

Business Insurance

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

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New employer group seeking broad Y2K liability reforms

WASHINGTON—A broad-based employer group wants Congress to enact an expansive array of liability reforms to encourage businesses to deal with the year 2000 computer problem quickly and to avoid a flood of Y2K-related litigation.

The Washington-based Y2K Industry Working Group, which includes the American Insurance Assn., the National Assn. of Manufacturers and the U.S. Chamber of Commerce, offered a "consensus package" of Y2K-related legal changes last week. The
See Updates on next page

Long-awaited rules on COBRA are issued

By JERRY GEISEL

WASHINGTON—Nearly 13 years after Congress passed legislation requiring employers to extend health care coverage to former employees and their dependents, federal regulators finally are providing answers to the myriad questions employers and others have raised about COBRA.

Long-awaited Internal Revenue Service regulations published last week provide, in many cases, the guidance that employers have sought ever since the Consolidated Omnibus Budget Reconciliation Act was passed in April 1986.

Benefits experts say the IRS, for the most part, has done a good job of clarifying gray areas of the law.

"I think companies will find this to be very useful guidance," said Henry Saveth,



an attorney with William M. Mercer Inc. in New York.

"This clarifies a lot of issues that had been outstanding," said Michael Thompson, a managing director at PricewaterhouseCoopers in New York.

The range of issues dealt with in the IRS regulations is sweeping and includes:

- How long an employer must extend COBRA when an individual experiences more than one event that would qualify him or her for COBRA coverage.

- Whether an employer must give an employee the opportunity to decline non-core health care benefits, such as dental and vision care, from a COBRA benefits package.

- Whether COBRA coverage can be denied to individuals who already have other group coverage, such as through a spouse or

See COBRA on page 4

AXA to buy GRE

U.S. units to be sold to Liberty Mutual

By EDWIN UNSWORTH

LONDON—AXA Group's successful bid to acquire Guardian Royal Exchange P.L.C. will make the French company one of the largest U.K. multiline insurers.

The proposed £3.45 billion (\$5.66 billion) acquisition also will make AXA the largest

multiline insurer in Ireland and boost its stature in the German property/casualty market.

David Gamble, executive director of the Assn. of Insurance & Risk Managers, said U.K. risk managers are unlikely to have any concerns about the merger.

"It appears it's a very good fit by all accounts. ...It's obviously going to remain a strong U.K. insurer; it's just going to bolster the position of AXA within the U.K., and they're a very reputable company," he said.

As part of the deal, AXA will sell GRE's operations in the United States to Liberty Mutual Insurance Co. for \$1.47 billion. Executives of the French insurer stressed that it remains interested in U.S. expansion.

AXA Senior Executive Vp Henri de Castries said in London that GRE's U.S. units are being resold because they represent a niche business, and "the scale of it was not sufficient to give us significant and sustainable advantage in the U.S."

He said AXA's often-stated strategy—to achieve a leading position in its chosen markets, including Europe, parts of the Far East and the United States—remains intact.

AXA's bid for London-based Guardian Royal Exchange beat offers from Royal & SunAlliance Insurance Group P.L.C. and Eu-

See AXA on page 23



AXA expands its global reach

Year	Company	Country
1999	GRE	U.K.
1997	Banco Bilbao Vizcaya	Spain
1996	Union des Assurances des Paris	France
1996	Compagnie du Midi	France
1995	Abeille Reassurances	France
1995	National Mutual Life Assn. of Australasia	Australia
1994	The Equitable Cos.	U.S.

BUDGET REVIEW

Punitive damages tax break targeted

By AMANDA MILLIGAN

WASHINGTON—A proposal that would prohibit the tax deductibility of punitive damages paid to plaintiffs in civil suits has raised concerns among risk managers, insurers and attorneys.

This proposal, announced last week as part of an explanation of the Department of the Treasury's revenue proposals, would, in effect, penalize the defendant in a civil case twice, legal and risk management sources say. But speculation is mixed on how the proposal, if enacted, would affect insurance premiums and the propensity of companies to settle civil lawsuits.

The proposed budget also calls for the reinstatement of two Superfund taxes and a pro-



PHOTO: NEWSMAKERS
President Clinton unveiled his 2000 budget last week.

COLI tax benefits would be curbed

By ROSEANNE WHITE

WASHINGTON—The Clinton administration's budget proposal includes a rule change that would raise the cost of carrying corporate-owned life insurance, which many businesses use to fund benefits.

The proposed fiscal year 2000 budget includes a COLI rule modification

that appeared in the 1999 budget proposal.

Under current law, corporations that hold cash value life insurance policies on officers, directors, employees or those owning 20% of the business are exempt from a proration rule that would reduce their tax deductions on the interest they pay on debt. The budget proposal would remove the exemption, meaning that

a company with COLI policies would lose interest deductions in proportion to the amount of cash value life insurance the company holds compared with its assets.

The proposal "has the potential to cause huge problems for certain companies," said Jim Hess, vp/managing actuary for ASA Inc. in Somerset, N.J.

See Budget on page 6

Lower liability outlay cut cost of risk: Study

By MICHAEL BRADFORD

Risk managers are enjoying a steadily falling cost of risk, made lower in 1997, in part, by a significant drop in liability costs, according to a new survey.

The 1998 RIMS Benchmark Survey, released last week, found the cost of risk averaged \$5.25 for every \$1,000 of revenue in 1997, the last year for which complete data is available. That's down from \$5.70 the



year before, and it marks a drop of 37% from \$8.30 in 1992, when the cost of risk began its five-year decline.

The survey, which was conducted by the Risk & Insurance Management Society Inc. and Ernst & Young L.L.P., replaces RIMS' annual Cost of Risk Survey.

The new survey shows that in 1997, property costs

were down as well but workers compensation costs edged up slightly. And the report indicates that risk managers had a little more money in their budgets in 1997.

While it is not precisely comparable to last year's Cost of Risk Survey, the Benchmark Survey does give a fair comparison when stacked up against prior year's findings, according to James Blinn.

See Risk on page 20

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Updates

Group wants Y2K measures

Continued from page 1

package, which the group has dubbed the "Year 2000 Fairness and Responsibility Act," calls for, among other things:

- Requiring potential plaintiffs to give potential defendants 30 days' notice of a Y2K problem. Defendants that chose to try to fix the problem would have 60 days in which to do so before a suit could be filed.
- Encouraging parties to take their disputes to some type of alternative dispute resolution forum first before filing suits in court.
- Eliminating joint and several liability in Y2K-related cases by holding defendants responsible for only their portion of fault.
- Limiting punitive damages to the greater of \$250,000 or three times actual damages, with punitive damages for businesses with fewer than 25 employees being limited to the lesser of the two amounts.
- Capping lawyers fees in Y2K-related cases to \$1,000 an hour.
- Requiring Y2K-related cases to be filed in federal, rather than state, courts.

The package was released as Congress prepared to begin hearings on various Y2K liability relief bills. For example, Senate Commerce Committee Chairman John McCain, R-Ariz., has scheduled a hearing on his bill for Tuesday.

Male plaintiff wins FMLA case

BALTIMORE—A jury awarded a Maryland State Police trooper \$375,000 in compensatory damages last week for emotional distress in a landmark case that found the plaintiff was denied parental leave under the federal Family and Medical Leave Act because of his gender.

The ruling is the first involving gender issues and the FMLA, the trooper's lawyer said.

A civil complaint filed by the American Civil Liberties Union against six defendants, including the state of Maryland and five members of the Maryland State Police, alleged that Kevin Knussman's rights of equal protection and medical leave were violated.

In 1994, Mr. Knussman asked to take leave from work to care for his newborn daughter because his wife experienced complications from the birth. Mr. Knussman, who had worked for the Maryland State Police for more than 20 years, was told he couldn't take the 30 days' leave granted to primary caregivers because he was male and therefore unable to be the child's primary caregiver, the complaint stated. He was allowed 10 days' leave as secondary caregiver.

The defendants were found liable in the Maryland federal district court for sex discrimination and violation of the FMLA, said Sara Mandelbaum, the ACLU Women's Rights Project attorney who represented Mr. Knussman.

TOPS Insurance liquidated

HAMILTON, Bermuda—TOPS Insurance Ltd., an energy industry mutual set up to provide high-excess property coverage, is being liquidated because demand for its coverage has diminished.

TOPS, which is an affiliate of Oil Insurance Ltd., was set up in 1993 to cover total losses like the Piper Alpha oil rig loss in 1988, which cost insurers more than \$2 billion.

"The need for high excess limits to cover very large offshore structures has been diminished by technological progress. . . In addition, the commercial market today provides more than sufficient capacity at very competitive rates," said Jon R. King, president and chief executive officer of Oil and TOPS.

TOPS has 16 shareholder policyholders and covers more than 50 offshore platforms, primarily in the North Sea.

TPA settles with county

MINEOLA, N.Y.—A health plan administrator will pay Nassau County \$16 million to settle a suit over the TPA's handling of the county's medical plan.

The TPA, Benefit Plan Administrators Inc. of Melville, N.Y., began administering the plan for the county's employees after Nassau County left an insured statewide health system and became self-insured.

But when medical costs exceeded those previously experienced by the county, it sued BPA. The settlement resolves that suit.

The settlement "will assure that Nassau County employees, retirees and their dependents continue to receive uninterrupted coverage and reasonably and fairly protects the taxpayers," county Presiding Officer Bruce Blakeman said in a written statement.

BPA also will pay the county up to \$150,000 to cover costs for the investigation.

James Pennington, president and chief executive officer of BPA, denied any wrongdoing by his company but said the county did not fully understand the financial risks of becoming self-insured.

"We think it was in the best interests of the county and the best interests of our company for them to return back to a fully insured atmosphere," Mr. Pennington said.

BPA, a wholly owned subsidiary of USI Insurance Services Corp., the San Francisco-based broker and TPA, will continue to administer the county's plan until a new one is selected or it returns to the state plan.

See Updates on page 22

Errors & omissions

- In a Feb. 1 story and editorial cartoon on J&H Marsh & McLennan Inc.'s agreement to disclose contingent commission arrangements, the factor used to calculate approximations of those commissions should not have been expressed as a percentage. The factor is 0.0062.
- Due to an editing error, a story in the Feb. 1 issue misspelled the name of Arthur Shinn, a principal with William M. Mercer Inc.

State high court hears case on CIGNA's restructuring

By DAVE LENCKUS

PHILADELPHIA—Does a former Pennsylvania insurance regulator's reliance on a confidential actuarial report in approving CIGNA Corp.'s restructuring of its property/casualty operations necessitate new trial-like hearings on the transaction?

Would a more "businesslike approach" be to either disclose the report to opponents of the restructuring or order the state's current insurance commissioner to again review the transaction

without relying on the report?

In the latest legal clash over CIGNA's 1996 restructuring, Pennsylvania Supreme Court Justice Ralph J. Cappy last week suggested that either of those alternatives would be a more expeditious way to resolve the protracted legal battle over the transaction.

Opponents of the restructuring long have sought access to the actuarial report on the financial strength of CIGNA's new runoff operation for long-tail liabilities. But, an attorney for the opponents

told the state's high court that the judge's suggested alternatives would be inadequate protection for CIGNA policyholders.

At the same Feb. 1 hearing in a packed courtroom, an attorney for the Pennsylvania Insurance Department argued that state law does not provide the plan's opponents the right to trial-like hearings. Granting those hearings would both "wreak havoc" with the insurance regulatory process and circumvent the unique state corporate division statute under

See CIGNA on page 21

Ex-UFG officials convicted

Premiums and premium loans were embezzled to help broker

By DOUGLAS McLEOD

NEW YORK—Three former officials of bankrupt broker Underwriters Financial Group Inc. conspired to embezzle millions of dollars of client premiums and defraud several premium finance companies of millions more in an attempt to keep the brokerage afloat, a federal jury has found.

A jury last week convicted former UFG Chairman Donald Ferrarini, former Executive Vp Bruno Rumignani and UFG consultant Everett Vieira on a variety of charges stemming from the broker's 1995 collapse.

A fourth defendant, A. Michael Kagan, a former senior vp of one of the defrauded premium finance companies, also was convicted of aiding the scheme and taking kickbacks from UFG for his help.

Prosecutors charged, among other things, that the four men plotted to ease UFG's mounting financial woes by creating phony premium finance contracts in the names of unwitting clients and using the \$12.7 million in proceeds to prop up UFG's operations and falsify its Securities and Exchange Commission filings.

"There's no dispute here that UFG cooked the books," Assistant U.S. Attorney Robert E. Rice argued during the trial. "Donald Ferrarini knew about it and signed every one of those (SEC filings) and knew all about the fraud from top to bottom."

The jury returned its verdict last Wednesday after three days of deliberations and a four-week trial that saw a parade of former UFG employees and clients testify against the defendants.

See UFG on page 22

New effort on standards

Working together on 'report cards'

By ROBERT KAZEL

Benefit managers and employees will be able to better judge the quality of health plans, hospitals and even individual physicians if a new performance measurement council realizes its goals.

If so, workers and plan sponsors may eventually gain access to "report card" ratings on medical providers that surpass the comparative data that is available today.

The 15-member council, a joint effort of the National Committee for Quality Assurance, the Joint Commission on Accreditation of Healthcare Organizations, and the American Medical Assn., last month announced that the three groups would combine their expertise to develop common stan-

dards for their respective quality measurement programs. These programs now operate independently, leading to duplicated efforts and complaints from providers that data now required by numerous accreditation programs is being analyzed differently.

The three organizations' Performance Measurement Coordinating Council, formed last year, will find ways to obtain common performance data more economically and efficiently than its members could do individually.

"There's no use wasting money," said Margaret E. O'Kane, president of NCQA. "This is an expensive proposition, to do performance measures."

See PMCC on page 16

Benefit system listings due

Business Insurance will publish its annual Directory of Employee Benefit Information and Communication Systems on March 1.

The directory combines the former employee benefit information directory with the employee benefit communication system listings.

To be listed, companies must produce and supply software products to benefit personnel for the purpose of administering or communicating their own benefit plans. However, software products listed must not be dependent on additional services offered by your organization.

There is no charge to be included. If your company meets the requirements and has not received a questionnaire, please request one from Assistant Directory Editor John Keagy at 312-649-5313 or print a copy from BI's home page at: www.businessinsurance.com/magazine/directories.html

Completed questionnaires must be received by Feb. 11.

Inside

• The Occupational Safety and Health Administration is once again headed down the wrong path with its draft ergonomics standard, this week's editorial says. **PAGE 8**

• According to a new survey, retention and recruitment are two reasons employers offer work/life benefits. **PAGE 10**

• Lloyd's of London is looking to cast its net wider to catch new business, and reducing business costs is a major lure. **PAGE 17**

Departments

Advertiser Index19
Classifieds18
Commentary21

For the Record19
Global Briefs17
Insurance Services Guide16
International17
Letters8
Ticker23

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COBRA

Continued from page 1

through Medicare, when they lose their own group coverage and become entitled to COBRA.

IRS regulations published in 1987 provided some answers. But those regulations do not address many of the questions that have since emerged. In addition, numerous congressional amendments to COBRA have created a need for more substantive COBRA regulations.

Indeed, the challenge for employers will be mastering the new regulations.

"The rules are massive. There is a lot to digest and a lot to learn. There are nearly 60 clarifications and changes," said Colleen Clearwater, senior vp with COBRA Compliance Systems Inc., a COBRA administrator in Coldwater, Mich.

Still, the regulations do not provide answers to all questions that have been raised about the COBRA statute. One obvious omission is what constitutes employee "gross misconduct," a ground for denying terminated employees COBRA coverage.

That and other omissions are probably due to the IRS preferring to leave interpretation of certain parts of the law to the courts, Ms. Clearwater said.

Benefit experts note that the regulations do not contain any bombshells.

"It is a mixed bag of affirmation, simplification and complication," said Andy Anderson, a consultant with Hewitt Associates L.L.C. in Lincolnshire, Ill.

Some of the issues addressed by the IRS regulations include the following:

• **A COBRA beneficiary underpays a COBRA premium, such as by transposing some number on a check, by an insignificant amount. Can the employer cut off coverage?**

No, the employer has two options: either it can write off the underpayment or it can notify the beneficiary of the amount of underpayment and give that beneficiary a reasonable period of time to pay the deficiency. The IRS says 30 days would be a reasonable

period.

• **An employee goes out on Family and Medical Leave. After taking the maximum 12-week leave allowed under the FMLA, the employee quits. When does the employee's eligibility for COBRA coverage begin?**

Taking leave under FMLA, which requires employers to continue health care coverage on the same basis as prior to the leave, is not in itself a COBRA qualifying event.

Eligibility for COBRA would occur when the employee does not return to work with the employer at the end of the FMLA leave and would otherwise lose group coverage. At that point, the employee would be eligible for COBRA.

• **Can a third party, such as a hospital or a deceased employee's estate, pay a COBRA premium for a beneficiary?**

The final regulations make clear that any person or entity can pay COBRA premiums on behalf of a beneficiary. In addition, the third party can elect COBRA coverage on behalf of the beneficiary.

"Nothing in the statute requires the qualified beneficiary to pay the amount required by the plan; the statute merely permits the plan to require that payments be made," the regulations say.

There are many situations in which this clarification could apply. Assume, for example, a low-income worker loses his job and becomes eligible for COBRA but can't afford to pay the premiums.

During the individual's period of COBRA eligibility, he is injured, is hospitalized and incurs tens of thousands of dollars in medical bills. The hospital—rather than having to absorb the loss of providing uncompensated care—could pay the individual's COBRA premium.

Other examples of third-party involvement could include the estate of a deceased employee paying COBRA premiums or an individual's new employer, which might lack a health insurance plan, paying the premium.

• **An individual has other group**

coverage or Medicare at the time he or she has an event that would make that person eligible for COBRA. Does the individual have a right to COBRA even though he or she has other coverage?

Yes. The IRS regulations essentially incorporate a 1998 U.S. Supreme Court decision, *Geissai vs. Moore Medical Corp.*, that said individuals have a right to COBRA coverage even if they are insured—at the time of a COBRA qualifying event—under another group plan or Medicare (*BI*, June 15, 1998).

Take the case of a 66-year-old employee who loses his job. That individual also had been covered by Medicare since he turned 65, with Medicare acting as a secondary payer with the employer's plan primary.

Because he already had Medicare coverage prior to COBRA eligibility, that individual would be entitled to COBRA coverage.

By contrast, a 64-year-old employee with COBRA would lose that coverage after turning 65 and becoming eligible for Medicare. That is because his eligibility for Medicare occurred after he was entitled to COBRA.

There could be several situations where individuals with other group coverage or Medicare also would be willing to pay COBRA premiums, which can be hefty. Employees with high medical bills might want the maximum coverage possible. The Supreme Court decision, for example, dealt with a 62-year-old cancer patient who was covered as a dependent under his wife's group plan and also took COBRA from his employer after he lost his job and his group health insurance coverage.

In addition, an employee older than 65, who, for example, loses his or her job, might want COBRA because Medicare does not provide prescription drug coverage or because he or she has a spouse not yet eligible for Medicare.

• **Can an individual who waives COBRA coverage during the election period revoke that election?**

Yes, but coverage does not have to

be provided prior to the revocation.

• **A multinational company has 20,000 employees abroad and seven employees in the United States. Do the U.S. employees have a right to COBRA coverage?**

Yes, in determining whether an employer meets the 20-employee COBRA threshold, all corporate units, including those outside the United States, are counted.

• **An employee loses group health care coverage after going to part-time status. The employee is entitled to and takes COBRA. Later, the employee "stacks" the two COBRA qualifying events and is entitled to 18 months of COBRA for the first event—reduction in number of hours worked—and a second 18 months of coverage for the second event—termination of employment?**

The final regulations make clear that a reduction of hours of employment and termination of employment are "variations of a single qualifying event rather than two distinct qualifying events." As a result, the individual would be entitled only to 18 months of COBRA coverage.

In situations involving two distinct qualifying events, a maximum of 36 months of COBRA coverage must be offered. For example, an employee quits and purchases COBRA coverage for himself and his spouse. The employer must extend COBRA for 18 months. However, after six months, the employee dies. The spouse could purchase COBRA coverage for an additional 30 months.

That is because the qualified beneficiary—in this case, the surviving spouse—could have purchased 36 months of COBRA coverage if the second qualifying event—the death of the employee—had occurred first.

• **An employer offers employees medical, dental and vision care coverage through one health care benefits plan. Can individuals opting for COBRA purchase coverage to cover just**

medical expenses?

Under earlier IRS regulations, employers generally had to give COBRA beneficiaries a choice of buying only "core" coverage—comprised of medical coverage—or COBRA coverage for core and non-core benefits, such as dental and vision care.

The final regulations make clear that this choice no longer has to be offered and that COBRA coverage can consist of both core and non-core health care-related benefits.

• **Are part-time employees included in determining whether an employer meets the 20-employee threshold for being required to offer COBRA?**

Each part-time employee counts as a "fraction of an employee." The fraction is determined by dividing the number of hours the employee works by the number of hours an employee must work in order to be considered a full-time employee at that company.

For example, assume a company requires employees to work 40 hours to be considered full-time employees. The organization has 10 full-time employees and 30 part-time employees, each working 20 hours a week. Its number of employees, for COBRA computation purposes, would be 25.

• **An employer offers employees the opportunity to select from several different health care plans during an annual open enrollment period. Do COBRA beneficiaries also have the right to change plans during open enrollment periods?**

Yes. Under the statute, COBRA beneficiaries generally have the same rights as "similarly situated" non-COBRA beneficiaries.

That ability to switch plans is especially important to COBRA beneficiaries, because individuals who opt for COBRA are especially likely to anticipate using medical services.

"COBRA beneficiaries may gravitate toward plans that provide richer benefits and a broader range of services," said Mr. Anderson of Hewitt Associates. **BI**

Sara Lee

Continued from previous page

those with HIV infection and people undergoing chemotherapy. It also can cause miscarriages.

A Memphis, Tenn., man, John Bodnar, last week filed suit in Cook County Circuit Court in Chicago, accusing the Bil Mar plant of manufacturing listeria-contaminated hot dogs that resulted in the death of his 74-year-old wife, Helen. Mrs. Bodnar ate the hot dogs last August, became ill in October and died Oct. 19 of meningitis, according to her husband's Chicago attorney, Kenneth B. Moll.

After the recall last December, Mr. Moll filed a motion in Cook County Circuit Court seeking class-action status for those affected by Sara Lee's listeria-infected products. Mr. Bodnar's lawsuit was filed separately because he is 76 years old and time is considered of the essence. A speedier trial for his claim can be obtained outside the class action, Mr. Moll said.

The Bodnar suit does not specify damages, but attorneys likely will seek between \$500,000 and \$1 million in compensatory damages and between \$10 million and \$50 million in punitive damages, Mr. Moll said.

The suit alleges that former Sara Lee workers have told of potentially unsanitary conditions at the Bil Mar plant. According to Mr. Moll, employees who work with raw meat were allowed to enter the ready-to-eat section of the plant without changing their clothing or using foot baths, a violation of customary sanitary procedures.

Sara Lee would not comment on the pending litigation.

The spokeswoman also would not comment on press reports that an air conditioning refurbishing project at

the Zeeland plant last summer could have caused the contamination. The spokesman for the CDC said the possibility of airborne germs spread by the air conditioning project is "just one thing we are looking at."

Until the precise cause of the Bil Mar listeria outbreak is determined, several classes of meat production are now being removed from the Zeeland plant, the spokeswoman said. The production of retail frankfurters, sliced luncheon meat and some bulk meats will be turned over to other Sara Lee facilities and to affiliated outside plants.

As a result, 241 of the Zeeland plant's 1,600 workers will be laid off. These workers will be offered early retirement, two months' severance pay or, in some cases, job placement in other Sara Lee factories. After new meatpacking technology is introduced into the plant, it is hoped that these product lines will be returned to Zeeland and the jobs restored, the spokeswoman said.

Southfield, Mich.-based Thorn Apple Valley Inc., another retail food manufacturer, on Jan. 22 recalled 30 million pounds of hot dogs and delicatessen meats marketed under a variety of brands and shipped nationwide and to Russia and South Korea.

The company shut down its plant in Forrest City, Ark., after internal testing detected the presence of the listeria bacteria. The plant remains closed. The recall was voluntary, and no illnesses have yet been linked to any Thorn Apple Valley products, a spokesman said.

The Thorn Apple Valley recall is thought to be the largest recall of meat in U.S. history. The spokesman said company executives believe Thorn Apple Valley is "adequately covered" for potential litigation but declined to elaborate. **BI**

Carvill

Reinsurance Intermediary

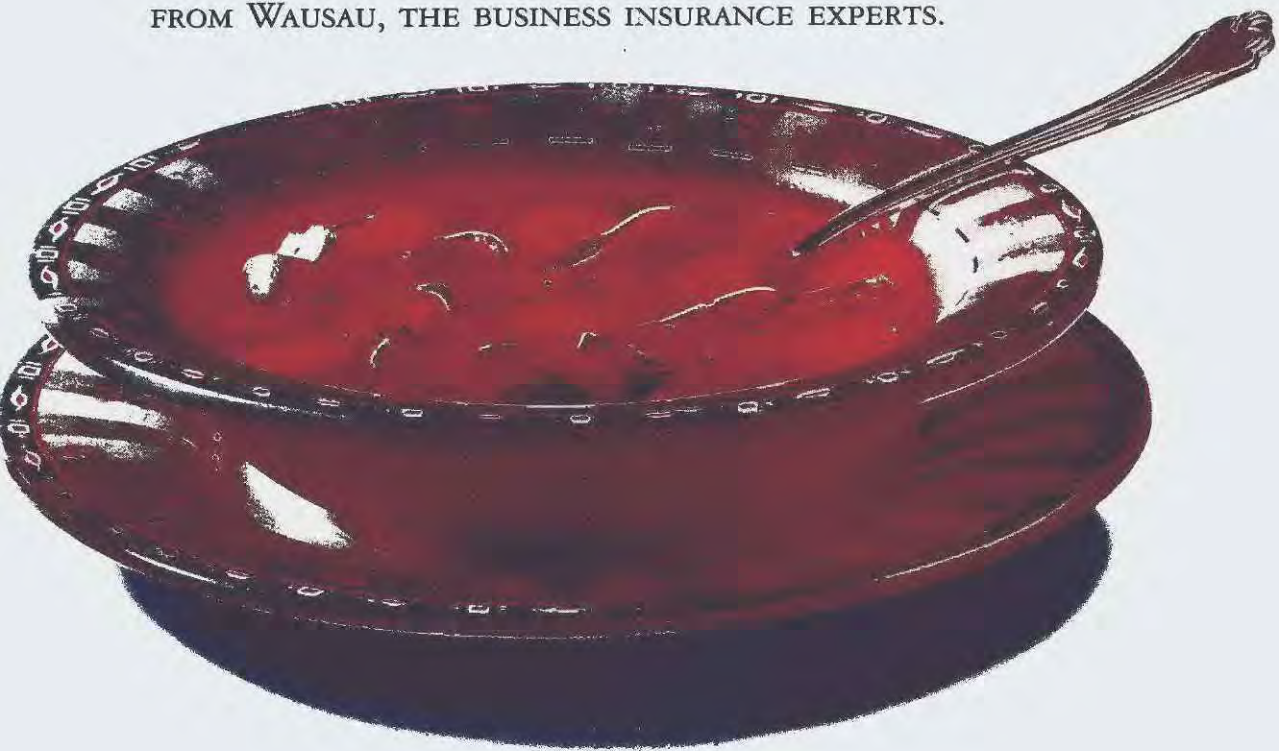
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**A
little
personal
attention
goes a long way.**

AN EMPLOYEE HAS A LONG-TERM
ILLNESS. SPECIALIZED NURSES HELP TO
FACILITATE THE RECOVERY PROCESS. MEDICAL
DELIVERY AND RETURN-TO-WORK SCHEDULES ARE
COORDINATED. COMPLICATIONS ARE PREVENTED. QUALITY
OF CARE IS IMPROVED. RECUPERATION TIME IS REDUCED. AND
MONEY IS SAVED. THANKS TO MEDICAL CASE MANAGEMENT
FROM WAUSAU, THE BUSINESS INSURANCE EXPERTS.



The business insurance experts.



Budget

Continued from page 1

In addition to the COLI modification, many other items in the document also had been previously introduced in the fiscal year 1999 budget proposal or in legislation.

The administration didn't break much new ground in the pension or retirement savings plan areas, said Frank McArdle, a Washington-based consultant with Hewitt Associates L.L.C.

"The real action in pension legislation is going to take place in congressional committees," he said.

Consultants say the COLI proposal could have a significant impact on benefit programs.

Under a COLI program, an employer purchases and maintains ownership of life insurance on employees. The employer is not taxed on the increased cash value of the policy while it is in force, or on the proceeds when an employee dies. Another advantage is that the employer can borrow against the value of the policy without being taxed.

According to ASA's Mr. Hess, the most popular uses of cash value life insurance among large companies are as key man life insurance policies; to fund non-qualified retirement benefits, such as excess pension plans or deferral plans; as executive life insurance in which a corporation may own or share ownership; and for broad-based funding of welfare benefit plans.

"Life insurance works very well for funding employee benefits," said Mr. Hess. Under well-designed programs, there's a good cash flow match between the death benefit payments and the other benefit payments that companies must make, he said.

David Sugar, an executive benefit consultant and specialist in benefit funding methods in Hewitt's Lincolnshire, Ill., home office, said COLI "is a mainstay of large corporate America."

Consultants estimate that 20% to 33% of Fortune 500 companies have COLI policies.

"The vast majority of companies that have entered into COLI transactions have done so for benefit-related reasons," Mr. Sugar said.

What the administration aims to do with this proposal is weed out the large COLI purchasers motivated strictly by the tax advantages of carrying the coverage, Mr. Sugar said.

They are doing so by forcing companies to lose part of their general interest expense deduction, he said. The amount that they lose is proportional to the amount of cash value life insurance they have compared with other assets. This proposed rule change is an extension of a tax provision that prohibits deducting expenses associated with tax-exempt income, Mr. Sugar said.

The ultimate impact of this proposal, if enacted, will depend upon whether the law applies only to future cash value life insurance contracts or also to existing contracts.

Mr. Hess said if this becomes law and covers existing policies, the upshot for some companies is that there's "no way they can come out of this without being hurt."

Highly leveraged companies that are large COLI purchasers either will take a hit from losing their general interest deductions or would have to divest themselves of the policies. The latter could involve substantial income tax liabilities.

Putting companies in that position, he said, is "inappropriate and unfair."

If the law is prospective, companies may decide the overall financial result of COLI is not favorable, and they won't buy it, Mr. Sugar said. Other companies may decide COLI still is the "best game in town" for financing employee benefit programs. If the

proposal becomes law, it would "introduce another element that companies will have to factor in to determine whether or not they want to invest in COLI in the first place," Mr. Sugar said.

Mr. Sugar said he believes existing policies would be grandfathered into the law because it would "represent a radical shift in the playing rules under which companies have been operating."

If the COLI proposal ever is enacted, the loss of this benefit funding mechanism could create cost pressures that force employers to reduce benefits, Mr. Hess said.

The pension provisions in the budget proposal include those that would:

- Require employer matching contributions under 401(k) plans to be fully vested in three years, or to become 20% vested each year after the employee has completed two years of service, with full vesting after the employee has completed six years of ser-

vice. A provision for three-year vesting of 401(k) matching funds was included in a bipartisan Senate pension reform bill last year (BI, July 13, 1998).

- Mandate that pension plans required to provide a joint and survivor annuity option offer an option that pays a lifetime benefit to the participant's surviving spouse equal to at least 75% of the benefit the couple received while both were alive.

- Modify the matching contribution safe harbor that exempts employers from running non-discrimination tests on their 401(k) plans. Under this safe harbor, the employer must make a 100% matching contribution on an employee's elective contributions up to the first 3% of compensation and a matching contribution of at least 50% on the employee's elective contributions up to the next 2% of compensation.

The administration advanced the same proposal last year. In order to

qualify for the safe harbor, employers would be required, in addition to the matching contribution, to contribute 1% of compensation for each eligible non-highly compensated employee, regardless of whether the employee makes elective contributions.

- Increase the portability of retirement savings plan funds. An eligible rollover distribution from a qualified retirement plan could be rolled over to a section 403(b) tax-sheltered annuity plan. 403(b) plans are offered by tax-exempt organizations, such as universities. Under current law, an eligible rollover distribution may not be transferred between a section 401(k) plan and a section 403(b) tax-sheltered annuity. Under another provision, individuals who have made only tax-deductible contributions to traditional IRAs could transfer funds from their IRAs into their qualified defined contribution retirement plans or section 403(b) tax-sheltered annuities, provided that the retirement plan

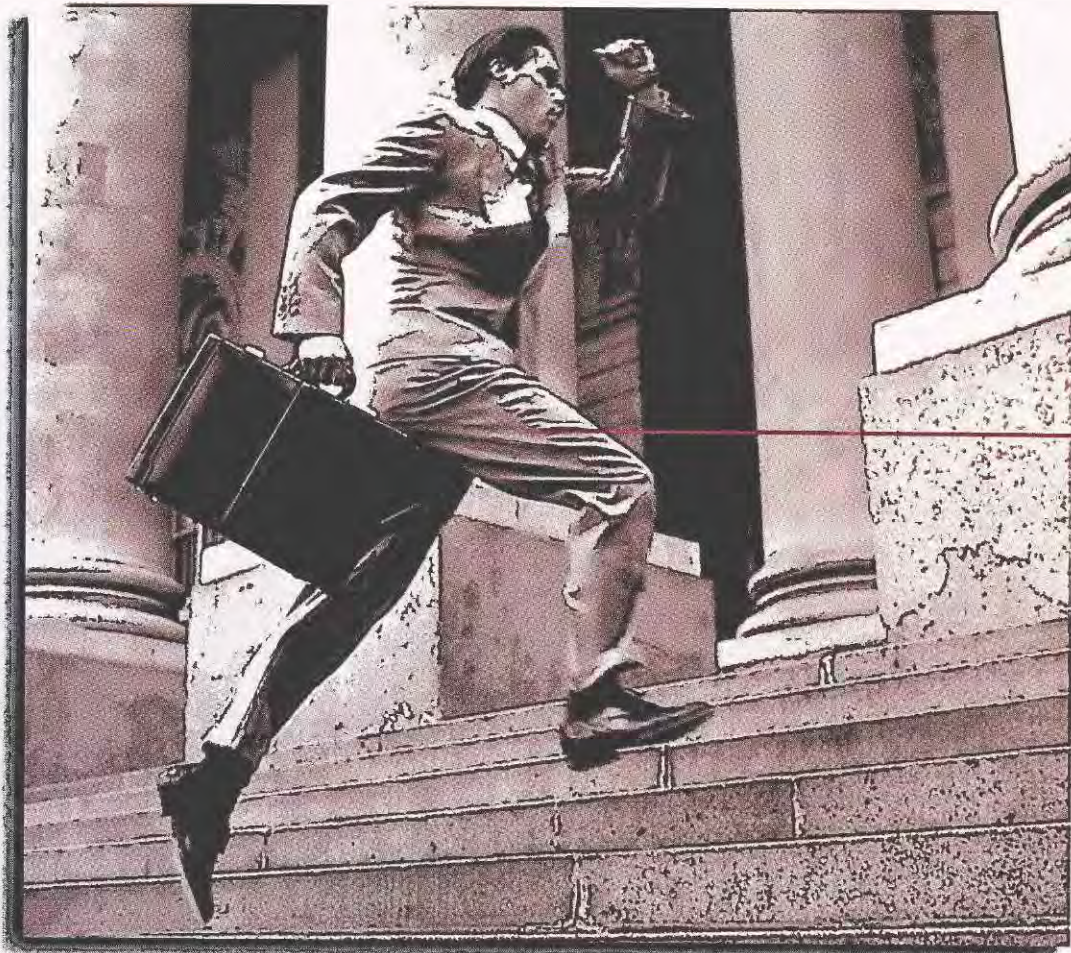
trustees meet the same standards as the IRA trustees. And, aftertax employee contributions to a qualified retirement plan could be included in a rollover contribution to a traditional IRA or another qualified retirement plan, provided that the plan or IRA provider agrees to track and report the aftertax portion of the rollover.

Other benefit items in the budget proposal include a tax credit for employers that provide employee child care. This proposal also appeared in last year's budget. The credit would equal 25% of qualified expenses incurred by offering the service. Employers also would receive a credit for 10% of the expenses incurred to provide employees with child care resource and referral services. The total credit under this proposal could not exceed \$150,000 per year.

The fiscal year 2000 budget proposal also would impose a 40% excise tax on buyers of structured settlements,

Continued on next page

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Punitive

Continued from page 1
vision that would reduce the tax deductions that property/casualty insurers can take for contributions to loss reserves.

Under the punitive damages proposal, insurance payments for punitive damages would be taxable as part of a defendant's gross income. In addition, insurers whose policies cover punitive damages would be required to report such payments to the defendant and to the Internal Revenue Service. Uninsured defendants simply would lose the tax deduction for punitive damages paid.

"I think risk managers should take a real close look at this proposal, especially in light of recent failures by Congress to institute meaningful product liability reform," said Lance J. Ewing, director of insurance and loss prevention for GES Exposition

Services in Las Vegas and team leader for legislative and external affairs for the New York-based Risk & Insurance Management Society Inc. "Insurance companies also would need to take note because they would, in essence, become a reporting service or an arm of the IRS."

According to information gathered in 1997 by the New York-based law firm of Wilson, Elser, Moskowitz, Edelman & Dicker L.L.P., about 29 of the 50 states allow punitive damages to be insured.

"The Treasury Department is basically overriding what is a states' rights issue," said Gary Meggs, director of risk management for Atlanta-based utility Southern Co.

In Georgia, punitive damages can be insured. "When we buy insurance, we do so to transfer risk. We would never be in constructive receipt of this money," said Mr. Meggs.

New York-based partner Mitchell L. Lathrop of Luce, Forward, Hamil-

ton & Scripps disagrees. "In a perfect world, insurance should never pay punitive damages," he said. But, he added, in pretrial settlements, it is highly unlikely that punitive damages would be broken out from compensatory damages.

This would make the proposal difficult to enforce, sources say.

Whether the proposal will have any impact on the propensity to settle lawsuits depends on the facts of each case and the state in which the case is to be heard, said John Greene, a shareholder with the Phoenix law firm of Tiffany & Bosco and a former director of the Arizona Department of Insurance. "It clearly will affect the dynamics of settlement talks," he said. Arizona permits punitive damages to be insured.

"(The proposal is) a new tax on insureds and a new burden on insurance companies," said Robin Conrad, senior vp for The National Chamber Litigation Center, the legal arm of the

U.S. Chamber of Commerce in Washington. She also noted that premiums would likely increase as insurers attempt to recoup the cost of the extra paperwork involved in the reporting process.

David Farmer, senior vp for the Washington-based Alliance of American Insurers said the proposal, if enacted, would "have a greater impact on the employer community than (on) insurers." Overall, he said, "it just increases the cost of the civil justice system to employers."

Calling it a ferocious tax, James Corcoran, a New York-based partner with the law firm of Winston & Strawn, said the proposal "is onerous stuff. This type of whimsical discussion can hurt a lot of people."

One of the problems, Mr. Corcoran said, is that the proposal is vague and doesn't specifically define the activities that the public policy is addressing. "I think the IRS has to articulate and distinguish between gross negligence and intent," he said.

"Punitive damages are awarded by very vague definitions," said Victor Schwartz, a liability lawyer at the Washington-based law firm of Crowell & Moring.

In addition, the proposal places criminal and civil damages on the same level but without extending the same protections and fine limits placed on criminal punitive damages, he said.

"If the government wants to tax this, it has to provide the protections that are available to criminal defendants," Mr. Schwartz said, adding that the administration is comparing "the apples of criminal law to the bananas of civil law."

For example, while criminal punitive damages are capped at three times economic damages and linked to precisely defined wrongs, civil damages have no such limits and are defined only by words such as "reckless" or "wanton" conduct, Mr. Schwartz said.

Iris Owen, director of risk management for Dallas-based Pizza Inn Inc., said losing the tax deduction "would definitely be an economic downside. That is some companies' only restitution."

Global competitiveness would be hurt by this proposal, said Southern Co.'s Mr. Meggs. "The cost of claims and litigation is a cost of doing business. This cost will ultimately be borne by corporations and their customers," he said.

Also included in the fiscal year 2000 budget is the reinstatement of two Superfund taxes that expired at the end of 1995, an issue that risk managers and the insurance industry have been watching closely. The corporate environmental income tax and the excise tax on domestic crude oil, imported petroleum products and certain imported substances would be deposited in the Hazardous Substance Superfund Trust Fund.

The American Insurance Assn. "remains committed to reinstatement of the Superfund taxes only as part of comprehensive Superfund reform legislation and only if revenues from those taxes are used for cleaning up toxic waste sites, and not to fund other programs," a spokesman for the Washington-based AIA said in a statement.

The budget proposal also includes an item that would decrease tax deductions that property/casualty insurers can take for contributions to loss reserves. Under a 1986 tax law property/casualty insurers must reduce their tax deductions for loss reserves by 15% of their tax-exempt interest or dividend income. Last week's budget proposal would increase that proration percentage to 25%. A provision in last year's budget proposal called for a 30% proration.

Roseanne White contributed to this report.

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POSSIBILITY#3

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FINANCIAL SERVICES

Opinions

Ergonomics draft chilling

THE OCCUPATIONAL SAFETY and Health Administration headed down the wrong path yet again in a draft ergonomics standard that began circulating around Washington a few days ago.

Fortunately, OSHA moved quickly to clarify that the draft was by no means the last word in the years-long controversy surrounding a federal ergonomics standard. In fact, OSHA said the draft proposal wasn't even the document being used in the next step of the rule-making process.

We're glad that's the case, because the draft proposal did nothing to allay employers' legitimate fears that the workplace safety agency intended to charge ahead with an ergonomic standard that was neither well thought-out nor justified by scientific evidence. Indeed, the draft actually stoked those fears by including a particularly onerous and unrealistic provision concerning those to whom that standard would apply.

The draft said that, in addition to all workplaces involving manufacturing operations or manual handling operations, the standard would apply to any workplace where a single ergonomics injury or illness was reported. Even though the draft would exempt three specific types of workplaces from this requirement—agriculture, construction and maritime—the provision still could catch far too many employers in its net without justification.

After all, a single report of an ergonomics-related injury does not an unsafe workplace make. If it did, the vast majority of workplaces in the country probably could be deemed unsafe at one time or another. The federal government's own workplace health and safety statistics have shown that's simply not the case. The incidence of workplace injuries and fatalities has been dropping for years, despite an expanding economy.

To subject workplaces with a single reported ergonomics-related injury to a new—and judging from the draft's language, complex and confusing—standard doesn't make any sense. It's particularly troubling that this proposal would emerge after OSHA has come under years of verbal fire for its approach to ergonomics.

At one point, Congress—frustrated by what many members thought was OSHA's intransigence on the subject—forbade the agency from spending a cent on even researching ergonomics, let alone promulgating a standard.

It's also troubling that this newest draft proposal



"HE'S CLAIMING INJURY FROM REPEATEDLY TRYING TO UNDERSTAND OUR DRAFT REPORT..."

comes after OSHA officials' repeated assurances that the agency had changed its ways. With ample justification, OSHA's leadership could point to an agency that transformed itself from a by-the-book enforcer of often arcane rules to a common-sense regulatory body that focused its resources to correcting the worst safety violations. A proposal such as the single-injury provision casts doubt on the sincerity—and longevity—of such reforms.

A far better approach to the ergonomics question would be for OSHA to hold off even drafting proposals for a while. Congress already has approved funds for an ergonomics study by the National Academy of Sciences, and OSHA ought to wait until that study is complete, even if that means waiting another 18 months.

One of the chief criticisms of OSHA's approach to the issue has been that there is a lack of conclusive scientific evidence that an ergonomics standard would do any good. A study by the NAS could go a long way toward either affirming or deflecting such criticism.

To move forward without such evidence simply increases the chances of further missteps such as the premature single-injury proposal. The leaked draft proposal indicates that OSHA has once again begun heading down the wrong path in ergonomic policy. There's no reason for OSHA to follow that path any further.

Letters

Is a 4% HMO rate hike really an increase?

To the editor: Your Dec. 14, 1998, article, "HMO Rates to Increase for Many Employers in '99," makes one question the naivete of your reporters and the honesty of their sources. Industry sources refer to three to four years of price wars, years of market-share underwriting, rates kept artificially low, underwriting losses and rising health care costs.

All this and the result is that "next

year... HMO executives and others (are) expecting most rate increases to be in the range of 4% to 7%?"

It truly does sound as though *Business Insurance* is allowing itself to be used as a tool in peddling someone else's public relations pap. Surely your reporters have the insurance sense and mathematical aptitude to see that the projected premium increase numbers they are being handed do not add up in light of the

situation being described. Increases of 4% to 7% amount to cost trending—probably inadequate at that—and would end up leaving companies with another year of artificially low rates driven by market share, guaranteed to generate further underwriting losses.

I, for one, would appreciate more realistic reporting from *BI*.

Peter Sawyer
Chicago

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Retention one goal of work/life benefits

By AMANDA MILLIGAN

Retention and recruitment are two of the reasons employers offer work/life benefits, a survey says.

And today's job applicants are actively examining benefits offered by potential employers to learn about the culture and mission of the companies, benefit managers say.

Seventy-one percent of responding companies cited retention as the most important goal of work/life benefits, and 38% cited recruitment as the most important goal, according to the survey, conducted jointly by Bright Horizons Family Solutions and William M. Mercer Inc. BHFS, with headquarters in Boston and Nashville, Tenn., specializes in child care facility design and work/life consulting.

Carol Poulsen, a work/life benefits consultant for Fairfax, Va.-based Mobil Corp., said that, in recruiting young people, it's critical that management support work/life programs. Of those looking for jobs, "I think (work/life initiatives) are top on their plate today—sometimes more than compensation," she said.

Mobil was among the 10 companies with the highest survey scores for supporting work/life initiatives.

Four hundred companies responded to the survey; most of the respondents have some kind of work/life program. They typically had between 1,000 and 10,000 employees. Sixty percent of respondents had annual worldwide sales of less than \$1 billion in 1997.

According to the survey, "To the degree that work/life initiatives provide a competitive advantage, most companies are hoping their work/life efforts help them address issues of retention, morale and productivity."

Patricia S. Bellinger, director of culture and work/life diversity for New York-based Bristol-Myers Squibb Co., said recruitment and retention "go hand in hand."

"The type of talent we're interviewing today, they're interviewing us, too," said Ms. Bellinger, whose company also finished in the top 10. "Who you've got in-house is as critical as who you bring in."

Survey author and BHFS Senior Vp Dana Friedman said that overall, she is "sobered" by the survey findings. She said that with all the media attention on work/life programs, the perception often is that they are widely offered. In reality, however, it is only the model programs the public hears about, she said. Many companies just now are starting to realize the value of such benefits, she said.

The results of the survey, whose respondents predominantly were companies with some type of work/life program, indicate that the average employer respondent offers about 33 work/life initiatives from a list of more than 100 the survey listed.

Typically, the success of various work/life programs is not assessed beyond the cursory remarks made by those using the programs. Among the surveyed companies, only 23% said they have evaluated their work/life programs to ensure that employees' needs are met. Of those that do evaluate established work/life programs, 69% conduct employee polls. Only 27% said they conducted formal evaluation studies.

Copies of the "1998 Survey on Work/Life Initiatives" are available for \$50 each by contacting Tara Lewis, William M. Mercer Inc., 1166 Avenue of the Americas, New York, N.Y., 10036; 212-345-2451.

Y2K liability legislation strives for simplicity

WASHINGTON—Any legislation dealing with liability stemming from the Year 2000 computer problem will have to be kept as simple as possible if its supporters have any intention of enacting it.



Rep. Manzullo

Rep. Donald Manzullo, R-Ill., offered that bit of advice during an address to the Council of Insurance Agents & Brokers legislative conference in Washington last week. He noted that the initial draft of his Y2K liability bill—the Year 2000 Consumer Protection Plan Act of 1999—originally ran more than 20 pages before being pared down to a much more manageable five. Rep. Manzullo's bill, which enjoys the support of several key Republican lawmakers, would, among other things, cap punitive damages in Y2K cases; provide certain protections against liability for corporate directors and officers in Y2K actions; and set a two-year statute of limitations for bringing Y2K suits, beginning on Jan. 1, 2000 (BI, Jan. 18).



"This bill is so simple" that it could actually be passed, said Rep. Manzullo. He said he deliberately steered away from including controversial provisions that have been contained in other tort reform legislation. For example, the measure does not spell out which party in a suit would be responsible for attorneys fees, because that's an issue that could scuttle the bill. For the same reason, the measure also remains silent on the issue of limiting attorneys fees

in such cases, he said. "If a bill is kept simple like this, it minimizes the amount of opposition," said Rep. Manzullo.

No hearings on the bill have been scheduled.

Another speaker at the conference, House Commerce Committee Chairman Tom Bliley, R-Va., also brought up the Y2K matter. He said that some prominent plaintiffs attorneys are "salivating" over potential Y2K-related problems, viewing Y2K as the "mother lode" of litigation following the tobacco suits.

Rep. Bliley said that, like Rep. Manzullo and other liability reform advocates, he, too, wants Y2K cases first to go through arbitration rather than litigation. He also supports limits on punitive damages. He warned, however, "it isn't going to be easy" enacting such legislation, given the opposition of the plaintiffs bar.

—By Mark A. Hofmann

Mandates

Continued from page 3
radical mandates.

To face this challenge, businesses must stick together and constantly point out to lawmakers what mandates would do to their cost of providing coverage, Mr. Isakowitz said. The battle should be fought "recess to recess," so that members of Congress are constantly hearing from the people in their districts about the matter, he

said. The message should be limited rather than broad, he added.

Employers should work on moderate to conservative Democrats with whom they have relationships, he said, calling the issue too big for one party to handle. Finally, employers should "provide comfort" for those following a pro-business course by showing that they appreciate the lawmakers' actions and encouraging them to continue doing so, he said.

"For both short-term and long-term interests," employers should

get involved, he said.

Rep. Henry Waxman, D-Calif., told attendees at the CIAB meeting he still believes that requiring employers to provide health care coverage for their workers makes sense, but he acknowledged that the mandate had gone nowhere.

Rep. Waxman predicted that a proposed patients' bill of rights—which would subject managed care organizations to new regulations and give beneficiaries new legal rights to contest decisions and, in some cases, sue their plan sponsors—will be approved by Congress this year, though he did not say which particular bill would get the final nod.

Nevertheless, Rep. Waxman, who has previously advocated radical changes in the nation's health care system, said that he now accepts "the reality" that reformers will have to settle for incremental changes for the time being.

Rep. Waxman added that if Congress adds too many mandates to health care plans without regard to cost, "we're not doing anybody a favor."

House Majority Leader Dick Armey, R-Texas, told the CIAB meeting that Democrats "seem to be dedicated to the proposition that the lawyers' right to sue is more important than the patient's right to review" coverage decisions. Rep. Armey was referring to patients' bill of rights legislation introduced in the House by Rep. John Dingell, D-Mich., and in the Senate by Senate Minority Leader Tom Daschle, D-S.D., that would expand employees' rights to sue over coverage decisions. The House and Senate Republican leaders support competing legislation that would expand patients' rights to have coverage disputes reviewed by outside panels.

Rep. Armey also said that there is something "fundamentally wrong" in giving employers a tax deduction for providing coverage for their employees while not granting people who pay for their own medical insurance the same tax break. The Texas lawmaker said he is working on a bill that would give those who buy their own coverage the same tax deduction.

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Internet

Continued from page 3

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When embarking into Internet banking, financial institutions must examine several key questions, Mr. Katz said, including:

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- Can the bank ensure the privacy in information?
- Can the bank prevent unauthorized changes of information?

The bank also must consider whether it can prevent customers from later refusing to acknowledge transactions, whether it can ensure service and whether it will know when it does have a problem, he said.

Once banks start doing business online, "technology you once thought was safe, now you've opened it up," Mr. Katz said, adding, "Every major company is a target."

And, because "there are no mathematical models to quantify risk relative to technology," companies must shift their thinking from looking at a "risk model" to an "impact model," gauging the potential business effects of various negative occurrences, Mr. Katz said.

Suggesting that in the very near future Internet banking is "going to be mainstream," both for consumer and business transactions, Global Integrity's Mr. Marlow predicted that within four years the market will mandate that all banking services be interconnected and Internet-accessible.

The business-to-business side of Internet banking will offer particular growth opportunities for financial institutions, Mr. Marlow said.

Meanwhile, implementation of Internet banking is easy; correct

implementation, however, is difficult, he said.

Although 326 Internet banking packages are available on the market, Mr. Marlow said, "The reality is, there aren't a lot of good Internet banking packages available."

Topping the list of the possible exposures of online banking, says William J. Marlow, is brand protection. 'You don't want people misusing your brand.'

The risk vs. reward evaluations that bank risk managers must apply as their banks start doing business online are an ongoing process, Mr. Marlow said. And, to properly conduct those evaluations, it's important to understand the potential impact of the various exposures in different areas of the business.

At the top of the list, Mr. Marlow suggested, is brand protection. "You don't want people misusing your brand."

"What happens if somebody breaks into your Web site? What happens to your brand?" he asked. "For underwriters, that's going to be one of the major areas of protection on the Internet in the future."

Other risk factors to consider include data modification and a resulting loss of confidence in that data; denial of service to customers, and a resulting loss of business because of service disruption; and theft, whether it be the loss of intellectual property, money or other assets, Mr. Marlow said.

Without naming the victims, Mr. Marlow provided examples of Internet banking disasters.

Because of a service disruption, "one Internet banking site lost

3,000 customers in one hour," Mr. Marlow said. "What would happen if (one of those) was an institutional investor?"

At another bank, hackers had arranged for the system to display pornographic images when certain banking functions were acti-

ed from a banking site. "Every one of those customers changed banks," Mr. Marlow said. "The suits that followed were devastating."

And the problems aren't limited to the work of hackers outside the bank, Mr. Marlow said. "The inside problem is as big, if not bigger, than the outside problem."

Even as banks seek to protect their Internet sites, hackers have access to tools readily available online that can identify systems' vulnerabilities and facilitate break-ins, the system security expert said.

"It's going to happen," Mr. Marlow said of system hacking. "You need to have processes in place to deal with it."

And when it does happen, "Do you want to prosecute?" is the first question you have to ask, because do you want the media involved?" he said.

The risk management process involves both internal and external considerations, Mr. Marlow said.

Internally, there should be an

independent review of the institution's online banking implementation. There also should be regular evaluations of connections, firewalls—electronic security barriers—and authentication systems. "If you're a mid- to large-sized bank, that should be monthly," Mr. Marlow said.

The bank also should establish a crisis management process so that when its system is hacked it can avoid panic, finger-pointing and wasted time.

In addition, "There should be one individual at the top of that who has the power to shut down the trading floor," Mr. Marlow said.

Externally, among other things, the company should establish teams to help set up customers' online banking systems and test for vulnerabilities.

It's also critical that they have a realistic view of just how much demand there will likely be for the online service.

"Make sure you understand how big this can get," Mr. Marlow said. **BI**

Banks need to lend attention to manifold Y2K issues: Panel

By RODD ZOLKOS

ORLANDO, Fla.—Banks face numerous and varied Year 2000-related liability exposures that could threaten fundamental aspects of their business.

Although insurance coverage may exist for some of these exposures, it may prove inadequate to the task, experts say.

Potential targets of lawsuits alleging Y2K negligence can include the financial institution itself and its directors and officers or corporate fiduciaries, according to Ty R. Sagalow, chief underwriting officer at National Union Fire Insurance Co. of Pittsburgh, Pa., in New York.

Potential claimants include bank customers, vendors, suppliers, joint venture partners and shareholders.

"Even if you are not publicly traded, you have shareholders somewhere," said Mr. Sagalow, who spoke as part of a panel on Year 2000 issues at the American Bankers Assn.'s annual risk management conference last month in Orlando.

The legal foundations for liability, he said, include:

- Federal securities laws. "That is a huge foundation for liability," he said.
- Common law negligence and fraud.
- Contract law. This could apply to "all the professional services that you render," he said.
- Fidelity.

There also are many forums in which a bank's Y2K-related liabilities could be adjudicated, Mr. Sagalow said. "A frequent error in thinking about Y2K is not thinking beyond civil liability," he said. "There are possible criminal proceedings, administrative proceedings."

Governmental investigations and media and customer relations issues also can be cause for concern, he added.

"One of your biggest threats is an economic threat and a loss of reputation or a loss of confidence in your community," said Mr. Sagalow. As a result, "managing the media" is as important as managing a lawsuit or regulatory investigation, he said.

"Public perception, I believe, is

going to be one of the biggest nemeses of financial services" in connection with the Y2K issue, said John V. McIsaac, president of Market Partners Inc., a King of Prussia, Pa.-based company that specializes in Y2K-related banking industry services.

Mr. McIsaac noted that a bank's business isn't about its computers, but rather the community with which it does business. Consequently, he explained, a key issue is whether it can continue doing business with



that community in the same way after Jan. 1, 2000.

The public appears to be anticipating significant bank Y2K problems, Mr. McIsaac suggested, citing a recent survey by Cable News Network that found 53% of the public believes Year 2000 computer errors will prompt bank disruptions. As for his company's clients' attitudes, many feel confident about their own systems' Y2K preparedness, though they haven't begun to address exposures stemming from problems at the companies with which they do business, Mr. McIsaac said.

To minimize those exposures, banks need to take a leadership role and engage in outreach activities to encourage their business partners to address their own exposures.

Among the defenses to Y2K suits, the best is to be Y2K compliant, said Mr. Sagalow of National Union. "If you had to pick one defense, I would pick 'Nothing goes wrong,'" he said.

Disclosure and safe harbor provisions are another significant defense. For publicly traded banks, "if your lawyers are not talking to you about that... then they'd better start, or maybe you should get someone else," the underwriter said.

A "business judgment rule" and due diligence also can be a potential defense, Mr. Sagalow said. "A business judgment rule is a process. They have to show activism," he said. "Forming a special committee for Y2K also is not a bad idea."

In terms of banks looking to their insurers for coverage of Y2K claims, Mr. Sagalow suggested that professional liability insurance underwriters have three potential responses to the Year 2000 issue.

One is to add a Year 2000 exclusion, or even cancel or not renew certain policies, though "that, of course, is a ridiculous conclusion to talk about in a soft market," he said.

Another approach is to remain silent about the issue in policy language and later deny coverage for such claims.

"That is very, very popular," Mr. Sagalow said. But a major problem with the silent approach is that it creates uncertainty at the time of the claim—a time when certainty is most needed. "I would argue that uncertainty at the time of the claim is not a good thing," he said.

Silence also creates a situation in which the policyholder is fighting on two fronts, with both the plaintiff and with the insurer. Even if the policyholder is ultimately successful in pressing the claim, the process may take a sizable toll in legal expenses and damaged business relationships, Mr. Sagalow said.

A third option is for insurers to underwrite and price the exposure with a goal of expressly granting coverage, Mr. Sagalow said.

Under the basic coverage grant of errors and omissions policies, if a claim of negligence arises from a Y2K problem "there's a good chance it's covered," but coverage is not certain, he said.

On the directors and officers insurance front, the good news for policyholders is that there is no specific Y2K exclusion in a D&O policy. Therefore, Y2K claims will generally be covered to the same extent as other similar claims, Mr. Sagalow said. "What that doesn't tell you is whether that coverage will be adequate for your claim."

And the bad news is that the typical underwriter won't tell you whether treating Y2K claims the same as any "other similar claim" provides you enough coverage, Mr. Sagalow said. That, he said, leads to the ugly truth that existing D&O coverage probably won't be adequate for a Y2K claim. **BI**

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QUALITY LEADERSHIP IN RISK AND INSURANCE SERVICES

Bank consolidation brings new risks to underwrite

By RODD ZOLKOS

ORLANDO, Fla.—Convergence and consolidation aren't important factors just on the insurance company side of the equation in the bank/insurer relationship; the trends also have changed the way insurance companies view bank professional liability risks.

Speaking to the annual risk management conference of the American Bankers Assn. last month in Orlando, Fla., Peter W. Wilson, president and chief operating officer of CNA Financial Insurance in New York, noted that, as recently as the mid-1980s, "there were lots of banks out there that were just banks."

In 1985, there were 14,000 banks in the United States, he said, and the regulatory environment drew clear lines between banking, security dealing and insurance.

Today, merger and acquisition activity has reduced the number of banks to about 9,000, and financial industry convergence has made banks' business more diverse and complex.

In the 1980s, the top underwriting concerns of bank professional liability insurance companies included such things as bank failures due to regional economic problems, highly leveraged transactions leading to shareholder and regulator suits, and lender liability and the emergence of large customer awards.

Highly leveraged transactions seem to be emerging again as an issue for underwriters, according to Mr. Wilson, while lender liability and resulting customer awards seem to be becoming less of a concern.

But with consolidation and convergence driving a host of new underwriting concerns, bank professional liability insurers find themselves confronted with such issues as the "culture clash in the executive suite," Mr. Wilson said, and



17th annual conference

whether co-chief executives can successfully co-exist.

"What does this do in terms of the decision-making ability of that organization?" he asked. "Who sets the vision for the organization?"

Risks emerging from the integration of multiple technology platforms, such as merging companies' computer systems, are an

'We're witnessing... a virtual explosion in (bank purchasing) of non-traditional products,' says Peter W. Wilson.

other concern, as is the possibility that merger and acquisition due diligence could become lax in an effort to complete a deal.

The possibility that banks may relax lending criteria and operating controls in order to drive up revenue to meet merger and acquisition goals is yet another concern on the professional liability underwriting front.

Meanwhile, technological change has introduced additional concerns. "E-commerce has introduced a whole host of new exposures," Mr. Wilson said.

While underwriters begin to look at new exposures, banks are beginning to change the way they structure their insurance programs, said Robert C. Cox, managing director of Chubb & Son Inc. in Warren, N.J.

"We're witnessing now what I

would call a virtual explosion in the purchase of non-traditional insurance products," he said, adding that because blended, multiyear and other new products meet banks' emerging needs, the trend will continue.

"Our current portfolio of property/casualty products respond to a relatively small portion of the risks your firm is taking," he told the bank risk managers. Moving forward, however, it will be important for underwriters to develop products that address more of those risks, Mr. Cox suggested.

But, in developing those new products, drafting the policy language is relatively easy; it's in the underwriting and claims-handling expertise that some insurers might have problems, Mr. Cox said.

"The inability to price risk appropriately can lead to bad market decisions, price volatility and abandoning of markets," he said.

Consequently, he suggested, the future will bring more partnerships and joint ventures between insurers and others that can provide risk measurement expertise.

Saying that he sees a need for "corrective action" in certain areas, Timothy J. O'Donnell, president of the financial institution group of National Union Fire Insurance Co. of Pittsburgh, Pa., in New York, said insurers need to find ways to broaden the scope of relationships with insurance buyers to enable them to develop products better suited to the buyers' needs.

Whether it's in the form of traditional or alternative risk transfer products, Mr. Cox said the insurance industry will continue to be involved in bank risk management.

The insurance industry's greatest opportunities, though, are in providing new products to meet emerging needs, rather than in trying to sell the same old products, he said. **BI**

Benefits

Continued from page 3

and 3,750 workers was conducted in 1997 and 1998 in seven countries: Brazil, Canada, France, Germany, the Netherlands, the United Kingdom, and the United States.

One of the main findings was that while most organizations are undergoing significant changes in their business environments, their benefits programs largely remain the same, the survey said. Sixty-six percent of managers polled said that their organizations had undergone a significant reorganization in the past two to three years, the survey said.

In benefit programs, 52% of managers reported changes in variable pay programs, and 50% reported changes in performance management programs.

Only 32%, however, reported changes in retirement and disability programs, the survey said. The lack of change in retirement programs was most noticeable in Brazil, Germany and the Netherlands, the survey said.

"To the extent that pay and performance programs have changed while benefit programs have not, benefits could be even more out of sync with business and (human

resources) objectives for a total compensation perspective," according to the survey.

Less than half of the managers polled said that benefit programs are sufficiently flexible to meet the changing needs of business, and only a little more than one-third of managers and employees viewed benefits as a key factor that attracts people to work at

Only a little more than a third of managers and employees see benefits as a key way to attract workers.

a company, according to the survey.

"This finding holds true across all countries in the study, including the U.S., where employer-sponsored benefits play a more important role in the total package of rewards," the survey said.

Yet many managers and workers are willing to see a more proactive role for benefit programs, including making them vary from year to year with company performance.

According to the survey, 53% of

managers said benefits should vary according to performance, and 49% of workers said that it was appropriate for companies to adjust their contributions to retirement accounts based on a company's overall performance.

Workers in Germany and the United States were most willing to take on that risk of lower contributions. Workers in the Netherlands and the United Kingdom were least willing, according to the survey.

Meanwhile, views on whether retirement incomes would meet workers' needs varied considerably.

Fifty-six percent of workers in Germany and 51% in the Netherlands and the United Kingdom were confident that they would have enough retirement income to meet their needs. But only 22% of French workers and 33% of U.S. workers had the same level of confidence.

Overall, the survey responses demonstrate that decisions about benefits will be increasingly driven by a company's business strategy, the survey concluded.

"Benefit designs will move away from the traditional entitlement-based approach to one that emphasizes flexibility and shared responsibility with employees," the survey said. **BI**

Insurers work on coverages for rogue trading

By RODD ZOLKOS

ORLANDO, Fla.—Coverage for unauthorized trading is slowly evolving to better fit financial institutions' need for protection against losses caused by rogue traders.

That evolution has been a slow process, according to panelists at the American Bankers Assn.'s annual risk management conference last month in Orlando, Fla. But the pace is deliberate, they say, as insurers gradually learn more about the nature of the exposure.

Using the experience of bank Barings P.L.C. as a touchstone, Rupert C.C. Villers, managing director of Lloyd's of London underwriting agency SVB Syndicates Ltd., noted that SVB



17th annual conference

was motivated to introduce its policy for unauthorized trading in 1997. The new policy was prompted by the huge losses that some banks had sustained in recent years due to rogue trading activities, and those losses' potential impact on the institutions.

"The size of these has been life-threatening, and in the case of Barings, fatal," Mr. Villers said. "These have resulted from operational failures, not market risk."

At Barings, the company ultimately collapsed in 1995 after losing approximately \$1.4 billion due to the unauthorized activities of trader Nick Leeson.

"The SVB objective was to achieve broad, unambiguous coverage, understandable by senior management," Mr. Villers said.

The insurance clause in the coverage refers to "direct financial loss... caused by unauthorized trading by any trader while trading for the assured which unauthorized trading was concealed or was falsely recorded," he noted.

As such, a loss like that suffered by Barings, for example, fits the guidelines of the insur-

ance clause. "It was a direct hit under the terms of the policy," Mr. Villers said.

According to J. Kelly Reyher, a partner with law firm McCarrick & Mayer in New York, while unauthorized trading coverage is making its way into the market to cover proprietary trading losses, there also is interest among financial institutions for policies that would cover third-party losses.

"The first problem that we heard about a lot is that it's limited to proprietary trading," Mr. Reyher said. But, he noted, "that's what it was intended to do because it's first-party coverage."

"The other question that comes up is the policy is somewhat specific on the types of trades," the attorney said. But again, he noted, that's by design. "The policies probably are going to be as specific as they can be, because no one wants to accept more risk than they understand."

Mr. Reyher noted that the pricing of rogue trading coverages has been relatively high because of the limited loss history that underwriters can consider.

"Obviously, as the loss history becomes better known, prices will come down accordingly," he said.

Meanwhile, some customers are asking whether the coverage for unauthorized trading can be wrapped into broader insurance programs to bring prices down, Mr. Reyher said. Buyers also are asking insurers whether they can amend the wording of their bankers professional liability and financial institutions bond coverages to cover rogue trading exposures, he said.

The next generation of unauthorized trading coverages likely will include endorsements to existing bank policies "that basically takes unauthorized-trading coverage and adds it as a separate policy section," Mr. Reyher said.

But for now, new unauthorized-trading policy forms hitting the young market are only slightly broader than existing policies, he said.

"The idea there is to create something that's just a little bit broader... kind of the incremental change idea."

Bankers' conference draws 235 to Orlando

ORLANDO, Fla.—This year's American Bankers Assn. Insurance Risk Management Conference drew about 235 financial institution risk managers and insurance industry professionals to Orlando, Fla.'s Buena Vista Palace Resort & Spa Jan. 24-26.

Risk managers attending the conference heard speakers address such



subjects as Year 2000 claims, Internet banking, unauthorized trading exposures and coverage, holistic risk management and employment practices liability.

For more information on next year's conference, to be held Feb. 13-15, 2000, in Scottsdale, Ariz., contact the ABA's customer service center at 800-338-0626. **BI**



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Management of Capital and Risk

PMCC

Continued from page 2

Currently, the NCQA rates the quality of managed health care plans, the Joint Commission accredits hospitals and a variety of other health care providers, and the AMA offers quality recognition to doctors through its American Medical Accreditation Program, AMAP. The PMCC, consisting of five members from each organization, has

met twice thus far.

The PMCC plans to appoint committees of medical experts to devise common performance standards for providers such as physicians, hospitals, nursing homes, home care agencies and managed care networks, "so that we're measuring the right things with the greatest bang for the buck," said Jerod M. Loeb, vp-research and performance measurement of the Joint Commission.

The subjects addressed by the various committees might include

Explosion

Continued from page 3
Rouge complex.

The company was working with Detroit Edison to establish a new electrical substation at the Rouge site, a spokeswoman said. The powerhouse that was destroyed fed the Rouge complex enough power to supply a medium-size

The deadly blast and fire destroyed the generating system that supplied electricity and steam to the complex.

city.

Ford spokespersons would neither discuss the company's property insurance nor speculate on the extent of financial losses due to structural damage.

It would take "several weeks, at minimum," for Ford to ascertain for insurance purposes how much it needs to recoup in lost income due to the Rouge incident, a spokesman said. He would not provide details on Ford's business interruption coverage.

Because of the down time, Ford suffered a loss "in the hundreds" in terms of auto production, a spokesman told Automotive News, a sister publication of *Busi-*

ness Insurance. Work shifts at Ford assembly plants in Wayne, Mich.; Lorain, Ohio; and Wixom, Mich., were reduced to four hours last week because a lack of components from the Rouge complex was feared.

The three Rouge facilities that were able to reopen using temporary generators were a frame assembly plant, a stamping plant, and an engine and fuel tank factory.

Electricity and steam power also was lost at Rouge Steel Co., a subsidiary of Rouge Industries Inc., which operates a huge plant at the complex site. Operations at the steel plant were halted. The Rouge powerhouse was jointly owned by Ford and Rouge Steel, supplying both with electric power, heating and processing steam, mill water compressed air and turbo air.

Rouge Steel, whose 3,100 workers were idled by the loss of power, has business interruption insurance that will supply "adequate coverage," said Marc Belliston, director of investor relations and strategic planning.

The company, which late last week was still without electricity, steam and water, would have its rolling mills back in operation in a matter of days. Its primary operation, a blast furnace, was expected to be back up later, Mr. Belliston said.

There was limited damage to steel-making facilities at the Rouge site, but its extent has yet to be determined, he said. **BI**

treatment for different forms of cancer, heart disease, strokes, diabetes, and the care of pregnant women, he said.

The PMCC would like have the committees begin work within the next few months, Mr. Loeb said.

'We want to cut out duplication, and we believe that, having all three organizations together, we can get better information,' says Dr. Randolph D. Smoak Jr. of the AMA.

"This is the way we'll march in the future—toward a new drummer," he said. The three organizations will continue to market their own evaluation and accreditation programs separately, while still cooperating on the design of the essential measurement systems that underlie them, he said.

"I know it's hard to imagine you can compete yet collaborate, but that's the nature of doing business in the 1990s," he said.

This may not be easy. Closer collaboration between NCQA and the Joint Commission might prove to be "pretty awkward," because the latter organization since 1994 has

also offered accreditation to managed care networks, said the NCQA's Ms. O'Kane. "We're not after their business, and we wish they wouldn't be after ours."

The ultimate objective in providing performance measures based on

common standards is to reduce the variations in health care that arise from provider to provider, Mr. Loeb said.

"The large purchasers out there are looking for answers to some very good questions," he said. "The benefit manager cares about whether the quality of care being provided to employees when they're diagnosed with diabetes is better in Plan A or Plan B."

The panels are especially likely to establish common performance standards for "high-cost, high-volume, high-risk areas that are known to be problem-prone and have significant variations in treat-

ment," he said.

Measures will gauge treatment procedures, medical outcomes and patient satisfaction levels, he said.

"We want to cut out duplication, and we believe that, having all three organizations together, we can get better information, more timely information," said Dr. Randolph D. Smoak Jr., chairman of both the AMA and the AMAP. "This will cut out some of the duplicate effort, reduce costs and put out a report card in the form of a superior product."

Within the next couple of years, some comparative data on physician quality might begin to be available to purchasers and the public, he said.

Ms. O'Kane said the alliance aims to reduce the "confusion, if not resistance" encountered when providers are faced with uncoordinated evaluations by different organizations.

"We think this is a win-win-win all the way around," she said.

She emphasized, however that the distinct cultures of the AMA, the NCQA and the Joint Commission would not result in an outright melding of quality measurement programs.

"We're not merging the organizations; we're merging these (medical) technical panels," she said. **BI**

Certified Grocers names new vp

Joe Ney has been elected corporate vp of Certified Grocers of California Ltd.

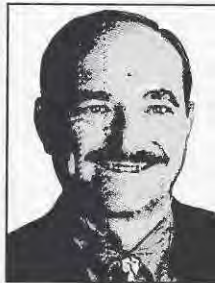
Mr. Ney, 50, already serves as president of the Commerce, Calif.-based grocery distributor's insurance subsidiaries, which in-

clude Bermuda-based captive Springfield Insurance Co. He also is responsible for risk management functions at Certified Grocers.

Mr. Ney reports to Alfred A. Plamann, president and chief executive officer of Certified Grocers.

Mr. Ney also has served as vp-administration for Grocers & Merchants Insurance Services, a Covina, Calif.-based insurance agency unit of Certified Grocers. Prior to that job, he was underwriting manager and systems analyst for National American Insurance Co. in Long Beach, Calif.

Mr. Ney holds a bachelor of arts degree in behavioral and social sci-



Mr. Ney

Comings & Goings: Buyers

ences from the University of California at Irvine.

He earned the Associate in Risk Management designation from the Insurance Institute of America.

Richard W. Ryan has been named director of risk management at Franklin Resources Inc., a San Mateo, Calif.-based company that provides investment management, shareholder and distribution

services to the Franklin Templeton family of mutual funds and institutional accounts.

Mr. Ryan, 52, is responsible for Franklin Resource's risk management

programs on its worldwide property, liability, crime, directors and officers liability and errors and omissions exposures.



Mr. Ryan

In his newly created position, Mr. Ryan reports to Michael McCulloch, director of corporate services.

Before joining Franklin Resources, Mr. Ryan was manager of corporate insurance at Bank of America in San Francisco.

He holds an engineering degree from State University of New York's Maritime College in Fort Schuyler, N.Y.

Mr. Ryan also earned the Associate in Risk Management designation and is a board member of the Golden Gate chapter of the Risk & Insurance Management Society Inc.

We'd like to report on staff changes in your company's risk management, safety and employee benefit departments.

Contact Michael Bradford, Associate Editor, *Business Insurance*, 2726 Prytania, #6, New Orleans, La. 70130; 504-269-9888; fax: 504-269-0858; or via e-mail: mbradfor@crain.com. Please send a photograph, too.

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Global Briefs

Maarten Hulshoff is to step down as chairman of Amsterdam, Netherlands-based international credit insurer **NCM Group** to become chief executive officer of the Dutch bank Rabobank International. He is expected to leave NCM by summer, and a successor has yet to be announced. Zurich, Switzerland-based reinsurer Swiss Re is a majority shareholder in NCM. . . Oldwick, N.J.-based rating agency A.M. Best Co. has assigned an A (Excellent) rating to **New India Assurance Co. Ltd.** of Fort Mumbai, India. Best based New India's initial rating on its superior capital position, strong operating performance and strong market position in the domestic insurance market in India. In addition, New India has developed "significant" international operations, said the rating agency, with a "long record of successful trading" in the international market. . . Business risk consultant **Control Risks Group** is opening new offices in Singapore and Sao Paulo, Brazil. In addition, it has recruited Larry Gurwin, former member of the U.S. Senate Permanent Subcommittee on Investigations, to head up its investigative team in Washington. Former assistant commissioner of the Royal Hong Kong Police Mike Horner is to head up the new Singapore operation, and Jim Wygand has been appointed to lead the Sao Paulo office. He previously was managing director of Kroll Associates in Sao Paulo. . . London-based equine broker **British Equestrian Insurance Brokers Ltd.** has bought specialist marine broker St. Margarets Insurances Ltd. from Lloyd's of London broker Ian McCall Holdings Ltd. . . Bermuda-based **EXEL Ltd.** is to change its name to XL Capital Ltd. following shareholder approval. The organization will change its name and unveil a new company logo Feb. 15. . . The Kenyan government has failed to find a buyer for state-owned **Kenya Reinsurance Corp.** Although several potential suitors for the company came forward, the government rejected all bids and is planning to start the process again. . . The Singaporean government is aiming to attract **financial guarantee insurers** to the country with a review of the insurance regulations, according to Lim Hng Kiang, minister for national development and second minister for finance. . . **January storms in Ontario** have cost the insurance industry at least \$50 million Canadian (\$33.1 million), according to figures issued last week by the Insurance Bureau of Canada. . . London-based accountant Coopers & Lybrand, now **PricewaterhouseCoopers**, has been fined £1.2 million (\$2 million) for its role as auditor to companies run by Robert Maxwell, the media tycoon who raided his companies' pension funds in the early 1990s. In addition, the auditor has been ordered to pay £2.1 million (\$3.4 million) in costs and has been censured by the Joint Disciplinary Scheme tribunal, the accounting watchdog. . . The European Union's Council of Ministers has resumed discussions on the draft directive on **insurance company liquidations**. The proposed directive includes a suggested precedence of creditors for liquidated insurers, putting policyholders behind employees, tax authorities, social security authorities and guaranty fund beneficiaries. . . **Insurance Corp. of the Channel Islands**, the Guernsey-based subsidiary of U.K. multiline insurer Royal & SunAlliance Insurance Group P.L.C., has bought Assicurazioni Generali S.p.A.'s local non-life book of business for less than £500,000 (\$817,650). RSA sold its Guernsey-based life operation, Sun Alliance Worldwide Insurance Co. Ltd., to Generali Worldwide Insurance Co. Ltd. in May 1997 for about £15 million (\$24.5 million).

Seeking new business

Market Board strategies for next three years include lower subscription costs

By SARAH GODDARD

LONDON—Lloyd's of London is looking to cast its net even wider to catch new business, and reducing business costs is a major lure.

In a document issued last week, "Priorities for Growth," the Lloyd's Market Board outlined the strategies it intends to use to increase business over the next three years.

Its first priority is to create an attractive trading environment, states the document. Costs in particular are targeted. By 2001, Lloyd's aims to reduce the premium levy used to pay off the market's syndicated loan to just 0.85% of premium volume.

Lloyd's took out a loan totaling almost £300 million (\$490.6 million when converted at a current exchange rate)

LLOYD'S

from a consortium of banks to help finance its reconstruction and renewal plan. Currently, it is being paid off with a 1.1% levy on all premiums written by the market, and from proceeds of Lloyd's debt collection process against former members who refused to pay losses. The Lloyd's Market Board aims to eliminate any premium levy by 2002.

At the same time, annual subscriptions for members will fall from their current level of 0.35% of capacity—down from last year's figure of 0.5%—to 0.25% for next year.

Also, Central Fund contributions are set to fall for corporate investors, currently paying 1% of their capacity to bolster the fund of last resort. This will be reduced incrementally beginning next year, ending up at 0.25% for the 2003 year of account. "We will build (the Central Fund) to a point where it doesn't need to be built any further," said Lloyd's Chief Executive Officer Ron Sandler.

Lloyd's has been working hard to reduce its
See Lloyd's on page 19

Cat losses, satellite claims hurt ReAC

By SARAH GODDARD

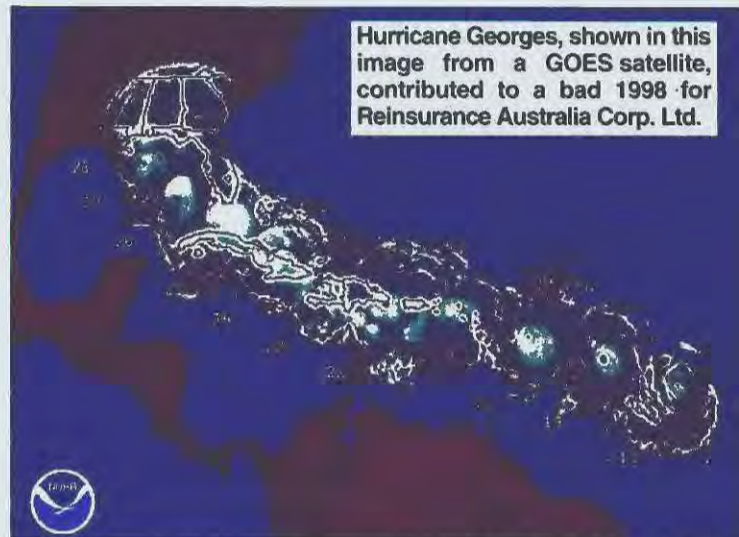
LONDON—Large catastrophe losses plus a run of satellite claims last year have led Reinsurance Australia Corp. Ltd. to post losses of up to \$45 million Australian (\$28.6 million) and stock analysts to speculate that the Sydney-based reinsurer could find itself an acquisition target.

The reinsurer originally warned of lower profits in October, as it started to feel the effects of Hurricane Georges. At that point, it reduced its 1998 profit estimate to \$33 million Australian (\$21.0 million) from \$70 million Australian (\$44.5 million).

A flood of claims in early December across all classes of business, plus further deterioration in Georges-related losses, led the reinsurer to post a loss warning the day before Christmas.

"We had a very poor year on satellite business," said Chief Operating Officer Tony Crossley, with claims levels much higher than normal loss years. In addition, there was "a very high frequency of losses on every account we write," he explained. ReAC's book is a mixture of international property, catastrophe excess of loss, marine, aviation and space business. "This was a year in which diversification (of classes of business) worked against us," he said. At the same time, the weak pricing conditions meant "there was very little room to absorb any significant shock towards the end of the year," he added.

ReAC was launched slightly more than five years ago to take advantage of the hard market conditions and capacity shortage at the time. Although headquartered in Sydney, it writes international business through a network of branch offices, including Paris, Hong Kong and Miami, and has a subsidiary reinsurer, Monegasque de Reassurances, in Monaco.



Hurricane Georges, shown in this image from a GOES satellite, contributed to a bad 1998 for Reinsurance Australia Corp. Ltd.

Other exposures for the 1998 account include Hurricane Mitch and Swissair Flight 111, which crashed into the ocean near Nova Scotia, Canada, on Sept. 3, killing all 215 passengers and 14 crew members. Mr. Crossley estimated Hurricane Georges will cost the reinsurer \$80 million Australian.
See ReAC on page 20

French health system criticized

By MARIA KIELMAS

MONTPELLIER, France—The French health care system badly needs to be reformed to cut high costs and to increase the quality of care, according to health insurance experts and risk managers.

Health care reform was a major theme at the 1999 conference of the Assn. pour le Management des Risques et des Assurances de l'Entreprise, the French risk management association, held late last month in Montpellier, France.

In addition to the crisis of increasing contri-

butions by employers, the logic of France's unlimited health care indemnity system itself is being questioned, said Daniel Laurent, a professor of computer science at the University of Paris and a scientific adviser to the Paris-based insurer AXA S.A.

Employers in France make contributions not only to the state-funded system but also to private health care insurance, which 85% of the French population buys to supplement state-provided health care benefits. Group plans account for 60% of the private health care insurance market, which is funded by employer and employee contributions totaling 1% to 3% of pay, according to Mr. Laurent. The state health care system is funded through an 18% payroll tax, of which employers pay 12% and workers pay 6%.

"France spends very nearly twice as much on health care as other developed countries," said Gilles Johanet, director general of the Caisse Nationale d'Assurance Maladie des Travailleurs Salaries, the state-run health insurance system. But, he said, "there is no transparency in the system or in the quality of service provided."

Mr. Johanet said any health care reform must address three issues: quality of service, which is not receiving attention from either patients or providers; whether providers can refuse or limit some treatment requests; and drug costs.

State spending on medication is not controlled and thus siphons off a large proportion of the state system's funds, he said.

See France on page 19

D&O liability an issue worldwide

By MARIA KIELMAS

MONTPELLIER, France—Wider publicity of corporate financial difficulties and practices is putting directors and officers liability into the spotlight on both sides of the Atlantic.

As a result, risk managers must look carefully at the corporate governance process and inform top management of all types of exposures, according to participants at a workshop titled "Corporate Governance and D&O Issues" at the convention of the Assn. pour le Management des Risques et

des Assurances d'Entreprise, held late last month in Montpellier.

As companies become more global and the euro takes hold, there will be a move toward greater harmony of corporate governance concepts, said Jane Hodgson, assistant vp and U.K. retail executive protection manager at Chubb Insurance Co. of Europe S.A. in London.

Now, though, corporate governance practices vary considerably worldwide. The British and U.S. corporate models tend to include diverse shareholder bases and are more liquid, whereas the European model tends toward cross-shareholding, she said, a model in which companies and banks invest in each other.

"Each country has a different belief system of what a board should be," Ms. Hodgson explained.

Christopher Lajtha, risk manager at oilfield services group Schlumberger Ltd. in Paris, moderated the workshop. He said one reason corporate governance has become a pressing issue is the expansion of companies' shareholder bases and developments in information technology, which have combined to push for greater transparency in corporations.

Drawing on his experience in the United Kingdom, Mark Butterworth, group insurance risk manager at London-based Prudential Corp. P.L.C., noted that several financial scandals in the British markets have triggered pub-

See D&O on page 19



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A proposers conference will be held on February 16, 1999 at 10:30 A.M. at the Authority's central office, located at 250 Broadway, New York, New York 10007. All inquires for additional information regarding the Request For Proposals may be directed, in writing, to Augusto Montan, Assistant Director, Financial Operations, at the above address or by calling (212) 306-6475.

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Vice Presidents, General Managers and
Other Administrative Personnel5,346

Financial:
Chief Financial Officers and Vice Presidents
of Finance4,872
Secretaries, Treasurers, controllers and
other Financial Personnel3,927

Risk/Employee Benefits:
Vice Presidents, Directors, Managers, and other
related department personnel of: insurance, risk,
employee benefits, personnel, compensation,
pension, safety, security, industrial relations,
human resources and employee/
labor relations13,774

Sub-total **32,926**
Associations259
Government, Unions and
Educational Institutions931

Commercial Consumers
Sub-total **34,116**
Insurance Agents and Brokers7,735
Insurance Companies6,668
Accountants, Actuaries,
Attorneys & Consultants2,520
Adjusters, Appraisers, TPA's, Captive Managers
& Health Care Providers1,437
Others Allied to the Field759

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INTERNATIONAL

France

Continued from page 17

"About 30% of emergency admissions to hospital are due to complications with medication," said Jean de Kervasdoué, an honorary professor at the Paris-based Conservatoire National des Arts et Metiers and former government adviser on health care.

Hospitalization costs have risen sharply in the past 40 years, as France has shifted from a volunteer nursing staff, composed mainly of members of religious orders, to specialists, Mr. Kervasdoué said. "They were doing this for nothing. Then in the 1950s, four professionals replaced one nun. In the 1960s and '70s, all hospitals had to have specialist equipment and staff, and now spending is just not controlled." As a result, the average hospital stay in France is between 10 and 26 days, he said. Unlike the United Kingdom, France has no fixed

budget for state health care spending.

But any government health care cutbacks likely would burden employers that provide complementary plans. French employers already face payroll taxes of more than 45%—one of the highest rates in the developed world. For this reason, it is important for risk managers to address the debate on health care funding in France, said Alain Lemaire, AMRAE chairman and risk manager at the Paris-based food company Nestlé-France.

Mr. Lemaire said that health care reform can progress in one of three directions—by promoting competition in the public sector, by establishing private-sector providers in competition with the public sector, or by the complete privatization of the state health care system.

Although the French government has not proposed legislative reform, AXA Group is trying to introduce a form of managed care to complement the existing state system. The insurer

covers about 3 million private health insurance clients.

Mr. Laurent, AXA's adviser, said the insurer plans to create a mutual insurer, AXA Sante Mutuelle Assurance, to manage health care risks, and a health assistance network to ensure the provision of medical help and the coordination of treatment.

The system would be funded through the complementary health insurance coverage provided by employers and/or individuals, together with a proportion of the 18% of gross salary paid toward the state health system. The new plan would be part of France's social security service and would reinforce its universal health care plan. It would be the insurer's responsibility to deliver to the customer the best quality care at the lowest possible price, said Mr. Laurent. The proposal is quite different from health maintenance organizations in the United States, he stressed.

"We need to introduce competition

among private-sector companies within the framework of the existing national system and adopt a risk management strategy," Mr. Laurent said.

AXA is proposing an experimental network in the Ile-de-France region, which includes Paris, to cover a socioeconomically diverse population. The network would be organized around a 24-hour medical center. It would be based on the coordination of treatment among health professionals and the implementation of preventive measures. Non-prescribing doctors would guide members, depending on their care requirements, through the network of medical treatment.

A plan member would be free to consult a practitioner inside the network, choosing as his or her personal doctor either a general practitioner or a specialist. The member would not have to pay in advance and could, if applicable, obtain a second opinion.

One problem is that French hospi-

itals are unable to estimate health care costs because they don't itemize expenses. Doctors thus have no incentive to keep down costs. The AXA plan, which is still in the conceptual stage, proposes that doctors be shareholders in the system and thus have an incentive to control costs. The doctors would subcontract out the risk management of the plan to the insurers, said Mr. Laurent.

The plan is due to start July 1 with 3,000 initial members, but no agreement has been reached with the government as yet on cost allocation from the state system. When negotiated, the precise allocation will be based on the perceived health risk of the 3,000 members, Mr. Laurent said.

AXA is proposing to open up this network's services to other mutual companies and to local communities. Thus, unemployed or poorly paid individuals not covered by the complementary plans would be able to receive health care. **BI**

D&O

Continued from page 17

lic interest in how companies run their affairs. Such scandals include:

- The 1991 collapse of the Bank of Credit & Commerce International, which failed amid allegations of fraud. Although BCCI was neither British-owned nor U.K.-based, it conducted most of its operations there.
- Embezzlement of pension funds from the Maxwell Group publishing empire by the late Robert Maxwell in 1991.

- The 1990 collapse of the textile and trading conglomerate Polly Peck International.

Such events led in December 1992 to the publication of the report of the Cadbury Committee on the Financial Aspects of Corporate Governance, later known as the Cadbury Report, along with the publication of a code of best practices for companies. The Cadbury Report also focused on the need to provide information to shareholders on the key operational risks faced by companies.

Further recommendations were published in July 1995 in the Greenbury Study report on directors' remuneration and the Hampel Report of January 1998, stating the need for broad principles in corporate governance and reporting requirements. The Cadbury, Greenbury and Hampel committees were jointly funded by the U.K. government and the private sector to review standards on accounting and reporting of corporate policy, such as environmental issues and executive pay.

AMRAE workshop participants agreed that risk managers must make known to top management all of the risk exposures their companies face.

Richard Reddaway, group insurance manager at the pharmaceutical company Glaxo Wellcome P.L.C., said that Glaxo intends to follow the Hampel principles in its 1998 accounts even though this is not obligatory. But this could soon be the case.

"Reporting is not a feel-good issue

but will soon become a requirement," said Mr. Lajtha.

The three reports—Cadbury, Greenbury and Hampel—were merged into a combined code of practice for corporations and published in June 1998.

The push toward more transparency in the way French corporations are run prompted the publication in 1996 of the Vienot Report, which recommended that companies implement internal audits. France's 40 largest

'Reporting is not a feel-good issue but will soon become a requirement,' says Christopher Lajtha.

corporations are complying with the report's recommendation.

Risk managers attending the workshop explained that their companies' expansion into international markets has triggered more transparency in operations and reporting.

As in the United States, shareholder activism in Europe has forced large corporations to re-examine their reporting procedures.

Mr. Reddaway said that his company had to re-examine the roles of the chairman and chief executive officer in the aftermath of the Maxwell pension scandal, in which the late Mr. Maxwell had no accountability inside his own company. At Glaxo, these positions were held by the same individual, but the Cadbury Report called for them to be separated. In addition, the report prompted internal audits and an examination of the role of non-executive directors.

While Glaxo once had no internal audit process, it now has a seven-person internal audit department, Mr. Reddaway noted. "How effective this is, we don't know. This is the difficulty of the concept we are dealing with," he said.

of CGU P.L.C.'s recent announcement that it is moving its marine book of business into Lloyd's from the London company market, as well as General Re Corp.'s purchase of managing agency DP Mann Holdings Ltd.

The document also outlines strategies that aim to increase Lloyd's product and customer base. These include allowing "more flexible arrangements between Lloyd's brokers and agents to deliver the most efficient service," states the document. As part of this, technology will be used to improve information flows, premiums and claims payments, and policy process-

The role of non-executive directors under the U.K. corporate model, or of the supervisory board as in the German model, is becoming more crucial and has implications for directors and officers liability insurance.

Although non-executive directors earn less than executive directors, corporate liabilities "are shifting to non-executive directors for matters such as Y2K, ethics, audits, etc.," said Chubb's Ms. Hodgson. As a result, D&O liability coverage should be increased to reflect non-executive directors' growing responsibilities, she said.

Glaxo has been re-examining its risk exposures to issues that have triggered public controversies, such as genetically modified products, environmental impact assessments and the probity of its suppliers.

Ms. Hodgson outlined a brief history of shareholder activism and the push for corporate governance in the United States. Although such activism was common in the 1930s, it didn't take off until the 1970s and 1980s. It was at this time that the ownership structure of corporations changed with the boom in institutional investors and pension funds. And the 1990s have witnessed a surge in special-issue activist groups that work for the disclosure of corporations' affairs, she said.

Nevertheless, European groups still place a greater emphasis on social issues, while shareholder returns are the dominant issue in the United States, Ms. Hodgson said.

For example, the merger between German carmaker Daimler Benz Corp. with Chrysler Corp. was one case where U.S. attention focused almost exclusively on shareholder return. Although there have been many labor problems at Chrysler, labor has no representation on the Chrysler board.

"Daimler has a different model, so it will be interesting to see the outcome," Ms. Hodgson said.

Daimler Benz, like most German companies, has labor representation on its supervisory board. **BI**

ing. Lloyd's will work closely with the International Underwriting Assn. of London to improve processing services, says the document.

It also will investigate electronic access from approved overseas intermediaries, with the goal of establishing a worldwide system within three years.

Lloyd's global reach will be extended with more licenses around the world, according to the document. Products will be developed, including a framework for alternative risk transfer products, and the Lloyd's brand name will be promoted and supported internationally. **BI**

Operational risks enter the equation

BY MARIA KIELMAS

MONTPELLIER, France—The treatment of corporations' operational risks as a competitive asset means new challenges for risk managers, experts say.

This issue was the subject of a workshop, "Operational Risks and Shareholder Value," at the convention sponsored by the Assn. pour le Management des Risques et des Assurances de l'Entreprise, the French risk manager's society, held Jan. 20-22 in Montpellier.

"Operational risks are those risks faced both by the corporation and the shareholders," said Thierry van Santen, AMRAE vp and head of risk management at the Paris-based food and agricultural conglomerate Danone S.A.

Mr. Van Santen explained that such risks have increased sharply in his company. Five years ago, Danone S.A. conducted 70% of its business in Europe; today, Europe accounts for just 40% of the company's business. With this geographical diversity of operations has come a greater range of operational risks.

Mark Stephen, partner-strategic risk services at PricewaterhouseCoopers (UK) in London, called operational risk the "third dimension of value" for corporations.

But while the corporate community knows that taking business risks are necessary to get any rewards, Mr. Rosenbaum examined the implications of greater risk disclosure to shareholders. He cited a recent survey that indicated that shareholders said risk is defined as "volatility" and that shareholders see risk only as a negative factor.

"From an investor's perspective, the priority has been to talk about growth and return. But now the talk is about risk," Mr. Stephen said.

He cited as an example the energy utilities in Britain. Prior to their privatization, these companies addressed risk solely in terms of the price they had to charge consumers for their product. Today, as private-sector companies that must create value for their shareholders, they must address many risks, such as potential hazards, erratic customer demand and aging infrastructures.

The operational risks involved in losses—even if those losses are in-

sured—also need to be examined by risk managers. Mr. Stephen gave as an example the loss of an industrial company's only plant. Although the company, which he did not name, was compensated for its loss by business interruption coverage, which allowed it to rebuild the plant, it lost customers for its product in the meantime. Thus, the loss of the plant wiped out 35% of the company's value.

Another risk that must be taken into consideration is the possibility that an occurrence will have a negative impact on a company's share price, such as the 1984 leak of methyl isocyanate gas at a Union Carbide Corp. pesticide manufacturing plant in Bhopal, India, that killed more than 2,500 people.

"From an investor perspective, the market reacts to what is the perception of risk," Mr. Stephen said.

Hugh Rosenbaum, principal at Tillinghast Towers Perrin in London, said it was important for companies to identify areas of "risk-based advantages," attempts to get higher rewards than the competition by engaging in riskier practices. Mr. Rosenbaum said that a company must compare its own risks in certain areas with the risks taken on by its competitors. Such areas of risks include the processing of raw materials, the possibility of strikes and the entrance of new competition.

Risk managers should determine the probability of various risks, examine their predictability, and spend time on risk quantification. **BI**

ADVERTISER

INDEX

Issue of February 8

ADVERTISER	PAGE #
ACMAT Corp.	24
Burnham Systems	16
Carvill America, Inc.	4
Employers Reinsurance Corp.	11
J & H Marsh & McLennan	13
Nottingham Partners Finance	10
Risk Capital Reinsurance Co.	9
Swiss Re America	15
The Hartford - EBD Group	6-7
TIG Insurance	12
Wausau Insurance Company	5

Lloyd's

Continued from page 17

costs, and they have dropped by 17% over the past year, said Mr. Sandler.

"There is no evidence to us that (Lloyd's) is a higher-cost market in relation to our competitors," said Max Taylor, chairman of Lloyd's.

And this is among the factors that interest potential capacity providers, he said. "It is probably fair to say that every single (major insurance company) is looking at an involvement in Lloyd's," he said, citing the examples

INTERNATIONAL

ReAC

Continued from page 17

(\$50.8 million), while Mitch and the satellite losses will hit \$16 million Australian (\$10.2 million) and \$18 million Australian (\$11.4 million), respectively.

Mr. Crossley was confident that the loss warning of between \$40 million Australian (\$25.4 million) and \$45 million Australian (\$28.6

million), against premium income of \$700 million Australian (\$444.9 million) for the year, including reinstatement premiums, is unlikely to deteriorate further.

The profit downgrade sent ReAC shares plummeting. In fact, the drop forced a ReAC executive to sell 2 million shares in January that had been bought through stock options with a loan, Mr. Crossley said. The lender called the \$2 million loan after ReAC's profit margin fell, but

the executive "should be buying (the shares) back soon," Mr. Crossley said.

However, the share price has continued to fall, leading Australian stock analysts to speculate the company may become a takeover target.

"We haven't ruled out any form of business combination," said Mr. Crossley. The reinsurer's shares currently are trading at a multiple below book value, he added, which could make it an interesting acquisition.

sition.

Previously, ReAC founder and non-executive Director Roger Burn had said that the fall in share value was not sufficient to spark an aggressive takeover bid. "No one has approached the company, and we have not made any overtures," he said.

Meanwhile, ReAC is in the process of setting up a Lloyd's syndicate to start trading at the beginning of April against £30 million

(\$49.2 million) capacity, though it is still awaiting regulatory approval. As part of the reinsurer's revised business plan, this move will give ReAC access to direct and facultative business it currently doesn't write. "We are reviewing every aspect of our business," said Mr. Crossley, with a view to being much more selective in the future.

Matthew MacDermott contributed to this report.

FTR FOR THE RECORD

Securities suits set record in '98

STANFORD, Calif.—A record-setting total of at least 235 companies were named as defendants in federal class action securities fraud lawsuits filed last year, according to data compiled by the Stanford Securities Class Action Clearinghouse.

The prior record was 227 companies sued in 1994. The record was broken despite the Private Securities Litigation Reform Act of 1995, which was designed to reduce frivolous securities litigation by narrowing the grounds for such suits and giving companies protections for their public statements.

A list of the 235 companies sued in 1998 and a list of the companies sued since the Reform Act became effective in December 1995 can be viewed at the clearinghouse's World Wide Web site at: securities.stanford.edu.

Survey finds trends in bias cases

SAN FRANCISCO—California employers won slightly more than half the employment discrimination cases brought to trial last year, and the median jury award was the smallest in six years, according to a law firm survey.

But the survey by Chicago-based Sonnenschein Nath & Rosenthal also found that 10 multimillion-dollar verdicts jacked up the average jury award to its highest level in six years.

The survey findings show that, while juries are less likely to assume employers are out to do wrong, "when the plaintiffs make their case, juries are angry, and they are perfectly willing to award a lot of money to the plaintiff and to punish the employer," said attorney Mark S. Ross, in Sonnenschein Nath's San Francisco office.

Mr. Ross said that although the survey was confined to

California cases, it is also generally representative of trends around the country.

Plaintiffs won 114 of the 249 reported jury verdicts in employment cases last year, or 46%. The median jury award was \$250,000, while the average was \$2.5 million.

Employers won most of the cases involving retaliation and discrimination based on national origin, gender, race or age. Plaintiffs won the majority of verdicts for claims involving termination in violation of public policy, disability discrimination or sexual harassment. There was an equal split in cases involving breach of contract; invasion of privacy; and discrimination based on sexual orientation, gender or religion.

2.1% P/C premium growth forecast

Wall Street stock analysts are expecting a slight increase in premium growth in the property/casualty business this year, according to the annual "Groundhog Forecast" published by the Insurance Information Institute.

Net premium growth is expected to be 2.1% in 1999, somewhat above current estimates of 1.6% and 1.8% for 1998, according to the analysts' forecast. The 1999 projection also is higher than the 1.4% growth rate predicted by Oldwick, N.J.-based A.M. Best Co.

However, the analysts predict deterioration in the industry's combined ratio for 1999, forecasting it will deteriorate to 105.3%. That is slightly higher than the 104.5% estimated for 1998 but below A.M. Best's estimate of 106.8%.

The combined ratio is expected to deteriorate due to the current soft pricing environment, according to the III forecast. By contrast, the nearly three-point rise in 1998's expected combined ratio (from 101.6% in 1997) was due to a combination of pricing pressure and a 287% jump in catastrophe losses to \$10.1 billion from \$2.6 billion.

Comings & Goings: Industry

At New York-based AXA Global Risks US, James Morgan has been named president and chief executive officer. Mr. Morgan will have particular responsibility for statutory and regulatory relationships and will continue to serve as CEO of AXA Global Risks UK. At New York-based Equitable Life Assurance Society of the U.S., another member of the global AXA Group, Mark Wutt, has been elected a senior vp. Mr. Wutt, who began his career with Equitable in 1982, will have a key role in distribution planning and in coordinating strategic implementation efforts across the company's retail and wholesale distribution groups.

Pauline Thomas has been elected the first female president of the Society of Risk Management Consultants. The New York-based society is an international professional organization of independent insurance and risk management consultants. Ms. Thomas heads the Irvine, Calif.-based consulting firm of Effective Risk Management.

Information in brief

Oklahoma insurance regulators on Jan. 19 completed their first-ever health insurer rehabilitation when the acquisition of Access Insurance Co. by Consolidated Health Holdings Inc. was completed. The deal includes repaying the state's life/health guaranty fund \$2.5 million in claims and administration costs. Tulsa, Okla.-based Access insured primarily employees of public schools, municipalities and small businesses. . . . Millers Mutual Insurance Co. of Harrisburg, Pa., and Paradise Mutual Insurance Co. of Hanover, Pa., have completed a consolidation of their operations. The combined company is operating under the name Millers Mutual Insurance Co. The company's main offices are in Harrisburg, though Paradise Mutual remains in Hanover, functioning as Millers Mutual's personal lines division.

Risk

Continued from page 1

national partner in charge of risk management consulting at Ernst & Young in New York.

The Benchmark Survey considers the cost of risk to be made up of insurance premiums; retained losses; internal administration; outside services, including consulting, captive management and other vendor services; financial guarantees; and fees, taxes and similar expenses.

Mr. Blinn said the survey "provides critical information for benchmarking the risk management functions. Because the results are segmented by industry groups, risk managers can tell how their costs stack up against those for their industry." This summary analysis by industry is a new feature of the report.

Bruce R. Evancho, manager-corporate insurance at E.I. du Pont de Nemours & Co. in Wil-

ington, Del., took part in the survey and will use the results for benchmarking. "We wanted to get an external benchmark of the actual cost of risk as it compares with other companies of our size" and in the same industry, he explained.

The data lets DuPont "drill down further to our business units and benchmark them against companies of like size and makeup," he said.

He pointed out that DuPont self-insures much of its risk and the survey will also allow the company to compare its cost of risk against others that are more heavily insured.

Survey results were based on questionnaire responses from 865 U.S. respondents and 86 Canadian respondents. Respondents were deputy members of RIMS, certain Ernst & Young clients and others from a list bought from the International Risk Management Institute.

Canadian organizations also enjoyed a lower

cost of risk in 1997.

The cost of risk in Canada fell to \$2.13 Canadian (\$1.49) per \$1,000 Canadian (\$699.20) of revenue in 1997, from \$2.52 Canadian (\$1.76) the year before. The 1997 figure is the lowest since the Canadian cost of risk reached a peak of \$3.90 Canadian (\$2.73) in 1990.

However, the survey cautions that there is some difficulty in comparing year-to-year Canadian results because the number of respondents is small and shifts may skew overall results.

Somewhat surprising in this year's U.S. results were significantly lower liability costs. Liability costs per \$1,000 of revenue amounted to \$1.93 in 1997, compared with \$2.51 in 1996. At the same time, liability premiums fell to 76 cents per \$1,000 of revenue from \$1.12 in 1996.

Retained liability losses also dropped to \$1.17 per \$1,000 of revenue from \$2.49 in 1996.

The survey acknowledges that the decreases may be partially attributable to changes in the survey methodology. Even so, the amount of the declines was surprising, Mr. Blinn noted.

"One of the things that hit me was the drop in liability costs was more than I would have expected," he said, pointing out that the decrease is due in part to a competitive insurance market and risk managers' success at controlling losses.

The survey indicated that employment practices liability insurance is becoming a common part of risk managers' insurance portfolios. The survey asked for the first time about premiums and losses related to the coverage.

The findings show that of 876 U.S. respondents, 172 bought separate EPL coverage for a total of \$19.1 million in premiums. Eighty-five respondents had claims, totaling \$23.4 million.

While liability costs fell, workers compensation costs inched up, moving to \$1.93 per \$1,000 of revenue from \$1.87 in 1996. The 1997 increase follows a drop in the previous year from

\$2.44 in 1995. However, the survey points out that 1997 workers comp costs are affected by the mix of responding industry groups.

Property risk financing costs fell to 93 cents per \$1,000 of revenue in 1997 from \$1.07 the year before. Property premiums fell to 59 cents per \$1,000 from 78 cents in 1996.

U.S. respondents reported paying an average of 34 cents for retained property losses per \$1,000 of revenue. That's an increase from 30 cents in 1996. The survey said the rise could be indicative of "better record keeping, since, generally, deductibles did not increase."

U.S. risk managers' budgets are increasing, according to the survey. Budget expenses, including salaries, training and office materials, amounted to 24 cents per \$1,000 of revenue in 1997, up from 15 cents in 1996. The 1997 figure is the highest since 1994, when those expenses amounted to 22 cents per \$1,000 of revenue.

The survey also gave some insights on risk managers' concern and readiness for Year 2000 computer problems. The findings indicate that in two-thirds of the U.S. organizations responding, risk managers have "been involved with respect to the risk of harm that may result from failure of (the organization's) computer systems, or those of its suppliers, customers, or service providers."

The survey said 31% of the U.S. respondents indicated they are "very concerned" about Y2K-related risks.

Other findings show that risk managers continue to turn to captives as a viable risk financing option, and growth of capital market techniques continues as an alternative to traditional risk-funding methods.

Copies of the 1998 RIMS Benchmark Survey are available from Insurance Publishing Plus Corp., 317-843-2523; fax: 317-816-1001. The cost is \$395 for RIMS members, \$445 for RIMS associates and \$495 for others.

Cost of risk survey

1990-1997 components of the cost of risk per \$1,000 of revenue

Costs	1997	1996	1995	1994	1993	1992	1991	1990
Liability risk financing	\$1.93	\$2.51	\$2.50	\$2.55	\$3.29	\$3.14	\$2.20	\$2.80
Workers comp risk financing	1.93	1.87	2.44	2.82	3.42	3.81	3.00	2.50
Property risk financing	0.93	1.07	1.24	1.31	0.93	0.96	0.90	1.00
Risk management department budget	0.24	0.15	0.18	0.22	0.17	0.18	0.20	0.20
Other costs ¹	0.22	0.17	0.13	0.14	0.21	0.08	-	(0.10)
Total cost of risk²	\$5.25	\$5.70	\$6.49	\$7.30	\$7.70	\$8.30	\$6.40	\$6.10

¹ Prior to 1994, other costs included outside services and captive cost (profits), subsequently included in premiums. ² Because the survey used only complete responses for each category, sums for each year may not match totals.

Source: 1998 RIMS Benchmark Survey

Rudeness in the air just doesn't fly

News reports of rowdy passengers on airplanes forcing delayed or unscheduled landings should come as no surprise to anyone who flies often. The increasing incivility of passengers, whether in the front or the back of the airborne bus, is painfully obvious on most flights.

Two recent extreme situations must be causing airline risk managers and their top management a sleepless night or two and concern for how their crews can control the behavior of ill-mannered and sometimes dangerous passengers. Self-defense training certainly is among the options.

In the two most recent incidents, it appears that the crews were well trained and handled the situations appropriately.

In mid-January, an Australian woman on an Air New Zealand flight from Sydney to Wellington decided she did not want to fasten her seat belt. Her protest escalated into assaulting two flight attendants, locking herself in the toilet and, at one point, grabbing for the door in-flight, causing the pilot to delay landing. After she was finally restrained and the pilot landed the plane 90 minutes late, she was arrested for endangering the lives of others, according to Reuters. The maximum sentence would be 14 years in jail.

The second incident involved a chartered flight from London to Montego Bay, Jamaica. Six couples' drinking progressed to throwing a drink and their singing escalated to shouting. When the offending passengers could not be calmed, the pilot made an unscheduled landing in Norfolk, Va., to throw them off the plane. The appearance of police did sober up the group, which was not arrested but was left to make other travel arrangements, according to the Associated Press. The other passengers continued to Montego Bay, two and a half hours late.

A few days later, a TV report said two other airlines had refused tickets to the stranded group. Perhaps this group and the Australian woman had to charter their own planes to get home.

Thankfully, passengers' behavior doesn't often endanger others or force unscheduled landings, but I've been on some flights made miserable by ill-mannered passengers. And, more often than not, the ill-mannered are in business suits, heading to or from presumably important meetings.

They board the plane with an attitude, shoving past others. Then they order the flight attendants around in a manner that would get them thrown out of any restaurant. After demanding their drinks (water or booze, I can't detect any pattern here), they get on the air phone and shout orders at secretaries or assistants at a volume audible six rows forward and aft.

Even worse, and perhaps endangering the lives of other passengers, are those who insist on using their cellular phones after they've just been told to shut them off. After hanging up, these "self-important masters of the universe" (a description coined by author Tom Wolfe) heave themselves around the airplane, dragging themselves out of their seats by grabbing any headrest they choose—except their own, of course.

If two or more of these antisocial A-types are traveling together, they talk at the top of their lungs of the mutual or independent exploits inflicted on their clients or competition. I mostly hear investment bankers bragging about deals, but I am sure one day I'll hear of an insurance deal. You can be sure I won't consider it off the record.

Upon preparation to land, if these arrogant idiots have had the money or the miles to upgrade to first class, they insult the flight attendant and those around them by refusing to accept their jackets or coats because they don't want to hold them for the next 10 minutes. "I don't want that until we land," I heard one particularly nasty passenger bark at a flight attendant.

In addition to the safety warnings and welcomes we hear on every flight, perhaps it would be helpful to add that polite behavior toward crew and fellow passengers is expected. Anything less, they could warn, will result in the pilot landing the plane at the nearest airport and ejecting the offenders. I know that sounds a bit like parents talking to unruly children, threatening to pull over and take action if the bickering doesn't stop.

Come to think of it, that is exactly the kind of discipline needed to make airline travel not only safe but also pleasant. If the merely rude were treated harshly, the potentially dangerous would surely think twice, wouldn't they?

It is called *civil* aviation, isn't it?

Publisher and Editorial Director Kathryn J. McIntyre's commentary appears fortnightly.



Kathryn J. McIntyre

CIGNA

Continued from page 2
which CIGNA walled off most of its liabilities from its ongoing operations, he argued.

The rules governing the implementation of the 1990 division statute are at the heart of the case, which about three dozen CIGNA policyholders and several rival insurers have been pursuing almost since the time that CIGNA unveiled its reorganization plan in October 1995.

Many of the policyholders are waging separate coverage litigation against CIGNA.

The insurers say the restructuring troubles them because CIGNA has reinsured them under various contracts. But their standing in the case was clouded in a 1997 decision by a state appellate court. That issue would have to be clarified by the Insurance Department if the case eventually returns there for additional hearings.

How ACE Ltd.'s \$3.45 billion offer for CIGNA's property/casualty operations may affect the case was not raised during the hearing. ACE's offer includes \$1.25 billion in additional reinsurance for CIGNA's runoff facility (BI, Feb. 1).

Opponents of the restructuring did not raise the issue because they did not want to complicate the case any more for the court, said CIGNA policyholder attorney John N. Ellison, a partner with Anderson Kill & Olick P.C. in Philadelphia.

Department attorney Jerome Shestack, who represented the agency and CIGNA at the hearing, said he does not comment on ongoing litigation. CIGNA's attorney could not be reached.

In its reorganization, CIGNA split its centuries-old Insurance Co. of North America unit into two segments to obtain an A- rating from A.M. Best Co. for the segment retaining ongoing business and INA's name. Without the restructuring, INA would have earned only a B++ rating. CIGNA officials have said that rating would have chased away attractive risks and financially imperiled the insurer.

CIGNA allocated most of INA's liabilities—including about 80% of its asbestos and environmental liabilities—to one segment. CIGNA merged that segment into a separately capitalized runoff operation without policyholder approval. The segment has earned a B+ rating from Best. The two sides disagree over whether such approval is mandatory under state novation laws.

The runoff operation will not be supported by any future revenue streams from CIGNA's ongoing operations. However, CIGNA dedicated \$1.35 billion more in capital and reinsurance to cover policyholders' liabilities in the runoff operation than CIGNA could have if it did not reorganize, the company says. The plan covers estimated liabilities three-fold, CIGNA has said.

At the state Supreme Court hearing, Mr. Shestack argued that Pennsylvania's corporate division statute requires the department to hold only informational hearings before deciding whether to allow an insurer to divide.

In late 1995, then-Commissioner Linda S. Kaiser held three such hearings. Only limited testimony by CIGNA and its opponents was allowed, with no opportunity for cross-examination.

Relying heavily on the secret actuarial report Tillinghast prepared on the runoff facility, Ms.

Kaiser approved the restructuring in February 1996.

The Pennsylvania Commonwealth Court later that year ruled the department did not have to disclose the report to CIGNA's opponents, because the report was part of the department's confidential financial examination of CIGNA.

However, the court ruled, the department no longer could rely on the report in approving INA's reorganization.

The department did not review the transaction after that ruling. And in their state Supreme Court briefs, the department and CIGNA cite the report in arguing the restructuring does not harm policyholders.

In March 1997, the state Commonwealth Court ruled that the state's Administrative Agency law obligated the department to hold trial-like hearings as well as informational hearings, because the agency's decision was an adjudication.

The case's record does not support opponents' argument that CIGNA's restructuring would harm them, says Justice Cappy.

The state's high court previously had defined an adjudication as a final agency order involving parties' property rights, immunities, liabilities and obligations.

The Commonwealth Court's analysis was erroneous, Mr. Shestack told the Supreme Court justices. The department's decision, which was vacated in that same March 1997 ruling, was not an adjudication for either side, said Mr. Shestack, a partner with Wolf, Block Schorr & Solis-Cohen L.L.P. in Philadelphia.

The opponents' property rights were not an issue, because the division law would allow the opponents to recover from CIGNA in later fraud litigation if the runoff facility were to fail, according to Mr. Shestack.

Mr. Shestack also noted that the Commonwealth Court did rule that Ms. Kaiser conducted proper informational hearings as required by the 1990 corporate division law.

Part of Mr. Shestack's argument, though, directly contradicted CIGNA's argument two years ago in the Commonwealth Court. The department's decision was an adjudication for the insurer but not for its opponents, because the department's decision would affect only CIGNA immediately, CIGNA asserted then.

Attorney Lawrence T. Hoyle Jr., who presented the opponents' case to the state Supreme Court, argued that the opponents would be harmed if they could not force a closer examination of the restructuring now. The future fraud lawsuit that Mr. Shestack suggested would burden CIGNA's opponents with a far tougher burden-of-proof requirement than they face under an immediate examination of the transaction, argued Mr. Hoyle, a partner with Hoyle, Morris & Kerr of Philadelphia.

In addition, under the corporate division law, the commissioner has to consider whether the restructuring would injure all policyholders' rights. A future fraud lawsuit would be limited to select policyholders, and a judge in that litigation could not reverse the restructuring, according to Mr.

Hoyle.

Justice Cappy said the case's record does not support the opponents' argument that the restructuring could harm them, especially because CIGNA has dedicated \$1.35 billion of additional capital and reinsurance to the runoff facility.

Mr. Hoyle noted the runoff facility's B+ rating is weaker than the B++ rating INA would have earned if it had not reorganized.

In addition, CIGNA informed securities regulators as late as mid-1995 that it could not accurately estimate its long-tail liabilities, Mr. Hoyle said. Because the opponents never have been able to review the Tillinghast report, they cannot judge the soundness of the additional capital and reserves, he said. That violates the opponents' due process rights, he said.

Mr. Hoyle also pointed out that a consultant with another actuary, Milliman & Robertson Inc., that reviewed the plan testified at the public hearings that the additional capital and reinsurance would be more than adequate. But in the actuary's full report, which was made public later, the firm concluded the restructuring was disadvantageous to policyholders in some ways. Among those was that policyholders would not have access to future CIGNA revenues to pay claims.

Referring to the department's and CIGNA's summation of the Tillinghast report, Mr. Hoyle asked the court: "Are there the same distortions in that" as there was in the Milliman consultant's testimony during the public hearings?

Justice Cappy said "there's something wrong" with Ms. Kaiser's order approving the restructuring because it relies on the Tillinghast report, despite the Commonwealth Court's later directive to the department to disregard the report.

But he suggested that releasing the report or ordering the department to review the restructuring without relying on the report would be more practical than ordering the department to conduct trial-like hearings.

Mr. Hoyle said that solution would deprive the opponents of their rights under the state's Administrative Agency Law. As the Commonwealth Court concluded, the informational hearings required by the 1990 corporate division law would have been adequate only if policyholders did not oppose the restructuring, according to Mr. Hoyle.

Mr. Shestack, who presented the department's and CIGNA's case without interruption from the justices, also asserted:

- Ms. Kaiser's decision deserves deference because the case is a regulatory matter.

- The opponents' due process rights were not violated, because the department provided notice of the restructuring and gave opponents an opportunity to express their concerns.

- The opponents' complaint that the restructuring cuts off their access to future CIGNA revenue and profits to pay claims is irrelevant. Policyholders never were entitled to those revenue streams, he said. Indeed, no corporate division ever could occur if policyholders and creditors had that right, he said.

In written court briefs, Mr. Shestack argued that even if CIGNA's restructuring were unlawful, the division law does not require the transaction to be reversed. Instead, he asserted, the law would "allow the injured party to recover 'as if' the division had not taken place."

UFG

Continued from page 2

Among these were former UFG Senior Vp Howard Miller and two other former UFG officials; all three earlier pleaded guilty to fraud charges and agreed to cooperate with prosecutors.

U.S. District Judge Denise L. Cote scheduled sentencing for May 21.

Lawyers for Mr. Rumignani and Mr. Vieira expressed disappointment with the verdict. Lawyers for Mr. Ferrarini and Mr. Kagan could not be reached. All are expected to appeal.

Meanwhile, more legal troubles may await Messrs. Ferrarini and Vieira.

Mr. Ferrarini still faces a federal bank fraud indictment charging him with submitting phony documents to a New York bank as part of a \$350,000 mortgage loan application.

Mr. Vieira also faces a federal tax evasion indictment charging that he had UFG divert up to half of his six-figure salary into a UFG account that was then used to pay the \$5,000 monthly rent on his New York apartment. The income was never reported to the Internal Revenue Service, and Mr. Vieira was also able to shield it from garnishment by several creditors who had filed liens against him, prosecutors allege.

Mr. Ferrarini and Mr. Vieira have pleaded not guilty to the charges. Both cases have been on hold while the UFG trial went forward.

For nearly two decades after 1974, the company now known as UFG operated as B.R.I. Coverage Corp. It was privately owned by its top officers, including Messrs. Ferrarini, Rumignani and Miller and Burton Matfus, its chief financial officer.

For many of those years, B.R.I. ranked among *Business Insurance's* 20 largest brokers of U.S. business based on revenue figures reported by management. At least some of those figures in retrospect appear vastly overstated: For example, while privately held B.R.I. claimed \$35.2 million in 1990 revenues, SEC reports it later filed as a public company disclosed 1990 revenues of only half that amount.

B.R.I.'s shift from private to public ownership proved a catastrophic mistake. That shift occurred in 1992, when it merged with Chippewa Resources Inc., a publicly traded oil and gas company, which then divested its oil and gas assets and rechristened itself UFG.

Within months, UFG was reporting a "liquidity crisis" as its brokerage business declined and it struggled with \$9 million in debt assumed from Chippewa.

Desperately seeking to boost revenues, UFG pursued several ill-fated acquisition plans, including a plan to acquire Frank B. Hall & Co. Inc. using "Kwajalein guarantees," which UFG claimed to be instruments backed by payments the U.S. government owed to property owners on a Marshall Islands atoll (*BI*, Aug. 14, 1995).

The broker's finances continued to deteriorate, though, and in April 1995 the American Stock Exchange suspended trading in UFG's shares.

Over the 1995 Memorial Day weekend, Mr. Matfus committed suicide, jumping from a window of UFG's lower Manhattan offices. UFG's business quickly unraveled.

Mr. Ferrarini in June advised wholesale brokers that UFG had failed to forward client premiums to insurers "due to financial difficulties."

At the same time, CPF Premium Funding Inc., a Lake Success, N.Y., premium finance company, filed a civil racketeering suit charging that UFG had defrauded it by submitting phony loan applications.

By the end of the summer of 1995, UFG had ceased operating and its offices had been taken over by regulatory and law enforcement officials, in-

cluding investigators from the SEC, the FBI and the U.S. Attorney's office (*BI*, July 24, 1995).

The criminal investigation produced its first result in February 1996, when Mark Bailine, UFG's former vp-finance, agreed to plead guilty to two charges and cooperate with prosecutors. Frank Palumbo, UFG's former comptroller, later signed his own cooperation agreement, pleading guilty to one conspiracy charge.

In January 1997, a federal grand jury indicted Messrs. Ferrarini, Rumignani and Kagan on dozens of counts related to a series of fraudulent schemes that stretched from the 1980s to shortly before UFG's collapse. Mr. Vieira was named in four of those counts.

A revised indictment filed early last year added Mr. Miller as a co-conspirator and additionally charged him with lying to government investiga-

Prosecutors charged that UFG officials obtained \$12.7 million in fraudulent premium finance loans.

tors during interviews in 1996 and 1997.

Shortly before the trial began last month, though, Mr. Miller pleaded guilty to 25 conspiracy, fraud and perjury charges and agreed to testify against his former partners.

The revised indictment charged the defendants with operating a number of illegal schemes that became increasingly risky as UFG's financial problems grew. Prosecutors charged that:

- From at least the late 1980s, UFG made a practice of pocketing client premiums and other credits that the broker had held for nine months or more with no inquiry from clients or insurers.

- Starting in 1993, UFG diverted current client premiums, later using other clients' money to make past-due premium payments. These diversions totaled at least \$6 million over two years.

- UFG officials engaged in an increasingly desperate scheme to defraud premium finance companies by submitting phony loan applications in the names of clients who never knew about them. The broker obtained \$12.7 million in fraudulent loans from three companies—Imperial Premium Finance Inc., A.I. Credit Corp. and CPF—over a two-year period, with the bulk of the loans coming from CPF in the months before UFG collapsed.

The loans were arranged "in care of" UFG to prevent notices from being sent to unwitting clients, with Mr. Rumignani and Mr. Miller signing loan contracts on behalf of borrowers and Mr. Rumignani forging client authorization letters, prosecutors charged. In some cases, UFG obtained two loans for the same client, pocketing the proceeds of the second loan, of which the client was unaware.

Mr. Ferrarini also authorized payment of \$425,000 in kickbacks—most of them disguised as "consulting fees"—to Mr. Kagan for his help with the CPF loans.

Mr. Kagan, who also owned his own insurance brokerage, had earlier defrauded his employer, CPF, on five phony loan deals of his own, prosecutors charged.

- UFG kept two sets of books—one showing actual income and another showing doctored income totals that included embezzled premiums and proceeds of the fraudulent loans. The brokerage also made a series of false SEC filings—signed by Messrs. Ferrarini, Rumignani and Miller—that vastly overstated income and under-

stated liabilities.

- The brokerage maintained a special bank account, dubbed the "exchange account," which UFG officers used to pay personal expenses.

According to testimony at the trial, Mr. Ferrarini used the account to make alimony payments to his ex-wife, who also collected a salary as a "phantom" employee of UFG. The late Mr. Matfus also used the account to pay school tuition for his children or grandchildren, to cover various housing expenses and to buy a racehorse, according to testimony.

All of the defendants denied wrongdoing and argued that the CPF loans in reality were a "bridge loan" that CPF had agreed to make to UFG and to disguise as premium finance deals to conform to CPF's own lending requirements.

To support this, defense lawyers argued that CPF—which would normally notify insurers of finance loans and request confirmation of policy details—never sent out any such notices on the UFG deals.

Mr. Ferrarini also maintained that he knew nothing about false information in UFG's SEC filings, saying he relied on his "good friend Mr. Matfus," and on outside auditors.

As the trial progressed, though, the four defendants sat mostly silent in the wood-paneled courtroom while a procession of witnesses implicated them in a long-running fraud.

Witnesses included former UFG employees, former clients who confirmed that they had never sought premium financing and officials of CPF who testified that they never suspected UFG was pocketing its loan funds.

Perhaps the most wide-ranging testimony came from Mr. Bailine, the former UFG finance official, who described UFG officials' roles in a variety of schemes.

Mr. Bailine testified, for example, that Mr. Ferrarini decided what level of earnings he wanted UFG to report in a given quarter and assigned Mr. Bailine the job of adjusting the company's financial records to meet the target.

He also denied the defendants' contention that CPF knowingly allowed the bogus loans to cement its relationship with UFG.

"Let me see if I understand that correctly," Mr. Bailine responded to one defense lawyer. "You're saying that CPF made these fictitious loans because they wanted UFG's other business?"

"That's correct."

"No, that is not correct at all," Mr. Bailine said.

Mr. Bailine also recounted what happened when an earlier loan from Imperial—purportedly for a client called Jerome Belson Associates—was discovered.

"Mr. Matfus called me and said, 'We're meeting in Don's—referring to Mr. Ferrarini's—office. We have a problem. We got picked up on Belson,'" Mr. Bailine testified.

"What was your understanding of what was meant by the term, 'picked up on Belson?'" a prosecutor asked Mr. Bailine.

"My understanding of that was the fact that either the client or the finance company or both realized that UFG had fraudulently entered into a contract, a finance contract on behalf of the client," Mr. Bailine testified.

UFG ultimately repaid the Belson loan.

As UFG's schemes began to unravel in the wake of Mr. Matfus's suicide, Mr. Bailine—who had quit the brokerage—said he met with Mr. Rumignani at a diner in Fort Lee, N.J.

"When we left the diner... Mr. Rumignani again reminded me that... I should remember the fact that I was working for Mr. Matfus and not to be a hero and to remember that if something happens, I should blame it on the dead guy," Mr. Bailine said. **BI**

Updates

GOP introduces patient bill

WASHINGTON—House Republican leaders last week reintroduced patient protection legislation that passed the House last year but died when the Senate took no action on it.

The measure, among other things, would require health maintenance organizations to offer a point-of-service option. In addition, the Republican bill would set up a system of internal and external review of health care coverage decisions. For example, a patient could appeal a coverage denial decision involving medical necessity to a "named fiduciary," who must be a physician and who must not have been involved in the initial coverage decision.

Other provisions in the House bill would exempt trade association health plans from state regulation; allow employers of any size to offer tax-favored medical savings accounts; and cap non-economic damages in malpractice suits at \$250,000.

HCC sells most of its Centris stock

HOUSTON—HCC Insurance Holdings Inc. has sold most of its shares in Centris Group Inc., ending its pursuit of the specialty insurer.

Houston-based HCC first started talking to Centris early last year about merging the two businesses, but its advances were rejected in November. HCC last month publicly offered to buy all the Costa Mesa, Calif.-based insurer's outstanding common stock, after it had purchased 7.8% of Centris' stock on the open market.

Centris again rejected HCC's offer, saying the valuation of \$13.25 per share was "grossly inadequate." Stephen L. Way, HCC chairman and chief executive officer, countered the claim, saying that if HCC were allowed to undertake due diligence, it might well increase its offer.

HCC was targeting Centris' medical stop-loss business, said Mr. Way, but was uncomfortable with its reinsurance arm, USF Re. USF Re was sold to Folksam Holding Co. Inc. at the end of last month, at which point Centris Chairman and CEO David L. Cargile said the organization planned to focus on its medical and specialty lines business.

HCC now plans to acquire other medical stop-loss insurers to achieve its aim of filling the top spot in the business, and it has dropped its Centris stock holding to 1.7%. "We want to be influential in any business that we do," said Mr. Way. "We want to be the market leader."

Also, HCC soon will be increasing aviation insurance rates as a response to soft market conditions. The alternative is to walk away from business, said Mr. Way. He is hoping that by increasing rates, HCC will set a precedent and other aviation insurers will follow. Not all clients will see their premiums increase; Mr. Way said some business "is profitable at the current rates."

Briefly noted

A Missouri judge has approved the **Transit Casualty Co. receivership's** plan to distribute an additional \$60 million to Transit creditors by Feb. 28. The distribution would amount to 4% of claims allowed by the estate and would bring total distributions to date to \$334.2 million, or 34% of approved claims. . . . **The Overseas Private Investment Corp.**, a federal agency that provides political risk insurance for U.S. companies doing business in selected developing countries, is asking Congress to reauthorize it for another four years. OPIC's operating authority expires this year. The House of Representatives voted to cut off all funding for OPIC in 1996, citing the agency as a prime example of "corporate welfare," but funding was later restored by a House-Senate conference committee (*BI*, Oct. 7, 1996). . . . The 9th U.S. Circuit Court of Appeals has ruled that growers may use evidence that E.I. DuPont de Nemours & Co. hid data about its **Benlate DF fungicide** to reopen claims for Benlate-related crop damage that those growers had earlier settled. DuPont last year paid \$11.3 million to settle a potential contempt-of-court finding stemming from its alleged concealment of Benlate test data. . . . A Florida appeals court last week overturned the \$1 million jury verdict against **Brown & Williamson Tobacco Corp.** in the case of deceased smoker Roland Maddox. The court granted the tobacco company's request to transfer the case to another county. . . . **Capital Z. Partners**, a private investment fund, has raised \$1.85 billion for investments in the financial services industry. One of the partners of the fund is Steven M. Gluckstern, the founder of Centre Re. . . . **Liberty Mutual Insurance Co.** said last week that it had received state and federal approval for Employers Insurance of Wausau and its subsidiaries to affiliate with Liberty Mutual. The agreement was announced in October (*BI*, Oct. 12, 1998). Wausau will remain headquartered in Wausau, Wis., and operate independently. Terms of the transaction, which was completed Dec. 31, were not disclosed. . . . Strong winds that ripped through the Boulder, Colo., area last week caused an estimated **\$3 million in insured damages**, a majority of which are homeowner claims, according to the Western Insurance Information Service. The storm, which produced wind gusts up to 119 mph, is the fourth-costliest windstorm to hit Colorado. . . . The City of **Atlanta filed suit** last week against 17 gun manufacturers, alleging that the products they manufacture are "defective, unreasonably dangerous and negligently designed." Mayor Bill Campbell said he would consider dropping the suit if the manufacturers agree voluntarily to safety improvements, such as installing mechanical locks. . . . The Bermuda Insurance Institute has inaugurated two awards, which will be presented March 20. The 1998 Market Leader award will be presented to **Brian Duperrault**, chairman, president and chief executive officer of ACE Ltd., and the Lifetime Achievement award will be awarded posthumously to **Fred Reiss**, one of the founders of the captive insurance industry. Mr. Reiss died in 1993.

Continued from page 1

reko, an alliance of seven European insurers. The GRE acquisition is being made by AXA's existing U.K. subsidiary, Sun Life & Provincial Holdings P.L.C. AXA offered £2.49 (\$4.09) in cash and 0.243 new shares of Sun Life & Provincial stock for each GRE share. To help finance the purchase, AXA also issued 10 billion francs (\$3.22 billion) in notes.

AXA's German unit, AXA Colonia, will purchase GRE's German subsidiary, Albingia Versicherungs A.G. for £588 million (\$965 million).

AXA is confident there will be no regulatory hurdles to the deal, and it expects the acquisition to be completed in May.

AXA Chairman Claude Bebear has made no secret of his desire to expand the French insurer's global presence through acquisitions. In particular, Mr. Bebear has said that AXA's presence was too small in the U.K. property/casualty and German life insurance markets.

The planned acquisition will give AXA the "critical mass" it desires in the United Kingdom, by merging GRE's U.K. operations with those of Sun Life & Provincial, in which it will continue to hold a majority stake after the deal.

GRE and Sun Life & Provincial are roughly equal in size. GRE reported that 1998 pretax profits fell 55% to £392 million (\$643 million) on net premiums written of £4.06 billion (\$6.66 billion), while Sun Life & Provincial in 1998 had estimated pretax profits of £318 million (\$522 million) on net premiums of £4.20 billion (\$6.89 billion).

The combination will create the third-largest U.K. property/casualty insurer, with an estimated £2.5 billion (\$4.1 billion) in gross premiums, the company says. AXA also says the combination will create the United Kingdom's second-largest health care insurer, third-largest life insurer and fourth-largest asset manager. AXA also says it will become the largest P/C insurer in Ireland, and AXA Colonia will become Germany's second-largest P/C insurer.

AXA said the merger of GRE with its Sun Life & Provincial unit will enhance earnings, despite £80 million (\$131 million) in anticipated expenses to combine the companies. Beginning in 2001, annual savings resulting from the merger are estimated by AXA at a minimum of £50 million (\$82 million) in the United Kingdom and 105 million deutsche marks (\$61 million) in Germany. These will come mainly from savings in the head office and support areas through consolidation, the removal of duplicate functions and job losses.

In announcing the merger last week, executives from both companies said they would look for cutbacks in some unprofitable areas of busi-

ness and increased rates in others. Areas where these are likely, they said, are automobile, some lines of reinsurance and employers liability.

Stock analyst reaction to the deal was mixed, though they generally favored AXA's offer over the other bids. Analysts said that if Royal & Sun Alliance had succeeded, it might have been overwhelmed by the task of integrating the companies, after undergoing the consolidation resulting from its creation by the 1996 merger of two leading U.K. insurers.

Royal & Sun Alliance said it has no plans to try to top AXA's offer for GRE.

Credit rating agency Standard & Poor's Corp. said the acquisition by AXA makes it "a truly global player," adding that AXA has a strong track record of managing large takeovers during the past decade. The GRE purchase will strengthen AXA's position in the United Kingdom and Germany, while its business position will continue to be extremely strong, its earning performance will improve, and its capitalization will remain strong, S&P said.

Moody's Investors Service Ltd. cited AXA's "increasingly important position in the French and European insurance markets" and said the takeover of GRE should allow AXA to add to its U.K. insurance market share and to exploit synergies resulting from the combination of GRE and Sun Life & Provincial.

"With the introduction of the Euro and the steady, if slow, progress in the development of the single European insurance market, AXA will have the opportunity to gain further market share and extract additional cost benefits as the European insurance consolidation continues," Moody's said.

Duff & Phelps Credit Rating Co. said the takeover "will significantly strengthen AXA's franchise in Europe." The rating agency added, however, that the acquisition also raises such issues as an increase in AXA's debt, a weak performance in GRE's U.K. non-life portfolio, and the way AXA integrates such a large acquisition.

Insurance analysts at Commerzbank in London said they believe the deal doesn't strategically enhance the long-term value of AXA's business.

"I don't think you necessarily have to be a big player in the market to produce a reasonable level of profitability. GRE is not that profitable, so (it) doesn't particularly enhance the long-term value of AXA as a whole," said Andrew Goodwin, an analyst at Commerzbank.

Chris Hitchings, also at Commerzbank, said he believes that AXA was most interested in GRE's life business and not its property/casualty operations. He maintained that given the depressed state of the property/casualty market, "it's life insurance businesses that people want to own."

Some analysts said the price that AXA is paying for GRE is greater than they had anticipated,

particularly for its U.K. business, while the price it will receive for selling GRE's U.S. and German businesses are less than they had expected.

Securities broker BT Alex. Brown issued a statement saying that while the takeover enhances Sun Life & Provincial's position in a number of markets, "these benefits are more than outweighed by the deterioration in earnings quality and the lack of strategic focus that the acquisition brings."

While analysts were divided over what the deal means in the United Kingdom, they generally agree that Liberty Mutual's acquisition of the U.S. business is a good move, though the cost could be a burden.

Moody's Investors Service and A.M. Best Co. both said the GRE companies fit comfortably with Liberty's existing small-business operations.

The acquisition "will significantly expand Liberty's geographical and market presence," according to Moody's.

A.M. Best said GRE's U.S. operations will strengthen Liberty's ongoing efforts to penetrate the small-commercial risk market. Additionally, the GRE operations should provide their new owner with a strong management team to focus on the New England and Midwest agency markets, the rating agency said.

However, Moody's, Best and S&P each expressed concerns about the \$1.47 billion cost of the acquisition on Liberty Mutual's immediate finances.

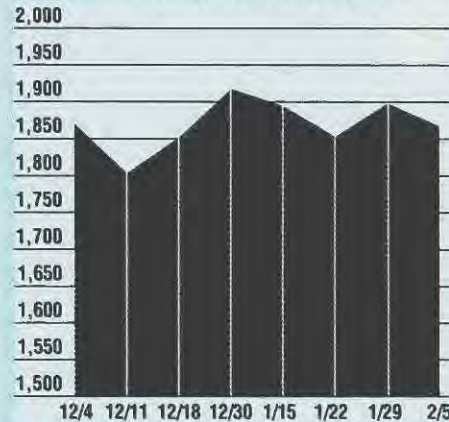
S&P, for example, said it was concerned by "the uncertainties surrounding the group's risk-adjusted capital adequacy as it relates to its current rating level and operational risk associated with the integration of the proposed acquisition."

The eight insurers being acquired by Liberty Mutual provide a variety of property/casualty insurance products to the small-commercial market and to personal customers. In 1997, they had combined net written premiums of more than \$1.3 billion.

Liberty Mutual President and Chief Executive Officer Edmund F. Kelly said these regionally focused companies, with their strong agent and broker distribution system, will be supported in enlarging and strengthening their franchises in their chosen markets.

The eight companies, which will retain their identities while becoming part of Liberty Mutual's Commercial Insurance Holdings unit, are: Albany Insurance Co., headquartered in New York; American Ambassador Casualty Co., Schaumburg, Ill.; Atlas Assurance Co. of America, New York; Globe American Casualty Co., Loveland, Ohio; Indiana Insurance Co., Indianapolis; Midwestern Indemnity Co., Loveland, Ohio; Peerless Insurance Co., Keene, N.H.; and Tower Insurance Co., Pewaukee, Wis. **BI**

BI Insurance Index



Base-100 on Dec. 29, 1978
Source: Nordby International Inc. (nordby.com) Boulder, Colo.

PCS catastrophe options

As of Feb. 5	Call spread	Price bid/ask	Call spread	Price bid/ask
National Annual 1999			California Annual 1999	
40/60	12.0/16.0		60/80	1.2/2.3
60/80	6.0/12.0		80/100	1.0/1.9
80/100	4.0/8.0		150C	0.5/2.5
150C	4.3/6.0		Western Annual 1999	
200/250	2.6/4.0		80/100	0.5/2.2
Southeastern September 1999			Midwest June 1999	
40/60	2.8/—		10/20	1.0/1.4
60/80	2.1/3.0		Florida Sept./Dec. 1999	
80/100	1.6/2.4		100/150	2.6/—
Eastern September 1999				
40/60	3.0/—			

Total volume: 0 Total open interest: 10,997
For information on PCS cat options, call the Chicago Board of Trade at 312-435-3674.

Source: Chicago Board of Trade

British Issues

Companies	Price pence	P/E	Div. %	Yield %	52-week high-low
Gdn Royal Exch	355	5.6	4.3	1.2	495-227
Legal & Gen	875	25.2	13.3	1.9	946-500
Royal & Sun	480	14.1	23.6	4.9	825-433

Brokers	Price	P/E	Div. %	Yield %	52-week high-low
Lmbt Fenchurch	80	9.9	4.2	6.6	121-78
JLT	180	11.0	10.5	7.2	236-152

Note: Prices are Feb. 5 closings; other numbers from Feb. 4.

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

BI Industry Stock Report FEB. 1, 1999, THROUGH FEB. 5, 1999

BROKERS						INSURERS/REINSURERS						HEALTH MAINTENANCE ORGANIZATIONS											
Company	Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)	Company	Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)	Company	Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)			
Aon Corp.	NYS	50.06	-1.35	-10.70	75.56	48.25	1602	CNA Surety	NYS	12.06	-9.81	-19.25	16.75	11.81	132	RLI Corp.	NYS	33.13	-0.75	-0.75	45.63	30.69	53
E.W. Blanch Holdings Inc.	NYS	55.69	-1.76	19.28	58.25	33.88	173	EMC Insurance Group Inc.	NDO	12.38	-1.00	-2.94	15.88	9.00	14	St. Paul Companies	NYS	31.00	5.53	-11.43	47.19	28.06	4133
Gallagher Arthur J. & Co.	NYS	45.38	-9.25	3.71	50.63	34.88	265	ESG Re Limited	NDO	18.00	4.35	-9.15	28.88	12.75	490	SCOR	NYS	56.25	-0.88	-13.48	72.75	50.75	20
Hill, Rogal & Hamilton	NYS	18.00	1.77	-3.36	19.88	15.38	47	Enhance Financial Services	NYS	24.81	-0.75	-17.98	37.56	17.31	649	SAFECO Corp.	NDO	37.38	-3.86	-12.06	56.00	36.69	4287
Kaye Group Inc.	NDO	7.25	-3.33	0.00	8.06	5.13	6	Everest Reinsurance	NYS	32.19	-4.28	-12.27	45.25	28.75	730	SCPIE Holdings Inc.	NYS	29.06	-2.11	-3.33	38.38	26.63	NA
Marsh & McLennan	NYS	60.50	-3.78	2.33	64.31	43.38	3054	Executive Risk Inc.	NYS	44.00	-6.26	-18.33	75.75	35.50	208	Seibels Bruce Group	NDO	3.56	9.62	1.79	8.38	3.06	54
Poe & Brown	NYS	33.25	-6.17	-4.83	42.50	30.38	34	EXEL Ltd.	NYS	62.38	-2.25	-12.64	83.25	61.38	935	Selective Ins. Group	NDO	17.75	-2.74	-12.35	29.25	16.69	677
BROKERS AVERAGE			-3.76	2.86				Fremont General Corp.	NYS	19.94	-12.36	-17.36	31.06	18.00	1728	Terra Nova Insurance Co. Ltd.	NYS	23.00	-4.91	-5.64	35.00	22.50	97
ACE Ltd.	NYS	26.88	-4.02	-17.78	43.00	24.38	3591	Frontier Insurance Group	NYS	14.25	-5.39	-14.00	25.69	11.06	553	TIG Holdings	NYS	15.94	0.79	2.82	27.75	11.63	1127
Accel International Corp.	NDO	2.94	0.00	-2.08	3.50	2.13	13	Gainco Inc.	NYS	5.75	-5.15	-8.91	10.00	5.56	126	Tokio Marine & Fire	NDO	54.75	-3.95	-7.01	61.38	39.00	101
Acceptance Insurance Cos.	NYS	17.25	0.00	-13.21	25.75	16.75	149	Gryphon Holdings	NDO	18.75	-0.33	0.33	19.38	11.38	15	Torchmark Corp.	NYS	32.06	-2.29	-7.73	49.81	30.69	2362
AEGON N.V.	NYS	108.13	-2.32	-11.33	130.13	48.19	255	Harleysville Group	NDO	20.50	-2.96	-19.61	28.50	17.25	40	Transatlantic Holdings	NYS	74.94	0.00	-0.91	94.50	71.50	133
Aetna Life & Casualty	NYS	80.50	-10.68	0.86	91.44	60.19	2813	Hartford Steam Boiler	NYS	36.06	-4.47	-10.26	59.56	34.75	434	Travelers Property Casualty	NYS	31.88	10.63	4.08	45.94	24.13	2125
AFLAC Inc.	NYS	49.25	14.87	11.93	49.25	25.13	5207	HCC Insurance Holdings	NYS	18.88	-2.89	11.44	23.94	16.06	415	Trenwick Group Inc.	NDO	31.50	-4.55	-0.40	41.75	26.75	60
Allmerica Financial Corp.	NYS	50.19	-6.95	-11.37	75.25	38.38	1312	ING Groep N.V.	NYS	58.00	-2.01	-4.92	76.75	36.06	249	Unico American Corp.	NDO	12.75	8.51	10.57	18.13	8.88	71
Allstate Corp.	NYS	35.88	-4.33	-6.82	52.38	35.00	12125	IPC Holdings Ltd.	NDO	21.50	-2.55	-5.49	33.25	19.00	778	United Fire & Casualty	NDO	32.06	0.00	-3.85	44.50	30.75	9
AMBAC Indemnity Corp.	NYS	57.06	-4.60	-4.80	65.94	40.88	1406	Hartford Financial Services	NYS	50.63	-2.53	-9.29	60.00	37.63	2837	Unilin	NDO	66.88	-1.20	-5.64	75.47	55.56	255
American Bankers Ins.	NDO	44.88	-2.45	-6.02	66.06	30.13	1274	LaSalle Re Holdings Ltd.	NYS	17.38	-6.06	-15.76	42.94	17.38	165	UNUM Corp.	NYS	55.75	-7.76	-6.99	62.50	41.75	3523
American Financial Group	NYS	35.00	-3.45	-15.02	45.75	30.50	145	Lincoln National	NYS	80.38	-3.55	-3.02	98.88	67.00	1556	Vesta Insurance Co.	NYS	7.31	-6.40	27.17	60.50	5.00	458
American General	NYS	66.56	-6.74	-14.94	79.00	52.38	2588	MAIC Holdings Inc.	NYS	30.38	-0.41	-5.08	33.13	23.25	77	Zenith National Ins.	NYS	22.88	-1.88	-1.08	30.50	20.31	79
American Heritage Life Ins.	NYS	24.13	-1.03	0.26	26.69	17.63	142	Market Corp.	NYS	177.56	3.31	-1.49	187.00	132.00	19	INSURERS/REINSURERS AVERAGE			-1.71	-4.35			
American Indemnity/Fin'l	NDO	10.83	-2.90	0.00	15.38	9.50	3	MBA Insurance Group	NYS	59.69	-8.96	-9.99	80.94	46.06	3433	FOUNDATION MAINTENANCE ORGANIZATIONS							
American International	NYS	102.06	-0.85	4.81	107.94	64.88	10535	Meadowbrook Insur. Group	NYS	16.38	-2.96	0.38	35.00	14.94	34	Foundation Health Systems Inc.	NYS	9.50	3.40	-13.64	32.63	5.88	1234
American Safety Insurance	NDO	15.06	60.67	58.55	15.06	6.75	74	MMI Cos. Inc.	NYS	16.00	-5.88	-4.12	26.00	13.75	111	Humana Inc.	NYS	18.56	3.85	-1.98	32.13	12.25	3017
Argonaut Group	NDO	25.00	-5.66	4.17	37.00	21.25	123	Mutual Risk Mgmt. Ltd.	NYS	36.00	-2.04	-5.11	39.94	25.38	233	Oxford Health Plans	NDO	17.88	3.25	27.68	21.75	5.81	5540
AXA-UP Group	NDO	69.25	-5.14	-3.23	80.25	38.25	240	NAAC Re Corp.	NYS	45.31	-7.29	-2.95	55.88	43.69	571	Pacificare Health Sys.	NDO	62.00	-3.31	-13.29	88.88	53.75	124
Baldwin & Lyons Inc.	NDO	20.63	-5.17	-11.76	26.00	18.50	10	Navigators Group	NDO	15.06	-3.60	-1.23	20.75	13.25	63	Safeguard Health Enter.	NDO	2.88	-9.80	-19.30	11.75	2.88	16
Berkley W.R. Corp.	NDO	25.13	-3.37	-25.56	49.88	24.88	930	NYMagic Inc.	NYS	17.25	-1.08	-17.37	34.25	16.00	9	Sierra Health Services	NYS	16.00	-15.23	-23.35	27.63	15.88	344
Berkshire Hathaway Inc.	NYS	71600.00	10.15	4.83	84000.00	52600.00	5	Ohio Casualty Corp.	NDO	39.00	-1.89	-5.17	51.75	33.75	246	United Healthcare Corp.	NYS						

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