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UPDATES

Aon plans to spin off its underwriting operations

CHICAGO—Aon Corp. has announced plans to spin off its underwriting businesses to its shareholders of its common stock, creating two independent, publicly traded companies.

The company hopes to complete the move by year end, with Aon shareholders initially holding the same proportionate ownership in the two separate companies, Aon Corp.

See **Updates** *on next page*

Willis move, IPO spark speculation

By SALLY ROBERTS

LONDON—Although the details surrounding Willis Group Ltd.'s recent decision to redomesticate to Bermuda and launch an initial public offering of a new holding company's stock remain sketchy, observers are not overly surprised by the moves.

For the past three years, the world's third-largest insurance broker has been privately held [illegible] consortium led by U.S. pri[illegible] equity firm Kohlberg [illegible] Roberts & Co. L.P. Ob[illegible]ers say that although KKR has maintained that it views its stake in Willis as a long-term investment, the IPO could mark the beginning of its eventual exit strategy. Others say the IPO will raise capital Willis needs to pay off substantial debt and to fund further growth initiatives as way to better compete.

While Willis is not relocating its brokerage offices to Bermuda, incorporating on the island affords the broker various tax advantages as well as proximity to the American markets, observers say.

Earlier this month, in a two-paragraph press release, Willis announced that it had formed a new holding company, Willis Group Holdings Ltd., with plans to incorporate the company in Bermuda and launch an IPO of the new company's stock in the United States. KKR, which owns nearly 75% of the company's stock, said that it has no intention to sell shares in the proposed offering (*BI*, April 9). Pri-

See **Willis** *on page 22*

Snapshot

Willis

(in millions of dollars)

	2000
Revenues:	$1,291.5
Net income:	$101.7
Total assets:	$9,490.7
Long-term debt:	$957.5
Shareholders' equity:	$1,376.7

Source: SEC filings
Amounts shown in accordance with U.S. GAAP; converted at Dec. 31, 2000, exchange rate.

Benfield buying Blanch

Deal seen as positive for both intermediaries

By DOUGLAS McLEOD

DALLAS—Reinsurance broker E.W. Blanch Holdings Inc. has put an end to a year of financial turmoil, agreeing to be acquired for $179 million by privately held rival Benfield Greig Group P.L.C., which Blanch has blamed in part for its financial woes.

The deal, expected to be completed next month, would create the world's largest independent reinsurance broker and the third-largest intermediary overall, surpassed only by Guy Carpenter & Co. Inc. and Aon Re Worldwide.

The merger gives Benfield, which has an extensive international network, its first substantial operation in the United States.

"On completion of this, we will have a superbly balanced book of international reinsurance business," Benfield Chairman John Coldman said. "It's remarkably complementary."

"Benfield Greig has a very developed business outside the U.S. and we're in the process of building a U.S. platform," while

See **Blanch** *on page 20*

Benfield and Blanch

2000 revenue and income figures in millions of dollars

	Benfield*	Blanch	Combined Benfield Blanch
Revenues	$202.2	$208.2	$410.4
Pretax net income	$54.5	($13.3)	$42.2
Employees	650	1,021	1,671

*Unaudited; income excludes exceptional items
Sources: Benfield Greig Group P.L.C. and E.W. Blanch Holdings Inc.

Many businesses with financial aspects to their operations—such as tax preparers, retailers with credit cards, mortgage brokers and car leasing firms—may be unaware of their new privacy duties.

Businesses may not know privacy duties

By RODD ZOLKOS

Many businesses that might seem unlikely targets of a 1999 federal law allowing the convergence of banks, insurance companies and securities firms may in fact be subject to consumer privacy provisions of the law set to be enforced this summer.

The impact of the Gramm-Leach-Bliley Financial Services Modernization Act's privacy provisions on insurance companies and banks has been widely discussed. But less attention has been given to the act's broad definition of "financial institution," which could apply the privacy requirements to numerous other sorts of businesses engaging in financial activities described in the federal Bank Holding Company Act of 1956.

"I think Gramm-Leach-Bliley has been thoroughly digested and reviewed by the types of companies who understand they are covered by the act, and that is the insurance companies, banks and securities firms," said Thomas M. Regan, a member of the Cozen & O'Connor law firm in Philadelphia. "I think it's those companies who aren't even sensitive to it who might have a rude awakening when the deadline comes July 1."

Essentially, GLB requires that all financial institutions provide consumers with written or electronic notice of their privacy policies and practices. The notice must set out the company's policies concerning information-sharing with affiliates or third parties.

Further, financial institutions are prohibited from sharing nonpublic personal information with unaffiliated

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Growing debate over federal charter for insurers page 4

INSIDE

• **George M. Betterley, regarded by many as the 'dean of risk management,' died April 12. He was 79. PAGE 4**

• **The chief problem with the federal medical privacy regulation is not that it goes too far but that it doesn't go far enough, according to a Washington-based privacy advocate. PAGE 6.**

• **Banking and securities industries are governed largely by a uniform national set of rules. It is only logical that insurers should have the same option, this week's editorial says. PAGE 8**

• **Conoco is investigating an explosion at its refinery in England but says immediate disruptions for customers are unlikely. PAGE 15**

• **The Colorado Assn. of Captive Entities met for the first time in two years to decide how to market the nation's oldest captive domicile. PAGE 19**

DEPARTMENTS

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UPDATES

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and Combined Specialties Corp. Patrick G. Ryan, Aon's chairman and chief executive officer, announced the plan last week at Aon's annual shareholder meeting in Chicago, saying the move would eliminate potential conflicts and create new growth opportunities. Aon's underwriting businesses currently operate through five major subsidiaries: Combined Insurance Co. of America, Combined Life Insurance Co. of New York, Virginia Surety Co. Inc., London General Insurance Co. Ltd. and Aon Warranty Group Inc. Richard Ravin, currently chairman of Combined Insurance Co. of America, will be president and CEO of the new Combined Specialty Corp. holding company. David Cole, president and CEO of Virginia Surety, will be vice chairman and chief operating officer of the holding company, as well as president and CEO of its new specialty casualty subsidiary, Combined Specialty P&C. Mr. Ryan will remain chairman and CEO of Aon Corp. and Michael D. O'Halleran will continue as president and COO of Aon Corp. Mr. Ryan also would serve as non-executive chairman of Combined Specialty Corp. The move also would allow the underwriting operation to use its capital toward its own growth, Mr. Ryan said. "We've been taking the capital out of the underwriting business to grow the world's second-largest broker and the consulting business," he said. "Now the underwriting business needs the capital in order to grow." The transaction requires final board approval as well as approvals from the Internal Revenue Service and insurance regulators.

Mr. Ryan

▶ **FEW WINTER LOSSES** Despite one of the fiercest winters in recent years, U.S. property/casualty insurers sustained only $705 million in catastrophe-related insured property damage during the first quarter of this year, according to preliminary estimates from Insurance Services Office Inc.'s Property Claim Services unit. According to ISO, the first three months of 2001 were the least costly first-quarter in a decade in terms of insured catastrophe losses. A year earlier, insurers paid $1.98 billion in the first quarter. Only three disasters in the United States in this year's first quarter qualified as catastrophes—which PCS defines as an event that causes $25 million or more in insured property losses and affects a significant number of property/casualty policyholders and insurers. They were the Seattle-area earthquake and two severe thunderstorms that raked the southern United States, all of which occurred in February. Washington state sustained the largest insured-property loss, with insured quake damages currently estimated at $315 million. States that suffered the largest amount of insured property damage from the storms were Mississippi, $135 million; Texas, $65 million; Alabama, $60 million; and Arkansas, $55 million.

▶ **RIMS SEARCH ENGINE** The Risk & Insurance Management Society Inc. has launched an Internet search engine that aims to simplify risk managers' Web searches. The search engine, at *askrims.org*, is designed to focus searches strictly on information related to insurance and risk management. "The downside of seeking good, comprehensive risk management data through more general search engines is that there are too many hits from nonrelevant sources," Chris Mandel, vp-member services and technology at New York-based RIMS, said in a statement. Using askrims.org should make Internet searches for risk management-related information quicker and easier, said Mr. Mandel, who also is assistant vp of enterprise risk management at USAA Group in San Antonio. Currently, 500 sites are accessed through the search engine, but RIMS plans to double that number over the next several months, according to the statement.

At *askrims.org*, search results are limited to risk management sites.

▶ **ERISA LIABILITY SUIT** Members of the Sheet Metal Workers' Local No. 9 Pension Trust in Denver are suing their pension plan trustees for violating their fiduciary duties under the Employee Retirement Income Security Act of 1974 by losing more than $20 million of plan assets through risky investments. The suit, *Norbert Piet and Samual Duran vs. John Lontine et al.*, filed last Tuesday in U.S. District Court in Denver, seeks to restore the lost assets and replace the pension plan's eight trustees with independent fiduciaries to oversee the plan's investments. The plan had assets of about $100 million in late 1998, according to the suit. The losses put the pension fund in jeopardy and may require reducing monthly retirement benefits to current retirees, said Dan Feinberg, a partner with Sigman, Lewis & Feinberg in Oakland, Calif., who filed the suit on behalf of the Denver sheet metal union's 1,600 members. The suit is the latest in a string of ERISA suits filed in Oregon and Colorado in connection with Capital Consultants L.L.C., a Portland, Ore., investment firm that made loans totaling $160 million to Wilshire Credit Corp., a real estate loan servicing firm that is now in bankruptcy. The U.S. Department of Labor and the Securities and Exchange Commission also have sued CCL for ERISA violations.

While much damage from the Northridge quake was obvious, FEMA has studied factors that led to hidden damage in steel-framed structures.

▶ **QUAKE DAMAGE STUDY** The Federal Emergency Management Agency has released the technical findings and recommendations of a six-year, $12 million study that assessed earthquake damage suffered by steel-frame buildings. FEMA initiated the project following the 1994 Northridge earthquake in California, after which building inspectors found unexpected cracking in the welding connections of modern buildings. The quake was classified as strong but not major, Washington-based FEMA said. The study found that numerous factors contributed to the damage, including: construction defects, such as welds that were not bonded well; changes in the properties of the weld metal and structural steel; and building design codes with connections that were unreliable when used with large beams and columns. The study findings are outlined in "A Policy Guide to Steel Moment-Frame Construction," available from *www.fema.gov*. A welded steel moment-frame is an assembly of beams and columns, rigidly joined together to resist vertical and lateral forces. This type of construction is the most commonly used in high-rise buildings built in the United States since 1970, FEMA said. "Until Northridge, this type of construction was considered an effective seismic-resistant structural system—widely accepted in seismic-prone areas as a way of constructing buildings that are resistant to earthquakes," FEMA said.

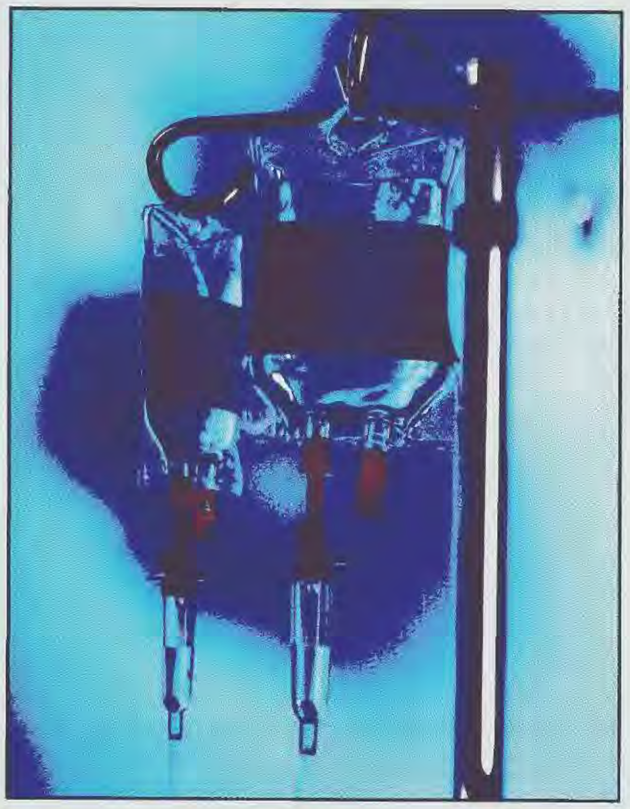
▶ **PRUDENTIAL DROPS INJUNCTION** U.K. insurer Prudential P.L.C. is no longer seeking an injunction to block American International Group Inc. from making a bid for American General Corp. but will proceed with a previously announced lawsuit over AIG's attempt to trump Prudential's earlier bid for Houston-based American General. Prudential said the injunction was no longer necessary after AIG filed details of its offer with the U.S. Securities and Exchange Commission. Prudential's suit, filed earlier this month in the Texas State District Court in Harris County, seeks unspecified damages (*BI*, April 16).

▶ **COMP RATE HIKES FORECAST** Workers compensation premiums are expected to rise in 2001, particularly on new rather than renewal business, analysts and observers said at the National Council on Compensation Insurance's recent annual issues symposium. Preliminary data on insurers' results last year, however, paints a mixed financial picture, according to the Boca Raton, Fla.-based NCCI Holdings Inc. The data and rate-making organization estimates that the calendar-year combined ratio for workers compensation insurers deteriorated to 121% in 2000 from 116% the year before. The calculation reflects all losses paid in that year, regardless of when an accident occurred. Meanwhile, the NCCI estimates a "very slight" improvement in the 2000 accident-year combined ratio for losses from accidents that occurred only in that year. Results indicate a ratio of 136% in 2000, down from 137% the year before. The NCCI held its annual symposium April 17-19 in Orlando, Fla. More detailed information about insurers' 2000 results will be released in several weeks, NCCI executives said.

▶ **BRIEFLY NOTED** Ohio Casualty Corp. has named Stanley N. Pontius chairman of the Fairfield, Ohio-based insurer. He replaces William L. Woodall, who has retired. Mr. Pontius has been a senior executive at several Ohio-based banks....**Trenwick Group Ltd.** has tapped Michael C. Watson, former head of Sphere Drake Holdings Ltd., to lead its London operations. He will replace Pierre Croizat as chairman and chief executive officer of Chartwell Managing Agents Ltd. and Trenwick International Ltd. on May 1. Mr. Croizat is retiring. Mr. Watson headed Sphere Drake for several years before its takeover by Fairfax Financial Holdings in 1997. Trenwick also said that David J. Marshall, the active underwriter for syndicate 839, is leaving the company. No replacement has been announced....After failing to obtain additional capital, online insurance exchange **iwix.net** will cease operations April 30, just over a year after the service was launched. The Chicago-based Internet Worldwide Insurance Exchange L.L.C. was set up to link agents, brokers and insurers providing specialty lines of coverage. BI

▶ ***To get breaking news as it occurs, visit Business Insurance's free online Updates at www.businessinsurance.com. All of the material in the Updates column, as well as other content in this week's issue, is generated from daily news postings that appeared on the Web site in the previous week.***

Drug shortages spur fears of patient safety risks



By MICHAEL PRINCE

Drug shortages are plaguing U.S. hospitals, increasing risks to patient safety as doctors and nurses are forced to use alternative drugs.

While drug shortages are nothing new, a spate of them involving important drugs in recent months has alarmed doctors and hospital administrators nationwide, and is forcing them to scramble for alternative solutions. As supplies of particular drugs dwindle, hospitals have begun restricting their use to certain cases and using alternate drugs for the other patients.

Despite greater awareness of the problem, shortages have been on the increase.

"I think we've seen more shortages lately," said Michael Cohen, president of the Institute for Safe Medication Practices, a non-profit organization in Huntingdon Valley, Pa., that tracks drug issues.

Other drugs often can safely replace those in short supply. But in some cases, doctors and nurses lack experience in administering these substitutes. In these instances, patient safety is put at risk, doctors and pharmacists said.

"Anytime there is a change, there is a safety issue," said Joseph Deffenbaugh, professional practice associate with the American Society of Health System Pharmacists, a Bethesda, Md.-based professional group for hospital pharmacists.

According to a Food and Drug Administration Web site that tracks drug shortages, the six drugs currently listed as in short supply or in limited distribution include one used as a local anesthetic and others prescribed for malaria, convulsions and drug overdoses. In addition, 14 drugs are listed as having seen their shortages recently resolved, the FDA reports.

Drug shortages are caused by

See **Drugs** *on page 23*

Court takes new ADA cases

Employers seek relief from bias claims

By MARK A. HOFMANN

WASHINGTON—The Supreme Court agreed last week to further clarify the scope of the Americans with Disabilities Act as it agreed to hear two cases alleging discrimination against disabled workers.

The cases involve two different issues. In *Toyota Motor Manufacturing, Kentucky Inc. vs. Ella Williams*, the justices will examine whether a partially disabled worker who can perform some tasks involved with her job is subject to the protections of the ADA. The relationship of seniority systems to the ADA is at the heart of the other case, *US Airways Inc. vs. Robert Barnett* (*BI*, Oct. 30, 2000).

Ella Williams, who suffers from repetitive strain injuries, including carpal tunnel syndrome, argued that her employer, Toyota Motor Manufacturing of Kentucky Inc., failed to make adequate accommodations for her disability. Ms. Williams, who had initially worked on the assembly line at Toyota's Georgetown, Ky., plant, was transferred to a quality-inspection job because of her ailments. When the job requirements changed and aggravated her condition, she asked to be transferred back to the less-demanding portion of the inspection job.

Ms. Williams claims that Toyota refused to do so, a charge the automaker disputes. She sought relief under the ADA on the basis that she was disabled even though she could perform some but not all of the job requirements. A federal district court held for Toyota, but a three-judge panel of the 6th U.S. Circuit Court of Appeals ruled last August that Ms. Williams was entitled to sue Toyota under the ADA over the issue of whether

See **Docket** *on page 17*

CalPERS' HMO rates up 6%

By ROBERTO CENICEROS

SACRAMENTO, Calif.—Saying that health care purchasing has grown tougher, the California Public Employees' Retirement System last week announced that it faces an average rate increase of 6% for HMO coverage in 2002.

CalPERS also said that it is doubling employees' copayments for visits to health maintenance organization doctors effective next year.

Last week's announcement of 2002 plan changes by California's biggest health care purchaser included the increase in doctor visit copayments to $10 from $5, as well as the introduction of a three-tiered prescription drug pricing system. CalPERS had not changed its HMO copayments since 1993.

CalPERS' action to increase employees' cost sharing signals that employers are seeking ways to cope with a continuing rise in health care costs, said Lee Exton, vp in Los Angeles for benefit consultant The Segal Co.

For 2001, CalPERS' average HMO rate increase was 9.2%. That follows a 9.7% increase in rates for 2000 coverage, a 2.7% increase in 1999, when health care rates began their current upswing. In 1998, CalPERS' rates had dropped by 1.4% after a 5.3% decrease in 1997.

The 6% increase CalPERS will pay for 2002 will cost the purchasing giant $1.76 billion, compared with the $1.65 billion it paid for HMO coverage in 2001. That does not include member contributions through plan design changes.

"Health care purchasing is becoming increasingly difficult and costly, and everyone must play a role in making sure that we are getting the most for every health care dollar expended," Dr. William D. Crist, president of CalPERS Board of Administration, said in a statement. The board gave final approval for the changes.

The change to a tiered prescription system is aimed at encouraging the use of generic drugs, according to CalPERS.

CalPERS, the nation's second-largest health care purchaser after the federal government, provides coverage to about 1.2 million state and local employees and their dependents. BI

XL leads investors pumping funds into Mutual Risk

By GAVIN SOUTER

HAMILTON, Bermuda—Mutual Risk Management Ltd.'s immediate problems have been eased with the $112.5 million investment in the company by a group led by XL Capital Ltd., but it still needs to execute a long-term turnaround plan, analysts say.

The capital infusion will ensure it keeps its crucial A level rating, but MRM must still dump loss-making business, recruit talented underwriters, successfully negotiate disputed reinsurance contracts and write more profitable business.

While MRM may have found a strong and influential big brother in XL, and the hardening market will also work in MRM's favor, its re-emergence as a successful company is not guaranteed, they say.

The announcement comes two months after Hamilton, Bermuda-based MRM took a $46.1 million charge to set up reserves to cover disputed reinsurance recoverables. After the charge was announced, Oldwick, N.J.-based A.M. Best Co. immediately put under review with negative implications its A- rating of Legion Insurance Group, the Philadelphia-based MRM insurance subsidiaries that front MRM's rent-a-captive business and write its troubled program business.

MRM determined that it was crucial to maintain its rating and began a search for capital that culminated in the announcement last week that investors XL, First Union Capital Partners, High Ridge Capital L.L.C. and Century Capital Partners II will buy newly created senior convertible exchangeable debentures that carry a 9.38% annual coupon, have a five-year term and are convertible to MRM common shares at a price of $7. Following the deal's announcement April 18, MRM shares rose nearly 50%, closing at $5.90. On Friday, they closed at $6.28. The 52-week high for the shares is $23.75.

XL will supply about half of the $112.5 million and, if it converts the debentures, will hold roughly a 15% stake in MRM. In total, MRM is giving up about 30% of its shares to the investment group.

MRM says it will use about $80 million of the money to boost the capital of the Legion units to $458 million, and will retain the remainder.

"The rating agencies indicated to us that they were looking for this kind of addition to statutory capital in order to maintain our ratings," said Robert A. Mulderig, chairman and chief executive officer of MRM.

MRM also will restructure its business over the next two years to retain more underwriting risk in its larger and more profitable programs, and it will not re-

See **MRM** *on page 22*

Federal charter proposed

Option for life insurers gets support from other sectors

By MARK A. HOFMANN

WASHINGTON—Even opponents of optional federal chartering for property/casualty insurers are finding something to like in a proposal to allow life insurers to do just that.

If nothing else, the proposal released earlier this month by the American Council of Life Insurers should spur improvement of state insurance regulation, say representatives of some property/casualty trade groups. And proponents of optional federal chartering for all insurers view the document as a blueprint for applying the concept to property/casualty insurers as well as life companies.

An ACLI spokesman made clear that the Washington-based life insurance trade group didn't set out to speak for anyone other than its members.

"It would have been presumptuous of us to write a proposal dealing with the property/casualty and health insurance lines," he said. "We tried to put together a proposal that could be expanded to include other lines of insurance if the people representing those lines chose to pursue optional federal chartering of insurance. We don't want to exclude them; we don't want to presume to speak for them."

The ACLI began distributing its draft on optional federal chartering on April 13. The draft consists of two proposed pieces of federal legislation—a National Insurer Act and a National Insurer Solvency Act.

The National Insurer Act would create an Office of National Insurers within the U.S. Treasury Department to regulate life insurers. The president would appoint a director of the Office of National Insurers for a five-year term.

Life insurers—and reinsurers—that met certain criteria would be able to obtain a federal charter that would allow them to underwrite and sell life insurance in all states. A national insurer would have to comply with the corporate governance rules of either the state in which it has its main office or where its holding company is incorporated. National insurers would have to comply with a variety of accounting and investment requirement standards and would remain subject to all applicable state taxes.

The companion legislation, the National Insurer Solvency Act, would require national insurers to be members of the state guaranty association in each state in which they do business. If a state guaranty association were not deemed qualified by the director of National Insurers, its function would be taken over by a new National Insurance Guaranty Corp., which would be funded by assessments on national insurers and on state-licensed insurers that do business in nonqualifying states.

Property/casualty insurance groups are studying the ACLI's proposed legislation—each bill runs more than 100 pages long—to see how the measures might apply to the property/casualty industry.

"We'll be taking a close look at the proposal and the comments they receive, to see if this would be a beneficial approach to the P/C market," said Daniel Barry, director-governmental affairs for the Risk & Insurance Management Society Inc. in New York.

"Generally, increased regulatory efficiency is something we should always be striving for," he said.

"As we have said in the pages of *Business Insurance*, we are happy to consider any proposal that moves in the direction of a competitive market and a more coherent, well-structured regulatory system," said a spokeswoman for the American Insurance Assn. in Washington. She referred to a Feb. 19 Perspective article written by AIA President Robert E. Vagley, in which Mr. Vagley called on property/casualty insurers to consider optional federal chartering among the options available to insurers for improving regulation.

"Certainly there are differences between the P/C sector and the life sector. AIA will be aggressively advancing the interests of the P/C industry in any and all discussions of this topic," she said.

"They obviously did a lot of

See **Charter** *on page 19*

George Betterley, industry 'dean,' dies

By MICHAEL BRADFORD

DAMARISCOTTA, Maine—Risk management has lost another of its pioneers.

George M. Betterley, regarded by many as the "dean of risk management," died of prostate cancer April 12. He was 79.

Mr. Betterley passed away at his home in Damariscotta, Maine. He had spent 45 years in the profession and retired in 1991 from Betterley Consulting Group, the firm he formed in Boston more than a quarter-century ago.

"We've lost a real friend," said Richard Hackenburg, president and chief executive officer of Willis of Missouri in St. Louis. "George was a role model and mentor for a lot of us."

Mr. Betterley was the recipient of the Risk & Insurance Management Society Inc.'s 1998 Dorothy & Harry Goodell Award, the organization's highest honor.

George M. Betterley (inset) shows his appreciation upon receiving the Risk & Insurance Management Society Inc.'s highest honor, the Dorothy & Harry Goodell Award, in 1998.

RIMS' Goodell Award recognizes contributions to the risk management profession. When Mr. Betterley received the award at the society's annual conference in San Diego, he removed his jacket to reveal the message "Thank You RIMS" on the back of his shirt.

After finishing his service as a captain in the Air Force during World War II and the Korean War, Mr. Betterley and his brother Delbert joined the risk management consulting firm started in 1932 by their father, P.D. Betterley. The brothers purchased the firm, known as Betterley Associates, in the 1960s. They parted professionally in 1975, when George Betterley opened Betterley Consulting Group and Delbert started D.A. Betterley Risk Consultants.

After amassing an impressive client list that included many Fortune 500 companies, George Betterley in the early 1980s sold his firm to Tillinghast-Towers Perrin.

"George had a lot to do with helping make risk management a profession," said his nephew, Richard S. Betterley, who is president of Betterley Risk Consultants Inc. in Sterling, Mass. "He pushed hard...to improve the profession" by promoting risk management to company executives who often questioned the need for a risk manager, he noted.

"He was a very creative guy," Richard Betterley said. "He was very good at giving talks and supporting RIMS."

In receiving the Goodell award, Mr. Betterley was honored for accomplishments that included his work to persuade universities to introduce risk management into their curricula. He was cited for his original ideas that helped shape and advance the profession.

Cheri Hawkins, a former RIMS president who is now an independent risk management consultant based in Auburn, Wash., said Mr. Betterley was instrumental in helping during her term to influence universities to include risk management among their courses. "I put it on the platform for my presidency, and George gave us the details to produce the papers to get universities going on it," she said.

She said Mr. Betterley was "so vibrant and vital to the consulting world that it's hard to believe" he is gone.

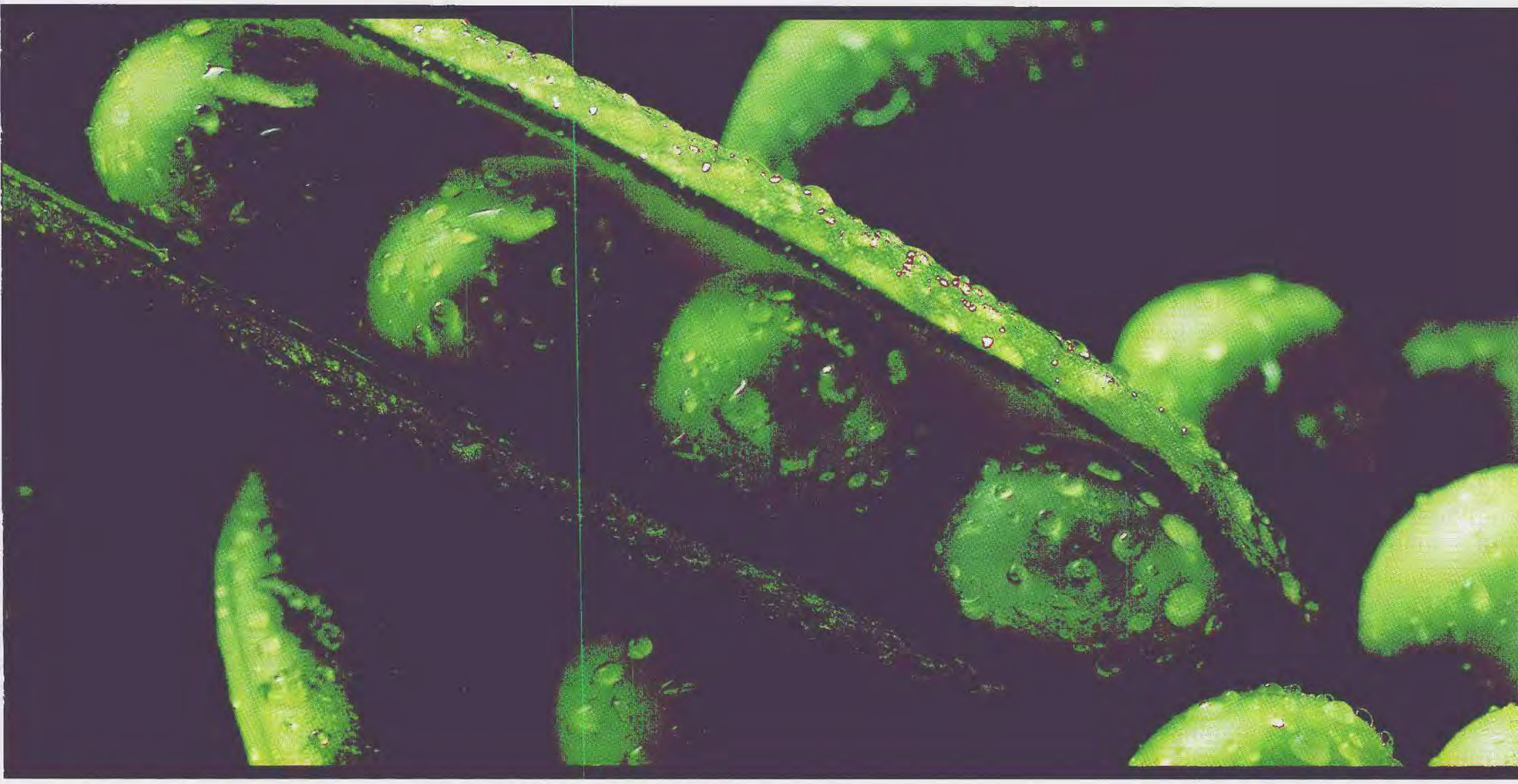
Mr. Hackenburg, also a former RIMS president, described Mr. Betterley as a "challenger of an idea or a concept. He always sought to have people strive for excellence. And at the end of the day, he could always be counted on to give good advice."

Senior executives often called on Mr. Betterley for "honest advice given with unbiased integrity," Mr. Hackenburg said. "George had an inquisitive mind" and "was a leading-edge thinker," he said. "He touched a lot of lives."

Mr. Betterley is survived by his wife; two daughters and two sons; his brother, Delbert; a sister; and seven grandchildren.

A memorial service for Mr. Betterley was held April 19 at Second Congregational Church in Newcastle, Maine.

What do you call a
company that truly understands
the risks you face?



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Effective risk management can head off EPL suits

By LEE FLETCHER

CHICAGO—Employers face the risk of employment practices liability every day, but the best way to avoid litigation is to institute effective risk management practices, especially regarding the Internet, EPL experts say.

A panel of EPL experts spoke last week in Chicago at a seminar called "Getting your Employment Practices to State-of-the-Art Status: Strategies for Dealing with Exposures in 2001," sponsored by Boston-based Lexington Insurance Co., a unit of American International Group Inc.

Gerald L. Maatman Jr., senior partner and chairman of the Global Labor, Employment & Employee Benefits Practice Group at Baker & McKenzie in Chicago, said that companies need to be aware of workplace harassment and take measures to minimize those risks, especially in the digital age.

Numerous employers have been burned by claims resulting from cyberspace harassment, Mr. Maatman said, explaining that "the law has not caught up" to address the number of cases in which an entire company is labeled criminal due to the actions of one employee.

And the number of workplace discrimination suits is at an all-time high, representing more than one-fifth of all federal civil lawsuits filed in the United States, he said.

In a case last year, *Blakey vs. Continental Airlines Inc.*, Mr. Maatman said the New Jersey Supreme Court ultimately redefined the definition of the workplace, incorporating electronic communication from locations outside the workplace under the law.

The *Blakey* case arose after a female pilot claimed that a fellow employee had used an electronic bulletin board to post harassing e-mails about her. The New Jersey Supreme Court ultimately ruled in her favor, allowing her to proceed with a sexual harassment claim against her employer.

Blakey is only one example of why employers need to exercise caution and implement strategies to avoid litigation in the "new digital workplace," Mr. Maatman said.

By establishing an "employment practices compliance program," risks can be minimized and companies can better defend themselves against claims of employment discrimination. Mr. Maatman explained that the essential components of such a program are:

- A state-of-the-art corporate policy and complaint procedure addressing equal employment opportunity, discrimination and harassment.
- An effective orientation program to educate all employees about the company's policies and procedures.

> *'The point is to push as much information to management as possible to avoid a lawsuit.'*
>
> *— Lisa Bee*
>
> *Lexington Insurance Co.*

- Exacting expectations of management behavior, communicated to and required of all supervisory personnel.
- Supplementary policies and procedures to implement the corporation's compliance with respect to discrimination and harassment laws.
- A relentless commitment to "best workplace practices" designed to eliminate any problems of discrimination or harassment.

John C. Hendrickson, regional attorney in Chicago with the U.S. Equal Employment Opportunity Commission, spoke about his work with the EEOC and how the commission enforces and litigates the laws within its jurisdiction.

Litigation has become an increasingly time-consuming and expensive process, so arbitration may come to be seen as "the big hit" in employment discrimination suits, Mr. Hendrickson said. "It's not going to take plaintiff attorneys very long (to learn) that arbitration cases are their friends," Mr. Hendrickson explained.

For example, a sexual harassment case against an employer in East St. Louis, Ill., that involved a relatively small number of women was in court for one and a half years and the defense litigated "every single issue," he said. After the case wound its way through court, a jury found for the plaintiffs and issued a $750,000 award.

This case could have been settled for much less, much earlier in the game, Mr. Hendrickson said.

The lesson from this and other similar cases is that employment discrimination is "incredibly expensive" and that it has really become a profit center for plaintiffs attorneys, he said.

In general, harassment claims of all types are increasing, Mr. Hendrickson said. In the EEOC's Chicago office alone, Mr. Hendrickson said he has three cases currently.

He warned that if companies are trying to get lean and mean, they need to do it within the parameters of the law. "If you're thinking of a layoff as a way of bringing a lighter look to your workforce, be careful," he cautioned.

Lisa Bee, an EPL risk management consultant with Lexington Insurance Co., said an employer is obliged to equip its workforce with key risk management tools.

Training is essential to make employees aware of what behavior is and is not acceptable, she said. Ms. Bee said a system that keeps track of training is a good way to show that an employer is serious about preventing discrimination and harassment.

Ms. Bee also said that other risk management tools, such as audits of policies and procedures, "management alert" newsletters, access to EPL resources and toll-free hot lines for both management and employees, can help reduce risks.

"The point is to push as much information to management as possible to avoid a lawsuit," Ms. Bee said. BI

Problems with privacy

Debate swirls over the scope of the HHS rules

By MARK A. HOFMANN

WASHINGTON—The chief problem with new federal medical privacy regulation is not that it goes too far but that it doesn't go far enough, according to a Washington-based privacy advocate.

Provisions in the regulations that allow law enforcement agencies to tap into personal medical records—as well as a loophole that allows certain types of marketing using medical records—should be changed, said Chris Hoofnagle, staff counsel for the Electronic Privacy Information Center, a Washington-based public-interest group focused on civil liberties issues. Mr. Hoofnagle offered that assessment during a Washington Legal Foundation panel discussion on the regulations, which are being implemented by the Department of Health and Human Services.

Mr. Hoofnagle's concerns stand in contrast to those expressed by employers, insurers and health care providers when HHS released its final rule in late December (*BI*, Jan. 1). Such critics charged that the rules went far beyond protections required under the Health Insurance Portability and Accountability Act of 1996 by covering all types of medical communication, rather than simply the electronic exchange of information.

Critics charged that the rules would be expensive to implement, overly restrictive and could possibly lead to the delay of necessary care in some cases. Although the Bush administration took advantage of a paperwork error to delay the effective date of the regulations—initially slated for Feb. 26—HHS Secretary Tommy G. Thompson announced on April 12 that the rules would go forward, though he said HHS intends to amend them somewhat before employers must be in full compliance on April 14, 2003 (*BI*, April 16).

HHS' critics got some more ammunition last Thursday when the Blue Cross & Blue Shield Assn. in Washington released two studies dealing with the regulation's costs. According to the Robert E. Nolan Co. Inc., a Dallas-based consulting firm that conducted the studies for the Blues, HHS seriously underestimated the cost of complying with the rule both in terms of implementation costs and in estimating projected savings from administrative simplification stemming from HIPAA.

Mr. Hoofnagle's fellow

See **Privacy** *on page 19*

The cost of privacy

Estimated costs of complying with the Health and Human Services Department's medical privacy regulations:

$4 billion for inspecting and changing records

$9 billion for tracking of disclosed information

$23 billion infrastructure cost, such as retraining staff and hiring privacy officers

$3 billion in added medical cost from reduced medical management

$4 billion for monitoring "business partners"

Source: Blue Cross & Blue Shield Assn.

Cutting the workforce

Communication important in economic downturns

By LEE FLETCHER

As the number of employers announcing layoffs continues to grow daily, employee benefit and human resource consultants say companies need to provide clear, timely and sensitive communication to both terminated and remaining employees.

With the slowdown in the economy, companies across many industries have been cutting their workforces. Communicating with employees during periods of staff cutting is crucial for employers to maintain productivity and help the remaining workforce adjust to the change, consultants say.

"You need to communicate more during bad times than in good times," according to Monica Jerussi, a partner in the strategic communications practice at Unifi Network, a unit of PricewaterhouseCoopers L.L.P. in Teaneck, N.J.

One way employers can lessen the psychological impact on employees is to steer them toward the company's employee assistance program, which can provide needed counseling services, consultants say. In addition, they say, it is crucial that laid-off employees' benefits, such as pensions, are clearly communicated to them.

When times are tough, employers really need to keep the workforce focused and keep morale up to ensure productivity, Ms. Jerussi said. "I think you have to do that with communication, and maybe that means you have to spend some money there, but I think that it can be a really good investment," she said.

It's important for senior management to articulate their goals for the business—why they're making certain predictions about it and why the company is exiting certain businesses, Ms. Jerussi advised.

Additionally, she said that prompt communication is crucial to ensure that the right message is conveyed. "What happens is that, as soon as the rumor mill takes over, employees are going to draw their own conclusions, and you may end up losing people that you otherwise would not have lost. If management and the organization don't control the message, the message will control them," she said.

Suzanne K. Lemen, chief executive officer of Dynamic Corporate Solutions Inc., a human resource consulting firm in Jacksonville, Fla., agreed that prompt and accurate communi-

See **Layoffs** *on page 14*

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OPINIONS

Keep pushing for change

WE APPLAUD NEW EFFORTS to advance the consideration and eventual adoption of an optional federal charter for insurance companies.

The American Council of Life Insurers recently began circulating two proposed pieces of legislation that would create a federal alternative to the current state-based regulatory system. While the proposals are merely drafts and have a long way to go before they become legislation, they already are sparking new discussion and interest in the matter.

Even if Congress doesn't act on the idea during the current session, as currently seems likely, we would encourage continued discussion of the concept by all insurance stakeholders—life insurers, property/casualty companies, reinsurers, brokers, buyers and even state regulators.

Even property/casualty trade groups that remain advocates of state-based regulation have expressed interest in the proposals.

The ACLI, which has been working on the drafts for a couple of years, is not alone in calling for consideration of optional federal charters as a way of improving insurance regulation. The president of the American Insurance Assn., Robert Vagley, recently wrote in the pages of *Business Insurance*: "The insurance regulatory system is not keeping pace with the evolution of financial services on the world stage, despite all the good-faith efforts to make it work" (*BI*, Feb. 19). The AIA president wrote that the insurance industry could no longer ignore the option of allowing insurers to obtain a federal charter instead of state-by-state licensing and oversight.

The silence from the industry that followed the AIA's public call for optional federal chartering was deafening.

But that in itself was quite telling, as such a suggestion would have drawn cries of "heresy" from other segments of the industry only a few years earlier. Some industry associations, it appeared, were now perhaps more willing to consider alternatives to their long-held support of state-based regulation.

The ACLI's subsequent release of draft legislation has finally prompted others in the industry to speak out. And what they are saying gives hope for reform of insurance regulation in the United States.

Even adherents of state regulation—such as the Alliance of American Insurers and the National Assn. of Mutual Insurance Cos.—welcome the ACLI proposals as a way to sharpen the debate and generate improvements in the existing regulatory system.

Others—like the pro-chartering AIA and the Council of Insurance Agents & Brokers—see the ACLI's proposals as encouraging signs of greater support for a federal alternative.

And so do we.

As we have said before, the state-based regulatory system is inefficient and out of step with the realities of the insurance marketplace today. Giving U.S. insurers the option of obtaining a federal charter would put them on a similar regulatory footing with competitors in other countries and other industries.

While the ACLI's proposals were intended only for life insurers and life reinsurers, their principles clearly would apply to property/casualty companies as well. Indeed, there is no room for a more efficient alternative to state regulation being made available only to one segment of the insurance industry.

But that uneven playing field is exactly the problem for insurance companies hoping to compete with other financial services industries: They are operating under an outdated and restrictive regulatory model, while their competitors are not.

Banking and securities industries are governed largely by a uniform national set of rules. It is only logical that insurers should have the same option.

LETTERS

Claims process advice on the mark

To the editor: A belated three cheers and a standing-O for Corby Pelto's insightful article—"Defining Good Insurance Claim Programs"—in the Feb. 26 Perspectives section.

Mr. Pelto's article reminds us that good claims work is not necessarily the result of "hitting the numbers" or crunching them. A spreadsheet never serviced a claim. Attention to process and people pays dividends.

It is trite but true that claims are costs but claim processes are investments and opportunities for strategic competitive differentiation.

Financial discipline has its place, but an emphasis on quality process undergirds claim success. As long as the claims area is seen by insurers as the also-ran orphan stepsister, playing second fiddle in resource allocation and attention, risk managers and other customers are likely doomed to unsatisfying claim experiences.

Mr. Pelto's precepts of quality claims operation provide a useful "best practices" blueprint that every claims operation should strive to embrace.

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PERSPECTIVES

ADR can help fend off big punitive awards

Tools such as mediation enable cost-effective resolution of claims

By RICHARD L. BLATT

Consider the implications of a pair of high-profile punitive damages cases:

BMW of North America vs. Gore: Nine months after buying a new BMW, Ira Gore learned that the carmaker had repainted the car to repair minor surface damage that had occurred in transit. Mr. Gore then sued BMW, claiming the company had defrauded him by failing to disclose that the $40,000 car had been refinished. To punish the defendant, an Alabama jury awarded $4 million in punitive damages to the plaintiff. The case ultimately reached the U.S. Supreme Court, which used it to declare that, under some circumstances, punitive damages may be so disproportionate to underlying damages as to be unconstitutional.

Stella Liebeck vs. McDonald's: In this case, an elderly woman, Stella Liebeck, burned herself with hot coffee she had purchased from a McDonald's drive-through window. She had placed the cup of coffee between her legs and, in an attempt to remove the plastic cover, spilled the contents of the cup. Ms. Liebeck, who suffered third-degree burns on her legs, groin and buttocks, claimed her injuries were the fault of McDonald's, which she said served its coffee at too high a temperature. A jury awarded her $2.7 million in punitive damages.

These two well-known examples make the point crystal clear: Punitive damages are dangerous business. When a company exposes itself to this legally sanctioned "punishment" for what a jury or court deems to be unacceptable conduct, the stakes can be high.

Traditionally, punitive damages were awarded only in cases in which the alleged misconduct was glaringly obvious. However, during the past 30 years, the awarding of punitive damages has become routine, the criterion for such claims mainly being whether a defendant has deep pockets. Any company of size that is doing business in the United States must be keenly aware of the risk of punitive damages awards in our courts.

Punitive damages can wreak all kinds of havoc, from damaging corporate financial performance in the short run, to threatening a company's very existence. Although punitive mega-awards are often reduced on appeal, in many instances they may not be insurable, depending upon which state's law is eventually found to apply. These awards are generally announced in open court and immediately become public information, often having an immediate impact on a publicly held company's share price. This is particularly so if the problem at the heart of the lawsuit is newsworthy or involves large numbers of claimants or potential claimants. Such increased exposure may, in turn, have other adverse results, which could ultimately lead to a company's closure.

While punitive damages seem to be here to stay in this country, the real question is how can this risk be managed before it becomes an even more grim reality? How can a company take steps to resolve potentially dangerous punitive damages claims before they are submitted to a jury or a court for decision?

The solution can be found by taking these potentially costly disputes out of the court systems and into a private and confidential environment for resolution. Accordingly, defendants should consider alternative dispute resolution—or ADR—methods, such as mediation, as a way to reduce or resolve the threat of punitive damages. ADR is not the solution in all cases—sometimes nothing else but a court decision will do. Nevertheless, except in the most egregious cases, there may be enough uncertainty in the minds of plaintiffs' counsel about the ultimate outcome of their case that they may be willing to submit the dispute—including the punitive damages issues—to an ADR process. Doing so may reduce their transactional costs, if nothing else.

The advantages of ADR—and especially mediation, or assisted negotiation—are particularly evident in the context of punitive damages claims. The main advantages when compared to traditional litigation are: confidentiality, flexibility, lower transactional costs and potentially swift resolution.

Let's look at the advantage of swift resolution. It is well known that serious punitive damages claims rarely become less dangerous as they age. On the contrary, they usually become more dangerous for the defendant as time goes on and as the pretrial discovery process wends its expensive and disruptive way through corporate documents and corporate executive suites. Swift, economical resolution of dangerous disputes on a confidential basis can save a company millions of dollars in transactional costs alone.

Another advantage of ADR is that it is flexible. The parties control through agreement the timing, locations and the parameters of the process. In litigation, the parties have little or no control over any part of the process; in mediation, however, the parties have almost total control over the process and even the result.

Also, unlike the outcome of a trial, which usually is a "winner take all" situation—with the ultimate result expressed in terms of dollars and cents—mediation can sometimes bring about a more flexible outcome. A result of this type might involve, for example, a deal in which cash payments can be traded off for other concessions that may be important to crusading plaintiffs and their zealous counsel. These might include settlements that involve a company's agreement to make changes that will result in greater safety margins or that will prevent future harm.

This cannot be done in every mediation, but it certainly is a possibility, and flexibility of this type can never be achieved through a jury verdict. In short, the ADR process can be used to manage risk.

A further key advantage of ADR is that the parties generally save time and money. In litigation, the parties' time and resources are entirely at the mercy of the court. ADR allows the parties to control costs much more effectively.

Finally, there is the overwhelming advantage of confidentiality. By agreement, the parties can come to a resolution of the matter out of the public eye and away from the media spotlight.

Many plaintiffs' counsels are more receptive to ADR today than they have been in the past. Being just as concerned as defendants about the costs and risks of protracted litigation—and often equally uncertain about the outcome of a court decision—they are starting to view ADR as a welcome alternative to litigation.

In conclusion, ADR methods, and particularly mediation, can help manage the risk of punitive damages exposure. While litigation tends to place the parties in a procedural straightjacket, affording them little or no control over the process, those who are able to use ADR methods can adapt them in flexible ways that can be helpful in managing exposure in the first instance and reducing the very real threat of punitive damages to the corporate bottom line. BI

Richard L. Blatt is a member of Philadelphia-based law firm Cozen & O'Connor's insurance litigation group, practicing in the firm's Chicago office.

Child born after injury denied comp survivor benefits

LEGAL BRIEFS

The Supreme Judicial Court of Maine ruled that a child born more than nine months after an employee's work injury was not a dependent eligible to receive death benefits under the workers compensation law.

Dennis Cribben suffered a work-related injury on Nov. 3, 1990, while employed by Central Maine Home Improvements. A daughter, Tessa, was born to Mr. Cribben in 1992. Under the terms of a 1996 divorce settlement agreement, Mr. Cribben and his ex-wife were to share custody of Tessa, and he was to pay $50 per week in child support. Mr. Cribben died Sept. 17, 1996. His brother sought workers comp death benefits on behalf of Tessa. The compensation board awarded the benefits, and the employer appealed.

The state Supreme Court said that for a child to be treated as a "dependent" under workers comp law, the child must have been dependent upon the employee "at the time of the injury." Mr. Cribben's brother argued that, for the purpose of awarding death benefits, the phrase "date of injury" may be interpreted to include the date of death. However, the court said that the Legislature uses the word "death" to refer to the fatality that gives rise to an award of benefits, and the word "injury" to refer to the work-related incident that precipitates that fatality. Thus, the court said that because Tessa was not a dependent at the time of the injury, the decision of the board would be vacated.

Cribben vs. Central Maine Home Improvements, Supreme Judicial Court of Maine, June 30, 2000. (BI/04/A.-$10)

Depression ruled an accident

The Supreme Court of New Hampshire concluded that an employee's depression disorder was an "accident," for workers compensation purposes, because the injury was an unexpected result of her supervisor's criticism.

Gail Sirviris-Allen worked for the State of New Hampshire starting in 1978 as a "Clerk I." She left her employment in 1995 as a "Case Technician II." During her tenure, she often failed to adequately fulfill her assigned work responsibilities. In 1989, she was transferred to a slower-paced environment due to job performance problems. Again, in 1992, she was transferred to a less demanding position.

Her tenure was marked by frequent medical and psychological problems. She had been diagnosed with clinical depression and problems related to attention deficit disorder. On Aug. 4, 1995, she left work due to tension and stress allegedly arising out of her supervisor's criticizing her for "every little thing."

She filed a workers comp claim for a work-related stress injury resulting from disciplinary action taken against her. The appeals board awarded her benefits. The employer appealed.

The appellate court said that disability caused by cumulative work-related stress is compensable if it can be shown to arise out of an "accident." The court concluded that her major depression was an accident because the injury was an unexpected result of her supervisor's criticism.

According to the court, a serious mental injury such as major depression constituted an unexpected consequence of good faith criticism of an employee's performance. The award of benefits was affirmed.

In Re New Hampshire Department of Health and Human Services, Supreme Court of New Hampshire, Aug. 23, 2000. (BI/03/My.-$10) BI

These abstracts were prepared by Mayo H. Stiegler. Copies of these decisions are available, at $10 each, by sending a check payable to Mayo H. Stiegler, to Business Insurance *740 N. Rush St., Chicago, Ill 60611-2590. Please provide the listed number for each opinion ordered.*

TAKING STOCK

Insurers' progress stalls on underwriting results

Effects of market firming aren't yet flowing to companies' bottom lines

By MYRON M. PICOULT

A funny thing happened on the way to the property/casualty underwriting recovery—it stalled.

We are once again approaching the quarterly earnings ritual—and the barrage of the "could have been," "would have been," "should have been" and the "but for" comments from some of the purveyors.

Notwithstanding pricing improvements that are more notable in the commercial arena than on the personal side, the business is still hurting. While positive progress on pricing has been made, the fact is, we are not yet in a hard market. And it remains to be seen if, in fact, one actually will arise.

The cautionary comments result from many factors. Consensus estimates for the first quarter of 2001, for the most part, do not pack much punch: They are basically flat. If, in fact, this proves to be the case, it cannot be blamed on catastrophe losses, which, we acknowledge, tend to be unevenly distributed among the insurers. According to preliminary estimates of the Insurance Services Office Inc., catastrophe losses for the first quarter of 2001 are expected to total about $705.0 million, compared to a restated figure of $1.98 billion in the same quarter a year earlier.

The overall pressure on the industry continues to come from various sources.

Problems persist on the underwriting side of the equation. It is becoming increasingly clear that virtually any business written in 1998 and 1999 was more deficiently priced than had previously been thought. This adverse development is sapping the industry's ability to flow some of this new cash-flow down to its bottom line.

As long as the pressure (from the rating agencies) persists to fill in balance sheet reserve potholes, the incremental improvement expected from enhanced premium levels will remain a mirage. We estimate that loss and loss-adjustment reserves for the industry declined $3.5 billion between year-end 1999 and the end of 2000. Indeed, we suspect that one of the key topics of discussion within many boardrooms remains whether to bleed in the reserve shortfalls or just take the hit.

Clearly, the tolerance of many underwriters for low premium growth/deficient pricing—fueled by an unprecedented bull market for investments—has come home to roost. It should also be noted that more is expected to be heard about reinsurance recoverables.

Another factor weighing on underwriting results is a second wave of asbestos claims coming back to haunt insurers that wrote general liability exposures dating back to the 1950-1986 era.

Other factors that are also putting pressure on underwriting margins include the increasing insurer insolvencies and the concomitant funding costs, as well as higher reinsurance costs that were not properly figured into 2001 budgets. This will ultimately be passed on in part or completely, but in the interim, it represents another pressure point.

Finally, there is the yield curve. Clearly, investment income, at least that which is derived from short-terms funds, is under some pressure. In addition, returns from alternative investments, which are sprinkled throughout numerous insurer portfolios, will also probably lag prior-year returns, at least through the first quarter.

Unless the industry quickly develops a better balance between present overall cost trends and current pricing, the prospects for underwriting improvement over the next few years will quickly fade. Under a Darwinian scenario, it would not be inconceivable to postulate that the industry's reported combined ratio could easily approach or surpass the all-time high-water mark of 118.0% (120.5% for the stock companies) that was posted in 1984. The somewhat dire scenario that we have painted can be avoided if managements execute intelligent underwriting and pricing plans and get focused on enhancing the paltry 5%-6% rates of return they have been recording. It is not easy to make the decision not to feed the machine, but it may well be the difference between surviving or slowly wasting away. **BI**

Myron Picoult is senior adviser, Financial Institutions Group at Dresdner Kleinwort Wasserstein in New York. He is a past president of the Assn. of Insurance & Financial Analysts and a member of the New York Society of Security Analysts. An archive of Mr. Picoult's columns for Business Insurance *can be viewed online at* www.businessinsurance.com.

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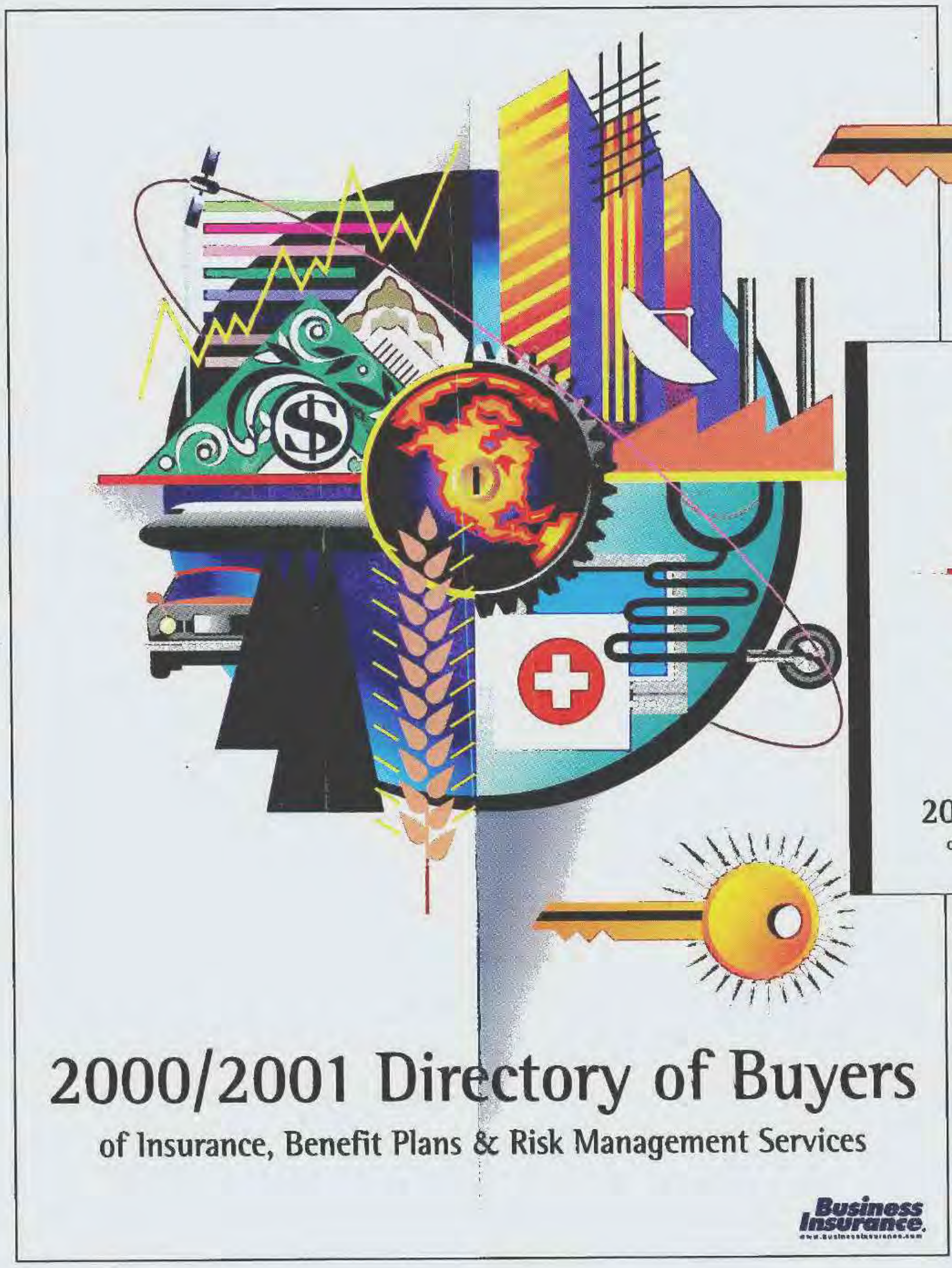

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Layoffs

Continued from page 6

cation is key.

"Sometimes, we get a little paternalistic, thinking that we're protecting people by not letting them know that this is going to happen to them, even though they know this is going to happen to them. All that does is create anxiety that spills over into productivity," Ms. Lemen said.

Even if there is no news, letting people know that "while we don't know exactly what's going to happen, we're committed to letting you know the minute we know" can eliminate a lot of fear and confusion, she said.

The benefits manager for a St. Louis-based manufacturer that employs more than 10,000 worldwide said, "The bottom line is to tell them what you can tell them or tell them when you'll be able to share more information."

The benefits manager, who did not wish to be named, said: "There are two reasons for treating people with dignity, respect and fairness. One, it's the right thing to do for the people who go. And two, it's the right thing to do for the people who stay."

Giving dismissed employees an outlet to express their feelings is also helpful, Ms. Lemen said.

One way to do that, she said, is to use an outplacement firm, which will give employees an outlet to talk about their feelings and fears and help them find new employment. Larger employers may do this on an internal basis, but Ms. Lemen said smaller companies may benefit from hiring outplacement firms.

Encouraging employees to use EAP services also can make the situation less difficult. Ms. Lemen suggested that employers negotiate with their EAP providers to extend services to laid-off employees for a given length of time. This way, she explained, employees can talk about their response to the situation, as well as other problems in their lives.

Ms. Jerussi agreed that it's important to deal with the emotional side of the layoff.

"Trying to dismiss individuals' emotional reaction to what's happening is just foolhardy. If you've been working side-by-side with someone and you're friends with them, and you care about them and they suddenly don't have a job anymore, to not expect you to feel something about that, I think, is just unrealistic," she said.

Employers should let workers express their emotions first—the fear and perhaps the anger over layoffs—and then "focus on the intellectual arguments," Ms. Jerussi said.

Clear communication about severance packages also is crucial, said Ms. Jerussi.

For example, she said one company currently going through a downsizing is simply having its in-house "pension experts" write the benefit communication materials, even though they are probably not the best at explaining the information. Apparently, the employer thought it would send a negative message if it hired consultants to do it, she said.

> *'Just because you're terminating these folks doesn't mean you shouldn't treat them with respect.'*
> *— Monica Jerussi*
> *Unifi Network*

"I think it's penny-wise and pound-foolish. If you're paying a consulting firm to do something you don't have the capabilities yourself to do so that your people will really understand what they're getting, I think that's really important. Pensions can be complicated enough. It's OK to say, 'We've hired someone to help us do this so that we can produce something that you really understand and that's helpful to you,'" Ms. Jerussi said.

On the benefits front, she said it's not enough to just hand employees a letter outlining terms of the benefits. If there are complicated benefit provisions, then a benefit manager needs to make sure that employees can get their questions answered, she said.

"In some cases, folks are near retirement and have certain issues, or maybe younger employees didn't even know that they had a pension plan or what they're entitled to under it. Just because you're terminating these folks doesn't mean that you shouldn't treat them with respect, because you may need them in the not-too-distant future and you don't want to leave a bad taste in their mouths," Ms. Jerussi said.

Employers need to think about the affected employees—those affected directly because they're being laid off and those affected indirectly who will remain.

"A company doesn't want to put too much emphasis on those who are leaving, but you can be sure that those who are staying are talking to those who are leaving, and if they're treated terribly that's going to influence morale in the workplace," Ms. Jerussi said.

Managers need training in how to best inform employees that they will be laid off, said Marci Koblenz, president of Evanston, Ill.-based MK Consultants L.T.D.

"The survivors are watching this happen, and they are going to interpret what happened, and that's going to affect their attitude about the company," Ms. Koblenz said.

When an employer finishes its downsizing, she said, it should let employees know that the cuts are over, so that fear doesn't linger among the remaining employees. And it's important to paint the new picture of the company, Ms. Koblenz said.

"You need to remotivate the employees that are left...They need to know why this all happened and what the company is doing to at least try and ensure that it doesn't happen again," Ms. Koblenz said.

Ms. Jerussi said the wiser companies will talk with their remaining employees and ask for feedback on how the downsizing was communicated and handled.

"I think HR as well as senior management need to listen to what employees say in that feedback, because there may come a 'next time.' The companies that I think are the better companies are not afraid to hear that kind of criticism, because they can probably learn something from it that can help them for the next time around," Ms. Jerussi said.

DATEBOOK

May

MAY 2-4. Personal Lines Underwriting Seminar in Chicago, sponsored by National Assn. of Mutual Insurance Cos.; $249 for members and $299 for non-members. Nancy Griffith, 317-875-5250; fax: 317-879-8408; *ngriffith@namic.org.*

MAY 3-5. National Assn. of Independent Life Brokering Agency Annual Meeting in Dallas. NAILBA, Jennifer Payne, 8201 Greensboro Drive, Suite 300, McLean, Va. 22102; 703-610-9020; *www.nailba.org.*

MAY 6-8. Intermediaries & Reinsurance Conference in Amelia Island, Fla., sponsored by Intermediaries & Reinsurance Underwriters Assn. $595. Guy Benthin, 971 Route 202 North, Branchburg, N.J. 08876; 908-203-0211; fax: 908-203-0213.

MAY 6-9. E-Regulation Conference in Kansas City, Mo., sponsored by National Assn. of Insurance Commissioners and National Insurance Producer Registry; $275 for regulators and $375 for non-regulators. NAIC, 2301 McGee St., Suite 800, Kansas City, Mo. 64108; *www.naic.org.*

MAY 6-9. National Assn. of Surety Bond Producers Annual Meeting in Colorado Springs, Colo. NASBP, Susan Ostrader, 5225 Wisconsin Ave. N.W., Suite 450, Washington, D.C.; 202-686-3700; *nasbp@nasbp.com.*

MAY 6-9. Assn. for Advanced Life Underwriting Annual Meeting in Washington, D.C. AALU, 2901 Telstar Court, Falls Church, Va. 22040-1205; 703-641-9400; *www.aalu.org.*

MAY 7-8. Pricing and Rate Making in Plain English Seminar in Orlando, Fla., sponsored by Dorman Consulting Services. Also **June 11-12** in Boston; $895. Richard Dorman, One Haverhill Court, Beachwood, Ohio 44122; 216-464-5678; fax: 216-464-2727; *www.dormanconsulting.com.*

MAY 10-11. Professional Insurance Wholesalers Assn. of New York Midyear Conference in Pearl River, N.Y. PIWANY, Mike Cocca, 25 Chamberlain St., Glenmont, N.Y. 12077; 800-424-4244; *www.piaonline.org.*

MAY 10-13. Life Insurance Council Annual Meeting in Orlando, Fla., sponsored by LOMA; LOMA, Bruce Dalzell, 2300 Windy Ridge Parkway, Atlanta, Ga. 30339; 770-951-1770; *www.loma.org.*

MAY 17. Harold H. Hines Jr. Memorial Symposium in Chicago, sponsored by Chicago Chapter of the Risk & Insurance Management Society Inc., *Business Insurance* and Insurance School of Chicago. 312-649-5279; *www.chicagorims.org.*

MAY 17-18. West Coast Casualty's Construction Defect Seminar in Anaheim, Calif., sponsored by West Coast Casualty Services Inc.; $249 for members and $299 for non-members. David Stern, 23945 Calabasas Road, Suite 100, Calabasas, Calif. 91302; 818-222-9690; fax: 818-222-9692.

MAY 20-22. ACORD Technology Conference in Orlando, Fla.; $525 for ACORD members and $625 for non-members. ACORD, 1 Blue Hill Plaza, Pearl River, N.Y. 10965; 845-620-1700, ext. 506.

MAY 20-23. Pennsylvania Assn. of Insurance & Financial Advisors Annual Convention in Harrisburg, Pa. 104 State St., P.O. Box 12058, Harrisburg, Pa. 17108; 717-234-2523; *www.paifa.org.*

MAY 20-24. American Assn. of Managing General Agents Annual Meeting Trade and Vendor Mart in Palm Springs, Calif. AAMGA, 9140 Ward Parkway, Kansas City, Mo. 64114; 816-444-3500; *www.aamga.org.*

MAY 21-22. Workers Compensation Conference in Arlington, Va., sponsored by Manufacturers Alliance; $600. Fred Stocker, 1525 Wilson Boulevard, Suite 900, Arlington, Va. 22209; 703-841-9000; fax: 703-841-9541.

MAY 21-24. Leadership Development Conference in Anaheim, Calif., sponsored by Linkage Inc.; $1095. Linkage Inc., The Leadership Development Conference, P.O. 42099, Providence, R.I. 02940; 781-862-3157; 781-862-2355; *www.linkageinc.com.*

MAY 22-25. National Flood Conference in Minneapolis, sponsored by National Flood Insurance Program; NFIP, 7700 Hobble Drive, Lanham, Md. 20706; 301-918-1436; *www.fema.gov/nfip.*

MAY 23. Professional Insurance Agents of New Hampshire Annual Conference in Concord, N.H. PIANH, Mike Cocca, 25 Chamberlain St., Glenmont, N.Y. 12077; 880-424-4244; *www.piaonline.org.*

MAY 23-24. Michigan Assn. of Insurance & Financial Advisors State Convention in Lansing, Mich. MAIFA, Terry Grady, 6412 Centurion Drive, Suite 120, Lansing, Mich. 48917; 517-327-3240; *www.malu.com.*

June

JUNE 2-5. Midwest Regional Young Agents Conference in Branson, Mo., sponsored by Missouri Independent Agent Assn.: Missouri Independent Agent Assn., Carol L. Dulle, P.O. Box 1785, Jefferson City, Mo. 65102; 573-893-4301; *www.missouriagent.org.*

JUNE 3-5. Inland Marine Underwriters Assn. Annual Meeting in Keystone, Colo. $550. IMUA, Melissa Kalt, 111 Broadway, 15th Floor, New York, N.Y. 10001; 212-233-7958; www.imua.org.

JUNE 3-6. The Insurance Accounting & Systems Assn. Inc.'s Conference and Business Show in San Antonio; $460 for members and $920 for non-members. IASA; 919-489-0991; *www.iasa.org.*

JUNE 4-6. Assn. of Insurance & Risk Managers Conference in Birmingham, England. $864 for members and $1,080 for non-members. AIRMIC, 6 Lloyd's Ave., London EC3N 3AX, England; 44-207-480-7610; *www.airmic.co.uk.*

JUNE 9-13. National Assn. of Insurance Commissioners Summer Meeting in San Francisco; $500 before May 9 and $600 after. Miriam Hennosy, NAIC, 120 W. 12th St., Kansas City, Mo. 64105; 816-842-3600; *www.naic.org.*

JUNE 10-12. Professional Insurance Agents of New Jersey & New York Joint Industry Forum in Atlantic City, N.J. Mike Cocca, 25 Chamberlain St., Glenmont, N.Y. 12077; 800-424-4244; *www.piaonline.org.*

JUNE 10-13. Public Risk Management Assn. Conference in Chicago; $495 for members and $635 for non-members in government, $715 for corporate non-members. PRIMA, 1815 N. Fort Myer Drive, Suite 1020, Arlington, Va. 22209; 703-528-7201; *www.primacentral.org.*

JUNE 10-13. American Assn. of Health Plans Conference in Los Angeles; $950 for members and $1,150 for non-members. AAHP, 1129 20th St. N.W., Suite 600, Washington, D.C. 20036; 877-291-2247.

JUNE 10-14. Million Dollar Round Table Meeting in Toronto. $575. MDRT, Randy Kopcinski, 325 W. Touhy Ave., Park Ridge, Ill. 60608-4265; 847-692-6378; *www.mdrt.com.*

JUNE 14-15. Environmental Insurance Forum in New York, sponsored by the Society of Environmental Insurance Professionals; $550. Also **Sept. 6-7** in Los Angeles and **Nov. 8-9** in Atlanta. Cindy Dybdahl, 4901 Pine Cone Circle, Middleton, Wis. 53562; 877-735-0800; fax: 615-370-8142.

JUNE 19-21. National Insurance Crime Bureau Annual Meeting in Arlington, Va. NICB, May Schuld, 10330 S. Roberts Road, Palos Hills, Ill. 60465; 800-447-6282; *www.nicb.org.*

JUNE 19-22. Management Conference in Bolton Landing, N.Y., sponsored by National Assn. of Mutual Insurance Cos.; $199 for members and $249 for non-members before May 19, $249 for members and $299 for non-members after May 19. Nancy Griffith, 317-875-5250; fax: 317-879-8408; *ngriffith@namic.org.*

JUNE 24-27. Insurance Marketing and Communications Assn. Annual Conference in San Diego; $695 for members and $900 for non-members. IMCA, 9710 N. 80th Place, Scottsdale, Ariz. 85258; 425-353-8504.

JUNE 24-27. 53rd Annual Society for Human Resource Management Conference in San Francisco; $785 for members and $990 for non-members. SHRM, P.O. Box 79402, Baltimore, Md. 21279-0482; 800-283-7476.

July

JULY 8-11. International Insurance Society Annual Seminar in Vienna, Austria; $1,850 for members and $2,150 for non-members. IIS, Colleen McKenna, 101 Murray St., New York, N.Y. 10007; 212-815-9290; *www.iisonline.org.*

JULY 22. Federation of Insurance & Corporate Counsel Annual Meeting in London. FICC, Joseph Olshan, 302 Centre Lane, P.O. Box 111, Walpole, Mass. 02081-0111; 508-668-6859; *www.thefederation.org.*

August

AUG. 7-10. Vermont Captive Insurance Assn. Annual Conference in Burlington, Vt. $350 for members and $550 for non-members. VCIA, Diane Leach, 1 Lawson Lane, Fourth Floor, Burlington, Vt. 05401; 802-658-8242; *www.captive.com/assoc/vcia.*

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The Datebook is compiled from notices sent to Business Insurance. Notices for meetings should be sent at least eight weeks in advance to Datebook, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590. Please include the cost, if any, to attend the meeting and information on registration for interested readers. Business Insurance reserves the right to select those meetings of greatest interest to its readers and cannot guarantee that notices will be printed. Datebook listings also are available on the World Wide Web at www.businessinsurance.com.

GLOBAL BRIEFS

Trenwick Group Ltd. has tapped Michael C. Watson, former head of Sphere Drake Holdings Ltd., to lead its London operations. He will replace the retiring Pierre Croizat as chairman and chief executive officer of Chartwell Managing Agents Ltd. and Trenwick International Ltd. on May 1. Mr. Watson headed Sphere Drake for several years before its takeover by Fairfax Financial Holdings Ltd. in 1997. Trenwick also announced that James Giordiano, senior vp and chairman of the underwriting committee of Trenwick America Reinsurance Corp., will relocate to London to become underwriting director of Trenwick's London operations. In addition, David J. Marshall, the active underwriter for syndicate 839, is leaving the company. No replacement has been announced....The London-based Assn. of British Insurers is rebutting warnings that a recent out-of-court settlement of a retiree's claim for damages because of a **fear of contracting asbestosis** could spark a rush of similar claims. Ronald Lyons, a retired dock worker, last week received a settlement from his former employer for the stress he now suffers because he worked with asbestos and fears becoming ill. Mr. Lyons has not contracted any asbestos-related illness but claimed that the trauma caused by watching former colleagues contract asbestosis has rendered him "stressed and paranoid." The ABI said that there was no court judgment for Mr. Lyon's claim, so there is no legal precedent for similar claims to prevail....Belgian-Dutch financial services group Fortis N.V. is acquiring the Spanish insurance portfolio **of Baloise (Espana) Seguros y Reaseguros S.A.**, the Spanish division of Basel, Switzerland-based The Baloise Insurance Co. Ltd. The two companies said they hoped the transaction would be complete within the next few months. Baloise (Espana) recorded premium volume of 11 billion pesetas ($58.7 million) last year. Fortis already operates in the Spanish market via its Bilbao-based subsidiary Bilbao Compania Anonima de Seguros y Reaseguros S.A....London-based HSBC Insurance Brokers Ltd. has hired a team of **fine arts and jewelry insurance specialists** from London-based broker JLT Risk Solutions Ltd., a division of JLT Group Ltd. The team will join HSBC's 40-strong fine arts and jewelry division....**Zurich Financial Services Group Inc.** plans to lay off 170 workers in the United Kingdom. The cuts, intended to reduce the U.K. life business' operating expenses by £65 million ($93.3 million) per year, will result in job losses in the company's offices in Swindon, Wiltshire, and Cheltenham, Gloucestershire. The action follows ZFS's decision last October to combine its U.K. and international life businesses into a single operating unit....London-based Moody's Investors Service Ltd. has placed its Baa3 insurance financial strength rating of Tokyo-based **Asahi Mutual Life Insurance Co. Ltd.** under review for a possible downgrade. Moody's said the action was prompted by a decline in Asahi life's policies in force, the negative spread of its guaranteed returns to policyholders exceeding its yield on investments in Japan's low-interest environment, and concerns over the quality of the insurer's investment portfolio, among other matters.

Safety drives U.K. traffic proposal

PHOTO: WALTER BIBIKOW

The United Kingdom is mulling new rules that would require companies to manage business-related road risks.

By CAROLYN ALDRED

LONDON—U.K. risk managers may have to take a greater role in managing the risk of employees on the road for business under proposals proposed by a government-appointed independent task force.

"Employers should manage at-work road risk within the same framework they should already have in place for managing all other occupational health and safety risks," according to a consultation document published by the Work-Related Road Safety Task Group. The Health and Safety Executive currently is seeking comments on the proposals.

The document estimates that between 25% and 33% of all serious and fatal road traffic accidents in the United Kingdom involve someone who was on the clock at the time. Such incidents, the task force says, cost the country a total of up to £5 billion ($7.18 billion) each year in compensation and other costs.

"Members on the task force believe there is a strong social and moral case for action and sound business reasons for employers to do more," said Richard Dyke, the chairman of the task force and group managing director of mail services for The Royal Mail, the postal services subsidiary of London-based Consignia P.L.C. Until now, the protection of workers and members of the public from traffic risks has been mostly a matter for road traffic law, normally enforced by the police and the courts.

"It has been government policy for many years that the health and safety enforcing authorities should not investigate at-work road traffic incidents, except where work vehicles are engaged in specific work activities, such as refuse collection and street cleaning," according to the consultation document.

"However, one consequence has been

See **Road** *on page 17*

ALARM gives nod to its Roots

Sharon Roots wins association's top honor

By SARAH VEYSEY

COVENTRY, England—The Assn. of Local Authority Risk Managers has named Sharon Roots its first Risk Manager of the Year.

Ms. Roots, corporate risk manager for the east London borough of Newham, received the honor at the association's annual conference, held April 9-10 at Warwick University in Coventry, England.

"Reasons for Sharon's success were varied, but each highlights her achievement of changing people's perceptions of risk, and putting risk management at the forefront of the thought processes of everyone in her organization," said ALARM Chairman Kevin McGlone in presenting the award.

"She epitomizes the new breed of public-sector risk manager, whose role not only encompasses an expertise in managing risk, but involves acting as a facilitator, coordinator, communicator and...creator," he said.

The ALARM Risk Manager of

See **Roots** *on next page*

Risk managers urged to face stress

Malady is second-biggest health problem

By SARAH VEYSEY

COVENTRY, England—Risk managers should wake up to the fact that stress at work is a big problem, but one that can be reduced, a consultant advises.

"Stress is the second-biggest occupational health problem after back pain" in the United Kingdom, said Christine Owen, European partner at William M. Mercer Ltd. in London, citing statistics from the U.K. government's Health and Safety Executive.

According to the HSE, she said, 5 million U.K. workers, out of nearly 29 million, suffer from stress in the workplace.

"There is lots you can do to reduce stress risk," she said. "Stress responds very well to intervention."

Ms. Owen told risk managers at the Assn. of Local Authority Risk Managers' annual conference earlier this month that they should treat stress like any other workplace risk.

"Why do we treat stress differently than any other risk in the workplace? Because it is emotive, difficult to manage and we are scared of it," she said. She urged risk managers not to bury their heads in the sand, but to tackle the problem of stress head-on.

See **Stress** *on next page*

PHOTO: AFP

Emergency crews work at the scene of the Conoco refinery explosion in Great Britain.

Cause of blast at Conoco plant is investigated

By SARAH VEYSEY

SOUTH KILLINGHORNE, England—An explosion last Monday at Conoco Inc.'s Humber Refinery has closed the refinery until further notice.

Claims administrator Crawford & Co. will handle any claims that arise from the explosion, which occurred Monday afternoon in the Saturate Gas Plant in South Killinghorne, Lincolnshire, England. There were no serious injuries in the blast, the company said. No structural damage to nearby property has been reported.

Houston, Texas-based Conoco has insurance coverage through its Hamilton, Bermuda-based captive, Danube Insurance Ltd., and excess coverage is placed in the international insurance market, according to the company.

The company said the accident would not create

See **Blast** *on page 17*

INTERNATIONAL

Stress

Continued from previous page

Risk managers must consider the problem that lost time resulting from stress-related disorders can cause to their organizations. "It is not just direct absence. It is also indirect absence—reduced productivity and turnover," she said. "When people are stressed they don't operate well."

An important step to combat the problem of time lost through stress-related disorders is to engender a workplace culture that enables people to speak up if they are feeling undue pressure in the workplace, said Ms. Owen. "You need to make sure that you have a culture that will understand if people say they are stressed. Because if not, why would they tell you?"

One way to begin to understand the scale of an organization's lost-time problems from stress is to ascertain the true causes of absenteeism, said Ms Owen She pointed out that there are just three commonly accepted reasons for absence from work in the United Kingdom—illness, jury service and the mobilization of the territorial army.

> *Risk managers should intervene if they are concerned about an employee's absence from work.*
> — *Christine Owen*
> *William M. Mercer Ltd.*

"But if people have a child-care problem, for example, they will say they are ill," she pointed out. "You need to give people ways to be absent and manage this," she advised.

Ms. Owen said risk managers should intervene if they are concerned about an employee's absence from work, whether or not they know the problem is stress.

In attempting to deal with stress, risk managers need to know what the real problem is, said Ms. Owen. "You need to know what is driving the problem—just like you would any other risk."

Ms. Owen said that if risk managers intend to carry out a "stress audit" of staff, they should do so under another name. "One of the problems with stress at the moment is that it is a bit of a status symbol," she said. "We would all tell our bosses that we were stressed—because (we believe) that if you are not under pressure, you are not valued."

For this reason, she said, stress audits should be carried out under a different guise, such as an employee satisfaction survey, to ensure that more accurate results are gathered.

Risk managers also need to instruct line managers to become more aware of the behavioral patterns of their staff, according to Ms. Owen. This will enable them to spot signs of stress far earlier. "Stress doesn't sit in isolation. No person has ever gone off work with (unexpected) stress," said Ms. Owen. "And you can't divide up home and work—you have to look at the whole person."

Ms. Owen said that local authorities, often unwittingly, have access to a lot of information that can help them build up a stress-risk profile of their organization. Such information includes: sickness monitoring; turnover of staff; exit interviews; age profile of the organization; accident rate; private medical claims; early retirement; permanent health claims; long-term disability claims; productivity data; and employer liability cases. BI

Roots

Continued from previous page

the Year is chosen by the ALARM board of directors from entries sent in by risk managers or their colleagues.

Ms. Roots, who has held her current post since 1998, undertook several initiatives last year to improve risk management practices in her borough, including the development of an overall risk management strategy. In addition, she created a service-continuity plan to reduce potential disruption to essential services and conducted a review of the financial risk management of capital projects undertaken in the borough.

She also conducted a survey of all borough employees that led to the development of stress-management and rehabilitation guidelines, and she produced a video—entitled "Accidental Day" and based on the film "Groundhog Day"—to educate managers about the need for improved accident and reporting procedures. That video is now being used as a training tool for other local authorities and consulting firms.

The role of the governmental risk manager has changed over the past few years, Ms. Roots said. "It is much more important now, and it doesn't just cover insurable risk," she said. Many local authorities, including Newham, now opt to self-insure a large proportion of their risks, Ms. Roots noted, and because of that, risk management has become the "in thing" to control risks.

"Insurance is just a small part of risk management," she said. "It is just the risk transfer part of risk management, as opposed to the be-all and end-all."

As part of the award, Ms. Roots will embark on an educational-exchange visit this summer with David Parker, director of risk management for Pima County, Ariz., who was named the Public Risk Management Assn.'s 2000 Risk Manager of the Year last June.

Ms. Roots, who has worked in the fields of risk management and insurance for 20 years, said that her proudest moment in her current position occurred when the chief executive of the Newham Borough Council agreed to accompany her to the 2001 ALARM conference and give a presentation alongside her.

This, she said, was proof that her push to promote the importance of risk management was getting across to all sections of the organization.

"My responsibility is to facilitate everyone having risk management in their job," she said. BI

Implication of rights law

HRA may require a broad review of government practices

By SARAH VEYSEY

COVENTRY, England—The European Convention on Human Rights, written into U.K. law in the Human Rights Act of October 2000, affects all areas of public authorities' activities, a local government official says.

But local government risk managers will find that many of the principles of British common law that have traditionally been applied to local government coincide with the HRA, according to Malcolm Gilbert, an attorney and assistant chief executive of Plymouth City Council.

Even so, he said, the HRA does necessitate a re-examination of existing administrative practices. "Human rights is a risk management issue," he told attendees of the 2001 Assn. of Local Authority Risk Managers conference.

"It is unlawful...for any public authority to act in any way that is incompatible with the Act," he said. Under the HRA, public authorities are classified in two ways—as government agencies or as bodies that are carrying out duties of a public nature.

The second classification raises an important risk management question, Mr. Gilbert said. He pointed out that local authorities should look carefully at whether subcontracted workers are acting as public authorities. If that is the case, he said, local authorities would need to look carefully at their liability if such workers were to breach the HRA.

Article 2 of the European Convention on Human Rights is the right to life. This is a positive duty, he said, which means that each European Union member-state has to ensure that everybody can enjoy their right to life. This can have many implications for the activities of local authorities, said Mr. Gilbert. For example, if a local authority decides to close a nursing home, it could be breaching Article 2, he explained. "Article 2 comes into play here; if you shorten a resident's life expectancy—even though you don't kill them—you are contravening Article 2," he said.

Article 3 of the convention outlaws torture, and cruel or degrading treatment. Mr. Gilbert quipped that while most local authorities in the United Kingdom do not routinely practice torture, this article of the convention could have far-reaching implications for them. The article covers abuses such as bullying and harassment, and could even extend to stress management, he said. This also could affect such things as initiation ceremonies in the fire and police departments, he said.

Article 5 of the convention covers the right to liberty and security. This has particular relevance to local authorities when detaining youngsters in juvenile institutions, he said.

The sixth article of the HRA ensures the right to a fair trial. This article, said Mr. Gilbert, exists in two parts, the first of which refers to criminal circumstances; the second pertains to civil rights and obligations. This could be interpreted as the civil rights the public has in reference to public authorities, he said. It could cover such things as planning rights, licensing and the employment of public servants.

Article 8 of the convention enshrines the right to respect for privacy, family life, home and correspondence. This wording—"right to respect"—means that the right can only be contravened if it is in the public interest to do so. This article poses several big problems for local authorities, said Mr. Gilbert. For example, the release from jail and subsequent housing of convicted pedophiles—an issue that has rarely been out of the U.K. media for months—causes enormous problems when viewed in human rights terms. "Which way do we turn? It is a big problem," said Mr. Gilbert, meaning the rights of the public must be weighed against the rights of the convicted pedophile.

Local authorities could run into difficulties regarding the right to respect for family, according to Mr. Gilbert. "Does scheduling evening meetings show a respect for the right to family life?" he asked.

The right to respect for correspondence also throws up potential risk management problems, said Mr. Gilbert. He advised risk managers to require local authority employees to sign consent forms outlining acceptable uses of the authority's e-mail system.

Other rights listed in the act include right to freedom of expression, right to religious freedom, right to a fair trial, and the right to freedom from forced labor.

Mr. Gilbert said that in addressing these and other risk management issues arising from the HRA, risk managers should bear in mind the principles of proportionality. "Insofar as it (any action) is intended to interfere with a convention right, the interference should be necessary, fair and proportionate to the objective," he said.

The rights of individuals should be treated in a balanced way, he added.

Road

Continued from page 15

that, other than for large vehicles, there has been little motivation for employers, or the enforcing authorities, to examine whether a failure in health and safety management systems has contributed to an incident," it adds.

"This position is no longer sustainable," the task force asserts.

The task force included representatives of employers, workers, the insurance industry, transportation organizations, the police, local authorities, the government Department of the Environment, Transport and the Regions, and the Health and Safety Executive. It proposes that at-work road safety should come under existing health and safety law, enforced and monitored by the Health and Safety Executive.

"Many employers already manage heath and safety risks to which employees are exposed when they work on or by the road, for example in construction, utility and telecommunications work, emergency services, refuse collection and postal delivery," the report points out.

"A greater concern, however, lies in the management of risks associated with driving while at work. Here we believe systems are likely to be ad hoc, concentrating more on driver training, vehicle selection and incentives for safe driving rather than applying risk prevention measures in a systematic way," the document states. The risk prevention measures suggested in the document include:

- Considering alternatives to journeys or alternative types of travel. It did not suggest any alternatives.
- Rescheduling work to limit long hours, choosing vehicles carefully and maintaining them conscientiously.
- Specifying safe routes for journeys. It did not specify what would constitute and unsafe route.
- Being more selective of drivers and providing them with training.
- Clarifying the roles and responsibilities for everyone in the management chain, from directors to individual employees.
- Setting standards for expected behavior.
- Establishing a system for reviewing drivers' past experience.

Employees must also retain their share of responsibility for their own and others' safety, the report stresses, noting that it is important to "get the balance right between what we can reasonably expect of employers in controlling risks to employee-drivers and the responsibility of drivers themselves to drive safely."

However, by extending HSE general guidance on occupational safety, "employers would have to consider whether to provide their employees with additional training both for general driving and for vehicle/task-specific competence," the report suggests.

"Putting in place new working practices to manage at-work road risk requires time and money. But we would argue that employers should already have in place systems to manage workplace health and safety. Extending these to their on-the-road activities might not prove too burdensome," the report states, pointing out the benefits might outweigh costs.

David Gamble, executive director of the Assn. of Insurance & Risk Managers, said that "AIRMIC will be considering this discussion document carefully and providing our views to the HSE's Task Group in due course." But, he said, "prior to any moves toward more regulation, plainly, the main causes of such accidents need to be established, along with review of current action being taken by employers to manage such risks. For example, some companies already undertake advanced driver-training for their fleet-vehicle drivers, or are involved in safe-driver incentive schemes," said Mr. Gamble.

"It could be that advisory guidelines and better publicity of best practices might prove easier to implement than further imposed regulation, with its attendant policing," he concluded.

"This use of existing Health & Safety at Work Regulations as suggested by the discussion document would appear to be the most suitable tool to implement" a corporate road safety strategy, said Graham Harris, marketing director for Motor Initiatives within the corporate risks division of Willis Group Ltd. in London.

Willis works with many company clients to establish best practices in the field of motor fleet risk management, incorporating the integration of at-work road traffic incidents into company health and safety management systems, Mr. Harris pointed out.

Copies of the report, "Preventing At-Work Road Traffic Incidents," are available at *www.hse.gov.uk*.

Comments on the HSE discussion document should be sent before May 25 to: The Task Group Secretariat, Health and Safety Executive, SPDA2 5SW, Rose Court, 2 Southwark Bridge, London SE1 9HS, England. Phone: 44-207-717-6841; e-mail: *spd.work.roadsafety@hse.gsi.gov.uk*. BI

QBE buys insurers in Latin America

SYDNEY, Australia—QBE Insurance Group Ltd. is buying the Latin American operations of defunct insurers Reliance Insurance Co. and HIH Insurance Ltd. for about $24 million.

QBE Insurance Group

The four operations, which are located in Mexico, Argentina and Brazil, are "clean, well-run companies," said Tim Kenny, president of QBE the Americas in New York. But to guard against any shortfall in reserves, 37% of the purchase price will be held in escrow to meet any deficiencies, he said.

The Reliance-owned companies, which Sydney, Australia-based QBE is buying outright are: Reliance National Compania Argentina de Seguros S.A., Reliance National Brasil Seguros S.A. and Reliance National de Mexico S.A. All three companies write commercial property/casualty insurance.

HIH Aseguradora de Riesgos del Trabajo, the majority-owned HIH unit, writes workers compensation insurance in Argentina.

The annual gross premium for all four units is about $90 million, Mr. Kenny said.

The Latin American units of Reliance are some of the few remaining active units of Reliance, which was placed under regulatory supervision earlier this year. Sydney-based HIH was placed in provisional liquidation last month.

QBE currently writes reinsurance business in Latin America. The Reliance and HIH purchases will give QBE its first stake in the primary market in the region, Mr. Kenny said.

—By Gavin Souter

Docket

Continued from page 3

the automaker had indeed failed to make adequate accommodation for her. Toyota appealed to the high court.

In the other ADA case, Robert Barnett, a US Airways customer service representative, sought a transfer to the mailroom after hurting his back in 1990 while loading luggage in San Francisco. He held a mailroom job temporarily, but was transferred out after workers with more seniority sought the same position. Mr. Barnett and the airline could not agree on what he should do next, and he sued US Airways under the ADA for alleged failure to make reasonable accommodations for his injury. He also charged that the airline was retaliating against him because he'd filed charges against it with the Equal Employment Opportunity Commission.

A district court granted summary judgment for US Airways. A three-judge panel of the 9th U.S. Circuit Court of Appeals agreed in October 1999 with US Airways that the ADA did not require it to ignore its seniority system to meet Mr. Barnett's needs.

The full circuit court, however, while it rejected the retaliation charge, ruled last October that the mere existence of a seniority system does not release employers from their ADA duties to seek accommodations and that Mr. Barnett could continue to pursue his case. Otherwise qualified disabled employees "should receive the position, rather than merely have an opportunity to compete with non-disable employees" for it, regardless of the existence of a seniority system, the court majority held.

Quentin Riegel, deputy general counsel of the National Assn. of Manufacturers in Washington, said NAM is "relieved that the Supreme Court has placed two ADA cases on its docket. Two years ago, it issued landmark rulings that helped define which individuals Congress intended to benefit when it passed the Americans with Disabilities Act."

The *Toyota* case, in which the NAM filed an amicus brief, "will further help business understand how serious a disability must be before statutory obligations and related penalties kick in," Mr. Riegel said. "Many jobs require specific abilities that not all people can perform, but that doesn't mean those people are disabled. Giving them disability benefits under the ADA would be a dangerous and expensive expansion of that law," he said.

> *The US Airways case 'will provide valuable guidance to companies that don't know whether to give preference to individuals with disabilities over individuals with years of seniority.'*
>
> *— Quentin Riegel, National Assn. of Manufacturers*

The other case the court agreed to hear, *US Airways*, "will help companies determine what to do if an employee is actually disabled and wants a reasonable accommodation on the job," Mr. Riegel said. "Specifically, the case will provide valuable guidance to companies that don't know whether to give preference to individuals with disabilities over individuals with years of seniority at the company. Congress did not resolve how to balance the legitimate but competing interests of various segments of a company's workforce, and the court's decision will provide a welcome answer."

No date has been set for the high court to hear either case. BI

Blast

Continued from page 15

immediate disruptions for its customers. "Conoco currently has sufficient supplies of petroleum products in storage to meet the immediate needs of its customers," the company said in a written statement.

The Lincolnshire plant produces about 85 million barrels of refined oil per year, according to Conoco. In the wake of the explosion, the price of crude oil Monday rose 54 cents, to $28.79 per barrel, on the New York Mercantile Exchange.

Refinery units at the Saturate Gas Plant, which separates propane and butane gases from gasoline, were shut down immediately, preventing any accidental pollution, the company said.

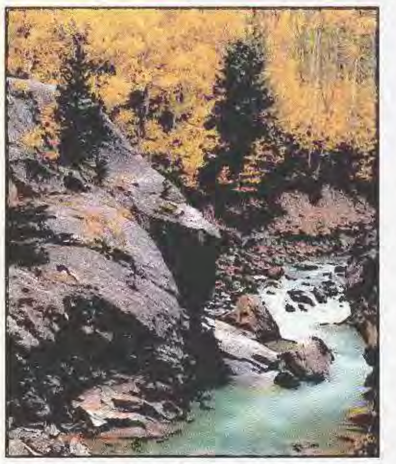
"Conoco can confirm that no spillage of hydrocarbons was involved in the incident," it added.

Conoco said it did not know what caused the explosion, but that it was conducting an internal investigation in conjunction with the U.K. government's Health and Safety Executive.

"Company experts have begun investigating the cause of the explosion and will be cooperating closely with the relevant agencies in their inquiries," the government agency said. "Lessons learned from those inquiries will be shared as soon as possible with companies that operate plants similar to the Humber Refinery."

A spokeswoman for Crawford & Co. said that further information on the causes of the blast and any claims arising from it should be available early this week. BI

Group hopes to revive Colorado captive industry



Colorado, once the largest U.S. captive domicile, is now among its smallest. A trade group hopes to reverse that decline.

By JOANNE WOJCIK

DENVER—Like a crocus poking through the snow in spring, the Colorado Assn. of Captive Entities is emerging from a long winter's sleep.

CACE members met for the first time in two years last week to update the group's articles of incorporation and brainstorm ways to market the nation's oldest and once its largest—but now a much smaller—captive domicile.

With the number of captives in Colorado dwindling to 10 this year, from a peak of 28 in 1982, CACE members realize they are facing an uphill battle.

But, like that proverbial spring crocus, CACE members are resilient.

"We've got nowhere to go but up. It can't get any worse," asserted Alan Schmitz, an attorney with the Denver law firm of Shughart Thomson & Kilroy in urging the group to "think outside of the box."

Mr. Schmitz is helping to wind down Havican Insurance Co., Colorado's oldest captive, which was formed in 1976. The owner, Trinity Health, decided to fold its Colorado captive because it has three others in Vermont, the Cayman Islands and the U.S. Virgin Islands, he said.

Among the ideas bandied about during the CACE brainstorming session was soliciting the support of the Colorado Builders Assn., which has successfully lobbied for tort reforms that it hopes will make it easier for its 300 members to buy insurance. Rates for contractor liability coverage have escalated in recent years as a result of insured loss ratios surging.

"Two major A-rated admitted companies have withdrawn from Colorado, and one has a 300% loss ratio, and the other's is even higher" for this line of business, said Mike Murphy, president of RiskCap, a Denver-based captive manager.

A bill limiting contractor liability passed Colorado's Legislature earlier this month and was signed into law by Gov. Bill Owens on April 19. The bill limits which contractors can be sued and stipulates that minor code issues cannot be construed as builder negligence.

"They might be a partner to help Colorado's captive industry," Mr. Murphy suggested.

John Kezer, a former Colorado insurance commissioner and an attorney with Jones & Keller, suggested CACE members work with regulators to try to find solutions for the state's brewing health care crisis.

In fact, he said, Colorado's captive law, enacted in 1974, came about as a result of the liability insurance crisis occurring at the time.

Several health maintenance organizations have either moved out of the state or filed for bankruptcy, thus limiting the availability of commercial health care coverage to Colorado employers. A captive could be a solution since Colorado's captive law was rewritten in 1994 to

See **Colorado** *on next page*

LEGAL NOTICES

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re Petition of Peter Charles Barnes Mitchell and Philip John Singer as foreign representatives of RAMUS INSURANCE LIMITED, Debtor in Foreign Proceedings.	In a Proceeding Under Section 304 of the Bankruptcy Code Case No. 01-12160

SUMMONS: TO ALL INSURANCE, REINSURANCE AND RETROCESSION CREDITORS OF THE COMPANY: A petition dated April 12, 2001 (the "Petition") in a case ancillary to a foreign proceeding was filed in the United States Bankruptcy court for the Southern District of New York, The Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408 (the "Bankruptcy Court"), requesting an order pursuant to 11 U.S.C. § 304 (the "Order") giving full force and effect in the United States to the Scheme of Arrangement (the "Scheme of Arrangement") dated February 6, 2001 between RAMUS INSURANCE LIMITED (the "Company") and its creditors in respect of insurance, reinsurance and retrocession liabilities (the "Scheme Creditors") and making the Scheme of Arrangement binding on and enforceable against all Scheme Creditors in the United States.

YOU ARE SUMMONDED and required to submit to the Clerk of the Bankruptcy Court a motion or answer to the petition, within 20 days after the service of this summons, at Room 534 of the Bankruptcy Court. At the same time you must also serve a copy of your motion or answer on the Petitioners' counsel at the address listed below. If you make a motion, your time to serve an answer is governed by FRBP 1011(c). If you fail to respond to this summons, the Order will be entered.

The foregoing summons is served upon you by publication pursuant to an order of the United States Bankruptcy Court, Southern District of New York, dated April 16, 2001, and filed with the Petition and other papers in the office of the Clerk of the Bankruptcy Court.

PLEASE TAKE NOTICE that copies of the Scheme of Arrangement, together with the related Explanatory Statement dated February 6, 2001, the Summons, the Petition, and a form of the Order are available upon written request to the Petitioners' counsel:

BUDD LARNER GROSS ROSENBAUM
GREENBERG & SADE, P.C.
11 Penn Plaza
5th Floor
New York, New York, 10001
Tel: (212) 946-2798
Fax: (212) 946-4966
Attention: Joseph J. Schiavone, Esq.
Jeffrey S. Leonard, Esq.

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LEGAL NOTICES

IN THE MATTER OF THE COMPANIES ACT 1981
AND IN THE MATTER OF
FOCUS INSURANCE COMPANY LIMITED
IN LIQUIDATION

NOTICE is hereby given to all creditors of Focus Insurance Company Limited (in Liquidation) that the Joint Liquidators intend to enter into an arrangement with creditors and distribute the funds available as soon as possible.

Notices have been sent to all known creditors by way of a letter dated 24 March 2001, to ascertain and agree all outstanding balances. Creditors have been asked to respond to the Joint Liquidators by 30 June 2001.

Creditors or any persons who may have claims in the Liquidation and who have not received the above letter, or wish to obtain further information about the liquidation, may contact the Joint Liquidators at the following address, Focus Insurance Company Limited - In Liquidation, PricewaterhouseCoopers, PO Box HM 1171, HM EX, Bermuda, Fax 441-295-1242

PETER C.B.MITCHELL *Joint Liquidator*
5 April 2001

HELP WANTED

MARKETING MANAGER

Large, multi-office, Ohio agency seeking Marketing Manager for middle market accounts. Must have P&C account placement background, P&C license, BA/BS degree, and exceptional communication and PC skills. Comprehensive benefits. Salary commensurate with experience. EOE. Send resume to: **DAWSON COMPANIES**, Attn: Human Resources, 1340 Depot St., Ste. 300, Cleveland, OH 44116; fax (440)356-6385; HR@DawsonCompanies.com
www.DawsonCompanies.com

HELP WANTED

Medical Malpractice Insurance Sales

We seek a licensed producer with experience in the medical professional liability insurance industry to join our growing firm. We offer a casual, but professional work environment. If you are considering a change, please contact:
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3701 Algonquin Road, Suite 810,
Rolling Meadows, IL 60008
Fax: 847-385-6801

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Sales/Marketing VP

Niche Insurance/Reinsurance Company located in Upstate New York is in search of an individual to assume responsibility for the sales/marketing functions of two year old company. The opportunity for the right candidate is enormous. The company's products are well positioned to capitalize on our customers need for our niche expertise and industry trend to outsource.

The candidate with a strong matching skill set will be offered a robust wage, incentive and benefits package along with the opportunity to earn an equity stake in the company commensurate with premium growth. The position is resident at the company's headquarters in Elmira, New York.

All inquiries will be kept confidential and will be answered. Please forward resume and letter of introduction to:
A.I.C. 1120 Magee Street, Elmira, New York 14901

HELP WANTED

HELP WANTED

DIVISION DIRECTOR / CHIEF FINANCIAL EXAMINER

Division of Financial Regulation
Mo. Department of Insurance
Jefferson City, MO
Salary range: $58,332 - $84,936
(Starting salary depends on qualifications)

Resp for directing, planning and coordinating the activities of regulating the financial solvency of insurance companies, i.e., ins co exams, financial statement analysis, premium tax assessments, and surplus lines audits. Extensive knowledge of state ins laws and regs, ins. co. operations, accounting/auditing procedures, securities and investment operations. Ability to direct a large professional staff.

Qualified applicants will have at least five years of financial examination experience in an insurance regulatory agency, including two years at the level of Examiner-in-Charge or above, possession of the Certified Financial Examiner designation, and a bachelor's degree in accounting, auditing or other closely related area. Possession of Certified Public Accountant certificate preferred.

See a more detailed description of this position at www.insurance.state.mo.us

Send resume and transcripts by **May 15, 2001** to:

Department of Insurance
ATTN: HR Manager
301 West High Street, Room 530
Jefferson City, MO 65101

The Department of Insurance is an equal opportunity employer

Colorado

Continued from previous page

allow captives to write employee benefits coverages. So far, only one captive—an association captive owned by the Farm Credit System—is providing stop-loss coverage for members' employee benefit plans.

"We should find three or four industries in crisis who could find relief through self-insurance," suggested Mr. Murphy. "The time is good to build political alliances."

In response to solicitations by reinsurers seeking to join CACE, members decided to eliminate its associate membership category and make insurance brokers, agents, insurers and reinsurers full voting members of the organization.

CACE President Don Pasmore, a consultant at RiskCap, said he has fielded inquiries from at least seven companies seeking to join the organization. Among them are Employers Reinsurance Corp. and Hall & Evans, a Denver law firm, he said.

But gaining attention within the state and expanding membership may not be enough to attract more captives to the domicile, Mr. Kezer pointed out.

"Other states really have accentuated marketing," he said.

For several years, CACE hosted an annual gathering at a Vail, Colo., mountain resort. But while speakers from all over the country were eager to come to the state, attendance by prospective captive owners dwindled, making the conference no longer feasible.

Now that the insurance market is hardening, one way to market the domicile might be to host a national conference focusing on self-insurance and the alternative market, Mr. Kezer suggested.

It would be a "search conference," he explained, where CACE members could survey attendees about their attitudes toward various domiciles, but Colorado in particular.

"One of our purposes would be to find out why people aren't choosing Colorado as a domicile," he said. "Colorado is still as competitive (with other domiciles), not only as far as the quality of its law goes, but the process. They'll (regulators) work with you."

In fact, the Department of Insurance has actually referred business to CACE members, Mr. Schmitz pointed out.

When a Colorado Springs-based used car dealership approached the department about its difficulty in finding commercial extended warranty and collateral protection coverage, regulators referred the dealership to its list of captive managers, and Alternative Insurance Management Services Inc. of Englewood, Colo., got the business.

After receiving a little good-natured jibing from the other CACE members about his company having a distinct advantage over other captive members because the list is organized alphabetically, AIM President Richard Johnson said he was planning to file International Motors' captive application as soon as the CACE meeting concluded.

"This is what makes Colorado unique," said Mr. Kezer. "It's competitors working together."

In fact, RiskCap collaborated with AIM, doing the initial design work on the new captive, Mr. Murphy pointed out.

But reviving this dozing domicile will be challenging even for this congenial group of competitors, Mr. Kezer admits. BI

Charter

Continued from page 4

work. At this point, in looking at their bill, it would have only indirect impact on our members as it relates to life companies. Our board is working on an analysis of all these issues," said Mike Duncan, senior vp, secretary and general counsel of the National Assn. of Independent Insurers in Des Plaines, Ill.

The proposal drew an enthusiastic response from a national insurance brokers and agents group.

"We are very heartened by their proposal and we think that the ACLI, probably more than any other insurance trade association, has made the case for an optional federal insurance charter," said Joel Wood, senior vp-government affairs for the Council of Insurance Agents & Brokers in Washington.

"They've made it clear that while they're not presuming to speak on behalf of the property/casualty industry, this is a transferable concept. We don't see that the lack of a P/C aspect is in any way an inhibition," he said.

The president of the Washington-based Reinsurance Assn. of America, which numbers life reinsurers among its affiliate members, noted that his organization's interest would be limited to certain aspects of the proposal but nevertheless praised it as significant.

"We would probably only focus on the reinsurance piece of it," said RAA President Franklin W. Nutter.

"It would be important for us that the life and P/C reinsurance piece be coordinated and compatible. We don't have a position for or against the federal chartering idea—we're neutral at this time. We do expect to meet with the life insurers to discuss the provisions," said Mr. Nutter.

"I do think it's notable that a major organization representing part of the industry has stepped forward as opposed to the sort of background debate that has been going on for years. I don't think it's just another phase in the continuous debate, particularly given Gramm-Leach-Bliley," he said in reference to the financial modernization act that lowered barriers separating the banking, insurance and securities industries.

Some property/casualty trade groups, while praising ACLI's efforts, remain opposed to the optional federal charter.

"Basically, the products the life insurance industry sells are products that are related to the federal tax codes, unlike property/casualty products that are related to common law development in each state. In a sense, property/casualty companies, though they sell on a national basis, they're selling customized policies in recognition of the differences that exist in individual states, as opposed to the life insurance industry, where they sell more standardized policies that are related to federal tax law," said David M. Farmer, senior vp-federal affairs for the Alliance of American Insurers in Washington.

> *'Everybody seems to be in agreement on one point and that is state regulation needs to be modernized.'*
> *— Mike Duncan*
> *National Assn. of Independent Insurers*

He added that, in some cases, purchase of property/casualty insurance—such as automobile liability coverage—is mandated by state law and subject to greater regulatory scrutiny than life insurance coverage.

"We are not suggesting that federal charters are inappropriate for the life insurance industry. The life insurance industry can evaluate for itself and has evaluated. What may be appropriate for the life insurance industry we don't think is appropriate for the property/casualty industry," he said. Nevertheless, the "life insurance industry has proceeded in embarking on this exercise with a great degree of prudence and diplomacy and sensitivity that there are other sectors of the industry and we have been very appreciative of their approach," said Mr. Farmer.

Pamela Allen, vp-federal affairs in the National Assn. of Mutual Insurance Cos.' Washington office, said NAMIC remains opposed to optional federal chartering, fearing that it would create "a very unlevel playing field" for insurers.

"Having said that, we do believe the ACLI has put together a very good proposal and it will stimulate debate within the industry. By industry, I mean companies, agents, regulators and state legislators. To the extent that it stimulates debate and leads to improved regulation at the state level, we find it a positive development."

That appears to be an issue upon which all parties in the debate on optional federal chartering agree.

"For us, much of our historic support for a chartering option is rooted in the reality that the mere presence of such a threat has a positive impact," said the CIAB's Mr. Wood. "Threatening federal oversight is what is needed to force the states to move to a national agenda of harmonization. We just want better regulation for our members, no matter where it is," he said.

"Wherever all of the trades are, everybody seems to be in agreement on one point and that is state regulation needs to modernized," said NAII's Mr. Duncan. BI

Privacy

Continued from page 6

panelists at the WLF discussion stressed that the issue is not whether there is a need to protect the privacy of individual medical records, but rather how best to do so.

There's a conflict between an "objective everyone shares" and an operational reality that is much more complex, said Donald W. Moran, founder of The Moran Co., a Fairfax, Va.-based consultant.

The U.S. health care system engages in millions of information transactions every day, but it's "very rare" that the personal information is deliberately misused, said Mr. Moran, who advised President Bush during his campaign last year. He said that the medical records privacy issue raises what he called a "classic regulatory dilemma"—whether regulations should aim to prevent problems entirely or to create a system of remediation should they occur.

The way liability is structured in the regulation is "conducive to a whole hell of a lot of litigation," said Mr. Moran, particularly because the "business partners" of covered entities such as health care plans can get involved. The situation, particularly given the business-to-business relationships, could end up with everyone in the health care system "suing each other into oblivion," he said.

Mr. Hoofnagle agreed that the regulation isn't perfect but called for tightening rather than loosening restraints. "Privacy rights are fundamental human rights," he said. "If we can't get behind medical privacy, what can we support?" he asked. He noted that other countries have gone in the opposite direction with regard to privacy, citing the British government's decision to place closed-circuit surveillance cameras in public places as a crime deterrent.

The third speaker—Healthcare Leadership Council President Mary R. Grealy—agreed that strong, national uniform privacy standards are needed. Ms. Grealy noted that her organization, which represents a broad range of health care-related enterprises, supported HIPAA.

"The bottom line is that we can all agree there should be penalties for those who do the wrong thing" by misusing or improperly releasing information, she said.

But she criticized the regulation, which in its current form requires a patient to give prior consent at every step of treatment before information can be released. She said she believes that if a patient agrees to a course of treatment, the patient has consented to the necessary exchange of information required to finish that course.

> *The way liability is structured in the regulation is 'conducive to a whole hell of a lot of litigation.'*
> *— Donald W. Moran*
> *The Moran Co.*

The more restrictive prior-consent provision "won't improve quality or efficiency" and could prevent proper care from being provided under some circumstances, she said.

Ms. Grealy also criticized the proposal's restrictions on oral as well as electronic or written communications as "an example of micromanaging common sense." The "rule has over-reached," she said.

Glenn Lammi, the WLF's chief counsel-legal studies division, moderated the discussion. The WLF is a pro-free market nonprofit advocacy group.

The Nolan Co.'s analysis of HHS' cost estimates of the privacy rule holds that the department's estimate of $17.5 billion over a decade failed to take into account a number of costs associated with the rule.

These included the costs of complying with dual federal and state regulation, an assumption that employers would not bear any significant direct costs as a result of the privacy rule and the costs borne by so-called "business associates"—entities that are not directly covered by the regulation but that would have additional responsibilities when dealing with covered entities. Although Nolan based its own estimates on a proposed version of the rule, the survey holds that "while we have not recalculated a new total, we continue to believe that the estimates that we released last year (in conjunction with the proposed privacy rule) of $42.9 billion over five years for the entire industry continues to be a better gauge of the magnitude of the implementation costs associated with this regulation."

The Nolan Co. also estimates that HHS overstated the potential savings stemming from HIPAA's administrative simplification provisions, which involve creating common forms and protocols for electronic transactions. HHS estimated last year that moving to the common forms would cost about $7 billion over 10 years but save about $36.9 billion over the same period, or a savings of $29.9 billion.

Nolan's survey criticized HHS' methodology as having ignored the costs of implementing the rule by not taking into account such matters as the programming changes needed to bring legacy systems into compliance and the need to purchase new systems to meet requirements.

The BC/BS reports conducted by the Nolan Co. are available at *www.bcbshealthissues.com* in the news and research section or by calling Bill Pierce, director of public affairs in the Blues' Washington office, 202-626-4818. BI

History of E.W. Blanch

1957

E.W. Blanch Co. is formed as a partnership.

1993

Blanch goes public as E.W. Blanch Holdings Inc.

1999

Unicover Managers Inc. workers compensation pools collapse, roiling work comp carve-out reinsurance market and forcing Blanch to eliminate Unicover-related commissions.

Blanch enters negotiations to be acquired by an unnamed potential buyer. Talks fall apart late in the year.

March 2000

E.W. Blanch Co.'s President Rodman Fox and Executive Vp Paul Karon resign to join Benfield Greig Group P.L.C. Blanch simultaneously reports lower-than-expected first-quarter earnings and its stock price plummets to less than $20 per share from about $55.

Mr. Fox and Mr. Karon sue Blanch for a ruling on the validity of their non-compete agreements, and Blanch countersues the two men for breaching their duties to the broker.

November 2000

Blanch again jolts investors in announcing a third-quarter net loss following reversal of previously booked revenues and a series of write-downs. The company launches a cost-cutting drive and hires Lazard Freres & Co. L.L.C. to "explore strategic alternatives."

January 2001

Ted Blanch Jr., son of Blanch's founder, resigns as chairman and CEO, becoming chairman emeritus of the holding company. Chris Walker, president of Blanch Holding, assumes the additional titles.

February 2001

A shareholder lawsuit is filed against Blanch officials over the huge drop in the broker's stock price.

Blanch reports a 14.8% decline in revenues to $208.2 million and a $9.6 million net loss for 2000.

April 2001

Benfield Greig announces it will acquire Blanch for $179 million.

Blanch

Continued from page 1

Blanch was looking to expand its operations overseas, observed Jay Cohen, first vp with Merrill Lynch & Co. in New York. "Each company achieves what it was attempting to build."

The deal also resolves financial and ownership uncertainties that have plagued publicly traded Blanch since it missed its earnings target in March 2000, lost two key executives to Benfield and saw its stock price slide throughout the year.

Blanch has "a great company under all the negative things that have happened," said Rodman Fox, who resigned as president of Blanch's brokerage unit last March to become chief executive officer of Benfield's U.S. operations.

The merger would "take the noise away, let (Blanch employees) join an exciting, entrepreneurial entity and let them go back to doing their jobs," Mr. Fox said.

Some uncertainties remain, including the makeup of the management team that would run the combined U.S. entity, to be named Benfield Blanch.

Mr. Coldman, Mr. Fox and Benfield CEO Grahame Chilton all said they expect Blanch Chairman and CEO Chris Walker to remain with the company in a role that is still to be announced. Former Blanch Chairman Ted Blanch Jr. is also expected to join the merged companies in a consulting and business production role, Mr. Chilton added.

Mr. Walker and Mr. Blanch could not be reached for comment.

Meanwhile, Benfield has also taken steps to keep Blanch employees, many of whom began moving to competing brokers, banks or other employers after Blanch's March 2000 earnings surprise and the subsequent collapse of its stock price.

A number of senior Blanch executives have already signed Benfield Greig contracts in addition to their Blanch contracts, said Mr. Chilton.

"We've had serious buy-in from senior people at Blanch who very much want this deal to happen," added Mr. Coldman. "When you're acquiring a people business, it helps to keep the people."

In the deal announced last week, a newly formed Benfield subsidiary, Barrel Acquisition Corp., would launch a cash tender offer for Blanch stock at $13.50 per share, or a total of about $179 million, before the end of this week. The offer would expire 20 days after its commencement, and is expected to close by the end of May.

Blanch stock was trading at a 52-week low of $6.70 per share before the announcement but jumped to more than $13 afterwards.

The acquisition price, amounting to less than Blanch's 2000 revenues of $208.2 million, appears to be a good one for Benfield, analysts say. Blanch's revenues were falling last year and the company reported a year-end net loss, making it difficult to generate the revenue and earnings forecasts needed to assess the purchase price, Mr. Cohen noted.

Combining Blanch's 2000 revenues with the $202.2 million reported by Benfield, the combined companies would have had $410.4 million in total revenues last year on a pro forma basis, pushing them ahead of Willis Re into the No. 3 spot among the world's largest reinsurance brokers. Blanch was previously the fourth-largest and Benfield the fifth-largest intermediary.

> *'We've had serious buy-in from senior people at Blanch who very much want this deal to go through.'*
> *— John Coldman*
> *Benfield Greig Group P.L.C.*

The companies' revenue figures bear out their view that their operations are complementary.

Of Blanch's 2000 revenues, $134.8 million, or 64.7%, were generated by domestic U.S. operations, while the remaining $73.4 million came from overseas business. This represented an expansion of Blanch's non-U.S. business, as the company's domestic revenues shrank last year and as it included revenues of London-based Crawley Warren Group Ltd., acquired in November 1999. In 1999, domestic business accounted for $185 million, or 75.7%, of Blanch's $244.5 million in total revenues, while overseas business accounted for $59.4 million.

By contrast, Benfield's 2000 revenues of $202.2 million included only about $25 million in U.S. business, with the rest produced by the broker's far-flung network of offices in Europe, South America, the Far East and Australasia, according to Mr. Chilton. On an annualized basis, Benfield's current U.S. business generates between $40 million and $50 million in revenues, he said.

Both companies also have strong analytical capabilities, including worldwide catastrophe modeling and risk management expertise, their officials say.

Benfield, which bought U.S. broker Bates Turner Intermediaries L.L.C. from Employers Reinsurance Corp. in 1999, has several U.S. offices in cities with existing Blanch offices. These offices would be merged, according to Benfield officials, who would not say whether staff reductions would follow.

"We are growing this business, not contracting," Mr. Coldman observed. "Therefore, it would be far too early to say whether there will be staff reductions."

Blanch had already launched a cost cutting drive last year as its financial woes mounted, slating three U.S. offices and 11 in the Far East and Australia for closure and terminating 114 employees. Blanch took a $9.5 million charge for the restructuring in 2000, and projected expense savings of $17 million this year.

The merger with Benfield is the culmination of a series of troubles at Blanch that began in 1999 with the collapse of the Unicover Managers Inc. workers compensation reinsurance pools and subsequent turmoil in the market for work comp "carve-out" business.

The broker was not only forced to reverse $4 million in commissions it had booked in 1999 on Unicover business but also faced litigation over its role in handling risks placed with Unicover and other carve-out facilities. While not publicly announced, Blanch was also in serious discussions with an unnamed suitor over a possible sale of the brokerage, court filings later disclosed.

In March 2000, Blanch jolted investors with the announcement that it would miss its first-quarter earnings target. At the same time, it reported that Mr. Fox, then president of E.W. Blanch Co., and Paul Karon, the brokerage unit's executive vp, had resigned to head up Benfield's U.S. expansion. Blanch's stock, then trading at about $55 a share, plummeted to less than $20.

As they departed, Mr. Fox and Mr. Karon sued Blanch for a ruling on the validity of their noncompete agreements with the company, and Blanch filed a countersuit against the two men and Benfield, charging that they had conspired to breach Mr. Fox's and Mr. Karon's duties to Blanch. A Texas judge later ruled that the noncompete agreement was legally unenforceable, but also enjoined the two men from trying to poach Blanch employees or use confidential Blanch information.

> *The merger would 'take the noise away, ...and let (Blanch employees) go back to doing their jobs.'*
> *— Rodman Fox*
> *Benfield Greig Group P.L.C.*

Several Blanch accounts followed Mr. Fox and Mr. Karon to Benfield, including Florida-based Tower Hill Insurance Group Inc., formerly Blanch's biggest client. A number of Blanch executives also decamped, in part because the value of their stock incentive awards had been virtually wiped out.

More bad news followed last November, when Blanch reported a drop in revenue for the first nine months of 2000 and a net loss for the third quarter. Among other setbacks, Blanch had to reverse another $3.2 million in Unicover revenues and $7.5 million in revenue from an unconsummated reinsurance deal that was not identified but that was believed to involve Leucadia National Corp.'s aborted takeover of Reliance Insurance Co.

In announcing the results, Blanch also said it had hired investment banker Lazard Freres & Co. L.L.C. to "explore strategic alternatives."

Benfield approached Blanch about a merger last November and conducted preliminary talks before the discussions broke off, according to Mr. Chilton and Mr. Fox. Lazard then contacted Benfield again about eight weeks ago and the talks resumed more intensely, leading to last week's announced deal, Mr. Chilton said.

While Mr. Coldman said he and Mr. Chilton spearheaded the negotiations, Mr. Fox said he also was involved with Benfield's due diligence review and in discussing the potential merger with Blanch employees.

Pressures on Blanch to resolve its situation were likely mounting, both from clients and from Blanch employees who needed to know the broker's long term plans, Mr. Fox observed.

Financial pressures also weren't easing: At the end of last year, Blanch was no longer in compliance with covenants on a $100 million revolving credit facility that required it to maintain minimum levels of net worth, among other things. Blanch's bankers waived the noncompliance in a Feb. 20, 2001, amendment to the credit facility, the broker noted in its 2000 annual report.

Blanch finished 2000 with a 14.8% decline in revenues from $244.5 million in 1999 and an aftertax net loss of $9.6 million, compared with a gain of $39.7 million in 1999.

Litigation between Blanch and Messrs. Fox, Karon and Benfield would be dropped as a result of the merger. Blanch still faces shareholder lawsuits filed in the wake of the drop in its stock price.

Independent private ownership would be good for Blanch's future development, Benfield officials predict.

The merger would resolve ownership questions that have hovered over Blanch and remove the pressure on a public company to meet short-term financial goals, allowing for greater investment in people and technology, Mr. Chilton said.

"It's very important for there to be a strong independent out there," he said. BI

COMMENTARY

Insurance has surprising draw

Many people in the insurance industry have wondered why they have stayed in this business so long.

They think of their childhood, when they held unflattering perceptions of people who worked in insurance. They recall how their first job in the business was accompanied by thoughts of, "This is only temporary until the longshoreman's union processes my application." They look back at the past 15 years of anguishing over when they'd ever be able to charge a higher rate again. They look to the future and wonder how, after changing employers 10 times in as many years, they will ever accrue a pension that would allow them to retire before age 105.

They think these dark, doubting thoughts, and yet they remain in the insurance industry, instead of quitting to pursue a more glamorous and fulfilling career like day-trading Amazon.com futures. Sometimes, they are bound to shake their fists at the sky, or at their blinking computer screens, or at the bartender at the far end of the bar and ask, "Why? Oh, why didn't I listen to my mother and enter dental school?"

Scientists now have found the answer.

Medical researchers at Emory University in Atlanta have published a study that shows that more than sex, more than food, the human brain craves a good surprise. See? You're delighted already!


Paul D. Winston

The scientists subjected a group of men and women to simple tests in which they received drops of water or fruit juice in a repetitive, monotonous pattern and tracked the response of each their pleasure centers. It quickly became clear that no one was very excited by getting water, water, juice, juice, water, water—especially in such tiny quantities. Then, they began to vary the routine to see what happened. A simple disruption in the routine—such as water, water, juice, water, juice, water, juice—made the test subjects sit up and take notice. They were surprised! And, what's more, they were delighted by the experience. The images of these brains began to light up like the $1,000,000 slot machines at Bally's after someone hits a jackpot. Can you imagine the response if the study group had been given water, water, juice, juice, bourbon and water? Wow.

From this simple experiment, scientists deduced that people are bored by droplets of water and fruit juice in general, but if delivered in an unpredictable manner, the they can be very stimulating. In short, people enjoyed being surprised.

And what industry is more full of surprises than insurance?

What is insurance other than trying to prepare for and minimize the effects of unexpected events, while hoping that they never occur? Surprises, which come in all areas of insurance, can be the pleasant variety or the unpleasant variety—and that in itself can be a surprise.

Imagine the risk manager of a major corporation who challenges a spurious third-party claim in court, only to have a jury return a multimillion-dollar verdict, with a punitive damages award that is five times greater? Surprise! His bleeding ulcer may tell him otherwise, but his brain is delighted by the outcome.

Consider how much more pleased he will be on a neurological level if he then forwards a claim to his company's insurer for coverage, only to have the claim denied on some technicality after paying premiums to that insurer for years. That risk manager is a surprise addict by now—he is hooked!

Or, take the perspective of the insurance underwriter, who year after year cuts her rates because investment returns are so strong that the business is profitable even without big underwriting gains. Then, the bottom drops out of the stock market and investment returns plunge. Surprise! And then, five once-in-a-lifetime catastrophes strike the industry in a row, resulting in millions of claims costing millions of dollars. Surprise!

Or, how about the broker who faithfully works the market to get his client the lowest possible price year after year, but has to jump through hoops in annual reviews to keep the business and one day loses the account over 0.05% worth of commissions. Surprise! And the next year, his firm is swallowed up by that competitor, and he gets the account back. Surprise!

If scientists are correct about how much people crave a surprise, it's easy to see why people stay in insurance. While on an intellectual level, people may question their sanity, on a biological level, they can never leave. Surprised?

Editor Paul D. Winston's commentary appears fortnightly and on www.businessinsurance.com. *He can be reached at* pwinston@crain.com.

GLB

Continued from page 1

third parties unless the consumer has had the opportunity to opt out of that disclosure.

"I would recommend that any company that's related, that has some aspect of their company that's financial—and, quite frankly, that's almost every company—they should conduct a legal review and see if they are covered under the act," Mr. Regan said.

> *'From a company's risk management standpoint, even if you're not a financial institution, you should be looking at it.'*
> *— Thomas M. Regan*
> *Cozen & O'Connor*

"The act itself defined financial institutions fairly broadly," said Peggy Twohig, assistant director for financial practices at the Federal Trade Commission in Washington. "Just by the plain language of the statute, if you're engaged in that kind of activity, if that is the kind of business you are in, you are covered."

Because GLB provides for functional regulation of the businesses it covers, businesses subject to the privacy provisions that don't fall under the authority of banking, insurance or securities regulators will be subject to enforcement by the FTC.

The FTC has developed its own regulations in connection with GLB that specifically identify some types of businesses that will be subject to its enforcement of the privacy provisions.

Among the businesses identified are: tax preparers; retailers that extend credit by providing their own credit cards; personal property or real estate appraisers; auto dealers that, as a usual part of business, lease automobiles; and career counselors specializing in counseling individuals employed by or recently displaced from financial institutions.

Others identified by the FTC as subject to the privacy regulations include: mortgage brokers, businesses that print and sell checks for consumers, check-cashing businesses, businesses operating travel agencies in connection with financial services, companies providing real estate settlement services, investment advisory companies and credit counseling services.

"We haven't heard how the commission intends to enforce the regulations...or even to investigate, to determine whether or not it's being implemented," Mr. Regan said.

"Our first priority is to try to get the word out that there is this law that they need to comply with," said the FTC's Ms. Twohig. "Given the breadth of the law, it's something that's particularly challenging in trying to get the word out, so that companies know they're covered in the first place."

To that end, FTC representatives have been speaking about the new requirements at business conferences and plan to put out a small-business compliance guide.

Once the act goes into effect July 1, "we'll be starting to take a look at enforcement," the FTC official said. "But it's not the kind of thing that, after July 1, it's going to be a 'gotcha.' "

"As with any of our other enforcement work, our approach will depend on the facts and circumstances involved," Ms. Twohig said. "We will be beginning to enforce the law, but we'll be trying to do it in a sensible way."

Robert H. Myers Jr., head of the Washington office of the Morris, Manning & Martin L.L.C. law firm, said companies that think they might be covered by the law should conduct privacy reviews, examining not only whether the company falls under the privacy requirements now, but also whether it might in the future.

"Essentially, what you need to do is find out what information you get, what you do with it and where it goes in the future," he said. "Basically, you have to go through all your systems and all your policies and make sure what you're doing is in line with the law."

And, speaking at the annual conference of the National Risk Retention Assn. in March, Mr. Myers noted that some risk retention groups might find themselves affected indirectly as well.

"Some of your companies or some of your affiliates are going to have operations that are financial institutions," he told those attending the NRRA gathering, held in Indian Wells, Calif.

"It's something you're going to have to deal with, and unlike Y2K, which you only had to deal with once, this is a continuing issue," Mr. Myers said.

At this point, large companies "should be well aware of the law and getting good advice," Ms. Twohig said. "For the large institutions, we're hoping they should be aware of it by now and starting to get out their privacy notifications."

In general, businesses subject to the GLB provisions "should right now be doing an inventory about what information they gather and what information they share," she said. "And if they do have customers with whom they have an ongoing financial relationship, they need to give them notice."

And, if those businesses are sharing any customer information with third parties, they need to give those customers an opportunity to opt out of that information-sharing.

"The basic principles are pretty straightforward," and even small companies should be able to comply, Ms. Twohig said. In enforcing the provisions, "One of the things we'll be looking at is, 'Did they try to comply?' " she said.

Ms. Twohig noted that not all companies defined as financial institutions will be subject to the privacy provisions. "We want people to be aware of the breadth of the provision, but we don't want people to be too alarmed," she said. "If they don't have direct consumer contact or relationships, they don't have to be doing much."

> *'We want people to be aware of the breadth of the provision, but we don't want people to be alarmed.'*
> *— Peggy Twohig*
> *Federal Trade Commission*

"On the other hand, the mortgage brokers out there all need to comply," she said.

"Obviously, what you want to do if you're covered by the act is comply with it," Mr. Regan said. Companies failing to do so could be subject to financial penalties as well as costs associated with litigating enforcement actions, he noted.

"From a company's risk management standpoint, even if you're not a financial institution, you should be looking at it," Mr. Regan said. "If it's a willful violation, the penalties can be pretty heavy." And, he said, companies should determine whether insurance covers the cost of litigation of any enforcement actions. BI

Tribune expands benefits

CHICAGO—Prompted by its June 2000 merger with the Times Mirror Co., the Tribune Co. has begun offering health insurance and other benefits to both same-sex and unmarried heterosexual domestic partners of employees.

To be eligible for the new benefit plan, which goes into effect in January 2002, employees must declare that they have been in an "exclusive, committed relationship of at least 12 months that is expected to last indefinitely," according to a Chicago-based Tribune Co. spokesman. He said the benefits offered include medical and dental benefits, basic life and disability insurance.

About 22,000 employees in all of the Tribune's business units, including its daily newspapers, will be eligible for the benefit plan, the spokesman said.

Before the merger, Times Mirror Co. offered domestic partner benefits while the Tribune Co. did not.

—By Lee Fletcher

Willis

Continued from page 1

or to the Willis purchase, KKR's largest insurance industry holding was American Re Corp., which it bought in 1992 and sold to Munich Reinsurance Co. in 1996.

Trinity Acquisition P.L.C., the KKR-led consortium that acquired Willis, also includes insurers Guardian Royal Exchange P.L.C., Royal & SunAlliance Insurance Group P.L.C., Chubb Corp., The Hartford Financial Services Group Inc. and Travelers Property Casualty Corp. Willis and KKR declined to comment on the reasons behind the moves, due to Securities and Exchange Commission regulations.

Analysts and consultants who have been following Willis offer various scenarios as to what may be driving the broker's moves.

"At the initial onset of the KKR purchase of Willis, it was known that KKR would eventually find a way to monetize its assets, either through an IPO or other exit strategy," said Darin Feldman, vp and senior credit analyst with Aladdin Capital Holdings in Stamford, Conn. For KKR, the IPO is "a good way to test the water of the true value of Willis in the market," which is useful for a future sale of the company, he said.

At the same time, capital raised through an IPO could help Willis pay down substantial debt, which would free up more money to fund further business opportunities, observers point out.

According to documents Willis filed with the SEC earlier this month, which included a 2000 annual report, the broker said that at the end of last year, Willis had a total of $957.5 million of long-term debt. During 2000, Willis eliminated $30 million of debt, and it paid down a further $22.5 million in February 2001, the filing shows.

"Our significant debt and debt service requirements could adversely affect our ability to operate our business and may limit our ability to take advantage of potential business opportunities," Willis warned in its annual report.

Willis' debt situation is not "bad" when one considers that the KKR buyout was highly leveraged, Mr. Feldman said, noting there's a substantial amount of debt incurred in financing such a transaction. But Willis may not be comfortable with its debt burden, and the IPO is one way to pay that down, Mr. Feldman said.

Standard & Poor's Corp. last May revised its financial strength outlook on Willis to negative from stable, in part due to the rating agency's continued concern about Willis' high financial leverage, noted Donovan Fraser, an associate director with S&P in New York. He said that he thinks some of what's driving Willis' IPO is a desire to take care of its debt situation.

> *'It's pretty evident... that Willis needs to do something to continue to emerge as a first-tier megabroker.'*
>
> *—Rob Ekern*
>
> *Ekern & Co.*

Willis noted in its annual report to the SEC that its current debt level limits its ability to pursue other business opportunities, to borrow more money for operations or capital in the future, and to implement its business strategies.

Rob Ekern of Ekern & Co., a Phoenix-based brokerage consulting firm, said that one of the issues Willis has had to contend with is competing against Marsh & McLennan Cos. Inc. and Aon Corp., which are both at least four times as large as Willis. The 1998 deal in which KKR and a group of five insurers bought Willis was seen as a way to help the broker to remain independent and offer customers a global alternative to the two megabrokers.

Mr. Ekern noted, however, that Willis has yet to be able to effectively compete with the brokerage giants.

"Over the last couple of years, Willis' strategy under KKR's ownership has been to grow, but it hasn't had the kind of growth...to get to the size it wanted in order to compete with Aon and Marsh," Mr. Ekern said. "With a move such as this, it will hopefully provide Willis some capital...to grow organically through investments and development of people.

"Willis has some of the best people in the industry, but it hasn't had the infrastructure...in order to compete consistently for the larger type of accounts," Mr. Ekern said. "It's pretty evident to everyone close to the industry that Willis needs to do something to continue to emerge as a first-tier megabroker," he added.

As far as the reasons that Willis decided to redomesticate to Bermuda, observers note that the jurisdiction's lighter regulation and absence of taxes on income, profit and capital gains are an attractive lure. At the same time, Bermuda in recent years has become a leading—if not the leading—insurance center of the world, they say.

"With the size of the market here, it's not overly surprising that a broker of (Willis') size would consider establishing its headquarters here," said Tom Miller, joint managing partner for PricewaterhouseCoopers in Bermuda. Operationally, though, it will not make a big difference for the company, he said.

S&P's Mr. Fraser pointed out that, as a Bermuda company, Willis will eliminate a "stamp duty" of 0.5% on each piece of business it transacts, which, as a U.K. company, it passed on to customers, he said.

While there is little doubt that some big move is in Willis' future, observers have different views of exactly what shape that future will take.

Mr. Feldman, for one, said that he believes there is "a 75% chance that Willis will eventually be bought by someone." He noted that, in particular, he thinks Willis would be attractive to a bank.

One London analyst, however, does not see Willis as an acquisition target. "Willis was set up as an alternative. I think it will stand alone, but there are question marks over some of the smaller brokers." BI

MRM

Continued from page 3

new smaller, less profitable programs.

MRM will pare its $1 billion program book by about one-third, Mr. Mulderig said.

XL will assist MRM in recruiting new underwriters, who will be needed as it relies less on reinsurance and retains more of the primary risks, he said.

In addition, XL Chairman Michael Esposito, Executive Vps Bruce Connell and Fiona Luck, and a director nominated by First Union, High Ridge and Century Capital will sit on the MRM board.

Reinsurance recoverables have been a problem for MRM, but it is negotiating with reinsurers to settle outstanding disputes, he said.

Recently, MRM said it has settled an arbitration case with the reinsurer of one of Legion's principal workers compensation treaties.

Under the settlement, that contract will remain in force. MRM is in the process of resolving two related reinsurance contracts, and the total covered by all three is about $30 million in losses, Mr. Mulderig said.

MRM is negotiating with reinsurers over four other disputed contracts that cover about $90 million in ultimate losses. "We took the $46 million charge, and we are comfortable that we can settle them within that charge," he said.

The losses are principally derived from a group of programs written by Legion that suffered large losses, Mr. Mulderig said.

Despite the problematic program business, the corporate risk management, specialty brokerage business and other financial services business will likely perform strongly this year as workers compensation rates rise, Mr. Mulderig said.

In 2001, those units will likely produce aftertax operating profits of about $40 million, he said.

> *'We still have to see the results of an improvement in underwriting in its program book of business.'*
>
> *—Joyce Sharaf*
>
> *A.M. Best Co.*

Despite the injection of capital, MRM still faces a challenge in turning the company around, said Michael Smith, an analyst at Bear Stearns & Co. in New York.

"Turning around a P/C enterprise is like parallel parking a battleship; it's big, cumbersome and you are dealing with things you can't control," he said.

The turnaround will be contingent on brokers and clients remaining with MRM, and MRM has little control over that, Mr. Smith said.

The investment will solve MRM's immediate problems, but there are still questions as to whether it can re-establish itself, agreed Joyce Sharaf, an analyst at Best. Best has removed Legion from review.

"It's not a long-term fix. We still have to see the results of an improvement in underwriting in its program book of business," she said.

XL's help in recruiting new staff to Legion, and the advisory role it may play in helping MRM shape its business, should help the company, Ms. Sharaf said. "But you don't improve the quality of a billion-dollar book of business overnight," she said.

XL's influence in the reinsurance market could also help MRM as it negotiates settlements with reinsurers, Ms. Sharaf said. "XL has clout in the marketplace," said Ms. Sharaf.

The association with XL should help MRM in several ways, agreed Michael G. Paisan, a principal of Williams Capital Group L.P. in New York.

"They would not have given the capital infusion unless they thought they could save MRM, and if MRM does survive it could be a very viable entity in the marketplace again," he said.

Nevertheless, MRM is paying a significant price in ceding part of its control of the company by giving the investors a 30% stake, Mr. Paisan noted.

"It may have very well been a last-resort move on behalf of MRM," he said. BI

Ergonomics rule outlined

WASHINGTON—A bipartisan group of House lawmakers has introduced legislation calling for the creation of a new federal ergonomics standard.

The legislation, introduced last Monday, is identical to a measure introduced several weeks ago in the Senate by Sen. John Breaux, D-La. Both measures call on the secretary of the U.S. Department of Labor to issue a final ergonomics rule within two years of the bill's enactment.

Such a standard could not apply to non-work-related musculoskeletal disorders that either occur outside the workplace or are aggravated by workplace conditions. The bills also would direct the secretary of Labor to "set forth in clear terms" the circumstances under which an employer must "take action to address ergonomics hazards, the measures required of an employer under the standard and the compliance obligations of an employer under the standard."

The twin measures also would direct the Labor secretary to "ensure that nothing in the rule pre-empts the application of state workers compensation laws."

The measures come in the wake of a failed attempt by the Occupational Safety and Health Administration to promulgate an ergonomics rule in the final days of the Clinton administration. OSHA's regulation, though supported by organized labor, drew fierce opposition from employers and insurers. They claimed it lacked scientific backing, would be overly expensive to implement and illegally infringed upon state workers comp systems by creating a new, more generous system of benefits for ergonomics-related injuries.

Congress responded last month by using the Congressional Review Act for the first time to overturn the regulation. Congress' action, followed by President Bush's signature on the bill, forbid OSHA from issuing any "substantially similar" rule in the future.

No hearings have been scheduled on the House measure, but a Senate subcommittee is slated to take up the matter on April 26.

—By Mark A. Hofmann

Business Insurance's 401(k) directory deadline approaching

Business Insurance will publish its annual Directory of 401(k) Plan Administrators in the May 28 issue, which also will feature a Spotlight report on pensions and retirement plans.

The directory is published as an editorial service, and there is no charge to be included. To be listed, companies must provide 401(k) plan administration services, such as enrollment recordkeeping, daily maintenance of participants' accounts and handling of account activity. Plan administration services must be available on an unbundled basis.

If your company meets the requirements and has not received a questionnaire, please request one by calling Directory Editor Kevin Edison at 312-649-5279.

Copies of the questionnaire also may be printed from the directory area of the *BI* Web site at *www.businessinsurance.com.*

Completed questionnaires must be submitted by the extended deadline of May 4.

Drugs

Continued from page 3

various factors, including a shortage of raw materials, discontinued production and FDA enforcement actions.

One drug that has experienced critical shortages and still is not widely available to hospitals is fentanyl, a narcotic preferred by anesthesiologists for surgery and to relieve pain for women in childbirth.

The fentanyl shortage first arose late last year and it deepened this year after one of the drug's manufacturers discontinued production, Mr. Deffenbaugh said.

While supplies of the drug have increased in recent weeks, hospitals still cannot obtain all they need, especially in the two-milliliter ampules that doctors prefer, said Dr. Bruce Cullen, vp of scientific affairs for the American Society of Anesthesiologists and the chief of anesthesiology at Harborview Medical Center in Seattle.

Because of the side effects from fentanyl substitutes and doctors' and nurses' lack of experience in administering the drugs, the fentanyl shortage in particular has raised the concerns of health care officials.

"The recent national shortage of fentanyl products has created unsafe conditions for many patients who may require analgesia and sedation," states a February alert from the ISMP.

The alert details how, in two separate incidents, patients were given a fentanyl substitute—sufentanil—at the same dosage levels as fentanyl; although sufentanil is 10 times more potent. Both patients recovered after emergency measures were used to revive them.

Such problems related to the use of fentanyl substitutes are not unique. According to an ISMP survey of 344 hospital-based pharmacists released in March, 10% of respondents reported "actual adverse events related to the use of various fentanyl alternatives."

Because of sufentanil's higher potency, "if people are not familiar, they could overdose somebody," Dr. Cullen said. Fentanyl substitutes "don't have the margin of safety you get with fentanyl," he added.

The fentanyl shortage has been one of the most pressing drug-shortage issues to hit hospitals in many years, according to Peggy Nakamura, executive director of risk management/associate counsel for Adventist Health System/West in Roseville, Calif. Adventist Health operates 20 hospitals on the West Coast.

'If there are any problems anywhere in the (drug supply) system, a crisis will occur.'

— Dr. Bruce Cullen
American Society of Anesthesiologists

"I have not seen something quite like this, with this kind of a drug so commonly used," she said.

Also, unlike most other drug shortages, this one touches on patient safety.

"It's very disturbing and very concerning," she said.

Another common fentanyl substitute is morphine. That drug, however, depresses patients' breathing more than fentanyl does. In addition, morphine takes longer to wear off, increasing the amount of time needed to recover, and it is more likely to cause vomiting, Dr. Cullen said. There also is a greater danger of overdosing with morphine than there is with fentanyl, he said.

Another important drug, succinylcholine—a muscle relaxant used to ease the insertion of breathing tubes during emergencies—also is in short supply, and this "really puts patients at risk," Dr. Cullen said. At his hospital, he said, supplies once dwindled until only one ampule remained.

Representatives from the FDA, hospitals, doctors and drug manufacturers met last week to address the problem of drug shortages. One outcome of the meeting was an agreement that the supply and distribution system "is right on the edge, and if there are any problems anywhere in the system, a crisis will occur," said Dr. Cullen, who attended the meeting.

The hospital risk management community has only recently begun to consider the issue of drug shortages, Ms. Nakamura said. At her hospitals, initial steps are now under way to address the risks associated with shortages. In part, her efforts seek to educate hospital staff on how to handle substitute drugs and how the alternatives differ from the drugs in short supply.

Hospitals need to be vigilant about monitoring drugs with dwindling supplies, Mr. Deffenbaugh said. And once a shortage develops, they should try to find alternative suppliers. If that is unsuccessful, then the hospital should ration the drug, saving supplies for the most critical cases, he said, and using alternative drugs for the other patients.

Calling the issue of shortages "a public health issue," Mr. Cohen of the ISMP said that the federal government should step in and "make sure that nobody can drop production of a drug without making sure there are proper alternative suppliers." BI

Event to explore patient rights issues

Hines symposium upcoming

CHICAGO—The 2001 Harold H. Hines Jr. Memorial Symposium will explore the issue of patients' rights in health care.

The free symposium, to be held Thursday, May 17, in Chicago, will feature a panel discussion as well as audience questions on the topic, "Patients' Bill of Rights: Why Care About Health Care?" Issues to be addressed include proposed federal legislation to protect the rights of patients and what effect such legislation would have on the cost and availability of health care plans.

The four panelists, representing the fields of health care, insurance, risk management and law, are: Cecil D. Bykerk, executive vp and chief actuary of the corporate actuarial and strategic planning operation at Mutual of Omaha Cos. in Omaha, Neb.; Richard A. Deem, vp for government affairs at the American Medical Assn. in Washington; Christopher E. Mandel, assistant vp of enterprise risk management at USAA Group in San Antonio; and Todd A. Smith, a partner at

Power, Rogers & Smith in Chicago. Kathryn J. McIntyre, vp and publishing director of *Business Insurance*, will moderate the discussion.

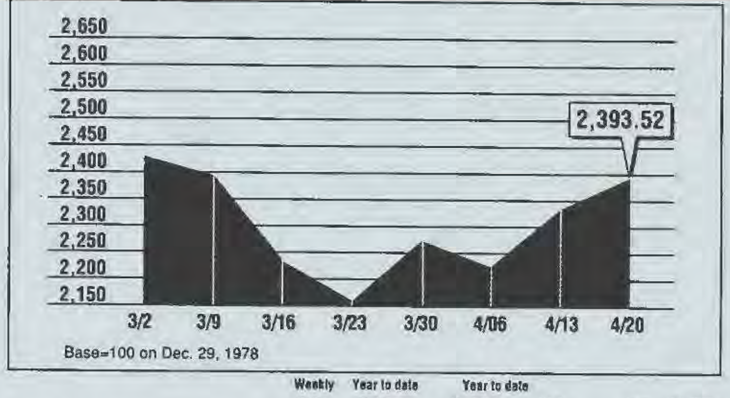
The annual symposium is held in memory of Harold H. Hines Jr., who served the insurance and risk management community for nearly 30 years. At the time of his death, Mr. Hines was president and chief executive officer of Rollins Burdick Hunter Co., now Aon Group Inc., the multinational insurance brokerage unit of Chicago-based Aon Corp.

Presenting this year's symposium are the Chicago chapter of the Risk & Insurance Management Society Inc., the Insurance School of Chicago and *Business Insurance*.

Registration for the May 17 event begins at 2:30 p.m., and the program will run from 3 p.m. to 4:45 p.m. at the Union League Club of Chicago, 65 W. Jackson Blvd., Chicago, Ill. A reception will follow the panel discussion. Business attire is requested.

There is no charge to attend, but attendees are asked to register by May 1. An online registration form is available at *www.chicagorims.org*.

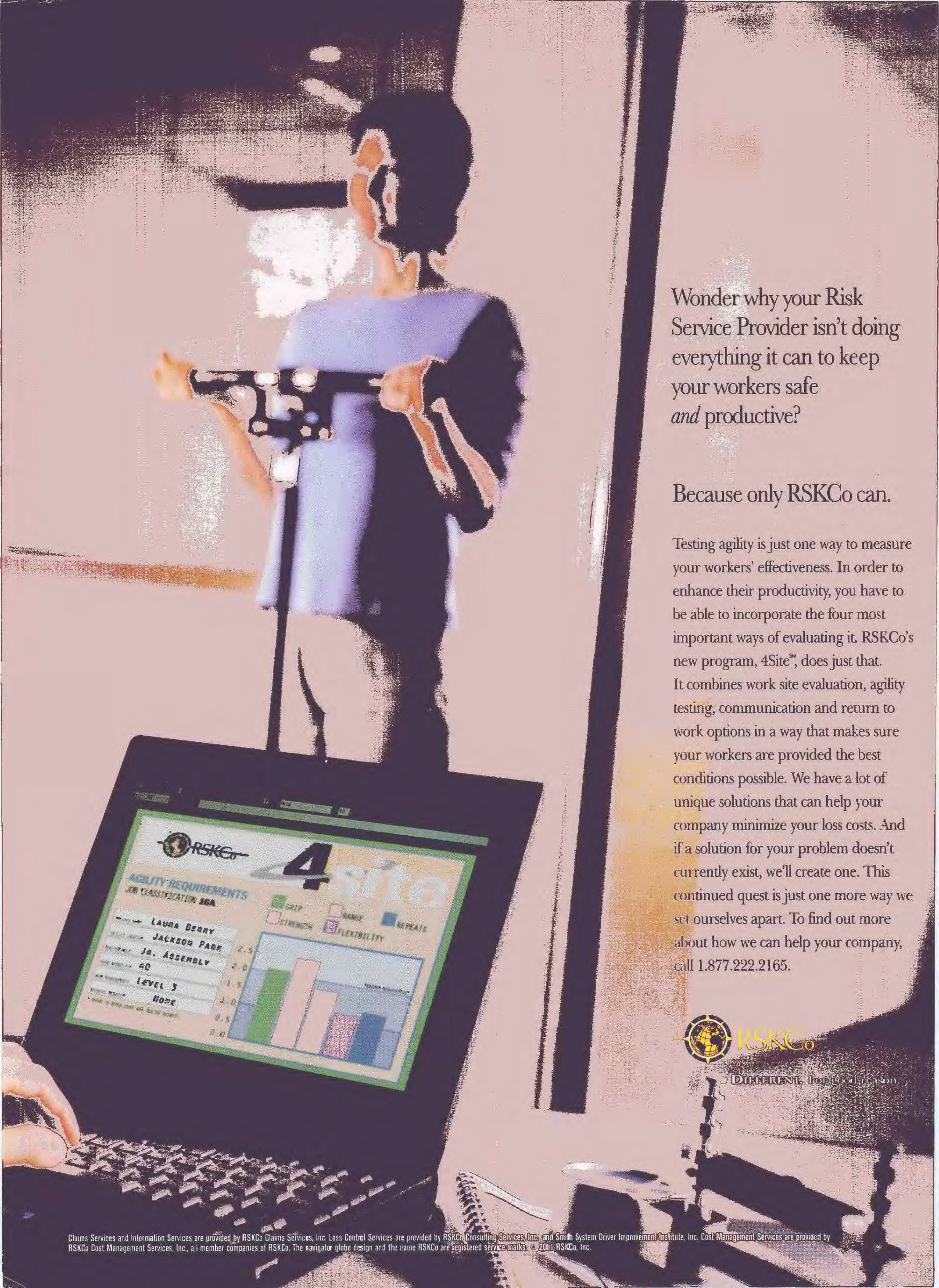
BI Stock Index - 4/20/2001



		Weekly Price	Year to date % change	Year to date % change	High	Low	Vol.(000)
BROKERS							
Aon Corp.	NYS	32.00	-6.43	-6.57	42.31	24.44	9529
Brown & Brown	NYS	38.95	3.59	11.29	39.92	19.00	185
Clark Bardes Holdings	NDQ	10.10	10.99	-0.25	17.88	7.25	329
E.W. Blanch Holdings Inc.	NYS	13.13	63.72	-24.70	29.50	6.70	4584
Gallagher Arthur J. & Co.	NYS	26.21	1.16	-17.61	34.25	14.94	1323
Hilb, Rogal & Hamilton	NYS	39.00	9.86	-2.19	42.13	26.94	198
Kaye Group Inc.	NDQ	13.10	0.77	69.03	13.25	5.00	15
Marsh & McLennan	NYS	94.35	3.91	-19.36	135.69	80.30	6102
BROKERS	AVERAGE		10.94	1.20			
INSURERS/REINSURERS							
ACE Ltd.	NYS	35.25	10.05	-16.94	43.94	20.00	10201
Accel International Corp.	NDQ	0.07	-46.15	-76.42	0.88	0.07	58
Acceptance Insurance Cos.	NYS	3.81	2.42	-27.43	6.94	3.70	64
AEGON N.V.	NYS	32.47	5.83	-21.64	43.00	25.92	711
AFLAC Inc.	NYS	28.55	3.25	-20.90	37.47	21.88	6501
Allmerica Financial Corp.	NYS	48.79	-5.45	-32.70	74.25	45.63	2471
Allstate Corp.	NYS	42.58	4.49	-2.26	44.75	20.06	15370
Ambac Financial Group	NYS	54.00	-12.49	-7.40	64.00	29.75	7863
American Financial Group	NYS	25.37	1.76	-4.49	29.00	18.69	464
American General	NYS	42.91	0.37	5.30	44.09	25.84	18731
American Intl Group	NYS	79.00	1.54	-19.85	103.75	66.70	25752
American Safety Insurance	NYS	8.22	-5.73	34.20	9.10	3.25	6
Argonaut Group	NDQ	15.51	2.72	-26.14	21.25	13.50	123
AXA-UAP Group	NYS	57.50	3.01	-19.93	81.50	49.16	935
Baldwin & Lyons Inc.	NDQ	24.00	2.13	3.23	28.75	15.25	18
Berkley W.R. Corp.	NDQ	41.20	-3.42	-12.69	48.75	18.13	933
Berkshire Hathaway Inc.	NYS	68600.00	7.02	-3.38	74600.00	51600.00	1
Capitol Transamerica Corp.	NAS	12.80	-4.12	2.91	14.44	10.00	26
Chubb Corp.	NYS	66.38	-0.81	-23.26	90.25	58.56	6768
Cincinnati Financial Corp.	NYS	37.60	3.01	-4.96	43.31	31.00	4947
Citigroup	NYS	49.42	4.48	-3.22	59.13	39.00	15436
CNA Financial Corp.	NYS	35.19	-0.06	-9.19	41.94	27.13	59405
CNA Surety	NYS	13.66	0.37	-4.14	14.94	10.38	618
EMC Insurance Group Inc.	NDQ	12.84	1.26	9.28	13.13	6.81	123
ESG Re Limited	NDQ	2.11	0.00	14.44	4.75	1.72	41
Everest Reinsurance	NYS	65.92	0.61	-7.97	74.75	27.31	187
Fremont General Corp.	NYS	3.79	6.76	34.76	6.88	1.50	1358
Gainsco Inc.	NYS	1.31	-2.96	-50.10	6.13	1.10	493
Harleysville Group	NDQ	25.20	6.82	-13.85	30.63	14.00	327
HCC Insurance Holdings	NYS	28.16	0.21	4.54	29.66	10.94	1021
ING Groep N.V.	NYS	67.77	-1.77	-15.42	83.94	52.44	2189
IPC Holdings Ltd.	NDQ	20.86	11.25	-0.67	24.50	11.25	647
Hartford Financial Services	NYS	59.21	1.28	-16.16	80.00	44.00	1451
John Hancock Financial Services	NYS	35.35	0.43	-6.05	40.00	16.38	5968
Lincoln National	NYS	44.12	1.52	-6.75	56.38	29.00	3296
MAIC Holdings Inc.	NYS	14.51	7.08	-13.05	21.00	10.00	2389
Markel Corp.	NYS	197.25	1.68	8.98	205.40	133.50	99
MBIA Insurance Group	NYS	71.82	-4.23	-3.11	83.80	48.00	838
Meadowbrook Insur. Group	NYS	3.15	2.27	-61.23	8.38	2.90	2839
MetLife	NYS	29.05	-2.68	-17.00	36.63	14.25	1998
Mutual Risk Mgmt. Ltd.	NYS	6.25	10.62	-58.85	23.75	3.40	5933
Navigators Group	NDQ	13.76	-3.10	3.36	14.70	8.63	4992
NYMagic Inc.	NYS	19.10	3.52	1.19	19.25	13.00	61
Ohio Casualty Corp.	NDQ	8.61	-1.60	-13.90	17.63	6.13	123
Old Republic Int'l	NYS	28.09	-0.50	-12.22	32.06	12.25	844
Partner Re Ltd.	NYS	49.90	1.07	-18.20	62.50	33.63	2111
Penn-America Group Inc.	NYS	10.26	-0.87	34.56	10.60	6.88	551
PMA Capital Corporation	NDQ	17.17	-4.35	-0.46	19.03	15.19	17
Philadelphia Cons. Holding	NDQ	27.78	5.83	-10.02	31.92	14.25	116
PXRE Corp.	NYS	17.90	4.68	6.07	20.10	12.50	375
RenaissanceRe Holdings Ltd.	NYS	69.35	-6.62	-11.44	84.19	36.13	168
RLI Corp.	NYS	40.68	1.57	-8.97	46.16	31.25	608
St. Paul Cos.	NYS	42.80	1.28	-21.20	57.00	29.31	1535
SCOR	NYS	44.15	0.66	-12.14	53.75	38.38	4687
SAFECO Corp.	NDQ	28.72	3.94	-12.64	35.88	19.56	755
SCPIE Holdings Inc.	NYS	20.00	0.00	-15.34	31.40	18.31	NA
Seibels Bruce Group	NDQ	1.94	-0.51	244.89	2.25	0.53	NA
Selective Ins. Group	NDQ	24.45	1.92	0.82	26.94	15.25	103
Tokio Marine & Fire	NDQ	50.60	1.61	-11.23	61.00	45.25	248
Torchmark Corp.	NYS	37.36	-3.04	-2.80	41.19	21.63	598
Transatlantic Holdings	NYS	106.11	2.52	0.22	107.06	80.38	3492
Trenwick Group Inc.	NYS	19.43	3.06	-21.69	27.13	12.75	60
Unico American Corp.	NDQ	5.50	0.00	-6.38	7.75	4.50	270
United Fire & Casualty	NDQ	24.25	19.46	22.78	25.00	15.50	7
Unitrin	NDQ	36.99	2.55	-8.95	41.94	27.19	78
UNUM Corp.	NYS	29.38	4.00	9.32	30.44	14.81	867
Vesta Insurance Co.	NYS	6.80	-2.86	34.32	8.39	4.13	5780
XL Capital Ltd.	NYS	69.90	-3.19	-20.00	89.25	43.75	952
Zenith National Ins.	NYS	25.72	0.08	-12.44	30.70	20.00	2065
INSURERS/REINSURERS	AVERAGE		0.66	-5.10			
MANAGED CARE COMPANIES							
Aetna Inc.	NYS	26.06	-3.48	-36.54	42.69	24.05	1832
CIGNA Corp.	NYS	100.90	-0.41	-23.73	136.75	73.38	9744
Health Net Inc.	NYS	19.40	-3.87	-25.92	26.94	7.69	2904
Humana Inc.	NYS	9.05	1.23	-40.66	15.81	4.75	3181
Oxford Health Plans	NDQ	24.13	0.00	-38.91	42.75	13.50	7783
Pacificare Health Sys.	NDQ	30.67	9.15	104.47	72.31	9.81	4460
Sierra Health Services	NYS	5.15	11.96	35.53	6.70	2.44	606
United HealthGroup	NYS	60.21	3.05	-1.90	64.36	28.88	10039
Wellpoint Health Networks	NYS	88.44	-2.01	-23.26	121.50	66.75	3456
MANAGED CARE COMPANIES	AVERAGE		1.73	-5.66			
ALL COMPANIES			4.45	-3.18			

Top advancing issues: E.W. Blanch Holdings Inc., United Fire & Casualty, Sierra Health Services. Leading decliners: Accel International Corp., Ambac Financial Group, RenaissanceRe Holdings Ltd. Most active issue: CNA Financial Corp. The BI Index increased 2.5%; the Dow Jones 30 Industrials rose 4.5%; the S&P 500 went up 5.0%, and the NYSE Composite increased 3.6%. Average P/E: Brokers, 20.0; Insurers/reinsurers, 31.0; and Managed care companies, 15.5.

Source: *CNET Investor* (investor.cnet.com) Boulder, Colo.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