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Updates

Maryland regulators enforcing law on stop-loss attachments

BALTIMORE—The Maryland Insurance Administration says it is now enforcing a state law that bars health insurers from selling stop-loss policies below certain attachment points.

The new law, which went into effect June 1, prohibits insurers from selling employers stop-loss policies with attachment points of less than $10,000 for specific claims or aggregate points of less than 115% of expected claims (*BI*, May 3).

The new law came in the aftermath of fed-

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Process upheld in CIGNA reorganization

By JUDY GREENWALD

HARRISBURG, Pa.—The Pennsylvania Insurance Department received long-awaited vindication last week when the Pennsylvania Supreme Court unanimously ruled the department had acted properly in its handling of CIGNA Corp.'s reorganization.

The decision was a victory for the department and CIGNA over a group of policyholders and rival insurers who have vigorously opposed the insurer's reorganization in a four-year battle.

"We are. . .satisfied that the Insurance Department proceedings were in accordance with law and fulfilled the requirements of administrative procedural due process," the court said in overturning a lower court's ruling.

Both the Insurance Department and Philadelphia-based ACE USA, whose acquisition of CIGNA's property/casualty business became final earlier this month, said they were pleased with the decision.

Pennsylvania Supreme Court's ruling ends long-running dispute.

Policyholder attorneys warn, however, that more policyholder litigation in the matter of CIGNA's reorganization may lie ahead. They point out the decision focuses on the department's approval of the restructuring, not on the underlying issue of reserve adequacy.

CIGNA reorganized its property/casualty operations in 1995 to maintain its A- rating from A.M. Best Co. for its active operation.

As part of the reorganization, its long-tail liabilities, including about 80% of its asbestos and environmental liabilities, were shifted to Brandywine Holdings, a separately capitalized company, to be run off. The operating unit is called Century Indemnity Co.

In 1996, then-Insurance Commissioner Linda S. Kaiser approved the restructuring after holding three public hearings during which she allowed only 15 minutes of prepared testimony from each witness and did not permit either side to cross-

See **CIGNA** *on page 22*

Clause proving a battleground

By GAVIN SOUTER

STAMFORD, Conn.—Xerox Corp. is the latest in what is expected to be a growing number of corporations seeking coverage for Year 2000 remediation costs under the "sue and labor" clause in property insurance policies.

Insurers contend, however, that the claims are without merit because the clause only authorizes policyholders to act to prevent losses that are "imminent." They are expected to fiercely battle such claims in court.

Some risk managers say the cost of litigating for possible coverage will be seen by some companies as a small price to pay when stacked alongside the millions of dollars spent to eliminate potential losses from the millennium bug.

In a lawsuit filed last week, Xerox seeks coverage of its remediation expenses from American Guarantee & Liability Insurance Co., a Schaumburg, Ill., unit of Zurich Financial Services Group.

Neither Xerox nor Zurich would comment on the lawsuit, filed in Connecticut Superior Court. In filings with the Securities and Exchange Commission, Xerox says it expects to spend $183 million on Year 2000 remediation.

The Xerox action follows a similar lawsuit filed last month by GTE Corp. against insurers (*BI*, July 5), and a notice of claim filed earlier this year by the Port of Seattle with an insurer, stating that it expected coverage for remediation costs under the sue and labor clause in its property policy (*BI*, June 14).

Insurers are expected to vehemently oppose the claims for fear of setting precedents that expose them to covering the potentially huge tab for policyholders' Year 2000 remediation costs. The Gartner Group, a consulting company that specializes in Y2K issues, last year estimated that the worldwide cost of Year 2000 remediation efforts could be as much as $600 billion.

Big corporations that are spending large amounts on Y2K remediation costs may be prepared to spend significantly on litigation costs in the hopes of obtaining coverage.

"The corporations are trying to hedge their bets on this in

See **Clause** *on page 19*

Attorneys critical of FTC letter

Federal rules may clash over harassment probes

By JUDY GREENWALD

WASHINGTON—Employers that hire outside firms to investigate sexual harassment charges could find themselves caught between two federal agencies' conflicting rules.

Uncertainty over how to proceed could seriously hamper employers' investigations of sexual harassment cases and ultimately leave them more vulnerable in cases brought against them by employees, some attorneys warn.

The focus of the concern is an April 5 opinion letter by a Federal Trade Commission staff attorney that says employers who use outside investigative firms must first get the targeted employee's approval and must furnish him or her with a copy of the investigator's report.

At the least, this could clash with Equal Employment Opportunity Commission guidelines, issued in response to two Supreme Court cases last year, that call for prompt and fair investigations of employee sexual harassment complaints (*BI*, June 28).

Attorneys warn that an employee's refusal to permit an investigation, as well as witnesses' possible reluctance to have their comments revealed to that employee, could seriously impede—if not cripple—an employer's ability to conduct an adequate investigation.

The situation has employers "between a rock and a hard place," said Amy L. Bess, an attorney with Sonnenschein Nath & Rosenthal in Washington.

Mark Larsen, a consultant in Tillinghast-Towers Perrin's Chicago office, said: "It borders on the absurd. I can't imagine this

See **Probes** *on page 21*

Something in the air?

Indoor environmental problems can threaten workers

By AMANDA MILLIGAN

It can lurk in buildings in both the city and the country, in the smallest offices and the tallest skyscrapers—it's in the air.

When a building has an indoor air quality problem, it can range from a strong odor to dust particles to harmful invisible substances. In some situations, the resulting ailments not only can make workers feel bad, but they may also be deadly.

Diligent maintenance and updating of ventilation systems, and the prompt and thorough investigation of employee complaints are key to resolving both categories of indoor environmental problems—building-related illnesses and sick building syndrome—say industrial hygienists, consultants and employers.

Of the two indoor environmental problems, building-related illnesses are the more threatening. As defined by industry experts, building-related illness is the more

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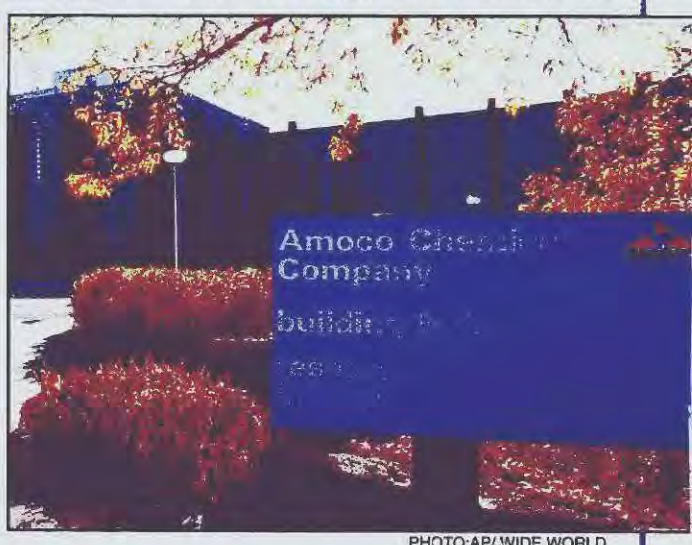

PHOTO:AP/ WIDE WORLD

A high incidence of cancer at a BP Amoco building in Naperville, Ill., has led to lawsuits and a search for answers.

Updates

Maryland enforcing stop-loss law

Continued from previous page
eral court rulings striking down a 1995 Maryland regulation that set minimum attachment points for stop-loss insurance policies. The courts ruled the regulation violated a provision in the Employee Retirement Income Security Act, which pre-empts state laws and regulations that relate to employee benefit plans.

The department said it would begin enforcing the law after one of the federal judges who struck down the earlier regulations gave the Maryland Insurance Administration a green light to implement the law.

Maryland Insurance Commissioner Steven Larsen said the department does not oppose stop-loss policies that protect employers against catastrophic or unexpected losses. But stop-loss policies with extremely low attachment points are "sham" policies, labeled "stop-loss" solely to avoid state regulation, he said.

Benefits-friendly bills advance

WASHINGTON—Tax legislation loaded with benefit provisions continues to move through Congress, with the House of Representatives and the Senate Finance Committee passing bills last week.

The House bill, approved on a near-party line vote, would, among other things, gradually boost maximum 401(k) deferral limits to $15,000 from $10,000; allow an employee 50 or older to kick in an additional $5,000 annually to a 401(k) plan; raise to $200,000 from $160,000 the amount of employee compensation that can be included when calculating pension benefits; raise to $160,000 from $130,000 the maximum annual benefit that can be funded through a defined benefit plan; and raise to $40,000 from $30,000 the maximum annual contribution that can be made to a defined contribution plan.

Other provisions would ease certain pension non-discrimination rules and allow employees changing jobs and moving between the private and non-profit sectors to transfer funds from 403(b) to 401(k) plans or vice versa.

The House, though, for certain technical reasons, declined to add most pension provisions earlier approved by the House Education and Workforce Committee. Among the dropped measures was a provision that would have barred the Labor Department from suing an employer for pension law violations if the employer already had settled a class-action suit with participants involving the same violations, and another provision that would have eliminated the requirement that employers automatically furnish employees with copies of annual pension summary reports.

The Senate Finance Committee bill includes the same higher 401(k) limits as does the House bill but not the higher benefit and contribution limits for other types of pension plans. Many other pension provisions are the same both bills.

Benefit experts laud the measures as positive for employers and employees. "We are on track to see a conference agreement that will produce broad and positive pension reform legislation," said James Delaplane, vp-retirement policy at the Assn. of Private Pension & Welfare Plans in Washington.

The full Senate is expected to take up its tax bill this week.

OPIC offers contract enhancement

WASHINGTON—The Overseas Private Investment Corp. is offering a new insurance contract to cover capital markets transactions as part of its political risk insurance program.

The new coverage is similar to the coverage OPIC has provided for years under its institutional lenders program. Like other OPIC political risk policies, the capital markets insurance contract has limits of up to $200 million per project and can be written on terms of up to 20 years. The contract currently covers only currency inconvertibility risks, not currency devaluation or other commercial risks of a given project.

In a written statement announcing the issuance of the first policy, OPIC President George Munoz said: "The insurance was developed by OPIC specifically for capital markets transactions involving U.S. investors. It provides coverage against the risks of a deterioration in the ability to convert local currency into U.S. dollars and the inability to transfer U.S. dollars out of the host country to service payments of principal and interest on the bonds."

OPIC issued its first capital markets insurance contract last week.

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Errors & omissions

The July 19 directory of agents and brokers contained several errors, including:

- The chart of the 100 largest brokers of U.S. business listed incorrect information for several companies. A corrected version appears on page 20.
- Incorrect financial figures in the directory listing for Kaye Group Inc. For 1998, Kaye had brokerage revenues of $44,903,930. Commercial retail brokerage from U.S. offices in 1998 totaled $32,389,720. A footnote in the directory listing also was incorrect. Kaye's gross revenues for both 1998 and 1997 include estimated commissions payable by an insurer Kaye owns. In addition, Kaye Group did not restate its percentage of personal lines business for 1997.
- The names of three Meadowbrook Insurance Group Inc. officers were misspelled. The correct names are Merton J. Segal, chairman/CEO; James R. Parry, senior vice chairman/chief marketing officer; and William J. Lohmeyer III, senior vp/CFO.
- Information supplied to *Business Insurance* incorrectly listed DMI as a non-retail subsidiary of Near North Insurance Brokerage Inc. DMI is independent. Also, Ruth Tave's name was misspelled.

White House prepares proposal

Pension disclosure sought

By JERRY GEISEL

WASHINGTON—The Clinton administration is drafting legislation that would require employers redesigning their defined benefit pension plans to disclose more information to employees.

Given the growing number of employers that are converting traditional final-average-pay plans to cash balance plans—a conversion that can lead to increased benefits for younger, shorter-service employees but lower benefits for older, longer-service employees—the administration says it is concerned employees do not understand how the changes will affect them.

"Although many employers have done a good job supplementing legally required disclosure—so that workers can adjust their personal retirement and savings plans if necessary—an employer's disclosure that simply complies with the current legal minimum leaves many workers in the dark," the administration says.

The proposal, which Treasury Department staffers are taking the lead in developing, is in only the draft stage. Although it isn't yet known when the administration will finalize its proposal, expectations are that it would do so soon, allowing the proposal to be considered for inclusion in tax legislation now moving through Congress. Bills in both the Senate and House contain pension benefit conversion disclosures provisions, though these provisions are more modest than the administration proposal.

The administration's draft proposal is not as far-reaching as disclosure legislation introduced by Sen.

See **Pensions** *on page 21*

Assurex broadens network

Little overlap with new partner Synergy

By SALLY ROBERTS and SARAH GODDARD

COLUMBUS, Ohio—To better compete with multinational brokers Marsh Inc. and Aon Group Inc. on global risk management accounts, Assurex International is adding European broker network Synergy to its list of partners.

While the 65 regional broker partners of Columbus, Ohio-based Assurex already have access to more than 30 international affiliates, the addition of Synergy gives Assurex partners a true global alliance that will enable member brokers to better deliver seamless global insurance and risk management services to clients all over the world, executives say. In most cases, there is very little overlap between Synergy's operations and the business of Assurex's existing affiliates.

Synergy was formed in 1998 by Groupe Verspieren of Paris; a predecessor of HSBC Insurance Brokers Ltd. of London; Leue & Nill of Dortmund, Germany; and Pulsar Holding of Milan, Italy, as a means to compete with Marsh's and Aon's expansive global capabilities. Over recent months, Synergy has added about 10 European broker affiliates to its network, covering 26 countries across Europe.

Synergy is "the product of 18 months of behind-the-scenes dis-

See **Assurex** *on page 22*

Court rules city can't subpoena coverage info

By RODD ZOLKOS

LODI, Calif.—A California appellate court has quashed a city's effort to use legislative subpoenas to get information about the environmental insurance coverage of local businesses.

The legislative subpoena process undertaken by Lodi, Calif., was similar to that typically used by federal congressional committees seeking information, said Randall A. Hays, Lodi's city attorney.

"That particular power exists at all governmental levels," Mr. Hays said. "Our program involves utilization of that power, which presupposes that there is a legislative motive for the request that you're making."

Lodi attempted to use the subpoenas, issued by the City Council, to obtain information from the insurers of specific businesses identified by the state as potentially responsible parties for ground water contamination in Lodi.

"The state of California had spent quite a bit of time and energy identifying responsible parties for cases of ground water contamination here in town," Mr. Hays said.

In June 1997, Lodi threatened to sue the businesses identified by the state as PRPs if they didn't settle with the city; the city offered to settle with the businesses for the limits of their insurance policies.

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Reinsurer directory Aug. 30

Business Insurance will publish its annual Directory of Worldwide Reinsurers on Aug. 30. The issue will include a Spotlight report on international reinsurance markets.

The directory is published as an editorial service, and there is no charge to be included. To be listed, companies must have written reinsurance premiums that exceed $100 million, including both property/casualty and life/heath. In addition, your company must provide premiums written and capital and surplus figures for 1997 and 1998.

If your company meets the requirements and has not received a questionnaire, please request one immediately by calling Directory Editor Kevin Edison at 312-649-5279.

Copies of the questionnaire also may be printed from the *BI* Web site at www.businessinsurance.com/magazine/directories.html.

Completed questionnaires must be submitted by the extended deadline of Aug. 6.

Inside

- The increasingly helpful nature of benefit provisions tacked onto tax bills, acquired from years of employer education on Capitol Hill, is an encouraging change, this week's editorial says. **PAGE 8**
- The biggest concern the global insurance industry has today is how electronic commerce will affect business, according to a recent survey. **PAGE 16**
- Employers in the United Kingdom will face increased liability for privacy issues under a code of practice set to begin next year. **PAGE 17**

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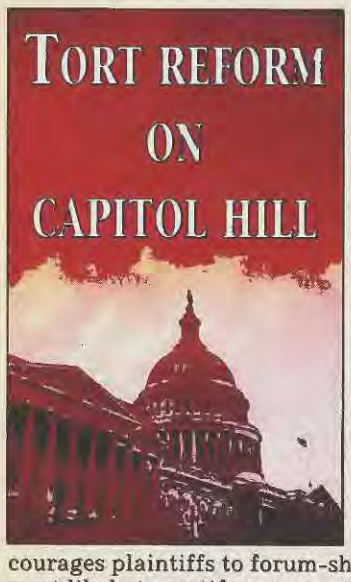
Clinton cool to tort reform

Opposition to two bills outlined

By MARK A. HOFMANN

WASHINGTON—The Clinton administration's opposition to broad federal tort reform remains firm, despite the president's signing last week of a measure that grants businesses some limit on liability from the Year 2000 computer problem.

That opposition was reiterated as a senior Justice Department official outlined the White House's objections to a pair of business-backed tort reform measures during testimony last week before the House Judiciary Committee.



One bill, the Interstate Class Action Jurisdiction Act, would make it much easier to remove to federal courts large interstate class-action suits filed in state courts. Businesses have long favored moving more class-action cases to federal court as a means of reining in so-called forum shopping, the bill's chief sponsor, Rep. Bob Goodlatte, R-Va., told the committee.

"The existence of state courts that broadly apply class certification rules encourages plaintiffs to forum-shop for the court that is most likely to certify a purported class. In addition to forum shopping, parties frequently exploit major loopholes in federal jurisdiction statutes to block the removal of class actions that belong in federal court," said Rep. Goodlatte.

The other bill, the Workplace Goods Job Growth and Competitiveness Act, would set a national 18-year standard of repose for product liability suits brought by injured employees against the manufacturers of workplace durable goods, such as machinery.

About 40% of states have product liability statutes of repose, ranging from six years to 15 years, according to a briefing paper prepared by the Judiciary Committee. The Workplace Goods Job Growth and Competitiveness Act would replace all existing statutes of repose with the 18-year limit and would impose that limit on

See **Reform** *on page 10*

Wide genetic testing called too costly for comp savings

By MICHAEL BRADFORD

Widespread genetic testing to identify and protect workers prone to certain occupational illnesses would be too expensive and cumbersome in most cases to yield big workers compensation savings, a researcher contends.

Moreover, legal and ethical issues stand in the way of genetic screening as a tool in deciding where to place or whether to hire workers, according to occupational health and safety experts.

They also say that loss prevention efforts to make workplaces safe for all workers are unlikely to be replaced by genetic screening of workers.

A study recently published in the Journal of Occupational and Environmental Medicine suggests, however, that such testing is possible. It was conducted by Mark Nicas, adjunct associate professor of environmental health sciences at the University of California's School of Public Health in Berkeley, Calif., and Geoffrey P. Lomax, a doctoral student at the school.

The study looked at whether workers comp costs could be lowered if workers were screened for susceptibility to two illnesses. It concluded that screening for the likelihood of a beryllium-related lung illness could reduce the number of those cases and generate a significant savings. But screening for a type of cancer caused by exposure to benzene would lower the number of cases only slightly, and savings would not be enough to justify the cost of the tests, according to the study.

"If you have a situation where genetic factors increase the susceptibility to a disease and you expect to see a substantial number of those diseases," screening can lead to "substantial prevention and cost savings," explained Mr. Nicas.

That's the case with lung disease related to exposure to beryllium, he pointed out. Beryllium is a rare chemical element used in some manufacturing processes to form lightweight alloys with metals such as copper and nickel.

Science has identified genetic factors that can indicate a likelihood of who will contract the disease after exposure to the substance over time. In workplaces where exposure to beryllium is likely, genetic testing could provide a way to identify high-risk workers and move them away from the exposure.

See **Genetic** *on page 10*

Standards of proof will be relaxed

Holocaust claim system coming

By JOANNE WOJCIK

WASHINGTON—An international commission chaired by former U.S. Secretary of State Lawrence Eagleburger is developing a claims resolution system for insurers to use in valuing and paying the claims of Holocaust-era victims and their survivors.

Drawing from suggestions by Jewish organizations, U.S. insurance regulators and insurers sitting on the International Commission of Holocaust-Era Claims, Mr. Eagleburger will determine in the next week the formula used to calculate the value of the policies, said Neal M. Sher, chief of staff for the Washington-based commission.

For example, the formula for calculating the value of life policies in Western European countries other than Germany likely will be based on the long-term government bond rates in the country where the policies were issued, he said. Because of currency fluctuations and devaluations that have occurred since World War II, however, another benchmark will likely be used for policies issued in Germany and Eastern Europe, he added.

In addition, the claims resolution process will allow for relaxed standards of proof so that even individuals who don't have policies in hand will be able to apply, said Elan Steinberg, executive director of the New York-based World Jewish Congress, a commission member.

To help identify claimants, the commission also will publish the names of policyholders and lists of policies.

Italian insurer Assicurazioni Generali S.p.A., a commission member, already has supplied a CD-ROM listing 100,000 unpaid policies as of 1938.

While the commission's initial focus will be on life insurance, "the memorandum of understanding is not limited to life insurance," Mr. Sher said, which means that eventually the claims adjudication system also will be applied to property and other types of insurance claims.

After Chairman Eagleburger selects the formulae for valuing life claims, the commission in October will begin setting up call centers to identify claimants and process claims, according to Mr. Sher.

Tens of thousands of claims are expected to be filed by victims' families and survivors of the Holocaust, he said.

The system will likely replace another program implemented earlier this year by insurance regulators in New York, Florida and Pennsylvania together with the government of Israel and several Jewish organizations.

These states have already begun processing several thousand claims they identified before the international commission was formed last fall, according to Mr. Sher.

These early claims will be put on a fast track, Mr. Sher said, and payouts will be adjusted later if the formulae selected by Chairman Eagleburger entitles claimants to larger sums, he added. BI

Court upholds rules on settlement offers

By ROBERTO CENICEROS

SAN FRANCISCO—A California Supreme Court ruling last week upholds a state law designed to encourage pretrial settlement offers, but the ruling's scope may be limited to contract disputes, a tort reform group says.

The court upheld two California civil code sections stating that a plaintiff who rejects a viable pretrial settlement offer must pay the defendant's costs and attorney fees if the amount the plaintiff recovers at trial is less than or equal to the pretrial settlement offer.

A bill now moving through California's legislature could add to the ruling's impact, said Jeff Sievers, legislative advocate for the Sacramento, Calif.-based Civil Justice Assn. of California, formerly the Assn. for California Tort Reform.

Currently, California Code of Civil Procedure, Section 998, allows a defendant to recover attorney fees and legal costs if a trial award for the plaintiff is less than the defendant's pretrial settlement offer. But the defendant can recover only those fees and costs incurred subsequent to when the settlement offer was made. The court also upheld Section 1717, which deals specifically with attorney fee provisions in contract disputes.

S.B. 1167 would allow a defendant to recover under Section 998 expenses incurred during the period before the settlement offer was made, Mr. Sievers said.

Mr. Sievers said he expects the bill will be signed into law. It already has passed the Senate and the Assembly's Judiciary Committee.

Under the high court's July 19 ruling in *Scott Co. of California vs. Blount Inc.*, the plaintiff will pay more in defendant attorney fees and legal costs than it was awarded at trial, court records show.

"It just goes to show, you can sue and think you are dead right and end up paying more than you were awarded at the trial," Mr. Sievers said.

While the Supreme Court's decision is

See **Settlement** *on page 10*

More consolidation, demutualization expected

IIS speakers also emphasize need for better service

By EDWIN UNSWORTH

BERLIN—Insurer consolidation will continue, demutualizations will increase, Japan's reform efforts will revolutionize that major market, and the European insurance market is becoming more transnational.

Key speakers earlier this month in Berlin at the 35th annual seminar of the International Insurance Society Inc. made these points, having no difficulty warming to the conference theme, "An Industry in Transition."

Claude Bebear, chairman of French insurance giant AXA Group, predicted that, in the United States, the frontiers between banks and insurers will disappear and that more major mutual insurers will demutualize.

He also forecast that more U.S. insurance groups will seek to become international, with their consolidation through mergers being just a preliminary step to globalization.

Japanese insurers, too, are hungry for expansion, particularly after the constraints placed on their domestic growth by the Japanese economic crisis, Mr. Bebear said. The gradual liberalization of other Asian insurance markets should aid Japan in this outward drive, he said.

See **IIS** *on page 16*

Almost 500 people attended the International Insurance Society Inc.'s annual seminar this month in Berlin.

Buildings

Continued from page 1

dangerous of the two categories of ailments that a worker can get simply from spending extended time in a building. Examples of agents that can cause building-related illnesses are radon gas; carbon monoxide; asbestos fibers; and Legionella pneumophila, the bacterium that causes Legionnaire's disease. Exposure to these agents can lead to deadly conditions, such as tuberculosis, asbestosis and cancers.

In 1989, Amoco Corp. thought it could be dealing with a cancer cluster when it learned that three chemical researchers who had been working in the same laboratory in the Amoco Research Center developed a brain cancer condition called glioma.

After commissioning a survey to investigate these cases, Amoco was advised to monitor the situation at its Naperville, Ill., facility, but the company was informed there were few similarities linking the cases. Amoco officials say they were told the pattern was probably just a "statistical anomaly."

In what would turn out to be a decade-long search for answers, Amoco's story serves as example of factors that can come into play when employees feel at risk in their workplaces—whether their fears are real or perceived. It also illustrates how crucial open and honest communications between the employee and the employer can be in reducing fear and encouraging trust when a building-related illness is suspected.

In 1996, Amoco's troubles escalated to a full-scale crisis when the company learned that another four workers had been diagnosed with intracranial tumors. During the same year, the company commissioned a five-part independent study, conducted by the University of Alabama at Birmingham and Baltimore's Johns Hopkins University. The full results of that study are expected to be released next month.

The study began very broadly and, in its final stages, narrowed to one building at the complex—Building 500. Researchers looked at all of the approximately 2,000 employees who have worked in the building since it opened in 1970. So far, the study has found that workers in Building 500 have an incidence of brain cancer three times higher than that of the overall U.S. population. In addition, all of those diagnosed with glioma were white males, and when examined in terms of these characteristics, the incidence of brain cancer is eight times greater than it is in the U.S. population.

'You're going to have cancers in an aging workforce in every workforce,' says John Fajen of AIG.

"With the glioma, there's a pretty clear pattern emerging," said Vicki Kastory, a spokeswoman for BP Amoco Corp.; Amoco Corp. and British Petroleum P.L.C. merged earlier this year. Ms. Kastory is a member of the 20-person BP Amoco Naperville Complex health investigation task force. "They all worked at the same time, in the same place, on the same types of activities."

But even after all of this investigation, Amoco, the cancer victims and their families may not have answers to what caused the tumors, because linking the workplace to the cause isn't a simple task.

"For science to identify a brain carcinogen, you'd have to see a similar situation happening where people have similar exposures," Ms. Kastory explained, noting that there isn't much known about what causes brain cancers to develop. "Chemists do work with hazardous materials, but the important thing is to put in controls and protective equipment to eliminate contact."

Paul Schulte, director of the education and information division of the National Institute for Occupational Safety and Health in Cincinnati, said issues of causality rarely are resolved. But, he said, "the criteria for proof that a scientist uses and the criteria for proof that fits under the legal system are different."

In 1996, the company temporarily closed the floor of Building 500 where all of the affected individuals had worked. The floor will remain closed until the survey has been completed.

Ms. Kastory said Amoco realized in 1996 that it hadn't always been diligent about communicating with employees about the company's efforts to resolve concerns about Building 500.

To remedy this, she said, the company has increased employee outreach efforts, including holding monthly luncheons where speakers address tumor-related concerns. Additionally, the company provides free testing by magnetic resonance imaging for past and present employees at facilities nationwide. To date, approximately 500 staffers have taken advantage of the MRI program.

"The one thing we want is to have answers to share with these individuals and their families, and it's frustrating because we have no guarantees of that," said Ms. Kastory. "We concluded that it would be very important to take the steps to get to the bottom of the situation, so that in 10 years or more, we could look back and say we didn't leave any stone unturned."

But the victims and their families don't all believe Amoco Corp. did enough prior to 1989 to protect its workers.

In a lawsuit filed by or on behalf of six former Amoco employees who developed forms of brain cancers, the plaintiffs allege, among other things, that the company did not maintain a hood ventilation system that would prevent exposure to toxins; used an air ventilation system that recirculated air within the building; failed to investigate and correct odor problems; and was negligent in the upkeep of the workplace.

"Employers have to be conscious of what's happening to their employees," said G. Grant Dixon III, a plaintiff's attorney with Corboy & Demetrio in Chicago. He is representing six more former Amoco employees who have developed various cancers. "From a risk management perspective, I think you've got to be proactive and in tune, and Amoco was neither."

"If Amoco had been paying attention, they would have started their crisis management at least two years earlier (than 1989)," Mr. Dixon said.

According to the company, six former Amoco employees have developed brain cancer, and only one of these employees is still living. At least 13 others have been diagnosed with benign brain tumors, said Ms. Kastory.

BP Amoco is self-insured for any future judgments or settlements and has some excess coverage, she noted.

Employers facing outbreaks of cancers should look at the age of the building, determine the length of employment of the individuals who have developed cancers and study the ventilation system, said John Fajen, senior environmental consultant for AIG Consultants-Environmental Management in Cincinnati.

"You're going to have cancers in an aging workforce in every workforce," said Mr. Fajen, who also investigated cancer clusters and conducted industrial hygiene studies for 20 years

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Highly Protected Risk Protecting business is becoming an increasingly tall task. That's why companies rely on Wausau. Our HPR engineering staff applies the most frequently recognized fire protection standards, while our high in-house capacity provides the flexibility to underwrite the most complex properties. Plus, we offer primary and excess layered programs, global capabilities and an A+ A.M. Best rating. It's the reason we've risen to the top of the industry.

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What can we do to help you?

Buildings

Continued from page 4

with NIOSH. "The question is, 'Did it come about as part of my employment?' The employees are going to say, 'Yes,' and the employers are going to say, 'I don't know how it could be.' "

"I don't know of too many (cancer) clusters where cause and effect have been established," he said. "When you look at the human element, it is very tragic. But when you step back and look at the scientific issues, there are so many factors that make it cloudy."

Last month, there was an outbreak of another type of building-related illness—Legionnaire's disease. Of the five people who developed the disease at Harford Memorial Hospital in Havre de Grace, Md., three have died.

Legionnaire's disease, which causes fever, chills and coughing, can be deadly to the elderly and to those with deficient immune systems, according to the Atlanta-based federal Centers for Disease Control and Prevention. The disease, named for a 1976 outbreak at an American Legion convention in which 34 people died, is caused by inhaling water vapors from contaminated water sources, such as air conditioning cooling towers, hot water heaters or showers.

Harford Memorial Hospital worked to manage the crisis by flushing its water system with chlorine and installing devices to continuously chlorinate the system, according to a hospital spokeswoman. The hospital also heated the water to 150 degrees Fahrenheit, hot enough to kill the bacteria, the spokeswoman said.

Follow-up cultures will continue to be collected to ensure all of the bacteria have been eliminated.

Another less-threatening concern, so-called sick building syndrome, also is related to indoor environmental problems.

Some elements that could cause adverse reactions in occupants of a building can be detected by doing a quick walk-through of the premises, said Alan Hedge, professor of ergonomics at Cornell University in Ithaca, N.Y. Mr. Hedge is co-author of a book titled "Keeping Buildings Healthy: How to Monitor and Prevent Indoor Environmental Problems."

Water-soaked ceiling tiles that could breed microorganisms, or new furniture or freshly painted walls that could emit noxious fumes may be sources of discomfort for allergy-sensitive workers.

"It's really sort of a matter of being a good detective and keeping your eyes, ears and nose open before they become major problems," said Mr. Hedge.

Daniel King, partner with the environmental and toxic tort insurance defense firm of Pedersen, Keenan, King, Wachsberg and Andrzejak P.C. in Farmington Hills, Mich., said that many of today's buildings are "essentially sealed." As a result, molds, allergens and chemical fumes can build up and circulate through a building's ventilation system.

Sick building syndrome, which is less serious than a building-related illness, is characterized by a general malaise affecting 20% of the individuals in a building, according to the World Health Organization. The syndrome causes complaints such as runny noses, headaches or lethargy, and some symptoms tend to dissipate once the employee leaves the building.

If these claims go without investigation, however, they can lead to increased absenteeism, lower productivity, higher turnover and the potential for lawsuits.

"The best way to protect yourself from lawsuits is to be cognizant of the fact that these types of complaints may be tied to the building and investigate it," said Mr. King.

At Hallmark Cards, staff industrial hygienists investigate all complaints that might point to sick building syndrome or a building-related illness, said Stephen S. DiGiacinto, corporate environmental, health and safety services manager for the Kansas City, Mo.-based company. Hallmark has not had any cases of building-related illnesses, but it has dealt with some sick-building complaints, he said.

'Basically, treat employees the way you want to be treated in this situation,' says Stephen DiGiacinto.

When a particular area of a Hallmark facility is thought to be causing a problem, it is monitored for temperature, humidity levels, and the presence of carbon monoxide and carbon dioxide. Dust samples also may be taken and checked for airborne fungi.

Test results, Mr. DiGiacinto said, always are shared with employees.

"Basically, treat employees the way you want to be treated in this situation," he said. "If you don't address these issues, they could manifest themselves in a situation that could cause the employer more headache or heartache."

Michael A. Rodman, president of J.H. Albert International Insurance Advisors Inc. in Needham, Mass., agrees.

"Let employees know that management is concerned and that they are investigating the problem and that they are committed to correcting any cause that is found," Mr. Rodman said. "Communicate with them all the way so there isn't the fear of the unknown."

Bill Stark, assistant vp-risk control at Itasca, Ill.-based Gallagher Bassett Services Inc., said it's important to not overreact to a single complaint. Still, he recommends interviewing all workers who have complaints about indoor air quality.

"Normally, when you have an indoor air quality problem, the word spreads," he said. "It becomes sort of a public relations issue, not only with your workers, but also with others coming in and out of the building."

In the early 1980s, when the energy crisis hit and buildings were sealed to retain warm or cool air, employee complaints about the workplace typically weren't taken seriously. And, while buildings now may be more energy-efficient, they may not be as healthy as they should be, industrial hygienists say.

"Employers would get these complaints and ignore them and hope they would go away," said H. Tim Frazer, manager of occupational health for ACE U.S.A. in Phoenix. Mr. Frazer added that 50% of sick- building complaints are caused by a lack of fresh air entering a building.

Good preventive maintenance, such as cleaning air filters seasonally and maintaining a ratio of fresh air based on the number of people in the building, can help, said AIG's Mr. Fajen.

But, as is the case with the more serious building-related illnesses, linking cause and effect can pose a challenge to even the most-diligent employer, said Mr. Fajen.

"It's not a cut-and-dry science. Many times, you can do the right things and not come up with anything, and people still have the problems," he said. Mr. Fajen added that remodeling or permitting smoking in a building can cause problems.

Mr. King, the defense attorney, said that during the design phase of new buildings, builders must take into consideration the use of space and the number of people who will be using the building. Some problems can occur when older buildings are rehabilitated, as when, for example, an old factory is turned into office space.

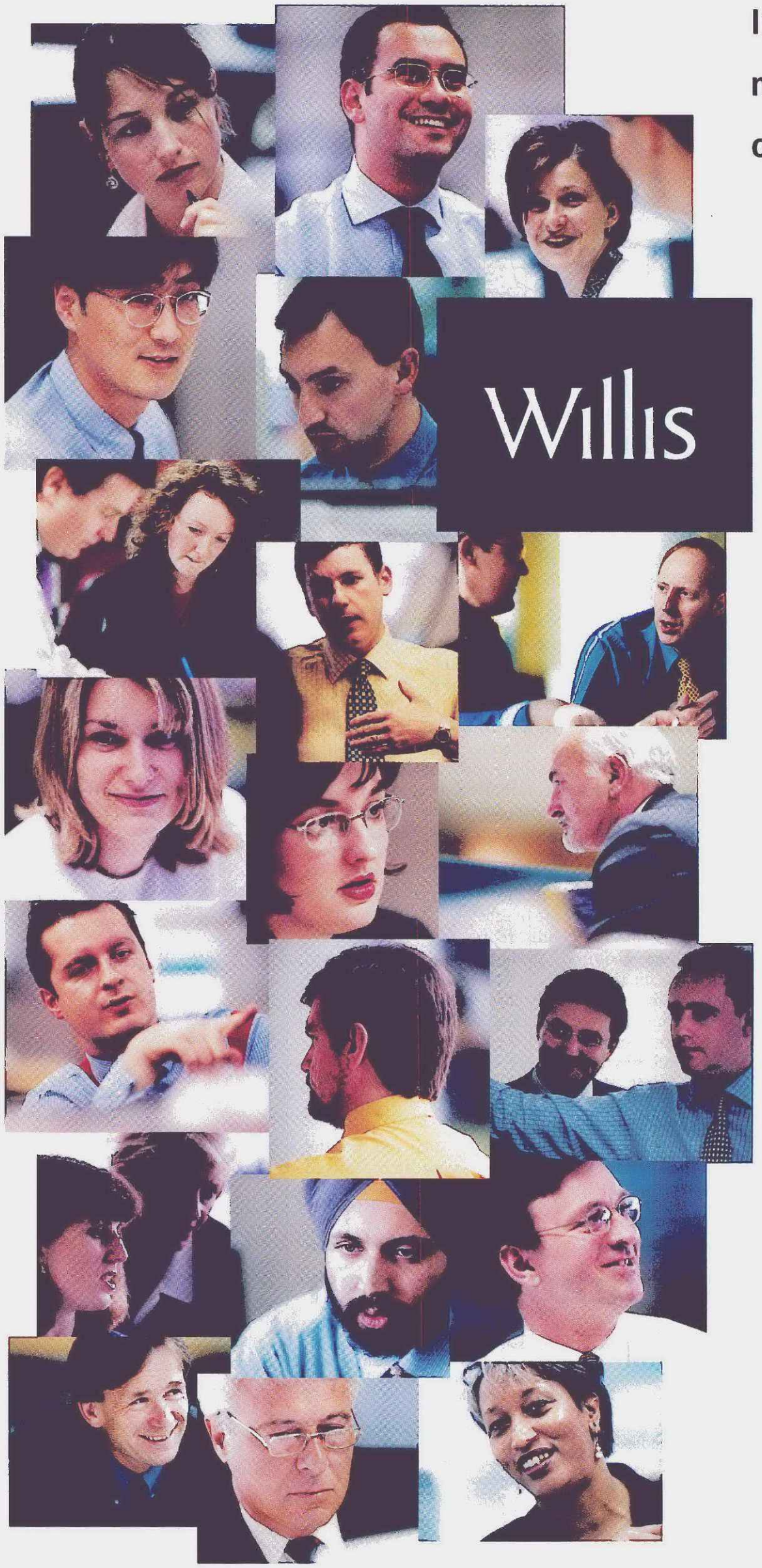
Cornell University's Mr. Hedge said concerns that something might be wrong with a building could lead to a psychological response from employees. "That very quickly can override the science of whether or not there is a problem in the building."

To overcome doubts about the ventilation system after complaints, Mr. Hedge said one company he consulted gave employees tours of the building's ventilation system and let concerned workers talk to a maintenance person.

"There's a huge psychological element," Mr. Frazer said.

Despite a desire to be forthcoming, though, employers walk a fine line in releasing information about office health, Mr. Fajen warns.

"If you start doing this without counsel, then you're cooking your goose," he said, noting that some air quality complaints will occur simply because people will "jump on the bandwagon." BI



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Genetic

Continued from page 3

The study indicates that screening for the genetic susceptibility to lung disease could lower the number of cases in a workforce of 1,000 individuals to 16 from 50. That sizable reduction would be "virtually guaranteed to yield a favorable cost outcome," the study states.

On the other hand, for cases of benzene-related cancer, which shows up infrequently, the savings from screening at workplaces where there is a benzene exposure would not be worthwhile, according to Mr. Nicas.

Among 1,000 workers where the exposure is present, screening would lower the number of cases to three from four, which is not enough to justify the expense of genetic testing, according to the study.

Apart from cost concerns, genetic testing would have to overcome legal hurdles if it were to be widely used to screen employees, the researchers say.

"There are profound ethical and legal concerns associated with genetic screening," the study states, "and it appears that denying or terminating employment based on results of a genetic test is unlawful at present."

No one is looking for genetic testing to replace tried-and-true loss prevention measures any time soon.

In fact, the study's authors wrote that "we are not advocating genetic screening in general, in part because we support exposure reduction efforts as the primary means of reducing disease incidence. Rather, our analysis is intended to inform future discussions concerning the potential benefits of genetic screening programs."

Instead of using genetic testing, employers probably are better served protecting the entire workforce from occupational injury and illness, says the Alliance's Keith Lessner.

Insurers aren't sold on the idea of screening, according to one trade group.

Instead of using genetic testing, employers probably are better served concentrating on protecting the entire workforce from occupational injury and illness, according to Keith Lessner, vp-safety and environment at the Alliance of American Insurers in Downers Grove, Ill.

The idea behind targeting the whole workforce is that you can protect the worker regardless of his or her genetic makeup, Mr. Lessner suggested.

And doing so means the employer avoids litigation that might otherwise be filed by a worker who thinks a workplace move based on genetics is discriminatory.

He pointed out that, under Occupational Safety and Health Administration regulations, employers must limit workers' exposure to most chemicals. They also are obligated to control chemical emissions, Mr. Lessner said.

"It is unlikely that they will replace these kinds of mitigation measures to control exposures," he said of employers and regulators.

"The concept of trying to identify people who have specific predispositions to become ill or injured due to certain genetic traits offers an opportunity but also poses some very difficult questions as to what is the goal of occupational safety and health," said Dr. Howard M. Sandler, president of Sandler Occupational Medicine Associates in Melville, N.Y.

"Should employers and the government become more concerned about making the workplace safe for everybody, or should we be looking to just place people appropriately?" Dr. Sandler asked rhetorically.

He echoed Mr. Lessner's point that regulations in many cases already exist to protect the entire workforce. For example, Dr. Sandler pointed out, in an effort to reduce the incidence of cancer in the workforce, "OSHA regulates exposure to carcinogens."

While the genetic screening concept appears "intriguing" and might have some benefit, there are a lot of "follow-on issues," said Richard M. Inserra, assistant treasurer at Union Carbide Corp. in Danbury, Conn.

"What if an employee doesn't want to move from a slightly higher-hazard area to one that is safer?" he asked. Such workplace moves could involve differences in pay or other changes that could become labor issues, Mr. Inserra noted.

If a worker is found to have a genetic condition that makes him or her susceptible to an occupational illness, the risk manager questioned if that will mean protections exist under the Americans With Disabilities Act.

"Is that a disability?" Mr. Inserra asked.

There are rights issues as well, he said. An employee forced to take a test and told he or she has a genetic condition that makes him or her unsuitable for certain work might have a case regarding a rights violation, he suggested.

"If it were on a voluntary basis, maybe it would make sense," he said of genetic screening.

Mr. Lessner of the AAI said: "My real skepticism comes from how broad a cut it would make in controlling occupational diseases. Occupational disease costs are a small part of workers comp costs. The largest are slips and falls."

Dr. Sandler suggested that screening might eventually have some usefulness in encouraging industries to more closely monitor and care for employees who are susceptible to occupational illnesses rather than a way for an employer to "nix an entire working population" or make drastic and unnecessary changes to the workplace.

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Copies of the study are available by contacting Debbi Caplick in the Public Relations Department of the American College of Occupational & Environmental Medicine, 1114 N. Arlington Heights Road, Arlington Heights, Ill. 60004; 847-818-1800, fax: 847-818-9266.

Reform

Continued from page 3

states currently without a statute.

The measure's chief sponsor, Rep. Steve Chabot, R-Ohio, pointed out that most major industrial nations have shorter statutes of repose than that which his bill proposes.

"It is important to note that our foreign competitors do not share" U.S. manufacturers' long-tail liabilities, he said.

Rep. Chabot added that his bill would leave no injured party uncompensated for injuries, as the statute would not apply to workers who are not covered by workers compensation.

In 1994, President Clinton signed into law the General Aviation Revitalization Act, which set an 18-year statute of repose for claims against small general aviation aircraft.

And only a day before last week's Judiciary Committee hearing, President Clinton signed the Y2K bill into law. That law provides that federal—rather than state—courts will hear certain class action suits stemming from the Y2K problem.

But U.S. Assistant Attorney General Eleanor Acheson made clear during her testimony last week that the administration's appetite for tort reforms is limited at best. The House proposal to steer class actions to federal courts, in particular, drew her fire, as she enumerated her agency's opposition.

'This newfound lack of confidence in state courts is unfounded,' says U.S. Assistant Attorney General Eleanor Acheson.

"This newfound lack of confidence in state courts is unfounded," she said.

Ms. Acheson said there was no evidence that state courts are any "less competent" to handle large interstate class actions than are their federal counterparts. If some state courts abuse class action rules, the abuses should be dealt with by state authorities, she said.

To enact the House proposal would be to strip some plaintiffs of their rights, while potentially overwhelming the federal courts with suits that should be heard by state courts, she said.

After Ms. Acheson finished her testimony, Rep. Gocdlatte noted that President Clinton had signed the Y2K bill only a day earlier and asked why the White House thought class action restrictions were justified in the Y2K context but not in others.

Ms. Acheson replied that Y2K is a unique situation that presents "a set of problems" that need to be addressed as quickly and completely as possible.

Rep. Goodlatte seemed unimpressed with that argument.

"What's good for Y2K class actions ought to be good for other class actions as well," he said. BI

Settlement

Continued from page 3

a good one, it is narrow in focus because the particular case revolved around a contract dispute, Mr. Sievers said. Attorney fee provisions are contained in most business contracts, though, he added.

The ruling will strengthen a defendant's hand in pretrial negotiations, particularly in complicated, technical cases involving expert witnesses, because experts' fees can be "astronomically high," Mr. Sievers said.

The Supreme Court decision stems from a dispute in which Blount Inc. was a general contractor and Scott Co. was a subcontractor. Their agreement called for Scott to perform mechanical work for a convention center construction project, court records show.

Scott sued Blount for breach of contract and negligence, claiming that Blount's poor management caused Scott to incur cost overruns. Scott sought $2 million in damages. Blount offered to settle for $900,000 prior to trial, and Scott suggested a counteroffer of $1.5 million.

A Santa Clara Superior Court awarded Scott $442,000 plus $226,000 in legal costs and found Blount negligent. Under the California civil code, Blount sought attorney fees incurred after the time of its offer to Scott because Scott's award was less than Blount's settlement offer.

The trial court awarded Blount its post-offer attorney fees and costs of $881,600.

But an appellate court ruled that Blount was not entitled to that money because, in part, it did not win the lawsuit.

The Supreme Court disagreed and upheld the lower court's decision. The high court found that the court of appeal's position "would be contrary to Section 998's language and purpose."

The high court said the defendant's entitlement to costs derives not from its status as a winning party but from the plaintiff's failure to accept a reasonable settlement offer.

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Scott Co. of California vs. Blount Inc., California Supreme Court, No. S057126.

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Prolonged standing invites problems

By Lisa O'Dell

INCREASED ATTENTION is being focused on the effects of long periods of standing the workplace. The number of people who must stand to perform their jobs continues to increase as today's fast-paced society demands more conveniences and services.

Standing often is overlooked as a physical stressor in the workplace because it is rarely linked to compensable injuries. But employers are beginning to realize that, by reducing the adverse effects of long-term standing, they can increase employee productivity and corporate profitability. To achieve this goal, employers need to understand the effects of having employees on their feet for long periods of time and how to minimize the possibility that problems may occur.

Standing on hard, flat surfaces often causes an employee discomfort and pain, because muscles are forced to be static to keep the body in place. When muscles are static, the body becomes less efficient at pumping blood and oxygen back to the heart. Blood begins to pool in the lower extremities, causing fatigue. This condition affects not only feet and legs but can also cause muscle fatigue in the neck, shoulders and back. Muscle tension, swelling, and medical conditions such as varicose veins and flat feet are a few of the consequences that may occur.

Employee fatigue and the resulting conditions often translate into reduced productivity and lower-quality products and services. Also, tired workers pose a greater risk for causing accidents or injuries, thereby driving up workers compensation costs. The risk of slip-and-fall accidents also increases among those employees who are required to be on their feet for a long time.

When looking for ways to improve the workplace, businesses should determine whether the standing workstations are necessary. For example, standing is required only when a large range of movement is necessary, when large forces are needed, when the work surface is too high for seated work, or when there is no clearance for legs if a chair is used.

Many ergonomists and safety professionals recommend the use of sit/stand devices: raised, tilted chair seats that allow a standing worker to reduce the amount of body weight supported by the legs. However, such devices are practical only if the work can be performed while either standing or sitting. Unfortunately, numerous jobs require standing and cannot be performed while sitting.

When standing is required, an employer can address its adverse effects in many ways. These include having the employee follow basic ergonomic guidelines and using industrial anti-fatigue and safety products.

There are some basic ergonomic guidelines regarding standing work. First, when a standing employee is performing a task by hand, the height of his or her work table should be 2 to 6 inches below elbow height. This helps alleviate shoulder and neck discomfort resulting from a workstation that is too high. Also, workstations should be designed to accommodate employees of varying heights.

Second, an employee's horizontal reaches to grasp tools, stock, and other materials should be prioritized by frequency of use. Items used frequently should be placed in a semi-circular area extending about 14 to 16 inches in front of the employee's body. Less frequently used materials can be located away from the body, but typically they should not be more than 24 to 26 inches away.

Third, an employee should elevate one foot while standing to help alleviate low-back stress. An employee can use a bar, rail or specially provided footrest on which to alternate placing the right and left foot.

Fourth, an employee should take regularly scheduled breaks.

In addition to having employees master these ergonomic guidelines, employers should consider the many products on the market aimed at minimizing the effects of long-term standing.

It is important to make informed purchasing decisions when selecting these products. Businesses first need to evaluate their workplace environments. Some of the key questions that must be addressed include: Do standing employees need to be elevated? Are the work areas dry, wet, greasy or covered in caustic chemicals? Are the workstations cleaned regularly? Do employees maintain correct body posture while performing job tasks? Do workers walk from station to station?

The conditions of the floor surfaces largely will dictate which products should be selected. Certain compounds are more effective for particular applications than are others. For example, for dry work areas, sponge and sponge-cote mats have proven to be very effective in reducing worker fatigue. For wet work areas, products that have gritty surfaces, textured design areas or drainage holes should be selected. Greasy and oily surfaces respond well to nitrile rubber products.

Many employers are achieving very positive results at alleviating problems for standing workers with anti-fatigue and safety mats.

Anti-fatigue mats provide a softer floor surface. These mats are designed to cause natural yet imperceptible muscle movement as the employee's body maintains a balanced position. This causes muscles to tense and relax, enabling blood and oxygen to flow more easily to the heart. As a result, fatigue and discomfort are reduced.

Safety mats are designed to prevent slip-and-fall injuries. The mat surfaces are made slip-resistant by applied grit or by raised patterns that provide greater traction. The Occupational Safety and Health Administration recommends a coefficient of friction of 0.6 in dry areas and a 0.8 in wet areas and on ramps. These are minimum standards. Safety can be improved by selecting mats that exceed these standards when possible.

Some floor surfaces are exposed to extremely caustic chemicals or excessive amounts of oil and grease. In those instances, workers should wear slip-resistant shoes, which help reduce the risk of slip-and-fall accidents. Some of these shoes offer specifically compounded slip-resistant rubber soles. Others are available with soles made of a hard grit/polymer combination. But while many of those shoes are designed to reduce the incidence of slip and fall accidents, they do not reduce worker fatigue from long hours of standing.

Slip-resistant shoes with supplemental insoles provide the additional support needed to reduce employee fatigue and discomfort. The most basic supplemental insoles are cut from flat sheets of rubber sponge. When evaluating insoles, look for strong arch support to help distribute weight more evenly across the center of the foot and to help absorb the shock of heel strike. For longer life, look for insoles featuring a resilient urethane compound. A contoured heel also is important to provide heel support and reduce the effect of heel strike.

The use of anti-fatigue and safety mats in combination with shoe insoles is ideal for those instances where employees must walk from workstation to workstation.

Long-term standing will continue to be required of employees. Fortunately, its adverse effects can be minimized, benefiting both employers and employees. Adhering to basic ergonomic guidelines and using proper anti-fatigue and safety products is an investment companies will want to make. BI

Lisa O'Dell is vp-marketing for the Tennessee Mat Co. in Nashville, Tenn.

Insurer must inform policyholder of changes on renewal

In a case of first impression in Montana, the Supreme Court of Montana ruled that a commercial general liability insurer had a legal duty to notify an policyholder of policy changes on renewal.

Peter J. Thomas and Leonard L. Thomas did business as Stan & Sons Plumbing & Heating. In 1989, they purchased a CGL insurance policy from Northwestern National Insurance Co. The policy was renewed through an agency on an annual basis for subsequent years through 1993. In 1992, Stan & Sons damaged a customer's property because of a fuel leak while installing or servicing a furnace. The customer sued them. Stan & Sons requested Northwestern to defend and indemnify them. The insurer refused based on a pollution exclusion. The original CGL policy had a partial pollution exclusion. In 1990, the policy was renewed, and an endorsement expanded the pollution exclusion. Stan & Sons hired counsel and defended the customer's suit. A judgment of $48,000 was entered against them. Stan & Sons then filed this suit against Northwestern seeking indemnification for the judgment and related damages. The trial court determined that the insurer had no duty to inform Stan & Sons of the policy changes when the policy was renewed.

The state high court noted that it had never directly addressed this issue of notice but now held that when an insurer renews a previously issued policy, it has an affirmative duty to provide adequate notice to the policyholder of changes in coverage. The court emphasized that, when other courts have addressed this issue, they have held that when an insurer renews a policy, the burden is on the insurer to notify the policyholder if the renewed policy differs from the original. According to the court, because an insurance policy is a contract, the parties must agree on the terms of the renewal coverage. The trial court decision was reversed and the case sent back to the trial court.

Thomas vs. Northwestern Nat. Ins. Co., Supreme Court of Montana, Dec. 31, 1998 (*BI*/01/Au.-$10).

Legal Briefs

Unrelated injury not compensable

At issue in this case before the Supreme Court of Virginia was the application of the doctrine of compensable consequences in workers compensation cases. The court ruled that a claimant must establish a causal connection between the original injury and the later injury to receive compensation for the later injury.

In July 1992, Essie L. Johnson sustained a compensable left ankle injury that arose out of and in the course of her employment with Amoco Foam Products Co. Following lengthy treatment and June 1994 surgery on the ankle, Ms. Johnson fell at home in August 1994 while recovering from the surgery when the ankle gave way; the fall caused injury to her right knee. Johnson filed for workers compensation for the knee injury. The Workers' Compensation Commission awarded her benefits. The Court of Appeals affirmed the award. The employer appealed.

The state Supreme Court concluded that the record failed to establish a causal connection between the original injury and the later knee injury. In other words, the court said, the later injury did not arise out of the employment because there was absence of a causal connection between the incidents of Johnson's employment and the later injury. "The link of causation," the court observed, "must directly connect the original accidental injury with the additional injury for which compensation is sought." The court reversed the decision to award Johnson benefits.

Amoco Foam Products Co. vs. Johnson, Supreme Court of Virginia, Jan. 8, 1999 (*BI*/04/Au.-$10). BI

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

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IIS

Continued from page 3

Amid such changes and the consolidation of key players, it is important for insurers to stay close to their customers, Mr. Bebear warned. He cited an Andersen Consulting survey that found banks are in contact with major clients every few weeks, while insurers meet their clients, on average, once every eight years.

This is a serious mistake, given insurance buyers' increasing willingness to deal with all sorts of insurance providers, from telephone-based services to supermarkets, he said.

Staying close to clients also is essential if insurers are to capitalize on clients' new risks and provide innovative solutions, he said. One way AXA manages this involves a decentralized structure that keeps key people close to the customers they serve.

In addition, Mr. Bebear stressed the importance of building a strong brand image across all markets if customers are to be won and retained. He pointed out that AXA derives no more than 25% of its profits from any one country, and said achieving such a broad geographic spread can be possible only when a brand is well known.

Rolf Hueppi, chairman and chief executive officer of Zurich Financial Services Group, also advised maintaining close contacts with clients. Particularly because of the increased use of high technology, clients have come to expect more-individualized treatment, he said.

Mr. Hueppi said his Switzerland-based company has a policy of "catering for a mass market of one," which involves open and "totally interactive" communication with customers.

He said the challenge is to maintain a long-term relationship with customers, and this can be done only in a "multidimensional" way. Such an approach involves insurers mixing their products either with those of other insurers or with other types of companies. As an example, Mr. Hueppi cited an arrangement Zurich is launching this month with DaimlerChrysler. Under the arrangement, purchasers of DaimlerChrysler's "Smart Car," a two-seat passenger vehicle intended for city driving, can buy their car in any of nine countries and arrange insurance through ZFS.

But Mr. Hueppi warned that at a time when customers want greater convenience, the majority of insurers "are distinctly underserving." He maintained, for example, that 90% of the industry does not satisfy clients when it comes to claims handling. If insurers don't improve and provide much more value, they will lose out to competition from the big insurers and from new players, he said.

Hans-Jurgen Schinzler, chairman of Munich Reinsurance Co., expressed similar views.

He said that meeting growing client demands for professional, comprehensive service—one-stop shopping—is one of the many factors driving mergers. The creation of bigger companies should lead to lower prices and more-efficient services, he said.

Mr. Schinzler said, however, that the key to a big company meeting customer expectations is to "act, where necessary, like a small and eager" company.

He predicted that smaller companies will fail if they attempt to be "all-rounders." Those small companies that survive will operate either in a regional environment or as specialized niche players, he said.

Takashi Onoda, chairman of The Sumitomo Marine & Fire Insurance Co. of Tokyo, said that "current reform of the Japanese insurance system is taking place at such a high speed, and over such a wide range of issues, that it is challenging us all."

Japan's 1998 Financial System Reform Bill is leading to reforms in all financial fields, but for insurers the key changes so far have been for life and non-life insurers, and insurers, banks and securities companies to share business with each other.

Also, an insurance business law passed in 1996 enabled a new insurance brokerage system to be introduced alongside the existing agent-based sales system. Now, more than 50 brokers have completed the registration formalities under the law.

Insurance sales in Japan via phone and the Internet are increasing, alliances and cooperation among insurers are becoming more frequent, and newcomers are expected in the sector, Mr. Onoda said. For example, Sony Corp. is preparing to create a non-life insurance company. BI

Distribution changes foreseen

By EDWIN UNSWORTH

BERLIN—Rapid changes in distribution channels spell a changing—though not necessarily diminished—role for brokers, according to several speakers at the International Insurance Society Inc. annual seminar.

IIS Chairman Kees Storm, who also is chairman of Dutch insurer AEGON N.V., kicked off a debate by saying that "intermediaries will remain important, but they'll have to change."

One key issue in distribution is the increasing interest in e-commerce.

Claude Bebear, chairman of Paris-based AXA Group, said: "We'll still need intermediaries, but more sophisticated intermediaries. . . .It's impossible to define everything with e-commerce."

Use of the Internet and e-commerce for conducting insurance business will increase but primarily will be for "easy, routine things," he said. There still will be a role for intermediaries because "customers will still need advisers," he added. Even the traditional agency network will become a sort of financial adviser, he predicted.

Rolf Hueppi, chairman and chief executive officer of Zurich Financial Services Group, said, "Of course we need brokers," but he suggested their role is changing. "Intermediaries are necessary when they create value—but they have to create value," he said.

Acknowledging that insurers still are generally underserving customers, He said this creates "tremendous opportunity" for winning business both for insurers that can offer a better service, and for brokers that can meet customer demands for prompt, apt information and risk solutions.

In Japan, some agents are not "professional" enough, said Takashi Onoda, chairman of The Sumitomo Marine & Fire Insurance Co. of Tokyo.

He asserted that, given the moves already afoot to liberalize the Japanese insurance market, which will inevitably increase competition and customer expectations, Japanese insurers will be compelled to employ agents who perform best.

As a result, he said, "I'd expect the number of agents to reduce, and only those who are professional and perform well will survive."

He added that intermediaries will be further affected by the competition resulting from deregulation, as non-life insurers are attempting to minimize expense ratios by reducing agent commissions and business expenses.

Ewald Kist, vice chairman of ING Group of the Netherlands, a company formed by a large-scale bank/insurer merger, addressed the issue of operating as a successful integrated financial services group. Such an organization, he said, can succeed only if it has access to the full range of financial products via multiple distribution channels such as banks, independent intermediaries, tied agents—those working directly for insurers—and direct distribution.

Mr. Kist said distribution is rapidly changing—particularly the direct distribution channel—due to the Internet. "The Web will be a dominant distribution channel for financial services in the near future. Employers are becoming an important distribution channel with the employee benefits programs becoming more comprehensive. . . .Distribution will be the key success factor," he said.

For Boston-based Liberty Mutual Insurance Co., distribution to its largest commercial customers will continue to be done through its direct national accounts sales force, which works alongside—but not through—brokers if the client desires broker involvement.

Edmund Kelly, Liberty's chief executive officer and president, said he sees signs of "an emerging backlash to the consolidation (of brokers). As with individual customers, commercial customers want options and choice."

Liberty believes that a direct, close relationship between insurer and customer is best for both parties, and Liberty is unwilling to cede that relationship to brokers, he said.

Brian O'Hara, president and CEO of XL Capital Ltd. of Bermuda, said that, in the current soft market, companies need to have a range of distribution systems and access to technology and resources.

It is companies with strong distribution networks, as well as clearly focused strategies and healthy balance sheets that will fare best, he said.

Companies "that have a high percentage of fixed assets and/or large human resources committed to pursuing a firmly established mode of business" will be the most challenged, said Mr. O'Hara.

Companies with the best chance of succeeding are those with a flexible corporate culture and strong distribution networks, he concluded. BI

IIS seminar attracts a global audience

BERLIN—About 490 insurance industry executives from 55 countries attended the 35th annual International Insurance Society Inc. seminar July 11-14 in Berlin.

This year's meeting, held in cooperation with the German Insurance Assn., explored the integration of world markets and its impact on the competitiveness and growth of the financial services sector.

The seminar also examined the effects of insurance industry consolidation, electronic commerce and competition from non-traditional sources.

The IIS provides a forum for insurance executives, academicians and others interested in insurance to share interests and ideas.

Next year's event will be held July 9-12 in Vancouver, British Columbia. For information, contact Linda C. Bock, executive director, International Insurance Society, 101 Murray St., New York, N.Y. 10007-2165; 212-815-9261; fax: 212-815-9297.

E-commerce a top concern: Study

BERLIN, Germany—The biggest concern the global insurance industry faces today is how electronic commerce will affect business, according to a survey conducted at this year's annual gathering of the International Insurance Society Inc.

Of the 490 conference attendees, 155 answered a survey that asked which three issues—out of 10 choices—they consider the most pressing concerns for the insurance industry.

The issue selected most was the impact of e-commerce, chosen by 17.2% of respondents overall. Among the respondents, 19.2% of those from Europe-based companies, 18.6% of those based in North America, 21.4% of those in Asia and 15.9% of those from Australia, Africa, Latin America or the Middle East selected this issue as the top concern.

The voting took place after some speakers mentioned the advantages and disadvantages of the increasing use of e-commerce and the Internet. Those speakers included Claude Bebear, chairman of AXA Group; Rolf Hueppi, chairman and chief executive officer of Zurich Financial Services Group; and Takashi Onoda, chairman of The Sumitomo Marine & Fire Insurance Co. in Japan.

The second major concern, earning 16.6% of the vote overall, was competing domestically amid global growth, takeovers and consolidations. Gaining and competing for human resources was the third major concern, at 12.1%, followed by non-traditional entrants to the insurance market (11.2%) and attempting to keep expenses down (9.3%). Other concerns, for which results were not given, were: entry of foreign companies into local markets; complexities of managing across borders; attracting capital for growth; demographic changes; and regulatory, supervisory and governmental interference.

Among North American attendees, concerns about e-commerce tied with their worries about competing domestically amid global growth, takeovers and consolidations; each issue was chosen as a main concern by 18.6% of the North American respondents.

For respondents from the combined area of Australia, Africa, Latin America and the Middle East, where use of technology and the Internet is less prevalent, the main concern was competing domestically amid global growth, takeovers and consolidations, cited as the top issue by 20.5% of respondents from those areas.

IIS Chairman Kees Storm, who is also CEO of AEGON N.V. of The Hague, Netherlands, said such concerns are driven by shareholders and customers. Shareholders want the best return on capital, while customers want the best price—both of which can be better achieved with technology, he said.

Human resources also has recently grown in importance for insurers, he said.

"With globalization, insurers need additional talent to address the issues," Mr. Storm said.

—By Edwin Unsworth

INTERNATIONAL

Global Briefs

German mutual insurers **Haftpflichtverband der Deutschen Industrie V.a.G.** of Hannover and **HUK-Coburg-Rechtsschutzversicherung A.G.** of Coburg have called off a planned merger after HUK's policyholders vetoed the plan. The merger would have created Germany's third-largest insurer, with gross premiums of more than 3 billion deutsche marks ($1.62 billion). . . .Malaysian insurers are being encouraged via measures introduced by the country's central bank to prepare for **insurance market globalization** by merging and making acquisitions. Bank Negara Malaysia Governor Tan Sri Dato Seri Ali Abul Hassan bin Sulaiman said the bank would not hesitate to take action against insurers unable to meet by the end of 1999 higher capital and solvency margin requirements that were deferred due to the 1997 economic crisis. The central bank also plans to ease the country's strict rules on insurance mergers; exempt merging insurers from cost control limits in respect of certain merger expenses; and allow healthier insurers to expand their branch networks. . . .Russian President Boris Yeltsin has vetoed a bill that would have effectively prevented foreign insurers from entering the **Russian market.** The bill would have limited investment by foreign insurers to 15% of the overall capital of insurance companies and required them to have a 25-year record in their home country and at least two years of work in Russia. However, the legislation will now revert to Russia's lower house of parliament, the Duma, which had originally drafted it and which could overturn the president's veto if it musters sufficient support. . . . LOT, the national airline of Poland, has become the first major European **airline to cancel flights on Jan. 1** due to concern over potential Year 2000 computer problems. A spokeswoman for the Warsaw-based airline said LOT decided to cancel flights for one day and resume them Jan. 2 because of the possibility of complications or problems with the airline's infrastructure. . . .Paris-based Assurances Generales de France, which is 51% owned by Germany's Allianz Holding A.G., has formed a **partnership in Saudi Arabia** with AlBank AlSaudi AlFransi to sell employee benefit and retirement products to BSF's personal and commercial banking network customers. The agreement still requires approval from SAMA, the Saudi central bank, but AGF said the partnership will enable it to play a major role in the Saudi insurance market. . . .Benfield Greig Interactive Ltd., a new media company in Benfield Greig Group P.L.C. specializing in Internet products, has launched **a new Web site** in conjunction with the Wellington, Venton and Atrium syndicates at Lloyd's of London. The site, www.freightinsure.com, is intended to meet the cargo insurance needs of freight companies and household goods movers. Accessible by both brokers and clients, the site can be used to obtain online quotations and bind risks. . . . Dutch insurer **AEGON N.V.** has completed its acquisition of U.S. financial services company Transamerica Corp. Kees Storm, AEGON's chairman, said in a statement that the transaction strengthens AEGON's position among leading providers of life insurance, investment and retirement products in the United States. Donald J. Shepard, chairman, president and chief executive of AEGON USA, was named president and chief executive officer of the combined AEGON USA/Transamerica operation. Frank C. Herringer, Transamerica's president and chief executive, was named chairman of the combined group. . . .A.M. Best Co. has assigned an A, or excellent, rating to **ARIG Reinsurance Co.** and its wholly owned London subsidiary, Arig Insurance Co. Ltd. The rating reflects the Manama, Bahrain-based reinsurer's "strong capitalization, leading position in the Arab world and conservative investment strategy," as well as its diversified book of short-tail business and strong underwriting controls, according to Best. These are somewhat offset, Best said, by Arig's "disappointing underwriting performance in 1998 and competitive trading conditions in most of the lines of businesses in which the group participates."

U.K. government to toughen employee data privacy rules

By CAROLYN ALDRED

LONDON—U.K employers will face increased liability for privacy issues under a code of practice set to begin next year, according to Elizabeth France, the government-appointed Data Protection Registrar.

The code of practice will be introduced in draft form when the Data Protection Act, passed by the U.K. government last year, comes into effect in March. The code will cover several employment practices, including record keeping; employment references; employee aptitude testing; employee health data; interception of e-mail; the use of closed-circuit television; alcohol and drug testing; and HIV/AIDS and genetic testing.

The Data Protection Act implements in the United Kingdom the European Union Data Protection Directive. The Act imposes additional employer requirements for personal data protection and provides more employee rights than does existing U.K. legislation, according to the Office of the Data Protection Registrar.

It also broadens the circumstances under which employees can seek compensation.

"Under the 1984 Act, data subjects were only allowed to claim compensation through the courts where they had suffered damage as a result of inaccuracy or unauthorized disclosure. This right has been considerably extended to allow the data subject the right to claim compensation for damage caused by any breach of the Act and also for distress in certain circumstances," according to a statement published by the DPR Office last month.

Under the new Act, employees must be informed of any personal data being processed by their employer. Data processing may be conducted only if the individual has given consent or the processing is: necessary for the performance of a contract with the individual, required under a legal obligation; or necessary to protect the vital interests of the individual, to carry out public functions or to pursue the legitimate interests of the data controller.

The new codes will make it more important for risk managers to oversee certain employment practices, says Mark Butterworth of AIRMIC.

Measures to safeguard personal data are set forth in the new Act. New rights granted under the Act include: entitlement to a description of the data and the purposes for which it is being processed; a description of any potential recipients of the data and information on the source of the data. The individual also has the right to prevent processing likely to cause "damage and distress" and the right not to have significant decisions based solely on the results of automatic processing, such as aptitude testing for employment purposes.

Under the Act, the data protection registrar, who will be renamed the data protection commissioner, will have the power to develop and enforce codes of practice; a draft of the code for employers in set to be released in March. Employers found in violation of the code could face fines from the office of the commissioner.

Employers will be taking a close interest in the new code.

The new codes will make it more important for risk managers to oversee certain employment practices, said Mark Butterworth, chairman of the Assn. of Insurance & Risk Managers.

The Confederation of British Industry has broadly welcomed the government's stance.

"We support appropriate protection for individuals where third parties process their personal information. We particularly support the government's attempts to balance the individual's right to privacy with the practical needs of business," the organization said during the legislation's passage through Parliament. BI

Last state-owned general insurer set for sale

Open market closer in Spain

By MARIA KIELMAS

MADRID, Spain—The Spanish government is preparing to privatize Musini Cia. de Seguros y Reaseguros S.A., the only remaining state-owned general insurer in Spain.

The government has appointed the Paris-based bank Credit Agricole-Indosuez as its adviser in the sale, said Raul Estravera, the official managing the Musini privatization at the government agency Sociedad Estatal de Participaciones Industriales in Madrid. SEPI is the government agency that formally owns the state's remaining shares in various financial and industrial companies and manages their privatization.

Mr. Estravera said the government wants to dispose of its entire holding in Musini—71.65% of the company—in one transaction. The remainder is held by a small number of formerly state-owned companies, with the largest of those stakes owned by the Madrid-based oil company Repsol S.A.

Mr. Estravera explained that Musini was founded as a mutual insurer in 1966 for state-owned industries in such sectors as energy, chemicals and aluminum. The state industries jointly owned Musini, and they insured all of their risks with it. Musini, in turn, reinsured the greater part of these risks on the world market.

Since the early 1980s, successive Spanish governments have been gradually privatizing the state's holdings in industry. As companies were sold off, SEPI bought these companies' interests in Musini. It made sense to accumulate a large shareholding in Musini, which could then be sold off at a later date, Mr. Estravera said. "It can't be ruled out that SEPI's stake in Musini could increase before it is finally sold," he said.

After previously state-owned companies were privatized, they gradually withdrew their risks from Musini. Seeking better rates and service, they bought direct and reinsurance coverage on the world market through international brokers. Insurance industry sources in Spain say the main uncertainty is how many of Musini's former and current shareholders are still insuring their commercial industrial risks with the insurer, and how many of those companies will be taking their business elsewhere.

Musini wrote 52.31 billion pesetas ($368 million) in gross premiums in 1998, of which 35.09 billion pesetas ($247 million) was in the life sector and 17.22 billion pesetas ($121 million) was in industrial risks. Gross premiums in 1998 were down 15.8% compared with 1997 premiums. Musini holds about 1.5% of the total Spanish insurance market in terms of premium volume.

Mr. Estravera said no base price for Musini has been set, but that discussions are under way with insurance companies operating in the Spanish market. Insurance sources in Spain have quoted a value of about 50 billion pesetas ($306 million) for the company, but Mr. Estravera declined to specify a value.

More details regarding a minimum price and bidding conditions of the sale will be released in September, he said. BI

Brazil to privatize state reinsurer

RIO DE JANEIRO, Brazil—The Brazilian government plans to auction off in October its controlling stake in the country's monopoly reinsurer, IRB-Brasil Resseguros S.A.

The sale involves 100% of IRB's voting shares and 50% of its capital stock, said Pablo Libergott, the head of the program to privatize IRB at the national development bank, Rio de Janeiro-based Banco Nacional de Desenvolimento e Social, whose roles include day-to-day management of the state's program to privatize industry. The remaining 50% of IRB capital is held jointly by Brazilian direct insurers in proportion to their share of the domestic insurance market.

The government has stipulated a minimum asking price of 437 million reais ($243.2 million).

"We are looking for one buyer," said Mr. Libergott.

The auction will be conducted as a closed-envelope bid; the bids will be opened Oct. 14. If any offers differ by less than 10% from the highest offer, then the tender will proceed to a vocal-bidding auction among these potential buyers, he said.

Mr. Libergott said that after the privatization, IRB will lose its reinsurance monopoly, but local reinsurance companies will hold a 60% reserved share of the reinsurance market for a transition period of two years. After that, the market will be totally open.

"Any company will be able to arrange reinsurance with whomever they want in the world," but those companies must offer 60% of that reinsurance to the Brazilian market at the same terms the international market offers, Mr. Libergott said.

If a reinsurance risk is turned down by the local market, then the direct insurer or broker may reinsure the risk internationally in its entirety. IRB wrote 1.03 billion reais in reinsurance premiums in 1998, equivalent to $860 million at the exchange rate in force before the January devaluation of the real.

—By Maria Kielmas

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Clause

Continued from page 1

the same way that insurance companies are with their exclusions," according to Lance Ewing, director of loss prevention at GES Exposition Services & Exhibit Group Giltspur of Las Vegas.

The Xerox and GTE lawsuits may lead to a flurry of similar suits from other large corporations, said Christopher E. Mandel, senior director-risk management at Tricon Global Restaurants Inc. in Louisville, Ky. Mr. Mandel is also a member of the Risk & Insurance Management Society Inc. Executive Council.

Senior executives at other corporations may wish to seek similar coverage to reduce their remediation expenses and also to protect themselves from accusations that they breached their own fiduciary duties should the suits prove successful and the corporations have not made claims, he said.

Several commercial insurers last year notified policyholders that most property insurance policies will not cover losses related to the Year 2000 problem, though they might cover consequential damage to property. Under that approach, for example, an automated fire suppression system that fails because of the computer problem would not be covered, but property damage that results because a sprinkler didn't work might be covered.

The Insurance Services Offices Inc. also issued wordings for Year 2000 exclusions to eliminate coverage under various insurance policies (*BI*, Dec. 15, 1997).

Despite these efforts, many property insurance policies still contain coverage definitions sufficiently broad to cover Year 2000 remediation costs, according to Laurence J. Eisenstein, a policyholder attorney at Swidler Berlin Shereff Friedman L.L.P. in Washington.

"Not all policies contain the language, but a significant number of large companies have the language," he said.

A typical sue and labor clause in a property policy provides that a policyholder should act to "sue, labor or travel" to minimize an actual or imminent covered loss, Mr. Eisenstein said.

Policies that contain a sue and labor clause and an electronic data processing endorsement will have the strongest claims, as the EDP endorsement specifically states that data corruption is deemed to be property damage and is a covered loss, he said.

The majority of commercial property policies contain either a sue and labor clause or some other "preservation of property" clause, said Suzanne Douglass, a managing director at Willis Corroon in New York.

The Xerox policy contains both a sue and labor clause and an EDP endorsement, according to court papers.

According to the court papers, the Xerox policy's clause states: "In the case of actual or imminent loss or damage by a peril insured against, it shall, without prejudice to this insurance, be lawful and necessary for the insured. . .to sue, labor, or travel for, in, and about the defense, the safeguard and the recovery of the property or any part of the property insured," and that the insurer "shall contribute to the expenses so incurred according to the rate and quantity of the sum herein insured."

Seeking coverage for remediation costs 'is like saying, "I know my brakes don't work on my car, so the insurance company should replace them," ' says Walter Andrews.

The American Guarantee & Liability policy provides at least $1 billion per occurrence, subject to some sublimits, court papers say.

Xerox first notified the insurer in March that it planned to file a claim. Last month, the insurer filed suit seeking a declaratory judgment that its coverage did not apply.

In its suit, filed in New York Supreme Court in Manhattan, American Guarantee & Liability says Xerox started to remediate its systems several years ago, making the company's claim not timely and, therefore, invalid.

The insurer's suit also argues that "the Y2K-related costs for which Xerox seeks coverage constitute ordinary business expenses, and are not within the scope of coverage under the policy."

The claim is excluded by the policy under several exclusions, including one for "defective design or specifications," the insurer's suit contends.

Other policyholders that believe they have valid claims for Y2K costs under the sue and labor clause should notify their insurers, advises Joshua Gold, an attorney at Anderson, Kill & Olick P.C., a policyholder law firm in New York.

The sue and labor clause compels policyholders to mitigate imminent losses; insurers and federal, state and local regulators have issued numerous warnings to businesses regarding the potential calamity that could follow the Year 2000 if computers are not upgraded, Mr. Gold said.

"But you will then get into the issue of whether you are protecting against an insured loss, and that will have to be resolved by litigation," he said.

The cost of litigation may deter some policyholders from filing claims, and many policyholders may find that their Year 2000 remediation costs would not exceed their self-insured retentions, said Mr. Eisenstein of Swidler Berlin.

Policyholders that do file claims should expect to face stiff opposition from insurers, as they will not willingly set a precedent that might open them up to a flood of claims, said Ms. Douglass of Willis.

Policyholders also will likely face numerous hurdles in proving that the sue and labor clause is applicable and that Year 2000 losses are insurable, she said.

Among other things, she said, policyholders will likely have to prove that the loss was imminent, that it was reasonable to believe they would suffer insured damage, and that their existing insurer should pay claims for remediation costs that may have been incurred while the policyholder was covered by another insurer.

Underlying the whole issue is whether Year 2000 losses will be deemed fortuitous and, therefore, be insured, Ms. Douglass said.

The sue and labor clause is not applicable to Year 2000 remediation costs, contends Walter Andrews, an attorney at Wiley, Rein & Fielding in Washington who represents the Insurers' Year 2000 Roundtable, an organization of 33 insurers.

"It's not something that would be covered by insurance, because it is not fortuitous," he said.

Year 2000 remediation costs are an ordinary cost of business, he asserted.

"It is like saying, 'I know my brakes don't work on my car, so the insurance company should replace them so that I don't have an accident,' " Mr. Andrews said.

The sue and labor clause was introduced in the 17th century, intended to ensure that a shipowner took whatever actions necessary, such as jettisoning cargo in an emergency, to prevent a ship from sinking, he said.

It is not applicable to corporations that started working in the mid-1990s to fix a problem that might result in a loss in the year 2000, because that is not an "imminent" loss, Mr. Andrews said.

While corporations may be able to make convincing arguments that the sue and labor clause could apply to fixing computer systems, the long period that has elapsed between them first knowing about the problem and the problem arising may make it difficult to apply it to Year 2000 remediation costs, agreed Thomas R. Manisero, an insurer attorney at Wilson, Elser, Moskowitz, Edelman & Dicker L.L.P., in New York.

"How long have they known about this?" Mr. Manisero asked. While a "mom and pop" business may be able to argue that the business had only recently heard of the Year 2000 problem, large organizations clearly have known about the problem for years, he said. BI

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FTR FOR THE RECORD

No LTD benefits parity under ADA: Court

RICHMOND, Va.—The Americans with Disabilities Act does not require employer-sponsored long-term disability plans to provide the same level of benefits for physical and mental disabilities, according to the 4th U.S. Circuit Court of Appeals.

Harold Lewis, the plaintiff in *Harold Lewis vs. Kmart Corp., Aetna Insurance Co. and Aetna Life Insurance Co.*, had been a manager for Kmart for several years. Mr. Lewis suffered from severe depression, and in 1995, he took a leave of absence from work. He was covered by a long-term disability plan that capped mental disability benefits at two years but provided benefits for physical disabilities until an employee reached 65.

In 1996, more than a year before his mental disability benefits would end, Mr. Lewis sued Kmart and its insurers, claiming that the two-year cap violated the ADA. In 1998, the U.S. District Court for the Eastern District of Virginia in Alexandria, Va., ordered Kmart to pay him benefits that would total more than $650,000 by the time he reached age 65 in 2019.

The 4th Circuit reversed that decision last month. Citing its recent ruling that a public entity employer is not required to provide the same level of long-term benefits for mental and physical disabilities, the appellate court held that "the ADA does not require a long-term disability plan that is sponsored by a private employer to provide the same level of benefits for mental and physical disabilities" and remanded the case back to the district court "with instructions to enter judgment in favor of Kmart."

Oregon court rejects damage cap

PORTLAND, Ore.—Oregon's cap on non-economic damages is unconstitutional, according to a state Supreme Court ruling that restored $1.9 million awarded to a man injured by a nail gun.

In a unanimous opinion July 15, the judges ruled that the $500,000 cap passed by Oregon lawmakers in 1987 violates the state's constitutional right to trial by jury.

The court made that ruling in the case of *John Lakin and Ann Marie Lakin vs. Senco Products Inc.*, the Ohio-based manufacturer of the nail gun that injured Mr. Lakin. The injury occurred when the nail gun he was using double-fired, which caused it to recoil, hit him in the face and fire a third nail that passed through his cheek and into his brain.

Mr. Lakin, who is partially paralyzed from the accident and suffered brain damage, sued in 1992. In 1994, a jury awarded a total of $10.2 million to Mr. Lakin and his wife. The jury awarded him $3.3 million in economic damages and $2 million in non-economic damages for pain and suffering. His wife was awarded $876,000 in non-economic damages, and a $4 million punitive award was assessed against Senco.

The trial judge, applying state law capping damages, later reduced the non-economic portion to $500,000 for each plaintiff, stripping $1.9 million of the damages.

Senco appealed the decision, and, in a cross appeal, Mr. Lakin's attorneys argued the cap was unconstitutional. In 1996, the Oregon Court of Appeals agreed, and in its review, the Supreme Court also ruled the cap unconstitutional.

The judges concluded that "to permit the Legislature to override the effect of the jury's determination of non-economic damages would 'violate' plaintiffs' rights to trial by jury" as guaranteed in the state constitution.

FHS selling two hospitals in California

LOS ANGELES—Foundation Health Systems Inc. is selling two of its Southern California hospitals to HealthPlus+ Corp. of Houston. Terms of the deal were not disclosed.

The two hospitals are the 180-bed Memorial Hospital of Gardena in Gardena, Calif., and East Los Angeles Doctors Hospital, a 127-bed facility in the city of Los Angeles.

The move is part of the Los Angeles-based FHS' current strategy to focus on its core health plan operations, Jay M. Gellert, president and chief executive officer, said in a statement.

FHS

The hospitals were acquired by an FHS predecessor, Foundation Health Corp., in October 1992 as part of its acquisition of Century MediCorp Inc., a Los Angeles-based health plan.

FHS is the nation's fourth-largest publicly traded managed care company, with more than 6 million individuals in 21 states enrolled in its HMO and PPO products.

HealthPlus+ is a privately held company that owns hospitals in Missouri and Texas.

$2 million awarded in asbestos suit

SAN FRANCISCO—John Crane Co., which manufactures gaskets and valve seals, is liable to pay about $2 million following a San Francisco jury verdict this month in an asbestos case.

The case was brought by Charles Hicks and his wife, Shirlene. Mr. Hicks, who was exposed to asbestos while serving for 20 years on Navy nuclear submarines, is dying from mesothelioma, a cancer of the lung lining caused by asbestos, said attorney Stephen Tigerman of Wartnick, Chaber, Harowitz, Smith & Tigerman. He represents Mr. Hicks.

The jury awarded Mr. Hicks and his wife $5.1 million in non-economic damages, while finding Morton Grove, Ill.-based John Crane 20% liable. Economic damages, less setoffs from previous settlements, will bring the total award from Crane to about $2 million, with the final amount to be determined by the court, said Mr. Tigerman. He said Mr. Hicks also has received about $1.9 million in settlements from other defendants.

Crane's attorney, Margaret Byrne of Daniel J. O'Connell & Associates in Elgin, Ill., said, "We intend to pursue every post-trial avenue of relief available, including a motion for a new trial as well as filing an appeal."

Comings & Goings: Industry

Long Grove, Ill.-based Kemper Insurance Cos. has named **Dennis P. Kane** president and chief executive officer of the new Kemper Casualty Co. in New York. Mr. Kane comes to Kemper from CIGNA Corp., where he was president of its special risk division. In addition, **Douglas A. Batting** has been named president of Kemper's newly created business customer group. He previously was with Chubb & Son Inc.

Information in brief

Garno & Addis has merged with the former employee benefits divisions of The Summit Group. The new company is called **Trion**. . . .Colorado Compensation Insurance's managed care network **SelectNet** was recently awarded Workers Compensation Network Accreditation by The American Accreditation HealthCare Commission. BI

ERRORS & OMISSIONS

• This is a corrected version of a chart that appeared on page 3 of the the July 19, 1999 issue; that chart contained several errors.

100 largest brokers of U.S. business

U.S. brokerage revenues are estimated based on reported percentage of brokerage revenue generated by U.S.-based clients

Rank	Company	1998 U.S. brokerage rev
1	Marsh & McLennan Cos. Inc.	$3,350,460,000 [1]
2	Aon Corp.	$2,286,440,000
3	Willis Corroon Group Ltd.	$630,554,780 [2]
4	Arthur J. Gallagher & Co.	$471,991,815
5	USI Insurance Services Corp.	$327,000,000
6	Acordia Inc.	$306,869,225
7	Hilb, Rogal & Hamilton Co.	$172,163,360
8	Norwest Insurance Inc.	$161,090,000
9	Brown & Brown Inc.	$150,443,000
10	Jardine Lloyd Thompson Group P.L.C.	$146,147,400 [2]
11	Lockton Cos. Inc.	$117,291,104 [3]
12	BB&T Insurance Services Inc.	$80,726,480
13	American Phoenix Corp.	$71,247,725
14	Near North Insurance Brokerage Inc.	$70,785,000
15	McGriff, Seibels & Williams Inc.-an Assurex partner	$60,493,308
16	Meadowbrook Insurance Group Inc.	$60,151,872
17	Talbot Financial Corp.	$56,966,400
18	ABD Insurance & Financial Services	$55,174,000
19	Frank Crystal & Co.	$55,040,000
20	Lambert Fenchurch Group P.L.C.	$52,969,350 [2,4]
21	Palmer & Cay Inc.-an Assurex partner	$52,374,670 [5]
22	Keenan & Associates	$50,400,000
23	The NIA Group-an Assurex partner	$47,734,226
24	Hobbs Group L.L.C.	$47,728,095
25	Summit Global Partners Inc.	$47,410,874 [4]
26	Riedman Corp.	$47,373,000
27	Kaye Group Inc.	$44,903,930
28	John L. Wortham & Son L.L.P.-an Assurex partner	$40,288,000
29	Healthcare Insurance Services Inc.	$38,019,229
30	Frenkel & Co. Inc.-an Assurex partner	$34,422,300
31	Robert F. Driver Co. Inc.	$34,104,800 [6]
32	The Sullivan Group	$33,950,000
33	Timberline Insurance Managers Inc.	$32,206,395
34	Commerce National Insurance Services Inc.	$31,568,600
35	The Leavitt Group	$31,185,000
36	J. Smith Lanier & Co.	$30,584,000
37	Bollinger Inc.	$28,569,651
38	Meeker-Sharkey Financial Group Inc.	$27,939,543
39	Marshall & Sterling Inc.	$27,301,872
40	Insurance Management Associates Inc.-an Assurex partner	$26,920,438
41	Holmes, Murphy & Associates	$26,499,236 [7]
42	Calco Insurance Brokers & Agents Inc.	$26,397,608
43	Rebsamen Insurance	$24,513,870
44	Mesirow Insurance	$24,379,772 [4]
45	Hylant-MacLean Group	$24,237,000
46	Heath Group P.L.C.	$23,672,825 [2,4]
47	Tanenbaum-Harber Co. Inc.	$22,799,700
48	Van Beurden Insurance Services Inc.	$22,690,000
49	Cal-Surance Associates Inc.	$21,949,000
50	The Graham Co.	$21,542,745
51	The Treiber Group L.L.C.	$21,204,592
52	Andreini & Co.	$20,875,000
53	Mellon/Clair Odell Group	$20,658,000
54	Berwanger Overmyer Associates-an Assurex partner	$20,288,375
55	Cameron M. Harris & Co.-an Assurex partner	$20,144,561
56	Saldana & Associates Inc.	$18,882,167
57	Old Kent Insurance Group Inc.	$18,746,640
58	Sullivan & Curtis	$18,288,770
59	Daniel & Henry Co.-an Assurex partner	$18,039,000
60	Allied Coverage Corp.	$18,000,000 [8]
61	BWD Group Ltd.	$17,820,000
62	Van Gilder Insurance Corp.-an Assurex partner	$17,578,646
63	The Tribus Cos.	$17,500,000 [4]
64	InterWest Insurance Services Inc.	$16,948,800
65	Wm. Rigg Cos.	$16,813,133
66	Dodge, Warren & Peters Insurance Services Inc.	$16,580,886 [9]
67	Horton Insurance Agency Inc.	$16,246,117
68	Kelter-Thorner Inc.	$16,166,150 [10]
69	Lawley Service Inc.	$15,737,194
70	James B. Oswald Co.-an Assurex partner	$15,601,000
71	Hastings-Tapley Insurance Agency	$15,161,797 [10]
72	Van Meter Insurance Agency Inc.	$15,084,007
73	Bratrud Middleton Insurance Brokers	$15,000,000
74	Fringe Benefits Management Co.	$14,834,548
75	Davis Baldwin Inc.-an Assurex partner	$14,722,257
76	Anchor Pacific Underwriters Inc.	$14,688,000
77	Associated Agencies Inc.	$14,553,000
78	Bowen, Miclette & Britt Inc.	$14,431,268
79	Fred A. Moreton & Co.-an Assurex partner	$14,368,258
80	The Loomis Co.	$14,215,046
81	SilverStone Group Inc.	$13,920,000
82	Allied American Insurance Agency Inc.	$13,880,185
83	The Rutherfoord Cos.-an Assurex partner	$13,770,101 [5]
84	Hamilton Dorsey Alston Co.-an Assurex partner	$13,103,896 [9]
85	Parker, Smith & Feek Inc.-an Assurex partner	$12,990,880
86	Seitlin-an Assurex partner	$12,500,000
87	Charles L. Crane Agency Co.	$12,426,353
88	Insurance & Risk Management-an Assurex partner	$12,396,780
89	Hibbs-Hallmark Co.	$12,384,197
90	The Rosenthal Cos.	$12,338,000
91	Bolton & Co.-an Assurex partner	$12,286,184
92	Starkweather & Shepley Insurance Brokerage Inc.-an Assurex partner	$12,110,000
93	Mack & Parker Inc.-an Assurex partner	$11,760,000 [10]
94	Lovitt & Touché Inc.	$11,742,414
95	R.C. Knox & Co. Inc.	$11,557,000
96	Posse Walsh Buckman Van Buren	$11,302,000
97	Hefferman Petersen Insurance Brokers	$11,300,000
98	Haas & Wilkerson Inc.	$10,989,120 [11]
99	The Hays Group Inc.	$10,925,000
100	Scott Insurance	$10,838,802

[1] *BI* estimate [2] converted at applicable exchange rate [3] fiscal year ends 4/30 [4] fiscal year ends 3/31 [5] fiscal year ends 6/30 [6] fiscal year ends 7/31 [7] fiscal year ends 6/30 [8] fiscal year ends 11/30 [9] fiscal year ends 10/31 [10] fiscal year ends 9/30 [11] fiscal year ends 1/31

Source: *BI* survey

Commentary

Readers respond with their views

From time to time, I devote this space to a dialogue with readers responding to my recent commentaries. I select the responses that offer additional insights or perspectives different from mine.

Responding to my commentary on HMO bashing, the employee benefits manager of a hospital that also owns an HMO suggested that "we need to do some education nationally on what our grandparents knew a long time ago, before health insurance existed: That a good plan, at reasonable costs, which covers a large number of services (but not everything) is a *blessing*."

She continued: "It was not so long ago that we didn't have health insurance or retirement plans or disability coverage, or time-off programs, etc. We've come a long way, but this appears to be lost on a lot of our current workers."

She is absolutely right. Employers can help with this process by better explaining the provisions of the health plans they offer and why there are limitations on coverage. Employers also can better explain what options are available to employees when a health plan refuses to pay for a procedure, including the option of paying for the procedure from one's own pocket.

This will be a tough sell for the very simple reason that the employee benefits manager also mentions in her note: the pervasive "entitlement" sentiment in the United States. She observed: "There is an expectation that everything will be paid for, by someone else!"


Kathryn J. McIntyre

Getting someone else to pay for illness was also the point of a risk manager's response to my column on the silicone breast implant disaster. "Having been in the risk management and insurance industry for almost 25 years, I have unfortunately seen a myriad of issues such as this one during my career. The outcome of this particular controversy is what many of us thought during it's early discussion: In the end there might be no scientific proof this product causes any of the physical problems it has been associated with.

"Most of my professional life has been spent in and around the area of workers compensation insurance. On a smaller scale to the silicone issue, I have seen disabled workers, attorneys and doctors rely heavily on 'junk science' in trying to get their 'conditions' acknowledged and then found compensable. Sadly, I have found too many judicial systems eager to embrace these theories. . . .We throw away both common-sense application and traditional scientific methods." Well said.

On my column recounting the miseries of flight delays this spring and summer, I was taken to task by a reader who wrote: "Needless to say, you are here to tell about your delays and inconveniences. I am sure that those who have died due to difficulties while flying wish their pilots/crew would have been much more attentive to detail. What is two extra hours, or even one evening, when it means it could have saved your life?"

Those words, written before the tragic crash of the private plane of John F. Kennedy Jr., are haunting now.

I was not advocating that any airline take risks with safety, however. I was pleading for better communication among those making decisions to limit the number and duration of delays.

Another reader complained: "As an avid and longtime reader of *BI*, it is interesting to see that this column is turning into a Dear Abby of travel. We all suffer from travel problems, but I guess that it impresses me less when an editor uses my space to complain about a fact of life that nothing can be done about."

It's a great compliment when a reader takes such a proprietary attitude toward a publication. I refuse to concede, however, that airlines are doing the best they can for their passengers and that nothing can be done to improve service. I will try to refrain from venting about conditions that truly can't be changed, such as the record heat.

One reader who wrote also was a fellow passenger on my flight from Detroit that was on the ground for seven hours before it was canceled. I'm sorry we didn't meet; he could have caught a ride to Chicago with my colleague and me.

He wrote: "The constant miscommunication (my euphemism for untruths) by either uninformed or purposefully evil airline personnel is the real rub. As you stated, no one wants to fly in unsafe aircraft or conditions. But the trickery, skullduggery, ignorance or stupidity (take your pick) is inexcusable."

Another reader offered me some practical advice: "I suggest that you use General Mitchell International Airport in Milwaukee for your future travel!"

If I lived in the northern suburbs of Chicago, I would seriously consider that option.

Publisher and Editorial Director Kathryn J. McIntyre's column appears fortnightly. She can be reached at kmcintyr@crain.com.

Probes

Continued from page 1

FTC opinion contributes anything but more sleepless nights to human resources officers in corporations."

Letters asking the agency to reconsider the letter have been sent to the FTC by the Washington-based U.S. Chamber of Commerce and the Alexandria, Va.-based Society for Human Resource Management; neither has yet received a formal reply from the FTC. SHRM is also forming a coalition with other business groups to seek legislative change.

Attorneys note that the FTC letter is just an advisory and does not, at least yet, have the full force of the law. But it is an issue that is expected to be brought into litigation and to eventually wend its way through the courts.

Any court encountering this issue is likely to find the FTC letter a "persuasive authority," said Phil Horowitz, a plaintiff attorney with Lawless, Horowitz & Lawless in San Francisco.

Most employer investigations are conducted in-house. Small and medium-sized firms, however, often lack the staff needed to investigate complaints and therefore must turn to outside firms, generally law firms or investigative agencies.

Such firms also might be used by large companies dealing with particularly sensitive cases, such as charges involving top management.

In a letter earlier this year, FTC staff attorney Christopher W. Keller says outside firms are consumer reporting agencies under provisions of the Fair Credit Reporting Act and therefore must comply with the relevant regulations, which include obtaining permission and furnishing an employee a copy of the report.

The FTC letter "came out of left field," said Gerald L. Maatman Jr., partner and chairman of the global employment law practice group at Baker & McKenzie in Chicago.

"They are not charged by Congress with authority over the administration of employment discrimination law. That's the bailiwick of the EEOC, so it's as if there's a turf battle going on between federal agencies as to how employers ought to conduct federal investigations."

But Ellen Vargyas, legal counsel with the EEOC in Washington, said she does not believe there is a turf war, noting that the FTC letter came in response to an attorney's query.

She said, though: "We clearly are concerned that it burdens an employer's ability to fulfill its obligations under the civil rights laws. We're hoping that some common ground could be reached that respects the interests of all the competing legal interests here."

Ms. Vargyas said that though "we certainly had some very cordial conversations with the FTC about it," she did not know when or if any action would be taken to resolve the differences.

The FTC's Mr. Keller said he knows of no plans by his agency to change the position outlined in his letter.

"Our energies, if we were to spend them, I think, would be best spent on a legislative amendment," said Mr. Keller, who said he does not know, though, of any steps being taken by the FTC in this direction.

If the FTC position does become applicable, "there's no question it makes it more complicated for the employer to follow all the rules and not get tripped up," said Tom Klein, an employer attorney with Orrick, Herrington & Sutcliffe in San Francisco.

Some employer groups oppose the FTC's position.

Sussan Mahallati Kysela, labor and employment counsel for the U.S. Chamber of Commerce's National Chamber Litigation Center, said, "We believe the FTC's (letter is) overly broad and an erroneous interpretation of the Fair Credit Reporting Act which is not supported by the plain language of the Act, or the legislative history." The NCLC earlier this month asked the FTC to rescind the letter.

The FTC's position "is one that we don't really think was contemplated by Congress," agreed Susan R. Meisinger, SHRM senior vp. Ms. Meisinger said she also is concerned that application of the principles expressed in the letter could be even further expanded to include other outside firms doing business with a company, such as forensic audit firms that are brought in to investigate alleged misappropriation of funds. "There are lots of employment impacts" this FTC letter could have, she said.

SHRM currently is forming a coalition with other business groups, including the Chamber, to seek a legislative change so that the FCRA "cannot be misapplied to employee misconduct situations such as sexual harassment," said Deanna Gelak, SHRM's director of governmental affairs. She said she hopes there will be quick action.

Not everyone opposes the FTC position, though.

"One positive effect may be that it will force (employers). . .to get the (accused) worker's point of view" during an investigation, said Mr. Horowitz.

Mr. Klein said that if an employee refuses to consent to an investigation, options facing employers would include having the employer do the investigation itself, which could leave it subsequently vulnerable if it is not done well; having an investigating firm conduct the investigation without interviewing the accused, "which is going to be inadequate almost by definition"; or having the investigator "quarterback" the investigation behind the scenes.

But for now, Mr. Maatman said, "I think most defense lawyers and human resources professionals are taking a wait-and-see attitude toward this purported ruling," because it is not a legal precedent. "I think this is the first chapter of what is going to be an issue thrashed out in the courthouse over the years," he said. BI

Pensions

Continued from page 2

Daniel Patrick Moynihan, D-N.Y. That measure, heavily criticized by employers and benefit consultants, would require employers amending pension plans to provide participants with statements projecting their benefits under these plans. Those individual statements would compare benefits that employees were projected to receive under the previous plan against those projected under the new plan. Such projections would be made for three, five and 10 years from the effective date of the change, as well as at normal retirement age. Benefit consultants say this approach could lead to employees feeling cheated if the benefits they ultimately received did not—as likely would occur—match projections (*BI*, June 7).

By contrast, the administration draft proposal does not require projections to be offered automatically.

Instead, employers would have to provide plan participants a "plain language summary" describing the pension design change. The summary would have to include a general description of how the change reduces the rate of future benefit accruals and a description of the group of employees to whom the change applies. This summary would have to be provided no later than 45 days before the change is put in place and would be furnished to participants whose future benefit accruals are "reasonably expected" to be reduced.

In addition, employers would be required to give affected participants specific examples of the new design's impact on "representative affected participants." Employers also would have to make available the formulas and factors used in the examples.

Among other things, the examples would have to include:

- Estimates that provide a meaningful comparison of benefits that would be earned under the new plan compared with the previous plan.
- The estimates would have to be based on "reasonable" actuarial assumptions, such as future interest rate and pay increase assumptions. An enrolled actuary would have to certify that the assumptions for benefit projections in the examples are reasonable for plan participants as a whole.

'What value do these statements provide when I compare a program with one that no longer exists?' asks Larry Sher.

In addition, employees could request an individual benefit statement to include a projection of benefits to a date specified by the participant in addition to the dates used in the examples. The individual benefit statement would have to be provided within 30 days of the request.

While describing the administration's draft proposal as an improvement over the Moynihan bill, benefit experts question whether it is the right approach to take in helping employees better understand new plans.

In particular, benefit experts ask why there should be a comparison of the new plan with a plan that no longer exists.

"What value do these statements provide when I compare a program with one that no longer exists?" asked Larry Sher, a principal with PwC Kwasha in Teaneck, N.J.

"What employees need to understand is how the new benefit formula works, how benefits are determined, which categories of employees are more likely to receive lower benefits under the new plan and under what situations would those reductions be likely to occur," Mr. Sher said.

Dave Rosenblum, a principal with William M. Mercer Inc. in New York, says a better approach than what the Clinton administration has proposed would be to "stick to the facts" so employees would receive fewer projections and more information on how the plans work.

"Facts should be presented of how both plans work in an easy-to-understand format, with examples to illustrate how the plans work," Mr. Rosenblum said.

As to furnishing employees with an individual benefit statement that projects benefits based on a date the employee selected, he said such projections not only would be expensive to conduct but also could mislead employees. Mr. Rosenblum noted that projections don't always hold true, because assumptions, such as future interest rates, on which such projections are made can be highly volatile.

Others say that imposing detailed disclosure requirements on employers changing defined benefit plans would give employers yet another incentive to abandon the plans and offer only defined contribution plans, for which the requirements would not apply.

"No one has stepped back and tried to think about the extreme imbalance that would be created between defined benefit and defined contribution plans," said Richard Shea, a partner with the law firm of Covington & Burling in Washington. BI

CIGNA

Continued from page 1

examine witnesses.

Opponents of the plan argued this structure did not permit them to question CIGNA officials and actuaries on concerns about the strength of the runoff facility's reserves.

In 1997, the Pennsylvania Commonwealth Court issued a ruling that vacated the department's approval of the reorganization and ordered regulators to conduct trial-like hearings.

But in its July 20 decision, the Pennsylvania Supreme Court concluded these proceedings were not necessary. The imposition of additional procedures such as sworn testimony and cross examination "would not materially enhance the interests of appellees, and would require the department to engage in evaluation of speculative future harm," said the court.

"The issue before the department was a statistical and economic one, an area indisputably within the expertise of the department," the ruling said.

The decision said everyone who wanted to speak was permitted to do so. "The massive materials received by the department were exhaustively analyzed by the commissioner in a 75-page decision and order, with over 350 findings of fact" that included the finding the transaction is not harmful to policyholders' and creditors' interests, the decision said.

But policyholder attorneys point out that the decision also says, "Department approval does not insulate the insurer from liability. . .no judicial remedies are foreclosed by the department's approval of the plan of restructure and division."

A CIGNA spokesman referred questions on the decision to ACE. An ACE spokesman said the company is pleased.

"The weight of the evidence in both the court of law and the record of our performance over the past three years has demonstrated that the restructuring is sound and fair to policyholders and now behind us," the ACE spokesman said.

Carol Dill Barkley, associate director at rating agency Standard & Poor's Corp., said the decision is good for ACE. "It takes away an uncertainty" that pending litigation generally creates, she said.

Heidi Hamman Shakely, chief counsel for the Pennsylvania Insurance Department, said the decision "affirmed the Insurance Department's regulatory role."

Those who opposed CIGNA's restructuring were disappointed.

"We are obviously disappointed with the decision. We still think we're right," said Lawrence T. Hoyle Jr. of Hoyle, Morris & Kerr of Philadelphia. He represents three policyholders and four insurers in the litigation.

"The merits of the issue have yet to be addressed, and we're analyzing exactly what action we're going to take at this point," he said. "We certainly haven't surrendered our position yet."

John Osborne, a partner with Zevnik Horton Guibord McGovern Palmer & Fognani L.L.P. in Washington who represents several policyholders, said the court's decision was "limited to one issue, and the court took great pains. . .to protect the rights of policyholders who are damaged as a result of the transaction.

"We'll see how things progress, and if necessary, our policyholders still have a full arsenal of rights and claims against CIGNA," said Mr. Osborne.

John N. Ellison, a partner with Anderson, Kill & Olick P.C. in Philadelphia who represents about a dozen policyholders, said the Pennsylvania Supreme Court chose to narrowly focus its decision on the Insurance Department's approval but postponed dealing with the basic dispute between CIGNA and policyholders.

CIGNA "may face claims in the future if policyholders think that their restructuring has harmed them directly." That could be the case if it turns out Century's assets are inadequate, he said.

Most of the policyholders challenging the reorganization either currently have or once had claims against CIGNA. Many of those claims resulted in litigated coverage disputes, of which some are ongoing.

Michael Zanic, an attorney with Kirkpatrick & Lockhart L.L.P. in Pittsburgh, who represents Pittsburgh-based PPG Industries Inc. in the reorganization matter, said the decision opens up the door for other insurers to do a "bait and switch." PPG Industries paid its premium dollars to a particular company, "and now they don't have that company there anymore." This decision will "permit that to happen more and more frequently," said Mr. Zanic. BI

Assurex

Continued from page 2

cussions between the four core members arising from a belief that post-Aon/Marsh rationalization of the insurance broking sector, it was necessary for the substantial remaining independent brokers to develop a global solution," said Graham Puttergill, chairman of HSBC Insurance Brokers in London.

The new link with Assurex forms what Mr. Puttergill describes as "the only real global alliance" in the insurance brokerage industry.

A number of the largest brokers of U.S. business are Assurex partners, including McGriff, Seibels & Williams Inc. of Birmingham, Ala.; Palmer & Cay Inc. of Savannah, Ga.; The NINA Group of Paramus, N.J.; and John L. Wortham & Son L.L.P. of Houston. In all, Assurex' 58 members generated $745 million in gross revenues in 1998.

Combined, the member brokers of Assurex and Synergy will employ more than 12,000 people worldwide and handle insurance premium volume of $12 billion annually, with gross revenues exceeding $1.3 billion, according to the companies.

While the network for now will work under the Assurex/Synergy name, a new name for its global network is being considered.

As a result of Marsh's and Aon's consolidation drive over the past several years, which has left risk managers with fewer choices among global brokers, many regional brokers have built up their international capabilities to handle larger global risk management accounts (*BI*, March 1). The Assurex/Synergy deal now is part of that trend.

"The ever-shrinking list of options for risk managers positions regional brokers nicely to place that business," noted Thomas W. Harvey, president and chief executive officer of Assurex.

"Most of the Fortune 1,000 customers are international," he said. In order to truly service those accounts, Assurex needed to build a strong international capability. While the Synergy network now gives Assurex presence in 36 countries, Mr. Harvey said he would like to see Assurex eventually have relationships in 80 to 90 countries.

Mr. Puttergill said he hopes to see an Assurex/Synergy partner in "any country of economic significance" added to the network over the next 12 months.

Another factor driving the need for new partnerships is that global acquisitions by Aon and Marsh have broken up many previous relationships.

Verspieren, the fourth-largest broker in the French market and the largest independently owned broker in France, previously worked with Aon until Aon bought Verspieren's French rival Groupe Le Blanc de Nicolay in February 1998.

Two of the three three brokers ahead of Verspieren in the French market are owned by U.S. companies, said Jerome Flach, manager of the international department at Verspieren. The third—Gras Savoye & Cie.—has Willis Corroon Ltd. as its largest shareholder, with 31.72%.

"We had to find something different to enable us to move ahead," and so the idea of Synergy was formed about two years ago, he said.

Brokers that are part of the new network are optimistic about their new competitive advantage.

"HSBC has a very substantial retail commercial account in the U.K.," said Mr. Puttergill. By joining Assurex, "we now have a sizable servicing arm (for clients) anywhere in the world. It is a very, very credible solution."

Mr. Puttergill said HSBC was not interested in expanding its international presence by buying overseas brokers because it does not believe it would get sufficient return on equity. But by being part of the alliance, it can better compete against powerhouses like Aon and Marsh, he said.

An existing U.K. client of the broker currently building a new facility in Savannah, Ga., is "delighted" that there is now local representation for it as a result of the new alliance, he said. Brokers need to reflect the globalization of their clients, and being part of the network is "enormously positive," he said.

"We work very closely and as a team (within Synergy)," said Mr. Flach. "We know each other and trust each other."

Combining Assurex with Synergy gives the brokers involved the "benefits of UNISON without the weakness of having only one member for North America," he said. UNISON was an international network that crumbled when its largest member, Johnson & Higgins, was purchased by Marsh.

"We are all committed to servicing our partners' clients wherever they are, whatever size they are and whatever the revenue," Mr. Flach said.

Existing U.S. Assurex partners also are optimistic about the deal.

"I've always said that Assurex is the viable option to the national houses. This new association only strengthens that," said William D. Bolton, chairman and CEO of Bolton & Co., an Assurex partner in South Pasadena, Calif.

Bolton & Co. ranked as the 91st-largest broker of U.S. business based on $12.3 million in 1998 brokerage revenues.

"We are finding it a lot easier to talk to other clients, those married to the nationals, and have had some good success. Activity is picking up," Mr. Bolton said.

Bryan Hondru, president and CEO of The HDH Group Inc., an Assurex partner in Pittsburgh, said that within the past month, the broker has picked up two Fortune 500 accounts: H.J. Heinz Co. and Wesco International Inc., both based in Pittsburgh. HDH generated $8.9 million in brokerage revenues in 1998.

The Synergy addition "was the key to it," Mr. Hondru said of winning the new clients.

A key meeting in establishing the alliance was held in Dallas during the annual conference and exhibition of the Risk & Insurance Management Society Inc., said Mr. Hondru, who also is chairman of Assurex.

He noted that many Assurex partners have large global customers that need brokers with international capabilities. Synergy "really pulls it together" for Assurex, he said. BI

Updates

OPIC offers contract enhancement

Continued from page 2

The first project to be covered by the new product is an automobile and truck manufacturing plant in Turkey run by Ford Otosan, a joint venture between Ford Motor Co. and Koc Holding, a Turkish concern. The policy covering that project was issued July 19.

OPIC believes the coverage is the first of its kind to reach the market, said Jamie Brache, regional manager for Asia and the Middle East in OPIC's insurance department.

Medicare estimate called low

WASHINGTON—The Clinton administration's plan to add a prescription drug benefit to the Medicare program and make other Medicare reforms would cost far more than the administration estimates, the Congressional Budget Office says.

While the administration put the 10-year price tag of the proposed changes, including the prescription drug benefit, at $45.5 billion, the CBO says it would cost at least $111 billion.

Among other things, the administration underestimated by nearly $50 billion how much drug costs would rise by 2009 and overestimated by $18 billion how much the government would save through other Medicare reforms, according to the CBO.

Department of Health and Human Services Secretary Donna Shalala, however, told a congressional committee last week that the administration stands behind its projections.

Under the administration proposal, Medicare would pay up to half of beneficiaries' drug bills, starting in 2002. By 2008, Medicare would pay 50%of beneficiaries' first $5,000 in annual outpatient drug costs, and, by that time, beneficiaries would pay a $44 monthly premium for the drug coverage.

If enacted, the proposal would be a boon to employers with retiree health care plans, as they could cut back their prescription drug benefits. Alternatively, employers could keep the benefit, with the government paying them about $200 per retiree per year for doing so.

Gulf setting up Lloyd's vehicle

LONDON—Gulf Insurance Co., a surplus lines subsidiary of Travelers Property/Casualty Insurance Co., is setting up a Lloyd's of London investment vehicle to provide dedicated capacity to syndicate 205, beginning in 2000.

This will be Gulf's first foray into Lloyd's, though the syndicate, managed by Jago Managing Agency Ltd., already has U.S. corporate backing from a joint venture between Aon Corp. and Unionamerica Acquisition Co. Ltd. Aon and Unionamerica formed UA Combined Investments Co. Ltd. in 1997; that company then bought 49% of the shares of JMA Holdings Ltd., the holding company for the managing agency and for the syndicate's dedicated corporate capital supplier, Jago Capital Ltd.

Jago Capital is supplying about 25% of the syndicate's £121 million ($203.6 million) capacity this year. Gulf's new corporate capital subsidiary, which has yet to be approved by Lloyd's regulators, will purchase capacity on syndicate 205 in the current round of capacity auctions or by direct offers to names, said Ray Walker, managing director of Jago Managing Agency. The Gulf vehicle will buy up to 25% of syndicate capacity.

Mr. Walker said the arrangement with Gulf is "really to support the capital base for the future." Several corporate investors with wholly owned underwriting agencies, such as Limit P.L.C., have said they intend to focus their activities on their own syndicates and withdraw capacity from syndicates owned by other agencies. In addition, unlimited liability names' capacity is expected to tail off as they convert their current membership status to participation in limited liability vehicles.

A spokesman for Travelers in Hartford, Conn., said, "We've had a long-term trading relationship with Chris Jago, so we are buying capacity, because the natural next step is for us to become a capacity provider."

Syndicate 205, set up in 1975, writes a variety of business, mainly concentrating on property/casualty coverages. Mr. Jago is its underwriter.

Briefly noted

President Clinton has signed into law a bill that would give businesses some **protection against liability** arising from the Year 2000 computer problem (*BI*, July 5). . . .**Jeremy Cox** has been named registrar of companies in Bermuda and will be responsible for regulating insurers, reinsurers and captives on the island. Mr. Cox, who previously was inspector of companies, takes over from Kymn Astwood, who resigned in June to join Arrow Re. . . .**Health insurance premiums** increased in June compared with a year earlier, according to a report by Ceridian Benefits Services. The average HMO family medical plan had a monthly premium of $486.52 in June, a 6.49% increase from the previous June, the Ceridian report said. A non-HMO family medical plan cost $519.69; that represents an 8.05% increase, the highest year-to-year increase of any plan type. . . .Liggett Group Inc.'s proposed **settlement of a class-action smoking suit** was rejected last week by Mobile County Circuit Court Judge Robert Kendall. Liggett offered 7.5 of its annual pretax income for the next 25 years, an amount the judge said did not meet the requirements of a "limited fund" settlement. . . .Central Insurance Cos. of Van Wert, Ohio, must pay **restitution of $85,000** to Texas employers that were shortchanged on tort reform rate reductions. Texas Insurance Commissioner Jose Montemayor ordered the payments after determining that the insurer did not reduce commercial umbrella rates enough to account for savings from tort reform. . . .Benefit consultant **ASA Inc.** said last week it is acquiring The Concord Group, a health care industry financial consultant with annual revenues of about $3 million. Terms of the transaction were not disclosed.

Subpoenas

Continued from page 2

The insurers subpoenaed by the city sought to quash the subpoenas on a number of grounds.

Two separate attempts, one by a group headed by Maryland Casualty Co. and another by a group headed by Connecticut Indemnity Co., claimed the use of the legislative subpoenas constituted premature prelitigation discovery and violated both the constitutional and statutory rights to privacy and attorney-client privileges.

In 1997, the San Joaquin County Superior Court found for Lodi in those cases. The cases were appealed, and, earlier this month, the California Court of Appeal 3rd Appellate District in Sacramento sided with the insurers.

The appellate court held that the insurers had a right to protect the privacy interests of their policyholders and that, as a potential litigant against the insurers or their policyholders, the city had no greater rights than any other litigant in obtaining information.

And, because the city was only a prospective litigant, its interest in disclosure did not override the privacy interests of the prospective defendants, the court ruled.

In a statement from the Insurance Environmental Litigation Assn., Laura A. Foggan, a partner with the Wiley, Rein & Fielding law firm in Washington, said the appellate court's ruling should deter similar attempts "to make an end run around the litigation process and thereby pressure insurers into settling." The IELA filed an amicus brief in support of the insurers.

The decision reflected the court's understanding "that a governmental entity cannot misuse its legislative or administrative powers in order to better its position as a party to environmental disputes," continued Ms. Foggan, whose firm is counsel to the IELA and also represented Maryland Casualty Co.

'At this point in time, we're not successful in convincing the court that it is an appropriate use of the legislative subpoena,' says city attorney Randall A. Hays.

"At this point in time, we're not successful in convincing the court that it is an appropriate use of the legislative subpoena," Mr. Hays said.

"The judge who wrote the opinion said that, because the city is a potential litigant . . .that trumped somehow the legislative purpose that the council had found," he said. "Obviously, we think he's wrong."

Mr. Hays noted that the appellate panel split on its ruling 2-to-1. And, "interestingly enough, the dissent was longer than the majority opinion," the city attorney said.

He added that the dissent should provide a "jumping-off point" for the city should it decide to appeal the most recent ruling to the California Supreme Court.

"We're evaluating the case now," Mr. Hays said. "We have a few weeks to make our recommendation to the City Council."

Mr. Hays acknowledged that the legislative subpoena has not been used "in this arena, and it's also seldom used, quite frankly, by local government."

The technique is most frequently used at the federal level and, occasionally, at the state level, and the possibility of its use by municipalities is "why I think the carriers have gotten excited about it," he said.

While the insurers objected to the city using legislative subpoena powers to obtain information about policyholders' environmental liability coverage, Mr. Hays contends that the technique could actually reduce the volume of litigation.

If cities can gather such information through legislative subpoenas, it would eliminate the need to file lawsuits to obtain information about insurance coverage through legal discovery, the city attorney suggests.

The information gathered by legislative subpoenas could then allow cities to be more selective in determining when to go to court in environmental disputes.

"We feel that litigation can actually be eliminated or surgically eliminated if you have a good information base before that," Mr. Hays said.

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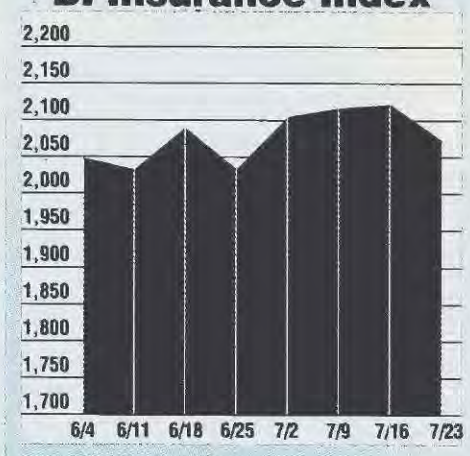
Connecticut Indemnity Co. vs. Superior Court (City of Lodi), Cal. Ct. App., 3rd Dist., July 12, 1999, No. C027794.

BI Insurance Index



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

PCS catastrophe options

As of July 23

Call spread	Price bid/ask
National Annual 1999	
40/60	15.0/19.5
60/80	8.0/16.0
80/100	4.0/—
150	3.5/9.0
200/250	2.5/6.0
Southeastern September 1999	
40/60	2.5/—
60/80	2.3/—
80/100	1.5/1.9
Eastern September 1999	
40/60	1.3/—
California Annual 1999	
60/80	0.7/1.8
80/100	0.5/1.6
150C	0.8/1.2
Western Annual 1999	
80/100	0.6/1.9
Midwest June 1999	
10/20	8.7/9.7
Florida Sept./Dec. 1999	
100/150	0.7/—

Total volume: 26 Total open interest: 10,054

For information on PCS cat options, call the Chicago Board of Trade at 312-435-3674.

Source: Chicago Board of Trade

British Issues

Companies	Price pence	P/E	Div. pence	Yield %	52-week high-low
Gdn Royal Exch	360	5.6	4.3	1.2	423-227
Legal & Gen	157	19.0	3.6	3.0	237-152
Royal & Sun	509	18.1	23.0	5.5	633-455
Brokers					
Lmbrt Fenchurch	85	8.2	4.2	6.3	94-58
JLT	244	10.9	12.0	6.2	253-166

Note: Prices are July 23 closings; other numbers from July 22.

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

Datebook

AUGUST

AUG. 17-20. Vermont Captive Insurance Assn. Annual Conference, in Burlington, Vt., sponsored by VCIA. $350 for members, $425 for non-members. VCIA, One Lawson Lane, 4th Floor, Burlington, Vt. 05401-8445; 802-658-8242.

AUG. 30-SEPT. 1. Health Care Coalition and Health Care Cost Management Conferences, in Williamsburg, Va., sponsored by the International Foundation of Employee Benefit Plans. $720 for members, $870 for non-members. IFEBP-Conference, P.O. Box 59546, Milwaukee, Wis. 53259-0546; 888-334-3327.

AUG. 31. Maritime Personal Injury in Illinois Seminar, in Chicago, sponsored by Lorman Education Services. $199. Lorman Education Services, P.O. Box 509, Eau Claire, Wis. 54702-0509; 715-833-3959.

SEPTEMBER

SEPT. 12-14. PBM Symposium and Executive Workshop, in Orlando, Fla., sponsored by the Pharmaceutical Care Management Assn. $1,395 for symposium, $395 for workshop preceding symposium. Pharmaceutical Care Management Assn., 2300 Ninth St. S., Suite 210, Arlington, Va. 22204-2320; www.pcmanet.org.

SEPT. 12-17. Core Skills for the Insurance Executive Conference, in Oxford, England, sponsored by The American Institute for CPCU, The Chartered Insurance Institute and Katie Insurance School at Illinois State University. $4,000. Andrew T. Nappi, Katie Insurance School, Illinois State University, Campus Box 5490, Normal, Ill. 61790-5490; 800-697-8692.

SEPT. 13-14. 1999 Casualty Loss Reserve Seminar, in Scottsdale, Ariz., sponsored by the Casualty Actuarial Society. $550 for members, $650 for non-members. Casualty Actuarial Society, 1100 N. Glebe Road, Suite 600, Arlington, Va. 22201; 703-276-3100.

SEPT. 13-17. Fundamentals of Global Benefits Management Conference, in San Francisco, sponsored by International Foundation of Employee Benefit Plans. $1,475 for members, $1,725 for non-members. IFEBP, 18700 W. Bluemound Road, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

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The Datebook is compiled from notices sent to Business Insurance. Notices should be sent at least eight weeks in advance to Datebook, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590. Please include the cost, if any, to attend the meeting and information on registration for interested readers. Business Insurance reserves the right to select meetings of most interest to its readers and cannot guarantee that notices will be printed. Datebook listings also are available on the World Wide Web at www.businessinsurance.com.

BI Industry Stock Report JULY 19, 1999, THROUGH JULY 23, 1999

BROKERS		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
Aon Corp.	NYS	38.94	-7.57	4.18	48.25	32.19	2320
E.W. Blanch Holdings Inc.	NYS	70.75	-0.18	51.54	71.75	34.88	277
Gallagher Arthur J. & Co.	NYS	52.56	-3.33	20.14	56.00	34.88	160
Hilb, Rogal & Hamilton	NYS	21.31	-0.29	14.43	22.50	15.56	60
Kaye Group Inc.	NDQ	8.38	19.64	15.52	8.50	5.00	24
Marsh & McLennan	NYS	76.63	-2.93	29.60	81.50	43.38	2222
Brown & Brown	NYS	37.31	-2.61	6.80	41.88	29.31	39
BROKERS	AVERAGE		1.72	23.00			
INSURERS/REINSURERS							
ACE Ltd.	NYS	25.38	-2.17	-22.37	41.56	24.38	3992
Accel International Corp.	NDQ	1.50	4.35	-50.00	3.38	1.38	25
Acceptance Insurance Cos.	NYS	15.38	3.36	-22.64	23.94	12.06	411
AEGON N.V.	NYS	75.69	3.24	-37.93	130.13	69.25	11757
Aetna Life & Casualty	NYS	85.44	-1.16	7.05	99.88	60.19	2036
AFLAC Inc.	NYS	44.56	-2.99	1.28	56.75	25.13	2487
Allmerica Financial Corp.	NYS	60.19	-5.68	6.29	75.25	38.38	502
Allstate Corp.	NYS	34.00	-9.63	-11.69	51.19	34.00	17412
AMBAC Indemnity Corp.	NYS	56.50	0.44	-5.74	63.50	40.88	842
American Bankers Ins.	NDQ	54.69	0.11	14.53	60.63	30.13	2110
American Financial Group	NYS	33.94	-3.38	-17.60	43.88	30.50	183
American General	NYS	77.94	-1.66	-0.40	81.38	52.38	2143
American Heritage Life Ins.	NYS	30.88	0.20	28.31	31.25	18.63	1549
American Indemnity/Fin'l	NDQ	14.44	0.00	35.88	15.38	10.25	2
American Intl Group	NYS	118.63	-2.57	21.82	134.00	64.88	9331
American Safety Insurance	NYS	8.06	-0.77	-15.13	11.88	6.63	25
Argonaut Group	NDQ	25.00	2.83	4.17	32.00	21.25	134
AXA-UAP Group	NYS	59.50	-7.03	-16.86	80.25	38.25	409
Baldwin & Lyons Inc.	NDQ	21.50	-1.99	-8.02	26.00	18.50	18
Berkley W.R. Corp.	NDQ	25.00	-2.20	-25.93	39.25	23.50	350
Berkshire Hathaway Inc.	NYS	68300.00	-2.84	0.00	81100.00	57000.00	1
Capital RE Corporation	NYS	15.00	0.84	-23.32	38.00	11.94	318
Capitol Transamerica Corp.	NAS	14.19	0.89	-19.79	22.13	12.50	44
Centris Group Inc.	NYS	10.06	-5.29	7.33	14.06	7.94	112
Chartwell Re	NYS	18.88	-1.63	-18.82	30.94	13.25	124
Chubb Corp.	NYS	65.06	-6.38	0.19	85.00	54.00	2785
CIGNA Corp.	NYS	87.50	-5.79	12.54	98.63	57.19	2233
Cincinnati Financial Corp.	NYS	37.63	-0.33	5.43	41.88	30.50	928
Citigroup	NYS	47.38	-3.32	40.54	51.75	19.00	50614
CNA Financial Corp.	NYS	36.00	-6.34	-8.43	45.31	33.00	595
CNA Surety	NYS	15.00	0.84	0.42	16.00	10.19	71
EMC Insurance Group Inc.	NDQ	13.38	3.38	4.90	14.13	9.00	47
ESG Re Limited	NDQ	15.13	2.54	-23.66	23.13	12.75	203
Enhance Financial Services	NYS	21.50	6.17	-28.93	36.38	17.31	638
Everest Reinsurance	NYS	32.75	-4.90	-10.73	43.50	28.75	748
Executive Risk Inc.	NYS	85.56	0.00	58.82	92.88	35.50	88
Fremont General Corp.	NYS	17.63	-8.74	-26.94	30.06	16.50	614
Frontier Insurance Group	NYS	14.25	-3.39	14.00	21.38	10.88	553
Gainsco Inc.	NYS	5.88	1.08	-6.93	8.06	3.94	149
Harleysville Group	NDQ	19.75	-1.56	-22.55	27.25	17.00	69
HSB Group Inc.	NYS	40.31	-2.71	0.31	59.56	34.75	262
HCC Insurance Holdings	NYS	24.00	-2.04	41.70	25.13	16.00	660
ING Groep N.V.	NYS	53.13	-0.82	-12.91	76.75	36.06	232
IPC Holdings Ltd.	NDQ	19.75	-5.39	-13.19	28.25	17.38	306
Hartford Financial Services	NYS	58.13	-5.10	4.14	66.44	37.63	2266
LaSalle Re Holdings Ltd.	NYS	17.00	-1.09	-17.58	36.25	11.63	140
Lincoln National	NYS	53.13	-3.41	28.21	57.50	33.50	2532
MAIC Holdings Inc.	NYS	28.94	-1.91	-9.57	33.13	23.25	90
Markel Corp.	NYS	190.00	3.26	5.41	193.00	132.00	19
MBIA Insurance Group	NYS	60.25	-5.86	-9.14	77.75	46.06	1364
Meadowbrook Insur. Group	NYS	13.13	-4.55	-19.54	30.69	12.31	54
MMI Cos. Inc.	NYS	15.94	-0.39	-4.49	22.81	13.75	146
Mutual Risk Mgmt. Ltd.	NYS	30.25	-2.62	-20.26	43.25	25.38	611
Navigators Group	NDQ	15.50	0.81	1.64	18.50	13.25	12
NYMagic Inc.	NYS	15.13	-1.63	-27.54	28.50	12.00	33
Ohio Casualty Corp.	NDQ	16.88	-6.41	-17.93	23.50	16.88	462
Old Republic Int'l	NYS	17.56	-2.43	-18.08	30.06	16.38	1613
Orion Capital Corp.	NYS	47.56	0.13	21.37	59.25	27.56	1611
Partner Re Ltd.	NYS	39.19	1.29	-13.28	51.44	33.63	169
Penn-America Group Inc.	NYS	10.00	0.63	8.11	13.25	8.13	32
PMA Capital Corporation	NDQ	19.38	-3.13	-0.96	21.13	16.63	27
Philadelphia Cons. Holding	NDQ	21.69	-4.14	2.06	25.50	18.63	320
PXRE Corp.	NYS	16.00	-6.91	-36.63	30.50	16.00	131
Reliance Group Holdings	NYS	6.00	-13.51	-53.62	19.13	6.00	4149
ReliaStar Financial Corp.	NYS	46.94	-4.70	4.89	52.19	29.00	1373
RenaissanceRe Holdings Ltd.	NYS	35.44	-3.24	-1.90	48.31	30.00	157
Risk Capital Holdings	NDQ	14.13	0.89	-33.14	25.25	12.00	133
RLI Corp.	NYS	37.25	-0.33	11.61	45.63	27.88	61
St. Paul Companies	NYS	33.06	0.19	-5.54	41.13	28.06	3903
SCOR	NYS	49.56	0.89	-23.75	72.75	48.00	11
SAFECO Corp.	NDQ	39.81	-2.75	-6.32	47.50	36.69	2194
SCPIE Holdings Inc.	NYS	30.69	-1.21	2.08	35.25	23.69	NA
Seibels Bruce Group	NDQ	5.13	-4.65	46.43	7.25	2.69	33
Selective Ins. Group	NDQ	19.63	-4.27	-3.09	23.00	16.69	161
Terra Nova Ins Co. Ltd.	NYS	25.00	-3.38	2.56	32.56	21.25	78
Tokio Marine & Fire	NDQ	58.50	0.65	-0.64	62.88	39.00	77
Torchmark Corp.	NYS	34.31	-1.61	-1.26	45.50	30.69	1266
Transatlantic Holdings	NYS	73.06	-2.58	-3.39	94.50	72.50	61
Travelers Property Casualty	NYS	40.38	-0.46	31.84	45.75	24.13	1641
Trenwick Group Inc.	NDQ	24.25	-2.51	-23.32	37.00	24.25	145
Unico American Corp.	NDQ	10.19	-2.40	-11.65	15.25	8.63	29
United Fire & Casualty	NDQ	25.25	-0.98	-24.13	40.25	22.25	26
Unitrin	NDQ	40.63	2.20	14.64	42.38	27.88	781
UNUM Corp.	NYS	54.75	-0.90	-8.65	62.50	41.75	1949
Vesta Insurance Co.	NYS	4.19	-4.29	-27.17	20.81	3.38	468
XL Capital Ltd.	NYS	57.69	5.13	-19.39	83.25	52.00	2474
Zenith National Ins.	NYS	24.94	-1.48	7.84	28.38	20.31	35
INSURERS/REINSURERS	AVERAGE		-1.98	-4.69			
HEALTH MAINTENANCE ORGANIZATIONS							
Foundation Health Systems Inc.	NYS	15.44	-4.63	40.34	24.06	5.88	1867
Humana Inc.	NYS	12.25	-5.77	-35.31	29.56	10.06	2133
Oxford Health Plans	NDQ	15.13	1.04	8.04	24.25	5.81	6455
Pacificare Health Sys.	NDQ	64.56	1.97	-9.70	100.38	55.63	1681
Safeguard Health Enter.	NDQ	4.00	0.00	12.28	6.88	2.34	8
Sierra Health Services	NYS	13.50	-3.14	-35.33	24.94	10.44	114
United HealthGroup	NYS	62.25	1.74	39.69	70.00	29.56	3768
Wellpoint Health Networks	NYS	81.00	-4.85	-5.68	97.00	50.50	1988
HMOs	AVERAGE		-1.70	1.79			
ALL COMPANIES	AVERAGE		-0.66	6.70			

Top advancing issues: Kaye Group Inc., Enhance Financial Services, XL Capital Ltd. Leading decliners: Reliance Group Holdings, Allstate Corp., Fremont General Corp. Most active issue: Citigroup. The *BI* Index dropped 2.3%; the Dow Jones 30 industrials decreased 2.7%; the S&P 500 decreased 4.4% and the NYSE Composite went down 3.7%. Average P/E: Brokers, 19.4; Insurers/reinsurers, 19.2; HMOs, 20.7.

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

Wake up, you're dead.

Tom Ranney Ph.D. LIBERTY MUTUAL AUTO SAFETY RESEARCHER

BUSINESS AUTO HOME LIFE

"You've just hit a tree. Slammed into an embankment. Or maybe even another vehicle. That's when I wake you up and end the test. At the Liberty Mutual Research Center, we keep truck drivers awake for hours, and then put them in our driving simulator to test the effects of road fatigue. Because every year, thousands of accidents are caused by drowsiness. So, to keep the road safe, we're developing tools to measure fatigue factors like road vibration and mirror glare. Because I'd rather someone crash in here than out there on the road."

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