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Updates

Employment practices capacity rises on moves by 2 insurers

HAMILTON, Bermuda—Companies can now buy another $125 million in employment practices liability insurance after X.L. Insurance Co. Ltd. last week introduced a new $100 million policy and Lexington Insurance Co. doubled the limits on its existing policy to $50 million.

"There have been some large settlements and judgments and there seems to be a real need for a dedicated product to address large companies' employment practices liability," explained Robert J. Cooney, presi-

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Justices broaden ERISA liability

By MARK A. HOFMANN

Participants can now sue fiduciaries on own behalf

WASHINGTON—Employers will be more exposed to fiduciary suits under the Employee Retirement Income Security Act after the Supreme Court ruled last week that benefit plan participants can sue sponsors on their own behalf as well as on behalf of the plan.

It is unclear how much greater the exposure will be because the ruling dealt only with employer conduct that a lower court found to be deliberately deceptive. But ERISA experts say the 6-3 ruling should be a warning to employers to be forthright and honest in dealings with participants.

What ended up before the high court as *Varity Corp. vs. Charles Howe et al.* began in the mid-1980s, when Varity Corp. of Buffalo, N.Y., transferred the financially weakest parts of its Massey-Ferguson division into a new corporate entity called Massey Combines (*BI*, Oct. 9, 1995).

Varity knew that the new entity might fail, but it also knew that such a failure would help it erase various debts, said the district court that first heard the case. Among those debts were benefit obligations to employees of the money-losing divisions. About 1,500 employees voluntarily accepted the transfer to Massey Combines' plan and 4,000 retirees were transferred without their knowledge.

Varity, which dubbed its plan "Project Sunshine" assured employees transferred to the new unit that it had a bright future. It didn't. By 1988 Massey Combines filed for bankruptcy and its employees and the retirees assigned to its plan found themselves without medical benefits.

A group of plan participants sued Varity, on their own behalf, for breach of fiduciary duty. Varity countered that ERISA permitted such suits only on behalf of the plan.

Finding for the participants, the trial court found that Massey Combines was insolvent from its formation and that Varity, acting as a fiduciary, had harmed beneficiaries through "deliberate deception."

On appeal, the 8th U.S. Circuit Court of Appeals also found for the participants, upholding the right to sue on their own behalf. Other federal courts, though, have held that ERISA gives individuals no right to sue on their own behalf.

Resolving that dispute in favor of participants, Justice Stephen G. Breyer, writing for the majority, first disposed of two other arguments Varity made.

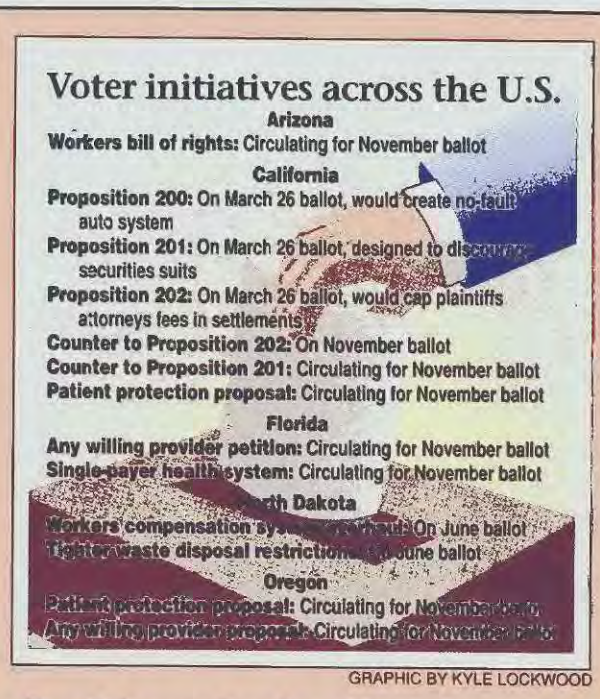
First, the company had argued that when it convinced workers being transferred to the new unit that their benefits were safe it was acting merely as an employer, not as a plan administrator and fiduciary.

"The factual context in which the state-

See **ERISA** *on page 19*

AP/WIDE WORLD

Supreme Court Justice Stephen Breyer ruled that plan participants can sue benefit plan sponsors on their own behalf.



GRAPHIC BY KYLE LOCKWOOD

California ballot battle over tort reform plans

By ROBERTO CENICEROS

Al Shugart, chairman and chief executive officer of Seagate Technology Inc., swears that all attorneys must line up behind a single machine that spits out copies of the same shareholder class-action lawsuit, "grammatical and typographical errors included."

Workers comp, environmental initiatives on North Dakota ballot.....Page 21

Like many of his fellow Silicon Valley entrepreneurs, Mr. Shugart has been a defendant in several such lawsuits. He also is a driving force behind The Alliance to Revitalize California, a campaign organization that has created three tort reform initiatives that are on Tuesday's California primary ballot.

See **California** *on page 19*

Product liability bill in limbo

By MARK A. HOFMANN

Businesses warn of political backlash for bill's opponents

WASHINGTON—Veto or no veto, businesses will not let product liability reform die.

In fact, the business community may take a page from the trial lawyers' game book and do more to reward its friends and punish its enemies in the November elections, say several veteran lobbyists.

President Clinton promised to veto product liability reform legislation that won Senate approval last week unless it was changed significantly.

The House, where support for broad tort reforms remains strong, could pass the legislation before leaving for its Easter recess later this week. If the House doesn't take up the bill this week, it seems certain to pass it soon after reconvening.

But despite the fact that H.R. 956—the Common Sense Product Liability Legal Reform Act—would be the first broad product liability bill to win approval from both houses, the 59-40 Senate vote showed it lacked the support to override a veto. Six Republicans joined the majority of the Democrats in opposition, while 12 Democrats voted for the bill, including its chief sponsor, Sen. John D. Rockefeller IV, D-W.Va.

The White House, though, held out the possibility of compromise as late as the Senate vote.

"There are some changes that I think are relatively modest that could be made that would permit me to sign it. So I still have some hope," President Clinton said last week. But the president does oppose the punitive damages caps that are the cornerstone of the bill.

Under the compromise measure worked out by House and Senate con-

See **Liability** *on page 22*

Court lets Dalkon ruling stand

Revival of suit illustrates tort uncertainties

By JOANNE WOJCIK

WASHINGTON—In letting an Oregon woman pursue a lawsuit over 20-year-old Dalkon Shield injuries last week, the Supreme Court illustrated how fragile both state tort laws and global settlements can be.

Without comment, the court declined to hear the Dalkon Shield Claimants Trust's argument that Oregon wrongly changed its law to revive claims that would otherwise have expired under the state's statute of repose for product liability suits.

By declining to hear the case, the Supreme Court let stand an appellate court ruling that held that states can enact such retroactive legislation as long as it serves a rational legislative purpose.

In 1987, Oregon lawmakers voted to allow lawsuits for damages over injuries related to intrauterine devices to be filed after the eight-year statute of repose—the time after a product is delivered or work completed that a lawsuit can be filed—that generally applied to product liability suits.

The legislature determined that the Special IUD Statute was necessary to provide a day in court to victims, many of whom would otherwise have had their claims barred by the statute of repose. Many of the women suffered injuries from the IUD in the early to mid-1970s, but the link between the IUD and the injuries it caused was not discovered until the early 1980s.

"The decision calls into question when anyone can enjoy complete repose," observed Dino Sangiamo, an attorney with Venable, Baetjer & Howard in Baltimore who represented the fund in its appeal.

"It only leads to the need for uniformity" in product liability laws "and further feeds mass tort litigation," agreed Ronald Bailey, a partner at Boullivant, Houser, Bailey, Pendergrass and Hoffman in Portland, who

See **Dalkon** *on page 23*

By the numbers

Funds when Claimants Trust set up in 1988:	$2.36 billion
Interest income since then:	$890 million
Number of claimants paid:	186,000
Highest payout:	$2.5 million
Lowest:	$125
Claimants still to be paid*:	38,000
Funds remaining:	$613.7 million

* These do not include claimants in states such as Oregon where statutes of repose were suspended for Dalkon Shield cases.

GRAPHIC BY JERRY PARKS

Updates

Employment liability options

Continued from previous page
dent and chief operating officer of X.L.

The typical retention on the X.L. policy will be $5 million and that retention need only be met once when multiple claims stem from one cause. X.L. of Hamilton, Bermuda, developed its policy with Marsh & McLennan Global Broking (Bermuda) Ltd. It will be reinsured by Zurich-American Insurance Group and ACE Insurance Co. Ltd.

The minimum retention on the Lexington policy is $1 million.

Lexington is raising the limits to make its policy more attractive to large employers, said Richard H. Bucilla, executive vp at the Boston-based surplus lines unit of American International Group Inc.

Both policies include coverage against claims for job discrimination, sexual harassment and wrongful dismissal and they cover compensatory and punitive damages.

Progress for Travelers, Aetna

HARTFORD, Conn.—Travelers Corp. and Aetna Life & Casualty Co.'s $4 billion deal is closer to completion after the Connecticut attorney general said last week that the state's deputy insurance commissioner could rule on the deal and may not need to hold more hearings.

Commissioner George Reider had recused himself from ruling on the proposed sale of Aetna's property/casualty operations—which the insurers expect to close March 31—after labor and consumer groups argued that the former Aetna employee had a potential conflict of interest (*BI*, March 18).

Mr. Reider turned the matter over to his deputy, William J. Gilligan, who sought advice from Attorney General Richard Blumenthal.

In a letter to regulators, Mr. Blumenthal said there is "no explicit statutory requirement" that testimony from a March 6 hearing be retaken. He added, though, that Mr. Gilligan may find it prudent to hear out opponents of the deal in person.

Mr. Gilligan gave interested parties until tomorrow to file more material and until Wednesday to file objections to any new material.

If regulators do not hold another hearing, the labor and consumer groups will challenge the move in court, said their lawyer, Richard Bieder, of Koskoff, Koskoff & Bieder in Bridgeport, Conn.

Clinton sticks to captive plan

WASHINGTON—The Clinton administration is sticking to a plan that would eliminate premium deductions for most captive owners.

The administration's 1997 budget proposal recommends Congress change tax law so that a captive that received more than 50% of its premiums from insuring or reinsuring shareholders that own at least 10% of the captive would not be considered an insurance company.

In that case, those 10% shareholders would be unable to take a tax deduction for premiums paid to the captive, though small shareholders and unrelated parties could continue to do so.

Captives could deduct claims paid on behalf of a 10% shareholder and those claims would be included in the shareholder's income to the extent they exceeded the shareholder's premium payments.

The proposal, similar to one unveiled by the administration in December, would in effect deny deductions for owners unwilling to boost the amount of outside business their captives write (*BI*, Dec. 11, 1995).

Such a change would be a significant tightening of rules handed down by courts. Several appellate courts have ruled that a captive owner could deduct premiums paid to a captive even if as little as 30% of the captive's premium volume came from unrelated business.

The short-term threat is minimal, since the administration and Congress have yet to agree on a 1996 federal budget. But, captive managers say the proposal indicates that the Treasury Department, which developed the provision, is hostile toward captives.

The administration's proposed budget also includes earlier provisions to simplify pension plan rules such as by giving employers an easier way to run 401(k) plan non-discrimination tests.

Renaissance Re diversifying

HAMILTON, Bermuda—The parent of Renaissance Reinsurance Ltd. plans to diversify beyond catastrophe reinsurance by forming a sister company that will write primary surplus lines coverage.

The move marks a continued trend among Bermuda reinsurers to offer coverage outside their core property catastrophe business.

Glencoe Ltd. is seeking a license as a non-admitted surplus lines insurer in California, said Glenn Thomas, senior vp at RenaissanceRe Holdings Ltd., parent of Renaissance and Glencoe.

The company aims to offer California earthquake capacity in time for midyear renewals, he said.

"Our overall intention is to be an excess and surplus lines insurer operating wherever there is a need," Mr. Thomas said. That may include U.S. and Caribbean windstorm and Midwest flood coverage.

Glencoe has $50 million in capital and surplus. It will offer maximum limits of $5 million, but typical limits likely will be $1 million to $3 million, he said. The deductible likely would be 10% of location-specific limits.

Glencoe expects to write premiums of $25 million in its first year.

See **Updates** *on page 22*

Errors & omissions

• Due to an editing error, the president of Nationwide Mutual Insurance Co. was misidentified in the March 4 issue. Richard D. Crabtree is to become president April 4. Galen R. Barnes, who was incorrectly identified as president, is actually president of Nationwide Insurance Enterprise—a trade name for the larger organization that includes Nationwide Mutual, Employers Insurance of Wausau and Nationwide Mutual Fire Insurance Co.

CIGNA gets day in court

Judge vacates order to let insurer argue for confidentiality

By DAVE LENCKUS

HARRISBURG, Pa.—CIGNA Corp. will get a chance to show a Pennsylvania court why state regulators should not have to unveil critical actuarial and other data on the insurer's reorganization.

In scheduling the April 10 hearing, Pennsylvania Commcnwealth Court President Judge James G. Colins late last week vacated his own March 15 ruling that had directed the regulators to turn over the material by April 1. Last week's ruling responded to a CIGNA unit's motion for a clarification of the earlier order.

The two sides disagree about how much of the material must be disclosed to evaluate how well policyholders are protected.

CIGNA's critics say the latest ruling is not a severe blow to their efforts to obtain the data. It burdens CIGNA with showing why the information should remain confidential, they said. A CIGNA spokesman said the insurer was given the forum it sought to explain why its sensitive business information should not be handed to rival insurers and other litigants.

Also, a March 5 order by the judge indicates that policyholders moved unilaterally into the insurer's new runoff operation for long-tail liabilities have no recourse against CIGNA now, suggest CIGNA and Pennsylvania regulators. CIGNA's critics contend that interpretation is too narrow.

Judge Colins also delayed a hearing by the full court on the merits of CIGNA's reorganization and how Pennsylvania regulators handled the transaction to June 12 from April 17. The case appeals Insurance Commissioner Linda S. Kaiser's Feb. 7 order approving the reorganization (*BI*, Feb. 12).

The rest of this report had gone to press before the judge reversed his order late Thursday. The reversal, though, does not affect his March 5 ruling.

CIGNA reorganized to recognize its environmental and asbestos liabilities and obtain an A rating from A.M. Best Co. for its ongoing operation. CIGNA created the runoff operation under a unique Pennsylvania law that allowed it to split its Insurance Co. of North America subsidiary. INA was the unit with

See **CIGNA** *on page 16*

P/C competition still drives market

Insurers may face grim returns in '96

By JUDY GREENWALD

Insurance buyers can expect to enjoy at least another year of intense price competition in a soft market that has property/casualty insurers glumly reviewing their earnings prospects.

In fact, 1996 commercial property/casualty results may look especially weak when compared with 1995 returns, which were buoyed by declining catastrophe losses.

INSURER RESULTS 1995

Although 1995 was the third-costliest catastrophe year on record, last year's results still compare favorably with 1994, which included the Northridge earthquake losses.

According to a *Business Insurance* survey of 21 major property/casualty insurers, net income increased 16.8% to $8.79 billion last year from $7.53 billion in 1994.

Already worrying insurers this year are: about $2 billion in catastrophe losses to date; an anticipated increase in workers compensation competition; and competitive pricing in other lines.

"Competitive, lots of capacity, with the possible exception of some of the catastrophe-prone territories, a real challenge for first-rate professionals in managing their business and serving their customers," said Paul Stewman, chief operating officer-commercial lines for Charlotte, N.C.-based Royal Insurance Group, in assessing the coming year. "I suspect much of the results will depend on the ultimate catastrophic impact."

Last year was a mediocre year for the industry "and '96 isn't go-

See **Insurers** *on page 15*

401(k) listing deadline near

Business Insurance will publish its eighth annual directory of 401(k) plan administrators in the May 20 issue.

Companies that provide enrollment services, daily maintenance of participants' accounts, account manipulation and other record keeping activities are eligible to be listed. To be listed, companies must offer 401(k) administration services directly to employers. Also, clients must be able to purchase administration/record keeping services on an unbundled basis—that is, separate from investment management or other services.

There is no charge to be listed. To receive a questionnaire, please contact Rich Trout at 312-649-5483. The deadline for returning questionnaires is April 12. BI

Superfund bill would limit cleanup costs

By MARK A. HOFMANN

WASHINGTON—A Senate Superfund proposal unveiled late last week would use existing tax collections to pay for potentially responsible parties' costs of cleaning up waste legally disposed of before Dec. 11, 1980.

The provision is contained in the most recent version of Superfund reform legislation first outlined by Sen. Robert Smith, R-N.H., last summer (*BI*, July 3, 1995).

Speaking for himself and co-sponsor Sen. John Chafee, R-R.I., Sen. Smith explained that "our proposal would have the effect of eliminating liability for parties at multiparty disposal sites—those sites where there was an off-site generator or transporter—for disposal activities that occurred prior to Dec. 11, 1980. These sites involve some of the most contentious and expensive litigation in the Superfund program and have only helped slow down the pace of cleanups."

Under the new version of S. 1285—dubbed the Accelerated Cleanup and Environmental Restoration Act of 1996—owners, operators, transporters and generators of substances to sites on the National Priorities List would submit to a mandatory, non-binding allocation process to determine who dumped what and when.

A neutral allocator would determine the portion of a potential responsible party's liability for waste dumped before and after the cutoff date.

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Inside

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Surety company focus of probes by regulators

Congress Re unlicensed as insurer

By DOUGLAS McLEOD

CHATTANOOGA, Tenn.—When the owner of a group of Florida television stations was hit with nearly $18 million in copyright infringement awards in 1994, he thought he had a temporary solution: bonds from a Tennessee surety company that would hold off execution of the judgments pending appeal.

The bonds no longer look like such a safe bet, though.

They were written by Congress Re-Insurance Corp., a surety company that is run by a convicted felon and that is the subject of several state and federal investigations.

Incorporated in at least three states but not licensed as an insurer in any of them, Congress Re has written a variety of surety products, focusing on performance bonds for construction contractors.

The bonds have been backed by millions of dollars of purported Congress Re assets that range from undeveloped gold mining claims in Idaho to uncut rubies supplied by a man now serving jail time for fraud.

Mohamed K.M. Zayed II, Congress Re's 32-year-old president—who himself served a prison term on a 1986 federal counterfeiting conviction—insists that the company is growing in financial strength and in the political good will it generates by supporting minority construction contractors.

"If anyone wants to toot a negative horn, we have a big trombone that we can play that will drown them out," Mr. Zayed said. "It's very positive. It's not anything other than that."

Among those that disagree is the Delaware Insurance Department, which barred Congress Re earlier this year after finding that it had no Delaware license and after Congress Re officials failed to appear at a scheduled hearing.

Regulators in Florida, Georgia, Kentucky and Tennessee also are investigating the company, as are federal law enforcement authorities, according to regulatory sources and court records.

An FBI official would neither confirm nor deny an ongoing investigation.

MCA Television Ltd. and Columbia Pictures Television Inc., which won the copyright infringement damages against the Florida broadcaster, also are challenging the broadcaster's Congress Re appeal bonds.

In court filings, MCA and Columbia charge that the bonds have "little or no value," that Congress Re does not have the assets to back its bonds and that the insurer and its principals are "under investigation. . .for numerous possible violations of various criminal and civil statutes."

Mr. Zayed said the appeal bond case is close to being resolved.

He also downplayed any state regulatory action, describing Congress Re as an "unregulated noninsurance surety" company operating under federal law.

In a letter to the Delaware department, Mr. Zayed explained that Congress Re is "not an insurance company but a private holding company with various assets available to be used for additional indemnification for third parties who may wish to accept our company as it is."

"We have been operating for five years in this unique way," he added in an interview.

Congress Re's history is short but complex.

The company was originally set

See **Bonds** *on page 21*

Health care reform nearing high noon

GOP says it may consider compromise

By JERRY GEISEL

WASHINGTON—As the House of Representatives nears a floor vote on health care reform legislation, Republican leaders are sending out signals that they may be willing to scale back their objectives to get legislation enacted.

"We want a bill that the president can sign," said Rep. Dennis Hastert, R-Ill., who has been coordinating the GOP's effort to produce a reform package, adding that the full House could vote on a reform bill this week.

Rep. Hastert's comment that perhaps a health care reform compromise can be reached comes as the Clinton administration and congressional Republicans appear to be on a collision course.

President Clinton has endorsed a bill—to be voted on by the Senate next month—that would curb pre-existing condition exclusions in health plans.

But House Republicans want to go much further and are pushing through committees reform packages that are strongly opposed by the administration.

Last week, the House Ways and Means Committee on a 25-11 party-line vote passed an expanded reform package that would curb pre-existing condition exclusions but also establish medical savings accounts, which the administration opposes. The Commerce Committee, which has only limited jurisdiction on health care legislation, last week unanimously approved a scaled-back bill largely limited to curbing pre-existing condition exclusions.

Those actions came after the House Economic and Educational Opportunities Committee earlier this month passed legislation that would exempt insured group health plans from state benefit requirements and take away from

See **Health care** *on page 10*

Coverage precedent erased

Arizona court orders pollution coverage verdict depublished

By ROBERTO CENICEROS

PHOENIX—The depublishing of a state appeals court ruling favoring an insurer that sought to deny coverage for a leaky underground storage tank could make it easier for Arizona companies to tap coverage for pollution liabilities.

The Arizona Supreme Court's recent order to depublish a 1995 state Court of Appeals' decision—involving the standard pollution exclusion common to comprehensive general liability policies issued in the early 1970s—means the ruling stands but will not serve as precedent, said Susan Freeman, a partner at Phoenix law firm Lewis & Roca. Lewis & Roca represented the insurer in *TNT Best-Way Transportation Inc. vs. Truck Insurance Exchange*. TNT Best-Way Transportation Inc. is a Phoenix-based trucking company.

The case involved cleanup liability for diesel fuel that leaked from a TNT storage tank in Phoenix during a period of 18 months to three years. During trial court arguments, TNT said a "sudden and accidental" exception to the pollution exclusion applied because the phrase was ambiguous and meant "unintended and unexpected." But the court found for the insurer Aug. 13, 1991, ruling the phrase meant "abrupt."

The appeals court ruled Aug. 30, 1995, that the pollution exclusion was ambiguous but still favored the Truck Insurance Exchange—a Los Angeles-based unit of Farmers Insurance Group—agreeing with the lower court that "sudden" was intended to mean "abrupt."

The state Supreme Court heard oral arguments and reviewed several briefs filed on behalf of the insurer and TNT before ordering the Court of Appeals' decision depublished.

Without the precedent of that ruling, insurer attorneys say summary judgments in such pollution coverage disputes will be hard but still possible to obtain. They now will look to favorable decisions made by other courts for precedent.

Policyholder attorneys clearly see the move to depublish as a victory.

David Paige, an attorney with the Tucson office of Anderson Kill Olick & Oshinsky, said policyholders will be able to "demonstrate the meaning of the pollution exclusion to provide coverage for gradual environmental damage claims in Arizona, as has been the case in a growing number of states."

Several Arizona cities and counties filed amicus briefs on behalf of TNT. Public entities are interested in pollution coverage cases because they face exposures similar to those in TNT's case, said Terry Anderson, risk manager for the City of Tucson.

Tucson is self-insured but in the past bought liability policies that may still cover sites that have experienced fuel leakage. "We have not touched any of our insurers at all, even though we have put them on notice of possible liability," he said. "But, someday that could happen. So it is of importance to us in terms of what happens in the future because this litigation has a life of its own."

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TNT Best-Way Transportation Inc. vs. Truck Insurance Exchange, Supreme Court of Arizona; CV-95-0251-PR, Feb. 13, 1996.

Violence at work can be stopped

Experts offer tips on warning signs

By JOANNE WOJCIK

SAN DIEGO—Employers that watch for triggering events can defuse workplace violence, experts say.

The workplace is a hotbed for violent acts because people spend the majority of their day there, pointed out Robert Sypult, corporate security director for Edison International Co., formerly Southern California Edison Corp. in Rosemead, Calif.

That's why supervisors need intervention skills.

"All you need are a potentially dangerous person, a perceived hostile work environment and a triggering event to create workplace violence," said Park Dietz, president of Threat Assessment Group Inc., a Newport Beach, Calif.-based firm specializing in workplace violence prevention training.

Employers can take steps to prevent violent flare-ups at their workplaces.

During a session titled "Violence 9-to-5" at the recent California Self-Insurers Assn. conference, Mr. Dietz listed warning signs:

- Threats and intimidating comments against the organization or against individuals in it.
- Allusions to violence in the workplace, such as excessive or intimidating references to mass shootings, either real or imagined.
- Special interest in police, military or survivalist functions.
- Inappropriate communication that is either written or on the telephone.
- Evidence of an employee researching or stalking potential targets.
- Increased anger and irritability.
- Depression or suicidal thoughts.
- Increased paranoia.
- Litigiousness or complaining about an employee's situation or treatment.
- Employees repeatedly accusing others of causing their problems.

"They won't take responsibility for their own lives," he said.

While workplace violence statistically is still relatively rare—only 1,063 of the 120.8 million people working in 1993 were victims of violence—homicide was just recently listed as a possible workplace injury by the National Institute of Occupational Safety and Health and the Occupational Safety and Health Administration, Mr. Sypult said.

During 1993, more than 2 million people were assaulted at work, according to the Workplace Violence Research Institute in

See **Violence** *on page 11*

Restrictive formularies may increase costs

As drug costs go down, other health services go up, study finds

By MICHAEL SCHACHNER

Of all the cost-containment methods used by managed care companies, prescription drug formularies, which specify what drugs a physician can prescribe, may actually lead to increased medical costs, according to a new study.

Drug formularies are one of the most common cost-cutting strategies used by the managed care industry. But a study commissioned by six health maintenance organizations and the National Pharmaceutical Council reports that plans with heavy formulary restrictions have more physician visits, more emergency room visits and more hospital admissions, all of which drive up medical costs.

In fact, the study—known as the Managed Care Outcomes Project and published in abstract form in the March issue of the *American Journal of Managed Care*—found that when formularies are severely restrictive, use of health care services is often double what it is when no formulary restrictions exist.

The study was based on patients of three for-profit and three nonprofit HMOs with one or more of the following ailments: asthma, ear infections, arthritis, ulcers and high blood pressure. These illnesses were selected because they are generally treated with prescription medication on an outpatient basis.

Between 1,309 and 3,938 patients were evaluated for each illness. In total, about 13,000 patients, who generated nearly 100,000 doctor visits, 500 emergency room visits and more than 1,000 hospitalizations, were studied.

See **Formulary** *on page 21*

Michigan State, unions near settlement

By ROBERT KAZEL

EAST LANSING, Mich.—Michigan State University and its unions will end their squabbles over benefits and work together to pare health care costs for 4,000 union members under a tentative agreement.

The university recently approved a memorandum of understanding with MSU's Coalition of Labor Organizations, a federation of eight unions, that it would begin bargaining on health care issues in July and would not impose any health insurance copayments until Dec. 1, 1997.

MSU agreed not to charge copayments, long a sensitive issue at the university, in exchange for the unions' support of the university's move in January from a fully insured Blue Cross & Blue Shield plan to a self-insured plan that employs Blue Cross for administrative services only. The change will save the university $4 million over three years, said C. Keith Groty, MSU's assistant vp of human resources.

In the months ahead, union officials say they hope to work with the university to lower health care costs in the East Lansing area and increase university workers' purchasing power in the local market.

Fifty-eight percent of the university's employees are members of two health maintenance organizations, Mr. Groty said, and a joint labor/management committee is planning to collect information from the HMOs on costs and professional standards. The committee also plans to compare its workers' health outcomes data against that of General Motors Corp. and the state of Michigan.

The labor coalition also will redouble its efforts to educate union leaders about health care issues, benefit design and purchasing.

The eight unions have until June 30 to give their final approval to the agreement with the university and to agree to accept benefit negotiations as binding on each of them.

It's not a done deal, Mr. Groty said. "The whole thing could fall apart," he said.

Benefit Beat

New buying group

TOPEKA, Kan.—Following in the tracks of other purchasing coalitions, a group of Kansas employers this week is completing plans to form a health care buying company that they hope will reduce their insurance costs and improve care.

The Topeka-based Kansas Employer Coalition on Health decided in December to create a separate organization to negotiate employee medical benefits on behalf of members. Since then, nine managed care plans have expressed interest in competing for the purchasing alliance's dollars.

Until now, the coalition concentrated its efforts on employer education, policy development and lobbying activity.

The new cooperative, which is still unnamed, will select three to five health maintenance organizations and point-of-service plans to serve member companies, said coalition Executive Director Jim Schwartz.

Initially, the cooperative will seek the membership of companies in the Topeka and Lawrence, Kan., areas, but in future phases may expand to other cities, beginning with Wichita in 1997. The coalition at present is limited to companies with 200 or more employees and now consists of a dozen companies.

The largest include: Topeka-based Western Resources Inc., a gas and electric service; Kansas City, Mo.-based Hallmark Cards Inc.; Topeka-based Payless ShoeSource; Colgate-Palmolive Co.'s Pet Nutrition Inc. subsidiary in Topeka; and Minneapolis-based Josten Printing & Publishing Inc.'s yearbook plant in Topeka.

The companies in the coalition have 7,800 employees, and dependents will boost the number of covered individuals well beyond the 15,000 threshold that Mr. Schwartz believes is critical for a purchasing alliance to have buying clout in the health care market.

The cooperative's contract went out for bid last month and responses will be due two weeks from now, Mr. Schwartz said. Plans will be selected based on price, quality of network, ability to comply with the coalition's reporting requirements and supply quality information, such as data from the Health Plan Employer Data and Information Set, or HEDIS.

A prime motivation for the new purchasing initiative is giving more health plan choices to employers' workers and their dependents, he said.

Hospital performance

DALLAS—Corporate executives in Dallas this week will get their first glimpse of a wealth of hospital performance statistics that are being gathered by the Carrollton, Texas-based DFW Business Group on Health.

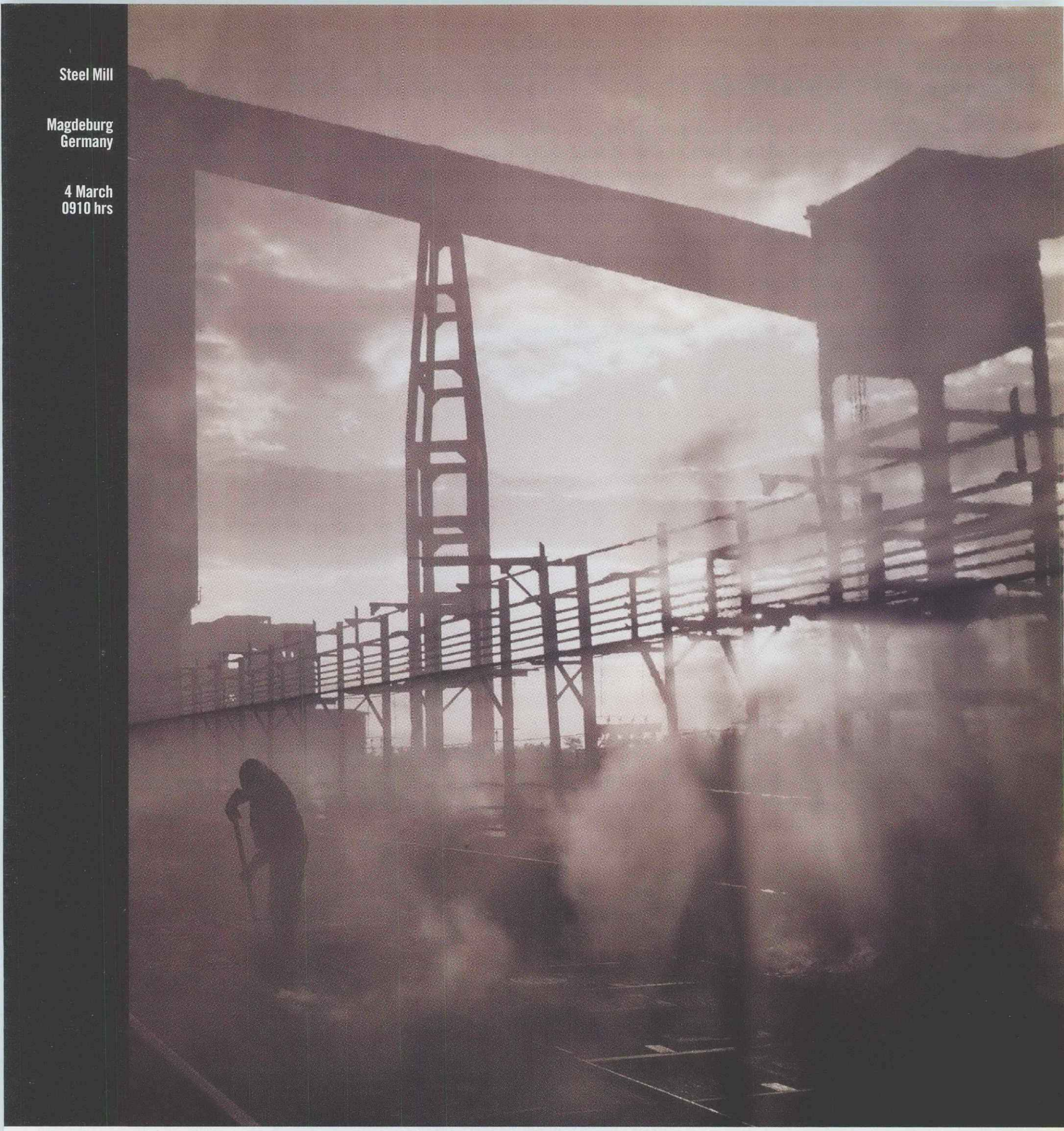
The project, called the Health Care Value Initiative, is beginning with a study of births in area hospitals.

The first set of data, on pregnancies and births at 45 hospitals in the Dallas-Fort Worth area, will be made available to about 175 companies that are members of the business group, which acts as an advocate for local businesses in health insurance matters. Measurements include mortality rates, complications, low birth rates, length of stay, readmission and number of Caesarean sections, said Marianne Fazen, executive director.

Although the raw data will be available, the corresponding identities of the hospitals will not be released for a year so that hospitals have a chance to address any problems at their institutions, Ms. Fazen said. "We don't think it would be fair to release the baseline data to anybody," she said. "There's a real fear that the employers will make purchasing decisions based on (preliminary data)."

The business group is drawing up plans to survey hospitals in four other areas: cardiovascular, musculoskeletal (orthopedics), substance abuse/mental health and oncology. Pregnancy and birth were selected for study first because a majority of coalition employers identified them as a priority for value measurement.

The project is being done in cooperation with the Dallas/Fort Worth Hospital Council, and additional studies of outcomes of physician office visits will be undertaken this year with the Dallas County Medical Society and Tarrant County Medical Society in Fort Worth. BI



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HMO enrollment picking up speed

Medicare and Medicaid patients ensure that growth will continue

By MICHAEL SCHACHNER

More than 110 million Americans will be enrolled in formal managed care plans by the year 2000, and a significant portion of new managed care enrollees over the next four years will be Medicare and Medicaid recipients, according to a new study by insurance industry consulting firm Conning & Co.

Currently, about 60 million people are covered by health maintenance organizations and increasingly popular point-of-service plans. Enrollment is expected to increase by more than 80% over the next four years as participants in government-run programs are encouraged to join managed care plans.

The aging of the U.S. population and the government's commitment to HMOs as the desired health care delivery system to Medicare and Medicaid beneficiaries are the main reasons managed care will thrive and provide explosive growth opportunities for insurers, health care providers and consumers, Conning states in its study, "The Health Care Marketplace—The Move toward Managed Care Accelerates."

Managed care companies will succeed mainly by taking business from traditional indemnity plan insurers, which will continue to fall out of favor with employers trying to cut costs, Conning states. Managed care companies will also grow through aggressive use of capital. Acquisitions, horizontal and vertical integration and nontraditional diversification all will contribute to the bottom line of managed care companies, the report says.

Conning believes the aging population, led by the baby boom generation approaching retirement age, will continue to exert pressure on national health care spending, which will lead to more managed care.

Currently, about 12% of the U.S. population is older than 65. However, by the year 2030, 20% of all people living in the United States will be older than age 65.

"The aging of the U.S. population and congressional reforms favoring HMO delivery of Medicare are a potential economic boon for HMOs over the next five to 10 years. Initially, the margins available from managing the care delivered to a previously unmanaged population may generate significant windfalls," Conning says.

Indeed, sizable pockets of the country's population still are not enrolled in managed care. Today, between 20% and 25% of the population is covered by managed care, but that figure is expected to increase to more than 40% by the year 2000.

However, regional managed care penetration will continue to vary. For example, managed care penetration will be about 25% in four years in the South Central part of the country, while it will swell to 50% in the Southwest and Mid-Atlantic, according to Conning.

Also fueling growth in the managed care industry is the popularity of point-of-service plans, which give beneficiaries an option to seek care outside a specified network, generally for a higher cost. By 1998, enrollment in POS plans is expected to exceed pure HMO enrollment.

Finally, Conning foresees large growth in managed care for Medicare and Medicaid recipients. The number of Medicare beneficiaries enrolled in HMO plans has been growing rapidly. Growth was about 30% in 1994 and an estimated 55% last year. Total Medicare enrollment at year-end was about 5.5 million. These growth figures are expected to continue.

For Medicaid, the story is similar. Medicaid recipients enrolled in HMOs totaled only 3 million in 1991, but that figure reached 8 million by June 1994. Overall, 15 states have opted for managed care for most Medicaid care. As of 1994, Tennessee and Arizona had enrolled all Medicaid beneficiaries in fully capitated managed care plans.

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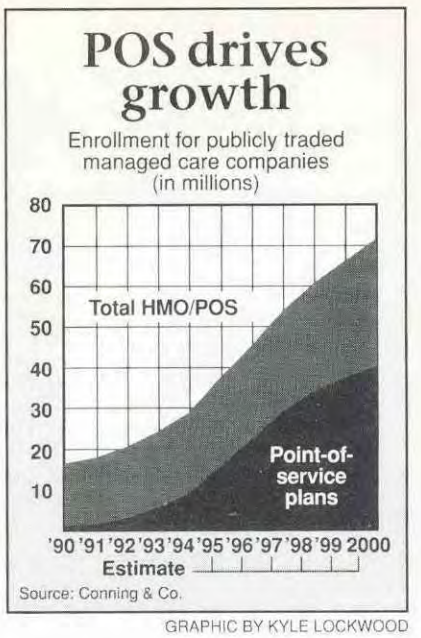
Copies of "The Health Care Marketplace—The Move toward Managed Care Accelerates" are available for $495 each from Conning & Co., CityPlace 2, 185 Asylum St., Hartford, Conn. 06103.



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Opinions

High court plays ERISA hardball

IF THE SUPREME COURT'S latest hard case ultimately makes bad ERISA law, employers will have nobody to blame but one of their own.

Last week, reversing its holding in an earlier case, the high court interpreted the cornerstone of U.S. employee benefit law to give benefit plan participants the right to sue sponsors for breach of fiduciary duty on their own behalf, as well as on behalf of the plan.

To hear business lobbyists and others tell it, this could increase litigation against plans and raise the stakes by encouraging employees with routine denial of benefit complaints to recast them as breach of duty actions, which are harder for sponsors to defend.

Only time will tell if that is true. What anyone can see, at least in hindsight, is that a duplicitous corporation left the court in a very awkward position. And judges, when maneuvered into a corner by too-clever legalisms, are a famously creative bunch.

In this case, it was Varity Corp. of Buffalo, N.Y., that did the maneuvering.

Varity's treatment of its workers and retirees is a stark reminder about the sort of conduct that Congress was considering when it drafted the Employee Retirement Income Security Act to protect workers and retirees.

In the mid-1980s, Varity dumped several of the worst-performing units of its Massey Ferguson Inc. division into a new corporate entity called Massey Combines.

That new unit—which the trial court in this case found was insolvent from the moment it was created and was declared bankrupt by 1988—was given responsibility for the benefits of its 1,500 workers, who were convinced to shift to the new unit in part by Varity assurances that it had a bright future. What's more, the company also transferred benefit obligations for some 4,000 retirees to the insolvent new entity without their permission.

Under the court's previous ERISA rulings, this left the participants in a dreadful predicament. The law limited participants to suing on behalf of a plan, and because these participants no longer had benefits due them under the Massey Ferguson plan, they were out in the cold.

It's not hard to see why Justice Stephen G. Breyer and five of his colleagues stared long and hard at the minutiae of ERISA and found the right to bring individual suits.

In a dissent, Justice Clarence Thomas may have written the more persuasive opinion, though. He argues that seldom have statutes been as fully thought out as ERISA and seldom has Congress taken such care in balancing interests as it did in that law. Knowing that—and also that Congress provided for no individual cause of action—he argued the court could not properly intervene.

But these cases are not decided in a vacuum and it is perfectly predictable that a majority on the court would not want to be seen as rubber stamping the duplicitousness of Varity Corp.

While perhaps few other companies would actually try so blatantly deceptive a maneuver, if the court had overturned the lower court rulings it is safe to say that the door would have been opened to future mistreatment of plan participants.

To some employers, the Varity ruling will serve as a useful reminder to be open and candid with employees and retirees. Yet it also is a compelling case study in how hardball tactics can backfire in employee benefits.

Letters

NAIC gets CIGNA advice from former colleague

To the editor: The National Assn. of Insurance Commissioners put the topic of CIGNA Corp.'s restructuring on the agenda for its convention, which is being held this week. It promises to be a lively debate.

CIGNA, as your magazine has reported, plans to "dump" its Insurance Co. of North America unit's pre-1986 policies—estimated to include 80% of costly asbestos and environmental risks—into a runoff company that many fear is severely undercapitalized.

Pennsylvania's insurance commissioner, Linda Kaiser, approved CIGNA's plan in February and seven other states followed suit. But one of those states, California, has set a 5% trigger of "most favored nation" treatment to equalize any preferential treatment for non-California policyholders.

Meanwhile, Michigan and several other states that were not part of the plan approval process have demanded preferential treatment for their policyholders. Missouri has required CIGNA to notify policyholders of their right to decide whether they will continue to be covered by INA or the runoff operation. As you reported on March 11, "no other CIGNA policyholders have that right."

Not yet, anyway. As a former regulator, I find it difficult to believe that other regulators will not demand the same protection as their peers.

Ultimately, it may be court action by policyholders that may doom CIGNA's plan. As California pointedly noted in a Feb. 13 letter to CIGNA, policyholders may seek redress to determine that the policy transfers are considered novations under California law. Normally, transfer of a policy from one insurer to another is considered a novation, which requires policyholder consent. The purpose is to protect the security that the policyholder purchased against covered risks when it paid its premium.

As the California Supreme Court wrote in *Travelers Indemnity Co. vs. Gillespie* in 1990, "Execution of such a (transfer) agreement does not in any way release the original insurer from its policy obligation; rather, it results in both the original insurer and the assuming insurer being obligated to the insured."

I count myself among those who believe that any plan that would permit an insurer to walk away from risks it insured is wrong—for a variety of reasons.

First, as a former regulator, I cannot endorse the financial expediency of shedding unwanted, expensive risks to a runoff company against the policyholders' wishes. That betrays the trust policyholders had that a solvent company would be there when needed.

Second, a runoff company's insolvency would inevitably shift the risk to otherwise solvent insurers that underwrote the same policyholders in different years. If it proliferates, this unfunded risk shifting could begin a downward spiral that would imperil the entire industry. Guaranty funds across the country have opined, though, that they will not be liable if the runoff becomes insolvent.

Third, as a practicing lawyer, I must question the legality of the proposed involuntary transfer of policies. I was commissioner of insurance in California when *Travelers vs. Gillespie* decided that such a transfer does not diminish the policyholder's rights against the issuing insurer.

Fourth, CIGNA's assurances to regulators may not be worth the paper they are written on. Those on the front lines in the claims area—risk managers, claims adjusters and their lawyers—know that environ-

See **Letters** *on page 10*

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Health care

Continued from page 3

state insurance departments and give to the U.S. Department of Labor the authority to regulate self-funded multiple employer welfare arrangements, proposals that the administration also opposes.

With the administration and the House GOP leadership backing such different approaches, the likelihood of a compromise has receded in recent weeks.

Rep. Henry Waxman, D-Calif., said Republicans seem intent on loading down reform legislation, which could ultimately kill any chance that Congress will send President Clinton a reform bill that he can sign.

For their part, Republicans said a health care reform bill has to do more than simply curb pre-existing condition exclusions, something GOP leaders say only would make coverage more available, but not necessarily more affordable.

"As we learned from President Clinton's health care reform effort, too much medicine can be harmful to the patient, but we also know that too little medicine won't cure America's health care ills," said Ways and Means Committee Chairman Bill Archer, R-Texas.

But Rep. Hastert, who will advise the GOP leaders on what to include in the bill the House is to vote on this week, earlier said he also favors an expanded bill.

But last week, following the Commerce Committee vote, Rep. Hastert said enactment of legislation that will receive presidential approval is paramount.

"We want to be sure we have a bill that the president can sign," he said.

The shape of the GOP health care reform bill to be voted on by the full House will emerge early this week.

GOP leaders will fashion a bill from measures passed by the Commerce, Economic and Educational Opportunities and the Ways and Means Committees.

'Too much medicine can be harmful to the patient, but we also know that too little medicine won't cure America's health care ills,' says Rep. Bill Archer.

They may also add a provision to cap medical malpractice awards.

One provision common to the bills passed by the three committees: curbing pre-existing medical condition exclusions. Under the measures, group health plans could exclude coverage for up to 12 months for a pre-existing condition, which is defined as one that is treated within six months of an individual joining a health plan.

However, the 12-month period would be offset by the amount of time a new employee was covered under previous health care plans.

The measure passed last week by the Ways and Means Committee also would give tax-favored status to MSAs.

Under the measure, employers could annually contribute to employees' MSAs up to $2,000 for individual coverage and $4,000 for family coverage. Employees would not be taxed on employers' contributions or on investment income earned on assets held by the MSAs.

Funds could be withdrawn tax-free to pay for health-care related expenses. Distributions made for other purposes would be subject to taxes and a 10% excise tax.

Distributions from an MSA after age 59½ only would be exempt from the 10% excise tax.

Other provisions in the Ways and Means bill would give new breaks to group long-term insurance premiums.

Under the measure, employers—up to certain limits—could pay LTC premiums without employees being taxed on those contributions.

For example, for employees under age 40, up to $200 in employer-paid premiums would be tax-free to employees.

The tax-free limit would steadily increase with age until the limit hit $2,500 for employees more than age 70. BI

Letters

Continued from page 8

mental law and coverage law are in flux and subject to radical swings.

In my view, no informed person can have any degree of certainty or even comfort that the assets CIGNA has allocated to the runoff will afford adequate protection to INA policyholders.

Roxani M. Gillespie
Buchalter, Nemer,
Fields & Younger
San Francisco

■ *Editor's note: Ms. Gillespie's firm represents American International Group Inc. in a variety of matters, including environmental claims litigation. AIG is one of the insurers appealing Ms. Kaiser's order approving CIGNA's reorganization.*

No shopping for TIG, broker says

To the editor: I am writing regarding your March 4 article, "TIG Cutback Has Some Guessing," to clarify some statements that were attributed to me.

In preparing the article for publication, *Business Insurance* paraphrased some of my statements, which inadvertently altered their meaning and did not reflect my intent.

Contrary to what is stated in the article, Sedgwick is not "shopping" its current TIG placements and will do so only at the direction of our clients.

My statements were not meant in any way to degrade TIG as a company or its quality commitment to clients. On the contrary, Sedgwick holds a very high opinion of TIG and understands its current restructuring efforts are necessary to achieve its future vision.

Shelley Yim
Director of Insurer Relations
for Southern California
Sedgwick James
of California Inc.
Los Angeles

Mercer offers managed care plan evaluation tool

NEW YORK—Employers now have another tool to help them evaluate the cost and quality of managed care plans.

Built on a database covering about 1,200 national, regional and local health plans, the tool is called Mercer Value Process and is being marketed by William M. Mercer Inc.

That data, including historical costs, treatment and outcome trends, and utilization review procedures, enables Mercer consultants to make much more precise managed care evaluations.

"MVP takes the words 'cost' and 'quality' and puts them together to come up with value. Employers today want to know which plans are bringing value to the table and different employers are at different points on the line with respect to what value is," said Lewis E. Devendorf, a principal in Stamford, Conn.

"Some clients see value as a combination of the lowest cost and the biggest network of providers. Others want healthy employees and better outcomes and are willing to pay more for that."

MVP provides employers with a value index based on a plan's quality rating divided by its cost. But, only the factors that individual clients consider most important are considered, Mr. Devendorf explained.

Ultimately, the MVP process looks at a series of quantifiable elements of quality and cost, each of which can be weighted to reflect importance to a particular employer:

- Access, including the availability of physicians, hospitals and health services.

"Access means availability as much as proximity. Good access may mean physicians issue patients reminders that important procedures are due. It could also mean referrals are easily obtainable. Our database tells us who a plan's hospitals are, who the doctors are and what their specialties are," said Mr. Devendorf.

- Care management and how plans deal with those who are sick.
- Health management promotion.
- Satisfaction of members, providers and employers.
- Program management.

These criteria are evaluated and profiled. They are then compared with bottom-line plan costs and internal cost structures.

"We're not benchmarking managed care plans for all clients. One plan could be good to one employer because it has the most doctors. Another could be of value because it is very well managed. We're not trying to hand a client a scorecard that has three plans that they would go for. That's not the point," Mr. Devendorf said.

"We spent a year compiling a database of 1,200 managed care organizations. Every one is fully profiled, so once we know what a client wants to evaluate, it is very quick and easy," he said.

Mercer clients do not pay fees specifically for the service. Its cost is built into consulting fees.

—By Michael Schachner

Violence

Continued from page 3

Newport Beach, Calif.

One in four workers is subject to some form of harassment at work, Mr. Sypult pointed out.

In 1993, homicide was the second biggest cause of job-related deaths, according to the institute.

But it ranked No. 1 in Los Angeles County, which is where Edison International is based, Mr. Sypult said.

While the homicides and robberies get most of the headlines, a lot of lower-level workplace violence goes unreported, he noted. For example, "hits and kicks are a big part of violence on the job."

Workplace violence generally falls into four basic categories:

- Terrorism and hate crimes, such as the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City.
- Domestic violence that filters into the workplace.
- Robbery and other commercial crimes.
- Employee/employer confrontations.

Among the types of workers most likely to encounter violence on the job are:

- Cab drivers and chauffeurs.
- Law enforcement officers.
- Hotel clerks.
- Gas station workers.
- Security guards.
- Store stock handlers and baggers.
- Store owners and/or managers.
- Bartenders.

The most dangerous cities for these people to work in are New York, Los Angeles, Dallas, Chicago, Philadelphia, San Francisco, Miami and Houston.

"You can easily draw correlation between the kind of work and the likelihood of confrontation," Mr. Sypult observed. For example, "these people often work late at night."

Furthermore, "the majority of violence involves robberies, which makes people with public contact more vulnerable."

To reduce the incidence of workplace violence, employers must understand the origins of the problem, Mr. Sypult said.

For example, economic factors may drive people to commit violence.

They may be afraid of losing their jobs or have other financial problems, he said.

Social factors, such as a lack of personal support systems or family also can prompt a worker to commit violence.

"A lot of times they don't have anyone to turn to," he said.

In 1993, the National Workplace Violence Institute in San Diego estimated workplace violence costs employers $36 billion annually.

These costs are generated by: increased direct and indirect medical costs, either through workers compensation or disability benefits; increased turnover; lower productivity; and legal costs.

Employers also may be exposing themselves to liability suits alleging inadequate security or wrongful death, Mr. Sypult said.

And not all of this litigation will be filed by victims or their survivors, he said. "Sometimes employees most impacted from stress are not the employees who are robbed or hurt" but those who witness these violent acts, he said.

Employers also may be sued for failing to warn other employees if one employee carries out a threat.

Other possible causes of action include negligence in hiring, supervision and/or retaining an employee.

Under guidelines recently issued by OSHA, employers have a duty to maintain a safe workplace (*BI*, March 18). BI

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Preventing harassment claims

Prompt enforcement of job policy can help avert expensive lawsuits

By JOANNE WOJCIK

SAN DIEGO—When employers think about sexual harassment, they think tort suit.

One expert says they should also think workers compensation claim because many suits are accompanied by claims seeking medical payments and disability for stress or stress-induced illnesses.

Employers also can be sued for constructive discharge, or deliberately making working conditions so intolerable that an employee is forced to resign.

"A lot of us misunderstand sexual harassment and take it for granted, but it's more serious today than ever before," said David Shapiro, assistant general counsel for Rockwell International Corp. in Seal Beach, Calif. "This whole area has undergone a resurgence lately."

Employers can reduce their exposure to sexual harassment suits by teaching employees prevention techniques, Mr. Shapiro recently told a group of workers compensation managers and risk managers for self-insured employers at the annual California Self-Insurers Assn.

"Whether your mission is to avoid a comp claim, a legal settlement, whatever, I offer you one word: prevention," Mr. Shapiro advised.

Once an allegation is made, the burden of disproving it is on the employer, according to Mr. Shapiro.

Simply having a corporate policy forbidding harassment will not help. Enforcing the policy will, though.

The entire workforce should understand the policy, and it should be enforced using good judgment to guard against retaliation against workers who make claims, he said.

Investigations must be private, confining knowledge to those who have a need to know, such as human resource personnel and legal counsel.

If the allegations of sexual harassment are found to be true, "the discipline should be severe," Mr. Shapiro said.

"Your management has the responsibility to report any allegations (of sexual harassment) and to allow for a good faith investigation," he said.

According to guidelines established by the U.S. Supreme Court, "the employer that has the best chance of rebutting an allegation is one that provides immediate, appropriate corrective action," Mr. Shapiro said.

Because the law uses a "reasonable person" standard to decide whether an employer should have been aware of sexual harassment occurring in the workplace, "ostriches with their heads buried in the sand will lose," Mr. Shapiro explained.

The average jury verdict in sexual harassment suits is estimated at $200,000, "but that doesn't include internal administrative and defense costs," Mr. Shapiro pointed out.

And while state and federal labor laws provide administrative remedies for workplace sexual harassment, most cases are filed in the civil courts, where there are no caps on punitive damages, he pointed out.

Not all sexual harassment cases are reported, however, which suggests that some of the workers compensation claims for stress and stress-induced illness may have originated from a discriminatory act, Mr. Shapiro suggested.

"Fortune 500 companies lose $6.7 million a year (collectively) in decreased productivity, time off and increased medical costs" as a result of sexual harassment, he said, quoting a 1995 article in Fortune magazine.

Since 1990, a total of $22.5 million in damages has been awarded in 15,000 sexual harassment suits in California alone, according to a recent survey.

And, the percentage of legitimate cases that are resolved early is declining, according to Mr. Shapiro.

"No area of discrimination is more pervasive in the workplace than sexual harassment," Mr. Shapiro said.

Mr. Shapiro said that according to research in the field, 70% of working women have been subjected to some form of sexual harassment, and 52% of working women have either been fired or forced to quit because of sexual harassment.

However, Mr. Shapiro pointed out that "this is not a law that just protects women," though 90% of the sexual harassment complaints made so far have been filed by women against men.

"It's the playground mentality (boys bullying girls) following us into the workplace," Mr. Shapiro said. BI

Heart disease may be work related

By JOANNE WOJCIK

SAN DIEGO—As working baby boomers age, employers need to look out for a new type of cumulative trauma claim under workers compensation: heart disease.

Such claims can be big-ticket items, especially for public entities in California, where state law has placed on employers the burden of disproving that such claims are work-related for certain employees, such as firefighters and police officers, a physician said.

"Heart claims can reach six or seven figures in very short periods of time," Dr. Irwin Weinreb, a San Francisco cardiologist, recently warned workers compensation managers and risk managers attending a session titled "Does Hard Work Cause Heart Injuries?" at the annual California Self-Insurers Assn. meeting.

There has been a lot of talk over the past three decades about whether highly driven people with so-called "Type A" personalities are more likely to suffer from heart disease later in life, but personality type alone is not a major contributor, Dr. Weinreb said.

In fact, since some landmark 1959 personality type studies, "other studies have shown that, in fact, the Type B has greater risk for recurrent heart attacks than the Type A personality," he said. That may be because naturally high-strung Type A personalities have inherent coping mechanisms that enable them to endure greater amounts of stress without suffering negative physiological changes, Dr. Weinreb explained.

"But, Type A's with personality 'subsets' such as anger or depression do have an increased risk of developing coronary artery disease," he said.

While work-related heart disease claims are not prevalent among private-sector employers, many states, like California, have statutes under which it is presumed that claims for heart disease or other cardiopulmonary disorders are compensable under workers compensation for certain public employees, such as firefighters and police officers.

And these types of claims are likely to increase as baby boomers, who make up the majority of today's workforce, age, Dr. Weinreb said. Workers who are out of shape or who rarely perform physical labor have a better chance of getting heart disease than those whose everyday work is physically demanding, such as longshoremen and construction workers, he said.

And, performing isometric tasks, such as lifting a heavy load once in a while, is more likely to cause a coronary event such as a heart attack than performing regular cardiovascular tasks, such as walking.

"Physical work causes direct physiological and pathologic changes in the body," Dr. Weinreb explained.

Because the skeletal muscles, which are doing the work, require more blood and oxygen, the heart must work harder to pump to the extremities. That, in turn, increases demands on other organs.

Isometric exercise also causes peripheral vascular resistance, which forces the heart to pump even harder, according to Dr. Weinreb.

That's why people with undetected heart disease can die suddenly from performing such isometric tasks as shoveling snow, he said.

Environmental factors, such as temperature extremes during the workday, can put additional stress on the heart.

Emotional stress also can put pressure on the heart, depending on how that stress is perceived, Dr. Weinreb said.

The response varies because some people view particular stressors as exhilarating while others perceive them as threatening, he explained.

Regardless of the triggering events, when the demand for blood and oxygen is too great, and the heart cannot keep up, heart disease occurs.

Add to that such factors as poor diet and heredity, both of which can cause high cholesterol, or plaque build-up in the arteries, and you have the formula for a heart attack.

And while it is possible for a worker to rebound completely from a heart attack or clot, "that might not occur until after significant damage has occurred to the heart," Dr. Weinreb pointed out.

Because many non-occupational factors such as heredity or personality type subsets can contribute to heart disease, workers who seek medical care and disability benefits under workers compensation should be thoroughly evaluated, he said.

"You need to examine all medical records dating back as far as possible," he said. "This may reveal that the work environment is not the true cause of the problem."

For example, the employee may be going through a bitter divorce or custody fight or other problems, Dr. Weinreb said.

"In some cases, you may find the work environment may be the most therapeutic environment for the employee." BI

450 attend CSIA conference

SAN DIEGO—About 450 workers compensation managers and risk managers attended the 66th annual meeting of the California Self-Insurers Assn. March 6-8.

The conference discussed a range of current issues.

As CSIA Vice Chairman John Roberts put it; "What is workers compensation coming to? We began the conference with sexual harassment, and now we're talking about workplace violence." By contrast, "when I started in the business 20 years ago, we were discussing the compensability of hernias."

Mr. Roberts, workers compensation manager for the University of California Board of Regents in Oakland, was elected vice chairman of the self-insurers' association at the recent annual meeting. Other officers elected were: David R. Caine, manager of workers compensation for Edison International Co., chairman; and Travis Howland, workers compensation manager for Los Angeles County, secretary/treasurer.

Next year's meeting will be March 5-7 in San Diego.

For more information, contact the CSIA at: 921 11th St., Suite 619, Sacramento, Calif. 95814; 916-442-4576.

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Summary of major property/casualty insurers' year-end 1995 results

Ranked by change in net income. All amounts in thousands of dollars.

		Corporate					Property/casualty operations							
Rank 1995		Consolidated revenues 1995	Net income 1995	Percent increase (decline) 1994-1995	Combined[1] ratio 1995	Combined[1] ratio 1994	Net premiums written 1995	Percent increase (decrease) 1994-1995	Pretax underwriting income (loss) 1995	Percent increase (decline) 1994-1995	Pretax investment income 1995	Percent increase (decrease) 1994-1995	Policyholders surplus 1995	Percent increase (decrease) 1994-1995
1	CNA Financial Corp.	14,700,000	757,000	1,974.0	107.8[2]	116.3[2]	10,160,000[2]	(8.6)	(1,095,700)[2]	47.2	1,890,400[2]	10.0	5,690,000	17.6
2	TIG Holdings	1,876,000	118,000	126.9	106.5[2]	112.1[2]	1,610,000	(0.1)	(78,000)	52.4	280,000	8.5	952,000	5.7
3	Reliance Ins. Co. and subs.	2,905,987	88,056	100.9	101.8	104.4	1,779,040	0.8	(45,644)	53.1	247,343	6.5	1,128,336	24.2
4	Royal Group (U.S. subs.)[2]	N/A	123,200	82.5	110.2	116.2	1,671,200	5.1	(177,500)	31.5	187,400	130.8	1,026,800	20.1
5	Fremont General Corp.	701,295	63,654	47.5	101.4	98.4	583,790	36.9	(2,820)	(132.1)	94,375	62.9	299,408	27.2
6	Old Republic Int'l	1,695,983	212,703	40.8	102.1	103.3	876,179[2]	2.9	(33,855)[2]	(1.8)	191,126[2]	10.0	1,382,547	12.5
7	Lincoln National Corp.	6,633,300	482,200	37.8	96.6	98.1	1,671,900	0.4	(74,700)	10.6	237,200	(1.6)	1,609,800	13.8
8	Chubb Corp.	6,089,200	696,600	31.8	96.8	99.5	4,306,000	9.0	94,200	1,234.9	603,000	7.6	2,208,200	18.9
9	General Re/Cologne Re Group	7,210,200	824,900	24.0	100.7[2]	100.9[2]	5,392,900	79.7	(50,400)	(26.0)	958,500	30.0	4,606,700	22.2
10	Hartford Steam Boiler	672,200	62,600	20.6	90.7	93.0	408,300	20.0	34,200	65.2	28,200	7.6	314,000	16.4
11	Sentry Insurance Cos.[2]	1,514,806	105,886	20.2	104.9	104.8	1,154,744	4.4	(60,477)	(6.6)	194,775	7.6	1,145,599	11.1
12	The St. Paul Cos. Inc.	5,409,830	521,209	17.7	102.0[2]	102.3[2]	4,243,213	17.1	(103,045)	8.8	731,096	8.3	2,456,985	29.0
13	American International Group	25,874,022	2,510,383	15.4	97.0[2]	98.8[2]	11,893,022	9.5	361,583	145.1	1,545,717	7.7	11,142,956	17.0
14	Ohio Casualty Corp.	1,456,242	96,379	3.4	104.0[2]	103.8[2]	1,250,554[2]	(2.8)	(45,520)[2]	(0.3)	184,362[2]	0.3	876,918	32.9
15	SAFECO Corp.	3,868,996	398,959	2.7	99.7	103.8	2,206,984	4.9	6,348	108.2	291,450	2.8	1,864,665	24.6
16	Berkshire Hathaway Group	1,457,700	426,700	(0.6)	102.0	85.9	1,024,200	11.9	19,600	(84.8)	500,200	19.6	19,473,000	45.3
17	USF&G Corp.	3,458,800	209,400	(11.7)	106.1	108.2	2,563,000	7.3	(155,900)	22.3	438,300	2.2	1,340,800	(17.3)
18	ITT Hartford Group Inc.	12,150,000	559,000	(13.2)	104.6	102.6	6,993,000	3.1	(345,000)	(45.6)	829,000	11.9	3,639,000	17.2
19	Argonaut Insurance Co.	248,743	69,571	(23.1)	111.3[2]	101.6[2]	144,223[2]	(33.2)	(29,143)[2]	(3,886.7)	92,574[2]	(7.3)	625,948	13.3
20	Aetna Life & Casualty Co.	12,978,000	251,700	(46.2)	135.1	117.7	4,081,300[2]	(7.3)	(1,496,900)[2]	(44.6)	898,500	9.4	2,752,600	18.2
21	CIGNA Corp.	18,955,000	211,000	(61.9)	144.5	123.9	3,587,000	(0.1)	(469,000)	51.9	674,000	2.6	1,990,000	13.8
—Travelers Group Inc.		N/A	N/A	N/A	104.6[2]	115.2[2]	3,606,300	(6.2)	(258,500)[2]	55.7	744,400[2]	15.6	2,637,500	27.9
—Commercial Union Ins. (U.S.)[2]		N/A	N/A	N/A	106.5[3]	107.5[3]	1,727,700	5.1	(126,400)	8.5	247,200	10.5	1,070,500	12.8
—Kemper National Ins. Cos.		3,383,914	N/A	N/A	109.6[2]	114.9[2]	3,235,257[2]	(2.3)	(312,286)[2]	36.4	399,183[2]	14.0	1,934,085	8.2
—Liberty Mutual Ins. Co.[2]		N/A	N/A	N/A	111.0	110.8	5,385,322	1.5	(616,416)	(2.0)	1,031,879	(0.4)	4,659,733	31.7
—Nationwide Mutual Ins. Co.[2]		N/A	N/A	N/A	114.0	108.6	7,636,120	2.7	(1,083,299)	(59.1)	905,958	6.3	5,109,943	6.2
Cumulative		133,240,218	8,789,100	16.8	107.3	108.0	89,191,248	4.2	(6,144,574)	(20.1)	14,426,138	5.2	81,938,023	22.7

[1]After dividends [2]Statutory [3]Before dividends N/A-Company did not provide data

Insurers

Continued from page 2

ing to be much better," said Dennis Busti, president of Reliance National Insurance Co. in New York.

Both premium growth and returns on equity will be anemic, he predicted. "No one can predict earthquakes and weather patterns, and you could get lucky and have a very low degree of catastrophe losses, but even with that, you're not talking about a brilliant year."

Competition is expected to remain intense.

"We're cautiously pessimistic, I guess," said Alan Levin, managing director at Standard & Poor's Corp. in New York.

"We think that there's nothing on the horizon that is going to cause companies to show markedly better results. They all seem to be competing with the expectation that it's always the other guy that's cutting prices," he said.

"From an underwriting standpoint, it looks as though it's going to be another very competitive year," agreed Barbara Stewart, president of consulting firm Stewart Economics in Atlanta. "There's nothing to suggest that the markets will harden or there will be any kind of upturn."

However, there will be a squeeze on profit margins, one analyst said.

If catastrophe losses are excluded for 1995 and 1994, losses grew about 6% rate, while premiums grew only about 3.5%, "which is not a good formula for solid margin dynamics," said Michael Smith, an analyst at Salomon Bros. in New York.

In addition, the first 2½ months of the year have already seen about $2 billion in catastrophe losses and there are still "five seasons" ahead: hurricane, fire, flood, drought and earthquake, said Mr. Smith. With investment income also expected to be lower, "It'll be a tough year."

Gloria Vogel, managing director and senior insurance analyst with Ladenburg, Thalmann & Co. Inc. in New York, also pointed to this year's catastrophe losses.

"I'm a little bit cautious on the outlook for '96," she said. "I think it's going to be more difficult in terms of the comparisons because we're already off to pretty high cat losses through just the first 2½ months of the quarter."

A continued influx of capital also could hurt returns by ensuring continued competition, she said.

Ms. Vogel pointed to the Travelers/Aetna Property Casualty Corp.'s planned initial public offering (*BI*, March 18), as well as plans by Lincoln National Corp. to sell up to 18.7% of the stock of its American States Financial Corp. subsidiary in an IPO. In addition, a group led by Kohlberg Kravis & Roberts Co. and Talegen Holdings Inc. management is planning to buy Talegen in a $2.7 billion deal (*BI*, Jan. 22).

"You've got lots of buyers and new companies coming to the market to raise capital. What that means is there's no capital shortage in the industry, so there's nothing out there that's going to suggest the price competitiveness is going to end anytime soon," she said.

But Joanne Morrissey, a principal with Firemark Consultants Inc. in Morristown, N.J., was more optimistic than some others.

"We think things are looking very good for the companies during 1996," she said. "We've seen some good changes that have come about," through managements' focus not just on current earnings but on their future earnings and on fixing any problems they have had, she said.

"I think that one thing that you're going to see right now is that companies are looking to underwrite for profit, and that's something that's been missing for quite a while in this part of the industry, and I think that's going to show us a bit more discipline in the companies' pricings," said Ms. Morrissey.

The 16.8% increase in net income in 1996 compares with only a 7.6% increase in the first nine months of last year, when earnings stood at $5.39 billion (*BI*, Nov. 20, 1995). *BI*'s survey no longer includes The Home Insurance Co. In addition, Aetna is now reporting its property/casualty results as a discontinued operation, so these are not reflected in 1994 or 1995 revenue figures.

Besides the gain in net income, other findings of the 1995 survey include:

- Net premiums written by 26 big insurers rose a modest 4.2% to $89.19 billion last year from $85.62 billion in 1994. This compares with a 3% increase for the nine months ending Sept. 30, and a 2.8% increase reported for the first half.
- Underwriting losses decreased by 20.1% to $6.14 billion from $7.69 billion. This compares with declines of 3.4% for nine months and 14.8% for the first half.
- Investment income increased 5.2% to $14.43 billion from $13.72 billion. It had risen 8.3% in the first nine months of 1995.
- The property/casualty insurers' combined ratio improved to 107.3% vs. 108%. For the first nine months, it was 107.8%.
- Policyholder surplus increased 22.7% to $81.94 billion from $63.26 billion. As of September, there had been a 9.8% increase to $45.32 billion.

Observers describe the fourth quarter as generally unremarkable.

'I don't think it was a tremendously eventful quarter," said Michael Lewis, first vp with Dean Witter Reynolds in New York.

"Companies came in with decent results, considering Hurricane Opal was in that quarter, and I would say it was characterized by somewhat more positive surprises than negative surprises," he said. "The greatest positive surprises being generated by the multiline companies, specifically Aetna and CIGNA, which continued to report above street expectations led by strong property/casualty results."

"I guess there really weren't too many surprises in the quarter," agreed Ms. Vogel. "Clearly, there was the impact of the catastrophes, specifically Hurricane Opal, that hurt a couple of companies and lower interest rates."

Low inflation rates are helping insurers by keeping losses from outstripping premiums, said Gary Ransom, senior vp at Conning & Co. in Hartford, Conn.

"It's still very competitive. . .and the outlook is for modestly deteriorating loss ratios overall. But, on the other hand, claims still seem to be behaving well, meaning that inflation is not making claims rise very rapidly," he said. As a result, despite the competition, "you don't have premiums falling behind losses very rapidly."

For the year ahead, though, increasing competition in workers compensation is a growing concern to insurers.

While workers comp has shown dramatically better results for the last several years, there has been significant competition, particularly in California, said S&P's Mr. Levin. This is not "very conducive to the line continuing to show profitable performance," he said.

Further deterioration in workers comp profits is likely this year, said George Yonker, vp, finance for SAFECO Corp. in Seattle.

However, said Conning's Mr. Ransom, "it will still be a good business. It will be a profitable business."

Low interest rates are raising concerns about squeezing insurer profits.

Investment income is "going to continue to be under pressure for a few years," he said. "Some of the bonds that were put out at very high interest rates in the early '80s are coming due basically or coming out of their call protection period." Such periods are the lengths of time issuers pledge not to call the bonds.

This means there is a gap between the rates on old bonds that are rolling over and the rates offered on new bonds, said Mr. Ransom. "It's fairly wide, probably a 350 to 400 basis point swing between what's maturing and called vs. what's being invested in."

That trend will continue because average yields of bonds held by insurers are still higher than new money rates, he said.

"The volatility of the (stock) market has resulted in some cases in realized or unrealized gains," observed S&P's Mr. Levin. But the general reduction in interest rates is resulting in more modest interest and dividend income, which means insurers "are going to have less portfolio income to offset underwriting losses."

A brighter spot on the horizon for insurers may be improved environmental reserves.

Earlier this year, A.M. Best Co. significantly lowered its "worst case" estimate of the industry's unfunded environmental/asbestos liability to $92 billion from $623 billion, a move it said reflects both improved information and more favorable industry trends.

A year ago S&P estimated the industry's environmental reserves were deficient by $23 billion. Now S&P puts it at $14.5 billion.

While there may still be surprises out there, "most of the public companies like Aetna and CIGNA took their hits already, so there'll probably be some modest leakage, but I wouldn't expect any major charges coming up in the near future," said Mr. Ransom of Conning.

"The obvious big reserve hits, I think, are behind, but I suspect there may still be some smaller companies that might have to 'fess up with some amount," said Ms. Vogel. BI

CIGNA

Continued from page 2

the most long-tail liabilities before the reorganization.

CIGNA then merged the portion of INA that retained those liabilities and a few other units into the runoff operation's lead company, Century Indemnity Co.

CIGNA officials say the insurer has fully funded its environmental and asbestos liabilities three times over by backing the runoff operation with a sizable addition to reserves, capital contributions and reinsurance protection written by the active operation.

At a public hearing, several CIGNA officials and consultants testified that the actuarial report Tillinghast prepared for the department shows how well the runoff operation protects policyholders (*BI*, Dec. 4, 1995). But, the department and CIGNA have refused to release the report and another that Milliman & Robertson Inc. prepared for CIGNA, saying they contain proprietary information about CIGNA's operations.

Critics of the transaction say they need that material to evaluate how well the transaction protects policyholders and rival insurers that have done business with CIGNA. They also say their inability to review the information unfairly hampered their testimony during public hearings on the plan.

Judge Colins' March 15 order directs the Pennsylvania Insurance Department to file with the court by April 1 all of the records related to the reorganization that the department listed in a March 5 court filing.

The judge also rejected a request by INA Financial Corp., a CIGNA holding company for all of its property/casualty operations, that he first review the voluminous material and determine which portions of it should be withheld because of its proprietary nature.

The five-paragraph order leaves no doubt that the department must produce the material, including the Tillinghast and M&R reports, said attorneys for CIGNA's critics.

"That's an in-your-face order," said David Walsh, a former Alaska commissioner and now general counsel of domestic brokerage for American International Group Inc. of New York. AIG is one of the rival insurers appealing Ms. Kaiser's order.

The order also should make public other information about the transaction that the department and CIGNA have kept confidential, said Lawrence T. Hoyle Jr. of Hoyle, Morris & Kerr in Philadelphia, who represents both CIGNA policyholders and rival insurers.

That information includes the final reorganization plan and changes to the plan up through the day Ms. Kaiser approved it, Mr. Lawrence said, citing the March 5 court filing.

Keeping that information confidential "is an impossible legal position," said insurer attorney Floyd Abrams, a partner with Cahill Gordon & Reindel of New York. Mr. Abrams represents AIG in the case.

The Pennsylvania department, though, is not sure the information would be publicly available even if it files the material with the court, a spokeswoman said. "We don't know what Judge Colins will do with the information once he receives it," she said.

Mr. Hoyle, the policyholder and insurer attorney, contends Judge Colins included that finding only to support his ruling that policyholders and rival insurers would not be harmed irreparably if he did not stay Ms. Kaiser's approval order.

Mr. Walsh of AIG said Judge Colins' finding could be interpreted many ways—none of which anyone can be certain about at this stage.

But, he said he "would be really distressed" if Judge Colins meant

CIGNA plans to ask the court to clarify the scope of access it will allow to proprietary information and financial analyses of claims information, says a spokesman.

Regardless, the department "is not happy with the order," she said. "We are looking for ways to preserve the statutory confidentiality of those documents."

CIGNA plans to ask the court to clarify the scope of access it will allow to proprietary information and financial analyses of claims information, a spokesman said.

The spokesman also said that already public material supports CIGNA's reorganization and its benefits to policyholders. Regulators in eight states relied upon that information in assessing and approving the portions of the plan that had to pass muster with them before CIGNA could implement it, he said.

Attorneys for CIGNA's critics say they would oppose any effort to restrict access to the material.

A restriction could prevent CIGNA's critics from calling various witnesses who otherwise could offer insight on the material if they had access to it, Mr. Abrams said.

John N. Ellison, who represents only CIGNA policyholders, said the department's and CIGNA's objections to releasing the information "just don't apply to us." Policyholders do not pose any legitimate competitive concerns for CIGNA, said Mr. Ellison, a partner with Anderson Kill Olick & Oshinsky P.C. in Philadelphia.

Judge Colins' earlier ruling this month that raises questions over when policyholders and CIGNA creditors can seek relief from CIGNA was part of his belated explanation of a Feb. 13 decision in which he refused to stay Ms. Kaiser's approval of CIGNA's reorganization. CIGNA's critics had argued that the stay was necessary because reversing the reorganization would be impossible.

Judge Colins disagreed.

In his March 5 explanation, he also noted that Ms. Kaiser's approval order correctly interpreted Pennsylvania law in finding that a corporate division does not impair the rights of policyholders and creditors.

He then quoted a portion of the law that states policyholders and creditors with claims may seek relief against the corporation "as if the division had not taken place." The quoted material also states claimants alternately may proceed on a joint and several basis against the portion of the divided entity that did not retain its liabilities after the division.

Under CIGNA's and the department's interpretation, rather than derailing or modifying the insurer's reorganization now, policyholders and creditors could act against CIGNA only if the new runoff facility fails and those parties are harmed.

"It's very noteworthy that the judge confirmed the findings, the conclusion of law in the regulator's order," the CIGNA spokesman said.

that policyholders and creditors could seek relief only if the runoff operation fails. He and Florence Davis, vp and general counsel at AIG, said that would put policyholders and creditors in an untenable position in preparing their financial statements, because of the uncertainty it would create.

Mr. Walsh also wondered whether, if policyholders had to wait to see if the runoff operation fails, CIGNA couldn't attempt to defeat the claim before it got to trial by arguing the reorganization was approved by the Insurance Department.

"We never would do anything to policyholders that wouldn't give them some recourse if they could prove they've been harmed by the insurance company," the department spokeswoman said. "It's pretty clear what CIGNA's responsibilities are."

Policyholders and creditors "have that cause of action under the Pennsylvania corporate division law," the CIGNA spokesman said. "The record is abundantly clear about their rights."

Those assertions raise other questions, though, argued AIG's Mr. Walsh.

Will policyholders have to prove, before reaching the trial stage, that the reorganization harmed them? And, if policyholders could seek relief against the parent company, has CIGNA built as strong a wall between its active and inactive operations as it says it has, he asked. BI

ADVERTISER INDEX

Issue of March 25

INTERNATIONAL

Failing to put safety first?

U.K. budget cuts seen limiting scope of safety commission

By CAROLYN ALDRED

LONDON—Continuing cuts in the budget of Britain's Health and Safety Commission will harm the agency's ability to safeguard health and safety standards in British industry, its chairman and a union representative contend.

A draft letter from HSC chairman Frank Davies asks the government for an additional £20 million ($30.5 million) over three years, without which the Health and Safety Executive "cannot meet all the expectations and requirements that the government, Parliament and the courts are placing on us."

The Health and Safety Commission and its operating arm, the HSE, are responsible for overseeing health and safety in all Britain's workplaces. Funded by the government, it is an independent agency that advises industry on safety matters, enforces safety legislation, inspects worksites and investigates accidents.

An HSE spokesman refused to comment on the draft letter, which was addressed to Secretary of State for the Environment John Gummer but was leaked to the British Broadcasting Assn. last week. The Department of the Environment, the government department responsible for funding the HSC, also refused to comment "on a letter never received by John Gummer."

However, a spokeswoman for the department confirmed that the negotiation process for HSC funds is about to start following the department's publication last week of a proposed budget of public expenditures.

Preliminary figures for the department show that the government plans to cut the HSC's budget 5% to £178.2 million ($271.9 million) for next year from £189.1 million ($288.6 million) for this fiscal year. Cuts will continue, with a projected budget of £177 million ($270.2 million) for the 1997-1998 fiscal year and £174.3 million ($266 million) for the 1998-1999 fiscal year.

The HSE is finding it increasingly difficult to cut its costs as it faces additional responsibilities, including new national and European safety legislation and the privatization of several of Britain's major industries, Mr. Davies said in the letter.

Cuts already imposed on the agency have led to reduced effectiveness and declining staff morale, according to Phil Carpenter, national officer of the Institution of Professionals, Managers and Specialists, a trade union representing 300 scientists working for the HSE.

HSC budget cuts have led to reduced effectiveness, says Phil Carpenter.

According to Department of Environment statistics, the HSE staff was cut 7.5% to 4,251 this year from 4,598 in the 1993-1994 fiscal year. Further reductions are estimated to trim staff numbers to 3,759 by 1998/99.

When senior staff have taken early retirement, they have either not been replaced or have been replaced by trainees, resulting in a less experienced and less effective workforce, Mr. Carpenter said.

At the same time, the workload for HSE inspectors has increased dramatically because of new safety regulations as well as the privatization of Britain's rail, coal and nuclear industries, he said. For example, the HSE's railway inspectors will soon have to deal with dozens of separate railway companies rather than one previously state-run enterprise.

These additional responsibilities were also highlighted by the HSC chairman's draft letter.

The HSE is "anxious to respond effectively to the government's requirement that we should protect and maintain safety standards—especially in the newly privatized or liberalized industries. Health and safety in the railway and gas industries in particular (though not exclusively) are high on the agenda of public concern; nuclear privatization will raise similar concerns," Mr. Davies wrote.

In addition, "we are about to grapple with enhanced and staff-intensive new responsibilities for regulating chemical and other major hazard plants," wrote Mr. Davies, referring to a new E.U. directive.

The new Control of Major Accidents and Hazards Involving Dangerous Substances directive, which widens current European Union safety, management and reporting requirements for the chemical and other industries, is expected to be adopted by the European Council of Ministers soon, an HSE spokesman said.

Other functions of the HSE already are suffering due to dramatic staff cuts, according to Mr. Carpenter.

For example, the Employment Medical Advisory Service, which provides advice to industry on occupational health, has "been cut savagely" with staff numbers being reduced to 50 this year from 100 in 1993-1994, Mr. Carpenter said.

"Occupational ill health kills 2,000 people a year in the U.K., five times the number of people who die from accidents," he noted. BI

Lloyd's members win another court victory

E&O cover may be inadequate

By EDWIN UNSWORTH

LONDON—In another victory for Lloyd's of London names, a High Court judge last week found the underwriter of Rose Thomson Young syndicate 255 negligent in handling catastrophe reinsurance.

However, the latest in a string of victories by Lloyd's names may find the agency's errors and omissions underwriters unable to afford to pay damages.

The March 19 ruling ends three years of litigation by about 1,000 members. Writing London market excess-of-loss business in the 1980s cost those members about £400 million ($611.8 million).

David Langley, of London law firm Clyde & Co., which represented RTY's E&O underwriters, warned that after losses in the earlier Gooda Walker and Feltrim cases, E&O underwriters may not be able to pay RTY claims.

Damages in last week's case were not determined. This will be announced at a later hearing, though Justice Morison said that members would be entitled to damages that would leave them in the same financial position as if the underwriting had been competent.

Justice Morison said the underwriter, Norman Bullen, had fallen "well below the standards to be expected of any (specialized) underwriter."

He said Mr. Bullen had not planned his exposures, calculated any probable maximum losses or made any informed decisions about members' net exposures.

The names' success in their battle may prove short-lived if errors and omissions insurers cannot pay the claims.

Nevertheless, Ian Chalk, chairman of the RTY Names' Action Group, was delighted. He said the verdict should show that E&O underwriters must contribute much more if runoff reinsurer Equitas Ltd. is to work.

Similarly, Christopher Stockwell, chairman of the Lloyd's Names Assns.' Working Party, said he said he hoped the verdict will help the various contributors to Lloyd's £2.8 billion ($4.28 billion) reconstruction and renewal plan to realize that this "must be substantially increased if litigating names are to believe it offers a just and acceptable alternative to continuing litigation."

The possible addition to the settlement offer comes at a time when members are threatening to call an extraordinary general meeting over the £200 million ($305.2 million) that Lloyd's agents are expected to contribute to the R&R plan. Lloyd's member Christopher Messer warned in a letter to Lloyd's chairman David Rowland that unless the agents' contribution was increased to at least £350 million ($534.1 million), an extraordinary AGM would be sought at which the matter would be put to a vote. BI

Crall sets objectives for Equitas

By EDWIN UNSWORTH

LONDON—Any hopes by Lloyd's of London policyholders that Equitas Ltd. would be more lenient in paying claims than Lloyd's were dispelled last week by Michael Crall, chief executive of Equitas.

Speaking to a conference organized by the Assn. of Lloyd's Members, Mr. Crall warned that if, as some people allege, Lloyd's claims-paying policy has been too lenient, this "will absolutely stop with the creation of Equitas."

Mr. Crall said that while he did not agree with assertions that the market has been too eager to settle claims, he stressed that strict claims handling would be one of four key management objectives of Equitas.

In his first address to names since assuming his Equitas role last December, Mr. Crall, who was previously president and chief executive officer of Argonaut Insurance Co., said: "Our interest will be to pay the absolute minimum required in terms of honoring our obligations."

Earlier this month, 34,000 names were sent estimates of how much they will have to pay to reinsure their losses into Equitas (*BI*, March 11). They have until July 15, the date of a rescheduled Lloyd's annual general meeting, to decide whether to accept the offer.

Mr. Crall held out the possibility that Equitas may eventually be able to return some premiums to members. This could happen if the reinsurer has reserved more than proves necessary to meet anticipated claims and if its management runs the company efficiently.

Equitas will look in four key areas for cost savings, Mr. Crall said. Those areas are in investments, claims management, reinsurance collection and keeping down expenses.

Many of these targets are reachable because of the economies of scale which Equitas would be able to achieve in comparison with the many syndicates individually operating at Lloyd's, he said.

It could invest more efficiently and predictably and agree on a common approach with key reinsurers to the handling of claims. Equitas would also be able to eliminate "intra-Lloyd's friction costs" by operating as a single unit.

Equitas also will be able to take more consistent claims-handling positions than would individual syndicates. It would adopt "strict contract interpretations" and keep a tight control on legal costs.

Mr. Crall also stressed that Equitas will generally keep down its expenses by operating a "no frills culture."

Meanwhile, Lloyd's declined to comment on a report that it is close to achieving an agreement from Lloyd's brokers to contribute £100 million ($152.6 million) to the R&R plan. The report said the contribution from about 200 brokers would be made over five years in proportion to the amount of business they do at Lloyd's.

Anthony Howland Jackson, head of the Lloyd's Insurance Brokers Committee, confirmed that negotiations are taking place and that £100 million would be "fairly close to what I believe would be the right sum."

Mr. Howland Jackson added that while "there is still quite a lot to be agreed," discussions are at an advanced stage, and details of any contribution from brokers should be available before names have to vote on Lloyd's R&R plan.

Mr. Howland Jackson stressed that a contribution from brokers would be made only to an ongoing Lloyd's market and only if brokers are given some sort of guarantee about their position in the future Lloyd's market.

Currently, only approved Lloyd's brokers are able to transact business in the market, but there are proposals under consideration that would allow other brokers to place risks at Lloyd's as well.

Philippine fire disaster uninsured

By MARIA KIELMAS

MANILA, Philippines—Owners of the Ozone Disco in Manila, where 150 perished in a March 18 fire, probably do not have any fire insurance or public liability coverage, a government official says.

Eduardo Malinis, commissioner for insurance at the Department of Finance, met with several insurers March 21. "We are almost sure that there is no comprehensive liability cover," he said. One insurer executive said his company had rejected the building for fire coverage, but Mr. Malinis would not identify that company.

The Philippines does not require businesses to carry comprehensive liability insurance, Mr. Malinis said.

Quoting an earlier statement by Herbert Bautista, the deputy mayor of Quezon City, the district of Manila where the popular club was located, Mr. Malinis said that the victims' families will receive some 10,000 Philippines pesos ($385) in compensation from the municipal authorities for each death, many of whom were students celebrating the end of the school year.

"Some families are thinking of filing a suit against the club owners," Mr. Malinis said.

According to reports from Manila, the fire started as a result of faulty electric wiring. The club had only one usable exit, with a door that opened inward.

Manila Mayor Mel Mathay has ordered an investigation into the cause of the fire. BI

AP/WIDE WORLD

The charred interior of the Ozone Disco in Manila, Philippines, is all that remains after a fire killed 150 people. No insurance is expected to cover the loss, though victims' families will get municipal compensation.

INTERNATIONAL

Pension dispute puts workers on strike

By GAVIN SOUTER

TORONTO—The Ontario provincial government and 54,000 striking government workers are locked in a dispute over pension and severance rights.

The Ontario Public Service Employees Union, which is striking, argues that the government is laying off provincial workers in their 50s without a full pension and with little chance of finding a new job.

Longtime workers should be offered a full pension, which the provincial workers' pension fund can afford to pay, the union contends.

But the Toronto-based provincial government says the workers had been offered that deal in the past when they reached the early retirement threshold but many turned it down, and now it is too late to reconsider.

The union members have been on strike since February.

The pension dispute arose because of the Ontario government's decision to significantly reduce the number of provincial workers in a budget-tightening effort.

Between 13,000 and 27,000 of the 81,000 government workers from a broad spectrum of positions will be laid off.

"It seems it's going to settle at around 19,000, and of those 6,000 jobs will be privatized," said a spokesman for OPSEU.

The government is making little provision for the fired workers, he said.

"Most companies when they are downsizing try to do it by attrition or help people get to retirement as quickly as possible and they do it in a reasoned way. This government clearly isn't," the spokesman said.

One of the central points of disagreement is the Ontario government's unwillingness to offer what is known as "Factor 80" early retirement provisions for all workers being laid off, the spokesman explained.

In Canada, workers often receive early retirement benefits if their age and years of service total 80, the spokesman explained.

"The employer is not required to make contributions to the pension fund, but it is required to make sure that there are sufficient funds," to fund all pension obligations, he said.

The government workers' pension fund has $5 billion Canadian ($3.67 billion) in assets and only needs to grow at a rate of 3.5% a year to fund pensions for fired workers who meet the Factor 80 threshold, according to the spokesman.

The government disagrees.

Provincial workers are given a three-month window to opt for Factor 80 retirement when they reach the threshold, and routinely 40% to 50% of the workers take the option, said Angelo Pesce, special adviser to the Ontario cabinet.

If the workers who decided to continue working were offered the same deal now, there would be a 70% to 75% acceptance and the pension fund could not afford the increase in retirees, he said.

"It was (calculated) on 40% to 50% uptake and that can't be changed. That was the risk they took when they let the window go by," Mr. Pesce said. BI

ERISA

Continued from page 1

ments were made, combined with the plan-related nature of the activity, engaged in by those who had plan-related authority to do so, together provide sufficient support for the district court's legal conclusion that Varity was acting as a fiduciary," Justice Breyer wrote.

Second, the company had argued that any deceptions of employees did not violate fiduciary obligations under ERISA. "ERISA requires a 'fiduciary' to 'discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries,' " wrote Justice Breyer, quoting from the law.

"To participate knowingly and significantly in deceiving a plan's beneficiaries in order to save the employer money at the beneficiaries' expense is not to act 'solely in the interest of the participants and beneficiaries.' As other courts have held, 'lying is inconsistent with the duty of loyalty owed by all fiduciaries and codified in section 404(a)(1) of ERISA,'' he wrote.

Then, the justice turned to the question of the individuals suing on their own behalf.

The class of Massey Combines participants had no other recourse, he wrote. They were no longer members of the Massey-Ferguson plan, and had no benefits due them under the terms of the plan.

"We are not aware of any ERISA-related purpose that denial of a remedy would serve. Rather, we believe that granting a remedy is consistent with the literal language of the statute, (its) purposes, and pre-existing trust law," wrote Justice Breyer.

'Lying is inconsistent with the duty of loyalty owed by all fiduciaries' under ERISA, says Justice Breyer.

Several benefits lawyers and consultants characterized the court as going to lengths to protect participants, though some warned that the ruling could be applied in situations where employer conduct was not nearly so egregious.

"If you have a law that's intended to protect the interests of participants and beneficiaries, I think it should be interpreted as to provide their protection," said Dennis Coleman, a principal with Kwasha Lipton L.L.C. in Fort Lee, N.J.

Had the court ruled the other way, it would have been telling companies that they could lie to their employees with impunity, he said. "I didn't think there was a ghost of a chance that the Supreme Court would have ruled for Varity here."

So egregious was the company's conduct, Mr. Coleman added, that this ruling may not be applicable to many employers. "In the real world, 99% of the companies don't have anything to worry about as long as they keep their eye on the ball. The guiding beacon should be: Are they administering the plan solely in the interest of participants and beneficiaries?"

Robert Eccles, a partner with O'Melveny & Myers in Washington, predicted that litigation against employers would increase.

"The court's legal analysis didn't seem to depend on the egregiousness of the conduct. I think other employers can potentially be sued. I think it's going to be a case-by-case determination as to whether they violated fiduciary duties. The overall point is there will be a lot more litigation," said Mr. Eccles, who filed a friend of the court brief for Eastman Kodak Co. and other companies.

"It can definitely add to the growth in litigation because the court sanctioned actions brought by individuals for breach of fiduciary duty. But it's difficult to pinpoint at this time how large the growth will be, but we think there's a potential for more litigation under ERISA," agreed Mona Zeiberg, senior counsel-labor and employment of the National Chamber Litigation Center, an arm of the U.S. Chamber of Commerce in Washington.

"I don't think it will be a limited case at all. I think the importance of this is now there is an individual course of action for fiduciary breach," said Mary Ellen Signorille, coordinator of the pension equity project for the American Assn. of Retired Persons in Washington.

Ms. Signorille called the decision "much more participant friendly" than some other recent decisions. "One of the things we'll have to see is whether this was because the facts were so egregious here or whether this will signal a trend. I would be hopeful that this might be an indication that the court would be looking at the changing workforce issue and that they will be more employee-friendly," she said.

In a dissent—in which he was joined by Justices Sandra Day O'Connor and Antonin Scalia—Justice Clarence Thomas warned that "if not limited to cases involving facts similar to those presented in this case, the court's expansion of recovery for fiduciary breach to individuals and its substantial broadening of the definition of fiduciary will undermine the careful balance Congress struck in enacting ERISA."

After predicting that the decision could "result in significantly increased liability, or at the very least heightened litigation costs" funded in part by a cut in benefits offered, Justice Thomas concluded that "the import of the court's holdings appears to be far more modest, and courts should not feel compelled to bind employers to the strict fiduciary standards of ERISA just because an ordinary business decision turns out to have an adverse impact on the plan."

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Varity Corp. vs. Charles Howe et al., U.S. Supreme Court, No. 94-1471, March 19, 1996.

California

Continued from page 1

The alliance is locked in a nasty fight to sway voters with the Consumer Attorneys of California and its campaign organization, Consumers and Their Attorneys Against Propositions 200, 201 and 202.

"I've been a fan of tort reform for years, and if we don't do something pretty soon, the country will crumble," Mr. Shugart said. "It's just greedy lawyers who are (filing shareholder suits). We have to get rid of them."

The attorneys have fought back with an aggressive television ad campaign, and the alliance recently countered with a new ad featuring pitch man Charlton Heston.

The campaign over the ballot initiatives is rife with ironies, including: entrepreneurs like Mr. Shugart seeking to regulate private contracts between attorneys and clients; Harvey Rosenfield and his former Proposition 103 allies in opposing camps and slinging insults at one another; and a likelihood that the tort reform measures could wind up snarled in litigation if voters approve them.

Proposition 200 would set up a no-fault auto insurance system requiring insurers to settle claims within 30 days and pay for all damage, regardless of blame. It would create the most extensive automobile no-fault system in the nation. The proposition would take all claims out of the courts, except those involving drunken drivers, police pursuits and intentional crashes.

Drivers could still sue automakers for product liability, governments for road hazards and their insurers for bad faith.

Proposition 201 would require losing parties in securities class-action lawsuits to pay the winners' attorney fees and other litigation expenses. It would apply only to securities suits and would allow judges to waive the loser-pays rule if they determined a specific case did not merit it.

Proposition 202 would cap plaintiffs' lawyer fees at 15% of the settlement if the plaintiff agrees to settle within 60 days.

The propositions have won the backing of Gov. Pete Wilson and the California Chamber of Commerce.

The Consumer Attorneys of California have placed a countermeasure to Proposition 202 on the November general election ballot. Their initiative would allow judges to impose stricter sanctions for frivolous lawsuits and affirm a client's right to pay his or her attorney whatever contingency fee they agree on.

"When conflicting initiatives pass, the one with the larger vote becomes law," a spokesman for the attorneys group said.

Additionally, a coalition of California senior citizens and shareholder attorneys is circulating petitions to put an initiative on the November ballot that would counter Proposition 201. They called it the Retirement Savings and Consumer Protection Act.

Of the three propositions on the primary ballot, Proposition 200—the auto no-fault initiative—is the most likely to fail. "I think they can be defeated, particularly no-fault," the attorneys' spokesman said.

Recent polls have shown support for Proposition 200 trailing, but the alliance says it is not giving up.

Several weeks ago a poll "looked pretty grim in that it reflected the fact that lawyers were spending $1.5 million on TV and we weren't spending anything for that period," an alliance spokesman said. "We're now back on TV with a very substantial buy. It will be in excess of $1 million for this final week."

The contingency fee cap initiative enjoys the strongest support, while Proposition 201 could be a horse race, according to the alliance. The organization's founders and supporters come mainly from Silicon Valley high-tech companies. They have greater interest in propositions 201 and 202 than they do in the auto no-fault initiative.

Among the alliance's key supporters are Thomas Proulx, co-developer of Quicken personal finance software for Mountain View-based Intuit Inc., and Mr. Shugart.

Mr. Shugart said he has contributed $255,000 and helped with fund raising. He said he is angry about eight years' worth of legal fees his company incurred before agreeing in 1992 to pay a $9 million settlement stemming from a shareholder class-action suit against Seagate's directors and officers. The company has faced four similar lawsuits and Mr. Shugart was named as a defendant in yet another one brought against a company on whose board he sits.

"The stock falls and they sue the company and then go through the company's files to try and find something that would say we misled people. All the suits are exactly the same," he said.

Nearly 70% of all Silicon Valley companies have been sued by shareholders, according to the alliance. Silicon Valley business leaders say the suits have driven up directors and officers liability rates for high tech companies (*BI*, July 3, 1995).

Some observers can't help but note the irony of entrepreneurs calling for the government to intervene in contract agreements between two parties, as the contingency fee cap would do.

"The ideology and interest group are out of sync," said Greg Keating, an associate professor at the University of Southern California Law School in Los Angeles. "It's a funny thing ideologically because it's anti-freedom, but it's basically being pushed by big business interests."

Even if they're passed, the initiatives could be mired in litigation before they are implemented.

However, the alliance does not expect that its propositions will be stymied as Proposition 103 was, the alliance spokesman said.

Former Proposition 103 allies Harvey Rosenfield and Bill Zimmerman have clashed over the tort reform initiatives. Mr. Zimmerman, who backs the initiatives, has called Mr. Rosenfield a "trial lawyer stooge" because he accepted $270,000 in contributions from them in 1993 and 1994. Mr. Rosenfield has a leading role in opposing the propositions.

Mr. Zimmerman managed the Proposition 103 campaign and now operates Voter Revolt, an organization that Mr. Rosenfield founded to spearhead Proposition 103. But Mr. Zimmerman's Voter Revolt is backing the alliance. To Mr. Rosenfield, he is a traitor.

Together, the two activists took on lawyers and insurance companies in 1988 in an $80 million war over insurance and tort reform initiatives, with the outcome being the passage of Proposition 103.

This time insurers have stayed out of the fray. A spokesman for the Assn. of California Insurance Cos. in Sacramento said insurers now feel the best place for their efforts is in the state's Legislature. BI

Gerald A. Isom
President

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A Message from Gerry Isom

The commitment to doing what's right for those we serve — not just what's expedient — has been the hallmark of CIGNA Property & Casualty's business philosophy for more than 200 years.

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Sincerely,

Gerry Isom

GERALD A. ISOM
President

For more information on CIGNA Property & Casualty's restructuring, call 1-800-964-4993 or write to CIGNA P&C Restructuring, P.O. Box 1307, Richmond, IN 47375-1307.

Bonds

Continued from page 3

up in Delaware in 1992 and separately incorporated in Florida and California in 1995. It is not licensed as an insurance company anywhere.

Asked about the multiple incorporations, Mr. Zayed explained that it was cheaper and faster to register as a corporation than to apply for an insurance license.

"There's nothing scurrilous or sneaky. It's just very simple," he said.

In a complicated series of deals, Congress Re was acquired last year by Academy Insurance & Financial Services Inc., a publicly traded North Lauderdale, Fla., firm. Congress Re then acquired its new parent company, with Mr. Zayed assuming control as president and CEO.

Earlier this year, Academy changed its name to Guardian Insurance & Financial Services Inc. It has since been sued for trademark infringement by New York-based Guardian Life Insurance Co. of America, though, and may change its name again to Guardian International Financial Services, Mr. Zayed said.

Guardian stock is traded over the counter, but is not NASDAQ listed. Bid and ask quotations ranged from $3.38 to $5.13 last week.

In addition to Mr. Zayed, Guardian's officers include Gary Emery, a surety executive who has himself run into regulatory trouble in the past.

In 1990, Mr. Emery signed a consent order agreeing not to violate Georgia insurance law after Georgia regulators found he had been operating an unlicensed surety company called American Fidelity Inc.

In an interview, Mr. Emery confirmed signing the order but insisted he had not violated the law.

"I was never selling insurance to start with," he said of American Fidelity. "We do not sell insurance here at Guardian. We use private assets to sell performance bonds."

Guardian has big plans, according to a five-year business plan the company has circulated. Along with its surety operations, it says it will raise $25 million in a stock offering to build a network of auto insurance agencies that will ultimately generate more than $400 million in gross premiums and $89 million in revenues, the plan projects.

An audited Sept. 30, 1995, Congress Re financial statement reflects more modest operations, though.

In the statement, Congress reported nine-month revenues of $560,068, total assets of $138.9 million and shareholders equity of $137.5 million.

Most of these assets, though, are not actually owned by the company but instead are "assigned" to it under agreements with other parties, the statement reports.

Describing these investments as "subordinated capital," the statement says that Congress Re "has no obligation to return these assets at any specific date and has the unrestricted use of these assets for surety purposes."

Licensed insurers must own assets in their own names to be given credit for them by state insurance regulators.

According to the statement, Congress Re's assets include:

- $143,000 in cash. Mr. Zayed said the cash is still held in a bank account of Intertech Investment Group Inc., a Congress Re subsidiary, even though Intertech's Tennessee corporate charter was dissolved in 1993 after it failed to make required filings.
- A "yen bond" purportedly issued by the Japanese government in the face amount of $80 million. Congress Re obtained rights to the bond from Southeastern Financial Acceptance Corp., a Crossville, Tenn., company with which Mr. Emery had previous business dealings.
- 192,000 carats of the mineral corundum, which in crystal form can be rubies and sapphires. This asset, valued at $2.3 million, was acquired from MYCO Investment Group Inc. of Miami in exchange for $100,000, according to the statement.

MYCO and its president, Dario Jaramillo, were convicted in 1994 of running a loan fraud scheme in which federal prosecutors named Mr. Zayed as an unindicted co-conspirator.

Mr. Jaramillo, who was previously jailed on cocaine smuggling charges, is now serving a 188-month prison term.

Mr. Zayed, who denied wrongdoing in the loan case, said he sees no problem in holding on to the corundum assets.

"They obviously were clean or the government would have seized them," he said.

- $18 million in Idaho mining rights assigned to Congress Re by Solomon of Nu Inc., a Louisville, Ky., general contractor specializing in motel construction.

Ted Collins, Solomon of Nu's principal, said the mining property is on Miller Mountain in the Boise National Forest, and that he obtained his mining rights through his friendship with a chief of the Crow American Indian nation, which he said originally held the rights.

Mr. Collins said his claims contain $4 trillion in gold, platinum and other metals, and that part of the claim has been assigned to Congress Re, which writes performance bonds on Mr. Collins' construction projects.

Mark Sigrist, an official with the U.S. Forest Service in Lowman, Idaho, said there are no current mining operations on Miller Mountain and expressed doubts about Mr. Collins' estimate of the area's potential.

"If there's that high a concentration of minerals there, somebody would have developed it before now," Mr. Sigrist said.

- $29.5 million in Japanese corporate bonds issued by Matsui First Merchants (Overseas) Ltd. Congress obtained rights to use the bonds from Chase Capital Services Inc. of Flintville, Tenn., Mr. Zayed said.

Mr. Zayed said he does not know if Matsui First Merchants is related to Matsui Corp., a Japanese manufacturer of marine equipment. A trade index published by the Japan Chamber of Commerce & Industry lists no corporation by the name Matsui First Merchants.

Wendell L. Clemons, Chase's principal, could not be reached. Chase—which is unrelated to Chase Manhattan Corp.—has no phone listing in Flintville and Mr. Clemons' number is not published.

- A first security interest in $8.5 million worth of unrefined gold bars obtained from First American Cos. Inc. of Hilton Head, S.C.

However, Don Luna, a First American official, said that a proposed deal between the two companies fell through about a year ago and that no gold assets have been assigned to Congress Re.

First American's own corporate charters in Delaware and South Carolina have since been revoked for failure to make required filings and pay taxes. Mr. Luna said First American is merging with a larger company.

Mr. Zayed said Guardian and Congress Re have improved their financial position since last September with new acquisitions.

Guardian announced in January that it had acquired a 622-acre farm in Morgan County, Tenn., that includes "several capped natural gas wells" with reserves worth $3.2 million.

Last month, the company announced the acquisition of International Medical Products Inc., a Mentor, Ohio, medical device patent holder that Guardian said is worth $5 million.

Another plan, announced earlier in the year, to acquire an upstate New York resort property valued at $27 million, fell through. BI

State voters to consider 3 proposals

By RODD ZOLKOS

BISMARCK, N.D.—Voters in North Dakota will consider initiatives related to the state's workers compensation law and its Environmental Protection Act on the June 11 ballot.

The workers comp initiative contains 34 sections that would change existing North Dakota workers comp law in what is described by state officials as a "massive overhaul."

Among its provisions are proposals that would remove limits on legal fees in litigation of workers comp cases and curtail the Workers Compensation Bureau's fraud-fighting activities.

The environmental ballot initiative relates to waste disposal facilities in the state. The measure would: impose new restrictions on waste sites; establish a fine and fee structure; prohibit private hazardous waste facilities; require facility owners to have liability insurance equal to at least $50 per ton of the facility's capacity; and hold facilities' directors and owners jointly and severally liable for any damage.

North Dakota voters also will vote on legislation referred to them by the state Senate that would place a minimum threshold of 16% impairment to receive workers comp permanent disability benefits and would increase awards for impairments above 50%.

If passed, the initiative would overturn the provisions of the measure referred to voters by the Senate.

Formulary

Continued from page 3

The study concluded that while some traditional cost-saving measures like utilization review and gatekeeping reduce the use of health care services, drug formularies do the opposite.

A strong relationship between restrictiveness of the formulary and utilization of other resources, such as physician office visits and hospital admissions, was detected for all five illnesses. By contrast, at the one HMO with no formulary at all, health care service utilization was almost always the lowest for each ailment.

'Not receiving appropriate medication on the first visit may be detrimental to a patient's health and cause greater overall health care costs,' says the study.

The study's authors, including principal author Susan Horn, a senior scientist at the Institute for Clinical Outcomes Research and a professor at the University of Utah School of Medicine, conclude that greater formulary restrictions likely lead to decreased quality of patient care, higher use of services and, ultimately, greater costs.

"Not receiving appropriate medication on the first visit may be detrimental to a patient's health and cause greater overall health care costs to be incurred through the additional health care services" patients need, the authors said.

The results also suggest that if cost-containment is the true goal of managed care, formularies, which govern prescription drug use, may be the wrong approach.

The study's authors point out that prescription drugs account for only about 7% of total costs, while hospitalization accounts for 37% of costs, and physician services about 19%. Thus, if formularies trim a few dollars off drug costs but yield higher levels of hospitalization and physician services, total health care costs will increase.

"This study really calls into question the effectiveness of formularies as a cost-containment tool and as a contributor to positive outcomes," said Richard Levy, president of the National Pharmaceuticals Council in Reston, Va. "Our belief has always been that broad access to a variety of medications is the optimal approach."

A spokesman for Scottsdale, Ariz.-based PCS Health Systems Inc., a unit of Eli Lilly & Co., acknowledged that the study's findings raise some legitimate questions about the usefulness of closed formularies. However, he said the study focused too narrowly on "closed formularies of the past" that were very limited in what they authorized.

"Today, a restrictive or closed formulary, if it's well managed and implemented properly, can optimize treatment at the lowest cost," he said.

What's important, the spokesman added, is that managed care firms avoid "balloon management," where if one part of the cost equation is squeezed, other parts expand.

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For single copies of the March issue of the American Journal of Managed Care, call 908-251-8361.

Indemnity plans slip in popularity: Study

By ROBERT KAZEL

Over the past five years, employers have dramatically increased the number of health plan options offered to workers and increasingly have offered preferred provider organizations and point-of-service plans, a new survey finds.

Hewitt Associates L.L.C. surveyed 681 companies and compared the health care benefits offered to employees in 1990 and 1995.

Hewitt found the prevalence of traditional indemnity health plans drastically diminished over only five years, with 59% of respondents offering only traditional indemnity plans in 1995, compared with 90% in 1990.

Employers that offered workers a PPO option rocketed to 44% from 12% during the same period, and POS plans were offered by 34% last year, compared with a non-existent place in the market five years ago.

Traditional health maintenance organizations, while quite common by 1995, had not shown as strong a growth during the period studied. Eighty-five percent of companies offered HMOs in 1995, up from 79% five years earlier.

In general, it was a period of widening options for the average worker, the survey indicates, with 63% of employers offering more than one plan in 1995, compared with 40% allowing choices in 1990. When workers had a choice of plans in 1995, they were more likely to have a choice of three options than two, the survey said.

As choices expanded, so did costs to employees. Costs rose especially quickly for those who remained in shrinking indemnity plan pools. Single coverage for indemnity plans rose 49% to $28.25 a month on average in 1995 from an average of $19 in 1990. The average monthly price of family indemnity coverage rose 64% to $90 in 1995, up from $55 in 1990.

In addition, Hewitt found that annual deductibles for indemnity and PPO plans rose for many employees: For indemnity plan members, 43% had a deductible of $250 or more in 1995 compared with 16% in 1990. Among PPO members, 32% had that level of a deductible, while only 15% did five years before.

From 1990 to 1995, as employee health care plan choices expanded, so did their costs.

Other findings included:

- Among companies with indemnity plans, only 7% provided health insurance at no charge to employees with single coverage in 1995; five years earlier, 27% did.
- Use of dental plans climbed in the period studied, to 30% of employers in 1995 from 19% in 1990.
- Availability of health care spending accounts rose to 79% last year from 51% five years earlier.

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Copies of "Salaried Employee Benefits Provided by Major U.S. Employers in 1990 and 1995" are available for $100 from Marie Boch, Hewitt Associates L.L.C., 100 Half Day Road, Lincolnshire, Ill. 60069.

Liability

Continued from page 1

ferees earlier this month, H.R. 956 would limit punitive damages in product liability cases to the greater of $250,000 or twice compensatory damages. For businesses with fewer than 25 employees, the limit would be the lesser of the two options. Judges would be allowed to sustain jury awards above the punitive cap if the defendant engaged in "egregious" conduct. The judge could not, however, increase damages above what the jury awards.

Among other things, H.R. 956 would set a 15-year statute of repose for workplace goods, meaning that plaintiffs couldn't sue under product liability law for damages allegedly caused by workplace goods that had been in service for at least 15 years. The bill would also limit joint and several liability to economic damages, with only several liability applying to non-economic damages such as pain and suffering.

The president's veto threat, made nearly a week before the Senate vote, appeared to take by surprise some strong backers of the measure in his own party, especially Sen. Rockefeller and Sen. Joseph Lieberman, D-Conn. Both senators stressed their past and future support for the president, but both said he had previously indicated that he would sign the bill and that he had in fact supported such legislation as governor of Arkansas.

Though businesses widely criticized the president as trying to curry favor with plaintiffs lawyers, Sen. Rockefeller was more restrained. He did say, though, that the president's statement detailing his reasons for opposing the bill was "politically motivated" and "a rather cynical exercise."

Paul Huard, a senior vp of the National Assn. of Manufacturers in Washington, contended that the veto will benefit primarily trial lawyers with "six- or seven-figure incomes."

Plaintiffs attorneys have contributed generously to Democrats in general and the president in particular. But there may be more subtle political undercurrents at work, as well.

For example, Ralph Nader has allowed his name to be entered in the California primary as a presidential candidate for the left-leaning Green Party. Since he faces no primary opposition, he is assured a spot on the California general election ballot. Even if Mr. Nader does not actively campaign, he would be far more likely to draw votes from the president than from Sen. Bob Dole, R-Kan., in a state crucial to the president's re-election chances.

No matter what the president does, businesses are not going to retreat from seeking product liability reform in this and future congresses, according to a number of veteran reform advocates.

"If anything, he's probably succeeded in energizing the business community," said Bruce Josten, senior vp at the U.S. Chamber of Commerce in Washington.

"Since the business community has never given up on this issue for a decade and a half, we sure are not going to give up on this now," he said.

Businesses are "absolutely" willing to continue paying for a lobbying effort that began more than 15 years ago, said Tom O'Day, associate vp-federal affairs for the Alliance of American Insurers in Washington.

While pointing out that the business community never promotes just a single issue in Washington, Mr. O'Day predicted that at least some business groups would begin acting "more like the trial lawyers" by "counting noses" on key votes, with the product liability vote being one of the most key. He predicted that business interests will try "even harder" in their efforts to replace unfriendly lawmakers in the November elections.

"With respect to this Congress, we are going to continue to push for this. The business community went to the mat to get the Senate to invoke cloture and pass this conference report. There's no question that supporters in the Senate, including the leading Democratic sponsors of this bill, went to the mat, too," said James Anderson, vp-government relations for the National Assn. of Wholesaler-Distributors in Washington. Mr. Anderson said that the product liability votes are the most important votes for wholesaler-distributors in a decade.

"We're going to do anything we can to assure we get as strong a vote in the House as we can," he said.

"Then it's up to the president. Does he really want to turn his back on small business people in this country and side with the trial lawyers one more time?"

"If this president believes—and the senators who jumped ship on us believe—that we are either going to forget this or we are going to ignore or reward this, they are mistaken," Mr. Anderson warned.

The Chamber's Mr. Josten agreed, saying there was "little doubt" that business community would remember who voted how on product liability come November.

The president "has politicized it. He laid his veto at the altar of the trial lawyers and he did that for one reason and one reason only, and that's political campaign contributions," said Mr. Josten.

For the time being, the White House can expect to hear quite a bit from business, said a spokeswoman for the National Federation of Independent Business in Washington.

"We're turning out the grassroots; grassroots is our strength. The president has said he's going to veto this—and up until the very moment he does, we're telling our members to contact the White House and tell him how important legal reform is to small business," said a spokeswoman for NFIB.

"The fact that he vetoes it is not going to stop us. If he does go forward, we won't give up." BI

AP/WIDE WORLD

Democratic Sens. Joseph Lieberman and Jay Rockefeller urge the president to sign the reforms.

'It's up to the president. Does he really want to turn his back on small-business people in this country and side with the trial lawyers one more time?' says James Anderson.

Poll finds reform support

Improve civil justice system: U.S. citizens

Most U.S. citizens believe the civil justice system needs fixing, according to a recent survey conducted for the Arlington, Va.-based Product Liability Coordinating Committee.

The Gallup Organization survey found that 88% of the 1,006 people queried last month think the system has flaws that should be corrected. Only 5% said they believe the system requires no changing.

When asked to name the biggest problem, 33% of the respondents said frivolous suits; 16% said the high cost of the system; 13% said the number of suits; 11% said delays and 8% said excessive awards; and 13% said "any or all of the above."

The survey also asked the respondents how the current system harms consumers. Forty-four percent said it increases the price of goods and services; 22% said it hampers job creation; 17% said it forces companies out of business; 7% said it keeps new products off the market; and 6% said "any or all of the above."

About 48% of the respondents blamed personal injury lawyers for the system's problems; 18% blamed "uncertainty in the law"; 10% blamed judges; 5% blamed business; 5% blamed juries; 4% blamed "any or all"; 2% said "none of these"; and the rest didn't know.

Fifty-three percent of respondents said personal injury lawyers profited most from the status quo, while 15% said "people with frivolous lawsuits" profited most; 13% said businesses; 7% said people who had been harmed; 4% said consumers; and the rest didn't know or refused to answer.

The Product Liability Coordinating Committee is a business-backed group supporting a uniform federal product liability code. For more information, contact the committee at 1001 19th St. N., Suite 800, Arlington, Va. 22209; 703-276-5045.

Updates

Banks likely covered for fraud

RICHMOND, Va.—Signet Banking Corp. and other banks taken in an apparent loan fraud are expecting "substantial recoveries" to reduce any losses from more than $300 million lent to a former Philip Morris Cos. employee who borrowed the money claiming he headed a special project for the company.

A spokeswoman for the Bank of Montreal said her bank had an $87 million exposure in the loan syndicate assembled by Richmond-based Signet. "Signet has indicated that there will be substantial recoveries," she said. In addition, she said Bank of Montreal has financial institutions coverage for losses resulting from fraud, though she declined to provide coverage details.

Signet revealed the alleged fraud last week, saying the money was lent to Edward J. Reiners, who claimed he was borrowing it to lease computer equipment to be used in a secret Philip Morris project he headed. NationsBank Corp. and CoreStates Financial Corp. were among the other banks involved in the syndicate that made the loans to Mr. Reiners.

Federal Bureau of Investigation agents arrested Mr. Reiners and Judy R. Bachiman on March 19, charging them with bank fraud.

An American Bankers Assn. spokeswoman said nearly all banks carry coverage that would respond to fraud.

Caremark settles disputes

NORTHBROOK, Ill.—Health care services provider Caremark International Inc. will pay $65.6 million to settle disputes dating back to 1986 with "non-government health care payers," the company announced.

Under the terms of the settlement, the Northbrook, Ill.-based company will not identify those payers.

Caremark will take an aftertax charge of $42.3 million to settle with the private health care payers and an additional $23.3 million aftertax charge to pay all pre-settlement and settlement-related expenses. Both charges will be recorded as discontinued operations in the first quarter.

At issue were "good faith business disputes," a statement from Caremark said. A spokeswoman declined to comment further.

In June 1995, Caremark agreed to pay $161 million in criminal fines and civil payments after admitting that its employees paid kickbacks to get doctors to refer Medicare and Medicaid patients to the company's home infusion, oncology, hemophilia and human growth hormone businesses (*BI*, June 19, 1995).

Court rejects RCRA claim

WASHINGTON—The Resources Conservation and Recovery Act does not authorize a private party to recover the costs of past toxic waste cleanup, the Supreme Court ruled.

In a unanimous ruling last week in *Meghrig et al. vs. KFC Western Inc.*, the high court said that restaurant operator KFC Western could not recover the more than $200,000 it spent cleaning up petroleum from a Los Angeles site on which it had built a restaurant from the property's previous owners. KFC sued Alan and Margaret Meghrig, the site's previous owners, three years after cleanup was completed. KFC claimed the contaminated soil was a "solid waste" covered by RCRA, that it had previously presented an "imminent and substantial danger to the environment" and that the Meghrigs were responsible for the cleanup cost. The 9th U.S. Circuit Court of Appeals overturned a district court decision in favor of the Meghrigs.

But the Supreme Court disagreed. RCRA "does not contemplate the award of past cleanup costs and. . .permits a private party to bring suit only upon an allegation that the contaminated site presently poses an 'imminent and substantial endangerment to health or the environment' and not upon an allegation that it posed such an endangerment at some time in the past," wrote Justice Sandra Day O'Connor in the court's unanimous opinion.

Briefly noted

A jury in state superior court in San Jose, Calif., last week ruled in favor of Lloyd's of London underwriters and Liberty Mutual Insurance Co. in a coverage dispute with Chicago-based **FMC Corp.** In one of series of related trials, the jury found FMC had expected groundwater contamination from its use of unlined waste disposal ponds at three sites—including one where FMC lawyers said damages could exceed $100 million—during the 1960s, said Peter Whalen, an attorney with Hancock, Rothert & Bunshoft in San Francisco, who represented Lloyd's. . . .**Steven T. Foster**, Virginia insurance commissioner since 1987, will resign in May to take the newly created post of vp corporate compliance-insurance operations at Prudential Insurance Co. of America in Newark, N.J. Virginia has not named a replacement. . . .A bill that would activate the proposed **California Earthquake Authority** was approved last week by the state Senate Insurance Committee, while a companion bill was introduced in the state Assembly. The legislation, which the California Insurance Department hopes to see passed by March 31 (*BI*, Jan. 22), was scheduled for other committee votes before heading for floor votes and likely reconciliation by a conference committee. . . .The **American Legislative Exchange Council's** board has formally rejected a resolution, which an ALEC task force had approved, opposing the National Assn. of Insurance Commissioners' stop-loss model act (*BI*, Feb. 5). The task force is to reconsider the measure this week. . . .Chicago-based **Aon Group Inc.** has acquired Lumley South Africa (Pty.) Ltd., a Johannesburg, South Africa-based insurance broker. Terms of the deal, which involves 90 employees in six offices, were not disclosed. . . .Former Bristol-Myers Squibb Co. unit Medical Engineering Corp. won a **breast implant lawsuit** last week in San Diego, continuing the recent strong pro-defense trend in implant litigation. The four manufacturers participating in the revised global breast implant settlement have won seven of eight recent jury verdicts.

Dalkon

Continued from page 1

was not involved in the case.

"The decision highlights the different recovery rules in product liability actions which exist from state to state," observed Bud London, a partner in New York-based London/Fisher who frequently defends manufacturers in tort suits.

"Citizens of states with more liberal tort laws do reap more generous tort settlements, which is the reason that so many members of the defense bar believe that a uniform standard established by a federal product liability law is needed to promote fairness and consistency throughout the country," he said.

The most recent product liability bill approved by the U.S. Senate last week would set a 15-year statute of repose, but only for "workplace goods" (see related story, page 1). Consumer goods would be unaffected.

This is not the first time Oregon has extended the statute of repose to help victims of mass torts. In 1989 and 1993, respectively, Oregon passed similar laws extending the time limit for suits alleging injury from asbestos and silicone breast implants as well, said Mr. Sangiamo.

In other states, statutes of repose have been effectively extended by court rulings.

New York state courts several times have allowed plaintiffs to pursue cases beyond the statutes of repose set by the legislature, said Paul Bottari, a partner with Wilson, Elser, Moskowitz, Edelman & Dicker in New York.

Such rulings create "such a high standard for manufacturers that it's impossible to defend anything that goes wrong," he said, especially in cases where the product is used on people.

In the case that was appealed to the Supreme Court, Portland resident Susan Shadburne-Vinton claimed that the Dalkon Shield left her infertile and contributed to her multiple sclerosis. The intrauterine device was first implanted in 1973 and replaced by another Dalkon Shield in 1974. After a severe attack of pelvic inflammatory disease in 1976, Ms. Shadburne-Vinton had the IUD removed. She sued the manufacturer, A.H. Robins Co., in 1983 in Maryland, where the Dalkon Shield was invented.

The federal judge hearing the case decided that Oregon law would govern it. And under Oregon law at the time, product liability lawsuits typically could not be filed more than eight years after the product was purchased, so the judge dismissed the suit. During her appeal of that decision, Robins filed for bankruptcy protection, citing its Dalkon Shield liabilities.

The Robins bankruptcy was concluded in 1989 with the creation of the Dalkon Shield Claimants Trust to pay women with claims of injury by the IUD.

It was one of the first times a company in reorganization was permitted to establish a fixed-asset trust rather than an open-ended trust to pay all product liability claims brought against it (*BI*, July 3, 1989).

Ironically, the trust was approved by the same court that upheld Ms. Shadburne-Vinton's suit: The 4th U.S. Circuit Court of Appeals in Richmond, Va.

So far 186,000 claimants have received $2.3 billion in payments from the fund, which is considered a very successfully executed mass tort settlement (*BI*, Oct. 9, 1995).

The trust paid claimants settlements averaging 15% larger than the offers made before Robins went into bankruptcy, according to Mr. Sheppard, the trust's chief executive.

Claimants also received a 60% "bonus" payment last year, he added.

With close to 300 of the remaining 38,000 cases still in contention, "litigation is our biggest cost now," Mr. Sheppard said.

And actions like Oregon's extension of the statute of repose add to those costs.

For example, now that the Shadburne-Vinton suit has been allowed to go forward, the trust's lawyers must defend this and any other product liability suits filed in response to it, Mr. Sheppard explained.

The bulk of the Dalkon Shield Claimants Trust fund came from American Home Products Corp., which acquired Robins in 1988. Robins took the Dalkon Shield off the market in 1974, but did recall existing products until September 1980.

Despite Oregon's extension of the statute of repose for IUD victims, lawyers for the trust had asked the U.S. District Court in Baltimore to dismiss Ms. Shadburne-Vinton's suit. They argued that the law violated the trust's constitutional right to due process by reviving a liability that had already extinguished.

The judge agreed and dismissed the lawsuit in 1993.

But the 4th Circuit disagreed and reinstated the lawsuit in July 1995.

"We find that the Special IUD Statute does not violate the Due Process Clause of the Fifth Amendment because it is rationally related to a legitimate legislative purpose," the court said.

Furthermore, "after extensive hearings on the legislation, the Oregon Legislature determined that the retroactive application of the Special IUD Statute was fair and equitable to all parties involved," the appellate court found.

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Susan Shadburne-Vinton and William G. Vinton vs. Dalkon Shield Claimants Trust, 4th U.S. Circuit Court of Appeals; No. 94-1820, July 26, 1995.

Superfund

Continued from page 2

The portion of cleanup attributed to wastes that were dumped legally before the 1980 cutoff date—which is the date of Superfund's initial enactment—would be deemed "orphan shares." Reimbursement would come from the "Superfund" itself, the pool of money raised by special taxes on chemical manufacturers and a handful of other industries and currently used to pay for cleanup at dumps for which no responsible parties can be determined.

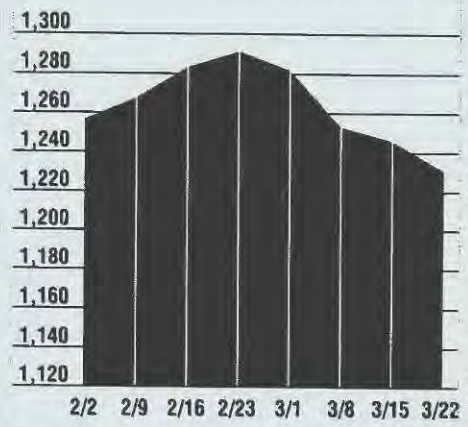
Although the measure has the effect of repealing retroactive liability for legal acts, it does not specifically repeal retroactive liability.

The cost of cleaning up materials dumped on or before Dec. 11, 1980, would be the potentially responsible parties' responsibility under the proposal. The proposal contains exemptions for so-called "de minimus" contributors. Those responsible for less than 1% of volume of the materials dumped before the cutoff date would be "eliminated from the liability net," Sen. Smith said.

A Senate Republican staff member stressed that polluters were not getting off the hook under the proposal. "People who are convicted" of acting outside the applicable law will get no liability relief, he said during a press briefing Friday afternoon.

The Senate proposal differs significantly from a proposal put forth in the House of Representatives by Reps. Michael Oxley, R-Ohio, and Thomas Bliley, R-Va. That proposal sets a cutoff date of 1987 for the relief from retroactive liability it would grant. The House proposal grants no retroactive liability relief to owners and operators of NPL sites. BI

BI Insurance Index



Base=100 on Dec. 29, 1978
Source: Nordby International Inc.

PCS catastrophe options

As of March 22

Call spread	Price bid/ask	Call spread	Price bid/ask
Eastern September 1996		**California Annual**	
40/60	5.1/6	40/60	2/4.5
50/70	4/6	80/100	1.6/2.6
80/100	2.5/4	100/120	—/2
Southeast Sept. 1996		**Texas June 1996**	
40/60	4/4.6	10/20	1/1.4
80/100	2/4	5/15	3/3.2

Total volume: 44 Total open interest: 2,262

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

British Issues

March 21 Companies	Price pence	P/E	Div. pence	Yield %	1 week high—low
Commi Union	585	11.2	35.3	6.0	585—572
Genl Accident	641	9.6	38.8	6.0	641—622
Gdn Royal Exch	234	8.7	11.3	4.8	235—232
Independent	463	8.7	14.1	3.0	463—462
Royal	367	6.9	20.0	5.4	367—356
Sun Alliance	377	8.6	21.6	5.7	377—356
Brokers					
Bradstock	64	10.7	7.1	11.1	66—64
Fenchurch	107	7.2	10.6	9.9	118—105
CE Heath	168	10.5*	12.5*	7.4	168—165
JIB Group	107	10.6	9.4	8.8	107—105
Lloyd Thmpson	173	10.6	11.3	6.5	173—169
Lowndes Lmbrt	149	8.1*	11.0*	7.4	149—149
Nelson Hurst	178	10.9	9.8	5.5	178—168
Sedgwick Grp	130	10.1	8.1	6.2	132—130
Steel Brl Jones	46	6.0	5.6	12.2	46—46
Willis Corroon	160	14.4	8.3	5.2	161—160

Source: Philip Olsen, London * Actual. Others estimated.

BI Industry Stock Report MARCH 18, 1996, THROUGH MARCH 22, 1996

		Price	Weekly % change	Year to date % change	Annual High	Annual Low	Vol.(000)	$ Div.	% Yield	P/E	Book value	Mkt./Bk. value
BROKERS												
Acordia Inc.	NYS	31	3.33	4.20	33.13	23.50	32	0.8	2.58	19	14.00	2.21
Alexander & Alexander	NYS	20.125	2.55	5.92	26.44	17.88	391	0.1	0.50	14	19.17	1.05
E.W. Blanch Holdings Inc.	NYS	25.125	1.01	7.49	25.50	16.50	109	0.4	1.59	19	4.93	5.10
Gallagher Arthur J. & Co.	NYS	36.875	-2.32	-1.01	39.50	32.50	42	1.16	3.15	15	6.48	5.69
Hilb, Rogal & Hamilton	NYS	13.5	0.00	0.93	14.38	10.50	59	0.6	4.44	16	1.21	11.16
Kaye Group Inc.	NDQ	7	0.00	-12.50	10.75	6.75	5	0.1	1.43	9	NA	NA
Marsh & McLennan	NYS	93.625	0.40	5.49	101.63	76.13	515	3.2	3.42	17	19.95	4.69
Poe & Brown	NDQ	24	0.00	-3.52	25.50	21.00	70	0.48	2.00	14	5.15	4.66
BROKERS	AVERAGE		0.6	0.9					2.7	18		
INSURERS/REINSURERS												
ACE Ltd.	NYS	44.875	1.70	12.89	50.38	23.63	674	0.00	0.00	0	22.45	2.00
Acceptance Insurance Cos.	NYS	15	2.56	0.84	17.50	13.13	177	0.3	2.00	54	10.76	1.39
AEGON N.V.	NYS	44.125	1.44	0.28	46.75	27.50	83	1.08	2.45	16	17.28	2.55
Aetna Life & Casualty	NYS	76.125	1.16	9.93	78.75	54.00	2016	2.76	3.63	34	48.85	1.56
AFLAC Inc.	NYS	32.375	5.86	11.64	33.13	24.38	900	0.34	1.05	14	17.58	1.84
Allied Group Inc.	NDQ	40.75	1.88	13.19	44.25	26.50	198	0.88	2.16	8	21.81	1.87
Allmerica Prop. & Casualty	NYS	26.75	2.39	-0.93	27.25	18.50	157	0.16	0.60	12	19.87	1.35
Allstate Corp.	NYS	42.125	1.81	2.43	46.00	27.50	4087	0.85	2.02	10	18.75	2.25
American Financial Group	NYS	30.5	2.52	-0.41	34.50	23.00	1063	1	3.28	8	24.94	1.22
American General	NYS	35.25	-1.05	1.08	39.13	31.00	1572	1.3	3.69	13	17.03	2.07
American Heritage Life Ins.	NYS	20.625	-2.94	-9.84	23.88	16.25	38	0.72	3.49	10	12.51	1.65
American Indemnity/Fin'l	NDQ	9.875	2.60	-1.25	13.25	9.00	1	0.3	3.04	-4	15.92	0.62
American International	NYS	95.75	3.93	3.51	103.38	67.38	3435	0.34	0.36	18	34.66	2.76
American Re Corp.	NYS	39	-0.32	-4.59	45.00	33.00	767	0.32	0.82	-21	16.77	2.33
Aon Corp.	NYS	52.875	1.68	6.02	55.38	35.63	417	1.44	2.72	15	18.30	2.89
Argonaut Group	NDQ	30.625	-5.04	-5.77	35.00	28.88	183	1.32	4.31	13	29.91	1.02
AVEMCO Corp.	NYS	15	0.84	-6.25	18.25	14.63	77	0.48	3.20	17	6.28	2.39
Baldwin & Lyons Inc.	NDQ	15.25	-1.61	-6.15	18.00	14.25	4	0.32	2.10	8	13.90	1.10
Berkley W.R. Corp.	NDQ	46.5	-3.63	-13.49	55.50	35.00	208	0.52	1.12	16	34.46	1.35
Berkshire Hathaway Inc.	NYS	33800	-8.03	5.30	38000.00	21500.00	2	0.00	0.00	71	10089.11	3.35
Capital RE Corporation	NYS	35.75	7.52	16.26	36.00	22.63	200	0.24	0.67	12	27.82	1.29
Capsure Holdings Corp.	NYS	16.625	2.31	-5.67	18.13	12.38	56	0.00	0.00	15	14.61	1.14
Chubb Corp.	NYS	96	1.32	-0.78	104.38	57.00	1260	2.16	2.25	12	48.92	1.96
CIGNA Corp.	NYS	118	0.21	14.29	125.50	68.25	831	3.2	2.71	41	80.46	1.47
CNA Financial Corp.	NYS	113	0.44	-0.44	123.25	74.00	61	0.00	0.00	9	71.13	1.59
EMC Insurance Group Inc.	NDQ	13.75	4.76	0.00	15.25	9.75	4	0.56	4.07	8	11.13	1.24
EXEL Ltd.	NYS	69.125	0.18	13.55	72.25	42.50	235	0.4	0.58	0	31.47	2.20
Fremont General Corp.	NYS	23.125	-2.12	-5.61	26.25	12.63	340	0.6	2.59	9	19.04	1.21
Frontier Insurance Group	NYS	31	1.64	-3.13	33.75	21.63	68	0.48	1.55	13	14.65	2.12
Gainsco Inc.	ASE	10.875	0.00	-4.40	12.38	8.31	99	0.05	0.46	13	3.98	2.73
General RE Corp.	NYS	147.125	3.34	-5.08	158.25	125.38	1165	2.04	1.39	15	59.35	2.48
Guaranty National Corp.	NYS	16.125	15.18	4.88	19.00	13.38	419	0.5	3.10	24	11.60	1.39
Harleysville Group	NDQ	27.375	1.86	-15.44	33.00	23.75	65	0.76	2.78	9	20.72	1.32
Hartford Steam Boiler	NYS	50.25	0.25	0.50	52.50	41.63	166	2.28	4.54	16	14.68	3.42
HCC Insurance Holdings	NYS	57.625	9.24	55.74	58.25	21.75	608	0.00	0.00	27	15.86	3.63
ITT Hartford Group	NYS	50	6.10	3.36	53.75	46.88	3117	1.6	3.20	10	45.46	1.10
Lincoln National	NYS	52.625	3.95	-2.09	57.00	39.75	636	1.84	3.50	11	28.90	1.82
Markel Corp.	NDQ	83.5	-5.11	10.60	91.00	45.50	44	0.00	0.00	14	25.71	3.25
Meadowbrook Insur. Group	NYS	30.875	0.82	-7.84	33.88	24.00	7	0.08	0.26	23	NA	NA
Mid Ocean Ltd.	NDQ	39	-0.48	5.05	43.00	26.50	628	0.25	0.64	0	22.18	1.76
Mutual Risk Mgmt. Ltd.	NYS	42.625	-3.13	-6.83	46.50	26.63	91	0.4	0.94	20	9.72	4.39
NAC Re Corp.	NYS	33.125	-1.12	-7.99	39.00	28.25	100	0.2	0.60	10	18.23	1.82
National Re Corp.	NYS	32.75	4.80	-13.82	38.13	28.38	111	0.2	0.61	12	17.05	1.92
Navigators Group	NDQ	19.125	2.00	8.51	20.25	12.75	56	0.00	0.00	13	10.21	1.87
Nobel Insurance Ltd.	NDQ	11.8125	0.53	3.85	12.75	9.13	87	0.2	1.69	5	6.84	1.73
Ohio Casualty Corp.	NDQ	37	0.68	-4.52	40.00	29.00	160	1.6	4.32	13	23.64	1.57
Old Republic Int'l	NYS	32.625	1.95	-8.10	36.50	23.88	417	0.52	1.59	9	25.79	1.27
Orion Capital Corp.	NYS	46.5	0.27	7.20	47.75	34.25	222	1	2.15	10	26.00	1.79
Partner Re Ltd.	NDQ	30.375	0.83	10.45	31.75	19.75	1589	0.00	0.00	0	20.37	1.49
Penn-America Group Inc.	NDQ	13.25	7.07	-7.02	15.50	7.00	102	0.16	1.21	10	6.40	2.07
Philadelphia Cons. Holding	NDQ	20.75	3.75	27.69	21.88	12.00	13	0	0.00	14	11.58	1.79
PXRE Corp.	NDQ	25	-1.48	-5.66	29.75	21.00	51	0.72	2.88	5	21.27	1.18
Prudential Reinsurance	NYS	23.875	8.52	2.14	25.13	18.50	1440	0.12	0.50	-	NA	NA
Reliance Group Holdings	NYS	8	-1.54	-7.25	9.25	5.13	1512	0.32	4.00	10	3.42	2.34
Reliastar Financial Corp.	NYS	46	1.94	3.66	51.63	33.00	339	1	2.17	11	24.53	1.88
RenaissanceRe Holdings Ltd.	NDQ	27.75	0.68	-8.64	33.13	20.72	132	0.00	0.00	0	NA	NA
Risk Capital Holdings	NDQ	20.125	1.26	-13.90	23.38	19.75	218	0.00	0.00	335	NA	NA
RLI Corp.	NYS	25.375	1.50	1.50	25.88	18.50	38	0.52	2.05	25	20.51	1.24
St. Paul Companies	NYS	56	3.70	0.67	60.50	46.13	1228	1.76	3.14	10	32.46	1.73
SAFECO Corp.	NDQ	34.375	-1.79	-0.36	39.75	27.00	1596	1.06	3.08	11	44.95	0.76
Seibels Bruce Group	NDQ	2.875	-4.17	91.67	4.25	0.44	90	0.44	15.30	41	0.04	71.88
Selective Ins. Group	NDQ	35.75	1.42	0.70	38.75	27.25	113	1.12	3.13	10	23.23	1.54
Sphere Drake Holdings	NYS	10.75	0.00	-23.21	19.13	10.63	19	0.00	0.00	0	13.86	0.78
TIG Holdings	NYS	32.875	5.62	15.35	34.25	20.25	991	0.2	0.61	17	16.62	1.98
Titan Holdings, Inc.	NYS	13.875	6.73	-3.48	15.75	9.88	176	0.3	2.16	10	9.04	1.53
Tokio Marine & Fire	NDQ	63.5	6.72	-3.79	69.25	50.88	11	0.32	0.50	22	57.72	1.10
Torchmark Corp.	NYS	45.375	3.13	0.28	49.88	35.75	707	1.16	2.56	23	17.37	2.61
Transatlantic Holdings	NYS	69.875	3.33	-4.77	75.25	60.38	177	0.48	0.69	12	33.30	2.10
Transnational Re Corp.	NDQ	22.375	2.29	-8.67	27.25	19.50	101	0.2	0.89	6	18.84	1.19
Travelers Corp.	NYS	64.875	4.22	3.59	70.50	37.75	3396	0.9	1.39	12	24.77	2.62
Trenwick Group Inc.	NDQ	51.375	1.61	-8.67	57.50	41.75	31	1.24	2.41	12	29.23	1.76
United Fire & Casualty	NDQ	32	1.59	14.29	37.25	18.25	8	0.9	2.81	12	28.96	1.10
Unitrin	NDQ	48.375	0.78	0.78	51.75	44.50	316	2.2	4.55	13	37.51	1.29
UNUM Corp.	NYS	60.625	3.41	10.23	61.88	39.88	795	1.06	1.75	16	26.45	2.29
US Facilities Corp.	NDQ	18.375	3.89	-14.04	23.38	13.13	612	0.24	1.31	8	14.20	1.29
USF&G Corp.	NYS	15.5	0.00	-8.15	19.50	13.50	1508	0.2	1.29	10	10.86	1.43
USLIFE Corp.	NYS	30	2.56	0.42	33.25	23.88	306	0.93	3.10	10	38.45	0.78
Washington National	NYS	26.875	0.94	-2.71	30.50	17.75	140	1.08	4.02	10	25.13	1.07
Zenith National Ins.	NYS	24.25	-2.11	13.45	24.88	19.38	96	1	4.12	67	16.35	1.48
Zurich Reinsurance Centr.	NYS	31.25	2.04	2.88	32.50	27.88	75	0.00	0.00	36	21.64	1.44
INSURERS/REINSURERS	AVERAGE			1.7	1.9				2.1	19.1		
HEALTH MAINTENANCE ORGANIZATIONS												
FHP International	NDQ	31.125	-4.23	9.21	34.25	19.50	2867	0.00	0.00	389	28.15	1.11
Humana Inc.	NYS	25.25	5.21	-7.76	28.88	17.00	2129	0.00	0.00	22	6.56	3.85
Oxford Health Plans	NDQ	86.5	-1.14	17.09	89.75	38.50	3155	0.00	0.00	60	6.56	13.19
Pacificare Health Sys.	NDQ	79	-17.71	-9.20	98.75	44.50	1232	0.00	0.00	21	15.02	5.26
Safeguard Health Enter.	NDQ	15.75	6.78	35.48	17.00	8.75	338	0.00	0.00	31	6.15	2.56
Sierra Health Services	NYS	33	-1.86	3.94	36.00	22.13	234	0.00	0.00	27	9.22	3.58
United Healthcare Corp.	NYS	61.625	-0.40	-5.74	69.00	34.13	2858	0.03	0.05	39	16.17	3.81
U.S. Healthcare	NDQ	47.75	2.14	2.69	50.75	26.50	5332	1.1	2.30	20	5.66	8.44
Wellpoint Health Networks	NYS	35	4.09	8.95	37.00	27.38	796	0.00	0.00	19	14.26	2.45
HMOs	AVERAGE			-0.8	6.1				0.3	70		
ALL COMPANIES	AVERAGE			0.5	2.9				2.3	28		

Top advancing issues: Guaranty National Corp., HCC Insurance Holdings, Prudential Reinsurance. Leading decliners: PacifiCare Health Systems, Berkshire Hathaway Inc., Markel Corp. Most active issue: U.S. Healthcare. The BI Index fell 1.2%; the Dow Jones 30 Industrials rose 0.9%; the S&P 500 increased 1.4% and the NYSE Composite gained 1.6%. Book values are updated annually by Nordby International Inc.

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