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WTC attacks two events: Jury

Silverstein now could recover $4.68 billion, but adjusting disputes loom

By DOUGLAS McLEOD

NEW YORK—Silverstein Properties Inc. has won the second round of the World Trade Center property insurance battle, but the fight is far from over.

A jury in the second phase of the WTC coverage litigation decided last week that the Sept. 11, 2001, terrorist attacks should be treated as two insured events by nine of the program's two dozen insurers.

The nine insurers, representing $1.13 billion of the WTC's $3.55 billion insurance program, are now liable for up to double their policy limits. Combined with $2.42 billion in limits from 15 other insurers that previously were either found liable or settled for only one occurrence, Silverstein stands to collect a total of $4.68 billion.

How much the WTC leaseholder actually recovers, though, remains to be seen. The amount of the recovery will depend not only on the outcome of appeals but also on an appraisal of the WTC complex's value when it was destroyed.

WTC COVERAGE TRIAL

In an arbitrationlike process scheduled to continue through at least April 2005, appraisers for Silverstein and several WTC insurers will separately prepare loss estimates and submit any disputes to a neutral umpire for a final decision.

Insurers not participating in this appraisal process—including lead insurer Swiss Reinsurance Co.—may take disputes over the amount of the loss back to court for a third, damages phase of the WTC litigation.

See WTC/page 34

Whirlpool scraps funding plan for retiree care

By JERRY GEISEL

WASHINGTON—Whirlpool Corp. is withdrawing its request for federal regulatory approval of an innovative retiree health care benefits funding arrangement that would have made use of its captive insurance company, a tax-free trust and commercial life insurance.

Had Whirlpool proceeded and had the Labor Department approved it, the arrangement could have broken new ground in the captive benefits funding arena and provided a model for other employers looking for new, tax-effective ways to fund retiree health care benefits.

But Whirlpool said it was withdrawing the application in the wake of the Labor Department's earlier rejection of its request to have its proposal considered under a special expedited review process.

At the time of the rejection, Whirlpool said it would seek a standard review of its application, a process that typically takes several months to a year.

But late last month, Whirlpool reversed

See WHIRLPOOL/page 33

But probe has found no bid rigging or tying, Aon says

Ryan sees 'indications' code wasn't followed

By JUDY GREENWALD

CHICAGO—Despite its chairman's earlier acknowledgement that some Aon Corp. employees have failed to follow Aon's code of conduct, the brokerage says its internal review has found no evidence that Aon solicited fictitious quotes, engaged in bid rigging or violated antitrust laws by tying reinsurance to retail placements.

Aon's latest statement, which can be described as a clarification of a clarification, came two days after a Dec. 6 statement in which Patrick G. Ryan, chairman and chief executive officer of the Chicago-based brokerage, said Aon had "found indications that some employees have not always followed the brokerage's code of conduct and values."

Observers found the statements puzzling.

"There's something there, (but) my sense is it is not too terribly serious," said Timothy J. Cunningham, a partner in the Chicago-based insurance brokerage consulting firm OPTIS Partners L.L.C. If any concerns were of the proportions of the charges New York Attorney General Eliot Spitzer has brought against Marsh & McLennan Cos. Inc., "I would sure hope they would disclose that, but it seems strange. It's kind of like, 'Well, we think there's some people not doing some proper things, but more is to follow.' Don't you think that's a little unusual?"

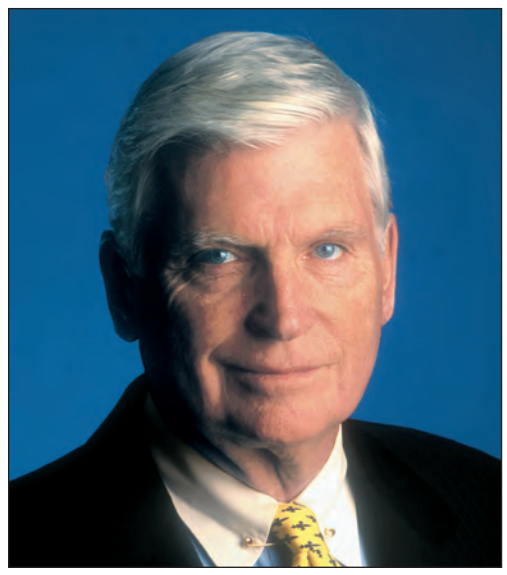

PHOTO: GETTY

Aon Chairman and CEO Patrick G. Ryan

In its most recent comment, Aon said its Dec. 6 announcement was not intended to modify Aon's previous statements that it has found no

See AON/page 33

Late News

Frankel sentenced over insurance scam

Rouge financier Martin Frankel, who masterminded one of the biggest insurance scams in U.S. history, on Friday was sentenced to nearly 17 years in prison by a U.S. district court judge in New Haven, Conn. Mr. Frankel, who federal prosecutors say bilked more than $200 million out of seven small life insurers, was captured in Germany in 1999 after an international manhunt. He pleaded guilty in May 2002 to federal charges of racketeering, conspiracy, wire fraud and securities fraud. Mr. Frankel-and 14 other defendants-also must pay $204 million, the judge ordered. He still faces state charges in Mississippi and Tennessee, according to Betty Cordial, deputy liquidator for three Mississippi insurers.

PHOTO: AP/WIDE WORLD

Mr. Frankel

Segal seeks release for medical care

A federal judge has scheduled a Dec. 14 hearing on whether convicted insurance brokerage executive Michael Segal should be allowed to leave a Chicago jail to seek medical treatment for an alleged case of lupus. The request is part of his lawyers' continuing efforts to have Mr. Segal released on bond before his sentencing,

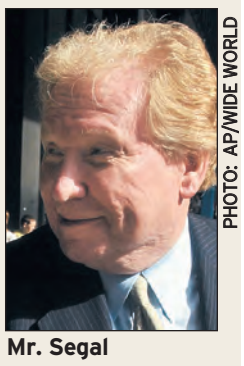

PHOTO: AP/WIDE WORLD

Mr. Segal

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NEWSPAPER

Spotlight

RISK MANAGEMENT: NEW TECHNOLOGY & ONLINE SOLUTIONS

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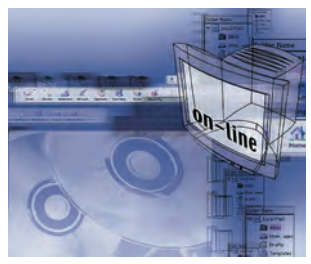

TOP RISK MANAGEMENT INFORMATION SYSTEMS

Ranking on page 14

Docs accept $22.3 million in settlement with Aetna

HARTFORD, Conn.—Aetna Healthcare Inc. has settled for $22.3 million charges of price fixing filed by physicians in Kentucky and Ohio.

The settlement, which has been granted preliminary approval, will be paid in the form of increased reimbursements over three years to doctors who filed a suit in 2002 as a group called The Academy of Medicine of Cincinnati. The increased reimbursements are to begin later this year.

A spokesman for Hartford, Conn.-based Aetna said the physicians agreed to meet certain utilization thresholds in order to receive the increased amounts.

The settlement also called for the creation of a compliance committee to review reimbursement rate negotiations between the two sides from 2007 through 2009 to ensure that the rates are the product of competitive market forces.

The suit, filed in Boone County Circuit Court in Burlington, Ky., sought reimbursement rates comparable to those in other area health care markets.

Another defendant, Humana Inc., previously settled the doctors' charges. Litigation against two other companies—Anthem Blue Cross & Blue Shield and United HealthCare Inc.—is still pending, according to the law firm of Waite, Schneider, Bayless & Chesley in Cincinnati, which represents the doctors' group.

Aetna and other insurer defendants claimed that underlying issues in the suit were subject to arbitration clauses in their provider contracts.

—By Michael Bradford

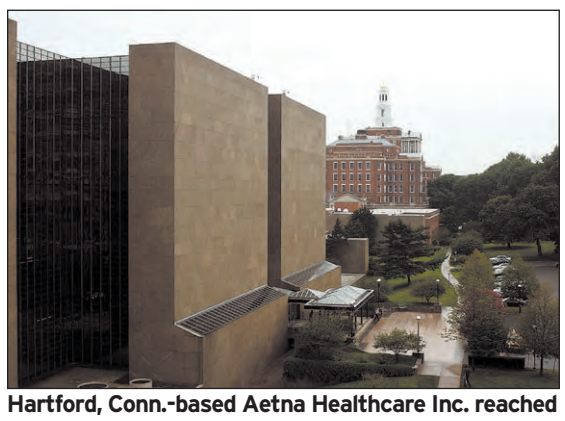

PHOTO: AP/WIDE WORLD

Hartford, Conn.-based Aetna Healthcare Inc. reached an agreement with doctors in Kentucky and Ohio.

SECTORS THAT PAY THE MOST

Average total D&O premiums by business class in the United States

Business class	Premiums
Utilities	$1,915,570
Banking	1,423,917
Durable goods	873,910
Transportation & communications	786,998
Petroleum, mining & agriculture	500,706
Health services	498,127
Merchandising	448,418
Nondurable goods	422,521

Source: Tillinghast-Towers Perrin

But survey predicts rate hikes likely for 2006

New capacity easing D&O prices, conditions

By MICHAEL BRADFORD

Rising capacity for directors and officers liability insurance resulted in a 10% average decline in D&O prices between the third quarter of 2003 and the same period in 2004, the first drop since 1999, a survey found.

This good news for buyers, though, is tempered by expectations that claims frequency and severity will continue rising and that the D&O market likely will begin firming again in 2006, according to the "2004 Directors and Officers Liability Survey," which was released last week by the Tillinghast unit of New York-based Towers Perrin.

New players in the D&O market are fueling the competition that has driven down prices, said Elissa Sirovatka, Chicago-based D&O liability program leader for Tillinghast and a director of the study, which polled 2,455 organizations in the United States and Canada.

Some of the new capacity is coming from Bermuda companies, while new players in the United States also have spurred competition, she said. Tillinghast did not name any of the companies providing new capacity.

Competition is particularly fierce in excess layers, where rates are falling by 10% to 15% on average, the survey notes.

"A lot of times that's where the new entrants play," said Ms. Sirovatka, because they see those layers as a "safe place" to write business.

The report found that, overall, D&O capacity increased by 11%, to $1.5 billion, in the survey period. Ninety-nine percent of U.S. respondents reported purchasing the coverage, while 89% of Canadian participants said they buy the insurance.

The biggest premium decreases were reported among the petroleum, mining and agriculture and the transportation and communications classes.

In addition to getting price breaks, buyers also are seeing broader coverage conditions

See D&O/page 32

Amid uncertainty, Big Blue phases out cash balance plan

By JERRY GEISEL

ARMONK, N.Y.—IBM Corp.'s decision to phase out its controversial cash balance pension plan could help spur congressional action to curb legal challenges to such plans, some benefits experts say.

IBM said last week that it would close its defined benefit plan to new entrants starting Jan. 1, 2005, and replace it with an enhanced defined contribution plan, making IBM the largest U.S. employer to join the move away from defined benefit pension plans.

Employees hired on or after that date will be covered under a 401(k) plan, in which IBM will match 100% of employees' salary deferrals, up to 6% of pay. For current employees, IBM will continue to provide both the cash balance plan and an existing 401(k) plan, in which IBM matches 50% of deferrals, up to 6% of pay.

IBM said the move stemmed from competitive and legal factors. "This innovative approach, which a large number of companies have already adopted, allows IBM to provide a competitive retirement benefit to new hires in an uncertain pension regulatory climate," a spokeswoman for Armonk, N.Y.-based IBM said.

Indeed, IBM has faced considerable uncertainty over its cash balance plan since it introduced the plan in 1999, succeeding another defined benefit design known as a pension equity plan.

Last year, in a decision that captured national attention, a federal judge in Illinois ruled that the cash balance plan discriminated against older employees. IBM and the plaintiffs later agreed to a partial settlement in which IBM will, among other things, appeal the age discrimination ruling to a federal appeals court. If IBM loses its appeal, its liability is capped at $1.4 billion, payable in the form of enhanced benefits. If it prevails, it will have no further liability (*BI*, Oct. 4).

IBM is the latest major employer

See IBM/page 35

Inside Business Insurance

Online

- The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info about your own event.
- Searchable **directories** provide access to all the listings of industry vendors found in *BI*'s Market Sourcebook.
- New **Opinion Poll** for readers: Will the verdict that the World Trade Center attack constituted two events under some insurers' policies be overturned on appeal?

Departments

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Appeals court says asbestos settlement plan unfair

ABB Ltd. may have to revise bankruptcy plan for Combustion Engineering

By DOUGLAS McLEOD

PHILADELPHIA—ABB Ltd. may have to revise a bankruptcy reorganization plan for its Combustion Engineering Inc. unit after a federal appeals court questioned the plan's fairness to certain classes of asbestos injury claimants.

A panel of the 3rd U.S. Circuit Court of Appeals in Philadelphia earlier this month overturned a lower court order approving the plan after finding that it improperly included asbestos claims of Combustion Engineering affiliates and that it could shortchange future claimants.

The appeals panel sent the plan back to U.S. District Court in Delaware for further hearings.

Jurgen Dormann, chairman and chief executive officer of Zurich, Switzerland-based ABB, expressed disappointment in the ruling. "But we remain confident that we can resolve Combustion Engineering's asbestos liability within a plan of reorganization compatible with the 3rd Circuit's decision within a relatively short time," he said in a statement.

The prepackaged Chapter 11 plan—announced in January 2003 and later approved by a federal bankruptcy court and the Delaware district court—would set aside $1.2 billion in cash, ABB stock and Combustion Engineering assets for all current and future asbestos claimants of the bankrupt company. The plan would also have taken over asbestos claims of the nonbankrupt Combustion Engineering affiliates ABB Lummus Global Inc. and Basic Inc.

The appellate court found, though, that U.S. Bankruptcy Code provisions do not allow Lummus and Basic to channel their own asbestos claims into an asbestos trust fund set up for Combustion Engineering.

The effect of the plan "is to extend bankruptcy relief to two nondebtor companies outside of

See ASBESTOS/page 25

CIGNA to pay back Connecticut for benefits commissions overcharges

By JOANNE WOJCIK

HARTFORD, Conn.—CIGNA Corp. has agreed to reimburse more than $870,000 to Connecticut for overcharges related to the state's dental benefits plan.

According to a statement by Connecticut Attorney General Richard Blumenthal, between 1989 and 2004 the Philadelphia-based health insurer billed the State of Connecticut Employee & Retiree Dental Benefits Plan for commission charges that should not have been included in the premium.

PHOTO: AP /WIDE WORLD

Connecticut Attorney General Richard Blumenthal says CIGNA improperly charged the state for concealed commissions.

CIGNA admitted that the commissions were erroneously included in the dental premiums charged to the state, despite a provision in its contract requiring that commissions not be included in dental plan premiums.

While the attorney general's office asserts that the payment is in response to subpoenas it had issued on Oct. 19 and Nov. 12 as part of an ongoing probe into questionable insurance industry practices, CIGNA claims that it had brought the error to the attention of the attorney general before the subpoenas were issued.

"The action is part of a broad investigation by the attorney general's office into the culture of improper commissions and anti-competitive practices within the insurance industry," the attorney general's office said in a statement.

"For more than 14 years, CIGNA improperly paid and later charged the state for improper, concealed commissions. My office continues to investigate this incident, and other evidence of secretive payoffs and other anti-competitive practices designed to line the pockets of brokers and insurers at the expense of customers," Mr. Blumenthal said.

CIGNA, though, says that the commissions were collected due to a clerical error.

"The inclusion of any commission in the dental rates was an error on CIGNA's part which entered into its payment process a number of years ago. Once in the system, it mistakenly continued until very recently," CIGNA said in a statement. "There was no intentional misconduct on the part of CIGNA or any past or present CIGNA employees."

CIGNA says that it had cooperated with state officials over the issue of the dental commission payments both before and after Mr. Blumenthal began his investigation into broker compensation issues.

The refund includes $481,245 in commissions CIGNA should not have paid to insurance broker Carl Feen, a former CIGNA employee, since 1990, as well as $390,000 in interest.

Proposal seeks 'customer's documented acknowledgement' of compensation

NAIC moves forward on disclosure rule for producers

By MEG FLETCHER

NEW ORLEANS—The latest version of the National Assn. of Insurance Commissioners' proposed commission disclosure rules for insurance producers reflects a consensus on the need for increased transparency and an exemption for certain intermediaries, such as a managing general agents or wholesale brokers, who do not deal with buyers.

'Admittedly, we are moving swiftly and responsively, but it is also critical that we be thoughtful and take the time to be inclusive in our approach.'

Diane Koken
National Assn. of Insurance Commissioners

Disagreements continue, though, between regulators, industry and consumer representatives on many other points, including the level of disclosure and whether new rules should apply to agents, who are primarily compensated by insurers, as well as to brokers, who may be compensated by insurers as well as by buyers.

Overall, the NAIC's Executive Task Force on Broker Activities is moving quickly to establish consensus among commissioners about how best to amend the organization's Producer Licensing Model Act to include the disclosure rules.

That group held a lengthy public hearing on one draft, followed by a shorter meeting on a quickly revised second draft, during the NAIC's recent quarterly meeting in New Orleans Dec. 4-7. The NAIC expects to release another revised draft by Dec. 17, according to an NAIC spokesman.

The NAIC's quarterly gathering of state regulators was the first since New York Attorney General Eliot Spitzer filed a lawsuit against Marsh & McLennan Cos. Inc. in October, charging the broker with bid rigging and client steering in order to obtain the largest contingent commissions paid by insurers.

The NAIC plans to adopt producer commission disclosure language by the end of the year so that there is an amendment available for state legislatures to consider in early 2005, said NAIC President Diane Koken.

"Admittedly, we are moving swiftly and responsively, but it is also critical that we be thoughtful and take the time to be inclusive in our approach," Ms. Koken said in a statement.

The latest NAIC draft would require that any producer or its affiliate—including one that "acts on behalf of the customer" which may

See NAIC/page 32

Employer liable for emotional distress in failing to enforce protection order

High court lets stand worker's claim in assault by ex-boyfriend

By JUDY GREENWALD

RICHMOND, Va.—Employers must promulgate and uniformly enforce policies to help employees who seek protection from violence, or risk being found at least partially liable for the consequences, say observers.

Observers say this was the implicit warning in a decision by the 4th Circuit Court of Appeals in Richmond, Va., in *Dominique K. Gantt vs. Security USA*, in which the court partially upheld an emotional distress claim made by a woman who was assaulted by an ex-boyfriend after her supervisor failed to enforce a protection order. The court said the workers compensation exclusivity rule did not apply.

The decision was issued by the court in January, and the U.S. Supreme Court refused to hear an appeal by the plaintiff in October.

The decision is likely to be influential nationwide, said Rodney H. Glover, an employer attorney with Wiley, Rein & Fielding in Washington. The 4th Circuit "is one of the most conservative circuits in the country, and if they have this view," courts elsewhere will consider the issue as well, he said.

According to the decision, in November 1996, Ms. Gantt, a security guard, obtained a protective order barring ex-boyfriend Gary R. Sheppard from any contact with her and informed her employer, Columbia, Md.-based Security USA Inc., of it the next day. A project manager notified all supervisors that Ms. Gantt should be stationed only at inside posts, so that Mr. Sheppard could not gain access to her at work.

See VIOLENCE/page 24

Ban on facial jewelry not a civil rights violation

Court says faith-based piercings not protected

An appeals court said companies can ban facial jewelry if they believe it will undermine their public image.

By DAVE LENCKUS

BOSTON—Expressions of religious faith in the workplace can only go so far before they create an undue hardship for employers—and facial jewelry crosses that line, a federal appeals court has ruled.

In its 3-0 ruling on Dec. 1, a 1st U.S. Circuit Court of Appeals panel in Boston found that barring faith-based facial jewelry does not violate Title VII of the U.S. Civil Rights Act of 1964.

While Title VII prohibits employers from discriminating against employees on the basis of religion, an employer can impose a dress code barring faith-based facial jewelry if it believes such adornments would undermine its public image, the 1st Circuit panel ruled.

The case is not the first in which a federal appeals court has upheld employers' rights to restrict faith-based jewelry, but the other cases addressed jewelry worn on employee's clothing, according to the 1st Circuit's opinion.

Attorneys say they believe the 1st Circuit's ruling is the first federal appeals court decision that addresses employees' right to wear facial jewelry as a form of religious expression.

The plaintiff's attorney in the case, Michael O. Shea of Wilbraham, Mass., would say only that he disagrees with the court's interpretation of what would constitute an undue hardship for an employer. Mr. Shea would not comment further while his client is

See PIERCING/page 27

Market probe turns to legal malpractice

Spitzer subpoenas five insurers

By RUPAL PAREKH

NEW YORK—The probe into insurance industry practices continues to widen, with New York Attorney General Eliot Spitzer and others now looking at the legal malpractice insurance market.

Mr. Spitzer's office has issued subpoenas requesting information from at least five insurers that provide professional liability coverage for law firms: Hamilton, Bermuda-based Arch Capital Group Ltd.; Chicago-based CNA Financial Corp.; Hartford, Conn.-based Hartford Financial Services Group Inc.; St. Paul, Minn.-based St. Paul Travelers Cos. Inc.; and Great American Insurance Co., the Cincinnati-based property/casualty division of American Financial Group Inc.

In addition, Connecticut Attorney General Richard Blumenthal also plans to investigate insurers providing legal malpractice insurance, a spokeswoman for the attorney general said.

All of the insurers said that they intend to cooperate with the requests but declined to comment on the contents of the subpoenas. Calls to Mr. Spitzer's office requesting further information were not returned.

PHOTO: GAMMA PRESSE

Eliot Spitzer has subpoenaed at least five insurers in a probe of the legal malpractice insurance market.

Medco accused of paying kickbacks to managed care firm

By JOANNE WOJCIK

PHILADELPHIA—Medco Health Solutions Inc. paid "kickbacks" totaling $200 million to an "unnamed managed care company" to obtain its business, according to federal charges filed against the pharmacy benefit manager.

In a court motion filed late last month, the U.S. attorney's office in Philadelphia sought extended discovery for a 2003 lawsuit to obtain testimony from an individual who allegedly had knowledge of the kickbacks.

While the attorney general's office declined to identify where the named individual—Gino Tenace—worked, a spokesman for UnitedHealth Group Inc. acknowledged that Mr. Tenace is an employee of the Minneapolis-based managed care company. The spokesman would not confirm, though, that UnitedHealth is the company accused of accepting the kickbacks.

"There has been no improper payment between UnitedHealth and Medco," the spokesman said. "We've had a market-based relationship in effect since 2000, and this relationship has been developed on a series of good-faith, arm's length and often-hard-fought negotiations."

According to the motion, Mr. Tenace's testimony "is necessary because he is the most knowledgeable individual about Medco's offer of a kickback in excess of $200 million" to a large managed care organization for its business.

The motion further states that Mr. Tenace's significance "became clear" during a Nov. 21 deposition of Eric Bergen. According to the spokesman, Mr. Bergen is a former employee of UnitedHealth.

The original lawsuit, which was filed last year, alleged that Medco defrauded the government by destroying prescriptions, failing to perform professional pharmacists' services required by law, switching prescriptions without patients' knowledge or consent and accepting rebates from drugmakers to favor their products.

A spokeswoman for Franklin Lakes, N.J.-based Medco denied that the PBM paid the alleged kickback.

"This is all speculative, pulled out of context, referring to a contract

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Editorial

Cash balance regulations vital

IF REGULATORS AND legislators wonder why employers are exiting the defined benefit pension plan system, they need look no further than their own actions.

It is safe to say that, over the past decade, most employers with traditional pension plans have been reviewing those plans. Many employers have concluded that traditional plans, in which meaningful benefits begin to accrue only after many years of service, are no longer a good fit for an increasingly mobile workforce.

As part of that review, they have looked at designs, such as cash balance plans and enriched 401(k) plans, that provide much richer benefits to employees who stay only a few years and then move on.

Given the length and the public nature of this shift to new plan designs—the first cash balance plan was established nearly 20 years ago—one would have thought regulators would have responded with new rules, making clear what was permissible and what was not.

But, incredibly, that did not occur. In the absence of government rules, it has been the courts that have been providing answers when legal questions about the plans have arisen. And in providing answers, the courts have had to turn to the Employee Retirement Income Security Act. Given that ERISA was passed 30 years ago—when there were no such account-based defined benefit plans—it is no surprise that courts have come up with varying conclusions when addressing such basic questions as whether the plans discriminate against older employees.

Nor have legislators been of much help. When the Internal Revenue Service belatedly came out with proposed regulations recognizing the legality of the plans, legislators put such heat on the IRS that the agency was forced to withdraw those rules. While they managed to stop the IRS in its tracks, legislators, with a few notable exceptions, have not shown a scintilla of interest in updating pension law to recognize the plans.

Given the legal and regulatory uncertainties, it shouldn't come as any surprise that employers that want to move away from outdated traditional plans now are phasing out those plans and adopting new defined contribution plans or are beefing up existing ones, rather than setting up cash balance plans. And some employers with cash balance plans—IBM Corp. being the most recent example—are closing out those plans in favor of defined contribution plans.

This isn't to say that a cash balance plan is better than an enriched 401(k) plan. Each plan has its advantages and disadvantages for employers and employees. Which plan makes the most sense depends very much on factors unique to each employer and its workforce.

And that is the point. Each employer should have the ability to choose between the two plan types. In today's legal and regulatory climates, such a choice doesn't exist. The deck is stacked against cash balance plans. If legislators want to keep employers in the defined benefit plan system, they either need to write rules that recognize the legality of the plans or let regulators do so. If they don't, the withering away of the defined benefit plan system will be the inevitable result, and one they surely do not want.

Disclosure rules get needed urgency

AS THE INSURANCE industry tries to get over the initial shock of having its compensation practices placed in the spotlight, it is refreshing to see insurance regulators move quickly to try to provide some clarity over the issue of broker commissions.

Acting with what some might call uncharacteristic urgency, the National Assn. of Insurance Commissioners plans to have commission disclosure rules out for states to consider by the end of the year.

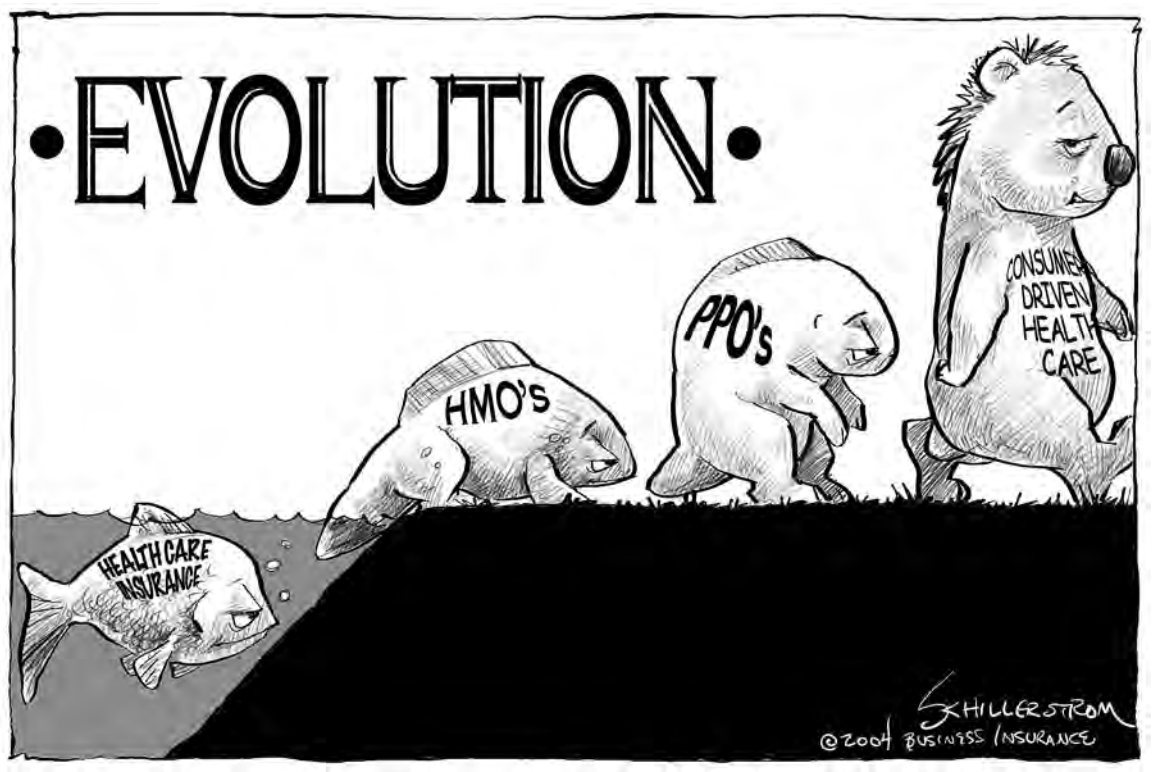
The NAIC's goal of achieving greater transparency is broadly supported by buyers and insurance industry groups, though, as we report on page 4, there are still some significant differences that need to be addressed if the rules are to be effective.

Since the contingent commission scandal erupted with the filing of New York Attorney General Eliot Spitzer's suit against Marsh & McLennan Cos. Inc. in October, there has been a great deal of finger pointing and some knee-jerk reactions but little in terms of considered action.

Regulators have been criticized for not acting to prevent the alleged abuses in the first place, and perhaps their current zeal to address the issue does reflect a desire to make up for past oversights. Regulators, in turn, have defended themselves by saying that previously they were merely complying with the wishes of sophisticated buyers who believed that they were big enough to look after themselves.

Regardless of past shortcomings or the impetus behind the current action, the NAIC deserves applause for taking a leading role in trying to move beyond the scandal and shape a more professional and accountable insurance industry.

Schillerstrom



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New Technology & Online Solutions

Spotlight Editor: Dave Lenckus

Few pluses realized in developing homegrown RMIS setups

By MICHAEL BRADFORD

Technological improvements and a healthy supply of service providers have rendered the homegrown risk management information system nearly obsolete.

There is little reason, sources say, for a risk manager to take the time and spend the money to build a risk management system when there are plenty of customizable systems and off-the-shelf software packages that are quicker and easier to put in place.

Fifteen to 20 years ago, large companies would have been more likely to take on the task of building systems, said Bob Morrell, chief technology officer with Aon RiskLabs in Marietta, Ga. "But it's very rare now," he noted.

Back then, RMIS vendors were so scarce that many large companies either went without systems or built them themselves, said Mr. Morrell.

That's no longer the case.

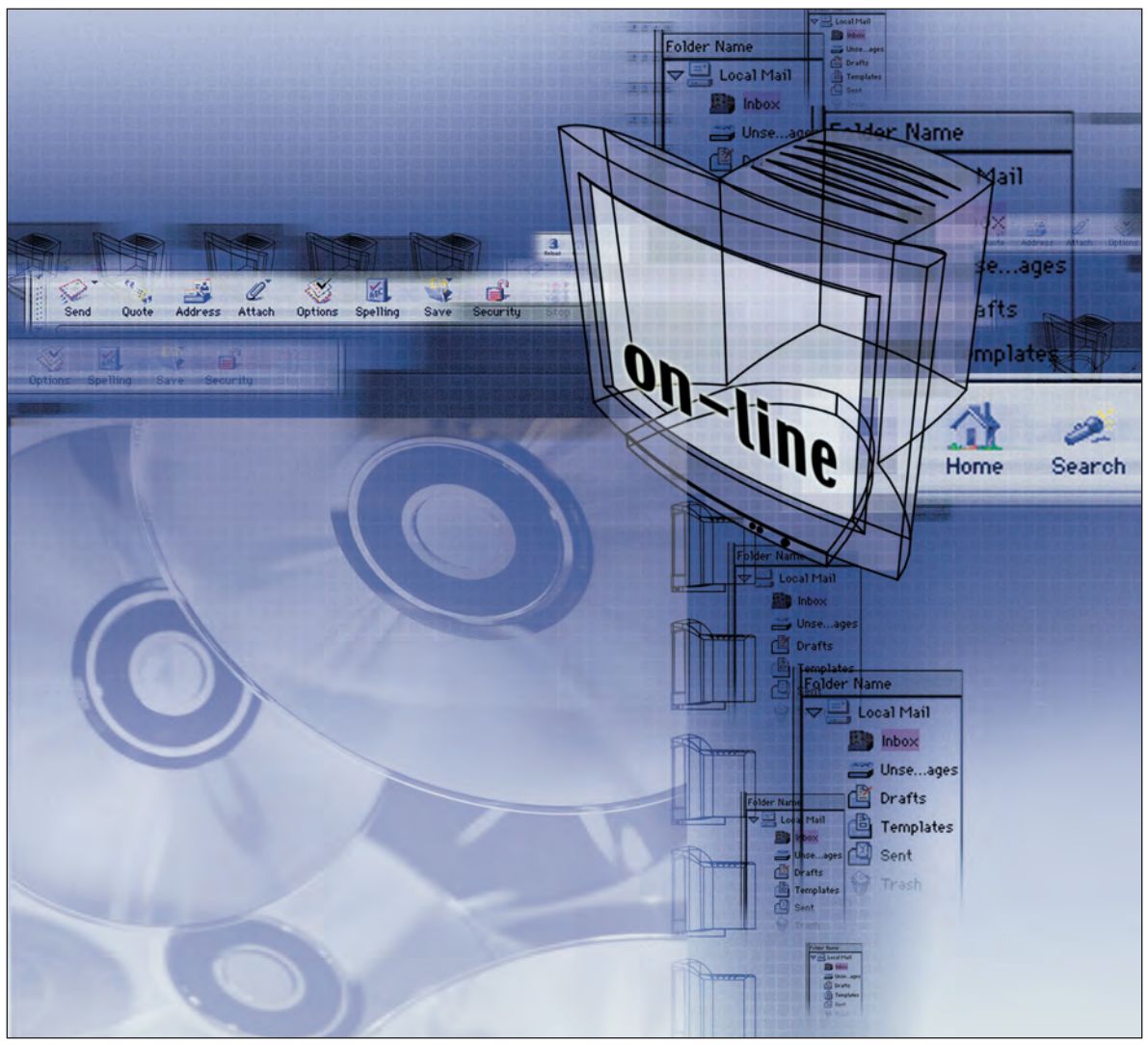
"We're not seeing risk managers trying to do it," said Mark Charron, principal with Deloitte Consulting in Hartford, Conn. But, he added, "there may still be some legacy home-built systems" that risk managers continue to use.

Mr. Morrell said he sometimes finds risk managers with "systems built 10 or 15 years ago that they are still clinging to," but when his company encounters a risk manager considering whether to build or buy, "we never see them build."

Information technology departments were designing software a decade ago, Mr. Morrell acknowledged. But with reduced head counts at many organizations, "corporations aren't building software anymore; they're buying it," he said.

RadioShack Corp. was one of the companies that recently ditched a homegrown system for a new RMIS from RiskLabs, said Jaime Caballero, manager of risk management at the Fort Worth, Texas-based electronics

See HOMEGROWN/page 16



Effective IT staff interface needed to safeguard data

Collaboration crucial when addressing security risks

By DAVE LENCKUS

Only a fraction of the security patches released by software manufacturers had been installed and tested, which made the organization's information system highly vulnerable to viruses and worms.

A default password included in a new software system was never updated after the system was installed, so security against hackers was as formidable as an unlocked back door.

A recovery plan designed to restore the computer system and ensure business continuity for a business that heavily relies on e-commerce had not been tested to determine whether it would work.

Risk managers who think that those kinds of disturbing information security problems could never occur in their organizations are fooling themselves, contend information technology security experts and cyber risk insurance market representatives.

Indeed, those information security shortcomings are typical, not isolated incidents, and there are other common problems, experts say. As a result, information at most organizations—regardless of size—is vulnerable to at least some degree, they say.

Compounding the problem is that many systems are compromised without the victimized organizations knowing it, noted Andy Boker, managing partner at IT security consultant Ambiron L.L.C. in Chicago.

An organization's security breach generally comes to light either when an extortionist demands payment in exchange for not crashing the system or a business partner such as a bank encounters problems that could have resulted only from such a breach, Mr. Boker noted.

The responsibility for information security typically rests with an organization's IT department. But safeguarding data, including customers' personal information, is so crucial to ensuring business continuity and preventing huge invasion-of-privacy liabilities and reputational damage that risk managers should be taking far more interest in information security, experts assert.

"The losses that can come out of the IT department can be a lot larger than one building burning down," said Michael C. Lamprecht, national practice leader for cyber risk at Gallagher CyberRisk Services, a Chicago-based division of Arthur J. Gallagher & Co.

Risk managers will "need to fund the losses somehow," Mr. Lamprecht said.

See SECURITY/page 12

Employees' e-mails seen as posing professional liability risk

By ROBERTO CENICEROS

Employers need to guard against employee e-mail transmissions becoming damaging evidence in securities-related litigation and professional liability lawsuits, say attorneys, risk managers and others.

Plaintiffs and regulators increasingly form the backbone of such cases with subpoenas that demand access to employee e-mail, they add.

"If you look at any of the major corporate scandals reported in the news over the last few years, oftentimes the 'smoking gun' documents are in the form of e-mail," said Carl Metzger, a partner at Testa, Hurwitz & Thibeault L.L.P. in Boston. "Companies need to do a better job in terms of regulating how their employees communicate through e-mail."

Don't put anything in an e-mail that you wouldn't shout down an office hallway, warned Mr. Metzger, who defends against securities litigation and advises employers on risk management procedures.

New York Attorney General Eliot Spitzer's fraud case against Marsh & McLennan Cos. Inc. represents a recent instance of a regulator using employee e-mail to build his case. Soon after Mr. Spitzer announced his allegations against MMC, several plaintiffs attorneys said they were filing policyholder lawsuits.

Employers to date have focused on guarding against employee communications as potential sources of employment practices lawsuits, said Randall Krause, an attorney and president of YourHRdepartment Inc., a San Mateo, Calif.-based loss control firm. They now also must consider potential directors and officers and errors and omissions risks associated with worker e-mail use, he said.

"E-mail is the first place for lawyers who want to get dirt (on companies)," Mr. Krause said. "Every plaintiff lawyer or prosecutor wants to get the dirt on the defen-

See E-MAIL/page 18

Largest risk management information systems ranked on page 14

Web-based systems integrate claims handling processes page 19

Security: Cooperation with IT staff needed

Continued from page 10

But addressing information security risks can be a major challenge for many risk managers, experts say. Besides having little, if any, familiarity with information systems and the departments and personnel responsible for them, risk managers likely won't find their newfound interest in information security welcomed by IT managers,they say.

A broad problem

Information security problems are a fact of life for any organization and do not necessarily reflect poorly on IT departments, which often face budget problems and a lack of clear direction from senior management about their priorities, they say.

Mr. Lamprecht and Tracey Vispoli, vp and worldwide financial fidelity manager at Chubb & Son, a unit of Warren, N.J.-based Chubb Corp., estimated that 90% of companies in America have suffered security breaches.

In a study conducted by consultant Ernst & Young L.L.P. of New York earlier this year, only 24% of more than 1,230 chief information and chief information security officers gave their information security departments the highest marks for meeting their organizations' needs.

The study's executive summary stated that, just like 10 years ago, survey respondents in general say they believe information security will not be toughened until their organizations suffer a major security breach.

Enterprise risk management dictates that risk managers pay more attention to information security, even if they do not intend to purchase cyber risk insurance to cover the cost of recovering lost data and the potential liabilities that information security breaches pose, experts say.

Other drivers that should be compelling risk managers to closely evaluate their organizations' information security include several federal laws that address corporate financial responsibility and privacy issues: the Gramm-Leach-Bliley Act, the Health Insurance Portability and Accountability Act and the Sarbanes-Oxley Act.

In addition, state invasion-of-privacy statutes and case law can provide risk managers some guidance on information security, but few specifically address personal information stolen from an organization's computer system.

But an 18-month-old California statute and another scheduled to take affect in January create liability issues for any organization in the country that stores confidential information about California residents in its database. (See story, page 13)

All of those laws, though, serve only as "a barometer of what needs to happen," said Mark Greisiger, president of cyber risk management and information security consultant Net Diligence of Gladwyne, Pa. They do not set out a detailed blueprint for risk managers, he said.

Ted Dezabala, national leader of the security services group at Deloitte & Touche L.L.P. in New York, contends that most industries have come a long way in safeguarding data.

In addition, those with the highest risk profiles—especially financial institutions—are doing a better job than most, he said.

"You're never gong to get where your systems are perfectly secure," Mr. Dezabala said. "That would be like eradicating all disease for humans."

But the "general health" of information security could be improved if the risk were managed better, he said. "Most companies aren't doing that very well."

The best way to begin managing that risk better is to assess current information security vulnerabilities, Chubb's Ms. Vispoli said.

To ensure objectivity and the most thorough test possible, she recommended hiring an IT security consultant rather than conducting a test internally.

Depending on the size of an organization, a test could cost between $4,000 and $25,000, Net Diligence's Mr. Greisiger estimated.

Even smaller organizations that outsource their IT departments should require their application service providers to demonstrate the efficacy of their information security, Ms. Vispoli warned. That is important, she said, because organizations that outsource their IT departments continue to bear business interruption and liability risks related to security breaches.

Avoiding turf battles

A key concern for risk managers is that by running a security audit and then trying to more effectively manage IT security risks, they could spark a turf war with IT departments. That conflict often occurs because, in many organizations, risk managers and IT managers have never communicated and do not even know one another, experts say.

"It is a very large problem for us," Mr. Lamprecht said. "I've been to dozens of meetings where they had never met."

Bill Kelly, director, insurance risk management solutions at PricewaterhouseCoopers L.L.P. in New York, characterized the lack of communication between risk management and IT as "critical."

Mr. Kelly surmised that one reason the managers in the two areas typically do not communicate is their lack of comfort in regard to

Continued next page

Continued from previous page
each other's discipline.

Mr. Greisiger said that IT managers like to resolve problems without alerting anybody. In addition, IT managers view risk managers' interest in information security as an encroachment into their territory and as a threat to their reputations and job security, he said.

Organizational structure could minimize those conflicts.

The reporting structure in many organizations has the risk manager answering to the chief financial officer, while the IT manager reports to the chief information officer, Mr. Kelly noted.

Keeping risk management and IT separated into "different silos" contributes to the lack of communication between the two disciplines, he said.

Messrs. Kelly and Lamprecht and Ms. Vispoli said communication would be facilitated if risk management and IT reported to the same individual, such as a chief risk officer or the CFO.

Short of a change in an organization's reporting structure, some fine-tuning of job duties may vastly improve communication between risk management and IT.

Mr. Lamprecht said he would like to see the duties of IT managers or information security officers include working with risk management to identify risks and minimize loss.

Mr. Kelly said that risk managers who are responsible for business continuity as well as for purchasing business interruption insurance have a natural line of communication with IT, because business continuity is so dependent on technology.

But until there are changes in reporting structures or job duties, risk managers who are intent on assessing their organizations' information security will have to rely on their diplomatic skills to prevent creating tension with IT managers, experts say.

The best way for a risk manager to establish a cooperative relationship with an IT manager is to resist raising questions about information security—which indirectly questions the IT department's performance—during an introductory meeting, experts say.

Instead, the risk manager should explain risk management's responsibility of identifying, minimizing and transferring risk and how those efforts can aid IT and make that department look better to senior management.

"You have to enforce that this is a collaborative effort," not an attempt to perform a job review. Mr. Greisiger said.

Georgette Fedunie, risk manager for New York-based American International Group Inc., agreed that how the IT department is approached is critical and that assessing information security is crucial regardless of whether the risk manager is considering buying cyber risk insurance.

Ms. Fedunie first approached AIG's IT department three years ago and has continued to maintain the relationship. She delivered a presentation on the topic to the New York chapter of the Risk & Insurance Management Society Inc. in November.

Ms. Fedunie said that her and other risk managers' experience demonstrates that risk managers also should:

- Engage the legal and security departments as well as senior management in a discussion about information security. Support from those areas of the organization will facilitate communication with IT, she said.
- Avoid coming across as being superior, because IT managers often feel that their work is not only essential but also should not be questioned.

"I think the attitude in which risk management approaches IT is very important," Ms. Fedunie said.

She also suggested that risk managers take some time before approaching IT to develop at least a rudimentary understanding of IT terms.

"They love to teach you, too," Ms. Fedunie noted.

California laws raise bar for data security

A California statute known as S.B. 1386, which went into effect last year, requires organizations outside of as well as within the state to notify their California-based customers if their personal information has been compromised during a computer security breach.

If it had subjected that data to any level of encryption, though, the organization would be shielded from liability, noted Daniel Appleman, a partner with Heller Ehrman White & McAuliffe L.L.P. in Menlo Park, Calif.

Before S.B. 1386, companies "had been doing what they could" to avoid disclosing security breaches, so they would not get sued, said Michael C. Lamprecht, national practice leader for cyber risk at Gallagher CyberRisk Services, a Chicago-based division of Arthur J. Gallagher & Co. Consequently, S.B. 1386 is "a big problem," he said.

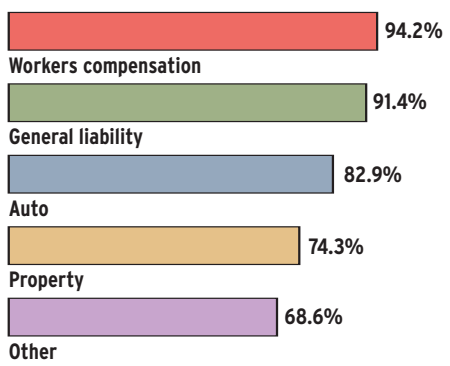
Starting in January, a related California law, A.B. 1950, will require organizations to take reasonable—but unspecified—measures to protect databases containing confidential information on California residents.

While the simplest level of encryption would provide organizations a safe harbor under S.B. 1386, it may not shield organizations from liability under A.B. 1950, Mr. Appleman noted.

—By Dave Lenckus

CLAIMS HANDLED

Most common claims handled by RMIS



Source: *BI* survey

LARGEST BUNDLED RISK MANAGEMENT INFORMATION SYSTEMS*

Ranked by installations in corporate risk management departments**

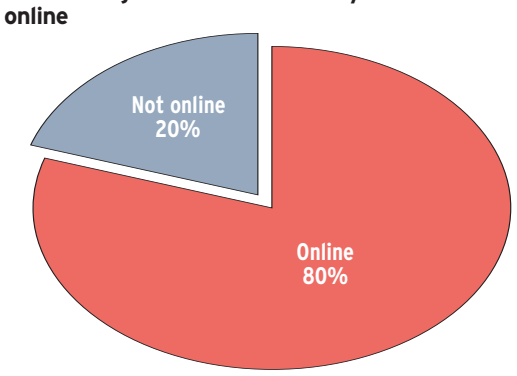
Rank	Company	System name	Number of installations	First installation
1	St. Paul Travelers Cos. Inc.	e-CARMA	10,055	1983
2	Gallagher Bassett Services Inc.	risxfacs.com	7,606	1983
3	ESIS Inc.	Global RiskAdvantage	3,120	1998
4	Chubb Corp.	Chubb RMIS Suite of Products	3,000	1994
5	Liberty Mutual Insurance Co.	RISKTRAC	2,610	1999

* Systems offered to clients bundled with other services provided by the company **Licensed users.

Source: *BI* survey

ONLINE SYSTEMS

Risk Management information systems based online



Source: *BI* survey

Largest risk management information systems*

Ranked by the number of installations in corporate risk management departments**

Rank	Company	System name	Address	Phone/Fax/Web site	2003 Number of installations	Price	First installation	Principal officer
1	CS STARS	STARS Professional Edition	500 W. Monroe St., Chicago, Ill. 60661-3630	312-627-6000 Fax: 312-627-6590 *www.starsinfo.com, www.marsh.com*	18,400	$75,000	1990	Robert G. Petrie III, managing director
2	Computer Sciences Corp.	RISKMASTER	200 W. Cesar Chavez Austin, Texas 78701	800-345-7672 Fax: 248-372-3050 *www.csc-fs.com*	7,200 [1]	NA	1982	Van B. Honeycutt, chairman/CEO
3	Risk Sciences Group Inc.	Sigma Encore Suite	1900 E. Golf Road, Suite 700 Schaumburg, Ill. 60173	800-619-0224 Fax: 847-619-3079 *www.risksciencesgroup.com*	4,397	$30,000 set-up fee and $25,230 annual support fee.	1978	Michael E. Saladino, senior vp/ managing director
4	Valley Oak Systems L.L.C.	IVOS Claims Management Software	5000 Executive Parkway, Suite 340 San Ramon, Calif. 94583	925-242-4600 Fax: 925-901-1020 *www.valleyoak.com*	1,200	NA	1995	Randy Wheeler, CEO
5	INFORM Applications Inc.	INFORM	888 Veterans Memorial Highway Hauppauge, N.Y. 11788	631-851-0222 Fax: 631-851-1769 *www.informapplications.com*	995 [1]	$25,000	1985	Alan R. Josefsek, president
6	Insurity Inc.	Intellisys	170 Huyshoppe Ave. Hartford, Conn. 06106	860-616-7721 Fax: 860-616-7474 *www.insurity.com*	700	$250,000	1988	Tony Reisz, president
7	Riskclick Inc.	Riskclick	114 E. 32nd St., Suite 401 New York, N.Y. 10016	646-452-8181 Fax: 646-452-8188 *www.riskclick.com*	519	$50,000 per company; $1,500 per user	2000	James F. DeSocio, CEO
8	PerDatum Inc.	PROGNOS	4098 Main St. Hilliard, Ohio 43026	614-777-4636 Fax: 614-777-4650 *www.perdatum.com*	507	$25,000	1994	Mark Tochtenhagen, president
9	Aon-Global eSolutions Group	RiskConsole	200 E. Randolph St. Chicago, Ill. 60601	877-755-7475 Fax: 678-784-4700 *www.aonriskconsole.com*	300 [1]	$75,000	1995	Mark Stephens, managing director-Americas
9	Blackburn Group Inc.	RiskPro	P.O. Box 52 Penfield, N.Y. 14526	585-586-4530 Fax: 585-586-7479 *www.blackburngroup.com*	300	$995 to $24,995	1985	Robert J. Blackburn, managing principal

* Systems offered on an unbundled basis. **Licensed users. NA=Not available. 1 Estimated
Source: *BI* survey

Visit *www.businessinsurance.com* for more information and to access the full searchable Directory of risk management information systems.

Homegrown: Few pluses realized

Continued from page 10

retailer. The company never considered building its own RMIS a second time, he said.

The corporate mindset of "let's build it" began losing steam several years ago, Mr. Caballero said, and RadioShack's information systems staff was no longer willing to support the legacy RMIS.

"RadioShack was notorious for writing its own programs," said Mr. Caballero, and the RMIS the company used for 15 years had been "built, written and rewritten" until its usefulness reached an end.

The new system actually replaces three of the older ones that handled damage, loss and product liability claims at RadioShack outlets, he said.

Big Lots Stores Inc. briefly considered building a system to replace an aging system built in-house but was deterred by the demands of such a task.

The company didn't have the experience to do it, said Allen Wingfield, the Columbus, Ohio-based retailer's risk manager. Designing a system that would comply with workers compensation regulations in the 46 states in which Big Lots operated at the time and would handle tasks such as medical bill review were soon seen as overwhelming.

Big Lots turned to an outside vendor in 2003 to build its system.

There are exceptions to the general trend of using vendor systems, although they are few. Wal-Mart Stores Inc. confirmed that it recently rolled out a RMIS it put together but would not provide details on the system or the process of building it.

Vendors point out that companies the size of Wal-Mart are the only ones that have the manpower and money to successfully put together their own RMIS.

And even before the growth of vendor services and technologies, it was not a common approach.

Some companies did take on the job of building their systems, noted Matthew L. Carden, vp-risk management information systems for St. Paul Travelers Cos. Inc. in Hartford, Conn. "But even before the advent of all the new applications, it was the exception and not the rule," he said.

Even if a risk manager were to decide his or her needs are so specialized as to require a homegrown system, getting it done would be a big chore, sources agree.

Information systems staffs at most companies typically are "committed to whatever their core business is," Mr. Carden noted, and a risk management department clamoring for a RMIS to be built would probably have trouble getting the attention of the technology staffers who would do most of the work.

Mr. Morrell agreed that a RMIS would likely receive an "extremely low priority," because it generally is "part of a small department in a very large organization."

The price of building a system is daunting, Mr. Carden pointed out. "It's a big cost." When risk managers look to outside vendors to provide the systems, "they make the decision that they can buy it cheaper," he said.

The ability to exchange data over the Internet also has made the decision to buy a system easier, according to Mr. Morrell. Users can easily connect to Web-based systems to transmit risk management information, he said. "Ten years ago that would have been a problem, but now the Web is a common thing."

Some risk management functions could be taken care of on simple homegrown systems, sources say, but those would not be able to handle complex RMIS functions.

It is possible for a company to build a straightforward system to manage certificates of insurance or collect some claims data, said Robert G. Petrie III, Chicago-based chief executive officer of CS STARS, Marsh Inc.'s RMIS unit. "But if what they want is a RMIS or claims management system, odds are that they will be less than successful" in building it, Mr. Petrie said.

It is more likely that a company that can't find what it needs from a single vendor will link products from various suppliers, vendors say. Or an in-house system such as those that handle asset management or human resources functions could be integrated with a vendor's RMIS.

"A lot of companies are linking their HR systems to a claim reporting system," allowing them to complete tasks such as filing initial notices of loss to an insurer or other service provider, Mr. Carden said. Another use would be to link an in-house system with an insurer's system to transmit files related to property coverages.

In both cases, Mr. Carden noted, the in-house systems likely would be provided by vendors rather than homegrown.

A company considering the undertaking "would have to question what they are trying to accomplish by building their own," said Mr. Charron. Independent vendors offer customizable products that allow enough configurations to handle individual RMIS needs, he said.

According to Mr. Charron, "customization is pretty common," allowing risk managers to "tailor it to your specific organization."

Mr. Charron noted that brokers that provide systems have begun to make them more customizable. "They've added a lot," he said, to make their systems adaptable to risk managers' needs.

And some insurers use their system offerings as a way to improve the value of their relationships with policyholders, Mr. Charron said. "Some are strategically placing their systems so that (the insurers) are not viewed just as a provider of coverage but as someone who is bringing an additional service" to the insurance buyer, he said.

E-mail: Employee transmissions as evidence

Continued from page 10

dant, and where are people more free to speak than in e-mail or in the little chat programs that are more commonly used now?"

The informal nature of e-mail messages—and the practice of sending them from remote locations, such as airports, rather than from formal office settings—leads many employees to assume they are safe sending damaging messages, observers say.

They may think, for example, that it is all right to use their workplace e-mail to complain about company management, observers say. But those complaints can become fodder for plaintiffs alleging mismanagement in policyholder lawsuits.

The New York-based American Management Assn. has documented a rise in the use of subpoenas by plaintiffs attorneys and regulators seeking corporate e-mails. More than 20% of 840 employers that responded to a 2004 Workplace E-mail & Instant Messaging Survey conducted by the AMA said that courts or regulatory bodies have wielded subpoenas seeking their employee e-mails.

More than 20% of 840 employees that responded to a 2004 Workplace E-mail & Instant Messaging Survey conducted by the American Management Assn. said that courts or regulatory bodies have wielded subpoenas seeking their employee e-mails.

In contrast, only 14% of respondents to a similar survey the AMA conducted last year said they had received subpoenas seeking their employee e-mails. That is up from 9% in 2001, when the survey was first conducted.

The Sarbanes-Oxley Act has added to the risk mitigation challenge stemming from e-mail, said Emily Q. Freeman, senior vp, management and professional liability in San Francisco for Capital Risk, a Jardine Lloyd Thompson USA unit. The act sets requirements for the retention and availability of corporate documents, including e-mail messages.

That makes it easier for plaintiffs to obtain e-mail messages that can bolster their securities litigation efforts, Ms. Freeman said. It can also help an E&O case if, for example, plaintiffs in a product liability lawsuit demand e-mail transmissions from a company's quality control department, Ms. Freeman added.

To mitigate those exposures—and others, such as a loss of trade secrets or the defamation of third parties—a growing number of employers now use software to monitor company e-mail, Ms. Freeman said. Employers also are implementing employee communications policies and explaining in employee manuals and other communications that e-mail and other on-the-job communications are the employer's property, Ms. Freeman said.

Helping employees keep in mind that there are appropriate and inappropriate electronic communications and that their actions can harm them and the company is something that can be ingrained in corporate culture, said George Haitsch, vp, corporate risk management, in Newtown Square, Pa., for Walldorf, Germany-based SAP A.G.

To successfully do that, though, risk management must team up with other corporate departments, such as legal, human resources, information technology and security, Mr. Haitsch said. His company relies on employee orientations and a formal policy explained in the company's employee manual. The policy discusses business confidentiality, the illegal duplication of software, efforts to hide the identity of e-mail senders and other matters.

The manual also reminds workers that their computer transmissions are not theirs and can be reviewed by the company. While the policy does not specifically mention exposures such as D&O-related lawsuits, making employees aware of their responsibilities helps to mitigate those exposures, Mr. Haitsch said.

Mr. Haitsch said he meets with a group of risk managers for 35 large technology companies, and they have discussed D&O and E&O exposure stemming from e-mail. Risk managers increasingly are aware of the potential problem, Mr. Haitsch said, but he acknowledged that some senior managements may not share the same level of concern.

PHOTO: SIPA

Target Corp. has modified its workers compensation and claims reporting system to allow the risk management department to quickly gather incident data.

Online systems help companies streamline claims handling

Software can be customized for specific needs

By RUPAL PAREKH

Although companies have long been making the move from traditional paper-based claims reporting to automated systems, Web-based claims technology has not gone stale.

The latest wave of online systems offers ways to improve upon and streamline companies' claims handling processes, with the focus shifting from mere computerization to the technological capability of a system to harvest detailed claims data. Risk managers can analyze this data to help minimize on-the-job accidents, pre-empt the filing of claims and prevent related losses, experts say.

Technology vendors and consultants note that risk management information systems for claims are now, among other things, customized to be industry- and company-specific, Internet-based for the real-time capture of claims data, integrated for access across departments organizationwide and linked to insurance carriers.

"In the corporate marketplace, the reporting of claims has evolved from phone calls to faxes to all kinds of electronic means," said Mark Charron, a principal at Deloitte Consulting L.L.P. in Hartford, Conn. "What is standard now is a Web-based report of claims."

According to Mr. Charron, "The speed, the accuracy and the completeness of reporting is really what gets the ball rolling" in the claims process. But the biggest challenge associated with the Web-based method, he said, is the accuracy of the information.

'In the corporate marketplace, the reporting of claims has evolved from phone calls to faxes to all kinds of electronic means. What is standard now is a Web-based report of claims.'

Mark Charron
Deloitte Consulting L.L.P.

"You don't want to have to go back and start asking the injured worker the same questions all over again," Mr. Charron said. "It's important to capture that information the first time."

Minneapolis-based retailer Target Corp. is one organization that recently modified its workers compensation and general liability claims reporting system to allow risk management to gather incident data more quickly and better keep tabs on Target's claims-related exposures.

"We're integrating safety into everything we do," from back-room functions to the layout of merchandise displays on the sales floor, said Maria Griffith, senior analyst, risk management, for Target. As part of this initiative, Target eliminated the toll-free telephone number store managers previously used to report claims. Though the system was efficient in relaying claims to Target's insurers, it was slow to impart the same information to its risk management department. With the help of Marietta, Ga.-based Risk Laboratories L.L.C., a unit of Aon Corp., Target opted instead to customize a RMIS that would provide the company greater control over the entire claims process from start to finish.

The customized platform, which was rolled out to all Target loca-

See CLAIMS/next page

Claims: Online systems help streamline handling

Continued from previous page

tions nationwide in mid-September, goes "above and beyond regular claim information," according to Ms. Griffith. Overall, she said, it is "a better process, and it's more cost effective."

To begin with, each of the information fields was developed by Target, enabling the risk management department to ask employees—referred to as "team members"—operational questions that a claims adjuster could potentially overlook. The system is "flexible enough that we can add questions at any time," Ms. Griffith noted.

In an effort to create an easy-to-use interface, questions were asked "on the front end in 'store-speak,'" so that 18,000 store managers "who may not know anything about workers comp" could understand and accurately enter the required claims information, Ms. Griffith said. Certain data fields in the system were coded as "required," so that the claims handler would be unable to bypass vital sections of an incident report, thereby reducing the possibility that the insurer would have to return to Target to fill in missing information.

Also, a key feature of Target's electronic claims reporting system is that the new platform is linked to the company's payroll department. Now, entry of just one field—a team member's employee identification number—automatically completes a host of basic claim data, such as the store location, the nature of the team member's employment and his or her health benefits information, permitting more time to discuss the particulars of the on-site incident.

'Our ultimate goal is to make the process of reporting incidents as quick and painless as possible.'

Maria Griffith
Target Corp.

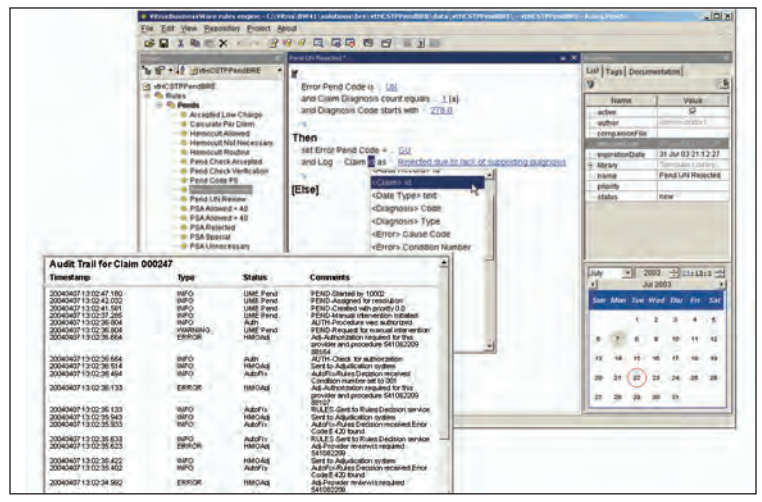
And Target's RMIS incorporates the company's signature colors of red and white.

"Our ultimate goal is to make the process of reporting incidents as quick and painless as possible," Ms. Griffith said.

In contrast with Target's previous telephone-based claim processing platform, the nearly instantaneous capture of information makes it possible to complete the claims entry process in as little as 10 minutes, she said.

Once an incident has been reported by a supervisor, that information is relayed immediately via e-mail to risk management, insurers, human resources and the "safety captain" of the store—another timesaving measure.

Independently built RMIS such as Target's are commonly more expensive than packaged solutions; businesses wind up "wrestling with what the return is on investment," said Deloitte's Mr. Charron. Yet Target anticipates "huge cost-saving" with its new program, particularly because risk management can monitor which team members are missing work as a result of on-site mishaps and assist them in returning to work as soon as possible.



Sunnyvale, Calif.-based Vitria Technology Inc. maintains that its SmartClaims reporting application catches entry errors early on, resulting in an improved claims pass rate and greater savings.

Anita Schoenfeld, a senior consultant in Dallas for the Tillinghast unit of New York-based Towers Perrin and a national practice leader for the firm's RMIS consulting support services, said she is seeing "a real spike in activity" both among companies looking to revamp their claims reporting systems and among vendors providing these services.

One reason Web-based claims reporting systems are attracting interest is that the technology is now far superior, having advanced from server or mainframe systems to browser-based Web technology, she said.

And new claims systems have started to become more affordable, Ms. Schoenfeld said. "The cost of the hardware and infrastructure is miniscule compared to what it was four years ago," she said.

In addition, fees for RMIS are increasingly being offered on a usage basis rather than a flat-fee basis, or license-based costs, which may benefit smaller companies, as well as larger companies that wish to restrict access to their claims systems to a few key personnel.

Sunnyvale, Calif.-based Vitria Technology Inc., is a provider of business process integration processes that offers both off-the-shelf and custom systems for streamlining claims processing. In addition to making modifications for other industries, Vitria has tailored its claims reporting technology for use in the health care sector, with customers that include Tulsa-based Blue Cross & Blue Shield of Oklahoma; Louisville, Ky.-based Humana Inc.; and Cypress, Calif.-based PacifiCare Health Systems.

John Ounjian, executive vp at Vitria, cites "the resolution of resubmissions" as one of the major advantages of the newer RMIS systems. "The later you find the problem, the more costly it is to fix it," he said.

In his experience, Mr. Ounjian said, the rejection of just 1% of claims due to entry errors at a mid-size managed care company with 2 million plan members costs approximately $500,000. Companies that use applications for improving claims transaction management such as Vitria's SmartClaims, though, can catch entry errors early on. Mr. Ounjian said the short-term use of SmartClaims typically results in a 10% improvement on the claims pass rate, translating, he said, into a savings of nearly $5 million.

One problem with custom-built claims reporting systems is that "they're not repeatable," Mr. Ounjian said. In his view, an ideal Web-based RMIS for claims includes 70% standard components and is 30% custom-made. Installing a claims process that is mostly standardized is faster, taking an average of three to six months, whereas putting in a fully custom-driven program can take "easily six to 12 months," he said.

'The cost of the hardware and infrastructure is miniscule compared to what it was four years ago.'

Anita Schoenfeld
Tillinghast

Tillinghast's Ms. Schoenfeld said that "the continued concern for security of information" is an issue inherent to all Web-based claims reporting systems. But she said she believes this problem can be addressed by conducting a thorough needs assessment and carrying out a careful implementation of the system. For optimal safety and control over claims, she recommends maintaining operation of the system within an organization, "rather than having your third-party administrator or insurer have control over your data."

Looking ahead, Mr. Charron predicts that "one of the leading-edge technologies" for claims handling will be "predictive technology," or the use of RMIS as tracking tools to identify, for example, what types of claims have a propensity for litigation.

"It's an evolving technology," Ms. Schoenfeld said. "We are building a tremendous opportunity to manipulate data."

Products & Services

AIG unit enhances environmental program

NEW YORK—AIG Environmental, a division of American International Group Inc., has expanded its casualty and pollution insurance program, which offers combined casualty and environmental coverage.

The program, Environmental & General Liability Exposures, now features bodily injury and property damage coverage arising from sudden and accidental pollution events as standard components. Other coverages, comprehensive site pollution, product pollution and product recall, are still available on an optional basis.

The program targets wholesale distributors, processors and manufacturers of asphalt, cement, food additives, plastic/ rubber products, industrial cleaners and cosmetics, among others.

Limits of up to $10 million.are available

For more information, contact Peter Gilbertson, director of marketing for New York-based AIG Environmental, at 212-458-6223 or at *peter.gilbertson@aig.com*. More information can also be obtained by visiting the company's Web site at *www.aigenvironmental.com*.

EQECAT introduces wildfire and flood models

OAKLAND, Calif.—EQECAT Inc., a catastrophe modeler, has released wildfire and flood probabilistic models for managing property risk.

The models are intended to help risk managers and insurers better understand and predict losses due to wildfires and floods, according to Oakland, Calif.-based EQECAT. The wildfire model considers the type of fuel and density of fuel load, windspeed and direction, humidity and terrain to determine the ignition probabilities and the rate of fire growth. It reports probabilistic loss per occurrence and annual aggregate with an expected annual loss.

PHOTO: ZUMA

The U.S. flood model produces analysis on areas adjacent to rivers and other bodies of water, along with those areas subject to coastal flooding. The analysis is based on historical data, as well as river drainage areas, mean annual precipitation in the basin, rainfall and basin shape, among others. The flood model produces a graphic that includes the proximity of a site to flood zones and probabilistic damage and loss estimates for each site.

For more information, contact the company at 510-817-3101 or at *eqecat@absconsulting.com*.

National Union launches EPLI product

NEW YORK—National Union Fire Insurance Co. of Pittsburgh, Pa., a subsidiary of American International Group Inc., has introduced an employment practices liability insurance policy, that, it says, offers a broad definition of employment practices violations.

The policy, EPL Leader, includes coverage for harassment, discrimination, wrongful termination, wrongful failure to employ or promote and failure to grant tenure. It insures current and past employees, directors, officers and leased employees, among others. The EPL Leader also can be extended to respond to harassment and discrimination claims brought against nonemployee third parties.

Limits of up $25 million are available.

More information can be obtained by e-mailing the company at *managementliability@aig.com*.

Great-West, Mellon to offer HSA

GREENWOOD VILLAGE, Colo.—Great-West Healthcare and Mellon Financial Corp. have formed a partnership to offer a health savings account for employer-sponsored health plans.

The Great-West Healthcare/ Mellon HSA allows employers and employees to contribute nontaxable dollars to the fund to pay for qualified medical expenses such as deductibles, long-term insurance premiums and prescription drugs. Unused funds can be rolled over from year to year and are portable. Employees can also invest HSA funds in a selection of mutual funds offered by The Dreyfus Corp., a New York-based Mellon subsidiary.

The HSA plan is administered by Ridgefield Park, N.J.-based Mellon and will be available through Greenwood Village, Colo.-based Great-West in January 2005.

For more information, contact Tom Hricik, national director of HSA distribution, at 412-394-3278 or at *hricik.t@mellon.com*.

IFEBP covers effective benefit communication

BROOKFIELD, Wis.—The International Foundation of Employee Benefit Plans has published a book to help employers better communicate benefit plans to their employees.

The book, "Effective Benefits Communication: Trends-Techniques-Technology," provides information on communicating health, wellness, flex and retirement plans, as well as communication techniques and effective technology. The book also includes case studies on companies that developed successful benefit communication programs.

The author is Ann Black, communications manager for the Virginia Retirement System, which administers benefits for Virginia's current and retired public employees.

To order the book, contact the Brookfield, Wis.-based IFEBP's publications department at 888-334-3327, option 4, or at *books@ifebp.org*.

Chubb enhances specialty insurance

WARREN, N.J.—Chubb Corp. has enhanced its specialty insurance package for small employers with fewer than 250 employees.

The package, ForeFront Portfolio, consists of eight coverage options for private companies that are offered by the Warren, N.J.-based insurer. It includes directors and officers liability, employment practices liability, crime, fiduciary liability, miscellaneous professional liability, Internet liability, kidnap/ransom and extortion coverage and workplace violence expense insurance. The enhancements include a lower minimum employment practices liability deductible and the option to purchase an additional $1 million in defense cost coverage for each liability product purchased, among other things.

For more information, visit the company's Web site at *www.chubb.com*.

Best releases updated version of exposure guide

OLDWICK, N.J.—A.M. Best Co. Inc. has released the fourth edition of its "Best's Underwriting Guide," which is intended to help risk managers and underwriters better understand industrial and commercial risks.

The 2004 edition contains more than 575 risk classifications, which have been revised and updated. The risk classifications describe each risk and identifies the relative degree of exposure for different lines of insurance. The guide also features in-depth information and articles on hazards and safety measurers, OSHA standards and lines of liability to consider, among others.

The product is available online or on CD-ROM.

To obtain this latest edition, contact Oldwick, N.J.-based Best at 908-439-2200, ext. 5742. More information on the CD-ROM version can also be found by visiting *www.ambest.com/sales/bugcdrom* and on the online version by visiting *www.ambest.com/sales/buglosscenter*.

Benfield publishes report on storms' CAT losses

WESTPORT, Conn.—Benfield Group Ltd., a London-based reinsurer, has released a report on the 2004 storm season.

The report, "2004 Catastrophe Losses: Hurricanes Hardly Ever Happen," provides an overview of the latest damage estimates from the storms, featuring data on the 2004 U.S. hurricanes Charley, Frances, Ivan and Jeanne, as well as the 10 typhoons that occurred this

year in Asia. The report discusses the storms' impact on the U.S., Bermuda, London and Europe reinsurance markets and includes third-quarter results from major reinsurers. It also provides data on catastrophe pricing and the demand for catastrophe coverage in 2004 and in the 2005 renewal season.

An online copy of the report is available at

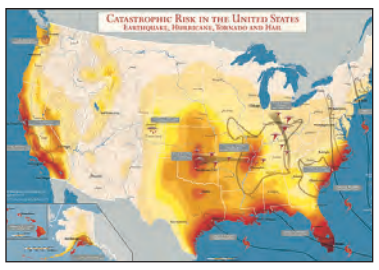
Continued on next page

Continued from previous page
www.benfieldgroup.com/research. To obtain a printed copy, contact the company at *iar@benfieldgroup.com*.

RMS enhances cat modeling systems

NEWARK, Calif.—Risk Management Solutions has introduced the latest versions of its underwriting and catastrophe modeling systems.

The Newark, Calif.-based RMS' upgraded systems, RiskLink and RiskBrowser 4.5, feature new underwriting capabilities, expanded accumulation management functions and the addition of catastrophe peril models. The RiskBrowser application, a Web-based underwriting application, now offers the ability to calculate the value of a building contained in a



location schedule. This can be done by accessing a building valuation calculation tool provided by Los Angeles-based Marshall & Swift/Boeckh, a residential and commercial property valuation technology provider. In May, MS/B partnered with RMS to integrate their property valuation system, BVS Express, with RMS' RiskBrowser. Building valuation estimates can be obtained by using basic location attributes such as a building's number of stories.

RiskLink, a modeling application that analyzes catastrophe risk using detailed or aggregate exposure data, features the expanded accumulation management function with additional U.S. flood zone data. RMS' accumulation management feature captures location data for multiple lines of business. With this expanded element, companies can determine flood zones in specific locations and track exposure accumulations across different lines of business and perils.

Also, both applications now allow users to access several risk assessment models—such as the Belgium River Flood model, which calculates the insured loss on and off river floodplains in Belgium; the U.S. Workers Comp Earthquake model, which details workers compensation exposure information for U.S. earthquake analysis and calculates the number of casualties and corresponding losses—and includes other models as well.

For more information, visit the company's Web site at *www.rms.com*.

MetLife disability reports now industry specific

NEW YORK—MetLife is offering industry-specific reports on disability trends in the workplace for employers.

Available are five industry-specific reports that are a part of The MetLife Series on Championing Productivity. The industries featured are finance, insurance and real estate; manufacturing; retail trade; services; and transportation, communication and utilities. The reports are intended to help employers better understand the impact disabilities can have on productivity and health care costs.

The reports are based on an analysis of New York-based MetLife's disability claims database, which includes over 4 million lives. They provide information on MetLife's most common disability claims as they relate to each industry and include demographics of the most affected employees.

To obtain a copy of these free reports, visit *www.metlifeis easier.com/disabilitypr*.

Alliance HealthCard launches prescription plan

NORCROSS, Ga.—Alliance HealthCard Inc. has introduced a prescription plan that can be used by itself or in conjunction with other health care plans.

The new program, Alliance 10/20 Rx, is available to employers, particularly those with large numbers of part-time employees or other groups that don't qualify for comprehensive group medical benefits. It intends to offer an

inexpensive drug program to those employers that are reluctant to offer a prescription benefit.

The Norcross, Ga.-based Alliance HealthCard's prescription drug program features a four-tiered pricing matrix and covers more than 1,500 prescription medications. The retail pharmacy network includes over 50,000 national and regional chain pharmacies, as well as a mail-order service.

For more information, contact Tom Kiser, president of Alliance HealthCard, at 770-734-9255, ext. 206.

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

Violence: Employer failed to enforce protection order

Continued from page 4

On Dec. 7, 1996, Ms. Gantt's supervisor, Angela Claggett, who was a friend of Mr. Sheppard, assigned her to an unsecured post outside a building despite Ms. Gantt's protest. About 15 minutes later, she transferred a call to Ms. Gantt from Mr. Sheppard. Ms. Gantt hung up on him and again asked to be moved inside the building, but Ms. Claggett refused.

About 45 minutes later, Mr. Sheppard appeared at the building and, with a shotgun aimed at Ms. Gantt, chased and caught her, placed her in a chokehold and dragged her into his van.

A guard who saw what happened suggested Ms. Claggett call the police, but she refused, saying, "He just wants to talk to her." She said she called the police several minutes later.

Mr. Sheppard held Ms. Gantt captive for six hours while he raped, physically and verbally abused her and threatened to kill her, according to the decision. He finally let her go after she promised to reconcile with him. He is now serving a 20-year sentence for kidnapping, rape and violation of the restraining order.

In partially overturning a lower court decision, two judges on the three-judge panel held that Security USA, which is now known as VSI Inc., is liable for the intentional infliction of emotional distress for the period while Ms. Gantt was still at her post after hearing from Mr. Sheppard.

'When employers are put on notice of a potential workplace violence situation, whether it involves co-workers or third parties, they should take all reasonable steps to protect the individual who may be subject to the actual violence, as well as other intermediate employees.'

Bruce Harrison Shawe Rosenthal L.L.P.

The Maryland Workers' Compensation Act says there is an exception to its exclusive remedy provision if there is a deliberate intent to injure the employee. That exception applies here, says the decision. A jury could infer from the evidence that "Claggett, despite awareness of Sheppard's abuse of Gantt and Gantt's well-founded fear of Sheppard, believed it all-important that Gantt and Sheppard 'talk,' and so deliberately determined to inflict on Gantt any emotional distress she might suffer from talking to Sheppard, even talking to him face to face" that day, says the decision.

However, the court ruled the exception does not apply to the subsequent abduction and rape because Ms. Gantt failed to offer evidence that there was a deliberate attempt by her employer to harm her. The case is set for trial in February.

Observers say also the decision illustrates the need for employers to have policies that offer protection for employees who request it. "When employers are put on notice of a potential workplace violence situation, whether it involves co-workers or third parties, they should take all reasonable steps to protect the individual who may be subject to the actual violence, as well as other intermediate employees," said Bruce Harrison, an employer attorney with Shawe Rosenthal L.L.P. in Baltimore, Md.

Supervisory training is important, say observers. "You need to tell your supervisory personnel not to meddle in the personal lives of employees even when they think by doing so they'd be advancing the cause of humanity and the employee will benefit," said Mr. Glover.

He recommended that employers put a brief paragraph in their supervisory handbook that reflects the holding in this case and tells supervisors that, even if their natural instinct is to help someone, "let the professionals deal with it." That way, if the supervisor does act outside the scope of the directions he or she has been given, "you have an argument that you're not responsible."

Mr. Harrison said, "Employers have to be pretty rigorous in demanding compliance on the part of their managers and supervisors, particularly the first level of supervisors, because that's where often the errors are more likely going to be made."

Furthermore, "you have to tell the people that are responsible for implementing your decisions that there are simply no exceptions," said Mr. Harrison. "It's hard to fault the employer here. Its assumption was the supervisor would comply with its directive. This shows you can't rely on this assumption."

"I think the courts are becoming more sensitive, if you will, to the acts of bad supervisors," said Michael W. Fox, an employer attorney with Ogletree Deakins in Austin, Texas. "I think they're beginning to look at different ways to say to employers, 'If you give someone that power over someone, we're going to hold you accountable for the way it gets exercised.'"

Dominique K. Gantt, plaintiff-appellant vs. Security USA Inc., corporate office, defendant-appellee, United States Court of Appeals for the Fourth Circuit, No. 03-1033.

Asbestos: Court says settlement plan is unfair

Continued from page 4

bankruptcy," the court noted. "There is no evidence that either Basic or Lummus need to reorganize under Chapter 11. If they do, as U.S. companies facing asbestos liabilities, both…could conceivably petition for Chapter 11 reorganization and injunctive relief from those liabilities."

Combustion Engineering also devised a "two-trust structure" to resolve asbestos claims. Nearly three months before filing its prepackaged plan, the company transferred $400 million to a trust to make partial payments to those with settled and pending asbestos claims. Claimants with agreed settlements received 95% of the amounts owed, far more than future claimants would likely receive. These claimants then voted in favor of the Chapter 11 plan, which would create a second trust fund for future and other claimants.

A cancer claimants' group objected that the company manipulated claimant groups to win approval of the plan, and the appellate court agreed the plan may unfairly discriminate among similarly situated victims.

Combustion Engineering's $400 million prepetition payment to the first trust may be voidable under several Bankruptcy Code provisions barring preferential treatment of certain creditors, the court ruled.

In setting up the first trust, the company also failed to include representatives of future claimants and the cancer claimants' group, the panel added. "The result was a plan ratified by a majority of (votes) cast by the very claimants who obtained preferential treatment from the debtor," the judges found.

The panel remanded the case to the Delaware district court for hearings on whether the plan violates Bankruptcy Code provisions, including a provision requiring Combustion Engineering to have proposed the plan in good faith.

Separately, Halliburton Corp. announced that a U.S. District Court judge in Pittsburgh has signed an order that will allow it to complete the Chapter 11 reorganization of subsidiaries DII Industries and Kellogg, Brown & Root after a 30-day waiting period. Halliburton earlier this month announced court approval of settlements with more than 150 insurers that will contribute part of the $1.5 billion in cash to be used to fund asbestos claimant trusts.

The Houston-based oil services company also said that the 3rd Circuit ruling on Combustion Engineering's plan will have no effect on the DII and KBR plans, which the company said are structured differently.

W.Va. court overturns monitoring decision

CHARLESTON, W.Va.—West Virginia's Supreme Court has overturned a lower court ruling that would have required several manufacturers to medically monitor possibly thousands of coal workers and their families.

The coal workers allegedly were exposed to acrylamide, a chemical that is a possible human carcinogen, while working in plants in West Virginia and several other states. In litigation against several manufacturers, the plaintiffs argue that the exposure put them "at increased risk of developing genetic abnormalities and diseases."

A West Virginia circuit court last year ruled that the workers and their offspring constituted a class. West Virginia has a medical monitoring law that requires insurers to cover the cost of monitoring individuals who have been exposed to harmful substances but have not developed any illnesses.

But West Virginia's Supreme Court on Dec. 2 overturned the ruling. The state's high court ruled that, contrary to the lower court's finding, other states in which the plaintiffs reside do not have similar medical monitoring statutes. As a result, the plaintiffs could not be certified as a class, the high court ruled.

"We applaud the decision of the West Virginia Supreme Court in *Chemtall Inc. vs. Madden*," said Robert Hurns, counsel and legislative database manager for the Property Casualty Insurers Assn. of America, which was one of several insurance and business groups that filed amicus briefs in the case.

"The high court in effect has determined that trial lawyers cannot impose West Virginia's medical monitoring standards upon other states that have not adopted them," Mr. Hurns said.

—By Dave Lenckus

Between the Lines

Compiled by Joanne Wojcik

'Tis the season to be miserly

Many insurance executives in the United Kingdom are feeling more like Scrooge than Santa this holiday season, according to a survey by the Chartered Management Institute.

Although 62% hold office parties, nearly half say the parties drag on too long and aren't any fun. More than one-third view such fraternization as "disruptive." Those who don't host holiday parties say it's either because of a lack of enthusiasm or because the parties are too much work. And a majority of insurance executives view the suggestion that such celebrations are morale-boosters as humbug, the survey found.

Nearly one-third of insurance executives also feel the holidays are disruptive to their business activities because they often make colleagues and/or clients inaccessible while they take time off to celebrate the season with family and friends.

Insurance executives also seem to share Scrooge's avariciousness. While 40% allow their employees to be "Secret Santas" and buy mystery gifts for co-workers, a mere 12% actually buy gifts themselves for colleagues.

"The idea that Christmas creates pressure and tension in the workplace is worrying, particularly as it has traditionally been seen as a time to reward staff for the hard work they do during the year," said Petra Cook, head of policy at the Chartered Management Institute, in response to the findings.

The naked truth

It looks like San Diego police officer John Roe will have to make a living from his moonlighting gig now that the U.S. Supreme Court has ruled that his employer didn't violate his First Amendment rights by firing him for stripping on tape.

Because Mr. Roe used his job as a police officer as a gimmick to sell videos on eBay showing him stripping , the city had cause to remove him from the force for exhibiting behavior unbecoming an officer, the court found.

"Roe took deliberate steps to link his videos and other wares to his police work, all in a way injurious to his employer," the high court's Dec. 6 opinion states.

"The use of the uniform, the law enforcement reference in the Web site, the listing of the speaker as 'in the field of law enforcement,' and the debased parody of an officer performing indecent acts while in the course of official duties brought the mission of the employer and the professionalism of its officers into serious disrepute," the court concluded.

Beware the bling bandits

Ascot Underwriting is offering up to £100,000 ($194,330) for information leading to the recovery of jewelry stolen late last month from the home of British rocker Ozzy Osbourne.

The Lloyd's of London syndicate, which also insures other celebrities' gems, is encouraging all jewelry owners to carefully guard their baubles while attending holiday events.

In fact, Ascot provided enhanced security to protect a pair of cufflinks worn by Sean "P. Diddy" Combs at his recent 35th birthday bash. That added protection included a bodyguard assigned not only to accompany the rapper-turned-actor throughout the night but also to put the cufflinks on Mr. Combs' shirt and remove them as soon as the party was over.

PHOTO: GETTY

Ozzy and Sharon Osbourne.

While it may not be feasible for everyone to have a personal bodyguard/valet, Ascot strongly advises owners of expensive jewelry to seek advice from their insurance brokers or insurers on how to best safeguard their prized possessions.

"The holiday season presents opportunity for thieves, as it is the busiest time of the year for the jewelry industry, as well as the time of year which sees celebrities and individuals dust down and don the best items for festive parties," said Ascot underwriter Annabel Fell-Clark. "Do not make it a Happy Christmas and a Prosperous New Year for organized gangs or opportunistic thieves."

Tips and feedback from readers are welcomed. Please send information to jwojcik@businessinsurance.com.

Specific tort reforms urged to protect vaccine makers

By MARK A. HOFMANN

WASHINGTON—Enacting specific tort reforms could spur the development and manufacture of vaccines, helping to prevent situations like this year's shortage of flu vaccine in the United States, experts say.

"What we need is a 'normal' market for vaccines," John E. Calfee said during a discussion of the U.S. vaccine marketplace at the Washington-based American Enterprise Institute last week. To create such a market, the government should give vaccine makers "reasonable protection" against "runaway" litigation, said Mr. Calfee, who is a resident scholar at the AEI and a former economist at the Federal Trade Commission.

Another speaker noted that the federal government created the Vaccine Injury Compensation Program about 20 years ago, after an explosion in litigation nearly drove some vaccines recommended for children out of the marketplace. The VICP was designed to provide speedy and appropriate compensation to children injured by routinely recommended vaccines, explained Richard Manning, who is senior director of economic policy analysis in Pfizer Inc.'s division of corporate affairs in New York. Mr. Manning noted, though, that plaintiffs have found ways to circumvent that system in favor of litigation. "There is plenty of evidence that the program isn't perfect," he said.

In addition, the litigation environment in the past few years has grown increasingly hostile toward the pharmaceutical industry, said Mr. Calfee.

In a health policy paper distributed at the discussion, Mr. Calfee and Dr. Scott Gottlieb, a resident fellow at the AEI, advocated that a federal liability pre-emption should apply to all vaccines approved by the U.S. Food and Drug Administration.

"Liability protection needs to be extended to any vaccine that targets an infectious disease capable of being transmitted person to person," they wrote. "The creation of these products is a public good that ends up producing benefits for all Americans, whether they receive the products or merely benefit from the protection of living in an environment where other people have received them. As a public good, (a vaccine maker) deserves protection from frivolous torts and state juries that are proficient in the complex science at stake," they wrote.

In an interview after the discussion, Mr. Calfee said "anything that would reduce the junk science" that he believes influences some vaccine liability cases would be welcome in promoting a better market for vaccines. In addition to supporting the federal pre-emption of state liability laws for vaccines that receive FDA approval, Mr. Calfee also advocates certain types of damage awards.

"I'm a big fan of caps on both punitive and pain and suffering" awards, he said. To be effective, both types of awards would have to be capped to prevent juries from simply shifting money from the capped category to the uncapped category, he said.

Dr. Gottlieb and Christopher Snyder, currently a John M. Olin fellow at the University of Chicago, also participated in the discussion. Alexander Tabarrok, an associate professor of economics at George Mason University in Fairfax, Va., moderated the panel.

Business Resources

Piercing: Ban not violation of civil rights

Continued from page 6

deciding whether to appeal the ruling.

Plaintiffs attorney Paul Mollica, who was not involved in the case, observed that plaintiffs attorneys generally characterize employer victories as being fact-specific and not widely influential.

But, Mr. Mollica, a partner with Meites, Mulder, Burger & Mollica in Chicago, noted that the 1st Circuit's ruling underscores the principle that an employer must offer an employee a reasonable accommodation before taking an adverse action against the employee.

The employer in the case, Costco Wholesale Corp., would not comment. Lynn A. Kappelman, a partner with Seyfarth Shaw L.L.P. in Boston, represented Issaquah, Wash.-based Costco.

Employer attorney Ann Reesman said the ruling could apply to employees who sport forms of body adornment other than facial jewelry for religious reasons.

Ms. Reesman is the general counsel for the Washington-based Equal Employment Advisory Council, which represents more than 330 large, private-sector employers. The EEAC filed an amicus brief in the case.

But, Ms. Reesman said, EEAC members are not interested in prohibiting workers from donning all expressions of religious faith, such as veils. Veils and other loose clothing would be prohibited only for security or safety reasons, said Ms. Reesman, who also is a partner with McGuiness Norris & Williams L.L.P. in Washington.

The 1st Circuit case involved a Costco store in West Springfield, Mass. The store hired Kimberly Cloutier as a cashier in July 1997. At the time, Ms. Cloutier had 11 ear piercings and four upper-arm tattoos.

In March 2001, in a stated effort to project a professional image to its customers and the public, Costco implemented a storewide policy that prohibits employees from wearing visible facial and tongue jewelry.

Ms. Cloutier, who by then had begun wearing eyebrow jewelry, did not raise any objections to the policy. But she also did not stop wearing her facial jewelry. Ms. Cloutier first informed Costco management that her facial piercings were a religious practice after the store began enforcing its new dress code in June 2001.

Ms. Cloutier said she belongs to the Church of Body Modification. Members of the Web-based church engage in "ancient body modification rites," such as piercing, tattooing and branding, according to the church's Web site.

Over the following few weeks, Ms. Cloutier offered to cover her facial jewelry with a flesh-colored bandage, but Costco management insisted that she remove her jewelry. Ms. Cloutier refused and decided not to return to work while she awaited the outcome of a complaint she had filed against Costco with the Equal Employment Opportunity Commission.

Costco fired Ms. Cloutier in July 2001. But a month later, Costco accepted the accommodation Ms. Cloutier had proposed and said she could return to work. The store also offered her an alternative that another employee had accepted: replacing her facial jewelry with clear plastic spacers.

But Ms. Cloutier rejected Costco's offer, insisting the store exempt her from its policy. Costco refused, and Mr. Cloutier did not return to her job.

The EEOC ruled in May 2002 that Costco had violated Title VII, and Ms. Cloutier then sued the store in federal district court.

Earlier this year, the court ruled that the store had offered Ms. Cloutier a reasonable accommodation that she should have accepted, even though it was not her preferred accommodation.

On appeal, the 1st Circuit panel noted but declined to formally grapple with its questions about the sincerity of Ms. Cloutier's religion argument.

And while affirming the district court's decision, the panel rejected the lower court's reasoning. Other federal appeals courts have ruled that offering a reasonable accommodation after taking "an adverse employee action" does not shield an employer from liability, the 1st Circuit panel noted.

The panel decided to avoid that issue. Instead, it ruled in favor of Costco because the only accommodation that Ms. Cloutier would have accepted—a blanket exemption from the store's dress code—would have imposed an undue hardship on Costco.

"In such a situation, an employer has no obligation to offer an accommodation before taking an adverse employment action," the panel ruled.

Medco: Kickbacks alleged

Continued from page 6

that is no longer in effect," the spokeswoman said. "We are prepared to present that argument on this as the legal process moves forward, but no kickbacks were either offered or paid."

The $200 million was paid over five years for certain data, including medical, pharmacy and diagnostic data, that is used to identify patients whose safety may be put at risk as a result of prescribing errors, the spokeswoman said.

She added that, in Medco's response to the attorney general's Nov. 24 motion seeking to extend the discovery period, "we refer to this kickback allegation as cavalier. Medco asserts that it did already produce documents that confirm that the alleged $200 million that was paid for certain data over five years of the contract was not an improper kickback."

The spokeswoman also pointed to a footnote in the filing that says the alleged kickback was part of a competitive bidding negotiation during which "that unnamed health plan requested a data purchase bid from three PBMs that were participating."

U.K. approves pension promotions

By SARAH VEYSEY

LONDON—U.K. employer groups are welcoming a change in pension law that will allow companies to promote certain kinds of pension offerings to their employees.

Starting next spring, employers will be permitted to encourage employees to participate in group personal pension plans and stakeholder plans, provided the employers themselves make contributions to those plans. The change, which stems from an amendment to the Financial Services and Markets Act 2000, will likely help to boost participation in the pension plans, employers say.

But pension experts note that further clarification is needed on what kinds of promotional statements employers can make, due to concerns about potential liability stemming from accusations of misselling.

Under group personal pension arrangements, an employer negotiates with a plan provider for employees to have individual pension contracts with that provider. Stakeholder pensions are low-cost plans—administration charges must total less than 1% of the value of the pension fund—that are mandatory for all employers with at least five employees that do not offer a better retirement alternative.

Previously, employers that operated such plans were subject to the Financial Promotion order of the Financial Services and Market Act. That provision stipulated that only individuals authorized by the Financial Services Authority, the U.K. financial services regulator, could offer guidance about financial and investment products.

As a result, an employer would have to have a third-party, such as a representative of an insurance company, explain the benefits of such a pension plan to its staff, explained Nick Thropp, a communications consultant at Mercer Human Resource Consulting in London.

The U.K. Treasury announced earlier this month, though, that it would amend the order to enable employers to encourage participation among staff.

"Employers running (pension plans) often feel unable to actively encourage workers to join up. Now, employers who make a contribution to stakeholder or group personal pensions will be free to promote these (plans) to their staff," the government's Department for Work and Pensions said in a statement.

The amendment to the rules is a boon to employers that want to boost participation in their pension plans, employer groups say.

Anthony Thompson, the head of pensions policy at the London-based Confederation of British Industry, said the employers' organization was "massively supportive of the change."

He said it would be "a small but essential step to increase take-up of employer-sponsored pensions."

See PENSIONS/next page

PHOTO: COURTESY OF ALASKA DEPARTMENT OF FISH AND GAME

A bulk carrier ran aground on an island off the coast of Alaska, broke in two and began spilling fuel oil.

Swedish club covers destroyed ship's liability

By PETA MILLER

UNALASKA ISLAND, Alaska —A ship that is leaking 440,000 gallons of fuel oil into the ocean off the Aleutian Islands has liability coverage through the Swedish Shipowners Assn.

The bulk carrier Selendang Ayu, which is owned by IMC Transworld, a subsidiary of Singapore-based IMC Group, lost engine power Tuesday. It later ran aground off Unalaska Island, Alaska—which is 800 miles southwest of Anchorage—split in two and began leaking fuel.

Six of the 26 crew members were still missing Friday.

The 40,000 gross ton vessel, which was bound for China with a cargo of soybeans, was entered with the Göteborg, Sweden-based Swedish P&I club.

The ship is valued at $34 million, and its hull and machinery coverage is led in Malaysia. London and Norwegian insurers have a significant share of the risk, sources say.

The vessel also has "increased value" insurance, which covers costs associated with replacing a ship in the event of a total loss. This is worth $8.9 million, according to marine insurance experts.

Radical reshaping of Lloyd's predicted

Corporate growth will spur change

By PETA MILLER

LONDON—The "corporatization" of Lloyd's of London will eventually lead to a radical reshaping of the market, according to a market executive.

And the changes to brokers' income stemming from the investigations led by New York Attorney General Eliot Spitzer could spur that process, said David Gittings, a director at London-based Wellington Underwriting Agencies Ltd., who spoke at a recent seminar sponsored by the Insurance Institute of London.

The so-called "corporatization" under way in the Lloyd's market refers to a sea change in the way capital is provided, with corporate capital—provided by both managing agents and other corporate entites—making up an ever-greater amount of the market's overall underwriting capital, which traditionally was provided by individual names.

Stressing that the views he expressed were personal and not those of his company, Mr. Gittings likened the Lloyd's market to the London Stock Exchange before the 1986 "big bang," which brought fundamental changes to the way equities are traded in London through deregulation and the enactment of various reforms and modernization efforts.

A shift brought about by the changes was that corporations took an increasingly powerful role at the LSE and smaller, individual traders were marginalized, said Mr. Gittings, who worked at the exchange at the time.

"Trading firms got bigger and bigger, old trading names disappeared, and the banks took over," he said.

"Lloyd's is heading in the same direction but is taking longer to get there," Mr. Gittings said.

"The achievement of the ambitions of many managing agents to buy out the remaining third-party capital is regarded by some as the end game, but, in my view, it is the beginning of a new game," said Mr. Gittings, a former director of regulation at Lloyd's and, more recently, a former director of the insurance firms division at the U.K. Financial Services Authority, which regulates insurance.

Mr. Gittings

"We have to assume that the trading entities in our market are going to get bigger in size, and I suspect it is true that there is likely to be further consolidation," Mr. Gittings said.

But as the Lloyd's entities grow, they may seek further structural changes at Lloyd's, Mr. Gittings said.

"Would one major integrated Lloyd's vehicle want to continue to be at risk, however remote, through the Central Fund for the failure of another?" he asked.

"And as the participants in the market grow ever larger and increasingly global in terms of ownership, for how long would the licenses and ratings to which membership of the market gives access continue to be a strong attraction?" he continued.

"What would Lloyd's itself become in such a scenario?" he added.

"Syndicate business planning, insurance pricing and the control of the cycle are all vital, but we must not lose sight of the potentially far-reaching consequences for the market structure from the continuing move toward a wholly corporate

See GITTINGS/next page

World Updates

New JLT unit to place U.S. wholesale business

Jardine Lloyd Thompson Group P.L.C. has launched a unit to place North American wholesale business at Lloyd's of London. John Lloyd, formerly chairman of JLT's Risk Solutions operation, will head a team of 80 people at the London-based operation, Lloyd & Partners Ltd., as its chairman and CEO. After final accreditation by the Financial Services Authority, Lloyd & Partners will be authorized to place property, casualty, energy, cargo, medical malpractice and errors and omissions coverage from Jan. 1. JLT expects that the unit will initially manage annual revenues of £20 million ($38.8 million).

Quanta sets up Lloyd's syndicate

Bermuda-based Quanta Capital Holdings Ltd. has established a specialty lines syndicate at Lloyd's of London to write various coverages, including crime and fidelity, professional liability, and specie and fine art insurance. Quanta declined to comment on the syndicate's capacity for 2005, but a market source said he expected capacity to total £80 million ($155.2 million). Chaucer Syndicates Ltd. will manage the new syndicate.

European reinsurers report storm losses

Above-average hurricane and typhoon activity during the third quarter of 2004 resulted in losses of nearly $2 billion for Europe's largest reinsurance companies, according to a report. But despite these storm-related losses, of the four largest European reinsurers that disclose quarterly results, only Converium Holding Ltd. reported a loss for the first nine months of 2004, the report by London-based reinsurance broker Benfield Group Ltd. noted. The report studied the six largest reinsurance groups listed on European stock exchanges: Alea Group Holdings (Bermuda) Ltd., Converium, Hannover Re Group, Munich Reinsurance Co., SCOR S.A. and Swiss Reinsurance Co.

Briefly noted

Lloyd's of London Chairman **Peter Levene** has accepted an offer to serve a second three-year term, the most allowed under Lloyd's rules. Lord Levene, the 61st chairman of Lloyd's and the first to come from outside the market, succeeded Sax Riley in 2002....Bermuda-based **Catlin Group Ltd.** has upped its loss estimate for hurricanes Charley, Frances, Ivan and Jeanne by $25 million, due to delayed reporting of energy claims. Catlin said in a statement that the storms now are expected to have a $75 million net impact on 2004 pretax income.

Pensions: Promotion approved

Continued from previous page

Sir Peter Davis, chairman of the London-based Employer Task Force on Pensions, also welcomed the proposed rule change.

"The current rules are cited by many employers and providers as a barrier to greater pension provision and increased take-up," he said in a statement.

"A number of employers say they would like to be able to promote their pension (plan) without fear of" violating rules about pension-related statements, noted Paul McGlone, a principal and actuary at Aon Consulting in London.

But there must be greater clarity on what information employers will now be able to give to their employees about pensions, in light of potential liability and other concerns, experts say.

"It is important the new rules are implemented quickly and are straightforward for employers to interpret," Sir Peter said in his statement.

The CBI's Mr. Thompson said that employers would now look to the government for guidance about how to interpret the rules, which are slated for introduction next spring.

One question that employers will want to resolve is whether promotion of the pension plan must be limited to designated individuals within the company, noted Stephen Yeo, a partner at Watson Wyatt Worldwide in London.

Employers must also be mindful of the costs associated with promoting participation in their pension plans, noted Aon's Mr. McGlone. Communication about the plans will increase costs for employers that previously did not promote their pension benefits, he explained.

Gittings: Market shift

Continued from previous page

structure at Lloyd's," he said.

Responding to a question from the floor, Mr. Gittings said that changes at Lloyd's could be spurred by the recent investigations into broker commissions. He noted that the big bang at the LSE was the culmination of a process among stockbrokers that started when the U.K. Office of Fair Trading investigated their commission structures.

"If (insurance) brokers came to the conclusion that increased transparency on commissions would cause them to withdraw from providing certain services, managing agents will look for someone else to provide that (service) or will provide that themselves," he said.

Responding to Mr. Gitting's comments, a spokeswoman for Lloyd's said, "Lloyd's has a very diverse capital base and welcomes all forms of quality capital into the market."

"Mutuality is highly valued by all of the members of the market, as demonstrated most recently by the debt issue which bolstered the Central Fund," the spokeswoman said (*BI,* Oct. 18). "In the coming years, Lloyd's will continue to develop an attractive offer for the shared benefit of its members."

NAIC: Scope of disclosure rule application debated

Continued from page 3

include an agent—must have "the customer's documented acknowledgment" before it can accept any compensation from an insurer or any other third party related to the transaction.

Some representatives of agents and other industry groups consider the "acknowledgement" wording an improvement over the previous draft, which required that a customer provide "written consent." Allowing for use of electronic mail or taped telephone conversations provides greater efficiency and flexibility, some supporters said.

The latest draft also requires that producers disclose the amount of any compensation, or at least a reasonable estimate.

If a producer provides an estimate, the Risk & Insurance Management Society Inc. would like the NAIC to require that he or she disclose the actual amount for the prior year, according to a letter from Janice Ochenkowski, vp-external affairs. She is also a senior vp with Chicago-based Jones Lang LaSalle Inc.

In addition, several insurance industry trade groups recommend adding a provision that "vests exclusive enforcement authority with the state regulator so that the revised proposal does not become a litigation trap" that could include charges from other enforcement agencies. The Dec. 9 letter reflected the views of the American Insurance Assn., American Bankers Insurance Assn., Council of Insurance Agents & Brokers, the Independent Insurance Agents & Brokers of America, Liberty Mutual Group and the National Assn. of Professional Insurance Agents.

The most controversial issue that remains is whether the commission

Some representatives of agents and other industry groups consider the 'acknowledgement' wording an improvement over the previous draft, which required that a customer provide 'written consent.'

disclosure provisions should apply to agents as well as brokers.

While there is "a broad public perception of corrupt compensation arrangements," regulators need to differentiate between agents and brokers, said John Morrison, the Montana insurance commissioner.

He recommended narrowing the scope of the amendments so that they applied only to brokers. Also supporting that position were the National Conference of Insurance Legislators, nearly all industry representatives and several other regulators.

Agents should be excluded because including them would cause an unnecessary upheaval in the industry's compensation system and may increase friction costs, which consumers would ultimately pay, some say.

Disagreeing were some regulators, including those from California and New York, who joined consumer representatives in urging that disclosure requirements also apply to agents. That should help ensure that agents and brokers are putting their clients' needs first, supporters said.

In other action at the meeting, commissioners:

- Approved new rules mandating that a regulator notify other affected states when the regulator changes an accounting rule—known as a "permitted practice"—for an insurer based in his or her home state. The amendment to the preamble of the NAIC's Statutory Accounting Principles goes into effect Jan. 1, 2005.
- Resolved some—but not all—issues related to a proposed white paper on large deductible insurance policies, including some aspects of deductible reimbursement policies.

D&O: New capacity eases prices, terms

Continued from page 3

to the survey.

Only 28% of U.S. participants reported increases in deductibles and retentions, down from 44% in the 2003 study. Coverage enhancements were reported by 13% of respondents, and 10% said their policies carried fewer exclusions.

Companies with assets of $400 million to $1 billion and those with $1 billion to $2 billion were the only ones to report decreases in average policy limits. Such companies reduced their D&O limits by 8% and 13%, respectively.

Policyholders are not likely to enjoy the falling D&O prices for much longer, though, Ms. Sirovatka said.

The D&O market should stabilize in 2005, and rates are expected to begin rising the following year, she said. If claim severity continues on its upward pace, price hikes are inevitable, Ms. Sirovatka said.

Respondents who participated in both the 2003 and 2004 surveys reported that claim frequency increased 11% this year.

And the average claim payment for those companies increased in four out of five studied classes, rising as high as 138% for the class made up of employees, unions and physicians who practice as employees. Payments for shareholder/investor claims were up 12%.

The current investment climate also could hasten increases, according to Jim Swanke, Minneapolis-based managing principal for Tillinghast's strategic risk financing practice.

"This soft market for D&O insurance will be shorter and less pronounced due to lower investment returns than in the 1980s, when cash flow underwriting was prevalent," Mr. Swanke said in a statement discussing the survey results.

"Carriers will likely need to begin increasing rates in the short to medium term in order to maintain their return on equity."

Ms. Sirovatka agreed that if "this was like the '80s, when we had high investment returns, you could get away with low premiums. But we've got pretty low investment rates right now."

One matter of concern is that insurers will find themselves short if premiums are not sufficient to cover losses, triggering reserve increases and big rate hikes down the road, she noted. "This is a particularly tough line to price because of the high severity and low frequency. There are not a lot of claims to look at," Ms. Sirovatka said.

Insurers that have lowered prices despite increases in claims frequency and severity in the D&O market appear to believe they are properly handling the business, even though they seem undisciplined, Ms. Sirovatka said.

"If you talk to the new entrants, they believe that they have got it right," she noted. "They think they are doing the right thing based on the information they have available to them. But maybe they don't have the actuarial information that some of the players that have been in the market longer have available to them."

Insurers have sought increases in some areas, according to the survey.

Premiums were up for banking, durable goods, health services and real estate and construction classes.

In Canada, most respondents—90%—reported premium hikes on D&O coverages.

Copies of the survey are available to nonparticipants for $700 and to participants for $350. The survey can be ordered from Tillinghast, D&O Services; Attn: Mary Maze; 200 W. Madison; Suite 3100; Chicago, IL 60606. Ms. Maze can be reached at 312-609-9347 or at mary.maze@towersperrin .com.

Sarbanes-Oxley extension for fraud claims ruled not retroactive

By DAVE LENCKUS

NEW YORK—Securities fraud plaintiffs whose claims expired before the July 2002 enactment of the Sarbanes-Oxley Act are not entitled to revive their claims, a 2nd U.S. Circuit Court of Appeals panel has ruled.

The Sarbanes-Oxley Public Company Accounting Reform & Investor Protection Act of 2002 extended the statute of limitations for filing private securities fraud lawsuits to the longer of two years from the date of occurrence or five years from the date of discovery. The previous statute of limitations was the longer of one year from the date of occurrence or three years from discovery.

Plaintiffs whose claims were time barred before the Sarbanes-Oxley Act went into effect on July 30, 2002, argued that the act retroactively applied to their claims. Therefore, they said, they should be allowed to pursue the claims.

But in unanimously affirming a lower court's ruling, a three-judge 2nd Circuit panel last week rejected the plaintiffs' arguments for several reasons:

- The law contains no language that clearly shows Congress intended to apply the law retroactively.
- Absent such language, applying the law retroactively would be permissible only if doing so would not increase defendants' liability. But resurrecting time-barred claims "puts defendants back at risk at a point when defendants reasonably believe they are immune from litigation, stripping them of a complete affirmative defense they previously possessed and may have reasonably relied upon."
- The legislative history does not indicate Congress intended to apply the law retroactively.

S&P predicts stable outlook for 2005 reinsurance market

By RUPAL PAREKH

The U.S. reinsurance market is finally stabilizing, thanks to four straight years of improved pricing and terms and conditions, a report by New York-based Standard & Poor's Corp. says.

Barring any severe catastrophic events, reinsurers are expected to report healthier operating performance in 2005, according to the report, "U.S. Reinsurance Year-End 2004 Outlook: Ratings Stability in 2005, An Atoll in Stormy Seas."

"Even with the four major U.S. storms, the industry's numbers were far better than they were only three years ago," says the report. Despite recent declines in property/casualty rates, S&P projects that profitability across most business lines will be reasonable over the coming year, while the pace and volume of reserve additions are expected to ease substantially.

Improved market conditions in the sector have resulted in the ratings agency, for the first time in several years, strengthening its outlook for U.S. reinsurance from negative to stable.

S&P did, though, cite its concern over the insurance industry's ability to prolong this positive trend into 2006 and beyond.

"In the future, it will be a question mark as to whether this stability can be sustained," said Laline Carvalho, an S&P credit analyst in New York.

According to the report, "U.S. reinsurers are still looked upon as a drag on the global market, with many of the companies' non-U.S. parents providing financial support to help keep their American subsidiaries solvent."

In addition, the current investigations into insurance industry practices led by New York Attorney General Eliot Spitzer "have added an additional cloud of uncertainty on the industry's prospective performance," the report says.

While S&P maintains that it is too "early to tell what effect these investigations will have on reinsurers," it says it "believes the current heightened scrutiny of finite/financial reinsurance product is likely to reduce the marketability of these products," which many reinsurance industry players have long sold and purchased.

Subscribers of RatingsDirect, S&P's Web-based credit research and analysis system, can obtain a copy of the report at *www.ratingsdirect.com*. Nonsubscribers can purchase a copy for $400 by calling S&P at 212-438-9823, or by sending an e-mail to *research_request@standardandpoors.com*.

Whirlpool: Withdraws captive funding plan

Continued from page 1

course. "Based on the complexities of the proposal and the duration and related costs associated with the process, Whirlpool has decided to withdraw the application," the Benton Harbor, Mich.-based major appliance manufacturer said.

Whirlpool's plan involved a Whirlpool-established and -funded voluntary employee beneficiary association, the Vermont branch of Whirlpool's Bermuda-based captive, a fronting insurer and a group universal life insurance policy.

Under the proposal, Whirlpool would have contributed at least $100 million to a VEBA to fund part of the health care obligations of retired union employees.

The VEBA then would have purchased a group universal life policy from Newark, N.J.-based Prudential Life Insurance Co. of America to insure retiree health care participants. The group life policy would have been reinsured by the Vermont branch of Bermuda-domiciled Whirlpool Insurance Co. Ltd., which Whirlpool established in 2002 and currently uses for workers compensation and property risks.

Under the proposal, if a retiree health care participant were to have died, the life insurance proceeds from the Prudential-written policy would have gone to the VEBA. Retirees' medical claims would have been paid by Whirlpool, and Whirlpool then would have sought reimbursement from the VEBA.

Whirlpool acknowledged that the arrangement would have provided it some tax advantages, as well as boosting the funding security of retiree health care benefits.

Among other things, Whirlpool would have received an immediate tax deduction for contributions made to the VEBA, while the VEBA would not have been taxed on the death benefit proceeds generated from the life insurance policy it held and Whirlpool would not have been taxed on reimbursement from the VEBA for the retiree medical claims it paid.

Additional tax considerations may have been another driver behind the proposal, others earlier speculated. By funding life insurance risks through the captive, Whirlpool would have, following a 12-year-old Internal Revenue Service ruling, boosted the captive's third-party business, increasing the likelihood that the company could take a tax deduction on property/casualty premiums paid to the captive, some speculated.

Whatever the range of corporate motivations, Whirlpool received a setback in September when the Labor Department rejected the company's request for fast-track consideration of the application. Under fast track, the department must provide an initial decision within 45 days of receipt of an application.

To qualify for fast-track consideration, an applicant has to show that its application is substantially similar to two other so-called prohibited transaction exemptions the Labor Department has approved in the past five years. Whirlpool cited three exemptions—those earlier provided to Archer Daniels Midland Co., Columbia Energy Group and International Paper Co.

The department, though, disagreed with Whirlpool that its application was substantially similar to the others. In the other transactions, the employers proposed using their captives to reinsure benefit policies written by commercial insurers. By contrast, in the Whirlpool proposal, the captive and the fronting life insurer would have played a role in the generation of revenue that ultimately would have funded retiree health care liabilities.

With Whirlpool pulling the plug on its proposal, there is no way to know with certainty if the Labor Department ultimately would have approved its Whirlpool application.

However, Karin Landry, a managing partner with Spring Consulting Group in Boston, which filed the application on behalf of Whirlpool, said Labor Department officials, based on her conversations with them, were comfortable with the transaction. Indeed, Ms. Landry said she expects to file similar proposals on behalf of other employers, noting that the Whirlpool proposal has helped to create "market interest" in the arrangement.

Others, though, say employers interested in funding benefits through their captives are more likely to structure their proposals along the lines of proposals already approved by the department.

"In this day and age, there is a reluctance to be a pioneer in new financial mechanisms," said Henry Saveth, an attorney with Mercer Human Resource Consulting in New York.

"This proposal definitely took a different and unusual approach," said Nancy Gerrie, a partner with McDermott, Will & Emery in Chicago.

The filing and subsequent withdrawal of Whirlpool's application comes amid growing corporate interest in funding benefit programs through their captives. This year, the Labor Department approved captive benefit proposals filed by two employers—Svenska Cellulosa Aktiebolaget, a Swedish paper, packaging and consumer products producer; and Alcon Laboratories Inc., a Fort Worth, Texas subsidiary of Swiss pharmaceutical eye care company Alcon Inc.—while it has given tentative approval to an application filed by Pittsburgh-based aluminum producer Alcoa Inc. to reinsure group term life insurance policies written by Metropolitan Life Insurance Co through its Vermont-domiciled captive.

And that interest is likely to continue. The captive benefits funding concept "is a very sound one," said Mitch Cole, a principal with Towers Perrin in New York.

"While it is not right for every company, where it works, it works very well," he said. "Employers and

Aon: No bid rigging found

Continued from page 1

evidence of fictitious quotes, bid rigging or illegal tying. It said the Dec. 6 statement was necessary because press reports "incorrectly left an impression that (Mr. Ryan) and Aon Corp. had no concerns about any of its employees' actions or about Attorney General Spitzer's investigation.

"From the beginning of the investigation, Aon has taken the investigation very seriously and has said that Attorney General Spitzer has raised legitimate issues about the insurance industry, including Aon," said the latest statement.

Mr. Spitzer on Oct. 14 filed a lawsuit against MMC, charging the New York-based brokerage with seeking to increase its contingent commission income through bid rigging and client steering. While Aon, like several other brokerages, has been subpoenaed as part of Mr. Spitzer's broader investigation into insurance industry compensation practices, it has not been charged with any illegal activities.

An Aon spokesman said Aon's internal investigation, which is continuing, is being conducted both by in-house personnel and outside counsel. "We obviously want the internal review to be handled thoroughly and expeditiously. That's the plan," he said. He did not elaborate on how many employees are being targeted, or on how long the investigation is expected to last.

In Aon's Dec. 6 statement, Mr. Ryan responded to reports that he was "very comfortable" with Aon employees' behavior, and that the company's past acceptance of contingent commissions did not cause brokers to place business with particular insurance companies.

"I made positive comments about the conduct of Aon employees because I do believe the vast majority of our employees adhere to the longstanding principles embodied in our code of conduct and Aon values. However, we have found indications that some employees have not always followed these principles," Mr. Ryan said in the statement.

Aon's 16-page code of business conduct includes a section on working with Aon clients and others outside the company. Its topics include fair dealing, treatment of clients, marketing practices, confidentiality of client and business partner information, improper payments and gifts and entertainment.

Under marketing practices, it tells employees to "compete fairly and honestly for business.… Never agree to fix prices, divide markets or engage in any other anti-competitive practices."

Mr. Spitzer's office had no comment on Mr. Ryan's statement.

Some observers characterize Mr. Ryan's statement on employees not following its code of ethics as legal posturing, rather than substantive, and say it is too early to evaluate the company's outlook in light of Mr. Spitzer's investigation.

"I think it's too early to tell" what Mr. Ryan's comments indicate, said Peter Patrino, senior director at Fitch Ratings in Chicago. "Based on what I've seen, it's not surprising that in an organization of that size there are a few bad apples." But, he added, "based on what's been disclosed at this time, it's hard to say what the magnitude of the outcome will be.

'I do believe the vast majority of our employees adhere to the longstanding principles embodied in our code of conduct and Aon values.'

Patrick G. Ryan
Aon Corp.

"Our big-picture view is, it's still kind of early days on this whole subject," including its ultimate impact on Aon's business franchise and operating profile, Mr. Patrino said. "We would probably expect to know more over the next couple of months."

Mr. Ryan's statements are "more legal posturing than a fundamental announcement" that there are some things wrong at Aon, said Adam Klauber, managing director at investment bank Cochran, Caronia & Co. in Chicago. "I don't think that announcement signifies in itself that there are major things wrong" at Aon.

Steve Ader, associate director at Standard & Poor's Corp. in New York, said in view of the Spitzer investigation, "it's safe to say" that many companies are now going through their operations "with a fine-toothed comb. It makes logical sense that, internally, they would be checking their controls." Mr. Ryan's statement "shows evidence that Aon, like other players in the industry, are doing that."

"I don't think the series of press releases and interviews is going to be that big of an issue in the long term," said John Ward, chairman of the Cincinnati-based Ward Group. "The question is, what will be the long term impact of this whole bid rigging, contingent commission issue on Aon, and how will they deal with it, and so forth. This will be just a bump in the long road towards resolving this issue."

But, "it is significant that Mr. Ryan is acknowledging that some of his employees have not always followed their principles and their code of conduct," added Mr. Ward. In light of the Spitzer investigation, "this is a sign that this issue with regard to Aon is not a done deal at this point," he said.

WTC: Battle over insurance payments far from over

Continued from page 1

Disputes seem likely. While Silverstein argues that its damages "equal or exceed" two full $3.55 billion program limits, Swiss Re and at least one other insurer—Allianz A.G. of Germany—maintain that actual losses amount to less than a single limit, representatives of the two sides confirm.

Some high-excess insurers liable for a two-occurrence payout may also argue that the damages from each occurrence are not great enough to pierce their layers and that they will, therefore, owe little or nothing, insurance company lawyers say.

Meanwhile, Silverstein has already filed a summary judgment motion against Swiss Re for failing to tender the single occurrence limit that many other WTC insurers have already paid. Swiss Re has argued that the coverage terms do not require it to make an immediate "actual cash value" payment unless Silverstein abandons plans to rebuild on the site.

Defining 'occurrence'

The WTC coverage dispute arose because no final policy had been issued at the time of the Sept. 11 attack, despite Silverstein broker Willis Group Holdings Ltd. having placed the coverage nearly two months before, in time for the July 2001 closing of Silverstein's 99-year lease on the complex.

In the first phase of the litigation, a jury found last spring that 10 of the program's 24 insurers bound coverage on a Willis form, known as Wilprop, that defines the terrorist attack as a single occurrence. Combined with five other insurers that had previously settled or won single-occurrence court rulings, insurers representing $2.42 billion of Silverstein's coverage were thus found responsible for only one limit.

In the second phase of the case, a separate jury considered whether the Sept. 11 attack represented one occurrence or two for nine other insurers that bound coverage on a variety of other policy forms. These forms had varying definitions of occurrence or, in the case of Travelers Indemnity Co., no occurrence definition at all.

Silverstein's lawyers argued during the four-week trial that each aircraft striking each of the WTC's towers constituted a separate "direct physical loss" and, therefore, a separate occurrence under the program, which carried a $1 million per occurrence deductible.

Insurers contended that the attack was one event that resulted from a single, coordinated Al Qaeda plot. They also argued that they intended their policy terms to be the functional equivalent of the Wilprop language, and that it made no sense for insurers representing two-thirds of the program limit to pay a single loss while those representing the other third pay double.

After 11 days of deliberations, the jury sided with Silverstein, finding that the nine insurers must treat the WTC's destruction was two events.

Insurers with the largest exposure as a result of the verdict are Allianz, which wrote $354.7 million in limits as a fronting insurer for SCOR S.A. of Paris and $77.9 million on a direct basis; the Industrial Risk Insurers unit of GE Insurance Solutions, which wrote $237.2 million; and Travelers, a unit of St. Paul Travelers Cos. Inc., which wrote $210.6 million.

Citing previous cases

Larry A. Silverstein, the leaseholder's principal, said in a statement that he was "thrilled" with the verdict, and policyholder lawyers unconnected to the case praised the jury's decision.

'The general rule is when there is an ambiguity or when reasonable minds can differ, the ambiguity is resolved in favor of the policyholder.'

Gary Thompson
Gilbert, Heintz & Randolph

"The general rule is when there is an ambiguity or when reasonable minds can differ, the ambiguity is resolved in favor of the policyholder," said Gary Thompson, a partner with Gilbert, Heintz & Randolph in Washington. The attack involved two separately hijacked aircraft, and "the fact that they may have been joined in the mind of Osama Bin Laden…does not make them one occurrence for insurance purposes."

Silverstein's lawyers badly damaged the insurers' position by citing two previous cases in which Travelers and IRI had treated series of similar losses as separate occurrences under the same policy forms they used for the WTC, several lawyers familiar with the case agree.

In one case, an arsonist set fire to four California courthouses, three of them on the same day, and Travelers responded to the losses as separate occurrences. In the other, IRI treated a series of rainstorms that damaged a Harrah's Entertainment Inc. casino in Shreveport, La., as separate events.

Officials of both insurers appeared as witnesses in the WTC trial but weren't able to distinguish the two prior cases from the WTC loss, lawyers say.

Some insurers criticized the verdict and indicated they will appeal.

SCOR, though not a party in the case, said it "considers the jury's verdict to be contrary to the terms of the insurance coverage in force and to the intent of the parties. SCOR will fully support Allianz's efforts to overturn the verdict."

An Allianz spokeswoman said the insurer will pursue its legal remedies, including a possible appeal.

"The jury disagreed with our view (on the occurrence question), and we believe the evidence was to the contrary," IRI noted in a statement. "We will examine our options."

Other insurers said they have not yet decided whether to appeal.

Jury verdicts in the first phase of the case have already been appealed to the 2nd U.S. Circuit Court of Appeals, but appellate action has been stayed. Any appeals of last week's verdicts are expected to join those already pending.

Appraising damage

Meanwhile, appraisal proceedings aimed at fixing the amount of the WTC loss are already underway for insurers representing the bulk of the $1.13 billion in policy limits at stake in the trial's second phase, according to Ian Boczko, a lawyer with Wachtell, Lipton, Rosen & Katz, representing Silverstein.

Mr. Boczko and insurer representatives declined to reveal specific amounts under discussion, but the two sides remain far apart in at least some cases. Silverstein believes that its damages "equal or exceed" two program limits, or $7 billion, Mr. Boczko said, while Allianz contends that the loss totals less than one $3.55 billion limit, the insurer's spokeswoman said.

Any differences between appraisers appointed by Silverstein and the insurers will be decided by the appraisal panel's umpire, and the decisions will be binding, lawyers involved say.

Insurers in the first phase of the trial, including Swiss Re, are not participating in the appraisal process and may—along with phase two insurers also not participating—return to court for a third phase of the litigation to decide damages.

Silverstein has already collected a single-occurrence limit from all of the phase one insurers except Swiss Re and Employers Insurance Co. of Wausau, a unit of Liberty Mutual Group, Silverstein court filings say.

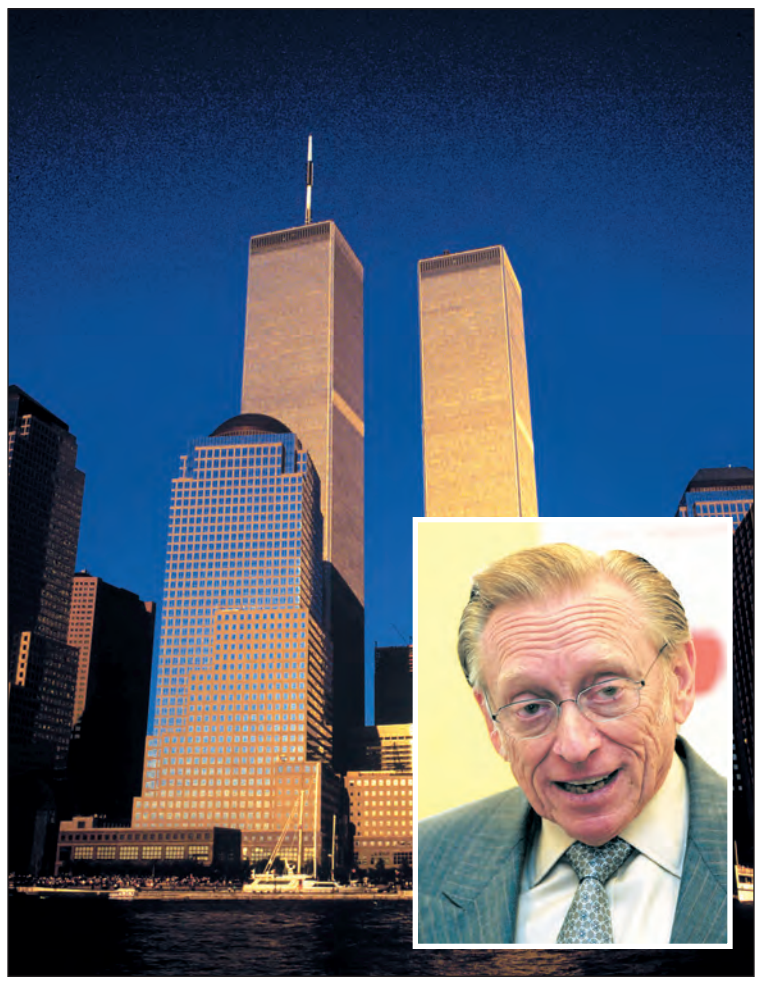


PHOTO: PHOTOGRAPHER SHOWCASE

Larry A. Silverstein, principal leaseholder of the World Trade Center, said he was 'thrilled' with the verdict that some insurers of the complex must pay two program limits.

Wausau wrote a $62.9 million share of a layer excess of $2.49 billion, and could end up owing none of that limit if the phase one verdict is overturned on appeal and Wausau is required to pay two occurrences, the insurer has argued in court.

In this scenario, the total WTC loss could be appraised, for example, at $4.5 billion, with the damages from each occurrence valued at $2.25 billion. If this happened, insurers in layers excess of $2.25 billion would not have pay out any of those limits.

Phase two insurers with shares of the top excess layers, already found liable for two occurrences, may also use this argument, noted Barry R. Ostrager, a Swiss Re lawyer with Simpson, Thacher & Bartlett in New York.

Not all insurance company lawyers are convinced, though. "I think it's a stretch," said one, noting that splitting the total insured loss evenly between two occurrences is not a given and that Silverstein could argue that 100% of one limit should be applied to the first occurrence.

As the appeals and appraisals go forward, Silverstein has filed a new summary judgment motion to force Swiss Re to pay its share of one program limit immediately. Swiss Re units wrote $877.5 million of the $3.55 billion program, and, despite paying $81 million of the leaseholder's business interruption claims, the insurer has "stubbornly refused" to pay any of the $796.5 million balance of one limit, the filing charges.

Swiss Re has argued that the Wilprop coverage terms allow Silverstein to collect the "actual cash value" of the property immediately only if it does not intend to rebuild. If Silverstein does rebuild on the WTC site—which Mr. Silverstein has pledged to do—it can collect replacement cost claims only over time as the construction moves ahead, Swiss Re says.

Silverstein charges that the insurer is misinterpreting the Wilprop language and notes that numerous other insurers governed by the same terms have long since paid their shares of a single limit.

WHO LOST

Insurers not bound on Wilprop lost in the second phase of the World Trade Center trial

Company	Share of limit
Allianz (SCOR)+	$354.7 million
IRI+	237.2 million
Travelers+	210.6 million
Royal Specialty*	127.8 million
Allianz+	77.9 million
Gulf+	65.0 million
Zurich*	45.7 million
TIG+	9.1 million
Twin City*	2.5 million
Tokio Marine+	1.6 million
Total	**$1,132.1 million**

*Decided by a jury in late April 2004
+Determined prior to Phase I coverage trial

ADVERTISER INDEX

Issue of December 13

Late News

Continued from page 1

which is scheduled for Jan. 19, 2005. U.S. District Court Judge Ruben Castillo previously said he considers Mr. Segal a flight risk. He was convicted on 26 counts of racketeering, fraud, embezzlement and other charges after a trial in which it was alleged that he looted the premium trust account of his then-brokerage operation, Near North National Group Inc.

Ohio passes tort reforms

Ohio's Legislature last week passed a broad tort reform measure that caps noneconomic damages for noncatastrophic injuries at $350,000 per plaintiff, institutes a 10-year statute of repose for product liability cases and provides the food industry with defenses against obesity lawsuits, among other changes. Republican Gov. Robert Taft is expected to sign S.B. 80 into law. Earlier this year, Ohio enacted legislation that requires claimants in asbestos injury and silica and mixed dust actions to meet specific medical criteria.

Spitzer subpoenas TPA Crawford

Crawford & Co. said it has received a subpoena from New York Attorney General Eliot Spitzer that seeks "various documents" related to the third-party administrator's operations. Thomas W. Crawford, Atlanta-based Crawford's chief executive officer, said he is reviewing the subpoena and could not provide additional details about the information sought. He added that the company will cooperate with the request. Earlier this month, Mr. Spitzer subpoenaed TPA Gallagher Bassett Services Inc., which was believed to be the first subpoena his office has served to a claims administration company since the start of his investigation of insurance industry practices.

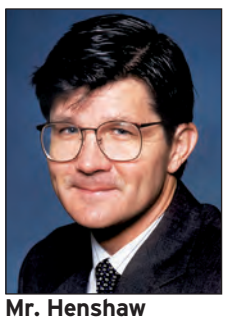
Benfield unveils disclosure policy

Reinsurance intermediary Benfield Inc. will fully disclose to clients its compensation on their property/casualty treaty business beginning Jan. 1, 2005, said Chief Executive Rod Fox. The Westport, Conn.-based intermediary also will disclose to its reinsurance customers all material relationships that Benfield has with the customers' reinsurers. Benfield is among the firms that have been subpoenaed by New York Attorney General Eliot Spitzer to provide information on market practices, said Mr. Fox.

ING launches IPO of Canadian unit

Dutch insurer ING Group has launched an initial public offering of its Canadian unit to raise about $907 million Canadian ($734.7 million). Toronto-based ING Canada Inc. priced its offering of 34.9 million shares at $26 Canadian ($21.10) each. Proceeds from the IPO—which is expected to close Dec. 15—will be used, in part, to finance ING's purchase of part of Allianz A.G. Holding's Canadian property/casualty business.

Henshaw resigning as head of OSHA



Mr. Henshaw

John L. Henshaw will leave his post as assistant secretary of Labor for Occupational Safety and Health on Dec. 31. Mr. Henshaw became head of the Occupational Safety and Health Administration in the summer of 2001. His successor has not been named.

XL Capital restructures global management

XL Capital Ltd. has named two executives to newly created global management positions. Fiona E. Luck, executive vp-group operations at the Hamilton, Bermuda-based insurer, was named global head of corporate services, which comprises strategic planning, human resources, marketing, global communications, public relations and corporate social responsibility. Henry C.V. Keeling, executive vp and chief executive for reinsurance operations, retains that role and also becomes global head of business services. The business services unit is responsible for information technology, real estate and coordination of global shared services across the company. In addition, James Veghte, chief executive officer of XL Re America, has been named COO of XL's reinsurance operations.

Underwriting profit forecast for 2005

The U.S. property/casualty industry will likely post an aggregate combined ratio of 99% in 2005-compared with around 100% in 2004-marking the industry's first underwriting profit since 1978, according to the Insurance Information Institute. In its annual "Early Bird Forecast," the New York-based III also predicted an average increase of 3.4% in net written premiums, compared with an estimated average of 4.8% this year. This year's estimate itself is less than half the growth rate of 9.8% in 2003.

California lawmaker seeks closure of CalPERS plans

A California state lawmaker has proposed a constitutional amendment to the California Legislature that would require future public employees to enroll in defined contribution plans rather than the defined benefit plans now administered by the California Public Employees Retirement System and other public pension funds. Under the proposal from Assemblyman Dr. Keith S. Richman, R-Northridge, which is designed in part to cut costs for the state, public employees hired after July 1, 2007, could enroll only in defined contribution plans. Public employees who are members of existing defined benefit plans would be able to transfer into defined contribution plans, according to the proposal. A CalPERS spokesman said, "Our feeling is, this is a short-term fix," citing startup costs for a defined contribution approach and retention concerns, among other issues.

Briefly noted

New York Attorney General **Eliot Spitzer** announced last week that he would seek the Democratic nomination for governor of New York in the 2006 election....Alan Fairhead has been appointed chief underwriting officer of the global corporate division of **Zurich Financial Services Group**. He previously was managing director of ZFS' global corporate U.K. division....Arkansas Gov. Mike Huckabee has appointed **Julie Benafield Bowman** as the state's insurance commissioner, effective Jan. 1, 2005. Ms. Bowman is currently chief executive officer of the state's Workers' Compensation Commission. She succeeds Mike Pickens, who is returning to the the private sector.

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Online Poll

[12/6 - 12/10]

Will your organization offer a consumer-driven health care plan in 2005?

Yes 38.5%

No 61.5%

BI Stock Index

[12/6 - 12/10]

Up-to-the-minute data for all 87 companies that comprise the *BI* Stock Index can be found at *www.businessinsurance.com*

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

***BI* Stock Index**	**2298.54**	**0.38**
Dow Jones	**10543.20**	**-0.46**
S&P 500	**1188.00**	**-0.27**

Largest gains

CIGNA Corp.	8.22%
Marsh & McLennan Cos. Inc.	7.35%
Humana Inc.	7.08%
PacifiCare Health Systems	6.61%
Willis Group Holdings Ltd.	6.32%

Largest losses

ESG Re Ltd.	-14.29%
SCOR	-6.97%
SCPIE Holdings Inc.	-3.89%
Unico American Corp.	-3.64%
Lincoln National	-2.95%

Weekly change by market segment

Brokers	2.52%
Insurers/Reinsurers	-1.56%
Managed Care Organizations	4.36%

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

IBM: Phasing out cash balance pension plan

Continued from page 3

to phase out its defined benefit plan. Dayton, Ohio-based NCR Corp.; Hoffman Estates, Ill.-based Sears, Roebuck & Co.; and Chicago-based Aon Corp. all in recent years have moved away from such plans in favor of new or enhanced defined contribution plans.

But IBM, with more than 300,000 employees and nearly $90 billion in revenues last year, is by far the largest U.S. employer to do so. IBM's pension plan has more than $41 billion in assets and more than 330,000 participants, with more than 135,000 individuals currently receiving benefits.

Employers for some time have been exiting the defined benefit plan system. In 1985, there were more than 112,000 employer-sponsored plans; last year, there were fewer than 30,000, according to the Pension Benefit Guaranty Corp.

Employers and pension experts attribute that exodus to several factors, including the unwillingness of a growing number of employers to accept the financial volatility inherent in defined benefit plans and the recognition that traditional plans are not a good benefit for a workforce that has grown more mobile.

Additionally, employers seeking to offer cash balance-type defined benefit plans have faced an uncertain legal environment. Although the design of the plans—which incorporates elements of both defined contribution and defined benefit plans—is said to make them more attractive to a more-mobile workforce, employers have been reluctant to embrace the approach because of concerns about litigation.

"Employers find they have no place to go and leave the system," said Chris Bone, chief actuary with Aon Consulting in Somerset, N.J.

'The hour is late. Some plans are gone, but many more can be saved. What we need is immediate action in Washington to pass legislation that will codify the acceptability of cash balance plans as a retirement plan design option.'

Ethan Kra
Mercer Human Resource Consulting

"Plan sponsors are looking for plans more predictive in their costs and more certain in their legal standing," said Kevin Wagner, a consultant with Watson Wyatt Worldwide in Southfield, Mich.

Some hope that IBM's phasing out of its cash balance plan will lead Congress to enact legislation making clear that account-based defined benefit plans are legal and do not violate age discrimination law.

"The hour is late. Some plans are gone, but many more can still be saved. What we need is immediate action in Washington to pass legislation that will codify the acceptability of cash balance plans as a retirement plan design option," said Ethan Kra, chief actuary with Mercer Human Resource Consulting in New York.

"There has to be security and certainty for these plans," said Mark Ugoretz, president of the ERISA Industry Committee, a Washington-based lobbying group.