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UPDATES

Worldwide natural disaster losses decline, report says

MUNICH, Germany—2000 saw a record number of natural disasters, but the resulting losses and deaths were significantly lower than those from natural catastrophes in 1999, according to a Munich Reinsurance Co. report.

There were more than 850 loss events from natural hazards last year, according to Munich Re's "Natural Catastrophes 2000," released last week. That figure topped the previous record year, 1999, by

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HHS unveils health care privacy rules

By MARK A. HOFMANN

WASHINGTON—Final medical privacy regulations that the Clinton administration released late last month go even further than employers and health plans had initially feared.

In fact, the final regulations released by the Department of Health and Human Services cover not only electronic communication regarding personal medical records but all forms, including paper and oral communication. The sweeping nature of the rules has led some observers to predict spikes in benefit costs and perhaps employer reluctance to offer benefits because of fears of expanded liability.

Although some employers and insurers are breathing easier because workers compensation is not subject to the same broad restrictions as health care, the regulations' treatment of workers comp remains ambiguous enough to raise risk manager concerns.

Earlier drafts of the rules, which became HHS' responsibility after Congress failed to adopt its own confidentiality rules within the time frame set by the 1996 Health Insurance Portability and Accountability Act, would have covered only electronic communications.

Under the final rules, which take effect in two years, health plans and health care providers will be required to disclose how information is used and to whom it's released. Physicians will have to receive written permission from patients before releasing information—even for routine purposes—under most circumstances. Self-insured employers will not be allowed to access medical information for purposes unrelated to health care.

Violators will be subject to an array of civil and criminal penalties, including prison terms of up to 10 years for illegally selling protected information. Law enforcement agencies, however, will retain access to otherwise confidential files, provided that they follow certain procedures.

Employers, insurers and consultants are still digging through the massive regulations in an attempt to sort out all of the details and the likely impact on their operations. But certain themes emerged almost immediately.

The cost impact is one of employers' most serious concerns, said Helen Darling, senior consultant-group benefits and health care for Watson Wyatt Worldwide in Stamford, Conn., and a former benefits manager at Xerox Corp.

"We have terrible cost problems right now, and health plans and insurance companies are coming in with these absurdly high increases. Some will cite (the regulations) and similar things as the cause," she said.

"Employers need to be able to manage their programs," and the rules will limit their ability to do so, she said. Insurers or health plans also will use the new regulations to slow down or stop employers' ability to manage their programs, Ms. Darling said.

She said the regulations were like "taking a bazooka after

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Genetic breakthroughs raise hopes—and fears

By JUDY GREENWALD

The explosion in genetics knowledge is creating a blast whose force will propel employers and health care companies in still-unforeseen directions.

Someday, this increase in knowledge could lead to the development of medicines tailored to an individual's illnesses, perhaps dramatically increase life spans and rid the world of disease. But that day, if it comes, is still far off, and there are many more-immediate issues to confront today.

In particular, the growing availability of genetic testing raises a host of questions, for society in general and employers and health insurers in particular.

For example: When should genetic tests be administered? Who should pay for them? How can the privacy of individuals be protected? Although some believe legislation already in place can handle the sensitive matter of genetics discrimination and privacy, others say new federal laws are required (see related story).

While managed care companies and health insurers have begun to consider these questions, employers generally have not. Observers say this is because relatively few genetic tests are widely available to date, and employers are already too absorbed with the basic concerns of rising health care costs to deal with an issue that is still largely esoteric.

But spurring interest in the whole topic is completion of the Human Genome Project, a rough-draft mapping of the human genome, which was announced earlier this year.

Genetic testing, which has been conducted for many years in a rudimentary form, analyzes DNA, RNA, genes and chromosomes. It can now be used to detect the genetic mutations associated with more than 300 genetic diseases,

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Liability risks accompany genetically modified corn ... page 3

Genetic testing prompts host of questions for employers ... page 15

U.K. survey finds many favor restrictions on use of test data ... page 16

Need for federal law on testing debated

By JUDY GREENWALD

Many observers believe a new federal law devoted to genetic testing that protects health plan members' privacy and prohibits discrimination is needed.

Although there are provisions in existing federal laws that address genetic testing, these observers believe a new law is still required, both to alleviate the public's concern about this issue and to help relieve employers of the burden of complying with numerous state laws.

Others, though, say the need for a new law is still unproven.

Meanwhile, an attempt this year to pass a comprehensive bill that was endorsed by President Clinton failed to get out of committee, although future legislative efforts are expected.

Other countries have moved ahead on the issue. In England, for instance, British insurers have been told by the government-appointed Genetics and Insurance Committee that they can use the results of genetic tests for Huntington's disease in underwriting life insurance policies (*BI*, Oct. 23, 2000).

The committee, which has no counterpart in the United States, is also examining the reliability of

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Public entity adopts holistic plan

Enterprising risk manager

By DAVE LENCKUS

VICTORIA, British Columbia—The central administration arm of British Columbia's government, which long ago showed its willingness to adopt a risk management concept that was unconventional among public entities, is at it again.

In a move spearheaded by Philip J. Grewar, director of the Canadian province's risk management branch, the government is embracing enterprise risk management. Under the enterprise risk management concept, risk managers seek to protect their organizations against operational and financial risks as well as hazard-based risks.

The provincial government first will require its crown corporations, which are government-run entities that deliver a variety of services, to develop their own enterprise risk programs with the aid of a model developed by the Australia/New Zealand Standards Assn.



Mr. Grewar

Mr. Grewar said he selected that model for the province's hundreds of crown corporations because it was developed in sister British Commonwealth countries. The standard, developed with input from the public and private sectors, is an updated version of a 1995 hazard risk-based model, he said.

Moreover, Mr. Grewar is bringing enterprise risk management into all of provincial government. He has persuaded the ministry, or government department, that oversees risk management to adopt the concept and to use its considerable influence to convince the government's 15 or

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UPDATES

Global disaster losses decline

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about 100, and was 200 more than the average for the 1990s.

Natural disasters in 2000 caused $30 billion in economic losses—including insured and uninsured losses—down from $100 billion in 1999. Insured losses accounted for $7.5 billion last year, down from $22 billion in 1999.

"The lack of major earthquakes and the moderate cyclone season, combined with a general absence of losses in heavily populated areas, made 2000 a comparatively inexpensive year as far as losses are concerned," Munich Re said in a statement.

Windstorms made up the greatest proportion of natural catastrophes, with more than 300 events last year. Windstorms "dominate the insurers' loss figures and account for 73% of the insured losses," the reinsurer said. "At the same time, as in previous years, floods play an important role," causing 23% of the insured losses, Munich Re said.

The most significant natural catastrophes in 2000 included: floods in Mozambique in February and March, which left 500,000 people homeless; and floods in northern and eastern India from August to October, which resulted in economic losses of $41.2 billion, Munich Re reported.

Catastrophe-related fatalities fell to 10,000 from 75,000 in 1999. Munich Re attributed the drop to disasters occurring in sparsely populated areas.

More information is available at *www.munichre.com*.

Reliance bankruptcy challenged

NEW YORK—Billionaire investor Carl Icahn has launched a tender offer for $40 million of Reliance Group Holdings Inc.'s overdue debt, a move that will pit him against Reliance management in its effort to carry out a prepackaged bankruptcy reorganization plan.

Acting through investment affiliate High River L.P., Mr. Icahn late last month began his offer to buy up Reliance 9% senior notes for $170 for each $1,000 in principal amount of the notes. The notes have been selling recently for $60 to $80 per $1,000 in principal amount, according to High River.

Mr. Icahn, who already holds large stakes of overdue Reliance notes and bank debt, opposes a reorganization plan developed by Reliance management and an unofficial bondholders' committee and is aiming to become a large enough Reliance creditor to influence an eventual restructuring plan.

Reliance and some of its bondholders have agreed on a prepackaged reorganization plan and are seeking approval from the Pennsylvania Insurance Department. A Department spokeswoman confirmed that "there's a plan out there" but would not say whether regulators have reviewed it.

Mr. Icahn opposes, among other things, Reliance's deal with Aon Corp. unit Cambridge Integrated Services Group Inc. to manage the runoff of Reliance claims, according to news reports. Aon announced the agreement Thursday and said it will hire most of Reliance's claims staff as of next month. The broker will receive "formula- and incentive-based fees" and agreed to terminate an existing reinsurance brokerage deal with Reliance. Reliance had earlier disclosed a brokerage agreement that guaranteed Aon $18 million a year in commissions until 2007.

Mr. Icahn has also said that the plan as he understands it "would provide a very low or no possibility of successful recovery for the bonds from the assets of Reliance Insurance Co. and will leave the bondholders without influence over RIC or its assets."

Reliance, meanwhile, has asked noteholders not to sell their notes to High River "until a consensual plan of reorganization has been announced."

"The company hopes to successfully conclude its discussions with the bondholder committee, the banks and the insurance regulators and to publicly announce a consensual plan of reorganization in the near future," George Baker, Reliance's chief executive officer, said in a statement Dec. 20.

Reliance officials could not be reached immediately for further comment.

The insurer missed repayment deadlines in late 2000 on $237.5 million in bank debt and $291.7 million in senior notes and has since been negotiating with its creditors.

Xerox loses Y2K suit in New York

NEW YORK—Xerox Corp.'s insurers successfully defended the company's attempt to recover the $138 million it spent on Y2K remediation costs.

A New York state trial court ruled Dec. 20 that American Guarantee & Liability Insurance Co., a New York-based unit of Zurich U.S., does not have to pay Xerox's claims under the "sue and labor" clause of its insurance coverage.

Stamford, Conn.-based Xerox will get a second chance, however, to obtain insurance in Connecticut, where it filed a parallel action on July 2, 1999—one day after American Guarantee filed an action seeking declaratory judgment in New York. The Connecticut lawsuit is pending.

The New York decision was the second legal setback for policyholders seeking insurance coverage to pay for their Y2K remediation costs.

In July, the English Court in London granted an injunction restraining Owens Corning Corp. from proceeding with its litigation against Bermuda-based XL Insurance Co. Ltd. After Owens Corning sued XL and several other insurers in March, XL sought an injunction in England. Owens Corning's policy provided for arbitration in London, but Owens Corning

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Errors & omissions

A story in the Dec. 11, 2000, issue listed incorrect enrollment figures for a Blue Cross & Blue Shield of Massachusetts health maintenance organization. BCBSMA's HMO enrollment grew to 807,599 in October 2000 from 602,824 in October 1999. A spokeswoman attributed the increase to brokers shifting enrollment in response to poor financial conditions at other area HMOs.

Aetna unveils job cuts, changes

Retooling effort seeks to sharpen focus on health care, benefits

HARTFORD, Conn.—Aetna Inc. plans to cut 5,000 positions from an employee base of 40,000 this year as part of efforts to cut expenses and improve profitability, as well as to shift its focus exclusively to health care and employee benefits business.

Aetna's announcement last month came a week after the Hartford, Conn.-based insurer completed the sale of its financial services and international businesses to ING Groep N.V., and includes other actions aimed at increasing Aetna's competitiveness.

Ætna

In addition to the job cuts, about half of which are planned to be made by attrition, Aetna plans to eliminate certain unprofitable health plan business by exiting some Medicare markets and withdrawing its commercial HMO product from certain markets. Aetna also will reorganize its sales force to place greater emphasis on higher-potential middle-market business and to serve smaller customers more efficiently.

In a statement, the company also said it expects "significant" price increases on health plan business

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BI promotes McIntyre, Ross

CHICAGO—Kathryn J. McIntyre, publisher and editorial director since 1992, has been promoted to the new position of publishing director of *Business Insurance*.

Martin J. Ross III, formerly associate publisher and advertising director, has been named publisher of *BI*. In his new position based in New York, Mr. Ross assumes responsibility for the business operations of the publication.

Ms. McIntyre will concentrate on editorial matters for the publication and outside activities on behalf of *BI*, based in Chicago. She and Editor Paul Winston will continue to write *BI*'s "Commentary" column on alternating weeks.

"We are delighted that both these valuable executives on *Business Insurance* will be undertaking new assignments for the publication," said Keith E. Crain, chairman of Crain Communications Inc., which publishes *BI*.



Ms. McIntyre



Mr. Ross

Ms. McIntyre is a 24-year veteran of *BI*. A 1974 graduate of the S.I. Newhouse School of Public Communications at Syracuse University, she joined *BI* in 1977 as an associate editor. Ms. McIntyre moved up the editorial ranks to editor in 1980, a post she held until 1992.

Mr. Ross has been with *BI* for more than 15 years. He joined *BI* in New York in 1985 as a district sales manager. Mr. Ross was promoted to Eastern advertising manager in 1988, overseeing the four-person New York sales staff. He was promoted to advertising director of the magazine in 1990 and was named associate publisher in 1997.

He began his career in 1980 as an administrative assistant to the vp of the New York Mets, working on promotional activities and players' contract reviews. He moved to Lanier Business Products in 1983 as a national account representative.

Mr. Ross is a 1981 graduate of St. John's University in Jamaica, N.Y., where he earned a bachelor of science degree in business administration.

Ms. McIntyre can be reached at 312-649-5286 and via e-mail at *kmcintyre@crain.com*. Mr. Ross can be reached at 212-210-0228 and *mross@ crain.com*.

Directory deadlines near

Business Insurance will publish several directories in the upcoming months. The directories are published as an editorial service, and there is no charge to be included; companies must simply complete a questionnaire to be listed.

The Directory of Case Management Services will be published in the Jan. 22 issue, which will include a Spotlight report on improving benefits quality. To be included in the directory, a company must provide case management services on a direct, unbundled basis to members of employer-sponsored group health plans. Companies must provide estimates of gross revenues for 2000 to be listed. The deadline for submitting information for the case management directory is Jan. 5.

The Directory of Environmental Risk Management Consultants will be included in the Feb. 5 issue, which also will feature a Spotlight report on environmental risks. To be listed, a company must provide unbundled environmental risk management consulting services directly to corporate or institutional employers and must derive at least $250,000 of its annual revenues from such services. Environmental risk management consulting includes providing environmental audits of real estate, operational audits of manufacturing plants and giving other advice on environmental issues. The extended deadline for this directory is Jan. 17.

The Directory of Third-Party Administrators will be published in the Feb. 19 issue, which will include a Spotlight report on self-insurance. To be included in this directory, a TPA must generate at least $500,000 in gross revenues from handling claims on a direct, unbundled basis for self-insured clients in the United States. Gross revenues must be reported. The extended deadline for this directory is Jan. 31.

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

Questionnaires also can be printed from the directory area of the *BI* Web site, *www.businessinsurance.com*. BI

INSIDE

- We again dust off our crystal ball and predict the coming "ins" and "outs" in commercial insurance. **PAGE 8**
- The Equitable Life Assurance Society, the world's oldest operating mutual insurance company and a major provider of pensions in the United Kingdom, has stopped writing new business. **PAGE 17**
- Panama, which became a captive domicile in 1996, has seen the growth of its captive industry hindered by soft market conditions and the regulatory actions of other nations. **PAGE 17**

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Suit seeks compensation for export losses

Farmers sue over modified corn

By MICHAEL BRADFORD

EAST ST. LOUIS, Ill.—Farmers are suing a bioengineering firm that developed a corn crop that produces its own biopesticide, charging the company caused them to lose overseas sales amid consumer fears of health risks from the product.

The class-action lawsuit accuses Aventis CropScience USA Holding Inc. of, among other things, failing to inform farmers that they needed to take precautions that would have kept the StarLink corn product from contaminating crops that were intended for the human food supply. When such contamination did occur, some overseas markets balked at buying any U.S. corn because of contamination fears, and the price of corn dropped, the suit says.

Plaintiffs in the case are not the farmers who grew the StarLink product or who suffered contamination. Instead, the class is several hundred thousand farmers who produced a clean crop but contend they lost overseas revenue because of damage to the U.S. corn supply caused by alleged StarLink contamination.

Farmers whose crops were contaminated are being reimbursed under a U.S. Department of Agriculture program that is funded by Aventis.

The suit asks for an unspecified amount of compensatory and punitive damages for Raymond Mulholland, the Marissa, Ill., farmer who is the original plaintiff, and other farmers whose lost revenues from export markets.

It is unclear how much revenue farmers lost in overseas sales, but the figure is one that can be calculated, according to Ronald E. Osman, a Marion, Ill., plaintiffs attorney with the firm Ronald E. Osman & Associates. "Economists will be able to tell how many cents per bushel" have been lost because of the depressed market, said Mr. Osman, who is representing the class.

The calculation is not as simple, though, as comparing the price of corn before and after the contamination, Mr. Osman pointed out. "The corn market is a very complicated market and a lot of things move the corn market," he said. Economists are working to determine how much of the depressed price is attributable to the StarLink

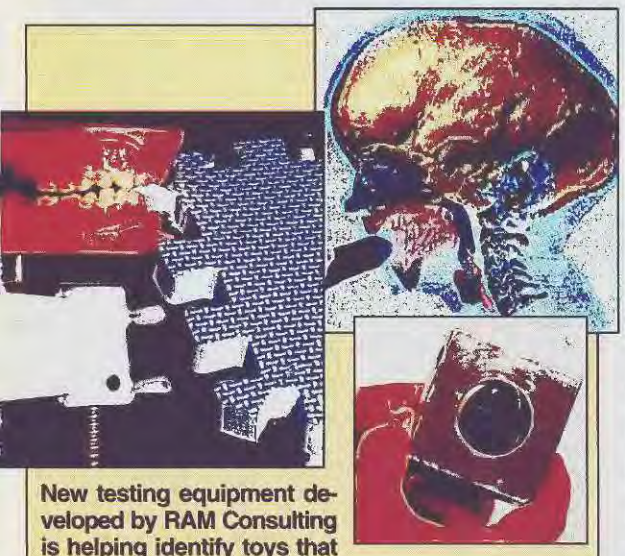
See **Corn** *on page 15*



PHOTO: ZUMA

Protesters of genetically modified food recently dumped StarLink corn and corn products at the EPA's offices in San Franscico.

Managing product recall risks no child's play for toymakers



New testing equipment developed by RAM Consulting is helping identify toys that can cause serious injury.

By JOANNE WOCJIK

Just as the news spreads of the latest toy recall—this one involving thousands of popular scooters with faulty handlebars—toymakers are finding that product recall coverage is both expensive and scarce.

And the market isn't expected to improve, even if the number of recalls shrinks under a less activist Republican administration in Washington.

Just in time for Christmas, the Consumer Product Safety Commission released a list of a dozen dangerous toys as part of a new toy safety awareness campaign.

Despite recall notices, public warnings and the removal of the toys from store shelves, the CPSC has found that many recalled products with the potential to seriously injure or kill can still be found in people's homes, explained CPSC Chairwoman Ann Brown, who last month unveiled the group's "Dangerous Dozen."

"We can get recalled toys off store shelves, but the more difficult task is to get recalled toys out of peo-

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Munich Re, Swiss Re form online exchange

By EDWIN UNSWORTH

ZURICH, Switzerland—The world's two largest reinsurers, Munich Re Group and Swiss Re Group, have formed an independent, Internet-based reinsurance exchange to serve insurers, brokers and professional reinsurers.

The exchange, inreon Ltd.—short for "insurance meets reinsurance online"—is based in London and capitalized at $37.5 million. Munich Re and Swiss Re each will hold 25% of the venture.

In addition, Internet Capital Group, a Wayne, Pa.-based holding company will own 25%, and global management and technology consulting company Andersen Consulting of New York will take a 5% stake. The remaining 20% has been reserved for the venture's management and for insurance companies that wish to become shareholders.

inreon provides users with transaction capabilities for standardized reinsurance coverages. The exchange will initially concentrate on facultative non-proportional property business in the United States, the United Kingdom, France, Germany, the Netherlands, Italy, Belgium and Spain.



Initially, coverages available from the exchange will be fire, extended coverage and/or all risk with business interruption following physical damage, according to a recent statement. In the near future, inreon plans to integrate facultative proportional coverages for property, proportional and non-proportional covers for casualty and other lines of business.

Capacity is being provided by Swiss Re, Munich Re, American Re-Insurance Co.—Munich Re's U.S. subsidiary—and by the first registered member, PartnerRe Ltd. of Bermuda. Several additional reinsurers are expected to be registered "in the near future," according to the statement.

The inreon Web site is *www.inreon.com*.

Oversight debate rekindled

Proposed federal insurance charter sparks discussion

By MARK A. HOFMANN

WASHINGTON—A banking industry proposal that calls for the creation of optional federal charters for insurers appears likely to reignite the long-running debate over the desirability of greater Washington oversight of the insurance industry.

But insurance industry observers—even those who have often been critical of certain facets of state regulation—in general contend that federal insurance chartering will not emerge as a major issue in the new Congress, at least at the beginning. Some see the proposal, offered by the American Bankers Assn. Insurance Assn., more as an impetus for state regulators to move forward with plans to ensure uniform treatment of multistate insurers and producers. Some also note that risk managers, who so far have not played a high-profile role in the debate, have much at stake in the uniformity question and could be major beneficiaries of reform.

The federal chartering proposal formed the centerpiece of a nearly daylong panel discussion of the issue of federal insurance regulation at the American Enterprise Institute last month in Washington. In addition to giving insurers the option of obtaining federal—rather than state—charters, the proposal also would establish a

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The Mystic Lake Casino Hotel in Prior Lake, Minn., is one of the entities covered under a tribal nation's unusual self-insured workers comp program.

Tribe offers comp lesson

Unusual, worker-friendly program helps reduce costs

By MEG FLETCHER

PRIOR LAKE, Minn.—A Minnesota-based tribe is finding that using worker-friendly operating policies to guide its unusual self-insured workers compensation program meets the tribal nation's goal of lowering costs while enhancing community relationships.

For example, Little Six Inc., the parent company of several tribal businesses operated by the Shakopee Mdewakanton Sioux Community, is providing more-generous benefits to workers with job-related injuries than those required under Minnesota's workers compensation law.

"If we have someone out of work, we want to make sure they get a livable benefit," said Joe Budzak, the director of administration of Little Six Inc. He oversees 4,200 workers—of whom only about 10% are Native Americans—at the community's two casinos, located outside the Minneapolis/St. Paul metropolitan area. The larger of the two is Mystic Lake Casino Hotel in Prior Lake, Minn.

The community's other affiliated businesses include a convenience store, a child care center, a health club and a self-storage facility on the tribe's 800 acres of land.

Because Little Six operates on a Native American reservation, its workers are not subject to some of the limits on benefit durations called for under Minnesota's state workers compensation law.

Typically, these limits require that temporary total benefits end after 104 weeks and temporary partial benefits end after 225 weeks, according to Jim Scullin, vp of Minneapolis-based Berkley

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The workers comp program covering employees of the Mystic Lake Casino Hotel in Prior Lake, Minn., strives to resolve contested claims cooperatively.

Tribal

Continued from previous page

Risk Administrators Co. L.L.C. Berkley has served as Little Six's third-party administrator since October 1999, Mr. Budzak said.

In addition, the Little Six enterprises offer "significantly higher" burial and survivors' benefits to the family of a fatally injured worker than the state requires, Mr. Scullin said, although he declined to elaborate.

The tribal community also is concerned with the long-run best interest of its workers, Mr. Budzak said. For example, while the casino and hotel operation provides modified-duty opportunities for some slightly injured workers, "we don't want them coming back to work too early, so they don't reinjure themselves," he said.

The community is also exploring the feasibility of increasing its integration of benefit programs, Mr. Budzak said.

The Shakopee Mdewakanton Sioux Community is one of 14 tribal nations in Minnesota, Wisconsin and Washington state that now participate in a specially designed program that Berkley consultants began about 10 years ago. Altogether, the 14 nations employ more than 10,000 people.

Previously, "tribal nations generally had a great deal of difficulty in securing workers compensation insurance from the market," and they often found themselves being insured by residual market insurers, Mr. Scullin said. Several factors contributed to this situation, including the rapid growth of tribal enterprises such as casinos and the need to obtain coverage for a wide range of other community risks, including medical clinics and government entities.

Berkley's program focuses on each community primarily self-insuring its workers comp exposures. A unique byproduct of such an arrangement is that it enables a tribal entity "to retain its sovereign immunity rights" under federal law, so that it is not subject to a state's workers comp laws, Mr. Scullin said.

As a result, a self-insured tribe such as Little Six can create a system that provides it with exclusive-remedy protection at the same time that it closely reflects the operating philosophy of the tribal community, Mr. Budzak said.

Under a typical program, a tribe establishes its own workers comp plan by passing an ordinance that establishes the plan's benefit levels, operating procedures, dispute resolution process and medical fee schedules, Mr. Scullin said. Most—but not all—tribal plans in the program offer benefits that are comparable to those available under state law, Mr. Scullin said.

In addition, some tribal nations participate in the trend toward alternative medicine, by allowing treating physicians to use a more "holistic" approach to treating injured workers. A few will even refer a recuperating worker to a recognized healer in the community, Mr. Scullin said. "Such a referral wouldn't occur under any other type of managed care program," he said.

An important difference between Little Six's self-insured program and the typical insured program is the simpler way contested claims are handled, Mr. Budzak said.

While some insurers tend to view such claims adversarially and drag them out, the Sioux community's program focuses on reaching a cooperative resolution of a contested claim as quickly as possible, Mr. Budzak said.

"There are some attorneys involved, but their participation is minimal," he said. The adjudicatory process is generally "very quick," although it does allow for appeals to tribal courts, he said.

Self-insured tribal workers comp programs save money by reducing such friction costs. Such self-insured programs also avoid industry filing fees, state assessments and premium taxes, as well as insurer charges that include underwriting, acquisition and profits.

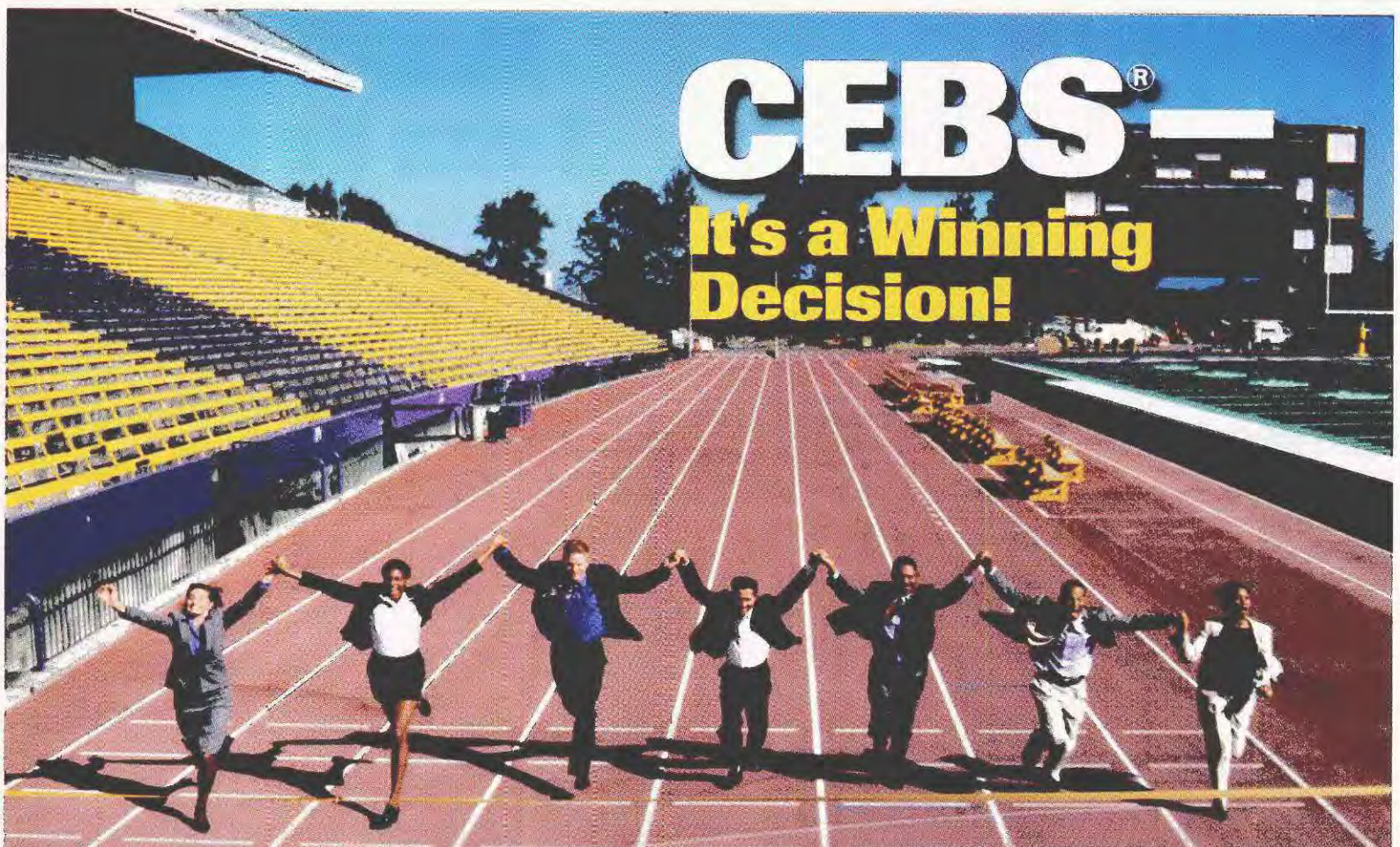
Those tribal plans that have had at least five years of experience in the program have loss costs that are about 30% to 40% lower than the industry average, said Berkley's Mr. Scullin.

Berkley's plan also provides tribal nations with the option to purchase enhanced risk management services.

Little Six's leading lost-time claims stem from strains while lifting, which may occur when removing coins from gaming machines; carpal tunnel ailments; and slips and falls, Mr. Budzak said. Berkley's traditional prevention programs attempt to reduce those injuries through demonstrations of proper ergonomic techniques and emphasis on the quick and thorough cleanup of spills.

In addition, while workers for other tribal nations may face respiratory hazards, such as dust and germs, from counting bills, Little Six uses sophisticated ventilation equipment, Mr. Scullin said.

But while it's clear that Little Six employees benefit from the tribal community's commitment to high safety standards and above-average workers comp benefits, management considers these worker-friendly practices to be only what is due its workers. "We don't try to pat ourselves on the back," he said, "but provide a good, well-rounded program." BI



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Enterprise

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so other ministries to follow suit.

British Columbia's risk management branch is under the auspices of the Ministry of Finance and Corporate Relations, which also includes the government's chief accounting office and budget policy office.

By adopting the enterprise risk management concept, crown corporation management and ministry officials in British Columbia "will have much more information to draw on," Mr. Grewar said.

With better insight on the organization's risks, there should be "better management, more informed management and better decision-making," he said. Such improvements should help minimize costly management gaffes, which have beset the province in recent years, he added.

The enterprise approach also should improve resource allocation by helping management to identify organizational opportunities, he said. "To the extent you can identify opportunities, you can better allocate resources to capitalize on those opportunities."

In addition to addressing hazard-based risks, the enterprise approach will help guide senior management in identifying and managing their organization's commercial and legal relationships, debt service capability, and impact on the environment, Mr. Grewar said. It also should help management better understand the volatility of various trends that could affect the organization and deal prudently with human resource and succession planning issues.

Mr. Grewar said he believes that British Columbia's government is the first of Canada's 10 provinces that has embraced enterprise risk management.

But this is not the first time that Mr. Grewar has persuaded the province's government to adopt a groundbreaking risk management concept.

After Mr. Grewar was appointed British Columbia's first risk manager 15 years ago, he maneuvered his way through crown bureaucracy and ideology to build a risk management structure on the cornerstone of self-insurance.

'I expect it will be several years before we get something everyone is happy with,' says Philip J. Grewar.

To solidify that program, he convinced provincial lawmakers to make legislative changes that allowed the risk management branch to establish a special account in which it could hold money from one year to the next. It was a novel idea for government but a crucial requirement of a pre-funded self-insurance program.

Mr. Grewar's success in building a risk management program for the provincial government earned him the 1998 *Business Insurance* Risk Manager of the Year award.

A major impetus behind Mr. Grewar's current effort is the emergence of stricter corporate governance rules and guidelines that publicly traded companies in Canada, the United Kingdom and the United States began to encounter during the 1990s. Those standards were developed in the wake of high-profile corporate failures, poor returns and large losses stemming from the use of financial derivative products.

The corporate governance standards, which were adopted in Canada during the mid-1990s as recommendations rather than requirements, called upon companies to appoint more outside directors and to limit board appointments to only those who have the experience and time to closely monitor the company's activities and develop future strategies.

The commission that, under the auspices of the Toronto Stock Exchange, issued its recommended corporate governance guidelines for publicly traded companies in Canada also suggested that corporate boards identify their organizations' principal business risks and make certain that appropriate systems are in place to manage those risks.

Mr. Grewar's approach is "a rare exception" among risk managers at public entities, observed Michael Kaddatz, a managing director at risk management, insurance and actuarial consulting firm Advanced Risk Management Techniques Inc. of Lake Forest, Calif. Public entities make up half of the firm's practice, according to Mr. Kaddatz.

While the concept still is breaking ground in private-sector risk management as well, it has been applied in that arena to a greater extent because of management's emphasis on making a profit, Mr. Kaddatz explained.

Those same profit concerns should be important among public entities, which also feel the impact of profits and losses of various operations they run, Mr. Kaddatz said. Those operations include utilities, airports, hospitals and convention centers, he noted.

Enterprise risk management is not a new concept, though, he stressed.

Leading-edge risk managers long have considered the impact that enterprise risks have on their organizations' ability to retain risk under self-insurance programs, he said.

In addition, finance directors have had to understand their organizations' enterprise risk to address the financial stability concerns raised by financial lenders and investors, Mr. Kaddatz noted.

Still, in a fairly significant step, risk managers are introducing new ways to finance enterprise risk and other contingency plans to control it, Mr. Kaddatz said.

Independent risk management consultant Erin Oberly in San Francisco said the concept has drawn attention at some public entities in the United States, but not because of risk managers.

Because of the U.S. corporate governance guidelines that the National Commission on Financial Fraudulent Reporting published in the early 1990s, internal auditors for the most part are introducing the enterprise risk management concept in public entities, she said.

The commission, more commonly known as the Treadway Commission, was an independent private-sector initiative that was jointly sponsored by five major financial professional associations in the United States. The group is known as the Committee of Sponsoring Organizations.

Internal auditors have access to a tremendous amount of training, text and support material to draw upon in introducing enterprise risk management into an organization, Ms. Oberly noted.

Indeed, she said: "There's no equivalent source of training for corporate entity or public entity risk managers."

Ms. Oberly said that two key Web sites for related material are the COSO site, *www.coso.org*, and the Institute of Internal Auditors' site, *www.iia.org*.

She also noted that every September the IIA and the American Institute of Certified Public Accountants, which are two of the organizations that make up COSO, co-sponsor a convention devoted to enterprise risk management.

But Ms. Oberly was critical of how some public entity auditors are using an enterprise risk assessment tool that is available from COSO.

"Some who think they're adopting enterprise risk management aren't going as far as I would recommend," she said. Those auditors are using the tool only to identify departments within their organization that should be audited.

The purer enterprise risk management approach, as identified by the Treadway Commission, is to identify all of the organization's objectives and threats and then manage those threats, she said.

An enterprise risk management program may have prevented some tremendously costly problems and scandals that occurred in recent years at a few British Columbia crown corporations, where board appointments often are based on political connections rather than experience or knowledge, according to Mr. Grewar. The government is the sole shareholder in the corporations, which deliver services such as electrical power, passenger ferry and rail service, and health care.

One recent example was the group of useless aluminum passenger ferries that British Columbia Ferry Corp. built, he said. That bungled operation cost the province hundreds of millions of Canadian dollars.

As a result of such problems, the government now is asking crown corporations' governance to sign an agreement on that lays out how the corporation will be managed and the financial results that the provincial government expects.

To that end, Mr. Grewar suggested implementing enterprise risk management.

In early December, the Ministry of Finance and Corporate Relations sent paperwork to many crown corporations informing them of the change. The ministry is focusing on the larger crown corporations initially, according to Mr. Grewar.

Implementing the enterprise risk management concept likely will not be a silky smooth process, Mr. Grewar said.

He said there is some "built-in resistance" to the plan among crown corporations. "I guess they could derail it by dragging their feet. But there's a strong political push to put it in place," he said.

Perhaps an even bigger factor in his favor is that crown corporations have to come to the government for budget approval. "So there's a big financial stick" that the government holds over the corporations, Mr. Grewar said.

Although Mr. Grewar's office will review the plans that the crown corporations develop for identifying and managing their enterprise risks, it will not participate in fashioning those plans. "I do not have enough resources to do the work for them," Mr. Grewar explained.

That policy mirrors how risk management normally is handled at the crown corporations. Instead, the risk management at the corporations will have to rely on the Australia/New Zealand model that Mr. Grewar has selected to develop an enterprise risk management program.

The timetable for the crown corporations to develop their plans has not been worked out fully, according to Mr. Grewar. While the provincial government would like to see the plans within three months, that "may be bit a bit ambitious" for some crown corporations, he said.

In addition, Mr. Grewar noted, referring to the plans: "It's probably something you don't get right at first. So I expect it will be several years until we get something everybody is happy with."

On the heels of his success with the crown corporations, Mr. Grewar recently pressed top officials with the Ministry of Finance and Corporate Relations to buy into the enterprise risk management concept.

Deputy Minister Chris Trumpy, Mr. Grewar's former immediate supervisor, signed off on the idea in early December. Mr. Grewar said that the ministry likely would adopt a version of the Australia/New Zealand model but that those details still must be worked out. In the meantime, a council of top ministry officials wants Mr. Grewar to introduce the concept at the government level by initially visiting executives at various divisions in the ministry to educate them about enterprise risk management and how that approach could aid them.

Mr. Grewar illustrated how having an enterprise risk management program would have assisted ministry officials with an important health care problem that they are dealing with currently.

Specialist doctors in the province are striking over compensation issues. While they have to treat current patients, they are not seeing new patients. The provincial government is developing plans to ensure that all patients are treated.

If the province previously had identified that risk and developed contingency plans, it could have addressed the problem with much less effort, Mr. Grewar said.

Mr. Grewar emphasized that enterprise risk management is a concept that he hopes will become ingrained in the provincial government's culture. "It's not something we want to do. It's something we want to be." BI

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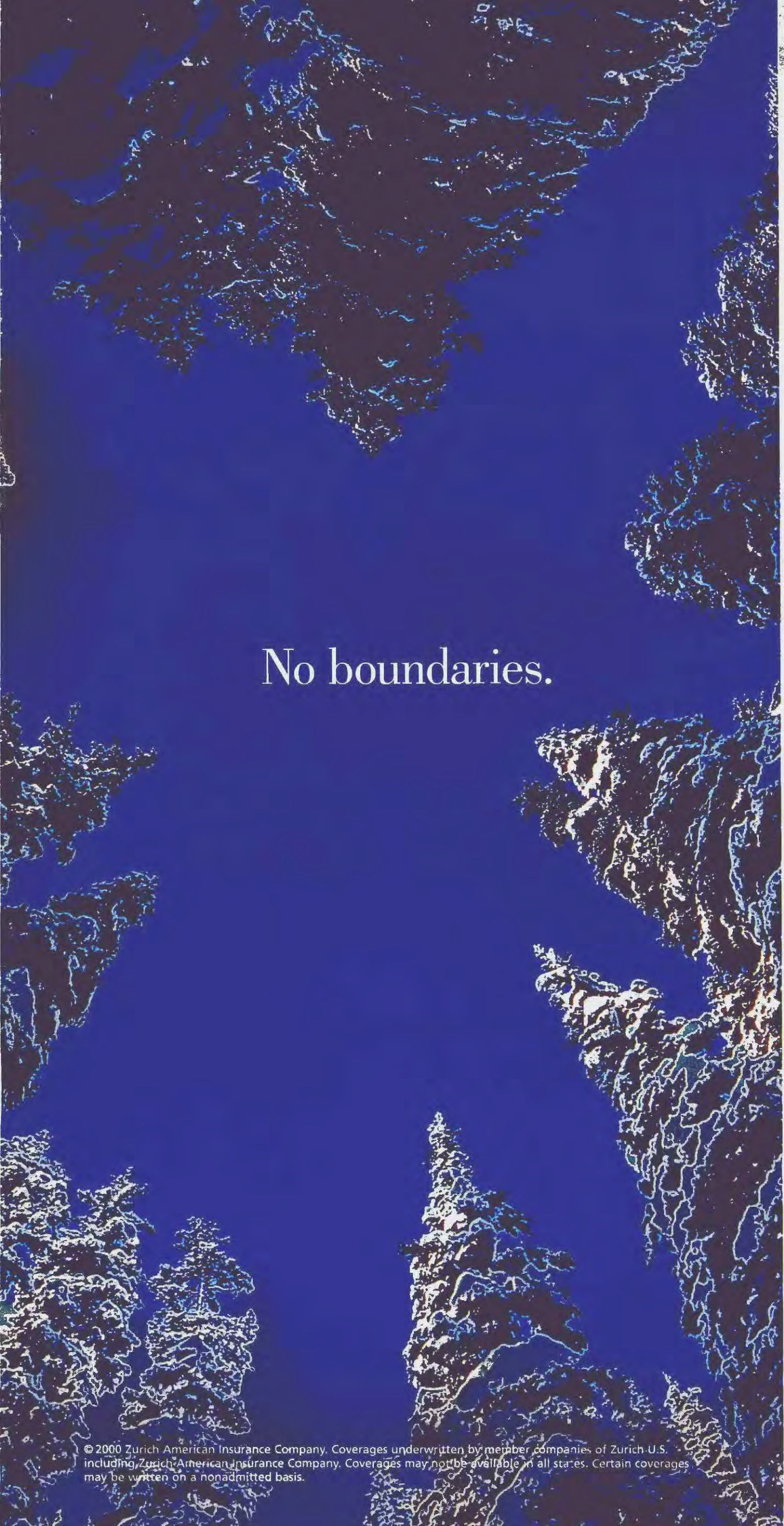
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OPINIONS

BI predicts trends for 2001

It is time once again for *Business Insurance* to dust off its crystal ball and peer into the future of the commercial insurance industry for the coming 12 months.

For 14 years now, we have engaged in our unique brand of soothsaying to identify for readers what will be "in" and "out" in the new year. In some years, we have been right on the mark; in others, we have missed badly. Looking back at 2000, our predictions were perhaps more optimistic than realistic, with misses slightly outnumbering hits.

Some of our predictions that became reality last year included that e-commerce solutions for commercial insurance, Y2K remediation coverage disputes and insurers relocating to Bermuda all would be in, while federal opposition to funding employee benefits in a captive and NAIC foot-dragging on deregulation would be out.

We went somewhat astray, however, with our forecasts that there would be more talk than action on raising property/casualty rates, that insurance trade associations would merge, that managed care reform would be a key election issue, that employers would widely adopt defined contribution health plans and that there would be more mergers of banks and insurers in the wake of financial services reform.

Given that record, it is worth noting that these forecasts are purely for entertainment purposes; any investments based on this guesswork are made at your own risk.

For 2001, we predict the following ins and outs:

IN: Republicans.
IN: Executives in the traditional insurance industry leaving to join dotcom start-ups.
IN: Captive insurance and other risk financing alternatives.
IN: Greater emphasis on health care quality by employer purchasing coalitions.
IN: Consolidation among workers compensation insurers.
IN: New concern about asbestos and environmental exposures.
IN: Heavy winter storm losses.
IN: Funding employee benefit programs through captive insurers.
IN: Risk management data standards.
IN: Risk securitization and structured risk financing programs using capital markets tools.
IN: Purchasing product recall insurance.
IN: New congressional interest in tort reform legislation.
IN: Widespread adoption of ergonomics programs.
IN: Privacy of consumer medical records and financial information.
IN: State adoption of uniform agent licensing rules.



IN: Litigation over alleged health risks from genetically modified foods.

OUT: Punch card voting systems and butterfly ballots.
OUT: Guaranteed cost property/casualty programs.
OUT: Generous prescription drug benefits.
OUT: Capitated reimbursement of physicians in managed care plans.
OUT: CEOs of poorly performing insurance and reinsurance companies.
OUT: Continued litigation by Lloyd's of London investors over long-tail losses.
OUT: Government-funded product liability litigation.
OUT: Ignorance of e-commerce risks and liabilities.
OUT: Employer reluctance to shift costs to employees.
OUT: Support for a patients' bill of rights in Congress.
OUT: Efforts to penalize Bermuda-based companies for alleged tax advantages.
OUT: Relatively light catastrophe losses in the United States.
OUT: Pension reform legislation.
OUT: Litigation over Y2K remediation coverage under sue-and-labor clause.
OUT: Lloyd's brokers' exclusive access to the market.
OUT: Multiyear insurance programs.

LETTERS

Human capital also an enterprise risk

To the editor: I read with interest your Nov. 13 article on enterprise risk management, "Definition Varies, but Enterprise Risk Cover Draws Interest." While I agree with all of its points, I'd like to mention another element of enterprise risk management that is often overlooked—human capital risk.

You hear business leaders say today that employees are their greatest investment, yet their behavior is often inconsistent, in that they don't consider all the broad ramifications. As with any corporate investment, human capital must be protected against risk in order to maximize the inherent opportunity.

As a risk and benefits consultant, I see human capital risk falling into three general categories:

- Attraction and retention: companies not being able to attract employees, or, more specifically, attract and retain the *right* employees—those who mesh with the company's business strategy.
- Uncontrolled or unmanaged workplace absences: employees who are missing in action while productivity suffers.
- Benefits that limit employee commitment and satisfaction: benefits that encourage absence, limit the quality of care (and, ultimately, employee health) or fail to promote worker flexibility.

I encourage businesses to view human capital risk along a continuum—from attracting the right employees, to preventing liability, to keeping employees healthy and committed, to retaining key talent, to retirement. Why? Because these risks do not exist in isolation; mismanagement anywhere along this continuum results in risk to the organization.

Here is a case in point. At most companies, the human resources department writes the policies and procedures and then implements them throughout the organization. These policies should be designed and implemented to minimize human capital risk and any resulting liability for the company.

For example, consider the potential effect the supervisor has on the company when she fails to follow the disciplinary procedures for terminating an employee. Consider the effects of closing a workers compensation claim, which may increase the company's liability under non-occupational programs. These matters are all interrelated; in the end, they all affect productivity and the bottom line.

For years, risk managers and human resource professionals have operated in separate silos. That's beginning to change, but it still has a long way to go. The more closely that the human resources and risk management departments work together, the greater the likelihood that they will make a compelling case to their chief financial officer to implement programs that increase the financial return on the company's greatest investment—its people.

Cindy Keaveney
Senior Vp and National Practice Leader
Aon Workforce Strategies
Conshohocken, Pa.

Business Insurance®

Reporting weekly on corporate risk, employee benefit and managed health care news

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FR: Jack Graves, CEO
RE: Health Care Costs

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Jack

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A look at the year in employee benefit news

JANUARY:

The Internal Revenue Service removes a major administrative burden and expense from employers that seek to offer generous 401(k) plans that are exempt from non-discrimination tests. Under IRS Notice 2000-3, an employer offering a plan that qualifies for safe harbor—which exempts the plan from non-discrimination testing—can match employees' salary deferrals on the basis of employees' compensation for a payroll period. No additional contributions or calculations are required. Previously, matching contributions had to satisfy the safe-harbor requirement based on employee compensation for the entire year. Problems could occur, though, when an employee opted to defer during part of a year more or less than the amount needed to get an employer match.

The publication of proposed IRS rules aids employers that want to set up tax-favored transportation benefit plans. The new rules answer questions many employers have, such as whether an employee can carry over contributions that are not used in a given month to cover future transportation expenses.

FEBRUARY:

The Clinton administration, in its proposed federal budget for fiscal 2001, calls on Congress to pass legislation that would give former employees and other beneficiaries who opt for continuation of health care coverage under the Consolidated Omnibus Budget Reconciliation Act a 25% federal tax credit to help offset the cost of coverage. While the administration's move aims to make COBRA coverage more attractive, employers fear that it would increase their own costs, because individuals who opt for COBRA coverage are most likely to use health care services.

A new study finds that employers that convert traditional defined benefit pension plans to cash balance and other hybrid plans are not reaping big cost savings. According to the Watson Wyatt Worldwide study, employers converting to hybrid plans cut pension costs, on average, by just 1.4%. Critics of the plans have charged that employers' principal motivation in adopting cash balance plans has been to slash pension costs. The study, though, finds that employers set up the plans as a way to distribute pension benefits more evenly.

MARCH:

Massachusetts Insurance Commissioner Linda Ruthardt announces that Harvard Pilgrim Health Care, a health maintenance organization with more than 1 million enrollees, will continue to operate as a non-profit entity and provide coverage under a rehabilitation plan developed by Massachusetts insurance regulators. Harvard Pilgrim had entered receivership in January, but its financial problems proved less serious than had previously been thought.

Benefit consultant Hewitt Associates L.L.C. launches a new e-commerce venture that could revolutionize the way employers purchase and deliver health care to employees and retirees. The venture, known as Sageo, will allow plan participants to compare and select health care plans online, while eliminating for employers the time and expense of enrolling participants, collecting premiums, transferring premiums to insurers and communicating benefits to participants.

The Pension Benefit Guaranty Corp. reports a record surplus, helped by a strong economy, higher interest rates and an absence of significant plan terminations. The agency's surplus—the difference between its assets and the benefits it must pay to participants in underfunded plans the agency has taken over—swelled to $7.04 billion in 1999, up from $5.01 billion in 1998. Despite the record surplus, PBGC Executive Director David Strauss warns that it would be premature to cut the premiums employers pay the agency, noting that a sizable cushion is needed in case the economy sours and more companies terminate underfunded plans.

APRIL:

Trying to keep its health care costs under control, the California Public Employees' Retirement System announces that it is considering doubling copayments to $10 for doctor visits and for brand-name prescription drug purchases. CalPERS, whose practices often are a model for other employers, hopes the changes will reduce unnecessary doctor visits and encourage greater use of generic drugs.

MAY:

A Minneapolis-based health care entity unveils a new program that would allow employees to choose their own physicians and pay providers their monthly fees with pretax dollars contributed by employers. Under the program established by Vivius Inc., an employer would fund employees' health care spending accounts. Funds would be withdrawn from the accounts to pay physicians selected by employees. Backers of the concept say it is a way to eliminate costs paid to third parties, such as insurers and health maintenance organizations, while still allowing employees to select their physicians.

Congressional negotiators hammering out a final bankruptcy reform bill eliminate a provision from earlier drafts that would have allowed creditors to lay claim to employees' pension benefits. However, the legislation retains a provision that would bar protection for assets in individual retirement accounts—including rollovers from employer-provided pension plans—that exceed $1 million. Benefit experts say the provision is inconsistent with a national policy to encourage retirement saving.

JUNE:

The Big Three automakers agree to provide domestic-partner health care benefits to their U.S. employees. While coverage will vary, all three companies will offer health care coverage to any same-sex partner who has had a committed relationship with an employee for at least six months. The move signals growing acceptance of benefits for same-sex partners.

The Supreme Court rules that HMOs can use financial incentives to encourage physicians to hold down the cost of care. Providing the opinion for a unanimous court in *Pegram vs. Herdrich*, Justice David Souter writes that HMOs could not survive without "some incentive connecting physician reward with treatment rationing."

Many employers that extend their health care plans to more than just their own employees will not have to file a new federally required form, the Labor Department announces. Responding to employer complaints, the department waives the filing of the new Form M-1—required of companies maintaining multiple employer welfare arrangements—in situations where an employer extends coverage to a very small number of employees or where an employer offers coverage to employees of another entity in which it has at least a 25% ownership stake. The exemption also applies to changes in control of a business, such as a spinoff, in which an employer temporarily extends coverage to individuals who no longer are employed by the company but who, for example, now work at a unit of the company that has been spun off.

JULY:

Several Medicare HMOs announce that they will significantly reduce the number of markets in which they operate next year, in response to what they regard as inadequate government payments. More than 700,000 retirees and disabled individuals enrolled in Medicare HMOs will lose coverage as a result. More than half of the beneficiaries are in plans offered by Aetna U.S. Healthcare, while other HMOs dropping the coverage include Foundation Health Systems Inc., Oxford Health Plans Inc. and Sierra Health Services. Those affected will have the option of returning to the traditional Medicare program, which offers less generous benefits, or trying to enroll in other Medicare HMOs.

The Pension Benefit Guaranty Corp. releases written standards stipulating that it will intervene in corporate transactions, such as spinoffs or mergers, only when they pose a significant risk of creating major losses for the agency. The PBGC's 10-page technical update is the first published guidance from the agency detailing how and when it will intervene.

AUGUST:

The IRS unveils final regulations on loan programs employers offer through their 401(k) plans that will aid in the administration of the plans. Among other things, the rules make clear when a loan is considered in default and provide guidance about the repayment of loans that are taken out by employees who later take leaves of absence.

The federal law that bars employers from discriminating against older employees also applies to retiree health care plans, a federal appeals court rules. Under the decision by the 3rd U.S. Circuit Court of Appeals, age discrimination suits can be brought against employers that provide lesser health care benefits to Medicare-eligible retirees than they provide to other retirees. Benefit experts say the decision, if adopted by other courts, could lead to a rash of plan terminations by employers that don't want to bear the cost of adjusting their plans.

The Department of Labor opens the door wider for employers that seek to fund their employee benefit plans through their domestic captives. The ruling involves Columbia Energy Group, which wants to use the Vermont branch of its Bermuda-domiciled captive to reinsure a long-term disability benefits program written by Employers Insurance Co. of Wausau. The Labor Department gives preliminary approval to the plan, under which Columbia Gas agrees to sweeten benefits, use a top-rated insurer to write the policies, and retain an independent fiduciary to ensure that all terms are followed. Previously, the department required that at least 50% of a captive's business be third-party business in order for its parent to use the captive to fund its employee benefit risks.

SEPTEMBER:

Responding to employer pressure, the New York Department of Insurance reverses course, allowing point-of-service plans to use experience rating. In May 1999, the department issued a regulation requiring all POS plans to use community rating. Employers, especially those with younger, healthier workforces, had urged the department to rescind the ruling, arguing it would drive up costs.

OCTOBER:

Two U.S. employers launch innovative health care programs developed by Definity Health of Minneapolis to give employees more control over how their health care dollars are used. The employers—Aon Corp. of Chicago and Ridgeview Medical Center of Wackonia, Minn.—allow employers to "define" their annual contributions to the accounts and give employees control over how those contributions will be spent. The programs mark a step toward defined contribution-style health care plans.

A federal judge rules that cash balance pension plans do not violate age discrimination laws. In a class-action lawsuit involving Onan Corp., U.S. District Court Judge David Hamilton rejects the plaintiffs' assertion that Onan's plan discriminated against older employees because the pay credits they received from the plan would purchase smaller annuities at normal retirement age than those credits received by younger employees.

NOVEMBER:

The Labor Department issues final regulations that will require health care plans to speed up coverage determination decisions. For urgent pre-service claims, such as enrollee inquiries as to whether a health plan will cover a procedure, the notification deadline would be 72 hours. For a non-urgent pre-service claim, it would be 15 days; for a post-service claim, a benefit determination would have to be made within 30 days of receipt of the claim. Under 1977 rules, which did not distinguish between pre- and post-service claims, the deadline for coverage determinations had been 90 days.

A group of 60 U.S. employers that collectively spends more than $40 billion on health care coverage for employees unveils its plans to use that joint purchasing power nationwide to spur hospitals to improve the quality of care they deliver. The Leapfrog Group says it intends to pressure hospitals to implement computerized prescription order entry and to use physicians trained in critical-care medicine to staff intensive care units. In addition, the health plans with which the member employers contract must steer patients to those hospitals and providers with the best outcomes.

The Labor Department releases final regulations that will force most employers to rewrite their employee benefit summary plan descriptions. The new regulations, which take effect in 2003, will significantly increase the amount of information that employers must provide in these documents, as well as the work needed to prepare them.

DECEMBER:

A survey reveals that group health care cost increases have continued unabated this year, with even bigger increases just around the corner. In 2000, costs increased 8.1% to an average of $4,430 per employee, according to a survey by William M. Mercer Inc. Employers expect costs to rise next year by 11%. With costs continuing to escalate, employers ready plans to shift some of those increases onto employees, something they—up until now—have been reluctant to do because of the tight labor market and booming economy.

Pension reform legislation that had been broadly embraced by employers dies, as Republican Senate leaders decide to scuttle a tax-cut bill to which the pension measures had been attached. President Clinton had threatened to veto the tax-cut bill on the grounds that it is too skewed in favor of higher-paid employees. The pension reform provisions would have substantially increased benefits that could be funded through pension plans, while cutting red tape for employers. Benefit lobbyists expect the measure to be introduced again in 2001.

Concluding its lame-duck session, Congress gives final approval to legislation continuing for two more years a four-year pilot program—which would have expired on Dec. 31—allowing small employers to establish tax-favored medical savings accounts. MSA backers hope to use the extension to convince lawmakers to liberalize the law and make MSAs more attractive to employers and employees. Only about 60,000 MSAs have been established, far short of the 750,000 ceiling set by Congress. BI

Agent/Broker Topics

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

INSIDE:

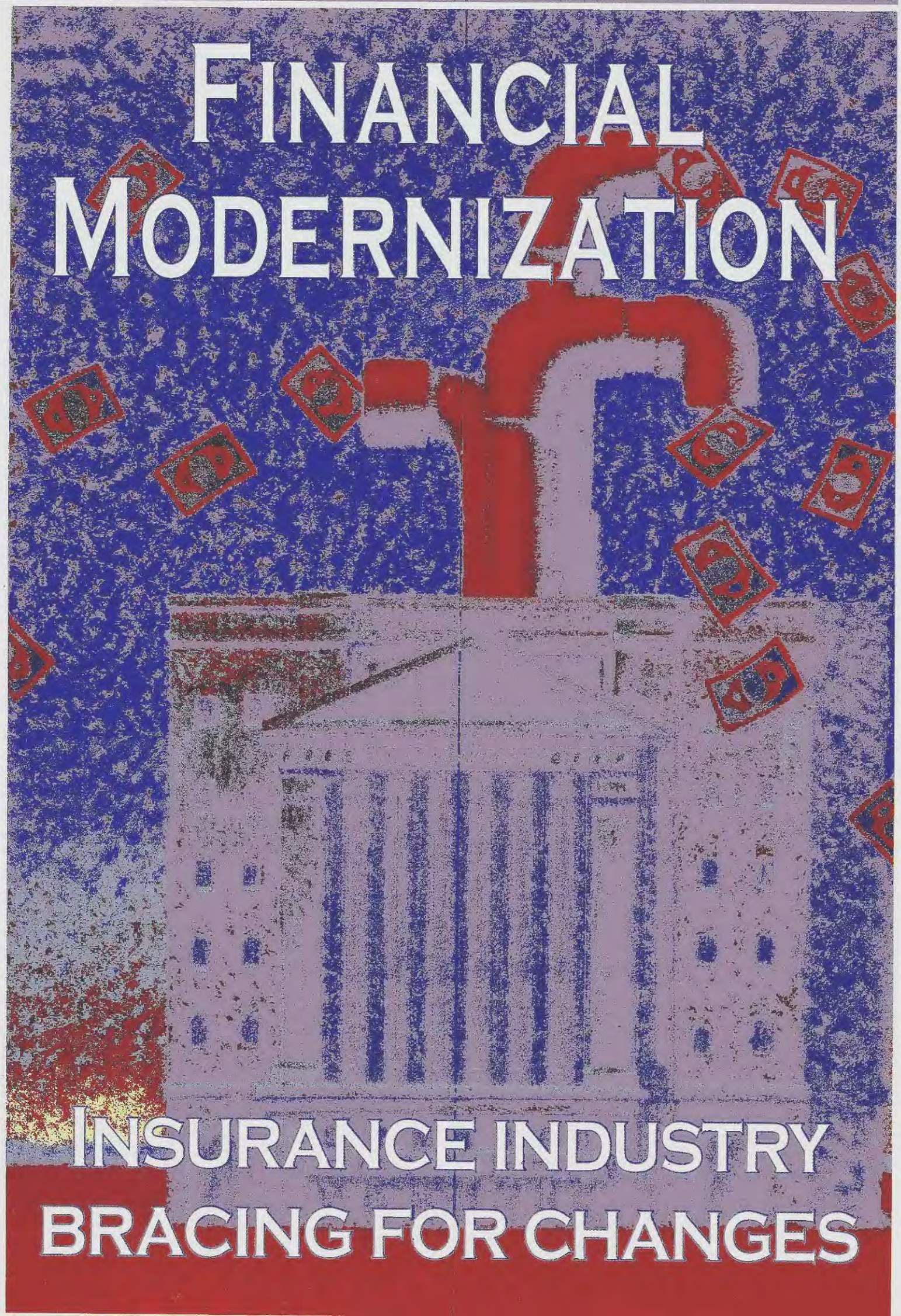
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Bank/insurer convergence sees slow start

By SALLY ROBERTS

When the Gramm-Leach-Bliley Act was signed into law in November 1999, a flurry of convergence across the banking, insurance and securities sectors was predicted.

In particular, early forecasts suggested that much of the merger activity would take place between banks and life insurance companies, due to similarities in those industries' product lines.

Now, a little more than a year later, not only has this anticipated convergence been slow to take off, but the financial services mergers that did occur in 2000 were mostly regional bank/insurance agency combinations.

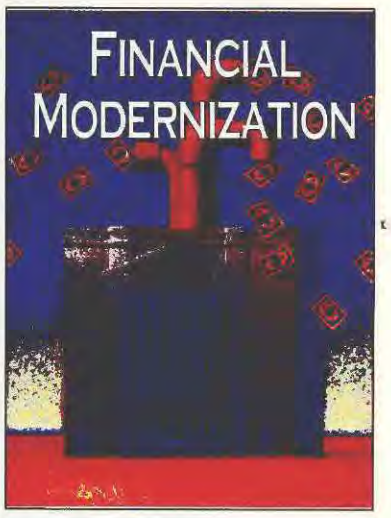
According to SNL Securities L.L.C., a Charlottesville, Va.-based financial services research and publishing firm, there were 68 transactions in which a bank acquired an insurance agent or broker last year. In comparison, there were only seven transactions in which a bank purchased an insurer or vice versa.

Some insurance observers say that banks are more interested in the retail side as opposed to the underwriting side of the insurance business. This is due, they say, to banks' desire to increase their fee-based income and to boost the number of financial products they can offer consumers.

In addition, observers say insurance companies do not provide banks with a high enough return on investment to justify a bank's capital expenditure.

Although bank interest in insurance seems geared more toward the distribution side, even there, there was not a significant number of deals between the two industries in 2000.

While the new law removed many of the barriers that prevented banks, insurers and securities firms from affiliating with one another and engaging in each other's business, many states had already passed their own laws permitting such affiliations. As such, banks have been acquiring intermediaries for some time. In 1999, for example, 62 transactions took place in which a bank acquired an insurance agency, according to SNL. That figure is only six fewer than the number of transactions that took place after the passage of Gramm-Leach-Bliley.



"There hasn't been a lot of activity, which probably surprises some who predicted that once Citicorp and Travelers started, others would follow," noted Joyce Kraeger, staff attorney for the Alliance of American Insurers in Downers Grove, Ill. She was referring to the 1999 megamerger between Citicorp and Travelers Group, which formed Citigroup Inc. "There is a wait-and-see attitude going on of how it is really going to work and how various regulations will play out," she said.

Paul A. Equale, chief executive officer of the Independent Insurance Agents of America Inc. in Alexandria, Va., agrees. "The starting gun was shot when the Gramm-Leach-Bliley bill passed, but we still have a long thicket of regulatory issues to work through before the rules of the road are worked out," he said. "Just because they can (converge), doesn't mean that they will," he said.

Two regulatory issues that have yet to be played out include developing privacy requirements for all financial services entities and achieving uniform multistate licensing of agents and brokers (see related stories).

In addition to regulatory issues, Mr. Equale noted that there also "are a number of economic, cultural and personal reasons why things don't move forward. I do think that we will see further convergence of insurance, banking and securities business, and we will see emerging a financial services industry both at the company/bank level, but also at the sales level."

"The shape it takes is still up in the air," he said. "I think that we will see a number of different experiments." Players will carefully assess those experiments and then determine their best option, he added.

Coletta Kemper, vp-industry affairs of the Council of Insurance Agents & Brokers, agreed. "People are being cautious and really looking at what makes a deal work," she said. "There is still a lot of interest, however, in doing things together," she said.

Although many financial services entities may be taking a wait-and-see attitude when it comes to

See **Converge** on page 12D

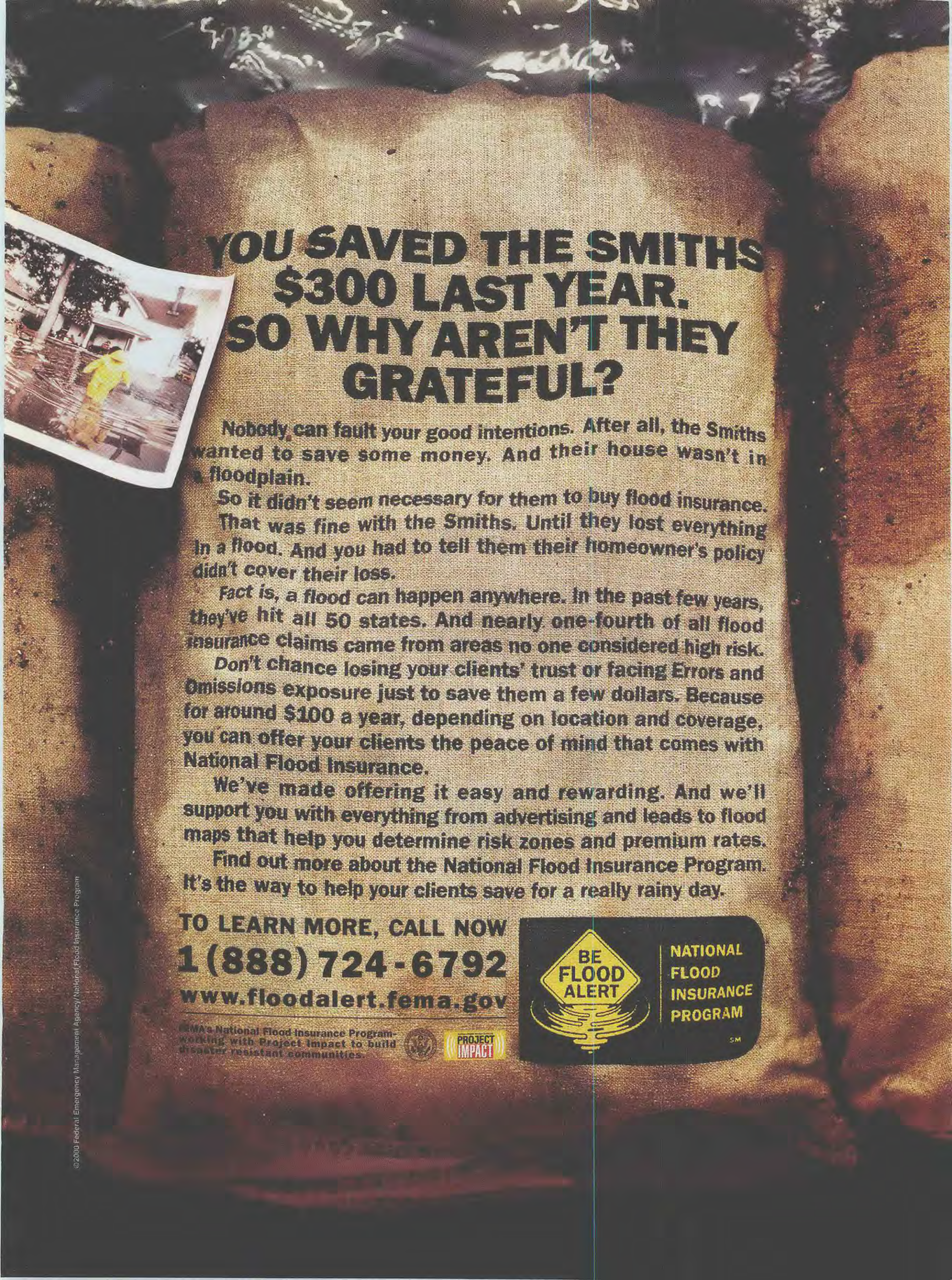


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Converge

Continued from page 12B

convergence, there seems to have been a shift in interest among banks. Such companies currently seem to be looking more toward the insurance distribution side of the business, rather than underwriting side.

Observers say there are many reasons for this shift in focus.

"Banks see the retail side as more attractive than the underwriting side," said Chuck Chamness, vp-public affairs for the National Assn. of Mutual Insurance Cos. in Indianapolis. "Banks are in the service business of providing financial products and services to retail clients. That is more closely related to insurance agency activities. Banks may not have a sales culture, but agency activity more closely relates to banking," he said.

Secondly, insurance agency business is "an area that banks are more experienced in," Mr. Chamness said.

Other observers say the shift reflects changes in the ways banks are approaching their business.

For one, banks are becoming more reliant on fee-based income as opposed to interest-based income, noted John Pottridge, whose firm—Alexandria, Va.-based Pottridge & Associates—advises banks, insurers and intermediaries on mergers and acquisitions. Particularly as the economy slows down, banks will become more motivated to go outside their normal means of generating income and seek more fee-based revenue, he said. The easiest way for banks to do that on the insurance side is to acquire or partner with an insurance agent or broker, he said.

"I think that if you look at the motivations of a bank, there are generally two major things driving them," agreed Timothy J. Cunningham, a principal with INSIGHT Management Consultants in Chicago. "No. 1, they want to have less reliance on interest-sensitive income like loans, for revenue. And No. 2, they also want a greater share of wallet—meaning they want to increase the number of financial products one customer buys from them.

"I think those two motivators run contrary to...buying insurance companies," Mr. Cunningham said. "It doesn't put them in the retail business."

Observers also point out that not only are banks taking on underwriting risk when they acquire an insurance company, but insurance companies themselves also generally do not provide a very high return on investment.

During a teleconference last month in which Standard & Poor's Corp. gave its outlook for the U.S. insurance industry in 2001, Thomas Upton, an S&P director in New York, said he thinks banks have not purchased more life insurers in the wake of Gramm-Leach-Bliley because of the relatively higher profitability of banks vs. insurance companies.

"Because of that, insurance companies aren't attractive acquisition targets for banks," Mr. Upton said.

AIA's Ms. Kraeger agreed, noting that insurers are not showing as good a return on investment as banks would like. Banks are therefore saying, "Why get in the business if it's just going to suck capital out and not show a good return?" she said.

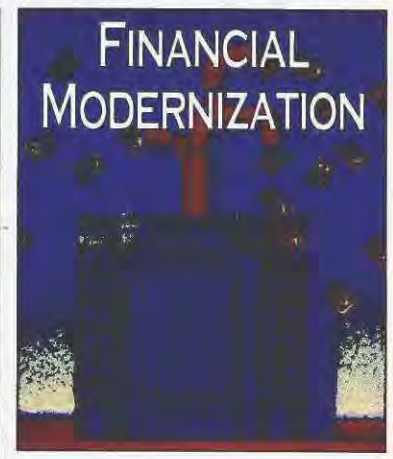
Mr. Pottridge pointed out, however, that just because banks are not buying insurers, that doesn't mean that insurers are not interested in the banking business.

In fact, he noted that a large number of insurers over the past year have obtained their own thrift charters and are beginning to sell banking products to their existing client base.

"At this point, there is more interest on behalf of insurance companies engaging in banking activities than banks interested in insurance activities," he said. BI

Privacy regulations drawing attention of financial sector

By RODD ZOLKOS



As the new year begins, with it comes renewed activity in implementing the privacy regulations required by the 1999 federal Gramm-Leach-Bliley Financial Services Modernization Act, as well as legislative action involving privacy rules that go beyond that law's mandate.

The 1999 act, which permits previously barred affiliations between banks and insurers, added fuel to the already hot privacy fire. But debates involving other areas, such as health information and online privacy issues, also are drawing the attention of those in the insurance industry.

In 2001, "privacy is probably going to be one of the two or three—if not the—hottest issues for the financial services industry," said Robert A. Rusbuldt, executive vp of the Independent Insurance Agents of America in Alexandria, Va.

For insurance companies, agents and brokers, a key concern will be not only coming into compliance with the requirements in Gramm-Leach-Bliley, but also trying to determine what other privacy mandates they will be forced to meet as the year unfolds, Mr. Rusbuldt said.

In essence, while allowing affiliated companies within a financial in-

Continued on next page



Continued from previous page

dustry holding company structure to share clients' financial information, the Gramm-Leach-Bliley Act requires that those clients be notified of such sharing, and that they be given an opportunity to opt out of any sharing of information outside the holding company "family."

The law also requires that all financial institutions, including insurance companies, establish privacy policies. Although those policies originally were supposed to be in place by Nov. 13, federal regulators extended the compliance date to July 1, 2001, and most states have followed suit.

"At this point, over 40 states have adopted July 1 as the operative date," said Rey Becker, vp property/casualty at the Alliance of American Insurers in Downers Grove, Ill. "However, there are still some states that have not acted."

Many insurance companies argued that they could not craft policies until the states regulating them adopted their own privacy requirements, and by the end of 2000, few states had acted to do so. Further confusing the issue is that the 1999 modernization law allowed states to establish requirements that go beyond those the act itself set forth, and many are expected to at least consider stiffer measures.

"I think, by July 1, most states will have addressed the issue," Mr. Becker said.

Although the matter of privacy will emerge in various forms at the federal level in 2001, the Gramm-Leach-Bliley requirement seems to ensure that most activity will take place at the state level this year.

"We do expect regulatory activity on privacy. We'll have individual state insurance departments grappling with the issue of implementing Gramm-Leach-Bliley at the state level," Mr. Becker said. "In order to implement that, they'll probably use a variety of different approaches."

Most states will follow a model bill crafted by the National Assn. of Insurance Commissioners, the Alliance vp suggested. Some, however, may follow another model, offered by the National Conference of Insurance Legislators. And some might approach the issue in smorgasbord fashion, selecting bits and pieces from the models' provisions as they craft their own state laws.

"We're already starting to see individual states' insurance departments beginning to pick and choose from the NAIC model as to what they're going to promulgate for their individual states," Mr. Becker said.

As 2000 ended, five states—Iowa, Louisiana, New Hampshire, New York and Washington—had already published privacy regulations. And, Mr. Becker noted, as states are publishing their privacy regulations, "many are leaving out the health information component" of the NAIC model. That provision of the NAIC model prohibits the distribution of personally identifiable health information unless the customer "opts in" and permits such disclosure. Such permission must be given on an annual basis.

"Iowa and Louisiana have left out the health information component," he said, adding that other states—including Connecticut, Illinois and Kentucky—are expected to soon follow suit.

Mr. Becker said his organization is similarly heartened by states choosing to skip over a provision of the NAIC model applying privacy requirements to information involving workers compensation claimants.

'We're already starting to see individual states' insurance departments beginning to pick and choose from the NAIC model as to what they're going to promulgate,' says Rey Becker.

"We're also meeting with some success, and we're optimistic that a number of states are willing to leave workers compensation out of the mix," he said. "Right now, I think we've been successful in terms of convincing Illinois, in terms of their regulation, and Virginia, in terms of draft legislation, to leave workers compensation out." Again, Mr. Becker said, the Alliance expects other states to follow suit.

While few states had published their privacy regulations by the end of 2000, Mr. Becker said he expects many states to quickly do so as the new year begins.

Although many states may move to implement privacy requirements beyond those set forth in the Gramm-Leach-Bliley Act, Julie Gackenbach, director of government relations at the National Assn. of Independent Insurers in Washington, said she doesn't expect that efforts to strengthen the act's requirements will go far at the federal level this year.

"I think a lot of people will say, 'Let's get these implemented first,' " Ms. Gackenbach said.

Mr. Becker suggested, however, that there may be congressional activity to pre-empt state regulations that go beyond Gramm-Leach-Bliley in order to craft a uniform federal standard.

Most financial privacy activity will take place at the state level this year, but that doesn't mean there

See **Privacy** *on next page*

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Privacy

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won't be federal activity as well. "I think it's evident privacy will be a huge issue," Ms. Gackenbach said. Health information privacy in particular will likely receive considerable congressional attention this year.

The health information issue is a particular concern to agents and brokers, who fear that if they are denied access to employee health records, it will be impossible to shop employers' health plans.

"If you have a couple of people in a health plan that refuse to release their information and one of them has a terminal disease, there is no way an insurance company is going to write the health plan," the IIAA's Mr. Rusbuldt said.

"Whatever Congress does is going to have to be done on a bipartisan basis," Mr. Becker said. "I think they'll look at health information. I think they will look at what often has been characterized as 'sensitive' patient information."

"I suppose there's always the possibility that, at least as far as health information privacy goes, it could be linked with some effort to push a patients' bill of rights," he added.

Congress also will probably take a hard look this year at online privacy requirements, Ms. Gackenbach predicted. "I think we'll probably get something through in the first session" of Congress, she said. "It got pretty far last year."

There also will likely be activity focusing on myriad other privacy issues, such as the use of Social Security numbers and electronic workplace monitoring.

Ms. Gackenbach said she would expect legislation involving the latter to be aimed not at prohibiting workplace monitoring but rather at requiring explicit disclosure to employees of what is being monitored.

While agreeing that any congressional move toward privacy requirements will have to draw bipartisan support in the new Congress, Mr. Rusbuldt noted that the issue already enjoys such support. "If this were solely a partisan effort, I would say it's over," he said. "But the fact of the matter is, you have bipartisan support for doing something."

As the privacy debate continues on its various fronts, "until the proper balance is found—and I don't think it has been found yet—Congress is going to continue to move legislation on that issue," Mr. Rusbuldt said. "What that means for the financial services industry is that we have to be vigilant to ensure that we are protecting our customers' privacy interests, but, at the same time, ensuring that we can continue to do business." BI

States continuing to tackle producer licensing issues

By MEG FLETCHER

Producer and insurer trade groups are among those that will be watching state legislatures closely to see how many act on measures to institute uniform licensing standards and procedures for insurance producers.

Representatives of several such groups agree that the topic will be a hot one among state legislators in upcoming sessions. While most groups are, in general, optimistic about the outcome of those deliberations, the Council of Insurance Agents & Brokers stands as a notable exception.

Essentially, legislatures are expected to consider granting at least reciprocity, if not full uniformity, in agent licensing. Reciprocity is the minimum requirement mandated by a federal financial modernization law approved in November 1999.

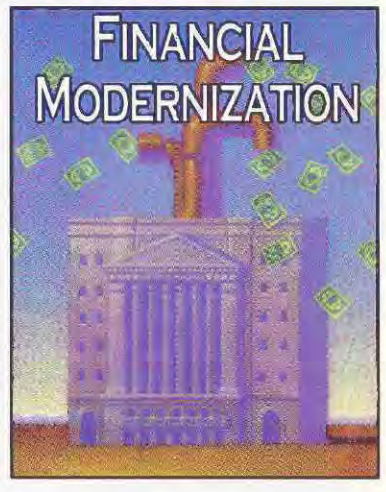
Under the Gramm-Leach-Bliley Act, 29 U.S. jurisdictions—including states and territories—must approve at least reciprocity in agent licensing by November 2002, or the federal government will create the National Assn. of Registered Agents and Brokers to act as a national clearinghouse for producer licensing.

In general, state legislators and regulators oppose the creation of NARAB, fearing that its existence would diminish states' authority to regulate insurance matters.

The Washington-based Council of Insurance Agents & Brokers has questioned whether states will meet their deadline. "In the council's opinion, the three-year window of opportunity for state-led initiatives is slipping away," the CIAB said in a recent statement.

"State regulators built a full head of steam a year ago to address the uniform-licensing mandate," said CIAB President Ken A. Crerar, "but at the start of Year Two, when the going is tough, the steam seems to have dissipated and NARAB looms ahead."

Thus far, only "minimal progress" has been made, according to the CIAB. Just four states



have approved measures, which are based primarily on the 18-page Producer Licensing Model Act developed by the National Assn. of Insurance Commissioners.

Specifically, Kentucky and New Hampshire enacted the NAIC model act almost in its entirety, while Missouri and North Carolina adopted the essential reciprocity portions of the NAIC model.

Mr. Crerar does not blame the NAIC for the current lack of activi-

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ty on the licensing front. He praised George Nichols III of Kentucky, the NAIC's immediate past president, "for his efforts to not only meet but go beyond the NARAB mandate."

During the past year, the NAIC also amended its draft Producer Licensing Model Act to allow states that adopted the model to meet NARAB reciprocity requirements. NAIC leadership continues to indicate, though, that the organization's long-term goal is uniformity.

While the CIAB statement praised the NAIC for its "vigorous and admirable" efforts, it also pointed out that, among state legislatures, activity "ground down in controversy and resulted in the sacrifice of valuable legislative time."

One of the chief controversies that has arisen from the NAIC's model involved its initial proposal of a licensing exemption for customer service representatives. Some industry representatives interpreted one draft licensing exemption as allowing unlicensed representatives to sell to or solicit existing customers.

As a result, opposition from state agent groups and others prompted the NAIC to redraft the measure to exclude the exemption. But other portions of the model still permit unlicensed managers and employees to engage in executive, administrative, managerial or clerical activities.

Currently, the CIAB says, other roadblocks are popping up, which may again slow the process. These include the opposition of state agent groups to "commission sharing" among agents or with non-licensed individuals, such as bank representatives.

Another area of contention is "termination reporting" provisions, which refer to the type of information an insurer must give a regulator when terminating an agent.

In addition, "there is a lot of protectionist legislation out there that agents had asked for previously that needs to be eliminated," said Nicole Allen, the CIAB's director of state affairs. Such legislation affects buyers by reducing their choices and increasing costs, Ms. Allen said.

The impact of these disagreements remains to be seen. "It's anyone's guess how far protesters are willing to press their cases and what delays these new controversies will cause," Mr. Crerar said.

Some delays also may result from opposition to the NAIC model by the Des Plaines, Ill.-based National Assn. of Independent Insurers. The NAII does not support that model because it lacks an exemption for unlicensed customer service representatives. The NAII favors a limited exemption for representatives dealing with existing customers, said Sam Sorich, a Sacramento, Calif.-based NAII vp.

"The model act's failure to recognize the realities of current consumer expectations prevents it from achieving the goal of truly modernizing producer licensing," Mr. Sorich said. In addition, the current wording in the model is "a little unclear" about what activities require a license, he said.

"We want to make lawmakers aware of the issue, but we don't intend to oppose passage of the model solely on this issue," Mr. Sorich said.

Ultimately, the NAII "is relatively optimistic that states will be able to meet the reciprocity requirements" in Gramm-Leach-Bliley by passing the NAIC model or laws similar to it, he said. Mr. Sorich predicted that 16 more states will approve the NAIC model this session—bringing the total to 20—with almost a year to go to meet the deadline.

'There is a lot of protectionist legislation out there...that needs to be eliminated,' says says Nicole Allen.

Other agent and insurer organizations support the NAIC model and, in general, they expect state legislatures to adopt at least reciprocity in agent licensing by the end of 2001, or certainly by the November 2002 deadline. These groups include the Independent Insurance Agents of America, the National Assn. of Professional Insurance Agents and the Alliance of American Insurers.

Wesley Bissett, vp-state government affairs for the Independent Insurance Agents of America in Alexandria, Va., said he was "concerned" about the CIAB's "pessimism and their finger-pointing." His organization "is much more optimistic than the CIAB about state legislatures' willingness to approve agent licensing reform."

"I think the outcome, in terms of reciprocity, will be very successful," said Patricia Borowski, division vp for PIA National in Alexandria.

Agent opposition on the state level primarily has come from captive agents who work only within single states, Ms. Borowski said.

"The new producer licensing model is really about bringing economies and efficiencies to the licensing system," said Larry Kibbee, vp and director of public affairs for the Downers Grove, Ill.-based Alliance. The new federal law also requires including nonresident surplus lines brokers.

Once reciprocity is achieved, though, the representatives say they want states to continue to work toward full uniformity. BI

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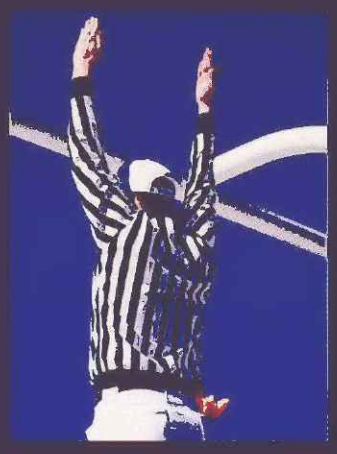
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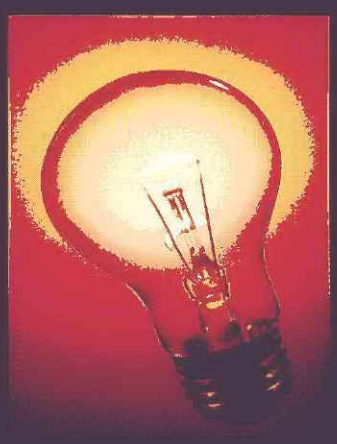
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Jan 1	Information Resource: Employee Benefits	ABT Financial Modernization	Dec 19
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Jan 15	Information Resource: Risk Management	IT Financial Modernization	Jan 3
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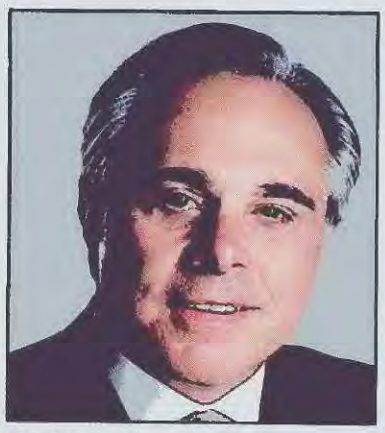
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Willis chief discusses financial services changes

*When looking for an expert on financial services, one with knowledge of the insurance, securities and banking businesses, one need look no further than Joseph J. Plumeri. Mr. Plumeri became chairman and chief executive officer of Willis Group Ltd. in October, succeeding a retiring John Reeve (*BI*, Oct. 2). Prior to his appointment at the world's third-largest broker, Mr. Plumeri was chairman and CEO of Travelers' Primerica Financial Services division. He assumed the additional responsibilities of overseeing Citibank's North American network of retail branches upon the 1998 $70 billion megamerger between Travelers Group and Citicorp, which formed Citigroup Inc. Previously, Mr. Plumeri managed the 1993 merger of stockbrokers Smith Barney and Shearson, and he served as president of the merged entity. In a recent telephone conversation, Mr. Plumeri discussed financial services modernization with Associate Editor Sally Roberts.*



Mr. Plumeri

Q: In your opinion, what impact has the passage of the Gramm-Leach-Bliley Act had on the insurance industry?

A: I don't think there has been much so far. When you look back at the mergers and acquisitions ...there haven't been any of note. But I think that if you looked at the institutions and the types of products they are selling, you'll see the beginnings of cross-selling and, probably, the thoughts or blueprints of cross-selling or the thoughts of how financial institutions will look in the near future.

Q: Why do you think that there hasn't been much activity?

A: I really don't know. I think that (convergence) is not as easy as it sounds. In financial services, people always talked about cross-selling, and there were a lot of mergers that took place in the '80s and '90s with the goal of better cross-selling. But those never seemed to work out. At Primerica, I'd like to believe that we had pretty good success at cross-selling a lot of Travelers' products. But looking back at that, it's not that easy to do in your own house, and then, to think that you can merge companies because the law allows, it's just not that easy. Also, the banking culture is much different from insurance culture, which is much different from the brokerage culture. Melding of cultures is probably the hardest part of a merger or acquisition.

Q: Why have banks focused more on acquiring insurance agents and brokers, as opposed to life insurance companies, as many had predicted?

A: I think it could be the risk. When you go from being in the banking business to buying an insurance company, that's a very big shift in understanding the process of what goes on, and you're also going to assume a great deal of underwriting risks. It could very well be, and this is speculation, that there's enough risk that banks are taking that they ask, 'Why do I need to take on the risk of owning an insurance company when I'd rather own the distribution? Why do I need to own the cow when I can own the milk?' In financial services today, if you ask most people what the most important thing is, they'd probably tell you distribution and channels of it and being able to sell multiple products to a predetermined or a pre-existing client base. You don't need an insurance company to do that.

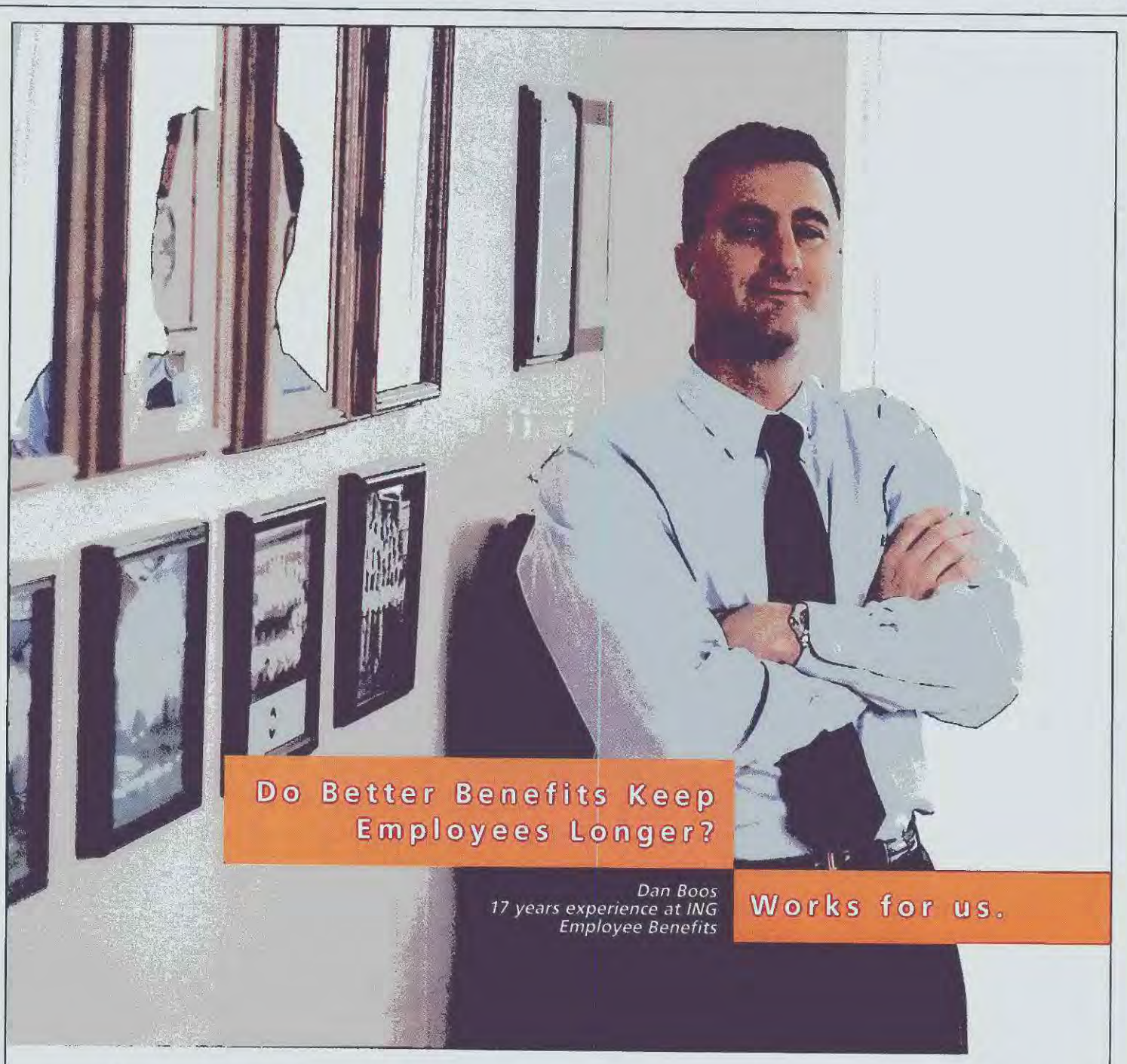
Q: In terms of Citigroup, since you were there when the merger took place, how would you describe the integration process?

A: I don't think it was bumpy at all; it was just laborious. It takes time, and it's not easy. Banks are not by nature sales-oriented, which is pretty interesting because brokerage business and insurance business is sales-oriented, because they have to go and find clients. In the banking business, clients come to you, which means you are not forced to be sales-oriented.

Q: Is financial modernization going to change the way insurance products will be distributed?

A: Sure. Even without the mod-

See **Q&A** *on page 12K*



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Q&A

Continued from page 12I

ernization, products are now being distributed differently.

You can now bank online, you can buy insurance...with 800 numbers. Who ever would have guessed that E*Trade (Group Inc.) and people like that would have been as popular as they are today? Those are different kinds of channels now without the modernization.

You've got to stand to reason that, at one point in time, people will figure out how to do it, as long as distribution is important and in any financial institution distribution is important. If you can figure out how to link client bases, and people will work hard to do that, the multiple of value of your business goes up. And the law now allows that to happen.

Q: Where do you think most of the activity will take place—between banks and insurers, banks and insurance agencies, or insurers and securities firms?

A: That's hard to say, because you can make a pretty good argument for all of them.

Brokerage firms, for example, first figured out how to sell annuities, and that's an insurance-type product. Then banks figured out how to sell annuities, and then insurers figured out how to sell annuities alone. Then banks figured out how to sell mutual funds.

I think you could give examples where all, at one point in time, were doing one or the other's business. The hardest thing for anybody to have figured out so far, whether you're an insurance company or a brokerage firm, is how to sell banking products; although I'll remind you that the brokerage business a long time ago figured out how to sell CDs.

Q: Do you think the financial services landscape will have more financial conglomerates like Citigroup?

A: I do. I think it has to do with costs of entry into the game.

It's very costly, and some people may not have the wherewithal economically to do that, so, as a result, they will have to get together with other people. If companies figure out how to run an efficient business—meaning, being a low-cost provider all the time—it will give the latitude and the ability to do a lot of things.

Q: How does Willis plan to take advantage of financial convergence?

A: I don't know.

I will tell you that our plan is to run a very efficient business; to concentrate on our margins so that we have the ability, because we are efficient, to develop new products; to be able to go into a business that makes sense and augments nicely what we already do and take advantage of what the world offers us.

That, I can tell you, we will do.

We want to always be in a position to constantly grow our top line and our bottom line. BI

How to help clients assess domestic partner coverage

By Leslie M. Carlet

Due to an increasing awareness that the definition of the "traditional" household of years ago no longer holds, more and more employers are offering domestic partner benefits as a way of meeting the diverse needs of the changing employee population.



"Domestic partners" are two adults—either of the same or opposite sex—who are mutually dependent on one another. This definition varies depending on the local entity or company defining the term.

In 1970, according to the U.S. Census Bureau, 40% of households fit the "traditional" family definition: a husband and wife living with their children. By 1998, however, that number had decreased dramatically to 25%. In addition, the number of Americans living in unmarried partner households is growing faster than the number living in married households.

Also, with the low unemployment rates that began in the 1990s and still continue, savvy companies are offering domestic partner benefits as a way to recruit and retain talented employees.

Many companies that consider offering domestic partners health coverage, however, fear that costs will skyrocket, though this has proved not to be the case. One reason for this is that enrollment rates for domestic partner policies tend to be extremely low. A 1995 survey of employers by the International Society of Certified Employee Benefits Specialists, for example, found that 75% of companies with domestic partner policies reported an enrollment rate of 2% or less. In addition, a 1997 survey by the Society for Human Resource Management found that 85% of respondent employers reported no increase in their health care costs as a result of offering domestic partner benefits.

Who is offering domestic partner coverage? In 1982, the Village Voice, a New York City weekly newspaper, became the first employer to offer domestic partner benefits to its lesbian and gay employees. In 1990, there were fewer than two dozen U.S. employers that offered "spousal equivalent" benefits to their gay employees' partners. In 1992, Lotus Development Corp. became the first publicly traded company to offer such benefits.

Today, the number of colleges, governments and private corporations that offer domestic partner benefits, as documented by the Human Rights Campaign, stands at more than 2,500.

In addition, many governments worldwide offer this coverage. Countries such as Argentina, Canada and Israel have experienced an equalization of health and welfare benefits to same sex partners through union movements, company initiatives and the recognition of common-law marriages.

To help your clients implement domestic partner coverage, consider the following:

- **Consult with your clients to determine if there is a need among their employees.**

There are a number of ways you can help your clients figure out whether their employees would benefit from domestic partner coverage. For example, you could: help them design and conduct an employee survey; suggest they create focus groups to discuss the needs of their employees; and give them the names and contact information for local human resource professionals so that they can determine what other companies in their community are offering.

Also, evaluate with your client the cost vs. benefit ratio of implementing domestic partner coverage to determine if it makes sense for the company. Included in this consultation should be helping your client determine whether the company or its employees—or both—will absorb any increase in premium.

- **Learn the laws.**

In order to educate your clients, you must first focus your efforts on determining if there are any local laws regarding domestic partner registration. This will enable you to assist your clients in determining the status of eligibility of partners for the coverage, as well as how the company will evaluate eligibility (e.g., utilizing government registration, company created forms, insurance company created forms, etc.).

For information on the cost and tax implications of domestic partner coverage, visit the Web site: *www.afscme.org/wrkplace/domestic.htm*. For information regarding state requirements, go to: *www.cga.state.ct.us/ps99/rpt/olr/htm/99-R-0713.htm*.

Because a domestic partner is not a qualified beneficiary, your client's company does not have to offer COBRA coverage to domestic partners. However, HIPAA laws would apply to a domestic partner and no pre-existing limitation may be imposed if the domestic partner has had 12 continuous months of health coverage prior to enrollment in your client's plan. As always, encourage clients to check with their ERISA attorney for legal advice regarding these laws and how they apply to their company.

- **Get it in writing.**

Once you and your client determine the proper coverage for the situation and the costs of that coverage, be sure to contact the insurer to request their written guidelines, quote and proposal. Giving your client the information in writing up front will serve to prevent any misunderstandings or miscommunications down the line.

- **Help your clients communicate with their employees.**

In order to make your client's life easier, and to further build your relationship with that client, offer to be present at mandatory employee meetings to assist with answering questions about domestic partner coverage.

A continuously changing definition of the "traditional" family, along with employers' desires to recruit and retain top talent, mean that offering domestic partner benefits may make sense for your clients. And, by guiding them through this process, you will help to position yourself as an expert in this field and solidify client relationships. BI

Leslie M. Carlet is vp of Custom Benefits for USI Florida in Boca Raton. USI Florida is a USI Insurance Services Corp. corporate partner with offices throughout Florida.

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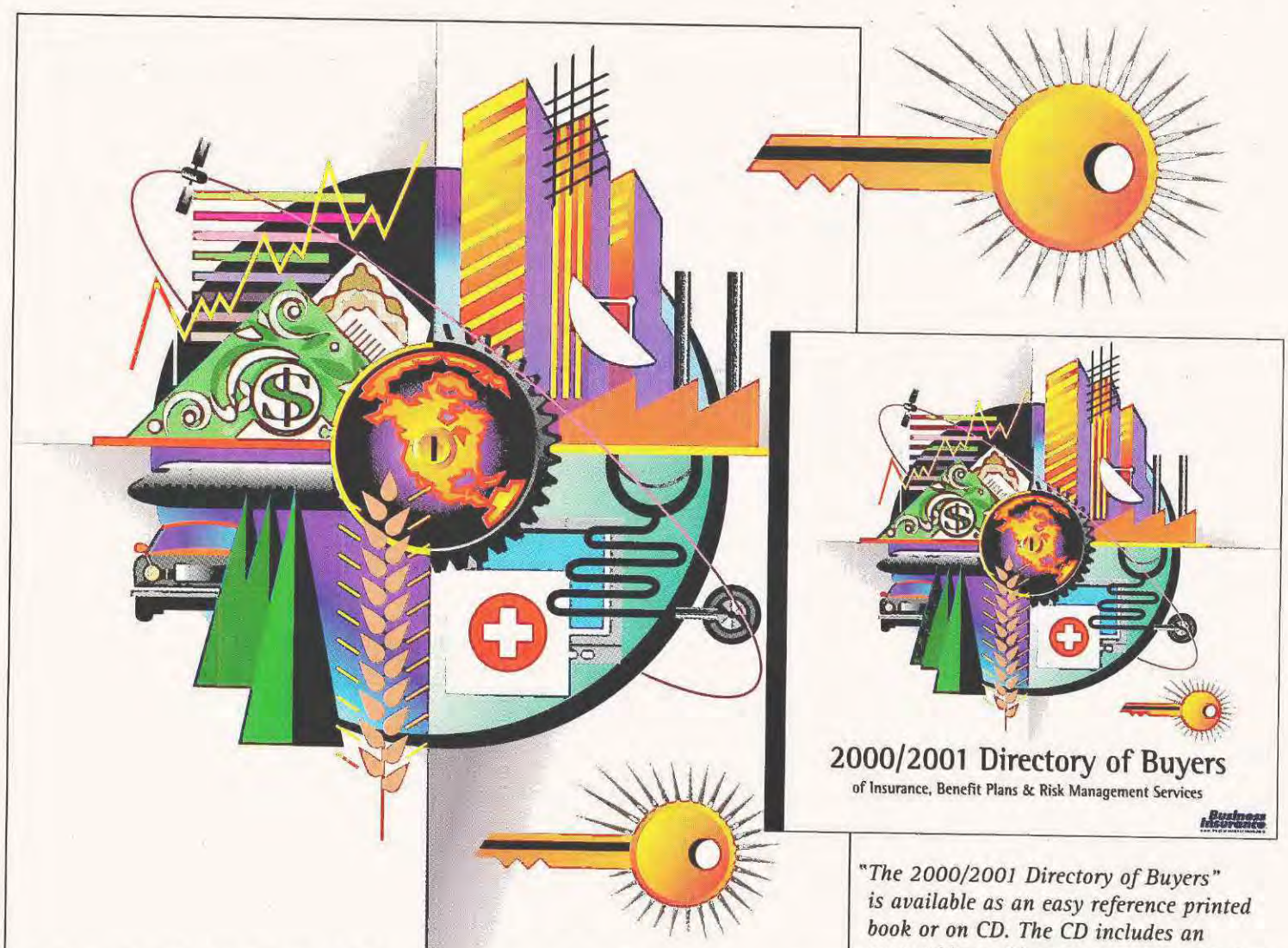
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A look at the year in risk management news

JANUARY:

The widely feared millennium bug largely fails to bite as computer clocks around the world register "00" in their date fields. Despite attempts by insurers and reinsurers to exclude coverage for so-called Y2K claims, some policyholders decide to seek recovery of the millions of dollars they spent on remediation efforts in 1999.

The Occupational Safety and Health Administration softens its stance on safety compliance for telecommuting employees after an earlier advisory document triggered a firestorm of criticism from employers. Business groups argued that OSHA's November 1999 interpretation that its regulations apply to all work-at-home arrangements was unreasonable and would force employers to inspect workers' homes.

Liabilities emerge from the failed workers compensation reinsurance pool run by Unicover Managers Inc. Reliance Group Holdings Inc. announces a $100 million settlement of its Unicover-related liabilities, and Aon Corp. takes a $27 million charge in connection with Unicover. Analysts predict that John Hancock Mutual Life Insurance Co. could face up to $1 billion in losses from the failed workers comp pool.

Folksamerica Holding Co. grows its reinsurance operations with an agreement to buy substantially all of the reinsurance operations of Risk Capital Reinsurance Co.

FEBRUARY:

Liggett Group Inc. seeks to tap its insurance coverage for tobacco litigation costs under the personal injury and advertising injury sections of its policies. The cigarette maker's lawsuit is the first to attempt to sidestep the bodily injury exclusions on tobacco claims.

Risk & Insurance Management Society Inc. Executive Director Linda H. Lamel resigns after finishing a three-year contract, sending RIMS searching for a new full-time leader. The society in September taps John J. Hampton to fill that post.

U.K. insurer CGU P.L.C. announces it will merge with Norwich Union P.L.C. and exit the U.S. property/casualty insurance market. CGU's U.S. unit wrote more than $2 billion in gross premiums in 1999.

MARCH:

Reliance Group Holdings Inc., facing looming bank debt, agrees to sell its most profitable unit, Reliance Surety, to Travelers Property/Casualty Corp. for $580 million.

A group of U.S. insurers argues that a tax "loophole" gives Bermuda-based insurance companies writing U.S. business an unfair advantage. Bermuda insurance executives counter that any advantage is substantially reduced when other issues, such as taxable ceding commissions, are considered.

Acknowledging the rising interest in enterprise risk management, Marsh & McLennan Cos. Inc. creates a unit, MMC Enterprise Risk, to provide integrated risk management services to corporate clients.

APRIL:

State Farm Mutual Automobile Insurance Co. and Tokio Marine & Fire Insurance Co. Ltd. create an earthquake risk exchange as an alternative to buying reinsurance. Analysts praise the innovative deal but say it likely won't replace the role of traditional reinsurance.

A bill introduced in the House of Representatives would impose extra taxes on companies that reinsure U.S. business with Bermuda affiliates. The measure draws immediate criticism from Bermuda officials as well as other international insurance companies, who argue the bill would violate international tax treaties.

Frontier Insurance Group Inc. faces financial trouble after reporting a widening series of net losses. In Frontier's 10-K filing, its auditor expresses "substantial doubt" about the insurer's survival.

MAY:

California's workers compensation insurance market stumbles, following the failure of Superior National Insurance Group Inc. and rating downgrades of Fremont General Corp. and the State Compensation Insurance Fund.

The number of captives worldwide increases, even though Bermuda, the world's largest captive domicile, sees slower growth. The overall global increase is led by formations in the Cayman Islands, Vermont and smaller domiciles, including the British Virgin Islands and Turks & Caicos Islands.

Hawaii enacts a law allowing the formation of a new class of captives. The law permits captives to write excess insurance or reinsurance for international risks.

The Spencer Educational Foundation Inc., making its largest-ever grant, provides a $300,000 endowment to help form an enterprise risk management program at the University of Georgia's Terry College of Business.

JUNE:

Reliance Group Holdings Inc. suffers another setback after losing its A- financial strength rating from A.M. Best Co. The downgrade, viewed as a significant hurdle for the debt-laden insurer's turnaround efforts, triggers a selloff of Reliance's various underwriting operations.

A federal district court rules that traditional property insurance policies must respond to business interruption losses caused by a computer malfunction. Policyholder attorneys acclaim the ruling, which insurers immediately appeal.

Granville E. "Ron" Judd, the former longtime executive director of the Risk & Insurance Management Society Inc., dies following an extended illness. Colleagues remember him as a visionary who helped build RIMS and raise the profile of risk management.

California Insurance Commissioner Chuck Quackenbush, facing investigations on settlements he reached with insurers over Northridge earthquake claims, resigns.

JULY:

California's Supreme Court rules that an insurer cannot deny a claim by arguing comparative bad faith on the part of its policyholder. Attorneys say the ruling denies insurers a defense doctrine applied widely in other areas of state law.

A Florida jury awards a record $145 billion in punitive damages in a closely watched tobacco case. The award raises questions about the viability of a larger settlement that tobacco companies reached with nearly two dozen states and redirects attention to federal tort reform.

Policyholders continue to pursue recovery of Y2K remediation costs from their insurers. More lawsuits seeking coverage under the sue-and-labor clause of all-risks property policies are filed.

Aetna Inc. agrees to sell its financial services and international operations to Dutch insurance giant ING Groep N.V. for about $7.7 billion. The sale completes Aetna's previously announced plans to focus on health care business.

AUGUST:

American International Group Inc. announces plans to acquire HSB Group Inc. for $1.2 billion. The purchase further consolidates an already narrow market for highly protected risk insurance.

A massive recall of tires by Bridgestone/Firestone Inc. is not covered by insurance but raises companies' interest in buying product recall liability coverage. Costs related to the recall, prompted by fatal accidents involving popular sport-utility vehicles, are estimated to far exceed the $350 million reserve that the tire maker created.

SEPTEMBER:

Arthur J. Gallagher & Co. Inc. enters the ranks of the largest reinsurance intermediaries with the purchase of John P. Woods Co. Inc.

An oil crisis in Europe prompts companies to examine their risk management and business contingency plans as protesters blockade fuel facilities.

American International Group Inc. heir apparent Evan G. Greenberg resigns as president and chief operating officer. The surprise departure casts uncertainty on who will succeed longtime Chairman and Chief Executive Officer Maurice R. Greenberg.

White Mountains Insurance Group Ltd. buys the U.S. property/casualty operations of CGNU P.L.C. for about $2.5 billion. The purchase completes London-based CGNU's previously announced intention to exit the U.S. market.

OCTOBER:

Multimillion-dollar asbestos liabilities force building products manufacturer Owens Corning Inc. to seek Chapter 11 bankruptcy protection.

The California Supreme Court upholds employers' ability to terminate at-will employees, even those with many years of service.

A U.K. government panel gives insurers the green light to use genetic test data for Huntington's disease in underwriting.

NOVEMBER:

Lloyd's of London wins what may be the last of the lawsuits filed by disgruntled names. The case, *Jaffray vs. Lloyd's*, involved charges that Lloyd's officials had fraudulently recruited members when the market was about to receive massive asbestos liability claims.

The Occupational Safety and Health Administration publishes the final draft of its ergonomics standard, with an effective date of Jan. 16, 2001. Insurers and business groups immediately attack the move and file lawsuits to block OSHA's implementation of the regulations.

Evidence of mad-cow disease in cattle in continental Europe prompts the European Union to ban animal-based feed and issue strict regulations to prevent an outbreak similar to a previous one that afflicted livestock in the United Kingdom.

DECEMBER:

Fremont Compensation Insurance Co. enters rehabilitation in California. Regulators, fearing adverse effects on the state's struggling workers comp market, permit Fremont to discount its loss reserves.

A General Electric Co. lawsuit challenges the constitutionality of the law that created Superfund, arguing that it deprives polluters of due-process rights. The novel approach draws wide support from business groups.

ACE Ltd. files suit over its $3.45 billion 1999 acquisition of CIGNA Corp.'s property/casualty operations. The Bermuda-based insurer argues that CIGNA withheld funds from a tax-sharing agreement and misrepresented the operations' financial condition.

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DNA

Continued from page 1

including breast cancer, cystic fibrosis and Alzheimer's and heart disease. The tests can be used to diagnose and predict an individual's likelihood of developing a disease.

In addition, investigators are exploring the development of tests for another 325 illnesses, according to a report publicly released in November by the Secretary's Advisory Committee on Genetic Testing, which was chartered by the Department of Health and Human Services in 1998.

Breakthroughs are coming at a rapid pace. In November, for instance, researchers at the University of Rochester Medical Center reported that they had identified a gene that may predispose an individual to developing autism. And British researchers last month reported that childhood leukemia is caused by a non-inherited genetic abnormality, present in 1% of healthy babies, in addition to a still-unknown second trigger.

It is an issue that will eventually affect everyone, said Dr. Edward R.B. McCabe, a geneticist who is chair of the Secretary's Advisory Committee and professor and executive chair of the department of pediatrics at the University of California at Los Angeles. As research continues, within 10 to 20 years, there will be recognition that "we're all at risk for genetic disease," said Dr. McCabe.

Meanwhile, managed care firms are developing policies on genetic testing. "With the new technology that is out there and is racing ahead, we look at all of these on a case-by-case basis," said a spokesman for Santa Ana, Calif.-based PacifiCare Health Systems Inc.

This includes considering whether the technology is sound, whether a test's efficacy has been demonstrated, and whether the patient is an appropriate candidate for the test or lab work. Those considerations are then matched up with the level of benefits and coverage the employer or Medicare provides for access to that technology, said the spokesman.

In developing coverage guidelines for genetic tests, Aetna U.S. Healthcare consults experts, including the relevant professional college, such as the American College of Clinical Oncology and the American College of Obstetricians & Gynecologists, said Dr. Allan C. Bombard. Dr. Bombard is the San Ramon, Calif.-based regional women's health medical director for Aetna's Western region.

"There is a logical approach to this," he said. "It's not capricious. It's based on what the proper scientific body says."

"Most insurers don't want to be out there deciding what the policy should be," he said. They prefer to have the relevant college address the issue first, he said. He noted Aetna has changed its guidelines three times in the past three years to keep up with scientific developments.

Underwriting risks

Another concern for both employers and employees in genetic testing is whether insurers' underwriting is based on the results.

"It's a potentially huge issue in terms of insurance underwriting," said Steve Wetzell, the former executive director of the Minneapolis-based Buyers Health Care Action Group. Mr. Wetzell stepped down as head of BHCAG at the end of last month. Fully insured employers could find their employees are underwritten out of risk pools based on their genetic profiles.

"Health insurance plans want healthy people," said Mark Solomons, a health attorney with Arter & Hadden in Washington.

A person under 30 may appear to be a highly desirable policyholder, "but if you could look into their future, which the genetics code will permit you to do, and show you there's a highly elevated risk" of a potentially long course of hospital care, insurers are not going to want to insure that person, Mr. Solomons said.

But HMOs uniformly deny this is a factor in their underwriting for employers. A spokesman for the Washington-based Health Insurance Assn. of America said: "Most people in this country have employer-sponsored coverage through a large group and are able to get their coverage because they are a member of that group. They are not required to take any type of test in order to apply or to obtain health insurance, so for these folks it's really a non-issue."

How will employers address 'treatments that may not, at this point, be medically necessary but are sort of indicated by the genetic tests?' asks Unifi's Mary Case.

The PacifiCare spokesman said that, as an HMO, "we can't exclude people." HMOs, he said, "have to provide coverage to everyone, regardless of medical conditions. That's a requirement for our being in business."

Information on genetic testing is not part of the group rating, said Dr. John Seidenfeld, senior vp and corporate medical director at St. Louis-based RightCHOICE Managed Care Inc. "I think that has to be guarded against. I think there's variability in testing. Tests can be right or wrong. There's the possibility that there'll be discrimination and there'll be ideas as to what is the right genetic profile and what is the wrong genetic profile, and we're against that approach."

At Kaiser, everyone pays one amount, said Dr. Ronald Bachman, chief of the genetics department at the Oakland Kaiser Hospital, which is one of four Kaiser Permanente regional genetics departments where genetic testing is equally available to all 3.1 million members. "Genetics is a free-standing specialty...and should be included in medical care, and in terms of cost, it should be part of (patients') health insurance policy," he said.

Dr. Bachman noted that a test for the breast cancer gene could cost $3,000. But "no one tells me to order or not order. We order based on medical necessity," he said.

In large experience-rated groups, insurers are likely to go along with employers and not make a big issue of it when it comes to genetic testing, said Ed Kaplan, vp-national health practice for The Segal Co. in New York, a benefits consultant.

Furthermore, charging more for coverage because of genetic test results is illegal under the 1996 Health Insurance Portability and Accountability Act, said Dr. Alan Spiro, a Boston-based consultant with Towers Perrin.

Privacy matters

Privacy remains paramount. HMOs say they keep close tabs on genetics-related data. At Kaiser, genetic information is kept in separate files. When such information is entered into a database, special access is required to see it, said Dr. Ted Cooper, Kaiser Permanente's Oakland, Calif.-based national director for confidentiality and security.

When Kaiser is asked to disclose medical information outside the organization, "we get the patient's permission before we do that and ask them to tell us exactly what they want released," Dr. Cooper said. No health information is released to employers, he said.

"Our major concern, at this point, is that there be an ethical discussion of the use of the information and that patient confidentiality be respected, so that in no way should information be used in a negative way. And I think that's critical in developing any conventions that we use," he said.

"I don't see that as much of a problem," said Helen Darling, senior consultant-group benefits and health care for Watson Wyatt Worldwide in Stamford, Conn., speaking of confidentiality. Most places where genetic testing is done are very protective of their patients, Ms. Darling said.

"Even if I wanted to get that information, it would be very, very hard to get it," she said. An employer may be able to get the total results from all the tests administered by an insurer in a particular city, "but you can't link it to individuals."

Employers' role

Observers say employers have not yet begun to pay attention to the matter from the standpoint of whether their health plans cover genetic testing. Benefit consultants report they are not receiving inquiries from their clients on the topic.

"It's not something that has come up here yet," said Michael Pikelny, benefit consultant and corporate actuary with Chicago-based Hartmarx Corp., a clothing manufacturer. "We've got enough concerns and problems with rising medical costs." To have this as another complication in light of genetic tests "is not happy news, but I guess we need to address it," Mr. Pikelny said.

"I don't think it's really on the radar screen, even with self-insured employers," Mr. Wetzell said.

"Right now, employers are so consumed with keeping their heads above water," due to rising health care costs, that "it's hard for them to deal with an esoteric issue" such as genetic testing, he said.

But, having said that, Mr. Wetzell added, it just gives them "that much less time to figure out what to do when it lands in their laps, because they're going to have to face it eventually."

Tom Lerche, senior vp with Aon Consulting in Chicago, said he believes it will become a concern for employers once the Health and Human Services Administration issues its final privacy regulation for HIPAA, which is expected shortly.

Pressure to cover genetic testing could come from employees, Ms. Darling suggested. She said, though, that "genetic testing is wonderful, and probably 10 or 12 years from now it will be much more definitive, but at this stage it can do more harm than good if it is not done in the context of a lot of knowledge" and accompanied by genetic counseling.

But "people believing it's a magic bullet will press for coverage prematurely and if, in fact, anybody's going to cover it, then it would be very important for an employer to tie it to counseling. Just paying for the test may do more harm than good," she said.

Ms. Darling also recommended that employers direct their employees to centers of excellence for these tests. Some, for example, specialize in screening for the breast cancer



gene, she said.

Employers should set up criteria as to which tests they will pay for, said Dr. Spiro. For instance, some scientists say genetic testing is inappropriate unless there is a family history of a particular disease.

"If you just say, 'Yes, of course, we have to pay for all these tests,' you're talking about taking that spiraling, increasing health care cost curve and accelerating it a bit more," Dr. Spiro said.

Mary Case, a principal with Unifi Network, a benefits consultant unit of PricewaterhouseCoopers L.L.P. in New York, said "employers should be thinking about whether they will cover these added tests, and how they'll define what their obligation is on the tests."

The bigger question, though, would be a situation in which, for example, an employee whose mother had breast cancer discovers she carries the gene for the disease herself and decides to have a radical mastectomy as a preventive measure, Ms. Case said. "How will the employer plan and deal with those treatments that may not, at this point, be medically necessary but are sort of indicated by the genetic tests?" she asked.

A framework to deal with such situations should be created, so that employers "don't end up debating every single test and every single product," Ms. Case said. Employers probably need to do some soul-searching to develop the principles that will guide their decisions, she said.

Mr. Lerche pointed to the privacy matter as well. "I think it's important the employers have policies that reassure employees of the privacy of information, both insurance information as well as information related to the employee's background."

In the meantime, Dr. Spiro said he knows of no employer whose attitude is, "Oh my God, I'm just waiting to get my hands on this information." Instead, he said, companies have a wait-and-see attitude as to what government regulations are issued, so that they will be able to say they are in compliance.

Observers believe genetic testing may be less of a problem for employers in regard to employment discrimination liability.

"It's really not going to be a significant employer issue, as much as it is an insurance issue," said Mr. Wetzell, who noted that many state laws already prohibit discrimination on the basis of genetic testing.

Meanwhile, to date, there has been little litigation in the area. "I don't see it as a major, burning employment law issue," said Brian T. Ashe, an attorney with Seyfarth & Shaw in San Francisco.

"If employers really did try and demand (genetic testing), they'd probably be run into the courts pretty quickly," said Dr. Peter Kongstvedt, Washington-based partner and health care practice consultant for Ernst & Young L.L.P.

In the current tight labor market, Dr. Kongstvedt said, even if employers were able to discriminate through genetic testing, they would be foolish to do so. BI

Laws

Continued from page 1

several genetic tests for identifying the genetic markers for different diseases and whether they should be used by insurers when assessing insurance applications.

In other countries, insurance industry associations themselves have introduced codes of conduct or placed a moratorium on the use of such test results.

"All Western European countries have laws limiting or restricting use of this information," said Tom Lerche, senior vp with Aon Consulting in Chicago. "So far, we've had it state by state, but I think there'll be a drive to have a national solution," he said.

According to the Cambridge, Mass.-based Council for Responsible Genetics, as of August, 42 states have enacted laws that provide some level of protection against genetic discrimination in health insurance, while 21 have legislative protections against genetic discrimination in employment.

"In fact, only a handful have reasonably comprehensive laws," said Philip Bereano, a policy analyst who is a professor of engineering at the University of Washington in Seattle and a Council board member. "Many of these laws are very, very limited or very weak."

The Genetic Testing Working Group, which was created by the National Assn. of Insurance Commissioners in 1994, held hearings and issued a report on the subject, but no further action has been taken, said an NAIC spokeswoman.

On the federal level, there are already relevant provisions under the 1996 Health Insurance Portability and Accountability Act. HIPAA includes genetic information among the factors that may not be used to deny or limit insurance coverage for members of a group plan.

HIPAA also excludes genetic information from being considered as a pre-existing condition, assuming there has been no diagnosis of the disease. It also prohibits insurers from charging one individual a higher premium than any other similarly situated individual in the group.

In addition, there may be protection under the Americans with Disabilities Act. For instance, if an employee has a genetic marker for a particular disease and an employer makes a decision based on that fact, he may well be considered disabled and fall under the ADA's protection, said Peter Gray, a senior attorney adviser in the office of legal counsel for the Equal Employment Opportunity Commission.

Furthermore, provisions of the ADA that say a person is considered disabled if he or she has a problem that substantially limits a major life activity, such as reproduction, may be applicable as well, said Mr. Gray.

However, he added, the U.S. Supreme Court has "issued a number of decisions in the area that taken a fairly stricter view of the scope of the ADA than the commission might have." EEOC Commissioner Paul Miller has testified in favor of new legislation in this area to clear up potential ambiguities, Mr. Gray said. "We think legislation would serve a useful purpose," he said.

Meanwhile on Feb. 8, 2000, President Clinton signed Executive Order 13145, which prohibits discrimination against federal workers based on their genetic information.

An attempt, though, to pass a comprehensive law on this issue applicable to all employers failed. The Genetic Nondiscrimination in Health Insurance and Employment Act, H.R. 2457/S.1322, was sponsored by Rep. Louise Slaughter, D-N.Y., in the

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Laws

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House and by Minority Leader Tom Daschle, D-S.D., and Sens. Edward Kennedy, D-Mass., Christopher Dodd, D-Conn., and Tom Harkin, D-Iowa, in the Senate.

The bill called for a comprehensive ban on genetic discrimination in employment, prohibited employers from requiring that workers disclose genetic information and permitted genetic testing only in efforts to monitor the adverse effects of hazardous workplace exposures. It would also have required that predictive information be confidentially maintained.

In addition, the legislation, which would have covered all health insurance programs, prohibited enrollment restrictions and premium adjustments based on predictive genetic information, and banned health plans and insurers from requiring individuals take genetic tests, among other provisions.

A federal law would make employers 'subject to a more uniform standard,' says Gerald L. Maatman Jr.

A more limited proposal, by Sen. Don Nickels, R-Okla., that was applicable only to insurers also was not acted upon. More proposals, though, are expected in the future.

Advocates of federal law say it is needed to alleviate the public's worry about the issue.

For instance, Dr. Jonathan Beckwith, American Cancer Society Professor of Microbiology and Molecular Genetics at Harvard Medical School in Cambridge, Mass., said studies he has conducted among genetic disease support groups indicated many feel they have been discriminated against.

Dr. Alan Spiro, a Boston-based consultant with Towers Perrin said: "There's been a lot of data over the years that show that many people are worried about the fact that insurers or employers may have access to and use genetic information.

"There seems to be almost a charged atmosphere around genetic information from a public perception point of view, and I think the politics follows that. It's extremely personal information in many ways. Everybody's DNA is unique unless you should happen to be a twin. When people think about that, they get highly sensitive to that, and they're very concerned about it being prejudicial" and used to discriminate against them.

"I know some people who will not be tested under their actual name for some diseases because they don't want it as part of their medical or insurance record" and use pseudonyms instead, said Dr. Edward R.B. McCabe, who is chair of the Secretary's Advisory Committee on Genetic Testing, which was chartered by the Department of Health and Human Services, and also professor and executive chair, department of pediatrics, at the University of California at Los Angeles. Dr. McCabe's committee has recommended federal legislation.

"The fear of it is worse than the actual discrimination right now," said Nancye Buelow, president of the Minneapolis-based Alpha 1 Assn. Alpha-1-antitrypsin deficiency is an adult-onset genetic disorder that may predispose sufferers to several illnesses, primarily emphysema and liver disease. About 100,000 Americans are believed to be severely deficient in the alpha-1-antitrypsin protein, although only 5% have been identified as such.

Ms. Buelow said she knows of one father who learned his infant son had the gene for the deficiency when a lab mistakenly performed the wrong test. The father, who works for a small plumbing firm, is now afraid if he changes jobs this will somehow be discovered and he will lose his health insurance.

"The state laws just don't protect you," said Ms. Buelow. "What we need is a federal law with penalties in place for those that don't comply."

Others are cautiously amenable to the idea. Any time the issue of federal rule-making comes up, "you get a little bit nervous, but it really depends on what they come up with," said Steve Wetzell, the former executive director of the Minneapolis-based Buyers Health Care Action Group.

"A federal law makes sense for employers because then they'll be subject to a more uniform standard," said Gerald L. Maatman Jr., a partner and chairman of the global employment law practice group at Baker & McKenzie in Chicago. "It'll make it a little easier to have a nationwide compliance program," rather than to be subject to the different laws of various states. It will be analogous to the situation with the Family and Medical Leave Act of 1993, before which employers had to comply with various state laws.

"The devil's obviously going to be in the details" as to what the law says, though, Mr. Maatman added.

Dr. Ted Cooper, Kaiser Permanente's Oakland, Calif.-based national director for confidentiality and security, said, "I personally think that we need national pre-emptive legislation on all health information." This "should prohibit use of information for discrimination for employment, education or insurance purposes," said Dr. Cooper.

Dr. John Seidenfeld, senior vp and corporate medical director at St. Louis-based RightCHOICE Managed Care Inc., said although he does not know if a federal law is necessarily the answer, "there needs to be a national dialog so we come up with the best policy for handling this information throughout our country, rather than to develop state-by-state legislation."

Although putting a law on the books is a good first step, "people would be deluding themselves to think just putting a law on the books is going to eliminate a basic problem," said Barbara Koenig, executive director of the Stanford Center for Biomedical Ethics at Stanford University in Palo Alto, Calif., and a member of the Secretary's Advisory Committee.

If testing indicates a high probability of getting a genetic disease that is going to lead to a very costly illness, there are going to be attempts to evade any privacy or anti-discrimination legislation, she said.

Some believe a new federal law is not necessary anyway, at least not yet. "At this point, I don't see it as a problem," said Ed Kaplan, vp-national health practice for The Segal Co. in New York, a benefits consultant.

"I think the market's taken care of it, and full employment and the perceived value of a good health plan" has led employers to avoid these types of issues, he said.

"I'm not sure that we need new laws," only because these issues are already covered under HIPAA, said Dr. Peter Kongstvedt, a Washington-based partner and health care practice consultant for Ernst & Young L.L.P.

"Let's wait and see what's happening in the marketplace," said Brian T. Ashe, an attorney with Seyfarth Shaw in San Francisco. If it is a problem, "then let's start regulating, but in the meantime, let's not pass laws that don't solve current problems." BI

To test or not to test?

Genetic testing raises myriad questions, ethical issues

By JUDY GREENWALD

Genetic tests raise a host of issues with which employers and managed care companies must grapple.

What the tests can and cannot do, and whether in some cases they should even be administered, are among the basic factors that should be considered.

And in developing appropriate policies, employers and managed care companies must also struggle with the sometimes difficult cost/benefit analysis these often expensive tests demand.

Complicating consideration of genetic testing is the issue of the "old" vs. "new" genetics and the public's misunderstanding of what these tests can do, said Barbara Koenig, executive director of the Stanford Center for Biomedical Ethics at Stanford University in Palo Alto, Calif.

The "old" genetics involved situations, such as those for Tay-Sachs and Huntington's diseases, where there is a one-to-one correspondence between having a particular gene and developing a disease, said Ms. Koenig. She is also a member of the Secretary's Advisory Committee on Genetic Testing, which was chartered by the U.S. Department of Health and Human Services.

But contrary to popular belief, more recent genetic research shows genes may indicate only a predisposition to a certain disease, not necessarily a guarantee that it will develop, said Ms. Koenig.

In some cases, this raises the issue of whether a genetic test should even be performed. If someone learns they have a genetic predisposition to the still-incurable Alzheimer's disease, for instance, "it's going to make them worry every time they lose their car keys, so why should they be tested until there's an effective therapy and a better knowledge of predictability?" said Dr. Edward R.B. McCabe, chair of the Secretary's Advisory Committee and also professor and executive chair of the Department of Pediatrics at the University of California at Los Angeles.

"A genetic predisposition doesn't mean you'll get it, and it may mean that you just need to do something to avoid getting it," such as engaging in good health practices that should be followed anyway, so "it may not make a difference to know," said Dr. Alan Spiro, a Boston-based consultant with Towers Perrin.

On the other hand, early detection can be helpful for a disease such as hemochromatosis, which causes the body to retain too much iron and can eventually lead to diabetes and heart disease, said Dr. McCabe, who noted this particular test is relatively inexpensive.

But many of the tests are expensive, and while some believe they will eventually decrease in cost, others fear patents could make them even more costly in the future.

"It's a supply/demand issue, and if you hold a patent then you can demand...from a strong hand," said Dr. Peter Kongstvedt, Washington-based partner and health care practice consultant for Ernst & Young L.L.P.

In addition, the tests themselves could lead to higher costs if, for instance, they determine a patient should take medication to prevent a particular disease's onset, said Dr. Spiro. While this could ultimately save money, more immediately it will hike costs, he said.

All these factors raise additional questions for managed care companies and employers as to when genetic tests should be performed:

- Should an employer, for instance, be required to pay for a test for breast cancer when there is no family history and the results at best will only serve to give the employee some peace of mind?
- If, theoretically, a $1,000 test could save the life of one employee out of 1,000, should it be performed on everyone? If not, what if the test costs only $500 but could uncover potential problems in 10 employees. Where does one draw the line?
- If a genetic test indicates a parent has a disease, is there an obligation to inform the offspring, even if they have not asked or necessarily even want to know?
- What if a test indicates an employee is likely to develop a disease but not for 20 years, when chances are, given the high mobility of today's labor force, he or she will be working somewhere else or even collecting Medicare? In that case, is it fair for the current employer to be put on the hook for paying for it?

There are no easy answers here, observers agree. "What we're going to need is a bunch of medical ethicists running our benefits departments instead of human resource professionals," said Steve Wetzell, former executive director of the Minneapolis-based Buyers Health Care Action Group, adding that his comment was not entirely tongue-in-cheek. "These ethics are going to go way beyond what most human resource professionals are used to dealing with," he said.

If it were a perfect world, we would develop our criteria based on scientific and objective cost/benefit studies, said Dr. Kongstvedt. "But that's not the world we live in. We live in a world where demand is created long before effectiveness is proven, and where tort lawyers ensure that that demand gets met."

Corn

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price is attributable to the StarLink contamination.

"It's going to be a very large number," Mr. Osman said. "When you've got 10.4 billion bushels of corn grown, any multiplier that is put to it is going to produce a very big number."

Mr. Osman said he does not know if Aventis has insurance coverage that would fund a judgment or settlement in the case, and an Aventis spokeswoman at the company's Research Triangle Park, N.C., headquarters would not comment on the company's insurance. Aventis CropScience is a unit of Paris-based Aventis S.A.

The StarLink corn has been genetically modified to contain a special protein, Cry9C, that acts as a pesticide to protect the crop from insects. There currently is debate over whether this protein is a potential food allergen.

Aventis has permission from the Environmental Protection Agency to market StarLink corn only as animal feed or for industrial uses, such as the production of ethanol.

When it was discovered that StarLink corn had cross-pollinated with crops intended for the food supply and was present in some foods, the value of the plaintiffs' crops was diminished, the suit charges. The papers point out that shiploads of corn for export markets "have been rejected for the purpose for which they were intended and/or discounted."

Court papers say the StarLink product was planted in a number of U.S. locations on around 350,000 acres in 2000. The lawsuit states that Aventis knew that StarLink corn could contaminate non-genetically modified crops and that the company was negligent in allowing the modified corn to enter the food supply.

According to the lawsuit, Aventis was aware of potential health risks from its product. The company submitted documents to the EPA that "indicated that StarLink had properties typically associated with proteins known to cause allergic reactions in human beings," the suit charges.

The suit charges that Aventis knew StarLink corn could contaminate non-genetically modified crops.

The discovery of StarLink corn in the food chain led to food recalls, including one in which restaurant chain Taco Bell recalled its brand of taco shells from stores in some of its markets. No lawsuits related to recalls have been filed against Aventis, according to the spokeswoman.

She would not comment on the litigation but supplied the text of a speech that Aventis Vp and General Manager John A Wichtrich made to the National Grain & Feed Assn. on Dec. 4 in Kansas City, Mo.

In the speech, Mr. Wichtrich said Aventis bears "some of the responsibility" for the failure of growers to receive information that the modified corn seed could only be sold for non-food purposes. He also said, however, that seed companies that sold modified corn were bound by a licensing agreement to advise all growers that the product was for animal feed or industrial purposes only.

In the copy of the speech, Mr. Wichtrich noted, "I don't want to get into a position of suggesting how good a job they did of this, nor do I want to second-guess how many of the growers actually received the information."

In the speech, Mr. Wichtrich pledged to compensate grain elevator owners and grain handlers for expenses related to the effort to keep StarLink corn out of the food chain.

He also denied that the contaminated corn poses a product-safety risk. He said the "EPA has confirmed that it does not have any evidence that food containing StarLink corn will cause any allergic reaction in people, and they believe the risks, if any, are extremely low." On Dec. 19, Japanese media reported that the Health Ministry had found StarLink corn in a cargo of corn awaiting shipment to Japan for use in food products. The announcement came one day after Japan's Agriculture Ministry agreed to a U.S. plan for testing corn to be shipped to Japan for animal feed to ensure it does not contain StarLink corn. Japan, which is the single biggest buyer of U.S. corn, has banned imports of the genetically modified corn. BI

Many in U.K. oppose use of gene data

By CAROLYN ALDRED

Most people in the United Kingdom oppose the use of genetic information by insurance companies to set premiums or by employers to determine whether employees are prone to ill health, according to a recent survey.

The survey was commissioned by the Human Genetics Commission, an independent body that advises the U.K. government on policy issues in the area of human genetics. The survey, which involved 788 face-to-face interviews of randomly selected adults, was carried out last year from Oct. 6 to Nov. 14. It was conducted prior to the publication of the HGC's consultation paper, "Whose Hands on Your Genes?" which addresses the "storage, protection and use of human genetic information."

The survey results are not included in the consultation document, which was released at the end of November, but the government is using both to gauge public opinion regarding genetics.

"People understand that advances in human genetics will have a big impact on our lives, and that much good could come from that. But most of us are nervous and confused about where the technology might be leading and the potential challenges to privacy and confidentiality," said Baroness Helena Kennedy, chairwoman of the HGC.

The HGC, which was set up by the U.K. Department of Health in 1999, advises government ministers on the implications of developments in human genetics for society overall and in the particular areas of health care, ethics, law and economics.

"We know from our survey that people are worried that these developments might lead to discrimination or exploitation and are skeptical of the law's ability to keep up with human genetics," Baroness Kennedy said. She added that the consultation paper identifies key questions that society must attempt to answer in the next few years. These include:

- How different and special is genetic information compared to other types of information?
- Does genetic information warrant special protection?
- Should insurers' access to individuals' genetic information be controlled?
- Should an employer have a right to know whether an employee is predisposed to developing an inherited disease or disability? What should an employer do if tests reveal that an employee may become a risk to others in the workplace?
- Who should be entrusted with genetic information so that confidentiality is maintained yet the information is easily accessible for long-term health care planning?

The HGC is soliciting comments through February and is scheduled to present its final recommendations to government ministers in the fall.

Preliminary findings from the survey show that, in the area of insurance:

- While 61% of respondents agreed that the results of genetic tests could be used as a basis for setting insurance premiums, only 8% said they regard that practice as acceptable.
- A total of 76% of respondents said that insurers should not be given access to genetic test results for the purpose of determining whether to raise premiums.
- Just more than half of those surveyed said they believe that it is inappropriate to require the disclosure of the results of genetic test results on applications for life, health or long-term care insurance. One respondent in three, though, said that the disclosure of such information is appropriate for applications for these types of insurance.

In the area of employment:

- Up to 70% of those surveyed said they support the use of genetic information to determine whether new or existing employees are sensitive to workplace substances, such as particular chemicals.
- Views are mixed about the appropriateness of using genetic information to determine whether employees suffer from conditions that might pose dangers to colleagues or to the public. On this question, just under half said that such a use is appropriate, while 39% said it is not.
- Seventy-two percent said they oppose the use of genetic information to determine whether employees are prone to ill health or are likely to take early retirement.

In regard to knowledge about and attitudes toward genetic information:

- Ninety percent of respondents said that developments in human genetics will bring cures for many diseases.
- But 56% said that if individuals have access to their genetic information, they will know too much, and 30% said they believe that genetic research is tampering with nature and is unethical.
- Eighty-six percent of respondents said that individuals should always be asked for permission before their blood or tissue samples are used in genetic tests.
- Seventy percent said they feel they lack sufficient information about developments in genetics information and testing.
- And 71% said they have little or no confidence that governmental rules and regulations are keeping pace with genetic developments.

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The text of the consultation document can be found at the HGC Web site, www.hgc.gov.uk.

DATEBOOK

JANUARY

■ **JAN. 18-19. Atlanta RIMS' Annual Educational Conference** in Atlanta, sponsored by the Atlanta chapter of the Risk & Insurance Management Society Inc.; $150 for members and $175 for non-members. Dennis Baltz, 404-249-2952, *www.atlantarims.org.*

■ **JAN. 28-31. Insurance Risk Management Conference** in San Antonio, sponsored by American Bankers Assn.; $795 for members and $975. ABA, P.O. Box 79129, Baltimore, Md. 21279-0129; 800-226-5377; fax: 202-663-0129; *www.aba.com.*

■ **JAN. 29-30. XML for Insurance Conference** in New York, sponsored by Marcus Evans; $2,295. Jill Faulkner, 303 E. Wacker Drive, Chicago, Ill. 60601; 312-894-6392; fax: 312-894-6390.

■ **JAN. 29-30. Financial Convergence Conference** in New York, sponsored by Marcus Evans; $3,995. Jill Faulkner, 303 E. Wacker Drive, Chicago, Ill. 60601; 312-894-6392; fax: 312-894-6390

FEBRUARY

■ **FEB. 4-7. Cyberinsurance Conference** in Scottsdale, Ariz., sponsored by Strategic Research Institute; $1,795. Jennifer Pierce, 333 Seventh Ave., 9th Floor, New York, N.Y. 10001; 212-967-0095; fax: 212-967-7973.

■ **FEB. 7-9. Alliance of Work/Life Professionals 5th Annual Conference** in Orlando, Fla.; $695 for members and $945 for non-members. AWLP, 515 King St., Suite 420, Alexandria, Va. 22314; 800-874-9383.

■ **FEB. 12-13. Institute for International Research 3rd Annual National Forum** in Dallas; $1,495. IIR, P.O. Box 3685, Boston, Mass. 02241-3685; 888-670-8200; 941-365-2507 (fax); *www.iirny.com.*

■ **FEB. 14-16. Second Annual Windstorm Insurance Conference** in Orlando, Fla., sponsored by Windstorm Insurance Network; $225 for members and $275 for non-members. WIND, P.O. Box 30486, Pensacola, Fla. 32503-1486; 850-469-9052; fax: 850-435-2949.

■ **FEB. 15. Return-to-Work Issues in Workers Compensation in Illinois Seminar** in Chicago, sponsored by Lorman Education Services; $219. **Also Feb. 22** in Itasca, Ill. Lorman, P.O. Box 509, Eau Claire, Wis. 54702-0509; 713-833-3940; fax: 715-833-3953; *www.lorman.com.*

■ **FEB. 19-21. Trustee and Administrators Institute Conference** in Orlando, Fla., sponsored by the International Foundation of Employee Benefit Plans; $725 for members and $915 for non-members. Stacy Van Alstyne, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 262-786-6700; fax: 262-786-8670.

■ **FEB. 19-21. Attorneys Forum on Employee Benefits Conference** in Orlando, Fla., sponsored by the International Foundation of Employee Benefits Plans; $765 for members and $915 for non-members. Stacy Van Alstyne, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 262-786-6700; fax: 262-786-8670.

■ **FEB. 27-28. Investment Basics Course** in Fort Worth, Texas, sponsored by the International Foundation of Employee Benefits Plans; $675 for members and $775 for non-members. Stacy Van Alstyne, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 262-786-6700; fax: 262-786-8670.

MARCH

■ **MARCH 1-2. Complying with the Labor and Employment Laws Course** in Scottsdale, Ariz., sponsored by American Law Institute & American Bar Assn.; $795. ALI-ABA, 4025 Chestnut St., Philadelphia, Pa. 19104-3099; 800-253-6397; fax: 215-243-1664.

■ **MARCH 1-2. 401(k) Plans Course** in Toronto, sponsored by the International Foundation of Employee Benefits Plans; $675 for members and $775 for non-members. Stacy Van Alstyne, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 262-786-6700; fax: 262-786-8670.

■ **MARCH 1-2. Health Benefit Plans Basics Course** in Fort Worth, Texas, sponsored by International Foundation of Employee Benefits Plans; $675 for members and $775 for non-members. Stacy Van Alstyne, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 262-786-6700; fax: 262-786-8670.

■ **MARCH 5-6. Choice-Based Benefits Course** in Fort Worth, Texas, sponsored by International Foundation of Employee Benefits Plans; $675 for members and $775 for non-members. Stacy Van Alstyne, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 262-786-6700; fax: 262-786-8670.

■ **MARCH 5-6. Retirement Plan Basics Course** in Fort Worth, Texas, sponsored by International Foundation of Employee Benefits Plans; $675 for members and $775 for non-members. Stacy Van Alstyne, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 262-786-6700; fax: 262-786-8670.

■ **MARCH 7-8. Basic Compensation Concepts Course** in Fort Worth, Texas, sponsored by International Foundation of Employee Benefits Plans; $675 for members and $775 for non-members. Stacy Van Alstyne, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 262-786-6700; fax: 262-786-8670.

■ **MARCH 7-8. Health Care Cost Management Course** in Fort Worth Texas, sponsored by International Foundation of Employee Benefits Plans; $675 for members and $775 for non-members. Stacy Van Alstyne, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 262-786-6700; fax: 262-786-8670.

■ **MARCH 12-13. How to Control and Manage Mass Tort Litigation Seminar** in Washington, sponsored by Food & Drug Law Institute; $645 for members and $945 for non-members. FDLI, 1000 Vermont Ave. N.W., Washington, D.C. 20005-4903; 202-371-1420; *www.fdli.org.*

■ **MARCH 19-21. The 13th Annual National Managed Health Care Congress** in Atlanta; $1,495. NMHCC, P.O. Box 102713, Atlanta, Ga. 30368-2713; 888-882-2500; fax: 941-365-0157.

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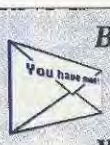


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GLOBAL BRIEFS

Lloyd's of London has published final information on how insurance brokers can apply for access to the market. Lloyd's announced earlier this year that it planned to increase the number of U.K. and foreign brokers allowed to place business in the market, and it has now compiled an information package containing a guide for applicants. Interested parties should contact Lloyd's via e-mail at *lloyds-bsd@lloyds.com*....**GIO General Ltd.**, a subsidiary of AMP Ltd., has been ordered by the Australian Securities and Investments Commission to compensate customers for an advertising campaign claiming that customers of GIO Business Insurance would pay no commissions if they dealt with the company directly. ASIC said the campaign, which ran from August 1999 to March 2000, had the potential to mislead customers because GIO Business Insurance representatives did receive commissions on sales. It has ordered GIO to issue corrective letters to customers and offer refunds to those affected....Mynd Corp., the Columbia, S.C.-based provider of e-business solutions and systems to insurance and financial services companies, and Deloitte & Touche Management Solutions have formed **a partnership to market Mynd's risk management program**, RISKMASTER/World, in Europe, the Middle East and Africa. The service will have a particular emphasis on the health care sector. John Maitz, Mynd's EMEA strategic development director, said the combination will enable the companies "to provide risk management professionals with a powerful, comprehensive and proven suite of tools to manage risk related issues and costs."....Hartford, Conn.-based The Hartford Financial Services Group Inc. has completed the sale of its Netherlands-based **Zwolsche Algemeene** subsidiary to Paris-based Assurances Generales de France, a subsidiary of Munich-based Allianz A.G. Holding. Hartford said its decision to sell the property/casualty insurer reflected its intention to concentrate its international operations on growth opportunities in life and asset accumulation business....Five new members have been elected to the **Council of Lloyd's**, the market's governing body. The three new working members of the council are John Coldman, chairman of Benfield Greig Group P.L.C.; Bronek Masojada, chief executive officer of Hiscox P.L.C.; and David Robson, chairman of Anton Members Agency Ltd. The two vacancies for corporate external members will be filled by Julian Avery, CEO of Wellington Underwriting P.L.C., who will represent Wellington (Five) Ltd.; and Charles Philipps, CEO of Amlin P.L.C., who will represent Amlin Corporate Member Ltd. All five are based in London....London-based broker **Willis Group Ltd.** has acquired a controlling interest in Colombia's second-largest insurance broker, SUMA Corredores de Seguros. SUMA has 380 employees in five offices in Colombia. Willis said the move boosts its position in the growing markets of Latin America....The **British Boxing Board of Control** has been ordered to pay compensation of £1 million ($1.5 million) to former boxer Michael Watson in December. Mr. Watson was left paralyzed and now uses a wheelchair after sustaining a blood clot on the brain during a world title fight against fellow Briton Chris Eubank in 1991. Mr. Watson's lawyers argued that fighting that broke out in the crowd after Mr. Watson collapsed delayed his exit from the ring by several minutes. The High Court in London ruled that the BBBC was liable for the injuries he sustained. The BBBC is reportedly considering an appeal....**Simon Fisher** has been appointed chairman and CEO of Lloyd's broker Price Forbes Ltd. Mr. Fisher joins Price Forbes from Sedgwick Re. He succeeds Robin Romer-Lee, who is retiring.

Equitable calling it quits after failure to find buyer

By CAROLYN ALDRED

AYLESBURY, England—The Equitable Life Assurance Society, the world's oldest operating mutual insurance company and one of the United Kingdom's biggest pension providers, will no longer write new business.

The mutual society's decision follows its failure to find a buyer for the company. That search began after the House of Lords ruled earlier this year that the insurer owed a group of policyholders £1.50 billion ($2.17 billion).

Closure of the society to new business leaves 450,000 pension policyholders, many of them participants in corporate pension plans, facing lower-than-expected pension payouts because the society will be forced to invest more of its funds in lower risk U.K. Treasury bonds, or gilts, rather than equities. The switch to a lower-risk investment strategy is necessitated by the removal of capital support from the funds.

Founded in 1762, Equitable Life—which is not related to the Equitable Life Assurance Society of the United States—claims to have "invented the principles of modern life assurance on which all other life offices are based."

"It is astonishing that the world's oldest and largest life office has to admit defeat after 240 years. Equitable even invented the word 'actuary' and yet they seemed quite incapable of being able to match their liabilities with adequate reserves," said Clive Scott-Hopkins, a director of financial consulting company Towry Law P.L.C. in Bracknell, England.

Trouble for the insurer, which manages funds totaling around £34 billion ($49.20 billion) and accounts for about one-tenth of the British pensions market, began when it realized in 1998, when the U.K. Treasury required the mutual to adjust its reserves, that it had not adequately funded up to 100,000 pension plans with guaranteed annuity rates that it sold between 1957 and 1988.

See **Equitable** *on page 19*

Domicile's efforts falter

Once-promising Panama struggles to lure captives

By ROBERTO CENICEROS

PANAMA CITY—When Panama in 1996 enacted a law permitting the incorporation of captive facilities, commercial insurance leaders in the nation sensed great opportunity for the new domicile.

Panama-based commercial lines broker Seguros Centralizados S.A., for example, eagerly launched a captive management unit at that time called Corporate Risk Management (Panama) S.A. With high hopes of winning captive clients throughout Latin America, the company invested in marketing efforts and sent representatives to other nations to drum up business, said Julieta C. de Perez, the brokerage's general director.

The effort looked like it would pay off when the captive manager in 1998 had the first facility licensed in the domicile (*BI*, April 27, 1998). At the same time, risk management concepts were spreading through Latin America, creating a potential niche market.

But four and one-half years after enactment of the captive law and with only two facilities licensed so far in the Central American domicile, Ms. Perez said she is not sure whether all the effort was worthwhile.

"The truth is," she said, "it hasn't been as good as we thought it would be when the captive law was first created."

It has been tough going for any new domicile trying to establish itself, captive experts say. "There hasn't been a successful (new) domicile since Dublin," which was formed in the late 1980s, observed Gary Osborne, senior vp for USA Risk Group in Montpelier, Vt.

Panama faces hurdles similar to those experienced by other domiciles, such as several years of a soft insurance market and a lack of state support. But it also faces stumbling blocks that are peculiar to Latin America—the region most likely to provide clients.

Insurance regulations adopted by many Latin American countries and economic recessions in those countries are working against the formation of captives in Panama, observers said. The stumbling blocks include a lingering perception that Panama may not be as politically stable as established domiciles, and a 40% tax penalty Mexico officials imposed in mid-1999 on premiums ceded to insurance operations in "blacklisted" countries viewed as tax havens.

Panamanian insurance leaders say they are frustrated.

"I did not expect it to be this tough," said Stavros Costarangos, president of Compania Panamena de Productores de Seguros, a Panama-based broker. Mr. Costarangos is a founding member of the Panamanian risk management organization, Asociacion Panamena de Administracion de Riesgos y

See **Panama** *on page 19*

Thousands of GIO investors opt in

Takeover suit to proceed

By DAMIEN TOMLINSON

SYDNEY, Australia—More than 68,000 former shareholders of the Sydney, Australia-based AMP Ltd. subsidiary GIO Holdings Ltd. will receive opt-out notices late this month, giving them the option to exclude themselves from Australia's largest class-action lawsuit, in terms of the number of claimants.

Under Australian federal law, when a class-action suit is filed, a definition of its claimants is tendered and, unless potential claimants who fit that definition choose to exclude themselves, they remain part of the action.

So far, more than 33,000 people have registered their intent to be part of the class action.

The former GIO shareholders are suing GIO, the former GIO board of directors and Sydney-based appraiser Grant Samuel & Assoc. Pty. Ltd. for $600 million Australian ($326.7 million), which they claim they lost during AMP's 1998 takeover of GIO (*BI*, Aug. 31, 1998).

An AMP spokesman said the company has directors and officers coverage and Grant Samuel has professional indemnity insurance, but the spokesman would name neither the insurers nor the brokers.

The shareholders have accused GIO and its directors of negligence and misleading and deceptive conduct, because they recommended that shareholders reject AMP's offer of $5.35 Australian ($2.91) per share.

The shareholders claim the directors knew about the company's pending reinsurance losses and that corporate advisers Samuel Grant, which prepared documentation for the shareholders on the board's behalf, ought to have known that the losses were imminent.

GIO announced in August 1999 that its reinsurance division, GIO Re, had incurred losses of $759 million Australian ($413.2 million) for the 1998/99 fiscal year. Those reinsurance losses were the major factor in GIO's overall 1998/99 loss of $743 million Australian ($404.5 million).

The shareholders claim the losses were not foreshadowed in detailed documents released by GIO during its defense of the hostile takeover by AMP (*BI*, Aug. 31, 1998; Sept. 21, 1998).

See **GIO** *on next page*

British pub covered for bad weather

LONDON—As the British public wonders whether it will ever see the sun again after three months of torrential rain, one London pub has arranged a weather derivative policy that will pay out if there are too many cold Fridays and Saturdays next summer.

The White Swan at Twickenham, a borough of southwest Greater London, will be protected under a weather derivative deal arranged by London-based Speedwell Weather Derivatives Ltd. and provided by the London office of the French bank Societe Generale, one of the leading providers of weather derivatives.



The contract will pay out if there are too few Fridays and Saturdays in which temperatures do not rise above 14 degrees Celsius (57 degrees Fahrenheit) in April and above 18 degrees Celsius (64 degrees Fahrenheit) in May. The pub also is protected if there are too many Fridays and Saturdays in June that are below 18 degrees Celsius and below 20 degrees Celsius (68 degrees Fahrenheit) in July.

Massive Ltd., which owns 26 pubs and restaurants in London, chose to protect The White Swan because its business is particularly weather-related.

"Several of our sites are significantly affected by weather conditions, but The White Swan, which is situated beside the Thames (River), is particularly sensitive," said Massive's managing director, Peter Linacre.

"Following the disappointing summer, we decided that it would be prudent to explore the possibility of hedging ourselves against similar weather in the future. This deal means that we no longer have to worry about something outside of our control and can concentrate on what we are good at," Mr. Linacre said.

Speedwell currently is working on several other similar transactions involving the leisure industry, said Stephen Doherty, chief executive officer of Speedwell.

Mr. Doherty said he believes that the unprecedented level of rainfall this fall in the United Kingdom may result in more rain-related deals in the future, particularly involving sporting events.

"The weather derivative market is developing with increasing interest from various companies and insurance brokers," he noted.

—By Carolyn Aldred

GIO

Continued from previous page

By January 1999, AMP had achieved a 57% holding of GIO. Later, though, it was able to take full ownership at just $2.75 Australian ($1.49) per share, after GIO stock plummeted with the announcement of the losses.

The class action is being conducted on behalf of the 43% of GIO shareholders who rejected AMP's early offer.

On Nov. 1, Australia's federal court rejected an appeal by AMP, which tried to have the class action ruled invalid on the basis that there was no string of commonality throughout the class.

The court found that all of the shareholders did have common interests—the ownership of GIO shares, the non-acceptance of the AMP offer, and the claim that they had suffered loss as a consequence.

The federal appeal court judges ruled the class-action members would likewise argue that each member of the class rejected the AMP takeover offer because of both the positive statements by some respondents—GIO, its board members and its corporate advisers—"and the silence of others, being people who had a duty, or might have been expected, to speak up if the positive statements were incorrect."

"If those allegations can be established," the ruling continued, "it is arguable that a right of action lies against both those who made the positive statements and those who remained silent."

Stephen Walsh, of the Melbourne, Australia-based law firm of Maurice Blackburn Cashman, which is representing the class, said no notification of an appeal against the federal court decision had been received before the Nov. 28 deadline.

Mr. Walsh said he did not expect the case to be heard before late 2001, "or even in 2002."

Last month, the class objected in federal court to the proposed transfer of GIO life insurance policies to AMP. The class argued that the move could jeopardize its ability to claim an award should the class action be successful, Mr. Walsh said.

Under Australia's Life Insurance Act 1995, the transfer of insurance policies between related companies must be approved by a federal court.

The federal court accepted an agreement between GIO and the class whereby GIO must, for the duration of the class action, provide Maurice Blackburn Cashman with 14 days' advance notice of any business transaction. The class then has the right to object to that move in court.

An AMP spokesman said that AMP had not tried to sidestep its duties and was happy to comply with the court's orders, but the spokesman refused to comment further on the class action. BI

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REQUEST FOR PROPOSALS

Long Term Care Affinity Program

The Auburn Alumni Association is soliciting proposals for a long term care affinity program. Interested organizations (with collegiate affinity program experience) can request information at 334-844-1132. Deadline for material request is January 19.

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LEGAL NOTICE

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 informat on 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
Special Deputy Receiver

REQUEST FOR PROPOSALS

ATTN: INSURANCE CARRIERS

REQUEST FOR PROPOSAL (RFP) NO. 20107

The Chicago Housing Authority (CHA) Invites Qualified Businesses To Submit Sealed Proposals For:

THE PRIVATE MANAGERS INSURANCE PROGRAM CONSISTING OF GENERAL LIABILITY, AUTO LIABILITY, CRIME/FIDELITY & WORKERS COMPENSATION COVERAGES FOR ALL PRIVATE MANAGERS OF CHA PROPERTIES. RESPONDENTS ARE INVITED TO QUOTE ALL OR PART OF THESE COVERAGES.

COVERAGES ARE TO BECOME EFFECTIVE 4/1/2001.

Proposals shall be made in the format included in the Request for Proposal packet containing instructions, specification and detailed submission requirements. Packets may only be obtained by calling CHA's Insurance Broker: Near North Insurance Brokerage, 875 N. Michigan Avenue, Chicago, IL @ (312) 280-5662, Mr. John Carmody. All inquiries for additional information regarding the Request for Proposal are to be directed in writing to Ms. Arlene Shorter, Buyer, Chicago Housing Authority, (312) 791-8500, ext. 4147.

RFP documents describing specific requirements of the Authority will be available starting Tuesday, January 2, 2001.

RETURN COMPLETED PROPOSALS TO:

ARLENE SHORTER
THE CHICAGO HOUSING AUTHORITY, 626 W. JACKSON BLVD, 2ND FLOOR, Chicago, IL 60661

Pre-Proposal Conf. Date/Time:	Proposal Due Date/Time:
WEDNESDAY, JANUARY 10, 2001 @ 9:00AM CST	THURSDAY, FEBRUARY 1, 2001 @ 4PM CST

PROPOSALS ARE NOT PUBLICLY OPENED

The subsequent contract shall be subject to the applicable compliance and procedures of Executive Order No. 11246, as amended, Equal Opportunity and other provisions as specifically set forth in the Specification.

The Authority encourages participation by joint ventures and qualified minority and women owned businesses.

LEGAL NOTICE

NOTICE OF CREDITORS' MEETINGS
IN THE HIGH COURT OF JUSTICE
(IN ENGLAND)
No. 7686 of 2000
CHANCERY DIVISION
COMPANIES COURT
IN THE MATTER OF
CHESTER STREET INSURANCE HOLDINGS LIMITED
(formerly Iron Trades Holdings Limited)
and
IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by an order dated 14 December 2000 made in the High Court of Justice in the matter of Chester Street Insurance Holdings Limited ("the Company"), separate meetings were ordered to be summoned of Scheme Creditors (as defined in the scheme of arrangement hereinafter mentioned) of the Company for the purpose of considering and, if thought fit, agreeing to a scheme of arrangement proposed to be made between the Company and its Scheme Creditors pursuant to section 425 of the Companies Act 1985 ("the Scheme"), namely:

i. Scheme Creditors who are Protected Policyholders (as defined in the Scheme); and

ii. General Scheme Creditors (being Scheme Creditors other than Protected Policyholders (as defined in the Scheme)).

The meetings will be held on 5 February 2001 at Glaziers Hall, 9 Montague Close, London Bridge, London SE1 9DD at the times mentioned below, namely:

i. in the case of Scheme Creditors who are Protected Policyholders, at 11:00 am (London time); and

ii. in the case of General Scheme Creditors, at 11:20 am (London time) or as soon thereafter as the previous meeting shall have concluded or been adjourned.

The chairman of the meetings will address Scheme Creditors generally on the Scheme and on issues relevant to voting at the commencement of the first meeting.

Scheme Creditors may only attend and vote at such of the meetings for which they are eligible, either in person or by proxy and are, in any event, requested to complete the appropriate voting form and return it to the Company, c/o PricewaterhouseCoopers at 3 St Philips Central, Bristol, BS2 0XJ, United Kingdom by 12:00 pm on 2 February 2001, although if not so returned, it may be handed in between 9:00 am and 11:00 am on the day of the meetings at the place fixed for them.

Each Scheme Creditor or his proxy will be required to register his attendance at such meetings as he is entitled to attend prior to its commencement. Registration will commence at 10:00 am.

The Scheme is proposed between the Company and its Scheme Creditors (being creditors in respect of any claim under or arising out of any Insurance Contract (as defined in the Scheme) being a liability to which the Company is subject at the date of the Scheme or to which it may become subject thereafter by reason of an obligation incurred before that date, except Non-Insurance Claims (as defined in the Scheme), any claim which would have been preferential in a liquidation of the Company or a claim in respect of the costs or expenses of the Scheme, each of which will be payable in full).

Copies of the scheme of arrangement, the statement required pursuant to section 426 of the Companies Act, 1985, voting forms for use at the meetings and registration forms are being sent to Scheme Creditors. If any person entitled to attend the meetings has not received these documents by 5 January 2001, copies can be obtained from the Company, c/o PricewaterhouseCoopers, 3 St Philips Central, Bristol, BS2 0XJ, United Kingdom.

By the order, the High Court of Justice has appointed Benjamin Vincent Michael Strickland, or failing him, Philip James Grant to act as chairman of the meetings and has directed the chairman to report the results of the meetings to the court.

The scheme of arrangement will be subject to the subsequent sanction of the High Court of Justice.

Dated 19 December 2000.

CLIFFORD CHANCE
Limited Liability Partnership, 200 Aldersgate Street, London EC1A 4JJ
Solicitors to the Company

Equitable

Continued from page 17

Lower inflation and falling interest rates in recent years made it harder for the insurer to pay the double-digit yields the policies guaranteed. When the insurer tried to give policyholders who exercised their guarantee a different level of bonus, a group of guaranteed annuity policyholders sued Equitable, eventually resulting in a House of Lords decision in July 2000 that favored the policyholders.

Following the adverse House of Lords judgment, directors of the society began to look for a purchaser. Although "the society received a large number of expressions of interest and received indicative proposals from three companies...no firm proposals have been received," the company announced Dec. 8. The last prospective purchaser, London-based insurer Prudential P.L.C., withdrew from discussions a day earlier.

"After detailed consideration, the board of Prudential P.L.C. has concluded that it is not in the interests of either its shareholders or policyholders to proceed with a transaction," according to an announcement sent by Prudential to the London Stock Exchange.

Without a sale, "the investment freedom of the with profits fund will be constrained with a consequent impact on long-term performance. In view of this, the Board (of directors) has decided that the Society should stop selling new business. The Board's decision has the full support of the Financial Services Authority," which regulates the investment industry in the United Kingdom, according to a statement released by the company Dec. 8.

Equitable Life's 'success was built on upon distributing all their hypothetical investment surplus and thereby claiming leading performance,' says Clive Scott-Hopkins.

So-called with profits products are instruments that use a portion of the premium to create a savings or investment component that carries a cash value. Examples of such policies sold by the company include pension plans, personal investment products, bonds, savings plans and school fee trust plans, as well as whole life insurance and endowment policies.

"The society has worked closely with the Financial Services Authority since its decision to put itself up for sale," a statement issued by the FSA Dec. 8 confirmed.

"The FSA will continue to monitor closely the operations of the Equitable. The society continues to meet the statutory solvency requirements," the FSA statement concluded.

Equitable Life "will now explore the sale of some of the Society's operations (including its sales force) but it is expected that there will be no transfer of the with profits fund which will be closed to new business and continue on a mutual basis," the insurer stated.

Meanwhile, "the board has no reason to change its best estimate of the likely cost of the GAR liability arising from the House of Lords decision of some £1.5 billion. The actual cost of the GAR liability could be more or less, depending on a number of factors—most importantly future interest rates. To meet the estimated cost, there was a reduction in policy values equivalent to seven months' growth—hence, were the actual GAR liability to exceed the current best estimate, there would need to be a further transfer in value from non-GAR policyholders," according to Equitable.

"In addition to increased reserving for the GARs, the recent tightening of regulatory requirements and poor returns in investment markets in the year to date are likely to mean that the capital strength of the with profits fund at 31 Dec. 2000 will be weakened. As a result, it will be necessary to reduce investment in equities and increase holdings in fixed-interest securities through an orderly rebalancing of the investment portfolio over an extended period of time."

Although fixed-interest securities are more stable than equities, they also can provide lower investment returns. As a result, the society cautioned, "Policyholders should be aware that bonuses for the current and future years are likely to be lower than in previous years."

Although the society "will not write new business, it will continue to accept premiums that policyholders are entitled to make under existing policies (but) policyholders should consider their individual circumstances when considering whether to pay additional premiums under their existing policies," it advised, meaning policyholders may wish to stop paying any more into their funds and just leave a static fund with the society.

Following the failure of the society to find a buyer for its business, Alan Nash, its managing director, resigned and Chris Headdon, the Society's finance director was appointed chief executive.

Equitable Life "went on a huge expansion tack of with-profits business in the '80s and '90s. Now the U.K.'s fifth largest life assurer, this success was built upon distributing all their hypothetical investment surplus and thereby claiming leading performance," said Towry Law's Mr. Scott-Hopkins, adding that "hindsight shows that this surplus was falsely boosted by underreserving for annuity business. Now their reserves are being corrected, the consequential overpayments to existing annuitants and excessive bonuses must be clawed back." BI

Panama

Continued from page 17

Seguros.

Yet Panamanian insurance leaders such as Mr. Costarangos and others who have worked hard and invested their own funds to promote the domicile say that despite their disappointment with a lack of growth so far, they have not abandoned hope. They say the obstacles can be overcome and they still believe Panama can become a leading domicile for Latin American-based risks.

"We are optimistic," said Manuel A. Eskildsen, executive vp for Panamanian insurer Compania Internacional de Seguros S.A. and a proponent of Panama as a captive domicile. "In a year's time, things will change in Latin America."

Experts vary on how many captives worldwide belong to Latin American owners, with estimates ranging between 50 and 100.

Observers outside Panama agree that there is reason to be hopeful that more Latin American-owned captives will form in Panama.

"There is nothing wrong with Panama," said Paul M. Bitner, senior vp strategic account management/Latin America in Aon Group Inc.'s Houston office. "I would have no problem recommending Panama as a potential domicile."

Yet a Mexican risk manager who asked not to be identified said that although Panama has not faced political instability since the ouster of Manuel Noriega in 1989, he is more comfortable with his company's captive in Bermuda.

The soft insurance market of the past few years is among the reasons Panama has not seen more captive formations, Messrs. Bitner and Eskildsen said. Overall, there have been very few captives formed by Latin American entities in the last two years, Mr. Bitner said.

But Mr. Bitner expects that will change. As insurance rates harden worldwide, he expects to see more Latin American businesses forming captives, especially for their property risks. "I would be shocked if Panama didn't pick up their fair share of it," he said.

Perception problems

Panama also faces the perception that it is an easy place to form a company to hide money obtained through legal and illegal business operations, Mr. Bitner said. That factor may persuade some risk managers to license their captives elsewhere.

But in reality, Panama "has a rather sophisticated service infrastructure that is similar to the Swiss banking system," he explained. The nation's captive law is conservative yet versatile and based on Bermuda's statute, he added. In addition, the country has adequate regulation and all the legal and accounting services necessary to operate a captive.

One difficulty for the domicile has been a lack of promotion, Mr. Bitner said.

That fact is not lost on APARYS members. They worked long hours to make sure Panamanian lawmakers adopted the country's captive statute, and then spent their own funds to market the domicile and host a booth for the past five years at conferences of the Risk & Insurance Management Society Inc.

They also hosted a recent conference held in Panama City for the Asociacion Latinoamericano de Administradores de Riesgos y Seguros, an association of Latin American risk management organizations. ALARYS conferences attract risk managers from throughout Latin America. Sessions on captive ownership have been popular among risk managers eager to learn alternative market basics.

But the APARYS members said that they can't do it all on their own and need the support of Panama's insurance regulators in the office of the Superintendente de Seguros y Reaseguros to properly market their domicile.

'I would have no problem recommending Panama as a potential domicile,' says Paul M. Bitner of Aon Group Inc.

"Unfortunately the government hasn't put up a nickel in this," one Panamanian said.

Javier Vallarino, subdirector of the Superintendente de Seguros y Reaseguros, said Panama's regulators are concerned about the domicile's inability to attract captives so far. He added that a boom had been expected following passage of the captive law.

Panama has much to offer and much to gain, Mr. Vallarino said. Among other positive factors, Panama is the first Spanish-speaking country to become a captive domicile and it has a modern economy that uses the U.S. dollar as legal tender.

Mr. Vallarino conceded that more promotion is necessary and that the Superintendente has not yet committed a 2001 budget for captive promotion. But the Superintendente already has promoted the domicile through magazine articles in insurance and business magazines, he said.

Overcoming tax laws

Another hurdle comes from laws adopted by several Latin American countries—including Mexico, Argentina, Venezuela and Peru—in an attempt to stop the channeling of money to offshore corporations for tax avoidance purposes, Mr. Eskildsen explained. The offshore corporations used for that purpose were not necessarily insurance operations. Yet the laws passed to address the issue do require offshore insurance entities, such as captives, to obtain a rating from agencies such as A.M. Best Co.

But obtaining such a rating generally requires an entity to have tens of millions of dollars in capital, an impossible amount to raise for many potential Latin American captive owners, Mr. Eskildsen said.

Mexico's 40% tax for premiums ceded to countries considered tax havens is also a stumbling block. Panama is among 10 captive domiciles included on a list of 35 jurisdictions singled out by the Paris-based Organization for Economic Cooperation and Development for their tax practices (*BI*, July 3, 2000).

Mexico's taxation is viewed as particularly harmful because Mexico has one of the largest economies in Latin America and is considered to have some of the greatest captive ownership potential.

Those factors have hindered Latin American captive formation, observers said. But as the market hardens, they expect Latin American captive owners to find their way around those laws.

One way that now is done is through a "double-fronting arrangement" that is commonly used by Latin American captives, insurance industry sources said.

Under that practice, an owner of a Bermuda-based captive insuring risks in Mexico, for example, obtains a fronting agreement from a Mexican insurance company and a reinsurer with a local office in Mexico. The fronting insurer does not cede the risk directly back to the captive. Instead, the insurer cedes the risk to the reinsurer, which then retrocedes the net retentions and other expenses, such as commissions, back to the captive. BI

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Toys

Continued from page 3

ple's homes," Ms. Brown said. She urged parents to use the Dangerous Dozen list to "check for recalled toys that might still be lurking in your child's toy chest."

The safety campaign is being financed by New York-based insurer American International Group Inc. AIG is the primary market for toymakers' product recall coverage.

When recalls are announced, the number of returns typically is low, according to Vince DeConti, product recall manager in AIG's WorldSource operating group in New York.

"If you spend $14.99 for a toy, what's the likelihood you'll return it?" Mr. DeConti asked. "You're more likely to throw it away. Toys have a very short life. The average toy is no longer used within six months."

So AIG has decided to finance the production of a public service announcement the CPSC is showing on its Web site and distributing to television stations nationwide. AIG hopes the effort will reduce toymakers' exposure to additional liability should a recalled product eventually cause harm, Mr. DeConti said.

"Recalls are more about things that could happen rather than did happen," pointed out John Pinner, assistant treasurer at Mattel Inc. in El Segundo, Calif.

In addition to AIG, some Lloyd's of London syndicates also provide product recall coverage, and excess coverage for product recall can be obtained from a handful of European reinsurers, according to Bill Harrison, managing director of Aon Corp.'s Crisis Management Practice in Hatboro, Pa.

But the market for product recall coverage is tightening just as the need for such coverage appears to be growing.

In one of the latest toy recalls, two scooter manufacturers—Parsippany, N.J.-based Kent International Inc. and Kash 'N Gold Ltd. of Ronkonkoma, N.Y.—last month voluntarily recalled a total of about 97,500 scooters after concerns emerged involving the handlebars of certain models.

"The paucity of product recall coverage is directly related to what insurers see as one of the most threatening issues today—an out-of-control tort system," said Bob Hartwig, chief economist at the Insurance Information Institute Inc. in New York.

Indeed, "you have an increase in product liability claims whenever you have a product recall," Mattel's Mr. Pinner said.

But neither product liability insurance nor general liability insurance covers the cost of product recall, Mr. Hartwig pointed out. "So you need an additional policy."

Unfortunately, "there is not a long list of people who will write toys and mechanical items," said Aon's Mr. Harrison. "With what happened with tire and automakers in the past year," and the increased dissemination of recall information via the Internet, "the damage that happens to companies is worse than it ever was before. So the losses are getting bigger, and the underwriters are raising premiums."

It is because the premiums are so high—sometimes more than $1 million for just $10 million in coverage—that few, if any, toymakers buy product recall insurance, according to Aaron Locker, counsel to the Toymakers of America, a New York-based trade group.

"We have an ultimate consumer who is probably the most vulnerable—the child—so companies are exacting rather large premiums," Mr. Locker said.

Mr. Pinner says Mattel doesn't buy product recall insurance because the coverage doesn't pay for the biggest expense associated with a recall—loss of market share.

When there's a recall, "you lose three things," he explained. "You lose the cost of the recall, which most large companies can afford; the loss of the product; and you lose market share, because people now have some concerns about your products."

While loss of income is covered under food and beverage recall policies, it is not covered under non-food recall policies, said Bernhard Steves, vp of Insurance Brokers Service Inc., a Chicago-based wholesaler that specializes in product recall coverage.

"The loss of income is the greatest expense," Mr. Steves said. "That's why this was segregated in the new coverage."

Typically, non-food product recall coverage has two parts, AIG's Mr. DeConti explained.

The first part covers "product recall expense," which includes the costs of notifying consumers, shipping, extra labor and warehousing, as well as the cost of repairing or replacing the product, he said.

The second part covers third-party liability that arises out of a recall, such as lawsuits filed by distributors against toymakers whose products have been recalled, Mr. DeConti explained.

AIG will write up to $20 million in limits for these two exposures, he said, for a premium that is "less than 1% of the company's total revenues from the product."

The rating system used to calculate the premiums charges more for the first $20 million in sales than for the next $20 million, Mr. DeConti said. Retentions start at $25,000 but can go as high as $1 million, depending on the company's appetite for risk, he noted.

Midsize companies, such as those with $10 million to $100 million in sales, are the type most likely to buy the coverage, Mr. DeConti said.

However, "I don't think many toymakers buy product recall coverage," he said.

Part of the reason they don't, Mr. DeConti suggested, is that the coverage has been available for only a few years and only through two major markets—AIG and London.

"So a lot of them are uninsured for this exposure, or they may get a small amount in a limited form as part of a package liability policy," Mr. DeConti said.

Non-food product recall coverage evolved out of the food and beverage product recall market, which emerged around 1986 or 1987, Mr. Steves said.

The creation of product recall coverage was prompted by the Tylenol recall of the early 1980s, he said. Originally, product recall insurance covered only malicious tampering, but slowly, through good experience and the availability of more capacity, underwriters during the 1990s added coverage for accidental acts, he said.

"Now you can buy $200 million to $250 million in capacity, and it still covers lost income and rehabilitation," Mr. Steves said. Lost income and rehabilitation are the costs associated with restoring the image of the product and/or its manufacturer, he said.

By contrast, only about $50 million in limits can be assembled today for non-food products, Mr. Steves noted.

Because of the high cost of product recall coverage and its narrow focus, toymakers instead invest heavily in risk management and loss control.

"We have a very large 'product integrity' program," said Mattel's Mr. Pinner. "If they think they have a toy that could pose a problem, they run it by risk management at the feasibility stage."

The risk management department gets a second opportunity to examine a toy during its production phase, and then another after the toy has been released, he said.

"We have monthly meetings with people from insurance, quality control and the legal department where we look at every customer safety complaint. If there's just one complaint, we don't get too concerned about it, but if there are five, we take a look and assess how serious it is. If it's serious, we call the plant and make adjustments," Mr. Pinner said.

The Toymakers of America also has its own testing laboratories, which apply standards that are even more rigorous than those employed by the CPSC, according to Mr. Locker.

The standard, established by the American Society for Testing & Materials, is reviewed every five years and is updated as needed, he said, adding that it is scheduled to be reviewed again this year.

In addition to the industry's self-testing, all electrical toys are reviewed by Underwriters Laboratories Inc., according to a spokesman for the Northbrook, Ill.-based independent safety organization.

After a toy has been released into the stream of commerce, it is examined by the Washington-based CPSC, a quasi-governmental agency that can request voluntary recalls or impose fines on manufacturers that fail to warn consumers of known hazards.

To beef up its oversight capabilities, the organization recently received state-of-the-art testing equipment from RAM Consulting and McDonald's Corp., both of Oak Brook, Ill.

RAM, which stands for Risk Analysis & Management, developed the equipment for McDonald's, the nation's largest toy distributor, according to a spokesman for RAM.

"McDonald's is our major client," he said. "They take safety extremely responsibly."

RAM's testing technology was developed by studying data from more than 8,000 toy-related fatalities, the spokesman explained. The information had been collected from the Atlanta-based Centers for Disease Control as well as poison control centers and 26 major pediatric hospitals from throughout the United States.

Out of this research came a "virtual child" 3-D computer program and a lifelike "breathing" mannequin designed to evaluate choking and suffocation hazards. In addition, RAM has developed a simulated baby jaw that can help determine whether a toy or other product is likely to come apart as a result of biting and tearing and pose a choking danger, as well as a strangulation tester and a biomechanical model that can replicate a child's pulling forces. That tool is designed to test whether a product is likely to come apart in the hands of a child.

It is hoped that the equipment will help the CPSC identify hazards that pose the greatest risk to children, particularly those under three years of age, according to a CPSC spokesman.

But even with this stepped-up scrutiny, the frequency of toy recalls—which has held steady at about 50 per year for the last several years—may slow under the new Bush administration, predicts the Insurance Information Institute's Mr. Hartwig, who worked for the CPSC during the administration of the elder Mr. Bush.

"The CPSC has become more active in calling for recalls during the Clinton administration," he said. "The question is whether it will be as active after appointees from the Bush administration take over. We're all in favor of public safety, but there has to be judicious" decision-making.

Even with all these levels of testing, "there's no toy that's perfectly safe," said Mr. Pinner. "Basically, what we look at, is reasonable use. We also make sure the correct age is targeted."

More information on the Dangerous Dozen list is available on the CPSC Web site, *www.cpsc.gov.* BI

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Like your dry cleaning dropped-off?



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Like to shop by catalog or online?



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Traits of the insurance field

Have you ever opened your e-mail inbox to find that you are the recipient of a "You know you are from..." message? Such messages, which alternately list inside jokes and poke fun at locals, are forwarded over and over, spreading like a benign virus across the Internet.

If you didn't instantly delete the e-mail, having seen it dozens of times before, you might have found such pearls of wisdom as: You know you're from Chicago if you've argued, at length, about whether or not Mrs. O'Leary's cow did it; you know you're from New Jersey if you know where Jimmy Hoffa is buried; and you know you're from Connecticut if your mom works at Aetna or Travelers and your dad works at Pratt & Whitney.

There are dozens of these sorts of lists floating around the Internet, and if you are from one of these places, you no doubt have seen the list make multiple appearances in your inbox. I've found that there's even a Web site that hosts dozens of these lists. If you are wondering whether there's one about your state or town, visit Yahoo! Internet Life's Forward of the Day feature at *www.zdnet.com/yil/content/depts/forward/fromforwards.html.*

In the spirit of the twisted, creative people who make these geography-based lists, I have decided to create one for the insurance industry, which can always stand to poke fun at itself.

* * *


Paul D. Winston

You know you're in the insurance industry if:

You know that M&M is not just a candy.

You know that not all captives require hostage negotiators.

You read the emergency preparedness cards and note all the exits on airplanes.

You know at least five actuary jokes—and you find all of them funny.

When you say "cats," you aren't talking about the animal or the musical.

You complain about how many times you've gone to Bermuda on business.

You complain about how many times you've gone to Monte Carlo on business.

You complain about how many times you've gone to Switzerland on business.

You watch the Weather Channel with dread from June through November.

You know the Bornhuetter-Ferguson method has nothing to do with birth control.

You know that Hartford, Conn., is no longer the insurance capital of the United States.

You wish the RIMS conference would end on Wednesday.

You know that Hank Greenberg is not just a baseball player.

You've spent hours over the years discussing who will succeed Hank Greenberg.

You stop to fix bumps in the carpeting of public places.

You know that a net loss is not a catastrophe that befalls fishermen.

You know that a follow-the-fortunes clause has nothing to do with seeking the advice of a soothsayer.

You don't complain that homeowners rates in Florida are too high.

You know that A&E is not just a cable television network.

You know what famous insurer was founded in the 17th century equivalent of a Starbucks.

You've complained about the high cost of a bottle of Perrier at the Café de Paris.

You don't think of swimming or billiards when you hear the word pool.

You've remarked that the Chinese symbol for "risk" also is used to represent "opportunity," or have heard it said at least half a dozen times.

When people talk about the two Brians, you know whom they are talking about.

You know where the National Union Fire Insurance Co. of Pittsburgh, Pa., is actually based.

You would never name your child Andrew, Georges, Hugo or Camille.

You can carry on a 15-minute conversation using nothing but acronyms.

You know an alien insurer or two, and they are not from beyond our solar system.

* * *

I would welcome additions, revisions and improvements to this list; e-mail them to me at the address below and maybe we can create something truly worth forwarding over the Internet that won't be instantly deleted when it arrives.

Editor Paul D. Winston's commentary appears fortnightly and on www.businessinsurance.com. *He can be reached at pwinston@crain.com.*

Charter

Continued from page 3

federal insurance commissioner's office within the Treasury Department. The office would be patterned after the Office of Thrift Supervision and the Office of the Comptroller of the Currency. The commissioner, who would serve a five-year term, would have plenary powers designed to assure that federally chartered entities are subject to federal, not state, regulation. The office and its activities would be funded through assessments and fees on federally chartered insurers.

In addition to detailing the characteristics of a national insurance company—which could be organized on either a stock or mutual basis—the proposal also calls for the creation of a National Insurance Guaranty Corp. That entity could borrow up to $30 billion from the U.S. Treasury for initial funding of its operations. The corporation would administer two funds, one for life/health insurers and one for the property/casualty sector. All national insurance companies would have to belong to the corporation, and its guaranty funds would be funded through risk-based assessments of member insurers.

'The corporate community has a major stake in (federal oversight of insurance), and if it's done right, they could benefit greatly,' says Zurich's Francis C. Bouchard.

Under the proposal, insurance agencies could also seek federal charters from the commissioner. Other provisions include a repeal of the limited antitrust exemption granted insurers by the McCarran-Ferguson Act of 1945 and a section that explicitly recognizes the right of states to continue levying taxes—including premium taxes—on insurers and agencies.

Insurance industry observers have not rushed forward to embrace the proposal, but they give it high marks for focusing attention on the need for greater uniformity in insurance regulation. Efforts to promote uniformity have moved slowly despite the passage of the federal Gramm-Leach-Bliley Financial Services Modernization Act in 1999, which includes certain uniformity provisions. The measure bears the names of its chief sponsors—Sen. Phil Gramm, R-Texas, and Reps. Jim Leach, R-Iowa, and Thomas Bliley, R-Va.

The National Assn. of Insurance Commissioners, under a deadline set by the modernization law, has been working to achieve reciprocity or uniformity in the non-resident producer licensing process to avoid imposition of federal licensing system. But by the end of November—a year after the law's enactment—only four states out of the required number of 29 had taken the steps necessary to achieve that goal. That means that 25 more states will have to bring their practices into line by Nov. 12, 2002, or the federal system—centered around the proposed National Assn. of Registered Agents and Brokers—will go into effect.

"Congress needs to be engaged in this debate. NARAB may offer a very strong and attractive alternative to a clear-cut federal chartering or leaving the states alone approach," said Joel Wood, senior vp-government affairs for the Council of Insurance Agents & Brokers in Washington.

Mr. Wood predicted, though, that the new Congress would not move swiftly on the matter.

"They're going to deal with it, but the most important reality is that there is not going to be a federal chartering option enacted into law in the next session of Congress...if for no other reason than for the expected opposition of Senate Banking Committee Chairman Phil Gramm. That alone is sufficient to guarantee that it is not going to get to the finish. I say this from the standpoint of someone who supports a serious look at the federal chartering option," said Mr. Wood, who participated in the AEI discussion.

"I have always thought the mere presence of a viable federal alternative is a galvanizing tool for those who seek national treatment in insurance regulation. Just as the Dingell inquisition into insurer insolvencies in the early '90s almost led to the solvency accreditation program, a serious debate over federal chartering can advance the NAIC leadership's goals of harmonizing insurance regulation across the board," said Mr. Wood, referring to Rep. John D. Dingell, D-Mich., the former chairman of the House Energy and Commerce Committee. Rep. Dingell investigated insurance fraud and regulation in the early 1990s.

Another panel participant—Craig Berrington, general counsel and senior vp of the American Insurance Assn.—said that the end, rather than the means, is the greatest concern of insurers.

"From the AIA's perspective, it's less critical who is regulating us than what is being regulated and how it's being regulated. Because of that, we have been very supportive of the NAIC's efforts this past year to begin the process of coming to grips with the need to modernize insurance regulation. To the extent that the NAIC succeeds in refashioning state regulation—so that it moves away from price controls and unnecessary limitations of the introduction of product to market—they will strengthen the argument for state regulation and make the discussion of federal alternatives less immediate."

"With that in mind, we think that the ABAIA proposal was a creative first cut, although we believe it focused too much on a banking model, rather than using terminology and concepts familiar to those in the insurance business," Mr. Berrington said. "We really need the NAIC to continue to work hard to modernize the system, and that is where the focus should be now."

Risk managers are taking a wait-and-see approach, noted Daniel Barry, director-government affairs for the Risk & Insurance Management Society Inc. in New York.

"We're very interested in what shape a 'national charter' would have. Done properly, it could open up the market to greater competition, benefiting consumers," said Mr. Barry.

"I think that risk managers have a lot at stake in this because of the cost of insurance caused by inefficiencies in the regulatory structure caused by inefficient state regulation. I think it goes beyond cost—I think a sophisticated risk manager has to be on top of the status of 50 different sets of rate and form regulations, market conduct regulations, solvency regulations, guaranty fund laws and a multitude of other individual requirements that could impact a standard national policy," Mr. Wood said.

Risk managers "may be among the earliest and most significant beneficiaries of national treatment," said the CIAB's Mr. Wood.

"This is important for risk managers because it begins a debate about the regulatory structure for the marketplace in which they're buying insurance. The corporate community has a major stake in this issue, and if it's done right, they could benefit greatly through a more efficient and flexible marketplace," said Francis D. Bouchard, senior vp and director-federal affairs in the Washington office of Zurich Financial Services Group Inc.

Mr. Wood said that debate needs to move forward despite opponents' concerns. "The risks of not having a debate on this outweigh the risks of Congress getting it wrong," he said. BI

City's gun suit dismissed

PHILADELPHIA–Gun manufacturers have won a big victory after a federal judge dismissed a lawsuit brought by the city of Philadelphia.

U.S. District Court Judge Berle M. Schiller late last month found that Pennsylvania law prohibited the city and five civic organizations from filing the lawsuit that claimed Beretta USA Corp. and 13 other gun makers created a public nuisance in the way they negligently distributed their products.



Attorneys for the city had argued that the defendants used marketing and distribution methods that allowed guns to fall into the hands of criminals and children.

Judge Schiller ruled that Pennsylvania's Uniform Firearms Act regulates firearms and contains provisions that prohibit the city from filing the suit.

The judge found that even if the suit was permissible, its theories based on negligence and public nuisance laws were flawed.

—By Michael Bradford

Aetna

Continued from page 2

renewing Jan. 1, "coupled with a strong focus on disciplined underwriting, with the intent of improving medical cost ratios."

Related to its restructuring initiatives, Aetna will record an aftertax charge of $100 million in this year's fourth quarter.

Meanwhile, in an attempt to improve its relations with doctors, Aetna announced today that it would abandon its longtime policy of requiring doctors who contract with the company to participate in all of the health insurance products it offers.

Instead, physicians will have the option of participating only in Aetna's health maintenance organizations or its preferred provider options, or to participate in all Aetna products.

The change follows discussions with physician associations around the country, including groups in New Jersey, Florida and California.

Aetna's announcement "reflects our commitment to work as a partner with physicians in providing patients with access to quality, affordable health care," Aetna President and Chief Executive Officer Dr. John W. Rowe said in a statement. "One of my highest priorities is improving physician relationships with the goal of improving health care quality. Many physicians have told us that our all products policy has been a concern." BI

Privacy

Continued from page 1

a problem that needed a .22." Ironically, the regulations also "absolutely stop in their tracks" some of the best efforts to enhance quality, Ms. Darling said.

"Employers do realize, as most people do, that privacy is a very important issue. At the same time, medical plans are tough enough and problematic enough to administer as it is. This adds another layer of difficulty on top of that, and that is something that is matter of concern to employers," said Henry Saveth, an attorney with William M. Mercer Inc. in New York.

"I think that one possibility we may see in the future is that the familiar enrollment card will be changed into a kind of enrollment epistle, in that a very small portion will actually be used to sign up for the plan and the larger portion will be a series of releases, an important aspect of which will be a waiver of privacy rights," he said.

Mr. Saveth agreed that higher costs are a possibility. "One issue in that regard is that if you have a self-insured plan, is there going to be difficulty getting information from the administrator to purchase stop-loss insurance? In other words, the stop-loss carrier may want detailed information on your catastrophic claims, and that administrator may say—rightly or wrongly—that they're sufficiently scared about the privacy law not to release it."

Neil Trautwein, director of employment policy for the National Assn. of Manufacturers in Washington, was even more critical of the regulations.

"The biggest problem is there is a profound lack of balance. If there was a 'tilt' light, it would be glowing madly, because this favors individuals over the necessary flow of information through our health care system," he said.

Mr. Trautwein expressed concern that the regulations could lead to greater employer liability even though they create no new private cause of action, because they open "the door to more litigation based on state law. In addition, it makes employers responsible for the privacy practices of their business partners—the health plans and other entities like the groups that operate employee assistance programs. It's another disincentive for employers to offer group health coverage, which we can ill afford."

The regulations' impact on workers compensation appears more benign, if still ambiguous in some respects.

Billie Fae Fuschi, vice chair of the Risk & Insurance Management Society Inc.'s External Affairs Team and director-workers compensation at Methodist Healthcare in Memphis, Tenn., said, "the only concern that we have is the notification issue."

She noted that the regulation still requires written notification for release of workers comp-related information.

"They do require that if you have an in-house treatment for workers comp, that you have a posting, that if it's out of our place of business, then the injured worker must be notified in writing that the employer will get the records. The regulations really expect you to have your releases very, very specific. I'm concerned about what sort of guidance do we have as to what is an acceptable notification," said Ms. Fuschi.

What impact will these rules have on 'an employer's ability...to get workers back to work?' asks Bruce Wood.

"From our standpoint, while it is not perfect, the work comp exemption is better than it was in the draft. We're pleased that they have made progress," said Julie Gackenbach, director-government relations for the National Assn. of Independent Insurers in Washington.

"There's actual language that allows them to give us information under the work comp system. They said covered entities are allowed to give information as provided by state law. The one issue is that some states may have to codify what information is allowable," she said.

Ms. Gackenbach said she is somewhat concerned that although other lines of property/casualty insurance—such as automobile—aren't covered by the regulations, insurers will still "now have all these third parties saying to us, 'Prove to us to that you're going to protect this information.' "

"They have added a provision dealing with standards of disclosure on workers compensation, and a covered entity could disclose protected health information that's specifically authorized by law," said Ken Schloman, Washington counsel for the Alliance of American Insurers.

"In that regard, they have addressed and clarified some of the workers compensation issues. If a state comp law specifically addresses what type of information can be disclosed and the circumstances under which it can be disclosed and how it can be disclosed, it appears workers compensation laws override privacy law. But where state law is ambiguous, there could be some problems. That leaves us in a situation where we would have to comply with the privacy regulations at least to the extent that there is some question of ambiguity," Mr. Schloman explained.

"That could very well be a problem for multistate employers and, in addition, possibly handling claims where the employee works in one state and lives in another," he said.

"Since the government was not successful in pre-empting workers compensation law as it stands, I don't think there's going to be a national way of handling workers compensation. I think it's still going to be state-specific," RIMS' Ms. Fuschi said of cross-state issues.

"I think what's going to happen is that the state programs are going to adopt a version of the federal privacy standard. The federal privacy standard will become the gold standard. You will be very limited in what you can receive," she said.

"From a workers compensation perspective, the transcendent issue is, what impact is this going to have on a work comp insurer's or employer's ability to effectively manage disability and, in doing so, to get injured workers back to work in a timely manner?" said Bruce Wood, assistant general counsel for the American Insurance Assn. in Washington.

"There is another issue of equal importance, which is the impact of the HHS reg on the continued independence of the state-based workers compensation system. To the extent that the regulation establishes standards for disclosing information to non-covered entities—standards which will be enforced by HHS—there is a risk of the federal government interposing itself into certain claims decisions that are reached by insurers, employers and state workers compensation agencies," added Mr. Wood.

Mr. Schloman also cautioned that some language in the preface to the regulation indicates support for making workers compensation insurers a covered entity subject to the health care information restrictions.

The Alliance's Mr. Schloman said that there appears to be a desire from an agency perspective that Congress "go back and address privacy in comprehensive manner."

The way that the Clinton administration issued such a wide-ranging regulation in the last weeks of its existence opens the rule to challenge, several observers said.

"To layer on at the very last minute the sweeping changes, when there is no public comment opportunity, just sort of defies reason. It's not respecting of process," said Watson Wyatt's Ms. Darling.

Mercer's Mr. Saveth called the regulations "legacy rule-making," noting that the administration has issued several other major regulations, most notably a broad workplace ergonomics standard, during recent weeks. "They're all going to be challenged," he said.

NAM's Mr. Trautwein called upon the incoming Bush administration to move quickly on the privacy matter. "The new administration would have to go back to the process of reproposing and reissuing. It can be done and it should be done," he said. BI

UPDATES

Xerox loses Y2K suit in NewYork

Continued from page 2

argued the arbitration clause was unenforceable under the Federal Arbitration Act in the United States.

Approximately 18 companies have filed suits seeking insurance coverage to pay for Y2K remediation expenses.

Premium mandate opposed

LOS ANGELES—An employer organization plans to sue the California Workers Compensation Appeals Board and state workers comp officials to stop a requirement that employers continue paying health care premiums for an employee out on a workers comp-related leave, regardless of length.

The WCAB's interpretation of California Labor Code Section 132a contradicts the Employee Retirement Income Security Act of 1974, according to the Los Angeles-based Employers Group. ERISA not only pre-empts state laws that relate to employee benefits, but also stipulates that employers are responsible only for health care coverage for the period stated under a health plan, according to the Employers Group.

The organization said late last month that it planned to file a lawsuit seeking an injunction blocking the state from enforcing the requirement.

"The contradiction in law signals an alarming trend on behalf of the state to impose strict and overbearing regulations on California businesses," a Dec. 18 statement by the Employers Group said. "California employers are increasingly subject to more stringent state laws that not only add to the cost of doing business, but that directly contradict federal law."

The Employers Group represents about 5,000 businesses and will file the suit on behalf of Santa Maria, Calif.-based Certified Freight of California.

Health care cost spike forecast

Health care costs in 2001 will increase faster than had been predicted only a few months ago, a new survey shows.

Buck Consultants Inc.'s survey is based on responses from 88 health insurers and third-party administrators that provided information about the annual trend factors they use to project future health care costs. The data, gathered in October and November, showed projected increases for 2001 between 0.5% and 1% higher than those in a similar Buck study released in September. For example, in the most recent survey, preferred provider organizations project medical costs to rise by 12.0% next year, while increases of 11.2% had been predicted by PPOs in Buck's September survey. Most recently, health maintenance organizations have projected cost increases of 9.2% vs. 8.6% reported in September (*BI*, Sept. 25, 2000).

"Insurers continue to cite previous underwriting losses and worse-than-expected claims as reasons for raising their trend factors," said Harvey Sobel, a principal with New York-based Buck and a co-author of the survey, in a statement.

The cost of prescription drugs continues to have the highest projected increases, the survey shows. The new survey projects an increase of 19.9% in 2001, compared with 19% reported in the September survey.

"It seems as though drug trends in excess of 20% have become the rule rather than the exception," said Brian Stitzel, the survey's other co-author and a senior actuarial manager at Buck.

Guidance on contingent labor

WASHINGTON—The U.S. Equal Employment Opportunity Commission has issued new enforcement guidance clarifying how contingent workers—those placed in job assignments by staffing firms such as temporary employment agencies—are affected by the Americans with Disabilities Act and the Rehabilitation Act of 1973.

The EEOC, for example, states that neither a staffing firm nor its clients can ask disability-related questions or require medical examinations until after an offer of employment with a particular client has been made. A staffing organization's placement of a person on its roster for future assignment does not constitute an employment offer, according to the guidance.

In addition, the guidance notes that while the staffing firm is generally responsible for providing reasonable accommodations for job applicants, both it and the employer client will often both be responsible for providing accommodations needed on the job.

The EEOC will post its complete guidance on the issue at *www.eeoc.gov* later this month.

Briefly noted

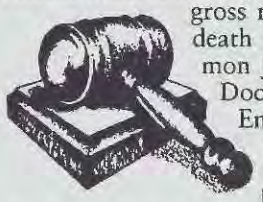
R.J. Reynolds Tobacco Co. will get a new trial in a Tampa, Fla., case in which a jury awarded the estate of a longtime smoker $200,000. A Hillsborough County Circuit Court judge last week granted a motion allowing the new trial after learning that certain testimony was found inadmissible in another case reviewed by the Florida Supreme Court....Seattle-based **SAFECO Corp.** has named William G. "Gary" Reed Jr. as its acting chairman and acting CEO, effective Jan. 1. Mr. Reed, a longtime SAFECO director, will serve in those roles until the insurer finds a replacement for retiring Chairman and CEO Roger Eigsti. Day-to-day management will be led by SAFECO President and Chief Operating Officer Boh Dickey, who the insurer said remains a candidate for CEO....Aon Corp. has appointed Peter Arkley to head **Aon Risk Services Inc. of Southern California**, based in Los Angeles. He will also remain managing director of Aon's construction practice for North America....The **severe winter weather** that ravaged areas from Illinois to the Northeast Dec. 11-12 has been declared a catastrophe by the Property Claim Services unit of the Insurance Services Office Inc. The designation means the event will cause at least $25 million in insured property damage....The **Pension Benefit Guaranty Corp.**'s maximum benefit guarantee for workers in multiemployer pension plans has risen to $12,870 from $5,850. The increase, contained in a provision of the Consolidated Appropriations Act signed by President Clinton late last month, covers workers with 30 years of service under a plan. The new guarantee will apply to any multiemployer plan that did not receive PBGC assistance within a one-year period that ended Dec. 21, 2000. Plans that received PBGC assistance during that period remain covered by the old limit.

FOR THE RECORD

Excerpts from *BI*'s Daily Online Updates, December 18, 2000 - December 29, 2000

ALABAMA TORNADOES Insurers are tallying claims from recent tornadoes that swept through Alabama, killing 12 and injuring dozens. Hardest hit was an affluent area just south of Tuscaloosa, where hundreds of homes and autos were damaged. A Winn-Dixie Stores Inc. supermarket under construction in that area was destroyed. The store was "nothing but a pile of rubble," said a spokesman for State Farm Group, who toured the area. The insurer does not cover Winn-Dixie. West Point Stevens Manufacturing, a textile manufacturer in Henry County, suffered about $2 million in damage to its plant when a tornado tore away the roof, according to Bob Will, emergency management director for the county. Murphy Feed & Seed, also in Henry County, suffered $200,000 to $300,000 in damage, Mr. Will said. Many of the fatalities were in a mobile home park that was ravaged by the high winds about 60 miles south of Birmingham. State Farm expects to pay around $15 million in claims from Alabama homeowners and possibly as much as $1.2 million in auto claims from the Tuscaloosa area. Alfa Insurance Group, based in Montgomery, Ala., said its claims from the storms that moved through the state are expected to total around $16 million.

CORPORATE MANSLAUGHTER CASE The U.K. Director of Public Prosecutions, David Calvert-Smith, has ruled that the U.K. general manager of a Dutch-owned company can be tried for manslaughter. Richard James Martell will face a charge of manslaughter by gross negligence over the death of 24-year-old Simon Jones at Shoreham Docks, near Brighton, England, in April 1998. The company, Netherlands-based Euromin will also be charged with corporate manslaughter. The trial is expected to begin next year. Mr. Jones was crushed to death by a crane shortly after starting work at the docks. His family's lawyers charge that he received no training for the job of unloading cargo and was working alongside two Polish crewmen who spoke no English. To date, just three of the six corporate manslaughter cases taken to court in the United Kingdom have been successful. In order to secure a corporate manslaughter conviction, prosecutors must prove that a "controlling mind" of a company, such as a chairman or senior manager, was at fault. The U.K. government is currently reviewing proposals that would make it easier for manslaughter charges to be brought. Representatives of Euromin could not be reached for comment.



NICHOLS JOINS NEW YORK LIFE Former Kentucky Insurance Commissioner, George Nichols III, will join New York Life Insurance Co. as a senior vp and assistant to the chairman, beginning Jan. 8. Mr. Nichols, who last month resigned as Kentucky's top insurance regulator, will be based in New York. His replacement, Janie A. Miller, was the state Insurance Department's deputy commissioner of health insurance. Kentucky Gov. Paul E. Patton recently announced her appointment, which is subject to confirmation by the state Senate. Ms. Miller, 45, has nearly 24 yeas of experience in the development and administration of health care programs. In addition to health issues, Ms. Miller said she also plans to focus on agent licensing and market conduct.



Mr. Nichols

SCOR AUTOMATION French reinsurer SCOR S.A. has automated all transactions with two of its major clients. A spokeswoman for SCOR confirmed that the company will now be able to carry out fully automated transactions with two major international brokerage firms. "These structured transactions, which already concern the data processing of nearly 1,000 treaty reinsurance accounts, significantly improve our efficiency in terms of client and partner relationships and increase the productivity of our group," Serge Osouf, president and chief operating officer of Paris-based SCOR, said in a statement. SCOR's announcement follows the launch earlier last year of a program to encourage the introduction of international insurance industry e-commerce standards. That program was developed and launched by WISe, a London-based industry group.

CNA TO MAKE REPAIRS CNA Financial Corp., in a settlement agreement with the City of Chicago, will pay a $250,000 fine and replace nearly all of the windows in its 45-story headquarters in Chicago. The agreement reached last month was prompted by an October 1999 accident in which a woman pedestrian was struck and killed by a large piece of glass that fell from one of the skyscraper's windows. "We have been working around the clock with the city since the incident to find the most comprehensive safety plan for our building," a CNA spokesman said. The insurer has applied an adhesive to all current windows and has already replaced 800 of the 2,900 windows to be fixed, he said. The project, which will cost CNA an estimated $9 million, is expected to be completed in June 2003. CNA's spokesman declined to comment on a pending civil lawsuit brought by the family of the victim.

BERKSHIRE BUYING JOHNS MANVILLE Berkshire Hathaway Inc. has announced it will acquire Johns Manville Corp. for $1.92 billion in cash, adding to a string of building products makers that Berkshire has bought or invested in, including another former asbestos producer, USG Corp. In November, Berkshire disclosed that it had acquired a nearly 15% stake in Chicago-based USG, a manufacturer of gypsum wallboard that faces past asbestos-related liabilities. In the last year, Berkshire has also bought Shaw Industries Inc., a carpet manufacturer; paint producer Benjamin Moore & Co.; and Justin Industries, a leading brick maker. "Johns Manville fits well in the Berkshire family of successful enterprises with global brand recognition," Berkshire Chairman Warren Buffett said in a statement.

UNITEDHEALTH MOVES UnitedHealth Group Inc. has named Jeannine Rivet as executive vp. Ms. Rivet, who previously was chief executive officer of the Minneapolis-based company's UnitedHealthcare subsidiary, will also serve as CEO of Ingenix, a group subsidiary that provides health care information. Replacing Ms. Rivet as CEO of UnitedHealthcare is Robert Sheehy, who has served as president of the health maintenance organization since 1998. In addition, Patrick Erlandson has been named chief financial officer of UnitedHealth Group. Mr. Erlandson currently serves as the company's corporate controller and chief accounting officer.



Ms. Rivet

BRIEFLY NOTED **PacifiCare Health Systems Inc.** has named Howard Phanstiel as the company's new president and chief executive officer. Mr. Phanstiel has been the acting president and CEO of the managed care company since October. He joined the company in July as executive vp and chief financial officer.... Chubb Corp. subsidiary **Chubb Executive Risk** has become a national sponsor of the Women Presidents' Organization, a national, non-profit peer-advisory group for women executives. As a sponsor, Chubb Executive Risk will advise members of the New York-based organization on protecting against various risks....PartnerRe Ltd. has named Graham Dimmock as chairman and president of its Paris-based **SAFR PartnerRe** reinsurance unit, effective Jan. 1. Mr. Dimmock, who joined PartnerRe as an executive vp in 1996, succeeds Herve Cachin, who is retiring.... Aon Corp. unit **Combined Insurance Co. of America** has completed its purchase of the accident and health business of **Reliance National Insurance Co.** Under an agreement reached last year, Combined will retroactively assume Reliance National's accident and health book effective Aug. 1, 2000. BI

To get breaking news as it occurs, visit Business Insurance's free online Updates at www.businessinsurance.com. All of the material in the 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.

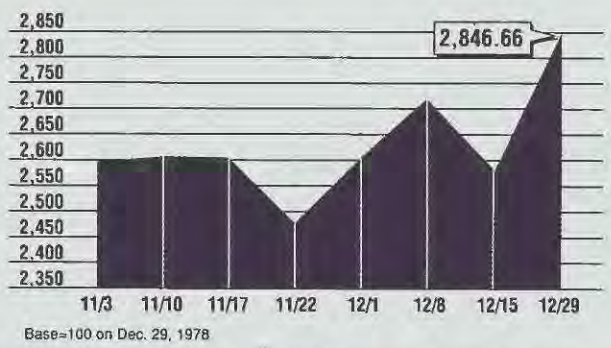
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BI Industry Stock Report

DECEMBER 26, 2000, THROUGH DECEMBER 29, 2000

BROKERS		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
Aon Corp.	NYS	34.25	6.41	-14.38	42.75	20.69	3940
Brown & Brown	NYS	35.00	-1.06	82.71	35.63	15.63	200
Clark Bardes Holdings	NDQ	10.13	6.58	-29.57	17.88	8.50	56
E.W. Blanch Holdings Inc.	NYS	17.44	6.08	-71.53	62.56	13.00	848
Gallagher Arthur J. & Co.	NYS	63.63	-0.29	96.53	68.50	23.06	952
Hilb, Rogal & Hamilton	NYS	39.88	0.31	41.15	42.13	25.63	176
Kaye Group Inc.	NDQ	7.75	6.90	-7.46	11.88	5.00	35
Marsh & McLennan	NYS	117.00	6.30	22.27	135.69	70.50	3620
BROKERS	AVERAGE		3.04	27.28			
INSURERS/REINSURERS							
ACE Ltd.	NYS	42.44	4.78	154.31	43.75	14.06	5682
Accel International Corp.	NDQ	0.30	140.00	-70.00	1.19	0.10	355
Acceptance Insurance Cos.	NYS	5.25	25.37	-8.70	7.00	2.75	694
AEGON N.V.	NYS	41.44	5.07	-13.22	49.13	31.50	456
Aetna Life & Casualty	NYS	41.06	17.11	47.14	41.88	32.94	3633
AFLAC Inc.	NYS	72.19	2.21	52.98	74.94	33.56	2874
Allmerica Financial Corp.	NYS	72.50	7.81	30.34	72.50	35.06	1002
Allstate Corp.	NYS	43.56	5.45	81.04	44.75	17.19	8494
Ambac Financial Group	NYS	58.31	10.15	67.60	58.31	25.91	2352
American Financial Group	NYS	26.56	13.64	0.71	29.00	18.38	834
American General	NYS	81.50	5.08	7.41	82.81	45.63	2863
American Intl Group	NYS	98.56	1.74	36.73	103.75	52.38	21010
American Safety Insurance	NYS	6.13	13.95	-5.77	7.38	3.25	62
Argonaut Group	NDQ	21.00	12.00	5.66	24.00	14.44	248
AXA-UAP Group	NYS	71.81	5.80	1.14	81.50	58.25	3115
Baldwin & Lyons Inc.	NDQ	23.25	11.88	5.08	23.94	15.25	44
Berkley W.R. Corp.	NDQ	47.19	7.55	126.05	47.63	14.00	887
Berkshire Hathaway Inc.	NYS	71000.00	7.25	26.56	71000.00	40800.00	2
Capital Transamerica Corp.	NAS	12.44	1.53	23.60	13.25	9.38	71
Chubb Corp.	NYS	86.50	1.39	53.61	90.25	43.25	2987
CIGNA Corp.	NYS	132.30	4.08	64.22	134.50	60.75	3011
Cincinnati Financial Corp.	NYS	39.56	1.61	24.12	43.31	26.19	1273
Citigroup	NYS	51.06	4.74	21.95	59.13	35.34	45179
CNA Financial Corp.	NYS	38.75	2.65	-0.48	42.13	24.56	583
CNA Surety	NYS	14.25	3.64	9.62	14.94	9.81	560
EMC Insurance Group Inc.	NDQ	11.75	10.59	28.77	12.00	6.81	65
ESG Re Limited	NDQ	1.84	-4.84	-73.42	7.00	1.72	848
Enhance Financial Services	NYS	15.44	2.49	-5.00	17.81	8.63	1912
Everest Reinsurance	NYS	71.63	7.20	221.01	74.00	20.69	2904
Fremont General Corp.	NYS	2.81	40.63	-61.86	9.63	1.50	2951
Frontier Insurance Group	NYS	0.09	0.00	-97.27	3.69	0.06	8050
Gainsco Inc.	NYS	2.63	7.69	-51.16	6.38	2.19	540
Harleysville Group	NDQ	29.25	0.21	105.26	30.63	11.63	272
HSB Group Inc.	NYS	38.75	0.00	14.60	40.63	21.50	782
HCC Insurance Holdings	NYS	26.94	11.37	104.27	26.94	10.38	904
ING Groep N.V.	NYS	80.13	5.34	31.35	80.13	46.81	592
IPC Holdings Ltd.	NDQ	21.00	-2.04	41.18	22.88	9.75	712
Hartford Financial Services	NYS	70.63	3.67	49.08	80.00	29.38	3282
John Hancock Financial Services	NYS	37.63	9.06	121.32	37.69	13.44	3289
LaSalle Re Holdings Ltd.	NYS	18.88	0.00	14.39	19.38	10.88	0
Lincoln National	NYS	47.31	2.30	18.26	56.38	22.63	2669
MAIC Holdings Inc.	NYS	16.69	11.72	-21.24	23.13	10.00	218
Markel Corp.	NYS	181.00	6.39	16.77	181.00	111.50	102
MBIA Insurance Group	NYS	74.13	3.76	40.36	76.19	36.31	1739
Meadowbrook Insur. Group	NYS	8.13	35.42	23.81	8.13	3.94	79
MetLife	NYS	35.00	6.46	145.61	36.50	14.25	6766
Mutual Risk Mgmt. Ltd.	NYS	15.19	16.27	-9.67	23.75	12.31	1569
Navigators Group	NDQ	13.31	0.47	36.54	14.13	8.63	79
NYMagic Inc.	NYS	18.88	0.00	43.13	19.25	12.25	17
Ohio Casualty Corp.	NDQ	10.00	2.89	-37.74	17.88	6.13	1080
Old Republic Int'l	NYS	32.00	6.89	134.86	32.00	10.63	1757
Partner Re Ltd.	NYS	61.00	11.42	88.05	61.00	28.38	1168
Penn-America Group Inc.	NYS	7.63	5.17	-1.61	9.75	6.63	59
PMA Capital Corporation	NDQ	17.25	4.55	-13.21	20.06	15.19	239
Philadelphia Cons. Holding	NDQ	30.88	20.78	112.93	30.88	14.13	462
PXRE Corp.	NYS	16.88	-1.46	29.81	17.56	10.00	234
ReliaStar Financial Corp.	NYS	53.94	0.00	37.65	53.94	23.75	0
RenaissanceRe Holdings Ltd.	NYS	78.31	0.97	91.59	81.50	35.88	711
RLI Corp.	NYS	44.69	3.92	31.43	44.69	26.25	89
St. Paul Cos.	NYS	54.31	4.45	61.22	57.00	21.31	4280
SCOR	NYS	50.25	-1.23	13.56	53.63	38.38	46
SAFECO Corp.	NDQ	32.88	3.95	32.16	34.25	18.00	4369
SCPIE Holdings Inc.	NYS	23.63	9.25	-26.46	36.94	18.31	NA
Seibels Bruce Group	NDQ	3.56	-25.07	-67.89	2.69	0.53	117
Selective Ins. Group	NDQ	24.25	6.01	41.09	25.00	14.63	215
Tokio Marine & Fire	NDQ	57.00	-0.87	-3.59	67.00	45.00	96
Torchmark Corp.	NYS	38.44	0.00	32.26	41.19	18.75	1635
Transatlantic Holdings	NYS	105.88	7.01	35.63	105.88	68.75	78
Trenwick Group Inc.	NYS	24.81	10.58	46.49	27.13	12.00	750
Unico American Corp.	NDQ	5.88	0.00	-16.07	7.88	4.50	61
United Fire & Casualty	NDQ	19.75	14.08	-12.71	23.31	15.50	124
Unitrin	NDQ	40.63	8.15	7.97	41.00	27.19	657
UNUM Corp.	NYS	26.88	1.90	-16.18	32.94	11.94	3648
Vesta Insurance Co.	NYS	5.06	8.00	30.65	7.88	3.44	703
XL Capital Ltd.	NYS	87.38	6.15	68.43	88.00	39.00	2144
Zenith National Ins.	NYS	29.38	-0.21	42.42	29.75	18.75	153
INSURERS/REINSURERS	AVERAGE		5.78	26.74			
HEALTH MAINTENANCE ORGANIZATIONS							
Health Net Inc.	NYS	21.13	0.00	112.63	21.88	6.63	0
Humana Inc.	NYS	15.25	6.09	86.26	15.25	4.75	2675
Oxford Health Plans	NDQ	39.50	7.30	211.33	42.75	10.63	4683
Pacificare Health Sys.	NDQ	15.00	28.34	-71.70	72.31	9.81	4589
Sierra Health Services	NYS	3.80	16.21	-43.18	9.31	2.44	634
United HealthGroup	NYS	61.38	1.71	15.53	61.50	23.19	5661
Wellpoint Health Networks	NYS	115.25	3.48	74.79	121.50	56.94	2869
HMOs	AVERAGE		9.02	55.09			
ALL COMPANIES			5.95	36.37			

BI Insurance Index



Base=100 on Dec. 29, 1978

Top advancing issues: Accel International Corp., Fremont General Corp., Meafowbrook Insurance Group; Leading decliners: Seibels Bruce Group, ESG Re Ltd., IPC Holdings Ltd. Most active issue: Citigroup. The *BI* Index increased 4.4%; the Dow Jones 30 Industrials went up 2.9%; the S&P 500 rose 3.6%; and the NYSE Composite increased 4.4%. Average P/E: Brokers, 23.2; Insurers/reinsurers, 29.8; and HMOs, 16.2.

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



The engineer who designed this bridge was undoubtedly faced with many challenges. For innovative thinkers, satisfaction can come from discovering new, more effective solutions. As a risk management services provider, we understand how important it is to constantly seek out new ways of doing things. We provide new tools which will help you take your company further. Watch out for what's next.

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