

Business Insurance

AUGUST 9, 1999

Updates

House speaker promises vote on managed care reform

WASHINGTON—House Speaker Dennis Hastert, R-Ill., has promised a vote on managed care reform legislation after Congress returns from its August recess.

In a written statement released Friday, Rep. Hastert said the GOP leadership would work with Reps. Tom Coburn, R-Okla., and John Shadegg, R-Ariz., to draft a bill based on a proposal made by the two lawmakers. The principles that form the proposal include giving participants in managed care plans the right to independent review of denied cover-

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Reporting Weekly on Corporate Risk, Employee Benefit and Managed Health Care News / \$4

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Media now face wider exposure

Newsgathering targeted

By AMANDA MILLIGAN

Extra, extra—read all about it.

Risk managers should prepare for a host of new media liability exposures that go beyond traditional claims of libel or defamation, according to media insurers and attorneys.

Certain cases currently on appeal, such as those involving talk-show host Jenny Jones and grocer Food Lion, will become tests of the strength and limitations of First Amendment protections for the media, they say.

In 1997, Food Lion, a North Carolina-based supermarket chain, was awarded \$315,000 in punitive damages and \$1,400 in compensatory damages against American Broadcasting Cos. The grocer claimed that ABC staff members fraudulently obtained jobs at its stores as part of a 1992 investigative report that aired on the television program "PrimeTime Live" (BI, Jan. 27, 1997; Sept. 8, 1997).

Earlier this year, Warner Brothers Inc., producer of the

daytime talk show "The Jenny Jones Show," was hit with a \$25 million wrongful death verdict after a guest was murdered. The guest had revealed during taping of a show that he had a homosexual attraction for another man who was to appear on the show—which never aired—and who now is his accused killer (BI, May 17). The family of the victim sued Warner Brothers, alleging that it had lured the perpetrator into appearing on the show, which humiliated him into committing murder.

These cases also will test the ability of plaintiffs attorneys to win cases based on charges of unethical newsgathering rather than the hard-to-prove accusations of libel, said Leib Dodell, media liability underwriting manager for Chubb Executive Risk in Simsbury, Conn.

"Rather than going after the truth or falsity of the news, they challenge the newsgathering techniques," Mr. Dodell said. "There's no question that this is a legally aggressive time

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Bill would forestall ergonomics rule

By MARK A. HOFMANN

WASHINGTON—Any ergonomics standard proposed by the Occupational Safety and Health Administration would not go into effect until 2001 if a bill approved last week by the House of Representatives becomes law.

Unlike some previous measures designed to head off promulgation of an ergonomics standard, the Workplace Preservation Act, H.R. 987, does not forbid OSHA from studying ergonomics issues. Instead, the bill, which was intro-

duced by Rep. Roy Blunt, R-Mo., would forbid OSHA from issuing a standard until the National Academy of Sciences completes a congressionally funded study of workplace ergonomics issues. The study, among other things, aims to determine whether a cause-and-effect relationship exists between repetitive workplace tasks and repetitive stress injuries.

The House's approval of the bill was welcomed by the Risk & Insurance Management Society Inc. and other employer groups, who have long charged that OSHA was

proceeding without adequate scientific evidence to justify what they believe could prove an unnecessarily expensive new burden on employers.

Opponents of an ergonomics measure had pushed for the completion of at least an NAS study before a proposal got past the talking stage.

"RIMS has called for that since the issue was first raised. As risk managers, we believe in having all of the information before making a decision. We believe the govern-

See OSHA on page 22

Flap over partner benefits lowered

Airlines offer benefits

By MICHAEL PRINCE

ELK GROVE TOWNSHIP, Ill.—United Airlines will offer its U.S. employees domestic partner benefits, ending a two-year refusal to comply with a San Francisco ordinance requiring the benefits.

UAL Corp., which owns United and has 97,000 employees worldwide, said United is the first U.S.-based airline to offer domestic partner benefits.

Shortly after United's announcement, AMR Corp., the parent of American Airlines, said it, too, would begin to offer employees domestic partner benefits.

United said that for those partners who cannot legally marry, the company will provide medical benefits, dental benefits, COBRA benefits, life insurance, pension survivor benefits, bereavement leave and travel benefits. For partners who can legally marry the United employee, the company will provide bereavement leave and travel benefits only. No benefits will yet be provided to employees outside the United States.

To be eligible, the company will require a notarized affidavit of the domestic partner relationship along with proof of joint residence and financial interde-

pendence. The company expects the benefits to be available in May 2000.

United's announcement in essence ends its opposition to a controversial San Francisco ordinance. The city law, passed in 1996, requires all contractors that work for the city that provide group

See Partners on page 22



PHOTO: AP/WIDE WORLD

United Airlines was recently joined by American Airlines in announcing plans to offer domestic partner benefits.

Trials and tribulations

Fewer cases: Through 1998, there have been 163 libel trials in the 1990s, well below the 261 such trials in the 1980s.

Larger awards: Despite fewer cases, libel damages awarded in this decade far exceed those awarded in the 1980s.

Source: Libel Defense Resource Center

Jenny Jones testified at a liability trial involving her TV talk show.

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London woos U.S. buyers

Lloyd's, IUA team up to promote market's capabilities

By SARAH GODDARD

LONDON—The London market is presenting an increasingly united front to international clients, in contrast to the visible market divisions of the past.

This new meeting of interests was sealed last Friday when the heads of London's two main insurance institutions—Lloyd's of London and the International Underwriting Assn.—met with major clients and regulators during a high-profile visit to the United States.

Max Taylor, chairman of

Lloyd's, and Tim Carroll, chairman of the IUA, joined a visit by

LLOYD'S

the Lord Mayor of the City of London to promote London as a major financial services center to senior business executives in Atlanta. The meeting was organized by British Invisibles, a

non-profit organization that promotes London as an international financial services center.

Mr. Taylor and Mr. Carroll took the opportunity to meet jointly with representatives of some of the London market's largest clients in the region. The visit was the first time that the two organizations have joined forces to promote the London insurance market as a whole, and it represents a further step in the growing cooperation between the organizations, they said.

Recently, the two bodies jointly

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Updates

Hastert pledges vote on patient bill

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age; allowing patients to sue HMOs if the patient is injured as a result of denied coverage; giving plan participants the right to see obstetricians, gynecologists and pediatricians without any referral; and by "giving consumers more choices through medical savings accounts, tax deductions and other common-sense provisions that will help the uninsured get the health care they need," according to Rep. Hastert's statement.

The announcement came one day after Reps. Charlie Norwood, R-Ga., and John Dingell, D-Mich., unveiled their Managed Care Improvement Act. The measure would allow patients to sue managed care plans in state courts for damages if they are injured as a result of a covered benefit being denied or delayed. If a plan did not abide by an established appeals process in denying the claim, the patient could seek punitive damages as well, according to the bill.

The bill provides some defenses against liability for employers that sponsor health plans. An employer or plan that approves a patient's request would face no liability, and an employer that chooses not to exercise "discretionary authority" in settling disputes between an employee and the plan also would not be liable.

The bill calls for the creation of an external review system for denied claims, first by a health plan physician and then, if the claim still is denied, by independent medical specialists, whose decisions would be binding on the plan. Other provisions call for the right of plan participants to see obstetricians, gynecologists and pediatricians without any referral; guaranteed emergency room care; and a ban on releasing a patient's medical information without the patient's permission.

Swissair insurers offer payments

PHILADELPHIA—Insurers are offering to pay compensatory damages to families of the 229 passengers and crew members who died in last year's crash of Swissair Flight 111.

The insurers for Swissair, Delta Air Lines Inc., Boeing Co. and other defendants have agreed to "share the liability," according to Desmond Barry, a Swissair attorney with Condon & Forsyth in New York.

Mr. Barry said defense attorneys will move to dismiss claims for punitive damages "as a matter of law" but that dropping the claims for punitive damages is not a condition of the offer to pay compensatory damages.

Hull and liability insurance for Swissair is shared equally by Polygon Insurance Co. Ltd. and Pentagram Insurance Co. Ltd., both aviation industry captive insurance companies based in Guernsey (BI, Sept. 7, 1998). Major airlines typically carry \$1.25 billion to \$1.5 billion in liability insurance.

U.S. District Court Judge James Giles is to hold a Sept. 13 hearing to determine how claims from the crash will proceed.

Swissair earlier this year made a voluntary offer to the families, against the advice of its insurers and attorneys, of 195,000 Swiss francs (\$133,600) per victim (BI, March 8).

Dingell questions regulation

WASHINGTON—U.S. Rep. John D. Dingell, D-Mich., is citing the Unicovert Managers Inc. reinsurance fiasco in questioning whether a pending financial services reform bill provides for adequate regulation of banks' insurance activities.

In a July 30 letter, Rep. Dingell has asked Federal Reserve Chairman Alan Greenspan for his opinion as to whether bank solvency could be threatened by provisions of S. 900, formerly known as H.R. 10. The National Assn. of Insurance Commissioners has said the bill would pre-empt state regulation of many potential insurance activities of banks and bank affiliates, including reinsurance underwriting and management, the letter notes.

Among other things, Rep. Dingell asked for Mr. Greenspan's opinion about "the implications for the safety and soundness of the banking system if banks were to incur losses like those of the participants in the Unicovert reinsurance pool." Rep. Dingell also questioned whether banks could become providers of "brand-new naive capacity" in the reinsurance market.

Earlier this year, workers compensation reinsurance pools managed by Unicovert unraveled amid allegations that unexpected explosive growth in premiums could generate \$2 billion or more in losses for pool retrocessionaires (BI, March 15).

Provisions of S. 900 are being debated by a House-Senate conference committee, of which Rep. Dingell is a member.

Gray sticking with predictions

FORT COLLINS, Colo.—It ain't over until it's over—that's the message from Colorado State University hurricane forecaster William Gray.

Despite seeing only one named storm for the 1999 hurricane season thus far, Mr. Gray contends that his April prediction of 14 tropical storms, nine hurricanes and four intense storms still will hold true.

"People should not be lulled into thinking that, because we've had a rather slow start to the season, that we're going to get a slow season," Mr. Gray said in a statement. The active portion of the season spans from mid-August to late October.

Likening the 1999 season to the prior year, when there were 14 tropical storms, 10 hurricanes and three intense hurricanes, Mr. Gray said in his statement: "This is probably not one of those eight or 10 blockbuster storm years of the century, but it still should be a very active year. . . . If we don't get an active year in 1999, it means the atmosphere, for some strange reason, has stopped behaving as it has in the past. We don't expect that to happen."

No carcinogen found in facility

NAPERVILLE, Ill.—After years of investigating a high incidence of brain cancer in the Amoco Research Center, BP Amoco P.L.C. said last week. See Updates on page 22

Employer must enforce gag order on worker: Court

By JUDY GREENWALD

SAN FRANCISCO—California employers that lose discrimination cases in court could find their problems are only just beginning as a result of a California Supreme Court decision last week.

The majority opinion in *Oscar Aguilar vs. Avis Rent A Car System Inc.* upheld a lower court injunction that bars an Avis supervisor from making any derogatory racial or ethnic remarks in the workplace and charges Avis with monitoring his compliance with

the gag order.

Some attorneys say the ruling not only raises constitutional free speech issues that may have to be resolved by the U.S. Supreme Court, but also creates daunting, if not insurmountable, enforcement problems for employers as well as a potential exposure to penalties. Other attorneys, though, say the ruling is so specific to Avis' situation that it is unlikely to have a wider impact.

At the very least, the decision underscores the need for all employers to enforce policies that discourage discrimination, attorneys

say.

An Avis attorney said the Garden City, N.Y.-based company has not yet decided whether to appeal the decision.

The California case stems from a 1994 jury award of \$150,000 to eight Hispanic employees who charged they were discriminated against by two supervisors at Avis' San Francisco International Airport facility. The trial judge also issued an injunction prohibiting one of the supervisors, John Lawrence, from using any derogatory racial or ethnic epithets. See Ruling on page 4

Loss data, proposed rate hike tools for California employers

By ROBERTO CENICEROS

SAN FRANCISCO—Call it ironic, but not all California employers are distraught over a recommendation that workers compensation insurers raise their pure premium rates by 18.4%.

The Workers' Compensation Insurance Rating Bureau of California's recommendation, which would be effective Jan. 1, 2000, is intended for use by insurers for developing market rates. The state agency is projecting a 99% insurer loss ratio for accident year

1998—which would be the worst loss ratio since the state began collecting data in 1970. Pure premium represents only costs associated with losses; it does not include expenses such as commissions. In a highly competitive market insurers often will set their rates below expected losses.

Citing the poor loss ratio and the "continuing deterioration of loss experience," the WCIRB recommended the rate hike July 30.

Rather than voice alarm, however, employers say this loss data and rate hike will provide a po-

tent argument for reducing a proposed steep increase in workers comp benefits in the state (BI, May 3).

Originally, employers expected the legislation, S.B. 320, would call for a \$1.7 billion increase in comp benefits. But recent changes to the legislation have increased the amount to \$2.7 billion after three years, according to the WCIRB.

California legislators are in recess until Aug. 16; the bill is in the Assembly Appropriations Committee. See Comp on page 20

Few confident of nest eggs

By ARLEEN JACOBUS

Crain News Service

After a decade of education and communication efforts, only 8% of 401(k) plan participants are confident they will have enough money to retire, a recent survey by Fidelity Investments shows.

Some 54% are fairly confident their savings will be enough, but 38% are unsure, the survey found.

At the same time, half of the respondents who are not confident have taken loans from their 401(k) accounts, according to "Profiles of Americans and Their 401(k)s," a survey of 700 people that participate in 401(k) retirement savings plans.

"One would have thought that after 10 years, more people would be comfortable with their 401(k) savings," said Kathryn Hopkins, executive vp, Fidelity Institutional Retirement Services Co. "This will force the industry to move from mass communications to more targeted educational content."

The survey results revealed that not all 401(k) investors are alike, Ms. Hopkins said. They point to a need for directed communication and education pro-

See 401(k) on page 10

Crain's offices in New York move

NEW YORK—The New York offices of Crain Communications Inc., which publishes *Business Insurance*, have moved to a new location in Manhattan.

Effective today, BI's reporting and sales staffs in New York will be based at 711 Third Ave., New York, N.Y. 10017-4036.

Phone and fax numbers for BI will not change, however, and staff may be reached at 212-210-0100. The fax number remains 212-210-0704.

Crain publications based in New York include Advertising Age, Advertising Age International, Ad Age's Business Marketing, Ad Age's Creativity, Crain's New York Business, InvestmentNews and Pensions & Investments. In addition, publications with sales and editorial staffs in New York include Automotive News, Automotive News International, AutoWeek, *Business Insurance*, Electronic Media, Global Wireless, Modern Healthcare, Modern Physician and RCR.

Crain Communications Inc., based in Detroit, publishes 30 consumer, business, and trade publications. The company has more than 900 employees in 15 offices worldwide.

Inside

• While new research suggests that DES may be potentially risky to the grandchildren of its users, much more evidence should be required before any tort claims are allowed in court, this week's editorial says. **PAGE 8**

• After putting reforms on hold throughout the Asian financial crisis, Malaysia has renewed its push to develop a more-centralized and globally competitive insurance industry. **PAGE 17**

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Business Insurance (ISSN 0007-6864) Vol. 33, No. 32, is published weekly by Crain Communications Inc., 740 N. Rush St., Chicago, Ill. 60611-2590. 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 \$89 a year in U.S. \$108 in Canada and Mexico (includes GST). All other countries \$209 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 1999 by Crain Communications Inc.

Companies err on side of recalls

By MICHAEL BRADFORD

It's a classic case of being between a rock and a hard place.

A company is aware of a problem with a product. In the interest of public safety and protecting its reputation, the product maker decides a recall is necessary.

Getting a defective product away from consumers also logically should reduce the risk of being hit with a product liability claim.

In reality, though, publicly acknowledging flaws in a product might also serve as a tasty invitation to lawsuit-hungry attorneys and eager plaintiffs.

In spite of that situation, doing nothing is not an option, experts agree. Hiding a problem could endanger the public and bring heavy fines from the Consumer Product Safety Commission or the Food and Drug

Administration, among other risks.

When companies are considering a recall, "the thing they have to think about is, 'What are our risks?'" said Brad Murlick, a partner and associate national director of business insurance consulting with Deloitte & Touche L.L.P. in Chicago. "What are the costs and benefits? Somebody has to make a business decision."

"If there's a mind-set, it would be that it's better to recall than not recall," said Don Bryan, managing director at Marsh Inc. in Chicago.

Proceeding with a recall means the company's reputation won't take a hit from problems that could arise from failing to address product flaws, and also, that public safety is protected, he said. "At the end of the day, most companies that believe there is a risk to their reputation or to humans are going to effect a recall. Nobody can afford the bad p.r."

The recall question is one that some companies seem to face more than others. Food and drug makers, for example, often are in the recall spotlight, with automobile manufacturers and toy makers also frequently showing up. But the recall dilemma is a potential problem for manufacturers of virtually all types of products.

In a recent case, General Motors Corp. recalled 3.5 million vehicles with an antilock brake system that has been the target of an investigation by the National Highway Traffic Safety Administration.

General Motors did not respond to questions from *Business Insurance* as to how it came to the decision to recall the vehicles, but the NHTSA pointed out in a written statement that the agency had been investigating the brakes for several years and had compiled a significant

See Recalls on page 10



PHOTO: AFP



PHOTO: NIKE

From General Motors to Nike to IKEA, companies in 1999 have issued recalls of various products in response to concerns about their safety.



Latex still an irritant for some

By MEG FLETCHER

ROCKVILLE, Md.—Allergic reactions to natural rubber latex continue to be a concern, especially among workers and patients who use gloves or equipment made of the highly flexible and protective material.

Allergic reactions and other problems continue despite a federally mandated warning on latex products and manufacturers' efforts to reduce the exposure of workers and patients to the potential ill effects of such latex.

In the wake of the AIDS epidemic, reactions to latex among health care workers "skyrocketed" after the federal Centers for Disease Control and Prevention issued a 1987 report urging health care workers to wear protective gloves during all patient procedures to prevent the transmission of infectious diseases, said Christian C. Mester, a plaintiff's attorney with Freeman & Freeman P.C. in Rockville, Md.

Use of such gloves increased to more than 200 billion pairs in 1997 from 12 billion a decade earlier, Mr. Mester said.

Other workers, including technicians and food service workers, as well as hairdressers and housekeepers, may be affected to a lesser extent.

In addition, according to experts, some patients, such as those with spina bifida or congenital abnormalities, are at risk of developing latex-related medical problems, probably because they undergo many medical procedures and are exposed more often to natural latex products, such as urinary

See Latex on page 6

TWA pollution coverage claim rejected

Cleanup loss may bode ill for airlines

By GAVIN SOUTER

ST. LOUIS—Trans World Airlines Inc. cannot make claims on 30-year-old insurance policies to pay for a more than \$30 million cleanup ordered by federal authorities in the late 1980s, a Missouri judge has ruled.

TWA cannot prove that the pollution took place when the policies were in place, and, even if it could, the policies exclude damages to the policyholder's own property, Judge Robert H. Dierker Jr. ruled in the 22nd Circuit Court of Missouri.

The case is one of several expected to focus on airlines' hazardous waste sites, said William D. Ellison, an attorney at Lord, Bissell & Brook in Chicago who represent-

ed insurers in the case.

In the TWA case ruled on earlier this month, the St. Louis-based airline had sought coverage from Associated Aviation Underwriters and London market insurers for a pollution cleanup.

The polluted site in Kansas City, Mo., is leased by TWA and used to maintain and overhaul its aircraft. The "owned property" exclusion—contained in TWA's policies prior to 1970—applies to property owned, rented, occupied or used by the policyholder, court papers say.

Construction of the facility started in 1956, and from the beginning, TWA had a waste water treatment plant at the site.

The waste water plant was expanded

See TWA on page 20



PHOTO: AP/WORLDWIDE

A state court denied Trans World Airlines Inc. coverage for cleanup of owned property.

Educational benefits reviewed: Study

By ELIZABETH LINDSEY

A tight labor market, higher tuition costs and a need for employees who can handle fast technological advances all have played a role in employers reviewing their educational reimbursement programs, a study and a consultant say.

The survey, conducted by Hewitt Associates L.L.C. in Lincolnshire, Ill., gathered information from 460 medium-sized and large employers. Hewitt defined a medium-sized employer as one having at least 1,000 employees and a large employer as having

100,000 or more employees; the median number of U.S. employees was 3,300.

Ralph E. Gretzinger, a Hewitt consultant, said that most employers are somewhat concerned about costs growing out of control if they are not limited. As a result, most limit how much they will reimburse.

Almost two-thirds of employers impose a dollar limit, with 45% of those having a flat annual limit for all types of courses. The median annual limit is \$3,000.

Some employers also agree to pay only a percentage of the cost or to pay for only a certain number of courses per term. Sixty-

one percent of employers reimburse 100% of eligible expenses; that number, Mr. Gretzinger said, is 10 percentage points higher than in 1993. Seventy-two percent of employers do not set a limit on courses.

Of all employers surveyed, 48% impose one of those three kinds of limits—dollar, percentage or number of courses. About a third impose two of those limits, with 6% of employers imposing all three types of limits. The remaining 14% of employers said they will reimburse their employees for 100% of their costs without any kind of

See Tuition on page 26

ART experts slated for captive forum

By RODD ZOLKOS

MIAMI—Structured along parallel tracks examining both traditional captive insurance topics and new financial risk transfer mechanisms, the 9th World Captive and Alternative Risk Financing Forum will offer attendees "Links to the New Basics."

Scheduled for Nov. 14 through 17 at the Doral Golf Resort and Spa in Miami, this year's forum will feature leading experts in alternative risk transfer discussing such topics as integrated risk financing, reinsurance, rent-a-captives, using captives in insuring employee benefits, and capital markets opportunities.

Outside its formal program, the gathering also allows considerable opportunity for one-on-one discussions among panelists and peers during breaks, meals and receptions.

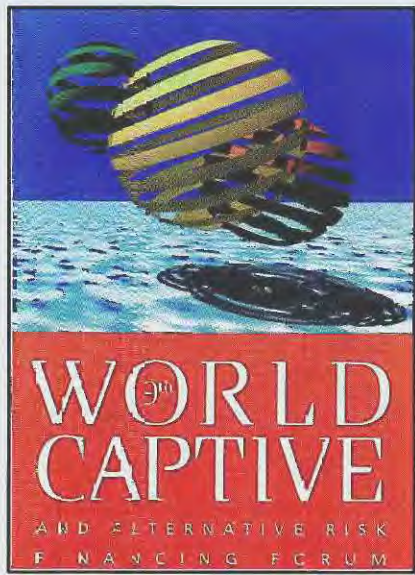
The conference's co-sponsors are *Business Insurance*, Skandia International Risk Management/SINSER, and Tillinghast-Towers Perrin.

Concurrent sessions that begin Monday, Nov. 15, will address both captive basics and essential employee benefits concepts.

"Captives 101: The Benchmark Course," will feature Nicholas Dove, president of Skandia International Risk Management, Bermuda, and D. Hugh Rosenbaum, a principal with Tillinghast-Towers Perrin in London, discussing basic risk financing and captive concepts, providing preparation for the more advanced material to come in the Forum.

Meanwhile, John Woyke, a Towers Perrin principal in Valhalla, N.Y., and P. Bruce Wright, a partner with the LeBoeuf, Lamb, Green & MacRae law firm in New York, will offer a step-by-

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Ruling

Continued from page 2

directed at Hispanic employees, and ordered Avis to enforce the injunction.

Avis and Mr. Lawrence appealed the injunction—but not the discrimination verdict—arguing that it was a prior restraint that violates their constitutional right to freedom of speech. A state appellate court subsequently ordered the trial court to limit the injunction to the workplace.

In its 4-3 decision upholding the appellate court's decision, the California Supreme Court concluded the injunction does not violate the right to freedom of speech "if there has been a judicial determination that the use of such epithets will contribute to the continuation of a hostile or abusive work environment and therefore will constitute

employment discrimination."

The controversial case generated five opinions among the seven Supreme Court justices, including three separate dissenting opinions.

The case presents significant problems for employers that lose discrimination cases, say some attorneys.

"It's yet another potential infringement on an employer's ability to run his or her business," said Tyler A. Brown, an employer attorney with Jackson, Lewis, Schnitzler & Krugman in San Francisco.

"It's bad enough that employers already face an increasingly hostile legislature, and now we have to worry about prior restraints on speech before it's even happened," he said.

The decision means any time an employer is faced with a harassment suit, "They're going to have to at least accept the possibility of some type of injunction being

levied against them," Mr. Brown said.

"What's an employer supposed to do?" he asked. "Have (someone in) an injunction monitor position who will ask around and make sure on a daily basis somebody doesn't violate an injunction?"

'It's yet another potential infringement on an employer's ability to run his or her business,' says Tyler A. Brown.

You're going to get into situations where employees who are trying to even a score could say, 'So and so called me a name.' It's potentially going to turn the workforce into a kindergarten class."

The decision means employers that lose discrimination cases "now face an injunction requiring them to police future speech of managers or employees, with penalties if they don't do so," said Jeffrey M. Tanenbaum, an employer attorney with Littler Mendelson in San Francisco.

Employees presumably ever can be put in jail if they violate the injunction and are found to be in contempt of court, said Mr. Tanenbaum, who called the decision a "horrendously bad, even laughable constitutional interpretation."

Patricia Gillette, an employer attorney with Heller Ehrman White & McAuliffe in San Francisco, said, "I don't know whether this means every time you get a jury verdict (as a result of an employee) saying, 'My manager put his arm around me and called me honey,' whether that now leads the plaintiff attorney to seek an injunction."

Ms. Gillette said that while in *Avis*' case an injunction may not necessarily have been a bad idea, "I think it's a slippery slope."

Tom Klein, an attorney with Orrick, Herrington & Sutcliffe in San Francisco, said, "I think what it says is that if an employer ever has a finding that they engage in harassment, that they're going to be under even more of a microscope than ordinarily, and that they're going to have to be even more vigilant in taking steps to prevent and eradicate that kind of behavior in the workplace."

Some attorneys say the decision should serve as a warning to all employers.

"It simply underscores the need for supervisory training for equal employment opportunity issues, particularly harassment," said Brent Giddens, an employer attorney with Sonnenschein Nath & Rosenthal in Los Angeles.

"It will give employers more of an impetus to watch what's going on, to stop the kind of conduct" that led to this decision, said Joseph Posner, a plaintiffs attorney in Encino, Calif.

"Nobody expects a workplace to be the bastion of prudery. We need not go back to Edwardian manners," said Mr. Posner. "You can have a loose workplace and a place where people feel comfortable, but when things cross over into bigotry and hatred, you've got to put a stop to it. It's that simple," he said.

Some attorneys say the decision has only a limited impact.

"I think it's a fairly unusual situation," said Joanne Dellaverson, an attorney with Curiale Dellaverson Hirschfeld Kelly & Kraemer in San Francisco who represents *Avis*.

"I don't believe it's going to have a lot of far-reaching implications for employers" unless they lose a case in court. Then, "there can be this sort of tail to the whole case where you have individuals who are ordered to not say certain things," said Ms. Dellaverson.

Edwin L. Currey Jr., a San Francisco-based solo practitioner who represented the plaintiffs in the case, said: "Most sophisticated employers have very complicated and certainly adequate procedures for dealing with complaints of harassment."

"It's only when there's a breakdown with those procedures that employers have problems," which are normally resolved through litigation. Only in rare circumstances will an injunction be necessary, said Mr. Currey. In this case, he said, the judge thought the discrimination would continue unless the injunction was issued.

"I think most employers would try to prevent that kind of behavior anyway," said employer attorney George W. Abel, of Los Angeles-based Paul, Hastings, Janofsky & Walker.

"I don't think this makes the defense of employment discrimination cases any worse or any easier," said Gerald Maatman, a partner in the Chicago law firm of Baker & McKenzie.

"I think it sends a signal that if I'm a risk manager and I want to create the best workplace possible, this is a favorable decision because it says I have wide leeway to institute disciplinary procedures against employees who may break my internal rules" and who may try to justify their conduct on First Amendment grounds, said Mr. Maatman.

Oscar Aguilar et al., Plaintiffs and Respondents, vs. Avis Rent A Car System Inc., et al., Defendants and Appellants, No. S054561, Supreme Court of California.

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Opinions

Slow the rush to judgment

AS TROUBLING AS NEW RESEARCH IS that suggests DES may be potentially harmful for the grandchildren of women who took the anti-miscarriage drug, it is even more troubling that such premature research is being touted as likely to unleash a new torrent of product liability litigation.

Before a new path is beaten to the courthouse, however, additional research is needed that shows a more-conclusive link between a medication taken two generations earlier and alleged genetic mutations in children today.

There have been several stark reminders in recent months of the dangers of rushing to litigation before there is firm evidence to support an underlying claim.

For example, just last month, the U.S. government published its finding that a federal researcher had committed "scientific misconduct" by manipulating results to support his theory that electromagnetic fields cause cancer. The faked research, originally released in 1992, was the first to claim a biological link between cancer and exposure to EMF from household appliances, power lines and other common sources.

Not only did this false report spark additional and costly studies—none of which has yielded any hard evidence of a link to cancer or other human diseases, according to the National Institute of Environmental Health Sciences—but it also sparked widespread fear about the health risks of EMF and led to several multimillion-dollar lawsuits against utilities, alleging health risks and diminution of property values.

In a similar case of rebutting unfounded health claims too late, a panel of scientists appointed by the National Academy of Sciences in June issued its conclusion that, contrary to the assertion of thousands of plaintiffs, silicone breast implants do not cause systemic diseases. That finding, which echoed other medical and scientific panels, came too late for implant manufacturers, which already have been hit with billions of dollars of claims alleging a connection.

Similar alarms have been raised in recent years over various products. There will always be a risk of defective products and chemicals that cause health problems requiring treatment, removal of the product from the market and compensation for losses. Far too many product liability claims, however, are prompted by incomplete research or junk science, as has been demonstrated time and time again. It is no wonder, then, that business equates some product liability claims with the tale of the boy who cried, "Wolf!"

Before any tort claim is allowed in court, plaintiffs should be required to have far-stronger evidence linking injuries or illnesses to a given product.

That clearly is not yet the case with the research into DES problems in a third generation. The DES research study, published this summer in the British journal *Carcinogenesis*, is among the first to examine potential risks to grandchildren of DES users. The researchers reported finding an increased risk of tumors in the elderly female members of third-generation



mice when the first-generation females were exposed to DES (*BI*, Aug. 2).

However, more research is needed on the grandchildren of women who took DES, not on mice. In particular, researchers must explore whether environmental or other factors may be to blame for any alleged health problems in people who were not directly exposed to the drug.

It is generally accepted that DES can cause cancer and reproductive problems in women who either took the drug—which was been banned for use in pregnancy in 1971—or were exposed to it in utero. It is a great leap, however, to assert that it creates a genetic mutation that causes health problems in succeeding generations.

If true, this would be a horrible and tragic problem. But much more research is needed before that link is proved.

Another hurdle to such claims is the issue of whether such third-generation lawsuits are even allowed.

It is questionable whether a plaintiff who was not born until decades after an ancestor took a drug should be able to bring a product liability claim against the drug's manufacturer. How can a manufacturer owe a legal duty of care to plaintiffs several generations removed from its consumer? It also might be deemed unfairly punitive for a manufacturer to be hit with repeat litigation by succeeding generations of plaintiffs for a single alleged tort.

And who is to say that this third-generation liability theory would stop with DES suits?

Fortunately, many state courts don't allow such third-party suits—at least, not yet. Before the first such lawsuit is filed by DES grandchildren, we believe much more research is needed and a far more conclusive link be shown between health risks today and an ancestor's exposure to a drug decades ago.

Letters

Competition the real issue in data battle

To the editor: The Aug. 2 article, "Who Should Get Data?" answered a lot of questions, except the most obvious one: How could a tiny company like DataLister Inc., with such huge industry-financed competitors like the Insurance Bureau Bulletin Board Service Network, attract such attention?

We're willing to bet the answer has to do with the fact that DataLister dramatically heats up competition between insurance companies and insurance agents for employ-

ers' workers comp accounts. We don't think it's any more complicated than that.

At DataLister, we believe competition and free markets are good and that efforts to stifle competition are bad. We believe that agencies and insurers that say they own data that employers are required to file with the states are merely trying to stifle competition.

Charles Murray
Senior Vp
DataLister Inc.
Lakeland, Fla.

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Business Insurance is published by Crain Communications, Inc.

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Published weekly at 740 N. Rush St., Chicago, Ill. 60611-2590, Fax 312-280-3174, E-mail: biweb@crain.com. Offices: 711 Third Ave., New York, NY 10017-4036, 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 Hutton 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 \$89 a year in U.S. \$108 in Canada and Mexico (includes GST). All other countries \$209 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 are available from University Microfilms, 300 Zeeb Road, Ann Arbor, Mich. 48103. Microfiche copies available: 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 information and rates to reproduce in general circulation media, contact: JOSEPH P. HANLEY, Crain News Service, 220 E. 42nd St., New York, N.Y. 10017-5806, 212-254-0890. For reprints or reprint permission contact: KAREN BROWN TUCKER, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590, 312-649-5319, Fax 312-280-3174.

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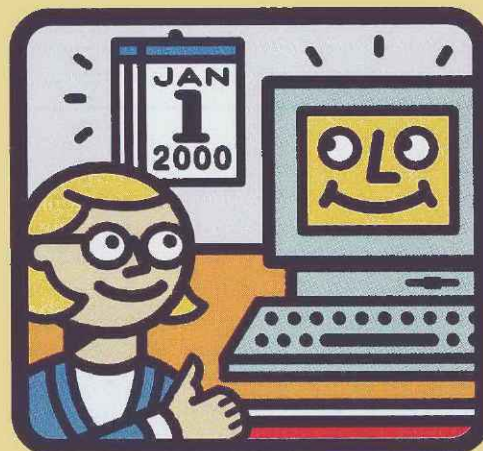
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Recalls

Continued from page 3

number of complaints before GM issued a recall.

The NHTSA said it has received 10,861 reports of brake problems on two styles of GM trucks. The reports refer to 2,111 crashes and 293 injuries. The agency also received 2,400 complaints of brake problems with the GMC Suburban, including 782 crashes and 68 injuries.

Product makers typically don't wait long before making the recall decision.

Nike USA Inc. last month voluntarily recalled 250,000 sport water bottles because of a potential choking hazard, according to the Consumer Product Safety Commission. Nike had received only one complaint of a valve detaching from a bottle and no reports of injuries when it issued the recall.

The recall urged consumers to return the bottles—which retail for around \$7—to stores for credit or to contact Nike to receive a redesigned cap.

A Nike spokesman could not be reached to comment on the recall.

Mr. Bryan of Marsh said the Nike recall shows how some companies think a quick recall decision is a way to protect the public and the company's reputation.

"I suspect they are highly concerned about their image in the public's mind," he said of Nike.

For Nike, it probably was not a difficult choice, Mr. Bryan suggested. "Sports bottles are not hard to recall and replace. They're not expensive. It's not likely to cost a lot," he noted, when compared to the potential damage a choking incident could cause.

A spokeswoman for Gerber Products Co. said recall decisions are not hard to make at that company. "Our business is about babies, and safety is our absolute number one concern," she said.

"If there is any doubt in our mind about the risk of safety to our customers, we are likely to recall the product," she said.

The company is recalling 300,000 spill-proof bottles that, like the Nike product, have a valve that

the expense of a recall is too high may find that that decision comes back to haunt them, Mr. Gregory remarked.

John Schumacher, president of the excess casualty division at American Home, said, "If one person becomes a whistle blower" and informs attorneys that a product defect was swept under the rug, lawsuits that lead to large punitive awards could result.

Certain situations can compli-

'If there is any doubt in our mind about the risk of safety to our customers, we are likely to recall the product,' says a spokeswoman for Gerber Products Co.

could detach and cause choking.

Gerber believes its attitude reduces the chances that lawsuits will be filed when problems arise, according to the spokeswoman. "I don't think litigation comes into the mix when always serving the customer is your first interest."

Geoff Gregory, senior vp of the excess casualty division at American Home Assurance Co., a New York-based unit of American International Group Inc., said product makers almost certainly consider the risk of increased litigation when deciding to make a recall.

"I'm sure those discussions are held," he said. Ultimately, however, those companies realize that a recall is a "proactive approach" for staving off unforeseen damage that could result from a product defect.

A company that does a cost-benefit analysis and determines that

cate the decision-making process on a recall, according to Mr. Bryan. Such a situation might arise if a defective product part came from a supplier, for example. "The supplier might have a different point of view as to what other solutions might be available."

The recall decision can be a little easier if the product maker has insurance to cover the cost of a recall, Mr. Bryan said.

"It can make a difference," he said, because having coverage in place can take away some of the financial sting and provide the company with a tool to help it decide whether to go through with a recall.

"On the hard goods side of things, we're seeing more of a move toward the purchase of coverage," Mr. Bryan said. "It's not a flood; it's still an expensive product to

purchase. Those we see purchasing the coverage have more exposure due to the nature of their products."

Companies that produce goods that end up "on or in the body" are more likely to buy recall insurance, according to Mr. Bryan. "We're seeing a spike due to what happened to Coke and other incidents in Europe."

The Coca-Cola Co. recently recalled millions of cans of its soft drink in Europe after dozens of people in Belgium and France became ill. Coke attributed the problems to defective carbonation and a fungicide used to treat storage pallets in a bottling plant (BI, June 21).

Mr. Gregory of American Home said policyholders can benefit from an insurer's help if a recall is undertaken. American Home offers coverage for third-party recalls, which are issued by companies that buy component parts from the policyholder, and for first-party recalls that policyholders initiate or are required by a government agency.

In the case of a third-party recall, American Home has little input in the decision to recall or how it is handled. The policyholder simply puts American Home on notice that a recall has been issued by another company because of a part supplied by the policyholder.

In a first-party recall, American Home may not be directly involved in making the recall decision, but it will work closely with the policyholder to provide claims expertise and services, such as helping develop publicity campaigns that can limit the damage to a company's image, according to Mr. Gregory.

That kind of help can keep costs

down for the company and the insurer, Mr. Schumacher noted.

Not all product makers think recall insurance is helpful.

David Hennes, director-risk management at The Toro Co. in Minneapolis, said his company "felt that most product recalls—while the worst-case scenario could have a significant impact—would be something we could absorb if we had to."

Toro explored buying recall coverage last year and found the cost was not prohibitive, Mr. Hennes said. The company decided, however, that "buying insurance might send the wrong message, that we are looking to others to bear the brunt of our problems. We should be responsible when a product goes out with our name on it," he said.

Toro has issued recalls, but none involving significant expense, Mr. Hennes said.

He pointed out that recall insurance was not widely available when Toro shopped for it last year and that some creativity in crafting the coverage to meet Toro's needs would have been necessary. A London market quote was obtained for coverage written on a form originally put together for the food and drug industry. "It would have had to have been tailored for our product."

American Home's Mr. Schumacher said that for some clients, buying recall insurance would merely mean "swapping dollars."

Automakers, for example, "certainly have an exposure to first-party recall," he remarked, but the cost of the coverage for such an expensive risk would be nearly as high as the policy limits.

That's why car makers self-insure the recall risk, he said. **BI**

401(k)

Continued from page 2

grams through a variety of mediums, including the Internet, she said.

Fidelity divided the survey respondents into eight groups based on age and investing attitudes.

"Some are extremely involved; some are too busy," Ms. Hopkins said.

For example, "concerned but harried" investors accounted for half of all investors between the ages of 35 and 50, and the category includes 65% of all 401(k) plan participants. Most of them are concerned about having enough mon-

ey for retirement and are looking for ways to reduce their debt, the survey revealed.

The categories break out as follows:

- "Less-involved beginners" represent 30% of participants under 35. Just 6% contribute the maximum; 13% have taken a loan from their 401(k)s; their average account balance is \$18,304; and 83% of their 401(k) plan assets is in equities.

- "Serious self-starters" encompass 30% of participants less than 35. About 32% contribute the maximum; 5% have taken a loan; their average balance is \$12,174; and 89% of their assets is invested in equities.

- "Eager beginners" represent

40% of 401(k) plan investors under 35. Twenty-six percent contribute the maximum; 34% have taken a loan; their average balance is

Those who contribute the maximum amount range from 6% of 'less involved beginners' to 55% of 'relaxed achievers.'

\$15,132; and 93% of their assets is in equities.

- "Confident planners" constitute 25% of participants from 35 to 50. Some 48% contribute the max-

imum; 19% have taken a loan; their average balance is \$92,860; and 91% of assets is in equities.

- "Concerned but harried" represent 50% of participants between 35 and 50. Thirty-five percent contribute the maximum; 50% have taken a loan; their average balance is \$46,692; and 79% of their assets is in equities.

- "Uninvolved savers" encompass 25% of participants from 35 to 50. About 43% contribute the maximum; 20% have taken a loan; their average balance is \$33,912; and 82% of their assets is in equities.

- "Relaxed achievers" represent 45% of participants older than 50. Fifty-five percent contribute the maximum; 22% have taken a loan;

their average balance is \$194,507; and 88% of their assets is in equities.

- "Pre-retirees in need" constitute 55% of participants more than 50. Forty-five percent contribute the maximum; 40% have taken a loan; their average balance is \$135,370; and 80% of their assets is in equities.

The prevalence of loans was a surprise, Ms. Hopkins said.

"We assumed most investors were aware of the power of compounding and that they should not access that money in other than a strict emergency," she said.

The availability of a loan feature helps many people be comfortable with participating in a 401(k) plan, she explained. Still, a loan is "really reducing the money available for tax-advantaged accumulating."

Despite the savings drain posed by loans, most 401(k) plans do offer this feature, prior studies show. According to a 1997 Spectrem Group survey, 75% of 401(k) plans included a loan feature. In the same survey, 15% of plan sponsors reported having participants with outstanding loans.

A 1999 survey by Buck Consultants Inc. reported that 88% of 401(k) plans had a loan feature; a 1998 survey by the Profit Sharing/401(k) Council of America in 1998 said 84.9% of plans permit loans.

Boston-based Fidelity executives hired Yankelovich Partners Inc. in Norwalk, Conn., and Forbes Consulting Group in Newton, Mass., to conduct the surveys. Fidelity plans to do at least part of the survey again, Ms. Hopkins said.

"We want to track how people are progressing," she said.

Arleen Jacobius is a reporter for Pensions & Investments, a sister publication of Business Insurance.

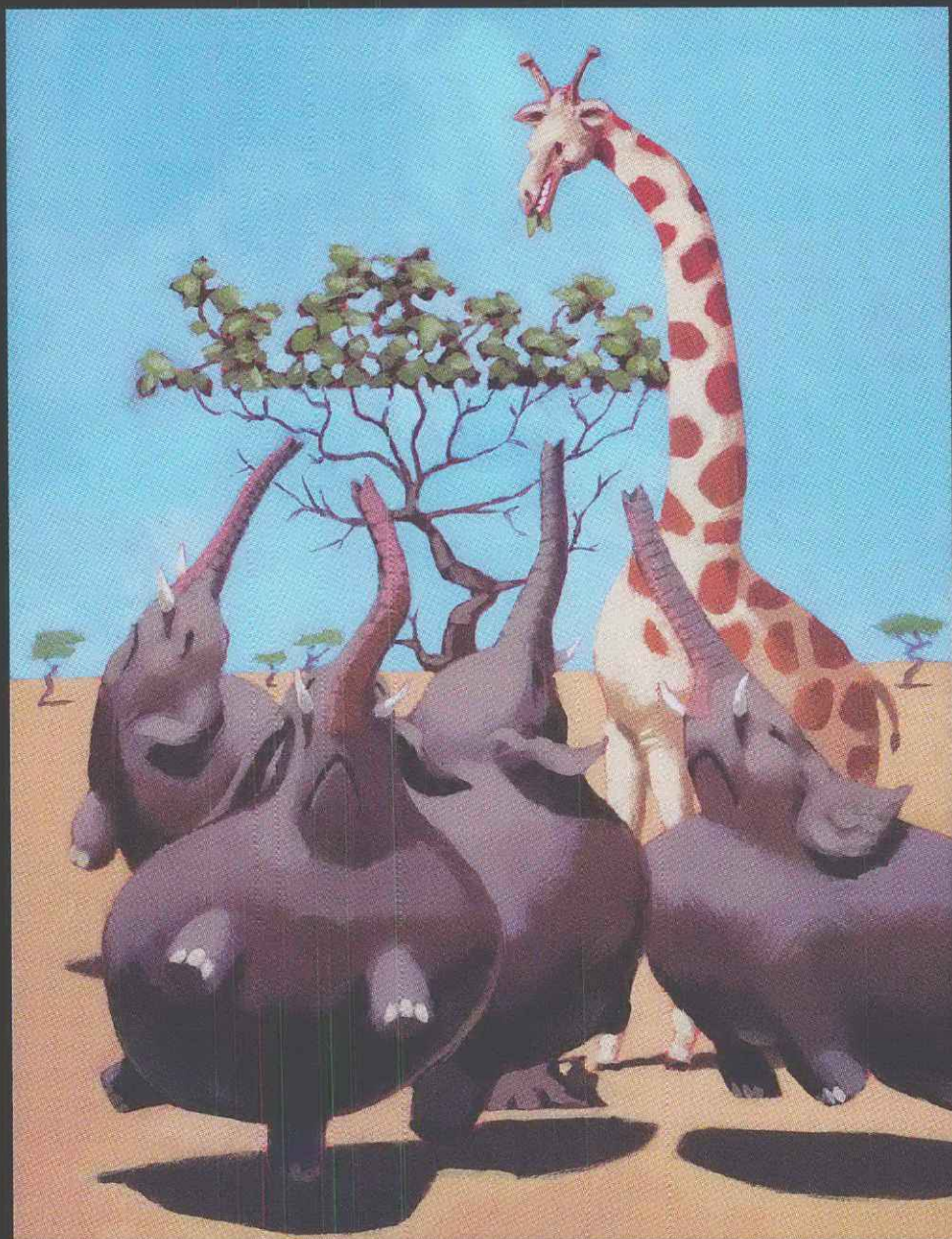
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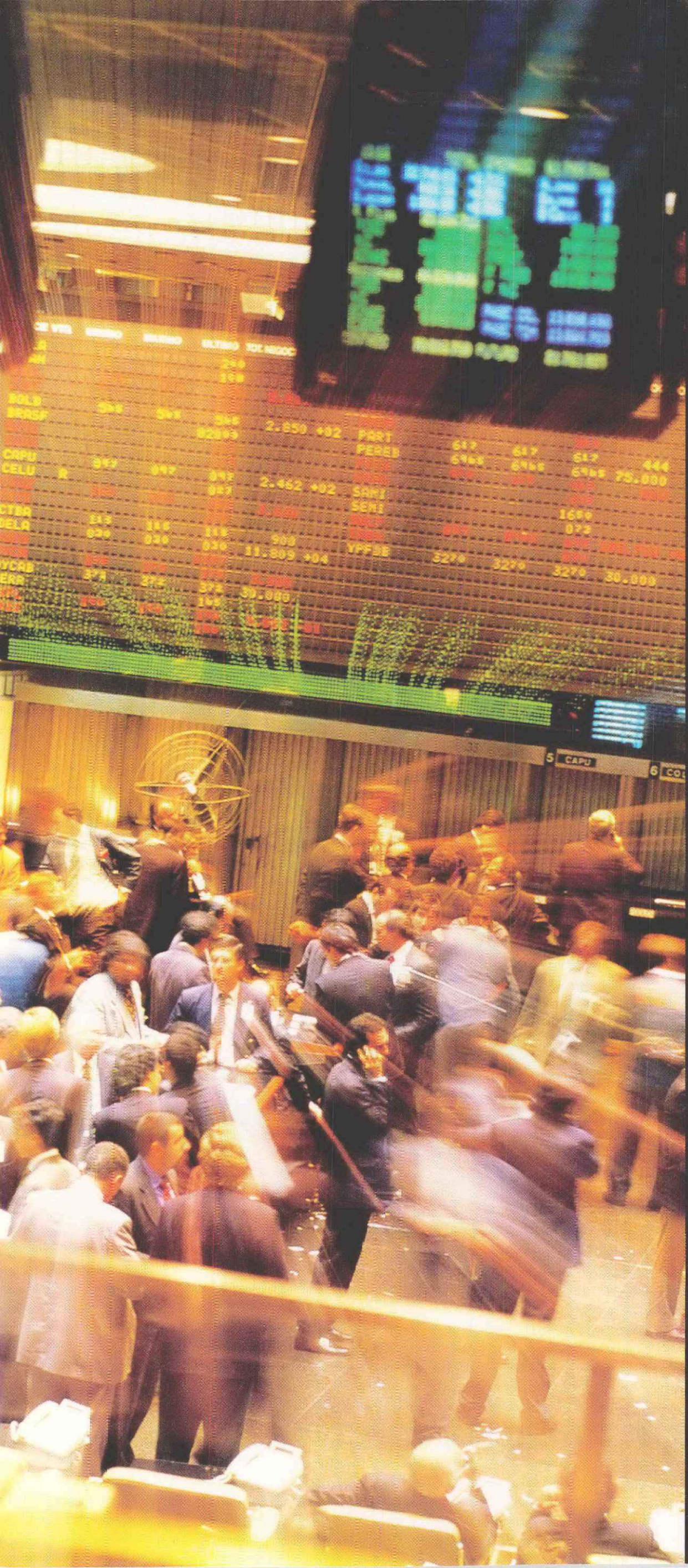
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Book offers helpful Y2K advice for late-starters

"Y2K Risk Management: Contingency Planning, Business Continuity, and Avoiding Litigation"

By Steven Goldberg, Steven Davis and Andrew Pegalis

Published by John Wiley & Sons Inc.
605 Third Ave., New York, N.Y. 10158-0012
212-850-6000
\$39.99

By Michael Prince

EVERYONE KNOWS THE year 2000 is coming, but few know what it will bring.

Nevertheless, risk managers must prepare for the possibility that computers will crash when the new year begins. To assist them in this effort is a new book, "Y2K Risk Management: Contingency Planning, Business Continuity, and Avoiding Litigation."

Underlying the book is the belief that the new year will bring big problems. As the authors state in the introduction, "We now realize that Y2K may be perhaps the greatest business problem ever to face most organizations." Fortunately, their comprehensive book covers numerous ways to reduce the impact of Y2K. The problem, of course, is putting their suggestions into practice before the champagne corks pop.

By now most people are familiar with the concern that computers may crash come 2000. But that's not the only risk lurking out there, according to the authors—Steven Goldberg, Steven Davis and Andrew Pegalis—all three of whom are well-versed in the issue. Risks also exist with equipment or machinery containing embedded computer chips, such as medical devices, telecommunications equipment or safety equipment. In addition, even an

Books & Ideas

organization without a Y2K problem can experience problems with its suppliers or customers, as well as having the electrical grid or local airport knocked out of action.

The results could bankrupt businesses, endanger people's health and ruin careers. And this is before the lawsuits fly.

So what's a risk manager to do? First, don't do it alone. The book recommends establishing a risk management team "to develop plans for critical operations that include not just computing but building systems, networks, suppliers, personnel, and operations."

Even an organization currently without a remediation program can start one now and prevent many problems. As the authors state, "any Year 2000 project effort, even a late-starting one, is better than nothing in most cases." Such a late start means focusing efforts on the most critical tasks and adopting contingency plans if computers and other systems crash.

From there the book outlines, often in great detail, the process of starting a remediation effort, prioritizing the work, and it even provides tips on how to create a budget.

Perhaps the most helpful section of the book deals with minimizing the impact of litigation—not surprising, as two of the authors are attorneys—in the event that every problem is not corrected. The key is acting now to prevent any Y2K problems and compiling documents to demonstrate the efforts, as such documents may be needed in a suit. This due diligence should encompass all aspects of a Y2K plan, including remediation, compliance of third parties, contingency and disaster-recovery plans,

disclosing potential Y2K risks and notifying insurers of potential claims.

Although few suits have been filed to date over Y2K, the authors attempt to project what types might be filed and then plot defenses. Numerous suit types are explained, covering breach of contract, torts and violations of statutes.

From there the book goes from a general discussion of prevention into detailed analysis, providing checklists and sample letters that can be sent to vendors to check on their Y2K remediation status. Thrilling? No. Valuable? Yes.

Near the end of the book is a discussion of insurance-related issues, in case an organization's remediation efforts fail. The chapter addresses a laundry list of issues about the extent to which insurance will cover Y2K losses, if at all. Ultimately, the authors conclude the issue is too complex and case-specific to draw any broad conclusions.

This exhaustive collection is not an easy read, but for those needing one source for dealing with Y2K risk management, this is the place to turn.

BI



Michael Prince is an associate editor of Business Insurance in the magazine's New York office.

Falsely accused worker's stress compensable

AN employee is entitled to workers compensation benefits for a psychiatric injury arising out of being falsely accused of embezzlement, according to the Commonwealth Court of Pennsylvania.

Deborah Miller was employed as the office manager for the New Wilmington Family Practice. Dr. John Dawson was Miller's supervisor.

Dr. Dawson frequently elected to disregard the official billing schedule and reduce or waive medical fees for certain patients. This caused various bookkeeping and insurance problems that upset Ms. Miller, who handled the insurance claims.

Subsequently, Ms. Miller was on a medical leave for a condition unrelated to this litigation. Several days before Ms. Miller was to return to work, Dr. Dawson discovered a patient who had been charged less than the health insurer had been billed. Dr. Dawson told one of Ms. Miller's co-workers that Ms. Miller was stealing money from the practice.

Thereafter, when Ms. Miller did return to work, she was confronted by Dr. Dawson and other top level managers and told that she was suspended pending an audit of the medical practice. In addition, they accused of her stealing funds from the employer. Thereafter, Ms. Miller began to experience extreme emotional distress, depression, anxiety and other mental problems, including suicidal thoughts.

She was hospitalized in the psychiatric ward. She never returned to work and her employer maintained her suspension. Accountants analyzed the employer's billing records and found no evidence that Ms. Miller had embezzled money from the practice. Ms. Miller filed for workers compensation benefits for a psychiatric injury. A workers compensation judge awarded her benefits but was reversed by the appeals board.

The appellate court said that the record showed that Ms. Miller was injured by objective and abnormal workplace events, such as being accused of embezzlement in a situation which had been created by Dr. Dawson who was himself at fault by inconsistently billing for patient medical services. Thus, the court said that Ms. Miller was entitled to benefits.

Miller vs. W.C.A.B., Commonwealth Court of Pennsylvania, Jan. 27, 1999 (BI/01/S-\$10).

Legal Briefs

Drunk driving injuries not covered

A beneficiary of a group health insurance plan governed by the Employee Retirement Income Security Act is not entitled to coverage for medical expenses incurred as a result of an automobile accident that occurred while the beneficiary was driving while intoxicated, according to a decision of the 4th U.S. Circuit Court of Appeals.

Thomas Baker was enrolled in a group health care plan. In December 1995, he was driving while intoxicated. He attempted to pass a car in front of him by crossing over the double yellow line into oncoming traffic. Mr. Baker's car collided head-on with another car, killing the driver. Mr. Baker pled guilty to involuntary manslaughter and driving while impaired. Involuntary manslaughter was a felony under North Carolina law where the accident occurred, and driving while impaired was a misdemeanor.

Mr. Baker suffered severe injuries in the accident and incurred \$179,225 in medical expenses. He submitted his medical expenses to Provident Life & Accident Insurance Co., the plan fiduciary. The plan excluded benefits for the treatment of an injury which is due to voluntary participation in a felony. The fiduciary denied benefits.

Mr. Baker then brought this suit under ERISA, claiming that the fiduciary wrongfully denied him benefits. The trial court ruled for the plan and against Mr. Baker.

On appeal, Mr. Baker argued, in part, that although he voluntarily drove drunk, he did not voluntarily kill the driver of the other car.

The court said that Mr. Baker voluntarily drank too much and he voluntarily got behind the wheel of his automobile while drunk. The court emphasized that no one forced Mr. Baker to drink too much, to drive while drunk or to crash headlong into another vehicle.

Thus, the court concluded that Mr. Baker's participation in the felony of involuntary manslaughter was voluntary. The trial court decision was affirmed.

Baker vs. Provident Life & Accident Insurance Co., 4th U.S. Circuit Court of Appeals, Feb. 19, 1999 (BI/02/S-\$10).

Claim for offsite attack denied

Injuries sustained by an employee when he was attacked off the employer's premises by a co-worker did not occur "in the course of employment" within the meaning of the Workers' Compensation Act, according to the Supreme Court of Tennessee.

Robby McCurry worked for Container Corp. of America; he operated a gluing machine. Operating the machine required a team effort, and Mr. McCurry was paired with several co-workers, including Gary Woods.

On the evening in question, Mr. McCurry complained that Mr. Woods was not performing his job. Mr. Woods was reprimanded by the shift supervisor.

After completing their shift at approximately 2 a.m., the employees clocked out. After leaving the employer's premises, Mr. McCurry stopped to assist a fellow employee with car trouble. As he exited his car, Mr. McCurry was approached by Mr. Woods, and they agreed to talk of their problems at work.

But Mr. Woods pulled out a baseball bat and struck Mr. McCurry several times. Mr. McCurry suffered a ruptured spleen and severe bruising as a result of the attack. He filed for and was awarded workers compensation for his injuries. The employer appealed.

The state Supreme Court pointed out that Mr. McCurry's injuries did not occur on the employer's premises but on a public road about 80 feet from the company premises. "Once the employee has exited the parking area and begins traveling on personal time, away from the employer's premises, he is no longer in the course of employment," the court said. Therefore, the court concluded Mr. McCurry's injuries were not in the course of his employment. The court reversed the award of benefits.

McCurry vs. Container Corp. of America, Tennessee Supreme Court, Oct. 26, 1998, Rehearing Denied; Feb. 1, 1999 (BI/03/S-\$10).

BI

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

Forum

Continued from page 3

step guide to the "Basics of Employee Benefits for Captive Owners."

Following opening remarks by Kathryn J. McIntyre, publisher and editorial director of *Business Insurance*, the Monday morning program continues with a keynote address by David Wasserman, president of Centre Solutions in New York.

After his discussion of the changes ahead for alternative risk financing, Mr. Wasserman will address questions from the audience and a panel to include Michele Cournier, director of risk management at Alcatel in Paris, and Richard M. Inserra, assistant treasurer at Danbury, Conn.-based Union Carbide Corp.

Monday afternoon will feature two pairs of concurrent sessions. The first includes a discussion of group captive issues moderated by Gaelen W. Cole, marketing director of Fireman's Fund Insurance Co. in Novato, Calif.

Panelists for that session include George Chaffee, president of Skandia International Risk Management Ltd. (Vt.) in Burlington, Vt.; Michael Ducey, assistant vp and managing director of Bermuda operations for Liberty Mutual Insurance Group in Boston; and Robert S. Wilkinson, executive vp for plan operations, Health Services Medical Corp., A Univera Company, in Baldwinsville, N.Y.

The parallel track session will be moderated by Thomas Wronski, director-insurance and risk management at Fidelity Investments in Boston, and will focus on "The Capital Markets Landscape." Panelists include Joe Kavanagh, vp at Marsh & McLennan Securities Corp. in New York with additional panelists

to be announced.

The afternoon's second pair of sessions includes one examining new ways to use a captive. That session will be moderated by Michael Maglaras, principal at Michael Maglaras & Co. in Stamford, Conn., and will feature a panel including James D. Cameron, partner in New York at the Baker & McKenzie law firm; and Mitchell J. Cole, a principal with Towers Perrin in New York.

The concurrent session will feature a debate on the merits of using the capital markets to replace reinsurance. Tillinghast-Towers Perrin's Mr. Rosenbaum will moderate the session, which will include John Berger, chief executive officer at Chubb Re in Bernardsville, N.J.; and John Kiernan, senior vp at Lehman Re in New York.

Tuesday begins with a pair of concurrent sessions. Skandia's Mr. Dove will moderate one session discussing rent-a-captives and segregated cell facilities. Panelists include Philip J. Harvey, president of West Chester, Pa.-based Philip J. Harvey & Co. Inc.; Philip J. Stevens, vp at Aon Group Inc. Alternative Markets Organization in Greenwich, Conn.; and William Watson, executive vp at Reliance National Insurance Co. in New York.

The parallel track focuses on improving captives' financial performance. Towers Perrin's Mr. Cole will moderate the session. Panelists will include Patrick C. Jensen, senior manager of Deloitte & Touche L.L.P. in Los Angeles; Jan Lommele, a Deloitte & Touche principal in Hartford, Conn.; and John M. Lummis, senior vp and chief financial officer at Renaissance Re Holdings Ltd., in Hamilton, Bermuda.

Tuesday morning's second pairing includes a session on new reinsurance products for

captives. The panel will include R. Lincoln Trimble, vp at Chubb Atlantic Indemnity Ltd. in Hamilton, Bermuda; and Michael Woodroffe, president of Meadowbrook International in Hamilton. Robert J. Rosser, senior vp at Skandia in Bermuda, will moderate the session.

The concurrent session will address expanding captive use to insuring employee benefits. Towers Perrin's Mr. Cole will moderate a panel including Nancy Bern, senior vp at John Hancock Mutual Life Insurance Co. in Boston; Union Carbide's Mr. Inserra; and Gary Matson, director-global benefits at H.J. Heinz Co. in Pittsburgh.

Tuesday afternoon will offer two more pairs of sessions. In the first group, one session will examine shutting down captives that no longer serve a purpose. Skandia's Mr. Rosser will moderate the session, and panelists will include Sanford Bragman, vp-risk management at Tenet HealthSystems in Dallas; and James M. Dineen, principal at The Knowledge Guild Inc. in Jacksonville, Fla.

The parallel session will focus on integrated risk financing, enterprise risk management and basket aggregates. B.I.'s Ms. McIntyre will moderate the session. Panelists will include Alcatel's Ms. Cournier; P. Richard Hackenburger, president and CEO of XL America Inc. in Stamford, Conn.; and Brian Kawamoto, director-enterprise risk at Swiss Re New Markets in New York.

In the afternoon's second pair, one session will offer a health care perspective on using captives in mergers and acquisitions. The panel will include Corbette Doyle, CEO of health care at Aon Healthcare Alliance in Franklin, Tenn.; and C. Richard Cornelius, vp-insurance services at VHA Inc. in Berwyn, Pa. Mr.

Maglaras will moderate.

Meanwhile, another session will examine the risk manager's role in a merger or acquisition. Ms. McIntyre will moderate the panel, which will include Ken Krenicky, vp-risk management at Rhone-Poulenc Rorer Inc. in Collegeville, Pa.; Gary Peruse, senior vp-risk management at Ogden Corp. in New York; and Peter Gentile, CEO of Gerling Global Financial Products Inc. in New York.

Wednesday morning will be devoted to in-depth captive case studies. Mr. Rosenbaum will moderate the panel, which will include Janet Evans, corporate risk manager for Snow Summit Ski Corp. in Big Bear Lake, Calif.; Barry Port, president of Public Utility Mutual Insurance Co. in Boston; and Philip Thomas, director of risk management at Bass P.L.C. in Burton on Trent, England.

Full registration for risk managers for the conference is \$975. Non-risk manager's full registration is \$1,250, with a \$975 fee for the second and all subsequent registrations from the same company. The \$2,750 exhibitor's fee includes one full registration, with an additional exhibit personnel fee of \$750 (maximum two).

Guest registration for social functions is \$100 with a full registration.

Special room rates for the World Captive Forum are \$190 per night, plus a daily resort charge of \$10.65 per room per night. Forum attendees also enjoy a \$10 discount on greens fees and a 50% discount on tennis facility fees.

For more information, contact the World Captive and Alternative Risk Financing Forum office at 4248 Park Glen Road, Minneapolis, Minn., 55416; 612-928-4659; fax: 612-929-1318; or on the World Wide Web at www.captive.com/CaptiveForum. **BI**

Software helps manage system-wide risks

SCHAUMBURG, Ill.—SeNet Corp. has introduced Ki4 Reputation Management Software, an incident reporting database designed to help organizations prevent potential exposures from expanding into full-blown losses.

Security, loss control or investigative professionals can use the database to cull meaningful information about individual incidents and investigations so that broader, system-wide problems can be detected and addressed.

For example, Ki4 helps organizations identify problems related to trespassing, property loss, corporate espionage, discrimination, sexual harassment, system hacking, environmental disasters and customer dissatisfaction before they escalate

Products & Services

from isolated incidents into major problems.

Ki4 allows users to track specific incidents or issues throughout an organization, with input from such areas as human resources, legal, public relations, customer service, management information systems/information technology, safety and health, environmental and facilities management/maintenance departments. Personnel in each of these departments can customize the interface and log data on the problems specific to their area.

Users can also create text reports and graphical charts to aid in analy-

sis. In addition, by documenting incidents, investigations and follow-up measures, Ki4 serves as a useful tool during litigation.

The software is available directly from SeNet and through its network of resellers. Pricing starts at \$950 per computer.

For information, contact Jim Kartalia, president of SeNet, 847-885-8300 or by e-mail at info@senet.com.

Midsized EPL program

ENCINO, Calif.—NAS Insurance Services is offering a new employment practices liability insurance program that provides broad coverage terms for small and midsized employers.

The EPLI program covers both sexual and non-sexual harassment allegations as well as inappropriate termination, demotion, defamation, invasion of privacy and other employment practices exposures.

Policyholders also receive an employment risk management manual and 30 minutes of toll-free access to an employment practices hot line operated by law firm Jackson, Lewis, Schnitzler & Krupman.

Designed for companies with 2,000 or fewer workers, the program offers limits of up to \$2 million, with a minimum premium of \$1,000. The policy's underwriters include syndicates at Lloyd's of London and other insurers.

For more information, contact NAS Insurance Services, 16633 Ventura Blvd., Suite 500, Encino, Calif. 91436; 818-382-2030; or on the Internet at www.nasinsurance.com.

Guide to benefits laws

FREDERICK, Md.—"Mandated Benefits: 1999 Compliance Guide," an updated desk reference from Panel Publishers, helps employee benefit and human resources professionals keep abreast of changing state and federal benefits laws.

Mandated Benefits identifies

state-specific employee benefits requirements as they relate to 17 major areas, including family and medical leave, COBRA requirements, sexual harassment, medical and health care benefits, layoff and termination and long-term care insurance.

The manual also provides guidance on federal laws governing employee benefits, so that a company's policies and practices meet requirements under the Drug-Free Workplace Act, Employee Retirement Income and Security Act, the Mental Health Parity Act and many others.

Mandated Benefits now features four new chapters, as well as a glossary of human resources terms. New chapters include Introduction to Human Resources, Payroll Administration, Alternative Work Schedule and Risk Management/Human Resources Audit.

The desk reference is available for \$165. To order, contact Panel Publishers at 800-638-8437.

Project owner's policy

NEW YORK—AIG Environmental, a division of American International Group Inc., has introduced Owner's Protective Environmental Insurance, a policy that provides coverage to project owners for legal liability resulting from wrongful acts on the part of contractors or engineers.

Owner's Protective is designed to protect a project owner in the event a hired contractor or engineer cannot meet indemnity obligations owed to the policyholder. Under the policy, independent contractors and engineers are still required to carry the appropriate levels of professional and pollution liability insurance.

Owner's Protective indemnifies the policyholder for the engineer's wrongful acts or omissions in the performance of professional services for the owner's project. The policy also indemnifies the owner for the legal liability of a contractor for claims of bodily injury, property damage or environmental damages arising from work performed by a contractor.

Additionally, Owner's Protective

provides coverage for damages resulting from third-party claims attributable to the engineer's wrongful acts or omissions at the covered location, or from third-party claims of bodily injury, property damage or environmental damage resulting from pollution conditions for which the contractor is legally liable.

Owner's Protective is available with limits of up to \$100 million.

For information, contact AIG Environmental at 800-348-4314, or visit access.aig.com.

Loss control for EPL

ST. PAUL, Minn.—A loss control program for policyholders with employment practices liability coverage has been introduced by St. Paul Fire & Marine Insurance Co.

The EPL program, targeted toward for-profit institutions such as banks, insurance companies, manufacturers and wholesalers, helps to identify potential workplace risks and offers tips on how to prevent losses.

The program is available through THE AGOS GROUP L.L.C., a Tulsa, Okla.-based risk management consulting firm that specializes in employment practices liability. Policyholders have access to a toll-free number that connects them to risk management consultants who can offer recommendations and assistance on workplace matters.

In addition, policyholders receive a quarterly newsletter designed to keep employers informed of employment-related issues. The toll-free number and quarterly newsletter are offered to policyholders at no charge.

Other loss control services are available to EPL policyholders through AGOS for a discounted fee. These include a toll-free number employees can call to report workplace risk and wrongdoing, a risk management program that prepares employers to address workplace risk and wrongdoing, and a Web-based training tool for employers to train managers and supervisors on EPL issues.

For information, contact Rachel Owens, underwriting manager at St. Paul, 651-310-8242. **BI**

Products & Services Guide

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INTERNATIONAL

Global Briefs

Creditors and brokers of failed London reinsurer **Charter Reinsurance Co. Ltd.** have been sent the scheme of arrangement devised by liquidators Philip Singer and Ian Bond of PricewaterhouseCoopers. Charter Re was wound up almost six years ago, but the scheme was delayed by various legal disputes. The reinsurer's 1994 accounts show a £98 million (\$158.8 million) deficit on £517 million (\$837.8 million) of gross liabilities. The joint liquidators say they hope creditors will receive an initial payment toward the end of next year. . . .

Benfield Greig Interactive Ltd., part of the London insurance group Benfield Greig Group P.L.C., has bought New Orleans-based Internet solutions provider Wild.Net L.L.C. Benfield Greig aims to use the Wild.Net expertise to develop Internet solutions for global clients. . . . Swiss-based **Zurich Financial Services Group** last week launched Zurich Commercial, a new business combining the U.K. commercial business of Zurich and Eagle Star P.L.C. U.K. multiline insurer Eagle Star was part of B.A.T Industries P.L.C., which in 1998 merged its financial services operations with those of Zurich Group to create ZFSG. Since the name was chosen at the beginning of the year, Zurich Commercial has converted more than 160,000 policies, representing premiums of more than £500 million (\$810.3 million), from the Eagle Star brand to Zurich Commercial. At the same time, another Zurich unit, **Zurich Financial Services General Insurance Division**, has appointed Glen Marr to lead an anti-fraud program. Mr. Marr, a former police officer and claims investigator, will develop a program for identifying and investigating claims fraud and will establish a network of fraud coordinators across all lines of business. . . . Michael Perry, former managing director of London-based insurance broker Dobinson Gregory & Co. Ltd., has been banned from conducting business at Lloyd's of London and fined £25,000 (\$40,513) for "conducting himself in a manner which was dishonorable or disgraceful or improper," as well as "engaging in and being associated with discreditable conduct," according to a decision from the Lloyd's Disciplinary Board. Mr. Perry placed business into Lloyd's through an umbrella arrangement with Lloyd's broker David Gyngell & Co. Ltd., and Mr. Gyngell was censured and ordered to pay costs of £14,409 (\$23,350), though he was not suspended from trading at Lloyd's. The decision said Mr. Perry has been banished from Lloyd's for personally taking premium payments from the broker's insurance brokerage account, as did a co-director who has since died. . . . U.K. companies implicated in the scandal regarding misleading pensions sales have until the end of June 2002 to complete the second phase of the personal pension review. More than 1 million cases are expected to be reviewed as part of the second phase, according to the Financial Services Authority. The first-phase program covered individuals close to retirement age; younger people who decided against occupational plans on the advice of pensions advisers will now have their cases considered for possible reparation. . . . Independent Lloyd's broker **Besso Ltd.** has hired two additional brokers to develop all lines of casualty business. Both brokers, Mike Cobb and Alan Luff, formerly were with Marsh Inc. . . . Paris-based bank Credit Lyonnais and insurer Assurances Generales de France have created **two partnerships**. In the first, pending approval by French and European Union authorities, Credit Lyonnais and AGF's credit insurance subsidiary, Paris-based Euler, are combining their factoring businesses—Sli-fac and Eurofacturs from Credit Lyonnais, and SFF Affacturage from Euler—into a joint holding company. The second deal, a seven-year renewable agreement, allows Credit Lyonnais to sell AGF's insurance products for small and medium-sized businesses through its retail banking network.

Captive converts to syndicate

Affinity group to underwrite roadside rescue business from Lloyd's

By SARAH GODDARD

LONDON—When is a captive not a captive? When it's a syndicate at Lloyd's of London, of course.

Affinity group Civil Service Motoring Assn., which provides services such as roadside recovery and travel insurance at preferential rates, is transferring its roadside rescue business, Britannia Rescue, from its Guernsey-based captive, Britannia Insurance Co. Ltd., to a new Lloyd's syndicate beginning next year.

CSMA is fully capitalizing the syndicate, which at least initially will write only the association's business. Under Lloyd's rules, affinity group business cannot be written into a captive syndicate, so CSMA is setting up the market's first affinity group syndicate.

Creating a Lloyd's syndicate will give CSMA "greater strategic control" over its insurance business, because it will be closer to the management of the syndicate than it could be to the captive management, said

LLOYD'S

CSMA Group Financial Controller Michael Sayer. More than 70% of the 338,000 CSMA members are signed up for Britannia Rescue, he said. While this represents the lion's share of the affinity group business, it is a small proportion of the U.K. market for roadside service, he said.

Previously, the business was the mainstay of captive Britannia Insurance Co., which

takes premium from fronting insurer Folgate Insurance Ltd.—a "longstanding and very happy relationship," according to Mr. Sayer. But the prospect of having more control over underwriting made the Lloyd's option attractive, he said. Mr. Sayer is meeting with the captive managers in Guernsey to decide the future of the current road rescue business and the future of the travel insurance coverage offered to CSMA members and placed into the captive.

Although the new syndicate has not yet been approved by Lloyd's, no regulatory difficulties are expected. The syndicate is to be managed by Greenwich Managing Agency Ltd. Originally a members' agency, Greenwich only last year made the leap to managing syndicate business with the purchase of the Service Motor syndicate 1222.

See Syndicate on next page

Malaysian reforms promote insurer consolidation

By MATTHEW MacDERMOTT

KUALA LUMPUR, Malaysia—Malaysia, after putting reforms on hold during the Asian financial crisis, has renewed its push to develop a more-centralized and globally competitive insurance industry.

The reforms will be implemented gradually over the next few years by Bank Negara Malaysia, the central bank of Malaysia and regulator of the country's insurance industry. The reforms are designed to create stronger and better-regulated Malaysian insurance companies and, consequently,



'We have not waned in our resolve to build a core of financially strong, resilient and responsible insurers.'

—Ali Abul Hassan Sulaiman

improved protection for Malaysian insurance buyers and investors.

Announcing the reform package at the International Conference for Emerging Markets in Kuala Lumpur last month, Bank Negara Governor Ali Abul Hassan Sulaiman said the new standards had been incorporated into the Malaysian Insurance Act in 1997 but that their implementation was deferred last year after appeals from insurers affected by the Asian financial crisis, he said.

Mr. Sulaiman said the delay was only a "temporary reprieve" and that insurers have had "ample breathing space to weather out the crisis."

"We have not waned in our resolve to build a core of financially strong, resilient and responsible insurers, despite the temporary setback of the financial crisis," he said.

See Malaysia on page 19

Possible indicator of RSI risk claimed

MRI scans may identify workers at risk

By CAROLYN ALDRED

LONDON—The United Kingdom's safety agency may revise some work guidelines if new research that identifies a potential physical indicator for people at risk of repetitive strain injuries is proven accurate.

The research suggests that RSI conditions may be aggravated by "nerve entrapment," a condition that entails reduced mobility of the median nerve in the wrist and that can be spotted and measured using medical imaging technology.

"This is a very important piece of research which may lead to revised guidelines" for employers, said a spokeswoman for the Health and Safety Executive, a U.K. government-funded agency responsible for monitoring health and safety at work.

The HSE will look at the study carefully; if a correlation between nerve damage and RSI is proved "it will have an impact and may result in revised guidelines" for employees, said the HSE spokeswoman.

Existing guidelines include the Health and Safety (Display Screen Equipment) regulations, which took effect in January 1993 and were designed to implement a European Community directive. The regulations require employers to minimize the risks to those who use video display units at work by ensuring that workplaces and jobs are well designed.

The regulations do not contain detailed technical specifications but set more-general objectives, such as requiring employers to evaluate equipment and furniture and provide for frequent breaks or changes in activity.

The research, funded jointly by the HSE and the British Occupational Health Research Foundation was undertaken by scientists at University College London.

The research involved performing magnetic resonance imaging scans on patients who had been diagnosed with repetitive strain injuries, indicated by non-specific arm pain.

The MRI scans showed re-

See RSI on page 19

Aussies don't pass 'go'; file lawsuit

By MATTHEW MacDERMOTT

BRISBANE, Australia—McDonald's Corp. is facing a class-action suit from hundreds of Australian customers who have not been awarded prizes they claim to have won in a McDonald's promotional game.

About 600 customers of McDonald's Australia Ltd. of Melbourne, Australia, have already joined the class action, which is scheduled to be heard in the federal court of Australia in Brisbane for two weeks starting on Oct. 4. The restaurant is a unit of Oak Brook, Ill.-based McDonald's Corp.

There is no estimate yet of the damages being sought from McDonald's as the number of people joining the action has not been finalized, as well as the total value of prizes they claim to have won.

McDonald's plans to defend itself

against the class action, but a spokesman for the restaurant company in Australia would not comment on the chain's insurance

arrangements.

The litigation has arisen from McDonald's "McMatch & Win" promotional game, which requires customers to peel stamps off McDonald's products. The stamps, marked with the names of various properties featured on the board game Monopoly, must be matched to the corresponding properties printed on the front of special McDonald's tray liners.

A customer who collects all the properties of the same set wins a prize; prizes range from an international vacation or a vehicle to a computer or television.

McDonald's Australia has run the game for several months this year but has rejected 3,105 of 3,408 prize claims. McDonald's also ran the game last year, and all prizes were awarded.

See Prizes on next page



INTERNATIONAL

Prizes

Continued from previous page

Only 600 people are participating in the class action thus far because many consumers are unaware of it. The Brisbane law firm of Shine Roche McGowan, which is coordinating the class action against McDonald's on behalf of disgruntled McDonald's consumers, is advertising for more people to join the class action.

In rejecting most of this year's claims, McDonald's has argued that customers have used stamps from the 1998 promotion, not those issued during this year's promotion.

In response to continuing consumer protests over the refusal to award prizes, McDonald's hired a retired federal court of Australia judge, Trevor Morling, to investigate the game and prize claims.

Mr. Morling's report, released July 9, backed McDonald's claims that many customers had used stamps from last year's game to win prizes. Stamps used in the 1998 and 1999 promotions have different markings on the back.

Mr. Morling concluded that McDonald's was justified in rejecting 3,105 prize claims.

Shine Roche McGowan, however, said Mr. Morling's report is of "no consequence" to the class action.

"The facts relied upon by McDonald's Australia Ltd. in the report differ substantially to the facts that will be relied upon by the claimants at the trial of this action,"

the law firm said in a statement.

"The claimants hold a very different view of the facts (from McDonald's)," the law firm said. "For this reason, the matter will be litigated, and it will be for the court to decide on the appropriate outcome."

Shine Roche McGowan alleges McDonald's breached sections 52 and 54 of Australia's Federal Trade Practices Act by engaging in misleading or deceptive conduct by failing to provide prizes offered in a promotion.

'It will be for the court to decide on the appropriate outcome,' says law firm Shine Roche McGowan.

Jacqui James, Shine Roche McGowan marketing manager, said 400 McDonald's customers have so far joined the class action, with more expected to join before October.

A separate class action against McDonald's, launched by the Melbourne law firm of Slater & Gordon, has attracted about 200 people.

At a directions hearing in the federal court of Australia in Melbourne on July 16, the Slater & Gordon action was ordered to combine with the Shine Roche McGowan action in Brisbane.

The McDonald's "McMatch &

Win" game also is under investigation from the Australian Competition and Consumer Commission, which may launch its own legal action against McDonald's over the game.

Allan Fells, ACCC's chairman, said there are "serious questions" about the McDonald's game. He said the ACCC, Australia's national consumer watchdog, has asked McDonald's for a "clear explanation which can address the apparently credible and compelling evidence of consumers."

"Information collected by the ACCC shows credible claims by consumers that they have obtained winning stamps in the current competition and not from last year's," Mr. Fells said in a statement.

"In the absence of a satisfactory explanation (from McDonald's), the ACCC will consider its options in regard to this matter, including court action," the statement said.

The "McMatch & Win" investigation is the second time this year McDonald's Australia has been investigated by the ACCC.

In June, the ACCC bound McDonald's to a court-enforceable order to stop advertising its "grilled chicken burger" as "grilled."

After complaints from consumers, ACCC investigations showed the burgers were steam-cooked and then seared with grill marks before sale.

The ACCC found that advertising the chicken burger as grilled was misleading or deceptive conduct under Section 52 of Australia's Federal Trade Practices Act. **B**

Syndicate

Continued from previous page

Beverly Shreeve, the underwriter of syndicate 1222, also will be the underwriter for the CSMA syndicate.

CSMA's Mr. Sayer welcomed the association's choice of Greenwich as the syndicate's managing agency, noting its "experience of the marketplace" as one of the major benefits of the relationship.

Greenwich is expanding its underwriting business, and the Britannia Rescue syndicate is "the first stage in our planned expansion," according to Greenwich Managing Director Christopher Hodgson.

For the 2000 year of account, the Britannia syndicate will have premium volume of about £12.5 million (\$20.3 million), rising to about £14 million (\$22.7 million) over the next few years. All the syndicate's capacity will be provided by a dedicated corporate capital member to be set up by CSMA. Britannia Rescue does provide services to non-affinity group members, and that business also will be written into the syndicate, said Mr. Sayer, though it is a "fairly small proportion" of the overall business, he said.

A broker hasn't yet been appointed for the new arrangement, though Greenwich's Mr. Hodgson said Britannia Recovery is an authorized insurance intermediary that likely will write the business through a binding authority.

There are no plans now to extend the syndicate's business from Britannia Rescue coverage, but third-party business may be added in the future, said Mr. Hodgson.

In a statement, Lloyd's Chairman Max

Taylor welcomed the new syndicate, saying "its entry into the market is a sign of Lloyd's' continuing strength within (the road rescue) sector."

After the announcement of the Britannia syndicate, Greenwich subsequently has agreed to take on the management of syndicates 947 and 994 from Chartwell Managing Agents Ltd., as well as managing the open years of Chartwell syndicates 923/2923, 947/2947 and 994 from the beginning of next year. This includes managing two of the syndicates' 1996 years, which have been left open because of their involvement in U.S. auto extended warranty business.

Greenwich plans to merge the two active syndicates for next year's underwriting, with about £55 million (\$89.1 million) capacity.

The combined capacity of the two syndicates for this year's business is £79.6 million (\$134 million), both writing similar portfolios of mainly non-marine and London market excess-of-loss business. Cliff Simmonds, currently the underwriter for syndicate 947, will take over the business of the merged syndicate, while Bill Deem, the underwriter for syndicate 994, will take the role of business development consultant within Greenwich and responsibility for closing the syndicate's 1997 account.

Chartwell, a subsidiary of the U.S. reinsurer that is being acquired by Trenwick Group, has previously said it planned to merge four of its non-life syndicates for the 2000 year of account while disposing of the two syndicates now to be transferred to Greenwich. Richard Thynne, Chairman of Greenwich, said the new merged syndicate will be the "central platform for the development of the Greenwich managing agency." **B**

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LEGAL NOTICES

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

No 4655 of 1999

IN THE MATTER OF THE CHARTER REINSURANCE COMPANY LIMITED
(PROVISIONAL LIQUIDATORS APPOINTED)

AND

IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by an Order dated 30 July 1999 made in the above matter the Court has directed that a meeting ("the Meeting") be convened of the Scheme Creditors (as defined in the scheme of arrangement referred to below) of the abovenamed company (the "Company") for the purpose of considering and, if thought fit, approving (with or without modification) a scheme of arrangement proposed to be made between the Company and the Scheme Creditors (the "Scheme of Arrangement") and that the Meeting will be held in the Council Chamber of the Chartered Insurance Institute, 20 Aldermanbury, London EC2V 7HY, United Kingdom on Wednesday 22 September 1999 commencing at 11am at which place and time all Scheme Creditors are requested to attend either in person or by proxy.

The Scheme Creditors may vote in person at the Meeting or they may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place.

A copy of the text of the Scheme of Arrangement and a copy of the Explanatory Statement required to be furnished pursuant to Section 426 of the Companies Act 1985 as well as blank Forms of Proxy are available from the offices of PricewaterhouseCoopers, 3 St Philips Central, Bristol BS2 0XJ, United Kingdom (Ref: PJS/SR).

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RSI

Continued from page 17

duced median-nerve movement in the carpal tunnel compared with a control group, "suggesting that this common condition may involve nerve entrapment," according to Jane Greening in a brief report on the research that was published in the July issue of *The Lancet*, a leading medical journal. Ms. Greening was an author of the report.

"Minor nerve compression will trigger marked changes in normal function and cause pain. Prolonged and abnormal (nerve) firing would also be triggered by mechanical stresses applied to the nerve. Changed nerve firing triggers a cascade of events within the central nervous system leading to chronic pain," Ms. Greening wrote in the report.

The non-specific forearm pain that accompanies RSI "may be due, in part, to entrapment and loss of mobility of the median nerve at the carpal tunnel. However, other sites of possible nerve entrapment could explain the diffuse symptoms associated with this condition," she wrote in the *Lancet* report.

Scientists say more investigation is needed, but they suggest that MRI scans of the carpal tunnel and measurement of median-nerve mobility could "prove useful in diagnosis and evaluation in patients with (non-

specific arm pain)."

Two recent court rulings have found U.K. employers liable for RSIs (see related story).

Meanwhile, new research into the possible health risks U.K. computer workers face also was published last month.

The study, conducted by researchers at the University of Reading in Berkshire, England, focused on 100 employees at the Southampton Area Health Authority.

The researchers found that neutralizing low-level radiation emitted from computer screens cut symptoms of ill health, such as runny noses, itchy eyes and tiredness, by nearly one-third.

John Jukes, a workplace safety consultant who helped with the research, said he has long been convinced that magnetic fields, such as those created by computer video display units, photocopiers,

and cordless and cellular telephones, are a factor behind the ill health of office workers.

"I work with a lot of employers who are seriously concerned that their employees still are getting headaches and itchy eyes despite the fact that they are complying with all the regulations," he said.

Mr. Jukes said more research is needed in the area of workplace health risks from magnetic fields.

The National Radiological Protection Board, a government-funded agency that sets safety standards for microwave emissions, and the HSE both point out that there is no evidence that the levels of radiation emitted by VDUs are high enough to cause any harm.

'This common condition may involve nerve entrapment,' writes Jane Greening in the medical journal *The Lancet*.

Workers given RSI awards

By CAROLYN ALDRED

LONDON—Employers have been found liable for repetitive strain injuries in two recent U.K. court rulings.

On July 22, the Court of Appeal of England & Wales rejected an appeal by Midland Bank P.L.C. of a lower court ruling that found the bank negligent for not preventing injuries to five employees. The five had been engaged in computer processing work, even though the bank was allegedly aware of the risk.

The bank had argued that the employees' injuries were psychogenic rather than physical in nature. However, a City of London Court judge had ruled in 1998 that poor ergonomics and an intense working regime had led to genuine physical injuries (*BI*, June 8, 1998). The judge awarded each of the five claimants £7,000 (\$11,071) in general damages for pain and suffering, in addition to special damages.

On appeal, Midland Bank had argued that the lower court judge had improperly shifted the burden of proof to the defendant bank, by requiring it to prove that something other than working conditions had caused the RSI injuries, rather than requiring the plaintiff employees to prove their injuries were caused by their work.

But the Court of Appeal ruled that the judge had been right to conclude that the injuries were physically based and arose from working conditions.

In another London court ruling earlier

this summer, an office worker was awarded £98,194 (\$159,339) in damages from her employer after she sustained an RSI allegedly caused by keyboard use.

Patricia Ann McPherson worked for the Housing Department of the London Borough of Camden from 1980 to 1994, though she did not do much keyboard work until June 1993. She began to experience her first RSI symptoms in late 1993 and stopped all keyboard use in February 1994. She was medically retired in 1994, at age 48, due to a condition in her left thumb.

In her lawsuit against the Borough of Camden, Ms. McPherson alleged that she should not have been retired but instead have been given a job with modified duties that involved less keyboard work.

Judge Anthony Thornton of the Queens Bench ruled that the Borough of Camden was negligent for failing to provide an ergonomic assessment of her workstation and her duties. According to the judge, Ms. McPherson should have been provided with a wrist rest and flat keyboard, been made to sit in a correct posture, been given 10-minute breaks each hour, and should have been directed to use the keyboard for no more than half the working day.

The injury had been caused by the continual use of the keyboard under poor ergonomic and working-time conditions and the employer should pay future income losses for the defendant, the judge ruled.

Malaysia

Continued from page 17

In fact, the crisis only further underscored the need for heavy regulation of financial industries in emerging economies if such industries are to survive and compete, Mr. Sulaiman said.

He said growing global competition also has increased pressures on Malaysian insurers and regulatory standards.

"Intense competition can potentially turn lax management into reckless management, legislative weakness into gaping loopholes, weak corporate governance into risky ventures, and ineffective

market discipline into market instability," Mr. Sulaiman said.

He said the reforms aim to consolidate the fragmented Malaysian insurance industry, adding

'Many of the financially weaker and smaller insurers remain resistant,' says Ali Abul Hassan Sulaiman of Bank Negara.

that he was pleased that 12 Malaysian insurers were already at various stages of implementing merger or acquisition plans with

one another. There are about 60 life and non-life insurers in Malaysia.

Nevertheless, "many of the financially weaker and smaller insurers remain resistant and continue to wait in the shadows, confident that they will get by somehow," he said.

The reforms are based on:

- Increasing the paid-up capital, or surplus of assets over liabilities, for all insurers from 35 million ringgit to 40 million ringgit (\$9.2 million to \$10.5 million) by Dec. 31, 1999, and to 50 million ringgit (\$13.2 million) by Dec. 31, 2000.

- Increasing the minimum solvency margin for each class of business from 30 million ringgit to 40 million ringgit (\$7.9 million to

\$9.2 million) by Jan. 1, 2000, and to 50 million ringgit by Jan. 1, 2001.

Mr. Sulaiman said the increased capital requirements are designed to "instill a sense of urgency among insurers on the need to expedite consolidation efforts through mergers and acquisitions." Most insurers are currently below the new standards and many will have to merge to stay in business.

The new requirements will be backed by other measures to promote consolidations. For example, financially strong insurers will benefit from incentives such as:

- Flexibility to consolidate their operations and costs, including aligning their investment

portfolios.

- Being considered first for new licenses.

- Being allowed to significantly expand their branch networks for greater market access.

- Increased financial flexibility through the use of financial derivatives to hedge investment portfolios.

Although providing more flexibility, the new guidelines will also reinforce the fiduciary duty of insurers to manage insurance funds in a transparent manner.

Mr. Sulaiman said that, while the Malaysian insurance industry does want foreign investment, the country is trying to equip its domestic insurers to compete in a global market. **BI**

Little relief seen from flood deaths, homelessness in India

By KAUMUDI MARATHE

PATNA, India—Floods that have plagued India's central state of Bihar since mid-July are being blamed for many deaths and an

officially estimated \$7.7 million in mostly uninsured damage.

According to the office of the Bihar relief commissioner, at least 158 people have died in the flooding and related boat accidents, and over 4 million have been left homeless. The commissioner said that more than 2,000 villages in 13 north Bihar districts had been inundated.

Torrential rains have hit Bihar and the nation of Nepal—due north of Bihar—causing major rivers to rise above dangerous levels. The rivers, flowing from the Himalayas into Bihar, have burst their embankments at several points.

According to the Indian Meteorological Department in New Delhi, this year's average rainfall in Bihar has been 30% above normal for the state, and 48% above normal for the week ending July 14.

On July 16, at least 41 people drowned when a boat capsized on a swollen tributary of the Ganges river in Bihar. Eyewitnesses said a wave toppled the overcrowded rowboat, which later sank. Most of the estimated 100 passengers on board were farm laborers, forced, like many local people, by

the monsoons to travel by boat due to flooded roadways.

Ajit Jha, resident editor of the Times of India in Bihar's capital of Patna, said, "Every year, dozens of people drown in Bihar's rivers. The victims are mostly women and children who cannot swim."

The state relief department announced that nearly 140 million rupees (\$3.2 million) in public property had been damaged. In addition, flooding has damaged or destroyed at least 7,100 homes, estimated at 57 million rupees (\$1.3 million).

The largely agricultural state has also lost about 137 million rupees (\$3.2 million) worth of summer crops on more than 730 square miles, as well as numerous heads of cattle.

But "official figures indicate only about a tenth of the actual damage," said Mr. Jha, who recently visited the flood-stricken region.

"The official numbers don't mean much," he said. "The situation is much more drastic—death, destruction, deluge. The sad thing is that this kind of flooding happens every year, and the worst is

yet to come. The flooding reaches its peak in September."

Insured property in the region was limited. The Indian government does not insure its vehicles or buildings, said an embassy official in Washington. And, according to Mr. Jha, informal boat services in India, such as the service that operated the boat that capsized in mid-July, do not carry any insurance coverage. And those companies, he said, certainly would not give compensation to the victims' families.

Furthermore, Mr. Jha said, most of the passengers were too poor to carry any personal insurance. "Most inhabitants in this part of Bihar are poor landless laborers. They don't even know what insurance is."

Many farmers and other citizens have neither life nor property coverage, agreed Amiya Kumar, divisional manager at the Delhi branch of the National Insurance Co.

But according to H.K. Nigam of the Life Insurance Corp., some small to midsize businesses might have some coverage. Such businesses, though, often are underinsured, with managers opting to

pay no more than the minimum premiums. And because insurance companies factor in depreciation when paying claims, "property owners frequently receive only 20% to 30% of their property value in compensation," Mr. Nigam said.

Relief and rescue operations in Bihar have been hampered by severed road links to some of the devastated areas. Relief officials blamed the irrigation department, which is responsible for the maintenance of embankments along major rivers, for not having taken effective flood protection measures before the onset of the monsoon season.

Mr. Jha has interviewed many victims in north Bihar. "Hundreds of people I spoke with have seen no relief efforts whatsoever. As usual, money and goods are being siphoned off" due to corruption in local and district governments, he said.

All the major rivers in Bihar are still flooded, and the flood situation continues to worsen. Disease and hunger are exacerbating the conditions in a region inhabited by an estimated 22.5 million people. **BI**

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FTR FOR THE RECORD

99 insurers, NCCI dismissed from suit

NEW YORK—A New York trial court judge has dismissed 99 workers compensation insurers and the National Council for Compensation Insurance from an employer class-action suit that alleges overcharging by the industry.

The 17 employers can only sue the 12 insurers from which they bought coverage, Judge Ira Gammerman of the New York State Supreme Court ruled last month. The state Supreme Court is a trial-level court.

The suit is one of 13 class actions filed across the country by employers alleging that an "industrywide conspiracy" among insurers inflated prices of voluntary-market workers comp insurance to subsidize losses in the residual market, court papers say.

Courts in several other states also have dismissed many insurers cited in the suits, Judge Gammerman said in the ruling.

Benefits sought for Holocaust survivors

WASHINGTON—Florida Treasurer and Insurance Commissioner Bill Nelson has proposed that European insurers under scrutiny for unpaid Holocaust insurance claims provide free home health care to thousands of elderly Holocaust survivors in the United States.

"Many of these victims are elderly and frail and need our help now," said Mr. Nelson, one of three state insurance regulators on the 12-member panel. The proposal would be a means of compensating the survivors now, while their unpaid insurance claims are being processed by the International Commission on Holocaust Era Insurance Claims (BI, July 26).

Former U.S. Secretary of State Lawrence Eagleburger, who chairs the panel, asked the Florida commissioner to submit a written proposal. The cost of the plan is expected to be a key factor in determining whether it is implemented, according to the Florida Insurance Department.

Currently, five European insurers are jointly operating the claims process. The governments of Poland and the Czech Republic are participating as observers, though they have agreed to search their archives for evidence of unpaid claims.

9th Circuit reinstates harassment suit

SAN FRANCISCO—A federal appellate court cited two recent Supreme Court cases when it overturned a lower court and ruled

a sexual harassment case brought by a former bakery worker against her employer should go forward.

The 9th U.S. Circuit Court of Appeals said a lower court had granted summary judgment in favor of the bakery before the decisions in *Burlington Industries Inc. vs. Kimberly B. Ellerth* and *Beth Ann Faragher vs. the City of Boca Raton* (BI, June 28).

But the standard for employer liability in a hostile environment that had been used by the district court "is no longer applicable under the new, more stringent standard set forth by the Supreme Court in *Burlington* and *Faragher*," said the appellate court in its July 28 decision in *Margaret Pacheco vs. New Life Bakery Inc.*

The case was brought by Margaret Pacheco, who claimed she had been sexually harassed by David Marson, an officer and co-owner of the bakery. After an investigation that was conducted primarily by Mr. Marson's sister—with the cooperation of his father and brother—Mr. Marson was exonerated, though he was issued a warning. Ms. Pacheco was laid off a month later. The district court had found New Life took satisfactory remedial action because, by warning Mr. Marson, the harassment had stopped.

New Life's attorney, Todd Russell of Allison, MacKenzie, Hartman, Soumbenot & Russell in Carson City, Nev., said he planned to petition for a rehearing of the case.

State comp insurer buys reinsurance

CARSON CITY, Nev.—Employers Insurance Co. of Nevada has bought a \$2 billion reinsurance contract to limit its exposure to poor-performing workers compensation business as it seeks to become a private insurer.

Nevada's Legislature mandated the reinsurance as a condition of the state fund's privatization, said Douglas D. Dirks, chief executive officer

of EICON. Nevada ended its workers comp monopoly on July 1, and EICON is due to be privatized on Jan. 1, 2000.

Included in the finite risk reinsurance contract is the transfer of \$775 million in assets to the reinsurers by EICON, Mr. Dirks said. The reinsurance will cover EICON losses from 1938 to 1995, he said.

Aon Re Worldwide, a unit of Aon Corp. in Chicago, placed the reinsurance. Coverage was led by Gerling Global Financial Products Inc., a New York unit of Gerling Group. Other reinsurers on the risk were XL Mid Ocean Reinsurance Ltd. in Bermuda and ACE Bermuda Insurance Ltd.

Broker in identity security venture

PRAIRIE VILLAGE, Kan.—Lockton Cos. Inc. has joined forces with e-DENTIFICATION Inc. and International Biometric Group L.L.C. to offer identity security and privacy protection for e-commerce and communications.

Akron, Pa.-based e-DENTIFICATION and New York-based IBG will provide the security system used to enroll and verify the identities of consumers transacting business on the Internet, while Lockton will broker insurance to cover losses associated with identity fraud.

The e-DENT system initially will use voice verification biometrics, but it also is designed to work with finger scan, face geometry, signature verification and iris scan biometrics.

Businesses using the e-DENT system for e-commerce can buy coverage through Lockton to protect against theft and fraud if a customer's identity is compromised by use of the e-DENT system, explained Mark Angers, executive vp for the Prairie Village, Kan.-based broker.

Mr. Angers declined to give specifics about the insurance policy due to competition.

Information in brief

Woodland Hills, Calif.-based Wellpoint Health Networks Inc. has offered to pay \$266 million for Rocky Mountain Hospital & Medical Service Inc., the parent company of Blue Cross & Blue Shield of Colorado and Nevada, a company spokeswoman said. Anthem Inc., a Wellpoint competitor, also has an outstanding offer for Denver-based Rocky Mountain Hospital & Medical Service. . . Cincinnati-based Anthem Blue Cross & Blue Shield says coverage for Viagra will now be available only to groups of 50 or more employees at additional cost as an optional policy rider. The new policy, announced in a letter to Ohio policyholders in June, becomes effective as policies renew. "The reality for Anthem is we continue to pay for Viagra under the terms of most of our customers' policies," a spokeswoman said. . . Job-related deaths in the United States fell by slightly more than 3% to 6,026 in 1998 from 6,238 a year earlier, according to figures released last week by the federal Bureau of Labor Statistics. **[B]**

Comp

Continued from page 2
mittee.

Labor argues that workers comp insurers and employers have saved billions of dollars in total workers comp costs as a result of 1993 system reforms and that those savings should be used to bolster inadequate benefit amounts.

But employers and insurers say most of the cost reduction that labor points to represents a dip in insurance premiums due to the introduction of open rating in 1995 and intense insurer competition. Meanwhile, they say, claims costs have continued to rise.

The fight against a benefits increase may be one of the most pressing issues facing employers in California. Gov. Gray Davis, through the state's Department of Industrial Relations, is looking for a compromise

on the benefits and system changes to be included in S.B. 320.

The WCIRB's recommendation for an 18.4% pure premium rate increase "gives me more ammunition to go to Gov. Gray Davis and say, 'Look, the rates are going to go up,'" said Lori Kammerer, executive director of Sacramento, Calif.-based Californians for Compensation Reform. "It gives us more fodder" for arguing that costs are rising and that a benefits increase as large as labor is proposing is not feasible, she said.

As a representative of a self-insured employer, Gregory Vach, director of workers compensation for Interstate Brands Corp. in San Diego, said he is acutely aware that workers comp claims costs have continued to rise.

So Mr. Vach is not surprised by insurers' predicted loss results or the rate increase suggested by the WCIRB. He hopes the recommendation will serve as an opportunity for

insured employers to realize it is just a matter of time before insurers start passing those losses back to the policyholders.

Insured employers may not be as aware of the increased costs as self-insurers, because their premiums have declined as a result of insurer competition, he said.

"If the costs are in the system, somebody has to pay for them, and sure enough, insurers are not going to eat it forever," Mr. Vach said. If the rate increase recommendation helps alert employers that the reforms did not reduce their claims' costs over the long term, then "yes, that is positive," he said.

The WCIRB's proposal to increase rates is subject to approval by Insurance Commissioner Chuck Quackenbush. Last year, when the WCIRB recommended a 5.6% increase in pure premium rates, the commissioner rejected the recommendation and did not pass it on to insurers. Under

California's open rating law, the commissioner only can suggest rate increases. He can not mandate them.

The current recommendation for an 18.4% rise is the largest made by the WCIRB since 1996, when it rec-

ommended an 18.7% jump and the commissioner only allowed a 5.6% suggested increase.

The commissioner's office has not made an announcement on the recommendation.

Tuition

Continued from page 3
limits on dollar amount, percentage or number of courses.

Seventy-seven percent of companies also reimburse for one or more related expenses, such as registration, laboratory and book fees and parking costs.

Seventy-five percent of the companies surveyed require that the courses relate to an employee's job or possible future job within the company in order to be eligible for reimbursement. Also, 63% will not pay if the employee's grade is not a C or better, while 22% require B grades for graduate courses and C grades for undergraduate courses.

Of the companies surveyed, slightly more than a third made changes to their programs in 1998. The most common change was increasing the annual dollar limits, which 27% of employers did. Eleven percent expanded the types of courses and degrees they will pay for, and 7% offered reimbursement to more employees.

In contrast, only 5% reduced the amount they will reimburse, 7% cut back the types of programs they will pay for, and 3% tightened eligibility requirements.

Also, 67% of employers require full-time employees to have completed a minimum period of service to be eligible for educational reimbursement. About a quarter of employers require six months' service, and 20% require one year.

Along with wanting to remain competitive and keep employees

up to speed, another reason for improving reimbursement programs is the extension until May 31, 2000, of the tax break for educational reimbursement provided by Section 127 of the Internal Revenue Code. Section 127 allows a company to take a tax deduction for reimbursements paid for undergraduate course work. The employee receives a tax exclusion, so the reimbursement does not appear as part of his or her taxable income, according to the Internal Revenue Service.

Eighty percent of companies reimburse for all kinds of courses, with the remaining 20% offering reimbursement only if the course meets the Internal Revenue Service definition of job-related.

Mr. Gretzinger said educational reimbursement programs were enacted to give employees an easy way to improve their performance. Reimbursement programs still serve that purpose, but they also have become a way to attract and retain employees who still are developing their skills, he said.

Mr. Gretzinger also said that, in spite of a low median participation rate—just 5.3% of eligible employees—the programs are very important to those who use them and that the programs speak well for the companies that provide them.

The 1998 Educational Reimbursement Survey is available free from the publication desk at Hewitt Associates L.L.C. Call 847-295-5000 or write to Hewitt Associates, 100 Half Day Road, Lincolnshire, Ill. 60069.

TWA

Continued from page 3

several times after 1971, and the sludge-drying beds at the plant were excavated and the sludge was moved to other areas on the property. TWA also constructed a large hangar at the site in 1971, and after 1975 it constructed several other facilities at the site, including another waste water treatment plant.

In 1985, the Missouri Department of Natural Resources issued a notice to TWA to stop violations of the Resource Conservation and Recovery Act. In 1988, the Environmental Protection Agency filed a civil administrative complaint against TWA for RCRA violations, and TWA later committed to clean up the site.

TWA filed suit against its insurers seeking coverage in 1994.

In other court actions, it was ruled that the insurance coverage TWA bought after 1970 contained pollution exclusions and did not cover the cleanup, whereas the policies issued by AAU and the London insurers in the 1950s and 1960s did not contain pollution exclusions, court papers say.

But the current cleanup is for pollution that occurred after 1970, say the court papers.

"Contaminants associated with TWA's operations prior to 1970 are almost entirely absent from soil samples at (the site), and, to the extent that contaminants have been detected in ground water, it is impossible to determine whether or to what extent contaminants from operations prior to 1970 are present," Judge Dierker ruled.

Also, it is clear that prior to the pollution exclusion in 1970, airline insurers still did not intend to cover

government-ordered pollution cleanups, he ruled.

Finally, the "owned property" exclusion, which the older policies did contain, applies in this case, Judge Dierker ruled.

"There is nothing remotely ambiguous about the exclusion, and it precludes recovery by TWA," the judge ruled.

The ruling is significant because several other cases are expected to focus on the cleanup of airline maintenance sites, said Mr. Ellison, who represented the London market insurers in the case.

"It signals that companies like TWA will have difficulty in getting insurers to pay for what are their ongoing business expenses," he said.

Trans World Airlines Inc. vs. Associated Aviation Underwriters et al. Missouri Circuit Court for the 22nd Circuit, No. 942-1848A. Div. 3.

Commentary

The serious business of silly bowling

For many companies, August marks the start of annual planning meetings, when staffs gather to assess the current year and develop strategies for the year to come. Most groups also try to use these occasions to have some fun and build team spirit.

To achieve the second objective, you can hire an expensive consultant and engage in somewhat dangerous stunts in an attempt to get people to trust each other.

But there is a much less expensive option.

If you are looking for a new approach to build team spirit and have fun at your annual meeting this year, try bowling.

I'm not kidding.

But you have to time it right when scheduling a trip to the lanes during business meetings.

Bowling should not take the place of opening-afternoon sporting activities, which are designed to encourage people to arrive early for an out-of-town meeting and to provide some get-to-know-each-other time before business sessions begin. The usual golf game—stroke play or scramble for those who don't play often—still is a great opening for a meeting. For those who don't play golf, tennis is a good alternative, or perhaps horseback riding. Whatever the sport, it's great to start a meeting with activities to relax the body and soul.

Kicking off a meeting with a day of outdoor activity also makes the next day of sitting in a airtight, windowless room for at least eight hours more bearable.

But we at *Business Insurance* have decided that the sports should not stop with the day of arrival.

We're now hooked on devoting the second evening of our annual staff meeting to gathering our group at the nearest bowling alley. There, everyone participates in the fun of trying to recreate our youth, when we could bowl strike after strike. OK, at least that's how I remember how well I could bowl as a kid. I sure can't bowl a strike now, but it doesn't matter.

Throw a group of people into a bowling alley, of all ages and abilities, and watch their eyes light up, regardless of when they last touched a bowling ball. Introduce some competition among the teams (\$5 a team with 10 teams makes a nice pot), and there's a real incentive to cheer your teammates to knocking down those pins.

It's quite revealing, as well, to see who the really good bowlers are. If anyone brings his or her own bowling ball, see if you can be traded to his or her team.

Regardless of how well—or how poorly—anyone bowls, the evening is full of laughs. The sight of two consecutive gutter balls can really be quite funny. And the high-fives really start flying when strikes and spares are recorded, even by those on opposing teams.

We've also learned that, after three or four regular games, it's a great idea to engage in what we have dubbed "silly bowling." That involves such feats as bowling with one's eyes closed, hopping up the lane on one foot, bowling with the "wrong hand" and—one of my personal favorites—bowling between the legs of a partner. That's definitely a trust-building exercise.

Silly bowling also levels the playing field somewhat. And in the spirit of silly bowling, one can elect to award style points.

After several years of hosting these bowling evenings, we also have learned some risk management tips for holding a successful evening at the bowling alley. There are a few we just thought of this year and have to test in the future, but we think they will work.

First, a little training would be helpful. Ask those who brought their own balls to demonstrate how to keep the ball not only out of the gutters but also in one's own lane.

Necessary safety equipment includes glue for broken fingernails and Band-Aids for blisters.

Loss reduction procedures should include the distribution of antacids at the end of the evening to counteract the effects of high-fat bowling alley food. Most people are eating such healthy food these days that they have lost their tolerance for that much grease in one evening.

Also, to comfort sore muscles, especially stiff necks, hire a masseuse to give post-event neck massages. A few aspirins should be on hand, too.

The stories and chuckles from an evening at the lanes, and the camaraderie created, last much longer than the sore backs and fingers.

And for the budget-conscious, it's one heck of a cheap evening.

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

Media

Continued from page 1 for the media.

Many media risk managers maintain, however, that their corporate policies and training efforts help them reduce the risk of such complaints. While defense attorneys closely watch these high-profile media cases, risk managers have varying opinions on whether the atmosphere makes obtaining coverage more difficult.

"We have not recognized any significant difficulty in obtaining media liability coverage," said Randy Thurman, director of risk management for Gaylord Entertainment Co. in Nashville, Tenn. Gaylord Entertainment owns the Opryland Hotel, three local radio stations and a CBS Corp. affiliate in Dallas. Gaylord also operates several World Wide Web sites.

Mr. Thurman noted that Gaylord has a \$50,000 deductible; because of that, the company is protected from any catastrophic claim, but Gaylord's insurers are insulated from "day-to-day" claims.

Although he didn't cite any specific case as a cause of concern for media outlets, he said the same basic issues of libel, slander and copyright infringement remain paramount. Approximately every 18 months, he said, Gaylord meets with its reporters and news staff "to share with them the policies of the corporation with regard to their work."

Chuck Rizzo, director of risk management for The E.W. Scripps Co. in Cincinnati, said, "What's ahead is unknown because of these verdicts but, as of yet, we have not seen any increase of pricing beyond normal expectations." Mr. Rizzo said the company's media liability policy was renewed in April.

But Tanya Karn, director of corporate risk management for The Walt Disney Co. in Glendale, Calif., said she has seen a definite effect with regard to insurance coverage and premiums resulting from media lawsuits.

"We have seen insurance carriers either decide they don't want to write specific forms of coverage, or the deductibles and premiums have increased so much that it doesn't make financial sense," said Ms. Karn.

Chad Milton, senior vp for Media/Professional Insurance in Kansas City, Mo., said two types of claims commonly are brought against the media. The first, pure advice claims, can result from the coverage of subjects as varied as mushrooms and investments, he said. Such claims try to hold publishers liable for advice or information provided.

The other type is an incitement claim, which alleges that an individual caused some harm as a result of exposure to media. Cases alleging the presence of hidden messages in rock lyrics are famous examples of incitement claims, Mr. Milton said.

He is closely watching the courts to see what is decided in a case involving a child shooter in Paducah, Ky. The suit charges that the shooter became motivated to kill by playing a video game.

"It seems to me, the avalanche (of cases) has started," Mr. Milton said. "I think how the courts handle these high-profile claims of media inducing violence will be a harbinger of how these cases will be handled in the future. So far, the First Amendment has been used to protect media companies in these kinds of liability."

David Bralow, a partner in the media department of law firm Holland & Knight L.L.P. in Orlando, Fla., said the First Amendment doesn't protect reporter conduct in gathering information.

"When we're dealing with conduct, it's questionable whether or not the First Amendment protections we have relied upon are still in place," said Mr. Bralow.

But, he said, the First Amendment should protect a news organization that publishes or broadcasts a non-libelous news item even if a reporter obtained information for the report through questionable conduct.

It's not only newsgathering, however, that should concern media risk managers. Some of the same new risks apply to entertainment.

In the past, for example, an underwriter didn't view a violent film as a major liability, because there was no great concern about liability or privacy exposures, which can be an issue in other kinds of movies, Mr. Milton noted. But if the courts change their view of First Amendment protections, underwriters undoubtedly will become more cognizant of the potential risks associated with violent movies and incitement, he said.

"Our underwriters are much more aware of this issue than they were six months ago and are incorporating it into underwriting," said Mr. Milton. That increased awareness will make insurance for exceptionally violent films more difficult to find, he said.

"Everybody is looking for somebody to blame for everything," Mr. Milton said. "As a society, we're not happy with ambiguities and the notion that bad things just happen. The media is sort of an outside force, and it's become a convenient scapegoat."

Risk managers, however, can protect themselves against growing media liability risks.

Underwriters are looking for "a sophisticated review process conducted by people who are careful journalists and who are aware of the liabilities," Mr. Milton said.

Mr. Dodell also noted that pre-publication legal review is crucial in today's litigious environment. He said such reviews "absolutely have an effect" on the price of coverage.

Media attorney Bruce Johnson said some newsgathering techniques, such as hidden cameras for investigative reporting, are losing favor. He is a partner with Davis, Wright & Tremaine L.L.P. and chairman of the media law and defamation torts committee of the American Bar Assn.'s tort and insurance practice section.

"The legal environment has induced a chilling effect in some areas of news coverage," Mr. Johnson said.

Matt Jablonski, director of insurance in Charlotte, N.C., for The Hearst Corp., said the company has expanded its coverage to include higher limits and punitive damages protection. He pointed out, though, that Hearst hasn't had a loss above its deductible in four years.

Publishers, he said, "would rather fight a case and have their name cleared than make a settlement and have it appear that our company was lenient." New York-based Hearst

publishes magazines and newspapers and owns more than 25 television stations.

Mr. Milton of Media/Professional Insurance recommends that risk managers make sure their media policies also encompass online activities.

"As media companies morph into cyberspace, they can stop being pure media companies and start being other kinds of companies and take on the liabilities of those other companies, whatever that may be," he said.

Jason White, a senior vp at Swett & Crawford in Los Angeles, said this branching out from the traditional forms of media will most likely give rise to new liabilities.

"All of us are wallowing in the unknown," he said. "I don't think all of the issues are fully understood with respect to doing business in these new mediums. Risk managers need to begin to think outside the box and really look at how doing business on or through the Internet can affect their customers and other third parties."

Mitchell Kamarck, a partner with Rosenfeld, Meyer & Susman L.L.P. in Beverly Hills, Calif., said a big problem that any company faces now is that its most-publicly accessible image is on the Internet. In some cases, "the Internet may not have been integrated into their legal and business thinking," said Mr. Kamarck.

A company's site on the World Wide Web is likely maintained by a technical person who may develop innovative ways to draw potential customers to the site. But these individuals often lack understanding about such legal issues as trademark and patent infringement and intellectual property concerns, he said.

"Young techies without business acumen or legal experience don't realize they are putting their company at risk," he said. "The law dealing with the Internet is moving so quickly. You really need a lawyer to go through the Web site and play with the bells and whistles and clear everything."

Web sites, Mr. Kamarck said, involve many of the same intellectual property issues as motion pictures and television shows. He said a lawyer will check such things as the origins of any designs that are used and will determine whether the site needs a privacy policy clause if it is tracking usage.

"These are things that, frankly, a techie may not care about," Mr. Kamarck said.

Disney's Ms. Karn said the company doesn't treat intellectual property placed on the Internet any differently than it does any other form of material, which means it is all reviewed by legal counsel.

"It's the same review of materials and the same concerns that we've always had. It's just coming from more directions," she said. **BI**

Deadline approaching for surplus lines directories

Business Insurance will publish its annual directories of surplus and excess lines insurers and wholesalers Oct. 4.

The issue will also feature a Spotlight report on the surplus lines marketplace, as well as profiles of leading insurers and wholesalers.

To be listed, a surplus lines insurer must generate at least 50%, or \$10 million, of gross premiums from non-admitted commercial risks. An excess lines specialty insurer must generate at least 50%, or \$50 million, of gross premiums from excess liability policies written on either an admitted or non-admitted basis. A company must be U.S.-based or, if an alien non-admitted insurer, be currently listed by the NAIC's Non-Admitted Insurers Information Office as having

met its criteria.

To be included in the directory of wholesalers, a company must act as a wholesale broker, managing general agent or underwriting manager for retail brokers and must report premium volume.

The directories are published as an editorial service, and there is no charge to be included. Completed questionnaires must be submitted by the extended deadline of Aug. 30. If your company meets the criteria for the directories but has not yet received a questionnaire, please request one immediately by calling Assistant Directory Editor John Keagy at 312-649-5313. Copies of the questionnaire also may be printed from the Internet at www.businessinsurance.com/magazine/directories.html.

Partners

Continued from page 1

benefits to spouses to also offer them on the same basis to domestic partners. The city applied the ordinance to airlines because the city owns San Francisco International Airport and contracts with airlines, including United, to operate there.

An airline organization, the Air Transport Assn., as well as United challenged the law, arguing it violated the federal Employee Retirement Income Security Act, which pre-empts state and local laws that relate to benefit plans.

A federal judge upheld the law in April 1998 but exempted the airlines from its requirements (*BI*, April 20, 1998).

This June, however, a ruling by the same judge required the airlines to provide certain non-health related benefits to the workers. That ruling was upheld by a panel of the 9th U.S. Circuit Court of Appeals in late July. United announced the new benefits policy after the ruling.

Although United has relented in its opposition to the city's demands, the airline said it will still

pursue through the ATA an appeal of the city's ordinance. And the company said it still can retract the benefits it offers to partners of employees who can legally marry if the city's law is eventually struck down by the courts.

United opposes local attempts to legislate benefits offered by companies nationwide, says James Goodwin.

United said it did not oppose granting partner benefits because such benefits involve gay and lesbian rights.

"What we oppose—and what we will continue to oppose—are local municipalities intruding upon the federal domain by attempting to legislate the employee benefits package of companies like airlines doing business nationwide," United Chairman and Chief Executive Officer James Goodwin said in a statement.

The move by United came as a surprise to Tom Ammiano, presi-

dent of the San Francisco Board of Supervisors and co-sponsor of the law. After United fought complying with the ordinance for two years, Mr. Ammiano said the announcement is a victory for United's employees. He added he is gratified that United will not only follow the law but also provide more benefits than the judge's order required.

"The idea that they went even a little further is exciting," he said.

Overall, he said, more than 90% of the businesses that contract with San Francisco have complied with the ordinance and that the percentage continues to grow.

A few days after United's announcement, American said it will offer medical and dental coverage, travel privileges, life insurance and COBRA benefits to partners who cannot legally marry U.S. employees. The company will continue to offer travel privileges for non-married household members.

A company spokesman said American had been evaluating the benefits for some time and said the announcement was not related to the 9th Circuit ruling. United's announcement, however, did speed up American's move, he said. **BI**

OSHA

Continued from page 1

ment should do the same," said Lance Ewing, chair of RIMS External Affairs Team and director-insurance and loss prevention for GES Exposition Services Inc. in Las Vegas.

"It's a victory for business and common sense. This is great step forward in making sure that there is sound and adequate science before OSHA moves forward on any type of ergonomics measure," said Tamara Velasquez, legislative counsel for the Alliance of American Insurers in Washington.

In addition, some employers and insurers fear that OSHA's foray into ergonomics also could undermine the workers compensation system.

In an Aug. 2 letter to Jacob Lew, director of the Office of Management and Budget, Bruce Wood, assistant general counsel of the American Insurance Assn., and Eric Oxfeld, president of UWC Inc., wrote that the Occupational Safety and Health Act that created OSHA expressly forbids OSHA from interfering with workers comp programs. But the proposed OSHA standard would do just that, the two argued.

"The proposed OSHA standard would create a new federal workers compensation program" that would

require employers "to provide 100% replacement of wages and benefits and medical treatment for up to six months for injuries alleged to be work-related. OSHA is ill-equipped to resolve compensation questions and should stick with regulating best practices in prevention of injuries," said Mr. Oxfeld in an interview after the letter was sent. UWC is a Washington-based business advisory and research organization.

'The proposed OSHA standard would create a new federal workers compensation program,' says UWC's Eric Oxfeld.

But the Clinton administration strongly opposes the measure and is threatening to veto it. Labor Secretary Alexis Herman wrote in a statement issued after the 217-209 vote, "We know how to prevent many musculoskeletal disorders, and we must act on that knowledge." She called the bill "the wrong answer to the ergonomics question."

"If this legislation were to take effect, it would harm both workers and employers, which is why President Clinton would exercise his

veto, if it were to reach his desk," she said in her statement.

There is, however, no guarantee that the president will get a chance to carry out the veto threat. Although a similar bill has been introduced in the Senate by Sen. Kit Bond, R-Mo., there has been no action on the measure.

Meanwhile, in a related matter, the North Carolina Department of Labor is continuing to develop an ergonomics standard despite the state General Assembly's recent approval of a bill that would forbid promulgation of a standard until 2001.

In fact, the department sent its standard to the Rules Review Commission for review late last month. A department spokesman said the document contained only minor changes from a draft amended earlier this year (*BI*, June 14). That proposal has drawn considerable opposition from risk managers and employers, who called it overly broad.

The proposal's provisions include: requiring employers to provide ergonomics training to employees within 90 days of employment and at least once every three years thereafter; mandating that employers tell workers to report ergonomic-related injuries as soon as possible; creating a system of mandatory responses to reported ergonomic-related injuries. **BI**

can remind policyholders why the London market is a center of excellence."

Mr. Carroll said the meeting was "an ideal opportunity to work together in a very visible way. . . . A lot of U.S. corporations come to London for their insurance and reinsurance, and this is a chance to jointly meet them and talk directly."

Both chairmen, however, said the visit was not a sign that the London market ultimately will become one unified body. Instead, it was a gesture for "demonstrating very clearly that there are areas where it makes sense to work together," said Mr. Taylor. "But it will always be a case of underwriters (in London) competing together," he said.

"There is still rivalry between the companies and syndicates as risk carriers," said Mr. Carroll. "Where we see a common interest is in infrastructure."

Mr. Taylor said he is convinced that e-commerce will be the main factor to change the shape of the London market. Thus far, technology has been used to replicate traditional business processes in a more efficient way, he said. Looking to the future, he said, "I expect it to be revolutionary. If it isn't, we haven't done our job right."

Henrietta Royle, deputy chief executive officer of British Invisibles, said the Atlanta meeting was a "classic" British Invisibles event. "Our job is to make sure that potential customers have the United Kingdom in the front of their minds whenever they think about financial services business," she explained.

Until now, British Invisibles has not collaborated as closely with the insurance sector as with other London business sectors. Regarding the London insurance market, Ms. Royle said, "We hope to do more of these events." **BI**

Updates

No carcinogen found in facility

Continued from page 2

week that it has not been able to identify a carcinogen in its facility.

The five-part study, conducted by the University of Alabama at Birmingham School of Public Health and Johns Hopkins University in Baltimore, did establish that "an occupational exposure at the facility may have contributed to the excess of the brain cancer glioma."

Six chemical researchers who worked in the same Naperville, Ill., building complex—all but one worked on the same floor—developed malignant intracranial tumors. The researchers worked in the facility within the period of the mid-1970s to mid-1980s; on average, each was employed there for 17 years. In 1996, the company closed the floor where the majority of researchers had worked.

Vicki Kastory, a spokeswoman for BP Amoco and a member of the 20-person task force that was set up alongside the cancer investigations, said the company has "no plans to open the third floor at this time."

BP Amoco said in a statement that many of the researchers used the same chemicals and agents. Five of the researchers have died from the disease.

The company contends that firm causal conclusions cannot be made because the study was small, little is known in the scientific community about the cause of brain cancer, and "there is no current scientific evidence that supports an etiologic link to brain cancer with the known types and magnitudes of exposures experienced by BP Amoco chemical researchers."

BP Amoco is self-insured for future judgments and has some excess liability coverage (*BI*, July 26).

Class-action reform bill moves

WASHINGTON—The full U.S. House of Representatives is the next stop for a business-backed bill that supporters say would restrain frivolous class-action lawsuits.

The House Judiciary Committee approved the Interstate Class Action Jurisdiction Act on a 15-12 vote last week. The measure would allow both defendants and plaintiffs in interstate class-action suits to request that the suits be heard in federal rather than state courts under certain circumstances (*BI*, July 26).

The measure enjoys the support of many employer groups, whose members hold that the act could curtail the practice of "forum shopping," whereby plaintiffs attorneys seek to certify suits involving plaintiffs from a variety of states as class actions in state courts known to be friendlier to plaintiffs than to defendants.

The Clinton administration, however, opposes the House legislative measure.

Tax bill faces veto threat

WASHINGTON—The chances of significant tax breaks for some employee benefits via a Republican tax cut measure have dimmed considerably in the face of a certain presidential veto.

A House-Senate conference committee worked out differences in tax bills each chamber approved and sent a compromise bill to the floor of both houses last week (*BI*, Aug. 2). Among other things, the consensus bill calls for: raising the maximum annual salary deferral that can be made to a 401(k) plan; allowing employees age 50 and older to make special "catch-up" contributions to 401(k) plans; enhancing the benefit portability of employees moving back and forth between tax-exempt and private sectors; modifying non-discrimination tests that determine whether a pension plan does favors; and increasing the amount of an employee's compensation that can be considered in computing pension benefits.

Other benefits provisions, such as new tax breaks for employers who build or run child care facilities and removing a cap in a 1996 law that limits the number of tax-favored Medical savings accounts, did not survive the conference committee.

President Clinton, however, pledged last Friday to veto the bill. Given that neither house passed the measure passed by a margin sufficient to override a veto, the chances of the bill becoming law in its present form appear very slim.

Briefly noted

Terra Nova (Bermuda) Holdings Ltd. has asked Donaldson, Lufkin & Jenrette to advise it whether to take advantage of unsolicited merger offer from a company Terra Nova did not name. The reinsurer is also in the final stage of discussions concerning the possible acquisition of a U.S. company, a Terra Nova statement said. . . . The House Transportation and Infrastructure Committee approved **Superfund reform legislation** on a 69-2 vote last Thursday. The measure, though stopping short of repeal of the program's controversial imposition of retroactive liability, would provide some liability relief for small potentially responsible parties. . . . The St. Paul Cos. Inc. said last week it will **eliminate 1,000 positions** as part of a cost-reduction program to enhance its efficiency. The effort is expected to enable the company to cut expenses by \$100 million next year. A company spokeswoman said most of the cuts will be taken in St. Paul's domestic operations, "but they will be widespread through all of our locations." . . . Aetna Inc. **completed its acquisition** of Prudential HealthCare last week for approximately \$1 billion. With more than 21 million members, Aetna has become the nation's largest provider of health benefits. . . . Reps. Mark Foley, R-Fla., Rick Hill, R-Mont., Robert Matsui, D-Calif. and Ed Royce, R-Calif. introduced legislation last Thursday that would allow insurers to set up tax-deferred reserves that would respond to qualified catastrophic events. Under the **Policyholder Disaster Protection Act**, the amount each insurer could put in the reserve would be capped based on evaluation of its catastrophe exposure for qualifying lines of property/casualty insurance.

London

Continued from page 1

announced the establishment of the IUA/Lloyd's Forum to investigate ways to boost efficiency and lower costs by improving processes, such as claims payment and policy issuance, in the London market. Last week, the Forum appointed REL Consultancy Group, a London-based consulting firm, to help prepare a plan for making the London market more competitive, including an investigation into the future role of e-commerce.

Speaking before his departure, Mr. Taylor said the Atlanta trip reflected the "increased level of cooperation" between Lloyd's and the London company market. "It is a very good opportunity to emphasize the benefits of the London market as a whole. . . in a very important U.S. state," he said. "We

Industry failing to communicate

By MYRON M. PICOULT
Special to *Business Insurance*

Dale Carnegie, where are you when I need you?

One does not have to be a rocket scientist to quickly pick up on the fact that property/casualty stocks are not in favor with investors.

Year to date, the Wasserstein Perella Securities Index of property/casualty stocks is down 3.7% vs. an 8.1% gain for the Standard & Poor's 500 Index. The 3.7% figure disguises the fact that numerous large, visible public entities have severely underperformed the group and the popular market averages.

Calls from clients and industry observers have all revolved around the same question: "What is wrong with these stocks?" Clients tend to offer some extra color, noting that "These stocks are killing me" or "I can't take it anymore; I've got to get out of this stuff!"

I have been hollering for some time now that the numbers for the industry were going to get worse (history has shown that, in this business when the pendulum swings, it always swings to extremes). Hence, on the plus side, the numbers have traditionally overshot expectations, and on the downswing, they have typically been worse.

Several items have been contributing to the group's stock market underperformance. Part of the problem appears to be the apparent inability of many management teams to succinctly communicate to investors, together with the shortened time frame within which success is measured by many industry observers. This is further exacerbated by an economy that just won't give up.

We are just starting to come into the thick of the gooey numbers spawned by years of lunatic pricing and the undermining of terms and conditions. Complexity in the absence of an extended record of earnings consistency also breeds skepticism and constricts valuations.

Managements have to make their complicated stories less complicated by providing concise answers to top line growth queries and bottom line shortfalls. They also have to do a better job of explaining how they have positioned their companies to compete in the rapidly changing operating environment. The creation of shareholder value and the time frames involved must also be addressed. All of the above is producing varying degrees of

investor angst and lower stock prices.

Admittedly, this time around we have a few new wrinkles. Back in the 1970s and the 1980s, when the industry last went through its underwriting travails, the property/casualty insurance marketplace deteriorated fairly quickly. Hence, the bottoming process did not last long, and there was a relatively quick recovery in prices. In fact, the recovery after the 1984-85 underwriting debacle was such an overshoot that the ultimate pricing redundancies carried the industry for many years.

This time, we have an economy that has been quite strong, with a negligible rate of inflation, and an industry that has accumulated a massive capital cache that has been ineffectively utilized. This is part and parcel of the fact that we are now in the 14th year of the three-year cycle.

Aside from the factual situation, as noted above, several other factors are inhibiting the performance of these stocks. They run the gamut from an investor buyers' strike, to alternative investments, to complexity, confusion over restated financial statements, some devastating conference calls and a lack of mea culpas.

Investor interest in property/casualty stocks appears to be approaching the subterranean level. A non-performing stock could be as harmful to a portfolio manager as an underperforming stock. The buyers see no need to step up to the plate, which in essence lets the selling pressure feed on itself. The "strike" is tied to the perception that most managements do not understand or fully grasp the importance of creating shareholder value.

There is also a classic disconnect between Wall Street's time frame for success and the industry's time frame, and investors (correctly) do not perceive a runaway train pricing environment. In fact, there remain nettlesome instances when one gets the feeling that the train is still slipping backward. As previously noted, the economy has been going great guns for some time and has spawned a multitude of alternative stock investments. Hence, investors don't need these stocks. This raises the obvious question as to why more of these entities (assuming they are not currently burdened with debt), if in fact they are such great cash flow machines, are not private entities?

Over the past few years, most insurers have gone out of their way to convince the investing public that they have reconfigured themselves

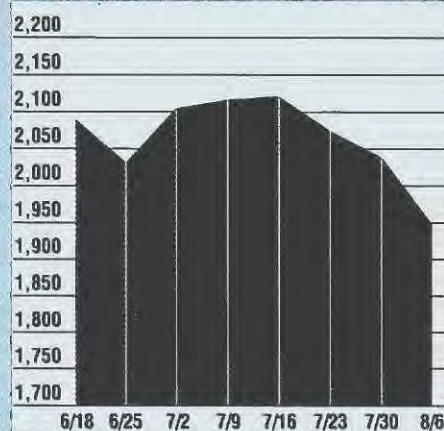
into niche and specialty companies, as those became the buzzwords for the industry. In fact, it seems that virtually no one writes traditional business anymore. Hence, that must now be a specialty. This fascination with nooks, crannies, niches and specialties has resulted in companies making themselves very complex. This drive to see who can conjure up more complexity is also inhibiting valuations.

While there are exceptions to the rule, the second-quarter conference calls have been varying degrees of disaster. Part of the problem rests with the fact that companies are shedding parts of their business (which managements had previously fervently argued had the necessary critical mass) and are (correctly) restating their numbers. Sometimes the data has not been readily available. All of this adds to the confusion.

Another problem with the conference calls in general is that too much time is spent reading what is written as opposed to what should be highlighted and where the anomalies (if any) lie. Also, in too many cases, too little time is left for the question-and-answer period. The other problem with the calls is the reticence of managements to do a couple of mea culpas. It always seems that it is the other guy that has created the pricing and/or underwriting problem in the marketplace. It seems to us that there is enough blame to be spread among all the participants.

More candor is needed. Notwithstanding the slow pricing recovery taking hold in some lines, many insurers may be relegated to a non-entity status in the future unless they can find Dale Carnegie.

BI Insurance Index



Base=100 on Dec. 29, 1978

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

PCS catastrophe options

As of Aug. 6		Call spread		Price bid/ask	
National Annual 1999		California Annual 1999		Western Annual 1999	
40/60	15.0/19.5	60/80	0.3/0.9	80/100	0.2/0.7
60/80	8.0/16.0	150C	—/1.0		
80/100	4.0/—				
150C	4.0/6.0				
200/250	1.5/6.0				
Southeastern September 1999		Midwest June 1999		Florida Sept./Dec. 1999	
40/60	1.7/—	10/20	—	100/150	0.7/—
60/80	1.7/2.0				
80/100	—				
Eastern September 1999					
40/60	1.3/—				

Total volume: 110 Total open interest: 10,235

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

Source: Chicago Board of Trade

British Issues

Companies	Price pence	P/E	Div. pence	Yield %	52-week high-low
Gdn Royal Exch	360	5.6	4.3	1.2	423-227
Legal & Gen	152	18.8	3.6	3.0	237-147
Royal & Sun	519	17.1	23.0	5.9	633-455
Brokers					
Lmbt Fenchurch	84	8.2	4.2	6.3	94-58
JLT	247	11.1	12.0	6.1	253-166

Note: Prices are Aug. 6 closings; other numbers from Aug. 5.

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



Myron M. Picoult is a director and senior insurance analyst at Wasserstein Perella Securities Inc. in New York. He is the past president of the Assn. of Insurance & Financial Analysts and a member of the New York Society of

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BI Industry Stock Report AUG. 2, 1999, THROUGH AUG. 6, 1999

BROKERS																							
	Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)			
Aon Corp.	NYS	35.44	-5.34	-5.18	46.89	32.19	3234	CNA Financial Corp.	NYS	35.00	-2.61	-10.97	45.31	33.00	351	SAFECO Corp.	NDQ	35.88	-5.75	-15.59	47.50	35.38	3241
Clark Bordes Holdings	NDQ	24.00	7.87	42.12	24.00	18.63	6	CNA Surety	NYS	13.50	-10.00	-9.62	16.00	10.19	118	SCPIE Holdings, Inc.	NYS	29.63	-4.82	-1.46	33.00	23.69	NA
E.W. Blanch Holdings Inc.	NYS	65.63	0.19	40.56	71.75	34.88	279	EMC Insurance Group Inc.	NDQ	11.25	-11.33	-11.76	13.63	9.00	5	Seibels Bruce Group	NDQ	4.25	-12.82	21.43	7.00	2.69	13
Gallagher Arthur J. & Co.	NYS	53.00	1.68	21.14	56.00	34.88	138	ESG Re Limited	NDQ	15.88	3.25	-19.87	22.25	12.75	227	Selective Ins. Group	NDQ	18.13	-8.23	-10.49	23.00	16.69	176
Hilb, Rogal & Hamilton	NYS	22.50	0.56	20.81	22.88	15.56	55	Enhance Financial Services	NYS	21.44	3.31	-29.13	33.13	17.31	553	Terra Nova Ins Co. Ltd.	NYS	27.31	14.40	12.05	31.19	21.25	484
Kaye Group Inc.	NDQ	8.75	2.19	20.69	9.13	5.00	3	Everest Reinsurance	NYS	30.50	-2.40	-16.87	43.50	28.75	366	Tokio Marine & Fire	NDQ	56.88	-2.78	-3.40	62.88	39.00	70
Marsh & McLennan	NYS	70.06	-7.81	18.50	81.50	43.38	2336	Fremont General Corp. -	NYS	16.88	-0.74	-30.05	27.00	15.88	801	Torchmark Corp.	NYS	32.63	-0.76	-6.12	45.50	30.69	980
Brown & Brown	NYS	34.44	-4.34	-1.43	41.19	29.31	55	Frontier Insurance Group	NYS	13.75	-6.38	10.00	18.75	10.88	413	Transatlantic Holdings	NYS	73.88	-0.42	-2.31	94.50	72.50	148
BROKERS AVERAGE			-1.26	20.04				Gainco Inc.	NYS	5.94	5.56	-5.94	8.06	3.94	770	Travelers Property Casualty	NYS	37.44	-5.22	-22.24	41.88	24.13	2221
								Harleysville Group	NDQ	19.63	0.64	-23.04	27.25	17.00	166	Trenwick Group Inc.	NDQ	22.25	-7.77	-29.64	35.63	20.13	46
								HSB Group Inc.	NYS	38.81	-4.61	-3.42	50.63	34.75	232	Unico American Corp.	NDQ	10.19	0.00	-11.65	14.25	8.63	6
								HCC Insurance Holdings	NYS	20.69	-8.82	22.14	25.13	16.00	768	United Fire & Casualty	NDQ	25.25	0.00	-24.13	38.75	22.25	6
								ING Groep N.V.	NYS	48.94	-3.81	-19.77	72.25	36.06	385	Unitrin	NDQ	36.97	-5.66	-4.32	42.38	27.88	359
								IPC Holdings Ltd.	NDQ	20.19	0.94	-11.26	27.38	17.38	101	UNUM Corp.	NYS	39.50	-23.67	-34.10	62.50	33.50	24927
								Harford Financial Services	NYS	51.00	-5.56	-8.62	66.44	37.63	3354	Vesta Insurance Co.	NYS	5.31	14.86	-7.61	16.69	3.38	642
								LaSalle Re Holdings Ltd.	NYS	15.63	-4.21	-24.24	32.13	11.63	123	XL Capital Ltd.	NYS	50.38	-4.05	-29.61	80.00	50.38	1872
								Lincoln National	NYS	48.00	-4.00	15.84	57.50	33.50	2028	Zenith National Ins.	NYS	23.00	-2.65	-0.54	26.69	20.31	27
								MAIC Holdings Inc.	NYS	28.31	-5.63	-11.52	33.13	23.25	56	INSURERS/REINSURERS AVERAGE			-2.98	-9.31			
								Market Corp.	NYS	188.00	-1.83	4.30	193.00	132.00	41								
								MBIA Insurance Group	NYS	54.25	-5.45	-18.19	71.88	46.06	1515								
								Meadowbrook Insur. Group	NYS	12.38	-3.88	-24.14	29.00	12.31	27								
								MMI Cos. Inc.	NYS	15.13	-7.28	-9.36	19.75	13.75	43								
								Mutual Risk Mgmt. Ltd.	NYS	26.00	-12.79	-31.47	43.25	25.38	1155								
								Navigators Group	NDQ	16.00	2.40	4.92	18.38	13.25	1								
								NYMAGIC Inc.	NYS	14.50	1.75	-30.54	26.81	12.00	7								
								Ohio Casualty Corp.	NDQ	16.50	-8.01	-19.76	21.69	16.38	833								
								Old Republic Int'l	NYS	16.25	-3.35	-24.20	26.88	16.25	1622								
								Orion Capital Corp.	NYS	47.56	0.00	21.37	47.88	27.56	1794								
								Partner Re Ltd.	NYS	35.69	-6.09	-21.02	48.31	33.63	164								
								Penn-America Group Inc.	NYS	10.13	0.00	9.46	13.00	8.13	30								
								PMA Capital Corporation	NDQ	20.50	0.61	4.79	21.13	16.63	28								
								Philadelphia Cons. Holding	NDQ	20.63	-4.07	-2.94	25.50	18.63	131								
								PXRE Corp.	NYS	14.56	-9.69	-42.33	29.88	13.94	187								
								Reliance Group Holdings	NYS	4.81	-18.09	-62.80	16.38	4.50	4156								
								ReliaStar Financial Corp.	NYS	42.63	-6.06	-4.75	49.81	29.00	1263								
								RenaissanceRe Holdings Ltd.	NYS	36.81	-0.67	1.90	48.31	30.00	113								
								Risk Capital Holdings	NDQ	14.28	2.01	-32.40	25.13	12.00	54								
								RLI Corp.	NYS	36.94	-0.17	10.67	40.50	27.88	33								
								St. Paul Companies	NYS	31.94	2.61	-8.75	37.50	28.06	2716								
								SCOR	NYS	46.81	-4.59	-27.98	70.00	46.81	34								

HEALTH MAINTENANCE ORGANIZATIONS																				
	Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
Foundation Health Systems Inc.	NYS	15.25	0.41	38.64	20.06	5.88	1665													
Humana Inc.	NYS	10.13	-6.90	-46.53	25.94	10.00	9638													
Oxford Health Plans	NDQ	16.50	-7.69	17.86	24.25	5.81	6808													
Pacificare Health Sys.	NDQ	67.75	-0.64	-5.24	100.38	55.63	1563													
Safeguard Health Enter.	NDQ	4.13	3.13	15.79	6.25	2.34	27													
Sierra Health Services	NYS	12.63	-2.42	-39.52	24.94	10.44	138													
United HealthGroup	NYS	61.88	1.43	38.85	70.00	29.56	6956													
Wellpoint Health Networks	NYS	82.25	0.15	-4.22	97.00	50.50	2125													
HMOs AVERAGE			-1.57	1.95																
ALL COMPANIES AVERAGE			-1.93	4.23																

Top advancing issues: Vesta Insurance Co., Terra Nova Ins. Co. Ltd., Clark Bards Holdings. Leading decliners: UNUM Corp., Reliance Group Holdings, Seibels Bruce Group. Most active issue: Citigroup. The BI Index decreased 4.4%; the Dow Jones 30 Industrials fell 0.6%; the S&P 500 declined 2.1% and the NYSE Composite fell 2.4%. Average P/E: Brokers, 18.5; Insurers/reinsurers, 17.7; HMOs, 16.1.

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

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