

Business Insurance

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

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Aetna chairman and CEO replaced by company director

HARTFORD, Conn.—Richard L. Huber resigned as chairman, president and chief executive officer of Aetna Inc. at Friday's board of directors meeting.

He is being replaced by William H. Donaldson, a co-founder of investment bank Donaldson, Lufkin & Jenrette and immediate past chairman and CEO of the New York Stock Exchange. Mr. Donaldson has served as an Aetna director since 1977.

Mr. Donaldson said in a press conference late Friday that he will not be an interim. See Updates on next page

New U.K. powerhouse U.S. unit to be sold after CGU, Norwich Union merger

By SARAH VEYSEY

LONDON—CGU P.L.C. and the Norwich Union Insurance Group plan to merge, creating the United Kingdom's largest multiline insurer.

The new entity, which would have worldwide revenues of £26 billion (\$42.01 billion) from premiums and retail investment sales, would sell off CGU's U.S. property/casualty operations by the end of 2000.

Bob Scott, chief executive officer of CGU, and Richard Harvey, CEO of Norwich Union, said they aimed

to create a company that would become "a British champion."

Mr. Scott, who will become CEO of the new group until he is succeeded in that role by Mr. Harvey in 2001, said the combined insurance company would aim to be among the top-five companies in all markets in which it operates. In non-life insurance, the combined entity would have the No. 1 position in the United Kingdom, Ireland, Canada and New Zealand and top-three positions in Australia and the Netherlands.

Mr. Scott said that the fragmented nature of the U.S. property/casualty market would make it difficult for the new company, to be known as CGNU P.L.C., to grow there, necessitating the planned sale of U.S. property/casualty operations.

"We do take the view that there will be consolidation in the U.S. market, but we don't think we can build ourselves into a top-five position," Mr. Scott said. "Even with the management continuing to move the operation, we cannot see CGU

See CGNU on page 17

Creation of a new CGNU

Pro forma information as of Dec. 31, 1999
Shown in millions of dollars

	CGU	 NORWICH UNION	CGNU plc
Net premiums			
Life	\$14,260	\$7,503	\$21,763
Health	\$364	\$286	\$650
Non-life	\$13,929	\$4,211	\$18,140
Pretax operating earnings ²	\$1,246	\$1,199	\$2,445
Worldwide employees ³	52,000	19,000	71,000

1. Norwich Union's unaudited 1999 full-year results to align its accounting policies with those of CGU. 2. Statutory earnings before goodwill and exceptional items. 3. Approximate number. Source: CGU, Norwich Union

Companies urged to boost security against hackers

By JUDY GREENWALD

When it comes to security, there are no guarantees.

That's probably the bottom line when it comes to safeguarding companies' computers against hacker attacks, experts say.



But businesses can take steps to significantly reduce their risks cost effectively, experts say. These include uncovering and addressing system vulnerabilities and developing contingency plans to react quickly should problems develop.

Computer security has been highlighted in recent weeks, af-

ter several high-profile Web sites, including those of Yahoo, Amazon.com and CNN, were bombarded with so much data they could not function, leading to so-called denial-of-service problems.

At the same time, all companies remain vulnerable to hackers getting into their systems and causing damage by stealing confidential information, modifying critical data, spreading viruses or other means.

For businesses, this problem is serious and growing.

According to the CERT Coordination Center, part of the federally funded Software Engineering Institute at Carnegie Mellon University in Pittsburgh, the number of computer security incidents reported to the institute grew to 8,268 last year from 2,134 in 1997.

Incidents such as the recent Web-site attacks "illustrate that the Internet is fragile, and that even a single hacker in a basement can disrupt major Web sites and shut them down for a

See Security on page 20

Reliance to appeal ruling Delay voids exclusion

By DAVE LENKUS

PHILADELPHIA—Even a sophisticated commercial insurance buyer is entitled to prior notice beyond a warning in the text of a policy before an insurer can reduce coverage on renewal, a federal district court has ruled.

As a result of the Feb. 10 decision by a U.S. magistrate judge in Philadelphia, Reliance Insurance Co. cannot invoke a total pollution exclusion to deny a \$1 million pollutant-related product liability claim. Philadelphia-based Reliance had added the exclusion unilaterally to its policyholder's general liability policy and issued the policy months after the coverage period began.

The product liability claimant

alleges he was seriously injured when equipment that the policyholder manufactured emitted carbon monoxide, a poisonous gas.

The decision by U.S. Magistrate



Reliance

Judge Peter B. Scuderi in Philadelphia follows a couple of rulings by the 3rd U.S. Circuit Court of Appeals on the reasonable expectations doctrine. One of those decisions came in this same Reliance case three years ago, when the 3rd Circuit reversed a lower court's summary judgment in favor of the insurer.

The reasonable expectations

doctrine, also used by courts in coverage disputes over ambiguous policy language, allows a court to set aside policy language and award coverage based on what a policyholder reasonably expected it would have.

Magistrate Judge Scuderi's decision "rings the death knell" for the insurer defense in coverage disputes that sophisticated policyholders are not entitled to take advantage of the reasonable expectations doctrine, said policyholder attorney Peter E. Frankel. Mr. Frankel represented Reliance's policyholder in the case.

The decision supports "the broadest principle that the sophisticated policyholder argument is not an absolute and that

See Delay on page 21

HMO incentives at issue Justices hear argument to expand liability

By MARK A. HOFMANN

WASHINGTON—The apparent skepticism of some Supreme Court justices over arguments to expand the definition of "fiduciary" under ERISA is prompting new optimism that the Supreme Court won't strip managed care plans of an effective cost containment strategy.

Employers and insurers have been following *Lori Pegram M.D., Carle Clinic Assn. & Health Alliance Medical Plans et al. vs. Cynthia Herdrich* very closely (*BI*, Oct. 4, 1999). At issue in the case, which the high court heard last week, is whether physicians who own and operate a health maintenance organization and who receive bonuses for keeping costs down act as fiduciaries under the Employee Retirement Income Security Act.

The majority of a three-judge panel of the 7th U.S. Circuit Court of Appeals ruled in 1998 that physicians could be deemed fiduciaries under those cir-



cumstances, which led employers, insurers and others to fear that the appeals court's reasoning might be applied to other forms of cost containment, hampering managed care efforts.

The case stems from Cynthia Herdrich's suit against her health maintenance organization—Urbana, Ill.-based Health Alliance Medical Plans Inc.—and Dr. Lori Pegram. Ms. Herdrich received care from the HMO under a plan provided by her husband's employer. Ms. Herdrich alleged the doctor and HMO had improperly delayed care for what ultimately turned into a ruptured appendix; she sued the plan for alleged violations of both state medical malpractice law and ERISA.

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Updates

Top Aetna exec resigns

Continued from previous page
CEO and that it is premature to speculate on what actions the company will take.
"We have a fresh slate, and we're going to take a fresh look at all of our assets," which will include the realignment, announced last month, of Aetna's operations into two main units, global health and global financial services, he said.
Aetna is operating with "a real sense of urgency" in addressing the company's strategic and operational issues, Mr. Donaldson said.
There has been speculation that Aetna is considering selling off part of the company, with rumors focusing on Aetna's IntelliHealth consumer health care information Web site and other electronic services (BI, Jan. 17).
Mr. Huber said in a statement that, since joining Aetna five years ago, "We have created the largest health care benefits company in America, doubled Aetna's revenues and strategically positioned the company for a bright future."
Aetna's stock rose more than five points on Friday, closing at \$40.75 a share.

Maynard, Love sentenced

OKLAHOMA CITY—A federal judge has sentenced two operators of the fraudulent First Assurance & Casualty Co. Ltd. to jail terms after their conviction on bankruptcy fraud, embezzlement and conspiracy charges.
U.S. District Court Judge David L. Russell last week sentenced Jesse J. Maynard to 78 months in prison and Samuel B. Love to 63 months. The two men also were ordered to pay \$7 million in restitution and serve three years of supervised release after their prison terms are up.
Mr. Maynard owned First Assurance, a Turks & Caicos Islands insurer that filed for bankruptcy in Oklahoma after being bombarded with claims from the 1992 Los Angeles riots. Mr. Love helped operate First Assurance through his Scottsdale, Ariz., management firm, Frontier Administrators Inc.
Prosecutors charged that Messrs. Maynard and Love diverted millions of dollars of First Assurance premiums to various service companies they controlled and continued to do so after the bankruptcy filing.
The two men remain free on bond but have been ordered to report to federal authorities to begin serving their terms March 27, according to Joe Heaton, first assistant U.S. attorney in Oklahoma City.
A third defendant, Donald P. Havenar, remains in jail in Mexico, pending extradition to the United States, Mr. Heaton said.

CNA posts \$130 million loss

CHICAGO—CNA Financial Corp. has reported a loss of \$130 million for year-end 1999, after strengthening its loss reserves by \$363 million.
Additionally, the insurer suffered large catastrophe losses from European storms in December.
In 1998, by contrast, Chicago-based CNA made a \$282 million profit.
The addition to reserves was for a broad range of exposures, including \$33 million for workers compensation losses, according to a CNA spokesman.
"The reserve action in 1999 is one more step in the turn-around plan we began working last year," said Bernard L. Hengesbaugh, chairman and chief executive officer of CNA.
Despite the reserve strengthening and \$80 million in catastrophe losses in the fourth quarter, CNA's underlying business is improving, he said.
CNA saw decreases in premium volume in several areas as the insurer turned down business it considered to be inadequately priced, Mr. Hengesbaugh said.

Bill would boost transit benefit

WASHINGTON—Legislation introduced last week by Sen. Charles Robb, D-Va., would allow employees to make pretax contributions of up to \$175 a month—an increase from the current \$65 monthly limit—to pay for mass transit commuting expenses.
The higher limit would equalize the tax treatment of mass transit and parking benefits, which currently have a \$175 monthly limit.
The existing tax discrepancy between parking and mass transit tax breaks "makes no sense when our goal is to reduce the amount of traffic on our highways," said Sen. Robb.
Employer-sponsored mass transit benefit programs have been expanding rapidly since Congress passed legislation in 1998 that allows employees to make pretax contributions to pay for mass transit passes.
Proposed regulations released last month by the Internal Revenue Service are expected to give the programs an additional boost by answering many of questions employers raised about the law (BI, Jan. 31).
In many employer-sponsored programs, employers purchase vouchers directly from transportation authorities. These vouchers then are distributed to employees, whose salaries are reduced by the amount of the voucher. The employee then redeems the voucher at a transit office—or a retailer acting as an agent for the transit authority—for a transit pass that is used on buses or trains.
The new legislation also would raise the tax break for van pool-ing programs to \$175 a month from \$65.

See Updates on page 22

To rebound from disaster requires advance plans

By RODD ZOLKOS

SCOTTSDALE, Ariz.—A business that wants to maximize its chances of surviving an operations-disrupting disaster should have a plan in place that spells out how to get back on track, a consultant says.
A business recovery program is an ongoing effort to ensure a prudent reduction of risks and, following a major disruption, to assure the resumption of key business operations before unacceptable consequences occur, said Cole Emerson, president of Cole Emerson & Associates Inc. in



Granite Bay, Calif.
In that context, the first objective of business continuity planning should be to not let a disaster happen, the consultant said. "Every dollar that's spent in preventing a problem is worth 10 in having to recover from it," Mr. Emerson said.
Beyond that, however, a company needs to understand what it can't prevent or mitigate, he said.
Mr. Emerson discussed the keys to business continuity planning during a session at the American Bankers Assn.'s annual insurance risk management conference earlier this month in

Scottsdale, Ariz.
A viable business continuity program, he said, provides a tested vehicle for the resumption of business operations; ensures the continuity of business; limits inconvenience to customers; minimizes financial and operational effects; and protects personnel, jobs and assets.
"The goal is to resume operations as quickly as possible," Mr. Emerson said. "The cause (of the disruption) is immaterial."
In developing the business recovery plan—the collection of actions, procedures and information developed and held in readiness for use in the event of an emer-

See Plans on page 4

Panel seeks change in industry standard

AMA injury guide criticized

By MEG FLETCHER

CHICAGO—The scientific validity of American Medical Assn. injury assessment guidelines, which most doctors follow in rating the degree of an injured worker's permanent impairment, may be facing its most-comprehensive challenge yet.
Five workers compensation scholars last month presented a comprehensive critique of the AMA's "Guides to the Evaluation of Permanent Impairment" in the Journal of the American Medical Assn., and also offered nine recommendations for improving the guidelines. Until now, criticism of the AMA guidelines primarily has come from labor representatives.
Employer's costs could rise if recent criticism of

American Medical Association
Physicians dedicated to the health of America



the guidelines results in challenges to workers compensation programs' reliance on them for adjudicating disability claims.
The AMA had named those workers comp experts in mid-1997 to a seven-person steering committee to help the association update the fourth edition of the guidelines. The AMA disbanded the committee in June 1998, however, after AMA officials decided to reduce the scope of scholarly review for the guidelines' fifth edition, according to John F. Burton Jr.
See Guidelines on page 23

Welcome to BusinessInsurance.com

After four years online, Business Insurance's Web site has changed its look and added new features to deliver more news and information to readers.

The site, www.BusinessInsurance.com, has been reorganized to make it easier to find news and editorial content, obtain advertising information and access the editorial archive. A new site search engine also will enable visitors to quickly locate the information they seek.

BusinessInsurance.com's main page features breaking news, reminders of upcoming editorial features and other information.

The Web site's content also has been expanded, most significantly with the addition of daily news items in the Updates section of the site.

The Commentary section now features BI's weekly commentary columns, as well as a new monthly commentary from George Head, director emeritus of the Insurance Institute of America

and the American Institute for CPCU, and Myron Picoult's Ticker columns.

We look forward to bringing new interactive features to the site in the months to come and welcome suggestions for how we can continue to improve www.BusinessInsurance.com and ensure it remains the leading source for corporate risk, employee benefit and managed health care news.

Business Insurance

Updates

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CNA posts \$130 million loss for 1999

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Addition... (more)

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Inside

- The tardy delivery of policies to buyers represents not only a deplorable level of service but may also begin to prove costly for the insurance industry, this week's editorial says. **PAGE 8**
- Failure to pay attention to the structure of alternative work arrangements can result in misclassified temporary and contract workers seeking benefits. **PAGE 11**
- Troubled Reinsurance Australia Corp. Ltd. has ceased underwriting in the wake of losses of more than \$300 million last year. **PAGE 15**
- New Zealand's new Labor government is finding that its planned return to a state-run workers compensation system is creating controversy. **PAGE 15**
- The U.K. government is coming under pressure to reform its corporate manslaughter law and increase penalties for health and safety offenses. **PAGE 15**

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Health plan rates hikes up to 15% seen

BC/BS Assn. executive says soaring costs of prescription drugs to blame for rate hikes

By JERRY GEISEL

WASHINGTON—Employers renewing health insurance plans this year can expect rate increases of 10% to 15%, the Blue Cross & Blue Shield Assn.'s top executive says.

That range of increases—the highest since the late 1980s—is being fueled chiefly by prescription drug benefits, whose costs continue to accelerate and are now rising at an unprecedented annual rate of nearly 25%, says Scott Serota, acting chief executive officer of the association.

"Pharmacy costs are increasing faster than any other part of the medical spec-

trum," Mr. Serota said.

Expressing frustration over soaring costs and the failure so far in holding down prescription drug cost increases, Mr. Serota said there is no evidence yet to suggest that expanded use of prescription drugs is holding down costs in other areas, such as hospital care. "We have not yet seen anything in our numbers to verify an assertion that it is offsetting other costs," he said.

Mr. Serota's remarks were made at a news briefing last week in Washington, where he touched on a wide range of other health care-related issues, including:

- Providers are increasing pressure on health plans to boost reimbursement rates.



- Employers' direct contracting with health care providers is unlikely to become a major factor in the purchase of health care services.
- Growth in Blues plans, which, after hitting their low point a few years ago, are now rapidly expanding.

- The likely passage of patient protection legislation by Congress.

Mr. Serota, though, directed many of his remarks toward prescription drug costs. Putting the issue in a broader context, Mr. Serota noted that prescription drugs now typically account for about 15% of a health plan's total costs, up from roughly 5% about 15 years ago.

"It is a big piece of the pie," he said.

Unquestionably, higher costs are being driven by increased consumer demand fueled by pharmaceutical industry advertising.

"When a patient walks into the doctor's office and says, 'I need Claritin,'... It is a tough situation for the physician," he said.

If the patient does not receive the particular drug requested, he or she may not feel the doctor visit was a good one. "It is a

See Blues on page 18



PC benefit enhances skills, communication

By LEE FLETCHER

As employers begin offering employees at-home computer equipment and services to increase their computer literacy, benefit managers are expected to take full advantage of this trend to enhance benefit communication efforts.

Some large employers have begun offering computers, Internet access and even printers for their employees' personal use for a very nominal fee.

Ford Motor Co. Inc. is one of the first corporations to offer all of its 350,000 employees—from factory line workers to management—use of a computer, Internet access and a printer in their homes for \$5 a month.

Delta Air Lines is making a similar offer to its 72,000 employees. Although a printer is not included in the package, employees will have their choice of a PC or a laptop and Internet access for \$12 a month.

A spokesman for Dearborn, Mich.-based Ford explained that the computer offering will be an extension of an existing company program to increase the business skills of everyone in the organization. He emphasized, however, that to really take employee skills to a higher level, Internet access is necessary because it's such a big part of the future of commerce.

"To be business savvy means understanding the Internet and you can't really do that unless you're online," the spokesman said.

Employers also are likely to take advantage of the broadened computer access to enhance benefit communication efforts, consultants say.

Steve McCormick, a Washington-based consultant at Watson Wyatt Worldwide, said that as employers roll out more self-service benefit applications, only the "wired" portion of the workforce, which is usually salaried corporate staff, have access.

"I applaud what Ford and Delta are doing. It allows all employees to have access, not only to the information that the employer is making available through the company intranet, but also to the numerous employment-related resources which are becoming available on the public Internet," Mr. McCormick said.

See PCs on page 19

Aon, Marsh target Fortune 500 New intellectual property facilities

By SALLY ROBERTS

The world's two largest insurance brokers have developed new intellectual property insurance programs for Fortune 500 companies, but it remains to be seen whether buyers are interested.

Chicago-based Aon Corp. earlier this month introduced a new insurance product that allows large corporations to secure in excess of \$200 million of blanket protection to recover damages, to defend or to enforce the rights of patents, trademarks, copyrights and other intellectual property assets.

Aon's chief competitor, Marsh Inc., said last week that it, too, is offering a new catastrophic intellectual property policy that offers up to \$300 million in limits for companies with more than \$1 billion in annual revenues. Marsh expects to announce further details of the product next month.

Like Aon's policy, Marsh's catastrophic policy will cover defense and

enforcement costs for a broad range of intellectual property risks.

Experts say this is the first time, with the exception of certain manuscripted policies, that an intellectual property insurance program of this size and scope has been made available to the upper-end market.

While coverage for intellectual property has always been available, sources say those policies are limited by several factors, including a lack of capacity and that the policies apply only to specific risks. In addition, the policies generally cover defense costs and damages only.

Prior to the development of the Aon and Marsh products, only two other managing general agents offered coverage for the costs of prosecuting infringement allegations.

In addition to writing coverage for defense costs, Houston-based Litigation Risk Management Inc. in 1997 became the second managing general agent to offer enforcement coverage, targeting firms with between \$5 mil-

lion and \$400 million in annual revenues. Intellectual Property Insurance Services Corp., a Louisville, Ky.-based managing general agent that focuses on small start-up companies, had been the sole market for enforcement coverage since 1989 (BI, April 28, 1997).

Despite the increasing frequency and severity of intellectual property litigation, some risk management consultants question whether large corporations will be interested in the coverage.

"These types of programs have certainly existed before. However, the focus has not been as great on the Fortune 500 companies; it's been more toward the smaller and mid-sized organizations," said Donald Fancher, a partner and regional practice leader of the intellectual asset management services division of Deloitte & Touche L.L.P. in Houston. Mr. Fancher said, though, that he doesn't believe larger companies are "clamoring for these types of policies."

See Policies on page 22

Road signs violate trademark

Municipals urged to stop using 'Jake Brakes' brand name

By RODD ZOLKOS



to thank all brand specific Since "Jake Brake" is our registered trademark, we like to know you see any signs that use the brand name like this, please let me know, City/Town and State you saw the sign by sending an e-mail to jakebrakes@jakesystems.com. Thank-you!

The Web site for Jacobs Vehicle Systems requests visitors to alert the company to trademark violations.

BLOOMFIELD, Conn.—The manufacturer of devices used to help slow large trucks is trying to put a stop to what it says are violations of its trademark on certain highway signs.

Jacobs Vehicle Systems has been advising local governments that signs with such messages as "No Jake Brakes" might violate federal trademark laws as an unfair use of the company's trademarked "Jake Brakes" name.

"'Jake Brakes' is a registered trademark of Jacobs," said Frank Stawski, manager of legal affairs at Bloomfield, Conn.-based Jacobs Vehicle Systems. "If you have a registered trademark, you have a responsibility, an obligation, to protect that mark. So we identify these locations, we do our due diligence and send them letters," he said.

The company uses the "Jake Brakes" trademark, first registered in 1972, to describe all of its truck retarding products, including its exhaust brake, driveline brake and engine brake products.

The "Jake Brakes" term is often used incorrectly, however, to describe compression release-type engine brakes in general, regardless of the manufacturer, according to Jacobs Vehicle Systems.

Among the reasons truckers use such engine-retarding devices is that they reduce wear and tear on a truck's brakes and allow a driver to slow the vehicle without the use of its service brakes, reducing the risk of brakes failing on long downgrades.

The municipal prohibitions against compression-release engine brakes cited on the signs stem from noise

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Plans

Continued from page 2

agency or disaster—"the first assumption you should make is that a major disaster will occur," Mr. Emerson said. "Don't put 'may occur' (in your plan); put 'will occur.'"

Planning should be for a worst-case scenario, he said, "because one can say, 'Any form of lesser disaster will be handled by the plan we put in place.'"

Effective business continuity plans have certain elements in common, Mr. Emerson said.

One element is a clear vision of the end product. "If you're going to develop a plan, you have to know where you're going to end up," he said.

Another common element of effective plans is that they establish gauges to measure and manage the plan's progress. "As a planner, if you don't have the metrics, you can't show

there's a problem or where you're making progress," Mr. Emerson said.

Effective plans also use exercises to validate the recovery plan and to train those who will be involved in its implementation.

"Anyone who tells you there isn't confusion and chaos in managing a disaster is lying to you," Mr. Emerson said. "A good exercise is where you discover a lot of things that would've bitten you had the event occurred."

The business continuity consultant suggested that a business should conduct an exercise of the full recovery plan at least once every two years.

Finally, effective business continuity plans have management support, both through the funding of the business continuity effort and through management's participation in the activities related to it, Mr. Emerson said.

"You might get their approval of funding, but when you ask them to participate, you get resistance," he

said.

Mary Ann Williams, vp-corporate insurance/risk management at All-first in Baltimore and moderator of the session, noted that after their preparation for a Y2K crisis that never materialized, many top managers are proving reluctant to focus on further business continuity efforts.

"The biggest challenge facing business continuity planners these days is convincing key management of the need to continue planning," Ms. Williams said.

Management reluctance, however, shouldn't deter risk managers from developing the necessary plans for their companies, Mr. Emerson said.

"As a planner, you've got to act on a philosophy that 'I'd rather beg for forgiveness than ask for permission,'" Mr. Emerson said. "It's always better if you have senior management approval and buy-in and blessing. But sometimes audacity is necessary."

More often than not, though, to get

management commitment for the program, "you've got to show them the real financial impacts," Mr. Emerson said. "You have to show them the effects on operations."

That information can be developed through a business impact analysis, which should be an objective, management-level analysis process that deals in dollar figures and business terms managers will understand.

It's also important that the analysis rely on data provided by function-area managers in the company, not on figures developed by a project team. "You've got to get the information from the source," Mr. Emerson said. "Don't ask people questions that you know they can't answer."

While a recovery strategy is a pre-defined and pretested approved course of action to be employed in response to a business disruption or disaster, "you should have in your plan that this is not a fixed course of action," Mr. Emerson said. "You have to

have flexibility."

Recovery strategies must be cost effective, and they should reduce exposures to acceptable levels. They must also meet both current and future business needs. "That's a whole lot easier to say than to do," Mr. Emerson said.

The recovery plan also should provide alternate facilities for time-sensitive functions and operations, and it should provide for the recovery of supporting technology, such as e-mail.

Typically, the basic resources needed for business recovery are a place to work, voice communications, computer processing and data communications and vital company records, he said.

Teams established to implement business operations recovery should include only those personnel needed to begin the recovery, and they should be designed to focus on the recovery of specific business operations or support functions.

"You have to put in place a reporting structure for your recovery operation. Who makes decisions?" Mr. Emerson added.

It's necessary to maintain up-to-date call lists that include information on recovery team personnel, employees in other departments, customers, vendors and other key contacts.

Post-disaster, it's important that the recovery organization "stands down" in an organized fashion, Mr. Emerson said. "You have to downsize it gradually," he said. "You can't just stop."

It's also important that a summary report be compiled by each recovery team, that a formal critique of the process be prepared by the management of the recovery organization, and that a report be submitted to the executive management of the company, all leading to the updating of the business recovery plan.

And, Mr. Emerson cautioned, when disasters occur and recovery efforts are implemented, "one of the errors that a lot of us make is that, at the moment of crisis, we forget to track the losses. Insurance companies like lots of records."

BI

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Meeting attracts over 170

SCOTTSDALE, Ariz.—The American Bankers Assn.'s annual insurance risk management conference drew about 175 attendees to Scottsdale Feb. 13-16.

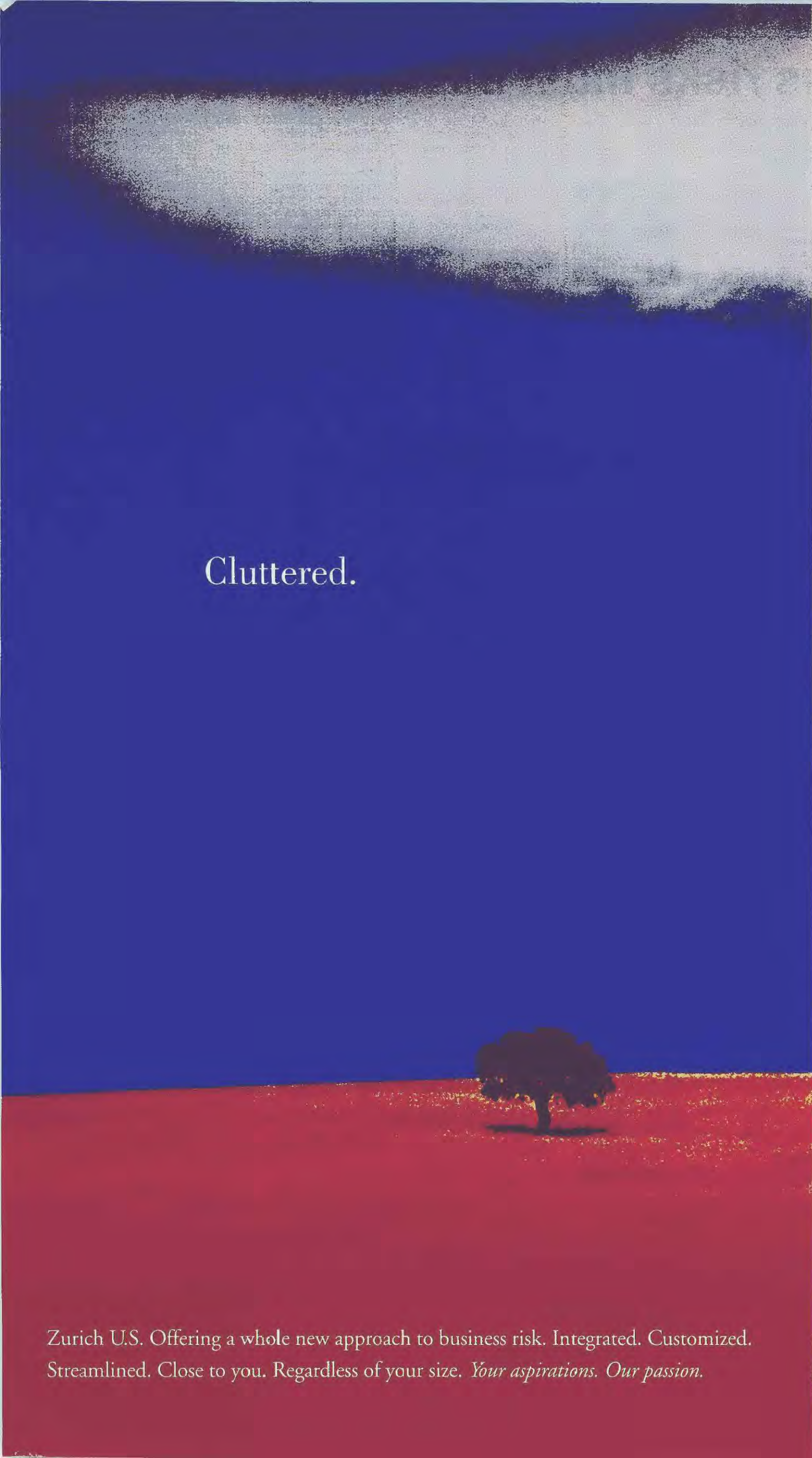
The event's keynote address was given by theoretical physicist and author Michio Kaku, a professor at City University of New York who spoke on the impact of technological change on the job market and business environment of the 21st century.

The job market of 2020 will be for those tasks involving human experience, common sense and human vision, Mr. Kaku said, adding "The jobs that are going to be obliterated in 2020 are those that require inventory, brokerage, agency work."

"Middlemen jobs, those are the ones that are going to disappear in the 21st century," Mr. Kaku said. "People in the middle... those are the ones that will go under unless they offer specialized human services."

The date and site of next year's ABA insurance risk management conference have not been set. For more information about next year's conference, call the ABA at 800-338-0626.

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E-business risks must be taken into account

By RODD ZOLKOS

SCOTTSDALE, Ariz.—In the plus column for banks, their industry has a reputation for being ahead of many others in moving onto the Internet.

On the negative side of the ledger, though, is that being in the vanguard also puts banks out in front with regard to e-commerce risks.

"The exposure to the Internet and e-business is not without risk," said J. Gregory Hamilton, a senior vp at Baltimore-based Fidelity & Deposit Co. of Maryland.

"The term 'denial-of-service attack' is now in the popular vocabulary within the course of one week," he noted, referring to several high-profile attacks on Web sites earlier this month. Mr. Hamilton's remarks were made while moderating a session on

online risk earlier this month at the American Bankers Assn.'s annual insurance risk management conference in Scottsdale.

"When you decide to become an e-business, you have to determine what you are offering to your clients, to your business partners, to yourself," said Thomas A. King, a consultant with IBM Global Services in Cranford, N.J. "If there is a disruption, what will be the impact?"

Access, publishing, hosting, private publishing, production access, e-commerce and collaboration "are the building blocks of electronic business," said Thomas A. Beach, a senior vp at Fidelity & Deposit in Baltimore. And each of those, he said, brings its

own set of exposures:

- Access—sending and receiving e-mail, transferring files and browsing the Web—creates such exposures as theft of intellectual property and information, denial of service, libel and negative publicity.



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Denial of service, which involves customers being unable to access the company's services, "is a risk we really haven't seen in insurance before," he said.

- Publishing is providing public information via the Internet.

Basically, if you have a home page, "you're publishing," he said. Attendant exposures include copyright infringement, unauthorized changes to information and virus damage to third parties. "What happens if you

transmit a damaging virus to a third party? What is your liability?"

- Hosting involves such activities as running a "Web hotel" service for other sites on the company's server.

Exposures from hosting include denial of service, theft, site corruption and vicarious or contingent liability.

"If you're in the practice of hosting somebody else's Web site and they do something that causes some problem to some other party, you may have some liability for that," he said.

- Private publishing is providing information available only to an authorized few, and the exposures in this area could include denial of service, programming errors and repudiation, which is "someone denying that they performed a transaction or initiated a transaction," Mr. Beach said. "We've seen this quite a bit in the

form of identity theft."

- Production access involves allowing customers or other outsiders to transact business on your system.

"When you get to this stage, you're opening yourself up to a much greater exposure," Mr. Beach said. Exposures could include denial of service, theft or malicious code, such as viruses.

- Collaboration entails two companies sharing a network. Related risks could include theft of information, denial of service or malicious code.

Mr. Beach noted that the actual losses from such events as a hacker stealing funds from bank accounts could go well beyond simply the amount of money stolen. Once costs associated with added security, emergency audits, reputational damage, increased future premiums and lost business are added, losses could soar.

Mr. Beach noted that an FBI cyber-crime survey found that the worst incidents of computer crime have been committed by disgruntled employees against their employers. "Independent hackers only account for 27%, even though they seem to garner the most publicity," he said. "The major source of attacks is disgruntled employees."

And, he noted, "If you think you're covered for these exposures...you'd better think again."

A big issue for insurers is there is little, if any, historical data to use to predict future loss costs.

Complicating the insurance question further is businesses frequently don't report Internet attacks to law enforcement authorities, primarily to avoid negative publicity, Mr. Beach said. Nor do they share information.

"The real issue is that the Internet technologies are very new. But the other issue is that businesses don't want to share data," said Emily Q. Freeman, senior vp and national e-business practice leader at Marsh Risk & Insurance Services in San Francisco, part of Marsh Inc. "Sharing data has become a critical thing."

The legal environment surrounding e-business is murky as well, said Steven M. Weinberg, a principal with the Weinberg Legal Group in Phoenix. For example, because e-business is such a new area, no "custom and usage" has been established, "so one cannot predict how contracts will be interpreted," he said.

"The most incredible aspect of the Internet is this stuff is global. And from a legal perspective, that's a mess," he said. Laws are being written to address Internet transactions, "and they don't all come together," he said.

From a jurisdictional perspective, "whose law applies still is one of the most debated aspects, and it will be for some time," he said.

Mr. Beach urged those getting involved in e-business to consider their potential exposures. "You should actually go through and list all the potential perils that are associated with what you're doing," he said, which includes determining "who are the potential perpetrators."

In implementing security procedures, businesses must realize "There is no such thing as 100% secure," Mr. Beach said, a fact illustrated by the recent spate of highly publicized denial-of-service attacks. "The people that were hit had all these security tools in place, but they were damaged by people using legitimate means for an illegitimate purpose," he said.

Ms. Freeman suggested that in looking at potential e-business perils, risk managers should "focus on the ones that affect your profitability and reputation." They also should examine existing coverage and how those programs address the exposures.

And, in terms of vendors, "If you think they're backed by meaningful insurance in this area, think again," Ms. Freeman said.

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Managing operating risks a control issue

By RODD ZOLKOS

SCOTTSDALE, Ariz.—Beyond lessening the direct impact of operating losses, managing operating risks can address another major concern—shareholder reaction to news of the losses.

"There have been small losses that have led to very big reactions in share prices," said Lisa K. Polsky, managing director at Morgan Stanley Dean Witter in New York. "Because when the market thinks you don't have control, they tend to react very dramatically."

"It's not necessarily the size of the loss, it's how does the market react to the loss of control," Ms. Polsky said. "If you get it wrong, it can cost you your business."



Speaking as part of a panel on operational risk management earlier this

month at the American Bankers Assn.'s annual insurance risk management conference in Scottsdale, Ms. Polsky noted that banks have devoted considerable time and effort to managing such exposures as market risk, credit risk and liquidity risk.

"The new and kind of up-and-coming kid on the block is operating risk," she said.

Examples of operating risk include error risk; transaction processing risk; technology risk; regulatory risk; fraud risk, such as unauthorized trading; legal risk, such as whether a customer has the authority to trade derivatives; sales practice risk and accounting risk.

In the banking area, addressing operating risk is "also important because the regulators are telling us it is," Ms. Polsky said. "We'd like to solve it before they solve it for us."

In fact, Stefan Walter, assistant vp at the Federal Reserve Bank of New York, noted that on the international level, as part of an effort to amend the Basle Capital Accord, "A lot of thinking has been going into how to deal with operational risk."

The accord is a set of standards set by the central bankers of the G-10 countries addressing capital adequacy and the behavior of international banks.

Mr. Walter added that he thinks awareness of operational risk management "has increased dramatically" within financial institutions. "Clearly, senior management is giving it a lot of attention," Mr. Walter said.

Jennifer McElroy, executive vp at Aon Financial Services Group in New York, suggested that in attempting to define operating risk, "what's important is that the definition be in line with your firm's operating activities."

She also suggests that risk managers and their companies view the effort to address operational risk concerns "as just another step" in the move from traditional stand-alone insurance programs to broader enterprise risk/holistic programs.

Ms. Polsky noted the importance of finding a way to measure operational risks. "You can't manage it if you can't measure it," she noted.

"But it's impossible, if not impractical, to quantify every type of risk," she said. "The answer, the way we approach it...step number one: You have to understand the key drivers of risk in your firm."

"The second thing is that you've got to develop policies around those risks," Ms. Polsky said. "And your policies should read like motherhood

and apple pie."

"Once you have your policies, you have to develop procedures around them," she said, noting that it's important to assess whether those procedures are "adequate to control the risk" as well as "are they practical?"

There will always be some exceptions to the procedures within a firm, she said. In some cases, they might not be practical with regard to certain operations; in others, implementing the procedures might be more expensive than the cost of the risk itself.

But, any exceptions must be written down and must be approved by senior management, she advised. And, Ms. Polsky said, "No one wants to be on the exception list. This isn't the hit parade."

Consequently, many of those business areas initially included on the

exception list find a way to implement the procedures for their operations before the list makes its way to senior management, she said.

'It's not necessarily the size of the loss, it's how does the market react to the loss of control,' says Lisa Polsky.

Once the operating risks have been identified and procedures are in place to address them, it's essential to track risks, Ms. Polsky said. In doing so, "You've got to translate that data into information...and you must report

that information to senior management in a way that they understand it," she said. "The next thing is followup."

Ms. McElroy noted that insurance solutions are being developed to address operational risks, though she cautioned that, "Obviously, any insurance solution isn't going to represent a perfect, 100% hedge."

But Lars Schmidt-Ott, head of the global banking practice at Swiss Re New Markets in New York, said, "The question here is: Can insurance replace your equity and to what extent?"

He asked the risk managers to imagine that their companies had faced major losses and found themselves needing additional equity. "Do you think that's a good time to go to the market to increase equity?" he

asked.

"If you look at insurance as a tool, it has all the benefits that will solve the problem," Mr. Schmidt-Ott suggested. With insurance addressing the operating loss, the company's overall profit and loss statement can remain intact, he said.

Mr. Schmidt-Ott noted, though, that insurance is not meant to replace the entrepreneurial risk taken by a company's shareholders. "It is also not our intention to guarantee top management bonuses," he said.

In the long run, the development of portfolios of diversified liability classes should allow insurers to take on operating risk at competitive prices, Mr. Schmidt-Ott said. "So basically, the insurance industry is in a position to take those risks, price it and hold it more effectively than the bank." **BI**

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Opinions

Improved service overdue

A RECENT FEDERAL COURT decision draws attention to a nagging problem in the insurance industry and perhaps will finally move the industry toward a solution.

The problem is the failure of insurers and brokers to deliver the actual insurance policies to their buyers in timely fashion. Indeed, for a buyer to have a policy in hand before its coverage period begins seems to be more of an exception than the rule.

Not only does this tardiness represent a deplorable level of service, but it also may begin to prove costly for the industry.

As we report in this week's issue, a U.S. magistrate in Philadelphia recently ordered Reliance Insurance Co. to pay \$1 million to a Pennsylvania couple. The couple had brought a claim against VE Corp., a Reliance policyholder, for bodily injury that was allegedly caused by carbon monoxide emitted by a VE product.

Reliance argued that VE's general liability policy was changed, on renewal, to contain a total pollution exclusion that would bar defense and indemnity of the claim and that VE's rate was lowered accordingly. Court records show that Reliance did not inform the policyholder about how its coverage had changed on renewal because the insurer did not regard the change as substantial. Court records also indicate that a reading of the new policy by VE would have alerted the buyer to the change.

But the problem is that Reliance did not deliver VE's new policy to its broker until three months after coverage began. VE's broker, in turn, did not forward the policy to the policyholder for another three months.

Quite properly, the magistrate found this delay unreasonable. He held that, in this case, the policyholder's expectation that it had coverage for the claim should govern. The late delivery of the policy effectively prevented the policyholder from negotiating for the coverage that it needed—and that it assumed it had purchased.

This federal ruling does not break new legal ground. Case law in other jurisdictions requires that some prior notice of changes in policy terms and conditions be given to policyholders. Barring such notification, a policyholder's reasonable expectations rule.

In spite of this legal and financial risk, insurers in general continue to deliver policies late and with errors. When buyers assess the quality of the commercial property/casualty industry, they often point to the tardy delivery of inaccurate policies as a major problem. The industry's track record on policy errors is another issue, but it is certainly compounded by the fact that mistakes cannot be noticed—and corrected—until the policyholder receives and reviews the policy.

According to the magistrate in the VE case, the insurance company did not even have to deliver the actual policy; it simply had to provide "constructive notice" to alert



the policyholder that there were changes in the coverage.

The magistrate rejected Reliance's assertion that a reduction in rates should have alerted a sophisticated buyer that something had changed, especially since VE noted that corporate restructuring had reduced the risks it was insuring. In this volatile market, buyers can hardly be expected to make assumptions about coverage based on rate activity.

We believe that insurers can and should deliver policies more promptly to their policyholders. Buyers, for their part, should demand quicker delivery from their insurers. Some risk managers do; unfortunately, many do not. Quality in the insurance industry will not improve until customers refuse to settle for poor service and hold service providers to measurably higher standards. What could be easier to measure than the time it takes to deliver a policy?

In this day and age, with technology that accelerates business processes and makes access to information almost immediate, there is little excuse for the insurance industry to not speed up its delivery of policies. At the very least, an insurer should send its policyholder a simple notice as to policy changes made and what those changes mean for coverage. E-mail it. Fax it. Send it by express mail. Whatever it takes.

Clearly, with court rulings such as the one in Pennsylvania, the consequences to insurance companies of foot-dragging are becoming more serious. Poor service becomes not just a cause for customer gripes but also a potentially significant loss exposure.

If insurers have no other motivation to improve the quality of their service, then it is to be hoped that this financial risk will prompt the needed changes.

Letters

Indian Nation proposal misunderstood

To the editor: Since writing our original research paper on the topic of American Indian reservations as potential captive domiciles (*BI*, Sept. 6, 1999), we have received numerous comments in the same line as Lee Backus' remarks, which were published as a letter to the editor in the Jan. 3 issue.

It appears Mr. Backus did not read our original paper but instead relied upon the reporter's observations of our comments and those of others with knowledge in the area.

The point of our paper was not the formation of captives by American Indian Nations, nor the domiciling of those captives or any other captives in the Nation, but rather the establishment of an infrastructure, including regulation and taxation, which would provide insurance company domiciling as a governmental enterprise of the Nation, thus providing revenues and employment for Nation

members, much as gaming has done.

We also disagree with Mr. Backus' nefarious-sounding statement that non-Native captives are seeking reduced regulatory oversight. While some captives have been established for that undesirable purpose, the opportunities for flexible regulation as offered by more-traditional offshore domiciles and some states remain valid reasons for consideration of any captive's domicile.

Our proposal was not that the Nations establish a regulatory system that attracts organizations wishing to skirt the edges of sound business practices but that the Nation develop regulations that compete favorably with the traditional offshore domiciles, yet do not involve the expenses of conducting business far away. Part of our paper focused on the peripheral benefits to the Nation, such as increased tourism, banking, hotel and

meeting accommodations, and captive management firms.

We do agree with Mr. Backus' opinion that many tribes continue to be in dire need of economic assistance: that was the entire thrust of our paper—a domicile as a means of aiding economic development in the Nation through creation of the regulatory and service infrastructures needed for a successful captive domicile.

A Native American once commented to Mr. Rudolph that his Indian ancestors really discovered America but it was Christopher Columbus who got the credit because he had a better public relations department. We regret that inconvenience of history.

Richard Rudolph
St. Charles, Ill.
Eric Routman
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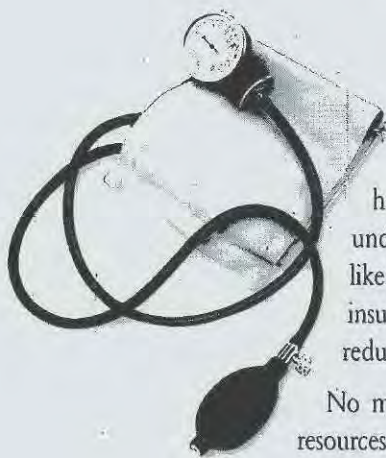


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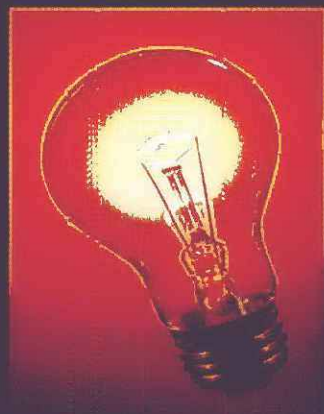
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Tune up temporary work arrangements

Misclassifying workers invites litigation

By Fredric S. Singerman

THE BUREAU OF LABOR Statistics has estimated that independent contractors, temporary-help agency workers and other "alternative workers" make up 10% of the nation's workforce. The ranks of temporary workers, in particular, have more than doubled in the past five years, and nearly 3 million workers are in temporary positions in America on any given day.

A 1995 study by The Conference Board found that 90% of U.S. businesses use temporary help. Temporary workers are used to fill positions while an employee is on leave or until a permanent replacement can be hired, to meet staffing needs during a temporary surge in demand, and to staff specific projects when internal resources are insufficient. Positions may last from a few days to more than a year.

Particularly with regard to high-demand jobs, when a project has a limited time line or a business does not have enough good work to keep skilled employees busy for the foreseeable future, alternative work arrangements may be the only practical source of personnel.

Some clients have reported that they are unable to hire their skilled independent contractors or staffing firm employees as traditional employees, because the workers prefer their current arrangements. The statistics bear this out: BLS reports that almost 83.6% of independent contractors and 33.5% of temporary help agency workers prefer an independent or indirect work relationship to a more traditional one.

Thus, the use of non-traditional work arrangements is driven by the needs of both businesses and workers and can benefit both parties. Unfortunately, the risk to businesses stemming from the use of alternative workers has greatly increased over the last two years.

This is the result of three recent decisions by the 9th U.S. Circuit Court of Appeals involving Microsoft Corp. The potential financial exposure to businesses that misclassify workers—particularly the risk of claims for retroactive benefit coverage—can be high. At issue in the Microsoft litigation is whether hundreds, or thousands, of contract workers are entitled to receive retroactive stock benefits to compensate them for what, in some cases, was a more than \$125 per share increase in the stock that regular Microsoft employees could purchase under the company's stock-purchase plan. Retroactive 401(k) plan contributions are also on the table.

The Microsoft litigation involved a group of workers hired as independent contractors or "free-lancers" who provided services to Microsoft during the late 1980s and early 1990s as software testers, production editors, proofreaders, formatters and indexers.

Each of the workers signed agreements with Microsoft in which they acknowledged that they were independent contractors and agreed to be responsible for their own insurance and other benefits. Although the workers were paid from Microsoft's accounts receivable department, rather than through normal payroll, in many respects the free-lancers were treated similarly to regular employees. They often worked on teams with regular employees, worked the same hours on company premises, were provided supplies and had the same supervisors.

In 1989 and 1990, the Internal Revenue Service determined that the free-lancers were employees and not independent contractors for payroll tax purposes, under the general right-to-control test. Some of the free-lancers brought a class-action suit

against Microsoft seeking benefits under the company's tax-qualified 401(k) plan and employee stock purchase plan, or ESPP.

A three-judge panel initially held that the free-lancers were eligible for benefits under both the 401(k) plan and the ESPP in *Vizcaino vs. Microsoft Corp.*, which I'll henceforth refer to as *Microsoft I*. The 9th Circuit re-heard and affirmed the part of the *Microsoft I* decision relating to the ESPP in *Vizcaino vs. Microsoft Corp.*, which I'll refer to as *Microsoft II*. However, the *Microsoft II* court remanded the issue of coverage under Microsoft's 401(k) plan, ruling that the coverage issue must be decided first by the administrator responsible for administering claims. Although the court voiced serious doubts about the administrator's ability to find that the workers were not covered—given their employee status and the plan language—it refused to usurp the administrator's authority.

These decisions are particularly troublesome because they decline to honor the written agreements between Microsoft and the free-lancers stating that the free-lancers would be responsible for their own benefits. Further, by granting to the misclassified workers a retroactive and entirely unbargained-for benefit, the court effectively allocates the entire risk of worker misclassification to only one party—the employer.

The potential exposure to businesses that misclassify workers—particularly the risk of claims for retroactive benefit coverage—can be high.

Following the IRS' examination of worker classification at Microsoft, the company offered some of the free-lancers jobs as regular employees. Most of the workers, however, became employees of temporary-staffing firms that provided their services to Microsoft. This ultimately gave the court the opportunity to look at temporary staffing as well as independent contractor arrangements.

The court seized this opportunity in *Vizcaino vs. Microsoft Corp.*, or *Microsoft III*. It ruled that the "converted" staffing firm employees—as well as newer staffing firm employees who were never hired as independent contractors—are presumptively the common-law employees of both the staffing firm that paid them and Microsoft, and are therefore entitled to benefits under the ESPP. In January 2000, the Supreme Court declined to review the 9th Circuit decision. The decision calls into question tens of thousands of leased employment relationships throughout the country.

Although the 9th Circuit acknowledged that "the triangular relationship between worker, temporary-employment agency and client is not wholly congruent with the two-party relationship involving independent contractors," its simplistic analysis focused almost entirely on the relationship between the leased employee and Microsoft and ignored the fundamental role played by the leasing agency in the transaction. Even if, for some purposes, a worker is considered an employee of the agency, that would not preclude his or her status of common-law employee of Microsoft. The two are not mutually exclusive.

A major problem with the 9th Circuit's analysis is that the question of whether a worker is an employee or an independent contractor is fundamentally different from the question of which company is the worker's employer. A significant

factual issue entirely unexplored by the court is that the staffing firm, rather than the client, typically retains the ultimate right to exercise control over the leased employees; the client can exercise control only to the extent that it is entitled to do so under its agreement with the staffing firm.

Thus, although the staffing firm employees may have performed services at the direction of Microsoft, this was a result of doing their jobs for the leasing company—satisfying the client. The 9th Circuit does not even inquire into the other factors that traditionally play a role in determining employment status, such as who has a right to hire and fire, who performs training, who pays salary and the like.

So where do the 9th Circuit's excursions into the realm of alternative work arrangements leave businesses? It leaves them at risk for *Microsoft*-type claims for retroactive benefit coverage. Although this column focused on employee benefit claims, the company may also face exposure for tax liability, wage and hour claims, employment discrimination claims, and whatever other claims an aggressive plaintiffs attorney can come up with.

Here are some pointers to keep in mind as you structure your alternative work arrangements, actions that will help to reduce the risks associated with the recent trends in "worker misclassification" litigation:

- Carefully review the governing agreements, preferably by counsel. If possible, staffing firm employees should acknowledge that they will not be entitled to participate in any employee benefits maintained by the client, and the agreement between the staffing firm and its client should explicitly allocate the risk associated with *Microsoft*-type claims. Independent contractor agreements should: accurately describe the results to be achieved; have a beginning and end date and not renew automatically; provide that the agreement cannot be terminated except for material breach or on meaningful advance notice; be negotiable; permit contractors to perform the same or similar services for both competing and non-competing companies; provide that the contractor will be treated as such for federal tax-filing purposes; and explicitly provide that the contractor will not be eligible for any employee benefits, and that he or she declines any offers of employee benefits.

- In addition, you should re-evaluate the substance of the relationship to ensure that the company has accurately classified workers and that the treatment of the workers is consistent with their classification. For independent contractor relationships, this means that the economic substance of the arrangement indicates, among other things, that the company does not retain the right to control the manner and means by which the results are to be accomplished. Consider the following:

1. Structure payment so that the independent contractor has some risk of loss or variation in profit. Per piece or per project rates are best.
2. Ensure that the independent contractor is not performing any services as your employee. In fact, contractors and employees should not be performing the same services.
3. Focus on the results the independent contractor is expected to achieve, rather than on how he or she must perform the services. Leave the contractor with discretion as to how to achieve those results.
4. Do not pay contractors additional bonuses or "benefits" that the contract does not require. Incentive programs should be as different from employee incentive programs as possible.
5. Train your managers as to the legal differences between how they should treat workers who are independent contractors (or staffing firm

See *Workers on next page*

Workers

Continued from previous page

employees), as opposed to how they treat employees.

6. Do not provide tools, supplies, equipment or materials for free or at a subsidized price.

7. Allow the contractors to subcontract out the performance of services.

When using staffing firm employees, consider why the company is turning to such workers, rather than using its own employees. Is it for legitimate business reasons, such as a desire to focus on core business objectives or to get out of a certain business? If the reason is solely related to reducing employee benefits costs, this may raise legal risks. The key is to outsource results and functions, not employees. Consider the following:

1. Structure the contract with the service provider as a results-oriented agreement. Define the results to be obtained by objective measures of performance. Avoid a "cost-plus" basis for payments. Instead, attempt to build in a risk of loss or opportunity for profit into the relationship.

2. Do not mandate that the service provider follow specified hiring and training procedures.

3. Do not get involved in the selection or

termination of the service provider's employees.

4. Review the contract being offered by the service provider with legal counsel before entering into it. Review indemnification language. Have the service provider ask its employees to acknowledge that they are not going to be receiving any of your company's benefits as a result of performing services for it.

5. When putting together an alternative arrangement, consider whether it is feasible for the service provider to perform the services off of your premises.

- You should also examine all employee benefit plans and compensation arrangements and amend eligibility provisions in the clearest possible language to exclude workers classified as independent contractors or staffing firm employees, no matter what their status actually is.

Keep in mind, however, that certain non-discrimination tests (i.e., the minimum coverage rules) applicable to qualified retirement plans—and certain welfare plans—could limit the number of employees who can be excluded from the benefit plan.

- In addition, you should consider claims for benefits as part of the employee benefit plan's Employee Retirement Income Security Act claims procedure. This makes it more likely that a court will

give the plan administrator's decision deference and overrule a decision only if it was arbitrary or capricious.

Reclassifying workers who previously may have been misclassified presents a very difficult legal and communications challenge: How do you correct the classification in order to limit liability going forward, without opening up the company to legal action for its prior conduct? Also, how should the outsourcing of a function currently handled by your employees in-house be handled? A knowledgeable attorney can assist in minimizing the risks presented by these transitions. **BI**

Fredric S. Singerman is an attorney in the Washington, office of Seyfarth, Shaw, Fairweather & Geraldson, concentrating his practice in employee benefits. He represented employer groups in supporting Microsoft's petition to the Supreme Court in the litigation described above. In addition, President Clinton appointed him as a delegate to the National Summit on Retirement Savings.



Web revolutionizing benefits communication

By Alan N. Cohen

In much the same way that the automatic teller machine revolutionized customer interface in the retail banking industry, online technology is rapidly becoming the accepted standard in the delivery of employee benefit plan information. Communication and administration based on the World Wide Web materially enhance the process of informing employees about their benefits. In fact, at this year's open enrollment period, the savvy employer will simply provide to each employee the address for its private benefits Web site, rather than distributing insurance brochures and lengthy forms. Employees can then access the Web site, enter a password, and explore, search and print information about any of their company benefit plans.

While human resource Web sites were once a luxury used by large companies only, various marketplace factors are now putting such resources within the reach of mid-size—and even small—companies.

The need for more-effective employee benefits communication, caused by numerous changes over the last decade, is well-documented in employee benefits literature. Not only have the types of employee benefit plans changed, but the basic philosophy of employee benefits has been altered as well. The changes have predominantly been driven by the escalating cost of employee benefits and the demands of a changing workforce.

Over 75% of all employers today offer some kind of managed care plan to their employees. These plans generally are medical or dental preferred provider organizations, health maintenance organizations and point-of-service plans. All of these plans are far more complex than the indemnity plans of the past and attempt to make their members become better consumers of health care.

Misunderstandings about the operation and administration of these plans usually lead to significant employee dissatisfaction. The majority of employers today also require employees to pay a portion of the cost of the insurance plans, and the most significant current trend is that employers are offering their employees a choice among many different types of plans, often from different vendors. The employees are now asked to be consumers themselves and are no longer given one plan that was selected by their employer. This decision is important for employees and their families. Therefore, greater clarity of employer

communications to employees is required.

In today's cost-competitive market, specific employee benefit plans are subject to constant change and evolution. Most companies completely change their employee benefits providers at least once every five years, and within that time period, significant annual changes are common. While such changes usually reduce the cost of benefit for the employers, they come with very high up-front employee communication costs. A benefits communication Web site allows employers to communicate these changes with great ease and clarity—qualities that such changes often lack.

Even though the need for employee benefits

A Web site allows employers to communicate benefit changes with great ease and clarity—qualities that such changes often lack.

communication has increased substantially, most employers continue to communicate with their increasingly diverse workforce using the same medium as in the past. Traditionally, employers hand out paper brochures describing company benefits to new hires, and they then redistribute revisions of this paper material upon any change in program benefits. Under such an approach, production and printing costs are burdensome, and the material is useless as soon as a benefit change takes place. As a result, the communication of benefit information is often unsuccessful, because employees are likely to disregard, misunderstand or lose the printed information and request duplicate information from the human resources staff.

Printed materials are often complex and confusing, and employees find these traditional materials woefully inadequate and difficult to use. This creates an environment where employees' perceptions of benefits range from dissatisfaction to indifference.

The dissatisfaction of employers, human resource managers and employees has fueled a need for improved benefits communication. Because all employers are required by federal law to disseminate information regarding certain employee benefits, each employer encounters the same obstacles in creating effective employee communication.

Human resource departments, in every size of business, were deeply cut in the downsizing initiatives of the last decade. They have been increasingly pressured to become more efficient and productive, although this often means fewer staff members and longer hours. Conversely, high-growth companies rarely increase human resource staff in proportion to the expansion of their employee populations. As a result, the average human resource staff is smaller today than it was 10 years ago on a per-employee basis. In addition, HR departments are becoming a strategic force in the company, which results in yet more responsibility falling on fewer employees.

Human resource organizations in mid-size companies need solutions that can reduce the people-hour burdens of their standard and regulatory functions. They seek outsourcing alternatives to replace in-house staff and computer networks to increase their effectiveness. Human resource managers desire a solution that, ideally, significantly reduces the time and cost of maintaining and changing their employee benefits programs.

"Employee self-service" is the catch phrase in human resource trade journals today. It is ballyhooed as the answer to the need for increased efficiency, and studies demonstrating that employees are more satisfied when they are given the proper tools to serve themselves are widely reported.

The greatest attraction of employee self-service is that it allows human resources departments to reduce their administrative duties while increasing employee satisfaction.

Other factors pushing HR Web sites to the forefront of benefit communications are workplace needs.

When asked to describe the ideal benefits communicator, benefits professionals and employees give similar answers. Fortunately, Web-based communication responds to each element of this wish list, which includes:

- The organization of information in one place where it cannot be lost. A benefits Web site can provide a comprehensive tool to control the myriad information supplied by the employer, such as jobs and training programs.
- Easy access and use. The ideal communicator requires little or no training and is easy for people to access and understand.
- Access to those who need the information. Often an employee's spouse is the actual benefits decision-maker.

See Web on next page

Web

Continued from previous page

It is important for the employee's family to have access to the updated benefits information. A benefits Web site allows the spouse to research a benefit issue or print a claim form from home or from the spouse's office via the Internet.

- **Answers to basic questions and research into complex issues.** The best benefits Web sites include intuitive and obvious navigation tools. They also offer comprehensive resources that contain all the information necessary to research complex issues, which are linked together, fully indexed, and searchable.

- **Current information.** With traditional paper-based materials, delivering new information is expensive and difficult. In a Web-based environment, employers publish

new material as quickly as the material is created. Thus, information is disseminated instantly to all employees worldwide.

- **Cost-effectiveness.** The costs of creating and delivering paper-based information can be enormous. Although a benefits Web site requires some initial expense, printing expenses and postage are reduced and may someday be eliminated.

- **Minimal HR time commitment.** When employees can get the answers to routine benefits questions from a benefits Web site, stretched human resources staff can concentrate their efforts elsewhere.

Electronic media has come to the forefront of human resources to solve critical challenges in employee communication. HR Web sites are quickly becoming a favorite resource for employees and managers. Through their use, employees attain a measure of control and responsibility for their benefits. As a result, they gain a new

appreciation for the programs offered by their employers. Human resources personnel are freed to focus on issues of strategic importance to their companies. Finally, employers achieve substantial cost savings and deliver better communication throughout their entire organizations. **BI**

Alan N. Cohen is the president and co-founder of Online Benefits Inc., a national provider of Web-based employee benefits communication that is based in Westbury, N.Y. He has 10 years experience in the benefits industry as an employee benefits specialist for Prudential Insurance Co. of America and CIGNA HealthCare Inc. and as a benefits broker and consultant.



Harassment advice to help avoid lawsuits

"What to Do When You Don't Want to Call the Cops: A Non-Adversarial Approach to Sexual Harassment"

By Joan Kennedy Taylor

Published by New York University Press,
Washington Square, New York, N.Y. 10003;
212-998-2575; www.nyupress.nyu.edu
\$24.95

By Amanda Milligan

Here's some refreshing, if perhaps naive, advice for a lawsuit-happy society: Don't sue.

In her recent book, "What to Do When You Don't Want to Call the Cops: A Non-Adversarial Approach to Sexual Harassment," author Joan Kennedy Taylor stresses that a victim of sexual harassment has more than one option when facing this unfortunate workplace problem.

Rather than arming employees with heavy-handed harassment policies that create the perception that their only recourse is to sue, Ms. Taylor advocates teaching employees about the different ways men and women respond to offensive behavior.

Such understanding, she says, will help employees relate to one another more constructively.

She asserts that when an employer pays more attention to improving workforce relations—rather than merely working within a legal framework or a sexual harassment policy—workplace animosity will be reduced for both genders.

Book Review

"We can expect that attempts to change sexually offensive behavior towards co-workers by invoking the law will always contain a large counterproductive element," Ms. Taylor writes.

Some sexual harassment, she says, is the product of differences in the ways men and women communicate and relate to each other, including the use of "bad" language and the presence of sexually explicit material. She also posits that behavioral expectations on the job are not the same for men and women. Behavior by both genders may change, however, when the gender ratio is heavily skewed.

Ms. Taylor cites management consultant Peter Drucker's prediction that demographics will be a major concern for at least the next two decades. Given that, she notes, more women will be taking jobs traditionally held by men.

Women workers, she says, should not expect to be treated "like a lady," as such treatment would send the message that the worker has a "special in." Expectations of employees and the treatment of workers should be equal, regardless of gender.

"If the idea is to lessen hostility in the workplace, an incremental approach, in which women go into new fields, show that they are talented and competent, gain respect for their values and their differences by an assertive but friendly drawing of the line and set the stage

for the employment of many more women, is what will bring lasting change," Ms. Taylor writes.

Gender-issues training should be voluntary, she writes, and training should be instituted if workplace relations seem tense. These programs, which examine interpersonal skills instead of etiquette, should have specific goals and should involve many different individuals and perspectives.

Sexual harassment law, she asserts, can be looked at in the wider context of communication "as that which protects you when communication gets out of hand, rather than as the sole reason one should examine and discard certain ways of relating to people."

Overall, Ms. Taylor has written a thoughtful analysis of sexual harassment behavior and policy in the modern American workplace. The book would have benefited, though, from a summary chapter that could be used for a quick review long after it has been added to the risk manager's bookshelf. **BI**



Amanda Milligan, a former associate editor of Business Insurance, is a reporter at BI's sister publication, Crain's Chicago Business.

Jail does not void duty to respond to employer: Court

Incarceration is not a valid justification for failing to respond to notification of available employment for purposes of an employer's suspension-of-benefits petition, according to the Commonwealth Court of Pennsylvania.

Andrew M. Mitchell sustained a work-related injury and was awarded disability benefits of \$173.50 per week before he was incarcerated due to a parole violation following a criminal conviction. Mr. Mitchell was incarcerated from July 30, 1995, until Nov. 18, 1996, when he was again released on parole.

Mr. Mitchell's employer initiated vocational efforts in August 1995, while he was incarcerated. Three job referral letters were sent to Mr. Mitchell's attorney in Philadelphia. Mr. Mitchell did not make a good-faith response to those job referrals because he was incarcerated. The employer filed a petition to terminate, suspend or modify compensation benefits. The Workers Compensation Board approved a suspension of benefits from July 30, 1995, through Nov. 17, 1996, based upon Mr. Mitchell's incarceration.

On appeal, Mitchell did not dispute the suspension but argued that he was entitled to reinstatement of benefits upon his release in November 1996. The appellate court said there is no authority for the argument that an employer must wait for a claimant to

Legal briefs

be released from incarceration before it can satisfy the requirements to suspend benefits. The board's decision was affirmed. In a dissenting opinion, a judge argued that a claimant's incarceration can and should act as a defense to a "bad faith" accusation and subsequent termination that will be effective even after he leaves jail.

Mitchell vs. W.C.A.B., Commonwealth Court of Pennsylvania, July 26, 1999 (BI/02/F.—\$10)

Estate may collect benefits

Workers compensation benefits are payable to an estate in the event that the spouse of a deceased employee dies before the benefits can be disbursed, the Supreme Court of Ohio has ruled.

Lawrence Nossal, who had worked as a pipefitter for about 25 years, died of pulmonary fibrosis secondary to asbestosis in July 1985. Ann Nossal, his widow and sole dependent, applied for death benefits. A hearing officer awarded her \$298 per week, commencing with Mr. Nossal's death. Mr. Nossal's employer, the Terex

Division of General Motors Corp., appealed the award.

In January 1990, Ms. Nossal died, before any benefits had been paid to her. The employer then successfully moved to dismiss her claim due to her death. The administrator of Ms. Nossal's estate instituted a new claim, which was denied. The administrator sought to force the commission to pay the accrued benefits, but the court of appeals again ruled against the estate.

The Ohio Supreme Court ruled that to deny benefits because a claimant fails to live long enough to survive delays in the administrative process is illogical and unfair. "The Legislature surely did not intend," the court said, "that a claimant's right to recovery be contingent upon the ability to outlive the administrative process." The lower court decision was reversed, allowing the estate to recover.

State Ex Rel. vs. Terex Division of I.B.H., Supreme Court of Ohio, July 28, 1999 (BI/03/F.—\$10)

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.

Brakes

Continued from page 3

concerns. Typically, those prohibitions are imposed along stretches of highway adjacent to residential areas.

The Jake Brakes manufacturer notes that its engine brake system functions by essentially turning a diesel engine into a compressor.

When engaged, the system causes an engine cylinder's exhaust valves to open at the top of a piston's compression stroke, releasing the energy stored in the air compressed in the cylinder before power can be returned to the crankshaft in the downstroke.

The air from the cylinder is released through the truck's exhaust system, producing a distinctive staccato sound.

Jacobs Vehicle Systems concedes that, when used on a vehicle with a

poorly muffled or unmuffled exhaust system, the engine brake "can be quite loud," prompting the prohibitions against their use in some areas.

Lash Chaffin, utilities section director for the Lincoln, Neb.-based League of Nebraska Municipalities, said he knows of municipalities in his state that have been contacted by Jacobs Vehicle Systems.

The league recently offered advice concerning the issue through its member publication, essentially suggesting that if municipalities are worried about being sued over alleged trademark infringement, the simplest solution is to change the language on their signs, Mr. Chaffin said.

The state league asked the Nebraska Department of Roads to approve alternative language for the signs. The state now will accept "engine brakes" or "unmuffled brakes," he said, in addition to the current lan-

guage for municipalities that choose not to change their signs.

"I do know a couple cities have changed their signs, and a couple haven't as well," Mr. Chaffin said. "So we don't actually know how

'The Web has been a real source of information for us to find out where these things are,' says Frank Stawski.

many followed up on it."

But Mr. Stawski said his company has been successful in having the language on the signs changed in most of the communities it has contacted around the country.

"We don't put them on notice initially. In most cases, we've found we

don't have to do that," he said. "Only in a few instances have we had to take the second step of writing a legalistic letter that says, 'You've got 30 days to take your signs down.'"

And the company recognizes that it takes a municipality time to manufacture new signs and replace existing ones, Mr. Stawski said. So, if the community is making a genuine effort to comply, Jacobs will allow for the time it takes.

"You still have to have faith in people," Mr. Stawski said.

The company's success at enforcing its "Jake Brakes" trademark has gone beyond just challenging its use on highway signs. Mr. Stawski said Jacobs Vehicle Systems has raised the issue of inappropriate use in cases involving musical groups, race horses and snowboards, among others.

And, as it looks to protect its trademark, Mr. Stawski said his company has found the Internet to

be a powerful tool in identifying possible violations.

In addition to explaining what Jake Brakes are and how they work, the Jacobs Vehicle Systems' Web site discusses the trademark infringement issue and asks visitors to the site to e-mail the company with information about any "brand-specific" street signs they've seen.

"That's been our primary method of identifying where these signs are," Mr. Stawski said. "We get a number of responses from truckers."

But even more, perhaps, come from people who've noticed the signs and gone to the Web looking to find out exactly what a "Jake Brake" is, the company's legal affairs manager said.

"We get those almost every day now," Mr. Stawski said. "The Web has been a real source of information for us to find out where these things are. People have a need to know: What's a 'Jake Brake'?" **BI**

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INTERNATIONAL

Global Briefs

London-based underwriter **Abbey Legal Protection Ltd.** plans to reduce its employment practices liability insurance rates by 50%. Abbey said the rate reductions come as a result of a two-year study into the market, which revealed that good risk management advice has led to less litigation. Two years ago, Abbey set up a legal help line staffed entirely by qualified lawyers. Insurance coverage is valid only if clients have sought and followed the advice of the legal help line. Abbey said its analysis of calls to the help line showed that the number of employers taken to court dropped sharply when advice was sought. . . . Morocco's largest insurer, **BMCE Bank**, has opened a branch in London and has announced that it is looking for a partner in a life insurance venture. BMCE has a 25% share of the Moroccan insurance market, and that share's worth is estimated to be at least \$500 million. Bank Chairman Othman Benjelloun, who singled out credit insurance, life insurance and pensions as important areas for his company, spent last week in London meeting with local insurers and Lloyd's of London Chairman Max Taylor. . . . **CIGNA HealthCare & Group Life** has launched a service for employers that offers help and medical advice for employees suffering from medical problems. The new absence management service also includes advice to employers about how to develop processes and policies to manage employee absence in line with the Disability Discrimination Act. The Confederation of British Industry estimates that employee absence costs U.K. industry more than £10 billion (\$16.04 billion) each year. Under the service, employees have access to a medically qualified case manager in addition to childcare and counseling. . . . Lloyd's of London has appointed a new representative in Australia. **Keith Stern**, formerly Lloyd's regional manager in London for Australia, Africa and the Middle East, will replace Steve Boucher, who is returning to the United Kingdom after a two-year term of office. Mr. Stern will serve as a liaison with regulatory authorities and market practitioners. . . . London-based **Aon Consulting Ltd.** and its sister company, **Aon Risk Services**, have formed a new joint venture for employment-related risks. **Aon Employee Risk Solutions** will help clients develop and manage strategies to counter the cost of such risks as absence, turnover, litigation and legal compliance. Patrick Carter has been appointed managing director of the new company. . . . The United Kingdom's energy minister, Helen Liddell, has launched an initiative to help Scottish ex-coal miners and their families obtain compensation for lung disease more quickly. The National Union of Mineworkers is joining with legal representatives to help claimants in the Scottish town of Fife complete paperwork and make claims, and the government will help to fund the initiative. Ms. Liddell unveiled a new awareness campaign that will include advertisements in the national and local press and updates on the progress of the compensation plan. She will also write to hospitals and doctors, urging them to process requests for health records swiftly and warn them that, in England and Wales, the courts may impose penalties if companies do not cooperate.

Manslaughter law under review

U.K. to review safety prosecutions

By SARAH VEYSEY

LONDON—The U.K. government is coming under increasing pressure to change the law on corporate manslaughter and to increase penalties for health and safety offenses.

The government's Home Office recently said that it will begin consultation on recommendations for changing the involuntary manslaughter law made as long ago as 1996. Separately, a House of Commons Select Committee has criticized the Health and Safety Executive's low prosecution rate for workplace fatalities and injuries and called for the government to increase the fines that courts can impose for health and safety offenses

"at the earliest opportunity."

The Home Office's announcement comes in the wake of a Feb. 15 Court of Appeal's decision to uphold the acquittal of Great Western Trains of corporate manslaughter charges arising from the 1997 Southall train crash, in which seven people died.

Great Western Trains was found guilty of breaches of health and safety regulations because the train's automatic braking system failed to activate. However, the Court of Appeal upheld a High Court ruling that current law made it impossible to secure a corporate manslaughter conviction against the company (*BI*, July 12, 1999).

A corporate manslaughter conviction. See Law on page 18



PHOTO: AFP

Great Western Trains was acquitted of corporate manslaughter charges in the 1997 Southall train crash, which killed 7 people.

ING Groep buys stake in Mexico

In venture with Seguros Commercial

By GAVIN SOUTER

MEXICO CITY—Dutch financial services conglomerate ING Groep N.V. will firmly establish itself in Mexico's burgeoning insurance market with its purchase of a stake in the country's largest insurer, Seguros Comercial America S.A. de C.V., analysts say.

The deal also will put pressure on other Mexican insurers to become more efficient and to find additional resources to compete with the growing number of foreign-backed insurers that have access to large amounts of capital, analysts note.

Under the terms of the deal announced earlier this month, ING will pay \$555 million for a 39.7% share of a new sub-

sidary of Savia S.A., a Mexican conglomerate that owns the majority of Seguros Comercial America.

The new subsidiary will own 71.6% of Seguros Comercial America. ING will have the option to increase its stake in the subsidiary to 49% in the first year after the completion of the deal and will be able to buy a controlling interest after three years.

The purchase of Seguros Comercial America will provide ING with a Mexican insurer that sells life, health and property/casualty insurance. For 1999, the insurer's total premium volume was 17.1 billion pesos (\$1.81 billion); its net income was 993 million pesos (\$105.4 million).

See ING on next page



PHOTO: REUTERS

A Paris housing estate lies in ruins after being struck by wind storms last December. The European storms are being blamed for heavy losses that have caused ReAC to stop underwriting.

ReAC halts underwriting

By PAULA WESTON

SYDNEY, Australia—Troubled Sydney-based Reinsurance Australia Corp. Ltd. has ceased underwriting and has appointed an independent actuary in the wake of unaudited losses of \$470 million Australian (\$308.3 million) last year.

In an Australian Stock Exchange announcement on Feb. 17, the publicly listed reinsurer said it is now preparing its 1999 accounts as if the company were moving into runoff. The announcement said the company believes that decision will best serve shareholders' interests.

ReAC said its unaudited losses of \$470 million Australian for the year ended Dec. 31 left the company with estimated net assets of \$50 million Australian (\$32.8 million). That amount is below the statutory minimum capital for an Australian reinsurer of 15% of net outstanding claims.

No executives from ReAC were available for comment; inquiries were directed to a public relations firm. A company spokesman said ReAC would make no comment,

apart from its announcement to the stock exchange.

"It will hit Sydney brokers hard, who have already weathered the problems with New Cap Re and GIO Re," said a Sydney stock analyst, referring to the heavy losses both reinsurers suffered in 1999, primarily from the European windstorms of late December.

ReAC's announcement said its losses were \$377 million Australian (\$236 million) for the full year, made up of first-half losses of \$116 million Australian (\$76.1 million), second-half "catastrophe losses" of \$185 million Australian (\$122 million), and further net adverse developments in the second half of \$76 million Australian (\$49.9 million).

Further non-recurring costs of \$93 million Australian (\$61 million) included the write-off of deferred acquisition and retrocession costs of \$35 million Australian (\$23 million), the write-down of fixed assets and information technology costs of \$13 million Australian (\$8.5 million), restructuring costs of 25 million Australian (\$16.4 million), as well as special provisions for future runoff costs of \$20 million

See ReAC on next page

Kiwi comp reversal creating confusion

By PAULA WESTON

AUCKLAND, New Zealand—New Zealand's new Labor government is learning that its planned return to a state-run workers compensation system may be more complex than was first expected.

Geoff Mowday, marketing consultant for the Auckland-based Corp. of Insurance Brokers of New Zealand, said that, since the new government won power last October, it had reaffirmed its commitment to reversing the previous government's privatization of the workers comp market. That effort had included dismantling the Accident Rehabilitation & Compensation Insurance Corp., or ACC, the former state-run monopoly workers comp insurer.

The reforms, implemented only seven months ago, required all New Zealand businesses to purchase workers compensa-

tion from private insurers by July 1 of this year.

After the privatization was given the green light, six insurers entered the New Zealand workers comp market: Royal & Sun Alliance Insurance (New Zealand) Ltd., New Zealand Insurance Ltd., HIH Insurance (New Zealand) Ltd., MMI General Insurance (New Zealand) Ltd., ACE Insurance Ltd., MMI General Insurance (New Zealand) Ltd., all based in Auckland; and New Zealand's Farmer Mutual Group, based in Palmerston North.

Now, however, businesses and brokers and insurers face uncertainty, as the government looks to revert back to a state-run monopoly insurer for workers comp by the end of July.

Mr. Mowday said that, in the lead-up to the changeover, the government had introduced an Accident Insurance Transitional Provisions Bill in the New

See Comp on next page

INTERNATIONAL

Law

Continued from page 15

tion is dependent on "establishing the guilt of an identified human individual," the Court of Appeal ruled. In the case of large companies, such as Great Western Trains, however, this is extremely difficult to prove, the court said.

The Law Commission, a government-funded body established to promote legal reforms, in 1996 proposed that "there should be a specific offense of 'corporate killing' broadly comparable to 'killing by gross carelessness' on the part of an individual."

A Home Office spokesperson said: "We are continuing to consider the conclusions of the interdepartmental group examining the Law Commission's report, which includes the recommendation on corporate killing. We also expect to

publish our conclusions for consultation shortly."

The Law Commission proposed that, in cases of alleged "corporate killing," it must be proved that the defendant's conduct fell "far below what could reasonably be expected," according to a Law Commission representative. "It is only if there is what we call a 'management failure' that the offense can be committed."

The Law Commission's report followed a series of disasters in 1987 and 1988 in which the companies involved were not prosecuted. These included the Herald of Free Enterprise ferry disaster, in which 187 people died; the Piper Alpha oil rig explosion, in which 167 died; the Kings Cross subway fire, which killed 31; and the Clapham rail crash, which killed 35.

If the Law Commission's proposed reforms ultimately are enacted, companies found guilty of

corporate killing could face hefty fines.

"Under our recommendations, there wouldn't be any question of sending the directors of companies to jail, because the only defendant would be the company, and the

'The HSE clearly needs more money,' says John Monks of the report calling for more safety investigations.

only thing you can do to a company is take its money away. One would certainly hope that the fines would be pretty substantial," not just in absolute terms but in terms relative to the company's revenue, said a Law Commission spokes-

man.

This could expose companies to a huge uninsurable risk: While defense costs are insurable, fines imposed by criminal courts are not.

Meanwhile, the House of Commons' Environment, Transport and Regional Affairs Select Committee's report on the performance of the Health and Safety Executive, published on Feb. 15, also called for greater fines for health and safety offenses in the workplace.

The report said that fines "need to be related both to the seriousness of the injury and to companies' (revenues) and profit." It also called for fines to "always be set at a level greater than the cost to the company of rectifying its unsafe work practices."

The report slammed the Health and Safety Executive's prosecution rate for workplace injuries and deaths. It claimed that the HSE investigates just 6% of serious acci-

dents and 10% of severe-injury cases. In addition, only 20% of workplace fatalities lead to prosecutions, the report said.

The committee described these figures as "unacceptable" and proposed a target of a 3% overall increase in the HSE's investigation of reported injuries over the next three years.

A major labor group agreed that more needs to be done.

"The HSE clearly needs more money, and the report makes a series of powerful recommendations calling on the government to invest more money in saving lives. (Members of Parliament) have made it clear that they want to see more inspections, more prosecutions of negligent employers and more corporate responsibility for deaths at work," said John Monks, secretary of the Trades Union Congress, an umbrella group for U.K. labor organizations. **BI**

CGNU

Continued from page 1

attaining a top-five position, either within the States or the sectors. The for-sale signs have gone up today, and we believe the sale will be completed by the end of the year."

The company expects CGU's U.S. property/casualty business operation, based on Boston, to fetch its asking price of at least \$2 billion (\$3.2 billion).

The U.S. unit recorded a profit of \$178 million (\$287.6 million) in 1999, up 29% from the year before. The U.S. operation posted an underwriting loss of \$204 million (\$329.6 million) in 1999, an improvement over a 1998 underwriting loss of \$248 million (\$411.6 million).

A CGU life operation in the United States, Commercial Union Life Insurance Co. of America, will be retained.

Rating agency Standard & Poor's Corp. placed the ratings of CGU's U.S. property/casualty operation on CreditWatch with developing implications. S&P said that the final rating would depend on the stand-alone characteristics of the U.S. group and the rating of the acquiring company.

Some analysts have questioned the timing of the planned sale of the U.S. business.

Chris Hitchings, an insurance analyst at Commerzbank in London, said: "Two years ago, you would have got a phenomenal price for non-life businesses. Today, though, even good businesses you can't give away."

According to a Commerzbank report on CGU's plans, "The problem is that, while the CGU (U.S. P/C) business is undoubtedly now in better shape than it was two years ago, the (mergers and acquisitions) market in U.S. non-life business has moved in the opposite direction."

The bank said that CGU's asbestos and environmental exposures in the United States could also prove a problem in the sale. "Although CGU has now provided (for its asbestos and environmental exposures) to competitor standards and the whole issue is less of a worry than it was two to three years ago, CGU may still need to reserve guarantee to get the right price. To us, that would look like having all of the downside and none of the upside," the Commerzbank report said.

A report by investment bank Salomon Smith Barney also said that the timing might not be ideal. "We believe that CGU has been looking

at the possibility of divestment of its U.S. property/casualty underwriting operations for some time but has been concerned about downsizing the group," the SSB report said.

"The newfound willingness to divest the U.S. operations should, undoubtedly, in our view, create shareholder value," the report said. "However, management has indicated that it would seek a clean sale of these operations, thereby offering no indemnities on long-tail liabilities. This would not come cheaply, and a significant premium to book would be unlikely, especially given the current highly depressed prices of U.S. property/casualty stocks. In truth, CGU should have prepared its U.S. businesses for sale a year or more ago, and we do not see why a merger with Norwich Union—or any other company—was a necessary precursor to a sale."

CGU and Norwich Union did not reveal whether they had any potential buyers lined up for the U.S. operation.

Some observers have suggested that there might be few potential buyers because of the business mix of the property/casualty operation. CGU's U.S. unit underwrites both personal and commercial lines. Several of the United States' largest multiline insurers, including The St. Paul Cos. Inc. and CNA Financial Corp., have recently sold off personal lines businesses to concentrate on commercial lines.

Expected consolidation in the U.S. market, though, might make CGU's book an attractive buy, one analyst said.

In the United Kingdom, the merger of CGU and Norwich Union will create the largest multiline company and second-largest life insurance company, behind London-based Prudential P.L.C.

Both Messrs. Scott and Harvey said they believed that the way to become a true international force was to have a powerful base in the company's home market.

A spokesman for the Assn. of Risk Managers, said, "We welcome the fact that the U.K. will have a major insurer with a global reach which has the size and the position to provide a global service. We wish it well and hope that the two are able to merge successfully and offer a full service to our members."

Questioned about diminishing choice in the U.K. marketplace, the AIRMIC spokesman said, "It does potentially mean less choice. AIRMIC's position, which we have stated in the past, is that we do have some concerns about dimin-



PHOTO: AFP

CGU P.L.C. chief executive Bob Scott (left) and Norwich Union chief executive Richard Harvey are all smiles as the merger is announced.

ishing choice in the marketplace, but we are also aware that companies need to grow."

After the merger, U.K. life business is expected to account for 37% of the group's premiums; U.K. non-life business, 21%; Continental European life business, 24%; international non-life business, 15%; and international life business, 3%.

Pehr Gyllenhammar, who is currently chairman of Norwich Union and will become chairman of the new group, said, "You should see this as creating a strong base as a stepping stone to participation in the international consolidation. We intend to be leaders in the game."

CGNU will use the brand name that is strongest in each market in which it operates.

This will mean the disappearance from the United Kingdom of the CGU brand—born of the 1998 merger of General Accident P.L.C. and Commercial Union P.L.C. (BI, March 2, 1998)—except for the CGU marine syndicate at Lloyd's.

Mr. Hitchings said he believed that this move made sense, because the CGU brand had never really become well established in the United Kingdom.

In the United States, news of the planned sale of the U.S. unit was met with equanimity.

Lance Ewing, director of insurance and loss prevention for GES Exposition Services in Las Vegas, likened the CGU-Norwich Union merger to the recent consolidation of the Factory Mutual companies to form FM Global here in the United States.

Mr. Ewing said that he expects "consolidation in work comp as well as in property/casualty is going to continue on a global level."

However, "if the level of services begins to drop off or premiums skyrocket, I'm sure risk managers will find alternative markets or go back to their brokers and demand it," he said.

And if that happens, there will be plenty of alternative capacity available, according to Jerry Sullivan, chairman of The Sullivan Group, a Los Angeles-based insurance broker.

"It's another merger. So?" he quipped. "I don't think this is going to be any better or worse than any other. We've got more capacity out there than Carter's got pills."

The company will have a significant presence in Europe. CGU has a series of strong overseas businesses. In France, the company is in the process of forging a bancassurance agreement with Paris-based Societe Generale. Excluding its health business, CGU recorded premium volume in France of \$657 million (\$1.06 billion) in 1999, up 4.5% from the previous year. This made France the company's third-largest market after the United Kingdom and the United States.

Mr. Harvey described the merger as a "great platform for capitalizing on growth opportunities." He said that, based on CGU's 1999 results and Norwich Union's unaudited 1999 results, the merged company would have a top-three position in the market for long-term savings products—such as life insurance, savings plans, investment plans and pensions—in the United Kingdom, Poland, the Netherlands and Ireland and a top-10 position in long-term savings in France.

The company stressed that it wanted to capitalize on what it saw as great opportunities for

growth in the long-term savings market.

Under the terms of the stock-swap deal, CGU shareholders would remain entitled to their shares in CGU, which will be renamed CGNU. Norwich Union shareholders would receive 48 new CGNU shares for every 100 of their Norwich Union shares.

The U.K. stock market reacted coolly to the deal. When the deal was announced, individual shares in CGU dropped 22 pence (35 cents) to 774.50 pence (\$12.40), giving the company a value of \$10.2 billion (\$16.34 billion).

Individual shares in Norwich Union fell 39.25 pence (63 cents) to 396.25 pence (\$6.35), giving the company a value of \$7.7 billion (\$12.33 billion). The fall in the share prices of the two companies prompted speculation that an overseas bidder might make a bid for one or both of the companies.

Mr. Harvey rebutted speculation that there might be a hostile bid. "We believe this is an immensely positive deal," he said, "giving excellent shareholder value to both parties. We believe this is the best transaction going."

Nevertheless, Roman Cizdyn, an analyst at Merrill Lynch in London, said he believes there is a 30% to 40% chance that a European insurer would step in to make a bid for Norwich Union.

Although most analysts said they would not categorically rule out the chance of a hostile bid, many thought it improbable. "I think it is possible, but, on balance, unlikely. I certainly wouldn't want to put a bet on it," Mr. Hitchings said.

Meanwhile, mutual life and pensions group Royal London has announced it will acquire United Assurance Group for \$15 billion (\$24.18 billion). The two companies said the deal would create a "leading force" in door-to-door insurance sales in the United Kingdom, with combined premium volume of about \$1 billion (\$1.62 billion).

The deal is the biggest-ever takeover of a U.K.-listed company by a mutual. United sells its policies via Churchill Insurance, while Royal London distributes its products via Norwich Union.

Hubert Reid, chairman of Royal London, said, "This acquisition will enhance our position in the home-service sector, allowing us to benefit from substantial economies of scale."

Senior Editor Joanne Wojcik Kochanec contributed to this report.

Blues

Continued from page 3
tough situation for the physician and for the health plan," he said.

In the wake of soaring prescription drug costs, Blues plans are taking steps to better control costs, including implementing copayment schedules with greater enrollee cost sharing for drugs not on formularies and for brand name drugs.

Patients, he said, should continue to have choices, but there needs to be more patient accountability for those choices, he said.

Rising prescription drug costs, though, are not the only reason health care plan costs are soaring. Blues plans, for example, are under pressure from providers, especially hospitals, to boost reimbursement rates, Mr. Serota said.

One possible approach to controlling costs—employers directly contracting with providers and eliminating insurers, such as Blues plans—is unlikely to be adopted by many companies, Mr. Serota said.

While direct contracting may sound easy in theory, in practice it poses many problems for employers.

First, direct contracting could expose employers to liability for mistakes made by providers they selected, and "employers don't want that kind of liability," he said.

At the same time, direct contracting is extremely complicated, and few employers have the expertise to do it successfully, he said.

"It is a very complicated set of relationships and risks that have to be managed," he said.

Indeed, some providers learned that the hard way several years ago, when they set up their own health

plans and attempted to negotiate directly with employers. Most of those provider plans later "went belly up," he said.

Meanwhile, Blues plans last year enjoyed—in terms of enrollment

With regard to the patient protection bills, 'there will be a compromise of some form or fashion,' says Scott Serota.

growth—one of their best years ever. In 1999, Blues plans gained 3.5 million enrollees, which is the largest single-year enrollment gain since 1972, the earliest year for which enrollment records are readily avail-

able.

That brought total enrollment in the 49 plans to about 75 million, the highest number since 1987.

Mr. Serota attributes at least some of that enrollment growth to the large provider networks that Blues plans have established.

"The cornerstone of the Blue Cross & Blue Shield system is large networks," Mr. Serota said, noting that enrollees want access to doctors and hospitals they have already been using.

Preferred provider organizations, the fastest-growing Blues plan type, had an enrollment gain last year of 16%, bringing total enrollment in Blues PPOs to 29.8 million. That compares to enrollment of 15.7 million in Blues HMOs and 7.2 million in Blues point-of-service plans. In all, about 70% of Blues' plan membership now are in managed care.

Managed care plans are popular among enrollees, with the least restrictive type of managed care, PPOs, the most popular, Mr. Serota said.

Turning to legislative issues, Mr. Serota said he believes it is likely that Congress will pass patient protection legislation during this session. "I think there will be a compromise of some form or fashion. There is enough pressure building around the country that something is going to happen."

Congressional conferees are expected to resume meetings this week to try to resolve differences in bills passed by the House and Senate.

The chief difference is that the House bill would expose employers and health plans to damage awards allowed under state law for coverage disputes. The Senate bill lacks a comparable provision. **B**

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REQUEST FOR PROPOSALS

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Topeka, Kansas 66612-1251
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Business Insurance

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California OKs cross-border HMO

LOS ANGELES—The California Department of Corporations last week licensed a Mexican health maintenance organization to contract with California employers to provide care to employees who reside in Mexico.

Sistemas Medicos Nacionales S.A. de C.V., with offices in Tijuana, Mexico, and San Diego, is the first cross-border HMO to receive a license from the state, according to a spokeswoman for the California department. Terms of the license are very narrow, she said. The HMO can provide health care to only Mexican nationals working in the United States, and the care must be provided in Mexico.

Many employers operating along California's border with Mexico have said they need health plans that can provide inexpensive, yet quality care for Mexican employees (BI, Sept. 30, 1996). Some of these employees live in Mexico and cross the border to work in California. Others reside in California, but regularly travel south for goods and services.

HMOs in California are regulated by the Department of Corporations under the Knox-Keene Act, which did not apply to foreign health plans. For years, several Mexican health plans operated in California without a license, but legislation passed in 1999 made licensing a requirement. Other Mexican HMOs are expected to follow Sistemas Medicos and obtain licenses, the department spokeswoman said.

High court upholds denial of new trial

WASHINGTON—Plaintiffs who win lawsuits in U.S. district courts but who subsequently have their awards thrown out on appeal because of faulty expert testimony aren't automatically entitled to a new trial to prove their case with alternative evidence, the Supreme Court unanimously ruled in a product liability case last week.

The case, *Weisgram et al. vs. Marley Co. et al.* began when the son of North Dakota woman who died of carbon

monoxide poisoning during a fire sued the manufacturer of a heater used in the woman's home, alleging that a defect in the heater caused his mother's death. Chad Weisgram relied on the testimony of three expert witnesses to back his claim, despite objections from Marley Co., which manufactured the heater, that the experts' testimony did not meet standards for the admissibility of such testimony, as established by the Supreme Court in *Daubert vs. Merrell Dow Pharmaceuticals Inc.*

A U.S. District Court jury awarded Mr. Weisgram \$500,000, but the 8th U.S. Circuit Court of Appeals reversed the lower court early last year, holding that the testimony—which was the sole evidence supporting the product liability allegation—was speculative and not proved to be scientifically sound.

The appeals court noted that it had the power to remand the case back to the lower court for a new trial without the rejected expert testimony, but said that it didn't have to do so.

Mr. Weisgram appealed to the Supreme Court, arguing that he could have presented new evidence in a new trial. The high court, however, upheld the 8th Circuit's decision not to order a new trial.

PCs

Continued from page 3

He cited Internet-based financial planning applications and health care information sites as valuable tools for all employees.

"To open up this type of avenue to their employees by subsidizing putting these PCs and Web access into the home is just wonderful," Mr. McCormick said.

Nancy Coolley, eGlobal Communication Leader at Lincolnshire, Ill.-based Hewitt Associates, agrees that employers need to address the lack of computer access of some employees.

"One of the big stoppers right now with organizations in benefits and compensation is that they keep stumbling over the fact that not everyone has access," she said.

Ford's spokesman said that the company currently has a well-used intranet Web site, HR Online, which provides information on company benefits and programs. For example, it gives employees the ability to file health plan elections and federal income tax forms and

to change withholding tax forms.

"We really wanted it to be totally online, but it's not fair to hourly workers and some people in the plant if they don't have regular access to a computer. This way, it will be something they can do at their leisure at home. It's great for the medical stuff because we can put more information online and they can make a more informed decision, plus we can prompt them to go places," the spokesman said.

For example, he said, Ford offers an online "profiling" system for providing workers with information about area hospitals and urgent care centers in five U.S. cities.

A spokeswoman for Atlanta-based Delta Air Lines agreed that the computer offer will make communication between the company and its employees more effective.

"Most of our employees could be called an absentee workforce—those who don't check in everyday like our pilots and our flight attendants. This is a great opportunity for them to get linked with the company on a daily basis," she said.

"Those employees who may have shied away or who just haven't tak-

Since the Daubert decision, "parties relying on expert evidence have had notice of the exacting standards of reliability such evidence must meet. It is implausible to suggest, post-Daubert, that parties will initially present less than their best expert evidence in the expectation of a second chance should their first try fail," Associate Justice Ruth Bader Ginsburg wrote for the unanimous court.

Canadian tobacco suit dismissed

VANCOUVER, British Columbia—A Canadian trial court has dismissed the first lawsuit brought by a provincial government seeking damages from the tobacco industry.

The British Columbia Supreme Court ruled that the law upon which the suit was based is unconstitutional. It held that the province overreached its constitutional power by enacting the Tobacco Damages and Health Care Cost Recovery Act, which

permits the recovery of retroactive damages from an international group of tobacco companies and their affiliates, some of which may have no connection with British Columbia.

The suit had sought unspecified damages to pay for the cost of treating smoking-related illnesses under the British Columbia universal health care system.

Dan Webster, a partner at Bull, Housser & Tupper in Vancouver who represented the province, said the provincial government was considering appealing the decision. Regardless of whether an appeal was successful, he said, the legislation could easily be amended to incorporate the judge's ruling.

The British Columbia law was based on a similar law enacted in Florida.

Big 'I' weighs in on reform

ALEXANDRIA, Va.—The Independent Insurance Agents of America Inc. added its voice to the commercial lines reform debate.

In a policy statement earlier this month, the IIAA said the competitive market is the most efficient and effective regulator of commercial lines rates, provided that state regulators retain the ability to intervene under certain circumstances.

According to the Alexandria, Va.-based IIAA, state regulators should be able to intervene if a market or line of insurance is non-competitive or when a rate is excessive, inadequate, unfairly discriminatory or unreasonably low, resulting in diminished competition or a monopoly.

The IIAA also said that forms should be subject to a greater level of state regulatory review and oversight than rates, because of the potential harm that can result to policyholders if forms are confusing, misleading or provide inadequate coverage.

"IIAA strongly supports state regulation. We believe thoughtful and appropriate commercial lines modernization can help ensure companies are responsive in this fast-evolving marketplace," said Wesley Bissett, IIAA vp-state government affairs in a statement.

"State authority is preserved by laying out specific stan-



dards where intervention is necessary, and, more importantly, in the best interest of protecting consumers," he said.

Bond would cover L.A. liability

LOS ANGELES—Mayor Richard Riordan has proposed using the capital markets to finance liability stemming from a police scandal that could cost the city of Los Angeles several hundred million dollars.



A city police officer has told investigators that officers in the Rampart Division have engaged in, among other things, improper shootings as well as the beating and framing of suspects. About 100 cases tainted by the allegations are being reviewed, and dozens of convictions already have been overturned.

According to the city manager's office, the scandal so far could cost Los Angeles \$125 million, but the number of cases is expected to grow, and potential liability could ultimately reach several hundred million dollars.

To pay those costs, the mayor said he wants to issue a \$90 million bond backed by \$300 million the city will receive over 25 years from a settlement with tobacco companies. Before the mayor's plan can move forward, however, it must obtain City Council approval.

Bridgefield enters Mississippi

BATON ROUGE, La.—Bridgefield Casualty Insurance Co., as part of an effort to expand its operations in the Southeast, is now writing workers compensation insurance in Mississippi.

The insurer already writes the coverage for contractors, manufacturers and public entities in Louisiana and Florida. Bridgefield Casualty is a unit of Lakeland, Fla.-based Summit Holding Southeast Inc., which is part of Liberty Mutual Insurance Co.

Summit Consulting Inc. of Louisiana, a Baton Rouge, La.-based member of the Summit organization, is the managing general agent for Bridgefield Casualty operations in Louisiana and Mississippi.

The insurer also is applying for approval to write workers comp insurance in Kentucky.

Information in brief

Due to claims from European windstorms and other property losses, **Terra Nova (Bermuda) Holdings Ltd.** posted a \$35 million net loss for year-end 1999. Terra Nova's results also reflect its withdrawal from several lines of business in 1999, including, marine hull, energy and personal auto business. Losses from the exited businesses and associated reinsurance costs totaled \$122 million for the year. . . **Heidi G. Miller** is resigning as chief financial officer of Citigroup, effective March 15, to join Norwalk, Conn.-based Priceline.com as its senior executive vp, strategic planning and administration, and chief financial officer. Citigroup said it will name a successor to Ms. Miller "in due course." . . **Policy Management Systems Corp.** in Columbia, S.C., plans to change its name to Mynd. The company will ask shareholders at its annual meeting in May to approve the name, which it said reflects its broadened computer consulting capabilities. **BI**

en the opportunity to have a computer at home, will now have that opportunity at a very reasonable price. When they're working on the computer at home, because they can access the company's internal Web site, they can access information that they may not have time to

Putting benefits data online is great because workers 'can make a more informed decision,' says a Ford spokesman.

look at when they are at work; for example, a daily company newsletter and access to their 401k plans," she said.

The spokeswoman also noted, "We have in the plans the ability for employees to do online annual enrollment for our health and medical benefits and an employee self-service center."

Another advantage of the computer offer is that increased com-

puter literacy provides an opportunity to integrate more computer usage on the job.

At Hartsfield International Airport in Atlanta, for example, the spokeswoman said the company is experimenting with a computer system located in the "tugs" that drive the baggage from one flight to another.

"It will alert them to any gate changes, so it makes these employees more efficient in getting the bags to the right place," she said.

Ford is also expecting some additional advantages to having a computer-literate workforce.

"This can be useful even on the plant floor. As more and more people will be ordering their cars from the Internet, the ordering system is going to get very fast and there will be changes on the plant floor. If our employees can understand how they fit into that and why that is occurring, there will be a lot of cost savings involved. We look to our plant employees to come up with a lot of ideas," the spokesman said.

Watson Wyatt's Mr. McCormick advised employers to analyze whether employees are taking ad-

vantage of the access.

"They don't want to create multiple cultures within their organization—those that are wired and those that are not," he said.

Mr. McCormick also said that companies are going to have to be very careful to support communication through something more than simply Web access from the home.

"They need to consider having call-center support in place so that employees who are having difficulty interpreting information or making benefit elections through the company's Web applications have the option to get some assistance. There is a layer of help and assistance that companies are going to have to continue to provide," he said.

Even with the potential for minor glitches along the way, Mr. McCormick said he expects other companies to follow the examples set by Ford and Delta.

"The cost of hooking people up to network-based information is steadily declining and as that cost declines, it becomes more cost-effective for organizations to do that," he said. **BI**

Security

Continued from page 1
few hours," said Mark Rasch, vp at Reston, Va.-based Global Integrity, a computer security consulting firm.

Computer security problems are "a very prevalent problem in the industry today," said Jon Darbyshire, partner and national director of e-security solutions for Ernst & Young L.L.P. in Kansas City, Mo. And despite the high profile of the recent attacks, the problem often receives little publicity, he said.

About 70% to 80% of computer security breaches are never even reported outside the affected organization, said Mr. Darbyshire. Company officials, he said, often worry that news of the break-ins could adversely affect stock prices and market capitalization, he explained.

For companies that conduct business solely on the Internet, denial-of-service attacks, in particular, can cause serious damage, observers say.

"The convenience factor is important in many cases," said Douglas Cale, the Detroit-based partner responsible for e-business security at Deloitte & Touche L.L.P. "If you can't deliver, the loyalty can vanish very quickly."

Furthermore, "whenever you have this type of attack, the direct loss of revenues isn't as significant as the time and resources that you have to divert from your core business to manage the crisis and put the damage control in place," said Peggy Patterson, managing director of Aon Growthwork, a Denver-based consulting division of Aon Corp. This is in addition to the public relations cost involved and the effort spent trying to prevent a recurrence, she said.

Although the popular image is one of outside hackers trying get into a system, experts estimate that half to three-quarters of all computer security problems stem from insiders. These can be disgruntled current or former employees, independent con-

tractors or workers at associated firms, or acquaintances of these insiders.

"Our perception is it's all unnamed, unknown computer buffs who are doing these kinds of things," but many of the problems start with insiders, said Emily Freeman, San Francisco-based practice leader for e-business risk solutions at Marsh Inc. And these insiders, who can cause billions of dollars in damage, "are probably the most difficult to protect against," said Greg

"There is a critical shortage of trained, educated security practitioners able to understand the security implications of architecture and running a secure environment," said Mr. Kurtz.

In addition, as e-commerce companies rush to market, security often is only an afterthought at best, say experts. Companies have been fighting to get online over the past three years, said Mr. Grant. "There is a sense out there that if you're not first to market, and you don't establish

avoid denial-of-service problems, said Mr. Cale. Systems should be constructed to "help to balance the loads," he said.

Companies should also investigate their systems' weaknesses, experts suggest. Mr. Nguyen said he often works with clients to see how far he and other security experts can get into clients' networks in order to evaluate their vulnerabilities.

"Typically, we break into about 90% of the systems we go after, and this is after a short two-week engagement or less," he said. "We're not doing any in-depth, very targeted penetration attacks. We just go in and take a look at what's on the surface and see what we can find."

"We use the 80-20 rule," said Mr. Darbyshire. About 80% of the vulnerabilities have already been identified by the vendor and are easily fixed, while, in the remaining 20% of cases, the problem has not been addressed.

While there may be ways to solve these remaining problems, only a "very small percentage" of companies are on top of this issue, said Mr. Darbyshire. "I think many times organizations don't have a centralized function responsible for addressing vulnerabilities," he said, adding, "that's the first thing that needs to be determined—who is responsible for those systems."

A quick and effective response program also is critical, experts say. "It's like a karate student. If a fist is coming at you, you put up your arm this way" to block it, said Winn Schwartau, executive director of Seminole, Fla.-based InterPact, a computer security organization.

An effective response program can quickly detect what is happening and introduce tactics to mitigate the damage, including shutting down compromised systems, said Mr. Kurtz. It also may include legal action against the attacker once he or she is identified.

But many companies do not have these plans in place, he said. "They simply throw their hands in the air and go from ground zero to calling the FBI," he said. "Many don't understand what needs to be done if an attack actually happens," Mr. Kurtz said.

And once a security program is in place, it should be continually monitored, which is "where most companies that cannot afford to have a large security staff fall down," said Mr. Grant.

"A company can spend a lot of money on security...but half the world never rests, and as soon as (information technology) managers or systems administrators feel that they have tweaked the latest problems, the hackers are on to the next vulnerability, looking for ways to penetrate systems, and that constant, dynamic change is something that companies need to be aware of."

Mr. Grant said the problem can be "not understanding enough about security protocols to ask very diligent questions about some of the applications they may buy for online shopping." But it can also "be as subtle as someone forgetting to change the default password when they install the latest service release of a database product," he said. Default passwords generally are easily obtainable by hackers.

Mr. Kurtz agreed about the need for vigilant monitoring. "If you put a secure system on the network and expect it to be secure two years from now, it's not going to happen," he said.

Additional vulnerabilities occur, and the system must be updated, he said. "You wouldn't drive your car for 100,000 miles without a tune-up. You have to keep sort of tuning up and maintaining the systems to keep them secure."

'If you put a secure system on the network and expect it to be secure two years from now, it's not going to happen,' says George Kurtz of Rampart Security.

Grant, director of marketing strategy and development at Atlanta-based Internet Security Systems Inc.

Such individuals have "detailed knowledge about your system, how it works, where the gaps are and how to exploit them," said Ron Nguyen, computer security manager at Ernst & Young in Kansas City, Mo.

"Basically, you can think of an organization with firewalls as hard on the outside and sort of soft and chewy at the center," said George Kurtz, chief executive officer at the Irvine, Calif.-based Rampart Security Group. "The internal security is magnitudes less secure than the perimeter networks in most cases" because of the false impression that a high wall is all that is needed.

The situation may be beginning to change, though, with the attacks of the past few weeks, Mr. Darbyshire said. "We definitely see a lot more activity coming from the outside."

In its efforts to combat the problem, the industry has been hampered by the lack of properly trained personnel, say experts.

the dominant brand on the Internet world...your likelihood of survival diminishes exponentially," said Mr. Grant. As a result, most of the budget is spent not on mitigating risk but on marketing to build the brand.

In these cases, "security is just something they tack on at the very end, and it's not really designed into any of their products or services. More than anything, it's just an afterthought," said Mr. Nguyen.

But no matter how concerned a company is about its computer security, in practical terms, there are probably no guarantees, say observers. "You could perfectly secure a system, but that would mean you'd perfectly isolate it, so it wouldn't have Web-based access," said Mr. Cale.

Systems can be made very secure through sophisticated equipment currently available, but at great cost, security experts note.

In the "purest world," total security might be attainable, but its affordability would be "off the scale," agreed Mr. Grant. "We try to raise the bar high enough by eliminating the unsophisticated attacker," he said. "If we can isolate only the most sophisticated attacker, we can dramatically reduce the chance" of a successful attack, he said.

Companies should try to minimize their risk to the extent that is cost-effective and then buy insurance to protect against any risk that cannot be minimized, said Global Integrity's Mr. Rasch.

For example, beginning with a secure system helps, experts say. "Many organizations would eliminate a lot of their security vulnerabilities if they basically configure their systems in a secure fashion before actually placing them on the network," said Mr. Kurtz.

E-commerce companies, in particular, should install systems capable of handling spikes in service to help

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Impossible task deserves respect

I'm sorry to see Linda Lamel leaving her position as executive director of the Risk & Insurance Management Society Inc. I've enjoyed working with Linda, including serving with her on the board of the Spencer Educational Foundation Inc.

Linda is enthusiastic, open to new ideas and suggestions and refreshingly candid with her opinions. There is little doubt where Linda stands on an issue, which I for one appreciate.

I can't shed any more light on why Linda has left RIMS other than what we have reported: She completed her three-year contract, RIMS did not renew it, and she and the Executive Council of RIMS say she has accomplished what she was hired to do.

Everyone is being very polite, which is all very civilized of everyone involved. Nonetheless, Linda has left RIMS, and one has to wonder why.

But rather than speculate specifically about RIMS and Linda, I would rather comment in general on association management.

I will tell you that I admire anyone who is willing to take on the challenge of managing any association.

From observing more than a dozen associations in insurance and risk management for more than 20 years, albeit from the distance of the press, it seems to me that serving as the top administrative person for an association is practically an impossible task. Whatever the person's title—

president or executive director—it's a job I wouldn't want and, indeed, could not endure.

The paid leader of an association has to be simultaneously a diplomat, a visionary, a fiscal wizard, a management guru and a strong leader, who also must make everyone else feel as though they are the ones in charge and making it all happen.

A diplomat is needed to keep the board members with different agendas remotely rowing in the same direction. A visionary is needed to anticipate the changes that

will confront not only the association but also its membership, which will dictate whether the association has a future. A fiscal wizard is needed to figure out how to run the association with limited funds—there are never enough.

A management guru is needed to keep both the typically underpaid staff and the unpaid volunteers interested and committed to the mission. And a strong leader is needed to keep the organization focused in the midst of a usually too large and an often frequently changing board of directors.

All this must be accomplished with the grace of a saint who cannot, under any circumstances, steal the thunder of the volunteer members, while at the same time maintaining the high profile of the association.

Sound impossible? I think so.

Anyone who can manage the job of being what is often treated as the "hired hand" for an association for any length of time has accomplished a great deal and has earned my admiration.

Every paid executive of any association reading this column is hereby required to photocopy it and distribute it at the next board of directors meeting. You are entitled to do so; you have earned it.

Linda, to be specific, was a great spokesperson for RIMS who raised the organization's visibility and involvement in government action.

She also was at the helm for the inauguration of the Fellow in Risk Management designation, the debut of the Quality Scorecard and the launch of online risk management education. And Linda listened to the RIMS exhibitors' needs and concerns, which any exhibitor with sore feet and a desire to make the next exhibition better truly appreciated.

Linda is now off to a new challenge, and I can't wait to see where she will be employed next. The opportunities created by financial services deregulation and technology intrigue her. I know she will find a welcome new home and challenge and I wish her all the best of success in her selection of new opportunities.

In the meantime, I wish RIMS well in finding its next executive director, just the fourth in its history.

I don't know what's harder: defining what an organization expects of an executive director and finding the right person, or doing the job once hired.

But I do know one thing: I don't want a shot at either.

Publisher and Editorial Director Kathryn J. McIntyre's commentary appears fortnightly. She can be reached at kmcintyr@crain.com.



Kathryn J. McIntyre

Delay

Continued from page 1

courts are not going to allow an insurer to deny providing coverage it's supposed to provide," said Mr. Frankel, of Anderson Kill & Olick P.C. in Philadelphia.

"There's nothing here that I wouldn't have expected," because of long-established case law that requires insurers to notify policyholders ahead of time about reductions in coverage, said reinsurance attorney David Spector.

The decision underscores "that insurance companies have to get their policy-handling procedures in order" so that policyholders receive their policies in a timely manner, said Mr. Spector, a partner with Hopkins & Sutter in Chicago.

'It's asking a lot from risk managers to go through these policies with fine-toothed combs,' says David Spector.

The untimely delivery of policies has been a source of complaints from risk managers and is often cited in discussions on how to improve insurer service (*BI*, Oct. 25, 1999).

Pondering whether many risk managers pore over every policy they purchase each year, Mr. Spector also observed that "it's asking a lot from risk managers to go through these policies with fine-toothed combs looking for where changes have been made."

Mr. Spector suggested one way that insurers could improve their policy-handling practices: Provide policy cover sheets that outline changes to coverage. "It's not that big a deal" to do, he said.

Insurer attorney Laura A. Foggan said, however, that "it does seem some facts may have been overlooked or disregarded by the trial court." Ms. Foggan, a partner with Wiley, Rein & Fielding in Washington, filed an amicus brief in the case at the appellate court level three years ago on behalf of the Insurance Environmental Litigation Assn.

Regardless of the ruling in this case concerning the reasonable expectations doctrine, insurers should be comforted by several findings by the court and the 3rd Circuit, Ms. Foggan stressed. Those include:

- The total pollution exclusion clearly bars coverage for any claim involving a pollutant—not just claims involving environmental damage.

- Unambiguous policy language supersedes the reasonable expectations doctrine.

- While sophisticated insurance buyers are protected by the reasonable expectations doctrine, courts still can determine that an unsophisticated buyer's reasonable expectation is unreasonable for sophisticated buyers.

Reliance plans to appeal Magistrate Judge Scuderi's ruling to the 3rd Circuit, where it lost the first time the case went up on appeal almost three years ago.

The case centers on VE Corp.'s one-year renewal of its general liability insurance policy with Reliance in May 1992 and whether VE reasonably expected that the policy would cover the type of product liability claim the company faced.

VE, which filed for bankruptcy several years ago, had manufac-

tured a steam-generating device designed to cure cement. The company discovered that the device, called a vaporator, emitted carbon monoxide as a by-product and shared that information with Reliance before purchasing its original general liability policy from the insurer in May 1991, according to court papers.

In 1995, Mark Moessner and his wife filed a product liability claim against VE. The lawsuit alleged that Mr. Moessner suffered permanent brain and neurological damage among other injuries at his worksite in February 1993 when he was overcome by carbon monoxide emitted by a VE vaporator. At the time of the alleged incident, VE was in the middle of its renewal policy.

VE, which had been based in Arlington, Texas, settled the claim in May 1996 by assigning the company's general liability insurance policy rights to the Moessners. The policy provided \$1 million of limits.

VE's initial policy with Reliance covered the company for product liability claims involving equipment that VE had manufactured and sold before the policy's inception.

The initial policy contained an absolute pollution exclusion. Reliance, however, conceded that the policy would have covered a product liability claim like Mr. Moessner's, because the incident did not occur on property owned or controlled by VE, according to court documents.

In the renewal policy, however, Reliance added a total pollution exclusion. Reliance argued that the exclusion barred coverage for all pollution-related bodily injury and property damage claims, regardless where those incidents occurred. Because Mr. Moessner's alleged injuries occurred during the renewal policy period and were attributable to exposure to a pollutant—carbon monoxide—the policy does not cover the claim, Reliance argued.

In a summary judgment in favor of Reliance, a U.S. District Court judge in September 1995 ruled that the total pollution exclusion clearly barred coverage of the Moessners' claim.

On appeal, though, a 3rd Circuit panel in August 1997 reversed the District Court's decision and remanded the case for trial. The panel ruled that despite VE's status as a sophisticated policyholder, the reasonable expectation doctrine still applied to it. The panel ruled that VE had presented sufficient evidence to warrant a trial court's examination of whether the company reasonably expected that its renewal policy, like its expiring policy, would cover product liability claims involving pollutants.

At trial, VE and Reliance disagreed over the type of coverage that VE could have reasonably expected.

VE argued it originally sought and obtained product liability coverage with no exclusions and did not agree to any reduction in that coverage upon renewal.

Reliance argued that while such coverage was available in the original policy, it was broader than what VE had expected at that time.

Reliance also showed that language in VE's renewal policy clearly warned that the total pollution exclusion altered coverage.

Other evidence, though, showed that Reliance did not deliver the renewal policy to VE's broker until three months of the coverage period had elapsed. The broker, MLW Services Inc. of New York,

did not deliver the policy to VE until November 1992, halfway into the policy period. An MLW official testified that she did not detect a change in coverage, because she believed that neither pollution exclusion affected product liability coverage.

Reliance typically notifies policyholders, their brokers or both either by phone or in writing when coverage changes substantially according to court papers. Reliance, however, did not alert either MLW or VE about the change in coverage before issuing the renewal policy. The coverage reduction was not significant enough to warrant such notice, a Reliance official testified in the latest litigation.

Even if Reliance did not provide VE any actual notice about the reduction in coverage, the sharply lower premiums that VE paid for its renewal policy provided the company "constructive notice" about the change in coverage, the insurer argued.

When the 3rd Circuit panel reviewed the Reliance case in 1997, it found that sophisticated policyholders require only constructive notice of coverage changes.

Magistrate Judge Scuderi rejected Reliance's arguments. He ruled that because of the product liability coverage that VE sought and obtained in its original policy, the company reasonably expected comparable coverage in its renewal

The lawsuit alleged that Mr. Moessner suffered permanent brain damage and neurological damage.

al policy.

Magistrate Judge Scuderi also ruled that VE's lower premiums for its renewal policy did not amount to constructive notice of a change in coverage. VE and MLW officials testified that they thought the reduced premiums reflected VE's drastic reduction in risk after it switched from a manufacturing to a design and consulting concern and laid off many employees.

Even if the lower premiums amounted to constructive notice, the notice would have been insufficient in this case, the judge ruled. Policyholders must receive the notice at a time when they still can negotiate their coverage, he found.

"Because VE reasonably expected that the product liability coverage embodied in the original policy would continue in the renewal policy, that coverage will control here," the judge ruled.

Ms. Foggan, the insurer attorney who represents the IELA, said one factor that the trial court judge may have missed or ignored was that sophisticated buyers in general in 1992 knew that the insurance market was including total pollution exclusions in policies to bar coverage for any type of claim involving a pollutant. That knowledge amounted to constructive notice, Ms. Foggan said.

She also noted that insurers often renew policies long before policy negotiations have been completed. In those cases, seemingly tardy policy issuance does not mean that policyholders have been stuck unexpectedly with coverage terms that they had no chance to negotiate, Ms. Foggan said.

Reliance Insurance Co. vs. VE Corp., U.S. District Court for the Eastern District of Pennsylvania Feb. 10; No. 95-538.

Fiduciary

Continued from page 1

Ms. Herdrich claimed that her treatment had been delayed because doctors in the HMO participated in a program that provided financial incentives for holding costs down, which she charged created a breach of ERISA fiduciary duty because the doctors themselves owned the HMO.

ERISA holds that, among other things, a plan "fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries." Ms. Herdrich's complaint held that the physicians in the HMO acted as fiduciaries under ERISA because they made discretionary benefits decisions and had breached this duty by acting in their own interest.

Ms. Herdrich won the state malpractice case, but a U.S. District Court denied the ERISA claim. The 7th Circuit majority reversed the lower court on the ERISA issue, leading to the Supreme Court's review.

The attorney representing the HMO is seeking to block any extension of ERISA. Carter Phillips, a partner in the Washington office of the Chicago-based law firm Sidley & Austin, argued before the justices that Ms. Herdrich and other claimants could already pursue a state remedy and that creating an additional ERISA remedy could only diminish state remedies.

Mr. Phillips also argued that the 7th Circuit ruling, if upheld, could adversely impact all managed care plans, as he said that Health Alliance was not "significantly different" from other managed care plans.

James A. Feldman, assistant to the U.S. solicitor general, joined Mr. Phillips in arguing for Dr. Pegram

and the HMO. A doctor doesn't become an ERISA fiduciary simply by entering into a doctor/patient relationship, which was all that happened in the Herdrich case, Mr. Feldman said.

Ms. Herdrich's attorney, however, said that the HMO in question was unique because it was owned and operated by its doctors, who in turn made decisions about bonuses. "We don't have, in this case, a plain vanilla HMO," said James P. Ginzkey of the Bloomington, Ill., law firm of Hayes, Hammer, Miles, Cox & Ginzkey.

He disputed Mr. Phillips' contention that the case would have bearing on all managed care plans. In most HMOs, he said, the doctors, owners and employees who make claims decisions are not the same people. "Here, all three groups are one," he said.

When questioned by Associate Justice Ruth Bader Ginsburg as to how many HMOs fall into the same category as Health Alliance, Mr. Ginzkey said he knew of no others.

Associate Justice David H. Souter asked Mr. Ginzkey whether he wanted the high court to say that there is a breach of ERISA fiduciary relationship when doctors make decisions subject to ERISA and receive a year-end bonus.

"I am not asking this court to outlaw physician incentives," the attorney responded.

Associate Justice Sandra Day O'Connor noted that Congress had passed legislation—the HMO Act of 1973—that allows managed care cost controls, and said that doctors already have an ethical responsibility to avoid what could otherwise be financial incentives to cut back costs. She questioned why the courts should go on that "slippery slope" when Congress had already acted.

Mr. Ginzkey also argued that Ms. Herdrich would have an ERISA fiduciary claim even if she had suffered no injury because of the financial incentive arrangement. This brought a response from Associate Justice Stephen Breyer that both "your client's appendix" and the medical malpractice issue were "irrelevant." Justice Breyer said that what Mr. Ginzkey was seeking was a decision determining when incentives were so extreme that they constituted a fiduciary breach. Mr. Ginzkey agreed that was basically what he sought.

Employer and insurer observers liked what they heard from the bench.

"I was very encouraged by the court's reaction to Pegram's arguments. The court recognized that incentives are present in both physician-owned HMOs and other types of HMOs. At the heart of HMOs is cost-containment," said Susan Mahallati Kysela, labor and employment counsel for the National Chamber Litigation Center Inc. in Washington. The center handles litigation for the U.S. Chamber of Commerce.

The Health Insurance Assn. of America has "been concerned" about the potential impact of the *Herdrich* case for some time, said Jeffrey L. Gabardi, legislative director and counsel for the HIAA.

"Despite Mr. Ginzkey's arguments yesterday, I think the ramifications of the 7th Circuit decision will implicate all health plans, and the ability to control costs is at the heart of what HMOs do," he said.

"I think we're fairly optimistic that the decision will be reversed," said Mr. Gabardi, noting the questions asked by Justices O'Connor, Breyer and Souter, in particular, indicated they were "disinclined to go with what the 7th Circuit had to say." **B**

Policies

Continued from page 3

"Larger organizations have felt that they have had the internal resources to pursue the enforcement, if needed, and they are often very confident with their own internal organization's structure to withstand infringement lawsuits presented against them," he said.

Richard S. Betterley, president of Betterley Risk Consultants Inc. in Sterling, Mass., agreed.

Intellectual property insurance "is a middle-market product," he said. In talking with larger companies, they say, "It's part of our day-to-day business to protect intellectual property." They don't see the benefit of buying insurance," Mr. Betterley said.

Judith Pearson, executive vp of Aon Financial Services Group in Denver, who developed the broker's insurance product, said that Aon is capitalizing on an opportunity it sees in the changing environment.

"We're moving from an asset-based economy to more of a knowledge-based economy," which is increasing the value of a corporation's intellectual property assets, she said. Citing statistics from Aon's proprietary database, she noted that, since 1992, there have been 31 intellectual property cases that each resulted in more than \$100 million in damages and defense costs. Intellectual property losses in 1998 totaled \$3.8 billion, compared to \$5 million in 1982, she said.

"Definitely a lot of education" needs to take place," Ms. Pearson noted. "Companies that are focused on intellectual property tend to have a really good (research and development) department and a really good law department, but they still struggle with infringement issues," she said.

In addition to the insurance product, Aon also is offering "risk qualification and quantification" services to help clients identify their intellectual property risks and to manage, miti-

gate and transfer those exposures.

Aon's policy, which is a proprietary form, is offered worldwide. The blanket coverage has limits of \$200 million above a minimum \$5 million per-claim self-insured retention, Ms. Pearson said. Underwriters participating in the program include: Chubb Corp.; Gulf Insurance Co.; Kemper Insurance Cos.; Liberty Mutual Insurance Co.; RLI Insurance Co.; Zurich American Insurance Co.; ACE Ltd; Mag Global Financial Products, an MGA writing on behalf of Clarendon National Insurance Co.; and underwriters at Lloyd's of London.

Ms. Pearson said that she is getting "a lot of interest" in the new policy but has yet to bind any coverage.

Dominic Davison-Jenkins, senior vp and national intellectual property practice leader for FINPRO, Marsh Inc.'s financial and professional services unit in New York, said that Marsh has bound some of its catastrophic intellectual property policies.

The Marsh policy has primary limits of between \$75 million and \$100 million in coverage, underwritten by one insurer, in excess of a \$10 million to \$50 million per-claim self-insured retention, he said.

Limits are available up to \$300 million with an additional insurer, he said, declining to name the companies.

"Capacity is not the issue," Mr. Davison-Jenkins said. "It's more the need to understand and to respond to the needs of clients. Intellectual property issues are very specific to firms."

For Marsh's product, "every wording is different," he said. "There is an enormous amount of work that is put into this to get it into the condition that is the best possible solution for the buyer."

Marsh expects also to begin offering in a few weeks a mass-market intellectual property program to companies with between \$25 million and \$1 billion in annual revenues, Mr. Davison-Jenkins said. The product covers defense costs and damages associated

with infringement and misappropriation liability. It does not include coverage for enforcement costs, though. The primary limit on the program is \$10 million, but it can be built up to \$100 million in layers, he said.

Risk managers have had differing reactions to the new products.

"We haven't even looked at it yet," said Paul Buckley, corporate risk manager for Lucent Technologies Inc. in Warren, N.J. Patent infringement is Lucent's biggest exposure, he noted.

"We are aware of the products that are out there, but we took a look at our exposure, and we don't see today a need to insure that," he said.

Henry Good, director of insurance for Rohm & Haas Co. in Philadelphia, said that the chemical manufacturer has "substantial" intellectual property exposures. "We live on our research and technology," he said. "It's do-or-die for our company, and we don't look to insure that."

The U.S. Olympic Committee in Colorado Springs, Colo., has a "fair" amount of exposure to trademark enforcement and copyright infringement, but the committee has always self-funded these risks, said David Mair, risk manager. "I have not yet found a policy that insures our risk in the fashion that I would buy."

But Roberta Martoza, director of risk management for Amazon.com in Seattle, said she is interested in looking at the insurance policies.

"Intellectual property is a big issue for us. It's definitely something we'll be looking at," she said. The five-year-old company has been self-insuring its intellectual property risks, which include copyright, brand and patent infringement exposures. Ms. Martoza said that her concern with purchasing the policies that were available in the past had been with defense provisions and whether the insurer would actively take part in defending the company. Control of Amazon.com's defense by insurers "is a big negative, especially when we're trying to control our brand name," she said. **B**

Updates

Frontier management shake-up

ROCK HILL, N.Y.—Frontier Insurance Group Inc. has announced a management shake-up and a round of layoffs as it reports slumping year-end 1999 financial results.

The insurer has appointed Jerry E. Goldress, a turnaround specialist, as non-executive chairman of the board. Mr. Goldress is chairman of Grisanti, Galef & Goldress Inc. of Incline Village, Nev.

Harry W. Rhulen, who was Frontier's chairman, will remain president and chief executive officer of the Rock Hill, N.Y.-based insurer.

Meanwhile, Ted Rupley, executive vp of Frontier and president of underwriting unit Frontier Insurance Co., has resigned "to pursue other business opportunities," the company announced.

Mark Mishler, formerly Frontier's chief financial officer, will replace Mr. Rupley, while Executive Vp Patrick W. Kenny will take on the added role of CFO. James W. Satterfield, formerly executive vp and chief operating officer, has been named executive vp of e-commerce.

Frontier separately announced a 71-person staff reduction, mostly at its Rock Hill home office. The insurer will report a \$1.3 million charge arising from the staff cuts in its first-quarter 2000 results.

The moves come as Frontier struggles with deteriorating bottom-line results. Rising losses and expenses pushed Frontier's net loss for the year to \$187.8 million from a \$50 million loss posted at year-end 1998.

Revenues, however, increased strongly in 1999. Frontier reported a 22.9% gain in gross written premiums to \$1.02 billion compared with 1998. Net written premiums likewise rose 28% to \$674.8 million last year from 1998 levels.

The insurer attributed the gains to increased business production in its core lines, as well as the 1998 cancellation of an excess-of-loss reinsurance program with Zurich Reinsurance (North America) Inc.

Miller EPL award reversed

MADISON, Wis.—A former manager at Miller Brewing Co. will appeal the reversal of a multimillion-dollar award in a complex case that stemmed from a demotion as well as a sexual harassment charge that led to his termination.

Jerold Mackenzie was fired in 1993 after a co-worker accused him of sexual harassment. The co-worker had complained that Mr. Mackenzie recounted a racy episode from the situation comedy "Seinfeld" in her presence.

After his termination, he filed suit against Miller, the co-worker and a supervisor. Mr. Mackenzie charged that Miller downgraded his position in 1992 despite assurances that he would be unaffected by a company reorganization. He also claimed that his supervisor blocked a promotion in 1992 and charged the co-worker with "fraudulently misrepresenting" feeling harassed by the discussion of the "Seinfeld" television episode. Mr. Mackenzie further charged Miller with wrongful termination in response to the female co-worker's sexual harassment complaint.

The trial court dismissed the wrongful termination claim, but a jury returned verdicts on the other charges. The court awarded total damages of \$24.5 million against Miller, \$200,000 against the supervisor and set aside an award against Mr. Mackenzie's co-worker.

"He had three suits wrapped into one," said Mary Pat Ninneman, a defense attorney with Quarles & Brady in Milwaukee who represented Miller.

Last week, the Wisconsin Court of Appeals for the First District overturned the awards, ruling that Miller had not deceived Mr. Mackenzie regarding his status and held that the co-worker and supervisor were not liable for damages.

Bridgit Boyle of Boyle, Boyle & Smith in Milwaukee, who represents Mr. Mackenzie, said the case will be appealed to the Wisconsin Supreme Court.

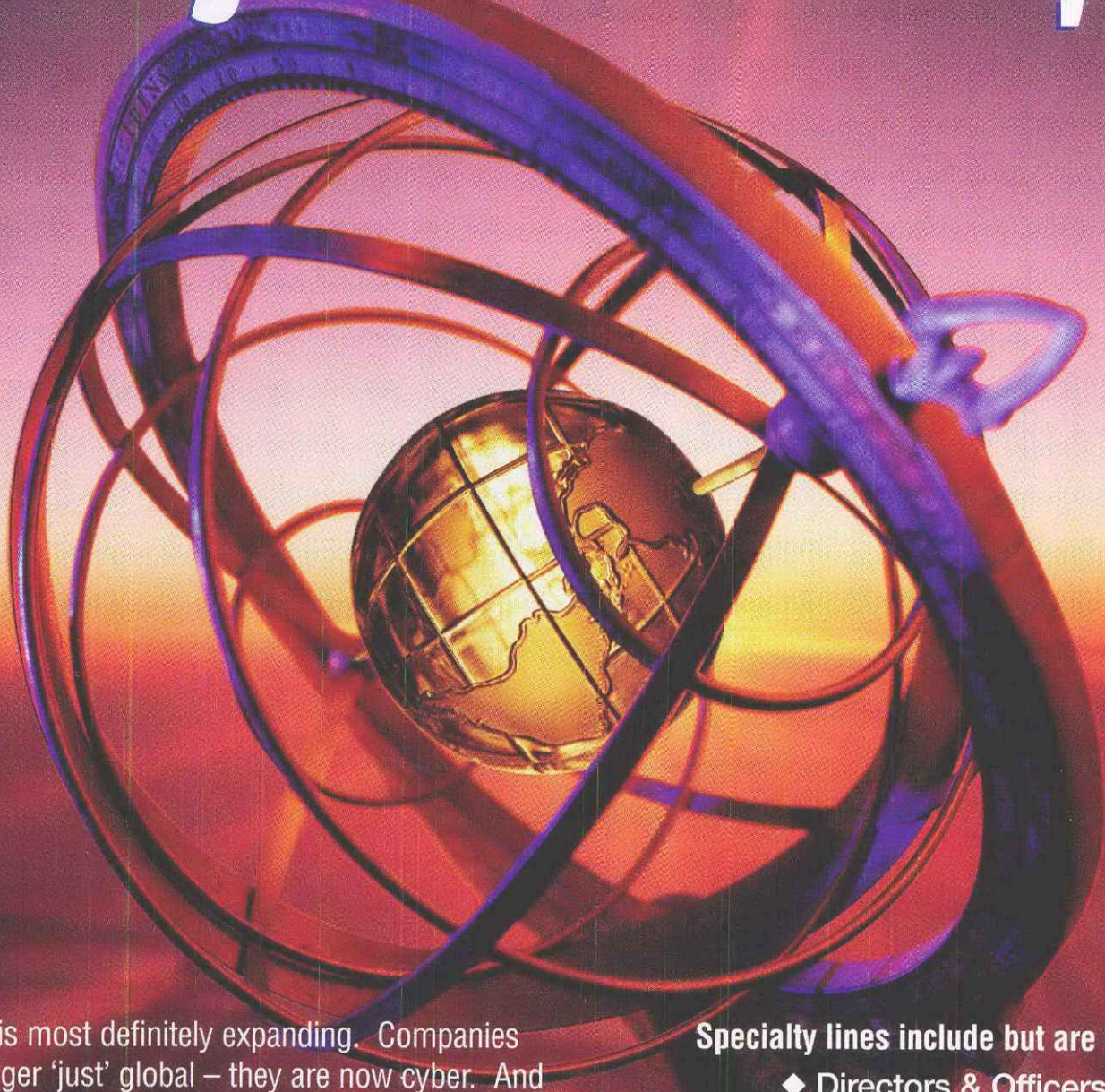
Briefly noted

A Colorado state Senate committee is considering legislation that would prohibit managed care plans from rewarding physicians for limiting referrals to specialists. This issue is at the heart of a lawsuit currently being reviewed by the U.S. Supreme Court (see story, page 1). In the case, a woman sued her health maintenance organization, claiming the plan's bonus system rewarded her doctor for limiting referrals for tests and treatments at out-of-network hospitals. . . . Directors of the Washington-based **Reinsurance Assn. of America** voted earlier this month to expand affiliate membership status to life and health reinsurers, offshore reinsurers and domestic reinsurance companies that otherwise would not qualify for RAA membership because of size. . . . American Financial Services Inc., a 2-year-old **Internet broker**, has acquired insurance wholesaler Morstan General Agency Inc. American Financial runs BrokernetUSA, a business-to-business Internet insurance broker. American Financial Services said that the new acquisition will add to its existing business. . . . The temporary receiver of **Harvard Pilgrim Health Care** is seeking to retain the name of the seized health maintenance organization after Harvard University recently "asserted rights to the use of its name by Harvard Pilgrim or any successor." In seeking a declaration by the Massachusetts Supreme Judicial Court, Insurance Commissioner Linda Ruthardt and state Attorney General Thomas F. Reilly said Harvard Pilgrim has used the name for more than 30 years without objection by the university and that an inability to continue using the name would decrease the likelihood of the HMO's rehabilitation.

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

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