

# Business Insurance

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

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## Asbestos attorneys facing suit filed by asbestos producer

NEW YORK—Bankrupt former asbestos producer G-I Holdings Inc. has filed a civil racketeering lawsuit against a trio of plaintiffs law firms that it charges “have orchestrated a scheme to inundate the judicial system with hundreds of thousands of asbestos cases without regard to their merit.”

G-I Holdings, the successor to GAF Corp., alleges that the law firms not only forced the settlement of meritless cases  
*See Updates on next page*

# Many Y2K claims still unresolved

By JOANNE WOJCIK

Insurers appear to be winning early battles over coverage of Y2K remediation costs, but the war is far from over.

While several legal victories have gone to insurers, roughly 200 claims are still pending with insurance companies, of which only a fraction are being litigated.

New research suggests these claims for Y2K remediation expenses could total \$150 billion. As a result, litigation over coverage of these

costs is not expected to diminish anytime soon.

Of the 18 lawsuits filed by companies over coverage of their remediation expenses, two cases were dismissed in New York, one was dismissed in Washington state, and a U.K. court upheld an arbitration clause removing one insurer from a Y2K lawsuit.

All of the suits seek coverage under the sue-and-labor clause, a provision in some all-risk property policies that provides coverage if a policyholder acts to “sue, labor or trav-

el” to minimize or avoid an actual or imminent loss to covered property.

Policyholders contend that insurer legal victories have come on procedural matters, and the key issue of whether the policies cover these claims has yet to be heard.

Policyholders also were heartened somewhat by a settlement earlier this month between Stanford University and Factory Mutual Insurance Co. of a Y2K coverage dispute (BI, Jan. 8).

Factory Mutual, which does business as FM Global, rebutted news-

paper reports that it had agreed to settle the university’s claim, asserting in a statement that it was “simply not true.”

While no money will change hands, the parties reached a confidential barter agreement that ended the dispute. Insurance industry sources said Stanford received attractive renewal terms and additional risk management services from the insurer.

“Bartering may be the way to settle these cases,” said Lance Ewing, senior director of insurance and loss

prevention at GES Exposition Services in Las Vegas. He said he once settled a coverage dispute with one of his company’s insurers that way. “We were able to negotiate better terms for renewals in exchange for the money the insurers owed us,” he explained.

“What’s good about it is that it shows that both parties are willing to find a business resolution to these claims rather than fight tooth and nail to litigate these cases,” said attorney Robert Carter, a  
*See Y2K on page 21*

## PBGC premiums should be cut, says Strauss

By JERRY GEISEL

WASHINGTON—At \$10 billion, the surplus in the Pension Benefit Guaranty Corp.’s insurance program has grown so large that legislators should reduce or even eliminate for the foreseeable future PBGC premiums for employers with well-funded plans, the agency’s executive director says.



Mr. Strauss

“For the first time in our history, our cushion is sufficiently large that we can not only protect the insurance program in the event of an economic downturn, but we also should be able to provide premium relief,” says David Strauss.

Premium relief, as Mr. Strauss puts it, could come in the form of a “premium holiday” for employers with fully or overfunded plans that now pay the agency an annual premium of \$19 per participant. Employers with underfunded plans would continue to pay a premium equal to \$9 per participant per \$1,000 of plan underfunding.

Periodically, policymakers would have to re-evaluate the premium holiday or reduction to be sure that the agency’s surplus was sufficiently large compared to its exposures, he says.

But right now, the \$10 billion surplus, up from \$7 billion in 1999 and \$5 billion in 1998, is so high that the economy would have to “basically crater” for the cushion to be in jeopardy, Mr. Strauss said.

Congress would have to approve any change in the PBGC’s insurance premiums, which all private employers with defined benefit plans must pay. The premiums are used to help pay benefits of terminated underfunded pension plans—typically of companies that have collapsed and are going out of business—that the agency has taken over.

Given the agency’s robust health, Mr. Strauss says he is reasonably certain that Congress will make some adjustments in the agen-  
*See PBGC on page 20*

## Energy crisis prompts review Utilities facing new risks

By ROBERTO CENICEROS



PHOTOS: AP/WIDE WORLD  
An engineer in the control room of the Moss Landing Power Plant in California, where the power grid remains close to crisis.

SACRAMENTO, Calif.—California’s “energy nightmare” and deregulation woes are helping to fuel nationwide interest in financial solutions, including insurance products, that protect power companies and their investors from price spikes in the electricity spot market.

Coverage under these relatively new “power price-protection products” may not have been triggered by the unique events unfolding in California but, as more states follow California’s lead and deregulate their utility industries, utility companies nationwide are looking to California as an example of the financial and commodity trading risks they increasingly face, according to risk managers, insurers and brokers.

Those risks are pushing utility company risk managers to go beyond insurance and delve into financial  
*See Utilities on page 6*

## Disability risks soaring Record salaries put squeeze on insurance

By SALLY ROBERTS

When the Texas Rangers signed Alex Rodriguez for a record-setting guaranteed \$252 million over the next 10 years, the free agent shortstop became the highest-paid player in baseball history.

If the All-Star player were to sustain a career-ending injury this season, however, he could also become the sports disability insurance industry’s biggest nightmare.

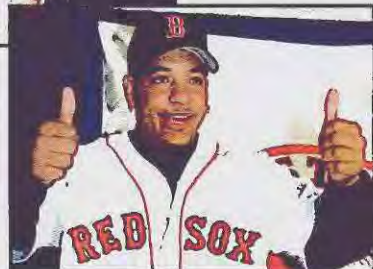
As a general rule, Major League Baseball teams purchase disability insurance policies to protect themselves against the risk of a marquee player being sidelined by a serious injury but leaving the team on the hook for the player’s multimillion, multiyear guaranteed salary.

But sports disability underwriters and brokers say that rising salaries for baseball players have far outpaced the capacity that is readily available in the marketplace. Coupled with a number of significant losses over the last few years and years of underpricing, disability underwriters are beginning to raise rates for the coverage anywhere from 30% to more than 100%. At the same time, those teams that have opted to sign superstars for super contracts are being forced to take on a greater share of the risk.

The deal with Mr. Rodriguez, whose contract calls for a \$25.5  
*See Baseball on page 4*



Alex Rodriguez’s (left) deal with the Texas Rangers made him the highest-paid player in baseball, while Manny Ramirez’s salary with the Boston Red Sox is a close second.



PHOTOS: GARY BARBER/ALLSPORT, AFP

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# Cards covered if Big Mac is stuck on the sidelines

ST. LOUIS—The St. Louis Cardinals have elected not to take out a disability insurance policy on their star slugger, Mark McGwire, but a unique insurance policy still covers the team if the first baseman is sidelined.

Two years ago, Aon Corp., the Cardinals' insurance broker, developed a policy that protects the team if an injury or serious personal matter forces Mr. McGwire out of the lineup for an extended period of time and results in fans not coming to Busch Stadium.

According to the Cardinals, the single-season home-run king draws an additional 600,000 fans to home games each season. With the average fan spending \$20 to come to a game, the absence of Mr. McGwire could expose the Cardinals to \$12 million in lost revenues.

Joe Addison, managing director of Aon Sports & Recreation Group in Atlanta, said the revenue protection policy came about as a result of a lunch meeting with the Cardinals' controller, who expressed concern over how the team would protect the additional revenue Mr. McGwire was generating in ticket sales if he could no longer play.

"So, we adapted a policy which was available in the marketplace and created one that protected the revenue generated by a superstar," Mr. Addison said.

The coverage is a named-peril policy that is triggered after 30 consecutive regular-season days in which Mr. McGwire is sidelined due to injury, incarceration or other occurrences, including an illness or death in his family.

Mr. Addison declined to discuss further specifics of the policy for competitive reasons, but he noted that the policy is tailored to just a select number of teams.

"We have to look at the superstars that make a difference as to why people come to a game," he said. For

instance, such stars as the Texas Rangers' Alex Rodriguez, Cincinnati Reds' Ken Griffey Jr. and Chicago Cubs' Sammy Sosa draw additional people to come watch.

"When you look at a team like the New York Yankees, does anyone come to a game just to see Derek Jeter? No, they come to see a winner, so it's harder to define the value of a Derek Jeter under the policy that we have," he said.

The Cardinals are the only major-league baseball team that has purchased the policy so far, Mr. Addison said. He said that he is unaware of any other similar

product for baseball teams on the market.

Because the Cardinals had the revenue protection policy in place, Mr. Addison said, the team declined to purchase a separate disability policy on Mr. McGwire. While a disability policy would protect the team from the cost of his guaranteed salary if he were injured, the revenue protection policy "will make up the difference," he said.

Mr. McGwire recently extended his contract through the 2001 season. He will be paid \$11 million.



PHOTO: ELSA/ALLSPORT

The St. Louis Cardinals opted to insure the risk of revenue losses from a disabled Mark McGwire.

The revenue protection policy came in handy for the Cardinals last season. Mr. McGwire, known by fans as "Big Mac," was on the disabled list for most of the second half of the season with severe tendinitis in his right knee. He has since had surgery.

Mr. Addison said the Cardinals filed a claim—the first under the revenue protection policy—as a result of Mr. McGwire's absence, but he declined to discuss the loss.

The policy is underwritten by Lloyd's of London through American Specialty Underwriters Inc., a Woburn, Mass. managing general agency.

—By Sally Roberts

## Baseball

Continued from page 1

million salary per season under the 10-year deal, is the largest in a string of multimillion-dollar baseball contracts. The Boston Red Sox recently signed outfielder Manny Ramirez to an eight-year, \$160 million deal; the Toronto Blue Jays signed first baseman Carlos Delgado to a four-year, \$68 million deal; and the Colorado Rockies signed pitcher Mike Hampton to an eight-year, \$121 million deal.

And these high-priced superstars are becoming a worry for the small number of underwriters that write sports disability coverage for Major League Baseball teams.

"Contracts are growing at such a tremendous rate that the capacity available cannot keep up with it," said Lou Madonna, national sales director of specialty risk products for Hartford Life Insurance Co. in Simsbury, Conn.

"There is not enough capacity to address the needs of all the guaranteed contracts," agreed Bill Hubbard, president of American Specialty Underwriters Inc., a Woburn, Mass.-based managing general agency specializing in sports disability coverage. "We're talking about a dozen players that have contracts that leave teams exposed beyond the readily available insurance capacity," he said.

Greg Sutton, director of international business for Toronto-based William J. Sutton & Co., an MGA specializing in sports, said plainly: "All it would take is for one of these larger insurance policies to encounter a claim. It would have a disastrous effect on the marketplace."

Joe Addison, managing director of Aon Sports & Recreation Group in Atlanta, agreed. "I think if there were a catastrophic loss on someone like (Alex Rodriguez), the disability market might not exist in the future. There's just not the capacity."

While disability policies differ widely depending on the player's age, injury history and position, underwriters generally write up to 60% to 70% of the total sum at risk, sports insurance experts say. Although teams generally can find up to \$100 million in coverage for up to five years for an individual player, many teams that sign jumbo contracts will find coverage for only up to 30% to 40% of the risk, they say.

"That's got to be a big concern for Major League Baseball teams," said Hank Tafaro, chairman and chief executive officer of The Hanleigh Cos., a Montvale, N.J.-based sports disability underwriter. "If some team has a loss of a mega player, not only does it have to meet the financial obligations to the player, but it also has to replace that player," he said. "There could be a huge cash crunch for some teams, especially those not financially flush," Mr. Tafaro said.

"I think we're going to see at some point in time a leveling out (of the contracts). I think it's getting way out of hand," he added. If guaranteed contracts continue to escalate at the same pace, "we'll see more and more self-insurance by the teams, because I don't believe there's enough reinsurance capacity to absorb those kinds of losses," he said.

Some sports insurance experts look to the success of the National Basketball Assn. and the National Hockey League, which have pooled their disability risks into mandatory league-wide programs, as the best course of action for Major League Baseball.

Teams in the NBA and NHL, for example, are required to insure their six and five highest-paid players, respectively, into league-wide programs to spread the risk. Trustmark Insurance Co. of Lake Forest, Ill., underwrites the programs, and BWD Group Ltd. of Jericho, N.Y., is the administrator.

The National Football League does

not have a league-wide mandatory insurance program, despite its risk of injury being the greatest among all four of the major professional sports leagues in the United States. But unlike those in the other three, a vast majority of the football contracts are not guaranteed, so teams are not on the hook for multimillion dollar salaries if a player sustains a season- or career-ending injury. As such, NFL players take out individual disability policies to insure against their risk of injury, experts say.

When it comes to Major League Baseball, however, each team is responsible for its own risk management and its own insurance purchasing. As Marc Blumencranz, executive vp of BWD Group, points out: "There are some astute teams that are very conscious of buying insurance, and there are teams that make the decision not to carry insurance."

Given that, Mr. Blumencranz says that baseball needs a similar league-wide disability program.

"A league program makes a lot of sense," he said. "It keeps funds consistent, so when there is one large loss...there's no knee-jerk reaction that could ultimately close the market off," he said.

Both the NBA and the NHL "have suffered great losses, and both league programs have survived and prospered for their teams," he said. "That's the benefit of stability and that's what baseball needs."

He added that the baseball teams that his firm deals with also express interest in a league-wide program. "They want to find a secure marketplace out there so if they sign a large contract, they know there's a stable insurance market to deal with them," he said.

Mr. Tafaro of the Hanleigh Cos. said that he, too, thinks it "would be wise" for baseball to consider developing a league-wide disability insurance program.

"My guess is that quite a few teams, because of their financial condition, don't or can't afford to buy disability insurance for their star players," he said. With league-wide coverage, it would give protection to a number of teams that have not bought insurance and it would provide a better negotiating field for prices, he said.

Sports disability experts point out, however, that given the politics of Major League Baseball, a league-wide program is unlikely, at least in the near future.

Unlike the NBA and NHL, where teams have rallied around strong commissioners, who have been credited with revitalizing their respective sports, authority in baseball tends to rest more with individual owners, who have resisted the notion of a strong commissioner.

"It would probably help standardize things and provide uniformity," Hartford's Mr. Madonna said of a league-wide program. "But I don't know if they can come together collectively and agree on that."

ASU's Mr. Hubbard agreed. "I think Major League Baseball needs to come together around and come to agreement on such issues as how wealth is distributed among the teams and relations with labor, before coming up with some kind of collective solution to guaranteed contracts," he said.

Others do not see a value in a mandatory league-wide program.

"If you ask me, I would be against locking them in all together," said David Bruce, divisional head of Lloyd's of London syndicate Hiscox. "By locking them all in together, what you do is you underwrite everybody, and not everybody is a good risk. There are good risks and there are bad risks, and the idea of insurance is to take the better risks, and you can't pick and choose if you're given a mandatory scheme to insure everybody." **BI**

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# Utilities

*Continued from page 1*

issues such as derivatives and commodity risks, the issues, such as derivatives and commodity risks.

In California, meanwhile, Gov. Gray Davis, in his state-of-the-state address last week, called deregulation a failure and labeled California's power crisis an "energy nightmare." The governor also proposed a major overhaul of the state's electrical system, as he and federal officials worked on a potential deal with electricity producers to stabilize the state's power supply.

In 1996, California's Legislature deregulated the state's electricity market. The state's large utility companies then sold many of their generating plants to third parties under the deregulation plan, which was supposed to spur competition and lower consumer rates.

To meet their customers' demands, utility companies then had to buy electricity from the power generators. But, until recently, the state prohibited utilities from hedging their demand for electricity through long-term contracts. Consequently, the utilities were left to contend with the gyrations of the wholesale market.

Yet the price that some of the distribution utilities can charge their customers for electricity is capped, while the price that generation companies can obtain on the wholesale market from utility companies is not. Additionally, California currently has experienced unique factors that are straining electricity supplies and driving up

costs.

Those factors include decreased hydroelectricity production because of below-average precipitation, increased energy demand from the neighboring states that California had counted on to supply electricity after it slowed the granting of permits for the construction of plants within its own boundaries, and an economic boom within the state that caused more demand for electricity than had been anticipated.

Spot wholesale electricity prices have risen more than tenfold over those of a year ago, reaching a high of \$522 a megawatt hour.

Potential blackouts also have become a constant threat. To protect themselves from that possibility, some employers have purchased or are renting huge diesel-powered generators to have on hand.

California's escalating electricity costs, coupled with skyrocketing workers compensation premiums, have also become a major business concern. The resulting financial burden is expected to become an employer argument for moderating an increase in workers compensation benefits that labor has been seeking through legislative action, said Mark E. Webb, vp-state affairs for the American Insurance Assn. in Sacramento, Calif.

Meanwhile, some of California's major utilities are on the brink of bankruptcy from having purchased electricity on the spot market at exorbitant prices without being able to pass the increasing costs on to their customers. Earlier this month, Standard & Poor's Corp. lowered the debt rating of both Southern California Edison of

Rosemead, Calif., and Pacific Gas & Electric Co. of San Francisco to a notch above speculative grade, and other ratings agencies have also downgraded the debt ratings of the two utilities.

The events in California may be unique to the state, but they are serving as an example of the commodity price exposures that power companies in other states are facing, especially as they deregulate.

"Because of all the press in California, they are becoming more aware and more sensitive to how the trading markets work and how they can be exposed," said John

**'This whole industry is a very good platform to elevate financial and capital risk management,' says William J. Anderson.**

McLane, senior vp in New York for Marsh Inc.'s Power Group.

Before deregulation, utility companies obtained a capital rate of return that was tied to the level of assets they owned. If they did not get an adequate rate of return, they requested a rate increase from public utility commissions, explained William J. Anderson, director and industry practice head-utilities, for Swiss Re New Markets in New York. Swiss Re New Markets is one of a handful of insurers that offer power price-protection products.

But deregulation pushes utility companies into a competitive mar-

ket and eliminates their ability to base their returns on ratepayer increases, Mr. Anderson said. Their capital and shareholders now face greater exposure to financial losses.

So, with increasing financial risks on the horizon and new insurance products to address them, insurance risk managers for power companies are interacting with greater frequency with the departments within their companies that buy and sell electricity, several experts say.

"This whole industry is a very good platform to elevate financial and capital risk management," Mr. Anderson said.

"It's one of the areas where the traditional risk manager is getting exposed to a commodity price exposure, pricing volatility, derivatives and how derivatives work," Mr. McLane said. "It is very much a blending of skills that comes together in a power pricing-protection policy."

That merging of skills "is exactly what is happening at our company and a lot of others," said Bobby Smith, manager of corporate insurance for OGE Energy Corp., a holding company in Oklahoma City, Okla., that owns several subsidiaries, including Oklahoma Gas & Electric Co.

Mr. Smith said that he is currently working very closely with an individual within OGE's trading unit whose job title is "risk manager" but whose position has nothing to do with insurance products. That person, Mr. Smith explained, is actually a financial trader.

"I am having to learn about his bailiwick, and he is having to learn

a lot about mine," Mr. Smith said.

Mr. Smith said he is keeping an eye on California's situation, especially as Oklahoma nears its planned timetable to deregulate in 2002, though he said he was already aware of electricity price risks.

OGE has not purchased power price-protection coverage. But, as deregulation approaches in Oklahoma, that may become a possibility, he said.

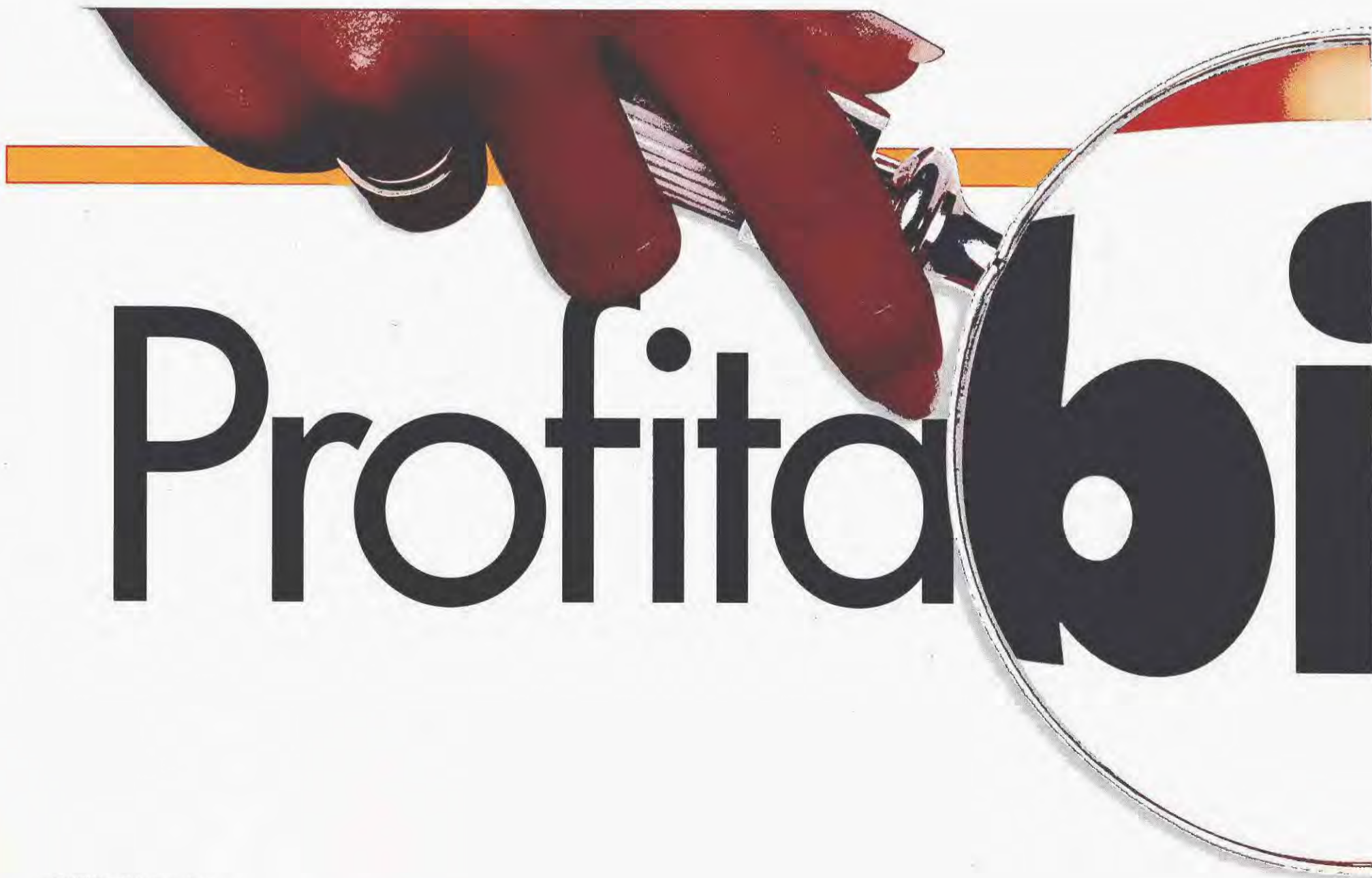
Typically, price-protection products rely on two simultaneous triggers, explained David Scott, utility global practice leader for Willis in Radnor, Pa. One trigger is the unplanned outage of a power plant or system of plants due to a fortuitous event. If, for example, the trigger is a 500-megawatt outage, it might be set off by an outage at one power plant. Or it could be outages at two plants that each produce 250 megawatts of power.

The second trigger requires the spot price of electricity to hit a certain level, Mr. Scott said. The lower the agreed-on strike price, the more expensive the insurance coverage is.

The coverage protects a power generating company or a utility that also produces some power when it has committed itself, under contract, to supply a specific amount of electricity but is ultimately unable to do so due to a generation outage, experts say.

Often, under such circumstances, the company must fulfill the contract by buying the promised electricity on the spot market, or it must pay liquidated damages to the party it promised to supply.

*See Utilities on next page*



# Utilities

Continued from previous page

But the spot market price might be several times higher than the cost of producing the electricity if the company's plants were operating properly. The insurance would then pay the difference between the amount for which the company could have produced the electricity and the amount it had to pay on the spot market, Mr. Scott said.

In that way, the coverage both protects a generation company from missing a sale and safeguards shareholder profits, experts say.

Buyer interest in such products

had increased even before California's current crisis, several sources say. Marsh, for example, placed one such policy in 1999 and 14 in 2000, Mr. McLane said.

But telephone calls to his office from prospective buyers nationwide inquiring about his company's price-protection product have increased because of California's dire situation, said Gil Gould, senior vp, underwriting, in Jersey City, N.J., for the mutual insurer Associated Electric & Gas Insurance Services Ltd.

AEGIS does not have specific limits on the amount of coverage it will underwrite. The mutual reinsures much of the price-protection

coverage. Consequently, limits depend on the amount of reinsurance AEGIS can assemble behind the risk it retains, Mr. Gould said.

Brokers said they doubt that California's large utility companies have purchased any of the power price-protection products because of the state's prohibition against long-term hedging agreements that existed until only recently. Still, some of the policies may have been sold in California to power generating entities. The brokers say, though, that it is unlikely that the coverage was triggered by most of the factors to blame for the current shortage.

As the potential for blackouts

continues, it is unlikely that California's utility companies will face related liability claims from customers. That's because state regulators tend to hold them harmless unless there is gross negligence on the part of the utilities, said Marshall Nadel, managing director-utility and power generation, for Aon Risk Services in Dallas.

Because of the events in California, Aon has received increased inquiries about power price-protection coverage and single-interest credit insurance, Mr. Nadel said. The credit coverage is designed to protect electrical industry companies that have contracts under which California utility company

trading units are to supply them with electricity.

The parties seeking the credit coverage are concerned that the California-based utility trading units may not be able to supply them with electricity. Or, because of their downgraded credit ratings, they may not be able to pay the liquidated damages their contracts require if they cannot deliver the agreed-on electricity, he said.

The coverage is referred to as "single-interest credit insurance" because the policy names only the credit of the one utility trading unit involved and not an entire portfolio of creditors, Mr. Nadel explained. **BI**

# IRS

Continued from page 3

onto employees, workers could prospectively boost their pretax contributions toward the premium.

The latest rules make clear that an employee could prospectively make a change in his or her pretax premium contribution premium because the employee's share of the premium had changed even though the underlying cost of the plan had not.

This could occur, for example, when an employee moves to part-time from full-time status. As a full-time employee, the employee may, for example, be paying 10% of the total premium. But by moving to part-time, the employee might have to pay 50% or even 100% of the premium. In such a situation, an adjustment in the previous pretax contribution for the premium would be permitted.

"That is a very welcome clarification. This had been raised as an issue, and the IRS listened," said Andy Anderson, a consultant with Hewitt Associates L.L.C. in Lincolnshire, Ill.

In addition, the earlier regulations permitted an employee to decrease or cancel coverage after the initial election, if he or she became covered under another health plan, such as a new spouse's plan.

But employers weren't sure about what sort of proof employees had to provide to establish that they had coverage under another health care plan. The final regulations make clear that an employer can generally rely on an employee's statement that he or she has or will obtain coverage under the other plan.

In the area of life insurance and disability coverage, the final regulations say that an employee may change an initial election if there is a subsequent birth or adoption of a child.

In one case, though, the final rules

will make it more complicated for employers to administer flex plans. That complication arises when an employer allows an employee to retroactively add a spouse to a plan due to marriage.

For example, many employers give an employee up to 30 days after getting married to add a spouse to a health plan, and allow coverage to take effect on the effective date of the marriage.

The final rules permit such retroactive coverage, but employees would have to pay their share of the premium for the coverage with after-tax, rather than pretax, contributions.

However, pretax contributions still would be allowed to pay for retroactive coverage in the case of a coverage election made within 30 days of a birth, adoption or placement for adoption of a child. A 1996 federal law grants special coverage rights for birth and adoption. **BI**

## Premium shortfalls

### IRS clarifies employers' options

WASHINGTON—Employers now have guidance from the Internal Revenue Service on when they have to give COBRA beneficiaries more time to make up small underpayments before their coverage will be terminated.

Under 1999 regulations, an employer had two options when it received a COBRA premium check that was off by an "insignificant" amount. The employer, to avoid administrative hassles, could write off the underpayment; alternatively, it could notify the beneficiary of the underpayment and give him or her a reasonable amount of time to pay the

shortfall. The IRS said 30 days would be a reasonable period.

The 1999 regulations, though, did not define what constitutes an "insignificant" shortfall. In final COBRA regulations published in the Jan. 10 Federal Register, the IRS says that an underpayment is insignificant if it is no greater than \$50 or 10% of the required amount, whichever is less.

While the clarification is welcome, the amount deemed insignificant is too high, said Colleen Clearwater, senior vp with COBRA Compliance Systems in Coldwater, Mich.

—By Jerry Geisel

#### COLLABORATIVE LITIGATION MANAGEMENT



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# OPINIONS

## Asbestos risk relief needed

New tools and solutions are needed if businesses and their insurers are to avoid getting stuck in another quagmire of asbestos liabilities and litigation.

As we reported last week, the frequency and severity of asbestos-related claims are rising—after an all-too-brief respite—driving a new wave of companies into bankruptcy and forcing insurers to address the adequacy of their reserves.

While it may prove difficult to win legislative relief from an almost-evenly divided Congress, that is exactly what is needed. Legislation that would reform the civil justice system and would create new asbestos claims-handling mechanisms are sorely needed if the industry is to avoid ruin from the enormous costs of battling these rising claims in court.

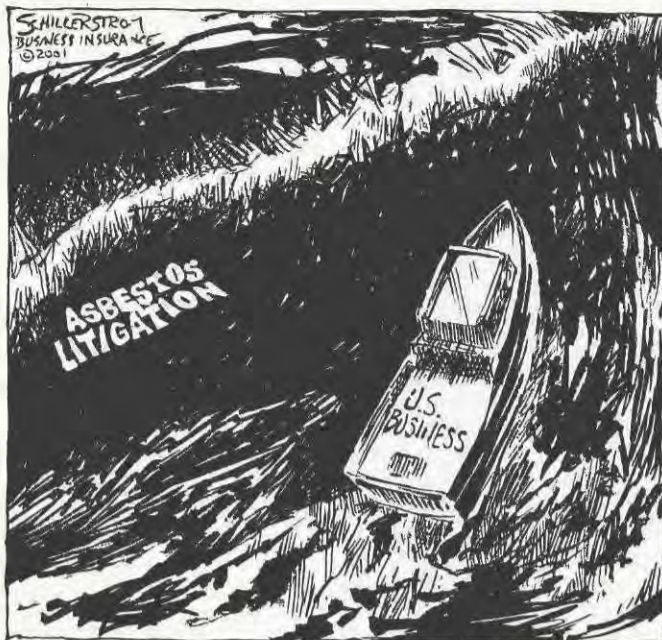
The fact that six large building products manufacturers have declared bankruptcy in the past 12 months to avoid facing a continuing stream of asbestos liabilities should serve to wake up members of Congress in both parties to the severity of this problem. If not, how many more companies must be driven out of business before lawmakers act?

We hope that legislative relief also will be at hand before insurers, due to the burden of boosting incurred-but-not-reported reserves for asbestos liabilities are forced to sharply raise the rates they charge all of their customers. We've seen this scenario before, and in a market where prices are firming, it's not hard to imagine that fear could drive insurers to a knee-jerk reaction.

During the last wave of asbestos and environmental liabilities in the 1980s and early 1990s, there was considerable momentum for tort reform efforts. Businesses and their insurers need to get the ball rolling again.

The benefits from tort reform relief would be felt far beyond the asbestos realm. They could also be applied, for example, to resolving pollution liabilities, product liabilities and other mass torts in a fair and efficient manner.

One area ripe for reform is the rules governing large-scale settlement plans. The U.S. Supreme Court in recent years struck down a pair of billion-dollar asbestos settlements, ruling that the claimants were too diverse to belong in the same class. This position essentially forced companies to settle or litigate the claims one by one. That is enormously expensive and has been a key factor in some of the re-



•THE PERFECT STORM•

cent bankruptcies.

While mass settlements are not ideal for defendants—they allow, for example, some questionable claims to avoid closer scrutiny—they ultimately are less costly than a case-by-case approach.

Another legislative goal should be enactment of the Fairness in Asbestos Compensation Act, which failed to clear Congress last year. This bill would create a mechanism to centrally manage compensation for asbestos claimants, thereby avoiding the need for litigation altogether. Such an approach speeds the delivery of benefits to people harmed by asbestos, while lowering their costs and those of the defendant companies.

The measure died last year because of lukewarm support from defendant companies and opposition from plaintiffs. The alternative to adopting a broad plan for managing these claims—companies going out of business—benefits neither side. We hope another asbestos compensation bill can be developed in the new Congress.

Lawmakers need to understand that removing obstacles to settling these cases fairly and promptly would not only benefit businesses and claimants alike but also would help to reduce the number of cases on court dockets.

# LETTERS

## List of top 100 women incomplete

To the editor: All of us at Anco Insurance Managers Inc. were very disappointed to not see our president, Kathy Gregory, listed among *Business Insurance's* 100 leading women in the insurance industry (*BI*, Oct. 2, 2000).

Kathy is president of Anco Insurance Managers Inc., which was ranked as the 79th-largest U.S. broker by your periodical. Not only has she performed in an

excellent manner as president but she also handles the largest volume of commission and/or customers within the Anco company. She has some 17 years of insurance experience, she is a "people person," and she lives and breathes customer service.

I know of few agencies or brokers that have female presidents. Anco Insurance Managers, Inc. is proud to say our presi-

dent is a female. However, she is the president not because of her gender but because of her sterling performance.

Please consider her for inclusion the next time you again list the leading women in the industry.

**Dick B. Haddox**

Chairman

Anco Insurance Managers Inc.

Bryan, Texas

## LETTERS TO THE EDITOR

*Business Insurance* welcomes letters to the editor. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Please send letters to Letters to the Editor, *Business Insurance*, 740 N. Rush St., Chicago, Ill. 60611; fax: 312-280-3174; e-mail: [pwinston@crain.com](mailto:pwinston@crain.com).

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Visit *BI's* Online Forum, which offers unmoderated discussion areas for readers to exchange ideas or information on risk management, employee benefits insurance and miscellaneous other topics.

The Online Forum is located at: <http://www.businessinsurance.com/forum/index.html>.

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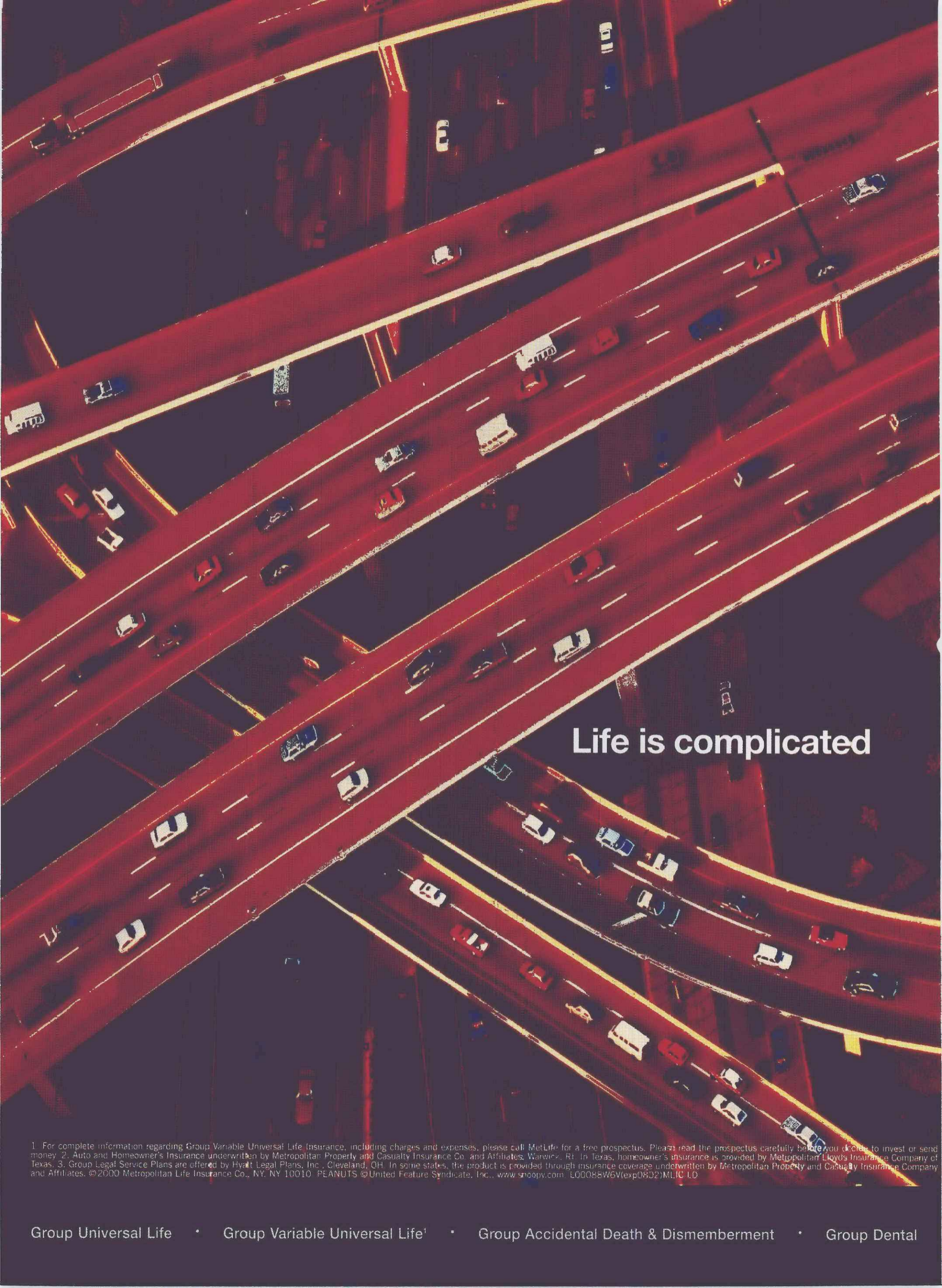
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# ASK A CASUALTY ACTUARY

## Q

If you were in the client's place, how would you approach working with a consulting actuary? How would you go about finding such a consultant?

## A

Risk managers and financial officers often tend to view consulting actuaries as technical advisers who have fairly narrow perspectives. Depending on the experience and capabilities of the consulting actuary, this may not be the best way to approach the consulting relationship.

In many cases, consulting actuaries have significant experience in dealing with key management issues. They could be viewed more broadly, as management consultants with specific areas of technical expertise. This change in perspective can make the relationship more beneficial for the client.

My answer to the first question would depend on what internal resources were at my disposal.

If there were no expertise internally, then, obviously, I would have to ask the consultant to perform the basic and necessary actuarial tasks needed to operate a sound risk management program. Such tasks would vary according to the program structure, but they would likely include the evaluation of funding needs for self-insured exposures, the design or review of cost-allocation plans, and a review of the adequacy of loss and loss adjustment expense reserves.

If reasonable expertise were available internally, then the consulting actuary might be asked to review internal analyses performed to meet any of these basic tasks and to advise the client on important management matters.

In either case, I believe clients often fail to use the skills and experience of consulting actuaries in the most beneficial way. A client can take advantage of the consulting actuary's skills to address key questions that need to be explored in properly managing a program. Such questions often include:

- What is the best retention for the program? What alternative of excess insurance or reinsurance would best meet the needs of the program?

Quite often, after a consultant performs one of the

basic tasks of loss analysis, he or she is in an excellent position to advise the client on these questions. To properly address these questions, it is important to be able to interpret the meaning and value of recent large claims experience and their relevance to questions about prospective experience in the higher layers.

In general, to adequately answer these questions, one needs to have years of experience in a wide variety of programs; this is one area in which the consultant's background can be of great value to the client.

- How sound is the financial condition of the insurers with which current coverage is placed? What about the state of insurers with which coverage may be placed in the future?

While there is no substitute for a thorough analysis of internal information in the evaluation of market security, it may be a good idea to ask the consultant to review publicly available information and provide his or her observations. For example, you could ask the consultant to work up a set of questions to ask the insurer that would assist in reviewing the publicly available information. These questions could include:

- How could internal resources for actuarial analysis be enhanced?

- Would a training program make sense?

- Should computer software be purchased?

- Could current claims reports and management summaries be revised to provide more pertinent information?

While it may be easy to estimate past or prospective loss costs on an expected-value basis, it is often hard to assess the degree of variation that can be expected in those loss costs. Consideration of such variation can make the difference between wise and unwise choices with respect to reserves, funding or the evaluation of alternative retentions or structures for the program.

As for the second question, the most common sources of information regarding the selection of a consultant are word of mouth; contacts at professional meetings; and other service providers, such as brokers, auditors and management consultants.

Relying on such sources is not always a good approach, as your source may be familiar only with the work of the prospective consultant in one set of circumstances, which may differ from your company's situation. For example, your colleague may be very impressed with a consultant who has extensive expertise in professional liability claims in Eastern states, but you may need someone with

a thorough background in California workers comp.

Here are some questions to ask the prospective consultant to determine the extent of his or her relevant experience. Other questions may be relevant to your organization's individual situation.

- How much experience have you had: In performing different types of studies, e.g. reserves, funding, cost allocation, etc., for a given type of claim, e.g. workers compensation, general liability, professional liability, etc.? In doing actuarial analyses of any type?

- How much consulting experience do you have?

- Which actuarial methods do you intend to use in performing a given study? Ask the prospective consultant to generally describe the range of applicable methods and explain the approach he or she intends to take.

The latest yearbook of the Casualty Actuarial Society is a good general resource for finding consulting casualty actuaries near you. Copies are available for \$40 from the CAS at 1100 N. Glebe Road, Suite 600, Arlington, Va. 22201-4798; 703-276-3100; fax: 703-276-3108; e-mail: [office@casact.org](mailto:office@casact.org). **BI**

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

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



Mr. Sherman

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

## Illegal alien eligible for workers comp benefits

The Commonwealth Court of Pennsylvania ruled that an illegal alien was not precluded from receiving workers compensation benefits simply because of his immigration status.

Juan Astudillo was an illegal alien and did not have proper Immigration and Naturalization Service documentation to work for Reinforced Earth Co. In May 1994, Mr. Astudillo sustained injury to his head, neck, shoulders and upper back when he was struck by a steel beam while employed as a maintenance worker. His injury prevented him from performing his pre-injury position. Mr. Astudillo filed for and was awarded workers comp disability benefits. The employer appealed, claiming that Mr. Astudillo, as an illegal alien, was not entitled to workers comp benefits. The compensation board, however, affirmed the award of benefits.

The employer argued on appeal that the Immigration Reform and Control Act of 1986, under which illegal immigrants are prohibited from being employed in the United States, pre-empts the state's workers compensation act and requires Pennsylvania courts to find that Mr. Astudillo was not an employee under the workers comp law. The court said the federal IRCA was enacted to prohibit employers from hiring illegal aliens and that it placed on employers the burden of obtaining documentation that an applicant can legally seek employment. The court said there was nothing in the IRCA that indicates that an individual hired by an employer in

### LEGAL BRIEFS

violation of the law's provisions was not an "employee" under federal or state law. Thus, the court said, IRCA does not preclude an illegal alien from being considered an "employee" for purposes of the workers compensation law. The court affirmed the award of benefits.

*Reinforced Earth Co. vs. W.C.A.B.*, Commonwealth Court of Pennsylvania, April 12, 2000 (BI/04/D.-\$10).

### Weight of representations clarified under ERISA

Statements made by employers regarding the retirement benefits an individual was due under an Employers Retirement Income Security Act-governed plan did not constitute an amendment of the plan, according to the 7th U.S. Circuit Court of Appeals.

Arnold Downs was receiving the exact level of retirement benefits to which he was entitled under the express terms of his pension plans, but he claimed that he deserved more. His former employer, World Color Press, apparently told him in error that he would receive 28 years of service credit under its ERISA plans, even though Mr. Downs worked for the company for only 16 years. Mr. Downs complained that these misrepresentations modified one of his ERISA plans and entitled him to more benefits than allowed under the plan's express terms. Mr. Downs

sued World Color Press in Illinois state court, seeking to clarify his rights under the plans. The employer had the case removed to the federal court, and the federal trial court ruled against Mr. Downs.

On appeal, Mr. Downs argued that his employer's oral and written representations amended the plans and entitled him to additional benefits. The court said that the statements made by World Color Press employees did not constitute an amendment of the plan because oral modification of an ERISA plan is prohibited. Furthermore, the court pointed out that, although written modification of an ERISA plan is permissible, a plan may be amended only pursuant to its express terms. The court said that the World Color Press plan provided that it could be amended only "through action of the board of directors." According to the court, Mr. Downs failed to establish that the board of directors ratified any plan modification that would have entitled him to additional benefits. The trial court decision was affirmed.

*Downs vs. World Color Press*, 7th U.S. Circuit Court of Appeals, May 25, 2000 (BI/05/D.-\$10). **BI**

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



## GLOBAL BRIEFS

Transatlantic Reinsurance Co., a subsidiary of Transatlantic Holdings Inc., has acquired a 40% stake in **Kuwait Reinsurance Co.** Transatlantic Reinsurance is paying \$30 million for the share in Kuwait Reinsurance, which primarily provides property, casualty and life reinsurance to clients in Middle Eastern and North African markets. Groupama Commercial Insurances, a United Kingdom unit of Paris-based insurer Groupama, has started offering business clients coverage against a wide range of **e-commerce risks.** Coverage includes infringement of intellectual property rights, breach of confidence and defamation, all with aggregate limits of £2 million (\$3.0 million); loss of documents, with an aggregate limit of £100,000 (\$150,290); and business interruption caused by disruption to Internet services, with a limit of up to £250,000 (\$375,725). Rating agency Standard & Poor's Corp. has assigned an A long-term counterparty credit and insurer financial strength rating to Austrian insurer **UNIQA Versicherungen A.G.**, but with a negative outlook. S&P said the rating is based on the insurer's "core strategic role within the Vienna-based UNIQA insurance group, its very strong business position in the Austrian insurance market and the strong capitalization at a group level." Offsetting these, though, are UNIQA's lackluster earnings and concerns about the group's ability to achieve a turnaround, said S&P. **Amlin P.L.C.**, a leading insurance company within Lloyd's of London, has secured £50 million (\$75.1 million) of syndicated bank letters of credit to support its growth in underwriting. Amlin said its underwriting capacity for 2001 is 28% greater than in 2000. **Claude Brunet** will join Paris-based AXA Group on April 2 as group executive vp-operations and a member of the AXA executive committee. Previously, Mr. Brunet was chairman and chief executive officer of Ford France, a subsidiary of automaker Ford Motor Co. **Peter Neville**, currently general manager of the regulatory division of Lloyd's of London, has been appointed director general at the Guernsey Financial Services Commission, beginning in March. Guernsey, in the Channel Islands, is the leading domicile for insurance captives in Europe. **British Airways P.L.C.** is issuing warnings to long-distance air passengers about the risks of potentially fatal blood clots, or deep-vein thrombosis. The warnings are in leaflets distributed with airline tickets, and they caution about the potential danger to blood circulation of sitting for long periods. Britain's largest independent insurance broker, London-based Willis Group Ltd., has acquired a controlling interest in **SUMA Corredores de Seguros**, Colombia's second-largest insurance broker. SUMA is a full-service professional risk manager and retail insurance broker with five offices throughout Colombia. Joe McSweeney, CEO of Willis International Holdings, said the acquisition will consolidate the broker's position in the growth markets of Latin America and is part of Willis' commitment to strengthening its international network. Japanese insurers Tokyo Marine & Fire Insurance Co. Ltd., Nichido Fire & Marine Insurance Co. Ltd. and Asahi Mutual Life Insurance Co. announced further progress last week in their plans to merge. Tokyo Marine & Fire and Nichido Fire & Marine intend to merge in April 2002, with Asahi joining them in 2004. The merger plans were first unveiled last September, part of the large-scale consolidation of Japanese insurers following deregulation in 1998 and subsequent failures by a number of insurers in 2000. Underwriting agents Cotesworth & Co. Ltd. has received approval from Lloyd's of London to merge marine syndicate 228 into its marine syndicate 535, where the active underwriter is Graham Davies. Lloyd's has also approved the merger of Cotesworth's non-marine syndicate 1069 into its non-marine syndicate 1688, where the active underwriter is Harvey Simons.

# Pension red tape under fire

## U.K. regulations may hinder growth of private pensions, warns NAPF

By SARAH VEYSEY

Growing regulatory constraints are making the administration of occupational pensions much more difficult for employers, according to a recent survey by the United Kingdom's National Assn. of Pension Funds.

"Pension schemes continue to struggle under the burden of red tape," said David Cranston, director general of the NAPF, which is based in London. "But despite this, employers want to and are willing to provide pensions...Employers are keen and see it as a good employee benefit," he added. But he said that while the NAPF supports the U.K. government's goal of shifting the bulk of pension benefits

to be provided by the private from the public sector, there would need to be a reduction in the red tape involved in administering pension plans for this to take place.

When the Labour Party took power in 1997, one of its goals was to shift the source of pension benefits. At the time, 60% of all pensions were provided by the state, with the private sector contributing 40%.

The London-based NAPF last fall received responses to its survey from 501 of its members, who are pension managers and service providers.

The vast majority of respondents, 94%, said they felt that providing occupational plans requires more company re-

sources now than it did five years ago. And 90% of respondents said the provision and management of occupational plans would become more difficult over the next five years and would require more company resources. Almost half of all respondents, 44%, said they felt that "a lot more" resources would be needed.

Respondents then were asked why they felt this way about the future. The two most common responses, making up 64% of the total, were "increased legislation" and "more complex legislation."

"The picture is clear. It has become increasingly difficult for employers to provide good occupational schemes, and the future

is likely to add to, not reduce, employers' woes," the NAPF said in a report accompanying the survey results. "Pension funds are drowning under a mass of red tape—much of it unnecessary."

Mr. Cranston cited a new law on the treatment of pensions in divorce cases as one of the thorniest problems that providers of employee pension plans face. Under the new law, a judge can earmark a portion of an employee's pension to be set aside for his or her spouse, creating what amounts to a separate pension. Before the change in the law, a spouse could receive only a lump sum and get nothing if the former partner

See NAPF on page 19

# Lloyd's capacity increases 10% for 2001 writings

By EDWIN UNSWORTH

LONDON—Lloyd's of London has increased its premium capacity by about 10%, to £11.06 billion (\$16.62 billion), for 2001, the largest annual increase since 1994.

Lloyd's Chairman Sax Riley,

## LLOYD'S

who succeeded Max Taylor at the beginning of this year, said the increase shows "a considerable vote of confidence in the market's strength."

"This significant increase demonstrates clear expectations that the market's performance will improve during 2001," Mr. Riley said. "With rates hardening in many sectors and syndicates reporting a healthy renewal season, all the vital signs are good."

The expansion came from increased investment commitment by corporate members—up 12.8%, to £9.09 billion (\$13.66 billion).

Meanwhile, investment by individual names dipped slightly to £1.95 billion (\$2.93 billion) from £2.00 billion (\$3.01 billion).

Three new syndicates have started up to write business in 2001, bringing the total number of syndicates to 108.

The new syndicates are:

- 2791, run by Managing Agency Partners Underwriting Ltd. and offering multiple lines of insurance and reinsurance, with capacity of \$209.5 million.
- 2010, managed by Cathedral Underwriting Ltd. and writing aviation and property reinsurance, with capacity of \$121.5 million.
- 2607, operated by Creechurch Underwriting Ltd. and insuring accident and health risks, with \$23.4 million of capacity.

In addition, several existing syndicates have increased their underwriting capacity for 2001. They include:

- 2001, managed by Amlin Underwriting Ltd., up £151 million (\$226.9 million) to £575 million (\$864.1 million).

See Lloyd's on page 19

# U.K. insurers predict growth despite pricing

By SARAH VEYSEY

Despite rate increases for most insurance buyers, the U.K. property/casualty insurance industry anticipates significant growth in the volume of business it writes in the near future, according to a survey by the Confederation of British Industry and London-based accounting firm PricewaterhouseCoopers.

Approximately 40% of U.K. property/casualty insurers surveyed in December 2000 said they were more optimistic about the overall business situation than they had been in the previous quarter.

The survey weighted responses based on the percentage of respondents replying "more," "above normal" or "up" to each question vs. those responding "less," "below normal" or "down."

The 20 U.K. property/casualty insurers that were

surveyed reported that the value and volume of their business were up in the last quarter of last year, taking into account seasonal variations. After weighting, 73% said that both the value and volume of their business were up, according to the CBI.

Furthermore, the insurers reported that they believe the higher rates are unlikely to discourage buyers. Sixty percent said they were optimistic about trends in the volume of business for the next three months.

Another 60% said they expected the overall profitability of their business to rise over the next three months—the sharpest expected rise since June 1999, according to the CBI.

"There is a high level of optimism in the general insurance sector," said Ian Dilks, an insurance partner at PricewaterhouseCoopers in London. "Present volumes

See Outlook on next page

# Mobil seeks federal venue for claims

By DAMIEN TOMLINSON and KATE TILLEY

MELBOURNE, Australia—Mobil Oil Australia Ltd. is seeking to have a class-action suit involving contaminated airplane fuel heard in Australia's federal court.

Mobil will present its case to Australia's High Court on Feb. 16. The company maintains that the Victorian Supreme Court, the current venue for the dispute, does not have jurisdiction over the matter, which was launched after contaminated fuel supplied by the company grounded 5,000 light planes in December 1999, said Alan Bailey, manager of corporate affairs for Mobil Oil Australia. Mobil is a subsidiary of Melbourne, Australia-based

Exxon-Mobil Pty. Ltd.

Of the 5,000 aircraft inspected, a Civil Aviation Safety Authority survey found 1,407 were affected by tainted fuel. Canberra-based CASA is Australia's federal aviation regulator.

Mobil will argue that, despite the recent enactment of legislation affirming the Victorian Supreme Court's ability to hear class-action suits and a ruling in the case from the Victorian Court of Appeal, the state court is not the appropriate venue for a case that involves nationwide claimants.

Previously, all class-action suits had to be heard in federal court. But on Nov. 23, the Victorian Parliament voted in favor of a law to

See Mobil on page 19



PHOTO: AP/WIDEWORLD

Mobil Oil Australia faces a class-action lawsuit for damages allegedly caused by tainted aviation fuel.

INTERNATIONAL

# Outlook

Continued from previous page are higher than expected. The trends are good for volume and value. Companies are benefiting from a marked upturn in general insurance."

Property/casualty insurers cited domestic competition as the major constraint on their business prospects for the coming year, though the relative importance of domestic competition as a constraint had fallen to the lowest level ever recorded in the quarterly survey, the CBI noted. Forty-seven percent of the insurers cited domestic competition as a constraint for the fourth quarter of 2000, compared with 81% in the previous quarter and 99% the quarter before that.

Mr. Dilks described this statistic

as "quite dramatic—the lowest in 10 years." He suggested that discipline in the market as it begins to turn has reduced concerns about domestic competition.

"The upswing of the cycle at the present time probably means there is still discipline in the market and companies are pushing through rate increases, as opposed to taking advantage of the rate increases to undercut and gain market share," he said. "There has been a marked slowdown in the concerns over domestic competition. There is more discipline in the market, and there have been changes in the market since the last upturn. For example, now there are a number of very big players."

Fully 93% of the insurers reported an increase in the value of claims in the last quarter. "The value of insurance claims rose very sharply and at the fastest rate in the sur-

vey's history, perhaps reflecting the impact of the recent flooding," the report's authors said. "The value of insurance claims is expected to grow much more moderately in the next three months."

Mr. Dilks described this growth in claims as somewhat disappointing, though he noted that one effect of the recent storm damage in the United Kingdom may be to introduce more restraint into the market.

"It is a sweeping statement, but claims tend to be driven up in times of recession. So the growth in claims is, in some ways, disappointing, but it is probably because of the storms. But this probably helps discipline in the market," he said. "No one will slash rates if there is concern over claims. And there is a risk that there are more claims to come" from the bad weather, he said.

There was also optimism among

insurance brokers surveyed by the CBI. This bullishness was a result of the upward trends in property/casualty insurance, Mr. Dilks said. "Broking has been very positive because of the positive feeling in general insurance," he said.

Mr. Dilks noted that brokers expect to continue to recruit new staff and spend more in the area of information technology. "Remember," he said, "insurance brokers seemed to be lagging everyone 12 months ago."

According to the survey, 29% said they will recruit more staff in the next three months and 36% said they will increase spending on training.

Property/casualty insurers, along with other financial services firms, will now seek to increase their Internet activity, the CBI survey reported.

"The messages are that e-busi-

ness is spreading across the financial services sector but is growing at a slower rate than many companies expected," said Sadhir Junankar, associate director of economics at the CBI.

"There are concerns about security and the speed at which the Internet operates and concerns about getting qualified staff," Mr. Junankar said. "Many financial services companies are looking at integrating e-business—there is a transition from the whiz-bang—from the suits at the front and the pony-tails behind—to (the Internet) becoming much more mainstream."

Copies of the most-recent financial services survey by the Confederation of British Industry are available from CBI Publications Sales; telephone: 44-207-395-80-71; fax: 44-207-497-36-46; e-mail: pub-sales@cbi.org.uk.

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**LEGAL NOTICES**

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 COUNTY DEPARTMENT, CHANCERY DIVISION**

IN THE MATTER OF THE REHABILITATION OF  
 CENTAUR INSURANCE COMPANY ) No. 87 CH 8615

**NOTICE OF CLAIM FILING DEADLINE AND PROCEDURES**

PLEASE TAKE NOTICE, that on December 8, 2000, the Circuit Court of Cook County, Illinois, entered an Order Approving Second Revised Plan of Rehabilitation for Centaur Insurance Company, In Rehabilitation ("Centaur"). On December 8, 2000, the Circuit Court also entered an Order Approving Claim Filing Procedures respecting Centaur.

TAKE FURTHER NOTICE, that, pursuant to the Second Revised Plan of Rehabilitation and the Order Approving Claim Filing Procedures, all rights and liabilities of Centaur and its policyholders, creditors and stockholders, and all other persons interested in its property or assets, are fixed as of December 8, 2000, unless otherwise provided in prior or further orders of the Court.

TAKE FURTHER NOTICE, that all persons and entities who have, or may have, claims against Centaur, its property or assets, or against a Centaur insured or policyholder, shall have the right to present and file with the Rehabilitator of Centaur ("the Rehabilitator") proper proofs of claim on or before March 30, 2001.

TAKE FURTHER NOTICE, that any insured under an insurance policy issued by Centaur shall have the right to present and file with the Rehabilitator a proper proof of claim setting forth a contingent claim on or before March 30, 2001 at 4:30 p.m. (C.S.T.). No contingent claim shall be allowed for purposes of participating in any distribution of estate assets that may be made at the fourth priority level, 215 ILCS 5/205(1)(d), unless such claim has been liquidated and the insured claimant has presented and filed evidence of payment of such claim to the Rehabilitator on or before October 1, 2001 at 4:30 p.m. (C.D.T.). Any contingent claim for which a proper proof of claim is filed on or before March 30, 2001 at 4:30 p.m. (C.S.T.), but which is not liquidated on or before October 1, 2001 at 4:30 p.m. (C.D.T.), may be estimated pursuant to 215 ILCS 5/209(4)(b) for purposes of participating in any distribution of estate assets that may be made at the fifth priority level, 215 ILCS 5/205(1)(e), unless otherwise directed by the Court.

TAKE FURTHER NOTICE, that the form and required contents of all proofs of claims are described in 215 ILCS 5/209. Proofs of claim may be obtained by submitting a request in writing to the Rehabilitator at 222 Merchandise Mart Plaza, Suite 1450, Chicago, Illinois 60654. Telephone requests will not be accepted by the Rehabilitator. Proofs of claim, along with supporting documentation, are to be filed with the Rehabilitator at the aforementioned address. A proof of claim shall be deemed "filed" with the Rehabilitator upon the Rehabilitator's receipt thereof. The Rehabilitator reserves the right to require such additional information with respect to any claim filed with him as he may deem necessary. The Rehabilitator further reserves any and all defenses available to Centaur upon all filed claims. All proofs of claim must be duly sworn to before an officer authorized to take oaths.

THE LAST DATE FOR THE FILING OF PROOFS OF CLAIM WITH THE REHABILITATOR IS SET FORTH ABOVE. NO PERSONS OR ENTITIES HAVING OR CLAIMING TO HAVE ANY CLAIMS AGAINST CENTAUR INSURANCE COMPANY, OR ITS POLICYHOLDERS, SHALL PARTICIPATE IN ANY DISTRIBUTION OF THE ASSETS OF THE COMPANY, UNLESS SUCH CLAIMS ARE PROPERLY FILED WITH THE REHABILITATOR ON OR BEFORE MARCH 30, 2001 AT 4:30 P.M. (C.S.T.)

Cathleen M. Travis  
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# Lloyd's

Continued from page 17

• 435, managed by DP Mann Underwriting Agency Ltd., up £143 million (\$214.9 million) to £400 million (\$601.1 million).

• 2488, managed by ACE Global Markets Ltd., up £125 million (\$187.8 million) to £725 million (\$1.08 billion).

• 623, managed by Beazley Furlong Ltd., up £90 million (\$135.2

million) to £215 million (\$323.1 million).

• 2020, managed by Wellington Underwriting Agencies Ltd., up £70 million (\$105.2 million) to £500 million (\$751.4 million).

Commenting on the increased capacity of syndicate 435, DP Mann Chairman David Mann said that, after having remained static for several years, capacity has increased in 2001 because of a market correction and "cautious optimism that 2001 will see a greater demand for our products."

# Mobil

Continued from page 17

legitimize the Supreme Court of Victoria's ability to hear class actions. The court has had its rules in place since the beginning of 2000, and their constitutional validity has been tested, but not clarified, in court. Parliament decided to circumvent any court challenges by implementing the new law allowing the Supreme Court to hear the class action cases. Mr. Bailey said, however, that Mobil is concerned that if the case were to proceed in the Victorian Supreme Court, the court's ruling could later be overturned by virtue of the jurisdictional issue.

"It would be a big waste of court time and costs if the case went ahead in this jurisdiction only to be challenged on validity of jurisdiction later," Mr. Bailey said. "Despite the Victorian government legislating that the court can hear class actions, there is still sufficient doubt that the court can rule on behalf of other states," he said.

"Our aim is to achieve clarity. If the case does proceed in the Supreme Court, we just want to make sure there can be no challenge as to the court's validity," Mr. Bailey said.

In June, the Victorian Court of Appeal ruled in a 3-2 decision that the class-action suit against Mobil

could be heard in the Victorian Supreme Court. It is that decision that Mobil is seeking to challenge in the High Court. Under Australian court rules, there is no automatic right to appeal to the High Court; the High Court will hear Mobil's application and then decide whether to hear the full appeal.

Sydney, Australia-based plaintiffs law firm Slater & Gordon, which is representing the plaintiff class, is seeking up to \$100 million Australian (\$55.8 million) in compensation for physical loss, economic loss, and loss of opportunity to earn income, as well as damages for lost reputation and mental distress, for its claimants. Another Sydney law firm, Maurice Blackburn Cashman, had considered bringing a separate class action, but has combined its plaintiffs with Slater & Gordon's to avoid having two cases proceeding simultaneously.

Attorneys for Slater & Gordon could not say how many claimants would participate in the suit, because members of the class—which comprises aircraft owners, operators and pilots who suffered losses as a result of the contamination—have not yet received their "opt-out" notices.

Under Australian federal law and Victorian law, when a class-action suit is filed, a definition of the claimants is tendered; unless potential claimants who fit the definition

"Certainly," Mr. Mann said, "the signs are much more positive than they have been for some considerable time."

Andrew Beazley, managing director of Beazley Furlong, expressed a similar view.

"We are experiencing greater demand for products arising out of the growth of service industries spurred by sectors such as technology," Mr. Beazley said. "This is creating a raft of new buyers for products like errors and omissions cover." **EI**

exclude themselves, they remain part of the action. When class members in the Mobil case receive their notices—delivery is expected early this year—they will have until March 21 to opt out of the suit.

So far, the Supreme Court case continues despite Mobil's challenge. Mobil has until Jan. 19 to file its defense with the Victorian court. But lawyers involved in the case said they expect the court will adjourn the case after the defense is filed, pending the High Court's decision.

Meanwhile, Mobil continues to settle claims out of court. To date, it has paid out more than \$19.7 million Australian (\$11.0 million), Mr. Bailey said. Claimants who accept Mobil's compensation offer must waive their rights to bring legal action against the company.

Melbourne-based Tasfast Air Freight Pty. Ltd. is currently the lead claimant in the case. The original lead claimant, Melbourne-based Schutt Flying School, recently settled its claim. Neither Mobil nor Schutt would disclose the terms of the settlement, saying there was a confidentiality agreement.

The matter first arose in December 1999, when light plane operators reported rough-running engines and loss of power. CASA grounded all piston-engine planes and ordered that they be inspected for the presence of a fuel residue thought to have caused the problems. **EI**

# Texas

Continued from page 3

held, it would have created significant problems for hospitals and medical providers, which would have been torn between saving lives and risking liability.

According to the decision, Karla Miller was just 23 weeks pregnant when she was admitted to Woman's Hospital in August 1990 with premature labor pains. When doctors informed the Millers that if the baby were born alive and survived she would suffer severe impairments, the parents asked that no heroic measures be performed after her birth.

The attending obstetrician concluded, though, that medical staff members were obligated by law and by hospital policy to administer resuscitative procedures even without the parents' consent if the newborn weighed more than 500 grams, or about 1.1 pounds. They did so after Sidney was born weighing about 1.4 pounds.

The parents sued, saying HCA was vicariously liable for the hospital's actions in treating Sidney without consent and for having a policy that mandated resuscitation for newborn infants weighing more than 500 grams. They also claimed the hospital was directly liable for failing to have policies to prevent such treatment without consent.

In 1998, a jury awarded the parents the \$60.4 million. That amount included \$29.4 million for past and future medical expenses, \$13.5 million in punitive damages and \$17.5 million in prejudgment

interest.

The court's decision says resolving the issue of HCA's liability requires finding "a juncture between three fundamental but competing legal and policy interests": parents' right to consent to their children's medical care; parents' legal duty to provide needed medical care to their children; and the state's legal and policy interest in guarding minors' well-being, even if this requires limiting parents' freedom and authority over their children.

As a general rule, parents have no right to refuse urgently needed life-sustaining medical treatment for their non-terminally ill children, says the court, although "a compelling argument can be made to carve out an exception for infants born so prematurely and in such poor condition that sustaining their life, even if medically possible, cannot be justified."

But the decision adds that the court does not have this alternative, both because "a sufficient record does not exist in this case where to 'draw the line' for such an exception" and because "it is not within the province of an intermediate appellate court to, in effect, legislate in this manner."

The majority also ruled that a court order had not been necessary to override the parents' refusal of consent to treatment. In his dissent, though, Justice Maurice Amidei said a court order was needed. This "would have provided an impartial tribunal without any conflict of interest or appearance of conflict to decide the manner," Justice Amidei wrote.

John Robertson, a law professor

at the University of Texas in Austin, said the majority opinion is "really a very important decision for hospitals and doctors and health insurers." If hospitals are to be held liable for resuscitating an infant against the parents' wishes, they risk "a very large malpractice judgment," Mr. Robertson said. Yet denying treatment means

## The trial results 'were not just and would have set a very unworkable legal precedent,' says Scott McQuarrie.

"they're violating the duty to protect the interests of children, even disabled children," he said.

Attorney Shannon H. Ratliff, of Austin-based McGinnis, Lochridge & Kilgore, who represented HCA in the case, said the trial court's outcome had put the health care professionals involved "in an almost-impossible situation." The staff believed it was correctly fulfilling its ethical responsibilities and was, obviously, "greatly disturbed by the court verdict," he said.

Likewise, health care attorney Scott McQuarrie of Fulbright & Jaworski in Houston said, "clearly, the results after trial in this case was not just and would have set a very unworkable legal precedent for doctors and hospitals in an admittedly very difficult area." Mr. McQuarrie represented one of the

# NAPF

Continued from page 17

remarried or died. "The rules are so complicated that several law firms didn't even know" what to do, said Chris Armitage, pension manager at Uniq P.L.C. and council member of the NAPF.

Mr. Armitage also pointed out that 20% of private pension plan respondents and 31% of public pension plan respondents said they had had difficulty complying with pension allocation orders in divorce cases. Of these, 73% of plan managers said the reason for the difficulty was that the new rules were impossible to implement.

Mr. Armitage said that pension managers' ability to run plans has been hindered by the rash of U.K.

## 'Nothing will stop people making money out of pension schemes if they really want to,' says Chris Armitage.

pension regulations introduced after the Mirror Group scandal of the 1990s, in which the late media tycoon Robert Maxwell plundered the assets in his companies' pension funds.

"Everything we do seems to be connected to what Maxwell did 10 years ago. But nothing will stop people making money out of pension schemes if they really want to," he said. "It doesn't help us to run pension funds; it makes it harder, and it doesn't make it safer."

In the wake of the Maxwell scandal, the U.K. government introduced the 1995 Pensions Act, which set out stringent rules on the administration of employer-spon-

sored pension plans. Twice as long as the Bible, the Pensions Act introduced myriad regulations governing pension plans, including the minimum funding requirement. That rule, which requires occupational pension plans to undergo regular actuarial audits, aims to ensure that a plan could meet its obligations should it be terminated.

The majority of respondents said that their organizations would be hindered if the government were to follow through on a proposal to raise to 55 from 50 the minimum age at which a member could draw his or her pension. Of respondents running private plans, 60% said that raising the minimum age would be a hindrance, as did 79% of public plan respondents. Managers of defined-contribution plans also cited this as a concern, with 64% saying an increase in the minimum age would hinder their organizations' activities.

Only 1% of respondents from private plans and no respondents from public plans said they intended to replace any of their existing pension plans with a stakeholder plan when that option becomes available in April. Stakeholder pensions are retirement savings plans that individuals can create, unlike state or employer-provided group pensions.

As part of the government's drive to shift pension provision to the private sector, all employers with five or more employees must ensure that their workers have access to a low-cost stakeholder pension plan—charges must be 1% or less of the fund's total value—or better or equivalent occupational pension. Mr. Armitage said that this came as no surprise to him. "Most employers have good schemes already," he said.

To order copies of the report contact Sue Dean at the NAPF, 44-207-808-1300; fax: 44-207-222-7585; e-mail: sue.dean@napf.co.uk

compliance with the parents' request that no extraheretic measures be taken.

Mr. McQuarrie said that, while there is no question Sidney would have died without the medical procedures, no one knew whether she would be severely impaired.

"I am very sympathetic to the Miller family for the tragedy that has befallen them, but we can't allow these difficult circumstances to force doctors and hospitals to withhold care that can be provided" in order to avoid the potential outcome of a child surviving but with impairments, Mr. McQuarrie said.

Alan Meisel, a professor at the University of Pittsburgh law school, who is an expert in the area of medical ethics, said that, while there have been other lawsuits on this issue, he knows of none that has reached the appellate level.

Mary Anne Bobinski, director of the Health Law and Policy Institute at the University of Houston Law Center, said, "The unique thing about this case is that the hospital gave treatment to the child over the parents' objections and did not seek a court order, and we have a court decision saying that was permissible."

HCA Inc., HCA-Hospital Corp. of America, Hospital Corp. of America, and Columbia/HCA Healthcare Corp., Appellants vs. Sidney Ainsley Miller, by and through her next friend, Karla H. Miller and Karla H. Miller and J. Mark Miller, Individually, Appellees, 14th Court of Appeals, Texas, No. 14-98-005892-CV, Decided Dec. 28, 2000.

# Behavior

Continued from page 3

sonality type. For example, point one signifies an individual who is a "perfectionist," with the characteristics of being principled, orderly, controlling and ethical. Point two is a supporter, and is caring, emphatic, self-sacrificing and possessive. Other points represent personalities described as achiever/motivator, artist, observer, troubleshooter, innovator, leader and facilitator.

"Every point is equal distance to the center of the circle," symbolizing equality, said Ms. Goodwin. "One point is no better than the other."

Employees are given a test to determine where they fall on the diagram and personality type is identified by that position, she explained. Once employees are tested, Action for Results introduces a curriculum that helps workers and employers use the information.

Once the workforce is characterized, the information can be used in several ways, Ms. Goodwin explained.

"Part of this is about identifying each individual," she said, and understanding "what happens when they are under stress." An individual under stress will move from their identifying enneagram point into another area on the diagram, she explained. By recognizing that they are exhibiting characteristics of another enneagram point, employees can understand that they are under stress and make adjustments before problems occur.

For example, a "one" who is normally orderly and detailed becomes rigid and opinionated, Ms. Goodwin said. "Potentially, they could start micromanaging. If things get worse, they could become emotional and feel powerless and unenthusiastic to make

changes."

The enneagram also helps workers understand how to deal with others who are under stress. "We know that the last thing you want to do to anyone under stress is become judgmental," Ms. Goodwin said. "We give tips and tools" to use in dealing with such situations, she added.

Project management also benefits from this method of identifying character types, Ms. Goodwin noted. The

preventing."

The center, he said, teaches employees "how to identify the emergence of aggression" so that conflict can be avoided.

The tool offered by the center is a 16-hour course on the "aggression continuum," a diagram that helps employers identify the emergence of aggression. "It's a graphic that demonstrates that aggression is made up of parts," Mr. Byrnes explained. Identifying

**'If you wait for conflict, sooner or later you are going to get violence. There's going to be somebody who doesn't communicate verbally, but physically,' says John Byrnes.**

enneagram helps project managers understand the personalities on a team and how to involve them in ways that are most productive, depending on their personalities and behaviors.

Conflict resolution is among the most requested uses of the enneagram, Ms. Goodwin said. "Conflict is a hot topic because there is a lot of stress in organizations. The pressure is on individuals to move faster and faster," she noted, and as a predictive tool, the enneagram allows conflicts to be resolved quickly because it indicates when individuals are moving toward negative traits on the diagram. That way, conflicts can be resolved before they become too serious.

Mr. Byrnes of the Center for Aggression Management said that any kind of conflict resolution that does not include some predictive element is doomed to fail. Conflict resolution, by its own definition, presupposes conflict, he pointed out. "It's already past

the parts, known as the trigger, escalation and crisis, helps employers recognize and defuse aggressive situations.

"If you wait for conflict, sooner or later you are going to get violence. There's going to be somebody who doesn't communicate verbally, but physically," warned Mr. Byrnes.

A tool devised by Envisionworks in Orland Park, Ill., helps employers identify both uncivil and civil behaviors in the workplace. Bad behavior can then be corrected and good behavior can be used to market the company as a pleasant place to work and to retain current employees, according to the program's developers.

Any attempt to make workers more productive is not effective if employees don't get along, said Kevin Schmidt, president of Envisionworks, a company that helps companies identify workplace behavior. "You have to be civil with each other to begin with."

Envisionworks recently unveiled its Organizational Civility Index, a tool based on seven years of research, that measures behavior in the workplace. It is based on a confidential survey that takes employees about 20 minutes to complete and pinpoints particular civility problems and the organizational levels where they are occurring within an organization. The ability to identify areas where incivility is taking place is important because senior management often is unaware that problems exist, according to Mr. Schmidt said.

He stressed that Envisionworks is in the business of identifying the behavior. Changing such behavior, however, requires the help of psychological professionals, Mr. Schmidt said. "We give statistical proof that is hard to ignore," he noted. "There are a lot of professionals out there that can help change behavior."

Not changing uncivil behavior can be expensive, according to Mr. Schmidt. While violence is a rare occurrence in the workplace, he said, "incivility happens all the time." As a result, affected companies suffer from employee turnover and a lack of productivity. "In dollar terms, it varies from company to company."

Mr. Schmidt explained that employers generally don't want to get rid of employees who exhibit uncivil behavior. "Incivility is like some horrible disease. No one wants to admit that they have uncivil people" in the workplace, he said. "But most do. Generally, they are good employees in other respects and they don't want to get rid of them."

Mr. Taffae pointed out that a handful of U.S. and London market insurers are offering coverage that responds when incivility turns to violence and leads to losses.

"Each has a different approach," he

said of the insurers. "A lot of them tie it to the crime and/or kidnap and ransom coverage. I'm not a big advocate of combining it."

When the workplace violence coverage is combined with others, "there's an aggregate-limit issue," Mr. Taffae noted. And, he said, the risk is "very different" from the others. "I think it should be priced according to the risk and underwritten on a dedicated contract."

Mr. Taffae said employers considering insurance for workplace violence exposures should consider whether a policy covers various losses. "Each contract is very different," he warned, and while no single policy likely will cover all the bases, there are several things to examine.

Legal liability costs, including any settlement amounts, should be a part of the coverage, Mr. Taffae advised. Business interruption that occurs because of violence, and costs related to "rehabilitation of the reputation" of a business that suffers a loss, should be considered as part of the coverage. The insurance can also include death benefits, accidental death and dismemberment payments, coverage for punitive damages, consulting costs and expenses related to counseling services for employees or others affected by the violence. Some contracts also cover the cost of rewards that might be necessary.

Mr. Taffae said the interest in workplace violence coverage has increased along with the number of incidents that have occurred. "A lot of these products have been out for some time," he remarked. But employers have become more likely to buy coverage after incidents like the one last month in which a worker at a computer software company gunned down seven other employees at the company's Massachusetts office. **BI**

# PBGC

Continued from page 1  
cy's premium structure.

Indeed, Mr. Strauss' recommendation is drawing strong support from the business community.

"The insurance program has a good deal of money. Premium reductions are long overdue," said Mark Ugoretz, president of the Washington-based ERISA Industry Committee, a benefits lobbying organization representing large employers.

"Sponsors of well-funded plans would be delighted. Any lowering of the premium should go to those employers with well-funded plans who don't pose a risk" to the agency's insurance program, said Ethan Kra, chief retirement actuary with William M. Mercer Inc. in New York.

That the PBGC's executive director would recommend premium relief is a dramatic illustration of how the agency's financial condition has turned around in just a few years.

As recently as 1993, the PBGC's deficit—swelled by a series of multi-hundred million-dollar losses from the terminations of massively underfunded pension plans sponsored by such failed companies as Eastern Airlines Inc. and Pan American Airways—hit nearly \$2.9 billion. The size of the

deficit, which is the difference between assets held by the PBGC and benefits it must pay to participants in terminated plans it has taken over, and the fear that the deficit would continue to grow led to fears that only a taxpayer bailout could save the PBGC from insolvency.

But that scenario did not unfold. A surging economy has led to increased investment income earned on PBGC insurance premiums paid by employers and on assets in pension plans taken over by the PBGC, while losses from terminated plans have declined sharply. From 1997 through 2000, the PBGC racked up about \$8 billion in investment income.

By contrast, from 1991 through 1994, investment income was just \$2.63 billion, or barely a third of the most recent four-year period.

At the same time, losses the agency has absorbed through taking over failed pension plans have sharply declined. From 1997 through 2000, losses from terminated plans totaled \$861 million, down sharply from termination losses of \$2.44 billion from 1991 through 1994.

If employers with well-funded plans were not required to pay PBGC premiums, the agency would lose roughly \$650 million in annual revenue. But that loss of revenue likely would be overshadowed by investment income.

Last year alone, according to unaudited but likely to be final results, the PBGC earned \$2.4 billion in investment income, including \$1.3 billion from equity investments and \$1.1 billion from fixed-income investments.

Mr. Strauss' premium cut recommendation comes during his last week at the PBGC, which he has headed since being appointed by President Clinton in July 1997.

During those 3½ years, Mr. Strauss implemented a series of changes that benefit experts say has made it much easier for employers to deal with the agency and to comply with the PBGC's rules.

"I think he has been very good. Looking at employers as customers was innovative and important. Certainly, we didn't get everything we wanted, but he made a major effort to accommodate the needs of employers," said the ERISA Industry Committee's Mr. Ugoretz.

"There has been a very positive change in environment. There has been a genuine willingness to listen," said Larry Sher, a principal at Unifi Network, a unit of PricewaterhouseCoopers in Teaneck, N.J.

One of Mr. Strauss' first actions after joining the agency was to eliminate the PBGC's Top 50 list, which was an annual compilation of the 50 worst-funded corporate pension plans. The

theory behind the list was that the adverse publicity it generated would prod companies to boost contributions to their plans.

But employers, noting that the list made no distinction between financially strong and financially weak companies, said the only result was needlessly scaring plan participants. Benefit experts also questioned whether fear of being on the list really led to better funding. In any case, subsequent changes in law that required employers to speed up contributions to the plans and more fully inform participants of underfunding rendered the list obsolete.

"The list had outlived its usefulness and Mr. Strauss recognized that," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Washington.

Another widely applauded change Mr. Strauss implemented was to significantly reduce the amount of information employers had to provide when the PBGC audited their plans to determine whether the PBGC premium payments the employers made were accurate.

"It used to be called the audit from hell. Now the PBGC tries to get the answer without making you go through hell," said Mercer's Mr. Kra.

As he is leaving the PBGC, Mr. Strauss says he hopes legislators, aside from cutting PBGC premiums, take

# FMLA

Continued from page 3

The survey found an increase, however, in the proportion of employers that consider FMLA to be an administrative burden. The survey found that 38% of employers consider maintaining additional records at least somewhat difficult, compared with 24% in 1995. Nearly 43% find coordinating state and federal leave policies at least somewhat difficult, whereas

only 18.9% gave the same response in 1995. Nearly 53% said that coordinating FMLA with other federal laws is at least somewhat difficult, compared with 25.7% in 1995; and 40.1% said that coordinating FMLA with other leave policies is at least somewhat difficult, compared with 21.1% in 1995.

Overall, 63.6% of the respondents in 2000 said they found complying with FMLA at least somewhat easy, compared to 85.1% in 1995. In 2000, 35.4% reported that compliance was at least somewhat

difficult, while only 14.9% thought compliance was somewhat difficult in 1995.

In the report, the Labor Department said it does not know why there has been a rise in the proportion of employers that find compliance somewhat difficult. But the Department suggests that as the use of FMLA has become more widespread, employers have experienced a greater need to understand it and follow its guidelines.

According to the findings, an average of 6.5 employees per 100

took FMLA leave in 2000, compared with 3.6 employees per 100 in 1995.

The surveys also found that 21.4% of employers are offering more than 12 weeks of leave per year. In addition, 28.1% cover employees who have worked for less than 12 months; and 26.8% cover employees who have worked less than 1,250 hours in the past year, the survey found.

Copies of "Balancing the Needs of Families and Employers" can be found online at [www.dol.gov](http://www.dol.gov). **BI**

even broader steps to try to reverse the ongoing decline in the number of employers offering defined benefit plans.

Among other things, employers need more incentives to offer plans, such as boosting benefits that can be provided to higher-paid executives, while pension rules need to be simplified, Mr. Strauss says.

During his tenure at the PBGC, Mr. Strauss has used his position, as he puts it, as a "bully pulpit" for defined benefit plans. And he is continuing to preach the value of such plans during his final week at the agency.

"Defined benefit plans provide a secure, predictable benefit every month. I don't think you can put a price tag on that," he says.

At the end of this week, Mr. Strauss will leave for a vacation in Australia. Mr. Strauss says the time away will help to give him a fresh perspective before making decisions about his future.

Prior to joining the PBGC, Mr. Strauss served as deputy chief of staff to Vice President Al Gore. **BI**

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# More ways to tell where you work

In the wake of the Gramm-Leach-Bliley Act, some of you may have begun to wonder whether you still work in the insurance industry—a traditional and old-fashioned profession that calls to mind for some Ben Franklin, car accidents and Mutual of Omaha's "Wild Kingdom"—or if you now are employed in the exciting world of financial services—a fast-paced industry that evokes images of automatic teller machines, day traders with Palm VIIIs and CNBC.

Well, wonder no more: You work in insurance. That's because although Congress over 12 months ago dismantled the barriers that separated banking and insurance (*at your request*), only about three of you, out of the thousands that fall under the financial services umbrella, have decided to try to do anything differently. That's OK, but somebody should tell the state insurance regulators to cool it before they whip themselves into a frenzy for nothing.

Another way to tell that you work in insurance would be to review a list of traits that identify the average insurance industry professional. I prepared just such a list on Jan. 1, which I have since posted to the Online Forum area of our Web page at [www.businessinsurance.com/bi\\_services/online\\_forum.php?action=view&id=1132](http://www.businessinsurance.com/bi_services/online_forum.php?action=view&id=1132).

Many of you not only read my list but also responded with traits of your own, providing additional evidence for discerning insurance-based lifeforms. I'd like to share some of this feedback.

Several people suggested additions to the list, which follow.

**You also know you're in the insurance industry if:**

You avoid the words "retro" or "retrospective" in conversations.

You mistakenly hear "protected cell" when someone jokingly says "put me in a padded cell."

You know that RIMS has nothing to do with basketball.

You know that Near North is not a wicked witch in training.

You know that Gallagher is not just a comedian.

You know that enterprise risk management has nothing to do with Star Trek.

You know that a producer does not necessarily work on a movie set in Hollywood.

You plan your family vacations around the RIMS conference, NAII, etc.

You actually read your insurance policies.

You did business with both the big and little Aetna.

You remember there were once more than two alphabet houses.

Your Christmas card list has more attorneys on it than family members.

You send letters to the editor of *Business Insurance*.

You delight in secretly naming your children so their initials are "LOC."

You do name your children after major hurricanes.

You never use the initials "BI" because they could mean many different things.

You wonder if AIG has considered cloning.

One reader offered numerous traits that would describe any industry gripped by mergers and acquisitions, cost-cutting and mind-numbing tasks:

You sat at the same desk for four years and worked for three different companies.

More than 10% of the people in your company do not know what you do.

All real work is done before 8 a.m. and after 5 p.m.

Your resume is on a diskette in your pocket.

"Dilbert" is your favorite cartoon.

Your boss' favorite lines are: "when you get a few minutes," "in your spare time," "when you are freed up," and "I have an opportunity for you."

One reader also took exception to one of the items on my list and wrote that, contrary to my assertion, the Bornhuetter-Ferguson method is an excellent method of birth control. Upon further reflection, I would have to agree that this is a distinct possibility.

Still another reader raised a question: "My colleagues and I work for a division of The Hartford and need to know: If Hartford is no longer the insurance capital of the United States, what is?"

I am skeptical that this person really works in the insurance industry if she does not know the answer to this riddle: it's Hamilton, Bermuda.

Editor Paul D. Winston's commentary appears fortnightly and at [www.businessinsurance.com](http://www.businessinsurance.com). He can be reached at [pwinston@crain.com](mailto:pwinston@crain.com).

## Y2K

Continued from page 1

partner at McKenna & Cuneo in Washington who represents several clients in Y2K coverage litigation. One, Baptist Hospital & Health Systems Inc., filed the most recent sue-and-labor suit against FM Global in federal court in Phoenix on Dec. 29.

FM Global, however, was quick to rebut that it had settled Stanford's claim because "the last thing the insurance industry wants is to encourage any more Y2K cases," pointed out Robert Wallen, a partner at Pillsbury Winthrop in Los Angeles who represented Stanford in the case.

The Stanford settlement is unlikely to serve as a model for the resolution of other Y2K coverage suits, insurer and policyholder attorneys agree.

Stanford and FM Global were able to reach an agreement because of their "good long-term business relationship," Mr. Wallen said. "There is no one-size-fits-all solution," he said. Other cases will most likely "turn on the unique policy language. Policies really do vary substantially."

A lot also will depend on the size of the claim, he added. The more money that's involved, the less likely a settlement can be reached, Mr. Wallen said.

One insurer attorney said he was surprised that the Stanford case settled, especially since insurers have not lost a sue-and-labor case in court.

"We have no idea why the Stanford case settled," said Thomas Brunner, a partner at Wiley Rein & Fielding in Washington, who also represents the Y2K Roundtable, a group of 33 U.S. insurers and reinsurers. "The courts are skeptical of these cases across the board," said Mr. Brunner, citing insurers' several victories so far.

Policyholder attorneys are quick to note that all the dismissals so far have been on procedural grounds, such as late notice and forum selection.

"No court has ruled on the substantive issues in Y2K coverage litigation,"

said Mr. Carter. "The only victories the insurance industry can point to are on procedural issues."

Mr. Wallen said, for example, that insurers were successful in getting two suits dismissed in New York because that state has a strict requirement for when notice of a claim must be made. Such was the case with *American Guarantee vs. Xerox*. Xerox's counter-suit against the insurer, American Guarantee & Liability Insurance Co., is still pending in a Connecticut court.

In New Jersey, Arizona and Michigan—where insurers must show that late notice of a claim created prejudice—sue-and-labor cases are proceeding.

Timing also was at the heart of the dismissal of the Port of Seattle's suit against Lexington Insurance Co. last year. The King County Superior Court in Seattle ruled Dec. 28 that the policyholder was time-barred from suing its insurer because the policy had a 12-month statute of limitations on lawsuits over rejected claims.

Among other Y2K decisions to date:

- ITT Industries Inc.'s suit against FM Global was dismissed in New York on the grounds it was an inappropriate forum for the dispute, though a mirror suit brought by the White Plains, N.Y.-based company continues in Indiana.

- Kmart Corp. lost a discovery motion last July when it tried to obtain coverage-related documents from the Y2K Roundtable. But, last week it won its motion to compel its insurer, FM Global, to produce other documents that could affect its coverage, including a portion of the claims manual and guidelines, Y2K-related policy provisions, the sue-and-labor clause, notice provisions, exclusions and the definition of fortuity, said Murray Sacks, a partner at McKenna & Cuneo who is representing the Troy, Mich.-based retailer in the case.

- Also last July, a U.K. court upheld a policy provision requiring Owens Corning Inc. to arbitrate its coverage dispute with XL Insurance Co. Ltd.

The future of Owens' case is in question following the Toledo, Ohio-based manufacturer's filing for bankruptcy protection in late 2000.

None of the dismissals has yet been appealed, but policyholders still have time to do so, said Mr. Brunner, noting that ITT Industries is the only case where the time has run out.

While insurers may have won several of the initial legal battles, they should be prepared for a long, drawn-out war, suggests a new study published by Conning & Co. The study predicts that claims for Y2K remediation costs ultimately could top \$150 billion. Conning also estimates that about 200 claims seeking coverage of Y2K remediation costs have been filed by commercial policyholders to date.

"Sue-and-labor is just the first salvo of the plaintiffs' bar against the insurance industry," said Jack Gohsler, senior vp at Hartford, Conn.-based Conning. Even if the insurance industry prevails in the sue-and-labor cases, the growth of technology and e-commerce are creating exposures that could provoke more coverage litigation in the future, he said.

Policyholders also are beginning to cite one non-Y2K court decision last April defining the loss of computer data and functionality as "physical damage," to counter insurer assertions that loss of data is not "physical damage" as defined in property policies.

The 9th U.S. Circuit Court of Appeals in San Francisco rejected the insurer's appeal of *American Guarantee & Liability Insurance Co. vs. Ingram Micro Inc.*, which was decided by a federal district court in Arizona.

"I don't think the industry is appropriately responding to emerging risks," Mr. Gohsler said. "We believe this is an area that insurers really need to watch."

• Copies of Conning & Co.'s "Y2K Remediation Costs Lawsuits: A Wake-Up Call for Property Insurers?" are available for \$575 each. Contact Mario Alvino at 860-520-1245.

## Sebelius

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logically sophisticated, so a lot of our procedures were done manually, and that even further slowed down the activity," added Ms. Sebelius.

As the only Democrat to win statewide office in 1994, she was seen as a reformer when elected following eight years as a state representative from Topeka. Prior to that, she spent seven years as executive director of the Kansas Trial Lawyers Assn.

And politics is a family affair for the Cincinnati native. Her father, John Gilligan, was a Democratic governor of Ohio, and her late father-in-law, Keith George Sebelius, was a longtime GOP congressman from Kansas.

During her 1994 race, Ms. Sebelius criticized GOP incumbent Ron Todd for close ties to the insurance industry. She underscores her concern about such ties when she runs for office, refusing contributions from groups and individuals that are regulated by the state Insurance Department. "I think it is appropriate to have an arm's-length professional relationship with those in the industry," she said. "They don't have to pay to be at the table; they can just come through the door."

Ms. Sebelius has made major changes in the Kansas Insurance Department, which now regulates 1,500 companies and 42,000 agents, who sell nearly \$9.5 billion in insurance products each year. For example, she oversaw the review of existing regulations and purged about half of them because they had no bearing on insurer solvency or consumer protection, said Ms. Sebelius, who holds a master's degree in public administration from the University of Kansas and a bachelor's degree from Trinity College in Wash-

ington.

Corporate insurance buyers benefited from the overhaul because it eliminated many prior-approval requirements, moving "a large portion of the commercial market" into file and use, she said. Agents also are now typically licensed in 24 hours, and companies are licensed within 90 days, she said.

The Kansas Insurance Department also has made great strides in automating its operations and developed a Web site to let consumers easily file complaints. The department also beefed up anti-fraud and market-conduct units during Ms. Sebelius' tenure.

Her department, which employs 102 full-time equivalent staff members, has a \$7.1 million budget, which ranks it 29th among other departments, according to NAIC data.

Ms. Sebelius considers herself to be a champion of progressive change in state government, health care reform and consumer rights. She also believes it is possible to be pro-consumer and pro-business. Commercial insurance buyers, she said, can benefit from more uniform and consistent treatment of companies and products. Easing market entry for companies also expedites the availability of products in every market, which "is a big plus" for both sides, she said.

Although Kansas lawmakers have been receptive to many of her initiatives, some are raising questions.

One of the most controversial issues this year concerns the adoption of an NAIC model privacy regulation on protecting consumers' financial and health information. Some privacy protections were mandated by the federal Gramm-Leach-Bliley Act, which broke down barriers between insurers, banks and securities firms.

Ms. Sebelius, who oversaw the NAIC's drafting of that model regula-

tion, has administrative authority to enact privacy rules consistent with the federal act. But, she said she will strongly recommend that the Legislature expand her authority so she can enact the broader NAIC provisions.

She is expected to face opposition, though, not only from the Republican-dominated Legislature but also from supporters of a more limited privacy measure proposed by the National Conference of Insurance Legislators. Some trade groups, including the Alliance of American Insurers and the National Assn. of Independent Insurers, have endorsed that measure.

Ms. Sebelius and the NAIC model's other advocates, including the American Insurance Assn., fear that individual state consideration of the NAIC's proposed model regulation will result in state-specific changes that will lessen nationwide uniformity.

She is "extremely optimistic," however, that legislatures this year will pass an NAIC model act designed to streamline multistate agent licensing, which also was required by the financial services modernization act.

The NAIC also will be monitoring other developments, including Congress' creation of a new House Financial Services Committee.

Establishing that committee may make good sense in terms of organizational efficiency, although not if it results in a push for federal pre-emption of state insurance regulation, she said.

Overall, though, Ms. Sebelius said in a statement that she is looking forward to "an exciting transformation of the state regulatory process, focused on enhancing consumer protection and solvency oversight of companies."

Ms. Sebelius' husband, Gary, is an attorney in a private law firm engaged primarily in employment-related law. They have two teen-age sons.

# NAM

Continued from page 2

for workers. The task force said it was also "sensitive to the arguments relating to federal vs. states' rights."

But, the consensus of the regulators was "to recommend that the NAIC not join in any litigation at this time either as an actual party or as a friend of the court....The task force's position should not be construed as either support or opposition to the new standard."

The Risk & Insurance Management Society Inc. expressed disappointment with the NAIC's decision.

"I think that the NAIC has missed an important opportunity by not challenging the regulations," said Daniel Barry, director-government affairs for New York-based RIMS. "The ergonomics standard will have a definite, practical impact on state workers compensation laws and on the industry that insurance regulators oversee. It seems to me to be an unprecedented intrusion, by federal regulation, into an area expressly reserved to the states by federal law," said Mr. Barry.

In contrast, NAM's effort to persuade Congress to rescind the measure drew praise from RIMS. The OSHA standard "is just the sort of regulation the Congressional Review Act is designed to deal with," Mr. Barry said.

"The costs of this regulation are staggering, and the justification for them is dubious. They were clearly politically motivated and rushed through in the final days of the administration only by virtue of a threatened veto of the labor and education appropriations bill that would have blocked them," Mr. Barry said. "That being said, invoking the Congressional Review Act will be a challenge politically—given a closely divided Congress and significant pressure from organized labor—but one that we support," he said. In addition, Mr. Barry said, "appropriate filings are being made to add RIMS as a named petitioner in the NAM lawsuit."

Ms. Krese said NAM has no illusions

about how hard getting Congress to use its power to overturn the standard could be. "This will be a very difficult vote," particularly given organized labor's strong support for the standard, she said. The employer group will work "very vigorously" to get Congress to move, she said.

"We have no choice; this thing is a killer for us," added Patrick Cleary, NAM's vp-human resources policy.

President-elect George W. Bush cannot unilaterally rescind the rule with a "wave of the wand," Mr. Cleary said. The president would have to reopen the entire rulemaking process, which is no easy task, he said. Simply ignoring the rule is not an option, either, he added. If a Bush Labor Department decided not to enforce the rule, proponents of the ergonomics regulation could sue to require enforcement, he explained.

"We're cautiously optimistic of being able to win under the Congressional Review Act, but it's going to be a tough fight," said Randel Johnson, vp-labor employment benefits for the U.S. Chamber of Commerce in Washington. Mr. Johnson noted that a majority within the last Congress—as with every Congress since 1995—opposed OSHA's going ahead with the rule until the completion of further study.

"We're working against a background where both the House and Senate by a majority vote already told OSHA not to go forward with its ergonomics reg," he said.

"But still, it's a 50-50 margin in the Senate" between Republicans and Democrats, Mr. Johnson said, which will make the task of invoking the review act that much more difficult. In the House, where the Republicans retain a slim but clear majority, supporters of repeal may face somewhat better odds.

Mr. Johnson said that Rep. Anne Northrup, R-Ky.—a leader in the fight against the ergonomics standard—survived a major challenge in last November's election from unions that stressed her position on ergonomics. "She took the issue head on and sur-

vived," he said.

John Savercool, vp-federal affairs for the American Insurance Assn. in Washington, said the act has been used "indirectly" by lawmakers who have threatened to use it to overturn regulations to which they objected, and that such threats alone resulted in changes. But, he said, bringing the matter to a full vote "would be a first, and it would therefore be a challenge."

"We are working independently and through the National Ergonomics Coalition to rally support for this congressional action. It is something we strongly support," the AIA representative said.

As the effort to get Congress involved in overturning the regulation gains steam, insurers remain unhappy with the NAIC's decision to stay out of the matter.

"The NAIC's decision not to involve itself in any respect in the ergonomics area is certainly disappointing," said Bruce C. Wood, assistant general counsel of the AIA. The AIA coordinated the insurer suit, but not all parties of the suit are AIA member companies (BI, Nov. 20, 2000).

"We're disappointed and think that the NAIC task force has underestimated the impact that the standard will have on state workers compensation programs," agreed Ken Scholman, Washington counsel for the Alliance of American Insurers.

"At the very least, we thought the Workers' Compensation Task Force might want to examine the matter further and explore what additional implementation issues might arise. It was an opportunity for the NAIC to stand up for state regulation of insurance, and they decided not to do so," said Mr. Wood.

He noted that the task force statement raised the question of how insurers would cover liabilities stemming from the standard. "As far as the NAIC is concerned, there isn't an issue of the intrusion of this new federal benefit on the state-based comp system; it's simply a question of how do employers pay for it. That, I think, missed the mark," Mr. Wood said. **BI**

# Forum

Continued from page 2

driven by a need to turn around lines of business with negative returns, Mr. Brandon said.

In most commercial lines, he added, the industry is still far from attaining rate adequacy. "We're getting a marginal improvement in returns but need more," he said.

The key to continued improvement, Mr. Brandon said, will be underwriting discipline. Unfortunately, he noted, this "has not always been a hallmark of our industry."

Unlike some past market turns that were driven by reductions in surplus, there is plenty of surplus in the industry currently, said Jay S. Fishman, chairman and CEO of Travelers Insurance Co. and chief operating officer-Finance & Risk for Citigroup Inc. The change in property/casualty pricing is a result of "a basic operating reality cycle," in which, he said, companies are coming to the realization that their prices don't match their costs.

While this has been the case for several years, in the 1990s many companies seemed to operate with the expectation that their losses would soon be improving, he said.

Companies finally have decided to stop writing business at inadequate rates, Mr. Fishman said.

The panelists also were asked to identify the major challenges the industry is likely to face in the future.

One of the key challenges for smaller insurance companies is the need to keep up with investments in technology to remain competitive, said F. Timothy Hegarty Jr., president and CEO of Norfolk & Dedham Mutual Insur-

ance Co. of Dedham, Mass.

Technology is not only expensive but also changes rapidly, he said. "It's very easy to go down a dead end," he said, noting that bad or costly bets on technology have driven some smaller insurers out of business.

The challenge posed by technology is "making sure our company is in a position to compete with any company, regardless of size," agreed Stephen A. Milne, president and CEO of Erie Insurance Co. of Erie, Pa.

Another big challenge for an insurer, Mr. Milne said, is finding the people to manage this technology. He quipped that, previously, insurers needed people equipped just to process policies; today, though, as a result of technology, insurers require far more complex skills, he said.

Mr. Brandon of General Re also remarked on the need for talented people. He noted that, despite a renewed focus on underwriting, the industry has not made a sufficient investment in underwriting education or in the encouragement of underwriting discipline. As evidence of this, Mr. Brandon pointed to the fact that the number of individuals taking examinations for the Chartered Property Casualty Underwriter designation has declined over the past decade.

Regulation also will be a key challenge for the property/casualty industry, Mr. Milne said. After years of unflagging support for state-based regulation, members of the National Assn. of Independent Insurers are taking a fresh look at whether the state system remains the best model, he said.

"We think it will be, but regulators will need to change," Mr. Milne said.

Mr. Hegarty of Norfolk & Dedham agreed, noting that the implementa-

tion of regulators' proposed speed-to-market initiatives is critical. Instead of overregulating policy rates and forms, he said, regulators should instead focus on adopting a uniform approach to regulating market conduct.

Companies do better when they are deregulated, said Mr. Fishman of Travelers. The current regulatory environment is problematic in that it prevents companies from responding quickly to market changes, he said. Regulation also hurts the industry's ability to compete for talent, because young prospective employees tend to see insurance as an industry shackled by old regulatory systems, he said.

Class-action lawsuits are another big challenge and an area in need of reform, said Martin D. Feinstein, chairman, president and CEO of Farmers Insurance Group in Los Angeles. Such lawsuits use the courts to redefine coverages and contracts, Mr. Feinstein said.

"Class actions will cripple us," he predicted.

In addition to reform of class-action lawsuits, broader reform of the civil justice system is needed, said Edward B. Rust Jr., chairman and CEO of State Farm Group of Bloomington, Ill.

Insurers can't make the case for tort reform alone, Mr. Rust noted. The industry must make sure that its agents, employees and customers are made aware of the costs created by the tort system, he said. Furthermore, if tort costs are to be reduced, individuals must be encouraged to vote for lawmakers and judges who can make a difference, he said.

The panel was moderated by Weston M. Hicks, managing director of J.P. Morgan Securities Inc. in New York. **BI**

# UPDATES

## Insured cat losses decline in 2000

Continued from previous page  
\$1 billion each.

Swiss Re warns, however, that "it is presumed that the trend toward high losses will continue uninterrupted, particularly as many risk factors will persist: higher population densities, higher concentrations of insured values, especially in endangered areas."

According to Swiss Re, there were around 17,000 lives lost last year in major catastrophes, which was well down from the 105,000 deaths in 1999, but on a par with the annual average during the 1990s. Economic losses—both insured and uninsured but not including indirect losses—are estimated at \$38 billion, compared with \$100 billion in 1999. The figure for 2000 is roughly in line with the annual average for the 1990s, Swiss Re added.

## Concorde crash suit filed in U.S.

NEW YORK—Relatives of three German passengers killed in the Air France Concorde crash near Paris last July are suing the airline and other companies in U.S. District Court in New York, seeking unspecified compensatory and punitive damages.

The plaintiffs claim that, under an international convention and due to Air France's significant operations in the United States, they are entitled to seek damages in U.S. courts. European courts typically make smaller damages awards than do courts in the United States.

The suit alleges negligence and recklessness by several companies involved in the design, construction and operation of the Concorde. Additionally, the suit alleges that the crash was caused by a tire blowout after a metal shard from a Continental Airlines Inc. jet pierced a tire on the Concorde, sending debris into one of its fuel tanks and two of its engines, causing a fire.

Joel B. Harris, a partner at Thacher Proffitt & Wood in New York who is representing the plaintiffs, said the suit could have been brought in several jurisdictions, but that New York was the destination of the Concorde flight and is a convenient location for all parties in the suit. New York is also permitted as a jurisdiction under provisions in the Warsaw Convention and its amendments, which set forth rules concerning international transportation, according to the suit.

The plaintiffs are also permitted to sue in the United States because Air France "engaged in a regular course of for-profit commercial conduct having a direct and substantial effect within the United States," the suit says.

Also named in the suit are: Continental Airlines; BAE Systems P.L.C.; European Aeronautic Defence & Space Co. N.V.; the Goodyear Tire & Rubber Co.; General Electric Co.; and MRA Systems Inc.

The Concorde crash in July killed all 100 passengers, many of whom were German tourists bound for New York. Air France's hull and liability insurance is led in Paris by La Reunion Aeri-

## Many P/C execs upbeat

NEW YORK—Executives in the U.S. property/casualty insurance industry are far more optimistic about business conditions today than 12 months earlier.

Nearly two-thirds, or 61%, of the roughly 200 executives who participated in an informal survey during the Property/Casualty Insurance Joint Industry Forum last week said they expect the industry this year will be more profitable—as measured by the combined ratio—than last year. The remainder predict 2001 will be less profitable than 2000.

A year earlier, a similar survey determined that only 21% expected 2000's combined ratio to be better than 1999's.

Commercial lines coverages are likely to lead the improvement, a majority of executives said.

In this year's survey, the majority of executives did not expect to see improvement in personal auto and homeowners coverage. In contrast, 56% did predict improvement in workers compensation and 80% expect to see improvement in other commercial lines. A year ago, only workers comp was expected to improve by a majority of respondents, cited by 51%.

When asked to describe the likely impact of George W. Bush's presidency on the property/casualty industry, 58% said he would have a positive effect, while 39% said the effect would be neutral, and only 3% said a Bush administration would be a negative.

The survey also explored structural changes in the insurance industry.

Nearly three-quarters, or 73%, of respondents expect increased consolidation in the industry, down from 90% a year earlier.

Asked whether insurers would be using the Internet as a distribution tool by the end of 2001, 76% of respondents said they would.

Only a fraction of executives expect their companies will get involved in banking activities in the wake of the Gramm-Leach-Bliley Act. Following the financial modernization law's passage, 93% said they have not established any banking units, while 95% have not offered any banking products and 80% have not entered any strategic alliances with banks.

The annual Joint Industry Forum is co-sponsored by the Alliance of American Insurers, the American Institute for Chartered Property Casualty Underwriters, the American Insurance Assn., the Insurance Services Office Inc., the Insurance Information Institute, the National Assn. of Independent Insurers, the National Assn. of Mutual Insurance Cos., the National Council on Compensation Insurance and the Reinsurance Assn. of America.

Next year's meeting will be held Jan. 15-16 in New York. For more information, contact the III at 110 William St., New York, N.Y. 10038; 212-669-9203; [www.iii.org](http://www.iii.org).

**► NCQA BROADENS SCOPE** The National Committee for Quality Assurance is launching new certification programs that focus on two specific functions: utilization management services and physician credentialing. In the past, NCQA's certification programs focused on entire organizations. While the NCQA will continue its HMO accreditation program, the committee decided to broaden its focus, because the health care system is becoming more disintegrated, with numerous organizations collaborating to provide care, an NCQA spokesman explained. "Certifying specific functions will give a wider range of organizations, like preferred provider networks and physician organizations, the opportunity to achieve distinction through NCQA," Margaret E. O'Kane, the organization's president, said in a statement. Three organizations—Waltham, Mass.-based Private Healthcare Systems; Irvine, Calif.-based Beech Street Corp.; and the Detroit Medical Center—have already committed to undergoing NCQA reviews.



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**► KEMPER RESTRUCTURES ART UNITS** Kemper Insurance Cos. has placed its alternative markets unit within its Kemper Alternative Risk unit, a move the company says strengthens Kemper Alternative Risks by increasing its underwriting expertise and service. The addition to Kemper Alternative



Risks of the alternative markets unit, formerly a stand-alone entity, will advance Alternative Risks' focus on captives, targeted homogeneous workers compensation program business and other alternative market products, the Long Grove, Ill.-based insurer said. Among the types of programs provided through Kemper Alternative Risks are multiline, non-Fortune 500 captive programs and services, reinsurance partnered accounts, risk securitization and other alternative risk transfer programs.

**► GUARANTEE DEAL** XL Capital Assurance Inc., a New York-based unit of XL Capital Ltd., has completed a deal in which it will guarantee \$250 million of debt securities. The

deal is designed to reduce the borrowing costs for Banco Nacional de Mexico, one of Mexico's largest domestic banks. Under the deal, a New York master trust will sell debt certificates benefiting Banamex, secured by future wire transfer payments owed by U.S. correspondent banks to Banamex, which has assigned its payment rights to the trust. XL Capital Assurance is guaranteeing the trust's debt certificates, effectively lending its AAA credit rating to the deal and cutting Banamex's cost of borrowing. The deal is XL Capital Assurance's first financial guarantee transaction.



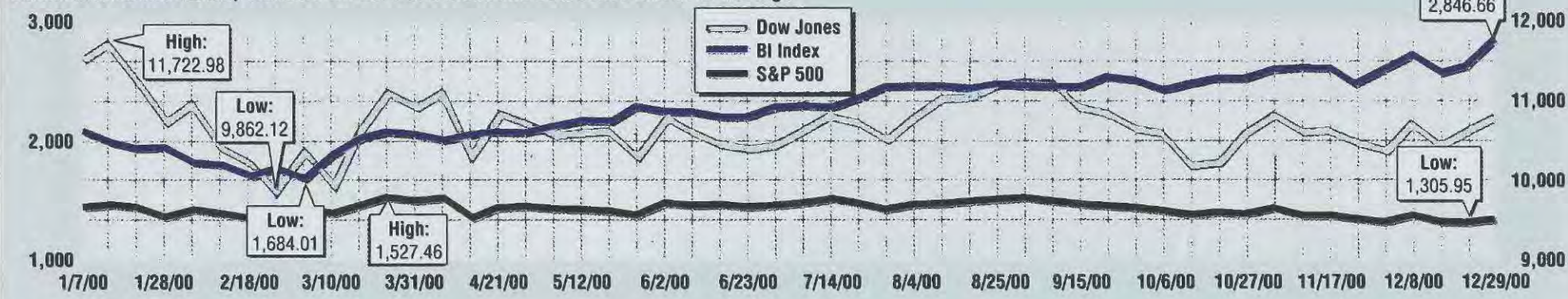
**► BRIEFLY NOTED** Michael J. Cascio will join Overseas Partners U.S. Reinsurance Co. in Philadelphia as president and chief executive officer on Feb. 1. Currently, Mr. Cascio is chief underwriting officer at OPUS's parent, Overseas Partners Ltd. in Hamilton, Bermuda...Blue Cross & Blue Shield of Oklahoma has acquired all of Protective Life Insurance

Co.'s group medical business in the state of Oklahoma. About 300 employers that insure 7,000 lives under the GuideStar Health Systems Inc. name will be affected by the move....Heidi G. Miller has been named to the new position of vice chairman at Marsh & McLennan Cos. Inc. She will be responsible for strategy, administration, communications, e-commerce, finance, human resources, and technology. Previously, she was senior executive vp and chief financial officer at Priceline.com. Prior to that she was CFO at Citigroup Inc....American International Group Inc. has bought Norwich Union Holdings (Canada) Ltd. from U.K.-based insurer CGNU P.L.C. for \$159 million. NU Canada is a direct-response life insurer

**► To get breaking news as it occurs, visit Business Insurance's free online Updates at [www.businessinsurance.com](http://www.businessinsurance.com). All of the material in the For The Record column, as well as other content in this week's issue, is generated from daily news postings that appeared on the Web site in the previous week.**

## 2000 stocks in review

Business Insurance Index, Standard & Poor's 500 Index and Dow Jones Industrial Average



Source: Nordby International Inc.

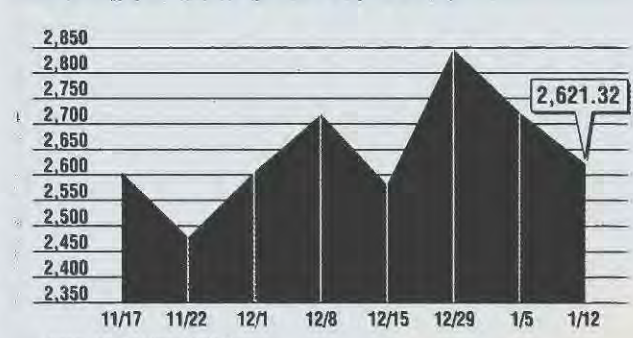
The Business Insurance Index of insurance industry stocks climbed 36.6% in 2000. By contrast, the Standard & Poor's 500 and the Dow Jones Industrial Average fell, dropping 8.4% and 6.4%, respectively, during the year. The BI index began 2000 at 2,083.20. After falling 19.2%, to 1,684.01 on March 3, its lowest point of the year, it began climbing and finished on a high note, reaching 2,846.66 on Dec. 29, the final Friday of the year. The S&P 500 started at 1,441.47 and peaked on March 24 at 1,527.46—a 6.0% increase. It held relatively steady for the next nine months but reached its lowest point on Dec. 22, when it hit 1,305.95—a 9.4% drop from its January starting point. It ended the year with a slight upturn, registering 1,320.28 on Dec. 29. The Dow began the year at 11,522.56 and peaked early, hitting 11,722.98 on Jan. 14. It was mostly downhill from there for the Dow, which sank to 9,862.12 on Feb. 25, a 15.9% drop from its high point the previous month. The Dow rallied a bit after that but never rose above 11,112.72, which it reached on March 24. It ended the year at 10,787.99.

Find daily coverage on Corporate Risk, Employee Benefit and Managed Health Care News at [www.businessinsurance.com](http://www.businessinsurance.com)

## BI Industry Stock Report JAN. 8, 2001, THROUGH JAN. 12, 2001

BROKERS						INSURERS/REINSURERS						HEALTH MAINTENANCE ORGANIZATIONS						ALL COMPANIES													
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)	Company	Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)				
Aon Corp.	NYS	31.81	-1.93	-7.12	42.75	20.69	4200	Gainsco Inc.	NYS	3.00	-4.00	14.29	6.38	2.19	101	XL Capital Ltd.	NYS	74.69	-0.91	-14.52	89.25	39.00	5243								
Brown & Brown	NYS	34.38	7.00	-1.79	35.88	15.63	197	Harleysville Group	NDO	26.50	-2.98	-2.56	30.63	11.63	277	Health Net Inc.	NYS	27.44	-2.44	-6.60	29.75	18.75	83								
Bardes Holdings	NDO	10.56	0.60	4.32	17.88	8.50	40	HSB Group Inc.	NYS	38.75	0.00	0.00	40.63	21.50	0	Humana Inc.	NYS	13.63	0.00	-10.66	15.81	4.75	4017								
E.W. Blanch Holdings Inc.	NYS	14.75	-7.45	-15.41	62.00	13.00	401	HCC Insurance Holdings	NYS	22.00	-6.88	-18.33	27.19	10.94	1050	Oxford Health Plans	NDO	33.75	1.50	-14.56	42.75	12.06	10065								
Gallagher Arthur J. & Co.	NYS	47.88	-14.79	-24.75	68.50	23.06	2094	ING Group N.V.	NYS	78.94	-3.81	-1.48	83.94	46.81	674	Pacificare Health Sys.	NDO	16.00	3.23	6.67	72.31	9.81	3532								
Hib, Rogal & Hamilton	NYS	36.63	-5.48	-8.15	42.13	25.63	97	IPC Holdings Ltd.	NDO	22.13	4.73	5.38	22.88	9.75	153	Sierra Health Services	NYS	4.40	8.64	15.79	8.25	2.44	413								
Kaye Group Inc.	NDO	7.50	-4.76	-3.23	11.88	5.00	91	Hartford Financial Services	NYS	60.44	-4.16	-14.42	80.00	29.38	7360	United HealthGroup	NYS	54.19	0.46	-11.71	63.44	23.19	8614								
Marsh & McLennan	NYS	100.25	-6.31	-14.32	135.69	70.50	6993	John Hancock Financial Services	NYS	31.88	-7.61	-15.28	38.25	13.44	8030	Wellpoint Health Networks	NYS	98.88	-1.31	-14.21	121.50	56.94	3124								
	AVERAGE		-5.30	-11.27				LaSalle Re Holdings Ltd.	NYS	18.88	0.00	0.00	19.38	10.88	0	HMOs	AVERAGE		4.83	-4.40											
								Lincoln National	NYS	40.44	-4.15	-14.53	56.38	22.63	3912																
								MAIC Holdings Inc.	NYS	16.94	-4.58	1.50	23.13	10.00	91																
								Markel Corp.	NYS	160.88	-1.83	-11.12	183.25	111.50	149																
								MBA Insurance Group	NYS	63.13	-7.34	-14.84	76.19	36.31	2806																
								Meadowbrook Insur. Group	NYS	7.31	2.63	-10.00	8.38	3.94	67																
								MetLife	NYS	31.00	-1.78	-11.43	36.63	14.25	15371																
								Mutual Risk Mgmt. Ltd.	NYS	13.19	-4.09	-13.17	23.75	12.31	656																
								Navigators Group	NDO	13.00	-1.89	-2.35	14.13	8.63	33																
								NVMagic Inc.	NYS	18.25	-0.68	-3.31	19.25	12.25	17																
								Ohio Casualty Corp.	NDO	10.63	-3.95	6.25	17.88	6.13	1003																
								Old Republic Int'l	NYS	25.56	-8.50	-20.12	32.06	10.63	2850																
								Partner Re Ltd.	NYS	48.13	-5.87	-21.11	62.50	28.38	1953																
								Penn-America Group Inc.	NYS	7.63	1.67	0.00	9.75	6.63	18																
								PMA Capital Corporation	NDO	17.38	2.21	0.72	20.06	15.19	56																
								Philadelphia Cons. Holding	NDO	26.13	-5.64	-15.38	31.25	14.13	251																
								PXRE Corp.	NYS	15.75	-1.56	-6.67	17.56	11.75	68																
								ReliaStar Financial Corp.	NYS	53.94	0.00	0.00	53.94	23.75	0																
								RenaissanceRe Holdings Ltd.	NYS	66.94	-8.15	-14.53	81.50	35.88	1171																
								RLJ Corp.	NYS	42.19	-7.02	-5.59	46.00	26.25	95																
								St. Paul Cos.	NYS	45.13	-5.25	-16.92	57.00	21.31	7622																
								SCOR	NYS	51.00	-1.69	1.49	53.75	38.38	14																
								SAFECO Corp.	NDO	24.00	-17.60	-27.00	35.88	18.00	7454																
								SCPIE Holdings Inc.	NYS	23.63	-0.26	0.00	36.94	18.31	NA																
								Seibels Bruce Group	NDO	0.67	26.09	54.67	2.69	0.53	37																
								Selective Ins. Group	NDO	24.19	8.40	-0.26	25.88	14.63	204																
								Toko Marine & Fire	NDO	50.94	-8.73	-10.64	61.00	45.00	107																
								Torchmark Corp.	NYS	33.38	-1.94	-13.17	41.19	18.75	2148																
								Transatlantic Holdings	NYS	97.88	-4.34	-7.56	107.06	68.75	54																
								Trenwick Group Inc.	NYS	23.88	4.37	-3.78	27.13	12.00	326																
								Unico American Corp.	NDO	6.25	6.38	6.38	7.88	4.50	14																
								United Fire & Casualty	NDO	20.31	-6.61	2.85	23.31	15.50	10																
								Unihir	NDO	38.00	-0.33	-6.46	41.94	27.19	549																
								UNILUM Corp.	NYS	24.44	1.56	-9.07	31.94	11.94	3680																
								Vesta Insurance Co.	NYS	5.88	8.05	16.05	7.88	3.44	855																

## BI Insurance Index



Base=100 on Dec. 29, 1978

Top advancing issues: Seibels Bruce Group,

**Medium-Size Mass Merchandiser.  
Company-Wide Computer Intranet.  
One Slightly Off-Color Email Joke.**

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