AUGUST 6, 2001

Business Insurance®

www.businessinsurance.com $4 / Entire contents copyright © 2001 by Crain Communications Inc. All rights reserved.

UPDATES

Insurers' asbestos exposure may be overstated: S&P

NEW YORK—The recent surge of new asbestos claims may hurt insurers less than some analysts have predicted, though the losses will amount to $20 billion or more and will lead to some insurer rating downgrades, says Standard & Poor's Corp.

The study was released one day before insurers CNA Financial Corp. and American Financial Group Inc. revealed expanded as-

See **Updates** on next page

D&O allocation upheld

6th Circuit ruling boosts protection for execs

By DAVE LENCKUS

CINCINNATI—In a ruling could maximize directors and officers liability coverage for corporate executives, a federal appellate court has reaffirmed a pro-policyholder method of allocating liability between insured individuals and uninsured corporate entities.

The 3-0 ruling last month by a panel of the 6th U.S. Circuit Court of Appeals in Cincinnati also sanctions a common corporate practice of indemnifying officers and then recovering from their D&O insurers.

Attorneys disagree, though, over whether the ruling will benefit policyholders or insurers in the long run.

The 1991 D&O liability policy in the case involves coverage that is narrower than that provided under policies written since 1995. Before 1995, when D&O insurers lost a string of high-profile coverage disputes, directors and officers liability policies did not cover corporate entities for their D&O liabilities. As a result, insurers attempted to reduce executives' indemnification by a portion of the loss for which the executives' corporate entities were liable.

The underlying loss in the 6th Circuit case also was not subject to a 1995 federal law that eliminated joint and several liability in many types of securities lawsuits unless the defendants knowingly violated securities laws.

The case centers on a one-year D&O policy that Toledo, Ohio-based Owens Corning purchased in March 1991 from National Union Fire Insurance Co. of Pittsburgh, Pa., a subsidiary of New York-based American International Group Inc.

In October 1991, some Owens Corning shareholders charged in a class-action lawsuit that the company and six directors and officers had misled investors since 1988 about the company's future financial exposure to asbestos claims.

National Union refused to defend and indemnify the executives, who settled the shareholders' suit in 1995 for nearly $10 million.

A few months later, Owens Corning, which indemnified the executives, sued National Union in federal court in Toledo. The case has since moved between a district court and the 6th Circuit.

On July 5, the 6th Circuit panel upheld the district court's 1999 ruling that Owens Corning,

See **D&O** on page 11

PHOTO: AP/WIDE WORLD

Rep. Charles Norwood, R-Ga., and President Bush announce a compromise on liability provisions in the House patient protection bill.

Compromise on liability advances bill

By MARK A. HOFMANN

WASHINGTON—Although a patient protection bill passed last week by the House of Representatives would not expand liability for health care coverage decisions as much as its Senate counterpart would, the measure still goes too far for the liking of many employers.

The vote came Thursday night after President Bush and Rep. Charles Norwood, R-Ga.—a retired dentist who has been pushing a patients' bill of rights for six years—announced that they had reached agreement on how far to expand the liability of health care plans—and, in some cases, the employers that sponsor them—for coverage decisions. That compromise was offered as an amendment to H.R. 2563, the Bipartisan Patient Protection Act, and the final version of the bill won House approval by a 226-203 vote.

But the patient protection controversy does not end with the House vote. House and Senate leaders must appoint a conference committee to work out differences between each chamber's measure. The result could be an inversion of what happened in 1999, when the Senate approved a measure that did not expand plan or employer liability and the House approved a much broader bill. Conferees could not agree on a compromise, and the measure died.

The Senate and House measures do have some elements in common. For example,

See **Rights** on page 21

Bill would expand, extend '96 law

Mental health parity mandate

By JERRY GEISEL

WASHINGTON—Legislation that would require most employers to offer the same coverage in their health care plans for mental disorders as they provide for other physical ailments is headed to the Senate floor.

Last week, the Senate Health, Education and Pensions Committee, on a 21-0 vote, approved the mental health care benefits parity measure, which would expand a soon-to-expire 1996 federal law. Washington observers say the overwhelming vote virtually assures the measure's ultimate passage in Congress.

The measure "really ends the discrimination. We should treat this illness as any other illness," said Sen. Paul Wellstone, D-Minn. Sen. Wellstone and Sen. Pete Domenici, R-N.M., along with another six Republicans and five Democrats, were original co-sponsors of the bill; as of late last week, more than 50 senators had become co-sponsors.

The 1996 law, which expires on Sept. 30, already bars employers from imposing discriminatory annual and lifetime dollar limits for mental disorders. But the law still permits employers to provide less generous benefits for mental health care services than for other physical illnesses by such practices as capping the number of visits to therapists and clinics or requiring higher deductibles or copayments for mental health care.

For example, the 1996 law permits an employer to cap the number of annual visits to a psychiatrist at 20 per year and to require a beneficiary to pay 50% of a therapist's charges for a session, while imposing no such comparable limits for visits to doctors for the treatment of other physical problems.

"We very much need a full-parity law," said Russ Newman, the executive director of the professional practice directorate of the American Psychological Assn. in Washington.

The Domenici-Wellstone legislation, S. 543, would do just that. Under the legislation, known as the Mental Health Equitable Treatment Act of 2001, the coverage provided by a group health care plan for mental health benefits and for medical and surgical benefits would have to be equal. Similarly, an employer could not limit the number of inpatient days or outpatient visits for the treatment of mental disorders if it did not impose the same limits

See **Parity** on page 22

To Subscribe Call
1-888-446-1422 in the U.S. or
1-313-446-0450 outside the U.S. or
go online to www.businessinsurance.com

NEWSPAPER

03

New coverage for teachers killed on the job page 3

Swiss Re purchase of Lincoln Re to boost reach page 3

INSIDE

- Workers compensation insurers could face greater liability for bad faith following a California court decision involving an insurer's reserving practices. PAGE 4

- A new bill in the House of Representatives would make clear that federal age discrimination law does not bar employers from offering less-generous health care benefits to Medicare-eligible retirees than they give to younger retirees. PAGE 6

- The Equal Employment Opportunity Commission has wisely stopped following the controversial Erie County decision, to the relief of many employers. The agency now must make permanent its moratorium on that policy, this week's editorial says. PAGE 8.

- Risk managers in Chile have launched a new professional organization, the Asociacion Chilena de Administradores de Riesgos y Seguros. PAGE 17

- A plan to overhaul U.K. company law that would increase public scrutiny of companies is raising some concerns for risk managers. PAGE 17

- A U.K. law firm is preparing five cases against airlines on behalf of individuals who claim to have suffered a circulatory condition stemming from long-distance flights. PAGE 17

DEPARTMENTS

Advertiser Index.................... 22
Ask a Casualty Actuary 12
Classifieds 18
Commentary 21
Global Briefs 17
Insurance Services Guide 16
International 17
Legal Briefs 14
Letters 8
Opinions 8
Ticker 23

Business Insurance (ISSN 0007-6864) Vol. 35, No. 32, is published weekly by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to *Business Insurance*, Circulation Department, 965 E. Jefferson Ave., Detroit, Mich. 48207. $4 a copy and $95 a year in U.S. $114 in Canada and Mexico (includes GST). All other countries $215 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 0293512, GST No. 136760444. Printed in U.S.A. Copyright © 2001 by Crain Communications Inc.

UPDATES

Continued from previous page

bestos liabilities, which prompted S&P to place its ratings for both companies under review. The rating agency's report stated that property/casualty insurers' exposure to new asbestos liabilities has been overestimated, in part because of the nature of the new claims. Many of the new claimants may have been exposed to asbestos but have not yet become ill, and "since the validity of these claims has yet to be established, (S&P) believes the current loss estimates might be overstated," the New York-based rating agency said. Although industry analysts—including A.M. Best Co.—have estimated that insurers are underreserved by $20 billion to $40 billion for asbestos losses, S&P predicts the shortfall will likely be at the lower end of that range. The industry will probably boost its asbestos reserves by $5 billion to $10 billion this year and will still maintain strong levels of capital and financial flexibility, S&P said. Some insurers will have to make large reserve additions, and their exposure could result in rating downgrades. S&P said, though, that it expects the number of such insurers to be small and that they will likely be able to handle the losses. Chicago-based CNA last week boosted its reserves by $778 million for asbestos, environmental and mass tort claims, which contributed to a first-half loss of $1.47 billion. Cincinnati-based American Financial Group said it was reviewing the adequacy of its reserves for asbestos liabilities after seeing a surge in claims.

PHOTO: AP/WIDE WORLD

General Electric Co. will spend hundreds of millions of dollars to dredge part of the Hudson River under an EPA cleanup order.

HUDSON RIVER CLEANUP The Environmental Protection Agency will order General Electric Co. to spend hundreds of millions of dollars to dredge a portion of the Hudson River to clean up polychlorinated biphenyls, or PCBs, legally dumped in the river during a 30-year period that ended in 1977. The EPA began circulating a draft proposal for the dredging, which could involve digging up as many as 2.65 million cubic yards of material. Even before the EPA made the decision official, GE said in a statement it was "disappointed" in the decision to dredge, which it predicted would "cause more harm than good." GE has already spent about $200 million in "research and restoration" of the river over the past 20 years, which has led to what it called a "remarkable improvement" to the waterway. GE sued the EPA last November over the constitutionality of a portion of the law that established the Superfund program (*BI*, Dec. 18, 2000). That lawsuit was filed only days before the EPA announced preliminary plans to force GE to pay for the dredging.

NCQA QUALITY COMPASS The National Committee for Quality Assurance is releasing its latest version of Quality Compass to help benefit managers select and manage health plans. The organization also has introduced HealthChoices Health Portal, a new online resource that employers can use to deliver to their employees customized benefits information, provider directories, health plan accreditation statistics and tips for self-care on specific illnesses and conditions. Quality Compass was developed to provide comprehensive information about health plan quality and performance. For example, this year's edition—the sixth produced by the NCQA—features performance data such as immunization and mammography rates and satisfaction survey results from 273 health plans that collectively cover about 63.3 million people. It also includes plan-specific data on health plan performance in controlling high blood pressure, chlamydia screening, and the use of appropriate medications for people with asthma. For more information or to view a demo of HealthChoices HP, visit *www.ncqa.org*.

CAT RISK SECURITIZATION Zurich Financial Services Group Inc. has completed a nearly $161.9 million risk-linked securities deal, providing the company with protection against U.S. hurricane and earthquake exposures and European windstorm losses. The private placement went through Switzerland-based Zurich Financial Services' Zurich Re unit. Trinom Ltd., a Bermuda-based special-purpose company, issued the securities, which include both notes and preference shares and which have an initial maturity of three years. The coverage backed by the securities is based on modeled losses on a notional Zurich Re portfolio, structured to match a specific book of the company's East Coast hurricane, California earthquake and European windstorm exposures. Zurich Re was responsible for structuring the deal and managing the project, with Morgan Stanley and Aon Capital Markets serving as lead underwriters. Applied Insurance Research Inc. provided the risk modeling and risk analysis on the deal.

'CATCH-UP' GUIDANCE The Treasury Department expects to publish guidance next month to help employers comply with a key but loosely written provision in the new tax law that will allow older employees to make "catch-up" contributions to their 401(k) plans, the department's top benefit official said last week. That is welcome news for employers, which have been anxiously awaiting word from federal regulators on when guidance on catch-up contributions would be coming and how extensive that guidance would be. Under the new tax law, employees age 50 and older will be able, starting next year, to make an additional $1,000 in catch-up contributions to 401(k) plans. That amount will rise in annual $1,000 increments until the maximum annual catch-up contribution reaches $5,000 in 2006. But employers and plan administrators have raised numerous questions about the provision's implementation. Guidance, for example, is needed on whether an employee can make the catch-up contribution at any time during the plan year in which he or she turns 50 or only after the employee turns 50.

LIQUIDATION AGENCY REPORT Poor management and inadequate oversight plague California's Conservation and Liquidation Office, according to a report by the state's Bureau of State Auditor. As a result, the agency fails to adequately protect failed insurers' assets, the report states. The CLO supervises troubled insurers. The report, released last week, blames the problems on the state's Department of Insurance, which oversees the CLO. "The department has allowed the CLO to continue its poor management practices by failing to properly oversee its activities," auditors found. In one instance, the CLO spent at least $6 million of insurer money on a claims processing system that does not meet the CLO's needs, the report says. Auditors also criticized the CLO's investment decisions and its procedure for awarding contracts to outside service providers. In one case, it overpaid a contractor by $43,000, the report notes. The report also points out that other audits in 1994 and 1996 came to similar conclusions, but steps were not taken to make improvements. The audit report can be found at *www.bsa.gov.ca*.

CLEANUP COST CAP Chubb Corp. has introduced an environmental remediation cost-cap coverage that offers up to $100 million in limits. The policy will cover cleanup costs that exceed a self-insured retention, which typically is set at 10% above estimated cleanup costs. The coverage is aimed at potentially responsible parties of Superfund sites, as well as owners of sites that are not known to be contaminated, said Michael J. Murphy, president of the New York-based Environmental Solutions division of Chubb Financial Solutions Inc. The coverage could be used to help settle cleanup disputes and to facilitate mergers and acquisitions involving environmental cleanup liabilities, Mr. Murphy said.

BRIEFLY NOTED Teresa L. Pahl has been named chief executive officer of e-Nable Corp., a Westwood, Mass.-based Internet-based insurance solutions provider. Previously, Ms. Pahl was president and CEO of Incent Inc., a technology provider to the financial services industry. Prior to joining Incent in 2000, Ms. Pahl was an executive vp for Aon Corp. in Chicago....The Senate Commerce Committee Thursday rejected Mary Gall, President Bush's nominee to head the **Consumer Product Safety Commission**, on a party-line vote. Ms. Gall, a current CPSC member, had come under fire from consumer groups for allegedly following an overly pro-business regulatory philosophy....John Barton, chairman of the London-based broker **Jardine Lloyd Thompson Group P.L.C.**, will retire at the end of the year. Mr. Barton will be replaced by Chief Executive Ken Carter. Steve McGill, currently JLT's deputy chief executive, will succeed Mr. Carter as chief executive....The Paris-based Organization for Economic Cooperation and Development did not publish on July 31 its **list of uncooperative tax havens**, as was planned. The OECD said the publication date has been pushed back because negotiations are continuing with some of the 35 jurisdictions it identified last June as having "harmful" tax practices. The report will likely be published on Nov. 30, according to the OECD....Acting New Jersey Gov. Donald DiFrancesco signed a bill Monday giving state residents the **right to sue health maintenance organizations** for medical malpractice. New Jersey is the 10th state to enact such a law, and several dozen more are considering similar legislation....Carol Barton has been promoted to senior vp of commercial lines at **Factory Mutual Insurance Co.** Previously, Ms. Barton was vp of commercial property at the Johnston, R.I.-based highly protected risk insurer, which does business as FM Global. **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.

Teacher's murder a catalyst for coverage

PHOTO: GETTY

Nathaniel Brazill demonstrates during his murder trial how he held the gun used to fatally shoot his teacher, Barry Grunow, in 2000.

By SALLY ROBERTS

Following several school shootings around the country, the National Education Assn., the nation's largest teacher union, and the state of Florida are offering insurance benefits to the survivors of teachers who are killed on the job.

The Washington-based NEA announced in July that it added a special "unlawful homicide" provision to the existing accidental death and dismemberment benefit that it has offered NEA members since the 1980s. Under the new provision, if an eligible member becomes a victim of homicide in the course of his or her employment, the policy payout increases to $150,000 from $50,000.

Also in July, the Florida Legislature enacted a law that will provide, among other benefits, $75,000 to the beneficiary or heirs of a teacher or administrator who is killed while on the job. Although the law says the program will be funded from the state's general revenue fund, there is some uncertainty as to how the money would be paid out.

That law is memorialized as the "Barry Grunow Act." Mr. Grunow, a teacher at Lake Worth Middle School in Lake Worth, Fla., was shot and killed by 13-year-old student Nathaniel Brazill on the last day of classes in 2000. Mr. Brazill was sentenced late last month to 28 years in prison for the murder.

Industry executives familiar with "homicide insurance" say that the recent actions taken by the NEA and the state of Florida are positive in light of all-too-familiar incidents of school violence around the country. They point out, though, that while the possibility of a teacher or administrator being shot and killed at school is real, it remains highly unlikely.

But individual school districts are beginning to look into the purchase of homicide insurance for teachers and administrators as an additional benefit on top of those offered by the union and, in the case of Florida, the

See **Homicide** on page 23

Chapter 11 hits risk exec

Owens Corning manager describes increased challenges

By RODD ZOLKOS

CHICAGO—Managing a company's risks is challenging in the best of times. When that company is in financial distress, the task becomes even more daunting for its risk manager, who assumes additional roles.

Discussing his experiences with his company's reorganization under Chapter 11 federal bankruptcy protection, Raymond Bennett of Toledo, Ohio-based Owens Corning noted that the company's financial position affected its risk management program in several ways.

Mr. Bennett, global risk manager at Owens Corning, discussed "Managing Risk in the Context of Distress" last month at the Third Annual Global Risk Management Summit in Chicago.

Faced with an overwhelming volume of asbestos-related liability claims, Owens Corning filed for Chapter 11 protection last October.

Mr. Bennett said that among the consequences of the filing was an audit of Owens Corning's risk management program. The bankruptcy filing also affected claims filings and payment obligations, as well as the continuity of the overall program, he said.

"The auditing of the risk management program was actually a pretty enlightening exercise," Mr. Bennett said.

That audit included an examination of complete copies of all current Owens Corning insurance policies and of summaries of all policies for the prior 10 years. Ultimately, Mr. Bennett said, the audit concluded that the company's program was "world class."

The Chapter 11 filing also created additional administrative chores for the risk management department. Owens Corning had to send notices about the filing to all of its claimants, including those with workers compensation, automobile liability and general liability claims, Mr. Bennett noted.

Mr. Bennett said that maintaining ongoing risk management efforts during this time also is important for the company. "One of the things we didn't want to do was stop work and just work on Chapter 11." Instead, the risk management department continued to stress the maintenance of its existing relationships and to set new goals for itself.

One key goal this year has been to prevent incurring any additional costs of risk. Mr. Bennett noted that there are several big barriers to achieving that goal.

One obstacle is that the Chapter 11 filing eliminated the company's access to some insurance

See **Distress** on page 19

40 speakers slated for *BI* event

Forum to tackle work comp topics

By MEG FLETCHER

SAN DIEGO—Sharing innovative ideas to better control workers compensation and disability management costs is all the more important to employers as market conditions harden, according to presenters of the upcoming *Business Insurance* Workers Compensation & Disability Management Conference.

THE NINTH ANNUAL **Business Insurance** WORKERS COMPENSATION AND DISABILITY MANAGEMENT CONFERENCE

The 40 conference speakers—a diverse group of leading risk and disability benefits managers, loss control specialists, actuaries, attorneys and consultants from private industry as well as the Occupational Safety and Health Administration—will share their insights and suggestions about how employers can better survive this challenging time.

The ninth annual event, which is presented in conjunction with International Business Forum of Rockville Centre, N.Y., will be held Oct. 22-24 at the Coronado Island Marriott Resort in San Diego.

The conference also will present an extensive update on legislative and legal trends that may create new liabilities for employers.

Conference topics were chosen and developed with the help of nearly two dozen members of an advisory board, which is chaired by Jeffrey W. Pettegrew, vp-insurance and risk management at Westaff in Walnut Creek, Calif.

Preceding the formal conference is an annual Employers' Private Roundtable, a popular event at which employer representatives can candidly discuss pressing problems and seek advice from their colleagues. Moderating the roundtable will be Kathryn J. McIntyre, vp/publishing director of *Business Insurance*. She co-chairs the conference along with Martin J. Ross III, *BI*'s vp/publisher, and Meg Fletcher, a senior editor.

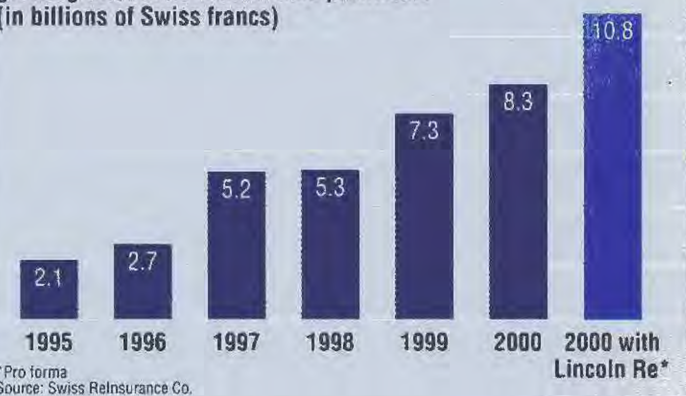
The conference is presented with assistance from IBF President and Chief Executive Officer Alexandra Scott and IBF Vp Jennifer Fauci.

The interactive spirit of the roundtable is encouraged throughout the conference, as attendees are invited to ask questions and seek advice on

See **Conference** on page 23

Great expectations

Lincoln Re is expected to boost Swiss Re's already growing life/health reinsurance premiums (in billions of Swiss francs)



GRAPHIC BY ADAM DOI

Lincoln Re buy would boost scale of Swiss Re book

By EDWIN UNSWORTH and RODD ZOLKOS

ZURICH, Switzerland—Swiss Reinsurance Co. stands to strengthen its position in the U.S. life/health reinsurance sector and to further diversify its portfolio with its proposed acquisition of Lincoln Re.

Zurich, Switzerland-based Swiss Re is paying Lincoln National Corp. $2 billion for its Fort Wayne, Ind.-based Lincoln Re unit. Lincoln Re, which had a premium volume of $1.45 billion in 2000, is the second-largest U.S. life reinsurer, with an 11% market share. The merger, expected to close by the fourth quarter, will boost Swiss Re's lead in the U.S. life sector by increasing its share of the market to 29% from 18%, Swiss Re said.

Jacques E. Dubois, deputy chief executive officer of Swiss Re's life and health division and chairman of Stamford, Conn.-based Swiss Re Life & Health America Inc., with which Lincoln Re will be merged, said clients will benefit from the increased "capital and knowledge" in the enlarged unit.

Lincoln Re, Mr. Dubois explained, will lend its expertise with regard to factors crucial to life and health business, such as mortality and longevity.

In addition, he pointed out, there is little overlap in the companies' major client bases. And Swiss Re, he noted, is underrepresented in the U.S. life market, which the purchase of Lincoln Re will correct.

Steven Bolland, senior vp at reinsurance intermediary Gill & Roeser Inc. in New York, said the obvious rationale behind the takeover is to enable Swiss Re to diversify its reinsurance book.

"There's only so much property and casualty you can write before you start getting into conflicts with

See **Swiss Re** on page 22

Court upholds bad faith claim over reserving

By ROBERTO CENICEROS

LOS ANGELES—Workers compensation insurers could face expanded liability for bad faith following a recent California appeals court decision that upheld the damages awarded to a policyholder that challenged its insurer's reserving practices.

The dispute arises from a lawsuit alleging that, in the late 1980s, Republic Indemnity Co. of America improperly set claims reserves for the plaintiff policyholder and mishandled its claims to avoid paying dividends to the policyholder.

Republic, which plans to appeal the decision to the state Supreme Court, contends that not only did it do nothing wrong but also that juries need more guidance when deciding cases involving complex issues such as reserving.

The California Workers Compensation Institute, an insurer-supported research organization that filed an amicus brief in support of Republic, agrees. The institute warns that allowing policyholders to bring such disputes in court, rather than resolving them through regulatory channels, could drive up workers comp premiums.

The July 23 decision by the Second Appellate District of the California Court of Appeal upholds a 1999 jury award to Lance Camper Manufacturing Corp. The jury awarded $6.3 million—including $4.6 million in punitive damages—for bad faith and breach of contract by Republic.

The Lancaster, Calif.-based manufacturer of camper tops for pickup trucks purchased workers comp coverage from Republic for three and one-half years, beginning Sept. 5, 1986. In its lawsuit, Lance Camper charged that Republic improperly overreserved for Lance Camper's claims, which drove up its premiums and reduced its dividends.

The policyholder charged that claims reserve changes often were made just before dividend calculation dates to preclude the payment of dividends. In other instances, they charge, the changes took place weeks or months after the scheduled dividend calculation date.

According to the appellate decision, in one such instance a Republic claims manager increased reserves to $104,000 from $33,000 for a claim. The increase not only exceeded the manager's authority to increase case reserves but also occurred just days after a scheduled dividend calculation date. That reserve increase resulted in the cancellation of a "substantial" dividend check, Lance Camper charged. The cancellation came after Republic had already authorized a broker to notify Lance Camper that the check would be available, and Republic had to void a check that had already been prepared.

The decision also said that reserves for settled claims often "were not promptly addressed and conveniently lingered until after the dividend calculation date." Republic's overreserving cost Lance Camper $636,000 in lost dividends and $51,000 in increased premiums, according to the policyholder's lawsuit.

Lance Camper also charged that Republic improperly charged hidden fees for some claims. The court found that Republic had a practice, undisclosed to policyholders, of adding a $2,500 expense charge for each claim that remained open after a policy period expired. The amount was then multiplied by a "loss conversion factor."

According to the decision of the appeals court, the insurer had no written procedure or "set policy" for setting reserve amounts.

While Republic's board of directors had responsibility for making decisions regarding policyholder dividend payments, the minutes of the board's meetings revealed that it never discussed the issue; instead, according to court papers, senior staff made the dividend decisions.

"Basically, they ignored their corporate bylaws," said Howard M. Jaffe, a partner at Mahoney, Coppenrath & Jaffe in Los Angeles who represented Lance Camper.

Encino, Calif.-based Republic Indemnity, a unit of American Financial Group Inc., disputes many of the court's findings. The appeals court uncritically accepted the plaintiff's allegations but did not fully appreciate the insurer's arguments, said Laurel Thurston, Republic's senior counsel.

Republic plans to appeal the ruling to the California Supreme Court, Ms. Thurston said.

In doing so, she said, Republic also will ask the Supreme Court to establish a standard for juries

See **Bad faith** *on page 19*

ERRORS & OMISSIONS

• Due to an editing error, a story in the July 30 issue attributed information on the survival ratio of Equitas Ltd. to a statement from Lloyd's of London. The information came from Equitas.

• Due to an editing error, the directory listing for BB&T Insurance Services Inc. in the July 16 issue misspelled the names of Walter S. Robertson III, BB&T's chief insurance sales and marketing executive officer; and David M. Pruett, chief administrative officer.

Responsive service. Regional expertise. National resources. Pick any three.

That's a tall order.

Lincoln Financial Group has formed one talented employer stop-loss affiliate.

What does a championship driver need in a pit crew? Resourcefulness. Experience. Responsiveness. In other words, the same qualities you would love to have in a stop-loss insurance provider. The resources of a national company. The experience of being an early entrant to the employer stop-loss market. And the responsiveness that can only come from a thorough understanding of the regulations and local needs of your region.

Introducing Lincoln Re Risk Management Services, Inc. (Lincoln Re Risk Management).

We created Lincoln Re Risk Management by combining the resources of a steadfast carrier with vast underwriting experience and advanced industry technology. This powerful combination has united financial strength, employer stop-loss insurance expertise and regional focus in one convenient source.

In Abraham Lincoln's day, stovepipe hats were worn not just on special occasions but for everyday use.

As employees of the Lincoln family, our marketing managers and underwriters are empowered to quickly make underwriting decisions on behalf of the carrier. And because our carriers are sister Lincoln companies, our regional offices have direct access to resources that can help your clients make the best product and medical insurance decisions.

Giving self insurers the power to succeed.

Self insurance can be risky business. Working with an inexperienced underwriter and an uncommitted carrier can be detrimental. Lincoln Re Risk Management offers the stability and products your clients want and the service you both deserve.

Lincoln Financial Group is the marketing name of Lincoln National Corporation and its affiliates.

The excess loss insurance policy is issued by Lincoln National Reassurance Company in Washington and Lincoln National Health and Casualty Insurance Company (LNH&C) in all other states upon approval. LNH&C is a separate entity and is responsible for its financial condition and contractual obligations.

Lincoln Re Risk Management Services, Inc. does business as Underwriters & Management Services, Inc. in AR; as Underwriters & Management Insurance Services, Inc. in CA; and as UMS in NV.

Form # RACEAD 7/01

THE POWER TO PROSPER.℠

Lincoln Re Risk Management

A member of Lincoln Financial Group

www.LincolnRe.com

© 2001 Lincoln National Reassurance Co. All rights reserved.

Bill targets Erie County case

Bill would limit employer liability for retiree benefit variances

By JERRY GEISEL

WASHINGTON—Employers could provide less-generous health care benefits to Medicare-eligible retirees than they give younger retirees without running afoul of federal age discrimination law, under newly introduced federal legislation.

The measure, H.R. 2558, introduced by Rep. Thomas Petri, R-Wis., would make clear that employers would not violate the Age Discrimination in Employment Act if they were to reduce or eliminate health care coverage for retired workers when those individuals become eligible for Medicare at age 65. Employers would be safe cutting those benefits even if they continued to provide coverage to younger retirees.

The Petri bill effectively would overturn the August 2000 federal appeals court decision in *Erie County Retirees Assn. et al. vs. County of Erie, Pa., et al.*—a decision that sent shock waves through the employer community by expanding the ADEA to cover retirees as well as active employees. In the *Erie County* decision, the 3rd U.S. Circuit Court of Appeals ruled that the ADEA requires employers to compare health care benefits provided to retirees under the age 65 to those afforded Medicare-eligible retirees.

As a result of the 3rd Circuit ruling, to prove that its health care program is not discriminatory, an employer would have to show either that the benefits provided to older and younger retirees were equal or that the costs to provide the benefits are equal (*BI*, Aug. 14, 2000).

Many employers' plans currently do not meet either test. Some employers, because of the availability of Medicare, drop coverage when retirees turn 65, while others offer lesser benefits to older retirees.

After the ruling, the Equal Employment Opportunity Commission, the federal agency that enforces ADEA, incorporated the decision in its compliance manual. The EEOC then filed discrimination charges against several employers, mainly school districts in Wisconsin.

But in the wake of pressure from employers and organized labor, the EEOC has dropped those charges and is reviewing its enforcement policy on retiree health care plans (*BI*, July 30). The EEOC says it will not file any more charges against employers while it conducts its policy review.

Although the EEOC's decision to review its policy is welcome, it does not resolve the problem created by the appeals court ruling, a spokesman for Rep. Petri said.

Employers still could be exposed to suits filed by individual retirees, the spokesman said.

A legislative solution still is needed, the spokesman said. Wisconsin school boards sought Rep. Petri's assistance, the spokesman noted.

Others concur that federal legislation may be needed to address the issue.

Referring to the EEOC's authority in working with the ADEA, employer attorney Nancy Ross, a partner with McDermott, Will & Emery in Chicago, said, "Regulators are not empowered to make law, only to execute and implement it."

Some benefit experts concede that while Congress may not have intended for ADEA to apply to retiree health care plans, the statute may do just that because of imprecise language.

Other benefit experts, however, hope the matter can be resolved without legislation. "We would prefer to deal with this as a regulatory issue," said Mark Ugoretz, president of the ERISA Industry Committee, a Washington-based benefits lobbying group representing large employers.

In all likelihood, Congress will not act on the Petri measure while the EEOC is reviewing its policy, said Frank McArdle, a consultant with Hewitt Associates L.L.C. in Washington. BI

Court questions racial assumptions

By JUDY GREENWALD

SAN FRANCISCO—An Arizona police department may have been guilty of discrimination when it incorrectly assumed a missing auto accident victim was a Native American and then allegedly launched an ineffectual search for him.

A 9th U.S. Circuit Court of Appeals panel ruled 3-0 on July 26 that while the victim was Caucasian, the city of Page and its police department may have violated his constitutional equal protection rights after he apparently stumbled away from the scene of an auto accident and perished in the desert.

The victim, Burton Walter Amos, was driving from Glendale, Ariz., near Phoenix to visit his father in Salt Lake City in October 1996 when his car crossed the center line of a highway near Page in northern Arizona. The car collided with an oncoming vehicle.

Police officers found blood in Mr. Amos' car and a set of tracks leading into the desert. The tracks indicated that the person who made them was "running or jogging, stumbling and kneeling, and going in circles," according to the decision.

Mr. Amos may have fallen asleep while driving and then left the car in confusion after the accident to seek help, said Jamie McAlister, the Phoenix attorney who represents Mr. Amos' estate.

The police cut short their search, though, when their flashlights lost power and a police helicopter pilot became concerned about flying around nearby power lines.

The search resumed more than a month later and only after Mr. Amos' father contacted Page police about his son's whereabouts.

European tourists visiting the area found the victim's remains three years later.

Page's city attorney later told an attorney for the elder Mr. Amos that Page police

See **Court** on page 21

Eleventh World Captive and alternative risk financing FORUM

Betting On The Future

produced by
Business Insurance SINSER Tillinghast-Towers Perrin

Mark Your Calendar...

World Captive Forum
November 12 to 14, 2001
PGA National Resort & Spa, Palm Beach Gardens, Florida

PRELIMINARY SCHEDULE SUMMARY

Monday, November 12
Golf Tournament and Golfer's Luncheon
Conference Registration
The Benchmark Course/Captive Developments or New Ideas Roundtable
Welcome Reception with Exhibitors

Tuesday, November 13
Continental Breakfast
Keynote Address: Betting on the Future with David Hale, Chief Global Economist, Zurich Financial Services, Inc., Chicago
Employee Benefits or Investments
Buffet Luncheon
Healthcare or E-Commerce
Rent-a-Captives or Capital (In)Adequacy
Dinner and Entertainment

Wednesday, November 14
Continental Breakfast
Captive Case Studies
Reinsurance or Financing Business Risks
Buffet Luncheon

2001 WORLD CAPTIVE FORUM FEES

$2,750.00	Exhibit Booth (Includes Booth Space and 1st Exhibitor Registration)
$750.00	2nd and 3rd Exhibitor Registration
$975.00	Risk Manager Registration
$1,250.00	Non-Risk Manager Registration
$150.00	Spouse/Guest Registration
$200.00	Golf Tournament Fee

INTERESTED IN SPONSORSHIP AND EXHIBIT OPPORTUNITIES?
Contact the World Captive Forum office:
4248 Park Glen Road, Minneapolis, MN 55416
Phone: 952.928.4659 Fax: 952.929.1318

For a complete brochure and registration materials, please visit:
www.captive.com/CaptiveForum

Space Limited to the First 300 Registrants

This is your health plan's
idea of simplicity. And you expect
them to streamline costs?

Carry all
9!

Most health plans are made up of disparate pieces from multiple vendors. And that not only makes things more complicated, it makes things more expensive. But there is a more effective option. A health plan offering with one national network, one integrated system and services that deliver savings, efficiencies and choice. **First Health.** If your company is looking to carve out unnecessary costs, it's the only tool you need.

OPINIONS

Keep bad policy on hold

SHOULD FEDERAL REGULATORS set national enforcement policy that affects all retiree health care plans on the basis of a federal appeals court decision that flies in the face of congressional intent?

Common sense would dictate no, but that is exactly what the Equal Employment Opportunity Commission, the federal agency charged with enforcing the Age Discrimination in Employment Act, did last year. Fortunately for employers, though, the EEOC is reconsidering its move and has put its policy on hold and dropped enforcement actions begun against several employers.

We hope that the EEOC, after a careful review, will make permanent its suspension of enforcement of the new policy, to the relief of employers that commonly offer benefit levels to retirees that differ in accordance with an individual retiree's eligibility for Medicare benefits. If the EEOC does not, then Congress must step in with legislation that explicitly permits employers to take Medicare into account when providing benefits to older retirees.

This problem has its origins in a controversial ruling last year by the 3rd U.S. Circuit Court of Appeals in *Erie County Retirees Assn. et al. vs. County of Erie, Pa.*, which held that the ADEA permits lawsuits against employers for alleged age discrimination in connection with retiree health care plans. That ruling stunned the benefits community, which had been operating under the assumption that while the equity requirements of the ADEA must be met when providing benefits to younger and older active employees, they do not apply to the benefits offered under retiree health care plans.

Even more stunning, though, is that federal regulators promptly incorporated this decision into their enforcement policy.

Two months after the *Erie County* decision, the EEOC revised its compliance manual to say that it would consider it an ADEA violation for an employer either to spend amounts for the health care coverage for a Medicare-eligible retiree and a younger retiree that are not equal or to provide the two with unequal benefits.

Putting the new language in its compliance manual was more than an academic exercise, though. The EEOC soon began to investigate and charge employers—initially several Wisconsin public school districts whose health care plans offered lesser benefits to Medicare-eligible retirees—with age discrimination.

But now the EEOC has backed off, much to the relief of employers across the country. As we recently reported, the EEOC will drop its charges against employers whose health care plans ran afoul of the appeals court ruling in the *Erie County* case. Perhaps more significantly, the EEOC said it would review the enforcement guidance it adopted in the wake of the court decision.

We commend the EEOC for halting its misguided actions and hope that its moratorium on the enforcement of the revised policy is made permanent. We don't know whether the agency instituted its review because it began to question the soundness of its policy or because it started to heed warnings that Congress might get involved. Whatever the reason, the EEOC's action is appropriate. One incongruous court decision shouldn't be the basis of a federal agency's nationwide policy, especially when, as many benefit experts contend, congressional intent dictated a different interpretation.

"WE'VE DECIDED TO ENROLL HIM IN A BEHAVIOR MODIFICATION CLASS!!!"

We hope that the EEOC, during its review process, will develop new guidance that allows an employer to factor in Medicare coverage when meeting ADEA equity requirements in the provision of benefits to younger and older retirees.

The EEOC has a chance to correct its mistaken policy and provide common-sense guidance to employers. If it does not, Congress should make clear that reducing health care benefits for Medicare-eligible retirees is perfectly legal.

LETTERS

Union plans an honest alternative

To the editor: Ever since the Clinton administration told us we could find other jobs, the attack on health insurance agents has been relentless.

Although the great health insurance "reform" the Clintons threatened never came to pass, state and federal mandates have forced many health insurance companies out of the market. Market conditions in the health insurance industry have deteriorated to the point where choices are severely limited for agents as well as for the American worker.

Many health insurance agents have been forced to seek other sources of revenue. Some have gone as far as to get involved with multilevel discount health programs and/or legal services.

With all of this in mind, I anticipated a good response when I e-mailed a number of health insurance agents invitations to represent our union and present our unique and innovative benefits to employees of businesses of all sizes. While I received an overall favorable response, there were a few agents who immediately started yelling "MEWA" or "scam" as soon as they saw the word "union."

There have been some unions in the past that were established for the purpose of circumventing state laws and offering cheap health plans. Many agents gathered their sick and uninsurable clients and put them into those plans. When those plans failed, everybody got hurt.

Historically, though, union health and welfare plans have provided benefits to more than one-third of America's workers at times. In fact, there would be no health insurance industry if labor unions had not negotiated with employers to offer such

See **Letters** *on page 22*

Business Insurance® www.businessinsurance.com

Vice President/Publisher Martin J. Ross III (New York)
Vice President/Publishing Director Kathryn J. McIntyre, A.R.M. (*Chicago*)

Editor: Paul D. Winston (*Chicago*)
Editor-at-Large: Jerry Geisel (*Washington*)
Managing Editor: Regis J. Coccia (*Chicago*)
Assistant Managing Editor - Graphics: Kathy L. Barnes (*Chicago*)
Assistant Managing Editor - News: Gavin Souter (*New York*)
Senior Editors: Meg Fletcher, A.R.M. (*Chicago*), Judy Greenwald (*San Jose*), Mark A. Hofmann (*Washington*), Dave Lenckus (*Tucson*), Douglas McLeod (*New York*), Joanne Wojcik (*Denver*), Rodd Zolkos (*Chicago*)
Bureau Chiefs: Roberto Ceniceros (*Los Angeles*), Edwin Unsworth (*London*)
Associate Editors: Michael Bradford (*New Orleans*), Michael Prince (*New York*), Sally Roberts (*Denver*), Sarah Veysey (*London*)
Copy Desk Chief: Matt Scroggins (*Chicago*)
Copy Editors: Mary B. Nick (*Chicago*), Joe Walker (*Chicago*)
Directory Editor: Kevin P. Edison (*Chicago*)
Assistant Directory Editor: Michel Schwartz (*Chicago*)
Assistant Graphics/Online Editor: Amy R. Kepka (*Chicago*)
Assistant to the Publishing Director: Karen Brown Tucker (*Chicago*)
Editorial Cartoonist: Roger Schillerstrom (*Chicago*)

Editorial interns: Kate Williams (*Chicago*), Curtis Wong (*New York*)

Advertising Director: Kenneth F. Luker Jr. (*New York*)
Midwest Advertising Manager: Robert L. Niesse (*Chicago*)
District Managers: Chris Crain (*New York*), Lori Lieberman (*Los Angeles*), Robert B. Murray (*New York*), John L. Phillips (*Chicago*), Jennifer Powers (*Boston*)
Classified Advertising Manager: Irais Amleshi (*Chicago*)
Assistant to the Publisher: Pat Ghazvini (*New York*)
Advertising Traffic: Stephanie Cress (*New York*)
Production Manager: Cheryl Magiera (*Chicago*)

Director of Communications: Ronnie I. Drachman (*New York*)
Promotion Coordinator: Barbara O'Brien (*New York*)

EDITORIAL: Chicago: 312-649-5398; Denver: 303-698-7601; London: 207-457-1400; Los Angeles: 323-370-2455; New Orleans: 504-364-1908; New York: 212-210-0100; San Jose: 408-774-1500; Tucson: 520-579-1937; Washington: 202-662-7200
ADVERTISING: Boston: 617-292-4856; Chicago: 312-649-5276; New York: 212-210-0228; Los Angeles: 323-370-2456
COMMUNICATIONS: New York: 212-210-0132
SUBSCRIPTIONS: Detroit: 888-446-1422

Business Insurance is published by Crain Communications Inc.
Keith E. Crain - Chairman; Rance Crain - President
Merrilee Crain - Secretary; Mary Kay Crain - Treasurer
William A. Morrow Executive Vice President/Operations
Gloria Scoby Senior Vice President/Group Publisher
Robert C. Adams Group Vice President/Technology, Circulation, Manufacturing
Peter Johnson Vice President/Circulation
Dave Kamis Corporate Director/Production & Manufacturing

G.D.Crain Jr. Founder (1885-1973)
Mrs. G.D. Crain Jr. Chairman (1911-1996)
S.R. Bernstein Chairman-executive committee (1907-1993)

Published weekly at 360 N. Michigan Ave., Chicago, Ill. 60601-3806, Fax 312-280-3174, E-mail: biweb@crain.com, Offices: 711 Third Ave., New York, N.Y. 10017-5806, Fax 212-210-0704, CRAIN COM NYK; 473 Fairfield Ave., Gretna, LA 70056, Fax 504-364-1337; Suite 814, National Press Building, Washington, D.C. 20045-1801, Fax 202-638-3155; 6500 Wilshire Blvd., Suite 2300 Los Angeles, Calif. 90048- 4947, Fax 323-655-8157; 967 Bermuda Court, Sunnyvale, Calif. 94086-6750, Fax 408-774-1155; New Garden House, 78 Hatton Garden, London EC1N 8LD England, Fax 207-457-1440; 8157 N. Torrey Way, Tucson, Ariz. 85743, Fax 520-579-3476; 777 E. Speer Blvd., Denver, Colo. 80203-4214; Fax 303-733-2244. $4 a copy and $95 a year in U.S. $114 in Canada and Mexico (includes GST). All other countries $215 a year (includes expedited air delivery). Don Mierendorf, circulation manager. Four weeks' notice required for change of address. Send subscription correspondence to Circulation Department, Business Insurance, 965 E. Jefferson Ave., Detroit, Mich., 48207-3185, or phone 888-446-1422 or 313-446-0450, Fax 313-446-6777. Microfilm copies available: University Microfilms, 300 Zeeb Road, Ann Arbor, Mich. 48013. Microfiche copies: Bell & Howell, Micro Photo Division, Old Mansfield Road, Wooster, Ohio 44691. Portions of the editorial content of this issue are available for reprint or reproduction in other media. For reprints or reprint permission: KAREN BROWN TUCKER, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806, 312-649-5319, Fax 312-280-3174.

TO SUBSCRIBE CALL 888-446-1422 · 313-446-0450 outside of the United States

We don't have to be on this call to know how important it is to you.

Someone you've never spoken to before called and made your day today. How? By starting the conversation with a name of one of your customers and the words, "You come highly recommended." **We understand what it takes to be a successful agent. And that makes us a smarter insurance partner.**

INSURANCE IN TOUCH WITH BUSINESS

For more information, visit www.cna.com

CNA is a service mark and trade name of the CNA Financial Corporation. Copyright 2000-2001. All rights reserved.

Study contradicts medical mistakes death figure

By MICHAEL ROMANO
Crain News Service

A new study is touching off renewed debate about a vexing issue that has preoccupied the health care community for the past two years: the annual death toll from medical errors in U.S. hospitals.

But instead of continued hand-wringing over "body counts" from medical mistakes, the provider community should instead focus squarely on maintaining its momentum in patient-safety initiatives, health care safety experts contend.

The new study, which examined patient deaths at seven Veterans' Affairs hospitals, suggests the oft-cited medical-error statistics in a landmark 1999 Institute of Medicine Report are "probably unreliable" and "misleading."

The new report implies that the number of preventable deaths attributable to medical errors is anywhere from 5,000 to 15,000—far below the widely publicized 44,000 to 98,000 figures in the IOM's 1999 report "To Err is Human," which received so much national attention.

"The hospital field's focus all along has been working to improve patient safety," said Carmela Coyle, senior vp for policy at the American Hospital Assn. "There may have been questions about the numbers, but the issue and the need to focus on improved patient safety remains."

The study, which appeared in the July 25 issue of the Journal of the American Medical Association, contends that medical errors are to blame for only two to three patient deaths per 10,000 hospital admissions. That's well below previous estimates that placed the number of patient deaths related to medical errors at about 15 or more per 10,000 admissions, said Dr. Rodney A. Hayward, director for outcomes research at the Ann Arbor VA Health Care System in Ann Arbor, Mich., and co-author of the JAMA study.

"We're not contradicting (reports) that errors are common—the study confirms that," Dr. Hayward said. "(But) it suggests that the number of deaths due to errors, at least (those identified through chart review) have been overestimated."

Dr. Lucian Leape, an adjunct professor at the Harvard School of Public Health in Cambridge, Mass., who helped write the 217-page IOM report, criticized the JAMA survey, saying it was based on an uncharacteristic group and a tiny sample—just 111 patient deaths between 1995 and 1996.

"Most of us have stopped trying to count bodies," Dr. Leape said. "The (IOM) report has galvanized a growing effort in the health care system to reduce medical errors. And that job seems to be flourishing. The answer to this problem is not to know exact numbers—it's to know what the problems are and how to solve them."

Dr. Richard Cook, a member of the board of directors for the Chicago-based National Patient Safety Foundation, said the commitment of his group and others to patient safety "is not going to be changed because of one article or another."

"The foundation has never been focused on trying to establish numbers—we've never thought that was a particularly productive way to address the issue," he said.

Dr. Hayward's study concludes that 6% of the patients would have lived if they had received optimal care, but that only about one-half of one percent would have lived another three months or more in good health.

"As a consumer, I would be interested in knowing what the hospital's safety record is, and what is the likelihood that a serious error will occur," said Janet Corrigan, director of the board on health care services for the IOM, "regardless whether the life expectancy was three months, six months or six years."

•

Copies of the July 25 report, "Estimating Hospital Deaths Due to Medical Errors—Preventability is in the Eye of the Reviewer," can be ordered from the JAMA Web site at: http://jama.ama-assn.org/issues/v286n4/toc.html

Business Insurance®

• SERVICES •

REPRINT SERVICES

BI's Reprint Department can provide reprints, in quantities of 100 or more, of any article that has appeared in the magazine. Legal permission complying with U.S. copyright laws also can be provided to companies that seek to reprint, on their own, materials that have appeared in the magazine. For information, please call or fax:
Phone: 312-649-5319
Fax: 312-280-3174

ARTICLE FAX SERVICE

For article photocopies sent by fax on the same day, please telephone and provide the *BI* issue date, the article headline and credit card information. The charge is $10.00 per copy, per article. In-publication directories are not available by fax. For article photocopies, please call:
Phone: 312-649-5329

Utilization Management
Effective 5/29/01-5/29/03

202.216.9010 • www.urac.org

D&O

Continued from page 1

which filed for reorganization under bankruptcy law last year, did not have to allocate any portion of its settlement and defense costs to the uninsured corporate entity.

The appeals court applied the so-called "larger settlement" rule in determining how to allocate liability for the $10 million settlement. Under that rule, insurers may allocate a portion of a settlement or judgment to uninsured defendants only if their misdeeds inflated the settlement or judgment.

National Union asked the court to apply the so-called "relative exposure" rule, which would have required the court to apportion a certain percentage of liability to each insured and uninsured defendant.

The 6th Circuit cited various court decisions and "ambiguous" wording in the Owens Corning policy as support for its ruling. The policy did not state which rule would apply and required only that the insurer and policyholder use their "best efforts" to reach a fair allocation.

The appeals court rejected National Union's argument that Owens Corning drove up the costs of the shareholders' case by settling to avoid bad publicity and low employee morale.

The court ruled that the motives of the company and its executives were identical, which means their liabilities were concurrent. Other courts, including the 9th Circuit, also have ruled previously that insurers must pass the "larger settlement" test and show that defendants' liabilities are not concurrent before insurers may allocate a portion of a covered D&O loss to uninsured parties.

In another setback for National Union, the 6th Circuit determined that Owens Corning complied with Delaware statutes that govern how a company may indemnify its executives for their D&O liability losses and then recover the losses from the executives' D&O insurer. Owens Corning, like many other companies, is incorporated in Delaware.

National Union argued that Owens Corning violated state statute by presuming, without investigating, that its executives had acted in good faith.

The court ruled that Delaware statutes allow companies to make such presumptions. National Union still could have challenged whether the executives acted in good faith but did not make any specific allegation on appeal, the court noted.

Owens Corning attorney Mitchell F. Dolin, a partner with Covington & Burling in Washington, said the 6th Circuit "applied well-settled legal principles and held the nation's most prominent D&O carrier to its contractual obligations."

National Union attorney H. Frederick Humbracht Jr. of Boult, Cummings, Conners & Berry of Nashville, Tenn., could not be reached.

Attorneys say that a few coverage disputes involving pre-1995 D&O policies are wending their way through the courts but that the influence of the 6th Circuit's ruling likely will not be limited to those cases.

Insurer attorney Dan A. Bailey, a partner with Arter & Hadden L.L.P of Columbus, Ohio, said the ruling would be beneficial to insurers in the long run.

In ruling that the "best effort" allocation provision in National Union's D&O policy was unclear, the court suggested it would have applied the "relative exposure" allocation rule had the policy clearly imposed the rule, he said. For coverage claims unrelated to underlying securities litigation, most D&O policies require allocations based on the "relative exposure" test, he said.

In addition, the Private Securities Litigation Reform Act of 1995, which did not apply to the policy in the 6th Circuit case, "eviscerates the larger settlement rule" by requiring each defendant to bear its share of liability for a loss, Mr. Bailey said.

Mr. Bailey noted that the three federal appellate court decisions in 1995 that led the market to develop coverage for corporate entities did not address the ambiguous policy language issue or the 1995 reform act.

> *The 6th Circuit Court of Appeals 'applied well-settled legal principles and held the nation's most prominent D&O carrier to its contractual obligations.'*
>
> *— Mitchell F. Dolin*
> *Covington & Burling*

But policyholder attorney Carolyn Rosenberg, a partner with Sachnoff & Weaver Ltd. of Chicago, called the decision "a very positive ruling" for policyholders. It affirms the use of the "larger settlement" rule for determining allocations absent explicit policy language to the contrary.

Although most D&O policies now provide entity coverage for securities claims, the 6th Circuit's ruling is "still helpful, because there still are a variety of other claims" for which insurers may attempt to allocate liability, Ms. Rosenberg said.

According to the "2000 D&O Liability Survey" by Tillinghast-Towers Perrin in Chicago, at least 24% of D&O claims last year would have been subject to allocation.

Policies treat allocation for those liabilities in a variety of ways, some of which are not explicit, Ms. Rosenberg said.

Regarding how the ruling may affect cases involving policies governed by the 1995 securities reform act, Ms. Rosenberg said that courts still would have to apply insurance policy language and other case-specific facts in each dispute. She noted that no court "has made a hard and fast determination" of how the 1995 act would affect coverage.

Another wild card for policyholders is the D&O market's new effort to reintroduce at least predetermined allocations for securities-related losses (*BI*, July 2).

•

Owens Corning vs. National Union Fire Insurance Co. of Pittsburgh, Pa., 6th U.S. Circuit Court of Appeals; No. 99-4275, July 5, 2001.

At PHCS, we've always been proud of the quality of our medical management services. And now we're being recognized for it. With our recent certification from NCQA, we're the first PPO to have earned both NCQA certification and URAC accreditation for medical management. This accomplishment underscores our commitment to setting the quality standards for PPOs nationwide. As accreditation becomes a more critical element in the PPO evaluation process, our high quality standards will allow you to choose PHCS with confidence. So call 1-866-750-7427 or visit www.phcs.com today, and see how we can put the proven quality of PHCS to work for you.

PHCS PRIVATE HEALTHCARE SYSTEMS ®

ASK A BENEFIT ACTUARY

Actuarial projections take long-term view

Q: Why do actuaries always come up with such high numbers?

A: I am personally aware of many situations where different consulting actuaries, including myself, have provided estimates that later proved to be too low. This awareness makes me less inclined to think all actuarial projections of reserves and rates are biased on the high side.

On the other hand, as in any profession, there is a wide variation among actuaries in terms of the degree of conservatism (or absence thereof) in the projections they provide. Some have a tendency generally to take a pessimistic view of how things may turn out.

Your opinion could be due to a difference in perspective between clients and consultants. A consultant's experience is with a broad range of clients, including those for which the ultimate losses have turned out both higher and lower than their projections. Clients' experiences, either good or bad, are with their own programs.

Those with only good experience usually wonder how the consultant could justify putting in a provision for the possibility of bad experience, since they haven't seen that in their own data. Those with bad experience are less inclined to criticize actuaries for high projections, though they might if they believe that one bad year of experience was a fluke.

Many factors influence an actuary's selection of ultimate loss numbers, and most of these tend to push the numbers higher.

Although claims history may not show any large losses in recent years, the actuary generally puts in a provision for a large loss or bad overall year once every five, 10 or 20 years or so, depending on the chances of a large loss occurring. Obviously, it is not humanly possible to pinpoint in advance which year is going to develop into a particularly bad one. Therefore, the actuary's goal is one of being correct over the longer term, rather than trying to pinpoint exact losses in advance each year. This also has the beneficial result of smooth loss projections, rather than ones that bounce around substantially each year.

For instance, suppose claims history reflects losses of around $2 million for each of the last five years, with the exception of one year that had losses of $3.5 million. For the next few years, it would be perfectly reasonable for the actuary to include a provision of a portion of that $1.5 million in extra losses (say one-fifth, or $300,000). If the pattern stays the same, the actuarial projection would develop downward by $300,000 for four out of five years. However, for one out of those five years, the projection would develop upwards by $1.2 million. By including a provision for large losses each year, total reserves include a cushion to provide for the year that develops adversely.

As touched on earlier, there is an understandable tendency of clients to view a large loss as a fluke. In contrast, actuaries are likely to see that large loss as something more likely to happen sooner or later. From a client perspective, future large losses may be viewed as being controllable—maybe there are plans to implement a loss control program or to defend claims more aggressively. Thus, the chances of large losses in the future are often viewed in an optimistic light.

An actuary, who deals with a much larger current database of claims, has heard these positive forecasts repeatedly. Yet, as time goes by, the actuary will often see large losses or adverse overall years continue to emerge, regardless of the best efforts of management. An actuary must use a certain level of skepticism in evaluating management projections, until data emerges to support them. For this reason, an actuary will generally be more cautious about how favorable future loss levels might be than a claims manager or administrator.

Until a sufficient database of claims has built up in the claims history, an actuary will be reluctant to give full weight to the organization's data, considering it too sparse to be an accurate predictor of costs.

A claims manager may be thinking, "We won't have any claims larger than $150,000, because that's the largest one we had in the past." One problem with this assumption is that it ignores the effects of inflation. Even with the current low level of interest and inflation rates, loss cost trends play a major factor in the projection of future claims severities. Beyond simple Consumer Price Index comparisons, loss cost trends are affected by medical inflation, changes in litigiousness, changes in claims handling and a host of other factors. Anytime past claims costs are analyzed in relation to current costs, the effects of loss cost trends must be factored in. If that $150,000 loss occurred 10 years ago, today it might be a $300,000 loss—given 7% inflation in claims costs per year.

The other problem with this thinking is that the size of the largest claim of the recent past is subject to tremendous variation—so that using it as a basis for a forecast of the size of future large losses is highly unreliable.

An organization may see a favorable trend in loss rates emerging and want this emphasized in future funding rate selections. The actuary, however, is concerned that this recent trend could be merely the result of good luck in the most recent years or could be caused by decreases in case reserve adequacy, more slowly emerging losses, or other complex factors.

In addition, the provision for incurred but not reported losses—IBNR—for the most current years must be much larger than that for earlier years. The observed favorable trend could be caused by nothing more than inadequate IBNR provision for the most recent past years. For these reasons, the actuary generally is cautious about using newly emerging trends heavily in the projections and may tend to take a longer term average.

Several components go into an actuary's projections of reserves:

- Case reserves, or the total of claim-specific reserves.
- Adverse development on case reserves. Although most cases develop downward, a few large claims generally turn out to be much worse than expected. In fact, the adverse development on these few claims often outweighs the positive development on the rest.
- True IBNR. These are reserves for claims for which the loss has been experienced but for one reason or another the claim hasn't been reported yet.
- Reopened claims. Often, an actuary will include IBNR reserves for an older year for which all claims have been closed. This is because for certain lines of business, most commonly workers compensation, it is common for claims to reopen—sometimes years after they were originally settled.
- Unallocated loss adjustment expenses. Reserves for the general expenses incurred during settlement of claims, such as claims adjuster salaries, office rent, overhead and so forth.

A risk manager's opinion regarding adequate reserve levels or ultimate losses may have been formed with consideration of only some of these components, rather than of all five.

For some previous years, the client may assume that no more loss development is possible—and therefore that no more reserves are necessary. However, the actuary may turn to evidence from outside sources regarding the length of time during which claims may continue to develop. Ignoring the potential of old claims to develop could lead not only to inadequate reserves but to future inadequacy in funding rates. Assumptions regarding additional development beyond what is included in current data are incorporated into what is known as a tail factor. It is not a popular concept but one that is often appropriate.

Credibility may be a problem for organizations with a small claims database. Until a sufficient database of claims has built up in the claims history, an actuary will be reluctant to give full weight to the organization's data, considering it too sparse to be an accurate predictor of future costs. This is another case where the actuary will turn to outside sources or industry data. Often, using industry data will result in higher projected losses than using the organization's past data. However, this may be because the organization's losses are simply too immature to have experienced that inevitable large loss yet. Industry data will have the average large loss for that type of business factored in.

Actuarial estimates may be stated at a confidence level well above expected. If reserves are stated at a 75% confidence level, they were provided with the explicit goal of being high enough that they will develop downward three times out of four. Higher confidence levels are especially important when evaluating self-insurance funds or loss sharing pools, which may not have significant surplus set aside to absorb adverse deviations from expected. If such a pool is funded based on expected loss estimates rather than estimates at a higher confidence level, its current-year funding would be short approximately half the time.

Another potential source of difference in perspective is the "savings on closure" fallacy. An organization may have an average savings on closure of 20%—in other words, cases are settled for an average of 20% percent less than their final reserve. Yet, the actuary may indicate that those reserves are deficient. The problem is that the 20% statistic doesn't look at reserves over the life of the claim. Those redundant reserves are often set up just before settlement. If one compares initial reserve to final cost, or average reserve over the life of the claim to final cost, the answer is often that the reserves were deficient much of the time that the claim was open.

An actuary is in the difficult position of having to prepare unbiased estimates without being influenced by the many conflicting priorities with which he or she is surrounded. I am reminded of an

See **Actuarial** on page 14

Agent / Broker Topics

A monthly editorial section sent exclusively to agents, brokers and consultants

Inside:

Debate continues on chartering page 12B

Privacy issues gain attention page 12D

CIAB aims to help benefits brokers page 12F

Agent legislator honored page 12G

AAMGA interns get career boost page 12H

Broker lands fishing promotion page 12H

Debate over federal chartering continues

Each side says any change to the current system is still a few years away

By MARK A. HOFMANN

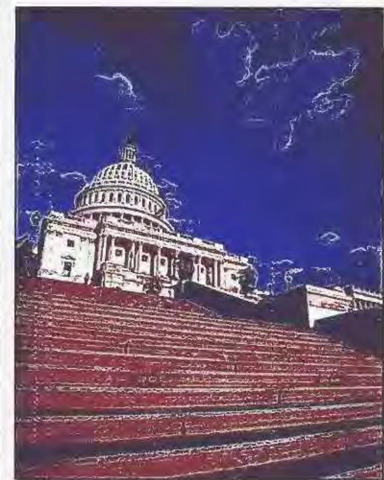
When it comes to insurance regulatory reform, it's all a matter of timing.

For supporters of the American Insurance Assn.'s recent proposal for optional federal chartering of property/casualty insurers, "too little, too late" describes the efforts of state insurance regulators to modernize the system of state oversight. Advocates of an expanded federal insurance regulatory role maintain that the states have had more than enough time to standardize the often patchwork system of state regulations; now, they say, it's up to Congress to act.

But supporters of continued state-only regulation of insurance say that the response to the AIA proposal is "too much, too soon." While they acknowledge that state regulation has its shortcomings, they say that regulators have made great strides in improving the process and Congress must provide sufficient time for them to finish the job.

Supporters of an enhanced federal role freely admit that change won't come overnight. AIA President Robert E. Vagley said at a press briefing late last month that he expected the process to take at least three to five years.

But the House Financial Services Committee has already commenced hearings on various aspects of insurance regulation. In fact, the chairman of the committee's subcommittee on capital markets, insurance and government-sponsored enterprises said months ago that he would like to start discussing optional federal insurer chartering as early as this fall. The chairman, Rep. Richard Baker, R-La., also made clear that he has drafted no legislation and wants only to talk about the issue, at least for the time being.



But the AIA proposal is the third such proposal to emerge in recent months; both the American Bankers Insurance Assn. and the American Council of Life Insurers have released proposals that apply to their segments of the insurance industry. The AIA proposal is the first aimed specifically at the regulation of property/casualty underwriters.

The AIA proposal would create a system of optional federal chartering for property/casualty insurers, overseen by a federal insurance chartering director based in the Treasury Department. That director would serve a six-year term and would have the power to establish chartering standards, including capital and surplus requirements based on a risk-based capital formula. He or she would have financial examination authority and could establish investment limitations and holding company requirements. The director also could promulgate rules on unfair claims and marketing practices consistent with Internet developments, conduct market examinations and levy fines.

An insurer that operates under a federal charter could write all lines of property/casualty business in any state without state rate and form regulation, and it would not have to file rates and forms with the federal regulator to get prior approval. Such insurers would not enjoy antitrust protection for rates, though, except for those set for participation in residual markets. Antitrust protection would remain in place for the development, dissemination and use of standard policy forms. In addition, not all insurers within a single holding company would have to choose the same type of chartering.

States would not be allowed to discriminate against federally chartered insurers. The proposal would pre-empt state laws that pertain to rate and form regulation, insurer licensing, solvency and market conduct. State law would also be pre-empted to the extent that it permit-

See Charter on page 12D

[Why risk it when you can CCBsure?]

If you have technology clients or prospects, it makes sense to have an insurance provider that speaks their language. For more than a decade, the CCBsure insurance program has been helping agents and brokers insure technology businesses and technology businesses alone. Over 5,000 across the country right now, in fact. For Property, Liability, E&O, Workers' Compensation, D&O, 3rd Party Fidelity and EPLI that is specifically designed for technology companies, there's really only one safe alternative to risking it. CCBsure.

For a free broker information kit, call 1.800.336.5659 today or visit us at www.ccbsure.com.

© 2001, ISG International, Inc.

CCBsure®
THE TECHNOLOGY INSURANCE EXPERTS

Nobody can fault your good intentions. After all, the Smiths wanted to save some money. And their house wasn't in a floodplain.

So it didn't seem necessary for them to buy flood insurance.

That was fine with the Smiths. Until they lost everything in a flood. And you had to tell them their homeowner's policy didn't cover their loss.

Fact is, a flood can happen anywhere. In the past few years, they've hit all 50 states. And nearly one-fourth of all flood insurance claims came from areas no one considered high risk.

Don't chance losing your clients' trust or facing Errors and Omissions exposure just to save them a few dollars. Because for around $100 a year, depending on location and coverage, you can offer your clients the peace of mind that comes with National Flood Insurance.

We've made offering it easy and rewarding. And we'll support you with everything from advertising and leads to flood maps that help you determine risk zones and premium rates.

Find out more about the National Flood Insurance Program. It's the way to help your clients save for a really rainy day.

TO LEARN MORE, CALL NOW
1 (888) 356-6339
www.floodalert.fema.gov

NATIONAL FLOOD INSURANCE PROGRAM℠

FEMA's National Flood Insurance Program—working with Project Impact to build disaster-resistant communities.

© 2000 Federal Emergency Management Agency National Flood Insurance Program

Charter

Continued from page 12B

ted a private right of action based on marketing activities regulated by the federal government.

State laws regarding residual market participation, mandatory reparation requirements, fees, taxes and guaranty funds would otherwise remain intact. State law would also remain unchanged with respect to agent licensing and the National Assn. of Registered Agents and Brokers provision of the Gramm-Leach-Bliley Act. Finally, state law would remain unchanged with respect to an insurer's state of incorporation—which would be considered the state of domicile for premium tax and retaliatory tax purposes.

Insurers that chose to remain state-chartered would retain all current protections under the McCarran-Ferguson Act of 1945.

The Kansas City, Mo.-based National Assn. of Insurance Commissioners responded calmly but firmly to the AIA proposal. "NAIC members recognize that change is needed and have embarked on a national drive to bring greater uniformity, uniform application, efficiency and effectiveness to state insurance regulation. This is the process we began in March 2000, following unanimous NAIC adoption of the Statement of Intent" on complying with the financial modernization law, the NAIC said in a statement last month.

"Despite the AIA's actions, our focus will not change, nor will we yield our mission of safeguarding consumers across the country, knowing that they are and will continue to be well served by the states. Our goal is creating a 21st-century regulatory system that not only makes it easier for companies to get products to market and gives consumers more choices but also enhances the protection of the very policyholders we are charged with looking out for," said the NAIC.

Nor does the Alexandria, Va.-based Independent Insurance Agents of America Inc. support the AIA's federal charter proposal.

"While we recognize that there are legitimate (insurance) company concerns that need to be addressed, we strongly believe that those concerns can be fixed through the state-based regulatory system," said Maria Berthoud, senior vp-federal affairs for the IIAA in Washington. The IIAA wants to "find a middle ground to help fix the state-based system, not dismantle it," she said.

> *'The NAIC set out in their first year that uniformity and reciprocity are important issues. How long has that organization been around? About 130 years.'*
>
> *— Ken Crerar, CIAB*

Jack Ramirez, the president of the Des Plaines, Ill.-based National Assn. of Independent Insurers, said his group remains committed to state regulation—which he believes is best for consumers and for a competitive marketplace—and opposes "federal encroachment." The NAII also believes that state regulation need to be modernized, he said. The fact that state regulators have admitted that regulation needs to be improved is significant, he said.

"We think Congress needs to give ample time for the states to do that. What is ample time? That's debatable. It's a matter of years, not months," Mr. Ramirez said. "We think the emphasis should be to give them adequate time."

Mr. Ramirez noted that the Gramm-Leach-Bliley Act gave the states three years to adopt producer licensing reciprocity laws to avoid the imposition of a federally mandated National Assn. of Registered Agents and Brokers.

As far as Ken Crerar, the president of the Council of Insurance Agents & Brokers is concerned, states have had ample time. "Let's look at our best example of regulatory reform, which we know well, which is licensing. The NAIC set out in their first year that uniformity and reciprocity are important issues. How long has that organization been around? About 130 years," he said.

"They don't have the power or control to change it. The control and power rests with the legislatures, and there's no reason for state legislatures to respond. Why did they respond on NARAB? Because there was a threat—the federal government had a huge club over their head," Mr. Crerar said.

The executive director of the Albany, N.Y.-based National Conference of Insurance Legislators disagrees. In fact, Bob Mackin pointed to the states' quick response in passing reciprocity legislation as proof that the states can do the job.

"I think the states did one hell of a job to get that done—that speaks for itself. We won that one—NARAB was an outstanding success for the states. It will continue to be," Mr. Mackin said.

He noted that the group passed a resolution at its July 13 Chicago meeting that read, in part, "NCOIL will oppose any proposal to establish either a federal or bifurcated system of insurance regulation, cede any authority to federal agencies to regulate financial institutions involved in the business of insurance or congressional ratification of trade agreements that pre-empt state insurance regulation."

"NCOIL adopted a commercial line deregulation bill three years ago; it has been passed by 21 states. The idea that states don't do the job is simply not accurate," Mr. Mackin said.

An AIA spokeswoman said that no one expects the issue to be resolved overnight. "We have said all along that optional federal chartering is a multiyear effort. And in that time period, we will continue to work actively at the state level. The states control their own destiny with respect to what their system will look like in the future. They have all the time in the world. Having said that, we would like to see meaningful progress at the state level soon," she said.

Meanwhile, a senior CIAB official said that NARAB can serve as a model for reform.

"Broader insurance regulatory reform is No. 1 in the context of NARAB" on the CIAB's list of legislative issues, said Joel Wood, CIAB's senior vp-government affairs. "We believe that NARAB provides a good model for an achievable political solution to improved insurance regulation without necessarily having to go the full distance of the federal charter. I say that as a supporter of a federal charter."

NARAB is "neither fully federal nor fully state but is having a galvanizing impact on moving toward a more uniform regulatory environment," Mr. Wood said.

Sally Roberts contributed to this article. BI

We've got your commercial accounts covered
(from high rises to main street)

You want to write business in the New York metro area. You know it's competitive and complex, but not out of your reach. Where do you turn? To GNY, of course.

GNY's experience in the real estate, hotel, retail, movie theatre, restaurant, food importers and distributor business, strip malls and light manufacturing make us an ideal market for these and so many other risks.

With statutory surplus of $197million and an A.M. Best "A+" rating to boot, GNY has the experience and stability your clients will demand. Couple this experience with superior claims handling, and you will realize the tight control GNY can keep with your clients' insurance costs.

Working with GNY gives you the benefit of a company who knows its business and yours. It's a difference you'll see, and a difference you'll *appreciate* right away.

Discover why GNY has so many of your commercial accounts expertly covered. Welcome to GNY.

Greater New York Mutual Insurance Companies
Insurance Companies of Greater New York
A Stock Company

200 Madison Ave., New York, NY 10016 212-683-9700 Fax 212-685-0826

Privacy a top legislative priority

Gramm-Leach-Bliley requirements worry agent, broker groups

By SALLY ROBERTS and MARK A. HOFMANN

While debate over the future of insurance regulation has once again made its way into the forefront of various insurance associations' legislative agendas, it is not the only issue bringing agent and broker groups to Capitol Hill this year.

Privacy issues, especially those pertaining to financial and medical information and patient protection legislation, also remain key concerns for the leading associations representing agents' and brokers' interests in Washington.

The Alexandria, Va.-based Independent Insurance Agents of America Inc. is keeping a close eye on the privacy regulations required under the 1999 federal Gramm-Leach-Bliley Financial Services Modernization Act, and it also is watching legislative action involving privacy rules that go beyond that law's mandate.

Under GLB, affiliated financial services companies may share clients' financial information, but clients must be notified and be given an opportunity to opt out of any sharing of information. The privacy regulations, which took effect July 1, also require all financial institutions, including insurance intermediaries, to have privacy policies in place.

In addition, GLB allows states to establish privacy requirements that go beyond those established under the modernization law. To date, about 40 states have considered privacy legislation.

"Without a doubt, this year's implementation of the Gramm-Leach-Bliley privacy regulation has proved to be onerous for many of our members across the country," said Maria Berthoud, senior vp-federal affairs for the IIAA in Washington. "The privacy debate in Washington now is more focused on expanding privacy requirements than on lessening them," she said. "This is another battle the IIAA will be engaged in for the coming years."

Privacy regulations also are a concern for the Council of Insurance Agents & Brokers.

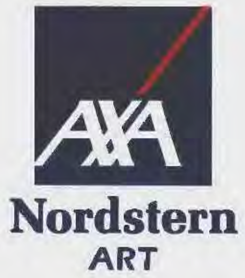
The CIAB is particularly concerned about the Department of Health and Human Services' implementation of medical records privacy rules, said Joel Wood, senior vp-government affairs for the Washington-based organization. Congress failed to meet its own deadline for implementing such rules under the Health Insurance Portability and Accountability Act of 1996, and the

See **Privacy** *on page 12F*

Only art.

(But, then, we are the world leader.)

We are the fine art insurance specialists. With 50 full-time art historians around the world and a network of renowned curators, appraisers, conservators, shippers and handlers, we are the leading authority in the care, preservation and insurance of fine art and collectibles. To learn more, please contact us at 877-AXA-4-ART or www.axa-art.com



Nordstern
ART

collectors preserve culture. we insure it.

AXA Nordstern Art Insurance Corporation is solely responsible for its own obligations.

Privacy

Continued from page 12D

task fell to HHS (*BI*, July 16).

"We are very concerned that, unless changes are made, the HIPAA guidelines on privacy could undermine the ability for intermediaries to adequately shop plans among insurers. Fortunately, we don't believe that the purpose of the HIPAA privacy regulations is to punitively impact the brokerage relations," he said.

Under the HHS privacy rules, covered entities—including insurers, providers and health care data clearinghouses—must take certain steps to protect the privacy of individual medical records. Those that fail to do so could be subject to criminal penalties, including imprisonment, under some circumstances.

Also front and center on the minds of agent and broker groups is patient protection legislation that would, among other things, allow individuals to sue health plans over coverage decisions.

The Senate passed the Bipartisan Patient Protection Act of 2001 in June, after amending the original version to give employers greater protection against liability arising out of coverage disputes involving the health care plans they sponsor. A similar bill is one of two measures that could be considered by the House.

"We don't support either bill," IIAA's Ms. Berthoud said. She noted, however, that the association welcomed decisions by the Senate and House to include provisions in their respective bills that would shield agents and brokers from liability associated with medical decisions.

> *The CIAB is concerned that Congress could 'undermine the employer-sponsored health insurance system.'*
>
> *— Joel Wood*
> *Council of Insurance Agents & Brokers*

The association, however, remains concerned about potential premium rate increases and the effect that expanding liability for coverage decisions will have on the insurance market in general, Ms. Berthoud said.

Another worry for the IIAA, she said, is the effect an expansion of liability would have on small, independent producers' ability to offer health care coverage to employees.

No matter what happens with patient protection legislation, the CIAB is "deeply concerned about activity in Congress that could dramatically undermine the employer-sponsored health insurance system," Mr. Wood said.

"Commensurate with our starting up the Council of Employee Benefits Executives, the health-related issues are clearly moving to the top of our agenda," he said, referring to the CIAB's new benefits initiative (see related story).

In addition to privacy regulations and patient protection legislation, several other legislative issues are currently of interest to the IIAA and CIAB.

"There is a myriad of other issues we're working on this year," Ms. Berthoud said. "We will, for example, continue to help try to find a solution for market availability problems in disaster-prone areas."

The IIAA also is keeping its eye on crop insurance, flood insurance and various tax issues related to small businesses, she said.

Other issues of concern to the CIAB include class-action reform and asbestos liability, which Mr. Wood called "a situation that, amazingly, is getting worse rather than better after decades of litigation." BI

CIAB creates organization for benefits producers

By MARK A. HOFMANN

The Council of Insurance Agents & Brokers wants to tap into an underserved market. That market consists, though, not of consumers but of insurance producers: namely, benefits producers.

The CIAB plans to reach this market through the creation of the Council of Employee Benefits Executives, which was chartered early last month. The CEBE seeks to provide employee benefits producers with many of the same services that the CIAB furnishes to agencies and brokerages engaged in property/casualty insurance business. This includes advocacy on Capitol Hill, continuing education, networking opportunities and a national industry forum.

In fact, the CEBE plans to hold its first Employee Benefits Leadership Forum at the Greenbrier resort in White Sulphur Springs, W.Va., on May 29-31, 2002. The CIAB has held its annual Insurance Leadership Forum—which brings together property/casualty producers and underwriters—at the Greenbrier every fall for nearly 90 years.

Robert Munao, who is the CEBE's chairman, said the creation of the group acknowledges the importance that employee benefits-related revenues have assumed for insurance agencies and brokerages that traditionally have focused on the property/casualty side of the business.

"Benefit operations as part of P/C shops have always been the stepchildren of that agency," said Mr. Munao, who is president of Kaye Benefits Consulting, a HUB International Ltd. company in Woodbury, N.Y. But in recent years, he said, as property/casualty earnings have flattened, there's been a "spike-up" in the importance of benefits business. And in the last three or four years, "P/C shops have realized if they don't have a strong benefits shop, there's money being left on the table, because it's a very critical part to round out a client's relationship," he said.

In some cases, Mr. Munao said, clients have moved property/casualty accounts but kept their benefits programs with incumbent producers; that's because "we're dealing with something much more personal than a P/C policy," he said.

CIAB Chairman Tom Rodell, managing director of Aon Risk Consultants in Chicago, said that after it merged with the National Assn. of Insurance Brokers in 1998, the CIAB began assessing how it could "move forward into the new decade with a recommitted focus." Mr. Rodell said the CIAB found that, "while there were numerous organizations representing consumers and underwriters," none represented employee benefits producers. The CIAB then held meetings across the country to determine how to reach this constituency, and, in March, its board decided to form the CEBE.

Mr. Rodell noted that benefits business already generates a significant portion of the revenues of many CIAB members, reaching, in some cases, as high as 50%.

Mr. Rodell said there would be no change in the criteria for membership: CEBE members, like CIAB members, must have at least $2.5 million in annual revenues, which could come from combined benefits and property/casualty business. The short-term focus will be to identify all current CIAB members that could participate and then reach out to non-CIAB members, he said.

CIAB members produce more than 80% of all commercial domestic property/casualty premiums, said CIAB President Ken Crerar. As the CIAB builds the CEBE, "we also will reach out to those firms that are not council members but are dominant firms," Mr. Crerar said. Continuing the premium requirement provides "a delineator of who the players are," he said.

The concerns of larger intermediaries differ from those of smaller producers, Mr. Crerar noted. Furthermore, he explained, the lines between commercial property/casualty and benefits and life business are blurring, as producers seek to meet all of the needs of their commercial customers.

"I would like to encourage benefit-only organizations to join the council, since they are an important group of companies that we need input from," Mr. Munao said.

"The main goal is to create the professional networking for employee benefits executives, like there is on the commercial side," said Kathi Tripoli, director-employee benefits for Pasadena, Calif.-based Bolton & Co. Insurance Brokers and the vice chair of the CEBE.

"Another main focus is to offer top-quality education and a training program for employee benefits agents—producers and account managers. There really is nothing out in the industry that formalizes your continuing-education credits," Ms. Tripoli said. The CEBE will be putting together a program—"like a benefits university"—to provide the continuing-education opportunities, she said.

Both Ms. Tripoli and Mr. Munao stressed the importance of the CEBE's role in voicing the concerns of benefits producers.

"We want to have an advocate on Capitol Hill that will streamline the information," Ms. Tripoli said.

"We don't have a real lobbying source in Washington to hear our concerns," Mr. Munao said. He cited privacy legislation as one of the most pressing of those concerns, particularly the privacy provisions of the 1999 Gramm-Leach-Bliley Financial Services Modernization Act.

Mr. Crerar said the CEBE will choose carefully the issues it targets, seeking to concentrate "we were can truly have an impact, instead of being a 'me-too player.'"

The CEBE has not yet determined whether to form a parallel organization to the Council of Insurance Company Executives, an underwriter organization that meets with the CIAB at the Greenbrier gathering, Mr. Rodell said. "We would clearly give that some serious consideration," he said.

"Whether we need to do this, I'm not sure," Mr. Crerar said. "We want to maintain and develop strong relations with the markets that provide benefits products."

Mr. Crerar noted, though, that regional players tend to have a larger role in the benefits marketplace than they do in the property/casualty arena. Furthermore, he said, the benefits market has three distinct segments: pensions, health care and group life/disability.

"Each one of those markets is different," Mr. Crerar said. Consequently, he said, the CEBE would continue to have regional meetings, as a well as a national meeting, he said.

Mr. Munao said that the CEBE's Greenbrier meeting likely would follow the same format as that of the CIAB gathering.

"We will invite the major national carriers, as well as the major regional carriers, to a national meeting to accomplish the same thing as Greenbrier," he said. It will provide a chance for top people to discuss issues and products, he said.

"There's a reluctance among carriers," Mr. Munao said, "to talk to each other about how to make the health care delivery business, for example, more efficient" with regard to such issues as handling claims and delivering data to employers in a common format. He described the current system as "totally archaic."

The CIAB held a series of regional meetings over the past year to ascertain the needs and concerns of benefits executives. Two more meetings are scheduled to take place in Miami and Los Angeles in November. BI

Need a purchasing group formed?

Fast & accurate setup on a fixed quote basis

Don't staff for occasional needs... OUTSOURCE IT!

- Preparation & submission of your purchasing group forms
- No obligation, same day Qwik quote
- No project too large or small

Compliance & Filing Solutions

Call 800-778-8100

Politics, insurance not strange bedfellows for lawmaker

By CURTIS M. WONG

When he began work at age 22 as an adjuster for Providence, R.I.-based Liberty Mutual Insurance in the winter of 1963, David Bates had no idea how committed he would eventually become both to the insurance industry and to his home state.

He has been president of the A.N. Nunes Agency of Barrington, R.I., which specializes in property/casualty insurance, since 1982 and has been a Republican member of the Rhode Island Senate since 1993. And Sen. Bates' hard work and dedication on the political scene have recently garnered him national recognition.

"Being an insurance agent, you get into a specific rhythm that can translate well into the political arena," said Sen. Bates. "You're definitely going to be criticized a lot. It's certainly a lot of work, and it's not something you can do without a thick skin. But it has very many rewards that make it all worth it."

At the 2000 convention of the Independent Insurance Agents of America, Sen. Bates was honored with the Sidney O. Smith Award for advancing the 1997 passage in Rhode Island of a groundbreaking law. Although state-regulated banks and insurers were traditionally barred from forming business alliances in Rhode Island, the law permitted state-regulated banks to sell insurance in towns with fewer than 5,000 residents. Furthermore, Sen. Bates said, the law established the authority of the state's Insurance Department to oversee the business activities of all providers of insurance, including banks.

Since its passage, 28 other states have used the Rhode Island law as a prototype in crafting similar laws, Sen. Bates said.

"It was really a blending of two distinct businesses," he said. "At the time, it was very important for the state to set up a system with banks' agencies and how they were involved with insurance. It's a really comprehensive bill."

Although politics and insurance may seem to be two distinct fields, Sen. Bates said his insurance background has served him well in the Senate. As a small-business owner, he understands the everyday needs of citizens and he makes himself accessible, he said.

"You already get so involved in local and national issues by just being an insurance agent anyway," Sen. Bates said. "I think it provides a perspective that's useful in debates that many other senators can lack. People feel comfortable approaching someone that they already know with their issues."

Wesley Bissett, vp of state relations and state government affairs at the IIAA in Alexandria, Va., noted that the combination of insurance and politics is hardly a new one.

"We actually have a long history of insurance agents running—and winning—elected positions," Sen. Bissett said. "The fact that they are natural leaders and trusted advisors makes them a shoo-in when it comes to running for an elected office."

Like many of his colleagues, Sen. Bates entered politics gradually and experienced some setbacks along the way. He began his career with the A.N. Nunes Agency in 1966. By 1972, he had joined Barrington's planning and zoning committee. Twelve years later, a town council seat opened up, and he decided to run for the council.

"Up until that point, I'd swore I'd never run for an elected office," he said. "It was really a last-minute type of thing."

Despite what he describes as an "interesting" door-to-door campaign, Sen. Bates lost the 1980 election. In 1982—the same year he purchased the A.N. Nunes Agency from founder Al Nunes—Sen. Bates ran again and won. Just one year later, Sen. Bates was elected vp of the Barrington town council; four years after that, he was elected president of the council, a position he held until 1988.

But Sen. Bates didn't consider expanding his political role until Ann Hanson, a decade-long veteran of the state Senate, decided not to run again. When Ms. Hanson suggested that he take her place on the ticket in the 1992 race, Sen. Bates jumped at the chance, he said. "I guess it seemed like the next logical step in my career."

Mr. Bissett said Sen. Bates' decision is not unusual.

"Once people get involved with the political process, they realize that they can take that next step and be elected themselves," Mr. Bissett said. "It's a lot of work to convince 25 colleagues that a specific issue is prevalent. But most state legislators don't have experience when it comes to selling things—things that an insurance agent does all of the time. The world of poli-

See **Bates** on page 12H

YOUR CLIENTS CAN GET A BETTER UMBRELLA.

Make sure it is from you.

It's always in the back of your mind. Even your most loyal clients could jump ship for a better offer. Don't let the umbrella policy cause them to doubt you and the competitiveness of the total program you have designed. If your clients include office buildings, industrial parks, shopping centers, residential real estate, hotels or contractors, you'll want to get your hands on one of our umbrella products before your competition does. We are the foremost developer of umbrella purchasing groups in the country. We offer group buying power that gives your clients the industry's best terms, limits from $10 million to $200 million and pricing that will astound you, all with the backing of markets rated "A-" or better. So let's talk before your clients find out about us from your competition. Call Carla Vel today.

THE DISTINGUISHED PROGRAMS GROUP

6 E. 43rd St., New York, NY 10017 • 888-355-4626 • email: cvel@distinguished.com

Get with the program.

Bates

Continued from page 12G

tics really takes advantage of their assets as agents."

When Sen. Bates first came to office, he said that he and many of his colleagues found the state's prohibition of cooperation between banks and insurers to be outdated. The legal bar to coordination between the two financial services, he said, failed to take into consideration the problems inherent in providing quality insurance coverage to the residents of towns with populations of fewer than 5,000 people, he said.

After the U.S. Supreme Court's 1996 ruling in *Barnett Bank of Marion County, N.A. vs. Nelson, Florida Insurance Commissioner*, which allowed federally regulated banks to sell insurance policies in towns with 5,000 or fewer residents, Sen. Bates began a focused campaign to grant state-regulated banks in Rhode Island the same privilege, he said. Although the measure had its critics, Sen. Bates said that the entire business world "saw the bill coming."

"The fact that so many states used Rhode Island as a model for their own laws pretty much speaks for itself," Sen. Bates said.

Sen. Bates offers advice for other agents seeking to get involved it politics. Being a state senator, he said, has both allowed him to contribute to his community and helped his business.

As for his future political goals, Sen. Bates said that he'd like to work to preserve state regulation of the insurance industry.

Sen. Bates said he has been surprised by the way that his political status has advanced his career as an independent insurance agent. "Not only does it help the Legislature, but it also helps the agency," he said. "If an agent has the extra time, energy and ability to devote themselves to politics, I would definitely encourage it."

Sen. Bates said he advises independent agents looking for a political break to start small and gradually take on larger issues. An individual can't get to the state level, he said, without first getting his or her feet wet in local politics. Furthermore, he said, political activity isn't for everyone; an agent must be sure he or she has sufficient time to devote to campaigning and to the responsibilities political work entails, he said.

"Obviously, the business has to come first. You really have to weigh your time commitments carefully and weigh the situation in the job you already have," he said. BI

Internship helps prepare heir to family business

By JOANNE WOJCIK

Heather Scobie Lessard always knew what she would do when she grew up.

Every Saturday morning, Ms. Scobie Lessard's father, Robert Scobie, who is chairman of R.W. Scobie Inc./Midwest General Agency in Eau Claire, Wis., would go into the office early—usually between 5 a.m. and 6 a.m.—and then take a break around 7 a.m. or 8 a.m. to bring doughnuts home to the family.

"Then we'd go to work with him," she recalled, leaving her mother time to do some weekend housework.

Although Ms. Scobie Lessard's older siblings, David and Stephanie, also would visit the agency with their father, it was Ms. Scobie Lessard who took the most interest in the business.

"It was always a part of our family. Something I always knew I would do," Ms. Scobie Lessard says today.

Her background, as well as an internship program sponsored by the American Assn. of Managing General Agents, helped Ms. Scobie Lessard achieve that goal.

During high school, Ms. Scobie Lessard worked part time in the company's file room and also typed, and during a summer in college, she worked as a marketing representative for Premium Finance Corp., a unit of Scobie in Eau Claire.

While attending the University of Wisconsin-Stout in Menomonie, Ms. Scobie Lessard completed a marketing internship by working at the agency three days a week. In 1999, she graduated with a degree in business administration with an emphasis in public relations.

After college, Ms. Scobie Lessard took some time off, married George Lessard, and traveled to Europe before returning to the family business.

Today, at age 28, Ms. Scobie Lessard is being groomed to take over that business, which was started in 1932 by her great-grandfather, R.W. Scobie.

If Mr. Scobie names Ms. Scobie Lessard his successor six years from now, as is expected, she'll be the first woman in her family to run the business.

"It had been passed from father to son, and this is the first time it's being passed from father to daughter," she said.

Such notions, though, have never dissuaded Ms. Scobie Lessard from entering a traditionally male-dominated field.

"I guess I have always grown up feeling it doesn't matter if you're a male or a female. You can do what you want. I have played ice hockey since I was 4 years old. So, I have always done what I wanted," she said.

And Ms. Scobie Lessard will be well prepared for her new role. In addition to her prior experience, she is getting a thorough education thanks to an internship program sponsored by the AAMGA. Ms. Scobie Lessard is only the second intern to complete the AAMGA Internship Program.

The AAMGA internship program was launched in 1998 to provide practical experience at the company level, the general agency level and in the London market. Only family members or employees of active AAMGA members may apply.

During a speech at the AAMGA's 75th anniversary meeting, held in May in Palm Springs, Calif., Ms. Scobie Lessard described her internship.

She worked as an assistant to the underwriters in Markel Corp.'s Southwest property/casualty department for six months and then spent a month in London working for Lloyd's of London broker Miller North America, which she said was the highlight of the internship. The work was interesting, and included helping to underwrite a jeweler's block line slip, she said.

Before her AAMGA internship, Ms. Scobie Lessard worked for Scottsdale Insurance Co. for a year.

Unfortunately, the final portion of her AAMGA internship—working for managing general agency First Western Insurance Co. Special Risk Facilities Ltd.— was interrupted when the operations manager of the company retired, and the owner, who was to be her mentor, died.

Dick Watt sold Des Moines, Iowa-based First Western to R.W. Scobie in January, and plans called for him to stay on for three years and teach Ms. Scobie Lessard the business.

But because of Mr. Watt's sudden death, two other insurance industry veterans have taken over the role of Ms. Scobie Lessard's mentor: her father, Robert Scobie; and Robert Giles, president and chief operating officer of the agency and the 2001-2002 president-elect of AAMGA.

Ms. Scobie Lessard also is receiving assistance from Ray Spies, an outside business consultant from Development Associates in Eau Claire.

Financial assistance will be available to future AAMGA interns as a result of a $25,000 grant from Jefferson Insurance Co. of Jersey City, N.J., a unit of Interstate Insurance Group. Previously, interns paid their own expenses. All interns, though, are paid by the companies that host them.

For more information about the internship program, contact Chris Behmyer, director of education at AAMGA University in Scottsdale, Ariz., 480-905-5059 or e-mail *university@aamga.org*. BI

Insurance angle key to big-dollar fishing contest

By CURTIS M. WONG

Although it's known as one of New York state's most polluted lakes, Syracuse's Lake Onondaga will have reeled in scores of eager fishermen—with a little help from a Texas-based insurance broker.

Beginning Aug. 3, the lake's first-ever "Ultimate Fishing Challenge" offered some lucky anglers a chance at a $5 million grand prize, simply by casting their lines into the lake in downtown Syracuse.

The three-day derby, sponsored by local CBS affiliate WTVH-TV, promised to be Syracuse's largest fund-raiser. Proceeds will go to lake cleanup efforts and a proposed Civil War monument. Dallas-based broker SCA Promotions coordinated the release of 50 tagged bass into the lake, which is five miles long, one mile wide and 60 feet deep. The $5 million fish was by far the largest prize, but the five other fish with money tags were no small fry, either. One fish was worth $500,000, while four others were worth $50,000 each.

Other fish bore tags for other prizes, including four years of paid tuition to a local college, a $250,000 house, a motor home worth $200,000 and several cars.

While the contest may have driven local fisherman to near hysteria, it was business as usual at SCA Promotions, which works with various insurance companies in providing cash awards for 600 to 1,000 fishing derbies each year, said Max Rhodes, director of SCA's tournament fishing division. Recently the company has also backed the Lake Ontario Salmon Derby in Toronto and the CrappieFest 2001 in Lake Eufaula in eastern Oklahoma.

The "Ultimate Fishing Challenge" was not the largest contest in the company's repertoire this summer: A promotion in Florida offered a whopping $8 million for a record largemouth bass, Mr. Rhodes said. Nevertheless, he added: "The contest is definitely a large situation and could get quite expensive. But these fish do get caught, and we pay all the time."

According to SCA, the broker has placed more than $10 billion of coverage for promotional events—resulting in $60 million in claims—since the company was founded in 1986.

Although he would not comment on the exact structure of the insurance coverage, Mr. Rhodes said that SCA Promotions traditionally places prize indemnifcation programs with several excess insurers. Those insurers include New York-based American International Group Inc.; Berkshire Hathaway Inc. in Omaha, Neb.; and Zurich, Switzerland-based Swiss Reinsurance Co.

Mr. Rhodes also said that the television station would pay a fee "in excess of $50,000" for SCA's coordination of the event and to ensure that the winning anglers get their prizes, the top of which would be paid out as a annuity of $125,000 a year for 40 years. SCA does not recommend a cash payoff, as the potential for fraudulent entries—a prize underwriter's biggest concern—tends to increase in such scenarios, he said.

While brokers tend to view such prize indemnification policies as limited to "hole-in-one" style contests, many brokers forget their value for advertising and for local promotions, said LeConte Moore, managing director of New York-based Marsh Inc.

Although a $50,000 premium for a multimillion-dollar fishing derby seems paltry, the policies are like a form of intelligent gambling that takes the mathematical chances of actually winning the contest into account, he said.

"There's a need for a certain level of sophistication in these types of policies," Mr. Moore said. "Many companies like to rubber stamp insurance policies, but as far as prize indemnification goes, none are identical. They're all similar games of chance."

While insurance capacity for special events such as the fishing derby ran in the range of $25 million to $50 million just five years ago, capacity has dropped to about $10 million, Mr. Moore said. "Surprisingly, the loss ratio on these contests can be quite large," he said. "Obviously, many companies are less willing to take a bet that's not in their favor" in an economic downturn.

The Syracuse event was the brainchild of Gary Wordlaw, general manager of local CBS affiliate WVTH-TV and a fishing enthusiast. He first envisioned the derby more than two years ago as a way to ignite Syracuse's dwindling tourist trade and raise funds to clean up the lake's polluted water. He expected 70,000 to 150,000 people to attend the event, which had the potential to generate approximately $10 million to $30 million for the town.

Although his idea generated "tremendous excitement" in the city almost immediately, Mr. Wordlaw said it took him two years to finalize the derby's legal and political details, including the prize insurance. BI

Agent/Broker Topics ADVERTISER INDEX

Issue of August 6

ADVERTISER	PAGE #
AXA Nordstern Art Insurance	12E
Compliance & Filing Solutions	12F
Distinguished Programs	12G
FEMA	12C
Greater NY Insurance Co.	12D
ISG International Inc.	12B

NOBODY NEEDS REINSURANCE UNTIL THEIR BUSINESS GOES UP IN SMOKE.

POOR REINSURANCE.
ALWAYS THERE WHEN THINGS ARE AT THEIR WORST.

TO HELP READERS UNDERSTAND THIS CRITICAL SECTOR OF THE INDUSTRY MORE CLEARLY, *BI* WILL PUBLISH A SERIES OF SPECIAL REPORTS FOCUSING ON REINSURANCE. THE FIRST SPOTLIGHT, APPEARING IN THE SEPTEMBER 3RD ISSUE, WILL EXAMINE INTERNATIONAL MARKETS AND WILL BE DISTRIBUTED AT THE ANNUAL MONTE CARLO RENDEZ-VOUS, ONE OF THE LARGEST GATHERINGS OF THE WORLD'S LEADING REINSURANCE EXECUTIVES.

DON'T MISS OUT ON THIS HOT OPPORTUNITY.
THIS ISSUE CLOSES AUGUST 22ND.

Business Insurance®
www.businessinsurance.com

NEW YORK: 212.210.0133 CHICAGO: 312.649.5276 LOS ANGELES: 323.370.2456 BOSTON: 617.292.4856

PERSPECTIVES

Actuarial

Continued from page 12
old metaphor: An insurance company is like a car on a treacherous mountain road. The vp of marketing has his foot on the gas. The vp of underwriting has his foot on the brakes. And the president has his hands on the wheel as he takes directions from the actuary in the back seat who has just made a map by looking out the back window.

The problems caused by slightly high projections are generally easier to deal with than those caused by projections on the low side. Low ultimate loss projections normally result in low rate projections, which eventually can cause erosion of a program's fund balance.

After considering all these factors, you may change your opinion regarding whether the actuary is providing high estimates.

But given all the factors above, it is difficult to ascertain at first glance whether a set of projections are too high—a substantial amount of analysis is generally required.

Loss estimates perceived as being on the high side are usually unpopular. However, it is an actuary's task to make sure that a reasoned provision for both good years and bad is included in projections. The future financial health of your program may depend on it. BI

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

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

This month's column on actuarial issues in the casualty field is written by Richard E. Sherman, president of Richard E. Sherman & Associates Inc. in Ashland, Ore. Dennis J. Nirtaut, managing director of compensation and benefits for Arthur Andersen L.L.P. in Chicago, answers questions for benefit managers. Christopher E. Mandel, director of risk management at Tricon Global Restaurants Inc. in Louisville, Ky., answers questions on risk management issues. William J. Miner, an actuary with Watson Wyatt Worldwide in Chicago, answers actuarial questions on benefits issues.

Mr. Sherman

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

Injury compensation relies on inherent work hazard

LEGAL BRIEFS

To be compensable under workers compensation, an injury must stem from a hazard inherent to the nature of an employee's work or workplace conditions, according to the Court of Appeals of Virginia.

Frederick W. Ellis worked as a truck driver at Southside Virginia Training Center. His job required him to travel to various buildings on the center's campus and take carts filled with empty food trays to a central location.

Occasionally, he had to remove empty trays from the dining tables and put them on the cart. In April 1997, Mr. Ellis sustained a back injury when he bent to lift one of the empty trays to move it from a cart to a nearby cabinet. This injury was found to be compensable. He was off work briefly and was then assigned to lighter duties.

In May 1998, Mr. Ellis returned to full-duty work. On May 26, 1998, he again injured his back in lifting an empty tray from a dining table and placing it in the cart. He filed for workers comp benefits, but his claim was initially denied. The full compensation commission, however, found that his injury was compensable. The employer appealed.

The appellate court said that an injury is not compensable merely because it occurred during the performance of some employment duty if the act performed by the employee is not a causative hazard of the job. "Simple acts of walking, bending or turning," the court said, "without any other environmental factors, are not risks of employment."

The court found that Mr. Ellis' action of bending was neither unusual nor awkward, nor was it something he was required to do repetitively. The court found that merely bending over is a risk to which the public is equally exposed. The court reversed the award of compensation.

Southside Virginia Training Center vs. Ellis, Court of Appeals of Virginia, Nov. 21, 2000. (BI/05/Au.-$10)

Disease not an 'accident' under AD&D policy

An Employee Retirement Income Security Act plan administrator did not abuse its discretion in finding that the injury of a plan participant was attributable to disease, rather than an accident, under accidental death policies, according to the 5th U.S. Circuit Court of Appeals.

Tibby Thomas' husband held, through his employer, two accidental death policies written by AIG Life Insurance Co. Under the AD&D policies, Ms. Thomas was entitled to benefits if Mr. Thomas suffered a "loss resulting from injury," defined as "bodily injury caused by an accident." The policies excluded coverage for diseases of any kind.

Mr. Thomas suffered from morbid obesity, and he underwent two stomach-stapling surgeries as treatment. Following the second surgery, his sutures broke, and he died from resulting complications. Ms. Thomas then filed for benefits under the policies. The insurer's ERISA appeals committee rejected her claim, and Ms. Thomas sued, contesting the denial of benefits. The trial court ruled against her.

On appeal, Ms. Thomas argued that she was entitled to benefits because Mr. Thomas' death was caused by an accident that occurred during his operation. The court said that it could find no basis for disassociating Mr. Thomas' injury from the disease complications of his obesity. In addition, the court emphasized that Mr. Thomas' death was a foreseeable result of treatment for his disease. Thus, the court ruled, the ERISA plan administrator had not abused its discretion in denying the claim. The trial court decision was affirmed.

Thomas vs. AIG Life Insurance Co., 5th U.S. Court of Appeals, March 7, 2001. (BI/01/Au.-$10)

Cap on home care benefits upheld

A statutory cap on workers compensation domiciliary care benefits for an employee who received care from his wife did not violate the employee's equal protection rights, according to the Supreme Court of Montana.

Michael Powell suffered severe head and facial injuries in a motor vehicle accident that occurred in the course and scope of his employment with Security Armored Express. After the Oct. 7, 1995, accident, Mr. Powell remained in the hospital until Oct. 20, when he was transferred to a comprehensive inpatient rehab facility. He was discharged from the facility on Nov. 10, 1995, with a physician recommendation that he have daily supervision.

In late 1995, Mr. Powell began having seizures and experienced difficulty with attention, concentration and memory. Mr. Powell's condition left him virtually bedridden on certain days. Even on good days, his wife must fix many of his meals, wash his clothes and make sure he takes his medicine.

The state insurance fund accepted liability for his injuries and paid medical and wage-loss benefits. Mr. Powell filed a petition seeking domiciliary care benefits at a rate of compensation greater than allowed by state law. For a condition requiring 24-hour care, reimbursement to a family member providing care was limited to no more than the daily statewide average Medicaid reimbursement rate for the current fiscal year for care in a nursing home. Although Mr. Powell accepted a settlement equal to the state limits, he reserved the right to challenge the constitutionality of the limit.

On appeal, Mr. Powell argued that the cap on reimbursement was unconstitutional because it violated his right to equal protection under the laws. He maintained that, because of his choice to live at home rather than a skilled nursing facility, his wife was significantly undercompensated for providing his care.

But, the court concluded that the state where Mr. Powell brought his case had not adopted a classification that affected two or more similarly situated groups in an unequal manner. According to the court, care provided by a family member differs in some important aspects from that provided by a nonfamily member. Thus, the court found that there was no violation of Mr. Powell's equal protection rights.

Powell vs. State Compensation Insurance Fund, Supreme Court of Montana, Dec. 12, 2000. (BI/02/Au.-$10)

No comp benefits in workplace murder

The workplace murder of an employee by her co-employee did not arise from her employment and thus did not entitle the employee's widower and minor children to workers compensation benefits, according to the Supreme Court of Kentucky.

Betty Carnes and Delmar Partin were co-workers, and it was undisputed that they had engaged in an extramarital relationship that Ms. Carnes eventually ended. About two to three months later, Mr. Partin murdered Ms. Carnes while in the workplace.

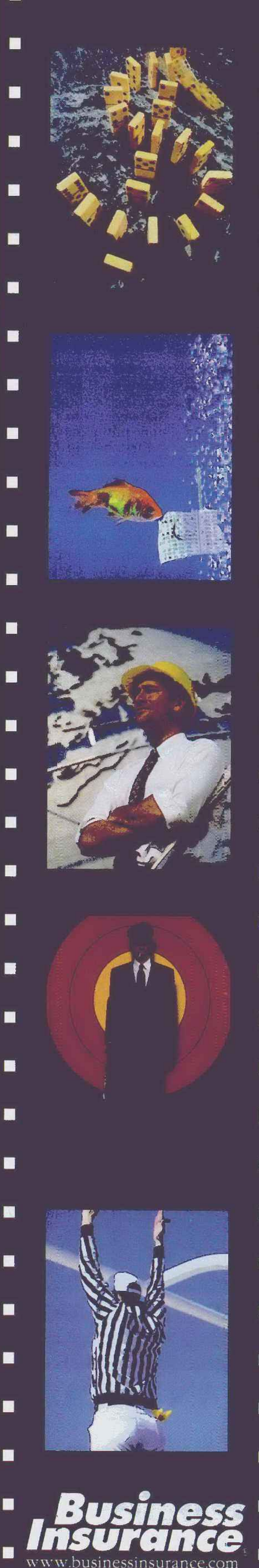
Although Ms. Carnes had ended the relationship, she did not request disciplinary action against Mr. Partin. In addition, she made no request for protection and was seen talking to him on breaks. In the weeks immediately preceding her death, Ms. Carnes was reported to have seemed nervous in Mr. Partin's presence, and she expressed to co-workers fear of Mr. Partin because she was ending their relationship.

Phillip Carnes, Ms. Carnes' widower, filed a claim for workers comp benefits on his own behalf and that of their minor children. The compensation board denied his claims, and an appeals court affirmed the decision to deny benefits. Mr. Carnes then appealed to the state Supreme Court.

On appeal, Mr. Carnes argued that the conditions of his wife's employment contributed to her death, because Mr. Partin was an employee who was permitted to enter the plant while off duty and because the lab where Ms. Carnes worked was in a secluded area, which facilitated the murder. However, the court was not persuaded that Ms. Carnes' employment had facilitated her death. Thus, the court said, her death did not arise from her employment for purposes of workers compensation benefits.

Carnes vs. Tremco Manufacturing Co., Supreme Court of Kentucky, Oct. 26, 2000. (BI/03/Ju.-$10) BI

These asbstracts 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. Please provide the listed number for each opinion.



THE FOLLOWING PREVIEW HAS BEEN APPROVED FOR ALL AUDIENCES.

COMING SOON IN *BUSINESS INSURANCE...*

Issue Date	Editorial Feature	Demographic Section	Ad Closing
Sep 3	Reinsurance: International Markets *Directory: Leading Reinsurers Worldwide* *Distribution: Monte Carlo Rendez-Vous*	ABT Fighting Fraud	Aug 22
Sep 10	Surplus Lines *Directory: Surplus Lines Insurers & Wholesalers* *Distribution: Canadian RIMS; IUMI; ISCEBS; NAPSLO*		Aug 28
Sep 17		IT Fighting Fraud	Sep 5
Sep 24	Reinsurance: Rendez-Vous Report *Distribution: NAIC*		Sep 12
Oct 1	Marine Market Report	ABT Leaders In Productivity	Sep 19
Oct 8	E-Commerce/Best Web Sites of the Year *Directory: Industry Web Sites* *Distribution: CIAB/CICE; FERMA*		Sep 26
Oct 15		IT Reinsurance Strategies	Oct 3
Oct 22	Workers Compensation *Directory: Safety Consultants & Rehabilitation Services* *Distribution: Baden Baden; BI Workers Comp Conference; CPCU*		Oct 10
Oct 29	*Distribution: ASHRM; IIAA*		Oct 17
Nov 5	Reinsurance: Trends & Issues *Directory: Reinsurance Brokers* *Distribution: NAII*	ABT E & O/Loss Prevention	Oct 24
Nov 12	Bermuda Market Report *Directory: Policyholder-owned Facilities;* *Directory: International P/C Insurers* *Distribution: ARIMA; PLUS; WCF*		Oct 31
Nov 19	Benefits: Effective Benefit Commuication/EBC Awards	IT Loss Control/CPCU Report	Nov 7
Nov 26			Nov 13

"...the most valuable, most credible and most timely newsmagazine in the industry."

"★★★★... A must-read ... Don't miss a single issue."

RESERVE YOUR AD SPACE TODAY. CALL A SALES OFFICE NEAR YOU.

New York: 711 Third Ave., NY 10017-4036 ■ Tel: 212-210-0133 ■ Fax: 212-210-0704
Chicago: 360 N. Michigan Ave., IL 60601-3806 ■ Tel: 312-649-5276 ■ Fax: 312-649-7937
Los Angeles: 6500 Wilshire Blvd., CA 90048-4947 ■ Tel: 323-370-2456 ■ Fax: 323-655-8157
Boston: 77 Franklin Street, MA 02110-1510 ■ Tel: 617-292-4856 ■ Fax: 212-210-0704
Circulation: 965 E. Jefferson Ave., Detroit, MI 48207 ■ Tel: 888-446-1422 ■ Fax: 313-446-6777

First-half profits increase for many insurers

The following roundup of first-half results reports was compiled from items that were originally daily news postings at *www.businessinsurance.com.*

ACE Ltd.

HAMILTON, Bermuda—Gross premiums at ACE Ltd. showed significant growth in first-half 2001 as the insurer pushed up rates in most lines of business.

ACE recorded $4.96 billion in gross premiums for the first half, up 25.7% from the year-earlier period. Profits, however, fell 13.4% to $249.9 million, which was largely the result of net realized capital losses and a one-time charge in the first quarter related to accounting changes.

Second-quarter profits increased 15.4%, to $131.5 million, despite $55 million in catastrophe reinsurance losses above what would normally be expected, ACE said. The higher-than-expected losses stemmed from Tropical Storm Allison.

Hamilton, Bermuda-based ACE has benefited from rate increases in all geographic markets except Japan and across all lines, said Brian Duperreault, chairman and chief executive officer. "This market turn is very broad based," he said.

American International Group Inc.

NEW YORK—American International Group Inc. reported double-digit revenue and profit increases for the first six months of the year.

New York-based AIG posted six-month revenues of $24.73 billion, a 10.8% increase over the prior-year period. Net income rose 14.7%, to $3.16 billion. Excluding a first-quarter 2001 accounting change and realized capital losses, net income rose to $3.23 billion for the six-month period, an increase of 15.5%.

Net written premiums for AIG's general insurance operations rose 13.6%, to $9.92 billion. In addition, AIG's combined ratio improved slightly, to 95.71%.

In a statement, AIG Chairman and CEO Maurice R. Greenberg noted that AIG's strong premium growth reflects the improved pricing environment in the property/casualty market. AIG reported $30 million in net catastrophe losses for the second quarter, a majority of which came from Tropical Storm Allison, he said.

Chubb Corp.

WARREN, N.J.—Catastrophe losses hit the first-half results of Chubb Corp., which posted a 4.7% drop in operating income, to $315.1 million.

Net income for the period, which includes realized investment gains, was $321.8 million, a decline of about 4.9% from the year-earlier period.

Chubb said income was "heavily affected" by catastrophe losses in the second quarter, with Tropical Storm Allison accounting for about two-thirds of the company's $80.3 million in second-quarter catastrophe losses.

Chubb's second-quarter catastrophe losses were up more than 230.4% from the comparable period last year. Chubb's total catastrophe losses for the first six months of this year were $91.8 million, an increase of more than 68.1% from the first half of 2000.

The company wrote more than $3.37 billion in net property/casualty premiums in the first half, an increase of more than 8.0%.

Hartford Financial Services Group Inc.

HARTFORD, Conn.—The Hartford Financial Services Group Inc. posted a 3% increase in first-half net income to $466 million, while recording larger gains in operating income and revenues.

Operating income rose 11% to $515 million, and revenues grew 8% to $7.6 billion.

Results were boosted by growth in group benefits and life business, a strong performance in commercial property/casualty business and The Hartford's acquisition of Fortis Financial Group in April, The Hartford said in a statement.

Humana Inc.

LOUISVILLE, Ky.—Although revenues slipped, Humana Inc.'s profits surged 30.0% in the first half, to $52.0 million.

First-half revenue fell 7.8% to $4.82 billion, compared with the same period a year ago, according to the Louisville, Ky.-based managed care company.

Humana attributed the drop in revenues to exiting numerous "non-core" markets and products in the latter part of 2000. It defined "non-core" as those that lacked the potential for profitability or did not fit into the company's strategic focus, or both.

Humana also raised rates, which it said contributed to a 1.9% decline in membership for its fully insured medical insurance products to 2,343,300 at June 30.

In addition to exiting markets it found to be unprofitable, the company lost some of its small-group business because of the rate hikes.

"Our operational improvements continue to be reflected in our financial results," said Michael B. McCallister, Humana's president and CEO, in a statement.

Oxford Health Plans Inc.

TRUMBULL, Conn.—Oxford Health Plans Inc. posted big gains in profits for the first six months of this year on the strength of steady premium growth and a reduction in expenses.

First-half net income rose $142.3 million, up 116.4% from the year-earlier period. Premiums rose 7.1% to $2.13 billion in the first half, while total expenses rose only 4.5%.

Also helping the managed care company boost profits was a reduction in its medical loss ratio—the percentage of premiums used to pay medical services—to 80.6% this year from 81.3% in 2000, the company reported. In addition, Oxford's administrative loss ratio—the amount of premium allocated to administrative expenses—dropped to 11.0% from 12.1% last year.

Oxford has added 33,900 new members this year, which brings its total commercial enrollment to 1.4 million as of June 30.

UnitedHealth Group

MINNEAPOLIS—Profits at UnitedHealth Group increased 26.5%, to $435 million, in the first six months of 2001.

The Minneapolis-based managed care company also reported gross premiums of $10.19 billion in the first half, a 10.2% increase from the year-earlier period.

"Strong growth across the portfolio of business and products, coupled with ongoing operating cost controls in the face of a slowdown in the U.S. economy," were major factors in the company's strong results, Chairman and CEO Dr. William McGuire said in a statement.

The company's main managed care unit, UnitedHealthcare, increased its commercial enrollment by 380,000 people in the past 12 months to 7.6 million.

WellPoint Health Networks Inc.

THOUSAND OAKS, Calif.—Both profits and enrollment for WellPoint Health Networks Inc. surged in the first half of 2001, the Thousand Oaks, Calif.-based managed care company reported.

Net income for the first half climbed 20.3%, to $196.4 million. Second-quarter net income rose 19.4%, to $99.9 million.

Total enrollment in WellPoint's health plans reached 9.8 million by the end of the second quarter, up nearly 29% from the year before.

The company attributed the growth to the addition of 343,000 new members in California and the March 15 acquisition of Blue Cross & Blue Shield of Georgia, which added about 1.9 million members.

Excluding the impact of the Georgia Blues transaction, WellPoint's medical loss ratio of 80.6% showed a marginal improvement from the prior quarter, David C. Colby, WellPoint's chief financial officer, said in a statement.

Willis Group Holdings Ltd.

LONDON—Willis Group Holdings Ltd. reported large profit growth in the first results statement it has issued since its June initial public offering.

First-half profits at the London-based brokerage increased more than 350%, to $56 million, over the first half of 2000. Gross revenues increased 7.4% to $712 million.

Willis has benefited from rising insurance rates in most markets, Willis Chairman and CEO Joseph J. Plumeri said in a statement. "The rating environment for the next couple of years seems to be hardening," he added.

After being privately held for three years, Willis earlier this year redomiciled its holding company to Bermuda and launched an IPO.

W.R. Berkley Corp.

GREENWICH, Conn.—W.R. Berkley Corp. recorded an 80.9% increase in profits to $19.9 million for the first half of 2001.

Gross premiums at the Greenwich, Conn.-based insurer increased 17.6% to $1.05 billion.

The increases were achieved despite catastrophe losses in the second quarter of 2001, William R. Berkley, chairman and CEO, said in a statement.

In particular, the insurer saw significant growth in its specialty and alternative market business.

Premium growth should continue over the next year as the insurer cuts the amount of reinsurance it buys and increases its rates, Mr. Berkley said. BI

Products & Services Guide

To place your ad, contact Irais Amleshi

Phone: (312) 649-5340 Fax: (312) 649-7937 E-Mail: iamleshi@crain.com

TRAVELERS MORTGAGE IMPAIRMENT PROG. (B&O)
Travelers provides broader domestic Mortgage Impairment Program Liberal commission.
Program Manager
DAVIS AGENCY
Westfield, NJ
1-800-752-0150
Beth Carroll-Rob Davis

Where Benefit Buyers meet Benefit Sellers
www.employee-benefits.com

Any Risk Management Questions?
Ask www.GeorgeLHead.com

BI Visit www.businessinsurance.com

The Products & Services Guide is the Place to Reach Key Decision Makers!!!

MAKE AN IMPACT!

Advertise in

Call (312) 649-5340 for more information

GLOBAL BRIEFS

Composite Lloyd's of London syndicates that write multiple lines of coverage are, on average, outperforming their monoline counterparts, according to rating agency Standard & Poor's Corp. in London. In its Lloyd's Syndicate Performance Measures for 2001, S&P found that composite syndicates account for 38% of the market's capacity. The average size of syndicates has increased to an average of £102 million ($146.1 million) in capacity for 2001, up 24.3% compared with 2000 and 155% greater than 1996. The number of syndicates operating at Lloyd's has declined to 83, down 13% from 2000 the report noted....Lorenz Stampfli has been named secretary general of the **Federation of European Risk Management Associations**. Mr. Stampfli is legal adviser and director of risk management for Geneva, Switzerland-based CERN, the European Organization for Nuclear Research. He also is vp of SIRM, the Swiss Assn. of Insurance & Risk Managers. As secretary general of Brussels-based FERMA, he will be responsible for the organization's legal duties and will become part of the group's board....Lloyd's of London has opened a representative office in Spain. The office is situated in the Madrid office of U.K. law firm Davies Arnold Cooper and is headed by Pablo Wesolowski, managing partner of DAC, and **Lloyd's first general representative in Spain**. Lloyd's said the move was part of its drive to expand its network of international licenses....London-based insurer CGNU P.L.C. has agreed the sale of **its Brazilian nonlife insurance subsidiary** to the Brazilian subsidiary of rival U.K. multiline insurer Royal & SunAlliance Insurance Group P.L.C. CGNU has agreed to sell CGU Seguros to RSA for 51 million reals ($20.5 million) in cash. In 2000, CGU Seguros recorded gross written premiums of £48 million ($68.7 million)....Lloyd's managing agency **R.J. Kiln & Co.**, a subsidiary of Kiln P.L.C., is to assume the management of medical malpractice liability syndicate 1204 from Crowe Syndicate Management. Under the proposed agreement, which is subject to Lloyd's approval, Kiln would take over the management of both the 2000 and 2001 years of account and all the syndicate's staff would transfer to Kiln. The transaction is expected to take place in October....In a report published last week, U.K. labor organization the Trades Union Congress said that more than 150,000 people in the United Kingdom each year suffer from some kind of **repetitive strain injury**. The TUC, which also said that the vast majority of RSI victims are unsuccessful in their efforts to obtain compensation from employers, estimates that lost production from RSI costs U.K. business about £1 billion ($1.43 billion) per year. The TUC said it would call on employers to work with labor unions to set up prevention programs and to improve rehabilitation for RSI victims....E-commerce standards body **ACORD** has opened a new London office. The office, which will be managed by Phil Brown, standards manager for ACORD, is in the London Underwriting Centre....Peter Sengupta has been named branch manger and senior casualty underwriter in the Zurich office of **Zurich Global Energy SM**, a division of Zurich North America. Mr. Sengupta was formerly senior casualty underwriter at Swiss Reinsurance Co.

Corporate governance redux

Report recommends reforms that raise worries for U.K. risk managers

By SARAH VEYSEY

LONDON—A plan to overhaul U.K. company law that would increase public scrutiny of companies is raising some concerns for risk managers.

The Company Law Review plan was presented last week to Secretary of State for Trade and Industry Patricia Hewitt in London. A nine-person steering group of industrialists, legal experts, economists and accounting professionals worked for three years to compile the list of recommendations, which will be considered by the government and could be passed into law by the end of this year.

"Years of neglect have left us with an archaic, Victorian system that is holding British business back," Ms. Hewitt said. "This review reflects the changes that are needed to get rid of unnecessary burdens and to meet modern expectations about corporate accountability and transparency. A more user-friendly system will boost productivity and make this country a better place to do business."

David Gamble, chief executive of the London-based Assn. of Insurance & Risk Managers, said the Company Law Review report raised some considerations for the corporate governance and risk management profession.

"One of the things that does concern me is that (these recommendations) are starting to make (corporate governance) very prescriptive. And that certainly wasn't the idea behind Turnbull," he said. The 1999 Turnbull report, whose recommendations later became law, introduced a series of guidelines for the reporting of risk and mandated companies to outline their risks in their reports and accounts.

Among the main tenets of the steering group's recent report was a proposal for a new statement of directors' duties. The group said it advocated the idea of a statement of directors' duties that, among other things, would "encourage responsible behavior by making clear that, in promoting the success of the company for its members as a whole, directors must take account of long-term as well as short-term consequences; and that they must recognize, where relevant, the importance of relations with employees, suppliers, customers and others, the need to maintain a reputation for high standards of business conduct, and the im-

See **Report** *on page 19*

Chile forms association

Risk management awareness grows in Latin America

SANTIAGO, Chile—Risk managers in Chile recently launched a new professional organization, the Asociacion Chilena de Administradores de Riesgos y Seguros.

The creation of ACHARYS shows that awareness of risk management principles is growing in Latin America, said Maria Beatriz C. Schiesari, who is insurance officer in Washington for the Insurance Unit Technical & Environment Department of the International Finance Corp. International Finance is a private-sector affiliate of the World Bank. She noted, however, that the number of risk managers in the region is not increasingly as rapidly.

Ms. Schiesari also is executive vp of the Asociacion Latinoamericana de Administracion de Riesgos y Seguros, an organization made up of risk management associations from Argentina, Brazil, Mexico, Panama, Spain and Venezuela.

ACHARYS is expected to become the seventh member of ALARYS, said ACHARYS President Jorge Ferrada Gallardo, who is an industrial risk management analyst in Santiago for ING Groep N.V. ACHARYS so far has 15 members, including risk managers, insurance industry vendors and safety managers, he said.

—By Roberto Ceniceros

St. Paul to acquire London Guarantee

Greater Canadian surety presence seen

By JUDY GREENWALD

TORONTO—The St. Paul Cos. Inc. has agreed to buy Toronto-based surety insurer London Guarantee Insurance Co. for $125 million Canadian, or $80 million.

The move will significantly expand St. Paul's surety operations in Canada and broaden its range of clients, said Robert J. Lamendola, president-global surety and construction at the St. Paul, Minn.-based insurer.

London Guarantee, which has 200 employees, is a specialty property/liability insurer that offers surety products and management liability, bond and professional indemnity products, according to St. Paul.

The surety company reported about $65 million Canadian ($42.5 million) in net premiums last year, mostly in surety. It is a majority-owned subsidiary of the London Insurance Group, which is owned by Winnipeg, Manitoba-based Great West Lifeco Inc., a financial services holding company.

St. Paul's Canadian surety operation, Toronto-based Northern Indemnity, which reported about $13.1 million Canadian ($8.6 million) in net premiums last year, will be merged with London Guarantee, Mr. Lamendola said in a statement. The deal is expected to close within three to five months.

Mr. Lamendola said London Guarantee's operations complement Northern Indemnity's. "London Guarantee targets small to midsized accounts, whereas The St. Paul's surety business in Canada consists mainly of large accounts. Our product offerings also complement one another."

St. Paul Chairman and Chief Executive Officer Douglas W. Leatherdale said in a statement, "This acquisition immediately increases our presence and expands our market in two of our more-profitable specialty businesses, at a fair price."

The deal marks St. Paul's second surety acquisition in 2001. Earlier this year, St. Paul bought Australian Pacific Surety Corp. Ltd., a Sydney, Australia-based underwriting agency, for an undisclosed amount.

Airlines facing suits over blood clot risks

By SARAH VEYSEY

LONDON—A U.K. law firm is preparing five test cases against airlines on behalf of individuals who claim to have suffered deep-vein thrombosis stemming from long-distance flights.

Watford, England-based Collins Solicitors said it was acting on behalf of a group of plaintiffs who had suffered, or whose family members had suffered, from DVT, or so-called "economy-class syndrome." DVT, a circulatory condition in which blood clots develop in the legs and travel to the heart or brain, is thought to be related to sitting for long periods of time in cramped conditions.

The plaintiffs include the family of 28-year-old Emma Christofferson, who died after developing DVT during a 20-hour Qantas Airways Ltd. flight from Australia to London last October.

Collins said it had sent "letters of claim" to five airlines, including Sydney-based Qantas; London-based British Airways P.L.C.; and American Airlines of Fort Worth, Texas. Collins declined to name the other two airlines it had contacted.

A spokesman for British Airways said the company would make no comments on the case until it had received the writ.

Collins said it represents about 30 DVT claimants.

In addition, the Melbourne, Australia-based law firm of Slater & Gordon is launching about 20 test cases against airlines on behalf of hundreds of DVT victims and their families. Slater & Gordon last month served papers to Australia's Civil Aviation Safety Authority. British Airways, Qantas and KLM Royal Dutch Airlines.

The law firm is charging that the airlines and CASA breached their duty of care by failing to warn passengers about the possible link between long-distance air travel and DVT. BI

Professional Marketplace

www.businessinsurance.com

To place your ad, contact Irais Amleshi

Phone: (312) 649-5340
Fax: (312) 649-7937
E-Mail: iamleshi@crain.com

Business Insurance, Classified Department, 740 N. Rush Street, Chicago, IL 60611-2590

Call for details on Blind Box and Internet Advertising

REQUEST FOR PROPOSALS

RFP FOR PROPERTY INSURANCE

The Town of Hempstead, Long Island, New York seeks a three year all peril policy for property and contents coverage for all Town facilities. The latest appraisal value for the property to be insured is $180 million +.

RFP packages will only be sent to insurance companies licensed in New York with a Best rating of A+ and a financial size category of 10.

Written request only for an RFP package should be addressed no later than August 17th, 2001 to:

Property Insurance RFP
Attn: Norman Murray
Town's Attorney's Office
1 Washington Street
Hempstead, New York 11550

HELP WANTED

WAUSAU **Account Representative**

Wausau Insurance & Companies Agency, Inc. has continually tailored our services to meet the evolving needs of our clients. Through change and growth, we have achieved our vision to be the very best in commercial insurance.

We are currently looking for motivated Account Representatives to be responsible for the direct solicitation and sales of commercial insurance products and services in the following areas: metropolitan New York/Northern New Jersey; Syracuse & Rochester, Detroit, Dallas & Houston, Atlanta, and Charlotte. The ideal individual must possess a college degree, 3 years of insurance sales experience and a take charge attitude. We offer a competitive salary and comprehensive benefits plan.

Please submit your resume to: Diane Pike, 1160D Pittsford-Victor Road, Pittsford, NY 14534. Fax: 716-381-9815

For *BI* Rates & Editorial Calendar Call 312-649-5340

REQUEST FOR PROPOSALS

WANTED

Commercial insurance brokerage firm to joint venture or subcontract for Insurance Brokerage and Risk Management Services for Sacramento Municipal Utility District. Minimum experience requirements of two (2) years servicing electrical utilities or complex to commercial accounts. The due date for the response to the Request For Proposal (RFP) is August 16, 2001. Contact Brian Cooney with Marsh Risk & Insurance Services at (415) 743-8172, between 8:30 am - 4:15 pm PST.

HELP WANTED

Assistant Risk Manager

BankAtlantic, located in sunny Ft. Lauderdale, is one of the largest and oldest financial institutions based in Florida. With almost 50 years of experience, BankAtlantic has become a community and civic leader in the South Florida market, providing a full range of commercial and individual banking products and services.

As the Assistant Risk Manager for BankAtlantic, you will possess a 4-year college degree, with five to seven years insurance experience. An advanced designation of a CPCU and/or ARM is preferred. Additionally, you will have Property and Casualty experience, coverage knowledge and claims management experience. PC proficiency in Word and Excel is essential.

We offer a competitive salary and a comprehensive benefits package, including medical/dental/vision and 401(k) plan, paid holidays, vacation and tuition reimbursement. For consideration, please apply to: BankAtlantic, Human Resources Department, 1750 E. Sunrise Blvd., Ft. Lauderdale, FL 33304. Fax (954) 760-5489 or email to:

careeropportunities@bankatlantic.com.

EEO/AA. Drug-free workplace. It is the policy of BankAtlantic to conduct credit reference, background checks and drug screening as a condition of employment.

HELP WANTED

INSURANCE
Experienced Commercial Underwriter

General Agent in W. Suffolk seeks ind. w/ heavy Comm'l Lines & supervisory experience. Hands-on duties include production, managing an existing book, producer relations & assisting in expansion. Exclt. communication skills req. Knowl. of Personal Lines a +. Exclt. career opp. Send resume: P.O. Box 1509, Melville, NY 11747 Attn: CU

HELP WANTED

SALES/MARKETING

Nat'l service org. seeks motivated ind. to sell adjusting, appraisal, salvage, recovery, fleet mgmt. & medical mgmt. svcs to insurance cos, corp. risk mgrs. & lending institutions. The successful candidate should be boardroom ready. This opportunity involves high level contact w/customers. Exclt. comp. & benefit pkg. Please send resume & comp. requirements to: P.O. Box 1509, Melville, NY 11747, Attn: MKTG

BI

(312) 649-7937

iamleshi@crain.com

LEGAL NOTICES

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
IN RE PETITION OF DAN YORAM SCHWARZMANN AND MARK CHARLES BATTEN AS JOINT PROVISIONAL LIQUIDATORS OF
INDEPENDENT INSURANCE COMPANY LIMITED, CASE NO. 01-B-13899 (SMB)

NOTICE IS HEREBY GIVEN THAT IN CONNECTION WITH THE PETITION FILED ON JULY 10, 2001 PURSUANT TO SECTION 304 OF THE BANKRUPTCY CODE (THE "PETITION") WITH RESPECT TO **INDEPENDENCE INSURANCE COMPANY LIMITED** (THE "COMPANY"), THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (THE "BANKRUPTCY COURT") HAS ENTERED A PRELIMINARY INJUNCTION ORDER DATED JULY 31, 2001 (THE "ORDER"):

1. ENJOINING ALL PERSONS AND ENTITIES FROM: (A) TRANSFERRING, RELINQUISHING OR DISPOSING OF ANY PROPERTY OF THE COMPANY IN THE UNITED STATES, OR THE PROCEEDS OF SUCH PROPERTY, TO THIRD PARTIES; (B) COMMENCING OR CONTINUING ANY ACTION OR OTHER LEGAL PROCEEDING (INCLUDING, WITHOUT LIMITATION, ARBITRATION, OR ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY ACTION, PROCEEDING OR PROCESS WHATSOEVER), INCLUDING BY WAY OF COUNTERCLAIM, AGAINST THE COMPANY, OR ANY PROPERTY IN THE UNITED STATES THAT IS INVOLVED IN THE FOREIGN PROCEEDING OR ANY PROCEEDS THEREOF, AND SEEKING DISCOVERY OF ANY NATURE AGAINST THE COMPANY; (C) ENFORCING ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY JUDGMENT, ASSESSMENT OR ORDER OR ARBITRATION AWARD AGAINST THE COMPANY AND COMMENCING OR CONTINUING ANY ACT OR ACTION OR OTHER LEGAL PROCEEDING (INCLUDING, WITHOUT LIMITATION, ARBITRATION, OR ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY ACTION, PROCEEDING OR PROCESS WHATSOEVER) OR ANY COUNTERCLAIM TO CREATE, PERFECT OR ENFORCE ANY LIEN, SETOFF, ATTACHMENT, GARNISHMENT, OR OTHER CLAIM AGAINST THE COMPANY, OR ANY OF ITS PROPERTY IN THE UNITED STATES, OR ANY PROCEEDS THEREOF, INCLUDING, WITHOUT LIMITATION, RIGHTS UNDER REINSURANCE AND RETROCESSION CONTRACTS; (D) DRAWING DOWN ANY LETTER OF CREDIT ESTABLISHED BY, ON BEHALF OR AT THE REQUEST OF THE COMPANY IN EXCESS OF AMOUNTS EXPRESSLY AUTHORIZED BY THE TERMS OF THE CONTRACT OR OTHER AGREEMENT PURSUANT TO WHICH SUCH LETTER OF CREDIT HAS BEEN ESTABLISHED; AND (E) WITHDRAWING FROM, SETTING OFF AGAINST, OR OTHERWISE APPLYING PROPERTY THAT IS THE SUBJECT OF ANY TRUST OR ESCROW AGREEMENT OR SIMILAR ARRANGEMENT IN WHICH THE COMPANY HAS AN INTEREST IN EXCESS OF AMOUNTS EXPRESSLY AUTHORIZED BY THE TERMS OF THE TRUST, ESCROW OR SIMILAR ARRANGEMENT;

2. REQUIRING ALL PERSONS AND ENTITIES IN POSSESSION, CUSTODY OR CONTROL OF PROPERTY OF THE COMPANY IN THE UNITED STATES, OR THE PROCEEDS THEREOF, TO TURN OVER AND ACCOUNT FOR SUCH PROPERTY OR ITS PROCEEDS TO THE PETITIONERS;

3. REQUIRING ALL PERSONS AND ENTITIES THAT ARE BENEFICIARIES OF LETTERS OF CREDIT ESTABLISHED BY, ON BEHALF OR AT THE REQUEST OF THE COMPANY, OR PARTIES TO ANY TRUST, ESCROW OR SIMILAR ARRANGEMENT IN WHICH THE COMPANY HAS AN INTEREST, TO (A) PROVIDE NOTICE TO THE PETITIONERS' UNITED STATES COUNSEL OF ANY DRAWDOWN ON ANY LETTER OF CREDIT ESTABLISHED BY, ON BEHALF OR AT THE REQUEST OF, THE COMPANY OR ANY WITHDRAWAL FROM, SETOFF AGAINST, OR OTHER APPLICATION OF PROPERTY THAT IS THE SUBJECT OF ANY TRUST OR ESCROW AGREEMENT OR SIMILAR ARRANGEMENT IN WHICH THE COMPANY HAS AN INTEREST, TOGETHER WITH INFORMATION SUFFICIENT TO PERMIT THE PETITIONERS TO ASSESS THE PROPRIETY OF SUCH DRAWDOWN, WITHDRAWAL, SETOFF, OR OTHER APPLICATION, INCLUDING, WITHOUT LIMITATION, THE DATE AND AMOUNT OF SUCH DRAWDOWN, WITHDRAWAL, SETOFF, OR OTHER APPLICATION, AND A COPY OF ANY CONTRACT RELATED TRUST OR OTHER AGREEMENT PURSUANT TO WHICH ANY SUCH DRAWDOWN, WITHDRAWAL, SETOFF OR OTHER APPLICATION, WAS MADE AND PROVIDE SUCH NOTICE AND OTHER INFORMATION CONTEMPORANEOUSLY THEREWITH; AND (B) TURN OVER AND ACCOUNT TO THE PETITIONERS FOR ALL FUNDS RESULTING FROM SUCH DRAWDOWN, WITHDRAWAL, SETOFF OR OTHER APPLICATION, IN EXCESS OF AMOUNTS EXPRESSLY AUTHORIZED BY THE TERMS OF ANY CONTRACT, ANY RELATED TRUST OR OTHER AGREEMENT PURSUANT TO WHICH SUCH LETTER OF CREDIT, TRUST ESCROW, OR SIMILAR ARRANGEMENT HAS BEEN ESTABLISHED; AND

4. PROVIDING, WITH RESPECT TO ANY CLAIM, ACTION, ARBITRATION OR OTHER PROCEEDING WHICH MAY BE COMMENCED OR BECOME KNOWN TO THE PETITIONERS IN THE FUTURE, OR THE ENTITLEMENT OR ALLEGED ENTITLEMENT OF ANY BENEFICIARY OF ANY LETTER OF CREDIT ESTABLISHED BY, ON BEHALF OR AT THE REQUEST OF, THE COMPANY, OR OF ANY PARTY TO ANY TRUST OR ESCROW AGREEMENT OR SIMILAR ARRANGEMENT IN WHICH THE COMPANY HAS AN INTEREST THAT IS IDENTIFIED BY THE PETITIONERS IN THE FUTURE (EACH A "SUBSEQUENT CLAIM"), THAT:

(A) WHEN INFORMED OF A SUBSEQUENT CLAIM, COUNSEL FOR THE PETITIONERS SHALL SERVE UPON THE HOLDER OF SUCH CLAIM A COPY OF THE SUMMONS, THE PETITION AND THE MOST RECENT INJUNCTION ORDER ENTERED BY THE COURT;

(B) THE HOLDER OF A SUBSEQUENT CLAM WILL HAVE TWENTY (20) DAYS FROM SERVICE OF THE SUMMONS IN WHICH TO FILE AN ANSWER OR MOTION WITH RESPECT TO THE PETITION.

THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING SCHEDULED TO BE HELD ON FEBRUARY 5, 2002 AT 10:00 A.M. (THE "RETURN DATE") BEFORE THE HONORABLE STUART M. BERNSTEIN, UNITED STATES BANKRUPTCY JUDGE, IN ROOM 723 OF THE ALEXANDER HAMILTON CUSTOM HOUSE, ONE BOWLING GREEN, NEW YORK, NEW YORK, 10004. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OBJECTING TO CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE BANKRUPTCY COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE STUART M. BERNSTEIN AND SERVED ON CHADBOURNE & PARKE LLP (ATTN: HOWARD SEIFE, ESQ.), SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE.

ANY PARTY-IN-INTEREST THAT HAS NOT RECEIVED A COPY OF THE PETITION, SUPPORTING PAPERS AND/OR THE ORDER SHOULD CONTACT COUNSEL FOR THE PETITIONERS AT THE ADDRESS BELOW:

CHADBOURNE & PARKE LLP
ATTORNEYS FOR THE PETITIONERS
30 ROCKEFELLER PLAZA
NEW YORK, NEW YORK 10112
(212) 408-5100
ATTN: HOWARD SEIFE, ESQ.

RECRUIT THE INDUSTRY'S MOST QUALIFIED CANDIDATES!

When the most talented men and women in the insurance industry want to make a move, they turn to...

Business Insurance®

Reserve your space now for these upcoming issues

August 13	August 20	August 27
Property Loss Control *Directory: Property Loss Control Consultants* Closing: August 7	**Ward Results** Closing: August 14	**Closing: August 21**

Advertise in the **PROFESSIONAL MARKETPLACE**

Call 312-649-5340 or e-mail iamleshi@crain.com

And visit *BI* at www.businessinsurance.com

INTERNATIONAL

Report

Continued from page 17

pact of their actions on the community and the environment."

Mr. Gamble said that while the proposed statement of directors' duties would be useful from a risk management point of view, its implementation would require particular care.

"If it ends up with people just going through the motions because the law demands it, then will this actually produce better corporate governance?" he asked. "My concern is that it is very tight. (Some) people seem to think that you can squeeze risk out of a situation by having rules and regulations," Mr. Gamble said. Instead, he said, a better understanding of upside risk and risk management is needed.

Mr. Gamble said that while he welcomed the streamlining effect that the statutory statement of directors' duties could have, a careful balance is needed to avoid increasing companies' costs. "It comes back to whether the directors' duties will add to the constraints and costs (of a company). That is the risk management role the steering group has—to find a balance between protection and the enterprise side of risk," he said.

Another major recommendation by the steering group is the proposal for an operating and financial review designed to improve reporting by larger companies. "The OFR will cover future plans, opportunities, risks and business strategies, and will include qualitative aspects of business such as the skills and knowledge of employees, business relationships and corporate reputation," the steering group said in a written statement.

Mr. Gamble said that it would be interesting to have greater clarification of what these future risks might be. "We strongly support the view that business and risk management have a tremendous interest in upside risk," he said. He added that AIRMIC was pleased that the issue of upside risk was being considered in the Company Law Review.

'We strongly support the view that business and risk management have a tremendous interest in upside risk.'

— David Gamble
AIRMIC

The United Kingdom's London-based Trades Union Congress, which represents labor unions, welcomed the report. "These proposals are a direct response to public concern about how companies make decisions and will create an opportunity for unions, pension funds and others to scrutinize corporate behavior and challenge bad practice," said John Monks, the general secretary of the TUC, in a statement.

"In particular, we welcome the proposal for a more-inclusive statement of directors' duties," Mr. Monks said. "This is a significant step forward and will require companies to have regard to the interests of employees, customers, suppliers and the wider community."

Mr. Monks added that the TUC welcomed the proposal for an operating and financial review for large companies. He said it result in publicly listed companies being required to publish more details about their planning and its impact on workers.

Ms. Hewitt said the proposals had been designed in accordance with the concept of "think small first." She pointed out that the vast majority of companies in the United Kingdom are small, with fewer than 50 employees each, and she said that these companies were finding themselves "caught up in a jungle of company law that is designed for large companies."

Ms. Hewitt added that complying with company law was often costly for smaller companies. "At the moment, small companies are having to bear unnecessary costs in order to comply with company law," she said. BI

Bad faith

Continued from page 4

to use when deciding whether insurers have acted in bad faith in their setting of claim reserves.

That way, Ms. Thurston said, in future disputes insurers would not need to second-guess what juries, which are not familiar with the complexities of workers comp reserving, might find punishable.

Republic made a similar request of the Second Appellate District Court, but that court rejected the request. In its decision, the unanimous three-judge panel said there is no merit "to judiciously legislate a new theory limiting the tortuous breach of the implied covenant of good faith and fair dealing." Instead, the panel found the jury award was proper and supported by "clear and convincing evidence."

The finding is one of several California appeals court decisions in recent years arising from lawsuits over the reserving practices of California workers compensation insurers. These suits alleged that the insurers' practices harmed policyholders, raising premiums and lowering dividends.

Most California insurers stopped paying dividends when the state ended its minimum rating law in the mid-1990s, said Guy Avagliano, principal and workers compensation actuary in San Francisco for Milliman USA. According to Mr. Avagliano, in 1994 California workers compensation insurers paid out more than $1 billion in policyholder dividends; by 2000, insurers paid out just $233 million, with almost half that amount paid by the State Compensation Insurance Fund.

'The impact of first-party bad faith in the work comp industry can be a big one. We have argued in cases before that it corrupts the fundamental elements of workers compensation.'

— Mike McClain
California Workers Compensation Institute

But employers today continue to file bad-faith lawsuits against workers comp insurers, charging negligent or fraudulent reserving practices that resulted in the employers being given unfavorable experience modification factors, said Mike McClain, general counsel for the California Workers Compensation Institute in Oakland. Overreserving can adversely affect an experience modification, which is used to calculate a policyholder's premium.

The CWCI filed an amicus brief supporting Republic. The research organization argued that employer complaints regarding workers comp payments and experience modification calculations should be handled administratively and not by the courts, Mr. McClain said. He said, for example, that employers currently can take complaints to the Department of Insurance or to the Workers Compensation Rating Bureau of California.

"The impact of first-party bad faith in the work comp industry can be a big one," Mr. McClain said. "We have argued in cases before that it corrupts the fundamental elements of workers compensation." He acknowledged, though, that several courts have upheld an employer's right to sue its workers compensation insurer.

The CWCI also supports Republic's contention that juries need a clear "business judgment" standard to help them determine at what point insurers' behavior indicates that they have acted in bad faith.

The judges in the Lance Camper case acknowledged that setting reserves is not an exact science and requires the exercise of judgment. "Insurers have discretion in setting reserves, and there is an acceptable range of reserves a carrier could set without incurring liability," the panel said in its decision.

Nevertheless, the appellate court rejected Republic's argument that Lance Camper should be required to establish that the reserves set by the insurer "were outside the range of permissible decisions that other carriers have made."

Such a requirement would eventually allow insurers to set an artificially high standard for reserves, the court decision said. The standard for reserves is that they be set at the reasonable expectation of the claims value, the court concluded.

In defense of Republic, Ms. Thurston said the insurer did not set Lance Camper's reserves to meet a "maximum probable potential." Instead, she said, Republic used a reasonable range.

In responding to the claim that Republic's dividend policy was set not by its board of directors but by its upper management, Ms. Thurston said that the insurer is small, that its board and its upper management consist basically of the same individuals, and that the two groups meet almost daily. As for the $2,500 fee charged for each claim that remains open at the end of a policy period, Ms. Thurston noted that such a fee is not illegal. Furthermore, she said, the existence of the fee had been disclosed to policyholders, though in retrospect, she said, the insurer wishes it had made greater efforts to point out the fee.

•

Lance Camper Manufacturing Corp. vs. Republic Indemnity Co. of America, Second Appellate District of the California Court of Appeal, July 23, 2001, No. B121976.

Distress

Continued from page 3

markets.

And the company's demand for reduced deductibles while the property/casualty insurance market is firming poses still more challenges.

"I knew I wasn't going to get my reductions from premium costs,," Mr. Bennett said

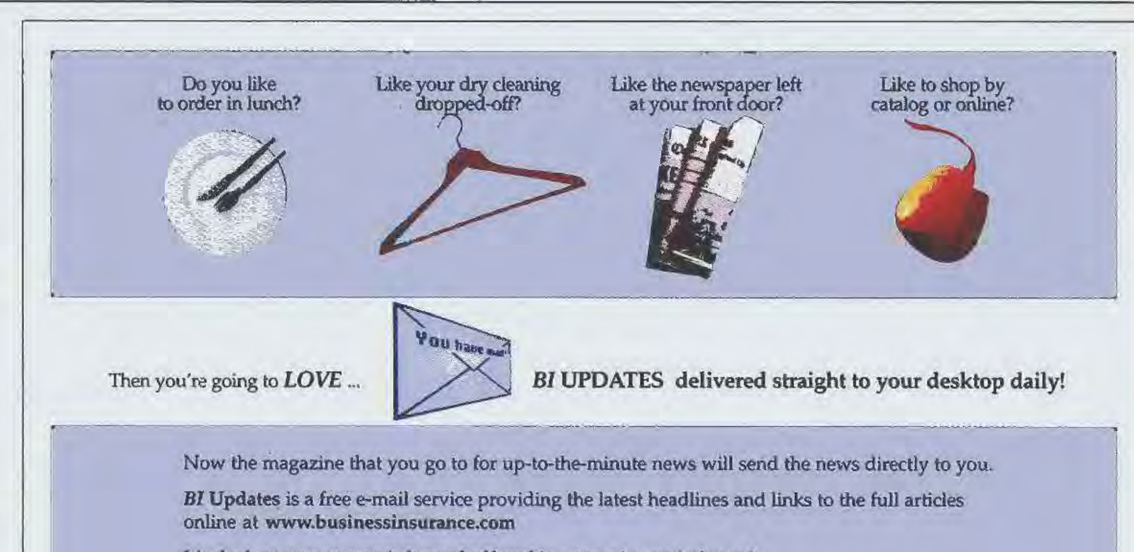
But he noted that among the positive developments that resulted from the Chapter 11 filing were the company's audits of its claims and its renewed attention to safety and loss protection.

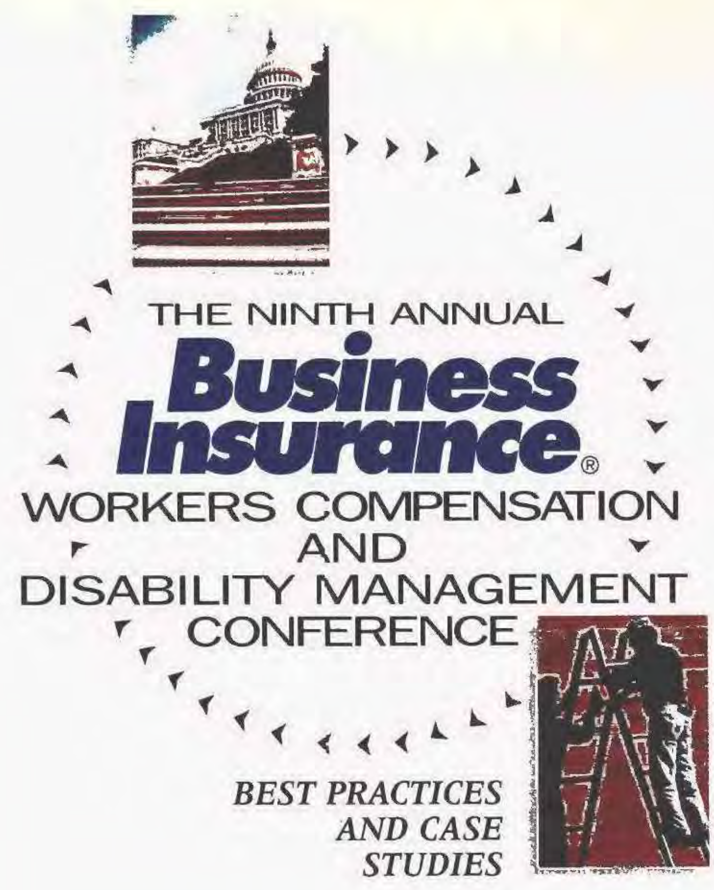
As part of the latter effort, Mr. Bennett said, every lost-time accident is now reported to Owens Corning's chief executive officer to increase the awareness of safety and loss prevention throughout the company.

And Mr. Bennett said he now attends all of Owens Corning's meetings with its underwriters. Previously, he participated in about half of such meetings, he said. He added: "In the ones I've attended, I do 95% of the talking."

But Mr. Bennett stressed that he leaves the "wheeling and dealing" to his brokers, while he talks about the company and what it is doing.

Selling the financial health of the company has become crucial when dealing with insurance markets, Mr. Bennett said. He added that it takes considerable convincing to get underwriters to believe the message that "we're in Chapter 11, but we're healthy." BI





Presented by Business Insurance in conjunction with IBF•International Business Forum

OCTOBER 22-24, 2001

Coronado Island Marriott Resort • San Diego, California

CONFERENCE CO-CHAIRS:

Kathryn J. McIntyre
Vice President/Publishing Director
Business Insurance

Martin J. Ross III
Vice President/Publisher
Business Insurance

Meg Fletcher
Senior Editor
Business Insurance

ADVISORY BOARD CHAIRMAN:

Jeffrey W. Pettegrew
V.P. Insurance & Risk Management
Westaff

MEMBERS:

Maria A. Bayne
President
Bayne Consulting Group Ltd.

Anshell Boggs
Director of Risk Management
Pep Boys

Libby Child
Manager
Integrated Disability Management
Steelcase Inc.

Dominic Dugo
Deputy District Attorney
Assistant Chief, Insurance Fraud
County of San Diego

Dan Kugler CPCU, ARM, CEBS
Director of Risk Management
Snap-on Incorporated

John Leonard
President
Maine Employers Mutual Insurance Co.

Bernadette Melchionne
Sr. Corporate Insurance Administrator
Mattel Inc.

Daniel R. Miller, M.P.H.
Vice President, Workers' Compensation and Disability Consulting
AON Consulting

Judith Parrish
Workers Compensation Program Manager
Office of Insurance and Risk Management
UCLA

Peter Rousmaniere
Senior Consultant
Work Loss Data Institute

Barry E. Thompson
National Practice Co-Leader
Workers Compensation Disability Management Services
Deloitte & Touche LLP

David J. Thompson, M.S.
Work/Life Manager Diversity
Microsoft Corporation

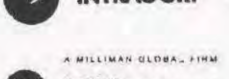
Richard Victor, J.D., Ph.D.
Executive Director
Workers Compensation Research Institute

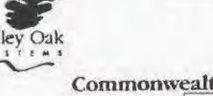
Stephen M. Wilder
Vice President, Risk Management
The Walt Disney Co.

WHO SHOULD ATTEND:

Risk managers, loss prevention and safety managers, benefit managers, workers compensation and disability managers, along with representatives from state and local governments ... plus insurers, brokers, consultants, and representatives from HMOs and PPOs.

SPONSORS:





Milliman USA

AMERICAN RE

NCCI Holdings, Inc.

CommonwealthRisk

CONFERENCE PROGRAM:

Monday, October 22, 2001

- GOLF TOURNAMENT*
- EARLY REGISTRATION
- EMPLOYERS' PRIVATE ROUNDTABLE: EXPERIENCES, VIEWS AND IDEAS
- PRE-CONFERENCE WELCOME RECEPTION: *Sponsored by NCCI Holdings, Inc.*

Tuesday, October 23, 2001

- REGISTRATION AND CONTINENTAL BREAKFAST: *Sponsored by Genex Services, Inc.*

KEYNOTE PRESENTATION:

GAINING CONTROL OF AN OUT-OF-CONTROL SYSTEM
James E. Green, *Risk Manager*, Acme Building Brands Inc.

- TABLE-TOP EXHIBITS & REFRESHMENTS: *Sponsored by Omega Insurance Services, Inc.*
- DISPELLING COMMON MYTHS ABOUT WORKERS COMPENSATION
- LUNCHEON: *Sponsored by AON and American Re-Insurance Company*
- LEADING MEDICAL PROVIDERS PRESCRIBE COST-EFFECTIVE PROTOCOLS FOR HANDLING CLAIMS
- LEGISLATION AND LITIGATION THAT COULD AFFECT EMPLOYERS' LIABILITIES
- TABLE-TOP EXHIBITS & REFRESHMENTS: *Sponsored by Bayne Consulting Group, Ltd.*
- VENDOR BENCHMARKING - TOOLS TO MEASURE YOUR VENDORS' PERFORMANCE
- PRACTICAL ERGONOMICS - HOW TO GET A GOOD HANDLE ON PREVENTING AND MANAGING CLAIMS
- COCKTAIL RECEPTION: *Sponsored by ACE USA*

Wednesday, October 24, 2001

- CONTINENTAL BREAKFAST: *Sponsored by Commonwealth Risk*
- INTEGRATED DISABILITY MANAGEMENT: PROMISE AND PERFORMANCE
- CAN LOSS CONTROL TECHNIQUES BE IMPROVED? A NEW LOOK AT SAFETY
- TABLE-TOP EXHIBITS & REFRESHMENTS: *Sponsored by Synchrony offered by MetLife and Travelers*
- FIGHT WORKERS COMP FRAUD AND WIN - WHAT REALLY WORKS
- LUNCHEON WORKSHOP: INNOVATIVE TECHNOLOGIES THAT CAN IMPROVE YOUR PROGRAM'S EFFECTIVENESS: *Sponsored by Milliman USA and CompConnector*

**For sponsorship information contact: Jennifer Fauci, Conference Producer at IBF (516) 594-3000 ext. 19 or email jenniferf@ibforum.com*

For exhibitor information contact: Julie Tarsie, Exhibits Manager at IBF (516) 594-3000 ext. 14 or email juliet@ibforum.com

REGISTRATION:

"A well organized conference with great speakers. I have attended many conferences over my professional lifetime and this was one of the best! Keep up the great work!"
— Dolores Nizich, *Manager, Safety & Health*, Team Staff Companies, Inc.

"The one thing I enjoy is always learning something and picking up ideas that I can take with me and use." — Bernadette Melchionne, Sr., *Corporate Insurance Administrator*, Mattel Inc.

To register or to receive more information, please write or call IBF•International Business Forum
100 Merrick Road, Suite 500, West Bldg., Rockville Centre, NY 11570
TEL: (516) 594-3000 FAX: (516) 594-5979
E-MAIL: cathyf@ibforum.com Website: ibforum.com

YES, please register me for the Ninth Annual *Business Insurance* Workers Compensation and Disability Management Conference.

International Business Forum IBF Conferences

- ❑ I am a service provider - $1,095
- ❑ I am a risk, employee benefit or safety manager - $795
- ❑ Sign me up for golf outing* - $100 Fee *(must register by September 15, 2001)*

**Golf available on a first-come first-serve basis*

NAME ____________________
NAME ON BADGE ____________________
TITLE ____________________
COMPANY ____________________
ADDRESS ____________________
CITY/STATE/ZIP ____________________
TELEPHONE NO. ____________________
FAX NO. ____________________
E-MAIL ____________________

❑ Check enclosed (Payable to International Business Forum. Write WC '01 on the check.)

❑ PLEASE CHARGE TO: ❑ American Express ❑ MasterCard/Visa

Cardholder name: ____________________

Card No. ____________________ Exp. Date: __________

Signature: ____________________

❑ Please forward information about sponsorship opportunities.
❑ Please forward information about table-top exhibits.

NEW GROUP DISCOUNT POLICIES: *Register two or more people from your firm and receive a 15% discount off each registration fee. Or, refer an industry colleague, register at the same time and you both will receive a 15% discount. (All parties must register at the same time and must attend to obtain the group discount offered. Cannot be combined with other discount offers).*

CANCELLATIONS: *Received in writing by IBF before September 22, 2001, will receive a refund, minus a $225 administrative charge. Thereafter, refunds are not available. Substitutions may be made at any time by calling IBF at (516) 594-3000.*

REDUCED RATE ACCOMMODATIONS: *Please make your reservation directly with The Coronado Island Marriott Resort at (619) 522-3113. There is a special room rate of $210 Single/Double if you mention the conference. (Special rate cut-off date is October 1, 2001.)*

CODE: BI-70

COMMENTARY

Rising rates lift all ships' costs

I too often look at insurance and risk management issues from 40,000 feet. A friend of mine who owns a boatyard brought me down to sea level last week.

I seldom think about how small businesses cope with their insurance and risk management issues, since our readership tends toward larger corporations. When insurance prices are rising, as they are now for health insurance as well as property/casualty insurance, I tend to focus on global issues: How will professional benefit managers and risk managers cope with higher pricing? What new financing programs will they implement? Will they keep their jobs or be fired when insurance costs go through the roof? Which insurers and brokers will benefit the most from rising prices, how quickly and why?

Just how expensive, and worrisome, insurance is for small businesses was brought home for me over dinner with my old friend Robert MacGregor, a Scotsman who goes by the name of Brodie. He owns The Concordia Co. Inc., a highly regarded boatyard in Southern New England specializing in custom boat building in addition to normal repair and maintenance of fine yachts.

Kathryn J. McIntyre

Brodie confided to me that he is "feeling the pinch" of rising insurance costs. Indeed, insurance costs are the most worrisome issue for him after cash flow, which is a perennial concern in a seasonal business like boatyards.

Out of the $55 an hour charged for work at Concordia, a whopping $6.75 goes to pay for insurance. "That's a lot, at more than 10%," Brodie says. He notes, "That's more than our profit at the end of the day—in a good year."

The most expensive insurance: group health, at $630 per month for family coverage, a 17% increase from last year. Concordia, which Brodie bought in 1981, once paid the whole tab for the most generous health plan available. As costs went up, Brodie switched his plan to a health maintenance organization and started asking employees to chip in. Employees now pay 25% of the cost. And still, it costs Concordia $3 of every $45 charged to provide group health insurance to its 60 employees in South Dartmouth, Mass.

General liability insurance is the next most expensive, now up to $2.75 an hour. It could have been even more expensive this year if Brodie hadn't increased his deductible and lowered his limits last fall. If he had purchased comparable coverage, costs would have gone up 15% instead of 4%. He expects another increase this year.

And then there's workers compensation insurance. This year it's costing $1 an hour, after a 10% increase last October. And Brodie fears it will go up to $1.50 next year, due to rising medical costs in general and some nasty accidents suffered by employees.

Three employees are out on disability now, which troubles Brodie. First, he worries about them as friends. "Every accident is a serious slap to us," he says, because the company is committed to preventing accidents. And second, he worries about the rising experience modification factor that will increase his cost of workers comp insurance.

He has been told that it would benefit him financially to pay injured employees to come to work and read The Boston Globe all day rather than to have them out on disability.

Brodie, who believes in the benefits of light-duty work for injured employees, would provide it if he could. But there just isn't enough light-duty work in a boatyard for an injured mechanic, for example. If he can't find productive work for an injured employee, he won't have them show up to "do something stupid," he says. "That's bad for them and bad for the rest of the employees."

How will this boatyard, founded in 1926 and world renowned for its elegant wooden yawls, cope with continually rising insurance costs? "We have to increase our rates to cover it," Brodie says. The hourly rate for work done by Concordia will increase to $60 on Sept. 1.

"One wonders how much our customers can take," Brodie says. Many of Brodie's customers are longstanding and good friends. At least for 2002 they will pay the price for quality work. But Brodie, who earned an MBA from Harvard in 1967, has posed the ultimate question for all businesses, small and large: How much will the customer take?

Publishing Director Kathryn J. McIntyre's commentary appears fortnightly and on www.businessinsurance.com. She can be reached at kmcintyre@crain.com.

Rights

Continued from page 1

both bills would guarantee access to specialty and emergency care, and both provide for systems of internal and external review to settle coverage disputes.

The House also approved an amendment that would expand the availability of medical savings accounts to allow anyone to set up MSAs, regardless of whether the individual is self-employed. The provision also would allow employees and employers alike to contribute to the accounts. The amendment, offered by House Ways and Means Chairman Bill Thomas, R-Calif., also lowered the minimum deductible for MSAs and would make them a permanent part of the tax law.

While the MSA provision could cause problems in conference committee, the chief bone of contention now, as it was two years ago, is liability.

Under the compromise announced by the president and Rep. Norwood, coverage disputes would be heard in federal court, while disputes arising from medical judgments would be heard in state courts.

After exhausting an outside independent review process, a patient who had been wrongly denied coverage could receive up to $1.5 million in noneconomic damages, in addition to unlimited economic damages in federal court. He or she could also be awarded up to $1.5 million in punitive damages if the denial of a coverage claim were "reversed by a written determination by an independent medical reviewer" and "there has been a failure to authorize coverage in compliance with such written determination."

In addition, the compromise would ban almost all class actions that involved a single health plan and a single employer. Employers could be sued only in federal court, and only when plaintiffs could prove that the employer had indeed made a coverage decision.

Initially, the president had supported limiting noneconomic damages to $500,000 and banning punitive damages altogether. The Senate patient protection act would allow unlimited noneconomic damages, as well as up to $5 million in civil penalties that resemble punitive damages. Rep. Norwood had initially co-sponsored a House version that closely tracked the Senate measure.

President Bush had threatened to veto the Senate bill if it came to his desk. Not surprisingly, he praised the House action in a statement that called passage of the bill "an important step closer to ensuring that patients get the care they need and that HMOs are held accountable."

Democrats, however, blasted the compromise as a sellout to health maintenance organizations and insurers, and vowed to fight for the Senate version in conference.

> *'This particular version does a slightly better job of managing the floodgates of liability. It also does provide a lot of patient protection.'*
>
> *— Helen Darling*
> *Watson Wyatt Worldwide*

Many employers, which had long criticized the notion of creating any employer liability in the name of patient protection, consider the House bill to be simply the slightly better of two bad options. Of particular concern is the shape of the version, if any, that will emerge from conference committee.

"This particular version does a slightly better job of managing the floodgates of liability. It also does provide a lot of patient protection, even though most of what it requires either was never a problem or was stopped within the past year or two," said Helen Darling, senior health care consultant with Watson Wyatt Worldwide in Stamford, Conn.

"It will still be very expensive and could be much worse if the compromise with the Senate makes it look more like the Senate version. No one should forget that we have a health care cost crisis, and more people will lose their coverage because they won't want to or be willing to pay even their share of modest cost sharing. I actually think that's the bigger problem. Most employers won't drop coverage," but employees asked to bear the higher costs of health care might decide it's not worth the expense, Ms. Darling said.

"Certainly, what passed is better than the underlying bill," said James Klein, president of the American Benefits Council in Washington. But the group remains concerned that an individual could still bring a cause of action in some cases even when the independent reviewer determined that denial was correct. He said he is also concerned that while "it's clearly preferred that there are federal causes of action," there could be "inconsistent state application of federal law."

Mr. Klein said it's "way too early to determine" what will happen in conference. He predicted a "very vigorous debate amongst the House, the Senate and White House."

The Washington-based U.S. Chamber of Commerce is "pleased" with the MSA provision as well as provisions that would encourage the use of association health plans, said Kate Sullivan, the Chamber's director-health policy. She expressed disappointment that the House rejected another amendment from Rep. Thomas that dealt with medical malpractice reform.

"We are relieved that they did adopt the Norwood amendment—it could have been a lot worse," said Ms. Sullivan. Looking ahead to the conference, "we hope this represents an ending point, not a starting point to negotiations" and that the president "will maintain his very strong position" against further expansion of liability, she said.

In a statement issued before the final vote, the National Assn. of Manufacturers in Washington called the compromise "clearly superior" to the underlying bill "but still more than the NAM can support."

Michael Baroody, the NAM's executive vp, said in the statement that while the "agreement was making the best of a bad situation," the employer group remains "greatly concerned that the legislation will move further to the left in the subsequent conference."

Meanwhile, in an analysis released Aug. 2 before the vote, New York-based Standard & Poor's Corp. held that a patients' bill of rights could have a negative impact on health care. The patients' rights proposals "come at a time when health care costs and health insurance premiums are rising and the economy is slowing down. The adoption of (a patients' bill of rights) is likely to increase medical costs, thereby exacerbating these financial pressures on health care funding and financing." BI

Court

Continued from page 6

routinely do not conduct searches for runaway drivers, because police suspect that most of them are Native Americans from a local Navajo reservation, according to court papers. The city attorney explained, according to court papers, that Native Americans in the area commonly flee auto accident scenes and then file stolen-vehicle reports.

In overturning a lower court decision, the appellate panel concluded that the city might have discriminated against Mr. Amos even though he was white.

"The city's alleged discrimination is no less malevolent because it was based upon an erroneous assumption," the panel's opinion stated.

In addition, the appeals court overturned the lower court's decision to dismiss a charge that the city's inadequate police training deprived Mr. Amos of his constitutional rights.

The appeals court affirmed, however, the district court's decision to dismiss a charge that the city violated Mr. Amos' due process rights.

The case was remanded to the lower court for further action.

The city will seek a rehearing before the full appeals court, said Page's attorney, Georgia Staton of Phoenix-based Jones, Skelton & Hochuli.

The decision "sends a very strong message to police departments, particularly those that border reservations, about what kinds of actions are appropriate," said Melissa L. Tatum, an associate law professor and co-director of the Native American Law Center at the University of Tulsa in Oklahoma.

•

The estate of Burton Walter Amos et al. vs. the City of Page, Ariz., and the City of Page Police Department et al., 9th U.S. Circuit Court of Appeals; 00 C.D.O.S. 6313, July 26, 2001.

Parity

Continued from page 1
or the treatment of other medical ailments.

But equitable coverage would not be required for the treatment of substance abuse or chemical dependency. In addition, parity would not be required for mental health care services delivered outside a network, as long as beneficiaries have reasonable access to in-network providers.

Like the 1996 law, the Senate bill would apply only to employers that offer mental health coverage in their group benefits plans. Employers that do not offer any coverage for mental health care, and those with 50 or fewer employees would be exempt. The legislation, if passed by Congress, would go into effect for plan years that start on or after Jan. 1, 2002.

The unanimous vote gives the measure powerful momentum as it moves to the Senate floor.

"This bill is going to move," said Frank McArdle, a consultant with Hewitt Associates L.L.C. in Washington.

> *'If you already are close to full parity, you will not see a big impact.'*
>
> — *Joy Riley*
> *Watson Wyatt Worldwide*

"The chances of passage are high," agreed James Klein, the president of the American Benefits Council in Washington.

Still, the measure may not remain in its current form. Sen. Judd Greg, R-N.H., the ranking minority member of the HELP Committee, said he intends to offer on the Senate floor an amendment that would exempt an employer from the parity mandate if upgrading its mental health care benefits to comply with the law would increase its costs by more than 1% a year.

Cost increases are likely to be along those lines, according to two recent studies. An analysis of the Domenici-Wellstone bill carried out for the APA was released last week. The study, conducted by Ron Bachman, a principal in the Atlanta office of Pricewaterhouse-Coopers L.L.P., estimates the average cost increase at 1%; that is the same estimate projected by the Congressional Budget Office in July.

By contrast, when Congress was debating full parity in 1996—before it decided on the scaled-back bill—PwC's Mr. Bachman put the cost impact at a national average of 2.6%.

According to the APA, one reason the impact of a federal parity mandate will likely be less now compared with that projected in 1996 is that many plans have been upgraded in the interim to comply with mandates passed by state legislatures.

Since 1996, 29 states have passed parity legislation. These state laws apply only to health plans offered by commercial insurers and health maintenance organizations, and most mandate parity only for severe biologically based mental disorders. The federal legislation would be binding upon both self-funded and insured plans and would apply to services for broad categories of mental health conditions.

The actual cost of full parity for any individual employer would depend, in large part, on the extent to which it would have to upgrade its plan, said Denise Podeschi, a consultant in the Phoenix office of William M. Mercer Inc.

"If you already are close to full parity, you will not see a big impact," said Joy Riley, a consultant with Watson Wyatt Worldwide in Atlanta.

Another big variable in cost will be the extent to which employers currently provide coverage through managed health care. Mercer's Ms. Podeschi said that those employers that move to managed care plans from traditional indemnity plans could actually see cost decreases even if they have to upgrade their mental health benefit packages to provide full parity.

"There still is a big opportunity to better manage care and hold down costs," said Ed Kaplan, a vp with The Segal Co. in New York.

Still, some business groups, such as the ERISA Industry Committee in Washington, say that a federal mental health care parity mandate would discourage companies from offering the coverage.

But the APA's Mr. Newman disagrees. Employers, he said, have come to understand that the cost to business of mental disorders in terms of increased absences and reduced productivity exceeds the cost of providing the coverage for their treatment. BI

Swiss Re

Continued from page 3
yourself," he said. "Life tends not to accumulate with itself," while property business does, Mr. Bolland said.

In addition to the diversification the move provides, "you can get top-line growth," he said.

Mr. Dubois said Swiss Re's decision to spend $2 billion on a U.S. life and health reinsurer in no way represents a pulling back in other areas. "We look at it as a way to balance the nonlife business with a more stable supply of earnings from the life reinsurance side," he said.

Acquiring Lincoln Re will increase to 44% from 37% the life and health contribution to Swiss Re's overall premium volume, Swiss Re said. Swiss Re's life and health business division recorded gross reinsurance premiums of 8.33 billion Swiss francs ($4.82 billion) for 2000.

In addition, the acquisition is a good one for a direct reinsurance writer, Mr. Bolland said. "It works well for directs because, historically, I would say the majority of life reinsurance has been done on a direct basis," he said.

Another reason for the deal was simply the availability of the Lincoln Re business, Mr. Bolland suggested. Because of consolidation in the reinsurance industry, there currently are fewer opportunities to grow through acquisition, he said.

After the acquisition was announced, Standard & Poor's Corp. in New York affirmed its ratings on Swiss Re Group and said its outlook on the ratings remains stable. S&P said the affirmation "reflects principally the high quality of the portfolio being acquired and Swiss Re's firm intention to fund the acquisition cost with fresh shareholders' equity."

In addition, the ratings agency noted that the takeover "will substantially increase (Swiss Re's) leading life reinsurance position in the North American market and globally."

> *'Any time you have more people vying for the same business, pricing is impacted.'*
>
> — *Joanne Smith*
> *UBS Warburg L.L.C.*

John Fitzpatrick, Swiss Re's chief financial officer, discussed in an analyst briefing when the takeover was unveiled the importance the company attaches to the U.S. life market.

According to Mr. Fitzpatrick, Swiss Re's Economic Research & Consulting unit has determined that North America accounts for $13.1 billion of the $20.5 billion total global life reinsurance premium volume. It calculates further that North American life reinsurance business will grow by almost 5% in real terms over the next 10 years, meaning that the North American market will account for about 60% of new reinsurance volume over the next few years.

Swiss Re Chairman and CEO Walter B. Kielholz said, "Lincoln Re is an excellent strategic fit with our plans to expand our life and health reinsurance business globally and to further strengthen our leading life and health reinsurance business in North America."

S&P noted in a statement that Swiss Re will assume certain liabilities and discontinued business from Lincoln National, including its workers compensation liabilities related to the failed Unicover Managers Inc. pool, disability coverage and London market personal accident reinsurance.

The ratings agency said that although there is some uncertainty about the adequacy of reserves established for these exposures, "Swiss Re's rigorous due diligence process and a runoff risk sharing arrangement with LNC should limit any future negative impact."

Joanne Smith, executive director at UBS Warburg L.L.C. in New York, said that the move was a good one for Lincoln National because of the competitive pressures faced by smaller reinsurers.

Ms. Smith noted that the life reinsurance business is growing more competitive with the entrance of Bermuda life reinsurers into the market and with European reinsurers becoming more active in that area as well.

"Any time you have more people vying for the same business, pricing is impacted," Ms. Smith said. "Over the longer term, it's probably not the kind of business that you want to be in if you're not a big reinsurer."

"I think for the European property/casualty reinsurers and some of the Bermuda reinsurers, they're probably looking at this as a diversification," Ms. Smith said.

Swiss Re placed its life and health business into a separate division in 1995, and since then it has expanded rapidly. Its other acquisitions include Dutch insurer Alhermij, Mercantile & General Reinsurance Co. P.L.C. in London, and Life Re Corp. of Stamford, Conn. BI

LETTERS

Continued from page 8
benefits to their workers in the first place.

Imagine America's workplace had there been no unions. Without such things as minimum wages, workplace safety laws, child labor laws, health benefits—all direct results of union efforts—America's workers would be no better off than those workers in third-world countries. Even those workers who are not represented by a union enjoy the benefits gained for the American worker through the collective bargaining process of the unions.

Should a health insurance agent consider working with a union? Why not?

There is no reason why an insurance agent can't work for a union, as long as things are done properly and honestly. It can offer an alternative at a time when both agents and workers are being restricted in their choices for health care.

When considering working with a union, an agent should have answers to the following questions:

- Is the union a legitimate labor organization?
- Is the union affiliated with the AFL-CIO?
- Does the union do anything other than offer a health plan?
- If health benefits are a key factor, are the contribution rates much too low?
- How are health and welfare plan contribution rates set?

Working with a union is not for every agent. It takes more time to do a proper presentation and there are more things to disclose than there are in selling a regular health insurance plan.

However, health insurance agents that want to use their skills and experience to offer the best benefits available, should not rule out working with labor unions. Unions have traditionally offered their members the best, most progressive benefits. After all, it was unions that created benefit programs to begin with.

Steve Gorman
President
International Union for the Natural Health, Complementary & Alternative Medicine Professions
West Hills, Calif.

Deadline approaches for two directories

Business Insurance will publish both its Directory of Surplus Lines Insurers and Directory of Wholesalers in the Sept. 10 issue, which will also contain a Spotlight Report on Surplus Lines.

The directories are published as an editorial services, and there is no charge to be included.

To be listed in the Directory of Surplus Lines Insurers, companies must be approved non-admitted insurers that are based in the United States and receive at least 50% of their gross premiums or a minimum of $10 million in gross premiums from policies written on a direct, non-admitted basis.

To be listed in the Directory of Wholesalers, your U.S.-based company must serve retail brokers as a wholesale broker, managing general agent or underwriting manager, regardless of whether you primarily use admitted or non-admitted markets. You must report premium volume and total gross revenues to be listed.

If your company meets the requirements for either directory and has not received a questionnaire, please request one immediately by calling Assistant Directory Editor Michel Schwartz at 312-649-5313.

Copies of the questionnaire also can be printed from the Directories area of the *Business Insurance* Web site at *www.businessinsurance.com*.

Completed questionnaires must be submitted by the extended deadline of Aug. 20.

ADVERTISER INDEX

Issue of August 6

ADVERTISER	PAGE #
AIG Corporate	24
American Assoc. of Orthodontia	16
Business Insurance	6,13,15,20
CNA Corp.	9
Davis Agency	16
First Health	7
Lincoln National/Reinsurance	4
Private Health Care Systems	10,11
Wausau Insurance Company	5

Homicide

Continued from page 3

state.

According to the National School Safety Center, a Westlake Village, Calif.-based nonprofit organization that tracks school violence, 18 schoolteachers have been slain on or near school grounds since 1992. An additional 11 school staffers, including administrators, custodians, nurses, security guards and police officers, have been killed over the past nine years.

"Within the past two years, two NEA members were victims of school shootings," a spokeswoman for the NEA in Washington said, referring to Mr. Grunow and Dave Sanders, a teacher shot and killed at Columbine High School in Littleton, Colo., in 1999. "NEA leaders reached out to their widows and families to help in every way we possibly could, but we wanted to do more," she said.

The spokeswoman said that, in the wake of the shootings, the NEA asked its insurer, Newark, N.J.-based Prudential Financial Services, whether it could increase the benefit payout it offered its roughly 2.6 million members across the United States.

The spokeswoman said that the union is paying no extra premium for the enhancement, due to the low level of risk associated with such an incident. NEA members are enrolled automatically in the insurance program, and there is no cost associated with it.

"While we hope it is never used, we are glad that it is in place just in case," the spokeswoman said.

The American Federation of Teachers, a Washington-based union that represents more than 1 million teachers, is looking into offering a similar benefit to its members.

"We have not received much interest from our members about a policy," an AFT spokesman said. "With that said, we historically closely follow the NEA's insurance benefit offerings."

"What we'll likely do is boost our benefits to include a death benefit if a teacher is killed on the job," the spokesman said. He noted that any enhanced policy that would likely cover death by homicide would pay out following any incident that resulted in the death of a teacher while on the job.

If the policy focuses solely on homicide, "it creates the wrong impression of the risks involved in teaching," he said. "We don't think homicide is a real threat for most members, and we wouldn't emphasize that with any policy."

> *'While we hope it is never used, we are glad that it is in place just in case.'*
>
> *— Spokeswoman*
> *National Education Assn.*

"The reality is, people are safer in schools than almost anyplace else," he said.

While the risk associated with teachers being killed on the job is small, it is a growing concern among school districts, which are beginning to look into homicide insurance benefits.

"We're beginning to hear about it, and I have at least one client that has asked us to develop a specific AD&D policy that will be paid for by the district," said Louis Giallonardo, a vp with The Segal Co. in Phoenix, which works with about 50 school districts in Arizona.

"There hasn't been a hue and cry over it, but I think this coming school year there will be a greater interest for it," Mr. Giallonardo said.

School districts in Florida may be among those interested in the policy.

Scott Clark, the administrative director in the office of risks and benefits management for the Miami-Dade County Public Schools, said the newly enacted Barry Grunow Act is still "a little nebulous." It is unclear whether the state will pay out the benefits directly or if it will reimburse school districts for paying out the benefits, he said. Furthermore, Mr. Clark said, he is a bit leery about whether the state fund will have enough money to cover the costs if an incident should occur.

At a recent gathering of the Florida Education Risk Management Assn., Mr. Clark said, members discussed how individual school districts were to comply with the new law. If the state plans to reimburse the districts, the question becomes whether the districts should self-insure the risk or transfer it. Mr. Clark said he is in favor of pooling the school districts' risks and sending a request for proposals to various insurers.

"The first thing we need to do, however, is to get clarification from the Department of Education as to what the bill is saying from a reimbursement standpoint," Mr. Clark said.

In addition to offering beneficiaries $75,000, the new Florida law also provides $1,000 for funeral and burial expenses and tuition expense reimbursement for a teacher's or administrator's dependent children when admitted to a publicly funded vocational-technical school, community college or university.

At least one policy that addresses death benefits for teachers killed on the job has been available in the marketplace for years.

"We've actually been working with schools and have had an AD&D plan with a felonious assault provision since 1992, said Steve Gedestad, executive vp for Keenan & Associates, a Torrance, Calif.-based broker that represents about 70% of the school districts in California.

Keenan has an exclusive AD&D policy for school districts with Transamerica Occidental Life Insurance Co. The policy pays out $450,000 should an employee become a victim while performing his or her job on school premises, Mr. Gedestad said.

"We've had some inquiries (into the policy) in the last year after Columbine," Mr. Gedestad said. "I wouldn't call it an overwhelming trend, but we've had several calls about it." BI

Conference

Continued from page 3

specific problems from the moderators and panelists at the end of each session and during social gatherings.

The conference will begin with a keynote speech by James E. Green, risk manager of Fort Worth, Texas-based Acme Building Brands Inc. In a presentation titled "Gaining Control of an Out-of-Control System," Mr. Green will suggest his ideas for improving the workers compensation system, especially how best to provide cost-effective medical care to workers injured on the job.

In addition, several sessions will discuss ways for employers to manage workers comp and related disability claims, including practical ergonomics, vendor benchmarking and fighting fraud. Speakers also will consider the promise and performance of integrated disability management, especially in a changing regulatory environment that is increasingly concerned about protecting an individual's right to privacy.

A luncheon workshop will end the conference, featuring a discussion of innovative technologies to help employers prevent and manage workers comp and disability claims while empowering workers.

Because most experts generally agree that preventing workers' job-related injuries and illnesses is the ultimate goal, a separate panel will consider safety and suggestions to improve loss control techniques.

The conference registration fee for a risk manager, employee benefits manager or safety manger is $795, though IBF conference alumni may pay a discounted $676 fee. The fee for a service provider is $1,095, though IBF alumni may pay a discounted $931 fee. Group discounts also are available for both categories of registrants.

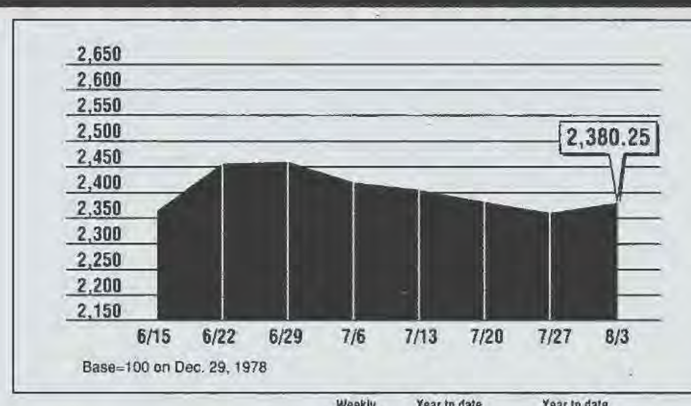
The registration fee entitles an attendee to two lunches, two cocktail receptions, two continental breakfasts as well as refreshment breaks throughout the conference. An attendee may also participate in the pre-conference golf outing for a $100 fee, though space is limited and is available on a first-come, first-served basis.

In addition, conference participants can earn 12 continuing education credits from the California Insurance Board.

Conference attendees seeking a hotel room at the reduced rate of $210 single/double should call the Coronado Island Marriott Resort at 619-435-3000 by Oct. 1. Attendees wishing to play golf should call the IBF registrar at 516-594-3000 no later than Sept. 15, though capacity may have been reached before then.

For additional details, contact Ms. Fauci at IBF, 516-594-3000, ext. 19, or *jenniferf@ibforum.* BI

BI Stock Index - 8/3/2001



		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
BROKERS							
Aon Corp.	NYS	35.80	2.55	4.53	42.31	28.13	6500
Brown & Brown	NYS	48.38	0.58	38.23	50.69	24.75	284
Clark Bardes Holdings	NDQ	25.04	-12.14	147.31	33.30	7.25	495
E.W. Blanch Holdings Inc.	NYS	13.50	0.00	-22.58	29.50	6.70	0
Arthur J. Gallagher & Co.	NYS	26.25	-5.91	-17.49	34.25	21.88	1759
Hilb, Rogal & Hamilton	NYS	47.06	2.98	18.02	47.06	33.75	448
Marsh & McLennan	NYS	100.48	2.48	-14.12	135.69	80.30	3442
Willis Group Holdings Ltd.	NYS	17.65	2.62	6.33	18.50	15.50	2194
BROKERS	AVERAGE		-0.86	20.03			
INSURERS/REINSURERS							
ACE Ltd.	NYS	34.85	5.10	-17.88	43.94	31.59	6168
Accel International Corp.	NDQ	0.07	0.00	-76.42	0.64	0.06	0
Acceptance Insurance Cos.	NYS	5.39	-7.71	2.67	6.94	3.70	284
AEGON N.V.	NYS	28.15	4.26	-32.07	43.00	25.92	616
AFLAC Inc.	NYS	29.09	-0.14	-19.40	37.47	23.38	6258
Allmerica Financial Corp.	NYS	51.30	-2.25	-29.24	74.25	46.30	1317
Allstate Corp.	NYS	33.50	-5.66	-23.10	45.90	27.25	22216
Ambac Financial Group	NYS	58.29	2.68	-0.04	64.00	41.38	1727
American Financial Group	NYS	23.15	-21.66	-12.85	30.75	18.69	5215
American General	NYS	45.64	0.64	12.00	47.44	33.31	12166
American Intl Group	NYS	81.64	-0.10	-17.17	103.75	72.64	23808
American Safety Insurance	NYS	9.85	-1.50	60.82	10.36	3.25	5
Argonaut Group	NDQ	19.00	1.44	-9.52	21.25	13.50	136
AXA-UAP Group	NYS	29.03	4.61	-19.15	39.88	24.58	1397
Baldwin & Lyons Inc.	NDQ	24.52	0.12	5.46	28.75	15.75	12
Berkley W.R. Corp.	NDQ	41.45	0.07	-12.16	48.75	22.88	704
Berkshire Hathaway Inc.	NYS	68200.00	0.29	-3.94	74600.00	53500.00	1
Capitol Transamerica Corp.	NAS	16.23	0.19	30.49	16.50	10.31	98
Chubb Corp.	NYS	68.51	-1.64	-20.80	90.25	63.30	3695
Cincinnati Financial Corp.	NYS	39.01	0.46	-1.40	42.92	32.56	1833
Citigroup	NYS	51.13	2.16	0.13	59.13	39.00	41315
CNA Financial Corp.	NYS	32.65	-14.69	-15.74	41.94	32.06	1534
CNA Surety	NYS	14.25	2.74	0.00	14.60	10.63	227
EMC Insurance Group Inc.	NDQ	14.08	3.00	19.83	15.86	8.50	11
ESG Re Limited	NDQ	3.67	2.80	99.05	4.00	1.72	90
Everest Reinsurance	NYS	68.04	-1.65	-5.01	75.50	38.94	1528
Fremont General Corp.	NYS	5.46	0.00	94.13	6.97	1.50	498
Gainsco Inc.	NYS	1.17	0.86	-55.43	4.75	1.10	245
Harleysville Group	NDQ	26.25	-7.24	-10.26	30.63	18.25	362
HCC Insurance Holdings	NYS	23.37	2.95	-13.24	29.66	17.63	664
ING Groep N.V.	NYS	32.80	3.14	-18.13	41.97	27.92	571
IPC Holdings Ltd.	NDQ	23.63	-1.54	12.52	25.05	15.13	336
Hartford Financial Services	NYS	64.50	1.74	-8.67	80.00	53.50	5451
John Hancock Fin. Services	NYS	39.80	1.53	5.78	42.00	20.63	5964
Lincoln National	NYS	50.76	3.23	7.29	56.38	38.00	5121
Markel Corp.	NYS	199.55	1.29	10.25	207.47	133.50	191
MBIA Insurance Group	NYS	55.62	0.31	12.55	56.74	37.50	1933
Meadowbrook Insur. Group	NYS	3.15	-1.56	-61.23	8.38	2.45	14
MetLife	NYS	29.23	1.04	-16.49	36.63	19.38	5112
Mutual Risk Mgmt. Ltd.	NYS	12.00	9.49	-20.99	23.75	3.40	1298
Navigators Group	NDQ	20.00	-0.50	50.23	20.86	9.75	12
NYMagic Inc.	NYS	20.30	0.74	7.55	22.70	13.00	16
Ohio Casualty Corp.	NDQ	14.07	5.55	40.70	14.30	6.13	3217
Old Republic Int'l	NYS	26.80	3.68	-16.25	32.06	21.25	4303
Partner Re Ltd.	NYS	49.75	-1.68	-18.44	62.50	38.44	1587
Penn-America Group Inc.	NYS	10.05	0.00	31.80	10.60	6.69	26
PMA Capital Corporation	NDQ	16.95	-3.14	-1.74	18.94	15.19	35
Philadelphia Cons. Holding	NDQ	36.07	0.03	16.83	37.50	16.38	295
ProAssurance	NYS	15.90	-4.33	-4.72	18.50	10.56	170
PXRE Corp.	NYS	17.60	-3.30	4.30	20.10	12.56	14
RenaissanceRe Holdings Ltd.	NYS	70.41	0.44	-10.09	84.19	46.56	371
RLI Corp.	NYS	42.18	0.55	-5.61	46.16	35.63	55
St. Paul Cos.	NYS	42.59	-3.51	-21.58	57.00	39.58	7531
SCOR	NYS	44.60	1.62	-11.24	53.75	39.75	2
SAFECO Corp.	NDQ	30.18	0.03	-8.20	35.88	21.50	5826
SCPIE Holdings Inc.	NYS	20.33	0.64	-13.95	31.40	17.78	NA
Seibels Bruce Group	NDQ	2.60	4.00	362.22	3.25	0.53	6
Selective Ins. Group	NDQ	27.41	1.44	13.03	28.22	15.25	193
Tokio Marine & Fire	NDQ	46.75	0.54	-17.98	58.25	45.10	85
Torchmark Corp.	NYS	41.28	1.83	7.40	41.90	24.63	1649
Transatlantic Holdings	NYS	76.14	-1.07	7.87	84.16	56.13	144
Trenwick Group Ltd.	NYS	17.68	6.51	-28.75	27.13	14.75	1382
Unico American Corp.	NDQ	6.50	2.69	10.64	7.75	5.27	6
United Fire & Casualty	NDQ	30.17	0.63	52.76	34.52	16.19	24
Unitrin	NYS	37.74	2.69	-7.10	41.94	27.75	145
UNUM Corp.	NYS	28.18	-0.35	4.86	33.75	19.25	3376
Vesta Insurance Co.	NYS	10.72	-4.63	111.75	11.49	4.13	760
XL Capital Ltd.	NYS	76.95	3.15	-11.93	89.25	64.13	2165
Zenith National Ins.	NYS	29.30	0.86	-0.26	30.70	20.00	70
INSURERS/REINSURERS	AVERAGE		0.06	5.75			
MANAGED CARE ORGANIZATIONS							
Aetna Inc.	NYS	26.48	0.68	-35.51	42.69	23.02	4297
CIGNA Corp.	NYS	88.60	-11.04	-33.03	136.75	86.48	11469
Health Net Inc.	NYS	17.47	-5.92	-33.29	26.94	14.13	5376
Humana Inc.	NYS	10.51	13.01	-31.08	15.81	6.63	5783
Oxford Health Plans	NYS	26.80	-2.83	-32.15	32.06	21.25	4303
Pacificare Health Sys.	NDQ	15.18	23.31	1.20	63.25	9.81	11420
Sierra Health Services	NYS	8.10	-11.96	113.16	10.27	2.44	1294
United HealthGroup	NYS	64.29	-1.09	4.75	68.00	40.94	10628
Wellpoint Health Networks	NYS	100.75	-2.19	-12.58	121.50	79.50	4294
MANAGED CARE	AVERAGE		0.22	-6.50			
ALL COMPANIES			-0.19	6.42			

Top advancing issues: Pacificare Health Systems, Humana Inc., Mutual Risk Management Ltd., Trenwick Group Ltd., Ohio Casualty Corp.; Leading decliners: American Financial Group, CNA Financial Corp.; Clark Bardes Holdings, Sierra Health Services, CIGNA Corp. The *BI* Index increased 0.88%; the Dow Jones 30 Industrials rose 0.92%; the S&P 500 was again unchanged; and the NYSE Composite rose 0.45%. Average P/E: Brokers, 24.91% Insurers/reinsurers, 28.52 percent; and managed care companies, 14.93%.

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

The Wright Brothers represented by the Roger Richman Agency, www.wrightbrothers2003.com

THE GREATEST RISK IS NOT TAKING ONE.[SM]

It takes courage to do something that's never been done before. To attempt a feat that goes beyond conventional thinking. But, it also takes planning and a complete understanding of all the problems that may arise. No one has better firsthand knowledge of the inherent risks of daring enterprises than we do. In fact, we're the leading U.S.-based provider of custom-tailored risk solutions for companies all over the world. So the next time you wake up, mind ablaze with an idea that nobody's attempted to pursue before, contact AIG. We're the organization that helps challenging ventures get off the ground.

Insurance and services provided by members of American International Group, Inc., 70 Pine Street, Department A, New York, New York 10270.

WWW.AIG.COM