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In Brief

Travelers, ACandS settle asbestos claims

The Travelers Cos. Inc. and ACandS Inc. have agreed to settle all of the insulation contractor firm's current and future asbestos-related claims against Travelers. Under the settlement, Travelers will contribute \$449 million to a trust to be established following ACandS' reorganization. Travelers said it expects to obtain about \$84 million from its reinsurers. It will fund the remaining \$365 million from existing reserves.

Validus IPO expected to raise over \$300M

Validus Holdings Ltd. has launched an initial public offering in which it expects to raise more than \$300 million. In a U.S. Securities and Exchange Commission filing, Validus said it

See **IN BRIEF** page 22

International NEWS

FERMA to examine governance issues as Marie-Gemma Dequae is reelected the European risk management group's president; kidnap risks increase for oil companies in Nigeria; European Court of Justice rules U.K. health and safety law does not violate E.U. directive. **Page 17**



Employer to fine unhealthy workers

Punitive element added to wellness effort

By **JOANNE WOJCIK**

INDIANAPOLIS—While many employers have been using financial incentives to encourage participation in wellness programs, beginning in 2009, one company will pick up the "stick" and charge employees more for their health

December to ensure that wellness programs comply with the nondiscrimination provisions of the Health Insurance Portability and Accountability Act of 1996, benefit experts say. The rules became effective July 1, 2007.

Moreover, as the cost of health care continues to skyrocket, more employers are expected to follow Clarian Health's lead.

In fact, 62% of 135 top executives responding to PricewaterhouseCoopers' May 1 Management Barometer survey said that their companies should require employees who exhibit unhealthy behaviors such as smoking or obesity to pay a greater share of their health benefit costs. This compares with 48% who expressed such a view in PwC's last such survey in 2005.

Clarian Health's decision to impose fees came after several years of operating a comprehensive wellness program, according to Steven Wantz, senior vp for administration and human resources at Clarian Health, which has 13,000 employees working at five hospitals in the Indianapolis metropolitan area.

"We didn't just decide this. We have five years of wellness program history that included health risk

THE PRICE

Beginning in 2009, Indianapolis-based Clarian Health will charge employees a \$5 per pay period fee for each of the following high-risk behaviors or conditions:

- Tobacco use
- Body mass index over 29.9
- Blood pressure over 140/90
- Blood glucose over 120
- LDL cholesterol over 130

insurance if they allow health risks such as tobacco use, obesity or high cholesterol to go unchecked.

Although this punitive approach by Indianapolis-based Clarian Health is a departure from the methods used by most employers, it is permitted under the final rules the federal government issued last

See **CLARIAN** page 22

CHANGE IN DIRECTION

What has happened to commercial airlines' defined benefit pension plans

Airline	Number of plans	Status	PBGC loss*
American Airlines	4	ongoing	
Continental Airlines	2	1 on-going; 1 frozen	
Delta Air Lines	3	1 terminated; 2 frozen	\$920 million
Northwest Airlines	3	all frozen	
United Airlines	4	all terminated	\$7.1 billion
USAirways	4	all terminated	\$2.9 billion

Source: Pension Benefit Guaranty Corp.
*PBGC loss estimated as of Sept. 30, 2006

Airlines' pension woes help reforms take off

Financial troubles of one business sector spark rethink for all

By **JERRY GEISEL**

As the nation's airlines fight battles on many fronts, one huge issue that had been hanging over them—how to fund their enormous pension plan liabilities—is virtually gone.

Over the past four years, all of the nation's major airlines with defined benefit plans have either terminated or frozen at least one of those plans, except for American Airlines (see box).

Two airlines, US Airways Inc. and

United Airlines, no longer offer defined benefit plans. As part of their bankruptcy reorganizations, they jettisoned the plans and stuck the federal pension insurance agency with a multibillion-dollar tab for some of the plans' promised but unfunded benefits.

Other airlines, such as Delta Air Lines Inc. and Northwest Airlines Inc., have kept some of their plans but frozen benefit accruals.

While that means airlines won't have to worry about growing plan liabilities and the deficit-ridden Pension Benefit Guaranty Corp. has been spared more massive losses, it also means that several hundred

See **AIRLINES** page 20

Failed terror plots prompt security concerns

Thwarted attacks may signal less coordinated approach; experts urge increased vigilance

By **ETTIE SCHMITT**
and **BETH MURTAGH**

Counterterrorism and risk management experts say the recent failed

attacks in the United Kingdom have reinforced the need for vigilance and preparedness.

British authorities discovered and deactivated two car bombs in a busy

nightlife area of central London late last month. A day later, individuals connected to the London car bombs crashed an explosives-laden vehicle into a terminal at Scotland's Glasgow International Airport.

One of the would-be bombers, whom authorities said was believed to be the driver of the vehicle, sustained serious injuries in the airport crash.

The British government said at least eight people who had links to the medical profession were questioned in the terrorism-related incidents. Britain's Home Office initially raised the nation's terrorism threat level to "critical" and later

lowered it to "severe," indicating another attack was considered "highly likely."

Meanwhile, authorities in the United Kingdom, United States and Australia increased security at airports, while U.S. observers noted that the thwarted attacks could boost efforts to extend the federal backstop for terrorism coverage (see stories, page 21). People reportedly with links to the failed U.K. attacks also were questioned in Australia.

"People remember the (London transit bombings of July 2005), and the threat of terrorism has been

See **ATTACKS** page 21

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August webinar covers CDHPs and wellness

Much of the emphasis in consumer-driven health care has been on increased cost-sharing, but there is a wellness component that is often overlooked. Find out more Aug. 14 during "Wellness and Consumer-Driven Health Care: Contradictory or Complementary?" This *Business Insurance* Online Executive Forum™ starts at 11 a.m. EDT. Go to www.BusinessInsurance.com/webinars to sign up.

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Assurant executives may face SEC charges

Two of insurer's execs sent Wells notices as part of finite probe

By RUPAL PAREKH

NEW YORK—Two Assurant Inc. executives could be the next to face civil fraud charges in the Securities and Exchange Commission's ongoing investigation of finite reinsurance.

In a statement last week, the New York-based specialty insurer said so-called Wells notices had been sent to Michael Steinman, senior vp

and chief actuary, Assurant Solutions/Assurant Specialty Property; and Dan Folse, vp-risk management, Assurant Solutions/Assurant Specialty Property. Both are based in the company's Miami office.

Each received a Wells notice—which serves as a warning that SEC staff plans to recommend that the agency bring a civil enforcement action for violating federal securities laws—in connection with "certain loss-mitigation products."

Under the SEC's procedures, Wells notice recipients can respond to the SEC staff before staff members make a formal recommendation whether civil enforcement

action should be brought.

A spokesman for Assurant declined to comment on how Messrs. Steinman and Folse would respond.

"I can't speculate on any future actions by the SEC...but we are working with the SEC to try and help them conclude their investigation in a timely manner," the spokesman said.

David Rosenfeld, associate regional director of the SEC's Northeast Regional Office, declined to comment on the Wells notices, or on the status of the SEC's investigation of companies' use of finite reinsurance.

The Wells notices against the two executives come more than two years after Assurant—along with several other insurers and reinsurers—received an SEC subpoena as part of the inquiry into loss-mitigation products (*BI*, May 9, 2005).

Since then, various companies have settled related charges. However, only a few company executives have faced federal charges stemming from alleged finite reinsurance-related wrongdoing.

Last October, three former top executives of Bermuda-based

See **ASSURANT** page 21

New York blogger ruling may have wider impact

Federal appeals court upholds dismissal of defamation suit

By JUDY GREENWALD

NEW YORK—A federal appellate court's dismissal of a defamation lawsuit brought by a Brooklyn moving company against an Iowa blogger will have influence outside New York state, some observers say.

Attorneys say the June 26 decision by the 2nd U.S. Circuit Court of Appeals in *Best Van Lines Inc. vs. Tim Walker* reaffirms other courts' rulings but still is significant because of the court's prestige and the reputation of the judge who wrote it.

According to the decision, Mr. Walker of Waverly, Iowa, runs a nonprofit Web site that provides information and opinions on household movers.

In August 2003, Mr. Walker claimed in two postings on his site that New York-based Best Van Lines was performing household moves without legal authorization and without the required insurance, according to court papers.

Best Van Lines sued Mr. Walker, charging the statements were false, defamatory and intended to harm the company. It asked the court to ban him from publishing defamato-

ry statements and sought \$1.5 million in compensatory and punitive damages.

A lower court dismissed the case in 2004. A three-judge appeals court panel unanimously affirmed the lower court's dismissal.

A key focus of the opinion is New York's "long-arm" statute. The decision says "long-arm" statutes describe terms under which state courts can exercise personal jurisdiction over out-of-state defendants. New York's law, though, exempts defamation claims involving out-of-state parties, the opinion says.

"New York courts have found jurisdiction in cases where the defendants' out-of-state conduct involved defamatory statements projected into New York and targeting New Yorkers, but only where the conduct also included something more" in the way of business transactions, says the opinion. But this was not the case with Mr. Walker, the opinion concludes.

"Moreover, the nature of Walker's comments does not suggest that they were purposefully directed to New Yorkers rather than a nationwide audience," the opinion states. "Material on the Web site discusses interstate moving companies located in many states for the putative benefit of potential persons in

See **LONG ARM** page 6

Gov. Spitzer seeks ways to curb med mal costs

Insurance regulator to head review panel on system reforms

By DAVE LENCKUS

NEW YORK—A sharp increase in medical malpractice rates for physicians in New York has triggered an effort by Gov. Eliot Spitzer to rein in malpractice costs for all medical risks in the state.

Gov. Spitzer's move to create a multi-interest task force to study reforms in various areas, including risk management, comes on the heels of the New York Insurance Department's approval of a 14% increase in physician medical malpractice rates.

Physician and hospital groups welcomed the task force, but a physicians' representative said the rate hike would exacerbate the state's doctor shortage.

A critic of medical malpractice insurers nationwide, however, said New York is the one state market

where a rate hike is warranted.

Gov. Spitzer last week appointed New York Insurance Superintendent Eric R. Dinallo to head the task force, which has been charged with recommending short- and long-term reform options for controlling the causes of high medical liability

costs. The task force, which is due to report by the end of the year, has been asked to consider risk management, legal and regulatory reforms.

The group will include the state's health commissioner; representatives of hospitals, physicians, insurers, health plans and consumers; and trial attorneys and state legislators.

In a statement, the insurance department said the rate hike stems from several factors: the state's past failure to address the underlying causes of rising medical liability costs,

years of inadequate rates and the swelling deficit in the state's medical malpractice insurance assigned risk plan.

Even the latest approved rate

See **MED MAL** page 6



APPHOTOS

New York Gov. Eliot Spitzer has set up a task force to recommend short- and long-term solutions to reduce medical malpractice costs that have led to a 14% increase in doctor med mal insurance rates.

Business Insurance®

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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ON OCT. 8, 2007, *Business Insurance* will celebrate its 40th anniversary of publication. Each week until then, *BI* will offer a peek at news we reported during the past four decades.

JULY 6, 1987 Repeal or modification of the McCarran-Ferguson Act would not solve the liability crisis but create new headaches for buyers, the National Assn. of Insurance Commissioners contended in a position paper. Lawmakers proposed repealing the antitrust exemption amid soaring costs and limited availability of liability coverage.

JULY 20, 1987 Group health insurance benefits are provided to virtually all employees, but workers in midsize and large companies are being asked share more of the costs, according to a U.S. Department of Labor survey. The percentage of employees whose coverage was fully paid by their employer fell to 54% in 1986 from 61% in 1985.

Health courts touted to fix 'broken' system

Idea gains support of physician group and congressmen

By MARK A. HOFMANN

WASHINGTON—Interest in having medical malpractice disputes handled by special "health courts" appears to be growing, according to experts in the field.

For example, bipartisan legislation that would grant funds to states to test alternatives to the current tort-based system for resolving such disputes—the Fair and Reliable Medical Justice Act—was introduced in both houses of Congress

in late May.

In addition, the American Medical Assn., while stopping short of endorsing the concept, late last month issued six principles it holds should be incorporated into any system of health courts to "fix the broken medical liability system" (see box).

In a statement hailing introduction of the Fair and Reliable Medical Justice Act, Will Marshall, president of the Progressive Policy Institute, and David Kendall, PPI senior fellow for health policy, explained how the proposed health courts would work. The PPI is a Washington-based think tank with ties to Democratic Party centrists.

"It would work like workers com-

pensation where injured employees do not need to hire a lawyer to receive compensation in most cases," they wrote. "Patients would submit a claim form about an injury, and a health court review board would investigate and award compensation automatically if the claim fit a predetermined medical malpractice scenario. If the claim presented new or unclear circumstances, then the review board would steer the case to a full trial in a health court with legal representation for both sides. Specialized judges would preside over the health court and use court-appointed expert witnesses to provide a

See **HEALTH COURTS** page 20

A PRESCRIPTION FOR HEALTH COURTS

The American Medical Assn. recently issued its principles for health courts:

- Health courts should be structured to create a fair and expeditious system for the resolution of medical liability claims—with a goal of resolving all claims within one year from the filing date.
- Health court judgments should not limit the recovery of economic damages, but non-economic damages should be based on a schedule.
- Qualified experts should be utilized to assist a health court in reaching a judgment.
- Health court pilot projects should have a sunset mechanism to ensure participating physicians, hospitals and insurers do not experience a drastic financial impact based on the new judicial format.
- Health court judges should have specialized training in the delivery of medical care that qualifies them for serving on a health court.
- Negligence should be the minimum threshold for compensation to award damages.

Source: American Medical Assn.



AP PHOTOS

A magnitude-6.5 earthquake rocked California from Los Angeles to San Francisco in December 2003, killing three people and injuring dozens. The temblor also toppled a two-story clock tower building in Paso Robles (above).

Quake-related costs for workers comp decline

California study finds market reforms lower need for loading

By ROBERTO CENICEROS

Paying for insured workers compensation losses from future California earthquakes requires setting aside about \$180 million annually, according to research released last week by the California Workers' Compensation Insurance Rating Bureau.

In contrast, a 2002 study prepared for the San Francisco-based WCIRB found that insurers needed to collect \$418 million annually to pay for earthquake-related injuries in the future.

The updated study evaluates potential quake-related workers comp costs since California adopted workers comp reforms in 2003 and 2004.

Excess workers comp insurers are pricing risks for future earthquake losses in California accounts because they are concerned about potential catastrophic losses

impacting a concentration of employees, said Kevin Orphan, senior associate in San Francisco for Integro Insurance Brokers Ltd. Services.

In other parts of the country, such as in New York, workers comp insurers are more concerned about the potential for terrorism to impact concentrations of employees rather than temblors, several sources agree.

It remains unclear, though, whether all primary insurers in California are pricing for their share of the state's earthquake risk, particularly with a competitive and softening market where losses remain low, observers say.

Some workers comp insurers are pricing for earthquake exposure while others may not be, said Steve Paulin, senior vp for brokerage SullivanCurtisMonroe Insurance Services L.L.C. in Irvine, Calif.

"There are definitely carriers that still consider that part of their underwriting criteria and others that really haven't given it that much consideration," Mr. Paulin

See **QUAKE** page 6

Workplace retaliation claims rising

Management training expert tells SHRM audience how to avoid pitfalls

By JUDY GREENWALD

LAS VEGAS—Policies that are applied inconsistently and employer documentation that fails to support, or even contradicts, the stated reason for taking action against an employee can lead to successful retaliation claims against employers, an expert says.

Jonathan Levy, a partner with Santa Cruz, Calif.-based Fair Measures Inc., which provides legal training for managers, issued the warning during a session at the Alexandria, Va.-based Society for Human Resource Management's annual conference last month in Las Vegas.

He said, according to the U.S. Equal Employment Opportunity Commission, retaliation claims against employers have been up 30%, while all other claims have been down 30%.

There are three elements to the

successful retaliation claim, he said: "The employee's got to engage in a protected activity," "something bad" has subsequently happened to him, and "there must be a causal connection" between the protected activity and the adverse job action.

Explaining protected activity, Mr. Levy pointed to the 2005 California Supreme Court decision in *Elysa J. Yanowitz vs. L'Oreal USA Inc.*

In that case, Ms. Yanowitz refused to follow a supervisor's instructions to fire an employee and "get me somebody hot." She never explicitly told the supervisor she believed his order was discriminatory and later took a stress-related disability leave because of the supervisor's subsequent treatment of her (*BI*, Aug. 15, 2005). Ruling the retaliation claim could proceed, the court held Ms. Yanowitz was not required to use "legal terms or buzzwords" in opposing the supervisor's discrimination, Mr. Levy said.

Discussing adverse job action, Mr. Levy pointed to the U.S. Supreme Court's 2006 decision in *Sheila White vs. Burlington Northern & Santa Fe Railway Co.*, in which the court held that reassigning Ms. White to a different job and temporarily suspending her pay were retaliatory acts for her earlier complaint of sexual harassment (*BI*, June 26, 2006). The court ruled an adverse job action can be any material action that "might have dissuaded a reasonable worker" from the protected activity, said Mr. Levy.

As for the time required between the protected activity and the adverse action to establish a successful retaliation claim, "it depends," said Mr. Levy. He pointed to the 2004 decision by the 9th U.S. Circuit Court of Appeals in *Lawana Porter vs. California Department of*

See **CLAIMS** page 12

Heed gut feeling about employee's reaction to termination, expert says

Workplace violence specialist debunks myths at SHRM gathering

By JUDY GREENWALD

LAS VEGAS—Human resources executives who are uneasy about how an employee might react to being fired should listen to their gut feeling because they may be right, a psychologist says.

"Ask what's making you feel this way," said Marc W. McElhaney, director, incident and threat management, at Atlanta-based Critical Response Associates L.L.C., who discussed safety considerations in making terminations at the Society for Human Resource Management's annual conference in Las Vegas last month.

Know the employee, "know what the termination means to them"

and do not fire a worker in haste, said Mr. McElhaney, who is a psychologist.

Confer on the termination first, he said. "Check out with some of your peers" what the employee is like. "If you have concerns, there's a good chance someone else does, too," and peers may validate that uneasiness, Mr. McElhaney said.

"Understand the level of risk you have," he said. This requires a team approach, despite many people's tendency to feel they handle a firing

themselves. "You will come up with a much better plan," he said.

Next, plan the termination itself. It is important to have a plan with which you are comfortable and with well-understood potential consequences because you may have to defend the decision in court, he said.

If possible, have someone besides the worker's direct manager, whom the terminated employee may blame for losing his job, perform the termination, Mr. McElhaney said.

Also speaking at a related session was Dennis A. Davis, president of Vista, Calif.-based Help Center

See **VIOLENCE** page 12

SHRM: More conference coverage on electronic communications and technology risks on PAGE 12.

IN THEIR OWN WORDS

Wilma Miller, Insurance Administrator, Church of God Florida State Offices, Inc.



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Long arm: Ruling may be 'turning point'

CONTINUED FROM PAGE 3

household moves."

Terrence A. Oved, an attorney with Oved & Oved L.L.P. in New York, who represented Best Van Lines, said his client is considering whether to ask for a rehearing before the full court.

Some observers say the decision has limited application.

Charles S. Sims, an attorney with Proskauer Rose L.L.P. in New York, said the decision "joins a long list of decisions that refuse to allow the availability of an article in the state to be sufficient to sue the author or the publisher. But it is based on New York law. Therefore, strictly speaking, it should be precedential with respect only to state and federal courts here in New York."

But, said Robert J. Ambrogi, a Rockford, Mass.-based attorney, "A lot of the principles that the court sets out in the decision would apply to a broader analysis or even to a constitutional analysis."

"I think this is going to be one of those seminal cases that becomes kind of a turning point in defining the law on this issue," said Mr. Ambrogi.

Sandra Baron, executive director of the New York-based Media Law Resource Center, said, "To the extent New York's an important jurisdiction, the case will undoubtedly be influential."

Bruce E.H. Johnson, an attorney with Davis Wright Tremaine L.L.P. in Seattle, said, "The courts are still struggling with Web site defamation law and jurisdiction." This case is significant because it is consistent with other courts' decisions "that merely having defamatory statements on a Web site does not subject the publisher to suits anywhere in the United States or the world," which is a deterrent to free speech, he said.

Furthermore, the opinion's author, Judge Robert D. Sack, "is one of the leading experts on libel law and has written a treatise on the

subject, so this will be a very well-respected decision," despite its focus on New York's law, said Mr. Johnson.

Jeremy Feigelson, an attorney with Debevoise & Plimpton L.L.C. in New York, said the 2nd Circuit "is one of the leading federal courts in the country, and when the 2nd Circuit speaks on free speech issues, people listen."

Jonathan D. Hart, an attorney with Dow Lohnes P.L.L.C. in Washington, said, "It's an important opinion because it's so thorough and carefully written and well-reasoned. It pulls together the law in this area and articulates it."

However, "It's not doing anything particularly new and different," Mr. Hart said. Decisions in the area "tend to be very fact-specific," he said.

Best Van Lines Inc., plaintiff-appellant, vs. Tim Walker, defendant-appellee, U.S. Court of Appeals for the Second Circuit, No. 04-3924-cv, June 26, 2007.

Med mal: Panel to investigate costs

CONTINUED FROM PAGE 3

hike—as has been the case since 2002—is less than what insurers wanted, the department noted. The state's two largest med mal insurers, Medical Liability Mutual Insurance Co. and Physicians Reciprocal Insurers, sought rate hikes of 16.6% and 30.6%, respectively, the department said.

Contributing to the medical malpractice market's financial woes are losses it faces through the state's assigned risk plan in which all med mal insurers in the state participate. The plan had a \$525 million deficit as of March 31.

A significant portion of the deficit has been caused by inadequate reimbursement for an excess coverage program that is fully state-financed, according to observers.

Under the decades-old program, physicians who voluntarily provide hospital attending services and purchase at least \$1.3 million per occurrence limits must be provided \$1 million of excess coverage at no cost.

State budget actions also contributed to the current financial problems, the department said. Between 1992 and 1997, the state used \$691 million of surplus reserves from the state's now-shuttered Medical Malpractice Insurance Assn. to help fund New York's budget. The MMIA had been the state's med mal insurer of last resort until 2001, when the assigned risk plan was implemented.

MLMIC took over the association's book of business in 2000, and the state transferred \$373.4 million of loss reserves to the insurer. The insurer has broken even on that business, said Edward Amsler, a vp with MLMIC in New York.

But, "Had MMIA's reserves been preserved...New York's medical malpractice insurers would be in a much stronger financial position today, and the problem confronting New York would be far less serious," the department stated.

A department spokesman said that the entire market, rather than just MLMIC, could have benefited if the reserve had not been depleted,

because a larger reserve might have led to a different transaction.

Med mal market critic Jay Angoff, a former Missouri insurance commissioner and now an attorney with Roger G. Brown & Associates of Jefferson City, Mo., called the rate hike "modest," considering the excess coverage that New York physicians "get for free."

"The rates in New York have always been artificially low," said Mr. Angoff, who in recent years accused med mal insurers in the rest of the country of price-gouging physicians.

The excess coverage should be among factors examined by the task force, Mr. Angoff said.

A physicians group says the state should reconsider the role of the civil justice system in the medical liability arena, among other things.

The Medical Society of the State of New York would like the state to create a special court to hear medical malpractice claims, said Gerard L. Conway, the society's Albany, N.Y.-based executive vp for governmental affairs.

Commentary

Autism poses challenge in risks and benefits



REGIS COCCIA

Editor Regis Coccia's commentary appears periodically. He can be reached at: rcoccia@businessinsurance.com

Most of the topics mentioned in *Business Insurance* tend to fall into the realm of either risk management or employee benefits, but occasionally we encounter subjects that touch both.

Autism is a prime example. This pervasive developmental disorder is alarmingly common. A recent Centers for Disease Control and Prevention study found that autism afflicts one in 150 children. That makes it more prevalent than pediatric cancer and juvenile diabetes—combined.

If that fact is underreported, even less appreciated are the risks posed by autistic behaviors and the costs of treating them.

What causes autism is not known, and there is debate over whether environmental factors, such as mercury in immunizations, or genetics are to blame. Research suggests a genetic link, but ultimately what matters is finding effective treatment for the millions of children and adults with autism spectrum disorders.

My family has learned more on this than we ever wanted to, because we have an autistic child. We have met many families whose lives have been touched by autism and, like us, they struggle daily to help their loved ones.

People with autism are all unique, though they typically display impairment in social interaction, communication and exhibit behaviors that are repetitive or narrowly focused, such as preoccupation with an object. As a spectrum disorder, autism ranges from high-functioning to severe, with many variations in between. Many people mistakenly believe autistics cannot make eye contact, smile or show affection, or that they lack intellectual capability. In my son's case, at least, that is most definitely not true.

Autism cannot be cured, and people who have the diagnosis do not outgrow it. But they can, and many do, learn to function like most of the rest of us.

Various programs exist for treating autism, including speech therapy and occupational therapy. Experts advise early and frequent treatment to get the best outcome. Children may need multiple sessions per day—possibly for years. Those with severe cases may need lifelong care.

The financial burden on families is huge, and insurance shoulders only a fraction of that cost. Employee benefit plans generally cover therapy sessions, but typically they do not distinguish between ongoing therapy, such as occupational therapy, and short-term therapy, such as rehabilitation from an injury or illness. If a plan covers therapy sessions per year, for example, that coverage can be exhausted quickly.

By some estimates, autism in

the United States afflicts 1.5 million people and costs \$90 billion a year. Sadly, it's the fastest-growing developmental disability. The Autism Society of America estimates that by 2013, autism will cost \$200 billion to \$400 billion. It's clear to me that benefit plans in the future will need to look at how they cover autism therapies.

Autistic behaviors also present risks that need managing—at home as well as in public places. Today's autistic kids are tomorrow's autistic adults.

Parents with autistic children already know their kids can act unpredictably: Some run off, and many don't perceive danger. Law enforcement and emergency services are just beginning to understand that people with autism often have difficulty communicating and following instructions and exhibit behaviors that may be misinterpreted as aggressive.

It's not hard to envision a tragic encounter between a law enforcement officer and an autistic teen or adult, along with ensuing litigation. Likewise, knowing that many autistic children and adults have a tendency to wander and are attracted to water can help first responders save precious time. Disaster preparedness is hard enough for high-functioning people, but it gets infinitely more complicated when those plans must account for those with developmental disabilities.

Dennis Debbaudt, a law enforcement educator based in Florida who has an autistic son, helps first responders and parents understand these risks. His site, www.autismriskmanagement.com, offers a wealth of information.

Autism presents significant challenges, for those with it as well as those who interact with them. Understanding the disorder is the first step in overcoming those challenges. For more information, visit Mr. Debbaudt's site, the Cure Autism Now Foundation site at www.cureautismnow.org and the Autism Society of America's Web site www.autism-society.org.

Quake: Workers comp needs updated

CONTINUED FROM PAGE 4

said.

The WCIRB sought a 1.8% pure premium load for earthquake losses for 2004 rates. The California Department of Insurance, however, did not approve the load and the WCIRB never renewed its attempt to include the potential losses in its pure premium rate recommendations.

The WCIRB report released last week is entirely for informational purposes, a WCIRB spokesman said. The WCIRB does not plan to include the potential losses in its recommendations.

Catastrophe modeling and consulting company EQECAT Inc. con-

ducted the study and made its determination by evaluating databases containing information on 15.6 million workers across California.

The database information, culled from sources such as the U.S. Department of Labor's Bureau of Labor Statistics, included job classifications and the shifts worked by the group.

Oakland, Calif.-based EQECAT's study also considered the types of buildings across the state, the structures' potential for damage, the injuries and deaths expected from such buildings, and anticipated workers comp payouts for various injuries.

The probabilistic analysis then

calculated the sum of a number of events, such as those likely to occur once every two years, once every 50 years and once every 200 years. Some events would cause millions of dollars in losses while others would reach into the billions.

Boca Raton, Fla.-based NCCI Holdings Inc. a few years ago consulted EQECAT to help it determine potential workers comp losses in several states including Alaska, Hawaii and Missouri, an NCCI spokesman said.

NCCI, which is the licensed rating and statistical organization for more than 30 states, currently includes loss cost provisions for earthquake risks in several of those states, the spokesman added.



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Business Insurance OPINIONS

Punitive approach may harm morale

EMPLOYERS SHOULD BE WARY of using financial penalties to prompt workers to lead healthier lifestyles.

As we report on page 1, at least one employer plans to charge those employees it deems unhealthy more for health care if they fail to give up smoking, lose weight, or lower their cholesterol or sugar levels.

This is a significant departure from the traditional approach to tackling wellness issues, which usually has involved offering a variety of incentives for all employees to live healthier lives.

The newly announced punitive approach, though, is perhaps the logical extension of more targeted efforts in which employers insist that all employees not use tobacco.

In an era where every cent spent on health care is under scrutiny, such approaches may have a certain appeal for many employers that believe they are simply saving money while helping employees do the right thing for their health.

There are, however, some troubling aspects to this policy. For example, certain physical conditions, such as obesity, have been linked by some studies to other complex conditions, such as depression. In such circumstances, it is inappropriate to have policies that seem to suggest that obese people simply need to lay off the Twinkies.

Regardless of whether the inequities are imagined or real, employers may find that the policies lead to morale problems, which in turn could lead to higher costs in other areas.

Staying with the wellness carrot and forgetting about the stick may be the best approach.

Staying with the wellness carrot and forgetting about the stick may be the best approach.

Foreign or domestic, terrorism is terrorism

THE RECENT FAILED terrorist attacks in London and Glasgow, Scotland, underscore the importance of quickly resolving a key issue in the debate over extending the United States' federal terrorism insurance backstop. That's the issue of whether the backstop should respond to terrorism attacks of domestic as well as foreign origin.

We believe it should, even though current law limits the backstop's protections to acts of foreign terrorism. The nature of the U.K. attacks demonstrates just how difficult it can be to classify an attack in terms of foreign vs. domestic. The alleged terrorists were legal residents of the United Kingdom, living and working there openly. An argument can certainly be made that the attempted attacks were acts of domestic rather than foreign terrorism.

The House bill to extend the U.S. backstop 10 years beyond its scheduled Dec. 31 sunset wisely eliminates the increasingly difficult and artificial distinction. The measure focuses on how great the damage would be rather than whence the perpetrators operated.

We were fortunate that the planned U.K. attacks failed. We may not be so fortunate in the future. The situation would be unfortunate indeed if the aftermath of a truly catastrophic terrorist attack would be marked by avoidable squabbling over whether compensation for losses depended on the terrorists' home addresses.



Letters

NBCR threat deserves nationwide solution

To the editor: *Business Insurance's* June 25 editorial on legislation to extend the Terrorism Risk Insurance Act, "TRIA Extension Bill Good, Can Get Better," was right on target. TRIA played a key role in triggering the economic recovery in the wake of the 9/11 attacks because it created a market for an uninsurable risk and allows businesses of all sizes in all parts of the country to protect themselves from the financial devastation of a terrorist attack. The program deserves a long-term extension.

However, as you correctly point out, the inclusion of a mandatory "make available" provision for

weapons of mass destruction oversimplifies an extraordinarily complex issue. Some—but certainly not all—commercial policyholders have expressed a demand for coverage against attacks that employ nuclear, biological, chemical or radiological weapons. It is naïve, however, to think that this demand can be met simply by requiring insurers to offer the coverage.

The reality is that many small and midsize insurers will be unable to provide this coverage without jeopardizing their solvency. A "make available"

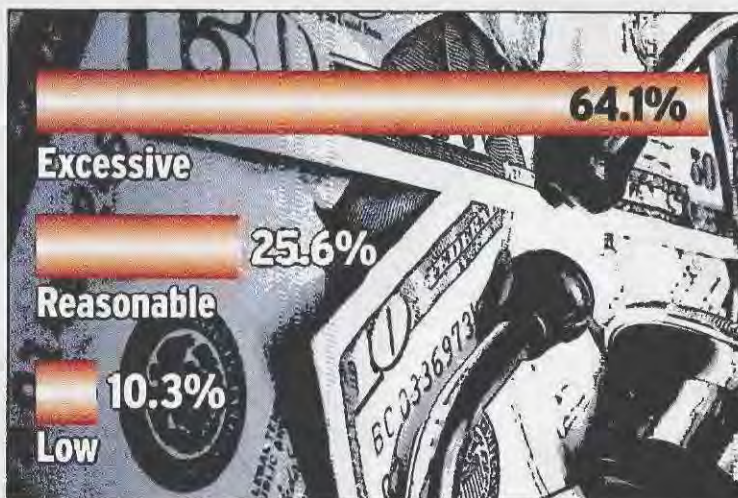
See **LETTERS** page 20

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Online Poll at www.businessinsurance.com

Do you think health insurers' profits are:



NEXT WEEK'S POLL: How effective are financial incentives for employees in achieving wellness program goals?

BI Online Poll tool sponsored by Wausau Insurance Cos.

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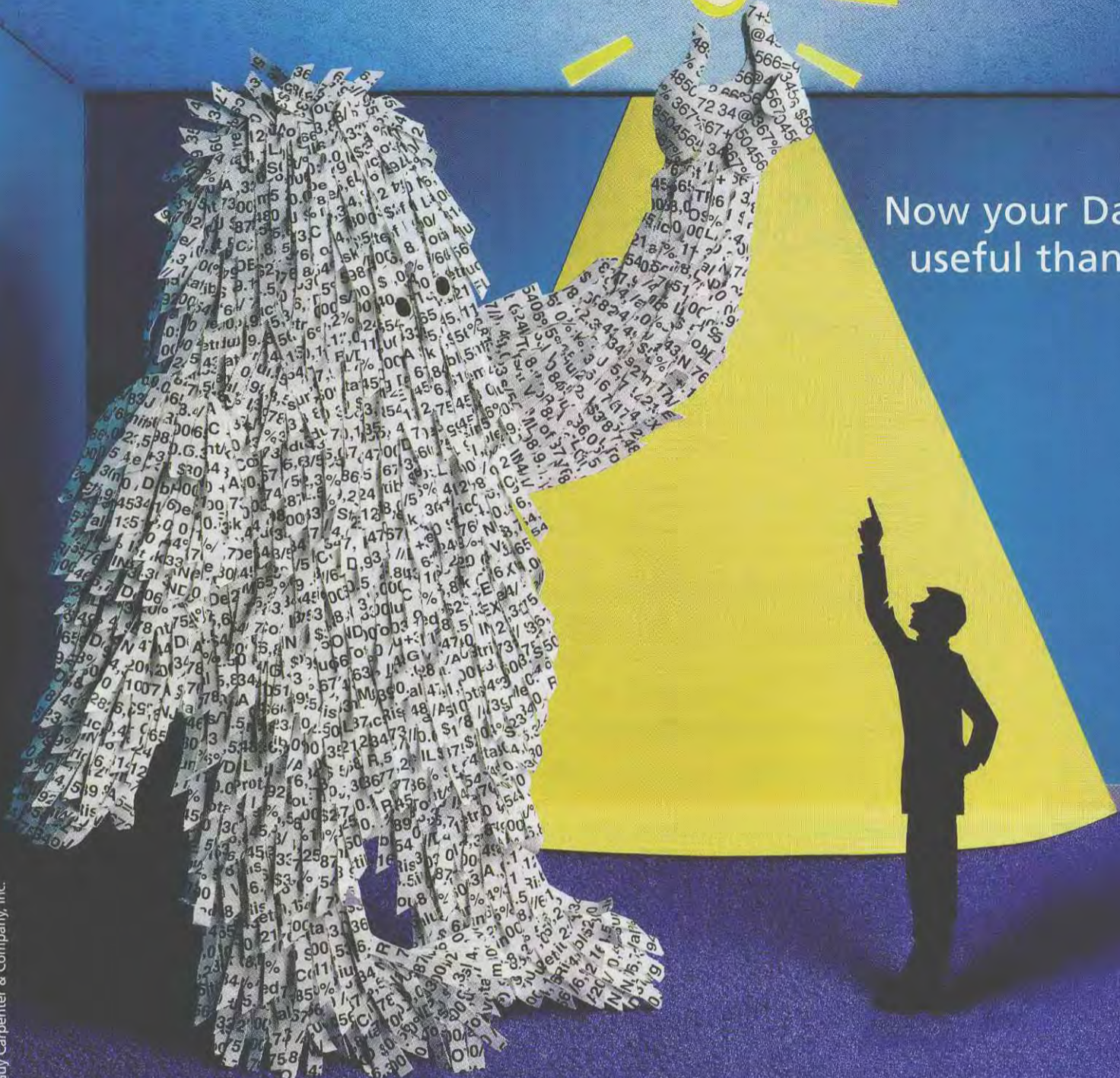
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Employers grapple with telecommuter, technology risks

Potential legal and practical problems in the workplace can be avoided by communicating policy procedures

BY JUDY GREENWALD

LAS VEGAS—Employers are struggling with telecommuting-related risks as well as managing the risks associated with technology in the workplace, experts say.

The law is just not keeping up with the rapidly changing electronic workplace, Jonathan W. Yarbrough, an attorney with Constangy, Brooks & Smith L.L.C. in Asheville, N.C., told the Society for Human Resource Management's 59th annual conference last month in Las Vegas.

During a separate session, Matthew S. Effland, an attorney with Ogletree, Deakins, Nash, Smoak & Stewart P.C. in Indianapolis, discussed developing electronic workplace policies.

Overtime is among issues about which employers with telecommuting workers must be concerned, said Mr. Yarbrough. At-home telecommuters, for instance, may be entitled to overtime pay if they work more than 40 hours a week.

"That can be a serious issue right there" and can lead to a federal Department of Labor investigation,

said Mr. Yarbrough. "You need to be really careful about that." It is important that employers keep adequate records and "clearly define limitations" on hours worked, he said.

Telecommuting also raises the issue of what is a reasonable accommodation for disabled employees, said Mr. Yarbrough. "The courts are kind of split on this issue right now" as to whether telecommuting can be considered a reasonable accommodation and if a worker's physical presence at the worksite is an essential job function.

According to the Equal Employment Opportunity Commission, Mr. Yarbrough said, factors that employers should take into account include whether the job requires supervision, what equipment is needed and the type of interaction involved. "Is this a position that requires some face-to-face interaction, or can it just be done at home?" he asked.

Safety issues are a concern as well. An employee who breaks a leg while getting a cup of coffee at his home office "could very well be a workers comp claim," said Mr. Yarbrough.

"Don't automatically dismiss that type of claim."

"Choose your telecommuters wisely," he advised.

Employees who have problems focusing on their work are not good telecommuting candidates. Do not permit new employees to be telecommuters, either, he said. If possible, have new hires spend time in the office first so they can become familiar with the company's culture.

Also, take steps to protect confidential data accessed by telecommuters, he said. "You need to address that as well," Mr. Yarbrough said.

Other concerns

At the same time, many employers are struggling to manage technology-related risks in the workplace, Mr. Effland said.

When you have technology, "you're going to have people who abuse that technology," Mr. Effland said. "There are steps companies need to take to get a handle on it."

Employees at private firms do not have a constitutional right to privacy at work, said Mr. Effland. "The

key is to limit the expectation" of privacy and explicitly communicate this to employees, he said.

But employers should also avoid "obvious mistakes," such as placing video cameras in the ladies' washroom. In those cases, "courts will bend over backwards" to come down on the company, he said.

Discussing wiretaps, Mr. Effland said employers need at least one-party consent under federal law and some states have more stringent requirements. This consent provision does not apply, though, to voicemail, answering machines or other recorded media.

Mr. Effland said under the 1986 Electronic Communications Privacy Act, electronic communications cannot be intercepted in transit, but

can be read either before or after transmission.

He also warned that even deleted e-mail can be retrieved.

"Your e-mail is not private," he said. Do not put anything in an e-mail you would not feel comfortable "shouting at the top of your lungs" while standing on top of your desk in the middle of the day, he said.

Mr. Effland said one common factor in developing policies on electronic communications should be the right to discipline violators. "It sounds simple, but you need to let them know that," he said. Also, have employees sign a consent form acknowledging they know the company policy, Mr. Effland said.

Violence: Myths unveiled

CONTINUED FROM PAGE 4

L.L.C., who discussed myths associated with violence in the workplace.

Mr. Davis, a psychologist, said one myth is that workplace violence is random and unpredictable. People will show signs of violence in advance, he said.

For instance, those who may become violent will use racial and gender slurs. This dehumanizes the slurs' object and contributes to the process that results in violence. "Pay attention to how your employees talk to one another," said Mr. Davis.

Argumentative behavior is another indication of potential violence. These are arguments that are based not on logic but on comments such as, "You're an idiot," said Mr. Davis. "Pay attention to those personal challenges."

The potentially violent person also will challenge authority and may think he or she knows how to run the company after three days on the job, said Mr. Davis. This person also disregards company policy as not being applicable to him or her, he said.

The potentially violent employee

also feels no sense of accountability or responsibility for his or her actions, instead placing all blame on others. "It's always someone else's fault," said Mr. Davis, who told the story of a job applicant who was 20 minutes late for an interview and blamed his "stupid wife" for not waking him up.

Among myths associated with workplace violence is that anyone can be pushed to it, said Mr. Davis. But short of self-defense or defending a family member, people who are in control of themselves do not injure or kill others, he said.

It is also a myth that verbal threats are not a warning sign of impending violence, he said. "There are some things that rational people...never form their mouths to say," he said. Every case of significant workplace violence has been preceded by the aggressor "telling us exactly what they were going to do," Mr. Davis said.

It is also a myth that workplace perpetrators of violence are "crazy." Most often, mentally ill people are already either hospitalized or incapable of getting a job in the first place, Mr. Davis said.

Claims: Avoiding retaliation complaints

CONTINUED FROM PAGE 4

Corrections in which the court allowed Ms. Porter to proceed with her retaliation claim even though there was a several-year gap between her sexual harassment complaint and the alleged acts of retaliation.

Five mistakes to avoid

Mr. Levy said the five crucial mistakes employers make are:

- Policies are applied inconsistently: Employers must "focus on what to do to remain consistent," said Mr. Levy. Treat like cases alike, he said. "The employer can have any standard it wants," so long as it is consistently applied.

- "Employer documentation does not support, or contradicts, the legitimate business reason" provided for the employer's action: "Review relevant documents before taking action," said Mr. Levy. In one case, he said, a medical center that had lost its federal funding claimed an employee had been let go because he was the most recent hire. But an e-mail sent three months previously—and after the employee filed a complaint—asked, "What can we do right now to get rid of him?"

- "Sometimes people forget" that an adverse job action in close time proximity to a complaint looks like retaliation: "There is a "very, very high" barrier to overcome when

these two events occur close together, he said.

- Failure to partner with experts: Train managers on how to act, Mr. Levy said.

- "Obviously, you want to avoid the rush to judgment" and making hasty moves: Be patient and "conduct investigations," he said, and "always hear both sides of the story."

In one case, he said, a female employee claimed sexual harassment and provided e-mails that a colleague had sent her as proof. However, when the colleague was called in and questioned, he showed e-mails that she had sent him earlier that "would have made a sailor blush," said Mr. Levy.

Healy: Evaluating group LTC insurers

CONTINUED FROM PAGE 10

willing to offer a full transfer of reserves, with a guaranteed-issue "landing spot" in the new coverage, premium credits and a second guaranteed-issue opportunity for the entire employee population.

For smaller employers, a landing spot might be available, without a reserve transfer. Instead, the coverage would be offered on a "moving forward" basis, where insureds can either keep their current coverage, drop it in favor of the new plan or stack it by adding coverage provided by the new plan to their existing coverage.

There is also the chance that insurers may not view your organization as a good fit for true group

LTC insurance due to size or other factors and may direct you to a multilife option, which gives employees access to individual coverage. Multilife insurance usually offers a streamlined underwriting process in place of guaranteed-issue, and can offer a measure of plan flexibility since employees can customize plans to meet their needs.

Evaluating the insurer

When it comes to introducing a plan or transferring your existing group LTC insurance, you will want to evaluate a number of insurers, with a focus on their financial stability and commitment to the coverage. The usual measures of financial stability, such as Standard & Poor's Corp. or A.M. Best

Co. Inc., are good indicators of an insurance company's claims paying ability.

Less well-known, but possibly a stronger indicator, is the Comdex Score, which is a consolidation of all ratings of an insurer, with the companies ranked on a scale of 1-100. As a general rule, the higher the Comdex Score, the more stable the company.

An insurer's actual commitment to group long-term care insurance may be harder to determine, but its number of years in the industry, its presence across market segments—from individual policies to multilife and true group products—and its overall market share can be a good reflection of its future intentions.

SHRM annual conference draws 15,000 attendees in Las Vegas

LAS VEGAS—There were 15,000 paid attendees at the Society for Human Resource Management's 59th annual conference and exposition held June 24-27 in Las Vegas.

Human resource executives attended a wide variety of sessions on employment, human resources and the law, skill development, strategic management and total rewards programs. For the first time, the sessions were paperless as participants were able to download session materials before the conference.

Speakers included seven-time Tour de France champion Lance Armstrong; Linda Alvarado, president and chief executive officer of Denver-based Alvarado Construction Inc. and co-owner of the Colorado Rockies baseball team; Dan Pink, author of "Free Agent Nation and A Whole New Mind;" and Erin Gruwell, the teacher depicted in the film "Freedom Writers."

Next year's conference is scheduled for June 22-25 in Chicago.

—By Judy Greenwald

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Mother Nature teaches hospitals of the need for self-care

Prior and on-the-fly planning help make the best of disaster

By CINDA BECKER

Early in May when a mile-wide tornado ripped through Greensburg, Kan., killing nine people, 25-bed Kiowa County Memorial Hospital crumbled along with the town of about 1,500 people.

Within 20 minutes of the twister, Ron Tucker said he rushed to help some neighbors get out of their house, then rushed to the hospital to help with the calming and then safe evacuation of about 20 patients, including 10 psychiatric patients, from the hospital's basement to other facilities.

Coming up into the darkness from the basement after six hours, he was overwhelmed to see 15 ambulances from all over the state as well as several from Oklahoma parked in the driveway. The hospital building was for all intents and purposes destroyed, and Mr. Tucker's real work as the hospital's chief financial officer was just beginning.

"The first thing was to make sure everybody was OK, then what are you going to do and when are you going to do it," he said. "Now decisions have to be made. We are trying to get some idea of what the new norm is."

Like all accredited hospitals in the country, Kiowa had a general, hospitalwide disaster plan in place, "but basically you throw it out the window and do what you can," Mr. Tucker said. Just from his casual observations of the recovery efforts at New Orleans hospitals in the wake of Hurricane Katrina, Mr. Tucker said he knows "that there are going to be a lot more questions than answers (about the rebuilding process), and it is going to take a lot longer than anyone wants to think about" to recover.

Digging out is one thing; recouping expenses is another. Roger John, president and chief executive officer of Great Plains Health Alliance of Phillipsburg, Kan., which leases Kiowa from the county, said very little was salvaged from the building. Officials have already settled with the insurance company and will receive about \$4.3 million, but the building was grossly underinsured, he said. The Federal Emergency Management Agency will pay up to 75% of the difference between what the insurance will pay and the cost of rebuilding, and the state of Kansas will pick up another 10%, "so we'll have to find another way to finance 15% of the building," Mr. John said.

Based on the experience of health care providers in New Orleans after the devastation of 2005, it could take months or years for Kiowa to become financially whole again. In Louisiana, the process has been excruciatingly slow, especially in recovering sheltering costs from FEMA, which has to go over every claim in detail, said a spokeswoman for the Louisiana Hospital Assn. Of

28 hospitals that submitted reimbursement claim forms through the LHA for a total of \$6.6 million in expenses, 15 of those hospitals as of March received approval, and only 11 hospitals have received any payment: approximately \$138,000 in total, she said.

What's more, in April, doctors at the 362-bed West Jefferson Medical Center in Marrero, La., sued the state and health department for \$100 million to be reimbursed for caring for displaced poor and uninsured patients in the wake of Katrina. The doctors reportedly said in the lawsuit that they had not received any money for their work.

Hospitals around the country are nervously taking note, imagining their own worst-case scenarios, financially planning for them as best they can and applying for a small nest egg of federal funding that became available for hospital disaster preparedness in the eye-opening, hospital-changing aftermath of the Sept. 11, 2001, attacks.

In the six fiscal years since 2002, Congress has appropriated approximately \$2.6 billion for national hospital bioterrorism preparedness, said Roslyne Schulman, senior associate director for policy at the American Hospital Assn. The \$135 million appropriated the first year "didn't take us very far," and even the roughly \$450 million average in the years since then "is hardly enough to pay for one additional staff person" at each hospital, she said.

"I have to say certainly hospital preparedness has improved, but it is important to keep in mind that preparedness is not a final state," Ms. Schulman said. "It has to be done constantly. There are always new threats...and equipment and supplies become obsolete. So one thing we have said consistently is that there has to be sustained investment in hospital disaster preparedness."

The five employees who report to Mr. Tucker have been able to work only intermittently because of their own personal responsibilities and because of a lack of computer access. Mr. Tucker personally recovered a bag of clothes from his home, which was destroyed. He, his family and his insurance company are deciding if they can rebuild.

Recently, Mr. Tucker recounted the Kiowa story from what he described as something similar to a Mobile Army Surgical Hospital tent. There are plans to bring in a mobile building to house the hospital's laboratory. The emergency room was basically the only service still running; a portable X-ray machine was brought in to assist with care. Several days later, a modular building was brought in to operate a rural health clinic, he said. In the meantime, the closest hospital, the 85-bed Pratt (Kan.) Regional Medical Center, is about 30 miles away.

In terms of business interruption, "We had sufficient money to meet



CARLOTTA MEEKER

A mile-wide tornado struck Greensburg, Kan., in May—killing nine people and destroying Kiowa County Memorial Hospital (above and left) among other structures. Officials say the hospital is on the road to recovery but still has a long way to go to regain all previous functions.

'We will get through it in the long run and we will possibly be better off than we were before, but it's surviving the transition that is going to be hard.'

Ron Tucker,
Kiowa County Memorial Hospital

the main payroll and we'll just have to see what happens from what we had on hand and what we are able to collect," Mr. Tucker said. Going forward, "I think you can never have too much detail for the government agencies, for example on equipment. It's not enough to just have a description of the equipment (that was destroyed). They want serial numbers and detailed records you may or may not have. It's kind of the basic recording of information in a situation like this that becomes terribly important."

Most of the hospital's financial data were backed up at a centralized data repository 100 miles away, and luckily, Kiowa's information technology expert grabbed the hospital's internal server before the tornado hit, Mr. Tucker said. As a result, no information was lost, but it was quite a while before computers could be hooked up again. If it were not for a light fixture that fell on top of his laptop computer during

the tornado, shielding it from getting wet, Mr. Tucker would not have had a computer to work on. As it was, for about two weeks his laptop was understandably a coveted piece of equipment, which he shared with other office workers.

"You take it one day at a time and realize it's going to be a long road, but you will eventually dig out," Mr. Tucker said.

When officials at Scripps Health in San Diego volunteered their services for the Katrina recovery efforts, they unexpectedly got a crash course in a type of disaster for which the four-hospital system had not prepared, said A. Brent Eastman, senior vp and chief medical officer of Scripps Health, and N. Paul Whittier, chairman of trauma services at 346-bed Scripps Memorial Hospital-La Jolla. Scripps sent a team to Houston's convention center to relieve exhausted workers from 760-bed Memorial Hermann Texas Medical Center. A 65-member multidisciplinary team of doctors, nurses and administrators from Scripps stayed about three weeks. Rather than trauma patients, Mr. Eastman said the team wound up caring for displaced survivors with chronic illnesses, upward of 1,000 patients a day.

Secondary effects

Last fall, Mr. Eastman was part of a panel of health care executives at a conference in New Orleans discussing the financial challenges resulting from a disaster. The discussion ranged from the effects on hospitals whose businesses were basically paralyzed by the hurricane as

well as "the financial implications of that secondary effect on hospitals in adjacent areas of a disaster that have to rise to the occasion to care for those displaced," he said. That led to a discussion on the importance for hospitals in preparing their budgets to work out contingency plans for disasters, he said.

"I think one of the main bullet points I came away with from the meeting is how critical it is in the event of disaster to document everything you do because without documentation you won't be eligible for subsequent reimbursement. Conversely, well-documented people who did that in Katrina did well in terms of reimbursement," Mr. Eastman said.

Scripps estimates that it contributed nearly \$266,000 to the Katrina effort, including payroll and incidental costs and costs for replacement employees for those who traveled to Houston. But it wasn't about the money, Mr. Eastman said, and there were some tough lessons learned.

"We never thought about the concept of a lifeboat (preparedness model), but that impacted our own planning as we contemplate disaster preparedness in San Diego," Mr. Eastman said. For example, Scripps is now preparing for its role as a health care provider in the event that an earthquake devastates Los Angeles. And with 1 million people just across the border from Scripps in Tijuana, Mexico, the system is also working out a "lifeboat concept" in the event of a tragedy.

Continued on next page

CONTINUED FROM PREVIOUS PAGE

there. Hospital personnel are considering other scenarios besides earthquakes, such as levees breaking in Northern California. Wildfires are another potential danger that San Diego residents live with constantly, he noted.



'Document everything you do because without documentation you won't be eligible for subsequent reimbursement.'

A. Brent Eastman,
Scripps Howard

and pay vendors, she said.

As a result of discussions with its CFO, Scripps has determined it would need about \$50,000 in cash "to manage vendor support," Ms. Skoglund said. And based on the Katrina experience, Scripps now requires all employees to have direct deposit. But rather than budgeting money specifically for disaster preparedness, the system is "paying more attention to processes for documenting our costs," Mr. Eastman added.

Budgeting for disasters even without firsthand experience in dealing with one is a high priority for hospitals across the country. At the 123-bed Stillwater Medical Center in Oklahoma, officials have been slowly piecing together a program with federal grants that were previously awarded by the Health Resources and Services Administration until last January when the program was moved to Health and Human Services Department. Under the HRSA, which had cooperative agreements with each state, the program each year set benchmarks and goals for hospitals, Ms. Schulman said.

Stillwater's only recent disaster scare was an unknown white powder found in an envelope in the community that required about four hours of staff time before it was analyzed and determined to be harmless, said Denise Webber, the hospital's assistant administrator. But the hospital is nevertheless preparing for chemical spills, tornadoes and pandemic flu. Beginning in 2004, the hospital has applied for HRSA grants each year through the Oklahoma state health department.

The funding has paid for everything from personal protection equipment to enhanced communication satellite phones, she said. Stillwater also has stockpiled antibiotics thanks to the federal program, receiving approximately \$173,000 in funding since 2004.

The federal grants have helped, Ms. Webber said. Stillwater doesn't really budget for disasters directly although it has spent its money for things such as staff training. It also covers the expenses of its participation in communitywide disaster drills, including an annual flu vaccination drive, she said.

But the hospital is not there yet. "We're as prepared as we can be at this point, and we are constantly looking at disasters and trying to

increase our preparedness. But we're not fully funded for anything to happen. If a disaster were to come along, it could put us in a bind," Ms. Webber said. "Part of our mission is to make sure we can continue providing care. Any more grants from the federal and state government would be put to good use."

Every year the hospital's disaster planning committee talks about what is needed immediately and "what would be great to have," and each year the hospital applies for funding, Ms. Webber said. At least two remaining items on the Stillwater wish list for funding: additional backup water supplies and energy needs. "So we hope we will continue to get funding, but without this grant, we wouldn't be as prepared as

we are today," she said.

The federal program will change slightly this year in light of the Pandemic and All-Hazards Preparedness Act passed by Congress in December 2006, Ms. Schulman said. Under the new law, there are now two streams of funding: cooperative agreements between HHS and state health departments and also a competitive grant program in which the federal government will fund partnerships consisting of one or more hospitals and another health organization such as a primary-care center, Ms. Schulman said. The details of that program are still unknown. "It gives HHS another optional approach to strengthen hospitals and other health care providers. I think it's important to allow that

kind of leverage in the health care system," Ms. Schulman said.

Chief disaster-planning officer

At the 11-hospital St. Luke's Health System in Kansas City, Mo., Chuck Robb, senior vp and CFO, serves as the system coordinator of all disaster preparedness efforts "I don't think it's unusual (having a CFO in charge of disaster preparedness) because a big piece of what could happen in a true disaster is figuring out how you are going to pay employees and get supplies down," he said. Mr. Robb leads the team in deciding what supplies and equipment need to be onsite and what can easily be obtained from

See **DISASTER** next page

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Disaster: Katrina's lessons also apply when the water main breaks

CONTINUED FROM PREVIOUS PAGE

vendors in the event of an emergency. "We know where to get a bulldozer if we need one. I don't know why we might need a bulldozer, but we might have to have one," he said.

All facilities throughout the system are represented on the multidisciplinary team that meets quarterly to talk about the strategic plan to prepare St. Luke's for a disaster response, Mr. Robb said. Perhaps because he is the CFO and in charge of the program, early on St. Luke's "set up a separate cost center for disaster preparedness so we could clearly track any outside funding and document on the front end what we were going to use it for," he said.

St. Luke's is preparing for all sorts of disasters. Most recently, it staged a "virtual drill" on the Internet with the entire community and other Kansas City hospitals earlier this month in the possible event of a pandemic. Mainly an exercise in communication procedures at its command center, the primary cost of the drill would be staff time, he said. The command center procedures actually were invoked once when a water main broke at the hospital "so there are uses for these kinds of initiatives in your regular business," Mr. Robb said.

St. Luke's relies on the federal funding for its disaster preparedness plan but it also allocates money out of its operating budget, he said. This year,

the system expects to budget approximately \$200,000 for the effort. The system is also receiving about \$50,000 in HRSA funding through Kansas and Missouri agencies. Like Stillwater, St. Luke's is spending funds on a variety of things such as upgrading communications and hazardous substance cleanup capabilities. "These are

long-term things, and it's a long-term process, particularly when you are coordinating 11 hospitals," Mr. Robb said. Long-term means "it is forever that people are thinking about these things," he said.

Prompted by the New Orleans experience, the Healthcare Financial Management Assn. published in November 2005 a disaster planning checklist for CFOs of health care organizations. The list is based on the 10 most common problems or errors with emergency response plans according to the National Safety Council.

Richard Gundling, the HFMA's vp of product development, said Katrina was the catalyst for many hospitals' disaster planning initiatives. The clinical response is of course key in any hospital's plan, but "the other big part is just the business continuity: How do you get the funds and the payroll done and all those immediate steps that need to happen?" he said.

"It's a very important part because it's the part that keeps the funds coming into an organization."

Hospitals that have been through disasters have a different issue, and that is how to make up for the loss of revenue as an organization tries to get back on its feet, the AHA's

Ms. Schulman said. Those hospitals "would like to see some sort of recognition of the economic costs of disaster," she said. Hospitals can apply for and receive funding for damages directly related to disasters and evacuation expenses, she noted.

Officials at FEMA did not respond to a request for the amount of money that has been distributed to New Orleans-area hospitals in the wake of Katrina.

Business interruption cover

Mr. Tucker of Kiowa County Memorial said, based on his experience, hospitals "might want to consider purchasing business interruption insurance—something we would have been happy with if we had had it. I don't know the cost of it, but I can tell you in a situation like this, it would be great to have."

Kiowa officials have not even begun to figure out the cost of rebuilding. "We're probably in the first month of a two-year digging-out process," Mr. Tucker said. "I think we have learned a lot, but I think we have a lot left to learn. It is not something you would wish on anybody, but we will get through it in the long run and we will possibly be better off than we were before, but it's surviving that transition that is going to be hard."

Cinda Becker is a reporter for Modern Healthcare, a sister publication of Business Insurance.



Federal grants have helped pay for personal protection equipment at Oklahoma's Stillwater Medical center (above). In Kansas City, Mo., St. Luke's Health System recently staged a "virtual drill" (left) to test procedures for a variety of emergency situations.

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International NEWS

FERMA to review own governance

Growing membership triggers examination of group's structure

By RICHARD MILLER

BRUSSELS, Belgium—Streamlining the governance of the Federation of European Risk Management Assns. will be among the first orders of business for Marie-Gemma Dequae in her second term as the organization's president.

Since each association that joins FERMA has a representative on the board of directors, the federation has decided to examine how it is governed at its next board meeting in October, she said in an interview.

"The major reason is the increasing number of members in FERMA...and the goal is to reach good and transparent governance," said Ms. Dequae, who was re-elected at FERMA's June 13 board meeting.

New members

FERMA's constitution calls for elections to be held every year but it is customary for the president to serve the two years between the association's biennial forums. Ms. Dequae said she intends to serve the full two years.

At the board meeting, FERMA also approved two additional member associations, bringing the total number to 15. Joining the federation were PolRisk, the Polish risk management association based in Warsaw, and FinnRiMa, the Finnish risk management association based in Helsinki.

FinnRiMa is one of Europe's oldest risk management groups, founded 20 years ago based on a working group of the Central Chamber of Commerce of Finland. The group today has about 200 members—roughly half of which are risk managers.

"We have been dealing with these (risk management) issues already a long time and I feel we can learn a lot from others, but we are also able to provide some competencies and experiences to others as well," said Lassi Väisänen, chairman of FinnRiMa, who is also vp and chief risk officer at TeliaSonera Corp., a Helsinki-based telecommunications company. "The FERMA members and (our members) are all winning something."

Some of FinnRiMa's current objectives concern the implementation of enterprise risk management in practice, overall corporate governance issues and improving transparency of risk management activities vs. reporting, said Mr. Väisänen. PolRisk is a newer organization,

founded last year.

Rafal Rudnicki, PolRisk's board president and group risk manager at Raben Group in Poznan, Poland, believes FERMA membership will benefit local risk managers through education and the sharing of know-how.

The addition of Mr. Rudnicki and Mr. Väisänen as FERMA directors bring the total number on FERMA's board to 22, comprising 15 directors from member associations and seven deputy directors.

As for changing FERMA's future governance structure, "there are suggestions, but no formal proposal has been put forward yet,"

said to Florence Bindelle, FERMA's executive manager.

Still, with 27 countries in the European Union, FERMA can only get larger, said Ms. Dequae. She noted that there are risk management associations that are either being developed or considered in Turkey, the Czech Republic and Slovakia, as

See **FERMA** next page



'I felt that two years was a bit too short to realize all the things I would like to do.'

Marie-Gemma Dequae, FERMA

AP PHOTOS

Four kidnapped workers for Houston-based oil company Schlumberger Ltd. were released in Port Harcourt, Nigeria, last month. Foreign oil companies are being targeted by militant groups in the African nation.

Kidnap risk increases for Nigeria oil workers

Companies reduce number of expat employee

By MICHAEL BRADFORD

LAGOS, Nigeria—Violence in the oil-rich Niger Delta has prompted a warning from the U.K. government that has seen some expatriate energy workers pack their bags to leave for less hostile working conditions.

But even as some of their workers decide the region is too dangerous, oil companies are toughing it out in Nigeria, battling the constant threat of kidnappings and violence with security that often is no match for militants demanding a larger share of oil revenues for the region.

Britain's Foreign & Commonwealth Office issued an advisory warning against all travel to Nigeria's Delta, Bayelsa and Rivers States and urged British nationals to leave those areas. "This is because of the very high risk of kidnapping, armed robbery and other armed attacks in these areas," the warning stated. "In 15 separate incidents since January 2006, 31 British nationals and over 180 foreign nationals have been kidnapped in the Niger Delta area. One Briton has been killed."

"Nigeria is a real area of concern, particularly for oil companies," said

Doug Milne, London-based chief executive officer of Specialty Contingency Risks Ltd., a Lloyd's of London broker. "Any organization sending people to Nigeria should be concerned."

The warning has spurred some oil workers to leave. The Hague, the Netherlands-based Royal Dutch Shell P.L.C. confirmed that some of its expatriate employees have left the region because of the warning. The energy company would not say how many have left or reveal their nationalities.

Attacks

"We said we would support any expat staff in the region if they wanted to leave," a London-based spokeswoman for Shell confirmed. "Some have expressed that desire."

Shell has been a hard-hit target of violent activists. Last year, nine Shell workers in the area lost their lives in the violence and the company's production has at times been interrupted in militant attacks.

The British agency's warning, its first advising Britons to leave Nige-

See **KIDNAP** next page

High court dismisses safety case

U.K.'s health and safety law not seen as counter to European directive

By SARAH VEYSEY

LUXEMBOURG—The European Court of Justice has ruled that the United Kingdom's "reasonably practicable" clause in its health and safety law is acceptable, removing the threat of tougher health and safety laws for the country's employers.

The court examined a claim made by the European Commission that U.K. health and safety law does not correctly implement a European Council framework directive (89/391/EEC) on measures to encourage improvements in workplace health and safety.

The ECJ last month dismissed the case and ordered the commission to pay the U.K. government's costs.



'The effectiveness of this system is supported by the U.K.'s health and safety record.'

Lisa Fowlie, IOSH

The case centered upon a key phrase in the U.K. Health and Safety at Work Act 1974.

Duty of employers

That act states that it is the duty of employers to ensure "so far as is

reasonably practicable" the health, safety and welfare of staff. The health and safety framework directive, however, states that employers have "a duty to ensure the health and safety of workers in every aspect related to work."

But it also contains a clause that states that the directive "shall not restrict the option of member states to provide for the exclusion of, or the limitation of, employers' responsibility where occurrences are due to unusual and unforeseeable

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FERMA: Plans to examine group's governance format

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well as risk management contacts in Romania.

Ms. Dequae, group risk and insurance manager of N.V. Bequaert S.A., a Belgium-based multinational metals group, was first elected as FERMA's president in 2005. Asked why she wanted to be president for another two years, she said: "I felt that two years was a bit too short to realize all the things I would like to do."

Serving two terms is not without precedent. Thierry van Santen, group risk manager of Paris-based Group DANONE, served two terms before Ms. Dequae.

"FERMA is growing quite fast, so we have a lot of contacts within our association," she said. "One of the things I want to do (in my second term) is visit all the associations to get a feel of what it is like for my colleagues in other countries."

The other goals for the organization are to:

- Work more closely and hold joint educational seminars with other federations or associations, such as those representing European internal auditors, loss control engineers and treasurers. Such contacts could lead to joint action on issues before the European Commission, she said.

- Encourage national associations to make their views heard at the European Commission, on topics

such as its inquiry into business insurance competition. "FERMA has reacted, but different countries also have to react on the more country-specific topics," she said.

- Obtain full transparency for larger companies on broker commissions, which Ms. Dequae hopes to obtain in collaboration with insurers and brokers. She intends to improve communication with broker groups as well as insurers through the Comité Européen des Assurances in Brussels.

- Communicate the risks of climate change so that national associations are "aware of the consequences of this, because it is very important to have very good risk management adapted to the climate change we are confronted with."

- Stay on top of the risks associated with the economic boom in countries like China, which is leading to a "scarcity of energy and enormous fluctuations in the prices of raw materials," she said.

"We also see that some new risks are appearing due to globalization, like the whole logistic supply-chain risks; I think we will have to be very aware of the evolution in that area."

Also at last month's FERMA meeting, the board chose as FERMA's two vps, Franck Baron of the Swiss risk management association, SIRM, and Hans Gorrée of the Dutch risk management association, NARIM.

Worldwide premiums up

By RUPAL PAREKH

Growth in the life sector helped to lift worldwide insurance premiums in 2006, according to a report from Swiss Reinsurance Co.

Global insurance premiums increased by more than 5% in 2006 to \$3.723 trillion. Of that figure, \$2.209 trillion was attributed to life business and \$1.514 trillion was attributed to nonlife business.

While profitability improved for the industry overall, growth accelerated at a faster pace in the life sector; life premiums increased by 7.7% over the prior-year period, while nonlife premiums grew by 1.5%, the study said.

Western Europe accounted for most of the growth in the life insurance market, with particularly strong

premium growth in the United Kingdom, France and Germany. Several Asian markets also saw significant growth, including South Korea, Hong Kong, China and India.

Stepped-up demand for retirement products in countries with aging populations, together with the efforts of governments to shift from public to private pension plans, boosted demand for the life industry's products, Zurich-based Swiss Re said.

Momentum was slower on the nonlife side. "Downward pressure in rates, particularly in noncatastrophe lines of business, was the salient feature of the market and could not be offset by higher demand," the report said.

The study is available by visiting www.swisre.com/sigma.

Safety: Law doesn't counter directive

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circumstances, beyond the employers' control, or to exceptional events, the consequences of which could not have been avoided, despite the exercise of all due care."

The European Commission argued that the United Kingdom's use of the "reasonably practicable" phrase amounted to defective implementation of the directive.

An oral hearing of the case took place in September 2006, and an advocate general at the European Court in January delivered an opinion favorable to the United Kingdom. And in June the ECJ dismissed the case.

The London-based Institution of Occupational Safety and Health welcomed the ECJ ruling, in which it said "common sense prevailed."

"In terms of health and safety law, the clause 'so far as is reason-

ably practicable' means that employers don't have to take measures that are grossly disproportionate to the risk. In turn, the U.K. courts are able to objectively assess whether employers have done everything 'reasonably practicable' to manage the risk. The effectiveness of this system is supported by the U.K.'s health and safety record, which is one of the best in Europe," said Lisa Fowlie, president of IOSH.

"Had the challenge against the United Kingdom been successful, employers in this country could have been treated more severely than those elsewhere in Europe. Although, other member states' laws are written in absolute terms, the courts in those countries can apply flexibility and proportionality in their judgments," she added in a statement.

The U.K. Health and Safety Com-

mission also welcomed the decision.

"We continue to believe that the right way forward is a proportionate and risk-based approach protecting employees and others effectively, while allowing common sense to be applied when deciding on what protective measures to adopt," said Bill Callaghan, chair of the HSC, in a statement.

Green light

The European Trade Union Confederation said it believed the ruling might go against European workers' "inalienable right to protection of their health and safety at work."

Walter Cerfeda, ETUC confederation secretary, said in a statement that the ruling could be "a sign of encouragement from the European court to states who want to cut back European legislation on workers' rights."

Kidnap: Risks increase for oil workers

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ria, has insurers and brokers looking closely at the risks they cover in the troubled area. "It has been one of the triggers of an increased level of interest in this part of the world," said Clive Stoddard, London-based executive director of Aon Ltd.'s crisis management team, of the advisory.

Sensitive issue

Oil companies, meanwhile, are mostly silent on how they guard against violence.

"We try as much as possible not to discuss security," said a Nigeria-based spokesman for Shell. He would not comment on recent press reports that Shell is reducing its output because of security concerns and as a result is considering \$100 million in spending cuts and the elimination of at least 200 jobs in the strife-torn region.

Total S.A. was tight-lipped about its security in Nigeria. "The less we talk about it, the more secure we feel," said a spokesman for the Paris-based company. "It's a dangerous country," he added, pointing out that Total employees have been kidnapped and one of the company's onshore oil fields was attacked several months ago.

Total employees are staying put for now in Nigeria, according to the spokesman. "We only have necessary people there," he said of expa-

triate personnel, which make up a small percentage of the oil company's Nigerian workforce of 3,500 employees.

Chevron Ltd. would not discuss its security operations because of the increasing civil unrest in the region, a London-based spokesman said. "For obvious reasons, security is extremely sensitive," he said in an e-mail.

'Don't send employees without them knowing what the risks are.'

Doug Milne,
Specialty Contingency Risks Ltd.

Experts say the safest, and most obvious, way oil companies can reduce the risk of kidnappings and violence is to eliminate the risk. In the same way Total has sent only essential personnel to Nigeria, other companies should consider posting only those whose presence is absolutely necessary, sources note.

"That's the main one, eliminate the extreme risk," Mr. Milne said of security measures to protect oil workers. Most are advised to remain in Lagos and only venture into more violence-prone areas when

they have to go there, he said. "Quite a few (oil companies) will subcontract some of the tasks so they don't bear the risks themselves."

Energy companies and other businesses operating in dangerous areas such as Nigeria have a duty-of-care towards workers that is more important than it was a few years ago, said Mr. Milne. "Don't send employees without them knowing what the risks are," he said.

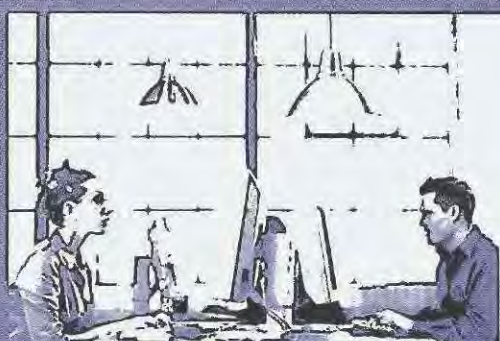
Employers should be able to show that they properly advised workers of the dangers and gave them adequate training before sending them to an area where they could be caught up in violence, said Mr. Milne.

Combination of resources

The protection of property goes hand-in-hand with taking care of employees in Nigeria, Mr. Stoddard said. "People tend to be located on company property. They've been taken off secure compounds or taken off oil rigs offshore," he said.

"Typically it's a combination of private and public resources" being used to protect oil company property and workers, according to Mr. Stoddard.

Kidnap and ransom insurance is a high priority for oil firms in the region, although none will acknowledge buying it. Underwriters void K&R insurance coverage if its existence is disclosed.



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NEW YORK—AI Risk Specialists Insurance Inc., a wholly owned brokerage subsidiary of American International Group Inc., has introduced AI Risk Property Complete, a suite of general property and inland marine insurance for middle-market businesses with annual premiums of \$5,000 to \$100,000.

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RiskMeter Online adds batch processing

BOSTON—CDS Business Mapping L.L.C. has enhanced its RiskMeter Online real-time, natural hazard risk reporting service by adding a batch processing feature that enables underwriters, agents and brokers to run schedules through

RiskMeter Online.

With the new tool, users can obtain natural hazard risk reports without having to type in individual addresses, resulting in substantial time savings and increased productivity. All RiskMeter reports are available, including distance to coast, flood zone determinations, wind pool eligibility and brush fire scores. Schedules can be run at any time, with users uploading their schedules on the RiskMeter Web site. Users will receive an e-mail with their policy exposure results a few hours later.

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For more information, contact Mr. Munson at 617-737-4444 or visit www.riskmeter.com.

'Investigative Photography' released by ASSE

DES PLAINES, Ill.—The American Society of Safety Engineers has released "Investigative Photography," a book by John Wenzel Jr. that provides information for occupational safety and health professionals on how to improve their investigative photographic skills and the role photos play in investigations and legal proceedings.



The book contains strategies that safety, health and environmental professionals can use to develop and exercise the skills necessary to increase their investigative photography skills under a variety of conditions, and provides guidance on many aspects of the legal use of photographs from ownership and control issues to protecting trade secrets.

Mr. Wenzel shares his experience and tips, such as methods of documenting and collecting evidence involving motor vehicle accidents, pesticide releases and fatalities.

Safety concerns also are covered, from personal protective equipment to protection from falls in and around machinery and moving vehicles. The book also has a section of exercises that include safety briefings, existing light photography, flash bouncing, and photographing reflective surfaces and

motor vehicles. Basics such as how to hold a camera and lighting techniques along with how to hire and work with contract photographers also are included.

Mr. Wenzel, the founder of Precision Image Photography Co., has testified using investigative photographs in hundreds of legal cases. He has served as an occupational safety and health compliance officer and regional supervisor for the state of Maryland. He has taught at the University of Maryland Fire and Rescue Institute, Washington College, Harford Community College and for several professional organizations. He is currently an instructor for the U.S. Department of Defense, where he has also served as a senior safety specialist.

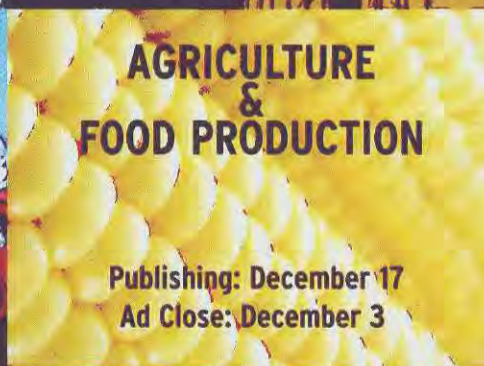
For more information or to order a copy of the book, order number 4415, contact ASSE Customer Service at 847-699-2929, by e-mail at customerservice@asse.org or go to www.asse.org.

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The editors of *Business Insurance* and *Business Insurance Europe* will collaborate their reporting in special Sector Briefings in response to readers' needs for analysis of risk management trends in specific global business sectors. Risk managers will now have access to information on new developments within their own fields, as well as gain insights into best practices, and the risk management challenges and solutions facing other industries worldwide.

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Airlines: Reforms boost pension funding

CONTINUED FROM PAGE 1

thousand airline employees are no longer earning benefits through those plans (see related story).

Instead, future retirement benefits will be earned exclusively through defined contribution plans, with the amount of benefits available largely depending on employees' investment acumen.

The erosion of airline pension plans is not a recent development. In the early 1980s, the PBGC took over—at a cost of nearly \$48 mil-

lion—three pension plans sponsored by Braniff International Corp. after the famed Texas-based airline filed for bankruptcy.

Then in the early 1990s, pension plans sponsored by Pan American World Airways and Eastern Airlines were taken over by the PBGC as those once-storied aviation names descended into bankruptcy and then liquidation. The termination of Pan Am's plans cost the PBGC about \$840 million, while its takeover of Eastern Airlines' plan cost about \$550 million.

In early 2001, Trans World Airlines failed and the PBGC picked up nearly \$700 million in unfunded pension promises.

But the cost to the PBGC of those earlier airline pension plan failures pales in comparison to the more recent round of airline plan terminations. For example, the PBGC estimates that its 2005 takeover of United's four pension plans will cost more than \$7 billion—its biggest loss ever from a corporate pension program failure.

That dwarfs the PBGC's 2003

takeover of bankrupt Bethlehem Steel Corp.'s pension plan, which the PBGC calculates will cost it about \$3.7 billion. At the time of the takeover, it was the largest pension plan failure.

While the losses to pension plan participants and to the PBGC—which is partly funded by premiums paid by employers with pension plans—were unprecedented, the airlines broke no laws in underfunding their plans.

"No one did anything illegal," said Frank Cummings, of counsel with LeBoeuf, Lamb, Greene & MacRae L.L.P. in Washington, who represented retired United Airlines pilots.

Instead, experts say, the culprit was a combination of events, including low interest rates that drove down the value of plan assets and the fall in the equities' markets, which accelerated after the Sept. 11, 2001, terrorist attacks.

"It was devastating," said Ethan Kra, chief actuary with Mercer Human Resource Consulting in New York, referring to the double hit of low interest rates and the bear equities markets.

"There was an unfortunate confluence of events," said Mike Pollack, a principal in the Stamford, Conn., office of Towers Perrin.

While those factors affected the funded status of all pension plans—requiring most employers for the first time in years to increase contributions to boost their plans' funding levels—airlines faced additional problems, experts say.

Airlines' ability to make pension plan contributions was pinched because of soaring costs, chiefly for fuel. At the same time, business dropped off sharply for airlines in the wake of the Sept. 11, 2001, attacks and competition increased from other airlines with lower operating costs.

"Few industries were touched more by Sept. 11 than the airlines," said Alan Glickstein, a senior consultant with Watson Wyatt Worldwide in Dallas.

Airline plans also were hurt as employees, who were eligible to retire and feared pension plans might not survive, took their benefit as a lump sum rather than a lifetime monthly annuity, draining the plans of assets.

"It is a kind of run on the bank," said Mercer's Mr. Kra.

But if there was a silver lining to

the airline pension crisis, it was that it focused congressional attention on the need to tighten pension funding rules—another factor in why airline pension plans were so underfunded.

Pension funding reforms that Congress passed in 2006 would not have been approved without the "airline pension crisis," Mr. Cummings said.

While no one will say that the reforms would have prevented airline plan failures, the failures might have been less costly to the PBGC and participants had they been enacted years earlier.

Among other things, the 2006 law requires faster funding of plan liabilities and requires employers to fully fund their plans rather than at 90%, as was the case under the previous law.

Additionally, as Mr. Pollack put it, the law includes "stop-bleeding" provisions. For example, benefits cannot be paid out as lump sums when plan funding falls below a certain level. In addition, underfunded plans cannot increase benefits and must use more conservative actuarial assumptions that have the effect of boosting contributions.

While those funding reforms will not prevent future pension plan failures, "they will keep losses at a more reasonable level," said Mark Warsawsky, former assistant secretary of economic policy at the U.S. Treasury Department, who played a key role in drafting the Bush administration's pension funding reform package. Now he is director of retirement research at Watson Wyatt in Arlington, Va.

The 2006 law could further boost pension plan funding levels by significantly increasing the maximum tax-deductible contributions employers can make to the plans, said William Quinn, chairman and chief executive officer of Fort Worth, Texas-based American Beacon Advisors, which manages the pension plans of American Airlines, the only major commercial carrier not to have frozen or terminated at least one pension plan in the last few years.

"You can put in more money in good years," helping plans build cushions, Mr. Quinn said, adding that a prudent investment strategy and making bigger plan contributions led to better pension plan funding at American compared with some other competitors.

Health courts: Support begins to increase

CONTINUED FROM PAGE 4

foundation for rulings on standards of care that should become legal precedents."

The heightened interest in health courts doesn't surprise Paul Barringer, the Washington-based general counsel of the bipartisan group Common Good. The group has been in support of having specialized courts adjudicate medical injury disputes for years, holding that such courts could provide speedier compensation to the injured than the current system.

"We've seen a lot of support from a range of different interest groups over the past few years, including health care providers," said Mr. Barringer.

"Ultimately, I think that interest is driven by the fact that all the parties recognize the need for fundamental reform, and that there is a need to explore alternatives," said Mr. Barringer. "We've seen a great deal of interest at the state level. There are proposals in a number of states."

He noted, though, that no state has established a health court.

In an interview last week, PPI's Mr. Kendall said the current system "leaves a lot of people with injuries" without any compensation. Because relatively few patients file claims, "there are weak incentives for improving safety."

Mr. Kendall said health courts

would change the current debate between advocates of restricting access to compensation through what he called "arbitrary" caps on damages vs. defenders of the status quo.

"That's been the classic doctors vs. lawyers debate," Mr. Kendall said. "The public hasn't been involved in that."

He said he's "thankful that the AMA has begun to critically examine this issue." As with other health care issues, "we're coming to a point where things are so broken" that small fixes simply won't be adequate, Mr. Kendall said.

"We still believe that there is medical liability crisis," said Dr. William Hazel, a Herndon, Va.-based physician who serves on the AMA's board of directors. "We believe that the liability lottery really does not help patients who are injured. It does not help physicians. The payouts are unpredictable and the premiums go up. We believe that there is evidence that MICRA reforms work, and that still is our policy," he said.

MICRA—California's Medical Injury Compensation Reform Act enacted in 1975—caps non-economic damages in medical malpractice cases.

The AMA believes MICRA works, said Dr. Hazel. "But we're not blind, deaf and dumb, and we realize that the political likelihood of federal reform itself is challenging," he

said. "We're looking at alternatives that may get us some fairness and equity in the system for both the patient and the physician."

He noted the interest some members of Congress, Common Good and others have in the health court concept. "We've looked at that in some detail and laid out some principles that should be followed if health courts are to be supported," he said.

However, an opponent of the idea said health courts would violate state constitutions while providing no benefit to injured patients.

"They're unconstitutional in most states," said Joanne Doroshow, president and executive director of the Center for Justice & Democracy in New York. "Health courts present injured patients with the same kinds of burdens of proof that they're currently faced with in court, but the health courts take away important protections that they have. For example, an unbiased judge, juries and other protections that courtroom setting provides. Then it establishes a schedule of benefits that can be politically influenced and chipped away."

Ms. Doroshow said creating a health court system would be "incredibly expensive."

"They would have to establish an entire new bureaucracy that currently doesn't exist to handle all cases," she said.

in the next 18 months. By focusing the debate on effective ways to address workers compensation coverage and more thoroughly studying how the very serious long-term NBCR risk should be addressed, Congress will be able to enact a long-term extension of TRIA before consumers face the uncertainty of renewing policies that extend into 2008 without terrorism coverage in place.

Charles Chamness
President
National Assn. of Mutual
Insurance Cos.
Indianapolis

June Holmes
Interim Chief Executive Officer
Property Casualty Insurers Assn.
of America
Des Plaines, Ill.

The complicating factor in this debate is the fact that NBCR coverage is included today under all workers compensation policies. This ensures that workers who are injured or killed in a terrorist attack while on the job will get the protection intended by the workers compensation system. However, the sheer size of a NBCR attack threatens the solvency of the workers compensation system and imperils the very system workers and their families are counting on.

We hope the commercial risk managers who read and respect *Business Insurance's* opinion will join PCI and NAMIC members in urging Congress to support a proposal that would create an NBCR Study Commission to develop a comprehensive national approach to the issue of NBCR exposure with-

Losses affect participants

While the collapse of airline pension plans has cost the Pension Benefit Guaranty Corp. billions of dollars, the impact of the failures on plan participants also has been huge.

Because of limitations on PBGC benefit guarantees imposed by federal law, many participants of failed airline pension plans, especially pilots, aren't receiving the full amount of benefits that the airlines once promised.

For example, United Airlines' plans, which had nearly 123,000 participants, had roughly \$10.2

billion in unfunded benefits. The PBGC guaranteed about \$7.1 billion of those unfunded promises, so participants saw more than \$3 billion in earned benefits vanish.

For participants, recovering those losses will be a lot more difficult than in past years. With most airline pension plans either terminated or frozen, participants who move to another airline will not, as used to be the case, receive coverage and accrue new benefits in another's airline's pension plan.

—By Jerry Geisel

Letters

CONTINUED FROM PAGE 8

requirement for NBCR coverage would reduce availability for traditional terrorism coverage, increase consumer costs and could force these companies to abandon the terrorism insurance market altogether. The potential for such unintended consequences is why the NBCR issue requires careful study before attempting to address it in the form of a mandate to the private sector. Adding a "make available" requirement for NBCR coverage could threaten the well-functioning program, the expansion of the private market and the expeditious extension of TRIA. American businesses, insurers and taxpayers would be better served by a full study of the critical issues involved in NBCR losses.

Attacks: Evaluate employee travel when terrorism threat level increases

CONTINUED FROM PAGE 1

bubbling away since then. Risk managers and companies have had it on their agenda, but the recent attacks brought the threat back to the fore," said Alan Staniforth, principal consultant at AS Risk Management in Chesterfield, England, and chairman of the business continuity group of the Assn. of Insurance & Risk Managers.

One observer said the nature of the U.K. attacks may signal a shift in terrorists' approach.

Justin Priestley, executive director of Aon Corp. unit Aon Crisis Management in London, said "though the attacks were smaller and failed, they showed that the intention to mount attacks is still there, but that

the capabilities are perhaps not as strong as they had been."

Mr. Priestley noted that it is important to understand "that the threat of terrorism is still with us, but it's a new type. It's less coordinated....People in our own society will be mounting these attacks."

"Terrorists will conduct recon-

naissance, and if they find a (well-protected) target, they will shift their attention to a soft target, such as hotels and transport centers," Mr. Priestley said.

Cobham, England-based David Ketley, insurance manager for Cargill Europe and Asia Pacific, said that, "each and every one of us

should be more aware of what is going on around us—what doesn't fit in, what looks suspicious."

Mr. Ketley said risk managers should advise employees and contractors to be "extra vigilant."

Steve Swain, London-based head of the counterterrorism section at consulting firm Control Risks Group Ltd., said organizations need to have good systems in place to control access to company buildings and must encourage "guard force awareness," whereby the security staff is trained to look beyond the immediate perimeter of the company's property.

In addition, he said, companies must remain vigilant about screening mail. "Companies ought to have a secure room where mail staff can investigate unusual parcels," Mr. Swain said.

Hank Chase, director of homeland security practices at Baltimore-based Smart & Associates L.L.P., said organizations also should evaluate employee travel during times of increased terrorism threats.

International business travelers need to understand the threat level

of their destination and have general security awareness training, Mr. Chase added.

Barry Scanlon, senior vp and partner at James Lee Witt Associates, the crisis management and preparedness arm of GlobalOptions Group in Washington, said terrorism threats underscore the need for businesses to have a good working relationship with the public sector.

"Corporations really need to have insight into how to work with the public sector," as public entities make decisions that affect businesses, such as closing off certain areas.

Advisers at JLWA help companies develop their own system of alert levels, Mr. Scanlon said.

The Department of Homeland Security's color-coded system is "of little or no use to a company," Mr. Scanlon said. The appropriate response to various threats should rather be tailored to the individual business' vulnerabilities. "If you're in manufacturing, you don't care if Chicago is shut down. You care about whether the highways are shut down."



On June 30, two men drove an SUV into a terminal at Glasgow International Airport in Scotland. No one at the airport was injured. The attack is linked to other failed car bombings that occurred late last month in London.

Assurant: Execs may face charges

CONTINUED FROM PAGE 3

RenaissanceRe Holdings Ltd. were accused of fraud for their alleged roles in orchestrating a finite reinsurance scheme designed to smooth the company's earnings and mislead investors (*BI*, Oct. 9, 2006). Many of those charges remain pending.

Following Assurant's announcement, New York-based Standard & Poor's Corp. revised its outlook to stable from positive on the collective group of companies referred to as Assurant Solutions and Assurant Specialty Property. The action does not affect the ratings on holding company Assurant Inc. or its other operating companies.

"Although we do not expect that these events or a potential accounting restatement will hurt the company's financial position, we believe management will likely be challenged for the remainder of the year if the business unit loses the two cited officers," said Shellie Stoddard, S&P credit analyst.

Last month, Assurant announced the departure of John B. Owen, Assurant Specialty Property president and chief executive officer, effective July 13.

Mr. Owen's departure was "totally unrelated" to the SEC's investigation, the Assurant spokesman said.

Attempted bombings stress need for federal backstop

The foiled terrorist attacks in the United Kingdom underscore the need for a continued federal role in U.S. terrorism insurance, say proponents of extending some version of the current government backstop.

The backstop, originally created by the Terrorism Risk Insurance Act of 2002, is slated to expire Dec. 31. Legislation that would expand and extend the backstop for 10 years has been introduced in the House of Representatives (*BI*, June 25).

"I think that the attacks are significant in several ways, most notably because they are still conventional attacks," said Ben McKay, senior vp of the Property Casualty Insurers Assn. of America in Washington. He noted that some experts have predicted that the next attack would involve nuclear, chemical, biological or radiological weapons, "but we're finding time and time again is that they actually continue to be conventional attacks."

"I think these attacks demonstrate that the need for TRIA, the underlying program very much still exists—maybe more so than ever. I think these attacks should give a needed measure of urgency to extending the underlying program and hopefully will enable Congress to focus on that," said Mr. McKay.

"It does bring into public

recognition that the global terrorist threat is unfortunately very real and not confined to the 2001 tragedies," said Peter Lefkin, senior vp in Allianz of America Corp.'s Washington office. "Members of Congress and people within the Bush administration were certainly mindful of this fact before, but the most recent events bring forth a greater concentration on this fact. It emphasizes the fact that terrorism reinsurance is needed."

Marc Racicot, president of the American Insurance Assn. in Washington, noted that insurers are united in having a "meaningful, workable TRIA-like bill enacted by Congress before the end of the year."

He said attacks and attempted attacks in the United Kingdom underscore that there's no real distinction between acts of domestic and foreign terrorism. The current U.S. backstop covers only foreign-originated acts of terrorism, a distinction the new bill would erase.

He noted that the suspects in the U.K. attacks were in the country legally, and their acts wouldn't necessarily be classified as foreign acts of terrorism.

"You can never discount the fact that terrorism is real, that there is no distinction between foreign and domestic terrorism, and that it's being franchised," Mr. Racicot said.

—By Mark A. Hofmann

Security measures boosted after failed attacks in U.K.

Security officials in the United States and United Kingdom responded swiftly after an attack at Glasgow International Airport in which two individuals crashed a bomb-laden vehicle into an airport entrance.

In the wake of the airport incident in Scotland, British Airways P.L.C. announced

number of uniformed and plain-clothes officers to guard Chicago's O'Hare International and Midway airports. They also conducted random car checks and patrolled with police dogs.

In Washington, security workers were on the lookout for cars near Washington Mall rigged with explosives.

On July 3, the U.S. Transportation Security Administration deployed specialized units of bomb-detecting dogs, air marshals, transportation inspectors and "behavior detection officers" to mass transit areas in Boston, Chicago, Houston, Los Angeles, New York, Philadelphia, San Francisco and Washington.

The squads, dubbed Visual Intermodal Protection and Response teams, are deployed frequently to serve as a "visual deterrent" in large, public areas, a TSA spokeswoman said.

TSA has sent VIPR teams out 84 times in the past 18 months, she added.

"Frankly because it's July 4, we'd be doing it anyway," the TSA spokeswoman said. Because of the recent attack in Scotland, the agency has simply "done more of it" by increasing the operation's scope.

—By Ettie Schmitt and Beth Murtagh



Travelers faced heightened security across the nation after the attacks that occurred in United Kingdom.

additional security measures and called for people to avoid trying to reach airport terminals by car.

At Heathrow, the United Kingdom's busiest airport, additional security personnel and restrictions were put in place.

In the United States on the day of the attack, airport authorities increased the num-

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will offer 15.7 million common shares, with an option for underwriters of the offering to purchase up to 2.3 million additional common shares. Validus said the offer could raise as much as \$346.6 million, based upon an assumed IPO price of \$25 per share. Proceeds will be used toward, among other things, funding the company's recent purchase of Hamilton, Bermuda-based Talbot Holdings Ltd. and capitalizing Validus Reinsurance Ltd.

Neb. retaliation ruling curbs comp demotions

Nebraska's Supreme Court extended the state's prohibition against the retaliatory firing of workers compensation claimants to include the banning of retaliatory demotions. The ruling in *Kimberlee Trosper vs. Bag 'N Save* stems from a case filed by a deli manager who was demoted and had her salary slashed from

\$30,100 to \$22,500 after reporting an injury that required medical treatment. After Ms. Trosper sued for retaliation, Bag 'N Save argued a public policy exception to state law allowing employers to fire at-will employees at any time should remain limited to discharges.

AARP to seek review of retiree benefits ruling

The AARP will seek a full 3rd U.S. Circuit Court of Appeals review of a three-judge panel's June ruling that the Equal Employment Opportunity Commission may implement a rule to exempt retiree health plans from the Age Discrimination in Employment Act when those plans reduce benefits to retired workers once they are eligible for Medicare. Laurie McCann, a senior attorney with the AARP in Washington, said the organization will file its petition for review of the unanimous decision in the so-called Erie County case by the July 19 deadline. Legal experts say such reviews are unlikely when a decision handed down by a panel of an appeals court is unanimous.

Aspen to underwrite professional liability

Aspen Insurance Holdings Ltd. will

begin writing professional liability risks effective in September. Hamilton, Bermuda-based Aspen will underwrite the new business—which will consist mainly of indemnity-based coverage for professional firms—through its U.K. offices. Aspen plans to target midsize and large firms in the United Kingdom and Australia, and expects to write \$100 million in gross written premiums within three years, according to a company statement.

Fla. allows work leave for domestic violence

Victims of domestic violence can take up to three days' leave from work under a law that went into effect July 1 in Florida. The law permits employees to take the leave in any 12-month period to take action in response to becoming a domestic violence victim, such as obtaining an injunction for protection, medical care or mental health counseling. The law applies to employers with 50 or more employees and to employees at the job three or more months. Before receiving the leave, the employee must exhaust all annual or vacation, personal and sick leave unless the employer waives the requirement, the law says. The leave may be with or without pay, at the employer's discretion.

U.K. flooding claims may top \$3 billion

Claims from severe flooding in parts of England late last month could top £1.5 billion (\$3.01 billion), according to the Chartered Institute of Loss Adjusters. London-based CILA said claims from commercial policyholders totaled about £680 million (\$1.37 billion), while personal lines claims were about £825 million (\$1.66 billion). CILA said there had been about 6,800 claims from businesses, averaging £1,000 (\$1,475) each. There have been approximately 27,500 personal lines claims.

Noted

Rates for all lines of commercial property/casualty insurance continued to decline in June, with an overall average decline of 14% compared with a year earlier, Dallas-based electronic insurance exchange MarketScout said....**Marsh Inc.** General Counsel Richard J. Sullivan has received U.S. Senate confirmation of his nomination as a district judge on the U.S. District Court of the Southern District of New York. Mr. Sullivan will leave his Marsh post later this summer, a spokesman said. No replacement has been named.

Clarian: Employees to be fined for unhealthy behavior

CONTINUED FROM PAGE 1

appraisals, health coaching and other resources to help people reduce their risk factors," he said. But even with the wellness initiatives, Clarian Health's annual health benefit costs continued to climb, growing 15.7% in 2007 and 12.9% in 2006.

Labor, Health and Human Services and Treasury released final rules to ensure that wellness programs comply with HIPAA, "it was our window of opportunity," Mr. Wantz said. "We believe that by using this premium charge approach, where it shows up in employees' paychecks every two weeks, it will keep (costs) in front of the person, and we think it will be more effective at creating

behavior change. "It seems that a charge gets people's attention more readily than an incentive," he said. The program will assess \$5 per paycheck fees on employees who do not meet minimum standards for nonuse of tobacco, body mass index, cholesterol, blood glucose and blood pressure (see box, page 1). Although it will not be fully implemented until 2009, the effort was announced this year to give employees plenty of warning, Mr. Wantz said.

benefit experts predict it is the way wellness programs are headed. "This kind of plan is not as unusual as it would have been five years ago. I've heard of employers considering getting more aggressive," said Sharon Cohen, group and health care benefits counsel at Watson Wyatt Worldwide in Washington. "I think more and more employers, now that there are final rules, want to take the next step. If they're not implementing this type of arrangement, it's on the table and they're discussing it."

Employer wellness programs to follow federal criteria

Final regulations issued last December by the U.S. departments of Labor, Health and Human Services and Treasury provide guidelines for employers seeking to add incentives and/or penalties to encourage participation in wellness programs.

Under the final Health Insurance Portability and Accountability Act rules, employers may vary the amount of premium contributions required from employees as long as the wellness program meets the following criteria:

- The reward or penalty must not exceed 20% of the cost of employee-only coverage under the plan.
- The program must be reasonably designed to promote health or prevent disease.
- Employees must be eligible to qualify for the reward at least annually.

- The reward must be available to all similarly situated individuals.

- A reasonable alternative standard or waiver must be available to individuals for whom it is unreasonably difficult to satisfy the otherwise applicable standard due to a medical condition.

Employers are also permitted to seek verification, such as a statement from an employee's physician, when a health factor makes it unreasonably difficult or medically inadvisable for that employee to satisfy or attempt to satisfy the otherwise applicable standard.

The complete HIPAA regulations governing wellness programs, which apply to plan years beginning on or after July 1, 2007, were published in the Dec. 13, 2006, issue of the Federal Register.

—By Joanne Wojcik

However, this year, employees will be required to complete a health risk appraisal to enroll in their benefits for 2008, he said. In addition, those who cannot claim nonuse of tobacco for at least six months will be assessed a surcharge of \$5 per paycheck in 2008, he added. Following the annual assessment, employees who can later prove they have made changes to meet the standards can appeal to have the fees dropped.

Clarian Health sought legal review to ensure that the program meets HIPAA requirements (see related story).

"We didn't want to get in a situation where we were out of compliance," Mr. Wantz said.

For example, the program's total possible assessment is limited to \$25 per paycheck for an employee who fails to meet all five standards—less than 20% of the cost of coverage, he said. In addition, if an employee has a medical condition that prevents him or her from meeting certain standards, that employee can obtain an exemption by providing a doctor's note.

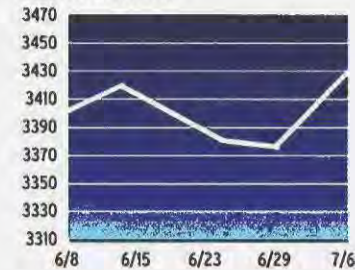
While Clarian Health's punitive approach may be an anomaly now,

Stock Index

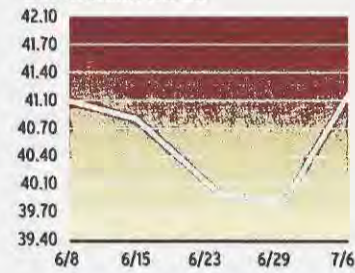
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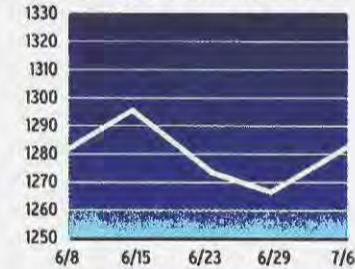
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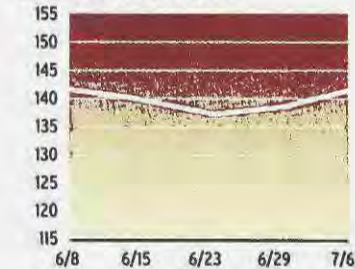
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BI INSURER/REINSURERS INDEX



BI MANAGED CARE ORGANIZATIONS INDEX



Percentage change of BI Stock Index vs. key indicators

Index	Value	Change
BI STOCK INDEX	3423.40	↑ 1.44%
DOW JONES	13611.61	↑ 1.51%
S&P 500	1530.44	↑ 1.80%

LARGEST GAINS

Transatlantic Holdings Inc.	6.54%
CNA Surety Corp.	5.61%
Zenith National Insurance	4.54%
Unitrin Inc.	4.53%
Health Net Inc.	4.09%

LARGEST LOSSES

Selective Insurance	-8.74%
SCPIE Holdings Inc.	-5.08%
American Safety Insurance	-2.06%
Gainsco Inc.	-1.37%
XL Capital Ltd.	-1.01%

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Contributing: Roberto Ceniceros, Jerry Geisel, Beth Murtagh, Sally Roberts



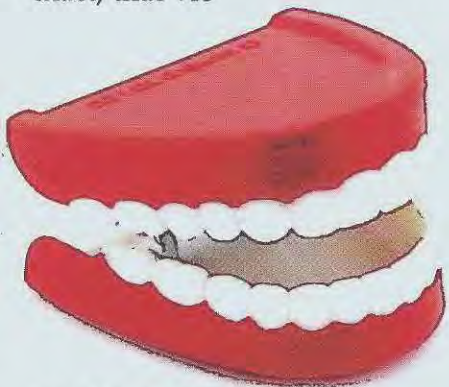
Starburst rolled out in Britain in 1960 and entered the U.S. market in 1976, according to Mars Inc., owner of the candy brand.

Sour grapes suit blames Starburst 'soft chew' for jaw woes

If you think you've had your fill of curious lawsuits, chew on this.

A Michigan woman has sued the maker of Starburst Fruit Chews, alleging that the neon-colored treats are too chewy and have afflicted her with a jaw disorder.

It was a lemon Starburst, to be exact, that Vic-



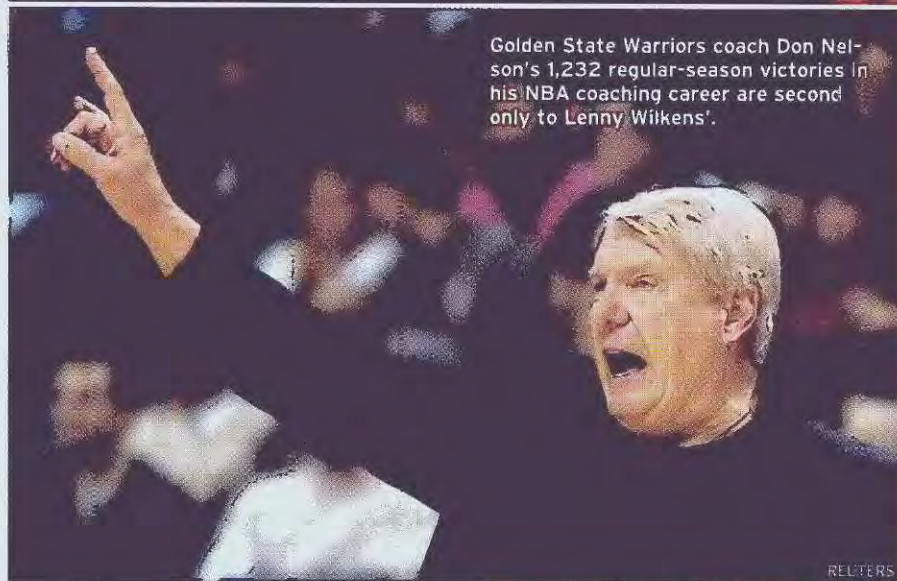
toria McArthur says is to blame.

The candy caused her top and bottom teeth to stick together, Ms. McArthur says, claiming that she now suffers from temporomandibular joint dysfunction—commonly called TMJ—and has trouble talking, eating and sleeping.

The suit alleges that Ms. McArthur has suffered "pain, humiliation, mental anguish, embarrassment, gross indignity and inconvenience because of the permanent nature of said injuries." She now wants \$25,000 from the candy-making giant, which also makes confections Snickers and Twix.

"I don't want to see anybody else have to go through what I have gone through from eating a piece of candy that was supposed to be a soft chew," Ms. McArthur told Fox News.

Business Insurance END PAGE



Golden State Warriors coach Don Nelson's 1,232 regular-season victories in his NBA coaching career are second only to Lenny Wilkens'.

Owner vs. coach in NBA playoff suit

Winning may not be everything, but losing appears to be entirely unacceptable for Dallas Mavericks owner Mark Cuban.

Mr. Cuban is suing Golden State Warriors coach Don Nelson, claiming that the Warriors beat the Mavs in May—one of the more stunning first-round playoff defeats in National Basketball Assn. history—because Mr. Nelson had "confidential information" about the Mavs he coached until 2005, said Mr. Nelson's attorney, who was quoted in press reports last week.

"Don may know that (Dirk) Nowitzki likes to turn toward his left shoulder, not his right shoulder, but we don't think that's a trade secret or confidential infor-

mation," attorney John O'Connor was quoted as saying. "Cuban apparently does."

According to reports, Mr. Cuban acknowledged that he and his lawyers have "claims" against Mr. Nelson, but would not comment on the "confidential information."

The lawsuit is the latest legal battle between the two men. Mr. Nelson sued Mr. Cuban last year, claiming he is owed \$6.5 million in deferred compensation for his time with the Mavericks from 1997-2005.

Mr. Cuban contends that Mr. Nelson forfeited the money when he accepted the Golden State job because it breached a non-compete clause in his \$200,000 a year consulting contract with the Mavericks that ran through 2011, according to reports.

Mr. Nelson claims Mr. Cuban stopped paying him before he took the Golden State job and that he believed he was no longer bound by the non-compete clause, reports say.



Mark Cuban bought the NBA Dallas Mavericks in January 2000.

Too much for some, too little for others

Hewitt Associates Inc. is calling it a "data source error."

But whatever words are used, a situation involving litigation settlement payments to about 20,000 former Enron Corp. employees who participated in the failed Houston-based energy giant's employee stock ownership plan undoubtedly is an embarrassment to Hewitt, one of the nation's biggest savings plan administrators.

Hewitt was retained by Enron Recovery Service Corp. to calculate and distribute funds available from settlements to Enron ESOP participants. However, in a recent distribution of \$22 million, opening balance amounts used to perform the settlement calculations were incorrect, a Hewitt spokeswoman said.

The result was that distributions to a majority of ESOP enrollees were too large, while for others, the distributions were too small, an Enron spokesman said.

For those who received too much and are entitled to a future distribution, the next distribution will be reduced to offset the overpayment, the Enron spokesman said. Those who didn't receive enough will receive more in the future.

The spokeswoman for Lincolnshire, Ill.-based Hewitt says, as an Enron service provider, Hewitt is working diligently to resolve the situation as soon as possible.

Thousands of Enron employees lost much of their retirement savings when Enron, amid allegations of fraud, failed in 2001 and its stock became worthless.



ADA lawsuit about scents, sensibility

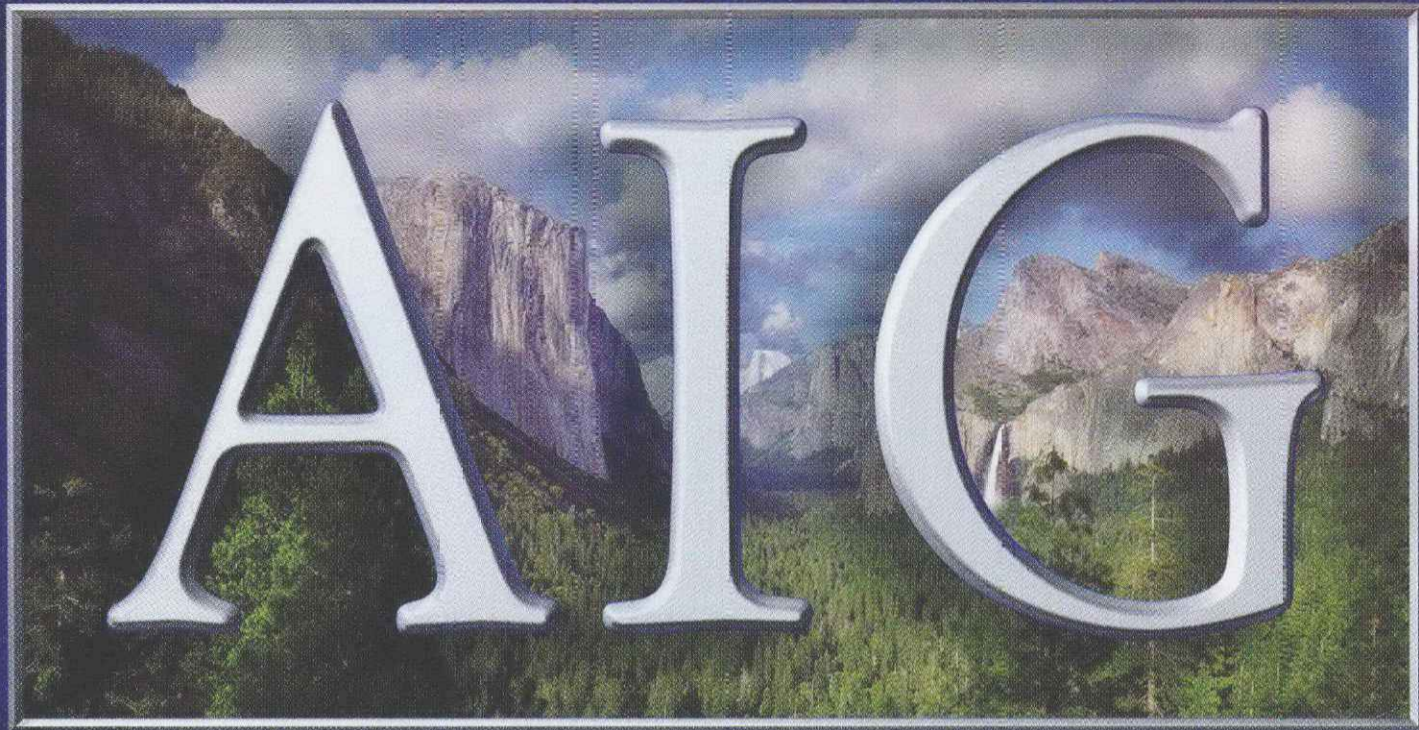
If a co-worker's scent makes you sick, perhaps suing your employer might provide some relief.

That's the tactic adopted by Susan McBride, a worker in the City of Detroit's planning department. Ms. McBride reportedly claims in a lawsuit that her work environment violates the Americans with Disabilities Act and she wants her employer to ban co-workers from wearing fragrances.

She also wants unspecified damages.

Ms. McBride claims she is severely sensitive to perfumes and must avoid scents in public places, such as the detergent aisles in stores. A co-worker's fragrance reportedly gave her headaches and nausea and kept her from working.

The city won't enforce a no-scent policy in the workplace to accommodate Ms. McBride's disability, she alleges.



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