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Treasury neutral on 'Bermuda tax loophole'

WASHINGTON—The Department of Treasury has adopted a noncommittal position on an alleged tax loophole that some U.S. insurers say favors offshore insurance holding companies.

In a letter to Rep. Richard Neal, D-Mass., the Treasury acknowledges that U.S. subsidiaries of offshore insurers may benefit from reinsuring with related companies in

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PHOTO: THE BOEING CO

An initiative combining union and management teams is making worker health and safety a priority at The Boeing Co.'s facilities.

Institutes unite labor, managers on worker safety

By ROBERTO CENICEROS

LOS ANGELES—Before Robert Gentry became a staunch advocate of labor-management cooperation to reduce work-related injuries, he resolutely represented the management of The Boeing Co., working, as he jokingly puts it, "on the dark side" of labor relations.

His current partner, Bill Stanley, has been a union member and leader for decades. Mr. Stanley says he once would have viewed Mr. Gentry as "my enemy."

But today the two are teammates whose work transcends such divisiveness in the effort to reduce shop-floor hazards and develop safety and communications training for thousands of union workers and their managers at Boeing's manufacturing facilities.

The men acknowledge that

while Boeing pays Mr. Gentry's salary, Mr. Stanley is paid by the International Assn. of Machinists and Aerospace Workers, the union that represents many of Boeing's workers. But the two stress that they work side by side as administrators based in the Seattle area for the independent IAM/Boeing Health and Safety Institute.

The institute came into existence at a time of deep divisions between the union and Boeing. But much of its success can be attributed to the fact that the two sides now work together to reduce injuries regardless of which labor disputes in which labor and management may be involved.

"We will take a crew of hourly workers and their management and train them at the same time," Mr. Stanley explained. "We found

See Institutes on page 23

Patient rights debate moves into the House

Bush would veto Senate bill

By MARK A. HOFMANN

WASHINGTON—Employers are looking to the House of Representatives to follow a more moderate course on patient protection legislation than the Senate did.

The Senate passed the Bipartisan Patient Protection Act on a 59-to-36 vote last month after amending the original version to give employers more protection against liability arising out of coverage disputes involving the health care plans they sponsor. Under the final Senate version of the bill, most—but by no means all—employers would be able to avoid liability by appointing a "designated decision-maker, such as health insurer, to make coverage decisions.

"Finally, they're talking about employers and not just about HMOs," said Kate Sullivan, director-health care policy for the U.S. Chamber of Commerce in

Washington.

"There finally was a focus on employers and how it is that you can or cannot protect employers from liability. The senators showed a lot of concern for employers that do offer health coverage. They finally get it—they finally understand the connection between employers and their health plans, but that still doesn't mean they have protected employers by any stretch of the imagination," she said.

"We hope to see that dialogue continue in the House," Ms. Sullivan added.

Still, despite the last-minute liability relief for employers, President Bush wasted no time in saying that he could not "in good conscience" sign the Senate bill.

The measure, S. 1052, would give patients the right to sue health plans, such as health maintenance organizations, over

See Patients on page 22



PHOTO: AFP

President Bush is threatening to veto the Senate's Bipartisan Patient Protection Act because of its liability provisions. Here are some key differences between it and a measure backed by House Republicans.

- **SENATE BILL:** Would allow unlimited economic and noneconomic damages. Would allow civil monetary penalties, similar to punitive damages, of up to \$5 million.
- **HOUSE BILL:** Would allow unlimited economic damages but cap noneconomic damages at \$500,000, based on direct proportion of fault and responsibility. Punitive damages prohibited.

401(k) catch-up rules unclear

Pension guidance sought

By JERRY GEISEL

WASHINGTON—Employee benefits lobbying groups are urging government regulators to develop quickly the guidance that employers urgently need to comply with the sweeping pension changes laid down by the new tax law.

Last month, the ERISA Industry Committee hand-delivered to the U.S. Treasury Department a three-page list of recommendations to help regulators develop rules for what is now

widely being recognized—in the absence of guidance—as one of the most difficult provisions of the law to implement: allowing employees 50 and older to make "catch-up" contributions to their 401(k) plans.

In addition, another Washington-based employer benefits lobbying group—the American Benefits Council—will meet with Treasury Department officials this week to offer suggestions on guidance for regulators to consider.

Official guidance could come

as soon as next month, say benefit lobbyists and consultants, based on their discussions with Treasury Department officials. That guidance, which could take the form of announcements and rulings, will be only the start of a lengthy rule-making process.

"It is going to take a lot more than one piece of guidance. The issues are that complicated," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Washington.

Guidance is needed because, See Guidance on page 20

Employer-sponsored day care faces staffing challenges page 3



High court rules on host of labor issues page 4

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INSIDE

• Human resources managers could provide important help in the early stages of corporate mergers and acquisitions, but they typically are not involved until later, when problems are difficult or impossible to overcome. **PAGE 6**

• Since the first weather risk transaction was completed in the winter of 1997, the market for such deals has grown rapidly each year. **PAGE 15**

• It is up to the House—and the president—to make sure that any patient rights bill that emerges doesn't go so far in providing a right to sue that it discourages employers from offering health care plans, this week's editorial says. **PAGE 8**



• The European Monetary Union's transition to a new single currency next year poses risks, and risk managers warn that European companies must make sure they are ready for the changeover. **PAGE 17**

• Risk managers and other insurance buyers facing a hardening insurance market can rest assured that brokers know they must work harder to keep companies' business. **PAGE 19**

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Business Insurance (ISSN 0007-6864) Vol. 35, No. 28, is published weekly by Crain Communications Inc., 740 N. Rush St., Chicago, Ill. 60611-2590. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to *Business Insurance*, Circulation Department, 965 E. Jefferson Ave., Detroit, Mich. 48207. \$4 a copy and \$95 a year in U.S. \$114 in Canada and Mexico (includes GST). All other countries \$215 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 0293512, GST No. 136760444. Printed in U.S.A. Copyright © 2001 by Crain Communications Inc.

UPDATES

Continued from previous page

low-tax domiciles. "This is not unique, however, to related-party reinsurance and is not necessarily limited to low tax rate...countries," says the letter, which was sent last month by Mark A. Weinberger, assistant secretary-tax policy at the Treasury. "In studying this issue, we have found conflicting information regarding both the extent and nature of the problem," Mr. Weinberger writes. The letter was written in response to Rep. Neal's letter to the Treasury raising concerns about the tax treatment of insurers that cede premiums to related companies in foreign countries with markedly lower tax rates than the United States. Rep. Neal is a co-sponsor of H.R. 1755, which seeks to deny deductions for reinsurance premiums ceded to non-U.S. affiliates in low-tax domiciles (BI, May 28). The bill, which is supported by U.S. insurers including Chubb Corp., Hartford Financial Services Group Inc. and Liberty Mutual Insurance Co., is widely thought to target Bermuda-based insurers and reinsurers that have large operations in the United States, such as ACE Ltd. and XL Capital Ltd. The U.S.-based insurers argue that the Bermuda-owned insurers have an unfair advantage because the Bermuda companies can reinsure much of their business offshore, where loss reserves face little or no taxes. Because U.S. insurers must pay taxes on the investment income they earn on reserves, some U.S. insurers may be tempted by redomicile to offshore locations to gain the same advantages, say the companies backing the legislation. The Bermuda insurers argue that they are reinsuring the business at market rates and are already subject to other taxes and costs not imposed on U.S.-based insurance groups. The Treasury refused to take sides in its letter to Rep. Neal. "While examples of businesses reorganizing outside the U.S. are cited as evidence that U.S. insurance companies will expatriate wholesale to take advantage of lower taxes abroad, this is countered by evidence that the proportion of U.S. risks reinsured with companies located in Bermuda, for example, a low tax rate jurisdiction, has remained relatively steady over time," the letter says. The Treasury will continue to monitor the situation and consider possible options, the letter notes.

► **CLAIM DEADLINES DELAYED** The U.S. Labor Department is delaying and possibly revamping final rules—issued during the waning weeks of the Clinton administration—that set tough new deadlines for resolving health care claims. The new rules, which cover both fully funded and self-funded plans, were to have gone into effect on Jan. 1, 2002. But the department, in a notice to appear in the July 9 Federal Register, said the new compliance date will be the first day of the first plan year beginning on or after July 1, 2002, but in no case later than Jan. 1, 2003. Assistant Secretary of Labor Ann Combs said the delay was needed to ensure that plans can comply in a cost-effective way. In addition, the delay will give the department more time to review the regulations and to take into account any changes that might be needed to those rules if Congress passes patient protection legislation, Ms. Combs said. Employers, which lobbied for a delay, welcomed the department's action. "There is no point in employers having to gear up to comply with one set of rules if those rules later have to be changed" due to the enactment of patient protection legislation, said James Klein, president of the American Benefits Council in Washington. The Labor Department rules established a number of deadlines for the resolution of claims that vary in duration from the time of their receipt, depending on whether a given claim is urgent and whether it is for a medical service that has already been provided.

► **CIAB BENEFITS INITIATIVE** The Council of Insurance Agents & Brokers in Washington is launching a new initiative, the Council of Employee Benefits Executives, to represent the interests of employee benefits divisions at the CIAB's member firms. In a statement announcing the move, CIAB Chairman Thomas J. Rodell noted

that although the organization's members are known primarily for their activities in the commercial property/casualty insurance field, "any-



where from 15% to 50% of total revenues at our member firms comes from their benefits business." Robert Munao, president of Kaye Benefits Consulting, a HUB International company in Woodbury, N.Y., will serve as the CEBE's first chairman, said Mr. Rodell, who is managing director of Aon Risk Consultants in Chicago. Kathi Tripoli, vp-employee benefits division and manager of Bolton & Co. Insurance Brokers of Pasadena, Calif., will be the first vice chair. The new CEBE Employee Benefits Leadership Forum will hold its inaugural meeting May 29-31, 2002, at The Greenbrier resort in White Sulphur Springs, W.Va.

► **CONTRACTOR COMP RULING** The California Supreme Court has ruled that a company hiring an independent contractor is not liable for negligent hiring if an employee of the contractor is injured while working on the company's property. Workers compensation statutes already address such injuries, and allowing a contractor's employee to collect tort damages would be a windfall, the court ruled in *Eva Camargo et al. vs. Tjarda Dairy et al.* The court's unanimous decision bolsters other California high court findings that restrict lawsuits brought against third parties by the employees of contractors. The decision stems from a case in which worker Alberto Camargo was killed when the tractor he was driving rolled over. He was working for a trucking company that a dairy had hired to haul away manure. Mr. Camargo's wife and children sued, claiming the dairy was negligent for hiring Golden Cal Trucking because the trucking company failed to determine whether Mr. Camargo was qualified to drive the tractor.

► **CONTRACEPTIVES LAW UPHELD** A state appellate court has ruled that a California law requiring employers to offer contraceptives as part of their prescription benefit plans does not violate the constitutional rights of a Catholic charity. Catholic Charities of Sacramento Inc., with the support of other organizations with ties to the Roman Catholic Church, sought injunctive relief against the state coverage mandate, which took effect in last year. In its suit, the charity asserted that because the use of contraception violates the



tenets of Roman Catholicism, requiring the organization to provide contraceptive coverage "impermissibly burdens" the organization's religious beliefs, court records show. Justice Arthur Scotland of the California Court of Appeals for the 3rd Appellate District disagreed with that argument, upholding the lower court's decision that the coverage mandate does not violate the constitutional rights of Catholic Charities of Sacramento. In his decision, Justice Scotland wrote that a ruling in favor of the charity would allow the employer to impose its religious views on its employees. Nearly 75% of the employees of Catholic Charities of Sacramento are not Catholic, according to court records in *Catholic Charities of Sacramento Inc. vs. The Superior Court of Sacramento County*.

► **ARBITRATION ROLE CLARIFIED** A reinsurer is not bound to arbitrate a dispute with a ceding insurer when the case hinges on whether a valid reinsurance contract existed in the first place, a federal appeals court has ruled. A panel of the 7th U.S. Circuit Court of Appeals in Chicago found unanimously that Sphere Drake Insurance Ltd., formerly Odyssey Re (London) Ltd., can-

not be forced to arbitrate a dispute with All American Life Insurance Co. over workers compensation reinsurance purportedly bound by a Sphere Drake managing general agent. Sphere Drake contended that its MGA, London-based Euro International Underwriting Ltd., had no authority to bind it on the workers comp business, and the question of the MGA's authority was the only issue in dispute. Milwaukee-based All American demanded arbitration, but a federal district judge agreed with Sphere Drake that a court should decide the case, and the 7th Circuit panel last Tuesday affirmed that finding. While interpretation of a valid contract is an appropriate role for arbitrators, questions of contract formation—that is, of whether a contract was validly entered into—belong in the courts, the appeals panel held. The panel remanded the case to the trial court to resolve the question of the MGA's authority.

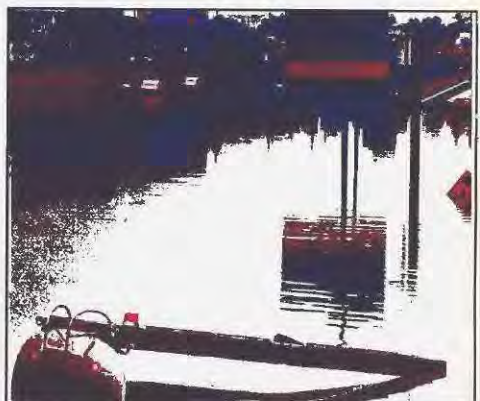


PHOTO: REUTERS

A stranded tanker in Houston is nearly covered by water from Tropical Storm Allison.

► **ALLISON LOSSES** Underwriters expect to pay \$1.2 billion for insured property damage caused by June's Tropical Storm Allison, which would make it one of the largest windstorm loss ever, according to the Property Claim Services unit of the Insurance Services Office Inc. Texas bore the brunt of the storm, sustaining about \$1.0 billion of the estimated total. The heavily populated Houston area suffered the heaviest losses, according to PCS, which is based in Jersey City, N.J. The storm's punch reached halfway across the country, to Pennsylvania. That state sustained the second-highest level of insured property damage—\$120 million, with most claims coming from the Philadelphia area. Louisiana suffered the third-worst level of damage, at \$65 million in insured property damage; followed by New Jersey, with \$10 million; and Florida and Mississippi, with \$5 million each. In all, insurers received about 219,500 Allison-related claims from policyholders in those six states. The PCS tally does not include hundreds of millions of dollars in flood losses that are covered by the federal National Flood Insurance Program.

► **BRIEFLY NOTED** Three veteran insurance professionals have left Aon Risk Services to join the construction practice of Marsh Risk & Insurance Services in Newport Beach, Calif. Gayle Graef, a 24-year industry veteran, joined Marsh as a client adviser; Julie Branstetter, a 17-year veteran, joined Marsh as a client adviser; and Peggy Vahle-Todde, a 13-year veteran, joined Marsh as a client representative....The Department of Health and Human Services last Friday issued its first guidance on new federal patient privacy regulations. The guidance addresses what insurers, physicians, hospitals and other entities covered by the rules must do to meet their legal requirements. Topics covered by the guidance include patient consent, parental rights, marketing, medical research and governmental access to information. The text of the guidance can be accessed at HHS' Web site, which is located at www.hhs.gov/ocr/hippa.

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

Day care centers pay premium for quality



Demographics, educational opportunities keep supply of possible workers low

By JUDY GREENWALD

Finding and retaining qualified workers is a major challenge for all day care centers, but employer-sponsored day care centers may have a leg up in dealing with those issues.

The prestige of working at a major corporation's center, the onsite services that day care workers can often use and the higher salaries employers are willing to subsidize are often powerful recruitment and retention tools, work/life experts say.

It is generally recognized there is an ongoing crisis in finding qualified day care workers,

caused in large part by the low wages they earn. Day care workers make an average of \$7.14 an hour, or less than \$13,000 a year regardless of their educational qualifications, said Liz Klein, senior program officer with the Kansas City, Mo.-based Ewing Marion Kauffman Foundation.

That "puts them on a pay scale wage among the lowest in the country," said Ms. Klein. "In fact, the sanitation staff that clean the day care facilities makes more than the lead teachers working with our kids."

Because of this, the turnover rate is very high. In Missouri, for

See **Day care** on page 16

Court rules on 'willful self-exposure'

Comp eligibility at issue

By DAVE LENCKUS

PHOENIX—A worker who refused to switch jobs or wear protective gear to avoid contacting a normally benign substance that doctors knew posed health risks for the worker is not automatically ineligible for workers compensation benefits, an Arizona appeals court has ruled.

Overtaking a state Industrial Commission decision, the court unanimously ruled on June 28 that knowingly taking a health risk for the sake of employment jeopardizes a worker's eligibility for workers comp benefits only if the worker intentionally disregarded an unjustifiable risk of self-harm.

While the case is unusual, it may underscore a need na-

tionwide for clearer statutory wording on what constitutes



claimants' "willful self-exposure" to harmful workplace conditions and should encourage employers to take a firmer stance in mandating the use of safety gear, workers comp experts said.

The case involves a baker who developed an asthmatic illness triggered by her long-time allergy to flour dust. In 1997, the illness prevented the baker, now 63, from returning to work in the bakery depart-

ment of a Phoenix grocery store owned by Fry's Food Stores of Arizona Inc. Fry's is a division of The Kroger Co. of Cincinnati.

The baker, Betty J. Bernhart, joined Fry's in 1974 and learned of her allergy in 1981, 20 years after becoming a baker. Through 1997, she filed seven industrial injury claims after suffering bouts of asthma caused by her allergy. She filed the three claims central to this case in 1994, 1995 and 1997.

After her 1997 illness, Ms. Bernhart's doctor refused to allow her to return to work.

After her prior illnesses, doctors cleared her to return to work but warned her to avoid flour dust by wearing a mask or respirator, according

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PHOTOS: NOAA, UPI

Good preparation affords shelter from weather risks

By CURTIS WONG

In addition to planning days at the beach, risk managers should prepare for summer by addressing the risks that the arrival of the warmer months brings.

High temperatures, windstorms, hail and flooding are the major seasonal concerns businesses face from June through early September, according to insurance and risk management experts.

And the summer of 2001 has already proved costly for insurers, with a variety of harsh weather conditions across the country resulting in significant damage. For example, Texas and Louisiana continue to recover after being pounded with torrential rains and flooding generated by Tropical Storm Allison. Insured damage from Allison are expected to reach \$1.2 billion, according to the Property Claims Services unit of the Insurance Services Office Inc. in Jersey City, N.J. Traditionally,

June, July and August are also the leading months for tornadoes in the Midwest and hurricanes on the Atlantic and Gulf coasts.

Summer storms aside, warm weather itself can be especially problematic for businesses, said Dennis Anderson, a Park Ridge, Ill.-based vp for operations and engineering at Factory Mutual Insurance Co., which does business as FM Global.

"It seems as if the swings of weather have become more severe in the past five to 10 years," Mr. Anderson said. "There are a variety of seasonal risks that people don't consider," he said, adding that such risks "can lead to major inconveniences, if not a loss of major profit, for industries."

High temperatures, for example, can put a load on an electrical supply system simply because hot weather increases the demand for air conditioning, said James Brogan, loss control specialist at Hartford Steam

See **Weather** on page 22

Managing costs of health care

Employers attempting to increase participation by consumers

By MICHAEL PRINCE

NEW YORK—Employers will accelerate the pace at which they adopt consumer-driven health care approaches in coming years, an experienced benefits consultant predicts.

With managed care plans unable to control rising health care costs and employers more receptive to change in the way they deliver health care benefits, the time is ripe for the adoption of a consumer-driven system, said J.T. Thompson, senior benefits consultant at Hewitt Associates L.L.C. in New York.

"It's the first real product innovation that happened in eight to 10 years," Mr. Thompson said.

Perhaps the biggest factor prompting employers' interest is the continually rising cost of

health care, Mr. Thompson said. This year has seen double-digit increases, with little change likely for next year, he said.

"Managed care has lost its ability to control costs," Mr. Thompson said at a conference in New York sponsored by the New York Business Group on Health.

In addition to trying to lower costs, many employers want to increase the involvement of their employees in their health care decision making, he said. A consumer-driven approach will "make employees more like consumers, like they are for any other product in the marketplace," he said.

But some employers are concerned that giving employees more control could lead to higher costs. Ideally, Mr. Thompson said, employers want to give

employees more control without driving up costs.

A consumer-driven model would eliminate a major shortcoming of the current system—the insulation of employees from the true cost of health care, he said. For example, in a consumer-driven health care system, an employee, rather than paying a fixed amount for a doctor visit, such as a \$10 co-payment, could pay a percentage of the total bill, in order to develop an understanding of the real cost of his or her care. The aim of such a change would be to compel consumers to maximize the value of their health care dollars.

But for such a development to occur consumers would need accurate, comprehensive information about health care quality and costs, Mr. Thompson said. Currently, he said, a num-

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Arbitration dominates labor issues before court

By MARK A. HOFMANN

WASHINGTON—If the past is prologue, employers can expect the U.S. Supreme Court to con-

1925 applied to all contracts of employment (BI, March 26). At issue was whether Circuit City could require Mr. Adams to submit a discrimination claim

sociated Coal vs. United Mine Workers, District 17 and Green Tree Financial Corp. vs. Larkeeta Randolph, as being of significance to employers.

"The Eastern Associated Coal case underscored that the courts will not readily interfere with the arbitral process, even when a truck driver twice fails drug tests. The Green Tree Financial Corp. case also gave the court a chance to validate the Federal Arbitration Act, even where the question of who pays costs and how much they will be remained unanswered," he said.

Significance of decisions

The number of arbitration cases heard by the Supreme Court shows that "business entities are increasingly realizing" the value of the technique in settling disputes, particularly given the uncertainties they face in the civil justice system, said Mr. Hungar. The high court's Circuit City decision "simply affirmed" the applicability of the Federal Arbitration Act to most contracts of employment, he said, adding that "we're likely to see more nationwide employers" embrace the technique.

"The practical significance is a signal from the judiciary that court dockets are stuffed and crowded and so long as arbitration agreements contain some indicia of fairness, we endorse the courts upholding those agreements so the disputes in the workplace are resolved outside the courthouse. The future battleground is over the issue of fairness underlying the arbitration agreement," said Gerald L. Maatman Jr., senior partner and chairman of the global employment law practice of Baker & McKenzie in Chicago.

Mr. Hungar said that while he still thinks it's "too soon to say" whether the court's affinity for arbitration in this term represents a trend, he was willing to predict that the court would continue to use a significant proportion of its civil docket to deal with employment-related cases. He added that a question the court may address in the future is whether arbitration agreements that preclude class actions in consumer contracts

can be enforced.

The court's decisions represented a "green light for arbitration," said Walter Dellinger, a co-counsel to Circuit City, at the WLF discussion. But business may take a few years to realize the importance of the court's actions, said Mr. Dellinger, national chairman of the appellate practice group of the law firm O'Melveny & Myers L.L.P., a law professor at Duke University and a former acting solicitor general of the United States under President Clinton.

Other business cases

Employers suffered a small defeat in the court's decision in *Sharon B. Pollard vs. E.I. du Pont de Nemours & Co.*, in which the justices were asked to decide whether so-called "front pay" constitutes compensatory damages under the Civil Rights Act of 1964 as amended in 1991 (BI, June 11).

According to the high court, front pay is "simply money awarded for lost compensation during the period between judgment and reinstatement, or in lieu of reinstatement" and not subject to a \$300,000 cap on compensatory damages contained in the federal law. Although Ms. Conrad called the decision "the biggest disappointment of the term," she pointed out that the Supreme Court was merely upholding what most federal appeals courts had already ruled.

"The Pollard case could make employment discrimination claims more expensive, since front pay demands could run into the hundreds of thousands of dollars where a plaintiff is unable to secure another job. This is the kind of issue that should be resolved more clearly by Congress when it originally passes broad remedial legislation," said the NAM's Mr. Riegel.

Also of considerable interest to employers was the high court's decision in *Cooper Industries vs. Leatherman Tools*, a case involving punitive damages awarded in a dispute between two tool manufacturers (BI, May 21). The decision, which Mr. Hungar said might appear "hypertechnical" to some observers, revolved around the standard of review that a federal appeals court should apply to a district court's award of punitive damages.

The high court was asked to decide whether an appeals court had to defer to the judgment of the lower court and review the awards only when there had been an "abuse of discretion," or whether the higher court had the right to subject punitive damage awards to "de novo" review. Employers generally favor the de novo standard, which they believe provides a better safeguard against disproportionate punitive damage awards because the appeals court has more flexibility.

The Supreme Court agreed that the de novo standard was appropriate. Mr. Hungar called it a "potentially very important

ruling for defendants." He added that the decision leaves one key question unanswered, which is whether state courts should use the same standard as federal appeals courts in reviewing punitive damage awards.

"Cooper was what I would call the sleeper case of the term, no one seemed to focus on it, it seemed hypertechnical. It has huge ramifications. It really is the continuation of the *Gore vs. BMW* legacy," said the National Chamber Litigation Center's Ms. Conrad. In *Gore vs. BMW*, the high court ruled for the first time that punitive damages could be so disproportionate to underlying damages as to be unconstitutional.

In a complex decision involving regulatory leeway, the high court ruled in *American Trucking Assns. vs. Whitman* that the Environmental Protection Agency does not have to consider the costs of implementation in setting air quality standards. Many employer groups had hoped that the court would require the use of cost/benefit analysis in general but were able to take some comfort in the fact that certain aspects of the standard were sent back to a lower court for review.

"It's not the end of cost/benefit analysis. Cost/benefit analysis is alive and well throughout the rest of the regulatory branch," said Ms. Conrad.

Ms. Conrad pointed out that the justices did rein in federal regulators in its decision in *Solid Waste Agency of Northern Cook County vs. U.S. Army Corps of Engineers*. In that case, the high court ruled that the Corps couldn't assert jurisdiction over isolated intrastate waterways simply because the waters serve or could potentially serve as the habitat for migratory birds. Ms. Conrad hailed the decision as "scaling back government overreaching."

Casey Martin case

A final employment related case of sorts that drew a good deal of attention was *PGA Tour Inc. vs. Casey Martin*. The high court ruled that Casey Martin, a professional golfer who suffers from a disease that makes walking difficult, has the right to use a golf cart under the Americans with Disabilities Act despite a longstanding PGA rule against doing so.

The NAM's Mr. Riegel said the specific nature of the *Casey Martin* case would not generally affect manufacturers. But, he added, it might "portend that the court may look more closely into the definition of a 'qualified individual' or a 'reasonable accommodation'" under the ADA. Those terms do affect most manufacturers, he said. He noted that the court has already accepted two additional ADA cases for review in its next term.

Mr. Dellinger quipped that the decision showed that the court "assumes it's better equipped than the Professional Golf Assn. to determine the true nature of golf."



tinue to devote much of its civil docket to labor and employment issues in the court's next session.

In fact, the justices dealt with five cases on arbitration alone in the term that just ended, said Thomas G. Hungar, partner and co-chair of the appellate and constitutional law practice group in the Washington office of the Los Angeles-based law firm Gibson, Dunn & Crutcher L.L.P. Mr. Hungar spoke at a recent briefing sponsored by the Washington Legal Foundation.

But arbitration wasn't the only issue of interest to employers that the high court tackled in its 2000-2001 session. Caps on certain types of awards in discrimination cases, the standard of review that applies to punitive damages in federal courts and even the nature of the game of golf all merited the justices' attention.

In each of the arbitration cases, the court came down in favor of the use of arbitration to settle disputes, said Mr. Hungar. The most closely watched of these cases was *Circuit City Stores Inc. vs. Saint Clair Adams*, in which the majority ruled that the Federal Arbitration Act of

brought under state law to binding arbitration because he had signed a pre-employment agreement that stipulated the use of arbitration in all employment disputes.

"The Supreme Court has examined arbitration from nearly every possible angle this term, and has upheld the principle in every one of these cases," said Robin S. Conrad, senior vp of the National Chamber Litigation Center Inc. in Washington, which handles litigation for the U.S. Chamber of Commerce. "This alone should take the wind out of the sails of any legislative attempt to undermine the principles of arbitration," said Ms. Conrad in reference to an attempt by some Democrats to amend the Federal Arbitration Act.

Ms. Conrad noted that the justices have already agreed to hear another potentially significant employment arbitration case—*Equal Employment Opportunity Commission vs. Waffle House Inc.*—in its next term (BI, April 9).

Quentin Riegel, deputy general counsel for the National Assn. of Manufacturers in Washington, pointed to two of the other arbitration cases—*Eastern As-*

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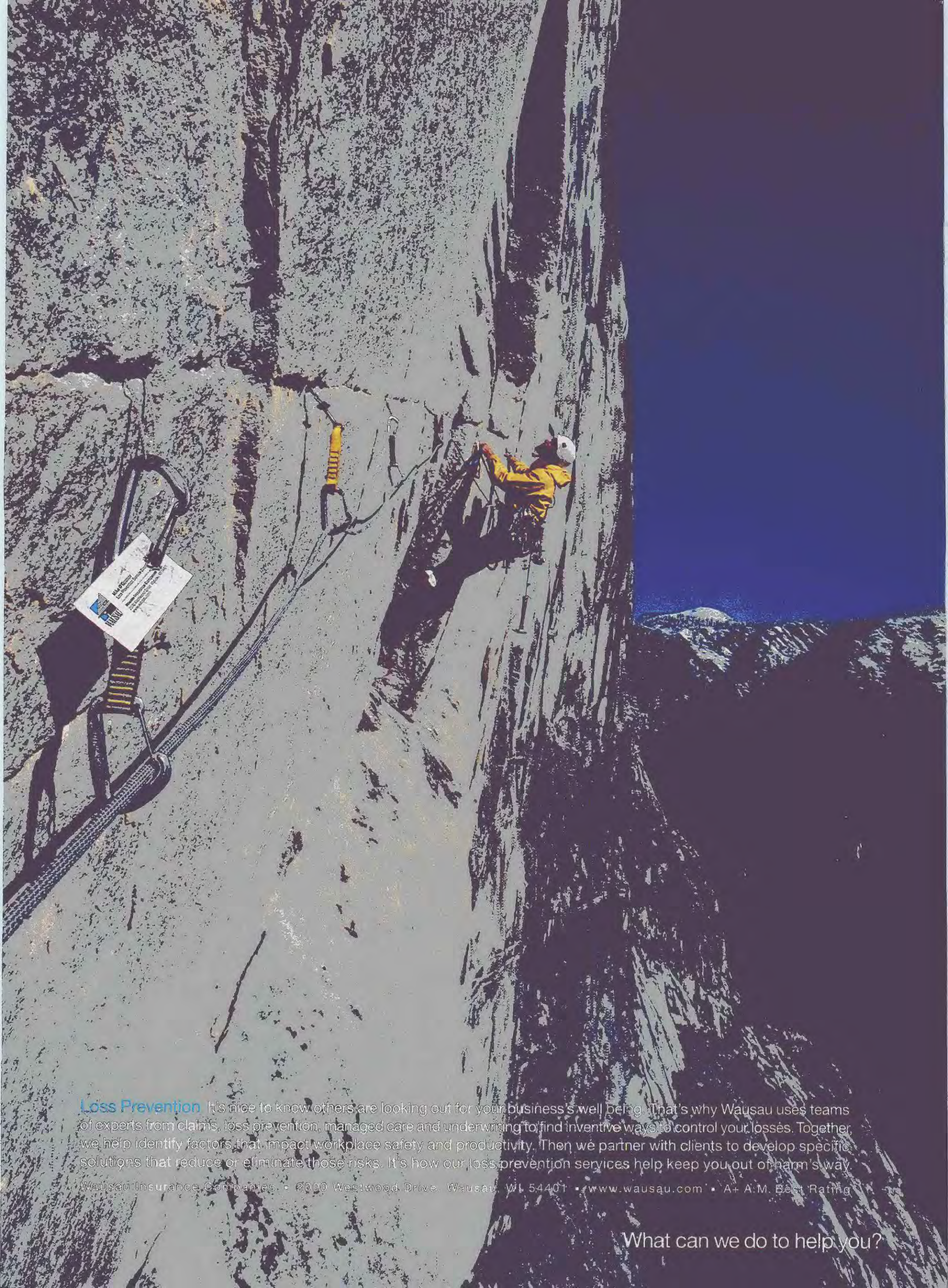
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What can we do to help you?

HR managers can be crucial for successful mergers

Book cites survey, case studies indicating HR's role in M&A

By DOUGLAS McLEOD

Human resources managers could provide important help in the early stages of corporate mergers and acquisitions, but they typically are not involved until later, when problems are difficult or impossible to overcome, a study by consultants with Towers Perrin concludes.

While mergers involve a range of employee benefit and other "people" risks, from underfunded pension plans to clashes in corporate culture, most human resources professionals take a role only after deals are made and companies begin to integrate their operations, according to Jeffrey A. Schmidt, a managing director with Towers Perrin in Chicago.

"Strategic people management is as crucial to a successful merger or acquisition as a sound strategy and fair valuation," Mr. Schmidt contends. "HR must have a seat at the planning table—that is, be involved at the beginning stages of a deal—to provide management with critical insights into how the merger or acquisition will affect the newly formed company's people."

Mr. Schmidt's observations and those of other Towers Perrin consultants are included in a book to be published in August, "Making Mergers Work: The Strategic Importance of People."

The book outlines four stages of a merger: predeal analysis, due diligence review of the company to be acquired, integration planning and implementation.

The seeds of bad mergers are sown early in this process, according to Mr. Schmidt.

Companies "that fail to do the homework in formulating strategy and in due diligence almost always make mistakes in selecting partners and negotiating deals," he writes. "For example, they don't consider cultural issues early in discussions. They don't address the ways in which the two companies' managements will work harmoniously. Too little attention is paid to identifying and keeping high-performing, high-potential employees. These mistakes will eventually come back to haunt the new company and its management."

Included in the book are the results of a survey of 440 senior human resources executives

conducted by Towers Perrin and the Alexandria, Va.-based Society for Human Resource Management. The survey found that cultural differences between companies may be the single highest barrier to a successful merger.

In one case of culture clash, a pharmaceutical company with a fast-paced entrepreneurial culture merged with a relatively staid chemical company, resulting in "runaway employee conflicts" and a mass exodus of key employees before the deal had even closed, according to Mr. Schmidt. He did not name the companies.

The due diligence process presents more pitfalls.

"Even with an exhaustive process, deal wreckers can come from almost anywhere—even areas thought of as only marginally important at first glance," he writes.

A senior vp with a midsize software company, for example, reported that the company's due diligence team overlooked an underfunded executive pension plan at an acquisition target, costing the software company \$10 million.

"To avoid making the same

mistake in the future, HR is now involved in all predeal (merger and acquisition) activities," the executive told Towers Perrin in the survey.

The software company is in the minority, though, the survey found.

While survey participants rated predeal activities to be as important as those in later stages of mergers, only four in 10 said they had any substantial involvement at that stage, Mr. Schmidt writes. In addition, companies reporting successful mergers—only 43% of the total—more frequently involved human resources executives early in the process than did others, the survey found.

"HR is significantly more involved during (later) integration planning and implementation, where aligning HR programs and addressing staffing issues are among the key concerns," according to Mr. Schmidt. "Looked at another way, HR has typically participated in the M&A process through its traditional roles and expertise as technical specialists in the people area, rather than as a strategic business partner and trusted adviser within the senior management team."

Of the 440 respondents, about

two-thirds represented companies with 1,000 or more employees, and almost half of the companies had annual revenues of at least \$1 billion. Two-thirds of the respondents' companies had been involved in three or more mergers, acquisitions or joint ventures in the previous five years.

Whether human resources executives can win a regular place on the teams reviewing merger plans is an open question, Mr. Schmidt suggests.

"It's one thing to want to become a strategic partner in M&A and quite another to convince the (chief executive officer) and other senior management that HR can add value, particularly at the earliest predeal and due diligence stages," he writes.

To do so, human resources managers must show that they understand the financial aspects of acquisitions as well as the related operational and staff-related issues, he says.

"Armed with this knowledge, HR professionals have a greater chance of gaining a seat at the table with their counterparts in finance, operations, legal and other functions at the early, strategic stages of the M&A process."

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 The Benchmark Course/Captive Developments—
 22 New Ideas Roundtable
 Welcome Reception with Exhibitors

Tuesday, November 13
 Continental Breakfast
 Keynote Address: **Betting on the Future**
 with David Hale, Chief Global Economist,
 Zurich Financial Services, Inc., Chicago
 Employee Benefits 22 Investments
 Buffet Luncheon
 Healthcare 22 E-Commerce
 Rent-a-Captives 22 Capital (In)Adequacy
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 Captive Case Studies
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OPINIONS

House must strike balance

Once again, patient protection legislation is moving through Congress, and its advocates believe that passage of some measure during this session appears likely, if not certain.

Such optimism aside, President Bush has clearly warned that unless the liability provisions are eased, he will veto the legislation.

President Bush is right on target. To be sure, we have come to accept patient protection advocates' arguments that the current legal remedies participants have against health plans—chiefly in the recovery of lost benefits—are too weak.

There is sufficient evidence that stronger sanctions are needed, but litigation should be reserved as a last resort, to be used only after all other avenues—such as independent external review of coverage decisions—have been exhausted.

And while remedies should be expanded, the Senate bill—which would allow unlimited economic and noneconomic damages and permit up to \$5 million in civil monetary penalties—goes way too far.

Regrettably, there has been little discussion of what the impact would be of exposing health care plans to large damage awards.

Costs surely would go up, and that inevitably would lead many employers—particular smaller employers—to shift more of their costs to participants and, in some cases, to drop their health plans altogether.

Given that millions of Americans already lack health care coverage, it would seem the United States can ill afford to risk increasing the ranks of the uninsured.

Indeed, it would be a supreme irony if legislation that is supposed to give health participants more rights were to end up costing people their health care coverage.

To be sure, there are costs associated with most, if not all, benefit plan regulation. That is perfectly acceptable. But the role of government is to find a balance that will ensure that participants' rights are protected without making those

rules so complicated or costly as to discourage employers from offering the plans, or to make the plans prohibitively expensive. The Senate, we are afraid, has failed to strike that balance.

That said, we are encouraged that the Senate, at least to a point, listened to the concerns of employers and took steps to shield them from lawsuits over coverage decisions. Employers, which are the chief payers of private health insurance, are understandably opposed to being held liable for the coverage decisions of their health plans and have lobbied against the bill because of those concerns. Lawmakers, in an effort to deflect attention from this subject, have said it is not their intention to hold employers liable unless plan sponsors have a role in determining what treatments are covered beyond simply paying for coverage.

Almost lost amid all the managed care plan bashing is that many of the plans operate in very different—and, by and large, better—ways than they did just a few years ago.

When Helen Hunt's character in the 1997 movie "As Good As It Gets" made a crack about the limitations of health maintenance organizations, many audiences reacted with appreciative and bitter laughter. But that was four years ago, and managed care—driven by a variety of forces, not least of which was the threat of patient protection legislation—has changed dramatically. The much-reviled gatekeepers have lost their power, physicians are exercising their clout to regain control of medical decisions and pricing, access to specialty providers is growing, and em-



ployers are becoming increasingly insistent that their plans provide high-quality care, not merely the cheapest care.

In short, the market, prodded on by employers and patients, already is accomplishing what proponents of patient protection legislation say they want—less restrictive health care coverage. So, is the need to provide dramatically expanded legal remedies as urgent? We think not.

It is therefore up to the House—and the president—to make sure that whatever legislation emerges from Congress doesn't go so far in providing a right to pursue damages that it discourages employers from offering plans at all, ultimately denying employees a chance to exercise even basic health care rights.

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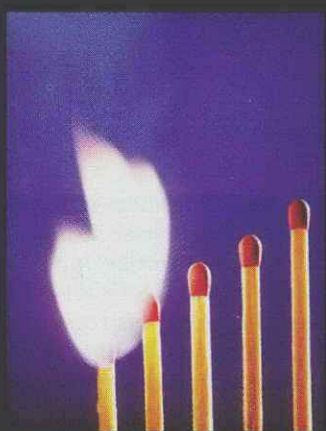
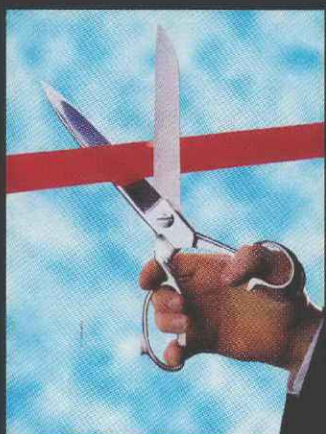
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Jul 9			Jun 27
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PRELIMINARY AGENDA

MONDAY, OCTOBER 22

8:00 AM
Golf Tournament

3:00 PM
EARLY REGISTRATION

4:00 PM
**EMPLOYERS' PRIVATE ROUNDTABLE:
 EXPERIENCES, VIEWS AND IDEAS**
Moderator:
Kathryn J. McIntyre
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5:30 PM
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TUESDAY, OCTOBER 23

8:00 AM
**REGISTRATION AND CONTINENTAL
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9:00 AM
WELCOME
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9:05 AM
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9:15 AM
**KEYNOTE PRESENTATION: GAINING CON-
 TROL OF AN OUT-OF-CONTROL SYSTEM**
 "Sometimes the best way to get control of the out-
 of-control system is to CHANGE the system."

James E. Green
 Risk Manager
 Acme Building Brands Inc.

10:15 AM
TABLE-TOP EXHIBITS & REFRESHMENTS
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10:45 AM
**DISPELLING COMMON MYTHS ABOUT
 WORKERS COMPENSATION**
Moderator:
Tony DiDonato
 Actuary
 NCCI Holdings Inc.

Panelists:
Annette Sanchez
 Senior Vice President
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Jill A. Dulich
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Gary Nesbitt
 Director of Risk Management
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12:00 PM
ROUNDTABLE NETWORKING LUNCHEON
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1:15 PM
**WORKERS' COMPENSATION AND
 DISABILITY CONSULTING**
Moderator:
Daniel R. Miller, M.P.H.
 Vice President
 Workers' Compensation and
 Disability Consulting
 AON Consulting

Panelists:
Bruce Sundquist
 Vice President, Healthcare Claims
 American Re-Insurance Co.

Brian Boon
 President & CEO
 CARF (Commission on Accreditation of
 Rehabilitation Facilities)

R. Dion Edwards
 Division Workers' Compensation Manager
 Cessna Aircraft

Lester L. Sacks, M.D., Ph.D.
 President
 Lester L. Sacks, M.D., Inc.

2:15 PM
**LEGISLATION AND LITIGATION
 AFFECTING EMPLOYERS' LIABILITIES**
Moderator:
Robert Persico
 Vice President, Product Management, ESIS, Inc.
 ACE USA

Panelists:
Nancy Schroeder
 Assistant Vice President
 National Association of Independent Insurers

Bruce C. Wood
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James E. Green
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3:15 PM
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3:45 PM VENDOR BENCHMARKING — TOOLS TO MEASURE YOUR VENDORS' PERFORMANCE

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Workers Compensation
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Deloitte & Touche LLP

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Valley Oak Systems, Inc.

Barbara Pelletreau
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University of California

Alberta R. Mendenhall
Assistant Treasurer, Second Injury Fund
State of Connecticut
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Eric T. Hovanky
Director—Global Risk Management
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4:30 PM PRACTICAL ERGONOMICS — HOW TO GET A GOOD HANDLE ON PREVENTING AND MANAGING CLAIMS

Moderator:
John S. Ingram
Vice President, ESIS Risk Control Services
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Panelists:
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WEDNESDAY, OCTOBER 24

7:45 AM
CONTINENTAL BREAKFAST
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9:00 AM INTEGRATED DISABILITY MANAGEMENT: PROMISE AND PERFORMANCE

Moderator:
Maria A. Bayne
President
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Panelists:
Archie Simons
CEO
Synchrony

Bernadette Melchionne
Sr. Corporate Insurance Administrator
Mattel Inc.

Elizabeth Robinson
Director, Integrated Disability Management
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10:00 AM CAN LOSS CONTROL TECHNIQUES BE IMPROVED? A NEW LOOK AT SAFETY

Jim Kelly
Regional Director of Loss Prevention
Marriott International
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Wende Carleson, MSPH, CIH
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TECHNOLOGIES THAT CAN IMPROVE YOUR PROGRAM'S EFFECTIVENESS

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PBM offers migraine management program

COSTA MESA, Calif.—Prescription Solutions, the pharmacy benefit management subsidiary of PacifiCare Health Systems Inc., has launched a migraine management program to increase awareness of low-cost therapies and prevention techniques among physicians and health plan members.

While more than 35 million Americans are afflicted with one or more migraines each year, it is estimated that fewer than half of migraine sufferers ever receive a diagnosis from a doctor, according to Dr. David Berenbeim, Prescription Solutions' medical director.

In addition to helping physicians identify migraine sufferers, the disease management program provides information on cost-effective remedies, educational materials that highlight the value of managing stress, keeping a notebook to identify when migraines occur and their triggers, and discussions of the role of diet and exercise in migraine management.

For example, recent independent studies have shown that, often, over-the-counter medications can work just as well, if not better, than prescriptions, yet the use of high-cost prescriptions to treat migraines is increasing because of drug companies' aggressive marketing.

"Employers depend on PBMs to help them control pharmacy costs," Dr. Berenbeim said in a press release announcing the new disease management pro-

gram. "With such tremendous variations in cost, we thought it was important to help physicians and patients understand the cost of medications and the value that other, lower-cost therapies would offer."

Prescription Solutions estimates that the average midsize employer with between 5,000 and 10,000 employees could reduce overall migraine medication use by 25% with a comprehensive migraine management program.

Web-based HR tool

SCHAUMBURG, Ill.—Zurich North America is offering its HR Care risk management product free to midsize privately held companies that purchase the insurer's Zurich Private Solutions coverage.

HR Care is an Internet-based service that provides a variety of human resources information and tools. It includes information on legalities related to hiring, managing and terminating employees, as well as information on employment law, benefits, safety and other topics. The service also includes self-audit and research tools, as well as links to other human resources information. State laws relating to human resources issues are addressed, as are regulations in countries other than the United States.

Users also can participate in discussion forums on issues related to human resources and

can receive monthly updates by e-mail.

"It is critically important for all our insureds to keep up with rapidly changing laws and practices, so they can understand, and often mitigate, workplace problems before they happen," Bruce Hayes, executive vp of the Management Solutions Group at Schaumburg, Ill.-based Zurich North America, said in a statement.

HR Care already was available to policyholders with 200 employees or more that purchased employment practices liability coverage on a stand-alone basis. Zurich Private Solutions offers directors and officers liability and employment practices liability coverages under one policy.

More information on the HR Care tool is available at www.zurichna.com.

Online billing history

ST. LOUIS—Internet access to billing and payment history is now available to group benefit administrators through GroupWeb software offered by the Genelco Software & Services division of Liberty Insurance Services Corp.

The GroupWeb software allows a user to see detailed billing and payment history using a Web browser. Users also can view family member enrollment

status, address/contract information, and coverage in force and claim status information. GroupWeb also allows for the posting of forms that can be downloaded, printed or routed electronically.

Greenville, S.C.-based Liberty Insurance Services Corp. is part of RBC Insurance, an arm of the Royal Bank of Canada. LIS formed Genelco Software & Services last November.

For more information about GroupWeb and other Genelco software available from LIS, visit www.genelco.com or send e-mail to info@genelco.com.

Internet cargo system

CHICAGO—CNA Financial Corp.'s maritime division has released its latest version of OMMni.com, an Internet-based cargo insurance system.

OMMni.com allows users to obtain online cargo certificates, make electronic premium payments and get rating reports, data analysis and other information from the Internet site.

The system aims to eliminate the time-consuming and paper-intensive traditional approach to cargo insurance.

The new version of OMMni.com provides, among other features, access for larger accounts and features drop-down listings of customer commodities, con-

veyances, trade routes and shipment methods.

The system is free to agents, brokers and CNA policyholders.

More information is available at www.ommni.com.

Calculating liabilities

BRENTWOOD, Tenn.—A new software product created by Specific Software Solutions L.L.C. lets users evaluate alternative loss financing techniques on a net present value basis for auto liability, general liability and workers compensation exposures.

The software, called NPVision, compares various plans, including guaranteed cost, retrospectively rated incurred loss, paid loss and investment credit plans and large-deductible plans. Users can change assumptions and compare the effects on programs. The tool also generates reports that can be customized using company information, and it aims to increase the accuracy of cost allocation and risk management decisions, according to the software's developers.

More information is available at www.specificsoftware.com/npv/npvision.htm or by calling 800-929-4052.

Back injury rehab

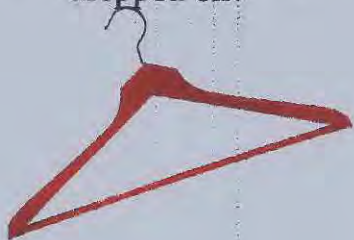
PHOENIX—The Center for Total Back Care has formed an alliance with Minneapolis-based Prevention First Inc. to

Continued on next page

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Continued from previous page
market the company's HealthyBack program to employers in the Phoenix area.

And, in a separate announcement, PFI said it has introduced BackTrac, a new software program that enables employers to precisely measure improvements in injury rates, the number of lost workdays and workers compensation costs as a result of using the HealthyBack program.

The HealthyBack program uses a specifically designed exercise machine that isolates muscles so that they are exercised and strengthened. Studies have shown that many adults in the HealthyBack program increase low-back strength by

more than 100% in just 12 weeks of using the device for just 10 minutes per week, the Mesa, Ariz.-based company said.

The program has reduced lower-back injuries and related workers compensation costs by more than 75% in clinical and industrial settings over the past five years, according to the company.

Large employers usually set up the HealthyBack program onsite, while the program is available to small and midsize employers via a mobile HealthyBack clinic that visits their facilities on a scheduled basis.

Additional information on Prevention First and the HealthyBack program is avail-

able at www.pfibaack.com.

Online self-serve benefits

UNIONDALE, N.Y.—Online Benefits Inc. will provide employer clients of Strategic Employee Benefit Services with online access to self-serve benefits administration under a co-branded model.

The venture will enable SEBS, a member of the Northwestern Mutual Financial Network, to offer Online Benefits' Benergy product to companies with up to 1,000 employees.

Benergy aims to reduce the workload for human resource professionals by putting benefits communication and administration on the Internet.

Alternative care

INDIANAPOLIS—MPlan, one of Indiana's largest health plans, has contracted with American Specialty Health Networks to provide its members with a discount of up to 25% on chiropractic, acupuncture and massage therapy services.

San Diego-based American Specialty, which offers complementary care services through a national network of providers, also is administering a discount alternative medical health care program for Schaller Anderson Healthcare, a third-party administrator based in Phoenix.

And on July 1 the company began offering a new Complementary Care Rider through the

Hawaii Medical Service Assn., a member of the Blue Cross & Blue Shield Assn. American Specialty has provided discounted alternative medicine programs through BC/BS plans nationwide since January.

The new Complementary Care Rider expands on an earlier discount program for complementary therapies, Natural Pathways, that the Hawaii Medical Service Assn. launched in June 1999. Under the new Hawaii plan, employees will pay as little as \$10 for procedures and can self-refer to participating chiropractors and acupuncturists. They must obtain referrals from their primary care physicians, though, for massage therapy.

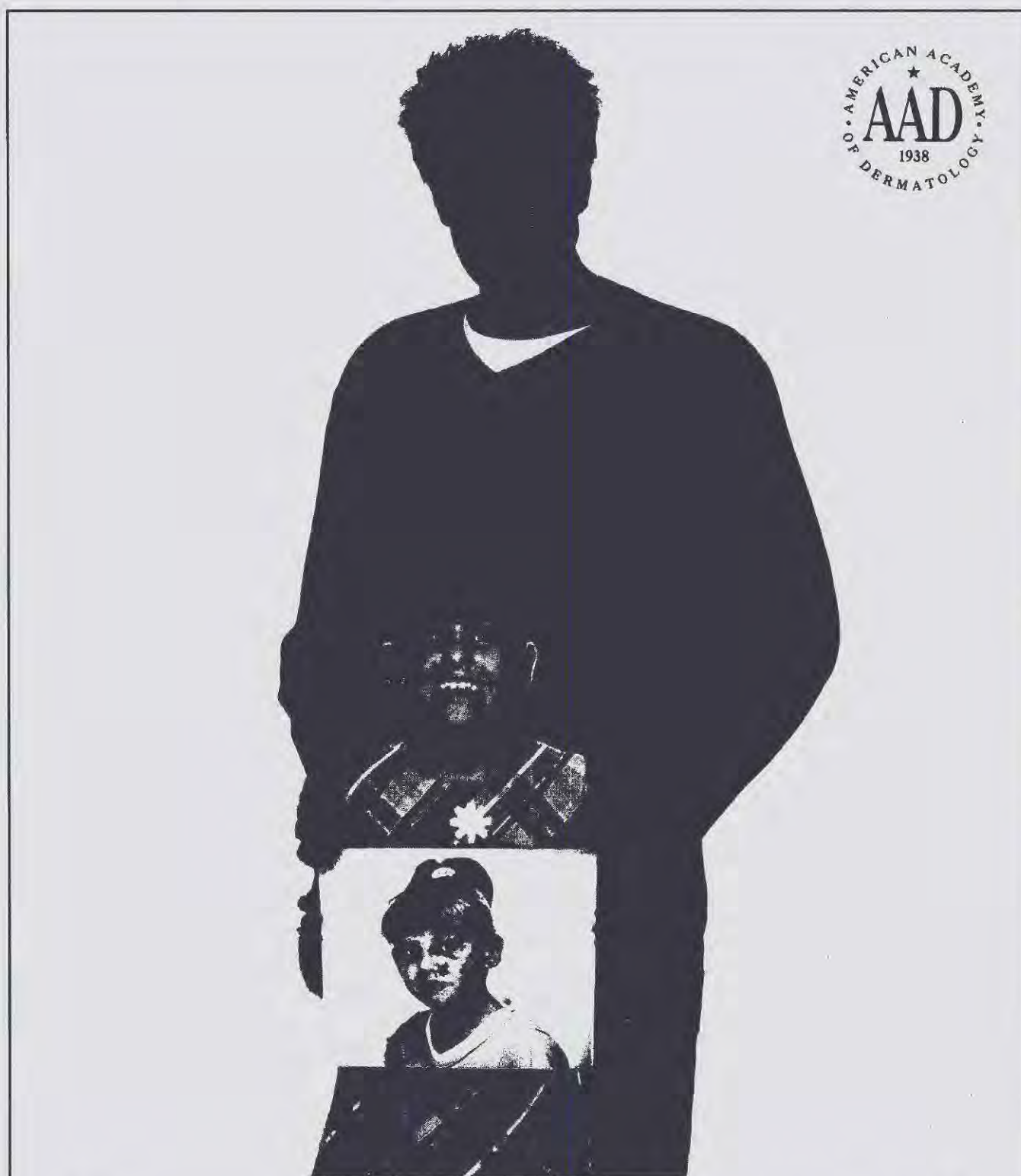
Weather risk market experiences fast growth

Since the first weather risk transaction was completed in the winter of 1997, the market for such deals has grown rapidly each year, according to a recent survey. Participants in the PricewaterhouseCoopers L.L.P. survey reported a total of 4,821 weather risk management contracts over the past three and one-half years, with a total notional value of \$7.5 billion. The survey, conducted by PwC for the Washington-based Weather Risk Management Assn., sought information on weather risk contracts—most of which were temperature- or precipitation-linked derivatives—bought or sold by the 63 members of the WRMA between Nov. 1, 1997, and March 31 of this year. Of those surveyed, 19 companies thought to represent the bulk of the industry responded, according to the WRMA. The survey assigned contracts to half-year periods representing winter and summer. The number of October-April contracts grew at an annual rate of 171%, to 1,633 in 2000/01 from 82 in 1997/98, while April-October contracts increased at a 132% annual pace, to 1,126 in 2000 from 209 in 1997.

While the number of contracts has grown steadily, the growth in their total notional value has been less consistent, according to the survey report. For example, while the number of October-April contracts increased to 1,633 in 2000/01 from 923 in 1999/2000, their notional value actually decreased slightly, to nearly \$1.88 billion this past winter from nearly \$2.32 billion for the previous winter. The report suggests that mild North American winters in 1997, 1998 and 1999 may have prompted contract buyers to seek less protection against the possibility of an unusually cold 2000/01 winter.

More information on the survey is available at the WRMA's Web site, www.wrma.org.

—By Rodd Zolkos



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Day care

Continued from page 3

instance, the annual rate is 60%, said Ms. Klein. "We know that they're turning over because of the inability to earn a livable wage," not because they no longer want to work in the child care field, she said.

Aggravating the situation is unfavorable demographics. There are relatively few women in their early 20s, the population segment that would normally become child care workers, said Helen Darling, senior consultant with Watson Wyatt Worldwide in Stamford, Conn.

And the potential supply is further diminished because today's more widely available educational opportunities mean that many women who in another age might have become child care workers years ago are now going on to become better-paid elementary school teachers, said Ms. Darling. It is not unlike the situation in nursing, which is also facing a shortage, in part because women who years ago would have become nurses are now going on to get their medical degrees, she said.

"I don't think it's an overstatement to state it's a crisis," said Ms. Darling.

It is a critical issue, not the least because these workers are responsible for the incalculably precious commodity of employees' children, observers agree. "Your whole quality of program is based on who's your staff," said Andrea Moselle, work/life manager for the U.S. headquarters of AstraZeneca Pharmaceuticals L.P. in Wilmington, Del., which plans to open its day care center in 2003. "I think it's an ongoing challenge."

Although this situation affects all operators, employers hold an advantage over operators of other day care centers because they see to it that their centers' workers are paid higher-than-average salaries, say observers. Employers generally contract with vendors to run their child care programs, which includes hiring its workers, but they often subsidize these workers' salaries. Employers also often offer use of their own onsite services, such as their gyms, to these workers.

As a result, turnover in employer-supported child care centers is much lower than elsewhere, said Susan Seitel, president of Minnetonka Minn.-based Work & Family Connections, a work/life consulting firm. "Having the support of the employer means that while parents are often charged comparable rates, the salary and

other operating expenses are subsidized," she said.

"Employers want their centers to be of the highest quality, and we know that high quality means a well-educated staff, parent involvement and small groups," she said. "The staff feels better about their work when they're working

'Employers want their centers to be of the highest quality, and we know that high quality means a well-educated staff, parent involvement and small groups.'

— Susan Seitel
Work & Family Connections

in a quality center, their own staff development is being taken care of," and they are paid a livable wage, said Ms. Seitel.

"We see examples all the time of day care staff saying, 'I love my work so much, but I can't

continue because I must make a livable wage.' I just don't think that happens that much in employer-supported child care," she said.

"To avoid turnover and get the best people, you pay a premium in the marketplace," said AstraZeneca's Ms. Moselle. To do so, AstraZeneca plans to offer its child care staff a "fairly significant" discount on tuition for continuing education, including helping those with two-year degrees to get their bachelor's degrees, as well as other benefits, she said.

The Duluth, Ga.-based retail solutions division of NCR Corp. has a teacher appreciation day at its day care center, said Kimberly Bocian, its human resources director. On that day, parents take care of the children while the center's workers have lunch. The workers are also given NCR gift certificates, she said. This helps them feel appreciated, said Ms. Bocian, whose company has a day care management contract with Cambridge, Mass.-based Bright Horizons Family Solutions Inc.

The center also offers slots for the day care workers' own children. "That helps to also lighten the burden if they have small children," said Ms. Bocian.

A low teacher/child ratio also gives the staff more time to enjoy the children. "I think the general work environment in terms of quality really helps to improve on staffing," she said.

In addition, day care workers are also free to take advantage of the division's onsite facilities, which include a fitness center, onsite dry cleaning and a credit union, said Ms. Bocian.

Noelle Aarons Cass, director of benefits for Hartford, Conn.-based Phoenix Home Mutual Life Insurance Co., also offers workers in its day care facility "a nice cross-section of additional work/life benefits," including use of the insurer's fitness center.

One of the attractions of working at a corporate-sponsored day care center may be a sense of stability, because there is no concern about the center going out of business, she said. "There may be a greater element of job security," said Ms. Cass.

There can also be prestige associated with working at a major corporation's center, said a spokeswoman for Bright Horizons. "If you're the No. 1 employer in your community, or if you're well known within the community as an employer of choice or a great place to work, it makes it easier to recruit for your child care center," she said. "There's often just an associated goodwill factor" that translates into people wanting to work there, she said.

Working at a day care center where, as fellow employees, the parents know one another also gives day care workers a sense of community, said Jean Callahan, a principal with Booz, Allen & Hamilton in McLean, Va., which has an onsite child care center managed by Bright Horizons. There is "more camaraderie around the whole culture and the whole community. That's what they tell me is the biggest attraction," said Ms. Callahan. "Everyone who's down there works for Booz, Allen, knows each other and each other's kids," she said.

Pittsburgh-based PNC Financial Services Group Inc. "has a good reputation as a caring employer, an employer of choice," said Kathleen D'Appolonia, manager of work/life and diversity at PNC, which has an onsite backup child care center that is managed by Bright Horizons. "I think they like being affiliated with PNC," she said.

In addition, she said, PNC's state-of-the-art building was just finished last year, complete with a cafeteria that offers outdoor dining and a great view. Furthermore, because it is only a backup center, with a different group of children each day, the job itself presents some professional challenges, said Ms. D'Appolonia.

Employers that are considering opening a day care center should question potential vendors about their employee turnover rate "for at least the previous two-year period," their pay rate and their credentials, recommended Rich Federico, vp and work/life practice leader at The Segal Co. in New York. This way, "you can get a good sense of the caliber of people" who will staff the center, as well as how likely it is they will stay, he said. "We think those are very important questions to be asked," said Mr. Federico.

Bright Horizons, for instance, pays its workers a salary that is typically 30% above the market rate, as well as a full health care benefits program and a 401(k) program, among other benefits, said a spokeswoman.

Boston-based ChildrenFirst Inc., which operates backup facilities, also offers an above-average starting salary of \$26,000 to \$28,000, a 401(k) plan, full health and dental benefits, a stock option plan and tuition reimbursement, as well as generous vacation and sick leave policies, said Mark Vasu, marketing vp.

Despite those benefits, though, ChildrenFirst faces the same staffing issues as anyone in the industry, including a severe national teacher shortage, said Mr. Vasu. "We're all competing in different ways for that talent, and that brings with it some real challenges," he said. **B**

Blue Care to drop Medicare HMO

By DAVID BARKHOLZ

CRAIN NEWS SERVICE

SOUTHFIELD, Mich.—Blue Care Network of Michigan Inc. is planning to drop its Medicare HMO product, forcing 17,465 seniors to find alternative insurance by year's end.

The decision to discontinue the program, called Medicare Blue, was made a little easier by the fact that Blue Care Network and its parent company, Blue Cross & Blue Shield of Michigan, have two other products that the Medicare seniors can move into, said a spokeswoman for the

Southfield, Mich.-based Blues plan.

One of the alternatives, supplemental insurance that Blue Cross offers, helps cover copayments and deductibles not paid by Medicare. The Blues operate the state's largest Medicare supplemental insurance program, enrolling about 180,000 seniors, she said.

The HMO is exiting the Medicare program because it was suffering losses of more than \$1 million a year, the spokeswoman said. A 2% increase in federal reimbursement for the program was insufficient to keep pace with medical inflation averaging in

the double digits, she said.

The Medicare HMO program was offered in the Detroit area, Flint, Saginaw and Lansing.

Blue Cross intends to send group and individual members additional information on the cessation of the program in the coming weeks.

Care Choices HMO, a Farmington Hills-based Blues competitor, dropped its Medicare HMO product several months ago.

David Barkholz is a reporter for Crain's Detroit Business, a sister publication of Business Insurance.

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GLOBAL BRIEFS

Gibraltar's government has passed a bill to allow **protected cell captive companies** to set up in the domicile. The Gibraltar House of Assembly passed the bill into law on July 3. In such captives, each cell's liabilities and assets are kept separate from those of other cells....U.S. broker **Arthur J. Gallagher & Co.** has been rapidly building up an expansive marine, aviation and transport team in London, with many of its staff coming from rival brokers. The team at London-based Arthur J. Gallagher (UK) Ltd. is now headed by Graham Barden, managing director of MAT. Mr. Barden joined Gallagher in April, bringing with him his team of 10 other reinsurance and wholesale aviation brokers from Lloyd's of London aviation brokerage Bradstock, Blunt & Crawley Ltd., where Mr. Barden was chairman. Soon after Mr. Barden's arrival, Gallagher hired a team of about 12 more aviation brokers from Aon Ltd. Gallagher has also hired 15 energy and political risk brokers from HLF Insurance Holdings Ltd. in London....The U.K. Lord Chancellor, the government's most senior lawyer, has set at 2.5% the discount rate to be used in **personal injury claims**. The discount rate is used to adjust settlement amounts for possible investment gains on the funds. The Assn. of British Insurers said it had hoped that the rate would be set at 3%, as had been recommended by the House of Lords and the U.K. Court of Appeal. "The decision will increase insurers' costs and certainly will not help keep premiums down in the classes of business most likely to be affected—motor and employers' liability," said John Parker, head of general insurance at the ABI in London....London-based insurer **CGNU P.L.C.** is exploring the development of a new partnership in France with multiline French insurance mutual MAAF Assurances Group and its member company Mutuelles du Mans Assurances. CGNU, the United Kingdom's largest multiline insurer, already has a partnership with MAAF for small and medium-size commercial insurance business in France through its Paris-based subsidiary, CGNU France. "The partnership would reinforce the position of the MMA/MAAF group in the area of general insurance and the position of CGNU France in life insurance and asset management," CGNU said in a statement....Finnish insurer **Sampo Group** is selling its European property/casualty subsidiary, Sampo Industrial Insurance N.V., to Hampden P.L.C., a Lloyd's of London managing agency and insurance services company....Heath Lambert Financial Services Ltd., a subsidiary of London-based broker HLF Insurance Holdings, has changed its name to **Heath Lambert Consulting Ltd.** HLF said the name change coincided with the company becoming a member of the U.K. General Insurance Standards Council, which monitors and enforces standards in nonlife insurance....Thierry van Santen, director of risk management for French food giant Groupe Danone S.A., has been appointed president of the **Federation of European Risk Management Assns.** Mr. van Santen was formerly president of the French risk managers' association AMRAE for seven years and has been vp of FERMA for two. He said his goals are to improve communication via the Internet, to raise the profile of risk management in Europe through education, and to reinforce links with European organizations. Paul Taylor, risk manager for Kingfisher P.L.C. and chairman the U.K. Assn. of Insurance & Risk Managers' international special interest group, was elected vp of FERMA.

Euro transition mints new risks

Smaller companies appear least prepared for currency changeover

By CAROLYN ALDRED

Europe's transition to a new single currency poses significant business risks, and some risk managers warn that smaller European companies need to prepare now for the change.

As of Jan. 1, 2002, the euro will replace the national currencies of 11 European Union countries: Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain. E.U. members that are not part of the European Monetary Union that created the euro include Denmark, Greece and the United Kingdom.

The euro was introduced as a single currency for participating EMU countries on Jan. 1, 1999, when the exchange rates of their national currencies and the euro were fixed. The countries were given a three-year transition period, but only certain operations have used the euro to date, relying on national currencies for most transactions.

On Jan. 1, 2002, all transactions must be made in euros, and euro coins and notes will become



PHOTO: REUTERS

Beginning Jan. 1, 2002, the euro will replace the national currencies of 11 European Union member countries.

legal tender in EMU countries for the first time. There will then be a dual circulation phase, varying between two weeks and two months in most countries, in which both euros and national currency will be legal tender. Afterward, the national currencies will be exchanged, only in banks for an unspecified period.

Although the move is intended to boost international trade and

create a more integrated economy among European countries, the transition also is expected to present challenges.

"The practical and technical preparations for the euro have major implications for virtually all firms: The single currency impinges on their commercial policies, marketing strategies and accounting and (information technology) systems," ac-

cording to a report on the transition prepared by the European Commission in Brussels, Belgium.

"Generally speaking, the preparations being made by large firms are progressing satisfactorily. But some small and medium-sized enterprises, especially very small firms, may be underestimating the scale of what has to be done and the risks involved in leaving preparations to the last minute," warns the report, which was released in May.

Paul Taylor, chairman of the International Special Interests Group of the Assn. of Insurance & Risk Managers and deputy president of the Federation of European Risk Management Assns., said there are "a number of potential risk management issues," particularly in the retail sector, stemming from the introduction of the euro.

"It is very important to have IT systems ready, euro compliant and operational. Most businesses should have sorted this issue out by now. Many hotels and retailers in Europe already

See Euro on next page

Aussie buyers see rates rise in 2001

By KATE TILLEY

Australian commercial insurance rates rose an average of 14% for all lines of coverage during the year to May, with increases expected to continue through midyear renewals, according to a recent survey.

The survey, conducted jointly by investment banker J.P. Morgan Ltd. in Melbourne and accounting firm Deloitte Touche Tohmatsu in Sydney, found that the average rate hike for the year to May was significantly higher than the 10% average increase that was forecast for 2001 in a survey conducted late last year, said Shane Fitzgerald, an analyst with J.P. Morgan.

The more recent survey, conducted in May, included responses from major commercial insurance companies and brokers in Australia. DTT surveyed the top 20 insurance companies and top 10 brokers, plus a random selection of small and mid-sized companies. All Australian states and territories were represented among the companies surveyed.

The findings supplement a J.P. Morgan-DTT annual survey released last December.

Mr. Fitzgerald said the collapse of insurer HIH Insurance Ltd. earlier this year caused a reduction in capacity in the

Australian market (BI, April 16). Reduced capacity, in turn, has led to an acceleration of rate increases compared with the levels that had been anticipated for 2001 and 2002, Mr. Fitzgerald said.

Other means by which the Australian insurance industry has sought to restore underwriting profitability, in addition to raising rates, have included increasing deductibles and toughening terms and conditions, he said.

Mr. Fitzgerald said the current increases mark the second year of firming rates in Australia and follow several years of soft market conditions.

"Given that the return on equity of the nonlife insurance industry was 2.5% during the 2000 financial year, significant premium increases were required to restore profitability to an adequate level. As such, the increase in premium rates is not surprising," he said.

The survey found that:

- Fire and property insurance rate increases were 16%, on average, for the year to May and were expected to rise to 17% by the end of June. Last year's survey had predicted that property rates would be up 12%, on average, in 2001.

- Liability insurance rate in-

See Survey on page 19



PHOTO: AFP

Russia investigating passenger jet crash

IRKUTSK, Russia—The Russian government has set up a commission to investigate the July 3 passenger plane crash that killed all of the flight's 145 passengers and crew.

The Vladivostokavia airline's Tupolev-154 plane crashed en route from Yekaterinburg, Russia, to the Russian port city of Vladivostok. The crash occurred during an attempt to land at the Siberian city of Irkutsk for routine refueling.

The airline's liability coverage is split evenly between Russian insurers and insurers in the London aviation market. Willis Group Ltd. brokered the liability coverage in London, which was led by AIG Europe (UK) Ltd., the London unit of American International Group Inc.

The 15-year-old Tupolev plane was insured with Russian insurers for around 25 million rubles (\$857,500), according to a source.

Last Thursday, Russian Prime Minister Mikhail Kasyanov ordered the preparation of a government resolution on compensation for the families of the crash victims. He has also instructed insurers to speed up the processing of claims stemming from the disaster.

—By Edwin Unsworth and Dave Lenckus

INTERNATIONAL

Euro

Continued from previous page
have the euro as the primary currency on their receipts, with a conversion into the local currency, so they are clearly ready," said Mr. Taylor, who also is head of business risk management development at the London-based retail consortium Kingfisher P.L.C.

"There will be legal requirements and accounting requirements, producing a lot of compliance issues that local managers should be aware of," he noted.

"For retailers, the next big issue is the cash issue, including the counterfeiting and theft issues and having a double lot of currency in circulation for a period," Mr. Taylor said. "Companies should be making sure that staff are ready

and processes are in place. Staff should be trained and culturally aware, particularly to deal with and help customers."

In addition, "there is the business risk that customers may not continue to spend at the normal rate, and there may be a pause in spending because of concerns over exchange rates. This may well have an impact on the business, and managers should be prepared," Mr. Taylor warned. He noted that "the role of a risk manager is to provoke these sort of questions and raise such operational risk problems."

The planned total replacement of national currencies creates a huge business risk for E.U. companies that will not be insured, said Noel Hepworth, euro project director for the Brussels-based European Federation of Accountants.

"Business managers need to un-

derstand that it will be very difficult to remain in business if they are not ready to trade in the euro"

'Staff should be trained and culturally aware, particularly to deal with and help customers.'

— Paul Taylor
Assn. of Insurance
& Risk Managers

by Dec. 31, 2001, he warned.

Mr. Hepworth compared the risk

of not being prepared for the currency conversion to the threat posed to computers that were not equipped to handle the change to the year 2000, known as the Y2K bug. If companies are not prepared for the euro by the changeover date, "they will find it difficult to continue in operation," he said. In addition, Mr. Hepworth said, "because the introduction of the euro is a foreseeable event, normal directors and officers and professional indemnity insurance may not provide protection in the event of loss."

The E.C. report estimates that "almost one firm in three" has not yet undertaken preparations to operate entirely in euros. According to the E.C. report, "this lack of awareness is particularly marked in France, Spain, Italy, Finland and Portugal."

In May, the European Parliament's Committee on Economic and Monetary Affairs stressed the need for a "firmer information campaign aimed at small and medium-size companies and at local authorities, warning them of the costs of delaying any further the switchover to the euro."

While smaller and midsize companies may still need to prepare, risk managers say that most multinational companies should have no problem with the switch to euros, because they already will be coping with handling several different currencies and have the systems in place to switch from one currency to another.

Multinational risk managers will have been keeping an eye on the situation for the past three years and ensuring that the various de-

See Euro on next page

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Interested candidates should furnish a resume and cover letter by July 31, 2001 to Mr. Steven P. Ferguson, Assistant Director, Financial Affairs Division, Arizona Department of Insurance, 2910 North 44th Street, Suite 210, Phoenix, Arizona 85018-7256. Contact Ethel Rozelle, Human Resources Specialist by e-mail at arozelle@id.state.az.us, or by phone at 602-912-8405 if you have any questions concerning this recruitment. *Position is not covered under the State Merit System. EEO/ADA employer.

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Sub-total	33,088
Associations	254
Government, Unions and Educational Institutions	913
Commercial Consumers	
Sub-total	34,255
Insurance Agents and Brokers	7,538
Insurance Companies	5,634
Accountants, Actuaries, Attorneys & Consultants	2,010
Adjusters, Appraisers, TPA's, Captive Managers & Health Care Providers	1,092
Others Allied to the Field	1,444
Total Qualified	51,973
Non-qualified/Paid Subscriptions	30
TOTAL CIRCULATION	52,003

• Source Business/Occupational
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BPA Publisher's Statement

INTERNATIONAL

Euro

Continued from previous page
partments are on top of the situation, particularly with regard to information technology concerns, said Maurizio Castelli, president of FERMA.

Such companies have had three years to manage the situation and should be prepared.

"It is also a matter of image for large companies" that wouldn't want to be seen as ill-prepared, said Mr. Castelli.

"We looked at the risk management issues associated with the euro several years ago," said Richard Reddaway, the London-based vp of corporate insurance and risk management for the pharmaceutical group Glaxo-SmithKline P.L.C., which operates worldwide.

"The euro is just another currency, and we are structured to deal with 80 currencies. As a result, we did not see it as a major issue from an IT or, indeed, other perspective," Mr. Reddaway said.

Over the long term, the euro's introduction will offer large companies many advantages for corporate risk management and employee benefits, he said. A common currency will allow, for example, greater harmonization and standardization of pension arrangements and other benefits, he said.

Small and medium-sized companies also will benefit in the long term from the euro's introduction, Mr. Reddaway predicted. For example, those companies that have been reluctant to trade and operate in other European countries because they were unable to accept the inherent currency exchange risk now will be able to do so, he said.

Mr. Reddaway said, though, that the transition period presents a business risk, particularly for small and medium-sized companies and retailers.

In a warning similar to those issued in 1999 about the millennium bug, a report by the Federation of European Accountants said that many companies face greater risks

if they postpone preparations for the euro changeover.

"Risks cover not only the consequences of not being ready at Dec. 31, 2001, but also those of delaying preparation until late into 2001. In some countries where it presently appears that large numbers of companies will delay until the end of 2001, this will cause difficulties for software suppliers, business advisers and for banks," the federation said, adding also that "accountants and other business advisers who maintain the accounts of companies may find that they will be unable to meet the demand because of the volume of that demand."

"Already, computer software companies fear that many (small and medium-size companies) will wait until the second half of this year before taking action. By then, there will be insufficient capacity among software firms to help them," warned the European Parliament's Committee on Economic and Monetary Affairs.

The introduction of the euro presents companies with a huge risk management challenge, particularly for information technology, according to Patrick O'Beirne, a consultant with Wexford, Ireland-based Systems Modelling Ltd.

With the switch to the euro, "we have the unique condition of a simultaneous global change and no fallback to national currency processing. At present, if new system changes fail, you fall back to the status quo and work that till the new one is fixed; from Jan. 1, 2002, there is no old working system to go back to, because the backup system and data is still in national currency," Mr. O'Beirne said.

But the risk management implications are much broader than accounting and information technology functions, he said.

For example, "consider the psychological effects of confusion, irritation and suspicion among customers and uncertainty and unfamiliarity of staff" with the new currency, Mr. O'Beirne said.

"Remember that euro problems can be (public relations) disasters

too. Ensure a proper communications and responsibility structure to prevent near misses and unrelated incidents being blown up into 'Chaos as Acme Ltd. Fails to Cope' in the press," he warned.

Also, even if a company is sufficiently prepared, what happens "when your nonprepared competitor closes when they are out of cash and your customers suddenly increase 10% to 30%? Can you handle them?" Mr. O'Beirne asked.

According to the Irish EMU Business Awareness Campaign, a company's first step to managing the currency transition should be to appoint one person to collect information on the euro and report the main implications of its adoption for the company. This includes considering such areas as information technology, accounting, legal, purchasing, marketing, production management, training and human resources.

The introduction of euro currency "absolutely is a concern for bank risk managers. It is not as big an IT issue as Y2K, but for the banking business, it is a very complex risk management process," said Jos Smet, risk and insurance manager for the Brussels, Belgium-based bank Dexia S.A.

Information technology risks are similar to Y2K exposures, except that they are "less problematic, because the environment is more well-defined, and currency issues are a normal part of banking business," Mr. Smet said.

For banks, the physical risk management issues are more important, he said. These include the procedures involved in handling huge amounts of money in a very

defined timetable, Mr. Smet said.

There are also big risk management concerns for retailers, which collect the old currencies, and for the cash-transit companies, which carry the new and old cash to and from the banks and retailers, he said.

In the banking sector, the main concerns of risk managers are storage of the new and old currencies. This involves checking contracts with transit companies responsible for bringing in and collecting the money and checking and amending insurance contracts to ensure that there are no lapses in coverage, as well as confirming that security and storage arrangements are adequate, Mr. Smet said.

Leading Lloyd's of London specie underwriter David Wood, of syndicate 33, managed by Hiscox P.L.C., agreed that the euro changeover has "severe risk management implications" for banks and financial institutions, cash-in-transit companies and retailers.

"This is the biggest logistical issue that cash-in-transit companies probably ever will face," Mr. Wood said, adding that security companies that deal with cash in transit are "clearly aware of their exposures and addressing the risk and insurance issues."

Mr. Wood said he has already written several customized policies covering the introduction of euro currency for cash-in-transit companies. He pointed out that policies must be adapted to take the euro issue into account. "It is not just a question of raising limits," he said.

Banks, which also face increased storage risks, must buy

excess policies for their bankers blanket bond policies that specifically cover the extra currency being stored, Mr. Wood said.

Meanwhile, "retailers are critical to the whole thing, from my perspective," he said. "If they don't get it right, the whole thing could fall down. An awful lot of currency could be built up by retailers, and they need to make sure that they have adequate money coverage on their property/commercial insurance policies."

Mr. Hepworth of the Federation of European Accountants said companies are underestimating the business risk of the change.

In a discussion paper that examines the "most-difficult changeover problems for companies," Mr. Hepworth writes: "The evidence is that companies who have gone through the changeover process have considerably underestimated the impact of the change in the business. Regarding the change as a finance or IT—or both—issue is a serious mistake. The business ramifications can be substantial, not least in pricing, marketing and competition, all of which may impact on purchasing, manufacturing and distribution strategies."

In many companies, some senior executives and country managers still "think that the changeover has only limited effects upon their operations, often rationalizing from the Y2K experience, (and) will not provide the support that is needed," Mr. Hepworth said.

But "the euro has to be given priority," he said, "and all other businesses objectives will fail if the organization cannot operate in the euro from Jan. 1, 2002." **[B]**

Survey

Continued from page 17
creases were 19%, on average, for the year to May but were predicted to edge up to 20% by June 30. The prediction last year was for a 17% increase in liability rates through June.

- Workers compensation rates for the year to May were up 12%, on average, though they were expected to drop to 10% by the end of June.

- Professional indemnity insurance rates were up 15%, on average, for the year to May and were likely to jump to 19% by the end of June.

- Directors and officers liability rate hikes were up 10% for the year to May and were expected to rise to 12% by the end of June.

- Commercial motor vehicle rates were up 11%, on average, for the year to May and predicted to rise to 13% by the end of June.

Peter Caldwell, the chairman of the Deloitte Touche Tohmatsu

National Insurance Industry Group, said that, "despite significant rate increases for fire and property, premiums will still be 20% below 1995 levels."

The annual survey has been conducted for eight years. This was the first time an interim survey was conducted; it was undertaken in May to determine the effects on the market of the HIH collapse, Mr. Fitzgerald said. Future plans call for interim surveys to be conducted each March, he said.

June is the peak insurance renewal time for Australian companies because most businesses report transactions using a fiscal year that runs from July 1 to June 30.

Copies of the Deloitte Touche Tohmatsu-J.P. Morgan 2001 Interim Insurance Industry Survey are available from Walter Spratt, national media relations manager of Deloitte Touche Tohmatsu, by e-mail, at walter_spratt@deloitte.com.au.

Firming market poses challenges

Brokers striving for creativity

By EDWIN UNSWORTH

LONDON—Risk managers and other insurance buyers who fear that the hardening insurance market looks set to firm further and to be around for a while can find solace in the knowledge that brokers are aware they will have to work harder and be more creative in order to maintain or increase their business.

Mario Vitale, sales and marketing director for London-based Willis Group Ltd., said he recognizes the challenges faced by brokers and has produced an internal memo alerting Willis brokers to the situation.

"In a hard market, clients are motivated to look for alternatives to incumbents," Mr. Vitale says in the memo. While this may mean Willis clients could be inclined to look elsewhere, it also means competitors' clients may look to Willis, he points out.

Mr. Vitale also says in the memo that risk managers facing price increases "may be open to new options, from (alternative risk transfer) and enterprise risk management to ways of looking at increased retentions." Some clients new to risk retention are "prime candidates for loss control and risk management programs," he

says in the memo.

Graeme Kerrigan, group chief executive officer of South African broker Alexander Forbes Ltd., also said that, in a hardening market, brokers have to be more innovative.

"The insurance market out there is very tough. Rates are hardening; capacity is reduced. It's becoming more and more difficult to place big risks into the international market. But the reality is, in a business like ours, that's how you demonstrate your expertise," Mr. Kerrigan said.

He said brokers face a challenge because the hardening market appears likely to hold on for at least the next two or three years.

"A hard market makes it easier for brokers to differentiate themselves," said Ken Carter, CEO of London-based broker Jardine Lloyd Thompson Group P.L.C.

Mr. Carter said JLT is preparing its clients earlier than usual for renewal due to the impact of the hard market. "It takes longer to do everything," he said, and certain types of risk have become harder to place.

For brokers, a hard market is not just a bonanza that means increased commissions on the back of higher premiums. Brokers must also work harder, Mr. Carter said.

Gordon Prager, executive vp of Willis Risk Solutions North America, said that the hardening of rates is nothing compared with that of the mid-1980s.

"People who call this a hard market have either not lived long enough or they have very short-term memories," Mr. Prager said.

Since the mid-'80s, though, insurers "have gotten smarter about how they write," Mr. Prager said, and this increasing sophistication means that the broker has to "remain market-savvy." While Mr. Prager said that there is no magic formula for doing so, he said the key ingredients are "single-mindedness, dedication and dogged pursuit." A hardening market also spells adversity for both brokers and clients, creating a wonderful bonding opportunity, he said.

Willis also maintains that a firmer insurance market opens doors for brokers. John Carter, Willis' global sales director for the world outside the United States and the United Kingdom, said that in the less-sophisticated markets he covers, a hard market often brings increased opportunities for business.

Mr. Carter said that in such countries, a hardening market leads buyers to examine more

See **Brokers** on next page

INTERNATIONAL Brokers

Continued from previous page
complex, less traditional risk solutions than those they typically consider. He said many Willis offices report increased interest in captive feasibility studies, enterprise risk management analyses and structured financial solutions, "specialties that differentiate Willis in the marketplace."

In a hard market, brokers can provide creative deals, said Tom Coughlin, executive vp in Willis Risk Solutions. As an example, he said, as insurers withdraw locked-in multiyear deals, "a clever broker can suggest such options as locked-in premium range based on loss performance."

David Gamble, executive director of the London-based Assn. of Insurance and Risk Managers, said that,

in a hardening market, risk and insurance managers should "make certain they've got excellent information and that the underwriter is listening carefully."

This means "you really do need a serious figure from the broker to make sure the underwriter is listening carefully... somebody senior and very capable managing your account, someone you can put before your main board to explain what is going on, why it's going on," he said.

Mr. Gamble said those individuals who have been through a hard market in the past can probably provide more assistance than can those brokers who are experiencing such a market for the first time. "Some of the older brokers are able to pull in all sorts of contacts to get what they require," he said.

Carolyn Aldred contributed to this article.

Consumer

Continued from page 3
ber of Web sites provide data about health care quality.

While many employers will eventually adopt some type of consumer-driven health care system, such as a defined contribution approach, few will make it their only option, Mr. Thompson said.

Instead, he said, most employers will offer such plans as options, adding them to their existing plan choices.

And Mr. Thompson said he doubts that employers will soon give their employees money to purchase health care in the marketplace by themselves. While employers hope to give their employees more control, he said, they are still paternalistic and concerned about the welfare of their employees.

Looking ahead, Mr. Thompson predicted that some employers will adopt a consumer-driven model in the next three years. After that, he said, employers and consumers will react to the

model, and the plans, in turn, will respond with changes that address the shortcomings that have been revealed. A pure defined contribution system—in which the employer gives money to the employee to buy health care—might emerge a few years later, he said.

In the meantime, employers have a number of ways to ensure that employees think like consumers when it comes to health care, Mr. Thompson said.

The simplest step, he said, is for an employer to offer its employees an additional health care benefit that provides discounted services not covered under its regular health plan.

Another possibility is to permit all employees to select, during open enrollment, their co-payment and deductible levels; that way, Mr. Thompson said, employees would see the effect of their selections on their health care premiums.

Employers can continue to put more decision making into the hands of employees, up to and including a pure defined contribution approach, he said. **BI**

Guidance

Continued from page 1

as is typical when Congress passes pension legislation, the law President Bush signed in early June is very general, with legislators leaving it to regulators to provide the clarification that plan administrators need.

At times, the guidance can seem to be forever in the making. For example, 15 years after the passage of the Consolidated Omnibus Budget Reconciliation Act, the Internal Revenue Service has yet to provide detailed guidance on a basic COBRA issue—how to calculate monthly premiums paid by beneficiaries. Without that guidance, employers must make their own "good-faith" interpretations of the law.

That clearly will be the case, at least for some time, with many of the pension provisions in the Economic Growth and Tax Relief Reconciliation Act of 2001. "Complete guidance is not likely for some time," said Valerie Grace, an attorney in the Washington office of William M. Mercer Inc.

Encouragingly, government regulators are aware that employers are "struggling" with several implementation concerns, and providing guidance is a high priority for them, said Larry Sher, a principal in the Teaneck, N.J., office of Unifi Network, a unit of PricewaterhouseCoopers L.L.P.

Unquestionably, the provision triggering the most confusion is the one allowing catch-up contributions to 401(k) plans. Under that provision, starting next year, each employee aged 50 and over can contribute an additional \$1,000 to his or her 401(k) plan. The amount of the maximum catch-up contribution will increase by \$1,000 annually, until the maximum deferral reaches \$5,000 in 2006. After that, increases in catch-up contributions will go up in \$500 increments and be tied to the rise in the Consumer Price Index.

One basic question employers have raised involves employees who turn 50 during a year and, thus, are eligible for the first time to make catch-up contributions. The law refers to eligible catch-up participants as those who have "attained the age of 50 before the close of the plan year."

The ERISA Industry Committee, or ERIC, is asking the Treasury Department to clarify whether an employee who turns 50 by the end of a given year would be considered to have satisfied the age-50 requirement throughout the year.

"For example, a participant whose 50th birthday falls in December of 2002 should not be prohibited from making catch-up contributions during the first 11 months of 2002 merely because he has not yet turned 50," ERIC said.

Another concern is a restriction in the law that allows a catch-up contribution to be made only if a participant can make no more deferrals during a given year to a 401(k) plan because of a statutory or plan limit.

For example, next year an older employee could make a catch-up contribution if he or she deferred \$11,000—the maximum 401(k) salary deferral allowed in 2002—to the plan.

But in other situations, an older employee could make a catch-up contribution even if he or she did not make the full \$11,000 deferral. That could occur in the case of highly compensated employees who weren't allowed to make the maximum contribution because such contributions would have resulted in the plan failing government nondiscrimination tests. Generally, the average deferrals of highly compensated employees cannot exceed by more than 200% or two percentage points, whichever is less, the average deferrals of rank-and-file employees.

But the new tax law doesn't make clear if the catch-up contribution can be made at any

time during the plan year or only after the employee had reached the statutory or plan limit on deferrals.

Other questions have arisen about what should be done when an employee makes a catch-up contribution and the employer subsequently discovers that the employee was not yet 50 and, thus, was not eligible to make such a contribution.

In that situation, ERIC recommends that the plan administrator be allowed to correct the problem simply by refunding to the participant the amount of the erroneous catch-up contribution, adjusted for investment performance.

While the subject of 401(k) catch-up contributions dominates employer questions about the pension provisions in the new tax law, it is not the only concern.

Indeed, a very basic—and unaddressed—concern centers on the fact that the entire law expires at the end of 2010. That raises questions about how employers, for example, are to calculate pension benefits payable to very highly paid employees.

Under the law, the maximum annual benefit that can be provided through a defined benefit plan rises next year to \$160,000, up from the current \$140,000. But in 2011, the limit—excluding possible inflation increases, drops back to \$140,000 under the sunset provision.

Take the case of an employee who retires next year and asks for his or her benefit to be paid as a lump sum. Assume the employee is entitled to a very large benefit and bumps up against the maximum benefit that can be provided through a qualified plan. In calculating the amount of the lump sum, an employer first would have to determine the value of the benefit payable as a lifetime annuity. In such cases, experts say, it isn't clear whether the employer, in calculating the lump sum, would be bound by the \$140,000 limit in the years after 2010 or the new \$160,000 limit would apply. **BI**

Information key to consumer-driven health care

By MICHAEL PRINCE

NEW YORK—If the U.S. health care system is to shift to a consumer-driven model, consumers must be armed with accurate data on health care quality, experts say.

"If we are moving to a consumer-driven health care market, then people need tools to make that work," said Ann Mond Johnson, president of Subimo L.L.C., a health care information provider in River Forest, Ill.

Such information would aid consumers in making several decisions, including whether to see a physician, what treatments are most effective for certain conditions, and which doctor and hospital to select to provide needed treatment, said a group of experts speaking at a June seminar in New York sponsored by the New York Business Group on Health.

Ultimately, increased attention to quality and informing con-

sumers will lead to healthier patients and reduced costs for employers, the speakers said.

The need for such information is growing in the wake of reports about the poor quality of health care in the United States, one speaker noted.

Several recent high-profile reports have pointed out shortcomings in health care in the United States, said Dr. Ian Jones, senior vp/chief quality officer at Crozer-Keystone Health System in Springfield, Pa.

Two reports by the Institute of Medicine—one from 1999 and one released this year—posit that there is a tremendous amount of "overuse, underuse and misuse" of health care services, Dr. Jones said.

"There is a quality problem," he said.

A great deal of the health care treatment currently provided is inappropriate or unnecessary, said Dr. Christopher Saigal, chief medical officer at iHealer L.L.C. in

Santa Monica, Calif.

One way to address this problem is to give consumers information on which doctors and hospitals provide the best care, based on clinical outcomes data. Equipped with that information, consumers would gravitate toward the higher-quality providers, Dr. Jones said.

"Clinical quality is emerging as a significant market force among consumers," Dr. Jones said.

Over the last few years, several Web-based companies have emerged to provide consumers with information on health care providers and services. While such companies supply some valuable information and can help people to become better-informed consumers, the industry is still in its infancy, Dr. Jones said.

iHealer is one such organization that uses software that searches a vast data bank of medical literature on a particular health care issue, Dr. Saigal said. The literature is customized for the user based on information the individual enters

into the search engine. The search yields a customized list of treatment options designed to inform the patients on the best options available, Dr. Saigal said.

"Consumers realize they have to arm themselves with good information when making health care decisions," he said.

Currently, managed care organizations assess treatment decisions by subjecting them to utilization review, Dr. Saigal said. Such an approach, however, is very expensive and has fallen out of favor with consumers, who consider it intrusive and restrictive, Dr. Saigal said. A better alternative, he said, is having well-informed consumers making decisions.

Another company, Subimo, helps consumers select a treatment from among various options, Ms. Johnson said. Subimo's software sorts through the preferences specified by the patient to determine the most appropriate treatment, she said. The information, which is designed to be easily understood by the patient, can then

be used to enhance the communication between patient and doctor, she added.

A third organization, DoctorQuality Inc. provides, among other things, a list of high-quality hospitals and physicians, said Dr. David Shulkin, chief executive officer of the Philadelphia-based company. Using the company's Web site, a patient can select the best hospital for a particular procedure, based on outcomes data.

Among all of these organizations, the underlying concept is that patients equipped with information will make better health care decisions. That, in turn, will lead to better outcomes and lower costs, Ms. Johnson said.

Surveys show that information about provider and hospital quality shapes patients' choices and that, when patients have enough information about health care quality, it becomes their No. 1 concern, Dr. Jones said.

"Consumers fundamentally are smart. They get it," Ms. Johnson said. **BI**



COMMENTARY

Treasury tables offshore tax fight

It appears, at least for the moment, that the Department of the Treasury is only mildly interested in allegations that Bermuda-based insurers that reinsure their U.S. affiliates have an unfair advantage over their U.S.-domiciled competitors.

That, at least, is my reading of a letter from Assistant Secretary for Tax Policy Mark A. Weinberger to Rep. Richard E. Neal, D-Mass. It is written in as polite a way as possible to tell the congressman that the U.S. Treasury Department is really not interested in going into this matter much further at this time.

Before the proponents of punitive tax legislation against Bermuda-based companies reinsuring U.S. affiliates blow a gasket, I will allow that the one-page letter, a copy of which I received late last week, arguably is vague enough to encourage them to continue their fight. But if I were they, I'd spend my lobbying dollars elsewhere.

Rep. Neal, a co-sponsor of the latest effort to impose new taxes on Bermuda-based companies reinsuring their U.S. affiliates, wrote to Treasury Secretary Paul O'Neill "expressing concern about the possible tax advantage enjoyed by insurance companies doing business with related reinsurers located in foreign low tax rate jurisdictions," according to Mr. Weinberger's letter.

Rep. Neal's bill, H.R. 1755, would deny U.S. insurers a tax deduction for premiums ceded to an affiliated reinsurer in a low-tax jurisdiction, which is defined as one with an income tax rate of less than 7%. Bermuda-based companies obviously are the target of this legislation.

His previous bill in the last Congress would have imposed U.S. income taxes on the loss reserves related to U.S. business ceded to affiliated reinsurers in low-tax jurisdictions.

Why does Rep. Neal care about this? Well, Boston-based Liberty Mutual Insurance Co. is among the four U.S.-based insurers lobbying for tax penalties on Bermuda-based insurers reinsuring their U.S. affiliates.

Lest I be accused of misinterpreting Mr. Weinberger's letter, I will quote it in its entirety, with my editorial commentary, of course.

"The concern you raise has been of interest to the Office of Tax Policy for some time, and our staff has spent considerable time examining it," Mr. Weinberger assures the congressman. "Beneficial tax treatment *may result* (emphasis mine) through the use of related-party reinsurers organized and operated in countries that impose levels of taxation that are lower than the taxes imposed on reinsurers organized and operated in the United States," Mr. Weinberger writes.

The real clincher, to the delight of Bermuda-based insurers, comes in the next sentence: "This is not unique, however, to related-party reinsurance and is not necessarily limited to low tax rate (so-called tax haven) countries."

Mr. Weinberger's letter continues in a vein that gives more hope to the Bermuda-based companies than to their opponents in the United States. "In studying the issue, we have found conflicting information regarding both the extent and the nature of the problem. While examples of businesses reorganizing outside the United States are cited as evidence that U.S. insurance companies will expatriate wholesale to take advantage of lower taxes abroad, this is countered by evidence that the proportion of U.S. risks reinsured with companies located in Bermuda, for example, a low-tax jurisdiction, has remained relatively steady over time."

The one sentence of hope for those seeking a new tax law to remove the alleged tax advantage from Bermuda-based companies reinsuring their U.S. affiliates reads: "We are continuing to develop and analyze the data to understand better the factual situation and its evolution and to formulate an appropriate response."

But then, he appears to backpedal when he adds: "In formulating any prospective regulatory or legislative response, we expect to evaluate a full range of options, including options that address the difference in treatment of such business in the United States and in other countries by making the United States a more attractive location for such business."

His letter concludes: "There are very significant questions raised with respect to this issue that need to be considered carefully and completely. Accordingly, we are continuing to monitor developments in this area and to study these important matters."

Of course, this could mean that Treasury has assigned a summer intern or two to look at this. If so, I hope they are lucky enough to get a field trip out of it.

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

Comp

Continued from page 3

to court papers. Doctors also occasionally advised her to change jobs.

Ms. Bernhart, however, rejected all of those suggestions.

She explained that she continued working in the bakery because, during the periods between her asthmatic episodes, she thought she would not get ill again. She also asserted that no doctor warned her that flour dust posed the risk of permanent illness.

In addition, Ms. Bernhart said she would have had to take a pay cut if she had given up her union position in the bakery. She could have kept her same pay and avoided flour dust by becoming a cake decorator, but said she feared that position would not have provided her as much job security.

Wearing the protective masks that Fry's began providing its workers in 1987 was pointless because they did not protect her from the flour dust the few times she wore the masks, Ms. Bernhart said.

Fry's did not require employees to wear masks, and the store's production supervisor never discussed Ms. Bernhart's job-related health problems with her, according to court papers.

An Industrial Commission administrative law judge concluded in June 1999 that Ms. Bernhart was ineligible for "compensation or disability" benefits due to her "willful self-exposure" to flour dust. The judge rejected her open industrial injury claims from the mid-1990s and barred Fry's and its workers comp insurers from re-opening her four earlier claims.

On appeal, the Arizona Court of Appeals agreed with Ms. Bernhart that state statute does not justify an outright denial of her claims.

Foremost, contrary to the argument by Fry's and the commission's ruling, Arizona law does not deny "compensation or disability" benefits in such cases, the appeals court ruled. Instead, it denies "compensation for disability."

That distinction means that only

disability benefits—and not medical benefits—are not compensable under the portion of the statute the commission based its ruling upon, the court explained. Therefore, the commission could not rely on that part of the statute to deny Ms. Bernhart both disability and medical benefits, the appeals court ruled, setting aside the commission's entire decision.

The appeals court considered Ms. Bernhart's argument that the "willful self-exposure" provision does not apply to her three 1990s industrial injury claims.

The court relied on state law and two academic treatises in determining that the Industrial Commission must treat the "willful self-exposure" argument identically to the "willful misconduct" argument that injured workers may press in attempts to circumvent the workers comp system's exclusive remedy restriction and sue their employers over their injuries.

Like "willful misconduct," "willful self-exposure" must entail "a conscious and deliberate disregard for a substantial and unjustifiable risk of significant self-harm," the appeals court ruled. That "must mean something more than a mere decision to expose oneself, for reasons of employment, to a risk of illness or injury that one's job entails."

The court remanded the case to the Industrial Commission for further review.

Unlike many workers comp decisions, the Bernhart case is being published and can be cited as precedence, noted Ms. Bernhart's attorney, Ronald M. Meitz, of Phoenix.

In Arizona, the case may signal a need for legislators to clarify the definition of "willful self-exposure" under state law, observed Barry Llewellyn, senior divisional executive-regulatory services for the National Council on Compensation Insurance in Hoboken, N.J.

Mr. Llewellyn said he could not judge whether workers comp statutes in other states define "willful self-exposure" any better, because he has not seen a case like this one before in his 30 years of

experience.

The ruling also "sends a signal to employers that they have to take steps beyond making (protective gear) available" and make it mandatory if they expect to successfully fight a case like this one, Mr. Llewellyn said.

Ms. Bernhart's objection to wearing a mask and ignoring repeated doctor recommendations to take another job seem to satisfy certain elements of "willful self-exposure," Mr. Llewellyn said. But "the court had a higher threshold."

"It seems the employer could have done something" more than it did, said attorney Kirk A. Pasich, a partner with Howrey Simon Arnold & White L.L.P. in Los Angeles. In workers comp litigation, Mr. Pasich typically represents employers in coverage disputes.

But, he questioned whether employers should be forcing workers to wear protective gear in a situation like the Bernhart case. "It really comes down to which side of public policy you want to come down on," Mr. Pasich said.

The workers comp system should not compensate claimants who willingly exposed themselves to the risk of an occupational illness, he said.

But, employers should ensure safe workplaces, which sometimes means requiring workers to take protective measures the workers do not like, he said.

Employers, however, step onto a "slippery slope" of public policy when protecting workers involves moving them to lower-paid and less secure positions, which could pose economic hardships for the workers.

Attorneys for Fry's and its workers comp insurers—Royal Insurance Co. of America and Hartford Financial Services Group Inc.—could not be reached for comment. Industrial Commission Chief Counsel Anita R. Valainis did not return telephone calls.

Betty J. Bernhart vs. The Industrial Commission of Arizona et al., Arizona Court of Appeals Division One, June 28, 2001; 1 CA-IC 99-0136.

Looking for the Best of the Web

Business Insurance is seeking entries for its first annual Best of the Web competition.

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

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

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

The risk management Web site categories are: insurance services, claims services and risk management services.

The benefits management Web site categories are: benefits management services, health plan services and claims services.

Combined Web site categories for the competition are: legal services and educational/professional services.

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

The deadline for submitting completed entries to

BI is July 30.

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

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

The winners will be announced and profiled in the Oct. 8 issue of *Business Insurance* and online at www.businessinsurance.com.

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

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

Patients

Continued from page 1

coverage decisions. The measure, which is sponsored by Sens. Edward Kennedy, D-Mass., John McCain, R-Ariz., and John Edwards, D-N.C., is supported by the American Medical Assn. and consumer groups but opposed by major employer groups.

Proponents claim that the measure is necessary to protect patients against unfair coverage decisions, but opponents say it will drive up health care costs and add to the number of the uninsured.

In a June 29 statement, President Bush praised what he called the "good-faith efforts" of the bill's sponsors to meet some of his objections to the original measure.

He said, though, that the Senate failed "to address the danger that excessive, unlimited litigation in state courts would drive up premium costs and cause many American families to lose their health insurance." There-

fore, the president said that he "could not, in good conscience, sign this bill, because it puts the interests of trial lawyers before

**No one should take
(President Bush's veto)
for granted. We need
to work vigorously to
urge the Congress not
to pass a bad bill.'**

— Jim Klein
American Benefits Council

the interests of patients."

President Bush said that he would "continue to work with the House to pass a strong patients' bill of rights" along the lines of a narrower measure backed by the House GOP leadership.

The House is expected to take up that bill, H.R. 2315, which is sponsored by Reps. Ernie

Fletcher, R-Ky., and Collin Peterson, D-Minn., when it returns from its Fourth of July recess this week.

The treatment of liability is among the most-significant differences between the two bills; of the two versions, the Senate bill is much more far-reaching. The Senate bill would permit unlimited economic and noneconomic damages. It also would permit civil monetary penalties, similar to punitive damages, of up to \$5 million.

The House bill, while it would permit unlimited economic damages, would cap noneconomic damages at \$500,000, based on direct proportion of fault and responsibility. It would prohibit punitive damage awards.

Reps. Greg Ganske, R-Iowa, and John Dingell, D-Mich., have already introduced a version of the Senate Bipartisan Patient Protection Act.

The House passed an earlier version of the Ganske-Dingell bill—at that time co-sponsored by Reps. Dingell and Charlie Norwood, R-Ga.—in 1999, but

House and Senate conferees were unable to iron out differences between it and a much more modest Senate-passed bill, and both bills died.

Employer groups hope that the Senate-passed bill and the Ganske-Dingell measure suffer a similar fate.

"Clearly, we hope that the House will not just take up the Dingell-Ganske bill or the Senate-passed bill," said Jim Klein, president of the American Benefits Council in Washington. "Rather, we hope they'll consider something far more reasonable, so that something meaningful and livable can worked out in conference."

Mr. Klein said that President Bush's veto threat "adds pressure on the House to pass something they hope the president can sign."

Nevertheless, "no one should take that for granted. We need to work vigorously to urge the Congress not to pass a bad bill," he said.

"The bill has passed the Senate, but that's only step one," said a spokesman for the Health

Insurance Assn. of America in Washington. He noted that the HIAA has endorsed neither bill.

"You have the White House saying the Senate bill is unacceptable, so we see the White House doing some hard-nosed negotiations with members of the House so that the House will come out with a bill that the White House can support," the spokesman said.

The Chamber's Ms. Sullivan said that the outcome in the House is "going to really depend on getting a group of 20-odd Republicans who voted only for Norwood-Dingell and none of the other alternatives last time around and getting them to reconsider how far they're willing to go to get a bill to the president that he will sign."

"It's going to take a huge amount of effort on the part of the White House, as well as the Republican leadership, in the House in order to prevail over the Norwood forces," Ms. Sullivan said. "It's really going to come down to people who really want a bill or people who really want an issue." **BI**

Weather

Continued from page 3

Boiler Inspection & Insurance Co., a Hartford, Conn.-based unit of American International Group Inc.

Companies should install surge protection devices and conduct preseason maintenance of air conditioning systems, including regular cleanings, to protect such systems against damage, Mr. Brogan said.

Also, installing an air conditioning phase monitor can help protect against a problem called "single phasing," which occurs when motors break down due to overheating, Mr. Brogan said. The phase monitor sends out a signal when portions of the air conditioner are not operating properly, which helps prevent overloading of other components.

In addition, because backup generators may be needed in the event of outages, those generators should be tested regularly to ensure they will function properly in emergencies, Mr. Brogan noted.

High temperatures also should be taken into consideration when planning work on certain projects, one risk manager said.

Although outdoor renovation is more common during warmer months, companies should consider working on such projects in the evening, rather than during the day, said Lance Ewing, senior director-risk management at GES Exposition Services Inc. in Las Vegas.

Lower temperatures in the later hours decrease the potential for power failures and heat-related equipment damage, Mr. Ewing said.

The summer months also bring hail, which can be a significant threat to property. Midwestern companies are at the greatest risk to damage from hail storms, said Don Griffin, director of business and personal lines at the National Assn. of Independent Insurers in Des Plaines, Ill.

A recent summer storm in North Dakota caused damage to roofs, aluminum siding and equipment, the insured costs of which have not been determined. In addition, a June hail storm in Colorado damaged more than 70 planes at Denver International Airport, resulting in the cancellation of hundreds of flights (*BI*, June 25).

Mr. Griffin said that a company should protect its property against the threat of hail by maintaining the upkeep of its buildings' rooftops and by storing mobile equipment indoors whenever possible.

Also key to preparing for summer risks is the implementation of an emergency response plan, experts say.

At a basic level, businesses should make it a point to keep records and loss prevention reports within easy access in case of bad weather, said Kenneth Linder, assistant vp of loss prevention technical services at GE Industrial Risk Insurers in Hartford, Conn. One way to do this, Mr. Linder said, is to store such information electronically, such as on an intranet site, he said.

And because basements are usually the worst hit in the case of torrential rains and flooding, businesses should avoid storing physical records there.

"Preparation is critical," FM Global's Mr. Anderson said. "Businesses need to think about reality and have an emergency response plan. ...It can make a significant difference."

And while groundwork may be key, practice is also essential, Mr. Linder said. Companies should make a point of regularly running through their emergency plans.

"Employees and conditions change all the time," Mr. Linder said.

"You can prevent the damage ahead of time, or you can plan to recover once the event happens. You just have to make sure that your plans are up to date, pretested, communicated internally throughout the organization and ready to go." **BI**

Partner benefits upheld

Opposite-sex exclusion justifiable, federal court rules

By LEE FLETCHER
ROSENBERG

Employers scored a legal victory recently when a federal appellate court struck down a lawsuit seeking to require an employer to extend same-sex domestic partner benefits to unmarried, opposite-sex partners.

In *Irizarry et al. vs. Board of Education of the City of Chicago*, the 7th U.S. Circuit Court of Appeals in May upheld a district court ruling that Milagros Irizarry, an employee of the public school system, was not eligible for domestic partner benefits because her partner, with whom she was not married, was of the opposite sex.

The Chicago Board of Education began offering health benefits to employees' same-sex domestic partners in July 1999.

Ms. Irizarry then sought to obtain benefits for her domes-

tic partner, a man with whom she had lived for more than 20 years and with whom she has two children. She was denied the benefits and sued her employer, arguing that excluding opposite-sex partners from domestic-partner benefit offerings was unconstitutional, citing, in particular, a violation of equal protection.

The 7th Circuit said that the defendant needed to show a rational basis for denying Ms. Irizarry domestic partner benefits, and it found the Board's reasons rational under two criteria, said Heather Sawyer, Chicago-based senior staff attorney for the Lambda Legal Defense & Education Fund Inc., which filed an amicus brief in the case.

The Chicago Board of Education said that Ms. Irizarry should not be entitled to domestic partner benefits because she and her partner are heterosexual and can therefore marry. Employers typically offer benefits to same-sex part-

ners because they cannot legally marry.

Additionally, Ms. Sawyer noted, "the Board of Ed wants to stay a competitive employer and wants people in homosexual partnerships to know that they are valued."

Ms. Sawyer noted that most employers that have domestic partner benefits extend the criteria to include both same-sex and opposite-sex couples.

"In a lot of cases, courts have upheld any definition of a domestic partner," Ms. Sawyer said.

Ms. Irizarry does not plan to appeal the case further, said her attorney, Richard P. Campbell, a partner with Campbell & DiVincenzo in Chicago. Mr. Campbell, said though, that a complaint has been filed with the Chicago Human Rights Commission.

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Milagros Irizarry et al. vs. Board of Education of the City of Chicago, 7th U.S. Circuit Court of Appeals; No. 00-3216,

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Institutes

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that if you just train the workers and send them back into the shop, their management doesn't know what to support or where they are coming from. By the same token, if we just trained management, workers wouldn't have a clue what their managers are talking about."

The two men note that while the institute—modeled after a similar program in Detroit's automotive industry—has been in existence since 1989, few similar organizations can be found operating in the United States.

But cooperation between labor and management to create safety committees is a growing trend, said Donald Banas, the director of the Labor Management Relations Center at Cleveland State University. Mr. Banas noted that case studies have found such an approach to reduce injuries.

The trend toward cooperation is most noticeable among public entities, Mr. Banas said. That, he said, is because the growth of unions in the public sector has exceeded that in the private sector and because labor-management cooperation is more likely to be accepted in the public realm.

One such example is the Los Angeles Department of Water and Power. The DWP and Local 18 of the International Brotherhood of Electrical Workers launched their own Joint Safety Institute in January. While setting up the institute, union members and managers made several trips to the Seattle area to observe the work being done by Boeing and the machinists' union.

The DWP and the union that represents most of the department's 7,500 workers agreed to cooperate on several issues, because the DWP was facing crippling financial difficulties in an increasingly competitive utility industry, said Hal Lindsey, the DWP's executive director of corporate health and safety. At the same time, the safety record of the publicly owned utility was far from exemplary.

Recordable accidents and lost workdays were "relatively high," compared with those of other utility industry entities, Mr. Lindsey said. While he declined to provide specific data, he said the losses "were higher than I want them to be."

To remedy the situation, the Joint Safety Institute launched training programs for workers and management.

"We are still trying to find our way, in terms of what kind of programs we are going to move forward with," Mr. Lindsey said. But the organization has introduced educational programs on safety leadership skills and incident investigation.

Efforts also include the formation of employee safety groups within every business unit. The guiding theory is that the employees who work in those units have the best understanding of potential hazards in their areas and are most likely to have the best rapport with co-workers who may have ideas about how to remedy dangerous situations.

Suggestions for improvements are passed on to committees that consist of management and labor representatives, where the recommendations are reviewed for possible implementation.

Messrs. Gentry and Stanley say they are impressed with the efforts being made in Los Angeles, particularly because the DWP was in the throes of its own labor difficulties when its institute was being formed. Furthermore, they note, the DWP, as a municipal entity, had to navigate the political waters of the Los Angeles City Council to get approval to create the institute.

The Los Angeles institute op-

'They can sit and have a meeting on different issues and pound the table at each other, but when it comes to health and safety, it's a different matter.'

—Robert Gentry
IAM/Boeing
Health & Safety Institute

erates on a DWP contribution of 10 cents for every hour worked by each IBEW employee, amounting to \$1.2 million annually, Mr. Lindsey said.

"It's not company money, it's not union money—it's Joint Safety Institute money," he said. One union representative and one management representative administer the funds, and they report to a board that consists of four trustees selected by the union and four selected by DWP management.

Similarly, Boeing contributes 4 cents for every hour worked by each member of the company's machinist union to fund the IAM/Boeing Health & Safety Institute. The institute was launched when a labor standoff over economic issues resulted in weeks of work stoppage at Boeing. At about the same time, Seattle-area newspapers reported that Boeing was poisoning workers with production-process chemicals and noted that the workers' unions were taking no action, Mr. Stanley said.

While the two sides were at odds over economic issues, they both realized each could gain from improving worker health and safety. Now the institute and its safety mission are isolated from all labor-management wrangling.

"Both the leadership of the company and the union have declared over and over that this is sacred ground," Mr. Gentry said. "They can sit and have a meeting on different issues and pound the table at each other, but when it comes to health and safety, it's a different matter."

Messrs. Gentry and Stanley, along with other institute administrators from the Seattle

area and from Wichita, Kan., and Portland, Ore., report to a governing board made up of company and union representatives. The administrators' job is to coordinate "site committees" at Boeing facilities and provide training for about 38,000 union workers and their managers.

Typically, a site committee consists of eight members drawn from several disciplines within the shop, Mr. Gentry explained. The committee, which is equally split between union workers and management, receives comprehensive safety training. The committees have considerable power; they can, for example, demand safety equipment for workers.

"I've seen them shut down a production line until an unsafe condition was corrected," Mr. Stanley said.

Each year, Boeing employees participate in institute training classes that last from one to several days, Mr. Gentry said. Class subjects include the basics of occupational health and safety; motion safety, to reduce repetitive-stress injuries; and investigation techniques, to determine and prevent the causes of accidents.

While the institute seeks to train workers and managers in several technical aspects, it also tries to increase trust and communication between managers and workers. "Often, the solution to problems is right there on the shop floor," Mr. Gentry said.

Increasing communication is vital, because workers and managers often are "walking around with the solution or part of solution," Mr. Gentry said. "We are just helping them get a communication line going, so they realize they are working on the same issue and it's not somebody else's responsibility; it's everybody's responsibility."

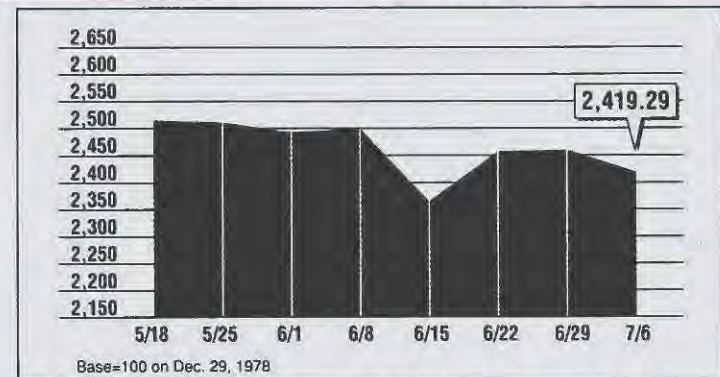
Both Boeing and the DWP also maintain separate corporate safety programs and employ safety managers who work apart from the respective institutes. At Boeing and the DWP, both those connected with institute efforts and those separate from them often cooperate to improve workplace conditions. Because several safety endeavors are under way simultaneously, representatives for both entities say it is difficult to determine precisely how instrumental each individual program is in reducing injuries.

But Mr. Lindsey of the DWP said the department's losses have already dropped, and managers and the unions say they're sure the institutes have increased safety awareness.

"It's a switch in thinking," Mr. Lindsey said. "For years, industry saw safety as a management responsibility, with a 'we will tell you how to do it' type of thinking. But once you realize the value of getting employees involved, it's a real positive."

At Boeing, Mr. Stanley said, worker and management expectations are so high now that the company can't go back to making safety a top-down mandate. "From a safety perspective, we have changed the way that The Boeing Co. does business," he said, "and we have changed it to such a degree that it will never go back to the way it was." **BI**

B/Stock Index - 7/6/2001



BROKERS

		Price	% change	Year to date % change	Year to date High	Year to date Low	Vol. (000)
Aon Corp.	NYS	34.27	-2.09	0.06	42.31	28.13	3042
Brown & Brown	NYS	41.90	-0.21	19.71	46.10	23.72	138
Clerk Bards Holdings	NDQ	23.25	2.88	129.63	24.64	7.25	181
E.W. Blanch Holdings Inc.	NYS	13.50	0.00	-22.58	29.50	6.70	0
Gallagher Arthur J. & Co.	NYS	26.27	1.04	-17.42	34.25	20.06	1221
Hibb, Rogal & Hamilton	NYS	43.78	0.07	9.79	44.16	33.75	118
Marsh & McLennan	NYS	99.15	-1.83	-15.26	135.69	80.30	3439
Willis Group Holdings Ltd.	NYS	17.73	-0.11	6.81	18.50	15.00	626
BROKERS AVERAGE			-0.03	13.84			

INSURERS/REINSURERS

ACE Ltd.	NYS	37.80	-3.30	-10.93	43.94	28.06	2025
Accel International Corp.	NDQ	0.07	0.00	-76.42	0.69	0.06	0
Acceptance Insurance Cos.	NYS	5.24	-0.19	-0.19	6.94	3.70	104
AEGON N.V.	NYS	27.90	-1.76	-32.67	43.00	25.92	723
AFLAC Inc.	NYS	30.87	-1.97	-14.47	37.47	22.78	4693
Allmerica Financial Corp.	NYS	54.27	-5.62	-25.14	74.25	45.30	487
Allstate Corp.	NYS	42.73	-2.86	-1.91	45.90	23.06	6487
Amfac Financial Group	NYS	59.26	1.82	1.62	64.00	36.83	1958
American Financial Group	NYS	29.51	-1.63	11.10	30.52	18.69	464
American General	NYS	46.00	-0.97	12.88	47.44	31.00	6634
American Int'l Group	NYS	84.39	-0.73	-14.38	103.75	72.64	17681
American Safety Insurance	NYS	9.98	-0.70	62.94	10.25	3.25	9
Argonaut Group	NDQ	18.41	-8.41	-12.33	21.25	13.50	124
AXA-UAP Group	NYS	28.05	-0.43	-21.88	39.88	24.58	681
Baldwin & Lyons Inc.	NDQ	23.85	13.57	2.58	28.75	15.25	99
Berkley W.R. Corp.	NDQ	39.86	-3.77	-15.53	48.75	19.00	397
Berkshire Hathaway Inc.	NYS	70000.00	0.86	-1.41	74600.00	51600.00	2
Capitol Transamerica Corp.	NAS	13.63	-10.51	9.59	15.86	10.31	42
Chubb Corp.	NYS	75.16	-2.93	-13.11	90.25	63.00	2368
Cincinnati Financial Corp.	NYS	38.93	-1.44	-1.60	42.92	32.56	1279
Citigroup	NYS	50.79	-3.88	-0.53	59.13	39.00	32618
CNA Financial Corp.	NYS	39.00	-1.14	0.65	41.94	32.06	556
CNA Surety	NYS	13.80	-1.43	-3.16	14.50	10.38	165
EMC Insurance Group Inc.	NDQ	14.44	-5.37	22.89	15.86	8.50	24
ESG Re Limited	NDQ	3.54	16.83	92.00	4.13	1.72	88
Everest Reinsurance	NYS	72.40	-3.21	1.08	75.50	33.13	769
Fremont General Corp.	NYS	6.06	-6.77	115.47	6.97	1.50	372
Gainco Inc.	NYS	1.30	5.69	-50.48	4.88	1.10	102
Harleysville Group	NDQ	27.96	-6.02	-4.41	30.63	17.13	302
HCC Insurance Holdings	NYS	24.80	1.22	-7.94	29.66	17.63	832
ING Groep N.V.	NYS	65.65	-0.33	-18.07	83.94	55.84	329
IPC Holdings Ltd.	NDQ	22.60	-4.48	7.62	25.05	12.63	129
Hartford Financial Services	NYS	66.98	-2.08	-5.16	80.00	53.50	1982
John Hancock Financial Serv.	NYS	40.41	0.37	7.40	42.00	20.63	4976
Lincoln National	NYS	49.85	-3.67	5.36	56.38	37.81	2424
MAIC Holdings Inc.	NYS	15.64	0.00	-6.28	18.50	10.50	0
Market Corp.	NYS	198.60	1.07	9.72	207.47	133.50	69
MEIA Insurance Group	NYS	55.28	-0.72	11.87	56.74	33.75	1008
Meadowbrook Insur. Group	NYS	3.25	0.00	-60.00	8.38	2.45	10
MetLife	NYS	30.99	0.03	-11.46	36.63	19.38	3869
Mutual Risk Mgmt. Ltd.	NYS	9.28	4.27	-38.90	23.75	3.40	747
Navigators Group	NDQ	18.95	0.26	42.35	20.86	9.19	24
NYMag Inc.	NYS	18.80	-5.05	-0.40	22.70	13.00	26
Ohio Casualty Corp.	NDQ	12.70	-1.93	27.00	13.44	6.13	699
Old Republic Int'l	NYS	29.01	0.03	-9.34	32.06	17.19	1566
Partner Re Ltd.	NYS	54.12	-2.31	-11.28	62.50	35.38	472
Penn-America Group Inc.	NYS	10.00	0.00	31.15	10.60	6.69	0
PMA Capital Corporation	NDQ	17.00	-5.82	-1.45	19.00	15.19	73
Philadelphia Cons. Holding	NDQ	35.35	1.64	14.49	36.16	15.63	346
PXRE Corp.	NYS	19.10	-2.05	13.19	20.10	12.50	113
RenaissanceRe Holdings Ltd.	NYS	74.00	-0.07	-5.51	84.19	42.50	319
RIU Corp.	NYS	44.80	-0.27	0.25	46.16	33.63	114
St. Paul Cos.	NYS	49.80	-1.78	-8.31	57.00	35.25	2732
SCOR	NYS	43.77	-2.08	-12.90	53.75	39.75	64
SAFECO Corp.	NDQ	29.95	1.53	-8.90	35.88	20.25	3159
SCPIE Holdings Inc.	NYS	19.00	-5.94	-19.58	31.40	17.78	NA
Seaboard Bruce Group	NDQ	2.15	7.50	282.22	3.25	0.53	4
Seective Ins. Group	NDQ	25.23	-5.43	4.04	28.22	15.25	253
Tojo Marine & Fire	NDQ	45.50	-2.17	-20.18	60.38	45.10	63
Tochmark Corp.	NYS	40.00	-0.52	4.07	41.19	24.06	1082
Transatlantic Holdings	NYS	121.03	-1.21	14.31	126.25	80.38	34
Trenwick Group Ltd.	NYS	22.29	-2.75	-10.17	27.13	14.56	136
Union American Corp.	NDQ	6.30	-1.56	7.23	7.75	5.27	9
United Fire & Casualty	NDQ	28.48	-2.53	44.20	34.52	16.19	50
Univis	NYS	38.45	0.13	-5.35	41.94	27.19	135
UNUM Corp.	NYS	31.85	-0.84	18.51	33.75	19.25	2362
Vesta Insurance Co.	NYS	10.50	-4.11	107.41	10.95	4.13	1079
XL Capital Ltd.	NYS	80.39	-2.08	-7.99	89.25	55.38	697
Zenith National Ins.	NYS	27.51	1.89	-6.35	30.70	20.00	44
INSURERS/REINSURERS AVERAGE			-1.13	5.93			

MANAGED CARE COMPANIES

Aetna Inc.	NYS	25.17	-2.78	-38.70	42.69	23.02	3024
CIGNA Corp.	NYS	93.20	-2.73	-29.55	136.75	86.88	2241
Health Net Inc.	NYS	17.17	-1.32	-34.43	25.94	13.25	1299
Humana Inc.	NYS	9.71	-1.42	-36.33	15.81	5.75	1894
Oxford Health Plans	NYS	27.22	-4.83	-31.09	42.75	21.44	2157
Pfizer Health Sys.	NDQ	15.20	-6.75	1.33	68.69	9.81	1991
Sierra Health Services	NYS	8.00	14.29	110.53	8.00	2.44	1013
United HealthGroup	NYS	61.92	0.28	0.89	67.40	39.06	7168
Wellpoint Health Networks	NYS	94.26	0.02	-18.21	121.50	72.81	1569
MANAGED CARE COMPANIES AVERAGE			-0.58	-8.40			
ALL COMPANIES			-0.58	3.79			

Top advancing issues: ESG Re Ltd., Sierra Health Services, Baldwin & Lyons Inc. Leading decliners: Capitol Transamerica Corp., Argonaut Group, Fremont General Corp. Most active issue: Citigroup. The B/Stock Index decreased 1.7%; the Dow Jones 30 Industrials dropped 2.4%; the S&P 500 went down 2.8%, and the NYSE Composite decreased 2.0%. Average P/E: Brokers, 24.8; Insurers/reinsurers, 27.0; and managed care companies, 14.8.

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



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