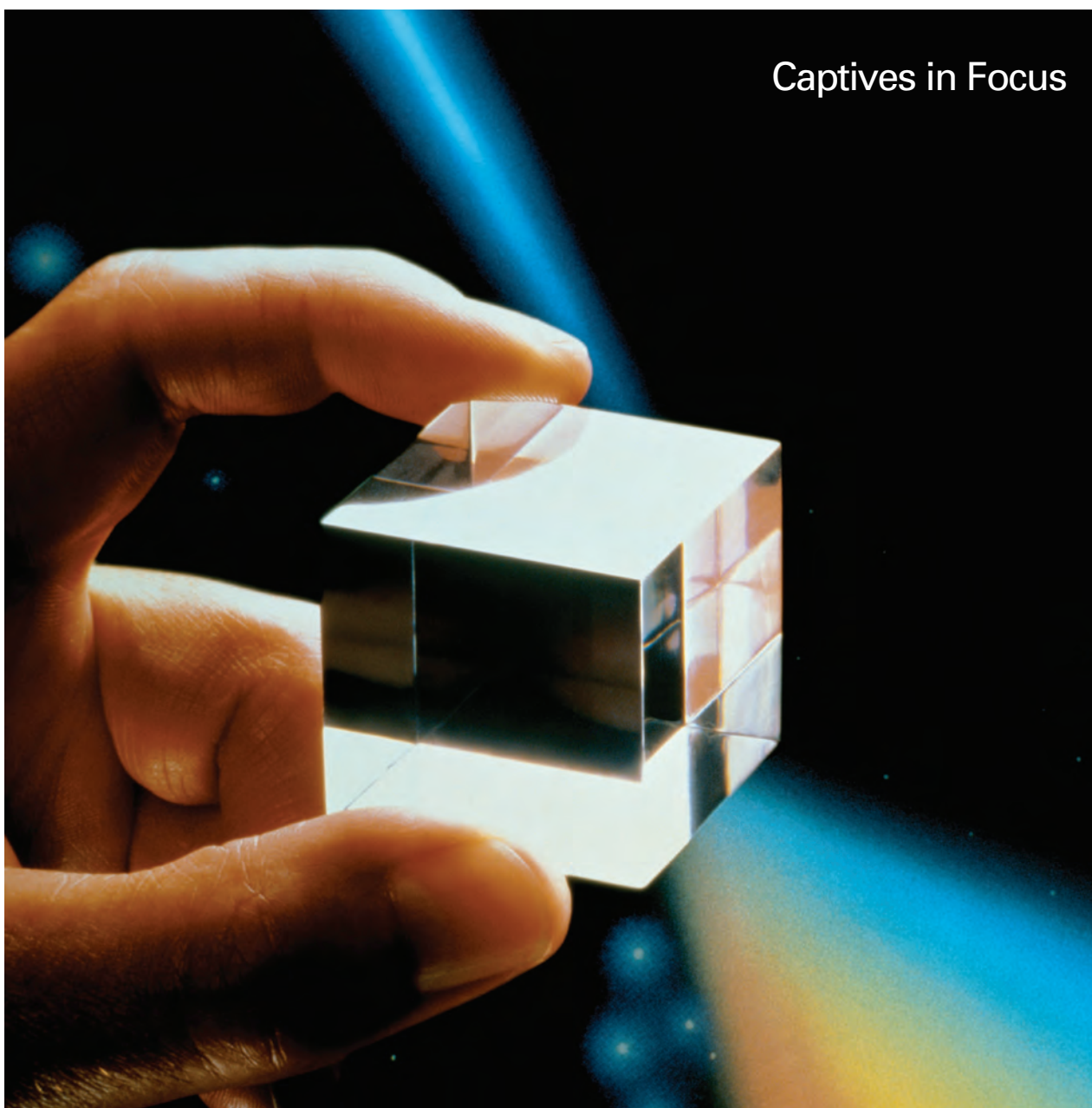
**CL:** Bermuda is a key player in the reinsurance market globally. Therefore, when anything happens in that sector—whether it's positive or negative—it's inevitable that Bermuda's name comes up.

One of the challenges that we do have, unfortunately, is if something happens to a company in New York, people don't say, "New York is a bad place to do business." But when a Bermuda company is even perceived to have done something wrong or there is some negative news concerning a particular company, people immediately start questioning Bermuda.

**Q:** Where do you see the Bermuda market in the next 10 years?

**JC:** All we can say from a regulator's perspective is that we see international regulation as still in the early days. The international insurance regulators association, the standard-setting body, has only been around for 12 years. In the next 10 years, they are going to very busy trying to consolidate the infrastructure from a regulator's perspective—so we're going to be very busy participating in standard-setting meetings and making sure that whatever takes place in the market in Bermuda has a solid regulatory infrastructure.

**CL:** The underlying commitment to quality I don't believe will change, because that has been the secret of our success. I believe we're going to strengthen in that regard, and, 10 years from now, that will still be the key thing that underscores our regulation and plays a key role in the market.



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# Bermuda captive owners form networking association

By MICHAEL BRADFORD

Bermuda captive owners have, for the first time, an association to call their own.

While captive managers and other Bermuda market professionals have for years belonged to organizations intended to help them work smarter and share expertise, captive owners have not had that same kind of professional camaraderie. But that changed in September, when the Bermuda Captive Owners Assn. held its inaugural meeting at the Bermuda Captive Conference, which is itself a newly launched ac-

tivity that organizers plan to make an annual event.

The new association aims to create networking opportunities for risk managers who have captives in the domicile and to foster an active approach to doing business and working with Bermuda regulators.

The Bermuda Insurance Managers Assn., an organizer of the September conference, is helping the captive owners association establish its structure and find its feet in the marketplace. But while BIMA is providing support, the new association will be making its own decisions.

"We have ideas at BIMA, but we're trying to leave it to the steering committee" to come up with the final operating structure of the association, said J. Oliver Heyliger, BIMA's president.

The inaugural meeting drew 30 attendees, with six risk managers volunteering to staff the group's steering committee.

Karl Zimmel, director, risk management, at Alberto Culver in Melrose Park, Ill., is a member of the committee and one of the organizers of the association. Mr. Zimmel said he sees the association as an excellent way for risk managers to

help each other with their captive operations.

"It's an opportunity, really, to network among your peers in similar situations," Mr. Zimmel said. In addition to having meetings to provide networking opportunities, there are plans for the group to establish an e-mail link that members can use to share information and offer guidance, he said.

Such an association could be especially helpful to risk managers with newly established captives, Mr. Zimmel said. "If someone is brand new" to the captive world, "there will be a support group avail-

able," he said. "Historically, it's been captive managers and consultants" that have been available to provide help, he noted, and there hasn't been a way for Bermuda captives to solicit help from their peers.

The need for networking opportunities and the idea of such an association had been on Mr. Zimmel's mind for some time when he was asked by Mr. Heyliger to help with the new group's formation.

He first considered the idea about two years ago, when he was with another company, Mr. Zimmel said, and an executive asked how other captives handled a given investment situation. "I wished I had had an organization to go to or could shoot an e-mail to someone" for the answer, he recalled. "It really hit me then."

"So I was very excited when I heard he had similar thoughts," Mr. Zimmel said of Mr. Heyliger's plans for the group.

**The inaugural meeting in September of the Bermuda Captive Owners Assn. drew 30 attendees, with six risk managers volunteering to staff the group's steering committee.**

In addition to offering networking benefits, the club hopes to provide its members with a close relationship with Bermuda regulators. Captive managers would like to have some input into the regulatory process and be better informed ahead of time when regulatory changes are in the works, Mr. Heyliger said.

The association will allow captive owners to "have a consolidated voice," said Brian Raymore, senior vp of safety and risk at CentiMark Roof Systems in Canonsburg, Pa., and one of the first members of the captive association. With that voice, he said, the group can "make recommendations as to how to make the business climate better."

As of now, the association is open only to Bermuda captive owners, which generally means the risk managers for the parent companies, Mr. Zimmel pointed out, though he noted that the group could later be opened to captive owners from other domiciles. "That's something we're still kicking around," he said.

The association has yet to decide how frequently it will meet, but plans are to gather at least annually during the Bermuda Captive Conference.

Many of the new group's members also belong to the Risk & Insurance Management Society Inc., Mr. Zimmel said, and there may be a way for the association to meet during RIMS' annual conference. Regarding meeting dates and other details, though, "a lot still needs to be developed," he acknowledged.

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# Companies boost capital in anticipation of price hikes

## Post-Katrina, insurers and reinsurers seeking to profit from property cat opportunities

By SARAH VEYSEY

In the weeks since Hurricane Katrina caused the insurance industry's largest-ever natural catastrophe loss, followed by two other substantial hurricanes, many of Bermuda's newer insurers and rein-

surers have been reassessing business plans and raising new capital.

Many Bermuda companies suffered large losses from the hurricanes, but most have now replenished lost capital and are in a strong position to take advantage of expected price increases for

many lines of business, particularly property catastrophe reinsurance.

Investors also have signaled their intention to place more capital in the Bermuda market.

Last week, London-based Amlin P.L.C. announced it has formed a reinsurance company in Bermuda with capacity of \$1 billion. Amlin Bermuda, which intends to be up and running by Jan. 1, 2006, will focus on underwriting regional U.S. and international catastrophe reinsurance. Charles Philipps, chief executive of Amlin, said of the formation of the new reinsurer, "We believe this is an opportune time to make this move in view of the significant rating increases which are expected as a result of the unprecedented windstorm losses incurred in 2005 and 2004."

Donald Kramer, founder of NAC Re Corp. and Tempest Reinsurance Ltd., last month announced plans to set up a Bermuda-based reinsurer with capital of \$750 million. He leads an investment group that will buy the existing business of Rosemont Reinsurance Ltd., the Bermuda unit of London-based Goshawk Insurance Holdings P.L.C. that was placed into runoff after large hurricane losses.

**Many Bermuda-based companies are optimistic about the opportunities they believe the Hurricane Katrina losses will generate.**

Warren, N.J.-based Chubb Corp. announced that, in conjunction with Greenwich, Conn.-based Stone Point Capital L.L.C., it is setting up a Bermuda-based reinsurer, Harbor Point Ltd. The new company expects to have startup capital of about \$1.5 billion and will take on the reinsurance book of Bernardville, N.J.-based Chubb Re, including Jan. 1, 2006, renewal rights and certain other assets, Chubb said.

Startup reinsurer Validus Reinsurance Ltd., supported by insurance investment vehicle Aquiline Capital Partners L.L.P., was incorporated in Bermuda late last month. The reinsurer, which will write property catastrophe business and other specialty lines, will be headed by Chairman and Chief Executive Officer Edward J. Noonan, a former president and CEO of American Re Corp. Validus' sponsor, Aquiline Capital Partners, is an investment vehicle run by Jeffrey Greenberg, former chairman of Marsh & McLennan Cos. Inc.

Bermuda is considered a vibrant market and a great place for new startups, said Laline Carvalho, a credit analyst and director at Standard & Poor's Corp. in New York.

While a few additional startups



**A casino barge in Gulfport, Miss., lies in ruins, pushed ashore by Hurricane Katrina. Large losses from the hurricane have forced many Bermuda-based insurers and reinsurers to raise new capital and reassess their business plans.**

will form in the wake of hurricanes Katrina, Rita and Wilma, there is not likely to be a rush of new company formations like that after the Sept. 11, 2001, terrorist attacks, Ms. Carvalho said.

Established companies, too, have been raising capital to replenish their balance sheets after hurricane losses, and many likely will alter their strategies to take advantage of the expected upturn in rates for some classes of business, particularly catastrophe business, sources say.

For example, some of the "hybrid" Bermuda-based companies that write both direct insurance and reinsurance business may write a greater proportion of reinsurance going forward because that market is expected to afford opportunities, noted Ms. Carvalho.

And some of the Bermuda companies that "have made large inroads into casualty" may now write a greater proportion of property business, she said. This could restrict the available capacity for casualty risks and reduce competition, resulting in rate increases in that area too, she noted.

Rating agencies also may review their risk-based capital requirements for insurers and reinsurers writing certain lines as a result of the recent hurricane losses, noted Chris Klein, head of counterparty risk at London-based broker Benfield Group Ltd. "And the cost of capital could increase," he said.

Some monoline companies could, as a result, face a "disproportionately high cost of capital" and some may decide to diversify their business lines to reduce this cost, he said.

### Reinsurance rate hikes ahead for property risks

Many Bermuda-based companies are optimistic about the opportunities they believe the hurricane losses will generate.

Large rate increases are expected for property reinsurance, likely between 50% and 100% for U.S.-based risks and possibly higher for catastrophe-exposed business, said

Chris O'Kane, chief executive of Bermuda-based Aspen Insurance Holdings Ltd.

Aspen is a diversified player, Mr. O'Kane said, and "we would not want any one line of business—however attractive—to grow to the extent that (losses in it) could threaten the whole entity."

Some Bermuda-based companies that have monoline structures may seek to diversify if rating agencies require them to allocate more capital to certain risks, he noted, and consolidation in the market could take place.

This year's hurricanes suggest "a meaningfully better market (for reinsurers) than we would have seen in the absence of the storms," said Kevin J. O'Donnell, senior vp at Renaissance Reinsurance Ltd. in Bermuda.

But Mr. O'Donnell noted the market is unlikely to change so significantly as it did after Hurricane Andrew in 1992, when Bermuda became a center for catastrophe insurance and reinsurance.

Underwriters hit by storm losses this year have been able to replenish their balance sheets fairly easily, in the main, he said, and "any amount of new capital, I think, will increase supply and dampen the effects" of expected demand.

But cedents may, in the wake of the storms, believe that they need to buy more reinsurance cover at higher levels, he said.

### Property business becomes attractive

Max Re Ltd. plans to diversify into property insurance and reinsurance in order to benefit from the improved rating environment and expected increased demand for such business in the wake of the recent hurricanes.

Max Re's president and CEO, Robert J. Cooney, said the company recently raised \$246 million to take advantage of what it believes to be a significant opportunity to expand into property business at the upcoming renewal.

See POST KATRINA/page 25



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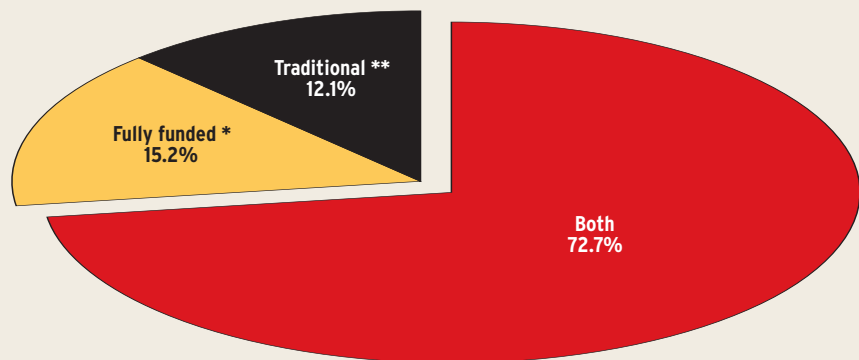
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**BI RANKS**

**Types of rent-a-captive programs**

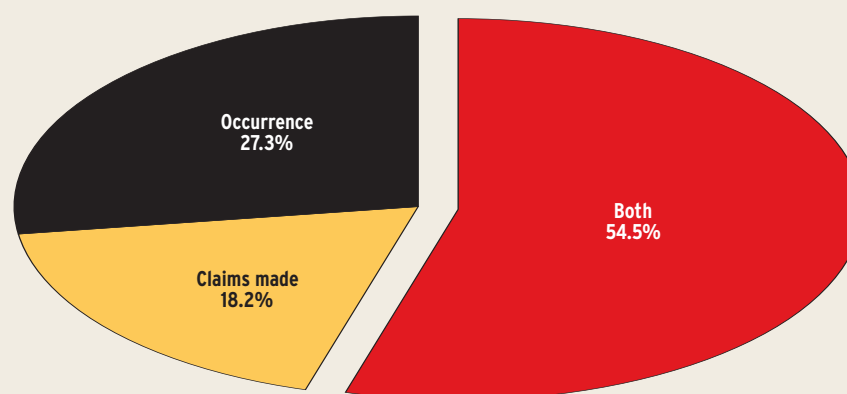


\*In fully funded programs, the rent-a-captive issues a policy and funds it up to the aggregate limit.  
 \*\*Traditional programs are written through a fronting company rather than by the rent-a-captive.

Source: BI survey

**Liability triggers**

Coverage forms used by rent-a-captive facilities



Source: BI survey

# Largest rent-a-captive facilities

## Ranked by 2004 gross premiums written

Rank	Facility	Domicile	2004 gross written premiums	Estimated 2005 gross written premiums	2004 participants	Estimated 2005 participants	Risks insured	Management company/Address	Phone/Fax/Web site	Contact
<b>1</b>	Guardrisk Group of Cos.	South Africa	\$329,317,076 <sup>1</sup>	\$362,489,033 <sup>2</sup>	291	346	Life, nonlife	Guardrisk Holdings Ltd. Alexander Forbes Place, 90 Rivonia Road, Fourth Floor, Sandton, 2146 South Africa	27-11-669-1100 Fax: 27-11-669-2528 <a href="http://www.guardrisk.co.za">www.guardrisk.co.za</a>	Andre Gideon Jordaan, financial director
<b>2</b>	Universal Re-Insurance Co. Ltd.	Bermuda	\$185,000,000	\$215,000,000	125	135	All lines	Atlantic Security Ltd. Windsor Place, 18 Queen St., Hamilton, HM 11 Bermuda	441-295-5425 Fax: 441-295-5444	Hal Forkush, president
<b>3</b>	Marchmont Insurance Co. Ltd.	Bermuda	\$146,000,000	\$40,000,000	15	12	Health, life, pension, property/casualty	HSBC Insurance Solutions (Bermuda) Ltd. Insurance Building, 112 Pitts Bay Road, Hamilton, HM 11 Bermuda	441-292-5566 Fax: 441-292-8682 <a href="http://www.bfm.bm">www.bfm.bm</a>	S. Andrew White, assistant vp/ manager
<b>4</b>	Universal International Reinsurance Co. Ltd.	Bermuda	\$115,000,000	\$125,000,000	65	72	All lines	Atlantic Security Ltd. Windsor Place, 18 Queen St., Hamilton, HM 11 Bermuda	441-295-5425 Fax: 441-295-5444	Hal Forkush, president
<b>5</b>	Alternative Re Ltd.	Bermuda	\$81,300,000	N/A	146	N/A	Auto liability, general liability, property, products and completed operations, workers compensation	Wessex House, 45 Reid St., Hamilton, HM 12 Bermuda	441-278-9245 Fax: 441-278-9249	Gavin P. Collery, president/COO
<b>6</b>	Artex Insurance Co. Ltd.	Bermuda	\$66,100,000	\$70,000,000	100	108	Auto liability, general liability, workers compensation	Artex Underwriting Managers Ltd. Swan Building, 26 Victoria St., Hamilton, HM HX Bermuda	441-296-6429 Fax: 441-292-8231 <a href="http://www.rent-a-captive.com">www.rent-a-captive.com</a>	Peter J. Mullen, president
<b>7</b>	Hurst Holme Insurance Co. Ltd.	Bermuda	\$64,000,000	\$75,000,000	22	25	Property/casualty	IAS Group 44 Church St., Hamilton, HM 12 Bermuda	441-295-3688 Fax: 441-296-1457 <a href="http://www.ias.bm">www.ias.bm</a>	David P. Pickering, president
<b>8</b>	Lansdowne Insurance Co. Ltd.	Bermuda	\$59,675,000	\$65,000,000	60	64	Property/casualty	Allegro Insurance & Risk Management Ltd. Burnaby Building, 16 Burnaby St., Hamilton, HM 11 Bermuda	441-295-8495 Fax: 441-292-1196	Andy McComb, president
<b>9</b>	Uberrimae Fidei Insurance Co. Ltd.	Bermuda	\$55,000,000	N/A	12	N/A	All lines	Independent Management Ltd. P.O. Box HM 2070, Hamilton, HM HX Bermuda	441-295-1646 Fax: 441-292-8062 <a href="http://www.img.bm">www.img.bm</a>	Francis J. Carter, president
<b>10</b>	North Rock Insurance Co. Ltd.	Bermuda	\$41,000,000	\$45,000,000	70	50	N/A	Cedar Management Ltd. Continental Building, 25 Church St., Hamilton, HM 12 Bermuda	441-295-6015 Fax: 441-295-1702	Thomas R. McMahon, president-Cedar Management Ltd.

<sup>1</sup> 2004 premium volume, assets and capital/surplus are converted from South African rand = \$0.1611 (2004). <sup>2</sup> 2005 estimated premium volume is converted from South African rand = \$0.1505 (10/24/05)  
 Source: BI survey

Visit [www.businessinsurance.com](http://www.businessinsurance.com) for more information and access to the full searchable directory of rent-a-captive facilities.

## Post-Katrina: Bermuda companies boost capital in anticipation of rate hikes

Continued from page 22

Currently, Max Re largely writes casualty business, with premium volume of about \$30 million from property insurance business, Mr. Cooney explained. He said he believes the company will be able to expand that portfolio to between \$75 million and \$200 million.

Previously, Mr. Cooney said, Max Re was binding only a few of the submissions it received because it believed prices were not adequate. "We were probably only writing about 7% of what we saw," he said.

But the company now expects rising rates to make property business more attractive, Mr. Cooney said, with increases of 15% to 20% expected on accounts with no catastrophe exposure, rises of 50% to 60% expected on business that experienced limited losses, and increases of as much as 200% to 300% expected on business that suffered large losses.

In addition, Mr. Cooney said, Max Re plans to expand in property catastrophe business, where it has not previously been a large player. The company does have an investment in Da Vinci Re, a vehicle set up after Sept. 11, 2001, to underwrite short-tail property catastrophe business, he said, but it now plans to greatly expand its underwriting in this area.

Mr. Cooney said Max Re is currently in the process of hiring a team of property catastrophe reinsurance underwriters, which it hopes will be on board before the Jan. 1 renewals.

There are, as yet, no fixed targets for premium volume for this part of the business, Mr. Cooney said, but he predicted that Max Re likely will write about \$75 million to \$100 million of such business if the

renewal season goes well.

Pembroke-based Endurance Specialty Holdings Ltd. raised \$600 million, in three stages, to restore its balance sheet to its pre-Katrina strength and to be in a position to take advantage of market opportunities, said the company's chairman and CEO, Ken LeStrange. Endurance has a diversified book of business but sees particular opportunities in the property catastrophe area, he said.

"I am very excited about the property catastrophe reinsurance business. The market has behaved in a very disciplined fashion now for 12 to 13 years post-Hurricane

Andrew, and I think we bring some important advantages in that space," Mr. LeStrange said. "And our property catastrophe reinsurance portfolio has been stress-tested now" by a large number of natural catastrophes in recent years "and we're feeling pretty good about it," he said.

Bermuda-based companies will be reassessing the way they look at risk in the wake of Hurricane Katrina—"the largest loss in insurance history," said James P. Bryce, president and CEO of IPC Holdings Ltd.

Companies will probably now impose clearer definitions and language, and there will be a tighten-

ing of sublimits, he said. This, in turn, will create greater demand for property catastrophe coverage, he said.

In the wake of the hurricanes, other companies are assessing their exposures in certain lines.

Quanta Capital Holdings Ltd. is conducting an internal analysis of its technical risk property and property reinsurance books and has temporarily ceased writing those lines until the review is complete, a spokeswoman for the company explained.

"We are still a relatively young company—just two years in business," she said, "and our results

have been overshadowed by the severity of the windstorms." The company expects net losses of about \$68.5 million from hurricanes Katrina and Rita, and of about \$8 million to \$15 million from Wilma.

Quanta was working closely with rating agency A.M. Best Co. to "assess its capital position and what the best option is for capital raising," the spokeswoman said.

Quanta announced late last month that it had filed a shelf registration statement with the U.S. Securities and Exchange Commission that, if enacted, would enable it to raise up to \$125 million.



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## Patients: Hospitals must act to curb liabilities arising from anti-dumping law

Continued from page 4

The law requires hospital boards of trustees to adopt and enforce EMTALA policies. Hospital staff must then be educated about the policy, Dr. Bitterman said.

Although EMTALA was enacted in 1986, the Centers for Medicare and Medicaid Services—a division of the Dept. of Health and Human Services—did not publish its final interpretive guidelines for the law until May 2004.

Some of the interpretive guidelines are confusing and at odds with how the law is written, according to Dr. Bitterman. In addition, hospitals now face patient-treatment

rules that vary depending on whether a patient is first treated in the emergency department or some other department.

The fastest-growing area of lawsuits against hospitals centers on EMTALA violations, however, good hospital policies and procedures should mean “you have nothing to fear from this law,” Dr. Bitterman said.

The “most controversial issue” under the new CMS regulations centers on the on-call lists of physicians that hospitals must maintain to ensure that emergency patients have access to specialists. “This is where the rubber meets the

road in terms of access to care,” he said.

Hospitals, not their medical staffs, are responsible under the CMS regulations for on-call duties. “That’s an enormous expansion of hospital liability,” he said.

In developing on-call lists, “you have to look at on-call services differently than you did before,” Dr. Bitterman said. The regulations require a hospital to maintain an on-call list that “best meets the needs” of its patients by tailoring the list to the hospital’s specialties.

Hospital policy also must include contingency plans for when an on-

call physician cannot respond because of circumstances beyond their control. In addition, under the CMS rules, hospitals can give physicians the flexibility to make commitments that could preclude them from performing their on-call duties, Dr. Bitterman noted.

This “maximum flexibility,” as the CMS rules call it, may mean that “maximum uncertainty” will continue for hospitals and the requirement will complicate arranging timely access to specialty care providers, he said.

On-call doctors often do not want to respond for various reasons, Dr. Bitterman said. For exam-

ple, doctors may not want to treat patients from neighboring communities that do not take care of their own residents, yet that is a required by the law, he said.

In another situation, an on-call physician who is tapped during office hours typically would not want to leave his or her practice and would instruct the hospital to have the patient moved to the doctor’s office. That would be allowable only if the patient were stabilized, Dr. Bitterman noted. That is why the CMS regulation on when an emergency patient is considered stabilized is such “a big deal,” he said.

In its “confusing” guideline, CMS says that a patient is stabilized at the point that his or her EMC is resolved rather than when the patient can safely be transferred to a more-appropriate facility, Dr. Bitterman said.

**The patient transfer guideline “creates confusion and additional liability for physicians and hospitals when transferring patients.”**

**Dr. Ronald A. Bitterman**

“This interpretation is contrary to the plain language of the statute, all court rulings on the issue, CMS’ own prior regulations and guidelines and creates confusion and additional liability for physicians and hospitals when transferring patients with EMCs,” he said.

“This will be a highly charged issue and will be litigated all over the map. It already is being litigated,” Dr. Bitterman said.

EMTALA also requires each hospital to develop a formal transfer policy, which should stipulate the documentation that must be completed and who must be responsible for that, Dr. Bitterman said.

While EMTALA does not apply to stabilized patients, a hospital’s transfer policy should be the same for all patients, he advised.

Meanwhile, if a hospital has the capability to treat an emergency that another hospital cannot, the transfer must be accepted, Dr. Bitterman said.

So hospitals should define what types of cases they can accept and their capacity and communicate that to other hospitals in the region, he advised.

In addition, hospitals should ensure that their policies have been drafted carefully, because there is growing litigation over hospitals’ failure to follow their own rules, Dr. Bitterman said. For example, one facility is being sued because it violated its rules requiring physicians to read X-ray films when it began allowing physician assistants to read the films.

*Wrench in the works?*



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# Wake-up call needed on nurse-administered anesthesia

*Advocates warn of medical malpractice liability risks in administration of popular sedative*

By **DAVE LENCKUS**

**SAN ANTONIO**—A popular sedative with no known antidote poses a huge medical malpractice liability risk for hospitals and health care providers because it often is administered under conditions that contradict the manufacturer's warning, say an attorney and a nurse manager.

Compounding the problem is an effort by some physicians to persuade federal regulators to remove the warning label from the general

anesthetic, according to the two advocates for keeping and following the warning label.

The pair warned hospital risk managers of the risks created by ignoring the label during a session at the American Society for Healthcare Risk Management's annual conference, held Oct. 23-26 in San Antonio.

The patient sedation procedure that the pair opposes is known as NAPS, short for nurse-administered propofol sedation. The general anesthetic propofol, which was in-

troduced in 1986, is manufactured by London-based AstraZeneca P.L.C. under the brand name Diprivan.

The anesthetic is popular among health care providers for several reasons, according to attorney and endoscopy nurse Deborah A. Krohn. Ms. Krohn practices law at Siegel & Krohn P.C. in Towson, Md., and is a nurse at The Johns Hopkins Hospital in Baltimore.

Ms. Krohn noted that propofol works within two or three minutes, which is a fraction of the time re-

quired by other anesthetics; it is easy to administer; and patients recover quickly from the sedative.

The anesthetic is used in hospitals, ambulatory centers and physician and dentist offices during a variety of procedures, including minor surgeries, minor bone fracture repairs, burn debridement, plastic and reconstructive surgery and dental surgery.

The risks to patients who are sedated by the drug are collapsed airways, reduced blood pressure, reduced heart rates and low oxygen

saturation, according to Ms. Krohn.

To date, the drug has a good safety record, noted Laura A. Kress, a nurse manager and the assistant director of nursing at Johns Hopkins.

But Ms. Krohn suggested that safety studies are somewhat misleading. She said the studies compare the risks of propofol, which has been used on relatively healthy patients, to the risks of other anesthetics used to sedate patients who are sicker.

An important medical issue with the drug is that there is a 19-fold difference among patients in how the drug metabolizes, Ms. Krohn noted. That unpredictability in a patient's reaction to the drug is not

**One in 10,000 patients under sedation will have a problem. "The question is, 'Do you have the right people in the room if that happens?'"**

**Laura A. Kress**  
The Johns Hopkins Hospital

correlated to any factor such as age, weight or illness, she said.

"Perhaps the scariest thing of all" is that there is no known agent that can reverse the effects of the drug, Ms. Krohn said. Unlike with other anesthetics, a patient sedated with propofol "cannot be rescued pharmacologically. There is no antidote," she explained.

Therefore, patients who are sedated with the drug need "airway management" by a specialist in this area. "Airway protection is everything," Ms. Krohn said.

Indeed, the drugmaker's warning label states that the drug should be delivered by a person trained in administering general anesthesia. The anesthesiologist should not be otherwise involved in the patient's procedure, the label also warns.

But propofol often is administered by nurses who have no special training in either anesthesia or airway protection, Ms. Kress and Ms. Krohn said.

Indeed, risk managers should be aware there is no consensus in the medical community about the level of educational and clinical competency that nurses should have before administering propofol. Only in Oregon and Indiana are there institutional programs designed to educate nurses who administer the sedative, Ms. Krohn said.

The lack of training for nurses compromises their ability to rescue patients who have bad reactions to the drug, Ms. Kress said. "I'm worried about that," she said.

One in 10,000 patients under sedation will have a problem, she said. "The question is, 'Do you have the right people in the room if that happens?'"

"In my experience, this is below

See **SEDATIVE** / next page



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# Myths, realities of hospital-run malpractice cover cited

By **DAVE LENCKUS**

**SAN ANTONIO**—Hospital-run insurance programs for physicians can benefit hospitals and doctors in several ways, but the anticipated and actual benefits often differ, according to a panel of experts.

Some myths about hospital-run third-party insurance programs are that they always offer the least-expensive medical malpractice coverage, that hospitals need not worry about program risk management and that the programs run themselves, the experts noted.

A panel of hospital insurance program executives and risk management consultants outlined the realities of such programs during a session at the American Society for Healthcare Risk Management's annual conference in San Antonio last month.

Although hospital-run insurance programs for physicians will not always be the least-expensive option for physicians and cannot be run successfully on autopilot, they can benefit hospitals and their physician communities, said session moderator Ruth A. Goodell, a managing director with Marsh U.S.A. Inc. in Detroit.

Over the long run, the programs provide physicians with a stable med mal insurer that has flexibility

in how it designs coverage and handles claims, she said.

Furthermore, the creation of another insurer means added market competition, which should improve coverage opportunities for physicians, Ms. Goodell said.

And well-run programs strengthen a hospital's relationship with its physician community, she said.

Competitors "don't like to lose business, and we've taken a lot of business from carriers in the state," said Jeffrey J. Stafford, vp and chief operating officer of the Clarian Health Risk Retention Group Inc.

Over the long run, the programs provide physicians with a stable med mal insurer that has flexibility in how it designs coverage and handles claims.

**Ruth A. Goodell**  
Marsh U.S.A. Inc.

and director of corporate insurance and risk management for hospital group Clarian Health Partners Inc. of Indianapolis.

The risk retention group covers about 2,000 various health care providers, 1,500 of whom are third-party risks. CHRRG also covers 1,000 residents when they are practicing in Clarian Health facilities.

The idea that hospital-run insurance programs always can cut every physician's med mal insurance costs is a myth, said Edward Wrobel, a managing partner with Towers Perrin Tillinghast in Weatogue,

Conn. A hospital program might offer lower-cost coverage, "but, clearly, that should not be the overriding goal of the program." The pricing should be sound and cover loss and administration costs, he said.

Hospitals first need credible loss data, which they can obtain through public filings by the dominant med mal insurers in the jurisdiction in which the hospital intends to offer coverage, Mr. Wrobel said. That data can be stripped

See **MED MAL** / next page

## Sedative: Wake-up call needed on risks

Continued from previous page

the radar of nurse managers," Ms. Krohn said. "I've seen it go bad."

But earlier this year, the American College of Gastroenterology petitioned the U.S. Food and Drug Administration to remove the manufacturer's warning label.

Anesthesiologists recently filed their objections.

The debate over how the drug is administered is driven by economics, Ms. Krohn asserted. "As a nurse, I'm repulsed by that," she said.

Ms. Krohn explained that because propofol sedates patients much more quickly than other anesthetics, physicians and dentists can perform more procedures each day. And by using nurses to sedate patients, physicians do not have to share their fees with anesthesiologists, she said.

As the FDA considers whether to remove propofol's warning label, NAPS is being opposed by a growing number of state nursing boards, according to Ms. Krohn. Nonetheless, around half the states either permit it or have unclear positions, she said.

Meanwhile, Ms. Krohn noted, the Joint Commission on Accreditation of Healthcare Organizations, a nonprofit organization that accredits more than 15,000 U.S. health care organizations, requires health care organizations to be prepared to rescue patients.

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## Med mal: Panel reviews myths, realities of hospital-run coverage programs

Continued from previous page

down to loss and defense costs, he said. Hospitals then can add their own overhead costs for the insurance program.

To keep expenses down, the facilities should encourage policyholders to agree to coordinated defenses when claims arise, suggested Michele J. Calderon, vp of CHRRG and associate general counsel with Clarian Health. That keeps physicians' premiums down in the long run, as well, Ms. Calderon said. But she added that the risk retention group does allow physicians to arrange individual legal representation if they insist on that up front.

Hospitals have to be cautious to not violate federal laws by giving coverage pricing breaks to physicians with staff privileges at their facilities, warned attorney Julie E. Robertson, a partner at Honigman Miller Schwartz & Cohn L.L.P. of Detroit. In certain regions, though, price breaks may be permissible for obstetricians, Ms. Robertson noted.

To maintain a viable program, insurance program managers should engage in underwriting and risk management, panel members said.

An early decision that must be made is whether coverage will be offered to all staff physicians just because the hospital already has

**"You have to look carefully at why (doctors are) coming to your program. ... If they've been denied by everyone else, do you want them?"**

**Jeffrey J. Stafford**  
Clarian Health Risk Retention Group Inc.

credentialed them, Ms. Robertson said. CHRRG does not offer coverage to all physicians with privileges at the hospital group's 10 facilities.

"You have to look carefully at why they're coming to your program," Clarian Health's Mr. Stafford said. "If they've been denied by everyone else, do you want them" insured by your program? he asked.

At CHRRG, applications are reviewed and answers are assigned points. If an applicant exceeds a certain point level, the application is reviewed by the risk retention group's underwriting committee, which includes physicians.

Mr. Stafford also recommended

taking into account an applicant's character. If applicants have substance abuse problems, for example, they may be too risky to cover, he said.

CHRRG has denied coverage to some applicants, including Clarian staff physicians, Mr. Stafford noted. "This is a business, not a charity," he said. But "there are political ramifications for telling people 'No,'" he acknowledged.

After underwriting a risk, a hospital-run insurance program still should engage in risk management, Mr. Stafford said. More than 95% of CHRRG's policyholders have not had a claim in 10 years, and "a lot of that is due to risk management," he said.

The facility holds quarterly risk management seminars, where plaintiffs and defense attorneys outline what they look for in their cases, discuss how to keep records and update physicians on the law.

Risk management programs also should include a physician "check-up program," Mr. Stafford advised. "Doctors could say they are doing one thing on the phone and be doing another," he explained.

Just as an insurance program's risks must be managed, the insurance facility's operations also must be directed, the panel noted.

Insurance facilities do not run themselves, CHRRG's Ms. Calderon said. "It's a big deal. You need help."

The easiest route for a hospital is to retain a third-party administrator, she said.

But if program management is not outsourced, then the hospital must ensure that the program has adequate staff—particularly for data analysis, the panel said.



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### Record crowd participates in conference in San Antonio

The American Society for Healthcare Risk Management attracted a record 3,400 visitors—including 2,200 attendees—to its 25th annual conference in San Antonio late last month.

The conference featured 150 exhibitors and 51 educational sessions that covered, among other things, emerging risks for hospitals, patient safety initiatives, updates on the latest legal and regulatory developments and various insurance and risk management tools.

ASHRM's next annual conference is scheduled for Oct. 29-Nov.1, 2006, at the San Diego Convention Center in San Diego.

Further information about ASHRM is available by calling the organization at 312-422-3980 or sending an e-mail to [ashrm@aha.org](mailto:ashrm@aha.org).

## PCI: Hurricane losses leave questions about size, extent of reinsurance rate hikes

Continued from page 3

unhappy with the cat models used by the industry.

These were among the observations made by participants at the Property Casualty Insurers Assn. of America's annual meeting in Chicago last month. Reinsurers, intermediaries and insurers use the occasion to negotiate January renewals.

The meeting occurred as Hurricane Wilma was still battering Florida, and the full extent of insured losses in the United States and Mexico—which has been estimated at up to \$15 billion—was not yet known.

"No one's tipping their hands, so it's just wide speculation as to how much of an increase" there will be in property business, said William J. Adamson, chief executive officer of reinsurance intermediary Carvill America Inc. in Chicago.

"There's great uncertainty as to what level rates will go up," said William H. Eyre Jr., managing director and CEO of Philadelphia-based Towers Perrin Reinsurance.

### Property rate increases

"We know property rates will go up," and the excess and surplus marketplace will go up sharply, while the marine and energy markets see higher rates as well, said Mr. Eyre. "But how much they will increase will depend on clients' exposures and experience," he said.

Mr. Eyre added, "The great debate is, will the commercial lines market harden, and the answer is 'yes,' but it may be over the course of three to six months due to primarily reinsurance pricing."

"In 2001, the commercial lines market was already hardening, and Sept. 11 helped to accelerate that," said Mr. Eyre. This time, the hardening of the market will be a "bit different," he said. "I think this is going to be a little more reinsurance-driven this year."

Among the uncertainties reinsurers and cedents face is that some key players in the retrocessional reinsurance market "are still up in the air" as to what they will do, said Roderick P. Thaler, executive vp and national director at reinsurance intermediary Willis Re in New York.

Moreover, Wilma "just happened," he said. "By itself, (Wilma) should not be severe, but when considered in accumulation with Katrina and Rita, and the four last year, there will be significant pressure on cat loss-affected programs at renewals," said Mr. Thaler. In addition, some reinsurers still need to address rating agency concerns, and that likely will ensure they at least hold the line on programs not hit by the hurricanes, he said.

Clearly, for wind-exposed regions, rates will go up, but it will be interesting to see what happens in the rest of the country, "because most had a very good year," said Jack Snyder, managing director in charge of business development for the Americas at reinsurance intermediary Guy Carpenter & Co. in New York.

In light of the losses, "the initial reaction of reinsurers is to raise rates," Mr. Snyder said. It is going to

be a "tough sell," though, for a reinsurer to tell a regional insurer in the Midwest that has had great results that "we want to raise your rates," he said.

Patrick J. Denzer, president and CEO of reinsurance intermediary John B. Collins Associates Inc. in Minneapolis, said, "On property, we think there will obviously be rate increases for programs with losses in affected areas this year, but it's too early to tell how much prices will be impacted for those clients who did not have a loss or who are not in the hurricane-prone areas."

Before Wilma struck, programs

with no losses would have seen their property cat rates increase by 5% to 15%, while those with losses could have expected a 20% to 40% increase, said Paul Karon, CEO of Benfield Group Ltd.'s U.S. division in Minneapolis.

Gregory T. Doyle, executive chairman of Shelton, Conn.-based BMS Vision Re, estimated that property cat programs that were hit by the hurricanes will see rate hikes of 30% to 40%, while those that were not affected may have an increase of 10% to 15%.

There is also some talk of stripping out some segments of the property cat business—such as the

Southeast, Northeast or California—and reinsuring those separately, said Edmund Megna, vice chairman of Guy Carpenter in New York.

Primary insurers can also expect an effort by reinsurers to either totally or partially remove catastrophe risk from their property-per-risk business, say observers.

"I've heard it discussed. Whether it will stick, it's unclear," Mr. Adamson said.

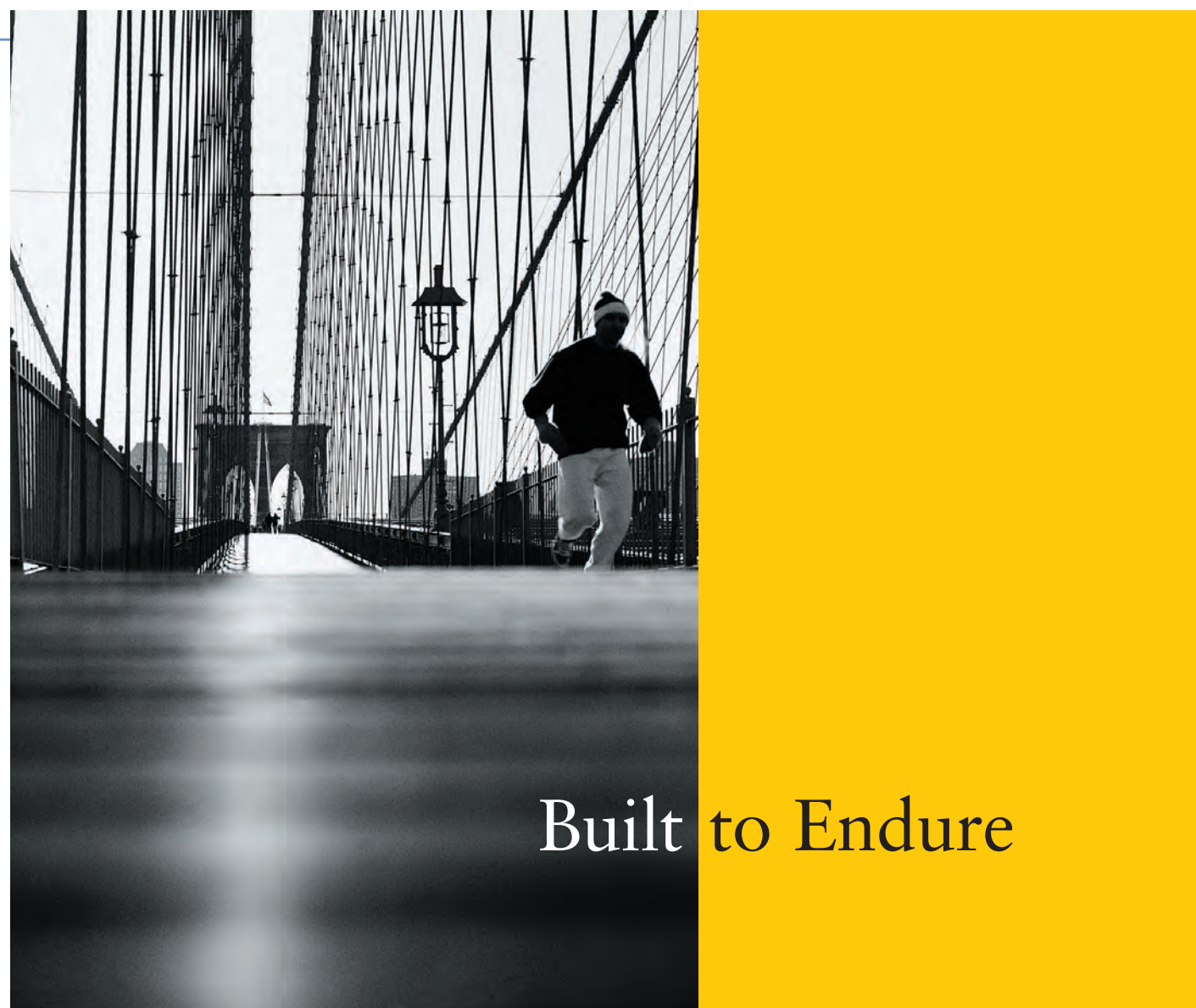
### Casualty rate hikes?

Observers say they are unsure which direction casualty rates will

go. There are two lines of thinking on this, according to Steven J. Dreyer, managing director at Standard & Poor's Corp. in New York—reduced reinsurance market capacity will drive casualty rates up in addition to property rates, or companies will redirect some of their capital away from catastrophe areas and instead seek to write more casualty business.

"The verdict still seems to be out on casualty," said Mr. Doyle. Some reinsurers believe the property loss is large enough to require rate hikes across all lines. But "that does not

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# Upheaval from hurricanes may delay reinsurance renewals

**CHICAGO**—The turmoil caused by hurricanes Katrina, Rita and Wilma is likely to make this a late renewal season as reinsurers continue to assess their losses, say some intermediaries.

But others contend that concern over compliance with the corporate governance requirements of the Sarbanes-Oxley Act will encourage

reinsurers and cedents to have everything in place by the Jan. 1, 2006, contract date.

In addition, there is a desire to avoid repeating the situation that followed the destruction of the World Trade Center, when the failure to have a finalized contract in place led to prolonged litigation over coverage terms, noted interme-

diaries attending the Property Casualty Insurers Assn. of America's annual meeting in Chicago last month.

Jack Snyder, managing director in charge of business development for the Americas at intermediary Guy Carpenter & Co. in New York, said, "It's just going to be a very late season," with reinsurers wanting to

see the damage caused by Wilma as well as get a better evaluation of their Rita and Katrina losses. Once this process is completed, reinsurers will be better equipped to determine prices and terms, he said.

But, Mr. Snyder added, many markets want to have their contracts completed at inception. The situation "puts a lot of strain on a

lot of companies' legal departments," he said.

Market participants are expecting a late renewal, said William J. Adamson, chief executive officer of reinsurance intermediary Carvill America Inc. in Chicago.

"Everyone is projecting a very late renewal season, which is exacerbated by the fact that the retro market suffered seriously as a result of Katrina, and it will take some time to put together each company's retro capacity," Mr. Adamson said.

"It's going to take a lot of reinsurers a lot of time to work out where they want to be and can they get there," said Steven Bolland, president of reinsurance intermediary Gill & Roeser Inc. in New York.

Renewals were also later than usual after the WTC attacks in 2001, Hurricane Andrew in 1992 and Hurricane Hugo in 1989, recalled Edmund Megna, vice chairman of Guy Carpenter in New York. "Obviously, there were some surprises this year, and they're trying to understand what happened, why the estimates were off, and trying to understand their exposure better than the year before," Mr. Megna said.

There has been increased emphasis, though, on completing contracts by the inception date because of the WTC litigation, Sarbanes-Oxley and because "it's just good business practice," said Patrick J. Denzer, president and CEO of reinsurance intermediary John B. Collins Associates Inc. in Minneapolis.

"I think the treaties will be pretty well done by Jan. 1," said Paul Karon, CEO of Benfield Group Ltd.'s U.S. division in Minneapolis. "I don't see things getting done in January or February," Mr. Karon said. It is just "good governance," he added.

Roderick P. Thaler, executive vp and national director at reinsurance intermediary Willis Re in New York said, "I think the more-astute buyers will seek to get into the market as soon as possible," because this will not be one of those years where they get a better deal by waiting.

—By Judy Greenwald

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## PCI: Hurricane losses leave questions about size, extent of reinsurance rate hikes

Continued from page 31

seem to be the majority view at this point," he said. "Right now, I would say they probably will remain stable."

At this point, "we're not seeing that many quotations" on casualty business, said Mr. Megna. The situation in property, though, "could definitely have an impact on further rate decreases" and have a leveling effect on certain areas of business in the casualty area, he said.

According to Carvill's Mr. Adamson, "People are waiting to see." The market hardening that followed the Sept. 11, 2001, terrorist attacks came "after an extended period of very poor results on casualty," he said. This time, the market was softening, but the industry had not created a deep hole, he said. As a result, he said, "it's doubtful we will see radical change in liability pricing, but it's probable you'll see some modest change."

**"What's striking is that we have not heard anybody talk about across-the-board rate increases across all lines."**

**Patrick J. Denzer**  
John B. Collins Associates Inc.

"Casualty's a question mark," concurred Mr. Eyre. But "we anticipate casualty reinsurance pricing will not show any decreases, and there could be stable to moderate increases," he said. We have to keep in mind that "a number of reinsurers have lost multiples of their yearly earnings," he said.

Mr. Denzer of J.B. Collins said: "What's striking is that we have not heard anybody talk about across-the-board rate increases across all lines. Casualty will be more flat than anything."

Meanwhile, PCI conference attendees said there has been relatively little discussion about policy terms and conditions and reinstatements.

"I don't see much change in the reinstatements," said Mr. Megna. "Most companies still have a second loss left" on their reinsurance coverage, and some still have not reached their limit for their first loss, he said.

Mr. Denzer said, "There will be a lot of emphasis around modified terms and conditions, but it's far too early to tell if there will be any meaningful changes."

Larry Spoolstra, Barrington, Ill.-based chief underwriting officer for North American and Asian Pacific reinsurance business for GE Insurance Solutions, said one trend that has surprised him is clients shopping around for noncat business. Mr. Spoolstra said he would have thought, given the market dislocations, that "ceding companies would be likely to maintain reinsurers where they are now."

Mr. Adamson said, though, "I

think that customers are concerned about their options if there's a sea change in the market, and they're going to keep their options open."

Also, "we see continued interest in nontraditional structuring products as the industry gains better definitions of the accounting rules" from the Financial Accounting Standards Board, he said.

But "we still need better clarification from FASB and the (National Assn. of Insurance Commissioners) as to where the goal posts are actually set," Mr. Adamson said.

"Any nontraditional products all have a higher risk element than in the past," he added.

### Rethinking loss models

Some observers also contend that reinsurers may increasingly turn to techniques such as dynamic financial analysis to evaluate their books.

DFA is a systematic approach to financial modeling. Its "stress testing" models present, often in statistical form, scenarios based on a variety of business, competitive and economic factors. This information is used to help prepare a company for a variety of situations.

"A lot of companies were already moving in that direction," said Tom Upton, managing director at

S&P in New York. In light of recent events, though, there is "an increased sense of urgency about introducing disciplines of that nature."

But Mr. Spoolstra said, "I'm not sure that makes sense, because DFA is essentially putting all models together." One of the building blocks would be the cat model, though, which means "the whole DFA model to me becomes questionable," he said.

Several observers noted that catastrophe models, which failed to predict potential flooding losses in New Orleans prior to Hurricane Katrina, need to be revised.

The cat models should be revised, but "I'm not sure they will be," said Mr. Spoolstra.

These models "look at things over a very long period of time," and last year's four hurricanes were regarded as a "drop in the bucket," he noted.

"Perhaps the industry needs to rethink how it interprets modeling results, meaning that models really are the basis for a quantitative analysis," said Mr. Denzer of J.B. Collins.

However, "there obviously needs to be a substantial amount of interpretation and analysis of those quantitative results," he said.

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## PRODUCTS & SERVICES

### Elite Underwriting introduces health plan

**EXTON, Pa.**—Elite Underwriting Services, a managing general underwriter, is offering a limited benefit program for employees.

The program, Elite Health, is an indemnity-based plan and includes coverage for inpatient and outpatient doctor visits, emergency room benefits, prescription drug benefits and daily hospital benefits up to \$2,000, among other features. Coverage is written for a minimum of 150 lives, and the minimum deductible is \$50,000.

The Exton, Pa.-based MGA's program is underwritten by Baltimore-based Monumental Life Insurance Co.

For more information, contact Ryan Cahill, regional sales director, at 610-280-4357, or visit the company's Web site at [www.eliteunderwriting.com](http://www.eliteunderwriting.com).

### Chubb offers online compliance training

**WARREN, N.J.**—Chubb Corp. has expanded its online resource, ChubbWorks, by adding a training program to comply with California's Assembly Bill 1825, which targets sexual harassment in the workplace. ChubbWorks' employment

practices liability training complies with California A.B. 1825 and offers two hours of training that focuses on California's sexual harassment regulation, which is required by the bill. The interactive training is designed for managers and supervisors and provides pre- and post-training questionnaires and online training summaries.

A.B. 1825 applies to employers with 50 or more employees that have one or more employees based in California. All California supervisors must complete two hours of anti-harassment training every two years.

The initial training must be completed by Jan. 1, 2006, and new hires must complete training by July 1, 2006.

More information on ChubbWorks can be obtained by visiting [www.chubbworks.com](http://www.chubbworks.com).

### Institute releases travel awareness program

**SPOKANE, Wash.**—The Safe Travel Institute has launched a training program to help travelers detect and avoid risks.

The program, Safe Passage Travel Companion, is available for corporate buyers and provides strategies for international and domestic travel. The package

includes an instructional DVD; a CD with emergency contact procedures and embassy telephone numbers; a pocket reference with safe-travel reminders; a travel security pouch; and a free online membership to Safe Passage NewsLine, which provides travel security information and resources.

The guide provides information on the stages of travel, including what to pack, how to increase security in hotels and how to avoid being abducted.

The package can be ordered by calling 800-990-4541. To learn more, visit [www.yoursafepassage.com](http://www.yoursafepassage.com). More information about the Spokane, Wash.-based Safe Travel Institute is available at [www.safe-travels.com](http://www.safe-travels.com).

### MS/B offers hurricane images

**LOS ANGELES**—Marshall & Swift/Boeckh, a residential and commercial property valuation technology provider for the property/casualty insurance sector, has teamed up with MDA Federal Inc., a U.S. geospatial services operation, to offer aerial imagery of areas affected by Hurricane Katrina. Both companies are divisions of MacDonald Dettwiler & Associates Ltd.



Pre- and post-Katrina images are available dating from June and July 2005 and from Aug. 30 through Sept. 3. Because many of the affected structures can no longer be identified and others have been demolished, these images give multiple views of the most heavily affected areas and properties from a variety of angles. The images conform to the contour of the earth based on the angle of capture and acquisition height. Some of the higher-resolution images available are located in the 35,000-square-mile area that includes Mobile, Ala.; Biloxi and Gulfport, Miss.; and New Orleans.

For more information, contact Jonathan Kost, claims vp for MS/B, at 800-285-1288 or at [jon.kost@msbinfo.com](mailto:jon.kost@msbinfo.com).

### AIGRM adds program for temp staffing industry

**NEW YORK**—AIG Risk Management has introduced an insurance program for temporary staffing firms.

AIGRM, an American International Group Inc. subsidiary, is offering a suite of coverages and risk management services available to temporary staffing firms of all sizes. The program offers coverages that include workers compensation, general liability, automobile liability, fidelity, employment practices liability, fiduciary and professional liability. The program aims to protect staffing firms from various liability exposures that can develop when sending employees on assignments to client companies.

Limits are available for auto and general liability up to \$1 million and for umbrella up to \$10 million. Workers compensation has statutory limits.

For more information, contact David Schwartz, vp-strategic marketing for AIGRM, at 212-458-2584.

### ACE USA launches LTC suite of products

**PHILADELPHIA**—ACE USA, a division of the ACE Group of Cos., has introduced long-term care primary liability coverage products.

The long-term care offering is a suite of medical professional and primary and excess liability coverages, along with a package policy for nonprofit and for-profit nursing homes, assisted and independent living facilities and continuing care retirement

Continued on next page

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**Continued from previous page**

communities. The products are offered by Philadelphia-based ACE USA division ACE Medical Risk.

The available limits for primary coverage is \$1 million per occurrence and \$3 million aggregate. The limits available for excess coverage are \$5 million per occurrence and \$5 million aggregate.

For more information, contact Colleen Dunn, assistant vp, at 646-458-7048 or at [colleen.dunn@ace-ina.com](mailto:colleen.dunn@ace-ina.com). More information can also be obtained by visiting [www.acemedicalrisk.com](http://www.acemedicalrisk.com).

**MetLife disability offering for small employers**

**NEW YORK**—MetLife has introduced a disability insurance product for small businesses with fewer than 500 employees.

The disability contract intends to offer increased plan flexibility and employee benefit options. Some of the options employers have include the ability to combine or separate limited-benefit duration for a number of absence conditions, as well as the ability to combine term life insurance and disability insurance within the same certificate. The employee benefits provide protection in the event of a loss of income—such as the optional terminal illness benefit for long-term disability, which provides 100% of predisability earnings for up to 12 months if the employee becomes disabled and diagnosed as terminally ill. In addition, the product offers return-to-work and stay-at-work strategies for employees.

For more information, visit the Web site of New York-based MetLife at [www.metlife.com](http://www.metlife.com).

**Reed Group issues various formats of MDA**

**WESTMINSTER, Colo.**—Reed Group, a provider of disability and duration guidelines and software, has released three additional formats of its fifth edition of "The Medical Disability Advisor: Workplace Guidelines for Disability Duration."

This guide provides data on disability and workers compensation duration guidelines and covers more than 6,700 common injuries and illnesses of working-age people. It is geared toward employers, case managers, third-party administrators, insurers and workers compensation management organizations.

The MDA is now available as a two-volume-set reference textbook, a CD-ROM and a data integration technology solution. In addition to the new formats, the MDA is available online.

More information can be obtained by contacting the company at 866-889-4449 or by visiting [www.rgl.net](http://www.rgl.net).

**Work-Life Benefits adds labor unions program**

**RALEIGH, N.C.**—Work-Life Benefits, a dependent care resource and referral company, has launched a work/life program for labor unions.

The UnionSelect offering aims to meet the needs of union workers by providing services they may not have been able to use previously,

such as on-site consultants to help employees without phone or Internet access during the workday, as well as more-affordable child and elder care for all salary ranges.

For more information, contact Mary Ellen Gornick, senior vp for union services, at 800-699-8011, ext. 2121, or at [maryelleng@workplaceoption.com](mailto:maryelleng@workplaceoption.com).

**AI RISK offers architect, engineer cover program**

**NEW YORK**—AI Risk, a division of American International Group Inc.'s subsidiary Risk Specialists Cos. Inc., has launched an architects and engineers professional liability insurance offering.

This insurance provides worldwide

coverage for architecture and engineering firms and the firms' employees against claims from allegations of errors, omissions or wrongful acts related to services provided or services performed by others for which they are legally liable.

The architects and engineers professional liability coverage is available on an admitted basis. There are minimum premiums available of \$3,000 to \$12,500 for certain risk classes with policy limits

up to \$1 million. In addition, limits of up to \$5 million are available.

For more information, contact Terri Moran, vp-marketing for AIG programs, at 415-836-7251 or visit [www.airisk.com](http://www.airisk.com).

**Best releases new version of 2005 loss control guide**

**OLDWICK, N.J.**—A.M. Best Co. has issued its final release of the 2005 "Best's Loss Control Manual."

The guide intends to provide a better understanding of industrial and commercial risk by containing more than 500 risk classification descriptions. Designed to assist risk managers and underwriters, the manual is released three times a year on CD-ROM. The online

version's content is updated when new information becomes available.

Some of the revised classifications include air charter services, carpet and upholstery cleaners, music stores and textile mills.

For more information, contact Oldwick, N.J.-based Best's customer service department at 908-439-2200, ext. 5742, or visit [www.ambest.com/sales/lcmcdrom](http://www.ambest.com/sales/lcmcdrom).

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## COMMENTARY

Senior Editor Rodd Zolkos

# Almanac forecasts: more than hot air?

This year's hurricane season has understandably prompted a lot of talk about the viability of various catastrophe models and weather predicting techniques.

Even more challenging questions are being asked about such topics as climate change, the warming of the oceans, global temperature increases and their potential impact on everything from future hurricane seasons to home heating bills.

Setting aside the argument over whether what's happening is the result of greenhouse gases or simply a natural cycle that we haven't experienced since weather records started being kept, there's a lot of people who sure would like to know just what the heck's happening with the weather.

Heating bills and golf forecasts aside, I might not have quite the same incentives for having an accurate idea of what's ahead weatherwise as a CEO making plant siting decisions or a reinsurance executive determining where to allocate capacity, but I have long found the weather to be source of great fascination.

I probably log more than my share of time watching the Weather Channel, leading my wife, Kathy, to express wonderment on those rare occasions when "Weather Guy" can't tell her which coat would be appropriate for the day as we head out the door in the morning.

So, in my own way, I'd be quite interested in knowing just what's going on and what's coming down the road. But lacking access to fancy modeling tools or teams of meteorologists, I've decided to consult a time-honored source. The other day, I picked up a copy of The Old Farmer's 2006 Almanac.

Back in college, a roommate and I were fond of consulting the Almanac, though I don't remember if we found it particularly reliable. I do recall wearing canvas Converse All Stars even in ankle-deep snow and slush back then, so I suspect we weren't particularly sweating the accuracy of the Almanac's forecasts.

But this year, with all the high-tech forecasts and varying opinions about weather trends swirling around, I've decided it's time to put the Almanac to the test. I've examined its predictions for the year ahead, and I've made a note to check on its accuracy about a year from now, with plans to report back to you on my findings.

The Almanac's editors note that their weather predictions are based on a "secret formula" devised by the Almanac's founder, Robert B. Thomas, in 1792, supplemented with the study of sunspots and other solar activity, the analysis of prevailing weather patterns and the observation of the atmosphere.

So what does this year's Almanac predict? In general, for November through March, colder weather than usual east of the Mississippi and warmer than normal to the west, with greater than normal snowfall in the Northeast and the southern High Plains region but below normal snowfalls elsewhere.

April and May of 2006 are predicted to be cooler than normal in most of the country, with more rain than normal in the Northeast, the Heartland region and the Pacific Northwest and below normal rain elsewhere.

The summer months—June through August—will be cooler than normal from the Heartland into the Southeast, according to the Almanac, hotter than normal elsewhere, with the Northeast, the region from northern Florida to Richmond, Va., the Lower Lakes region, the southern Deep South and the area from Texas into the Heartland getting above-average rainfall.

September and October of next year will be warmer than normal in most of California and from the Lower Lakes region east into the Northeast and south into Florida, the Almanac predicts, with cooler-than-normal conditions elsewhere in the country.

Of course, the Almanac gives much more detailed forecasts for each of its 16 regions of the Lower 48 states, in addition to its monthly-by-month astronomical information, planting guidelines, etc.

If the Almanac's forecast proves to be off the mark, at least I'll have gotten the benefit of learning that the fisher (a relative of the weasel) is my cat's worst enemy, and that boiled potatoes work well to cleanse the hands. And, back on the subject of the weather, I learned that "Onion's skin very thin, mild winter's coming in. Onion's skin thick and tough, coming winter cold and rough."

I don't know if any weather modelers factor such sophisticated forecasting methods into their annual hurricane predictions, but I'm thinking of planting some onions next spring, just to see what they have to say.

Senior Editor Rodd Zolkos can be reached at [rzolkos@businessinsurance.com](mailto:rzolkos@businessinsurance.com).

# Fighting stop-loss assessments tops agenda of self-insurers group

By MICHAEL BRADFORD

**CHARLOTTE, N.C.**—Opposing both the regulation of stop-loss insurance and the imposition of assessments against stop-loss policies is a high priority for the Self-Insurance Institute of America Inc.

At its 25th Annual National Educational Conference & Expo, held Oct. 18-21 in Charlotte, N.C., the group put the fight against stop-loss assessments near the top of its public policy concerns for the coming months. SIIA has long opposed such assessments because of the impact the charges would have on employers with self-funded health plans.

George Pantos, SIIA's Washington counsel, said during a meeting at the conference that states are attempting to regulate stop-loss insurers as health insurers and charge them assessments that would be used to make up deficits in high-risk health insurance pools and for other purposes. Last year, for example, the Indiana Court of Appeals upheld the authority of the state's insurance commissioner to levy an annual assessment on several stop-loss insurers to support the state's high-risk insurance pool.

Such moves have "major economic implications" for employers and others in the self-insurance marketplace, he said, because the burden of the assessments could be passed along to self-insurers.

"Where we have the greatest concern," Mr. Pantos noted, "is, as costs go up on self-funded plans, that will affect the design and administration of ERISA plans." Some employers could find the additional expenses so high that they decide to switch from self-funded to fully insured plans.

The battleground states in which the SIIA has fought assessment proposals this year are Georgia, Kentucky, Texas, Oregon and Wisconsin, according to Mr. Pantos. He noted that in Georgia, the SIIA was successful earlier this year in derailing legislation that would have resulted in assessments against stop-loss insurers to fund a high-risk pool. Illinois and Ohio have been added to the list for 2006 as states in which there is a danger that proposals to charge assessments could become law.

Threats to self-funded health plans are becoming even more significant as the number of such plans continues to increase, Mr. Pantos said. Referring to figures from a Kaiser Family Foundation study released earlier this year, he noted that of 131 million working Americans covered by private insurance, more than half—70 million—are covered by self-funded plans. "So we must be doing something right," he said.

Another issue on the SIIA radar screen is the debate over potential changes to the tax code that SIIA fears could compromise the employment-based health care system. For example, last week, a presidential blue-ribbon commission recommended limits on the amount of tax-free health care coverage employers could provide to employees and their dependents.

Meanwhile, SIIA continues its push for the passage of legislation that would bring association health plans under federal regulation. Under the legislation, AHPs could be formed by trade or professional associations to provide coverage to the associations' members. The plans, which could be self-insured or fully insured,

would be exempt from state rules such as mandated benefit requirements.

While the U.S. House of Representatives has passed the AHP legislation several times, the Senate has yet to act. SIIA disagrees with opponents of the legislation, who claim, among other things, that it would fragment the state-regulated insurance market and that the market segmentation caused by AHPs would destabilize small-group insurance markets.

Among other issues supported by SIIA are the expansion of the federal Liability Risk Retention Act and the extension of the Terrorism Risk Insurance Act.

Proposals are being discussed in Washington that would expand the Risk Retention Act to allow risk retention groups—the special multiple-owner group captives created by the federal law—to fund property risks. The groups currently can be used by policyholders to fund all commercial casualty risks except workers compensation. Mr. Pantos said he is hopeful that legislation will be in the works next year that would open up the act to allow broader coverage to be written by the groups.

SIIA also wants an extension of TRIA that would keep the federal terrorism insurance backstop in place beyond its Dec. 31 expiration date.

The association is lobbying heavily for the extension, arguing that many of its members would be adversely impacted if the legislation were to lapse. That is vital because "the self-insurance industry is an important aspect of the U.S. economy," said Ashley Williams, Washington-based director of government relations and public affairs at SIIA.

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# U.K. government introduces tort reform bill

By CAROLYN ALDRED

**LONDON**—Legislation intended to restrict the filing of allegedly frivolous lawsuits was introduced by the U.K. government last week.

The measure would impose restrictions on the activities of so-called claims management services companies, which offer services to individuals pursuing injury claims and are often linked to law firms, and give courts more leeway in rejecting personal injury and other claims.

If passed, the legislation would help curb the growing restrictions on activities that numerous organizations feel compelled to impose for fear of litigation, according to the government.

The Compensation Bill published by the U.K. government's Department for Constitutional Affairs last week would introduce a regulatory regime for claims management services companies.

Under the proposals, claims management services companies would need to be authorized by a new regulatory body or an existing recognized regulator, such as the

Law Society or the Financial Services Authority. The firms would also have to comply with rules and a code of practice prohibiting the aggressive advertising and selling of their services.

The regulations would initially be applied to personal injury and criminal injury compensation as well as employment-related claims and the misselling of financial products.

"It is time to put the brakes on the cowboy claims companies who take advantage of the public," according to a statement by Secretary of State for Constitutional Affairs Lord Falconer.

According to the statement, the bill would ensure that potential claimants are: not pressured into making claims, not misled by inappropriate and aggressive advertising, given appropriate advice on the merits of claims, are not encouraged to "have a go" at making frivolous claims, and are given a clear mechanism for making complaints about claims service companies.

In addition, according to Lord Falconer, the measure would allow



"It is time to put the brakes on the cowboy claims companies who take advantage of the public."

Lord Falconer  
Secretary of State  
for Constitutional Affairs

courts to consider whether their rulings "might prevent a desirable activity from being undertaken at all (or) discourage persons from undertaking functions in connection with a desirable activity."

"Fear of a claim can restrict groups from undertaking activities we all take for granted. The bill will provide reassurance to those concerned about possible litigation that the law takes the social value of activities into account," said Lord Falconer. "Individuals and organizations that adopt reasonable standards and procedures to safeguard those to whom they have a duty of care will not be liable and should not have to face unfounded claims."

The proposed regulation aims to stop some of the practices that have led to a growth in "frivolous" compensation claims in the United Kingdom, said Andrew Wigmore, policy director of the Claims Standards Council, a trade association for claims management companies.

According to Mr. Wigmore,

See REFORM / next page

## Future of finite cover remains in balance amid investigations

By REGIS COCCIA

**HAMILTON, Bermuda**—The future of finite reinsurance contracts may depend on whether insurance industry companies can communicate the products' usefulness to regulators, a panel of legal experts suggested.

Four attorneys participated in a panel discussion last month at the 19th International Reinsurance Congress in Hamilton, Bermuda, sponsored by Hawksmere Ltd. and PricewaterhouseCoopers L.L.P. The panel discussion was moderated by Sarah Goddard, chief executive officer of the Dublin International Insurance & Management Assn. in Dublin, Ireland, a leading center for finite reinsurance.

Finite reinsurance has been under a microscope this year, since New York Attorney General Eliot Spitzer and, later, the Securities and Exchange Commission launched investigations of accounting improprieties at several major insurance companies.

After New York-based American International Group Inc.'s use of a finite contract written by General Reinsurance Corp. was questioned, AIG restated four years of results, and its longtime chairman and CEO, Maurice R. Greenberg, was forced to resign in the wake of the investigation.

Gen Re's current chief executive, Joseph Brandon, and its former CEO, Ronald Ferguson, have re-

ceived Wells notices from the SEC and remain under investigation. Messrs. Greenberg, Brandon and Ferguson have not been charged with wrongdoing.

Because other insurance companies, including MBIA Inc., ACE Ltd. and CNA Insurance Cos., also have restated results to reflect their use of finite reinsurance deals (see related story), the future of finite reinsurance seems uncertain.

"Was Spitzer wrong or was Spitzer right? Was there something wrong with the industry" in its use of finite contracts? Ms. Goddard asked the panel.

"I'm absolutely confident that government lawyers involved in these cases believe they're right and what they've seen is just the tip of the iceberg," said John Carroll, a partner at Clifford Chance L.L.P. in New York who previously was a federal prosecutor. While those lawyers have observed "garden-variety accounting fraud," the investigations continue because of the nature of the insurance industry, he said.

"The industry is highly expert; it's insular, tribal, has its own customs and rules—it's a world unto itself. Ethicists have a name for what occurs (in these situations) and it's called 'cabined ethics,'" Mr. Carroll said. "I'm sure that's what the prosecutors and regulators believe they've found here."

See FINITE / next page

## Converium to restate results amid internal probe on finite risk

By JUDY GREENWALD

**ZUG, Switzerland**—Converium Holding Ltd. said it plans to delay announcing its third-quarter results and restate unspecified prior-period figures as it completes an internal review sparked by authorities' investigations into finite risk reinsurance.

The reinsurer said it does not expect the restatement to impact its \$1.65 billion in shareholders' equity as of June 2005, although Chief Executive Officer Terry Clarke cautioned the investigation is not yet complete.

Converium, which was scheduled to publish third-quarter results on Nov. 8, now expects to do so in mid-December.

Converium said the primary reason for the restatement is to correct the accounting treatment of certain transactions, primarily ceded reinsurance, which should have been accounted for as loans rather than as reinsurance.

### Probes inspired action

During a teleconference explaining the delay, Mr. Clarke pointed to inquiries by the Securities and Exchange Commission and New York Attorney General Eliot Spitzer. "Converium proactively launched an extensive internal investigation into certain reinsurance transactions" because it believed that it

was important to determine whether there were any new issues "regarding certain complex transactions," Mr. Clarke said.

At the time the investigation was launched, said Mr. Clarke, Converium did not anticipate finding anything that would lead to a restatement. "Recently, however, certain additional bits of information became available through our internal inquiry," which prompted the decision to restate prior-period accounts, he said.

Mr. Clarke also noted that aggregate prior-year loss reserves have continued to remain stable for four consecutive quarters. In 2004, Converium announced a \$385 million addition to reserves for U.S. liability business written between 1997 and 2001.

The CEO said that since taking over that role in February, he has aimed "to manage and operate Converium in a prudent way, supported by enhanced and more stringent internal controls. I believe this has been, and continues to be, a precondition for maintaining and restoring shareholder confidence in Converium. Today's announcement should be seen in this context."

Fitch Ratings in London responded to the restatement announcement by placing Converium's BBB-insurer financial strength rating and other ratings on watch with negative implications.

## Updates

### U.K. pension watchdog plans regulatory revamp

The United Kingdom's Pensions Regulator has published a consultation document outlining its plans for regulating new funding requirements for defined benefit plans. The document sets out the regulatory body's proposed plan-specific approach, which will use certain triggers to determine when a pension plan is at risk and potentially warrants intervention. The document is available at [www.thepensions-regulator.gov.uk](http://www.thepensions-regulator.gov.uk).

### Security executive guilty in HIH probe

A former executive of a security firm linked to HIH Insurance Ltd. has been found guilty of bribery and fraud charges related to more than \$6 million Australian (\$4.5 million) in payments and debt forgiveness bilked from the now-defunct insurer. Bradley Cooper, former chairman of FAI Home Security Group, was found guilty of "giving a cash benefit to influence an agent of HIH" and of "publishing false or misleading statements with intent to obtain a financial advantage," a statement from the Australian Securities and Investments Commission said.

### Kiln to raise capital to boost underwriting

Kiln P.L.C. plans to raise £72.8 million (\$128.4 million) through a share issue to increase its underwriting following the impact of hurricanes in the United States. Kiln said it would use the proceeds of the share issue to increase the capacity of all its syndicates at Lloyd's of London in 2006, when it expects average rate increases of 12.5%.

### Gallagher buys Australian agency

Arthur J. Gallagher & Co. has acquired Sydney, Australia-based InterPacific Underwriting Agencies Pty. Ltd. for an undisclosed amount. InterPacific, founded in 1997, is a managing general agency that offers specialized insurance products through brokers in Australia, according to Gallagher. InterPacific's management and associates will join Australis Group (Underwriting) Pty. Ltd., a wholly owned subsidiary of Arthur J. Gallagher Australasia Holdings Pty. Ltd.

### Rita, Wilma claims hit Swiss Re

Zurich-based Swiss Reinsurance Co. expects claims totaling \$750 million from hurricanes Rita and Wilma. The reinsurer said it would tap its equalization reserves to mitigate part of its hurricane losses.

## Reform: U.K. introduces bill to reduce frivolous lawsuits

Continued from previous page

about one-third of all compensation claims made in the United Kingdom are frivolous. "Regulation, with strict guidelines and codes of practice barring, for example, cold calling, hard selling and advertising in hospitals without a contract, will help get rid of some of the rogues in the industry," he said.

David Gamble, executive director for the London based Assn. of Insurance & Risk Managers, welcomed the introduction of the bill but said that the government needs to do more to promote rehabilitation of injured workers as part of an overall effort to reduce the likelihood of workers suing employers over work-related injuries.

"AIRMIC wants to see what the government is planning by way of

encouraging vocational rehabilitation. It's one thing to say you think it's a good idea, but what are they actually going to do? We are still waiting to be told," said Mr. Gamble.

The Assn. of British Insurers welcomed the bill but said it was only the first step in a series of reforms that should be introduced. "More longer-lasting reform of the whole system is needed to speed up and simplify the claims process," said a spokesman for the ABI, who noted that up to 40% of compensation payments in the United Kingdom go toward legal costs.

The Assn. of Personal Injury Lawyers expressed concerns about the provisions in the bill on the law of negligence, saying that they were "unlikely to result in clarification of the law."

## Finite: Future of coverage remains uncertain

Continued from previous page

"Let's give (Mr. Spitzer) a lot of credit for being an exceptionally astute attorney general. Let's recall how effective he has been as a populist Democrat" going after mutual funds, the New York Stock Exchange and contingent commissions, said Kenneth Wylie, a partner at Sidley Austin Brown & Wood L.L.P. in Chicago.

The bid-rigging Mr. Spitzer found at Marsh & McLennan Cos Inc. "everyone in the industry would concede and recognize is beyond the pale," but finite reinsurance is different, Mr. Wylie said. "I wonder if (prosecutors) really do have an appreciation of how useful the products are in the insurance industry," he said.

"The issue with reinsurers and the insurance industry is they are built on the concept of income smoothing," said David Raim, a

partner and co-head of the insurance and reinsurance practice at Chadbourne & Parke L.L.P. in Washington. "Even your plain-vanilla quota-share contracts, your plain-vanilla property contracts, are bought" to smooth the balance sheet from events such as hurricanes, he said. "I'm not suggesting there were no abuses in the industry, but, to some extent, there was a disconnect between the prosecutors and the industry."

Joy Langford, also a partner at Chadbourne & Parke in Washington, said sophisticated investors should be able to discern the use of contracts designed to smooth earnings. "We should be sympathetic with insurers and reinsurers. We are looking at regulation that is retroactive" on finite contracts, she said. "Companies believe they were playing by the rules. When you see smooth results, the savvy

investor needs to know something is going on."

One trend in the current investigations is a shift from focus on compliance with accounting rules to executives' statements that may later prove incongruous with financial reports, Mr. Carroll said.

"There are GAAP-compliant transactions that are being charged" on the basis of disclosure, such as "the CEO is questioned on a statement made during an analysts' call," he said. "I see the SEC moving in that direction in all sorts of fields."

"SEC attorneys are very competent and very bright. However, they are incredibly cynical and skeptical about anything outside" their experience, said Mr. Wylie. "They can't intellectually let go of Bermuda companies writing what we call finite contracts."

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# Insurers to lose key lawmaker with Oxley retirement

## Industry lobbyists hail work of Financial Services Committee chair

By MARK A. HOFMANN

**WASHINGTON**—Insurance industry lobbyists are hailing the first chairman of the House Financial Services Committee as a leader who brought revolutionary change to Capitol Hill before deciding to retire from Congress at the end of his current term.

Rep. Michael G. Oxley, R-Ohio, announced last week that he would not seek re-election next year to the seat he has held since 1981. He was named chairman of the then newly created Financial Services Committee in 2001.

Since then, Rep. Oxley has won plaudits for his efforts to reform state insurance regulation, as well as to create—through the Terrorism

Risk Insurance Act—a federal financial backstop for insurers for losses from future catastrophic terrorist attacks.

He is also co-author of the Sarbanes-Oxley Act, which tightened standards of corporate governance and created new investor protections in the wake of widespread corporate accounting scandals.

“He’s been a great chairman and has done more to create a forum for insurance issues than anyone before him in Congress,” said Joel Wood, senior vp-government affairs for the Council of Insurance Agents & Brokers in Washington.

“He’s consolidated our jurisdiction, he’s created a bipartisan atmosphere, he’s the first leader to blow the whistle on the flaws of state in-

surance regulation, and he’s gotten a lot done,” said Mr. Wood, who called Rep. Oxley “an incredible leader with the best political instincts I’ve ever seen.”

“TRIA has been instrumental in America’s economic recovery from the 9/11 terrorist attack,” said Leigh Ann Pusey, senior vp-government affairs for the American Insurance Assn. in Washington, in a statement.

“We look forward to his continued leadership as we work with him and other lawmakers to ensure that this economic safety net remains in place after its scheduled expiration on Dec. 31,” she said.

“Whether addressing regulatory reform, corporate accountability, accuracy and access to credit histo-

ries, or a financial safety net for terrorism losses, Chairman Oxley showed a true understanding of insurance issues and a desire to develop free market solutions for both the industry and consumers,” said Ernie Csiszar, president of the Des Plaines, Ill.-based Property Casualty Insurers Assn. of America, in a statement.

“His leadership, common sense, and ability to forge workable compromise will be critical to securing an extension of the Terrorism Risk Insurance Act and will be sorely missed when he leaves Congress next year,” he added.

“Chairman Oxley will be the model for the next chairman of the committee,” said the AIA’s Ms. Pusey.

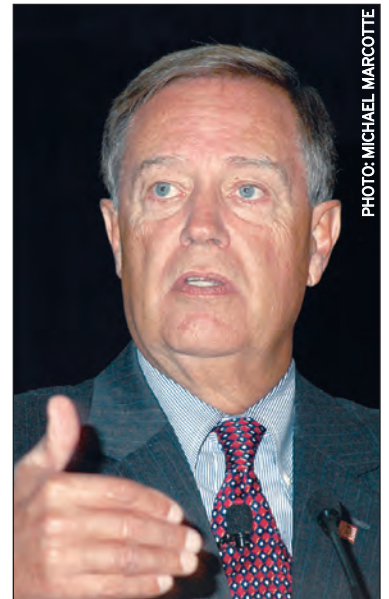


PHOTO: MICHAEL MARCOTTE

Rep. Michael G. Oxley, R-Ohio, will retire from Congress in 2006.

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**UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK**

In re: Petition of Hermanus Johannes Touw, on behalf of DAP HOLDING N.V., et al. Debtors in a Foreign Proceeding.

An Ancillary Case Under Section 304 of the Bankruptcy Code Case No.: 05-18816 (ALG) Jointly Administered

**NOTICE OF ENTRY OF PERMANENT INJUNCTION ORDER GRANTING RELIEF REQUESTED IN SECTION 304 PETITIONS AND GIVING FULL FORCE AND EFFECT TO SCHEMES OF ARRANGEMENT**

PLEASE TAKE NOTICE that on October 27, 2005, the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) issued an Order (the “Permanent Injunction Order”) giving full force and effect in the United States to the Schemes of Arrangement, dated August 5, 2005 (collectively the “Scheme”) and sanctioned by Order of the High Court of Justice of England and Wales, dated September 26, 2005, with respect to each of the following companies:

DAP Holding N.V.; Achmea Schadeverzekeringen N.V.; AEGON Schadeverzekering N.V.; Allianz Nederland Schadeverzekering N.V.; AMEV Schadeverzekering N.V.; Aradius Credit Insurance N.V.; AXA Schade N.V.; Delta Lloyd Schadeverzekering N.V.; Fortis Corporate Insurance N.V.; GENERALI Schadeverzekering Maatschappij N.V.; Goudse Schadeverzekeringen N.V.; N.V. Maatschappij van Assurantie, Discontering en Beleving der Stad Rotterdam Anno 1720; N.V. Nationale Borg-Maatschappij; Nationale-Nederlanden Internationale Schadeverzekering N.V.; Nationale-Nederlanden Schadeverzekering Maatschappij N.V.; N.V. Noordhollandse Van 1816 Algemene Verzekeringmaatschappij; Vereenigde Assurantiebedrijven “Nederland” N.V.; and N.V. Verzekering Maatschappij de Noord-en Zuid-Hollandse Lloyd.

The Permanent Injunction Order provides that the Scheme is binding on and enforceable in accordance with its terms against all Scheme Creditors (as defined in the Scheme), and Scheme Creditors are permanently enjoined and restrained from, *inter alia*, taking any action that is inconsistent with the Scheme.

PLEASE TAKE FURTHER NOTICE that the Permanent Injunction Order is on file with the Bankruptcy Court and may be accessed via the Bankruptcy Court’s website at <http://www.nysb.uscourts.gov> (a PACER login and a password are required to retrieve a document). Further, a copy of the Permanent Injunction Order is available upon written request to counsel (including by facsimile) at the address listed below.

Dated: October 27, 2005  
 CADWALADER, WICKERSHAM & TAFT LLP  
 Attorneys for the Petitioner  
 Gregory M. Petrick (GP 2175)  
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 New York, New York 10281  
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### LEGAL NOTICE

**NOTICE OF SANCTION OF SOLVENT SCHEME OF ARRANGEMENT IN THE HIGH COURT OF JUSTICE (OF ENGLAND AND WALES) NO 4433 OF 2005, CHANCERY DIVISION, COMPANIES COURT**

**IN THE MATTER OF THE SCOTTISH EAGLE INSURANCE COMPANY LIMITED (the “Company”) AND**

**IN THE MATTER OF SECTION 425 OF THE COMPANIES ACT 1985**

**NOTICE IS HEREBY GIVEN** that, by an order dated 28 October 2005 made in the High Court of Justice of England and Wales, Chancery Division, Companies Court, at the Royal Courts of Justice, Strand, London, WC2R 2LL, in the matter of the Company, the solvent scheme of arrangement (the “Scheme”) to be made between the Company and its Scheme Creditors (as defined in the Scheme) pursuant to section 425 of the Companies Act 1985, which was voted on and approved by Scheme Creditors during the meeting held on 5 September 2005, was sanctioned. A copy of the Scheme was lodged with the Registrar of Companies in England and Wales on 31 October 2005 and the Scheme became effective on that date. The full text of the Scheme along with the Explanatory Statement may be obtained from the Scheme website located at [www.scottisheaglesolventscheme.co.uk](http://www.scottisheaglesolventscheme.co.uk) (the “Website”) or, upon request, by contacting PricewaterhouseCoopers LLP at Plumtree Court, London, EC4A 4HT, United Kingdom (marked for the attention of James Allison).

After further consideration, the Company will not be filing a petition in the United States Bankruptcy Court to obtain relief under Chapter 15 of the Bankruptcy Code, as originally intended.

Under the terms of the Scheme, Scheme Creditors must submit a Claim Form and supporting information to us in respect of their Claims (as defined in the Scheme) so as to reach the Company on or before the Final Claims Submission Deadline. The Final Claims Submission Deadline for the submission of all Claim Forms is 5.30pm (United Kingdom time) on 1 March 2006, this being 120 days after the Effective Date. Claim Forms can be obtained from the Website or by contacting Steve Crawley at the Company at 5th Floor, Cutlers Exchange, 123 Houndsditch, London, EC3A 7PQ.

If a Scheme Creditor fails to complete and submit a Claim Form to the Company on or before 1 March 2006, then that Scheme Creditor will not be entitled to receive any payment in respect of his or her Claim, or to assert his or her Claim, either under the Scheme or otherwise, at any time after that date.

Notice of the Effective Date and the Final Claims Submission Deadline along with a Claim Form and accompanying instructions has been sent by the Company to all known Scheme Creditors at their last known addresses along with brokers, underwriting agents and managing general agents with which the Company has dealt. Any person who believes himself or herself to be a Scheme Creditor who has not received notice by post should contact Steve Crawley, Bill Vince or James Allison (contact details below).

Any Scheme Creditor who is unclear about or has any queries regarding the Scheme, this notice or the action that they are required to take, or any Scheme Creditor requiring a hard copy of the Scheme or any other document contained on the Website, should contact:

Steve Crawley of The Scottish Eagle Insurance Company Limited, 5th Floor, Cutlers Exchange, 123 Houndsditch, London, EC3A 7PQ, United Kingdom (Tel: + 44 (0) 20 7626 4266) or Bill Vince or James Allison of PricewaterhouseCoopers LLP, Plumtree Court, London, EC4A 4HT, United Kingdom (Tel: + 44 (0) 20 7583 5000).

### LEGAL NOTICE

**NOTICE OF SANCTION OF SOLVENT SCHEME OF ARRANGEMENT IN THE HIGH COURT OF JUSTICE (OF ENGLAND AND WALES) NO 4436 OF 2005, CHANCERY DIVISION, COMPANIES COURT**

**IN THE MATTER OF LA MUTUELLE DU MANS ASSURANCES IARD (the “Company”) AND**

**IN THE MATTER OF SECTION 425 OF THE COMPANIES ACT 1985**

**NOTICE IS HEREBY GIVEN** that, by an order dated 28 October 2005 made in the High Court of Justice of England and Wales, Chancery Division, Companies Court, at the Royal Courts of Justice, Strand, London, WC2R 2LL, in the matter of the Company, the solvent scheme of arrangement (the “Scheme”) to be made between the Company and its Scheme Creditors (as defined in the Scheme) pursuant to section 425 of the Companies Act 1985, which was voted on and approved by Scheme Creditors during the meeting held on 5 September 2005, was sanctioned. A copy of the Scheme was lodged with the Registrar of Companies in England and Wales on 31 October 2005 and the Scheme became effective on that date. The full text of the Scheme along with the Explanatory Statement may be obtained from the Scheme website located at [www.mmaukbranchsolventscheme.co.uk](http://www.mmaukbranchsolventscheme.co.uk) (the “Website”) or, upon request, by contacting The Scottish Lion Underwriting Agencies (“SLUA”) at 5th Floor, Cutlers Exchange, 123 Houndsditch, London, EC3A 7PQ, United Kingdom (marked for the attention of Steve Crawley).

The Company also intends to file a petition in the United States Bankruptcy Court in the Southern District of New York commencing a proceeding to obtain relief, including injunctive relief, under Chapter 15 of the Bankruptcy Code, to aid the effective implementation of the Scheme.

Under the terms of the Scheme, Scheme Creditors must submit a Claim Form and supporting information to us in respect of their Claims (as defined in the Scheme) so as to reach SLUA on or before the Final Claims Submission Deadline. The Final Claims Submission Deadline for the submission of all Claim Forms is 5.30pm (United Kingdom time) on 1 March 2006, this being 120 days after the Effective Date. Claim Forms can be obtained from the Website or by contacting Steve Crawley at SLUA at 5th Floor, Cutlers Exchange, 123 Houndsditch, London, EC3A 7PQ.

If a Scheme Creditor fails to complete and submit a Claim Form to the Company on or before 1 March 2006, then that Scheme Creditor will not be entitled to receive any payment in respect of his or her Claim, or to assert his or her Claim, either under the Scheme or otherwise, at any time after that date.

Notice of the Effective Date and the Final Claims Submission Deadline along with a Claim Form and accompanying instructions has been sent by the Company to all known Scheme Creditors at their last known addresses along with brokers, underwriting agents and managing general agents with which the Company has dealt. Any person who believes himself or herself to be a Scheme Creditor who has not received notice by post should contact Steve Crawley (contact details below).

Any Scheme Creditor who is unclear about or has any queries regarding the Scheme, this notice or the action that they are required to take, or any Scheme Creditor requiring a hard copy of the Scheme or any other document contained on the Website, should contact:

Steve Crawley of SLUA, 5th Floor, Cutlers Exchange, 123 Houndsditch, London, EC3A 7PQ, United Kingdom (Tel: + 44 (0) 20 7626 4266).

### LEGAL NOTICE

### LEGAL NOTICE

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## Alito: Supreme Court nominee issued rulings favorable to business interests

Continued from page 1

face a more sympathetic ear given Judge Alito's generally pro-government and pro-business views," said Mr. Maatman. He noted, though, that Judge Alito has "a judicial bent for nuanced rulings."

In employment cases, Judge Alito has often—but not always—called for a limited rather than expansive reading of nondiscrimination law. For example, the judge wrote in *Chittester vs. The Department of Community and Economic Development* in 2000 that provisions in the federal Family & Medical Leave Act that allowed state employees to sue states for alleged violations of the act was unconstitutional. The Supreme Court later rejected that reading of the FMLA in its 2003 decision in *Nevada Department of Human Resources vs. Hibbs*.

"Judge Alito does take an extremely narrow view on discrimination cases in terms of both what the laws provide as protection to victims of discrimination substantively and then also takes a very narrow view on procedures that makes it harder for plaintiffs to get their cases in front of the courts," said Kathy Rodgers, president of Legal Momentum, a New York-based women's advocacy group.

Ms. Rodgers noted that Judge Alito was the sole dissent in 1996's *Sheridan vs. E.I. DuPont de Nemours & Co.* The case involved alleged violations of Title VII of the Civil Right Act of 1964. At issue was when

summary judgment in the case could be granted.

"The key thing about a summary judgment motion is it is based on a showing of evidence and facts," said Ms. Rodgers.

"In this case, the requirements are that the plaintiff has to come forward and state a case that, if proven, would demonstrate discrimination. The defendant can then put in an affirmative defense, which, if proven, would win the case," Ms. Rodgers said. The plaintiff then has the right to show that the reason given is "indeed a sham—it's not the real reason they discriminated against me," said Ms. Rodgers. In his dissent, Judge Alito held that even when this point in the argument had been reached, summary judgment could be still be granted to the defendant rather than sending the case to a jury, she noted.

"He seems to be, over the course of his history, a rather strict constructionist. I believe he reads these statutes as written," said Paul J. Siegel, a partner in the Melville, N.Y., office of the law firm of Jackson Lewis LLP. "As these laws were written, you're really supposed to show that something specifically bad happened to you, not that the employer isn't running a perfect workplace."

But Mr. Maatman cited as examples of the judge's "independent thinking" a pair of rulings involving the First Amendment. In the

2001 decision in *Saxe vs. State College School District*, he ruled that a nonharassment policy that covered all "members of the school community"—including employees, students and visitors—went too far because it infringed on speech that

**"Judge Alito does take an extremely narrow view on discrimination cases."**

**Kathy Rodgers  
Legal Momentum**

was not harassing.

And in the 1999 case *Fraternal Order of Police Newark Lodge No. 12 vs. City of Newark*, Judge Alito sided with employees in a case involving two Muslim policemen ordered to shave their beards to keep their jobs. Judge Alito wrote that Newark, N.J.'s ban on beards other than for medical reasons violated the First Amendment rights of the officers to practice their religion, which they said required them to wear beards.

"He strictly construes insurance contracts," noted Robin Conrad, senior vp of the National Chamber

Litigation Center Inc. in Washington.

Judge Alito's narrow view of insurance contract language was evident in this year's Oct. 3 decision in *MBIA Insurance Corp. vs. Royal Indemnity Co.* Writing for the court, Judge Alito found that even though Royal had been the victim of "a spectacular fraud" committed by a now-defunct student loan provider, the insurer still had to honor credit risk policies that covered the loans because it had waived its rights to assert any fraud-based defense in its policy language (*BI*, Oct. 10). The policy language was not ambiguous about the waivers, said Judge Alito. "When sophisticated parties include a broad but unambiguous nonreliance clause in their agreement, the Delaware Supreme Court will likely indulge the assumption that they said what they meant and meant what they said," he wrote.

Judge Alito also strictly construed the limits of casino liability in a case from a decade ago.

In the 1995 case *Ayhan Hakimoglu vs. Trump Taj Mahal Associates et al.*, Judge Alito dealt with the issue of whether, under New Jersey law, "a casino patron may recover from a casino for gambling losses caused by the casino's conduct in serving alcoholic beverages to the patron and allowing the patron to continue to gamble after it becomes obvious that the patron is intoxicated."

Judge Alito noted that deciding



**Based on his record, U.S. Appeals Court Judge Samuel A. Alito Jr.'s elevation to the Supreme Court could benefit employers.**

the case would involve engaging in a bit of prediction as to whether "the Supreme Court of New Jersey would recognize claims such as those asserted by the plaintiff. Unfortunately, we must make this prediction without specific guidance from the New Jersey appellate courts, for neither the Supreme Court of New Jersey nor the Appellate Division has addressed the question that is now before us or any closely related question." He came to the conclusion that New Jersey law would not permit the type of claim put forward by Mr. Hakimoglu.

## Health tax: Mass. House passes play-or-pay bill

Continued from page 4

groups, only the first \$94,200 of an employee's wages would be counted in calculating payroll costs. That change was made after complaints that companies already offering a generous level of coverage would be hit with the new tax just because they employed highly compensated employees.

In addition, employers calculating their payroll costs could exclude the salaries of those employees who obtain coverage through their spouses.

The payroll tax would be used, among other things, to expand eligibility for lower-income residents to obtain coverage through the state's Medicaid program.

"This is the only proposal to date that truly delivers on its promise to expand access to affordable, quality health care," said Speaker of the House Salvatore DiMasi, D-Boston, who proposed the legislation. "The numbers add up because we level the playing field across the board to make sure that everyone—individuals, business and government—are all pulling in the same direction."

The legislation is reminiscent of a measure that Massachusetts legislators enacted in 1988. That law—a landmark at the time—also imposed a surcharge on employers, then set at \$1,680 per employee, to fund coverage for the uninsured. And, like the current measure, the 1988 law allowed employers to off-

set the surcharge by their health insurance costs.

Implementation of the 1988 law was delayed several times, though, and ultimately the law was repealed. Groups representing small employers argued that companies would move operations to neighboring states without such a tax, leading to job losses.

**"Fundamentally, employers should not be required to provide health insurance."**

**Eileen McAnneny  
Associated Industries of Massachusetts**

It is too soon to say what the fate of Rep. DiMasi's bill will be. Observers say it isn't clear if the Massachusetts Senate will go in the same direction. Additionally, Republican Gov. Mitt Romney previously has opposed new taxes on employers.

"I can't imagine that Gov. Romney would sign this," said Cameron Congdon, a principal in the Boston office of Towers Perrin.

"Gov. Romney is in favor of cutting taxes, not imposing new ones,"

said Bill Vernon, state director for the National Federation of Independent Business in Boston.

Opposition remains strong from business groups, which criticize the tax on philosophical and economic grounds.

"Fundamentally, employers should not be required to provide health insurance," said Eileen McAnneny, a vp with Associated Industries of Massachusetts in Boston, a business lobbying group.

"This is not something many of our members could afford to do without a huge hit to profits," said a spokeswoman for the Massachusetts Restaurant Assn. in Southborough, Mass.

Many employers, whose health care costs typically range from 7% to 10% of payroll, would likely not be hit by the payroll tax. Conversely, big companies whose workforces comprise part-time employees, who rarely are covered under group health care plans, could end up having to pay the surcharge.

"It could have a significant impact on them," according to Mr. Congdon.

Additionally, if revenue raised were to fall short of projections, legislators might change the formula to bring in more employer contributions, he noted. "It might be a nonevent now for many employers, but that does not limit their concern. Once taxes are put in place, they have a tendency to go up," Mr. Congdon said.

## Initiatives: Voters to decide fate of insurance-related measures

Continued from page 4

conscionable price or prices or terms that lead to any unjust or unreasonable profit. Also banned would be unreasonable discrimination and intentional restrictions on the sale or distribution of prescription drugs.

In Washington state, voters will consider two medical malpractice measures and a third measure that would expand smoking prohibitions.

Washington voters will consider Initiative 330, a comprehensive package of tort reform measures that would significantly reduce malpractice liability for health care facilities and practitioners.

For example, the measure would limit a claimant's recovery for noneconomic damages to \$350,000 against all health care professionals and institutions, or \$700,000 against a health care institution that is liable for the acts of people other than health care professionals.

The measure also would: limit plaintiffs attorney fees, authorize mandatory mediation of lawsuits and arbitration of contractual disputes, and add more proportional liability approaches to the state's existing system of limited joint and several liability.

In addition, the measure would require that plaintiffs certify the merit of a case and give at least 90

days' notice of lawsuits. It also would shorten the time for filing cases and expand evidence of payment from collateral sources, though it would eliminate subrogation rights for those sources.

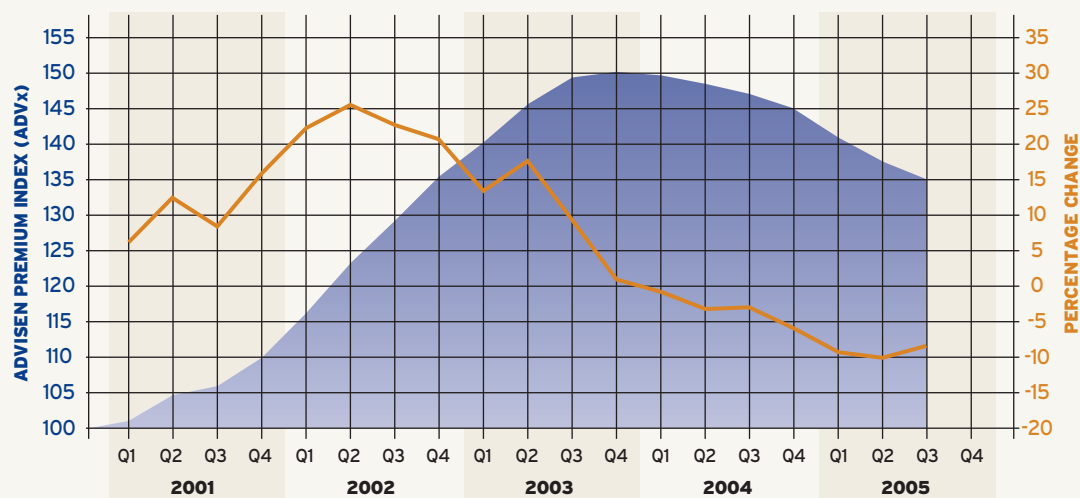
Once a judgment was rendered, the measure would expand existing guidelines for periodic payments of future damages and terminate those payments under certain circumstances.

Voters will also consider Initiative 336, which would establish a private supplemental program for health care facilities and practitioners to purchase excess malpractice liability insurance above private insurance. An appointed board and the insurance commissioner would oversee the program.

The measure also would require the insurance commissioner to provide public notice of malpractice insurance rate increases and hold a hearing if an insurer's increase exceeds 15%.

In addition, the measure would limit the number of experts testifying in lawsuits and give consumers greater access to information about some malpractice judgments and negative outcomes involving health care providers. The measure would allow increased oversight of physicians and license revocation of any physician with three malpractice judgments within 10 years, in most cases.

### Tracking composite renewal data by quarter



## Index of premium changes made public

For the first time, New York-based Advisen Ltd. is publicly publishing its ADVx composite premium index, which tracks changes in average renewal premiums for commercial insurance policies.

The index, a composite of U.S. property, general liability, workers compensation and directors and officers liability renewal data, tracks premium changes quarter by quarter relative to a base index of 100 beginning in 2000. All premiums are expressed in 2000 dollars.

Risk managers can use the index as a reference point for their own programs, said David Bradford, editor-in-chief of Advisen. "It's a way for them to benchmark how they are performing against the market," he said.

According to the index, premiums increased, on average, 50% from 2000 to the fourth quarter of

2003 and have been steadily decreasing since then. In the third quarter of 2005, the premium index was 134.90, vs. 137.74 in the second quarter.

The "percent change" in the index represents an annualized figure rather than the difference between premiums paid quarter by quarter. So if rates decrease at the same rate for the next 12 months as they did between the second and third quarter of 2005, risk managers would expect to see premiums fall by 7.9 by the third quarter of 2006.

Mr. Bradford said, though, that "the same downward trend that you see now will probably be moderated, if not reversed, in the fourth quarter" as a result of hurricanes Katrina, Rita and Wilma.

For more information about the index, contact Advisen at 212-897-4800 or go to [www.advisen.com](http://www.advisen.com).

—By Sally Roberts

## Survey: More buyers involved in placing insurance coverage

Continued from page 1

their clients regarding compensation arrangements, he noted.

"Clearly, brokers have made a genuine and apparently successful effort to be more forthcoming," said Mr. Bradford. In the first two surveys, which were conducted last year, there was "some genuine hostility on the part of some risk managers as to what they perceived as real wrongdoing in the industry. That has pretty much evaporated."

Janice Ochenkowski, director of global risk management at Jones Lang LaSalle Inc. in Chicago, said she agrees with Advisen's findings. "I believe brokers are providing more information and better information about their compensation," she said.

In the latest survey, about 75% of risk managers said they are generally satisfied with steps taken by brokers to make compensation practices more transparent. In the two earlier surveys, buyers expressed wide dissatisfaction with the level of disclosure from brokers and anger over alleged anti-competitive practices.

But as risk managers have become more comfortable with broker disclosures, they may be taking a more active role in their insurance placements. The survey showed that less than half—45%—rely solely on their brokers to handle the transaction.

Ms. Ochenkowski, who participated in the study, said: "Risk managers understand that they need to be more involved in the purchasing process. It's to their advantage" and benefits their companies, too.

Around 40% of the respondents said they have become more involved in the negotiation process with underwriters or in selecting the insurers they want to request quotes from. And 2.7% said that since Mr. Spitzer's investigation, they have begun bypassing brokers and placing business directly with insurers.

While the survey showed a high level of satisfaction among risk managers with their brokers, it also indicated that some buyers are making changes. The survey said 13% made such changes as switching intermediaries or dividing business among more than one broker. Nearly 15% said that their organization plans to

initiate a selection process to replace their current broker within the next 18 months. Another 18% were uncertain about such a move.

Some risk managers who participated in the study were critical of their colleagues for not knowing how their brokers were operating before Mr. Spitzer began his investigation. The survey included some of their written remarks.

"For the past 15 years, I have been doing what other risk managers are just starting to do," one respondent wrote. "Most never knew about the placement process, commissions on the backside, etc. Now they do and are crying 'foul,' but it is only because they never took the time to educate (themselves)."

"Risk managers have always been able to obtain the transparency they demand," another wrote. The respondent went on to ask why those who have complained about the lack of transparency accepted it in the first place.

"There obviously were some outstanding risk managers who were proactively involved," Mr. Bradford said. "A lot of them want it to be known that whatever happened, they were on top of it." Some others, he said, were likely "asleep at the switch" and are "now getting more actively involved."

Mr. Bradford said risk managers also posted remarks wondering why premiums haven't dropped as insurers abandoned payment of contingent commissions. "That was a fairly prevalent comment," he said. "And it mystifies me a little bit because rates have come down."

But Mr. Bradford also acknowledged that as rates have come down, there is nothing to show how much of that might be due to the elimination of contingent commissions.

Ms. Ochenkowski said she believes rates should reflect the absence of contingent commissions. Whether that has been the case is "difficult to tell," she noted, because it is unclear in a market that is driving prices both up and down what impact an accounting for the lack of commissions has had.

The survey is available for \$195 from Advisen by contacting Jeff Cohen by telephone at 212-897-4820 or by e-mail at [jcohen@advisen.com](mailto:jcohen@advisen.com).

### Changes in the buying process

Risk managers said that subsequent to New York Attorney General Eliot Spitzer's investigation of the insurance industry:

There have been no material changes in interactions with underwriters	62%
I have been more involved in selecting insurance carriers	20%
I have been engaged directly in negotiations with insurance underwriters	17%
I have taken a more active role in evaluating quotes from insurance carriers	23%
I require my broker to provide a written declination from each carrier	17%

Source: Advisen Ltd.

# Call for Nominations

## Risk Manager of the Year™ Risk Management Honor Roll™

Nominations for the Risk Manager of the Year and Risk Management Honor Roll are now being accepted by *Business Insurance*.

The Risk Manager of the Year Award was created in 1977 by *Business Insurance* to increase recognition of the risk management profession and to recognize outstanding performance in the practice of risk management. The Risk Management Honor Roll was added in 1980 as a way to recognize worthy risk managers and risk management programs in industries not represented by the annual Risk Manager of the Year award winner.

Executives anywhere in the world who are involved in risk management for a corporation, not-for-profit institution or government entity can be nominated.

The nominations will be judged by a panel of executives representing all aspects of risk management and the commercial insurance industry.

[www.businessinsurance.com](http://www.businessinsurance.com)

Risk Manager of the Year and Risk Management Honor Roll are Trademarks of *Business Insurance* and Crain Communications Inc.

Honorees are announced and profiled in the annual Risk Manager of the Year feature published by *Business Insurance* which is distributed at the RIMS annual Conference and Exhibition each spring. Awards will be presented at a special luncheon honoring these risk managers.

**DEADLINE FOR NOMINATIONS:  
November 22, 2005**

For nominating forms and instructions, call 312-649-5319 or e-mail: [ktucker@BusinessInsurance.com](mailto:ktucker@BusinessInsurance.com) or visit [BusinessInsurance.com/RMOY](http://BusinessInsurance.com/RMOY)

## RenRe: Founder quits as probe continues

Continued from page 1

this situation very closely and has concluded that at this point it is best for our company, our people and our shareholders to begin to put this matter behind us," Mr. MacGinnitie said in a statement.

RenaissanceRe additionally stated that Martin J. Merritt, formerly the firm's controller, has left the company, and that John M. Lummis, chief operating officer and chief financial officer, will retire in June 2006.

The company's decision to restate three years of earnings, which RenaissanceRe announced in February, related largely from transactions it entered into in 2001 with Inter-Ocean Holdings Ltd., a Bermuda-based finite risk reinsurer that went into runoff earlier this year (*BI*, Feb. 28). The restatement caused RenaissanceRe's 2001 and 2003 net income to increase by \$20.6 million and \$1.3 million, respectively, and its 2002 net income to decrease by \$21.9 million, the company reported.

In its 2004 10-K filing, RenaissanceRe acknowledged that although those contracts had been booked as insurance, they failed to transfer enough risk to meet accounting standards for insurance.

Numerous insurance companies—as well as top industry executives—have been targeted in probes into finite reinsurance. Improper accounting treatment of a finite deal formed the center of a probe that earlier this year led to the resignation of Maurice R. Greenberg, former chairman and CEO of New York-based American International Group Inc.

The U.S. Securities and Exchange Commission served RenaissanceRe and its executives a trio of so-called "Wells notices" earlier this year. One was issued to Mr. Stanard, one to Michael W. Cash—formerly vp of specialty reinsurance, who left the RenaissanceRe in July after refusing to comply with an SEC subpoena—and one went to the company itself.

Wells notices warn that SEC officials plan to recommend that the agency bring civil charges for vio-

lations of federal securities laws, but they give recipients the opportunity to explain alleged improprieties.

It remains unclear whether the SEC will bring charges against the executives and the company, and whether RenaissanceRe's recent management changes indicate that the reinsurer is closer to ap-

**"Although a significant loss for (RenaissanceRe), we believe the company's strong franchise runs deeper than its chief executive."**

**Brian Meredith**  
Banc of America Securities

proaching a resolution with authorities.

Regarding the SEC bringing a civil enforcement action against Mr. Stanard, "There's no decision made that we're aware of," said James D. Mathias, an attorney for Mr. Stanard with the Chicago-based law firm of DLA Piper Rudnick Gray Cary U.S. L.L.P. In a statement, Mr. Mathias noted that his client "strongly disagrees with any suggestion that he was aware or intended that (RenaissanceRe) engage in a transaction that did not satisfy the applicable accounting standards or that he otherwise engaged in or condoned fraudulent conduct."

A spokesman for the SEC, meanwhile, declined to comment on the status of the Wells notices or whether Mr. Stanard's departure represents a step toward resolving investigations surrounding the company.

RenaissanceRe said it continues to work with regulators. "As we've said in the past, we are cooperating fully with the investigations and are hopeful of a resolution," a RenaissanceRe spokesman said.

RenaissanceRe last week also released its third-quarter results, reporting a net loss of \$105.8 million for the first nine months of 2005—mainly due to hurricane losses—compared with a restated loss of \$58.4 million in the year-earlier period. The company's net premiums written rose 7.3% to \$1.29 billion.

### Ratings response

Following its announcements of earnings and management changes, rating agencies re-evaluated RenaissanceRe.

Oldwick, N.J.-based A.M. Best Co. downgraded Renaissance Reinsurance Ltd. to A from A+. The agency also downgraded the financial strength ratings of RenaissanceRe units Glencoe Group Holdings Ltd. and Overseas Partners Cat Ltd. to A- from A, due to the management changes and "poor operating performance over the last two years."

The strength of the newly instituted management team at RenaissanceRe remains to be seen, according to Bob DeRose, an analyst at Best, and that was one of the rating agency's considerations in keeping the company under review with negative implications, he said.

Standard & Poor's Corp. downgraded Renaissance Reinsurance to A+ from AA-. "The change in CEO, coupled with the fact that 2004 and 2005 didn't meet earnings expectations," is what led to the downgrade, said Damien Magarelli, an analyst at New York-based S&P.

Chicago-based Fitch Ratings downgraded the financial strength rating of Renaissance Reinsurance Ltd. to A from A+, citing concerns about management continuity at the company, among other factors.

"Although a significant loss for (RenaissanceRe), we believe the company's strong franchise runs deeper than its chief executive," Brian Meredith, an analyst with Banc of America Securities in New York, said in a statement, though the firm will monitor "whether

### Career highlights of James N. Stanard

Former RenaissanceRe Holdings Ltd. Chief Executive Officer James N. Stanard has more than 30 years of experience in the property/casualty industry.

- 1971-83** Held various actuarial, underwriting and management positions with INA Reinsurance, Chubb Corp. and Prudential Reinsurance.
- 1983-91** Co-founded F&G Reinsurance, a reinsurance unit of United States Fidelity & Guaranty Co.
- 1991-93** Served as executive vp and member of the office of the president of USF&G.
- 1993-2005** Founded RenaissanceRe Holdings and served as chairman and CEO.



PHOTO: DAVID SKINNER

Mr. Stanard's departure, and the potential departure of other employees as a result, could restrict the company's market opportunities."

### Confidence amid challenges

Even amid investigations of the company, the recent loss of its top executive and heavy hurricane losses, RenaissanceRe's new CEO said he remains confident about the company's performance going forward and that there will be few changes in how it operates.

"Jim and I started this company in 1993. The philosophies of both Jim and myself were aligned from the very beginning," said Mr. Currie, who left RenaissanceRe as a senior vp in 1997.

From an underwriting standpoint, Mr. Currie said, "we'll continue to do the same things going forward that we've done in the past." The company is, however, considering taking advantage of additional opportunities, particularly in the energy sector—both onshore and offshore—as well as the individual risk market, he noted.

With a new class of startup reinsurers arriving on the island, RenaissanceRe is aware that some of those companies are trying to recruit its staff, he said. But "we've had no defections, and I don't anticipate any defections," Mr. Currie said.

Regarding the use of finite reinsurance, Mr. Currie said that RenaissanceRe has already instituted safeguards to prevent future problems, including a full-time internal auditor, a legal team that reports directly to the CEO and an automated review process that flags contracts with questionable levels of risk transfer.

Still, the company is not completely averse to using alternative forms of risk transfer in the future, Mr. Currie said. "Reinsurance is not cookie-cutter," he said, and "under the (alternative risk transfer) umbrella, there are several types of acceptable contracts, such as catastrophe bonds and joint ventures."

### ADVERTISER

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## Delayed harassment complaint is denied

By JUDY GREENWALD

**SAN FRANCISCO**—A television sales manager who took too long to voice a complaint of sexual harassment by his supervisor, and then refused to cooperate with a subsequent investigation, may not pursue his case, said the 9th U.S. Circuit Court of Appeals.

In its 2-1 decision Tuesday in *Hardage vs. CBS Broadcasting Inc.*, the appellate panel upheld a lower court's decision to dismiss Hugh Hardage's sexual harassment and retaliation

claims against CBS Broadcasting Inc., Viacom Television Stations Inc. and Viacom Broadcasting of Seattle Inc.

According to the panel's decision, Mr. Hardage, who was a local sales manager in Seattle, complained that the station's Tacoma-based general manager, Nancy Sparks, sexually harassed him both in the workplace and outside the office.

Mr. Hardage complained to his manager in October 2000 about the harassment, which allegedly began in April 2000,

court papers show.

Mr. Hardage then failed to tell a human resources representative, who was sent in response to his complaint, any details about the harassment, insisting instead on handling it himself, according to the decision.

He subsequently resigned from his position after his work performance was called into question.

"In addition to waiting half a year to make a complaint, when Hardage finally made his complaint he specifically asked

the company not to investigate it," the opinion states.

"By specifically requesting the company not make use of its remedial and preventative procedures, Hardage unreasonably failed to make use of CBS' anti-harassment policies and procedures."

In addition, although Mr. Hartage complained of retaliation in the form of adverse performance memoranda and being placed on a 30-day probation period, "it is undisputed that Hardage failed to meet sales goals," says the opinion.

# Aon: Deadline to join settlements extended

Continued from page 3

tors, who charged that Aon steered clients to those insurers paying the highest contingent commissions and that it linked insurance placements with reinsurance brokerage business (BI, March 7).

Previously, U.S. policyholders that obtained insurance through Aon between Jan. 1, 1994, and Dec. 31, 2004, on which Aon collected contingent commissions, had until Jan. 31 to exclude themselves from the *Daniel* class.

Aon then gave those that asked to be excluded until Aug. 19 to change their minds and participate in the settlement.

Aon informed clients of the extensions and terms of the settlement in letters mailed last month.

A spokesman for Chicago-based Aon said the brokerage is extending the deadlines to give as many people as possible the opportunity to sign up for the settlements.

Attorneys familiar with the settlements, though, say that Aon's decision to extend the participation periods was driven, in part, by the number of objections filed in response to the *Daniel* settlement.

Many class members, they say, believe they were not provided with sufficient notice of the existence of the class or the opt-out date. And with a hearing coming up in which a judge will rule on whether the settlement is fair,

reasonable and adequate, Aon is attempting to give those members that have objections more time to make their decision.

Ken Adams, a partner in the law firm of Diskstein, Shapiro, Morin & Oshinsky L.L.P. in Washington, said it is his sense that Mr. Spitzer became "persuaded" that class members were not given enough information and time to make a decision to participate in the *Daniel* settlement.

Given Mr. Spitzer's concern, plus the objections filed relating to the settlement and the fact that Aon was heading into a fairness hearing, "I think they made a smart decision to take this issue off the table and give everybody proper notice," said Mr. Adams, whose firm is representing Aon clients.

Calls to Mr. Spitzer's office were not returned.

"Because there were so many problems with the notice in the *Daniel* case, Aon is allowing for a second opt-out in case people weren't happy with the settlement proposal," explained James Wagner, a partner in the Washington office of Howrey L.L.P. who also represents Aon clients.

"Aon had a complete listing of its clients but did not notify them by mail, which clearly would have been the appropriate method," Mr. Wagner said, noting that the objections to the settlement are not based solely on insufficient notice. There are ob-

jections questioning the fairness of the settlement as well as the class counsel fees, he said.

Indeed, just how much of the \$38 million in the *Daniel* fund will be distributed among class members remains unknown. Attorneys' fees and \$5 million in administration costs will be deducted before distribution, and class counsel is seeking \$19 million in fees, according to a Web site dedicated to the settlement.

In the fairness hearing scheduled for Dec. 6 and 7, which was postponed from October, Cook County Circuit Court Judge Julia M. Nowicki will consider the amount of attorneys' fees and costs to be awarded.

Attorneys say any unclaimed portion of the \$190 million compensation fund will be added to the *Daniel* fund.

The Aon spokesman declined to discuss the *Daniel* case.

Aon's extension comes on the heels of MMC extending its settlement opt-in deadline to Nov. 1, attorneys say. Roughly half of the 140,000-policyholder clients eligible for compensation accepted MMC's offer by the original Sept. 20 deadline (BI, Oct. 3). An MMC spokeswoman was unavailable for comment.

"Aon and Marsh want as much finality as they can get," said Mr. Wagner. "They're not too happy about people opting out, because that means they might be filing individual actions, like some of our clients have done."

## Late News

Continued from page 1

introduced into the Legislature, in part would: create a system of tiered benefit levels for permanent partial disability injuries, authorize comprehensive fee schedules for medical goods and pharmaceuticals, and require claimants to use in-network diagnostic services.

### Aon to lay off staff in wake of flat growth

Aon Corp. reported flat revenue growth for the first nine months of 2005 and said it will lay off 1,400 employees, about half of them previously announced as cuts in the broker's U.K. operations. Worldwide, Aon has about 47,000 employees. For the first nine months of this year, the broker reported total revenues of \$7.31 billion, virtually unchanged from the same period in 2004. Risk and insurance brokerage revenues fell 2.3% to \$3.97 billion. Aon's net income was \$511 million, up 10.4% over the prior-year period, the broker reported.

### Half of big employers to offer CDHPs: Survey

Nearly half of large employers surveyed plan to offer high-deductible, consumer-driven health care plans next year, according to a survey. Of the 45% of employers that will offer a consumer-driven plan, 62% said they will offer a high-deductible plan linked to a health savings account, according to the survey by Fidelity Investments. Employers with consumer-driven plans said the median deductible for single coverage will be \$1,500 and the median deductible for family coverage will be \$3,000. The Fidelity Investments survey is based on the responses of 86 employers whose workforces averaged nearly 15,000 employees.

### PBGC takeover of United plan stands

A panel of the 7th U.S. Circuit Court of Appeals has rejected an appeal by United Airlines' flight attendants challenging an earlier ruling by a bankruptcy court that the Pension Benefit Guaranty Corp. can take over the attendants' plan, which has about \$1.8 billion in unfunded PBGC-guaranteed benefits. The Assn. of Flight Attendants, though, is continuing to challenge—on different legal grounds—the PBGC's takeover

of the plan in a suit filed in U.S. District Court for the District of Columbia.

### ERISA architect Erlenborn dies

Former Rep. John Erlenborn, R-III., one of the key architects in the U.S. House of Representatives of what became the Employee Retirement Income Security Act of 1974, died last week at his home in Warrenton, Va., of a progressive neurological disease. He was 78. After serving 10 terms, Mr. Erlenborn decided not to run for re-election in 1984. After leaving Congress, he became a partner in the Washington office of the law firm Seyfarth, Shaw, Fairweather & Geraldson.

### Endurance, IPCRe downgraded by Best

Endurance Specialty Insurance Ltd.'s financial strength rating has been downgraded by A.M. Best Co. to A- from A because of heavy losses from Hurricane Katrina. The downgrades also apply to Endurance Reinsurance Corp. of America and Endurance Worldwide Insurance Ltd. Best also downgraded the financial strength rating of the reinsurance subsidiaries of IPC Holdings Ltd. to A from A+. The downgrade—which applies to Pembroke, Bermuda-based IPCRe Ltd. and Dublin, Ireland-based IPCRe Europe Ltd.—reflects "the decline in IPCRe's risk-adjusted capital position" due to losses from Hurricane Katrina and other third-quarter catastrophes, the rating agency said.

### Feds boost caps on HSA contributions

The Treasury Department and the Internal Revenue Service have increased the maximum annual health savings account contributions for 2006 to \$2,700 for individuals and \$5,450 for families, from \$2,650 for individuals and \$5,250 for families in 2005. The government also has established new out-of-pocket maximum spending on HSA-compatible high-deductible plans at \$5,250 for individuals and \$10,500 for families. However, the contributions to HSAs cannot exceed the deductible amounts, which were also increased to \$1,050 for individuals and \$2,100 for families. In 2005, HSA deductibles were a minimum of \$1,000 for individuals and \$2,000 for families.


## BI Stock Index [ 10/31 - 11/4 ]

Up-to-the-minute data for all 85 companies that comprise the BI Stock Index can be found at [www.businessinsurance.com](http://www.businessinsurance.com).

Percentage change of BI Stock Index vs. key indicators

**BI Stock Index**  
2,772.89  2.90%

**Dow Jones**  
10,530.76  1.23%

**S&P 500**  
1,220.14  1.81%

### Largest gains

PXRE Group Ltd.	16.63%
IPC Holdings Ltd.	13.71%
Axis Capital Holdings Ltd.	12.16%
XL Capital Ltd.	11.74%
UNUMProvident Corp.	9.77%

### Largest losses

Vesta Insurance Group Inc.	-14.29%
Fairfax Financial Holdings Ltd	-3.72%
CIGNA Corp.	-2.91%
Humana Inc.	-2.16%
WellPoint Inc.	-1.74%

### Weekly change by market segment

Brokers	35.5%
Insurers/Reinsurers	15.03%
Managed Care Organizations	26.58%

Source: FinancialContent Inc. (<http://financialcontent.com>)



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### At [BusinessInsurance.com](http://BusinessInsurance.com)

New **Online Poll**: Do you think Congress will pass comprehensive pension funding reform legislation this year?

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