

Business Insurance

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Missouri court rejects cover for TWA pollution cleanup

ST. LOUIS—The Missouri Court of Appeals has ruled in favor of a group of Lloyd's of London and London market insurers in an environmental pollution coverage dispute with St. Louis-based Trans World Airlines Inc.

The appeals court ruled recently that TWA was not entitled to insurance coverage for environmental pollution at its Kansas City airport. *See Updates on next page*

PHICO woes blamed on aggressive growth

By DOUGLAS McLEOD

MECHANICSBURG, Pa.—PHICO Insurance Co., the nation's 10th-largest medical malpractice insurer, was recently ordered into rehabilitation after falling victim to its own rapid growth in a soft market and the marketwide trend toward increasingly severe malpractice claims, insurance analysts say.

Despite recent efforts to turn around its underwriting experience, PHICO was overwhelmed by staggering losses that emerged in the first half of this year from an ambitious 1990s expansion into new territories and larger, more complex risks.

Several medical malpractice insurers have reported huge reserve additions for rising claims

in recent quarters, but PHICO's reported losses in the first half nearly doubled from the same period last year, slashing its policyholder surplus to \$6.8 million from \$127.2 million at year-end 2000.

"Growing at depressed rates, especially in a long-tail line of business," raises red flags about any insurer, including PHICO, observed Joseph Roethel, an assistant vp at A.M. Best Co. in Oldwick, N.J. "It was really the excessive growth, especially in that time frame."

The Pennsylvania Insurance Department obtained a rehabilitation order against Mechanicsburg-based PHICO earlier this month, after the insurer filed its June 30 statutory financial statement showing the re-

duction of surplus below the "mandatory control level" spelled out in the state's risk-based capital law.

Pennsylvania regulators have taken control of PHICO, the main operating unit of parent company PHICO Group Inc., and a PHICO subsidiary, Pennsylvania Casualty Co., which wrote workers compensation coverage for PHICO malpractice policyholders.

Other PHICO Group units not included in the rehabilitation order are Independence Indemnity Insurance Co., a Kansas-domiciled surplus lines insurer; and PHICO Re Ltd., a Bermuda-based unit that provided reinsurance for captives and medical malpractice self-insurers.

See PHICO on page 22



Health care turmoil

Buyers' clout carries cost

By ROBERTO CENICEROS

SACRAMENTO, Calif.—The success of California's largest health care purchasing groups in negotiating lower rates has a downside.

High-volume purchasers such as the California Public Employees' Retirement System and the Pacific Business Group on Health wield a great deal of clout, which has helped employer members control benefit costs and improve medical quality.

But their negotiating success is contributing to financial problems plaguing the state's health care and benefit delivery system, some con-

sultants and provider representatives say.

Those problems include the insolvency of physician groups and highly publicized contract disputes between hospitals and health plans, the observers say. In some cases health plan enrollees have been forced to find new doctors after their existing health care providers left managed care networks.

Employers disagree that those economic problems are linked to the negotiating clout wielded by CalPERS and the PBGH.

Some say that the purchasing giants hurt providers' financial health. *See Clout on page 21*

EEOC retreats on ruling Erie County rules on benefits withdrawn

By JERRY GEISEL

WASHINGTON—The Equal Employment Opportunity Commission will develop new retiree health care plan rules, following its rescission of a policy that said it was discriminatory for employers to provide less coverage for Medicare-eligible retirees than for other retirees.

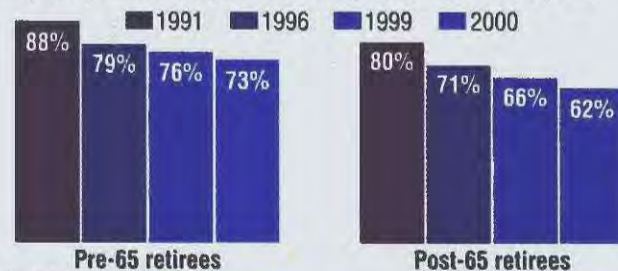
Those rules—withdrawn last week following a 3-0 vote by the EEOC on Aug. 17—said employers that reduced retiree health care benefits or eliminated the benefits altogether when their retired workers became eligible for Medicare were in violation of the Age Discrimination in Employment Act.

The EEOC put those rules in place last October, two months after the 3rd U.S. Circuit Court of Appeals ruled that the ADEA applied to retiree health care plans. That decision, involving a retiree health care program offered by Erie County, Pa.,

Downward trend

Benefit consultants warn that the *Erie* decision could accelerate an ongoing decline in retiree health plans

% of large corporate employers sponsoring retiree health care plans



Source: Hewitt Associates L.L.C.

GRAPHIC BY ADAM DO

stunned benefit experts, who had long thought the ADEA applied only when comparing benefit plans offered to younger and older employees and not to health plans provided to both younger retirees and retirees old enough to be eligible for health care coverage through the feder-

al Medicare program.

In order to comply with the *Erie County* decision and with the rules the EEOC subsequently established, an employer either would have had to offer equal health care benefits to all of its retirees or would have had to offer health care coverage through the feder-

See EEOC on page 22

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flood exposures can
be costly page 3

INSIDE

● Ohio's enactment of legislation to address liability exposures in uninsured and underinsured motorist insurance makes sense, this week's editorial says. **PAGE 8**



● In a Perspective, the AIA's Keith Lessner urges Labor Secretary Elaine Chao to carefully consider ergonomics rules. **PAGE 10**



● Blue Cross & Blue Shield of Michigan is promoting the use of generic drugs as a way to contain premium increases. **PAGE 14**

● The collapse of HIH Insurance Ltd. has forced a longtime Lloyd's of London managing agency to suspend its underwriting. **PAGE 17**

LLOYD'S

● Lloyd's will produce more profits in the years to come, the Assn. of Lloyd's Members predicts in the ALM's annual report on the market. **PAGE 17**

● Efforts to direct funding to help eradicate a heartbreaking disease that kills children deserve support, Editor Paul D. Winston writes in his Commentary. **PAGE 21**

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UPDATES

Continued from previous page
City, Mo., maintenance and overhaul base. State and federal authorities in the 1980s ordered TWA to pay \$30 million to correct widespread contamination at the site, which was then the largest such penalty levied by state regulators. TWA claimed that the pollution was accidental and in 1994 sued its insurers to recover the cleanup costs. But a St. Louis Circuit Court found that the pollution had been deliberate and the costs were, therefore, not covered. Since 1970, TWA's insurers have excluded pollution claims unless the discharge of the pollutants was accidental. TWA appealed, but the Missouri Court of Appeals ruled that the pollution had not been accidental. It also upheld a decision by the lower court that TWA was not entitled to coverage under its pre-1970 insurance policies because the airline had failed to prove at trial that the pollution had been caused, or contributed to, prior to 1970. Gary Westerberg, an attorney at Lord, Bissell & Brook in Chicago who represented the insurers, said several London-based insurers were involved in the suit. Lead insurers on the coverage were the Ariel aviation syndicate 48 at Lloyd's, now an ACE Ltd.-managed syndicate merged with ACE syndicate 960; and British Aviation Insurance Group Ltd., now known as Global Aerospace Underwriting Managers Ltd.

● **MED MAL RATE HIKES** In response to losses on medical malpractice liability business, The St. Paul Cos. Inc. has raised rates and is walking away from some health care risks. Health care liability "is the most dramatically underperforming segment of the marketplace," Michael Miller, executive v2-global specialty practices for St. Paul, said last Tuesday at a press

briefing in New York. The St. Paul, Minn.-based insurer said it has raised its medical malpractice liability rates for large hospitals an average of 76% on policies that have renewed this year and has not renewed some policies. Rate increases have become steeper in recent months, with the average renewal in July up 103% from last year's rate. The St. Paul also has received regulatory approval to raise medical malpractice rates for physicians in 25 states, with applications pending in three more, Mr. Miller said. These increases range from 10% to 65%, he said, with the average around 20%. Because of the serious losses recorded by large hospitals, St. Paul plans to exit some geographic regions and not renew policies with certain hospitals, Mr. Miller said.

● **TRENWICK RATING UNDER REVIEW** Significant reserve strengthening in the second quarter by Trenwick Group Ltd. has led A.M. Best Co. to place the Bermuda company's financial strength and debt ratings under review with negative implications. Oldwick, N.J.-based Best last week placed its A financial strength rating of Hamilton, Bermuda-based Trenwick under review with negative implications. Best also has placed related debt ratings under review with negative implications. Best said the move reflects its "concern with regard to the adequacy of Trenwick's current loss reserve position and the uncertainty in its ability to restore profitability to levels commensurate with an 'A' rating over the near term." Best noted that the loss reserve strengthening is the third such adjustment since 1999, when Trenwick acquired Chartwell Re Corp. In 2000, Trenwick bought LaSalle Re Holdings Ltd. Trenwick now operates through five principal units: LaSalle Re Ltd., Trenwick America Reinsurance Corp., Trenwick International

Ltd., Chartwell Managing Agents Ltd., and Canterbury Financial Group Inc. According to Trenwick's quarterly filing with the Securities and Exchange Commission, claims and claims expenses for the three months ended June 30, 2001, were \$235.6 million, up sharply from \$9.7 million for the comparable period of 2000. The increase resulted from the addition of business acquired in the LaSalle Re deal, as well as unusual loss activity and loss reserve strengthening, Trenwick's filing stated. Second-quarter 2001 results include unusual loss activity of \$10.5 million related to an accumulation of catastrophic losses, including Tropical Storm Allison and storms in the Midwestern United States. Trenwick strengthened its loss reserves by \$76.7 million, relating to directors and officers liability, specialty and other business.

● **PACIFICARE TO LAUNCH PPO** PacifiCare Health Systems Inc. plans to begin marketing a new preferred provider organization health plan later this year in California, Oklahoma and Texas. PacifiCare said it will begin enrolling in those states in October, with coverage taking effect in January 2002. The Santa Ana, Calif.-based managed care company said it is offering the PPO to give employers an alternative to its existing health maintenance organization products. PacifiCare operates HMOs throughout the Southwest and Pacific coast regions, with total membership of more than 3.7 million. Plans to expand the PPO to five other states in which PacifiCare does business are pending regulatory approval. The company said it expects to enroll more than 500,000 members in its PPO plans nationally within five years.

● **NATIONWIDE TRADEMARK SUIT** Nationwide Financial Services Inc. has filed a federal trademark infringement lawsuit against Nationwide Insurance Group Inc. and its parent, The Nationwide Cos., which are both based in Fort Lauderdale, Fla. Columbus, Ohio-based multiline insurer Nationwide Financial Services said it filed the suit to protect its name and trademark. The suit asks the Florida-based companies to stop using the Nationwide name and to surrender materials bearing the Nationwide name for destruction. The suit also asks the Florida-based companies to advise state insurance regulators and policyholders that they are not affiliated with the Ohio-based company, to pay damages and to turn over all Web domain names containing the word "Nationwide." The Nationwide Cos. was created in 1999 as a direct-sales company offering discounted packages of consumer products, including group health and life insurance, shipping services and nutritional products.

● **AIG-BACKED NOTES** Standard & Poor's Corp. has affirmed the AAA ratings of 17 debt issues worth \$2 billion that are backed by insurance policies issued by American International Group Inc.'s Lexington Insurance Co. unit. S&P reviewed



the note issues after Lexington refused to pay claims under a policy covering Hollywood Funding #6, a \$100.7 million debt issue sold to finance film productions by London-based Flashpoint Ltd. Hollywood Funding #6 notes, which were to be repaid from film earnings, went into default in June. S&P, which had initially rated the notes AAA, cut the rating to CCC-

in February after Lexington first challenged coverage, and it reduced the rating to D after the default. Lexington also issued policies on two other Flashpoint note issues, Hollywood Funding #4 and Hollywood Funding #5, and another AIG unit insured a fourth issue, Hollywood Funding #2. While noteholders argued that the AIG units have an unconditional obligation to pay upon default, AIG won a ruling from a U.K. appellate court in connection with Hollywood Funding #2 that it may raise policy defenses to deny claims. S&P said its rating affirmation is based on a review of the Lexington policies and "representations from AIG management with respect to its intent to honor claims or other payment obligations on a timely basis."



● **CIGNA EXPANDS DISCOUNTS** CIGNA HealthCare and CIGNA Dental Care members can receive discounts on cosmetic dentistry, laser vision correction, eyewear and hearing care services as part of an expansion of CIGNA's Healthy Rewards program. Healthy Rewards, which is offered at no additional cost to employers or plan members, also will continue to offer discounts on alternative and complementary medicine, vitamins, herbal supplements, over-the-counter medications and wellness products. The additional discounts are being offered in response to increasing demand for these products and services, said Scott Richardson, assistant vp for consumer services for CIGNA in Bloomfield, Conn.

● **BRIEFLY NOTED** Aon Corp. units Insurance Brokers Service Inc. and Asset Security Managers are teaming to launch a new kidnap and ransom/extortion insurance facility. Under the new facility, Chicago-based wholesale broker IBS will underwrite kidnap and ransom policies on behalf of Gulf Insurance Co. Lloyd's of London syndicates will reinsure the Gulf policies. The new facility will provide U.S. brokers and agents access to the coverage on an admitted basis. Coverages will include kidnapping, wrongful detention, product extortion, property extortion and computer virus extortion. London-based Asset Security Managers is Aon's dedicated kidnap and ransom insurance and crisis management resource....Argonaut Group Inc. has completed its previously announced acquisition of insurance holding company Front Royal Inc. for \$165 million in cash. Front Royal, based in Morrisville, N.C., operates several subsidiaries that specialize in excess and surplus lines and workers compensation. San Antonio-based Argonaut said the acquisition will more than double its premium volume. In 2000, Argonaut wrote \$195.9 million in net premiums....Barrington, Ill.-based benefit broker and consultant Clark/Bardes Consulting said it will sell the corporate-owned life insurance business of its Clark/Bardes Partners division to New York Life Insurance Co. Terms of the deal, which is expected to close in the third quarter of this year, were not disclosed. **BI**

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

Energy demand fueling need for loss control

Power equipment under pressure



PHOTO: PORTLAND GENERAL ELECTRIC

Electrical equipment maintenance is becoming critical as power demand increases, loss control experts say.

By JOANNE WOJCIK

California's energy crisis is highlighting the importance of electrical system loss control not only among the utilities that generate power, but also among other companies that use their own transformers.

Because all components of the electrical supply chain are operating at or near capacity to keep up with demand, it is imperative that risk managers be vigilant about maintenance, loss control experts say.

The direct economic losses to the nation from power interruptions and inadequate power quality exceed \$100 billion annually, according to the Palo Alto, Calif.-based Electric Power Research Institute. EPRI is a private research firm created by the utility industry in response to the energy crisis of the 1970s.

For example, EPRI estimates that blackouts at high-tech firms in the San Francisco Bay area cost the companies \$1 million per minute in lost out-

put. And EPRI estimates that the U.S. power industry itself loses more than \$1.5 billion per year from boiler tube failures caused by overheating and corrosion, both of which can be prevented through regular inspection and maintenance programs.

Competitive pressures in today's deregulated market have forced utilities' maintenance crews to do more with less.

"Across the energy-related infrastructure, engineers find it increasingly important to optimize their use of resources allocated to maintain large equipment," said Pete Riccardella, president of Structural Integrity Associates in Denver. Structural Integrity, a San Jose, Calif.-based unit of Hartford Steam Boiler Inspection & Insurance Co., specializes in preventing and controlling failures in power plant equipment.

Other industries that use in-house transformers also are feeling the pinch because of the current economic down-

See **Power** on page 23

Court widens window for bias claims in California

By MICHAEL BRADFORD

SACRAMENTO, Calif.—An employer can be held liable for discriminatory acts beyond a one-year limitation period for filing claims if the acts are similar to those that occurred within the time frame for filing such an action, the California Supreme Court has ruled.

In a 4-1 ruling last week, the court referred to the "continuing violation doctrine," which "allows liability for unlawful employer conduct occurring outside the statute of limitations if it is sufficiently connected to unlawful conduct within

the limitations period."

The court sent back to a trial court the case of *Lachi Delisa Richards vs. CH2M Hill*. The trial court decision, which originally awarded Ms. Richards \$476,000 in economic damages and \$925,000 in damages for emotional distress, was overturned on appeal. The high court directed the trial court to determine whether the standards of the continuing violation doctrine applied in the case. The Supreme Court also said the lower court must reconsider CH2M Hill's motion for a new trial.

Ms. Richards, who suffers from multiple sclerosis, filed suit in 1994 against CH2M Hill, alleging that the Redding, Calif., engineering firm refused to accommodate her disability. She claimed, among other things, that the firm refused to make doors easier for her to open, blocked her wheelchair by repeatedly placing furniture and equipment in hallways and disregarded a number of other requests to accommodate her. Despite a one-year statute of limitations established by the California Fair Employment and Housing Act, the court allowed Ms. Richards to seek damages for alleged discrimination from 1988 through 1993, and it ultimately awarded damages.

The trial court denied the defendants' motion for a new trial based on the FEHA statute, ruling that the misconduct was part of a "course of conduct."

In an appeal by CH2M, the appellate court ruled that the trial court had misapplied the continuing violation doctrine and erroneously allowed damages to be awarded for injuries occurring outside the limitations period. The appeals court did decide, though, that some unlawful conduct had occurred during the limitation period and instructed the trial court to determine damages.

Rising losses prompt look at flood risk

Risk managers advised to consider potential exposure more closely

By CURTIS M. WONG

Flooding has produced catastrophic losses for U.S. policyholders in 2001 to date, especially in the wake of Tropical Storms Allison and Barry, yet relatively few businesses take steps to mitigate and insure their exposure.

Losses from flooding caused by Tropical Storm Allison insured under the federally funded National Flood Insurance Program alone total nearly \$1 billion, which would make it the single most expensive flood event in the agency's history, according to a spokesman for the Federal Emergency Management Agency, which administers the NFIP.

Private insurers don't offer flood coverage as part of standard property insurance policies, so flood coverage for U.S. risks is typically underwritten as an endorsement to all-risks policies, or as part of difference-in-conditions policies. Coverage is also avail-



PHOTOS: AP/WIDE WORLD

National Guard troops build up the banks of the Minnesota River near Granite Falls, Minn., during a flood earlier this year.

able through the NFIP.

With only a very small percentage of buildings at an obvious risk of flood losses, insurance to cover this peril may seem like an unnecessary

cost to many business owners. However, the losses from flooding can be staggering.

Floods accounted for \$714 million in insured losses in 1999, which dipped in 2000 to

\$312 million, according to FEMA. Those tolls both are eclipsed, however, by losses to date in 2001. In addition to the nearly \$1 billion in insured losses from Allison, damage from the more recent Tropical Storm Barry is still being assessed, the FEMA spokesman said.

The numbers suggest that risk managers should reconsider whether they've underestimated the cost and destructive power of flooding, said Richmond Wall, assistant vp of Marsh Inc.'s risk consulting group in Atlanta.

"It's very tough to single out a specific region in the U.S. that doesn't have at least some amount of flood risk," Mr. Wall said. "Unfortunately, there really is a lack of education among a lot of risk managers when it comes to flooding. Many people don't take a proactive role."

A study conducted by Swiss Reinsurance Co. in late 1998 found that much of this igno-

See **Floods** on page 22

California employers to battle comp benefits bill

By ROBERTO CENICEROS

SACRAMENTO, Calif.—Many employers and insurers in California have vowed to fight legislation unveiled last Wednesday that one employer group says would increase workers compensation benefits by billions of dollars.

Although no formal cost analysis has been completed, a preliminary look indicates that Senate Bill 71 would increase total benefit costs by more than \$3 bil-

lion, said Dominic DiMare, legislative advocate for the California Chamber of Commerce.

Among other increases, the bill would raise the maximum weekly benefit for workers who are 15% or less permanently disabled, to \$230 from \$140 per individual. The maximum weekly benefit for temporary disabilities would rise to \$651 from \$490.

The bill—sponsored by Senate President Pro Tem John Burton, D-San Fran-

cisco—also would not give employers the system reforms they have sought to offset increased benefit costs, Mr. DiMare said.

Employers have lobbied for the repeal of the "treating physician presumption," which mandates that the assessment of an employee's physical condition made by any doctor chosen by that employee must be presumed correct. The bill is "illusory, at best" in repealing the physician presumption, Mr. DiMare said.

In 1999 and 2000, Gov. Gray Davis ve-

toed two similar bills, which were backed by organized labor and workers comp attorneys.

"S.B. 71 essentially leaves us in the same place we were a year ago," said Barry Carmody, the president of the Sacramento-based Assn. of California Insurance Cos. "This is unfortunate for the employers who must bear the cost burden of an out-of-control system, as well as for the more seriously injured workers who deserve higher benefits." BI

Plaintiffs' attorneys say \$750 million offer inadequate

Sulzer lays it all on the table to settle suits

By MICHAEL BRADFORD

AUSTIN, Texas—A maker of artificial hip and knee joints is willing to spend all its cash and exhaust its insurance coverage limits to settle lawsuits filed by patients who claim they were injured by the company's products.

Sulzer Orthopedics Inc. of Austin, Texas, is awaiting a decision by a federal judge in Cleveland on its settlement proposal, which would cost an estimated \$750 million in cash and stock. The company, along with its parent, Sulzer Medica of Winterthur, Switzerland, submitted the proposal earlier this month, and expects a decision within the next few weeks.

Meanwhile, lawsuits are proceeding against Sulzer, with jury selection in the first case completed last week.

The Sulzer companies are defendants in 1,029 lawsuits related to an artificial hip replacement and two suits that seek to recover damages related to knee

replacements. The products, which were manufactured by Sulzer Orthopedics, are no cause "it shared a manufacturing characteristic with the hip," according to a spokesman for

of surgery costs. Spouses of the patients would get an undetermined amount of compensation.

Those patients who chose not to have the devices replaced would each receive \$2,750 in cash and equity, plus spousal payments.

Sulzer Medica has estimated the total number of artificial hip and knee joints that will have to be surgically replaced at approximately 4,000.

A plaintiffs' attorney criticized the offer as inadequate.

"We don't think it's sufficient at all," said Martin Hoffman, an attorney with the Dallas-based law firm of Smoger & Associates. "We don't think it comes close to fairly compensating our clients."

Smoger & Associates represents about a dozen clients in a handful of suits against Sulzer.

To fund the settlement, the Sulzer companies would rely partly on insurance written by Winterthur Swiss Insurance Co. The liability coverage, written to limits of \$240 million, has approximately \$215 million to \$225 million in available limits, the spokesman said.

"It takes all our insurance, all our available cash, and we will put up about one-third of our stock," the spokesman said. Then, he explained, "there will be what is essentially a lien" on company earnings for the next seven years to finance the re-

mainder of the settlement.

"While the financial burden is a heavy one for our company, when distributed over the coming several years, it is financially bearable," Stephan Rietiker, Sulzer Medica's chief executive officer, said in a statement.

Despite the settlement proposal, litigation against the implant maker continues.

A jury has been selected in a state court in Corpus Christi, Texas, in what would be the first hip-replacement case to go to trial against Sulzer. Trials in about 45 other suits are scheduled to begin by the end of the year.

The Sulzer spokesman said that the settlement proposal contains an opt-out provision that would let individual patients refuse the terms and file suit on their own. "If a patient does opt out and receives a verdict," he said, "the downside is that there is no way they can get any money for at least seven years," because all the company's available cash and insurance will be used to fund the settlement.

Mr. Hoffman said that though he is unfamiliar with all the details of the proposed settlement, he doubts that Sulzer would be permitted to wait so long to pay the judgments. "I don't know what legal basis they think they have to delay payment for seven years," he said. **BI**

Joint replacement settlement

Sulzer Orthopedics Inc. will pay cash and equity to claimants



Source: Sulzer Orthopedics Inc.

\$57,500 for one hip or knee
\$97,500 for two hips or knees
4,000 Estimated number of surgeries
\$750 million Total estimated settlement costs

longer marketed. The artificial hip was recalled voluntarily late last year, when it was discovered that an oily residue on the implant prevented bone from attaching to the device. The tibial baseplate that was used in knee replacements was not recalled but was taken off the market by Sulzer in March, be-

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STD benefits don't offset comp: Court

By MARK A. HOFMANN

ALBANY, N.Y.—A New York state appeals court has ruled that employers cannot claim credit for temporary disability payments paid to certain young workers and thus reduce total compensation over the worker's lifetime.

The Aug. 2 ruling by the New York Supreme Court Appellate Division, Third Department, in *Fox vs. Crosby-Brownlie Inc.* involved the calculation of benefits paid to James Fox, an employee of a Rochester, N.Y., area contracting company who sustained a finger injury in late 1997. Mr. Fox received temporary disability payments for six weeks and was eventually declared permanently partially disabled because he lost 59% of the use of the injured finger, said Thomas F. Ferris, an associate in the Rochester law firm of Segar & Sciortino, who represented Mr. Fox.

Because Mr. Fox was under age 25 at the time of his injury, though, the question of wage expectancy entered the equation. The state Workers Compensation Board would thus have to calculate Mr. Fox's loss of wages due to the injury over his lifetime according to a set schedule of benefits, Mr. Ferris said.

The court ruled that, despite its 1998 decision in *Dinger vs. Kmart*, the Workers Compensation Board had to begin calculating benefits

from the date of the injury, without providing a credit to the employer for the six weeks of temporary disability. In *Dinger*, the claimant had received several months of temporary disability payments before being declared permanently partially disabled. In that case, the court held that lifetime benefits could be calculated from the time an injury was declared to be permanently partially disabling, rather from the date of that injury.

The court did not follow *Dinger* in deciding *Fox*. "It is readily apparent that the loss of earning power of a claimant who is temporarily disabled as a result of an injury which is later classified as a permanent partial disability is neither greater nor less than the loss of earning power of a claimant with the same injury who is classified as permanently partially disabled as of the date of the injury," the court held.

In doing so, the court "really answers a question that the statute never really addressed," Mr. Ferris said. The question is what should be done when an individual under age 25 sustains a permanent injury to an appendage and "where later the case is found to fit within the statutory wage expectancy," he said.

"I'm convinced that *Fox* categorically excludes the *Dinger* rationale in all cases involving scheduled loss of use," he said. **BI**

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9.2 Million. The number of employees we cover with group life and AD&D insurance. *That's more people than the entire cities of LA, Chicago, Boston, San Francisco, Miami, Denver, and Atlanta combined!*

148 The number of years people have been protected by Aetna Life Insurance Company.

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Employers seek OK to redeploy surplus assets

By VINEETA ANAND
Crain News Service

WASHINGTON—The nation's largest corporate plan sponsors have dreamed up a way to tap surplus pension assets and, at the same time, they claim, help the faltering economy.

Under the proposal, companies would be able to siphon excess pension assets into employers' matching of 401(k) plan contributions, but only into the accounts of participants covered by both defined benefit and defined contribution plans, said Janice Gregory, vp of the ERISA Industry Committee, a Washington-based benefits lobbying organization representing large employers. Ms. Gregory is working on the proposal.

Because corporations that currently claim a tax deduction on the employer match would not be able to deduct the surplus pension assets they transfer to 401(k) plans, the proposal could generate billions of dollars each year for the U.S. Treasury.

Pension lobbyists at the ERIC and the American Benefits Council, among the largest Washington employer groups, hope to present the idea soon to lawmakers.

The proposal would greatly expand Section 420 of the Internal Revenue Service tax code, which allows employers to use surplus pension assets—to the extent they exceed 125% of current liabilities—to pay for their current year's retiree medical expenses.

Companies that pay for retiree health care with surplus pension assets cannot reduce the cost of benefits they provide for five years,

and all pension plan participants are vested immediately.

"There is pretty broad agreement that using surplus pension assets for defined contribution plans would be a good idea," said James M. Delaplane Jr., vp of retirement policy at the American Benefits Council.

Melissa J. Kahn, a Washington lobbyist for Metropolitan Life Insurance Co., concurred. "It's important to keep retirement plan money in the retirement system. And when you have proposals that encourage that, but give flexibility to employers to enrich other benefits, it's a good thing," she said.

Labor groups, though, are expected to put up strong resistance to such an idea.

Although they support the idea of corporations using excess pension assets to secure health care benefits for retirees, unions oppose proposals to use the money to pay for anything else. "This is actually a proposal to cut corporate compensation costs. It doesn't do anything to increase worker retirement security," said Shaun O'Brien, a senior policy analyst at the AFL-CIO in Washington.

Mr. O'Brien scoffed at the suggestion that increased flexibility in the use of surplus pension assets would enable employers to provide more-generous matching contributions to retirement plans.

"This line of argument really contradicts what employers tell our representatives at the bargaining table," he said.

Bob Patrician, a research economist for the Communication Workers of America union in Washington, concurred. "It is our

position that those assets belong to participants and beneficiaries."

Unions oppose the proposal because they want to preserve the security of traditional pension plans, in which employers bear the investment risk instead of shifting the risk to workers through defined contribution plans, Mr. Patrician said.

'It's important to keep retirement plan money in the retirement system. And when you have proposals that encourage that, but give flexibility to employers to enrich other benefits, it's a good thing.'

— Melissa J. Kahn
Metropolitan Life
Insurance Co.

The latest proposal for tapping excess pension assets comes six years after employers lost a bitter fight to include such a provision in the 1995 budget.

The new proposal would overturn tax rules that impose prohibitive consequences on companies that use surplus pension assets to pay for matching contributions

to retirement plans. In a 1997 ruling, the IRS noted that a company making such a transfer would have to pay back taxes on the money taken out of the defined benefit plan, as well as pay a hefty "reversion" tax on the siphoned money, which can amount to between 50% and 80%.

Lobbyists do not yet have an estimate of the revenues the proposal would generate.

Even if they are unsuccessful with this proposal, employer groups have a long wish list of other legislative ideas. At the top of the list is a desire to make the pension package in the Economic Growth and Tax Relief Reconciliation Act permanent, instead of letting it expire in a decade, as written in the law.

Already Rep. Kenny Hulshof, R-Mo., has introduced legislation that would make the changes permanent, including allowing workers to stash more cash in retirement plans, making it easier for them to switch money between different kinds of retirement plans when they change jobs, and making it easier for employers to contribute more to pension plans for midcareer employees.

But the high cost of such a measure is expected to raise Democratic opposition. It would cost at least \$6.6 billion a year to make the retirement provisions permanent, according to estimates by the Joint Committee on Taxation.

And because Congress assesses the cost of legislation in 10-year periods, the cost of extending the tax breaks rises with each successive year. "Now is the cheapest time to make it permanent, because there is only one year's cost right now and each year's delay makes it more expensive," said Brian H. Graff, executive director of the American Society of Pension Actuaries in Arlington, Va.

And Reps. Rob Portman, R-Ohio, and Benjamin L. Cardin, D-Md., who crafted the pension provisions that became law this year, are drafting the next generation of pension provisions.

Among the possibilities are the "Byrd droppings," which are named after Sen. Robert C. Byrd, D-W.Va., and refer to a string of provisions that were dropped from

the tax package this year because they did not have tax implications. These provisions would change federal pension law to permit the Labor Department to waive the excise tax on prohibited transactions, would eliminate the summary annual plan report participants currently must receive, reduce the insurance premiums imposed by the Pension Benefit Guaranty Corp. on new and small plans, make it easier for unionized pension plans to track down missing participants through the PBGC, and create a similar program for defined contribution plans and delay the frequency of national savings summits.

Additional proposals that Reps. Portman and Cardin are considering would make it easier for small businesses to offer retirement plans, increase contribution limits to plans sponsored by smaller employers, educate participants about do-it-yourself retirement plans, encourage defined contribution plans to let participants purchase annuities when they retire instead of taking their savings as lump sums and make it easier for employers to offer workers investment advice.

Pension lobbyists also are keen to see the two lawmakers include provisions that would revitalize defined benefit plans by allowing employers to use an interest rate linked to long-term corporate bonds, instead of 30-year Treasury bonds, for calculating pension liabilities. The fall in the interest rate on 30-year Treasuries has jacked up employers' pension liabilities and prompted some plan sponsors to consider scuttling their plans.

Efforts to breathe new life into defined benefit plans also include an ERIC proposal to require the PBGC to use market-related interest rates in calculating the insurance premiums employers pay.

A proposal to streamline the alphabet soup of defined contribution plans into a universal 401 "X" plan is also on the table, but the proposal might face resistance from employees because of the advantages some plans enjoy over others.

Vineeta Anand is reporter for *Pensions & Investments*, a sister publication of *Business Insurance*.

IPOs fuel upswing in shareholder suits

Shareholder class-action lawsuits are up dramatically this year, driven by a rise in investors suing investment banks for their handling of initial public offerings, according to an analysis released last week by New York-based PricewaterhouseCoopers L.L.P.

Allegations of accounting fraud also are contributing to the increase. So far this year, litigants have filed 263 shareholder class-action suits. That is up from 201 filed during all of 2000 and 207 filed in 1999, according to the PricewaterhouseCoopers report.

Most of the lawsuits involve computer service companies, telecom entities and other high-tech corporations. But of the lawsuits filed this year, 143 are related to initial public offerings. In general,

the lawsuits charge that underwriters allocated shares in "hot" IPOs in exchange for excessive and undisclosed commissions.

The PricewaterhouseCoopers study said that many of the complaints may be without merit, containing only generic allegations with few details of specific wrongdoing. Nevertheless, the study says, investment banks will need to conduct internal investigations into their underwriters' activities in order to prepare for their defense.

The current analysis of shareholder class-action suits is not available, though a similar PwC report on securities litigation in 2000 is available online at www.10b5.com.

—By Roberto Cenicerros

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OPINIONS

Ohio back on the right road

We have to say, "Way to go, Ohio." Businesses and insurers in the state got a victory late last month, when Gov. Bob Taft signed legislation that will undo the harmful effects of several recent Ohio Supreme Court rulings that expanded the terms of commercial auto insurance policies in the state far beyond what insurers intended to offer and what businesses intended to purchase.

In essence, those rulings, taken in concert, made the uninsured motorist/underinsured motorists insurance coverage of a business liable for claims by its employees and their dependents for accidents that occur while they are traveling on personal business and in personal automobiles. The rulings also retroactively expanded the period in which claims could be filed, creating a rush of claims against businesses in the state and their insurers (BI, Aug. 20).

UM/UIIM coverage is designed to protect a policyholder who is injured or incurs damage but is unable to recover from a negligent motorist because the other motorist either does not carry insurance or carries too little coverage. For individuals and businesses in many states, it is a sensible and relatively inexpensive form of protection, but not in Ohio. Recent decisions by the state Supreme Court have made the coverage so absurdly broad that many companies would rather risk going without the coverage.

To see how the Ohio Supreme Court has created this irrational and costly situation, it is helpful to look at three key decisions.

In June 1999, the Ohio high court ruled in *Scott-Pontzer vs. Liberty Mutual Insurance Co.* that the widow of an employee killed while he was driving a car owned by his wife on a personal errand was entitled to benefits under his employer's UM/UIIM policy. The court's majority held that, even though the UM/UIIM policy listed the corporation for which he worked as the "named insured," the employee was covered because, the decision said, corporations act through their employees and because employees, not corporate entities, drive cars. That's not an unreasonable conclusion, but what is incongruous is that the court simultaneously ruled that because the policy did not specify that an employee had to be working to be covered under an employer's policy, the widow's claim should be covered.

That decision meant that any employee involved in any car accident in any vehicle—whether on the job, on a personal errand or on vacation—could file a claim for coverage under his or her employer's UM/UIIM coverage. The ruling not only spurred new claims against businesses in the state but also forced insurers to sharply raise rates and, in some cases, leave the state market, in response to this new, unreasonably broad liability risk.

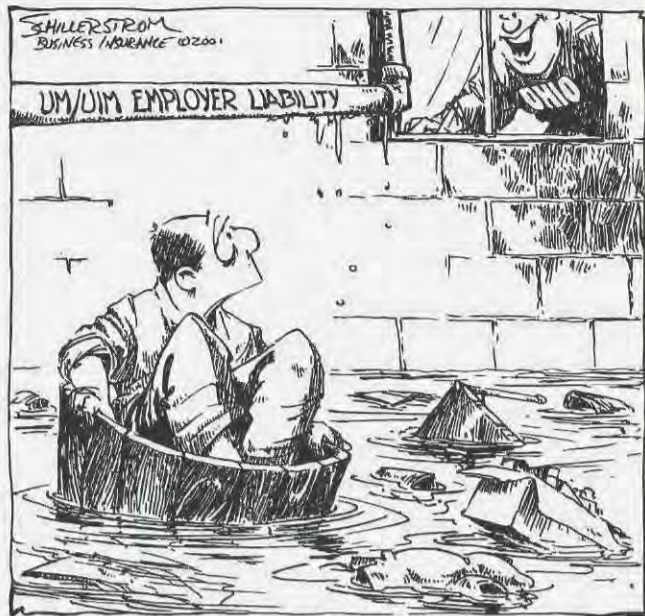
That, in turn, forced many businesses to forgo UM/UIIM coverage.

In September 1999, in *Ezawa vs. Yasuda Fire & Marine Insurance Co. of America*, the Ohio court further expanded the breadth of UM/UIIM insurance, holding that the dependent minor of an employee could claim coverage under the employer's policy. That ruling permitted a dependent of an employee to file a claim under the employer's coverage, creating more unanticipated claims against businesses, adding to the cost of coverage and prompting more companies to drop UM/UIIM coverage.

In December 2000, the Ohio Supreme Court made its third—and most damaging—ruling in regard to UM/UIIM coverage. In *Linko vs. Indemnity Insurance Co. of North America*, the widow of a man killed while driving a company car claimed coverage under the employer's policy when the coverage of the motorist at fault proved insufficient, even though the company's corporate parent had rejected UIM coverage.

The widow argued that the subsidiary for which her husband had worked was not given its own opportunity to consider and accept or reject the coverage, so her claim should stand. The Ohio court agreed, stating that any commercial auto insurance policy issued to a business must list every covered subsidiary, so that each subsidiary could be offered the various coverage options, such as UM/UIIM protection, and decide individually whether to purchase or reject it.

The effect of this irrational ruling was, in essence, to invalidate every decision by a business to decline UM/UIIM coverage; furthermore, because of the Ohio statute of limitation, that invalidation extended back 15 years. That meant that insurers suddenly found themselves on the hook to provide coverage even in instances when it had been explicitly rejected long ago by policyholders. It also meant that businesses would be exposed to claims by employees and their dependents for the cov-



erage of injuries sustained in personal autos on personal business, even though the employer had never intended to purchase the coverage, let alone cover claims that were not work-related.

It's appalling that the court could construe business coverage to be intended to cover employees traveling on personal time and in personal vehicles. So it is a relief that the Ohio Legislature and Gov. Taft supported legislation to undo this harm. The law eliminates mandatory offering of UM/UIIM coverage, allows exclusions to be introduced, and cuts to three year the time in which a claim can be filed.

As the bill's sponsor said, though, "it is important to note that any action taken by the Ohio General Assembly...will not extinguish the over \$1.5 billion in additional claims created by the Ohio Supreme Court in these rulings. We, as lawmakers, can only address this situation from this point forward."

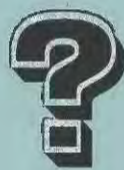
In other words, while the expansion of the liability of businesses for these claims will be curbed after the law's effective date of Oct. 31, the new law cannot spare employers from retroactive liability that goes back 15 years.

The new law is a good way to start undoing the mess that businesses and insurers in the state have had to confront. We reiterate our approval—way to go, Ohio. But we think the state's Legislature still needs to act to relieve its employers of the unfair burden of retroactive liability. In that regard, Ohio still has a way to go.

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Crafting a successful approach to ergonomics

An open letter to Labor Secretary Elaine Chao

Dear Secretary Chao:

You are to be commended on the thoughtful approach the Labor Department is taking in evaluating options to address the important issue of ergonomics. The three public forums you convened this past July offered an

excellent opportunity to hear the broad range of stakeholder views on the appropriate role for the federal government in addressing this issue. These were constructive meetings, and we appreciated the opportunity to present the views of our members.

Having listened closely to the more than 100 fellow speakers at these forums, we are hopeful

that a comprehensive and systematic ergonomics approach can be developed. In the spirit of the department's reopened dialogue, we offer these suggestions.

Before going into specifics, I would like to address the potential of the standard to affect the existing workers compensation system. The state workers comp system has worked well for many years to provide medical care, income protection and vocational rehabilitation to workers injured on the job. We are committed to protecting this state-based system and believe strongly that no federal ergonomics proposal should damage the operation of this system.

In considering any approach, it is important to define policy objectives. These policy objectives will, of necessity, be constrained by the very nature of ergonomics, the public policy structure and the multiplicity of societal interests. We propose that any approach should meet the following objectives. It must be:

- Realistic and based on attainable goals.
- Likely to minimize ergonomics-related injuries.
- Affordable.
- Politically feasible—both in the short term, in order to be adopted, and in the long term, in order to be sustained.
- Fair to all affected parties.

Of course, any policy must do what is possible now while remaining flexible enough to allow for an increase in scientific understanding. We do not know all there is to know about ergonomics, but we do know some things and can act upon them. Doing what is possible now is more productive than either extreme—deferring action until a broader approach can be justified or creating an unjustifiably expansive approach. We need to acknowledge that there is no silver bullet. As science adds to our understanding of the causes and prevention of ergonomics-related injuries, our approach should be free to

evolve similarly.

An approach that meets these policy objectives will need to call upon an array of specific policy tools. There is no single ergonomic public policy approach for such a large and diverse group of employers that is likely to work, be fair and provide good value for the money. A portfolio of policy tools is needed, each tool targeted to address the various issues that confront different groups of employers. Tools should include programs addressing three key areas: voluntary initiatives, research and compliance.

The Occupational Safety and Health Administration should expand voluntary programs and focus on new ways to help employers make better-informed decisions about implementing ergonomics programs. Effectively designed voluntary programs are the most cost-effective way to cause a large number of employers to implement some type of meaningful ergonomic intervention.

OSHA's existing voluntary programs are designed primarily to provide technical expertise. Consultation assistance and guidelines tell employers that have decided to implement ergonomics programs how to do so. OSHA's voluntary programs should augment technical assistance with specific programs aimed at helping to match employers with significant exposures to appropriate mitigations.

There are many reasons why some employers have not voluntarily implemented ergonomics interventions. OSHA should examine the broad range of impediments that stand in the way of employers making their own decisions to implement interventions. Voluntary decisions can be stimulated by helping employers put ergonomic investment decisions in context, providing information to facilitate decisions, providing lower-cost alternatives that serve a purpose but fall short of complete programs and seeking ways to lower costs.

For example, a significant impediment is a lack of certainty about the cost benefits associated with any intervention. Developing realistic information on the likelihoods associated with specific interventions in specific environments can help employers make appropriate decisions. Developing and describing when partial or phased-in programs are worthwhile can help employers determine when partial programs are an alternative to either creating complete programs or doing nothing. It is important to develop mitigations that balance cost and benefits to accommodate businesses of varied sizes, industries, tasks and occupations.

Specific programs can best be designed and implemented by continuing and strengthening the department's reliance on private/public partnerships. This will spread the costs while yielding programs that reflect the decision-makers' perspectives and needs. Of course, these voluntary initiatives will also benefit from an increased emphasis on effectively communicating their existence and benefits to the employer community that will

make use of them.

OSHA should broaden its research efforts to increase the body of ergonomics knowledge. We propose that the agency establish a research agenda describing priorities and the kinds of information needed to develop and assess public policy.

OSHA should coordinate and monitor the funding and development of needed research in conjunction with appropriate public agencies and private organizations. OSHA should disseminate this research so that all stakeholders understand how the science both limits and accelerates public policy. Finally, OSHA should monitor the application of useful research to public sector programs to make certain public sector policy continues to reflect the most current knowledge in the field.

In the key area of compliance, OSHA will, of course, be required to address the issue of recalcitrant employers that refuse to act on clear and significant workplace ergonomics hazards. The recent ergonomics debate centered on a compliance approach. Some stakeholders have argued for the adoption of a broadly applied, strong ergonomics rule. The disadvantages of such an approach have been clearly articulated in the debate over the rescinded rule.

We propose that compliance programs be relied upon only when they are the most effective and efficient means to achieve goals and be limited to employers who respond only to the threat of penalty. These employers, who have failed to act and have demonstrably clear and significant hazards, should be identified through the range of means that OSHA currently employs—scheduled inspections and targeted inspections based on employee complaints or reported data.

This compliance approach enables OSHA to use its limited enforcement resources as an effective deterrent, rather than further diluting the range of employers subject to inspection. It also avoids mandating programs of questionable scientific merit that have heavy administrative costs when other approaches can offer better results at a lower cost. The existing general-duty clause, which enables OSHA to issue citations in limited circumstances without promulgating rules, is the appropriate tool for this objective.

In closing, I would like to reiterate our support for your efforts to move forward in setting a course to protect workers from ergonomics-related injuries without adversely affecting the broad ranges of benefits each stakeholder contributes to our society. We believe that the approach outlined above will serve to maximize everyone's interests in the long term.

Sincerely yours,
Keith Lessner

Vp of Safety and Environment
Alliance of American Insurers
Downers Grove, Ill.

Understanding long-term care coverage

By Janet Kennedy



The trend may not have reached its full momentum yet, but employers are becoming increasingly interested in offering employees long-term care insurance. Employer-sponsored coverage increased every year throughout the 1990s. In 1999, sales of employer-sponsored group LTC insurance plans jumped 56%, according to a

survey by LIMRA International, an association of financial services companies.

Several factors are influencing this trend:

- Benefit managers increasingly perceive LTC insurance as an emerging benefit. Because coverage is usually employee-paid, it is a low-cost way to enrich a benefit package that can attract and retain workers.
- LTC insurance can help relieve employees' stress, lost productivity and absences related to arranging care for sick and elderly parents. Today, roughly 12% of workers care for aging parents. That figure is expected to reach nearly 50% by 2010. Studies say that elder care costs between \$1,100 and \$2,500 per employee—in lost work time, productivity and stress-related illnesses.
- Faced with an aging and diverse labor force, plan sponsors want flexible programs that enable workers to

choose the benefits that best suit their changing needs and lifestyles. As part of a larger continuum of health-related benefits—including health, disability and life insurance—LTC insurance helps provide employees with retirement security.

As millions of baby boomers near retirement, they have little faith that the government will finance their potentially catastrophic health care costs, including those for long-term care. The number of Americans over age 65 will double, to 70 million people, in the next 30 years. And with today's advances in medical technology, roughly 40% of those turning age 65 can expect to spend some time in long-term care facilities before they die.

Employers that are considering sponsoring long-term care programs should have a solid understanding of the

See **LTC** on page 12



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Continued from page 10 coverage.

LTC insurance benefits help pay for a wide range of supportive, personal and social services for people who are unable to meet their basic living needs because of accident, illness or the frailty of old age. LTC benefits pay, depending on the terms of the policies, for care received from nursing homes; home health care providers; assisted living facilities; and community services, such as adult day care centers. A plan typically pays benefits if certain daily activities, such as eating, dressing or bathing, can't be performed without substantial assistance or if the insured has a severe cognitive impairment, such as Alzheimer's.

Group benefits are commonly offered as a voluntary benefit paid for by employees. In an effort to boost plan enrollment, though, some companies buy a base amount of coverage that is supplemented by employee-purchased coverage.

Making payments should be as convenient as possible. For active employees, payroll deduction or direct billing are two options; the former is preferable, because direct billing can have a significant negative effect on participation. When shopping for an insurer, ask if coverage is fully portable for both employees and their family members on a direct-bill basis.

Premiums are typically linked to an employee's age at enrollment, the benefit levels and policy features. The policy should contain inflation protection options, such as an automatic increase in the initial benefit level each year or the right to periodically increase the benefit level without providing evidence of insurability.

Make sure the insurer explains its rating practices. Premium rates are subject to change for all policyholders as a class, so find out whether and for how long the insurer offers rate guarantees. Also ask whether the insurer has ever had a rate increase; if so, ask how much.

Some insurers cover only active employees or they require that an employee be covered in order for other family members, such as parents, to purchase coverage. Other insurers cover active workers and spouses, retirees,

parents, grandparents and in-laws, and the family members may be eligible to enroll even if the employee doesn't.

As with other types of group benefits, employer-sponsored LTC insurance premiums are generally more affordable than are individual policy premiums. Group insurance is typically offered on a guaranteed-issue basis for active employees during open enrollment periods. With group coverage, medical underwriting typically is required for employees' spouses, parents and other relatives.

Because claims may not be made for many years, it's important to choose a reputable insurer with staying power. The insurer should be financially strong and have a proven track record in the LTC market, a sizable book of business and a history of stable premiums. Other criteria include flexibility in plan design in order to meet employees' needs; ongoing servicing and administration capabilities; the ability to support enrollment through marketing, communications and technology, as with Web enrollment; the appearance and professionalism of the insurer's proposal; and the employer's satisfaction with other lines of business it has with the insurer.

If most of a company's employees are in their 20s and 30s, earn relatively low wages and have few assets to protect, LTC insurance will be a hard sell. Better candidates are businesses at which a large proportion of the workforce earns above \$40,000 annually, with an average age of approximately 40.

Highly educated employees, as well as those with personal experience in caring for sick or elderly family members, tend to be favorably inclined toward LTC insurance. Increasingly, the so-called "young elderly" are concerned with LTC and its financing. The average LTC insurance buyer is a 55-year-old female earning about \$42,000 per year, according to a recent study by the Health Insurance Assn. of America.

The willingness of plan sponsors to support and communicate the LTC program and the insurer's enrollment efforts is critical to success. Unlike health care benefits, the concept of LTC and the need to finance it is not well understood by most employees. Partnering with an insurer to educate employees—through internal newsletters, customized Web sites, enrollment materials,

employee meetings and hotlines—will help. Be aware that low enrollment—of 5% to 7%—is common initially, but enrollment typically rises thereafter.

Once a plan is installed and employees are enrolled, LTC plans require little ongoing servicing beyond the processing of payroll deductions. The insurer should fulfill requests for enrollment materials, manage the enrollment process, directly bill retirees and others not billed through payroll or pension deduction, service enrollees, administer claims and provide case management services.

Employers' contributions to group LTC insurance for employees are deductible business expenses, and employees buying LTC coverage may, within limits, deduct premiums as medical expenses. Several proposals pending before Congress would change federal tax laws to permit the inclusion of LTC policies in employer-sponsored cafeteria plans and flexible spending accounts, as well as establish an "above the line" tax deduction for LTC insurance premiums.

Plans offer a variety of features. A nonforfeiture provision allows coverage to continue, for a certain amount of time or at a reduced level, when premium payments stop. With a return-of-contributions option, if the insured dies before making a claim, a named beneficiary will receive contributions paid into the plan, subject to certain restrictions.

A restoration-of-benefits feature reinstates the insured's lifetime maximum benefit by the benefit amount paid once the insured recovers and is no longer in claim status. With such an option, a sick employee with, for example, a maximum lifetime benefit of \$500,000 who had received \$100,000 of benefits for care at an assisted living facility, would, upon her recovery, see her lifetime maximum benefit restored to the original \$500,000.

In conjunction with more traditional benefits, LTC insurance can help employers offer financial security to employees and reduce the lost-productivity costs that are associated with the provision of care by employees to their elderly relatives. **BI**

Janet Kennedy is vp of Aetna Long Term Care in Hartford, Conn.

Defective workmanship not an 'accident' under CGL policy

Property damage caused by defective workmanship was not covered under a commercial general liability insurance policy that covered property damage caused by accidents, according to the 8th U.S. Circuit Court of Appeals.

Annett Holdings contracted with B-D Construction to build a trucking terminal. B-D, in turn, subcontracted some of the construction of the terminal's parking lot to Norwalk Ready Mixed Concrete Inc. In 1991, Annett Holdings sued B-D and Norwalk in Iowa state court for breach of warranty and negligence, charging that the concrete poured by Norwalk had begun to crack and deteriorate abnormally. Norwalk was covered under a CGL policy issued by Travelers Insurance Co. Norwalk filed an insurance claim with Travelers seeking defense and indemnification in Annett Holdings' suit. Travelers denied the claim on the basis that there was no coverage. Norwalk settled with Annett Holdings for \$67,500 and incurred attorneys' fees of nearly \$130,000. Norwalk then sued Travelers in federal court, alleging breach of contract. The trial court ruled for Travelers.

The 8th Circuit said that Travelers' CGL policy covered property damage caused by an "occurrence," defined as an "accident." The court said that because the term "accident" was not defined in the policy, the ordinary meaning would be given to the term, i.e., an undesigned, sudden and unexpected event. Furthermore, the court said that defective workmanship, regardless of who is responsible for the defect, couldn't be characterized as an accident. The trial court decision with respect to coverage under the CGL policy was affirmed.

Norwalk Ready Mixed Concrete vs. Travelers Insurance Co., 8th U.S. Circuit Court of Appeals, April 19, 2001 (BI/05/S.-\$10)

LEGAL BRIEFS

ERISA bars contingency fee enhancement

Contingency fee enhancement is not available under the Employee Retirement Income Security Act's attorney fee provision, according to the 11th U.S. Circuit Court of Appeals.

Clarence Murphy filed a suit to recover disability benefits under ERISA. The trial court determined that Mr. Murphy was entitled to \$300,000 in benefits from Reliance Standard Life Insurance Co. In addition, the court determined that Mr. Murphy was entitled to reasonable attorneys' fees and costs under ERISA's attorney fee provision. In calculating the fee, the trial court considered the itemized costs submitted by Mr. Murphy's attorney and the terms of the contingent fee contract signed by Mr. Murphy and his attorney. The insurer appealed.

On appeal, Mr. Murphy argued, in part, that the trial court did not abuse its discretion by enhancing an award of attorney fees based on a contingency fee arrangement because without such enhancements, ERISA cases would not attract competent counsel. But the court said that a ruling by the U.S. Supreme Court called into question the use of contingency enhancements under federal fee-shifting statutes. Thus, the court held that a contingency fee enhancement is improper under ERISA's attorney fee provision. While the court upheld Mr. Murphy's recovery of \$300,000 in disability benefits and an award of reasonable attorney fees, it returned the case for recalculation of the fee award without a contingency enhancement.

Murphy vs. Reliance Standard Life Insurance Co., 11th U.S. Circuit Court of Appeals, April 20, 2001 (BI/02/S.-\$10)

Policy covered flood-caused sinkhole

The Supreme Court of Georgia has ruled that a property insurance policy covered damages produced by a sinkhole collapse that was precipitated by a flood.

Williams Seafood of Albany Inc. suffered a complete loss when its restaurant building collapsed into a sinkhole following a flood. Williams was covered under a property insurance policy issued by York Insurance Co. That policy provided coverage for sinkhole collapse, but it also excluded coverage for damage caused directly or indirectly by flood. Williams filed for coverage, which York denied. The insurer then filed a suit seeking a declaration from the court that the policy did not provide coverage in the case. Williams countersued, seeking coverage. The Court of Appeals of Georgia certified the question of coverage to the state Supreme Court.

The Georgia Supreme Court said that, reading the policy as a whole, it was clear that the coverage in section D of the policy (additional coverage for loss caused by collapse) was not subject to the exclusions in section B (loss due to flood). Therefore, the court said, the sinkhole coverage was not limited by the exclusion for damage by flood. The court emphasized that if the flood exclusion also applied to Section D, the additional coverage in section D would be meaningless.

*York Insurance Co. vs. Williams Seafood of Albany, Supreme Court of Georgia, March 19, 2001, reconsideration denied April 12, 2001 (BI/04/S.-\$10) **BI***

These abstracts were prepared by Mayo H. Stiegler. Copies of these decisions are available, at \$10 each, by sending a check payable to Mayo H. Stiegler, to Business Insurance 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Provide the listed number for each opinion ordered.

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Blues plan's ad campaign touts generic drugs

By DAVID BARKHOLZ
Crain News Service

DETROIT—Blue Cross & Blue Shield of Michigan is preparing a \$1 million marketing campaign to elevate the image of generic drugs and promote them as a way to slow the rise of health insurance premiums.

If the Blues, the state's dominant health insurer, can get members to shift just an additional 1% of their prescriptions to generics, the health plan can reduce drug expenditures by about \$17 million, a spokesman for the Blues said.

The company's 4 million members currently fill prescriptions 38% of the time with a generic when one is available, the spokesman said. The Blues would like to see that percentage raised to about 40% in the coming months, which would save about \$34 million, he said. Generics cost about 60% as much as brand drugs.

BC/BS of Michigan thinks the time is right to push generics. Patents on four of the 12 costliest drugs used by Blues customers expire over the next 16 months. The four drugs—Prozac, Prilosec, Glucophage and Claritin—cost the Michigan Blues \$219.6 million last year, slightly more than 10% of the company's \$2.15 billion drug outlay for the year.

Several other drugs are coming off patent in the coming months, including Mevacor, Prinivil and Zestril, said Ather Kaddis, director of pharmacy services-

clinical for Detroit-based BC/BS of Michigan.

The insurer is planning an awareness campaign that combines advertising, educational outreach to doctors and a competition among pharmacies to see which can do the best job of selling generics, the spokesman said.



The \$1 million cost of the campaign is one-quarter of the \$4 million that the Blues intend to spend on advertising this year, he said.

The company hopes to improve public perceptions about generics through new ads that tout generics as "unadvertised brands" rather than second-quality goods, Mr. Kaddis said.

The Blues plan expects to begin running the ads next month, said William Elwell, the insurer's director of strategic

communications and advertising.

The Detroit Regional Chamber, which has about 15,000 members, likes the initiative, said Sebastian Wade, senior director of public policy.

The promotion of generic drugs is consistent with the recommendations of a recent chamber task force report calling for more consumer education on the effectiveness and savings available through generics, Mr. Wade said. "We believe an educated consumer will make better choices," he said.

Generics have the same active ingredients as brand drugs and as such can be purchased with confidence by customers, because the brand drug has at least a 15-year track record for efficacy and safety over the course of its patent, Mr. Kaddis said.

One ad features a series of hands holding generic pills and capsules with separate captions stating: "They're safe. They save. Same active ingredients. They're generic drugs. Choose the unadvertised brand."

Another key element of the campaign is a contest among pharmacies to determine which can show the most year-over-year improvement in generic drug dispensing from the fourth quarter of 2000 to the fourth quarter of this year.

The winners, selected one each from independent pharmacies and pharmacy chains, will be featured in Blues advertising beginning next spring. Mr. Kaddis said pharmacies generally do a good job of pushing generics as a cost saver. The pharmacies tend to earn the same dis-

pensing fee whether they fill brand or generic prescriptions, he said.

BC/BS of Michigan also intends to feature drug costs in an upcoming fall issue of Living Healthy magazine, a publication sent to about 2.1 million Blues households across Michigan, the spokesman said. The Blues also are using regular newsletters and updates to physicians and pharmacists to promote generic drugs. Virtually every physician and pharmacist in the Michigan accepts Blue Cross insurance.

The newsletters are aimed at fighting the influence of pharmaceutical company representatives selling their products into practices, the spokesman said. The pharmaceutical industry spent about \$300 million on marketing to physicians in 1998, according to the California-based Institute for Healthcare Advancement.

The Pharmaceutical Research & Manufacturers of America, a trade association in Washington, defends industry marketing as a key educational tool to empower consumers. A spokesman for the association said that additional pharmaceutical use was improving the quality of life for thousands of people who would have to be hospitalized or institutionalized if not for the availability of drugs. Furthermore, it costs about \$500 million and takes 12 to 15 years of development to bring each new drug to market, the spokesman said.

David Barkholz is a reporter at Crain's Detroit Business, a sister publication of Business Insurance.

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DATEBOOK

SEPTEMBER

SEPT. 9-12. 26th Canadian Risk & Insurance Management Society Annual Conference in Ottawa; \$545 Canadian (\$356) for members and \$645 Canadian (\$421) for nonmembers. Canadian RIMS, 416-253-1888.

SEPT. 9-12. International Society of Certified Employee Benefits Specialists Conference in Boston; \$695 for members, and \$795 for nonmembers. ISCEBS, P.O. Box 209, Brookfield, Wis. 53008-0209; 262-786-8771; www.iscebs.org.

SEPT. 12-14. National Assn. of Professional Surplus Lines Offices Annual Convention in San Antonio; \$615 for delegates. NAPSL0, 6405 N. Cosby Ave., Suite 201, Kansas City, Mo. 64151; 816-741-3910; www.napslo.org.

SEPT. 16-19. International Union of Marine Insurance Annual Conference in Genoa, Italy; 1,380 euros (\$1,173). IUMI, www.iumi2001.it.

SEPT. 21-28. 89th Annual National Safety Council Congress and Exposition in Atlanta; \$575 for members, and \$735 for nonmembers. NSC; 800-621-7619; www.nsc.org.

SEPT. 22-26. National Assn. of Insurance Commissioners Fall Meeting in Boston; \$600. NAIC, Miriam Henosy, 120 W. 12th St., Kansas City, Mo. 64105; 816-842-3600; www.naic.org.

SEPT. 23-26. National Assn. of Mutual Insurance Cos. Annual Convention in Washington; \$420 for members, and \$540 for nonmembers. NAMIC, Larry Baile, P.O. Box 68700, Indianapolis, Ind. 46268; 317-875-5250; www.namic.org.

SEPT. 24-25. Marketing Strategies for Insurance Industry Conference in Atlanta, sponsored by the Institute for International Research; \$1,595. IIR, Sasha Burgansky, 708 Third Ave., New York, N.Y. 10017; 212-661-3500; fax: 212-661-6041; www.iirusa.com/insurancecmkt.

SEPT. 24-25. Insuring E-Business Conference in Hartford, Conn., sponsored by World Research Group; \$1,695. Liz Smith, 16 E. 40th St., New York, N.Y. 10016; 212-869-7231, ext. 21; fax: 212-869-7309.

OCTOBER

OCT. 2-3 12th Annual PricewaterhouseCoopers Executive Conference in New York; \$1,200. The Conference Group Ltd., 1 Resource Square, 10925 David Taylor Drive, Suite 100,

Charlotte, N.C. 28262; 504-541-2800.

OCT. 2-5. Reinsurance Course in New York, sponsored by Reinsurance Assn. of America; \$1,695. RAA, 1301 Pennsylvania Ave. N.W., Suite 900, Washington, D.C. 20004; 202-638-3690.

OCT. 3-5. Globalization and Technology Special-Interest Seminar in Glasgow, Scotland, sponsored by Casualty Actuarial Society; £1,165 (\$1,666). CAS, Emily Monacell, 1100 N. Glebe Road, Suite 600, Arlington, Va. 22201; 703-276-3100; fax: 703-276-3108.

OCT. 3-5. Self-Insurance Institute of America 21st National Conference and Exposition in Chicago; \$675 for members, and \$995 for nonmembers. 12241 Newport Ave., Suite 100, Santa Ana, Calif. 92705; 714-508-4920; fax: 714-508-4904; www.siaa.org.

OCT. 5-10. 47th Annual Employee Benefits Conference in San Francisco, sponsored by International Foundation of Employee Benefits Plans; \$870. IFEBP, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 262-786-6700; fax: 262-786-8670.

OCT. 6-10. Insurance Leadership Forum in White Sulphur Springs, W.Va., sponsored by the Council of Insurance Agents & Brokers/Council of Insurance Company Executives; \$950. CIAB, 701 Pennsylvania Ave. N.W., Suite 750, Washington, D.C. 20004-2608; 202-783-4400.

OCT. 7-9. International Foundation of Employee Benefit Plans Annual Conference and Exhibition in San Francisco; \$870. IFEBP, Stacey Van Alstyne, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 262-786-6700; www.ifebp.org.

OCT. 7-10. Federation of European Risk Management Assns. Risk Management Forum 2001 in Barcelona, Spain; \$1,034 for risk managers, and \$1,797 for others. FERMA, www.ferma-asso.org.

OCT. 15-19. Global Benefits Management Certification Course in Brookfield, Wis., sponsored by the International Foundation of Employee Benefit Plans; five-day course is \$1,499 for members, and \$1,749 for nonmembers, and two-day course is \$675 for members and \$775 for nonmembers. IFEBP, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; www.ifebp.org.

OCT. 21-23. CPCU Society Annual Meeting in Seattle; \$495 for members, and \$545 for nonmembers. CPCU Society, P.O. Box 3009, Malvern, Pa. 19355-0709; 800-932-2728; www.cpcusociety.org.

OCT. 21-24. Conference for Risk Re-

ention Pools, in Key West, Fla., sponsored by Advanced Risk Management Techniques; \$595. Wendy Wiens, 23701 Bircher Drive, Lake Forest, Calif. 92630; www.armtech.com.

OCT. 22-24. The Ninth Annual Business Insurance Workers Compensation and Disability Management Conference in San Diego, sponsored by *Business Insurance* and IBF-International Business Forum; \$1,095 for service providers, and \$795 for risk managers, benefit managers and safety managers. IBF, 100 Merrick Road, Suite 500, West Building, Rockville Centre, N.Y. 11570; 516-594-3000.

OCT. 25-26. Fourth Annual P/C Claims Congress in Orlando, Fla.; sponsored by Global Business Research Ltd.; \$1,495. Conference Administrator, Global Business Research Ltd., 510 Sacramento St., Nevada City, Calif. 95959; 800-868-7188; www.globalbusinessresearch.com.

OCT. 27-30. Independent Insurance Agents of America Annual Conference in Honolulu; \$399 for agents, and \$545 for others. IIAA, 127 S. Peyton St., Alexandria, Va. 22314; 800-221-7917.

OCT. 29-NOV. 1. American Society for Healthcare Risk Management Annual Conference in Boston. \$575 for members, and \$730 for nonmembers. ASHRM, 1 N. Franklin St., Chicago, Ill. 60606; 312-422-3980; www.ashrm.org.

OCT. 29-NOV. 1. International Risk Management Institute Construction Risk Conference in New Orleans; \$1,050. IRMI, Conference Coordinator, 12222 Merit Drive, Suite 1450, Dallas, Texas 75251-2276; 800-827-4242; fax: 972-371-5120; www.irmi.com.

NOVEMBER

NOV. 3-7. Health Insurance Assn. of America Annual Forum in Orlando, Fla.; \$795 for members, and \$945 for nonmembers. HIAA, 555 13th St. N.W., Washington, D.C. 20004; 202-824-1600; www.hiaa.org.

NOV. 4-7. National Assn. of Independent Insurers Annual Meeting in New Orleans; \$500 for members, and \$600 for nonmembers. NAII, 2600 River Road, Des Plaines, Ill. 60018-3286; 847-297-7800.

NOV. 7. Asset Management for Insurance Companies Seminar in Boston, sponsored by the Institute for International Research; \$995. IIR, Sasha Burgansky, 708 Third Ave., New York, N.Y. 10017; 212-661-6041; fax: 212-661-6041.

NOV. 8-9. Additional Insured Endorsements Conference in Orlando, Fla., sponsored by the Institute for International Research; \$1,595. IIR, Sasha Burgansky, 708 Third Ave., New

York, N.Y. 10017; 212-661-3500; fax: 212-661-6041; www.iirusa.com/additionalinsured.

NOV. 11-14. Insurance Professionals Technology Conference in Dallas, sponsored by Insurance Services Office Inc.; \$625. Nicola Freeman, 545 Washington Blvd., Jersey City, N.J. 07310-1686; 201-469-2443; fax: 201-469-4006.

NOV. 12-13. Corporate Benefits Conference in Tucson, Ariz., sponsored by International Foundation of Employee Benefit Plans and Council on Employee Benefits; \$540 for IFEBP/CEB members, and \$640 for nonmembers. 888-334-3327.

NOV. 12-14. 11th Annual World Captive and Alternative Risk Financing Forum in Palm Beach Gardens, Fla., produced by *Business Insurance*, Skandia/SINER and Tillinghast-Towers Perrin; \$975 for risk managers, and \$1,250 for others. Tina Gassman, 4248 Park Glen Road, Minneapolis, Minn. 55416; 800-845-0778.

NOV. 14-16. Professional Liability Underwriting Society Conference in Chicago; cost varies by date of registration: \$650 to \$775 for members, and \$860 to \$985 for nonmembers. PLUS

Conference, 4248 Park Glen Road, Minneapolis, Minn. 55416; 800-845-0778.

NOV. 19-22. Assn. of Risk & Insurance Managers of Australasia Conference in Sydney, Australia; before Oct. 18, cost is \$950 Australian (\$483) for members, and \$1,200 Australian (\$610) for nonmembers; after Oct. 18, cost is \$1,020 Australian for members and \$1,270 Australian for nonmembers. Intermedia Convention & Event Management, P.O. Box 1280, Milton Queensland, 4064 Australia; 61-7-3369-0477; fax: 61-7-3369-1512 www.arima.com.au.

The Datebook is compiled from notices sent to Business Insurance. Notices for meetings should be sent at least eight weeks in advance to Datebook, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Please include the cost, if any, to attend the meeting and information on registration for interested readers. Business Insurance reserves the right to select those meetings of greatest interest to its readers and cannot guarantee that notices will be printed. Datebook listings also are available at www.businessinsurance.com.

BI moves to new Chicago office

CHICAGO—The Chicago office of Crain Communications Inc., publisher of *Business Insurance*, relocated at the beginning of the month to a new address.

Both the editorial and sales offices of *Business Insurance* are now located at 360 N. Michigan Ave., Chicago, Ill. 60601-3806. All telephone and fax numbers will remain the same, as will e-mail addresses for BI staff.

The new building is located at the southwest corner of the intersection of Michigan Avenue and Wacker Drive, adjacent to the Chicago River, and has been renamed the Crain Communications Building.

"Our new address makes the intersection of Michigan Avenue and Wacker Drive media central in Chicago...the

Chicago Tribune, Chicago Sun-Times and Crain Communications. Not a bad trifecta," said company Chairman Keith Crain and President Rance Crain.

The building at 360 N. Michigan Ave. originally was built in 1922 for the London Guarantee & Accident Co., and also is the site that once housed Fort Dearborn.

In addition to *Business Insurance*, Crain publications headquartered in Chicago include Crain's Chicago Business, Modern Healthcare and Modern Physician. In addition, publications with sales and editorial staff in Chicago include Advertising Age, Advertising Age International, Automotive News, BtoB, Electronic Media, InvestmentNews, Pensions & Investments, and RCR.

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GLOBAL BRIEFS

The London-based War Risks Rating Committee has raised **hull and machinery rates** on ships entering the Sri Lankan port of Colombo to 0.7% from 0.0025% of hull value. In addition, the WRRC last week declared the region a war zone. The moves follow a July 24 terrorist attack on the city's airport and discussions this month between a delegation from the Sri Lankan government and Lloyd's of London underwriters. Insured damage from the July 24 raid is estimated at more than \$1 billion....Ratings agency Standard & Poor's in London has withdrawn its bell ranking on Lloyd's of London **marine syndicate 1861**; S&P's five-bell rating system ranks syndicates' relative market performance. S&P said it withdrew the ranking of one bell—indicating market performance that is significantly below market level—because syndicate 1861 had insufficient trading history on a stand-alone basis. S&P withdrew the ranking after it learned from Marlborough Underwriting Agency, which manages syndicate 1861, that the business of marine syndicate 744 had not been merged into syndicate 1861 as planned. Syndicate 1861 began underwriting in 2000, but an S&P bell ranking typically requires that a syndicate have an underwriting history of at least two closed years of account, S&P said....PricewaterhouseCoopers, the liquidator for failed U.K. multiline insurer **Independent Insurance Co. Ltd.**, has formed a company to provide runoff services to the insurer. The new operation, Aurora Corporate Services Ltd., will be headed by Chief Executive Ken Blanc—who previously led Independent's personal lines arm—and Managing Director David McGuigan, who is the claims, reinsurance and commutations manager at London-based Scottish Lion Insurance Co. and the chairman of the London-based Assn. of Run-Off Cos. John Blakemore, whom PwC initially had chosen to head Independent's runoff, resigned last week. Meanwhile, Michael Bright, the former chief executive of Independent, this month declared himself bankrupt, the U.K. Department of Trade and Industry confirmed....Lloyd's managing agent **SVB Syndicates Ltd.** has warned that its results will fall below market expectations. SVB said last week in a submission to the London Stock Exchange that it would report a loss of about £33 million (\$49.3 million) for 2000. SVB, which manages five syndicates for the 2001 year of account, said the loss forecast was based on reversals in its long-term investment return....Standard & Poor's has assigned an AAA financial strength rating to **Caisse Centrale de Reassurance**. S&P, in its first rating of Paris-based CCR, said its outlook on the French state-owned reinsurer was stable....British workers have the lowest number of **public holidays** in Europe and the lowest minimum statutory leave, according to the Trades Union Congress, a London-based labor organization. For U.K. workers, the average number of such days off—both public holidays and statutory leave combined—is 20 days per year, the TUC said. The European Union average is 33 days per year. The TUC said it would call on the U.K. government to review public holiday entitlement and grant British workers an additional three public holidays per year.

ALM is optimistic rate hikes will renew Lloyd's profitability

By SARAH VEYSEY

LONDON—In a new report, the Assn. of Lloyd's Members Ltd. expresses confidence that profitability will soon return to Lloyd's of London, in light of added pressure to raise rates in the market.

The London-based association found not only a resolve among underwriters to raise rates but additional factors that could keep rates aloft, such as diminished capacity in the London market and a weak stock market.

"There is now strong evidence that the market is in the middle of a recovery from its nadir in 1998 and 1999," the ALM said in its annual report on the market, "Lloyd's Market Results & Prospects," which was published last week.

In the 2001 report, which includes data on Lloyd's syndicates provided by London-based A.M. Best International Ltd., the ALM states that there now exists strong evidence that rates are increasing across the board at Lloyd's. A survey of Lloyd's underwriters by the association, included in the report, found that all expect to increase rates in the coming financial quarter.

"For the first time since the survey be-

gan in 1992, surveyed underwriters are unanimous in forecasting further upward movements in premium rates," the ALM said in the study.

LLOYD'S

"There is an ongoing increase in insurance rates in areas where Lloyd's is a leading player," said Michael Deeny, the chairman of the ALM, who cited marine and aviation as two such areas.

Mr. Deeny said that the bottom of the market for many specialist lines of insurance was 1999. But he added that rates still have some way to go before they reach a new peak. "We are not suggesting that rates are anywhere near the peak of the previous cycle, but they are moving in the right direction and there is a good prospect of profitable times ahead," he said.

Mr. Deeny said that, among other factors, the insolvency of Independent Insurance Co. Ltd., which entered liquidation in June, has contributed to the rise in insurance rates at Lloyd's. He said that al-

though the collapse of the London-based insurer was unfortunate for its policyholders, the loss of capacity is adding momentum to raise rates in the market.

The ALM also said in its report that the upswings in previous insurance cycles had been cut short by buoyant investment markets, which inflated insurers' balance sheets and allowed them to keep rates low.

"The current weakness of capital markets has led to a fall in the amount of capital supporting the U.S. insurance industry," the ALM said in a statement accompanying the report.

"To a significant extent, insurance markets are the mirror image of capital markets. When capital markets are buoyant, insurance markets are weak, and vice versa," the report said. "Last year, we argued that 'what Lloyd's needs is an old-fashioned bear market.'...Our wish has been largely granted," the ALM stated.

The ALM claims its study shows that traditional Lloyd's names are enjoying better underwriting results than are their corporate counterparts. For the 1998 year of account, the latest to close under Lloyd's three-year accounting system, the

See ALM on next page

Gerling, NCM team to write credit risks

By SARAH VEYSEY

COLOGNE, Germany—German credit insurer Gerling Credit Insurance Group and Dutch credit insurer NCM Group plan to form a joint venture by the end of the year.

Gerling Credit, a Cologne, Germany-based unit of Gerling Versicherungs-Beteiligungs-A.G., and Swiss Re Group subsidiary NCM said last week that they will form a new company, to be called Gerling NCM Credit & Finance A.G. Gerling will take a 51% stake in the new company, which will



be based in Cologne; Swiss Re will take a 25% stake. Private investors will hold the rest of the company. Swiss Re and Gerling said that an IPO is planned.

The combined groups would have a 25% share of the global credit insurance market, Gerling said in a written statement.

In fiscal year 2000, NCM insured transactions worth 172 billion euros (\$158.76 billion) against the risk of nonpayment. NCM's revenues, excluding insurance carried out on behalf of the Dutch state, totaled 528 million euros (\$487.3 million), and its pretax profits were 54.9 million euros (\$50.7 million).

See Venture on next page

Cotesworth unable to replace lost capital

Lloyd's agency hit by continuing HIH fallout

By SARAH VEYSEY

LONDON—Lloyd's of London managing agency Cotesworth & Co. Ltd. has suspended underwriting, following the loss of its primary capital supplier, HIH Insurance Ltd.

Cotesworth, one of the oldest Lloyd's agencies, closed its doors to new business earlier this month after failing to replace capital lost following the collapse of Sydney, Australia-based HIH Insurance Ltd. HIH, which went into liquidation in March, had provided 85% of the managing agency's capital.

"It is with great regret the directors of Cotesworth & Co. Ltd. have decided to suspend, for the time being, the underwriting of the two managed syndicates, marine 535 and nonmarine 1688, with immediate effect," Cotesworth said in a statement to the Lloyd's market.

Cotesworth's syndicates had underwriting capacity of more than £200 million (\$289.3 million). Business written by syndicate 535 included energy and marine hull and liability. Syndicate 1688 wrote professional indemnity, medical malpractice, bankers fidelity and other lines.

"We have been in discussions with Cotesworth since March, and we are working to ensure a well-managed outcome to the situation," said David Gittings, Lloyd's director of regulation.

Cotesworth, which was founded in 1855, had been struggling to find new capital backing for 2002. Last month, Moody's Investors Service in London cut

its rating on syndicate 535 to B- from B. Moody's does not rate syndicate 1688.

Moody's said the downgrade was prompted by several factors, including losses related to the March sinking of a Petroleo Brasileiro S.A. oil platform, uncertainty over capital backing for Cotesworth in 2002, and reinsurance contracts ceded by syndicate 535 to London-based Independent Insurance Co. Ltd. Independent went into liquidation in June.

And following Cotesworth's announcement that it would suspend underwriting, Moody's downgraded its rating on syndicate 535 to C with an uncertain outlook. The ratings agency said in a statement that although the syndicate has an "above-average track record," it has

been plagued by poor market conditions, the Petrobras loss and the collapse of Independent.

Robert Smith, a senior analyst at Moody's, said that syndicate 535 had been consistently profitable in the past 10 years. Its profits over that time period averaged 10% of capacity, he said, with profits that averaged 19% of capacity over the past five years and 15% over the past three years.

Moody's also said it appears increasingly unlikely that syndicate 535 will secure backing for 2002.

Michael Deeny, the chairman of the London-based Assn. of Lloyd's Members, said that although the Cotesworth syndicates weren't the only Lloyd's syndicates to have exposure to Independent, they were the hardest hit by the company's recent collapse.

HIH Insurance Ltd., which went into liquidation in March, provided 85% of Cotesworth's capital.

INTERNATIONAL

ALM

Continued from previous page
average loss made by Lloyd's participants overall was 10.0% of capacity, while individual names advised by Lloyd's members agents made an average loss of 6.9% of capacity for the 1998 year, the ALM said.

'Many of the international insurance companies that came to Lloyd's in recent years have proved themselves to be part of Lloyd's problem and not part of the solution.'

— Michael Deeny
Assn. of Lloyd's
Members Ltd.

"Many of the international insurance companies that came to Lloyd's in recent years have proved themselves to be part of Lloyd's problem and not part of the solution," Mr. Deeny said. "In contrast, it is increasingly recognized that private capital has a vital and profitable role to play in Lloyd's future."

Mr. Deeny said the fact that names tend to spread their capacity among several syndicates writing

different lines of business is one reason for their better performance.

He added that the standards among members agencies, which advise names on which syndicates to select, had greatly improved. "Lloyd's is all about syndicate selection, and so I do think the selection of members agents is very important," he said. "I think the standard of members agencies is much higher—it has been survival of the fittest," he said, alluding to the financial crisis that hit Lloyd's in the early 1990s after a string of heavy asbestos and environmental liability losses.

Mr. Deeny said that another reason the ALM is more confident about the future for individual investors at Lloyd's is that the Council of Lloyd's "is now determined to remove incompetent underwriters from the market."

The ALM said that the level of capacity at Lloyd's provided by names is stabilizing, despite a drop in the number of individual investors underwriting in the Lloyd's market. "The capacity of private capital as a whole has declined imperceptibly, from £3.12 billion (\$5.02 billion) in 2000 to £3.02 billion (\$4.52 billion) in 2001," the report said.

A spokeswoman for Lloyd's said that the market as a whole had capacity of £11.06 billion (\$16.48 billion) for 2001.

Individual copies of the annual study are available, at £300 (\$434) each, from the Assn. of Lloyd's Members Ltd., 100 Fenchurch St., London EC3M5LG; phone: 44-207-488-0033. Copies can also be ordered through the ALM's Web site, at www.association-lloyds-members.co.uk.

Venture

Continued from previous page
Gerling Credit recorded a pretax profit of 55 million euros (\$50.8 million) in 2000.

In a statement, Amsterdam, Netherlands-based NCM said: "Current and potential customers will benefit from the new company's clear presence in leading mar-

kets such as Germany and France, where NCM's presence has been limited and Gerling Credit strong. Conversely, NCM will provide Gerling Credit with improved access to markets such as the Netherlands, U.K., Nordic countries, Italy and the United States, where Gerling's presence has so far been limited."

Following the announcement, Standard & Poor's Corp. affirmed

its AA- insurer financial strength and long-term counterparty credit ratings on Gerling Credit.

S&P said the affirmation was "based on the strong rationale for the joint venture and the continued core status of GCIG to the Gerling Group." S&P said its outlook remains negative, though, because of concerns about the earnings performance of the Gerling Group.

Praxair taps Inserra as risk exec

Richard M. Inserra has been named assistant treasurer and director-risk management at Praxair Inc., a Danbury, Conn.-based producer of specialty gases for chemical companies and other industries.

Mr. Inserra's responsibilities in the newly created position cover global risk management and risk financing. He also is the president of Praxair's captive insurance subsidiaries.

Previously, Mr. Inserra spent 10 years at Union Carbide Corp.; he left Union Carbide after serving most recently as assistant treasurer-insurance and risk management.

Mr. Inserra holds a bachelor of arts degree in history from Fordham University in New York and a master of business administration degree from Iona College in New Rochelle, N.Y.

Kim Martin has been named vp of insurance, risk management and compliance at Team Health, a Knoxville, Tenn.-based provider of physician services to health care facilities.

COMINGS & GOINGS: BUYERS

In the newly created position, Ms. Martin takes over risk management and other responsibilities previously handled by several individuals. She reports to Bob Joyner, executive vp, general counsel and chief compliance officer at Team Health.

Ms. Martin has 20 years' experience in health care, the last 12 in the areas of risk management, insurance and compliance. Before joining Team Health, she spent four years with Charter Behavioral Health Systems/Magellan Health Services in Atlanta. She served as senior vp and chief administrative officer before leaving to join Team Health.

Ms. Martin earned a bachelor of arts degree from the University of South Alabama in Mobile and a law degree from Faulkner University in Montgomery, Ala.

Lola Chriss has been named manager-total compensation and benefits, occupational health, recognition and reward at Texas Instruments Inc. in Dallas.

She is responsible for strategic planning in the areas of health benefits and occupational health. She also manages care networks and supplier contracts.

Ms. Chriss, who replaces the retired Sue Nelson, reports to Melendy Lovett, vp at Texas Instruments.

Ms. Chriss holds a bachelor of science degree in nursing from the University of Texas and a master's degree in nursing from Texas Woman's University. She is on the executive board of the Dallas-Fort Worth Business Group on Health.

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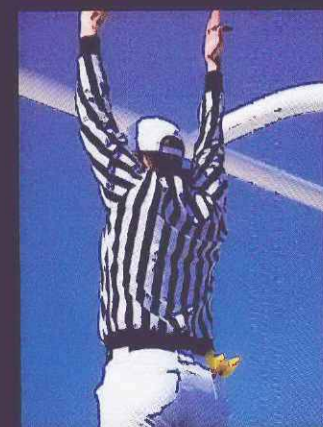
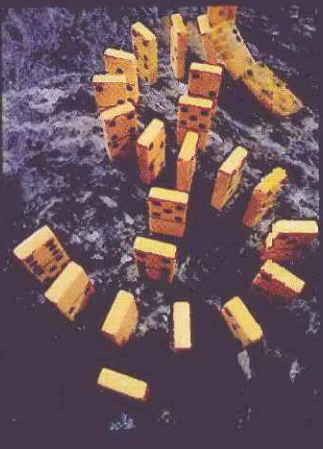
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Labor to do more for MD cure

When I was a kid, the approach of the Labor Day holiday to me did not mean a long weekend and a day off from school, and certainly not a day off from work.

Instead, it meant a time of backyard carnivals with all the kids in the neighborhood and traveling door to door with an old mayonnaise jar and special cardboard boxes handed out at McDonald's restaurants. Both the carnivals and the canvassing were part of fund raising for the annual Muscular Dystrophy Assn.'s Labor Day Telethon.

The fund raising for the MDA Telethon was as much an annual fall ritual as getting new Red Chief notebooks and blue jeans for school. It was heralded by posters in stores and advertisements on television featuring Jerry Lewis, the Telethon's emcee, who appeared with a child who suffered from MD.

I don't recall whether some friend's brother had muscular dystrophy, and I never personally knew anyone with the disease, but we, as kids, approached raising funds for the MDA Telethon

with an enthusiasm that, looking back on it now, was surprising.

It was exciting to count all the pennies, dimes, nickels and quarters—and the rare bills—we had collected and to drive down to the local television station to drop off our collection. We'd then race home and watch the local and national totals grow, captivated by the rising

sums on the tote boards and feeling proud that we were part of that effort, even if we never really understood how children were afflicted by the lethal disease or how our funds were used to help them.

In time, I stopped collecting for the MDA Telethon and my interest in the event waned. Jerry Lewis was getting older and was no longer funny, and the Las Vegas-style performers ceased to be entertaining.

It had been many years since I've even thought about muscular dystrophy and the Telethon, and perhaps the same is true for many of you. But the disease continues to cripple and kill children. That fact was brought home to me when the child of a friend was diagnosed with a form of the disease.

James Wood was diagnosed last year with a form of MD called Duchenne muscular dystrophy. James is the son of Joel Wood, senior vp-government affairs for the Council of Insurance Agents & Brokers in Washington, and Joel's wife, Dana.

DMD, which is the most common form of muscular dystrophy, cripples boys in childhood and worsens as they grow older. It is the No. 1 child-killing disease and affects about one in 3,000 boys born in the United States. The disease, which involves a deficiency in a protein that is a building block in muscle cells, strikes in early childhood. About age 4, leg and trunk muscles weaken, and by age 7 to 12, the ability to walk is lost. Death typically occurs in the 20s from respiratory failure.

When Joel investigated the disease, his sorrow turned to shock when he learned that, over the years, little funding has gone toward finding a cure for the disease, and virtually no organized advocacy had been conducted to change that. Although the MDA has funded valuable research on neuromuscular diseases over the years, much of its annual resources are used to help people who need medical equipment, such as leg braces and wheelchairs, rather than to fund research for a cure. Only limited federal funds are allocated by the National Institutes of Health to researchers who could search for a

cure, and none in an organized, coordinated manner, even though the disease is so common and catastrophic.

Since the late 1960s, when I was running around with a jar of coins, great strides have been made in medical research in general and in gene therapy in particular. Such advances offer new hope of finding a means of better identifying parents at risk of passing on this gene and of eliminating the disease. DMD is a disorder in a single gene, which means it stands a good chance of being among the first genetic disorders that could be cured if aggressive research efforts are made.

Unlike many other parents dealing with the prevailing attitude that this is a hopeless disorder, Joel last year worked closely with a volunteer parent organization that had lobbied on behalf of MD interests at a grass-roots level. In addition, he used his skills and contacts in the federal arena to push for MD to be included in Senate legislation aimed at authorizing federal research funds for diseases that affect children.

This year, a push is on for another measure, the Muscular Dystrophy Community Assistance, Research and Education Amendment Act, which would authorize more funds for aggressive research and establish national research centers for the disease. The measure has overwhelming support in the House, where H.R. 717 has 310 co-sponsors. In the Senate, S. 805 has 40 co-sponsors. The next step for the House bill is to move to the floor, perhaps in early September. The Senate measure is now before the Senate Health, Education, Labor and Pensions Committee, where it has yet to be considered. While Joel is quick to credit the commitments and sacrifices of other parents, the support these measures have is directly due to Joel's efforts and the respect he has among lawmakers.

The MDA also has been energized by Joel's efforts, and it is, for the first time in its 50-year history, advocating expanded federal funding for research. Its principal spokesmen, Jerry Lewis and Ed McMahon, have testified in support of the MDCARE Act before Congress.

When I was a child, it was exciting to see the rising dollar totals raised by the annual MDA telethon, in the hopes that new records would be set. But now I would find it far more rewarding to see those funds spent on aggressive efforts to find a cure for the disease that has struck James and so many other children.

What can you do to help? One of the best ways would be to urge your senator to co-sponsor the legislation, S. 805, and push for its enactment. It's a simple step that would make a big difference.

More directly, there is a fund-raising event in Washington on Sept. 11 that has already drawn support from some in the insurance industry as well as members of Congress. The event would directly benefit scientific research into treatments for DMD at Children's National Medical Center in Washington, which is a leading center of research on the disorder and also is the facility treating James Wood. For more information about supporting this initiative, please contact Julie Wadler or Julie Conway at event organizer epiphany productions inc., at 703-683-7500; or Joel Wood, at 202-783-4400 or jwood@ciab.com.

As a kid with a jar of coins, I thought I could make a difference. As an adult with barrels of printer's ink, I hope I can do more to rouse support. Perhaps we can then carry a memory through life not of fund raising but of having helped to eradicate this heartbreaking disease.

Editor Paul D. Winston's commentary appears fortnightly and on the Business Insurance Web site, at www.businessinsurance.com. He can be reached at pwinston@crain.com.

Clout

Continued from page 1

nancial viability when they negotiated significant premium reductions from health plans over several years, particularly during the mid- to late 1990s. They say the consequences are still rippling through the system.

Today, 64% of hospitals in California are losing money, and 23 have closed in the last five years because of financial problems, according to the California Healthcare Assn., a Sacramento trade group for hospitals. California's Department of Managed Health Care recently found that nearly 25% of physician groups in the state do not meet solvency requirements, posing potential problems for health maintenance organizations and consumers.

"We are not in a catastrophic failure mode," said Ken Drummer, practice leader for group and health care in the San Francisco office of Watson Wyatt Worldwide. "But I think purchasing co-operatives, when they get to critical mass, can become part of the problem. I think we may be looking at something like that."

As a consultant, Mr. Drummer said, he also would help the purchasing groups bargain hard to drive down premiums if they were his clients. "But that doesn't take away the macroeconomic consequence of having done that," he said.

Those who see a link stress that the coalitions' clout is only one of several factors contributing to the fallout from medical reimbursements not keeping pace with the costs incurred by hospitals and doctors. Other factors include government "underfunding" for Medicaid patients and California's huge population of uninsured. One in five state residents does not have health care insurance. That fact alone left hospitals to provide \$2.96 billion in uncompensated care in 2000, according to the hospital association.

There are several players in the health care system whose incentives are not aligned, said a spokeswoman for the hospital association.

"We have the employers who pay the premiums, and they, through their purchasing coalitions, have, over the last decade made it a priority to keep their premium costs under control," she said.

"So they beat up on the health plans to keep the premiums under control. That, in turn, causes the health plans to reduce the reimbursement to the providers because they are trying to keep their clients happy," the spokeswoman said.

As a result, the quality of care quality suffers, she said.

In several ways, coalitions have improved the health care system, said Steven Thompson, vp for governmental affairs for the Sacramento-based California Medical Assn. Employer coalitions have pushed for data on consumer care quality and for the implementation of good treatment practices.

Five years ago, California had 400 doctor groups. Now there are 290. Several observers say many of those groups were simply inefficient, but Mr. Thompson said the

purchasing giants also contributed to their financial problems.

The coalitions have now realized, though, that there is a need to better fund the medical system. So they have insisted that a fair portion of recent health plan rate increases go to providers, Mr. Thompson said.

"The large systems simply have the power to do that," he said.

Sacramento-based CalPERS provides retirement and health benefits for more than 1.2 million members and 2,400 public employers. San Francisco-based PBGH's Negotiating Alliance purchases coverage for 20 large employers, with 400,000 covered lives. It also manages another coalition for smaller employers.

During the 1990s, the volume purchasers achieved particularly impressive premium reductions. PBGH, for example, saw its HMO rates drop 5% from 1995 to 1999. Meanwhile, the national trend was for HMO premiums to increase 10%, according to PBGH press releases from that period.

Claiming that purchasing coalitions are responsible for health provider woes is "an unfortunate perception," said Jim Franklin, director of staff recruitment and retention for Stanford University in Palo Alto, Calif., and a PBGH board member.

Health plans are free to accept or reject contracts with employers, just as providers may accept or reject contracts with health plans, Mr. Franklin said. Coalitions cannot force providers to accept contracts with reimbursement levels that are too low.

California's "mega-purchasers" have obtained lower HMO pricing than have pricing than other purchasers across the nation, a CalPERS spokeswoman said.

But when HMOs can defend a rate increase—paying providers necessary additional reimbursement, for example—CalPERS doesn't mind paying, she said.

"All the large purchasers are doing is trying to obtain good benefits at a fair price," she said. "We don't go into negotiations saying, 'Give us the cheapest price, period.' We go into negotiations saying, 'Give us good rates for good care, good quality and good medical outcomes.'"

Peter V. Lee, president and CEO of PBGH, said he agrees, in a "macro sense," that purchasers' cost control efforts have affected providers' finances.

But in the last couple of years, Mr. Lee said, the pendulum has swung back, giving "well-organized" hospital and doctor groups the upper hand in negotiations with health plans.

Now, with rates rising 15% per year, employers are still unsure about what additional value and improved outcomes they receive for their money, Mr. Lee said.

Meanwhile, health care providers are looking to make up for losses they experienced in past years.

"The pattern since the mid-'90s of getting (reimbursement contracts) below the cost of living has left the providers in a very difficult position," said Greger Vigen, a principal in the Los Angeles office of William M. Mercer Inc. "That historical context has been a big factor in why they have had to have bigger increases this last year and a half."



Paul D. Winston

PHICO

Continued from page 1

Kansas insurance regulators have not placed Independence Indemnity in receivership but are examining its financial status to determine what action, if any, to take, a Kansas Insurance Department spokeswoman said. Bermuda Registrar Jeremy Cox said he is evaluating the status of PHICO Re. Pennsylvania regulators are now examining PHICO's financial position and are seeking an explanation for the sudden spike in reported losses, an insurance department spokeswoman said.

PHICO officials did not return phone calls for comment.

Licensed in all 50 states, PHICO wrote direct premiums of \$242 million last year, making it the 10th-largest U.S. malpractice insurer, with a market share of 2.9%, according to Best.

In its latest statutory financial statement, though, the insurer disclosed a massive increase in direct losses incurred, to \$221.2 million in the first half of the year from \$121.8 million for the same period last year. The first-half figure also was greater than the \$218.4 million reported for all of 2000.

The increase most likely resulted from reserve strengthening for prior years' business, market analysts say.

With net earned premiums of \$92.2 million for the first half, the underwriting losses produced a net loss of \$124.4 million at June 30, far exceeding PHICO's full-year 2000 net loss of \$37.8 million and nearly wiping out its year-end 2000 surplus of \$127.2 million.

PHICO's collapse follows nearly two decades during which it was regarded as a conservatively run, even a stodgy, company.

PHICO was formed in Pennsylvania in 1978 in the midst of a medical malpractice insurance crisis that had left hospitals in the state with few attractive insurance options. Pennsylvania has long been its main source of premium revenue, though

the percentage has dropped over the years as PHICO expanded into other states, notably Florida and Texas.

After years in which PHICO's premium volume remained relatively steady, the insurer began pushing aggressively for growth in the mid-1990s. Direct written premium volume grew from \$154.7 million in 1995 to \$271.0 million in 1999, while net written volume expanded from \$94.6 million in 1995 to \$226.1 million in 1999, Best figures show.

In 1998, PHICO launched several new operations, acquiring Skandia U.S. Insurance Co.—which it renamed Pennsylvania Casualty—to write workers comp business, acquiring Independence Indemnity to act as a surplus lines affiliate, and forming PHICO Re.

But most of PHICO's late 1990s growth came from expanded medical malpractice underwriting in new territories and the underwriting of larger, riskier accounts. That growth was occurring just as malpractice rates were dropping in a prolonged competitive market, industry analysts say.

Meanwhile, the last few years have seen a trend toward increasingly severe malpractice losses, as sympathetic juries return bigger awards against hospitals and doctors.

"It's kind of like a domino effect. Everything is coming together at once, and none of it is good," observed Matthew Coyle, a director with Standard & Poor's Corp. in New York.

Other malpractice insurers also have suffered from the trend.

For example, CNA Financial Corp. boosted reserves in its specialty operations unit by \$354 million in the second quarter of this year, mainly because of poor experience on medical malpractice business and nursing home chains with exposures in Texas and Florida, the insurer reported.

The global health care unit of the St. Paul Cos. Inc. strengthened its reserves by \$107 million in the second quarter, citing rising claims

severity on business written before 2000. The reserve increase produced an underwriting loss of \$253 million for the unit in the first half of this year, compared with a loss of \$64 million for the same period last year using generally accepted accounting principles, St. Paul reported. In response to losses on malpractice business, St. Paul is sharply increasing rates for some risks (see story, page 2).

PHICO's experience was worse, though, and had been deteriorating for some time.

During 1999, PHICO boosted its reserves for prior years' business by \$130 million. It softened the financial blow of the increase by arranging a retroactive aggregate reinsurance deal with Bermuda-based Scandinavian Reinsurance Co. Ltd. that produced a one-time reinsurance gain of \$100 million on PHICO's income statement.

Best last year downgraded the financial strength rating of PHICO Group units to B++ from A-, though, and downgraded the ratings again in April to B, citing the poor operating performance and weakening capitalization reflected in its year-end 2000 results.

Earlier this year, PHICO President and Chief Executive Officer Barry Perofsky resigned and was replaced as interim president and CEO by Constance B. Foster, a member of PHICO's board and a former Pennsylvania insurance commissioner.

Ms. Foster headed a restructuring effort at PHICO that included other management changes, a reorganization of business units and a reduction in PHICO's premium volume in certain states, according to the company's 2000 annual report.

The changes came too late, though, to avoid the wave of losses that PHICO recognized during the first six months.

"All companies nationwide have been affected" by mounting malpractice losses, Best's Mr. Roethel said. "But PHICO was definitely more severe." **BI**

Floods

Continued from page 3

rance can be attributed to the fact that floods can take on a variety of forms. The most common include torrential rainfall, river flooding, storm surge, winter ice jams and dike failures, according to Swiss Re. Although less common, flash floods, mudflows and tsunamis also can lead to large-scale flooding losses. As flood-prone areas have gradually undergone commercial development, the risk of financial loss has grown significantly.

Although businesses that aren't located adjacent to a river or other body of water may think that the potential for flood-related losses in their area is minor, Mr. Wall warned that the risk still exists. In addition, he said, the biggest financial threat from flooding is likely to be business interruption losses rather than property damage.

"People sometimes take an attitude of complacency if they're not located in a given flood region," he said.

"Sometimes you just never know when it comes to flooding," said Lucille Gallagher, a Denver-based independent risk management consultant and former risk manager. "Unfortunately, you face the same types of damages as you do with a hurricane or a tornado, but flood damages can be somewhat difficult to assess," because damage may not be as immediately apparent and catastrophic, she said.

In addition to water-related impairment, flooding can also bring unexpected damage. After heavy rains pounded Iowa and Missouri in 1993, causing flooding of the Mississippi and Missouri Rivers, many businesses were left without a potable water supply, forcing them to remain closed for extended periods of time, Ms. Gallagher said.

Furthermore, underground fuel tanks can become exposed during a flood, said Roger Clemons, assistant vp and senior engineering spe-

cialist at the Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global.

"It's very difficult to predict exactly where the borderlines of a flood plain are going to be," Mr. Clemons said. "It's not that uncommon for floods to exceed the established flood plain levels, which often leads to surprising results. Once contaminants such as oil and natural gas are involved, the cleanup becomes all that more difficult."

The best initial prevention against flood damage is to familiarize oneself about the risks at a business' given location, said John Abraham, senior vp of corporate marketing at Risk Management Solutions Inc. in Newark, Calif. A good starting point would be to examine FEMA's flood zone maps, he said.

"Obviously, businesses need to know what the flood risk is at any given location," Mr. Abraham said. "From there, the easiest place to start is flood insurance. Pursuing insurance for flooding is really the tool kit for the risk manager's pocket. With the exception of flash floods, risk managers can usually tell some time in advance that a flood is heading their way."

Risk managers still need to establish disaster response actions, however, as well as a permanent protection plan, Ms. Gallagher said. This can include contingency protection such as removing valuable equipment and placing it on higher levels, installing devices such as fixed barriers and emergency pumps, and sandbagging entrances, she said.

Because business interruption tends to be the biggest loss, companies should consider a backup site where they can resume operations if flooding damage prevents them from doing so at their regular locations, she said.

"You're going to want to make up for any loss of production in an emergency scenario, so an alternate facility is a must if it's financially feasible," Ms. Gallagher said. **BI**

EEOC

Continued from page 1

to spend an equal amount of money for younger and Medicare-eligible retirees.

At the time, benefit experts warned that such compliance, in many cases, would have disastrous consequences for retirees. Employers typically offer much richer health care benefit packages to younger retirees than they do to retirees 65 and older. That disparity is a logical design differentiation, these experts pointed out, because older retirees receive most of their medical benefits through Medicare.

Upgrading benefits for older retirees—one way to comply with the court decision and the EEOC rules—would have been prohibitively expensive for many companies. Reducing benefits for younger retirees or eliminating coverage altogether also would pass muster, but that approach would have stripped away corporate-provided health insurance benefits for millions of retirees.

"The commission has heard from a wide range of stakeholders—including employer, employee and labor groups—expressing concerns about the impact of the now-rescinded policy on the future of employer-sponsored retiree health ben-

efits," said the EEOC's new chairwoman, Cari M. Dominguez, in a written statement.

"The commission shares these concerns, and our review will focus on the development of a new policy, consistent with the ADEA, that does not discourage employers from providing this valuable benefit," Ms. Dominguez said.

The withdrawal of the EEOC retiree health care rules, which were included in the commission's compliance manual, was greeted enthusiastically by benefit experts.

"This is great news. Enforcement of the *Erie County* decision would have had dire consequences," leading to the mass terminations of retiree health care plans, said Nancy Ross, a partner with law firm McDermott, Will & Emery in Chicago.

"The EEOC wisely recognized the danger of the *Erie County* decision and how it would wreak havoc on the ability of employers to offer medical benefits to their retired workers," said Dennis Coleman, a consultant in Teaneck, N.J., with Unifi Network, a unit of PricewaterhouseCoopers L.L.P.

Amid the jubilation, though, benefit experts caution that it is not yet clear how employers can design retiree health care plans without violating the ADEA.

"To be sure, this is an important step forward, but the war is not

over. This is not the last word," said Judy Mazo, a senior vp in the Washington office of The Segal Co.

In fact, in the months ahead, while the EEOC develops new guidance, it is not yet known what kind of programs the agency will consider nondiscriminatory.

"We have to be realistic and pragmatic in our expectations of what the agency can and cannot do," said Chip Kerby, an attorney in the Washington office of William M. Mercer Inc.

Benefit experts say one approach that the EEOC could take would be to allow employers to factor in the value or cost of Medicare benefits when determining whether the health care benefits packages provided to older retirees were equal to those provided to younger retirees. Under that approach, for example, if an older retiree's Medicare coverage were valued at \$3,000 and the employer's supplementary health care policy were valued at \$2,000, that package would be regarded as equal to a health care package provided to a younger retiree that was valued at \$5,000.

While many employer-provided retiree health care plans would be considered nondiscriminatory under such an approach, it wouldn't help employers that provide rich health care benefits to retirees who are not yet eligible for Medicare but then

eliminate the coverage when those retirees turn 65. While 73% of large employers—those with at least 1,000 employees—offer health care coverage to retirees who are not yet ready for Medicare eligibility, only 62% of such employers offer the coverage to retirees who are Medicare-eligible.

While the direction the EEOC will take is not yet known, benefit experts say they hope the rules will be clear and simple.

"Don't make it so complex; don't go the Section 89 route," said Ms. Mazo, referring to health care plan nondiscrimination rules that Congress passed in 1986 and repealed three years later, amid many complaints from employers about the complexity of the rules.

Congress also could get involved in the controversy. Rep. Thomas Petri, R-Wis., last month introduced legislation, H.R. 2558, to make clear that employers can legally reduce or eliminate health care coverage when their retired workers become eligible for Medicare.

In fact, while the EEOC's rescission of its retiree health care rules removes the threat—for now, at least—of the agency filing suit against employers that offer less generous health care benefit plans to their older retirees than to their younger retirees, employers still could face legal challenges from retirees.

In addition, the 3rd Circuit ruling still stands, though benefit experts say that employers in that circuit have not made design changes to comply with that decision while they await a final resolution of the case or regulatory action. **BI**

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Power

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turn, loss control experts say.

But increased maintenance is especially necessary today, they insist, because much of the equipment is old, having been built in the 1950s, '60s, and '70s, and the chances of that equipment failing increase with time.

"These plants are getting older, and, just like an old car, they need regular maintenance," Mr. Riccardella said.

It's particularly imperative that utilities keep their own power generating equipment working because "if you have to buy power from someplace else, in a deregulated market, it's really going to cost you," said Ken Linder, assistant vp-loss prevention technical services at Industrial Risk Insurers, a Hartford, Conn.-based unit of General Electric Co.

Especially vulnerable are the steel piping and pressure vessels that contain steam used to generate electricity, according to Mr. Riccardella.

"To generate power, basically, you boil water at high pressure and run it through a turbine generator," he says.

In fact, it was the malfunction of a valve in a high-pressure system that contributed to the 1979 meltdown at Three Mile Island in Harrisburg, Pa., he said.

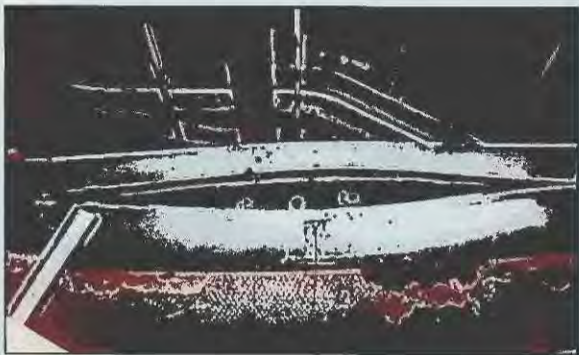


PHOTO: STRUCTURAL INTEGRITY ASSOCIATES, A SUBSIDIARY OF HSB
Power plant inspections aim to identify problems in steam pipes, such as these, which can cause potentially catastrophic shut downs.

Since Three Mile Island, the U.S. Nuclear Regulatory Commission has ordered stepped-up inspection and maintenance in nuclear power plants. Some insurers require similarly rigorous loss control measures in fossil fuel plants, Mr. Riccardella said. The piping in fossil fuel plants, which operate at higher temperatures than do nuclear plants, is susceptible to a problem known as "creep," which was brought to light by an explosion at a plant in Southern California in the mid-1980s, he noted.

"When piping is put under high pressure, it stretches a certain amount. However, at the temperatures at which fossil plant piping operates, the piping continues to stretch, or creep, over time," he said. "Because of these higher operating temperatures, there have been severe problems in fossil plants, with creep-related degradation, cracking and even explosion of their high-energy piping," he said.

Inspections are essential to keep this problem under control, Mr. Riccardella said.

"We do monitor certain systems that might be susceptible to creep," said Loren Mayer, manager of Portland General Electric's coal-fired power plant in Boardman, Ore., about 170 miles east of Portland.

Using inspection guidelines developed by EPRI, the maintenance crews at the Boardman plant measure the outside diameter of pipes to determine whether they are stretching, he said.

"And during startups, we 'listen' to the pipe. If there are cracks, we can hear them propagating," he said.

"We're doing visual, physical inspections using in-

frared technology to identify potential problems before they occur," said Jerry Rhoades, Portland General Electric's risk manager. "We also do a tremendous amount of tree trimming and line inspection."

"A year and a half ago, we changed our philosophy from being time based to being testing based," said Earl Wood, maintenance manager for the utility, which provides electricity to some 700,000 customers in Oregon. Now, when equipment is taken out of service for one test, all other applicable tests also are performed "to see if there's anything else wrong," he explained.

Such vigilant inspection efforts have paid off for the utility now that the insurance market has hardened.

"I'm thankful I can go out to the underwriting community with our story. It helped with renewals," Mr. Rhoades said.

But utilities aren't the only companies that need to boost their electrical system loss control.

Risk managers at companies that own or lease power generating equipment also need to make sure the equipment is being properly inspected and maintained.

"Large industrial companies, like steel mills, have large power needs, and most have their own power generating systems," IRI's Mr. Linder pointed out. In addition, some companies use transformers to power computer equipment, such as data processing systems.

Transformer explosions, which can be expensive because the units cost anywhere from \$100,000 to \$1 million to replace, are becoming increasingly common.

For example, a transformer exploded at the San Onofre nuclear power plant in Southern California on June 26, scattering debris and starting a small fire. A day earlier, a transformer outside Nebraska Public Power District's Cooper Nuclear Station in Brownville caught fire before dawn, knocking out power to a reactor cooling pump.

"The median age of transformers in the U.S. is about 25 years, and their normal life expectancy is 25 to 35 years," said Bill Barley, an electrical engineer at HSB in Hartford, Conn.

Dissolved gas analysis of transformer oil is the chief method used to determine whether the units are operating efficiently and safely, according to Paul Boman, TOGA program director at HSB in Topeka, Kan. TOGA is short for "transformer oil gas analyst."

In dissolved gas analysis, an oil sample is tested for the presence of potentially combustible gases. For example, the presence of acetylene "means there probably had been some arcing inside that transformer," according to Al Pierce, senior engineering specialist at Factory Mutual Insurance Co. in Norwood, Mass., which does business as FM Global.

"If the arcing continues, and it happens between a conductor and insulation and it's at too low of a level for the electrical protection—like a circuit breaker—to detect a fault," the gas inside the transformer expands and puts pressure on the sides of the tank, he said. "If this expansion occurs quickly, it will produce a hammer effect. The transformer will start shaking. It's like a pressure cooker now. It may shoot the bushings off like Scud missiles."

Sometimes the results of oil gas testing indicate the need for "increased sample frequency to watch when the parameters change inside those oil samples," Mr. Boman said. Unfortunately, transformer owners are not always willing to provide the manpower necessary to perform frequent testing, he said.

"They see it as an extra burden on their resources," he said, explaining that while it may take only 30 to 45 minutes to perform the test, travel time to and from the units can be significant.

Furthermore, to conduct the test, "you must take the unit offline for half a day per transformer," Mr. Pierce said. While "most clients take our advice and take corrective measures, the problem comes when, for business reasons, they decide not to take action," he said. **BI**

Tire suit settles as jury gets case

McALLEN, Texas—As jurors were deliberating late last week whether a recalled tire made by Bridgestone/Firestone Inc. was responsible for a crash last year that left a woman paralyzed and brain damaged, the parties in the lawsuit reached a settlement.

The decision by the federal jury in McAllen, Texas, would have been the first handed down in such lawsuits against the tiremaker and could have shaped the outcome of similar litigation. Terms of the settlement were not disclosed.

In a statement Friday, Bridge-



stone/Firestone said: "We are glad we were able to reach a resolution....As in many other cases we have resolved out of court, we see this as a reflection of the responsibility we feel for all Bridgestone/Firestone products and the people who use them."

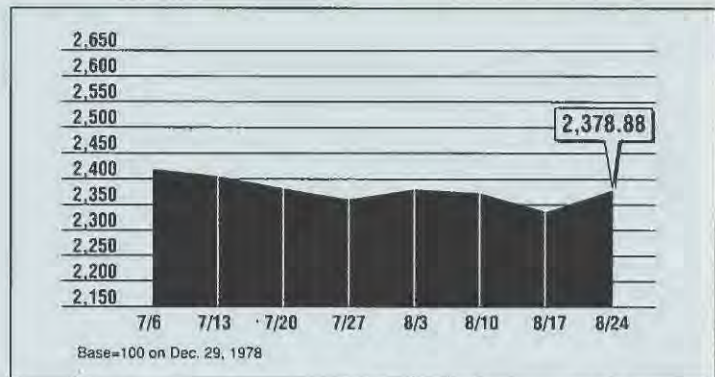
Nashville, Tenn.-based Bridgestone/Firestone has argued that crashes involving rollovers, including the one that injured the Texas woman, were caused not by the tire-

maker's product but by the Ford Explorer's tendency to roll over.

The woman was a passenger in an Explorer that rolled after a tread separation on one of its Bridgestone/Firestone-made tires. The Wilderness AT tire was manufactured in the company's Decatur, Ill., plant, which has been blamed for producing tires with defects that could cause tread separation. Last August, Bridgestone/Firestone recalled 6.5 million tires, some of which were produced at the Decatur plant.

—By Michael Bradford

BI/Stock Index - 8/24/2001



Base=100 on Dec. 29, 1978

BROKERS

		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
Aon Corp.	NYS	38.48	0.81	12.35	42.31	28.13	2776
Arthur J. Gallagher & Co.	NYS	27.44	1.55	-13.74	34.25	21.88	950
Brown & Brown	NYS	46.10	-2.27	31.71	50.69	26.25	171
Clark Bards Holdings	NDQ	25.29	-6.23	149.78	33.30	7.25	142
E.W. Blanch Holdings Inc.	NYS	13.50	0.00	-22.58	29.50	6.70	0
Hibb, Rogal & Hamilton	NYS	42.39	-8.62	6.31	48.16	33.75	333
Marsh & McLennan	NYS	99.35	4.35	-15.09	135.69	80.30	3895
Willis Group Holdings Ltd.	NYS	19.20	3.23	15.66	20.20	15.50	1754
BROKERS AVERAGE			-0.90	20.55			

INSURERS/REINSURERS

ACE Ltd.	NYS	34.32	-4.37	-19.13	43.94	31.59	5757
Accel International Corp.	NDQ	0.07	0.00	-76.42	0.59	0.06	0
Acceptance Insurance Cos.	NYS	5.53	2.41	5.33	6.94	3.70	372
AEGON N.V.	NYS	31.10	2.81	-24.95	43.00	25.92	614
AFLAC Inc.	NYS	28.15	1.37	-22.01	37.47	23.38	7385
Allmerica Financial Corp.	NYS	52.95	3.62	-26.97	74.25	46.30	850
Allstate Corp.	NYS	34.50	2.04	-20.80	45.90	28.38	13463
Ambac Financial Group	NYS	60.04	1.16	2.96	64.00	41.38	2600
American Financial Group	NYS	23.80	0.80	-10.40	30.75	18.69	306
American General	NYS	44.79	-0.49	9.91	47.44	33.66	9980
American Intl Group	NYS	77.20	-2.54	-21.67	103.75	72.64	38217
American Safety Insurance	NYS	10.00	-1.48	63.27	10.36	3.25	6
Argonaut Group	NDQ	19.00	5.20	-9.52	21.25	13.50	194
AXA-UAP Group	NYS	29.70	0.17	-17.28	39.88	24.58	1543
Baldwin & Lyons Inc.	NDQ	25.82	6.62	10.19	28.75	18.13	12
Berkley W.F. Corp.	NDQ	40.02	3.14	-15.19	48.75	22.88	484
Berkshire Hathaway Inc.	NYS	69800.00	0.87	-1.69	74600.00	53500.00	1
Capital Transamerica Corp.	NAS	16.27	-0.18	30.81	16.50	10.31	81
Chubb Corp.	NYS	69.11	0.25	-20.10	90.25	63.30	2276
Cincinnati Financial Corp.	NYS	42.13	2.16	6.49	42.92	32.56	1145
Citigroup	NYS	48.30	3.65	-5.41	59.13	39.00	57311
CNA Financial Corp.	NYS	28.78	-8.40	-25.73	41.00	28.60	3008
CNA Surety	NYS	14.05	-1.68	-1.40	14.70	10.63	65
EMC Insurance Group Inc.	NDQ	13.70	2.24	16.60	15.86	9.00	1
ESG Re Limited	NDQ	3.63	10.00	96.88	4.00	1.72	34
Everest Reinsurance	NYS	66.23	-2.19	-7.53	75.50	39.69	1504
Freemont General Corp.	NYS	6.19	-0.16	120.09	6.97	1.50	884
Gainsco Inc.	NYS	1.50	14.50	-42.86	4.25	1.10	289
Harleysville Group	NDQ	26.74	5.69	-8.58	30.63	18.52	423
HCC Insurance Holdings	NYS	25.39	1.56	-5.74	29.66	17.63	3876
ING Groep N.V.	NYS	33.65	4.70	-16.01	41.97	27.92	608
IPC Holdings Ltd.	NDQ	22.90	0.66	9.05	25.05	16.06	49
Hartford Financial Services	NYS	86.31	2.81	-6.11	80.00	53.50	3238
John Hancock Fin. Services	NYS	40.48	1.20	7.59	42.00	22.44	6200
Lincoln National	NYS	51.23	2.05	8.28	56.38	38.00	2939
Market Corp.	NYS	192.40	0.10	6.30	207.47	133.50	180
MBIA Insurance Group	NYS	56.42	-1.21	14.17	57.49	40.05	2491
Meadowbrook Insur. Group	NYS	3.15	18.87	-61.23	8.38	2.45	76
MetLife	NYS	30.40	4.43	-13.14	36.63	23.38	7319
Mutual Risk Mgmt. Ltd.	NYS	10.73	1.71	-29.35	23.56	3.40	297
Navigator Group	NDQ	19.11	-0.48	43.53	20.88	10.63	13
NYMag Inc.	NYS	20.00	-1.48	5.96	22.70	14.00	70
Ohio Casualty Corp.	NDQ	13.85	2.37	38.50	14.34	6.13	802
Old Republic Intl	NYS	28.14	1.70	-12.06	32.06	21.25	1751
Partner Re Ltd.	NYS	50.30	1.55	-17.54	62.50	39.31	754
Penn-America Group Inc.	NYS	10.10	-0.98	32.46	10.60	6.69	35
PMA Capital Corporation	NDQ	18.20	0.61	5.51	18.94	15.19	73
Philadelphia Cons. Holding	NDQ	32.39	-7.83	4.91	37.50	16.38	262
ProAssurance	NYS	17.00	-4.23	1.87	19.25	11.63	127
PXRE Corp.	NYS	16.70	-1.76	-1.04	20.10	12.56	44
RenaissanceRe Holdings Ltd.	NYS	73.42	3.02	-6.25	84.19	46.56	449
RLI Corp.	NYS	44.30	4.11	-0.87	46.16	37.44	23
St. Paul Cos.	NYS	43.95	-0.36	-19.08	57.00	39.58	6074
SCOR	NYS	44.85	-2.92	-10.75	53.75	40.50	17
SAFECO Corp.	NDQ	30.40	1.00	-7.53	35.88	21.50	1900
SCPIE Holdings Inc.	NYS	21.16	0.57	-10.43	31.40	17.78	NA
Seibels Bruce Group	NDQ	2.66	0.76	372.89	3.25	0.55	13
Selective Ins. Group	NDQ	26.49	0.72	9.24	28.22	15.25	260
Tokio Marine & Fire	NDQ	52.59	7.77	-7.74	58.25	45.10	181
Torchmark Corp.	NYS	43.05	1.29	12.00	43.10	26.31	1124
Transatlantic Holdings	NYS	74.83	-0.52	6.02	84.16	56.33	61
Trenwick Group Ltd.	NYS	14.95	-1.64	-39.75	27.13	14.50	675
Unico American Corp.	NDQ	6.40	1.59	8.94	7.75	5.27	6
United Fire & Casualty	NDQ	28.89	-0.38	46.28	34.52	16.19	26
Unitrin	NYS	38.95	3.67	-4.12	41.94	29.13	208
UNUM Corp.	NYS	28.55	2.81	6.23	33.75	19.25	2995
Vesta Insurance Co.	NYS	10.26	9.15	102.67	11.95	4.25	796
XL Capital Ltd.	NYS	78.40	-1.16	-10.27	89.25	64.63	1484
Zenith National Ins.	NYS	29.70	2.06	1.11	30.70	20.00	60
INSURERS/REINSURERS AVERAGE			1.52	6.51			

MANAGED CARE ORGANIZATIONS

Aetna Inc.	NYS	30.00	11.11	-26.94	42.69	23.02	4630
CIGNA Corp.	NYS	90.07	-0.11	-31.92	136.75	86.48	2483
Health Net Inc.	NYS	18.71	2.41	-28.55	26.94	15.56	2953
Humana Inc.	NYS	12.00	10.60	-21.31	15.81	7.94	6213
Oxford Health Plans	NYS	28.14	1.70	-28.76	32.06	21.25	1751
Pacificare Health Sys.	NDQ	14.70	-10.53	-2.00	56.13	9.81	2529
Sierra Health Services	NYS	10.20	3.66	168.42	10.98	2.50	1162
United Health Group	NYS	68.11	3.79	10.97	68.75	44.63	6771
Wellpoint Health Networks	NYS	106.98	3.74	-7.18	121.50	81.06	2875
MANAGED CARE ORGANIZATIONS AVERAGE			2.93	3.64			
ALL COMPANIES			1.19	10.23			

Top advancing issues: Meadowbrook Insurance Group, Gainsco Inc., Aetna Inc. Leading decliners: Pacificare Health System, Hibb, Rogal & Hamilton, CNA Financial Corp. Most active issues: Citigroup. The BI Index rose 1.81%, the Dow Jones 30 Industrials rose 1.78%, the S&P 500 rose 1.98%, and the NYSE Composite increased 1.57%. Average P/E: Brokers, 24.68%; Insurers/reinsurers, 21.46%; and managed care companies, 18.31%.

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