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Updates

CIGNA to appeal N.C. finding; judge stays regulator's order

RALEIGH, N.C.—A North Carolina judge on Friday stayed a state insurance commissioner's order that ultimately could force CIGNA Corp.'s active operation to cover the losses of thousands of commercial property/casualty insurance policyholders whose policies were moved to a runoff facility during CIGNA's reorganization last year.

Superior Court Judge Howard E. Manning Jr. stayed Commissioner James E. Long's Aug. 6 order until CIGNA can appeal it in Superior Court. Mr. Long found that the policy move-

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PHOTO: AFP

The recent crash of Korean Air Lines Flight 801 in Guam is unlikely to increase aviation rates, London brokers say.

IRS signs off on rule easing 401(k) loans

Not requiring worker signature may reduce administrative burdens

By MICHAEL PRINCE

WASHINGTON—Employees don't necessarily have to sign on the dotted line to borrow from their 401(k) plans, the Internal Revenue Service says.

The recent IRS letter saying a participant's signature is not required for a 401(k) loan will not significantly alter plan administration but could eliminate some administrative burdens, consultants said.

The general information letter from the IRS to a lawyer representing Bankers Trust Co. of New York says employees need not sign loan documents to borrow money from their 401(k) plans, provided the loans are legally enforceable.

Bankers Trust, along with Hewitt Associates L.L.C. of Lincolnshire, Ill., and Fidelity Investments of Boston, requested the letter in their roles as plan administrators.

The letter will not eliminate paperwork for loans, said Michael Barry, managing director-plan advisory services for Bankers Trust. Plan participants, however, may no longer need to sign and return loan documents, and plan administrators may no longer need to keep signature cards on file.

"Most of our clients do not use signed loan documents anyway, and we will probably go back to our clients and see what documents can be eliminated," Mr. Barry said.

Overall, consultants say the impact won't be significant. "This is not some giant step forward," said Jim Klein, a principal with Towers Perrin in New

See **401(k)** *on page 27*

Liability limit waived in air crash

KAL 801 claims at least 225 lives

By STACY SHAPIRO

LONDON—The crash last week of Korean Air Lines Ltd.'s Flight 801 in Guam could become the first major disaster in which an airline has voluntarily waived the liability limitation on international flights under the Warsaw Convention.

Sources in London last week said aviation underwriters would set up a liability reserve of at least $200 million for the disaster, but the airline's broker, J&H Marsh & McLennan Inc., and lead underwriter at Lloyd's of London would not comment. No official liability reserve has so far been set up.

London brokers said the crash is unlikely to drive up aviation premiums.

U.S. National Transportation Safety Board investigators arrived in Guam late last week to investigate why the Boeing 747-300 landed in mountains on Nimitz Hill only a few miles from Agana International Airport in the early hours of the morning on its flight from Seoul, South Korea. At least 225 passengers and crew died, though 29 people survived the crash. Thirteen or more Americans were on board.

A complex combination of bad weather, broken airport equipment and pilot error are being blamed for the disaster.

In particular, glide slope equipment to help guide jetliners into the airport was shut down for maintenance. Although the air traffic control tower at the airport is privately run by Barton ATC International in Gibbsboro, N.J., the Federal Aviation Administration owns the instrument landing equipment in question.

The FAA notified pilots through a "notice to airmen"

See **Crash** *on page 26*

UPS, Teamsters boxing on benefits

By MICHAEL BRADFORD

ATLANTA—The outcome of a high-stakes pension battle that stalled negotiations between United Parcel Service of America Inc. and the International Brotherhood of Teamsters could lead to increased employee benefit levels.

Atlanta-based UPS and the Teamsters returned to the bargaining table late last week with a federal mediator present in an effort to come to terms on pension and other issues that prompted the strike of 185,000 union workers.

In their rhetoric in discussing the pension issue publicly, both sides have claimed their plan is in the best interest of employees.

Other issues have not been publicly highlighted. UPS and the Teamsters, for example, each see advantages in controlling the funds. Another important element in the talks is that the withdrawal of UPS contributions would be no small blow to the multiemployer pension plans covering Teamster-

See **Strike** *on page 25*

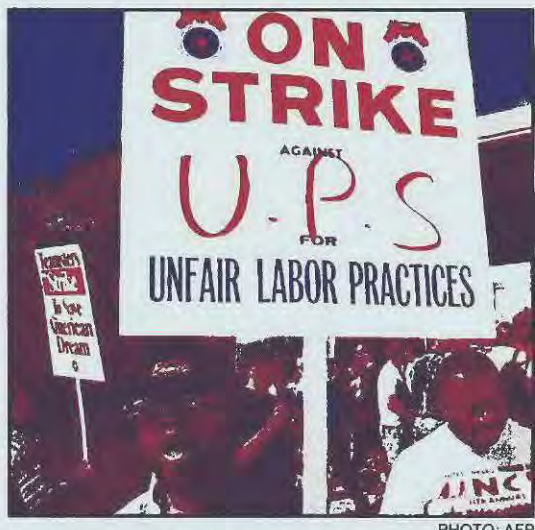

PHOTO: AFP

Control of pension funds is among the issues dividing the United Parcel Service and union workers.

Maryland regulators to review RRG anti-fraud assessment

By JERRY GEISEL

BALTIMORE—The Maryland Insurance Administration is reviewing its earlier decision to assess a $1,000 anti-fraud fee against risk retention groups operating in the state.

Steven Larsen, who took over as Maryland insurance commissioner about two months ago, said he would re-evaluate a decision made prior to his joining the department that RRGs licensed in other states are liable for the fee.

"I will examine their arguments and see if there is any merit to their position," Mr. Larsen said, referring to a letter the National Risk Retention Assn. sent to the department protesting the fee. Mr. Larsen said a decision will be made as quickly as possible.

At issue is the Maryland Insurance Administration's interpretation of a new law that imposes a $1,000 fraud prevention fee on "each insurer, health maintenance organization, non-profit health service plan, fraternal benefit society or any entity operating in the state under the regulatory jurisdiction of the commissioner."

RRGs around the country that operate in Maryland have received—by certified mail—letters from the Maryland Insurance Administration demanding payment of the fee, which is used to help fund the administration's Insurance Fraud Division.

NRRA, the trade group representing RRGs and service providers, however, says the federal Risk Retention Act specifically pre-empts non-domiciliary states from imposing fees on RRGs.

"The Risk Retention Act is very specific on what non-domiciliary states can and cannot do," said Jon Harkavy, chairman of NRRA's government affairs committee and vp and general counsel for USA Risk Services in Arlington, Va.

The Risk Retention Act says states cannot regulate non-domiciliary RRGs but permits them to impose premium and other applicable taxes in a non-discriminatory way, Mr. Harkavy said.

"This ($1,000) assessment, which both the Maryland Insurance Administration and the statute describe as a 'fee,' is clearly not 'applicable premium and other taxes'. . .and thus cannot be levied by Maryland against its non-domiciliary RRGs," Mr. Harkavy wrote to the Maryland Insurance Administration.

Mr. Harkavy said he hopes the issue can be resolved amicably, adding that he thinks the Insurance Department made its decision without a complete understanding of the pre-emption provisions of the Risk Retention Act.

"I don't believe they were aware of the pre-emption provisions of the law, and we hope once they are so aware they will drop the assessment," he said.

Mr. Harkavy also stressed that the

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Updates

CIGNA to appeal state order

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ment violated the state's assumption reinsurance statute. That statute bars any contract that creates a novation—the transfer of an insurer's policyholder obligations to another insurer without prior policyholder approval. Mr. Long also ruled CIGNA unlawfully transferred policyholders to an unlicensed company.

Under the order, Insurance Co. of North America—the lead company in CIGNA's active operation—must show it has reserved adequately for losses against the 8,202 North Carolina policies CIGNA says it moved, said Peter A. Kolbe, the department's general counsel. Before the reorganization, INA said it had reserved nearly $35.4 million to cover losses against those policies.

CIGNA does not have to move the policies back to INA, Mr. Kolbe said. But, if the facility were unable to pay policyholders' claims, "I'd take some comfort that their liabilities were listed on INA's statements," he said. Mr. Long also fined INA $820,200.

A CIGNA spokesman said North Carolina's law does not apply in INA's case because no policies were "transferred." CIGNA maintains the policies were moved during a merger, which does not require policyholder consent. CIGNA split INA in two and merged the portion that retained most of INA's liabilities into an existing CIGNA subsidiary.

The spokesman also said no North Carolina policyholders have complained about the reorganization.

Among the eight other states with assumption reinsurance laws, regulators in at least five—Colorado, Georgia, Maine, Nebraska and Rhode Island—said they do not plan to take any similar action immediately but will review Mr. Long's order and monitor the ongoing litigation in Pennsylvania over CIGNA's reorganization. Colorado and Maine regulators also noted that policyholders in their states have not complained about the reorganization.

Novations are prohibited in most other states under case law.

Captive bill passes in New York

ALBANY, N.Y.—Companies can set up captive insurers in New York if a bill passed by the Legislature is signed by Gov. George E. Pataki.

Under the bill, which Gov. Pataki sponsored, companies with gross annual revenues or net worth of more than $100 million would be able to set up a captive insurer in the state. Also, non-profits or public authorities with annual budgets of more than $100 million could establish captives. Group captives also would be permitted under the bill, as long as the companies had aggregate revenues or budgets exceeding $100 million.

The bill would allow captives to insure both the parent company and its affiliated companies for most property/casualty risks but bar them from writing life or health insurance. Captives would be required to use a fronting insurer to write workers comp and motor vehicle coverage.

The legislation would set minimum capital and surplus requirements at $250,000 for single-parent captives and $500,000 for group captives.

The bill also would require captives to maintain a home office and records in New York and submit to oversight by the state's Superintendent of Insurance. Captives also would be prohibited from participating in any state insurance pool or guaranty fund.

Return premiums, judge rules

NEW YORK—Health insurers and health maintenance organizations should receive refunds of $170 million in premiums they paid to a state excess medical malpractice fund, a judge has ruled.

The New York Excess Medical Malpractice program had sufficient reserves to fund itself in the 1995 policy year and should return the money, Supreme Court Judge Joseph P. Torraca said. Former New York Superintendent of Insurance Edward J. Muhl's determination of the 1995 rate "was arbitrary and capricious and affected by an error of law," the judge ruled. In New York, the Supreme Court is a trial court.

In the judgment late last month, Judge Torraca noted that New York insurance law requires that in setting the rate due, consideration be given to past and prospective loss experience of the program.

Actuaries for the New York State Conference of Blue Cross & Blue Shield Plans, who brought the suit, estimate the program is overfunded by $661 million and that in its 12-year existence has had to pay only $89 million in claims.

The New York Insurance Department has not yet decided whether to appeal the judgment. In addition, it wasn't immediately clear last week how the ruling would apply to employers that self-fund health plans.

A second suit seeking the return of 1996 premiums is pending.

The excess medical malpractice fund provides free excess medical malpractice coverage to 20,000 doctors: $1 million excess of $1 million per incident and $3 million excess of $3 million in the aggregate.

A surcharge on hospital discharge fees funded the program. Earlier last month New York lawmakers voted to suspend the payments for one year and ordered a study to assess whether the program could be perpetually self-funding. Gov. George E. Pataki signed the bill (*BI*, July 7).

Lloyd's intervenes in dispute

LONDON—Regulators at Lloyd's of London are attempting to broker a peace and avoid litigation between investors in loss-making syndicate 657 and the syndicate's agency, Archer Managing Agents Ltd. Syndicate 657, parts of which are being re-underwritten into two

See **Updates** *on page 26*

Errors & omissions

• Due to an editing error, a story on product recall insurance in the Aug. 4 issue misquoted an executive with Reliance National Insurance Co. Reliance does not offer product recall coverage for "virtually any product" but does write product liability insurance for most products.

• PCS Health Systems Inc. was omitted from the Aug. 4 directory of prescription benefit managers. A complete listing is on page 12.

Firing older workers OK for pay reasons: Court

By JUDY GREENWALD

SANTA ANA, Calif.—California employers now will have a freer hand in firing higher-paid employees after a state appellate court decision that says companies can replace those employees with younger, lower-paid workers for economic reasons without violating age discrimination laws.

The decision in *Michael J. Marks vs. Loral Corp.* means "employers can breathe a little easier now," said employer attorney Angela Bradstreet of San Francisco law firm Carroll Burdick & McDonough.

The recent decision by the 4th Appellate District in Santa Ana already has generated significant publicity and could have a wide impact, observers say.

"The case is significant in the sense it's the first published California decision on the question of whether or not age discrimination can be established by showing that employees are terminated primarily, or solely, because of their high salaries," said attorney William Quackenbush of San Mateo, Calif.-based Quackenbush & Quackenbush, who represents employees.

Employer attorney Jeffrey Wohl of San Francisco-based Orrick Herrington & Sutcliffe in San Francisco said, "I think it's a fair shot that the Supreme Court of California or even the U.S. Supreme Court will grant review of this case."

The 42-page decision upholds jury instructions issued in the case of Mr. Marks, who lost an age discrimination and retaliation

See **Age bias** *on page 13*

Equisure stock halted

Belgian authorities, exchange investigating reinsurer

By DOUGLAS McLEOD

NEW YORK—Until last week, reinsurance holding company Equisure Inc. might have provoked envy with reports of triple-digit revenue and earnings gains and a skyrocketing stock price.

Envy is no longer the appropriate reaction: The American Stock Exchange last week suspended trading in Equisure shares and began steps to delist the company amid an investigation of its accounting practices and possible manipulation of its stock by insiders, sources familiar with the situation confirm.

The American Exchange acted after being contacted by Belgian police, who are investigating Equisure's Belgian reinsurance unit, Equihot Herverzekering N.V., along with the fraudulent and now-defunct Dai Ichi Kyoto Reinsurance Co. S.A.

Among those the Belgian police have questioned is a United Kingdom accountant who helped prepare Equisure's financial statements and who performed similar work for Dai Ichi Kyoto.

See **Equisure** *on page 25*

Limiting mental LTD benefits doesn't violate ADA, ruling says

By SALLY ROBERTS

CINCINNATI—Employers and insurers that cap long-term disability benefits for mental illnesses and not physical impairments are not in violation of accommodation provisions of the Americans with Disabilities Act, a federal appeals court has ruled.

In a much-anticipated decision, the full 6th U.S. Circuit Court of Appeals ruled Aug. 1 that employer-provided long-term disability plans are not goods offered by a place of public accommodation and therefore are not subject to Title III of the ADA.

The 8 to 5 decision reverses a three-judge panel decision last October that said Title III of the ADA not only prohibits discrimination in terms of physical access to places of public accommodation but also prohibits discrimination in terms of goods and services—including insurance products—offered at those places (*BI*, Nov. 4, 1996).

The 6th Circuit ruling in *Ouida Sue Parker vs. Metropolitan Life Insurance Co., Schering-Plough Corp. and Schering-Plough Health Care Products Inc.* re-

See **Mental** *on page 4*

Golden Eagle fight over

AIG concedes but will support California insolvency bill

By JOANNE WOJCIK

SAN FRANCISCO—Liberty Mutual Insurance Co. and California regulators have officially won the final round in the fight with American International Group Inc. over Golden Eagle Insurance Co.

San Francisco Superior Court Judge William Cahill issued a final order Aug. 4 approving Liberty Mutual's rehabilitation plan for San Diego-based Golden Eagle.

"Liberty Mutual is delighted Judge Cahill has approved the rehabilitation plan for Golden Eagle," said Fred Marziano, senior vp and leader of Liberty Mutual's Golden Eagle transition team.

"His decision concludes what has been a fair, open and orderly process conducted by the Department of Insurance and California's court system."

While AIG acknowledged its defeat, the New York-based insurer said it plans to continue to support state legislation that would alter California's insolvency law.

The Insurance Department in January seized Golden Eagle, one of California's largest workers compensation insurers. The department then initiated a bidding process for takeover of the insurer's business.

Regulators initially picked AIG as the winning

See **AIG** *on page 20*

Inside

• We welcome the decision of Maryland's insurance commissioner to review a proposed fee for risk retention groups licensed in other states and that operate in Maryland, this week's editorial says. **PAGE 8**

• Once again, a U.K. judge has upheld the "pay now, sue later" that applies to disgruntled Lloyd's of London names, who vow to continue fighting. **PAGE 21**

• The European Union warns Spain and France to comply with its insurance directives. **PAGE 21**

Departments

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Columbia/HCA ills may delay managed care move

Indictment of executives prompts internal shakeup, new business strategy

By JUDY GREENWALD

NASHVILLE, Tenn.—Columbia/HCA Healthcare Corp.'s recent problems are likely to forestall any forays the hospital chain makes into the managed care market—at least for the near future.

But assuming it successfully puts its problems behind it, the company, which is the largest private U.S. provider of health services, could once again make further thrusts into the market. The company's current troubles are related to Medicare, not managed care.

Three Columbia/HCA executives have been indicted on charges of conspiring to submit false cost reports to Medicare and the Civilian Health and Medical Program of the Uniformed Services, the federal insurance program covering members of the military and their dependents.

In the wake of the turmoil caused by the situation, former Columbia Vice Chairman Dr. Thomas F. Frist Jr. has taken over as chairman and CEO, replacing Richard Scott, and Jack Bovender Jr. has been named president and chief operating officer.

Columbia/HCA announced several changes to its strategy Thursday, including the sale of its home care division, elimination of annual cash incentive compensation for all of its employees, discontinued sales of interest in hospitals to physicians and adoption of a comprehensive compliance program.

Dr. Frist said that he wants to make changes that will "clarify our company's business focus, institutionalize a corporate culture that emphasizes universal values of integrity, openness and cooperation" and enable the company to provide superior care.

The company has had mixed results with recent deals.

Columbia/HCA failed in its $299.9 million bid to buy Cleveland-based Blue Cross & Blue Shield of Ohio after the Ohio Department of Insurance ruled against the proposed deal (*BI*, March 24; March 17).

If it had been approved, the Ohio acquisition would have formed an unprecedented hybrid of horizontal and vertical operations.

Despite that setback, Columbia's acquisition of Avon, Conn.-based Value Health Inc. in a $1.3 billion stock swap was completed last week.

The deal represents a large step for Columbia into prescription management, disease management and several other managed care fields (*BI*, Jan. 20).

Additional steps by Columbia/HCA into the managed care arena in the immediate future are not expected, observers say.

See **Columbia** *on page 6*

Brokers feast on acquisitions during first half

By SALLY ROBERTS

The second quarter of 1997 was a digestion period for many of the world's largest U.S.-based publicly held brokers, which have gobbled up a slew of other brokerages over the past year.

While integration was the main course, the acquisitions from previous quarters have bolstered most of the broker's top lines during the first half.

All five of the U.S.-based publicly held brokers surveyed by *Business Insurance* reported revenue increases, four of them in double digits, and all but one reported profit rises for the first six months of the year compared with the same period last year.

BROKER RESULTS 1st Half

Aon Group Inc. reported a 24.2% drop in pretax profits to $91 million after a $145 million special charge taken in the first quarter to cover costs associated with its acquisition of Alexander & Alexander Services Inc. in January. Its parent, Aon Corp., took an additional $27 million special charge in the second quarter to recognize hidden investment losses incurred at A&A prior to the acquisition (see story, page 12).

Both Marsh & McLennan Cos. Inc. and Aon Group, which together acquired five of the world's largest brokers within the past year, say their integration processes are going smoothly and according to plan.

With the exception of Aon's acquisitions of Minet Group, which was completed during the second quarter, and Sodarcan Inc., announced in the second quarter and completed in July, Arthur J. Gallagher & Co. was the only other broker to make an acquisition during the quarter.

Hilb, Rogal & Hamilton Co. and Poe & Brown Inc. turned to internal growth for the quarter but do not rule out the possibility of acquisitions in the third quarter.

Indianapolis-based Acordia Inc. is missing from the ranks of the largest U.S.-based publicly held brokers due to mutual insurer Anthem Insurance Cos. Inc.'s purchase of the broker's remaining shares last month.

Acordia's management and other investors subsequently bought out its predominate property/casualty operations, which had $305 million in 1996 revenues, for $320 million earlier this month (*BI*, Aug. 4). As part of the sale, Anthem retained certain health and workers compensation claims administration operations, which had revenue of about $40 million. Acordia, which estimated its 1996 revenues at $343.9 million prior to the deal's completion, remains the world's seventh-largest broker, with 1996

See **Brokers** *on page 10*

Brokers' first-half results

(in millions of dollars)

	Gross revenues	% change from 1996	Net income	% change from 1996
J&H Marsh & McLennan	$1,211.9	12.8%	$164.4	14.9%
Aon Group	880.7	81.6	(36.4)†	(142.7)
Acordia	165.8	0.7	6.7	(8.5)
Arthur J. Gallagher*	111.5	3.1	9.2	8.2
Hilb, Rogal & Hamilton	47.9	11.2	5.4	4.7
Poe & Brown	34.0	10.6	5.2	17.5

*1996 figures have been restated † pretax
Source: company reports

Benefit provisions in effect

Employers now must pay for 30 months of ESRD treatment

By JERRY GEISEL

WASHINGTON—Benefit managers beware: While most of the employee benefit-related provisions contained in tax and budget bills signed last week by President Clinton don't take effect until next year, a handful already are in force.

Perhaps the most significant—from a cost standpoint—of those provisions already in effect involves employer liability for end-stage renal disease, an impairment of the kidneys, whose annual treatment costs often are in the $50,000 range.

Under legislation enacted more than 20 years ago, Congress expanded the Medicare program to provide coverage for ESRD for people under 65, the normal eligibility age for Medicare. Legislation later was passed so that employer health care plans became the primary payer—for an 18-month period—of medical bills for employees or retirees under 65 who developed the disease.

APPWP

But, effective Aug. 5, the day President Clinton signed the legislation, employers became the primary payer of medical services for 30 months for employees who develop ESRD, after which Medicare becomes the primary payer.

The new law applies to services "beginning on or after the date that is 18 months prior to enactment."

That means that employers' expanded period of being the primary payer of medical claims applies to employees who have been treated for ESRD in the past 18 months and not just to employees who develop ESRD after the legislation was signed into law, said Frank McArdle, a consultant with Hewitt Associates L.L.C. in Washington.

For example, if an employer had been the primary payer for the

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Traders' unauthorized acts no longer uninsurable

Market developing for financial institutions' catastrophe risks

By GAVIN SOUTER

NEW YORK—Financial institutions seeking coverage against catastrophic losses from securities traders' unauthorized acts could see a burgeoning insurance market for the risk.

J.P. Morgan & Co. Inc. has just secured $400 million in excess coverage from the conventional insurance market.

Last fall, FMR Corp., better known as Fidelity Investments, obtained such coverage in a program that includes finite risk as well as conventional insurance coverage.

Additionally, Lloyd's of London underwriter Stephen Burnhope is currently working on a financial bond coverage that would cover unauthorized activities.

Financial institutions buy bankers blanket bonds that cover them for fraudulent activities of employees, but the bonds do not normally cover unauthorized transactions that are not considered fraudulent.

Normally the employee must make a personal financial gain from the fraud to trigger bankers blanket bonds.

Until now, insurers largely have shunned the risk of loss from unauthorized activities, said Mr. Burnhope, a director at SVB Syndicates Ltd.

Anything that has to do with trading has normally been seen as something in the normal business risk area, and it is difficult to underwrite, he said. Financial institutions "fire people up with big salaries and bonuses," so it is difficult to assess how driven an employee might be to make an unauthorized trade and generate losses, he said.

While financial institutions normally have accepted the risk as part of business, high-profile loss-

See **Financial** *on page 19*

Managed care changing malpractice landscape

By MARK A. HOFMANN

HARTFORD, Conn.—The shift from fee-for-service to integrated managed care systems is creating "severe growing pains" for medical malpractice insurers, according to a new report by Hartford, Conn.-based Conning & Co.

The forces affecting the malpractice insurance market could ultimately cause policyholders concern over availability, pricing and the stability of malpractice insurers, according to health care risk managers.

Competition has become "extremely heated" as "too many insurers are chasing too few points of sale," according to the report.

"In an environment where pricing may be out of sync with upwardly trending loss costs, a crisis may be in the making," according to the Conning analysts.

The continuing strong competition among medical malpractice underwriters may spell trouble in the future as insurers weaken reserves, warns the report.

"The temptation may be to continue to weaken current accident-year reserves to compensate for this soft market. The problem is there is no guarantee that a hard market is just around the corner."

New liabilities have arisen for health care providers because of the shift to managed care. Managed care organizations are attractive targets

See **Report** *on page 19*

Mental

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volves around Schering-Plough's LTD plan, which MetLife administers.

Schering-Plough said it "is gratified with the ruling. . .and believes the court's decision comports with the principles of the Americans with Disabilities Act."

MetLife said in a statement: "We believe this decision will have a positive impact on preserving flexibility and controlling the costs of employee benefit plans."

However, Kaye Burson, an attorney with Rutledge & Rutledge in Memphis, Tenn., who represented the plaintiff, said, "I'm positive we'll take it to the Supreme Court."

Ms. Parker, who suffers from severe depression and has been unable to perform her job at Schering-Plough since 1990, alleges her employer's long-term disability plan discriminates against people with mental illnesses because under the plan, people with mental illnesses receive disability benefits for up to two years, while people with physical illnesses continue to receive benefits until age 65.

In affirming a lower court ruling, the 6th Circuit said the ADA expressly limits discrimination in employment practices to Title I and that an employer-provided LTD plan administered by an insurer does not fall within the purview of Title III because health plans are not goods provided by a place of public accommodation.

"The public cannot enter the office of MetLife or Schering-Plough and obtain the long-term disability policy that (Ms. Parker) obtained. (Ms.) Parker did not access her policy from MetLife's insurance office. Rather, she obtained her benefits through her employer. There is, thus, no nexus between the disparity in benefits and the services which MetLife offers to the public from its insurance offices," the court said.

The ADA does not "prohibit an insurance company from differentiating between different disabilities. The same policy is provided to all employees who, when they receive it, are not disabled but working. The fact that some may become disabled for different reasons does not amount to discrimination in providing the policy. The ADA simply does not mandate equality between individuals with different disabilities. Rather, the ADA. . .prohibits discrimination between the disabled and the non-disabled," the majority concurred.

Most employer-provided disability plans impose two-year caps on LTD benefits for mental illnesses as a means to reduce costs, benefit experts say. The recent appellate ruling, while limited in range, is good news for benefit managers who likely would have had to scrap their old plans.

Benefit consultants and labor attorneys say while the ruling is positive for employers, the issue will likely turn up in the Supreme Court or Congress.

"It's a much better decision for employers," noted Henry Saveth, a principal with William M. Mercer Inc.'s Washington Resource Group. "It recognizes that employer disability cases should be brought under the employment title of the Act, not the public accommodations title."

Gerald L. Maatman Jr., a labor attorney with Baker & McKenzie in Chicago, said the 6th Circuit ruling contradicts a ruling in a case by the 1st U.S. Circuit Court of Appeals in Boston. In that case, *Carparts Distribution Ctr. vs. Automotive Wholesalers Assn. of New England Inc.*, the court concluded that Title III is not limited to the mere denial of physical access to places of public accommodation.

The case involved lower caps placed on lifetime benefits for AIDS-related illnesses but not on other illnesses (*BI*, Oct. 24, 1994).

There is "conflict in the circuits," he said. "An employer in New Hampshire is subject to a different rule than an employer in Ohio." This is "a recipe for the Supreme Court" to decide a general rule for everyone in the United States, he said.

Mary Case, a principal with The Kwasha Lipton Group in Fort Lee, N.J., agreed the case will most likely be decided by the Supreme Court but added it did not make sense to her why this case was originally brought under the ADA in the first place, as opposed to being left for public policy.

"The ADA is all about enabling people to work. This case is about an individual not working," she said. Whether mental illnesses should be treated the same as physical illnesses is a public policy issue, she said.

Indeed, Congress did pass the Mental Health Parity Act last year, but the law involves group medical plans, not disability benefits.

The law, which takes effect Jan. 1, 1998, requires employers with 50 or more employees to offer in their group medical plans the same annual and lifetime limits for treatment of mental illnesses and disorders as they provide for physical problems. Employers, however, can still continue to impose higher deductibles and copayments in their plans for treatment of mental disorders.

Ms. Case said she wouldn't be surprised if the issue regarding mental illnesses and disability benefits was addressed in an expanded version of the new law.

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Ouida Sue Parker vs. Metropolitan Life Insurance Co., Schering-Plough Corp. and Schering-Plough Health Care Products Inc., 6th U.S. Circuit Court of Appeals; No. 95-5269.

BI adds production assistant

Amy Kepka has joined *Business Insurance* as production assistant.

In the newly created position, Ms. Kepka will assist Graphics Editor Kathy Barnes in the production and design of the magazine. She will also help with the production of *BI*'s directories.

Ms. Kepka

Ms. Kepka, 22, graduated from the University of Kansas with a bachelor of science degree in journalism.

Before joining *BI*, she was an editorial intern at Atlanta Magazine in Atlanta and served as sports correspondent at the Topeka Capital-Journal in Topeka, Kan.

Ms. Kepka can be reached at 312-280-3176. BI

On The Road To Recovery, There's A Fast Lane.

The concept is improving the health and well-being of employees who are injured or sick. The purpose is to effectively manage these occupational and non-occupational disabilities, returning employees to work sooner. It's called integrated disability management. Every phase of it is coordinated, from treatment to case management to rehabilitation to claim service. The process values employees by focusing on healing. Yet, it gives employers powerful tools for managing costs. It's the road to the future, and you can take it now.

The Business Insurance Experts.

WAUSAU

Wausau Insurance Companies, 2000 Westwood Drive, Wausau, Wisconsin 54401 Telephone (800) 269-7771
Nationwide Insurance Enterprise®

Columbia

Continued from page 3

"They're probably going to be a lot more conservative in the kinds of acquisitions they undertake and the various directions they go in now," said Clifford Hewitt, an HMO analyst with Sanford Bernstein & Co. in New York.

"This is a period in which they're clearly evaluating how they define their strategy and what they emphasize," he added. "It's a time of transition for them. You've got new priorities being set, and all that's regardless of what happens in these investigations. They're going to be marching to a different drummer."

"My guess is that Tommy Frist and Bovender are going to focus on the core operations right now, clearing that up, so getting into managed care business is going to be a lower priority," said Elizabeth Senko, an HMO analyst with Lehman Bros. in New York.

Another analyst commented that "a big part of Rick Scott's strategy at Columbia had been to get very deeply into the managed care business," and the Ohio Blue Cross deal would have been a part of it.

"I think they would have looked at becoming a fully integrated payer/provider over a period of five to 10 years, and I think that with the change at the top, that strategy will be slowed down fairly significantly, but what's in place I expect them to continue to pursue forward with," including the Value Health acquisition, the analyst said.

'They're probably going to be a lot more conservative in the kinds of acquisitions they undertake and the various directions they go in now,' says analyst Clifford Hewitt.

Manfred Nowacki, vp at A.M. Best Co. in Oldwick, N.J., said, "It's certainly going to be a major distraction to the management of Columbia/HCA, but I don't think it's going to have a longer-term impact on their strategy."

The future for the company could depend upon the outcome of the current situation.

"If Columbia/HCA is judged to be guilty in a great number of these allegations, I think they're going to have some real problems," including in making further acquisitions, said Jack Doerr, national group benefits practice leader for Sedgwick Noble Lowndes in Chicago.

But on the other hand, he said, if they are essentially acquitted of all these charges, "then I would think it would be back to something close to business as usual."

Ken Jacobsen, national health practice leader for The Segal Co. in Atlanta, said the situation calls for a wait-and-see attitude. If the company can put its problems behind it, it will be in a great position to enter the managed care as well as other health care areas, he said.

But if it develops that the alleged violations were "enormous" and Wall Street "starts to pull out, it could be a house of cards," Mr. Jacobsen said. "It's just a matter of how well the board does in the next six to 12 months," he said.

Others are confident the company will move forward in the managed care area.

"Their problems are on the Medicare side. . .but I don't think it's going to stop their movement into the managed care side at all, because that's where a lot of the action is," said Barry Barnett, a principal with The Kwasha Lipton Group in Fort Lee, N.J.

The company already is well-positioned to be a managed care player, Mr. Barnett added. "I think it's a part of their strategic plan," and the current situation will not stop them from continuing to move in that direction.

Rob Mains, an HMO analyst with Advest Inc. in Albany, N.Y., agreed. "I wouldn't imagine this is going to change anything with managed care," he said, while also noting its problems are related not to that segment, but to Medicare.

Although Columbia might be viewed as "somewhat of a walking wounded who got into a lot of trouble with the Medicare program," it must still grow its business "and more managed care contracting might help them," said Mr. Mains. "I certainly wouldn't imagine it leading to any kind of a slowdown" insofar as its efforts in the area are concerned, he said.

However, Thomas LeConey, an analyst with National Securities Inc. in New York, said, "I think they bought a lot of stuff that, frankly, they could sell and would never miss and it would probably help earnings a lot" if they shed these businesses, including Value Health. BI

Care bills blocked in California

SACRAMENTO, Calif.—In a veto message delivered to the California Assembly last week, Gov. Pete Wilson told lawmakers he would veto all but one of the bills that would regulate managed care.

Gov. Wilson said he will wait to decide on nearly all managed care bills until after the Managed Health Care Improvement Task Force issues a report in January. Formed last year, the task force will "provide comprehensive and coherent recommendations and policy guidance on the key, overarching policy questions raised by managed care" when it issues its report, he said.

Until then, "the prudent course of action for the Legislature would be to take a five-month hiatus from uncoordinated, reactive, piecemeal decisions on literally dozens of bills," he said.

The governor said the only bill he will sign is a measure that would mandate maternity inpatient coverage of 48 hours after a normal vaginal delivery and 96 hours after a Caesarean section to comply with the recently enacted federal law.

The governor's admonition was contained in a letter vetoing a bill that would have permitted women to obtain specialist obstetric and/or gynecological care without referrals from their primary care physicians.

In California, legislation that passes becomes law if the governor chooses not to sign or veto it.

—By Joanne Wojcik

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Opinions

RRG fee review a good move

WE WELCOME the Maryland Insurance Administration's willingness to review an earlier decision to assess a $1,000 fraud prevention fee on risk retention groups licensed in other states that want to do business in Maryland.

As we report on page 1, Steven Larsen, the new Maryland insurance commissioner, said he would decide as quickly as possible if the National Risk Retention Assn. is correct in arguing that the federal Risk Retention Act pre-empts such state fees.

Like risk retention group advocates, we believe the situation in Maryland is completely different from that in Louisiana. Louisiana, we believe, launched a frontal assault on risk retention groups with a law and application procedures so onerous they would have had the effect of driving groups out of the state. That law was struck down by federal courts.

In Maryland, we don't believe state insurance regulators intend to do any harm to risk retention groups. They have simply incorrectly extended a new law to risk retention groups, a decision they now—upon further evidence—are reviewing.

In our view, there is no doubt federal law preempts the Maryland fee. The law is explicit on what requirements a non-domiciliary state can impose on risk retention groups.

One of those requirements is that risk retention groups can be assessed premium taxes so long as those taxes are imposed on a non-discriminatory basis. Nowhere does the federal law say non-domiciliary states can impose fees on the groups. And clearly a fee is not a tax.

A $1,000 fee may seem at first blush a small deal and not worth disputing. But a far bigger issue is involved. If this fee isn't resisted, what is to prevent states from trying to impose more and more fees on risk retention groups? If such fees proliferated, it could become uneconomical for groups to write coverage in states where they have only a handful of policyholders.

It was not by accident that Congress so sharply restricted the authority of states—other than the state where a risk retention group is licensed—to regulate the groups.

When Congress enacted the Risk Retention Act in 1981 and later expanded it in 1986, it did so with one purpose: to give buyers a new funding alternative when coverage in the traditional market became unavailable, unaffordable or irrationally priced.

If that alternative—risk retention groups—is burdened with fees and other requirements that inflate overhead, risk retention groups will cease to be a cost-effective funding mechanism, and buyers would be left at the mercy of the traditional market.

The latest controversy in Maryland aside, we would hope that state insurance regulators, 16 years after the original Risk Retention Act was enacted, come to see the importance of risk retention groups.

While small in number—just 68 groups now are operating—they are an important part of the market. The fact that commercial insurers know buyers have an alternative if they unfairly or irrationally price policies is an important check on insurers.

Regulators, whose job it is to protect consumers, should not lose sight of that fact when they consider what rules to apply to risk retention groups.

Letters

Go slowly on ergonomics standard

To the editor: It appears from the action described in the July 28 article, "Congress Relaxes Freeze on Ergonomics Action," that we are moving ever so quickly toward a new standard with an unquantified cost to both the private and public sector. Prior to the promulgation of any ergonomics standard, I believe several actions are in order:

• Study and separate out work-related cumulative trauma from body changes and disease processes that occur over time.

This will be a very difficult task, especially in the context of more than 40 million baby boomers aging at the same time. But, realistically, why should my employer pay additional premium and face potential Occupational Safety and Health Administration citations for my future back problem, which may or may not be related to lifting at home and/or at work, business travel or any number of other times I have done something without using proper technique and body mechanics?

• Study the financial impact and benefit of perhaps several proposed ergonomics standards.

Any standard would, I assume, require all employers with a specific number of employees to identify jobs that might produce cumulative trauma disorder, modify them—including engineering and administrative adjustments—to minimize the probability of cumulative trauma disorder, and then provide employee training. The cost of employer response must be quantified and extrapolated to capture aggregate financial impact. The other side of the ledger, yield, also must have a dollar figure attached.

• Pilot test one or more proposed standards to determine their effectiveness and real direct, indirect and opportunity costs to employers and the U.S. economy. This is not the Fall Protection Standard, which only impacts employers whose employees work at heights of 6 feet or more; it is a standard that will pervade almost every U.S. workplace and perhaps require unknowing, untrained and ill-equipped managers to implement costly changes to basic functions, such as using a computer keyboard.

If promulgated, this will no doubt be the costliest OSHA regulation ever. There is nothing wrong with going slowly, which includes asking the basic question: Do we need an ergonomics standard?

Robert K. Tuman
Compensation Claims Review Corp.
Andover, Mass.

Letters to the Editor

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Brokers

Continued from page 3

revenues of $305 million.

In other brokerage news, Kaye Group Inc.'s stock price jumped 32.56% to $7.13 per share during the week ending Aug. 1. Michael P. Sabanos, senior vp and chief financial officer of the New York-based broker, said the big increase came the day before the company released its second-quarter results.

For the first six months, Kaye's revenues were up 12.2% to $26.4 million, and profits were up more than 500% to $952,000.

Mr. Sabanos said Kaye's $2.9 million acquisition July 1 of Western Insurance Associates of Pasadena, Calif., also may have contributed to the company's share price boost.

Overall, prices continue to remain soft and the market competitive, brokerage executives report.

"We're not losing market share," noted Michael J. Cloherty, executive vp of Arthur J. Gallagher. "We're trading clients here and there. . .today's rate is challenged tomorrow."

'Since the first of the year, there has been a change in the intermediary end of our industry. . .very dramatic change in terms of consolidation,' says Andrew L. Rogal.

"Since the first of the year, there has been a change in the intermediary end of our industry. . .very dramatic change in terms of consolidation," said Andrew L. Rogal, chief executive officer of HRH. "It's a very, very turbulent environment."

"It's sort of blood and guts on the deck each month," added J. Hyatt Brown, chairman and CEO of Poe & Brown.

The first-half results of the individual brokers follow:

Marsh & McLennan

Revenues at the world's largest broker increased 26.2% during the first half to $2.67 billion. Profits also rose 19.8% to $309.4 million.

Second-quarter results reflect, for the first time, M&M's acquisition of Johnson & Higgins, completed earlier this year. J&H added $250 million in revenues in insurance services during the second quarter, noted J. Michael Bischoff, vp-corporate development for the New York-based broker. That caused a 26.8% rise in insurance services revenues for the first six months, to $1.3 billion.

The integration of J&H also began in the second quarter, and 95% of the key management decisions have been made, Mr. Bischoff said. For the next six to nine months, M&M will begin the physical integration of the brokers, deal with the issue of redundant positions and begin to see the cost savings it hopes to achieve, he said.

Overall, "we had a very strong quarter in many respects, not least of which was The Putnam Cos.," Mr. Bischoff said. Revenues for M&M's Boston-based investment management company grew 38.1% during the first six months to $695.8 million.

Consulting services, including those of unit William M. Mercer Inc., rose 14.4% to $652.3 million. Mr. Bischoff said that J&H's benefit consulting unit, A. Foster Higgins & Co. Inc., was fully integrated with Mercer on July 1.

Mr. Bischoff said the slowdown of insurer consolidation after the first of the year yielded better reinsurance revenues, though they are still down about 2% from the same period last year. The dip, however, "is significantly better than the prior five quarters," he said.

Aon Group

First-half revenues catapulted 90.4% to an acquisition-fueled $1.80 billion, while pretax profits fell 24.2% to $91.0 million. Excluding the $145 million charge, pretax profits rose 65.7% to $236.0 million.

Revenues for the year so far include those from Bain Hogg Group P.L.C. and A&A. Revenues from the Minet and Sodarcan acquisitions will be reflected in third-quarter results.

"We're very pleased with the revenue growth," said Patrick G. Ryan, chairman and CEO of Aon Group in Chicago. "The benefits of consolidation and the integration process are reflected in the second quarter."

Excluding acquisitions, revenues were up almost 11%, Mr. Ryan said. He added, however, that he is cautious of the internal growth figure because "a quarter doesn't make a trend. You can have a combination of new business and retention improvement in a three-month period that is beyond the norm."

Nevertheless, consulting and U.S. retail revenues "did very well" and offset reinsurance brokerage revenues, which continue to be down, Mr. Ryan said.

Arthur J. Gallagher

Revenues for the first half of the year increased 4.6% to $228.1 million while profits jumped 41.8% to $22 million.

Second-quarter results were buoyed in part by one-time gains from pension plan restructuring and new office leasing arrangements in the United Kingdom.

Mr. Cloherty said the modest revenue gains are a reflection of the current marketplace. "All lines remain soft and highly competitive," he said.

To offset soft pricing and take advantage of the alternative market, Gallagher is forming ARTEX, a Bermuda-based rent-a-captive operation that will facilitate pooling and captive arrangements for Gallagher clients. Details of the operation still are being set (*EI*, July 21).

During the second quarter, Gallagher acquired a small general property/casualty broker, Trinder & Norwood & Co. in White Plains, N.Y.

Hilb, Rogal & Hamilton

Revenues at the Glen Allen, Va.-based broker increased 13.9% to $92.2 million during the first half. Net income similarly improved, rising 14.1% to $8.9 million.

While a majority of HRH's commission and fee revenue growth is acquisition-fueled, growth from core operations owned in both six-month periods increased 2.6%. While small, it is a significant change for the company, according to Mr. Rogal. "Never in (HRS') entire history has it shown

See **Brokers** *on page 12*

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Brokers

Continued from page 10
core top-line growth."

This growth is attributable to the company's focus on improving internal operations, Mr. Rogal said. "If there is one word to describe our company, it would be change," Mr. Rogal said (*BI*, May 5).

The broker's first-half results include $850,000 it has spent on outside consultants assisting the company with its reorganization, he added.

During the second quarter, HRH made no acquisitions, but Mr. Rogal said some are likely in the third quarter.

Poe & Brown

Revenues for the Daytona Beach, Fla.-based broker increased 11.6% to $66.2 million and profits grew 17.6% to $9.2 million.

An 11.3% rise in commissions and fees and a 31.2% rise in interest income contributed to the overall revenue growth during the first half of the year. However, those increases were tempered by expenses, which grew 9.6% to $50,993.

Almost all of the growth is internally generated, Mr. Brown said.

"All segments of the business are growing but at a very high physical price. Employees are working more hours and are under more pressure," he said.

While Poe & Brown made no acquisitions during the second quarter, it did acquire Phoenix-based Shanahan, McGrath & Bradley Inc. Aug. 1. Those operations will be merged in with Poe & Brown of Arizona Inc. BI

Aon trying to recoup A&A losses

By SALLY ROBERTS

CHICAGO—Aon Corp. is confident it has found all the investment losses incurred at Alexander & Alexander Services Inc. before Aon bought the broker in January.

Chicago-based Aon now is focusing on recouping those losses.

During the second quarter, Aon's internal auditors discovered A&A's investment portfolio contained $27 million in unrecognized losses from highly volatile securities. These securities, which included collateralized mortgage obligations involving inverse floaters, were misclassified as high-quality money market instruments on A&A's books. As a result, A&A's financial results, including its earnings and net worth, had been inflated.

Aon immediately sold the securities upon their discovery, initiated an investigation and took a $27 million pretax writedown in the second quarter.

Patrick G. Ryan, Aon's chairman and chief executive officer, said there is no reason to believe more than one person was involved in the incident. He said Aon is cooperating with the Federal Bureau of Investigation.

Mr. Ryan said the person involved apparently engaged in several volatile trades, suffered major losses and tried to cover it up.

Sources say the person worked in A&A's Owings Mills, Md., office and did not take a position with Aon after the acquisition. Mr. Ryan confirmed that the individual does not work at Aon.

"The important thing is, we got it all. We are very convinced of that," Mr. Ryan said. "We don't minimize $27 million."

However, the loss represents roughly 2% of A&A's $1.23 billion purchase price.

Some observers have questioned whether A&A's auditors, Deloitte & Touche L.L.P., should have caught the misclassification. But, according to Mr. Ryan, that is not as easy as it seems.

"People cover things up, and auditors often cannot find fraud right away, because it's difficult to find."

Deloitte & Touche did not return phone calls.

Asked whether Aon should have caught this error in the pre-acquisition due diligence, Mr. Ryan said that when due diligence is done on a public company and there is the risk that any leaked information could affect stock price, "you don't physically see as much as you do when you buy a company that is private. You don't get to physically examine every asset."

Mr. Ryan said the misclassification occurred before Frank G. Zarb came on board at A&A in June 1994.

Mr. Zarb, now chairman and CEO of the National Assn. of Securities Dealers Inc., said in a statement: "I have been briefed by Aon, who assures me that their investigation shows that only one former A&A employee was involved. I have every confidence in Aon's ability to handle this matter appropriately." BI

Omission

The following was omitted from the Aug. 4 directory of prescription benefit managers:

PCS Health Systems Inc.
9501 E. Shea Blvd., Scottsdale, Ariz. 85260-6719; 602-391-4600; 602-314-8110

1996 revenues	
PBM gross revenues	$1,600,000,000*
PBM clients	
Total	198,142
Employer/group plans with direct service	24,330
Lives covered	
Group health:	
Total	56,000,000
Active enrollees	24,600,000
Through employers	26%
Through third-party vendors	74%
Retail network	
Pharmacy locations	54,000
Generic usage	
Percent of prescription volume	40%
Staff	
Total	1,779

PBM services since: 1969.

Parent: Eli Lilly & Co.; primary business: drug manufacturer.

Services: Retail pharmacy network, mail-order distribution, claims processing, online claims processing, concurrent utilization review, disease management, retrospective utilization review, benefit design consulting, formulary management/review, monitoring of physician prescribing practices, patient education.

Formularies offered: Open, closed, restricted/customized.

Pharmacies contracted: Independently owned, retail chains.

Reports provided: Physician prescribing patterns, generic vs. name brands dispensed analysis, employee utilization, claims history, drug utilization review, network performance, ad hoc.

Service area: United States: nationwide; Puerto Rico.

Billing methods: Capitated rate, fee per claim. Volume discounts to employers.

Officers: Jean-Pierre Million, president/CEO; Thomas Garrity, executive vp/CFO; John Voris, executive vp-strategic alliances; Elizabeth Dichter, executive vp-strategic marketing; Robert Ashworth, executive vp-advanced technology solutions.

** BI estimate.* BI

studio battistella trieste

summary of the financial year 1996

the Generali Group strengthens its position worldwide
US$ 22,820 million of premiums, US$ 940 million profit

Generali Group in figures

101	*insurance companies operating in 50 Countries*
61	*Consolidated financial, real estate and agricultural companies*
126	*various non consolidated subsidiary companies*
US$ **22,820**	*million of premiums (+10.7% on 1995)*
US$ **73,400**	*million of provisions for insurance liabilities*
US$ **79,515**	*million investments*
US$ **940**	*million consolidated profit*
40,000	*insurance experts working for customers*

Group Business

In 1996, Assicurazioni Generali continued its policy of expanding the breadth of its operations in various primary markets. The acquisition of Group Prime, and their widespread network of producers specializing in financial and retirement product distribution, has established a substantial presence in the Italian financial services market. Integrated management of customer insurance and financial needs was further enhanced by directly establishing sophisticated online communications between the Group's Italian sales offices and its computer network . New joint marketing agreements have been entered into with certain financial institutions which, in addition to the existing agreements with primary banks, substantially expand the distribution capacity of the Company and the Group.

In France, a subsidiary company has sold its stake in AXA, which no longer held any strategic interest, thus obtaining a strong surplus value and an elevated liquidity which will be used for international expansion of the Group.

In the French market, the structural reorganization of the different companies has continued and a decision has been made to merge France IARD into Concorde.

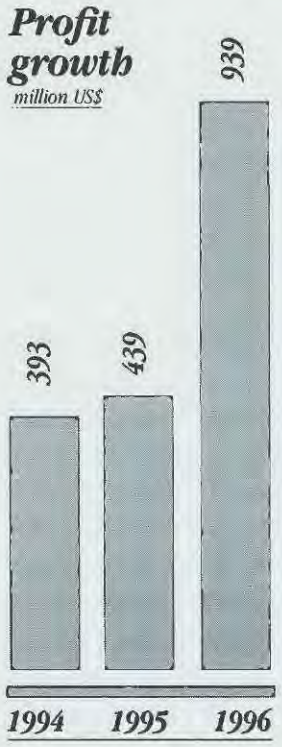
An important acquisition was completed at the beginning of the year in Israel, when the market leader Migdal, which in turn controls four other insurance Companies, joined the Generali Group.

In Austria, due to the impossibility of participating in the privatization of Creditanstalt, EA-Generali arranged for the sale of the Group's products through three major regional banks. Another undertaking initiated in the insurance banking field occurred in Brazil with Banco Sudameris, with the establishment of a company to operate in the Life and pension field through the Bank's branches.

The expansion of the Parent Company and the Group has continued in those areas offering the best prospects for growth. Two new companies were added to the Group's existing presence in Middle and Eastern European Countries, one during 1996 in Slovenia and the other during the first months of the year in the Slovac Republic. In the Far East, a representative office has been opened in Peking, a preliminary step to obtain the authorization for insurance activity in China.

Profit growth

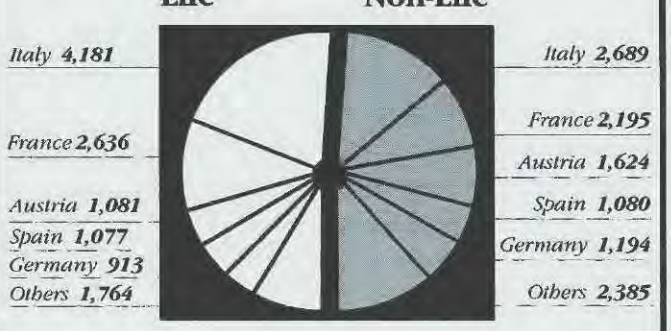
million US$



The result of the consolidated balance sheet reflects the gain on the sale of the AXA shares; without considering such effect, the profit would be in the order of US$ 522 million with an increase of 14.3%.

Consolidated premiums distribution

million US$



All figures have been converted at the rate of exchange of Lire 1,530.57 to the US$

Parent Company Results

The Annual Meeting of Assicurazioni Generali S.p.a., leader of the Generali Group, held in Trieste on June 28th, approved the 1996 financial statement, which showed a net profit of US$ 339.5 million (304.6 million in 1995), with a dividend of 375 lire (US$.25) per share (+10% considering the stock dividend in 1996); the dividend, before taxes, is 585.9 lire (US$.32). Pursuing the traditional strategy for the consolidation of assets, Shareholders approved to appropriate US$ 105 million, taken from the profit, to the extraordinary reserve.

The Board of Directors, which met after the Annual Meeting, confirmed as Chairman Mr. Antoine Bernheim, Vice Chairman and Managing Director Mr. Gianfranco Gutty and Vice Chairman Mr. Francesco Cingano.

GENERALI GROUP

The Generali Group operates in Italy and also in: Argentina, Australia, Austria, Belgium, Brazil, Canada, Colombia, Czech Republic, Denmark, Ecuador, Egypt, France, Germany, Gibraltar, Great Britain, Greece, Guatemala, Guernsey, Hong Kong, Hungary, Ireland, Israel, Japan, Jersey, Lebanon, Liechtenstein, Luxemburg, Malta, Mexico, Morocco, Netherlands, Niger, Panama, Peru, Poland, Portugal, Romania, San Marino, Singapore, Slovac Republic, Slovenia, South Africa, Spain, Switzerland, Tunisia, Turkey, United Arab Emirates, United States, Virgin Islands.

Central Head Office in Trieste (Italy)
The Generali Group also operates in the United States through: Assicurazioni Generali U.S. Branch, BMA-Business Men's Assurance Company of America and Jones & Babson Inc.

http://www.generali.com

THE FIFTH ANNUAL

Business Insurance®

WORKERS COMPENSATION CONFERENCE

OCTOBER 27-29, 1997

Loews Santa Monica Beach Hotel
Santa Monica, California

WHO SHOULD ATTEND

Risk managers, loss prevention and safety managers, workers compensation administrators and analysts, employee benefit executives, plus insurers, brokers, consultants, representatives from HMOs and PPOs, state and local government representatives, association members, attorneys and providers from a broad range of companies and institutions.

PROGRAM AGENDA

MONDAY, OCTOBER 27

9:30 AM
GOLF TOURNAMENT:
Hosted by
Deloitte & Touche LLP and SAC3

3:00 PM
EARLY REGISTRATION

4:30 - 5:30 PM
EMPLOYERS PRIVATE ROUNDTABLE

Moderator:
Kathryn J. McIntyre
Business Insurance

5:30 - 6:30 PM
COCKTAIL RECEPTION:
Hosted by Liberty Mutual Group

TUESDAY, OCTOBER 28

7:45 - 9:00 AM
REGISTRATION
CONTINENTAL BREAKFAST:
Hosted by
Kemper Insurance Companies

9:00 AM
OPENING REMARKS

Alexandra Scott
International Business Forum

9:05 AM
KEYNOTE SPEAKER

THE CASE FOR INTEGRATION: SORTING OUT THE MYTHS AND REALITIES OF DISABILITY INTEGRATION MANAGEMENT

Dwight E. Davis
Wausau Insurance Companies

9:45 AM
ERGONOMICS: EFFECTIVE WORKPLACE PRACTICES AND PROGRAMS

Moderator:
Wayne S. Maynard
Liberty Mutual Group

Michael Lichtenberger
BOC Gases

Russell C. Opferkuch
Bankers Trust Company

Cynthia R. Parks
Turner Broadcasting System, Inc.

Michelle Robertson
Herman Miller, Inc.

Neal J. Taslitz
National Repetitive Strain Injury Foundation

10:45 AM
TABLE-TOP EXHIBITS REFRESHMENTS:
Hosted by Commonwealth Risk

11:15 AM
DEVELOPING A SUCCESSFUL ANTI-FRAUD PROGRAM

Moderator:
Peter C. Madeja
GENEX Services Inc.

Donald Elisburg, Esq.
Department of Labor Fraud Commission

William Kizorek
InPhoto Surveillance

Christopher E. Mandel
PepsiCo Restaurant Services Group

Philip J. Polazzo
Olsten Corporation

12:15
LUNCHEON:
Hosted by Intracorp

1:15
LUNCHEON SPEAKER
Adam W. Potter
Continental Airlines Inc.

SOARING TOWARD THE YEAR 2000

1:45 PM
BREAK

2:00 PM
INTEGRATING OCCUPATIONAL WORKERS COMP WITH NON-OCCUPATIONAL SHORT-TERM AND LONG-TERM DISABILITY PLANS

Moderator:
Kathryn J. McIntyre
Business Insurance

Elizabeth M. Lindner
Kemper Insurance Companies

Ruth D. Theule
Steelcase North America

Jenny Parker Emery
Towers Perrin

Charles A. Amis
Provident Companies Inc.

3:00 PM
TABLE-TOP EXHIBITS AND REFRESHMENTS

3:30 PM
CONCURRENT SESSIONS

Concurrent Session A:
RETURNING EMPLOYEES TO WORK

CONFERENCE CHAIRMAN

Kathryn J. McIntyre
Vice President, Publisher and Editorial Director
Business Insurance

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School of Labor & Industrial Relations
Michigan State University

Stephen M. Wilder
Vice President, Risk Management
The Walt Disney Company

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- **Wausau Insurance Companies**

Moderator:
Rebecca S. Bruce
Aon Management Institute

Daniel L. King
Host Marriott Services Corporation

Larry Kurtz
The Achievement Institute

Rosemary Osman
University of Pennsylvania Health System

Concurrent Session B:
WORKERS COMPENSATION TRENDS IN CALIFORNIA TODAY: WHERE IS REFORM GOING?

Moderator:
John G. Pasqualetto
American Home Assurance Company

Rachel Kaganoff Stern
RAND

Edward C. Woodward
California Workers Compensation Institute

4:30 PM
CONCURRENT SESSIONS

Concurrent Session A:
IDENTIFYING FACTORS THAT DRIVE WORKERS COMPENSATION COSTS: CASE STUDY OF AN INNOVATIVE APPROACH

Introduction by:
Christopher Mandel
PepsiCo Restaurant Services Group

Christopher A. Duncan
Frito-Lay

I. Jeff Turshen
The MEDSTAT Group

Concurrent Session B:
CREATIVE INCENTIVES AND PAY-FOR-PERFORMANCE METHODOLOGIES

Michael Gibney
Rollins, Inc.

Lizbeth Mackenzie
Coors Ceramics Company

5:30 PM
COCKTAIL RECEPTION

WEDNESDAY, OCTOBER 29

7:45 - 9:00 AM
CONTINENTAL BREAKFAST:
Hosted by GENEX Services Inc.

9:00 AM
OPENING REMARKS FROM THE CHAIR

9:05 AM
OUTCOMES MEASUREMENT—MANAGED CARE VS. MANAGED COSTS

Moderator:
Maddy E. Bowling
Intracorp

Mary Furnanz
Levi Strauss & Company

Brenda Olsen
J & H Marsh & McLennan, Inc.

Richard A. Victor
Workers' Comp Research Institute

10:00 AM
TABLE-TOP EXHIBITS REFRESHMENTS:
Hosted by Wausau Insurance Companies

10:30 AM
ALTERNATIVE RISK FINANCING

John Kessock, Jr.
Commonwealth Risk

Art Engel
Southwest Marine, Inc.

Keith Terrano
Labor Ready, Inc.

11:30 AM
CONCURRENT SESSIONS

Concurrent Session A:
NEW MEDICAL APPROACHES TO OLD PROBLEMS

Moderator:
Mary Stoik Dymond
ACX Technologies Inc.

Peter G. Hanson, M.D.
Hanson Peak Performance Clinic

Robert S. Ivker, D.O.
American Holistic Medical Association

Concurrent Session B:
RISK MANAGEMENT INFORMATION SYSTEMS

Moderator:
David P. Duden
Deloitte & Touche LLP

Michelle DeLizio
CompReview

Tim East
The Walt Disney Company

Scott Lund
SAC3

12:30
LUNCHEON:
Hosted by
American International Group, Inc.

1:30
LUNCHEON ADDRESS
Sandra M. Jenson
CNA Insurance Companies

INNOVATIVE PRINCIPLES FOR REDUCING WORKERS COMPENSATION CLAIM COSTS

2:00 PM
BREAK

2:15 PM
CONCURRENT SESSIONS

Concurrent Session A:
SCREENING OUT YOUR PROBLEMS—HOW FAR CAN YOU GO?

Moderator:
Jeffrey W. Pettegrew
Western Staff Services

Chris Berka
Psychemedics Corporation

Brent A. Winans
Avert, Inc.

Concurrent Session B:
BUILDING A LABOR/MANAGEMENT TEAM TO WORK TOGETHER IN REDUCING WORKERS COMPENSATION COSTS

William C. Bruce, Esq.
Mayo, Gilligan & Zito

Catherine M. Hopkins
The New York Times

3:00 PM
CONFERENCE ADJOURNS

COMMENTS FROM SOME OF LAST YEAR'S ATTENDEES:

"The conference and speakers were fantastic — a very broad collection of knowledge and experience."
Noreen A. Walsh • *Worker's Compensation* • Hoffman - LaRoche Inc.

"This is the first Worker's Compensation Conference I have ever attended where 100% of the topics were of relevance to me. Well worth my time. Conference was a great value!"
Michael J. Tilley • *Director, Worker's Compensation* • Kelley Services, Inc.

"Each year the conference grows and provides me with a wealth of information."
Wendy M. Gocha • *Manager, Risk Finance* • IDV, North America

"The conference has been an informative experience containing many applicable theories to present to management for consideration."
Jennifer A. Beukers • *Disability Coordinator* • The BOC Group, Inc.

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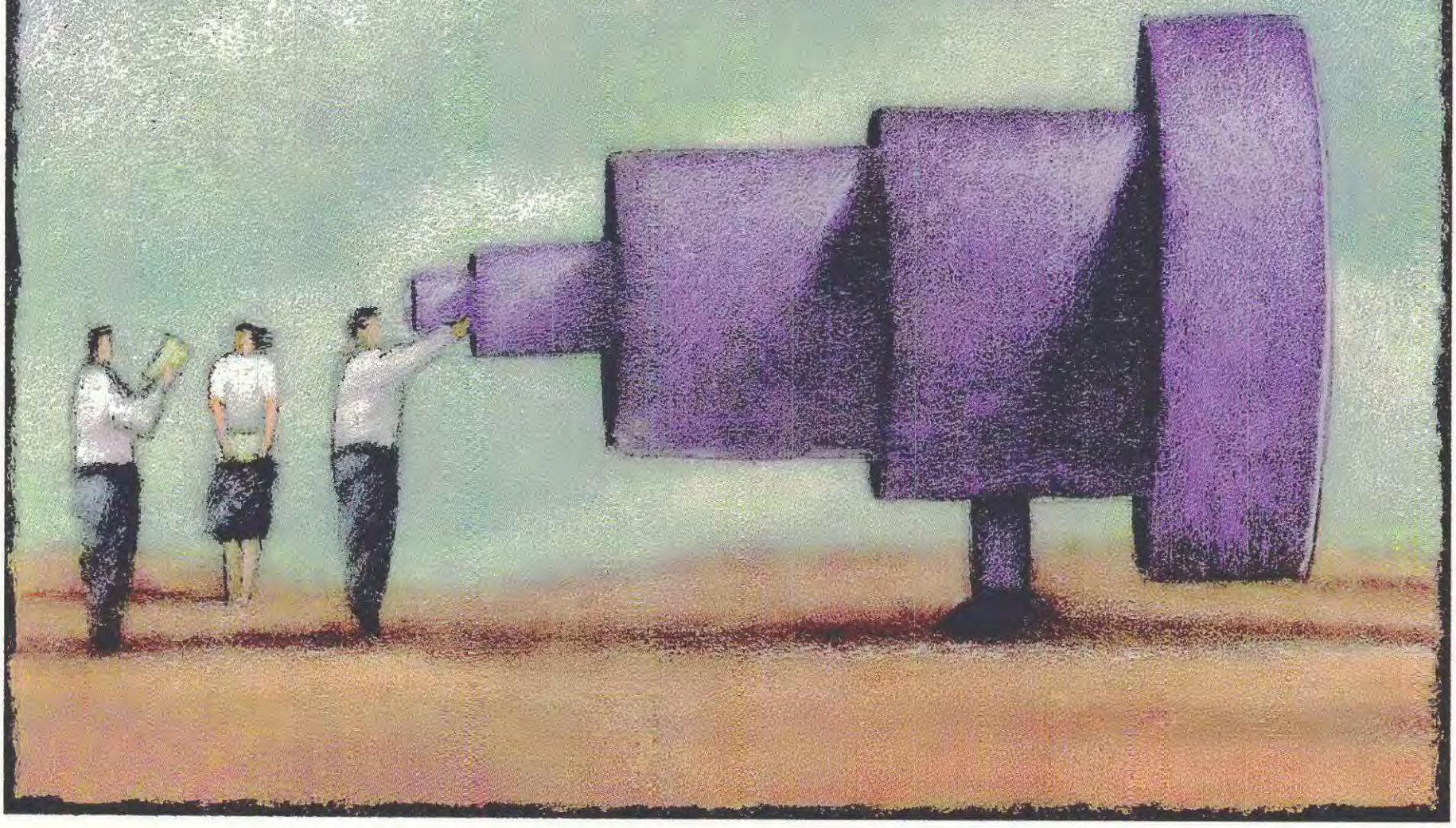

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Jun 9	Specialty Risks: Environmental & Professional RS *Directory: Environmental Risk Management Consultants* *Distribution: NAIC*		May 28
Jun 16		IT Reinsurance Recoveries	Jun 4
Jun 23	Benefits: Balancing Work & Family RS, SS *Directory: EAPs & Dependent Care Resources & Referral Services* *Distribution: AAHP, SHRM*		Jun 11
Jun 30			Jun 18
Jul 7	Midyear Market Report: Property/Casualty & Health Care RS *Information Resource: Property/Casualty & Health Care*	ABT Advertising & Promotion	Jun 24
Jul 14	*Distribution: IIS*	GLOBAL FOCUS	Jul 2
Jul 21	Agent/Broker Profiles RS *Directory: Agents & Brokers*	IT Advertising & Promotion	Jul 9
Jul 28			Jul 16
Aug 4	Benefits: Managed Care Market Report RS, SS *Directory: Prescription Benefit Managers* *Information Resource: Benefit Products & Services*	ABT Government Relations	Jul 23
Aug 11	*Distribution: ARIA*		Jul 30
Aug 18	Property Loss Control RS *Directory: Property Loss Control Consultants*	IT Government Relations	Aug 6
Aug 25	Ward's 50 Benchmark Results		Aug 13

RS: Reader Service, SS: Starch Study

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ASK A BENEFIT MANAGER

Q **What is the status of long-term care plans today? How popular are these plans and how does the Health Insurance Portability and Accountability Act of 1996 impact these plans?**

A According to a Health Insurance Assn. of America survey, 1,260 group long-term care programs were in force in 1995. The growth in group long-term care plans has been sporadic from year to year. They experienced fairly substantial growth in the early 1990s; that growth slowed in 1993-1994 but increased substantially in 1995. However, the vast majority of long-term care policies have been issued on an individual rather than group basis. According to the HIAA, more than 80% of the policies have been issued through the individual market.

A William M. Mercer Inc. survey published in March provides some insight into the long-term care plans employers offer. One element of the Mercer survey focuses on the participation rates. The survey included 66 respondents that offered group long-term care plans; 94% of those respondents employ more than 1,000 people. Forty-nine percent of the respondents indicated that the participation rate of employees was less than 5%. Twenty-three percent of employers reported participation rates between 5% and 9%. This indicates that while the number of employers offering long-term care coverage may be increasing, the overall participation rate is relatively low.

The Health Insurance Portability and Accountability Act established favorable tax treatment for long-term care insurance, similar to that currently granted to accident and health insurance premiums.

Employer-paid premiums now are fully excludable from employee income. Employee-paid premiums—up to certain limits—now are treated as unreimbursed medical expenses; that is, potentially deductible from income along with other unreimbursed medical expenses. However, employee-paid premiums are deductible only up to an age-rated dollar amount and only if the premiums along with the unreimbursed medical expenses exceed 7.5% of the individual's adjusted gross income. Also, employee-paid unreimbursed long-term care expenses will be treated as unreimbursed medical expenses potentially deductible from income, again subject to the 7.5% of adjusted gross income rule.

Also, long-term care payments of more than $175 a day or an annual maximum of $63,875 are not tax-exempt unless the insured has incurred actual costs for long-term care services that match the excess. For taxable years after 1997, the per diem and annual dollar limits are indexed for increases in the medical care component of the Consumer Price Index. Also, expenses for long-term care services cannot be reimbursed under a flexible spending account plan. The benefits an employer pays under a long-term care plan contract will not be tax-exempt to an employee if they are provided through a flexible benefits plan.

The new law certainly improves the situation for those buying long-term care insurance as well as for employers that may want to offer long-term care as an employer-provided benefit. I think the government may be sending a message with this law that it has no intention of expanding Medicare benefits to provide any additional long-term care. The message is that the responsibility for long-term care is with the individual. With that thought in mind, employees should think about buying long-term care insurance.

As indicated, the participation rates in long-term care insurance programs have been nominal. Part of the reason for relatively low participation is the lack of knowledge of long-term care and the perceived low probability of the potential of one needing long-term care services.

John Hancock Mutual Life Insurance Co. and the National Council on Aging conducted a survey that focused on the knowledge level about long-term care and the potential for long-term care. The results were that individuals overall do not understand long-term care and the fairly high probability that they will use it. Some of the statistics shared from this survey, which certainly would be of interest to employees, include:

- Between 45% and 60% of people now receiving long-term care services are between age 18 and 64.
- There is a 45% to 60% probability that someone age 65 eventually will be admitted to a nursing home.
- On average, a one-year stay in a nursing home today costs about $40,000.
- People have to spend almost all of their assets to be eligible for Medicaid benefits.
- Medicare pays a nominal portion of the cost related to an extended stay in a nursing home. More than 60% of older adults receiving long-term care receive that care in their homes.

People overall do not understand long-term care and the probability that they will need it one day, according to a survey from John Hancock Mutual Life Insurance Co. and the National Council on Aging.

An improved understanding of the need for long-term care is important for employees.

The John Hancock/NOCA survey proved employees do not understand long-term care.

The William M. Mercer survey, "State-of-the-Art in Long-Term Care Insurance," shed some light on the types of plans offered to employees today. Some of the key findings of that survey:

- Eligibility. More than 90% of those surveyed indicated that those eligible for this coverage include employees and spouses, employees' parents and in-laws. Seventy-three percent of the respondents provide long-term care insurance to their retirees and retiree spouses, while 23% of respondents say employees' grandparents and grandparents-in-law are eligible for coverage.
- What is covered? More than 90% of the plans indicated they cover nursing home; home health care, or skilled care; and adult day care, while 74% of the respondents indicated they covered home personal care, or unskilled care, and respite care. Other types of care cited by 5% or less of the survey respondents include hospice care, physical/occupational/respiratory/speech therapy and alternative care facilities.
- How much is covered? The most common number of choices of daily maximum benefits is three, offered by 44% of respondents, while 18% provide four choices, 14% provide five to six choices, and 13% provide six or more choices. The dollar amount of coverage varies considerably, including the range of nursing home daily benefits and the total lifetime maximum benefits.

Those employers responding to the Mercer survey provided the reasons they offered long-term care benefits.

The most common reason is that the employers wanted to offer leading-edge benefits. Seventy percent of the employers felt that was extremely important or very important. The second most common reason is that the benefit could be offered at low employer cost. Other reasons cited in the survey included that it was a good fit for the workforce, employees/retirees wanted it, senior management wanted it, it helped achieve a human resources objective and, finally, competitors offered the benefits.

It is also interesting to view the ways in which the long-term care benefit was positioned within the total benefits package. The benefit was split evenly between providing the long-term care benefit as part of a flex program and as part of a work/life program. Others positioned the benefit as part of disability, health or retirement.

Finally, there is generally positive employer reaction to long-term care programs, with 70% of the respondents indicating they were satisfied with the program, while 17% indicated it was too early to tell and 13% indicated they were not satisfied with the long-term care program.

It will be interesting to view the marketplace to determine if the 1996 law influences more employers to offer long-term care plans and if employers begin to pay some portion of the cost of long-term care programs. The Mercer survey shows that only one employer subsidized the long-term care benefit—the employer pays 20% of the cost.

As the population ages, we will see increased interest in long-term care coverage, though because of the nature of the coverage, it likely will never be as commonplace as life or disability coverage. Although employers can offer long-term care coverage and not have the employee taxed on such coverage, I don't expect to see many employers offer this coverage and pay for it. Organizations today are looking to control their benefit costs, not increase them. However, a long-term care plan can enhance an employer's benefit program.

According to the Mercer survey, the two most common ways to position this benefit were to offer it as another option under their flex plans or to offer it as part of a work/life program. We probably won't know until after 1997 and 1998 if the new law influences the number of long-term care plans being offered. I think better understanding of long-term care issues and the aging workforce probably will have a greater influence on the interest in long-term care plans than the legislation.

Material in this article does not constitute accounting, tax, investment, legal or business advice. Employers should review their specific situation with professional advisers. BI

Would you like advice from an experienced colleague on a risk management, benefits management or actuarial problem? Four quarterly features in the Perspective section of Business Insurance can give you some answers.

Ask A Benefit Manager, Ask A Risk Manager, Ask A Benefit Actuary and Ask A Casualty Actuary answer written questions from readers on risk and benefits management issues and actuarial problems.

Mr. Nirtaut

This month's column on employee benefit management issues was written by Dennis J. Nirtaut, managing director of compensation and benefits for Andersen Worldwide S.C. in Chicago. Christopher E. Mandel, director of risk management at PepsiCo Restaurant Services Group in Louisville, Ky., answers questions on risk management issues. William J. Miner, an actuary with Watson Wyatt Worldwide in Chicago, answers actuarial questions on benefits issues. And, Richard E. Sherman, president of Richard E. Sherman & Associates Inc. in Ashland, Ore., answers actuarial questions in the casualty field.

Address your questions to ASK, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.

Age bias

Continued from page 2

lawsuit against his former employer, the New York-based Loral Corp. (*BI*, Aug. 4). The court instructed the jury that "an employer is entitled to choose employees with lower salaries, even though this may result in choosing younger employees. If the choice is based on salary, there is no age discrimination."

Mr. Marks' attorney, James J. Guziak, an Orange, Calif.-based solo practitioner, said shortly after the ruling was issued that it will be appealed, though he and his client have not decided whether to ask for a rehearing before the appellate court or to petition the California Supreme Court for review.

Employer attorneys applaud the decision, saying it permits employers to make sound economic decisions without fear of being accused of age discrimination.

Attorneys who represent employees complain the decision will make it more difficult to prove legitimate cases of age discrimination.

These attorneys also point out that while this decision may have relatively little impact in today's vibrant economy, the ruling could have a devastating effect on the large number of aging "baby boomers" in the workforce when the economy changes.

A key element in the decision is the concept of "disparate impact," which refers in this case to the unequal effect on older employees of letting workers go for economic reasons.

"For years now, the federal courts have struggled, in applying federal age discrimination law, with the problem of whether an employer's policy or practice, which has a 'disparate impact' on older workers, generally constitutes illegal age discrimination," says the decision.

This decision says, however, "Employers may indeed prefer workers with lower salaries to workers with higher ones, even if the preference falls disproportionately on older, generally higher-paid workers."

Federal and state statutes "show an intention that price-based business decisions should not be held to constitute illegal age discrimination," the decision states.

Furthermore, these statutes' intent "was to prevent employers from basing decisions on generalities, not to prevent employers from making perfectly sound economic decisions which have a disproportionate effect on older workers as a group."

The decision also states that the "first principles of disparate impact analysis, as articulated by the United States Supreme Court, do not apply to differentiations based on salary."

The decision also says a company's financial status has no bearing. "There is not one age discrimination law for the marginally profitable and another for the highly profitable," it states.

There is a "poignancy" in situations where older workers are let go, acknowledges the decision, and "the image of some newly minted whippersnapper MBA who tries to increase corporate profits—and his or her own compensation—by across-the-board layoffs is not a pretty one."

"Even so, neither Congress nor the state Legislature ever intended the age discrimination laws to inhibit the very process by which a free-market economy—decision-making on the basis of cost—is conducted and by which, ultimately, real jobs and wealth are created."

"It basically affirms the employer's right to make sound, economic, cost-based decisions without the fear of being sued," said Ms. Bradstreet. "Up until now, employers have sometimes been between a rock and hard place," when it came to the issue of dismissing higher-paid employees.

"They've been paranoid about doing anything for fear of getting sued, and I think this decision brings some common sense back to the workplace. . .and discrimination laws by affirming the right to make neutral, economic-based decisions."

Catherine A. Evans, of Irvine, Calif.-based Assayag, Mauss & Evans, who represented Loral in the litigation, said, "I think it is a well-reasoned, carefully researched decision, and I do believe it is a correct reflection of both federal and state law."

Even presuming salary correlates with age, and older workers cost more, "neither the federal nor state statutes ever intended to keep businesses from making business decisions that were necessary," she said. "They intended to eliminate discrimination on the basis of age and other biases."

Mr. Wohl said, "It really turns the law on its head if you tell employers they must hold on to higher-priced employees even if it does not make economic sense, because we will hold you liable for age discrimination" if the employee happens to be older.

The issue is not employers that are "hell-bent on getting rid of older workers," added Mr. Wohl. The issue for employers trying to cut costs is whether they "have the right to eliminate those people whose salaries have exceeded their actual contribution to the business" or whether they are stopped because of a concern about violating age discrimination law.

Kent Jonas of San Francisco-based Graham & James, who represents employers, said, "I certainly couldn't say it never happens, but I don't think there are that many employers out there who are interested in getting rid of 'old people,' especially when you consider the fact the law considers you old once you're over 40" and you are protected under age discrimination laws.

However, attorneys representing employees say the impact on older workers should be taken into consideration as well. "It's troubling that the decision doesn't. . .balance the interest of older workers as a group in society as a whole against the economic interest of employers," said Mr. Marks' attorney, Mr. Guziak.

"There are substantial societal impacts when older workers are laid off or let go," including unemployment compensation and potential welfare claims, as well as the detrimental impact upon the worker's families, Mr. Guziak said.

The decision "sends a message to employers that if they announce that they are cutting the workforce by focusing on higher-paid employees that they will be able to do that with no risk of a lawsuit," said Mr. Quackenbush.

High salary "is very often used to disguise age discrimination," according to Cliff Palefsky of McGuinn, Hillsman & Palefsky in San Francisco.

One of the factors lost in the appellate court's analysis is "what is truly said behind closed doors," said Mr. Palefsky. The decision "ignores the reality of the situation. I think many companies are smart enough" to not say they want to bring in younger, more energetic people, "but we all know that's the motivation, and I think it will be incumbent upon employment lawyers to find different ways to establish that reality."

Mark Rudy of San Francisco-based Rudy, Exelrod, Zieff & True, who represents employees, said the decision already has "caused a lot of hysteria" among his clients.

"It's so hard to prove discrimination," added Mr. Rudy. Usually this is done circumstantially. "There are not that many smoking guns out there," and this decision "really critically injures those who are trying to get their rights vindicated," though it is not necessarily the death knell of their efforts.

Mr. Rudy predicted more decisions on this issue. "I think there's going to be a lot more activity before we have a definitive, final decision on what the law is," he said.

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Michael J. Marks vs. Loral Corp. et al., Court of Appeal of the State of California, Fourth Appellate District, Division Three; G017833.

Fired worker's leave left for court to decide

CHICAGO—A former employee of the city of Fort Wayne, Ind., may be entitled to a federal family and medical leave if a lower court determines her multiple medical problems constitute "a serious health condition."

The 7th U.S. Circuit Court of Appeals on June 27 vacated a lower court's finding that Katherine Price's medical problems did not constitute "a serious health condition" and were reasonable grounds for her 1994 dismissal for excessive absences.

The appeals court also sent the case back to the U.S. District Court for the Northern District of Indiana for further proceedings.

Ms. Price's diagnosed ailments included hypertension and hyperthyroidism; periodic headaches; stress related to her job and her concern over the possible recurrence of cancer, stemming from a benign infected arm cyst. She was seeing her personal physician for some but not all of those ailments.

The appeals court also threw out the city's attempt to challenge Ms. Price's eligibility for leave under the Family and Medical Leave Act on the grounds that she did not expressly ask for it. The appeals court said it is "a question of fact whether her notice to the city was sufficiently timely to trigger an FMLA inquiry," meaning a jury must determine that.

In addition, the appeals court excluded from consideration the opinion of a second physician because he was associated with the city rather than independent, as the law requires.

The city does not plan to appeal the federal court decision, said J. Timothy McCaulay, an attorney representing the city who practices with the firm of Helmke, Beams, Boyer & Wagner in Fort Wayne.

—By Meg Fletcher

Financial

Continued from page 3

risk, Mr. Burnhope said.

Most spectacularly, Barings P.L.C., one of the most respected banks in London, underwent a more than $1.3 billion collapse in 1995 that was blamed on the activities of a single trader in its Singapore office, Nicholas Leeson (*BI*, March 6, 1995).

Mr. Leeson is serving a prison sentence in Singapore.

William J. Kelly, senior vp and risk manager at J.P. Morgan in New York, has been critical of insurers for not taking on the potentially catastrophic risks of financial institutions.

"We want insurance that is responsive to exposures that are real," he said.

Consequently, Mr. Kelly began working 10 months ago with Minet P.L.C., which is now part of Aon Corp., to put together a catastrophe insurance program for the investment bank.

Last week, the coverage was finalized with a three-year policy term and a single aggregate limit of $400 million excess of $100 million. J.P. Morgan has varying levels of primary coverage.

The catastrophe coverage includes: unauthorized transactions; corporate professional liability; excess directors and officers liability; crime, including computer crime; employment practices liability; and millennium liability relating to the risk of converting systems to avoid the so-called Year 2000 problem.

In addition to the unauthorized transactions coverage, the policy gives J.P. Morgan broad organizational liability coverage, explained Jennifer J. McElroy, executive vp at Aon Financial Services Group, which helped develop the policy.

"If you wanted to buy $300 million to $500 million in D&O coverage, you could probably scrape it up, but it would be very difficult to get that kind of capacity for professional liability coverage," she said.

The lead insurer on the policy is American International Group Inc. Other insurance companies participating on the risk include Chubb Corp., Zurich Insurance Group, Swiss Reinsurance America Corp. and other insurers in the United States, Bermuda and London.

Mr. Kelly would not disclose the premium.

The policy gives J.P. Morgan extensive coverage without having to turn to alternative markets or blended programs, according to Mr. Kelly.

The aggregate limits would not have been as large under a blended program, he said.

Risk managers at large banks, investment banks and insurance companies would be the most likely buyers of the coverage, Ms. McElroy said.

The coverage bought by J.P. Morgan could have a broad appeal to financial institutions if it is affordable and has variable attachment points that would be attractive to policyholders that are considerably smaller than J.P. Morgan, said Michael R. Vogler, a principal and risk management consultant at Coopers & Lybrand L.L.P. in Atlanta.

"It provides a warm, cozy feeling to those people that are investors in the investment companies" that have aggressive sales techniques, he said.

It is difficult to find underwriters willing to provide insurance coverage for unauthorized transactions, agreed Judy M. Lindenmayer, vp-Fidelity insurance and risk management for FMR Corp. in Boston and the 1997 *Business Insurance* Risk Manager of the Year.

In September, Fidelity put together a three-year financial insurance program that includes conventional coverage and finite risk insurance to respond to unauthorized transactions and a broad range of other financial risks (*BI*, April 14). AIG is the sole insurer on the program.

Fidelity has not suffered any losses from unauthorized transactions, but the highly publicized losses of other financial institutions indicate the need for

the coverage, Ms. Lindenmayer said.

"We're getting larger and larger, and while we have excellent compliance procedures, when you read about incidents that happen around the world it makes one think whether there are other forces which could cause us to have a loss," Ms. Lindenmayer said. BI

Report

Continued from page 3

for lawsuits because they are perceived as having the health care world's deep pockets, according to Conning.

"As health care delivery systems get bigger, risks will continue to become more concentrated. As a result, medical malpractice writers may well get more of the high-risk, high-volatility claims. Under these circumstances, the requirements for large amounts of surplus to cover such risks will accelerate consolidation among medical malpractice writers," says the report.

As health care delivery systems get bigger, 'medical malpractice writers may well get more high-risk, high-volatility claims,' Conning & Co.'s report says.

The prospect of a market with fewer, larger players doesn't surprise health care risk managers.

"Competitive pressure can act to promote consolidation," according to Nancy Rapp, risk manager of Alliant Health System in Louisville, Ky., and a board member of the Chicago-based American Society for Healthcare Risk Management.

"Those underwriters who can offer insurance packages such as medical malpractice together with managed care liability and general liability will survive. Health care institutions and risk managers are seeking to move away from policies covering only specific and isolated risks and toward seamless coverage for the entire process of the delivery of health care in a rapidly changing market," said Ms. Rapp.

Another health care risk manager said consolidation among the malpractice underwriters will have a mixed impact on health care risk managers' ability to secure coverage.

"Few medical malpractice carriers may mean more market leverage for them and fewer choices for us," said William B. Reisbick, director-risk management for Virginia Mason Medical Center in Seattle and an ASHRM board member.

"If the return on equity continues to dwindle, the trend may be to move away from the present soft-market approach. However, malpractice carriers are acutely aware of the practice of self-insuring more risk, combining into risk retention groups, captives and other alternative risk financing methods. The commercial carriers understand their need to remain financially attractive. If not, many larger provider groups may seek only catastrophic coverage from such carriers," he added.

"To the extent that underwriters price premiums at levels that are unsound, an unstable market may result. This could lead to availability or affordability concerns if the industry overreacts," he said.

Liability awards against managed care organizations will help determine the market's stability, he said.

"The bottom line will depend on whether large managed care verdicts will remain the exception rather than the rule. Institution of policies and procedures requiring consideration of the patient's best interests first, and cost reductions second, will help make these cases more defensible," Mr. Reisbick explained.

The report left no doubt liability exposures are on the rise, for a variety of reasons.

"All attempts to monitor quality of service and access are a direct result of the growing concern about some managed care practices. High-profile news stories about drive-through mastectomies, one-day new baby stays and wrongful denial of benefits have raised concerns. However, many managed care practices, including the use of primary care physician gatekeepers, financial

See **Report** *on next page*

ADVERTISER

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Report

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incentives to physicians for restricting care, utilization review and gag rules, to name a few, may lead to an expansion of potential physician liability exposures and/or new legislation to control practices. For medical professional liability and perhaps managed care liability, the list of perceived abuses continues to grow and includes, among others: failure to refer; improper referral; failure to diagnose; inadequate treatment due to capitation; delay in diagnosis; lack of follow-up; withholding information; breach of patient confidentiality; withholding or withdrawing futile care; denial of treatment, test or procedure; (and) use of lower-cost prescription drugs.

"Perhaps of more serious consequence in the long run is the vulnerability of managed care organizations—the deep pockets of the health care world—to new exposures. With the potential erosion of ERISA and utilization review more often being considered a diagnostic rather than an administrative procedure, managed care liability could develop into a new business with totally new underwriting considerations," the report says.

"Medical Malpractice to Managed Care Liability-Fifty Ways to Meet the Future" ends with a list of 50 ways medical malpractice underwriters can meet the challenges of the changing marketplace. The list was drawn from the responses of 101 malpractice insurer executives polled in April. Among the suggestions, which were arranged alphabetically rather than in terms of importance, were "sell risk management, not insurance," "reinsure managed care risks heavily," "increase risk management/loss control efforts" and "innovate new risk management tools."

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Copies of "Medical Malpractice to Managed Care Liability—Fifty Ways to Meet the Future" cost $495. To order, call Lisa Pesci at Conning & Co. at 860-520-1521 or 888-707-1177.

Maryland

Continued from page 3
situation in Maryland is entirely different from that in Louisiana, where the NRRA successfully fought a 1995 law and department application procedures that imposed a wide variety of fees as well as capital and surplus requirements on RRGs licensed in other states that wanted to issue policies to members in Louisiana.

Those requirements were struck down by a federal judge, who said Louisiana's requirements were just the kind pre-empted by the Risk Retention Act (*BI*, June 10, 1996).

The 5th U.S. Circuit Court of Appeals earlier this year affirmed the lower court ruling.

"In Louisiana, there was a broad assault on the very foundation of the Risk Retention Act. Louisiana was trying to do everything that a non-domiciliary state is pre-empted from doing," Mr. Harkavy said.

By contrast, in Maryland, "there is no animus, just an overly broad interpretation of an existing law," he added.

Still, RRG managers and others worry that if the groups don't challenge fees that states attempt to impose on their operations, such requirements will proliferate and inflate their overhead.

'I don't believe (Maryland was) aware the pre-emption provisions of the (federal) law,' Jon Harkavy says.

"These things begin to add up," said Rosita Steele, executive vp and chief operating officer of American Assn. of Orthodontists Services Inc. in St. Louis. Her organization provides management services to a Vermont-domiciled RRG for orthodontists.

Congress specifically excluded RRGs from state assessments—other than premium taxes—because of legislators' desire that RRGs be able to operate in the most cost-efficient way for policyholder-owners, Ms. Steele said.

State fees are "a cost that is passed on to the consumer," said Karen Cutts, managing editor of The Risk Retention Reporter, a Pasadena, Calif.-based newsletter.

In light of the favorable court decisions involving the Louisiana law, NRRA's Mr. Harkavy says the group will become more aggressive in challenging state requirements on RRGs that are pre-empted by the Risk Retention Act.

Passed by Congress in 1981 and later expanded in 1986, the Risk Retention Act allows RRGs, which are special, multiple-owner captives, to operate throughout the United States after meeting the licensing requirements of one state. RRGs can write coverage only for members, not for the public. RRGs can write all commercial liability lines except workers compensation.

Sixty-eight RRGs now are licensed, nearly half of which are domiciled in Vermont, which has an attractive captive statute. BI

AIG

Continued from page 2
bidder, but a Judge Cahill in June chose a revised bid from Liberty Mutual instead.

AIG appealed his decision, charging that Liberty Mutual won by negotiating a back-door settlement of litigation between Golden Eagle owner John C. Mabee and the Insurance Department (*BI*, July 14).

The Court of Appeal rejected AIG's petition without further comment (*BI*, July 28).

Meanwhile, an Insurance Department investigation into AIG's business practices is continuing, department sources say.

The department said it was looking into alleged efforts by AIG "to deliberately spread false statements to third parties in an effort to create anxiety and start problems for the new Golden Eagle company" (*BI*, July 21).

AIG said one of those assertions apparently was put to rest in the order approving the rehabilitation plan.

"AIG is pleased that Judge Cahill's order seeks to eliminate the 'bar date' for claims covered under Golden Eagle policies, protecting the policyholders from a deadline that would have barred their valid claims. This was an issue that AIG had pressed vigorously during the legal proceedings," the company said in a statement issued Aug. 5.

'Liberty Mutual is delighted Judge Cahill has approved the rehabilitation plan for Golden Eagle,' says Liberty Mutual Senior Vp Fred Marziano.

However, the bar date never applied to claims for coverage under Golden Eagle policies, but only to non-insurance claims, such as general creditor and bad faith claims, according to deputy conservator Karl L. Rubinstein.

Still, AIG attorney Roxani M. Gillespie insists that under the original rehabilitation proposal, policyholders that did not file claims by Feb. 27, 1998, risked the loss of potential benefits.

While Judge Cahill's decision clarified the protections available to policyholders and claimants with regards to the Golden Eagle rehabilitation, "the judge's decision left unanswered several concerns about policyholders', claimants', and creditors' rights" in other insolvencies, said Ms. Gillespie, an attorney with Buchalter, Fields, Nemer & Younger in San Francisco and a former California insurance commissioner.

"That is why AIG plans to continue supporting the work of the California Legislature," she said. "We believe that the system malfunctioned in the Golden Eagle case, and confidence in the process for rehabilitating insolvent insurers needs to be restored."

Specifically, AIG is backing S.B. 1042, introduced by State Sen. Patrick Johnston and co-authored by Assemblywoman Liz Figueroa, that would, among other things, amend California's insolvency law to forbid a liquidator from setting a claims bar date shorter than 10 years from notice of a liquidation. The bill also would bar owners of insolvent insurers from receiving any compensation or other benefit until all claimants and creditors are paid in full.

This second provision was triggered by AIG's allegations that Mr. Mabee would profit from the deal with Liberty Mutual.

Under the rehabilitation plan approved by the court, Liberty Mutual will pay Mr. Mabee $20 million for an option to buy his Golden Eagle shares. Of this amount, Mr. Mabee will pledge $10 million to secure Golden Eagle's reinsurance recoverables from Mesa Reinsurance Co. Ltd., which Mr. Mabee also owns.

The option allows Liberty Mutual to buy Mr. Mabee's shares for $375 million. But regulators doubt there will be enough money left in the company after claims are paid to tempt Liberty to exercise the option.

The bill, which the Assembly Insurance Committee has approved, is scheduled for a hearing Aug. 20 before the Assembly Appropriations Committee. BI

INTERNATIONAL

Global Briefs

Rating agency Standard & Poor's has assessed the **Japanese non-life insurance industry** as "financially strong." It has restored its catastrophe reserves after the "climatic losses" in 1991 and has high-quality assets and sound capitalization, says S&P. As a result, S&P has affirmed its AA+ ratings on Chiyoda Fire & Marine Insurance Co. Ltd., Dai-Tokyo Fire & Marine Insurance Co. Ltd. and Nichido Fire & Marine Insurance Co. Ltd. In addition, it has affirmed AAA ratings for Tokio Fire & Marine Insurance Co. Ltd. and Yasuda Fire & Marine Insurance Co. Ltd. Nevertheless, S&P warns of pressure on premium rates, partly because of competition from low-premium-rate products in the short term, due to the ongoing liberalization of the Japanese insurance market. . . .Lloyd's of London has brought **regulatory and disciplinary sanctions** against four people and seven organizations, imposing fines ranging from £300 to £20,000 ($487 to $32,490). The largest fine and a notice of censure went to Derek Walker, formerly the active underwriter for syndicate 290 and deputy chairman of its managing agent Gooda Walker Ltd. Lloyd's castigated Mr. Walker for approving three documents, including the syndicate accounts, without providing relevant information about certain syndicate transactions. Lloyd's reprimanded his former colleague, Hugo Pilch, who had been finance director of Gooda Walker Ltd., for "conduct detrimental to the interests of policyholders, the Society and others doing business at Lloyd's" and ordered him to pay £25,000 ($41,425) in costs. . . .Unveiling six-month worldwide profits of £442 million ($718 million), U.K. insurer **Prudential Corp. P.L.C.** also announced it will speed up its internal pension misselling review by not arguing the onus of proof in each case. This should help Prudential meet its deadline of March 1998, and as a result, it has increased its provisions for compensation to victims of pensions mis-selling to £450 million from £240 million (to $731 million from $387 million). . . .In the meantime, the Personal Investment Authority has criticized **Royal & Sun Alliance Insurance Group P.L.C.** for failing to meet its required timetable for resolving pension mis-selling cases. RSA responded that it has "taken all reasonable steps to carry out this review expeditiously," adding that previously it had made clear that certain cases would be too complex to solve within the time frame permitted. . . .Lloyd's corporate capital provider **Angerstein Underwriting Trust P.L.C.** next year will reduce the number of syndicates to which it provides capacity in response to the "more difficult underwriting climate" at Lloyd's. In addition, it will continue to look at acquiring new businesses—it bought three Lloyd's agencies earlier this year—and placing more capacity with the agencies it owns. . . .Reserves at **The United Kingdom Mutual Steam Ship Assurance Assn. (Bermuda) Ltd.**, better known as the U.K. P&I Club, have increased 14% to $332 million over the past year. In its accounts for the year to Feb. 20, 1997, the U.K. P&I Club attributes the increase to a reduction in estimated claims for 1995/1996, to $874 million from $921 million and a marginal increase in total funds to $1.12 billion from $1.117 billion. . . .Telemarketing of commercial insurance has been taken up by a new company, **PI Direct Ltd.**, launched last week. PI Direct aims to sell professional indemnity cover to small to medium-sized firms—those with one to nine partners—of accountants, engineers, surveyors, architects and insurance brokers. It will take business placed through insurance brokers and will provide a quotation within 48 hours.

'Pay now, sue later' clause upheld, Lloyd's moves forward

By SARAH GODDARD

LONDON—Although Lloyd's of London appears to have made it through the rough water and into calmer seas with the success of its reconstruction and renewal plan, it hasn't quite reached harbor as far as member litigation is concerned.

Names have vowed to fight a ruling handed down late last month by the Court of Appeal in London that refused to let names who had not paid their Lloyd's losses withhold payment while they sue the market for fraudulent trading. The decision by Lord Justices Phillips, Saville and Ward upheld two High Court judgments delivered earlier this year.

In the most recent of those rulings, Justice Colman in the High Court decided members must pay any outstanding bills to Lloyd's before they could start litigating against Lloyd's, upholding the "pay now, sue later" clause in members' contracts (*BI*, April 28). Even though the litigating members lodged their intention to appeal the decision, Justice Colman allowed Lloyd's to start collecting the £300 million ($487.4 million) in outstanding debts owed to the market in the wake of its reconstruction and renewal plan, clearing the way for Lloyd's to sue them for payment.

Earlier in the year, Justice Colman had ruled against three non-paying members who alleged that as a result of Lloyd's fraudulent trading, their Lloyd's membership was voided and therefore they had no obligation to pay premiums to Equitas Ltd. (*BI*, Feb. 24). He had not given the three members leave to appeal his decision, which was based on the premise that even if an appeals court upheld their assertions of fraudulent trading, although damages would be awarded, their memberships would not be rescinded, and they still would be liable for the Equitas premium.

The latest decision stated that the lord justices "know of no principle of law that

See **Lloyd's** *on page 23*

Sedgwick, Nikols venture

By EDWIN UNSWORTH

LONDON—Sedgwick Group P.L.C. said last week that the prospect for growth in its employee benefits business would be a key advantage of the proposed merger of its southern European and Latin American operations with those of Italy's leading broker.

Giving further details of the proposed joint venture with Milan-based Gruppo Nikols, Sedgwick Chairman Sax Riley said it should be "earnings enhancing" in 1998 and would "over time" lead to an increased flow of business to Sedgwick's London market operations. The deal, announced in April (*BI*, April 21, 1997) is expected to be completed, pending shareholder approval, by the end of the year.

Mr. Riley said "there is significant growth potential in the southern European markets" for employee benefits business. Sedgwick is the world's third-largest broker.

Apart from being the largest insurance broker in Italy, Nikols Sedgwick B.V., as the joint venture will be called will merge Sedgwick and Nikols operations in Spain, Portugal, Argentina, Brazil, Chile and Colombia.

It will be 51% owned by the company that owns Nikols, Securfin S.p.A., which is owned by the Moratti family of Italy.

Letizia Moratti, chairman of Gruppo Nikols, will become executive chairman of Nikols Sedgwick. She also will join Sedgwick's board.

Commenting on the joint ven-

See **Venture** *on page 23*

Spain, France urged to comply with E.U. regs

By EDWIN UNSWORTH

BRUSSELS, Belgium—The European Commission has warned Spain and France that it will take them to the European Court of Justice unless they comply fully with E.U. insurance directives.

The European Union alleges that in contravention of its directives and recommendations, Spanish authorities are imposing too many checks on insurance brokers from other E.U. countries wanting to operate there. It says Spain, contrary to the Directive on Insurance Agents and Brokers, has introduced a full vetting procedure rather than merely checking the authenticity of documents furnished as proof of the applicant's standing and good reputation.

Also, contrary to the E.U. Treaty of Rome, Spain imposes a prior-authorization requirement both for those wanting to set up as agents or brokers as well as for those wishing to provide services temporarily.

The European Commission

See **E.U.** *on page 23*

Multiple claims predicted after landslide hits ski lodge

By YVETTE HIGGINS and KATE TILLEY

SYDNEY, Australia—A fatal landslide at Thredbo Ski Resort in Australia could lead to third-party liability, workers compensation, business interruption and property damage claims.

The Snowy Mountains resort, which is owned by Kosciusko Thredbo Operations Pty. Ltd., is 125 miles south of Canberra, in the Australian Capital Territory.

Nineteen people, mostly Thredbo staff and senior resort executives, were entombed when a landslide destroyed two lodges at the resort on July 30. There was only one survivor, a ski instructor who was rescued after 65 hours under the rubble.

Temperatures as low as 15 degrees Fahrenheit combined with the threat of additional landslides to hamper search and rescue operations.

The cause of the landslide, which sent the privately owned Carrinya Lodge crashing into Bimbadeen Lodge, destroying both and scattering debris hundreds of feet, has yet to be determined.

Carrinya Lodge is owned by Brindabella Ski Club Pty. Ltd., a group of Canberra-based individuals. The Bimbadeen staff lodge is owned by Kosciusko Thredbo's parent company, Amalgamated Holdings Pty. Ltd.

Bruce Yahl, Sydney-based Amalgamated Holdings' corporate counsel, would not disclose details of the company's insurance policies or discuss existing coverage.

"Insurance and liability issues will be determined by the results of the coroner's inquest," he said.

It could be as long as three to four months before the inquest results are made public.

The incident has attracted widespread publicity and criticism that the lodges were built in a landslide prone area.

Sydney-based Marsh & McLennan Pty. Ltd. is Amalgamated Holdings' insurance broker.

Ross Baker, claims officer for M&M, would not comment on Amalgamated Holdings' insurers.

A spokeswoman for Kosciusko Thredbo said the resort was not yet concerned with insurance issues since recovering those trapped was a greater priority.

Graeme Berwick, executive director of the risk transfer group at Sydney-based broker Willis Corroon Richard Oliver Pty. Ltd., who was not involved in placing Thredbo's coverage, said he expects Amalgamated Holdings to face mostly workers comp and third-party liability claims from the incident. He noted that a coroner's inquiry still had to determine responsibility for the accident and decide whether or not any parties had been negligent.

Mr. Berwick speculated the incident would generate business interruption claims, not only from immediate business lost, but from future tourists canceling holidays.

Workers compensation claims could also occur, and payments to parties would be determined by the state workers comp legislation.

According to Thredbo's media unit, more than 500 rescue workers from throughout Australia rushed to the scene to search around the clock for survivors.

Rescuers lifted massive cement slabs by crane and dug access tunnels in their efforts to find survivors, she said.

PHOTO: AFP

Rescue workers saved one of the 19 victims buried in the Australian landslide.

1967 was a landmark year for environmental liability.

When the Torrey Canyon ran aground in 1967, the value of the lost oil was easily calculated. But who could have known the spill's ultimate cost?

Just months after the 118,000-ton Torrey Canyon set out on its ill-fated journey, Crain Communications launched *Business Insurance* — a new magazine for the commercial insurance marketplace. As world attention turned to the tanker spill's devastation of the environment, corporate executives — risk managers, benefits and health care executives — as well as insurers, reinsurers, agents, brokers and consultants turned their attention to *BI*. There they found ways to manage -- and prevent — the catastrophic impact of all types of risk.

Thirty years after the Torrey Canyon accident heightened awareness of environmental risks, *BI* continues to present news and information that helps corporations preserve their resources. We'll celebrate three decades of publishing with a special commemorative issue that looks at the most noteworthy people, issues and events in the world of business insurance.

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Strike

Continued from page 1

represented employees. Other employers in multiemployer plans are watching closely to see if the giant delivery company can succeed in pulling out of the plans.

Both sides have proposed changes in current plan offerings.

UPS would pay about $700 million in withdrawal liability charges to pull out of the 31 multiemployer plans that provide pension benefits for the company's nationwide Teamster workforce. Under federal law, employers that leave underfunded multiemployer pension plans must pay a share of the plans' promised but unfunded benefits. UPS has pledged to replace the plans with a single defined benefit pension plan—under its control—for all full-time and part-time workers. The new plan, UPS says, would sharply increase benefit levels.

"We want a single, uniform plan across the country that is easily understood," a UPS spokeswoman said. She added the company's proposal would prevent any changes in benefits without the Teamsters' approval.

The UPS plan would pay future retirees, who had worked full time, monthly benefits equal to $100 for each year of employment with the company. A worker who spent 35 years at UPS would get monthly benefits of $3,500. Part-time workers would be eligible for monthly payments equal to $50 for each year.

The spokeswoman said that "on average," UPS' plan would pay workers 50% more than they are entitled to under the multiemployer plans. In the few cases where the multiemployer plan would pay a higher benefit, UPS has promised to match that benefit.

Charles Rader, director of the Teamsters' office of benefits in Washington, would not discuss specifics. But in its final proposal before the strike, the union indicated in a statement that it countered UPS' proposal with an offer to improve benefit levels in the multiemployer plans, in some cases to levels at or higher than those in the proposed UPS plan.

Other Teamster representatives did not return calls seeking information on the union proposals.

While UPS says it wants to create a uniform plan and increase benefits, it has other incentives to pull out of the multiemployer arrangement.

UPS said in a statement last week it no longer wishes to subsidize other companies' benefits. "Right now, UPS' contributions benefit several thousand Teamster retirees who have never even worked for UPS. We want UPS dollars to go to UPS people."

That kind of subsidy occurs when other employers in a multiemployer plan go out of business and withdraw from the plan, leaving the burden of providing benefits to retirees of bankrupt employers to companies remaining in the plans.

Fewer companies are contributing to the plans, while the number of retirees is increasing, UPS said.

"There are a number of issues at stake for the company and the union in a situation like this," said Bob Walter, a Buck Consultants Inc. principal in Secaucus, N.J.

Apart from concerns about subsidizing other retirees in multiemployer plans, UPS likely believes it could earn a greater investment return on contributions made to a pension plan it controls than to the multiemployer Teamster plans, he noted. In most cases, "multiemployer plans invest more conservatively than single-employer plans," he said. "As such, they have had lower rates of return."

The union's concerns are not only related to retaining investment control and authority over benefit levels, but an exit by UPS could spur other employers to leave the multiemployer plans, he suggested.

"It depends on the industry," he noted, explaining that some types of businesses, such as construction companies, are well-suited for multiemployer plans partly because the volume of work and income is unpredictable for those industries. Many of those employers aren't large enough to operate their own pension plans.

Large companies like UPS may decide they have the resources to take control of their pension plans, Mr. Walter said. "We could see efforts from employers to extricate themselves from these funds" if UPS is successful, he added.

Details on any losses the multiemployer plans would suffer if UPS does pull out were not available last week, and the Pension Benefit Guaranty Corp. said it would not comment.

Mr. Walter explained that the withdrawal liabilities were put in place—as part of a 1980 federal law—so that theoretically a plan would not be hurt if a large employer were to leave. Withdrawal liability penalties also were imposed to give employers participating in the plans an incentive to improve plan funding and try to restrain costly benefit increases. However, he added, if UPS' claims of subsidizing other retirees is true, its pullout could lead to a shortfall.

"Is it possible that it could put some plans out of business? I guess it's conceivable," he remarked. "There's a critical-mass issue here. If you start losing big employers, it's going to be tough to keep these plans running."

Also on the table is a UPS proposal to create a new company-administered health care program to replace the one currently administered by the union. The program would offer managed care options and would provide the same benefits to full- and part-time workers. UPS also wants to set up a company-administered health plan for retirees. Currently employees are covered under Teamsters-administered health plans. BI

Other shipping plans made

ATLANTA—The sky did not fall when the brown trucks' engines went quiet.

Most businesses were ready for the strike by United Parcel Service of America Inc.'s 185,000 union workers. Contingency plans hashed out well in advance of the walkout kept goods moving last week, and disruptions for many companies were minimal.

"We started over six weeks ago developing a contingency plan," said Jo-Marie Lilly, senior vp with NM Direct, the Irving, Texas-based catalog division of Neiman Marcus department stores.

NM Direct arranged for an unidentified transportation firm to carry catalog orders to the U.S. Post Office bulk mail center nearest the packages' final destinations. That kept orders out of the postal system, which was laden with shipments UPS normally carried.

As a result, disruptions have been minimal, Ms. Lilly said.

"We anticipated this," said a spokeswoman for Dell Computer Corp. in Austin, Texas. "Being a logistically driven company, we put a contingency plan in place" that involved transferring shipments to other transportation companies, she added. "It's business as usual."

The Budd Co., a supplier of parts to the automotive industry, said last week it hadn't encountered significant problems as a result of the strike, according to Louis J. Drapeau, manager-insurance and risk management. "I'm sure there's been some interruption, but not to the point of being disruptive."

The Pep Boys: Manny Moe & Jack also were well situated. The Philadelphia-based auto parts and service chain always has relied on couriers other than UPS, and while it expected delays as those companies became burdened with extra shipments, "it's not had much of an effect at all," a spokesman noted.

That isn't to say that all businesses are out of the woods.

Those that operate with "just-in-time" inventory systems were the most vulnerable to problems, an expert suggests.

"The idea behind just-in-time is not to have a lot of stock on hand," said Michael K. Evans, professor of economics at the J.L. Kellogg Graduate School of Management at Northwestern University in Evanston, Ill.

Heavy manufacturers, machinery makers, metal producers and similar industries in many cases rely on transportation companies to provide inventory practically as needed, he added. A prolonged strike could keep those companies waiting for some inventory and lead to production losses.

A UPS spokeswoman would not say how much the strike is costing but said the daily totals are high for the company, which earned more than $1 billion last year. She said the delivery giant is relying on self-insurance funds and existing lines of credit to cover expenses and losses related to the strike.

Its own contingency plan included canceling all money-back guarantees. The company also rejected a request by the Independent Pilots Assn. to pay the hotel expenses of pilots who abandoned UPS planes when the strike began.

Relying on management and non-Teamster employees, UPS managed to deliver about 10% of its normal daily volume last week.

—By Michael Bradford

Equisure

Continued from page 2

Belgian authorities have also reportedly issued an arrest warrant for Ronald Charles Bridle, whose business card describes him as an Equihot divisional director and who is also a director of Equihot's former parent company.

A Belgium Judicial Police official refused to confirm the warrant, but Mr. Bridle—who also uses the name Charles Bridel—acknowledged in London court filings last week that he is being sought "for questioning under warrant."

In an interview, Mr. Bridle strenuously denied any connection to Dai Ichi Kyoto and any wrongdoing by himself or Equisure.

"I have personally bought shares" of Equisure, he said. "Unless I've been completely stupid, I don't see what I have to gain by perpetrating a fraud. . .I don't believe the company has done anything wrong."

Equisure also issued a statement from its Antwerp office denying illegal insider trading and charging that the American Exchange "has breached its statutory responsibility to protect investors and the public interest by destroying the market in the company's stock."

The company nevertheless promised to "continue to cooperate" with American Exchange investigators.

However, accountants with Arthur Andersen & Co.—hired by the stock exchange to examine Equisure's books and records—had little success by last week in efforts to find the records at offices in Belgium, the United Kingdom and Monaco, a source familiar with the investigation confirmed.

On Friday, the exchange "initiated formal proceedings to review the continued listing eligibility of Equisure," an exchange spokeswoman said.

Equisure Chairman Peter G. Uttley and CEO Barrie Harding could not be reached.

The company is unrelated to Equisure Financial Network Inc., a Canadian insurance brokerage network that trades on the Toronto exchange.

Although Equisure traces its complex corporate history to a Monaco company formed in the 1940s, its appearance as an international reinsurer is fairly recent.

Mr. Bridle said Equihot S.A.M. of Monaco was a shell company formerly in the hotel equipment business that was acquired and converted to a metals trading company, which its articles of incorporation allowed.

In 1994, Mr. Bridle said, the metals trading operation was largely transfered to Equihot Delfstoffen N.V., a newly formed Belgian corporation. Equihot Delfstoffen, which reported 1995 revenues of $1.4 billion, in turn owned Equihot Verzekering N.V., a Curacao-domiciled insurance unit, and Equihot Herverzekering, a Belgium-based reinsurance unit, both of which were reportedly used only to insure their parent's metals trading.

By 1995, Equihot Herverzekering had begun writing unrelated business and its parent decided to divest ownership of the reinsurance unit.

In a complex deal last year, Equihot Delfstoffen took over a dormant Minneapolis-based former cosmetics company—Aloe Vera Naturel Inc., whose stock traded over the counter—in exchange for all of the stock of Equihot Herverzekering.

Aloe Vera then changed its name to Equisure and became the reinsurer's new parent company, according to Securities and Exchange Commission filings. Within weeks of the deal, Equihot Delfstoffen sold about 73% of Equisure's outstanding stock to an investor group that included Equisure management, retaining a 22% holding in the Minneapolis company, SEC filings say.

In December, Equisure stock moved to the American Exchange and was the exchange's biggest gainer in the second quarter of this year, rising from $6.25 per share last year to a peak of $17.13 a share last month. The stock closed at $15 a share when trading was suspended last Monday.

Accompanying the runup in the stock price has been a series of bullish press releases. Last month, for example, the company reported a 252% increase in second-quarter revenues to $9.2 million from $3.7 million in the year-earlier period.

In its year-end 1996 SEC filings, Equisure reported written premiums of $12.9 million. The company also reported assets totaling $76.7 million, including $36.4 million in marketable securities and $3.3 million in "certificates of gold deposit."

Equisure's outside accountants—Stephen Muggleton of Albion Management Services in Canterbury, U.K., John Geddes of Boeye Geddes Van Gulck & Co. in Brussels and Rick Pavelka of Stirtz Bernards Boyden Surdel & Larter in Minneapolis—declined to provide further information about the company's assets but said they saw no evidence of improper accounting practices.

Equisure has made inroads in both U.S. and London markets: Last year, for example, it executed a deal in which Intercargo Insurance Co. of Schaumburg, Ill., is fronting for it on a book of construction liability business produced by Dallas-based Construction Insurance Brokers Inc., an Intercargo executive confirmed.

Construction Insurance Brokers is separately described in Dallas court filings as a successor to Equipment Insurance Managers Inc., a broker that declared bankruptcy last year in the face of civil fraud charges. Elaine Garner, president of Construction Insurance Brokers and a former EIM officer, could not be reached.

Several of those involved in forming and operating Equisure have figured in previous insurance controversies.

Mr. Muggleton, who prepares the books and records of Equisure and Equihot Delfstoffen for audit, previously provided similar services to Dai Ichi Kyoto, another Belgian reinsurer that collapsed in 1995 and has since become the focus of fraud investigations in Belgium, the United Kingdom and the United States.

In an interview, Mr. Muggleton confirmed that he was questioned earlier this year by Belgian police, who seized his files on Dai Ichi and two related companies.

"I have no problem with that," he said. "As far as I'm concerned, (Dai Ichi) is dead and gone."

Mr. Bridle and David A.V. Carter—who signed the Aloe Vera purchase agreement as an Equihot Delfstoffen director—were previously directors of Hill Leonard Ltd. and W.G. Hill & Son (Insurance) Ltd., respectively, London brokers involved in a fraudulent property insurance placement that bilked Occidental Petroleum Corp. of $22.5 million in premiums in the mid-1980s. Both men were named in a lawsuit filed after the debacle by Occidental broker Bayly, Martin & Fay International Inc.

Mr. Muggleton also headed a U.K. corporation that acted as corporate secretary for W.G. Hill, documents show.

Mr. Bridle and Mr. Carter both deny wrongdoing in the Occidental affair, and Mr. Muggleton said he had nothing to do with Hill's operations.

Meanwhile, Mr. Bridle—while acknowledging that he is an Equihot Delfstoffen director—also denied ever being an officer or director of Equihot Herverzekering, despite his apparent use of a business card in the name of Charles Bridel describing him as the reinsurer's divisional manager.

Asked why he uses two versions of his name, Mr. Bridle said the different spelling is intended to make it easier to pronounce his name correctly with the emphasis on the second syllable. "There is not any intent to disguise my name," he said.

Investigators examining Equisure stock transactions are looking at several trading accounts, including some set up by officials of Equihot group companies, a source familiar with the inquiry said.

Also being examined are buy and sell transactions involving two Isle of Man companies, New Century Services Ltd. and Specialist Millenium Services Ltd., both formed in April.

Mr. Carter said in an interview that he has bought Equisure stock on behalf of both companies using their money. He said he does not know who owns the Isle of Man companies, though, and said he knows nothing of any alleged manipulation of Equisure stock.

For his part, Mr. Bridle charged that the controversy surrounding Equisure has been created by Michael A. Reeve, a former Dai Ichi Kyoto manager who was recently released by Belgian police after being arrested earlier this year. In a libel lawsuit filed in London last week, Mr. Bridle charges that Mr. Reeve has tried to extricate himself from the Belgian investigation by claiming that Mr. Bridle helped direct the Dai Ichi fraud and that the Equihot companies are linked to the scandal.

Michael Verhaeghe, a Brussels lawyer representing Mr. Reeve, denied Mr. Bridle's contentions and said Mr. Reeve will fight the lawsuit. BI

Crash

Continued from page 1

that since July 7 the landing equipment had been out of service to be upgraded, said an FAA spokesman in Washington. Flight 801 also was notified sometime during its landing approach that the equipment was out of order, the spokesman said.

Without the equipment, pilots are supposed to follow a chart showing how to descend using a "step landing." According to this chart, an aircraft should not be below an altitude of 1,440 feet when going over one of the airport's radio beacon, but Flight 801 nearly clipped that beacon before crash-landing, the FAA spokesman said.

Korean Air Lines' hull and liability insurance, which renews Nov. 1, is underwritten by the Oriental Fire & Marine Insurance Co. Ltd. of Seoul, but most of the coverage is reinsured in London. The reinsurance is led by Murray Lawrence aviation syndicate 824. The hull is insured for $60 million, and the airline carries a liability limit of at least $1 billion.

The Murray Lawrence aviation syndicate's claims manager flew out to the region last week, said underwriter John Butler.

Korean Air Lines has had 12 major or partial airline losses since 1983. That year, one of its Boeing 747s was forced down by Soviet fighters on a flight from Anchorage to Seoul, killing 246 passengers and 23 crew.

Eleven passenger claims are outstanding in the United States 14 years after KAL Flight 007 was shot down in 1983, according to George N. Tompkins Jr., a partner with Tompkins, Harakas, Elsasser & Tompkins in White Plains, N.Y. It has taken this long to pay passenger damages because "lawyers representing the families want more money than the law says they are allowed," he said. About $100 million so far has been paid to the KAL Flight 007 victims' families, he said.

Korean Air Lines is a signatory to the International Air Transport Assn.'s Intercarrier Agreement on Passenger Liability. That agreement waives the liability limitation on recoverable compensatory damages found in the Warsaw Convention, which governs international flights. The limitation varies between $10,000 and $145,000 per passenger, depending on the region, unless willful misconduct can be proved.

Korean Air Lines also signed an IATA implementation agreement that calls for strict liability up to 100,000 special drawing rights ($134,130), with proof of negligence required for damages above that amount. The implementation agreement also defines what conditions should be put in a passenger's conditions of carriage and in tariffs filed to governments.

It is not known, however, whether the airline agreed to an option in the agreements that would allow damages to be determined by the domicile of the passenger. Legal experts believe airlines cannot determine voluntarily where passengers can sue anyway because other articles in the Warsaw Convention that are still in effect state that lawsuits can be filed only where the ticket was issued or in the passenger's final destination.

This would mean that if an American on board the KAL flight bought a round trip ticket in Seoul, then he or his survivors could only sue in South Korea and not in Guam or in the United States, according to Lee Kreindler, senior partner for Kreindler & Kreindler in New York.

Although Korean Air Lines signed the IATA agreements, sources believe the South Korean government has yet to approve the new ticket wordings that would implement the agreement. Attorneys at the airline's London-

See **Crash** *on next page*

Dates

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past five months for an employee with ESRD, that company would continue to be the primary payer for an additional 25 months.

However, employers would not resume liability for employees with ESRD whose 18 months of employer-provided coverage had been reached prior to the enactment of the law.

The tax bill also retroactively reinstates the tax-favored status of employer-provided educational assistance benefits. Section 127, under which employers could reimburse employees tax-free for up to $5,250 in undergraduate educational expenses, expired June 30. But the new law reinstates Section 127 through May 31, 2000.

The law, also effective Aug. 5, eliminates the requirement that employers file copies of summary plan descriptions and summaries of material benefit modifications with the Labor Department. The department, though, still can request copies of those documents, which still must be furnished to employees.

In addition, the law permanently continues the Medicare Data Match Program. Under this program, the Health Care Financing Administration—the federal agency that administers Medicare—reviews employees' health care coverage and claims to see if employers' health care plans should have paid the claims rather than Medicare.

Typically, overpayment situations involve employees who stay on the job after 65—the year they are first eligible for Medicare—and hospitals that incorrectly bill Medicare rather than the older workers' employers or health insurer. Back in the early 1980s, Congress shifted to employers and away from Medicare the primary responsibility of paying medical bills of employees who stay on the job after 65. BI

Consent rule not dead yet

401(k) provision may resurface, but tax repeal applauded

WASHINGTON—While benefit lobbying organizations are celebrating the enactment of tax and budget bills, which generally will be a boon to employers, employees and retirees, they are wary that damaging provisions that were knocked out could resurface in other measures later this year.

Their biggest fear involves a provision proposed by Sen. Carol Moseley-Braun, D-Ill., that would have required employees to obtain the written consent of spouses before taking a distribution other than as an annuity from their 401(k) plans. The spousal consent provision had been part of the Senate tax bill, but congressional conferees dropped it amid a major employer lobbying campaign.

The battle over spousal consent has only been put off to another day, say officials at the Washington-based Assn. of Private Pension & Welfare Plans, one of several trade groups that mobilized their members to lobby against the provision.

This is something Sen. Moseley-Braun "feels very strongly about. She will try very hard to attach it to an appropriations bill," Lynn Dudley, the APPWP's director of retirement policy, said at a press briefing last week.

Indeed, there is a precedent for employee benefit provisions ending up as part of broader, unrelated appropriations measures.

Last year, two health care measures passed that way. Legislation attached to an unrelated appropriations bill mandated that group health care plans offer at least 48 hours of inpatient care for a mother and child after a normal delivery and 96 hours after a Caesarean section. Also in that bill was a ban on discriminatory annual and lifetime limits for mental health care that takes effect in 1998.

Still, while awaiting a future battle, APPWP officials are jubilant that they were able to derail the spousal consent provision, which they say would have added to employers' administrative costs while

APPWP

discouraging participation in 401(k) plans by employees fearful they would lose easy access to the money.

"A handful of groups and individuals made a difference," said APPWP President James Klein, referring to the employer lobbying effort against the provision.

APPWP officials also worry that legislators in the fall will take up what they call "legislating by body part," i.e., setting specific periods of time that group health care plans must cover certain physical conditions.

Through such efforts, legislators are attempting to make medical decisions, which is an inappropriate role for them, said Paul Dennett, the APPWP's vp of health policy.

The APPWP, though, saluted other provisions included in the final bill, including those that permanently repeal the 15% excise tax on large pension distributions and require the Labor and Treasury departments to issue rules next year guiding employers on which benefit forms they can deliver to employees through electronic information systems, such as e-mail and the Internet.

The 15% excise tax deserved to be repealed because it punished employees who did better at investing assets in their retirement accounts, Ms. Dudley said.

Ms. Dudley said she welcomes the push that the new law gives the regulatory agencies to develop rules for electronic delivery of benefit information to employees.

Such systems, Ms. Dudley said, are a very cost-effective way of providing employees information and far more accurate than paper-driven systems.

Other provisions in the new law will expand the availability of health maintenance organizations to retirees eligible for Medicare, allow more employees with pension plans to also make tax-deductible contributions to individual retirement accounts as well as raise to $5,000 from $3,500 the present value benefit threshold at which employers can remove former employees from their pension plans by giving them their accrued benefit in cash (*BI*, Aug. 4).

—By Jerry Geisel

Updates

Lloyd's intervenes in dispute

Continued from page 2

other Archer syndicates, had been led by David Lowe since 1993. It specialized in U.K. liability business. The 1994 year of account is still open, and currently Archer estimates the losses between 41% and 45% against £43 million capacity ($63.6 million) for that year of account. Both the 1995 and 1996 accounts also appear to be loss-making, with estimates for 1995 running at 15% against capacity of £42 million ($65.7 million).

Mr. Lowe left the syndicate last year when the extent of the losses started becoming apparent.

Stephen Wenman, chief executive of Archer Group Holdings P.L.C., owned by U.S. reinsurer Chartwell Reinsurance Co. of Stamford, Conn., said, "David Lowe's results have been very disappointing, and we deeply regret the underwriting results."

As the problems emerged earlier this year, Archer made a settlement offer to investors on the syndicate, said Mr. Wenman. All unlimited liability members accepted, he said, but corporate capital investors decided not to take the offer. Last week, New London Capital P.L.C. issued its results for the fiscal year ending March 31, 1997, results it said were negatively affected by syndicate 657's results. NLC had placed £7.5 million capacity ($12.8 million) on the syndicate for 1994, 1995 and 1996. NLC is advised on its Lloyd's syndicate participations by Chartwell Advisers, though Mr. Wenman pointed out the syndicate selection ultimately is a board decision.

Another corporate investor, The Benfield & Rea Investment Trust P.L.C., also issued a statement in which it said syndicate 657 held back the trust's performance.

A spokesman for Lloyd's said that regulators are aiming to bring the various parties together to thrash out the problem, rather than resorting to the courts. It is the responsibility of the corporate capital investors to undertake proper due diligence of the syndicate before investing, he added.

Dallas diocese seeks coverage

DALLAS—The Catholic Diocese of Dallas is asking a federal judge to rule that its insurers should be responsible for part of a $119.6 million sexual abuse judgment if the judgment is upheld against the diocese.

The diocese, which plans to appeal last month's jury verdict in the sexual abuse case (*BI*, July 28), filed suit shortly after the judgment, asking U.S. District Court Judge Jerry Buchmeyer to rule that coverage written by Interstate Fire & Casualty Co. and syndicates at Lloyd's of London will apply if an award is upheld.

The diocese was found partly responsible for the sexual abuse of several boys from 1981 to 1992 by former priest Randolph "Rudy" Kos.

Interstate Fire & Casualty provided annual limits from June 1978 through June 1985 of $4.8 million above $200,000 of underlying insurance. The lower layers consist of coverage written at Lloyd's and the diocese's self-insured retention. Interstate wrote coverage to limits of $800,000 above the lower layers for the policy period of June 1985 to June 1986.

Interstate Fire & Casualty argued, among other things, that its coverage should not apply because of the jury's findings that the diocese committed gross negligence and concealed information about the abuse. The final year of the coverage contained a sexual abuse exclusion.

Briefly noted

Shareholders in South African broker **Forbes Group Ltd.** have approved its acquisition of London-based Nelson Hurst P.L.C. In return, the vast majority of Nelson Hurst shareholders accepted the Forbes offer of 185 pence per share, making the deal unconditional. Based on their combined 1996 gross revenues, Forbes is the eighth-largest broker in the world (*BI*, July 21). . . . Former Assistant Treasury Secretary **George Munoz** has been sworn in as president and chief executive officer of the Overseas Private Investment Corp., which underwrites political risk insurance for U.S. companies doing business in certain developing countries (*BI*, July 28). The Senate voted unanimously to confirm him shortly before it left for its August recess. . . . **Home Holdings Inc.** has settled a rent dispute with Olympia & York Co. and will pay no more than $86 million for the reduced space it requires at its 59 Maiden Lane offices in New York. Home had stopped paying rent on the property last June, saying it would not need all of the 583,000 square feet it had leased for $130 million through September 1999 (*BI*, July 15, 1996). . . . The **National Assn. of Securities Dealers Inc.** voted last week to abolish mandatory arbitration of statutory discrimination claims for registered brokers. The new policy must be approved by the Securities and Exchange Commission before it becomes effective. . . . The sale of **Industrial Indemnity Holdings Inc.** to Fremont General Corp. was completed last week. Fremont will pay $365 million to Xerox Corp. for the workers compensation insurer and pay off $79 million of Industrial Indemnity's debt. . . . New York-based **Kroll Associates will merge** with Fairfield, Ohio-based O'Gara Co. in a "pooling of interests" transaction. Kroll, a corporate security and risk management firm, had been slated to be acquired by Alphretta, Ga.-based Choicepoint Inc., but no agreement could be reached (*BI*, April 7). O'Gara Co. provides corporate security services, systems integration and hardware products. . . . Norwalk, Conn.-based **Oxford Health Plans Inc.** named William M. Sullivan as its chief executive officer. Company founder Stephen F. Wiggins, who is relinquishing the title, will remain chairman. Separately, the company said last week it had agreed to purchase for an undisclosed amount privately held Riscorp Health Plans Inc., a Sarasota, Fla.-based health insurer that offers point-of-service and health maintenance organization plans to 15,000 members in the Orlando, Tampa, Jacksonville, Miami and southwest Florida areas. . . . The Senate Environment and Public Works Committee will vote on a **Superfund reform bill** early next month. The current version of the measure, S. 8, would not, however, make significant changes to Superfund's imposition of retroactive liability, which has long been a goal of risk managers and insurers. Senate Democrats withdrew from negotiations on a consensus reform bill after the Republican majority set a markup date of Sept. 11 for the bill.

Crash

Continued from previous page

based law firm, Beaumont & Son, did not return phone calls.

By signing the IATA agreement, KAL has waived all passenger limits, regardless of whether the airline has filed anything with the South Korean government, said Mr. Kreindler. "If we are assigned to represent any of the (KAL Flight 801) families, we will take the position that the signing of the (IATA) agreement is all that is necessary to waive the limits. . . .If they waived the limit, there is no limit."

KAL officials last week reportedly stated that the airline's liability will be 100,000 SDRs per passenger to pay for compensation for injury or death, medical treatment and funeral costs.

According to a KAL filing for a certificate of insurance with the U.S. Department of Transportation, the airline has a minimum liability limit of $300,000 per passenger for bodily injury for flights through the United States.

"This is an interesting loss (because) it's the first post-signatory case," said one aviation underwriter. "It's the first real test" of the IATA agreements.

To date this year, there have been nine total Western-built jet losses costing about $348 million in hull claims, including Flight 801, according to analyst Airclaims Ltd. In the past 12 months, there have been 20 such total jetliner losses, costing about $647 million in hull losses.

There has been a spate of losses and near misses since June, including the fiery crash last month of a Federal Express Corp. jet with an estimated value of $115 million (*BI*, Aug. 4).

This excludes the crash of a cargo plane in Miami last Thursday. The plane—a $10 million DC-8 cargo plane operated by Fine Air Inc. and owned by its sister company Agro Air & Associates—crashed on takeoff. The plane, on its way to Santo Domingo with 80,000 pounds of textiles, skidded across a six-lane highway, narrowly missing cars and pedestrians before crashing into a parking lot of a shopping mall. Four crew and one person on the ground were killed, and three others were injured.

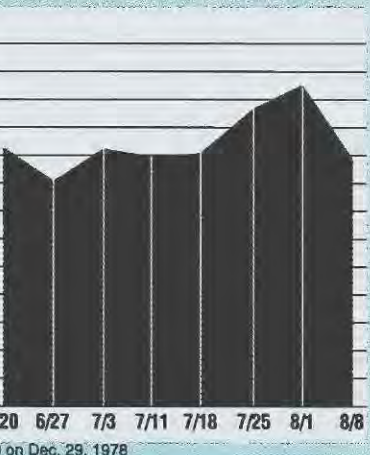
The hull and liability insurance is placed in London by C.E. Heath P.L.C. and led by Westminster Aviation Insurance Group.

Underwriters would like to raise airline hull and liability rates in the fall as a result of these losses, but this is probably wishful thinking, according to London brokers.

"They will need more (losses) to turn the market," summed up one broker. While total airline hull and liability premiums have dropped about 14% this year from this time last year, year-to-date claims also were down substantially until the past few weeks, he said.

Though claims may now be rising, "we're only halfway through the year. If the rest of the year remains quiet (in terms of airline losses), then we could have an average year again," and premiums would stay where they are. BI

BI Insurance Index



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Source: Nordby International Inc.

401(k)

Continued from page 1

York. He said many companies already have signature-free loans, but the letter might influence some previously hesitant companies to eliminate signatures.

"It will help the progress towards paperless transactions," said Tom Butterworth, a consultant with Hewitt Associates in New York. "But I wouldn't want to suggest it will be a dramatic sea change, because lawyers still want security on the issue of loan enforceability."

One large issue the letter does not address is whether a signature-free loan is enforceable. This is an unresolved legal question on which benefit attorneys give differing opinions, consultants said. Some attorneys take a conservative approach and say a signature is required for a loan, while others think no signature is required, that simply the endorsement on the back of the loan check or the depositing of the money makes the loan enforceable.

Enforceability of the loan is very important. If the loan is not enforceable, it might be considered a distribution and therefore subject to taxation and possible penalty. The approach taken by states on enforceability of electronic signatures varies, said Henry Saveth, a principal with William M. Mercer Inc.'s Washington Resource Group.

But for now, loan documents will continue to be be used. Bankers Trust sends these documents to plan participants along with the loan check. The loan documents state the amount of the loan, the terms of repayment and state that depositing the check means the participant agrees to all the terms.

"We still believe there is a piece of paper that is necessary at this point, and that is the loan agreement," Mr. Barry said. "This is an evolving process, and it's conceivable that in five years no paper will be required."

One advantage of the ruling may be the elimination of TAC cards, short for Transaction Authorization Cards. These cards are completed and signed by employees when they join 401(k) plans and are kept by the plan administrators to allow future transactions without additional signatures. The ruling may render the need for a signature on file obsolete and remove an administrative burden. "Elimination of TAC cards will be a major achievement," Mr. Barry said.

Elimination of TAC cards is only part of the goal of plan administrators. The ultimate goal is eliminating all paperwork and making the transaction completely paperfree so that participants can arrange for the loan over the phone or Internet, and receive the check a few days later. This system will not only reduce administrative work but will speed up transactions that drag on as paperwork is retrieved and sent between the participant and administrator. "That's a problem we really don't want to have," Mr. Barry said.

One concern with making loans too easy, consultants said, is that employees may too frequently withdraw money from their 401(k) plans.

Because the plans are intended for employees' retirements, loans reduce the money—if not repaid—later available to them. Because employees contribute their own money into the plan, however, consultants say without a loan feature, many employees won't participate at all.

"They (loans) may pose a risk to retirement fund plans," Mr. Saveth said. "But those funds might not be in the plan to begin with if there is no escape hatch in the plan in the form of a loan."

Eliminating paper might also reduce participants' awareness of the effects of the loan.

When someone takes out a loan from a 401(k) plan, he or she repays it, with interest, through payroll deductions. If the employee leaves the company before the loan is repaid, however, the outstanding balance of the loan is treated as a distribution and is subject to taxes and penalties.

Because of these issues, companies try to educate their employees about the risks of taking out a loan.

What they will not do, however, is oversee their employees' activities. Most companies have adopted an "I won't hold your hand but I will educate you" philosophy, said Marty Collins, a senior consultant with The Kwasha Lipton Group in Fort Lee, N.J.

Despite its limitations, the letter will help push 401(k) plans into a paperless environment, like many other financial transactions, consultants said. "Qualified plans will not be held back in the 20th century if the rest of the world advances into the 21st century," Mr. Saveth said. BI

PCS catastrophe options

As of Aug. 8

Call spread	Price bid/ask
Eastern September 1997	
40/60	2.2/3.4
60/80	1.7/3.0
80/100	—/2.3
National Annual 1997	
80/100	—/4.5
60/80	3.4/6.0
Southeastern September 1997	
40/60	2.1/3.0
60/80	1.5/2.2
80/100	—/2.0
California Annual 1997	
40/60	.4/1.6
80/100	—/1.3
Western Annual 1997	
40/60	.5/1.8
50/70	—/1.0

Total volume: 632 Total open interest: 16,733

For information on PCS cat options, call the Chicago Board of Trade at 312-435-3674.
Source: Chicago Board of Trade

British Issues

Companies	Price pence	P/E	Div. pence	Yield %	1 week high—low
Commi Union	741	10.9	35.8	5.1	764—583
Genl Accident	938	6.9	34.3	4.5	978—631
Gdn Royal Exch	300	4.3	12.2	4.0	311—243
Independent	888	11.2	13.3	1.9	908—490
Royal & Sun	542	15.0	19.7	4.6	546—386
Brokers					
Bradstock	85	12.0	6.4	9.9	90—54
CE Heath	142	9.1	1.5	1.3	143—74
Lmbrt Fenchurch	129	9.5	8.4	8.5	133—101
Lloyd Thmpson	184	NA	NA	NA	206—163
Nelson Hurst	179	16.3	8.6	6.0	192—121
Sedgwick Grp	118	10.2	8.9	7.5	144—115
Steel Brl Jones	27	9.6	1.5	6.8	40—22
Willis Corroon	127	12.6	6.6	6.6	165—117

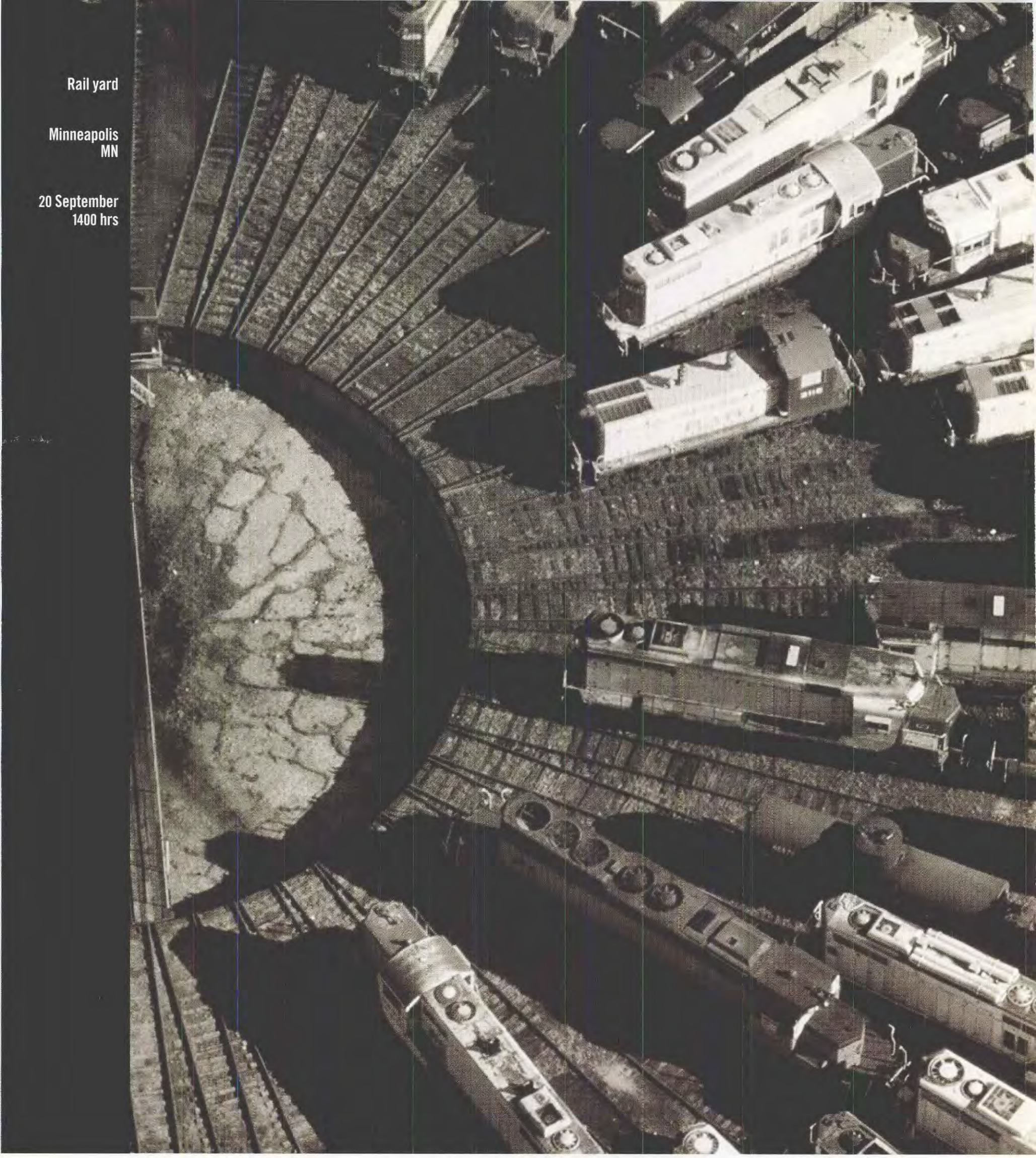
Note: Prices are Aug. 8 closings; other numbers from Aug. 7.
Source: Nordby International Inc.

BI Industry Stock Report AUG. 4, 1997, THROUGH AUG. 8, 1997

BROKERS		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
Aon Corp.	NYS	52.75	-1.86	27.36	56.13	31.88	1042
E.W. Blanch Holdings Inc.	NYS	28.13	-2.81	39.75	30.63	18.00	12
Gallagher Arthur J. & Co.	NYS	34.75	-3.30	12.10	37.75	29.13	178
Hilb, Rogal & Hamilton	NYS	16.44	-0.38	24.06	17.25	12.13	66
Kaye Group Inc.	NDQ	7.50	5.26	42.86	7.75	4.38	7
Marsh & McLennan	NYS	73.06	-4.73	40.50	78.25	45.50	1726
Poe & Brown	NDQ	36.75	-0.34	38.68	38.50	23.75	16
Sedgwick Group PLC	NYS	9.50	-6.17	-8.43	10.88	9.50	13
Willis Corroon Corp.	NYS	10.19	-2.98	-11.41	13.50	9.38	344
BROKERS	AVERAGE		-1.93	22.26			
INSURERS/REINSURERS							
ACE Ltd.	NYS	84.75	0.59	40.96	87.25	44.25	527
Acceptance Insurance Cos.	NYS	21.94	-4.10	11.08	24.13	17.00	519
AEGON N.V.	NYS	73.50	-0.76	16.21	78.88	47.13	534
Aetna Life & Casualty	NYS	97.63	-14.36	22.03	118.13	60.13	18027
AFLAC Inc.	NYS	53.44	-2.06	25.00	56.44	32.88	1740
Allied Group Inc.	NYS	50.94	8.23	56.13	53.63	24.38	175
Allstate Corp.	NYS	74.13	-4.51	28.08	79.94	43.50	3690
AMBAC Indemnity Corp.	NYS	83.00	0.84	25.05	85.88	49.88	534
American Bankers Ins.	NDQ	69.13	3.36	35.21	70.06	42.75	137
American Financial Group	NYS	45.75	-2.66	21.19	49.25	29.63	356
American General	NYS	51.19	-1.09	25.23	54.75	35.63	2212
American Heritage Life Ins.	NYS	37.81	-2.42	44.05	38.75	19.00	40
American Indemnity/Fin'l	NDQ	13.00	4.00	26.83	14.00	9.50	0
American International	NYS	99.25	-3.99	37.53	106.88	62.63	4300
Argonaut Group	NDQ	31.75	-3.79	3.25	33.38	26.75	52
Baldwin & Lyons Inc.	NDQ	20.00	3.23	8.84	22.63	17.38	10
Berkley W.R. Corp.	NDQ	56.88	-1.52	12.07	60.50	43.00	289
Berkshire Hathaway Inc.	NYS	45500.00	-4.21	33.43	48600.00	30000.00	1
Capital RE Corporation	NYS	52.75	-0.24	13.14	56.38	35.38	40
Capital Transamerica Corp.	NAS	25.88	-2.82	-15.85	27.50	13.13	11
CapMac Holdings Ltd.	NYS	27.50	1.38	-16.98	36.88	22.50	2084
Capsure Holdings Corp.	NYS	13.63	-0.91	18.48	18.88	8.00	59
Centris Group Inc.	NYS	21.69	-3.07	10.51	23.56	16.13	41
Chartwell Re	NYS	33.00	-0.38	23.36	33.50	21.50	91
Chubb Corp.	NYS	67.50	-2.09	25.58	70.94	43.63	1855
CIGNA Corp.	NYS	190.75	-3.05	39.62	200.75	111.38	804
CNA Financial Corp.	NYS	111.00	-5.78	3.74	119.13	95.88	173
EMC Insurance Group Inc.	NDQ	13.38	1.90	11.46	13.50	10.50	92
Enhance Financial Services	NYS	49.00	-2.61	34.25	51.75	27.88	120
Everest Reinsurance	NYS	38.06	-3.79	32.39	40.38	23.75	390
Executive Risk Inc.	NYS	58.88	7.78	59.12	58.88	33.38	219
EXEL Ltd.	NYS	54.00	-0.80	42.57	57.50	31.75	632
Fremont General Corp.	NYS	37.56	-11.75	21.17	43.44	25.38	266
Frontier Insurance Group	NYS	33.88	6.48	77.12	35.00	17.75	2743
Gainsco Inc.	NYS	8.69	-4.79	-9.74	10.88	8.13	398
General RE Corp.	NYS	196.00	-3.92	24.25	208.88	140.75	738
Gryphon Holdings	NDQ	17.13	0.00	21.24	17.75	12.00	70
Guaranty National Corp.	NYS	27.31	2.10	63.06	27.50	13.75	46
Harleysville Group	NDQ	38.19	-0.97	25.20	38.88	24.50	62
Hartford Steam Boiler	NYS	53.88	-3.36	16.17	56.00	42.75	166
HCC Insurance Holdings	NYS	28.56	-6.92	19.01	32.75	21.50	168
IPC Holdings Ltd.	NDQ	29.63	0.00	32.40	30.50	19.50	163
ITT Hartford Group	NYS	84.94	-0.80	25.83	88.81	51.00	2231
LaSalle Re Ltd.	NDQ	34.63	2.59	18.38	34.63	22.38	308
Lincoln National	NYS	68.56	-4.61	30.60	73.00	43.13	1738
MAIC Holdings Inc.	NYS	47.50	0.40	40.22	50.00	28.25	93
Markel Corp.	NYS	142.00	-2.07	57.78	147.50	83.00	6
MBIA Insurance Group	NYS	115.00	-1.81	13.58	122.00	77.88	713
Meadowbrook Insur. Group	NYS	25.50	0.49	21.43	29.63	15.25	35
Mid Ocean Ltd.	NYS	58.44	-2.60	11.31	61.00	39.25	198
MMI Cos. Inc.	NYS	26.19	-5.42	-18.80	33.38	20.75	92
Mutual Risk Mgmt. Ltd.	NYS	48.13	-0.90	30.07	49.63	27.13	48
NAC Re Corp.	NYS	46.88	-2.47	38.38	49.50	32.63	343
Navigators Group	NDQ	18.94	2.36	3.77	20.63	15.75	29
Nobel Insurance Ltd.	NDQ	14.13	-4.24	12.44	15.38	11.25	19
NYMagic Inc.	NYS	24.00	5.49	33.33	24.00	17.00	16
Ohio Casualty Corp.	NDQ	47.00	0.27	32.39	48.06	31.75	90
Old Republic Int'l	NYS	35.19	-4.74	31.54	37.00	21.13	1420
Orion Capital Corp.	NYS	40.00	-3.90	30.88	42.25	24.38	127
Partner Re Ltd.	NYS	41.44	0.00	21.88	42.50	27.50	240
Penn-America Group Inc.	NDQ	19.25	6.21	79.07	19.38	9.88	333
Philadelphia Cons. Holding	NDQ	39.00	1.30	67.74	42.25	17.25	20
PXRE Corp.	NYS	31.00	0.61	25.25	31.88	22.25	70
Reliance Group Holdings	NYS	12.06	-7.66	32.19	13.88	7.50	765
Reliastar Financial Corp.	NYS	75.13	-3.53	30.09	79.00	43.63	328
RenaissanceRe Holdings Ltd.	NYS	43.69	1.01	32.39	46.13	26.75	131
Risk Capital Holdings	NDQ	20.75	0.00	7.10	22.13	15.88	107
RLI Corp.	NYS	37.44	1.53	12.17	39.63	23.75	56
St. Paul Companies	NYS	74.44	-4.26	26.97	82.81	50.63	1255
SCOR	NYS	42.50	-2.86	23.64	44.50	34.00	10
SAFECO Corp.	NDQ	46.50	-3.38	17.91	49.38	32.13	1181
Seibels Bruce Group	NDQ	8.13	-2.99	-1.52	11.25	5.88	167
Selective Ins. Group	NDQ	53.00	-0.47	39.47	54.00	32.00	3
Sphere Drake Holdings	NYS	8.94	1.42	0.70	10.50	8.13	99
TIG Holdings	NYS	31.81	-1.55	-6.09	38.00	26.38	1450
Titan Holdings, Inc.	NYS	21.44	-9.26	29.92	25.00	12.75	438
Tokio Marine & Fire	NDQ	63.75	1.39	36.73	66.00	42.00	125
Torchmark Corp.	NYS	37.19	-4.72	47.28	40.00	20.75	1210
Transatlantic Holdings	NYS	71.63	-2.22	33.46	75.38	44.38	128
Travelers Property	NYS	42.06	-1.32	18.90	43.56	26.50	439
Travelers Corp.	NYS	66.13	-6.78	45.73	73.63	31.63	8711
Trenwick Group Inc.	NDQ	37.00	-3.27	20.00	39.63	30.75	49
Unico American Corp.	NDQ	11.25	1.12	3.45	11.50	7.13	85
Unionamerica Holdings	NYS	21.00	-5.62	18.31	22.75	14.75	44
United Fire & Casualty	NDQ	39.50	2.60	12.06	40.50	29.75	4
Unitrin	NDQ	60.88	-1.42	9.19	64.75	46.00	244
UNUM Corp.	NYS	43.06	-3.50	19.20	48.44	30.50	1114
USF&G Corp.	NYS	22.50	-6.74	7.78	25.50	15.75	2148
Vesta Insurance Co.	NYS	52.81	0.00	68.33	54.00	24.50	219
Washington National	NYS	29.00	0.87	5.45	30.75	27.13	215
Zenith National Ins.	NYS	26.44	-2.76	-3.42	28.50	24.63	28
Zurich Reinsurance Centr.	NYS	39.31	0.00	25.80	39.50	28.38	5
INSURERS/REINSURERS	AVERAGE		-1.53	24.02			
HEALTH MAINTENANCE ORGANIZATIONS							
Humana Inc.	NYS	23.44	-2.09	23.36	25.00	17.38	3196
Oxford Health Plans	NDQ	74.00	-11.11	26.36	89.00	40.38	17955
Pacificare Health Sys.	NDQ	66.06	1.05	-18.69	86.25	55.50	264
Safeguard Health Enter.	NDQ	12.00	-8.57	-31.43	22.50	9.63	123
Sierra Health Services	NYS	34.38	1.10	39.59	35.25	22.38	271
United Healthcare Corp.	NYS	51.75	-8.41	15.00	60.13	35.13	19418
Wellpoint Health Networks	NYS	49.63	2.19	44.36	54.00	24.38	1015
HMOs	AVERAGE		-3.69	14.08			
ALL COMPANIES	AVERAGE		-2.38	20.12			

Top advancing issues: Allied Group Inc., Executive Risk Inc., Frontier Insurance Group. Leading decliners: Aetna Life & Casualty, Fremont General Corp., Oxford Health Plans. Most active issue: United Healthcare Corp. The *BI* Index dropped 3.5%; the Dow Jones 30 Industrials dropped 2.0%; the S&P 500 decreased 1.4% and the NYSE Composite gained 1.5%. Average P/E: Brokers, 17.3; Insurers/reinsurers, 41.8; HMOs, 27.2.

System design: Nordby International Inc.



WITHOUT THE RIGHT COVERAGE, YOUR COMPANY CAN BE FLATTENED BY A TRAIN THAT'S STANDING STILL.

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