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Late News

Hedge fund forming Caymans reinsurer

Hedge fund Greenlight Capital Inc. is launching a Cayman Islands-based reinsurer, Greenlight Re, with more than \$220 million in capital, said a source close to the company. David Einhorn, the founder of the New York-based \$3 billion hedge fund, plans to eventually take the property/casualty reinsurer public, according to the source. The reinsurer, which is expected to begin writing policies next year, will be headed by Len Goldberg, the former chief executive officer of Alea North America Co. Earlier this month, the Cayman Islands Monetary Authority said Greenlight Re will specialize in custom-tailored reinsurance solutions and will work with local insurance managers to provide reinsurance for Cayman-licensed captives.

Asbestos reform on Senate agenda: Frist

Senate Majority Leader Bill Frist, R-Tenn., said last week that legislation that would create a

See **LATE NEWS**/page 19

Inside



ON THE BLOCK

Aon looks to offload underwriting units.

PAGE 3

COST CONTROL

Health care cost hikes still slowing.

PAGE 3

SWISS RE TO POWER UP WITH GE UNITS

Deal to end effort to shed ERC, make Swiss Re world's biggest reinsurer

By SARAH VEYSEY

ZURICH, Switzerland—General Electric Co. took a big step last week in its efforts to reduce its insurance operations, agreeing to sell GE Insurance Solutions' property/casualty business in a deal that will make Swiss Reinsurance Co. the world's largest reinsurer.

Under the \$6.8 billion deal, which is contingent on a massive reserves increase, Swiss Re plans to acquire all of the property/casualty



John Coomber
Swiss Re

business of Kansas City, Mo.-based GE Insurance Solutions, including

reinsurance arm Employers Reinsurance Corp. Swiss Re will not ac-

quire any of GE Insurance Solutions' U.S. life and health business. The cash-and-stock transaction is expected to close in mid-2006.

In 2004, Zurich, Switzerland-based Swiss Re reported net premiums written of \$23.48 billion, making it the world's second-largest reinsurer, while fifth-ranked Employers Re reported net premiums of \$8.17 billion. Combined, the reinsurer would become the world's

See **SWISS RE** / page 17

Pension reform bill clears Senate hurdle, but struggle looms

Senate, House compromise key

By JERRY GEISEL

WASHINGTON—The stage is set for a congressional battle over pension reform legislation following Senate passage last week of its reform bill.

The outcome of that battle, to be waged by a conference committee that will hammer out differences between the Senate bill

and one the House of Representatives is expected to pass early next month, will be critical for the thousands of employers that maintain defined benefit plans. At stake will be how much they will have to contribute to their pension plans, how much certainty they will have in budgeting future contributions and how much protection cash balance plan sponsors will have from age discrimination suits.

The implications, some say, extend to the very foundation of the nation's defined benefit plan system. The driving force behind the legislation is to shore up the financial base of the U.S. Pension Benefit Guaranty Corp., which, after absorbing several massive losses, has a deficit of nearly \$23 billion.

Senate Finance Committee Chairman Charles Grassley, R-Iowa, the bill's sponsor, said on the Senate floor that "the bipartisan bill before us today will re-

PHOTO: AP/WIDE WORLD



Senate Finance Committee Chairman Charles Grassley is an architect of the reform bill.

See **PENSIONS** / page 18

Prospects brighten for renewal of TRIA

Action on measures in House and Senate fuels optimism

By MARK A. HOFMANN

WASHINGTON—The odds that the Terrorism Risk Insurance Act will be extended for at least two years look considerably better thanks to last week's approval of reauthorization legislation by the full Senate and a key panel in the House of Representatives.

But better is far from certain. The two bills differ considerably on the scope of the federal terrorism insurance backstop that was created by TRIA, which is slated to expire Dec. 31. And even if the full House approves its bill, the differing measures would have to be reconciled before being sent to President Bush, who has said he will not support any extension that is not significantly scaled back.

Ultimate passage will not be easy but is possible, say TRIA extension supporters.

"We're for getting something in place by the end of the year,"

said Leigh Ann Pusey, senior vp-government affairs for the American Insurance Assn. in Washington. "We're encouraged by both bills" and "we remain confident" that TRIA will be extended, she said.

"We're pleased. Both bills will satisfy RIMS," said Terry Fleming, a member of the New York-based Risk & Insurance Management Society Inc.'s board of directors with responsibility for external affairs and director-division of risk management for Montgomery County, Md., in Rockville.

The full Senate on Friday passed the Terrorism Risk Insurance Extension Act, which had been unveiled late Tuesday afternoon and passed a day later by the Senate Banking Committee. The bill, S. 467, would extend TRIA for two years beyond its current Dec. 31 expiration date. The measure would increase the size of terrorist event required to trigger the federal financial backstop contained in TRIA to \$50 million in insured losses in 2006 and \$100 million in 2007 from the

See **TRIA** / page 18

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INTERNATIONAL NEWS

Executives acquitted

Australian Judge dismisses charges against FAI execs.

PAGE 13

Fatalities down

HSE finds U.K. workplace deaths decrease in 2004.

PAGE 13

Pension problems

Employers must sell benefits of pension plans to workers.

PAGE 13

AON**Focus**
www.aon.com/focus

*New federal legislation provides
quality-of-care improvement opportunity
to health care organizations
across the nation.*

NOVEMBER 21, 2005

The Patient Safety Act: A rare opportunity for health care organizations



Debra McBride is vice president of Aon Healthcare. A registered nurse and attorney, she advises health care providers across the nation about patient safety and risk management. Debra can be reached at debra_mcbride@aon.com.

While risk management has been working to improve patient safety and quality reporting for decades, health care organizations and other groups, like the National Patient Safety Foundation, Leapfrog and the Joint Commission on Accreditation of Healthcare, have elevated patient safety initiatives to the top of the priority list. In July, the Patient Safety and Quality Improvement Act of 2005 was signed into law, creating a platform to foster voluntary medical error reporting and tracking. This law establishes a new class of confidential and privileged data, allowing providers to report and analyze medical errors under a "patient safety activity" umbrella that prohibits the information from being used in a civil action.

Though not a silver bullet to solve all problems of medical errors, the new act authorizes the creation of a national database to serve as a resource for health care organizations. The act:

- authorizes the creation of patient safety organizations (PSOs) to be certified by the secretary of Health and Human Services;
- authorizes creation of a national patient safety database network to provide a resource for health care organizations;
- defines data parameters and requires standardized data sets be developed for health care organizations' voluntary reporting to the patient safety organizations;
- acknowledges that a voluntary data-gathering system is more supportive than a mandated system when the goal is to encourage learning and not to dispense punishment;

- establishes "patient safety work product" as privileged and confidential, not subject to subpoena, Freedom of Information Act (FOIA) request or disciplinary proceeding use;
- protects reporters from retaliatory adverse employment actions;
- establishes redacted reporting standards that do not identify patient or provider; and
- sets a timeline (18 months after implementation) for the first report from the patient safety database.

Health care providers should not wait to begin the process of developing a patient safety evaluation system. Organizations will be best served if they keep moving forward while patient safety organizations are established and certified. New policies and procedures can be drafted immediately, identifying staff accountabilities, creating internal reporting processes, defining formal collection and analysis protocols and prohibiting employment retaliation for reporters.

Participation is voluntary under the new act. However, health care organizations that embrace this change and welcome the opportunity to significantly improve quality of care will be more valuable and profitable in the long term. This act gives health care organizations a chance to transform the workplace culture and support putting the patient's safety above the fear of reprisal. The long-awaited freedom to safely discuss and learn from medical mistakes will benefit the entire health care industry as errors are examined, reduced and eliminated through shared processes and solutions.

Global insurance options can help businesses improve risk management

Businesses purchasing global risk insurance can choose from several options, including admitted, non-admitted and self-insurance structures. Understanding the advantages and challenges associated with each option is critical. For example, admitted structures are beneficial because they comply with local insurance regulations and enable tax and claim payments to be made locally. Additionally, legal and regulatory developments affect the decision. Both Sarbanes-Oxley and the Kvaerner tax case, which defined insurance premium tax liability for the European Union, have contributed to the continual evolution of the interpretation of various program structures. For comprehensive insights and information, read the complete report at www.aon.com/focus.

Businesses can take steps to prepare for pandemic influenza

Pandemic influenza has the power to debilitate multinational companies by depleting resources and creating supply chain interruption. Global companies can proactively assess their business risks related to pandemic influenza and take protective steps against this global threat to employees and critical assets. These steps include establishing a robust business continuity plan that is flexible enough to adapt to changing situations during a pandemic, and ensuring that regional offices are as scrupulous as global headquarters in implementing contingency plans. Read a newly published white paper, "Pandemic Influenza: Managing the Risks of an Invisible Threat," at www.aon.com/focus.

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Inside

Employers must assess disabled workers individually

Court rules that employer can't turn down disabled worker without a job test. **Page 4**

AIG says some employees could face civil charges

In its delayed financial report, the insurer reveals civil charges could follow probes. **Page 4**

Cash flow advantage comes with captive benefit funding

Benefits experts cite pros of captive funding at World Captive Forum. **Page 4**

Pension bill clears hurdle but more obstacles remain

Lawmakers should work out compromise to get pension deal done, an editorial says. **Page 8**

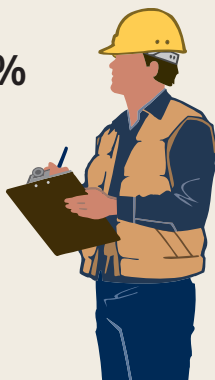
Online poll - [11/14 - 11/18]

Should contractors providing assistance to the federal government in the post-hurricane Gulf cleanup/reconstruction be granted special protections against liability suits arising from their work?

YES
33.33%

NO
61.11%

Unsure
5.56%



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Departments

Advertiser Index	16
Business Resources	12
Commentary	12
International	13
Opinions	8
Products & Services	12
Professional Marketplace	14
Ticker	19
Paul Winston	6
World Updates	13

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Aon seeks to wind down underwriting as several units are put on the block

By SALLY ROBERTS

CHICAGO—Aon Corp. is making another go at formally divesting its underwriting operations.

The Chicago-based brokerage announced last week that it is exploring strategic alternatives for its warranty, credit and property/casualty underwriting business.

The businesses, which generated \$1.4 billion in 2004 revenues, fall under Aon Warranty Group, Virginia Surety Cos. Inc. and London General Insurance Co. Ltd. Excluded from consideration is Combined Insurance Co. of America, Aon's accident/health and life insurance unit, which generated \$1.7 billion in 2004 revenues. In total, underwriting operations accounted for about 30% of Aon's \$10.17 billion in gross revenues last year.

Buyer wanted

Aon Corp. is looking to shed underwriting operations that comprise:

- Aon Warranty Group
- Virginia Surety Cos. Inc.
- London General Insurance Co. Ltd.

All three entities write extended warranty coverages on consumer products.

Aon declined to elaborate on reasons for the move except to say in a statement that by exploring alternatives it expects to determine whether the potential of those businesses "can be more fully realized under different ownership."

This, however, will not be the first time Aon has attempted to sell its warranty, credit and property/casualty underwriting business.

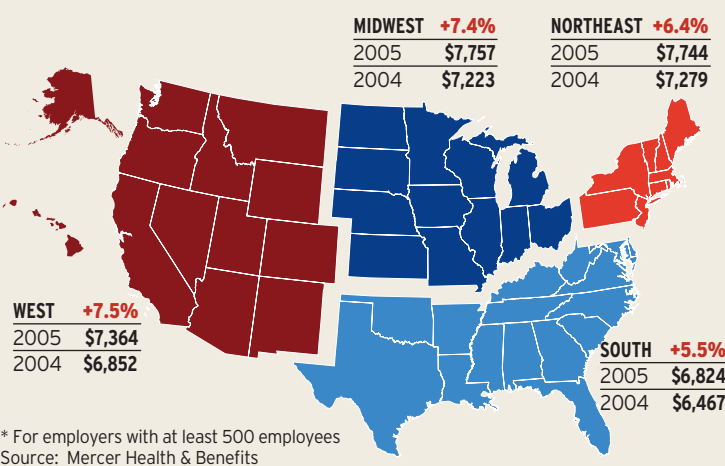
In 2001, Aon attempted to spin off Combined Specialty Group Inc., the holding company under which it organized all of its underwriting operations including Combined Insurance, Aon Warranty, Virginia Surety and London General. Aon eventually scrapped the plans to spin off and grow that business, citing difficult market conditions, and opted instead to sell all or part of the underwriting operations.

At that time, Aon's then-Chairman and Chief Executive Officer Patrick G. Ryan said that, despite canceling the spinoff, Aon was committed to exiting the underwriting business.

See AON / page 16

Average health care cost increases

Increases in per employee health care plan costs by region*



Health care price hikes fall to eight-year low on cost-shifting efforts

By JERRY GEISEL

Group health care plan cost increases continue to ease, with this year's increase less than half of the peak hit three years ago.

In 2005, group health care costs rose by an average of 6.1%—the smallest increase in eight years—to \$7,089 per employee, according to a survey of nearly 3,000 employers released today by Mercer Health & Benefits in New York.

Total health plan costs for large employers—organizations with at least 500 employees—climbed 6.7% to \$7,379 per employee. Costs for health care plans maintained by small employers—those with 10 to 499 employees—rose by 4.9% to \$6,670 per employee.

This year's 6.1% overall increase continues the slowing of health care inflation that began after 2002. That year, costs jumped by a whopping 14.7%, but increases have slowed since then as employ-

ers began to take new aggressive steps to bring costs under control.

Those efforts had immediate impact, with cost increases dropping by more than four percentage points from the 2002 high-water mark of 14.7% to 10.1% in 2003 and 7.5% in 2004.

Cost increases are unlikely to return to double-digit levels anytime soon. Survey respondents predict that costs will increase by an average of 6.7% in 2006.

While employers would like to see cost increases slow even more to be more in line with the overall rise in the cost of living, "they are very happy that cost increases are out of double-digit territory," said Blaine Bos, a Mercer consultant in Minneapolis and an author of the survey.

"It is good news, though perhaps not terrific news," he added.

Several factors, Mr. Blaine says, have come together to slow cost

See MERCER / page 17

AIG unit denies \$100 million pollution claim

By DOUGLAS McLEOD

CHICAGO—An American International Group Inc. subsidiary is fighting a bankrupt company's efforts to collect the \$100 million limit of a pollution liability policy to cover cleanup costs at several former manufacturing and dump sites.

American International Specialty Lines Insurance Co. earlier this month filed suit in federal court in Chicago against NWI-I Inc., a bankrupt conglomerate that was formerly known as Fruit of the Loom Inc. and that previously owned Velsicol Chemical Co.

Also named are the trustees of two bankruptcy trusts formed as part of NWI's Chapter 11 reorganization, one to hold the contaminated properties and the other to marshal assets, including insurance recoveries, to pay for cleanup.

AISLIC's suit charges that NWI breached the terms of its policy when it agreed to transfer its coverage rights to the bankruptcy trusts, managed by trustee corporations dubbed Le Petomane II Inc. and Le Petomane III Inc. The insurer also argues that NWI is trying to collect huge sums for cleaning up a Michigan river that is not part of an insured former Velsicol manufacturing site.

NWI and the two trustee corporations have not yet responded to the complaint. Jay A. Steinberg, a lawyer with Foley & Lardner in Chicago who is acting as president of the two Le Petomane entities, could not be reached.

NWI was known in the 1980s as Northwest Industries Inc., a conglomerate with operations ranging from an oil drilling unit and the Velsicol chemical subsidiary to an apparel maker that produced the Fruit of the Loom underwear brand. Northwest underwent a junk bond-financed leveraged buyout in 1985 and subsequently went public as Fruit of the Loom Inc.

After spinning off Velsicol's operations and other businesses, Fruit of the Loom—which retained environmental liabilities at several Velsicol-related sites—filed for Chapter 11 protection in 1999.

The bankruptcy estate—renamed NWI—has since sold the Fruit of the Loom apparel business to Berkshire Hathaway Inc.

In 2002, the U.S. Bankruptcy Court in Delaware approved an NWI reorganization plan that incorporated a settlement NWI reached with the U.S. Environmental Protection Agency and state regulators over cleanups at seven sites in Illinois, Michigan, New Jersey and Tennessee.

Under the plan, NWI created a custodial trust, managed by Le Petomane III, to hold title to the seven sites and oversee cleanup activities; and a successor trust, managed by Le Petomane II, to gather assets such as insurance proceeds to pay for the cleanup work.

One potentially large NWI asset is the AISLIC policy, which provides pollution lia-

See SUIT / page 16

AIG announces latest round of earnings restatements

Insurer reveals some employees have received 'Wells' notices in connection with probes

By RUPAL PARKEH

NEW YORK—Embattled insurer American International Group Inc. filed its delayed third-quarter earnings last week and additionally indicated that some of its employees could face civil charges stemming from an ongoing probe of AIG's accounting practices.

New York-based AIG reported net income of \$10.02 billion for the first nine months of 2005, up 20.9% over its restated prior-period result.

The company's third-quarter net income was \$1.72 billion, down 36.1% from the restated prior-period figure, due largely to net aftertax catastrophe losses of \$1.57 billion related to hurricanes Katrina and

Rita and other natural catastrophes.

AIG's delayed financials incorporated the effects of another round of restatements the insurer announced this month, as a result of errors AIG said it discovered during an internal review (BI, Nov. 7).

The errors relate mainly to previously disclosed material weakness in internal controls surrounding accounting for derivatives and related assets and liabilities, and reconciliation for certain balance sheet accounts and income tax accounting, according to AIG.

As part of its revisions, AIG is correcting its financials for 2002 through 2004—along with certain data for 2000 and 2001—as well as quarterly earnings statements for all

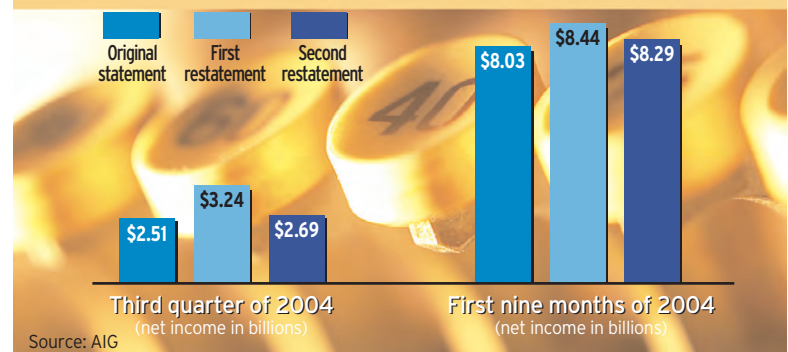
of 2004 and the first two quarters of 2005. The insurer's longtime auditor, PricewaterhouseCoopers L.L.P., consulted AIG on the latest restatement.

The latest earnings restatement is the second for AIG this year. In May, the insurer restated more than five years of earnings due to regulatory probes into AIG's accounting for certain transactions, including a \$500 million retrocessional loss-portfolio deal with Stamford, Conn.-based General Re Corp. in 2000, which AIG earlier this year acknowledged did not transfer risk.

The effect of the May restatement was to shrink AIG's reported net income between 2000 and 2004 by

Déjà vu all over again

AIG restated its net income for the third quarter of 2005 as \$1.72 billion and for the first nine months of 2005 as \$10.02 billion. AIG has twice restated net income for the third-quarter and nine-month periods of 2004.



See AIG / page 16

5th Circuit finds bias in ConAgra withdrawal of diabetic's job offer

By JUDY GREENWALD

NEW ORLEANS—An employer that refuses to hire a worker who is regarded as having a disability without conducting an individualized assessment of his ability to do the job is liable for disability discrimination, says a federal appellate court.

tion contingent, in part, on the results of a physical exam.

Based on a blood sugar test, a physician determined that Mr. Rodriguez had uncontrolled diabetes and, on that basis, Omaha, Neb.-based ConAgra withdrew its job offer.

There was no effort to make an individualized assessment of Mr. Rodriguez, as mandated by the Americans with Disabilities Act, according to the appellate panel's ruling.

"Without giving Rodriguez the chance to be evaluated based on his own individualized experience with diabetes, ConAgra lumped him into a class with all putative 'uncontrolled' diabetics and summarily denied him" the job, says the unanimous decision by the three-judge panel.

"ConAgra's argument that Rodriguez's 'failure to control' his diabetes obviates the protection of the ADA is a red herring," says the opinion.

"At its core" this case is about the ADA's and the Texas Commission on Human Rights Act's "emphasis on treating impaired job applicants as individuals," the decision says.

"ConAgra's blanket policy of refusing to hire what it characterized as 'uncontrolled' diabetics violates this fundamental tenet of the federal law; it embraces what the ADA detests: reliance on 'stereotypes and generalizations' about an illness when making employment decisions,"

The case was remanded to the district court to determine Mr. Rodriguez's damages.

Rudy Rodriguez vs. ConAgra Grocery Products Co.; 5th U.S. Circuit Court of Appeals, No. 04-11473.

Cash flow, other advantages seen in funding benefits through captive

By JERRY GEISEL

AVENTURA, Fla.—The biggest advantage of funding employee benefit risks through a captive insurance company is improved cash flow, say corporate financial executives.

"It was cash flow, cash flow and cash flow," according to Greg Davies, executive director and treasurer at AstraZeneca Pharmaceuticals L.P., that was the main driver behind the company deciding to seek permission to fund benefit risks through a Vermont captive. The Wilmington, Del.-based unit and another U.S. affiliate of U.K. pharmaceutical giant AstraZeneca P.L.C. sought permission from the U.S. Department of Labor last month.

Speaking earlier this month at the 15th annual World Captive Fo-

World Captive Forum coverage continues on page 10

rum in Aventura, Fla., Mr. Davies noted that there can be significant cash flow advantages, for example, in funding long-term disability risks through a captive compared with purchasing coverage from a commercial insurer.

Given the long-tail nature of LTD, premiums paid to a captive can generate investment income over a long period while the claims are paid out slowly.

"The cash flow is always positive," said Allan Harris, finance manager in the risk management department at Wells Fargo in Castle

Rock, Colo. "You take in the premiums and pay out benefits slowly," he added.

Wells Fargo is now in the final stages of deciding whether to apply to the Labor Department to fund benefit risks through a 15-year-old Vermont captive.

The cash flow and other advantages associated with funding employee benefits through captives are prompting a small but growing number of employers to take a look at the innovative funding arrangement. Of the nine employers that have sought Labor Department permission to fund benefits in their captives since the agency liberalized its rules in 1999 allowing the arrangements, six have done so since 2004.

See BENEFITS / page 10

Radical risk management needed as med mal claims stay untreated

By MICHAEL BRADFORD

AVENTURA, Fla.—A captive owner is advocating radical surgery on the old methods of controlling medical malpractice and is using his insurer as part of a new approach to make medicine safer.

A captive can succeed where legislative efforts and loss prevention techniques have failed in reducing malpractice incidents, said Larry L. Smith, vp-risk management at MedStar Health Inc., a Columbia, Md.-based hospital system that owns a Cayman Islands captive.

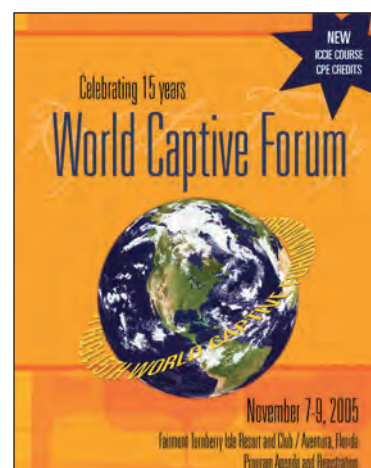
Tort reform and risk management have done little to make the practice of medicine safer, Mr. Smith contends.

Malpractice cases result from medical errors, and "the long-term

solution to error prevention is not tort reform," Mr. Smith said. While legal reforms are welcome, "that's a Band-Aid," he said.

Speaking as a panelist at the World Captive Forum, held earlier this month in Aventura, Fla., Mr. Smith said that the only way to prevent medical errors is "to throw away the quality assurance and risk management programs that we have had in the past, which have been absolutely worthless and have done very little to move the practice of medicine" toward becoming safer.

Mr. Smith said MedStar is taking a different approach, aiming at the



See MED MAL / page 9



Court ruling for ADA

According to the **5th U.S. Circuit Court of Appeals**, an employer that refuses to hire a worker who is regarded as having a disability without conducting an **individualized assessment** of his or her ability to perform the job is in violation of the **Americans with Disabilities Act**.

The Nov. 14 decision by the 5th U.S. Circuit Court of Appeals in *Rudy Rodriguez vs. ConAgra Grocery Products Co.* overturns a lower court decision that had dismissed the case.

Mr. Rodriguez, a diabetic, was a temporary worker at a ConAgra plant in Fort Worth, Texas, when he was offered a permanent posi-

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PAUL WINSTON

Editorial Director

A better way to give thanks

In a few days, Americans will celebrate the Thanksgiving Day holiday. Rather than aspire to new heights of culinary excess, I'd like to suggest a different way of giving thanks for our bounty and good fortune and tell you about an insurance agent who is doing just that.

The Thanksgiving Day holiday in the United States is meant to commemorate the pilgrims' celebration of the good harvest of 1621. Without it, the Plymouth Colony would have fared poorly that winter and this country's history would probably be quite different. But somewhere along the way—blame Norman Rockwell perhaps, or Butterball—this event morphed into a day of gluttony.

We're supposed to be commemorating the fact that the original settlers did not starve—not honoring the invention of Pepto-Bismol. What was once a family occasion to eat simple fare that the pilgrims might have consumed is now perverted with such gastronomical bling-bling as turducken, tofurkey and 30-quart deep fat fryers. (I should know. I have one that sits in the garage 364 days a year.)

The living standard of the majority of Americans is such that they have plenty to eat, but flaunting this fact with Thanksgiving voracity—especially when there remain plenty of Americans who are hungry *every day*—just seems in bad taste.

This Thanksgiving, perhaps a better way to give thanks for our good fortune is to help others who are less fortunate. In our country of 300 million people, about 37 million—35% of them children—live below the federal poverty line, according to the U.S. Census Bureau. Consider, too, this year's special burdens: hundreds of thousands of people displaced by Hurricane Katrina, and the many families facing financial struggles while a breadwinner serves active duty with the armed forces in Iraq.

There is an insurance agent who became so appalled by the problem of hunger in our land of plenty, and its impact on children, that he formed a charitable organization—People Against Children Starving USA—to address the problem.

Al Singer, president of Singer, Nelson & Charlmers in Teaneck, N.J., formed PACS USA in 1997, after learning that millions of children in this country go to bed hungry every night. It's an embarrassment that most people, including those in government,

turn away from.

"The government doesn't want to admit that we have millions of children going to bed hungry," Mr. Singer noted. "Politicians don't want to touch the subject and don't want to publicize this problem around the world. We show starving children in Africa and everywhere else, but not here."

PACS USA raises money to fund U.S. food distribution efforts by Feed the Children, a nonprofit relief organization that distributes food and other necessities in communities worldwide afflicted by famine, war, poverty or natural disaster. A contribution of \$5,400 to PACS USA finances one Feed the Children truckload of food—about 35,000 pounds of food provided by major food companies at cost.

Large contributors can choose where their food is delivered, if they wish, enabling them to help needy children in their own communities. Contributors can also help distribute the food to see firsthand the relief their support provides.

In 2005, PACS USA has funded about 15 truckloads of food, including two to New Orleans.

I admire Mr. Singer's tenacity. I have witnessed his efforts, for example, during the annual Insurance Leadership Forum at The Greenbrier. You can imagine the struggle he faces in asking people to focus on an ugly problem like hunger amid a meeting of insurance executives at a luxury resort. And he has persisted year after year.

While several of his insurance industry colleagues have made donations, it is a constant struggle to attract adequate funds and to convince people and companies of the need to continue supporting the effort.

Insurance agencies are very community-minded, and many companies already have favored philanthropic causes they support, but that means they often are less willing to make a sizable and continuous commitment to PACS USA, Mr. Singer noted.

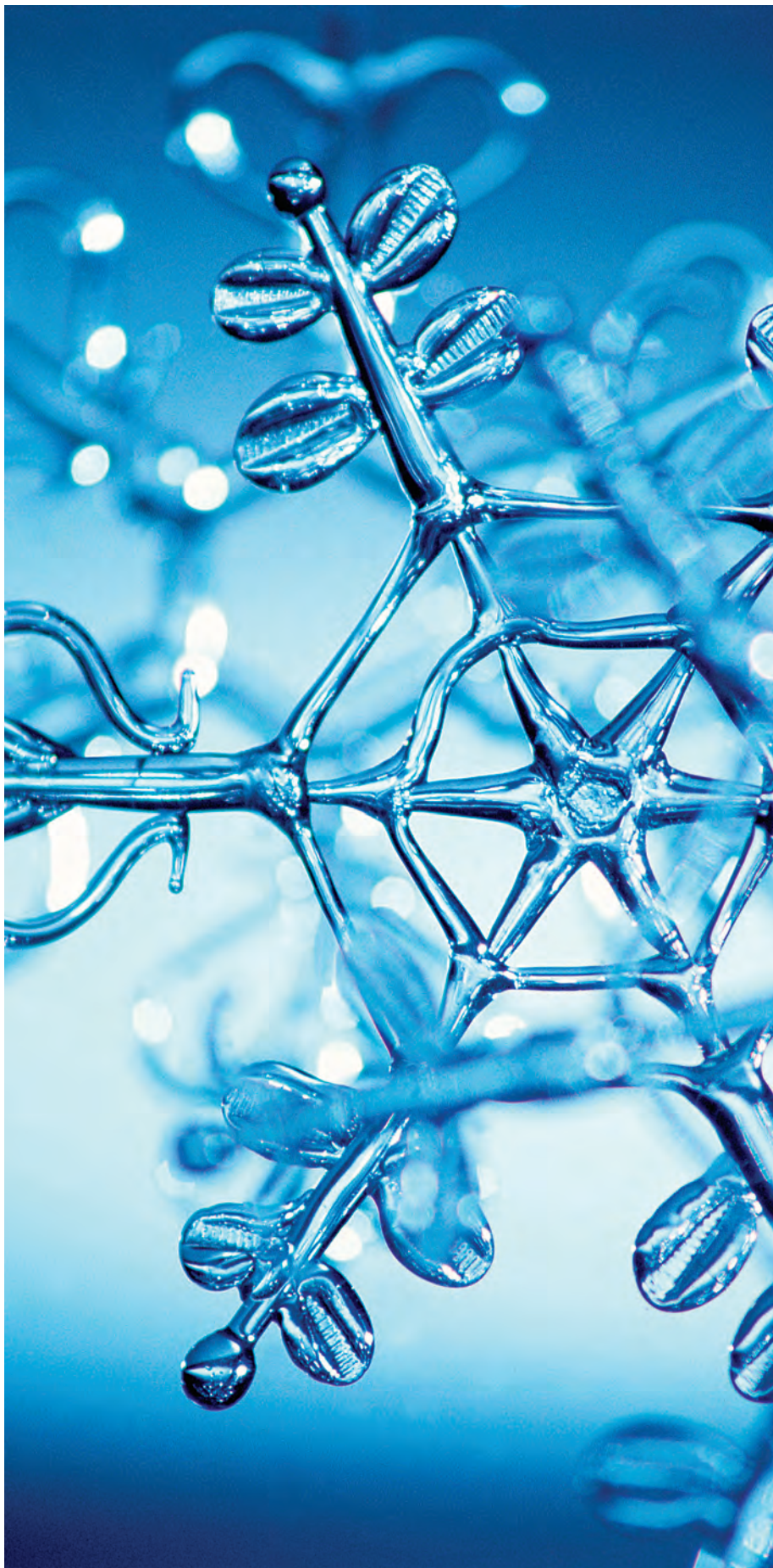
"Most companies are already supporting charitable ventures and such," he said. "But I tell them that this is not a charity. It's a social ill in our country that we should not tolerate."

To find out how you and your organization can help Mr. Singer's efforts to relieve the disturbing problem of starving children in America, please visit the PACS USA Web site, at www.singermelson.com/PACS/.

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

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Editorial

Congress must press ahead toward final pension bill

WE APPLAUD members of the U.S. Senate for their ability to compromise and overwhelmingly approve pension funding reform legislation last week.

The 97-2 vote to approve the bill belies the difficulty Senate leaders faced in bringing the measure to the floor for a vote.

Indeed, just a month ago, the measure was widely viewed as being in big trouble after two senators placed a hold on the bill, preventing a Senate vote just before the Columbus Day break. The conventional wisdom then was that the Senate would not consider the bill this year.

That prediction proved dead wrong. The two legislators who had blocked the bill—Sens. Mike DeWine, R-Ohio, and Barbara Mikulski, D-Md.—dropped their hold after assurances that the provision to which they object—imposing tougher funding requirements on employers with poor credit ratings—would be considered carefully later on. That deal, a very reasonable one, put the bill back on the Senate floor, where it easily passed last week.

While that roadblock has been removed, many remain, not the least of which will be members of the House and Senate resolving the numerous significant differences in the two bills they have produced and agreeing on a final version that President Bush will sign.

As we report on page 1, finding a compromise will be challenging. There is no easy middle ground on issues such as the use of “smoothing” to value plan liabilities and assets, stiffer funding requirements for financially distressed companies or the rules that govern cash balance plan conversions.

That said, we believe acceptable compromises are achievable, if only because legislators must know by now that action is crucial to prevent a future collapse of the defined benefit plan system.

The driving factor behind the legislation is ensuring the financial solvency of the federal agency—the Pension Benefit Guaranty Corp.—that guarantees employees’ and retirees’ pension benefits.

In just a few years, the PBGC’s net position has gone from a surplus of more than \$7 billion to a deficit of about \$23 billion. A key reason for this dramatic change in for-

tune is that loopholes in pension law allow employers not to come even close to funding what they have promised to plan participants.

As a result, when companies fail, their plans can be hugely underfunded and the resulting loss to the PBGC—which has to guarantee a chunk of the promised but unfunded benefits—can be and has been enormous. Indeed, pension plans sponsored by three companies—Bethlehem Steel Corp., US Airways Group and United Airlines—and taken over by the PBGC account for more than half of the agency’s deficit.

There is no doubt that, unless funding loopholes are closed, the agency will surely be hit with more massive losses. To those who ask, “What difference does that make?” we say all the difference in the world, if lawmakers actually want to prevent the defined benefit plan system from unraveling.

The PBGC pays for broken pension promises through the premiums it charges employers with defined benefit plans. The annual premium now—\$19 per participant—is a very modest one. But what if Congress had to raise the premium to ensure the agency can honor its benefit commitments to several hundred dollars per participant? Would there be any doubt that employers, en masse, would fold their defined benefit plans in favor of defined contribution plans, for which no premiums are charged?

Certainly, Congress can’t let that happen, and we hope for that reason legislators press ahead to reach agreement on a final bill.

More than a decade ago, Congress let an opportunity to reform pension funding rules slip away. The bill enacted in 1994 was a loophole-ridden disaster whose weaknesses—most notably the inadequate pension plan funding requirements—are enormous.

Now with the PBGC in a huge financial hole and employers in growing numbers freezing their pension plans, time is running out for congressional action. This time—and there may not be a next time—Congress has to get it right.

Schillerstrom



Letters

Fresh capital provides startups with chance for fresh approach

To the editor: This is in regard to *Business Insurance's* Oct. 31 editorial on the fresh influx of new insurance capital post-Katrina/Rita/Wilma.

Your warning about the opportunism shown by the fresh underwriting capital post-Katrina, Rita and Wilma and the “abysmal record of underwriting losses” over the past 26 years and the comment by the ACE chairman, Brian Duperreault in the same issue that “in general, brokers should not be compensated by insurers, because they don’t work for them” signals a great opportunity for these new underwriters.

Why not scrap all commissions, direct and contingent, and offer their services directly to buyers? This would reduce the expense ratio enormously, allow premium and loss payments to move directly between buyer and seller, increase the credibility of these new companies and, just perhaps, set them on the road to underwriting profits. Should buyers require the counsel of brokers for these transactions, they could retain them on a conven-

tional fee basis.

A startup has this opportunity in contrast to established underwriters that are locked into “the system.” Given our new interactive technology, I see no reason why underwriters, just like our entire banking system, could not operate directly with customers.

Felix Kloman
Risk Management Reports
Lyme, Conn.

Write Us

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Med mal: Risk management needs radical surgery to cut medical error claims

Continued from page 4

root causes of malpractice by using some of its captive's funds to educate doctors and nurses about how certain changes can reduce the potential for errors.

The captive has asked physicians and nurses in recent years to suggest projects that they have been unable to find funding for that "might save us money in terms of loss prevention or reducing the risk," Mr. Smith said. "And we've had some wonderful opportunities to use small amounts of money to do creative things," he said.

Some of the captive's money has been used for research that, in one case, taught doctors how early intervention in some childhood disorders can reduce the "severity of the injury and, therefore, the severity of the claim."

As a way to get doctors more involved in the effort to reduce medical errors and malpractice claims, MedStar has instituted a claims management program it describes as "physician-driven," Mr. Smith noted. "We basically got our docs together and said, 'From now on, we're not doing claims management the old way. We're bringing these cases before you; you caused them to happen, you've been involved in these....You've got to help us figure out what went wrong in this case, if anything did.'"

Mr. Smith said he also encourages doctors and nurses "to 'fess up when they see bad medicine being delivered"—rather than turning away or apologizing for

such behavior—and to help find ways to stop those practices from recurring.

He did acknowledge, though, that bad medicine causes a lot of legitimate malpractice claims, with around 40% of those lodged against MedStar stemming from incidents of poorly delivered care.

MedStar's tough stance extends to its hospitals that have obstetrics programs. After a loss-history study showed that obstetrics led all practice areas in malpractice claims, "we got the physician and nursing leadership together...threw the data on the table and said, 'Here's your losses for 10

years; fix it.'"

Mr. Smith said the medical leadership was told, "This is now the most important work you are doing as our chairs of OB and our nursing directors.... This is the most important work you are going to be doing until this work is accomplished."

Another health care captive has managed to slow the frequency of medical malpractice claims and is now working on ways to reduce the severity of those claims.

Kenneth M. Krakaur, Newport News, Va.-based president of Sentara Healthcare's Peninsula Region and president of the company's

Cayman Islands-based captive, pointed out during the session that Sentara has managed to reduce the number of its claims to 0.6 per 100 occupied beds currently from a high of 8.2 per 100 occupied beds around five years ago.

But per-claim severity has jumped to \$141,000 from \$13,000 over that same period.

Mr. Krakaur said the captive attacked the problem by studying five years of malpractice claims to determine what types of mistakes were causing problems in health care delivery at Sentara facilities. The study revealed that "42% of our problems were around profi-

ciency errors," he said, meaning that, in many cases, "someone was not making the right diagnosis" or was using poor judgment.

Along with addressing that problem, Sentara learned that there were significant "violation errors," which it defines as policy breaches or failure by employees to follow protocols. Those errors, which were 18% of the total identified, often led to claims, Mr. Krakaur explained.

Also participating in the session was the moderator, Michael Maglaras, president of insurance consulting firm Michael Maglaras & Co. in Stamford, Conn.

Conference draws 300

AVENTURA, Fla.—The 15th annual World Captive Forum attracted more than 300 attendees from around the world to the Fairmont Turnberry Isle Resort in Aventura, Fla., Nov. 7-9.

The annual conference is produced jointly by *Business Insurance*, Quest Insurance Solutions Ltd. and Tillinghast-Towers Perrin.

Reflecting growing corporate interest in the area, about half of the meeting's sessions were devoted to issues related to the funding of employee benefit plans through captives. Other session topics included the use of cell captives, funding risks through group captives and developments in the reinsurance market.

Next year's conference is scheduled for Nov. 13-15 at the Fairmont Scottsdale Princess in Scottsdale, Ariz. For more information, contact the World Captive Forum by mail at 4248 Park Glen Road, Minneapolis, Minn. 55416; by e-mail at info@worldcaptiveforum.com; or by telephone at 952-928-4659.



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Homogeneity a virtue in group captive formation, survival

Start small but have a plan to handle growth, deal with top management, panelists advise

By MICHAEL BRADFORD

AVENTURA, Fla.—Group captives can swing the odds for success in their favor by keeping some things simple.

Those that limit their membership to businesses in a single industry, deal only with the top management at each member company and establish clear growth objectives will have the best chance of thriving, two experts who have learned those lessons contend.

"Our captive is homogenous, and we feel homogenous captives are more likely to succeed," said Roberts F. Underwood, president of Pan-American Underwriters Inc., an insurance broker and managing general agent in Pasadena, Calif. Pan-American's Bermuda-based captive, AggCap Holdings Ltd., is a segregated account company that reinsures the workers compensation risks of California agriculture businesses.

Sometimes it takes a few hard knocks to learn such lessons, according to Ken Krenicky, former senior vp, risk management, at Aventis Pharmaceuticals Inc. Mr. Krenicky and Mr. Underwood were panelists during an educational session at the 15th World Captive Forum, held earlier this month in Aventura, Fla.

"You go through a lot of lessons when you're not successful," said Mr. Krenicky. "You can learn from your mistakes, and, let me tell you, we had some." He was referring to the long road he and others in the pharmaceutical industry have traveled toward forming a captive that would provide excess liability insurance. While that goal remains elusive, a property captive, Pharmaceutical Insurance Ltd., was created.

Mr. Krenicky agreed that single-industry owners are probably the best arrangement for group captives. Many group captives that

wrote coverage for multiple industries have failed, he pointed out. "One of the things that we have learned is that perhaps heteroge-

"You go through a lot of lessons when you're not successful. ... You can learn from your mistakes, and, let me tell you, we had some."

Ken Krenicky
Aventis Pharmaceuticals Inc.

neous risks don't work as well," he said.

The failed captives were "pools of captives, most of them from various industries, bringing together different types of companies and risks, and that just doesn't work as well," Mr. Krenicky noted. There can be exceptions, he acknowledged, but, generally, heterogeneous captives

don't have the same success rate.

Mr. Underwood said that a group captive managers should have close contact with members' top decision makers.

"All of our members are private companies; we don't deal with any public entities," Mr. Underwood said. As such, "it is critical that we have the owner or the major partners in on the buying decisions," he said. "Otherwise, we're managing back to an HR person—a second lieutenant who has to deliver the message back. On decisions of capital, premium and all the things associated with it, you have to be dealing with the buyer."

Successful captives get larger, and it's a bad idea to start a captive without a plan to handle its growth, said Mr. Underwood.

"Captives usually start small," he said. "Ours started with about \$3 million in premium, and now it's just north of \$17 million." AggCap began underwriting in 2002.

Mr. Underwood said group captives should offer coverage that makes it a potential market for new

members and good prospects should be identified. "You have to develop hard and fast membership criteria. In our case, it's California workers comp," he said, which means a potential member must provide a lot of information on its loss experience, premium size and company financial data.

And group captives have to be able to prove their worth if they expect to attract new members, Mr. Underwood noted.

"You have to be able to clearly articulate what makes your group captive better than the market," he said. AggCap is able to show its members how their coverage and costs stack up against guaranteed cost programs and other alternatives, "including other captives," Mr. Underwood said.

"Captives are so in vogue right now...you have to really know your captive inside and out" in order to promote it, he emphasized.

The session moderator was C. Jeffrey Triplette, vp, continuity, insurance and security services at Duke Energy Corp. in Charlotte, N.C.

Benefits: Use of a captive can produce cash flow advantages

Continued from page 4

And more employers could join the movement to fund benefits through captives. "This could move us in a direction we have not gone before," said Laurie Solomon, risk

"There is a road map. You don't have to reinvent the wheel. You can look at what other companies have done."

Greg Davies
AstraZeneca Pharmaceuticals L.P.

manager at The Coca-Cola Co. in Atlanta, who moderated the WCF session.

Improved cash flow, while perhaps the most significant incentive for companies to consider funding benefits through their captives, is not the only reason. Mr. Davies of AstraZeneca, for example, noted that employers can obtain more flexibility in the design of their benefit plans by funding them through captives.

Additionally, adding benefit risks to an existing captive can broaden the captive's book of business. "We like that spread of risk," said John Wilson, president of Three Rivers Insurance Co., a Vermont-domiciled insurance subsidiary of Alcoa Inc. Earlier this year, the Labor Department granted Alcoa approval to use Three Rivers to reinsure group term life insurance policies written by Metropolitan Life Insurance Co.

"It's nice to get that extra diversification," Mr. Harris agreed.

But panel members warned that funding benefit programs through captives is not something that can

be accomplished quickly. To begin with, such projects almost always require that at least two corporate departments—typically risk management and human resources—work together.

"You have to respect the turf of HR," Mr. Wilson.

At the same time, the commercial insurers that previously covered the exposures have to be educated on their new role. Typically, commercial insurers involved in captive benefit funding arrangements will issue the policies and then be reinsured—in full or part—by the captive.

"The big challenge is to get carriers to look at this differently," Mr. Harris said.

There are other issues as well. An employer has to decide whether to use in-house or external counsel to prepare the necessary filings for the Labor Department, and it must select an external fiduciary.

Because the Labor Department has already approved seven captive benefit funding applications, employers by now have a good idea of what it takes to win regulatory clearance. Among other things, the Labor Department requires that a top-rated insurer be selected to issue policies and that plan participants benefit from the arrangement, such as through a sweetening of benefits.

"There is a road map. You don't have to reinvent the wheel. You can look at what other companies have done," Mr. Davies said.

In the end, though, an employer has to see if the arrangement truly makes sense for it. "You have to see what works best for you," he said.

The session was coordinated by James Waters, retired head of employee benefit services for Towers Perrin in New York.

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Report on RRGs may pose threat to captives

By JERRY GEISEL

AVENTURA, Fla.—A recent government report suggesting that risk retention groups be subject to new rules could trigger more attacks on the groups from state regulators, an RRG and captive manager warns.

"The report has made them frisky," said Jon Harkavy, vp and general counsel in the Arlington, Va., office of Risk Services L.L.C. He added that the National Assn. of Insurance Commissioners has had a long "institutional bias" against risk retention groups. That bias, Mr. Harkavy said, stems from the NAIC's opposition to any proposals that would reduce or interfere with insurance departments' ability to regulate insurers doing business within their borders.

Speaking earlier this month at the 15th annual World Captive Forum in Aventura, Fla., Mr. Harkavy said

If the GAO report's recommendation were adopted, RRGs would no longer be able to write coverage for policyholders nationwide after meeting the licensing requirements of one state.

that if states do step up their attacks, other captive arrangements could feel the impact, if regulators are emboldened to move beyond RRGs.

Because the situation could lead to a "sword of Damocles" hanging over all captives, corporate sponsors of single-parent captives should be following the possible regulatory fallout from the U.S. Government Accountability Office's report on risk retention groups, Mr. Harkavy said.

The GAO's report recommends that the states and the National Assn. of Insurance Commissioners adopt a set of uniform regulatory standards for RRGs (*BI*, Sept. 19). Once those standards are developed, the GAO suggests, Congress may want to rewrite the Liability Risk Retention Act to limit the special pre-emption RRGs now enjoy from state insurance laws, extending it only to groups domiciled in those states that have adopted the NAIC's standards.

In practical terms, if that recommendation were adopted, RRGs no longer would be able to write coverage for policyholders nationwide after meeting the licensing requirements of one state.

In support of its suggestion, the GAO noted that 22 RRGs have failed between 1990 and 2003.

But Mr. Harkavy said the GAO report is based on several faulty assumptions, such as the assertion that RRGs gravitate to states with

the most liberal licensing requirements, thus increasing the likelihood that the groups won't be adequately regulated. In fact, while RRGs are concentrated in states with attractive captive licensing laws, that doesn't translate into inadequate regulation of the groups, he said. Because such states typically have extensive experience in regulating captives, their approach to such regulation tends to be much more "hands on" than that of other states, Mr. Harkavy said.

Indeed, when RRGs have failed, the groups often were domiciled in states where they were regulated under traditional state insurance law, rather than under a captive statute.

To date, the GAO report has generated little reaction from federal legislators, who would have to approve any changes to federal pre-emption of state insurance laws. On the other hand, Congress has expressed little interest in expanding the Risk Retention Act so that RRGs could fund all commercial risks, Mr. Harkavy said. Currently, RRGs can write only commercial casualty coverages other than workers compensation.

Another session speaker, Roy Sedore, a partner at the law firm of Baker & McKenzie L.L.P. in New York, said an Internal Revenue Service notice earlier this year could lead to new guidance on several tax issues affecting captive arrangements.

Among other things, the IRS has asked for comments on what factors should be taken into account in determining whether cell captive arrangements should be considered insurance. Such a determination will affect whether premiums are considered tax-deductible. "This is an area where the IRS has not yet taken a position," Mr. Sedore said.

The session was moderated by Charles Lee, a managing principal in the Dallas office of the Tillinghast unit of Towers Perrin.

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COMMENTARY

Senior Editor Mark A. Hofmann

Don't let the sun go down on TRIA

Somehow, it all seems spookily familiar.

Remember the mood back in November 2002, when Congress appeared unlikely to get together on what the Terrorism Risk Insurance Act should look like? Lawmakers and the White House wrangled for a year, but there was no bill.

Elections came and went, and, ultimately, it fell to a lame-duck Congress—one of the most potentially mischievous, if not downright dangerous, legislative institutions imaginable—to enact TRIA. Fortunately, the members of that lame-duck session proved themselves worthy of the task before them, passed TRIA and sent it on to President Bush for his signature, which he was only too happy to affix to the bill.

TRIA, of course, contained a sunset date, which happens to be Dec. 31. And guess what? Here we are in November again with no extension legislation heading to the president. Both the House Financial Services and the Senate Banking committees passed their own TRIA extension bills last week, but neither the full House nor the full Senate had approved its respective bill by last Thursday. In addition, the bills differ significantly and must be reconciled, thus setting the stage for another nail-biting, down-to-the-wire replay of late 2002.

That the situation is playing out this way is no accident. TRIA's drafters designed it as a temporary program, intended to give insurers enough breathing room to come up with a private-market solution to the provision of terrorism insurance. For a variety of reasons, that did not happen and is highly unlikely to happen before TRIA's expiration date.

The predictable result is fear about both the affordability and availability of coverage, and that fear is not being calmed by policies festooned with pop-up terrorism exclusions. Ironically, the fact that the pain is already starting before the act expires may force action, as Joel Wood, senior vp-government affairs for the Council of Insurance Agents & Brokers, noted during *Business Insurance's* October webinar on what a world without TRIA might look like.

But even if some form of TRIA is extended for a couple of years, the long-term question of who pro-

vides what in the way of terrorism coverage remains unresolved. This is the issue that should have been settled during the period between TRIA's enactment and its scheduled demise.

Fortunately, the House measure specifically calls for a commission to recommend long-term approaches to covering terrorism losses.

Also, fortunately, in recent months, a diverse group of people and entities has offered a spate of suggestions about how a long-term program could work. Among those involved have been the Defense Research Institute, Aon Corp., Liberty Mutual Insurance Group, U.S. Re, former D.C. Insurance Commissioner Larry Mirel and the Property Casualty Insurers Assn. of America, and I apologize to anyone I've missed here.

The ideas have varied in scope and detail, which is to be expected. What they have not varied in is the sincerity of the people offering them. No doubt more ideas about the best way to approach the long-term terrorism insurance question will be offered.

Ideally, such a commission would take the best aspects of each of the current proposals as well as any forthcoming proposals. That may seem obvious and commonsensical, but anyone who's watched the workings of Washington closely knows that the obvious and the commonsensical can be rare commodities indeed.

Even if Congress fails to approve extension legislation by the end of the year, TRIA supporters need to push lawmakers to establish such a commission. We have been told repeatedly—and rightly so—by federal officials that terrorism will be a long-term menace to the United States, and that the current war on terror could last longer than the Cold War.

The time for short-term thinking has long passed, if such a time ever existed. We're in this for the long haul, and a long-term answer to the question of how terrorism insurance should be provided is not only overdue but imperative.

We've been here before, we're here now, and it doesn't feel any more comfortable than it did in 2002. No one wants to be here again in 2007, waiting for another short-term fix to a problem that demands a long-term solution.

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

PRODUCTS & SERVICES

BISYS introduces program for distributors

MELBOURNE, Fla.—BISYS

Commercial Insurance Services is offering a wholesale distributors insurance program available to wholesale businesses of all sizes.

The program was developed for operations that transport their nonhazardous durable and nondurable goods to other suppliers or retailers. Some of the coverages provided are auto liability and physical damage, commercial property, general liability, cargo and crime. The program is available to a variety of eligible classes—such as electrical goods, groceries, plastics and allied products, paper and paper products, and lumber and construction materials—but is not limited to those listed.

The program is accessed through BISYS Specialty Programs, a Melbourne, Fla.-based division of BISYS Commercial Insurance Services and a provider of specialty insurance and property/casualty programs.

For more information, contact Terry Stevens, underwriting manager, at 800-444-8474, ext. 3130, or at wholesaledistributors@bisys.com.

Willis publishes global D&O directory

LONDON—Willis Group Holdings Ltd. has published a guide to global directors and officers liability.

The guide, "The Willis Worldwide Directory of Directors' and Officers' Liability," examines the potential personal liabilities of directors in 51 countries. It is targeted at risk managers, senior-level executives, corporate counsel and company secretaries. Each chapter is broken out by jurisdiction and provides details on who might sue directors and officers, tax implications, trends relating to D&O liability insurance, corporate governance developments and procedural requirements, among others.

To order a copy of the 600-page

directory, send an e-mail to D&O@willis.com. For more information, visit www.willis.com.



Beazley expands professional liability cover

FARMINGTON, Conn.—Beazley

Insurance Co. Inc. has created an architects and engineers professional liability insurance policy that offers traditional coverage along with coverage for a range of technology-related risks.

The expanded coverage includes cyber liability, which protects against damage caused to third parties by inadvertently exporting viruses; intellectual property misuse, which covers copyright, trademark and other infringements; data theft, which protects against the theft of client data by computer hackers; and technology services, which covers against third-party claims arising from nontraditional services provided by architects and engineers, such as software design or Web hosting.

The policy is available to firms of all sizes, and the policy is offered on a duty-to-defend basis worldwide with limits available up to \$20 million. The policy is underwritten by Farmington, Conn.-based Beazley Insurance Co. on an admitted basis and by Beazley syndicates at Lloyd's of London on a nonadmitted basis.

For more information, visit www.beazley.com.

Crawford Healthcare offers absence management aid

LONDON—Crawford Healthcare, a

division of Crawford & Co., has partnered with Injury Prevention & Rehabilitation Services, a Little Blakenham, England-based provider of injury and rehabilitation services, to offer a suite of absence management services.

The initiative offers services including full absence case management, rehabilitation assessments, return-to-work programs, hospital bill audits, career counseling and independent examinations, among others. The services are intended to help companies facilitate a quicker return of employees to the workplace. The suite of services is available to companies within the United Kingdom.

For more information, visit Crawford's Web site at www.crawco.co.uk.

St. Paul Travelers adds AD&D coverage

ST. PAUL, Minn.—St. Paul Travelers Cos. Inc. has enhanced its Global Companion, a commercial property and general liability portfolio of products geared to cover international programs.

The company has added accidental death and dismemberment coverage for international business travelers. The exposures covered include loss of life, loss of limb and total and permanent loss of sight, among others. In addition, medical expenses are covered for bodily injuries caused by accidents.

For more information, visit www.stpaultravelers.com.

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Justice orders acquittal of FAI execs

Allegations of 'sham' deal tied to HIH collapse could not be proved

By ELIZABETH FRY

SYDNEY, Australia—A New South Wales Supreme Court jury was directed last Monday to acquit three former executives of FAI Insurance Ltd. accused of covering up a potential reserving shortfall by arranging a reinsurance deal with General Cologne Reinsurance Australia in 1998, a deal originally termed "a sham" by a government inquiry that claimed its purpose was to deceive the auditor.

During the six-week Supreme Court proceedings, the government prosecution alleged that side letters to some contracts removed risk transfer from the deal as a whole, which, therefore, should not have been accounted for as reinsurance at all.

The three former FAI executives—Chief Operating Officer Daniel Wilkie, Finance Director Tim Mainprize and Reinsurance Manager Stephen Burroughs—faced charges of acting dishonestly as company officers in relation to the reinsurance deal.

The transaction, which allowed FAI to turn a loss of about \$19 million Australian (\$11.6 million) for 1998 into a profit of \$8.9 million Australian (\$5.4 million), was investigated by the Australian Prudential Regulation Authority and by a government inquiry into the 2001 collapse of HIH Insurance Ltd., which determined that the HIH acquisition of FAI played a role in HIH's subsequent demise. The collapse of HIH, which had been Australia's second-largest property/casualty insurer, was the country's largest corporate failure.

In its investigation, the APRA determined that the reinsurance transaction involved no genuine risk transfer because FAI agreed, in side letters that accompanied the transactions, not to make any claims on certain policies.

But Justice Roderick Howie told the jury last Monday that the prosecution's allegations could not be proved. Justice Howie found that the terms of the side letters did not amount to an agreement to make no claims and that, therefore, the government's case against the accused executives must fail.

Justice Howie also dismissed the prosecution's allegation that there was a legally binding oral agreement between FAI and GCRA that FAI would make no claims on some of the reinsurance policies, saying there was clear evidence to the contrary.

See FAI / page 16

Updates

Willis takes major stake in Chinese broker

Willis Group Holdings Ltd. has been granted regulatory permission to take a 51% stake in Shanghai, China-based insurance broker Willis Pudong Insurance Brokers Co. Ltd. London-based Willis took a 50% stake in Pudong Insurance Brokers in 2004 and changed its name. In April of that year, Willis Pudong was granted a license to engage in insurance and reinsurance business throughout China.

BAIC drops appeal of solvent scheme ruling

British Aviation Insurance Co. Ltd. has withdrawn its appeal of a high court ruling refusing to sanction the company's solvent scheme of arrangement. In a statement, BAIC said that, "after careful consideration, the company has decided not to proceed with its appeal." London-based BAIC, which went into runoff in 2002, had sought court approval late last year for a proposed solvent plan that would allow it to rapidly run off the business.

Ascot ups capacity at Lloyd's syndicate

Ascot Underwriting Ltd. will increase capacity for the rest of 2005 at its Lloyd's of London syndicate 1414, boosting the total to £435 million (\$746.7 million) from £410 million (\$703.8 million). Lloyd's has also agreed to Ascot's 2006 business plan, which allows syndicate 1414 to increase capacity to £550 million (\$944.1 million) beginning in January, the managing agency said in a statement.

S&P keeps 'stable' rating on French market

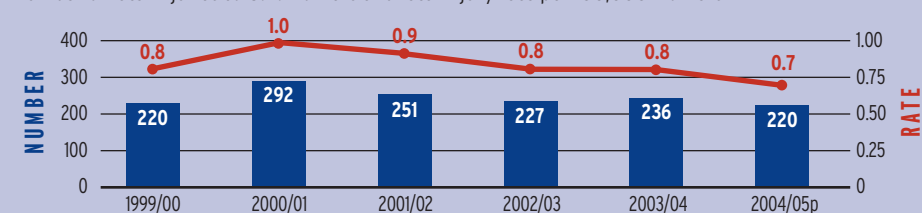
Standard & Poor's Corp. has maintained its "stable" outlook on the French insurance industry, citing underwriting discipline and strong capitalization of property/casualty insurers. "As a whole, the industry boasts strong and resilient solvency, conservative reserving and strong financial flexibility," according to an S&P statement.

U.K. requests comments on E.U. pension rule

The U.K. Pensions Regulator is consulting on its proposed approach to implementing E.U. requirements for cross-border pension plans. The requirements, which will take effect at year-end, will govern plans based in the United Kingdom that include workers in other E.U. countries and those based in other countries in the European Union that include workers in the United Kingdom. The consultation period ends on Dec. 12.

Safety improvement proves elusive

Number of fatal injuries to U.K. workers and fatal injury rate per 100,000 workers



Source: Health and Safety Executive

Work safety program records 'mixed' success at midpoint

By SARAH VEYSEY

The frequency of fatal and major nonfatal injuries to U.K. workers fell during fiscal 2004 but still outpaced the rate for such injuries in 2000, according to a report by the Health and Safety Executive.

In addition, the incidence of self-reported work-related illness also fell last year, the government agency reported.

According to the HSE, in the 12 months ending April 2005, work-related fatal injuries fell 7%, to 220, and major nonfatal injuries fell 2% compared with the previous year, to 30,213.

In addition, a further 120,346 injuries that led to absences of three days or more were reported in 2004, the HSE said, down 8% compared with the previous year.

According to estimates, about 2.0 million people in the United Kingdom suffered from work-related ill health during the 2004, the HSE said, down from 2.2 million in 2003 year. Those numbers are based on self-reported illness that patients believed to be work-related.

The estimated number of working days lost in 2004 was 1.5 days per employee, down from an estimated 1.7 days per employee the previous year.

The publication of statistics for 2004 marks the halfway point in the HSE's "Revitalizing Health and Safety" program, which was launched in 2000.

The program includes a series of 40 "action points" for various stakeholders involved in workplace health and safety. Those points include: the publication, by the Health and Safety Commission, of new guidance on workplace health and safety; the closer involvement of the insurance industry in the work of the HSC; and the annual publication of a list of companies prosecuted, convicted and fined for health and safety offenses as a

drive to "name and shame" poor performers.

The HSE also said it aimed to achieve half the improvement under each target by 2004.

According to the HSE report, the rate of reported fatal and major injuries in 2004 was 118.4 per 100,000 employees—up from 111.1 in 2000.

In a statement, Bill Callaghan, chair of the HSC, said that while the organization was pleased with the progress made on ill health

Goals to improve safety

By 2010, the Revitalizing Health and Safety program aims to:

- Reduce the incidence rate of fatal and major injury accidents by 10% from a 1999/2000 baseline.
- Reduce the incidence rate of cases of work-related ill health by 20% from a 1999/2000 baseline.
- Reduce the number of working days lost per worker due to work-related injury and ill health by 30% from a 2000-02 baseline.

and the reduction since last year in fatal and major injuries in production industries, "the overall picture is mixed."

"I am concerned at the increase of reported major injuries within the service sector, which is one reason the midpoint target for fatal and major injuries has not been met," he said.

A spokesman for the HSE said that while the target was not met, there was a reduction in the number of fatal and major workplace injuries in 2004 compared with the previous year.

He said that while fatal and major injuries decreased overall last year, the figures were

See HSE / next page

Communication key to fostering interest in pension planning

By SARAH VEYSEY

LONDON—Employers in the United Kingdom should invest in benefits communications efforts as they seek to engage workers in retirement planning, according to a panel of experts.

Many employees have little interest in pensions and do not attribute significant value to the benefit, they acknowledge. But communications efforts need to highlight the often-significant financial value of pensions and help employees understand that pensions are a personal issue that must be addressed, the experts say.

"You really do need to spend money on communications," said Rob Collinge, senior vp-benefits at London-based GlaxoSmithKline P.L.C. Mr. Collinge spoke at a Society of Pension Consultants' conference, held in London last week.

The image of occupational pensions has suffered in recent years because of large deficits in defined benefit plans, among other things, Mr. Collinge explained.

Many employers provide occupational pensions as part of a strategy to "recruit, retain and motivate" employees, he said, but participation in workplace pension plans often "seems to be quite low on (employees') agenda," Mr. Collinge said. Good communication of pension benefits is a "big driver" to increase employee participation in pension plans, he said.

"We have an interest in increasing employees' understanding of pensions," said Stuart Stephen, director of pensions at London-based bank Barclays P.L.C. "The delivery of pensions must be consistent with the company's objectives," and employers must communicate better with employees to ensure that they fully value the pension benefits they are offered, he said.

Miles Templeman, director general of the London-based Institute of Directors, which represents employers, said his organization is working with its members to help them improve communication about pension benefits to employees. Mr. Templeman said that the current, so-called "crisis" in U.K. pensions had raised both employer and employee awareness of the issue of occupational pensions.

That increased awareness provides employers with a "fantastic opportunity" to encourage staff to take responsibility for their retirement saving and "engage" in occupational pension plans, according to Diane Buckley, corporate business director at London-based Legal & General Group P.L.C.

The panel was moderated by David Harris, managing director of Ipswich, England-based TOR Financial Consulting Ltd.

HSE: Work safety program sees 'mixed' success

Continued from page 13

buoyed by a high number of major injuries and deaths in the service industries.

The spokesman said the HSE was conducting research into why there have been a large number of major injuries in the service sector. This research will be published in December, he said.

While the causes of the high

number of major injuries in service industries currently are unclear, one possible explanation for the large number of injuries in these industries since 2000 could be the growth in the number of people employed in service industries compared with traditional, heavy industry, the spokesman said. He said the HSE was hopeful that its forthcoming research would reveal

the causes of the increase and was confident of tackling the problem.

Lawrence Waterman, president of the Wigston, England-based Institution of Occupational Safety & Health, said that, overall, the 2004/05 figures were encouraging. He noted that the number of workplace fatalities fell significantly, though he acknowledged that the 2003 workplace deaths figures had

been inflated by the deaths of 23 Chinese workers who drowned picking cockles in the bay off Morecambe, England, in February 2004.

Mr. Waterman said that the reduction in injuries giving rise to absences of three days or more was encouraging, and he noted that many employers have been working to better manage and reduce the risks to employees of musculoskeletal disorders—one of the largest causes of workplace ill health and absence. He said that IOSH was aware that many

employers, through risk assessments, have reduced the risks of such injuries to their staff.

In addition, Mr. Waterman noted, there is now greater awareness of the potential risks of work-related stress and related problems among both employers and employees in the United Kingdom. Because this awareness has increased, there likely now is more reporting of such problems, he said.

The report, "Health and Safety Statistics," can be viewed at www.hse.gov.uk.

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LEGAL NOTICE

IN THE SUPREME COURT OF BERMUDA
COMPANIES (WINDING-UP)
No. 411 of 2003
IN THE MATTER OF THE COMPANIES
ACT 1981
AND IN THE MATTER OF FIRST
VIRGINIA REINSURANCE LTD.
NOTICE TO CREDITORS TO SUBMIT
PROOF OF DEBT AND NOTICE TO
CREDITORS OF INTENTION TO
DECLARE DIVIDEND

(Under the order for winding up the above named Company dated 7th day of November 2003)

NOTICE IS HEREBY GIVEN that the Creditors of the above named Company, which is in liquidation, are required on or before December 14, 2005 to send their full Christian and Surnames, their addresses and descriptions, full particulars of their debts or claims, and the names and addresses of their solicitors (if any) to Mike Morrison and Malcolm Butterfield at KPMG Financial Advisory Services Limited, PO Box HM 906, Hamilton HM DX, Bermuda, the Joint Liquidators of the said Company, and if so required by notice in writing from the said Joint Liquidators, and personally or by their solicitors, to come in and prove their debts or claims at such time as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts are proved.

A first interim dividend is intended to be declared in the above matter. If you believe you are a Creditor of the Company and have not already filed a proof of debt, as described above, you must do so or you will be excluded from this dividend.

Dated this 16th day of November, 2005.
Malcolm Butterfield and Mike Morrison
Joint Provisional Liquidators

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF
GARETH HOWARD HUGHES AND
PAUL CLARKE, AS JOINT PROVISIONAL
LIQUIDATORS OF
OCEAN MARINE MUTUAL INSURANCE
ASSOCIATION LIMITED,
CASE NO. 99-B-42545 (BRL)

NOTICE IS HEREBY GIVEN THAT ON NOVEMBER 9, 2005, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") CONTINUING THE PRELIMINARY INJUNCTION ORDER PURSUANT TO 11 U.S.C. § 304 ORIGINALLY ENTERED IN THIS CASE ON MAY 5, 1999. THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING TO CONSIDER WHETHER IT SHALL BE CONTINUED, WHICH HEARING IS SCHEDULED TO COMMENCE BEFORE THE HONORABLE BURTON R. LIFLAND, UNITED STATES BANKRUPTCY JUDGE, IN ROOM 623 OF THE ALEXANDER CUSTOM HOUSE, ONE BOWLING GREEN, NEW YORK ON MAY 17, 2006 AT 10:00 A.M., OR AS SOON THEREAFTER AS COUNSEL MAY BE HEARD (THE "RETURN DATE"). ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE BURTON R. LIFLAND AND SERVED ON COUNSEL FOR THE PETITIONERS LISTED BELOW, SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE PETITIONERS.

CHADBOURNE & PARKE LLP
ATTORNEYS FOR THE PETITIONERS
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LEGAL NOTICE

Hearing Date: December 7, 2005 @ 10:00 a.m. ET
Objections Must Be Received By: December 1, 2005 @ 4:00 p.m. ET

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Telephone: +1 (212) 308-4411

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

In re:

Petition of Jeffrey John Lloyd, as Foreign Representative of United Kingdom Foreign Proceeding respecting United Kingdom marine insurance Account known as the MMA Account, written by Les Mutuelles du Mans Assurances IARD, the United Kingdom branch of La Mutuelle du Mans Assurances IARD, f/k/a Les Mutuelles du Mans IARD, f/k/a La Mutuelle Générale Française Accidents, Debtor in a Foreign Proceeding.

Chapter 15
Case No.: 05-60100 (BRL)

NOTICE OF FILING AND HEARING ON PETITION UNDER CHAPTER 15 OF THE UNITED STATES BANKRUPTCY CODE SEEKING RECOGNITION AND RELIEF, INCLUDING INJUNCTIVE RELIEF, IN AID OF FOREIGN MAIN PROCEEDING

TO: THE PARTIES ON THE LIST ANNEXED TO THE CERTIFICATE OF SERVICE OF THIS NOTICE:

PLEASE TAKE NOTICE, that a Petition under Chapter 15 of Title 11 of the United States Code (the "Bankruptcy Code") was filed November 11, 2005 in the United States Bankruptcy Court for the Southern District of New York seeking recognition of, and relief, including injunctive relief, in aid of, the above-captioned foreign main proceeding, as defined in Bankruptcy Code section 1502(4).

PLEASE TAKE FURTHER NOTICE, that a copy of the Official Form Chapter 15 Petition is attached to the copies of the Notice served on parties in interest, along with: (i) the Index of Appendices to such Petition; (ii) the List required to be filed with the Petition pursuant to Bankruptcy Rule 1007(a)(4); (iii) the Statement of the Foreign Representative of the foreign proceeding required to be filed pursuant to Bankruptcy Code section 1515; (iv) the Index to the Appendix of Exhibits filed in support of the Verified Petition and of the Declaration of UK Counsel which have been filed with the Court in further support of the Chapter 15 Petition; and (v) the Proposed Order Granting Recognition and Relief which sets forth the relief sought by the Chapter 15 Petition.

PLEASE TAKE FURTHER NOTICE, that copies of all relevant notices and documents in the foreign proceeding in the United Kingdom were provided in that proceeding to all parties in interest, including Notice of the procedures, requirements and deadlines for submitting Scheme Claims and a copy of the Claim Form, which may be viewed on the website for the foreign proceeding, www.mmaukbranchsolventscheme.co.uk. Copies of all documents filed in the Chapter 15 case are available to parties in interest on the Bankruptcy Court's Electronic Case Filing System, which can be accessed from the Bankruptcy Court's website at <http://www.nysb.uscourts.gov> (a PACER login and a password are required to retrieve a document). In addition, copies of any documents filed in the Chapter 15 case or available on the foreign proceeding website may be obtained upon written request made to undersigned counsel specifying the document(s) requested and full contact details of the person making such request, including name, title, affiliation, street address, telephone number, facsimile number and e-mail address.

PLEASE TAKE FURTHER NOTICE, that the Court has scheduled a Hearing on the request for recognition as a foreign main proceeding and for relief, including injunctive relief, sought by the Chapter 15 Petition, to be held **Wednesday, December 7, 2005 at 10:00 a.m. U.S. Eastern Standard Time** before the Honorable Burton R. Lifland, United States Bankruptcy Judge for the Southern District of New York, at The United States Bankruptcy Court, One Bowling Green, New York, New York 10004-1408.

PLEASE TAKE FURTHER NOTICE, that any party in interest wishing to submit a response or objection respecting the recognition or relief sought by the Petition must do so pursuant to the Bankruptcy Code and the Local and Federal Rules of Bankruptcy Procedure, including, without limitation, Federal Rules of Bankruptcy Procedure Interim Rule 1011, in writing and setting forth the bases therefore, accompanied by a memorandum of points and authorities, which response or objection must be filed with the Office of the Clerk of the Court, Room 534, One Bowling Green, New York, New York 10004-1408, and served on the attorneys for the petitioner, Edwards Angell Palmer & Dodge LLC, ATTN: Selinda A. Melnik, Esq., 919 North Market Street, Suite 1500, Wilmington, Delaware, USA 19801 and Edwards Angell Palmer & Dodge LLC, ATTN: Shmuel Vasser, Esq., International Plaza, 750 Lexington Avenue, New York, New York, USA 19022, so as to be received by them all no later than **4:00 p.m. Eastern Time Thursday, December 1, 2005**. The Federal Rules of Bankruptcy Procedure and the Local Rules of Bankruptcy Procedure of the Bankruptcy Court for the Southern District of New York may be viewed on the Court's website www.nysb.uscourts.gov.

PLEASE TAKE FURTHER NOTICE, that the response or objection to be filed with the Office of the Clerk of the Court must be filed: (i) electronically by registered users of the Court's electronic case filing system in accordance with General Order M-242 of the Bankruptcy Court for the Southern District of New York, a copy of which may be viewed on the Court's website, www.nysb.uscourts.gov; and (ii) by all other parties in interest on a 3.5 inch disc, with hard copy provided to the Chambers of the Court at the address specified in the paragraph above.

PLEASE TAKE FURTHER NOTICE, that, the Hearing may be adjourned from time to time without further notice other than an announcement in open court at the Hearing of the adjourned date or dates or any further adjourned hearing.

PLEASE TAKE FURTHER NOTICE, that, if no response or objection is timely filed and served as provided above, the Court may grant the recognition and relief requested by the Petition without further notice or a hearing.

Dated: November 14, 2005
New York, New York

Respectfully submitted,
EDWARDS ANGELL PALMER & DODGE LLP
Attorneys for Petitioner
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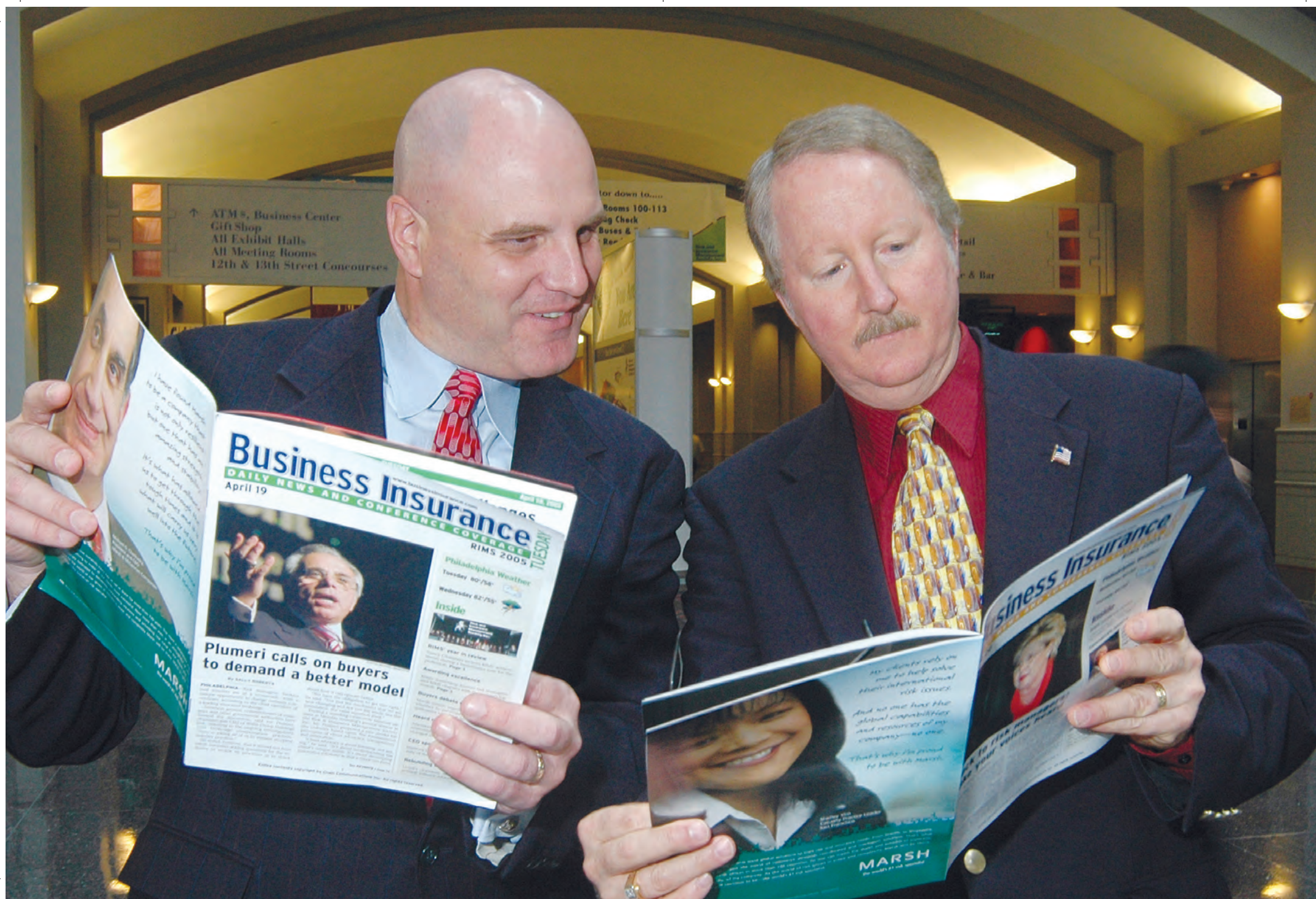


Photo: Michael Marcotte

Lance Ewing (L) and Chris Mandel, RIMS past presidents.

BI's Daily News & Conference Coverage at RIMS 2006.

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Aon: Broker places insurer units on the block

Continued from page 3

ness. He cited the basic conflicts of having an insurance brokerage unit and an underwriting unit under one holding company (*BI*, Aug. 12, 2002).

With the exception of Sheffield Insurance Corp., a small excess and surplus lines insurer that Aon sold to AXIS Specialty Ltd. in November 2002, the underwriting operations have continued under the Aon banner.

But as Mark Lane, a principal and research analyst with William Blair & Co. in Chicago, noted, "These businesses have been for sale over that time period—sometimes formally and sometimes informally." By formally announcing a fresh

desire to sell, Aon might find unanticipated buyers, and the plan "shows that (Aon's CEO) Greg Case is serious about making positive changes" at Aon, Mr. Lane said.

"I think it makes sense and I don't think it's surprising," Mr. Lane added. "I don't think underwriting business has a lot of strategic value."

Indeed, credit analysts say the move is reflective of Aon's desire to focus on its core insurance brokerage business.

"I think Greg (Case) is looking at their business and what's strategic and what's core and what they can use resources for to better focus on their core brokerage business," said Gretchen Roetzer, a credit analyst

with Fitch Ratings in Chicago. Those underwriting operations are "not a great contributor to the company as a whole and it's not what they are best at."

"Aon's primary focus is insurance brokerage and they have a solid consulting practice," said Steven Ader, an analyst with Standard & Poor's Corp. in New York. "Those are cash flow businesses that don't require much capital to serve them."

"Aon is not doing this out of need for the cash," Mr. Ader added. "I think it's a strategic decision and that they will weigh what the businesses generate for them vs. what they may be able to get by examining strategic alternatives."

Suit: AIG rejects \$100 million pollution claim

Continued from page 3

bility and cleanup cost-cap coverage at various sites for claims made between 1998 and 2008.

The policy carries a \$100 million aggregate limit with various deductibles for pollution liability claims, and sits excess of a \$44.5 million self-insured retention for cleanup cost-cap claims. NWI, through broker Marsh Inc., paid AISLIC a \$3.6 million premium for the coverage, a copy of the policy shows.

In January of this year, the NWI successor trust sent AISLIC a \$100 million policy limit claim, arguing that the \$44.5 million cleanup cost retention had been satisfied by huge unsecured creditor claims allowed to the EPA and state regulators as part of the Chapter 11 plan. These creditor claims included \$60 million to the EPA for response costs near a former Velsicol plant site in St. Louis, Mich. The NWI trustee said it also faced up to \$404.6 million in additional future costs at various of the seven covered sites, according to court filings.

NWI made several more coverage demands in the following months, answered by AISLIC reservation of rights letters and culminating in the insurer's declaratory judgment action, filed in U.S. District Court in Chicago last week.

In its complaint, AISLIC charges

that the Chapter 11 plan and NWI's settlement with regulators was not only unfair to the insurer but breached terms of the AISLIC policy. The plan transferred the policy from NWI, a "for-profit corporation responsible to its shareholders and sensitive to the marketplace," to a liquidating trust formed only to secure insurance recoveries, the suit notes.

Under the settlement, the EPA and the states agreed not to sue NWI except to pursue insurance recoveries, and NWI is liable to regulators only to the extent of those recoveries, the complaint says. Thus, regulators "reserved the right to create liability to provide the successor trust with a putative loss under the policy" while giving the trust no incentive to resist such claims, AISLIC charges.

The policy itself also bars assignments without AISLIC's prior consent, and NWI breached this provision by assigning its rights to the bankruptcy trust, the suit alleges.

Meanwhile, AISLIC is also contesting claims arising from one of NWI's costliest sites, the St. Louis Velsicol plant that was contaminated with the pesticide dichlorodiphenyl trichloroethane—or DDT—and other toxic compounds.

Under a 1982 agreement, Velsicol built a containment wall with a clay

cap around the 54-acre site. The wall was later found to be leaking chemicals into the nearby Pine River, though, and in 1999 the EPA decided to dredge contaminated sediments from the riverbed.

NWI did not notify AISLIC of the EPA decision, and the insurer wasn't aware of its potential liability until it received a copy of NWI's Chapter 11 plan and settlement with the EPA in 2002. The settlement allowed the EPA a \$60 million unsecured claim against the estate for Pine River cleanup costs, the suit says.

AISLIC contends that the Pine River is not part of the insured St. Louis plant site and is thus not covered. It also argues that NWI's settlement with environmental regulators breached a provision in the policy that required AISLIC's consent.

The AISLIC complaint is only the latest insurance-related litigation related to NWI's former operations. Velsicol has been embroiled since 1997 in litigation with numerous insurers in an Illinois state court over coverage of various properties. Some of the insurers have settled, while negotiations with others have continued, according to a report filed with the Delaware Bankruptcy Court last week by Mr. Steinberg, head of the Le Petomane trustee entities.

Results: AIG employees receive 'Wells notices'

Continued from page 4

\$3.92 billion and to reduce its shareholder equity for year-end 2004 by 2.7%, to \$80.61 billion (*BI*, June 6).

The probes also led to the resignation of longtime AIG Chairman and Chief Executive Officer Maurice R. Greenberg and to a civil lawsuit filed in May by New York state Attorney General Eliot Spitzer and New York state Insurance Superintendent Howard Mills against the company, Mr. Greenberg and AIG's former chief financial officer, Howard I. Smith.

Those suits have yet to be resolved, and the company currently has no plans to establish any reserves for potential settlements of

these issues, AIG noted in its 10-Q filing with the U.S. Securities and Exchange Commission.

AIG is unable to predict the outcome of the litigation, nor can it "estimate the potential costs related to these matters and, accordingly, no reserve is being established in AIG's financial statements at this time," the insurer said.

The company also reported in the regulatory filing that some of its employees have received so-called "Wells notices" in connection with ongoing SEC investigations of certain AIG transactions or accounting practices, and it noted that more may be served as the probes continue.

Wells notices warn that SEC officials plan to recommend that the

agency levy civil enforcement actions for violations of federal securities laws but also give recipients the opportunity to respond.

The company declined to identify how many employees received notices or to name the individuals. In a conference call with analysts last week, Martin J. Sullivan, AIG's president and CEO, did say "the individuals that have received Wells notices to date are not senior corporate officers."

As part of its investigation into nontraditional insurance products, the SEC also has issued Wells notices to some current and former officers of Gen Re, among other companies.

FAI: Judge orders execs' acquittal

Continued from page 13

"It would have been impossible for the Crown to prove beyond reasonable doubt that there was an oral agreement that FAI would not make the claims in light of the evidence from all the people from GCRA and letters as well, including a letter which said that premiums less claims made would be returned," said Justice Howie.

"It was clear (from the evidence) that it was not intended that claims could not be made, just that it would be unlikely that they would," he said.

In 1998, the main contract between FAI and GCRA provided for maximum recoveries of \$65 million Australian (\$39.8 million) against premiums of \$55 million Australian (\$33.7 million). According to the contract, FAI would hold premiums "on deposit" for GCRA until July 1, 2003, and GCRA would not be obliged to make payments for recoveries until that date. The contract also contained an offset clause allowing recoveries to be set off against premiums due under the contract and due "under any other agreements."

GCRA requested "good business" to compensate for the possible gap of \$10 million Australian (\$6.1 million) between the premium and claim payments under the main contract. A premium of \$12.5 million Australian (\$7.7 million) paid by FAI to GCRA for six reinsurance contracts—or "six slips," as the contracts were referred to during court proceedings—represented the "good business."

According to Hugh Scott of Sydney-based Speed & Stracey Lawyers, who represented Mr. Wilkie, the case involved two sets of reinsurance contracts. The main contract provided protection for the potential for FAI's underreserving problem and was perceived to involve a high likelihood of loss for the reinsurer. By way of compensation for entering into the main contract, the reinsurers sought and obtained a separate "good business" contract, covering additional business considered likely to be profitable to the reinsurer.

While the prosecutor alleged that a side letter to the "good business" contracts evidenced an agreement not to make claims under those contracts so there would be no risk transfer, Mr. Scott said the side letter stated that, unless mutually agreed, FAI would not seek reinsurance recovery.

"The bottom line is there was transfer of risk, but all that the side letter meant was that if there were claims under the good business contracts, the parties would sit down and have discussion about further good business. There was simply no evidence of an agreement not to make claims under the good business contracts," Mr. Scott said.

"It was possible, if not probable, that FAI might not have made claims under the main contract. They may have made them against the six slips or the 'good business.' So what was 'good business' might have been 'bad business' and vice versa. Whilst there may have been

likelihood of a particular result, there was not the certainty of the result, and this lack of certainty meant the risk passed," Mr. Scott said.

In evidence, GCRA executives Andrew Smith and Christopher Byatt said they understood that the side letters with the phrase "unless mutually agreed" meant that FAI could make claims on the policies and, in return, they would discuss the provision of further reinsurance business to GCRA in the future.

Justice Howie said, "One view holds the words 'unless mutually agreed' in the side letter indicates that there was a gentleman's agreement between the parties to suggest that their understanding of the agreement was that FAI could make claims under the six slips and that if they did, they would find further good business for GCRA for further compensation."

"The fact that Mr. Burroughs was having difficulty finding sufficient good business to make up the premiums does not mean that he could not have found some lesser amount of good business to offset a claim," the justice said.

Justice Howie noted that it was the first time in his 10 years on the bench that he had been forced to tell a jury to acquit on all charges. "It is, I might say, with respect to those who drew the charges, unfortunate that they were drawn as they were," he said. "But it is easy to be critical in hindsight, and I accept that it was always going to be difficult to frame charges to capture the essence of what the Crown was alleging the accused had done."

Jeffrey Lucy, chairman of the Australian Securities & Investments Commission, said the acquittal highlighted the difficulties of prosecuting complex financial cases.

But Mr. Lucy added that the outcome would not deter ASIC from pursuing complex matters where it believed the law had been breached. "Just because a case is complex should not provide a shield against prosecution," he said in a statement.

Mr. Scott rejected Mr. Lucy's comments, saying they did not correspond with the Crown's opening assertion that what was done was very simple indeed.

Mr. Wilkie's legal costs were covered by his insurer as a result of a High Court decision in April that held the insurer was not entitled to rely on a dishonesty exclusion prior to any adjudication to that effect by the court.

ADVERTISER

INDEX

Issue of November 21

ADVERTISER	PAGE #
ACSTAR	9
Aetna Corporate	7
AIG	20
American Bankers Association	11
Aon Corporation	2
Burnham System	12
Business Insurance	15
Carvill	19
Dickstein, Shapiro, Morin & Oshinsky LLP	6
RMTS L.L.C.	10
Wausau Insurance Companies	5

Mercer: Cost-shifting, fewer new drugs slow increases in health care plan costs

Continued from page 3

increases, with the most significant being employer redesign of health care plans to shift more costs to employees through, for example, higher deductibles and replacing copayment requirements with coinsurance.

The survey abounds with examples of increased cost-shifting. For example, 37% of very large employers—those with at least 20,000 employees—with preferred provider organizations require coinsurance for office visits, up from 26% in 2004. Coinsurance, which reflects the actual cost of the service provided, tends to shift a greater proportion of the cost burden to employees than does using copayments.

In addition, 64% of employers offering health maintenance organizations now impose a deductible for hospitalization, up from 46% in 2004.

Employees pay more

Employee cost-shifting, Mr. Bos noted, reduces plan costs in two ways. At the most obvious level, it means employees will pick up costs previously covered by a health care plan. In addition, exposing employees to more costs gives them a stronger financial incentive to choose the most cost-effective care.

"Employees will look for alternatives that are just as good and cost less," Mr. Bos said.

Employers also are taking steps beyond cost-shifting to hold down cost increases. In the past year, many more employers added care management programs that, de-

pending on their design, can control costs in a variety of ways.

For example, 46% of large employers—up from 35% in 2004—said they offered health risk assessment programs, which are used to help spot medical problems and conditions before they worsen and result in expensive medical treatments.

But some factors bringing down cost increases were, at least in part, due to factors beyond employers' control. For example, the cost of prescription drugs increased an average of 11.5%, down from last year's 14.3% rise and far less than the peak set in 2000, when costs leaped by 18.3%.

One factor leading to a slowing of prescription drug cost inflation was a letup in the introduction of drugs by manufacturers.

"There was not a huge pipeline of new products," Mr. Bos said.

Still, employer redesign of prescription drug benefit plans also played a role in the easing of cost increases. Large employers, Mr. Bos noted, increasingly are moving toward prescription drug benefit plans with coinsurance—rather than copayment—requirements. By requiring employees to pay a percentage of a drug's costs rather than a flat copayment, employees often have a greater financial incentive to opt for a lower-cost generic than a more expensive branded product.

Employers, possibly because of cost concerns, continue to move away from health maintenance organizations. For example, 44% of large employers offered HMOs this

year, down from 46% in 2004 and a significant decline from 54% in 1997. Correspondingly, 27% of employees of businesses with at least 500 employees were enrolled in HMOs, down from 30% in 2004 and 32% in 1997.

HMOs, which traditionally have very low cost-sharing requirements, may no longer fit at a time when employers want to expose employees to a greater share of health care costs, Mr. Bos said.

"With employers focused on making employees into better health care consumers, they want more cost-sharing—and more transparent cost-sharing. This disconnect may explain the slipping HMO enrollment figures," he said.

Consumer-driven plans

On the other hand, employers—mainly the biggest ones—are jumping into the consumer-driven health care market.

Such plans feature high deductibles and an account—whose balance rolls over each year—from which employees can pay a portion of uncovered health care-related expenses.

In 2005, 22% of employers with at least 20,000 employees said they offered a consumer-driven plan, up from 12% in 2004 and 9% in 2003. On the other hand, just 2% of small employers—those with 10 to 499 employees—offered a consumer-driven plan this year, up from 1% in 2004.

Mr. Bos says the disparity may be a result of the complexity of the plans and the level of resources em-

ployers have to communicate the plans.

"If I have 20,000 employees, I have the ability to create a communications program that is necessary to explain the pros and cons. If I have 50 employees, I just don't have the time and capital" for such efforts, he said.

To achieve greater penetration of consumer-driven plans in the smaller employer market, insurers will have to offer more "plug-and-play packages," he said.

Other survey findings, all involving employers with at least 500 employees, include:

Regionally, PPO costs were highest in the Midwest, averaging \$6,852 per employee, up 7% from 2004. PPO costs were lowest in the South, averaging \$5,995, a 2.8% rise.

HMO costs were highest in the Midwest, averaging \$7,069 per employee, up 9.8%, and were lowest in the West, averaging \$6,228, up 9.5%.

Point of service plan costs were highest in the South, averaging \$6,971 per employee, a 16.8% increase, and were lowest in the West, averaging \$6,277, a 7.5% decline from 2004.

Copies of the "National Survey of Employer-Sponsored Health Plans 2005" will be available in early March from Tara Lewis, Mercer Health & Benefits, 1166 Ave. of the Americas, 29th Floor, New York, N.Y. 10036; 212-345-2451. Copies also will be available online at <http://mercerhr.com/ushealthplansurvey>. The cost is \$500.

Costs at a glance

Annual increases in average total health care plan costs per employee

2005	\$7,089	6.1%
2004	\$6,679	7.5%
2003	\$6,215	10.1%
2002	\$5,646	14.7%
2001	\$4,924	11.2%

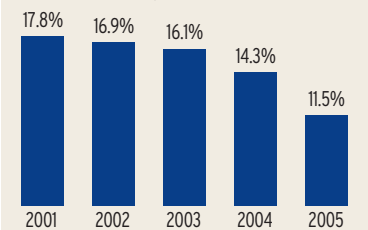
Medical costs per employee by plan type

Preferred provider organization		
2005	\$6,480	+6.3%
2004	\$6,095	

Point of service		
2005	\$6,444	+5.6%
2004	\$6,101	

Health maintenance organization		
2005	\$6,210	+6.6%
2004	\$5,827	

Prescription drug benefit cost increases easing*



*For employers with at least 500 employees
Source: Mercer Health & Benefits

Swiss Re: General Electric plans to offload P/C units in \$6.8 billion deal

Continued from page 1

largest, surpassing Munich Reinsurance Co., which reported net premiums of \$24.07 billion in 2004.

Swiss Re plans to finance the acquisition by raising as much as \$7.5 billion through a share issue and hybrid debt security issue. As part of the deal, GE Insurance Solutions will provide an additional \$3.4 billion in pretax reserves and GE would hold approximately 10% of Swiss Re shares, according to the Swiss reinsurer.

In a conference call to analysts, Jacques Aigrain, the deputy chief executive officer of Swiss Re, said that the deal would "further enhance (Swiss Re's) client base and product capabilities."

Mr. Aigrain, who will succeed CEO John Coomber in January, said that GE has a strong franchise among cedents in the United States and Europe and that the deal will better position Swiss Re to serve clients.

"Size and diversification have never been more important," Mr. Coomber said during the call. "Our customers are getting bigger," he said, and Swiss Re needs to be big enough "to deal with their needs."

Mr. Coomber also said that enlarging Swiss Re's book by buying GE's business would diversify the book, making it less volatile.

GE has a strong regional presence

in the U.S. insurance and reinsurance market, Mr. Aigrain said, and the deal will help to expand Swiss Re America's book of business. He added that there will be little overlap of Swiss Re and GE clients.

He said Swiss Re expects to realize significant value by reducing the GE business' dependency on retrocessional cover. He also said the business would write less of that coverage as part of Swiss Re.

Mr. Coomber noted that significant rate increases are being seen in many of the lines of business both Swiss Re and GE Insurance Solutions underwrite, such as U.S. property and marine business. "We are gaining share in the property/casualty market at the right time,"

In addition, he noted that Swiss Re had carried out a long and detailed analysis of GE's reserving position. "We are not driving in the night without headlights," he said.

Ron Pressman, CEO of GE Insurance Solutions, said in a statement that, "for customers, this move will provide access to a deeper pool of reinsurance and insurance resources and capital."

Not part of the deal are GE Insurance Solutions' life/health reinsurance operations. These operations comprise Employers Reassurance Corp., which represents about 25% of GE Insurance Solutions' \$8.2 billion in 2004 equity, according to a

GE Insurance Solutions spokesman. The life/health reinsurance operations are not writing new business.

"Swiss Re chose not to purchase the life/health operations because it already has a footprint" in the United States in that business area, he said. Worldwide, Swiss Re's

"Over the last five years, the Insurance Solutions business has lost \$700 million and required the infusion of \$3.2 billion of capital."

Jeffrey R. Immelt
General Electric Co.

life/health business reported about \$10.25 billion in revenue last year.

GE has long sought to offload its insurance operations. Most recently, in May it sold medical liability insurer Medical Protective Corp. to Berkshire Hathaway Inc. unit National Indemnity Co.

In a statement, Jeffrey R. Immelt, CEO of Fairfield, Conn.-based GE, said that the Swiss Re deal is part of GE's strategy to "redeploy capital to faster-growth and higher-return businesses" than insurance. "Insurance Solutions has been a tough

strategic fit for GE," he said. "Over the last five years, the Insurance Solutions business has lost \$700 million and required the infusion of \$3.2 billion of capital."

Some reinsurance brokers questioned whether the combination will be entirely positive for cedents, citing concerns about the loss of a highly rated reinsurer.

Steven Bolland, president of New York-based reinsurance intermediary Gill & Roeser Inc., said that the combination of the world's second- and fifth-largest reinsurers will shorten some buyers' security list—the list of reinsurers with a security level they feel comfortable with. And for certain long-tail lines, such as U.S. casualty reinsurance, the security lists of many reinsurance buyers were already very short.

Richard DiClemente, president and chief executive officer of New York-based reinsurance intermediary THB Intermediaries Inc., said the deal will not likely have a dramatic impact on the market.

"Essentially what it does, of course, is consolidate the direct market a bit more. I don't know in terms of any kind of pricing mechanism whether it's going to have a significant effect or not," he said.

In many respects, Swiss Re and GE Insurance Solution's books of business "were quite different, so I don't think it's going to have that

much of a direct impact on the conducting of daily business," Mr. DiClemente said.

One London-based reinsurance broker, who asked not to be named, said that the deal may signal the start of a consolidation trend in the reinsurance market, as expected large rate increases for retrocessional cover may cause some reinsurance companies to run into difficulties and become potential acquisition targets.

And while consolidation may reduce buyer choice for certain lines of business, the wave of startups in Bermuda may fill gaps for certain lines of cover for cedents that wish to spread their risk.

Following the deal's announcement, rating agencies placed the reinsurers' ratings under review.

Standard & Poor's Corp. put Swiss Re's AA financial strength rating under review with negative implications, citing concerns about integration. Fitch Ratings acted similarly, citing concerns over GE Insurance Solutions' "poor record of adverse reserve development and weak earnings," as a reason for the move. A.M. Best Co. also put its ratings under review, with negative implications, and cited similar concerns over GE's reserves.

Judy Greenwald contributed to this report.

Pensions: Senate passes reform bill, but House proposal differs significantly

Continued from page 1

verse (the PBGC's) decline over time by improving pension funding and bringing in additional premium revenue to the PBGC."

Lawmakers want to reduce—through stiffer pension funding requirements—the exposure of the PBGC to major losses. If the rules are too tough, though, more employers may fold their pension plans in favor of defined contribution plans, which are not insured by the PBGC.

On the other hand, if the rules are too weak, the PBGC will continue to be hit with huge losses, which likely would lead lawmakers to dramatically boost the premiums the PBGC charges employers to help fund its insurance program. If premiums skyrocket, that could also result in more employers exiting the defined benefit plan system.

Finding the right legislative balance—tightening funding rules to better protect the PBGC without making the rules too tough to trigger an employer exodus—will be a huge and crucial challenge.

"It is a balancing game, so hard but also so important," said Larry Sher, a principal and director of retirement policy at Buck Consultants Inc. in New York.

That a battle over pension legislation would even be waged seemed very much in doubt until recently. In October, Senate Republican leaders pulled a bill—fashioned by two Senate panels—from a floor vote after two senators raised objections.

Sens. Mike DeWine, R-Ohio, and Barbara Mikulski, D-Md., objected to a provision that would require employers with below-investment-grade credit ratings to make extra

contributions to their plans. Some Republican Senate staffers put out word that the delay resulting from Sens. DeWine and Mikulski's hold on the measure likely would be fatal to chances that the bill would be considered by the Senate this year.

But that pessimism evaporated after backers worked out a deal with the two senators. In exchange for assurances that Sen. DeWine would be a member of the conference committee that will iron out differences between the Senate bill and one the House is expected to pass after the Thanksgiving break, Sens. DeWine and Mikulski dropped their hold and paved the way for last week's 97-2 Senate passage.

But overcoming that obstacle may be small compared to the challenge conference committee members will face in welding a compromise bill, because the House and Senate bills take very different approaches on several key issues.

"There is a lot of tough negotiating ahead," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Arlington, Va.

Still, there is optimism that negotiators will work out those differences. "With so much public attention on the pension crisis, legislators know it would be unacceptable to the American public for them not to do something," said Ethan Kra, chief actuary with Mercer Human Resource Consulting in New York.

On several issues—the speed at which employers should have to fund liabilities, how much the base PBGC premium should be increased, what new methodology should be used to value plan liabilities

Forging a compromise

Where there is a consensus on pension funding reform legislation between the Senate and the House of Representatives and where there is not:

Consensus

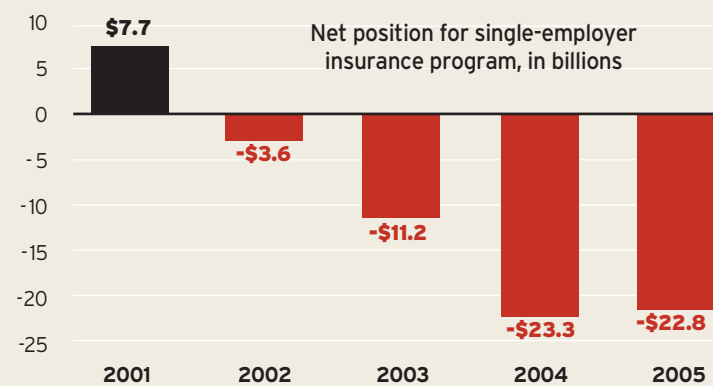
- Higher PBGC premiums
- Faster funding of liabilities
- Use of yield curve to value pension liabilities
- Restrictions on benefit improvements and accruals for underfunded plans

No consensus

- "Smoothing" to value plan liabilities and assets
- Extra contributions for companies with junk bond status
- Rules for cash balance plan conversions
- Special treatment of airlines' pension plans

Damage control

Legislation is being driven to prevent the collapse of the PBGC and a subsequent taxpayer-funded bailout.



Source: PBGC

ties and what curbs should be placed on the ability of employers with underfunded plans to improve benefits—there already is a congressional consensus.

For example, both Senate and House bills would require employers to amortize plan liabilities over seven years—several times faster, in some cases, than current law—and raise the base annual PBGC premium to \$30 per participant from \$19.

Both bills also incorporate a so-called bond yield curve, under which the interest rate assumptions employers would use to value plan liabilities would be tied to plan demographics and to corporate yields of varying maturities. Under current law, all employers use the same interest rate—regardless whether their pension plan population is primarily comprised of retirees drawing benefits or younger workers decades away from retirement—to value

plan liabilities.

The measures also would bar employers whose plans are less than 80% funded from improving benefits, while new benefit accruals would not be allowed in plans that are less than 60% funded.

Conversely, there is a lack of congressional consensus on several issues of critical importance. Those issues include:

• **Smoothing.** Under current law, plan liabilities are valued using the four-year weighted average of the yield on the 30-year Treasury bond. Under the House bill, interest rates derived from the yield curve would be averaged over three years to come up with the rate that employers would apply. In the Senate bill, interest rates derived from the yield curve would be averaged over only one year.

Continued next page

TRIA: Industry encouraged by congressional action despite differing provisions

Continued from page 1

current trigger, which can be as low as \$5 million. The bill also would remove certain lines of insurance—such as commercial automobile and professional liability—that currently enjoy TRIA's protections and would not add group life insurance to the lines covered.

Insurers would have to pay a deductible of 17.5% of direct earned premium in 2006 and 20% in 2007 for lines covered by the backstop, which currently requires a deductible of 15% to trigger coverage.

In addition, the bill calls for the President's Working Group on Financial Markets in conjunction with the National Assn. of Insurance Commissioners and various stakeholders, including policyholders, to conduct "an analysis regarding the long-term availability and affordability" of insurance for terrorism risks including group life and chemical, nuclear, biological and radiological risks. It does not, however, require the group to make long-term policy recommendations.

AIA's Ms. Pusey noted that Senate Banking Committee Chairman Richard Shelby, R-Ala., voted against the original TRIA bill in 2002. "A voice vote out of a committee with a chairman who voted against it last time is very significant," she said.

Following the Senate's approval of the bill, the White House issued a statement, saying that the administration "supports Senate passage of S.467 and appreciates the Senate's efforts to ensure increased private market participation in providing terrorism insurance."

The statement also notes that the administration "believes that legislation sends the proper signal to the marketplace that the Terrorism Risk Insurance Program was envisioned to be temporary" and goes on to say that the administration will oppose any efforts to add lines of coverage, including group life, or to "further expand the program."

The Treasury Department had recommended in a June 30 report that TRIA not be extended unless it was significantly scaled back and required the private market to assume more of the terrorism risk.

Meanwhile, the House Financial Services Committee moved forward with its Terrorism Risk Insurance Revision Act—H.R. 4314—which it approved on a 64-to-3 vote.

Unlike the Senate bill, the House bill would create "silos" that would segregate coverage types and subject them to different deductibles before an individual insurer could tap the backstop. The measure would also add group life insurance

to the lines protected by the backstop but would drop commercial automobile.

"A voice vote out of a committee with a chairman who voted against it last time is very significant."

Leigh Ann Pusey
American Insurance Assn.

Under the silo approach, insurers' retention levels would range from 16% for workers compensation in 2006 to 25% for casualty. The retention percentages would increase each successive year of the program by two percentage points annually for workers comp, two-and-a-half points for property and group life, and five percentage points for casualty.

The House bill also would require insurers to offer coverage for nuclear, biological, chemical and radioactive acts of terrorism, though the coverage "may differ materially

from the terms, amounts and other coverage limitations applicable to losses arising from events other than NBCR terrorism."

The bill would raise the loss amounts needed to trigger the backstop by the same amounts as the Senate bill. It also would create a special commission on terrorism risk insurance, comprising representatives of all aspects of the insurance business, including regulators and policyholders as well as underwriters and producers, to make long-term recommendations about the best way to provide terrorism coverage.

The inclusion of language assigning a commission responsibility to examine long-term solutions is particularly significant, said Brad Wood, senior vp-risk management for Marriott International Inc. in Bethesda, Md. "A week ago, the committee or the President's Working Group was not being considered," said Mr. Wood. "I'm absolutely thrilled that the commission idea had made it into the legislation as being critical" to determining "the appropriate long-term solutions," he said.

"We're certainly encouraged by that," said RIMS' Mr. Fleming. "They list a number of players on the committee, and one of those players is policyholders. We hope

they at least include a risk manager in that group," he said.

Carl Parks, senior vp-government affairs in Washington for the Property Casualty Insurers Assn. of America said, "we're pleased that the House bill creates a commission that can become a bridge to a long-term, market-based solution." He added that "we'll be working to ensure that trigger levels work for all insurers to maintain an open and competitive marketplace."

Joel Wood, senior vp-government affairs for the Council of Insurance Agents & Brokers in Washington, said he is "very confident" that the House will take up the TRIA extension bill in early December.

In a statement, CIAB President Ken Crerar, president of the Council of Insurance Agents & Brokers in Washington, expressed confidence that House and Senate proposals could be reconciled quickly.

"Despite reports of wide gulfs between the bills, we think congressional leaders could get their staffs to negotiate out their differences in a day's time," he said. "Even though we are all concerned about quick action, we deeply believe regular order should prevail, and the two chambers should work together in the remaining days of Congress to get a bill that works."

Continued from previous page

Benefit experts say a longer smoothing period of time, such as that in the House bill, is crucial to keeping employers in the defined benefit plan system. Longer smoothing periods, they note, make it easier for employers to predict and budget contributions.

That is because interest rates can swing significantly over a short period of time. But the impact of such swings is reduced if the rate used to measure plan liabilities is an average of rates over the past several years.

Predictability is crucial

"Smoothing accomplishes a very important thing. You can predict, with some certainty, what your future contributions will be," Buck's Mr. Sher said. "If you rely exclusively on current rates, you lose that predictability," which is important for companies that need to budget pension contributions, he added.

But coming up with a middle ground on the smoothing issue between the House and Senate bills will be challenging, lobbyists warn. "Finding a period of time that all can agree upon will be tough," said Aliya Wong, director of pension policy for the U.S. Chamber of Commerce in Washington.

• **Credit ratings.** The Senate bill would require employers that have not earned an investment-grade rating for several years to use certain actuarial assumptions—such as assuming that all employees eligible to take lump-sum distributions would do so—that would have the effect of

boosting plan liabilities, and, as a result, require them to make additional contributions. The House bill lacks such a requirement.

The Bush administration has been a strong advocate of such a requirement, noting that funding requirements should reflect the financial health of the plan sponsor.

But some pension experts say such a requirement could prove to be counterproductive, because it would hit ailing companies with a call for cash at the time they could least afford it and, perhaps, lead to more plan terminations.

"Increasing plan contributions could lead to an unstoppable spiral, resulting in more bankruptcies and more plans dumped on the PBGC," said Mercer's Mr. Kra.

• **Commercial airlines exemption.** The Senate bill would give commercial airlines 20 years to amortize their pension plan liabilities, nearly three times as long as all other employers. In exchange for this stretched-out funding period, airlines would have to freeze their plans. The House bill does not contain such an exemption.

While the administration has taken a strong stance against targeted funding relief for any one industry, benefit observers expect—after much give and take—the airlines to win some type of funding relief. They note that Congress has a long history of aiding commercial airlines. In fact, a stopgap pension relief bill that legislators passed in 2004 temporarily changed the methodology to calculate plan liabilities, including a provision that al-

lowed airlines in 2004 and 2005 to make only 20% of the contributions to their pension plans that otherwise would be required.

• **Cash balance plans.** The House bill would make clear—prospectively—that the basic design of cash balance plans in which employees receive pay-related benefit credits as well as interest credits do not violate age discrimination law. By contrast, the Senate bill would, prospectively, protect cash balance plans from age discrimination suits, but only if employers gave employees several options, such as choosing between their current plan or the new cash balance plan design.

Some say that if employers are required to offer such choices, they simply will freeze their traditional plans and adopt enhanced 401(k)s rather than cash balance plans.

But it is too soon to say how the matter will be resolved. "This is the toughest issue. It is a very emotional one but also one where there is very little technical understanding," said the Chamber's Ms. Wong.

If legislators fail, though, to agree on a comprehensive funding reform package, they are prepared to raise PBGC premiums.

Last week, the House completed action on a budget bill with a provision that would boost the base PBGC premium to \$30 and give the PBGC authority to raise the premium by 20% a year.

The Senate earlier passed a budget bill that would hike the premium to \$46.75, though it would not give the agency authority to increase premiums on its own.

Late News

Continued from page 1

\$140 billion national no-fault trust fund to replace the current litigation-based system for compensating victims of asbestos-related disease would be the first major legislation to be taken up the Senate in January. He said that he had hoped to move the bill, which won the approval of the Senate Judiciary Committee in May, to the Senate this year but other priorities had to be addressed first.

PacifiCare shareholders OK UnitedHealth deal

PacifiCare Health Systems Inc.'s shareholders last week approved the managed care company's proposed acquisition by UnitedHealth Group Inc. Under the deal, announced in July, Minneapolis-based UnitedHealth would significantly expand its presence in the western United States by acquiring Cypress, Calif.-based PacifiCare. More than 99% of voting shareholders voted to approve the deal, the companies said in a statement.

Arch names new head of reinsurance operations

Marc Grandisson has been promoted to chairman and chief executive officer of Arch Worldwide Reinsurance Group, succeeding founding executive Dwight Evans, who is leaving the company. Mr. Grandisson previously was president and CEO of Hamilton, Bermuda-based Arch Reinsurance Ltd., a unit of Arch Capital Group Ltd. that was formed in the wake of the Sept. 11, 2001, terrorist attacks. Nicholas Papadopoulos, chief underwriting officer of Arch Re, was named president and CEO of that unit.

Regulators developing cat fund proposal

A summit arranged by several insurance commissioners last week on the issue of developing a national catastrophe insurance program resulted in a proposed framework that calls for a multilayered approach to catastrophe losses. The framework, which focuses only on personal lines, starts with individual policyholders and private insurers and reinsurers and proceeds through state and regional government mechanisms to a national fund for major catastrophic losses. A spokesman for California Insurance Commissioner John Garamendi, one

of the summit's organizers, said the framework will be presented to the National Assn. of Insurance Commissioners at its meeting in December, with the goal of developing it into federal legislation.

Platinum's A rating put under review

A.M. Best Co. has put its A financial strength rating of Platinum Underwriters Holdings Ltd.'s reinsurance subsidiaries under review with negative implications. In a statement, Oldwick, N.J.-based Best said the decision to re-evaluate Hamilton, Bermuda-based Platinum came after the company estimated that it will book \$135 million in aftertax losses stemming from Hurricane Wilma, which battered south Florida and Mexico last month.

St. Paul Travelers sees Wilma losses at \$220M

Hurricane Wilma left St. Paul Travelers Cos. Inc. with estimated aftertax catastrophe losses of about \$220 million. The losses, net of reinsurance, are based on St. Paul Travelers' estimated gross loss of \$410 million. Losses from Wilma follow more than \$1 billion in third-quarter aftertax losses the St. Paul, Minn.-based insurer reported from hurricanes Katrina and Rita. The insurer said hurricane losses are based on a number of complex analyses, and that the final costs could differ from current estimates.

Oregon fines Marsh for overcharges

The Oregon Department of Consumer and Business Services has fined Marsh USA Inc. \$75,000 for overcharging 22 public entities in Oregon and for failing to retain insurance records. Although the New York-based brokerage voluntarily returned \$1.2 million in commissions to six Oregon school districts and a community college last fall, a further investigation found an additional 15 public sector clients were overbilled more than \$260,000, the DCBS said. The overbilling occurred from 1999 to 2004. Marsh has terminated three executives in connection with the improper conduct. Marsh "brought the matter to the attention of the Oregon insurance division last year, and (we) have worked cooperatively to correct these problems," a Marsh & McLennan Cos. Inc. spokeswoman said.

BI Stock Index [11/14 - 11/18]

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

Percentage change of BI Stock Index vs. key indicators

BI Stock Index
2,859.84  **0.98**

Dow Jones
10,766.33  **0.75**

S&P 500
1,248.27  **1.10**

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

Largest gains

SCPIE Holdings Inc.	13.92%
Vesta Insurance Group Inc.	10.10%
PXRE Group Ltd.	6.29%
Aetna Inc.	5.65%
Fairfax Financial Holdings Ltd.	5.35%

Weekly change by market segment

Brokers	35.08%
Insurers/reinsurers	17.08%
Managed care organizations	27.01%

Largest losses

Baldwin & Lyons Inc.	-5.70%
Harleysville Group Inc.	-5.33%
Aspen Insurance Holdings Ltd.	-4.48%
Clark Inc.	-4.24%
Hub International Ltd.	-4.23%



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AIG

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