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UPDATES

Lloyd's orders 19 syndicates to increase their capital

LONDON—Lloyd's of London regulators have imposed financial penalties on 19 syndicates, including two with U.S. parents.

In a crackdown on underperforming businesses, Lloyd's regulators have told the syndicates that they will need to increase their capital for the 2001 year of account.

A Lloyd's spokesman said that capital loading could be imposed on individual syndicates or managing agents if the syndicate has excessive losses, if it has made

See **Updates** *on next page*

PBGC returns plans to White Consolidated

By MICHAEL PRINCE

WASHINGTON—In the first settlement of its type, White Consolidated Industries Inc., a unit of Sweden's Electrolux A.B., has reached an agreement with the Pension Benefit Guaranty Corp. under which the employer will resume sponsorship of six terminated pension plans and pay the PBGC $40 million.

The agreement comes less than a month after a federal appeals court ruled in favor of the PBGC, declaring Cleveland-based WCI liable for the pension plans. The recent ruling by the 3rd U.S. Circuit Court of Appeals ends almost a decade of litigation to resolve the liability for the plans, which cover about 5,000 workers.

It's the first time that a plan sponsor has taken back from the PBGC a previously terminated plan, a PBGC spokesman said.

"It does represent a new frontier for the PBGC," the spokesman said.

The cost to White Consolidated Industries of resuming the plan sponsorship may hit $180 million, said Olle Wallen, general counsel for WCI in Cleveland.

The company agreed to the settlement "to obtain security in the terms of the exposure amount," Mr. Wallen said. The PBGC had estimated the liability at about $225 million.

See **Settle** *on page 22*

Documents often get overlooked in disaster plans

By MICHAEL BRADFORD

Some risk managers may be overlooking an important piece of a disaster recovery plan—making sure that critical documents can be printed if catastrophe strikes.

While backing up computer data is commonplace, not all employers are considering the difficulties that could arise if they are unable to print bills, statements, invoices, paychecks and other documents that are needed to keep a company running, said Leo Hertzog, president of Mail-Gard Concepts Inc. in Westminster, Pa.

Mail-Gard is among a handful of companies that offer "print-to-mail" services that ensure backed-up data can be printed. It is particularly important, these companies say, for employers to have access to high-speed, state-of-the-art printing and mailing equipment that can keep the income flow from drying up.

Though backing up vital information is second nature to most employers, some may not be considering whether they truly have the ability to print and distribute normal volumes of mail if their own equipment is damaged or destroyed.

In a typical scenario, a business that is struck by a fire, earthquake or other catastrophe that takes away its ability to generate critical documents can turn to a company that has printing and mailing equipment standing by. Using the backup copies of computer files, print-to-mail service providers can get bills in the mail so that the company's income is not interrupted.

Companies such as Mail-Gard and Pitney Bowes Inc. are pitching their facilities to employers as the solution for what they see as an underserved exposure. Both companies' clients pay a monthly fee for access to the services. And when the need to use the services arises, clients pay

See **Mail** *on page 21*

Comparative bad faith denied

Insurer defense rejected

By ROBERTO CENICEROS

SAN FRANCISCO—When California's Supreme Court ruled recently that an insurer cannot escape bad-faith damages by arguing a policyholder is guilty of comparative bad faith, it denied insurers a potential defense doctrine applied widely in other areas of state law.

Had the court's majority ruled otherwise, allowing the insurer to apply the comparative fault argument, insurers would have gained the right to examine a policyholder's entire conduct during underlying third-party litigation, according to the attorney who argued the case before the high court on behalf of the policyholder.

Insurers then could have attempted to hold policyholders responsible for a share of any damages that resulted from third-party litigation, said Thomas W. Johnson Jr., an attorney at Irell & Manella L.L.P. in Newport Beach, Calif.

"In almost every case, if you look hard enough, you can find something—including statements made in depositions or bad communications to the insurer—that could be seized upon to say the terrible result was your own fault," he said.

The practice would have flourished, Mr. Johnson and other policyholder attorneys say.

Instead, in a decision widely watched by policyholders and insurers, the California Supreme Court found in *Kransco vs. American Empire Surplus Lines Insurance Co.* that the insurer breached its duty of good faith and fair dealing. The insurer did so by unreasonably failing to settle a third party's lawsuit within the policyholder's $1 million primary policy limits, thereby exposing the policyholder to damages far in excess of those limits, court

See **Court** *on page 21*

Hepatitis C costs to soar

Study warns of consequences of not managing disease now

By RODD ZOLKOS

A mounting hepatitis C epidemic threatens to cost employers, insurers, health plans and governments tens of billions of dollars over the next two decades, though a commitment to curative treatment can dramatically reduce those costs, a recent study suggests.

Those suffering from the hepatitis C virus, or HCV, currently consume a total of at least $15 billion per year for medical care, according to the study conducted by Milliman & Robertson Inc.

Without effective curative treatment, total annual health care costs for hepatitis C patients will peak at an estimated $26 billion in current dollars in about 2021, Milliman & Robertson says.

See **Hepatitis** *on page 22*

Influencing outcomes

Tracking progression of hepatitis C disease

Disease state	Starting population	Population after 15 years: Without curative treatment	With combination therapy
Mild/moderate hepatitis C	529,000	360,000	210,000
Cirrhosis	119,000	105,000	85,000
Advanced liver disease	0	32,000	22,000
Cured	0	0	217,000
Dead	0	150,000	114,000
Total	**648,000**	**648,000**	**648,000**

Source: Milliman & Robertson Inc.

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NEWSPAPER

UPDATES

Syndicates told to boost funds

Continued from previous page
inaccurate forecasts and/or if there are management weaknesses. The syndicates have 14 days from notice of the loading to request a "statement of reason" explaining why the capital increase has been imposed. Syndicates then will have an additional 14 days to appeal.

Lloyd's did not specify each syndicate's capital shortfall. The syndicates must raise their capital by their regular means—via private or corporate investors.

The syndicates and managing agencies affected are: CNA Underwriting Agencies Ltd. syndicate 1229 (non-marine); PXRE Managing Agency Ltd. syndicates 1224 (non-marine), 1250, 2002 and 2004; St. Paul Syndicate Management Services syndicate 1211 (non-marine); Chartwell Managing Agents Ltd. syndicates 44, 839 and 2241; Chaucer Syndicates Ltd. syndicate 587; Crowe Syndicate Management Ltd. syndicate 1121 (marine); Greenwich Managing Agency Ltd. syndicates 994 (non-marine short-tail), 1222 and 1923; Hardy (Underwriting Agencies) Ltd. syndicate 382 (marine, aviation and non-marine); KGM Underwriting Agencies Ltd. syndicate 260 (motor); Malborough Underwriting Agency Ltd. syndicate 744 (marine); Sterling Underwriting Agencies Ltd. syndicate 529 (non-marine); and Wren Syndicates Management Ltd. syndicate 735 (marine).

Medicare HMO pullout continues

SANTA ANA, Calif.—PacifiCare Health Systems Inc. further contributed to a growing exodus of Medicare+Choice HMO plans when it announced last week that it intends to withdraw such health maintenance organization plans from 15 counties in five states.

The move by Santa Ana, Calif.-based PacifiCare affects more than 26,000 members in Arizona, Colorado, Texas and Washington. The company in June announced a similar withdrawal in Ohio.

"The county exits announced today are a direct result of inadequate payments and increased administrative burden. There is a widening gap between rising health care costs and the amount the federal government pays Medicare HMOs in these counties," a company statement said.

PacifiCare's decision comes in the wake of several other major Medicare HMO withdrawals, which have affected more than 700,000 members (*BI*, July 3). Those health maintenance organizations also cited rising costs and inadequate federal funding as reasons for their decision to withdraw from the Medicare HMO market.

NAII sues over malpractice fund

ALBANY, N.Y.—The National Assn. of Independent Insurers is suing the state of New York over its planned dissolution of the state's medical malpractice fund.

The fund, created in the 1970s when doctors had trouble finding private medical malpractice insurance, is slated to be dissolved as a result of a law passed last year.

Not enough money exists in the fund, however, to pay a $370 million reinsurance premium needed for the dissolution, and the state wants New York property/casualty insurers to fund the difference, which would amount to about $100 million to $150 million, the NAII contends.

A spokesman for the National Assn. of Independent Insurers said the suit seeks to prevent the insurers from having to pay this money.

Since 1992, New York state has withdrawn more than $700 million from the fund because it had ample reserves, the NAII contends. Under the law that permitted this withdrawal, the state pledged to repay the money.

That law, however, was repealed last year as part of the dissolution, and if New York state does not repay the money—or at least enough to cover the reinsurance premium—the state's insurance companies will have to fund the reinsurance premium, according to the NAII.

The suit seeks to clarify when the fund is considered dissolved and when the repay law becomes repealed. The insurers want the repay law to remain in force until after the fund incurs the reinsurance premium, making the state liable for any shortage in funds.

In addition, the suit seeks to delay the medical malpractice fund's dissolution until after the fund receives a federal tax refund of up to $200 million, enough to cover the reinsurance premium.

Acting commissioner named

SACRAMENTO, Calif.—California's departing insurance commissioner, Chuck Quackenbush, last week named a law professor and head of a university public affairs program as his temporary replacement.

Clark Kelso, the director of the Institute for Legislative Practice at the University of the Pacific McGeorge School of Law in Sacramento, will assume the title of chief deputy commissioner of the Department of Insurance, according to a statement issued by the department.

Attorney General Bill Lockyer, who is investigating Mr. Quackenbush's management of the department, recommended that Mr. Kelso be named to the Insurance Department caretaker role, a spokesman for the attorney general said.

Continued on page 22

Overseas Partners Ltd. to buy Reliance Re

By GAVIN SOUTER

PHILADELPHIA—Reinsurer Overseas Partners Ltd. will buy the reinsurance subsidiary of Reliance Group Holdings Inc. for an undisclosed sum.

While the past liabilities of Reliance Reinsurance Co. will remain with Reliance, about 45 to 50 of the 70 Reliance Re staff will be offered jobs with OPL.

The purchase of Reliance Re will give OPL the necessary expertise it needs to expand its business, said Mary Hennessy, president and chief executive officer of Hamilton, Bermuda-based OPL, in announcing the deal last week.

OPL, which has about $2.5 billion in capital and wrote about $500 million in third-party gross reinsurance premiums in 1999, has only about 40 staff members, Ms. Hennessy said. "The missing ingredient we had was talent," she said.

For years, OPL's principal business was reinsuring shippers risk for United Parcel Service of America Inc. That arrangement ended in 1999, however, when a U.S. tax court ruled that the two companies had substantially the same ownership and that the reinsurance transaction was simply a means for UPS to avoid taxes.

Since then, OPL has sought to turn itself into a specialty reinsurer.

Reliance Re, which will remain domiciled in the United States, is largely a shell company with insurance licenses in 40 states, Ms. Hennessy said. Most of the approximately $300 million in gross premiums that Reliance Re wrote in 1999 was written on Reliance Insurance Co. paper, so the reinsurance subsidiary has no old liabilities, she said.

In 1999, Reliance Re had a 129% combined ratio, but when reserve increases are excluded, the reinsurer performed as well as its peers, Ms. Hennessy said.

Reliance Re specializes in reinsurance for small and midsize insurers.

George Roberts, the former CEO of Reliance Re, will not join OPL, as he recently accepted a job at American Re-Insurance Co. Mr. Roberts is expected to start later this month at the Princeton, N.J.-based reinsurer as senior vp in charge of its reinsurance brokerage operations.

American Re, which is mainly a direct reinsurer, set up a department last year to accept business from brokers. BI

Legal merit not required for certification

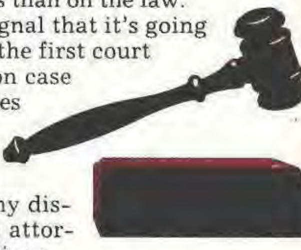
Court clears class action

By JUDY GREENWALD

SAN FRANCISCO—A recent California Supreme Court decision that says the legal merits of a case should not be a factor in deciding whether to certify it as a class action will allow more class-action suits to proceed against businesses, some attorneys warn.

Other attorneys contend, however, that the unanimous decision does not break any new legal ground and will not drive up the number of class actions in California, because courts will continue to have discretion on whether to certify a case as a class-action lawsuit.

"I think it's unfortunate," said John H. Sullivan, president of the Sacramento-based Civil Justice Assn. of California, a tort reform group. "The psychological impact is going to be a green light for those lawyers who are filing lawsuits based more on economic considerations than on the law.



"I think that it is a signal that it's going to be easier to get past the first court hearing in a class-action case and increase (the) chances of bludgeoning a defendant into settling even a meritless case to avoid the cost of lengthy discovery and continuing attorneys fees," said Mr. Sullivan.

In the case, *Linder vs. Thrifty Oil Co.*, Rochelle C. Linder charged Downey, Calif.-based Thrifty Oil Co. with unfair business practices in connection with requiring California residents using credit cards to pay about 4 cents per gallon more for gasoline than customers who paid cash at 200 Thrifty service stations.

*See **Decision** on page 6*

Putting a value on benefits

PBGC seeks input on valuation of plans with variable features

By MARK A. HOFMANN

WASHINGTON—The Pension Benefit Guaranty Corp. is seeking public comment on how it should approach certain benefit valuation issues associated with terminated cash balance pension plans.

Although the exercise is largely academic at this point, as only a handful of cash balance plans have been terminated, some benefit experts are giving the PBGC high marks for tackling the issue now rather than waiting for problems to occur.

The valuation issue arises for cash balance plans that use variable indices, such as the rate on the 30-year Treasury bill, to calculate the interest credit on plan participants' accounts and for annuities. When a plan with variable indices terminates, the PBGC must fix a rate so that it can determine and guarantee participants' future benefits.

The notice seeking public comment on the matter appeared in the July 6 Federal Register.

The PBGC notice said it has several possible alternatives by which to fix variable rates for valuation purposes.

According to the notice, these include using:

- A standardized PBGC value that would apply to all plans that terminate on a given date.
- A "best estimate" determination of each plan termination

*See **Valuation** on page 19*

INSIDE

- Federal regulators should clarify the definition of a multiple employer welfare arrangement, giving some companies permanent relief from regulatory overload, this week's editorial says. **PAGE 8**
- In Perspectives, David J. Guttchen and Mary L. Pettigrew of the Connecticut Partnership for Long-Term Care write that LTC coverage is beneficial for both workers and employers. **PAGE 11**
- Marsh Ltd.'s third annual Alternative Risk Transfer survey of risk managers at the world's largest companies finds their main concern is insurance rates. **PAGE 17**

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Insurers reward stronger server security

By ROBERTO CENICEROS

Imagine outsourcing control of the computers that host a company's Internet business to outside security experts, who would constantly guard against hacker intrusions and other threats to e-commerce.

Contracting for such a service, or undertaking other safeguards against security risks, could eventually determine whether some companies will be able to obtain new insurance coverages for Internet-related risks. For other insurance buyers, such security measures could result in preferential rates and terms for this coverage, some insurers say.

But some e-commerce insurance experts say that pricing discounts in a such a rapidly evolving line of insurance are subjective. It remains difficult, they say, to quantify the amounts of discounts given.

Nevertheless, they agree that such security provisions will increase an underwriter's comfort level with an account.

They also agree that, with the growth of corporate e-commerce risks, more risk managers will be working alongside corporate information technology managers to minimize threats to online operations.

"Really, for the first time, security is being seen as risk management issue and not just an information technology issue," said Ty R. Sagalow, executive vp and chief operating officer of AIG Global E-business Solutions in New York.

The American International Group Inc. unit will give a 10% discount to policyholders who use the services of one of the security companies that have allied themselves with the insurer, said Mr. Sagalow.

"Certainly, if they outsource (their security) to a member of our Technology Alliance Panel, we have a high degree of confidence that their network security is in good hands. That translates to a lower premium," he said.

And AIG is not alone in its approach With the proliferation of companies conducting Internet transactions, insurers, brokers and Internet security companies have teamed up to sell policyholders an array of business services.

Security companies may gain entry to a new account by evaluating an insurance buyer's current security policies and procedures, which usually is an underwriting requirement. They can then pitch their additional services to a risk manager.

Those services include enhancing the security of a client's computer systems, monitoring Internet traffic coming into a client's systems and providing emergency response

See **Security** *on page 6*

Prescreening hires weeds out bad apples

By JOANNE WOJCIK

LAS VEGAS—In today's tight labor market, it's more imperative than ever that employers do background checks on job candidates, a pre-employment screening expert says.

Employers also must be careful, though, not to violate job candidates' right to privacy, warns Barry J. Nadell, president and chief executive officer of Encino, Calif.-based Infolink Screening Services Inc.

HR
SOCIETY FOR HUMAN RESOURCE MANAGEMENT

Additional coverage of the SHRM conference on page 20

Employers risk being sued if they fail to prescreen workers who later perform criminal acts, Mr. Nadell told a group of human resource professionals attending a seminar during the Society of Human Resource Professionals' 52nd Annual Conference and Exposition, which was held June 25-28 in Las Vegas.

For example, he said, a Florida court in 1986 upheld the negligent hiring doctrine when it ruled in *Garcia vs. Duffy* that "the employer knew or should have known of the employee's unfitness, and the issue of liability focuses upon the adequacy of the employer's pre-employment investigation into the employee's background."

"Since that case, there have been lots of cases" holding employers liable for negligent hiring practices, said Mr. Nadell, who said the largest award to date was handed down in a 1998 case against Trusted Health Resources Inc. of Brockton, Mass. In that case, *Ward vs. Visiting Nurses Assn. and Trusted Health Resources Inc.*, a Massachusetts jury awarded the family of a murder victim $26.5 million after a health care professional employed by Trusted Health stabbed the 32-year-old patient to death.

Sometimes it's easy to spot a personnel problem in the making by how a candidate completes the job application, according to Mr. Nadell.

Following are some statements his firm has found on actual job applications:

- "I'm an expert at computers. At my last job, I showed the employees in my group how to change their passwords and find neat stuff on the Internet," one applicant wrote.

"Perfect IT person for you to hire, right?" Mr. Nadell quipped.

- "I left my last job because my boss was a jerk," another candidate wrote.

"That's not somebody that I think you'd

See **Screening** *on page 20*

Business assesses high court's record

By MARK A. HOFMANN

WASHINGTON—The Supreme Court's record for the just-ended 1999-2000 term is as remarkable for what the justices declined to do as for what they did.

The justices refused to create a new right to sue managed care entities under the Employee Retirement Income Security Act. They also refused to allow states to pre-empt federal law in a series of business-related cases.

SUPREME COURT

"This was an excellent term for the business community. Across the board, this is a court that is skeptical of civil litigation as a method of social ordering," said Walter Dellinger, a professor at the Duke University Law School in Durham, N.C., who served as acting U.S. solicitor general in the Clinton administration in 1996-97. Mr. Dellinger offered his observation during a discussion of the high court's rulings at the Washington Legal Foundation late last month.

Other legal experts point out, though, that "excellent" isn't synonymous with "perfect."

While many of the business-related decisions handed down by the court in its most recent term scaled back employer liability, the justices' decision in *Roger Reeves vs. Sanderson Plumbing Products* could make employers more vulnerable to suits alleging age discrimination. In that case, the justices unanimously held that an employee need not offer concrete proof of illegal behavior in a discrimination suit. Instead, the employee may only have to present evidence that the employer's stated reasons for its actions were false to establish that prima facie evidence suggests discrimination (*BI*, June 19).

The *Reeves* decision "definitely was a setback. It's one that will make it more difficult for businesses to win employment cases and also to get them thrown out on summary judgment," said Steve Bokat, executive vp of the Washington-based National Chamber Litigation Center, which handles litigation for the U.S. Chamber of Commerce.

On the whole, though, "I think business did well this year. The only trend, per se, was pre-emption of state laws in business cases," said Mr. Bokat.

The high court's rulings in favor of na-

See **Court** *on next page*

Claimant denied access to surveillance video

By MEG FLETCHER

MONTGOMERY, Ala.—An Alabama construction company fighting a workers compensation claim is not required to turn over a surveillance videotape of the injured worker before he is deposed in the case, a majority of the Alabama Supreme Court ruled.

In a 5-4 decision, the state's high court reversed a trial court decision that Doster Construction Co. of Birmingham, Ala., cannot take the deposition of Curtis Childress until it discloses whether it videotaped him while he was recuperating from a back strain and, if so, allow him to view the tape before he is deposed.

That initial decision by the Jefferson County Circuit Court in Birmingham was affirmed by the state's Court of Civil Appeals in Alabama. Alabama is unusual in that civil courts—rather than an independent state agency—adjudicate workers comp cases.

Mr. Childress, who receives modest permanent partial disability benefits following an on-the-job back injury in 1997, is seeking permanent total disability benefits, including surgical repair of a herniated disc, according to his attorney, Stewart Springer of Campbell & Springer in Birmingham.

Doster Construction, however, says that it is not liable for any more medical or compensatory benefits because it contends that "the disabling injuries Childress alleges were not the natural and probable consequence of the original compensable injury," according to court papers.

The state high court's reversal of the earlier trial court decision and appeal was guided by the state Legislature's goal of providing a "fair and affordable" workers comp system, wrote Justice Gorman Houston for the majority.

"The primary way to keep the costs of workers compensation affordable is to

See **Video** *on page 16*

Absence proves costly

Productivity loss costs more than benefits tab: IBI

By LEE FLETCHER

Lost productivity from employee absence is far more costly to employers than the costs related to programs designed to keep workers healthy and at work, according to a recent study.

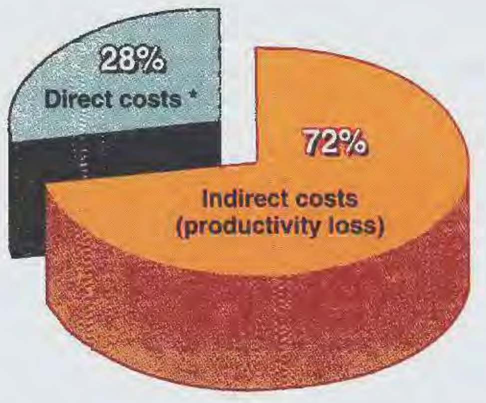
In the study, the San Francisco-based Integrated Benefits Institute analyzed revenue data collected from 11 U.S.-based telecommunications companies. The IBI's analysis revealed that lost work time resulted in an estimated $11.5 billion in lost productivity in 1999—the equivalent of 8% of total revenue for the participating companies. Incidental absence, such as sick days, and absences taken under the Family and Medical Leave Act account for almost half of that total, according to the IBI.

A significant portion—about 72 cents per dollar—of costs related to employee absence stemmed from lost productivity rather than from direct costs, such as funds spent on health care and disability benefit programs, the IBI found. The IBI analyzed each participating company's data and compared that data to the aggregate data from the other companies.

"We were able to discover that while a lot

See **Absence** *on page 19*

Lost time adds up



* Direct costs comprise group health benefits (24%) and disability benefits (4%)
Source: Thomas Parry, Integrated Benefits Institute

GRAPHIC BY LANCE PRATHER

Court

Continued from previous page
tional pre-emption of state and local laws showed that "a strong national government is not necessarily bad for business," said Mr. Dellinger.

The pre-emption cases involved such questions as the right of states to set standards for the operation of oil tankers engaged in international commerce and whether state "selective purchasing" laws that punish companies that trade with countries under state economic sanctions face pre-emption by federal law.

The most notable of the pre-emption decisions involved airbags, or the lack thereof.

In *Geier vs. American Honda Motor Co.*, the justices examined whether an automaker's compliance with federal law that permitted—but did not require—installation of airbags in cars pre-empted a state tort claim that the car suffered from a defect because it had no airbag.

The court ruled that the 1966 National Traffic and Motor Vehicle Safety Act did indeed pre-empt a claim filed in a District of Columbia court.

Victor Schwartz, general counsel for the American Tort Reform Assn., said that the case asked whether there should be a "thousand different tongues on how to design a vehicle, or one tongue that has expertise," with the court ruling in favor of the single, federal tongue.

But the *Geier* decision also made a broader point, he said. "Tort law isn't always the best engine for decision-making, especially when it comes to highly technical engineering questions."

Mr. Schwartz pointed out that the high court also proved its unwillingness to legislate by ruling in *Food and Drug Administration vs. Brown & Williamson Tobacco Co.* that current federal law does not allow the FDA to regulate tobacco.

"There was pressure on the court to find jurisdiction, because tobacco is the most unpopular defendant in America today," he said. But the court "declined to pick up the lance and make itself the lawmaking body in regard to FDA jurisdiction."

That judicial reluctance emerged again in the court's decision in *Lori Pegram et al. vs. Cynthia Herdrich*, which asked whether a doctor-owned HMO and its physicians breached fiduciary duty under ERISA by implementing a managed care program in which member doctors received financial bonuses to provide care in a cost-effective manner (*BI*, June 19).

The court ruled that there was no such fiduciary duty, and that to accept the argument that financial incentives created such a breach would end managed care as it is practiced.

Mr. Schwartz called that decision the "most important decision for business" of the term. The high court "decisively said, we're not going to read something into fiduciary duty," he said.

According to Mr. Schwartz, the *Pegram* case itself epitomized a battle that is going on throughout America over "whether courts will become the surrogate regulators of unpopular industries, whether through tort or civil liability." In each case, the court held that "you cannot regulate an industry indirectly through liability," he said.

"If business had lost that case, every garden-variety medical malpractice case would have had an ERISA claim added to it," said the National Chamber Litigation Center's Mr. Bokat.

The case the business community did lose, *Reeves vs. Sanderson Plumbing*, will have an impact beyond age discrimination cases, said Gerald L. Maatman Jr., a partner and chairman of the global employment law practice group at Baker & McKenzie in Chicago.

Mr. Maatman said that the decision "has far-reaching implications for two reasons. First, it's going to be applied to all discrimination claims, and not just age claims. Second, it's going to have a huge impact on the litigation process in terms of motions for summary judgment and internal decisions on whether or not to try lawsuits or settle them. In my mind, the playing field has been tipped, to a certain extent, to the plaintiffs' favor."

Mr. Maatman added that "it's kind of tough" to generalize about the overall trend of the court in the most recent term.

"I think the more interesting speculation is the 'what if' in terms of (Vice President Al) Gore or (Texas Gov. George W.) Bush being elected, and the impact the new president's first appointee might have to tip the balance in labor and employment cases," he said. BI

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Property loss control consultant listings near

Business Insurance will publish its annual Directory of Property Loss Control Consultants and Engineers in the August 14 issue. The directory is published as an editorial service, and there is no charge to be included. To be listed, companies must provide unbundled property loss control consulting or engineering services directly to corporate and institutional clients. In addition, a company must generate at least $100,000 from unbundled property loss control consulting or engineering—and must report those revenues—to be listed in the directory. If your company meets the requirements and has not received a questionnaire, please request one immediately by calling Michel Schwartz at 312-649-5313. Copies of the questionnaire also can be printed from the *BI* Web site at: *www.businessinsurance.com.*

Questionnaires must be returned by the extended deadline of July 19.

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What can we do to help you?

Security

Continued from page 3

when an intrusion occurs.

Some security companies also offer clients secure Web hosting, as well as the complete offsite management of computer file servers. These services enable security companies to directly guard against threats to credit card transactions, exchanges of employee health benefit information, the processing of inventory supply orders and other Internet transactions that could be disrupted by viruses and hacker attacks.

While such threats are now prompting more risk managers to weigh their organizations' information technology risks, the decision to undertake an approach such as server outsourcing remains primarily the domain of information technology experts. Such moves most often occur for business reasons other than the purchase of insurance, several experts say.

Risk managers agree.

Until recently, the risk manager of Mattel Inc. had never worked closely with the toymaker's information technology department, according to John G. Pinner, assistant treasurer and risk manager. That changed, however, when the El Segundo, Calif.-based company considered a potential business project that would involve online sales.

Mr. Pinner's role in the Mattel project was to quantify the exposure. Outsourcing the computer server was mentioned to him by some of the security companies brought in as part of the underwriting evaluation process. That decision ultimately rests, though, with Mattel's information technology department.

That particular Mattel project has been put on hold, but it is an example of the new responsibilities risk managers increasingly face as the Internet age exposes their companies to new information technology-related risks.

"They are suddenly getting to be a major risk factor they never were before," Mr. Pinner said of computer-related operations.

As a result, trying to understand Internet exposures is something more risk managers are now grappling with, he said.

"An insurance company can tell us, 'These are the risks we will cover for you.' But everybody is struggling with what really are the risks," Mr. Pinner said. "There are a lot of perceived risks, and I say probably half of those perceived risks will not happen anyway."

Given the lack of significant loss-history information, Mr. Pinner also questions whether insurers really understand all the emerging e-commerce risks, he said.

E-commerce insurance experts say it is true that insurers underwriting the coverages do not always fully understand the technical aspects of computer technology and the adequacy of potential clients' security measures.

That is where computer security companies come into play.

Rather than having to understand each client's technology, insurers can learn the pitfalls associated with each service level offered by Internet security companies, says Peter R. Taffae, president and CEO of e-perils.com, a new Los Angeles-based wholesale brokerage unit of independent wholesaler Worldwide Facilities. By partnering with a computer security firm, insurers can price their customer accounts according to the level of security the customer has purchased from the partner.

Atlanta-based Internet Security Systems Inc., for example, is among the companies that have teamed up with insurers to perform underwriting evaluations and to provide reports on potential security improvement measures.

E-commerce insurance experts say insurers do not always fully understand the technical aspects of computer technology.

Among its other services, ISS will test a client's "security posture" on a monthly basis by attempting to hack its way into the client's Web site, said Greg Grant, director of market strategy and development for ISS.

"That is what the underwriters are excited about," he said. "It keeps their investment safe." ISS now has an internal "risk solutions" group working exclusively with insurers and brokers, he added.

Reston, Va.-based information security company Global Integrity Corp. has formed an alliance with Marsh Inc. and AIG. Global Integrity increasingly is interacting with risk managers in hopes of bridging a gap between risk management and information technology professionals, said Al Foster, vp of client relations.

"Absolutely that is the goal," Mr. Foster said. "When you roll those into one, you are going to come up with a different solution than if it was left to the IT manager or the risk manager."

Global Integrity can monitor Internet servers at a client's facility, or it can house the servers and manage them from its own secure site.

One of its tactics is to apply sophisticated algorithms in monitoring for "fingerprints" in Web site traffic, or signs that an intruder is attempting to enter a client's site.

Companies that host Web sites, and those that provide Internet security services, are locked in an increasingly competitive marketplace, so they are looking to differentiate themselves, said Julie Davis, executive vp in San Francisco for Aon Technology Risk Consultants. They are trying to drive sales by pitching their network security strength, she said.

Ms. Davis said, though, that it is difficult to determine the extent to which such services lead to reduced insurance rates.

"It absolutely is a comfort level for insurers," she said. "Whenever (insurers) see you are being hosted by somebody that is credible, that certainly factors into whether or not they will provide adequate coverage or whether or not they will entertain the risk. However, I have not concluded (that) if you utilize ABC or XYZ, you get a premium discount."

In addition, server outsourcing is not necessarily risk free, said Ms. Davis. The systems could still be vulnerable to attack from a company's own employees or the employees of the security company.

Additionally, underwriters should consider that companies that host sites and servers could be concentrating risks in one location, said Kae Lovass, vp of technology and underwriting at St. Paul Fire & Marine Insurance Co. in St. Paul, Minn.

St. Paul, Ms. Lovass said, is moving away from requiring buyers of its Internet insurance products to conduct security audits.

Large, publicly held corporations often have already obtained audits of their computer operations as part of broader audits conducted by the large accounting firms, she noted. Although they obtain those audits for reasons other than purchasing insurance coverage, the audits often meet the needs of St. Paul's underwriters, she said.

New Internet start-ups, however, often rush to market without first considering a possible connection between computer security measures and their insurance needs.

For them, outsourcing security or outsourcing their server management could provide a baseline of protection needed just to obtain coverage, said Emily Freeman, practice leader for Marsh's e-Business Risk Solutions in San Francisco.

Large corporations, on the other hand, might turn to Internet security management outsourcing for other reasons, such as freeing up IT staff to focus on the company's core operations, Ms. Freeman added. BI

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Decision

Continued from page 2

in the state.

She moved to have her case certified as class action, but the trial court refused, citing the legal merits of the case as well as the small benefit that would be gained by class members even if the case were successful. An appellate court subsequently affirmed that decision.

In overturning both lower courts, the California Supreme Court said in its June 26 decision that "we view the question of certification as essentially a procedural one that does not ask whether an action is legally or factually meritorious."

The state Supreme Court said "the important interests of fairness and efficiency sometimes may be served better when class causes of action are screened for legal sufficiency before the matter of certification is decided. But nothing prevents a court from weeding out legally meritless suits prior to certification" through a formal pleading or pretrial motion.

The court said also whether class members receive any substantial benefit from a class action suit should not be a factor. It is "firmly established that the benefits of certification are not measured by reference to individual recoveries alone."

"The problems which arise in the management of a class action involving numerous small claims do not justify a judicial policy that would permit the defendant to retain the benefits of its wrongful conduct and to continue that conduct with impunity," the court said.

The Supreme Court returned the case to the trial court for further deliberations based upon its decision, noting that "upon a fresh look it may discern valid reasons for denying Linder's certification motion."

The court's decision means courts will allow more class actions to proceed, says attorney Jeffrey J. Daar of Daar & Newman in Los Angeles, who represents Ms. Linder in the case.

"I think it's a major victory for all people," said Mr. Daar. "The court emphasizes the importance of using class actions to redress wrongs by both individuals and businesses."

The decision will be helpful to everyone, including businesses that try to bring collective action to redress competitive wrongs, he said.

'I see this case as one that, frankly, is just as good for business as it is for consumers,' says Los Angeles attorney Jeffrey J. Daar.

"I see this case as one that, frankly, is just as good for business as it is for consumers," said Mr. Daar.

"I believe this will be well-cited, important decision."

Mr. Daar said the decision is also important because it gives good direction to the courts in permitting class action suits in cases where the amount involved for individuals is too small to justify the large expense of litigation.

Some defense attorneys, however, say that the decision is not all that significant.

"If someone sees this as an earth-shattering decision that's going to change the world and make it easier to file class certifications" they are wrong, said attorney Kenneth Klein of Los Angeles-based Riordan & McKinzie, whose firm filed an amicus brief in the case on behalf of Torrance, Calif.-based Union Oil Co. of California and the Sacramento-based California Retailers Assn.

Mr. Klein said courts will still have to weigh the burden of a class action suit on the system vs. its benefits.

"And that's something they were supposed to determine all along," he said.

Richard A. Samp, chief counsel for the Washington-based Washington Legal Foundation, a public interest law firm that is generally on the side of tort reform and decreased government regulation, said, "We're disappointed, but they didn't do anything that was out of the norm."

"There have already been a huge number of class actions," said Mr. Samp, whose organization filed an amicus brief on Thrifty's behalf.

Had the court ruled in Thrifty's favor, the number would have been reduced somewhat. While this decision may not lead to a decrease, it will not increase the total either, he said.

"I think that the Supreme Court's ruling on Monday was pretty much in line with what a lot of other courts have been saying. This is not a radical departure in the law. We were hoping they would be willing to rein in class actions and to create new rules that would have made them more difficult than they currently are, and the Supreme Court refused to do that," Mr. Samp said.

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Linder vs. Thrifty Oil Co., California Supreme Court; 00 C.D.O.S. 5513.

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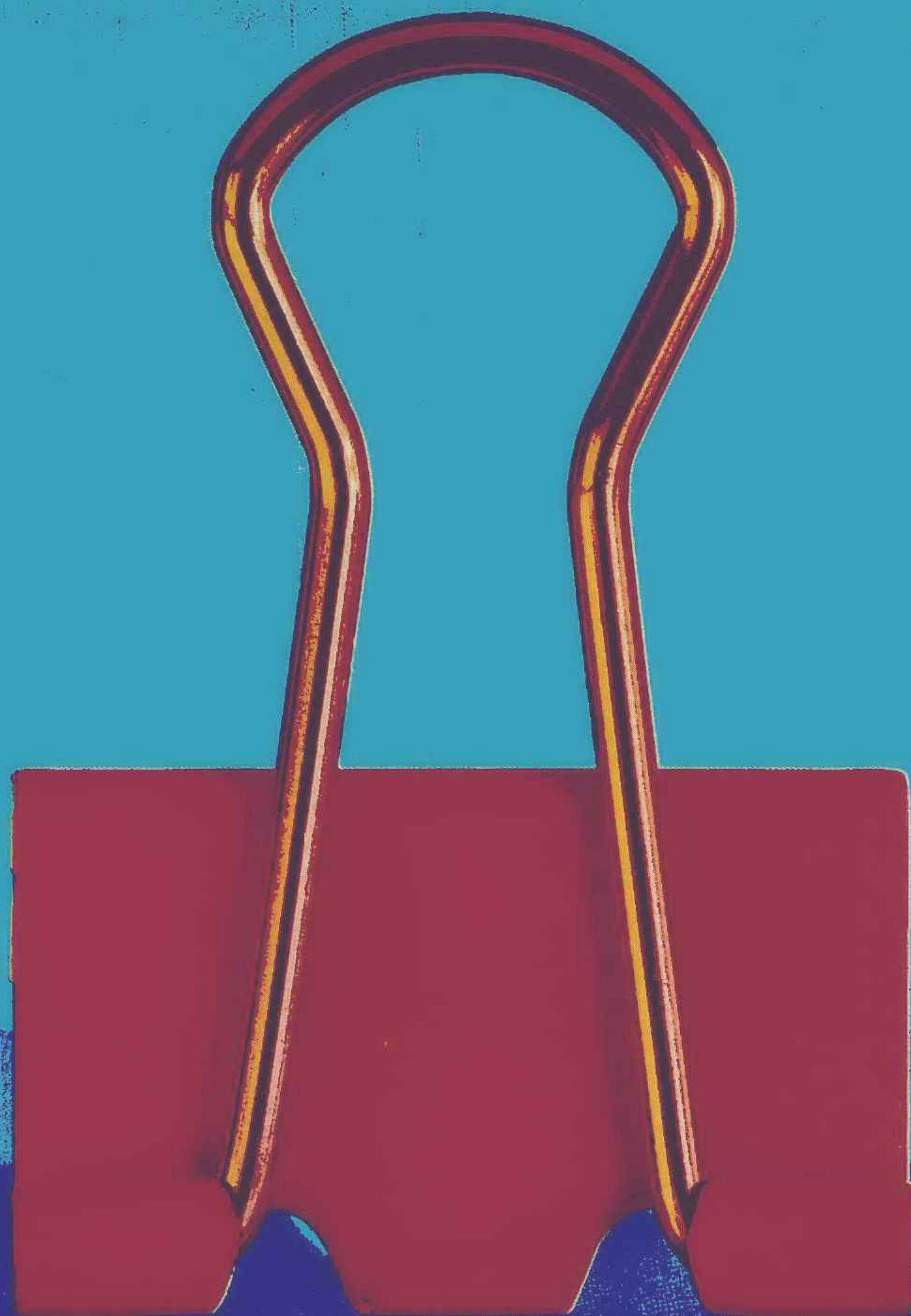

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OPINIONS

Clarify MEWA definition

WE ARE RELIEVED the U.S. Labor Department recognizes that its new reporting requirements for multiple employer welfare arrangements are overly broad and could put many health plans at risk of regulatory intervention.

The rules, which the government recently agreed to temporarily waive for certain plans, are designed to gather detailed information about MEWAs to help state and federal regulators track these plans and spot potential problems before they result in unpaid claims.

However, the reporting rules as issued by the Labor Department also would have subjected many plans that are not typical MEWA arrangements to the same reporting requirements, inviting the risk that state insurance regulators could find the plans in violation of state insurance laws. This risk is amplified by the fact that many employers have no idea that their health plans may be subject to the new MEWA reporting requirements, which called for hefty penalties on plan sponsors that did not file a federally required Form M-1 by July 1.

There are many examples of innocent arrangements that would have been swept under the Labor Department's rules. Take, for example, a Fortune 500 company with billions of dollars in annual revenues that extends its health care plan to a few non-executive members of its board of directors. Or a situation where two large employers set up a joint venture, and one of the two firms temporarily extends its health care benefits to employees of the new joint venture.

These are not the sort of situations originally contemplated by federal lawmakers that created the MEWA reporting requirement.

We are glad to see the Labor Department—at least for this year—agrees and that it will exempt sponsors of certain health plans, such as the ones we describe, from filing its new reporting form for this year.

The new MEWA reporting requirement has its origins in health plan scams that rocked the nation in the 1970s and early 1980s.

Following the passage of the Employee Retirement Income Security Act in 1974, insurance entrepreneurs set up "multiple employer trusts," and marketed them as group benefit options for small, unsophisticated employers.

State regulators saw METs, however, as no more than unauthorized insurers. When regulators tried to shut down some METs, the operators, who were collecting fat commissions, went to court to block the regulators, citing ERISA pre-emption.

By the time courts ruled, many of the METs had gone broke, leaving tens of thousands of employees stuck with unpaid medical bills. In 1983, Congress wised up to what was going on and made clear that ERISA pre-emption did not protect METs—which lawmakers renamed MEWAs—and that states could regulate them.

That helped states take action against what in many cases were phony health plans. States got more help a few years ago when Congress passed another bill requiring MEWAs to file annual reports with the Labor Department. That information would enable states to find out if any MEWAs were operating within their borders and take whatever action necessary to assure their solvency or shut them down.

A key problem with the federal statutes remained, however: What exactly is a MEWA?

The law refers to a MEWA as a health plan covering non-union employees of two or more employers. That definition, however, covers health plans that legislators clearly did not intend to regulate.

The Labor Department was correct in exempting arrangements where employers extend their health care plans to more than their own employees from filing the new form.

We hope that federal regulators will take this temporary relief a step farther and clarify their definition of MEWA to assure that such innocent health plan arrangements are permanently exempted from these requirements.

LETTERS

FEMA created for public entities

To the editor: With all the articles and opinion letters relative to public entities' failure to insure their facilities for natural disasters and slurping at the Federal Emergency Management Agency trough, I believe it is time for an opposing view for your readers, FEMA and private industry to consider.

With reference to the following points, our agency represents the risk management interests of the 45 public school districts in Sonoma County, Calif., with approximately 160 school sites and total building values of about $850 million.

We joined together in 1979 under a joint-powers arrangement to provide common risk management and insurance services, primarily through pooling and self-funding, which has saved our agencies millions of dollars vs. purchasing insurance from for-profit insurance companies.

• The first point that seems to be continually overlooked in this debate is that the Stafford Act that created FEMA was specifically enacted to protect our nation's public entities from catastrophic losses that are neither predictable or affordably insurable. Under current FEMA regulations, predictable and highly probable losses involving public entities are currently insured.

For example, perhaps three of our 160 schools are in flood plains and have been subject to flooding every four to five years. For these particular schools, we provide flood coverage through the National Flood Insurance Program. Under the proposed FEMA regulations, we would be required to purchase flood insurance for all of our 160 schools, even if their exposure to flood is less than one in every 100 years.

• In California, perhaps our biggest exposure would appear to be from a disastrous earthquake. Under the proposed FEMA regulations, all of our schools would have to carry earthquake insurance.

What your articles and the proposed FEMA regulations fail to recognize is that public entities—and, particularly,

See Letters on page 16

LETTERS TO THE EDITOR

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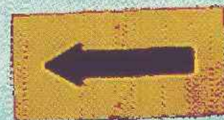

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LTC benefits a good plan for the long-term

Employers, workers can reap big savings by taking advantage of coverage early

By David J. Guttchen and Mary L. Pettigrew

HOW OFTEN HAS SOMEONE you know missed work because he or she had to take care of a family member who needed extended nursing home or home care? How often have you seen someone spend a lifetime of savings paying for the costs of such care?

Unfortunately, these situations are all too real for many of us. With the cost for nursing home care averaging more than $45,000 per year—and in some states, such as Connecticut, more than $75,000 a year—the frequency of this problem is not surprising.

The high cost of long-term care affects individuals, families, businesses and government. And it will become a more pressing issue for all of us as baby boomers age. Because Medicare and health insurance do not cover LTC, the burden falls to individuals and, ultimately, to the government, whose Medicaid program steps in after an individual has depleted his or her personal resources.

Several studies in recent years indicate that the cost of LTC to businesses is substantial.

Here are just a few of the findings of recent research:

- The cost to U.S. businesses that is related to caregiving is estimated at $11 billion to $29 billion per year.
- Sixty-four percent of caregivers are employed in addition to providing care to a family member for several hours per week.
- Caregiving takes its toll on worker productivity and increases employee turnover, absenteeism and early retirement.
- Caregivers suffer stress-related health problems as well as wage reductions, lost retirement benefits, and loss of training and promotion opportunities.

Offering LTC insurance as an employee benefit is one way employers can help employees deal with the high cost of LTC, while also holding several benefits for employers and employees alike. And employer LTC insurance offerings need not be limited to active employees. In fact, many employers extend the benefit—and associated discounts—to family members of active employees and retirees, such as spouses, parents, in-laws and grandparents.

The purchase of LTC insurance by family members can reduce the potential caregiving burden of the employee, thereby reducing lost productivity. In addition, expanding the LTC insurance offering to retirees and family members increases the pool of potential purchasers, increasing an employer's negotiating power with insurance companies.

Tax deductions are available. Employer contributions to LTC insurance have been made easier by federal legislation, passed in 1996, that allows LTC insurance to be treated under the federal tax code in the same manner as health and accident insurance. Therefore, an employer that contributes toward an employee's LTC insurance premium can deduct that contribution in the same way it deducts health insurance costs.

The law also permits employers to discriminate in the contributions they make toward LTC insurance premiums. For example, an employer may wish to pay the full premium for executives but contribute less than the full premium amount for all other employees.

Most successful employer LTC insurance offerings have involved an employer contribution toward the cost of the premiums. Such a contribution sends a very strong message to employees that the company believes the benefit is an important one. Further cost savings from the insurer are also possible if the employer delivers good participation and is willing to assist with administration.

From an employee's perspective, purchasing LTC insurance at a younger age can dramatically reduce the cost of premiums. As is the case with life insurance, the younger an employee is at the time of the purchase, the lower the premium. And offering LTC insurance as a benefit in the workplace is one of the best ways to reach younger purchasers. In addition to enjoying lower premiums, the insured also will have coverage if he or she requires long-term care services at a younger age. Contrary to popular belief, long-term care is not an issue just for the elderly. According to "Chronic Care in America: A 21st Century Challenge," published by the Robert Wood Johnson Foundation, chronic conditions affect nearly one in four working-age adults.

More importantly, younger purchasers can get more LTC insurance benefits for less. It's a common perception that younger purchasers will pay more in premiums because they will be paying premiums for a longer period of time compared to older purchasers. However, based on a cost/benefit analysis conducted by the State of Connecticut's Partnership for Long-Term Care, the best time to begin planning for long-term care is before an individual reaches age 60.

The example in the table below is based on a sample LTC insurance policy with a $160 daily benefit for both nursing home care and home care coverage, with total benefits of $125,000 at purchase. The policy has a 90-day deductible (waiting period) and an inflation-protection feature that will increase benefits annually at a rate of 5% compounded. The premiums, however, are level.

The table reflects the amount of premium paid and the amount of benefits accumulated when the insurance is purchased at different ages. The model assumes that the purchaser will require long-term care at age 85. It is important to note that the premiums shown below are based on an individual purchase and do not include discounts that might be available through an employer offering.

If a 55-year-old individual bought a policy today, he or she would spend $18,200 in premiums over 30 years—that is, until age 85. The policy benefits would increase to $540,200 from the original purchase amount of $125,000 because of the 30 years of 5% compounded inflation protection. This is compared to $40,300 in premiums paid over 15 years for someone who purchased the same benefits at age 70. Because the 70-year-old has the insurance over a shorter period of time—15 years instead of 30—the total amount of benefits at age 85 is less than half of the benefits earned by the 55-year old ($259,900 compared to $540,200). As this example illustrates, LTC insurance not only provides valuable coverage against the cost of long-term care, but it also can be an important investment for younger purchasers.

In addition, underwriting is less restrictive when the insurance is purchased on a group basis. As with most insurance, LTC insurance must be purchased before long-term care is needed. An individual who has been diagnosed with a chronic condition, such as Parkinson's disease or multiple sclerosis, would not be eligible for LTC insurance on an individual basis.

In the workplace, however, the underwriting rules can be negotiated and relaxed as part of the offering. In some cases—usually those in which a large employer is making the offering—underwriting rules can be eliminated entirely for active employees during an open enrollment period. In addition, the employer could negotiate preferred rates for healthy and younger employees. Such an offering would make LTC insurance available to people who otherwise would not qualify for coverage and would make the coverage more attractive to younger employees.

Purchase Age	Age 40	Age 45	Age 50	Age 55	Age 60	Age 65	Age 70	Age 75
Total Premiums Paid	$12,500	$15,300	$15,100	$18,200	$24,700	$32,400	$40,300	$45,500
Value of Benefits at Age 85	$1,123,900	$880,000	$689,500	$540,200	$423,300	$331,700	$259,900	$203,600

Source: Connecticut Partnership for Long-Term Care

LTC insurance not only provides valuable coverage, but it also can be an important investment for employers in reducing the costs of lost productivity due to caregiving. And, because LTC insurance is an appropriate retirement-planning tool, employers can provide a critical link in reaching younger purchasers.

While the benefits of expanded life expectancy due to advances in technology and better health care are obvious, our society also will be facing a tremendous challenge in attempting to meet the growing demand for long-term care. Offering long-term care insurance as an employee benefit is one way employers can do their part.

Some states—Connecticut, New York, Indiana and California—have implemented programs, known as the Partnership for Long-Term Care, to better inform the public of long-term care issues. These programs also have developed special long-term care insurance in conjunction with participating insurers. Other states have initiated similar public education programs as well. A benefits professional can check with his or her state's insurance department to find out whether a program is available and to take advantage of the state's resources. BI

David J. Guttchen and Mary L. Pettigrew are the director and assistant project director, respectively, of the Connecticut Partnership for Long-Term Care, and they work for the State of Connecticut's Office of Policy and Management in Hartford. The Connecticut Partnership has initiated a major campaign to better educate employers about the benefits of offering long-term care insurance.

PERSPECTIVE

ISO 14001 lowers environmental risks

By James H. Schaarsmith

Last fall, Ford Motor Co. and General Motors Corp. both announced that they would begin requiring their automobile parts suppliers to implement ISO 14001, the global environmental management system specification developed under the auspices of the International Organization for Standardization in Geneva, Switzerland. Ford and GM thus joined International Business Machines Corp., Xerox Corp., Lucent Technologies Inc. and Bristol-Myers Squibb Co. as major end-product manufacturers that require suppliers to adopt ISO 14001.

ISO 14001's role in several key manufacturing industries is now crystal clear: Component parts suppliers in the automotive, electronics, aerospace and pharmaceutical industries must implement and register their conformity with ISO 14001 as a condition of doing business with the dominant firms in those industries.

And the trend will not stop there. Those familiar with ISO 14001 anticipate that ISO 14001-based environmental management requirements will eventually spread across all economic sectors and affect suppliers of all kinds. This phenomenon will occur because ISO 14001 addresses one fundamental truth: Virtually all human activity adversely impacts the environment, much of it needlessly. Organizations like Ford and GM are simply recognizing that, by compelling suppliers and contractors to adopt environmental management standards, they are wielding their enormous market power constructively. We can expect to see a growing number of organizations using such leverage to influence the environmental performance of their electric power suppliers, construction contractors, transporters, bankers, insurers, lawyers, caterers and the communities in which they operate.

So what does ISO 14001 have to do with risk management?

Implementation and maintenance of the core elements of ISO 14001 can help an organization avoid criminal and civil liability for the environmental impact of its practices.

ISO 14001's environmental-policy requirement lays the foundation by requiring "top management" to define the policy and ensure that it contains commitments regarding compliance with relevant laws and regulations, prevention of pollution and continual improvement of the environmental management system itself. If the policy is a succinct directive from the chief executive officer, stating environmental stewardship requirements for the organization and its employees, it can help overcome claims of criminal intent or gross negligence on the part of management.

If, on the other hand, the "environmental policy" is a four-color glossy, issued by a mid-level manager lacking the authority to make policy, outlining glowing intentions toward the environment that have little likelihood of being carried out, it undermines the organization's credibility toward the environment.

Another ISO 14001 procedure requires the organization to identify the environmental aspects of its activities, products and services and to determine which of these represent potentially significant environmental impacts.

The procedure for establishing objectives and targets requires the organization to consider six factors: the environmental policy, legal requirements, potentially significant environmental impacts, business considerations, technological options and the views of interested parties.

My first experience with applying these procedures was with the ISO 14001 committee of a global manufacturer. The committee was made up of 10 to 12 internal and external members representing operations in Asia, Europe, South America and North America. It was co-chaired by the director of human resources and the director of risk management and reported to a global environmental council. The global council—made up of the chief financial officer, general counsel, senior vp of manufacturing, and senior vp of sales/marketing—reported to the CEO.

In implementing the environmental aspects procedure, the committee derived approximately 20 broad categories of environmental impact from the United Nations' "Agenda 21: The Program of Action for Sustainable Development," and it used them to identify potentially significant global environmental impacts of the organization. The significant impacts, in turn, were used to establish environmental objectives and targets.

This kind of process—comprehensive, systematic, executed in good faith and having the active oversight of top management—increases the likelihood of an organization successfully defending itself against claims of environmental negligence, gross negligence or criminal intent.

The risk manager seeking additional responsibility is a logical candidate to oversee the implementation ISO 14001.

Because ISO 14001 is nominally an environmental management system, it is assigned—in many cases by default—to an organization's environmental, health and safety manager. That individual—who is usually focused on compliance with government environmental regulations—may not be the best person to implement ISO 14001, which is much broader in scope than such regulations.

ISO 14001 implementation should be headed by a person who has a broad general understanding of the organization and its activities, products and services. In addition, that individual must be able to interact with top management, facilitate multidisciplinary task forces and communicate environmental information across all ranks of the organization. The individual selected to implement ISO 14001 also should be able to negotiate with a wide range of external interested parties, appropriately incorporate the views of such parties into environmental objectives and targets, and fashion creative solutions to a wide range of policy and procedural issues.

For risk managers seeking more authority, ISO 14001 establishes an argument for the creation of a chief risk officer.

> *Implementation and maintenance of the core elements of ISO 14001 can help an organization avoid criminal and civil liability for the environmental impact of its practices.*

ISO 14001 contains certain non-delegable responsibilities for top management. It requires that top management:

- Define the organization's environmental policy;
- Delegate specific responsibility and authority for establishing, implementing and maintaining the environmental management system;
- Provide human, technical and financial resources essential to the operation of the environmental management system; and
- Periodically review the environmental management system for suitability, adequacy and effectiveness.

The very nature of these responsibilities implies that they can be fulfilled only by the functional equivalent of the CEO. Whoever acquires the responsibility and authority for implementing ISO 14001 reports to this top manager and becomes the de facto chief environmental officer of the organization.

These responsibilities of top management under ISO 14001 call to mind another management principle: Whenever a management function is important enough to materially impact the organization's financial performance, result in loss of life or bodily harm, damage property of the organization or of others, or seriously diminish the organization's reputation, then that function should be a first-order responsibility of top management. Parity of reasoning between ISO 14001 and risk management argues for the creation of both chief environmental and chief risk officers in many organizations.

ISO 14001 improves risk performance by:

- Encouraging correction of adverse environmental impacts that often have a direct impact on worker and third-party health and safety exposures;
- Requiring organizations to establish and maintain procedures for identifying the potential for and responding to accidents and emergency situations; and
- Embedding systems management skills that focus management attention on improving underlying system processes and correcting individually manifested problems.

In addition, ISO 14001 can be adopted as a formal protocol for risk management.

Risk management is a well-recognized, informal process for identifying and evaluating risk exposures; considering alternatives for elimination, avoidance, mitigation or transfer; implementing selected alternatives and reviewing results.

Three additional factors differentiate ISO 14001 from risk management and make ISO 14001 a formal management system. First, it was developed by an open, inclusive, broadly based, international committee working under the principle of consensus.

Second, the elements of ISO 14001 can be objectively audited. Third, the official standards bodies of more than 120 countries have approved ISO 14001 as an international standard. In addition, it has been approved as an American standard.

The end goals of environmental and risk management are not so much the correction of individual potential environmental impacts and elimination of risk exposures as they are the modification of organizational behavior. In this sense, ISO 14001 puts in place a framework that embeds, supports and perpetuates practices designed to improve performance by bringing environmental issues to the attention of management decision-makers. ISO 14001 principles can be applied with equal utility to risk management. BI

James H. Schaarsmith is an environmental management consultant located in Arlington, Va.

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October 16-18, 2000

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Preliminary Agenda

Monday, October 16

9:30 AM
GOLF TOURNAMENT
Hosted by: NCCI

3:00 PM
EARLY REGISTRATION

4:00 PM
EMPLOYERS' PRIVATE ROUNDTABLE
Moderator:
Kathryn J. McIntyre
Vice President, Publisher and Editorial Director
Business Insurance

5:30 PM
PRE-CONFERENCE WELCOME RECEPTION*

Tuesday, October 17

8:00 AM
REGISTRATION AND CONTINENTAL BREAKFAST
Hosted by: GENEX Services

9:15 AM
KEYNOTE PRESENTATION:
"SECURITY ON THE ROAD TO RECOVERY" SNAP-ON INC.'S WORKERS COMPENSATION MANAGEMENT SYSTEM FOR INJURED WORKERS
Dan Kugler, CPCU, ARM, CEBS
Director of Risk Management
Snap-On Inc.

10:15 AM
TABLE-TOP EXHIBITS & REFRESHMENTS
Hosted by: Commonwealth Risk

10:45 AM
STRATEGIES FOR REDUCING HEALTH CARE COSTS
Moderator:
Robert L. Gelb
President, Bay Brook Medical Services
A Division of QTC Management Inc.

Panelists:
Fred Scardellette
Vice President, Disability Management Product Development
Intracorp

Victor L. Paganucci
Director, Integrated Disability Systems
Champion International Corporation

William P. Molmen
General Counsel
Integrated Benefits Institute

12:00 PM
LUNCHEON
Hosted by: Hack, Piro, O'Day, Merklinger, Wallace & McKenna Hall & Evans, L.L.C., Hinshaw & Culbertson and Litigation Solutions Law Group LLP

1:15 PM
THE NEW WORKPLACE: MANAGING LIABILITIES DUE TO CHANGING EMPLOYMENT RELATIONSHIPS
Moderator:
Barry Thompson
National Practice Co-Leader of Disability Management Services
Deloitte & Touche LLP

Panelists:
David J. Thompson
Work/Life Manager Diversity
Microsoft Corporation

Jeffrey W. Pettegrew
Vice President, Risk Management & Insurance
Westaff

James R. Nau, CPCU, ARM
General Manager, Workers Compensation Residual Markets
NCCI

2:15 PM
TOP WORKERS COMPENSATION ATTORNEYS TELL YOU HOW TO AVOID PROBLEMS WITH CLAIMS

Moderator:
RISK MANAGER OF THE YEAR
Paul F. Buckley
Treasury Director, Risk Management
Lucent Technologies Inc.

Panelists:
Patricia J. Clisham
Member & Chief Marketing Officer
Hall & Evans, L.L.C.

John T. West
Partner
Hack, Piro, O'Day, Merklinger, Wallace & McKenna

Mary Skelton
President of WORKDOTCOMP.COM
Workers Compensation Solutions, Services & Consulting

Cheryl Wilke
Partner
Hinshaw & Culbertson

3:15 PM
TABLETOP EXHIBITS & REFRESHMENTS
Hosted by: Bayne Consulting Group, Ltd.

3:45 PM
ADDRESSING PRIVACY ISSUES AND LEGAL EXPOSURES FACING EMPLOYERS: WHAT EMPLOYERS NEED TO KNOW

Eric Oxfeld
President
UWC Inc.—Strategic Services on Unemployment & Workers' Compensation

Terrence Delehanty
General Counsel
NCCI

4:30 PM
EMPLOYER, CLAIMANT AND PREMIUM FRAUD: FIGHTING FRAUD IN AN INCREASINGLY CHALLENGING ENVIRONMENT

Moderator:
Tim Fargo
President
Omega Insurance Services

Panelists:
L.A. Andy Casto, CPCU
Director, Workers Compensation
Kmart Corporation

Anshell Boggs
Workers Compensation Manager
Pep Boys

Tim East
Manager, Risk Management Business Process
The Walt Disney Corporation

5:30 PM
COCKTAIL RECEPTION
Hosted by: Kemper Insurance Companies

WEDNESDAY, OCTOBER 18

7:45 AM
CONTINENTAL BREAKFAST
Hosted by: Intracorp

9:00 AM
A PRACTICAL GUIDE TO DEVELOPING AN AWARD WINNING ERGONOMICS PROGRAM: CENTER FOR OFFICE TECHNOLOGY WINNER

Winner of *"The 2000 Outstanding Office Ergonomics Award"*
PRESENTED BY:
The Center for Office Technology

Panelists:
Elizabeth A. Grosh, CSP, ARM
Loss Control Specialist
The Prudential Insurance Company of America

Pamela Faccone, MS, ETT, HFI
Exercise Physiologist
The Prudential Insurance Company of America

Diane Lee, MS
Ergonomist
Safety and Health Team
Seattle City Light

Steve M. Davis, M.Ed
Consulting Ergonomist
Prezant Associates, Inc.
Former Ergonomist, Seattle City Light

10:00 AM
TABLE-TOP EXHIBITS & REFRESHMENTS
Hosted by: Omega Insurance Services

10:30 AM
IMPLEMENTING SAFETY AND LOSS PREVENTION STRATEGIES THAT WORK

Robert S. Anderson, ACII, ARM
President
The Worksafe Group

John Leonard
President
Maine Employers' Mutual Insurance Co.

11:15 AM
BEST PRACTICES: HOW TO MEASURE THE PERFORMANCE OF YOUR DISABILITY MANAGEMENT PROGRAM

Moderator:
Maria A. Bayne
President
Bayne Consulting Group, Ltd.

Panelists:
Elise Macinka
Safety and Risk Manager
Cox Communications OC

Peter Rousmaniere
President
Rousmaniere Designs

Bernadette Melchionne
Senior Corporate Insurance Administrator
Mattel Inc.

12:45 PM
LUNCHEON WORKSHOP:*
INNOVATIVE TECHNOLOGIES TO SAVE MONEY AND EMPOWER WORKERS

Greg Owen
Claims Manager
Sears Roebuck & Co.

2:00 PM
CONFERENCE ADJOURNS

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Diane Perkins, *SVP Risk Management* • Team Staff Companies, Inc.

"Still yet another great year and opportunity to learn more about integration and a great networking opportunity."

Sharon Van Sant, *Claims Manager* • Bergen Brunswig Corp.

"This conference updates me and my staff on what is working successfully as well as specific contacts with professionals who are in the mainstream of making it happen."

Barbara Y. Anderson, *Finance Services Manager, Risk Management* • Metropolitan Water District

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LETTERS

Continued from page 8

schools—have much stricter earthquake-standard building requirements than does private industry to protect our students, staff and community from earthquake loss. The standards are such that our school facilities are, by law, designated as shelters in earthquakes and other disasters that befall our communities.

Although we have moderate or strong earthquakes every 10 years in California, the last earthquake to cause other than minor damage to a few of our Sonoma County schools was in 1969, and those damaged were typically built between 1910 and 1920. Prior to 1969, we must go back to 1906 for a severe school building loss. The building standards our state has adopted for our schools have dramatically increased the cost of our facilities, and these standards are the best risk management tool we have to protect our communities and FEMA from loss.

To spend millions of dollars each year on earthquake coverage for a severe loss that occurs one out of 100 years is irresponsible. If we increase the risk transfer requirements, do we go back to the Legislature and relax building standards to reduce the cost of schools so we can afford insurance?

- The proposed FEMA regulations would regard annual premiums of $.30 per $100 of value as "affordable" to fulfill the insurance requirement. Our early investigation into coverage availability would indicate that this $.30 would be about what it would cost our schools for the proposed private insurance. The math on our current building values and this "affordable" premium base would take $2.6 million out of our classrooms each year for a loss we may incur once every 50 to 100 years.

Multiply this amount by the total building values for all of California schools, and the premium rises to perhaps $200 million per year. Extend this calculation to all schools nationwide. Next, add in all the cities, the counties, the fire districts, and all other municipalities that do not carry "all risk insurance," as required by the proposed FEMA regulations. The total costs will easily reach into many billions annually.

Do we take these dollars out of teacher salaries; cut police officers or firemen; reduce the books, computers and supplies from our classrooms; or increase taxes to our communities?

- The proposed FEMA regulations state that private insurance is the best method for funding the risks, disallow self-funding by public entities and consider a national coverage program unfeasible.

These perceptions and requirements are irresponsible on the part of FEMA, as a National Coverage Program could create a truly affordable method to reduce our publicly funded costs to perhaps $.03 or less vs. what is being suggested. Self-funding current property and liability risks throughout our nation's public entities typically reduces the cost by 40% or more. The larger the pool, the higher the savings. How is it possible that a national program is unfeasible or that self-insurance out of the question?

- One of the current FEMA regulations requires that once an entity sustains a FEMA-funded loss, it must secure protection in the future, which means that those public entities that have regular risk of exposure and losses do have insurance. To require public entities that have never sustained a catastrophe to purchase insurance coverage for exposures that they may never face is unreasonable, and it will only divert valuable resources from public services, or raise taxes to fund billions of dollars in additional insurance premiums.

Public entities are not skirting their responsibilities or slurping at the FEMA trough. If, in fact, these insurance requirements are necessary, perhaps FEMA should require "all risk insurance" for all citizens.

Sonoma County Public Schools currently pay approximately $800,000 per year for property protection. To increase this amount to over $3 million, without some additional funding source, will take books and computers out of our classrooms.

The Stafford Act was created to provide for unpredictable and unaffordable catastrophes to our nation's communities, but, somehow, FEMA has forgotten the purpose of its existence. These comments and others from many public entities were forwarded to FEMA in the proposed rulemaking feedback time frame. Rather than just looking at the merits of the FEMA proposal, we would suggest that *Business Insurance* and others review some of the public sector input responding to the regulations. This side of the proposed FEMA regulation story is being overlooked.

Joe Myers
Executive Director
Redwood Empire Schools
Insurance Group
Santa Rosa, Calif.

Marriott International promotes Wood to vp

Bradley R. Wood has been named vp-risk management at Washington-based Marriott International Inc. He succeeds **Arnold Davenport**, who retired June 30 after 23 years at the company. Mr. Davenport, Marriott's first risk manager, was the 1991 *Business Insurance* Risk Manager of the Year. Mr. Wood, 43, is responsible for Marriott's worldwide insurance, claims administration, life-safety and business continuity programs, reports to Arne Sorenson, executive vp and chief financial officer. Mr. Wood joined Marriott in 1986 as insurance manager, and his most recent position was senior director of insurance. Mr. Wood earned a bachelor's degree in business administration/finance from Ball State University in Muncie, Ind., and a master of business administration degree from the University of Wisconsin in Madison. He holds the Chartered Property & Casualty Underwriter and Associate in Risk Management designations.

* * *

COMINGS & GOINGS: BUYERS

William E. Phillips has been named chief safety officer for CNA Financial Corp. in Chicago. Mr. Phillips, 54, brings 30 years of industrial safety experience to the newly created position. He is responsible for safety concerns at all CNA operations. Mr. Phillips reports to Bernard L. Hengesbaugh, CNA's chairman and chief executive officer. Before taking his new position, Mr. Phillips was vp-sales and client services for the Midwest region at RSKCo Consulting Services, a CNA affiliate in Chicago. He holds a bachelor's degree in economics from Florida Southern College in Lakeland, Fla. and a master's degree in occupational safety and health from New York University. Mr. Phillips serves on a number of national standards committees and is a past president of the American Society of Safety Engineers.

* * *

Robert C. Wellman Jr. has been named senior risk manager at Risk International Services Inc., a risk management consulting and insurance recovery firm based in Richfield, Ohio. Mr. Wellman is responsible for administering the risk management programs of several client corporations from Risk International's Cleveland office. He also is charged with expanding risk management services to Risk International's Fortune 1000 clients with global exposures. In his newly created position, Mr. Wellman reports to Michael D. Davis, vp and chief operating officer of Millennial Assurance Services, the Cleveland-based parent of Risk International. Before taking the job with Risk International, Mr. Wellman was a vp at Hylant Group, a risk management services and brokerage firm in Cleveland. He holds a bachelor's degree in English from Ohio Wesleyan University in Delaware, Ohio. Mr. Wellman is an associate member of the Risk & Insurance Management Society Inc.

Mr. Wellman

* * *

Stephen C. Pogue has been named vp-reinsurance and risk management at eCoverage, an Internet insurance facility based in San Francisco. Mr. Pogue, 42, is responsible for eCoverage's risk management program, as well as the reinsurance relationship between eCoverage Reinsurance and American Re-Insurance Co. eCoverage provides personal lines insurance buyers with access to the agents of Royal & SunAlliance USA. Coverage is ceded to the two reinsurers. In his newly created position, Mr. Pogue reports to Scott L. Kaufmann, president and CEO of eCoverage. Prior to joining eCoverage, Mr. Pogue was a senior vp with American Re-Insurance in San Francisco. He joined that company in 1986. He holds a degree in economics from the University of California at Davis and has attended the Wharton School of Business's Executive Management Program. Mr. Pogue holds the Chartered Property & Casualty Underwriter and Associate in Risk Management designations.

* * *

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Video

Continued from page 3

reduce the number of fraudulent claims filed by employees. By allowing the employer to protect a surveillance videotape, the trial court will be helping to promote truthful answers by an employee at his deposition," he wrote.

In addition, the court accepted Doster Construction's argument that Alabama law protects the videotape from discovery as part of an attorney's work product.

The high court also narrowly concluded that a trial judge has great discretion about whether to order an employer to disclose the existence of a surveillance videotape. A trial judge, however, cannot order the employer to turn over a copy of the tape before the employee has testified in a deposition, it said.

"We see no apparent advantage to requiring the disclosure of a videotape before an employee is deposed, except for the advantage that would inure to the employee if he intended to lie or to pursue a fraudulent claim," Judge Gorman wrote. "Therefore, the quest for the truth should be furthered through protecting the videotape before the employee is deposed."

However, once the employer tries to use the videotape as evidence, any privilege is gone and the employee must be allowed to see the tape prior to trial, the court ruled.

"Of course, the employee also has a right to question the truthfulness of the images on the videotape. Therefore, once a party decides to use the videotape as evidence, it is no longer protected by the work-product privilege," the court said,

'With videotape, claimants are more likely to admit to higher levels of physical activity,' says Bill Kizorek.

noting that videotapes can be manipulated through various editing techniques.

The four other Supreme Court justices raised a variety of issues in three dissents that were also filed with the majority decision on May 18.

"This is the first case in Alabama that deals with the discoverability of the existence of a videotape and whether the plaintiff has the right to view the tape at what stage in the proceedings," according to Doster Construction's attorney David Wilson with Janecky Newell P.C. in Birmingham.

"This ruling is consistent with other appellate or supreme court rulings on the subject of discovery (of videotapes)," said Bill Kizorek, a consultant with In-Photo Surveillance Inc., a Kroll-O'Gara Co. affiliate in Plainfield, Ill.

"With videotapes, claimants are more inclined to admit to higher levels of physical activity," he said. "The strategic advantage in not turning over the videotape is to preserve the impeachment value of the evidence," Mr. Kizorek added.

The pro-employer decision in this case "is a loss for the employee because he is not given evidence prior to being confronted by it," said Mr. Springer, the employee's attorney.

While the decision is a loss in dealing with workers comp cases, it may be "a huge victory" for plaintiffs attorneys in other cases like those involving divorces, he said. For example, plaintiffs attorneys in such cases may benefit if they can retain possession of videotapes they made prior to defendants' depositions, he said.

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Ex parte Doster Construction Co. Inc., Supreme Court of Alabama, No. 1990203.

Global Briefs

The new U.K. general insurance regulatory body was launched in London on July 3. The **General Insurance Standards Council** is a self-regulatory body. Lloyd's of London, the Assn. of British Insurers and the British Insurance Brokers Assn. are among those that have joined the new body. . . .The state-owned **General Insurance Corp. of India** has appointed consulting firm PricewaterhouseCoopers to advise it on restructuring its business when the Indian insurance industry is opened up to private companies later this year. PwC is expected to produce its report by the end of the month. . . .London-based **CGNU P.L.C.**, the product of the merger of CGU P.L.C. and Norwich Union Insurance Group, has agreed to sell 51% of its South African general insurance business to Mutual & Federal Insurance Co. Ltd. Terms were not disclosed. . . . New **standards for Lloyd's brokers** will be announced in October. A Lloyd's working party that was formed in May will announce the standards, which will apply to U.K. and overseas brokers seeking to trade at Lloyd's. The accreditation of Lloyd's brokers will be carried out by a newly created broker services team headed by Steve Boucher, formerly Lloyd's representative in Australia. . . .The U.K. government has announced **new pension rules** for employees earning less than £30,000 ($45,249) per year. Under the new rules, such an employee can concurrently contribute to an occupational pensions plan and a new kind of plan, called a stakeholder pension. The Assn. of British Insurers and the National Assn. of Pension Funds have welcomed the government's decision. The change will take effect next spring, and any employer with five or more employees must offer access to a stakeholder plan. The low-cost stakeholder pension plans are intended to replace state-funded pensions. . . .**Moody's Investors Service Inc.** said it has a "moderately positive outlook in the long term" for Australian property/casualty insurers. Fierce competition in the Australian market and losses from a string of catastrophes have fueled consolidation among Australian insurers, which is strengthening their credit quality, Moody's said. Moody's expects to see continued consolidation in the Australian market. . . .Lloyd's dedicated capital provider **Advent Capital (Holdings) P.L.C.** has agreed to acquire Lloyd's managing agency Kingsmead Underwriting Agency Ltd. and its dedicated corporate Lloyd's member, Heraldglen Ltd., from Canadian company Fairfax Financial Holdings Ltd. Under the terms of the deal, Fairfax will become a major shareholder in Advent. Fairfax also has signed a five-year commitment to support both Kingsmead syndicates and Advent's BF Caudle Agencies Ltd., through a £110 million ($166 million) letter of credit. As a result of the deal, Advent will have £142 million ($214.2 million) of funds at Lloyd's to support underwriting capacity. Based on 2000 figures, the combined underwriting capacity of Advent and Kingsmead would be £300 million ($452.5 million), of which Advent would own 62%. . . .Paris-based reinsurer **SCOR S.A.** officially opened its Beijing office on July 4. SCOR has been an active reinsurer in China for 30 years, chief executive Jacques Blondeau said at the opening ceremony. SCOR's Asia-Pacific arm has offices in Hong Kong; Sydney, Australia; Singapore; Tokyo; Seoul, South Korea; and Labuan. . . .Finnish insurer Pohjola Group Insurance Co., Swedish insurer Skandia Insurance Co. Ltd. and Norwegian insurer UNI Storebrand ASA say they have reached a settlement agreement over pan-Nordic insurance company **If Property & Casualty** Insurance Ltd. The three insurers had agreed to establish If jointly, but Pohjola pulled out of the deal when Skandia sold Pohjola shares to Pohjola's main Finnish competitor, Sampo Insurance Co. The parties involved have not published details of the settlement. Because of Pohjola's withdrawal, Skandia will now own 56% of Stockholm, Sweden-based If, while Storebrand will own 44%.

Buyers rate pricing top concern

Survey finds ART still new to some large companies

By EDWIN UNSWORTH

A global survey of risk managers at the world's largest companies has found that their main concern is insurance rates.

This finding, from the third annual Alternative Risk Transfer survey by Marsh Ltd. in London, differs from Marsh's previous surveys, in which risk managers ranked market stability and insurer security/credit risk as their principal concerns. Insurance pricing ranked lower but still among risk managers' top five concerns in the 1999 and 1998 surveys.

Insurer security and credit risk remain a key concern, however, coming second in Marsh's latest survey.

Marsh's survey of about 1,000 of the largest companies worldwide in December 1999 and January 2000 drew responses from 26 companies, compared with 70 last year, said Chris Mundy, practice leader of Marsh's Alternative Risk Transfer unit in London. Mr. Mundy, the survey's editor, said the low response rate probably resulted from the timing of the questionnaire.

While 77% of respondents said they had been offered ART services by their advisers—up markedly from 46% last year—almost one in four major companies still had not been approached with ART services, Mr. Mundy said. He added that some of those companies not approached are major organizations that one would have thought to be natural targets for alternative risk transfer.

Some 27% of respondents said they are using ART mechanisms, while 71% said they were likely to use them, though Mr. Mundy noted that the low number of respondents makes it dangerous to draw many conclusions.

According to Marsh, of those using ART: 19% are using finite risk insurance and 12% said they are likely to use it; 4% are using loss-portfolio transfers and 12% are likely to use them; and 4% are using derivatives and 12% are likely to use them. These percentages were little changed from last year.

The sources from which respondents said they are getting ART advice have not changed significantly: from insurance brokers, 48%, insurance companies, 21%; specialist consultants, 19%; and banks, 12%.

See **Survey** *on page 19*

London launching e-ventures

By SARAH VEYSEY

LONDON—Insurance has come a long way since the days of Edward Lloyd's coffee house. The London market now has a "virtual cafe."

Underwriter Cafe—not a cafe at all but rather an insurance-specific e-business application at *www.underwritercafe.com*—was launched in London in late June. And a whole host of other e-commerce initiatives are springing up in the world's oldest insurance center.

The Underwriter Cafe is among the new ventures that are trying to take advantage of the advent of e-commerce by offering tools to help companies transact their business on the Internet.

The Underwriter Cafe tool, which was designed by London-based Web site host WebX, offers a package that enables all aspects of the insurance process to be managed online. Underwriting, reinsurance, claims handling, accounting, management reports, cash-handling and renewals can all be managed using the Underwriter Cafe, and the product is aimed at all insurance industry players, from global insurers to individual brokers, according to its founders, WebX Technical Director David Piesse and Operations Director Chris Brown.

"The powerful functionality of Underwriter Cafe is set to revolutionize the insurance industry," claimed Mr. Piesse. "It will lead to a significant reduction in the claims-processing time and subsequently to more cost-effective deployment of resources, which in the long term will help to maximize turnover." He added: "It also gives insurance companies greater control and management of their data and insurance risk. Millions of transactions can be handled and database records stored."

Currently, the system can handle life, pensions and personal lines business, but WebX said it could be applied to commercial, marine and aviation lines by January 2001.

Underwriter Cafe isn't the only recently launched e-commerce initiative in London.

See **Online** *on next page*

Insurer group to go public

Eureko outlines expansion plans

By EDWIN UNSWORTH

LONDON—Eureko B.V., an alliance of eight European financial services companies, unveiled restructuring plans last week that it says will help it become "a leading pan-European insurance company."

The company's ownership is being radically restructured as a first step toward creating an entity that within two years could be publicly traded on the Amsterdam stock exchange, which would help fund expansion. Eureko's leading shareholder will take on an even larger stake in the new company.

Eureko, originally created in 1992, was designed to allow its members to sell insurance independently in their home markets but collaborate internationally.

Two of the alliance's members—Achmea N.V., a Dutch financial services group, and Banco Comercial Portugues S.A., a Portuguese bank—have agreed to merge their insurance operations into Eureko B.V., which, once listed, will become Eureko N.V.

Achmea will own 72.2% of the new company, up from 28.3%, while BCP will own 15.1% and the other members of the alliance will divide the remainder. The other members are: European Alliance Partners Co., a newly created legal entity that manages cooperation between the alliance's partners; Swiss Mobiliar Insurance Co. of Switzerland; Parion Group of Germany; Friends Provident Life Office of the United Kingdom; Lansforsakringar Wasa Forsakringsaktiebolag of Sweden; Topdanmark Forsikring A/S of Denmark; nd MAAF Assurances of France. BCP and these other companies currently hold stakes ranging from 2% to 17.5% in Eureko. Financial terms of the planned restructuring were not disclosed.

Eureko said the restructuring will facilitate business growth and consolidation in selected European markets and allow direct access to the capital markets, which would allow expansion.

Plans call for Amsterdam-based Eureko N.V. to offer a full range of life and non-life insurance, including pension products. The alliance already holds leading positions in the Netherlands, Portugal, Ireland and Poland.

Eureko, with 1999 premium volume of 7 billion euros ($6.6 billion) is one of Europe's largest insurance groups.

Eureko Chief Executive Officer Joao Talone said, "We are present in markets that offer opportunities for growth, and we will expand, leveraging on the strength of the partners and the support of the Eureko alliance."

See **Eureko** *on page 19*

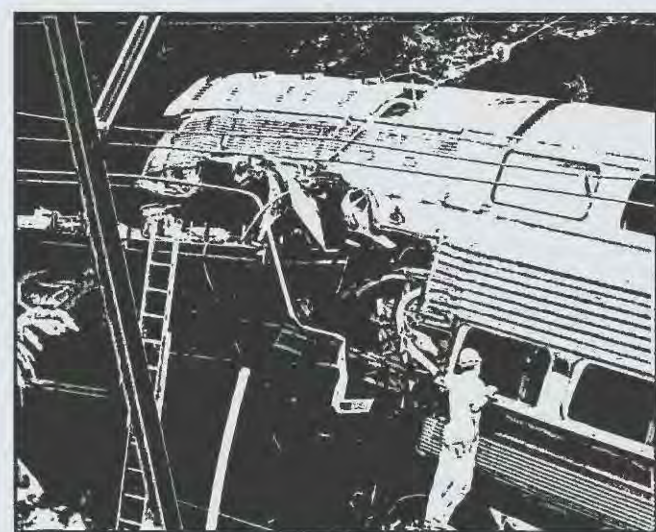

PHOTO: COURTESY WYATT GALLAGHER BASSETT

Several safety shortcomings led to a fatal 1999 train crash in Glenbrook, Australia, a new report concludes.

Crash inquiry faults rail safety

Inadequacies led to Australian wreck

By KATE TILLEY

SYDNEY, Australia—A lack of communication about signal failures and inadequate safety training for train drivers, signalers and controllers were contributing factors in an Australian rail crash that killed seven people last December.

This was the finding of acting judge Peter McInerney, in his interim report released two weeks ago on the train crash that occurred at Glenbrook, in the Blue Mountains west of Sydney, when a packed commuter train crashed into the back of a long-distance freight and passenger train, the Indian Pacific.

Mr. McInerney, a retired judge brought back especially for this case, was appointed by the New South Wales government to conduct an inquiry into the crash and ascertain the causes. He will now report on the adequacy

See **Train** *on page 19*

Online

Continued from previous page

Richard Fields, founder and chief executive officer of Washington-based dotRisk Ltd., which launched last year, will relocate to London by the end of the summer to head up dotRisk's U.K. operations.

"If you are in this market and not seriously focused on e-commerce, then you are already in trouble," said Mr. Fields. "In a few years, we won't be talking about dotcoms. If you're not on the Internet, you're dead," Mr. Fields added.

He said he founded dotRisk to create an electronic insurance and claims marketplace. It allows all participants in the insurance process—such as insurance buyers, brokers, insurers and claims professionals—to come together via the Internet. One area of the site has a video-conferencing facility that enables all players in a negotiation to talk together and make presentations in real time.

Mr. Fields said the approach adopted by dotRisk will change the way business is done in the insurance industry. "It will change business processes. You can deliver information in real time at virtually no cost. We intend to move entire business processes to the Web," he said. "If I am a buyer (of insurance), do I want to go to 15 different Web sites, or just one?" he asked. "I want a place where I get the broker, the insurer, the lawyer and so on. That is the model for a successful business-to-business marketplace."

As a virtual insurance marketplace begins to evolve, security and standards are needed to govern the way business is done, said Kevin Ashby, chief executive of WISe, a company with industry-wide partners set up last year to promote e-commerce through a legally secure framework (*BI*, Sept. 27, 1999).

Twelve major insurance industry companies are now connected to the WISe network, including Aon Group Inc., Jardine Lloyd Thompson Group P.L.C., Marsh Inc., CGNU P.L.C., Lloyd's of London and SCOR S.A. Ten other companies are set to join the network imminently, and nine more are expected to sign up soon. Mr. Ashby said he has been delighted with the degree of "coopetition" fostered among the companies signed up to the network.

"Standards underpin everything we do," he said. "We have been able to work quite quickly to redefine industry standards in the language of the Internet."

WISe plans to launch soon a set of extensible markup language, or XML, standards developed in association with IVANS Inc., the Reinsurance Assn. of America and the Brokers & Reinsurers Market Assn. of America. Greenwich, Conn.-based IVANS provides electronic communication and networking services, among other things, to insurers in the United States and Canada. These standards will cover large commercial insurance contracts and reinsurance. This month, WISe is also launching a joint venture with software provider SAP.com to promote business process and data standards.

"Our aim is to build collective commitment for insurance e-commerce, and the greater the number of organizations sharing our ideals and promoting our services, the better for the industry," said Mr. Ashby.

'If you are in this market and not seriously focused on e-commerce, then you are already in trouble,' says Richard Fields.

But the movement to bring e-commerce to the insurance industry has a long way to go. A recent Assn. of British Insurers survey of 80 ABI members found that just over half thought their use of the Internet was underdeveloped. And while 96% of those with a Web site said they used it for providing general information, less than half said they were selling products on it. Only 11% of commercial insurers surveyed said they were writing business online, and 40% said they would not transact commercial insurance on the Internet.

But in the life insurance industry and in personal lines—such as auto, homeowners and travel insurance— the ABI survey found there is more willingness to use the Internet to sell products. The survey revealed that 44% of such personal lines business is now written online and 33% of life insurance is written on the Internet.

According to a Swiss Reinsurance Co. study on the impact of e-business on insurance, "Not all insurance products are equally suited to Internet distribution. Their suitability depends chiefly on how much advice is required. The more complex the product and the bigger its financial scale (transaction volume), the greater the client's willingness to pay for advice."

John Kemble, the ABI's manager of electronic commerce, said the complexity of many insurance products, as well as regulatory restrictions, security risks and the cost of online development and integrating old mainframe computer systems, all are impediments to transacting insurance online. "The greatest progress in Internet selling has been with lower-priced goods, such as (compact discs) and books. Insurance faces additional barriers, such as product complexity, regulation and legacy business, which has meant its progress is slower than high-volume, low unit-cost trading areas," he said.

But the Swiss Re study says that even products considered unsuitable for Internet selling can benefit from "the huge opportunities for quality and service improvements presented by e-business."

Two such opportunities come in the areas of marketing and policy administration, according to the Swiss Re report. "If clients already have extensive product and risk expertise, the Internet can still be used as a marketing tool, despite the high complexity and transaction volume," the report said. "Internet team rooms, for example, could support the consulting and negotiation process." On the administration side, the Internet can be a valuable tool, "even if the conclusion of the policy and the associated advisory services occur with little or no online support," the report said.

The Internet can also be a valuable tool for insurance brokers, according to the study. "Brokers can use e-business solutions to bundle together the needs of a large number of clients, handle the administration themselves, and then forward the data to the insurer," the report said.

"In the U.S., for example, this type of Internet broker has become established in health insurance products for medium-sized companies." BI

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DOE

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Eureko

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He added that Eureko N.V.'s combination of strong local brands and market knowledge, and its position as "the first real European economic platform which others may join," would give it "a unique investment position to offer the capital markets."

Nol Hoevenaars, chief executive officer of Achmea, said his company had always believed an international approach to be in the best interests of its customers, and creating Eureko N.V. would help achieve this. "Eureko will allow us, through acquisitions and partnerships, to strengthen dynamically our position in the European market," he said.

Jardim Goncalves, chairman and chief executive of BCP, said that the new venture, by building upon each partner's strengths and skills, "sets the foundation for a pan-European aspiration."

He said the insurance unit of BCP—Seguros e Pensoes—is the largest insurance group in Portugal in all lines and one of the largest in Southern Europe.

Standard & Poor's Corp. in London put its BBB credit rating on Eureko B.V. and its A+ rating on Seguros e Pensoes on CreditWatch with positive implications. It affirmed its A/A-1 ratings on Achmea N.V.

S&P said that given the size of Achmea relative to both the existing Eureko B.V. and Seguros e Pensoes, it expects Achmea's operations to represent nearly 80% of the enlarged Eureko's total assets, more than 60% of its gross premium income, and over 50% of net income. For these reasons, Achmea is likely to emerge with more than 70% control of Eureko, said S&P.

The credit rating agency concluded that it expects the enlarged Eureko to maintain a financial and risk profile consistent with debt ratings solidly in the A range, and that the proposed integration should not have any negative impact on any of the Eureko members. BI

Survey

Continued from page 17

"It is clear that insurance will continue to be driven by cost, regardless of the insurance cycle," Mr. Mundy said. Faced with their own cost pressures, clients are becoming more selective in the services they require—"cherry-picking from the menu of services rather than accepting an 'all inclusive' service at an 'all inclusive' price," he said.

An increasing number of companies believe they do not need conventional insurance, though they do see a need for risk transfer and risk mitigation services, said Mr. Mundy.

He added there are clear signs that "the successful insurer of small to medium-size entities will be the one having the lowest distribution costs rather than the most extensive network or services."

An increasing number of companies believe they do not need conventional insurance, though they do see a need for risk transfer and risk mitigation services, added Mr. Mundy.

Major insurers and ART providers will need to work on their distribution channels and divest themselves of the conventional infrastructures for the major accounts.

"The skills needed will be in the areas of predictive risk assessment, repackaging and restructuring and corporate finance and, most importantly, in prioritizing future risk. The competition will come across the new consultancy/provider sector, as convergence finally arrives and destroys the artificial barriers between financial, legal, strategic, operational and insurance risk," he concluded.

•

Copies of the Alternative Risk Transfer Questionnaire Analysis are available free from Chris Mundy, Marsh Ltd., 1 The Marsh Centre, London E1 8DX; 44-207-357-5841; fax: 44-207-357-5810; or by e-mail to chris.mundy@marshmc.com.

Train

Continued from page 17

of the risk management procedures applicable to the circumstances of the crash, and recommend necessary safety improvements.

The Dec. 2, 1999, accident occurred at 8:22 a.m., when a State Rail Authority train crashed into the back of the Indian Pacific, the final carriage of which was a car carrier wagon. Mr. McInerney said the seven dead passengers in the State Rail train were killed instantly. The driver avoided serious injury by running from the driver's cabin into the passenger carriage "when a collision appeared imminent." Fifty-one passengers on the State Rail train were hospitalized for injuries and many others were treated for minor injuries.

Mr. McInerney found there was no single, integrated system for communications between trains, signalers and controllers on the rail network. Five different communication systems were involved leading up to the crash.

His report also found that the language used between controllers and drivers in communicating the fact that a train signal had failed was "inappropriate."

"Imprecise and colloquial expressions. . .lead to misunderstandings, as occurred in this case, because they fail to recognize the seriousness that should attend communications relating to safety matters," Mr. McInerney said.

He also said the signalers, in telling the State Rail Authority driver to go past a failed red signal, were motivated by the need for trains to run on time. Their go-ahead gave the driver the impression the track ahead was clear.

Mr. McInerney explained that two signals had failed, but the signaler who authorized the train to proceed was unaware that a second signal also had failed. While the State Rail Authority train had an onboard communications system with signalers, the Indian Pacific freight train did not. The driver had to leave the train to call from a signal box. "This is time-wasting, inefficient and undoubtedly contributed to the accident," the acting judge found.

The signal failures and communication problems caused delays for the Indian Pacific, which meant it had not cleared the track before the commuter train arrived.

Mr. McInerney's report also found safety training was inadequate.

"As soon as an event occurred which tested their knowledge of safe working procedures, the train controller, the signaler, and the driver of the inter-urban were all found wanting," he noted. "This reflects badly on their employer and the systems for training, supervision and rectification."

'As soon as an event occurred which tested their knowledge of safe working procedures, the train controller, the signaler and the driver...were all found wanting,' the report says.

Mr. McInerney said his final report, due by Aug. 31, will look at ways to address the training deficiencies.

He found a general lack of awareness of safety considerations by everyone involved in the operation and management of both trains.

Mr. McInerney's interim recommendations include fitting portable radios to all commuter trains, enforcing protocols for voice communications, the installation of train indicator boards at all signal boxes, and for train drivers, controllers and signalers to acknowledge, in writing, the receipt and reading of all safety information.

He also recommended that trains be required to proceed with extreme caution if they pass an automatic stop signal.

Andrew Thomas, Sydney-based New South Wales manager, loss adjusting, for Wyatt Gallagher Bassett Pty. Ltd., a Brisbane-based claims management-loss adjusting firm, was appointed by London underwriters to adjust the material damage and loss of profits claims for the State Rail Authority, and by State Rail's Sydney law firm, Gillis Delaney Brown, to handle potential public liability claims.

Mr. Thomas said there was substantial damage to property, including the State Rail Authority train, the Indian Pacific train, and rail infrastructure. There were also potential claims for passengers' property and freight.

"We met just days after the accident with SRA administration heads to initiate procedures to capture the data we required for the claim," Mr. Thomas said. "It was important to have access to data which could illustrate increased costs of working, for example, additional staffing, busing passengers while the track was repaired, and other aspects of the business interruption claim. Data was also required on costs of repairs and removal of debris."

Quick repairs were carried out to three of the State Rail carriages, which were back in service within two weeks. The engine has been retained for inspection, and rail contractors will help decide whether it can be economically repaired, Mr. Thomas said.

While it could take six months for the property/business interruption claim to be finalized, Mr. Thomas said a claim under State Rail's legal expenses policy is likely to be lodged soon. The State Rail Authority already has paid numerous third-party claims, but liability issues are not yet resolved, he said. BI

Absence

Continued from page 3

of companies may focus on measuring direct costs. . .if you could ever get at the real indirect costs associated with those kinds of activities, those numbers would probably pale in comparison," said Sherry Blomberg, director of health services for telecommunications company U.S. West Inc. in Denver, one of the companies that participated in the study.

The indirect costs associated with employee absence include the cost of hiring temporary workers and the overtime needed to compensate for lost work hours. Indirect costs also include less-tangible costs, such those related to diminished productivity, including business lost due to unmet commitments.

"These things are much more difficult to quantify. While you may have a specific code to track how much you're using temporary workers or overtime costs, some of the other, softer costs really have a tremendous impact," Ms. Blomberg said.

"When you see, in this instance, that nearly 75 cents of each dollar is focused on productivity loss rather than on the direct cost of benefits, it really emphasizes that, perhaps historically, employers have not been looking broadly enough," said IBI President Thomas Parry.

Ray Layburn, director of attendance management for study participant Bell Atlantic Corp. in New York, said that companies are constantly striving to obtain better quantitative data to determine the costs associated with lost productivity.

"There's always a sort of nebulousness to some of the data, because many companies have not been in the habit of focusing on lost work time from this perspective," he said.

"Most companies in all industries focus on the cost of managing benefit programs; managing workers compensation; managing (the Family and Medical Leave Act); managing disability management; managing incidental, non-occupational lost time—focusing on only the group health costs," Mr. Layburn said.

The study "puts in perspective" the significance of indirect costs and the need to examine those costs along with benefit costs, Mr. Layburn said.

While the IBI's study examined a specific industry, the telecommunications industry is not unique in its tendency to overlook indirect benefit costs related to employee absence, Ms. Blomberg said.

"I think what we saw (from the study results) is no different from what is seen in other industries. We just happened to be a group of companies who have similar benefit plan designs, who have similar union contracts, who are able to give our data to an independent source like IBI," she said.

IBI, in turn, "is then able to give us some aggregated information so that we can compare and get a feel for what we should be paying attention to," she said.

Companies need to be creative in their return-to-work approaches, including possible alternative assignments for injured workers, Ms. Blomberg suggested. That involves addressing what injured workers can do, rather than looking solely at what they cannot do.

"The focus needs to be on functionality, not on disability," she said. "I think that we need to continue to focus on how we value our workers. We need to make sure that the environment that we're creating is one where people want to come to work."

IBI's analysis of the data is not publicly available, as it is based upon proprietary company information. BI

Valuation

Continued from page 2

based on generally accepted actuarial principles and practices.

- The index to which a variable rate is tied on the date of the plan's termination.
- A "historical average" of the index.

The PBGC notice points out that each method "would present different issues," which it then outlines. Comments on how the PBGC should proceed must be received by the agency by Sept. 22.

A spokeswoman for the PBGC said the agency currently is trustee of eight terminated cash balance plans, three of which do have variable indices. "The agency is still working on the valuations of the plans that have variable indices," she said.

Some benefit experts praised the federal agency for taking steps now to deal with the issues associated with cash balance plans that use variable indices.

"As they actually get more of these plans in for termination, they understandably need to develop a consistent position on how to handle these plans. I think their soliciting information is a good way to obtain the opinions of interested parties," said Larry Sher, a principal with Unifi Network, a unit of PricewaterhouseCoopers L.L.P. in Teaneck, N.J.

"It shows they're reaching out to employers and practitioners for ideas, and that's positive," said Mr. Sher.

Ethan Kra, chief actuary-retirement for William M. Mercer Inc. in New York, said that many of the PBGC's regulations were written for an environment where current investment opportunities weren't available to participants. "Accordingly, the PBGC is now proactively in an anticipatory fashion addressing the need to update regulations to deal with these types of plans," he said.

Mr. Sher downplayed the effect of any PBGC action on employers' day-to-day operation of cash balance plans.

"It's unlikely it will have any direct impact, though depending on where they end up it may suggest that certain plan language dealing with termination be modified. But I doubt it would have any direct impact on the ongoing operation of the plan," he said.

The head of the employer-supported ERISA Industry Committee was a bit more skeptical.

"It seems premature to get excited about three plans out of almost 1,000," said Mark Ugoretz, president of the Washington-based ERIC. "That raises a red flag," he said, noting that employers have had concerns about the mandated (interest rate) assumptions the PBGC has used in the past.

Mr. Ugoretz also pointed out that cash balance plans in general are a "politically hot issue."

Another observer dismissed the effect that controversy over cash balance plans may have had on the PBGC's move.

"This notice is something the PBGC would have had to put out as they started to get cash balance plans to value regardless of anything else that's been happening on the cash balance issue for the last year and a half," said Eric Lofgren, director-benefits consulting for Watson Wyatt Worldwide in Philadelphia.

Screening

Continued from page 3

want to hire," Mr. Nadell said.

- "I was working for mom. When they terminated the job position there was nothing else I could do there," wrote yet another job applicant.

"Has anybody ever terminated a job position because it's the only way you could get rid of somebody?" Mr. Nadell queried.

- "Please don't misconstrue my 14 jobs as job hopping. I have never quit a job yet."

Most of the time, however, spotting the so-called "employee from hell" isn't so easy, Mr. Nadell admitted. That's why it's so important to do background checks, he said.

Among the best sources of information are credit reports, arrest records, Social Security records, licenses and/or school records and references.

"Some people say, 'I stopped doing references. I don't get good information anymore.' Well, guess what? You will be sued for negligent hiring. You can't stop calling references," Mr. Nadell stressed. "And you know what? You never know what people will tell you."

Mr. Nadell advised against using credit report information "unless the person can affect you financially.

Mr. Nadell encouraged employers to review driving records, though, even if an applicant won't be driving for the company.

"I find more about a person's character from the motor vehicle report than from anything else," he said. "It picks up DUIs, possession of drugs, current warrants for their arrest and failures to appear. If they don't appear in court to handle something, what makes you think they'll show up for work?" he asked, rhetorically.

Before an employer begins the task of investigating a potential employee's past, "you need to know the legal issues," Mr. Nadell warned. "The fact is that 75% of the companies to which I've made a presentation were currently violating federal law, state law or both."

For example, employers can be assessed both criminal and civil penalties if they violate provisions of the Consumer Credit Reporting Reform Act of 1996, which governs pre-employment background checks. The law is enforced by the Federal Trade Commission.

"Credit is only 20% of this law," he pointed out. "Any other kind of background check is 80% of the law."

Among other things, the law requires that employers disclose to applicants that their background will be investigated and obtain their permission on a different form from the job application.

Penalties for employers that don't can be costly, Mr. Nadell warned.

In March 1998, the Federal Trade Commission fined Altmeyer Home Stores Inc. of New Kensington, Pa., more than $11,000 each time it failed to tell a job applicant that he or she had been denied employment as a result of information in the applicants' credit records.

Information employers obtain from consumer reporting agencies also must be less than 30 days' old.

Also, even though it might help with a background check, employers cannot ask applicants to give their maiden name, full date or birth, nor their gender or race, according to Mr. Nadell.

Some state laws are even more restrictive than the federal laws, he pointed out.

The California Labor Code, for example, requires employers to disclose the name of the consumer reporting agencies that will be used. BI

Avoiding liability for temp workers

By JOANNE WOJCIK

LAS VEGAS—When is an employee really an employee and what difference does it make?

In the case of *Donna Vizcaino et al. vs. Microsoft Corp.*, it cost the Seattle-based software maker more than $100 million in stock options when the U.S. Supreme Court declined to reverse an appellate court ruling holding that Microsoft's temporary workers were entitled to the same benefits accorded full-time employees.

"And you thought Bill Gates was having a bad day when Nasdaq dropped," quipped Rodney Glover, managing partner of the Washington office of Gardner, Carton & Douglas.

In a similar case, the Internal Revenue Service ordered Atlantic Richfield Co. to pay $3 million for allegedly misclassifying temporary workers.

And a lawsuit filed by two former volunteers for America Online Inc. pending in federal court in New York is seeking back pay and benefits from the Internet service provider.

While the Microsoft case has received the most notoriety, human resource professionals also should be aware of these other cases, as well as federal legislation recently introduced to bar employers from discriminating against temporary employees, Mr. Glover said during a session at the 52nd Annual Society of Human Resource Professionals' Conference and Exhibition, held June 25-28 in Las Vegas.

Mr. Glover offered some guidelines for employers using temporary workers to avoid liability like that which Microsoft and other employers now face.

In particular, he suggested that employers apply the test that the 9th U.S. Circuit Court of Appeals used in the Microsoft case, which arose out of a 1992 Supreme Court decision in *Nationwide Mutual Insurance Co. vs. Darden.*

According to "the Darden Dirty Dozen," as Mr. Glover has dubbed them, the factors used to define whether a hired party is an employee include:

- The skill required.
- The source of the instrumentalities and tools.
- The location of the work.
- The duration of the relationship between the parties.
- Whether the hiring party has the right to assign additional projects to the hired party.
- The extent of the hired party's discretion over when and how long to work.
- The method of payment.
- The hired party's role in hiring and paying assistants.
- Whether the work is part of the regular business of the hiring party.
- Whether the hiring party is in business.
- The provision of employee benefits.
- The tax treatment of the hired party.

In the Microsoft case, the 9th Circuit focused on "the hiring party's right to control the manner and means of the job or work," which is basically the issue at the heart of the Darden factors, Mr. Glover explained.

Despite the fact that the individuals were both employed by and paid by temp agencies, the court ruled they were "common law employees," and entitled to the same benefits as full-time employees, he said.

In response to the class-action litigation, Microsoft has made several changes in its policies pertaining to temporary employees, according to Mr. Glover.

For example, beginning this month, Microsoft established a one-year limit for the duration of temporary workers' employment, with 100-day intervals in between rehiring a temp. The company also is encouraging its 5,500 to 6,000 temporary workers to apply for 3,000 regular positions now open.

Mr. Glover advised employers to follow Microsoft's lead, but also suggested some other protections.

For example, he encouraged employers to make sure that the temporary agencies with which they contract offer a complete benefits package to workers.

Employers that use temporary agencies also should ensure that the agency recruits the workers themselves and provides any necessary training before being assigned to a position that requires certain skills, according to Mr. Glover.

He also warned against awarding temporary workers any of the perks that regular full-time employees get, such as business cards, company cars or even attending the company picnic.

"Make sure your temps are treated differently," he insisted.

Mr. Glover also advised employers to review all existing and future contracts with temporary agencies and outside service providers to make it clear that the employer "neither seeks nor accepts responsibility for control over the employees of its contractors."

"You need to make sure your temporary workers are 'employed' in every sense of the term through the temp agency" or outside vendor, Mr. Glover said. BI

Focus on performance

'Emotional intelligence' important in ADA accommodation

By JOANNE WOJCIK

LAS VEGAS—Employers are less likely to run into trouble complying with the Americans with Disability Act if they focus on performance, rather than on the disability being addressed, experts say.

At the same time, employers must foster an environment in which people with disabilities feel safe in seeking accommodations when they are needed, according to Peter Petesch, an attorney in the Washington office of Ford & Harrison L.L.P.

Perhaps most importantly, though, managers must learn how to put their own prejudices aside so they don't embarrass disabled workers and exacerbate an already delicate situation, says Nancy Breuer, co-founder of The Positive Workplace, a consulting firm in Los Angeles.

The natural impulse of a manager when presented with the prospect of a request for ADA accommodation is to emotionally withdraw or ignore the situation, hoping it will go away, Ms. Breuer said during a session at the 52nd Annual Society of Human Resource Management's Conference and Exhibition, held June 25-28 in Las Vegas.

Such an attitude will only make things more difficult, she said.

Instead, managers need to fight the impulse to withdraw and use their "emotional intelligence" to take charge of the situation, she said.

"Emotional intelligence is a person's ability to manage himself or herself and relate to other people," Ms. Breuer explained. "It matters twice as much as technical skills or IQ in success on the job."

Fortunately, she said, emotional intelligence can be developed over time. The core skills of emotional intelligence are:

- Emotional self-awareness.
- Self-management.
- Interpersonal effectiveness.
- Social skills.
- Empathy, or the ability to understand another person's feelings or difficulties.

"Help your managers better understand how their behavior, thoughts and feelings affect themselves and others," Ms. Breuer suggested.

This way, they will be better able to demonstrate the behavior they would like the disabled individual's co-workers to exhibit, she said.

And to avoid "the perception among other employees that they're carrying part of the disabled person's load," it's essential that managers "manage performance, not the disability," Mr. Petesch said.

"Hold that person to the same performance standards as you would anybody else," he said.

This requires using a little creativity and accepting that not all tasks need to be performed a certain way to achieve the desired result, he said.

Moreover, an employer shouldn't approach an individual thought to have a disability and ask them outright about the condition, Mr. Petesch said.

"The law does not require clairvoyance. Most disabilities are invisible," he said. "Disclosure is up to the employee, unless the person is posing a threat to the safety and health of others in the workplace."

"The ability to make medical inquiries is limited at the pre-employment stage. However, it's wide open at the post-conditional-offer stage," he said.

But if a person is already employed and seems to be having a performance problem, the best approach is for a manager to treat that individual as he or she would any other person with a performance problem.

"That is, go over the problem and ask if there is anything you can do to get them back on track," Mr. Petesch advised.

Then, only if the individual requests accommodation under the ADA, is the employer required to make a reasonable effort to determine the appropriate accommodation.

"And reasonable accommodation means effective; cost doesn't come into the equation," he pointed out. "If it's not effective, no matter how cheap or expensive it is, it's not a reasonable accommodation."

The accommodation also must take into consideration the individual's current condition, Mr. Petesch said.

"That's one of the biggest challenges of reasonable accommodation. You have to focus on the present condition, not speculate on how someone with a degenerative illness might perform six months from now," he said.

It's also important to keep tabs on how co-workers react to the disabled worker and his or her accommodation, Mr. Petesch said.

"If the other employees know a person has a disability and are accepting now of their accommodation, it doesn't mean they'll be accepting six months down the road," he said.

"Intellectually, most people know they cannot get HIV or AIDS under ordinary workplace contact, but emotional stupidity takes over later on," he said.

Employers also must closely guard any information they acquire regarding a disabled individual's condition, Mr. Petesch said.

"Once a person comes forward, restrict disclosure to a small circle of management. It's much easier to protect the confidentiality of that information," he said. Mr. Petesch added that training supervisors to be discrete is very important, particularly at the lower levels of management, because ADA violations often come from this level.

HR gaining in salary, respect

LAS VEGAS—The role of human resource professionals is getting a lot more respect in today's tight labor market.

Salaries for many human resource positions are rising faster than overall U.S. salaries, according to a new survey conducted by William M. Mercer Inc. and the Society for Human Resource Management.

The findings were announced at the 52nd Annual Society for Human Resource Management's Conference and Exhibition, held June 25-28 in Las Vegas.

"HR professionals play a critical role in the success of their organizations, and the value they provide is being recognized and rewarded," said SHRM President and Chief Executive Officer Michael R. Losey in a statement.

The salary survey found that the median annual total cash compensation for top HR management executives whose responsibilities include industrial relations was $201,500, up 5.1% from a year ago. For top HR executives without industrial relations responsibilities, it was $195,500, up 9.3% from 1999.

Top corporate compensation and benefits executive pay was $143,200, up 5.3% from 1999; compensation and benefits manager median pay was up 6.1% to 82,500; and median pay for HR generalists was $49,000, up 5.4% from last year.

Next year's annual conference will be held in June 24-27 in San Francisco.

For more information on these surveys or on future SHRM conferences, visit *www.shrm.org* or contact the Society for Human Resource Management, 1800 Duke St., Alexandria, Va. 22314; 703-548-3440; fax: 703-836-0367. BI

Crackpot theory born on 4th of July

I have a grand new theory on risk. I call it the relativity of risk theory.

If Albert Einstein were still alive, I'm sure he would have thought of it first. In fact, I can't be sure that someone else didn't think of it first; if they did, I can only assure you that I never heard of it before, and they did not arrive at it the same way I did.

My theory states that risk is not constant, but rather depends on one's relation to—or control of—the risk in question. In other words, the destructive force posed by a risk is subjective and varies depending on who is creating a particular situation.

In layman's terms, my theory goes like this: What may be perfectly safe if I do it, is probably irresponsibly risky if you do it.

This breakthrough theory came to me earlier this month during the explosively festive Fourth of July holiday.

In the days running up to the holiday, which is traditionally celebrated by lighting explosives and shooting rockets at one's friends and enemies, I found myself bombarded by opportunities to buy, light and enjoy firecrackers, rockets and the like.

Even in the growing number of communities where lighting explosives and creating fire hazards are considered to be in bad taste, it apparently is still perfectly legal to sell fireworks. It's as if local lawmakers expect buyers to drop in by helicopter from neighboring, inflammable states and just as cleanly depart to enjoy their volatile purchases elsewhere.

Paul D. Winston

I really don't worry about the weak logic of such legal loopholes. You see, I love fireworks. And, having not burst an eardrum or lost any digits, I consider myself quite skilled in their use. Therefore, I reason, the risk of harm when I am lighting M-80s and cherry bombs is quite low.

As I passed all these innocent vendors of pyrotechnics, I was tempted to buy firecrackers, rockets, Roman candles, aerial displays, spinning and whistling devices—even those stinky little black things that writhe and expand like snakes when lit.

While watching our community's municipal fireworks display, I may actually have been drooling with excitement at the loud explosions and bursts in the sky. Thankfully, it was dark, so there were no witnesses.

My enthusiasm fizzles faster than a wet fuse, however, when someone other than the pros is lighting fireworks.

This unease is usually triggered when the neighbors start launching their arsenal from what seems dangerously close to my house.

On the Fourth, I returned home from the local fireworks display to see three of my neighbors standing in the street in front of my home with glassy eyes and maniacal grins. One of them seemed unable to control himself from chuckling, "heh heh heh." At first, I didn't know what they were up to, and then it hit me: These guys had the unmistakable look of men who are blowing things up.

Get the kids inside, lock the doors and hide the cat! There are dangerous lunatics on my street!

Sure enough, what sounded like about 500 firecrackers going off in a row soon followed. Then 500 more.

Next, from a street away, a barrage of shrieking rockets sailed over my house. It sounded like we were under attack as waves of rockets corkscrewed through the air. I could hear them plinking on my roof and imagined embers being fanned into flames.

What, I wondered, are these idiots up to? It's not safe! It's risky! It's a fire hazard! You could put out an eye!

Confronted with my chicken-like core, I was aghast and ashamed. Why am I, who loves lighting fireworks myself, such a wuss when a few good old boys in the area are lighting off several thousand explosives?

And then it struck me: Risk is in the eye of the beholder. It's OK if I do it; it's crazy and unsafe if someone else does it. I'd even be willing to concede that my neighbors probably have the same perspective regarding me.

So that's the origin of my theory: The realization that the risk is proportional to how much control I have over it. Insurers, which have to entrust their policyholders with the control of risks every day, must have a lot of sleepless nights, I realized.

To test whether my theory of the relativity of risk was limited to the lighting of fireworks, I sought to apply it to other endeavors. And it holds just as true for other situations—driving over the speed limit, falling in love, cooking with shellfish, wearing plaid clothing, cutting one's own hair, raising children, and so on.

Try it yourself and I'm sure you'll agree it's one of the more startling discoveries I've ever made. But then, everything's relative.

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

Mail

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additional fees.

Although some companies have contingency plans for printing and mailing, those plans may not work as well as they hope, Mr. Hertzog noted.

Mr. Hertzog said he has found that many companies with high-volume printing operations, such as insurance companies and banks, have more at stake than they realize. He has visited major corporations that want the print-to-mail services to make sure one part of their operations can continue, he noted. But while there, Mr. Hertzog said he has found "rooms and rooms of mailing machines" that could be taken out of commission by a catastrophe. "If something happens, they're out of business."

He warned that while most companies are diligent about making backups, "that doesn't communicate with their customers," and simply backing up files "leaves a gaping hole" in a company's post-catastrophe operation if there is no plan for printing from the files.

Michael Mack, director of sales at Pitney Bowes Inc. in Stamford, Conn., agreed that not all employers are aware of the risk they are facing.

Employers are sending data files to an offsite vendor that "might just happen to have printing capability," Mr. Mack said. But many employers have not thought through whether the vendor can provide printing and mailing services or can handle the volume of such services that could be required.

One of the biggest business interruption risks some companies face is losing the ability to print and mail bills, some consultants say. When that occurs, income is going to be interrupted.

"People won't pay until they get a bill," said Charles R. Lee, principal with Tillinghast-Towers Perrin in Dallas. Companies that automatically generate monthly bills will be in a bind if a disaster takes down their printing capacity and that ability is not accounted for in a contingency plan, he noted.

"Even in this day and age of outsourcing, we still have a lot of organizations that do their own printing," Mr. Lee pointed out, "and they have to be able to continue that business."

He said some companies can rely on a "natural backup" if they have multiple locations that handle similar printing tasks. With that kind of arrangement, some of the work from an affected location could be shifted to another site.

Mr. Mack pointed out, however, that if the load is too great, other locations could become overwhelmed. "At best, it will slow things down."

It isn't often that print-to-mail service providers have to crank up their machinery. Mail-Gard has had just two instances where it was called into action for clients and Pitney Bowes' clients haven't needed the service.

Mr. Hertzog declined to name the companies that have used Mail-Gard's services, but he said one was a bank that lost the use of its printing operations because of a fire and the other was an insurer that was shut down when computer lines were severed by nearby construction.

William J. Kelly, a managing director with responsibility for risk management at J.P. Morgan & Co. Inc. in New York, said that risk managers should be considering the ability to print revenue-generating paperwork when preparing for disasters. If a company does not have a contingency plan regarding how to send out invoices, "that would seem to me an awful omission," Mr. Kelly said. J.P. Morgan is heavily regulated, and federal agencies make sure the bank has those contingencies in place, he added.

But, if a company is "not so heavily regulated," Mr. Kelly said, it's possible that such a contingency arrangement "might slip through the cracks."

Nick Elsberg, vp-information services at Arthur J. Gallagher & Co. in Itasca, Ill., said ensuring that printing capabilities are available is common in many employers' contingency arrangements. "Most disaster recovery plans I'm familiar with always included the print side of things."

That's particularly true when the documents that need to be printed are checks or other critical documents, he added. The same contingencies might not be undertaken for less-critical paperwork, such as reports, Mr. Elsberg noted.

When a catastrophe does cause a print-to-mail interruption, it generally is covered under business interruption policies, according to Roderick Hudson, central region underwriting manager-property and general liability with Kemper Insurance Cos. in Chicago.

"You don't need a specialty coverage to address it," he said. Traditionally, the extra expense portion of a business interruption policy will cover costs such as those charged by print-to-mail services, according to Mr. Hudson.

In addition, an "accounts receivable" endorsement can be added to a business interruption policy to cover interest income that is lost because a company's revenue stream is interrupted, Mr. Hudson pointed out.

"It's a great option to have," he said of the ability to print bills and other critical documents in the wake of a catastrophe. Any disaster recovery plan should address that capability, Mr. Hudson noted.

Mr. Lee of Tillinghast said, "we advise clients to think through all the relationships they have with third parties and how they can communicate and interact with them" if a catastrophe strikes. BI

Court

Continued from page 1

records state.

The high court's decision now holds the insurer responsible for a nearly $14 million bad-faith verdict, far more than the insurer would have been responsible for had it agreed with the policyholder's desire to settle the underlying liability lawsuit for $750,000.

Insurer defense attorneys say the ruling is a significant loss, because it denies insurers a comparative fault defense doctrine, which California courts currently apply to all other tort areas except those addressing insurance.

"In every other instance where California courts have had the opportunity to expand comparative fault. . .they have done it," said Thomas Newman, a partner in the New York office of Luce, Forward, Hamilton & Scripps L.L.P., who represented American Empire in the case. "This is the first time that they have retreated from that."

Justice Joyce L. Kennard agreed in a dissenting opinion.

"By refusing to recognize a partial defense of comparative fault in insurance bad faith actions. . .the majority takes a step backward, making liability insurers the only parties to whom this court has denied the benefits of California's comparative fault tort system," she said.

The majority of the court, however, disagreed and found in its June 22 decision that comparative bad faith is conceptually flawed. An insurance company's breach of the implied covenant of good faith and fair dealing is governed by tort principles, whereas a policyholder's breach of that covenant is not a tort, the majority held. Thus, the two actions are not comparable, the court reasoned.

The Supreme Court decision stems from a 1987 incident in which a Wisconsin man, Michael Hubert, was rendered a quadriplegic after jumping headfirst onto a water-slide toy known as a "Slip 'N Slide," court records show.

The man sued Kransco, which manufactured the Slip 'N Slide, seeking $1.75 million. During trial, he offered to settle for $750,000, and Kransco approved and agreed to tender its $100,000 self-insured retention.

Kransco's primary insurer, American Empire Surplus Lines Insurance Co., would contribute only $250,000 toward a settlement and rejected the plaintiff's settlement offer. Later, when an excess insurer said it would contribute $100,000 to a settlement, American Empire expressed a willingness to settle for $450,000, court records indicate. But Mr. Hubert rejected that offer.

A jury ultimately returned a verdict for $2.3 million in compensatory damages and $10 million in punitive damages. During post-verdict motions, Kransco settled with Mr. Hubert, and its insurers paid $7.5 million, with American Empire contributing its policy limits of $900,000.

In 1992, Kransco initiated its bad-faith action against American Empire on the grounds that the insurer originally rejected Mr. Hubert's offer to settle his lawsuit for a sum within the Kransco policy limits, despite a substantial risk of a verdict greatly in excess of those limits, court records state.

In that bad-faith dispute, a jury first found the manufacturer itself acted in bad faith, because it earlier denied knowledge of two previous Slip 'N Slide accidents that had resulted in similar injuries. The jury assessed compensatory damages of $13.6 million and concluded that Kransco was 90% at fault.

But the trial judge later found the insurer entirely responsible for breaching its duty of good faith and fair dealing for failing to settle the third-party action within policy limits, court records show.

On appeal, the insurer argued for reinstatement of the jury's original verdict allocating fault and liability. But an appeals court found comparative bad faith is not a defense, and the Supreme Court upheld that ruling.

"After this decision, insurance companies are going to think long and hard before taking gambles at trial when they know they can settle within limits," said John MacDonald, senior shareholder in the Philadelphia office of Anderson Kill & Olick P.C. "If this decision came out the other way around, I think you would see a plethora of these defenses being raised."

Anderson Kill is among the policyholder law firms that filed amicus briefs.

Mr. Johnson said he also thinks the comparative bad-faith defense would have flourished had the court ruled in favor of the insurer. He believes that because several articles regarding the case appeared in insurer defense publications after a jury initially found the policyholder 90% at fault, he said.

But insurers had not resorted to the argument frequently in the past, because they are not eager to accuse their policyholders of unreasonable activity unless there is substantial evidence, said Lisa Perrochet, a partner at Horvitz & Levy, an Encino, Calif., firm that filed briefs on behalf of insurers.

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Kransco vs. American Empire Surplus Lines Insurance Co. California Supreme Court No. S062139.

Settle

Continued from page 1

"This agreement will make it possible for thousands of WCI retirees to receive retirement benefits over and above PBGC's guarantee," PBGC Executive Director David Strauss said in a written statement.

In September 1985, White Consolidated Industries, a home appliance maker, sold a group of its businesses to Robert Tomsich, who set up a thinly capitalized corporation, Blaw Knox Corp., for the purposes of making the purchase.

Mr. Tomsich paid nothing for the businesses but would assume the pension liabilities of the businesses, court records show. Electrolux bought the remainder of WCI in 1986.

The agreement included provisions to ensure that the pension plans would not falter before 1990, five years after the deal closed, by having WCI contribute a total of $20 million to the underfunded pension plans over five years.

In February 1992, after the five-year period ended, Blaw Knox failed and the largest pension plan was terminated, leaving about $81 million of underfunded obligations, according to court documents.

The court ruled that WCI was liable because the sale was done to evade its pension obligations.

The PBGC challenged the sale in 1991 and later brought suit. Last year, a federal district court held WCI liable for the pension obligations.The court ruled that WCI was liable because the sale was done to evade its pension obligations and that the sale of the business to Mr. Tomsich was a sham transaction.

WCI had argued that under the Employee Retirement Income Security Act, its liability ended five years after it sold the businesses. But the federal district court disagreed, ruling that ERISA's five-year seller's liability provision started to run in 1990, not 1985, because WCI had continued to contribute to the pension plans. The 3rd Circuit upheld that decision last month.

Under the agreement with the PBGC, WCI will pay retirees their full pensions as the pension plans had originally provided, along with a 5% increase, plus any benefits the PBGC was unable to pay retirees because of legal limits placed on the organization.

Retirees will "be made whole and then some," a PBGC spokesman said.

WCI will also pay the PBGC $30 million to reimburse it for the benefits already paid out and $10 million in legal and administrative fees.

The deal still must receive approval from both the Department of Labor and the Internal Revenue Service, which could take 12 to 18 months. If the deal is not approved, WCI will be required to pay the full benefits plus give the PBGC $180 million less the amounts it pays the workers. BI

Hepatitis

Continued from page 1

Treatment is available, though, that can save lives and lower costs, a consultant says.

"The most significant aspect of the study, in my mind, is that currently available treatment is very cost-effective," said Bruce S. Pyenson, a principal and consulting actuary with Milliman & Robertson in New York and one of the report's authors.

About 4 million Americans, or 1.8% of the population of the United States, have hepatitis C antibodies, of whom 2.7 million have active hepatitis C virus infection, according to the Centers for Disease Control and Prevention in Atlanta.

In comparison, an estimated 750,000 Americans currently are infected with the human immunodeficiency virus that causes AIDS.

The Milliman & Robertson report notes that there are about 30,000 new hepatitis C cases annually, and that no vaccine is currently available. Transmission occurs through contact with HCV-infected blood or bodily fluids.

"People currently infected with HCV will incur tens of billions of dollars of medical costs and lost productivity over the next two decades," the report said.

"The burden this will impose on insurers, (health maintenance organizations), employers and governments will depend on the distribution of the infected patients, their health status, the treatments available and the coordination of care," the report continued.

"The epidemic is here," Mr. Pyenson said. "And it is clearly better not to ignore the epidemic. It's clearly better to plan for it."

The study notes that the leading treatment for HCV is a combination of two medicines, Interferon-Alfa and ribavirin, and a cost-benefit analysis shows that every $1 spent on this "combination therapy" can result in about $4 of medical cost savings.

That finding includes the total health care costs for treating both the patients who respond to curative treatment and those who don't.

For a typical patient, the study said, combination therapy pays for itself within 10 years, even before considering the savings from avoided losses in disability costs and lost productivity.

Disability losses stemming from HCV will cost employers billions of dollars, the report claims, and, if all those in the eligible population were working and were treated with combination therapy, employers would save at least $4 billion to $5 billion in lost work-time costs over the course of the epidemic.

'The epidemic is here. And it is clearly better not to ignore the epidemic. It's clearly better to plan for it,' says Bruce S. Pyenson.

In its natural progression, chronic HCV infection advances from mild chronic hepatitis to moderate chronic hepatitis to cirrhosis and, ultimately, to various forms of advanced liver disease.

Combination therapy is successful at eliminating the hepatitis C virus in approximately 41% of those suffering from mild to moderate hepatitis, and 20% of the population with cirrhosis.

"While these success rates may seem too low to justify the high cost of treatment, vigorous analysis of the available data indicates otherwise," the Milliman & Robertson report said.

Because the disease has a longer latency period than an infection such as HIV/AIDS, it's possible that people exposed to HCV in the 1960s through intravenous drug use or blood transfusions may be just becoming sick today, Mr. Pyenson said.

"That implies something about the nature of the risk," he said.

And, the report notes, "The characteristics of HCV transmission mean that the risks will not be spread evenly across socio-economic groups or across HMOs, employers and other organizations."

"Some organizations will face more risk than average, and others will face less," the report said. "The risk will vary with a population's prevalence, distribution of disease state and ability to comply with risk-lowering behaviors."

Because of those differences in the HCV-infected population's distribution, some HMOs and insurers may see a large portion of their members infected with HCV, the report said, and managers in plans with high turnover rates might be tempted to try to avoid treatment costs by delaying pharmaceutical treatment.

"However, the consolidation of the insurance industry (which reduces turnover), the higher cure rate for earlier treatment and standards of care issues counter the arguments for the delay," the report cautions.

The HCV epidemic also raises issues from medical malpractice and workers compensation perspectives.

Given that the hepatitis C virus was not fully identified until 1989, in many cases physicians have not diagnosed it or are not treating it, Mr. Pyenson said.

"In today's (malpractice) environment, a potential failure to diagnose or failure to treat are two of the main issues," he said.

On the workers comp front, in the health care industry, "there's something like a million needle sticks a year, probably more than that," the consultant said, and hepatitis C apparently spreads much more easily through needle sticks than does HIV.

Mr. Pyenson said he believes employer and insurer awareness of hepatitis C is beginning to grow and will continue to do so, and noted the issue is beginning to get the attention of the general public as well.

Ultimately, Milliman & Robertson's report recommended that "organizations plan now to manage their members or employees with chronic HCV."

"As with other chronic disease processes, there are significant opportunities to develop well-managed programs that control cost while providing high-quality services," the report said.

And, the study concludes, unlike with some chronic diseases, curative treatments exist for HCV, and they are cost-effective.

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Copies of the research report, "The Hepatitis C Epidemic: Looking at the Tip of the Iceberg," are available at no cost by calling Mr. Pyenson at 212-279-7166 or writing to Milliman & Robertson Inc., 1 Penn Plaza, 38th Floor, New York, N.Y. 10119.

UPDATES

Acting commissioner named

Continued from page 2

Mr. Kelso is scheduled to assume the responsibilities of acting insurance commissioner when Mr. Quackenbush officially steps down Monday. Mr. Kelso will retain those responsibilities until Gov. Gray Davis appoints someone to finish out Mr. Quackenbush's term, set to expire in 2002, according to the Insurance Department.

Mr. Kelso has not worked in the insurance industry. He has, however, written two 1999 university-sponsored reports on insurance issues, according to a spokesman for the McGeorge School of Law.

One report focused on the impact of jury verdicts on insurance bad-faith cases. The other examined the impact of jury verdicts on medical malpractice and damage award caps.

His experience includes advising state legislators and the judicial and executive branches on issues such as constitutional amendments, legislation and court rules, according to the Insurance Department press release.

"My job is to prepare the department for new leadership and to begin the process of restoring public trust and confidence that the insurance industry is being effectively regulated and consumers' interests are being properly protected by the Department of Insurance consistent with the rule of law," Mr. Kelso said in a prepared statement.

Am Re harmed by delay: Judge

HARRISBURG, Pa.—Further delay by Pennsylvania's insurance commissioner in processing American Re-Insurance Co.'s application for approval to buy United National Group will cause additional harm to American Re, a judge ruled late last month.

The judge had ruled in May that Commissioner M. Diane Koken was "stonewalling" the proposed $350 million acquisition of the surplus lines insurer as a means to pressure American Re's parent, Munich Reinsurance Co., into joining the International Commission on Holocaust Era Insurance Claims.

The latest ruling was issued in response to a June appellate court decision that the judge should rearticulate his argument to deny the insurance commissioner's automatic right to appeal the decision and his order to process the application "forthwith" (*BI*, June 5).

The delay has already caused "irreparable harm" to American Re in that regulators unjustifiably withheld a decision on American Re's right to buy an insurer, ruled Judge Joseph T. Doyle, president judge in the Commonwealth Court of Pennsylvania.

"Such harm would only be compounded. . .were American Re to lose an acquisition merely because respondents failed to perform their mandatory duty," the judge ruled.

Under the purchase agreement, either party could have terminated the deal after Feb. 29, 2000, Judge Doyle noted.

The commissioner and the Insurance Department have filed a motion with the Pennsylvania Supreme Court seeking to appeal Judge Doyle's decision.

Quake claim bill still pending

SACRAMENTO, Calif.—California's Assembly recessed last Thursday without acting on a Senate bill that would revive damage claims from the 1994 Northridge earthquake.

The Legislature will reconvene Aug. 7. S.B. 1899, which has already passed the Senate, would extend for one year quake claims that otherwise would be barred by the statute of limitations. The bill has been amended to apply only to claimants who have had previous contact with their insurer. The bill excludes those claimants who have reached a final court settlement with their insurer or a written agreement with their insurer in which the policyholder had legal representation.

Despite the changes, the National Assn. of Independent Insurers continues to oppose the bill, saying that the measure would reopen cases long ago settled in good faith between insurers and their customers simply because the policyholder did not have an attorney. The NAII says the legislation also disregards clear policy language that requires policyholders to file claims within the one- year statute of limitations.

"In essence, S.B. 1899 sends a message that insurance contracts no longer mean what they say," said Sam Sorich, vp and western regional manager for the Des Plaines, Ill.-based NAII.

"The bill would rewrite insurance contracts that were entered into seven years ago," he said.

Reliance rating slips further

NEW YORK—Reliance Group Holdings Inc. was downgraded several notches, to B from BBB-, by Standard & Poor's Corp. last Thursday.

The recent sales of the insurer's most attractive businesses prompted the severe downgrade, said Matthew Coyle, a director at New York-based S&P.

"The sales of key businesses really raises questions about Reliance and what kind of franchise it will have at the end of the day, and that's what we really feel uncomfortable about," Mr. Coyle said.

Reliance completed the sale of its most successful unit, its surety operation, earlier this year (*BI*, March 6). Then after being downgraded by rating agencies in June, it sold off several other units. The latest sale was announced July 3 when Bermuda-based Overseas Partners Ltd. agreed to buy Reliance Reinsurance for an undisclosed sum (see story, page 2).

FTR FOR THE RECORD

Excerpts from *BI*'s Daily Online Updates, July 3 - July 7, 2000

FMLA CHANGE OPPOSED The Society for Human Resource Management and two other organizations are suing the U.S. Department of Labor to stop implementation of a new federal regulation that would allow states to use unemployment insurance funds to pay employees taking birth and adoption leave under the Family and Medical Leave Act. After the regulation was published in the Federal Register last month, SHRM, the U.S. Chamber of Commerce and Washington-based non-profit employer organization LPA Inc. filed suit in the U.S. District Court for the District of Columbia. Two employers also joined the suit as plaintiffs. According to the groups' suit, the regulation creates a fundamental change in the country's jobless assistance program and should have been submitted to Congress as potential legislation. At least 15 states are considering adopting the change, according to SHRM. The suit also asserts that using unemployment insurance to compensate employees taking birth-and-adoption leaves "will force employers to pay higher employment compensation taxes. . . .In addition, employers using the reimbursement method will be forced to reimburse states for (birth-and-adoption leave) benefits claimed by their employees." The regulations are scheduled to take effect Aug. 13, 60 days after their publication.

SOCIETY FOR HUMAN RESOURCE MANAGEMENT

RECORD CALIFORNIA COMP LOSS California's workers compensation insurers last year tallied a $2.8 billion underwriting loss—or 40% of premiums in 1999—according to a report by the California Workers Compensation Insurance Rating Bureau. The amount is the largest underwriting loss ever recorded by the WCIRB, the organization reported last week. In 1998, California's workers comp insurers posted a loss of $2 billion, the WCIRB said. "The alarming trends in claim cost development and claim severity that we have previously noted are continuing and appear to be escalating," Dave Bellusci, WCIRB chief actuary, said in a statement. "Nevertheless, the principal factor driving the record underwriting loss for 1999 was market-pricing levels that were not reflective of the underlying costs," he said. Copies of the report are available for $25 each by requesting Bulletin 2000-07 from the WCIRB's customer service department, 888-229-2472.

ONLINE SOCIAL SECURITY SERVICES To improve customer service and prepare for the largest increase in retirees in history, the Social Security Administration is unveiling a variety of new online services. SSA Deputy Commissioner William A. Halter said that one of the most valuable new services lets U.S. citizens apply for Social Security retirement benefits via the Internet. An estimated 400 to 500 people are expected to use the online service during a trial period, which runs from July 1 through Sept. 30. If the pilot program is successful, a national roll-out of the program is expected at the end of this year. The online service will cut down on paperwork and, according to Mr. Halter, "it's certainly one way to do our jobs more efficiently and save our taxpayers more money."

Mr. Halter

NEW M&A POLICY Chubb Executive Risk Inc. will offer limits of $25 million under a new insurance policy to cover liabilities associated with mergers and acquisitions. The insurer plans to unveil the new single-form representations and warranties liability policy today. The policy can be written to protect buyers or sellers in a merger or acquisition. The coverage, written on a first-party basis for buyers or third-party for sellers, gives the policyholder the right to choose counsel and covers punitive damages where such coverage is allowed. The coverage can be written on a worldwide basis. There are no exclusions for damages related to regulatory matters, bankruptcy, tax liability, illegal profit or renumeration, prior pending litigation, doubtful accounts receivable, failure to discharge obligations or the Employee Retirement Income Security Act. Premiums generally will amount to 2% to 8% of limits purchased.

HEALTHAXIS SELLING ONLINE OPERATION HealthAxis.com is selling its Internet health insurance operation and will concentrate on

providing business-to-business services. The retail operation, which offers individual and small-group health insurance, is being sold to Digital Insurance Inc., an Atlanta-based online company that provides distribution and administrative services to health insurers. HealthAxis.com is a subsidiary of HealthAxis Inc. and is based in East Norriton, Pa. After the sale, the company plans to focus on providing Internet technology services to health insurers and intermediaries. The deal calls for Digital Insurance to pay HealthAxis $1 million in cash and $3 million in quarterly payments over a 30-month period. In addition, the parties have entered into a technology services contract that will pay HealthAxis a minimum of $3 million in fees over the next 12 months. HealthAxis will receive an 11% ownership stake in Digital Insurance. The sale is expected to close around Aug. 15.

SWISS RE CHINESE INVESTMENT Swiss Reinsurance Co. has bought a 9.9% stake in China Insurance International Holdings Co. Ltd. for $15 million. The purchase was made during Hong Kong-based China Insurance International's recent initial public offering, in which it sold 35% of its share capital for $55 million. Its parent, the state-owned, Beijing-based China Insurance Group, has retained the remaining 65% shareholding. The investment will enable Swiss Re to grow further in the region, a Swiss Re spokesman said. Swiss Re already has representative offices in Hong Kong, Beijing and Shanghai. China Insurance International is principally a reinsurer. Its business split is: Hong Kong and Macau, 44%; mainland China and Taiwan, 7%; Japan, 10%; the rest of Asia, 19%; Europe, 15%; North America, 3%; and 2% elsewhere.

BRIEFLY NOTED Joseph Gunset has been appointed **Lloyd's of London** general counsel-U.S. regulatory affairs in New York. He previously was vp and general counsel for the warranty products division at American International Group Inc. Mr. Gunset succeeds Al Skwiertz, who left Lloyd's in March to join a unit of Swiss Reinsurance Co. . . .**The Hartford Financial Services Group Inc.** and **Reliance Group Holdings Inc.** have signed a definitive agreement for the The Hartford to buy Reliance's financial products and excess and surplus lines business. The insurers last month announced an agreement in principle with regard to the business, which involves about $250 million in gross premiums. . . .Health care providers and policyholders are facing a July 10 deadline for submitting proof of **claims against Tufts New England Health Plan,** which is in liquidation. Information and claim forms are available from insurance regulators at *www.maineinsurancereg.org* or *www.state.nh.us/insurance*, or by calling Tufts Health Plan at 800-442-0422. . . . **Karen Suter** has been named commissioner of the New Jersey Department of Banking and Insurance, after serving six months as acting commissioner. Ms. Suter replaced Jaynee LaVecchia, who was appointed to the New Jersey Supreme Court. Prior to being appointed acting commissioner, Ms. Suter had been deputy commissioner and chief of Banking and Insurance Operations since 1998. . . .**Coventry Health Care Inc.** of Bethesda, Md., is buying health maintenance organization WellPath Community Health Plans for $25.5 million. WellPath has 152,000 members in North Carolina and South Carolina and annual premiums of $230 million. 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 JULY 3, 2000, THROUGH JULY 7, 2000

		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
BROKERS							
Aon Corp.	NYS	31.31	0.80	-21.72	43.13	20.69	2503
Brown & Brown	NYS	50.94	-2.04	32.95	52.50	30.75	59
Clark Bardes Holdings	NDO	16.25	-1.52	13.04	21.00	11.63	10
E.W. Blanch Holdings nc.	NYS	21.00	3.38	-65.71	71.75	16.56	380
Gallagher Arthur J. & Co.	NYS	40.81	-2.83	26.06	43.44	23.06	568
Hilb, Rogal & Hamilton	NYS	34.63	-0.18	22.57	35.25	20.75	75
Kaye Group Inc	NDO	5.81	0.00	-30.60	11.88	5.00	0
Marsh & McLennan	NYS	108.13	3.53	13.00	112.50	61.75	2239
BROKERS	AVERAGE		0.31	-0.29			
INSURERS/REINSURERS							
ACE Ltd.	NYS	29.13	4.02	74.53	31.44	14.06	1913
Accel International Corp.	NDO	0.63	-9.02	-37.50	1.88	0.50	14
Acceptance Insurance Cos.	NYS	4.25	-15.00	-26.09	15.94	2.75	154
AEGON N.V.	NYS	35.44	-0.53	-25.79	49.13	31.50	361
Aetna Life & Casualty	NYS	67.81	5.65	21.50	89.94	38.50	1873
AFLAC Inc.	NYS	47.63	3.67	0.93	54.25	33.56	3728
Allmerica Financial Co'p.	NYS	55.63	6.21	0.00	64.81	35.06	486
Allstate Corp.	NYS	23.69	5.28	-1.56	37.94	17.19	6533
Ambac Financial Group	NYS	57.88	5.59	10.90	63.00	38.88	1298
American Financial Group	NYS	25.56	3.02	-3.08	35.44	18.38	251
American General	NYS	63.75	4.51	-15.98	82.19	45.63	3933
American Intl Group	NYS	121.75	3.62	12.60	124.06	78.56	8200
American Safety Insurance	NYS	4.38	4.48	-32.69	8.56	3.75	9
Argonaut Group	NDO	17.88	4.38	-10.06	26.63	16.50	69
AXA-UAP Group	NYS	79.00	-0.71	11.27	81.50	53.75	169
Baldwin & Lyons Inc.	NDO	16.56	-2.93	-25.14	23.94	15.94	28
Berkley W.R. Corp.	NDO	19.25	2.67	-7.78	27.94	14.00	391
Berkshire Hathaway Inc.	NYS	53700.00	-0.19	-4.28	73000.00	40800.00	1
Capitol Transamerica Corp.	NAS	11.13	-5.82	10.56	15.25	9.38	8
Chubb Corp.	NYS	64.94	5.59	15.32	72.94	43.25	2299
CIGNA Corp.	NYS	99.69	6.62	23.74	99.69	60.75	2579
Cincinnati Financial Corp.	NYS	33.13	5.37	3.92	43.31	26.19	1166
Citigroup	NYS	65.19	7.86	17.06	67.63	41.19	26840
CNA Financial Corp.	NYS	37.69	10.85	-3.21	42.13	24.56	360
CNA Surety	NYS	12.00	0.52	-7.69	15.50	9.75	229
EMC Insurance Group Inc.	NDO	8.75	0.00	-4.11	13.38	6.81	9
ESG Re Limited	NDO	4.06	3.17	-41.44	16.75	3.19	143
Enhance Financial Services	NYS	15.13	5.22	-6.92	22.63	8.63	92
Everest Reinsurance	NYS	34.50	4.94	34.62	36.50	20.50	505
Fremont General Corp	NYS	4.50	14.29	-38.98	19.56	3.88	528
Frontier Insurance Group	NYS	0.94	50.00	-72.73	15.81	0.63	568
Gainsco Inc.	NYS	4.56	-8.75	-15.12	6.94	4.50	43
Harleysville Group	NDQ	17.44	4.10	22.37	20.75	11.63	79
HSB Group Inc.	NYS	31.94	2.61	-5.55	42.25	21.50	441
HCC Insurance Holdings	NYS	19.50	3.31	47.87	25.13	8.00	222
ING Groep N.V.	NYS	67.88	0.56	11.27	68.38	46.81	390
IPC Holdings Ltd.	NDQ	13.88	-0.89	-6.72	22.50	9.75	103
Hartford Financial Services	NYS	59.25	5.92	25.07	64.00	29.38	2363
John Hancock Financial Service	NYS	24.06	0.79	41.54	24.63	13.44	2196
LaSalle Re Holdings Ltd.	NYS	15.00	5.73	-9.09	18.63	10.88	78
Lincoln National	NYS	41.00	13.49	2.50	57.50	22.63	2737
MAIC Holdings Inc.	NYS	10.69	-5.00	-49.56	29.05	10.00	67
Markel Corp.	NYS	143.88	1.59	-7.18	192.00	111.50	34
MBIA Insurance Group	NYS	52.06	8.04	-1.42	66.94	36.31	856
Meadowbrook Insur. Group	NYS	5.19	1.22	-20.95	14.06	4.50	7
MetLife	NYS	21.88	3.86	53.51	22.00	14.25	5908
Mutual Risk Mgmt. Ltd.	NYS	17.63	1.81	4.83	35.50	9.81	320
Navigators Group	NDQ	9.19	2.08	-5.77	16.00	8.63	3
NYMagic Inc.	NYS	14.50	1.75	9.95	16.13	12.25	3
Ohio Casualty Corp.	NDQ	10.06	-5.29	-37.35	18.63	9.88	765
Old Republic Int'l	NYS	17.63	6.82	29.36	18.69	10.63	886
Partner Re Ltd.	NYS	36.88	4.06	13.68	39.75	28.38	283
Penn-America Group Inc.	NYS	7.69	-2.38	-0.81	10.38	6.63	23
PMA Capital Corporation	NDQ	19.00	0.00	-4.40	21.00	15.50	20
Philadelphia Cons. Holding	NDQ	16.75	-0.37	15.52	24.44	10.81	51
PXRE Corp.	NYS	13.50	0.00	3.85	19.56	9.94	50
Reliance Group Holdings	NYS	0.75	0.00	-88.68	7.75	0.63	2717
ReliaStar Financial Corp.	NYS	52.69	0.48	34.45	52.75	23.75	1514
RenaissanceRe Holdings Ltd.	NYS	42.81	-1.72	4.74	44.13	33.19	221
RLI Corp.	NYS	35.25	1.44	3.68	38.63	26.25	33
St. Paul Cos.	NYS	36.50	6.96	8.35	39.38	21.31	2011
SCOR	NYS	44.38	2.31	0.28	53.63	38.38	15
SAFECO Corp.	NDQ	21.56	8.49	-13.32	44.50	18.00	1470
SCPIE Holdings Inc.	NYS	20.81	1.52	-35.21	36.94	19.00	NA
Seibels Bruce Group	NDQ	1.25	8.11	-28.57	5.69	0.75	46
Selective Ins. Group	NDQ	19.25	1.32	12.00	22.50	14.63	169
Tokio Marine & Fire	NDQ	60.38	1.47	2.11	67.00	45.00	45
Torchmark Corp.	NYS	26.06	5.57	-10.32	36.94	18.75	1020
Transatlantic Holdings	NYS	84.56	0.97	8.33	91.56	68.75	31
Trenwick Group Inc.	NYS	15.69	7.73	-7.38	25.06	12.00	111
Unico American Corp.	NDQ	6.25	6.38	-10.71	10.50	4.50	17
United Fire & Casualty	NDQ	19.00	22.58	-16.02	26.50	15.50	59
Unitrin	NDQ	30.19	2.77	-19.77	42.38	29.38	490
UNUM Corp.	NYS	21.44	6.85	-33.14	56.88	11.94	2042
Vesta Insurance Co.	NYS	6.75	9.09	74.19	7.88	3.44	156
XL Capital Ltd.	NYS	56.50	4.39	8.92	63.50	39.00	648
Zenith National Ins.	NYS	21.56	1.47	4.55	26.00	18.75	42
INSURERS/REINSURERS	AVERAGE		4.01	-1.33			
HEALTH MAINTENANCE ORGANIZATIONS							
Foundation Health Systems Inc.	NYS	14.88	6.73	49.69	16.94	6.25	2206
Humana Inc.	NYS	5.75	17.95	-29.77	13.19	4.75	4692
Oxford Health Plans	NDQ	25.81	8.40	103.45	25.81	9.75	5726
Pacificare Health Sys.	NDQ	58.88	-2.18	11.08	72.31	31.13	1737
Sierra Health Services	NYS	3.81	19.61	-42.99	14.56	2.75	302
United HealthGroup	NYS	89.75	4.66	68.94	91.94	39.38	4619
Wellpoint Health Networks	NYS	74.69	3.11	13.27	86.69	48.25	1398
HMOs	AVERAGE		8.32	24.81			
ALL COMPANIES	AVERAGE		4.21	7.73			

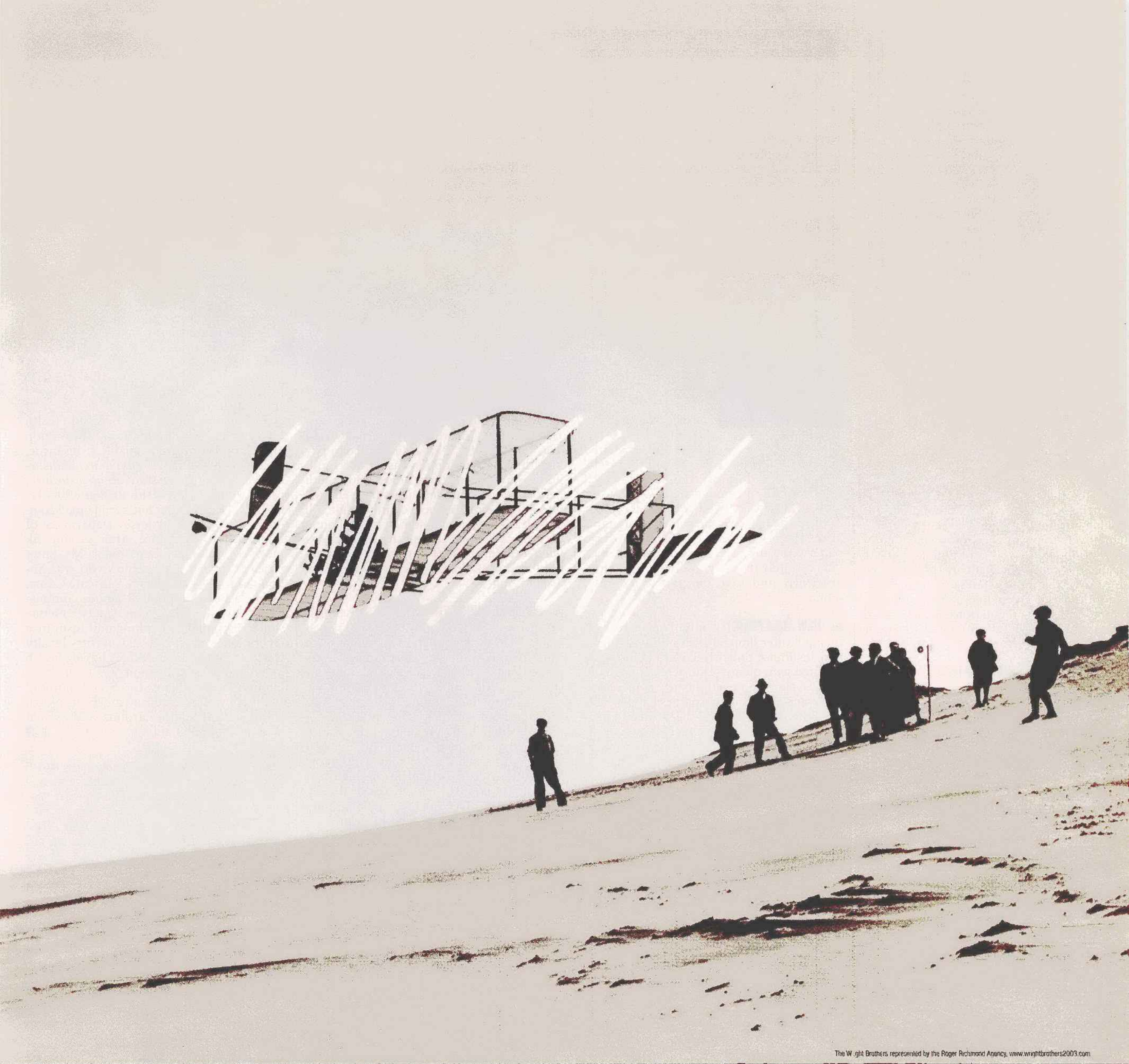
BI Insurance Index

2,300
2,250
2,200
2,150
2,100
2,050
2,000
1,950
1,900
1,850
1,800
2,286.10
5/19 5/26 6/2 6/9 6/16 6/23 6/30 7/7

Base=100 on Dec. 29, 1978

Top advancing issues: Frontier Insurance Group, United Fire & Casualty, Sierra Health Services. Leading decliners: Acceptance Insurance Cos., Accel International Corp., Gainsco Inc. Most active issue: Citigroup. The *BI* Index increased 3.8%; the Dow Jones 30 Industrials rose 1.8%; the S&P 500 went up 1.7%, and the NYSE Composite increased 2.0%. Average P/E: Brokers, 20.6; Insurers/reinsurers, 17.1; HMOs, 14.3.

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



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