Managed care profits lifted by big rate hikes/ 2

Ward Group identifies best-performing insurers/ 3

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Business Insurance

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Comp benefit offset rejected

Court says employer can't deduct settlements paid to longshoreman

By DAVE LENCKUS

SAN FRANCISCO—A federal appeals court ruling that bars an employer from offsetting federal longshoreman workers compensation benefits its owes an injured worker by settlements that other employers already have made raises several concerns for employer and insurer attorneys.

The 3-0 ruling underscores the inequities of the Longshore and Harbor Workers' Compensation Act and could influence courts to prohibit employers from taking offsets, or credits, under state workers comp systems, the attorneys say.

The July 16 ruling overturns a decision by the U.S. Labor Department's Benefits Review Board. The employer in the case, which is monitoring an identical dispute coming up in another federal appeals court, is considering seeking a review by the U.S. Supreme Court.

The case examines how the aggregation rule and credit doctrine dovetail under the longshoreman's act. Under the act, an injured or ill worker's last employer is held fully liable, even if it is minimally responsible, so the worker is spared from proving how much each former employer contributed to the

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PHOTO: AFP

A ruling by the 9th U.S. Circuit Court of Appeals in a dispute over the law that governs benefits for longshoremen could influence other workers compensation disputes, some employers fear.

Buyers, insurers rebut CFA report on terrorism cover

By GAVIN SOUTER

A Consumer Federation of America report issued last week stating that commercial terrorism coverage is widely available and that a federal backstop is unnecessary is drawing fire from insurer and policyholder groups.

Most businesses currently should be able to buy adequate coverage in the commercial market, and the federal government should offer temporary coverage only for so-called "trophy properties" or buildings in New York, Chicago and Washington for which coverage is unavailable in the commercial market, said J. Robert Hunter, director of insurance for the Washington-based CFA.

But insurer and policyholder groups say that the report ignores the reality of the commercial insurance marketplace.

The terrorism insurance that is available is limited in terms of capacity and coverage, they say. In addition, buyer and insurer groups argue that, in the absence of a federal coverage backstop, another terrorist attack on the scale of Sept. 11 would leave the insurance market in disarray.

The report, which updates a CFA study released in January, concludes that although commercial insurance rates are increasing, prices are likely to stabilize by mid-2003.

An increasing number of in-

See CFA/page 20

Secondary evidence of cover is sufficient

Insured wins in lost-policy ruling

By ROBERTO CENICEROS

SAN FRANCISCO—A California Supreme Court decision granting product liability coverage under a lost comprehensive general liability policy will benefit a wide range of policyholders, observers say.

The high court ruled unanimously last week in *Dart Industries Inc. vs. Commercial Union Insurance Co.* that secondary evidence is sufficient to prove the substance of a policy's material provisions. The decision overturns an appeals court finding in January 2000 that Dart had to prove the material provisions of a policy by introducing evidence of the specific language used in those provisions.

A Texas appeals court and a federal district court in New York recently reached similar conclusions favoring policyholders, said James Fitzgerald, a partner at Luce Forward Hamilton & Scripps in Los Angeles who represented Dart. Mr. Fitzgerald said he does not know of any other courts that have ruled similarly.

The California Supreme Court also found that if a policy is missing or destroyed, the insurer has the burden of proving that any policy exclusions apply to a specific claim, Mr. Fitzgerald said. The case involved a policy in effect from 1946 to 1951.

While the high court's ruling involved a product liability claim, its decision will help the Port of Oakland obtain pollution liability coverage under decades-old policies purchased by the port and its tenants, said Jane Keegan, the port's

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Late News

PHOTO:KRT

WTC cover issues to have separate trials

A November trial will decide whether the Sept. 11 destruction of the World Trade Center was one occurrence or two under the $3.55 billion insurance program covering WTC leaseholder Silverstein Properties Inc., a federal judge ruled. A separate trial next year will determine how much insurers must pay. The November trial will also determine whether the program is governed by binders prepared by Silverstein broker Willis Group Holdings Ltd. or by a Travelers Property Casualty Corp. policy issued after the attacks. Silverstein has argued that the twin towers' destruction was two occurrences, entitling it to two policy limits. Swiss Reinsurance Co. and other insurers contend the attack was a single occurrence. The judge also ordered Silverstein and its insurers to hire independent appraisers to calculate the destroyed complex's value and to try to agree on a settlement.

California approves workers comp bills

Legislation sent to Gov. Gray Davis would extend until 2007 a 2% assessment on workers compensation premiums that supports the California Insurance Guaranty Fund. The levy was doubled for one year to 2% under a provision that is set to expire Sept. 12. Legislators also approved a bill, A.B. 1985, that would let the insurance commissioner reject rates deemed inadequate to cover an insurer's losses and expenses or that threaten an insurer's solvency. Existing law merely prohibits rates that tend to impair or threaten solvency. Gov. Davis has not decided whether to sign the bills, a spokesman said.

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NEWSPAPER

International

EUROPEAN FLOOD LOSSES RISING

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Inside

Certification is business as usual

Senior Editor Douglas McLeod says that requiring corporate CEOs to certify the accuracy of financial statements won't change the laws of insurance economics or human nature. **Page 6**

CFA ill-informed on terrorism cover

The Consumer Federation of America's contention that a federal terrorism insurance program is not needed because some coverage is available privately ignores economic realities and the risk that terrorist attacks pose to businesses, one of this week's editorials says. **Page 8**

Now is not the time to be complacent

As the stakeholders with the most to lose should a conference bill on terrorism insurance not materialize, risk managers and commercial policyholders must continue communicating with Congress on the need for terrorism insurance legislation, writes Christopher E. Mandel in Ask A Risk Manager. **Page 10**

Staying connected to litigation coverage

In Perspectives, Mark E. Miller tells policyholders in the telecom industry how to avoid coverage hang-ups over lawsuits that allege the risk of bodily injury caused by the use of wireless telephones. **Page 10**

Environment directive meets with misgivings

Risk managers and insurers are unhappy with a European Union draft directive on environmental liability. **Page 17**

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REPORTING WEEKLY ON CORPORATE RISK, EMPLOYEE BENEFIT AND MANAGED HEALTH CARE NEWS

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ZFS, RSA shares rise after rumors

Shares in Zurich Financial Services Group and Royal & SunAlliance Insurance Group P.L.C. rose last week amid rumors that New York-based American International Group Inc. was looking to take over either company. None of the companies would comment. Insurance analysts found no evidence to substantiate the market speculation, and some said they would be surprised by an offer from New York-based AIG. Analysts did note that some segments of the European insurers' business would complement AIG's operations. ZFS shares closed Friday at 172 Swiss francs ($113). RSA shares closed Friday at 125.25 pence ($1.90).

Illinois Blues offer bonus for generics

To help cut rising health care costs, Blue Cross & Blue Shield of Illinois will pay pharmacists $1 each time they persuade a customer to choose the generic equivalent of a name-brand drug. A spokesman for Chicago-based BC/BS of Illinois, which will offer the incentive beginning in January 2003, said any such intervention "would benefit the policyholder patients." BC/BS of Illinois estimates its prescription claims costs rose 26% last year. A Chicago-based benefit manager said the move would have little effect on companies that have implemented a three-tier formulary that already encourages patients to use generics.

RMS expands cat modeling

Newark, Calif.-based Risk Management Solutions has expanded its catastrophe modeling program to include windstorm risk in Ireland and Sweden and earthquake risk in Turkey and the Philippines. RMS' Europe Windstorm model now covers nine countries: Belgium, Denmark, France, Germany, Ireland, Luxembourg, the Netherlands, Sweden and the United Kingdom. RMS said that earthquakes in Turkey and the Philippines during the 1990s heightened awareness of quake risks in those countries.

Late News

PHOTO: GETTY

Risk Management Solutions' catastrophe modeling now includes earthquake risk in Turkey.

Canadian insurers' P/C profits fall

Lower investment income in the second quarter overshadowed modest improvement in underwriting results for the Canadian property/casualty industry, according to the Insurance Bureau of Canada. The insurers' total profits fell by 30.1%, to $192 million Canadian ($126.2 million). Canadian P/C insurers' underwriting losses fell 13.1%, to $214 million Canadian ($140.7 million) in the second quarter, the Toronto-based IBC reported. Lower expenses helped insurers improve their overall combined ratio by one point, to 103.8%.

PBGC takes over Acme Metals plan

PHOTO: AFP

The Pension Benefit Guaranty Corp. has taken over and terminated a severely underfunded pension plan sponsored by Acme Metals Inc. of Riverdale, Ill., a shuttered manufacturer of steel and fabricated steel products that is now in bankruptcy and is liquidating its assets. The Acme plan, which has about 3,800 participants, is underfunded by about $170 million, with $157 million in assets and $327 million in liabilities. The termination of the Acme plan, which ranks among the top-dozen biggest losses to the PBGC, follows several other major terminations this year. Additional big losses could lie ahead for the PBGC if the troubled economy forces more employers with massively underfunded plans to file for bankruptcy and terminate their plans.

Briefly noted

Moody's Investors Service Ltd. is reviewing the insurance financial strength ratings of various units of **UnumProvident Corp.** Moody's said the review was prompted by concerns about the capital position of Chattanooga, Tenn.-based UnumProvident, which is one of the largest writers of long-term disability coverage in the United States....Two **data standards** organizations are working together on a project that would let insurers, reinsurers, service providers and intermediaries seamlessly exchange information across national borders. The Assn. for Cooperative Operations Research & Development will combine its eMerge project with eEG7's SMILe project in the effort to create a global data standard.

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To get breaking news as it occurs, visit *Business Insurance*'s free online Daily News, at *www.businessinsurance.com.* Sign up for your daily e-mail of breaking news. All the material in the Late News column, as well as other content in this week's issue, is generated from Daily News postings that appeared on the *BI* Web site in the previous week.

Online this week:

- Check the **Datebook** calendar for upcoming industry seminars and events and add those sponsored by your own group.
- Get a job! Browse the **Career Center** for employment listings in risk management and insurance.
- Learn Douglas McLeod's thoughts about CEOs certifying the accuracy of financial statements in **Commentary**.
- Exchange ideas and information with other readers through the **Online Forum**.

Cost drivers likely to keep pressure on rates

Rate hikes spur managed care profits

By MICHAEL PRINCE

Managed Care
Six-month
RESULTS

Ongoing increases in health care rates are bad news for employers, but rising premiums helped fuel a healthy first half for managed care companies.

Rates are climbing, membership is up, and profits rolled in for most managed care firms in the first half of 2002.

The first six months of the year have been "fabulous" for managed care companies, said Michael LeConey, senior vp at Gilford Securities Inc. in New York. "They have not had a year like this in 20 years," he said.

Health care rate hikes will continue for at least another year, analysts predict, fueled by rising medical costs and growing provider bargaining power to demand higher fees. This year, health care rates are rising, on average, by 15% to 18%, analysts note. And some buyers are seeing even-higher increases.

For example, the California Public Employees' Retirement System, one of the largest health care buyers in the United States, in April approved a 25.1% rate increase for 2003 for its health maintenance organization plans.

"When they have to give a 25% rate increase, it tells you all you need to know about supply and demand and the pricing power of HMOs," Mr. LeConey said.

"Premium rates continue to outpace the growth in health care expenses," said Robert Mains, research analyst with Advest Inc. in Saratoga Springs, N.Y.

In addition, managed care enrollment is rising, driven in part by a move away from self-insurance to fully insured HMOs, analysts note.

The Sept. 11 terrorist attacks dramatically changed the marketplace for medical stop-loss coverage, driving up rates and drying up capacity. This has made it more difficult for some employers to self-insure, pushing more business into the fully insured marketplace, analysts note.

"The big HMOs are seeing pretty strong increases" in their membership base, said John L. Ward, chairman and chief executive officer at industry analyst Ward Group in Cincinnati.

This convergence of rising rates and increasing membership "is a great combination for the industry right now," Mr. Ward said.

"Right now the lines are all crossing....It's nirvana," said Mr. LeConey.

But managed care companies were not uniformly successful in the first half, noted Richard Shaw,

See RESULTS/page 22

Ward's Results

Ward Group benchmarks top-performing insurers

By JUDY GREENWALD

The insurance industry's best-performing companies do things a little differently—and a little better—from the rest, new research shows.

Such best practices are what set those insurers apart and can serve as a model for other companies to emulate, according to the annual analysis of the insurance industry's top performing companies conducted by the Cincinnati-based Ward Group.

Among the findings of Ward's research is that the industry's best performers have a centralized operating structure and a wide, flat organizational structure and that they rely heavily on commercial underwriters who work closely with agents to inspect and underwrite specific risks (see story, page 16).

The value of following best practices is demonstrated by top performers' overall greater operational effectiveness compared with that of other insurers, according to the Ward study (see story, page 16).

For its latest analysis, Ward reviewed statutory data from 2,700 property/casualty and 1,200 life/health insurers to compile a list of the top 50 insurers in each sector.

Making the list are insurers that, over the past five years, have excelled at balancing safety, consistency and performance.

Then, to identify best practices, Ward conducts a more extensive analysis based on the 300 firms in Ward's database, all of which are Ward clients. To determine best practices, Ward analyzes data from those insurers that are in the top quartile in three categories: the lowest expense ratio, the lowest combined ratio and the highest return on average equity. About 15 property/casualty insurers and life/health insurers fall within the category of top performers. The business and operating practices of these 25 insurers are then compared against those of the other insurers in Ward's benchmarking database.

"Our challenge is to broaden the analysis and drill down into the short list of business practices that are also best practices," said

See WARD/page 14

Coverage of the Ward Group's research continues on page 16

PHOTO: COURTESY OF TRAVELERS

Citigroup completed its planned spinoff of its Travelers Property Casualty Corp. unit last week.

New road for Travelers

Insurer expects few changes from spinoff

By RODD ZOLKOS

HARTFORD, Conn.—Insurance buyers should notice no immediate changes resulting from Travelers Property Casualty Corp.'s spinoff last week from Citigroup Inc., according to the insurer's top executive, but the move offers several advantages for the company.

Citigroup Inc. completed its spinoff of Travelers P/C with Tuesday's distribution of more than 219 million shares of Travelers Class A common stock and more than 450 million shares of Travelers Class B common stock to Citigroup stockholders.

The stock distribution follows a March initial public offering of Travelers shares, in which Citigroup sold about 23% of the insurer's stock for more than $4 billion. Following Tuesday's share distribution, Citigroup retains slightly less than 10% of Hartford, Conn.-based Travelers' common stock.

Citigroup acquired the Travelers P/C operation as part of its $70 billion merger with Travelers Group in 1998.

For the Hartford, Conn.-based insurer's customers, following the spinoff "I think it's business as usual," said Robert I. Lipp, Travelers' chairman and chief executive officer. "I'm happy to say we've got such great people and a great agency system that we had even before Citigroup came along," Mr. Lipp said. "We like what our people do. We like the way we underwrite."

For the company, meanwhile, independence offers three particular advantages, Mr. Lipp said.

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VCIA 17th Annual Conference

More captives looking at property risks

By RODD ZOLKOS

BURLINGTON, Vt.—It might have been uncommon for companies to place property coverages in their captives during the soft market, but current market conditions provide numerous reasons to consider such a move.

"Three or four years ago, it was something that was 'What would you be doing putting property risk in your captive?'" said Gary H. Osborne, senior vp of USA Risk Group in Montpelier, Vt. "But the events of the past year have made it very topical."

Mr. Osborne moderated a session on covering property risks in captives earlier this month at the Vermont Captive Insurance Assn.'s annual conference in Burlington.

Edward S. Koral, a senior manager at Deloitte & Touche L.L.P. in New York, said that, until recently, factors such as the frictional costs associated with the property programs and the lack of significant tax benefits arising from putting property risk in a captive were disincentives to using the captive to cover property.

In addition, property losses can be unpredictable, he noted, and property isn't the sort of "frequency" line of business that tends to work well in a captive.

But there are a variety of reasons in favor of putting property in the captive, Mr. Koral said, including direct access to reinsurance markets.

"There are other reasons, too," Mr. Koral said, among them both "hard" and "soft" reasons. "The hard reasons always had to do with saving money," he said. "And the soft reasons had to do with managerial comfort, managerial happiness."

"If the CFO could look at the P&L of a captive and say, 'Oh, now I understand what's happening,'...that makes a lot of sense," Mr. Koral said.

Conference coverage continues on page 4

One good approach to using property coverage in a captive is to fill in layers between the deductibles that subsidiary companies are comfortable taking and a single, higher corporatewide insurance layer, Mr. Koral said. Such an approach allows a company to set retention based on a corporatewide risk appetite while acknowledging the lower-risk appetites of subsidiaries by allowing subsidiaries to buy down from the corporate retention into the captive.

"There's a lot of business value to using a captive to manage a large deductible," Mr. Koral said. That's particularly true in a market such as the current one, he said, in which the deductibles that insurers demand may be increasing faster than subsidiaries can adapt to those market changes.

"To the extent that you can avoid your subsidiaries wasting money by going off and buying their own local insurance policies, you are saving money," Mr. Koral said.

Using the captive as a vehicle for obtaining direct access to reinsurers on the property program can be a way to get needed coverage

See PROPERTY/next page

Employee benefit plans of the future likely to offer many flexible options

By MICHAEL PRINCE

Twenty years from now, the average employer in the United States likely won't have a benefits plan. The average employer likely will have many benefit plans.

No one can be sure what the future of benefits holds—after all, 20 years ago, few would have predicted the prevalence of online health plan enrollment or the availability of pet health insurance. Still, the aging of the workforce is resulting in some trends that will be hard for employers to ignore.

Older workers tend to place greater importance on employee benefits than do their younger colleagues. And, as a result of a looming shortage of workers, older employees will be well positioned in 20 years either to get the benefits they want from their employers or to readily find other jobs that provide such benefits.

"They will look to their employers to help them take care of their family issues," said Marc Drizin, employee loyalty specialist at Walker Information in Indianapolis.

Perhaps what will most distinguish benefit plans in the 2020s compared with those of today will be their flexibility. Employers may offer differing groups of benefits to various groups of employees. An employer, for example, may offer one package of benefits to workers under the age of 40 and another to those over 40.

Even if the same benefits are offered to all employees, some likely will be marketed to younger workers and others to older workers, said Gale Varma, vp of human resources at Prudential Financial Inc. in Newark. "One plan won't fit everyone," Ms. Varma said.

Employers will also have to adopt more flexibility with regard to scheduling to accommodate the demands of older workers. For example, older workers may want to "downshift" from senior-level positions to lower-level jobs with reduced work hours and pay, Ms. Varma said. "Employers will be extremely open to making changes to accommodate the workers, as they will need people to fill the jobs," she said.

Another possible shift will be away from employer-paid benefits to voluntary benefits, said Gary Breitbart, the president and chief executive officer at Prudential Working Solutions unit of Prudential Financial Inc. in Newark.

Voluntary benefits make available to employees services that employers are able to obtain at group discounts, Mr. Breitbart ex-

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VCIA 17th Annual Conference

Reinsurance market adding to challenges

By RODD ZOLKOS

BURLINGTON, Vt.—Changes in the reinsurance market are presenting captives with a host of new challenges beyond higher prices.

"The industry now is being described as being in the fear phase of the underwriting cycle," said Gregory P. Lang, vp at Munich-American RiskPartners in Princeton, N.J., who moderated a panel on reinsurance for the alternative market at the Vermont Captive Insurance Assn.'s annual conference earlier this month in Burlington.

Peter C. Hunter, another vp at Munich-American RiskPartners in Princeton, noted that in the Sept. 11 terrorist attacks, many reinsurance lines suffered their biggest loss ever.

"In many ways, it has forever changed our perspective on loss accumulation and risk," Mr. Hunter said. "We knew this could happen, but we didn't price for it."

As a result, many reinsurers are now returning to their core areas of business, as demonstrated by the reduced availability of fronting coverage, he said. And reinsurers' efforts to restore capital after last year's losses are driving higher prices.

The nature of the reinsurance market can determine the feasibility of a captive program, speakers said.

"We had a large financial institution in New York approach us about trying to use a captive for their workers comp," said Gary H. Osborne, senior vp at USA Risk Group in Montpelier, Vt. But it was impossible to find reinsurance for a captive program covering 5,000 lives in a 50-story tower in New York, which doomed the proposal, he said.

"Captives are a wonderful mechanism if we can get the reinsurers to come along," he said. "You're not going to solve it any other way."

Coverage exclusions for acts of terrorism and other exposures also continue to cause problems for captive owners seeking reinsurance.

Robert L. Sweezey, president of Vermont-domiciled Gencon Insurance Co., noted that nearly a year after the Sept. 11 terrorist attack, the industry still hasn't settled on a definition of "terrorism."

"If we could define terrorism, it wouldn't be terrorism," said Mr. Sweezey, who also is president and executive director of Adventist Risk Management Inc. in Silver Spring, Md. "We are having a lot of struggles coming to terms, and we are causing ourselves a lot of grief because we can't define it."

And Merritt W. Fabel, director of corporate risk and insurance for American International Group Inc. in New York, suggested that the inability to obtain coverage for some risks might create new exposures for companies.

Going forward, he said, companies may have to consider buying directors and officers coverage against charges that the company failed to purchase sufficient insurance for exposures such as terrorism and mold that are now excluded in most policies. "There's a lot more going on than straight terrorism," Mr. Fabel said.

But Munich-American's Mr. Hunter said he feels that some exposures might simply be uninsurable. And for those risks for which coverage is available, reinsurance buyers need to be prepared to meet the new demands of the market, he said, particularly the demand for detailed information.

"Renewal business is now new business, so start dealing with it that way and start digging that information up now," he said.

"A lot of us are going to have to work a lot harder to identify and quantify our risk," added Mr. Sweezey.

But Mr. Fabel said efforts to identify and explain risks can be an advantage for a reinsurance buyer who recognizes the benefit in helping the reinsurer understand the risk it is assuming.

"Your insurance risk is somebody else's business risk," Mr. Fabel said. "And if you can help them feel comfortable with that, they're going to look at you first."

Understanding exposures also can help companies make more sensible reinsurance purchasing decisions, Mr. Osborne suggested.

"I think there are a lot of people who got so (accustomed to the) soft market they're not evaluating their retentions on a level that makes some sense," he said, adding that he often sees companies taking retentions well below the level of other business risks they routinely assume.

Several panelists noted that established relationships with reinsurers can be of considerable benefit to a captive in a hard market, though even the best relationships don't guarantee a satisfactory outcome as a captive seeks coverage.

"The real wins I had in the hard market came from relationships we had for 15-plus years," Mr. Sweezey said. "But there are some relationships that ended badly, even after the long-term. And that's why I insist on having more than one relationship."

Over 940 go to VCIA

BURLINGTON, Vt.—The Vermont Captive Insurance Assn. drew more than 940 attendees and 68 exhibitors to its annual conference Aug. 13-15 in Burlington. Among them were 231 first-time attendees.

In addition to educational and general sessions, the VCIA presented its annual Captive Crusader and Industry Service awards. This year's Captive Crusader Award, recognizing exceptional service, was presented to Al Heeg, principal of Albert Heeg Investment Management in Moraga, Calif. The Industry Service Award went to Kathryn Westover, president of Captive Advisory Services Inc. in Colchester, Vt.

The VCIA board also bestowed a special honorary membership to Lisa Ventriss, the former VCIA president who resigned earlier this year to lead the Vermont Business Round-table. The VCIA's new president is Molly Lambert, who most recently had been Vermont's secretary of commerce and community development.

Next year's conference is set for Aug. 5-7, 2003. For more information, contact the VCIA at 802-658-8242, or visit *www.vcia.com.*

VCIA 17th Annual Conference

Conditions promoting alternative uses for captives

By RODD ZOLKOS

BURLINGTON, Vt.—Current market conditions are creating a variety of opportunities for captive insurance companies and their parents, including nontraditional captive uses that could provide long-term strategic value.

"We're encouraging companies to look outside the traditional lines of coverage, even outside the insurance box," said Carl Groth, executive vp at Willis Structured Financial Solutions in New York.

Moderating a session on strategically focused captive solutions at the Vermont Captive Insurance Assn.'s annual conference earlier this month in Burlington, Vt., he said risk mapping exercises can help identify new opportunities for a captive. "I would encourage all of you to go through that process."

And Mr. Groth suggested that a feasibility study process doesn't have to be limited to the feasibility of forming a captive. It could be applied to examining the feasibility of a new area of captive use, with the feasibility team charged with looking for alternative uses or opportunities to derive additional benefits from the captive.

Roy J. Villella III, corporate risk manager for Mentor, Ohio-based STERIS Corp., said his company is using the Vermont-domiciled captive it formed last year to fund its known and incurred-but-not-reported casualty claim deductible exposures.

In the future, however, the company may use its Global Risk Insurance Co. captive for several other uses, including property deductible buy-downs and property capacity, employee benefits and warranty risks, Mr. Villella said.

In examining alternative uses for captive, "you have to be very open minded," said Robert Curtis, a vp at AIG Risk Finance, a New York-based unit of American International Group Inc.

In today's insurance market, many companies are facing such concerns as higher retention levels, the loss of certain key coverages, insurance program layers with rates on line of 20% or more and coverage that is available only for a single year at a time, Mr. Curtis said.

One possible solution, he suggested, is to cover risks in the captive and then transfer them through a blended finite reinsurance program. Such programs can offer the flexibility to address a captive's specific needs, Mr. Curtis said.

In addition, his company is looking at programs to cover exotic liabilities and loss-portfolio transfers from captives, Mr. Curtis said.

Structured reinsurance programs for captives could provide ways to cover tough-to-insure risks such as product recall, or those for which market capacity is limited such as patent infringement. Such programs also can help hedge risks associated with illiquid commodities or other business exposures that are difficult to hedge, he said.

Among the advantages such programs can offer are earnings protection against catastrophic losses, optimization of accounting and tax treatments, sharing of favorable loss experience and evidence of insurance coverage, Mr. Curtis said.

Property: Captives considering new risks

Continued from previous page

that otherwise isn't available, Mr. Koral said. Also, a company with a layered property program with multiple insurers can fill in holes in the program with the captive, later ceding the risk taken by the captive to reinsurers.

"Historically, reinsurers haven't had much contact with buyers of insurance," said another panelist, Robert E. Storey, a vp at Munich-American RiskPartners in Princeton, N.J. "In order to access us, you had to go through primary insurance companies. With the advent of captives, that has changed."

Reinsurance can provide a captive with the leverage to write large risks without exceeding risk-to-surplus and premium-to-surplus requirements, Mr. Storey said, and it can also help smooth a captive's loss experience and provide a level of protection against catastrophic events.

Julie K. Long, executive director-risk management at SBC Communications Inc. in San Antonio, Texas, said her company has placed property coverages in its captive, even in the soft market, as a way of getting access to reinsurance markets.

SBC insures only for catastrophic losses, Ms. Long said. The result is large corporate retentions, because the telecom company can cope financially with routine losses.

In that context, SBC uses the captive to prevent "leakage" of property premiums from departments whose managers desire coverage for specific transit exposures—such as transporting a multimillion-dollar switch—by allowing the managers to cover those exposures in the captive. The average annual premium to the SBC captive for such activity is $400,000 to $500,000, Ms. Long said.

SBC also uses the captive to insure employee homes held in inventory by the company under its employee relocation program. And the company uses the captive to cover specific network installations in which the client has taken title to the equipment but the SBC subsidiary has assumed the risk of loss for the equipment during its installation.

SBC also will place coverage in the captive for properties under long-term lease when the landlord won't accept a subsidiary's written agreement to retain the risk as self-insurance. Ms. Long said.

Errors & omissions

- Due to an editing error, an incorrect company logo appeared in conjunction with a profile of managing general agent Risk Placement Services Inc. in the Aug. 19 issue. Risk Placement Services is a unit of Arthur J. Gallagher & Co., not American International Group Inc.
- A story on the aging workforce in the Aug. 12 issue misstated the time frame for changes in benefit plans following a quote from Eric Wurzel, a partner with Travers, O'keefe & Associates Inc. The sentence should have read: "The benefit plans you see today will be gone" in the next two to four years, Mr. Wurzel predicted.

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Commentary

For insurer CEOs, it's no new drill

Several hundred chief executives have now placed their hands on Bibles and sworn that their companies' financial reports are not misleading. Among them were leaders of a couple of dozen big insurance groups, some of which filed their certifications well in advance of the Securities and Exchange Commission's Aug. 15 deadline. That deadline passed with no new eruptions of accounting scandal and with only a small cast of mostly-familiar characters–Enron Corp., WorldCom Inc.–failing to cross the finish line.

For insurers, this is not a new drill: Their top officers have long been required to sign off on statutory financial statements, swearing to the accuracy of the myriad schedules, exhibits and addenda covering such things as, for instance, loss reserve development. SEC certifications merely extend this practice to include parent companies–not just the underwriting units that file statutory reports–and, incidentally, to impose criminal penalties for lying.

Doug McLeod

So policyholders and investors can now feel confident that an insurer's fiscal health is exactly as its financial statements depict and that the odds of a nasty surprise are diminished, right? If you think so, I've got some Reliance Group Holdings stock options you might be interested in.

This is not to say that SEC certifications are pointless. They are part of a needed re-emphasis on disclosure and accountability. Many corporations, insurers included, are supplying more information in their latest reports than they have in the past and have committed to continuing the practice. More disclosure is better than less.

CEO certifications don't repeal laws of insurance economics or human nature, though. Property/casualty insurers still have to contend, for example, with the inexact science of reserving, in which even very intelligent people make mistakes that can lead to sudden, huge losses and damage to earnings, if not capital adequacy.

Earlier this year, Warren Buffett, generally recognized as a pretty smart guy, lamented General Re Corp.'s need to take an $800 million charge against 2001 earnings for underreserving. He suggested the industry do away with the term "loss development," since it implies the losses weren't there all along, and replace it with "oops."

Honest mistakes happen.

But there are also the less-honest kind: the insurance company CEOs who yield to the temptation to hold down reserves to boost reported earnings and policyholder surplus.

The SEC's certification requirement, regardless of its criminal penalties, seems unlikely to keep such executives from finagling reserve levels, any more than statutory certification has prevented it in the past. After all, proper reserve levels are a matter of debate, even among actuaries. Who can blame a CEO for being optimistic?

And reserves aren't the only area vulnerable to cosmetic accounting. Another that's attracted attention is pension assumptions. The amount of money a company must contribute to a defined benefit pension plan depends partly on how much it expects that money to earn before it's paid out to employees; the higher the assumed rate of future returns, the lower the amount that must be contributed today. Lower pension contributions mean higher reported earnings.

For months, various experts, including Mr. Buffett, have held that too many companies have assumed unrealistically high rates of return on pension assets, given the slide in stock prices since 2000. Berkshire Hathaway assumed a long-range average rate of return of 6.5% in 2001, down from 8.3% in 2000. By contrast, several large insurance groups still assumed last year that they'd earn 9% to 10% on pension investments, according to the 2001 10-K reports they filed with the SEC.

These are the same 10-Ks, by the way, that have just been certified as accurate by the insurers' CEOs.

In other words, the SEC crackdown doesn't necessarily mean that some insurers' financial filings won't turn out to be grievously wrong.

The standard wording of the SEC certification itself seems to leave companies some wiggle room on debatable accounting practices: CEOs must swear "to the best of (their) knowledge" that their companies' financial reports contain no untrue statements or omissions that would make the reports misleading "in light of the circumstances under which they were made."

The more things are certified, the more they stay the same.

Senior Editor Douglas McLeod's commentary appears occasionally in Business Insurance and at www.businessinsurance.com. He can be reached at dmcleod@crain.com.

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Editorial

CFA off base on terror insurance

THE CONSUMER Federation of America is yet again arguing against the need for the federal government to provide protection to insurers facing future terrorism losses.

And once again, we do not find the CFA's arguments persuasive. Indeed, some of its assertions are misleading and false. What the CFA fails to acknowledge is that the proposals now in Congress to provide insurers with financial relief for future terrorism losses benefit consumers.

Lowering the net exposure of private insurers to catastrophic terrorism losses means they can provide terrorism coverage to a broader array of policyholders, and at more-affordable rates. It also means that insurers will not be bankrupted by future terrorism losses that, arguably, governments are responsible for protecting against.

The CFA contends that the price has dropped for stand-alone terrorism insurance yet goes on to acknowledge that "it is still expensive." Considering that businesses previously did not pay additional premiums for terrorism coverage, even if the cost *is* lower—an assertion for which the CFA offers no proof—today's coverage costs are enormous compared with those of a year ago. Furthermore, the existing coverage is sharply limited and, in the view of many risk managers, affords less-than-complete protection.

The CFA contends that the current affordability and availability problems in the terrorism coverage line are only temporary and will ease when the hard market cycle inevitably turns. That may eventually happen, but what about the high costs that policyholders are paying now and next year?

And what happens after the next terrorist attack? If another attack occurs, the private market for terrorism insurance likely would vanish for good and, subsequently, so would many policyholders. Federal assistance provides a much-needed cushion to help insurers bear the risk of future losses. If a private market is emerging, as the CFA asserts, it will develop that much faster with the support of the government.

The CFA contends that World Trade Center loss estimates are declining. By whose estimate? The most recently industry loss estimates are $20.3 billion, up from $16 billion, and it is generally expected that the actual total will be $40 billion, if not higher.

And current estimates do not take into account the tens of billions of dollars in additional exposures when business interruption and liability claims are filed. Those claims likely will engender years of litigation, delaying and inflating the ultimate accounting for the industry's exposure.

The CFA also contends that federal relief is not needed because commercial rates in general are stabilizing and may be inflated due to alleged "price gouging." While anecdotal evidence abounds that such price gouging is occurring, even the CFA acknowledges it is in lines such as umbrella liability coverage. What does the cost of umbrella coverage have to do with the price of terrorism insurance?

Rather than muddy the waters with unsupported arguments that federal relief is not needed, the CFA should focus its efforts on helping consumers. Even if it is unable to recognize businesses as valid consumers, it should realize that the high costs these businesses incur are passed along to individual consumers as employees and customers. Federal assurances for terrorism insurers help all consumers.

Obvious idea for obvious savings

SOMETIMES AN IDEA is so good and obvious you have to ask why no one thought of it before.

In this case, the idea is a new initiative by Blue Cross & Blue Shield of Illinois in which the health insurer will, starting next year, pay pharmacists $1 each time they persuade a customer to switch to the lower-cost generic equivalent of a name-brand drug.

If there is a negative, we certainty don't see it. While $1 may not seem like much, the new incentive can mean thousands of dollars each year in additional revenue for high-volume pharmacies.

More importantly, if customers in large numbers opt for generics, the Blues' plan will reap significant savings, which, in turn, means smaller health insurance premium increases for employers and less need for companies to shift costs to employees.

This initiative is not the only one aimed at controlling prescription drug costs. Employers, in ever increasing numbers, are using a tiered approach in their prescription drug plans, in which employee copayments for brand name drugs are significantly higher than for generics.

As employers can attest, giving employees an economic incentive—in this case a much smaller copayment for a generic drug than a brand name—dramatically influences employee behavior.

The lesson of that goes beyond prescription drugs. There are many reasons why health care costs are soaring that are beyond employer control, not the least if which is the increased leverage, due to mergers and consolidations, of medical providers.

But one factor, that can be influenced of employers and insurers, is plan design. Managed care plans were put in place with little cost sharing for enrollees. As a result, enrollees lacked an incentive to use services wisely. The result: surging utilization.

Clearly, if cost increases ever are to be brought under control, plan design has to include more economic incentives for plan participants that lead to more careful use of health care services.

Schillerstrom

Letters to the Editor

Blues association says AHPs encourage scams

To the editor: Despite recent claims by U.S. Secretary of Labor Elaine Chao—"AHPs Will Cut Costs, Foil Scams: Chao," which appeared on *www.businessinsurance.com* Aug. 7—the Blue Cross & Blue Shield Assn. believes that association health plans as currently proposed will encourage, rather than foil, scams

As highly regarded federal fraud investigator Eleanor Hill noted in a report for BCBSA in May, AHP legislation "would ignore the lessons of history by creating new regulatory loopholes for some of the same types of plans that left consumers with millions of dollars in unpaid medical bills in the past." In her report, Ms. Hill asserted that congressional efforts to exempt AHPs—insurance companies for small employers—from state regulation will ultimately reinvent the fraud and insolvency scandals of the 1980s associated with multiple employer welfare arrangements.

AHPs are not a viable solution to double-digit increases in health care costs. In reality, AHPs could actually make the situation worse for

See LETTERS /page 19

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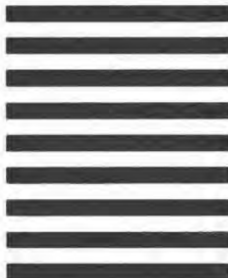

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Ask A Risk Manager

Terrorism insurance bill not yet a done deal

Q: Nearly one year after 9/11, the terrorism reinsurance issue remains unresolved. How can we move this to an acceptable conclusion most effectively?

A: Now that the Senate has approved its version of terrorism insurance legislation and appointed conferees to draft a compromise bill with their House counterparts, can we declare victory on this issue? Not just yet.

Many industry stakeholders, including the Risk & Insurance Management Society Inc., have met or corresponded with the staff of the conferees over the last two months. The consistent message that we have received is that now is not the time to become complacent. There is still a lot of work to be done. Members of Congress need to keep hearing from commercial policyholders that terrorism insurance remains a critical issue. The upcoming midterm elections and competing issues could distract lawmakers from completing the bill.

Risk managers and other affected policyholders must keep the pressure on the conferees to enact an effective federal terrorism insurance backstop—and quickly. This legislation has been delayed for nearly a year, putting insurers and policyholders at risk for insolvency, and dragging down U.S. economic recovery. The key is to stress the link between terrorism insurance and the economy, and to emphasize the jobs that are at risk. Despite some differences, the House and Senate bills are not too far apart. By pulling together the best provisions from each, there is an excellent chance that the president will be able to sign a bill into law that will have a positive effect on the insurance industry and the economy.

When Congress returns from its recess, the conference committee will have to address several areas of contention—primarily, what form the program will take. The Senate bill contains a provision that would allow insurers to share the costs of a future catastrophic terrorist attack with the government. The House bill would require insurers to repay any government assistance.

While many stakeholders, including RIMS, fully support the Senate cost-sharing concept, we understand that those supporting the House payback provision are also very committed to their approach, and a compromise may be inevitable. However, I encourage risk managers to reiterate to their legislators and the conferees, in particular, that the costs of a terrorist incident will ultimately be borne by the policyholders in any type of federal repayment program—the same commercial insurance consumers that are already struggling under a hard market and a recessed economy.

The intended length of both programs is inadequate. Two years would not allow enough time to properly establish the federal program or restabilize the insurance and reinsurance markets. Indeed, if a payback provision were included in the final legislation, the new bureaucracy necessary to process repayments would certainly outlive the intended length of the program in order to ensure that all of the loans are paid.

It would be more effective if a federal terrorism insurance program were run on the policy-year concept used in an insurance contract, with a one-year limitation on the extension of individual policies covered beyond the end of the program. Neither bill contains this provision, yet its inclusion would facilitate accounting of losses and payment of costs. In addition, it would be extremely difficult for policyholders to renegotiate in the middle of their policy term if the protection of the federal program were no longer available to their insurer.

These and other issues, including the controversial tort provisions, will have to be tackled by the lawmakers. As the stakeholders with the most to lose should this conference bill not materialize, risk managers and commercial policyholders need to continue actively communicating to Congress the need for terrorism insurance legislation.

Stories of unaffordable and unavailable terrorism coverage and economic disruption are still prevalent. They offer a stark picture of what many commercial insurance consumers—not just those in "high risk" areas—are facing. Recently, the small town of Tulelake, Calif., temporarily ceased offering public services because it was unable to renew its liability coverage, due to the fact that its insurer could not get an exclusion for terrorism coverage—California being one of a handful of states that will not permit terrorism insurance exclusions. City services, police work and garbage collection resumed last week after the town entered an insurance pool with other local governments.

This example further demonstrates that the urgency surrounding a federal terrorism insurance bill has not gone away, even nearly a year after the attacks and the withdrawal of most reinsurers from the U.S. market.

We must make sure that Congress completes the job it set out to do last fall by calling for the president's signature on a terrorism insurance bill by the end of September. This legislation is long past due, and the finish line is in sight.

For the economic health of the nation and of our businesses, we can effect change by taking a consistently aggressive stance that this matter is of great importance and that part of our economic recovery depends on passing this legislation. Don't forget to seek the assistance of the government affairs experts in your own company, as they will at least want to know what activity of this nature you are involved in and can, in most cases, help you be more effective in influencing the outcome.

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

This column on risk management issues was written by Christopher E. Mandel, assistant vp-enterprise risk management at USAA Group in San Antonio and president of the Risk & Insurance Management Society Inc.

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

Avoiding hang-ups in coverage disputes

By Mark E. Miller

Since the early 1990s, when plaintiffs lawyers singled out the telecommunications industry as a target for litigation, a series of lawsuits has been filed against wireless telephone equipment manufacturers, service providers and retailers.

Generally, these suits fall into two distinct categories—individual suits alleging that users contracted cancer or some other physical ailment; and class-action suits alleging that, because of the risk of bodily injury caused by the use of wireless telephones, wireless telephone manufacturers and distributors should be required to pay for, among other things, wireless telephone headsets (*BI*, Jan. 7).

Because typical liability insurance policies provide for the defense of "groundless false or fraudulent" bodily injury allegations, many policyholders believed that obtaining coverage for these wireless suits would not prove difficult. But, as the cases multiplied, a number of insurers elected to fight coverage.

Wireless telephone insurance coverage litigation has been initiated by insurers and policyholders alike, with most coverage actions being filed by insurers.

Zurich American Insurance Co., with lawsuits pending in several states, is among the insurers leading the charge against coverage. Zurich's approach and strategy appears to have three main parts: (1) sue first to establish jurisdiction in favorable venues; (2) challenge only one type of wireless telephone case—the wireless headset class-action cases; and (3) take two test cases forward, one against Baltimore Business Communications Inc., a wireless telephone distributor with limited resources, and one against Audiovox Corp., a wireless telephone manufacturer, filed in the particularly policyholder-unfriendly jurisdiction of New York.

This strategy has met with some success, resulting in a trial court decision in Maryland and an appellate court decision in New York holding that coverage is not provided. Insurers have prevailed in each of these lawsuits because they were able to convince the court that headset replacement was an economic issue unrelated to bodily injury.

Policyholders such as Motorola Inc., AT&T Wireless and VoiceStream have filed suits in Washington and Louisiana, which are generally considered to be policyholder-friendly jurisdictions. A Louisiana trial court found no coverage for Motorola, and the case is currently on appeal. The AT&T case, filed in Washington, reached a temporary interim defense funding agreement, and litigation was stayed.

Although it is too early to predict the outcome of the coverage disputes related to pending and potential future wireless telephone lawsuits, several important observations can be made.

First, all actions in which coverage has been denied addressed coverage only with respect to wireless headset class-action lawsuits. These wireless headset class-action lawsuits contain numerous allegations of injury to humans that should be sufficient to trigger coverage under bodily injury provisions of commercial general liability insurance policies covering "groundless false or fraudulent allegations." Yet courts denying coverage largely ignored these allegations to characterize these cases as purely economic in nature.

Second, a number of insurers have agreed to pay, and are paying, at a minimum, defense costs associated with underlying wireless telephone litigation. This is especially true for cases alleging cancer, where the insurers often have no valid defenses. Issues faced in these types of cases include the determination of which policies are triggered; the allocation of costs among insurers; the selection of counsel; the control of defense; and the establishment of what portion of defense costs, if any, should be paid by the policyholders.

The difference between obtaining coverage and losing it often comes down to strategy and negotiation. Although no one strategy will work in all cases, a policyholder should, at a minimum:

- Provide notice for all actual and potential claims. Notice should be provided to all insurers that issued policies during the time of the alleged injuries as soon as is reasonably possible.
- Select the applicable forum or forums with care. The selection of a forum is probably the most important decision made by a policyholder. Even if litigation is not being initiated, the coverage issues for each potentially applicable jurisdiction should be evaluated and a determination should be made in regard as to which state or states' laws apply.
- Evaluate the prospects of settlement and litigation. Although many claims have been and are being settled without litigation, it may prove necessary to initiate litigation to establish jurisdiction in a favorable forum or to bring a series of diverse insurers to the table.

If history is any lesson, the best approach for policyholders is to evaluate their claims fully before settling with their insurers or being sued by them. That way, lessons learned from analogous types of claims, such as those for asbestos and lead-based paint, can be fully applied to obtain the coverage that policyholders reasonably expect.

Mark E. Miller is an environmental and litigation attorney in the Washington, D.C., office of the Miami-based law firm of Greenberg Traurig L.L.P., where he represents policyholders in a wide variety of insurance coverage disputes, including disputes over coverage for wireless telephone cases. The views expressed herein are those of the author and do not represent the views of any Greenberg Traurig client.

Dennis Franz, Actor

I'd like to talk to you about a killer.

Its name is colon cancer, and it kills more people than any cancer except lung cancer. I know because my father died from it recently. The sad thing is that people are dying from a type of cancer that's curable 90% of the time when you catch it early. That, to me, is a real crime. So please, talk to your doctor about getting a simple test. It could stop a killer. And save your life.

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Aging: Benefit plans likely to become more flexible

Continued from page 3

plained. "It's not just about traditional benefits; it's about access to these services," he said.

Such voluntary benefits could include services related to travel, hobbies, group activities and retirement planning, Mr. Breitbart said. Voluntary benefits permit an employer to put its employees in touch with existing groups with common interests, while offering payroll deductions to cover the costs of participation. In addition, employers could offer stipends to cover part of those costs, Mr. Breitbart said.

Ms. Varma noted that many benefits that are currently being paid for by employers also might become voluntary benefits if the costs to provide them increase dramatically. "You'll see very few products just fade away," she said.

By the 2020s, it might become popular for employers to let employees allocate their compensation among present salary, future salary and benefits.

Randall Abbott
Watson Wyatt Worldwide

One benefit that may become widely available by the 2020s is volunteering and mentoring centers. There is a strong link between employee loyalty and corporate volunteering, Mr. Drizin said. Such a volunteering program "will engender loyalty and commitment, and employees will stay longer because they want to, not because they have to," he said.

Another low-cost but much-desired benefit in the future will be retiree job banks, predicted Sally Hass, manager of benefits education at Weyerhaeuser Corp. in Federal Way, Wash. Such a job bank could consist of lists of part-time or seasonal jobs available for retirees. It would help retirees get some work while giving them the flexibility they want, "and that's an easy thing to do," Ms. Hass said.

By the 2020s, it might also become increasingly popular for employers to combine benefits with salary to create total compensation programs, said Randall Abbott, senior consultant with Watson Wyatt Worldwide in Philadelphia. In such a program, an employee chooses how to allocate compensation among current salary, deferred salary and benefits.

This method fixes the costs for employers while giving employees choices and flexibility in the way they get their benefits, Mr. Abbott said. And a total compensation program can meet the demands of both older and younger workers, because younger workers can elect to receive more salary while older workers can opt to get more benefits. "It means a massive rearticulation of the deal," Mr. Abbott said.

While few benefits are likely to be curtailed, one prominent benefit is likely to disappear, said Uwe Reinhardt, a professor of economics at Princeton University in Princeton, N.J. Rising health care costs will most certainly spell the death of retiree health care benefits, he said.

The current system simply cannot continue to exist with huge expenses looming, Mr. Reinhardt. As a result, retiree health care "will ultimately have to be taken over by the government," he predicted.

Such a plan would look much like today's Medicare program, Mr. Reinhardt explained, with enhanced benefits, such as for prescription drugs. There is no alternative to such a development, he argued, because employers cannot possibly pay for the huge costs of retiree health coverage.

Mr. Reinhardt also predicted a larger government role in providing health care for active workers. With costs rising year after year, employers will pass more health care costs onto employees and then begin "a slow rolling over to the government" of these costs, he said.

While early retirement will be less common, because it will make little sense for employers to push out older workers, educating workers on the need to save and invest for retirement will become more prominent, experts say.

"Employers will need to think what role they have in educating employees," Ms. Varma said.

Though some employers will be shocked by these changes, others will welcome them as a business opportunity, Mr. Breitbart said.

A shrewd use of these benefits could attract legions of older workers to an organization, ensure their retention and prevent a shortage of workers from hurting business, experts say.

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Products & Services

Return-to-work plan uses nonprofits for transition

DEERFIELD, Ill.—Workers Transition Network Inc. and AIG Claims Services Inc. have teamed up to provide return-to-work solutions.

AIG Claims Services, a unit of New York-based American International Group Inc., will implement the WTN program in 14 states, offering return-to-work services in the workers compensation marketplace to self-insured employers, insurers and third-party administrators. WTN is a member of the Deerfield, Ill.-based LewisCo Group.

Under the program, WTN offers an alternative to traditional vocational rehabilitation by placing injured workers with nonprofit agencies until they are ready to return to their previous jobs. Permanent jobs also can be found at the agencies for workers whose employers cannot accommodate them in a post-injury return to the workplace.

The arrangement provides services "that help get complex claims resolved, assist in returning injured workers back to productive employment and reduce loss costs for our customers," Don Hurter, vp of AIG Claims Services' Medical Management Services, said in a statement.

More information is available at *www.lewisco.com.*

Payroll deduction credit-type card offered

BLUE BELL, Pa.—Employers can offer a new benefit aimed at helping employees manage their finances.

A payroll deduction card called Clear allows employees to make consumer purchases and have payments deducted without interest over a two-month period from their paychecks. The benefit is offered by Blue Bell, Pa.-based E-Duction and MasterCard International.

Clear cards are accepted by all merchants that accept MasterCard, and transactions are done in the same manner as credit card purchases. Employees pay a $29 annual fee and, to prevent misuse, use is capped at a percentage of annual salary. Employees receive monthly statements that explain charges and deductions, and they can access statements online.

There is no cost to employers for offering the service.

"A large number of our employees have requested the card," Helen Dubil, a manager with Reliance Standard Life Insurance Co., said in a statement. Employees want the card to pay for emergency purchases or for recurring bills, she said, as it provides a way to spread payments without paying interest.

More information is available at *www.e-duction.com.*

Watson Wyatt tool aids global benefit management

WASHINGTON—Watson Wyatt & Co. has released Ben Track, an Internet-based tool that helps organizations manage benefits, compensation and financial data across multiple business units and countries.

Ben Track allows companies to manage data for retirement and benefits programs, including pensions, medical and dental coverages, death and disability benefits, termination and severance provisions, stock plans and company cars. The system has advanced reporting functions and offers the ability to generate side-by-side comparisons of benefits across divisions and borders.

Ben Track can store historical financial and accounting data; track names and contact details of company personnel, consultants and other advisers; access statutory benefit summaries from around the world; track pension plan investment performance and provide other information.

Data are stored on secure Watson Wyatt servers.

More information is available from Gary Patterson in Washington, at 202-251-5687, or from Caroline Dopson in Reigate, England, at 44-173-727-4288.

Prescription drug program encourages generics use

IRVING, Texas—AdvancePCS is offering a program that provides health plan members with free generic drug prescriptions.

Under the AdvanceGenerics program, the Irving, Texas-based health services company provides vouchers to allow patients to fill their first prescription of a generic drug at no cost.

The program also includes a system that alerts pharmacists to the availability of drugs that are cost-effective and available in generic form. With the patient's agreement, a pharmacist can contact the physician to determine if a switch from a name-brand to a generic medication is appropriate.

The vouchers can be distributed to members by AdvancePCS, their health plans or their doctors.

More information is available from AdvancePCS, at 800-749-6199.

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Ward: Identifying best practices

Continued from page 3

John Ward, chairman and chief executive officer of Ward Group.

"It's important for the insurance industry to look for ways to continuously improve their operation. It's not traditionally an industry that is big on self-analysis, but it's important for the industry to constantly be looking at the operation and looking for ways to improve it."

"Quarterly results the last several years have not been good results for the industry, so that makes it even more important for companies to be willing to look at areas of the operation and make changes to improve the effectiveness of the operation," Mr. Ward said.

Many of the best practices identified by the Ward Group are not widely used. For example, only 19% of the 300 companies in its benchmark group use a well-articulated business strategy to guide decisions on information systems. On the other hand, in the claims management area, 36% of the benchmark group have implemented another best practice identified by Ward: around-the-clock handling of initial loss reports.

A "cut and dried" practice like 24-hour reporting is "fairly straightforward, and management can decide to do it or not to do it," said Mr. Ward.

But with other best practices, such as making an information systems strategy fit overall business strategy, "saying you want to do it and actually succeeding at doing it are two things," Mr. Ward said. Many companies have such a goal, but "few do a good job of doing it. It's just very tough," he noted.

In addition, only 19% of the benchmark insurers distinguish between technology investment and technology effectiveness, said Mr. Ward. "Spending and investing in technology does not ensure that you're going to get a good payback," Mr. Ward said. "Very few companies do a good job" in making this distinction, he said.

'It's important for the insurance industry to look for ways to continuously improve their operation. It's not traditionally an industry that is big on self-analysis.'

John Ward
Ward Group

In general, the percentages of insurers following a best practice are "fairly low," said Mr. Ward. "If everybody was doing a best practice, then the industry would be performing well as an industry."

Ward continues to determine new industry best practices, though it has never eliminated any of those it has previously identified. "Theoretically, it is possible that we would get smarter about our analysis and eliminate a practice from being a best practice," but that has yet to happen, said Mr. Ward.

The best practices "are not fads," he said. "These are conclusions drawn by looking at a lot of quantifiable information" over several years. "Fads come and go, but our view is that best practices shouldn't. They should stand the test of time and be supported by objective analysis," Mr. Ward said.

Other best practices used by the top performers include:

- Using a centralized quote unit to provide rapid response to requests for quotes by agents in the field.
- Having underwriting teams that are organized around a geographical area or around a specific group of agents.
- Focusing on the effectiveness of the loss control function, rather than the volume of loss control surveys conducted.
- Achieving an outstanding first-call resolution rate—meaning a customer's problem is solved with one phone call—and reducing the rate of abandoned calls, in which customers hang up before they are served, to improve customer satisfaction.
- Testing advanced technologies in noncritical areas before making major investments.
- Implementing an automobile glass repair network to expedite the handling of windshield claims.
- Using medical bill audit software to evaluate the reasonableness and accuracy of bills submitted by providers.
- Implementing an effective fraud-detection function.

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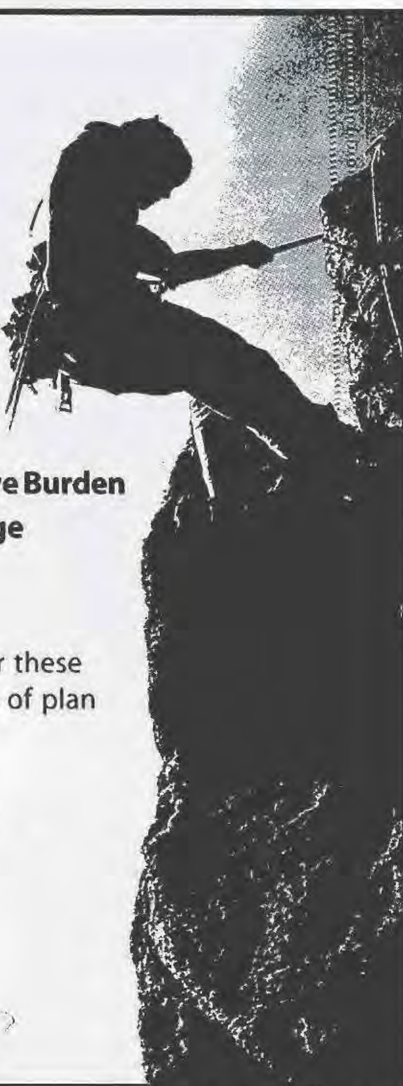

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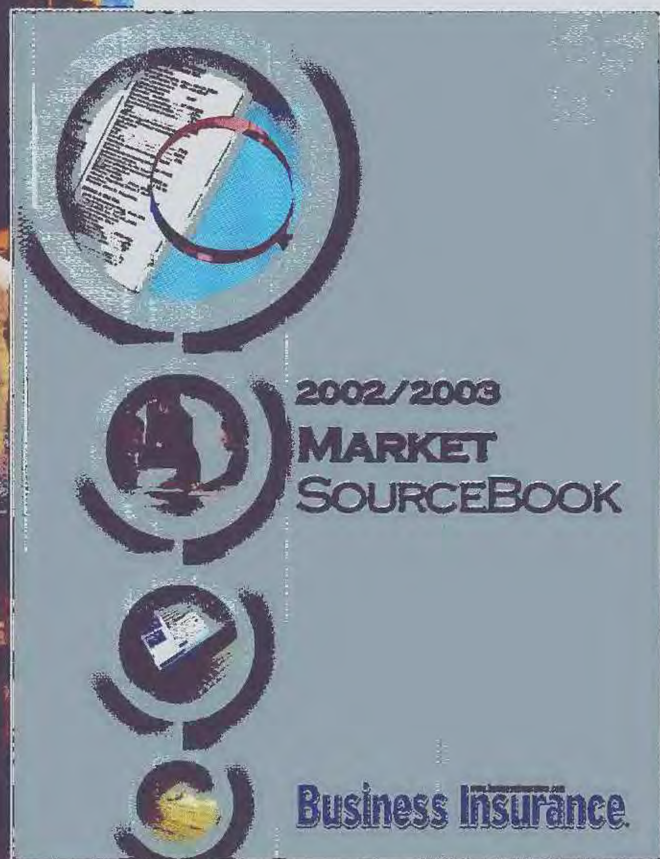

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Pollution: Draft directive would mandate environmental cover

Continued from previous page

• Create unlimited liability for pollution cleanup.

• Not provide an exemption from liability to companies that would comply with the directive's environmental regulations or would use state-of-the-art environmental protections.

• Impose mandatory insurance when the market for the coverage may be inadequate.

"The directive makes it necessary to insure (environmental) liability, but it is uninsurable" based on the requirements within the directive, said Mr. van Santen. Environmental liability insurance is available, he said, but it does not cover everything that the directive demands.

"Under the existing form of the draft, the insurance industry cannot currently offer sufficient insurance cover, with the exception of soil damage," the CEA reported. "There is not an established market that provides insurance solutions to all businesses. Covers exist, but they tend to be niche players offering specific contracts to specific highly protected risks."

> **'Universal compulsory insurance, which is mooted in the directive, is not practical for the time being.'**
> *Assn. of British Insurers*

The CEA said a wider insurance market eventually would develop. However, "we very strongly believe that it must be allowed to develop naturally rather than through compulsion," the CEA stated.

The Assn. of British Insurers also has told the European Commission that "universal compulsory insurance, which is mooted in the directive, is not practical for the time being."

The ABI has been working on the issue of environmental liability insurance called for by the directive with Lloyd's of London and the International Underwriting Assn.

In Europe, there does not exist a sufficient market to offer compulsory environmental liability insurance, the ABI added.

The ABI also said its member insurers are concerned about insuring against biodiversity damage, which it said would be difficult to quantify and has never been insured before.

"Insurers believe it would be very difficult to provide insurance cover for biodiversity risk," stated the ABI.

"As an example," the ABI said, "if pollution from a company threatened to destroy a colony of butterflies in an area used by walkers, it would be difficult to measure the type and scale of any potential loss."

Floods: Losses grow as water levels rise

Continued from previous page

Lynch estimated that Converium's exposure could total 36 million euros ($35.4 million).

Paris-based reinsurer SCOR S.A. said it expected only minimal losses from the flooding.

In Austria, the flooding was described by Chancellor Wolfgang Schuessel as "the worst natural disaster to have hit Austria in living memory."

The Austrian insurance company association, Verband der Versicherungsunternehmen Osterreichs, said that insured losses in the country were currently estimated at about 100 million euros ($98.5 million).

James Peace, London market director at loss adjuster GAB Robins, pointed out that although insured property damage claims from the European floods may not be as high as earlier feared, there also is a potential for substantial business interruption claims.

Mr. Peace added that rising water tables, particularly in Dresden, Germany, could potentially result in structural damage to the foundations of buildings.

Mr. Peace said that it is likely that more insurance and reinsurance claims would come to light once the flood waters begin to subside and the damage can be fully assessed.

In a report on flood insurance exposures, analysis firm Schroder Salomon Smith Barney pointed out that although some large companies may have business interruption coverage and "wider property protection," such coverages are "far from universal (particularly in less well developed eastern European states) and, more specifically, policies usually have specific limits in respect of flood claims–typically around 10,000 euros ($9,847) per event."

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Liability: Reform talks continue

Continued from page 17
government's agenda," Mike Williams, chief executive of BIBA, said in a statement.

An industry conference on the problem of soaring employers liability premiums—organized by BIBA and the London-based Assn. of British Insurers—is slated for Sept. 6. BIBA said that a further meeting with the Treasury and the Department of Work and Pensions is scheduled to take place after that conference to discuss problems and possible solutions raised by attendees.

But the London-based National Federation of Builders, an association that represents the construction industry, issued a statement blasting what it described as the Treasury's "lack of urgency" over the "escalating liability insurance crisis."

The NFB said that inaction on the problem could result in many construction companies operating illegally or ceasing business. Employers liability coverage is compulsory in the United Kingdom.

The NFB is calling on the government to increase the scope of coverage offered by Pool Reinsurance Co. Ltd., the government-backed reinsurance pool, to include areas of insurance such as employers liability. Currently, Pool Re reinsures only terrorism-related losses.

"This is not a begging bowl we are holding out to the Treasury. We understand that market conditions are increasingly harsh for underwriters, as many seek to recover their losses on employers liability and reduce exposures to high-risk sectors," Barry Stephens, the director of policy and planning for the NFB, said in the statement. "A degree of increase was inevitable, but the massive increases being witnessed are untenable."

Meanwhile, the government's Health and Safety Executive said Wednesday that it would form a steering group to discuss whether companies with good safety records should receive discounts on their employers liability premiums.

The moves come amid what some insurers and employers see as an employers liability insurance crisis in the United Kingdom. Rates have increased sharply as insurers have faced escalating claims and higher reinsurance costs (*BI*, Aug. 19).

World Updates

Continued from page 17
has downgraded Royal & SunAlliance Insurance Group P.L.C. to A from A+. S&P also said it has a negative outlook on RSA's rating, noting that the downgrade was prompted by a decline in the capital base of the London-based multiline insurer. Earlier this month, Moody's Investors Service placed its A1 rating of RSA under review (*BI*, Aug. 12).

London police look into bogus Lloyd's policies

City of London Police are investigating a suspected public liability insurance scam involving bogus Lloyd's of London policies. According to Lloyd's, police are investigating claims that an insurance intermediary sold about 80 policies to clients in Australia for coverage that purports to be underwritten at Lloyd's but does not exist. A London man trading as an insurance intermediary under the name of Imrac Ltd. is helping police with their inquiries, Lloyd's said.

Letters to the Editor

Continued from page 8
most small businesses across the country. In fact, a study by the Congressional Budget Office predicted that AHPs would raise premiums for four out five workers in small businesses nationwide and could cause 10,000 of the sickest workers to lose their health insurance altogether.

While this is ominous in its own right, it is important to note that, in recent months, more than 100,000 consumers participating in AHP-like entities around the country have lost their health care coverage altogether. Does this really sound like a way to ensure greater access and affordability?

AHPs are clearly not the magic bullet we are seeking to rein in health care costs.

Scott P. Serota
President and CEO
Blue Cross & Blue Shield Assn.
Chicago

Consider OPIC's potential

To the editor: Although Michael Bradford's article on the tightening of political risk insurance ("Political Risk Capacity May Tighten," *BI*, Aug. 12) is an informative view of the private market, it is an incomplete view of the total market. A complete view of the market must consider fully the role of the public market, notably the Overseas Private Investment Corp. Public insurers such as OPIC both complement and improve what is available in the private market.

OPIC, as a U.S. government agency, may well be the most stable and financially sound insurer in the world. OPIC offers 20-year fixed-rate contracts for up to $250 million per investment. While predominately insuring emerging market investment on a primary and net basis, OPIC's preferred role is as a facilitator and partner of the private market. When the private market is normally not available or adequate, OPIC can offer its strength and stability to private insurers as either a co-insurer or reinsurer. The potential benefit of OPIC's support for the private market is immense. That potential, though, is far from being realized.

The article also suggests that there will be few new political risk products coming to the marketplace in the current economy. But the fact is that the standard products are increasingly less relevant to the needs of the market. The challenges of political violence, terrorism, convertibility and foreign exchange risk will demand either more creativity in product offerings or more market constriction. I would bet on a little bit of both, but I would also bet that the public market could help in both respects.

Rod Morris
Vp, Insurance
Overseas Private Investment Corp.
Washington

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CFA: Report findings disputed

Continued from page 1
surers are now willing to offer coverage for terrorism, and the market will likely grow further if Congress does not step in and offer government-backed coverage, Mr. Hunter said.

Currently, capacity is available for most policyholders, he said. The government should play a role only in offering temporary per-risk coverage for commercial properties seeking more than $500 million in limits or for properties based in large metropolitan areas where there is a high concentration of risk and limited capacity, Mr. Hunter said.

"We're suggesting a per-risk retention rather than an industry-wide retention. Per risk would mean much less exposure for the taxpayer," he said.

Despite the massive insured loss resulting from the Sept. 11 attacks, which is likely to be in excess of $30 billion, the insurance industry still has sufficient capacity to cover most of the risks for which policyholders are seeking coverage, Mr. Hunter said.

"After you take into account the federal tax writeoff for the loss, you have a loss of about $20 billion, and that's not as much as has flowed into the industry since the attacks," he said.

Despite the influx of capacity, many policyholders cannot obtain sufficient coverage, said Christopher E. Mandel, assistant vp-enterprise risk management for San Antonio-based United Services Automobile Assn. and president of the Risk & Insurance Management Society Inc.

Many commercial policyholders are not buying coverage, because the premiums charged for terrorism coverage alone are typically equivalent to what risk managers would have paid for their whole property program prior to the attacks, he said.

And capacity is limited to the extent that a policyholder with a $2 billion real estate portfolio would be likely to obtain only $100 million to $200 million in terrorism insurance limits, Mr. Mandel said.

"I don't think all that many people are making purchases unless they are forced to. And if they do, they are not doing it at a rate that they consider economic," he said.

Mr. Mandel said that anecdotal evidence from RIMS members makes clear that a significant number of real estate deals have been undone or hindered because policyholders cannot obtain sufficient terrorism coverage to satisfy lenders.

The terrorism insurance that is available does not provide adequate coverage, said Marty Depoy, vp for government relations at the National Assn. for Real Estate Investment Trusts in Washington.

Limits are insufficient, he said, and the coverage has high deductibles and exclusions for significant risks, such as biochemical and radiological attacks.

"And all the Swiss cheese policies out there come at an extraordinary cost," said Mr. Depoy.

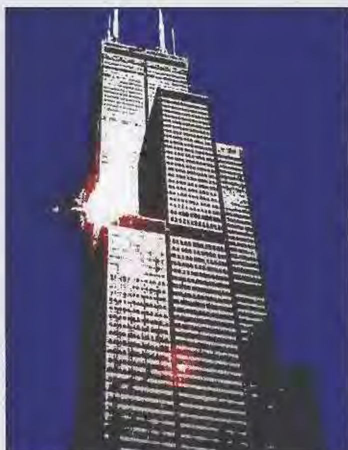
PHOTO: AFP PHOTO/SCOTT OLSON

The Consumer Federation of America wants to see federal terror coverage limited to "trophy properties" such as Chicago's Sears Tower.

whose organization is also part of the Coalition to Insure Against Terrorism, a Washington-based lobbying group made up of entities from various industries.

A broad-based federal backstop is needed to avoid major disruptions in the insurance market in the event of another terrorist attack, Mr. Depoy said. "You would have the same mayhem that we had after Sept. 11," he said.

The backstop is also needed because reinsurers remain unwilling to cover terrorism risks, said a spokesman for the American Insurance Assn. in Washington.

Despite an increase in the number of insurers offering primary coverage, a significant number of policyholders cannot obtain coverage for terrorism risks, the AIA spokesman said.

Lost: Court accepts secondary evidence

Continued from page 1
risk manager.

The port is among several insureds and policyholder representatives—including the relatives of Holocaust survivors seeking coverage under life insurance policies and companies seeking coverage for asbestos claims—that filed amicus briefs on behalf of Dart.

The port was established in 1927 and is a huge waterfront property owner and developer, Ms. Keegan explained. Over the decades, many of its tenants engaged in ship repair, foundry work, oil production and other industrial operations.

Because the port can be held responsible for cleaning up pollution from those operations, it has a longstanding risk transfer strategy. It requires tenants to maintain high coverage limits for pollution, with the port as a named or additional insured.

But many companies that were tenants decades ago no longer exist. And while the port may have some documentation indicating coverage existed—such as an insurance certificate, a policy number or accounting records showing a company paid for insurance—the actual policy often is missing.

"Very few organizations have complete policies that go all the way back to the 1940s," Ms. Keegan said. So the port, like many other commercial policyholders with operations reaching back decades, engages in extensive insurance archeology.

"It has consumed a lot of our energy, a lot of our (legal) counsel time and risk management time trying to recreate records," Ms. Keegan said. The *Dart* decision will lessen that burden and help the port obtain coverage under some ongoing claims, she said.

"This will assist in your ability to put together a prototype of the coverage or the model of what (a policy) looked like and have the court accept that," Ms. Keegan said.

In Dart's case, the company sought coverage under commercial general liability policies purchased by its predecessor company, Rexall Drug Co. From the 1940s until the late 1960s, Rexall manufactured and sold diethylstilbestrol, a prescription drug once used to prevent miscarriages. From the mid-1970s onward, numerous claimants alleged personal injuries caused by DES, court records show.

Rexall purchased coverage from Continental Insurance Co.; Liberty Mutual Insurance Co.; and Employers Liability Assurance Corp. Ltd., a predecessor in interest of defendant Commercial Union, according to court records.

In 1984, Dart filed a lawsuit seeking defense and indemnity from the three insurers. Continental and Liberty Mutual settled with Dart in 1986. A continuing dispute between Dart and Commercial Union reached a trial court in 1993 and led to last week's ruling.

In its decision last week, the high court did not address the standard or degree of proof required for other lost insurance policy cases. But it concluded that Dart is owed coverage because of evidence that Commercial Union's predecessor paid two product liability claims. The claims were brought against Rexall for drugs taken during the period for which Dart claims Rexall had coverage.

The court found that the evidence of paid claims corroborates the testimony of a broker who serviced the Dart account. The broker testified to seeing an insurance contract and participating in related discussions.

"Although it is a truism that we look to the language of a contract to ascertain its meaning, it is equally true that when a contract has been lost in good faith and the actual language is unavailable, the law does not require proof of such language," wrote Justice Carlos Moreno. "Rather...the proponent of the lost document need only prove the relevant substance of the document."

The ruling will help policyholders seeking coverage under various lines of insurance, Mr. Fitzgerald said, noting that it could even apply to homeowners who have lost their policies in fires.

The high court remanded the case to the appellate court for further consideration of the trial court's finding in favor of Dart. In 1998, the trial court awarded Dart more than $2.5 million for defense and indemnity costs, plus $1.4 million in interest through 1992. The trial court also found Dart entitled to recover 50% of its defense and settlement costs incurred after 1992 for damages related to DES exposures during the 1945-51 policy period.

Dart Industries Inc. vs. Commercial Union Insurance Co.; California Supreme Court; S086518.

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Results: Rate hikes drive up managed care profits

Continued from page 2

assistant vp at A.M. Best Co. in Oldwick, N.J.

"A lot of the smaller companies are not making the phenomenal profits" that the larger ones are, he said. Mr. Shaw attributed that disparity to greater efficiency on the part of large companies resulting from investments in technology.

One factor that had a significant impact on some managed care companies' results was a change in accounting rules with regard to the amortization of goodwill.

Some insurers, such as Aetna Inc., took large hits to earnings in the first half to bring their goodwill accounting into compliance with the new rule.

Results of some major managed care companies for the first half, compared with the same period last year, are:

- Hartford, Conn.-based Aetna reported a $2.72 billion loss for the first half, in large part due to a $2.97 billion charge related to a change in accounting rules. The Hartford, Conn.-based health insurer recorded a loss of $37.6 million in the same period of 2001.
- CIGNA Corp. of Philadelphia posted net income of $432 million, a 21.7% decline led by lower investment income.
- Net income at Louisville, Ky.-based Humana Inc. climbed by 78.1%, to $92.1 million, for the first half. Adjusted for the new goodwill accounting rule, Humana's net income rose 18.7%, from $77.6 million in the year-earlier period.
- Kaiser Permanente of Oakland, Calif., reported net income of $458 million, up 54.8%.
- Oxford Health Plans Inc. of Trumbull, Conn., posted net income of $124.3 million for 2002, down 12.7%, partly as a result of an investment writedown.
- PacifiCare Health Systems Inc. in Santa Ana, Calif., recorded a loss of $838.6 million for the half, compared with profits of $28.4 million for the year-earlier period. PacifiCare attributed the loss to the change in goodwill accounting, which reduced its bottom line by $897.0 million.

'Like it or not, we're at a time when the providers' of health care coverage have employers in a corner.

Michael LeConey
Gilford Securities Inc.

- Net income at Minneapolis-based UnitedHealth Group of Minneapolis increased by 42.5%, to $620 million. The company noted that 2001 results were restated to reflect the change in goodwill accounting.
- Thousand Oaks, Calif.-based WellPoint Health Networks Inc. posted net income of $311.8 million, up 58.8%.
- Health Net Inc. of Woodland Hills, Calif., reported net income of $114.5 million, up more than 300% from the same period of 2001.

As health care buyers grapple with rising rates, some are buying less generous benefit packages and shifting some of their costs to employees, analysts said.

"The industry has learned the art of the benefit buydown," Mr. LeConey said.

In buydowns, employers seek to reduce rate increases by purchasing plans that have larger employee copayments and higher deductible levels.

"There is a lot of shifting going on right now," said Best's Mr. Shaw.

But Mr. Ward said that the boom period for managed care companies will not last. He said he expects both employers and even the government to put pressure on managed care companies to slow price increases, perhaps as soon as next year. If companies have not controlled rising medical costs by then, they may again see medical cost inflation outpacing price increases, Mr. Ward said. "But, in the short term, this has not happened," he said.

Although changes may be on the horizon, "the market has not hit its saturation point yet where the employers are going to stand up and yell," said Mr. Shaw.

"Like it or not, we're at a time when the providers" of health care coverage have employers in a corner, Mr. LeConey said.

Travelers: Few changes expected after spinoff

Continued from page 3

"Generally, as an independent company, we can now set our priorities for management and allocating capital resources very much based on our own interests," he said. In contrast, as part of Citigroup, seeking capital was "always sort of a competition" with the company's other units, he said.

"Secondly, as an independent company we have a lot more visibility of our financial results to the marketplace," the chairman and CEO said, noting the company now will post its own financial figures and have analysts assigned to track Travelers specifically.

'As an independent company, we can now set our priorities for management and allocating capital resources very much based on our own interests.'

Robert I. Lipp
Travelers Property Casualty Corp.

"Thirdly, I think it means something to the employees," Mr. Lipp said. By having their stock ownership centered in Travelers rather than a larger parent company, employees can see a more immediate impact of their efforts, he said.

Barbara Stewart, president of Stewart Economics in Atlanta, said, "I'm sure those things are true, but my guess is the rationale for spinning off Travelers was that Citigroup couldn't handle the volatility and the volatility was hurting the valuation of Citigroup stock."

While the spinoff might have advantages for Travelers, "this isn't something Travelers did. It's something Citigroup did," Ms. Stewart said. Travelers "never belonged in that group," she said. "People realize property and casualty insurance is quite different from other financial services."

As an independent company, some see Travelers poised to be a leading industry consolidator. It's difficult to say for certain what might drive future acquisitions, Mr. Lipp said, but opportunities that fit best with Travelers' existing structure will be viewed most favorably.

"We're not looking to fill in any big product holes," he said. The company also is happy with its domestic focus and its independent agent base, Mr. Lipp said, so in terms of potential acquisitions, "The closer they are to our own strengths, the more interest there would be for us."

Comp: 9th Circuit ruling a concern for employers

Continued from page 1

injury or illness. That so-called aggregation rule is tempered, though, by the credit doctrine developed through case law. The credit doctrine allows an employer to reduce its liability by sums the worker already has recovered in settlements with other employers governed by the longshoreman's act.

In the 9th Circuit case, Domingo Alexander, a maritime worker in ships and shops for nearly 40 years, filed a claim after developing various illnesses, including asbestosis.

An administrative law judge in late 1991 determined that Triple A Machine Shop Inc. of San Francisco was Mr. Alexander's last employer. But the judge barred Triple A from taking credits for the settlements Mr. Alexander had reached with three other former employers. The settlements would have covered Triple A's liabilities as well as a portion of the obligation the judge imposed on the longshoreman act's Special Fund, noted Triple A attorney Robert E. Babcock of Sherwood, Ore. The company is self-insured for the loss, he said.

The Benefits Review Board disagreed with the decision, and its subsequent rulings compelled the judge to rule for Triple A.

In overturning the Benefits Review Board, the 9th Circuit panel asserted that the longshoreman act is unclear on the permissibility of credits for settlements reached before the system determines the worker's last employer.

'Allowing quadruple recovery for an injured worker suggests to me the author didn't understand workers compensation.'

Eric J. Oxfeld
UWC

The panel determined: "The settlements that Alexander received were alternative to an entire award against any one of the three settling employers, who might have been liable for an entire award if found to be Alexander's last responsible employer. The aggregation rule was not in play, and hence the credit doctrine was not applicable."

The panel asserted that its ruling "makes economic sense," because ruling otherwise would force injured longshoremen to risk entering into settlements in which their last employers "would get all the benefit." The court, however, also said its ruling prevents "the perverse effect of discouraging settlements."

While the BRB sided with Triple A, the Labor Department supported Mr. Alexander on appeal. But Mr. Babcock said that the Labor Department conceded in oral arguments that credits for the settlements would have been allowed under state workers comp systems.

"This is really a shockingly inequitable outcome," said Eric J. Oxfeld, president of UWC—Strategic Services on Unemployment & Workers' Compensation and the National Foundation for Unemployment Compensation & Workers' Compensation. UWC is a Washington-based association of employers, insurers and associations.

"Allowing quadruple recovery for an injured worker suggests to me the author didn't understand workers compensation," which is designed to allow an injured worker to recover only economic loss, Mr. Oxfeld said. The ruling stands workers comp law "on its head."

Bruce Wood, assistant general counsel for the American Insurance Assn. in Washington, agrees. "The comp system is not to be a casino," he said.

The decision opens the door for state and federal courts "to manipulate the principles of workers compensation to overcompensate" injured workers, Mr. Oxfeld said.

Mr. Babcock said he expects the decision will generate challenges to the permissibility of credits under state workers comp systems.

The decision also will encourage more settlements by employers who were injured workers' last employers, Mr. Oxfeld said.

But Mr. Babcock said employers would be wiser to avoid settling with injured workers and instead settle with the worker's last employer in exchange for hold-harmless agreements.

Attorneys for the Labor Department and Mr. Alexander could not be reached for comment.

Domingo Alexander vs. Director, Office of Workers' Compensation and Triple A Machine Shop Inc., 9th U.S. Circuit Court of Appeals, July 16, 2002; No. 00-70762.

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For the Record

This roundup of news from the previous week is generated by *BI*'s daily news reporting. To get breaking news as it occurs, log on to *www.businessinsurance.com*, or sign up online for free *BI* Daily News by e-mail.

The real estate developer of Santana Row in San Jose, Calif., expects a builder's risk policy to cover damages from a recent fire.

Fire at development project insured

Investigators are still assessing the damage and cause of a fire at a $500 million retail, commercial and residential complex that was set to open next month in San Jose, Calif. Federal Realty Investment Trust, the developers of the complex, known as Santana Row, said its builder's risk insurance policy should cover the cost of the damage. A spokeswoman for the trust declined to name the project's insurer. The fire damaged a significant portion of the largest of the nine buildings in the project.

Cayman Islands licensing more captives

Challenging primary insurance market conditions are resulting in a boom for the Cayman Islands' captive insurance industry. As of Aug. 9, the world's second-largest captive domicile has licensed 43 new captive companies this year and has 26 more applications under review, according to Gordon Rowell, head of insurance supervision for the Cayman Islands Monetary Authority. In 2001, Cayman issued a total of 47 licenses. "Quite simply, the captive industry is going through some extraordinary growth, with no sign of an end," Mr. Rowell said.

Corporate behavior risks undermanaged: PwC

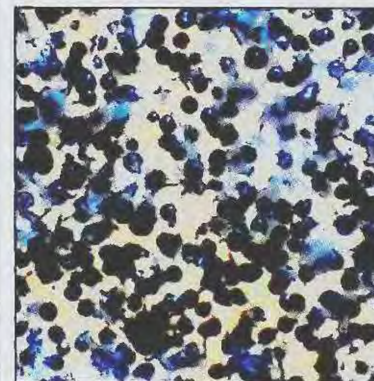
U.S.-based corporations understand that the public now holds them to a performance standard beyond evaluation of short-term financial goals and considers the long-term social, economic and environmental impact of corporate activities, according to a survey conducted by PricewaterhouseCoopers L.L.P. Despite their awareness of that trend, though, corporations are failing to identify or address various risks related to such issues, the survey found. These risks include disruption of critical customer and supplier relationships based on a perceived failure to act appropriately and project delay or stoppage due to failure to anticipate and address community or government concerns.

Bush considers higher 401(k) deferral limit

The Bush administration is considering a tax-cut package that includes proposals to raise the maximum annual salary deferral that employees can make to 401(k) plans. President Bush said that one idea under consideration is "accelerating the 401(k) contribution limits–in other words, making it easier for people to put more money in their 401(k)s quicker." Such a change would have to be approved by Congress, which only last year, as part of a broad tax package, raised 401(k) deferral limits.

Dental plan rates projected to increase

Employers sponsoring group dental plans will see further rate increases in 2003, according to the National Assn. of Dental Plans. Employee-only group premiums for dental indemnity plans with coverage for orthodontia are expected to increase, on average, by 7.4% in 2003, compared with an average 3.9% increase this year, a report by the Dallas-based NADP shows. The rate increases will be biggest for large employers, averaging 8.2%, followed by small employers, 7.3%, and midsize employers, 6.8%.



Insurers urge caution on mold coverage

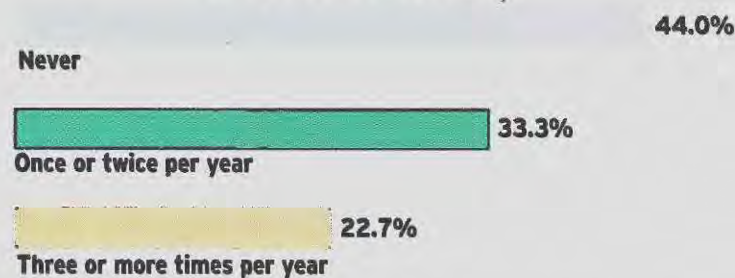
Insurers say insufficient scientific evidence on the health effects of mold and an opportunistic trial bar could be disastrous for insurers. William Stander, government affairs representative for the Alliance of American Insurers' Southeast region, testified that scientific uncertainty and a litigious trial bar "could combine to severely damage Florida's insurance markets." He testified during a public hearing scheduled to gather information that will be used to address the emerging issues of mold-related damage and insurance coverage in Florida.

Briefly noted

Bermuda-based MRM Specialty Brokerage Ltd. has been renamed **The Park Group Ltd.** Park Group is a holding company for two other renamed operations–Park (Bermuda) Ltd., which formerly was H&H Park International Ltd., and Park London Ltd., which was MRM Intermediaries Ltd.....A.M. Best Co. has affirmed its A- rating of **Gerling-Konzern Allgemeine Versicherungs A.G.**, calling the outlook stable. Best placed the ratings of Cologne, Germany-based Gerling under review earlier this year following significant losses at the company's reinsurance operations.

Online Poll [8/19 - 8/23]

How often does your company's risk manager make presentations before the board of directors?



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BI Stock Index [8/19 - 8/23]

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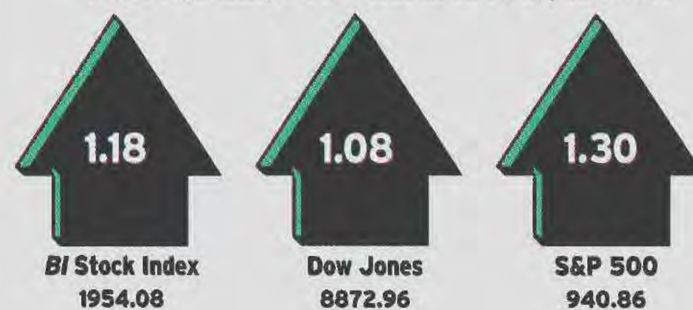
Percentage change of *BI* Stock Index vs. key indicators



Largest gains		Largest losses	
Gainsco Inc.	66.67%	Seibels Bruce Group	-34.15%
Meadowbrook Ins. Group	13.04%	Acceptance Insurance	-21.31%
AXA-UAP Group	10.98%	ESG Re Ltd.	-13.47%
AEGON N.V.	9.42%	SCPIE Holdings Inc.	-9.07%
Health Net Inc.	7.33%	Travelers P/C	-6.56%

Weekly change by market segment	
Brokers	-1.54%
Insurers/Reinsurers	0.83%
Managed Care Organizations	2.29%

Source: CNET Investor (investor.cnet.com)

Insurers ask Supreme Court to overturn punitive award

WASHINGTON—Four insurer trade groups last week asked the U.S. Supreme Court to overturn a Utah jury's punitive award against an automobile insurer, arguing that upholding the award would subvert state regulatory authority over insurers.

The case, *State Farm Mutual Automobile Insurance Co. vs. Curtis B. Campbell and Inez Preece Campbell*, stems from a 1981 auto accident involving the Campbells. The Utah couple claimed that State Farm's failure to resolve a resulting third-party claim against them exposed the couple to a judgment that exceeded their auto insurance limits.

After reviewing evidence of State Farm's claims-handling practices nationwide, a Utah state court jury in July 1996 ordered State Farm to pay the couple $145 million in punitive damages. The trial court reduced the award to $25 million in August 1998, but the Utah Supreme Court reinstated the original award in October 2001.

In the amicus brief filed with the U.S. Supreme Court, the insurance industry argued that the Utah courts inappropriately allowed the jury to act as a "national insurance regulator."

In the brief, the industry stated: "The decision of the Utah Supreme Court would allow a single jury in one state to award punitive damages based on an assessment of the lawfulness of an insurer's practices outside of that state, including practices that have no similarity whatsoever to the controversy before the jury. In essence, the role of the jury would be radically transformed from that of a factfinder in a particular dispute into a national insurance regulator."

The industry also argued that the Utah high court's decision would let juries in one state assess punitive damages against insurers for practices that are lawful and even encouraged by regulators in other states.

The amicus brief was filed by the Alliance of American Insurers, the American Insurance Assn., the National Assn. of Independent Insurers and the National Assn. of Mutual Insurance Cos.

—By Dave Lenckus

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