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Business Insurance

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\$5

Superfund lawsuits limited

Common pollution cleanup action barred

By **DOUGLAS McLEOD**

WASHINGTON—A U.S. Supreme Court ruling barring a common type of pollution cleanup liability action has upended years of accepted practice for allocating cleanup costs and could at least temporarily slow voluntary cleanup efforts, some environmental law experts say.

The nation's highest court ruled 7-2 last week that a section of the federal Superfund law does not al-

low a company to sue others potentially responsible for a polluted site unless the Environmental Protection Agency has first filed a civil enforcement action against the company.

The ruling eliminates a type of cost recovery action that has been successfully pursued in scores of cases since the mid-1980s by companies engaged in private cleanups. These actions, brought under Section 113 of the Superfund law, had been accepted as legal by federal ap-

pellate courts in nine of the 11 circuits, lawyers say.

In the same decision, the Supreme Court declined to rule on whether similar actions would be allowed under a separate cost recovery section of the Superfund law, Section 107.

While corporations may still be able to bring claims under Section 107 and under state laws, the high court ruling creates huge uncertainties for those with cleanup liabilities, some say.

"It opens more questions, and by creating that uncertainty, you create a little bit of chaos," said John S. Gray, an environmental law partner with Gardere Wynne Sewell L.L.P. in Houston.

Faced with legal avenues less certain than the established Section 113 route, some companies may decide to follow the Supreme Court's reasoning and wait to be sued by the EPA before undertaking cleanups, thus delaying remedial action, some lawyers predict.

"From a policy perspective, which the Supreme Court did not

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Late News

Lloyd's capacity falls for 2005

Lloyd's of London underwriters will offer £13.7 billion (\$26.6 billion) in capacity in 2005, a 9% decrease from 2004. The announcement by Lloyd's marks the first time since 1999 that the market's capacity has fallen. The reduction in capacity from £15.0 billion (\$26.9 billion) in 2004 reflects underwriting discipline at Lloyd's, said Nick Prettejohn, chief executive officer.

Former HIH chief pleads guilty

Ray Williams, former chief executive of HIH Insurance Ltd., has pleaded guilty to criminal charges of mismanagement related to the insurer's 2001 collapse. Mr. Williams pleaded guilty to recklessness and failure to properly exercise his authority as a director of HIH, whose \$5.3 billion Australian (\$2.72 billion) insolvency was Australia's largest corporate failure. The charges, filed by the Australian Securities and Investment Commission, were related to omissions and misleading statements made by Mr. Williams, who will be sentenced in March. The charges carry prison time, fines or both.



Mr. Williams

Health care experiment

Performance pay coming to smaller communities

By **JOANNE WOJCIK**

Pay-for-performance initiatives, which have been confined mostly to major urban centers, are coming to the nation's heartland.

The National Business Coalition on Health, a Washington-based consortium of employer coalitions from around the country, has selected four of its member groups to participate in a pay-for-performance experiment modeled after the Bridges to Excellence program.

Coalition leaders hope that BTE's two-year track record, and the fact that it was launched by such major employers as Ford Motor Co. and General Electric Co., will make it easier to promote the new program to employers and providers in smaller communities, which have been largely immune to such efforts.

Most other pay-for-perfor-

mance programs have operated independently, resulting in a patchwork of untested methodologies that have failed to win the support of many providers, sources say.

To try to get that support, the Joint Commission on Accreditation of Healthcare Organizations recently announced new principles covering both financial and nonfinancial incentives to help guide and improve pay-for-performance programs.

"Our members were looking for a way to get into the physician space with a well-vetted program, and Bridges to Excellence was that program," said Andrew Webber, president and chief executive officer of the NBCH.

BTE was launched in 2003. The program provides financial rewards for physicians who implement certain measures, such

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PHOTO: REUTERS

The severance pay of former Disney President Michael S. Ovitz, left, next to Disney CEO Michael Eisner, is at the center of a lawsuit that some observers suggest could raise the cost of D&O coverage.

Derivative suit could increase D&O rates

By **ROBERTO CENICEROS**

A highly publicized shareholder derivative lawsuit against Walt Disney Co. directors could increase the cost of Side A directors and officers liability coverage, observers say.

Already, the Delaware Court of Chancery, where the case is being tried, has issued rulings in the ongoing trial that erode established protections for directors, say attorneys. Such rulings add to coverage pricing pressure, especially as excess difference-in-conditions Side A poli-

cies are growing in popularity, insurance sources say.

"This could have massive implications for the D&O underwriting community," said A. Quentin "Skip" Orza II, vp of RLI Insurance Co.'s executive products group in Summit, N.J.

The lawsuit stems from a \$140 million severance package paid to former Disney President Michael S. Ovitz after his former friend, Disney Chief Executive Officer Michael Eisner, hired him for the role in which

See **DISNEY**/page 18

Spitzer subpoenas 401(k) consultant

New York Attorney General Eliot Spitzer has subpoenaed



Mr. Spitzer

Morningstar Associates L.L.C., seeking information on the investment consulting services it provides to retirement plan sponsors. Joe Mansueto,

chairman and chief executive officer of company parent Morningstar Inc., said in a statement that the subpoena seeks "information about the

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International AIRLINE DISPUTES OFFICIAL FINDING IN CRASH

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December 20, 2004

Spitzer hints at deal with Aon

No charges filed yet, state attorney general says

By DOUGLAS McLEOD

NEW YORK—New York Attorney General Eliot Spitzer suggested Friday that a deal is in the works between his office and Aon Corp. and declined to say when there might be a settlement of his fraud and bid-rigging charges against Marsh & McLennan Cos. Inc.

Interviewed on Bloomberg Television, Mr. Spitzer praised Aon Chairman and Chief Executive Officer Patrick G. Ryan and denied that Mr. Ryan's announcement in September that he planned to step down as CEO was a move Mr. Spitzer had demanded as part of his investigation into brokerage industry compensation practices.

Mr. Spitzer then said that Mr. Ryan has been "easy and prof-

itable...in terms of moving the deal forward," according to a transcript of the interview. He did not elaborate, and a spokesman for his office could not be reached. A spokesman for Chicago-based Aon declined to comment.

The interviewer had earlier noted that Mr. Spitzer has not brought charges against Aon, to which Mr. Spitzer replied, "Not yet."

Mr. Spitzer declined to set a timetable for settling charges against Marsh.

"It's clear that we are working diligently. It's clear that Marsh would like a resolution sooner rather than later," he said. "We also have to be...diligent and make sure we understand the facts."

Elsewhere in the interview, Mr. Spitzer suggested that he does not

expect to call for the replacement of other brokerage or insurer executives as he did in the case of former MMC Chairman Jeffrey W. Greenberg after accusing Marsh of misleading his investigators.

"We have been dealing with (American International Group Inc.), ACE, a whole range of other companies and we have not encountered similar problems" to those at Marsh, Mr. Spitzer said.

"There is improper behavior at many companies by individuals. But again, once we have dealt with the senior leadership of those other companies, they have said, 'What are the problems? How do we dig into them? Let's resolve them.' That was not the response at Marsh & McLennan," the New York attorney general said.



The American Tort Reform Assn. praised Mississippi and its Republican governor, Haley Barbour, above, for comprehensive tort reform in the state.

Illinois county once again leads list of 'hellholes'

By MARK A. HOFMANN

WASHINGTON—Although the civil justice environment for business appears to be improving, there still are some "judicial hellholes" on the map that must be addressed, says a longtime tort reform advocate.

Victor E. Schwartz, general counsel of the American Tort Reform Assn., called for more work to tackle such problems during a Washington press conference last week, where the group unveiled its "Judicial Hellholes 2004" report. The report defines such jurisdictions as "places where the law is not applied evenhandedly to all litigants, generally favoring local plaintiffs' lawyers and their clients against out-of-state defendants in civil lawsuits."

Madison County, Ill., known as a magnet for plaintiffs attorneys seeking to file multistate

class action suits against national companies, headed the list of hellholes for the second year in a row.

"Madison County has retained its status as the worst trial court in America, and continuing to put a bright spotlight on the continuing abuses in Madison County is obviously a priority for ATRA," said ATRA President Sherman Joyce in an interview shortly before the formal release of the report.

In addition, ATRA cited St. Clair County, Ill.; Hampton County, S.C.; West Virginia; Jefferson County, Texas; Orleans Parish, La.; South Florida; Philadelphia; and Los Angeles, as other judicial hellholes.

An additional four entities drew "dishonorable mentions," which the report said went to "places where particular abusive practices or warped litigation en-

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TRIA's end could shrink market, surveys suggest

Appetite for terror cover growing among buyers

By MARK A. HOFMANN

The market for terrorism insurance is alive and well, according to studies released last week by the two largest insurance brokers.

In fact, the reports, released separately by Marsh Inc. and Aon Corp., showed that risk managers' appetite for adding terrorism insurance to their programs has grown considerably over the past year or so.

However, both reports also warn that congressional inaction on extending the Terrorism Risk Insurance Act through the end of 2007 could wreak havoc in the marketplace. TRIA, which created a federal backstop for private insurers faced with losses arising from future catastrophic terrorist attacks, is slated to expire on Dec. 31, 2005.

New York-based Marsh's analysis

of 754 U.S. companies that renewed their property insurance policies between July 1 and Sept. 30 of this year found that 43.9% took up terrorism coverage, whether backed by TRIA or not. That represented a slight decrease from the 46.2% of the companies surveyed in the second quarter of this year and the 44.2% that reported doing so in the first quarter. Nevertheless, the percentage of companies taking up terrorism insurance in the third quarter of this year marked a significant increase over the 26% that reported taking up terrorism coverage in the same quarter of 2003, according to the report.

Aon's study, based on a sample of about 500 U.S. companies, found an even greater take-up rate for all types of terrorism coverage, including non-TRIA-backed policies. Ac-

cording to the Chicago-based brokerage, 57.1% of the companies studied had purchased some sort of terrorism coverage by the end of the third quarter of this year, compared with only 24% during the first quarter of 2003, when TRIA-backed coverage first became available.

The Aon white paper asked "What is causing the increased take-up rates?" and provided its own answers.

"One reason could be that risk managers have become more familiar with the risk and their risk transfer options. A more compelling argument can be made that after the chaotic rollout of TRIA, with its attendant pricing confusion, a more rational market has fostered rational decision making. More impor-

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Inside Business Insurance

Retiree health care coverage threatened

Continuing double digit cost increases are threatening retiree health care coverage. **Page 4**

Mudslides cause massive energy claims in Gulf

Oil and gas producers are looking at higher property and business interruption coverage after Hurricane Ivan. **Page 4**

Asian liability risks rise on cultural changes

Legal and cultural changes in Asia are increasing liability risks for companies doing business in the region. **Page 4**

Merry Spitzermas to everyone

Editorial Director Paul Winston writes a song for the season for the insurance industry. **Page 8**



Head of employer group urges action on pensions

Sir Peter Davis says U.K. employers must act to improve retirement savings programs or risk government mandates. **Page 13**

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: Has the civil justice system changed since the American Tort Reform Assn. issued its first "Judicial Hellholes" report in 2002?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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High costs threaten retiree health cover

By JERRY GEISEL

Amid continued double-digit annual retiree health care plan cost increases, employers are shifting more of the costs onto retirees, and the continuing erosion of coverage shows no sign of easing, according to a survey released last week.

The survey of 333 large employers conducted by the Kaiser Family Foundation and Hewitt Associates Inc. found that total retiree health care costs climbed an average of 12.7% in 2004, down from an average of 13.7% in 2003, but several times greater than the overall rise in the cost of living.

With costs continuing to soar, employers are asking retirees, especially those who have recently re-

tired, to absorb a larger portion of those increases. For example, employees under age 65 who retired in 2004 are paying, on average, \$2,244 in premiums for single coverage, up 27% compared with those who retired in 2003 year. A Medicare-eligible individual who retired this year is paying an average annual premium of \$1,212, which is 24% higher than the premium paid by those who retired in 2003.

Still, while retirees are paying more for coverage, they may be a lot more fortunate than future retirees, who will be much less likely to receive employer-subsidized coverage.

Indeed, Kaiser Family Foundation President Drew Altman, speaking at a briefing last week in Washington,

described retiree health care coverage as a "slowly vanishing species."

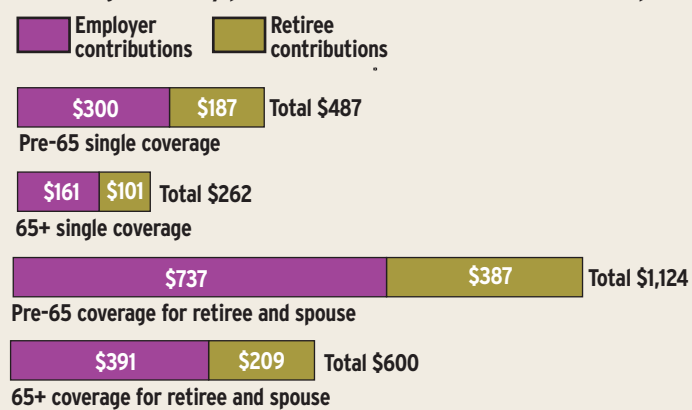
An earlier Kaiser survey found that the share of employers offering retiree health care coverage has plummeted since the late 1980s, when costs began to soar and the implementation of accounting rules requiring employers to recognize retiree health care liabilities on their financial statements loomed. In 1988, 66% of employers with at least 200 employees provided retiree health care coverage. Now, only 36% do so.

And that trend seems certain to continue. In the past year, for example, 8% of respondents terminated subsidized coverage for future retirees, and 5% said it is very likely

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HEALTH CARE COSTS PER RETIREE

Average monthly premium costs for retiree health care plans*



* For employees retiring on or after Jan. 1, 2004
Source: Kaiser/Hewitt



PHOTO: GETTY

Energy companies operating rigs in the Gulf of Mexico faced losses from Hurricane Ivan's high winds and massive underwater mudslides that damaged platforms and pipelines.

Energy rates to soar as insurers pay out big mudslide losses

By PETA MILLER

LONDON—Oil and gas producers should expect significant rate increases for property and business interruption coverages after underwater mudslides helped make Hurricane Ivan one of the most costly energy insurance losses to date.

The final tally of energy-related losses from the deadly storm could reach \$2.5 billion, and up to \$500 million of that will likely relate to losses caused by mudslides, energy insurers and brokers say.

As a result of the losses, premiums could increase by up to 100% at the next renewal, they say. Prior to the hurricane, energy premiums were falling by up to 50%.

Hurricane Ivan, the third of four major hurricanes that

made landfall in the United States in 2004, ripped through the Caribbean, the Gulf of Mexico and the Southeastern United States in September (*BI*, Sept. 27). The storm caused an estimated \$11 billion in total insured damages, according to the latest estimate by Swiss Reinsurance Co.

Overall, Hurricane Ivan destroyed seven platforms and caused major damage to six other platforms and five drilling rigs, according to the U.S. Minerals Management Service. Mudslides were responsible for four of the lost platforms.

In addition, of the 33,000 miles of pipeline in the Gulf of Mexico, about 10,000 miles of pipe lay in the path of Ivan. Pipes located near the Mississippi Delta were buried by up to 30

See MUDSLIDES/page 6

Cultural changes increase liability exposures in Asia

By MICHAEL BRADFORD

HONG KONG—Legal and cultural changes sweeping Asia are bringing increased liability risks for businesses and underwriting opportunities for insurers.

Improving economies in many Asian countries have given rise to better-educated, more affluent middle classes, said Ruediger Otto, Hong Kong-based chief underwriting officer for Asia at Swiss Reinsurance Co. That has meant that Asian populations now have increased access to media reports and travel, which has resulted in a greater awareness of how things work in western nations—particularly in the courts.

Armed with a wider worldview and a more developed sense of their own rights, Asians today "are much more likely to take legal action compared to previous generations," Mr. Otto said.

While that may be a threat to in-

surance buyers, it holds a silver lining for their underwriters.

An increase in demand for product liability, professional indemnity and directors and officers liability insurance has been particularly strong in many Asian countries, Mr. Otto noted. Rates for the coverage



have remained fairly stable, so far, as insurers come to grips with how to price the exposures, he said.

That's the case in Hong Kong, said Duncan Spooner, a partner in Trowbridge Deloitte's office there. "We've seen a change in demand

for professional indemnity and directors and officers coverage in the last couple of years," he said.

Prices for the coverages, however, "are generally quite good at the moment," Mr. Spooner said. He attributes that partly to an unusual situation in which many potential claimants haven't caught on to their ability to file claims.

"I think we've got a delay going on. People who are buying it are aware of the fact that they have an increasing risk," Mr. Spooner said of liability policyholders. But litigation has not drastically increased because the lawsuit culture has not taken firm root, he added.

Insurers need to carefully consider that scenario, Mr. Spooner noted, because once potential litigants realize that they can file claims, the trend "is very quickly going to turn around."

Lawsuits are becoming more common in some Asian countries

See ASIA/page 15

Glacier Re sets up in Europe to write global specialty cover

By SARAH VEYSEY

PFAFFIKON, Switzerland—Glacier Reinsurance A.G., a reinsurance company with 347.5 million Swiss francs (\$299.3 million) in capital, has been launched to underwrite global specialty reinsurance business.

Pfaffikon, Switzerland-based Glacier Re will focus on five main lines of business: aerospace, catastrophe reinsurance, European property/casualty, marine and energy, and war and terrorism, according to Robbie Klaus, chief executive officer and chief underwriting officer of the company.

Mr. Klaus said the company plans to write between \$400 million and \$500 million in gross written premiums by the end of 2007.

He said that the company is being launched now to take advantage of favorable reinsurance rates in its chosen lines of business, and—subject to regulatory approval from the Swiss federal Office of Private Insurance—will start underwriting on Jan. 1, 2005. Mr. Klaus was previously head of the global specialty division at GE Frankona Re in Munich.

Two senior underwriters have already joined the new company, while three others will join within

the first quarter of 2005, Mr. Klaus said.

The two senior underwriters are Jeremy Bloxham, formerly director of marine and aerospace for Odyssey Re Holdings Corp. in London, who will head the company's marine and energy and catastrophe retrocession units; and Richard Etridge, formerly co-manager of Conventium Holding Ltd.'s aviation team in Zug, Switzerland, who will head up Glacier's aerospace and war and terrorism underwriting. Glacier intends to employ up to 35 professional and support staff, the company said.

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Mudslides: Energy rates to soar

Continued from page 4

feet of mud, according to the MMS.

The mudslides are the result of years of sediment buildup flowing into the Gulf from the Mississippi and other rivers along the Louisiana coast, explained Robert Bea, professor in the civil and environmental engineering department of the University of California, Berkeley.

"When enough material builds up and a storm comes close, the waves come into shallow water and cause major mudslides," he said.

In shallow waters, where the rivers dump large amounts of material, mudslides usually occur every five to 10 years, he said.

"In deeper waters, where the buildup occurs more slowly, events are much more rare but much larger," he said. "This occurs along the outer perimeter of the Gulf of Mexico, in deep water at depths in excess of 200 meters."

The offshore energy industry has largely ignored the problem of offshore mudslides for the past several years, Mr. Bea noted.

The mudslides that followed Hurricane Ivan caused significant losses for insurers, said Richard Watson a director at Hiscox Syndicates in London. "This has happened before, but not in an area full of pipelines and drill heads," he said.

"The market has had a much worse loss than ever anticipated," but underwriters should have been aware that they faced a significant mudslide exposure in the Gulf of

Mexico, said John Lloyd, chairman and chief executive officer of Lloyd & Partners Ltd., a wholly owned subsidiary of Jardine Lloyd Thompson Group P.L.C.

Experts are divided about the magnitude of the loss, saying that companies are still investigating the extent of the damage.

"It will probably be a year before a complete assessment can be done" on what proportion of losses was caused by mudslides and what proportion was caused by wind and wave damage, said Steven Devoy, group marine director at Matthews Daniel, a Houston-based loss adjuster.

Mr. Watson of Hiscox said the mudslide-related losses would likely total \$500 million, including business interruption, out of a total loss estimate for Ivan of between \$2 billion and \$2.5 billion.

"People are doing their best to estimate costs, but lots of them are business interruption, and that is very difficult to give, because the equipment cannot be fixed because there is so much (of it)," said Mr. Lloyd of Lloyd & Partners.

The energy losses related to Hurricane Ivan will likely be the largest since the Piper Alpha explosion in the North Sea in 1988, said a Lloyd's underwriter who did not want to be identified. The underwriter estimated that the loss would total between \$2.1 billion and \$2.4 billion.

Up to \$500 million of the loss will fall within retentions, about

\$600 million will be paid by Bermuda-based oil and energy mutual Oil Insurance Ltd., and up to \$1.3 billion will be paid by the open market, he said.

However, according to Doug Kline, senior vp and chief operating officer of Oil, the mutual insurer will likely pay \$350 million in claims related to Hurricane Ivan.

Richard Harries, offshore energy underwriter at Atrium Underwriting P.L.C.'s syndicate 609 at Lloyd's of London, said Ivan-related energy losses will likely be more than \$2 billion.

Underwriters will increase energy insurance rates as a result of the loss, particularly for Gulf of Mexico risks, insurers and brokers say.

Buyers should expect premium increases of between 10% and 100%, whereas before the hurricane, premiums were falling by up to 50%, said Mr. Lloyd. The larger increases will be imposed on policyholders that suffered catastrophic losses, he said.

"It has stopped the offshore market softening, and (underwriters) will look very closely at limits and the premiums they charge," he said.

"It will affect people with offshore Gulf of Mexico exposures, especially those with claims. Some have horrific claims," Mr. Lloyd said.

The hurricane caused losses that totaled more than the entire worldwide offshore energy market's premium income for 2004, noted the Lloyd's underwriter who did not wish to be identified.

"The simple equation is that if you need more money to put the business back into profitability, there will be demands for rate increases," he said.

The loss "will make the market wary of the Gulf of Mexico, because it was not the biggest hurricane, but it has given a very large loss," Mr. Harries said.

It is difficult to estimate by how much rates will increase, but business interruption rates in the Gulf in particular will be affected, he predicted.

Mr. Watson said the effect from Ivan will be "significant," noting that many of the Gulf of Mexico risks renew in April and May.



PHOTO: AP/WIDE WORLD

Containment booms surround an oil spill in the Gulf of Mexico. Damage during Hurricane Ivan has led to massive energy claims.

Glacier Re: Reinsurer launched

Continued from page 6

The new reinsurer is backed by a consortium of investors, including funds that are advised by HBK Investments L.P. and Soros Fund Management L.L.C. London-based reinsurance broker Benfield Group Ltd. has a 10% stake in the company.

Mr. Klaus said that the company had considered a number of domiciles, including Bermuda and Dublin, but decided on Switzerland for its proximity to continental European cedents, among other reasons. Most of the reinsurers that formed in 2001 and after set up in Bermuda.

Glacier is hoping to obtain an

insurer financial strength rating when it begins operations. A spokesman for A.M. Best Co. in London declined to comment on whether the rating agency was in discussions with Glacier about a rating.

Geoff Miller, an analyst at Bridgewell Securities in London, said that Glacier would benefit from having a clean balance sheet that is not burdened by the prior-year losses that have plagued some established reinsurers.

And though Glacier has less capital than most of the recent Bermuda startups, it has enough obtain a secure rating, and Glacier should be able to "carve out a pretty good po-

sition for themselves," he said.

Clement Booth, chairman and chief executive officer of Aon Re in London, said "in principle, it is positive when investors invest in reinsurance," though he noted that it is too early to say how the market would respond.

One London reinsurance broker, who did not want to be identified, said that the retrocessional reinsurance market is still firm, "so they might be able to make some money there." But there is little need for additional capacity in most of the other lines that Glacier intends to write, so the reinsurer may have to offer lower rates in order to attract business, he said.

Paul Winston

A seasonal song for Spitzermas

Maybe it's the Muzak in the department stores. Maybe it's the local lite rock station that plays nothing but holiday music. Maybe it's the blinking Christmas lights in the night. Whatever it is, it's got me humming various carols and holiday tunes in my head.

As a consequence, once again I have penned a song for the risk management industry set to holiday music. Three years ago, I wrote about the "12 Days of Renewals" (*BI*, Dec. 17, 2001). This year, I offer you the "Carol of the Smells," based on the song "Carol of the Bells." If you want to hum along, but don't know the tune, think of the Andre champagne song from holiday advertising past. Happy holidays!

"Carol of the Smells"

Hark, something smells,
bad, rotten smells,
all seem to say,
trust thrown away.

Spitzer is here,
stirring up fear,
looking to scold
how risk was sold.

Wrong, wrong,
wrong, wrong,
that is his song,
with doleful ring
all accusing.

One seems to hear,
words of great fear
from ev'rywhere,
filling the air.

Brokers expound,
as if dumbfound,
o'er the loud wails,
needing details.

Buyers dismayed
trust was waylaid.
Time to renew,
their brokers, too.

Very, very, very, very troubling...
Very, very, very, very troubling...

So on it goes,
Spitzer's salvos,
more to follow.

Wrong, wrong, wrong, wrong,
wrong. Wrong.

Hark, something smells,
bad, rotten smells,
all seem to say,
trust thrown away.

Spitzer is here,
stirring up fear,
looking to scold
how risk was sold.

Wrong, wrong, wrong, wrong,
that is his song,
with doleful ring
all accusing.

Insurers claim
they're without blame,
but can that be?
It's their money.

Officials, too,
seemed to eschew

a closer look
what brokers took.
And none was strong,
to say it's wrong,
'til Eliot
had filed his writ.

Very, very, very,
very troubling...
Very, very, very,
very troubling...

So on it goes,
Spitzer's salvos,
more to follow.
Wrong, wrong,
wrong, wrong, wrong.
Wrong.

Hark, something
smells,
bad, rotten smells,
all seem to say,
trust thrown away.

Spitzer is here,
stirring up fear,
looking to scold
how risk was sold.

Wrong, wrong, wrong, wrong,
that is his song,
with doleful ring
all accusing.

Now, time to look
at the playbook,
set a new course
all can endorse.

Pay above board,
no one to hoard.
Fair play in bids,
fraud it will rid.

But above all,
heed an old call:
For your welfare,
buyer beware.

Very, very, very, very troubling...
Very, very, very, very troubling...
So on it goes,
Spitzer's salvos,
more to follow.

Wrong, wrong, wrong, wrong,
wrong. WRONG.

Editorial Director Paul Winston's
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Paul Winston

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Schillerstrom



Each Christmas Eve gets harder
As they hitch me to the sleigh
To pull the gifts and Santa up
And on their merry way.

The elves still make the fun toys,
Ice skates, sleds, puzzles and more...
I'll gladly carry those to all
As through the night we soar.

The hard part isn't in the bag.
It's not Santa's hefty girth
But the weight of expectations
As we go 'round the earth.

The uninsured look for help,
The storm ravaged, for relief.
The empty spaces in our homes
Cry out war's loss and grief.

Yet, still, the dreams continue.
They tug hard upon the sleigh
And hope will spring eternally
As we travel on our way.

I'll do my part this Season
Delivering toys and cheer.
May your holidays be merry
And wishes come true next year.

Letters to the Editor

HSAs a smart alternative to retiree benefit plans

To the editor: How can we begin to prepare for what's down the road when it's clear that employer-sponsored retiree health care benefits are going the way of pension plans (see story, page 4)?

The implications are even more serious for aging baby boomers facing retirement. After years of loyal service, they have little or no recourse as they watch their retiree benefits plans increase in costs, diminish in benefits—or disappear altogether.

Health savings accounts are a viable, smart alternative to retiree benefits plans—especially for peo-

ple age 55 and older. These affordable plans will protect workers now in the event of a trip to the hospital or major illness, while offering an opportunity to build a strong financial safety nest of tax-free savings to pay for retiree medical expenses.

The HSA offers a little-known and little-talked-about “accelerated” contribution schedule for people age 55 and older. They can stash away tax-free dollars above and beyond the maximum contribution cap.

This means that from age 55 through 64, they can accrue more than \$60,000 for retirement medical expenses, like the Medicare prescription drug plan available in 2006. Workers who choose

to stay with traditional managed care plans will be digging deeper into their own pockets to pay for premium rate hikes and other increased expenses. In this same 10-year timeframe, they'll walk away with less take-home pay and little or no fallback to pay for retiree benefits.

With an HSA, they can take ownership of their retirement care. The more than \$60,000 in tax-free savings will put them in a financially secure position to cover premiums that will be required with the Medicare prescription drug plan, deductibles and copays that also will be required, as well as long-term care expenses. They won't need to rely on their employers to provide

the retiree benefit—since they'll have sole ownership of the HSA.

Allen Wishner

Chief Executive Officer
Flexible Benefit Service Corp.
Rosemont, Ill.

Online Opinion polls

Each week, *Business Insurance* posts a poll question about industry events on www.businessinsurance.com.

Visit the BI Web site to cast your vote in the weekly online polls and to view the results of previous questions.

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Perspectives

Restoring integrity of industry paramount

By Ernie Csiszar

The editors of *Business Insurance* hit the nail on the head when they wrote in the Oct. 25 issue that "insurance is a

business based on trust. ...The allegations in the Spitzer suit, if true, will shake the industry to its foundation."

Yet we were disappointed when, in the same editorial, *BI* urged all brokers to stop accepting commissions that are contingent on



sales volume or productivity.

Each broker and company must decide how to handle the issue of incentive compensation on its own. Several large brokers have announced that they will no longer accept incentive bonuses. That is a business decision made by those companies. But calls for every broker—including the vast majority who do everything possible to represent the interests of their clients—to stop accepting valid compensation for their services lends credence

to the notion that this should somehow be a legislative or regulatory decision. The Property Casualty Insurers Assn. of America believes that blanket prohibitions on incentive compensation programs or attempts to regulate the terms and conditions of such agreements is beyond the jurisdiction of regulators and legislators. Such efforts do nothing to address the issues of consumer trust and confidence.

The claims by New York Attorney General Eliot Spitzer of illegal bid rigging and price manipulation gave every insurer, broker and agent a black eye. But we cannot let the allegations of criminal actions by an isolated few—and the sweeping characterizations of companies and producers made by politically motivated individuals—soil the reputation of an entire industry.

So how do we restore the industry's integrity in the minds of commercial insurance buyers, risk managers and public policy makers in the states and in Congress?

Firstly, we must keep the focus on the core of the Spitzer allegation. Individuals and corporations that are found to have broken the law and damaged consumers by rigging bids should be punished. And that punishment should not be limited to a financial settlement—although it appears to be enough to appease the New York attorney

general.

Secondly, those companies, brokers and agents who work hard for their clients and their employers, who operate ethically, who are compensated fairly and legally for the service they provide and who value the trust on which our business is built need to speak out forcefully on this issue. We need to let everyone—consumers, regulators, legislators and the media—know that the industry does not deserve to be tarred with the same brush.

We also cannot allow Mr. Spitzer and others to distract public policy makers from focusing on illegal bid-rigging activities by launching a subversive attack on incentive compensation. Performance bonuses have been used by virtually every American business for decades. We must be willing to defend the value of these programs for companies and consumers. They reward sales excellence, superior customer service and top-flight risk management practices over the long term. Most importantly, they also can result in the buyer being able to enjoy innovative products and more favorable pricing, terms and conditions.

Thirdly, we must continue to push hard for bold, comprehensive and meaningful regulatory reforms that serve consumers by increasing choice, trust and transparency. This

means eliminating outdated, unnecessary and ineffective price controls for personal and commercial lines in every state. It means focusing regulatory activity on critical issues—solvency, accounting standards and market conduct, for instance—rather than trivial issues such as name changes.

It also means we must give serious consideration to more transparency in insurance transactions, including the clarification of representation by an agent or broker and the disclosure of broker compensation. Transparency is the price that any industry must pay to remove price controls and achieve a more competitive market.

Achieving such reforms would be a difficult task in the best of times. Some say that attempting to achieve them in the midst of the crisis generated by the Spitzer investigation will be impossible. Yet despite all the challenges created by the allegations, there is also an opportunity to focus the attention of state legislators, state regulators and members of Congress on the urgent need to enact reforms that bring insurance regulation into the 21st century.

Ernie Csiszar is president and chief executive officer of the Property Casualty Insurers Assn. of America in Des Plaines, Ill.

Ask a risk manager

Industry problems warrant aggressive response

Q: With all the controversy surrounding contingency commissions and brokerage compensation and practices, how should risk managers respond to the inquiries and dilemmas this will create?

A: The contingent commission issue is a proxy for the underlying problem of unethical and potentially illegal behaviors, both of which go to the issue of trust between the broker and risk manager.

Few people I know ever expressed concern



about the possibility of bid rigging and price fixing, which New York Attorney General Eliot Spitzer alleged occurred at Marsh & McLennan Cos. Inc. It is these activities, though, that are the focus of attention now.

Apart from these behaviors, commission arrangements themselves should not be viewed as wrongful business practices. Contingent commissions have been around for ages and represent standard practice for most of the commercial sector.

Clearly, the alleged behaviors of bid rigging and price fixing are reprehensible. Only time will tell the extent to which they have been a sanctioned business practice.

Marsh has assured its clients and investors that the results of the two investigations they've called for will be publicized and appropriate corrective steps will be taken. In fact, ahead of any findings of endemic patterns or practices, Marsh has taken substantial remedial action to improve its business practices and put new controls in place to minimize the possibility of future wrongdoing, and Marsh, Aon Corp. and Willis Group Holdings Ltd. have all eliminated

market service agreements, or MSAs, and their equivalents. It would appear that the reforms already announced at Marsh and elsewhere will significantly diminish the chances of these behaviors emerging again and certainly will prevent them from becoming endemic sanctioned practices.

The most important reform to bring about that objective, though, would be eliminating or radically improving the global broking function and concept.

In the mean time, risk managers face the fallout. No reasonable person has suggested that risk managers are culpable in the alleged practices in any way, but the problems have occurred on our watch. We need to respond aggressively.

While many risk managers have worried for years that MSAs and similar agreements have the potential to promote the wrong type of behavior, the larger concern relates to brokers' full disclosure of compensation they receive.

The first order of business to address this concern is to have your brokerage provide you with written assurances that no broker placing your business has engaged in the type of behaviors alleged in the Spitzer suit. Next, demand a written statement as to whether your broker has used or plans to use MSAs, placement service agreements or their equivalents. While many brokerages have repudiated these forms of compensation and contingent commissions, it is important to be aware of the circumstances under which and the extent to which your broker may have used them or intends to use them in the future.

If your broker has used or plans to use any of these types of agreements with markets, you should ask about the types and amounts of compensation that have been or will be received by the broker, regardless of whether that income can be attributed directly to your placements.

Marsh has a dedicated Web site for answering many of these questions. The site is a good place to begin to get a better

understanding of these arrangements, including the content of the typical MSA used in the past.

While getting the answers to these questions is necessary, it won't eliminate all remaining concerns about transactions undertaken by your brokerage that would put its interests ahead of those of its clients in any way, shape or form. Nor are these behaviors, of course, necessarily limited to the narrowly focused allegations made in the Spitzer suit. You should investigate for breaches of trust on as broad a basis as is necessary to reasonably restore your trust in the relationship on which these transactions are based.

Regaining this trust will require varied measures, depending on the involved parties. Some of my colleagues have even indicated they are considering having their auditors review the transaction records of their brokers. You should tailor your approach to restoring your confidence in accordance with your management's appetite for risk and its confidence in you, your brokers and underwriters.

Several underwriters were directly implicated in the Spitzer suit, and others have been implicated in other ways since. This raises significant concerns about their behavior and, importantly, the question of whether the relationship of trust between buyer and underwriter has been breached for your account.

To answer this question, I would suggest that you direct the same queries you made of your brokers to your key underwriters. This is especially important if you have not established a direct relationship with your underwriters and, by failing to do so, have allowed your brokers complete control over the transactions. Securing answers from multiple sources will improve the reliability of the responses you receive and help you gain the confidence you need to move forward with all of your partners.

Another important question risk managers must ask is to what extent they themselves

have used thorough and disciplined procurement processes to ensure that their purchases of insurance are scrutinized appropriately. This is not to imply that all commercial insurance purchases are mere commodity transactions. Ours is still a relationship business, especially for the more complicated and important lines.

That fact, though, should not blind us to the benefits offered by a disciplined procurement process that uses requests for information, requests for proposals and thoroughly vetted and constructed contracts, the terms of which cover, among other things, the details and disclosures related to total compensation and the practices used to complete the transactions. While they are sometimes cumbersome, well-designed procurement practices ensure a well-controlled, more transparent transaction process that can significantly minimize behaviors that could jeopardize meeting your responsibilities of sound insurance placement.

Finally, the result of your investigative efforts should be shared on a timely basis with the appropriate management in your company. You'll want to keep management apprised of the development of the investigations, because they affect your business. To do otherwise would jeopardize the confidence management must maintain in its risk manager.

Ask A Risk Manager answers written questions from readers on risk and benefits management issues and actuarial problems.

This month's column on risk management issues was written by Christopher E. Mandel, assistant vice president, Enterprise Risk Management, at USAA in San Antonio, as well as the former president and current chief risk officer of RIMS.

Address your questions to ASK, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.

Damage caps will help solve med mal crisis

By Lawrence E. Smarr

Judging by the accounts in newspapers and trade publications, you would think that “greedy insurance companies” are gouging doctors by charging unnecessarily high medical liability insurance premiums. We see the guest commentaries often: “Blame Insurers!”

Earlier this year, *Business Insurance* printed a Perspective entitled “Try an ounce of prevention on malpractice,” which chastised malpractice insurers for not following the example of automobile insurers that sought methods to improve vehicle safety



and driver behavior as a way to stabilize insurance premiums (BI, July 26). As I’ve come to expect from such columns,

what is omitted is often more important than what is said.

First of all, provider-directed companies dominate the medical liability insurance industry. Medical malpractice insurance companies that are owned and/or operated by doctors and health care facilities insure the majority of practicing health care professionals in the United States. And while the industry as a whole has been in the red for the past three years, provider-directed malpractice insurers are doing better than the rest of the industry, based on data provided by A.M. Best.

In 1985, under the umbrella of the Physician Insurers Assn. of America, many of these doctor-owned companies pooled their claims histories to create the PIAA Data Sharing Project. It is currently the largest database of open and closed medical malpractice claims in the world. The purpose of this claims-analysis project is to study malpractice cases so that effective tools can be developed to increase patient safety and stabilize medical liability insurance premiums. In addition to the Data Sharing Project, each provider-directed insurer has its own risk management division dedicated to eliminating medical errors and reducing physician liability.

The PIAA and its member companies have published many studies and reports designed to educate insurance companies and health care professionals and facilities as to common areas of liability and offer suggestions that may reduce that liability. Many doctor-owned insurers even provide discounts on premiums if doctors and hospitals participate in approved patient safety workshops and programs.

Provider-directed companies are doing their part to provide a stable medical liability insurance market by stressing patient safety and

prudent underwriting practices. The problem, as has always been the case, is the ever-escalating cost of malpractice claims and legal expenses. PIAA data shows that the value of the average paid claim has risen 42% over the past five years alone.

Trial lawyers will say that only bad doctors get sued, but over 70% of all malpractice cases are dropped or dismissed with no payment to the plaintiff. If plaintiff attorneys pursue only cases with merit, why do they lose over 80% of the time in court? The reason for the excessive lawsuits is that when plaintiff

Perspectives

attorneys do win, they win big—and it is these big verdicts that drive up settlements.

After 30 years in the medical liability insurance industry, I’ve heard just about every argument for and against caps on noneconomic damage awards in malpractice lawsuits. And the truth is, there is just no other proven solution for the medical liability insurance crisis.

As confirmed by a recent Rand Institute of Civil Justice analysis,

California’s effective Medical Injury Compensation Reform Act of 1975 has ensured the viability and stability of the medical liability insurance market in that state. One look at the distribution of PIAA member-insurers proves this. Most states have one, maybe two, of our companies offering coverage within their borders—California has seven. It is this competition and availability of insurance that defines a healthy malpractice insurance market.

Other proposed solutions, such as state-sponsored subsidies, do not address the core issue of

skyrocketing claims costs. In fact, subsidies often result in an additional financial burden for health care professionals in the form of surcharges or fees—shifting the burden to taxpayers and ignoring the skyrocketing costs of paying and defending claims.

Only after effective MICRA-like legislation is passed at the federal level will the pressure to increase malpractice rates be taken off. As long as there is no limit to the amounts that can be awarded to resolve claims, there can be no ceiling on the premiums that must be charged to pay for them.

Lawrence E. Smarr is president of the Rockville, Md.-based Physician Insurers Assn. of America.

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Commentary

Bad toys were better back when

Among other things, the holidays are a time for reminiscing. They're also a time for tradition.

One of the greatest of column-writing traditions, of course, is the "things were better then" piece, and I find myself moved to embrace that tradition this holiday season.

Inspiring my nostalgia is this year's Consumer Product Safety Commission list of the most hazardous toys. The list included the Nerf Big Play Football, whose hard plastic interior frame could cause facial cuts to a child struck by one, the CPSC said, and a Batman Batmobile, whose plastic rear tail wings could cause puncture wounds.

Now the CPSC reported that 11 children age 15 and under were killed by unsafe toys last year, while 155,400 were injured seriously enough to be treated in hospital emergency rooms. Obviously, safeguarding children from hazardous playthings is an important endeavor.

But—and here's where the nostalgia comes in—criticizing a Nerf ball? What's with our public safety watchdogs today?

One of the great hazardous toy fads of the 1970s, known as Kabangers (or Click Clacks or Crazy Clackers), consisted of two golf ball-sized acrylic spheres, each attached by about a foot of string to a small handle. The idea was that, by raising and lowering your hand, you'd get the balls moving pendulum style, clacking together at the bottom of the arc. With more vigorous movement and a bit of proficiency, you advanced to clacking the balls together at high speed both above and below your hand, occasionally resulting in the balls exploding into flying shards of hard plastic.

There were rumors of broken wrists, which we were convinced were merely the product of teacher and parent hysteria, though it did seem that avid clackers often seemed to sport a lot of bruises and bumps on their forearms. Many kids also discovered that Kabangers, swung above the head bolo fashion, made a great impromptu weapon.

One of the great toy fads for a year or two in the 1960s was the Wham-O Super Ball, a toy the manufacturer called "the most amazing ball ever created by science." About two inches in diameter, Super Balls were made of a compound Wham-O called Zectron, and a dropped Super Ball would bounce to something like 90% of the height from which it was dropped. They also had some weird properties Wham-O

attributed to the ball's relatively high coefficient of friction, among them that a Super Ball bounced along the sidewalk to a buddy seemed to pick up velocity on its second bounce.

Enterprising kids could find all manner of amusement with a Super Ball. One of my favorites was Super Ball baseball—you just had to hope the batter would hit a lazy fly to one of the outfielders stationed a block or so away, not a line drive back to the pitcher. Unfortunately, even without interruption for a trip to the emergency room, games never tended to last long. Most of the time they ended after a futile hunt for the ball in a distant weed patch or after the ball split in two

off the bat, half going for a long home run, the remainder fouled off into oblivion or the gutter of a house across the street.

Another amusingly hazardous toy of the '60s was Mattel's Agent Zero M Sonic Blaster. I recall the commercial for this bazookalike toy showing a kid taking careful aim at a distant mail carrier or meter

reader, then the stunned target getting his feet knocked from under him by a blast of compressed air as our youthful masterspy gives a look of smug satisfaction. It's possible that my recollection is enhanced or distorted a bit by the prism of time, but you get the idea.

Of course Consumer Reports nipped that the Sonic Blaster fired its compressed air "with a deafening blast," saying their measurements of the gun's volume reached 157 decibels, "above a level that can do permanent damage to the hearing of an adult." They rated the Sonic Blaster "not acceptable." Maybe it's just my nostalgic mood, but I'm wondering if you can find one of these on eBay.

It should be noted that Consumer Reports itself found fault with the Official Nerf Ball in the early 1970s. Testing the ball for flammability in 1971 against the standards of the 1969 Child Protection & Toy Safety Act, the watchdogs found that it failed, "bursting into flames about two seconds after contact with a lit match." The message, I guess, was that if your gift-giving plans included leaving a carton of smokes under the tree for little Timmy, prudent household risk management suggested taking a pass on the Official Nerf Ball.

Senior Editor Rodd Zolkos can be reached at rzolkos@businessinsurance.com.



Rodd Zolkos

Comings & Goings

Agents/Brokers:

Aon Corp.'s Aon Professional Risks unit, based in London, has named **Anka Taylor** as director. Previously, Ms. Taylor was a senior underwriter at Hiscox P.L.C.

Atlanta-based Beecher Carlson Holdings Inc. has named **Robert C. Smith** as managing director. Previously, Mr. Smith was senior vp and principal at Reagan Consulting.

Catherine Snyder has been named manager of the Swett & Crawford Top Floor Hospitality program. Based in Los Angeles, Ms. Snyder previously was a managing underwriter.

New York-based Willis Group Holdings has made several senior-level appointments.

• **Sandra Bravo** has been named executive vp, North America private client group leader. Ms. Bravo previously was senior vp for Personal Lines Insurance Brokerage Inc., a subsidiary of Chubb Group.

• **Michael Bernstein** has been named senior vp and office leader for a new location on Long Island, N.Y. Previously, Mr. Bernstein was a senior vp at Aon Risk Services.

London-based Cooper Gay Group has named **Philip Lundberg** as director in its nonmarine division. Before joining Cooper Gay, Mr. Lundberg was a senior vp and head of broking for Latin American accounts at Bowring/Marsh Energy Onshore division.

London-based HSBC Insurance Brokers has named **Tim Kemp** as deputy chief executive, effective Jan. 1, 2005. Mr. Kemp currently is managing director of the General Corporate & Commercial Risks division. He will also assume the role of chairman of GCCR.

Redwood City, Calif.-based ABD Insurance & Financial Services has named **Antonio Casabat** as senior vp/sales executive. Previously, he was a principal at Mercer Hu-

man Resource Consulting.

Insurers:

Keith A. Jensen has been named chief financial officer of Cincinnati-based American Financial Group Inc., replacing Fred J. Runk, who also serves as senior vp and treasurer. Mr. Jensen's promotion will be effective on Mr. Runk's retirement in March 2005. Mr. Jensen also is an AFG senior vp.

Boston-based Liberty International Underwriters has named **Risa Revin** as chief claims officer for global casualty, specialty casualty and environmental operations. Previously, Ms. Revin was vp of specialty casualty claims in Canada.

Other providers:

Karen A. Callanan has been named a senior vp of NIF Professional Liability Risk Solutions in Murray Hill, N.J. Before joining NIF, Ms.

Callanan was an underwriting executive for professional liability at Fireman's Fund Insurance Co.

Jay Lewis has been named

market leader for the Pittsburgh office of Mellon Financial Corp.'s Human Resources & Investor Solutions unit. Previously, Mr. Lewis was a client manager and senior consultant for Mercer Human Resource Consulting.

John Lucker has been named firm principal at Deloitte Consulting L.L.P. Previously, Mr. Lucker

was a senior manager at the New York-based company.

The Tillinghast unit of Towers Perrin has named **Prakash Shimpi** as practice leader in its New York office. Previously, Mr. Shimpi was president and chief executive officer of Swiss Re Financial Services Corp.

Cambridge Integrated Services Group Inc. has named **Robert J. Fechtmann** as chief financial officer, a newly created position based in Greenwich, Conn. Previously, Mr. Fechtmann was executive vp and CFO of Draft Inc.

London-based Medisure, a health care program manager, has named **John Picken** as chief executive. Previously, Mr. Picken was manager of Medisure's client relationships.

Reinsurance:

Benfield Inc. has named **Joseph J. Vitale** as senior vp in its Boston office. Before joining Benfield, Mr. Vitale was a senior vp at Willis Re.

Surplus lines:

Robert Drohan has been named chief underwriting officer for Target Insurance Services in Avon, Conn. Previously, Mr. Drohan was a vp at the St. Paul Travelers Cos.

Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers. Please send news of recently promoted, hired or appointed senior-level executives to: Joe Walker, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; jwalker@crain.com.

Photos should be sent to: Kathy Barnes, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; kbarnes@crain.com.

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U.K. to keep voluntary pensions system But compulsory contributions loom if employers fail to encourage saving

By SARAH VEYSEY

LONDON—Employers in the United Kingdom could be forced to make mandatory contributions to occupational pension plans unless they do more to encourage employees to contribute to the current voluntary system, a government appointed task force says.

The Employer Task Force on Pensions, which was established in 2003 to advise the secretary of state for Work and Pensions, last week published a report recommending that the current system of voluntary contributions to occupational pension plans be maintained.

But Sir Peter Davis, chairman of the task force and a former chief executive of Sainsbury's Supermarkets Ltd., said that while the task force is not yet recommending compulsory pension contributions it is the "last-chance saloon for voluntarism."

The report made several recommendations to employers and the task force also published a guide detailing case studies of pension plans it deemed to be good practice (see story, page 15).



PHOTO: BLOMBERG NEWS/LANDOV

Employers are only one part of the solution to the problem of inadequate retirement savings, but 'we urge them to do what they can' to help increase private savings for retirement.

Sir Peter Davis
Employer Task Force on Pensions

Employers are only one part of the solution to the problem of inadequate retirement savings, Sir Peter said, but "we urge them to do what they can" to help increase private savings for retirement. Key to this effort is establishing a higher overall level of employer contributions

to occupational pension plans, he said.

Currently, the total average contribution to occupational pensions is inadequate, according to the report. Average contribution rates, in-

clude at least two thirds of the contributions, the report recommends.

Employers should also review the types of pension plans they offer, Sir Peter said. Over the past several years, many employers in the United Kingdom have closed their traditional defined benefit plans in favor of other plan types. But the change in plans can lead to significant differences in the level of pension benefits for employees that are doing similar jobs, he said.

"We urge employers moving away from defined benefit schemes to consider career-average schemes or one of the new hybrid schemes," he said.

Employers should also improve communications with staff regarding retirement savings, the report said.

Employers should work with
See **PENSIONS**/page 15

cluding employer and employee contributions, average between 7% and 11% of employee salary, the report notes.

However, contributions should average between 10% and 15% to ensure adequate retirement savings, the report notes. Employers should

World Updates

U.K. regulator mandates process improvements

The Financial Services Authority will give the U.K. insurance industry two years to find ways to improve commercial insurance contract certainty, instead of deferring details. If the industry's efforts fail, the agency will impose its own solution, said FSA Chief Executive John Tiner. The FSA also plans to examine potential conflicts of interest in the market following New York Attorney General Eliot Spitzer's investigations of commission practices in the United States, said Mr. Tiner in setting out the FSA's agenda. The FSA, which regulates U.K. insurers, will begin regulating brokers as well in 2005.

Britain to change law on retirement age

By 2006, the U.K. government will introduce changes to its law on retirement ages as part of its plan to implement a European Union directive on age discrimination. The Department of Trade and Industry said that the new law would set a default retirement age of 65, but employees could request permission to work beyond this age. Employers will have a duty to consider such requests. Once the rules are enacted, employers will be permitted to require individuals below the age of 65 to retire only if they can show that such moves are justified.

U.K. pension regulator gets expanded powers

U.K. employers with defined benefit pension plans could be forced to make retroactive payments to the plans if they are impaired by corporate restructurings, under new powers granted to regulators. The Occupational Pensions Regulatory Authority noted last week that the new Pensions Regulator, which will succeed OPRA in April 2005, will be able to apply funding orders retroactively, back to April 26 of this year.

Briefly noted

The board of **Zurich Financial Services Group** has selected Manfred Lentz to succeed retiring Chairman Lodewijk C. van Wachem. Mr. Lentz, who is also chairman of the International Chamber of Commerce, will assume the chairmanship of the Zurich, Switzerland-based insurer in April, pending shareholder approval....**Goshawk Insurance Holdings P.L.C.** has upped its estimated net loss from the recent U.S. and Japanese windstorms to \$33 million. Goshawk said previously that its storm losses would total about \$22 million.



PHOTO: GETTY

The fatal crash of a Concorde jet in 2000 has been blamed on a loose piece of titanium that fell from a Continental Airlines jet.

Concorde disaster blamed on debris from other jet

By PETA MILLER

PONTOISE, France—Continental Airlines Inc. is disputing an official finding that debris from one of its aircraft was the direct cause of the 2000 crash of a Concorde jet at Charles de Gaulle Airport near Paris.

A panel of experts released its report on the crash at a public inquiry at a court in Pontoise, France, which is investigating whether criminal charges should be brought in connection with the accident.

In their report, the experts concluded that a strip of titanium that fell from a Continental Airlines DC-10 punctured the tire of Air France's Concorde Flight 4590. The resulting rupture of the tire created debris

that damaged the Concorde's fuel tanks, causing the plane to explode. The accident killed 113, including four people on the ground.

The report notes that the titanium strip in question had been used to replace an aluminum strip—a much more malleable material—and that such replacements had not been authorized by the U.S. Federal Aviation Administration. In addition, the report faults Continental for the frequent replacement of the strip, saying those actions had weakened the part of the plane to which the strip was attached, making its loss more likely, the report states.

However, the experts also de-

See **CONCORDE**/page 16

Aussie regulator probes broker pay U.S. charges help spur investigation

By ELIZABETH FRY

SYDNEY, Australia—Australia's corporate watchdog has begun a three-month investigation into insurance brokers' remuneration practices to check that brokers are acting in the best interests of their clients.

Although the investigation—announced earlier this month—was prompted, in part, by allegations of and bid rigging and client steering in the United States, the Australian Securities and Investments Commission had already planned to examine the disclosure practices of insurance brokers as part of its compliance monitoring campaign, according to Ian Johnston, ASIC's executive director of financial services regulation in Melbourne.

"We had already looked into disclosure practices of financial planners, so it was time for us to look at all brokers and see how they are managing," he said. "We don't know how big a potential problem there is until we do the work."

ASIC will, over the next several weeks, audit insurance brokers and insurance companies to determine whether all commissions have been disclosed. It will report its findings by March 2005. At that time, ASIC will assess the need for further regulatory action. The investigation is expected to focus on Australia's largest brokers and insurers.

Speaking of the investigation, Noel Pettersen, chief executive officer of the Sydney-based National Insurance Brokers Assn., said that Australian insurance brokers operate in the most heavily regulated market in the world and had nothing to hide. NIBA, though, placed a

document on its Web site earlier this month providing its members with general information on how insurance brokers can better manage conflicts of interest.

Chris Spraggon, insurance manager for Sydney-based energy giant AGL Ltd., expects that the investigation will reveal some hidden commission payments. "As a corporate insurance buyer, I have always been aware of the fact that there are commissions hidden in the insurance purchase structure," he said. "Some of these commissions are so embedded and go so far up the chain, they are difficult to identify, let alone squeeze out."

"You can question the structure, but, as one client of a large broking house, you can't change the way they work just for one transaction," Mr. Spraggon said. "All you can do is accept the fact that is how life is, and, while it's not something that keeps corporate buyers awake at night, we would rather there weren't commissions in the process, and, if there were, that they are properly disclosed."

The ASIC investigation is causing insurance brokers to focus more on their clients' wishes, according to Bruce R. Bollom, CEO of Willis Australia Ltd. "We are listening very carefully to what our clients want and focusing on our internal practices," he said.

And Aon Australia placed an advertisement in the local press, reassuring its clients that it had abolished contingency agreements in response to client concerns.

"The company will discontinue contingency agreements in North America immediately and in the
See **PROBE**/page 15

Professional MarketPlace

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REQUEST FOR SERVICES

Request for Services

The City of Chicago is seeking proposals for Owner Controlled Insurance Program Brokerage Services for the City's O'Hare Modernization Program "OMP". Proposals are due no later than 4:00 p.m. on January 10, 2005. The Request for Services and other details can be found on OMP's web site www.ohare.com.

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LEGAL NOTICE

NOTICE OF SANCTION OF SOLVENT SCHEME OF ARRANGEMENT
 IN THE HIGH COURT OF JUSTICE (IN ENGLAND AND WALES)
 CHANCERY DIVISION
 COMPANIES COURT
 NO. 5952 OF 2004
 THE HONOURABLE MR JUSTICE HART
 IN THE MATTER OF
MOORGATE INSURANCE COMPANY LIMITED
(FORMERLY POHJOLA INSURANCE COMPANY (U.K.) LIMITED)
 AND IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by the Order dated 7 December 2004 made in the High Court of Justice in England and Wales and in the matter of Moorgate Insurance Company Limited (the "Company"), the scheme of arrangement (the "Scheme") proposed to be made between the Company and its Scheme Creditors (as defined in the Scheme) pursuant to section 425 of the Companies Act 1985, which was voted on and approved by Scheme Creditors during the Creditors' Meeting held on 25 November 2004 was sanctioned. An office copy of the Order was lodged with the Registrar of Companies on 9 December 2004 and the Scheme became effective on that date. It is requested that Scheme Creditors submit completed Claim Forms by 9 March 2005. Returned Claim Forms must reach Cavell Management Services Limited, PO Box 62, Rose Lane, Norwich, Norfolk NR1 1JY marked for the attention of Jim Moran before 12.00 noon, London time, on this date. If a Scheme Creditor fails to lodge a Claim Form by this date, the Scheme Manager will determine the value of any Paid Loss Claim from information contained in the Company's own books and records and will not allocate any value to Notified Outstanding Claims or IBNR.

Should you have any queries in connection with this Notice please contact Jim Moran of Cavell Management Services Limited at the above address, telephone: +44 (0)1603 599340, facsimile: +44 (0)1603 599441, email: jim.moran@cavell.co.uk. Copies of the documents referred to above are also available from www.cavell.co.uk.

Dated: 17 December 2004

LEGAL NOTICE

IN THE MATTER OF AN INTENDED APPLICATION
 IN THE HIGH COURT OF JUSTICE OF ENGLAND AND WALES
 CHANCERY DIVISION
 COMPANIES COURT
 IN THE MATTER OF
THE BRITISH AVIATION INSURANCE COMPANY LIMITED
 AND IN THE MATTER OF THE COMPANIES ACT 1985

Notice is hereby given that the above named company (the "Company") intends to issue an application in the High Court of Justice of England and Wales on 11 January 2005 for an Order for permission to call a meeting of certain creditors of the Company (the "Scheme Meeting"). The purpose of the Scheme Meeting will be to consider, and if thought fit, to approve (with or without modification) a solvent scheme of arrangement proposed by the Company to be made pursuant to section 425 of the Companies Act 1985 (the "Scheme") in relation to business ("Scheme Business") underwritten by or on behalf of the Company during the period 24 February 1930 to 31 December 1990 (inclusive). It is also proposed that, subject to discussions with the Office of the Superintendent of Financial Institutions in Canada, Scheme Business will also include business underwritten by or on behalf of the Company's Canadian branch in the period up to and including 31 December 1991.

Creditors under the proposed Scheme are all potential claimants under or in connection with any contract or policy of insurance, reinsurance or retrocession entered into by or on behalf of the Company (including its Canadian branch) during the above periods ("Scheme Creditors"). BAIG Pool business and any other insurance and reinsurance business written by or on behalf of the Company after 31 December 1990 and by or on behalf of the Canadian branch after 31 December 1991 is excluded from the proposed Scheme.

The primary objective of the proposed Scheme is to terminate the run-off of the Scheme Business earlier than would be the case if claims were left to mature and be paid in the normal course, thereby allowing the Scheme Creditors to receive early payment. The Scheme will impose a Bar Date on the submission of claims. The Scheme will establish a method by which current, contingent and future claims of Scheme Creditors will be valued and paid in full.

The Company is of the opinion that the rights of proposed Scheme Creditors are not so dissimilar as to make it impossible for them to consult together with a view to their common interest. Accordingly, the Company has concluded that there should be only one class of Scheme Creditor under the Scheme and it is therefore proposed that only one Scheme Meeting of Scheme Creditors will be held for the purposes of considering and, if Scheme Creditors think fit, approving the Scheme.

If any proposed Scheme Creditor is of the view that for some reason there are or may be more than one class of creditor of the Company in relation to Scheme Business, it should contact Global Aerospace Underwriting Managers Limited, Fitzwilliam House, 10 St. Mary Axe, London EC3A 8EQ, United Kingdom for the attention of Mick Dempsey (tel: +44 (0)20 7369 2244; fax +44 (0)20 7369 2840; email: mdempsey@global-aero.co.uk), as soon as possible, in any event by 11 January 2005 so that any points can be considered before the application to the English Court is issued.

Further information about the Company and the proposed Scheme and, should the Court grant leave to convene the Scheme Meeting, copies of all the Scheme documents, will be available for downloading from the Scheme website at www.baicsolventscheme.co.uk

LEGAL NOTICE

LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE (IN ENGLAND AND WALES)
 CHANCERY DIVISION
 COMPANIES COURT
 NO 5774 OF 2002
 IN THE MATTER OF

ASSURANTIEMAATSCHAPPIJ "DE ZEVEN PROVINCIEN" NV (also known as "THE SEVEN PROVINCES" INSURANCE COMPANY LIMITED); "TRANSATLANTICA" HERVERZEKERING MAATSCHAPPIJ NV; NATIONALE-NEDERLANDEN SCHADEVERZEKERING MAATSCHAPPIJ NV; NATIONALE-NEDERLANDEN INTERNATIONALE SCHADEVERZEKERING NV (also known as "NV THE NETHERLANDS INSURANCE COMPANY EST. 1845 LIMITED");

**AND
 MERCANTILE MUTUAL INSURANCE (AUSTRALIA) LIMITED**
 IN THE MATTER OF THE COMPANIES ACT 1985, SECTION 425
 AND IN THE FEDERAL COURT OF AUSTRALIA
 NEW SOUTH WALES DISTRICT REGISTRY
 NO. 3052 OF 2002

NOTICE OF FINAL IMPLEMENTATION

NOTICE IS HEREBY GIVEN in the matter of Assurantiemaatschappij "De Zeven Provinciën" NV, (also known as "The Seven Provinces" Insurance Company Limited); "Transatlantica" Herverzekeering Maatschappij NV; Nationale-Nederlandschadeverzekering Maatschappij NV; Nationale-Nederlandschadeverzekering NV (also known as "NV The Netherlands Insurance Company Est. 1845 Limited"); and Mercantile Mutual Insurance (Australia) Limited (together the "Scheme Companies") that, following the sanction of the schemes of arrangement (together the "Scheme") which became effective on 20 December 2002 and the subsequent payment of all established liabilities (as defined in the Scheme), the Scheme has been implemented in accordance with its terms.

All Scheme Creditors' cheques and payments by telegraphic transfer have been despatched. The Scheme has been implemented in accordance with its terms and has terminated and no further payments shall be made to Scheme Creditors by the Scheme Companies.

Should you have any questions regarding this Notice, please address them to Fiona Christie at: PricewaterhouseCoopers, Plumtree Court, London EC4A 4HT, United Kingdom, Telephone: +44 (0) 20 7583 5000, Facsimile: +44 (0) 20 7804 5203, Email: fiona.christie@uk.pwc.com

or to Martin Rebisz at: Nationale-Nederlandschadeverzekering Finance and Investment Company, 60 London Wall, London EC2M 5TQ, United Kingdom, Telephone: +44 (0) 20 7767 6428, Facsimile: +44 (0) 20 7767 7899, Email: Martin.Rebisz@uk.ing.com

LEGAL NOTICE

LEGAL NOTICE

NOTICE TO ALL CREDITORS OF GORDIAN RUNOFF (UK) LIMITED (FORMERLY GIO (UK) LIMITED)

GORDIAN RUNOFF (UK) LIMITED (formerly GIO (UK) LIMITED) ("the Scheme Company") wishes to propose a Scheme of Arrangement so that it may agree and pay all its remaining liabilities in full. The Scheme Company would then be dissolved. The Scheme Company is solvent. The proposal relates only to business written by GIO (UK) Limited. It does not include any business of Gordian RunOff (Australia) Limited or of GIO General Limited.

If you have a policy that was issued to you by GIO (UK) Limited between 1987 and 1999, you may be affected and your views are sought on the points below by no later than 14 January 2005.

A Scheme of Arrangement is a court-approved process pursuant to section 425 of the Companies Act 1985. The Scheme Company will prepare a scheme document explaining how it proposes to agree and pay all its remaining liabilities in full. The court will specify how the Scheme Company must bring that scheme document to the attention of all its creditors who have or may have claims against the Scheme Company. Those creditors are then invited to attend a meeting to vote on the scheme proposal. The scheme becomes effective if (a) it is approved by a simple majority of the creditors who cast a vote, provided the value of votes cast in favour represents at least 75% of the value of all votes cast and (b) the court sanctions the approved scheme.

The Scheme Company hopes to send the proposed scheme to all creditors in February 2005 and to invite creditors to vote on the scheme at a meeting in early April 2005. The Scheme Company is solvent and all Scheme Claims will be paid in full. The details of the principal terms of the proposed scheme are included in a draft explanatory statement which has been prepared pursuant to section 426 of the Companies Act 1985. Copies of that draft explanatory statement are available on application to the persons whose contact details are given below. Creditors' views are sought on the following points.

One Voting Class: The creditors who are eligible to vote are put into voting classes of other creditors with similar rights and liabilities. The Scheme Company is proposing that there should be only one voting class of creditor. The Scheme Company's directors and their legal advisers consider this approach to be fair. They consider that the rights and the proposed treatment of the various creditors under the scheme are sufficiently similar to enable all creditors to consult together with a view to their common interest, notwithstanding that some creditors will have claims for paid losses (claims against liabilities of a creditor in respect of losses that are certain in amount, have been paid or are due and payable by him); notified outstanding claims (claims or liabilities in respect of losses that have been notified to that creditor but not yet become paid losses); and IBNR (losses that have been incurred but have not been reported).

Short form Explanatory Statement: The Scheme Company intends to post to all its creditors and brokers who placed business with the Scheme Company a 6-page letter and voting and proxy forms. That short form letter will summarise the scheme's terms, the important dates and the claims agreement process. A full copy of the scheme document will not be distributed by the Scheme Company. From February 2005 onwards, the entire scheme document may be downloaded from www.gordianuk.co.uk or hard copies will be provided free of charge upon request made to any of the persons whose contact details are below.

Claim Form: The Scheme Company proposes to send creditors blank claim forms. Creditors will be required to provide (where relevant) the contract reference number, broker reference, inception date, participation percentage and the value of agreed claims, notified outstanding claims and/or IBNR claims. The Scheme Company will upon request provide contract reference numbers, broker references, inception dates and participation percentages where known.

Deadline for submitting claims: Creditors will have six months in which to submit claims. Any claim not filed within that six-month period will be valued at nil.

Your response is invited by no later than 14 January 2005. Please contact one of the following persons with any comments:

- the Proposed Scheme Manager: Andrew Godwin, Cobalt RunOff Services Limited, Tel +44 (0) 207 818 5368 or scheme@gordianuk.co.uk
- the Legal Adviser: Miriam Bartlett, Pinsent Masons, Tel +44 (0) 207 667 0242 or miriam.bartlett@pinsentmasons.com
- the Scheme Advisers: Kirsteen Hodge or Jamie Smith, Deloitte & Touche LLP, Tel +44 (0) 207 007 3851 or khodge@deloitte.co.uk

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Pensions: Increased savings necessary

Continued from page 13

their employees and the government to take steps to increase retirement savings if mandatory contributions are to be avoided.

"We ought to have one last go to make the voluntary system work," Sir Peter said.

An independent commission on pensions is due to release its recommendations to the Government in the fall of 2005, so employers should strive to show before then that a system of voluntary contributions can work, Sir Peter said.

Pension experts and employer groups generally welcomed the task force's report.

The Confederation of British Industry, which opposes mandatory employer pension contributions, welcomed the report's "emphasis on reinvigorating the voluntary pensions system."

A spokesman for the CBI said that the employer body believed a move to compulsory contributions would be a virtual tax on jobs. And he noted that the CBI calculated that such a move could cost U.K. employers £22 billion (\$42.24 billion).

The London-based British Chambers of Commerce also welcomed the report.

"The task force is right to reject compulsion. Compulsory contributions would involve great costs for firms and could damage the U.K.'s competitiveness," BCC President Bill Midgley said in a statement.

And a spokesman for the Engi-

neering Employers Federation said that the association was not in favor of a move to mandatory pension contributions.

"Any move towards compulsion would open a series of complex issues and could not be contemplated by manufacturers unless it formed part of a satisfactory long-term solution to future pensions policy," David Yeandle, deputy director of employment policy at the EEF, said in a statement.

Benefit consultants also welcomed the report's recommendations.

Deborah Cooper, a consultant at Mercer Human Resource Consulting in London, said that forcing employers to make pension contributions would likely force average wages down.

Alan Pickering, a consultant at Watson Wyatt Worldwide in London, said that making pension contributions compulsory—either for employers or employees—would not increase the awareness of the need for pension savings among individuals. He said that better education was needed to allow employees to make informed choices about their pension savings.

The 14-member Employers Task Force is made up of employer and trade union representatives, and was advised by a 16-person advisory group that included pension experts, lawyers and actuaries.

The report and good practice guide can be viewed online at www.employertaskforce.org.

Pension guide for U.K. employers

A U.K. government-appointed employer task force last week published a "good practice guide" for pension programs.

David Allen, vice chairman of the London-based Employer Task Force on Pensions and managing director of British Petroleum P.L.C., said the guide aims to offer employers practical ideas and advice on pension offerings, particularly on alternatives to traditional defined benefit plans.

One of the guide's areas of focus is ways companies can boost employee participation in pension plans, such as through automatic enrollment. Under such an approach, new employees are automatically enrolled into an employer's pension plan unless they expressly opt out.

The guide also discusses ways that employers seeking to close defined benefit plans to new members and open defined contribution plans can reduce benefit inequalities. Many U.K. employers have made such moves in recent years in order to lower

costs and reduce the investment risk they bear.

In one of the guide's case studies, the task force discusses how a company this year closed its defined benefit plan to new members and replaced it with a hybrid plan that contained elements of both a defined benefit and defined contribution structure.

In another case study, the report details the experience of a company that closed its defined benefit pension plan in 2000 and replaced it with a defined contribution plan. In an effort to encourage employee saving, the company introduced both automatic enrollment and a contribution formula in which contribution rates rise as employees age.

Other case studies demonstrate the need for employers to recognize the importance of flexibility and effective communication of pension offerings.

The guide is available at www.employertaskforce.org.uk.

—By Sarah Veysey

Probe: Australia eyes brokers

Continued from page 13

other countries by the end of the year," Peter Harmer, CEO of Aon Australia in Sydney, said in the statement. "In a highly regulated insurance industry, financial services clients in Australia enjoy some of the best consumer protection in the world."

But though personal lines and small business policyholders currently have legal protection regarding broker remuneration, that same level of protection will not be afforded to commercial policyholders until early next year, noted insurance lawyer Ray Giblett, senior associate, insurance, at the Sydney law firm of Clayton Utz. Under ASIC's new conflict-of-interest provisions, which are effective Jan. 1, 2005, all brokers will be required to have arrangements in place to monitor potential conflicts of interest that arise.

Existing law requires brokers to disclose to personal lines and small business policyholders "all information about remuneration—direct payments or soft-dollar benefits such as a discount or related ser-

vices or trips or client placement facilities whereby brokers send certain types of risk on to certain insurers under a profit-share arrangement—the problem is that the same does not apply to (commercial) clients," Mr. Giblett said.

ASIC's Mr. Johnston agreed that

'Corporates are big enough to look after themselves, and I don't think we need a regulator running around trying to control the market.'

Chris Spraggon
AGL Ltd.

the law regarding the commercial insurance sector is not explicit. The existing law "is based on the premise that (commercial) clients are more able to look after their own interests, and I think it is the case that they are more able to

manage their relationships with a broker or any financial service provider and they are able to do so with more equality of information," he said.

AGL's Mr. Spraggon agreed, to a point. "I think corporates are big enough to look after themselves, and I don't think we need a regulator running around trying to control the market. But following the changes that will be brought about in the U.S., I think most of these commissions—at least the ones which produce the worst conflicts of interest—will disappear from the process," he said.

Mr. Johnston also said that though there exists a moral obligation for brokers to manage any conflicts of interest, that will not be explicitly demanded in the law until the new conflict-of-interest provisions become effective.

But to Mr. Spraggon, that doesn't matter. "The U.S. situation is the cleanser—the big brokers have already moved away from secret commissions," he said, "and that makes me feel far more comfortable as a corporate buyer."

Asia: Liability risks increase

Continued from page 4

than others, said Brad Wood, vp of risk management at Marriott International Inc. in Bethesda, Md. Countries such as Hong Kong and Singapore have legal frameworks that are more developed than those in other, developing nations, he pointed out, and the more sophisticated nations tend to see more lawsuits.

U.S.-based multinationals such as Marriott, which operates properties throughout Asia, are seeing the development of legal systems in parts of Asia that look a lot like the one at home, Mr. Wood said. And that raises some liability concerns for companies, he added. "As the world's legal systems look more like the U.S., the more adverse it becomes for anyone operating outside the U.S.," he said.

But, while Hong Kong, Singapore and other developed nations are seeing an increase in litigation spur the move to purchase liability insurance, less developed countries, such as Indonesia, are not seeing such a trend, Mr. Wood said.

Nick Duder, president director at PT. Hill Konsultan Indonesia, a risk management consulting firm based in Jakarta, said multinationals and companies providing services to those operations in Indonesia, rather than local companies, are the targets of most litigation because they are the ones that carry liability insurance.

Most local companies in Indonesia don't bother with liability insurance, Mr. Duder said, because "it is still a relatively new concept and anything that adds cost without tangible returns is generally regard-

ed as not being essential and therefore best avoided."

Indonesian companies "would rather take the risk and make what they consider to be savings" by not paying premiums, Mr. Duder said.

Mr. Wood said Marriott, as a multinational with worldwide operations, doesn't rely on country-by-country trends in litigation when putting its liability program together. "We have global programs and try not to get into the business of predicting what outcomes will be in specific countries," he said. "We protect ourselves wherever a claim may arise."

The demand among Asian countries for liability insurance is spurred not just by an increase in litigation, but also by "the importation of global trends," according to

See ASIA/next page

China opens insurance market further

BEIJING—Foreign insurers operating in China are hopeful that the recent removal of restrictions that limited their ability to write across wide geographic areas will allow them to more effectively compete in the country.

The action on Dec. 11 by the China Insurance Regulatory Commission is a "positive development" that could mean foreign insurers will be on a more level playing field with local companies, said David Snyder, general counsel of the Washington-based American Insurance Assn.

He said, though, that U.S. insurers in China are evaluating the change to determine exactly how it affects licensing procedures and how much impact it will have on their underwriting operations.

Foreign insurers had been limited by strict licensing procedures that allowed them to write only in specific parts of the country. "One of the most significant restrictions has been the need to repeatedly apply for licenses," Mr. Snyder said.

A translation by the AIA of CIRC's short announcement

posted on the agency's Web site said the CIRC had moved to "abolish geographic limitations" on insurers operating in China.

The AIA has long felt that Chinese regulators have "discriminated against foreign players by granting broader territorial approval to their own companies," Mr. Snyder said.

The recent move is welcomed, but "doesn't deal with all the issues," he said. For example, capitalization requirements for foreign insurers in China remain very high, Mr. Snyder said.

—By Michael Bradford

Asia: Increased liability exposures

Continued from previous page
Mr. Otto.

Laws protecting copyrights and patents, for example, which are common in western nations, are being implemented in financial markets such as Singapore and Hong Kong, he said, bringing protections as well as the potential for litigation against those who run afoul of the regulations.

'I would say the demand for liability products is still driven by what the customer needs to buy rather than viewing insurance as one part of an overall risk management approach.'

Chris Lee
Chubb Group

And, in Japan and Korea, the old tradition of public apologies or resignations by "disgraced senior business or government leaders are no longer seen by the public as sufficient reparation," Mr. Otto said.

"Certainly there is a developing awareness of liability concepts in most territories," said Chris Lee, Hong Kong-based Asia/Pacific zone underwriting manager for Chubb Group. "However, I would say the demand for liability products is still driven by what the customer needs to buy rather than viewing insurance as one part of an overall risk management approach."

For example, "the demand for product liability coverage among exporters is certainly on the rise in Asia, but this tends to be driven by vendor contract requirements, par-

ticularly if products are going to the U.S.," rather than a local company's desire to manage their exposure, Mr. Lee noted.

Product liability coverage for exporters, errors and omissions insurance and D&O liability "are the ones most sought after at the moment and the ones offering the greatest growth potential for foreign insurers and reinsurers" operating in Asia, according to Mr. Lee.

Most Asian countries are not "significant markets" for general liability coverages, Mr. Lee said.

Commercial general liability writings have, however, taken off in some of the more developed Asian nations.

In Malaysia, for example, CGL writings have grown by an average of 24% since 2000, more than twice the overall market growth of 11.4%, according to Mr. Otto. He said CGL premiums have risen an average of 16.6% over the same period in Hong Kong, compared with overall growth of 6.7%, and are up 9% per year from 2001-2003 in South Korea, compared with 11.4% overall market growth.

Mr. Otto warned that, while the social, economic and regulatory changes spurring the demand for liability insurance are "positive developments" that will benefit Asian consumers, employees, shareholders and companies that want to "access more of the global capital base," there can be a downside to such progress.

With the positive changes comes increased opportunities for "abuse of these benefits through spurious lawsuits and the creation of the type of compensation culture that is plaguing not only the insurance industry worldwide, but economies themselves," Mr. Otto said.

Concorde: Airline disputes findings

Continued from page 13

terminated that an inherent fault in the Concorde aircraft—the use of a relatively weak material to encase the fuel tanks—created a vulnerability that contributed to the chain of events.

A spokesman for Air France, which is based in Roissy, France declined to comment on the findings of the inquiry.

Judge Christophe Reynard will now decide whether he needs to hear other evidence in consultation with the families of the victims of the crash.

Houston-based Continental said in a statement that the airline "has not received any communications from the court."

"As the company has stated previously, it strongly disagrees that anything Continental did was the cause of the Concorde accident, and it is outraged that media reports have said criminal

charges may be made against the company and its employees," the firm added.

The insurers of Air France; Concorde manufacturers Aerospatiale, which is now part of European Aeronautic Defence & Space Co. EADS N.V. of Schiphol-Rijk, Netherlands, and British Aerospace P.L.C., now BAE Systems P.L.C. of Farnborough, England; Akron, Ohio-based tiremaker The Goodyear Tire & Rubber Co.; and Continental settled with most claimants in 2001. Led by La Réunion Aérienne, Air France's insurer, insurance companies representing much of the aviation insurance market paid in excess of \$100 million in connection with the settlement.

The following year, the relatives of seven crew members not compensated in the original agreement settled with Continental and Goodyear for an undisclosed amount.

Pay: Performance initiatives

Continued from page 1

as proven treatments for medical conditions or steps that seek to reduce medical errors (*BI*, April 28, 2003). The types and amounts of payments have yet to be determined.

"There is a proven return on investment calculator," said Bev Rossmiller, executive director of the Tri-State Health Care Coalition in Quincy, Ill., one of the four coalitions participating in NBCH's initiative. Tri-State, a 52-member coalition representing 25,000 covered lives, was selected because it was already working on a heart disease management program with Pfizer Inc. that it was preparing to roll out next year, she said.

"We're known as the 'Cardiac Belt,'" Ms. Rossmiller said, because the community of 40,000 has a 17% to 20% higher incidence of heart disease than others like it in other parts of the country.

Like the BTE program, the NBCH initiative will focus on three areas of improvement: diabetes care, cardiac care and technology. Participating coalitions can choose to focus on all three areas or to concentrate on just one.

While Tri-State has chosen cardiac care, the Colorado Business Group on Health has selected diabetes care because it was planning its own diabetes initiative with a group of 10 employers in the Colorado Springs area, according to Donna Marshall, executive director of the Denver-based coalition.

The Heartland Healthcare Coalition in Peoria, Ill., also is looking at diabetes care, according to Executive Director Jerry Custer.

"We had done some preliminary work as a group working with area physicians. We were just getting into discussions when we made our application" to the NBCH, he said.

By contrast, the Employers Health Coalition, operating in both Fort Smith and Hot Springs, Ark., will attempt to address all three areas, according to Caryol Hendricks, chief executive officer.

The coalition, which comprises 64 employers representing 45,000 covered lives, had been collecting health care data for a decade and had been looking for a pay-for-performance program that would enable it to use that data to measure treatment outcomes.

"It had to be outcomes-based, and we wanted something providers would respect and believe in," she said.

While BTE is well known among the employer community, the National Committee on Quality Assurance, which will be reviewing the physicians' performance, is known and respected in the provider community, Ms. Hendricks said.

Following the BTE model "will give (the NBCH program) recognition and at least forestall some of the suspicion or concern about an unknown approach to measuring quality," said Bruce Kelley, a consultant at Watson Wyatt in Minneapolis who has been involved

with quality initiatives in other parts of the country. "That's one of the things physicians react to—they're suspicious of quality measurements."

Most physicians are more hesitant to participate in such programs because of the paperwork involved, and the fact that the incentives are often too small to cover these added administrative costs, according to Dr. Manuel Lowenhaupt, vp and national practice leader for clinical transformation at CapGemini Health in New York.

But because of the rising cost of health care, most employers don't have the wherewithal to create meaningful incentives, he said.

"When I look at the big GEs and the automakers, they're very progressive, and they are willing to invest. Many of these programs have built ROI models: If you're willing to kick in an extra \$200 per employee, you will double your money back," he said. "But when you look at the midsized and small employers, they just want a lower premium. They think the plans should be building in enforcement and not ask employers to pay over and beyond their already onerous premiums."

Indeed, it will be a tough sell among employers in these smaller communities, which is why NBCH selected coalitions that already had some backing for pay-for-performance programs from members, according to Mr. Webber.

See **PAY**/next page

Survey: Retiree cover threatened

Continued from page 4

they will terminate coverage for future retirees next year while 6% said it was somewhat likely.

"The prospects for retiree health coverage are slowly disappearing," Mr. Altman said.

Current retirees—while paying higher premiums and facing increases in other cost-sharing requirements—are likely to retain coverage. None of the surveyed employers said it was very likely they would terminate coverage for current retirees next year, while just 1% said it was somewhat likely they would do so.

With the exception of retirees who once worked for firms in bankruptcy that are now terminating coverage completely, current retirees are keeping coverage, noted Tricia Neuman, a Kaiser Foundation vp in Washington.

Employers "will stay in the game," at least for current retirees, said Frank McArdle, a Hewitt consultant in Washington.

It is the big cost burden—with no expectation that increases will dramatically slow down—that is driving the continued erosion of coverage. Those costs have reached levels that couldn't be imagined years ago. For example, the annual cost of providing coverage for a pre-age 65 retiree and a spouse averaged nearly \$13,500.

Retiree health care coverage "is a

very real burden" for employers, Mr. Altman said.

To cope with that burden, respondents took a variety of steps in the past year. For example, nearly eight out of 10 employers increased premiums retirees have to pay for coverage, 45% boosted required coinsurance or copayments for services and 37% raised deductibles.

More cost-shifting to retirees is on the horizon.

Eighty-five percent of employers said it is either very likely or somewhat likely that they will increase retiree health premiums in 2005, while just over half say it is very or somewhat likely they will raise coinsurance or copayment levels.

From a retiree perspective, the good news in the survey's findings is that contrary to some earlier fears raised in Congress, the addition of a federal prescription drug benefit to the Medicare program in 2006 will not yet lead to a significant percentage of employers terminating their own prescription drug benefit plans.

Under that law, Medicare enrollees will receive, after a \$250 deductible, coverage for 75% of the next \$2,250 in expenses. After that, the next \$2,850 in expenses will be excluded, and then Medicare will pay 95% of prescription drug bills exceeding \$5,100.

To encourage employers to retain retiree prescription drug coverage—typically more generous than that provided by Medicare—the law gives employers rich financial incentives.

Employers who keep prescription drug plans that are at least actuarially equivalent to the Medicare benefit will receive tax-free subsidies equal to 28% of each retiree's prescription drug costs between \$250 and \$5,000.

According to the survey, 58% of employers say they are likely to continue to offer drug coverage and take the federal subsidy. Another 17% said they will revamp their retiree health care plan so that prescription drug coverage supplements or wraps around Medicare coverage. Just 8% said they would terminate coverage in 2006 and 13% haven't decided what they will do.

"We will not see a cliff effect" with a mass of employers suddenly dropping prescription drug coverage in 2006, Mr. McArdle said.

Still, Ms. Neuman cautions, this is a "short-term finding" and how long employers will retain retiree prescription drug coverage isn't known.

Copies of the survey, "Current Trends and Future Outlook for Retiree Health Benefits" are available at www.kff.org.

Pay: Plan expands

Continued from previous page

"These are four that all got approvals from boards of directors to begin implementation of this program," he said.

And to help reduce some of the administrative overheads for the coalitions themselves, NBCH has created implementation toolkits, marketing materials and Powerpoint presentations that can be used to communicate with members and providers, Mr. Webber said.

Coalition leaders hope that the proven track record of BTE may help the coalitions get more employers on board, said Mr. Custer of Heartland.

"When you have company names like General Electric...it adds a lot of credibility," he said, adding that having backing from the NBCH gives the coalitions' added credibility.

"There is a certain dilemma and a certain dichotomy about asking employers on the one hand to incentivize physicians who will practice high quality medicine...because of the expectation that this is what they should be doing now," Mr. Custer said.

But, "once it's recognized in terms of what the value of this is from a standpoint of improving the quality of care...I think we can certainly make a business case for employers that this not only makes good business sense, but it also makes good sense for the community at large," he said.

Terror: Brokers report coverage increase

Continued from page 3

tantly, pricing for TRIA and associate coverages dropped during the period examined," according to the white paper.

Marsh's report also found that more than 95% of the companies that reported buying terrorism coverage in third quarter of 2003 renewed the coverage during the third quarter of this year.

Pricing for terrorism coverage continued to soften during the third quarter, Marsh's research found. The median terrorism rate as percentage of total insured value fell to 0.0053% during the third quarter of this year, compared with 0.0076% in the second quarter and 0.0080% in the first quarter.

"Interestingly, this price is virtually identical to that of a year ago, just as the second quarter's rates were similar to those of a year ago," the report says. "This suggests that insurers renewed terrorism coverage in both quarters on, essentially, a flat-rate basis."

The Aon white paper found an even steeper decline, with median quarterly terrorism pricing as a percentage of total insured values dropping from just under 0.0070% during the fourth quarter of 2003 to slightly more than 0.0040% during the third quarter of 2004.

As a percentage of overall property premium, terrorism coverage represented a median of about 4.2% during the third quarter, down from 5.0% during the second quarter of this year, Marsh found. During the third quarter of 2003, terrorism coverage amounted to about 3.7% of total premium, while the

median percentage for the past 12 months stood at 4.7%, said Marsh.

Steve Lundin, a managing director at Marsh in New York and one of the study's authors, said, "If you peel the onion back one level deeper," the industry in which a company falls appears to be one of the most important factors in determining whether the company buys terrorism cover.

"Take-up rates among financial institutions (75%), educational institutions (59%), and the habitational/hospitality sectors (52%) continued to rise," the report notes. The real estate and retail sectors also reported take-up rates of more than 50% for the third quarter.

The take-up rates for financial institutions in the second quarter had been 59.5%, for education institutions 37.5% and for habitational/hospitality 45%. Real estate's take-up rate for the third quarter dropped somewhat from 69.2% to 60.5%, but retail nearly doubled, to 54.8% from 31.3% in the previous quarter. Changes for other sectors were generally not as dramatic.

In contrast, utilities reported a significant drop in the take-up rate from the second to third quarters, falling to 25% from 62.5%. "However, compared to the same quarter a year ago, the take-up rate of 25% was virtually unchanged," the report said.

"It is worth noting that a large number of the utilities renewing in this quarter are situated in the Western region," said the report. This region has consistently had the lowest take-up rates and...now has the highest pricing. The low take-

up rate in the utility industry for this quarter may be a function of these regional and pricing factors."

Aon's white paper also places special emphasis on the issues raised by the uncertainty surrounding TRIA reauthorization.

"TRIA's importance as a backstop cannot be overstated," according to the white paper. It warns that "obviously, another terrorist event in the U.S. could kindle a massive increase in demand, perhaps after the opportunity to reauthorize TRIA has expired," Aon said.

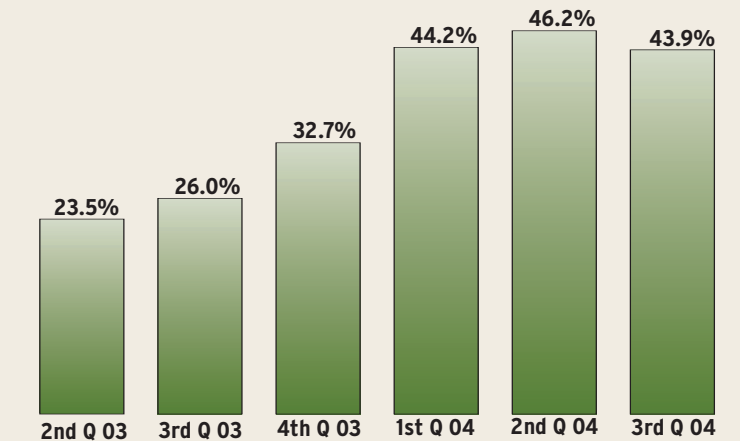
"We think this is going to be a very big problem for the market," said Aaron Davis, New York-based vp-Aon Risk Services and one of the authors of the study. "We would anticipate substantial market disruption without the \$100 billion

annual aggregate backstop. We fully support the renewal of TRIA....If you take a look at the available capacity in the market from a surplus standpoint to respond to property and casualty losses, there's approximately \$116 billion of surplus available. If you look at the \$100 billion of annual aggregate capacity that's being offered with the TRIA backstop, it's quite clear that the loss of that \$100 billion would have a dramatic impact on the industry's ability to write terrorism insurance."

For more information on "Marketwatch: Property Terrorism Insurance Update—Third Quarter 2004," contact a Marsh office. Aon's "Terrorism Risk Management & Terrorism Risk Transfer Overview" can be accessed at www.aon.com.

TERRORISM TAKE-UP RATES

An increasing number of companies bought terrorism coverage in 2004 compared with 2003



Source: Marsh Inc.

Hellholes: Problems remain despite state reforms

Continued from page 3

vironments could lead them to being named a judicial hellhole in the future. These were Oklahoma, the Utah Supreme Court, the District of Columbia and the New Mexico appellate courts.

But Mr. Schwartz said that "the overall trend has been good" since

ATRA published its first list of judicial hellholes in 2002. "The trend has been to quench hellholes."

He cited as an example Mississippi, home to judicial districts that had made previous lists. Republican Gov. Haley Barbour made comprehensive tort reform a central theme of his campaign in 2003, and the Legislature approved a sweeping civil justice reform bill in June of this year.

"Probably the most significant finding from our perspective was the good news in Mississippi," said Mr. Joyce. "This is the first time that we've been able to really document a complete reversal in a hellhole, and we're pleased, obviously, at the good work that Gov. Haley Barbour, the elected officials and the people of Mississippi have done."

Mississippi wasn't the only bright spot from ATRA's perspective. The report also cited what it called "points of light." These included Texas, where medical malpractice liability reforms appear to be spurring improvements in health care availability, and Ohio, for becoming the first state to enact legislation that requires claimants in asbestos, silica

and mixed-dust-related injury cases to meet specific medical criteria before pursuing a suit. State supreme courts in Michigan, North Carolina and Wisconsin won recognition for upholding state tort reform laws. ATRA also recognized Michigan's high court for refusing to uphold

laws, he said.

Mr. Schwartz said enactment of the Lawsuit Abuse Reduction Act, which would, among other things, mandate sanctions on attorneys who file frivolous lawsuits, also would improve the litigation environment.

The House passed LARA in September, but the Senate failed to follow suit. Mr. Schwartz also called for broad class action reform, which also died in the Senate but appears likely to be one of the first legal issues tackled by the new Congress when it convenes next month.

Mr. Schwartz also stressed that, contrary to some critics' charges, ATRA has never blamed jurors for the existence of judicial hellholes. "We are not at all talking about jurors" but rather a handful of judges, he said.

"We get (judicial hellholes) through the rulings of judges that are not fair," he said. "Most judges in America do a really good job," noting that their pay is relatively low compared to what they might be making in private practice.

"We have a big country, and

we're only talking about nine places," said Mr. Schwartz.

"In these nine places, we don't have equal justice under law," he added.

Joanne Doroshov, executive director of the New York-based Center for Justice & Democracy, which opposes the tort reforms sought by ATRA, issued a statement blasting the study.

ATRA has "repackaged its 'judicial hellhole' report as a wholesale attack on judges rather than juries," she said.

"The American public expects their judges to be fair and impartial," Ms. Doroshov said.

"In particular, judges should not have to look over their shoulder to calculate how their decisions might play with the big business members of ATRA. Unlike legislators or officials of the executive branch, judges are not supposed to be advocates of particular interests like this," she said.

Ms. Doroshov called the report "nothing more than an intimidation tactic against judges who are not beholden to corporate interests."

The report, "Judicial Hellholes 2004," can be accessed at www.atra.org.

2004 JUDICIAL HELLHOLES

Madison County, Ill.
St. Clair County, Ill.
Hampton County, S.C.
West Virginia (entire state)
Jefferson County, Texas
Orleans Parish, La.
South Florida
Philadelphia
Los Angeles

Dishonorable Mentions:

Oklahoma
Utah Supreme Court
District of Columbia
New Mexico Appellate Courts

Source: American Tort Reform Assn.

'We have a big country, and we're only talking about nine places. In these nine places, we don't have equal justice under law.'

Victor Schwartz
ATRA



the largest pain-and-suffering award in state history, while courts in several other states won plaudits for remanding large punitive damage awards.

More legislative work needs to be done to remedy civil justice problems, said both Messrs. Joyce and Schwartz.

"There are certain issues Congress must address," Mr. Joyce said. These include reforming the way in which victims of asbestos-related disease receive compensation and improving medical malpractice liability

Superfund: Court curbs liability

Continued from page 1

get to, it's bad policy," said Robert L. Graham, a partner with Jenner & Block in Chicago. While the aim of the Superfund law was to encourage parties to clean up polluted sites, "this decision will be a disincentive to doing that."

Mr. Graham and others predicted that companies with environmental liabilities will ask Congress to amend the Superfund law specifically to allow cost recovery actions in cases where the EPA has not brought a civil action.

While acknowledging the ruling's impact on established legal practice, though, other lawyers express doubts that it will circumvent cost recovery actions or delay cleanups.

"There may not be a federal remedy, but there are state (law) remedies. There doesn't have to be a federal remedy for everything," said Elizabeth Mack, a lawyer with Locke, Liddell & Sapp in Washington, who represented Cooper Industries Inc., the winning party in the Supreme Court case.

Companies also have a variety of other incentives not to delay cleanups, including tax benefits and the desire to enhance the value of real estate assets, some note.

"I think the voluntary (cleanup) programs are very active, and that doesn't have anything to do with

contribution," Ms. Mack said.

"It's speculative to say this opinion is going to lead to delay in cleanups," said Laura A. Foggan, a partner with Wiley, Rein & Fielding in Washington.

Enforcement actions key

The case pitted Cooper Industries against Aviall Services Inc., a company that bought four aircraft engine maintenance sites in Texas from Cooper in 1981 and later discovered that both it and Cooper had contaminated the sites with oil and other hazardous waste.

Aviall notified the Texas Natural Resource Conservation Commission of the pollution, and the state agency directed the company to clean up the properties. Neither the Texas commission nor the EPA ever filed formal judicial or administrative enforcement actions against Aviall, though.

Before selling the sites in the mid-1990s, Aviall spent more than \$5 million on cleanup efforts supervised by state authorities and remains liable for additional costs.

The company sued Cooper to recover a share of the costs in 1997 but lost federal district court and initial appellate rulings. Those rulings found that the Superfund law—the Comprehensive Environmental Response, Compensation

and Liability Act of 1980—did not authorize Aviall's suit because no enforcement action had been brought against the company.

In a later rehearing, the full 5th U.S. Circuit Court of Appeals reversed the decision, reinstating Aviall's claim. But in its ruling last week, the Supreme Court overturned the 5th Circuit ruling.

Section 113(f)(1) of the Superfund law provides that "any person may seek contribution from any other person who is liable or potentially liable...during or following any civil action" by government regulators, Justice Clarence Thomas noted in writing for the majority.

"The natural meaning of this sentence is that contribution may only be sought subject to the specified conditions, namely 'during or following' a specified civil action," Justice Thomas wrote.

Aviall argued that the phrase "may seek" should be read to allow suits without a prior enforcement action. Justice Thomas responded, though, that "there is no reason Congress would bother to specify conditions under which a person may bring a contribution claim, and at the same time allow contribution actions absent those conditions."

Section 113(f)(1) also provides that "nothing in this subsection shall diminish the right of any per-

son to bring an action for contribution in the absence of a civil action" under CERCLA.

This provision also does not authorize Aviall's claim, the majority found. Instead, the "sole function" of the provision is to clarify that Section 113 does not diminish any other cause of action—presumably including state law claims—that a party may want to pursue, the court ruled.

While Cooper and Aviall both claimed that their readings of Section 113 furthered the goals of CERCLA, the majority refused to consider policy implications of its ruling. "Given the clear meaning of the text, there is no need...to consult the purpose of CERCLA at all," Justice Thomas wrote.

The majority also refused to consider Aviall's alternative argument that its claim should be allowed under Section 107, which makes responsible parties liable for "any other necessary costs of response incurred by any other person." The court noted that the 5th Circuit did not rule on the question and that issues arising from it were not briefed before the high court.

The Supreme Court remanded Aviall's Section 107 claims to the lower courts for a decision.

The ruling upsets about two decades of accepted practice in handling Section 113 actions and could have a "very large" impact on pending and future cases, noted Ira Gottlieb, a partner with McCarter & English in Newark, N.J.

The impacts could vary widely, Jenner & Block's Mr. Graham said. Rather than take a chance on filing a Section 107 claim, some companies may decide that "the safest course is to ask federal or state authorities to sue them," he said.

The time companies require for a site-by-site analysis of whether to seek an enforcement action or file Section 107 or state law claims will itself delay cleanups, he observed. The ruling could also make companies leery about acquiring properties with actual or potential contamination problems if they're uncertain about recovering cleanup costs.

"It will change a whole range of transactions," Mr. Graham said.

A key question will be whether the 5th Circuit allows Aviall's Section 107 claim on remand and whether the Supreme Court later agrees that such claims are allowable, said Gardere's Mr. Gray. Gardere lawyers represent Aviall, though Mr. Gray himself is not involved in the case and was not speaking for the company.

If Section 107 claims are allowed without an enforcement action, the loss of the Section 113 remedy will have relatively little long-term impact, Mr. Gray said.

"The final bell has not been rung," he said.

Cooper Industries Inc. vs. Aviall Services Inc., Supreme Court of the United States, No. 02-1192.

Disney: Derivative D&O action

Continued from page 1

he served for only 14 months.

Shareholders for Burbank, Calif.-based Disney filed their derivative lawsuit in 1997, alleging that board members breached their fiduciary duty in approving and subsequently terminating an extravagant and wasteful employment agreement, court records show.

The lawsuit could result in a judgment or settlement that dwarfs sums historically paid out in derivative actions.

In a derivative shareholder lawsuit, the plaintiffs sue a company's directors and officers, with any recovery going to the corporation, not the shareholders.

Broad form Side A coverage typically responds to executive claims when corporations are in bankruptcy and incapable of indemnifying their officers and directors. It also responds to derivative lawsuit settlements and judgments because of state laws barring policyholders from indemnifying directors and officers in those cases.

The latter coverage under Side A policies has been a popular topic recently in the insurance industry because of growing personal exposure for directors and officers.

"A lot of people in the D&O industry are watching this case extremely closely because we keep talking about the risk of nonindemnifiable, yet insurable claims, and you've got it here," said an insurance attorney who asked not to be identified.

Delaware law prohibits corpora-

tions from indemnifying executives for derivative settlements and judgments.

Several attorneys specializing in D&O liability insurance who are watching the case say most derivative lawsuits settle for about \$5 million to \$10 million and rarely exceed \$15 million.

But in this case, the plaintiffs are seeking the \$39 million in cash and \$101 million in stock paid to Mr. Ovitz upon his departure from Disney. They also want interest.

Sources familiar with Disney's coverage arrangement say the company's directors are insured for such a loss. New York-based American International Group Inc. currently is the lead insurer providing Disney's defense, said an attorney who asked not to be identified because of his involvement in the trial. AIG declined to comment.

"If we have a \$200 million or a \$170 million pay out, people will start taking a much harder look at (Side A) coverage being provided and how much they are charging for it," Mr. Orza said. "Insurers will look at it and say 'is the exposure as little as we thought it was?' The answer might come back as no. So obviously there could be a huge ramp up in the rates."

Currently, derivative claims account for about 5% of all shareholder litigation losses, Mr. Orza said.

But a victory for the plaintiffs in the Disney case could encourage more plaintiffs to seek substantial derivative settlements or awards

while driving up the frequency of derivative related losses, Mr. Orza and several D&O attorneys agree.

An attorney who also asked to remain anonymous because of his association with the litigation said, however, that the Disney case has specific circumstances and may not spark a trend in large shareholder derivative payouts, even if it does result in a large settlement or judgment. He declined to elaborate.

He agreed with other attorneys, though, that underwriters are watching the case because a recent rise in the sale of excess Side A policies has increased insurers' exposures.

"It's safe to say that the carriers are evaluating this case very closely, and not just the carriers who have potential exposure under their policies in this (particular) case," said Carl Metzger, a partner at Testa, Hurwitz & Thibault L.L.P. in Boston. He represents policyholders in securities litigation and advises employers on risk management procedures.

Mr. Metzger said some of his risk manager clients at large companies are aware of the trial's implications. Insureds generally think of Side A coverage as offering protection only when a corporation can't indemnify their directors and officers because of a company bankruptcy, Mr. Metzger said. But the Disney litigation represents a small, but potentially growing, number of claims in which insurers would pay out, even though the corporation has the financial viability to indemnify

executives, but is prohibited from doing so.

"This case brings that to the forefront," Mr. Metzger said.

Several attorneys said they do not know of any other derivative lawsuits that have made it to trial. Most are settled beforehand. But defendants in this case have already won a state supreme court victory allowing them to try the lawsuit.

Additionally, the Court of Chancery—which settles disputes involving the affairs of companies incorporated in Delaware—has ruled that if allegations that the defendants lacked good faith and loyalty in their decision-making are proved true, the directors will not be entitled to defenses usually provided in derivative cases.

"This is an unusual victory," said Steven G. Schulman, an attorney at Milberg Weiss Bershad & Schulman L.L.P. in New York, who represents the plaintiffs.

Under Delaware's Business Judgment Rule, board members cannot be held personally liable for business decisions that financially harm the corporation if they act in good faith.

Attorneys say that Delaware's Court of Chancery has staunchly upheld the Business Judgment Rule when directors do not have a personal financial tie to allegations they are defending against.

The Disney trial is important for the court's holding that the Business Judgment Rule does not apply even though the directors did not personally gain from their decision, said Dana Lockpot, senior vp and director at Lockton Financial Services in Los Angeles.

"It continues to demonstrate the

judiciary's impatience with director conduct," Mr. Kopper said. It also shows the Business Judgment Rule is under attack, he added.

The chancery court decided that the facts alleged by the plaintiffs, if true, show the defendants did not make a good-faith attempt to fulfill their duties, court records show.

Disney's litigation has drawn widespread media attention because of the massive severance package and because it involved the imploding friendship of two Hollywood titans, Mr. Eisner and Mr. Ovitz. The events are now being made into a cable TV movie.

Delaware's Court of Chancery originally dismissed the shareholders' allegations. But in February 2000, the state's Supreme Court reversed the chancery court decision. The high court remanded the case for the Court of Chancery to reconsider the breach of fiduciary duty and waste claims. The trial took a break for the holidays last week and is expected to continue in January.

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Late News

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investment consulting services we offer to retirement plan providers, including fund lineup recommendations." He said Morningstar will cooperate with Mr. Spitzer's request.



Cat losses near \$42 billion in 2004, Swiss Re says

Natural and man-made catastrophes cost property insurers about \$42 billion in 2004, according to preliminary estimates by Swiss Reinsurance Co. In a similar analysis of 2003, Zurich-based Swiss Re said last year that such catastrophes resulted in insured losses of \$17 billion. Swiss Re said that about 300 natural and man-made disasters have been recorded so far in 2004, and more than 21,000 people died as a result of the catastrophes. Some of the largest losses stemmed from hurricanes in the United States and typhoons in Japan.

Policyholder prevails in legal costs dispute

An insurer that loses a coverage lawsuit against a policyholder must pay the policyholder's defense costs in the coverage suit even though it has defended the policyholder in underlying litigation, New York's highest court ruled last week. The losing party in a lawsuit is not typically required to pay the winner's costs, the court noted. In a coverage dispute, though, "an insurer's duty to defend an insured extends to the defense of any action arising out of the occurrence, including a defense against an insurer's declaratory judgment action," the New York State Court of Appeals ruled. The ruling arose from a case in which U.S. Underwriters Insurance Co. sought a summary judgment denying defense and indemnity coverage to New York-based Shelby Realty L.L.C. and other defendants for liabilities stemming from a worker injury on Shelby's property.

Aetna, Boeing sued over disability claims

A group of Boeing Co. employees is suing the company and Aetna Life Insurance Co., charging that they were unfairly denied disability benefits. The lawsuit, which seeks class action status, charges that Aetna, as administrator of Boeing's self-insured short- and long-term disability plan, used inappropriate

claims-adjustment practices and procedures from 1998 through the present, in violation of the Employee Retirement Income Security Act.



An Aetna spokesman said "it is Aetna's policy to review each disability claim based on its own merits and to make appropriate decisions based on the terms of the Boeing plan." Chicago-based Boeing declined to comment on the suit.

Guy Carpenter unveils disclosure policy

Guy Carpenter & Co. Inc. has announced new compensation disclosure rules for the worldwide treaty reinsurance business that accounts for 90% of its revenues. Guy Carpenter, a unit of Marsh & McLennan Cos. Inc. and the world's second largest reinsurance broker, will now report its brokerage compensation on the cover note for each treaty reinsurance transaction, the company said. It will also disclose its anticipated total compensation for brokerage and other services when a client appoints it broker of record, and will review its expected compensation with each subsequent renewal of reinsurance contracts.

Briefly noted

Marsh & McLennan Cos. Inc. has completed arrangements for \$3

billion in bank financing, including a \$1.3 billion term loan due at year-end 2006 and the amendment of \$1.7 billion in existing revolving credit facilities. The term loan replaces two revolving credit facilities that would have matured in 2005....**Aspen Insurance Holdings Ltd.** said that it has accepted the resignation of Peter Coghlan as president and chief executive officer of Aspen Specialty Insurance Co., following his admission that he misrepresented his educational credentials in U.S. regulatory filings. Chris Maciejewski, who is executive vp and chief casualty underwriter of Aspen Specialty, will become president of the Boston-based surplus lines insurer, Aspen Insurance said.... Jonathan L. Snare will become acting assistant secretary of labor for occupational safety and health upon the departure of John Henshaw, the current head of the **U.S. Occupational Safety and Health Administration**, on Dec. 31. Mr. Snare currently is deputy assistant secretary of labor.

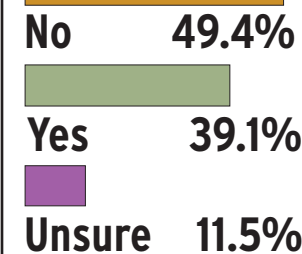
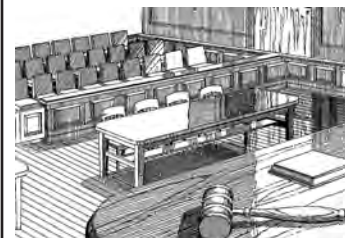
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Online Poll

[12/13-12/17]

Will the verdict that the World Trade Center attack constituted two events under some insurers' policies be overturned on appeal?



BI Stock Index

[12/13 - 12/17]

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	2319.51	↑ 0.91
Dow Jones	10649.90	↑ 1.01
S&P 500	1194.22	↑ 0.52

Largest gains

Unico American Corp.	12.39%
Unum Corp.	9.78%
Gainsco Inc.	7.91%
ACE Ltd.	7.67%
Humana Inc.	5.16%

Largest losses

United Fire & Casualty	-49.46% *
ESG Re Ltd.	-33.33%
EMC Insurance Group Inc.	-8.37%
Baldwin & Lyons Inc.	-5.00%
Clark Inc.	-4.34%

* Reflects 2-for-1 stock split.

Weekly change by market segment

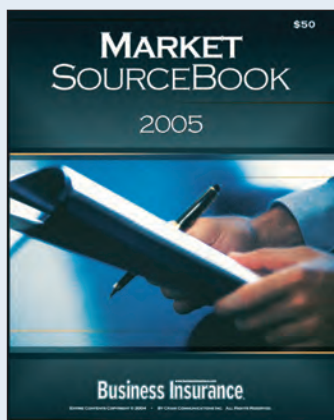
Brokers	0.89%
Insurers/Reinsurers	0.01%
Managed Care Organizations	1.02%

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

2005 Market SourceBooks will be delivered soon

Business Insurance subscribers should be on the lookout for the 2005 Market SourceBook, which will arrive in their mailboxes soon.

The Market SourceBook is a



more than 300-page compilation of 25 directories listing 1,249 insurance industry vendors. This convenient, valuable reference also contains rankings of the largest providers of products and services to corporate buyers of insurance, risk management and employee benefit programs. The directories, updated throughout the year, are available online to *BI* subscribers at www.businessinsurance.com.

Copies of the Market SourceBook, also available on CD-ROM, are available for \$50 each. For information or to order, please contact *Business Insurance* single-copy sales at 888-446-1422, or outside the United States, 313-446-1662, or e-mail subs@crain.com.

Judge overturns minor Segal counts

CHICAGO—A federal judge has overturned seven minor counts against Michael Segal and his brokerage, Near North National Group Inc., but upheld the most serious counts on which they were convicted in June.

U.S. District Judge Ruben Castillo last Monday acquitted the defendants of seven counts of making false statements because the prosecutor failed to prove that the defendants' insurance producer renewal licenses, which they filed with Illinois insurance regulators, were "financial reports or documents," as required for such charges.

But Judge Castillo denied the defendants' other motions for relief, including requests for acquittal from all charges and a new trial.

"The bottom line is that both defendants were properly convicted of most of the charges against them af-

ter a fair trial by a competent, properly instructed jury that was presented with overwhelming evidence of defendants' guilt," according to Judge Castillo.

Mr. Segal stands convicted of 19 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.

Spokesmen for the prosecutors and Mr. Segal each said they are reviewing the judge's opinion.

Later in the week, Judge Castillo denied Mr. Segal's request for release on bond to seek medical treatment for an alleged case of lupus. He will remain in custody—where he has been receiving medical treatment—until his sentencing, which is slated for Feb. 23, 2005

—By Meg Fletcher

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