

Business Insurance

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Lilienthal joins CNA to head P/C operations

CHICAGO—Stephen W. Lilienthal has joined CNA Insurance Cos. as president and chief executive officer of CNA's property/casualty operation.

Before taking the newly created post at Chicago-based CNA, Mr. Lilienthal was executive vp-U.S. insurance operations at The St. Paul Cos. Inc. in St. Paul, Minn.

In his new position, Mr. Lilienthal will
See Updates on next page

AIA endorses charter

Industry groups divided on federal oversight

By MARK A. HOFMANN

WASHINGTON—The American Insurance Assn.'s formal endorsement of optional federal chartering for property/casualty insurers is drawing a predictably mixed response from other industry groups.

The Washington-based AIA's board voted at a July 17 meeting in favor of draft legislation that would allow insurers to seek a federal, rather than state, charter.

In doing so, AIA reaffirmed a position in favor of federal oversight that it first took in the early 1990s. In addition, AIA President Robert E. Valley promoted industry discussion of the idea in a Perspectives article for *Business Insurance* in February (*BI*, Feb. 19).

The AIA is not alone in its support for the concept of federal insurer chartering. The American

Council of Life Insurers released a proposal for optional federal chartering of life insurers earlier this year (*BI*, April 23), and the American Bankers Insurance Assn., a banking group, also has endorsed a proposal to allow optional federal chartering (*BI*, Nov. 20, 2000).

Although the Washington-based Council of Insurance Agents & Brokers wasted no time embracing the proposal, the Downers Grove, Ill.-based Alliance of American Insurers was equally quick to condemn it. Other groups, including the Risk & Insurance Management Society Inc., remain neutral.

The AIA proposal, which was crafted by the association's staff, would apply only to property/casualty insurers and not to any other type of insurer or to reinsurers or producers.

The proposal calls for the creation of a federal insurance chartering director's position within the Treasury Department. Among other things, the director would have the authority to establish chartering standards, including risk-based capital and surplus requirements, and to take action against

See Charter on page 21

Costs cited in dropping suits

Y2K claims bugging out

Case closed

Recent Y2K cases that have been dismissed or dropped

- **Port of Seattle vs. Lexington Insurance Co.**, dismissed in December 2000.
- **Stanford University vs. Factory Mutual Insurance Co.**, dismissed in January 2001.
- **ITT Industries vs. Factory Mutual Insurance Co.**, dismissed in January 2001.
- **Nike Inc. vs. American Home Assurance Co. et al.**, dropped in February 2001.
- **Mandalay Resorts vs. Factory Mutual Insurance Co.**, dropped in March 2001.
- **Baptist Hospital & Health Systems Inc. vs. Factory Mutual Insurance Co.**, dropped in June 2001.

By JOANNE WOJCICK

While insurer attorneys maintain they are winning the war over coverage for Y2K remediation costs, policyholders say it's only the economic downturn that's forcing them to retreat, not a belief that they cannot prevail.

When Unisys Corp. announced last week that it was dropping its Y2K coverage suit against Royal & SunAlliance USA, the insurer's attorneys issued a press release claiming that the policyholder's actions "should be a clear signal to other attorneys and policyholders pursuing these claims that they have little merit."

But a spokeswoman for the Blue Bell, Pa.-based technology company said it decided to abandon the coverage litigation "for business reasons related to cost."

"It's an expensive suit," she said, adding that Unisys "firmly believes in the merit of the arguments."

A risk manager for a major financial services firm who asked not to be identified said his company also decided not to pursue a claim for Y2K remediation costs, but for a different economic reason. "We did not want to disturb our relationship with our property insurers knowing that the market was bound to turn," he said.

"It's a sign of the economic times," said Robert Carter, a policyholder attorney with McKenna & Cuneo in Washington.

"Businesses focus on their bottom lines from quarter to quarter. Until there's a payment from their insurers," they can't justify spending large sums of money pursuing coverage litigation.

See Y2K on page 20

AIDS and the Workplace

Multinational employers face global risk **page 15**

Changing practices **page 16**

New threat: complacency

By JUDY GREENWALD

Employers dealing with the AIDS epidemic over the past 20 years have had to contend with wildly changing attitudes.

The hysteria and fear of 20 years ago when the disease was first identified has since been replaced by complacency.

Employers, though, must still cope with employees' ignorance, albeit of a different nature.

Two decades ago, people thought AIDS could be easily transmitted, perhaps by just a touch.

Today, most know better. But many also incorrectly believe the disease is curable and fail to take precautions against contracting the disease caused by the human immunodeficiency virus. At the same time, there has been a significant decline in educational efforts by employers in this area.

As a result, with an estimated 40,000 new HIV infections still being reported annually in the United States, some observers warn that AIDS-related claims could begin to rise.

Meanwhile, despite the 439,000 people who have already died from the disease and the 432,000 others who were living with either AIDS or HIV infection as of June 2000, AIDS has had relatively little impact on U.S. employers' bottom line.

This is so because many sufferers were not employed when they contracted the virus, and a growing percentage of those who were working are now able to return to the workplace, thanks to the so-called medical "cocktails," combinations of antiviral medications that can at least temporarily—if not permanently—stave off the disease's onset for those who are HIV-positive.

See AIDS on page 14



Contraceptive coverage battle **page 3**

Health plan option for employers hits snag **page 3**

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INSIDE

● A new study by Hewitt Associates L.L.C. indicates that while the automatic enrollment of employees in 401(k) plans increases initial participation, many employees tend to remain at the conservative default rate of contribution. PAGE 4

● In Perspectives, William L. Winslow, a partner in the Los Angeles law firm of Farmer & Ridley, writes that workers compensation settlements must be apportioned to address the various needs of the injured employee and to delineate the scope of primary coverage for future medical needs. PAGE 10

● With regulatory action and litigation on the increase, employers in the United Kingdom must raise their awareness of the liabilities associated with administering employee pension plans. PAGE 17

● According to a recent report by Standard & Poor's Corp., Latin America's insurance market is experiencing significant growth and could see even more as markets stabilize. PAGE 17

● Myron Picoult writes that insurance market investors may tire of waiting and decide to fold their tents before the industry really takes off. PAGE 23

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UPDATES

Continued from previous page
head CNA's primary property/casualty business and report directly to Bernard L. Hengesbaugh, CNA's chairman and CEO. Mr. Lilienthal will have responsibility for CNA's worldwide field operations, global specialty lines, all primary standard lines, risk management and technology operations, and will be nominated for a seat on parent company CNA Financial Corp.'s board. St. Paul said that succeeding Mr. Lilienthal as executive vp of U.S. insurance operations is Marita Zuraitis, who had been senior vp-USIO. St. Paul also announced that T. Michael Miller, who had been senior vp-global specialties, has been named executive vp, with expanded responsibilities for the company's global specialties practice. Both Ms. Zuraitis and Mr. Miller will report directly to Douglas W. Leatherdale, St. Paul's chairman and CEO.

● **CIAB MARKET STUDY** The commercial property/casualty insurance marketplace is definitely hardening, according to preliminary data from the Council of Insurance Agents & Brokers' market index for the second quarter of 2001. The preliminary data, released last week, shows that an overwhelming majority of the 111 agent and broker respondents to the CIAB survey described the market for each of five major commercial property/casualty lines—automobile, workers compensation, property, general liability and umbrella—as “somewhat hard” or “very hard.” Eighty-six percent used those terms to describe the general liability market, while 96% used those terms to describe the property market. At least 90% of respondents called conditions in each of the other lines “somewhat” or “very” hard. Respondents compared conditions for accounts of varying sizes during the period April 1 to July 1, 2001, to those experienced by similar accounts in the first quarter. Seventy-seven percent of the CIAB respondents reported that medium-size accounts—those generating between \$25,000 and \$100,000 in fees and commissions—sustained rate increases of at least 10%. Seventy-four percent reported that large accounts—those generating more than \$100,000 in fees and commissions—faced rate increases of at least 10%. For midsize accounts, more than 11% of respondents reported rate increases of more than 30%, as did 10% of the respondents regarding large accounts. The increases for small accounts, though less dramatic, still amounted to at least 10%, according to 44% of the respondents.

● **STATE ERGO EXPANSION REJECTED** A labor organization's bid to implement the former federal ergonomics standard in California failed last week when the California Occupational Safety and Health Standards Board unanimously rejected the proposal. The AFL-CIO had petitioned the board to amend California's current ergonomics standard by incorporating certain provisions of the federal Occupational Safety and Health Administration's failed federal ergonomics standard. Employers and insurers opposed the move in California for several reasons, said Mark Webb, vp-state affairs, Western region, for the American Insurance Assn. One objection was that the change would have included an increase in workers compensation benefits, he noted. Although the board rejected the idea of broadening the state standard, Mr. Webb said he believes the issue is not dead.

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● **PENSION ERROR CASE** Xerox Corp. has said it will appeal a ruling by a federal judge in Illinois that thousands of former Xerox employees are entitled to additional retirement money. The July 3 ruling by Judge David Herndon of the U.S. District Court for the Southern District of Illinois in East St. Louis, ordered Stamford, Conn.-based Xerox to pay former employees additional money because the company had miscalculated the amount it owed the retirees. The judge has yet to rule on how much money the members of the class will receive, but Xerox could be liable for millions of dollars in payments. Involved in the suit were more than 25,000 former Xerox employees who left the company from 1990-2000 prior to the normal retirement age of 65. These employees chose to receive their pension proceeds as a lump sum. In a class-action suit filed last year, the former employees asserted that Xerox had miscalculated the amount of the lump-sum payout and should have paid them more. A Xerox spokesman said the company will appeal the decision after the judge rules on the amount that the company must pay. “We maintain the calculation was appropriate,” the spokesman said. No date has been set yet for that ruling.



● **ST. PAUL ORDER OVERTURNED** A Georgia state court judge has overturned the cease and desist order that state regulators issued against The St. Paul Cos. Inc. after the insurer announced it was pulling out of the state's admitted market for medical malpractice liability coverage. The July 13 ruling by Judge Gail S. Tusan in Fulton County Superior Court in Atlanta will allow St. Paul to continue offering insurance in Georgia other than the medical malpractice policies it has not renewed, Michael Miller, senior vp-global specialty practices at the St. Paul, Minn.-based insurer, said in a statement. Georgia Insurance Commissioner John Oxendine said the ruling will be appealed. Mr. Oxendine said St. Paul violated Georgia's unfair trade practices laws, which require insurers to obtain regulatory permission before they exit a line of business. St. Paul announced in May that it would not renew medical malpractice policies in Georgia but instead would offer coverage on a surplus lines basis and that it was considering taking similar action in other states. Mr. Oxendine issued a cease and desist order in June, which was to have taken effect in September.



● **CALIFORNIA COMP STUDY** California workers compensation claims costs grew by 11% between 1997 and 1998 due to several factors that are more prominent in California than in several other states, according to a study by the Workers Compensation Research Institute. A long, and lengthening, average time spent away from work, and a high, and growing, share of claims that receive permanent disability payments or lump-sum settlements are among the factors raising costs, the study found. More than 50% of the claims filed in California from 1996 to mid-1999 resulted in lump-sum payments or payments for permanent disabilities, a 6% increase since 1994. California tied with Texas among the eight states the study reviewed for the highest percentage of such settlements. Additionally, the average duration for a temporary disability claim in California

nia in the period studied was 14 weeks, which represented an increase of two weeks in the state since 1995 and double the average duration of such a claim in Connecticut and Wisconsin. The study also looked at trends in Florida, Georgia, Massachusetts and Pennsylvania. For information about obtaining a copy of “CompScope Benchmarks: Multistate Comparisons, 1994-1999,” contact Jill Lawson at 617-661-9274.

● **GALLAGHER PROMOTIONS** Arthur J. Gallagher & Co. has named David E. McGurn Jr. as president of the broker's international and specialty marketing division, which encompasses Gallagher's managing general agency, wholesale, reinsurance and international business. Mr. McGurn previously was vp



of the division. Gallagher also has named James S. Gault as executive vp of the company's brokerage services division, Gallagher's retail unit. Mr. Gault was regional manager of Gallagher's Chicago region and risk management services division. Thomas J. Gallagher, president of Gallagher Construction Services, will succeed Mr. Gault as the Chicago regional manager. Meanwhile, Gallagher's brokerage commission and fee revenues increased 14.2%, to \$394.3 million, for the first six months of 2001, the broker reported Tuesday. Total revenues, which include investment and other income, grew 15.7%, to \$418.8 million. Net income rose 36.5%, to \$50 million, over the comparable period last year.

● **BRIEFLY NOTED** Equitas Ltd., the runoff reinsurer for the pre-1993 long-tail liabilities of Lloyd's of London syndicates, said last week that an increase in asbestos reserves dented its results for the year ended March 31. Equitas strengthened its asbestos reserves by £1.7 billion (\$2.40 billion) net of reinsurance, to £8.0 billion (\$11.33 billion) for that period. The reinsurer noted that asbestos claims from the United States had exceeded previous actuarial estimates. Equitas' accumulated surplus dropped by £84 million (\$118.9 million), to £700 million (\$991.1 million), while Equitas' solvency margin—its accumulated surplus expressed as a percentage of its net claims outstanding—fell to 9.5% from 11.2% the year before....Maureen Cotter, a veteran Watson Wyatt Worldwide consultant, has been named global director of the company's group and health care consulting services. Ms. Cotter, who works out of Watson Wyatt's Southfield, Mich., office, previously was practice leader for the central United States. She succeeds Richard Ostuw, who left the company.... New York employers' overall workers compensation costs will drop 1.8% this year, according to the New York Insurance Department. The reduction stems from the department's decision to forgo workers comp rate increases for 2001 and to trim the assessment levied for certain specialized workers comp funds, beginning Oct. 1....GE Commercial Insurance Co. has consolidated the affinity insurance business of its Westport Insurance Corp. with the operations of its Chicago-based Coregis Insurance Co. GE Commercial Insurance is part of Employers Reinsurance Corp., which is a unit of General Electric Capital Corp.

► To get breaking news as it occurs, visit Business Insurance's free online Updates, at www.businessinsurance.com. All of the material in the Updates 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.

Purchasing group delay not end of Florida effort

By DAVE LENCKUS

TALLAHASSEE, Fla.—Florida employers that had been anticipating a new small-group health insurance option to help control coverage costs and minimize health care cost-shifting to large groups could see some progress over the next few months, following a recent setback.

The National Federation of Independent Business in late June missed its self-imposed deadline for finding a health plan to cover small Florida employers through a group purchasing alliance. The alliance should be in place by early 2002, though, which would be only a couple of months later than initially planned, an NFIB official says.

But, the NFIB official says that the only health plan that has expressed interest in immediately covering small groups through the purchasing alliance is unwilling to underwrite groups with fewer than 20 lives.

Another concern for the Nashville, Tenn.-based NFIB is that the insurer, United Wisconsin Life Insurance Co., faces some market conduct complaints from Wisconsin regulators. The insurer, which is licensed in 40 states, is based in Green Bay, Wis.

A spokesman for the insurer, however, characterized the discussions with the NFIB as "preliminary."

He also said the Wisconsin regulators' complaints are "technical" in nature and that the insurer has taken aggressive

action to come into compliance with state regulations.

Meanwhile, Fortis Health, a unit of Milwaukee-based Fortis Inc., has agreed to cover NFIB members on a group basis in those states, including Florida, where Fortis companies are licensed. Fortis, however, will not participate in purchasing alliances, an official said.

A health plan that attracts small employers that do not currently offer coverage to their employees could benefit large employers as well. Large companies bear the burden of health care cost-shifting when the uninsured cannot pay for the health care services they have received and providers pass those costs—in the form of higher rates—onto insured patients.

See **Alliance** on page 22

Summer risk for coastal entities

Education key to shark safety

By MICHAEL BRADFORD

PENSACOLA, Fla.—Shark attacks are a summertime risk that Florida's public entities have a tough time fending off.

In the state's Panhandle, where, earlier this month, an 8-year-old boy was mauled by a shark in shallow water and a surfer was bitten on the foot several days later, the task of protecting swimmers along more than 100 miles of Gulf of Mexico beaches and in other waterways is mostly a matter of public education. Other methods, such as introducing the protective netting used in Australia's shark-infested waters, would be prohibitively expensive and present other problems, government officials say.

"We have been discussing whether there is anything we can do," said Debra M. Johnson, risk manager for the board of county commissioners in the Panhandle's Escambia County. The shark attack that critically injured the boy occurred in Escambia County. Ms. Johnson said that incident has prompted the municipality to focus on whether there are measures that can be taken to protect swimmers.

Because the Panhandle covers such a large area



PHOTO: GETTY IMAGES

Bathers swim in the water off a beach at Pensacola, Fla., where four days earlier an 8-year-old boy was attacked.

of coast, "I don't think there's a lot we can do," she said.

The Santa Rosa Island Authority, a government agency that manages the beaches for Escambia County, last week banned shark fishing from the Pensacola Pier after the incident in which a surfer

See **Sharks** on page 22

O-ring risk spurs sprinkler recall

Central Sprinkler says recall costs will likely reach \$200 million

LANSDALE, Pa.—Central Sprinkler Co. is undertaking a \$200 million voluntary recall of 35 million fire sprinkler heads.

The Lansdale, Pa.-based unit of Tyco International Ltd. has reserved funds to pay for the recall, according to a spokeswoman for Central Sprinkler. In 1998, Central Sprinkler recalled a different model of defective sprinkler heads.

The spokeswoman could not say whether insurance coverage would indemnify the company for any of the recall costs. The recall, which includes parts and labor to replace the sprinklers, is estimated to cost \$40 million per year for the next five years.

Central Sprinkler said it initiated the recall after learning that the sprinklers' O-ring seals degrade over time, which could cause them

to malfunction in a fire.

The Consumer Product Safety Commission said it has received two property damage claims of undisclosed amounts related to the sprinklers, which were manufactured from the 1970s through 2001.

Central Sprinkler issued a similar recall in 1998, when it acknowledged that 20 of its Omega models were defective and recalled 8.4 million sprinklers. Under an agreement with the CPSC at that time, Central Sprinkler set aside tens of millions of dollars to pay for replacing the defective sprinkler heads.

Information on identifying the sprinklers involved in the current recall is available from the CPSC at 800-871-3492 or at www.sprinklerreplacement.com.

—By Michael Bradford



Sides square off over mandates on contraceptives

By ROBERTO CENICEROS

SEATTLE—A recent lawsuit alleging discrimination by a Seattle-based insurer for not providing full coverage of prescription contraceptives could be the start of similar lawsuits against other health insurers and employers, a reproductive health care advocate warns.

The lawsuit filed against Seattle-based Regence BlueShield is the latest development in a growing movement to mandate that health insurance policies and pharmaceutical benefit plans provide coverage of prescription contraceptives.

On the other side of this issue, however, religious organizations around the country are challenging the recent upsurge in state laws requiring health plans to provide contraceptive coverage, arguing that such mandates run counter to their beliefs.

The Washington state chapter of the National Abortion & Reproductive Rights Action League and the American Civil Liberties Union of Washington on July 11 announced they had filed the lawsuit against Regence on behalf of small employers in the state. It seeks to force Regence to provide the coverage under its policies and to reimburse women who have spent their own money on contraceptives that have not been covered.

A companion suit—filed by three individuals and seeking class-action status—was filed on behalf of women in Washington state who are covered by Regence policies.

"The Washington state suit is a harbinger of many more lawsuits to come (nation-

wide) unless employers and insurers provide contraceptive equity," predicted Elizabeth Cavendish, legal director in Washington, D.C., for NARAL.

She said advocates were encouraged to file such suits after a June ruling by a U.S. District Court judge in Seattle and a similar Equal Employment Opportunity Commission ruling that followed.

The federal judge ruled that Bartell Drug Co.'s self-funded health plan, which excludes coverage for prescription contraceptives, violate Title VII of the federal civil rights laws, as amended by the Pregnancy Discrimination Act of 1978 (BI, June 18).

Despite her prediction that lawsuits similar to the one against Regence would proliferate, Ms. Cavendish said she does not know of any other suits currently under consideration or that have been filed.

The Washington state plaintiffs say that half of all health insurance plans in their state fail to provide comprehensive coverage for prescription contraceptives. Like other proponents of such coverage, they argue that women pay 68% more for health care than men because of the costs they incur for reproductive services, according to a statement from NARAL.

"Washington citizens want this inequity addressed," said Karen Cooper, executive director for Washington-state chapter of NARAL. "They want the health care system to work in ways that help women prevent unintended pregnancy and thus reduce

See **Prescription** on page 20

Auto enrollment may lead to poor 401(k) returns

By LEE FLETCHER ROSENBERG

Automatically enrolling employees in 401(k) plans is not—contrary to conventional wisdom—always a win-win situation, according to a new study.

Automatic 401(k) plan enrollment programs are a kind of default mechanism. They are triggered for

those employees—sometimes as many as 20% of a company's workforce—who do not specify whether they want to defer a portion of their salary to the company's 401(k) plan.

Unless non-electing employees specifically say not to do so, their employers will reduce the employees' salary by a stipulated amount—often around 3%—and transfer the amount to an investment fund, such

as a money market fund.

Through these programs, employees, who might not otherwise invest, build up funds in their 401(k) plans.

In addition, because non-electing employees are more likely to be lower-paid, automatic enrollment plans bringing those employees into the 401(k) plan will increase—under Internal Revenue Service nondiscrimination tests—the likelihood that

higher-paid employees will be able to boost deferrals, making the plans more valuable to higher-paid employees.

But according to the new Hewitt Associates L.L.C. study, conducted in conjunction with researchers from Harvard University and the University of Chicago, there is a downside to these 401(k) enrollment plans.

According to the study, while automatic enrollment results in immediate and increased participation, over time many employees tend to remain at the same conservative default rate and fund, therefore vastly limiting their potential retirement income.

According to Lori Lucas, a defined contribution consultant with Hewitt in Lincolnshire, Ill., 96% of plan sponsors in 1999 that had automatic enrollment chose 3% or less of pay as their default rate.

"When an individual is investing 2% or 3% of their pay every year for many years, that's clearly not going to get the average individual to a very secure retirement," Ms. Lucas explained.

The most at-risk type of people, according to Ms. Lucas, are younger people who tend to put off saving, as well as lower-wage employees who often find it difficult to find sources for saving.

"Those are the types of people who stand to benefit the most from being automatically enrolled," she said, however those are also the people who get stuck in that low, default contribution rate.

David Wray, president of The Profit Sharing/401(k) Council of America in Chicago, said that many employees have trouble believing the message that they should save more after their employer has made default decisions for them.

"A lot of employees look at this number and say 'if the employer felt I should have been saving more, then that's what they would have taken out of my paycheck to begin with.' It's very difficult to overcome that sort of trust in the employer that these employees have," Mr. Wray explained.

The answer, according to Mr. Wray, lies in a school of thought that says that the longer the employee is with a company, the higher the default savings percentage should be.

"You initially enroll the participant at 3% of pay. The longer the employee is with the company, the more you take out until you get to some higher number like 6% or 7% of pay," Mr. Wray said.

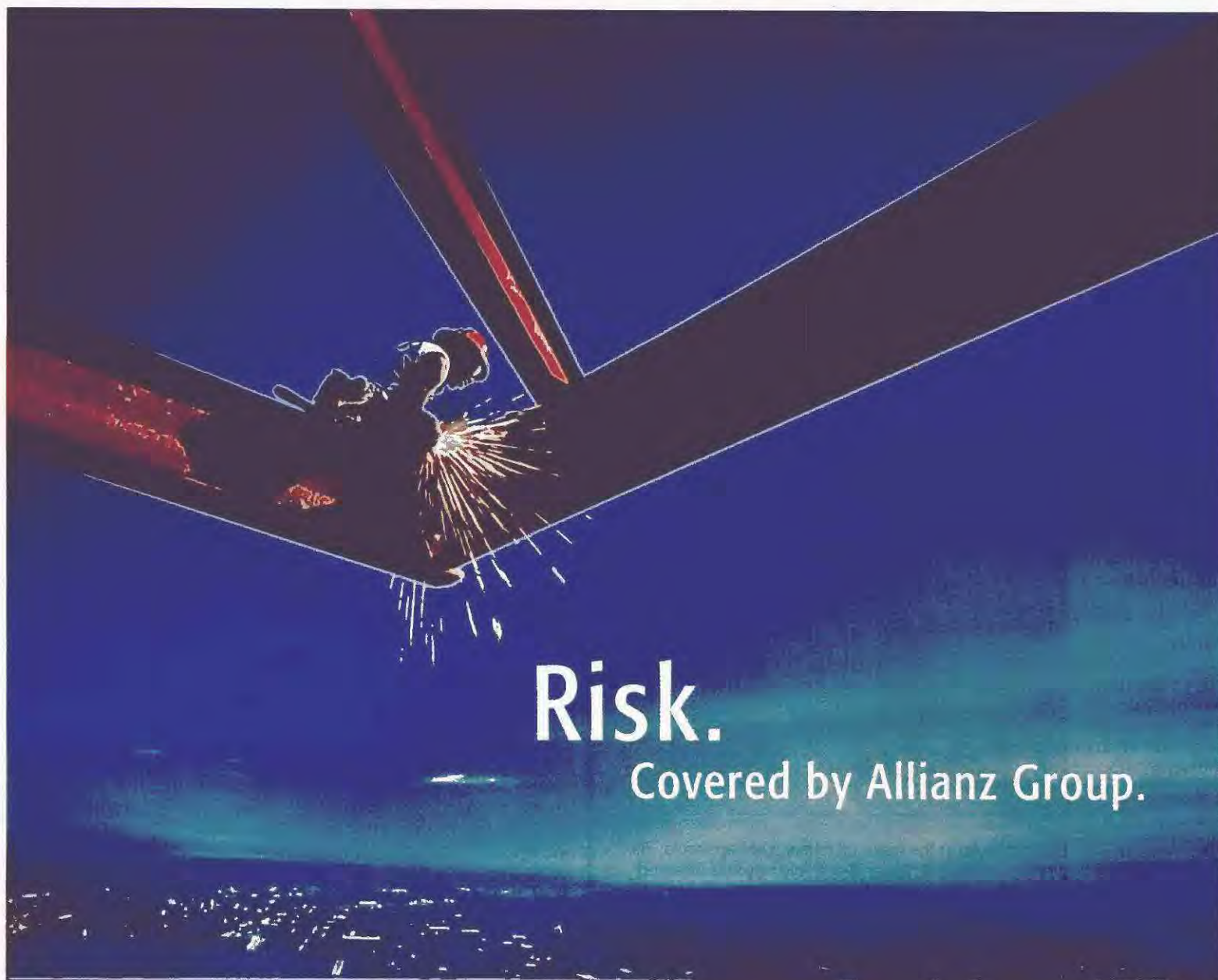
Hewitt's Ms. Lucas suggested that the average participant might be better off contributing at a rate that is equal to the company's matching threshold.

"So, if the company is matching up to 6% of salary, start automatic enrollees at 6% and then, of course, they can change at will, but at least they're starting more in the ballpark as compared to 2% or 3%, which is probably not appropriate for most individuals," Ms. Lucas said.

Mr. Wray suggested that every company should evaluate its own workforce to find the right fit.

"They need to do some focus groups with their people and be

See **Enrollment** on page 21



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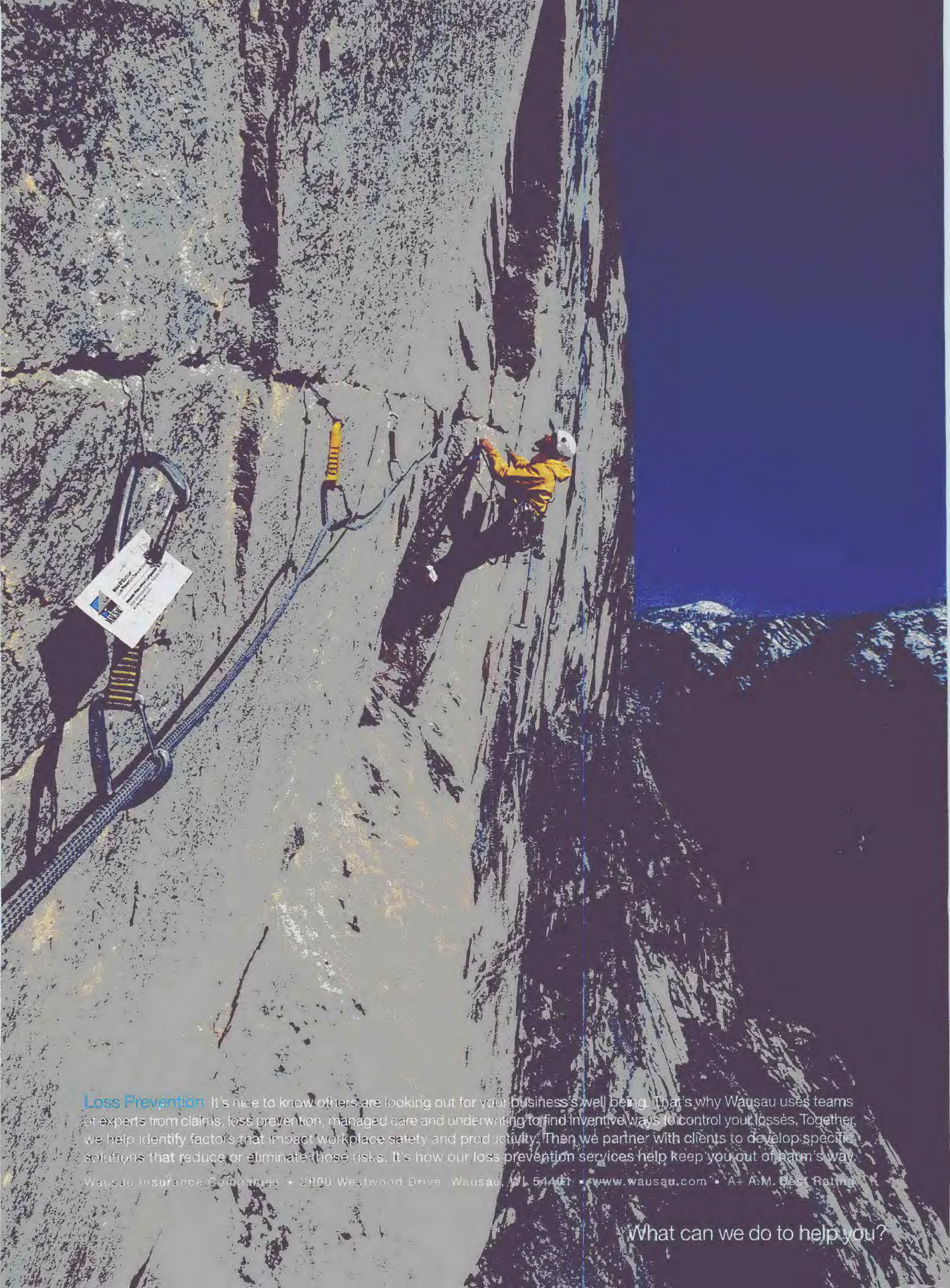
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ERRORS & OMISSIONS

• Due to an editing error, a chart of the top 100 brokers of U.S. business in the July 16 issue contained several incorrect rankings. Fleet Insurance Services L.L.C. is the 28th-largest broker, based on brokerage revenues of \$57,495,215 from U.S.-based clients. As a result, Robert F. Driver Co. Inc. is the 29th largest, followed by Kaye Group Inc. at No. 30 and First Union Insurance Services Agency Inc. at No. 31.



Loss Prevention It's nice to know others are looking out for your business's well being. That's why Wausau uses teams of experts from claims, loss prevention, managed care and underwriting to find inventive ways to control your losses. Together, we help identify factors that impact workplace safety and productivity. Then we partner with clients to develop specific solutions that reduce or eliminate those risks. It's how our loss prevention services help keep you out of harm's way.

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What can we do to help you?

Pension plan option offers guaranteed return

By MIKE KENNEDY
and ARLEEN JACOBUS
Crain News Service

COLUMBUS, Ohio—When executives at the Ohio State Teachers' Retirement System unveiled their new 401(a) plan July 1, some participants were offered a guaranteed 7.75% annual rate of return backed by the defined benefit plan.

This novel investment option, suggested by the system's investment staff, was made available only to employees with less than five years of service and to new participants.

About 40% of eligible participants were expected to choose the Total Guaranteed Return Choice. Those who did got a portfolio with an asset allocation parallel to that of the system's \$55 billion defined benefit plan. Participants, however, must leave their money in that option for five years to be guaranteed the 7.75% return, said Herbert Dyer, executive director.

"It's clearly intended this choice is to be a long-term investment," said Robert Slater, deputy executive director.

If the system is unable to reach its goal, the defined benefit plan will fund the shortfall, said Mr. Dyer.

If the STRS Total Guaranteed

Return Choice exceeds its projected 8% return (7.75% plus 25 basis points for administrative costs), the excess assets will be placed in the defined benefit plan, Mr. Slater said. Attorneys inside and outside the system have examined the plan and approved of the idea, he said.

Executives at the Columbus-based fund chose the 7.75% guarantee after the investment staff predicted the system would earn an 8% compound annual return over the next five years. No formal actuarial studies were conducted, he said.

Participants who elect this option in subsequent years may get a guaranteed rate of return higher or lower than 7.75%.

Asset allocation will parallel that of the defined benefit plan. Currently, the allocation is 46% domestic equities; 20% global fixed income; 20% international equities; 12% real estate; 1% alternatives; and 1% cash.

And, like the defined benefit plan, the option with the guaranteed return will be internally managed.

If a participant withdraws from the option before the five years, a 10% penalty will be charged. At the end of the five-year period, participants will be able to decide if they want to stick with the allocation in effect

at that time or if they want to create their own allocation from the options available.

For participants choosing the guaranteed-return option, only their contribution for the first year will be allocated automatically to that option. In subsequent years, their contributions

'If the actual return is less than the guaranteed amount, the system would have to make it up from somewhere.'

— Steve McElhaney
William M. Mercer Inc.

can be allocated to the guaranteed option or to any of the other eight options the new 401(a) plan offers.

Those options, all managed in-house, are: money market; indexed bonds; stock funds indexed to the Standard & Poor's 500 and the S&P 400; a large-capitalization growth fund; a large-cap value equity fund; a

real estate investment trust fund; and an international equity fund indexed to the Morgan Stanley Capital International Europe Australasia Far East index.

Consultants say no other 401(a) plan offers such a guarantee.

"I have not seen anything exactly like this," said Steve McElhaney, consultant with William M. Mercer Inc. in New York. "There's some risk to the system in that if the actual return is less than the guaranteed amount, the system would have to make it up from somewhere else," he said. "The fact that the money would stay for five years mitigates that risk because volatility risk is more over the short term than over the long term."

Participants, meanwhile, won't have to make investment decisions. "From a participant's view, it sounds pretty attractive," Mr. McElhaney said.

Some public funds offer variations of Ohio's program.

Oregon, for example, has a money purchase arrangement in which all of the assets get the rate of return that the pension plan gets without a minimum guarantee, Mr. McElhaney said. It's not a separate defined contribution plan but a subaccount within the defined benefit plan.

Washington state's two 401(a) plans, with \$1.7 billion in assets,

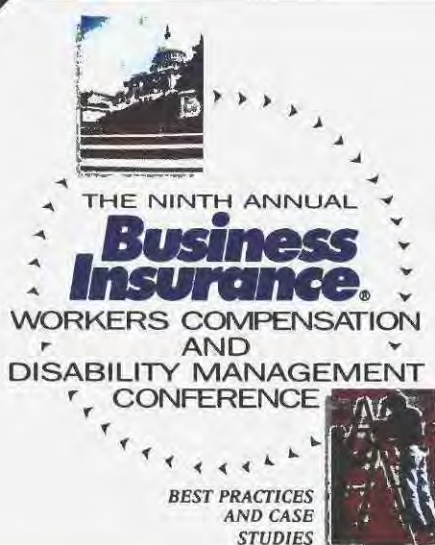
have a fund mirroring the defined benefit plan that has received mixed reviews. One problem: The mirrored portfolio—called the Total Allocation Portfolio—is valued monthly, whereas the remainder of the options offer daily valuation. It is managed in-house by the Washington State Investment Board in Olympia. Assets in the portfolio will be commingled in a pool with assets of the \$42 billion Washington defined benefit retirement plans. A new 401(a) for all state employees to be launched in 2002 also will contain the TAP option.

About 50% of the participants are invested in the TAP option, more than any other single fund, said Scott Huntley, legislative and communication coordinator for the Washington State Investment Board. However, that portfolio is the default option.

The biggest challenge was the pricing of the TAP fund because it contains investments such as its 16% allocation to private equity and 8% allocation to real estate that are not meant to be in defined contribution plans, Mr. Huntley said.

Mike Kennedy and Arleen Jacobus are reporters for Pensions & Investments, a sister publication of Business Insurance.

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OPINIONS

New HMO focus overdue

WHAT SHOULD BE DONE to control health care costs?

Obviously, there is no one right answer, but a new approach being launched by Blue Cross of California is, we think, an outstanding one.

As we reported in the July 16 issue, Blue Cross will begin providing bonuses to physician medical groups for delivering quality care and for measuring patient satisfaction.

The health plan will abandon its current practice of paying cost- and utilization-containment bonuses to providers with health maintenance organization contracts. The money from that program will instead go to HMO-contracted doctor groups that have a system for measuring quality and clinical performance, as well as a way to reward individual doctors who score well on those measurements.

Blue Cross then will use the quality information it receives from doctor groups to develop a physician score card, which it will make available to consumers.

To some, Blue Cross' approach might appear puzzling. Why, some might ask, would a health insurer, at a time of soaring costs, choose to eliminate a program

that rewards physicians who hold down utilization and costs?

The answer—which Blue Cross obviously recognizes—is that rewarding quality has a far bigger payoff than short-term cost-control efforts.

Although no one can quantify the exact impact, health care costs clearly are driven higher by repeat visits to providers that must be made because a service or procedure was not done correctly the first time.

It stands to reason, therefore, that a procedure that costs \$1,500 and is done right the first time is far less expensive than paying \$1,000 for the same procedure and then paying for follow-up visits when that procedure is performed poorly.

In that example, the physician who charged the higher amount was in fact the lower-cost provider and should, accordingly, be rewarded with more business and bonuses. And it is that sort of incentive that the Blue Cross program would provide.

At the same time, despite a great deal of talk about how consumers have to be empowered to make better, more informed decisions, patients currently have scant quality-related information with which to evaluate



providers. The Blue Cross program's doctor score card will help to fill that information vacuum.

Just as encouragingly, other health plans are developing strategies similar to the one Blue Cross has implemented, a sign that quality is getting the recognition it deserves as a way to lower health care costs.

Employers playing catch-up with new tax law

HOW DIFFICULT CAN it be to allow employees older than 50 to make "catch-up" contributions to their 401(k) plans?

In the wake of the loosely drafted tax law that will permit such contributions beginning next year, the answer is very, according to the comments of employers and benefit consultants.

Under the Economic Growth and Tax Relief Reconciliation Act of 2001, each employee age 50 and over will be able to contribute an additional \$1,000 to his or her 401(k), 403(b) or 457 plan next year. The amount of the maximum catch-up contribution will increase by \$1,000 annually until the maximum catch-up deferral reaches \$5,000 in 2006.

The public purpose behind the catch-ups is to give employees, especially women who may have been away for the workforce for years to raise families, the opportunity to put more money in their savings plans to make

up for the time that they couldn't. While the intent of the law is clear, there is not yet an easy-to-follow set of rules for employers that want to add such a provision to their savings plans. Clearly, rules are needed.

For example, employers now have no guidance on whether catch-up contributions are allowed only after an employee turns 50 or at any point in the year in which an employee turns 50.

Another question involves a real-world situation in which an employee makes a catch-up contribution, only for the employer to discover—after the fact—that the employee was not yet 50 and thus wasn't eligible to make the contribution. How exactly should an employer remedy the situation?

Benefit managers looking for answers to those questions and others raised about catch-up contributions aren't going to find them in the tax law. Not surprisingly, the tax law only uses broad language to describe

catch-ups and, for that matter, other pension provisions.

That is entirely appropriate. It is not reasonable to expect Congress to deal with such minutiae. But it is entirely appropriate to expect regulators to do so.

We are encouraged, therefore, that Internal Revenue Service officials have pledged to provide guidance on catch-up contributions and other pension provisions as quickly as possible.

Many of the pension provisions in the new tax law represent sound public policy, and it would be regrettable if employers failed to implement them because of a lack of guidance from federal regulators.

We would also hope the IRS reaches out to employers in preparing that guidance. If producing sound, workable regulations is the goal of the IRS, employers represent a source of expertise that regulators cannot afford to ignore.

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Settlements must sort out future needs

Defining the scope of primary care is vital

By William L. Winslow

Most large settlements and awards in workers compensation cases include money that is earmarked for a variety of future care expenses. Under longstanding Medicare law, to the extent that the injured worker's recovery contains dollars for expenses that otherwise would be covered by Medicare—hospitals, physicians, durable medical



equipment—the compensation award is the first source to be tapped for payment. Medicare would then be the secondary payer.

The easiest way to understand this concept is to think of layers of medical insurance. The first layer—that derived from the workers comp award—must

be exhausted before the insurer providing the second layer—Medicare—is obligated to pay on its coverage. Most severely injured workers become eligible for Social Security Disability Income five months after the onset of a disability. A Medicare card is issued automatically 24 months later.

Since 1981, the law has held Medicare to be a fallback when there is other coverage. But only in recent years has the agency responsible for Medicare—the Health Care Financing Administration, recently renamed the Centers for Medicare and Medicaid Services—begun to give substantial attention to protecting Medicare's position as secondary payer in the workers comp field. This is a worthy endeavor, but the task of fairly defining the scope of the primary coverage that emerges in thousands of cases—each with unique circumstances—is fraught with complexity.

There are three primary policy objectives, and they tug in different directions:

- Medicare coverage should be secondary where there are settlement dollars for future hospital and doctor bills. Medicare dollars come from Federal Insurance Contributions Act payments, made by taxpayers who are already burdened.

- Conversely, it isn't fair to the injured worker to overstate the primary coverage. That worker has paid FICA taxes in order to be covered by Medicare coverage when the primary coverage is exhausted.

- The task of determining where the primary coverage stops and Medicare coverage starts should not be allowed to unduly burden the already-difficult process of resolving large cases.

The basic rule appears at 42 U.S.C. 1395y(2)(A), which reads:

Medicare Secondary Payer

Payment under this subchapter may not be made...with respect to any item or service to the extent that...payment has been made, or can reasonably be expected to be made promptly...under a workers compensation law or plan of the United States or a state.

Thus, if the injured worker has received funds for future medical expenses as part of the settlement of a workers comp claim—that is, for expenses that would normally be covered by Medicare—then Medicare is not obligated to also pay for the same medical bills.

In addition, CMS may seek the reimbursement

of a worker's postcompromise medical expenses—paid by Medicare—from the injured party, his or her lawyer or the settlement payer. Thus, two scenarios emerge: Following the workers comp settlement, Medicare coverage may be denied in the first place or Medicare may pay the bill but later demand reimbursement.

One regulation expressly bars efforts to improperly characterize a workers compensation settlement so as to shift to Medicare the responsibility of payment for treatment of work-related conditions. Another regulation offers sensible recognition of the concept of

The federal government may seek the reimbursement of a worker's postcompromise medical expenses—paid by Medicare—from the injured party, his or her lawyer or the settlement payer.

apportionment between future medical needs—medical care that is primary to Medicare—and other needs, such as income replacement. The extent of the recovery for expenses otherwise covered by Medicare must be fairly estimated in writing. For example, if the maximum cost to the insurer to make disability payments over the worker's lifetime would be \$275,000 but the defendant is spending \$425,000 to settle the case, generally there must be dollars in the settlement that are intended for the worker's future care.

For many years, the majority of workers comp professionals have ignored the Medicare secondary payer rules. For the injured worker, this neglect carries the risk of miscalculation with regard to when Medicare coverage will be available for conditions related to an industrial injury. For the employer or insurer, there is the possibility of exposure to double damages. The statute provides that the United States may recover double damages against a primary plan if Medicare pays a claim covered by the plan. But there exist no reported decisions in which CMS actually relied on this statute.

Nevertheless, employers and insurers cannot ignore the risk. The Medicare program continues to hemorrhage red ink, so greater enforcement by CMS of the secondary payer rules can be expected.

The cases of most interest to CMS and the settling parties are those arising from grave work-related injuries or illnesses, because those settlements includes large sums for future medical bills. The regulations require only a reasonable allocation; they do not speak of the need for precision. Inherently, there will always be considerable uncertainty as to how much primary coverage has been provided. The sources of that uncertainty include:

- The difficulty of forecasting future medical needs.

- Questions as to whether the settlement includes sums for certain expenses—including attendant care; pharmaceuticals; adaptive equipment; and extensive physical, speech or

occupational therapy—for which there is little or no Medicare coverage.

- Whether there is an unresolved dispute about the need for hospitalization and physician services in the future.

It is unrealistic to expect that the typical workers comp settlement will, in effect, write a definitive, comprehensive primary health insurance policy for future hospital and doctor bills.

The regulations contain an implicit assumption that when there is a compromise, it must be a lump-sum compromise. This idea is now outdated. Indeed, a majority of large cases likely are settled with at least some structured payments.

As compliance with the Medicare secondary-payer rules expands, much of the change will involve apportionment of settlements. The amounts earmarked for future medical bills will be received by the worker. Unless there are new regulations, this will constitute compliance. The difficulty, though, is that a lump sum earmarked for future medical bills may not be preserved by the claimant for that purpose. A simple way around this difficulty is to address projected hospital and doctor bills with structured settlement payments funded by an annuity.

Many of the most-serious cases involve lifetime care. When there is a severe injury to the brain, spinal cord, or internal organs, the worker's condition usually will not improve to the point that treatment is no longer needed. But because a particular worker's actual life span—as opposed to an approximate life expectancy—cannot be known in advance, a lump sum paid at the time of settlement to cover future medical bills may be either grossly inadequate or excessive. By contrast, structured settlement annuities that pay out for as long as the claimant lives provide an economically efficient response to the uncertainty of the worker's life span.

Another misconception reflected in the regulations is that settlement funds fall into only two main categories: those that will replace income and those that will pay for medical expenses, i.e., Medicare-covered services. In fact, in the case of many grave injuries, there are three categories. The biggest of these is funds to meet costs not covered by Medicare, such as attendant care and medicines.

With the process of arriving at a reasonable three-way apportionment already so difficult and time-consuming, the thrust of practice and policy should be to avoid adding any more delay or disruption to the settlement process than is necessary.

Some commentators have raised the specter of an injured worker losing Medicare benefits unless in every substantial settlement these actions are taken: one, a Medicare set-aside trust, or MSAT, is established; two, the trust is funded with sufficient settlement proceeds; and three, the approval of CMS for the level of funding and the terms of the trust is obtained. This is an overreaction.

The regulations do not require preapprovals by CMS. The settlement process involves tens of thousands of workers each year and very large sums; it is a critical part of the workers comp system. This system already struggles to move cases, and such a searching oversight by a government bureaucracy would significantly exacerbate the problem.

This is not to say that there is never a case where it makes good sense for the parties to seek CMS approval of custodial accounts or trusts that set aside a certain amount as the primary

Continued on page 12



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PERSPECTIVES

Continued from page 10

coverage. Occasionally the claimant and the employer are poles apart over whether, for example, a particular condition is accident related, or whether a heroic, but expensive, procedure is needed. In this situation, it is desirable to have a procedure by which CMS would essentially

become a party to the negotiations, because the issue of primary vs. secondary coverage must be addressed in order to arrive at a settlement.

Workers comp is entering an era in which an express written allocation regarding future care expenses—in effect, a written type of health insurance plan—will be needed in virtually all

large settlements. The industry, counsel, CMS and the Medicare intermediaries must collaborate to develop a set of new policies and practices that are fair to all, sensible and effective. **BI**

William L. Winslow is a partner in the Los Angeles law firm of Farmer & Ridley L.L.P.

Emotional stress not CGL definition of 'bodily injury'

In a case of first impression in West Virginia, the Supreme Court of Appeals ruled that a purely mental or emotional harm that arises from a claim of sexual harassment and lacks physical manifestation does not fall within the definition of "bodily injury" for purposes of a commercial general liability insurance policy.

Erin Smith filed a civil action against Animal Urgent Care Inc. and Dr. Karl E. Yurko, a veterinarian, claiming sexual harassment, wrongful discharge and intentional infliction of emotional distress. She sought both compensatory and punitive damages. She claimed that during her nine and one-half month employment with Animal Care, Dr. Yurko engaged in various acts for the purpose of harassing, degrading and embarrassing her through unwelcome sexual advances and exploitation. Animal Care was covered under a CGL insurance policy issued by American States Insurance Co. The policy covered damages because of "bodily injury" defined as "bodily injury, sickness or disease sustained by a person...." American States brought this action seeking to have the court declare that it was not obligated to defend or indemnify Animal Care and Dr. Yurko in Smith's suit. The trial court ruled for the insurer.

The appellate court said "bodily injury" and "personal injury" are not synonyms and have two distinct definitions. The term "personal injury," the court said, is broader and includes not only physical injury but also any affront or insult to the reputation or sensibilities of a person. "Bodily injury," by comparison, the court said, is a narrow term and encompasses only physical injuries to the body. The court said that in an insurance policy, purely mental or emotional harm that arises from a claim of sexual harassment and lacks physical manifestation does not fall within a definition of "bodily injury," which is limited to "bodily injury, sickness or disease." The trial court decision was affirmed.

Smith vs. Animal Urgent Care Inc., Supreme Court of Appeals of West Virginia, Nov. 3, 2000 (BI/02/Jy.-\$10).

Coverage extends past group policy expiration

Coverage of a group health insurance policy for expenses incurred within 52 weeks of the date of the first treatment extended beyond the expiration of the policy period, according to the Court of Appeals of Georgia.

Guarantee Trust Life Insurance Co. issued a nonrenewable blanket student accident policy to Georgia State University for the 1994-1995 school year. The following September, Guarantee issued another policy for the 1995-1996 school year. Students could obtain insurance under the policy by applying for coverage and paying the required premiums. John Connell, a graduate student, and his wife Caroline Connell paid the premiums for coverage. On May 2, 1995, Ms. Connell, pregnant at the time, discovered blood in her urine. She was diagnosed with kidney stones and received treatment until May 1996. She submitted claims for coverage for this treatment. The claims were denied. The Connells then sued Guarantee for breach of contract. They appealed after the trial court dismissed their suit without a trial.

On appeal, Guarantee argued, in part, that coverage was not afforded under the 1994-1995 policy period because it expired before Ms. Connell incurred the medical expenses for which she sought coverage. The court said that the fact that the policy may have terminated on Sept. 19, 1995 was not dispositive of the issue. The court pointed out that the policy recited that coverage will be afforded for certain expenses incurred

within 52 weeks of the date of the first treatment. This language, the court said, contemplated that some expenses incurred due to a covered sickness might occur after expiration of the policy, if the illness first manifests itself late in the policy term. The trial court decision dismissing the Connells' suit was reversed.

Connell vs. Guarantee Trust Life Insurance Co., Court of Appeals of Georgia, Oct. 23, 2000 (BI/04/Jy.-\$10).

Murder victim's family denied workers comp

The murder of an employee by a fellow employee in the workplace did not arise from her employment, so the Supreme Court of Kentucky denied workers compensation benefits to the deceased woman's husband and her minor children.

Betty Carnes and Delmar Partin were co-workers and it was undisputed that they had engaged in an extramarital relationship. Two to three months after Ms. Carnes ended the relationship, Mr. Partin murdered her in the workplace. Although Ms. Carnes had ended the relationship, she did not request disciplinary action against Mr. Partin and did not request protection and was seen talking to him on breaks. In the weeks immediately preceding her death, she was reported to act nervous in Mr. Partin's presence and expressed to co-workers fear of him because she was ending their relationship.

Phillip Carnes, her widower, filed this claim for benefits on his own behalf and that of their minor children. The compensation board denied his claims. The Court of Appeals affirmed the decision to deny benefits. Mr. Carnes appealed to the state supreme court.

On appeal, he argued that the conditions of his wife's employment contributed to her death because Mr. Partin was an employee who was permitted to enter the plant while off-duty and that the lab where Betty worked was in a secluded area, thereby facilitating the murder. However, the court was not persuaded that the employment here had exacerbated or facilitated her death. The court said that her death did not arise from her employment for purposes of workers compensation benefits.

Carnes vs. Tremco Mfg. Co., Supreme Court of Kentucky, Oct. 26, 2000 (BI/03/Ju.-\$10).

Prisoner entitled to workers comp benefits

The Supreme Court of Arizona ruled that a state law requiring suspension of workers compensation benefits during a claimant's period of incarceration could not be applied retroactively to claimants whose awards were final and whose offenses were committed before the effective date of the law.

Michael Everett suffered a compensable head injury on July 21, 1991. He was awarded workers comp benefits on Jan. 24, 1994. Mr. Everett and his dependent son received monthly compensation payments from 1994 into 1998. In April 1997, he was arrested for the commission of three criminal offenses. He pleaded guilty and was sentenced to prison in December 1997.

The same year, the state Legislature enacted a law that authorized the suspension of workers comp benefits to people convicted of a crime and incarcerated. It became

effective Dec. 1, 1997. Consequently, the state suspended benefits to Mr. Everett effective May 1, 1998. He appealed and an administrative law judge concluded that the statute could not be applied retroactively and the suspension of benefits was set aside. The state appealed.

The state Supreme Court, in a case of first impression in that state, said Mr. Everett's award became final on Jan. 24, 1994, which was prior to the effective date of the law suspending benefits during a claimant's incarceration. According to the court, he then possessed an existing, enforceable right in property, to receive the monthly compensation payment before the effective date of the law. Since his substantive property right was vested, the court said, the statute could not be applied to Mr. Everett, whose award was final and whose offenses were committed before the effective date of the law. The case was sent back for further proceedings consistent with the decision.

Aranda vs. Industrial Commission of Arizona, Supreme Court of Arizona, Sept. 12, 2000, As Corrected on Denial of Reconsideration Nov. 1, 2000 (BI/03/Jy.-\$10).

Proving injury doesn't violate equal protection

A requirement that an employee prove both a psychic injury and that the injury was other than a subjective reaction to normal working conditions in order to receive workers compensation benefits for a mental injury did not violate the equal protection clause, according to the Commonwealth Court of Pennsylvania.

Robert Berninger worked as a police officer for East Hempfield Township, Pa. He was unable to perform his official duties after Jan. 8, 1998, due to psychological problems. Because of his attention deficit disorder, the police department accommodated him by assignment to a steady shift rather than a rotating shift.

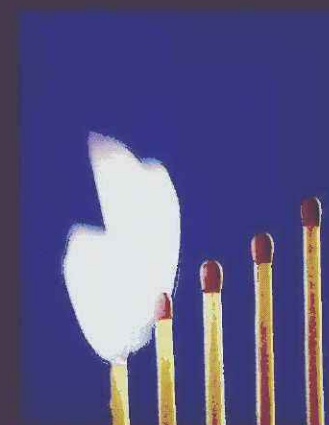
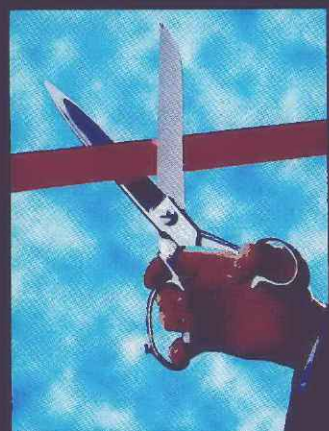
Mr. Berninger petitioned for workers comp benefits, claiming he could not possibly perform his duties as a police officer because he was depressed and "burned out" from the stress of the job in addition to his attention deficit disorder. It was stipulated that a specific incident or abnormal working conditions did not cause Mr. Berninger's disability. His claim was denied on the basis that he did not establish that he was subject to abnormal working conditions.

On appeal, Mr. Berninger argued that the dual burden on him (to prove both a psychic injury and that his injury was other than a subjective reaction to normal working conditions) denied him equal protection and was unconstitutional.

But the court said there was a rational basis for the requirement to prove both because a determination whether a worker claiming a work-related psychic injury has actually suffered an injury was a legitimate government interest. Furthermore, the court said that the dual burden classification was rationally related to that government interest. The court upheld the constitutionality of the requirement and denied Mr. Berninger benefits.

Berninger vs. W.C.A. B. (East Hempfield), Commonwealth Court of Pennsylvania, Oct. 30, 2000 (BI/01/Jy.-\$10). **BI**

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



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AIDS

Continued from page 1

But that is not to say that AIDS has not had a profound impact in the workplace. AIDS has contributed to the development of viatical and same-sex benefits, and it has directed attention to the issue of medical confidentiality, among other effects, observers say. It has also influenced employers' nondiscrimination policies (see story, page 16).

In today's global economy, AIDS is of increasing concern to multinational companies, especially those with operations in Africa, where the disease is most rampant (see story, page 15).

Initial societal reaction to AIDS was anxiety and fear, and this reaction seeped into the workplace. David Schulman, supervising at-

torney in the AIDS/HIV discrimination unit of the Los Angeles City Attorney's Office, advises the city as an employer of 40,000 workers.

In those early years, "we were receiving phone calls from heads of city departments, from supervisors, beginning to bring to us the same exact kinds of concerns, questions, that employers generally were encountering," he said. People "would hear that AIDS is contagious and would misapply what they knew about contagious illnesses like colds," said Mr. Schulman.

But that attitude has changed as a result of employee education and medical breakthroughs. In 1991, for instance, then-Los Angeles Mayor Tom Bradley asked every city department head to meet with Mr. Schulman and the city attorney "and go through their own small, high-level briefing," where the city's comprehensive AIDS policy, which was adopted the previous year, could be explained and any questions answered, said Mr. Schulman.

"We worked to create an environment where these very high-powered people could feel free to ask embarrassing questions," he said. "We emphasized to them that, until one received training, anyone could be ignorant about this, and the most important thing would be to overcome the ignorance through information."

"I'm sure one could still find incidents of employers not handling it well; but, I think, as a general rule, knowledge has helped lead to a sort of more responsible way of handling the issue, and so employers have adopted policies. They've made important accommodations both in their benefit plans as well as their work rules and things of that nature, and there's been some progress," said James Klein, president of the Washington-based American Benefits Council.

"Today, I don't think people are being discriminated against, certainly not in larger corporations, and I don't think they're losing jobs," said consultant Paul A. Ross of Lexington, Mass.-based Paul A. Ross Associates. "I don't think employees are going to walk off the job or threaten to quit or resign" if a co-worker develops AIDS. "I think we're pretty far beyond that."

A factor contributing to the changed attitudes was the improved prognosis for AIDS patients. "It went from being something where there was a guaranteed death end point pretty soon, anywhere from six months to a couple of years," to having people still alive five or six years after their diagnosis, said Helen Darling, a senior consultant with Watson Wyatt Worldwide in Stamford, Conn. "It's a hard life, to be sure," and AIDS remains a chronic condition, but it is no longer a "guaranteed, terminally ill condition."

In fact, people with AIDS often do not remain on long-term disability but return to the workplace. "It could be partial, because they still need a lot of medical treatment, but they can and want to come back to work, so there's been a complete turnaround," Ms. Darling said.

Changing cost expectations

Because of medical advancements, AIDS has also not been as

costly as first feared.

"I think, initially, there was a lot of fear that it would have a huge impact," Ms. Darling said. But "aside from the human tragedy, the impact to employers has been spread out," she said.

"The good news about most corporate (benefit) packages is they're very generous," said Ms. Darling. At the same time, sadly, many AIDS sufferers "don't have any insurance coverage at all. They're on Medicaid, or they are just coping with whatever financial resources they have," she said.

But, in terms of expense to employers, "it almost never came in the top five or 10" in terms of costly diseases, said Ms. Darling. "It is not the problem I think many people feared it would be."

Annual per-patient treatment costs for HIV patients totaled \$18,300, after certain adjustments, in 1998, according to the Santa Monica, Calif.-based RAND Institute. RAND earlier this year released its latest analysis of a national survey it conducted on HIV care costs. According to the survey, 68% of patients rely on public programs or personal assets, rather than private insurance, to finance their care. Overall, the disease accounts for less than 1% of all direct personal health care expenditures in the United States, according to RAND.

As a result of employee education and the availability of the drug cocktail, people no longer particularly worry about the cost of AIDS, said Ken Jacobsen, national health practice leader for The Segal Co. in Atlanta.

Employers also no longer consider AIDS a unique condition, he said. "It's long been absorbed into the everyday of benefits and eligibility and expense and premium rates and everything else."

"I think the medications that have extended the life span have really made a difference from a claims perspective," said Eileen Settineri, director of health and welfare benefits for the Unifi Network, a unit of PricewaterhouseCoopers L.L.P. in New York.

"Whereas initially, there would be catastrophic claims, where you might have a long hospital stay, now, people move into an outpatient setting with doctors, so the type of expense has differed. The types of expenses you saw earlier on were more hospital-based, and now they are more pharmaceutical-based," said Ms. Settineri, who was a nurse at St. Vincent's Hospital in New York's Greenwich Village before AIDS was identified.

She added that, today, "I think what employers have to grapple with is the impact of technology on the medical costs, and when it comes to AIDS, that meant a whole new set of drugs used to treat this disease, which influenced life expectancy—although the same holds true for medical advances in other diseases, including cancer."

The RAND study concludes that, despite their increased cost, the widespread introduction of the new drugs in early 1996 led to a drop in the average annual per-patient treatment costs from \$20,300 that year to \$18,300 in 1998 because of reductions in other areas, including hospital services. Of course, assuming the therapy continues to be effective,

the total lifetime cost can be higher because patients are living longer.

Side effects for employers

AIDS has had an effect in other areas as well. One impact, Ms. Darling said, is the introduction of viatical benefits, under which employees can collect on life insurance benefits while still living. That was "very substantially driven by the problem of AIDS, of people knowing they were dying" and wanting access to those funds, she said.

Nancy L. Breuer, a partner in The Positive Workplace, a Los Angeles-based management consulting firm, said the issue of medical confidentiality also arose within the context of AIDS. The disease "has really brought the confidentiality of medical information to the forefront of many employers' minds."

Before the issue arose, she said, some of her employer clients would have employees fill out medical questionnaires requesting information—including their diagnosis and prognosis—when they were out sick for just a few days. It took several years for employers to withdraw those forms and realize "that they couldn't ask questions like that without running afoul of the law," and they are only permitted to ask the employee how long it would be before he or she could return to full duty.

Anne Chamberlain, a principal with Buck Consultants Inc. in New York, said AIDS has also contributed to an awareness of disability and its cost to employers, as well as to employees, their families and the community. People with AIDS could become disabled very suddenly, and employers became cognizant of "the psychological impact it can have on everyone who's involved" and the importance of handling any disabling illness effectively, she said.

Domestic partner benefits can also be tied indirectly to AIDS, said Michael Sears, a partner with law firm Seyfarth Shaw in San Francisco. People who had same-sex relationships with AIDS sufferers sought the benefits for their partners, he said. Although Mr. Sears, who is gay, said he believes those benefits would have been introduced eventually anyway, it happened sooner as an outcome of the gay community's mobilization on behalf of AIDS patients. "I think there has been some tying in of the two issues."

A 1994 study by Lincolnshire, Ill.-based Hewitt Associates L.L.C. concluded that the cost of domestic partner benefits to employers was lower than anticipated, in part because any increased risk of AIDS among male same-sex couples appears to be offset by a decreased risk among female same-sex partners.

Complacency grows

Today, employers' main concern is an overall sense of complacency about AIDS, observers say.

Victor Barnes, who works with employers on the issue in his capacity as deputy director, division of HIV/AIDS prevention, intervention, research and support at the Centers for Disease Control and Prevention in Atlanta, said, "What we've seen recently mirrors what's happening in the U.S., that is, general complacency



with HIV, because...you're not seeing a lot of people who clearly are very ill and dying."

People have allowed the idea of AIDS to slip out of their awareness, and informing young people who are entering the workforce has become a major issue for business and labor, said Mr. Barnes. According to CDC statistics, of the 43,000 new infections annually, at least half are among people under the age of 25.

There is a "whole new group of people entering the workforce" who have not had exposure to AIDS education, said Lynn Franzoi, senior vp-benefits for the Fox Entertainment Group Inc. in Los Angeles.

Young workers today "weren't around for those early days when we were going to a funeral a month and watching friends die," said Segal's Mr. Jacobsen, who agreed there is complacency.

"You have a segment of the population thinking it's a curable disease, which is wrong, and you also have a loss of interest in workplace educational efforts because of the perception that attitudes have changed—which is only partly true—and just the fact that it's not the 'disease du jour' anymore," said Peter J. Petesch, an employer attorney with Ford & Harrison L.L.P. in Washington. Complacency "raises different dangers from the panic that we had in the early and mid-'80s."

Ms. Franzoi said, "We're definitely seeing that there is complacency out there, and we have been trying throughout our organization to combat this and to try to create a new awareness."

A total of 18% of employees received AIDS education in the workplace in 1997, compared with 28% in 1992, according to a 1998 national survey by the Washington-based National AIDS Fund, a philanthropic organization.

Paul A. Ross Associates' Mr. Ross, formerly worldwide manager of HIV/AIDS programs for Maynard, Mass.-based Digital Equipment Corp., said, "My general feeling is, in the workplace—and in corporate America—there's very little happening, and I think that's really a tremendous loss."

Mr. Ross, who left Digital in 1994 to start a consulting practice devoted to HIV and AIDS education, has not delivered a seminar on the topic in two years due to declining interest, and he has had to expand his focus to other areas. Many of his counterparts who were at other corporations when he worked at Digital also have moved on, he said. And a New England corporate consortium of 15 companies that was once active in this area exists today essentially as only a legal entity, said Mr. Ross.

There is a lost opportunity here, he said. "The workplace is a con-

See AIDS on next page

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AIDS

Continued from previous page

tained audience, and an ideal opportunity to educate. So much of the emphasis today is on cure and vaccines, and I certainly respect that, but there's got to be a balance which allows an opportunity for people (to learn how not to) become infected in the first place."

This is particularly important for younger workers who were not in the workforce when the AIDS epidemic first started and

may even consider it an older person's disease, he said.

Mr. Ross said, though, that it is hard to convince companies to introduce programs in today's economy. "Those that are far-reaching and thinking about it in terms of their future workforce are really very enlightened, but I think the business community today is focused on immediate results" and the idea "of doing anything pre-emptory in nature rather than crisis management is a hard sell."

He said, "The impression is that it's in marginalized communities, and therefore if

my workforce is 80% not diverse, then it really doesn't impact me. That's the attitude I'm getting."

The nature of any education effort today would differ from what it was years ago, noted American Benefit Council's Mr. Klein. Employees no longer need to be told they do not have to fear contracting the disease from minimal contact.

"I think that's an important distinction," he said.

"It hasn't really come up as an issue" with employers of late, said Segal's Mr. Jacobson, though that may change if claims begin

to increase. "I'm sure that there are some very progressive organizations that really anticipate things like that, that have such a social relationship with their employees that they educate them on things, but that would not be the average employer."

Even a progressive employer may be able to do little in light of prevailing social attitudes. Ms. Franzoi said, "I used to hold AIDS-in-the-workplace training sessions and have 25 or 30 people. Now I'm lucky if I get two. People are getting more complacent. They don't see it as the same threat they considered it five, six years ago." **B**

Employers confront AIDS in Africa

Disease spurs multinationals to be more aggressive in education

By JUDY GREENWALD

While AIDS has been put on the back burner by many American companies, with some lamenting a growing sense of complacency in the United States, the disease is becoming a growing concern to U.S. firms with multinational operations.

In particular, many U.S.-based corporations with operations in Africa—where the disease has killed 17 million people and where another 25 million are infected with HIV—increasingly are worried about the disease's proliferation in the region and its impact on their employees.

In response, certain companies—including Ford Motor Co., Chevron Corp. and Coca-Cola Co.—have launched local initiatives to address the issues in regions where they operate.

"Sub-Saharan Africa is where the heart of the AIDS problem is, so we are seriously impacted in these countries," said Dr. Steven Simpson, Luanda, Angola-based regional medical director for Chevron.

Dr. J. Denise Clement, director of health care quality assurance for Ford in Dearborn, Mich., said AIDS affects people who are in their "prime time" not only as productive employees, but also as drivers of their country's economy. "So, this is a business issue, not just a health issue."

These corporate efforts reflect the general concern illustrated by last month's three-day special United Nations session on AIDS, which culminated in a declaration by the General Assembly outlining how the fight against AIDS should proceed.

Kandy Ferree, president and chief executive officer of the Washington-based National AIDS Fund, a philanthropic organization, said that although domestic interest in AIDS education seems to be "on a plateau and, in some cases, declining," there has been increasing emphasis on an international level.

Multinational businesses are "using the workplace as a primary point for distribution of HIV-AIDS information and prevention messages and strategies," and, in some cases, even condoms, she said. The workplace is seen as a key component of a comprehensive community approach to HIV and AIDS prevention, Ms. Ferree said.

Despite the sense of complacency in the United States, "the international momentum, because of the scale of the epidemic, is going to shine a lot of light on the need for continuing workplace education" and foreign and multinational companies "will be on the cutting edge of this strategy," she said.

Major multinational corporations "are being sensitized to the global epidemic," said Victor Barnes, deputy director, division of HIV/AIDS prevention, intervention, research and support at the Centers for Disease Control and Prevention in Atlanta. Such companies sometimes have to train more than one employee for the same job in order to be prepared if the

employee or are a family member becomes ill, and companies must contend with frequent absences, he said.

Furthermore, companies must also deal with the health-related costs associated with opportunistic infections related to AIDS, because their employees do not have ready access to the treatments available in the United States, Mr. Barnes said.

Chevron, for instance, whose African operations are primarily concentrated in Nigeria and Angola, has free medical fa-

'I think our employees are very well educated about HIV and how it's transmitted and the actions they can take to stop their risks.'

— Dr. Steven Simpson
Chevron

cilities for its employees. Employees, however, do not have access to the level of expertise or advanced facilities needed to administer antiretroviral drugs, said Dr. Simpson.

"We work with what we have," he said, adding that the available antibiotics seem to be effective in treating most of the opportunistic infections associated with AIDS, including tuberculosis. "We have some people who we know are HIV positive who have been living well over 10 years, and without retroviral therapy. And that, I would think, is very unusual for Africa," said Dr. Simpson.

Ford, Chevron and Coca-Cola are all active in reaching out to the general community on ways to address the AIDS issue. Following are details about the prevention and treatment programs they have developed for their own employees:

Chevron Corp.

Chevron, which has 2,000 employees in Nigeria and Angola and smaller operations elsewhere in Africa, has been able to keep the AIDS rate somewhat below the prevailing rates in both countries, thanks to the medical care it provides through its clinics and hospitals, said Dr. Simpson. That care, he said, is much more sophisticated than that normally available in those countries.

This is particularly an accomplishment in light of these employees' profession, said Dr. Simpson. "I have to say oil workers are considered a high-risk population because a lot of them work rotational schedules," and, as a result, are often away from their families. Also, their relative affluence would normally tend to make them more vulnerable, he said.

Dr. Simpson said Chevron has been ac-

tive in health education in Nigeria since 1991, "when we began to realize that we had a problem. We'd assumed, perhaps naively before that, that we hadn't," he said. The company then began to make sure someone from its medical department was present at safety meetings and available to answer questions. "Before that, people didn't talk," both because of the stigma involved "and also from a genuine belief (AIDS/HIV) wasn't a problem. It was always something that happened to someone else," he said.

Now, he said, "I think our employees are very well educated about HIV and how it's transmitted and the actions they can take to stop their risks." Contractors were also included in these educational efforts, Dr. Simpson said.

The next step, he said, was the introduction of a program for Chevron employees' adolescent children, which was later expanded to the general community. Recognizing "they couldn't get adolescents into a lecture theater" Chevron's medical department in Nigeria used a combination of different approaches instead, including theater, singing, dancing and poetry, said Dr. Simpson.

Chevron also offers its employees psychological counseling, he said. "We know from our clinics if we diagnose somebody as HIV positive, they definitely don't want anyone else to know about it—even within their family—and we spend a lot of time counseling those people" to prevent them from transmitting the disease to others, said Dr. Simpson.

Ford Motor Co.

Ford's three-pronged AIDS program in South Africa, where the HIV rate is about one in five, includes an education and prevention program for its 3,700 employees, joint efforts with other employers and a community outreach program, said Dr. Clement.

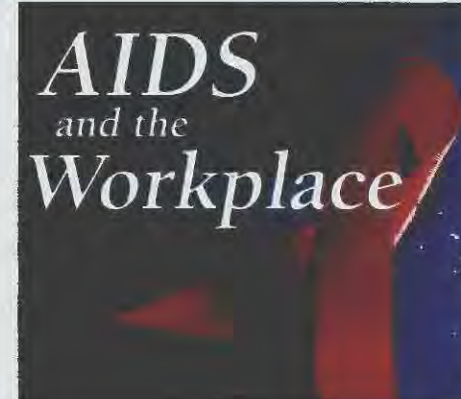
When it first introduced its employee education program in August 1999, Ford shut down its two plants for half a day so everyone could attend a training program, she said. Shortly after that, Ford sponsored a family AIDS awareness day attended by about 2,000 people, at which Ford distributed educational materials, such as a publication on how to talk to teen-agers about HIV and AIDS, said Dr. Clement.

Ford's employee program also provides for the distribution of male and female condoms, which are available in locker rooms and changing areas, "so they're readily accessible," she said.

In addition, Ford has trained 40 peer educators—employees who have volunteered to serve as a resource on the issue—and has a dedicated AIDS/HIV coordinator in both plants.

Ford's two health plans in South Africa also cover AIDS-related expenses, said Dr. Clement, who said he does not have access to data on how prevalent the disease or HIV is among Ford employees.

She noted that although Ford has not had to train more than one employee for



the same position, it has had some problems with employee absence. "Within Africa, you have funeral rites and customs that go on for several days," so if someone loses a family member, he or she may be gone for almost a week. "So that has an impact on your workforce."

In addition to its community-outreach program, which works with elementary school children and AIDS orphans, Ford also collaborates with other employers. The company is "taking a leadership role in the business community," including hosting seminars on workplace programs with other South African employers, particularly those in the automotive industry, said Dr. Clement. This way, other firms do not have to create a workplace program "from scratch," said Dr. Clement, who spoke at the United Nations last month on Ford's program.

Coca-Cola Co.

Atlanta-based Coca-Cola has conducted two-day basic AIDS training with managers and associates in its Nairobi, Kenya; Lagos, Nigeria; and Johannesburg, South Africa locations, Carole Wainaina, the company's Africa Group human resources director, said in a written statement. Coca-Cola is the largest private-sector employer in Africa, with about 100,000 employees working in its marketing and bottling operations there.

The company has also conducted basic HIV/AIDS training and has established steering committees in its South African canning plants in Cape Town, Durban and Johannesburg. Coca-Cola plans to roll out similar training for its other regions in Africa as well, according to Ms. Wainaina.

Condoms are readily available in the restrooms of many of Coca-Cola's offices and in all of its canning plants. "Our plan is to make distribution of condoms and related literature a minimum standard in all of our region offices" by August, said Ms. Wainaina.

Health coverage is available for all local employees in Africa. In South Africa, East Africa and West Africa, the company has arranged with its health care providers to provide comprehensive AIDS benefits "based on reasonable and customary allowances," she said.

"Similarly, in Nigeria, we treat HIV/AIDS like any other terminal illness," said Ms. Wainaina. "We are self-insured in Nigeria, and we support an affected associate or covered dependent with reasonable and customary benefits coverage. HIV/AIDS cannot be used as a reason to exclude anyone from health insurance coverage," said Ms. Wainaina.

AIDS propels changes in employment practices

By JUDY GREENWALD

AIDS has forced many employers to rethink their employment practices.

"I think it's had a far-ranging impact, in that it has brought a national health issue into the workplace in ways that employers have never had to address before," said Michael Sears, a partner with the San Francisco-based law firm of Seyfarth Shaw.

Observers say that employers have had to re-evaluate their disability policies not only to comply with a variety of federal and state anti-discrimination laws but to deal with the return to work of increasing numbers of those afflicted with AIDS, thanks to the development of advanced medications.

As society's attitude has, in general, swung from the panic and hysteria that marked the early years of the epidemic to today's general sense of complacency, attitudes in the workplace have shifted as well. At first, there were "some fairly bizarre workplace harassment cases and other discrimination cases," said Peter J. Petesch, an employer attorney with Ford & Harrison L.L.P. in Washington.

"Years ago," Mr. Petesch said, "there was a case in Texas where the employer found out about an employee's HIV status, told all the employees and then had them vote on whether to keep the HIV-positive employee."

But, by and large, such attitudes have changed. David Schulman, the supervising attorney of the AIDS/HIV discrimination unit in the Los Angeles city attorney's office, said, "In the year 2001, I think most people are at least vaguely aware that AIDS discrimination is illegal. So I think most people working for large employers probably have at least some idea that maybe they have rights." Mr. Schulman acknowledged, though, that such awareness might not extend to small employers.

Mr. Petesch also noted that the current level of understanding about AIDS and the human immunodeficiency virus that causes it was reached at some cost. "It certainly has been a hotly litigated is-

sue and has caused a disproportionate share of workplace anxiety, mostly due in part to people's preconceptions and the nature of the illness and how you do and don't get HIV, and (involving), of course, managing the attitudes and preconceptions of others in the workplace."

Critical in shaping employers' anti-discrimination policies on AIDS was the Americans with Disabilities Act, which took effect in 1992. Although AIDS was not the impetus behind the legislation's passage, and is not even cited in the legislation, observers say that many of the court decisions that stemmed from the law are AIDS-related and have led employers to adopt policies addressing AIDS concerns.

"There certainly have been a lot of ADA developments related directly or indirectly to typical issues involving HIV in the workplace," Mr. Petesch said. He pointed to the 1998 U.S. Supreme Court decision in *Bragdon vs. Abbott*. In that case, which stemmed from the refusal of a dentist to fill the cavity of an HIV-positive woman, the high court determined that asymptomatic HIV is a protected impairment under the ADA (*BI*, June 29, 1998).

Mr. Petesch noted that though that case did not involve the workplace, it was the first U.S. Supreme Court case to directly address the question of who is protected under the ADA.

About one in 20 ADA court cases are AIDS-related, said attorney Gerald L. Maatman Jr., a senior partner and the chairman of the global labor, employment and employee benefits practice group at Baker & McKenzie in Chicago.

If you're a human resources director or a corporate risk manager who is up on current events, "you can't help" but notice "there have been lots of lawsuits brought by AIDS victims or AIDS advocacy groups under the ADA," Mr. Maatman said. "There's been a steady flow of it."

Under the ADA, employers must give employees who want to return to work the option to do so and to make any reasonable accommodations, said Helen Darling, a senior

consultant with Watson Wyatt Worldwide in Stamford, Conn. "We hope most employers would be compassionate and not need the law to do that," Ms. Darling said.

But education has been needed to secure employees' cooperation. "I think many employers have had to undertake educational efforts to overcome employee stereotypes and preconceptions and panic reactions over this disability," Mr. Petesch said. AIDS, he said, has generated more of a response than other disabilities, for which employers "have not had to overcome hysteria in the workplace."

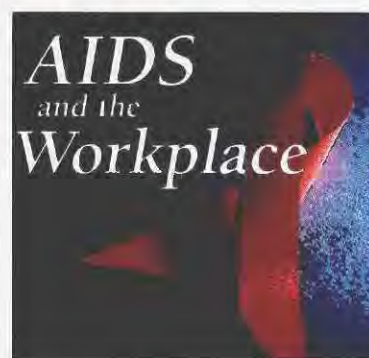
Mr. Petesch added that, "although most people say, 'We know better now,'" such attitudes still linger. Consequently, he said, "workplace education is as important today as it was at the early stages of the epidemic."

"I'd probably give employers a C-plus or B-minus in this area," Mr. Petesch said. "My feeling is that, in many cases, employers have reacted appropriately when forced but have not put enough effort into being more proactive on this with policies which would have made responding to an employee's disclosure of HIV status and requests for accommodations that much easier. They've come through in the end, but it would have taken a lot less work had the foundation been laid."

"You can't be unprepared, and you can't address it on an ad hoc basis," Mr. Maatman said. Employers must have a protocol in place, he said, because it is more likely than not that at least one individual working for the company of any significant size is HIV-positive, is suffering the onset of AIDS or is facing the prospect of leaving work because the AIDS has become full blown.

Los Angeles has long had such a policy in place. The city's comprehensive AIDS policy, which was adopted in 1990, "really goes into quite specific detail (about) the city's duty as an employer to educate employees so they don't feel frightened working with an HIV-positive employee and the city's commitment to ensure the privacy and the discrimination-free envi-

ronment for city employees," Mr. Schulman said.



Mr. Schulman noted that in 1991 he co-wrote an article about the city's innovative AIDS policy with Jim Hahn, who at the time was city attorney and last month was elected mayor of Los Angeles. The article appeared in the magazine of the League of California Cities, an association of California city officials.

Mr. Schulman said that any city employee can bring any form of discrimination complaint to his office "and is promised a prompt, thorough and fair investigation. I think all of these steps have signaled to city employees that the city of Los Angeles is an enlightened employer to work for."

Nancy L. Breuer, a partner in The Positive Workplace, a Los Angeles-based management consulting firm, said, "The workplaces that I have encountered that have struggled with this issue have become less discriminatory, in general, once they've had to work through the issue of what it means to have someone with HIV on staff. That working through of the issue tends to spill over into other areas of the workplace life, and it helps co-workers and managers be less discriminatory."

But Ms. Breuer noted that she is "seeing more and more detailed questions on job application forms, which seems to me to be an attempt to weed out anyone who might have a serious medical condition so they don't even get hired in the first place." This is ironic, she said, because the cost of AIDS to employers continues to decline with improved medical management. "If the intent is to prevent large claims,

then the question really is becoming outdated," she said.

Meanwhile, "as people have gotten healthier and are living longer because of the advances in treatment, many employees are going back to work," said Kandy Ferree, president and chief executive officer of the National AIDS Fund, a Washington-based philanthropic organization. Ms. Ferree said her organization's Web site gets about 15,000 requests weekly for its publication on AIDS disability management, as well as requests for other publications about how to manage the return to work of individuals with AIDS.

From a disability perspective, AIDS raises particular challenges, said Ann Longmore, senior vp for Willis Group Ltd. in New York. Because it is a progressive condition, the answers to questions about what constitutes accommodation and whether a particular employee can perform the essential features of his or her job change over time.

Questions about accommodation can also arise if, for instance, a job normally calls for 70 or 80 hours of work a week but an AIDS sufferer can work only 40.

The disease raises privacy concerns in this context as well, Ms. Longmore said. That is because AIDS "is one of those conditions that an individual would really consider to be private information about themselves" and yet accommodation may require informing colleagues why, for instance, a person has to be away from work every third day or is suddenly working from home.

The measures that resolve some of these concerns may have wider applicability. Ms. Ferree said she recently received a telephone call from an employer to discuss how what has been learned from AIDS may be applicable to genetic testing as well.

"Employers are beginning to have a conversation, especially Fortune 500 companies, about what lessons can we learn about the hard knocks they took about HIV and AIDS" and about how confidentiality should be approached from an ethical, legal and medical perspective, Ms. Ferree said. **BI**

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GLOBAL BRIEFS

U.K. pension risks on the rise

Post-Maxwell regulation, litigation are increasing trustee liability

By SARAH VEYSEY

With regulatory action and litigation against employer-sponsored pension plans on the rise, U.K. employers need to be aware of the potential liabilities involved in administering such plans.

According to the U.K. Occupational Pensions Regulatory Authority, in the year ended March 31, more than 200 pension plan trustees were brought before the OPRA board for breaches of the 1995 Pensions Act.

The 1995 Pensions Act, which is twice as long as the Bible, sets out more than 20 offenses for which employers or trustees of employer-run plans can be found liable. The Pensions Act was created to protect pension plan members from abuse by employers and

trustees and to ensure that plans can meet their financial obligations should they be terminated.

The law, which came into force in 1997, has created new exposures for company directors in particular, who often are the trustees of such plans.

"It is the trustees and administrators of pension funds who are responsible for running these schemes for the benefit of the pension fund beneficiaries," U.K. multiline insurer Royal & SunAlliance Insurance Group P.L.C. said in a statement. "In carrying out their role, trustees have a very heavy legal responsibility. Should they fall short of the standards required of them, they may be held liable for what could be very large claims."

In April, RSA relaunched its pension plan

liability coverage as part of its management assurance portfolio, which also includes directors and officers liability and employment practices liability coverage. The product combines coverage both for the legal liability of pension plan trustees and protection of the sponsoring employer's assets. Other insurers, including American International Group Inc., also have developed coverage for plan trustees and assets.

Although fiduciary liability for the administrators of pension plans emerged in the United States after the enactment of the 1974 Employee Retirement Income Security Act, there was little demand for pension plan liability insurance coverage in the United Kingdom until the 1990s, said Pat Drinan, U.K.

See **Pensions** on page 19

Latin American market

Brazil and Mexico account for more than half of the Latin American insurance market's 2000 premiums (in billions of U.S. dollars)



GRAPHIC BY ADAM DDI

Insurer growth seen for Latin America

By GAVIN SOUTER

Latin America's insurance market is seeing significant growth and could see even more as markets stabilize, according to a recent report from Standard & Poor's Corp.

Although growth in premium volume will likely be uneven from year to year, the current low level of insurance buying in Latin America means there is substantial potential for insurers seeking to expand in Latin America, the report says.

"Latin America remains a market of possibilities, carrying only 3% of the world's insurance business at present," S&P says in its report, "Five Markets Dominate Developing Latin American Insurance Industry."

But while the market has seen growth in premiums in recent years stemming from deregulation and reform to social

See **S&P** on next page

Big jump forecast in U.K. injury claims

End to legal aid cited as a major factor

By EDWIN UNSWORTH

Improved risk management and higher insurance rates are needed to combat an expected sharp rise in U.K. personal injury claims, a new report suggests.

In a study of U.K. personal injury litigation, London-based Datamonitor P.L.C. predicts that personal injury claims will increase by one-third, to about 1 million cases a year, by 2005. Datamonitor based its study on personal claims experience in the United States and the aftermath of the withdrawal of legal aid for personal injury claims in the United Kingdom.

Since the withdrawal of legal aid in April 2000, personal injury litigation has passed to the private sector, leading to increased use of conditional-fee arrangements and so-called "after the event" insurance—which is taken out by claimants to pay costs if they lose their cases. In a conditional-fee case, the principal cost would be the legal fees of the successful defendant, which in the United Kingdom are paid by the unsuccessful claimant. After-the-event insurance has become a prevalent form of funding personal injury claims because the government has encouraged it as a way of improving access to justice.

The change in U.K. legislation has also led to the entry of a "new breed" of lawyers into the market, "with massive advertising budgets and high-profile brand promotion," said Datamonitor. They now hold 25% of the personal injury litigation market.

Datamonitor says it believes the U.S. personal injury claims experience to be the best benchmark for predicting the future in the United Kingdom. The United Kingdom, it says, is now at the same stage in such trends that the United States was in as of 1987.

The United Kingdom experiences 10.4 million accidents a year, but in 2000 only 744,000 personal injury and illness claims were filed with insurers, Datamonitor estimated. About 1.7 million of these accidents, however, could result in a personal injury claims due to the fact that they can be partly or wholly attributed to another party, the study says. "The potential problems facing insurers are evident," Datamonitor added.

If the rate of growth in personal injury claims were to follow that seen in the United States, the number of personal injury claimants in the United Kingdom could escalate rapidly, rising by 33%

See **Claims** on next page

Reports link work stress, absence

By CAROLYN ALDRED

Employers face increasing absenteeism and productivity losses unless they do more to combat occupational stress, two recent reports warn.

There are several steps that employers could take to minimize the level of workplace stress within their organization and the resulting losses, both reports state.

The potential toll from workplace stress also is prompting regulators in the United Kingdom and Europe to develop guidelines and possible legislation to address this issue.

A report issued last month by the Industrial Society, a London-based research and ad-

vocacy organization on employment issues, found that workplace stress is a problem for 86% of the nearly 500 human resource specialists it surveyed. Increased absenteeism was cited by 79% as the main consequence of employee stress in their organizations.

The Confederation of British Industry, the United Kingdom's main employer organization, also found in a recent survey that stress is a primary cause of employee absences. According to the CBI survey of its members, conducted in May, workplace absences averaged 7.8 days per employee in 2000. Those absences totaled 192 million days, or 3.4% of total working time, and they cost U.K. business £10.7 billion (\$15.02 billion), the

CBI reported.

Both reports concluded that employers could do more to lower the level of workplace stress and its resulting loss in productivity.

Although 74% of the employers surveyed by the Industrial Society predicted that stress would become their greatest health and safety concern in the next two years, 53% also said they view stress "as an issue that the organization can address proactively," according to the report.

Furthermore, the Industrial Society found that 95% of respondents see "supportive managers as the workplace factor most likely to help employees cope with stress."

See **Stress** on page 19

London insurance broker Miller Insurance Group Ltd. has formed a **risk management consulting company**. The new company, Dawson Risk Management Services, will provide independent due diligence and risk management services, principally in the energy, marine, oil and gas, and energy sectors....Reinsurance broker Benfield Greig Group P.L.C. has arranged **reinsurance to protect \$18 million in financing** for a new computer-animated television series, "Dan Dare-Pilot of the Future," based on a British comic book hero created in the 1950s. Benfield Greig Entertainment Finance, a unit specializing in the insurance of bank gap financing, provides insurance-backed financing on behalf of banks writing loans for films and other visual media....Moody's Investors Service Ltd. has changed to stable from negative its rating outlook on ING Verzekeringen N.V. and ING Groep N.V., both rated Aa2 for senior debt. The outlook, which has been negative since 1997 because of concerns that acquisitions would deplete ING's surplus and alter its financial structure and risk profile, was revised for several reasons, Moody's said. They include: ING's consistent financial performance; its "solid and predictable earning power and cash flows"; its strong debt service capacity; and its "superior franchise and business diversification, sound asset quality and low risk profile," the rating agency said....London-based Royal & Sun Alliance Insurance Group P.L.C. is selling its Spanish subsidiaries—Royal & SunAlliance S.A., Royal & SunAlliance Vida y Pensions S.A. and Royal Insurance Club S.A.—to Liberty Mutual Insurance Co. of Boston. The sale, subject to regulatory approval, is worth about £134 million (\$190.3 million). RSA, meanwhile, is acquiring Seguros BBV Probusa, Mexico's 13th-largest insurer, for £29 million (\$41.2 million). The seller is Grupo Financiero BBVA Bancomer....Italy's largest insurer, Trieste-based Assicurazioni Generali S.p.A., has announced that the head of its U.K. branch, Benito Pagnanelli, will retire at the end of July and will be replaced by Renzo Verita. Mr. Verita was until recently based in Miami and had responsibility for Generali Global's Latin American activities. In London, he will be responsible for developing Generali Global's activities worldwide....Aon Ltd., the London-based unit of Aon Corp., has furthered its aim of becoming the United Kingdom's leading specialist occupational health service provider and consultant by buying RGIT Ethos Health & Safety from RGIT Montrose Group....The European Commission has approved the 23 billion euro (\$19.67 billion) takeover of Dresdner Bank A.G., Germany's third-largest bank, by the country's largest insurer, Allianz A.G. Holding. The merger creates Germany's biggest bancassurance group. The European Commission gave its consent on the condition that Allianz and Dresdner reduce their holdings in Munich Reinsurance Co., which is itself creating a separate bancassurance alliance with HVB Group, Germany's second-largest bank....Moody's Investors Service Ltd. has downgraded the performance rating of Lloyd's of London syndicate 535, managed by Cotesworth & Co. Ltd., to B- from B. The rating of the energy-oriented marine syndicate remains under review for a possible further downgrade. Moody's said it believes there is increased uncertainty that syndicate 535 will find alternative backing for the 2002 year of account. This year, about 85% of its capital came from HHH Insurance Ltd. of Australia, which is in provisional liquidation.

INTERNATIONAL

S&P

Continued from previous page
security, pension, workers compensation and health care systems, that growth has been volatile. "In the past five years, premium volumes have occasionally declined in real terms following economic recessions and currency devaluations," the report says.

Still, in Latin American countries, insurance premiums represent 3% or less of individual countries' gross domestic product, compared with 8% to 13% of GDP in more developed economies, S&P points out.

Within the Latin American insurance market, five countries accounted for 93% of the market's \$36.7 billion in premiums at year-end 2000, according to S&P: Brazil, with \$11.8 billion; Mexico, \$9.2 billion; Argentina, \$6.5 billion; Chile, \$4.7 billion; and Colombia, \$1.7 billion.

In Brazil, premium volume increased 335% between 1992 and 2000, and insurance premiums as a percentage of GDP increased to 2.1% from 1.4% over the same period, according to S&P.

The Brazilian market should see further growth in the medium and long terms, the report says. "Among the main factors contributing to this potential is the continued shallow penetration of insurance products in the market, including a tremendous potential for private pension as well as workers compensation reform."

"The privatization of the existing reinsurance monopoly, post-

poned many times in the past three years, should also contribute significantly to the overall improvement in the insurance market," S&P says, referring to the proposed privatization of the Instituto de Resseguros do Brasil.

Mexico also has enormous growth potential, with insurance premiums currently representing less than 2% of the country's GDP, the report says.

"Local market dynamics point to an accelerated growth motivated by regulatory reforms carried out in the last 10 years that, together with a more stable economic environment, are starting to produce benefits," S&P says.

New insurers have been established in recent years, and acquisition activity boomed in 2000 as international insurers sought to enter the market, the report says.

Changes in the past three years in Mexico have helped the market grow, S&P notes. "The authorization of private insurers to provide pensions related to workers compensation, a regulatory framework that provides more certainty to the operations of insurance companies providing complete health care coverage, the ability of foreign companies to take majority stakes in local companies, and a stricter regulation governing capital requirements" have all stimulated growth, the report says.

The Mexican insurance market also is seeing an increased presence of foreign insurers. Of Mexico's 69 insurance companies, 33 were foreign-owned as of March 31, 2001, according to S&P.

In Argentina, the insurance sector has bucked the larger econom-

ic trend in the country, according to S&P. In 2000, insurance premiums grew 3%, compared with a 0.5% decline in GDP, the report says. Insurers in Argentina, however, are suffering from low rates. In 2000, the only profitable lines were workers comp and life insurance annuity business, S&P says.

Chile began to deregulate its insurance sector earlier than did its Latin American counterparts; consequently, insurance premiums account for a relatively high 3% of GDP, the report says.

The privatization of Chile's social security system in 1981 was a huge boost to the country's life insurance market, the report says.

The Chilean market also is marked by significant concentration of business. The top 10 life insurers account for 68% of premiums, and the top 10 property/casualty companies represent 83% of premiums. "Most insurers are foreign-owned or have partnerships with foreign companies," S&P notes.

Colombia has also seen rapid growth in its insurance sector since it was deregulated in the early 1990s, according to the S&P report: Insurance premiums now represent 2.3% of GDP. In the future, life/health and workers comp premiums in Colombia should continue to outpace GDP, but property/casualty premiums will likely be more in line with general economic growth, the report says.

Overall, the Latin American insurance market remains in transition, according to the S&P report. As the local economies stabilize, the market will likely grow; but

"for the time being, Latin America will remain a market for tomorrow, with the natural resources and demographic potential for significant growth," S&P says.

Claims

Continued from previous page
by 2005 to 1 million, Datamonitor said.

Already the increase in personal claims frequency and cost, particularly at a time when the customer base is not growing, "have undeniably exacerbated the situation of insurance companies," the report suggests. U.K. insurers will have to plan their claims-reserving policy carefully, it warns.

"Insurance companies will become increasingly proactive in their handling of third-party claims and seek to resolve potential personal injury claims as quickly as possible by capturing the injured party into their own networks of service providers," says the study.

To minimize the impact of rising personal injury claims, insurers must first simply raise premiums, Datamonitor said. "Improved risk management techniques are critical to reducing the number of accidents and the number of injured," Datamonitor added.

In addition, insurers need to concentrate on implementing practical rehabilitation plans and not just paying lip service to the benefits. It says the United Kingdom returns only 10% of people

Copies of the report, "Five Markets Dominate Developing Latin American Insurance Industry," are available online at www.standardandpoors.com.

to work successfully after serious injury, compared with 50% in Scandinavia.

Insurers are also unhappy with what they perceive to be inflated legal costs stemming from lack of clarity or guidelines in terms of the recoverability of lawyers' success fees and the after-the-event insurance premium. Many also question the issue of timing in terms of whether the premium is taken out before claim proceedings, and thus pre-risk, or not, said Datamonitor.

Just last week, the U.K. Court of Appeal issued its ruling in *Callery vs. Gray*, a groundbreaking case resulting from a traffic accident that dealt with the "reasonableness" of insurance premiums and success fees. The insurers for the defendant had objected to the claimant's lawyer charging a 40% success fee, which they would have to pay. According to court records, the insurers questioned both the size of the fee and whether it should be charged at all, since it was a straightforward case the claimant was expected to win. The Court of Appeal ruled that the fee should be 20%.

Copies of "U.K. Personal Injury Litigation 2001" are available for £1,995 (\$2,801) by calling the Datamonitor sales department at 44-207-675-7073.

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Pensions

Continued from page 17

marketing manager for RSA's London-based ProFin division.

In part, the growing liability associated with pension administration stems from the Maxwell scandal of the 1990s, when the late media tycoon Robert Maxwell was found to have plundered millions of pounds from the pension fund of his company, The Mirror Group P.L.C. "The post-Maxwell environment has brought a public focus on the management of occupational pensions, with a proliferation of regulation in an increasingly litigious climate," according to a statement from the London-based Occupational Pensions Defence Union. "Accordingly, the complexities of regulation have considerably increased the potential for noncompliance—with costly consequences," said the OPDU, an organization made up of pension plan administrators.

A spokesman for OPRA explained that the two major types of employer-provided pension plans—commercial plans and occupational plans—place several responsibilities upon employers.

Under a commercial plan, in which the employer contracts with an insurance company to provide, administer and run the plan, the principal responsibility for trustees—and the employer—is to ensure that deductions made from employees' paychecks are invested in plan funds in a timely fashion. But the employer still holds ultimate fiduciary duty for the plan.

Trustees are also required to provide the insurance company administering the plan with a record of payments due, allowing the insurer to monitor closely payments made into the plan. The insurance company has a duty to report to OPRA if payments into the plan are not made on time. As a result, the OPRA spokesman said, the record

of payments due becomes crucial.

Last month, the London-based Assn. of British Insurers reported that in 1999, £180 billion (\$252.70 billion) was invested in insurance-administered occupational pension plans, an increase of 13% over 1998. The figures, compiled by the U.K. Government Actuary's Department, also revealed that those funds grew by 138% between 1995 and 1999.

Occupational plans, on the other hand, are run by employers or trade unions and must be approved by Inland Revenue, the government entity that administers the U.K. tax service. There are about 120,000 occupational plans in the United Kingdom, managing about £600 billion (\$842.34 billion) in total assets.

Under the Pension Act, trustees of occupational plans may delegate some of their responsibilities, the OPRA spokesman noted. "But they have to delegate appropriately," he added. It is the duty of the employer and the trustee to ensure that suitable actuaries are appointed and that any outsourcing companies used in administration are properly investigated.

According to the OPRA spokesman, other trustee duties include:

- Ensuring that plan accounts are fully audited and appointing qualified auditors.

- Appointing a statutory whistleblower, such as an auditor or actuary, to report breaches of pension regulation.

- Furnishing plan members with a statement of investment principles outlining, for example, whether the plan's funds are invested in a socially responsible manner.

- Ensuring that the plan has member-nominated trustees in place. Exemption from this requirement is provided only after a vote by all members of the plan.

- Fulfilling certain duties relating to disclosure of plan information and changes.

Occupational pension plans are

also governed by rules on investment of their funds. Plans are barred from investing more than 5% of the pension fund in the employer's own business, and loans to the employer's business from the fund are illegal.

'Effective pensions governance is vital in the environment within which trustees...operate today'

—Janet Rice
BG Group P.L.C.

OPRA has the authority to fine employers for breaches of these responsibilities. Employers can be fined up to £50,000 (\$70,765) per violation, while fines on individuals range up to £5,000 (\$7,077). While regulatory fines and penalties generally are not insurable, explained Mr. Drinan, many fines imposed by OPRA are civil fines and thus can be insured against, provided premiums are not paid out of plan assets.

One of the most common violations last year was the late payment of pension contributions, according to OPRA.

The exposures associated with pension administration are growing, experts note.

"An increasing number of high-profile court cases and media coverage in recent years are a symptom of a tightening regulatory legislation, increased vigilance and whistle-blowing within the sector," RSA said in its statement. "The potential for individual trustees of the pension scheme, sponsoring employer or, indirectly, the pension scheme to incur litigation, expenses or other related costs is very real."

Mr. Drinan of ProFin pointed out that even if a pension plan is well run, it can still run into problems arising from negligence or an innocent error. While trustees can delegate or outsource certain administrative functions, they cannot transfer their fiduciary duty. As a result, they may seek protection against responsibilities arising from the negligence of any advisers or administrators.

AIG Europe U.K. Ltd. also offers coverage for pension fund liability under both its Financial Protector portfolio of products and a specialized policy. The insurer, a unit of New York-based AIG, has offered such coverage in one form or another since the early 1990s.

The Financial Protector product, which is aimed at midsize companies, covers directors, managers, supervisors and the company against employment practices liability as well as claims against pension plan trustees, according to Janet Edey, corporate manager of financial lines at AIG Europe in London. "It protects against administration breaches and trustee breaches," Ms. Edey said. AIG Europe also offers a specialist trustee liability policy, Corporate Guard Pension Trustee Liability. The policy covers companies of any size, whether public or private, Ms. Edey said.

In the case of occupational plans, the product provides coverage for the employer as a policyholder, including coverage for civil fines; for any of its subsidiaries; for any corporate trustee company that it sets up; for all individuals involved in the administration of the plan; and for the plan itself insofar as it can be sued, Ms. Edey explained. The policy generally provides limits of liability for up to £15 million (\$21.1 million), though larger limits are available in certain cases, she said.

The OPDU, which was formed in 1997 to help providers of occupational plans cover their liabilities, also offers a comprehensive insurance policy that covers various ele-

ments of the plan, including trustees, the pension funds themselves, administrators, pension managers and trustee companies. Coverage can be triggered by civil fines and penalties, civil damages and compensation; and litigation costs. Coverage is written by ACE Ltd. unit ACE Insurance S.A.-N.V.

In addition, the OPDU offers advisory services through a council made up of representatives of some of the United Kingdom's largest occupational pension plans.

The OPDU also has a risk management subsidiary, Trustee Risk Management Ltd., which assesses the supervision of pension plans.

"Trustee Risk Management Ltd. can assist trustees in developing their own approach to pensions governance by providing a due diligence review—a prerequisite to efficient trustee risk management," according to the company. As part of the review, Trustee Risk Management will provide "a practical checklist and summary of those issues where compliance must be satisfied, as well as illustrating features of good pensions governance."

"Effective pensions governance is vital in the environment within which trustees of occupational pension schemes, whether large or small, operate today," said Janet Rice, group head of pensions at London-based BG Group P.L.C., which is a member of OPDU. "Risk management reviews provide the framework within which trustees and their advisors can monitor compliance and governance going forward."

"They ensure that audits are focused on the key pension issues that matter to trustees and companies in fulfilling their onerous obligations," Ms. Rice said. "The establishment of such a valuable service under the banner of OPDU can only raise standards and is a major landmark in the development of the occupational pensions industry in this country."

Stress

Continued from page 17

Pat McGuinness, an occupational health consultant for the Industrial Society in London, noted that "employees need to feel they can talk about stress without fear of recrimination. In this way, companies get a more-accurate picture of negative processes, practices and bad job design which compromise employee performance. Successfully identifying and removing causes of negative stress brings real benefits."

Dudley Lusted, director of corporate health care for PPPHealthcare, a Tunbridge Wells, Kent-based health care provider that co-sponsored the CBI survey, said that "too many companies are still failing to manage their people risks properly. It's crazy to pay people not to work when the tools to safeguard their well being and manage sickness absence are so well established."

Susan Anderson, the CBI's director of human resources policy, noted that the survey "shows that the most-effective approach is for an employer to tailor its HR policies to the actual causes of absence in their particular workforce."

Effective measures to reduce workplace stress that were identified by the Industrial Society survey

included: good employee communication, cited by 68%; creating realistic deadlines for tasks, 53%; empowering staff, 32%; fostering a no-blame culture, 45%; implementing flexible working arrangements, 44%; and the promotion of a family-friendly culture, 33%.

"The pace of change in organizations is not being matched by the development of employee well-being safety nets such as effective stress policies and good job design. Having a comprehensive stress policy which is part of the organizational fabric and develops with the organization can help reduce the likelihood of individuals experiencing occupational stress, improve productivity levels, and so benefit the bottom line," Mr. McGuinness said.

John Monks, the general secretary of the Trades Union Congress, which represents U.K. trade unions, this month called on employers and unions to work together to reduce stress in the workplace.

Speaking July 5 at the launch of a TUC/CBI joint initiative to create health and safety partnerships, Mr. Monks said that "genuine partnership transforms workplaces and working conditions and delivers major improvements in health at work, especially by controlling the causes of stress."

Both the Assn. of Insurance &

Risk Managers and the Assn. of Local Authority Risk Managers view stress as "No. 1 concern of risk managers," said a spokesman who represents both groups.

Recent surveys of risk managers have put stress at the top of their concerns, the spokesman said, adding that ALARM soon will publish recommended guidelines for stress management at public-sector organizations.

The U.K. Health and Safety Executive last month published a guide for employers on preventing work-related stress.

According to an HSE statement that accompanies the release of the guide, stress-related illness accounts for the loss of 6.5 million working days each year, costing employers about £370 million (\$519.4 million) and society overall as much as £3.75 billion (\$5.26 billion).

"An estimated half a million people in Britain are suffering from work-related stress, anxiety or depression at levels which make them ill," the HSE statement said.

The guide, which is aimed at managers in organizations that employ more than 50 individuals, examines workplace culture and the degree to which individual organizations are supportive of their employees; the demands placed on in-

dividuals and their capacity to handle them; the amount of control individuals have over their work; how individuals relate to one another; change both inside and outside organizations and its effects on workers; the need for individual employees to be clear about their roles within a given organization; and the importance of support and training.

"Work-related stress is a huge occupational health problem facing Britain today, inflicting a heavy toll in terms of financial cost and human suffering. Managers have a key role to play in reducing this toll," said HSE stress spokeswoman Elizabeth Gynnell.

Meanwhile, stress is of growing concern to employers across Europe, according to two recent studies conducted by the Bilbao, Spain-based European Agency for Safety and Health at Work, an organization funded by the European Union.

Studies that looked at the state of occupational safety and health both in the member nations of the European Union and in those of the European Free Trade Assn.—the non-E.U. trading bloc that consists of Iceland, Liechtenstein, Norway and Switzerland—found that some psychosocial working conditions held emerging risks for European employers. The conditions included

stress caused by work overload and change; high-speed work; a workplace dictated by social demand; a machine-dictated workplace; physical violence, bullying and victimization at work; sexual harassment and monotonous work.

In a working paper published last month by the EASHW, the agency recommends that existing E.U. legislation on health and safety be extended to cover new employment health and safety issues such as stress.

"We need to consider completing the current legislation by including some spheres that have not been covered yet," the paper notes, highlighting stress as one of the main areas still to be addressed by European legislation.

The Industrial Society's report, "Managing Best Practice No. 83—Occupational Stress," can be purchased through the society's Web site, www.indsoc.co.uk/trg_resources/books/MBP_Summary_83_Occupational_Stress.htm, at a cost of £60 (\$84.23) per copy.

The Confederation of British Industry survey, "Pulling Together—Absence and Labour Turnover," can be purchased through the CBI Web site, www.cbi.org.uk, at a cost of £25 (\$35.10) for CBI members and £50 (\$70.20) for nonmembers.

Prescription

Continued from page 3
the need for abortion."

Washington Insurance Commissioner Mike Kreidler added his input last week. He proposed a rule stating it is an unfair practice for any health insurer to restrict or reduce coverage of contraceptives under any health plan with prescription drug coverage. A hearing is set for Aug. 22 in Olympia, Wash.

Regence BlueShield, before the recent court and regulatory actions, was formulating plans to expand its contraceptive benefits, a company spokesman said. It will soon roll out plans with "comprehensive" contraceptive coverage, meaning the plans will cover most forms of prescription medications and devices, not just birth control pills.

The health insurer is doing so because employers and consumers have demanded the coverage, the spokesman said. Currently, about 60% of the insurer's 1.1 million members are covered under plans that provide coverage for birth control pills. The remaining 40% are covered under plans that were made available by employers but did not provide birth control pill coverage.

Regence's current plans tend to not cover contraceptives other than birth control pills because of traditional thinking that insurance is mainly for treating illness, the spokesman said. "That

is outdated thinking now." Most insurers offer plans that cover contraceptives, but employers do not always offer to pay for them, said a spokesman for the Health Insurance Assn. of

'Americans overwhelmingly support access to contraceptives and believe... women should make health care decisions.'

— Elizabeth Cavendish
NARAL

America in Washington, D.C. The HIAA opposes mandated coverage. Employers and employees should decide whether they want to pay the costs of providing specific coverages, he said.

Meanwhile, religious organizations are challenging efforts by some states to mandate that health plans provide contraceptive coverage.

About 15 states have passed so-called "contraceptive equity" laws since 1998, according to the New York-based Center for Reproductive Law & Policy. Many more states recently have introduced similar legislation. The laws typically require that health benefit plans or health in-

surance policies that provide prescription drug coverage also cover prescription contraceptives.

The laws are made a part of a state's insurance statutes so that policies sold to employers will cover contraceptives. Self-insured plans, however, are exempted by the Employee Retirement Income Security Act of 1974, said Henry Saveth, principal in the New York office of William M. Mercer.

But representatives for Catholic-owned institutions say the mandates can violate religious tenets that hold contraception is intrinsically evil and a sin.

As large employers, however, Catholic organizations often employ many employees who do not share their beliefs. That fact became an issue in a recent California appeals court decision, *Catholic Charities of Sacramento Inc. vs. The Superior Court of Sacramento County*.

In that case, the Sacramento, Calif.-based Catholic Charities lost a decision over the scope of an exemption for religious organizations contained in a California law mandating contraceptive coverage. Most of the proposed and enacted state laws contain exemptions, dubbed "conscientiousness clauses," for religious employers. Some state exemptions are broader than others, with proponents and detractors of California's law agreeing that California's exemption is particularly narrow.

Justices for the Third Appel-

late District Court in Sacramento unanimously ruled that exemption for religious employers contained in California's law does not violate Catholic Charities' constitutional rights.

The charity argued that the exemption's limited nature burdens its religious beliefs about contraception without a compelling government interest, court records show. But proponents of the mandate argued that most of the charity's employees work at secular tasks, are not followers of the Catholic Church's religious beliefs and neither are many of the people the charity serves.

California's exemption applies where the inculcation of religious values is the entity's purpose, the entity primarily employs people who share its religious tenets, the organization primarily serves people who share its religious tenets, and the entity is a non-profit organization, according to court records.

There is a "substantial probability" that Catholic Charities will appeal the court's ruling, said James F. Sweeney, a partner at Sweeney & Grant in Sacramento. Mr. Sweeney is the charity's general counsel.

The Catholic Church was supported in court by religious institutions belonging to faiths that do not share the Catholic stance on contraceptives. They filed amicus briefs, however, arguing a violation of religious freedom.

Supporters of "contraceptive equity" legislation say the move-

ment gained momentum when Viagra, the male impotence prescription drug, became available and health insurers paid for its use. That angered many women who believed they were being discriminated against.

But the battle to force religious institutions to provide contraceptive coverage is really about abortion, Mr. Sweeney said. Proponents of the contraceptive laws want to force Catholic-owned hospitals to perform abortions or to refer patients for abortion services, he explained. They currently do not do so because of the church's religious beliefs.

"If you take away our ability to object as a matter of conscientiousness in the realm of contraceptives, what is to stop them from taking away our right to object in the realm of abortion?" Mr. Sweeney asked.

"What is really going on is there is a move on to essentially compel church-run organizations to perform and refer out abortion and sterilization, which we do not do with respect to Catholic teaching," he said.

The issue is really about nothing more than contraceptives, insisted NARAL's Ms. Cavendish. "Americans overwhelmingly support access to contraceptives and believe that women should make health care decisions and nothing should come between a woman and her health care needs. That means insurance shouldn't be determined by the personal or religious views of her boss." **BI**

Plan would keep benefit mandate

WASHINGTON—Insurers and health maintenance organizations participating in the nation's largest health care benefits program would have to continue to provide coverage for prescription contraceptives under an amendment approved by a congressional committee last week.

The amendment, introduced by Rep. Nita Lowey, D-N.Y., and approved on a 40-21 vote by the House Appropriations Committee, would continue a 3-year-old requirement that the roughly 250 plans offered to more than 9 million federal employees, dependents and retirees—including 1.2 million women of child-bearing age—provide prescription contraceptive coverage.

The amendment, attached to a bill appropriating funds for fiscal 2002 for the Treasury Department, the U.S. Postal Service and other federal agencies, overturns a Bush administration federal budget proposal that would have deleted the mandate.

That mandate has been in place since 1998, when Rep. Lowey first proposed it, and it has been renewed annually by Congress. Prior to the first enactment of the Lowey amendment, more than 80% of the plans participating in the Federal Employee Health Benefit Program did not cover the most commonly used types of prescription contraceptives, Rep. Lowey said.

The Lowey amendment drew fire from Rep. Ernest Istook, R-Okla., who said mandates drive up the cost of health insurance.

But Rep. Lowey said eliminating contraceptive coverage for federal employees would have disastrous consequences. Nearly half of all pregnancies in the United States are unintended, and many of those end in abortion, she said. Preventing unintended pregnancies and reducing abortions by providing contraceptives "just makes sense," Rep. Lowey said.

The broader appropriations bill still must be approved by the full House, as well as the Senate.

—By Jerry Geisel

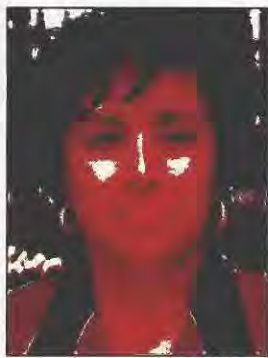


PHOTO: GETTY

Rep. Lowey

Y2K

Continued from page 1
tion, said Mr. Carter. He added that he believes "the insurance industry is fighting a very aggressive war" to avoid a repeat of the drawn-out battles over asbestos and other environmental liabilities.

Other Y2K cases that policyholders have decided not to pursue further include:

- *Port of Seattle vs. Lexington Insurance Co.*, dismissed in December 2000.
- *Stanford University vs. Factory Mutual Insurance Co.*, dismissed in January 2001.
- *ITT Industries vs. Factory Mutual Insurance Co.*, dismissed in January 2001.
- *Nike Inc. vs. American Home Assurance Co. et al.*, dropped in February 2001.
- *Mandalay Resorts vs. Factory Mutual Insurance Co.*, dropped in March 2001.
- *Baptist Hospital & Health Systems Inc. vs. Factory Mutual Insurance Co.*, dropped in June 2001.

These suits all cited the sue-and-labor clause of the policyholders' property insurance policies.

This leaves only a handful of Y2K remediation coverage cases wending their way through the courts nationwide.

Insurer attorneys say that policyholders "have lost their enthusiasm" for pursuing Y2K coverage claims in court because so far most of the decisions have been unfavorable to them.

"The bloom is off the rose," said Tom Brunner, a partner at Wiley, Rein & Fielding in Washington who represents the Y2K Roundtable, which is a group of 33

U.S. insurers and reinsurers. "I can't remember the last time major coverage cases were abandoned like this."

In fact, because no new Y2K coverage suits have been filed in recent months, the Y2K Roundtable has dismantled its Web site and is broadening its scope to encompass coverage litigation over all types of technology risks, Mr. Brunner said.

'I can't remember the last time major coverage cases were abandoned like this.'

— Tom Brunner
Wiley, Rein & Fielding

But while fewer policyholders may be taking their insurers to court over Y2K remediation coverage, "there are a whole cadre of cases still going through the claims adjustment process," said Mr. Carter.

He said that McKenna & Cuneo, which has served as of counsel on numerous Y2K coverage suits, receives calls every week from other policyholder attorneys contemplating litigation against insurers.

It may take a favorable decision at an appellate court level to encourage more policyholders to file suit, Mr. Carter said.

Murray Sacks, another partner at McKenna & Cuneo in Washington, said that policyholders may be heartened by a June 15 decision by a U.S. District Court in Michi-

gan denying the insurer's motion for partial summary judgment dismissing the case.

Mr. Sacks, however, said he won't know whether that ruling in *Kmart Corp. vs. Lexington Insurance Co.* is good news for policyholders until after he reviews transcripts of the case, which the court has not yet sent to him.

Another case in Michigan—the *School District of the City of Royal Oak vs. MAB-SEG Property/Casualty Pool Inc.*—also may eventually prove favorable to policyholders, said Philip J. Goodman, a policyholder attorney in Birmingham, Mich.

"Our case is rather unique because of the fact that the insurance company sent out Y2K exclusions after the policy was issued and with no offer to reduce the premium," he said. The school district sued its insurer under its property policy, which provided coverage for software defects.

The school district has appealed a lower court's dismissal of its suit, which, in addition to coverage for Y2K remediation costs, also sought class-action certification.

Besides Kmart and the School District of Royal Oak, other major cases are still being pursued, including those filed by GTE Corp., which is now part of Verizon Communications Inc., and Owens Corning, said McKenna & Cuneo's Mr. Carter.

"Until decisions have the opportunity to work their way through the appellate process, we don't have a definitive answer" concerning coverage for Y2K remediation costs, he said.

"It's unfortunate there's not a quicker way," Mr. Carter said, "but the wheels of justice turn slowly." **BI**

COMMENTARY

Sex, drugs and insurance e-mails

Charter

Continued from page 1
federally chartered insurers that fail to meet requirements.

Federally chartered insurers would have the right—but not the obligation—to write all lines of property/casualty business in any state without being subject to state rate and form regulation. There would be no antitrust protection for rate-setting activity except for that involving participation in residual markets. Antitrust protection would continue for the development, dissemination and use of standard policy forms.

In addition to calling for the pre-emption of state insurance laws that pertain to rate and form regulation, licensing, solvency and market conduct in regard to federally chartered insurers, the proposal holds that states could not discriminate against federally chartered insurers. State laws would also be pre-empted to the extent that they allowed a private right of action based on marketing activities regulated at the federal level.

State laws would remain unchanged with respect to agent licensing and the National Assn. of Registered Agents and Brokers provision of the Gramm-Leach-Bliley Financial Services Modernization Act. They would also remain unchanged with regard to residual market participation, the insurer's state of incorporation—which would act as the "state of domicile" for purposes of premium tax and retaliatory tax purposes—and with respect to state fees, taxes, guaranty funds and other assessments.

The proposal would not require all insurers within a holding company to choose the same chartering option. Insurers that chose to remain under state regulation would continue to enjoy protections provided by the McCarran-Ferguson Act, a 1945 law that gives states primacy in insurance regulation.

Mr. Vagley said that the AIA had been examining the issue for a "a couple of years." The proposal was released because "the product was ready and our board was ready to act on it."

"We didn't want to be left on the sidelines when that debate began in earnest," said Mr. Vagley, who noted that the House Financial Services Committee has been holding hear-

ings on various aspects of insurance regulation almost monthly. He predicted a "long-term" debate over the issue, marked by a "deliberate and thoughtful" pace. He said that debate could last three to five years.

"We don't want other sectors of the financial services community outlining their objectives for insurance regulation without being very much a part of that debate," he said.

The Washington-based Council of Insurance Agents & Brokers quickly endorsed the AIA proposal.

"Our view is, it's a good proposal. It's sort of a starting point for the discussion. The whole regulatory discussion is one we're going to be in for the next few years. AIA has done a responsible job for putting the proposal forward," said CIAB President Ken Crerar.

The CIAB has emphasized producer licensing and streamlining issues in its approach to regulatory issues, Mr. Crerar said. But issues such as insurer solvency and speed-to-market of new products are also important to brokers, he said. "The whole regulatory environment is one that affects agents and brokers directly and indirectly," Mr. Crerar said.

"The ability of the regulatory system to keep up with the marketplace is critical, and the current system isn't doing that very well. We're concerned that if the regulatory system doesn't catch up quickly, it's going to put the industry at a disadvantage in the marketplace" as it goes up against new competitors such as banks in the aftermath of Gramm-Leach-Bliley, Mr. Crerar said.

"It's only a natural extension of that" to look at the insurance regulatory system in context of financial services regulations, he said.

That assessment was far from universal, though.

In a statement, the Alliance of American Insurers expressed "strong disagreement" and "disappointment" with the proposal. Alliance President Rodger Lawson said in the statement that the group and its members "do not share the view that the federal government would be a more benign regulator, or that total federal pre-emption is a reasonably obtainable objective."

"We believe that there would be additional political costs that are not clearly understood. Once a majority of insurance companies fully realize the ramifications of this fed-

eral chartering initiative, we are confident that they will oppose it," Mr. Lawson said.

For the time being, RIMS is taking a neutral stance. The group does not have a formal position paper on the matter and will review the AIA proposal, said Mike Phillipus, RIMS vp-external affairs.

"There are a number of interesting issues on both sides that our members should be interested in," said Mr. Phillipus, who is manager-risk management for Pennzoil-Quaker State Co. in Houston.

The Reinsurance Assn. of America also is maintaining neutrality. "We have no position for or against a federal charter," said RAA President Franklin W. Nutter.

A spokesman for the Des Plaines, Ill.-based National Assn. of Independent Insurers said that group is following several principles in its approach to the issue of state vs. federal regulation. These include support for state regulation and opposition to federal encroachment into insurance oversight; an understanding that state regulation must improve; and a belief that Congress must give the states "ample time" to bring about that improvement. NAII is also "carefully studying other options, including the American Insurance Assn. proposal, with an open mind," the spokesman said.

"The release of the AIA proposal reflects the growing concern in the industry regarding the need to reform the existing state insurance regulatory system," Pamela J. Allen, vp-federal affairs for the Indianapolis-based National Assn. of Mutual Insurance Cos., said in a written statement. "NAMIC continues to support state regulation. NAMIC believes reform of the state system is necessary, deserves immediate action and should be based on principles of consumer protection, free enterprise, regulatory fairness and due process," she said.

This is not the first time that the AIA has advocated an expanded federal insurance regulatory role. In the early 1990s, the AIA broke with industry ranks in support of optional federal solvency regulation. While the group came under a great deal of industry fire for taking that stance, Mr. Vagley said he doesn't foresee a repeat this time around.

"We did this in the early '90s, and it was lonely that time. I don't think we will be as lonely this time," Mr. Vagley said. **BI**

Enrollment

Continued from page 4
careful, but I think it's a very viable alternative to gradually increase this, certainly to a point where you get 100% of the match," he said.

According to Ms. Lucas, once plan sponsors take the step of having a more aggressive default fund and a more aggressive contribution rate level, there needs to be a shift in communication to participants. Employees need to be informed of risk-taking in investing and the volatility that might be involved in equity or stock exposure, she said.

"I think that's part of the reason that plan sponsors have been hesitant to put people in these types of funds, because they could be very inexperienced investors and quite unprepared for that type of risk," Ms. Lucas said.

Cindy Stolber, benefits administrator with Lear Corp., a Southfield, Mich.-based manufacturer of auto-

motive interiors, said it is worrisome that employees are not actually going in and making investment elections. Under Lear's automatic enrollment plan, nonelecting employees' salaries are reduced 5%—unless an employee specifically objects—and the amount is contributed to the 401(k) plan.

"I feel like we've done a pretty good job with the rate, but investment education certainly is something that we need to do more with," Ms. Stolber said.

Ms. Stolber said that, because Lear's employees are already participating in the plan and receiving quarterly investment statements, including an educational "stuffer" in the statements is something the company could do at little cost.

Ms. Stolber explained that, at present, the information is available to employees, but many don't access it.

"They're not picking up the phone, they're not logging online. At least if we put brief descriptions in the statements, it might get more no-

tice and bring it more to light that 'gee, maybe I should be doing something with this, maybe I should reallocate,'" Ms. Stolber said.

Under an automatic enrollment program offered by Allergan Inc., an Irvine, Calif.-based specialty pharmaceutical company, nonelecting employees are advised that they will be enrolled in the 401(k) plan unless they object during a 30-day period.

Just receiving the automatic enrollment notice increases employees' interest in the 401(k) plan, said Kevin Wilcox, Allergan's director of corporate benefits. Eighty percent of employees call within a week wanting to get further information about the company's 401(k) program.

"Our tactic is to get everyone enrolled, but also to follow up and let employees know that they're not maximizing the company match," Mr. Wilcox said.

"Communication is key" and it's vital to target employees right after they begin working at the company, he said. **BI**



Kathryn J. McIntyre

In the June 20 lineup of news items, there was one reporting that (italics mine): "In a nationwide sex discrimination lawsuit seeking class-action status, a group of current and former female Wal-Mart employees are suing the retail giant, charging that it has unfairly denied them promotions, compensation and job assignments because of their sex." The item also noted that the suit could be "the largest sex discrimination case ever litigated against a private employer," comparing the suit with other "sexual discrimination class-action lawsuits."

I can appreciate that employers want to keep material that might be offensive to some employees off their e-mail system, but this was a news story mailed to an insurance broker. To block e-mails containing the words "sex" and "sexual" means that any client inquiring about employers liability insurance to cover allegations of sexual discrimination or sexual harassment is going to receive this not-so-friendly automated response. Unless the broker makes an effort to determine whether the e-mail was work related, the client may never get an answer to the query—at least not from that company.

Then, a few weeks later, we received responses telling us that our July 9 Updates by e-mail contained offensive material.

One response from an energy company said the company "automatically screens all e-mail for inappropriate subject matter (i.e. material that is discriminatory, hateful, vulgar, pornographic, sexually explicit or obscene). This e-mail contains information that is considered inappropriate for the business environment and will not be forwarded to the intended recipient."

Now what did we write about? The answer: Viagra.

We reported that a California state court ruled that regulators cannot force Kaiser Permanente to cover Viagra prescriptions. We also noted that "The decision overturns the state's Department of Managed Health Care requirement that Kaiser provide coverage of Viagra and other sexual-dysfunction drugs."

Perhaps it was the reference to "sexual-dysfunction" that got the e-mail quarantined.

Of course, employers do not want their e-mail systems used to disseminate smut. They rightly want their employees working instead of reading vulgar or lewd e-mails, and employers also have to be concerned about employees forwarding unwanted e-mails to colleagues, who could then file sexual harassment charges against the employer. But automatically censoring e-mails with automated filters is too tyrannical for my taste. And I want our readers who have requested this free news service to get their e-mail news. So if you are employed by a company automatically blocking e-mails, clip this column and send it to your system administrators. Perhaps they will lighten up on the censorship.

In the meantime, if our e-mails to you are blocked, we will e-mail you to let you know you can still read the daily news by logging onto www.businessinsurance.com. I'm fairly certain our site won't set off any alarms over inappropriate content.

Publishing Director Kathryn J. McIntyre's commentary appears fortnightly and on www.businessinsurance.com. She can be reached at kmcintyre@crain.com.

Alliance

Continued from page 3

A 2000 Florida law gives small employers—for the first time—limited ability to band together and negotiate coverage with health plans. Legislators passed the law, which applies to groups of two to 50 lives, after a system of small-group purchasing alliances collapsed. But the failed alliances, created by an early 1990s law, served only as rate and plan information clearing-houses and had no authority to negotiate rates on behalf of small groups (BI, Feb. 26).

Under the new law, alliances will have some negotiating authority with health plans, but alliances will be able to negotiate discounts only on the portion of rates pertaining to health plans' administrative expense. Health plans, which must underwrite each group in an alliance separately, also can cut or raise their community rates 10% in the first year of a contract and 15% after that if the plans can justify adjusting a group's rate, according to the Florida Insurance Department.

Besides rating on age, sex and location, health plans now also have some ability to base rates on a group's health status and claims experience.

Another big change under the new law is that an alliance can limit its members' health plan choices and hold a master contract with a health plan.

The NFIB has teamed up in Tallahassee with third-party administrator Workable Solutions Inc. of Orlando and general agency BenefitPort Southeast L.L.C. in Fort Myers to form a purchasing alliance for the NFIB's 14,000 member companies in Florida. Fifty-six percent of those companies do not offer health care benefits to their employees.

The NFIB is handling market responsibilities; Workable Solutions will handle administrative responsibilities except claims management; and BenefitPort will broker the coverage for alliance members.

The NFIB had hoped to line up by the end of June its selection of

either a single statewide health plan or a limited number of regional plans to write coverage for businesses that join the alliance.

Officials with the NFIB and Workable Solutions previously said they would prefer that the alliance, Small Business Health Solutions Inc. in Tallahassee, contract with a single health plan that would cover all the groups that joined the alliance. If they could not find a taker, they wanted to contract with a handful of plans and assign each one as the sole alliance market for a particular geographic region of the state.

Either approach would minimize the risk of adverse selection, which Florida market experts said was a major problem with the former alliances.

In the last week of June, health plan marketer American Medical Security Inc., an affiliate of United Wisconsin, offered to participate in the new alliance but only for groups with 20 or more lives, said Jamie Amaral, national director of health care for the NFIB in Nashville.

Both AMS and United Wisconsin are subsidiaries of American Medical Security Group Inc. AMSGI's largest shareholder is Milwaukee-based Cobalt Corp., the new parent company for Blue Cross & Blue Shield United of Wisconsin, which became a for-profit organization earlier this year. But AMSGI is not an operating unit of Cobalt.

Ms. Amaral said that no decision has been made on how the AMS and United Wisconsin small-group coverage would be structured. But, she said, small employers likely would have to self-insure the benefit and then reinsure it with United Wisconsin.

Other health plans also have expressed some interest in writing coverage for the NFIB's Florida members through the new alliance, but they want to wait at least until they work out bugs in their own electronic data interchange systems, Ms. Amaral said.

She added that a major disincentive for writing small-group coverage in Florida is the state's lack of a high-risk pool. That in-

creases the risk of adverse selection for health plans in the small-group market, she said.

The NFIB has not decided whether to begin providing coverage through the alliance to groups of 20 lives and larger as soon as possible or wait until coverage has been lined up for the smaller groups, Ms. Amaral said. She noted that a health plan that later offers to write the smaller groups also might want to write the larger groups.

'If you do one (small-market segment), you ought to do all of it. You're leaving the most difficult piece to manage to someone else.'

— Jamie Amaral
National Federation of
Independent Business

Among the 14,000 NFIB member companies in Florida, 14% have 20 or more lives and 76% have two to 19 lives, Ms. Amaral said. The remainder are sole proprietorships, which would not be eligible to participate in the new alliance.

A spokesman for AMSGI, however, said discussions with the NFIB have been only "preliminary."

The spokesman said "it's too early to have any public discussion" about whether AMS and United Wisconsin would make any program available to NFIB members and how any program would be structured.

Despite the NFIB's interest in AMS and United Wisconsin, Ms. Amaral said she has "some real concerns" about their long-term viability as a small-group market and their market conduct problems in Wisconsin.

The insurer's refusal to underwrite groups of two to 19 lives is "not fair," she said. "If you do one (small-market segment), you ought to do all of it. You're leaving the more difficult piece to manage to someone else."

Typically, the smallest groups purchase health insurance only when there is a high probability that covered lives will file claims, market experts explain.

United Wisconsin's market conduct problems began in 1994, four years before a series of changes in its parent company's organizational structure.

Based on their 1994 financial and market conduct examination of United Wisconsin, Wisconsin regulators issued 20 recommendations to the company. In a January 1999 followup market conduct exam, which covered company activities from January 1997 through September 1998, regulators found that United Wisconsin had not complied with eight of the recommendations.

Those recommendations included that AMS, as United Wisconsin's administrator:

- Outline in contracts with preferred provider organizations responsibilities for quality assurance and utilization review.

- Improve grievance reporting from its PPOs and implement grievance reporting and related procedures at United Wisconsin.

- Implement various claims administration modifications that, among other things, would ensure interest payments on late claim payments and provide covered lives with explanation-of-benefits statements that comply with state regulations.

- Implement better record-keeping of the status of agents and ensure that terminated agents have been notified of their status change.

In September 1999, regulators issued 27 recommendations to AMS and United Wisconsin, including that the insurer create management-level positions with the responsibility of ensuring the company comply with state regulations on handling complaints and grievances and maintaining adequate records on agents.

In February 2000, United Wisconsin agreed to pay a \$60,000 fine for violating state regulations, according to the Wisconsin Office of the Commissioner of Insurance.

In a statement announcing the fine, Insurance Commissioner

Connie L. O'Connell said she was "pleased" that United Wisconsin's management "acknowledged past mistakes and is committed to a major program to improve its regulatory compliance record."

Ms. O'Connell also stated she was "confident that the company is already on the right path to improving its compliance record" but that regulators will continue to monitor United Wisconsin's progress.

Regulators plan to conduct a follow-up market conduct examination next year, said Eileen Mallow, assistant deputy commissioner.

The AMSGI spokesman said AMS and United Wisconsin have retained "veteran industry experts" to bring the organization into compliance with state regulations.

Meanwhile, the NFIB on July 10 announced that Fortis Health would be the exclusive provider of health insurance products that the NFIB offers its 600,000 members nationwide. In Florida, the Fortis coverage would be another option for small employers in addition to the purchasing alliance, said Bill Bergum, vp and senior counsel.

Small employers in each state will be covered as though part of a single group, but Fortis will not participate in purchasing alliances, Mr. Bergum said. Regulations in states that allow purchasing alliances typically do not give alliance insurers much ability to make a profit, and most alliances cannot provide medical savings accounts, a Fortis specialty, he explained.

While the NFIB and Fortis have not hammered out coverage details, Fortis will offer individual as well as small-group health insurance, MSAs, short-term medical coverage and ancillary insurance, including vision, dental and prescription coverage.

Either one of two Fortis companies—Fortis Benefits Insurance Co. and Fortis Insurance Co.—will write the coverage, Mr. Bergum said.

A managing general agency unit of Fortis, Warrenville, Ill.-based J.L. Barnes Insurance Agency Inc., will place the coverage. **BI**

Sharks

Continued from page 3

was bitten in the foot by a shark near the structure. Shark fishermen attract the fish with chum—a mixture of blood and fish parts that is dumped into the water.

Monte Blews, the general manager of the Santa Rosa Island Authority, said the surfer was bitten as he paddled into a school of bait fish, which often attract hungry sharks. "We tell people, 'You don't want to go into a school of bait fish,'" Mr. Blews said.

Unprovoked shark attacks occur more frequently in Florida than in any other state, according to International Shark Attack File data compiled by the American Elasmobranch Society. According to the group's statistics, of 79 such attacks worldwide last year, 34 occurred in Florida, according to the group's statistics.

"There are sharks in these waters all the time," said George

Collins, the emergency manager for the Panhandle's Okaloosa County. "If you go in the water at all, you are living among sharks."

'There are sharks in these waters all the time. If you go in the water at all, you are living among sharks.'

— George Collins
Okaloosa County, Fla.

Mr. Collins stressed that doesn't mean swimmers must stay out of the water. "Most times, the sharks do not attack people," he said. But when an attack does occur, the media attention tends to be

overblown and make the problem appear worse than it is, Mr. Collins said.

But Mr. Collins acknowledged that preventive measures are largely limited to public education. "Short of closing the beaches, that's the only way we can prevent it," he said. "The sharks are there every day."

There is a flagging system on some beaches that will indicate with a red flag that sharks are in the area, Mr. Collins said. But only a small area of the coastline is under the system, he said.

Mr. Blews said the island authority manages three areas with lifeguards who help protect swimmers. "The safest place to swim is in a guarded area," he said. "The lifeguards maintain a watch and if they see sharks in an aggressive mode, they will pull people out of the water."

"When you talk about a coastline like Florida's, putting up netting would be cost-prohibitive," Mr. Collins said. "And once you

put it up, you would have to have a rigorous inspection program" to guard against ruptures and ensure that the netting is effective, he explained. Netting also would cause navigational problems for boats using the waterways.

Mr. Collins said a public awareness campaign to help swimmers avoid shark attacks is ongoing. Newspaper stories and pamphlets that are distributed in tourist centers and other outlets advise swimmers how to reduce the chances that they will be attacked.

In the case of the boy who was injured, he and other family members were in the water in the evening, which is feeding time for sharks, Mr. Collins noted. "We tell folks to avoid swimming in the evenings....In the evening, (sharks) tend to come closer to shore."

Other suggestions are to avoid swimming in high-contrast clothing, he said. "Sharks key in on that." And while it is probably the

most ignored piece of advice, Mr. Collins pointed out that swimmers are asked "not to splash around. Sharks may see that as an injured fish" that can be eaten, he said. **BI**

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TAKING STOCK

Industry not telling the full story

By Myron M. Picoult
Special to Business Insurance

For some time now, the property/casualty industry has been overpromising and underperforming, and the results for the recently closed second quarter will unfortunately sustain this trend.



It is critical to recognize that the shortfall in earnings that will likely be posted by most industry purveyors is not solely the result of the \$4.4 billion in estimated catastrophe losses that pummeled the industry. Adverse development of prior writings/losses and ongoing restructuring charges at some entities continues to undermine the industry's credibility.

In all fairness, the \$4.4 billion in second-quarter catastrophe losses is the second-worst second quarter in the last 10 years—surpassed only by the \$4.5 billion in losses sustained in the 1998 second quarter. Nonetheless, this is the industry's business. All of this, however, underscores the need for a reality check.

There are four specific areas that have to be addressed:

- On the pricing side of the equation, dynamics have improved for both commercial and reinsurance prices and the outlook for continued price gains remains favorable. Hopefully, we are in the early stages of seeing a better tone to personal lines pricing, too. To get a better handle on pricing dynamics, however, we believe that industry observers should seek more insightful information from underwriters on price increments for both new and renewal business.

In addition, we find it remarkably curious that many key company officers continue to caution about the amount of poor business that is still floating around the industry arena. Although no one admits to writing such business, the fact is that somebody is writing it and probably at a deficient rate level.

Also, many investors still have not come to grips with the interplay of written premiums, lagging earned premiums and adverse loss development going against a premium base that has not yet fully recognized the benefits of improved pricing.

- The next area of interest revolves around the returns on equity that are being prognosticated by many insurers. The 15% number has long been an admirable but elusive ROE target for most insurers. But the fact is that the 15-year decline in the yield curve has clearly diminished the ability of net investment income to bail underwriters out of poor underwriting decisions.

It should also be noted that the investment income figure for many property/casualty entities in recent years has been enhanced by distributions from private equity investments. These gains have dried up to such an extent that we sense some insurers may be reconfiguring how they compute net investment income to exclude what may well be some losses from these investments.

Both operating and capital leverage are key components to the achievement of the sought-after 15% return. However, the yield curve is such that in order to achieve this number, many insurers would have to post combined ratios that would run in the high 80s to the low 90s. While anything is possible, we think that is too much to ask for at this stage of the industry's reconfiguration.

- Next comes the question of overcapitalization. On the surface, it appears that the industry is still very flush with capital given the 1.02-to-1 premium-to-surplus ratio recorded for the 12 months ended March 31, 2001. As we have noted in the past, this figure is distorted by a deflated numerator and an inflated denominator.

Exacerbating the situation is the impact of some codification changes that took place this year. The capitalization question flows right to the heart of the concept of effective capital management, which also remains an elusive goal for still too many companies.

- On top of this, one has to add the pick-up in equity and debt activity that has occurred thus far this year. Some of the transactions were spurred by rating agency pressures and some by acquisition activity.

The red flag to be aware of is that a marked pick-up in capital-raising activity could potentially dampen the upturn in property-casualty pricing.

Clearly, the earnings outlook for most carriers for 2001 is proving to be less robust than most industry observers had estimated. While results in 2002 should be better, the interplay of a lagging earned premium factor (versus top line growth), exacerbated by some continuation of adverse reserve development and some miscellaneous charges, and struggling net investment income growth, all seem to point to perhaps somewhat more modest earnings improvements in 2002 than are currently projected. The earnings kicker may well have to wait until 2003. The risk is that investors may tire of waiting and decide to fold their tents before industry numbers really take off.

BI

Myron Picoult is senior adviser, Financial Institutions Group, at Dresdner Kleinwort Wasserstein in New York. He is a past president of the Assn. of Insurance & Financial Analysts and a member of the New York Society of Security Analysts. An archive of Mr. Picoult's columns for Business Insurance can be viewed online at: www.businessinsurance.com.

Last chance for Web entries

The deadline for submitting entries to Business Insurance's first Best of the Web competition is July 30.

The Best of the Web Awards were created by Business Insurance to recognize and promote excellence in Internet-based services for corporate risk and employee benefit executives.

All Web sites that are designed primarily—though not necessarily exclusively—to serve the buyer of commercial insurance services may be submitted for consideration. Web sites will be judged on their functionality, interactivity, design, innovation and relevance to the buyer of commercial insurance services (i.e., risk managers and employee benefit managers).

To be considered, sites must fit into one of eight specified contest categories.

The risk management Web site categories are:

- Insurance services.
- Claims services.
- Risk management services.

The benefits management Web site categories are:

- Benefits management services.
- Health plan services.

Combined Web site categories are:

- Legal services.
- Educational/professional services.

Detailed information about the categories and rules for the competition can be downloaded from the Events area of the Business Insurance Web site, www.businessinsurance.com.

Web site sponsors from anywhere in the world may enter, though the sites must be accessible via the Internet and should be understandable to English-speaking judges. Sites that are not open to the general public must provide the judging panel with a sample account, user ID and password—or other means of access as needed—for the duration of the judging process to be eligible for consideration. The access will be used only for judging purposes.

All contest entries will be screened by a panel of BI editors to ensure they fit the specific contest categories for which they are entered, and that they meet the criteria for entry. A panel of independent judges—knowledgeable in various aspects of risk management, benefits management, insurance and technology—will then score entries and select the highest-scoring candidates in each category as BI's Best of the Web. The panel has the option to present additional Awards of Excellence in any category.

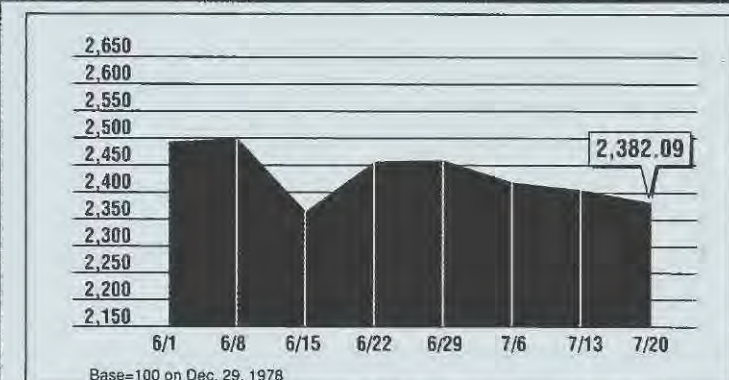
The winners will be announced and profiled in the Oct. 2 issue of Business Insurance and on www.businessinsurance.com.

All entries, regardless of whether they win an award, will automatically be included at no charge in www.businessinsurance.com's links to industry-related Web sites.

To obtain an entry form and rules for the competition, visit www.businessinsurance.com, or e-mail Editor Paul Winston at pwinston@crain.com.

BI

B/Stock Index - 7/20/2001



BROKERS

		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol. (000)
Aon Corp.	NYS	34.69	-0.89	1.28	42.31	28.13	5015
Brown & Brown	NYS	47.95	2.02	37.00	49.00	23.72	272
Clark Bards Holdings	NDQ	29.22	4.92	188.59	30.25	7.25	270
E.W. Bancorp Holdings Inc.	NYS	13.50	0.00	-22.58	29.50	6.70	0
Gallagher Arthur J. & Co.	NYS	26.50	-7.92	-16.70	34.25	21.66	3448
Hib. Rogal & Hamilton	NYS	44.51	4.61	11.62	44.70	33.75	352
Marsh & McLennan	NYS	98.37	-2.43	-15.92	135.69	80.30	4204
Willis Group Holdings Ltd.	NYS	16.95	-1.74	2.11	18.50	16.00	1084
BROKERS AVERAGE			-0.18	23.18			

INSURERS/REINSURERS

ACE Ltd.	NYS	33.76	-5.80	-20.45	43.94	29.81	8991
Accel International Corp.	NDQ	0.07	0.00	-76.42	0.69	0.06	0
Acceptance Insurance Cos.	NYS	5.45	0.93	3.81	6.94	3.70	51
AEGION N.V.	NYS	26.95	-1.68	-34.96	43.00	25.92	456
AFLAC Inc.	NYS	31.56	0.83	-12.56	37.47	23.38	7530
Allmerica Financial Corp.	NYS	54.25	-0.68	-25.17	74.25	46.30	1662
Allstate Corp.	NYS	33.15	-22.00	-23.90	45.90	23.69	51070
Ambac Financial Group	NYS	57.10	-3.20	-2.08	64.00	0.16	2586
American Financial Group	NYS	28.45	-5.92	7.11	30.75	18.69	401
American General	NYS	46.05	-0.90	13.01	47.44	32.19	6156
American Intl Group	NYS	84.01	-0.59	-14.76	103.75	72.64	21130
American Safety Insurance	NYS	10.02	1.73	63.59	10.36	3.25	27
Argonaut Group	NDQ	17.94	-6.47	-14.57	21.25	13.50	72
AXA-UAP Group	NYS	28.03	0.29	-21.94	39.88	24.58	974
Baldwin & Lyons Inc.	NDQ	21.45	-3.60	-7.74	28.75	15.25	9
Berkley W.R. Corp.	NDQ	38.65	-4.66	-18.09	48.75	19.75	841
Berkshire Hathaway Inc.	NYS	68000.00	-1.59	-4.23	74600.00	51600.00	1
Capital Transamerica Corp.	NAS	15.00	1.69	20.60	15.86	10.31	52
Chubb Corp.	NYS	68.32	-5.08	-21.02	90.25	63.30	4689
Cincinnati Financial Corp.	NYS	38.66	-1.40	-2.28	42.92	32.56	1811
Citigroup	NYS	50.56	3.48	-0.98	59.13	39.00	62726
CNA Financial Corp.	NYS	38.01	-4.06	-1.91	41.94	32.06	541
CNA Surety	NYS	13.98	0.00	-1.89	14.50	10.38	134
EMC Insurance Group Inc.	NDQ	13.55	-6.16	15.32	15.86	8.50	7
ESG Re Limited	NDQ	3.36	-2.33	82.24	4.00	1.72	42
Everest Reinsurance	NYS	66.60	-8.37	-7.02	75.50	34.31	3324
Fremont General Corp.	NYS	5.08	-15.33	80.62	6.97	1.50	1045
Gaisano Inc.	NYS	1.19	-10.53	-54.67	4.75	1.10	814
Harleysville Group	NDQ	29.92	4.65	2.29	30.63	17.88	201
HCC Insurance Holdings	NYS	23.02	-2.62	-14.54	29.66	17.63	2271
ING Group N.V.	NYS	32.00	-0.62	-20.12	41.97	27.92	692
IPC Holdings Ltd.	NDQ	22.45	1.81	6.90	25.05	12.63	78
Hartford Financial Services	NYS	62.65	-5.65	-11.29	80.00	53.50	7447
John Hancock Financial Serv.	NYS	41.04	0.98	9.08	42.00	20.63	4017
Lincoln National	NYS	48.15	-4.22	1.77	56.38	38.00	4252
MAIC Holdings Inc.	NYS	15.64	0.00	-6.28	18.50	10.50	0
Market Corp.	NYS	198.26	-1.83	9.54	207.47	133.50	53
MBIA Insurance Group	NYS	53.20	-4.30	7.66	56.74	34.75	2448
Meadowbrook Insur. Group	NYS	3.35	-6.94	-58.77	8.38	2.45	19
MetLife	NYS	30.05	-3.84	-14.14	36.63	19.38	10998
Mutual Risk Mgmt. Ltd.	NYS	11.29	1.71	-25.66	23.75	3.40	774
Navigators Group	NDQ	19.00	0.00	42.72	20.86	9.25	9
NYMag Inc.	NYS	19.99	2.78	5.91	22.70	13.00	2
Ohio Casualty Corp.	NDQ	12.72	2.66	27.20	13.44	6.13	957
Old Republic Intl	NYS	26.05	-7.46	-18.59	32.06	17.19	5234
Partner Re Ltd.	NYS	51.39	-4.48	-15.75	62.50	36.63	1859
Penn-America Group Inc.	NYS	10.00	-0.10	31.15	10.60	6.69	8
PMA Capital Corporation	NDQ	17.26	-1.37	0.06	18.94	15.19	84
Philadelphia Cons. Holding	NDQ	36.15	-0.14	17.09	37.50	15.66	285
PXRE Corp.	NYS	18.55	-1.70	9.93	20.10	12.50	69
Renaissance Re Holdings Ltd.	NYS	68.95	-3.97	-11.96	84.19	43.63	308
RLI Corp.	NYS	42.99	-2.85	-3.80	46.16	33.63	52
St. Paul Cos.	NYS	40.85	-16.21	-24.79	57.00	36.94	19623
SCOR	NYS	44.64	3.81	-11.16	53.75	39.75	2
SAFECO Corp.	NDQ	28.84	0.03	-12.27	35.88	20.25	11371
SCPIE Holdings Inc.	NYS	18.68	-1.68	-20.93	31.40	17.78	NA
Seibels Bruce Group	NDQ	2.55	6.69	353.33	3.25	0.53	17
Selective Ins. Group	NDQ	26.10	2.47	7.63	28.22	15.25	128
Tokio Marine & Fire	NDQ	47.45	0.96	-16.75	58.25	45.10	42
Torchmark Corp.	NYS	40.10	-1.98	4.33	41.25	24.06	2365
Transatlantic Holdings	NYS	117.25	-1.36	10.74	126.25	80.38	54
Trenwick Group Ltd.	NYS	21.54	-4.27	-13.19	27.13	14.75	379
Unico American Corp.	NDQ	6.50	4.00	10.64	7.75	5.27	5
United Fire & Casualty	NDQ	30.49	1.97	54.38	34.52	16.19	35
Unitrin	NYS	37.30	-0.80	-8.18	41.94	27.19	147
UNUM Corp.	NYS	30.46	-6.96	13.34	33.75	19.25	5000
Vesta Insurance Co.	NYS	10.98	4.67	117.09	11.25	4.13	1184
XL Capital Ltd.	NYS	73.60	-5.50	-15.77	89.25	56.13	5442
Zenith National Ins.	NYS	29.15	-1.52	-0.77	30.70	20.00	54
INSURERS/REINSURERS AVERAGE			-2.24	4.89			

MANAGED CARE COMPANIES

Aetna Inc.	NYS	25.85	-2.56	-37.05	42.69	23.02	3166
CIGNA Corp.	NYS	99.95	0.15	-24.45	136.75	86.88	3032
Health Net Inc.	NYS	18.65	0.87	-28.78	26.94	13.50	2548
Humana Inc.	NYS	10.00	0.00	-34.43	15.81	6.63	3863
Oxford Health Plans	NYS	28.05	-1.23	-28.99	42.75	21.44	3115
Pacificare Health Sys.	NDQ	16.92	-19.35	-12.80	68.69	9.81	8061
Sierra Health Services	NYS	8.99	-2.07	136.58	10.13	2.44	1730
United HealthGroup	NYS	65.82	0.05	7.24	67.41	39.06	8230
Wellpoint Health Networks	NYS	102.45	-1.77	-11.11	121.50	79.50	3689
MANAGED CARE COMPANIES AVERAGE			-2.88	-0.91			

ALL COMPANIES

Top advancing issues: Seibels Bruce Group, Clark Bards Holdings, Vesta Insurance Co. Leading decliners: Allstate Corp., Pacificare Health Sys., St. Paul Cos. Most active issue: Citigroup. The BI Index decreased 1.0%; the Dow Jones 30 Industrials rose 0.4%; the S&P 500 went down 0.4%, and the NYSE Composite increased 0.1%. Average P/E: Brokers, 25.0; Insurers/reinsurers, 27.7; and managed care companies, 15.8.

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

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