

# Business Insurance

Reporting Weekly on Corporate Risk, Employee Benefit and Managed Health Care News / \$4

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## Labor Department likely to liberalize MEWA rules

WASHINGTON—The U.S. Department of Labor this week is expected to provide new guidance to decrease the likelihood that employers extending their health care plans to more than their own workforce will be considered to be operating multiple employer welfare arrangements.

Under a 1983 federal law, a MEWA is a health plan covering employees at two or more different companies. However, if a company owns at least 80% of another company and extends its health care plan to

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API/WIDE WORLD PHOTOS

The U.S. Supreme Court handed down two unanimous decisions at the end of its current session that are likely to increase litigation for employers and managed care plans.

## Litigation may surge for age bias claims

By JUDY GREENWALD

WASHINGTON—In a one-two punch to employers, a U.S. Supreme Court ruling is expected to lead to more employment discrimination cases reaching sympathetic juries, as well as fewer pro-plaintiff verdicts being overturned on appeal, attorneys say.

The unanimous Supreme Court ruled last week in *Roger Reeves vs. Sanderson Plumbing Products Inc.* that an employee need not

necessarily offer concrete proof of illegal behavior in a discrimination suit. The

employee may only have to present evidence that the employer's stated reason for its action was untrue



and establish that prima facie evidence suggests discrimination.

Attorneys say the decision

means fewer age discrimination cases will be dismissed by summary judgments.

"This case is a loss to employers," said Sussan Mahallati Kysela, labor and employment counsel for the National Chamber Litigation Center in Washington. "The court's decision makes it easier for employees to win discrimination cases against their employers, or at least to get their claims in front of a jury."

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## HMO cost control rewards upheld

By MARK A. HOFMANN

WASHINGTON—The battle over managed care regulation may grow fiercer following a unanimous Supreme Court decision upholding the right of HMOs to encourage physicians to hold down the costs of care through financial incentives.

Last week's decision in *Lori Pegram et al. vs. Cynthia Herdrich* overturned a 1998 decision by the 7th U.S. Circuit Court of Appeals.



The appeals court held that HMOs under some circumstances can breach a fiduciary duty under the Em-

ployee Retirement Income Security Act by offering financial incentives to their physicians to control costs. The U.S. Supreme Court disagreed, and overturned the appellate decision.

The Supreme Court's action is being hailed by employers, managed care organizations and insurers as a victory for managed care. Some observers warn, however, that the decision could actually lead to increased litigation over how managed care operates.

The case began in 1991, when Ms. Herdrich sought treatment for abdominal pains from Urbana, Ill.-based Carle Clinic Assn. P.C., Health Alliance Medical Plans Inc. and Carle Health Insurance

Management Co. Inc., which operate as a doctor-owned for-profit HMO. Ms. Herdrich received care under a plan provided by her husband's employer.

Dr. Pegram examined Ms. Herdrich and decided that the ailment did not constitute an emergency. "Carle's policy requires plan participants to receive medical treatment from Carle-staffed facilities in what they classify as 'non-emergency' situations," according to the appeals court deci-

sion. As a result, Ms. Herdrich was told to wait eight days until testing could be scheduled at a Carle-owned facility in Urbana, some 50 miles from her home in Bloomington.

Ms. Herdrich's appendix burst before the tests could be run. She later sued Dr. Pegram and the HMO in state court for medical malpractice, and ultimately won \$35,000. She also attempted to sue the defendants on two state fraud

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## Loss prevention to be next focus of battle over data coverage

By DAVE LENCKUS

Even with the support of a federal court's decision to extend property coverage to business interruption losses triggered by computer glitches not attributable to physical damage, policyholders still should expect coverage problems.

Insurers that cannot convince courts that their all-risk property policies do not cover such losses can be expected to argue in other forums that policyholders forfeit coverage if they have not taken reasonable measures to safeguard their systems from known perils,

such as power outages, some attorneys say.

Other attorneys predict, however, that insurers would have little luck holding policyholders accountable for not taking such precautionary measures if the underwriters did not require those precautions before covering the risk.

The first-of-its-kind decision on business interruption losses caused by computer glitches came in a recent Arizona federal district court case (*BI*, June 12).

Relying on language in federal and state computer crime statutes, the court found that policyholders

*See Data on page 29*

## RIMS leader dies

### Judd lauded as visionary

By MICHAEL BRADFORD

Risk management professionals are remembering a man whose passion and commitment polished the image of their profession and shaped the Risk & Insurance Management Society Inc. into a world-class organization.

Granville E. "Ron" Judd, who served for 24 years as RIMS' executive director, died June 9 after a battle with lymphoma. He was 71.

Mr. Judd is widely credited with turning a gathering of insurance buyers known as the American Society of Insurance Management into a sophisticated non-profit society that is recognized and respected around the world. During his tenure at RIMS from 1967 to 1991, he brought greater recognition to the role of risk managers, boosting their image from mere buyers of insurance to that of vital executives with a range of insurance and loss control responsibilities.

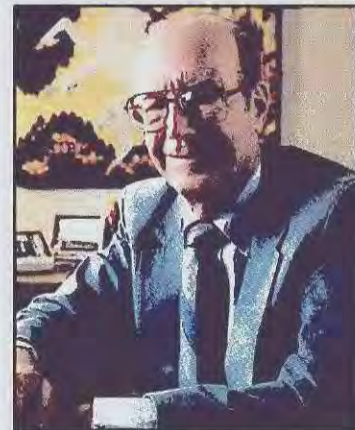
His friends and colleagues say

the risk management landscape would have evolved very differently without Mr. Judd.

"RIMS wouldn't be without Ron Judd, simply put," said Richard Hackenburg, president of XL Market Services in Stamford, Conn., and a former RIMS president. While others contributed to the formation and success of RIMS, Mr. Judd was the "creator; he was the master builder," Mr. Hackenburg said.

"He was the mover and shaker who made it all happen," agreed Ron Winans, a former insurance manager and vp of administration with J.R. Simplot Co. in Boise, Idaho. "If not for Ron Judd, the society would not have developed to the extent that it has."

Mr. Judd "had a vision from the very first day that he came on the job as to what RIMS should be," said Donald T. Browne, president and chief executive officer of Georgia Bankers Assn. Insurance Trust Inc. and a longtime acquaintance of Mr. Judd. "He felt strongly about the discipline of risk management and RIMS' role



in protecting that discipline."

"He was pretty much a visionary," recalled Richard C. Heydinger, director of risk management services at Hallmark Cards Inc. in Kansas City, Mo., and a former RIMS president.

"Like all of us, he had his strengths and weaknesses, and administrative duties were not his strengths. It was his vision and unstoppable commitment to that vision. And he wasn't afraid to be out there alone, either," Mr. Hey-

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## Updates

### Change in MEWA definition

Continued from previous page

employees of that second firm the two companies are considered members of the same "controlled group" and its health plan would be considered a single-employer plan and not a MEWA.

Business groups have been pressing the Labor Department to use its statutory authority to lower the 80% controlled group threshold to 25%, a change that would decrease the likelihood that a health plan an employer extends to employees in a firm in which it has an ownership interest would be considered a MEWA.

Lowering the controlled group standard—to avoid a health plan being considered a MEWA—has become especially important today as joint ventures and corporate spinoffs proliferate and one health plan is offered to employees at the different units.

Employers offering health plans that are MEWAs are required to file a reporting form with the Department of Labor. Those reports will be made available to state insurance regulators. Benefit lobbying groups are concerned that regulators could use the information to shut down self-funded MEWAs as unauthorized insurers.

### Aetna in talks with multiple suitors

HARTFORD, Conn.—ING Groep N.V.'s \$8 billion to \$9 billion bid for the financial services and international operations of Aetna Inc. may be trumped by other offers, according to a statement by Aetna.

The Hartford, Conn.-based insurer has opened talks with several potential buyers for its financial services and international operations in addition to the Dutch financial services group, Aetna Chairman and Chief Executive Officer William H. Donaldson said Friday.

"We are continuing to talk with ING regarding their interest in Aetna. . . . However, we have also received numerous expressions of interest in these assets from other potential acquirers," he said in a statement. "We believe we should also evaluate these opportunities."

Earlier this year, Aetna rejected a \$10.5 billion joint takeover bid by ING and WellPoint Health Networks Inc. in Thousand Oaks, Calif. Aetna subsequently announced plans to split its health and financial services businesses into separate companies (BI, March 20; March 6).

Then, earlier this month, Aetna announced that it had reopened talks with ING.

Aetna stock closed Friday at \$69.38, down 5.5% from \$73.38 the day earlier. ING stock also was down slightly to \$64.44 on Friday, from \$64.88 on Thursday.

### GOP backs patient bill: Senator

WASHINGTON—Senate Republicans will continue to push for enactment this year of a patient rights bill, says a key lawmaker.

"We are absolutely committed" to sending a "strong patients' bill of rights" to President Clinton, said Sen. Bill Frist, R-Tenn., at a press conference last week. The press conference had been called by Sens. Frist and James Jeffords, R-Vt., to unveil legislation aimed at reducing medical errors and enhancing patient safety. That measure would create a national center for quality improvement and patient safety and would call for development of a voluntary national reporting system for collecting and analyzing medical errors.

But during questions following the announcement, Sen. Frist reiterated GOP lawmakers' desire to enact a patients' bill of rights. He noted, however, that doing so would not be easy in the wake of this month's unsuccessful Democratic attempt to attach a House-passed patient bill to a Senate defense spending bill (BI, June 12).

Sen. Frist said that move had "poisoned the well" regarding attempts to craft a compromise between that House bill—which would expand health plan and employer liability with regard to coverage decisions—and a Senate measure that contains no expanded liability.

### SmithKline temps seek benefits

PHILADELPHIA—SmithKline Beecham Corp. is contesting a lawsuit filed by two temporary workers who assert they should receive the same benefits as regular full-time employees.

The suit, filed last week in U.S. District Court in Philadelphia, was brought by two "longtime" SmithKline Beecham workers who say they and other "temps" work side by side with permanent workers and perform the same jobs but are denied participation in the company's health care and pension benefit plans.

A spokesman for the pharmaceutical giant said that both plaintiffs, Louise D. Thomas of Phoenixville, Pa., and Dennis D. Darden of Norristown, Pa., "accepted the assignments with the explicit understanding that they were employees of the staffing firm and not SmithKline Beecham. They also were aware that any benefits to which they might be entitled would be provided through the staffing firm, and not SmithKline Beecham."

Plaintiffs' lawyers John Shniper of Phoenixville, Pa., Philip Stephen Fuoco of Haddonfield, N.J., and Paula Markowitz of Markowitz & Richman in Philadelphia say they will urge the court to follow the 9th U.S. Circuit Court of Appeals' decision in *Vizcaino vs. Microsoft Corp.*, in which the court held Microsoft had violated federal benefits law by its designation of certain employees as temporary.

The plaintiffs are also asking that their lawsuit, *Thomas vs. SmithKline Beecham Corp.*, be given class-action status to represent approximately 300 workers in SKB plants and offices in Pennsylvania, New Jersey, South Carolina and Tennessee who have been classified as temporary.

The suit seeks an injunction barring SmithKline Beecham from continuing to classify permanent workers as temporary and an award of monetary damages to reimburse all the wrongly classified workers for the benefits they were improperly denied.

Kelly Services placed Ms. Thomas at SKB in October 1992 and placed Mr. Darden in October 1993.

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# Lawmakers seek to pass Medicare drug coverage

By JERRY GEISEL

WASHINGTON—With time running out on the legislative session, congressional leaders are launching an 11th-hour effort to draft and reach agreement on legislation that would expand Medicare to include coverage for prescription drugs.



The Senate Finance Committee last week began a series of closed-door meetings to try to reach a bipartisan agreement on adding a prescription drug benefit and making other changes to Medicare, the federal program that provides health care benefits to about 40 million elderly and disabled people.

At the same time, Rep. Bill Thomas, R-Calif., late last week introduced a comprehensive Medicare drug benefit package in which

beneficiaries would receive coverage for roughly 50% of expenses above a \$250 deductible. The premium for coverage, which would be offered by insurers and others, would be between \$30 and \$40 per month. Rep. Thomas says the House Ways and Means Committee could take up his bill as soon as this week.

If Medicare were expanded to cover prescription drugs, it could—depending on how the expansion is structured—significantly reduce employers' retiree health care costs. For many employers, prescription drugs currently account for anywhere from 40% to 60% of their health care costs for Medicare-eligible retirees, benefit consultants estimate. If Medicare takes on at least part of the responsibility of providing prescription drug coverage, that would allow employers to pare back their own programs.

"An expansion may very well be good news for employers," said Paul Dennett, vp-health policy with the Assn. of Private Pension & Welfare Plans in Washington.

See Medicare on page 29

## Employee satisfaction is top health care concern: Survey

# Vendor effort a big factor

By MICHAEL PRINCE

Benefit managers who create partnerships with their health care vendors report better performance from them.

When health care buyers put in the time to forge this relationship, they are often rewarded with better service and give higher marks to their health care vendors, according to a survey Watson Wyatt Worldwide released today.

"It takes considerable effort for

the benefits manager to build an effective partnership with the health plan vendor, but for those who make the investment, the payoffs are considerable in terms of both employee satisfaction and plan cost," the survey states.

Employers can get both employee satisfaction and lower costs, "but they have to work for it," said Steven Richter, chairman of the national vendor management committee at Watson Wyatt Worldwide in Los Angeles, who

headed up the study.

The survey asked 175 benefit managers from large employers nationwide during face-to-face interviews to rank the outcomes they desire from their companies' health care plans. Topping the list was employee satisfaction, scoring 4.2 out of a possible 5. Next on the list was containing costs, with a score of 3.7. This was followed by reducing problems for human resource staffs and maintaining a

See Survey on page 6

## Jury spreads blame for jet crash

MIAMI—A federal jury in Miami last week found that two companies share liability with American Airlines for the 1995 crash of a passenger jet that slammed into a Colombian mountainside, killing 163 people.

American sued the two companies, which developed a computer flight navigation system used by the airline, seeking to recoup about \$270 million in damages that its London liability insurers paid to the families of those who died in the crash, an American spokesman said.

The District Court jury found Englewood, Colo.-based Jeppesen Sanderson Inc., which provides navigation data, 17% liable for the crash. Phoenix-based computer and database manufacturer Honeywell Air Transport Systems was found

8% liable, according to representatives for all three companies.

American has acknowledged its pilots made mistakes, but also blamed a defective database for leading the flight into a mountainous area.

"Unfortunately, we had to take Honeywell and Jeppesen to court so that they would take responsibility for intentionally leaving a defect in their database uncorrected and unannounced for years," American said in a prepared statement.

A Honeywell spokesman said that the company is disappointed with the jury decision. Honeywell believes the fault lies with pilot error and not its database, he said. An appeal is likely, Honeywell and Jeppesen representatives said.

—By Roberto Cenizeros

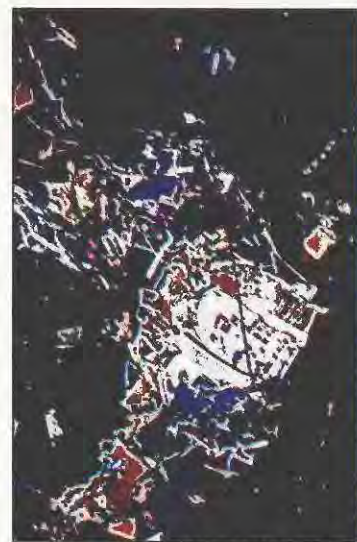


PHOTO: AP/WIDE WORLD

American Airlines blames a defective database for a 1995 crash.

## Inside

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• Roderick Hudon of Kemper Insurance Co. writes that continuing business after a major interruption requires planning. **PAGE 17**

• Employers in the United Kingdom are urged to make workplace safety and risk management a key part of their corporate culture. **PAGE 21**

• Sir David Rowland, former chairman of Lloyd's of London, denies conspiracy claims related to asbestosis coverage. **PAGE 21**

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# FEMA's Witt urges public sector to insure, manage property risks

By LEE FLETCHER

CHARLOTTE, N.C.—Public sector risk managers must continue to address risks aggressively, rather than rely on the federal government to step in when disaster strikes, according to the head of the Federal Emergency Management Agency.

"Even in the smaller communities, risk managers have taken responsibility for their buildings, and they have taken responsibility for their communities," James Lee Witt, director of the Washington-based agency, said at the Public Risk Management Assn.'s annual conference, held earlier this month in Charlotte, N.C.

A key part of that responsibility, he said, is having adequate insurance.

Public property currently is eligible for federal disaster relief regardless of whether or not it is insured. FEMA, however, is considering a proposal that would make property coverage a prerequisite for the receipt of relief funds (*BI*, April 10).



More PRIMA coverage on page 27

"Could I have used that \$44,000 it costs to buy insurance for our county buildings? You bet. I could have used it to put a bridge in. I could have used it to help pave a road. I could have used it in many ways, but it goes back to being a responsible public official," Mr. Witt said.

Mr. Witt pointed out that a municipality could be left in a bind if a public building were destroyed by an incident that was not serious enough to warrant federal disaster relief funding. Insurance could help protect against such losses, he said.

"If you have something that destroys that facility and you don't have the federal government coming in to rebuild it, at least you can rebuild it, instead of having... a bond issue to help rebuild it again," Mr. Witt said. For an elected official, addressing the problem after the fact could bring political consequences. Issuing a bond, he said, is "not going to make you very popular. Or raising taxes. That's not going to make you very popular," Mr. Witt said.

He pointed out that a double standard exists in regard to insurance requirements for property.

"There is a law that says you are required to have liability insurance on your car before driving it. If you go to a lender to buy a house, that lender is going to require you to have a home policy on that house," he said. But no such requirements exist for public buildings, Mr. Witt noted.

"It's all about being responsible, showing the leadership in our communities and making a difference," Mr. Witt said.

He pointed to risk pools formed to purchase earthquake insurance as an example of that sort of initiative. Earthquake insurance, particularly in heavily exposed areas such as California, can be very expensive, he noted. By pooling their risks, municipalities

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AP/WIDE WORLD PHOTOS

FEMA is considering requiring municipalities to insure their properties before they can receive federal relief for disasters such as the 1994 Northridge earthquake.

## Non-confinement clauses hit

Hospitalized dependents are covered immediately: HCFA

By JERRY GEISEL

WASHINGTON—A federal agency memorandum that only recently surfaced will make it tougher for employers to deny health care coverage on the basis of pre-existing conditions.

That memorandum will require employers—contrary to typical plan design—to immediately extend coverage to new employees' dependents in situations where a dependent is in the hospital at the time coverage is to begin. The memorandum, issued by the Health Care Financing Administration, does not deal with situations where the employee is in the hospital at the time coverage is to start. HCFA says that issue will soon be addressed.

The memorandum is intended to help employers and insurers comply with a far-reaching 1996 federal law that curbed the use of pre-existing medical condition exclusions in health care plans. The law is intended to make it easier for employees with medical conditions to change jobs without fear of losing coverage for those conditions.

Under that law—the Health Insurance Portability and Accountability Act—employers can exclude coverage for new employees' pre-existing conditions for up to 12 months.

However, this exclusion must be offset by prior coverage. For example, if an employee joined

a company after being covered under a prior group plan for seven months, the maximum exclusion for the pre-existing condition under the new plan would be five months.

Employers have been uncertain for years, though, how the 1996 law affects so-called non-confinement and actively-at-work provisions in their health care plans.

Non-confinement provisions apply to situations in which employees' dependents are in the hospital at the time their group health care coverage would otherwise begin. Generally, health care plans stipulate that coverage won't start until the dependent leaves the hospital. Actively-at-work clauses apply much the same way, except to employees.

Take the case of an employee who is hired on Aug. 1 and becomes eligible, along with his or her family, for health care coverage on Sept. 1. On Aug. 30, the employee's spouse is hospitalized and isn't released from the hospital until Sept. 7. Only at that point, under typical non-confinement policies, would she become eligible for coverage in the new employer's plan.

HCFA says in its memorandum, however, that such a delay violates HIPAA. Non-confinement clauses are prohibited "because they operate in part as a pre-existing condition exclusion by precluding coverage of benefits related to a pre-exist-

ing condition."

In the above example, coverage for the employee's spouse would have to begin Sept. 1.

While HCFA has posted its memorandum at [www.hcfa.gov](http://www.hcfa.gov) for months, few benefit experts were aware of it.

"Most people don't know about it," said Henry Saveth, an attorney with William M. Mercer Inc. in New York.

What is known is that banning non-confinement clauses will increase employers' health care costs, said Barry Barnett, a principal with PricewaterhouseCoopers L.L.P., based in Teaneck, N.J.

Still, the cost impact should be modest, given the unlikelihood of a dependent being in the hospital on the day coverage is supposed to begin.

On the other hand, given how common non-confinement clauses are, "a very large number of health care plans will have to be changed," said Mark White, a consultant with Watson Wyatt Worldwide in Washington.

Since the memorandum is a clarification of law, benefit experts say it is unlikely that HCFA would enforce it retroactively.

"It is fairly clear that this would be something going forward," Mr. White said.

Clarification of "actively-at-work" clauses will be provided in the "near future," HCFA says.

## Privacy regs draft released

Effect on work comp claims unclear

By MEG FLETCHER

ORLANDO, Fla.—State insurance regulators drafting compliance regulations for protecting consumer financial and medical information under

### NAIC

a new federal act are seeking advice about how to clarify and integrate several disparate elements, including extending privacy protections to workers compensation claimants.

The National Assn. of Insurance Commissioners' Privacy Working Group faces several self-imposed deadlines, as it wants comments by the end of June so that it can resolve by September several controversial definitions, policies and procedures. These were outlined in a new working draft discussed during two two-hour sessions last week at the organization's quarterly meeting, held in Orlando, Fla.

The privacy working group is one of nine groups whose discussions were given priority over the NAIC meeting's usual schedule of business so that states could respond to a variety of insurance-related concerns stemming from the Gramm-Leach-Bliley Act, the new federal law that removes barriers between banks and insurers.

The working group's recommendation, that the NAIC adopt a compliance date of

July 1, 2001, in order to align state insurance requirements with federal requirements for the banking and securities industries, may have been the only regulatory proposal universally agreed upon last week by those regulators and insurance industry representatives.

"Consumers and companies will be better served by a uniform compliance date for enforcement of the Gramm-Leach-Bliley Act's privacy regulations," said Kathleen Sebelius, the NAIC vp who chairs the privacy working group. That proposal, however, must be ratified by the NAIC's full membership, which has rescheduled its executive and voting sessions for a June 26 teleconference.

The NAIC working group's new two-part consumer privacy regulations focused on rules for notifying a consumer if his or her non-public, personal information were to be used by a non-affiliated third party for marketing purposes (*BI*, May 29). State regulators proposed tougher restrictions on disclosure than called those for under the federal law, especially in extending privacy rights to workers comp claimants to protect them from the actions of third parties.

Consequently, the most controversial part of the proposal concerned special rules affecting data dissemination and the notification of workers to protect their private health information. Those rules were discussed in a June 28 teleconference.

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## No pollution exposure found

# Sublessor not liable

NEW YORK—In a ruling that runs contrary to many federal district court decisions, a panel of the 2nd U.S. Circuit Court of Appeals last week limited when companies qualify as property owners that can be held strictly liable for Superfund pollution cleanup costs.

The 2nd Circuit panel considered a case in which a property lessee, Barlo Equipment Corp., acted as a leasing conduit for property owner Commander Oil Corp. Barlo leased two adjacent parcels from Commander and then subleased one parcel to a third company, Pasley Solvents & Chemical Inc., that Commander previously had dealt with individually.

After pollution was discovered on the parcel where Pasley operated, Commander sued Barlo in an effort to recover a portion of the millions of dollars necessary to clean up the site. Commander argued that, under the Comprehensive Environmental Response, Compensation and Liability Act, which created Superfund, Barlo was an owner of the polluted site.

A federal district court judge agreed in June 1997.

But the 2nd Circuit panel rejected that ruling and several other federal courts' decisions that have imposed ownership liability in-

stead of operator liability on companies that were not owners of record but controlled polluted properties.

Such a finding "threatens to conflate two statutorily distinct categories of potentially responsible parties," the panel ruled. "Since a typical lessee is not liable as an owner, then, logically, a sublessor should not be liable either" automatically under the Superfund law, the panel ruled.

The panel also refused to remand the case for proceedings to determine whether Barlo is liable under Superfund as an operator. In a footnote, the panel said Barlo neither managed nor controlled the operations that caused the pollution.

In rejecting a standard under which a company's control over a polluted site is evaluated for Superfund liability, the 2nd Circuit adopted an "amorphous standard" under which courts must measure whether a sublessor had "the bundle of rights associated with ownership," said Commander attorney Andrew J. Simons, a partner with Farrell Fritz P.C. of Uniondale, N.Y.

Mr. Simons said that Commander is evaluating whether to appeal to the U.S. Supreme Court.

—By Dave Lenckus

# Bias

Continued from page 1

Furthermore, the decision "snuts the door" on appellate judges weighing evidence and reversing jury verdicts, said Richard T. Seymour, an attorney with the Washington-based Lawyers' Committee for Civil Rights Under Law, which had filed a brief on the plaintiff's behalf. "I expect that the jury's verdict will be the last word in many cases from now on."

The ruling underscores employers' need to document justifications for employment decisions, attorneys said.

The case began when Roger Reeves, a 57-year-old employee of Columbus, Miss.-based Sanderson Plumbing, lost his job as supervisor in 1995 after 40 years of service. The company said Mr. Reeves had failed to keep accurate time records. Mr. Reeves claimed he had been fired because of his age and filed suit under the federal Age

Discrimination in Employment Act.

A jury ruled in Mr. Reeves' favor, and a Mississippi federal court awarded more than \$100,000 in damages.

A 5th U.S. Circuit Court of Appeals panel ruled last April that Mr. Reeves had not introduced sufficient evidence to prove that his termination was based on age, despite showing a supervisor had made negative comments about his age.

Mr. Reeves then appealed to the Supreme Court, which unanimously overturned the 5th Circuit ruling.

Attorneys say one of the principal issues at work in the case is the degree of proof needed to establish discrimination—an issue on which federal appellate courts are divided.

Some courts have held to the "pretext only" standard, which says an employee has to produce no more than prima facie proof of discrimination and evidence that casts doubt on his or her employer's explanation.

Other federal courts—including the 5th Circuit—have set a higher standard, holding that employees must show not only that the employer's explanation was false but also that its motive was discriminatory.

Justice Sandra Day O'Connor, writing for the court, argues against the "pretext-plus" standard used by the 5th Circuit, stating that the court erred in holding that the plaintiff must always introduce additional, independent evidence of discrimination.

Once an employer's justification has been found false, "discrimination may well be the most likely alternative explanation, especially since the employer is in the best position to put forth the actual reason for its decision. . . . Thus, a plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated," wrote Justice O'Connor.

But, she added, "this is not to say that such a showing by the plaintiff will always be adequate to sustain a jury's finding of liability." For instance, the employer may get a summary judgment if it reveals a non-discriminatory reason for the action.

Another issue in the case was application of a federal rule of civil procedure that allows trial and appellate courts to overturn clearly irrational or prejudicial jury awards. Rule 50 provides for dismissal if, even after all the evidence is construed in the plaintiff's favor, it is still insufficient to demonstrate the defendant's liability.

The issue in dispute in *Reeves* is whether the appellate court should look at all evidence in the case or only the winning parties' evidence and uncontroverted evidence that is offered by disinterested witnesses.

Justice O'Connor wrote that although the appellate court should review all the evidence in the record, "the court must draw all reasonable

inferences" in favor of the victorious party in the case, "and it may not make credibility determinations or weigh the evidence." The 5th Circuit, she said, did not follow that approach.

The decision appears to thoroughly discredit the "pretext-plus" standard, which was almost impossible to meet, said plaintiffs attorney Woodley Osborne, of Osborne & Deutsch in Washington. As a result, he said, more cases will now be settled or reach juries.

Paul Mollica, a Chicago-based attorney with Meites, Mulder, Burger & Mollica, who filed a brief on behalf of the San Francisco-based plaintiffs attorney group the National Employment Lawyers Assn., said: "Very often, you really don't have direct evidence of discrimination, because managers are usually very circumspect about discrimination; and when it happens, they always know better than to make slurs or direct comments that can be attributed to them.

"So instead, they always provide business reasons for why they have engaged in discrimination. The Supreme Court decision says if an employee can disprove that reason after establishing their case, a jury can find in their favor," Mr. Mollica said.

"I think it's an excellent outcome because it means more jury trials—and more jury verdicts that will be protected from appeals," he said.

Once a case reaches a jury, though, the issue often becomes not the law but whether the jury believes the plaintiff has gotten a fair shake, said employer attorney David Weinstein, who heads the labor and employment group at law firm Wildman Harrold Allen & Dixon in Chicago.

Furthermore, because nearly everyone anticipates growing old, age bias cases often create "ready empathy" for the plaintiff, he said.

The decision is expected to have an impact at the appellate level as well. Mr. Reeves' attorney, Jim Waide, of Tupelo, Miss.-based Waide, Chandler & Fleitas, said, "I'm just hoping it'll reverse that trend that federal appellate courts have had in reversing jury verdicts," which they are especially prone to do in civil rights cases.

"I'm hopeful they'll start letting the jury make the decision," said Mr. Waide, who added that the decision will influence several of his cases that are currently before the 5th Circuit.

But one attorney said the decision isn't all bleak for employers.

The decision "hardly opens up the gates" for the jury to consider any claim, said Peter J. Petesch, an attorney with Ford & Harrison L.L.P. in Washington, who filed an amicus brief in the case on behalf of the Society of Human Resource Management in Alexandria, Va.

He pointed also to Justice O'Connor's statement that an employer may have a justification that would warrant summary judgment.

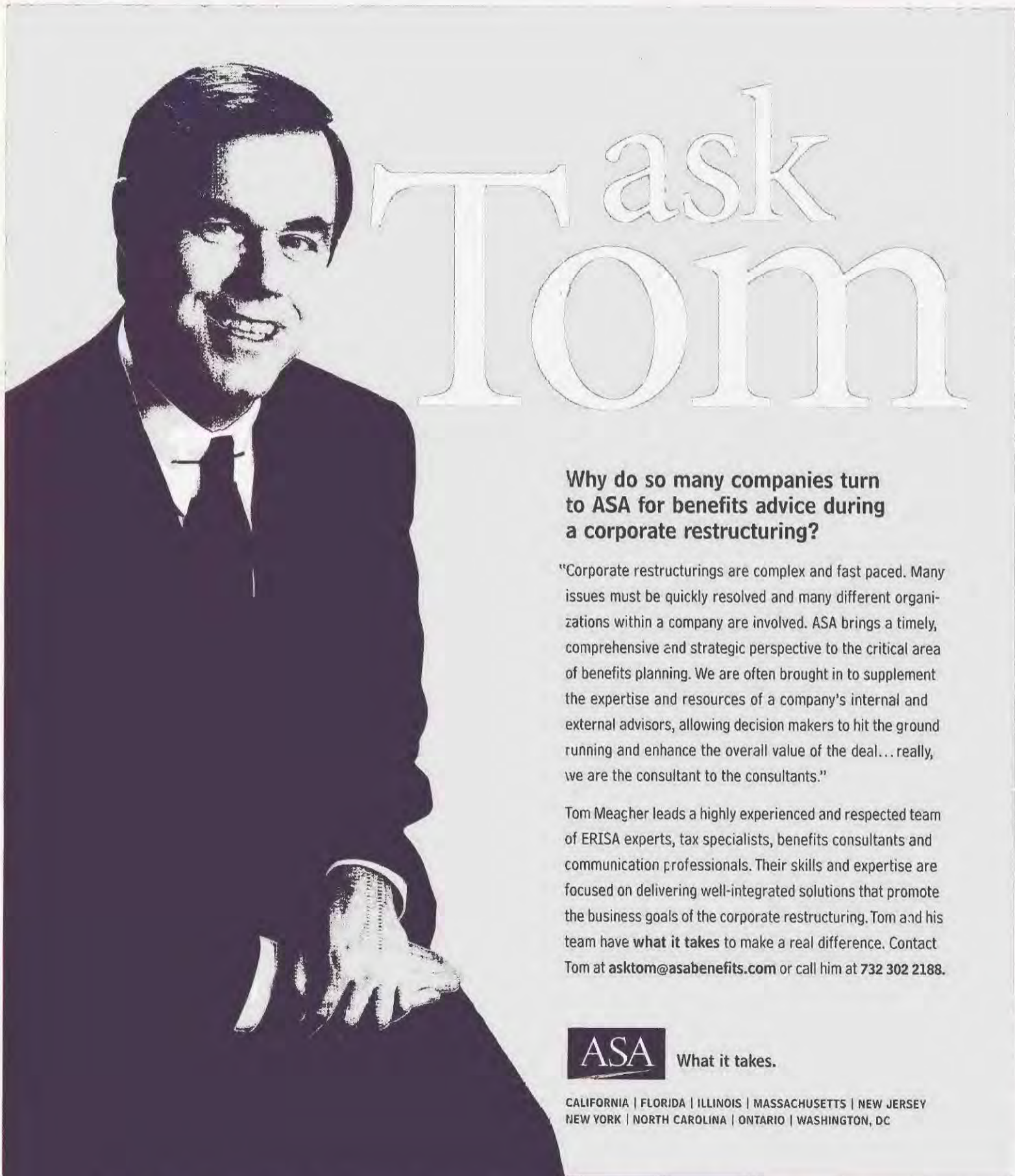
Employers must take this decision into account, attorneys say.

"Employers have to be sure to take steps to require their employees to come forward and let them know if they think they're being treated unfairly" or improperly, said Philip Berkowitz, an attorney with Salans Hertzfeld Heilbronn Christy & Viener in New York. "Merely having a policy that prohibits discrimination may no longer be enough."

Gerald L. Maatman Jr., a partner and chairman of the global employment law practice group at Baker & McKenzie in Chicago, said, "It's important to document for other people's eyes the reasons why you undertake personnel decisions, because if you don't, this is what could happen."

"This is a good case study as to why risk management in the workplace is so important."

Reeves vs. Sanderson Plumbing Products Inc., U.S. Supreme Court, No. 99-536, June 12, 2000.



To ask  
Tom

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# Survey

Continued from page 2  
healthy workforce.

Placing employee satisfaction ahead of costs as a concern for benefit managers was a "very significant" finding, the survey states.

"Many plans have experienced deterioration in member services, plan relationships with physicians and basic functions such as claims processing. In the context of today's competitive labor market, employers are not inclined to ignore employee complaints about

these issues," the survey states.

Mr. Richter added, "This is the first survey we've done where employee satisfaction is above cost as a desired outcome."

But achieving these goals from health care vendors is another story. Benefit managers only gave 13% of vendors an "excellent" rating when it comes to controlling costs. Similarly, only 12% received an excellent rating for employee satisfaction.

Benefit managers gave 65% of vendors an "average" rating for controlling costs and gave 76% of vendors an average rating for delivering employee satisfaction.

Also, it's interesting to note that the employers that get an excellent employee satisfaction rating are more likely to also get an excellent cost outcome, Mr. Richter said. This demonstrates that multiple levels of success can be achieved when employers "put in the effort to manage their programs," he said.

The survey also unearthed how employers get quality service. For example, the benefit managers who gave excellent scores for cost control to their vendors were most likely to utilize three management practices: adopting a multi-year commitment from their vendors,

creating a process to monitor performance and having frequent face-to-face meetings with the vendors.

Benefit managers who gave excellent ratings were almost twice as likely to have multiyear commitments than those that gave poor ratings, the survey states.

"It appears that the multi-year commitment fosters a greater willingness on the part of the vendor to meet the performance expectations of the purchaser," the survey states.

Perhaps the most likely indicator of an excellent performance was having a sustained vendor ef-

fort, Mr. Richter said.

The survey showed that employers can implement four practices to help get this effort: clearly identify the desired outcomes, confirm expectations with performance guarantees, reinforce expectations with performance monitoring and reinforce expectations with regular meetings.

For example, 78% of those employers that clearly defined the outcomes they desired got a sustained effort from their vendors, while only 44% of those that did not define their outcomes got the same effort.

"The road to success begins with a clear definition of what the purchaser wants from the vendor," the survey states.

Looking at the future, 58% of the survey participants said they will seek to change their vendor management if health care costs rise, while only 33% will change based on employee dissatisfaction.

This shows that costs "will be a major concern of employers," exceeding employee satisfaction, Mr. Richter said. "So, costs again will become a bigger issue in the future."

Copies of the survey are available for \$20 by calling Watson Wyatt at 1-800-388-9868 or from [www.watsonwyatt.com](http://www.watsonwyatt.com).

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# HMOs

Continued from page 1

counts, but the defendants asked a U.S. District Court to dismiss the counts as being pre-empted by ERISA. The court dismissed one count but allowed Ms. Herdrich to amend the other. She did so by claiming that the HMO became an ERISA fiduciary when it contracted with her husband's employer and had breached its fiduciary duty because the doctors owned the HMO, made discretionary benefit decisions and acted in their own interests rather than those of the plan participants.

The District Court dismissed the ERISA count, but a divided three-judge panel of the 7th Circuit overturned the lower court, holding that under some circumstances, an HMO could be found in breach of ERISA fiduciary duty because of its

incentive package. The HMO appealed to the Supreme Court.

Associate Justice David Souter, writing for the unanimous court, said that Congress did not intend HMOs to be treated as fiduciaries under such circumstances. "Although it is true that the relationship between sparing medical treatment and physician reward is not a subtle one under the Carle scheme, no HMO organization could survive without some incentive connecting physician reward with treatment rationing," he wrote.

To follow Ms. Herdrich's argument against tying incentive plans to cost reductions "in effect would be nothing less than elimination of the for-profit HMOs" and could possibly eliminate non-profit HMOs as well, he wrote.

Although the court closed the door to the courtroom for those seeking to recover damages from

HMOs for alleged breaches of fiduciary duty under ERISA, it left open other doors. Most notably, the right of action in state court for fraud and malpractice remains unaffected by the decision.

Another course of action under ERISA was suggested in a footnote to the decision.

**'Both the Democrats and the Republicans are claiming this case supports their view,' says Henry Saveth.**

"The fraud claims in Herdrich's initial complaint, however, could be read to allege a breach of fiduciary duty to disclose physician incentives to limit care, whereas her

amended complaint alleges an obligation to avoid such incentives," wrote Justice Souter.

He noted that the high court wasn't presented with the question of whether a company has a duty to disclose financial incentives. "It could be argued" that the HMO "is a fiduciary insofar as it has discretionary authority to administer the plan and so is obligated to disclose characteristics of the plan and of those who provide services to the plan, if that information affects beneficiaries' material interests," he wrote.

The decision drew an immediate response from the chief sponsor of patient protection legislation that would allow participants in managed care programs to sue the plans—and in some cases the employers that sponsor them—for denial of coverage. "With this ruling, the Supreme Court isn't just asking for congressional action, they are

shouting at the top of their lungs for us to act," said Rep. Charlie Norwood, R-Ga. An attempt to attach the managed care regulation bill sponsored by Reps. Norwood and John D. Dingell, D-Mich., to a Senate defense authorization bill failed by only three votes on June 8 (BI, June 12).

A managed care industry trade group took a different read. The decision "should be a clear and compelling warning to Congress that it should resist a special interest takeover of the U.S. health care system," said Karen Ignagni, president of the American Assn. of Health Plans, in a written statement.

"We hope Congress doesn't misinterpret *Pegram vs. Herdrich* when they debate the patient bill of rights legislation," said Tom Emerick, vp-benefits for Wal-Mart Stores Inc. in Bentonville, Ark.

"Congress should not use *Pegram vs. Herdrich* as a reason for including employer liability in the patient bill of rights. Herdrich, in this case, still has a legal remedy against her medical provider. In addition, for Wal-Mart and other companies with self-insured health plans, we don't make medical decisions; we pay the bills," said Mr. Emerick.

More disinterested observers say the court decision will give momentum to the legislative battle over managed care regulation.

"It certainly turns up the heat. Both the Democrats and the Republicans are claiming this case supports their view. The Democrats are saying it highlights the need for congressional action; the Republicans are saying this case just shows you can't sue your way to quality health care," said Henry Saveth, an attorney with William M. Mercer Inc. in New York.

"It's clear in this opinion that this is not a blanket exemption. It's also very clear that this case's failure to win at the highest court will have an impact on the whole debate over the patient bill of rights," said Mary Case, principal of Unifi Network, a benefit consulting unit of PricewaterhouseCoopers L.L.P. in New York.

"If the Supreme Court had held that there was breach of fiduciary responsibility, this could have been the end of managed care as we know it," she added.

"I think it's great news," said Helen Darling, senior consultant-group benefits and health care in Watson Wyatt Worldwide's Stamford, Conn., office.

"I've got to believe that there are lots of sighs of relief floating around the managed care world. First of all, it's clear it was a unanimous decision that medical decisions are not fiduciary decisions and that there is no ERISA-based cause of action for the kind of case that was before the court," said Ms. Case.

"Initially, it's good news for employers because it validates the very purpose of HMOs and the core method of their operation, which is keeping health costs down," said Mr. Saveth. However, he added, "While initially it's good news, in the long term this may not be the end of the road, this may be the beginning of another road and that one leads to state court. States may be increasingly opening up HMOs to liability under state malpractice laws.

"On the state issue, it's possible that HMOs and the employers that are paying their bills are jumping out of the frying pan into the fire if this encourages more state legislation and litigation."

*Lori Pegram et al. vs. Cynthia Herdrich, U.S. Supreme Court; No. 98-1949. Decided June 12, 2000.*

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## **Searching for solutions**

# **Employee Recruiting & Training**

# Labor shortages prompt innovative recruiting

By SALLY ROBERTS and RODD ZOLKOS

Although insurers and intermediaries have long struggled to draw young talent into the insurance industry, today's

tight labor market is forcing many companies to rethink the way they attract and retain employees.

In some cases, firms are taking steps they would never have considered just a few years ago, insurance consultants say.

Some companies, for instance, are finding themselves paying higher

compensation in order to attract people. Others are offering a variety of bonuses to new hires and to current employees who bring in qualified applicants. And some firms are recruiting individuals straight out of college and training them for specific positions.

According to one executive whose

recruiting firm has a strong insurance industry focus, the mentality of the industry in the past tended to be "well, we post the jobs, and we hire the best candidates." But "it's changed in the past few years, to where the company can post the jobs and they may post them again and again, and they may not attract



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candidates," said Paul Cornell, business unit manager in the financial services division of The Richmond Group, a Richmond, Va.-based affiliate of Management Recruiters International Inc. of Cleveland.

As insurers and intermediaries adjust their approaches in the current job market, many are turning to a basic human instinct—the desire for money.

"We are seeing upward pressure on entry-level compensation" with insurance companies, said Mr. Cornell. Salaries are up 10% to 15% for new college graduates coming into the industry, he said. And Mr. Cornell noted that there is an "incredible demand" for individuals with information technology or actuarial experience.

The tight labor market "has clearly pushed up compensation for support staff" at insurance agencies, said Timothy J. Cunningham, a principal with Insight Management Consultants in Chicago. "If I were looking to steal someone from somewhere, one way to do it is to offer \$5,000 to \$10,000 more in salary."

There are some compensation levels for support staff that would have seemed unreasonable just a couple of years ago, Mr. Cunningham said.

Chris Burand of Burand & Associates L.L.C. in Pueblo, Colo., said that one of his Denver-based clients ran a help wanted ad seeking a commercial customer service representative with two years experience but got no response until the salary was raised to \$35,000; that, Mr. Burand said, had never happened before at his agency.

The salary for top-rated CSRs is going up, especially in metropolitan areas, said Mr. Burand, who noted that he has seen CSRs earn as much as \$60,000 per year.

"There just aren't enough good commercial CSRs out there," he said.

Recruiting is "a hot, hot topic right now," Mr. Burand said. And, he said, the question most often posed by agencies is not as much "How much should I pay them?" as it is "Where in the world do I find these people?"

Agents are "being more creative as to where they look for employees," he said. "They are going to colleges and hiring people straight out of school for the first time."

"It's a very small movement, but I'm seeing it happen more and more and more," Mr. Burand said.

Signing bonuses are another inducement that insurers and intermediaries are beginning to use, consultants say.

See Labor on page 16D

# Labor

Continued from page 16B

Mr. Cunningham noted that he is seeing some agencies offer from \$5,000 to \$10,000 in signing bonuses to support staff members.

In addition, "a handful of firms are offering bonuses to staff members if they find a good qualified person" to join the agency, he said.

With regard to the more-senior positions within insurance companies, Mr. Cornell said, "we're seeing some interesting trends, more (of) what could be described as performance-based compensation." Base-level compensation might be un-

changed, but "we're seeing people make what might be considered lateral moves, where the salary is the same but the upside potential is very strong," he said.

In such situations, performance-based payments may boost salaries 20% to 25%, "but it's at risk," Mr. Cornell said.

Some larger companies are also doing "some unique things," he said, to attract "proven" people that have a few years experience.

"We're seeing one case now where the company sees somebody they really like and the candidate said, 'Well, it's in Chicago, and I live an hour and a half away and it's too far.' And the company said, 'We'll

get you an apartment,'" Mr. Cornell said. "Three years ago, that would have been unheard of."

And, as in other fields, retaining valued employees has become a big concern for the insurance industry.

"In hiring, the mindset now is an employee will be there three to five years," Mr. Cornell said.

"In order for companies to retain people, they need to look internally," he said. "Promote people. Don't wait until it's time to promote them but get to them early, put them in the training program, give them a reason to stay with the company," he urged.

"And be honest about that," Mr. Cornell continued. Tell them, he

said, "Here's our expectations. Here's where we see you in the future.' That becomes more important in this marketplace. 'I've got a commitment to my company, because they've made a commitment to me.'"

For agencies that have been successful in attracting and retaining employees, it comes down to two factors, according to John Jaques of the agency consulting firm John H. Jaques Inc., located in Palo Cedro, Calif.

Those factors are the quality of the other employees in the agency and the agency's work environment, Mr. Jaques said.

First, an agency that trains its people well and has high productivity levels typically has employees who don't want to work with a weak staff, Mr. Jaques said. Firms such as these have an easier time attracting high-quality employees, he said.

Second, an agency that offers the right environment—including business-casual dress codes, spacious offices, modern furnishings and updated technology—will find that people like to work for the agency and will stay with it, he said.

Mr. Cornell said he thinks that, aside from money, employees look for responsibility and diversity. "Companies need to look internally. 'Are we burning people out? Can we shift resources around?'" he said.

"When talent does leave a company, by the time the company does realize they've lost their talent, it's

usually too late," Mr. Cornell said.

Ultimately, the recruiting and retention battles are linked, the insurance industry recruiting consultant noted.

In many of the largest insurance companies today, "they have so many positions that are open right now, there's such incredible demand, (employees are) spread very thin; they're stretching their focus," Mr. Cornell said. "People are overwhelmed and saying, 'What is my company doing to solve the problem?'"

"If people say, 'They've been trying to get help for six months now. Why can't they get anybody in here?' at some point, they're going to leave," he said.

But it might be good news for insurance industry companies looking to retain employees that, for the most part, potential hires seek stability these days, Mr. Cornell said.

"They're craving a place where they can stay long term," he said. "If a company can convince people there's potential for them long term, they're going to keep their employees."

"It's the dollars to get them in, but retention is not the dollars. Retention is the quality of life, quality of the workplace, the people they work with," Mr. Cornell said.

"All of those factors come into play. Some companies are addressing it, and some companies aren't," he said. "And the companies who don't, three years from now, they're going to be hurting." **BI**

## Training increases skills, commitment

By LEE FLETCHER

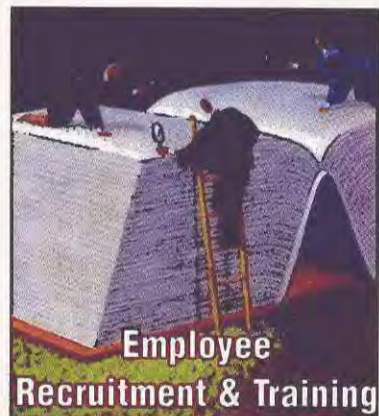
**E**mployee training programs—both online and in person—are winning favor with insurers that seek to promote knowledge of their products and build relationships with agents and brokers.

And, throughout the industry, training programs are being seen as an excellent way not only to boost employee skills and knowledge but also to increase loyalty and satisfaction.

Jeff Barton, a regional marketing manager with Chubb Co. in Cincinnati, said that Chubb annually revises its training curriculum to meet the needs of its highest-producing independent agents.

"An area which continually comes up involves continuing education credits, which are necessary to qualify to be licensed to sell insurance. The reason (independent agents) come to us is that it's free of charge to them, as well as it being a way to build better relationships, therefore retaining renewal. Not only do we hope that we get the return on investment in business, it also gives us an opportunity to familiarize them with our products," Mr. Barton said.

The classes are held either at Chubb offices or at the offices of the



Employee Recruitment & Training

agents.

"We try to focus these classes on areas where we want to grow the business or new products or new topics in the industry. So it's not that they're going to a class on something that they've known about for 20 years. It's a cutting-edge topic or a new product or new area of insurance," Mr. Barton said.

Debora Sokolski, vp of product management division at Hartford, Conn.-based Travelers Property Casualty Corp., said that, for their highest-performing independent agents, most education is outsourced, although some Internet and distance learning is available.

"Travelers has an agency marketing division which provides support for agents. For the more high-per-

See **Training** on page 16H

help them gain the necessary insight and vision.

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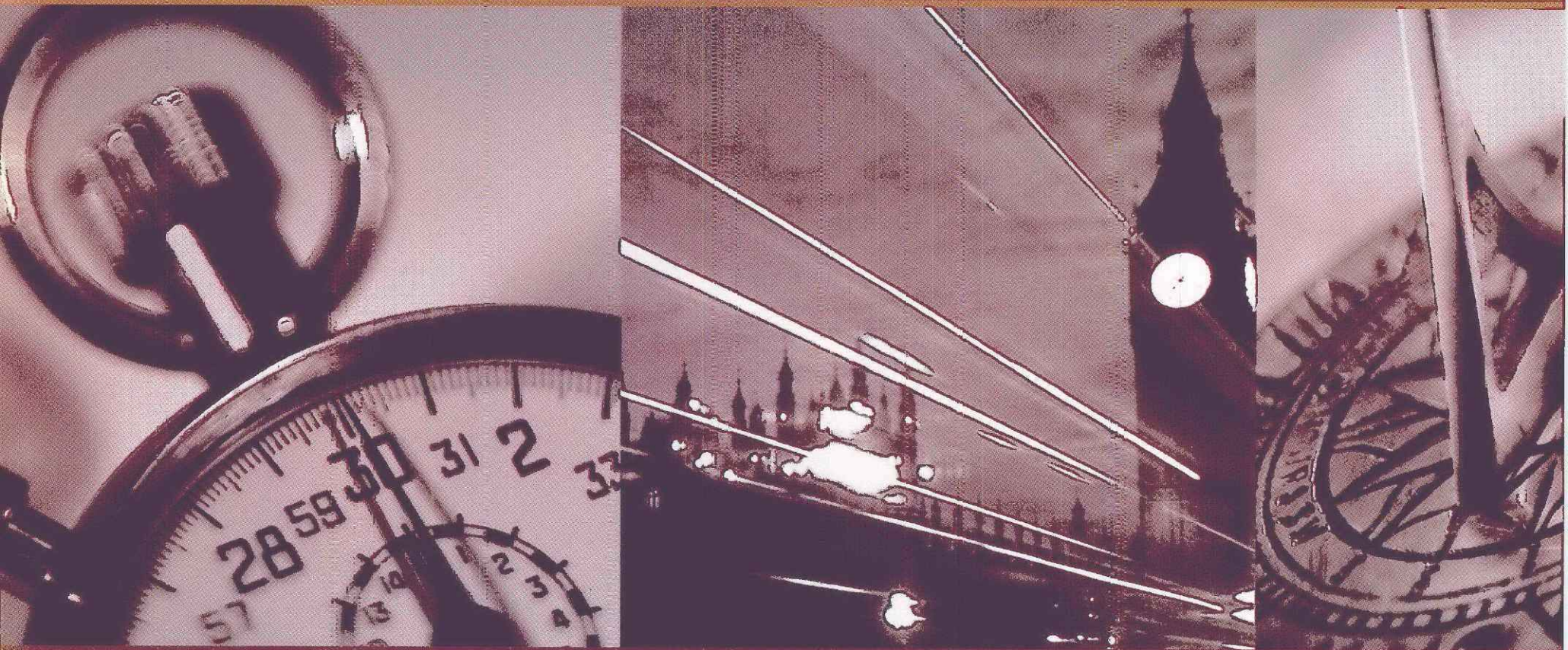
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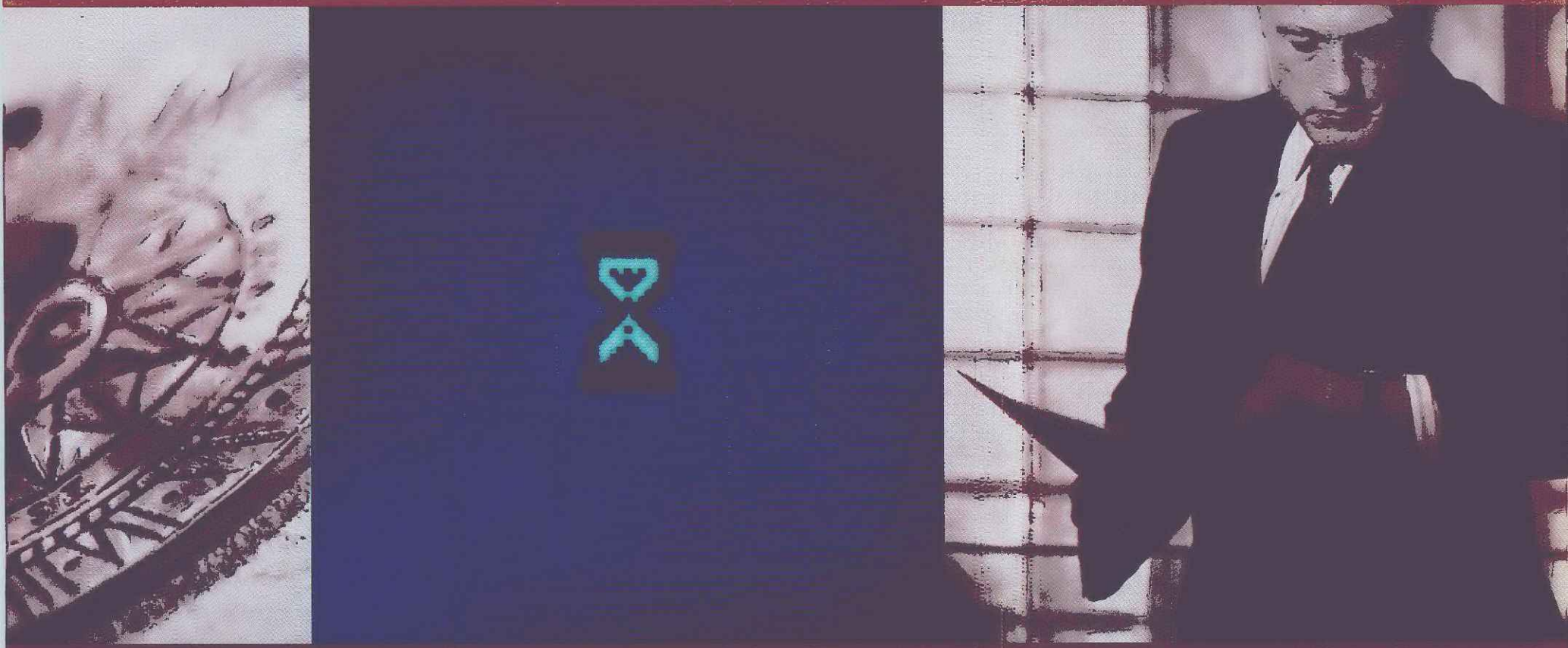
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## Training

Continued from page 16D

forming independent agents, Travelers has a program in which they can acquire education vouchers, Ms. Sokolski said. Those vouchers can be redeemed by Travelers' agents for training, primarily for sales and marketing courses.

According to Terry Hennen, director of training and communications at Itasca, Ill.-based Arthur J. Gallagher & Co., about 8% of Gallagher's employees have gone through training at the home office's Gallagher Training Center.

"We want everyone to, essentially, be singing off of the same sheet. There's lots of management training programs out there, but we have our own feel for how it should be, and we have a customized program. We need our culture to be considered in what's taught. If everybody was going off in different directions, they might be getting good stuff, but it may not be exactly what we wanted. This way, they are all getting the same thing," Mr. Hennen said.

Mr. Hennen said that all Gallagher

managers and supervisors are required to participate in the company's two-phase training program. Initially, employees spend about five days at the training center; then, a year or two later, they return for a three-day program.

Mr. Hennen said that, because

**'We have our own feel for how it should be, and we have a customized program.'**

—Terry Hennen

Gallagher is essentially a sales organization, it presents sales-skills programs that are tailored to the company's needs.

"We're a very large organization, and salespeople who come on board need to get to know the organization. . . . They need to know who to go to for help with products, services, assistance in marketing, so they come in for an orientation for all levels of Gallagher," he said.

Kim Windrow, senior vp and director of human resources for Willis

North America Inc., said that most of her company's training takes place through the Willis Institute, a virtual university launched about a year ago in a joint venture between Willis North America Inc. and Willis U.K. Ltd.

Ms. Windrow said that Willis offers courses that give an orientation and foundation to individuals who are new to the insurance business, courses for those who are in the middle of their careers and courses for senior management. Yet another program offered through Willis fosters employee-to-employee mentoring, she said.

"They can develop a mentoring relationship with another employee. We think that's something that can really help employees who are new to the business or looking at possibly making a change within the business—they can go to a mentor who's not their direct manager," Ms. Windrow said.

Ms. Windrow said that Willis expects its employees to expand their roles within the company. "This not only makes our recruiting job easier but our retaining job easier. If they feel like there are opportunities be-

ing offered to them where they can grow into other areas and they don't feel like they're just stuck in one job, they're more likely to stay with the company," she said.

"We're not making anything; we're not manufacturing widgets. We're selling professional services and selling knowledge. We feel like the way to really have a competitive edge is to make sure that we're developing our people to the best of their capabilities, and that's one of the reasons for establishing the institute," Ms. Windrow said.

John Roskopf, senior managing director of Aon University in Glenview, Ill., said that the Aon Corp. program tends to focus more on the informational and behavioral side of training, rather than on the technical and production side.

The focus "is on things that will help them manage better, serve the client better and promote a more robust relationship with our clients. The real payback is in those things that support the overall corporate culture," Mr. Roskopf said.

Aon University has been operating since January 1998. According to Mr. Roskopf, classes typically are

held during the workday and are free.

"We're also experimenting with distance learning, where we can provide proprietary information to people in different offices via the Internet, (regarding), for example, a new product or service which can be set up," Mr. Roskopf said.

Mr. Barton said that Chubb has provided formal classes since May 1999. He said that although it is difficult to quantify the success of the training programs, "it's been appreciated and enhanced relationships between Chubb and our agents."

"You're spending more time together. My theory is that people do business with people they like, people they know and people they trust. The way to hit on all three of those areas is to spend more time with them," Mr. Barton said.

Mr. Hennen said that Gallagher has operated a summer internship program since 1965. Of those program participants who have been hired by Gallagher, 38% have stayed with the company, he said.

"That's a pretty amazing figure in today's world, when people are job-hopping all over," he said. **BI**

## Insurer's consulting experiment works

By **RODD ZOLKOS**

**F**acing a hot job market that made it tough to recruit and retain workers critical to the company's technology-based projects and e-business initiatives, The Hartford Financial Services Group Inc. put those workers in business for themselves.

By creating Hartford Technology Services Co., The Hartford succeeded both in improving the retention of information technology staffers the company had spent time and mon-

ey training, and in luring more quality IT employees.

Essentially, the unit, created in 1997 with approximately 200 employees recruited from The Hartford's IT staff, serves as an in-house consulting firm to the company's various business units. Today the technology services operation has more than 420 employees.

"It really has been sort of an interesting journey for us," said Ann Park, director of sales and marketing at Hartford Technology in Hartford, Conn.

"People like the value proposition

that we're offering," Ms. Park said. "And what we're offering is the

**'What we're offering is a chance to do consulting work in a large corporation.'**

—Ann Park

chance to do consulting work in a large corporation."

Essentially, Hartford Technology provides its employees a way to en-

joy both the job diversity of a consulting position and the stability of a staff position within a large corporation.

Employees in the technology unit can work on assignments throughout The Hartford's 40 different units, gaining exposure to different segments of the industry and encountering different technology challenges.

"People do these assignments just like they were working at one of the Big Six consulting companies," Ms. Park said. "But what they like about it is the travel is minimal."



**Employee Recruitment & Training**

The arrangement serves the IT needs of many of The Hartford's business units, which might require workers with particular technology skills for only short periods of time, making it impractical to staff to the level necessary for peak periods only to be overstaffed during the lulls.

The business units could have  
See **Hartford** on page 16I

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# Improving access to claims information

By MICHAEL BRADFORD

Agents are letting insurers and other business partners know that the more information they can get regarding claims—and the faster they can get it—the better.

Insurers say that they are hearing agents' thoughts on needed improvements in access to claims information. And some requests are drowning out others.

Speaking as a panelist during an educational session at last month's ACORD Technology 2000 Conference in Lake Buena Vista, Fla., Franklin D. Sanders, e-business strategist with Chubb & Son in Warren, N.J., said he hears from a lot of agents about what they want.

"The one thing that every single agent—bar none—tells us," said Mr. Sanders, is that they want "the ability to go into a general claims inquiry. And it's a message that's being heard loud and clear."

In response, Chubb is moving away from its dial-in claims inquiry system and developing an Internet-

based system for claims information, he said.

In assembling that system, the insurer is talking to agents to determine how it should be constructed, Mr. Sanders said, asking them "How do you want the information provided to you?"

Several options are being considered, he said. Information such as a first report of loss could be transmitted by pager, fax or e-mail, or agents could "go and look for it online."

Agents' demands for online claims information doesn't mean all insurers will be pulling the plug on their telephone systems, though.

SAFECO Corp. finds that phones work just fine, according to Mele L. Fuller, who is in charge of agency interface and industry standards at the Seattle-based insurer. Ms. Fuller spoke as a panelist.

"Any time a claim is filed at SAFECO, an agent has immediate access to its status through connection to our mainframe, which can be done over the Internet," Ms. Fuller said.

But, she stressed, SAFECO prefers to collect claims information over

the telephone. Enabling agents or policyholders to call with claims information at any time is "by far, the most efficient way," said Ms. Fuller, because "we get all the data we need immediately. And we, so far, have found it the most efficient



way for our clients and our agencies to get the data to us. We are always there."

She said that although SAFECO likely will consider adding an Internet system that will allow electronic submission of claims data, the insurer will not abandon its call centers, which are located throughout the United States.

Ms. Fuller pointed out that when a policyholder calls in a claim after normal working hours, the SAFECO

agent handling that client's account can access the details from an Internet location.

"The piece that we would like to offer, that we don't yet," she added, is an application that would let agents use the SAFECO claims data on the agency's computer management system. Doing so would let agents offer more-extensive risk management services to clients, Ms. Fuller pointed out.

Steve Tetzloff, assistant secretary, external business systems at EMC Insurance Cos. in Des Moines, Iowa, said his company's claims data does help risk managers keep their losses down.

Agents whose clients are large employers with high claims volume use the EMC data to help spot red flags in claims data by examining frequency, location, type of injury and other elements.

"We really see that as where the value is for the agent that is acting as the risk manager for the customer," he said.

Mr. Tetzloff, who was a panelist, said EMC is planning to provide more information to agents and customers.

The insurer is developing a system to allow some large commercial accounts to handle first reports of injury, he said. "There are some customers that like doing our work for us. I don't know why they want to do that, but they do. If a commercial account wants to put out first report of injury or first notice of loss, we're going to make that available."

EMC has heard from agents that they want immediate contact with the customer when a loss is reported, Mr. Tetzloff said. "Especially on the personal lines. If someone calls in with a loss, they're distraught. It's a significant event in their life," and personal contact at that point is more important to agents and policyholders than is access to information from a Web site, he explained.

Providing more information to agents and policyholders is important to SAFECO as well, Ms. Fuller said.

See **Claims** on page 16K

## Hartford

Continued from page 16H

hired outside consultants to work on those projects, but doing so would mean The Hartford would lose the benefit of the consultants' knowledge when their contracts expired.

In addition to serving the company's business units, "The other thing we've done is we want people to feel ownership in their own careers here at The Hartford and their skill set," Ms. Park said.

Each consulting opportunity coming in to Hartford Technology is posted for all of the technology consulting subsidiary's employees, allowing them to request the opportunities where they believe they can bring value or identify areas where they need to enhance their skills.

To further help the group's employees expand their skills, the company sets aside an annual \$500 per person in discretionary training funds that staffers can use to pay for classes, books or anything else they feel would enhance their consulting abilities.

That discretionary benefit is on top of about \$2,500 per employee Ms. Park estimates the company spends each year on training.

The in-house technology consulting company takes other steps as well to help its employees find career satisfaction at The Hartford.

In response to feedback that at some consulting firms the extent of the company's interest in its employees is to "complete the assignment, get your next billable assignment," Hartford Technology created a staff advocate position, Ms. Park said.

Each advocate is responsible for approximately 50 staff members and

is available to discuss career concerns with those employees and work with them on addressing those issues.

Today, Hartford Technology's employee retention rate is consistent with that of other consulting firms, but the percentage of employees who remain within The Hartford group is far better, so overall the creation of the technology subsidiary is going a long way toward meeting the company's goal of retaining its information technology talent.

"We're probably averaging about 19% or 20% turnover (in Hartford Technology), which is probably typical of your consulting firms," Ms. Park said. But probably only 10% leave The Hartford's operations, she said.

"We've had several instances where our own employees have gone on to become our customers on the other side. So that's a good thing," Ms. Park said.

The new company also is proving successful at bringing in new information technology talent. "From an offer standpoint, we're getting about an 80% acceptance rate," she said.

Many of those new hires come through the recommendation of existing staffers, something the technology services company encourages.

"We've been very successful with employee referrals," Ms. Park said. "A little more than 50% of our hires come from employee referrals."

To promote such referrals, the company offers its workers a significant employee referral bonus program, rewarding employees \$2,000 for the first referral, \$3,000 for the second referral and \$5,000 for each subsequent referral.

"For us, that's a lot less than a recruiter's fee," Ms. Park said. **B**

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## Claims

Continued from page 161

She said the insurer wants to be able to "provide every piece of information that we have to the agency and, ultimately, to the customer" over the Internet. "It provides a bit of self-servicing, so that if a customer is sitting home and wants to know, 'What's happened to my claim?' he doesn't have to wait until Monday morning to

(call) in. I think I can see that happening sometime in the future."

Michael E. Milligan, vp with ChoicePoint Inc. in Alpharetta, Ga., walked the audience through the offerings at the Fraud Defense Network, an Internet site that helps agents and others identify claimants who illegally file claims.

The site is "an Internet access to services that help fight fraud," Mr. Milligan explained. The site can be used by consumers or members of the network, and the amount of

information that is revealed depends on who makes the request.

There are "laws and restrictions as to who can see what," Mr. Milligan told session attendees.

Plenty of users are checking the site, [www.frauddefense.com](http://www.frauddefense.com), with more than 500,000 hits per month, Mr. Milligan said.

The session was moderated by Michael Bergstein, vp at Insurance Resource, a brokerage in River Edge, N.J. **BI**

## Agents flock to online exchange

By MICHAEL BRADFORD

An Internet insurance trading company has reached a milestone before completing its first transaction.

In anticipation of its launch later this year, InsureTrade.com has signed up agencies handling more than \$1 billion in premiums, said D.R. Rawson, president of the Santa Ana, Calif.-based company.

InsureTrade.com serves as an electronic exchange where agencies, wholesalers and insurers can transact business. Insurers are able to "put their profile on our trading floor and secure business from agencies—both appointed and non-appointed—that they are looking for," Mr. Rawson explained.

The idea behind InsureTrade.com is to match insurers' risk appetites with the market needs of agencies. Through the exchange, agents can extend their reach to a broad market of insurers that are looking to write specific risks.

The Internet startup was among several companies showcasing new offerings at the ACORD Technology Conference 2000, held last month in Lake Buena Vista, Fla. Several vendors were on hand to present business integration systems.

DWL Inc., a New York-based company, announced that it is offering DWL Unifi Insurance, a suite of personalized applications for property/casualty insurers.

DWL Unifi integrates information from several policy administration systems and presents it in a customized interface through the

World Wide Web.

Among the types of information brought together by DWL Unifi are first notices of loss, policy inquiries, claims management, commission tracking, forms and marketing materials.

The system creates personal toolbars and navigation bars based on the user's relationship with the insurer. Optional interface applications are available for policyholders,

prospects and customer service agents.

New Era of Networks Inc. is teaming with Microsoft Corp. to offer integration server software called e-Biz 2000 for Insurance.

The product, which supports extensible markup language and other data standards, is among the platforms that the Englewood, Colo.-based company says can receive information from any source, analyze that information and then determine where it needs to go. Based on the destination, the system determines whether the information needs to be translated into a different format.

The system aims to allow insurers to quickly establish links with customers and business partners. In addition, it allows access to and distribution of information through wireless technology.

MaxSol Inc., based in Concord, Mass., introduced its eInsurePlus

suite of applications, which allows all partners in an insurance transaction to exchange information from different databases.

Modules in the system facilitate the interchange of information between agencies and insurers. The system allows real-time quoting, rating, submission, binding and issuing; online queries and reports; and customer access to information on policies, claims and bill status.

"eInsurePlus lets insurance companies use the Internet to support sales, customer service and internal operations," Sam Patterson, general manager of MaxSol, said in a statement. "The result for our customers has been more efficient and effective operations, with increased sales opportunities and customer satisfaction."

TowerStreet, an AMS Services Inc. subsidiary in Nashua, N.H., has developed a conversion utility that translates ACORD forms and AL3 data to the ACORD XML standard.

The utility, available at [www.towerstreet.com](http://www.towerstreet.com), provides a tool for converting information to the XML standard for those who are not interested in "rewriting all their systems," explained John Ashenhurst, executive vp at TowerStreet.

He said TowerStreet believes that the XML standard is important "not just to connect insurance agencies to companies," but also to "connect the whole value chain."

XML has the potential to tie together insurers, reinsurers, agencies, and managing general agencies—"all the different sources of information that are part of the whole insurance process," Mr. Ashenhurst explained. **BI**

## Standards sought for large accounts

By MICHAEL BRADFORD

Exchanging information on some commercial insurance accounts will be easier if work on new electronic standards is successful.

ACORD has established a working group to begin developing standards for processing information related to large commercial insurance accounts. In a meeting set for earlier this month at the non-profit association's Pearl River, N.Y., headquarters, the group was to begin determining what processes need standards and prioritizing the list of transactions.

ACORD announced the effort at its Technology Conference 2000, held May 21-24 in Lake Buena Vista, Fla. The group expects pilot implementation of the standards to begin by Oct. 1.

The decision to develop the standards was "very much driven by the market," said Beth Grossman, ACORD's director of industry relations. "We had major players—carriers, the risk managers and the brokers—coming to ACORD and asking us to start the large commercial account initiative."

ACORD said its research points to the need for standards for transmission of information such as location schedules and vehicle fleets and ocean cargo/inland marine reports.

Insurers, reinsurers, risk managers, brokers, standards organi-

zations and others are participating in the effort. "We already have commitments from major players," Ms. Grossman said. "All the major players are at the table."



She said the development of standards for processing information related to personal lines and small commercial accounts has been a success. "And the way the technology is moving today, and the way the industry is moving, it's time to bring some efficiencies electronically to the area of large accounts."

In developing the format for larger accounts, ACORD will be able to "leverage the work we've already done" in creating standards for other types of business, Ms. Grossman pointed out.

And because other associations are involved, she said, "we're going to be able to leverage not just our own work but everyone's work."

Schedules of locations and statements of value likely will get early attention in the development process, Ms. Grossman said. Standards for such areas will allow ACORD to "address aspects of the business all the way through the process," she explained.

## ACORD celebrates 30th anniversary

What must rank as one of the slickest and most elaborately

staged insurance industry conferences provided attendees with a mix of high-tech entertainment and education last month.

ACORD held its Technology Conference 2000 at the Contemporary Resort at Walt Disney World May 21-24 and entertained about 1,500 registrants with high-profile speakers, educational sessions, dancers and a birthday bash.

ACORD, a non-profit insurance



association that promotes communications standards, is known for lining up presenters who are among the most recognized technology experts. This year's roster featured John C. Dvorak, a technology writer and radio and television personality; Nicholas Negroponte, founder and director of the MIT Media Laboratory; and Chuck Mar-

tin, chairman and CEO of Net Future Institute.

Educational sessions featured discussions on a range of technology, business strategy and financial services topics.

A birthday bash celebrating the group's three decades was sponsored by Microsoft Corp. and held at Disney's Pleasure Island.

Next year's conference will be held May 20-23 at the Walt Disney World Dolphin Resort in Lake Buena Vista, Fla. Information is available from ACORD at 1 Blue Hill Plaza, P.O. Box 1529, Pearl River, N.Y. 10965-8529; 800-444-3341, fax: 914-620-3600; [www.acord.org](http://www.acord.org). **BI**

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**Q** What steps would you recommend to prepare for a future hard market?

**A** There is no doubt in my mind that the market will harden, and there are a number of signs that it may happen quite soon.

But my crystal ball is no clearer than anyone else's. I can't predict when the turn will occur or how hard the market will get. Such a

hardening could be precipitated by any of several possible events. It will likely start in those markets that have been most notable for excessive competition and price cutting. California workers compensation is a good candidate, but it is hardly the only one.

As a consultant who provides comparative analyses of the various options of coverage or self-insurance, I continue to be amazed at the willingness of underwriters to offer coverage at premiums that are decidedly below cost. This cannot continue indefinitely, even though excess capacity has encouraged this practice for some time.

As to how to prepare for the market hardening, that obviously depends on each risk's individual circumstances and its current form of coverage or self-insurance. Let's first consider the case of the risk that is totally or largely insured.

If possible, this is a good time to try to lock in coverage at current rates for as long as you can. Failing that, it would be advisable to start exploring the feasibility of a range of options if yours is the type of risk that has historically been out of favor among underwriters during past hard markets.

One of the most important prerequisites to having a broad range of options available is the maintenance of a good, consistent history of relevant loss experience. Being fully or largely insured should not preclude maintaining a

history of claims tabulations at consistent evaluation dates for several recent years. If, for example, June 30 is a key date for you, make sure to retain loss runs as of June 30 for each of the last five to 10 years.

The quality and consistency of loss experience can be key to encouraging underwriters, both primary and excess, as well as analysts and consultants, to view your program more favorably. The more accurately your risks can be assessed, the less uncertainty there is. In a hard market, it is especially true that a lower perceived level of risk will result in a lower quoted premium.

And when the market hardens, your success at obtaining quotes from alternative carriers at more-reasonable premiums could easily depend on the availability of such information. If you want to move to any one of several alternatives to coverage, a solid, credible database of loss experience will prove to be invaluable to your own internal analysts, your brokers, risk management consultants and/or consulting actuaries. Any one or all of these will need this information to reasonably design and/or price self-insurance alternatives.

Other information to have readily available includes a history of exposures. This could include five to 10 years of summary data on payroll, sales, the number of vehicles owned and the like. You may want to have some of this information compiled separately according to workers compensation class.

Another category of information that is often overlooked is a history of changes in claims administrators or adjusters and of changes in claims practices that could affect the recording and development of loss experience.

History tells us that when a hardening of the market occurs, it likely will be abrupt and dramatic. You may not have the luxury of digging into your archives to locate historical information. Keep it on hand.

And it goes without saying that if you haven't been receiving such information in the past, it may be impossible or very costly to resurrect the data. An insurer that has suddenly decided to stop writing your class of business likely won't be overly eager to provide you with loss runs—especially at a variety of past evaluation dates.

Keep abreast of what you need to explore various

alternatives to standard coverage. Determine the data that would be helpful when conducting a feasibility study.

If you are currently self-insured, much of the above also applies. There is no substitute for knowing where your program has been if you are trying to figure out where it is going in the near future.

I have a final recommendation. If you haven't already done so, start researching whom you can turn to for assistance in dealing with the difficulties of a hard market. Lay out contingency plans, get suggestions from your risk management colleagues and make contacts in the months ahead. **B**



Mr. Sherman

*Would you like advice from an experienced colleague on a risk management, benefits management or actuarial problem? Four quarterly features in the Perspective section of Business Insurance can give you some answers.*

*Ask A Benefit Manager, Ask A Risk Manager, Ask A Benefit Actuary and Ask A Casualty Actuary answer written questions*

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*This month's column on actuarial issues in the casualty field is written by Richard E. Sherman, president of Richard E. Sherman & Associates Inc. in Ashland, Ore. Dennis J. Nirtaut, managing director of compensation and benefits for Arthur Andersen L.L.P. in Chicago, answers questions for benefit managers. Christopher E. Mandel, director of risk management at Tricon Global Restaurants Inc. in Louisville, Ky., answers questions on risk management issues. William J. Miner, an actuary with Watson Wyatt Worldwide in Chicago, answers actuarial questions on benefits issues.*

*Address your questions to ASK, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.*

## Business continuation demands planning

By Roderick Hudson

**E**ach spring begins a period of potential devastation and loss to business from windstorms, flooding and other natural disasters. The tornado season, which intensifies between April and June, has already visited the areas of Fort Worth and Arlington, Texas, causing an estimated \$400 million in damage. Many businesses were badly harmed.

The hurricane season, which began June 1 and causes billions of dollars in damage to property and loss of business each year, also is looming. Experts forecast that storms this year will be stronger and longer in duration than average.

And total destruction or major damage to property is not limited to weather-related catastrophes. Complete or significant shutdown from fire, explosion, utility or equipment failures or small losses to property can strike at any time. Such incidents, which typically occur without warning, can result in prolonged disruptions to operations. Technical setbacks and other events also can result in significant property damage and loss of business. The World Trade Center bombing, for example, resulted in business interruption losses for more than 300 companies of varying sizes and operations. Consistent with insurance industry projections, 150 of these companies never regained their previous market share, eventually closing their doors permanently.

Information technology has become an integral part of many companies' business strategy, with today's business environment creating a reliance on technology and automated systems. Electronic transactions and

communications take place quickly and are vulnerable to non-traditional causes of loss, such as the failure of telecommunications lines and hacker intrusions.

And the financial loss from business interruption can be substantial. Assaults by hackers in February, for example, disabled the Internet sites of several major e-commerce companies, causing millions of dollars in damages.

More recently, the "I love you" e-mail virus crippled computer systems and interrupted operations at companies around the world. Few businesses were unaffected, with damages estimated at several billion dollars.

Many companies that suffer an interruption of business never resume operations. Of those that do, a large percentage eventually shut their doors because they cannot regain customers or market share.

In recent years, awareness of business continuation or disaster recovery plans has increased as more businesses recognize the likelihood of significant property damage and interruption of business.

Three critical elements are necessary to keep a company operating during and after a major interruption of business: business income insurance, a comprehensive business continuation plan and wise plan implementation.

Adequate insurance must be part of any business recovery plan and should address standard and optional insurance coverage, including:

- Business income.
- Extra expense.
- Extended period of indemnity or recovery.
- Contingent business income.
- Building ordinances.

These elements cover normal operating expenses, loss of revenue, loss related to suppliers, compliance with building laws, and pay increases or extra expenses needed to help restore operations to the pre-loss level.

Each business environment has its own factors that will affect insurance needs. Make sure that your insurance program will address your specific business requirements. Consult in detail with insurers, brokers and other professionals to determine appropriate insurance coverage type and adequate limits.

Insurance alone will not be sufficient to ensure recovery from most losses. The likelihood of a business' survival is only as good as its insurance coverage and business continuation planning.

Preparedness is the key. Effective business continuation planning addresses what a company's needs are both today and in the future. Such planning, which requires a thorough understanding of a company's operations, involves analyzing each functional area to identify crucial elements and determine potential risks. The likelihood and potential impact of downtime is measured to help prevent interruption and to speed successful recovery from loss.

Most companies lack the resources or the need to ensure equal business continuation for every function. Strategies that focus on the entire organization will likely leave a company underprepared or lead to it spending unnecessarily in the event of loss.

Plans should include access to substitute vendors, facilities, stock and equipment. Once a continuation plan has been developed, commit to keeping it current with changes to your business and technology.

See **Planning** on next page

# Planning

Continued from previous page

It also is important to plan for losses of any duration, recognizing that the response will be different for each. A loss of short duration should not be overwhelming; business income insurance will be sufficient to cover loss of income and expenses.

A loss of longer duration, however, is where disaster recovery planning becomes a significant factor.

A comprehensive business continuation plan addresses:

- Loss prevention. Identify all potential causes of loss and establish preventive measures. The only thing better than recovering from a loss is avoiding one.
- Pre-emergency preparations. These include internal and external communications to employees and customers.
- Remaining in business and maintaining customers during the period of interruption. This involves aggressively doing everything possible to remain a vital force in the marketplace during repairs or rebuilding and to return to pre-loss market share as quickly as possible.
- Adequate insurance, including coverage type and limits to replace, as quickly as possible, all property after a loss.

Factors that could affect the estimated time needed to repair or replace buildings include design plans, geographical location, governmental approval, building laws and weather conditions.

- Quick replacement of equipment and supplies. Sophisticated or foreign-made equipment or difficult-to-replace raw materials and supplies could cause extensive delays. Determine the costs and time needed to repair or replace equipment and the availability of substitute raw materials and supplies.

Have written agreements for service and processes in place prior to emergencies. Make sure that important operations can be duplicated elsewhere.

- The protection of critical business processes and complex interdependencies. Such elements are as important as safekeeping data itself. Information technology, data, software, hardware, networks, call centers and laptop computers offer easy access to critical business data and are now tied to every aspect of an organization's business operations. As a result, more companies are operational 24 hours a day, seven days a week and have no business tolerance for downtime. Critical systems and networks require continuous availability or customers will go elsewhere. Companies are also dependent on the technology of their suppliers.

Wise execution of the continuation plan—especially appropriate use of insurance proceeds—also is important.

A disaster management team with rotating or backup support members should be appointed to oversee the implementation of the plan. This team should work to ensure that critical decisions are made and recovery procedures are coordinated in a timely and orderly manner.

Assign roles and responsibilities to individuals based on knowledge and abilities, and grant those individuals authority to assume command, coordinate activities and use funds intelligently for organizational stability.

Business continuation planning is not limited to large companies. The time, money and customer confidence potentially lost due to business interruption can damage a company of any size. The nature of the business, property involved, operations and location are important elements.

Adequate insurance and business continuation planning can be the deciding factors in a company's ability to continue operations, maintain customer service and remain in business. Waiting until property is completely restored could mean the end of business. Risk managers who pair up with knowledgeable insurers as underwriting partners gain a solid advantage in obtaining and keeping quality business. **BI**



Mr. Hudson

Roderick Hudson is central region underwriting manager-property and general liability with Kemper Insurance Co. in Chicago.

# Self-inflicted injury not compensable: Court

A self-inflicted workplace injury resulting from an employee's impulsive, angry act is not compensable under Nevada's workers compensation law, the state high court ruled.

Russell Mauer, while working in November 1995 for Bryant Universal Roofers, hit his head on the corner of a large rooftop air conditioning unit. When he hit his head on the unit a second time, Mr. Mauer angrily hit the unit with his fist. As a result, Mr. Mauer sustained a superficial skull abrasion and fractured his right hand.

He applied for workers compensation. His claim for the skull injury was accepted, but his hand injury claim was denied. He appealed and lost in the trial court.

The appellate court said that workers compensation covers employees injured by accident arising out of and in the course of employment. Thus, the court said, the threshold question here was whether Mr. Mauer sustained an injury by accident. The court said that Mr. Mauer's angry act cannot be characterized as either unexpected and unforeseeable—essential elements of an accident.

Thus, the appellate court held that an intentional violent act that produces a foreseeable and reasonably expected self-inflicted injury is not an accident and the resulting injury is not covered under the workers compensation law.

*Mauer vs. ELCON, Supreme Court of Nevada, Aug. 26, 1999. (BI/05/A.- \$10)*

## Bathtub slip not work-related

Injuries that an employee sustained when she slipped in the bathtub of a hotel room while attending a seminar on behalf of her employer were not compensable, according to the Court of Special Appeals of Maryland.

In May 1995, Patricia Mulready was attending a seminar in Canada on behalf of her employer. Ms. Mulready was a dissemination coordinator and worked long hours at the seminar in this position. The hotel was selected by the employer and she was directed by the employer to be at that particular hotel. At about 9 a.m. on May 31, 1995, Ms. Mulready stepped into a tub at the hotel, slipped and sustained injuries. The compensation committee found that she sustained an accidental injury arising out of and in the course of employment. On appeal, the trial court denied her any benefits.

The appellate court concluded that, while the accident occurred in the course of Ms. Mulready's employment, it did not arise out of her employment.

## Legal Briefs

According to the court, there was no unusual or extraordinary condition of Ms. Mulready's employment that caused her to bathe differently than most people concerned about their appearance or hygiene. "At most, the employment affected only the timing and the location of the bathing," the court said. The trial court decision was affirmed.

*Mulready vs. Univ. Research, Court of Special Appeals of Maryland, Oct. 1, 1999. (BI/03/My.-\$10)*

## Retirees told to pay premiums

Retired railroad workers could be required to contribute toward their union health care benefits, ruled the 6th U.S. Circuit Court of Appeals.

In order to provide medical benefits to their elected officers and employees, the Brotherhood of Locomotive Engineers participated in a multiple-employer health and welfare benefit plan issued by Travelers Insurance Co. Through 1993, the plan document contained a "funding clause" that provided that the group health policy premiums were made by the union and contributions were not to be made by employees.

The plan was subsequently amended, however, to allow each union to determine the participants' and employees' contributions toward the cost of the plan. Thereafter, the BLE elected to require each of its retirees and their dependents to contribute \$100 per month per covered person to maintain their health insurance coverage. The new contribution requirements motivated the lawsuit brought by retirees claiming breach of contract and breach of fiduciary capacity under the Employee Retirement Income Security Act. The trial court ruled against the retirees.

The appellate court noted that the original plan document reserved the right to amend or modify the plan in whole or in part at any time. Thus, the 6th Circuit said that the retirees' breach of contract claim failed even if it were demonstrated there had been an oral assurance of lifetime health benefits. Such oral assurances, the court said, could not change the written plan documents. Nor could the BLE be liable for a breach of fiduciary duty under ERISA, the court said, because of the plan documents vested authority in the health committee to administer the plan, not BLE. The trial court decision was affirmed.

*Voyk vs. Brotherhood of Locomotive Engineers, U.S. 6th Circuit Court of Appeals, Dec. 1, 1999. (BI/04/My.- \$10)*

## Insurer has no duty to settle

The 11th U.S. Circuit Court of Appeals ruled that, under Alabama law, an insurer has no duty to settle a compensatory damage award merely to minimize its policyholder's exposure to punitive damages.

Ross Neely Systems Inc., a trucking company, was covered under a business auto policy from Occidental Fire & Casualty Co. The policy covered bodily injury and property damage but excluded punitive damages.

A Ross truck rear-ended a car stopped at a traffic light. The car's driver suffered soft tissue injuries and \$3,000 to \$4,000 in medical expenses. The driver sued Ross, seeking both compensatory and punitive damages. Ross submitted the claim to the insurer, which denied coverage for the damages.

Testimony at the trial indicated that Ross had violated federal regulations by requiring its driver to remain on duty for 36 hours, 21 of which were spent driving. The investigating police officer testified that the accident supported an inference that the truck driver had been asleep at the wheel. A jury awarded the injured driver \$45,000 in compensatory damages and \$250,000 in punitive damages.

The insurer refused to pay the punitive damage award. Ross paid the verdict and then sued its insurers. The trial court ruled against Ross.

The appellate court said that the insurer need not cover Ross' punitive damage award unless the punitive damage exclusion was contrary to public policy. The court reviewed Alabama law and concluded that it could not say that Alabama policy bars the insurer from excluding coverage of punitive damages. Nor is an insurer under a duty to settle a compensatory damage award merely to minimize its policyholder's exposure to punitive damages, the court said. The trial court decision was affirmed.

*Ross Neely Systems vs. Occidental Fire & Casualty Co., U.S. 11th Circuit Court of Appeals, Dec. 3, 1999. (BI/05/My.-\$10)* **BI**

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

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## INTERNATIONAL

## Ex-chief rejects Jaffray charges

By SARAH VEYSEY

LONDON—Former Lloyd's of London Chairman Sir David Rowland took the witness stand last week in the ongoing *Jaffray vs. Lloyd's* fraud case and rebutted charges of a conspiracy to defraud names.

Sir David, now chairman of Nat West Group, denied the allegations of litigating names that Lloyd's insiders and management conspired to conceal from investors the extent of the market's exposure to asbestos-related losses.

"I wholly reject the allegation that I or the whole Council of Lloyd's acted dishonestly, whether by failing to disclose the

true extent of the market's asbestos liabilities or otherwise," Sir David said in a written deposition that was presented at trial in the Chichester Rents courtroom in London.

"As a working member of the Council of Lloyd's, and a member of the committee during 1987 and 1988 and thereafter, I acted honestly and properly at all times. Furthermore, I had no reason then, nor subsequently have I had any reason, to believe that any of my fellow members of the council or committee were not also acting honestly and properly during that period. I feel confident in rejecting these allegations," he added.

Sir David was chairman of

Lloyd's from 1993 to 1997 and a member of the Council of Lloyd's between 1987 and 1990. The architect of the market's 1996 Reconstruction and Renewal Plan told the court that he suffered personal losses of more than £360,000 (\$540,000) between 1982 and 1990, mainly from syndicates that were exposed to long-tail liabilities including asbestosis.

Sir David told Simon Goldblatt Q.C., the attorney acting on behalf of the Jaffray names, that during his time on the Lloyd's Council he had been concerned to ensure that every possible risk—however remote—was disclosed to names.

The Jaffray names allege that many of their number were

fraudulently recruited by Lloyd's to provide much needed

See Jaffray on page 25



Sir David Rowland

AP/WIDE WORLD PHOTOS

## London closes footbridge



AP/WIDE WORLD PHOTOS

LONDON—It's not quite London Bridge falling down, but London's newest attraction has been closed just one week after it opened.

The Millennium Bridge, which links St. Paul's Cathedral with the new Tate Modern art gallery, was closed last week after pedestrians complained of "excessive swaying."

The footbridge, which cost £18 million (\$27.2 million) and took more than a year to build, will likely be closed for several weeks as engineers investigate the swaying, which caused several pedestrians to lose their footing on June 11 as high winds blew through London.

Engineers from the London borough of Southwark are responsible for public safety on the bridge. One possible solution would be to fit the bridge with shock absorbers to reduce the swaying, a Southwark spokesman said. Insurance information was not available.

The Millennium Commission, the trust that allots lottery funding, may provide additional funds to correct the problem. The Millennium Commission has already contributed £7.9 million (\$11.9 million) to the bridge project.

The swaying did not dampen tourists' enthusiasm for the bridge, however. On June 11, more than 50,000 people crossed the bridge, some lining up for more than an hour.

—By Sarah Veysey

## China shutter Travelers office

BELJING—China's insurance regulator has closed Travelers Insurance Co.'s representative office in Beijing for unspecified violations of the country's insurance regulations.

A spokeswoman for Travelers said the Beijing office had been established years ago and was dormant, adding that Travelers would "like to preserve our ability to do business there." She would not comment further.

According to local Chinese news reports, Travelers and several other insurers had violated administrative regulations. Other companies whose representative offices were recently closed include Ping An Insurance Co. Ltd. and Guijiang Insurance Agency Ltd., the reports said.

Over the past 18 months, the China Insurance Regulatory Commis-

sion has stepped up its regulatory actions against insurers, agents and brokers in China. Last year, it suspended the operations of a Marsh Inc. subsidiary in China (*BI*, June 4, 1999).

The action against Travelers occurred a few days before the insurer announced the formation of an international insurance division at its head office in Hartford.

The division will concentrate its initial efforts in Taiwan, where it has recently invested in a financial services company—Fubon Group—and will later target Southeast Asia, the Travelers spokeswoman said.

The division will be headed by Robert J. Price, who was previously senior vp and chief financial officer of Aetna Inc. unit Aetna International.

—By Gavin Souter

## U.K. raising bar on work safety

By SARAH VEYSEY

BIRMINGHAM, England—Efforts to improve workplace safety must become part of U.K. corporate culture, rather than being seen as merely a regulatory duty, a safety expert says.

One factor that will drive greater attention to risk management of workplace health and safety is growing litigiousness by claimants, he adds.

"Health, safety and risk management are not purely compliance based, but represent a significant contribution to the development of continuous improvement and business excellence within an organization, and the maintenance of stakeholder confidence," said Stephen Fulwell, head of technical affairs at the Leicester, England-based Institution of Occupational Safety & Health.

Mr. Fulwell told attendees of a session at the Assn. of Risk & Insurance Managers conference that he believed there will be a greater onus on businesses to incorporate health and safety practices into their day-to-day operations, rather than waiting for health and safety legislation to be passed.

"I believe that we will see a gradual move away from the domination of health and safety by law toward what ethical businesses do," he said. "The law has only ever provided a minimum standard. We think it is important to move with the idea that companies are going to be expected to do more."

Minimizing civil liability exposures is of increasing importance to corporate health and safety managers, said Mr. Fulwell.

See Safety on next page

## Reputational risk needs managing

By SARAH VEYSEY

BIRMINGHAM, England—Companies should treat risks to their reputation in the same way they treat risks to other corporate assets.

That was the message put forward in a presentation by David Brotzen, a director of London-based reputation protection consultant Brotzen Mayne Ltd., and Nicola McLennan, vp-marketing at AIG Europe in London, during a presentation at the Assn. of Insurance & Risk Managers's annual conference in Birmingham, England, earlier this month.

"How much is your reputation worth?" asked Mr. Brotzen. "Whether you consider this from a personal or corporate perspective, the answer is probably similar. It is difficult to quantify, but I can't afford to lose it."

Ms. McLennan described reputation as a complex mix of personality, including the company's ethos, identity—"what the company says it is and how you want your stakeholders to see you," and image—"how the company is actually viewed by the stakeholder." She stressed that there is a subtle difference between corporate reputation, which hinges on investor confidence, and brand reputation, which is contingent on customer confidence and is reflected in sales.

Mr. Brotzen said his company defines reputational risk as "any event which has the potential to affect the long-term trust placed in the organization by its stakeholders, thus affecting areas such as customer loyalty, staff retention and shareholder value."

Mr. Brotzen said that reputational risk is not an area that many companies used to consider in great detail because they believed it to be too in-

See Trust on next page

## Global Briefs

French insurance giant Caisse Centrale Groupama has announced some top management changes as a result of diverging opinions at board level. Director General Bernard Delas and his deputy, Gilles Laporte, have resigned. Their roles will be filled by Jean Azema, chief executive of Groupama Sud. A spokeswoman said the differences of opinion concerned some points regarding the group's strategy, particularly the issue of combining the information systems of Groupama and Groupe des Assurances Nationales, the formerly state-owned insurer that Groupama acquired two years ago. . . . London-based Willis Group Ltd. has formed Willis Korea Global, which it claims is the first insurance intermediary organized on a worldwide basis to serve the risk management needs of Korean companies. The new unit will initially have offices in Seoul and New York, and will be led by Global Chief Executive Ken Lee. . . . Britain's Health and Safety Commission is proposing a tightening of the law to reduce risks from asbestos in approximately 1.5 million workplace buildings nationwide. The tougher law would require those responsible for workplace premises to determine whether asbestos is present in their buildings and to implement plans to manage the related risks. The commission, which unveiled its proposals in a consultative document on controlling asbestos at work, is seeking comment from interested parties by Oct. 20. . . . As part of its ongoing assessment of Lloyd's of London syndicates, Moody's Investors Service has downgraded its ratings of six more syndicates. Downgrades are: composite syndicate 79, managed by Limit Underwriting Ltd., to B+ from A-; marine syndicate 329, managed by Markel Syndicate Management Ltd., to B- from B; aviation syndicate 340, managed by St. Paul Syndicate Management Ltd., to B from B+; marine syndicate 735, managed by Wren Syndicates Management Ltd., to B from B+; life syndicate 779, managed by St. Paul Syndicate Management Ltd., to A- from A; and marine syndicate 1036, managed by Limit Underwriting Ltd., to B- from B. . . . Standard & Poor's Corp. has raised its rating based on public information on Ssangyong Fire & Marine Insurance Co. Ltd. of Korea to Bpi from Cpi. The action reflects "a remarkable improvement" in the company's capitalization, stemming from the insurer's issue of 28.5 billion won (\$25.3 million) in common stock in July 1999. S&P, however, expects Ssangyong Fire's capital base to remain "volatile" in light of the unstable value of its assets. . . . Tempest Reinsurance Co. Ltd., a Bermuda-based subsidiary of ACE Ltd., has appointed Kin K. Gee to the newly created position of chief life and health officer. ACE said the appointment of Mr. Gee, who last served as president and chief operating officer of Swiss Re Life & Health North America, is intended to spearhead Tempest Re's expansion into life, annuity and health reinsurance in North America. . . . Translinx, a Harrogate, England-based online trading company, has launched CargoCover, which Translinx calls the world's first fully interactive online cargo insurance application. CargoCover, available on www.translinx.com, enables shippers of all types of cargo via all forms of transport to seek insurance coverage online, including instant quotations and claims management.

## Safety

*Continued from previous page*

"The number of claims is going up, and the size of settlements is certainly going up," he said. "The health, safety and risk management professions have traditionally interfaced most in the area of civil liability, which continues to develop along American litigation lines rather than the European approach of fixed levels of compensation for clearly defined events," he said. "Closer management, the increased use of formal systems and a greater awareness of the potential of this issue to severely damage an organization, represent the only possible counter to a claims culture," he added.

Mr. Fulwell recommended that

companies take a comprehensive, interdepartmental approach to managing health and safety within the workplace, particularly in the case of emergency and contingency planning.

**'The number of claims is going up, and the size of settlements is certainly going up,' says Stephen Fulwell.**

"The importance of this cross-party approach to the control and resolution of a serious situation must not be underestimated or considered only applicable to high-risk activities," he said.

"Events such as Piper Alpha... clearly demonstrate the importance of these activities and the value of effectively planned and well-rehearsed emergency and contingency procedures," he said referring to the North Sea oil platform that exploded in 1988.

The largest loss of life at the Piper Alpha catastrophe arose not from the initial explosion but "from the failures of the emergency procedures and the rig design to support the evacuation of the structure following the compressor explosion," he noted.

It is also important to remember that a health and safety disaster is never attributable to a single factor, said Mr. Fulwell. He pointed out that the inquiry into the Piper Alpha disaster identified 145 preconditions that led to the loss.

Mr. Fulwell said it was vital

that all managers within a business be aware of risk management and health and safety issues.

"It is important for us to make sure that all managers coming into our organizations understand risk management and risk control. We need to teach our managers about risk. We cannot afford to continue with the old 'specialist' approach," he said. "We need to reposition health and safety as an important part of the business. We need health and safety to become part of day-to-day practice."

Mr. Fulwell reiterated that companies must go beyond regulatory minimums.

"Even the Health and Safety Executive admits that the law is not working as a deterrent. It has to come from the hearts and minds," he said. **BI**

## Trust

*Continued from previous page*  
tangible. But the value of "goodwill," of which reputation is a part, is becoming increasingly important to companies, he said.

According to research by Interbrand and Citibank, in 1998 the total value of Financial Times Stock Exchange 100 companies was £824 billion (\$1.37 trillion), with "goodwill" accounting for 71% of total value, said Mr. Brotzen. "Just 10 years earlier, in 1988, goodwill accounted for 44% of total value," he said.

Ms. McLennan said there are three broad indicators of a loss of reputation—an adverse movement in share price, an increase in negative media coverage and a loss of sales. Management behavior is critical in avoiding catastrophic events and, if they do occur, handling them well, she said.

Ms. McLennan cited research carried out at Templeton College of Oxford University in 1997 that looked into the key determinants governing shareholder value in response to catastrophes. "The findings showed that the impact of catastrophes on shareholder value was not strongly influenced by the existence of catastrophe insurance," she said. "The investment community's re-evaluation of the management during and after a crisis also affects shareholder value."

Mr. Brotzen said it is important to set up a cross-functional team to create and implement a reputational risk management strategy, because reputational risk cuts across the whole of a business.

This team should set about identifying the threats to the company's reputation, including such factors as whistle-blowing in the media, corporate responsibility, marketing failures and loss of regulatory approval, said Mr. Brotzen. Once identified, these risks must be prioritized. Traditional risk management strategies can be used to rank these risks, he said. But the task force must not neglect to assess the organization's ability to respond to these risks if they do occur. "For example, if the company is vulnerable to a product recall, it needs to assess whether it has a comprehensive recall plan," said Mr. Brotzen. "The company will also need to decide whether it retains, reduces or transfers all or part of the risk."

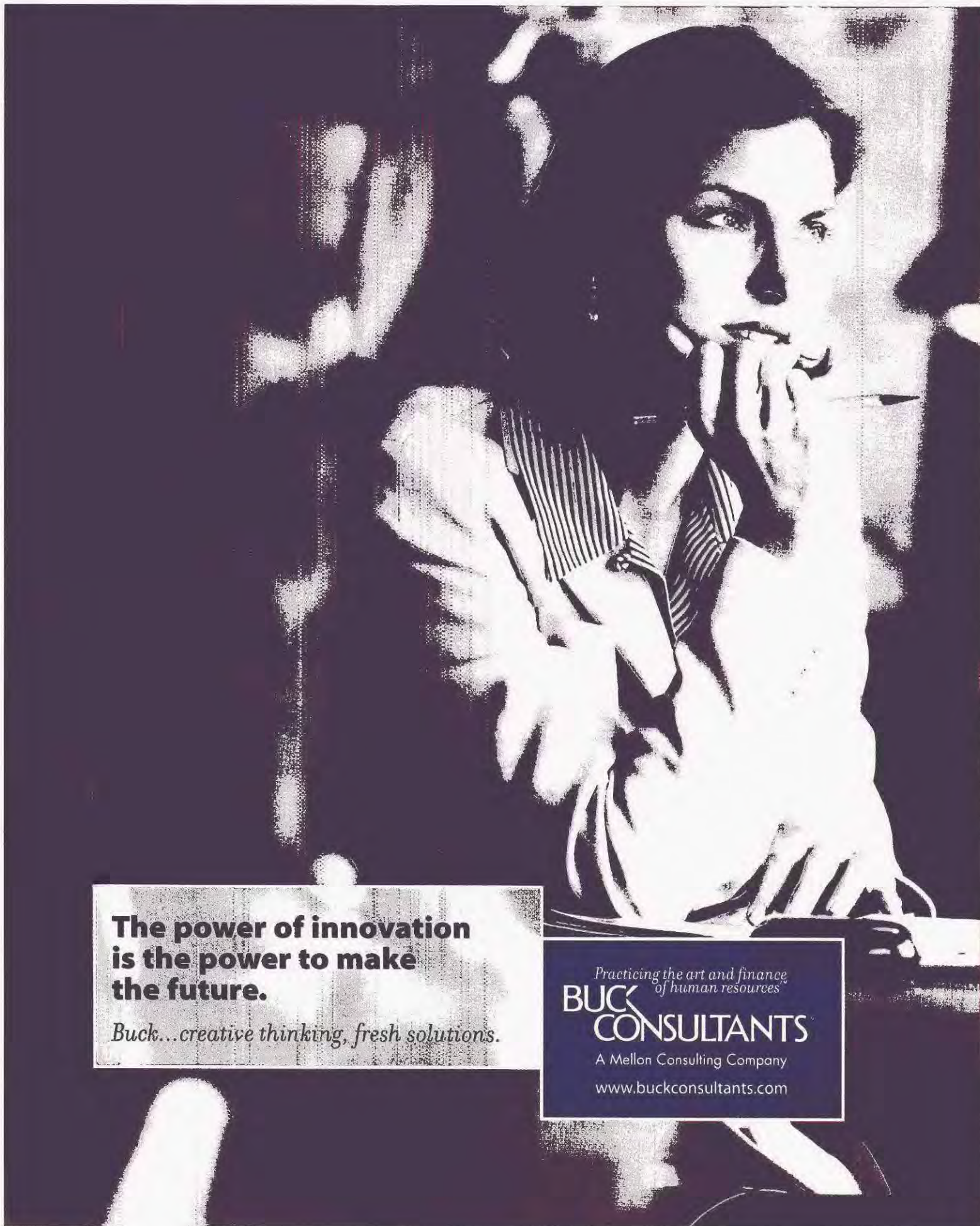
The reputational risk task force should also ensure that it has a comprehensive monitoring strategy, said Mr. Brotzen. This includes monitoring the media and the Internet.

Another important factor in managing reputational risk is establishing what Mr. Brotzen calls "credit in the bank" with stakeholders. If a company can engender a trusting relationship with its shareholders, it stands a better chance of salvaging its reputation should a disaster occur, he said. "I think reputation is about a historical perception by your stakeholders. The key is to build up goodwill," he said.

"The public is critical, but it is not always unsympathetic," said Ms. McLennan. "It depends how you handle it if you get caught out."

Ms. McLennan and Mr. Brotzen told conference attendees that they should regard reputational risk as they would more traditional risks and ensure that they have strategies in place to guard against those risks and to mitigate the damage should the worst happen.

"Organizations need to prioritize the threats to their reputations and look at what management procedures they might adopt to combat them," said Mr. Brotzen. "All risks are predictable to some degree as long as you start thinking about them far enough in advance." **BI**



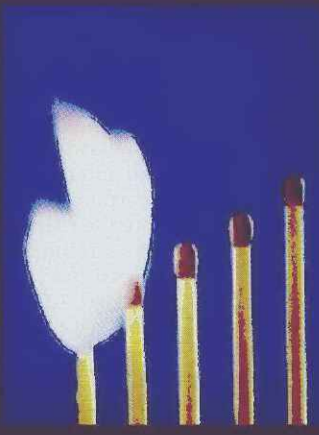
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# Many U.K. companies lack cyber cover: Survey

By SARAH VEYSEY

BIRMINGHAM, England—Three out of four U.K. businesses lack coverage for damage caused by cyber risks, such as computer viruses and hacker attacks, a recent survey shows.

The survey, conducted by Lloyd's of London, polled attendees at this year's Assn. of Insurance & Risk Managers conference, held June 5-7 in Birmingham, England. Lloyd's found that almost half of the 166 respondents' computer systems had been infected by viruses, while 12.7% had been breached by hackers.

One-quarter of those businesses affected by viruses, hacking or cyber-squatting—in which a company's name or brand is registered as

an Internet domain by someone unaffiliated with the company—said their approximate loss was less than £100,000 (\$151,010). At the same time, 11.4% said their losses fell in the £100,000 to £500,000 (\$755,050) range, while 3.6% reported costs of £500,000 to £1 million (£1.5 million). In addition, 1.8% reported costs in the £1 million to £5 million (\$7.6 million) range, and 2.4% said costs exceeded £5 million.

Just 10.2% of businesses surveyed said they had bought specific coverage for cyber risks before experiencing a problem. In addition, 1.3% said that they had bought coverage after experiencing an e-commerce-related problem, while 74.7% said they had no such coverage.

Companies were asked to rate which e-commerce risk was of most concern to them; multiple answers were permitted. Nearly two-thirds—62.7%—cited exposure to unanticipated liabilities. More than half—

54.2%—said they were concerned about business interruption due to systems problems, and 40.4% cited

man Max Taylor. "What is even more alarming is that without proper e-commerce insurance cover,

responsible for billions of pounds of damage worldwide and massive business interruption. I don't believe there can be any doubt that this is going to be repeated again and again until organizations learn the lessons—tighter security, closer relationships between IT professionals and risk managers, and the recognition that dedicated cyber insurance is vital if revenues and costs are to be protected," he said.

In a "snapshot" survey of the at least 50 members of AIRMIC's newly created e-commerce special interest group, 95% said they believe that insurers and brokers do not have an adequate understanding of the risks associated with e-commerce.

While 60% said brokers had provided some help in tackling e-commerce-related problems, just 27% of respondents said they believed that capacity and coverage available for e-commerce-related risks were

See *Cyber* on next page

**AIRMIC**

**'This survey paints a very worrying picture of unprotected businesses beginning to count the cost of cyber vandalism,' says Lloyd's Chairman Max Taylor.**

worries about business interruption resulting from hacking. Other concerns included: theft of sensitive corporate information, 37.3%; theft of customer data, 32.5%; and copyright or trademark abuse, 32.5%.

"This survey paints a very worrying picture of unprotected businesses beginning to count the cost of cyber vandalism," said Lloyd's Chair-

man Max Taylor. "What is even more alarming is that without proper e-commerce insurance cover,

those costs are going to keep mounting unless there are substantial improvements to (information technology) security in U.K. organizations." Mr. Taylor cited the so-called Love Bug virus, which recently wreaked havoc on systems around the globe, as an example of the on-line exposures companies currently face. "The Love Bug virus was re-

# Risk management standards effort on schedule

By SARAH VEYSEY

BIRMINGHAM, England—A broad effort to develop risk management standards in the United Kingdom is proceeding on schedule and will include comments from working risk managers, the project's coordinator says.

The Assn. of Insurance & Risk

Managers, the Assn. of Local Authority Risk Managers and the Institute of Risk Management in April announced their plans to jointly create internationally recognized standards for risk management (BI, May 8). They plan to make the proposals available to their members for review and hope to publish a draft proposal for public comment by year end.

"It is a huge challenge," said David Ovenden, risk management consultant at KPMG in London and coordinator of the project, during a

session at AIRMIC's annual meeting earlier this month in Birmingham, England.

"I have been gathering information; for example, looking at the Australian and New Zealand standards. But trying to crystallize it is going to be a major operation," said Mr. Ovenden, who served as chairman of AIRMIC in 1987-88 while he was risk manager for P&O Steam Navigation Co.

Mr. Ovenden said that the three organizations would first submit proposed standards to their respec-

tive members for review. "We will keep it within the three organizations at first, and then, when we have reached a consensus, we will put it out to the market," he said.

"When the new RM standards are established, they will be offered for adoption within the evolving risk community," AIRMIC said in a statement. "After a period in operation of around one year, the standards would be submitted to the British Standards Institute for its official ratification prior to a similar submission to the International

Standards Organization for worldwide recognition."

While accounting firms would not be excluded from the process of devising the new standards, the three U.K. risk management bodies would do the bulk of the work, Mr. Ovenden said.

Risk managers "are the people who should do the preliminary work," he said. "We all have to agree and then listen to the accountants to see what they bring to it. But the first stage is internal within the three organizations."

Accountants are entering the discussions by virtue of their role in advising company executives. A U.K. report on corporate governance has suggested that accounting firms play an important role in helping manage both financial and operational risk.

Meanwhile, AIRMIC announced changes in several of its special interest groups, or committees, to reflect emerging 21st century risks.

**AIRMIC**

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**'I have been gathering information. . .but trying to crystallize it is going to be a major operation,' says David Ovenden.**

AIRMIC's former health and safety, environmental, and employers liability special interest groups have been combined to form a liability special interest group that will concentrate mainly on the issue of stress-related claims. In addition, the integrated risk management special interest group will form a new corporate governance group to explore the risk management implications of industry consolidation and pressure to achieve shareholder value. Also, AIRMIC formed a new e-commerce special interest group.

Also at its conference, Mark Butterworth, risk manager at Prudential P.L.C., was succeeded as chairman of AIRMIC by Alan Fleming, head of insurance and risk management at rail operator Railtrack P.L.C.

Before joining Railtrack, Mr. Fleming served in risk management roles at a number of large corporations, including Guinness P.L.C. and Imperial Chemical Industries P.L.C.

## INTERNATIONAL

## Cyber

*Continued from previous page*  
adequate. In addition, only 20% of respondents said they thought the provision of insurance was sufficient to protect them against cyber risks.

"I am beginning to hear alarm bells about the market's ability to respond to these risks—especially business interruption," said Mark Butterworth, outgoing chairman of AIRMIC and risk manager of Prudential P.L.C. "Insurers will have to look at their (business interruption) policy wordings and develop them," he said.

The AIRMIC survey revealed that while three-quarters of the risk managers' companies had set up working groups to deal with e-commerce issues, two-thirds of the risk managers questioned had not been consulted about the risks to the company. A re-

sounding 80%, however, said they believed they should have been consulted.

Two-thirds of the e-commerce special interest group members said they viewed e-commerce as a natural evolution of business and not as a new and unique area of risk. The vast majority of respondents—80%—said they thought e-commerce risks could be controlled using traditional techniques.

Stuart Martin, chairman of the e-commerce special interest group, said: "E-commerce and use of the Internet is still a largely unexplored territory and, as such, one which needs to be traveled with care and the advice of those who have relevant knowledge. Venturing into this new challenge without risk management help is rather like a trapeze artist attempting a new routine without a safety net." **BI**

## Conference attracts more than 400

Risk managers explore 'Adding Value' at AIRMIC event

BIRMINGHAM, England—More than 400 attendees gathered in the International Convention Centre in Birmingham,

**AIRMIC**

England, June 5-7 for this year's Assn. of Insurance & Risk Managers annual conference.

The conference attendees included risk managers, insurers, reinsurers, brokers and consultants. Attendees included Roger Andrews, current president of the New York-

based Risk & Insurance Management Society Inc.; and Susan Meltzer, the immediate past president of RIMS.

The theme of the conference, "Adding Value," was chosen by outgoing AIRMIC Chairman Mark Butterworth, risk manager for Prudential P.L.C. Speakers included Mary Francis, director general of the Assn. of British Insurers; and John Humphrys, a British Broadcasting Corp. newscaster.

"I believe adding value should be one of the key objectives for 21st century risk managers," Mr. But-

terworth said. "It could be achieved through better knowledge and information, adding value through improved systems, earlier identification of risks, better assessments, more flexible service suppliers, greater employee awareness—whatever, as long as it benefits the corporate bottom line."

Next year's conference will be held June 4-6 at the same venue.

More information is available from AIRMIC, 6 Lloyd's Ave., London EC3N 3AX, England; 44-207-480-7610; or on the Web at [www.airmic.com](http://www.airmic.com).

## Jaffray

*Continued from page 21*  
capital to cover impending asbestos-related losses. They also allege that the true extent of the asbestos problem, which almost ruined the Lloyd's market, was known to key players at Lloyd's but concealed from names.

Sir David told the court that a conspiracy by Lloyd's to fraudulently recruit names in the 1980s and 1990s would have required a degree of control and manipulation inconsistent with the way Lloyd's operated at the time. He described the Committee of Lloyd's, the market's governing body prior to the R&R plan, as a "particularly anachronistic and inefficient forum for discussion and decision-making in the context of a dynamic and increas-

**'It is important to remember that Lloyd's is a marketplace,' says Sir David Rowland, a former Lloyd's chairman.**

ingly competitive international insurance market."

Mr. Goldblatt told Sir David that "the whole of this case is about whether eyes were closed to things that were there to be seen."

Asked by Mr. Goldblatt whether he was surprised that Lloyd's kept no central tally of asbestos-related losses in the 1980s, Sir David said, "My surprise lessened once the complexity of establishing the position became apparent."

"Although we were well aware of the gravity of the situation, we were all of the opinion that it could be managed within the existing structure of the society," he added.

Sir David admitted that many of Lloyd's problems in the 1980s were caused by the incompetence of some individuals working in the market. "There were a number of people (working in the market) that did not come up to standard. There were many others, thank God, that did," he said. He stressed, however, that he was not questioning the competence of any members of the Committee of Lloyd's or preceding chairmen of the market.

While he expressed sympathy for those who had incurred large losses, Sir David told the court: "It is important to remember that Lloyd's is a marketplace."

The hearing is expected to continue until July. The judge, Mr. Justice Cresswell, is expected to return a verdict in the fall. **BI**

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# NAIC

Continued from page 3

cussed in the 46-page draft of Gramm-Leach-Bliley Act compliance regulations, which were based on the NAIC's Health Information Privacy Model Act and the health privacy regulations proposed by the Department of Health and Human Services.

Insurer trade association representatives, who had obtained copies of the June 7 draft just a few days before the meeting, complained about many aspects of the proposal, including the three-year sunset clause that would allow the NAIC to later beef up what it describes as "minimum compliance regulations" now under discussion.

Overall, the draft is "overly burdensome and particularly bureaucratic," said Debra Ballen, executive vp-public policy management for the American Insurance Assn. in Washington.

The NAIC appears very committed

to extending privacy protections to third-party beneficiaries and claimants covered by insurance policies, which may include claimants under workers compensation and group auto policies, Ms. Sebelius said.

"Employers should be concerned with the proposed health privacy rules as they affect their ability to keep fraudulent claims at a minimum," Massachusetts Insurance Commissioner Linda Ruthardt, a former risk manager, said in an interview.

"The price of the claims is in the product or service, and fraudulent claims reduce the pool of money available to employee benefits," she said. "The model is not designed to encourage fraud, but regulators need to be careful that they don't inadvertently make it easier to commit fraud."

For example, the proposed model allows an employer to use an employee's personal health information to

fight fraud, but requiring the employer to send the worker a notice that such information is being reviewed is "strange," said Ms. Ruthardt. Some claimants and their attorneys might use such information as "a road map" to track the employer's investigation or consider the notice to be a form of admission by the employer that the claim is valid.

In addition, unclear definitions of "licensees" and "business partners" raise several questions about how the provisions would affect different state's workers compensation systems and participating employers, self-insurers, insurers and the service companies.

Determining the specific impact of the proposal on employers is very difficult because only after analyzing their method of financing workers comp risk can it be determined what, if any definitions, they meet, according to an interview with John Conniff, a deputy superintendent of the Wash-

ington Insurance Department, who oversaw drafting of the NAIC's 1998 health privacy model.

During the meetings, Ms. Sebelius referred technical questions to him. She also asked him to join the working group.

"The way the parts fit together now is incomprehensible, but we will be working very hard and fast to fix those things," said Mr. Conniff, who is seeking election as Washington's insurance commissioner. Current Commissioner Deborah Senn plans to run for the U.S. Senate.

The intent of the draft proposals is not to restrict an employer or insurer in paying or investigating workers comp claims or any other benefit claims, though they would need separate authority from a worker to use the worker's health information for any other purpose, he said.

Of particular concern to many critics was a provision that allows workers "to exercise the right to access,

amend and correct protected health information and procedures."

Changes Mr. Conniff favors include developing a single, meaningful notice for consumers that integrates both financial and medical information as well as limiting access to information for beneficiaries to those who are actually receiving benefits, rather than those who are unnamed at the policyholders' request.

Among the few people praising the proposal were representatives of consumer groups, including Bob Hunter, director of insurance for the Consumer Federation of America in Washington and a former Texas insurance commissioner.

Copies of the working draft on privacy are available by calling the NAIC's Kansas City, Mo., headquarters at 816-842-3600. Comments should be sent to Jack Chesson at the NAIC's Washington office, phone: 202-624-7790, fax: 202-624-8579.

## Pollute

Continued from previous page finally quantify the cost to clean it up. The better you quantify it, the better position you'll be in," Mr. Stein said.

It's important to recognize common exposures, according to Mr. Stein. He cited some of these as general premises and operations, solid-waste landfills and waste disposal, underground storage tanks, hazardous materials, electrical utilities, lead and asbestos, pesticide spraying, waste water treatment, water treatment, and policy decision-making.

After identifying potential exposures, a risk manager can look at the various pollution products offered, such as pollution liability, contractor's pollution liability, environmental professional liability, environmental surety bonds, storage tank liability, property transfer liability and hazardous-waste processor's and transporter's insurance.

When choosing coverage, Mr. Stein said, it is important to thoroughly understand the needs of the government entity.

"When you know what you want, you've got to know what to get. You need to identify and assess major pollution exposures and develop a risk management plan in order to control risk and reduce premium costs," Mr. Stein said.

He also recommended becoming familiar with coverage terms and conditions, including the various exclusions, limitations and optional coverages.

And when determining which partners to work with, Mr. Stein warned, it is vital to choose carefully.

"Do your homework, and work with people with some background. Not all insurance brokers and agents are created equally," he said.

Finally, Mr. Stein emphasized the importance of demonstrating professionalism, making it clear that the risk manager's role goes beyond simply the purchase of insurance. He suggested gaining the support of others through reports, newsletters and training and safety committees.

"You have the opportunity to be a hero, a scapegoat or anything but a hero. This is something you should be preparing for—you will be called upon to react. Questions will be asked. Were the current regulations and policies enforced?" Mr. Stein asked.

"When it happens, you're going to have to deal with the issue. Look into the liabilities; be the best risk manager you can be," Mr. Stein said.

Moderating the session was Evan R. Chesterman, insurance specialist with the bureau of risk management for the city of Richmond, Va. **BI**

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## Commentary

# Readers offer moving solutions

"It's mostly trash," is the consensus of our readers responding to my anguished plea for help in deciding what to keep and what to throw away as we prepare to move our Chicago office next year.

A 33-year veteran of the insurance business wrote: "I have been with five different companies, had 20 offices, in five states (two of them twice), and 11 cities. As they say, I've been moved.

"For the first 20 years, I carried the wealth of my learning from place to place, neatly packed in moving boxes, which I never opened. Time and again, something would come up and I would think of relevant material I had packed away in the boxes, and vow to dig it out. Time and again, I would delay until I put out one last fire. And I never opened a box.

"Needless to say, every time I moved there were additional boxes, all neatly packed, all stored in the basement, never opened."

When she left CIGNA P&C last July, after 22 years, she "decided to leave the past and 16 neatly packed boxes behind. Traveling light has its advantages. The main advantage being, I no longer feel the guilt of not referring to my treasure trove of archived material."

Yes, but how guilty will I feel if I throw away something I need later?

Another reader with employee benefits responsibilities wrote, "Having just moved my office after 32+ years to a new location, I can truly empathize with what you're going through. Was I sure I didn't need those canceled pension checks that terminated employ-

ees received in the late 1970's? What about all the Form 5500s from the early '80s? Suppose we were audited? And what about participants' statements of accounts from 20 years ago? Suppose someone had a question??? Decisions, decisions!

"The first go-around was the hardest; the second was easier; by the time I got to round three, anything with a date prior to 1992 bit the dust. I just kept telling myself that everything I packed eventually had to be UNPACKED."

This assumes there won't be any long-term storage area in the new digs. I'm afraid to ask.

A risk manager who cleaned out 14 years of files not too long ago after her employer was acquired warned, "My advice is to start early, because it will take a long time!"

I know, which is why I am procrastinating.

I did, however, also hear from a few fellow pack rats.

One, who also organizes his business cards electronically and keeps the originals, confessed: "My business card files bring me a great deal of pleasure as I reflect over the relationships I've had in the industry through the years. I keep each card in a plastic sleeve, carefully entombed in a three ring binder—sorted by periods in my life," which, he noted, included employment with two brokers and an insurer. "Within each binder are subsections, like insurance companies, client contacts, personal contacts, my first business trip to Europe, my first international conference, etc. I wouldn't trade the memories that my card file 'keepsakes' bring for all the palm-tops in America! My suggestion: Scan the facts and keep the memories."

Now I am sorry that I have thrown away the old business cards that I did. But I wasn't organized enough to always know where and when I collected them all.

My favorite advice, which I am sure to follow, comes from an old friend who wrote: "I'm a fellow pack rat, so there are lots of people who have told me to throw out the vast majority of the stuff I've collected. Looking back over my files each time I relocate, I have a sense of comfort that my 'library' reflects my quirky values, and the eclectic group of contacts I've enjoyed over the years. Rather than let someone else rush you into dumping mementos into the shredder, create a special category of boxes for stuff you treasure, but can't defend keeping at work, and ship them home. That will allow you the luxury of knowing that you haven't really lost those irreplaceable artifacts, and also the freedom of setting your own timetable for doing further culling."

\*\*\*

And now a shameless plug for a great cause: The Angus Robinson Jr. Foundation has a limited supply of "Reinsurance Folk Songs" on a compact disc, which was produced to commemorate the 10th anniversary last month of the scholarship fund. With lyrics written by Mark Hinkley, the funniest guy in reinsurance, the songs are a hoot, to say the least. To order yours, send \$25 to the foundation at 166 High Meadow Road, Southport, Conn. 06490. The proceeds will fund scholarships for college students studying insurance who need financial assistance. This is one CD that really is a treasure.

*Publisher and Editorial Director Kathryn J. McIntyre's Commentary appears fortnightly and on [www.businessinsurance.com](http://www.businessinsurance.com). She can be reached at [kmcintyre@crain.com](mailto:kmcintyre@crain.com).*

## Medicare

*Continued from page 2*

Right now, however, it appears unlikely that an agreement could be reached this year, observers say.

"The prospects for broad-based bipartisan cooperation appear dim," said Frank McArdle, a consultant in the Washington office of Hewitt Associates L.L.C.

While there is widespread agreement among members of Congress that Medicare should be expanded, the intense partisan climate has

made finding agreement on any issue—let alone a potent political one that affects 40 million beneficiaries—extraordinarily difficult.

"The will to act is there on both sides. But whether there is the means is another question. Some members do want a deal, but others just want an issue," said Dean Rosen, a former congressional staffer and now senior vp-policy and general counsel with the Health Insurance Assn. of America in Washington.

"The level of cooperation has not been high all year and is only like-

ly to decrease in the weeks ahead," Mr. Dennett said.

And there is more than partisanship at work. Republicans, for example, have been leaning toward an approach in which Medicare beneficiaries would buy prescription drug coverage from private insurers. The government would subsidize premiums for lower-income retirees under this approach.

On the other hand, congressional Democrats and the Clinton administration are more interested in an approach in which Medicare would

*See Medicare on next page*

## Data

*Continued from page 1*

that lose the use of their computers have suffered a covered property loss. The court ruled that the loss is covered regardless of whether the equipment is physically damaged or merely rendered temporarily inoperative.

The policyholder in the case, Santa Ana, Calif.-based Ingram Micro Inc., sustained a business interruption loss in December 1998 after a brief power outage at the company's data center in Tucson, Ariz., shut down three mainframe computers there and caused an eight-hour-long computer programming problem. The power outage, however, did not damage any computers.

While Ingram Micro's computers were offline, the wholesale distributor of microcomputer products could not process orders from customers worldwide, and many customers took their business elsewhere.

An Ingram Micro spokeswoman said she could not discuss the case, which the company's property insurer is seeking to appeal to the 9th U.S. Circuit Court of Appeals.

Daniel McNeil, a partner with Bullivant Houser Bailey in Portland, Ore., who represented Ingram Micro's insurer, said the data center did not have any emergency power that would have allowed technicians there to shut down the computers appropriately.

According to computer experts, shutting down computer systems "cleanly" during a power disruption nearly guarantees that data and programming will not be corrupted or lost.

"It's really easy to protect power," said Matt Smith, network manager for risk management information system vendor Risk Laboratories L.L.C. of Marietta, Ga.

The easiest way to protect computers in a critically important data center is with an uninterruptible power supply device, computer experts agree.

Experts said that most large companies have an uninterruptible power supply for their file servers to give their computer technicians enough emergency power during an outage to shut down computer systems appropriately and thereby avoid data and programming corruption. Such backup power systems typically provide 10 to 60 minutes of emergency power.

The cost of such a system at a 10,000 square-foot facility would be about \$100,000, Mr. Smith said.

Another relatively inexpensive way to guard against power outages would be to negotiate with the local power company to install a secondary power route into the data center, said Marc Sollosy, vp and chief information officer for Amarillo, Texas-based Corporate Systems, another RMIS vendor.

An emergency generator also could keep a data center running during a power outage, but even large companies generally do not opt for that measure, said Dave

Cianfarini, owner and chief executive officer of Spark Group Inc., a Hampstead, Md.-based company that designs, develops and implements Internet-based electronic business solutions.

Mr. Sollosy agreed. The cost of a generator is several times greater than a uninterruptible power supply and could total more than \$1 million, he said. In addition, storing fuel onsite to run generators can be hazardous, he added.

Mr. Sollosy said a more viable alternative for companies would be to maintain one of two types of emergency computer facilities:

- A hot site, which is tantamount to running a redundant data center. Data is written at that facility at the same time it is written at a company's primary facility.

- A warm site, which is a facility available to the company during an emergency. A company, however, would have to bring along backup tapes to the warm site to re-establish operations.

The experts also cautioned that companies have to pay as much attention to their network servers, or their offices will not be able to communicate with their data centers. Network servers should be protected by uninterruptible power supply devices and by a secondary telecommunications service provider, they said.

The experts also stressed the importance of making computer systems "fault tolerant." Among their suggestions were that companies:

- Routinely make tape backups of data on computer disk drives and store the tapes off site.

- Use a multiple disk drive configuration that distributes data among all the drives so that data is not lost if one drive fails.

- Investigate using software that alerts computer technicians when various computer components are at risk of failing.

Because computer system safeguards are readily available and are in use at many companies, property policyholders that do not implement such protections face coverage disputes with their insurers if their systems are knocked out of service, some attorneys said.

If policyholders should have expected that, for example, a power disruption would cause their computer systems to malfunction and they do not take reasonable precautions to safeguard their systems against that risk, then insurers could argue that the loss was not fortuitous, the attorneys said.

"I think it's an argument that should well be considered and brought, depending on the facts," said insurer attorney Walter Andrews, a partner with Shaw Pittman in Washington.

Power outages may be accidents, but if policyholders know that their computer systems are vulnerable to an outage, "that is not a fortuitous event," Mr. Andrews said.

Insurer attorneys said the coverage dispute in those circumstances would be similar to the one that policyholders have faced over pollution liability coverage. Insurers in those

disputes have argued—often successfully—that a policyholder that poured a toxin into the ground either intended to pollute or should have expected that a pollution problem would result.

"If an insured should have reasonably expected a loss and could have protected against the loss—this is not the stuff for insurance coverage," said Eric Sinrod, a partner with Duane Morris & Hecksher L.L.P. in San Francisco.

"It's a bad business deal" for insurers, said Mr. Sinrod, who represents insurers in coverage disputes and high tech companies in non-insurance matters.

But policyholder attorneys—and even some insurer attorneys—said policyholders can make a case that insurers that want policyholders to safeguard their computer systems must outline that requirement in policy language.

If an insurer did not question a policyholder about its computer system safeguards, "a policyholder could argue the insurer never put that obligation on the policyholder," Mr. Sinrod said.

Unless a policy contains an endorsement outlining which protective safeguards the policyholder must have, insurers generally cannot raise the coverage defense that policyholders did not adequately avoid a loss, said Michael Donovan, a partner with Hancock, Rothert & Bunshoft L.L.P. in San Francisco. Mr. Donovan largely assists insurers in developing Internet products.

Indeed, Mr. McNeil, the attorney for Ingram Micro's insurer, said the insurer did not raise that defense because Ingram Micro's policy did not contain such a provision.

Policyholder attorney Joshua Gold said that an insurer that would raise a fortuity defense would be standing on shaky ground.

Mr. Gold, a partner with Anderson Kill & Olick P.C. of New York, pointed out that Florida property owners face hurricane risks every year. "It's almost a certainty it will hit and cause damage, but no one would argue that it's not a fortuitous loss," he said.

Underwriters are responsible for assessing risks and determining which ones they will cover, Mr. Gold said. If the risk needs protection beyond what the policyholder is providing, the insurer should spell that out as a condition of coverage, he said.

Mr. Andrews, the insurer attorney, characterized that argument as a "red herring."

"The underwriter shouldn't be telling policyholders how to avoid losses," he said. "They're there to say what the rating is, what the risk is."

A more near-term issue than legal battles that property policyholders could face is exclusionary language.

"There is no doubt that insurers will be putting exclusions into their policies very quickly if this is the way courts are going with this issue," said a spokeswoman with the Insurance Information Institute in New York. She said she would expect to see those exclusions appear on a company-by-company basis. **BI**

# Medicare

Continued from previous page  
be expanded to create what would become a new "Part D" program, through which prescription drug benefit coverage would be offered. Premiums would be paid directly by beneficiaries to Medicare with the government subsidizing premiums for lower-income beneficiaries.

And Republicans and Democrats have been busy bashing each other's proposals. Rep. J.C. Watts Jr., R-Okla., chairman of the House Republican Conference, criticized the administration's prescription drug package as a "one-size-fits-all government-run program" in which benefits would vanish as drug prices continue to escalate.

By the same token, the administration last week labeled the Republican effort to provide prescription drug coverage as one that builds on the "flawed private Medigap insurance

market."

Insurers themselves have doubts about the wisdom of offering prescription drug-only coverage to Medicare beneficiaries through some type of cooperative arrangement with the government.

"The experience of working with the government as a partner has not been a good one," the HIAA's Mr. Rosen said.

Business groups, while aware that an expansion of Medicare to cover prescription drug costs could cut employers' costs, are concerned that both parties may be underestimating the expense of such an expansion. As a result, they warn, if the program were expanded, benefits might have to be cut in only a few years.

"There could be a big promise and splash, but the costs may not be sustainable. You need to look at the long-term viability of any proposal, not just its enactability," Mr. Dennett said.

In 1988, Congress significantly expanded Medicare to cut copayments and deductibles. Only one year later,

amid massive protests by higher-income retirees about the size of a surcharge they paid to help fund the expansion, Congress repealed the 1988 law. Employers, which had just redesigned their plans to eliminate retiree benefits that duplicated the expanded Medicare program, were forced to overhaul their plans again.

Even though the odds are not high that Congress will pass legislation this year to add prescription drug benefits to Medicare, the likelihood of it passing next year, when a new president takes office, is much greater, some say.

"The first year of a new presidency is typically the period when a new administration has the most leverage," Mr. McArdle said.

In fact, the two main party candidates—Vice President Al Gore and Texas Republican Gov. George W. Bush—have advocated adding a prescription drug benefit to Medicare.

"Whoever is elected will have a promise to keep and an opportunity to act," Mr. McArdle said. **BI**

# Judd

Continued from page 1  
dinger said.

Mr. Browne said that Mr. Judd's "devotion to the organization is unparalleled in today's society," and his tenure with a non-profit association is impressive.

Mr. Judd began his work with the society when ASIM recruited him from the Glass Container Manufacturing Institute to help the struggling association. It took some convincing for the association to finally land him.

In an April 10 interview in *Business Insurance*, Mr. Judd said he initially was not interested in the job because he didn't see any problem with ASIM. "I thought, how can an organization with this potential be sitting dead in the water? I told them, 'You represent purchasing power that's unreal.' RIMS (at that time) represented \$60 billion in purchasing power."

Eventually, he responded to ASIM's pleas and accepted the job. He took direct aim at polishing the organization's image, first by revamping its national conference.

The affair had become a boozey get-together for insurance buyers, where business often took a back seat to partying. Mr. Judd moved quickly to remedy the situation. He started by banning the word "convention" as a description of the annual conference.

Mr. Heydinger recalled that Mr. Judd was determined that the conference would be "disciplined and educational. He worked hard to convert it from a party atmosphere."

Mr. Judd changed the focus of the event to education and began soliciting the participation of exhibitors as a way to raise money for the society. Today, the week-long conference features nearly 200 educational sessions led by members of the risk management and insurance community and a sprawling exhibit hall filled with insurers, brokers, vendors and others who want to reach risk managers.

Cheri Hawkins, who served as RIMS president in 1990-91, said the image makeover extended to the organization's publication, which had been titled *National Insurance Buyer*. "He picked it up, called it a rag and revamped it into *Risk Management magazine*," Ms. Hawkins recalled.

In his work to foster risk management education, Mr. Judd was a strong supporter of the Spencer Educational Foundation Inc. He was instrumental in moving the

foundation from the Atlanta chapter of RIMS, where it began, to New York, where it has grown its assets in excess of \$4 million to fund risk management scholarships.

ASIM became RIMS in 1975, and as its focus changed and membership grew, Mr. Judd began forging ties with risk management organizations in other countries. He was instrumental in launching the AEAI/RIMS International Risk Management Forum in Monte Carlo, Monaco.

Mr. Judd made it a priority to stay in touch with the organization's chapters. He traveled exten-

**'He felt strongly about the discipline of risk management and RIMS' role in protecting that,' says Donald T. Browne.**

sively and tried to visit each chapter at least once every two years. He once said he would have "lunch in Vancouver, dinner in Seattle, stay overnight and then do it again in San Francisco and Los Angeles."

Ms. Hawkins traveled with Mr. Judd during her term as RIMS president. "Ron was known everywhere," she recalled. "People thought of him as RIMS."

She said Mr. Judd decided not to inform many people when he became ill in early 1999, but he changed his mind after about six months. "One day he called me and said, 'I'm so sick, and I want people to know I'm sick. I want to hear from my friends.'"

He heard from many, she said, and was somewhat surprised by the response. In an e-mail to Ms. Hawkins in July, Mr. Judd said he was "a bit overwhelmed" that people were still interested in "this old war horse."

He also wrote to Ms. Hawkins about his own amazement as to how far RIMS had come. "I sometimes wonder if we realize what we started," he wrote. "I understand the Spencer Foundation has its own Web page and the educational committee is one of the busiest at RIMS. Isn't that great?"

Mr. Judd's rapidly failing health came as a surprise to many of his colleagues. When he appeared on a video presentation at RIMS' annual meeting in San Francisco this year, many in the audience expressed concern about his appearance. Colleagues agreed that it was

sad for him to miss this year's RIMS conference, a celebration of the society's 50th year.

"It was tough for him not to be able to go to the conference," said Mr. Winans. "I talked to him about two weeks before the conference," he said, and Mr. Judd was looking forward to continuing a Saturday night tradition of meeting with Mr. Winans and other friends before the conference kicked off on Sunday.

Just before the get-together was to take place, Mr. Winans received a call from Mr. Judd's wife, Jean, who told him that Mr. Judd was back in the hospital.

Upon his retirement from RIMS in 1991, Mr. Judd was made an honorary deputy member of the society. Before he left his post, Mr. Judd said that his leaving was a "departure" and not a retirement. "I intend to get another job," he announced.

That same year, RIMS named Mr. Judd the winner of its most-prestigious award, the Dorothy and Harry Goodell Award. The award was established in 1978 by Mr. Goodell, a RIMS founder and its first president, to recognize outstanding achievements in furthering the goals of risk management.

After leaving RIMS, Mr. Judd worked for American International Group Inc. as a consultant. While there, he persuaded the insurer to set up a risk management advisory board.

He eventually settled into retirement in Sea Cliff, N.Y., with his wife.

Ms. Judd said her husband was "one of the most thoroughly honest and ethical men I knew. He was a good leader, illustrative of the fact that he would bring people together and say, 'Let's talk about our differences'" as a way to solve problems.

In an interview a few weeks before he died, Mr. Judd said that he had "loved the job" he held with RIMS.

"In the end," Mr. Judd said, "we all loved each other."

He is survived by his wife, three children and a grandchild.

Ms. Judd has designated the Spencer Educational Foundation as one of the recipients of donations in Mr. Judd's name. Donations can be sent to the foundation at 655 Third Ave., New York, N.Y. 10017-5637.

A memorial service will be held July 9 at the Unitarian Universalist Society of Shelter Rock, N.Y. In lieu of flowers, contributions can be sent to the Interfaith Nutrition Network, 148 Front St., Hempstead, N.Y. 11550. **BI**

## Updates

### Limit merger appears on track

LONDON—Despite recent complications, the proposed merger of Limit P.L.C. and Wellington Underwriting Agencies P.L.C. at Lloyd's of London appears likely to proceed.

On June 9, the Limit board announced it would unanimously recommend Wellington's offer of 133.5 pence (\$2.02) per share for Limit, which had bested an offer earlier in the day of 133 pence (\$2.01) per share from Australian insurer QBE Insurance Group Ltd. Following the announcement, however, QBE made another unsolicited offer for Limit, this time for 135 pence (\$2.04) per share.

The Limit board announced last week that it would stand by its recommendation of the Wellington offer, saying that it represented a better value for shareholders.

Limit said it is now awaiting full details of the Wellington offer and will then invite its shareholders to vote on the proposals.

QBE may not be giving up so easily, though.

In a June 9 announcement, QBE said that it "reserves the right, in the event that this proposal is rejected, to take further action as it deems appropriate."

Limit and Wellington began merger talks in March. Plans called for Limit to take over Wellington and create a new company, Ensign Underwriting P.L.C., that would be the largest independent Lloyd's-based insurance business. In May, QBE stepped in with a hostile bid for Limit.

At the time, Limit rejected QBE's offer of 120 pence (\$1.82) per share as unacceptable and set a deadline of June 6 for bids for the company.

### Employers Re names new CEO

OVERLAND PARK, Kan.—The head of a General Electric Co. real estate unit has been named the new president and chief executive officer of Employers Reinsurance Corp.

Ronald R. Pressman, 42, will replace David L. Calhoun, who served as president and CEO of Employers Re for less than a year before being named executive vp and chief operating officer of GE Aircraft Engines earlier this month.

Mr. Pressman, who was also named a GE executive vp, has been president of GE Capital Real Estate since 1997. While at the real estate operation, he launched new capital and equity programs and aggressively pursued international expansion, according to General Electric.

Mr. Pressman joined GE's financial management program in 1980 and served in a variety of leadership roles on the corporate audit staff. He became general manager of GE's Central and Eastern European operations, based in London, in 1990.

In 1992, Mr. Pressman was named CEO of GE Power Systems Europe; in 1995 and 1996, he was given responsibility for GE Power System's global marketing, product planning and power plant business units.

### Coke settles race bias suit

ATLANTA—Coca-Cola Co. has reached a tentative deal to settle a 14-month-old race discrimination suit that will cover 2,000 current and former African-American employees in the United States.

Terms were not disclosed, and a monetary award has yet to be determined.

In an order last week in Atlanta, U.S. District Court Judge Richard A. Story said that the level of monetary relief will be finalized after additional investigations are completed. Final details of the settlement are expected to be announced by the end of October, according to the judge.

The original lawsuit, which sought class-action status, was filed in April 1999 by four current and former African-American Coke employees alleging disparities between black and white employees in salaries, promotions, performance evaluations and dismissals.

The same day that the tentative settlement was struck, four African-American women filed a \$1.5 billion suit in state court in Atlanta.

The new suit against Coke, which is unrelated to the original race bias suit, alleges eight counts of discrimination, including negligent hiring and retention practices, a hostile work environment and the intentional infliction of emotional harm.

The four women, who are all former employees of the Coca-Cola Co., are being represented by personal-injury attorney Willis Gary and by Johnnie Cochran Jr., who served on the defense team of O.J. Simpson.

Coke officials did not return calls.

### Briefly noted

French reinsurer **SCOR S.A.** has named Henry Klecan Jr. to succeed Dominique Lavallee as president and chief executive officer of SCOR Canada, effective July 30. Mr. Klecan, who will be based in Toronto, most recently was a senior vp of The Citadel Insurance Co. Mr. Lavallee will move to Paris, where he will head SCOR's risk management and control group. . . . The Senate gave its approval Friday to a measure that would give **electronic signatures** the same legal standing as written ones under most circumstances. The measure, which President Clinton is expected to sign into law quickly, passed the House last Wednesday. . . . **Frontier Insurance Group Inc.** says it will defer a dividend payment due July 15 on its 6.25% convertible trust-originated preferred securities. Frontier earlier deferred an April 15 dividend, citing its need to improve liquidity.

# FTR FOR THE RECORD

Excerpts from BI's Daily Online Updates, June 12 - June 16, 2000

**PACIFICARE EXITS** PacifiCare Health Systems Inc. said last week it is withdrawing from its Ohio and Kentucky markets. The move is part of Santa Ana, Calif.-based PacifiCare's decision to focus its business in the Western states, where it is well-positioned in the commercial and Medicare health maintenance organization areas, the company said. PacifiCare's decision will affect about 54,400 members in its commercial HMO, preferred provider organization, indemnity and self-funded programs, as well as 6,300 members of PacifiCare's Medicare+Choice plan, Secure Horizons. The company has entered into a transition agreement with Indianapolis-based Anthem Blue Cross & Blue Shield that permits Anthem to provide health care coverage for PacifiCare commercial members affected by the departure, which is expected to be complete by Dec. 31. The exit is expected to result in a \$3 million to \$4 million charge to PacifiCare's second-quarter earnings, according to the company.

**CONSOLIDATION AT LLOYD'S** Continued consolidation among Lloyd's of London syndicates is likely in 2001, according to a Standard & Poor's Corp. report issued last week. Larger composite syndicates formed over the past several years generally have

## LLOYD'S

been more profitable than smaller specialist syndicates, and that will spur more consolidation in the market, S&P said. The consolidation within Lloyd's has been accompanied by an increase in new investments in the market. As a result, Lloyd's overall capacity remains steady at about £10 billion (\$15 billion) for 2000, the S&P review said. Corporate investors controlled an even larger portion of the market in 2000. Corporate vehicles in 2000 provide 80% of the capital in Lloyd's, compared with 73% in 1999, S&P said.

**SECURITIZATION DEAL** A State Farm Group unit has embarked on a one-year, \$90 million securitization deal for its Florida hurricane risk with Arrow Reinsurance

Co. Ltd., the Bermuda-based reinsurance subsidiary of Goldman, Sachs & Co. The transaction transfers to investors the risk associated with predefined levels of hurricane losses on the insurance company's property insurance

portfolio in Florida. Securities were offered to investors by a special-purpose Bermuda reinsurer, Alpha Wind 2000-A Ltd., which entered into a retrocessional agreement with Arrow Re. State Farm opted for this deal rather than a traditional reinsurance program in the interest of diversification, said Jim Ament, vp-operations for State Farm Fire & Casualty Co. in Bloomington, Ill. Mr. Ament said the premium paid for the cat bond on a gross basis was the same as that the insurer would have paid for traditional reinsurance. Menlo Park, Calif.-based Risk Management Solutions Inc. provided risk analysis support.

**FORMER CRUMP CEO DIES** Sidney A. Stewart Jr., former chairman and chief executive officer of E.H. Crump Cos. Inc., died May 21 at age 74. Mr. Stewart joined Crump in 1950 as an account executive



Mr. Stewart

and rose through the ranks to become chairman and CEO in 1981. Following Memphis, Tenn.-based Crump's 1986 acquisition by Sedgwick Group P.L.C., Mr. Stewart served as vice chairman of Sedgwick James Inc., as well as a member of the board of directors and executive committee of the parent company until his retirement in 1990. Crump Insurance Services Inc., the second-largest wholesale broker based in the United States, is now a unit of New York-based Marsh & McLennan Cos. Inc.

**ONLINE CREDIT RATINGS** French export credit insurer Coface Group and Chicago-based CNA Financial Corp. have launched an online credit rating and credit insurance service for e-commerce transactions. The service, dubbed "@rating," offers U.S. companies a way to check the creditworthiness of overseas business partners and to certify their own credit standing to their online partners. Ratings are either unsolicited or solicited. Unsolicited ratings are based on public information in Coface databases covering 35 million companies in 150 countries. A company may solicit a rating by providing Coface with additional non-public information. E-commerce transactions with any company rated higher than "fragile" can then be insured for non-payment, political and other risks by Coface and its partners in various countries, including CNA Credit.

**P/C 1Q RESULTS** Underwriting losses and declining investment gains helped drag the U.S. property/casualty insurance industry's net income down more than 35% during the first quarter of 2000, compared with the same period of 1999, according to an estimate released

last week by the Insurance Services Office Inc. and the National Assn. of Independent Insurers. After-tax net income fell 35%, to \$5.83 billion, during the first three months of this year, according to the ISO/NAII estimate. Underwriting losses skyrocketed to \$5.58 billion during the first quarter, an increase of 142% over a year earlier. Net investment gains fell to \$13.27 billion, down 8.3% from the same period of 1999. The drop reflected a reduction in net realized capital gains, as actual investment returns grew slightly, according to ISO/NAII. Both net written premiums and net earned premiums grew during the first quarter. Net written premiums grew 3.2%, to \$74.21 billion, while net earned premium grew 3.1%, to \$71.14 billion.



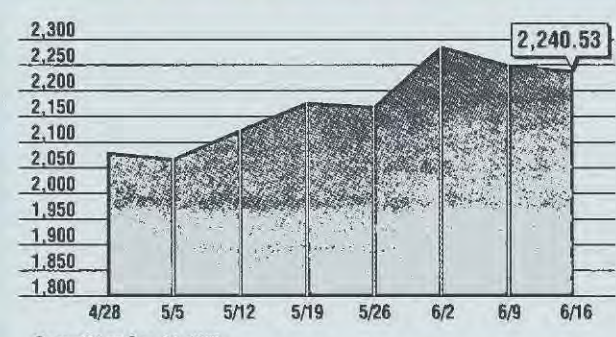
**BRIEFLY NOTED** Nigel Rogers has resigned as president and chief executive officer of Markel International, the London-based subsidiary of Markel Corp. Anthony Markel will become president of Markel International, Jeremy Cooke will continue as chief operating officer of Markel International and, subject to regulatory approval, Reg Brown will become managing director of Markel Syndicate Management, the company's Lloyd's of London managing agent. . . Jeffrey M. Yates, chief executive officer for industry and state relations for the Independent Insurance Agents of America Inc., will resign from the association after its annual convention in October. Mr. Yates' position will not be replaced; his responsibilities will be assumed by IIAA CEO Paul A. Equale and Executive Vp Bob Rusbuldt, an IIAA spokesman said. . . Rating agency Fitch IBCA has changed the status of its A- rating of Reliance Group Holdings Inc. to negative from evolving. The decision follows the downgrade of Reliance to B++ by rival rating agency A.M. Best Co. (BI, June 12) and doubt about whether the recently announced agreement for Leucadia National Corp. to buy Reliance will be completed, a Fitch statement said. . . Utah's Supreme Court last week declined to review a state appellate court decision awarding workers compensation benefits to a home-based salesman who fell while spreading salt on his icy driveway. The Utah Court of Appeals in February agreed with the state Labor Commission, which found Charles Tjas was eligible for benefits. A neck injury Mr. Tjas suffered in the fall left him a quadriplegic. . . Gill & Roeser Inc., a New York-based reinsurance broker, has formed a Banks-In-Insurance consulting unit to advise banks interested in expanding into insurance business. The unit will be headed by Herbert E. Goodfriend, a former investment banker, and Dale A. Myer, a former insurance executive. **BI**

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

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## BI Industry Stock Report JUNE 12, 2000, THROUGH JUNE 16, 2000

BROKERS			Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)	Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)	Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)			
Aon Corp.	NYS	35.81	0.53	-10.47	43.63	20.69	3950	Harleysville Group	NDO	16.50	0.00	15.79	20.88	11.63	131	XL Capital Ltd.	NYS	59.63	-0.88	9.16	63.50	39.00	1207
Brown & Brown	NYS	50.13	5.11	30.83	50.69	30.75	92	HSB Group Inc.	NYS	30.75	-0.20	-9.06	42.25	21.50	354	Zenith National Ins.	NYS	23.81	0.26	15.45	26.69	18.75	42
Clark Bards Holdings	NDO	15.00	0.00	4.35	21.00	11.63	11	HCC Insurance Holdings	NYS	19.25	0.65	45.97	25.13	8.00	502	<b>INSURERS/REINSURERS</b>							
E.W. Blanch Holdings Inc.	NYS	20.06	-12.77	-87.24	71.75	16.56	1166	ING Groep N.V.	NYS	64.56	2.38	5.84	66.50	46.81	707	AVERAGE			-1.82	-1.29			
Gallagher Arthur J. & Co.	NYS	37.81	-1.47	16.80	39.75	23.06	435	IPC Holdings Ltd.	NDO	14.63	3.08	-1.68	22.50	9.75	132	<b>HEALTH MAINTENANCE ORGANIZATIONS</b>							
Hibb, Rogal & Hamilton	NYS	34.56	5.13	22.35	35.25	20.39	153	Hartford Financial Services	NYS	53.56	-0.23	13.06	64.00	29.38	5335	Foundation Health Systems Inc.	NYS	13.13	13.51	32.08	20.06	6.25	3237
Kaye Group Inc.	NDO	6.00	-1.03	-28.36	11.88	5.00	7	John Hancock Financial Service	NYS	22.38	-7.25	31.62	24.63	13.44	3719	Humana Inc.	NYS	4.75	-5.00	-41.98	15.19	4.75	3937
Marsh & McLennan	NYS	105.69	4.71	10.45	112.50	61.75	3523	LaSalle Re Holdings Ltd.	NYS	14.88	-1.65	-9.65	16.83	10.88	141	Oxford Health Plans	NDO	24.00	11.30	89.16	24.44	9.75	11276
BROKERS	AVERAGE			-2.53				Lincoln National	NYS	36.44	-4.27	-8.91	57.50	22.63	2017	Pacificare Health Sys.	NDO	65.56	-1.78	23.70	91.00	31.13	2260
<b>INSURERS/REINSURERS</b>								MAIC Holdings Inc.	NYS	12.00	4.35	-43.36	29.05	10.00	269	Sierra Health Services	NYS	3.69	152.00	-44.86	15.75	2.75	1211
ACE Ltd.	NYS	28.25	-0.66	69.29	31.44	14.08	4838	Markel Corp.	NYS	149.75	0.84	-3.39	192.00	111.50	69	United HealthGroup	NYS	80.75	4.96	52.00	84.06	39.38	7263
Accel International Corp.	NDO	0.63	0.00	-37.50	2.25	0.50	7	MBA Insurance Group	NYS	51.81	-4.38	-1.89	88.31	36.31	1845	Wellpoint Health Networks	NYS	74.19	7.42	12.51	97.00	48.25	1678
Acceptance Insurance Cos.	NYS	4.63	-8.64	-19.57	15.94	2.75	142	Meadowbrook Insur. Group	NYS	5.06	-10.00	-22.86	14.06	4.75	85	HMOs	AVERAGE			6.59	17.52		
AEGON N.V.	NYS	38.19	6.26	-20.03	49.13	31.50	877	MetLife	NYS	20.06	-4.46	40.79	21.06	14.25	10064	ALL COMPANIES	AVERAGE			1.57	4.57		
Aetna Life & Casualty	NYS	69.50	3.15	24.52	97.19	38.50	6445	Mutual Risk Mgmt. Ltd.	NYS	19.06	8.93	13.38	37.75	9.81	1120	<b>BI Insurance Index</b>							
AFLAC Inc.	NYS	47.81	-5.56	1.32	54.25	33.56	2814	Navigators Group	NDO	9.00	2.49	-7.69	16.00	8.63	121	2,300							
Allmerica Financial Corp.	NYS	55.38	-1.56	-0.45	64.81	35.06	1053	NYMAGIC Inc.	NYS	14.75	1.29	11.85	19.50	12.25	17	2,250							
Allstate Corp.	NYS	23.72	-11.12	-1.43	39.31	17.19	22592	Ohio Casualty Corp.	NDO	11.13	0.00	-30.74	20.13	10.75	4201	2,200							
Ambac Financial Group	NYS	53.56	0.47	2.63	63.00	38.88	1426	Old Republic Int'l	NYS	17.38	-4.14	27.52	18.88	10.63	1609	2,150							
American Financial Group	NYS	27.50	0.69	4.27	35.44	18.36	241	Partner Re Ltd.	NYS	37.81	1.34	16.57	39.75	28.38	426	2,100							
American General	NYS	62.63	-5.29	-17.45	82.19	45.63	4100	Penn-America Group Inc.	NYS	9.50	-1.30	22.58	11.00	6.63	13	2,050							
American Intl Group	NYS	118.00	0.37	9.13	124.06	78.56	12282	PMA Capital Corporation	NDO	18.63	-1.81	-6.29	21.00	15.50	120	2,000							
American Safety Insurance	NYS	4.63	6.82	-28.85	9.06	3.75	96	Philadelphia Cons. Holding	NDO	17.38	-2.80	-19.83	24.63	10.81	98	1,950							
Argonaut Group	NDO	17.88	0.70	-10.06	27.00	16.50	120	FXRE Corp.	NYS	14.38	-1.71	-10.58	19.56	9.94	21	1,900							
AXA-UAP Group	NYS	80.63	5.31	13.56	81.50	53.75	311	Reliance Group Holdings	NYS	1.75	21.74	-73.58	10.06	1.13	3577	1,850							
Baldwin & Lyons Inc.	NDO	16.63	-1.12	-24.86	24.00	15.94	45	ReliaStar Financial Corp.	NYS	52.00	0.36	32.70	52.25	23.75	3703	1,800							
Berkley W.R. Corp.	NDO	21.13	-0.29	1.20	27.94	14.00	555	RenaissanceRe Holdings Ltd.	NYS	42.75	2.70	4.59	44.00	33.19	174								
Berkshire Hathaway Inc.	NYS	57000.00	-5.18	1.60	73600.00	40800.00	1	RLI Corp.	NYS	34.63	-1.60	1.84	38.81	26.25	49								
Capitol Transamerica Corp.	NAS	12.63	-0.98	25.47	15.25	9.38	21	St. Paul Cos.	NYS	37.44	-2.28	11.13	39.38	21.31	4197								
Chubb Corp.	NYS	67.50	4.15	19.87	74.13	43.25	4151	SCOR	NYS	41.88	0.60	-5.37	53.63	38.38	11								
CIGNA Corp.	NYS	92.13	4.10	14.35	97.63	60.75	5010	SAFECO Corp.	NDO	21.00	-9.68	-15.58	44.88	18.00	3501								
Cincinnati Financial Corp.	NYS	35.31	-6.77	10.78	43.31	26.19	1948	SCPIE Holdings Inc.	NYS	22.13	-7.81	-31.13	36.94	22.13	NA								
Citigroup	NYS	63.00	-1.56	13.13	67.63	40.13	45245	Seibels Bruce Group	NDO	1.00	-30.43	-42.85	5.69	1.00	132								
CNA Financial Corp.	NYS	34.88	-1.06	-10.43	43.69	24.56	198	Selective Ins. Group	NDO	19.06	-0.97	10.91	22.50	14.63	328								
CNA Surety	NYS	12.50	0.50	-3.85	15.56	9.75	354	Tokio Marine & Fire	NDO	57.25	0.44	-3.17	67.00	45.00	43								
EMC Insurance Group Inc.	NDO	8.38	0.00	-8.22	13.38	6.81	29	Torchmark Corp.	NYS	25.88	-4.83	-10.97	36.94	18.75	1661								
ESG Re Limited	NDO	4.00	-5.88	-42.34	20.06	3.19	327	Transatlantic Holdings	NYS	86.25	-0.79	10.49	91.56	68.75	37								
Enhance Financial Services	NYS	14.63	1.74	-10.00	22.63	8.63	319	Trenwick Group Inc.	NYS	15.00	-5.88	-11.44	31.00	12.00	192								
Everest Reinsurance	NYS	32.88	-2.05	47.34	35.69	20.50	590	Unico American Corp.	NDO	5.63	-2.17	-19.64	10.75	4.50	21								
Fremont General Corp.	NYS	4.38	2.94	-40.68	21.25	3.88	1021	United Fire & Casualty	NDO	17.06	-1.80	-24.59	26.56	16.00	144								
Frontier Insurance Group	NYS	1.00	-36.00	-70.91	17.19	0.63	1433	Unitrin	NDO	29.88	-6.82	-20.60	42.38	29.88	408								
Gaisco Inc.	NYS	4.56	-8.75	-15.12	6.94	3.94	247	UNUM Corp.	NYS	20.81	-7.24	-35.09	56.88	11.94	4588								
								Vesta Insurance Co.	NYS	6.63	-4.50	70.97	7.88	3.44	375								

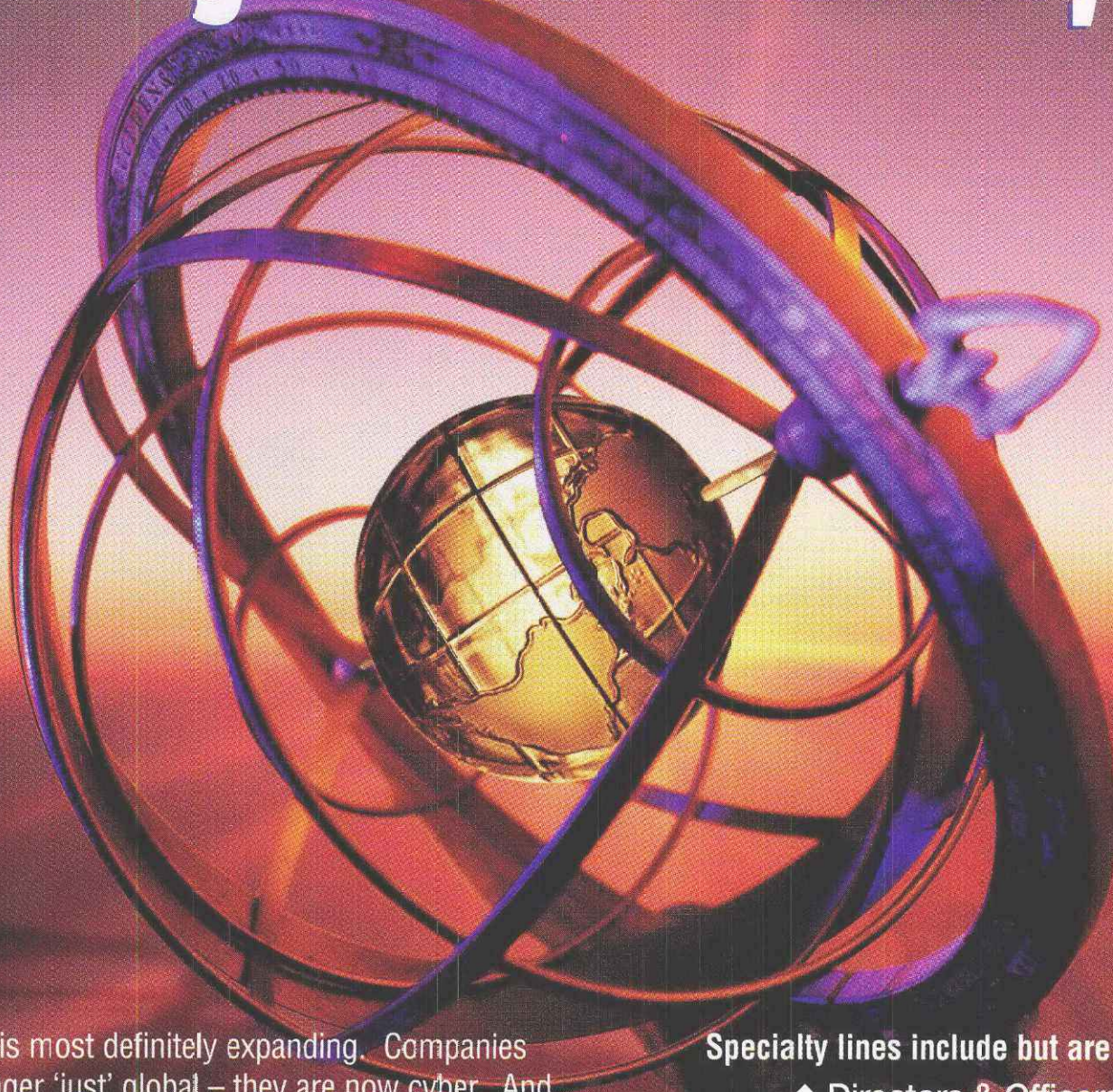


Top advancing issues: Reliance Group Holdings, Sierra Health Services, Foundation Health Systems Inc. Leading decliners: Frontier Insurance Group, Seibels Bruce Group, E.W. Blanch Holdings Inc. Most active issue: Citigroup. The BI Index decreased 0.5%; the Dow Jones 30 Industrials went down 1.6%; the S&P 500 increased 0.5%, and the NYSE Composite rose 0.2%. Average P/E: Brokers, 20.3; Insurers/reinsurers, 17.3; HMOs, 13.6.

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

# Reliance National

## Spanning the Globe and Beyond



**T**he World is most definitely expanding. Companies are no longer 'just' global – they are now cyber. And as this world continues to expand into new frontiers, businesses need an insurance carrier who can travel at technology's pace, even remain one step ahead.

At Reliance National, our product portfolio combined with our reach - both on earth and in cyberspace - does just that...offers client's coverage to safely navigate on earth and over the internet. With offices in the U.S., Canada, Latin America, Europe, Southeast Asia, Africa, and of course, Cyberspace...we allow our insureds to target whatever part of the international business world they desire.

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***When looking for a comprehensive commercial insurance product portfolio, come to Reliance National...domestic, international or cyber...we reach all the right places.***

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#### **Specialty lines include but are not limited to:**

- ◆ Directors & Officers Liability
- ◆ Risk Management
- ◆ Excess Liability
- ◆ Professional Liability
- ◆ Healthcare
- ◆ Integrated Benefits
- ◆ Ocean Marine
- ◆ Petrochemical/Energy
- ◆ Property
- ◆ Construction

### THE CHOICE



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