

Business Insurance

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Kmart insurers ordered to produce Y2K papers

DETROIT—Kmart Corp.'s insurers must produce internal communication related to Y2K coverage exclusions added to property insurance policies, a federal magistrate has ruled.

The May 25 decision by Magistrate Steven D. Pepe is the first court order requiring insurers to produce interpretive documents, according to Murray D. Sacks, a partner at

See Updates on next page

What reforms would do

Economic Growth and Tax Relief Reconciliation Act of 2001

- ▶ Bigger deferrals to 401(k) plans
- ▶ New 401(k) catch-up contributions for older employees
- ▶ Simpler 401(k) nondiscrimination testing rules
- ▶ Higher benefit and contribution limits for pension plans
- ▶ New Roth 401(k) plans created
- ▶ More disclosure on impact of pension benefit cutbacks
- ▶ New portability for rollovers between 401(k) plans and 403(b) and 457 plans
- ▶ Faster vesting of matching contributions
- ▶ New IRA transfer requirement for small benefit distributions
- ▶ New tax breaks for investment education
- ▶ Permanent tax-free status of educational assistance benefits

Lobbying pays off

Pension reforms boost benefits, reduce red tape

By JERRY GEISEL

WASHINGTON—Three years ago, a small group of legislators in Congress, backed by business groups, began a campaign to allow pension plans to provide richer benefits and to simplify plan administration.

Last month, that effort finally bore fruit, as Congress passed a tax cut bill that includes many of the pension reforms long advocated by employers and their allies on Capitol Hill. President Bush is expected to sign the package into law this week.

"This is a shot of adrenaline for pension plans," said Phil Anderson, senior vp-government affairs for the American Council of Life Insurers in Washington.

"This is good news for employers and employees," said Dan Schwallie, a consultant in the Cleveland office of Hewitt Associates L.L.C.

The legislation, known as the Economic Growth and Tax Relief Reconciliation Act of 2001, is a massive change in direction from legislation in the mid-1980s, when Congress enacted a series of tax laws that dramatically cut back the amount of benefits that could be provided through pension plans and added layer after layer of complex rules.

The booming economy that transformed the huge federal budget deficits of the 1980s into today's big surplus is a key catalyst behind that change. Simply put, the gov-

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Swiss Re suing XL over derivative deal

By RODD ZOLKOS

LONDON—A legal dispute between Swiss Re Financial Products Corp. and XL Insurance Ltd. apparently centers on the question of a company's name in a credit default swap agreement.

As such, the case is a natural product of the highly customized nature of credit derivative contracts, according to some in the industry.

Others, though, suggest the legal action isn't something unique to the credit derivative market; instead, they say, it is the result of a dispute that could occur in any contractual arrangement and just happens, in this case, to involve a credit default swap.

The suit, filed recently by SRFP against XL in the High Court of Justice in London, is

the second involving credit default swaps in the wake of the restructuring of Armstrong World Industries Inc.

The new case in-



volves a credit default swap SRFP purchased last year from XL Insurance, a unit of Hamilton, Bermuda-based XL Capital Ltd., on Armstrong Holdings Inc.

Armstrong World Industries, an Armstrong Holdings operating unit, declared bankruptcy in the United States last December in the face of mounting asbestos claims (BI, Dec. 11, 2000). The failure of Armstrong World prompted SRFP, a unit of

Zurich, Switzerland-based Swiss Reinsurance Co., to look to exercise its credit default swap contract. XL, however, refused to pay out, contending that the swap covered only the holding company, according to the suit.

Neither Swiss Re nor XL would comment on the dispute.

In a credit default swap, the buyer seeks protection from a credit risk exposure, paying a fee to the seller in return for a payoff in the event of a specified credit event. The instruments are often used by financial institutions seeking to hedge risks of defaults on loans, bonds or other derivative contracts.

The swap typically seeks to transfer credit risk associated with the issuer of a security, known in the transaction as the

See Dispute on page 20

Re-reading Chapter 11

Maxicare files for bankruptcy protection again

By JUDY GREENWALD

LOS ANGELES—Employers that contract with Los Angeles-based Maxicare Inc. are unlikely to have problems finding replacement coverage, if necessary, though there will inevitably be some cases in which coverage is disrupted.

Maxicare's California subsidiary filed for bankruptcy May 25, the same day the California Department of Managed Health Care issued an order appointing a conservator and seized control of the subsidiary. Earlier last month, the Los Angeles-based managed care organization announced it would close its operations in Indiana. The Indiana Insurance Department had filed for the rehabilitation of the Indiana operation.

Maxicare's operation in California, where it has ranked as about the 10th-largest managed care firm, had 259,150 members as of March 31, including 158,300 commercial members, according to its filing with the Securities and Exchange Commission. Its members are primarily concentrated in Southern California. Maxicare's Indiana operation had 97,200 members, including 83,100 commercial members. The remaining members in both states are either Medicare recipients, or, in

Maxicare at a glance

As of March 30, 2001:

Total assets	\$112,387,000
Total liabilities	\$123,818,000
Total members	356,350

the case of California, Medicaid recipients.

"It's a very active, competitive market in Southern California, and I think that they won't have any problem at all" finding alternative coverage, said David Olson, vp-investor relations for Woodland, Calif.-based Health Net Inc. Although Maxicare had lower-priced products than many of its competitors, employers should be able to find substitute coverage for their employees "with virtually no change in their ultimate total out-of-pocket cost," Mr. Olson said.

Many believe that Maxicare, despite having emerged from bankruptcy once before, is unlikely

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Underwriters taking a hard line on rates, MGAs warn page 3



ADA ruling may have employer impact page 3

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INSIDE



● In Perspectives, Deborah Tompkins, of the Tompkins Benefits Group, writes that expanding benefits is good for a company's bottom line. PAGE 10

● The governor of Texas is expected to sign a bill that would ban certain employers from asking workers to waive their rights to sue for injury benefits. PAGE 15



● Lawsuits pending in Australia highlight the need for risk managers to more closely supervise construction projects. PAGE 17

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UPDATES

Continued from previous page
McKenna & Cuneo in Washington who represents Kmart in the case. Kmart and other policyholders hope that such documents would contain admissions by insurers about the scope of Y2K coverage provided under their policies. "This is a very positive development and makes



insurance companies live up to their discovery obligations," Mr. Sacks said. Earlier in the litigation, Troy, Mich.-based Kmart had tried to obtain

Y2K exclusion-related documents from the Y2K Roundtable, which is a group of 33 U.S. insurers and reinsurers. The court denied that request, however, and instead ordered the policyholder to seek the information directly from its insurers. The ruling was handed down late last month in the case of *Kmart vs. Lexington Insurance Co.*, which is being heard in the U.S. District Court for the Eastern District of Michigan. "It's not a big deal because Michigan law is extremely liberal on discovery of extrinsic evidence," said Jay Levin, an attorney with Cozen & O'Connor in Philadelphia who represents Lexington, the principal insurer in the case. He added that the judge "is not ruling on whether it's admissible or even relevant."

► **LAYOFF WAIVERS INVALID** A technology company's policy of requiring laid-off workers to sign waivers forfeiting their rights to sue the company violates age discrimination laws, a federal court judge has ruled. Bull HN Information Systems Inc. violated the Older Workers Benefit Protection Act as part of its layoff program between 1994 and 1998, U.S. District Court Judge Nancy Gerner said. Bull commenced a layoff program in 1990, and several former employees filed age discrimination complaints related to the layoffs, court papers show. Bull "required terminated employees to sign a waiver of rights, explicitly including (Age Discrimination in Employment Act) rights, before receiving any severance pay," court papers say. The Equal Employment Opportunity Commission sued Bull, arguing that under OWBPA, waivers of ADEA rights cannot be enforced unless the employees are given "sufficient" information about a layoff program including details of other people being laid off. The judge granted the EEOC's motion for summary judgment on the invalidity of the waivers and ordered Bull to provide all employees it laid off between 1994 and 1996 with a copy of the decision.

► **RELIANCE IN REHABILITATION** Reliance Insurance Co. last week was placed into rehabilitation by Pennsylvania Insurance Commissioner Diane Koken. "I took the step of asking the Commonwealth Court to put Reliance Insurance Co. into rehabilitation in order to protect the policyholders, as the company has been unable to restore itself to sound financial condition," Ms. Koken said in a statement. A team of consultants will take over control of the insurer's operations and review its finances, she said in the statement. "In the coming weeks and months, we will use that review to develop the factual information we need to make a reasoned determination of



Reliance

whether to proceed with rehabilitation, or to move to liquidation," Ms. Koken said. The rehabilitation order enables the regulator to take control of the company, analyze its assets and liabilities and better determine whether a liquidation of the company is required, the statement explains. The Pennsylvania regulator's action comes nearly one year after Reliance lost its A rating and various attempts to keep the insurer's operations going fell apart.



PHOTO: AP/WIDE WORLD

► **Demonstrators picketed outside The Coca-Cola Co.'s Atlanta headquarters before the company settled a race discrimination suit.**

► **COKE SETTLEMENT APPROVED** A U.S. District Court judge last week approved the \$192.5 million race discrimination settlement The Coca-Cola Co. reached last November with a class of 2,000 current and former African-American employees. In addition to cash payments, the settlement requires the Atlanta-based beverage bottler to implement new programs and reforms (*BI*, Nov. 20, 2000; June 19, 2000). Coke took a \$188.0 million charge in the fourth quarter of 2000 to cover costs related to the settlement. The settlement relates to a lawsuit filed in 1999 alleging disparities between black and white Coke employees in salaries, promotions, performance evaluation and dismissals.

► **HEALTH COVERAGE TRENDS** More individuals in the United States received employment-based health benefits in 1999 than in the mid-1990s, finds a report issued by the Employee Benefit Research Institute. The percentage of children in the United States covered by employer-based health plans increased to 61.5% from 58.1% between 1999 and 1994, the report states. For adults, coverage rose to 67.6%—the highest level since 1991—from 66.1% in 1994, with the greatest percentage point increases occurring between 1997 and 1999. The report by the Washington-based nonprofit group cites the strong economy and low unemployment as key factors in the rise in insured workers. But over the longer term, the percentage of U.S. individuals insured through employer-sponsored health plans moved downward. In 1989, 69.8% of adults and 65.8% of children were covered by employer-based health benefit plans. The percentage of retirees receiving employer-sponsored health benefits is also lower. Over the past few years, many employers overhauled their retiree health benefits programs, and some have dropped the benefits completely. Most employers that continue to offer health benefits have required retirees to pay a higher share of the premiums, the report states.

► **HEALTH PLAN TRADE GROUPS LINK** The American Assn. of Health Plans and the London-based International Federation of Health Plans will affiliate with one another under a new agreement. Under the arrangement, the organizations will share information about policy and medical affairs and create forums through which members can exchange ideas. "We are pleased to announce this new affiliation," AAHP President and Chief Executive Officer Karen Ignagni said in a statement. "With our shared goal of improving the health of the populations served by AAHP and IFHP members alike, it makes sense to pursue working collaboratively with leading health plans around the world." Washington-based AAHP is a national trade organization representing more than 1,000 health maintenance organizations, preferred provider organizations and other health care plans serving more than 140 million people. IFHP's member companies provide health care coverage and services to an estimated 60 million people in more than 20 countries.

► **MERCER LAYOFFS** William M. Mercer Inc., the world's largest benefit consulting firm,

will lay off about 3.3% of its U.S. workforce of 4,800 employees. The reductions stem from the current economic slowdown, which has forced employers to scale back their spending on consulting services, a Mercer spokeswoman said. The cuts will be made across virtually all offices and practice areas of New York-based Mercer, which is a unit of Marsh & McLennan Cos. Inc. In addition, Mercer has given newly hired college graduates the option of starting their jobs at a later date in exchange for a sign-on bonus.

► **AHP TO INDEMNIFY PILL MAKER** Interneuron Pharmaceuticals Inc. announced an agreement in which American Home Products Corp. will indemnify the diet-pill developer for certain product liability cases filed against Interneuron related to the prescription anti-obesity drug Redux. In exchange, Lexington, Mass.-based Interneuron has agreed to withdraw its litigation against AHP, filed in January 2000; its objection to the judicial approval of a national class action settlement of



Redux product liability claims; and its cross-claims against AHP related to Redux. The agreement also provides for Madison, N.J.-based AHP to fund additional insurance coverage to supplement Interneuron's existing product liability insurance. Developed by Interneuron and manufactured solely by AHP, Redux—generically known as dexfenfluramine—was pulled from the market in September 1997 after being linked to heart valve problems. AHP also was the sole manufacturer of the diet drug fenfluramine, under the brand name Pondimin, which was recalled at the same time. AHP, which exhausted its insurance coverage in early litigation related to diet drugs, has taken charges totaling \$12.25 billion to cover litigation costs.

► **BRIEFLY NOTED** The Illinois House of Representatives passed a bill last week that would protect workers with job-related injuries by preventing medical providers from directly billing them for costs above the usual-and-customary charges paid by insurers. Illinois is the only state that has not banned this practice, known as "balance billing," according to the Alliance of American Insurers in Downers Grove, Ill. An Illinois Senate committee will now consider the bill, H.B. 30....A new Web site launched last week allows consumers in the New York area to investigate the quality of care provided by physicians, hospitals and health plans. The site, www.aboutthehealthquality.org, was created by the New York State Health Accountability Foundation and allows users to compare various health plans and research the plans' ratings from the leading quality organizations, such as the National Committee for Quality Assurance and the Foundation for Accountability. In addition, the site has an interactive feature that allows users to evaluate the care they receive from their own physicians....White Mountains Insurance Group completed its \$2.17 billion purchase of CGU Insurance Group on Friday and changed the Boston-based unit's name. The former U.S. unit of CGNU P.L.C. will now be called OneBeacon Insurance Group. **E**

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



PHOTO: AP/WIDE WORLD

The ruling allowing golfer Casey Martin to use a cart during tournaments may have spillover effects for employers.

Case may require broader accommodation

Ruling may expand ADA

By MARK A. HOFMANN

WASHINGTON—The Supreme Court's May 29 decision that the Americans with Disabilities Act does not allow the PGA Tour Inc. to bar professional golfer Casey Martin from using a golf cart at its events could have ramifications beyond the greens.

At a minimum, the 7-2 decision in *PGA Tour Inc. vs. Casey Martin* could require greater accommodation of disabled athletes in a variety of sports settings, say some employment experts. And, in a stinging dissent in which Associate Justice Clarence Thomas concurred, Associate Justice Antonin Scalia held that the decision could have an effect on all sorts of independent contractors.

"I don't see this as limited just to Casey or just to the PGA Tour," said Gerald L. Maatman Jr., senior part-

ner and chairman-global employment law practice of Baker & McKenzie in Chicago. Mr. Maatman is also president of the Chicago District Golf Assn./Golf Assn. of Illinois, the third-largest regional amateur golf association in the United States.

The decision "basically impacts any organization that runs a sporting event," but, ultimately, it could reach even further, Mr. Maatman said.

"It truly has the potential for propelling the ADA into a much more broadly based civil rights statute," said Frank Alvarez, a partner in the Stamford, Conn., office of Jackson Lewis Schnitzler & Krupman.

In its decision, the court's majority said that allowing Mr. Martin to use a golf cart rather than requiring him to walk between holes would not alter the fundamental nature of golf. Mr. Martin suffers from a circulatory disorder that makes it hard for him

to walk long distances. When the PGA refused to let him use a cart, Mr. Martin sued. Mr. Martin claimed that the ADA required the golfing association to permit him the use of a cart. In early 2000, the 9th U.S. Circuit Court of Appeals agreed with Mr. Martin, and the PGA sought Supreme Court review.

The ADA's Title III holds that no one should be discriminated against because of disability in "the full and equal enjoyment" of "privileges" of any place of public accommodations. The PGA had argued that golfers are not clients or customers of a covered public accommodation; rather, it said, they are providers of the entertainment that the PGA sells and, consequently, wouldn't be covered under Title III. But the court ruled that even if the class of individuals protected by Title III were so limited,

See ADA on page 21

Feeling pressured

MGAs warn of insurers' firming stance on rates

By JOANNE WOJCIK

PALM DESERT, Calif.—Although insurance buyers may grumble about paying more for coverage at renewal time, rate hikes are a matter of survival for insurers, industry executives say.

But buyers aren't the only ones feeling pressured by the firming market. It has been a rude awakening for insurance underwriters, too, because many of them have never experienced a hard market and don't know how to appropriately price risks.

And retail brokers also are having difficulty explaining price increases to their clients, according to a panel of surplus lines experts speaking at the American Assn. of Managing General Agents' University Day held May 20 in Palm Desert, Calif.

The University Day was held in conjunction with the AAMGA's annual meeting, which this year celebrated the organization's 75th anniversary.

Throughout the soft market that began in the late 1980s, insurers slashed prices to capture market share, supplementing their income with investment returns. Fifty-six percent of the insurance industry's surplus is dependent upon growth from investment gains, according to

Letha Heaton, vp-sales and marketing at Shand, Morahan & Co. of Deerfield, Ill., who moderated the session.

But now that losses are up and stock prices are down, insurers are feeling the pinch.

The New York-based Insurance Services Offices Inc. reported that the industry as a whole suffered \$18 billion in unrealized capital losses last year, compared with losses of \$1.9 billion in 1999.

"We've had a state of severe underpricing for several years, culminating in late 1999 or 2000," said John K. Latham, president and chief executive officer of Morrisville, N.C.-based Front Royal Inc.'s Colony Insurance Co., Preferred National Insurance Co., Front Royal Insurance Co. and Colony Management Services Inc. units.

"Chasing that premium has resulted in horrible results for investors. This is what's driving the hard market today," he said.

"This marketplace is very different from some of the previous hard markets," observed Paul W. Springman, president of Markel North America, a subsidiary of the Markel Corp. of Richmond, Va., and parent company of Evanston Insurance

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AAMGA

S.C. amends captive law to allow reserve discount

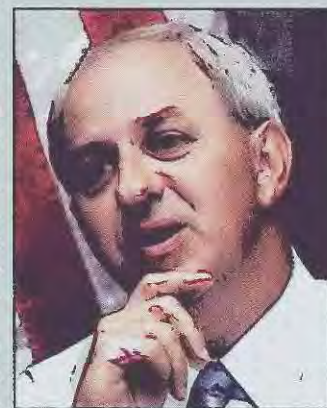
COLUMBIA, S.C.—South Carolina is seeking to attract reinsurers to the state with a law that will allow them to form captive subsidiaries in South Carolina that will be permitted to discount loss reserves.

"We are trying to level the playing field between what they are allowed to do in Bermuda, Guernsey and other overseas domiciles," said Clayton Ingram, director of business development for alternative risk transfer services at the South Carolina Department of Insurance.

Under the law, signed by Gov. Jim Hodges last Wednesday, reinsurance companies will be able to establish captive reinsurers in South Carolina with a minimum capitalization of \$300 million.

"A captive reinsurance company may discount its loss and loss adjustment expense reserves at Treasury rates applied to the applicable payments projected through the use of the expected

payment pattern associated with the reserves," according to the law, which amends South Carolina's 1976 Insurance Code.



PHOTOS: AP/WIDE WORLD

South Carolina Gov. Jim Hodges has signed a law that may help attract reinsurance captives.

At least 35% of a captive reinsurer's assets must be managed by a South Carolina-domiciled asset manager.

The new law also confirms that segregated cell rent-a-captives can be set up in South Carolina, Mr. Ingram said.

Legislation passed last year that allows the creation of segregated cell companies as securitization vehicles could be applied to rent-a-captives, but the new legislation explicitly states that a "sponsored captive insurance company" can be established with segregated cells, Mr. Ingram said.

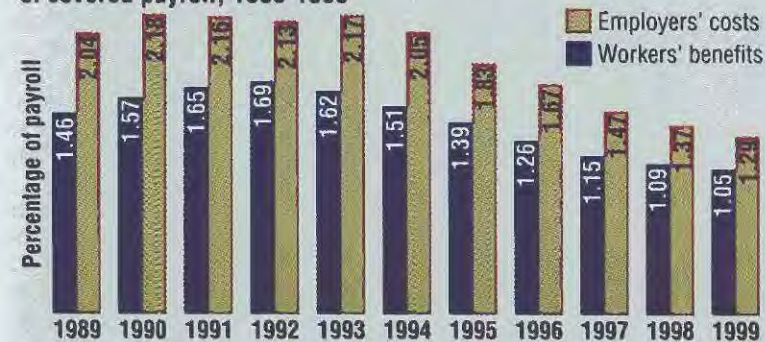
South Carolina enacted captive insurance legislation in 2000, and the domicile currently has seven insurance captives.

—By Gavin Souter

Years of comp cost declines likely ending

Workers comp costs, benefits drop

National workers compensation costs and benefits as a percentage of covered payroll, 1989-1999



Source: National Academy of Social Insurance, 2001

GRAPHIC BY ADAM DOI

By MEG FLETCHER

A new report shows that employers' cost of providing workers compensation benefits continued to decline relative to workers' wages through 1999, though a leading workers comp analyst says market conditions have worsened since then.

In its report, the Washington-based National Academy of Social Insurance, a nonprofit and nonpartisan group known for providing the most comprehensive workers comp data available, found that 1999 marked the sixth consecutive year that employer costs declined and the seventh consecutive year that

benefits paid to workers also decreased. The data was the most current available.

The NASI's 11-year analysis also shows that employers' costs declined as a percentage of workers' wages, dropping to 1.29% in 1999 from 2.17% in 1993—their highest point. In addition, workers' benefits declined to 1.05% of wages in 1999 from 1.69% at their peak in 1992.

The data reflect that the strong economy of 1999 brought an increase in the number of workers covered by workers comp and contributed to the decline in costs and benefits relative to wages, said John F. Bur-

ton Jr., a professor at Rutgers University's School of Management and Labor Relations in New Brunswick, N.J. He chairs the NASI's committee that oversees the project.

"Employers would say that is a good trend that is reflective of the fact that the frequency of workplace injuries is down and, because of case management and managed care, workers compensation programs are being run more efficiently," said Daniel Mont, the organization's workers compensation project director.

Workers, however, would say that a decline in benefits is a

See Comp on page 21

ISO forms new unit to make acquisitions

JERSEY CITY, N.J.—Insurance Services Offices Inc. has formed a new subsidiary to make and finance acquisitions.

The unit, which is named Intego Solutions Inc., will permit ISO to acquire entities that remain separate rather than become units of ISO, said Frank J. Coyne, president and chief executive officer of the Jersey City, N.J.-based insurer

services company, in a statement.

“By creating a new company whose sole purpose is to make acquisitions, ISO will remain focused on its core services and products, while Intego Solutions brings together companies that can redefine the way business is done through a thoughtful combination of data, software and decision support,” Mr.



Coyne said.

Intego will likely broaden the spectrum of acquisitions that the Insurance Services Office makes, because the target companies will not have to be integrated into ISO, an ISO spokesman said.

Since its conversion to for-profit status in 1997, the Insurance Services Office has made several acquisitions, including the purchase of American Insurance Services Group and the Art Loss Register, which aids in the recovery of stolen art. One of AISG's units,

Property Claim Services, monitors insured losses from catastrophes. All of the acquired companies have been integrated into ISO.

The purchases were also made largely in cash. The new unit will make use of a variety of financing options, the spokesman said.

Intego will be headed by Scott G. Stephenson. Before joining ISO, Mr. Stephenson was an executive at Silver Lake Partners, a private equity firm in Menlo Park, Calif.

—By Gavin Souter

General Mills settles coverage fight with reinsurers

MINNEAPOLIS—General Mills Inc. has settled a property claim involving pesticide contamination with a group of reinsurers for \$55 million.

The Minneapolis-based food processing company had previously won a coverage battle with its own captive insurer, Gold Medal Insurance Co., over the same \$168.8 million contamination loss (BI, Feb. 21, 2000). Most of the claim was reinsured.



The contamination occurred in 1994, when an independent contractor hired by General Mills sprayed some of the company's raw oat supplies with a pesticide that, while not hazardous to humans, had not been approved by the U.S. Food and Drug Administration. The contractor, who billed General Mills for a more expensive FDA-approved pesticide, was later convicted on criminal charges.

General Mills subsequently destroyed the adulterated oat grain and more than 50 million unsold boxes of cereal, and it dismantled and cleaned machinery at several grain processing facilities across the country.

Minnesota-domiciled Gold Medal had denied coverage on several grounds, including exclusions in General Mills' all-risk policy, but a court-appointed referee ruled in General Mills' favor.

A General Mills spokesman said the recent settlement was with “more than a dozen” reinsurers. He would not identify the reinsurers involved.

The companies reinsured Hopewell International Insurance Co. Ltd., a Bermuda-based captive reinsurer that is now in runoff and which in turn had covered Gold Medal. Hopewell filed for bankruptcy protection in New York in 1998, largely to block Gold Medal from suing it in the U.S. and to force the captive instead to arbitrate its claim in Bermuda as part of the Hopewell runoff proceeding.

Arbitration between Gold Medal and Hopewell and the “many” other reinsurers of its property program regarding the same issue has not yet been concluded, the spokesman said.

—By Gavin Souter

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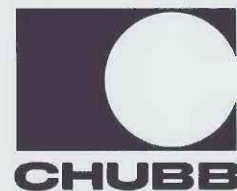
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OPINIONS

Pension bill finally passes

AT LAST.

It was nearly four years in the making, but a sweeping pension reform package finally is about to become law.

As we report on page one, President Bush will sign tax legislation that includes a wide array of pension provisions. Employers have fought long and hard for these pension reforms only to be disappointed time and again as broader bills to which the provisions were attached went down to defeat.

That wasn't the case this time, though there were considerable worries at the 11th hour that the pension reforms would be jettisoned by congressional conferees as they assembled a final bill.

Fortunately, the pension reforms remained largely intact, which is a testimony both to the lobbying of employer and insurer groups and to the efforts of a bipartisan group of senators who warned that they would not support a tax package if, among other things, it did not contain the pension reform package.

As for those reforms, we should not exaggerate how far they go. In many respects—such as the increases in the amount of money employees can defer to 401(k) plans and in the amount of employee compensation that can be considered in computing benefits and contributions—the new law only partially

restores cuts that Congress imposed in the mid-1980s.

Still, allowing employers and employees to fund bigger benefits is a welcome change in direction. Such a change is a recognition by legislators that one way to encourage employers to offer and improve retirement programs is to give top management a greater financial stake in their pension plans. To the extent that corporate executives got a decreasing percentage—due to congressionally imposed limits—of their retirement benefits, management interest in maintaining and improving pension plans obviously declined. Finally, Congress woke up to that basic fact.

Similarly, Congress, after years of employer lobbying, recognized that putting on ever more complex—and, in many cases, unnecessary—rules was not the best way to encourage employers to offer pension and savings plans. The new law dumps many of those rules, such as certain convoluted non-discrimination tests for 401(k) plans that allow both pretax and aftertax contributions.

In other areas, legislators struck what we think is a fair compromise. Employers that move to new pension plans that could cut employees' projected benefits will be required to disclose more information to



employees about the impact of those changes. Current disclosure requirements, many would agree, are woefully inadequate, but legislators wisely did not make the new disclosure requirements unduly burdensome.

In sum, the pension reforms have been well worth waiting for and will help spark the rejuvenation that the nation's employer-based pension system so badly needs.

LETTERS

Genetic testing moratorium is not justified

To the editor: On its face, the recent British request that insurance companies undertake a "voluntary moratorium" on the use of genetic testing for underwriting purposes (*BI*, May 7; April 16) or face mandatory restrictions, sounds like a reasonable request for a cooling off period while we evaluate the predictive value of such risk indicators.

But, in reality, the request is an attempt to force the insurance industry to bear the costs of an increasingly high-risk public. It is also a publicity ploy, well timed with the upcoming British elections.

Nor is this an isolated development. There is an important trend under way in public health policy that may have costly implications for private insurance. The recent decision in the United States that many life insurance companies may have

discriminated against black policyholders is also part of this trend; historical insurance practices may be subject to public revision and found in violation of later, more modern principles and sentiments.

Many insurance companies, in the interest of public relations, have acceded to these revisionist demands and, without admitting guilt, have voluntarily refunded premiums. Now, it seems, the industry is being told that it cannot use traditional underwriting practices to control risk.

It is one thing to insist that there be no unjustified discrimination in the practices of insurance underwriting. It is quite another to insist that there be no discrimination among risks or risk-based pricing policy. It is entirely fair to charge a higher premium to those in a higher-risk category.

There is nothing immoral about this business practice. It is based on the idea of individual responsibility and culpability.
See Letters on page 21

LETTERS TO THE EDITOR

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PERSPECTIVES

Expanding benefits good for bottom line

By Deborah Tompkins

Our nation's labor market is tight. We hear the common refrain: "Anyone who wants a job has one, so it's tough to find qualified candidates." However, employers have within their reach a powerful, yet largely unused tool to attract and retain qualified employees—work/life benefits—that is about a lot more than a decent health care plan.

In days gone by, a steady paycheck and health care insurance were the hallmarks of companies that cared for their employees. And that was enough to satisfy workers. That's not so today. Across the board—from the aging boomer population to fresh-faced high school and college graduates—there is a demand for employers to offer an array of "quality of life" benefits, such as child



care or flexible work hours. And there is an immense incentive for employers to do so.

According to a January 2001 report by the U.S. Department of Labor, "The number of unemployed rose by about 300,000 to nearly 6.0 million, pushing the unemployment rate from 4.0% to 4.2%. The jobless rate has remained within the 3.9% to 4.1% range since October 1999." That's good news for workers, but businesses have to compete to attract qualified talent and work harder to retain their loyal, skilled staff.

In an address on Labor Day 1999, then-Secretary of Labor Alexis M. Herman further defined the state of change in the workplace.

"Technology, globalization and new demographics are constantly redefining work. We know that as changes come three things must remain constant: American workers must have a balance between work and family; rising economic security; and workplaces that are safe and fair. Our challenge is to keep this foundation firm as we manage the changes."

Businesses need to face the fact that workers struggle to balance work and family responsibilities—and that challenge will not lessen in the 21st century. Even if an economic downturn happens, the battle for talent will continue and the kinds of issues facing the time-starved labor pool are here to stay. Here's the reality check:

- Work/life benefits are as important as health insurance, according to 90% of more than 1,000 employees surveyed

by The Gallup Organization in a 1998 poll. Balancing work and family ranks higher for American workers than job security, working conditions and relationships with co-workers and supervisors, the poll found.

- Twenty percent of non-working mothers with young children do not seek employment because they see quality child care as unaffordable or unavailable.

- Family issues now account for more than 26% of absences—vs. 22% for illness.

- Elder care is an increasing concern for American workers. A 1997 survey by the National Alliance for Caregiving reported that nearly one-fourth of American households—22.4 million families—were providing care for an older relative or friend. The American Society for the Aging reports 64% of caregivers are employed full- or part-time. Yet, only 30% of companies offer elder care programs.

- Finding and keeping affordable, quality child care and accommodating families when it comes to relocating or traveling for work remain some of the toughest issues working parents face.

- Access to affordable transportation ranks high on the list of obstacles that face an increasingly diverse workforce, particularly low-income workers. Employers who assist with transportation costs actually make more people available to their labor pool. There are transit voucher programs that allow employees to buy tokens, tickets and fare cards and offer a tax-free subsidy to employers.

- Taking care of personal matters can consume up to 21 hours of time per employee, per personal issue annually.

When employers offer consultation and referral networks, they save employees time and relieve stress by providing toll-free, 24-hour assistance for child care, elder care, legal, financial and home assistance issues.

The bottom line is workers want options that help them take care of dependent children and aging parents, provide support for their spouses and give them the opportunity to enjoy a happy home life free from unnecessary workplace stress. Companies that do not address these issues will lose their competitive advantage. Business today can't afford not to provide quality-of-life benefits.

A study released in January 2001 by Towers Perrin Global Research confirms that it is "high-performing companies who will thrive in the new economy by redefining operating models to focus on value, proposition, people and rewards." In part, the report suggests "rapid technological change has created a new business environment where innovation has become a top competitive strategy and, in turn, has created sharp demand for human capital as a key business asset. At the same time, demographic pressures point to a growing shortage of key talent. The convergence of these forces presents a critical challenge to companies today."

To stay competitive, employers need to ask themselves some tough questions about their true commitment to what they often call their "greatest asset." Whereas it may seem like an unnecessary and added expense to invest in what were once considered "soft" benefits, the truth is that most of your "employee assets" are overburdened in their personal lives and that affects your bottom line.

Factoring in turnover costs—including recruiting, training and lost productivity—helps to justify the expense of implementing a work/life benefits plan. And aligning benefits with the company's mission, while assessing the company's ability to be competitive and contribute to employee satisfaction and sense of corporate value, further aids calculation of the return on investment. The payoff is apparent: who wouldn't want to come to work or keep working in an environment that recognizes and rewards employees with choices that help make their lives easier and offer convenience and real-world options?

Some forward-thinking businesses have caught on and are leading the shift in allocating employee benefits. According to Fortune magazine's Jan. 22 feature, "100 Best Companies to Work for in America," 83 of the top 100 companies offer work/life benefits programs to employees. Once employees in those companies have experienced the comfort that comes from quality-of-life benefits, there's no turning back.

Those 83 high-performing companies get it. They understand that helping employees balance work and personal life isn't about bending to unreasonable employee demands. They realize that to compete in the new millennium, they must demonstrate flexibility and respect for the diversity that is the modern workforce. According to the Towers Perrin report, these companies favor differentiating reward packages based on individual and business performance. They realize it is critical to understand the attributes and changing values of the people they need to hire and keep, while at the same time motivating employees to apply their skills, time and effort in ways that deliver high performance for corporate success.

Businesses that haven't done so must respond to labor market issues with customized employee benefits. It will take moving beyond traditional thinking and committing to flexibility that responds to employee needs. A benefits plan that offers flexibility and meets daily life issues acts as a means to an end. The payoff is the increased ability to hire and retain happier, higher performing employees who stay with companies longer, thus providing long-term value. And that's a scenario where everybody wins. **BI**

Deborah Tompkins is the president and founder of Tompkins Benefit Group, a Portland, Ore.-based benefits brokerage and consulting agency.

Allergic reaction to food ruled not compensable

An employee who experiences an allergic reaction to food served at a luncheon his employer directed him to attend cannot recover workers compensation benefits, an Illinois appellate court ruled.

Jack Rodin, an electrical contractor, was a foreman on a construction project. His employer directed him to attend a buffet luncheon hosted by the project's general contractor, where he had salad, chicken, potatoes and a diet soda.

After eating, Mr. Rodin noticed nothing unusual. That evening, he ate scrambled eggs and baked beans his wife prepared. Shortly thereafter, he experienced cramps, a feeling of "burning up," and a facial rash. He passed out, fracturing his nose, and was taken to a hospital and diagnosed with an anaphylactic reaction. The next day, he experienced back pain and was further diagnosed with a degenerative back disorder. Mr. Rodin had a history of allergies since childhood. His doctor thought preservatives in the food at the luncheon caused his allergic reaction, but his application for workers comp benefits was denied. On appeal, the court said the risk of an allergic reaction to food was not inherent in Mr. Rodin's work and therefore not an employment risk or one distinctly associated with

LEGAL BRIEFS

his employment. The court said that injuries resulting from personal risks generally don't arise from employment. Thus, the court agreed he wasn't entitled to workers comp benefits.

Rodin vs. Industrial Commission, Appellate Court of Illinois, Sept. 28, 2000 (BI/01/Ju.-\$10).

Hospital plan not subject to ERISA: Court

A hospital at which a disability insurance plan participant worked was not associated with a church, so the subject disability plan was an Employee Retirement Income Security Act plan and not a "church plan," according to the 4th U.S. Circuit Court of Appeals.

Claudia Lown was a mental health counselor at Baptist Healthcare System of South Carolina Inc., which was once associated with the South Carolina Baptist Convention. Baptist Healthcare maintained a long-term disability plan for its employees issued by Continental Casualty Co. Saying she had chronic fatigue and pain, Ms. Lown filed a claim for total disability and sued Continental in state

court when it was denied. Continental removed the case to the federal courts, saying the claim was governed by ERISA. The federal trial court upheld the denial of benefits.

Ms. Lown appealed, saying a church established the plan and maintained it for its employees, so it was not subject to ERISA. But the court noted that by 1997, South Carolina Baptist Convention played no role in the governance of Baptist Healthcare nor did the latter receive any support from the Baptist Convention. Thus, the court concluded the disability plan was an ERISA plan, and came within the jurisdiction of the federal courts. The court also said Ms. Lown failed to prove total disability, as required, and affirmed the trial court decision.

Lown vs. Continental Casualty Co., 4th U.S. Circuit Court of Appeals, Feb. 2, 2001 (BI/02/Ju.-\$10).

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



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- ▶ EARLY REGISTRATION
- ▶ EMPLOYERS' PRIVATE ROUNDTABLE: EXPERIENCES, VIEWS AND IDEAS
- ▶ PRE-CONFERENCE WELCOME RECEPTION: Sponsored by NCCI Holdings, Inc.

Tuesday, October 23, 2001

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James E. Green, Risk Manager, Acme Building Brands Inc.

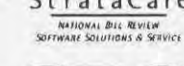
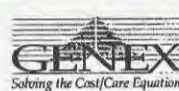
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- ▶ COCKTAIL RECEPTION*

Wednesday, October 24, 2001

- ▶ CONTINENTAL BREAKFAST*
- ▶ INTEGRATED DISABILITY MANAGEMENT: PROMISE AND PERFORMANCE
- ▶ CAN LOSS CONTROL TECHNIQUES BE IMPROVED? A NEW LOOK AT SAFETY
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Denver seeks a bigger spot on insurance map

By SALLY ROBERTS

If asked to name a leading insurance center, individuals who would automatically mention Hartford, Conn., or Hamilton, Bermuda, would not be likely to place Denver in the same category.

But the Mile High City hopes to boost its stature within the insurance industry by creating a workforce that is trained and ready to

step into insurance jobs. The way Denver Mayor Wellington Webb's Office of Economic Development and International Trade sees it, if the city builds a capable and ready workforce, insurance companies and agencies will come.

With this goal in mind, Mayor Webb's office created the Colorado Insurance Development Group, which in 1998 turned to the Professional Independent Insurance Agents of Colorado and the Rocky

Mountain Insurance Information Assn. for help. What resulted was InVEST of Colorado.

InVEST, which stands for Insurance Vocational Education Student Training, is a 30-year-old nonprofit national educational program that can be tailored to suit the needs of an individual communities. Administered by the Independent Agents of America Inc., InVEST classes are taught in high schools and community colleges and prepare students

for insurance industry jobs.

According to the national InVEST program, based in Alexandria, Va., roughly two-thirds of those graduates who have participated in the InVEST program secure jobs within the insurance industry.

With that statistic in mind, the Colorado Insurance Development Group was sold on InVEST.

"We wanted to make sure we had a strong financial and insurance in-



dustry in Denver, and we wanted to provide as much infrastructure as possible to make the industry strong, said Mary Beth Vaught, economic development specialist for Denver's Office of Economic Development and International Trade. "One component of that is the workforce," Ms. Vaught said. "We see (InVEST) as a means to strengthen the workforce of the insurance industry in Denver."

Denver is not alone in establishing its own InVEST program—more than 230 schools in 25 states are operating InVEST programs—but it is unique in that the insurance industry is working with the local government to promote the effort, said Barbara Miller-Richards, executive director of the national InVEST program.

"It's so smart," Ms. Miller-Richards said. "When you look at companies relocating to a new city, they look at local schools not only for their employees' children but also for potential workforce. Companies are not going to relocate their business to a place they cannot recruit folks."

Both new and well-established companies in the insurance industry find recruiting talented individuals in Denver to be a big challenge.

"We consider it a crisis situation," said Carole Walker, executive director of the Rocky Mountain Insurance Information Assn. "We have one of the lowest unemployment rates in the country. Insurance companies and agencies cannot get the quality people power to fill these jobs."

Supporters of InVEST of Colorado hope the program will make a difference.

Beginning in the 1999/2000 school year, InVEST classes were offered as an elective to students in four Denver public high schools, all of which have diverse student bodies. Approximately 40 seniors elected to take the InVEST class that first year. During the 2000/2001 school year, 43 seniors from three Denver high schools participated in the program.

The education program has a hands-on curriculum. Students form and operate model auto insurance agencies and an insurance company home office in the classroom. The students rotate through various positions in the home office and engage in insurance business activities that include processing applications, rating, accounting, loss control and claims handling.

See InVEST on page 12D.

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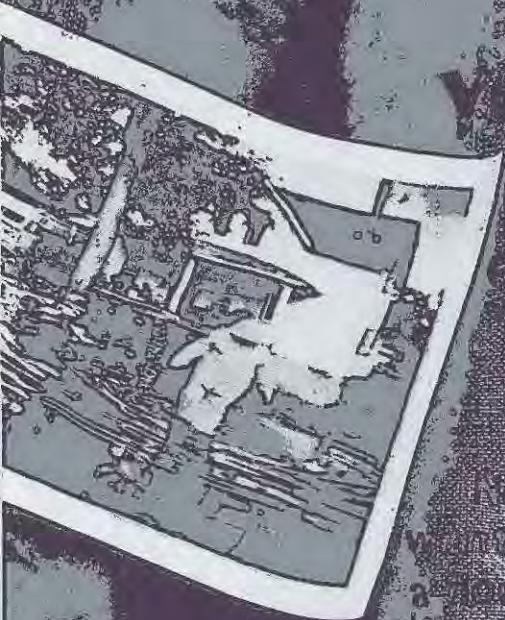
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InVEST

Continued from page 12B

In addition to learning the ins and outs of an auto insurance agency and company, students are given a broad-based introduction to all aspects of the insurance industry and a general business education, said Barbara D. Fidler, executive vp of PIIAC and chairman of InVEST of Colorado.

"When we talk to the kids about insurance, we talk to them in a broad sense" about career opportunities, Ms. Fidler said. The stu-

dents are told that such areas of study as law, accounting, science and nursing are all applicable to the insurance industry.

Students also receive hands-on experience through internships and visits to local insurance companies and agencies.

In March, for example, InVEST of Colorado hosted its first "job shadowing event," Ms. Fidler explained. Nearly 20 students from three Denver public high schools visited Pinnacol Assurance, Van Gilder Insurance Group or Hilb Rogal & Hamilton and shadowed insurance professionals for the day

to learn more about what their jobs entail.

In addition to providing information about the insurance industry, InVEST also awards scholarships to graduating seniors interested in studying business in college. During its first school year, InVEST of Colorado awarded one \$1,000 scholarship to a graduating senior, and the national InVEST program awarded another \$1,000 scholarship to a Denver senior, Ms. Fidler said.

This year, InVEST of Colorado granted two \$1,000 scholarships to two graduating seniors who also received one \$1,000 and one \$5,000 scholarships from the national program, she said.

But the program does not come without challenges.

InVEST of Colorado is funded solely through contributions from insurance companies, agencies, foundations and other organizations.

"It's a huge commitment on the part of the industry to get the program going," Ms. Walker said.

Thus far, the industry has given generously, donating computers, textbooks, time and money. This year, for example, the Surplus Lines Assn. of Colorado committed \$5,000 in scholarship money to InVEST of Colorado, Ms. Fidler said.

Although it is too early to determine whether InVEST of Colorado will achieve its goals, industry participants have expressed enthusiasm.

"I'm optimistic to the point where I'm realistic," said Mark Jenkins, president of Jenkins Insurance Agency Inc. in Englewood, Colo. Although most of the program's courses are taught by full-time teachers, Mr. Jenkins, who obtained an adjunct teaching license, has been teaching an InVEST class at Englewood High School every other day for three years.

Mr. Jenkins established the insurance class at Englewood High School prior to the formation of InVEST of Colorado; his class now makes up part of InVEST's program.

"There is great demand for people in insurance," Mr. Jenkins said, adding that he is optimistic that some InVEST students will eventually assume jobs in the field. "I'd be happy if one student goes into the industry," he said, noting that two students at Englewood High are interning at his independent agency.

The Rocky Mountain Insurance Information Assn.'s Ms. Walker pointed out that even if students never enter the insurance industry as a profession, the program is still valuable.

"It's a nice way to address the issue of lack of awareness in insurance in general in lower-income urban neighborhoods," Ms. Walker said. "If nothing else, we educate kids on why they need insurance and, hopefully, the kids take that home to their parents." **B**

Producer class starts newcomers out right

By MICHEL SCHWARTZ

A new school for agents aims to help producers sharpen their skills at selling commercial lines insurance.

The National Alliance School for Producer Development, established last year by the National Alliance for Insurance Education & Research, is a three-week course designed for new or relatively inexperienced agents.

The school, which helps agencies recruit and train new sales professionals, was created by the Austin, Texas-based National Alliance. The National Alliance sponsors insurance and risk management education programs and confers several professional designations, including that of Certified Insurance Counselor.

Last spring, the National Alliance held its first producer school, at Florida State University in Tallahassee. Faculty members, all experienced independent agents, focused on a variety of selling tactics and a brief overview of commercial lines coverages.

Jocelyn White, a sales executive at Blaire, Cutting & Smith in Amherst, Mass., was one of two women among the 42 students who took the course. "The sales techniques and the knowledge of insurance coverages I gained was invaluable," Ms. White said. She said her agency was so pleased by the results that it has signed up three more agents for future classes.

William C. Toll, senior vp of the producers' school, said that most of the students who attended the first session were male and had limited experience in the insurance industry. The backgrounds of the students, who averaged 25 years in age, included law, law enforcement and mechanical contracting.

There are advantages to having students come in who are new to the insurance industry, Mr. Toll said. "We prefer to get students when they're green, before they adopt bad sales habits," he said.

"Our school is taught by independent agents, as opposed to underwriters," Mr. Toll said. Consequently, he said, students are more likely to develop "insurance street smarts" than they would if they were to attend courses taught by the insurance companies the agents represent.

At the recent session, the student-to-faculty ratio was just over five to one, Mr. Toll said. During the first few days of the course, students focus on sales techniques and the "dynamics of selling." Next, they examine a variety of coverages and end each unit with a role-playing session.

"We divide the class into groups of three," Mr. Toll said. "One person plays the agent, one person the client and the last the observer. Then

they rotate."

The 20-hour course covers "traits of a superproducer, how to lure a successful producer and a mental rehearsal of a successful pitch," Mr. Toll said.

The third week includes a "risk inspection," in which students and faculty visit a prospective client's commercial site. Students learn firsthand what to look for when assessing the risks related to commercial property. For example, faculty members discuss fire protection, construction, property risk, liability, slip and fall and other concerns. Students at the Florida State University session went to a basketball stadium, Mr. Toll said.

Michael Maginnis, a producer for North American Insurance Agency in Covington, La., also attended the Florida State session. Mr. Maginnis said he found the most-valuable lesson to be the "diagnostic appointment questionnaire." The form, he said, helps a producer assess the history of a client's business as well as the client's individual needs.

For instance, one of the questions asked, "Other than price, what would you like me to fix about your coverage?" This assessment helps agents to determine whether a sales pitch should be used, which approach should be taken and what needs the consumer has, Mr. Maginnis said.

It "uncovers the need in a cost-effective manner," said Jack Frick, executive vp of the school.

Both Ms. White and Mr. Maginnis attended the session at the suggestion of their agencies, and they are now considering continuing their insurance education to achieve the Certified Insurance Counselor designation.

Agents who want to develop their skills may attend sessions to be held later this year and early in 2002. A course is scheduled for June 3-22 at the University of Massachusetts in Amherst. Students for the session are accepted on a first-come, first-served basis.

Tuition for the June session is \$4,500 and includes a \$1,000 application fee, materials, room, board, access to university facilities, course-sponsored extracurricular activities and graduation materials. Scholarships are available, and sponsorships are welcomed.

Another session is scheduled for September in the Dallas/Fort Worth area, to be followed by a January 2002 course in Anaheim, Calif.

The school is currently preparing an online yearbook, which will be password-accessible so that alumni can keep in touch.

For more information, write to the National Alliance for Producer Development, P.O. Box 27027, Austin, Texas, 78755-2027; call 800-633-2165; or visit the alliance's Web site, at www.scic.com. **B**

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Congress sharpening its focus on state regulation

By MARK A. HOFMANN

A topic once rarely discussed in polite circles in Washington is now being debated with increasing vigor in the offices of lobbyists and the halls of Congress.

The topic is an increased federal role in insurance regulation. The subject was once nearly taboo because the McCarran-Ferguson Act of 1945 formally gave states the right to oversee the business of insurance. But increasing dissatisfaction with the way states regulate insurance—along with the 1999 enactment of the Gramm-Leach-Bliley Act to lower barriers that had kept separate the insurance, banking and securities industries since the Great Depression—has given new impetus to advocates of a larger federal regulatory role.

In fact, the House Financial Services Committee plans to begin discussing optional federal chartering of insurance companies this fall, according to the chairman of one of the panel's subcommittees. But right now, Congress is focusing on improving the way states license agents and brokers.

The announcement that lawmakers will consider federal chartering came as the House Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises heard testimony on state efforts to avoid the creation of a new National Assn. of Registered Agents and Brokers. The NARAB would oversee a national clearinghouse for producer licensing, streamlining what many producers regard as a cum-

bersome, duplicative and expensive state-based system. While NARAB is favored by some in the producer community, it is opposed by the National Assn. of Insurance Commissioners.

The subcommittee's chairman—Rep. Richard Baker, R-La.—stressed that though the committee would discuss optional federal chartering it would not necessarily consider legislation to bring it about. Currently, insurers are chartered and regulated by individual states, and the development of federal chartering proposals has divided underwriters as much as the creation of NARAB has divided producers.

At the May 16 hearing, members of the subcommittee heard testimony concerning states' enactment of laws that allow reciprocity in agent licensing, resulting in treatment of nonresident agents equal to that granted to in-state agents. The Gramm-Leach-Bliley Act requires that at least 29 states enact reciprocity by Nov. 12, 2002, to preclude the creation of NARAB.

By the time of the hearing, 21 states had approved such legislation, though it isn't clear whether all of the laws actually meet the Gramm-Leach-Bliley requirements. Witnesses representing state regulators and producers alike said they believe the deadline would be met, though brokers are concerned that the country's largest states would not enact the legislation and, consequently, would not be bound by reciprocity requirements.

But it was evident at the hearing that reciprocity, even if it were to apply to all states, would not be

enough to satisfy the critics of state regulation. That much was clear from the opening comments of Rep. Sue Kelly, R-N.Y., the guiding force behind NARAB. Rep. Kelly testified before the panel about the desirability of true uniformity in the state licensing of producers.

"Let me begin by reading to you a quote which demonstrates both the desire of state regulators to achieve the uniform licensing standards and the impediments to it," Rep. Kelly said.

"The commissioners are now fully prepared to go before their various legislative committees with recommendations for a system of insurance law which shall be the same in all states—not reciprocal but identical, not retaliatory but uniform," she read.

Rep. Kelly said the statement she read had been made by former New York Insurance Commissioner George W. Miller, the founder of the NAIC, at the group's first meeting in 1871. "Since then," Rep. Kelly said, "the NAIC has been working for 130 years to achieve some form of regulatory uniformity. I wish they could have solved the problem, but they clearly have not."

Rep. Kelly said that states should enact true uniformity before the end of the decade. "As evidenced by the states' continuing effort to avoid NARAB implementation, the states will act if we give them the right incentive," she said. Rep. Kelly said uniformity would ensure that producers "can focus on providing the best insurance service at the lowest cost to consumers—not continuing to hire extra staff to attempt to comply with the staggering com-

plexity of 50 insurance regulatory standards."

A former chairman of the Washington-based Council of Insurance Agents & Brokers underscored the costs associated with the current licensing system as he fielded questions from the panel.

Albert R. Counselman, president and chief executive officer of Baltimore-based Riggs, Counselman, Michaels & Downes—the largest independent agency/brokerage in Maryland—said his agency spends about \$100,000 a year to meet state licensing requirements. Mr. Counselman noted that he had testified on the matter before Congress four years ago; he said that though he wished he could report that the situation had improved dramatically, "unfortunately, that is just not the case."

While Mr. Counselman said that the number of licenses that the firm must maintain has dropped to 90 from the 100 it had to hold four years ago, he said the licensing process has improved only slightly. Some states still do not accept the uniform nonresident licensing application developed by the NAIC, he said, and some retain protectionist policies. Citing an example, Mr. Counselman said that even though he secured a nonresident license in Texas, he is not permitted to solicit business from any Texas resident.

Mr. Counselman praised the NARAB provision for its "Bunsen burner effect" in getting states to act on reform. He also saluted the NAIC for urging further reform, but he made clear that the CIAB believes the pace is still far too slow.

Even a witness opposed to the cre-

ation of NARAB called for reform of the system.

"Despite our longstanding support for state regulation and effective licensing laws, we feel that the current licensing system does not operate as efficiently as it should," said Ronald A. Smith, a past president of the Alexandria, Va.-based Independent Insurance Agents of America and the agent group's current state government affairs chairman. Mr. Smith, who is president of Smith, Sawyer & Smith Inc. in Rochester, Ind., also testified on behalf of the National Assn. of Insurance & Financial Advisors and the National Assn. of Professional Insurance Agents.

Like Mr. Counselman, Mr. Smith advocated uniformity. While stressing the IIAA's continued commitment to state—rather than federal—insurance regulation, Mr. Smith also called on the Financial Services Committee to use its oversight to encourage reform.

Colorado Insurance Commissioner William J. Kirven, testifying on behalf of the NAIC, tried to assure the House subcommittee that the NAIC sought regulatory homogeneity as well. "Our long-term goal is uniformity," Mr. Kirven said.

Rep. Kelly asked him when that goal would be achieved.

"I don't know why we couldn't reach uniformity within another three years," Mr. Kirven replied.

At the end of the hearing, Rep. Kelly told Mr. Kirven to deliver a one-word message to the NAIC—"uniformity." If the state regulators couldn't bring about uniformity, Rep. Kelly said, Congress would be quite willing to help them. **BI**

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Recruiting key in 'e-ventures'

By John Barrett

Pundits and practitioners may debate the degree to which of the Internet has affected the financial services industry, but all agree it has been significant.

Statistics bear this out. A 1999 Morgan Stanley Dean Witter study predicted that by 2003, online trading could account for up to 75% of all retail transactions. In less than three and a half years, the Web has evolved from a neat toy for "techie" to a critical tool for financial transactions and information sharing. The question for financial services professionals today is not whether they'll offer online services but when and how.

Although other financial services sectors have embraced the Internet, insurers have been slow to adopt e-commerce strategies. A 1999 Booz-Allen & Hamilton survey of 120 insurer Web sites found 7% offered quotes online, and less than 1% offered interactive

A/BT PERSPECTIVE

services or online sales.

Insurance professionals justify the lack of e-commerce in their industry by citing channel conflict, the complexity of insurance products and the notion that insurance is "sold, not bought." What's more, far too many insurance professionals envision a successful e-commerce initiative as little more than an informational Web site—the equivalent of an online brochure built to entice clients but with little substance.

This "less is more" attitude does not recognize the indisputable growth of the Internet and its revolutionary impact on all sectors of the economy. Some may scoff at that comment given the recent downturn in tech stocks, though that is a shortsighted view. E-commerce is a revolution, and the variance of the markets is indicative of its growing pains,

not its death throes. If insurance professionals do not embrace e-commerce, they risk being treated as "part of the problem."

For those ready to embrace e-commerce, we have some invaluable lessons learned from recruiting e-commerce executives in the insurance industry.

Recruiting may seem an unlikely source for insights on e-commerce. In fact, attracting e-commerce executives requires a rigorous self-examination. Companies must challenge their core business strategy with the understanding that fundamental processes may not only be retooled but rejected outright. What then are the lessons for insurance professionals?

First, e-commerce executives want to be part of a company that is audacious in its vision, revolutionary in its practices and ready to leapfrog its competition's technology. The culture that reflects these characteristics will attract the

See **Recruiting** on next page

Recruiting

Continued from previous page
best executives.

The second lesson is e-commerce initiatives often challenge the parent company culture and may expose hidden scars concerning its self-identity. That can lead to conflicts in strategy between the leaders of the existing units and the e-commerce initiative.

To guarantee a smooth transition, insurance professionals must consider how to resolve these conflicts. They must also consider new performance measurements for the company that create incentives for the e-commerce initiative and develop a reward system that encourages organizational change. Finally, how will the e-venture be integrated to create lasting improvements in the company?

The third lesson is to convince e-commerce candidates that the organization has made allowances for the resources to implement major technological change. Successful e-commerce executives know that a startup operation requires significant investments of time and money. They also know that a "brick and click" venture that is part of a large organization requires the cooperation of department leaders. Support is critical to success, and e-commerce leaders must believe the parent company is ready to provide the resources.

The fourth lesson is to choose an e-commerce leader with the right skill set. The ideal e-commerce executive combines vision, diplomacy and tenacity. These attributes are as crucial a thorough understanding of technology, the insurance industry and the parent company's culture.

Developing the best e-commerce approach requires vision—not just of how technology is evolving but how to organize the company to best leverage e-commerce. For example, the new e-commerce initiative may require cannibalizing the brick-and-mortar business, a strategy that

often meets fierce resistance. The executive must be able to foster consensus.

The final lesson is companies must shift from resisting change to enthusiastically embracing it. The Internet revolution has already spread to the insurance industry. Professionals who invite change will reap the rewards. Those who don't, risk being left behind. **BI**

John Barrett is an executive director at Russell Reynolds Associates, a New York-based executive recruiting firm.

Making sites click with clients

By MICHAEL BRADFORD

Do it fast and in more than one language.

And while you're at it, take a look at what everyone else is doing.

That's some of the advice an Internet consultant offers to insurance agencies and companies that are up and running on the Internet or are looking to boost the performance of their Web pages.

Speaking at the ACORD Technology Conference last month at Walt Disney World in Lake Buena Vista, Fla., Russ Haynal urged agents and insurers to stay current on Internet trends.

"This is a new form of literacy that your customers will be speaking, your business and trading partners will be speaking. We have learned how to read, write and speak," said Mr. Hay-



nal. "Now we have to learn to surf."

Mr. Haynal, an independent Internet consultant based in Ashburn, Va., suggested that agents consider posting their Web pages simultaneously in languages other than English. "Historically, you could get away with publishing your page in English because the majority of your customers spoke English," he said.

But as the U.S. population becomes more diverse, with residents who

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AGENT/BROKER TOPICS

Internet

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speak other languages, and as business becomes more global, it is increasingly important to reach non-English speakers who are potential customers, he said. U.S. organizations that are publishing pages simultaneously in Spanish are experiencing increased sales, Mr. Haynal noted. "As you publish your content on the Internet, you may want to look forward to having alternative language versions up there."

He said figures compiled by Global Reach, a marketing company in San Francisco, show there are around 20 million Spanish-speaking Internet users worldwide and that number is expected to grow to about 60 million by 2003. The biggest increase will be in Chinese-speaking Internet users, from 40 million worldwide today to 160 million projected by 2003.

When users do find an agent or insurer's page, they want a quick response, according to Mr. Haynal.

As more Internet users move to high-speed access, they are losing pa-

tience with pages that don't quickly load, Mr. Haynal noted. "When they click on that link...they expect to see something now."

There have been many studies on how long users will wait for a page to download, Mr. Haynal pointed out, and if a page takes a laggardly 10 to 20 seconds to appear, studies show that users will bail out and go elsewhere. Or, if they are trying to pull up information from a page and that amount of time goes by with no results, they may turn to the toll free number instead. That means either a

lost sales opportunity or increased support costs, he said.

Mr. Haynal said agents can use the Internet to keep an eye on competitors by using a service called Company Sleuth at www.companysleuth.com.

By designating a number of competitors to be watched by Company Sleuth, users can receive daily reports that give a sizable amount of information on certain of the competitors' activities, Mr. Haynal said. The reports reveal lawsuits filed against a company, trademarks the competitor is seeking, domain names it has registered,

whether it is mentioned in investor reports, press announcements it has issued and other information.

To illustrate how the service works, Mr. Haynal called up a report on domain names registered by Lucent Technologies. The lengthy list of names gave some hints as to what new communications services the company might be planning to unveil. Such information can be useful to the company's competitors, he suggested, and agents and insurers can use the service to look for similar clues as to where their competition is headed. **BI**

Data sharing simplified

eMerge will create industry standard

By MICHAEL BRADFORD

Data swapping within the insurance industry could become much simpler if ACORD's vision becomes reality.

ACORD, or the Assn. for Cooperative Operations Research, is embarking on a strategy it

calls eMerge, which is aimed at integrating existing data

standards for insurance companies, intermediaries and reinsurance companies into a single shared standard. The common standard also would be available for use by those companies' partners in other industries and could simplify the amount of work it currently takes for all parties to enter data required for a transaction.

In a related move, ACORD is expanding internationally to assume responsibility for standards developed by WISE, a non-profit, industry-owned organization based in London that is backed by the world's leading insurers, reinsurers and brokers. WISE was formed in June 1999 through the merger of the Reinsurance & Insurance Network, the London Insurance Market Network and the Worldwide Insurance Network. ACORD will open offices in Brussels, Belgium, and London as it expands to service the WISE standards and work to develop its global eMerge concept.

The globalization of the insurance market and the convergence of financial services have made it necessary for companies to be able to communicate easier and faster, according to Tana Sabatino, assistant vp of standards at ACORD, based in Pearl River, N.Y. "The lines and the silos that we've operated in really are becoming quite blurred," she said at ACORD's technology conference.

"We're at a point now where we're all connected and there truly is a need to communicate" with common data standards, Ms. Sabatino said. She said eMerge is a "global framework" for all businesses to use, and not one "that is unique to insurance. This is a key component of this plan."

Ms. Sabatino said that making the

standard available to all businesses gives insurance-related businesses "many more options than they would have if they had an insurance-specific platform."

ACORD plans to test the standard in a pilot project that is scheduled for completion in November 2002. The organization is partnering with other standards bodies so that its resulting standard can accommodate the needs of different types of businesses, according to Ms. Sabatino.

Gregory Maciag, president and chief executive officer of ACORD, said during a presentation at the conference that the organization has had a relationship with WISE since that group's formation in 1999. Like ACORD, it is a non-profit organization that develops and promotes data standards. "WISE" stands for "worldwide insurance e-commerce."

Mr. Maciag said the groups would begin working together on July 1. The convergence of the two groups "reflects the change in our business and the globalization of the marketplace," said John Leonard, chairman of ACORD's board of directors and president of Maine Employers Mutual Insurance Co.

Rob White-Cooper, chairman of WISE's board of directors and a senior director with Marsh Inc., said during the conference that the "opportunity to integrate the standards activities of WISE and ACORD will be a very exciting breakthrough for e-commerce in our industry." Combining the two groups' efforts "will give the industry an extremely powerful force for change," he said.

Ms. Sabatino said that agents and insurers need not worry about the fate of their current efforts to implement ACORD's XML—or extensible markup language—standard for exchanging electronic data in light of the organization's new direction. She said ACORD would continue to support the XML standard "as long as the market demands."

XML is similar to hypertext markup language, but unlike HTML, XML lets those who exchange data over the Internet the ability to define data in specific ways.

XML will be a cornerstone of the eMerge platform, Ms. Sabatino said, and she called eMerge a "natural evolution" of the XML standard.

Privacy law will affect agents

By MICHAEL BRADFORD

Insurance agents are facing choices in complying with provisions requiring privacy notices and sharing of information set forth in the Gramm-Leach-Bliley privacy legislation that becomes effective July 1.

A portion of the law that stipulates whether financial services organizations must notify their customers before releasing personal financial information is causing some intermediaries to wonder where their responsibility lies, according to a panel of experts who discussed the law at ACORD's annual technology conference, recently in Lake Buena Vista, Fla.

Insurance agencies have three options for meeting the responsibility of providing privacy notices that allow clients to block the release of non-public information, said Scott A. Sinder, an attorney with the Washington law firm Collier Shannon Scott P.L.L.C. Agents can take advantage of an exception within the law, opt to be covered by insurers' privacy notices or issue their own notices, he said.

Panelists suggested that the wisest move likely is for agencies to issue their own privacy notices. Because of differences in how coverages are marketed, property/casualty agents are more strongly encouraged to issue their own notices than are life insurance agents, the panelists emphasized.

To be excepted from the notice regulation, agencies must be acting on behalf of another licensee, Mr. Sinder explained. In this case, an insurer that writes the agent's business would qualify as the licensee, he said, and must issue its own notice.

A "limiting factor" in that arrangement, however, is that "the agent cannot disclose non-public personal information to anyone other than" the insurer, Mr. Sinder said. And while some insurance commissioners have

said that if agencies do business with several companies, they can share information freely with all of them, "I

feel this is absolutely incorrect and we're all going to be in front of an unhappy judge if this is the practice" that becomes widespread, he said.

Patricia Borowski, division vp for the National Assn. of Professional Insurance Agents in Alexandria, Va., said agents have to be careful in understanding their roles as intermediaries when considering whether they are exempted from the privacy regulations.

Understanding the definition of an agent—and therefore when privacy exemptions would apply—can be tricky, Ms. Borowski noted. When shopping business, "you are not necessarily at that point a particular agent of any given company," she said, but can be considered such when a decision is made to place coverage with a particular underwriter.

At times, independent agents are "executing the roles of a broker," Ms. Borowski explained, "and at times are specifically executing roles as a particular agent" for an underwriter.

Because of the gray area within the definitions, the PIA encourages agents to issue their own privacy notices, Ms. Borowski said.

If an agency opts to fall under the insurer's policy for disseminating information, "it's going to limit their (information) sharing capabilities" to whatever the insurer decides meets its own best interests, Mr. Sinder said. Insurers will be developing their policies for handling non-public information based on their own needs and not those of the agency, he said.

There are exclusions within the law that allow the disclosure of non-public information for purposes of insurance underwriting, claims processing and

other insurance-related functions, said William Still, director of privacy and government affairs at Atlanta-based ChoicePoint, a consumer-reporting company servicing the insurance industry. "It's a very broad exception."

Even so, the exact impact the new legislation will have on how financial information is disseminated in the underwriting and claims process is unclear, Mr. Still said. "I've heard people say one way or the other what's going to happen with financial information after July 1," when full compliance with the law is required, he said. But he emphasized that those who claim to know for sure are lying. "It is very much in a state of flux; it's going to be up to how the regulators interpret it and how the data suppliers" react to the law, Mr. Still said.

He said his interpretation as it affects ChoicePoint and its clients is that underwriters using credit reporting services will be unaffected by the legislation because of exceptions it contains. "Your underwriting tools should be protected post-July 1," he said of insurers with such relationships.

Ms. Borowski urged insurers to review privacy procedures already in place before hiring attorneys to help them implement new procedures. "A lot of companies made the error of hiring privacy counsel and going ahead and putting together a lot of these extraordinary procedures, completely forgetting that they already had procedures in place," she said.

Reinsurers are able to invoke exemptions in the privacy legislation, said Anthony J. Mormino, vp and assistant general counsel of the Reinsurance Assn. of America in Washington. "For reinsurers, the main concern is the passing of information between a ceding insurer and an assuming insurer," he said, and that appears to be a process that will be unfettered by the new law. **BI**

1,600 attend ACORD conference

Brush fires clouded the skies around the Walt Disney World's Dolphin Resort but didn't dampen the enthusiasm at ACORD's Technology Conference held there.

Attendees got used to the smell of smoke from fires that burned hundreds of acres in central Florida. The

fires didn't threaten the resort but did produce a haze over the area.

This year's conference, held May 20-22, drew about 1,600 attendees to hear presentations by technology experts and others who discussed topics including ACORD's new eMerge single-standard initiative,

privacy issues that agents face, Internet trends, various e-business issues and other topics.

Next year's meeting, scheduled for May 19-22, again will be held at the Dolphin. Information is available from ACORD at 1-800-444-3341 or at www.acord.org.



AAMGA

Continued from page 3

Co. and Shand, Morahan.

Many insurers that were once privately held are now publicly traded, and investors are demanding better results, he said.

But with annual investment returns of just 5% to 6% over the last 10 years, insurers need to do better if they want to attract investors, Mr. Springman said.

Investing in the insurance industry today "doesn't make sense, especially when you can get this (kind of return) from a T-bill with no risk," he said.

In an effort to shore up their financial positions, insurers are generally raising rates across the board, the panelists concurred.

"We're now seeing standard companies retracting, reinsurers regrouping and rethinking and everybody is re-underwriting and repricing," Mr. Latham reported.

Indeed, the Council of Insurance Agents & Brokers' first-quarter property/casualty market survey, conducted between January and April of this year, found that medium and large risks are experiencing the largest increases.

According to the survey, 76% of medium-size risks are seeing rate hikes of 10% to 30%, while 55% of large risks are experiencing increases in that same range.

The lines seeing the most hardening are commercial auto and general liability. But group medical pricing also is up significantly, with small risks seeing the biggest increases, according to Ms. Heaton.

Fortunately for members of the AAMGA, tightening in the standard market is driving many risks into the surplus lines market, Mr. Latham and other panelists said.

"We see submissions up an average of 200% in our office, though it varies by product line," Mr. Latham reported, adding that "pricing increases range anywhere from 7% to 12% as a general rule but certainly a lot higher on specific lines."

Underwriting also is more restrictive, he said.

But, "we've only seen the tip of the iceberg," Mr. Latham said. "A lot of (business) was underpriced, and a lot of those losses haven't come through yet."

In addition, "a lot of investors in our industry are disenchanted with the results they've had so far," he said. "So I think the market will continue to tighten, at least through next year."

"In our office, the growth has been substantial," said Leonard LoVullo, president of Buffalo, N.Y.-based LoVullo Associates and past president of the AAMGA.

He said he expects to write more large accounts and has assigned the more experienced people to them, while junior staff are working on smaller accounts.

"A year ago, if you gave a quote of \$4,000, you may be competing with four or five other companies. Today, if you quote \$8,000 or \$10,000, you have a shot at getting that account," he said.

"This is a time of opportunity for all of us; we need to restore our industry to a healthy state. We've got to raise all prices to get our industry back to a healthy state, because it's going to turn again," said Max Williamson, president of

Scottsdale Insurance Co. of Scottsdale, Ariz.

But while the market turn may be good news for insurance companies, it's causing a stir among their underwriters, many of whom are too young to remember the last hard market, according to Francis Johnson, vp of Charleston, S.C.-based Johnson & Johnson Inc. Managers and president of AAMGA's Under 40 Organization.

"I joined the business in 1986 at the tail end of the hard market," he said. "At least one-third of your employees haven't seen a hard market, either," he told MGAs, brokers and insurers attending the meeting.

"The frustrating part of the cycle is the transition. One company has upped rates, while another is

still selling at old soft-market pricing. This causes underwriters double the work to make sure we're quoting the best price for the risk," Mr. Johnson said.

History does seem to be repeating itself, he noted.

"What we need to do now is teach our young employees this history, what the last hard market was all about. This will help them to lead our companies into the future."

Mr. Johnson also suggested that managing general agents have power to limit these cycles by pricing the risks correctly, regardless of how much insurers collect in investment income.

"There seems to be some sort of a golden rule that nobody learns anything" with each market turn, observed John Clements, chair-

man of London-based Bell & Clements Ltd. "It's not that everybody's dumb, it just that conditions changed, making it unnecessary to learn."

But, regardless of market conditions, "claims have a tendency to stay the same," he said.

Brokers also are having a hard time selling the new hard market pricing to insurance buyers, the panelists said.

Over the last 10 to 13 years, "we pretty much sold our soul to our retailers, doing favors, almost purposely misclassifying accounts to get the rates cut, and many times carriers allowed it," said Mr. LoVullo.

But, "that time is over; it's a seller's market, and we have to take advantage of it. We cannot be afraid to say 'no' to our retailers,

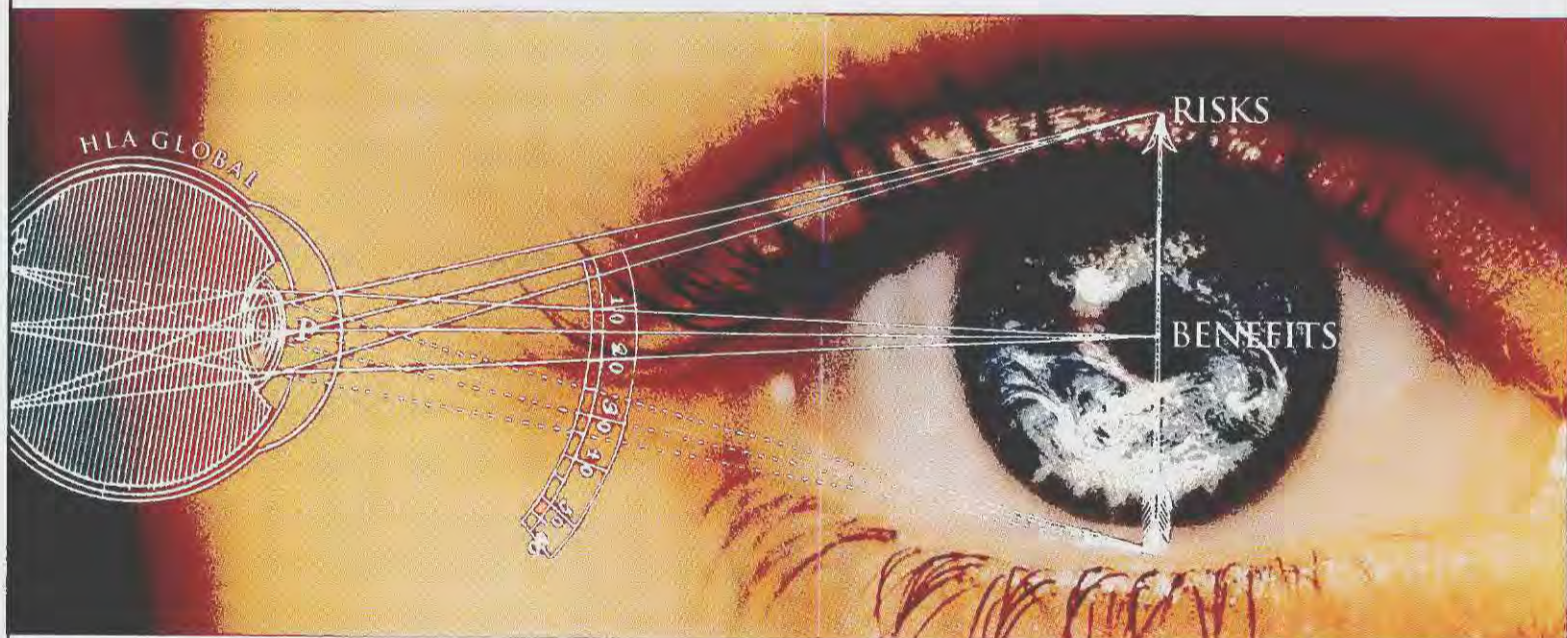
especially those who have only been throwing bones at us."

To arm underwriters so they can better explain and overcome objections to price increases, Scottsdale is putting people through sales training courses, according to Mr. Williamson.

Markel also is focusing more on education and training, teaching the "art of negotiation from the insurance underwriter perspective," according to Mr. Springman.

"The most important part of the educational phase was to have the company underwriters understand why the pricing increase was necessary, so they could work with the MGAs and the wholesalers," he said. "The broker has to be supplied with information to differentiate programs." **BI**

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Privacy rule puts breaks on sharing driver info

By JOANNE WOJCIK

PALM DESERT, Calif.—As the commercial auto market continues to firm, producers and insurers are seeking more and better information from companies, but a new federal privacy regulation is making obtaining—and sharing—that information more difficult.

In fact, under the new federal Driver Privacy Protection Act, employers could expose themselves to even greater risk if they share information obtained about employees' driving records with their insurance agents or brokers, said Dale Reagan, national sales manager of Tulsa, Okla.-based DAC Services. DAC provides electronic driver-screening

information to the transportation industry.

"It's imperative as an insurance provider to know about these workers," said M. Thomas Ruke Jr., president of Insurance Business Consultants Inc. of Fort Myers, Fla. Messrs. Ruke

AAMGA

and Reagan made their remarks at a session at the American Assn. of Managing General Agents' University Day, held May 20 in Palm Desert, Calif.

For example, before underwriting a commercial auto policy, underwriters should find out how carefully employers screen their drivers before handing over the keys, he said.

"You need to express to insureds standards for driver selection," said Mr. Ruke.

Sometimes a driver may have a license from more than one state, so that if he or she gets a citation on one license, the other one can be presented to an employer to prove a clean driving record, he said.

And some states allow drivers to "mask" drunken driving citations by removing such incidents from motor vehicle reports if they take a class or pay a fine, according to Mr. Reagan.

Fortunately, drunken-driving arrests turn up on criminal records regardless of whether they've been expunged from driving records, he said.

In fact, criminal record checks are the fastest-growing segment of his business, he added.

Mr. Ruke said he also is aware of situations in which a small-business owner might add his or her teenager to a commercial auto policy,

thinking that doing so will save money. But although the move may cost less in the short run, it could ultimately prove costly, he said.

"If you have a big loss on a commercial policy, it could affect your ability to do business; by contrast, if you have a personal loss, you pay a higher premium for a year or two," he said.

Sometimes, it may be necessary for employers to complete more than one coverage application if they have both clerical workers and other drivers using company cars, as those are different types of risks that should be underwritten separately, he said.

But even if employers want to be honest with their brokers, a new federal privacy regulation could make sharing driving-record information difficult, if not impossible, according to Mr. Reagan.

Under the Driver Privacy Protection Act, which was proposed by the Clinton administration in 1996 but is just now being implemented, there are only four permissible purposes for obtaining motor vehicle records—insurance, employment, government agency enforcement or as part of a civil, criminal or arbitration proceeding.

In addition, under the law, an employer that shares information with other parties—including insurance agents or brokers—becomes a consumer-reporting agency subject to the Fair Credit Reporting Act and regulated by the Federal Trade Commission.

As a result, agents, brokers and insurers must obtain their own copies of employee driving records inde-

pendently of employers, Mr. Reagan said.

The new law does permit insurers, agents, brokers and managing general agents to share driving records among themselves, according to Mr. Reagan. But, they cannot share the information they obtain about employee driving records with the employers they are insuring without themselves becoming consumer-reporting agencies.

As a result, if an underwriter finds out that a prospective new hire has a bad driving record, he or she cannot point out that fact to the employer.

"Don't tell an insured whether they should or should not hire a driver; it's their decision," said Mr. Ruke.

"If an MGA, insurer or broker provides (a motor vehicle record) to an insured and the insured uses it to fire or to not hire someone, and that person takes the insured to court and that evidence is presented, the MGA, insurer or broker then becomes a consumer-reporting agency, subject to FCRA," Mr. Reagan

said.

Such a disclosure could be costly, because "violations of FCRA result in fines of \$50,000 per violation," he added.

Because of this potential exposure, Mr. Ruke advises MGAs, brokers and insurers to merely state that "hiring drivers that don't meet certain standards could jeopardize their coverage."

And if the employer decides to go ahead and hire that driver, perhaps because the employer did not obtain a motor vehicle report of its own, it's useless for the underwriter to try to exclude that person from the policy, according to Mr. Ruke. If that driver has an accident, the employer almost always is found to be at fault, and the employer is the policyholder, he said.

Furthermore, "if you exclude the driver, you become an expert witness for the plaintiff," Mr. Ruke pointed out.

"It's safer for the MGA to simply not insure the entire risk than to add driver exclusions," he said. **BI**

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION
GARETH HOWARD HUGHES, CHRISTOPHER
JOHN WILKINSON HILL AND PAUL CLARKE,
AS JOINT PROVISIONAL LIQUIDATORS OF
OCEAN MARINE MUTUAL INSURANCE
ASSOCIATION LIMITED,
CASE NO. 99-B-42545 (BRL)

NOTICE IS HEREBY GIVEN THAT ON MAY 15,
2001, THE BANKRUPTCY COURT ENTERED AN
ORDER (THE "ORDER") CONTINUING THE
PRELIMINARY INJUNCTION ORDER PURSUANT TO
11 U.S.C. § 304 ORIGINALLY ENTERED IN THIS CASE
ON MAY 5, 1999. THE ORDER SHALL REMAIN IN
EFFECT PENDING A HEARING TO CONSIDER
WHETHER IT SHALL BE CONTINUED, WHICH
HEARING IS SCHEDULED TO BE HELD ON
NOVEMBER 8, 2001 AT 10:00 A.M. (THE "RETURN
DATE") BEFORE THE HONORABLE BURTON R.
LIFLAND, IN ROOM 623 OF THE ALEXANDER
HAMILTON CUSTOM HOUSE, ONE BOWLING
GREEN, NEW YORK, NEW YORK. ALL PAPERS
SUBMITTED FOR THE PURPOSE OF OPPOSING
CONTINUATION OF THE ORDER AFTER THE
RETURN DATE SHALL BE FILED WITH THE COURT,
WITH A COPY TO THE CHAMBERS OF THE
HONORABLE BURTON R. LIFLAND AND SERVED ON
COUNSEL FOR THE PETITIONERS LISTED BELOW,
SO AS TO BE RECEIVED AT LEAST FOURTEEN (14)
DAYS PRIOR TO THE RETURN DATE. ANY PERSON
WISHING TO OBTAIN A COPY OF THE ORDER
SHOULD CONTACT COUNSEL TO THE PETITIONERS.

CHADBOURNE & PARKE LLP
ATTORNEYS FOR THE PETITIONERS
30 ROCKEFELLER PLAZA
NEW YORK, NEW YORK 10112
(212) 408-5100
ATTN: HOWARD SEIFE, ESQ.

Garcia named new AAMGA president

PALM DESERT, Calif.—Baron Garcia, president of Oklahoma General Agency in Oklahoma City, was installed

son & Johnson Inc. Managers of Charleston, S.C., was elected director for the east region. Roger Lott, vp of Graham-



Mr. Garcia



Mr. Giles



Mr. LoVullo

as president of the American Assn. of Managing General Agents at the organization's annual meeting, held May 20-24 in Palm Desert, Calif.

Under the AAMGA election rules, Mr. Garcia, who had been president-elect of the organization, automatically ascends to AAMGA presidency.

Meanwhile, Robert S. Giles, president and chief operating officer of R.W. Scobie Inc./Midwest General Agency in Eau Claire, Wis., was named president-elect. Mr. Giles was vp for AAMGA's Zone 1 for the past year.

The immediate past president—Leonard T. LoVullo, president of LoVullo Associates Inc. of Buffalo, N.Y.—remains a member of the executive committee.

Also elected were two new regional vps and two new regional directors in the first year of a transition to a new board structure.

Joseph P. Hutelmyer, president and chief executive officer of Seaboard Underwriters Inc. of Burlington, N.C., will be vp-east region. Milton O. Johnston, president of Milton O. Johnston & Co. of Houston, will become vp-west region.

Francis Johnson, vp of John-

Rogers Inc. in Bartlesville, Okla., was elected director for the west region.

Also ascending to higher office in AAMGA are the 2000-2001 zone directors, who become senior vps. They are:

- Anthony R. Glotzbach, president of United Brokers Inc. of New Albany, Ind.

- Ronnie Moore, president of Southern General Agency Inc. of Bowling Green, Ky.

- William A. Fink, president of Delta General Agency Corp. of Houston.

The 2001-2002 board of directors of AAMGA will include 10 members—one more than in the past—in the first year of a transition from three geographic zones to two. Next year, the board will return to a nine-member structure.

This year's AAMGA meeting, which was attended by approximately 1,300 managing general agents, wholesale brokers and insurers, celebrated the 75th anniversary of the organization.

Next year's meeting will be held May 5-9 in Las Vegas.

More information about the Kansas City, Mo.-based AAMGA can be found on the association's Web site, www.aamga.org.

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Texas lawmakers pass workers comp reforms

By MICHAEL BRADFORD

AUSTIN, Texas—Texas employers that opt out of the state workers compensation system will no longer be able to ask workers to waive their rights to sue for injury benefits under a measure passed in the final days of the state's legislative session late last month.

Another proposal sent to the governor would convert the Texas Workers' Compensation Insurance Fund into a mutual insurer, which some insurance companies claim would have an unfair advantage in the marketplace. Gov. Rick Perry is expected to sign both bills.

H.B. 2600, sponsored by Sen. Robert Duncan, R-Lubbock, nullifies a recent Texas Supreme Court decision that upheld the right of employers that opt out of the state's workers comp system to ask workers to sign the waivers. Non-subscribing employers typically have in place plans that provide benefits to injured workers, and some employers have sought to have workers waive their rights to additional benefits.

"We have mixed views" regarding the legislation, said Steve Bent, executive director of the Texas Assn. of Responsible Non-Subscribers in Austin. "We want there to be laws that reward non-subscribing employers who provide benefits," he said, but the association also understands that employers cannot "enact whatever programs they want to limit their liability."

David R. Anderson, vp of the Alliance of American Insurers in Downers Grove, Ill., said the Alliance favors the new law, which, if signed, becomes effective Sept. 1. The state Supreme Court decision, he said, "was smacking of unfairness to the employee."

Without the legislation, the number of employers that choose to leave the workers comp system in Texas might have increased, something the Alliance would not have liked to see, Mr. Anderson said.

Mr. Bent said the state Supreme Court ruling, handed down in March, provided lawmakers with the opportunity to create legislation addressing the waiver issue. "They said it was up to the Legislature."

Also contained in H.B. 2600 is creation of a state-run managed care network to treat injured workers.

"It's a novel approach and we hope it will work," Mr. Anderson said. He said insurers successfully lobbied for protections in the bill that ensure existing managed care networks are not harmed by the new state program.

Under H.B. 2600, regional health care fee-for-service networks would be set up throughout the state. The networks would comprise doctors approved by the Texas Workers' Compensation Commission according to criteria established by the bill. Physicians' experience in treating work-related injuries, their ability to provide utilization review services and other

factors would be considered.

The commission would monitor the health care providers' performance and be able to levy sanctions for violations such as overcharges, overutilization or providing substandard care. Insurers or self-insurers could elect whether to participate in the networks.

Employees would be allowed to decide whether they want to participate in a network during an enrollment period. As an incentive, increased temporary income benefits would be available to injured workers who are treated by the network.

The Alliance is not as happy

with H.B. 3458, however, which would make the state's workers comp fund a mutual insurer. The legislation, also sponsored by Sen. Duncan, would change the name of the fund to the Texas Mutual Insurance Co. The insurer would continue to act both as a market of last resort and as a competitive fund. The law, if signed, would take effect Sept. 1.

The state fund, Texas' largest workers compensation insurer, wrote \$309 million in premium last year.

While the Alliance does not object to the fund's mutualization, it does object to a continuing tax advantage that it says

the fund would have over other insurers. Since the mid-1990s, state funds have enjoyed a federal tax exemption that is not available to private insurers.

Mr. Anderson said the exemption gives the fund an unfair advantage over the state's private workers comp insurers and, along with the state fund's "considerable surplus" of around \$600 million, could allow the fund to offer cut-rate premiums or large policyholder dividends.

The exemption may have been appropriate as the 10-year-old state fund was being established, Mr. Anderson said, but "at some point, it should stop." The Al-

liance is urging Gov. Perry to veto the bill.

A spokesman for the state fund said the new law has nothing to do with the tax exemption. "The exemption would have continued even if the bill failed," he said.

"The Legislature has helped us move one step closer to our goal of becoming the model provider of workers comp," said Russell Oliver, president of the fund, in a statement. H.B. 3458 would "protect our surplus, enhance our ability to respond to changing market conditions and ultimately help us to better serve Texas." BI



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GLOBAL BRIEFS

A new finite reinsurer has been formed in Bermuda by German bank Bayerische Hypo- und Vereinsbank A.G. and existing Bermuda-based reinsurer Max Re Capital Ltd. The new reinsurer, **Grand Central Re Ltd.**, has \$200 million in capital. HypoVereinsbank supplied \$185 million in capital, and Max Re provided the rest. Max Re will underwrite the risks written by Grand Central Re, while HypoVereinsbank will invest the assets....**Munich Reinsurance Co.** reported a 24.1% increase in gross reinsurance premiums written, to 5.0 billion euros (\$4.39 billion) for the first quarter of 2001, compared with the same period last year. For its primary insurance operations, Munich Re reported gross premium volume of 4.3 billion euros (\$3.78 billion), up 9% over the year-earlier period. Munich Re Chairman Hans-Juergen Schinzler announced last week that, in unchanged currency rates, the group expects consolidated gross premium volume of 33 billion euros (\$28.41 billion) for all of 2001, which would be a 6.5% increase over consolidated gross premiums of 31.1 billion euros (\$29.31 billion) for 2000....**Benfield Greig Group P.L.C.** has completed its \$165 million purchase of rival reinsurer broker E.W. Blanch Holdings Inc., acquiring 12.2 million shares, or 94%, of Blanch's outstanding common stock for \$13.50 per share (*BI*, April 23)....**AXA Corporate Solutions**, a subsidiary of French insurance giant AXA S.A., has acquired the equity and business of Markel Hong Kong. AXA Corporate Solutions has renamed the business AXA Corporate Solutions Marine Services Ltd. It is headed by former General Manager Paul Lee. AXA Corporate Solutions Marine is the lead underwriter of the Asian Shipowners Forum....The U.K. financial services regulator, the London-based Financial Services Authority, has said it will "name and shame" insurers that refuse to take part in **online league tables** it plans to launch. The FSA plans to rank insurers and fund managers according to several criteria, including the performance of pensions and insurance bonds. The authority said it would list all providers of such services and note those that declined to disclose information....London-based **Groupama Commercial Insurances** has appointed Paul Brearton as director of underwriting and strategy. Mr. Brearton was formerly London regional manager at the subsidiary of Paris-based Groupama-GAN. His replacement in that role is Carlo Marelli, previously regional underwriter....Dutch credit insurer **NCM Group** has announced a net profit of 32.2 million euros (\$30.3 million) for 2000, up 125% over the previous year. The group recorded an 8.9% increase in gross written premiums, to 385.9 million euros (\$363.4 million), and a 10% increase in overall revenues, to 501 million euros (\$472.1 million). The total value of risks borne by NCM increased 36.6%, to 172.6 billion euros (\$162.7 billion). NCM said that it expects claims to increase sharply in the United States in the coming year.

Lloyd's losing its only captive

By SARAH VEYSEY

LONDON—Lloyd's of London is losing its only active captive insurance syndicate, but the market still hopes to welcome new companies interested in forming captives within Lloyd's.

Pharmaceuticals giant GlaxoSmithKline P.L.C. put its Lloyd's captive syndicate 1250 into runoff last month, a Lloyd's spokesman said, stressing that the move did not spell the end for captives at Lloyd's.

The captive, formed by SmithKline Beecham P.L.C. in December 1998, was the first—and, so far, the only—captive syndicate to be set up at Lloyd's.

In March, Richard Reddaway, vp for corporate risks and risk management at GlaxoSmithKline in London, confirmed that the company was reviewing its captive opera-

tions as part of a broad overview of its risk financing programs following the merger that created the current company.

When SmithKline Beecham merged with London-based Glaxo Wellcome in December 2000, the newly merged company gained captive operations in Bermuda and Guernsey in addition to the Lloyd's captive.

One captive manager suggested that, after the merger, it was inevitable that GlaxoSmithKline would rethink its captive operations at Lloyd's.

The GlaxoSmithKline captive wrote non-marine general liability, pecuniary loss and motor business for its parent. Its capacity was reduced to £16 million (\$23.9 million) for 2001 from £25 million (\$40.4 million) the previous year. It was managed by Wellington Underwriting Agencies Ltd., which took over its management in December 2000, when former manager PXRE Manag-

ing Agency withdrew from Lloyd's.

Provisions to allow captive syndicates to operate at Lloyd's were established in 1998, and the SmithKline captive was admitted in December of that year. It began business on Jan. 1, 1999.

The advantages to setting up a Lloyd's captive include Lloyd's international licenses and high marketwide claims-paying ability ratings, captive experts noted.

Max Taylor, then-Lloyd's chairman, welcomed the move.

"We are extremely pleased to welcome SB to Lloyd's, and we expect to see other companies establishing captives at Lloyd's," he said in a statement. "We believe that the introduction of captive syndicates will generate substantial additional opportunities for the existing market."

Since then, however, no other captives have been set up at Lloyd's. The Lloyd's spokesman dismissed reports suggesting

See **Lloyd's** on page 20

Aussie dispute highlights building risks

By DAMIEN TOMLINSON and KATE TILLEY

MELBOURNE, Australia—A construction defects lawsuit pending in Australia has highlighted the need for risk managers to carefully monitor building projects, from their planning stages through their completion.

In the suit, the developer of a network of roads, tunnels and bridges in Melbourne is seeking \$240 million Australian (\$124.9 million) in liquidated damages and lost revenue from a construction subcontractor.

Melbourne-based Transurban CityLink Ltd., which is developing the \$2 billion Australian (\$1.04 billion) transportation network on behalf of the Victoria state government, is claiming damages from tunnel builder Transfield-Obayashi Joint Venture over the year-long completion of its contract and continuing

defects in one of two tunnels. The project links three previously unconnected freeway systems and bypasses Melbourne's central business district.

TOJV would not discuss its insurance arrangements or the Transurban claim.

Insurance industry sources say, though, that TOJV may have bought a liquidated damages policy in the London market to cover Transurban's financial obligations to lenders during the time the project was delayed.

Transurban and TOJV also face separate litigation from a property owner who seeks millions of dollars for damage he claims is due to the tunnel built beneath his property.

TOJV is a partnership between Sydney-based Transfield Pty. Ltd. and Japanese construction company Obayashi Corp. A Transurban spokeswoman said Transurban and TOJV had begun negotiations on the claim but dis-



Problems from a transportation construction project in Melbourne are spawning lawsuits.

cussions are on hold until mid-June, while the damage is repaired. The spokeswoman said Transurban and TOJV have discussed a settlement or legal action but both hope to resolve the dispute rather than go to court.

See **Tunnel** on next page

U.K. risk managers' stock may be rising

By CAROLYN ALDRED

LONDON—More U.K. organizations are realizing that risk management brings more of a value than simply procuring insurance.

Catapulted by new legislative and regulatory requirements, many companies are hiring risk managers for the first time, or expanding existing managers' responsibilities, risk managers say.

"It is clear that the role of the risk manager in the U.K. today is growing and continuing to evolve in difficult insurance market circumstances. Allied to this, the value of professional risk management within U.K. businesses is gaining recognition," said Alan Fleming, chairman of the Assn. of Insurance & Risk Managers.

The growing emphasis on risk management is likely to be widely discussed at AIRMIC's annual meeting, scheduled for this week in Birmingham, England.

The recent introduction of new internal control and risk reporting requirements for publicly traded U.K. companies and a mandate to demonstrate good corporate governance to shareholders and customers following the Turnbull Report, in particular have raised the profile of risk management at board level, risk managers agree.

The London Stock Exchange's Turnbull

Report, issued in 1999, defines the accountability of company directors and management and holds them more strictly accountable to shareholders for managing the risks their organizations face, among other things.

In some U.K. companies, the duties of a risk manager have been split into two jobs because of the increased importance placed on risk management, said Stuart Martin, a member of AIRMIC's council.

The new setup adopted by some companies has one individual focus on purchasing and managing insurance programs while another person concentrates on managing the company's strategic or business risks, said Mr. Martin, who is the newly appointed group risk and insurance manager for London-based Hanson P.L.C., a new post created by the company in recognition of the increased importance of risk management.

Farnborough, England-based BAE Systems P.L.C. has split its previously combined risk management and insurance departments and now has one team to cover risk management while another focuses on the company's insurance programs, said Mr. Martin, who worked as risk manager for BAE Systems two years ago.

Retail conglomerate Kingfisher P.L.C. is

See **Value** on page 20

U.K. mulls new duties in probing accidents

By CAROLYN ALDRED

LONDON—Employers would have a greater responsibility to investigate accidents, dangerous occurrences and diseases in the workplace under a new proposal from the U.K. Health and Safety Commission.

"The volume of incidents that could be subject to a proposed new duty to investigate accidents is vast," according to a consultative document issued by the HSC's operating arm, the Health and Safety Executive.

The HSC estimates that the new responsibilities would cost U.K. businesses about £18 million (\$25.7 million) each year but says that those costs would be offset by just a 3% reduction in costs stemming from workplace accidents and incidents of ill health.

The HSC estimates that there are 1 million workplace injuries to workers each year in the United Kingdom, and that figure does not include "dangerous occurrences" or injuries to the public. The total number of reportable injuries to workers—as set forth under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995—is estimated at about 400,000 annually, the document

See **HSE** on page 20

INTERNATIONAL

Tunnel

Continued from previous page

The 2.17-mile-long tunnel leading to the Melbourne suburb of Burnley opened last December, a year behind schedule. The tunnel, located 213 feet underground, developed leaks soon after opening. One of three lanes of traffic in the tunnel has been closed since early this year while TOJV carries out repairs.

Transurban is seeking compensation for lost toll revenues caused by the delayed opening and reduced traffic flow while the tunnel is under repair. The Transurban spokeswoman said the delay was caused, in part, by time spent by TOJV considering toll system changes that Transurban had ordered.

The spokeswoman said she could not give a breakdown of the \$240 million Australian claim or state whether TOJV has insurance to cover either the liquidated damages or the third-party business interruption components of the claim. She said TOJV is disputing the claims but "both parties want to get the project finished and running" before trying to negotiate a settlement. The spokeswoman confirmed that Transurban has received a without-

prejudice payment of \$120 million Australian (\$62.5 million) from TOJV as a "truce payment" until claim negotiations resume.

Transurban also is withholding \$120 million Australian in guaranteed letters of credit, provided under the 1996 contract agreement with the TOJV, she said. Transurban will argue that it is entitled to cash in the guarantees. TOJV constructed the project under a contract that makes it responsible for losses incurred by the developer.

An engineer's report has found the leak was caused by the failure of a joint connecting the arch and floor of the tunnel. The failure has caused a gallon of water to flow into the tunnel every second, the spokeswoman said.

She said the repairs are being completed under a 12-month rolling defects liability guarantee, which will be reinstated once the tunnel is repaired.

Melbourne architect Ben Genser has named Transurban and TOJV in a civil action. Mr. Genser claims his home in suburban Melbourne is "falling to bits" after large cracks appeared soon after tunneling work began on the CityLink project. Mr. Genser also named in his suit the insurers of Transurban and TOJV, in-

cluding Sydney-based HIH Insurance Ltd., which is now in provisional liquidation with an estimated \$2 billion Australian in losses (BI, April 16).

Mr. Genser is seeking unspecified damages. A court hearing is sched-

'Contractors often want to fast-track projects, but they need to make sure...all the planning is done first.'

— Bruce Ferguson
ARIMA

uled in the federal court in Melbourne for July 16.

The Transurban spokeswoman said the legal action is in its early stages but Transurban is not responsible for the tunnel construction or damage resulting from construction. She said TOJV, under its contract with Transurban, is responsible for the construction.

Bruce Ferguson, president of the Assn. of Risk & Insurance Managers of Australasia and risk and insurance officer with Sydney Water Corp., said the litigation surrounding the CityLink project shows the need for risk managers to plan projects carefully. "Time spent in planning and preparation is seldom wasted," he said. Mr. Ferguson said the cost of retrofitting and repairing is always much greater than the cost of "getting it right the first time."

"Contractors often want to fast-track projects, but they need to make sure the design matches the need and ensure all the planning is done first," he said. "You must spend time and effort to make sure the design works in the first place or it will cost you a lot of bucks."

Ian Deayton, divisional director of risk management with Sydney-based broker Heath Lambert Australia Pty. Ltd., said too many construction projects consider only engineering risks, without taking a holistic approach to risk management for the entire project.

Mr. Deayton, a former risk manager, said risk management is in danger of being segmented into engineering, financial and other sectors. "Consultants always want to put an adjective in front of risk

management. We need risk management in its holistic sense. You must look at the entire operation and protect all assets and consider all liabilities, ranging from income to personnel and reputation. No risk management studies on construction sites look at all of that," he said.

Terry Fear, head of the construction division for New South Wales at broker Jardine Lloyd Thompson Pty. Ltd., said a wide range of insurance coverages are available for contingencies on major projects, but policies such as those for liquidated damages frequently are bought only if financiers insist, because the coverage is expensive.

"These decisions are not always risk-driven," he said. "But litigation is a huge cost, and the financial impact (on a business) is not always covered by insurance."

Mr. Fear said insurance packages should be tailored for each major project, because finance structures differ and customized coverages are available. Capacity for such programs can be limited locally, though, he said. On larger projects, even if some of the coverage is placed in Australia, insurers might have to use the London and European markets to gain sufficient capacity, he said. **B**

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LEGAL NOTICES

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

NORTH ATLANTIC INSURANCE COMPANY LIMITED
(Petition of Colin Graham Bird and Paul Anthony Brereton Evans)
Case No. 97-41602 (RLB)

PLEASE TAKE NOTICE that on May 24, 2001, the Bankruptcy Court entered an order (the "Order") continuing the Preliminary Injunction Order pursuant to 11 U.S.C. §§ 105 and 304(b) originally entered in this case on April 7, 1997. The Order shall remain in effect pending a hearing scheduled for November 20, 2001 at 9:45 a.m. before the Honorable Richard L. Bohanon, in the Alexander Hamilton Custom House, One Bowling Green, New York, New York. Any person wishing to obtain a copy of the Order should contact Theresa D'Agostino at (212) 610-6300.

PLEASE TAKE FURTHER NOTICE that Allen & Overy is now acting as US counsel for the Joint Provisional Liquidators.

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REQUEST FOR PROPOSAL

NOTICE INVITING PROPOSALS

The City of Galt is soliciting proposals for the provision of **Group Vendor Liability Insurance** for its outdoor market. The Galt Market is open two days per week all year, and hosts about 400 vendors each day. Copies of the RFP may be obtained from the City Manager's Office at 380 Civic Drive, Galt, CA 95632, or by calling Helene Hausman at (209) 745-4695. Proposals are due by 4:00 p.m. June 29, 2001.

BI's Next Issue

June 11

Government Risk Management

Bonus Distribution: AAHP; NAIC; PRIMA Closing June 5

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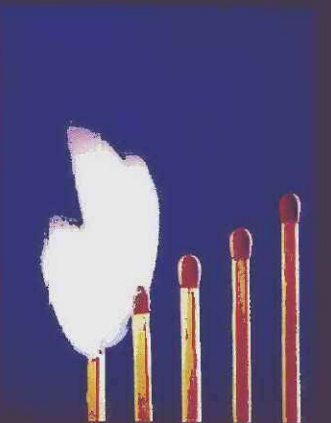
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May 21	<i>Distribution: AAMGA; ACORD</i>	IT Information Technology <i>Distribution: IASA</i>	May 9
May 28	Benefits: Pensions/Retirement Plans <i>Directory: 401(k) Plan Administrators</i>		May 16
Jun 4	<i>Distribution: AIRMIC; IASA</i>	ABT Employee Recruiting & Training	May 23
Jun 11	Government Risk Management <i>Distribution: AAHP; NAIC; PRIMA</i>		May 30
Jun 18		IT Employee Recruiting & Training	Jun 6
Jun 25	Benefits: Balancing Work & Life <i>Directory: EAPs & Dependent Care Resource & Referral Services</i> <i>Distribution: IMCA; SHRM</i>		Jun 13
Jul 2	Midyear Market Report: Property/Casualty & Health Care	ABT Marketing Strategies	Jun 20
Jul 9			Jun 27
Jul 16	30th Annual Agent/Broker Profiles <i>Directory: Agents & Brokers</i>	IT Marketing Strategies	Jul 3
Jul 23			Jul 11
Jul 30	Risk Management Services <i>Directory: Risk Management Consultants</i>		Jul 18
Aug 6	<i>Distribution: VCIA</i>	ABT Legislative Issues	Jul 25
Aug 13	Property Loss Control <i>Directory: Property Loss Control Consultants</i>		Aug 1
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Reforms

Continued from page 1
ernment today can much better afford the loss of revenue that results when companies and employees can fund bigger pension benefits with a corresponding increase in tax deductions.

"Budget surpluses are a wonderful thing," said Fred Rumack, national director of taxes and legal services for Buck Consultants Inc. in New York.

Another contributing factor to the change in direction was a growing congressional recognition of the damage that its prior approach—cutbacks in benefits provided through pension plans and ever-more-complex rules—was inflicting on the employer-based pension system as companies terminated or didn't improve plans.

"Congress recognized that its prior approach was flawed," said James Delaplaine, vp-retirement policy at the American Benefits Council in Washington.

By increasing benefits that can be provided through plans, top corporate executives—many of whom now get most of their benefits through non-qualified plans—would again have a direct personal interest in the plans and be more inclined to keep and improve the benefits, which would help all plan participants, some say.

"The idea is to get corporate decisionmakers to again care about the plans," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Washington. And that may happen with passage of the tax legislation, which President Bush is expected to sign this week. "This really raises the excitement level about pension plans," Mr. Brown said.

For many employees, the excitement is about significant increases in benefits that can be funded through pension plans. Changes that would directly affect 401(k) plans, the nation's most popular pension plan, include:

- Higher deferral limits. The current \$10,500 annual deferral limit would increase next year to \$11,000 and rise in \$1,000 annual increments until a new \$15,000 maximum is reached in 2006.

- Catch-up contributions. Next year, employees 50 and older would be allowed to contribute an extra \$1,000 to 401(k) plans. After that, permitted catch-up contributions, which would not be subject to non-discrimination tests, would increase \$1,000 a year until the \$5,000 annual maximum is reached in 2006.

- Roth 401(k) plans. Starting in 2006, employees would be able to make aftertax contributions to Roth 401(k) plans, which are named after William Roth, the former chairman of the Senate Finance Committee and a champion of individual retirement accounts and 401(k) plans. Contributed funds and accumulated investment gains could be withdrawn tax-free after an employee completed five years of service and was at least age 59½, which is a potentially huge windfall for employees.

Roth 401(k)s "will be a real beacon to attract employees," said Buck's Mr. Rumack.

- Hardship withdrawals. Un-

der current law, employees that take a hardship withdrawal from their 401(k) plans must wait 12 months before they can resume contributions to the plans. The new tax legislation would cut the wait to six months. With employees able to resume contributions faster, those funds would have more time to earn investment income.

Benefit increases mandated by the legislation, though, would involve far more than just 401(k) plans. For example, the amount of employee salary that can be considered in calculating pension benefits and contributions affects all types of pension plans.

'The idea is to get corporate decision-makers to again care about the plans.'

— Kyle Brown

Watson Wyatt Worldwide

Under current law, employers can include the first \$170,000 of salary in calculating employees' pension benefits, which would rise to \$200,000 under the tax bill.

That increase would result in bigger benefits for some employees. Take the case of an executive now earning \$200,000 a year. If his or her company agreed to contribute an amount equal to 10% of employees' salaries to its profit-sharing plan, the company could contribute only \$17,000 for that executive. Under the legislation, next year the company could contribute \$20,000 for that executive.

Other increases in contribution limits would have a greater impact on lower-paid employees. For example, under current law, the maximum annual contribution that can be made to a defined contribution plan for an individual employee is \$35,000 or 25% of compensation, whichever is less. For example, an employee earning \$30,000 a year annually could defer only a maximum of \$7,500 to a 401(k) plan, not the current \$10,500 limit.

Eliminating the 25% limit would allow that employee to make the maximum deferral to the plan.

This provision would be especially helpful for lower-income employees whose spouses are relatively well-off and, thus, could afford to put aside such a large amount of salary into a 401(k) plan.

Administratively, the tax legislation includes a slew of provisions that would help employers and employees by eliminating or easing many rules that are burdensome, complex or both. Those changes include:

- Portability. The measure would allow employees who move between the private, non-profit and state and local governmental sectors to roll over funds from 401(k) to 403(b) and 457 plans, which are, respectively, the non-profit and government sectors' equivalent of 401(k) plans. That would mean employees changing jobs no longer

would have to manage multiple accounts and could consolidate account balances.

- Elimination of the "same desk" rule. That rule now prevents employees who stay in the same position after their corporate unit is spun off to move their 401(k) plan account balance from their prior plan to the new employer's plan.

- Pension "cash outs." The legislation would make it easier for employers to cash out terminating employees with small account balances from their pension plans. Under current law, an employer can remove a terminating employee from its pension plan if the cash value of his or her benefits is less than \$5,000.

By cashing out employees, employers would reduce their overhead because they no longer would have to send pension-related reports to affected employees or keep track of them.

Under the legislation, the \$5,000 ceiling would remain, but the ceiling would be determined without counting any funds the employee rolled over, such as from a 401(k) plan, into his new employer's plan from a prior employer.

- "Multiple use test." This multistep, complex non-discrimination test is required for 401(k) plans that allow pretax and aftertax contributions. The tax bill would eliminate it and instead allow the same basic non-discrimination test now used on 401(k) contributions to also be used on aftertax contributions.

- IRA rollovers. Under current law, terminating employees who elect to receive pension distributions, such as a 401(k) account balance, before retirement can have those funds directly transferred to an IRA or to their new employer's savings plan, if the new employer allows it.

Employees also have another option: take the money and then within 60 days of receipt transfer it themselves to an IRA. By utilizing any of these approaches, employees can avoid the stiff tax bite the government imposes on pre-retirement pension distributions.

The legislation, though, would direct the Internal Revenue Service to develop rules to permit a waiver of the 60-day rule. That would help employees, who, for example, have taken a distribution in cash, but then because of unusual circumstances, such as the distribution check being lost in the mail, did not meet the 60-day deadline.

To be sure, other provisions in the legislation would increase costs and administration for employers, though the effects are likely to be modest, experts say.

For example, employers would be required to disclose more information to employees on the impact of pension plan conversions on their projected benefits. Employers have long acknowledged that current disclosure requirements are inadequate.

Another provision would require employers to set up IRAs to transfer terminating employees' pension distributions—if between \$1,000 and \$5,000—unless the employee objects. This requirement, though, wouldn't be put in place until the Department of Labor develops rules addressing such transfers. **BI**

More benefit changes in tax cut package

WASHINGTON—The revamped pension plan rules aren't the only benefit changes included in the Economic Growth and Tax Relief Reconciliation Act of 2001. Other employer-provided benefit programs that will be affected by the new law include:

- Educational assistance plans. Under current law, employers can reimburse employees for up to \$5,250 in annual undergraduate costs without the reimbursement being included in employees' taxable income. That tax break, allowed under Section 127 of the Tax Code, is set to expire on Dec. 31.

But the new tax law gives permanent tax-favored status to educational assistance plans and, as of Jan. 1, 2002, extends the tax break to graduate-level courses.

By making Section 127 permanent, Congress finally has put an end to the uncertainty it had fostered by allowing the law to expire several times and then retroactively renewing it.

- Adoption benefits. Under current law, employers can provide to employees up to \$5,000 in tax-free reimbursement for adoption-related expenses. Employers also can provide up to \$6,000 in reimbursement for adoption of children with special

needs.

The new law would raise the tax-free reimbursement limit to \$10,000 and raise to \$150,000 from \$75,000 the maximum annual adjusted gross income employees can earn without being taxed on any reimbursement. The new law also would make the adoption tax break permanent. Under current law, the tax break for adoption of children without special needs expires at the end of this year, though it is already permanent for adoption expenses related to children with special needs.

More than 30% of large employers now offer adoption assistance benefits, with roughly a quarter of those employers reimbursing at least \$5,000 in expenses, according to a Hewitt Associates L.L.C. survey.

- Employer-provided child care facilities. Employers will be eligible to receive a tax credit equal to 25% of expenses for developing and operating child care centers and a tax credit of 10% of expenses for child care resource and referral services. The total amount of the credit is capped at \$150,000 per year. The new tax break would begin next year.

—By Jerry Geisel

BI listing deadlines near

Deadlines are fast approaching for two *Business Insurance* directories—the directory of agents and brokers and the directory of risk management consultants.

The 30th annual Agent/Broker Directory will be published in the July 16 issue, which will also contain profiles of the world's largest brokerages and reports on current trends in the brokerage industry.

Completed agent/broker directory questionnaires must be submitted by the extended deadline of June 20.

The directory lists companies that deal directly with corporate or institutional policyholders and generate at least \$500,000 in gross revenues from commercial retail insurance brokerage. Listings are published as an editorial service; there is no charge to be included.

If your company meets the requirements for the agent/broker directory but has not yet received a questionnaire, please request one immediately by calling Directory Editor Kevin Edison at 312-649-5279.

Business Insurance will publish its annual directory of risk management consultants in the July 30 issue. That issue also will include a Spotlight report on risk management services.

Companies that wish to be listed in the risk management consultants directory must submit a completed questionnaire by the extended deadline of

June 15.

To be included in the directory, companies must provide risk management consulting, which *BI* defines as providing advice, on a fee-for-service basis, on the identification and analysis of an organization's loss exposures and on minimizing the financial impact of such risk.

BI has also expanded the definition to include providing advice to an organization's chief risk management officer on a broader range of possible losses or risks, such as enterprise risk management, risk securitization, financial risk management and even various forms of operational risk as long as your firm's advice is contracted for by the risk manager of the client organization or an executive to whom the risk manager reports.

Companies must generate at least \$150,000 of their gross revenues from risk management consulting and must report gross revenues in order to be ranked or, to be included without a ranking, attest to size of revenues.

If your company provides these consulting services and has not received a questionnaire, please request one by calling Assistant Directory Editor Michel Schwartz at 312-649-5313.

Copies of both questionnaires also can be printed from the Directories area of the *Business Insurance* Web site, which is: www.businessinsurance.com.

Maxicare

Continued from page 1

to survive as an independent entity. The company had a \$64.9 million net loss last year and an \$18.4 million net loss for this year's first quarter. Meanwhile, Maxicare says it continues to pay claims.

David Zingale, director of the California Department of Managed Health Care, said in a statement, "We are acting quickly to protect the health care of Maxicare enrollees. Our goal is to ensure that service continues and Maxicare consumers don't see any disruption in coverage."

'For employers that do offer Maxicare, the key is going to be to monitor the delivery of care over the next few weeks.'

— Steve Richter

Watson Wyatt Worldwide

A spokeswoman for the Sacramento-based California Public Employees' Retirement System, which now has 10,000 members with Maxicare, said, "We haven't had any problems" with Maxicare's service. "We had a good relationship with them," the spokeswoman said.

According to the department, though, it acted after a late April investigation raised "very serious concerns" about the quality of health care and services provided by Maxicare. It said its investigators found that Maxicare scored extremely low on commonly used quality-of-care measures, including poor oversight of preventive care and treatment services. The department also said Maxicare's oversight of medical records has been insufficient, and that in 25% of the cases of consumer appeals that it reviewed, Maxicare exceeded the department's required 30-day time frame for resolution.

The department said it was also concerned because the company is \$8 million short of its requirements for tangible net equity, an indicator of financial health.

According to news reports, Mr. Zingale has complained that Maxicare's bankruptcy filing is illegitimate in light of the state's takeover. He could not be reached for comment.

Maxicare President Susan Blais said in a statement last week, "We have been and are continuing to work very hard to make sure Maxicare (California) members continue to get access to quality care. Our primary goal right now is setting up a process with the Department of Managed Health Care to make sure that, regardless of the outcome, our members continue to get access to the care they need and Maxicare health care providers get paid for their services in a timely manner. At this time, we are current in our pay-

ment for all of our health care claim responsibilities." California law prohibits providers from seeking payment from employees should Maxicare stop paying them.

According to Maxicare's first-quarter SEC filing, the company had a working capital deficiency of about \$19.9 million and a deficiency in stockholder's equity of about \$11.4 million as of March 31. The company said it had hired an investment banking firm to help in the sale of all or part of its California operation. It said that the sale of part of its California operation would generate sufficient liquidity to enable it to continue in business on a reduced scale.

Maxicare has fallen from a great height. The company was incorporated in 1980, and by 1986 was the largest publicly held HMO in the United States. Two acquisitions that it made in 1986, though, substantially increased its debt and, when combined with adverse industry conditions and inadequate pricing policies, led to its 1989 bankruptcy filing, according to SEC documents. At the time, several state regulators unsuccessfully argued in bankruptcy court that Maxicare's use of the court to reorganize was inappropriate for the rehabilitation or liquidation of an HMO. It emerged from bankruptcy the following year.

Since 1994, Maxicare has shed the operations it had in five other states in addition to California and Indiana: Illinois, Louisiana, North Carolina, South Carolina and Wisconsin. In 1998, dissident shareholder Paul R. Dupee Jr., who had been embroiled in litigation with the company, reached a settlement with it and was named to its board of directors. He was named chairman and then chief executive officer in 1999.

"Arguably, they never did recover" from the 1989 bankruptcy, said Douglas Sherlock, a health care analyst with the North Wales, Pa.-based Sherlock Co. Furthermore, "it's a tough environment for smaller plans in general," Mr. Sherlock said. "When you move outside of California, a lot of their plans were relatively small, and that had been a problem for them, even in places like Southern California." Also, as hospitals have consolidated, their bargaining power has strengthened. "Maxicare was a victim of that," Mr. Sherlock said.

"I think they were faced with rebuilding a company that needed infrastructure changes" that had not been undertaken in a while, said Richard Shaw, an analyst with Oldwick, N.J.-based A.M. Best Co. Although new management had been brought in last year, "there just wasn't enough time left."

Maxicare has a reputation as a managed care company that charged low rates, observers say. "They kind of found a niche for themselves as being the low-cost plan, and not one that offered a lot of bells and whistles," said Steve Richter, senior consultant with Watson Wyatt Worldwide in Los Angeles.

Many observers say they do not expect Maxicare to again emerge successfully from

bankruptcy as an independent entity. "I think they're pretty much done," said Mr. Shaw. "I think that they'll basically disperse membership and work for an orderly transition."

Observers say they do not anticipate there will be a significant impact on either its members or the market in general if Maxicare does disappear. "It is a smaller player in the California market, and it won't have anywhere near the impact that such an event would have from a much larger player," said Kirby Bosley, practice leader for William M. Mercer Inc.'s health and welfare consulting practice in Los Angeles.

Michael Schionning, a principal and health and welfare consultant in Buck Consultants Inc.'s San Diego office, said Maxicare's commercial customers tend to be businesses with fewer than 1,000 employees; public entities, including city governments and school districts, and unions.

"It will likely cause some disruption" if employees find they have to switch health care providers, Mr. Schionning said. He said it is hard to say whether these employers will pay more for this coverage, despite Maxicare's reputation as a low-cost provider. "It depends on where that employer fits in the scheme of individual HMOs' marketing strategy," he said.

One of Maxicare's primary goals is to make sure that 'our members continue to get access to the care they need.'

— Susan Blais
Maxicare president

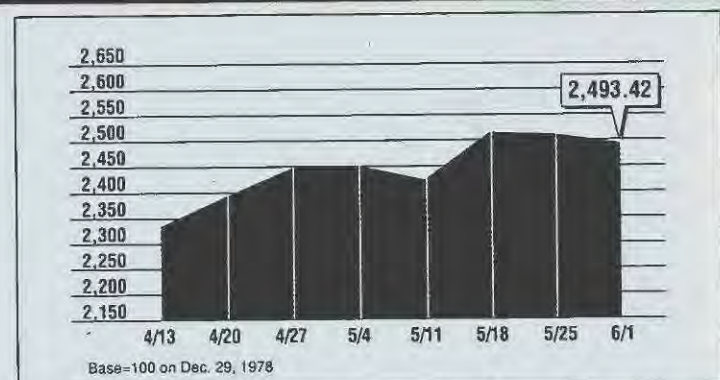
Watson Wyatt's Mr. Richter said, "I think, for those employers that do offer Maxicare, the key is going to be to monitor the delivery of care over the next few weeks to see if their employees are having any problems getting in to see their providers and to see if providers are dropping out of the program."

CalPERS had approved Maxicare as one of its HMOs next year, contingent upon favorable financial audits, but the company itself withdrew from consideration, citing business circumstances, a CalPERS spokeswoman said.

In Indiana, 8,400 state employees received their health coverage through Maxicare, said Keith Beesley, an attorney for that state. These employees were given a 30-day open enrollment period, which ends today, to move to one of the state's six other health care plans, he said.

Mr. Beesley noted also that although Indiana, like California, requires providers to sign a "hold harmless" agreement, there has been a problem with Maxicare creditors pursuing employees for unpaid claims. As a result, he said, there has been a court-issued injunction prohibiting the creditors' practices. **BI**

BI/Stock Index - 6/1/2001



		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
BROKERS							
Aon Corp.	NYS	34.71	1.73	1.34	42.31	28.13	3579
Brown & Brown	NYS	39.85	-1.97	13.86	46.10	23.19	116
Clark Bards Holdings	NDQ	19.46	2.42	92.20	20.40	7.25	370
E.W. Blanch Holdings Inc.	NYS	13.50	0.37	-22.58	29.50	6.70	28
Gallagher Arthur J. & Co.	NYS	27.17	2.53	-14.59	34.25	18.22	1864
Hlib, Rogal & Hamilton	NYS	42.10	-0.14	5.58	44.16	31.69	60
Kaya Group Inc.	NDQ	13.86	0.07	78.84	13.86	5.00	13
Marsh & McLennan	NYS	105.00	-3.00	-10.26	135.69	80.30	4084
BROKERS AVERAGE			0.25	18.05			
INSURERS/REINSURERS							
ACE Ltd.	NYS	38.10	2.04	-10.22	43.94	25.94	3454
Accel International Corp.	NDQ	0.07	0.00	-76.42	0.69	0.06	0
Acceptance Insurance Cos.	NYS	5.06	4.32	-3.62	5.94	3.70	180
AEGON N.V.	NYS	26.60	-6.67	-35.81	43.00	25.92	893
AFAC Inc.	NYS	32.10	1.20	-11.06	37.47	22.53	3964
Allmerica Financial Corp.	NYS	54.80	0.37	-24.41	74.25	46.30	654
Allstate Corp.	NYS	43.10	-3.08	-1.06	45.90	21.94	11440
Ambac Financial Group	NYS	55.28	-2.28	-5.20	64.00	33.66	3065
American Financial Group	NYS	27.92	0.83	5.11	29.00	18.69	322
American General	NYS	44.46	-1.75	9.10	46.38	29.40	8410
American Intl Group	NYS	80.09	-2.70	-18.74	103.75	72.64	12568
American Safety Insurance	NYS	9.99	0.60	63.10	10.25	3.25	6
Argonaut Group	NDQ	18.00	2.86	-14.29	21.25	13.50	159
AXA-UAP Group	NYS	28.00	-5.72	-22.02	40.75	24.58	1067
Baldwin & Lyons Inc.	NDQ	22.23	-4.39	-4.39	28.75	15.25	25
Berkley W.R. Corp.	NDQ	43.30	8.52	-8.24	48.75	18.13	945
Berkshire Hathaway Inc.	NYS	68400.00	1.13	-3.66	74600.00	51600.00	1
Capitol Transamerica Corp.	NAS	14.84	1.50	19.32	15.69	10.31	107
Chubb Corp.	NYS	74.36	1.54	-14.05	90.25	60.44	3978
Cincinnati Financial Corp.	NYS	51.70	1.73	5.43	42.30	31.00	1467
Citigroup	NYS	41.80	-0.12	1.44	59.13	39.00	42733
CNA Financial Corp.	NYS	39.50	-0.63	1.94	41.94	32.06	618
CNA Surety	NYS	14.10	1.44	-1.05	14.50	10.38	119
EMC Insurance Group Inc.	NDQ	11.72	-5.88	-0.26	13.70	8.00	11
ESG Re Limited	NDQ	3.43	-7.55	86.03	4.50	1.72	37
Everest Reinsurance	NYS	67.50	2.12	-5.76	74.75	31.69	1456
Fremont General Corp.	NYS	6.38	12.13	126.84	6.47	1.50	761
Gainsco Inc.	NYS	1.68	15.86	-36.00	5.25	1.10	128
Harleysville Group	NDQ	26.07	-1.44	-10.87	30.63	16.13	80
HCC Insurance Holdings	NYS	24.90	1.01	-7.56	29.66	17.63	912
ING Groep N.V.	NYS	63.61	-2.96	-20.61	83.94	55.84	688
IPC Holdings Ltd.	NDQ	23.05	-0.65	9.76	24.50	12.63	125
Hartford Financial Services	NYS	66.53	-0.66	-5.60	80.00	49.44	3844
John Hancock Financial Serv.	NYS	39.95	3.28	6.18	42.00	19.63	14954
Lincoln National	NYS	49.51	1.02	4.64	56.38	36.44	2201
MAIC Holdings Inc.	NYS	15.55	1.37	-6.82	18.50	10.50	135
Market Corp.	NYS	194.00	-0.36	7.18	207.47	133.50	259
MBIA Insurance Group	NYS	51.95	0.74	5.13	55.86	32.13	2685
Meadowbrook Insur. Group	NYS	3.90	0.78	-52.00	8.98	2.45	16
MetLife	NYS	31.82	1.37	-9.09	36.63	18.13	7304
Mutual Risk Mgmt. Ltd.	NYS	8.50	-4.49	-44.03	23.75	3.40	741
Navigators Group	NDQ	18.75	15.33	40.85	18.75	8.63	20
NYMag Inc.	NYS	22.15	-0.45	17.35	22.70	13.00	25
Ohio Casualty Corp.	NDQ	8.99	0.45	-10.10	12.50	6.13	616
Old Republic Intl	NYS	27.87	-0.61	-12.91	32.06	16.50	1414
Partner Re Ltd.	NYS	53.47	-0.98	-12.34	62.50	34.81	452
Penn-America Group Inc.	NYS	10.05	-1.47	31.80	10.60	6.69	46
PMA Capital Corp.	NDQ	17.29	1.71	0.23	19.03	15.19	68
Philadelphia Cons. Holding	NDQ	31.21	9.06	1.09	31.92	15.63	1686
PXRE Corp.	NYS	17.22	-0.75	2.04	20.10	12.50	160
RenaissanceRe Holdings Ltd.	NYS	68.20	2.94	-12.91	84.19	40.88	456
RIJ Corp.	NYS	41.30	0.73	-7.58	46.16	33.50	57
St. Paul Cos.	NYS	49.58	0.57	-8.71	57.00	33.75	4784
SCOR	NYS	43.98	1.10	-12.48	53.75	39.75	17
SAFECO Corp.	NDQ	27.47	-2.00	-16.44	35.88	19.69	2087
SCPIE Holdings Inc.	NYS	18.38	-8.33	-22.20	31.40	18.31	NA
Seibels Bruce Group	NDQ	3.05	4.45	442.22	3.25	0.53	58
Selective Ins. Group	NDQ	25.01	2.24	3.13	26.94	15.25	184
Tokio Marine & Fire	NDQ	52.10	3.68	-8.60	61.00	45.25	47
Torchmark Corp.	NYS	37.90	1.07	-1.40	41.19	24.00	1350
Transatlantic Holdings	NYS	121.40	1.78	14.66	124.45	80.38	63
Trenwick Group Ltd.	NYS	22.75	-1.52	-8.31	27.13	13.13	190
Unico American Corp.	NDQ	5.82	-0.68	-0.94	7.75	5.27	10
United Fire & Casualty	NDQ	33.12	3.82	67.70	34.52	15.50	77
Unifrin	NDQ	38.18	0.00	-6.02	41.94	27.19	0
UNUM Corp.	NYS	31.97	-2.74	18.96	33.75	18.38	6090
Vesta Insurance Co.	NYS	9.80	10.11	93.58	9.95	4.13	1068
XL Capital Ltd.	NYS	77.80	-0.26	-10.96	89.25	52.38	2007
Zenith National Ins.	NYS	27.10	-0.55	-7.74	30.70	20.00	134
INSURERS/REINSURERS AVERAGE			0.77	6.84			
MANAGED CARE COMPANIES							
Aetna Inc.	NYS	23.90	3.80	-41.80	42.69	23.09	2866
CIGNA Corp.	NYS	93.25	1.36	-29.52	136.75	83.75	3189
Health Net Inc.	NYS	18.70	1.08	-28.59	26.94	10.88	2245
Humana Inc.	NYS	9.61	2.78	-36.98	15.81	4.75	2558
Oxford Health Plans	NYS	27.38	2.85	-30.68	42.75	19.75	6390
Pacificare Health Sys.	NDQ	18.87	-8.26	25.80	72.31	9.81	7241
Sierra Health Systems	NYS	6.05	-0.49	59.21	6.70	2.44	640
United HealthGroup	NYS	56.70	4.13	-7.62	67.40	36.25	11667
Wellpoint Health Networks	NYS	86.60	2.46	-24.86	121.50	66.75	3029
MANAGED CARE COMPANIES AVERAGE			0.75	-12.78			
ALL COMPANIES			0.59	4.04			

Top advancing issues: Gainsco Inc., Navigators Group, Fremont General Corp. Leading decliners, SCPIE Holdings Inc., PacificCare Health Systems, ESG Re Ltd. Most active issue: Citigroup. The BI Index decreased 0.8%, the Dow Jones 30 Industrials dropped 0.1%; the S&P 500 went down 1.4%, and the NYSE Composite went down 0.7%. Average P/E: Brokers, 22.6; Insurers/reinsurers, 26.3; and managed care companies, 14.6.

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

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