

# Business Insurance

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

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## New York court upholds suit over HMO coverage

NEW YORK—New York's highest court has upheld a lawsuit against Prudential Insurance Co. of America and its New York-based health maintenance organization over health care coverage determinations.

Justices of the New York Court of Appeals voted unanimously last Wednesday to uphold the suit, which includes allegations of breach of contract, common law fraud and deceit, and improper interference. See Updates on next page

# Court upholds binding arbitration

By MARK A. HOFMANN

WASHINGTON—A Supreme Court decision that a 1925 federal law does not bar employers from requiring employees to submit job-related disputes to arbitration under most circumstances may not be the total victory employers hoped for.

Employers closely followed *Circuit City Stores Inc. vs. Saint Clair Adams*—which a sharply divided high court decided March 21—because the case called into

question their ability to force employment disputes into arbitration rather than having such disputes automatically go to court (*BI*, Nov. 13, 2000; Sept. 25, 2000). Employers have been looking upon binding arbitration employment agreements with increasing favor because they can settle disputes more quickly and inexpensively than through litigation.

Yet some legal experts caution that, despite the ruling, employment arbitration agreements aren't for all employers.



At issue was the breadth of the Federal Arbitration Act of 1925. Mr. Adams had signed a pre-em-

ployment agreement with Richmond, Va.-based Circuit City, agreeing to submit employment disputes to arbitration. About a year after signing the agreement, he voluntarily left his job at a Santa Rosa, Calif., Circuit City store and sued his former employer under state anti-discrimination law, holding that he had been illegally harassed at work because he was gay. Circuit City held that the Federal Arbitration Act required Mr. Adams to arbitrate his dispute.

The Federal Arbitration Act, however, exempts workers engaged in "foreign or interstate commerce" from the arbitration requirements. Circuit City argued that the exemption applied only to workers engaged in actually moving goods across borders, a view shared by most U.S. appeals courts. But the 9th U.S. Circuit Court of Appeals ruled in November 1999 that it applied to just about all workers because Congress did not consider itself to

See Arbitrate on page 21

## Reinsurer seeks more precise 'event' definition

By CAROLYN ALDRED

Recent natural catastrophe losses, including the huge storm and flood losses that have hit European insurers during the last two years, are prompting reinsurers to reassess the terms of catastrophe coverage.

One change being considered is a new definition of an insured event under reinsurance contracts and how losses paid by insurers after storms or other major catastrophes are aggregated for reinsurance coverage purposes.



A recent technical paper published by Swiss Reinsurance Co. contends that improved scientific techniques generally make it much easier these days to define an event occurrence for reinsurance purposes, reducing the need for the so-called hours clauses that currently are used in most catastrophe reinsurance contracts.

The Zurich-based reinsurance company is encouraging its clients worldwide to accept a new event definition wording it has drawn up that reduces reliance on hours clauses. Swiss Re began using the new wording at year-end renewals, and several

other reinsurers are examining the issue. An hours clause defines an insured occurrence as a period of time after an event, such as losses incurred for 24 hours after a tornado, or 72 hours after a storm or riot. The clauses were introduced in the 1940s and have been "essential tools in the reinsurance industry, particularly catastrophe excess of loss, ever since,"

See Hours on page 20

## Cutting costs of stress

### Employers see savings in helping workers

By JOANNE WOJCIK

When the breakup of AT&T Corp. in the mid-1980s forced massive divestitures and reorganization of the so-called Baby Bells, Atlanta-based BellSouth Corp. recognized how the changes were affecting its employees and decided to do something about it.

It implemented a companywide stress identification and management program that saved the corporation more than \$13 million in health benefits and stress-related workers compensation claims costs in its first year.

BellSouth's experience provides a model for how employers today, many of which are being forced to adapt to changing economic conditions, might deal with employee stress.

"There's a fair amount of organizational stress in today's economy, with either slow growth or no growth," said Ron Finch, corporate director for employee assistance at BellSouth between 1981 and 1994. Mr. Finch now serves as a hospital administrator for the Mount Carmel Guild Special Hospital of Catholic Community Services in Newark, N.J.

"Employers need to enhance productivity, but how does downsizing, no raises, etc., affect productivity?" See Stress on page 22



Stress Directions Inc. offers an assessment tool for measuring the impact of stress on an organization.

## Online work/life resources

# Web expands benefits

By LEE FLETCHER

The growing number of employers offering Web-based work/life programs are finding that the services—offered as employee benefits—are a boon not only to their workers but also to themselves.

"The bottom line for most employers is that technology really expands the richness and reach of work/life benefits at a very low cost," said Randall Abbott, a Philadelphia-based client strategy leader with Watson Wyatt Worldwide.

Mr. Abbott said that companies sought for years to give their employees broader assistance with

work/life concerns—from referrals for elder care to the provision of concierge services. He said, though, that before the wide dissemination of computer technology, "there was so much effort involved in structuring those programs, designing them, communicating them and administering them."

"Technology has really given (employers) the opportunity to expand these programs at very low costs," Mr. Abbott said.

Karen Olson, director of marketing for the Bellevue, Wash.-based service provider Xylo Inc., said that while pricing depends on company size, a good rule-of-

thumb estimate for Xylo's services is \$1 per employee per month, plus a setup fee.

"Xylo offers a Web site that connects off the intranet of a company, and it provides information, products and services that help employees balance work and life," Ms. Olson said.

The Web site is customized for each company. Xylo has about 1,000 agreements with marketing partners—from Disneyland to Sea World to local restaurants—whose services are offered at a discount on the company's intranet, Ms. Olson said.

The type of service provided by See Work/life on page 10

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## UPDATES

### HMO suit allowed to proceed

Continued from previous page

ence with existing contractual relations in connection with how Prudential determined coverage. Prudential is now owned by Aetna Inc.

Rather than using appropriately trained and experienced physicians to determine medical necessity, the suit asserts, Prudential permitted nurse clinicians to decide on "appropriate" medical care, based on undisclosed and unregulated guidelines promulgated by actuarial firm Milliman & Robertson Inc. The use of these guidelines permits HMOs to increase their profits by reducing outlays for medical treatment, the suit claims.

The decision affirmed a New York Supreme Court ruling that upheld the complaint, originally filed in 1997 on behalf of Prudential health plan members. The complaint includes detailed allegations of mistreatment by Prudential of the two named plaintiffs. One of the plaintiffs had to undergo a total abdominal hysterectomy to remove two fibroid tumors in her uterus; the other plaintiff, who had Crohn's disease, suffered a burst intestine while waiting for Prudential to approve exploratory surgery.

New York's high court concluded that the defendants "did not conduct the utilization review procedures that they promised in their contracts," and the court agreed that even though "plaintiffs sustained no out-of-pocket costs, actual injury is sufficiently alleged in the non-receipt of promised care, for which restitution of premiums paid may be an appropriate remedy."

D. Brian Hufford, a partner at Pomerantz Haudek Block Grossman & Gross L.L.P. in New York in charge of the litigation, said he is seeking class-action status for the suit, *Batas vs. Prudential Insurance Co.*

"This case could have material ramifications in the health care industry, as we are challenging Prudential's practice of withholding medically necessary care in order to maximize its corporate profits," he said. He added that many other HMOs have used Milliman & Robertson's medical guidelines.

"We have received the opinion and are reviewing it," said a spokesman for Newark, N.J.-based Prudential. Aetna declined to comment on the lawsuit because it predated the company's acquisition of Prudential.

### CalPERS narrows plan choices

SACRAMENTO, Calif.—The California Public Retirement System announced last Wednesday that it will drop Aetna U.S. Healthcare Inc., CIGNA Corp. and Lifeguard Inc. from ongoing negotiations for 2002 member coverage.

CalPERS will continue negotiating with six health maintenance organizations that it currently contracts with and one additional HMO. The six are: Blue Shield of California, Health Plan of the Redwoods, Kaiser Permanente Health Plans, MaxiCare Health Plans Inc., PacificCare Health Systems Inc. and Universal Care Inc. CalPERS will also add Western Health Advantage to serve plan members in Northern California.

In an attempt to reduce benefit costs by spurring competition, the CalPERS Board of Administration earlier this year ordered that the organization reduce the number of health plans offered to members. CalPERS said it would pare down those offerings after allowing all HMOs that it currently contracted with to submit bids.

CalPERS then scored the bids for cost, administration, customer service and the member demographic pool the health plans serve. The scoring led CalPERS to shed Aetna, CIGNA and Lifeguard for 2002, but will consider their bids in future years, a CalPERS spokeswoman said. In addition, CalPERS agreed to give Health Net Inc. additional time to prepare its bid.

The bids so far show an average benefit cost increase in the "mid-teens," the spokeswoman said. But the bids are not final and there are still several undetermined factors, such as the possibility of increasing member copayments for office visits and prescriptions. Final bids are expected April 17.

CalPERS is one of the nation's largest health care purchasers, providing retirement and health care for 1.2 million state and local public employees and their families.

### Zurich to spin off reinsurance unit

ZURICH, Switzerland—Zurich Financial Services Group plans to spin off its reinsurance unit, Zurich Re, and continue a reorganization begun last fall in an effort to turn around poor results.

ZFS also plans to slash its costs by \$200 million by the end of 2002. The announcements accompanied disappointing results for 2000. The insurer last week reported a 5.5% fall in normalized net income, to \$2.1 billion, and forecast a further drop this year.

Normalized income is a measurement ZFS devised to adjust income for currency fluctuations. On an International Accounting Standards basis, which makes no adjustment for the weakening of nondollar income against U.S. currency, ZFS' net income fell 28.7%, to \$2.3 billion. ZFS expects normalized earnings this year to range from \$1.8 billion to \$2.0 billion.

ZFS Chairman and Chief Executive Officer Rolf Hueppi said results were disappointing because of an unanticipated need to strengthen reserves in the fourth quarter and a decline in realized capital gains. He said the results also reflect costs related to the ongoing reorganization, which offset a 4% rise in gross written premiums. ZFS plans to continue the reorganization begun in November 2000 to focus on nonlife and life insurance and investment products and services.

In addition to spinning off Zurich Re, which will be renamed and operate as a fully independent and separately listed reinsurer, ZFS has embarked on a cost-cutting program that includes restructuring the company's head office operations.

See Updates on page 22

### Errors & omissions

• Due to an editing error, a March 19 story incorrectly stated the estimated insured losses from U.K. flooding since last fall. The Assn. of British Insurers estimates the losses at £750 million.

# Bill seeks guidelines for new ergonomics rule

WASHINGTON—A Senate subcommittee has scheduled an April 26 hearing on a new measure that calls on the U.S. Labor Department to issue an ergonomics standard within two years of the bill's enactment.

Sens. John Breaux, D-La., Arlen Specter, R-Pa., and seven other co-sponsors introduced the bill last Thursday, days after President Bush signed legislation formally rescinding a controversial ergonomics standard issued by the Occupational Safety and Health Administration in the final days of the Clinton administration.

The new bill, drafted by Sen. Breaux, would require the Labor Department to issue a standard that meets several criteria. These include requirements that the new rule clearly spell out the circumstances under which an employer would have to address ergonomic issues at a worksite and the standards that would be used to measure the employer's compliance.

The rule also would not cover ergonomics-related disorders that occurred outside a workplace. Finally, the new rule could not interfere with existing state workers compensation laws. Among criti-

cisms of the earlier regulation was that it would have set a special compensation system for ergonomic-related injuries outside of, and more generous than, those available through state-based workers comp systems.

Sen. Specter announced that the Senate Appropriations Subcommittee on Labor, HHS and Education—which he chairs—would hold a hearing April 26. Labor Secretary Elaine Chao, who would be responsible for drafting a new regulation, is slated to testify.

—By Mark A. Hofmann

## Higher earnings forecast

### P/C stocks expected to outperform others this year

By JUDY GREENWALD

Higher rates are expected to translate into improved earnings for commercial property/casualty insurers this year.

Most analysts also expect property/casualty stocks to outperform the overall market in 2001, despite the recent tumult on Wall Street.

Despite the bright outlook for insurers, 2000 results were another disappointment to analysts, who say it was too soon for market firming to be reflected on insurers' bottom lines.

The 15 insurers surveyed by *Business Insurance* that reported net income as a group posted an 18.9% increase to \$11.86 billion last year. But of those 15, seven companies actually saw a decline in net income from 1999 to 2000 (see chart, page 19).

Stock analysts say insurers can look forward to better results in 2001.

Although catastrophes—including the Seattle earthquake, winter storms and the sinking of the Brazilian oil rig last week—are likely to hurt results,

"I'm hopeful that 2001 will be an earnings-driven year as opposed to the year 2000, which was a rate-driven year," said Michael Lewis, senior insurance analyst with Warburg Dillon Read in New York.

"I'm upbeat about the outlook," said John L. Ward, of the Cincinnati-based Ward Financial Group. "The momentum for double-digit-plus price increases is picking up," he said. "All things being equal, I would think the rest of the year would show some positive improvements over the comparable periods of 2000."

"We are cautiously optimistic," said Ken Zuckerberg, vp in equity research at New York-based Dresdner Kleinwort Wasserstein. "However, given the desire and in some cases the need for certain companies to strengthen loss reserves, our sense is that indicated rate increases will not fully flow to the bottom line of all insurance companies," he added.

Although some companies, including Chubb Corp. and American International Group Inc., have been appropriately reserving at conservative levels, "there

See Results on page 15



## Brokers not professionals: Court

NEW YORK—Insurance brokers are not professionals, so breach of contract suits brought against them are subject to a six-year statute of limitations, New York's highest court ruled last Thursday.

The ruling overturns an appellate court decision last year that brokers were professionals and subject to the three-year statute of limitations that applies to professional malpractice claims.

As a result of the ruling by the New York Court of Appeals, the state's highest court, Chase Sci-

entific Research Inc. will be able to pursue its breach of contract dispute with insurance brokerage NIA Group Inc. Chase alleged that Paramus, N.J.-based NIA was negligent and failed to secure sufficient coverage for the Hawthorne, N.Y.-based precision rotor manufacturer. Chase filed suit three years and seven months after NIA placed the coverage.

In its ruling, the Court of Appeals acknowledged that "professional" has different meanings in different contexts, but in the context of malpractice cases

it should be taken to mean professions such as lawyers, engineers, architects and accountants. "While agents and brokers must be licensed, they are not required to engage in extensive specialized education and training," the court ruled.

Also, brokers and agents are not held to a standard of conduct for which discipline might be imposed, nor do they have a continuing duty to advise, guide or direct a client based on a special relationship, the court ruled.

—By Gavin Souter

## INSIDE

• Full disclosure of the way outside attorneys are chosen to do the business of states is not only justified, it's demanded in the name of good government, this week's editorial says. **PAGE 8**

• Insurance regulators hope the rapid financial collapse of Australian insurer HIH will lend urgency to proposals to increase the ability of regulators to intervene sooner in troubled companies. **PAGE 15**

• The family of a race marshal killed at the Australian Grand Prix race on March 4 may be prevented by law from seeking compensation from race organizers. **PAGE 15**

• ERISA pre-empts a Washington state law that can override an employee's designation of a beneficiary for pension and life insurance benefits, the Supreme Court ruled last week. **PAGE 19**

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# Document request sparks debate

By MARK A. HOFMANN

WASHINGTON—An employer group's attempt to obtain details of the agreements between state governments and outside counsel with which they contracted for work involving the multistate tobacco litigation is drawing plaudits from supporters of civil justice reform.

Tort reform advocates say that such arrangements demand heightened scrutiny, both because of the fees involved and the potential for state-private counsel alliances to target other unpopular industries. Pro-tort reform forces also praise the U.S. Chamber of Commerce's decision to use state freedom of information laws to get details of the arrangements as a public policy matter, and they urge states to pass so-called "sunshine" legislation that would require automatic disclosure of such informa-

tion. Consumer advocates say, though, that the move could lead to violations of attorney/client privilege, with some opponents holding that the move lacks justification and is nothing more than another prong in an attack on the nation's plaintiffs bar.

The Washington-based Chamber and the U.S. Chamber Institute for Legal Reform, an affiliate of the larger body, announced the filing of the requests at a press conference earlier this month. The requests, which Chamber President Thomas Donohue stressed were not lawsuits, seek documents concerning a number of matters related to how each of 21 states involved in the settlement contracted with outside counsel (BI, March 19).

The information sought includes state policies for retaining outside counsel, fee arrangements, whether or not a competitive

bidding process exists for retaining outside counsel and the amount of time the outside counsel actually spent working on the settlement. The requests also seek documents dealing with "any payments or contributions made by any outside counsel retained by the state to anyone in return for the referral of the state's legal business in connection with the tobacco litigation."

Stephanie Kanwit, a partner in the Washington office of New York-based law firm Epstein Becker & Green P.C., noted that some states might try to claim attorney/client privilege as a way to withhold the information. Ms. Kanwit, who drafted the Chamber requests, said at the press conference that the information requests warned states not to do so, because the real clients in the tobacco litigation were the citizens of the states that made claims.

The Chamber also called upon Congress

to open hearings on the issue of state contracts with outside counsel in mass torts.

The Assn. of Trial Lawyers of America blasted the Chamber's move as hypocritical—noting that the Chamber receives funding from the tobacco industry—and as simply an attack on the plaintiffs bar (BI, March 19).

A prominent consumer advocate agreed. "This is part of a much broader orchestrated attack on trial lawyers," said Joanne Doroshov, executive director of the Center for Justice & Democracy in New York.

"The arrangements with the states, not only were they made voluntarily but most of the lawyers involved in these suits agreed to relinquish their rights under their contracts with the states and let an arbitration panel decide their fees. This was done with full cooperation of the tobacco companies.

See Chamber on page 21

## Minnesota health plan standards praised

By MICHAEL PRINCE

MINNEAPOLIS—The announcement earlier this month by four leading health plans in Minnesota that they will adopt the treatment guidelines issued by an independent organization marks a sharp shift toward the acceptance of evidence-based medicine by managed care organizations and health care providers.

In the long run, experts say, the adoption of evidence-based medicine by physicians and hospitals will improve the overall quality of health care while driving down costs.

The announcement represents a "big upside for employers and purchasers if we can have doctors and hospitals do more standardization of care delivery methods and care management methods," said Dr. Arnold Milstein, national health care thought leader at William M. Mercer Inc. in San Francisco.

"Quality care is the most cost-effective care," said Dr. Paul Wernick, a consultant with Watson Wyatt Worldwide in Minneapolis.

One other plan had already agreed to adopt the standards issued by the Institute for Clinical Systems Improvement. The ICSI is a nonprofit organization that establishes standard treatment plans, as developed by medical specialists, for a variety of medical conditions. Together, the five health plans cover a majority of patients in Minnesota.

"The entire community has embraced what ICSI has been doing for eight years," said Carolyn Pare, chairwoman of the Buyers Health Care Action Group, an employer coalition in Minneapolis.

Dr. David Abelson, chairman of ICSI, expressed satisfaction with the increased adoption of evidence-based medicine. "This is a major step forward in promoting best care for Minnesota patients," Dr. Abelson said.

Having the health plans agree on one set of standards makes it much more likely that hospitals and physicians will adopt the treatment standards issued by ICSI, said Suzanne Delbanco, executive director of the Leapfrog Group, a Washington-based employer organization dedicated to improving

See Treatment on page 12

## New uses for captives discussed

By RODD ZOLKOS

INDIAN WELLS, Calif.—Although captive insurance experts say there should be a clear business purpose behind a captive's formation, a captive parent can also benefit from exploring other, creative uses for the insurer.

"I'm a strong advocate that captives really have to be formed for a business purpose," said Gregory K. Myers, president and chief executive officer of Becher+Carlson Cos. in Princeton, N.J.

But captive owners should "stretch the idea of what busi-

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ness purposes are," Mr. Myers said as part of a panel on "Not So Obvious Uses for Captives" earlier this month at the annual conference of the Captive Insurance Cos. Assn. in Indian Wells, Calif.

Mary C. Harrington, director of risk management at Subaru of America Inc. in Cherry Hill, N.J., noted that when her company established its Bermuda-domiciled Pleiades Insurance Co. Ltd. captive in 1988, the move was a direct result of the company's hard-market experience. Consequently, the captive was created to write casualty and property coverages.

A corporate reorganization following Subaru of America's 1990 acquisition by Fuji Heavy Industries Ltd. led to the risk management function reporting to the financial side of the company, rather than the legal department, as had previously been the case, Ms. Harrington noted.

And, because the company's chief financial officer viewed the captive as a financial tool that Subaru could use, the company was able to look for more creative uses.

Ultimately, Subaru determined that writing extended war-

See Captives on page 6

### 4.5 million claims analyzed

## Report establishes comp data baseline

By MEG FLETCHER

A new report that analyzes where state workers compensation dollars are spent and how medical costs and utilization differ across eight states is now available from the Workers Compensation Research Institute.

"The Anatomy of Workers' Compensation Medical Costs and Utilization: A Reference Book" provides the first detailed benchmarks about the cost and utilization of medical services by injured workers, according to the Cambridge, Mass.-based WCRI.

"Public policy actions affecting medical costs and utilization are common, yet little hard information exists to guide policy decisions," said Richard Victor, the executive director of WCRI. "The detailed measures in this reference book can help policymakers and businesses identify ways to manage medical costs more effectively, evaluate the impact of reforms, target market opportunities for new products and services and benchmark the performance of a company's medical cost management program."

California, Connecticut, Florida, Georgia, Massachusetts, See WCRI on page 20

### Medical providers vary

Average cost and provider use for workers compensation claims\*

Measure	MD/DO	Chiropractor	Physical/occupational therapist	Hospital
Medical cost per claim	\$1,766	\$1,817	\$1,237	\$2,865
Number of visits per claim	9.1	23.8	14.4	4.7
Number of services per visit	2.4	3.2	3.2	3.4
Payment per service	\$81	\$24	\$26	\$197

\* 1996 accident year claims, each with more than a week's lost time, using an eight-state average.  
Source: Workers Compensation Research Institute

## Past woes may haunt insurers

NEW YORK—The hardening in the property/casualty insurance market will boost insurers' results in 2001, but lingering problems likely will continue to be a drag on earnings for some companies.

Underreserving in the late 1990s and reduced investment income after large premiums were paid to secure finite coverage for old liabilities could hurt some insurers' results, said speakers at two recent briefings.

Insurers and reinsurers are increasing rates across the board in 2001, said Mark P. Lescault, head of the divisional underwriting office at Swiss Reinsurance America Corp. in Armonk, N.Y.

So far, property rates have risen 10% to 15%, and casualty rates have risen 5% to 10%, Mr. Lescault said at a seminar held in New York earlier this month by Swiss Re on

the U.S. insurance and reinsurance market.

But the full benefit of those increases will not be apparent for some insurers when they publish their 2001 results, due to inadequate reserving policies in 1997, 1998 and 1999, he said.

In particular, asbestos-related losses are worsening as claimants seek damages from a wider variety of defendants, he said.

Many asbestos manufacturers have exhausted their coverage, and claimants are now targeting the retailers of products containing asbestos, Mr. Lescault said.

The market is in the middle of a correction, said Dennis P. Kane, president and chief executive officer of Kemper Casualty Co. in New York, a unit of Kemper Insurance Cos.

While the higher rates will yield more

premium income, some insurers may still struggle to compete in the medium term due to finite deals that they put together to cover past liabilities or improve their current results, Mr. Kane said at a meeting of the APIW, an association of women in insurance, in New York earlier this month.

The premiums paid for the coverage are usually huge, and insurers that buy such coverage are sacrificing the future investment income from the money used to pay the premiums, he said.

While big companies may be able to absorb the loss in investment income, smaller insurers may have to seek other ways to make up for the lost income, Mr. Kane said. And that, he said, will place those companies at a disadvantage to other insurers.

—By Gavin Souter

# Captive-RRG partnership provides flexibility

By **RODD ZOLKOS**

INDIAN WELLS, Calif.—Forming a captive insurance company as a partner entity to a risk retention group—or partnering a risk retention group with an existing captive—can allow the parent company to expand coverages and craft more creative solutions.

Compared with the traditional market, “we have the ability to be much more innovative and to think out of the box,” said Dan Labrie, president and chief executive officer of the Housing Authority Insurance RRG Inc. in Cheshire, Conn.

“What we look at very closely is how tailor-made our services are and what we can do to provide the best possible services. We focus very closely on risk management and loss control,”

Mr. Labrie said, speaking earlier this month at the annual conference of the National Risk Retention Assn. in Indian Wells, Calif.

To that end, the group has formed several new companies since HARRG



was first licensed in Vermont in 1987.

“A risk retention group has its limitations because of the law saying you can use the risk retention group to write liability but you can’t use it to write property or workers comp,” said Gary Osborne, senior vp at USA Risk Group in Montpelier, Vt.

But Mr. Osborne noted that by forming an additional captive, the

group can provide members a vehicle for writing those coverages.

“If you want to serve your members’ needs in workers comp, property, it’s probably necessary to add a second captive,” he said.

“Property’s a line we don’t see very often in captives,” Mr. Osborne said. “The risk-to-reward isn’t there. But if your members want to address it, you can use a second captive.”

Adding additional lines can allow the group to offer members “one-stop shopping,” Mr. Osborne said. “Your members look to you to provide their insurance needs,” he said. “And the more you take care of them, the less likely it is that you’ll lose them.”

It could also enable the program to act as its own reinsurer, ceding RRG risks to the captive. Among other advantages, that approach can allow the

group to fill in gaps in existing reinsurance, he said.

Also, “by forming a second captive offshore, you can use your capital more efficiently,” Mr. Osborne said, because the offshore facility will be able to write coverage at a higher net premium-to-capital and surplus ratio than the onshore RRG. While some groups might not be comfortable writing at the higher ratio, “there is that option,” he said.

Adding a captive to an RRG also can address members’ international exposures. “Risk retention groups can only write in the 50 states,” Mr. Osborne noted. “Again, we’re talking one-stop shopping.”

Forming a second captive as a rent-a-captive, a protected-cell company or a sponsored captive can provide large members of the group an alternative

market facility and will allow members to segregate their risks and retain underwriting profits.

While Mr. Osborne emphasized that taxes should never be a “driving reason” behind captive formations, “there are ways you might be able to use a second captive to look at taxes.”

Meanwhile, one possible reason for forming a risk retention group as a companion to an existing captive is to eliminate or reduce fronting expenses or to provide fronting ability, Mr. Osborne said. The federal Risk Retention Act allows direct writing in all 50 states, and it has a broad definition of “liability.”

The RRG also can be a useful tool in manuscripting policies. An RRG faces fewer form and filing regulations than do standard insurers, Mr. Osborne noted. What’s more, associations or groups can use an RRG to revisit coverages eliminated or reduced by the standard market.

But Mr. Osborne noted that the pre-emption provided in the federal act that permits RRGs does not eliminate the need for state-specific endorsements. “Even though you can manuscript a policy, you can’t use the federal Risk Retention Act to avoid certain state rules,” he said.

Mr. Labrie said that HARRG offers members a range of liability products, including general liability, excess auto, non-owned and hired auto, employee benefits, public officials, law enforcement, lead abatement and lead liability coverages.

HARRG’s business strategy has definitely focused on one-stop shopping for members, Mr. Labrie said. “I think it’s very important in this business really to keep that in mind,” he said. Otherwise, Mr. Labrie suggested, the RRG will have problems maintaining or increasing its market share.

It’s also necessary for the group to develop specialized skills and market its knowledge, he said.

As part of that effort, in 1988 the group formed its Housing Authority Property Insurance association captive in Vermont. HAPI provides property, inland marine, workers compensation, business auto, boiler and machinery, and fidelity and crime coverages. “The association captive, interestingly enough, is growing much

See *Partners* on page 6

## BI hires promotion manager

NEW YORK—*Business Insurance* has added to its communications staff in New York.

Grace Spellman has joined the magazine as promotion manager. In her new role, Ms. Spellman’s responsibilities include marketing and sales promotion projects for the newsmagazine as well as *BI*’s Web site and RIMSTV. She succeeds Liz Ostow, who resigned to pursue other opportunities.

Before joining *BI*, Ms. Spellman was marketing director at TPI Metro PA, a media company in Philadelphia. Prior to that, she was the circulation and marketing director at the Philadelphia Business Journal, and before that worked as marketing manager at the Rouse Co. in Burlington, N.J.

She holds bachelor of science degree in business administration from Rowan University in Glassboro, N.J., and an associate degree of liberal arts in law and justice.

Ms. Spellman can be reached at 212-210-0780.

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# Captives

Continued from page 3

ranty coverage for its customers through the captive was an ideal use.

First, the coverage was in line with the automaker's overall business mission, Ms. Harrington said. In addition, the extended warranty business would improve the captive's tax treatment and its return on reserves. Finally, the additional business also created the possibility of the captive being able to lend money to its parent, and it provided a way Subaru dealers could participate in the captive program.

For a company like Subaru, placing such a program in the captive is "one of the most tremendous examples I have seen of using (the captive) to support the overall business goals of an organization," Mr. Myers said.

Graeme M. Harper, a manager at PricewaterhouseCoopers LLP, in Philadelphia, suggested that loss

portfolio transfers and owner-controlled insurance programs are two other creative uses for captive insurers.

With loss portfolio transfers, "What we're really talking about here is the transfer of previously incurred losses for a price," he said.

OCIPs, meanwhile, under which owners of large construction projects purchase insurance for all contractors and subcontractors on the project, can be done in two ways, Mr. Harper noted. Such a program can be structured for a single large project, or it can take the form of a "rolling" wrap-up, involving projects at several sites. In addition, an OCIP is regarded as third-party business, which might provide tax benefits for a captive owner.

Mr. Myers said captive parents can look both internally and externally for possible creative uses of their captives. On the internal side, he said, captives could be used to write em-

ployee benefits; environmental coverages; coverages of financial exposures, such as integrated risk or holistic programs; or to cover unusual exposures.

## Captives could be used for loss portfolio transfers and owner-controlled insurance programs, says Graeme M. Harper.

One possible creative external use is the development of agency captives, he said.

"Corporations have set up agencies that market programs to their members," Mr. Myers said, offering the example of a grocery wholesalers using such an approach to market to retailers or companies using an agency

captive to offer homeowners, auto or personal umbrella coverage to employees.

Companies also can use their captives to sell insurance to individual or corporate customers—an approach that can be used to help build a stronger relationship with the customer, Mr. Myers said.

"A personal program that's out there is cellular phone coverage," he said. Under such programs, the cellular telephone company uses its captive to offer cell phone owners coverage to replace lost or stolen telephones.

Typically, the phone is replaced with a refurbished used phone of the same type to ensure the customer isn't "conveniently losing" the cell phone in order to get a newer model with better features, Mr. Myers said. The programs ultimately benefit the cell phone company by increasing both customer retention and company profits. **BI**

# Partners

Continued from page 4

faster than the risk retention group," Mr. Labrie said.

And in 2000, the group formed Housing Enterprise Risk Services Inc. as a sponsored captive, also in Vermont. HERS was capitalized by the association captive, and it facilitates the one-stop shopping concept, he said.

"Again, there was an issue of market share, to tell you the truth," Mr. Labrie said. The sponsored captive also provides long-term flexibility to expand markets and provide other products, he said.

Pamela E. Davis, president and chief executive officer of the Santa Cruz, Calif.-based Nonprofits' Insurance Alliance of Calif., explained that adding a captive and a risk retention group to the original NIAC liability risk pool provided a way to expand its liability insurance services to nonprofits in other states.

The NIAC pool includes 2,500 members in California, with \$16.3 million in annual premium. "Other nonprofits in other states said, 'Gee, can't you do something for us?'" Ms. Davis said. "And also it seemed to make sense to us to have a pooling of risk that was broader than California."

Because NIAC doesn't pay premium taxes or income taxes in California, its member entities were reluctant to give the entity up. Instead, they opted to form the additional risk retention group and captive to aid nonprofits in other states.

In December, the group licensed its Alliance of Nonprofits for Insurance Risk Retention Group and National Alliance of Nonprofits for Insurance captive in Vermont.

The NANI captive reinsures both the RRG and the liability pool. "It really will be just a transfer vehicle for risk," Ms. Davis said of the captive. "It will accept risk from the RRG and the California liability pool."

Through the risk retention group, the liability pool and the captive, the group provides member nonprofits with coverage for all liability lines, as well as auto physical damage coverage and property coverage. The group purchases reinsurance beyond the levels retained in the NANI captive.

"To our members, this all looks like a very tight package, and it looks like we're providing them all the coverage they need, except for workers comp," Ms. Davis said. **BI**

## CICA, NRRA hold annual meetings

INDIAN WELLS, Calif.—The Captive Insurance Cos. Assn. and the National Risk Retention Assn. held their annual conferences this month at the Renaissance Esmeralda Resort in Indian Wells, Calif. This year's conferences were held in back-to-back fashion, with a day of overlapping sessions. CICA met March 11-13, and the NRRA meeting was held March 13 and 14.

The CICA conference drew approximately 350 attendees, while the NRRA drew about 170, with many attending both conferences.

Next year's CICA conference is set for March 3-6 at the Westin LaPaloma Resort in Tucson, Ariz. For more information, call 952-928-4655 or visit the association's Web site at [www.captiveassociation.com](http://www.captiveassociation.com).

The dates and location of next year's NRRA conference are still being determined. For more information, call the NRRA at 800-999-4501 or visit [www.nr-ra-usa.org](http://www.nr-ra-usa.org). **BI**

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## OPINIONS

## Bring deals into the light

THE U.S. CHAMBER OF COMMERCE is asking questions about a partnership between state attorneys general and private law firms that need to be answered.

That partnership arose as a result of the multibillion-dollar legal action against the tobacco companies, in which private counsel were brought in on a contingency-fee basis to assist the 46 states seeking to recover the costs of treating smoking-related illnesses.

Questions have arisen about how those arrangements between the states and the private law firms were struck and what their terms were—or are, in cases where private counsel are helping states go after other targets. But answers have not been forthcoming from some states.

This is troubling not only because it leads to speculation that the deals might benefit the law firms more than the public but also because it demonstrates a lack of openness by government.

There is nothing intrinsically wrong with public-private partnerships. In some cases, such as when businesses, insurers and government emergency-preparedness officials work together to devise more-effective ways to deal with natural disasters, the collaboration can pay handsome dividends for the citizenry.

But we're very skeptical of the public benefits from some of the partnerships that arose from the litigation between states and the tobacco industry. That litigation resulted in a landmark \$206 billion settlement with the tobacco firms, of which private law firms received a significant portion for the legal work they performed on behalf of the state attorneys general.

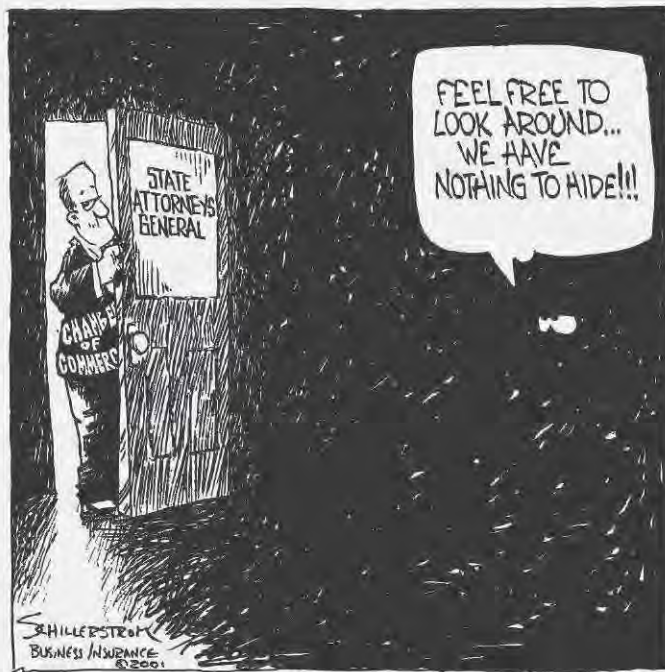
As we report in this issue, the U.S. Chamber of Commerce has filed freedom-of-information requests under state law with 21 states for documents relating to the details of these arrangements.

We recognize that the Chamber has no great love for the trial bar, but we believe these requests are more than an attempt to bash those attorneys, as critics of the Chamber contend. There's a very serious matter of public policy involved—openness in government.

By requesting documents relating to how contracts between state governments and outside counsel were struck, the Chamber is performing a much-needed public service. Citizens deserve to know the details of such arrangements, but in many cases those details have not been provided.

Most states have legions of staff attorneys whose job it is to handle litigation on behalf of the state, yet many relied on outside counsel to negotiate the particulars of their settlement with the tobacco companies. Why? Was it beyond the ability of lawyers already on the state payroll? If so, what tasks did the outside counsel perform that staff attorneys couldn't, and how much time did they spend doing them? How did that break down on a per-hour basis? What percentage of any recovery did the states agree to pay these attorneys for their work?

Another unanswered question is how the outside attorneys were chosen. Any awarding of contracts



that is not subject to public scrutiny understandably gives rise to public concern that the deals might have been made more in the interest of the contracting parties than of the citizenry.

We also question whether these arrangements were one-time deals to address a special situation—namely, the tobacco litigation—or if states continue to employ these hired legal guns to go after other targets and potential windfalls. We're troubled enough by the growth of government-led products litigation without this trend being enabled and encouraged by the use of private attorneys whose efforts may have more to do with their contingency fees than the public good.

We recognize that there may indeed be some situations where states need to retain outside legal expertise for tasks beyond their capabilities, but we oppose it as an ongoing enterprise. In addition, the lawyers selected by the states for those special tasks should be chosen in the same way as providers of other services—through an open public process where bids are solicited and reviewed. No system is perfect, but at least open bidding avoids any appearance of political favoritism or payoffs.

We see no reason why private attorneys working for a potential payday of hundreds of millions of dollars shouldn't have to go through the same process as, for example, highway contractors seeking more-modest rewards in bidding for state contracts.

Fortunately, a handful of states have already taken steps to assure that such arrangements between attorneys general and private law firms receive the public scrutiny they deserve by passing "sunshine laws" that outlaw secret arrangements. We hope other states follow their lead.

If the public/private partnerships between states and outside counsel represent sound public policy, they should be able to withstand public scrutiny. If not, then the public interest has been served.

Full disclosure is not only justified—it's demanded in the name of good government. The Chamber deserves credit for bringing this problem to light.

## LETTERS TO THE EDITOR

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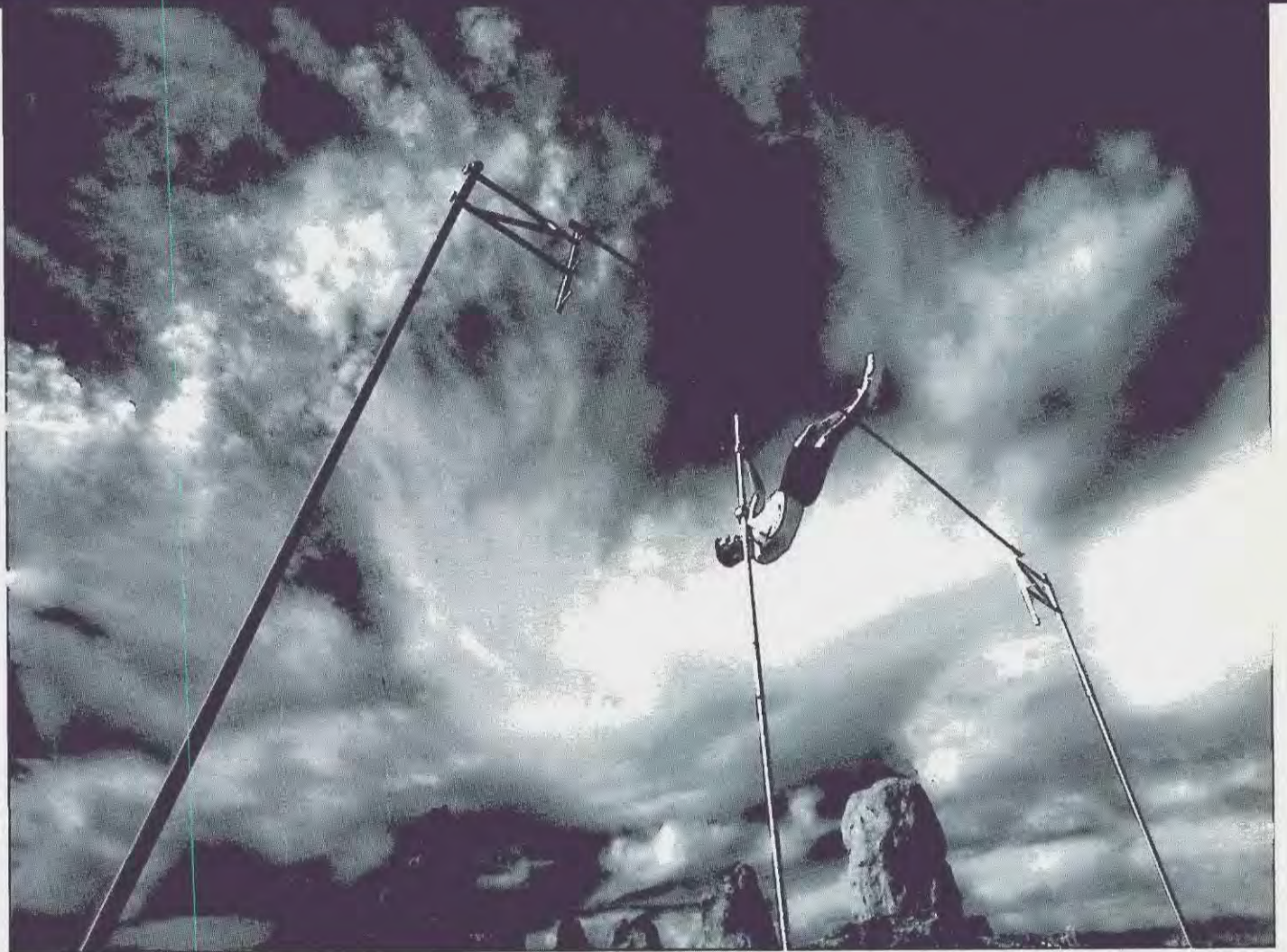
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## Work/life

Continued from page 1

Xylo and its competitors is considered a "soft benefit," she said. It is a time-saving resource that allows an employee to conduct business over the Internet in a fraction of the time it would otherwise take.

"If you have to get those soccer cleats for Saturday's soccer game—instead of leaving your desk, getting in your car or taking the bus to the mall and then coming back—you can do it online in about 10 minutes," Ms. Olson said. "It's definitely a productivity tool."

Karl Weiss, manager of work/life, recognition and paid time-off programs for Seattle-based retailer Eddie Bauer Inc., said one of Xylo's most popular time-saving services is its onsite oil

changes.

"Time is really the benefit of the new millennium," Mr. Weiss said. "Life is so hectic these days; anything we can do to save time—it's a benefit."

**'Time is really the benefit of the new millennium,' says Karl Weiss. 'Life is so hectic these days; anything we can do to save time—it's a benefit.'**

Even though more employees now use the Web to conduct personal business, Mr. Weiss said the company sees no need to increase its monitoring of employee Internet use.

"Our policy is that you're welcome to use it at your lunch hour,

around work, before work or after work," he said. "We say 'a reasonable amount of time.' The focus is on results."

Joseph Donner, senior consultant with Unifi Network, a unit of

PricewaterhouseCoopers L.L.P. in Teaneck, N.J., said that an employer, when providing such a service, must trust its employees.

"There has to be a lot of give and take. It definitely is a leap of faith on the employer's part. They're giving up a piece of con-

trol, and they're empowering employees. I think what we'll see down the road is that if employees start to abuse the privilege, things will probably not revert back, but things will change," Mr. Donner said.

Leonard Zucker, benefits manager for the city of Palo Alto, Calif., said an employee using the city's Web-based service provider is like "an employee taking a coffee break."

"I don't think we're going to prevent an employee from using the computer for some type of personal business at some point during the day," Mr. Zucker said. Still, he said, "I haven't seen any evidence of any type of abuse."

Mr. Zucker said that the city's service provider, Chicago-based ComPsych Corp., offers real time savings to employees. He said the city sought ComPsych's services primarily because many of its workers have long commutes to their jobs in the Silicon Valley.

"We don't want them to worry about something going wrong at their house—a fire, a flood, a break in plumbing. If that happens, we want them to be able to pick up the phone, call ComPsych, tell them that they have to get a plumber out to their place and go from there. When they come to work, we want them productive and not having to worry about anything," Mr. Zucker said.

Richard A. Chaifetz, chairman and chief executive officer of ComPsych, said the company provides resources such as employee assistance programs, work/life services, legal and financial services and personal convenience services. ComPsych also offers outsourced administrative services for human resources departments such as absence administration to more than 520 companies, serving over 6 million individuals worldwide.

The cost for the company's online tool, [guidanceresources.com](http://guidanceresources.com), ranges from \$2 to \$7 per employee per year, Mr. Chaifetz said.

He said that he has seen employers get a return on their investment in ComPsych's services that ranges, in dollar terms, between 5-to-1 and 7-to-1.

"It helps reduce absenteeism, it helps improve productivity, it's an attraction mechanism, it helps them differentiate themselves from other companies," Mr. Chaifetz said.

Another type of work/life service program puts a heavy focus on employee wellness.

Jim Grube, president of The

Teamwork Co. in Baltimore, said his company provides a technology-based tool that focuses on altering specific behaviors.

"It allows people to make behavioral changes so they can be healthier and reduce stress in their lives," Mr. Grube said.

The company connects employees of companies with coaches who help them make very specific behavioral changes.

"It has people focus on becoming more physically active, dealing with nutrition from a nondiet approach, improving sleep habits dealing with stress and focusing on individual challenges or issues," Mr. Grube said.

After health insurance, Mr. Grube said, this is the most valuable benefit an employee can have, because it is a day-to-day tool that helps an individual deal with all sorts of health and stress concerns. He said the whole idea is to get people into the habit of reporting their daily activities and diet and having the coaches respond about how they are doing.

The price of the service depends on company size, but it costs roughly \$50 per employee per year, Mr. Grube said.

"We feel that smart companies today need to send the message that it's not the gross time that you work on the job that's important; it's how productive you are on the job and how you can balance what you do here at work with your family life," he said.

In order to achieve success in both areas, a person must be successful in each individual area, Mr. Grube said.

Watson Wyatt's Mr. Abbott said that the programs are still in their infancy. He said that only 15% to 20% of all employers use such programs, though the statistics are much higher among Fortune 500 and Fortune 1,000 companies.

"The statistic will grow as more companies become more comfortable with having the Internet on the desktop and as employers continue to adopt payroll and HRIS operations that are Internet-enabled," Mr. Abbott said.

Mr. Chaifetz agreed that the number of companies that offer the online programs is growing.

"Ninety-five percent of the Fortune 500 companies use these types of services, and 60% of companies with between 1,000 to 10,000 employees have them. It's migrating down to the smallest employers, because they find it to be a significant cost savings, as well as a nice service to provide," he said. BI

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## Treatment

Continued from page 3  
health care quality.

"For many doctors, it will be a relief that all payors will be asking the same thing," Ms. Delbanco said.

The ICSI was founded in 1993 by Park Nicollet Health Services of St. Louis Park, Minn.; the Mayo Clinic of Rochester, Minn.; and HealthPartners Medical Group, a Bloomington, Minn.-based health plan that has already adopted the standards. The other four health plans—Blue Cross & Blue Shield of Minnesota, based in St. Paul, Minn.; Medica, a subsidiary of Allina Health Systems based in Minnetonka, Minn.; PreferredOne, based in Minneapolis; and UCare Minnesota, based in Minneapolis—agreed to use the treatment protocols developed by the ICSI. The development creates, in effect, a best-practice medical standard for Minnesota.

To date, the ICSI has established treatment guidelines for nearly 50 medical conditions, including chest pain, pregnancy and depression.

In the past, health plans issued treatment guidelines they had developed on their own. Often, these got a less-than-enthusiastic reception from health care providers, Dr. Wernick said.

"There could be some skepticism as to a hidden agenda, and doctors often don't respond as well to that," he said.

But because the ICSI guidelines come from such respected health care organizations as the Mayo Clinic and Park Nicollet Health Services, doctors will more readily adopt the standards, said Uwe Reinhardt, a professor of economics at Princeton University.

"They will probably be viewed as the gold standard," Mr. Reinhardt said. "Doctors clearly view these as just better than those developed by a private consulting firm."

Still, the news has not been greeted without some concern. Ms. Pare said she doesn't want the health plans to convert the guidelines into mandates that would

force doctors to follow them or risk forfeiting payment. The guidelines should be about improving quality, she said, and "not used as a standard for describing covered benefits."

A better way to implement the guidelines would be to give health care consumers information about the various treatment options that exist and about which of those options follow the ICSI treatment guidelines, Ms. Pare said. This would permit the consumer to choose which treatment option to select, she said.

**'Let the real marketplace work, instead of saying, "Do this or else,"' says Carolyn Pare.**

"Let the real marketplace work, instead of saying, 'Do this or else,'" Ms. Pare said.

Mercer's Dr. Milstein disagrees. He said he believes that some financial incentive is necessary to get providers to adopt the guidelines. Such an incentive might be to direct more patients to those providers that comply with the guidelines or to pay more for guideline-based service, he said.

But before such incentives are implemented, Dr. Milstein recommends that health plans do more than simply publish the guidelines and post them on their Web sites. The plans must follow up with providers and even provide financial or technological assistance to allow them to change their practices to conform to the guidelines.

While the members who will be affected by the changes in the health plans live and work, by and large, only in Minnesota, Ms. Delbanco said she believes that the developments there could easily spread to other parts of the country. The bandwagon toward evidence-based medicine is moving faster than ever, she said, and "it's just a matter of time until everyone is going to hop on it." **BI**

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## GLOBAL BRIEFS

The U.K.'s Health and Safety Executive has teamed up with London-based insurer Royal & SunAlliance Insurance Group P.L.C. to develop a management tool for small to midsize businesses. The "Essentials of Health and Safety Routemap" aims to help businesses carry out a **health and safety risk assessment** and develop a plan to comply with health and safety law. Copies are available at [www.hsebooks.co.uk](http://www.hsebooks.co.uk)....

The **Centre Group of Cos.**, a division of Zurich Financial Services Group Inc., is opening an office in Paris. The company said that it had already conducted several deals in France, including providing a new risk management structure for a range of uninsurable exposures. The group's Paris office will open May 17. Centre said the opening was part of its long-term European business development plans....

Moody's Investors Service Ltd. has placed its performance rating of **Lloyd's of London syndicate 535**, managed by Cotesworth & Co. Ltd., under review for possible downgrade. Moody's said the decision followed the announcement last week that Sydney-based HIH Insurance Ltd. had appointed a provisional liquidator (see related story). HIH provided about 85% of energy and marine syndicate 535's capital backing for 2001. Moody's said that the syndicate's current performance rating of "B average" reflected its average track record in recent years and the fact that it received 85% backing from HIH. Noting that HIH was not likely to back the syndicate in the future, Moody's said that time to find alternative backing was short....

A study carried out by William M. Mercer Inc. in London found that the **profitability of multinational pooling arrangements** for employee benefits risks varies greatly around the world. The survey revealed that the Argentine marketplace was the most profitable, producing an average surplus of 22% of premiums. The next most profitable was Finland, with an 18% average surplus; and the Irish Republic, with a 17% average. Least profitable were the United Kingdom, with about a 25% deficit; and Turkey, with a 33% deficit....

Standard & Poor's in London has assigned an A- long-term counterparty credit and insurer financial strength rating to Ballerup, Denmark-based **Tryg-Baltica International Forsikringselskab A/S**. S&P said its outlook for the reinsurance and specialty insurance group was stable....

In a joint effort, three marine classification societies—which inspect and certify the safety of ships—have introduced 10 initiatives to improve the **safety of international shipping**. The measures introduced by the classification societies—the Houston-based American Bureau of Shipping; Hovik, Norway-based Det Norske Veritas; and London-based Lloyd's Register—include a common program for identifying, targeting and monitoring substandard vessels, as well as the introduction of early warning systems....

London-based Markel Syndicate Management Ltd. has announced that David Hope is no longer the active underwriter on **Markel syndicate 1009**. Markel said Mr. Hope left because of a difference of opinion on the underwriting philosophy and long-term strategy for the marine syndicate. Jeremy Cooke, managing director of Markel Syndicate Management in London, said the company remained committed to the syndicate....

A.M. Best Co. has affirmed its A+ financial strength rating of Bermuda-based **XL Capital Ltd.** and its group members. Best said the rating reflects XL's global market capabilities and strong capitalization. Best also cited XL's disciplined underwriting approach, risk management capabilities and experienced management team.

# HIH collapse roils regulators

## Australian authority seeking broader powers to seize troubled insurers

By **DAMIEN TOMLINSON** and **KATE TILLEY**

SYDNEY, Australia—Insurance regulators hope that the rapid financial collapse of Australian insurer HIH Insurance Ltd. will lend new urgency to proposals that would increase the ability of regulators to intervene sooner in financially troubled companies.

Australia's insurance regulatory body, the Australian Prudential Regulation Authority, has come under fire from risk managers and brokers for failing to provide advance warning of HIH's problems before it sought voluntary liquidation.

According to a spokeswoman for Sydney-based APRA, the March 15 announcement that the New South Wales Supreme Court had approved HIH's provisional liquidation also caught regulators by surprise.

APRA will use the HIH debacle as ammunition for a new campaign to increase its powers under the Insurance Act 1973, the spokeswoman said. She said APRA wants more power to take charge of troubled insurers in cases where the regulator suspects serious financial difficulties.

Australian regulators have also

proposed raising minimum capital levels for insurers to \$5 million Australian (\$2.5 million) from the current \$2 million Australian (\$1 million) (BI, June 5, 2000).

The APRA spokeswoman said regulators had appointed an inspector to investigate the affairs of HIH and its 18 subsidiaries on the



morning of March 15, but was not told by HIH that the insurer planned to seek a court-appointed provisional liquidator later that same day.

The news coincided with HIH's announcement that it had incurred an \$800 million Australian (\$399.2 million) loss for the six months ending Dec. 31, 2000. That follows a \$500 million Australian (\$249.5 million) loss for the 12 months ending June 30, 2000.

The APRA spokeswoman said HIH currently is in a state of "limbo," as a team of financial investigators from court-appointed liquidator KPMG Australia, sifts through the insurer's books to determine whether current assets are

adequate to meet liabilities.

Bruce Ferguson, president of the Sydney-based Assn. of Risk & Insurance Managers of Australasia, said APRA, which has the power to appoint government inspectors to investigate Australian insurers in financial difficulty, should have stepped in "last year, when the alarm bells were ringing."

"APRA is conspicuous by its absence. It is supposed to ensure that insurers have adequate reserves to match their exposures," said Mr. Ferguson, who is risk and insurance manager for the New South Wales government-owned Sydney Water Corp.

Mr. Ferguson said that despite APRA's assertions that there are insufficient "triggers" under the Insurance Act to appoint an inspector, there was sufficient cause for regulators to intervene after a massive drop in HIH's share price, and amid widespread market speculation that the insurer would incur a loss of more than \$500 million Australian in the first half.

HIH's share price plunged to 17.5 cents Australian (87 cents) per share as of March 1, from \$3.00 Australian (\$1.50) in January 1997. Trading of HIH shares was suspended on March 1 by the Australian Securities and Investments

Commission because the insurer was unable to determine the size of its first-half loss.

HIH's difficulties are being partly blamed on its \$300 million Australian (\$149.7 million) acquisition of Sydney-based FAI Insurances Ltd. two years ago (BI, March 1, 1999). HIH launched a hostile takeover of FAI, which prevented it from providing as thorough a due diligence review as it would have with more time to prepare an offer.

In its 2000 annual report, HIH said its losses were due to "adverse claims developments" from its FAI purchase, \$11 million Australian (\$5.5 million) in losses from the 1999 Sydney hailstorm and losses on its California workers compensation business. Brokers and other underwriters say HIH's reserve cushion was too thin to cover adverse loss developments.

Kevin Mutch, head of group risk management for Melbourne-based metals company Rio Tinto Ltd., said the HIH situation showed that "the business environment is fragile, and it doesn't exclude insurers."

"It is probably not surprising that HIH went (into liquidation), but it is the speed at which the

See HIH on next page

## Latin American markets make hard M&A targets

By **GAVIN SOUTER**

MIAMI BEACH, Fla.—Cultural differences and corporate arrogance can impair foreign insurers' expansion plans in Latin America, a consultant warns.

To be successful, foreign insurers seeking to move into Latin American insurance markets must conduct extensive research on the markets they want to enter and the companies they want to buy, said David Sommer, a vp at Am-Re Consultants Inc. in Rio de Janeiro, Brazil.

The Latin American insurance market currently is polarized, Mr. Sommer said. "There are those that are going to buy and those that are going to be bought," he said at the Latin America Roundtable.

The roundtable, sponsored by the International Insurance Council and held in Miami Beach, Fla., was held earlier this month.

The insurance markets in Latin America are consolidating and becoming much more competitive, as more foreign investors pour money into the region, Mr. Sommer said. The influx of foreign capital accelerated after the Asian financial crisis in 1997, as foreign companies looked for other developing markets where they could invest

in insurers, he said.

Companies entering the area need to understand the unique features of the Latin American market to be successful, Mr. Sommer advises.

For example, in contrast with the United States, Latin American countries have a significant number of multiline insurers that sell life, pensions and property/casualty coverage, Mr. Sommer said. And Latin American insurers also are often owned by banks or have distribution agreements with banks, he said.

Latin American insurers are usually more hierarchical than are U.S. insurers, and there is much less delegating of authority, Mr. Sommer said. Consequently, training of personnel can take a lot longer, he said.

Latin American companies also "are still learning to deal with the fact that we are no longer in a hyperinflationary environment," he said.

Previously, insurance companies in Latin America often concentrated on generating cash flow so they could invest premiums and earn interest income, he explained. "Latin America is coming out of cash flow underwriting, but it is still an issue," Mr. Sommer said.

In addition to the existing

See IIC on page 17



INTERNATIONAL  
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PHOTO: AFP

The family of a marshal killed during the recent Australian Grand Prix Formula One race faces an uphill battle in seeking compensation.

Law may shield organizer

## Race official's death raises liability debate

By **DAMIEN TOMLINSON**

MELBOURNE, Australia—The family of a volunteer race marshal killed at the Australian Grand Prix Formula One race on March 4 may be prevented by law from seeking compensation from the race organizers, the Melbourne-based Australian Grand Prix Corp.

A clause in the Victoria state government's Australian Grand Prix Act 1994 prevents anyone from seeking compensation from the AGPC for claims relating to any "road construction or diversion" or the construction of permanent or temporary structures.

Eugene Arocca, an attorney with the Melbourne-based plaintiffs law firm of Maurice Blackburn Cashman, said the act was introduced when the Albert Park race circuit outside Melbourne—where the Australian Grand Prix is held—was under construction.

Albert Park is a public recreation

area that is used once a year for the race.

"The provisions were supposed to stop property, nuisance and noise claims from residents living near the construction site," Mr. Arocca explained.

Section 42 of the act states that "no compensation is payable (for)...road construction or diversion, removal, relocation or planting of trees, installation of services, relocation of ovals, buildings or facilities, construction of other structures, whether of a permanent or temporary nature, or demolition works or works altering the topography of Albert Park."

The broad wording of the act is likely to prevent any claims against the AGPC. But Mr. Arocca said the provisions of the act could be challenged.

"Section 42 presents itself as a preliminary barrier but one I think could be argued against. Any law

See Accident on next page

## INTERNATIONAL

# Accident

Continued from previous page that effectively removes a person's civil rights to compensation for negligence could be challenged," he said.

Neither the AGPC nor the Melbourne-based Confederation of Australian Motor Sport Ltd., the organization that provided the volunteer marshals, responded to written and verbal requests from *Business Insurance* for information about their insurance coverage. John Harnden, AGPC's chief executive officer, said "we are not in a position to provide the details you sought."

Spokesmen for the AGPC have stated in Melbourne newspapers that it has a \$200 million Australian (\$99.0 million) public liability policy that was brokered by the Melbourne office

of Sydney-based Aon Risk Services Aust. Ltd. But Ron Walker, chairman of the AGPC, said the marshal would not be covered by that policy; it applies, he said, only to spectators.

Jeremy Gray, an Aon motor sports specialist, said that Aon "handles a couple of motor sports organizations," but he would not confirm that Aon had placed any policies for the AGPC.

The volunteer marshal, Graham Beveridge, 52, was killed when he was hit by a flying tire after a collision between drivers Jacques Villeneuve and Ralf Schumacher in the fifth lap of the race.

Video footage shows the 38 centimeter-wide right front wheel from Villeneuve's car apparently passing through an access hole in a fence that surrounds the track, hitting Mr. Beveridge in the chest. The 40 centimeter-

wide gaps in the fence allow quick access to the track by marshals in case of a fire or accident.

Melbourne-based CAMS offers its members a \$100,000 Australian (\$49,490) in life insurance coverage, brokered through Sydney-based Marsh Pty. Ltd. and underwritten by Sydney-based Lumley Life Ltd. CAMS would not say if Mr. Beveridge had purchased the coverage. According to media reports, Mr. Beveridge was covered by a \$50,000 Australian (\$24,745) sickness, disablement and accident policy taken out by CAMS.

Victoria WorkCover, the state government-run workers compensation body, is assisting the Victorian police with their inquiry into the accident. A Victoria WorkCover spokesman said it has determined the area of the accident was a workplace. He said WorkCover would review the coroner's findings following the inquiry into the death.

Mr. Walker was reported to have said that there was no need for safety regulations to be upgraded because the accident was caused by the mechanical failure of cables designed to secure car wheels in accidents. Mr. Walker said the accident was a "billion-to-one chance."

"That's life, isn't it? Sometimes these things happen," Mr. Walker was quoted as saying.

"People are very passionate about motor racing," Mr. Walker said. "They know there are risks, even though we try to make the risks absolutely minimal. That's the way it is. At the moment, there is nothing else we can do."

But plaintiffs attorney Mr. Arocca rejected Mr. Walker's claims, saying

"a lot more could be done."

"This is a multibillion-dollar sport. People pay a lot of money all around the world to watch these events, but where does it all go?" Mr. Arocca said.

He said that while Formula One racing may be a sport with increased risks, that should not mean safety is compromised.

"It is undeniable that these events are likely to see tragic incidents from time to time. We can't expect organizers to erect 100-foot barriers to protect spectators, but this accident happened at ground level and affected a lot of people," Mr. Arocca said.

Five spectators who received minor injuries in the accident have hired Maurice Blackburn Cashman. Attorney Megan Butterfield said the claimants will sue for medical costs for their injuries and nervous shock.

Ms. Butterfield said she expected the AGPC to use Section 42 of the Act as its first defense.

"The claimants haven't suffered serious injuries, but one man has extensive bruising. The claimants were cordoned off and had to remain at the scene while paramedics tried to revive (Mr. Beveridge)," she said.

"We expect (the AGPC) to hide behind the provisions of the act, or argue that the barrier was adequate, that the incident was a freak occurrence. You can definitely see a fault with the setup—the barrier didn't work," Ms. Butterfield said.

Mr. Arocca said access holes in fencing are a feature of every Formula One track, but he said that they should not be placed in high-risk areas such as on the apex of corners.

"There should be a double barrier, and it should be back up the track, not

on a corner. Marshals won't mind running 30 feet farther to get to an accident if their safety is preserved," he said.

Mr. Villeneuve's car has been impounded by the Victorian state coroner pending an inquest into the death. An appeal for donations has been launched by racing teams and supporters to raise money for Mr. Beveridge's family.

Ms. Butterfield said that if the coroner finds that the wheel tethers were to blame for the accident, Mr. Beveridge's family, as well as the injured individuals, could file negligence claims against Mr. Villeneuve and his race team. They could also sue CAMS, because it is the Australian branch of the world Formula One governing body, the Federation Internationale de l'Automobile.

Mr. Beveridge's death comes six months after another marshal, Paolo Ghislimberti, 31, was killed when hit by a flying wheel after a six-car pile-up at the Italian Grand Prix in Monza last year.

After the Melbourne accident, a FIA spokesman said that the federation would propose at a March 21 meeting of the World Motorsport Council in Paris that the height of the fencing be raised by one meter at all Formula One events.

FIA President Max Mosley is now expected to rush the federation's plans to introduce cockpit lights to warn drivers of hazards. The introduction of the lights would reduce the number of officials required on Formula One courses, according to media reports. Currently, marshals enter racetracks to wave colored flags to indicate hazards to drivers. **[B]**

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## HIH

Continued from previous page company went downhill," Mr. Mutch said.

"This highlights the need for proper risk management, even when placing risk coverage with insurers. It is a sharp lesson that you need to be familiar with whom you are dealing with. Treat insurance like any other business dealing," he said.

Mr. Mutch said Rio Tinto will not purchase insurance from insurers that have less than a AA financial strength rating from Standard & Poor's Corp. HIH was downgraded to B from BBB- by S&P on March 15. It had been on S&P's CreditWatch negative for several months.

Wayne Riddell, risk manager with Sydney-based department store chain David Jones Ltd., said his company had shifted its liability and industrial special risks coverage away from HIH more than two years ago.

"We did place cover with them three years ago because they were the most price competitive, but we got out after our premiums grew by 100% the next year," Mr. Riddell said.

ARIMA's Mr. Ferguson said the collapse of HIH is "not a good thing" for the Australian insurance industry, as a lot of insurance business "will now have to be written offshore."

HIH has been popular in the Australian market as one of the only insurers prepared to write coverage for complex risks, including hard-to-place directors & officers, professional indemnity and industrial special risks insurance.

"In its heyday, HIH was one of the most flexible and easy to deal with insurance companies in the industry," Mr. Ferguson said. "It was the only insurer willing to look at a risk and tailor a product to suit."

While HIH has assured the market that all current exposures will be met, Mr. Ferguson said "you can never be sure until the money is in the bank."

Angus Maciver, executive director of Sydney-based broker Willis Aus-

tralia Ltd., said Willis clients had been rushing to transfer policies.

He said policyholders were not waiting to see whether their risks would be covered. "People don't want to know about HIH, they just want cover. People buy insurance to be covered, and if that is not available, they go somewhere else."

Mr. Maciver said it is "a real worry" that one of the country's largest insurers had collapsed. "It is worrying that the regulator did not do anything, especially in light of the speculation surrounding HIH since it posted a disastrous result last year."

APRA's spokeswoman said HIH's most recent audited accounts, presented to APRA last September, showed the company was within prudential boundaries, with more than \$900 million Australian (\$449.1 million) in assets, despite reporting a \$500 million Australian loss for the year to June 30, 2000.

But the spokeswoman said APRA had been "quietly working with the company" since last September, after APRA analysts "found some points of concern."

She added that it was APRA's "suggestions" that had led HIH to sell several of its operations.

In recent weeks, for example, HIH placed its commercial insurance business in Australia and New Zealand into a joint venture with Sydney-based QBE Insurance Ltd., which held a majority stake in the venture. HIH also recently sold its domestic workers compensation business to Sydney-based NRMA Insurance Group Ltd. HIH also sold its 49% stake in a retail insurance joint venture with Sydney-based Allianz Australia Insurance Ltd. HIH last year also sold its U.S. workers compensation business to Argonaut Insurance Co. (BI, Dec. 4, 2000).

The Sydney-based Insurance Council of Australia, of which HIH is a member, has told policyholders to check their policy status and seek advice from brokers.

Noel Pettersen, chief executive of the Sydney-based National Insurance

Brokers Assn., said insurance brokers had been "caught up in all this, just like everyone else."

"We just have to leave it in the hands of the liquidators, and convey every piece of information to our clients," he said.

Mr. Pettersen said he hoped the liquidator's investigation would see all claims able to be paid. "We are hoping for a positive result."

He would not comment on whether current insurance regulations need to be reviewed, but said he would "support any move that could improve the insurance industry."

HIH sought appointment of a liquidator only hours before it was due to report its six-month figures. Under Australia's Corporations Law, March 16 is the last day on which a publicly listed company can report its first-half results.

Randolph Wein, HIH chief executive officer, said in a statement to the Australian Stock Exchange that "(this) decision was difficult for the board, but prudent and necessary, given present indications about the extent of the losses for the first half, and their impact on the balance sheet."

Frank O'Halloran, chief executive officer of the QBE Group, said QBE would step in and replace HIH policyholders' coverage for the same terms and conditions, but with additional premium.

He plans to hold discussions with the liquidator about HIH's proposed 40% shareholding in the new commercial insurance venture, QBE Corporate Insurance Ltd.

Eric Dodd, managing director and chief executive officer of NRMA Insurance Group Ltd., said KPMG provisional liquidator Tony McGrath had confirmed the sale of HIH's workers compensation business to NRMA will go ahead. Mr. Dodd said all existing policyholders were "fully covered by funds under the control of relevant authorities." New and renewal business would be underwritten by NRMA Insurance Group, he said. **[B]**

Continued from page 15

challenges that foreign insurers face when they buy companies in Latin America, some foreign investors create additional problems for themselves, he said.

Often their approach amounts to "corporate imperialism," whereby they stick to a corporate plan regardless of the conditions in the local market, Mr. Sommer said. "They come in, drop prices and go for market share and put the market into turmoil," he said.

## Reinsurer rate hikes hit Latin America hard

By GAVIN SOUTER

MIAMI BEACH, Fla.—Reinsurance rates for Latin American and Caribbean risks are driving upward, insurance industry executives say.

Reinsurers are discarding unprofitable business and increasing rates for

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the business they keep, executives from a brokerage and a reinsurer said.

Some catastrophe rates have doubled in the region, which is heavily dependent on reinsurance, and further increases should be expected, they said.

In addition, the facultative market for Latin America has contracted significantly, and pro rata commission levels are decreasing, the speakers said. The executives spoke earlier this month in Miami Beach, Fla., at the Latin America Round Table, sponsored by the International Insurance Council.

In general, reinsurers reported high combined ratios in 2000 and are seeking to raise rates, and that includes Latin American-based risks, said Anthony J. Phillips, senior vp-reinsurance at Willis Faber North America Inc. in Miami. Underwriters have been told to cancel unprofitable business and are no longer writing "hobby business," where previously they may have written an account in part because they wanted to visit an exotic location, he said.

Reinsurers also are differentiating more between the individual cedents they keep, Mr. Phillips said. "In the old days, reinsurers would say 'the rate on line for Colombia is 3%,' and now they will ask what type of business an insurer writes and what are its exposures before they determine a rate."

At the beginning of this year, catastrophe rates in the Caribbean region rose 15% to 40%, he said. And because local insurers retain so little business, the reinsurance rate hikes have translated into similar direct insurance rate increases, he said.

Latin American risks that renew Jan. 1—mainly in Colombia, Venezuela and Central America—saw catastrophe rate hikes of 30% to 100%, Mr. Phillips said.

Pro rata business for the Caribbean has seen reduced limits and commission levels, with more-favorable conditions being applied to long-term clients, he said.

Pro rata business in Latin America has improved as primary insurance rates have seen some modest increases, he said. A lack of retrocessional coverage is reducing capacity for facultative reinsurance, which is also helping the pro rata market grow, he said.

The incoming companies are oblivious to established relationships and ignore the established strengths of the companies that they have bought, Mr. Sommer said.

Foreign insurers also often fail to ask why the local companies want to sell out in the first place, he said.

"Maybe it is because it is family owned and they want to retire, but maybe it is because the market is becoming more competitive and they need more capital to survive or to pay underwriting losses which you can't see yet because the price spiral has just started," Mr. Sommer said.

Furthermore, foreign insurers often

"There is not a capacity crisis, but there are fewer reinsurers," Mr. Phillips said. Generally, reinsurance capacity is still available for a price; that, he said, was not the case in some regions in 1992, during the last hard market, when no capacity was available, even at highly inflated prices.

Due to poor results, Latin America "has lost some of its appeal for reinsurers," he said. In El Salvador, for example, the recent earthquakes resulted in a \$350 million loss, yet the gross premium volume for the whole country was \$150 million, Mr. Phillips said.

Caribbean windstorms also affect the continental United States, so reinsurers sometimes drop more-marginal Caribbean business as they seek to trim exposures, he said.

Reinsurance rates for Latin America likely will increase for at least the next two years, Mr. Phillips said. "And if we have another catastrophe, the increases will be very sharp and continue for a lot longer."

Latin America is particularly exposed to gyrations in reinsurance rates, he said. For catastrophe risks, Latin American insurers retain only about 5% of the risks they carry, he said. "They have tens of millions in capital and write billions in liability for cat business, so they rely heavily on reinsurance."

Andres Lorenzana, a member of senior management in the Americas division at Swiss Reinsurance Co. in Zurich, Switzerland, agreed. In Chile, for example, about 45% of direct premiums are reinsured, compared with less than 15% in the United States, he said.

The high proportion of cessions is largely because many local insurers are comparatively small and lack the capacity to retain large risks, he said.

In many cases, the market is driven by competition among reinsurers rather than competition among local insurers, Mr. Phillips said.

Reinsurance premium volume in Latin America totals about \$5 billion. Currently, the largest nonlife sector is property, which accounts for 26% of all reinsurance premiums. But liability business, which accounts for only 7% of premiums, is growing, Mr. Lorenzana said.

The Latin American reinsurance market, like other reinsurance markets, saw cumulative rate reductions of 30% to 40% between 1994 and 1999.

As the market hardens, Latin American insurers are continuing to shop for the best price, and sometimes they do not pay enough attention to the security of reinsurers they are dealing with, Mr. Phillips said.

"In the long term, that is a mistake. There should be some regulation regarding who the local companies reinsure with, because there are some companies who will not be around in two or three years' time—let alone 10 or 20," he said.

fail to consider their own motivations for acquiring Latin American companies, he said.

"A lot of the time the motivation is size rather than 'how does this company fit in with how we do business?'" Mr. Sommer said.

Buyers should contemplate the mo-

tivations on both sides of the deal rather than entering into a transaction based solely on numbers, Mr. Sommer said.

And rather than simply determining that they want to enter a particular country, foreign companies should determine the strengths and weaknesses

of their target companies and assess how they would fit into their own operations, he said.

"Once the deal is decided, develop a post-M&A integration plan," Mr. Sommer said. "A lot of time deals are done and then people say, 'Well, now what?'"

## Increased liberalization seen

By GAVIN SOUTER

MIAMI BEACH, Fla.—Insurance markets in Latin America have seen radical changes over the past several years, and more changes are coming.

New regulations under consideration could further boost the growth

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that has resulted from deregulation in many markets in Latin America, a panel of regulators said.

Measures to cut red tape have been proposed in Chile and Mexico, for example, and the long-awaited opening of Brazil's market should occur eventually, insurance regulators from those countries said.

The regulators spoke this month in Miami Beach at the Latin America Round Table 2001, sponsored by the International Insurance Council.

Chilean regulators are considering several changes, said Monica Caceres Ubilla, insurance supervisor at the Supervisor of Securities and Insurance, or SVS, in Santiago, Chile. One change would let insurers sell policies before receiving formal regulatory approval, she said.

Insurers in Chile now must register new policies and wait for regulatory approval before selling them.

The proposed change would accelerate the process of launching new coverages by allowing insurers to file policies and sell them immediately but also would let regulators withdraw the policies later if they do not win approval, Ms. Caceres said.

Furthermore, the SVS may allow highly rated foreign reinsurers to operate in the market without first registering in Chile, she said. "So, if they have a AAA rating, say, then it will not be necessary for them to be in the register," Ms. Caceres said.

The SVS also may liberalize the investment regulations for insurers. Chilean law now allows insurers to invest only in conservative instruments. But insurers offering securitization coverages or investment-linked life products need to be able to invest in a more-diverse range of instruments, she said.

Regulators may open up the life reinsurance market to foreign life reinsurers, Ms. Caceres said. Insurers in Chile's annuities market, which has grown rapidly since Chile reformed its social security system in 1980, can reinsure only with Chilean-based reinsurers. "We want to provide more choice," she said.

Finally, the SVS is considering a legal framework to regulate the sale of insurance over the Internet. Legislation that would validate electronic signatures is expected to pass this year, Ms. Caceres said.

The proposed changes are in early stages, and they may be changed be-

fore being introduced, she stressed.

The government and regulators in Mexico are working to liberalize further that insurance market as well, said Manuel Aguilera Verduzco, president of the Mexican insurance and finance commission, or CNSF.

Mexico has already seen significant growth since the deregulation of its insurance market began in 1994, he said. The number of insurers in Mexico has risen from 48 in 1994 to 70 in 2000, Mr. Aguilera said. And the number of 100% foreign-owned insurers has risen from one to 27 over the same period, he said.

Insurance premiums now total 1.9% of Mexico's gross domestic product, a new high, Mr. Aguilera said. Mexican regulators are examining ways to boost growth further, he said. For example, regulators are considering ways to liberalize insurers' access to capital through reinsurance and debt and to simplify the introduction of new products.

In Brazil, the courts are holding up changes to the insurance market, said Antonio Caetano Filho, director of the Brazilian insurance regulator, SUSEP.

Opening the market to foreign insurers hinges on the privatization of the Instituto de Resseguros do Brasil. The state-owned monopoly reinsurer was to have been auctioned off last summer. But just before bidding for the IRB was to open, the privatization was challenged and the matter remains mired in the courts.

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Peter C.B. Mitchell  
 Joint Liquidator of Desert Insurance Company Limited  
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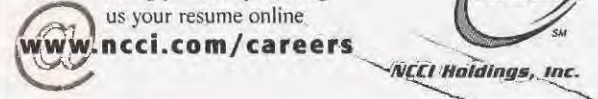
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# Results

Continued from page 2  
are some aggressive specialty companies where the ice has been thin for awhile," said Mr. Zuckerberg. Brokers and insurers suggest price hikes are continuing and perhaps even accelerating, "and virtually everyone thinks it's going to last all through this year" though "you start having differing opinions" when 2002 comes under discussion, said Gary Ransom, senior vp at Hartford, Conn.-based Conning & Co.

"I expect to see price increases continue at about the same level," said Jay Cohen, an analyst with Merrill Lynch & Co. in New York. "I don't think they will continue to accelerate, but certainly (they will continue at) the same level they have been going on, and I think the earnings will more clearly reflect the better environment."

Results should improve as the rate hikes of the past year "begin to filter down to the bottom line," said Michael Paisan, vp at Keefe, Bruyette & Woods in New York. This year should be a "fairly decent year" in terms of growth while 2002 and 2003 will be "fairly explosive," said Mr. Paisan.

Some analysts expect insurers' recovery will be slow.

"Commercial property/casualty results will turn around slowly," said Adam Klauber, director of investment research at Chicago-based Cochran, Caronia & Co. Despite last year's rate hikes, to an extent companies are still paying for the poor business written in prior years, especially in 1998 and 1999 and even to some degree last year. Underwriting profitability should start to improve by the end of this year and into 2002, Mr. Klauber said.

Recovery is likely to be a long, drawn-out process, agreed Judy Blades, executive vp for business insurance at the Hartford Financial Services Group Inc. "We're going to have a correction period

that's probably going to be slower than we've seen in the past, and more prolonged" as insurers "fix whatever problems they have in their books."

Matthew Coyle, a director at rating agency Standard & Poor's Corp. in New York, said, "You're still contending with some of the issues of the past—i.e., underreserving—and also trying to get renewals and current business up to adequate levels of pricing. This is not going to happen overnight. It's going to take some time."

The *Business Insurance* survey no longer includes Hartford Steam Boiler & Inspection Co., whose

he said.

Bottom line earnings "were not particularly impressive," said Mr. Cohen. One reason is "claims inflation has been eating into some of the price increases," he said. In addition, in some cases companies have run out of reserve redundancies they can release back into earnings and that "does make for a tougher comparison."

Results were "pretty much what I expected," said Michael Smith, an analyst with Bear, Stearns & Co. in New York. "Premiums were still a little bit sluggish," he said. "The price increases that the underwriters are talking about are

ment, and those that are still struggling to recover from the problems of underpricing in '97, '98, '99," he said.

Meanwhile, many analysts expect property/casualty stocks to outperform the overall stock market this year.

"The group kind of hit a wall at the end of the year," said Mr. Lewis. "I think the market felt that the re-evaluation it afforded it last year was sufficient." He added, however, "I'm still hopeful that the industry will outperform the marketplace this year, and if they're lucky, have a chance to revisit the December highs."

"The quality insurance companies, the ones with good, solid balance sheets" will have a good year, and may even return to their 52-week highs because fundamentals remain strong, said Brian Meredith, senior property/casualty insurance analyst with Banc of America Securities in New York.

Mr. Cohen also pointed to better industry fundamentals. "It's one of the few businesses where fundamentals are, generally speaking, improving, so if we continue to see disappointment in other sectors, the defensive nature of this group should allow the stocks to perform well."

Despite the industry's improving fundamentals, "The market will need to see evidence of much better underwriting results before the sector really begins to move up again," said Mr. Klauber.

Insurers are also feeling some impact from the current Wall Street turmoil on their own investment portfolios. "While you shouldn't see any effect, obviously from an earnings standpoint there may be a modest reduction in surplus for some companies," said Mr. Meredith, who noted most insurers have very small equity portfolios.

Less surplus is actually a positive for the industry, he added. Any time a little more capital is taken out of the industry it probably results in more pricing discipline, he said. **B/I**

## 'We were hearing about rate increases all year long, but it wasn't really translated into strong top-line growth until later in the year,' says Gary Ransom of Conning.

parent company, HSB Group, was acquired by AIG last year. Among the other results of the 19 insurers surveyed were:

- Net premiums written increased 11.4% to \$86.55 billion. This compares with an 8.2% increase for the first nine months of 2000, and with a 2.2% increase in 1999 for a comparable group of insurers.

- Insurers posted a 106.2% combined ratio, compared with a 106.7% ratio in 1999. A 104.2% combined was reported for the nine-month period.

- Policyholder surplus declined 3.0% to \$55.83 billion.

"The results basically fell short of expectations" though rates were in line with expectations and casualty losses "appear to be normal or below normal," said Mr. Lewis. The industry "continued to struggle with reserve adequacy issues, and that's really due to a combination of adverse claims development and inadequately priced business,"

not showing up in written premiums yet."

Mr. Ransom said one change in the fourth quarter from previous quarters is "we had more commercial lines companies with double-digit premium growth," including AIG, Chubb and The St. Paul Cos. Inc., which reported fourth-quarter premium increases of 12.4%, 14.5% and 29.1%, respectively.

"We were hearing about rate increases all year long, but it wasn't really translated into strong top-line growth until later in the year," said Mr. Ransom.

In terms of underwriting, however, while some insurers had greatly improved combined ratios, "there were others where the results really weren't improving as much as you would have expected," said Mr. Ransom. "It's almost like there's an increasing dichotomy between the companies that seem to be performing well right now and are able to take advantage of the improving environ-

# ERISA pre-empts divorce statute

WASHINGTON—The Employee Retirement Income Security Act pre-empts a Washington state law that can override an employee's designation of a beneficiary for pension and life insurance benefits, the Supreme Court ruled last week.

In a 7-2 decision, the court said a statute such as Washington state's has a "prohibited connection with ERISA plans, because it interferes with nationally uniform plan administration," a principal goal of ERISA.

"Uniformity is impossible, however, if plans are subject to different legal obligations in different states. The Washington statute at issue here poses precisely that threat," the court said in *Egelhoff vs. Egelhoff*.

## 'Uniformity is impossible, however, if plans are subject to different legal obligations in different states,' the decision says.

Business groups hailed the ruling as a victory for smooth benefit administration and employee benefit decision-making.

"The ruling means that benefit plans can be administered without the muddling effect of numerous and often-conflicting state laws. The decision also means that employees have the power to designate beneficiaries without being automatically overruled by state law," said Quentin Riegel, deputy general counsel at the National Assn. of Manufacturers in Washington, D.C.

The case involved David Egelhoff, a now-deceased Boeing Co. employee who designated his wife, Donna, as the beneficiary of his pension and life insurance plan benefits.

After six years of marriage, the Egelhoffs divorced in 1994. Shortly after the divorce, Mr. Egelhoff was killed in an auto accident. He died without a will.

Mr. Egelhoff's children from a prior marriage sued in state court, saying they were entitled to his pension and life insurance benefits. Under Washington state law, the designation of a spouse as a beneficiary of nonprobate assets—which includes pension and life insurance plan benefits—is automatically revoked upon divorce.

Mr. Egelhoff's children argued that, in the absence of a qualified named beneficiary, the proceeds should have passed onto them, as Mr. Egelhoff's statutory heirs under state law.

Earlier, the Washington state Supreme Court had upheld the state statute.

About 20 states have laws similar to the Washington state law and will be affected by the Supreme Court ruling, said Stephen W. Smith, a partner with the law firm of Fulbright & Jaworski L.L.P. in Houston. **B/I**

# Property/casualty insurers' 2000 year-end results

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

	Corporate			Property/casualty operations					
	Net income 2000	Percent increase (decrease) 1999-2000	Consolidated revenues 2000	Combined ratio 2000 <sup>1</sup>	Combined ratio 1999 <sup>1</sup>	Net Premiums written 2000	Percent increase (decrease) 1999-2000	Policyholder surplus 2000	Percent increase (decrease) 1999-2000
CNA Financial Corp.	1,210,000	100.9	15,610,000	114.8	121.2	8,790,000	(3.1)	8,320,000	(4.2)
ACE Ltd.	542,982	48.8	5,266,657	95.5	99.5	4,879,354	95.5	5,420,211	21.8
Old Republic Int'l	297,588	31.2	2,070,658	106.0	112.2	885,091	3.6	1,411,617	5.0
The St. Paul Cos.	993,500	19.1	6,607,600	104.9 <sup>2</sup>	108.1 <sup>2</sup>	5,884,200	15.1	6,321,300	16.0
Travelers P/C Corp.	1,480,000	16.0	11,068,000	102.1 <sup>2</sup>	103.1 <sup>2</sup>	8,843,300 <sup>2</sup>	7.7	6,903,900	11.0
Chubb Corp.	714,600	15.1	7,251,500	100.4	102.8	6,333,200	11.1	3,425,000	4.2
Hartford Financial Services Group Inc.	974,000	13.0	14,703,000	102.4	103.3	6,958,000 <sup>2</sup>	9.5	5,668,000	(17.8)
American International Group	5,636,099	11.5	45,971,556	96.7	96.4	17,526,339	8.0	N/A	N/A
RLI Corp.	28,693	(8.8)	263,496	94.8	91.2	260,853	14.6	309,945	8.3
Cincinnati Financial Corp.	145,466	(43.0)	2,330,994	110.7 <sup>2</sup>	100.4 <sup>2</sup>	1,881,112 <sup>2</sup>	11.9	N/A	N/A
SAFECO Corp.	114,600	(54.6)	7,140,100	111.4	108.4	4,539,700	1.3	2,286,800	(16.1)
American Financial Group	(56,000)	(139.6)	3,786,100	108.0	102.0	2,637,500	16.5	1,762,700	5.9
Ohio Casualty Corp.	(79,249)	(169.4)	1,736,669	119.2 <sup>2</sup>	112.8 <sup>2</sup>	1,505,393 <sup>2</sup>	(5.1)	812,133	(9.7)
Royal & SunAlliance USA	(67,000)	(184.8)	N/A	107.7	106.3	3,023,000	68.9	3,257,000	2.1
Argonaut Insurance Co.	(83,000)	(448.0)	209,900	255.6	180.7	163,900	33.9	501,100	(20.2)
Kemper Insurance Cos.	N/A	N/A	3,365,883	107.8 <sup>2</sup>	110.6 <sup>2</sup>	2,799,067 <sup>2</sup>	15.5	2,070,314	(22.8)
Liberty Mutual Ins. Co. <sup>2</sup>	N/A	N/A	N/A	116.3	116.8	8,676,000	5.5	7,147,000	1.4
Fremont Compensation Insurance Group	N/A	N/A	1,148,039	185.9	128.7	966,079	7.6	215,279	(61.8)
<b>Cumulative</b>	<b>11,852,279</b>	<b>18.9</b>	<b>128,530,152</b>	<b>106.2</b>	<b>106.7</b>	<b>86,552,088</b>	<b>11.4</b>	<b>55,832,299</b>	<b>(3.0)</b>

<sup>1</sup> Dividends<sup>2</sup> Statutory N/A-Company did not provide data  
Source: B/I Survey

# Hours

Continued from page 1

according to the recently published Swiss Re paper on event definition.

The paper states, though, that "scientific progress has made it possible to determine natural events without relying on traditional hours clauses, where the primary focus shifted from the physical phenomenon itself to an artificial measure of time."

Misunderstandings about how to apply the hours clause are not uncommon and, even when properly applied, an hours clause may cut off coverage in the middle of an event, the paper states.

Losses from the recent U.K. floods illustrate some of the challenges of illustrating an occurrence under the hours clause (see related story).

Swiss Re states in its paper that by more clearly defining an event and not using hours clauses to define a loss occurrence, reinsurers and ceding companies will attain a more accurate view of their exposures.

According to the new Swiss Re clause: "An event shall include all insured losses which arise directly from the same cause and which occur during the same period of time and in the same area. Such cause is understood to be the peril which directly occasions the losses or where there are several perils which, in an unbroken chain of causation, have occasioned the losses, the peril which triggered the chain of causation."

Perils identified in the wording as single events include:

- Storms due to an atmospheric disturbance usually so designated by a meteorological institute.
- Hail and/or thunderstorms and/or tornadoes due to a single atmospheric disturbance.
- Earthquakes, tsunamis and volcanic eruptions.
- Floods by one and the same instance of high water, which may have more than one peak and which may occur in one or more bodies of water.
- Conflagration.
- Strikes, riots, civil commotion or violent demonstrations taking place within the boundaries of a single city, town or village.

The new wording still includes an hours clause should it not be possible to determine the number of events under the new clause. The new hours clause states that an event encompasses a "continuous period of time starting with the occurrence of the reinsured's first individual loss" and lasting:

- 24 hours for hail/thunderstorms or tornadoes.
- 72 hours for storms, conflagration and strikes and riots.
- 168 hours for earthquake, tsunami and volcanic eruption.
- 504 hours for flood.

"In the case of differing perils which are not connected to each other by an unbroken chain of causation, the applicable number of hours corresponds to those of the peril which has caused the largest amount of damages," the Swiss Re wording states.

"In the case of more than one event, if it is impossible to allocate any losses, the reinsured shall allocate them to the event whose cause is most likely to have occasioned them," the wording adds.

Swiss Re devised the new wording to "give clarity of what is covered at the beginning of a contract," said John Davis, wordings controller for Swiss Re UK in London.

Today, for example, cyclonic depressions can be tracked much more accurately than in the past and there is no need to use an hours clause to aggregate the losses stemming from one event, he said.

"It will help rating structures to get rid of the hours clause," said Mr. Davis, who pointed out that the derivative market works on the basis of one catastrophe, without using hours clauses.

Although in the planning process for two years, the reinsurer introduced the new wording in the London market only last year, in advance of the 2000/2001 renewal season. It now is promoting acceptance of the clause throughout the world by insurers that purchase reinsurance from Swiss Re, though its use is not being required.

But use of the clause so far has been limited, Mr. Davis admitted.

"As with anything new, it is an education process," he said.

According to Swiss Re's launch material, published late last year, "introducing the new event definition may necessitate certain adjustments to catastrophe covers. Still, the improved adequacy of the policy should outweigh the added initial effort of reassessing the relevant exposure."

Other reinsurers and reinsurance brokers are still examining the Swiss Re wording.

Paris-based reinsurer SCOR S.A. is examining how it uses the hours clause as part of an overall review of catastrophe coverage terms and conditions in the wake of devastating windstorm losses in late 1999 that hit the French market.

"We are looking at the 72 hours definition. We are also looking at the actual definition of what is covered. We have seen it with some of the storms in Europe that what is actually covered is a bit extensive. There should be a tightening of primary insurance cover and the way that primary insurance companies are settling their losses," said Serge Osouf, president and chief operating officer of SCOR.

Munich Reinsurance Co. is "aware of Swiss Re's new wording" but a spokeswoman for the Munich-based

reinsurer noted that wordings and clauses would be adapted to individual clients and for individual perils, rather than applied uniformly throughout the industry. The new clause is "one more tool for reinsurers to be flexible," the spokeswoman said.

"We welcome any new initiative in this area, although we haven't yet seen the new clause used in any reinsurance involving us," said Paul Hertelendy, property/catastrophe underwriter for Zurich Re in Zurich, Switzerland. "As a professional leading reinsurer, we keep this aspect under constant review and have been considering the impact of this new development in the context of our existing wordings."

The need for this is demonstrated by the industry response to the 1999 Lothar and Martin storms and the 1997 floods in Poland and the Czech Republic, he said.

Mr. Hertelendy said he welcomes any clause that "creates more transparency or certainty and enables insurers and reinsurers to have a clear idea of the most-appropriate allocation of claims in relation to natural catastrophes, always bearing

in mind the contractual arrangements."

"The question whether this clause would have a material impact on pricing remains to be answered and is dependent on a number of other factors," he said.

"But I am sure that a clear definition helps to keep disputes or differences of opinion to a lower level, and so reduce any related adjustment and legal costs after an event or a series of events, which is and must be beneficial for both insurers and reinsurers."

Reinsurance broker David Stark, managing director of London-based Guy Carpenter & Co. Ltd., said that acceptance of the Swiss Re wording by insurers has been limited.

"Clients have not really requested the (Swiss Re) clause. They are tending to stay with the traditional hours clauses as they are tried and tested," Mr. Stark said.

The "main problem with the hours clause is that the definition of the event is problematical. The Swiss Re wording does not change the basic requirement that an event needs to be identified," Mr. Stark said, pointing out that most cedents will choose an event definition that "best suits their

portfolio and loss circumstances."

Cedents' view of a change in the hours clause would depend on their own circumstances, agreed Steven K. Bolland, senior vp at Gill & Roeser Inc., a reinsurance broker in New York.

For example, when Hurricane Hugo hit Puerto Rico and the East coast of the United States in 1989, some insurers were saved from blowing through their catastrophe coverages as the storm was determined to be two events under the hours clause, he said.

Other cedents with ample coverage, however, would prefer a similar storm to be labeled one event as then they would only have to finance one retention before claiming from their reinsurers, Mr. Bolland said.

"It's a judgment call," he said, noting that there has been little discussion of Swiss Re's new event clause in the U.S. market.

Copies of the Swiss Re paper "Event Definition: Swiss Re's New Event Clause" can be downloaded free of charge through the publications area of the Web site [www.swis-re.com](http://www.swis-re.com).

## Floods raise defining issue

By CAROLYN ALDRED

LONDON—Recent flood losses in the United Kingdom illustrate some of the problems of defining an event for reinsurance purposes.

Southeastern England was hit by torrential rain last Oct. 11-13 that resulted in widespread flooding in a handful of counties. Two weeks later, additional storms that struck England and Northern Europe caused widespread damage and additional flooding.

Although few insurers expected the first round of flood losses to trigger their reinsurance programs, that could change as flooding becomes more widespread and creates substantial business interruption losses, according to a recent report on the 2000 U.K. flood losses by INSTRAT, the London-based actuarial and catastrophe modeling unit of Guy Carpenter & Co. Ltd.

"An important related issue will be how the hour clause is applied," INSTRAT stated, referring to clauses in most property catastrophe reinsurance programs that define an insured occurrence in terms of a period of time after the initial event. "The most contentious subject will presumably be whether the windstorm on 29/30 October and the flooding later in the week are separate events. If they are, should any flooding on

Monday 30 October form part of the windstorm event or part of the general flooding event?" the report asks.

"A flood event may prove particularly hard to define because flood has many causes, including the varying interplay of atmospheric pressure, storm, rain, tidal forces, drainage and evaporation. The October/November losses occurred over a period of weeks in different parts of the U.K. with some places being flooded more than once," the INSTRAT report stated. "For these, and for any future losses, the application of different hours clauses will continue to vary from one loss circumstance to another."

Altogether, last year's U.K. flood losses—which the Assn. of British Insurers now estimates will cost the insurance industry £750 million pounds (\$1.07 billion)—were the result of three distinct cyclonic depressions, according to John Davis, wordings controller for Swiss Reinsurance Co. U.K. in London. However, he noted, because of the hours clause some cedents will be forced to take six retentions on the losses because of the period of time over which they occurred.

Because of such problems, Swiss Re has proposed a new event definition to replace the hours clause (see related story).

"For those claims which have trig-

gered reinsurance programs, there will be considerable debate on whether it is appropriate to aggregate the losses suffered during October and November 2000," Colin Croly, a partner of London law firm Barlow Lyde & Gilbert, and BLG lawyer Joanne Payne, wrote in a recent article published in one of the law firm's client newsletters.

"Although the severe weather has been classified as two catastrophes by Lloyd's of London's Claims Office, these codes and the periods to which they relate are by no means binding on underwriters or their reinsurers," the lawyers write.

"Whether it is possible to aggregate the October and November losses will depend on the precise wording of the aggregating provisions contained in the applicable contracts and the terms of any hours clause," they state. "Given size of the claims, the length of time over which the severe weather and flooding continued—and still continues in some areas—and the wide geographical area over which damage has been sustained, it does pose difficulties for those wishing to aggregate claims," the lawyers note.

Copies of INSTRAT's report about U.K. flood losses are available by telephoning INSTRAT at 44-207-357-1000.

## WCRI

Continued from page 3

Minnesota, Pennsylvania and Texas were analyzed in the 242-page report. Those eight states represent 40% of the benefits paid in the nation's state-based workers compensation systems.

Reviewing its aggregate results, the report found:

- The average medical cost per claim differs by as much as 100% across the eight states studied.
- Physical or occupational therapists receive 10% of total payments and are involved in 37% of claims with more than seven days of lost time. Meanwhile, chiropractors receive 4% of total payments and are involved in 10% of such claims.
- More than half of the claims with more than seven days of lost time involve a hospital visit or bill.
- Among nonhospital providers,

chiropractors receive the highest average payment per claim.

• Chiropractors provide about two-thirds more services per claim than do physical or occupational therapists.

The data also provide a baseline for tracking changes in medical costs and utilization by provider type, service group and state on five important measures. These measures are medical cost per claim, number of services per claim, number of visits per claim, number of services per visit, and payment per service.

"The interstate comparisons yield performance benchmarks that help identify areas where change in pricing or utilization may be necessary or where there may be concerns about access to care," said Stacey Eccleston, a senior analyst at WCRI who wrote the study.

For example, the report identifies

geographic areas where system costs and utilization levels might be reduced, such as in Texas. There, the average medical cost per claim studied was \$6,345, the highest among the eight states. Policymakers there can use the data to determine which types of providers appear to be driving higher-than-average medical costs.

The report also identifies areas where the underutilization of services might point to restricted access to care, as in Massachusetts. Policymakers there might ask whether workers' relatively low rates of utilization for many services indicate that access to care is limited because the state's fee schedule is among the lowest nationally.

In addition, the report assesses the impact of certain regulations on medical costs and utilization. For example, policymakers in states that set low fees, such as Florida

and Massachusetts, might use the data to determine whether lower fees actually produce lower overall medical costs.

The report uses data from the WCRI's Detailed Benchmark/Evaluation database, which includes information on 4.5 million claims. It is one of the largest and most-representative workers comp databases that have ever been developed, according to the WCRI.

Also contributing to the report were Dongchun Wang, Michael Watson and Xiaoping Zhao.

Copies of the report are available from the Workers Compensation Research Institute. The cost per copy is \$95 for WCRI members, government agencies and nonprofit organizations and \$495 for nonmembers. To order, contact the WCRI by telephone at 617-661-9274, or by e-mail at [jlawson@wcrinet.org](mailto:jlawson@wcrinet.org).

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# ...and they litigated happily ever after

Once upon a time, in a land not too far away, it was all right to watch a television show, see a movie or read a book without analyzing it for hidden meaning, misinformation and bad advice.

Then the lawyers, politically correct thinkers and hordes of people who toil in "the public interest" lifted the scales from our eyes and showed us that what we had thought was a pleasant diversion was really causing harm—harm that surely deserved millions of dollars in damages.

In the latest example of this search for ulterior messages, critics have charged that the Teletubbies—those colorful, happy, rotund television creatures—are really sending toddlers a message that it's OK to be fat, jolly and purple.

While the creators of the Teletubbies rebutted the criticism, they now are launching a toddler fitness video—Teletubbies Go!—which some cynics regard as an admission of culpability.

I have not seen this video, but I assume it covers the standard toddler exercise regimen of rolling on the floor, kicking wildly when a new diaper is being applied, chasing the cat on hands and knees, and the Cheerio toss. This is an important development, because when we park our kids in front of the TV for hours at a time, we want to be sure they are learning—and that they are getting a cardiovascular workout.

I think it's high time that the creators of children's fictional characters—be they on television, movie screens or in books—took greater responsibility for the messages they send. Old Aesop knew a thing or two about sending the right message, but stories have slipped a bit since his time. If children's publishers and entertainment companies don't shape up...well, we all know the timeless tale of "Timmy the Trial Attorney."

You probably haven't stopped to consider the subversive and harmful messages in many classic children's tales, or else you'd be on CNN expressing your outrage to Larry King, or at the courthouse filing a writ. These tales are not only injurious to little minds but they also ultimately increase all our insurance costs!

Consider the following, and you'll see what I mean:

● **Goldilocks and the Three Bears.** This story has probably started more children on criminal careers of breaking and entering than any other. The protagonist slips into the bears' home uninvited and proceeds to consume and criticize their food, break their chairs and rumple their bedclothes. And we are supposed to sympathize with her when the bears come home and angrily demand an explanation? Does she even apologize? No, she runs off and gets away scot-free to pull a B&E on some other unsuspecting woodland creature.

Insurance may cover the bears' losses, but they are bound to pay higher premiums at renewal. And doesn't that end up raising costs for everyone?

● **The Cat in the Hat.** Harmless Dr. Seuss fantasy about a friendly talking cat? I think not. This is a story that tells kids it's OK to let strangers in the house to wreak havoc and threaten the goldfish. Before you know it, we'll have brainwashed our kids into being tomorrow's security risk.

● **Green Eggs and Ham.** Another subversive title from the nefarious Dr. Seuss. This book makes it seem as though eating rancid or genetically engineered breakfast foods is fun. In a time of mad cow and foot-and-mouth disease, shouldn't we be sending a different message?

● **Pat the Bunny.** Sure kids, pat the bunny and watch it bite you. I hope it's not rabid. This book makes animals seem friendly, warm and fuzzy, but it's just leading our kids to stick their hands in the lion's cage. Stop the madness, before our homeowners insurance rates go through the roof as companies defend lawsuits for hamster bites, cat scratches and guppy nips.

● **Rumpelstiltskin.** This wayward tale teaches children that hard work is to be avoided, that agreements should be broken and that the only way to succeed is through treachery. If the miller's daughter didn't want to spin straw into gold day after day, she shouldn't have signed on the dotted line. Poor Rumpelstiltskin was simply trying to do was enforce a valid contract, and look where it got him.

● **Cinderella, Sleeping Beauty and Hansel and Gretel.** With our country's divorce rate, dads at least ought to stop perpetuating the myth of the wicked (homicidal) stepmother and wimpy, absent father figure. Each of these tales has as its antagonist an abusive, irrational mother figure. Doesn't anyone wonder how Dad could have failed to recognize that his new bride was so evil? Clearly, the Brothers Grimm had some hangups, but that's no excuse to pass them on to our children.

● **The Three Little Pigs.** This tale teaches kids that it's OK to do a shoddy job, because your brother will bail you out and rescue you in the end. While some kids will emulate the bricklaying pig, others will see that construction with sticks and straw allows more time for play and, in the end, doesn't matter anyhow. This sends a message that property loss control is unimportant, which we know to be a dangerous attitude indeed.

I long for the days when television shows, movies and books were not seditious, incendiary and irresponsible and instead were simply entertaining, but my attorney tells me I'm living in a fairy tale.

Editor Paul D. Winston's commentary appears fortnightly and on [www.businessinsurance.com](http://www.businessinsurance.com). He can be reached at [pwinston@crain.com](mailto:pwinston@crain.com).

## Arbitrate

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have expansive authority over economic matters until the New Deal legislation of the 1930s. Circuit City appealed to the Supreme Court.

On March 21, the high court upheld Circuit City's position by ruling 5-to-4 that the exemption should be narrowly read. Writing for the majority, Associate Justice Anthony Kennedy wrote that subjecting employment disputes to arbitration had real benefits, not

**'The decision requires all employers to evaluate whether arbitration is right for them,' says attorney David E. Block of Jackson Lewis.**

the least of which was avoiding litigation costs. The 9th Circuit's broad interpretation would "call into doubt" alternative dispute resolution mechanisms upon which employers increasingly rely to settle disputes, he wrote. To adopt the position taken by Mr. Adams' attorneys would undermine the Federal Arbitration Act's pro-arbitration purpose and would end up "breeding litigation from a statute that seeks to avoid it," he wrote.

But Associate Justice John Paul Stevens, writing for the dissenters, held that the majority wrongly ignored the historical background of the Federal Arbitration Act in upholding the narrow reading of the exemption clause. He noted that organized labor had opposed the act because of fears it would be used to uphold unfair labor practices.

While the result was as employers had wished, some employment law experts caution that arbitration is not always the best solution.

"The decision requires all employers to evaluate whether arbitration is right for them," said David E. Block, managing partner in the Miami office of Jackson Lewis, a firm that specializes in workplace law. Mr. Block authored an amicus brief filed with the Supreme Court on behalf of the Society of Human Resource Management in support of Circuit City.

"On the plus side, historically, disputes are resolved more quickly and efficiently through arbitration. The cost of arbitration is generally less. Arbitrators are expert decision-makers bringing specific knowledge and experience to the table as opposed to a lay juror," Mr.

Block said.

"Notwithstanding these benefits, many employers have shied away from arbitration for a variety of reasons, including fear of a proliferation of employee disputes because of the ease through which they can simply arbitrate a case. Another reason employers are reticent is the difficulty of overturning an arbitrator's decision—they are virtually unappealable," he said. "There's a tendency among arbitrators to split the baby regarding job disputes, making both sides mutually unhappy. There's also a propensity for arbitrators to admit evidence that would normally be excluded in court proceedings," Mr. Block added.

"Overall, I think employers can read it as a positive decision, but the pros and cons in terms of its impact depends on an employer and its corporate culture," said Gerald L. Maatman Jr., senior partner and chair of global employment law practice at the Chicago law firm of Baker & McKenzie.

"One size does not fit all when one talks about a workplace arbitration agreement," he said. "If you adopt a workplace arbitration agreement, there will be a tradeoff in terms of cases that are won and lost in the arbitration setting. My own view is that more-serious cases can be handled and settled cheaper in the arbitration setting but, conversely, less-than-meritorious cases tend to be kicked out of the court system," he said.

"The Supreme Court has continued its trend of affirming arbitration agreements and arbitration clauses in employment agreements, also including the fact that an employment application is tantamount to an employment agreement," said J.D. Thorne, senior partner of the Employment Law Managers law firm in Milwaukee.

Mr. Thorne said he is "really reluctant" to have clients follow a "blanket rule" that arbitration is always best. "There are times I would prefer the plaintiff to use the court system because it is costlier. There are also rules in the court that are much more protective than in arbitration," he said.

"By making it easier for the company to get arbitration, you also make it easier for the plaintiff who wants to file an action against you," he said. But Mr. Thorne added that, if Mr. Adams had won, "we would have seen more attorneys' fees and more attorneys' costs that probably would have benefited the plaintiffs' bar more than the defense bar."

Because other circuits had already followed the high court's interpretation, the impact of the decision will be limited, a California lawyer pointed out.

"For employers in the 9th Circuit, it's a significant victory. It's not going to change the law significantly in other circuits," said Brian Ashe, a partner in the

See Arbitrate on next page

## Chamber

Continued from page 3

So the Chamber has no grounds to complain. Really, their goal is to intimidate and harass these lawyers so they won't work with the states in the future on similar mass torts," she said.

But that is precisely what worries tort reform advocates—that the precedent set in the tobacco settlement will be extended to other state-orchestrated mass torts.

"I think it's going to be a problem in the future. The temptation is just too great for this dance not to continue," said Victor E. Schwartz, general counsel to the American Tort Reform Assn. in Washington and a senior partner in the law firm of Crowell & Moring L.L.P.

"The key, if you look back on the history of the tobacco litigation, is that you broke new ground," said Sherman Joyce, president of ATRA.

"The underlying basis of the lawsuit was injury to individuals, but how much money went to the people who were injured or killed? The answer is none. The money went to third parties—in this case, states," Mr. Joyce said. "That's kind of turning the law on its head."

"It should be an issue of great concern. Any effort that will shed further light on it will be very productive, and certainly worthwhile," he said.

Glenn Lammi, chief counsel-legal studies division of the Washington Legal Foundation, said: "We're deeply troubled when these sort of arrangements arise—public officials and profit-motivated private lawyers. You sort of have to wonder, whose interests do they have at heart? Is it making attorneys fees or doing justice for the public?"

Quentin Riegel, deputy general counsel for the National Assn. of Manufacturers in Washington, said that any time a government hires outside trial lawyers, two questions arise. One, he said, is the size of fees involved, which the Chamber has criticized in its report on the tobacco settlement. The other is the propriety of using third parties to do what government itself has traditionally done, which is "representing itself in court," he said.

"They're not jumping to disclose the fees the to-

bacco industry paid to defend these cases," said David Vladeck, a staff attorney with Public Citizen, a Washington-based group founded by consumer advocate Ralph Nader.

Mr. Vladeck said he believes there "should be a public debate" over whether states got their money's worth, but he questioned whether the use of state freedom-of-information acts was the right way to go about doing so. Such acts don't deal with attorney/client privilege, he said. "I don't think time records, attorney files or billing information should be made public," because such matters have traditionally fallen under the protection of attorney/client privilege, he said.

"I am unhappy to see open government laws used in a way that may have untoward consequences over the long term," Mr. Vladeck said. Aggregate state expenses connected with the tobacco settlement, however, should be made public, he said.

Mr. Schwartz said that a mechanism for assuring greater accountability already exists in some states.

"I don't think there's a need for federal intervention. I think there is a need for the states to act—and three have," he said.

Kansas, North Dakota and Texas have already enacted versions of the Private Attorney Retention Sunshine Act, which has been promoted by ATRA and the American Legislative Exchange Council, a group of about 3,000 state lawmakers. Sunshine acts address the problem because they require attorneys general to hire outside counsel with a system of open bidding, he said. "Naturally, attorneys general who want to keep this cozy dance going want to oppose" such laws, he said.

The Washington Legal Foundation's Mr. Lammi also praised the state sunshine laws, saying that while the federal government has an oversight role, a direct legislative role could cause problems because of federalism. But Congress "certainly has a role to play to sort of shine a spotlight on these sort of things, and I hope they do that."

The 21 states for which the Chamber seeks information are: Alabama, Florida, Hawaii, Illinois, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Montana, New Jersey, New York, Ohio, Oklahoma, South Carolina, Texas, Utah, Vermont and West Virginia.

## Arbitrate

Continued from previous page  
San Francisco office of Chicago-based law firm Seyfarth Shaw.

"So for us, it's very good news," said Mr. Ashe, who represents management. But he added that the good news is "tempered" by the fact that the 9th Circuit has already ruled that arbitration cannot be used to settle cases brought under the 1991 amendments to the Title VII of the Civil Rights Act. The Supreme Court has not taken any cases dealing with that decision.

Two attorneys with organizations that supported Mr. Adams' position expressed disappointment but not overwhelming dismay at the decision.

"In terms of the arguments that have had any success in terms of employees trying to avoid arbitra-

tion, none of those arguments has been taken away by this decision," said Paul Bland, a staff attorney with Trial Lawyers for Public Justice in Washington.

"For example, if an arbitration system is too expensive, then there are many courts that have refused to enforce an arbitration clause and none of those cases would in any way be affected by the decision. On the other hand, if the court had gone the other way and found that the FAA does not apply in employment settings, then states would have been free to adopt new laws limiting arbitration in those settings. Things aren't any worse than they were before the decision, but they're not going to get any better," said Mr. Bland.

It's disappointing but it's no surprise," said Tom Osborne, staff attorney with AARP Foundation Litigation.

## Stress

Continued from page 1  
he asked rhetorically.

Stress intensifies when the economy sours because employees fear they may lose their jobs, said Gene Morrissy, a Chicago-based management psychologist at RHR International Co., a management consulting firm in Wood Dale, Ill., that specializes in psychological assessment.

"Companies have to be very mindful," Mr. Morrissy said. "Very few companies take it on as their responsibility and won't own up to their part in generating stress and instead will push it off to the (employee's) family."

Indeed, many top executives label stress a health-related issue and delegate it to their human resources departments, said Lyle H. Miller, chief consultant and chairman of Lincoln, Mass.-based Stress Directions Inc., a firm that has developed a tool for assessing the impact of stress on organizations.

But identifying and managing stress can be a form of organizational risk management, Mr. Miller said. "We're asking, 'What is the exposure here, and what does it cost us to deal with this exposure?'" he said.

Furthermore, "stress is a cross-silo phenomenon. It's not isolated to one area, such as human resources or workers compensation," Mr. Miller said.

To help employers identify and quantify the effects of stress on their organizations, Stress Directions developed a 264-question survey called the Stress Navigator, that can be accessed via the Internet or stored on a corporate intranet. Using a scale that ranges from one to five, with five being the highest level, each employee rates his or her degree of stress over the prior six months and predicts anticipated stress levels over the next six months. The questionnaire focuses on three areas: susceptibility to stress, sources of stress and symptoms of stress.

The results are compiled into an "organization stress profile" that employers can use to target their stress management programs.

"For example, you can run an organization stress profile by ZIP code, and you might find that stress is highest among people who live 25 miles or more from work," he said.

For companies with multiple locations, the Stress Navigator can identify root causes by location, said Carolyn Krusinski, co-founder and chief executive officer of Stress Directions. "This helps the employer place the emphasis where it is most needed," Ms. Krusinski said.

By inputting such information as health care costs, workers comp costs, lost time accidents, turnover

rates, etc., employers also can "run a statistical analysis and come up with a model that documents very closely how much stress is costing them," Mr. Miller said.

BellSouth's top management decided to use the Stress Navigator on its employees after Mr. Miller demonstrated the effects of stress using a biofeedback device at an executive retreat in the mid-1980s. While connected to the device, which measures physiological responses to stress, the executives were told to visualize various stressful scenarios. Many were surprised

**'As people become more stressed out in some organizations, they will sabotage productivity,' says Gene Morrissy.**

to see how their bodies responded.

Soon after the demonstration, BellSouth made the questionnaire available to frequent users of health benefits. Employees received personal stress reports, while the company received the group data identifying companywide trends.

BellSouth used the findings to make changes that reduced employee stress levels.

For example, the organization stress profile showed that many night-shift workers were feeling stressed because they were not home to prepare their children for school each morning.

"So split shifts were created to help the mothers go home and get their kids off to school," Mr. Finch said.

The analysis also showed that 85% of parents found disciplining their children to be highly stressful. This was significant because a major health benefit cost was adolescent inpatient psychiatric treatment.

In response, the company implemented parenting workshops, which employees attended on their own time, and it began monitoring the psychiatric facilities most used by employee families. The result was a measurable drop in adolescent hospitalizations, which had accounted for a significant portion of psychiatric benefit costs.

Mr. Miller said that employers often don't realize how much stress costs them, both directly and indirectly.

According to the U.S. Bureau of Labor Statistics, stress costs employers an estimated \$10,000 per worker per year. The National Institute for Occupational Safety & Health estimates that 40% of the U.S. workforce is affected by stress,

"All the circuit courts but the 9th Circuit said what the Supreme Court said yesterday. I guess there was some doubt before yesterday but now it's OK for employers to go full-speed ahead on these so-called agreements. I say so-called because you accept the employer's imposition of this or you take a walk," he said. AARP Foundation Litigation had filed a brief with the high court supporting Mr. Adams.

He said the decision could have a disproportionately negative impact on older workers.

"We jumped in because particularly in times like we're going through right now, the older workers are generally the first workers to get bounced in a layoff," he said.

*Circuit City Stores Inc. vs. Saint Clair Adams, U.S. Supreme Court. No. 99-1379, Decided March 21, 2001.*

making it the No. 1 cause of worker disability.

Stress is a major contributor to psychiatric short-term disability claims, said Dr. Ronald F. Leopold, the national medical director for MetLife Disability in Atlanta.

"Many of our anxiety and depression and substance abuse claimants are off work because the workplace is too stressful," he said. He added that certain industries, such as telecommunications, have higher incidences of psychiatric STD claims.

According to Dr. Leopold, psychiatric illness accounted for between 7.5% and 8% of all short-term disability claims submissions during 2000 at MetLife Disability, the nation's second-largest group disability insurer, with 1.5 million covered lives.

The benefits paid to these STD claimants totaled \$35 million in 2000, Dr. Leopold said. The median duration of the claims was 38 days.

The benefits paid do not include premiums for STD coverage or the cost of any medical treatment or pharmaceuticals claimants required in connection with their conditions, he pointed out.

Psychiatric STD claims also can result in other physical maladies that are treated separately under health plans, Dr. Leopold said.

When these additional medical costs, as well as lost productivity and absenteeism, are added to the equation, employers spend anywhere from \$1 to \$1.50 in indirect costs for every \$1 spent on disability payments, Dr. Leopold estimates. So that \$35 million figure is less than half of the true cost of psychiatric short-term disabilities, he said.

Stress affects employees physically, emotionally and cognitively, RHR's Mr. Morrissy said. "Stress reactions tend to constrict blood vessels, and that can lead to higher blood pressure," he said.

Sometimes stress can cause musculoskeletal problems. For example, BellSouth's organization stress profile showed that many employees' symptoms developed in the musculoskeletal system rather than in the heart or stomach, Mr. Finch said. Stress can cause behavioral as well as physical problems. For example, some employees may appear irritated and aggressive, while others will become passive and lethargic, or turn to drugs or alcohol for relief.

Lastly, stress affects employees' cognitive skills, Mr. Morrissy said. "As people become more stressed out in some organizations, they will sabotage productivity," he said. He cited an example in which an assembly line worker stopped the line just so he could take a break.

That's why, Mr. Morrissy said, "it's a lot easier and cheaper to do preventive work."

## UPDATES

### Moody's forecasts Lloyd's losses

LONDON—Lloyd's of London will make losses for the four years to 2001 totaling about £3.5 billion (\$5.23 billion), according to forecasts issued last week by Moody's Investors Service Ltd.

Under Lloyd's three-year accounting system, the next results due to be published are for 1998. Moody's forecast of a loss for that year remains unchanged from earlier predictions at around £1.1 billion (\$1.64 billion). The rating agency said its loss forecast for 1999, however, is now around £1.5 billion (\$2.24 billion), worse than previously expected and representing the bottom of the current down cycle.

Moody's predicted Lloyd's 2000 loss will be about £715 million (\$1.07 billion), and the 2001 loss will be around £165 million (\$246.4 million).

"Our continued pessimism over Lloyd's performance prospects for the current open years of account reflects the severity of the latest down cycle, which has not only affected Lloyd's but also insurance and reinsurance companies worldwide," said Mark Hewlett, managing director of Moody's European insurance division.

He added that Moody's forecast of a "sizable" loss for 2000, despite an absence of significant catastrophes and a general improvement in rates, "is indicative of just how deep the trough has been."

Moody's said the results of Lloyd's syndicates will vary widely, though it forecasts losses in 1998, 1999 and 2000 in each of the main Lloyd's sectors, which include marine, non-marine, motor and aviation.

### Lloyd's may lose sole captive

LONDON—Pharmaceutical giant GlaxoSmithKline P.L.C. could withdraw its captive subsidiary from Lloyd's of London as part of an overall review of its captive arrangements.

The GlaxoSmithKline captive at Lloyd's, set up by SmithKline Beecham P.L.C. in December 1998, is the first, and so far only, captive syndicate at Lloyd's.

Glaxo Wellcome and SmithKlineBeecham, which merged on Dec. 27, 2000, have captive operations in Bermuda, Guernsey and at Lloyd's.

A spokesman for GlaxoSmithKline confirmed comments made in the U.K. press by Richard Reddaway, vp for corporate risks and risk management, that the company is reviewing its captive insurance arrangements. Mr. Reddaway was not available for comment Friday.

The Lloyd's captive syndicate is managed by Wellington Underwriting Agencies Ltd., which took over its management in December 2000 after former manager PXRE Managing Agency withdrew from Lloyd's. The syndicate's capacity was reduced to £16 million (\$23.9 million) for 2001 from £25 million (\$40.4 million) last year.

Wellington representatives were not available for comment Friday.

A Lloyd's spokesman late last week said that Lloyd's had not been informed by GlaxoSmithKline of any intention to leave the market or close the captive syndicate. As far as Lloyd's is aware, he said, the captive is still writing business. He added that Lloyd's is still able to accept new captives: "We are still open for business."

### Unicover ratings fallout ending

NEW YORK—U.S. insurers that participated in the ill-fated Unicover Managers Inc. workers compensation pool may have weathered the worst of the pool's losses and probably will not face further rating actions stemming from the pool's 1999 collapse, according to Moody's Investors Service Inc.

Insurers and reinsurers with Unicover exposures may still face charges against earnings as arbitrations of coverage issues move forward and as legal costs mount, the rating agency noted. Moody's does not expect the losses to affect ratings, though.

Since December 1999, "we've seen a substantial amount of activity, including settlements and earnings charges," said William Wilt, a Moody's vp. "Most of the impacted companies have also taken concrete actions to improve their risk management practices."

Unicover's primary participants have taken charges totaling more than \$1.1 billion to date for the pool's workers comp losses, with most of the charges announced in early 2000, the New York-based rating agency said.

Unicover participants included Reliance Insurance Co., Lincoln National Corp., Sun Life Assurance Co. of Canada and Phoenix Home Life Mutual Insurance Co.

### Briefly noted

**John Charman, ACE Ltd.'s senior London market executive, left ACE Ltd. last week after a disagreement with Brian Duperreault, chairman and chief executive officer of the Hamilton, Bermuda-based insurer. An ACE spokeswoman would not comment on why Mr. Charman left or indicate whether he resigned or was dismissed. Mr. Charman joined ACE in 1998, and was promoted last month to president and CEO of ACE International Group, which comprises ACE Europe, ACE Far East, ACE Asia Pacific, ACE Latin America and the Lloyd's unit ACE Global Markets. Each of these units will now report directly to Mr. Duperreault... President George W. Bush said he intends to nominate Ann Combs, vp and chief counsel at the American Council of Life Insurers, to be the assistant secretary at the Department of Labor for its Office of Pension and Welfare Benefits Administration. The nomination requires Senate confirmation... Christopher E. Mandel has been nominated as first vp of the Risk & Insurance Management Society Inc., a traditional steppingstone to the RIMS' presidency. Mr. Mandel, who became assistant vp-enterprise risk management at USAA Group in San Antonio this week, is former director-global risk management at Tricon Global Restaurants Inc. in Louisville, Ky. If elected as first vp, he would be in line to head the society in 2002. David Mair, risk manager of the U.S. Olympic Committee in Colorado Springs, Colo., will take over the RIMS presidency at this year's annual conference in Atlanta. Mr. Mair will succeed Roger Andrews, general counsel and director of risk management at E.D. Bullard Co. in Cynthia, Ky.**

# FOR THE RECORD

Excerpts from BI's Daily Online Updates, March 19 - 23, 2001

**▶ DEBT EXCHANGE LAUNCHED** The Debt Exchange, an online marketplace where the reinsurance industry can resolve or trade its estimated \$50 billion of bad debts, was launched this week by city3k, a London-based e-commerce company. The exchange, located at [www.city3k.com](http://www.city3k.com), already has almost 100 debts available and expects the number to run into the thousands, according to a company statement. Companies placing uncollected debts include Equitas Holdings Ltd., the runoff reinsurer of Lloyd's of London's pre-1993 long-tail liabilities; NRG, a major Dutch reinsurer now in runoff; and KWELM Management Services, which manages the \$8 billion of liabilities of the five insolvent KWELM companies that were subsidiaries of the failed London United Investments P.L.C. Robin Merttens, chief operating officer of city3k, said it is impossible to state the precise size if the reinsurance debt market, but he cited a recent Swiss Reinsurance Co. report estimating that, currently, liabilities in runoff total about \$184 billion. Research by city3k shows that about \$50 billion of that total is "problematic," Mr. Merttens said. city3k was launched last year as a reinsurance e-commerce venture by Brit Insurance Holdings P.L.C. Its shareholders include the professional services firm KPMG L.L.P.

**▶ AMTRAK CRASH PROBED** Investigations continue into the derailment of a National Railroad Passenger Corp. train en route from Chicago to Emeryville, Calif., on March 17 near Nodaway, Iowa.



The accident caused one death and 96 injuries, according to a statement by the Washington-based railroad. The Amtrak train was carrying 195 passengers and 15 crew members; it was made up of two locomotives and 15 cars, all of which derailed.

PHOTO: AP/WIDE WORLD

One person died and 96 were injured in the March 17 derailment of an Amtrak train.

Officials from Amtrak were unable to provide insurance information. Amtrak does have liability coverage, though, through a Bermuda-based captive, Passenger Rail Insurance Ltd.

**▶ TEXACO CAPTIVE SEEKING MANAGER** Texaco Inc.'s massive captive, Heddington Insurance Ltd., will soon be managed by an outside captive manager after operating as a self-managed captive for more than 20 years. Texaco recently decided it would cost less to appoint a captive manager than to continue managing the Hamilton, Bermuda-based captive itself, said Tom Dougherty, general manager of risk management at Texaco in Houston and chief executive officer of Heddington. The oil giant is negotiating a management agreement with Marsh Management Services (Bermuda) Ltd., he said. About 10 of Heddington's staff of 20 will likely be taken on by Marsh or be appointed to other positions within Texaco, Mr. Dougherty said. Heddington will continue to front Texaco's principal property/casualty and specialty insurance programs, he said. According to A.M. Best Co., the captive had \$485.5 million in capital and surplus at year-end 1999. It reported gross written premiums of \$53.7 million, and it ceded \$26 million in reinsurance premiums.

**▶ ALTERNATIVE CARE SETTLEMENT** Subscribers of Regence BlueShield in Washington state who paid for visits to alternative care providers are eligible for their share of the \$30.4 million settlement of two class-action lawsuits. The settlement was submitted for court approval last week. According to a plaintiffs' attorney statement, Regence subscribers who were told that they had no coverage for alternative care will now be able to obtain reimbursement for care that should have been covered under state law. Regence BlueShield, a Seattle-based affiliate of The Regence Group and the largest health insurer in Washington, will pay for services from chiropractors, massage therapists, naturopaths, acupuncturists and nutritionists. The lawsuits cover more than 1 million people insured with Regence BlueShield between Jan. 1, 1996, and Feb. 29, 2000. Plan subscribers have 120 days to submit claims, according to a Regence statement. Insurance coverage information was not available.

**▶ BUSH ADDRESSES PATIENTS' RIGHTS** President George W. Bush told a medical conference last



PHOTO: AP/WIDE WORLD

### President Bush

plans that illegally deny coverage under certain circumstances, he does not support unlimited legal liability. "I want to sign a patients' bill of rights, but I will not sign a bad one. And I cannot sign any one that is now before the Congress," said the president in a clear reference to a measure that was recently unveiled by Sens. John McCain, R-Ariz.; Edward Kennedy, D-Mass.; and John Edwards, D-N.C. "I will insist that any federal bill have reasonable caps on damage awards," President Bush said, adding that the caps proposed in the McCain-Kennedy bill are too high.

**▶ STATES SUE R.J. REYNOLDS** Attorneys general in five states are charging in lawsuits filed against R.J. Reynolds Tobacco Co. that the cigarette maker is violating the terms of the 1998 national tobacco settlement that prohibits smoking ads



aimed at children. Under the master settlement agreement reached with U.S. attorneys general, tobacco companies agreed not to target young people with advertising. The lawsuits, filed by attorneys general in Arizona, California, New York, Ohio and Washington, charge that Reynolds' spending on advertising in youth-oriented publications increased after the agreement was reached. California Attorney General Bill Lockyer has filed two suits in San Diego Superior Court, charging that Reynolds exposed children to tobacco ads in

Wednesday that while he would like to sign a patients' bill of rights, he could not sign into law any proposed legislation now pending in Congress. As he addressed the annual meeting of the American College of Cardiology in Orlando, Fla., the president also reiterated that while he would support a limited right for participants to sue health care

magazines such as Rolling Stone, Sports Illustrated, People and Spin. The state attorney general seeks to end such advertising and to stop some of Reynolds' outdoor advertising at professional automobile racing events that the company sponsors. Andrew Schindler, Reynolds' chairman and chief executive officer, said in a statement that the Winston-Salem, N.C.-based company is complying with the agreement and its advertising is targeted to adult smokers. If the lawsuits succeed, he said, they "would not resolve smoking issues but would severely and unnecessarily restrict legitimate competition for adult smokers."

**▶ BRIEFLY NOTED** Frontier Insurance Group Inc. last week laid off 67 people at its Rock Hill, N.Y., headquarters. The cut in its workforce follows Frontier's announcement last week that its primary operating subsidiary, Frontier Insurance Co., would cease writing business. Frontier still employs 550, but "staffing levels will continue to be evaluated," Harry W. Rhulen, president and chief executive officer, said in a statement. ... Insurance Services Office Inc. has purchased a majority stake in NetMap Analytics L.L.C. for an undisclosed amount. NetMap provides software for ISO's NetMap claims information system. ... Wisconsin insurance regulators have approved United Wisconsin Services Inc.'s proposed merger with Milwaukee-based affiliate Blue Cross & Blue Shield United of Wisconsin. Under the deal, expected to close at the end of March, the Wisconsin Blues will become a stock company unit of United Wisconsin Services and will operate as Cobalt Corp. ... Rating agency Fitch has affirmed its AAA insurer financial strength rating of ACE Guaranty Re Inc. ACE Guaranty Re, a unit of Bermuda-based ACE Ltd., reinsures, among other things, municipal bonds and asset-backed securities. Fitch noted that the reinsurer has a net par exposure of \$139 million to troubled California utilities Southern California Edison and Pacific Gas & Electric Co. but cited ACE Guaranty Re's strong capital base. **BI**

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

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## BI Industry Stock Report MARCH 19, 2001, THROUGH MARCH 23, 2001

### BROKERS

	Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)	
Aon Corp.	NYS	33.97	-2.02	-0.82	42.31	20.94	3973
Brown & Brown	NYS	32.96	-8.38	-5.83	39.92	15.90	179
Clark Bards Holdings	NDO	9.13	-3.95	-9.88	17.88	8.50	71
E.W. Blanch Holdings Inc.	NYS	8.78	-5.08	-49.65	56.94	7.70	385
Gallagher Arthur J. & Co.	NYS	27.21	0.04	-14.47	34.25	11.53	1287
Hibb, Rogal & Hamilton	NYS	34.81	0.90	-12.70	42.13	26.56	226
Kaye Group Inc.	NDO	12.81	-1.44	65.32	13.00	5.00	42
Marsh & McLennan	NYS	90.18	-5.42	-22.92	135.69	70.50	7198
<b>BROKERS AVERAGE</b>			<b>-2.20</b>	<b>-6.88</b>			

### INSURERS/REINSURERS

ACE Ltd.	NYS	33.30	-11.22	-21.53	43.94	14.06	9243
Accel International Corp.	NDO	0.17	-5.56	-42.74	1.00	0.10	12
Acceptance Insurance Cos.	NYS	3.95	-8.14	-24.76	6.94	3.75	399
AEGON N.V.	NYS	28.16	-4.22	-32.04	43.00	25.92	874
AFLAC Inc.	NYS	25.55	-5.19	-29.21	37.47	16.78	15246
Allmerica Financial Corp.	NYS	48.22	-3.37	-33.49	74.25	35.06	1761
Allstate Corp.	NYS	39.21	-1.48	-9.96	44.75	17.19	12805
Ambac Financial Group	NYS	57.60	-3.60	-1.22	61.86	25.91	4171
American Financial Group	NYS	23.00	1.91	-13.41	29.00	18.69	1262
American General	NYS	35.78	-7.09	-12.20	41.72	22.81	20671
American Intl Group	NYS	75.45	-3.27	-23.45	103.75	52.38	31185
American Safety Insurance	NYS	8.65	8.13	41.22	8.65	3.25	28
Argonaut Group	NDO	15.94	2.41	-24.11	21.25	13.50	389
AXA-LIAP Group	NYS	51.82	-7.22	-27.84	81.50	51.82	1390
Baldwin & Lyons Inc.	NDO	21.44	0.88	-7.80	28.75	15.25	30
Berkley W.R. Corp.	NDO	46.25	1.09	-1.99	48.75	14.00	962
Berkshire Hathaway Inc.	NYS	66000.00	1.54	-7.04	74600.00	49600.00	2
Capitol Transamerica Corp.	NAS	13.44	-3.59	8.04	14.44	10.00	38
Chubb Corp.	NYS	66.50	-2.81	-23.12	90.25	43.25	5105
CIGNA Corp.	NYS	103.01	-3.53	-22.14	136.75	60.75	5282
Cincinnati Financial Corp.	NYS	36.00	-0.95	-9.00	43.31	26.19	1658
Citigroup	NYS	42.85	-5.82	-18.08	59.13	35.81	100899
CNA Financial Corp.	NYS	33.80	-5.85	-12.77	41.94	24.56	812
CNA Surety	NYS	13.11	0.77	-8.00	14.94	10.38	92
EMC Insurance Group Inc.	NDO	11.50	2.22	-2.13	13.13	6.81	25
ESS Re Limited	NDO	2.59	3.75	40.68	5.50	1.72	90
Enhance Financial Services	NYS	13.45	0.00	-12.87	17.00	8.63	0
Everest Reinsurance	NYS	61.32	-3.71	-14.39	74.75	23.63	1464
Fremont General Corp.	NYS	3.16	-11.73	12.36	7.56	1.50	1345
Gainsco Inc.	NYS	2.08	1.46	-20.76	6.38	1.40	66
Harleysville Group	NDO	23.50	-2.08	-19.66	30.63	12.00	252

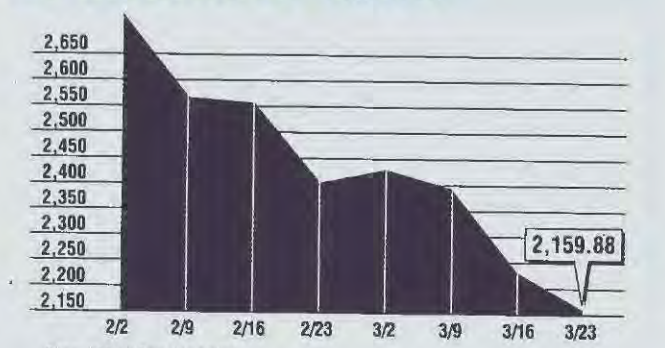
	Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)	
HSB Group Inc.	NYS	38.75	0.00	0.00	40.63	21.50	0
HCC Insurance Holdings	NYS	24.70	0.81	-8.31	27.19	10.94	1977
ING Group N.V.	NYS	59.95	-1.91	-25.18	83.94	46.81	1102
IPC Holdings Ltd.	NDO	20.06	-1.83	-4.46	24.50	11.25	106
Hartford Financial Services	NYS	57.00	-6.82	-19.29	80.00	29.38	7862
John Hancock Financial Services	NYS	35.36	-1.42	-6.02	38.25	13.44	5278
LaSalle Re Holdings Ltd.	NYS	18.88	0.00	0.00	19.38	10.88	0
Lincoln National	NYS	39.85	-9.57	-15.56	56.38	22.63	7136
MAIC Holdings Inc.	NYS	12.95	-2.56	-22.40	21.13	10.00	77
Market Corp.	NYS	184.50	-1.38	1.93	190.00	111.50	294
MBA Insurance Group	NYS	75.85	-1.88	2.33	81.10	36.50	2853
Meadowbrook Insur. Group	NYS	3.42	-7.57	-57.91	8.38	3.42	50
MetLife	NYS	27.50	-3.17	-21.43	36.63	14.25	11483
Mutual Risk Mgmt. Ltd.	NYS	6.85	-1.44	-54.90	23.75	6.02	1708
Navigators Group	NDO	13.75	0.00	3.29	14.38	8.63	#N/A
NYMagic Inc.	NYS	18.20	-2.10	-3.58	19.25	12.25	12
Ohio Casualty Corp.	NDO	8.94	2.14	-10.63	17.88	6.13	559
Old Republic Int'l	NYS	27.01	-0.99	-15.59	32.06	10.63	1729
Partner Re Ltd.	NYS	47.09	-3.64	-22.82	62.50	30.00	701
Penn-America Group Inc.	NYS	9.25	-0.43	21.31	9.75	6.88	7
PMA Capital Corporation	NDO	17.69	7.20	2.54	19.13	15.19	42
Philadelphia Cons. Holding	NDO	27.50	-0.45	-10.93	31.92	14.13	177
PIXRE Corp.	NYS	16.60	-7.78	-1.63	20.10	12.50	109
ReliaStar Financial Corp.	NYS	53.94	0.00	0.00	53.94	23.75	0
RenaissanceRe Holdings Ltd.	NYS	64.40	-5.01	-17.77	84.19	35.88	532
RLI Corp.	NYS	40.79	-2.72	-8.72	46.16	26.25	33
St. Paul Cos.	NYS	40.40	-6.33	-25.62	57.00	21.31	8543
SCOR	NYS	41.00	-4.76	-18.41	53.75	38.38	26
SAFECO Corp.	NDO	26.00	2.21	-20.91	35.88	18.00	5775
SOPIE Holdings Inc.	NYS	20.61	-5.46	-12.76	34.63	18.31	NA
Seibels Bruce Group	NDO	1.88	44.23	233.33	2.25	0.53	121
Selective Ins. Group	NDO	22.63	-0.28	-6.70	26.94	14.88	361
Tokio Marine & Fire	NDO	48.38	2.93	-15.13	61.00	45.25	147
Touchmark Corp.	NYS	36.08	1.35	-6.13	41.19	18.75	3454
Transatlantic Holdings	NYS	98.25	-3.34	-7.20	107.06	68.75	73
Tranwick Group Inc.	NYS	19.98	-0.45	-19.46	27.13	12.00	480
Unico American Corp.	NDO	5.81	-3.13	-1.06	7.75	4.50	1
United Fire & Casualty	NDO	19.75	-3.95	0.00	25.00	15.50	25
Unitrin	NDO	34.94	-3.45	-14.00	41.94	27.19	581
UNIUM Corp.	NYS	26.55	-3.84	-1.21	30.44	11.94	6428
Vesta Insurance Co.	NYS	6.50	-7.80	28.40	8.38	4.13	339
XL Capital Ltd.	NYS	70.05	-7.71	-19.83	89.25	40.63	2897
Zenith National Ins.	NYS	24.70	-2.18	-15.91	30.70	20.00	152

INSURERS/REINSURERS	AVERAGE	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
		-1.49	-8.50			

### HEALTH MAINTENANCE ORGANIZATIONS

Aetna Inc.	NYS	35.75	-3.74	-12.94	42.69	32.94	4553
Health Net Inc.	NYS	19.12	7.84	-26.99	26.94	7.63	4166
Humana Inc.	NYS	10.50	-16.00	-31.15	15.81	4.75	5827
Oxford Health Plans	NDO	25.63	-6.18	-35.13	42.75	13.50	9565
Pacificare Health Sys.	NDO	24.75	-9.17	65.00	72.31	9.81	6061
Sierra Health Services	NYS	3.85	-7.45	1.32	6.70	2.44	634
United HealthGroup	NYS	54.50	-2.36	-11.20	64.36	23.19	12749
Wellpoint Health Networks	NYS	90.80	-2.38	-21.21	121.50	56.94	3886
<b>HMOs AVERAGE</b>			<b>-5.10</b>	<b>-8.48</b>			

## BI Insurance Index



Top advancing issues: Seibels Bruce Group, American Safety Insurance, Health Net Inc. Leading decliners: Humana Inc., Fremont General Corp., ACE Ltd. Most active issue: Citigroup. The BI Index decreased 3.2%; the Dow Jones 30 Industrials dropped 3.2%; the S&P 500 went down 0.9%, and the NYSE Composite decreased 1.7%. Average P/E: Brokers, 19.7; insurers/reinsurers, 31.4; and HMOs, 15.5.

Wonder why your risk  
service provider can't get  
someone that's injured  
back to work sooner?

RSKCo can.

Many companies today are severely limited in light duty, return-to-work options for their injured employees. The simple fact is they just don't have these types of jobs available. That's why RSKCo developed a program that can get your injured employees back to work, even if it's not at their original job, or company. The program is called Choices to Work<sup>®</sup> and only RSKCo has it. You'll find it at over 1,000 approved return-to-work locations. We have a lot of unique solutions that can help your company minimize your loss costs. And if a solution for your problem doesn't currently exist, we'll create one. This continued quest is just one more way we set ourselves apart. To find out more about how we can help your company, call 1.877.222.2165.



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