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Updates

U.S. members must battle Lloyd's in England, judge rules

CHICAGO—Lloyd's of London last week won the first of several court battles it faces to extract up to $90 million from members in the United States who refused to pay their Equitas Ltd. premiums.

U.S. District Judge Harry Leinenweber in Illinois ruled that the English courts are the proper arena for any disputes with Lloyd's and that the two members in the case—a married couple—should pay their Equitas premium.

The members argued that, under the U.S.

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Markel making its mark

Markel's purchase of Terra Nova would expand its global reach (in millions of dollars)

Year-end 1998	Markel	Terra Nova	Combined
Gross premiums	$437.5	$759.4	$1,196.9
Net income	$57.3	$72.4	$129.7
Shareholders equity as of June 30, 1999	$414.9	$532.7	$947.6

Source: Company reports

Markel bids for Terra Nova

Deal would boost U.S. insurer's reach

By GAVIN SOUTER

GLEN ALLEN, Va.—Markel Corp. will propel itself from a successful U.S. excess and surplus lines insurer into an international insurer and reinsurer with its proposed $1.08 billion purchase of Terra Nova (Bermuda) Holdings Ltd.

While the radical change will significantly increase opportunities for Markel, it must be carefully managed because of the differences in the two companies' makeup and core business lines, analysts say.

Markel plans to do just that by retaining most of the current management of Terra Nova and its operating subsidiaries, said Steven A. Markel, vice chairman of Markel in Glen Allen, Va. "It ain't broke, and we don't need to fix it," he said.

Instead, Markel will greatly expand its premium volume and profits by taking over a well-run insurer and reinsurer, he said.

Markel will pay $905 million for Terra Nova in cash and stock and assume $175 million of Terra Nova's debt. The payment will be approximately 40% cash and 60% stock.

Markel currently writes excess and surplus specialty coverage and programs in all 50 states.

Terra Nova, which is based in Bermuda, has four operating units: a Bermuda reinsurer; a London market insurer and reinsurer; a Lloyd's of London managing agency with eight

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Benefits in captives may get a new look

By JERRY GEISEL

WASHINGTON—The U.S. Labor Department may be more flexible in how it reviews employer requests to fund employee benefit coverages through their domestic captives, an official says.

Funding benefit coverages through captive insurers has been discussed for years in risk management circles as a means of broadening captives' risks, cutting costs and, most recently, as a potential way for a parent to deduct property/casualty premiums paid to the captive.

But a tough 20-year-old Labor Department regulation has prevented nearly all employers from expanding their captives to fund benefits. Among other things, the 1979 regulation states that for a captive to be tapped to fund benefits, it must be licensed in at least one domestic state, and no more than 50% of the captive's business can be related to its parent.

Even if those two requirements are met, programs in which benefits are reinsured through captives are reviewed by the government on a case-by-case basis.

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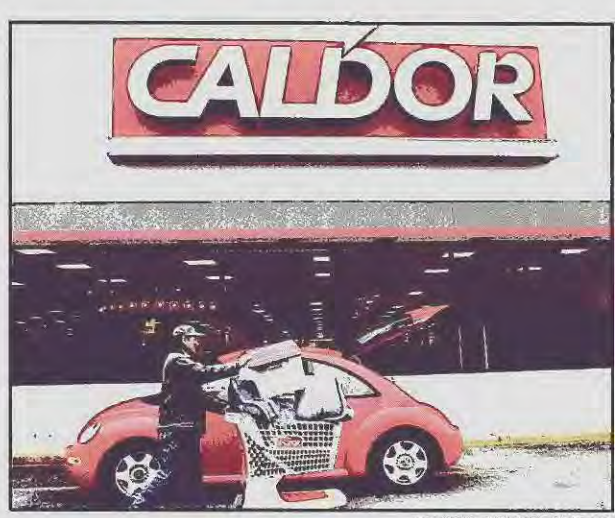

PHOTO: AP/WIDE WORLD

Caldor Corp., which is going out of business, would have provided a test of the Labor Department's new flexibility.

Court says lawmakers went too far

Ohio tort reforms dead

By MARK A. HOFMANN

COLUMBUS, Ohio—An Ohio Supreme Court decision overturning the state's comprehensive tort reform law may not be the last word on the subject, reform advocates say.

In fact, the sweeping nature of the 4-3 decision in *Ohio Academy of Trial Lawyers et al. vs. Sheward et al.* could lead some reform advocates to try to make a federal case out of the state ruling.

What is, at first glance, a purely state matter might be appropriate for a federal court because of the constitutional right of all U.S. citizens to live under a republican form of government, said Victor E. Schwartz, general counsel for the American Tort Reform Assn. in Washington.

Mr. Schwartz noted that the Ohio reversal follows other successful efforts by the Assn. of Trial Lawyers of America to overturn state reforms. "This is the 90th time where something like this has happened—where a state court has nullified a tort law" on the basis of a state constitution, he said.

"I think it portends other decisions nullifying state tort reforms. That process will continue until some clear counter-wave to the ATLA approach arises. The ATLA approach, plain and simple, is to use state constitutions to nullify state tort reforms," Mr. Schwartz said.

He got no argument on that point from Robert Peck, senior director-legal affairs and policy research at ATLA in Washington. Mr. Peck was one of the lawyers who argued the plaintiffs' case before the Ohio Supreme Court.

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Internet tool can track care

'Virtual provider organization' also aims to help avoid injuries

By MICHAEL BRADFORD

A new Internet tool aims to reduce both the cost and frequency of occupational injury and illness.

OccuLink Inc., a Melville, N.Y.-based company, has formed what it calls the first "virtual provider organization," which, among other things, helps manage the delivery of care to injured employees and provides information used to place employees in jobs where they are less likely to be hurt.

Its developers say the product, called OccuLink.net and accessed at occu-link.com, will result in workers compensation savings because it can help reduce the number of workplace injuries. OccuLink.net's first user is a large grocery distributor that says the system is expected to reduce injuries by matching new hires with jobs best suited to their functional skills.

OccuLink Inc. was spun off earlier this year from Sandler Occupational Medicine Associates Inc., a Melville-based company that develops programs to help

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NEWSPAPER

Updates

Lloyd's wins against U.S. names

Continued from previous page
Constitution, U.S. citizens are entitled to a hearing in the United States before they can be forced to pay money to a foreign entity. They will appeal the ruling.

A similar suit has been heard in New York and is awaiting the judge's ruling, and other suits are pending in Illinois, said Theodore W. Grippo Jr., of counsel at Pembroke & Brown in Park Ridge, Ill. He represented the members.

Judge Leinenweber ruled that Lloyd's was entitled to the premiums due to emergency circumstances at Lloyd's in 1996 at the time of reconstruction and renewal and that the members had adequate recourse in English courts, Mr. Grippo said.

"We believe that the judge was wrong on both counts," he said.

The members in the case, James and Mary Ashenden, face Equitas premiums of $700,000, Mr. Grippo said.

Meanwhile, jurisdiction also is an issue in a case decided earlier this month in which a judge said U.S. federal courts are not the correct forum for policyholders to sue Lloyd's (see story, this page).

Rockwell gets summary judgment

CHICAGO—A federal judge awarded summary judgment to Rockwell International Corp. in a case in which the U.S. Equal Employment Opportunity Commission alleged that Rockwell had used an abnormal result on a pre-employment nerve test to screen and turn down job applicants.

The judgment in *U.S. Equal Employment Opportunity Commission vs. Rockwell International Corp.*, was based, however, not the legality of Rockwell's employment test but on the questionable quality of a report prepared by an expert witness for the EEOC.

Gordon Waldron, an EEOC senior trial attorney, was reprimanded by U.S. District Judge Robert Gettleman in the written judgment for influencing the methodology and relevancy of the report compiled by the commission's expert witness. Mr. Waldron declined to comment.

A companion case also brought by the EEOC against the Pittsburgh-based Rockwell International and Cambridge Industries Inc. still is proceeding and is poised to set a precedent for employers, said Nina Stillman, Rockwell's attorney and a partner at Vedder, Price, Kaufman & Kammholz in Chicago. Cambridge now owns the Centralia, Ill., plant where the refused workers had applied (*BI*, Dec. 7, 1998).

Bermuda exchange halts trading

HAMILTON, Bermuda—The Bermuda Commodities Exchange suspended trading earlier this month after it failed to attract sufficient business in the nearly two years it has been offering to trade catastrophe-linked options contracts.

"Market conditions are such that people are using the traditional markets," said Michael Murphy, secretary of the BCE. If market conditions improve, the exchange could resume trading, Mr. Murphy said.

The BCE was set up in October 1997 with 20 member companies drawn from financial services and reinsurance companies. In August 1998, it traded its first significant contracts, but no losses affected the contracts, and there has been little activity in 1999, Mr. Murphy said.

"We decided that, rather than incurring the ongoing costs, at this time we would suspend the exchange and wait to see whether market conditions improve," he said.

Court allows Medicare suits

SANTA ANA, Calif.—Medicare recipients may sue health maintenance organizations in state court for punitive damages stemming from the denial of referrals or certain treatments, a California appeals court has ruled.

The decision in *McCall vs. PacifiCare of California Inc.* is the first by a California appeals court on the issue of allowing Medicare recipients to sue their HMOs in state court. Similar cases previously had been dismissed, with lower courts ruling that the Medicare Act precluded lawsuits in state courts.

An original suit was filed by a disabled businessman who suffered from lung disease and claimed PacifiCare tried to cut costs by refusing to refer him to a transplant specialist. The plaintiff has since died, but his widow, Barbara McCall, also filed a lawsuit. Her suit claimed emotional distress and other allegations against PacifiCare and the provider group, Greater Newport Physicians Inc., court records show.

A trial court judge determined all causes of action arose under the Medicare Act, which requires administrative remedies and federal court review. But the 4th District Court of Appeal in Santa Ana, Calif., ruled that the case can proceed. The higher court ruled in Ms. McCall's case that causes of action by Medicare recipients that do not seek reimbursement for Medicare benefits can be filed in state court.

Gen American delays processing

ST. LOUIS—General American Life Insurance Co. will delay processing loan and surrender requests involving large policies until 30 days after those requests are submitted.

A company spokesman said the action was taken at the request of the company's agents in order to give them time to contact policyholders and discuss their requests. The move affects only policies of more than $100,000 in cash value—about 3% of the company's 300,000 policies.

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Errors & omissions

• An Aug. 2 story on catastrophic health care claims omitted the name of Franklin Health Inc., a partner of Wellmark Blue Cross & Blue Shield of Iowa. Upper Saddle River, N.J.-based Franklin Health provides case management services for Wellmark's Personal Path Program.

Liberty settles fraud suit

Deal struck with Kentucky agent prior to trial

By DAVE LENCKUS

LOUISVILLE, Ky.—Liberty Mutual Insurance Co. has settled a lawsuit charging former Kentucky insurance agent W. Anthony Huff and others with fraud and racketeering over their alleged mishandling of trucking insurance premiums.

Liberty Mutual's suit alleged the defendants misappropriated $600,000 of premiums generated by a motor vehicle liability insurance program the insurer wrote for members of a trucking association Mr. Huff operated. Mr. Huff, whose Kentucky license was revoked last year, also ran the broker that administered the program under a managing general agent agreement with the insurer.

Additionally, Liberty Mutual alleged that the defendants misused their underwriting authority with the insurer to defraud premium financing companies.

Terms of the Aug. 11 settlement, reached five days before the scheduled trial date in the case, were confidential. Attorneys for both sides, however, said the settlement resolves all outstanding claims and issues in the case.

The attorneys, though, would not comment specifically on whether the settlement would clear one defendant of a default

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Cost trends, regulation still concerns

Price hikes helping HMOs

By JUDY GREENWALD

The benefits of the hefty rate increases introduced by managed care companies are becoming more apparent in their bottom lines.

Many of the large health maintenance organizations reported improved results for the first half, and many expect results to continue to be strong at least through this year.

But some analysts are concerned about whether HMO pricing can keep up with rising medical costs as well as about the eventual impact of possible regulatory reform.

"I think things are looking better than they have in a couple of years," said David Olson, vp-investor relations for Woodland Hills, Calif.-based Foundation Health Systems Inc.

"I think that the pricing discipline that the industry, by and large, is showing is absolutely encouraging," Mr. Olson said.

Things "are proceeding more or less in line with expectations both on the pricing and the cost front," said David K. Erickson, vp of investor relations at PacifiCare Health Systems Inc. in Santa Ana, Calif.

While cost trends are increasing,

See **HMOs** *on page 4*

Opposing view on jurisdiction

Judge says policyholders may not sue Lloyd's in federal court

By JOANNE WOJCIK

NEW YORK—Can a policyholder sue Lloyd's of London in federal court or not? That is the question prompted by a recent U.S. District Court decision.

While the U.S. District Court for the Southern District of New York had earlier ruled in *Squibb vs. Accident & Casualty* that policyholders can use the federal courts to sue Lloyd's, another judge in the same court recently ruled just the opposite.

Judge Shira A. Scheindlin ruled Aug. 11 in *Allendale Mutual Insurance Co. vs. Excess Insurance Co. Ltd.* that federal court was not the proper jurisdiction for the four-year-old coverage case because 19 of the 36 syndicates named in the suit included individual underwriting members—known as names—from the plaintiff's home state of Rhode Island.

Moreover, she said, it is unlikely that any of the underwriting members "in the syndicates could satisfy the $50,000 amount in controversy requirement."

Under current federal court rules, federal jurisdiction applies only if all defendants reside outside the plaintiff's home state and if each defendant is potentially liable for at least $75,000. When the Allendale case was filed in 1995,

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ART option spurs interest

By RODD ZOLKOS

BURLINGTON, Vt.—Vermont is reviewing its first application for a "sponsored captive," a new alternative risk financing option created by a 1998 change in state law.

Although similar to rent-a-captives in other domiciles, Vermont does not allow participants in sponsored captives' protected cells to write unrelated third-party business through the cell. Sponsored captive formation in Vermont also is limited to traditional insurers or reinsurers and existing captives.

As members of Vermont's captive industry gathered in Burlington for the annual conference of the Vermont Captive Insurance Assn. last week, Leonard D. Crouse, the state's director of captive insurance, said last Wednesday that the state that day had received its first application for a sponsored captive.

While declining to identify the applicant, Mr. Crouse said "it's a traditional insurance company from New England."

The captive director said the state also is in talks with two other companies interested in

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Inside

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Ward's 50 set the mark for best insurer practices

By JUDY GREENWALD

The best performers in the insurance industry have implemented wide, flat organizational structures in their companies, employing more front-line workers for each supervisor, on average, than do comparable insurers, according to a benchmarking study.

This is among the conclusions of the Ward Financial Group's annual study of best practices in the insurance industry. Using statutory data from 3,004 property/casualty and 1,407 life/health insurers, the Cincinnati-based insurer management consulting and investment banking firm Ward Financial identifies the 50 insurers in each sector that have done the best job of balancing financial safety, consistency and performance over the past five years.

Ward's proprietary benchmarking databases include detailed data on the 28 of these 100 insurers that use its consulting service. That group of 28 is composed of 20 property/casualty insurers and eight life/health insurers.

This information is then analyzed to determine the "best practices" that set these 28 insurers apart from others in Ward's detailed databases. The databases contain 160 insurers, all of which are clients of Ward.

"In general, the high performers do them, and the average performers don't do them," Ward Financial Group Chairman John L. Ward said of the best practices. "That's what makes them a distinguishing practice," he said. "These are examples of what the good companies do to make them better than the average."

For instance, in the technology arena, many of the top-performing companies have embarked on their Y2K remediation efforts without putting their other information technology projects on hold (see story, page 10).

The Ward analysis also reveals a continuing trend toward outsourcing by all companies (see story, page 12).

In the "people" arena, in addition to having a flat organizational structure, the practices that set the top companies apart include:

- Having either a home office-driven or a field-driven organization strategy, but not both.
- Using incentive plans as a significant element of compensation.
- Sustaining reasonable levels of employee turnover.
- Rotating managers through different departments during their careers to improve their knowledge of the business.
- Having outstanding productivity, as measured by premium per employee and policies in force per employee.
- Having a standard 40-hour work week.

Here is the Ward analysis of these best practices:

Flat organizational structure

The top-performing companies are more likely to have a flatter organizational structure than are their peers. So far, only about 16% of companies in the benchmarking group of 160 have this structure, "so it is still a relatively well-kept secret," said Mr. Ward.

"A wide, flat organizational structure means a company has more front-line workers and fewer supervisors. So they have relatively more of their workforce in the front lines servicing agents and policyholders, so that's an effectiveness benefit," said Mr. Ward.

In addition, because the insurers hire relatively few supervisors, whose total compensation, on average, is $50,000 more than that of their front-line workers, companies with such a structure save significantly on compensation, the analysis showed.

Ward found that the average number of front-line workers per supervisor among the high performers in the property/casualty sector was 6.6, compared with 5.9 for the other property/casualty companies.

There is some variation by function, though. For instance, in policy processing among property/casualty insurers, high performers have 19.7 workers per supervisor, while other property/casualty companies have only 11.7.

But in commercial underwriting in the property/casualty sector, the high performers actually have fewer workers per supervisor—just 3.6, compared with 5.2 for the others.

Mr. Ward explained that, in most technical areas, such as underwriting, "high performers generally have a narrower span of control, because they believe the technical accuracy of the function being performed is critical."

The opportunities to implement a flat organizational structure lay in areas that mainly involve "pushing paper," such as policy processing, said Mr. Ward.

Although it is not yet widely practiced, this approach is becoming increasingly popular, said Mr. Ward. He said the percentage of companies that use a flat organizational structure has doubled from just 8% only three years ago, and he predicted it will continue to increase.

But Mr. Ward also warned that such an approach cannot be introduced overnight. "It's a tough practice to implement, because it involves hierarchy and people issues, and those are areas that are tough for management to change," he said.

Mr. Ward recommends gradual implementation through normal attrition. "When they replace employees that leave the company, (insurers should) make an effort to widen, flatten the organization's structure naturally. We don't recommend in one fell swoop to fire everybody and whip it into shape."

Normal turnover will help this process, he said. "Given an average 15% to 20% turnover rate in the industry, one-fifth of the workforce is leaving every year, on average. So that presents an excellent opportunity for management to make changes to the organization without implementing disruptive changes all at once."

Home office or field focus

Choose either a home office-driven or a field-driven structure, but not both, Mr. Ward recommends.

When insurers try to use both, "the field and the home office tend to have a bit of friction as the balance of power pulls in both directions. When that occurs, it hurts the companies, because it unnecessarily adds to the cost structure."

Although the trend these days is toward a more centralized—rather than field-driven—approach, Mr. Ward's analysis found it makes little difference which strategy insurers choose.

While the data does indicate a slight benefit under a more centralized structure, "the evidence is that either can work," he said.

"Basically, this is a philosophy issue," said Mr. Ward. "We have companies that we work with that are extremely centralized." Although these companies write

See **Ward's 50** *on page 10*

Top performers in technology on page 10

Insurers outsourcing more processes on page 12

Ward's 50 property/casualty

- Alfa Insurance Group
- American International Group
- American Modern Home
- American National Property & Casualty Cos.
- Amica Mutual Insurance Co.
- Auto Club Insurance Assn.
- Auto-Owners Insurance Group
- California State Auto Assn.
- Canal Insurance Group
- Chrysler Insurance Co.
- Chubb Insurance Group
- Cincinnati Insurance Group
- Colonial Penn Group
- The Commerce Group Inc.
- Concord General Group
- The Doctors' Co.
- Empire Fire & Marine Group
- Employers Mutual Co. of Des Moines
- Erie Insurance Group
- Foremost Insurance Co.
- Frankenmuth Mutual Insurance Co.
- GEICO
- Harleysville Mutual Insurance Co. Group
- Horace Mann Insurance Group
- Insurance Co. of the West
- Interinsurance Exchange, Automobile Club of Southern California
- Kentucky Farm Bureau Mutual Insurance Co.
- Liberty Mutual Group
- Markel Corp. Group
- Medical Protective Co.
- Motors Insurance Corp.
- Nationwide Group
- New Jersey Manufacturers Group
- NORCAL Mutual Insurance Co.
- Northland Insurance Group
- Ohio Casualty Group
- Peerless Indiana Insurance Group
- Pekin Insurance Group
- RLI Insurance Group
- SAFECO Insurance Group
- Southern Farm Bureau Casualty Insurance Co.
- St. Paul Cos.
- Tennessee Farmers Mutual Insurance Co.
- Travelers Insurance Group
- United Fire & Casualty Group
- USAA Group
- Virginia Surety Co.
- West Bend Mutual
- Western World Group
- Westfield Cos.

Source: Ward's Results, 1999 Property/Casualty edition

Ward's 50 life/health

- Alfa Life Insurance Corp.
- Allianz Life Insurance Co. of North America
- American General Life Insurance Co.
- American National Insurance Co.
- American United Life Insurance Co.
- Ameritas Life Insurance Corp.
- Berkshire Life Insurance Co.
- Cincinnati Life Insurance Co.
- Farm Bureau Life Insurance Co.
- First Colony Life Insurance Co.
- Fortis Benefits Insurance Co.
- General American Life Insurance Co.
- Golden Rule Insurance Co.
- Great American Life Insurance Co.
- Guardian Life Insurance Co. of America
- Hartford Life Insurance Co.
- Horace Mann Life Insurance Co.
- Jackson National Life Insurance Co.
- Jefferson-Pilot Life Insurance Co.
- John Hancock Mutual Life Insurance Co.
- Liberty National Life Insurance Co.
- Massachusetts Mutual Life Insurance Co.
- Merrill Lynch Life Insurance Co.
- Midland National Life Insurance Co.
- Minnesota Mutual Life Insurance Co.
- Mutual of Omaha Insurance Co.
- National Life Insurance Co.
- National Western Life Insurance Co.
- Nationwide Life Insurance Co.
- New York Life Insurance Co.
- Northwestern Mutual Life Insurance Co.
- Ohio National Life Insurance Co.
- Pacific Life Insurance Co.
- Pekin Life Insurance Co.
- Penn Mutual Life Insurance Co.
- Physicians Mutual Insurance Co.
- Principal Mutual Life Insurance Co.
- Protective Life Insurance Co.
- Provident Mutual Life Insurance Co.
- Reliastar Life Insurance Co.
- SAFECO Life Insurance Co.
- Security Benefit Life Insurance Co.
- Southern Farm Bureau Life Insurance Co.
- State Farm Life Insurance Co.
- Teachers Insurance & Annuity Assn. of America
- Travelers Life & Annuity
- United Insurance Co. of America
- UNUM Life Insurance Co. of America
- USAA Life Insurance Co.
- Western & Southern Life Insurance Co.

Source: Ward's Results, 1999 Life/Health edition

HMOs

Continued from page 2

they are being matched by strong commercial prices, he said.

"I'd say 1999 second-quarter results are going along with expectations based on the premium rate increases that most companies have been able to put through and that the subsequent profitability has been able to fall in line with the now rational pricing going on in a lot of markets," said Richard Shaw, an analyst with A.M. Best Co. in Oldwick, N.J.

In general, "the HMO industry reported results for the quarter were in line with the expectations for continued improvement throughout the year," said Douglas L. Meyer, an analyst with Duff & Phelps Credit Rating Co. in Chicago.

"The three-year trend of disastrous second quarters came to an end," said Rob Mains, an analyst with Advest Inc. in Albany, N.Y.

But Todd Richter, managing director at Banc of America Securities in New York, said that although most of the companies reported results that were generally in line with expectations, "those results were, I think, somewhat less than many might have hoped they might have been earlier in the year.

"In other words, results were good; however, results did not show evidence that prices were up substantially more than costs were," he said.

Among the managed care results reported:

• Kaiser Permanente reported $49 million in net income in the second quarter, which reflects a $20 million operating loss for the same period. This compares with $2 million in net income and $25 million in operating losses for 1998's second quarter.

For the first half, Kaiser reported $110 million in net income, compared with a $31 million net loss for the first half.

• RightCHOICE Managed Care Inc. in St. Louis almost quadrupled its first-half net income, posting $8.6 million, compared with $2.2 million for the first six months of 1998.

• Coventry Health Care Inc. in Bethesda, Md., reported first-half net income of $17.5 million, versus a $23 million loss for the same period in 1998.

'Results did not show evidence that prices were up substantially more than costs were,' Todd Richter says.

• FHS reported $28 million in second-quarter net income, compared with $956,000 in 1998's second quarter. For the first half, it posted $69.9 million in net income versus $27.2 million for 1998's first half, a 157% improvement.

• Norwalk, Conn.-based Oxford Health Plans Inc. posted a $13.4 million loss for the second quarter, versus a $513.3 million loss for the comparable quarter a year ago. Oxford said results were better than it had expected. For the first half, it reported a $10.2 million loss versus a $558.6 million loss for the first half of 1998 (see story, page).

• Maxicare Health Plans Inc. in Los Angeles reported $1.9 million in net income for the second quarter, compared with a $19.8 million loss for 1998's second quarter. For the first half, Maxicare reported a $6.6 million loss, compared with a $22.5 million loss for 1998's first half, a 70.6% improvement.

• PacifiCare reported $68.9 million in second-quarter net income, compared with $48.9 million in 1998's second quarter. For the first half, net income increased 58.4%, to $142.9 million from $90.2 million in the first half of 1998.

• For the first half, Hartford, Conn.-based Aetna U.S. Healthcare reported a 30.7% increase in operating earnings before Year 2000 costs, to $268 million from $205 million.

• CIGNA Corp.'s employee health care, life and disability benefits segments, which include its HMO and indemnity operations, posted first-half operating income of $330 million, compared with $274 million for the same period in 1998, a 20.4% improvement.

• For the first half, Thousand Oaks, Calif.-based WellPoint Health Networks Inc. reported $142.2 million in net income, versus $128.9 million for the comparable period a year ago, which is a 10.3% improvement. The 1998 number excludes discontinued operations and a non-recurring charge.

• Minneapolis-based UnitedHealth Group reported a 1.5% decline in first-half net income, to $267 million from $271 million. This excludes $900 million in special charges in 1998 that are connected with operational realignment and Medicare-related losses.

• Humana Inc. in Louisville, Ky., reported $28 million in second-quarter operating earnings, compared with $52 million in 1998's second quarter, a 46.2% decline. For the first six months, Humana had $12 million in net income vs. $102 million for the first half of 1998, an 88.2% decline.

"Results have generally been good with a few notable exceptions that come to mind," said Arun Kumar, director at rating agency Standard & Poor's Corp. in New York, "Humana is still struggling to an extent with their performance," though the company expects improved results for the second half, with some improvements expected for next year as well, said Mr. Kumar.

But Aetna, United, CIGNA, WellPoint and PacifiCare "have all had strong results year-to-date, and for the second quarter, and all of those companies expect to post strong results for the rest of '99 as well," he said.

In addition, Oxford "has generally shown improved results in the second quarter, and we'll have to see how the rest of the year turns out," said Mr. Kumar.

But while an improvement in the pricing environment is clearly evident from the results, by the same token there continue to be flat, or in some cases modestly worse, results in terms of medical loss ratios, said Patrick Finnegan, senior vp at Moody's Investors Service Inc. in New York.

The price increases that have been introduced "may not be fully that much greater than the cost trends that these companies are experiencing" and in some cases may be lagging behind those cost trends, he said.

"What is clearly evident is the difficulty of managing the medical cost inflation trend line," Mr. Finnegan said.

Most observers have a positive outlook, albeit with some reservations. "Next year is shaping up to be a pretty decent year as well," said Mr. Kumar.

"Most of the companies we talked to expect to raise rates anywhere from 7% to 12% year over year. . .and most of them are trying to control the wild card, which is pharmacy benefits, by going to triple option copayments and trying to increase the members' participation in the overall health care costs." That should lead to improved operating performance next year, said Mr. Kumar.

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We'll go wherever your specialty needs take you.

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HMOs

Continued from page 4

Duff & Phelps' Mr. Meyer said results the rest of the year will be consistent with the first half, while "next year is a far way off."

But, "right now we don't have any reason to believe that there's going to be major deterioration in the segment or segment results for next year," he said.

"The biggest uncertainty," said Mr. Meyer, is continued cost pressure stemming from medical trends as well as the impact of various regulatory initiatives.

In the end, he said, all the regulatory reform measures now being discussed "need to be priced. To the extent HMOs can price for the additional costs, they should be in good shape. But, "when your cost structure is moving, there is pricing risk, and there's going to continue to be pricing risk."

Moody's Mr. Finnegan said also that even if managed care legislation is not approved at the federal level, issues such as the right to sue managed care firms "could end up coming back at the state level."

"Overall, we are still cautious about the sector's performance going forward," he said. In light of the whole issue of raising rates in response to medical cost trends, Moody's "has some reservations whether companies can continue to raise prices continually year over year in the 7% to 10% range" and expect employers to accept it.

"I think it's going to be a thorny problem for a number of companies," he said.

But PacifiCare's Mr. Erickson said, "I think as long as we have visibility on our cost trends and price accordingly, this industry should be able to keep up and match their price increases with the cost increases." BI

Good results key to future for HMO stocks: Analysts

By JUDY GREENWALD

Analysts say that while most health maintenance organization stocks have not done too badly in 1999, the future will depend upon their ability to continue to report good results.

The eight HMOs included in the *Business Insurance* Industry Stock Report had a slight decline of 0.86% in their stock prices for the year as of Aug. 13, though four of them reported gains.

The HMO included in *BI*'s survey that lost the most ground was Humana Inc., whose stock price has dropped 49.5% this year. The company has reported an 88.2% decline in its first-half net income (see story, page 2).

"Generally, the HMO stocks have done reasonably well," said Arun Kumar, director at rating agency Standard & Poor's Corp. in New York. They are "not getting clobbered" like they were last year, he said.

"The HMOs are up for the year so far, and that's something we haven't had for a while," said Rob Mains, an analyst with Advest Inc. in Albany, N.Y. "Traditionally, the last four months of the year is when these stocks really start to make hay, and I think the components are all in place for that to happen again," he added.

But Douglas L. Meyer, an analyst with Duff & Phelps Credit Rating Agency in Chicago, said, "I think a lot of the improved results that were expected this year have already been factored into the stock prices of these companies."

Patrick Finnegan, senior analyst at Moody's Investors Service Inc. in New York, said stock prices are driven by sequential growth in earnings, "and I think it's hard to predict in this industry. You really can't say what the bottom line's going to be until after the third quarter's out and the medical loss ratio's taken shape for the year."

"I think there's an expectation of more and continued volatility," said Mr. Finnegan.

'I think there's an expectation of more and continued volatility,' says Patrick Finnegan of Moody's.

"I think it's difficult to call," said Todd Richter, managing director at Banc of America Securities in New York. For the past four or five years, investors have cast virtually all their health care bets in pharmaceuticals. "If that remains the case, these stocks will do poorly," he said.

Among analysts who cite specific recommendations, Advest's Mr. Mains recommends both Minneapolis-based UnitedHealth Group and Norwalk, Conn.-based Oxford Health Plans Inc.

Mr. Mains said UnitedHealth Group exceeded his expectations for the second quarter and has "pretty optimistic projections for the remainder of this year and 2000."

"People kind of lose track" that 40% of its income comes from nontraditional health plan services, including the nation's largest transplantation network and managed mental health services, "so there's a lot of growth beyond what's happening with HMO products."

Oxford had another good quarter, said Mr. Mains. "It appears that they'll be solidly in the black for the next two quarters, and we haven't seen that since 1997, and I think the fact that they had a good quarter indicates a couple of things.

"No. 1, it indicates that the (computer) system problems that obviously have been a huge issue for Oxford. . .are largely resolved," he said.

Second, Oxford, a prime acquisition target because it is the largest HMO in its market, is "performing well enough to remove some of the risks of an acquisition," said Mr. Mains.

Mr. Richter recommends Philadelphia-based CIGNA Corp. and Thousand Oaks, Calif.-based WellPoint Health Networks Inc. Both companies have minimal health care exposure "and have done a good job financially," generating a lot of cash flow and using it wisely, he said. BI

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Opinions

Ohio court unravels tort reform

TORT REFORM ADVOCATES have every right to feel down following the Ohio Supreme Court's 4-3 decision voiding the state's comprehensive tort reform law.

Pro-reform forces may feel down, but they shouldn't consider themselves out. Businesses in Ohio and other states facing tort reform battles still have an opportunity to push for legislative remedies that can survive judicial challenges and to support pro-business candidates for state court seats.

The Ohio high court's decision last week in *Ohio Academy of Trial Lawyers vs. Sheward* strikes us as fundamentally flawed. In the name of separation of powers guaranteed by the state constitution, four of the court's seven justices basically stripped the Ohio Legislature of its power to legislate, exposing businesses in the state once again to the risk of excessive jury awards.

If lawmakers can't make laws that concern the courts or the civil justice system—which is what the four-justice majority of the high court has essentially said—we wonder what they can make laws about.

Linda Woggon, the vp-government affairs for the Ohio Chamber of Commerce, said after the decision that "lawmakers might as well close up shop and go home. They can no longer represent their constituents as the lawmaking body of our state."

Unfortunately, when a state law is overturned on the basis of a state constitution, businesses have little recourse. Tort reform advocates have been stymied by this time after time as other state tort reforms have been declared in violation of state constitutions. The Ohio decision can only embolden foes of tort reform who will use similar arguments to overturn reforms in other states.

So what can businesses do to resist efforts to remove much-needed tort reforms?

Some reform advocates think the Ohio Supreme Court's decision may so upset the balance of powers between the judicial and legislative branches that a federal challenge could be mounted. That's probably a very long shot, but certainly one worth exploring.

More immediately, reform advocates in Ohio and

elsewhere can work with and support pro-reform lawmakers in crafting laws that will pass state constitutional muster. That's an admittedly difficult—but not impossible—task. The Virginia Supreme Court, for example, has upheld that state's caps on medical malpractice awards.

Second, reform advocates need to get more involved in state judicial races by working with and supporting judges and candidates sympathetic to their cause. Once again, this isn't always an easy task, particularly where incumbents are involved. Ohio employers unsuccessfully tried to unseat an anti-reform Supreme Court justice last November but intend to continue this effort next year, when two incumbents on the Ohio bench seek reelection.

Businesses have to make such efforts, particularly if the separation of powers in state government is to be maintained. Reformers may feel down in the aftermath of the Ohio decision. But that's no excuse to take themselves out of the fight as well.

Letters

RIMS lobbying efforts still on track

To the editor: I am writing in regard to the Aug. 2 editorial opinion, "A Step in the Right Direction."

I agree that much can be accomplished through effective coalitions of interests like the one representing the Council of Insurance Agents & Brokers, the American Insurance Assn. and the Reinsurance Assn. of America.

The Risk & Insurance Management Society Inc.'s External Affairs Team and the Industry Relations Committee in particular have worked diligently for some time on developing valuable relationships on the "selling" side of insurance and risk management. These efforts also take place at other levels of RIMS, including various members of the executive council and the executive director. The Quality Insurance Congress is just one example of where we pursue joint interests effectively.

While our former director of government affairs, Anne Allen, did a fantastic job for RIMS on both legislative and regulatory matters, I don't agree that our efforts have "stalled" or need to "get back on track."

We continue to work effectively, particularly through our Washington counsel, Jim McIntyre, and are busy planning an even bigger and more impactive "RIMS on the Hill 2000." Our chapters have been active on the state levels, as well.

In addition, we have developed cooperative efforts (e.g., Superfund legislation) with all three organizations and continue to work with them on issues of common interest.

I am also happy to report that we are very close to naming Anne's successor.

The executive council, the board and the executive director all agree on the importance of that portion of RIMS mission that seeks to protect member interests in legislative and regulatory outcomes. You can expect RIMS to be even more effective once our new head of government affairs is in place.

Christopher E. Mandel
Vp-External Affairs Team
Executive Council
Risk & Insurance Management
Society Inc.
Louisville, Ky.

Insurance industry didn't help Dow

To the editor: We agree with the basic premise in Kathryn J. McIntyre's June 28 Commentary, "Silicone a Lesson in Fear and Greed."

The silicone breast implant controversy did, in our view, create an unfounded fear for women and eliminate a viable option in the determination of their medical care.

While commenting on the conduct of the parties, you are careful not to exonerate the manufacturers and suggest more "irrefutable research" on their part might have averted the breast implant scare. Dow Corning recognizes its obligation to conduct and sponsor research undertakings as part of its ongoing product development. Through these efforts, experience has taught us that no matter how prestigious the institution or unassailable a researcher's credentials, results often get challenged for no other reason than our sponsorship of the research. These challenges do not deter our continued commitment to future studies; they often detract, however, from a more meaningful review of the research results.

When you parcel out responsibility to the various groups party to the controversy, we suggest you not overlook the industry on which your publication reports. In Dow Corning's case, breast implant product litigation was compounded by insurance coverage litigation involving nearly 650 policies and 120 insurers. At a time when our organization most needed its liability insurers, the response was reservation of rights and 61 separate coverage defenses—virtually all of which were rejected by the trial court and/or jury.

Kevin W. Scroggin
Risk Manager
Dow Corning Corp.
Midland, Mich.

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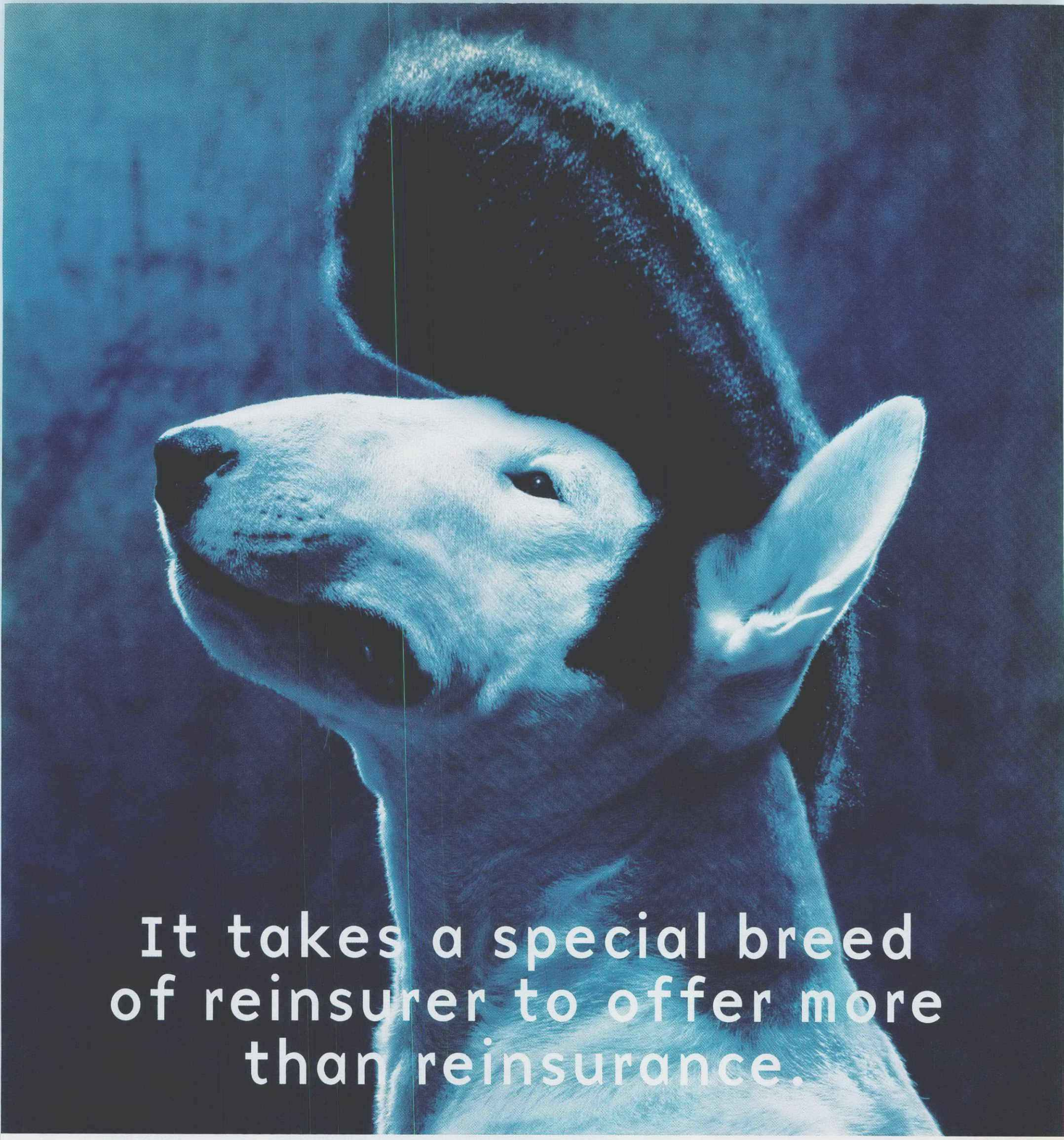

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Ward's 50

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business in all 50 states, they're largely based out of one city.

"And we also have companies that may be national writers that have branches all over the place, and if you look at the best of the companies that are centralized in comparison with the best that are decentralized, their performance is about the same," said Mr. Ward.

"The trade-off is the centralized companies usually have a lower cost structure, but the decentralized companies have the opportunity to know more about their local marketplace and have better underwriting results that more than offset the extra cost of decentralization."

If an insurer does choose the decentralized approach, "you'd better have a real lean and mean home office, or else you're going to be redundant," Mr. Ward warned. "That's a common flaw of companies that try to decentralize."

Incentive compensation

This has become a "huge trend," practiced by 70% of the 160 companies Ward studies closely, according to the analysis.

While high performers pay employees more than does the group of other insurers, "a bigger piece of it is incentive. Base salaries are a lot lower for the higher performers, and incentives are a lot higher," he said.

Ward found that the average compensation, including salary and benefits, was $56,000 for high performers in the property/casualty segment and $49,000 for the other property/casualty companies; that makes average compensation 14.3% higher for high performers.

The annual increase in average compensation per employee was 5% each year for the high performers during the period from 1994 through 1998 and 3.3% for the others in property/casualty.

But, at the same time, salary as a percentage of total compensation was 72.4% for the high performers and 76.1% for the others.

Base salaries, in fact, declined by an average of 1.2% annually for the high performers in the property/casualty sector during the five-year period. This, Mr. Ward said, is an indication that high performers, over time, are shifting even more toward incentive compensation. Base salaries were up 0.2% annually for the other property/casualty insurers during this same period.

On the other hand, incentive compensation accounted for 5.9% of total compensation for the high performers and just 3% for the others. Incentive compensation increased significantly over the five-year period: the overall annual increase was 26% for the high performers and just 2% for the others.

Incentive compensation continues to grow in popularity, said Mr. Ward. "I think the trend is to bring more departments in it," he said. "Even something like human resources is part of incentive plans more and more these days."

Turnover

There is an incorrect perception in the industry that employee turnover should be as close to zero as possible, said Mr. Ward. But, in fact, "some turnover is healthy," he said. The top performers have 7% to 8% annual turnover rates, while the average for the entire group is about 16%.

But Mr. Ward found the range of turnover to be anywhere from 2% to 50%. "Our conclusion is neither of those extremes is a best practice," he said. The company with a 2% turnover, for instance, "doesn't have much incentive compensation. Most of the compensation is guaranteed base salary pay" that is higher than average, he said, "so everybody's comfortable."

"What they should do is selectively implement a compensation program to control the rate of increase in base salaries and replace it with more incentive compensation," said Mr. Ward.

With that approach, over a period of time, the "deadwood," or non-productive employees, are getting salary hikes closer to zero than to 5%. "That usually drives them away, but if it doesn't drive them away, at least it isn't costing (the insurer) any extra," said Mr. Ward.

"That's a common way companies implement incentive programs," he said. "They take steps to freeze or lower the rate of growth of base salary and substitute incentives on top of that."

Rotation

The top companies frequently rotate their management through different positions, generally at five-year intervals. This keeps the managers fresh and gives them "more of a business perspective to do whatever job they're in at that time," said Mr. Ward.

"The philosophy is that the company and the employee both benefit by doing more of that," said Mr. Ward, who said the policy is not confined to just candidates for chief executive officer positions. Overall, about 10% of the group rotates managers, according to the analysis.

"I think this is very positive practice from the employee's point of view," said Mr. Ward. "This is how they broaden their knowledge of the business and become smarter."

While switching jobs is hard work, it is also "quite a learning experience, and there's probably some correlation between the employees that welcome rotation and those that have long-term potential within the company," said Mr. Ward. "It is the good employees that want to rotate."

Employee productivity

Ward found that premiums per full-time equivalent employee were $431,000 for high performers and $394,000 for the others in the property/casualty sector, a 9.4% difference. Similarly, polices in force per full-time equivalent employee were 453 for high performers and 405 for the others, an 11.9% difference.

This is evidence that the employees at the high performers are more productive than are those in the industry as a whole, said Mr. Ward.

Work hours

About 38% of the total benchmarking group has a 37.5-hour work week, but the high performers are more likely to have a 40-hour week, said Mr. Ward. All else being equal, companies whose employees put in more hours are more productive, he said.

"A lot of the executives say, 'We're here 100 hours a week,' " said Mr. Ward. But "this best practice is directed towards the bulk of employees who are not executives." BI

Diverse IT efforts kept up

By JUDY GREENWALD

The top performers in the industry are funding their Y2K remediation efforts by incrementally increasing their budgets while still continuing with other information technology projects, according to a benchmarking survey.

Top performers also are evaluating uses of the Internet beyond traditional general marketing applications, and they are using or considering automated call center management technology.

These are among the findings in the Cincinnati-based Ward Financial Group's analysis of the best practices of top industry performers in the technology area.

While everyone is concerned about the Year 2000 problem, "what's interesting to look at is how companies handle everything else while year 2000 remediation is under way," said Chairman John L. Ward.

Ward's proprietary benchmarking databases contain information on the business practices of 160 insurers. Among those are 28 of the 100 property/casualty and life/health insurers that Ward has found do the best job of balancing financial safety, consistency and performance. The practices of

See **Technology** *on page 12*

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Technology

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these 28 insurers are compared with those of the others in the databases to determine best practices.

The most common practice is to place other information technology projects in a "deferral mode" until Year 2000 projects are completed, Mr. Ward said.

But "while that does help keep costs down, our conclusion is that the best practice is not to do that, because you can't stop the rest of the world while you're remediating your system for Year 2000," he said.

The better approach, said Mr. Ward, is for insurers to incrementally increase their technology expenditures during this period "and get other things done." That approach, Mr. Ward admitted, is "a little counterintuitive."

In addition, Ward found that about 80% of all companies in the benchmark group of 160 companies outsource their Y2K remediation efforts (see related story).

The top performers are also closely examining the Internet. While the most common practice is to have a World Wide Web site, "the real good thinkers, the real top performers, are strategically looking at the role for commerce in their long strategy." This is true even for commercial property/casualty insurers that work with large companies, Mr. Ward noted.

The Internet holds two main strategic opportunities for the industry, said Mr. Ward. The first is as a communications network.

"In effect, the expense of data communications networks that have been established over the years could be replaced with a virtually cost-free Internet network," said Mr. Ward.

Commercial insurers could use the Internet as an agency interface to upload and download data to brokers. "It could be a vehicle by which risk managers report claims," said Mr. Ward. "It's basically an inexpensive and almost-free telecommunications network," said Mr. Ward.

A second potential use of the Internet—even for commercial insurers—is to produce quotes, he said.

Ward Financial has not yet concluded, though, whether having a company intranet is a best practice. More companies are becoming involved, though, and "it's a good way for companies to get experience with Web technology and also to facilitate communications internally," Mr. Ward said.

Meanwhile, the use of automated call center technology is considered another best practice for insurers, said Mr. Ward.

Mr. Ward found high performers have a rate of first-call resolutions—resolving a call without bouncing a caller to another handler—of 87.6%, compared with 73.9% for the others in the benchmarking databases. They also have fewer complaints, with a customer complaint ratio of 0.8% compared with 4.1% for the others in the study.

The average speed of an answer, defined as the time after an automated answering service switches the call to a live handler to the time a handler answers, is 17.3 seconds for the high performers vs. 45.9 seconds for the others examined. In addition, the abandoned call rate—callers who hang up before someone gets on the line—is 3.2% for the high performers and 7.9% for the others.

The overall service level is 85.7% for high performers vs. 80.7% for the others; that reflects the percentage of callers who get through without getting a busy signal or hang up before someone answers.

High performers also handle problems more quickly, taking an average of 3.2 minutes per call vs. 4.5 minutes for others in the benchmarking study of 160 companies. They spend less per call as well. The cost per minute per call handled is $1.57 for the high performer and $1.65 for the others.

The top performers "leaped ahead of the rest of the pack in customer satisfaction, but as a byproduct of that also were successful in a small way in lowering their cost," said Mr. Ward.

"Our research indicates that the unfortunate thing is a lot of companies have implemented call centers to improve customer satisfaction, but, because they've fallen short of important performance measurements like speed-of-answer and abandon rates, they're doing more harm than good," said Mr. Ward.

Because of this, it is important for a company that has implemented or is considering implementing a call center to do so effectively, he said. BI

Insurers outsource more functions

By JUDY GREENWALD

The trend toward insurers outsourcing functions not only continues but is increasing in momentum as the number of things that can be outsourced grows, according to a benchmarking study.

But the decision to outsource should be made with caution and an awareness that, even after outsourcing, some fixed internal costs may remain, said John L. Ward, chairman of the Cincinnati-based Ward Financial Group, an insurer management consulting and investment banking firm.

Ward Financial has conducted an analysis of its proprietary benchmarking databases, which include information on 160 insurance companies.

Ward's study indicates that the more popular outsourced functions include employee benefits administration and Year 2000 systems remediation, which are outsourced by 89% and 80% of the examined insurers, respectively.

"I think, over the past 10 years, there's been a proliferation of outsourcing services, and that has a lot of positives for management of insurance companies," said Mr. Ward. That's because the availability of marketplace benchmarks can help companies evaluate their internal operations' competitiveness, he said.

Used properly, outsourcing can be an effective management tool for companies, Mr. Ward said. But, he said, "the challenge is to have the discipline to look at the pros and cons of things that can be outsourced, rather than routinely outsourcing things."

While there may be a perception that outsourcing a particular business process will eliminate a problem area or management headache, in fact, "the problem is seldom going to go away when the problem is outsourced," he said.

Use common sense in evaluating outsourcing, Mr. Ward urged. While it can be the better way to do things, it is a bad idea in some cases, and in others, its impact is neutral, he said.

For instance, although loss control still is outsourced by 22% of insurers in the group, that is down from 47% just two years ago. "Because it was an integral part of the underwriting decisions, companies were more inclined to take more control over that function now," said Mr. Ward.

The decision to outsource can depend on the circumstances of the company as well, said Mr. Ward. "In the area of property/casualty claims adjusting, the data that we've analyzed indicates that, where the geographic concentration of a company's business warrants, companies that use staff adjusters to adjust their own claims tend to achieve better results than those that rely heavily on independents."

This is because "the staff adjusters have a more vested interest in adjusting the claim according to company policy," Mr. Ward said.

But if a company does not have a concentration of claims activity in any particular geographic areas, "there may be some merit" in outsourcing the function to independent adjusting firms," he said.

One area where outsourcing generally is beneficial is payroll processing, outsourced by about 58% of insurers. Ward's analysis indicates that if there is a good service provider available, "there's a lot of merit in outsourcing it, because it's a complicated mechanical process, and companies that specialize in that area can bring tremendous expertise to the table at a very reasonable cost."

Another function where, "all else being equal," it may be preferable to outsource is legal services, outsourced by 85% of companies in the survey, said Mr. Ward.

Insurers that outsource legal functions tend to keep a closer eye on avoiding litigation because of the high cost of outside attorneys, he said. Outsourcing creates an environment that encourages litigation avoidance rather than litigation management, he said.

Furthermore, when a company has a large in-house infrastructure for litigation and defense, "that cost becomes more of a fixed cost. And our conclusion is that it's better to keep as much of your cost structure as variable as possible, which is what you're doing when you use outside firms," said Mr. Ward.

Investment management is an area that tends to be neutral in terms of the benefits and drawbacks of outsourcing, said Mr. Ward. "A lot of companies don't really actively manage the portfolio. They take pretty much of a buy-and-hold strategy," he explained.

"In that case, that reduces the benefit of outsourcing, because the expertise that's available through outsourcing isn't part of the investment philosophy. So institutions like that are better off doing it internally," he said.

"The one exception is in the equities component of the portfolio," said Mr. Ward. "The heavier a company is in their asset allocation towards equities, the more an outside manager can bring to the table."

"It depends on the facts of the situation," Mr. Ward explained. "There are no rules of thumb."

Mr. Ward said a common mistake made by companies is "to assume all the internal costs will go away when the function is outsourced." For instance, he said, "if a company decides to outsource its data processing function, 100% of those internal costs seldom go away.

"At a minimum, there will be some costs associated with oversight of the outsourcing vendor. There frequently is a redeployment of those resources into more of a user liaison role," said Mr. Ward.

There may be locked-in costs involved as well. For instance, a company may be committed to a long-term contract, "so those would be components of the cost that might remain after the process is outsourced," he said. BI

Outsourcing trends

Business process	% of insurers outsourcing 1998	1996
Glass claims handling (P/C)	92	N/A
Employee benefits administration	89	86
Claims litigation defense (P/C)	85	83
Cafeteria support	81	74
Year 2000 systems remediation	80	N/A
Janitorial and housekeeping	77	73
Claims after hours loss reporting (P/C)	71	N/A
Sales illustration systems (life/health)	63	N/A
Security	63	66
Payroll processing	58	58
Premium audit	52	50
Building maintenance	48	33
Actuarial services (life/health)	46	46
Personnel systems support	45	45
Investment portfolio management	45	35
Premium collections via bank lockbox	42	38
Print shop	28	20
Claims adjusting (P/C)	26	26
Loss control	22	47
Selected information systems tasks (help desk, communications, etc.)	10	15
Actuarial services (P/C)	10	13
Assigned risk processing	10	19
Claims regular hours loss reporting (P/C)	8	N/A
Entire information systems function	5	3
Internal audit	2	2

Sources: Ward Financial Group annual benchmarking programs and Electronic Best Practices software databases.

How Ward arrives at its groups of 50

The Ward's 50 Benchmark groups reflect data from the property/casualty and life/health insurers that have the best balance of financial safety, consistency and performance over the past five years.

Using data provided to state regulators, Ward Financial Group each year identifies the 50 property/casualty and 50 life/health insurers that make up the Ward's 50 Benchmark Group lists. It then develops various aggregate financial measures for each group.

Ward, a Cincinnati-based insurer management consulting and investment banking firm, compares each group's aggregate financial measures to those of individual companies and peer groups in that industry segment that are categorized by product mix, premium level, location and type of ownership.

Risk and employee benefit managers can compare the strength and performance of their own insurers against the benchmark groups using statistics in the two Ward's Results volumes the consulting firm produces annually.

Unlike rating agencies, which develop their own qualitative assessments, Ward's evaluation is based solely on the statutory data insurers provide to regulators.

In the latest edition of Ward's Results, 3,004 property/casualty and 1,407 life/health insurers licensed in the United States are analyzed. The analyses of some of those companies are limited.

The 1999 property/casualty and life/health editions of Ward's Results are available from Ward Financial Group for $545 each. They can be obtained by contacting Ward Financial at 8040 Hosbrook Road, Suite 100, Cincinnati, Ohio 45236-2908. The telephone number to order the volumes is 513-791-0303; the fax number is 513-985-3442. The volumes can also be ordered on the Internet at www.wardinc.com.

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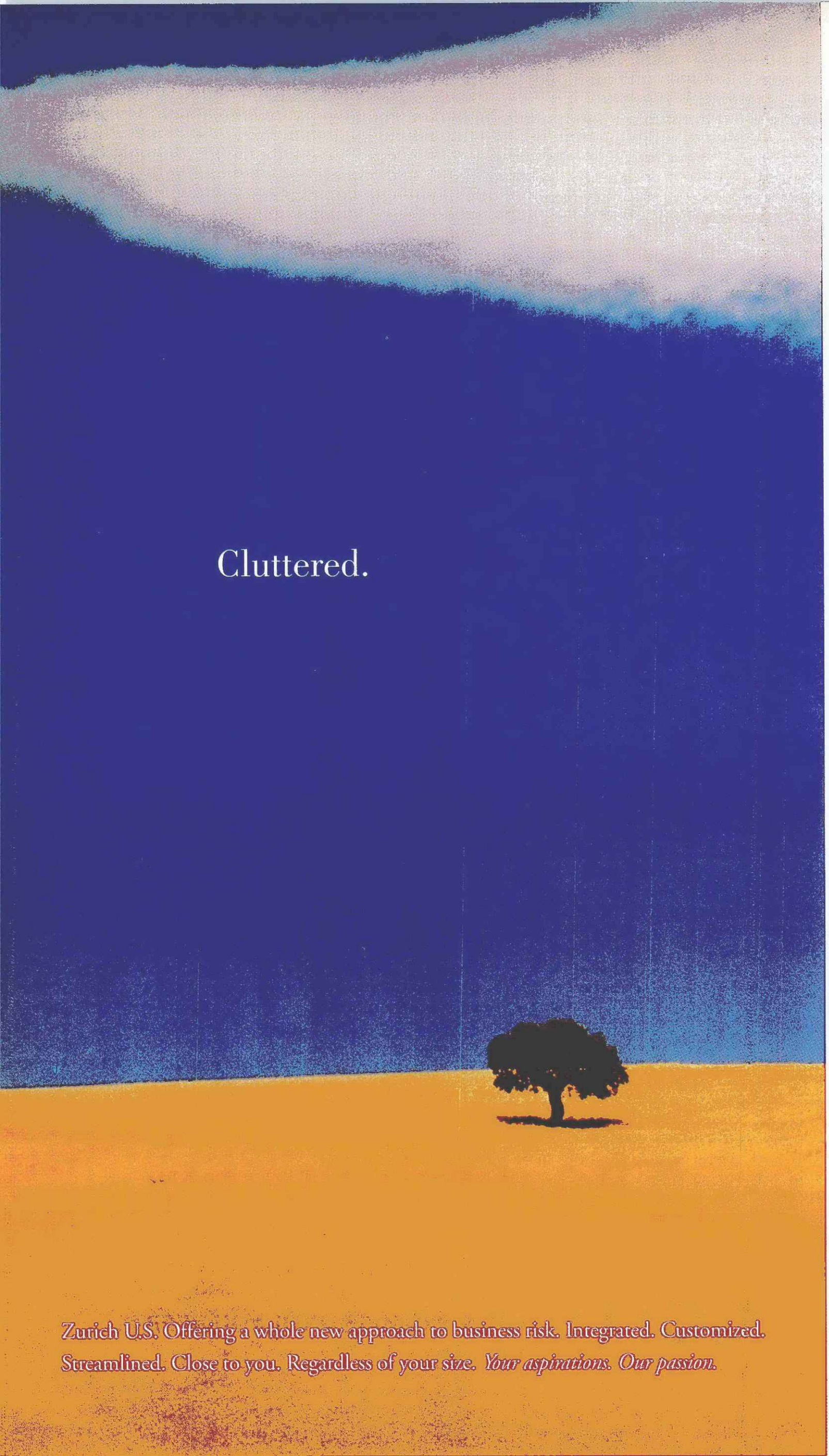

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Compliance programs help cut bias risk

Supreme Court ruling shows good-faith efforts are key for employers in defending against discrimination suits

By Gerald L. Maatman Jr.

RISK MANAGERS AND HUMAN RESOURCE professionals should take special notice of the U.S. Supreme Court's landmark ruling this past term in *Kolstad vs. American Dental Assn.*

Simply put, the *Kolstad* decision confirmed what many leading employment practices liability insurance underwriters have thought for years—a corporation with its "employment house in order" can reduce its susceptibility to lawsuits and more effectively defend any legal actions against it. More particularly, the Supreme Court ruling indicates that a proactive employer that institutes a formal employment practices compliance program can get "credit in the courthouse," in the form of practical immunity from punitive damages.

The Supreme Court's decision in *Kolstad* involved the appropriate standard for a plaintiff to recover punitive damages in an employment discrimination case brought under Title VII of the Civil Rights Act of 1964. On June 22, the Supreme Court ruled that a plaintiff need not show that his or her employer acted in an "egregious" manner to collect punitive damages. Instead, the Supreme Court interpreted the Civil Rights Act of 1991—which authorizes plaintiffs to recover compensatory and punitive damages in cases brought under Title VII and the Americans with Disabilities Act—to authorize punitive damages in cases of intentional employment discrimination if a plaintiff proves the defendant committed discrimination with "malice or reckless indifference" to the federally protected rights of an aggrieved individual.

In other words, malice and reckless indifference pertain to the employer's knowledge that it may be acting in violation of federal law, not its awareness that it is engaging in discrimination.

At first blush, the *Kolstad* ruling seems decidedly pro-plaintiff; the standard of liability for punitive damages is now less than the "only in egregious cases" test employers had hoped for before the Supreme Court's decision. But the critical point to the *Kolstad* case is its further holding and elaboration on the circumstances in which a corporation may be held liable for punitive damages in the most common of all employment discrimination lawsuit settings—where the corporation is sued over the acts of its supervisory personnel.

On this crucial issue, the Supreme Court determined that it is improper to assess punitive damages against an employer that undertakes good-faith efforts to comply with employment discrimination laws. The Supreme Court reasoned that any other ruling would reduce the incentive of employers to implement anti-discrimination programs.

Kolstad teaches that risk management and loss control are ideas whose time has come in the context of employment practices liability exposures. The Supreme Court's decision will reward companies with forward-thinking risk managers and human resource professionals who develop and implement employment practices compliance programs—or EPCPs—at their worksites. The existence of an EPCP will be a company's best and most essential defense against a claim seeking punitive damages in the post-*Kolstad* environment. In negotiating claims in a pre-lawsuit setting, the existence of an EPCP will enable the corporation to resolve claims more cheaply by demonstrating to opposing counsel that his or her client's claim lacks any punitive damages component.

In defending lawsuits, the same benefit will redound to the company's advantage. Additionally, the EPCP will create effective summary judgment and directed verdict defenses to any request for punitive damages. Because the decisional law of most states directs state court judges to interpret state employment discrimination laws consistent with federal employment discrimination laws, the "spillover" effect of *Kolstad* from federal cases to state cases will enable employers to use EPCPs as a sound defense in all types of lawsuits involving EPL-related exposures.

A sound and effective EPCP will add to a corporation's bottom line. From a business standpoint, this is manifested by various benefits that, in no certain order, include:

- Gaining or retaining competitive advantage in the company's industry by maximizing employee productivity.
- Solidifying the company's reputation as an "employer of choice" among potential applicants and its existing workforce in local and national labor markets.
- Maintaining the best work environment possible for the company's employees.
- Avoiding any adverse publicity stemming from employment discrimination problems. This publicity could be potentially detrimental to the company's reputation or destructive to its customer and/or shareholder relationships.
- Avoiding the negative impact EPL-related disputes can have on corporate balance sheets and the drain of management time diverted away from operating the company. For EPLI purposes, the existence of the EPCP will make the corporation a more desirable policyholder, resulting in the potential for lower or reduced EPLI policy premiums.
- Finally, from a legal standpoint, the EPCP can provide an employer with a sound defense against exposure to liability for punitive damages stemming from all types of employment discrimination and harassment litigation.

A compliance program will be a company's best and most essential defense against a claim seeking punitive damages.

Indeed, the *Kolstad* case will lead defense counsel to put proof of the existence and content of the EPCP into evidence at trial. In this respect, an EPCP will solidify the elements of the defense recognized by the Supreme Court in its *Kolstad* ruling.

Risk managers and human resource professionals should get their company's employment house in order to take advantage of the Supreme Court's admonitions in *Kolstad*. A litmus test of an effective EPCP is in its demonstration of the employer's good faith in attempting to comply with applicable employment discrimination laws. As no two companies are alike in terms of their culture and workplace needs, the contents of an effective EPCP will vary from corporation to corporation. However, at a minimum, an EPCP should include these components:

- A state-of-the-art equal employment opportunity, anti-discrimination, and anti-harassment policy and complaint procedure.
- An effective orientation program to educate all employees about the company's policies and procedures.
- Exacting expectations of management behavior communicated to and required of all supervisory personnel.
- Supplementary policies and procedures to implement the corporation's compliance with respect to discrimination and harassment laws.
- A relentless commitment to "best workplace practices" designed to eliminate any problems of discrimination or harassment.

In sum, the components of the EPCP should lead any observer—a disgruntled employee or ex-employee, a plaintiff's lawyer, a judge or a juror—to conclude that the employer is a good corporate citizen committed to doing whatever it can to prevent discrimination or harassment in its workplace.

A corporation must demonstrate its good-faith efforts to eliminate problems involving employment discrimination and harassment by adopting an all-inclusive corporate policy statement on equal employment opportunity.

The policy should reflect the employer's mission statement regarding the elimination of all forms of discrimination and harassment in its workplace; provide equal employment opportunities for all applicants and employees; and ensure that all employees are treated with dignity, fairness and respect. The policy statement should be modeled upon the U.S. Equal Employment Opportunity Commission's most-recent guidelines on employer liability for sexual harassment, which were issued June 18.

The guidelines specify that the corporate policy statement should define discrimination and harassment; prohibit discrimination and harassment as a matter of company policy; identify internal corporate mechanisms for complaints and redress for aggrieved employees; allow employees to submit complaints above and beyond their immediate supervisor; and, as a matter of policy, prohibit retaliation and reprisals against any complaining parties. In addition, the EPCP should include a standard protocol modeled on the EEOC's guidelines as to the manner and method by which the company will respond to any employee complaints of discrimination or harassment.

A company's good faith for purposes of the *Kolstad* ruling is evidenced not only by its policies but also by the attitude of top corporate officials. In this context, an employer is well served in demonstrating its good-faith efforts by instituting of a zero-tolerance program against discrimination and harassment. This will show the commitment and accountability of management to the priorities of equal employment opportunity.

A zero-tolerance program would identify the elimination of discrimination and harassment as a top corporate priority, require all management personnel to abide by and implement the zero-tolerance program, and communicate to employees that it is the specific responsibility of all members of management to put an end to any discrimination or harassment in the workplace that they observe or learn about.

An employer must prove the dissemination of its corporate policy statement to its workforce as part and parcel of its EPCP. To establish the defense under the *Kolstad* ruling, an employer must show that there is no question among employees as to their rights and responsibilities under the company's policy regarding what to do when a problem arises involving discrimination or harassment. The effective dissemination of the corporate policy statement is possible through a comprehensive orientation program for all new employees. Such an process enables a corporation to communicate the attributes of its EPCP to all new hires and, at the same time, to document the dissemination of that information.

In addition, educating employees is most effective if done in a user-friendly manner; corporate policy statements and human resource officials must be accessible to be effective. In this respect, corporations should consider the use of intranets, employee hotlines and HR call centers, so that employees have access to corporate policies and corporate HR managers on a 24-hour basis.

At the heart of the *Kolstad* ruling is the notion that an employer should not be liable for punitive damages based on the acts of supervisory personnel who discriminate or harass employees in a manner that contravenes a company's policies and procedures. In this respect, a corporation's expectations of management behavior are all-important.

See **EPL** *on next page*

EPL

Continued from previous page

An effective employment practices compliance program should include thorough training on EPL topics for management personnel. The training should consist of what management personnel need to know about the application of anti-discrimination laws to hiring, evaluation, terminations and all other aspects relative to the terms and conditions of employment.

An employer's expectations of management behavior also should be detailed in job descriptions. The written job description of any manager should include the provision that such a person is responsible for abiding by and enforcing the corporation's zero-tolerance program against discrimination and harassment; in this regard, it should be the specific job responsibility of all management officials to put a stop to any discrimination or harassment that they observe in the workplace.

An EPCP is made more effective by instituting additional personnel policies designed to provide alternative mechanisms for workers to assert grievances, complaints and workplace problems. Such personnel policies include an "open-door" policy and an internal complaint review procedure. This policy and procedure enables corporations to identify personnel problems more quickly and to resolve the problems before they mushroom into lawsuits. Additional personnel policies in this regard include policies on providing reasonable accommodations pursuant to the Americans with Disabilities Act and on ethical workplace behavior.

The goal of any EPCP is the pursuit of practices that will improve the state of the workplace. The components of an EPCP should include the creation of an executive committee charged with the responsibility of instituting and reviewing best practices in the workplace and monitoring the corporation's zero-tolerance program. Other attributes of the program include periodic employee surveys (to ascertain the attitudes, challenges and problems of employees), exit interviews (to learn if members of protected categories are leaving the company due to perceived or actual problems relative to equal employment opportunities), and the use of standard protocols and pre-dismissal checklists in dealing with discrimination situations (to promote fair and proper termination decisions).

The institution of an EPCP will enable an employer to improve its workplace. A concomitant legal effect will be the institution of loss control and risk management to enable a company to bolster its defense against potential punitive damages. In this age when litigious employees and multimillion-dollar verdicts are commonplace, risk managers and human resource professionals cannot afford to ignore the benefits of EPCPs. BI

Gerald L. Maatman Jr. is a partner at law firm Baker & McKenzie in Chicago. Mr. Maatman is chairperson of Baker & McKenzie's global labor, employment and employee benefits practice group.

'Polar Bear Strategy' offers cold truths on risk

"The Polar Bear Strategy: Reflections on Risk in Modern Life"
By John F. Ross
Published by Perseus Books
1 Jacob Way, Reading, Mass. 01867; 781-944-3700
$23.00

By Kevin M. Quinley

Newspapers report on exotic strains of flesh-eating bacteria, TV newsmagazines hype new causes of cancer, and the evening news terrifies us with the possibility of asteroids striking the Earth.

As if this weren't enough, we get to worry about the true impact of Y2K: whether it will be the end of the world as we know it.

With so many new dangers facing risk managers every day, how do we know which risks are real, and how do we make decisions about the dangers we face and manage?

In "The Polar Bear Strategy: Reflections on Risk in Modern Life," journalist John Ross serves up something akin to an intellectual "how to" of risk, helping us to understand our own unique psychological and biological responses to risk and to sort out the real hazards from the illusory ones.

Mr. Ross is a senior editor and writer for Smithsonian magazine; he is neither an insurance executive nor a risk manager. Although his book is intended for a wider audience, it should interest readers in the risk business.

In this entertaining and enlightening look at risk in the modern age, the author argues that the burgeoning science of risk assessment has given us powerful new tools for coping in a complex world, if only we could speak the language.

Mr. Ross examines the building blocks of this new language and explores our long-held—and often preset—biological and psychological responses to risk. Once we start looking at our own world using these tools, it will never appear the same.

"The Polar Bear Strategy" can be viewed as a primer for living safely in the 21st century. Using vivid stories and compelling science, this book offers concrete steps for effectively managing personal risks, telling how to fight fear and confusion and regain control over our lives.

The book's title conjures up an old quip about two campers plotting their strategy in case of bear attack. Reportedly, one camper said he would run full-tilt. The second camper said, "You know, you can't outrun a bear." The first camper replied, "I don't have to outrun the bear—I just have to outrun you."

"The Polar Bear Strategy" will not enable risk managers to outrun all risks, but it will give them a fresh perspective on uncertainty in modern life. BI

Kevin M. Quinley is senior vp of risk services for MEDMARC Insurance Co. Inc. and subsidiary Hamilton Resources Corp., both of Fairfax, Va. He holds the Chartered Property & Casualty Underwriter and Associate in Risk Management designations.

Former workers denied surplus assets

Former employees were not entitled to seek a portion of surplus assets resulting from a favorable tender offer for the employer's stock under an Employee Retirement Income Security Act section governing distribution of residual assets upon a plan's termination, according to the 3rd U.S. Circuit Court of Appeals.

In 1990, Conrail Rail Corp. established a voluntary savings plan for non-union employees. The plan included an employee stock ownership plan funded with a specially created class of Conrail preferred stock. In 1997, Norfolk Southern and CSX Corp. made a favorable tender offer to purchase Conrail including shares held in the unallocated account. The savings plan's share of the proceeds from the tender offer resulted in a cash surplus of about $533 million in the unallocated account.

In June 1997, the plan was amended to allocate this surplus to persons employed by Conrail from 1996 to 1998. Employees terminated or otherwise separated from employment with Conrail before 1996 were not eligible to share in the surplus. These ineligible former employees brought this suit against the plan administrator seeking a portion of the asset surplus. The trial court dismissed their suit.

On appeal, the former employees argued, in part, that Conrail's failure to distribute surplus assets to them upon partial termination of the plan constituted a breach of the duties imposed by ERISA that upon termination of a plan assets be distributed equitably. However, the court said that this provision of ERISA applies to partial termination of a plan only when the plan provides that it do so and the Conrail plan did not so provide.

With regard to complete termination of a plan, the court said that the ERISA provision regarding the distribution of the surplus applies only when an employer is seeking a reversion of assets to itself which was not the case here. The trial court decision was affirmed.

Bennett vs. Conrail Matched Savings Plan, 3rd U.S. Circuit Court of Appeals, Feb. 23, 1999 (*BI*/04/S. - $10)

Legal Briefs

Lewd remarks not CGL trigger

Allegedly lewd and lascivious remarks to fellow employees did not involve "publication" within the meaning of a commercial general liability insurance policy defining "personal injury" to include injury arising out of oral publication of material that slanders, according to the Supreme Court of Connecticut.

Springdale Donuts Inc. operated a doughnut shop in Stamford, Conn. During parts of 1992 and 1993, Springdale employed Helen Ritch and her daughter, Tina Ritch, as cashier-clerks at the shop. In 1995, the Ritches brought a federal suit against Springdale alleging sexual harassment and discrimination in the workplace.

Specifically, they claimed a fellow employee had sexually assaulted them and had made frequent lewd and lascivious remarks and gestures to them. The Ritches claimed Springdale was negligent in the failure to remedy the conduct.

Springdale was covered under a CGL insurance policy issued by Aetna Casualty & Surety Co. of Illinois that covered personal injury arising out of oral publication of material that slanders a person. Springdale then brought this suit in state court alleging Aetna breached its contract. The trial court ruled for Aetna.

The state Supreme Court said that "publication" generally refers to the communication of words to a third party. "Common sense dictates that a lay person would understand the term 'publication' to mean the communication of words to a third party," the court said. Since the harassment suit against Springdale was based entirely on comments made directly to the Ritches, the court concluded that the complaints did not set forth allegations of a personal injury to which Springdale's CGL policy applied. The trial court decision was affirmed.

Springdale Donuts vs. Aetna Casualty & Surety Co. of Illinois, Supreme Court of Connecticut, March 2, 1999 (*BI*/05/S. - $10) BI

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

INTERNATIONAL

Global Briefs

Lloyd's of London has introduced an **Automatic Transaction Monitoring System** to monitor more effectively activities within its syndicates and brokers. Lloyd's says ATMS allows a comprehensive audit of the entire market by being better able to examine complex transactions. . . .Protection and indemnity clubs belonging to the **International Group of P&I Clubs** are considering a reduction—starting with annual renewals next Feb. 20—in their surcharge for oil tankers traveling in U.S. waters. The surcharge, introduced in 1991 due to a sharp increase in reinsurance costs after the 1989 Exxon Valdez oil spill, will be reduced because of better claims experience in recent years. Stephen James, chairman of the group's reinsurance subcommittee, said it is too early to say how large the surcharge reduction will be but that it will be "significant." . . .With the launch of its "Asia Pacific Insurance Handbook," PricewaterhouseCoopers says it is working with several insurance companies looking at **investing in the Asian market.** Few significant deals have been done in Asia, as the absence of uniform accounting standards in many Asian countries makes it difficult to assess investment opportunities, PricewaterhouseCoopers said. Major European insurers, such as AXA Group, Allianz Holding A.G. and Prudential Corp. P.L.C., however, have been active in seeking investments in Asian insurers and fund managers. . . . Underwriters at Lloyd's of London are launching an **employment practices liability** insurance product that offers U.K. employers coverage for legal and compensation costs. An increase in employment tribunals or court hearings is expected to result from the U.K. government's pending Employment Relations Bill. The new product, available through underwriter Cottrell & Maguire, covers awards against employers for unfair dismissal, sexual harassment and various forms of discrimination. . . .AIG Europe (U.K.) Ltd. has named **Michael Whitwell** assistant managing director for commercial lines. He previously was a director responsible for sales and client retention. In addition, **Michael Giblin** has been appointed assistant managing director for consumer lines. They share duties previously held by Chief Operating Officer **Michael Sherman**, who has been promoted to president of commercial lines at American International Underwriters in New York. . . .Aon Risk Services has acquired **Claims Information Network Ltd.** from the Loss Management Group, in which Aon has a minority shareholding. Allan Gribben, chairman of Aon's managed services division, said the acquisition is part of a commitment to provide effective claims solutions. . . .Integrated Lloyd's of London insurance group **Euclidian P.L.C.** has gone private and doubled its underwriting capacity after shareholders accepted a £29.2 million ($46.8 million) cash offer from the company's management. Ownership reverts to Euclidian executives, who were backed by Centre Solutions, a Bermuda-based reinsurer that is part of Zurich Financial Services Group. Euclidian CEO James Truscott said the backing of Centre Solutions helps double underwriting capacity to £200 million ($320.8 million), which makes Euclidian's syndicate one of Lloyd's largest. . . .**Glenrand M.I.B. Ltd.**, a risk management and insurance consultant based in Johannesburg, South Africa, has joined the Worldwide Broker Network, an international broker alliance formed in 1989. Glenrand has revenues of $65 million with 1,500 employees in Africa, London and Zurich.

Quake devastates Turkey

Industrial corridor hard hit

PHOTO: AP/ WIDE WORLD

A mosque in Golcuk, Turkey, remains standing while many surrounding buildings lie in rubble from last week's earthquake.

By MARIA KIELMAS

ISTANBUL, Turkey—The insurance industry still is assessing the extent of insured losses from the severe earthquake that struck Turkey's industrial corridor last week, killing thousands of people and injuring tens of thousands.

Thousands more remained missing as rescue efforts continued last week. Overall damages could be in the billions of dollars. Turkish parliamentarians, who have criticized the government's slow response to the catastrophe, estimate that one-third of the country's population may have been affected by the quake.

The earthquake occurred about 3 a.m. local time Aug. 17. Both the U.S. Geological Survey and Turkish seismologists have calculated the earthquake's magnitude at 7.4.

It was located along the Northern Anatolian fault, a major strike-slip fault that runs northeast to southwest through Turkey and splits into three strands west of Istanbul. The northernmost strand passes through the Sea of Marmara, south of Istanbul, and has been identified as the source of major earthquakes that could seriously affect Istanbul and surrounding areas.

See **Earthquake** *on page 21*

Class actions increasing in Australia

By KATE TILLEY and MATTHEW MacDERMOTT

HOBART, Tasmania—A string of high-profile class-action lawsuits in recent years has made such suits a hot topic among Australian companies.

Attention to this liability exposure increased even more this year when a $1 billion Australian ($649.6 billion) class-action suit was filed against Esso Australia Pty. Ltd. on behalf of 1.2 million gas users affected by a 1998 fire and 10-day shutdown at Esso's natural gas plant in Longford, Victoria (*BI*, June 7).

The Esso action, expected to be heard in Australia's Federal Court next year, is the largest class action ever launched in Australia.

It is no surprise, then, that class actions were a major focus of discussion at the Australia Insurance Law Assn. national conference, held Aug. 4-6 in Hobart, Tasmania.

Conference attendees heard contrasting views on the merits of class actions.

Melbourne, Australia-based plaintiffs law firm Slater & Gordon has been at the forefront of coordinating several Australian class actions, including the Esso suit.

Andrew Grech, a Sydney, Australia-based partner at Slater & Gordon, told conference attendees that, despite the publicity surrounding class actions in Australia, the filing of such suits cannot be called an "epidemic."

Since the 1992 introduction of Part IVA of Australia's Federal Court Act, which paved the way for the filing of class action lawsuits, an average of three product liability class-action suits have been filed each year in Australia, Mr. Grech said.

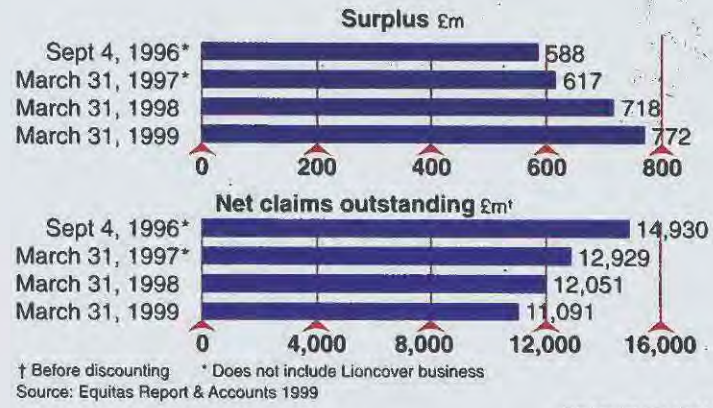
Mr. Grech said class actions attract a lot of publicity because they typically involve significant numbers of plaintiffs and large, well-known companies as defendants.

Melbourne-based food manufacturer Kraft Foods Ltd. and Melbourne-based McDonald's Australia Ltd., for example, are just two major multinational corporations that have faced class-action suits, each involving more than 500 Australian consumers.

Mr. Grech said class actions against large corporations always

See **Lawsuits** *on next page*

Stronger footing for Equitas



GRAPHIC BY ADAM DOI

Equitas' margins improve in '98

By SARAH GODDARD

LONDON—Claims payments by Equitas Ltd. were up slightly for fiscal 1998 compared with the year earlier, though net claims payments are lower thanks to reinsurance recoverables.

Equitas, the runoff reinsurer of Lloyd's of London's pre-1993 liabilities, also reported a stronger surplus and a higher solvency margin for the 12 months ending March 31, 1999.

Gross claims paid by Equitas during the most recent 12-month period totaled £2.25 billion ($3.72 billion), up a scant 0.9% compared with fiscal 1997. Of that, £952 million ($1.57 billion) is covered by reinsurance, up from £660 million ($1.08 billion).

As a result, net claims paid totaled £1.3 billion ($2.15 billion), 27% lower than the previous year.

Equitas' after tax surplus increased 8.1% to £722 million ($1.19 billion), helped in part by a £66 million ($109.2 million) payment made by Lloyd's during the year for a contingent liability, and despite a £144 million ($238.2 million) reserve addition made during the year.

Equitas' solvency margin also increased to 9.6% in fiscal 1998

See **Equitas** *on next page*

New South Wales may sue tanker owner

An Italian tanker spilled nearly 80,000 gallons of crude oil in Sydney's harbor Aug. 3.

PHOTO: AP/ WIDE WORLD

SYDNEY, Australia—Australia's New South Wales government plans to sue the owners of the Italian tanker *Laura D'Amato*, which was responsible for an oil spill of nearly 80,000-gallons in Sydney Harbor.

A report into the Aug. 3 spill, commissioned by the NSW government and conducted by the Sydney Waterways Authority, recommends the government sue the Italian-based tanker owner, Fratelli D'Amato S.p.A., under the New South Wales Protection of the Environment Operations Act. The act allows maximum fines of $1 million Australian ($650,000).

The NSW government has not decided when it will file suit. The government made a statement about the content of Sydney Waterways' 60-page report into the cause of the spill and said it would take legal action, but the full details of the report have not been publicly released.

Bob Carr, the premier of New South Wales, said the report will not be released until the harbor cleanup is complete and the full extent of the damage is known. Cleanup operations around the harbor could take several weeks.

Fratelli D'Amato's insurer, The Standard Steamship Owners' Protection & Indemnity Assn. (Bermuda) Ltd., has left an $8 million Australian ($5.2 million) bond with the Sydney Ports Corporation to cover the cost of the harbor cleanup and potential court fines.

—By Matthew MacDermott

Lawsuits

Continued from previous page
will draw more publicity because so many claimants are affected.

But, he said, the emergence of class actions is not a development that large corporations should "look upon with dread."

"Class actions do not make a corporation negligent where it would otherwise have been innocent," he said. "Class actions do not make a product defective where it was otherwise safe. Class actions do not make the representatives of a service provider misleading or deceptive where they are otherwise not."

Claims that once may not have been viable because of the cost of court action for one plaintiff outweighing that plaintiff's damages become viable with class actions, Mr. Grech said.

Class actions, however, have not altered the rights of plaintiffs or defendants, he said. Courts do not have to approve classes for class actions, but they can throw out suits if they think they have no merit. Courts also have procedures that must be followed; for example, a court could order that advertisements be placed in order to attract people who want to participate in the class action.

Class actions "are simply an extension of the same rights to people who would otherwise be denied access to and redress by our legal system."

Mr. Grech said Australia's legal system can't cope with individually hearing and resolving all claims against one defendant.

He said class actions have emerged as a valuable legal mechanism for consumers affected by mismanagement, as they allow class members to seek relief in a way that is cost-effective and efficient for all parties and the legal system.

Attorney David Poulton, however, said "practical difficulties" in Australia's Federal Court Act make it difficult for companies to prepare defenses against class actions.

Mr. Poulton is a partner with Melbourne-based Minter Ellison. His firm, one of Australia's leading defense firms, acted for Kraft Foods and its insurer, Zurich Australia Ltd., in defending a 1996 class action involving a Kraft product.

Ill-defined periods and incidents of consumption are among the difficulties for defendants in class actions, says David Poulton.

Mr. Poulton said the biggest difficulties with class actions in Australia are defining the scope of the class and the "opt out" provision in the Federal Court Act.

Under Australia's Federal Court Act, all persons with appropriate claims remain in the represented group unless they decide to opt out of the class action by giving notice to the court.

Mr. Poulton said the difficulties with this clause were highlighted in the Kraft action, when consumers who developed salmonella poisoning after eating contaminated Kraft peanut butter launched a class action.

He said the class then theoretically became "everyone in Australia who consumed peanut butter before the proceedings were lodged."

Slater & Gordon and Minter Ellison eventually reached an undisclosed, out-of-court settlement on the Kraft action.

Mr. Poulton said ill-defined periods and incidents of consumption are other difficulties that threaten to make class actions "unworkable" for defendants.

"When it comes to defining the class and enabling a respondent to understand the nature and scope of the case it has to meet, the difficulties can have the effect of interfering with the smooth running of the case and, in some cases, threaten the viability of the proceeding itself," he said.

In an effort to combat the cost of class actions, Mr. Poulton said defendant lawyers and their insurers must find ways to reduce transaction costs in cases with small claims and large numbers of claimants. Such methods include alternative dispute resolution and arbitration, he said. BI

Equitas

Continued from previous page
from 8.5% the previous year.

Equitas estimates that its total claims outstanding—including incurred-but-not-reported claims relating to long-tail liability business—now total £14.32 billion ($23.69 billion), 12.1% lower than a year earlier.

After taking into account discounting and reinsurance recoveries, Equitas' provisions for claims outstanding stands at £8.03 billion ($13.28 billion), 5.3% lower than what was reported a year ago.

"Claims are being paid more or less as expected," said Michael Crall, chief executive officer of Equitas. At the same time, he said, "We have made major inroads into settling major problems such as pollution" claims.

More than 20% of the 650 or so pollution coverage disputes involving Lloyd's have now been settled, he said.

So-called APH claims—asbestos, pollution and health hazard exposures—now comprise the bulk of Equitas' liabilities, representing about 55% of its outstanding exposures, compared with about 45% in fiscal 1997. The shift occurs as Equitas is able to settle short-tail claims more quickly.

Equitas' management welcomes the hard-hitting reputation the reinsurer has won for its claims settlement tactics. In his review within the Equitas accounts, Mr. Crall explains that even though APH cases often are very complex, "Our goal . . . is to negotiate directly with claimants in an attempt to achieve a solution, and to do so at the earliest appropriate time and at the appropriate value. When a policyholder has many claims stemming from a particular type of hazard, we normally attempt to negotiate a comprehensive settlement, including a release from further liability for both known and future claims."

At the same time, many policyholders also are Equitas' reinsurers, and Equitas has been successful in coordinating outward and inward reinsurance programs, reducing costs for all parties involved, said Mr. Crall.

The sheer number of contracts with which Equitas is involved also gives it a lot of clout when schemes of arrangement for failed insurers and reinsurers are designed.

"In many cases, we can determine whether a scheme (of arrangement) can be launched or not," said Equitas Finance Director Jane Barker, adding that Equitas frequently is both a debtor and a creditor within these arrangements.

During the past fiscal year, Lloyd's approached Equitas to renegotiate an obligation it had incurred during the final stages of its reconstruction and renewal program to provide the reinsurer with £100 million ($161 million) in 2002 should interest rates move adversely. Although the future payment never was definitely required, Lloyd's settled the contingent liability and paid Equitas £66 million for the last fiscal year.

"It certainly helped" the balance sheet, said Ms. Barker. "We think it's better to have £66 million than nothing." BI

Government, banks to step in on dioxin crisis

Insurers may cover loans

By MARIA KIELMAS

BRUSSELS, Belgium–The Belgian insurance industry is discussing internally how insurers may cover the government's interest-free loans to farmers and businesses hurt by the recent dioxin contamination crisis.

The government is planning to lend a total of 25 billion Belgian francs ($655 million) to farmers and businesses, said a Brussels, Belgium, spokesman for the Belgian government's dioxin trouble-shooter, Freddy Willockx. Half of this amount would be guaranteed by Belgium's banks, and the other half would be guaranteed by the government.

But the government is seeking insurance coverage for the risk of default on 12.5 billion Belgian francs ($327.5 million) worth of loans it would guarantee above a deductible of 1 billion to 2 billion Belgian francs ($26.2 to $52.4 million), the spokesman said. The precise deductible still is subject to negotiations with the insurers.

Inquiries by Belgian authorities following a loss assessor's report revealed that dioxins may have contaminated animal feed distributed to Belgian chicken and egg producers in January. About 400 cattle producers, 750 pork producers and 440 chicken producers may have bought the contaminated feed, according to the Belgian Ministry of Agriculture (*BI*, June 14).

Mr. Willockx, Economics Minister Rudy Demotte and banking and insurance industry officials had been meeting since Aug. 9 to reach a three-part agreement among the government, the Belgian insurance industry association Union Professionelle des Entreprises d'Assurances, and the Belgian Bankers' Assn. But the agreement stalled as the insurance officials had a number of questions on "technical matters," the spokesman said.

Nevertheless, the government had reached a separate agreement earlier this month with the BBA to extend the required loans, though this deal still needs approval by the European Commission.

UPEA's director, Rene Dhondt, said that once the EC gives the government banking deal the green light, the insurance sector will try to step in.

Insurers will try to provide what is essentially stop-loss coverage on the government's share of the loans. The insurance will be provided at cost; this effectively represents a subsidy and so requires approval from the European Commission Mr. Dhondt said.

"We are now trying to evaluate the technical risk," said Mr. Dhondt, referring to the risks of non-payment of loans. He said the insurers still are unclear how this technical risk could be calculated.

In late June, the Belgian government estimated that the full cost of the dioxin contamination was 60 billion Belgian francs ($1.57 billion), but further cost updates are expected.

PHOTO: AFP

Authorities' inquiries revealed that dioxins might have contaminated animal feed distributed to Belgian chicken and egg producers in January.

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Earthquake

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The largest economic asset destroyed by the earthquake was the Izmit oil refinery, owned by the state-owned Turkish Petroleum Refining Corp., or Tupras. Izmit is about 55 miles southeast of Istanbul. The plant, which processed 230,000 barrels of crude oil daily and provided petroleum products to industrial customers in the area, also met half of Turkey's demand for refined products.

It was feared shortly after the earthquake that the Tupras refinery fire would spread to nearby petrochemical plants. But, by the end of last week, the fire had been contained, though the area around the refinery was evacuated.

The plant carried property insurance of $1.2 billion, according to a spokesman from London-based brokerage Willis Corroon Group Ltd. Willis placed the reinsurance for the refinery and places the reinsurance for two-thirds of the Turkish market. The refinery was 5% coinsured by Tupras, with the remainder covered by the Istanbul-based insurer Gunes Sigorta. Five percent of the reinsurance was placed with Turkey's largest reinsurer, Istanbul-based Milli Reasurans Turk Anonim Sirketi, which is 75% owned by the Turkish investment bank Turkiye Is Bankasi.

The Willis spokesman said that when all retrocessions in Turkey are taken into account, 99.85% of the refinery's risk, or $1.12 billion, was reinsured internationally, with Lloyd's of London taking a major share.

Ankara, Turkey-based Turkish Petroleum Corp., or TPAO, was Tupras' parent company until Tupras became autonomous last year. Mete Gurel, assistant general manager at TPAO, said the plant was built in 1960.

John Toalster, oil analyst at London stockbroker SG Securities, said a replacement plant of the size of the Izmit plant would cost at least $1.3 billion to construct. Mr. Gurel said that, as of Aug. 19, none of TPAO's own installations had been damaged.

Companies whose property in the Izmit area was damaged include tire manufacturer Pirelli S.p.A. of Milan, Italy. Pirelli's risk manager was not available for comment.

Akron, Ohio-based Goodyear Tire & Rubber Co. said in a statement that there was little damage to its plant near the city of Adapazari, about 25 miles east of Izmit, though a warehouse and an office complex had losses.

Most damage occurred in and around the main urban centers of Izmit, Istanbul and Adapazari. Among the principal reported effects, according to a list compiled by Willis personnel in the area, are:

- A state of emergency was declared.
- Trading on the Istanbul stock exchange was suspended.
- Power and telephone lines were out.
- Main transportation links were cut.
- The Izmit industrial center was severely disrupted.
- Numerous post-earthquake fires were reported in Istanbul and Izmit.
- Many multistory apartment buildings in Izmit and Eskisehir, about 80 miles southeast of Izmit, collapsed.
- Hospital and rescue services were overwhelmed.

The government has been widely criticized for what many regard as a slow response to the catastrophe. Foreign rescue teams have complained that it took Turkish emergency services three or more days to get organized. And many local news media have reported complaints that emergency services have been concentrated at the large Turkish naval base at Golcuk, about six miles southwest of Izmit. The base was one of the worst-hit areas, with hundreds of navy personnel killed.

No damage, however, was reported to Istanbul's ancient architectural treasures, such as the Ayasophia mosque and the Topkapi Palace. The Ayasophia's famous dome has been frequently damaged by earthquakes since it was completed by the Emperor Justinian in 563. The present dome is the fourth on the building and was reinforced with iron chains in the last century by French engineers.

According to Mustafa Erdik, professor and chairman of the department of earthquake engineering at Bosphorus University in Istanbul, the Ayasophia, unlike many Byzantine buildings, has a strong foundation.

Willis has hired London-based loss adjusters Stewart Robinson to assess damage.

Munich Reinsurance Co., the largest reinsurer of Turkish risks, is not expected to estimate a figure for its losses until the middle of this week. Toward the end of last week, however, a spokesman for the reinsurer said, "At the moment, it looks as if the damage to the industrial site is not as high as was expected. Private dwellings have been substantially hit, but not so industry."

Previous estimates of probable maximum losses in northwestern Turkey have varied widely. In July of this year, Sean Mooney, a senior vp at New York reinsurance broker Guy Carpenter & Co. Inc., participated in a preliminary investigation with the World Bank and the Turkish government into the possibility of establishing an earthquake insurance fund similar to one in New Zealand. Mr. Mooney said they calculated PML in the Istanbul area, with respect to insured losses, at $2 billion. Mr. Mooney said the investigators used published data and did not consult local earthquake engineers.

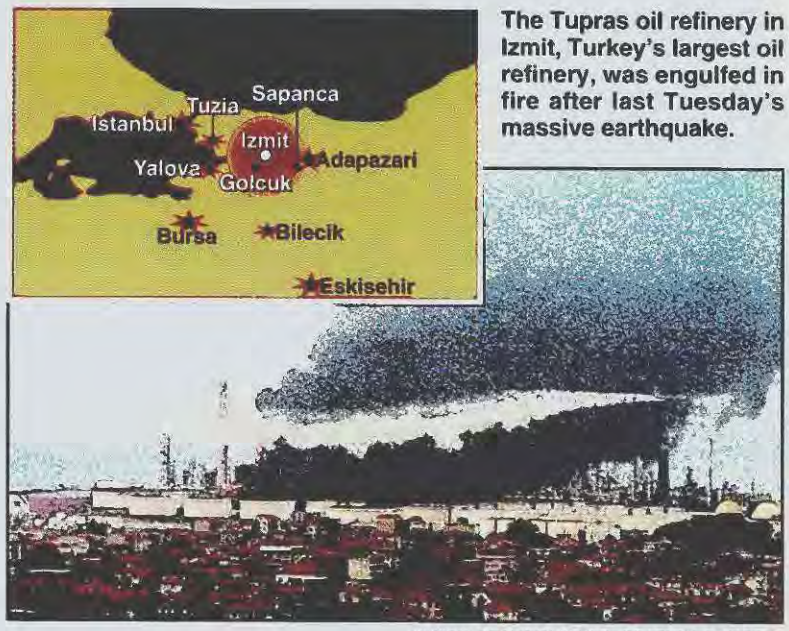
Mr. Erdik has prepared a damage scenario using vulnerability studies of, among other things, infrastructure, utilities, type of building stock and loss of life and business. He has determined that the probable maximum loss in economic—rather than insurance—terms in the Istanbul area would be $35 billion. The 1994 Northridge, Calif., earthquake caused an estimated $40 billion economic loss, according to the Boston-based Institute for Business & Home Safety.

The head of the Turkish central bank, Gaci Ercel, said the economic losses from the earthquake could be between $5 billion and $10 billion.

Turkey's earthquake building code dates from 1975 and was updated in January 1998. Mr. Erdik acknowledged the widespread criticism of dangerous and illegal building practices in Turkey in the aftermath of the earthquake. But he qualified the criticism, saying that, in the Izmit industrial area, those buildings that were up to five years old and that had been constructed according to the codes had performed well in the earthquake. Mr. Erdik said he thinks that, despite the fire, even the Tupras refinery has survived structurally. The fire may have started as a result of a leak in the main plant, but the most vulnerable parts, the storage tanks, appeared structurally safe when he observed the plant from a helicopter after the earthquake, he said.

Earthquake insurance is not compulsory in Turkey. Earthquake coverage is provided as part of fire policies for an additional premium. Turkish insurance companies keep only very low loss reserves—about 45% of total written premiums—compared with about 120% for most Western firms.

Turkish insurers do, however, carry additional earthquake contingency reserves, said Kevin Willis, an insurance analyst at rating agency Standard & Poor's in London. About 80% of the premiums of principal reinsurer Milli Re comes from compulsory cessions. Direct insurers in Turkey must cede a minimum of 15% of non-life premiums on a surplus basis to Milli Re, but the reinsurer may decline these if it wishes. S&P rates Milli Re's claims-paying ability at BB. BI



The Tupras oil refinery in Izmit, Turkey's largest oil refinery, was engulfed in fire after last Tuesday's massive earthquake.

PHOTO: AP/WIDE WORLD, GRAPHIC: ADAM DOI

ADVERTISER INDEX

Issue of August 23

Advertisement

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If you have any questions, please contact counsel for CLR at 203-328-6514.

Caldor

Continued from page 1

The 50% test has effectively blocked most captives from being benefits-funding vehicles, as few employers want their insurance subsidiaries to take on so much unrelated business.

But a Labor Department official said that, while the 50% test once was an absolute, the department now is willing to consider alternatives to the 50% test—if the alternatives are in the best interest of participants.

"There could be other approaches. We are flexible if there are safeguards," said Ivan Strasfeld, director of the Labor Department's Office of Exemption Determinations.

Among other things, the department would want to see that primary insurers used by the captive to write the policies are "top quality and highly rated," Mr. Strasfeld said.

"The plan should be getting good-quality insurance at a fair price, taking into account reinsurance arrangements," he said.

In addition, the transaction must benefit participants. "We want to see something concrete that this is good for participants," Mr. Strasfeld said.

This new flexibility in reviewing applications from companies that want to use their captives to fund benefit programs is welcome news to employers that have wanted to expand their captives into the benefit arena but have been stymied by the rigidity of the 50% test.

"The 50% test is a real stumbling block," said Arthur Koritzinsky, a senior vp with Marsh Inc. in New York.

Despite the new Labor Department flexibility, others caution that it remains unknown what it will take to win departmental approval to fund benefits in a captive if the 50% test is not met.

"The department may be looking for evidence of how an arrangement would benefit employees in a meaningful and significant way. But what would be considered meaningful and significant? asked Henry Saveth, an attorney with William M. Mercer Inc. in New York.

"How much would be sufficient? Would it be a 5% premium reduction or a 20% premium reduction? We don't know that yet," Mr. Saveth said.

What might have been the first test of this new Labor Department flexibility was stymied by the financial problems of Caldor Corp., a big discount retailer based in Norwalk, Conn., that, under court order, is winding down business after operating under Chapter 11 bankruptcy protection since 1995.

Caldor last year asked the Labor Department for permission to reinsure a voluntary long-term disability program through American East Insurance Corp., a captive insurer the retailer set up in Hawaii five years ago. Caldor proposed that AEIC reinsure policies written by Genesis Insurance Co., a unit of General Reinsurance Corp. of Stamford, Conn. Genesis and General Re are involved as insurers or reinsurers for certain Caldor property/casualty coverages funded through AEIC.

At the time of its application, Caldor had been using the captive to fund a wide range of risks, including workers compensation, general and auto liability, crime and ocean cargo coverage, and property coverage.

Paul Wagner, Caldor's director of risk management in Trumbull, Conn., described funding LTD coverage through the captive as a natural expansion. Mr. Wagner noted that it would have allowed the integration of Caldor's workers compensation and LTD programs.

The arrangement also would have benefited employees because their premium rate would have been cut by about 25% compared with rates charged in the traditional LTD market.

'We want to see something concrete that this is good for participants,' says Ivan Strasfeld of the DOL.

"The benefit to employees clearly was there," Mr. Wagner said.

But with all of the captive's business related to its parent, Caldor did not meet the department's 50% test.

Nevertheless, Mr. Wagner, noting how employees would have benefited from the arrangement, said he believed the application was on track at the department.

Now, however, with the withdrawal of Caldor's application, it never will be known if the retailer did enough to prove to the department that the transaction would have been in the best interests of participants.

Other employers whose captives do not meet the 50% test, however, are expected to file applications to fund benefits through their captives. One such application could be made public as early as this week.

Another application, filed by Union Carbide Corp., is expected to be decided by the end of the month. In that case, the Danbury, Conn.-based chemical maker wants to reinsure a portion of group life insurance benefits through a U.S. Virgin Islands branch of its Bermuda-domiciled captive, Westbridge Insurance Ltd. But approval of Union Carbide's request would not provide other companies with an indication of the Labor Department's new flexibility, as more than half of Westbridge's business is unrelated to Union Carbide.

Historically, using captives to fund benefits has drawn more theoretical than real interest. Reasons for that include a competitive commercial insurance market for certain benefit plans, such as life insurance, and the lack of a real cost advantage to using captives to fund other benefits, such as health benefits, compared to self-funding. The Labor Department's 50% test also has been an effective deterrent.

Interest in funding benefits through captives picked up several years ago, however, in the wake of several developments. Those developments include:

- Appellate court rulings that an employer can deduct premiums paid to a captive as long as the captive funds a significant amount of unrelated business.
- An Internal Revenue Service ruling that employers can deduct group term life insurance premiums paid to captives, as the premiums represent outside unrelated business.

Tying these two developments together, captive experts reason that if the parent funds enough employee benefits through the captive, the captive could be considered as writing a significant amount of unrelated business. That would increase the likelihood a parent would be able to deduct property/casualty premiums paid to the captive.

In 1993, in a case widely thought to be driven by tax considerations, transportation company CSX Corp. of Richmond, Va., asked the Labor Department for permission to reinsure group term life benefit programs through its Vermont captive.

The department rejected CSX's application, which was filed by the law firm of LeBoeuf, Lamb, Greene & MacRae of New York, the same firm that submitted Caldor's application. The Labor Department said that too much—in that case about 90%—of the captive's business was CSX-related.

Unlike Caldor, which promised employees specific premium reductions, CSX "failed to adequately demonstrate any objective cost savings would inure to the benefit of the (life insurance) plans as a result of the proposed transaction," the Labor Department said in 1994.

The department said the transaction appeared to have "been designed for the benefit of CSX and its affiliates rather than for the benefit of the plans." BI

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REQUEST FOR PROPOSALS

CITY OF CHICAGO PUBLIC SCHOOLS DEPARTMENT OF PROCUREMENT AND CONTRACTS

REQUEST FOR PROPOSAL

RFP document for Subrogation Services for Self-funded Medical Plan for the Department of Finance, Bureau of Risk and Benefits Management can be obtained from the Department of Procurement and Contracts, at the Bureau of Purchasing, 125 South Clark Street, 10th Floor, Chicago, Illinois from Monday - Friday, between the hours of 8:30 A.M. and 4:00 P.M., (773) 533-2280, for the following proposals.

CONTRACT NO: 00-250040

DESCRIPTION: The Board of Education of the City of Chicago (hereinafter the 'Board") invites the submission of proposals from Companies (hereinafter "Proposers") that wish to provide Subrogation Services for Self-Funded Medical Plan for eligible Chicago Public School employees and their dependents.

RESPONSE DUE DATE: Friday, September 10, 1999

TIME: 3:00 P.M.

LOCATION: The Board of Education of the City of Chicago, Bureau of Purchasing, 125 South Clark Street, 10th Floor, Chicago, Illinois 60603.

PRE-SUBMITTAL CONFERENCE: A pre-submittal conference will be held on Wednesday, September 1, 1999 at 10:00 A.M., Chicago time at 125 South Clark Street, 14th Floor, Conference Room, Chicago, Illinois 60603.

LATE RESPONSES WILL NOT BE ACCEPTED

The Board reserves the right to reject any or all proposals deemed in the best interest of the Chicago Public Schools.

Gery Chico
President of the Chicago School Reform Board of Trustees

Natalye Paquin
Chief Purchasing Officer
Procurement and Contracts

REQUEST FOR PROPOSALS

Pharmacy Benefit Management Services

The West Virginia Public Employees Insurance Agency is seeking bidders interested in providing Pharmacy Benefit Management for approximately 80,000 policyholders for services to begin July 1, 2000. A Request for Proposal (RFP) will be released on August 16, 1999. A **mandatory** bidder's conference will be held on Monday, August 30, 1999 at 10:00 a.m. EDT, at PEIA's office. Proposals are due October 8, 1999. To request a copy of the RFP prior to the mandatory bidder's conference, fax or mail your request to: Robert L. Ayers, ARM, Executive Director, WV PEIA, State Capitol Complex, Bldg. 5, Rm. 1001, 1900 Kanawha Blvd. E., Charleston, WV 25305-0710; fax (304) 558-4969.

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FTR FOR THE RECORD

Aetna hedges Prudential HMO buyout

BLUE BELL, Pa.—Shortly before closing its $1 billion acquisition of Prudential HealthCare, Aetna Inc. stated in papers filed with the Securities and Exchange Commission that it struck two agreements with Prudential to protect itself against severe losses.

One agreement will call for Prudential to indemnify Aetna if the transferred business has medical loss ratios in excess of a certain undisclosed threshold. Another agreement stipulates that Prudential pay Aetna a fee for administering Prudential's administrative service contracts for self-funded employers. The fee will be paid over 18 months and will gradually decrease over that period.

These agreements are in addition to the $500 million loan Aetna obtained from Prudential to help finance the transaction. Aetna will repay the loan at 7% interest over three years, SEC filings show.

Florida workers comp insurer seized

TALLAHASSEE, Fla.—Florida insurance regulators have seized a workers compensation insurer and will liquidate it if a buyer is not found.

FTBA Mutual Inc. was placed into rehabilitation earlier this month, and the Florida Department of Insurance is looking for another insurer to assume FTBA's book of business. If none is found by Sept. 14, FTBA's assets will be liquidated.

The Tallahassee-based insurer wrote coverage for 4,500 employers in Florida. Claims are being paid by the Florida Workers Compensation Guaranty Assn.

Regulators are trying to determine the amount of FTBA's liabilities and why it ran out of money to pay claims, said Dennis Threadgill, chief attorney with the Insurance Department's Division of Rehabilitation and Liquidation.

He said FTBA President Dennis Nye told regulators that the insurer was "somewhat undercapitalized when they became a mutual" about three years ago. Mr. Threadgill said the executive also told regulators that, as businesses insured by FTBA grew, they moved to other insurers that wanted their workers comp business as a condition for writing other liability coverages.

Mom awarded damages for injured son

LOS ANGELES—A Los Angeles jury has awarded $4.4 million to a woman who charged her newborn son was permanently disabled in 1992 after employees at Cedars-Sinai Medical Center waited too long to call her obstetrician.

Ima Hutchinson, mother of Christopher Patterson, said her son was left profoundly retarded, incontinent and wheelchair-bound because hospital staff did not quickly call the doctor when fetal monitors detected problems.

The award will be reduced by at least $250,000, because the jury awarded her $500,000 in for pain and suffering, which is double the maximum allowed by law, said Ms. Hutchinson's attorney, Jerome L. Ringler of Fogel, Feldman, Ostrov, Ringler & Klevens in Santa Monica, Calif.

A Cedars-Sinai spokeswoman said the hospital will appeal.

New policy covers e-commerce risks

LOS ANGELES—Broker The Sullivan Group has developed a new insurance policy for Internet e-commerce and marketing exposures.

WiSP, the Web site and Insurance Specialty Program, addresses specific risks associated with online transactions, including invasion of a site by hackers and viruses and breaches of security and errors by employees. Related losses include the theft of customers' credit card data; theft of company secrets; and loss of Web sales revenue, advertising revenue, electronically stored funds and intellectual property.

WiSP features two types of stand-alone policies—breach of security insurance and crime and intranet insurance—that also can be purchased as a combined program.

WiSP's breach-of-security policy covers losses triggered by hacking or unauthorized access by a third party. It covers loss of Web site sales and advertising revenue, as well as costs incurred in restoring the covered Web site to operating capacity. It also covers expenses to pursue legal action against another person or entity for the infringement of the policyholder's intellectual property, such as copyrights, patents or trademarks.

The WiSP crime and intranet policy provides coverage for Web site losses resulting from dishonest, fraudulent or malicious acts committed by an employee. It also covers loss resulting from the erroneous transfer of funds or delivery of property by an employee as the direct result of fraudulent input by an intruder.

The retentions, limits and price of WiSP are based on a company's size and the amount of business it does over the Internet.

The policy is available through Sullivan Group members nationwide. Information can be found at the broker's Web site, www.gjs.com.

Rite Aid to fight West Virginia stance

CAMP HILL, Pa.—Rite Aid Corp. will fight efforts by West Virginia's attorney general to end the company's contract to provide mail-order prescription drugs to public employees in the state.

Members of West Virginia's Public Employees Insurance Agency are encouraged to purchase prescription drugs through Rite Aid's Prescription Card Services Health Systems mail-order prescription dispenser.

But West Virginia Attorney General Darrell McGraw contends that charging plan members a higher copayment when they purchase drugs at local pharmacies instead of through Rite Aid represents an attempt by the company to monopolize prescription drug business in the state.

A spokesperson for Camp Hill, Pa.-based Rite Aid said earlier this month that the company had not yet been served a copy of Mr. McGraw's suit. But, the spokesperson also said, "We do intend to fight the claims vigorously, and we're certain that they'll be proven without merit."

Comings & Goings: Industry

Robert V. Deutsch has been appointed chief financial officer of Chicago-based CNA Insurance Cos. Mr. Deutsch, who previously was with Simsbury, Conn.-based Executive Risk, succeeds **W. James MacGinnitie**, who will retire in October. . . .New York-based Capital Re Corp. has named **Bruce Reich** executive vp and chief underwriting officer of its KRE Reinsurance Ltd. subsidiary. He comes to KRE from Swiss Reinsurance Co. . . .ACE USA of Philadelphia has named **Francis J. McNamee** senior vp of marketing. He previously was a senior vp at CIGNA Corp.'s commercial insurance services; ACE USA recently completed its acquisition of CIGNA's property/casualty operations. . . .**Tom Hutton** will step down as president and chief executive officer of Risk Management Solutions Inc. of Menlo Park, Calif., at the end of the year.

Information in brief

American Guarantee & Liability Insurance Co., a unit of Zurich Financial Services Group, has filed a motion to dismiss a Xerox Corp. suit filed in Stamford, Conn., seeking Y2K remediation costs under the **sue and labor clause** of its property insurance policy. The Xerox suit was filed after a similar suit seeking to deny coverage was filed by American Guarantee in New York. More than $2.2 billion of Xerox's insured property is in New York, and less than $40 million is in Connecticut, the motion says. . . .Political risk insurer **Sovereign Risk Insurance Ltd.** has increased its limits and extended its terms of coverage. Sovereign now will offer coverage up to $125 million for a single project—up from $100 million—and its maximum coverage term is now 15 years, rather than 10. Sovereign was formed in 1997 to underwrite political risks on behalf of ACE Bermuda Insurance Ltd. and XL Insurance Ltd. It had previously doubled its limits last August. . . .**Lifeguard Inc.**, the regional nonprofit and independent health plan based in the Silicon Valley, has been awarded "commendable" accreditation by the National Committee for Quality Assurance. The commendable accreditation is equivalent to the NCQA's former three-year full accreditation. The accreditation, which followed a May 1999 re-review by NCQA, is based on its 1997 Standards for Accreditation. . . .**Hobbs Group L.L.C.** has acquired The Linden Co., a Denver-based loss prevention and risk management company. Terms of the deal were not disclosed. . . .**Brown & Brown Insurance of Arizona Inc.**, a wholly owned subsidiary of Daytona Beach, Fla.-based Brown & Brown Inc., has acquired the assets of Tomborello Insurance Services Inc. of Phoenix. The agency will be combined with the existing Brown & Brown office in Phoenix. . . .**Patient's Choice Inc.**, a Baton Rouge, La.-based health maintenance organization with 14,435 members, is closing. The physician-owned plan that was formed in 1997 could not secure additional capital to continue operations. . . .Rep. Bernie Sanders, I-Vt., and 39 other members of the House of Representatives, mostly liberal Democrats, recently sent a letter to Internal Revenue Service Commissioner Charles Rossotti, urging the IRS not to approve any further conversions of **traditional defined benefit pension plans** to cash balance plans until all issues, including whether the plans discriminate against older workers, are fully investigated by the IRS and other federal regulatory agencies. . . .**XL Capital Ltd.** has bought a minority holding in MKP Capital Management, a fixed-income investment manager in New York, for an undisclosed sum. The purchase will enable Hamilton, Bermuda-based XL to broaden the investment options in the coverage offered by XL's insurance and reinsurance units, said Christopher Greetham, chief investment officer. The buy follows previous investments by XL in Highfields Capital Management. BI

Markel

Continued from page 1

Lloyd's syndicates; and a French reinsurer.

It will be a challenge to integrate the several companies with Markel, said Donald Watson, a director at Standard & Poor's Corp. in New York.

"They are very different companies. Markel is about half the size of Terra Nova, and there is very little geographic overlap," he said. Markel has no experience managing international operations, "and that is a concern," Mr. Watson added.

Markel has successfully managed an excess and surplus lines book of business in the United States, but that experience does not prepare it for managing London market business, he said.

If Markel manages the acquisition well, however, it will transform itself into a significant international insurer and reinsurer, Mr. Watson said.

S&P placed Markel under its "CreditWatch" review with negative implications after the announcement.

Markel will ensure a successful acquisition by keeping most of the Terra Nova management and by refraining from making other substantial changes there, said Mr. Markel.

Nigel Rogers, president and chief executive officer of Terra Nova, will become an executive officer of Markel and will continue to head the London operations of Terra Nova, which will continue to operate under their existing names. Mr. Rogers and two as-yet-unnamed directors of Terra Nova will join the Markel board.

The senior management of Compagnie de Reassurance d'Ile de France in Paris also will remain. Terra Nova bought CORI-FRANCE in 1997.

"Terra Nova brings a tremendous amount of experience with it, and we are not changing that," Mr. Markel said.

Despite the differences in the business written by Markel and Terra Nova, they are very similar companies in other ways, he said. "We are different in terms of location and lines of business, but we have a very similar commitment to making underwriting profits and establishing adequate loss reserves," Mr. Markel said.

By retaining most of Terra Nova's senior management, Markel should be able to absorb the company successfully, said Jay Cohen, an analyst at Merrill Lynch & Co. Inc. in New York.

"If they didn't have any good people in London, I would be nervous, but Nigel Rogers is staying on, and he is a good manager," Mr. Cohen said.

'We are different in terms of location and lines of business, but we have a very similar commitment to making underwriting profits,' says Steven A. Markel.

Mr. Rogers joined Terra Nova in 1996, when the company bought Octavian Syndicate Management Ltd.

The London operations of Terra Nova currently are working in a competitive market, but that could be reflected in the price Markel paid for the company, a price that Mr. Cohen called "fair."

"When the market is in the doldrums, maybe it's a good time to consolidate," he said.

And the purchase of an insurer and reinsurer with significant London market operations will greatly expand the range of business Markel will be able to write, Mr. Cohen said.

"There is business in the London market which you won't see in the U.S.," he said.

The competitive market in London hit Terra Nova's profits for the second quarter of 1999, when it decided to exit U.K. private passenger auto, light aircraft and general aviation business.

The withdrawal resulted in an aftertax charge of $25.2 million, which led to an operating loss of $7.6 million for the quarter.

The acquisition is subject to shareholder and regulatory approval. It is expected to be completed by late 1999 or early 2000.

The decision to sell to Markel was made after Terra Nova had spent several years looking for a company to buy in the United States, said John J. Dwyer, chairman of Terra Nova. "To be truly global, you have to have a U.S. presence," he said.

Although several insurers and reinsurers in United States have been for sale for the past several years, none were suitable, Mr. Dwyer said.

"Finding a partner in the U.S. is easy, but finding the right one is fairly difficult," he said.

Recently, Terra Nova was in negotiations to buy a U.S. company that Mr. Dwyer did not name. "It was a great company, but it did not give us the momentum that Markel does," Mr. Dwyer said.

Mr. Dwyer, who is 63, will retire from Terra Nova after the transaction is completed. BI

Vermont

Continued from page 2

forming sponsored captives, which would have cells open to other participants.

Another major element of this year's changes in Vermont's captive law is a provision allowing the formation of "branch captives." That measure allows alien captives to form an onshore branch in Vermont for purposes of writing employee benefits through the captive. It was enacted in anticipation of the U.S. Department of Labor allowing such activity.

Mr. Crouse said the state licensed its first branch captive about two weeks ago.

"Now the (branch captive) is sitting there, but the license is subject to Department of Labor approval," Mr. Crouse said.

Again, the captive director would not name the company, but he described it as "a large Midwestern utility with a captive in Bermuda."

The captive parent didn't want to move its Bermuda captive onshore, Mr. Crouse said, and it began discussions with Vermont captive officials about a year ago to find an alternative.

'The total fiscal costs of this industry are extremely low,' says Robert Miller. 'So it's an extremely profitable industry for Vermont.'

"If the Department of Labor gives us the ruling, we're off and running," Mr. Crouse said. He speculated it will probably be a few months before federal officials make their decision.

If the Department of Labor decides to modify the conditions under which captives can be used to fund employee benefits, the branch captive mechanism offers tremendous potential for Vermont to host more such entities, he said.

Looking ahead, Mr. Crouse suggested such activity might even prompt Vermont to adjust its existing premium tax structure, because many companies' annual employee benefit premiums are even larger than their property/casualty premiums.

Mr. Crouse said he anticipates 30 new captive formations in Vermont this year. As of Wednesday, the state had issued 17 new licenses in 1999.

Mark M. Boll, director of risk management for Minneapolis-based Apogee Enterprises Inc. and the new chairman of the VCIA, said continued captive formations in spite of the ongoing soft traditional insurance market are testimony to the notion that "captives are a good business idea."

And the captive industry remains good business for Vermont. Robert Miller, commissioner of the Vermont Department of Economic Development, revealed preliminary findings of a state study of the captive industry's economic impact that document the industry's value to the state.

The study showed the industry is directly and indirectly responsible for 625 full- and part-time jobs in Vermont, with an average salary of more than $43,000 and $22 million in total annual personal income attributable to captive insurance.

Fiscal benefits to the state from captive insurance include approximately $10 million in premium taxes and license fees annually, another $1 million in general fund taxes and $500,000 in state transportation fund taxes, Mr. Miller said.

Meanwhile, the total costs to Vermont's annual budget of approximately $900 million related to captive insurance are less than $250,000 annually, he said. The cost of captive regulation is paid through the premium tax and not reflected in that $250,000.

"The total fiscal costs of this industry are extremely low," he said. "So it's an extremely profitable industry for Vermont." BI

Call for Nominations

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Nominations for the 2000 *Business Insurance* Risk Manager of the Year and Risk Management Honor Roll are now being accepted.

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California upholds 'survival statute'

By JUDY GREENWALD

SAN FRANCISCO—Heirs to plaintiffs who die before a verdict is rendered cannot collect pain-and-suffering awards from state courts, even if the suit alleges violations of federal law, says the California Supreme Court.

Unlike most other states, California's "survival statute" bars heirs from collecting for pain and suffering after a plaintiff's death. In this case, however, the plaintiff's widower had argued that because his spouse alleged violations of federal civil rights law, the survival statute was not applicable. The California Supreme Court disagreed, overturning two lower court decisions.

The decision in *County of Los Angeles vs. The Superior Court of Los Angeles County* means litigation brought by elderly plaintiffs against nursing homes and other institutions will be filed more frequently in federal rather than California state courts, says an attorney involved with the case.

The case involved Patricia Cordova, who had filed a sexual harassment case against the Los Angles County Sheriff's Department, where she had worked as a deputy, and others in state court.

Ms. Cordova charged violations of state as well as federal civil rights laws. She was killed in an unrelated automobile accident, though, before her case came to trial, leaving a husband and four children as survivors.

A state trial court and an appellate court agreed that the statute against pain and suffering awards should not be applicable in her case because it "would be inconsistent with the policies underlying the federal civil rights law," according to the decision.

But in a unanimous decision, the California Supreme Court disagreed. The court said precluding pain and suffering awards "which our Legislature determined to be damages particularly personal to the deceased plaintiff, is not inconsistent with or pre-empted by federal law."

The decision says heirs still can collect for any economic damages sustained before the plaintiff's death, including lost wages and medical expenses, as well as punitive damages.

Barbara Enloe Hadsell of Hadsell & Stormer in Pasadena represents Ms. Cordova's husband. She said no decision has been made on whether to petition the U.S. Supreme Court in the case. The attorney who represents Los Angeles County had no comment.

"I think it's an extremely unfortunate decision," said Ms. Hadsell. Damages for emotional distress are "often the largest part of an award" in sexual harassment cases, such as this one, she said. This decision "basically lets the defendant off scot-free as a result of a horrible twist of fate."

Supporting Ms. Cordova's husband was Los Angeles-based Protection & Advocacy Inc., an advocacy group for the institutionalized elderly and infirm.

Karl M. Manheim, a law professor at Loyola Law School in Los Angeles who submitted a friend of the court brief on behalf of the group, said the decision creates a conflict with federal courts, which have ruled the state's survival statute is inconsistent with federal law. As a result, he said, the case ultimately may be decided by the U.S. Supreme Court.

Although plaintiffs can file federal civil rights charges in federal or state courts, "now plaintiffs will be inclined to file in federal court because in the rare occurrence they die while their case is pending," they will be at a disadvantage in state court because of this ruling, said Mr. Manheim.

This will particularly affect elderly or infirm institutionalized plaintiffs, "those folks who stand a greater risk of dying while their cases are pending, especially since (defendants now have) incentive to drag it out as long as possible," he said.

Mr. Manheim said California's survival statute is a "relic of the 17th Century" that most states have abandoned "because it's unfair and it provides a windfall for the defendant."

"Why should the defendant benefit simply because the plaintiff dies before the case goes to final judgment? That's why most states have rejected it. It's an anachronistic rule. It's out of touch with modern law."

Kevin J. Dunne, a defense attorney with Sedgwick, Detert, Moran & Arnold in San Francisco, said: "As a California lawyer, it comes as little surprise that the California Supreme Court would give credibility to its own law. Anybody who practices here is very used to the concept."

Mr. Dunne said the survival statue is a "bit of a compromise." In a typical case, such as one brought by an asbestos sufferer, the plaintiff may not be able to collect for pain and suffering, but heirs still could collect for damages on wrongful death claims.

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County of Los Angeles et al., petitioners, vs. The Superior Court of Los Angeles County, respondent; Kim A. Schonert, as personal representative, etc., Real Party in Interest, No. S053930, California Supreme Court.

Commentary

Action raises airlines' esteem

When I groused in a column last month about a series of flight delays in and out of Chicago this spring, I thought I had been just unusually unlucky.

Now, in the past few weeks, it's been documented that flying in and out of Chicago's O'Hare International Airport recently has indeed entailed "drastic delays," in the words of United Airlines.

And the major airlines and the Federal Aviation Administration are pledging to improve service around the country.

I'm not taking any personal credit for this, as much as I would like to think that my column was among those read by airline managements deluged with complaints about bad service. But as a frequent flier, I sure am happy it is happening.

In a letter to its frequent flyers sent last week, United wrote: "Since you have recently traveled through our largest hub and United's hometown, you may have experienced drastic delays at Chicago O'Hare International Airport. These delays have been largely due to unpredicted obstacles during renovations required by the Air Traffic Control and the coordination of their efforts in providing pleasant, efficient service."

The letter continues, "We want to assure you that we at United are doing everything we can to improve the implementation of these new systems."


Kathryn J. McIntyre

And as if responding directly to my column pleading with airlines to consider the schedules and comfort of their customers. United says, "Getting you comfortably to your destination on time is our top priority and the essence of our service to you."

Now that's more like it.

United also announced that it would credit the accounts of its Premier Mileage Plus members with 2,500 miles "to underscore our commitment to you as a Premier member and to acknowledge our pledge to improve the experience of all your air travel."

I don't want to sound too greedy, but adding another 0 to that mileage credit would get a lot more attention and appreciation.

American Airlines has sent a similar letter to its frequent fliers; I am looking forward to reading it, but I haven't yet received it. (Delivery delays by the U.S. Postal Service are fodder for another column.)

I'm hopeful that the airlines aren't making just an empty promise and that they will be able to improve their service as a result of the Federal Aviation Administration's recently announced a plan to reduce airline delays. The airlines certainly can't do it alone.

As reported in The New York Times and The Wall Street Journal, the FAA has told the airlines that its command center in Herndon, Va., will start coordinating traffic flow in bad weather, eliminating conflicts among local centers across the country. And because they are not necessary for safety, the FAA will allow the center to minimize the use of extra buffers that are otherwise routinely established between planes in bad weather.

The Wall Street Journal noted that the number of airport delays rose an average of 44% in April and May, attributing the increase not only to the new FAA equipment in some locations but also the ever-increasing growth in the number of passengers and the weather.

As several readers pointed out to me, neither the airlines nor the FAA can control the weather. But in what is the most welcome news to this airline customer, the FAA has pledged that airplanes held on the ground by bad weather will be given a specific departure time. This will allow the airlines to determine whether it makes any sense to keep passengers on a tarmac or let them get off a plane and make other arrangements.

Having berated the airlines and the FAA for lousy service, I think it is only fair that I now commend them for acknowledging the problems and telling us how they expect to improve service.

The FAA said that all these measures should improve service within the next few weeks without compromising the safety of air travel. With the approaching fall conference season, many of us will have plenty of opportunities to find out how well all of this is working.

I'm really an optimist at heart, but I am still, however, going to build airport departure delays into my travel schedule.

Kathryn J. McIntyre's commentary appears fortnightly. Reach her at kmcintyr@crain.com.

Ohio

Continued from page 1

"It is part of a national trend," he said. "The state legislatures that pass these laws are bound and limited by their state constitutions that create them, and we intend to hold them to those requirements."

Mr. Schwartz said the strategy is attractive to ATLA and opponents of tort reform because state constitutions "contain many vague and untested provisions" that can be interpreted in a variety of ways. In addition, he said, when a case focuses on interpretation of a state constitution, there are no grounds for appeal to the U.S. Supreme Court.

The Ohio decision, however, "is so extreme" that it may merit federal review, according to Mr. Schwartz.

Unless that occurs, though, Ohio's comprehensive tort reform law—which took effect in early 1997—is dead. The unusually broad law tackled numerous facets of liability at once (*BI*, Oct. 7, 1996). The measure: capped punitive damages; abolished joint-and-several liability for non-economic damages; capped non-economic damages via a pair of formulas involving the nature of the particular injury; modified the liability regime for economic damages under some circumstances; and set a 15-year statute of repose for product liability claims under most circumstances.

In a 4-3 decision, the state's high court last week voided the entire 1996 tort reform package. In a lengthy—and sometimes barbed—majority opinion that cited precedents stretching back to 1802, Justice Alice Resnick agreed with the plaintiffs that the Legislature had crossed into unconstitutional territory when it passed the legislation.

Justice Resnick, a Democrat who was joined by the other Democratic judge and two of the court's five Republicans, wrote that the Ohio constitution gives the courts, not lawmakers, the power to decide who will have access to the courts.

In a sharply worded dissent, Chief Justice Thomas Moyer wrote that it was the Supreme Court itself that had overstepped its bounds; he said the majority decision "affronted" constitutional government.

The Columbus-based Ohio Chamber of Commerce, which has been one of the most active reform supporters, shared Chief Justice Moyer's opinion.

"With this decision, Ohio lawmakers might as well close up shop and go home. They can no longer represent their constituents as the lawmaking body of our state. Under the guise of separation of powers, the Supreme Court has boldly made the judicial branch first among equals," Linda Woggon, the chamber's vp-governmental affairs, said in a written statement released shortly after the ruling.

In a subsequent interview, Ms. Woggon predicted that despite the state-specific nature of the ruling, the decision would resonate beyond Ohio's borders.

"Whenever you have a comprehensive and very good piece of legislation rejected by a state supreme court, it kind of re-energizes the movement to have legislation overturned in other states," she warned.

"The situation in Ohio is particularly frustrating," said Bill Schroeder, vp-Midwest region for the Alliance of American Insurers in Downers Grove, Ill. Four votes on the Supreme Court are all that is needed to "undo the legislative majority in both houses" as well as the governor, he said. The Ohio court's majority is "legislating; they're not ruling on laws."

The Ohio Supreme Court's majority is 'legislating; they're not ruling on laws,' says Bill Schroeder.

Risk managers also took issue with the ruling.

"The action of the Supreme Court recreates a lottery-like atmosphere at the trial court level. It will reap windfall profits for aggressive plaintiff lawyers at the expense of Ohio's consumers," said Jim Green, risk manager for Justin Management Co. in Fort Worth, Texas, and state and provincial team leader of the Risk & Insurance Management Society Inc.'s external affairs team.

By removing the law's limits on punitive and non-economic damages, "the threat of runaway jury awards forces commercial defendants to settle cases that should be tried on their merits. These settlements become part of the hidden cost of doing business. They cause higher insurance premiums," Mr. Green said.

"Although there's 100 and some pages of opinion, the driving issue I don't think is the law or the constitution, I think it's politics," said Richard Schafstall, senior counsel of Cincinnati-based Cinergy Corp. and past president of the National Council of Self-Insurers. "I think that everybody, including the leaders in the Senate and the House, is concerned about how to remedy the situation. I think they're appalled by the language of the majority. There's no doubt in my mind that some discussions will occur to decide what can be done, if anything," Mr. Schaftall said.

Mr. Schwartz of ATRA said he believes "the Ohio opinion is so extreme in nullifying two basic principles of federal constitutional law" that there may be a federal remedy.

First, Mr. Schwartz said, there was no "real case and controversy" in the underlying lawsuit in the Ohio case. "No person was hurt, there was no tort claim," he said, noting that the Ohio trial lawyers' group argument was that it had been injured because the law might cause the group to lose members as demands for plaintiffs attorneys' services fell.

Second, the decision simply turned the concept of separation of powers "upside down," Mr. Schwartz said, with the state high court infringing upon the duties of the Legislature.

That "gets to a possible federal argument, which is that the Constitution guarantees each citizen a republican form of government. The Ohio decision is so extreme that it may violate the rights of the lawmakers, people and persons whom the law was intended to protect. What the court has done is create a situation where there is no check on it," he said.

ATRA may pursue such a challenge, though no decision has been made, Mr. Schwartz said.

The immediate response may be more prosaic. The Ohio Chamber's Ms. Woggon said pro-reform forces plan to meet this week to consider legislative responses, "but perhaps more important than that" to look at how to change the makeup of the court.

"Unfortunately, the business community in Ohio hasn't been real sophisticated when it comes to their involvement in judicial elections, and we need to change that. They need to understand that judicial elections in Ohio right now affect their bottom line," she said.

In 1998 elections, the Chamber led an unsuccessful drive to unseat Associate Justice Paul E. Pfeifer, a Republican who often votes against business interests, according to the state business group (*BI*, Oct. 26, 1998).

Ms. Woggon pointed out that two of the court's seven justices—including Justice Resnick—face re-election campaigns next year.

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Ohio Academy of Trial Lawyers et al. vs. Sheward et al., Ohio Supreme Court; No. 97-2419. Aug. 16, 1999.

Huff

Continued from page 2

judgment that a federal district court judge in Louisville, Ky., entered against him last month. Judge Jennifer B. Coffman entered the judgment against former trucking association executive Robert Martire on July 7 because of his failure to make himself available to Liberty Mutual for deposition.

Mr. Martire, a former executive vp and chief operating officer for the association, the North American Trucking Assn. of Louisville, Ky., could not be reached for comment. Attorneys in the case said they believe Mr. Martire never mounted any kind of defense, including not hiring an attorney.

In 1995, Mr. Huff was president of NATA. The association, which no longer is in operation, then had a nationwide membership of about 650 trucking companies and 20,000 drivers, Mr. Huff has said.

Mr. Huff at that time also was president of Louisville-based broker All Risk Services Ltd. All Risk signed a managing general agent agreement with Liberty Mutual to bind coverage for NATA members, subject to the insurer's underwriting criteria, according to court papers. All Risk agreed to collect the NATA premiums and remit them to the insurer in a timely fashion. NATA guaranteed All Risk's financial and contractual obligations, according to the papers.

Instead, the lawsuit charged, the defendants:

- Failed to remit all of the annual premiums that NATA members paid in full upfront. The defendants allegedly told the insurer those members were paying their premiums under an installment plan over the course of a year.
- Created fictitious Liberty Mutual policies to fraudulently obtain premium financing from other financial institutions.
- Used the trucking program premiums and the premium-financing proceeds for their personal use and to operate All Risk and NATA.

Besides Messrs. Huff and Martire and All Risk and NATA, Liberty Mutual named Mr. Huff's two brothers as defendants. Eric Huff was an All Risk officer and a NATA director; David Huff was NATA's general manager. David Huff is not David L. Huff, whom oil giant Ashland Inc. of Covington, Ky., recently appointed director of corporate insurance.

The racketeering charges stem from the defendants' involvement in three other incidents that led to charges that the defendants misappropriated millions of dollars of insurance premiums and premium-financing proceeds.

Two of the cases were settled. In one case, however, a court earlier had ruled that NATA breached its contract with Transamerica Premium Financing Corp.

In the third case, retail and wholesale broker LaGere & Walkingstick Insurance Agency Inc., a Chandler, Okla., subsidiary of Chandler (USA) Inc., continues to seek $113,000 of unremitted premiums from Mr. Huff. The 6th U.S. Circuit Court of Appeals two years ago ruled that Mr. Huff could not discharge that debt in his personal bankruptcy.

Kentucky regulators last October revoked W. Anthony Huff's license based on the TIFCO and Lagere & Walkingstick incidents (*BI*, Nov. 16, 1998).

Lloyd's

Continued from page 2

the jurisdictional minimum was $50,000.

The Allendale coverage case stemmed from a warehouse fire claim filed in the early 1990s by Bulldata Corp. of France. Allendale paid the more than $100 million damage claim and collected on reinsurance from all of its reinsurers except for Lloyd's. In its suit, Allendale was attempting to collect $7 million in indemnification for the loss and $5 million in expenses.

After a seven-day bench trial overseen by Judge Scheindlin in December 1997, the reinsurance contract in controversy was rescinded based on alleged misrepresentations by Allendale during the placement, Mr. Glazer explained.

After losing at trial, Allendale appealed to the 2nd Circuit, which remanded the case back to the district court to review in light of the *Squibb* decision.

In *Squibb*, U.S. District Judge John Martin found the federal jurisdiction requirements were met because, in the insurance contract in dispute, the lead Lloyd's name had agreed to act as a representative of the other names on the risk. All of those names would be bound by the outcome of any litigation against that leading name (*BI*, Aug. 2; Dec. 21, 1998).

While Judge Martin's ruling preserved the 17-year-old Squibb coverage case, Judge Scheindlin's decision invalidates all the work in the Allendale case, said Neal M. Glazer, a partner at D'Amato & Lynch in New York who represented Excess Insurance Co.

"We had hoped that the principles enunciated in *Squibb* would be applied in our case," he said.

Instead, Judge Scheindlin ruled there is no federal jurisdiction in the Allendale case, nullifying her earlier ruling denying reinsurance coverage to Allendale, Mr. Glazer explained.

But Judge Scheindlin wrote in her decision that "unlike plaintiff Squibb, Allendale sued syndicates, not individual underwriters, and the parties never stipulated that all member underwriters would be bound by a decision for or against their representative underwriter."

Also in contrast to the Squibb case, "defendants here seek to force a stipulation upon plaintiff after the case has been fully litigated and defendants have prevailed. It is one thing for defendants to agree to be bound before trial and quite another to agree to be bound after a highly favorable outcome," she added.

The reinsurer defendants in the case presented several proposals that would have allowed the suit to go forward in federal court, one of which was to dismiss from the complaint all those defendants that did not meet the jurisdictional diversity requirement. But the plaintiff declined to accept any of the proposals. As a result, Judge Scheindlin dismissed the case.

"Jurisdiction cannot be saved despite the various alternatives suggested by the defendants," the judge wrote.

Now both parties in *Allendale vs. Excess* must go back to the drawing board and decide whether to pursue the litigation in state court or to appeal the dismissal to the 2nd Circuit.

"In our view, it's a colossal waste of the parties' and judicial resources," Mr. Glazer said.

London Fischer L.L.P., the firm that represented Allendale in the case, declined to comment.

But regardless of whether the case is refiled or appealed, it isn't really dead, according to Dean Hansell, a partner at LeBoeuf, Lamb, Greene & MacRae in Los Angeles who regularly represents Lloyd's in coverage cases.

"The ultimate outcome of this case will depend on what the 2nd Circuit does with the Squibb case," he said.

The Squibb case is on appeal to the 2nd U.S. Circuit Court of Appeals. The appellate court has asked for additional briefs on the issue of federal jurisdiction; arguments are set for Oct. 4.

George Marshall Moriarty, a partner at Ropes & Gray in Boston, is the attorney for Lloyd's in the Squibb case. He said he is reviewing how the Allendale decision might affect the Squibb case.

Louis Solomon, a partner at Solomon, Zauderer, Ellenhorn, Frischer & Sharp in New York who represented Squibb in its case against Lloyd's, declined to comment on the Allendale decision.

Mr. Hansell also suggested that perhaps the judge in *Squibb* allowed that case to go forward because the jurisdictional minimum was just $10,000 in 1982 when that suit was filed.

"One major difference between the two cases is that the jurisdictional minimum was much lower in Squibb because it was filed so long ago," he said.

The issue of whether Lloyd's can be sued in federal court has been a recurrent theme in U.S. coverage litigation involving the London market, according to Robert Horkovich, a policyholder attorney at Anderson, Kill & Olick P.C. in New York.

In fact, the service-of-suit clause was added to Lloyd's insurance contracts to make it easier for U.S. policyholders to enforce their policies through the U.S. courts, he said.

He quoted from a Sept. 23, 1971, letter from the Non-Marine Market Assn. to then-Lloyd's U.S. counsel LeBoeuf, Lamb, Leiby & MacRae as an example: "The NMA said 30 years ago that they need to allow U.S. policyholders access to their courts to sue them, otherwise they'd have problems selling insurance in the U.S.," Mr. Horkovich paraphrased.

Decisions such as *Allendale* effectively void the service-of-suit clause, making Lloyd's policies less desirable to U.S. insurance buyers, he said.

"A prudent risk manager has to realize that one of his avenues for collecting from Lloyd's is now questionable," he said.

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Allendale Mutual Insurance Co. vs. Excess Insurance Co. Ltd., et al., U.S. District Court for the Southern District of New York, Aug. 11, 1999, 95 Civ. 10970 (SAS).

Heller joins utility risk manager

Comings & Goings: Buyers

Susan Heller has been named director of risk management at the Public Utilities Risk Management Assn. in Southborough, Mass.

Ms. Heller, 30, acts as risk manager for some of the members of the association of publicly owned utilities. Among her duties are loss control, insurance purchasing, and policy and claims analysis. The position previously was filled on a part-time basis by a consultant.

Ms. Heller reports to Barry Port, executive director of PURMA.

Before joining PURMA, Ms. Heller was a risk management analyst at New England Electric System in Westborough, Mass.

She holds a bachelor of arts in economics and history and a master of business administration from Boston College.

Ms. Heller earned the Chartered Property & Casualty Underwriter designation and is a member of the Massachusetts chapter of the Risk & Insurance Management Society Inc.

* * *

Mary Denler has been named director-tax and insurance at The Cretex Cos. Inc., a concrete and industrial products manufacturer based in Elk River, Minn.

Ms. Denler, 35, is responsible for the risk management and tax compliance activities at Cretex and its subsidiaries.

In her newly created position, Ms. Denler reports to Don Schumacher, Cretex's chief financial officer.

Previously, Ms. Denler spent nine years with Delta Environmental Consultants Inc. in St. Paul, Minn., as manager of tax and insurance.

She holds a bachelor of science in business from the University of Minnesota's Carlson School of Management.

Ms. Denler is a Certified Public Accountant and a member of the American Institute of Certified Public Accountants, the Minnesota Society of Certified Public Accountants and the local chapter of the Risk & Insurance Management Society Inc.

* * *

Gordon L. Adams has been promoted to vp-risk management and administration at MBK Real Estate Ltd. in Irvine, Calif.

In his newly created position, Mr. Adams, 49, is responsible for buying and managing insurance programs, employee benefits and safety engineering for MBK and its operating divisions. He also oversees the company's human resources and facilities group.

Mr. Adams joined MBK in 1997 as director of risk management. He reports to Dale Kemp, senior vp and chief financial officer.

Mr. Adams

Mr. Adams holds a bachelor of science degree in marine transportation from the U.S. Merchant Marine Academy and a master's degree in business administration from Pepperdine University.

He is a director of the Orange County chapter of the Risk & Insurance Management Society Inc. and holds a California fire and casualty insurance broker's license.

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We'd like to report on staff changes in your company's risk management, safety and employee benefit departments. Contact Michael Bradford, Associate Editor, Business Insurance, 473 Fairfield Ave., Gretna, La. 70056; 504-364-1908; fax: 504-364-1337; e-mail: mbradfor@crain.com. Please send a photograph, too.

Updates

Gen American delays processing

Continued from page 2

Athough, under the terms of the policies, the company has six months to process such requests, it normally processes them right away, the company spokesman said.

The move resulted from an upswing in loan and surrender requests General American experienced after it was placed under voluntary supervision by Missouri regulators (*BI*, Aug. 16). The company faced a liquidity problem when it was unable to meet cash demands by institutions holding more than $4 billion in short-term funding agreements.

The spokesman said the company is reviewing offers for financial partnerships and hopes a deal will be struck within 30 days.

In a special report on the company, Moody's Investors Service Inc. said it is unlikely the liquidity problem experienced by General American will occur with other life insurers. Although many life insurers use the short-term funding device used by General American, they do it on a more-limited basis, Moody's said.

Enhance Re downgraded

NEW YORK—Moody's Investors Service Inc. last week downgraded the insurance financial strength rating of financial guarantee reinsurer Enhance Reinsurance Co. two notches to Aa2 from AAA, citing its holding company's diversification efforts.

Moody's thought some of the diversified business was higher risk, said Jack Dorer, Moody's senior vp-financial institutions group. But, he said, "I think they will continue to be a very viable provider of financial guarantee reinsurance in the industry."

Mr. Dorer said, "They have a strong track record of maintaining a high-quality insured portfolio, and they've developed very strong relationships with the primaries over the years, and we continue to believe their financial strength is very high."

Arthur Dubroff, chief financial officer of the holding company, Enhance Financial Services Group Inc., said that although he is pleased Moody's has confirmed the strength of its financial guarantee reinsurance franchise, "we're disappointed that Moody's believes that our successful diversification strategy endangers the financial strength rating of Enhance Reinsurance. We believe that's not the case." In fact, Mr. Dubroff said, being able to generate profits from other areas means "in effect, we don't have to stretch from an underwriting standpoint."

New York-based Enhance Re continues to have AAA ratings from Standard & Poor's Corp. and Duff & Phelps Credit Rating Agency.

Moody's downgraded another financial guarantee reinsurer, New York-based Capital Reinsurance Co., to Aa2 in March (*BI*, March 15). Bermuda-based ACE Ltd. subsequently announced its plans to buy Capital Re's holding company, Capital Re Corp. (*BI*, May 31).

Governor would OK HMO suits

SACRAMENTO, Calif.—California Gov. Gray Davis would give patients a limited right to sue their health plans for punitive damages related to the denial, delay or modification of a doctor's recommended treatment.

The governor proposed those reforms last week in response to the dozens of managed care reform bills now moving through the Legislature, which is scheduled to adjourn Sept. 16.

Under the governor's proposals, certain conditions would have to be met before patients could sue. For example, substantial physical harm would have to occur. The proposals define substantial harm as death, loss of a limb or loss of a bodily function.

Gov. Davis called for the creation of a grievance procedure enabling a patient to appeal a treatment decision to a panel of state-paid health experts. The patient first would have to exhaust the health plan's internal grievance process, but that grievance process could take no more than 30 days.

A plan would have to make its treatment guidelines "public and accessible." Utilization review would have to occur within five business days. Failure to meet the standard would deem the treatment as having been denied and would trigger a three-day expedited review of the denial through the plan's grievance procedure.

If enacted, the proposal also would create a new department to regulate managed care.

Briefly noted

A California state court judge has **denied a plaintiffs' request** to certify a diet pill suit as a class action. The suit was brought by two people against American Home Products Corp., makers of withdrawn diet drugs Redux and Pondimin. The plaintiffs are seeking medical monitoring of heart problems in people who took the drugs. . . .Illinois Gov. George Ryan last week signed a major **patient protection** measure, S.B. 251, which gives most enrollees in state-regulated HMOs easier access to specialists as well as to appeals. . . .Standard & Poor's Corp. has downgraded its financial strength rating of **Reliance Insurance Co.** and its related companies to A- from A. The downgrade reflects concerns about the future profitability of Reliance, the rating agency stated. . . . Families of 76 people killed in the crash of **Swissair Flight 111** off Nova Scotia last year have filed a $3.8 billion suit against E.I. DuPont de Nemours & Co. DuPont manufactures Mylar, a product used in insulation that may have spread a fire on Flight 111. The crash killed all 229 passengers and crew aboard. . . .Odyssey Re (London) Ltd. has filed an **amended racketeering complaint**, charging that units of Stirling Cooke Brown Holdings Ltd. and others conspired to defraud it in an array of workers compensation reinsurance placements (*BI*, April 5). Stirling Cooke labeled the complaint "totally without merit" and said it would file a motion to dismiss. . . .American International Group Inc. has received permission to operate a **life insurance subsidiary in Bulgaria**. Called AIG Life (Bulgaria), it will offer individual and personal life and accident insurance through brokers. The new unit will be headquartered in Sofia, Bulgaria's capital.

Virtual

Continued from page 1

employers hold down the frequency and cost of workplace injuries and illnesses.

The virtual provider organization was developed to tie together the parties involved in occupational care, explained Mark L. Midyett, vp-business development with OccuLink.

Like a traditional managed care operation, OccuLink.net signs up local health care providers and links them with risk managers, human resource managers, claims managers, regulators and others involved in preventing injuries and providing care to workers.

The need for Occulink.net became evident to Sandler Occupational as it looked for a way to better manage the kinds of programs it was putting together for its clients, Mr. Midyett said.

It became apparent "with the advent of the Internet" that the parties involved in loss prevention and treatment for injured workers could share information, and that such a collaboration could help lower the cost of occupational care, Mr. Midyett said..

Occulink.net is designed to allow local managers to input first reports of injury into the system. Once the report is entered into the system, the employer's risk management department gets a copy, and the form can be electronically filed with regulators in states possessing that capability.

The information also is made available to health care providers treating the worker. That means the provider can have the same account of the injury the supervisor got, Mr. Midyett said. The clinician then can input treatment information and return-to-work recommendations into the system.

Mr. Midyett stressed that it is important for the health care provider to have the same details regarding an injury as the employee's supervisor. Workers often leave out details they may think are unimportant, and these omissions can hamper treatment, he explained.

During the course of treatment, the system analyzes information from clinicians to assess the progress of injured workers. If, by a certain point, the level of functionality required for the job has not been reached, the case management nurse for the worker is alerted by e-mail.

"That way, there is case management only on the cases where it is really necessary," said Mr. Midyett. "With a lot of case management firms, you see activity on all cases, when a lot of them don't need it."

Mr. Midyett said an 80-bit encryption protects the information that is transferred over the Internet, and OccuLink has addressed the privacy requirements covered by the Health Insurance Portability and Accountability Act of 1996.

All medical information is kept on OccuLink's servers, he pointed out. The information can be placed on an employer's server, but only under guarantees that employee health data will be kept secure, Mr. Midyett said.

Because it is Internet-based, users don't have to buy software or special equipment to access OccuLink.net.

That was a big draw for Fleming Cos. Inc., a wholesale grocery distributor in Oklahoma City with 32,000 employees throughout the United States.

"We are so geographically spread out," said Linda Cartwright, manager of health services at Fleming. With an Internet-based system, different locations and their providers didn't need to buy software or special equipment.

Ms. Cartwright said the system has solved problems the grocery distributor encountered with 30 warehouse locations using hiring procedures that all were a little different.

With the new system, Ms. Cartwright put in place a process that lays out the hiring requirements for all warehouse managers. Part of that information is a functional screening that prospective employees must undergo to determine the type of warehouse work they should be able to perform.

"Before OccuLink, the process was applied depending on what the HR manager felt was appropriate," Ms. Cartwright explained. "We were getting big injury rates in new hires."

Before the new system was put in place, the screening criteria tended to differ at various locations. Some new hires were screened out according to criteria that were not used in other locations, Ms. Cartwright said. "We wanted to operate as if we were all under one roof."

The system outlines procedures for each step of the hiring process, including drug screening and medical exams that should be performed. Physicians and other providers are able to access the information and consistently administer the protocols Fleming sets up.

"It helps us police our providers a little bit," said Ms. Cartwright. "We have specific protocols that we want the placement physicians to conduct on a pre-employment exam." With the protocols in place, there is less chance a provider will perform unnecessary tests that don't provide information to aid in the hiring process.

"We believe we will see our new-hire injury rate go down because we are applying tools to select the best people for the jobs," Ms. Cartwright noted. "We should be getting functionally able people for our positions."

The process also provides a way for the company to show regulators, such as the Equal Employment Opportunity Commission, that there is no discrimination in the hiring process. This means there is less likelihood of the company incurring fines, she said.

Fleming is billed by OccuLink Inc. for each applicant that is screened.

Mr. Midyett said other employers considering the system include several airlines and a major insurer; the insurer is looking at OccuLink.net as a way to reduce case management costs. BI

UPS alters shipping coverage

ATLANTA—United Parcel Service of America Inc. will stop using a Bermuda reinsurance affiliate to cover customers' shipping risks after absorbing a mammoth $1.44 billion charge against earnings for tax liabilities stemming from the program.

UPS will restructure a 16-year-old program under which an American International Group Inc. unit has fronted shipper's risk coverage for UPS customers and reinsured the business with Overseas Partners Ltd. of Bermuda. UPS formed Overseas Partners in 1983 and later spun off ownership to UPS employees/shareholders.

A U.S. Tax Court judge ruled this month that the arrangement was a "sham" devised by UPS to avoid reporting customer premiums as income (*BI*, Aug. 16). While the ruling covers only 1983 and 1984, the Internal Revenue Service already has challenged the company's 1985 to 1990 returns and is expected to do the same for the years since 1990.

UPS last week announced a $1.79 billion tax assessment covering all the years since 1984, including $915 million for back taxes and $871 million for interest. After tax benefits, the assessment produced a $1.44 billion net charge against earnings.

UPS also will change its program for insuring customer shipments that are in excess of $100 per package, reverting to its practice before the formation of Overseas Partners of retaining the exposure "in house," a spokesman said.

The details of the new program haven't yet been worked out, the spokesman said. UPS also has not decided whether it will appeal the tax court ruling, he said.

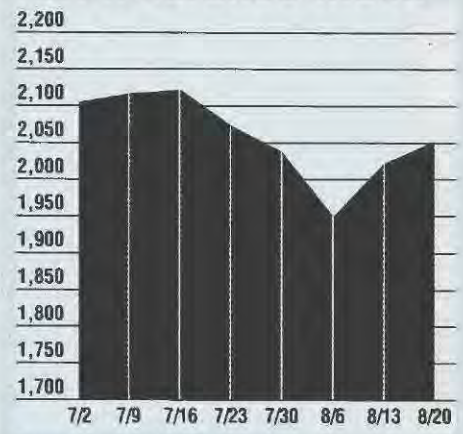
Overseas Partners drew $371.8 million, or 29.6%, of its 1998 revenues of $1.26 billion from the UPS shipper's risk business.

While losing this highly profitable line, Overseas Partners will continue writing UPS' California workers comp risks and reinsurance unrelated to UPS and will continue its real estate and leasing businesses, said Mark R. Bridges, Overseas' vp and treasurer.

A.M. Best Co. last week placed the Bermuda reinsurer's A+ rating under review.

—By Douglas McLeod

BI Insurance Index



Base=100 on Dec. 29, 1978
Source: *Nordby International Inc.* (nordby.com) Boulder, Colo.

PCS catastrophe options

As of Aug. 20

Call spread	Price bid/ask
National Annual 1999	
40/60	15.0/19.5
60/80	8.0/—
80/100	3.0/—
150C	4.0/6.0
200/250	1.5/5.0
Southeastern September 1999	
40/60	0.8/—
60/80	0.6/1.7
Eastern September 1999	
60/80	0.8/—
80/100	0.6/1.7
California Annual 1999	
60/80	0.2/0.6
80/100	0.1/0.6
100/150	0.2/—
Western Annual 1999	
80/100	—/1.9
National Annual 2000	
100/150	6.7/—
150C	5.0/—
190/195	0.3/0.5
200/250	3.0/—

Total volume: 27 Total open interest: 10,320

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 %	52-week high-low
Gdn Royal Exch	360	5.6	4.3	1.2	423-227
Legal & Gen	167	20.1	3.6	2.8	237-142
Royal & Sun	499	17.3	23.0	5.8	633-455
Brokers					
Lmbrt Fenchurch	84	8.2	4.2	6.3	94-58
JLT	261	11.9	12.0	5.7	265-166

Note: Prices are Aug. 20 closings; other numbers from Aug. 19.

Source: *Nordby International Inc.*(nordby.com) Boulder, Colo.

BI Industry Stock Report AUG. 16, 1999, THROUGH AUG. 20, 1999

		Price	Weekly % change	Year to date % change	Year to date High	Low	Vol.(000)
BROKERS							
Aon Corp.	NYS	35.63	-1.69	-4.68	46.69	32.19	1797
Clark Bardes Holdings	NDQ	22.75	-1.09	34.72	24.00	18.63	6
E.W. Blanch Holdings Inc.	NYS	68.56	5.38	46.85	71.75	35.50	149
Gallagher Arthur J. & Co.	NYS	53.88	1.41	23.14	56.00	34.88	125
Hilb, Rogal & Hamilton	NYS	24.25	4.86	30.20	24.38	15.56	38
Kaye Group Inc.	NDQ	8.63	-4.17	18.97	9.25	5.00	12
Marsh & McLennan	NYS	75.88	2.19	28.33	81.50	43.38	1358
Brown & Brown	NYS	37.00	6.09	5.90	39.44	29.31	15
BROKERS	AVERAGE		2.63	25.57			
INSURERS/REINSURERS							
ACE Ltd.	NYS	23.38	-2.09	-28.49	36.00	21.00	3144
Accel International Corp.	NDQ	1.38	-8.33	-54.17	3.38	1.25	56
Acceptance Insurance Cos.	NYS	13.88	0.00	-30.19	22.81	12.06	114
AEGON N.V.	NYS	88.13	4.14	-27.73	130.13	69.25	2567
Aetna Life & Casualty	NYS	78.13	-1.19	-2.11	99.88	60.19	1891
AFLAC Inc.	NYS	44.69	-0.14	1.56	56.75	25.13	2331
Allmerica Financial Corp.	NYS	59.44	-0.52	4.97	75.25	38.38	383
Allstate Corp.	NYS	35.63	-0.35	-7.47	48.38	34.00	8826
AMBAC Indemnity Corp.	NYS	55.88	-2.51	-6.78	62.38	40.88	819
American Bankers Ins.	NDQ	54.88	0.00	14.92	60.19	30.13	883
American Financial Group	NYS	30.63	2.08	-25.64	43.88	29.94	408
American General	NYS	75.75	0.75	-3.19	81.38	52.38	1758
American Heritage Life Ins.	NYS	31.38	0.20	30.39	31.44	18.63	232
American Intl Group	NYS	94.81	7.67	21.71	107.19	51.88	13216
American Safety Insurance	NYS	7.75	-4.62	-18.42	11.19	6.63	130
Argonaut Group	NDQ	23.94	-5.20	-0.26	30.25	21.25	249
AXA-UAP Group	NYS	61.81	1.54	-13.62	80.25	38.25	230
Baldwin & Lyons Inc.	NDQ	21.50	-1.99	-8.02	26.00	18.50	27
Berkley W.R. Corp.	NDQ	23.50	-1.57	-30.37	36.50	23.38	245
Berkshire Hathaway Inc.	NYS	63500.00	-3.93	-7.03	81100.00	57000.00	1
Capital RE Corporation	NYS	13.31	-4.05	-31.95	31.75	11.94	131
Capitol Transamerica Corp.	NAS	14.06	0.90	-20.49	20.88	12.50	50
Centris Group Inc.	NYS	7.81	-1.57	-16.67	14.06	7.63	300
Chartwell Re	NYS	16.63	2.31	-28.49	29.63	13.25	96
Chubb Corp.	NYS	58.13	-2.21	-10.49	76.38	54.00	3476
CIGNA Corp.	NYS	90.13	2.41	15.92	98.63	57.19	3134
Cincinnati Financial Corp.	NYS	40.63	0.31	13.84	42.50	30.50	1508
Citigroup	NYS	46.38	1.23	37.58	51.75	19.00	40586
CNA Financial Corp.	NYS	37.50	1.35	-4.61	45.31	33.00	371
CNA Surety	NYS	13.25	-1.40	-11.30	16.00	10.19	102
EMC Insurance Group Inc.	NDQ	10.38	1.22	-18.63	13.50	9.00	16
ESG Re Limited	NDQ	14.00	-5.08	-29.34	22.25	12.75	490
Enhance Financial Services	NYS	21.19	-0.29	-29.96	33.13	17.31	170
Everest Reinsurance	NYS	29.31	-2.29	-20.10	43.50	28.75	708
Fremont General Corp.	NYS	17.19	3.00	-28.76	26.00	15.88	513
Frontier Insurance Group	NYS	12.63	-1.94	1.00	18.75	10.88	367
Gainsco Inc.	NYS	6.13	2.08	-2.97	8.06	3.94	53
Harleysville Group	NDQ	19.50	0.00	-23.53	26.88	17.00	110
HSB Group Inc.	NYS	37.81	0.67	-5.91	50.00	34.75	248
HCC Insurance Holdings	NYS	14.56	-11.07	-14.02	25.13	13.88	2609
ING Groep N.V.	NYS	53.69	0.00	-11.99	70.13	36.06	230
IPC Holdings Ltd.	NDQ	21.25	0.29	-6.59	27.38	17.38	248
Hartford Financial Services	NYS	50.50	-0.62	-9.52	66.44	37.63	1687
LaSalle Re Holdings Ltd.	NYS	15.88	1.20	-23.03	31.50	11.63	72
Lincoln National	NYS	47.50	-1.04	14.63	57.50	33.50	1583
MAIC Holdings Inc.	NYS	25.94	-3.71	-18.95	33.13	23.25	250
Markel Corp.	NYS	180.25	-2.30	0.00	193.00	132.00	380
MBIA Insurance Group	NYS	53.00	1.19	-20.08	71.88	46.06	2201
Meadowbrook Insur. Group	NYS	12.13	-2.02	-25.67	28.13	11.06	60
MMI Cos. Inc.	NYS	13.50	-0.92	-19.10	19.06	13.38	90
Mutual Risk Mgmt. Ltd.	NYS	28.31	-0.22	-25.37	43.25	25.38	1444
Navigators Group	NDQ	14.56	-4.51	-4.51	18.25	13.25	52
NYMagic Inc.	NYS	13.94	1.36	-33.23	26.63	12.00	28
Ohio Casualty Corp.	NDQ	17.44	2.57	-15.20	21.69	15.81	763
Old Republic Int'l	NYS	15.81	-0.78	-26.24	25.56	15.56	1319
Orion Capital Corp.	NYS	48.44	1.71	23.50	48.44	27.56	807
Partner Re Ltd.	NYS	36.88	3.69	-18.40	46.50	33.63	209
Penn-America Group Inc.	NYS	9.38	-4.46	1.35	12.63	8.13	126
PMA Capital Corporation	NDQ	19.88	-2.45	1.60	21.13	16.63	79
Philadelphia Cons. Holding	NDQ	19.69	-3.37	-7.35	25.50	18.63	193
PXRE Corp.	NYS	15.63	7.76	-38.12	29.44	13.94	225
Reliance Group Holdings	NYS	5.00	-2.44	-61.35	16.19	4.50	1489
ReliaStar Financial Corp.	NYS	44.25	-2.07	-1.12	49.81	29.00	661
RenaissanceRe Holdings Ltd.	NYS	35.44	-2.74	-1.90	46.06	30.00	229
Risk Capital Holdings	NDQ	15.63	4.60	-26.04	25.00	12.00	121
RLI Corp.	NYS	34.75	-4.79	4.12	39.56	27.88	58
St. Paul Companies	NYS	32.81	4.37	-6.25	37.50	28.06	2599
SCOR	NYS	48.38	2.38	-25.58	68.50	45.88	12
SAFECO Corp.	NDQ	35.94	0.70	-15.44	47.50	35.00	2107
SCPIE Holdings Inc.	NYS	29.50	-0.63	-1.87	33.00	23.69	NA
Seibels Bruce Group	NDQ	3.38	-18.18	-3.57	6.25	2.69	116
Selective Ins. Group	NDQ	18.50	-1.00	-8.64	23.00	16.69	65
Terra Nova Ins Co. Ltd.	NYS	32.25	24.34	32.31	32.63	21.25	2258
Tokio Marine & Fire	NDQ	60.69	6.00	3.08	62.88	39.00	110
Torchmark Corp.	NYS	31.44	-2.90	-9.53	45.50	30.69	1170
Transatlantic Holdings	NYS	74.25	0.08	-1.82	93.38	72.50	78
Travelers Property Casualty	NYS	36.25	-1.69	18.37	41.88	24.13	910
Trenwick Group Inc.	NDQ	21.50	2.38	-32.02	35.25	19.00	71
Unico American Corp.	NDQ	9.19	-4.55	-20.33	14.13	8.63	74
United Fire & Casualty	NDQ	24.75	1.02	-25.63	38.50	22.25	3
Unitrin	NDQ	35.94	1.23	1.41	42.38	27.88	374
UNUM Corp.	NYS	36.38	-2.51	-39.31	62.50	33.50	4917
Vesta Insurance Co.	NYS	4.50	-11.11	-21.74	14.81	3.38	269
XL Capital Ltd.	NYS	53.13	-0.93	-25.76	79.50	49.25	1609
Zenith National Ins.	NYS	22.38	0.56	-3.24	26.69	20.31	60
INSURERS/REINSURERS	AVERAGE		-0.42	-10.65			
HEALTH MAINTENANCE ORGANIZATIONS							
Foundation Health Systems Inc.	NYS	14.00	-5.08	27.27	20.06	5.88	1522
Humana Inc.	NYS	10.00	4.58	-47.19	22.13	9.44	2360
Oxford Health Plans	NDQ	16.88	3.85	20.54	24.25	5.94	3228
Pacificare Health Sys.	NDQ	63.81	-7.18	-10.75	100.38	55.63	1756
Safeguard Health Enter.	NDQ	3.88	0.00	8.77	5.88	2.34	41
Sierra Health Services	NYS	12.44	14.37	-40.42	24.94	10.44	328
United HealthGroup	NYS	62.50	-0.70	40.25	70.00	31.75	3646
Wellpoint Health Networks	NYS	77.94	-3.63	-9.24	97.00	50.50	1117
HMOs	AVERAGE		0.77	-1.35			
ALL COMPANIES	AVERAGE		0.99	4.52			

Top advancing issues: Terra Nova Ins. Co. Ltd., Sierra Health Services, PXRE Corp. Leading decliners: Seibels Bruce Group, Vesta Insurance Co., HCC Insurance Holdings. Most active issue: Citigroup. The *BI* Index rose 1.6%; the Dow Jones 30 Industrials increased 1.2%; the S&P 500 was up 0.7%, and the NYSE Composite rose 0.8%. Average P/E: Brokers, 19.1; Insurers/reinsurers, 22.6; HMOs, 16.2.

Source: *Nordby International Inc.* (nordby.com), Boulder, CO

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