

Business Insurance

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

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House passes Y2K liability bill; Senate sets vote to end debate

WASHINGTON—The fate of Y2K liability relief now rests with the U.S. Senate, following House passage of a bill granting businesses some limited liability protections last week.

The House last week approved H.R. 775, the Year 2000 Readiness and Responsibility Act, by a vote of 236 to 190. Among other things, the bill would provide some protection from Y2K-related liability for corporate directors and officers, cap punitive damages arising from Y2K-related disputes in most cases, and encourage the use of alternative dispute resolution before

See Updates on next page

Superfund revisited

Two modest reform bills unveiled

By MARK A. HOFMANN

WASHINGTON—Superfund reform, long a goal of risk managers and insurers, has emerged from legislative limbo.

Two key lawmakers—Sens. John Chafee, R-R.I., and Robert Smith, R-N.H.—unveiled a draft proposal last week to implement reforms that enjoy broad political support.

Meanwhile, a House Transportation and Infrastructure subcommittee heard Environmental Protection

Agency Director Carol M. Browner discuss a bipartisan bill introduced earlier this spring by Rep. Sherwood Boehlert, R-N.Y., the subcommittee's chairman.

Both measures, however, stop far short of the comprehensive liability reforms sought by risk managers and insurers in the early 1990s. For example, neither proposal would repeal Superfund's imposition of retroactive liability for cleanup of waste sites that were in use before the controversial environmental law took effect in 1980.

Instead, both proposals focus liability relief on selected potentially responsible parties, such as generators of small amounts of waste at a given site. The Senate draft also calls for so-called "fair share" allocation of cleanup costs among PRPs "without any regard to any theory of joint and several liability."

Other portions of the proposals, which are not identical, focus on redeveloping "brownfields"—sites not in use because of lingering environmental concerns; the treatment of materials recyclers and municipalities; and funding for the Superfund

See Superfund on page 29



AP/WIDE WORLD PHOTOS

Recently introduced legislation that would reform Superfund stops short of repealing retroactive liability for pollution at sites such as this one in Wallington, N.J.

Employers defend alternative comp programs

By ROBERTO CENICEROS

"Carve-out" programs that allow employers and labor unions to negotiate alternative workers compensation benefits do not significantly lower costs, a preliminary draft of a new California study concludes.

The study also found that carve-outs do not reduce the level of benefits delivered to employees, as had been feared by some labor representatives.

California employers say the plans can save money and are seeking to expand carve-out programs to unionized manufacturing facilities. Carve-out programs generally are now limited to use on construction projects in the state.

While the study focused on California operations, its findings would likely hold true for other states that permit the use of workers comp carve-outs, a study director said.

Under a carve-out program, employers and labor unions negotiate to create workers comp benefits that may differ from statutory requirements.

For example, employers might seek to require that all injured employees be directed—for an indefinite time period—to a network of doctors specializing in work-related injuries. An agreement also can call for replacing attorneys and litigation with an ombudsman as part of an alternative dispute resolution process.

In return for such concessions from labor, the carve-out program might offer enhanced disability benefits to injured workers.

Cost reductions from carve-outs are most likely to result from the use of dispute resolution because of lowered legal expenses, said Frank Neuhauser, project director for the UC DATA/Survey Research Center of the University of California at Berkeley, which conducted the study. Savings on legal costs, however, account for

See Carve-outs on page 15

Opinions differ on benefits captive agencies can offer

By DAVE LENCKUS

Over the objections of his retail insurance broker, the risk manager at a large energy company recently set up his organization's own insurance agency so the company essentially could deal directly with insurers.

In taking over the broker's responsibilities for handling premiums and dealing with insurers, the new agency cut insurance costs significantly and improved communications with insurers. Both benefits have far outweighed the challenges of running the agency, the risk manager said.

The risk manager predicted that other large corporations will have a tough time resisting the advantages that captive agencies offer. "I think it's the wave of the future."

Indeed, Richard Kerr, an executive with one major broker, is so convinced that captive agencies can help risk managers at large companies that he has set up a company, Insurance Data Systems, to facilitate captive agency formations for large companies.

Captive agencies can cut insurance costs at least 20% to 25% and can help improve communications with insurers,

said Mr. Kerr, co-founder, chairman and chief executive officer of Dallas-based IDS. Mr. Kerr also is chairman and CEO of Dallas-based Lambert Fenchurch U.S. Holdings Inc., a subsidiary of London-based Lambert Fenchurch P.L.C.

But some risk management consultants, as well as broker representatives, doubt that captive agencies, which have been around for decades but are more prevalent outside the United States, can make such a big difference.

Mr. Kerr is not advocating that risk managers dump their brokers entirely. Many of their services are valuable, he said. But, insurance placement is not one of them, he said. Sophisticated risk managers "know how to broker just as well as the big brokers do now."

For a \$40,000 initial fee and \$5,000 per month, IDS will shepherd a company through the captive agency formation and licensing process, provide backroom services and offer secured Internet links with a group of insurers that will conduct business with captive agencies. Through those links, which include e-mail, risk managers can submit applications and negotiate their coverage,

See Agencies on page 4

Breaking the grip of fear

More employers reaching out to help victims of abuse

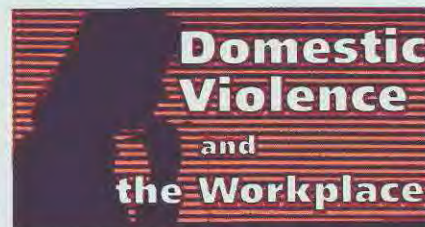
By AMANDA MILLIGAN

She could be the chief executive officer or the administrative assistant. She works white- and blue-collar jobs. She is of any ethnicity and of any class.

She represents the one in every four women whose lives are shadowed by domestic violence.

Because of the prevalence of domestic violence—and outreach organizations and employee assistance programs to respond to it—some employers say it's time for every employer to reach out to employees they suspect are being abused at home.

"If you don't think it's happening in your organization, you're sadly



mistaken," said Andrea Linskey, director of Bell Atlantic Mobile's Wireless at Work to End Domestic Violence, a program that addresses domestic violence among employees and in the local community of Bedminster, N.J. "It's not going to go away unless we realize the predominance of it and take action."

Not only is outreach the right thing to do for the victim's well-be-

ing, domestic violence experts say, but abuse is also a factor in reduced productivity, excessive absenteeism and higher health care costs among employees.

A company does not have to implement a major program to make a difference in the number of domestic violence incidents among employees, said Donna Norton, Washington-based manager of the Workplace Resource Center. The Workplace Resource Center is a part of the non-profit Family Violence Prevention Fund of San Francisco.

Activities can be as simple as placing fliers with help-line numbers in employee restrooms or

See Violence on page 10

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Updates

House passes Y2K bill

Continued from previous page

taking Y2K cases to court (BI, May 10). The House defeated a much less comprehensive Y2K measure backed by the White House before passing H.R. 775.

"Now we wait for the Senate to vote," said Melissa Sheik, assistant vp-federal affairs for the American Insurance Assn. The Senate had been deadlocked for weeks over a variety of issues, including the right of Democrats to attach unrelated amendments to a bipartisan Y2K liability-relief measure, S. 96. Senate Majority Leader Trent Lott, R-Miss., filed a cloture motion Friday with a cloture vote set for Tuesday.

Meanwhile, Maryland Gov. Parris Glendening last week vetoed H.B. 8, the Year 2000 Commerce Protection Act. The governor said the bill, which would have established a legal defense for businesses that took certain good-faith actions to remedy Y2K problems, did not exempt cases involving personal injury or death.

"While the goal of protecting businesses from Y2K technology failures is deserving, it should not come at the expense of our citizens when such failures lead to injury and death," Gov. Glendening said in a letter to the bill's chief sponsor, House Speaker Caspar Taylor.

\$1.49 billion in storm claims: PCS

NEW YORK—High winds, hail and killer tornadoes that hit the central United States earlier this month caused an estimated \$1.49 billion in insured property damage, according to the Property Claim Services unit of the Insurance Services Office Inc.

That number was a record amount for a U.S. tornado-related disaster, said PCS. Oklahoma City and its suburbs accounted for about \$775 million of the total, with insurers reporting about 145,000 claims from the area. The majority of the claims were from homeowners, according to PCS. PCS estimates that Oklahoma as a whole suffered a total of \$955 million in insured property damage from the storms. Oklahoma's previous record for catastrophe losses—\$150 million caused by high wind, hail and tornadoes—was set in 1992.

Insurers estimate that this year's storms, which struck portions of 18 states during the period May 3-7, ultimately will generate 370,000 claims. Kansas suffered the second-heaviest losses from the bad weather, with an estimated \$100 million in insured property damages.

Broad privacy standards opposed

WASHINGTON—Congress should not craft federal health information privacy standards that would pre-empt existing, sometimes-stronger state laws, urge leaders of two state organizations.

The warning to GOP and Democratic congressional leaders came in letters sent last week by the presidents of the National Assn. of Insurance Commissioners and the National Conference of State Legislatures. "We believe the best approach would be to set a federal standard that does not pre-empt all of the state laws that have been protecting health information for so many years," wrote NAIC President George M. Reider and NCSL President Daniel Blue Jr., a state representative from North Carolina. Privacy provisions can be found in various state laws, including those dealing with insurance, workers compensation, probate and civil procedure.

"We urge Congress to draft legislation that clearly outlines the areas that Congress intends to address. Congress needs to be very specific about the scope of any federal privacy legislation. This is of particular concern since the current privacy legislation is silent on many issues affecting federal and state law. The scope should not be left ambiguous or left to the courts to decide," they said in their letters.

Specifically, "we believe it would be better for the protection of consumers' health information if Congress would specify what is addressed by the federal legislation, as opposed to attempting to list all of the state laws that are exempt from federal legislation," they wrote. Also, "the legislation needs to outline a way for the states to measure their laws against any federal standards and to provide options for states to meet those requirements," they stated.

Lawsuits filed in bus crash

NEW ORLEANS—Relatives of those killed in the crash of a charter bus that was on its way to a Gulf Coast casino have begun filing lawsuits against the bus company and other defendants.

The first suit was filed less than 24 hours after the bus, owned by Custom Bus Charters of Gretna, La., veered off Interstate 610 in New Orleans and crashed into an embankment. The May 9 crash, the cause of which still was under investigation last week, killed 22 of 42 passengers and injured many others.

The bus carried mostly elderly passengers and was on its way to Casino Magic, a Bay St. Louis, Miss., casino.

"We have filed two suits and have others to file," said Daniel E. Becnel Jr., a Reserve, La., attorney who represents several of the relatives of those killed in the crash and some of the injured.

The suits seek an undetermined amount of compensatory and punitive damages from Custom Bus Charters; Frank Bedell, the driver who remained hospitalized last week; and Casino Magic.

The suits name the casino because it pays the bus company a commission to bring gamblers to the facility, Mr. Becnel said, and the bus driver is named in part because he tested positive for marijuana use when he arrived at the hospital after the crash.

A spokeswoman for the bus company said in a written statement that Mr. Bedell passed a drug test and physical examination when he was hired in 1997 and that his permit to drive the bus was renewed biannual-

See Updates on page 30

Errors & omissions

• A legal citation on page 21 lists an incorrect verdict date. The correct date is May 6, 1999.

Statehouses taking lead on mental health parity

By JERRY GEISEL

As Congress considers whether or not to expand a loophole-ridden 1996 mental benefits parity law, states are moving ahead and enacting their own parity laws.

Governors in Indiana, New Jersey and Oklahoma last week signed into law mental health care benefits parity measures.

The approval of those three measures comes on the heels of enactment of parity bills in Vir-

ginia and Montana. That brings to about two dozen the number of states that have enacted parity laws since the early 1990s, with many of the measures passed since Congress approved a watered-down federal parity bill.

The new state laws go well beyond the federal statute in scope. The federal law bars health care plans from offering lower annual and lifetime dollar limits for treatment of mental disorders than they provide for physical

disorders.

But the federal law allows plans to impose higher deductibles and copayments for mental health care services than for physical ailments. The federal law also allows plans to cap the number of outpatient visits and inpatient days for treatment of mental disorders even if there are no comparable limits for physical problems.

By contrast, the Indiana law requires complete parity for cover-

See Parity on page 6

HMOs getting needed rate increases

'The industry is recovering'

By JUDY GREENWALD

Higher premium rates are translating into improved operating results for managed care companies, and this trend should continue through at least this year, analysts say.

At the same time, rising pharmaceutical costs continue to plague managed care organizations (see story, page 30).

Overall, though, this year's outlook is bright for the managed care industry, though no one is saying with any certainty what may occur beyond 1999.

"The industry is recovering," said Greg Baird, senior vp of group sales for Woodland Hills, Calif.-based Blue Cross of California, a subsidiary of WellPoint Health Networks Inc.

"We're getting larger increases that are needed, and, to the best of my knowledge, the companies have done well. With one or two exceptions, stronger earnings are being reported," said Mr. Baird.

"I think things are very much turning around," said David Olson, vp-investor relations for

Woodland Hills, Calif.-based Foundation Health Systems Inc. "I think that we are seeing pricing improving significantly. At the same time, that is a reflection of the fact that costs are going up, and I expect costs will continue to go up, largely as a consequence of pharmacy costs."

"I think the industry's in a fairly good position, driven in large part by the commercial pricing environment," said David Erickson, director of investor relations for Santa Ana, Calif.-based PacificCare Health Systems Inc.

"I think you're seeing much

See Results on page 29

Punitive ruling favors insurers

By JUDY GREENWALD

SAN FRANCISCO—Insurance companies are not liable for coverage of punitive damage awards, even if the award follows an insurer's unreasonable failure to settle an underlying lawsuit against a policyholder, the California Supreme Court ruled.

The decision could lead insurers to pressure policyholders to contribute to settlement offers so that the policyholder avoids the risk of being hit with an uninsured punitive award, some defense and plaintiff attorneys say.

The insurance bad faith case, *PPG Industries vs. Transamerica Insurance Co.*, stems from a 1982 accident in which George Miller became a quadriplegic after his truck was hit by another vehicle and the truck's windshield popped out, ejecting him.

The windshield had been installed by Solaglas California Inc., later acquired by PPG Industries. According to the decision, evidence indicated Solaglas had used a silicone seal—despite regulations requiring urethane—when it installed the windshield.

An initial jury verdict that found in Solaglas' favor

See Ruling on page 29

Deadline is near for two directories

CHICAGO—*Business Insurance* will publish its annual directories of employee assistance programs and dependent care resource and referral services on June 28.

The EAP directory lists companies that provide EAP services directly to employers on a stand-alone basis, i.e., independently from other services the organization may offer. A minimum of \$100,000 in gross revenues or providing of these services in at least three states is required to be listed.

The directory of dependent care services companies lists companies that provide resource and referral services on a stand-alone basis. Companies must generate at least \$100,000 in gross revenues from this service, or provide these services in at least three states.

Gross revenues must be reported in both directories to be listed.

If your company meets the requirements for either directory but has not received a questionnaire, please request one immediately by calling Directory Editor Kevin Edison at 312-649-5279. There is no charge to be listed.

Copies of the questionnaires also can be printed from the BI Web site at www.businessinsurance.com/magazine/directories.html. Completed questionnaires must be returned by the extended deadline of June 1.

Inside

• The clock is ticking on needed legislation to provide limited liability relief for Year 2000 computer problems, this week's editorial says. **PAGE 8**

• A recent government order forcing a major mining company to fund up to \$6.4 million in health care treatment for injured children could force Mexican companies to focus more on pollution liability coverage. **PAGE 23**

Departments

Advertiser Index 25
Ask a Benefit Actuary 19
Books & Ideas 20
Classifieds 26

Commentary 29
For the Record 25
Global Briefs 23
Insurance Services Guide 24
International 23
Letters 8
Perspectives 19
Ticker 31

Business Insurance (ISSN 0007-6864) Vol. 33, No. 20, is published weekly by Crain Communications Inc., 740 N. Rush St., Chicago, Ill. 60611-2590. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to *Business Insurance*, Circulation Department, 965 E. Jefferson Ave., Detroit, Mich. 48207. \$4 a copy and \$89 a year in U.S. \$108 in Canada and Mexico (includes GST). All other countries \$209 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 0293512, GST No. 136760444. Printed in U.S.A. Copyright 1999 by Crain Communications Inc.

Summer risks: Heat, storms

By MICHAEL BRADFORD

Risk managers are hoping a few cool moves this spring will keep summertime risks from overheating.

They're busy checking equipment and preparing employees for the challenges of high temperatures and stormy weather that are typical of summer in many parts of the United States.

For example, air conditioning systems likely will be heavily taxed by hot weather. Risk managers who take time for preventive maintenance will save money by minimizing the risk of expensive system failures that can result in lost business, loss control experts say.

"What we normally experience is a spike of air conditioning losses in the spring, when systems are starting up, and another in the fall," after being used all summer, said Dave Schraeder, assistant

vp in the Houston office of The Hartford Steam Boiler Inspection & Insurance Co.

May and June are the leading months for air conditioner failures, the insurer reports, with most breakdowns related to the electrical failure of motors or mechanical parts that break. Such risks often are risk managers' responsibility, though companies that lease space may not be responsible for breakdowns. Similarly, coverage depends on terms of the lease, said Mr. Schraeder.

It's important to do some simple pre-season maintenance, because air conditioner repairs can be expensive, he emphasized. In many cases, air conditioner failures lead to business interruption losses when businesses must close for the repairs, he added.

Mr. Schraeder listed several air conditioner failures that Hartford Steam Boiler insured, ranging in price from a

\$23,500 restaurant claim to another that reached \$286,767 for an office building where a unit failed. Both claims included business interruption losses.

In the Houston area, where summer heat and humidity reach withering extremes, Hartford Steam Boiler sends out a pre-season checklist that a risk manager or building operator can give to the maintenance staff, Mr. Schraeder noted.

The list calls for a check of the lubricants and bearings in motors; the oil in compressors; and the condition of fans, air filters and other air conditioner components.

Mr. Schraeder said risk managers should ensure their facilities have adequate air conditioning equipment. Often, when businesses expand and add people and heat-producing equipment such as a quantity of personal computers, they fail

See Summer on page 16



PHOTOS: AP, REUTERS

From heat waves to hurricanes, businesses face a variety of potential exposures during the summer.

ISO/IDR pact with NCCI ends lawsuit

By MEG FLETCHER

BOCA RATON, Fla.—A new nationwide agreement between two workers compensation rating and statistical organizations resolves the lawsuit between them and lays the groundwork for greater cooperation—at least in the short run.

Choice of a rating organization and possible cost savings are among the several ways the agreement will affect employers.

The agreement calls for the Boca Raton-based National Council on Compensation Insurance to grant a perpetual nationwide license for use of its core intellectual property to the New York-based Insurance Services Office Inc. and its Insurance Data Resources Inc. subsidiary.



Specifically, ISO/IDR customers will enter into a direct license agreement with NCCI that will be administered by ISO/IDR. The license will permit use of NCCI materials, including

its policy forms and endorsements; statistical and retrospective rating plans; and its class code and basic manuals.

In addition, ISO/IDR will license its competitor's workers compensation rates and loss costs on an annual basis in most of the 29 jurisdictions in which IDR is licensed.

However, ISO/IDR retains the option to develop its own alternative materials and can, if it chooses, reduce the scope of the agreement on an individual product license or state basis, according to the agreement.

The agreement will benefit ISO/IDR customers and "promises significant benefits to the industry by preserving the required uniformity unique to workers compensation insurance," Fred R. Marcon, ISO chair-

See Agreement on page 31

Survey looks at plans' value

By MICHAEL PRINCE

Better communication with providers and setting goals other than lower costs may help employers get more value from their health care benefits, a new survey suggests.

Providers and employers have dramatically different opinions about whether group health care plans are providing value for their dollar and how to improve value, the survey also shows.

"The key to... getting a greater return on the health care dollar is to create a clear line of sight from health plans to specific, articulated business results... and to make management

decisions within that line of sight framework," according to benefit consultant Watson Wyatt Worldwide. "Employers may generate greater bottom-line savings by holding a provider to quality and efficiency standards than by focusing inordinate efforts on attaining a lower premium," the consultant says in a new survey conducted by Watson Wyatt in conjunction with the Washington Business Group on Health.

Health care cost increases have focused employers' attention on getting value for their benefit dollars. Health care premiums are rising 7.5% on average in 1999, about quadruple the rate of inflation, the survey states.

This trend spans all types of plan types, with a 7% increase for preferred provider organizations and an 8% rise for indemnity plans, while health maintenance increases were 7.5%.

New and expensive prescription drugs, along with an aging population and technological advances, are the leading reasons for the price hikes, Watson Wyatt says.

"Cost pressures will only become more acute as the baby boomers continue to age and require more frequent and more expensive medical care," the survey states.

To counter rising costs, employers

See Value on page 16

Media market watching 'Jenny'

\$25 million verdict could drive market firming

By SALLY ROBERTS

PONTIAC, Mich.—If a Michigan jury's \$25 million wrongful-death verdict against Warner Bros. Inc. and "The Jenny Jones Show" is upheld, it could have a chilling effect on the market for media liability insurance.

Not only could liability rates rise and more policy exclusions be imposed but more plaintiffs would be encouraged to bring similar suits, underwriters say.

Burbank, Calif.-based Warner Bros. is appealing the verdict, which was handed down by a Michigan state court jury in Pontiac earlier this month. The company is fully insured for the \$25 million award, said Zazi Pope, a senior vp and assistant general counsel for Warner Bros., which distributes "The Jenny Jones Show."

A nine-member jury found Warner Bros., the talk show and the show's producer, Burbank-based Telepictures Inc., negligent in the murder of Scott

Amedure, who appeared at a taping of "The Jenny Jones Show" in 1995 to reveal his secret crush on his friend Jonathan Schmitz. Mr. Schmitz admitted to killing Mr. Amedure three days later. The family of Mr. Amedure sued, arguing that Mr. Schmitz was lured onto the talk show believing that he would meet a woman and was humiliated into murder when he found out that his secret admirer was Mr. Amedure.

"We're obviously appalled by the verdict," Ms. Pope said. "It could have a chilling effect on every media outlet."

The verdict says that anyone who is surprised and humiliated by something said in a newspaper, magazine or talk show and then commits a wrongful act, "that conduct exposes the media outlet to liability," Ms. Pope said.

"Everyone in the media should be concerned about this; frankly, anyone

See Media on page 31



PHOTO: COURTESY OF WARNER BROS.

Television talk-show host Jenny Jones

Alabama verdict sparks renewed cry for reform

By MARK A. HOFMANN

WASHINGTON—An Alabama jury award of \$580 million in punitive damages to two families who were allegedly overcharged about \$1,200 for television satellite dishes is being cited by tort reform advocates calling for uniform guidelines on punitive damages.

Opponents of tort reform efforts, however, say the huge award was necessary to draw attention to unscrupulous business practices. They, and, in

general, tort reform supporters, also say the award is likely to be reduced significantly upon appeal.

Meanwhile, Alabama lawmakers are considering legislation that would limit punitive damage awards in state courts.

The defendant in the May 6 jury verdict, Benton Harbor, Mich.-based Whirlpool Corp., has already announced that it will appeal the verdict.

"The company strongly believes it did nothing to warrant any finding of liability in this lit-

igation, much less \$581 million. Furthermore, the company is confident that it will ultimately prevail through the post-trial and appeal processes, as the verdicts are totally without merit and represent a gross miscarriage of justice," the company said in a written statement released last week.

A Whirlpool spokesman declined to comment on whether the company's insur-



BMW, that led the U.S. Supreme

ance program would respond to the award other than by saying, "we maintain what we consider appropriate insurance for our business."

The award adds to Alabama's notoriety as a state where juries are generous with punitive damage awards. In fact, it was a case from Alabama, *Gore vs.*

Court in 1996 to rule for the first time that punitive damage awards can be so disproportionate to actual damages as to violate a defendant's constitutional rights. In that case, a jury awarded a doctor \$4 million in punitive damages because BMW had not disclosed that the paint on his new car had been retouched.

"Alabama seems to be a single-state problem. But it does show the need for guidelines for punishment, the same way there are

See Award on page 21

Agencies

Continued from page 1

and insurers can issue policies and certificates of insurance.

Mr. Kerr would not identify those insurers.

IDS oversaw the formation of the captive agency for the energy company, which generates \$2 billion to \$3 billion of sales annually.

Mr. Kerr broke down how he said companies can reduce their insurance costs by placing coverage through captive agencies.

Captive agencies can obtain an immediate 10% premium discount from insurers as a reward for being a new distribution system source, he said. Each new source reduces insurers' dependence on a handful of large brokers for large profitable accounts, he said.

Additional savings for a company with a captive agency would come

from keeping the contingency commissions, profit commissions and overrides that the account would have generated for brokers. Brokers earn those sums from insurers by bringing them a book of profitable business or a certain volume of business. Those sums either would flow back to a captive agency and its owner or would be reflected in lower premiums, Mr. Kerr said.

Captive agencies also improve risk managers' communication with insurers, he said. Risk managers can better explain to underwriters problems and unique risks when the message is not filtered by an intermediary, he said.

Large companies, or those paying at least \$5 million in premiums annually, are best suited to run captive agencies, Mr. Kerr said. Such companies have full-time risk managers, who would be needed to oversee the captive agencies. Also, companies that pay less in premiums would not

reap the same economic advantages that companies with larger insurance budgets would see.

Captive agencies have been around for decades, but how many exist is unclear. Consultants said they are more popular, though, in European and South American countries that prohibit brokers from rebating or discounting premiums.

Assessing the agencies' value to U.S. companies that own them is difficult. Risk managers at many publicly traded as well as at privately owned companies would not comment on their organizations' captive agencies.

The energy company's risk manager asked not to be identified but endorsed the captive agency concept and the various benefits Mr. Kerr touted.

A risk manager should be prepared, though, to accept some trade-offs in return for those benefits, the risk manager said.

"It's definitely more work," despite the assistance IDS provides, he said. A lot of the extra work involves invoicing the company for the premiums and preparing monthly reports with the aid of IDS accounting software.

Even so, the risk manager envisions expanding the captive agency's role, possibly turning it into a miniature profit center by placing coverage for third parties.

Neither the Council of Insurance Agents & Brokers nor the Independent Insurance Agents of America consider captive insurance agencies a key issue for their members.

But there appears to be at least some interest from risk managers.

Mr. Kerr said he has helped three companies set up captive agencies in the past 14 months, and he expects to set up eight or nine more this year.

Risk management consultant Michael Vogler observed that risk managers have inquired about cap-

tive agencies more during the past six months than in the past three years. That interest, though, has not led to any formations, said Mr. Vogler, a partner and a risk management consulting services leader at PricewaterhouseCoopers L.L.P. of Atlanta.

Consultant Rick Yocke, a director in the risk management consulting practice at Deloitte & Touche L.L.P. in San Francisco, said he has seen only indirect interest in captive agencies. That typically arises when a company is considering using its captive insurer to write third-party business to produce favorable tax treatment of the premiums paid to the captive, he said.

Jim Norman, a vp with Zurich U.S. in Schaumburg, Ill., said he sees interest only from franchisers.

Reliance National Insurance Co. of New York is willing to work with captive agencies, said Mario Vitale, president of Reliance's Casualty Risk Services division. Reliance has at least 10 policyholders with captive agencies.

Mr. Vitale would not advise risk managers on whether to set up captive agencies. He only emphasized that the agencies have to be "professionally run. . . . We're not here to fill in the inadequacies" of captive agencies.

Overall, though, many observers said they do not foresee a wave of risk managers turning to captive agencies.

Broker executives, consultants and insurers said captive agencies cannot save risk managers nearly as much as Mr. Kerr maintains. For example, Ken Pinkston, chairman of Willis Corroon Corp. in Nashville, Tenn., a subsidiary of London-based Willis Corroon Group P.L.C., said that Willis' North American contingency commissions last year averaged 0.5% of total premium volume. Most of that came on "Main Street" accounts, he noted.

Mr. Vogler also noted that good risks with loss-sensitive programs should be getting money back anyway.

Some captive agency skeptics also doubted that a captive agency could measurably improve communications between risk managers and insurers.

Risk managers for large accounts already "have as much contact as they want" with underwriters, Mr. Norman said.

Michael D. O'Halloran, president and chief operating officer of Chicago-based Aon Corp., said Aon encourages risk managers "to be in front of the markets and vice versa."

Risk management experts also said the captive agency concept goes against the trend to outsource risk management functions.

Risk managers at large companies, though, outsource only specific functions when they outsource at all, many experts agreed.

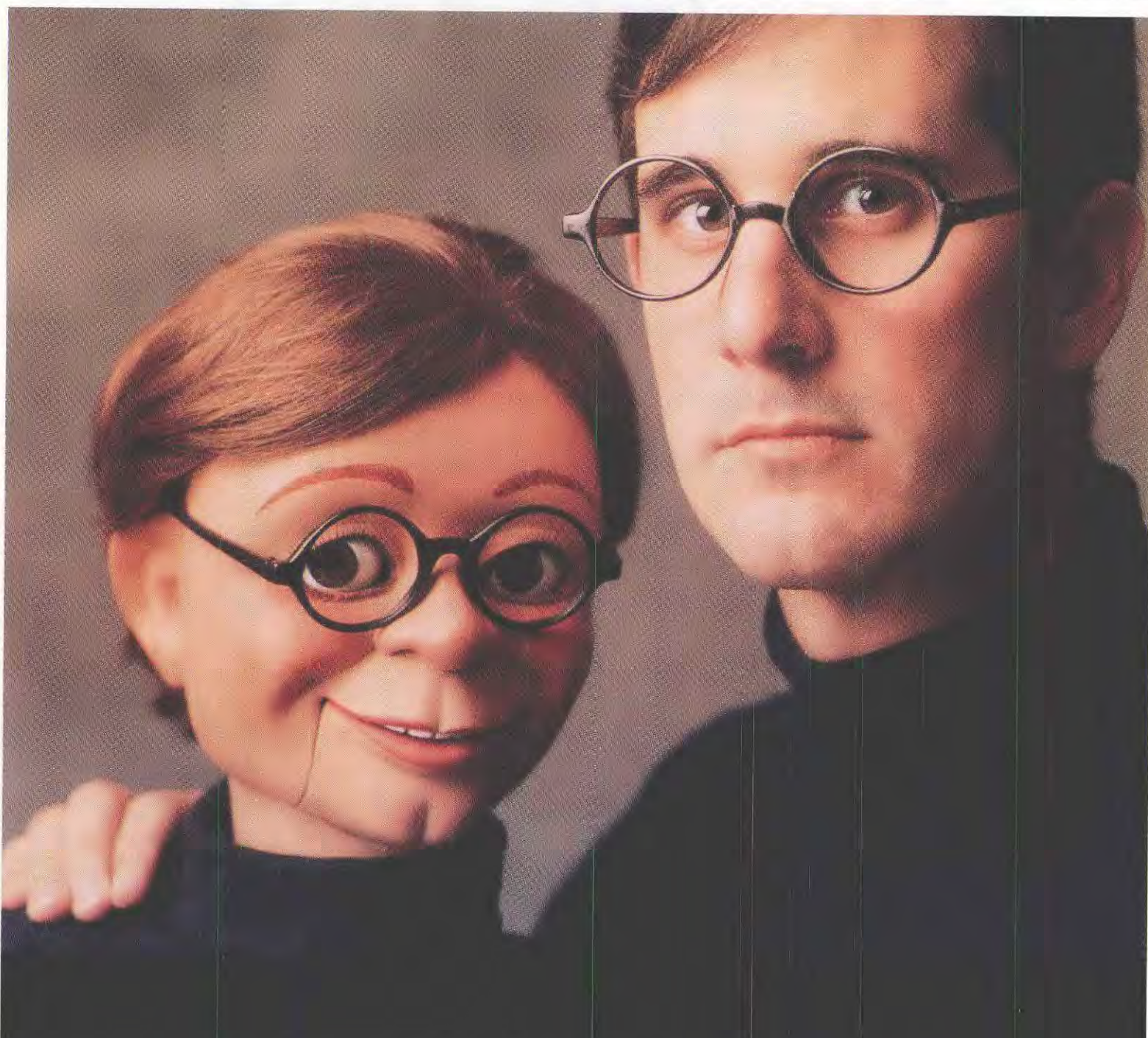
Captive agencies also run contrary to the increasingly popular management concept of refocusing operations on core competencies, consultants said.

For instance, even though they are giving up some savings, some U.K. companies have been selling their captive agencies as the companies concentrate on their core businesses, said Steven Norton, director of the PricewaterhouseCoopers Insurance Risk Management Solutions Practice in London.

Consultant Richard S. Betterley suggested that the rare opportunity to form captive agencies is "when you know who you want to insure with, or there aren't many markets" that will underwrite the insurance buyer's risk.

Overall, though, "it's a whole lot easier to trim broker costs by trimming broker costs rather than by setting up an agency," said Mr. Betterley, president of Betterley Risk Consultants Inc. of Sterling, Mass.

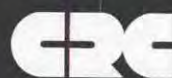
See Agencies on page 6



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Opinions

Push Washington on Y2K bill

TIME IS RUNNING OUT for federal lawmakers to pass legislation that would provide businesses with limited relief from liability for Year 2000 computer problems, and yet some senators seem more interested in quibbling about unrelated issues than in taking action on this important measure.

The House of Representatives last week passed a bill, H.R. 775, that would grant businesses some liability protection from claims that arise from computer failures caused by the Year 2000 problem. An even more limited measure lies dormant in the Senate, however, as senators try to work out a variety of issues, most notably some Democrats' wish to attach non-germane amendments to the Year 2000 legislation. An effort to cut off debate and bring the bill to a vote failed, with even the Democratic co-sponsor of the measure declining to bring his own bill to a vote. Senate Majority Leader Trent Lott, R-Miss., filed another cloture motion Friday with a cloture vote set for Tuesday.

Risk managers and insurers should send a loud message to their senators that they need to focus on the issue at hand and get beyond the gridlock that threatens to derail the bill, S. 96, or else face the consequences of leaving businesses exposed to a tide of litigation over risks that, in many cases, are beyond their control. The resulting economic turmoil from the cost of litigation and rising insurance costs would benefit no one—and could be the political equivalent of a permanent computer crash for foot-dragging lawmakers.

The clock is ticking, and this legislation is too important to be sidetracked by any lawmaker's efforts to turn it into flypaper for a host of unrelated measures. That's not even taking into account the question of whether it is appropriate to attempt to pass legislation dealing with such important issues as increasing the minimum wage in such an indirect manner.

Without uniform federal liability relief, businesses will be forced to rely on a patchwork of state laws governing liability for Y2K losses. That some states have passed Y2K relief bills while others have not means there will be a flurry of forum-shopping for plaintiffs after Jan. 1 unless federal protections are enacted.

Unfortunately, even if senators finally approve the legislation, the lobbying drive will not be over. Differences in the House and Senate bills will have to be



reconciled in conference, requiring additional time. That makes passing legislation quickly all the more imperative.

Of course, Congress approved Y2K liability relief legislation last year only to have it vetoed by President Clinton. President Clinton, while holding out the possibility that the White House is willing to work with Congress on some kind of Y2K legislation, has threatened to use his veto pen again this year if a bill he doesn't like wins the support of both houses. So businesses need to send a message to the president as well. That message is simple: Failure to sign reasonable bipartisan legislation that could help stave off a flood of Y2K-related lawsuits could very well become a significant issue in the next presidential campaign if Y2K losses are as bad as feared, hurting his party's chances in the election.

Another issue of importance to Mr. Clinton might be how blocking such legislation could affect his presidential legacy, which already has been tarnished by other matters.

Businesses need to impress upon him that there is an opportunity here to be remembered as the president who acted to prevent a meltdown of the nation's judicial system as it struggled to deal with Y2K suits.

Letters

Stop-loss attachment limits hurt small business

To the editor: I read the May 3 article on Maryland's stop-loss bill, "ERISA Showdown Likely Over State Stop-Loss Bill," with personal interest. What the article misses, and indeed what most of the debate misses, is that the dispute over stop-loss attachment points is not about the level of risk retained by an employer or insured with a health insurer. Rather, the dispute is over a small employer's freedom of choice to design its own benefit plan, just as its larger competitors are free to do. The reason the Maryland Insurance Administration opposes this freedom for small employers is that it would allow such employers to escape the dreadful economic impact of Maryland's system of mandated benefits and community rating, which creates some of the highest premium levels in the country and one of the highest rates of uninsured residents.

Mandated benefits and community rating, while apparently benign attempts to broaden coverage and flatten rates, really are hidden taxes on employees who are better-than-average risks. These hidden taxes are then used to subsidize the cost of insurance for the worse-than-average

risks. Unfortunately, the better-than-average are usually young (and earning less than average) and healthy (thus able to risk going without insurance). Ironically, the worse-than-average risks are typically older workers in their maximum-wage-earning years and thus better able to afford the higher health premiums associated with greater risk. The current system in Maryland taxes those least able to pay and subsidizes those most able to pay.

The tax/subsidy system created by mandated benefits and community rating is based solely on health status rather than on one's financial need or ability to pay. The cost of insurance for the young and healthy is increased by this hidden tax. As a result, these better risks often drop out of the system. As they do, the cost of insurance for the remaining insured pool increases in a statewide death spiral. This same approach was tried in Kentucky and destroyed the small-group health market. The same thing is happening in Florida, where both houses of the Legislature voted unanimously to change the system (only to see the hope fail when a conference committee could not resolve

differences in the two bills). The same thing will happen in Maryland if the system is left unchanged and small employers are deprived of their freedom and right to create their own benefit plans that make economic sense for their employees and their businesses.

Small employers pay much greater attention to operating margins than their larger and better capitalized counterparts. They are often unable to afford the types of benefits large companies provide but would like to provide some health benefits to attract good employees. For many small employers today, the choice does not lie between Plan A or Plan B, but between Plan A and no insurance. This is particularly true in Maryland, where the very least expensive health plan available to a small employer often is too expensive. The federal court that decided in favor of small employers in Maryland's last attempt to regulate stop-loss not only correctly applied the law, it followed good public policy.

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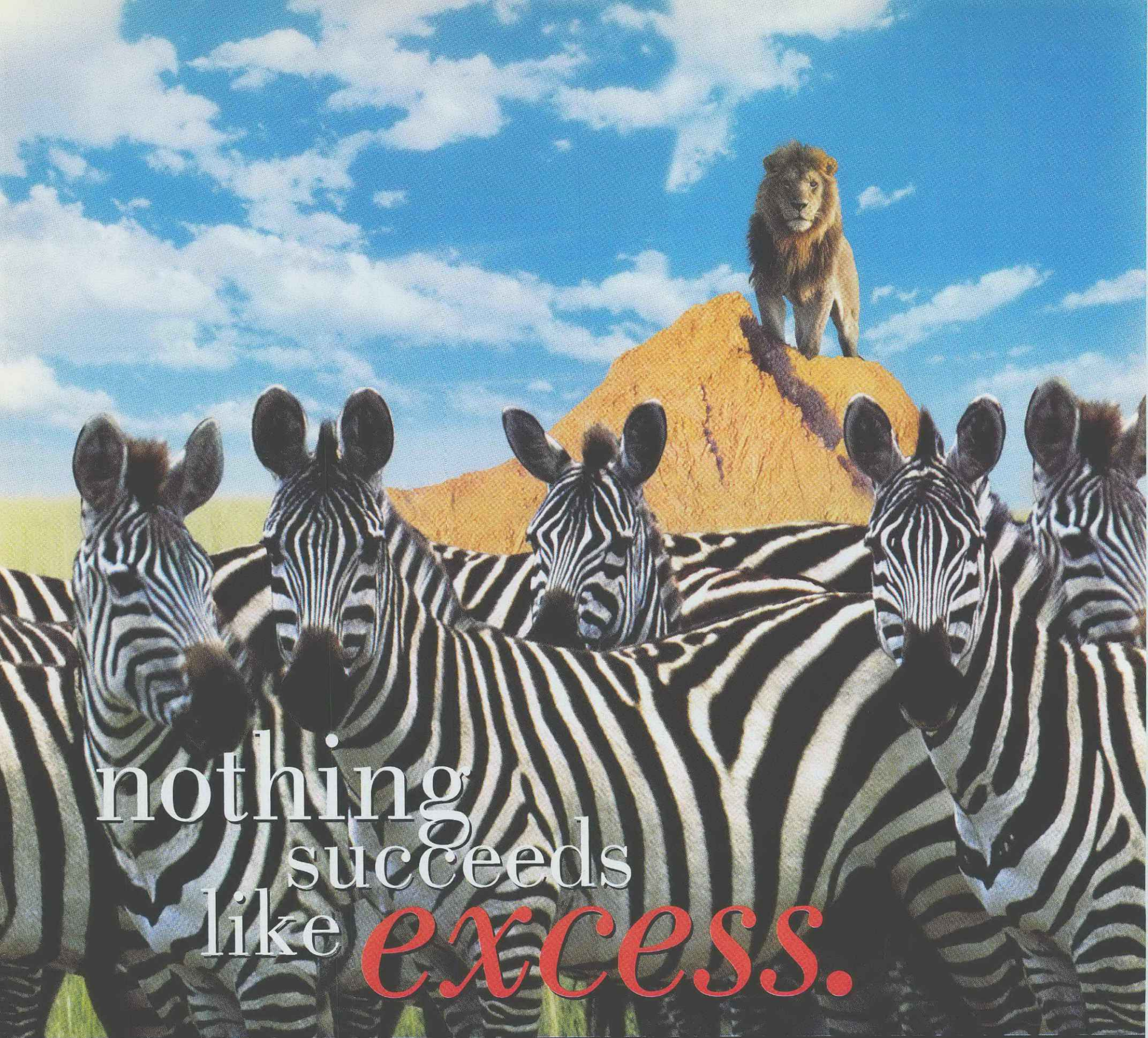
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Violence

Continued from page 1
publishing an article in the company newsletter. EAPs, which are confidential resources, also can play a role, said Ms. Norton.

These activities are not only helpful but are smart risk management techniques, domestic violence experts say (see story, page 14).

New York-based Philip Morris Cos. Inc. learned from its EAP statistics that 25% of workplace problems such as turnover, absenteeism and reduced productivity could be traced to domestic violence problems, said Dede Bartlett.

Ms. Bartlett is vp-corporate affairs programs for the 60,000 employees of Philip Morris and its divisions, Kraft Foods Inc. and Miller Brewing Co.

"Domestic violence is an equal opportunity crime," said Ms. Bartlett. "The face of domestic violence is the

face you don't expect."

Philip Morris is so concerned about addressing domestic violence that it has hosted conferences to teach corporations about the issue. Internally, the company places in fa-

'Our message (to other corporations) is not to be silent on the issue. You can do a lot as a bystander,' says Jane Randel.

cility restrooms brochures that list local assistance resources.

"As soon as the brochures were out, our EAP received a number of inquiries," said Ms. Bartlett. "One of the most important features of these little brochures are the phone numbers."

Liz Claiborne Inc. has been in-

involved with domestic violence prevention campaigns since 1991, said Jane Randel, director of corporate communications for the New York-based manufacturer of women's clothing. Eighty percent of Liz Claiborne's employees are women.

"We believe we have a responsibility to give back to people who've made us successful," Ms. Randel said of Liz Claiborne's internal campaign. "Our message (to other corporations) is not to be silent on the issue. You can do a lot as a bystander."

Domestic violence "feeds into profit and loss. It costs your business very little in terms of time, energy and dollars to make a response," said Marianne Balin, public affairs specialist for Blue Shield of California, based in San Francisco. "The benefit you get is well worth a small effort."

Blue Shield of California has several workplace outreach programs to address domestic violence.

"You can't go into a battered woman's home and help her. Work is a place where she has some room to move," said Ms. Balin. She added that the violence was following abused employees to work.

Flex time is available at Blue Shield of California so that domestic violence victims can seek counseling or attend court appointments. Additionally, the health insurer has an income protection program that allows employees to take unpaid or paid leaves of absence.

"We have articulated the policies we have that support victims, and that (domestic violence) won't be tolerated in any of our facilities," said Ms. Balin.

Blue Shield of California also held 32 training sessions last year on domestic violence for managers, line staff and human resources professionals.

"We hope to create a larger community of people who see domestic violence. Sometimes, we don't want to recognize it," said Ms. Balin. Victims "feel invisible and they hide. It's shameful, because you're out of control of your life."

Warning signs

An employee exhibiting these traits may be a victim of domestic violence:

- Reduced productivity
- Frequent absenteeism
- Bruises or other injuries
- Wearing concealing clothing
- Getting frequent upsetting calls
- Withdrawal from co-workers
- Obsession with being late
- Inability to go on out-of-town business trips

Source: Donna Norton, Family Violence Prevention Fund

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Jim Hardeman is a former corporate manager of Polaroid Corp.'s EAP. During his 14-year tenure at Polaroid, he heard the tearful firsthand accounts that reveal the shame and trampled spirits typical of domestic violence victims.

"How can I tell you I'm a nobody at home and a somebody at work?" pleaded a seven-year employee of Polaroid Corp. after receiving her third warning for tardiness, Mr. Hardeman recounted.

The employee was on the verge of dismissal when finally she confided in her manager that she was tormented by her intimate partner. Her partner was monitoring her every move—giving her a time slot in which to come and go to work and making her check in when she arrived at her destination.

This revelation in 1984 led Polaroid to start a support group for other women who came forward to their managers about their abuse, said Mr. Hardeman, who currently is executive director and founder of the consulting firm Workplace Violence Interventions & Strategies, based in Plymouth, Mass.

In 1994, after a serious workplace altercation, Polaroid formally adopted policies and protocols to handle workplace and domestic violence issues. From 1994 to 1998, when Mr. Hardeman retired from the company, Polaroid had no similar violent incidents, he said.

"Employers may see it on TV or read about it in the newspapers, but they always say, 'It's not here,'" Mr. Hardeman said. "But they probably see it every day."

Ms. Linskey of Bell Atlantic Mobile, agrees. "The sad story is it takes the Nicole Brown Simpsons...to get corporations involved."

Kimberly Wells, executive director of the Bloomington, Ill.-based Corporate Alliance to End Partner Violence, said some corporations shy away from offering domestic violence assistance because it makes some people uncomfortable.

"It's not that people don't recognize it. But because they look at it as a personal, non-work issue, they don't know how to address it," Ms. Wells said. She compares the fledgling workplace campaign against domestic violence today to the lack of alcohol abuse awareness and campaigns against sexual harassment 20 years ago.

"Anytime anybody's behavior changes and it affects performance, it's your business to ask," said Ms. Wells, noting that there is no legal concern in doing so. Companies "should be more concerned if you don't ask than if you do."

She recommends always focusing on an employee's performance and asking generally if there is any problem the employer could help with. In addition to domestic abuse, this question could ferret out substance abuse problems or a work/life balance problem.

Chris Mandel, director of risk management for Tricon Global

Restaurants Inc. in Louisville, Ky., said the company addresses domestic violence as an employee-related risk through its EAP instead of through a separate, dedicated prevention program.

EAPs that offer manager training don't try to turn managers into therapists, said Gary Kimbrough, executive director for EAP-staffed offices in the Atlanta branch of Magellan Behavioral Health, an EAP.

"We reinforce that they are trained to be managers and to confront performance problems as they arise," Mr. Kimbrough said.

Training a manager to respond properly when he or she suspects an employee is being abused by an intimate partner removes some of the fear of getting too personal or instigating a lawsuit, said Paul Liebig, a manager coach consultant in Kearney, Neb., for Ceridian Performance Partners of Minneapolis.

Mr. Liebig recommends that a manager plan how to approach an employee, selecting a location in which the employee will be comfortable to talk. When talking to the employee, the manager should state his or her concerns so that the focus is on changes in the employee's work or behavior. Mr. Liebig also suggests providing telephone numbers of the EAP and other resources and offering options such as flex time to show the employee that the company wants to help.

Mr. Liebig said managers also should notify the human resources department of the situation and alert building security officers.

"Managers are the trigger point," Mr. Liebig said. "They really can make a difference in an employee's life."

After referring the employee to the EAP, the manager should not become overly involved in tracking the employee's progress, Mr. Liebig said. If the employee's behavior doesn't change, then disciplinary actions may be needed.

Domestic violence not only reduces productivity, but it also costs businesses a bundle to treat the physical and emotional wounds. In 1990, the Bureau of National Affairs estimated that American businesses pay \$3 billion to \$5 billion annually in medical expenses associated with domestic violence.

According to a Roper Starch survey conducted in 1994 for Liz Claiborne, 44% of corporate leaders said they believe domestic violence added to medical and insurance costs.

Confidentiality and employee reluctance to report incidents make domestic violence hard to quantify. EAPs, however, confirm there is a definite correlation between higher health care costs and domestic violence.

"More and more dollars are being used to address the actual consequences of a domestic violence situation," Mr. Kimbrough said. "We see a large usage of benefits, especially on the mental health side and the medical/surgery side."

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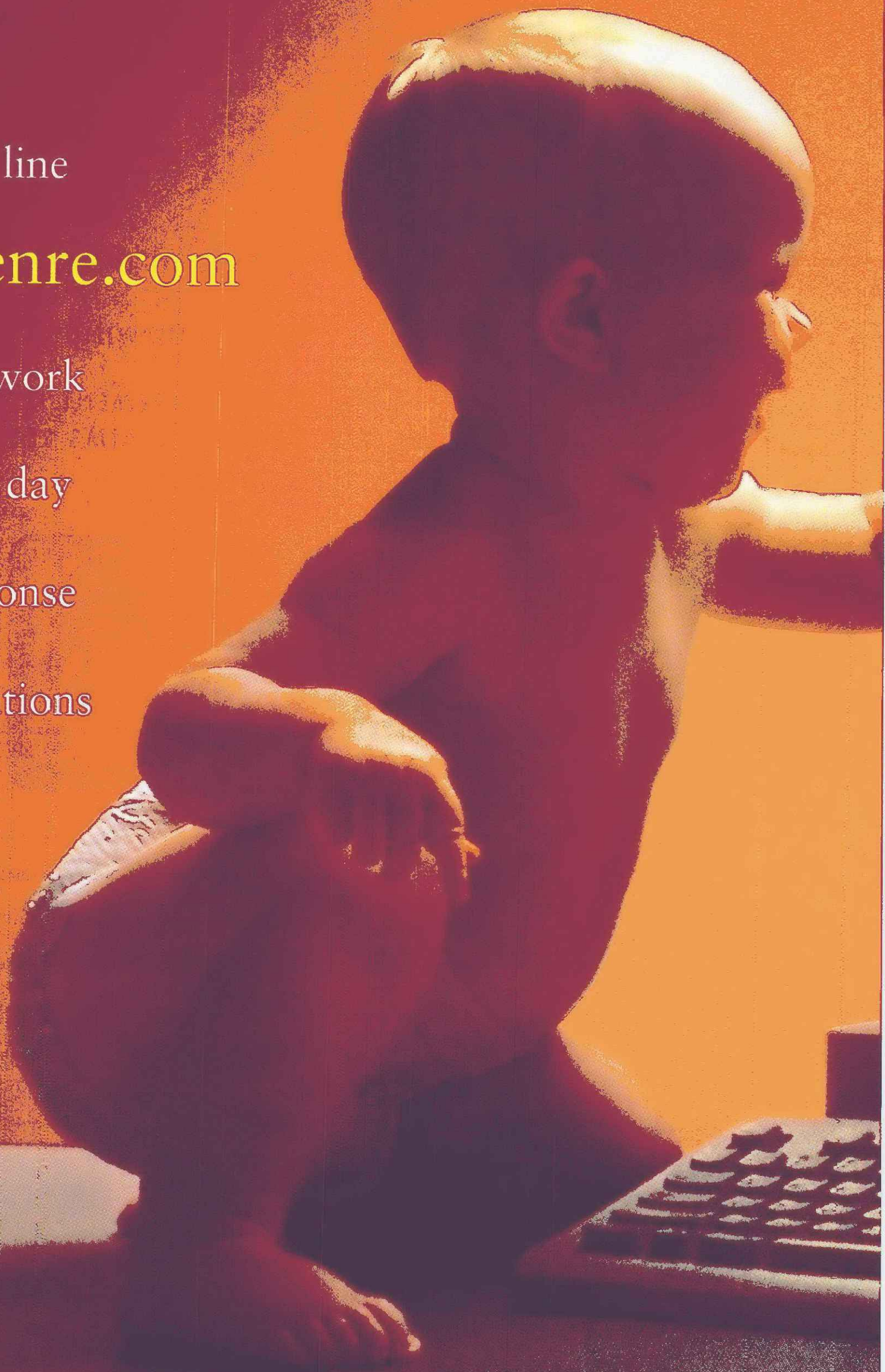
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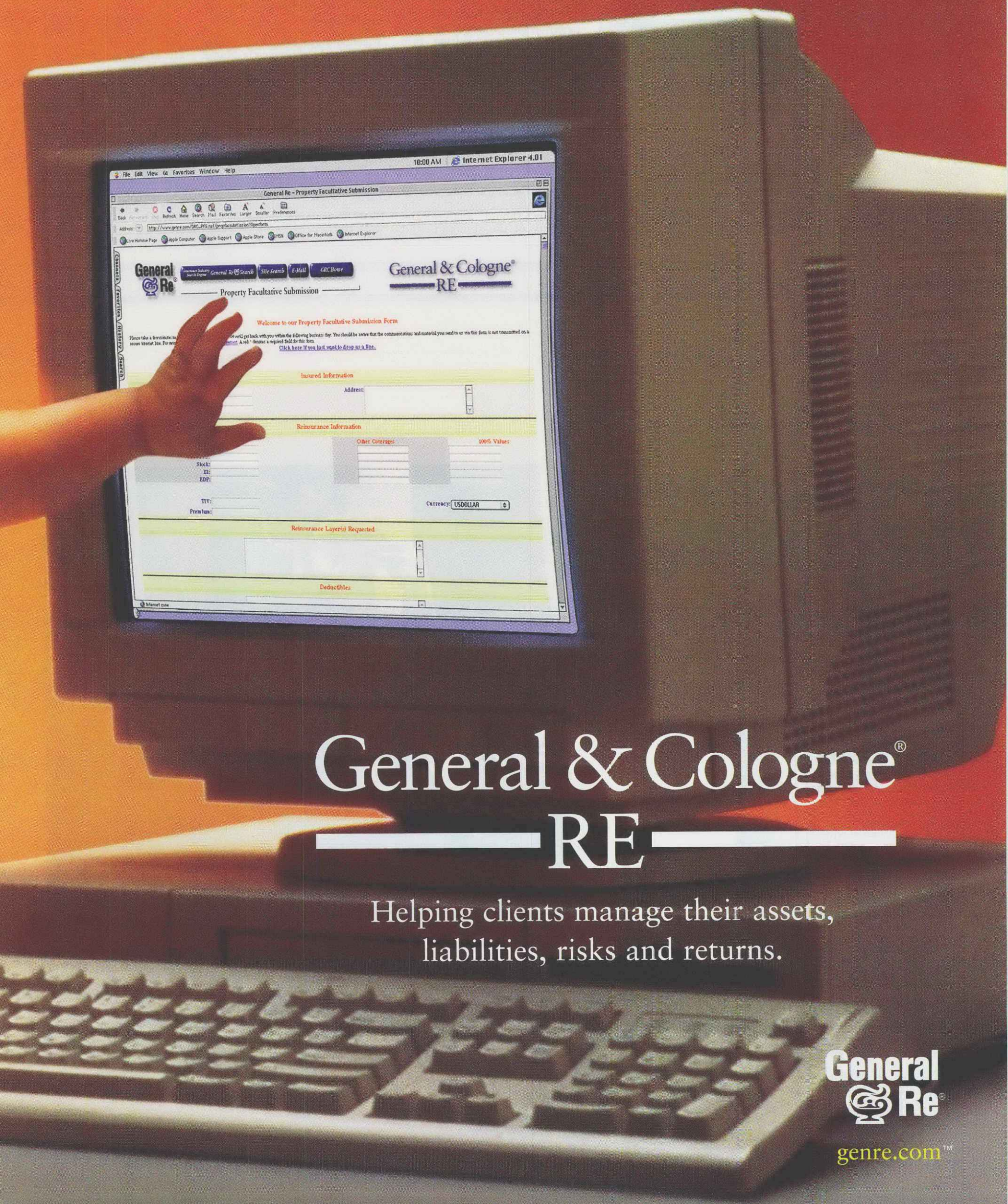
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Summer

Continued from page 3

to upgrade cooling systems to account for the additional needs. "Make sure you've got enough air conditioning," he advised. If a machine has to work too hard, "ultimately, the machine is going to fail," he said.

Summertime storms are another seasonal risk management headache, and hurricane season is on the horizon.

Businesses in areas such as the flatlands of the Midwest and the south central United States, as well as coastal locations along the Gulf of Mexico, Atlantic Ocean and Hawaiian islands, should have preparations in place to protect property and people from high winds and rain.

Take a look at the vulnerability of windows first, said Richard J. Davis, senior engineering specialist with Factory Mutual Research Corp. in Norwood, Mass. "That's a key issue."

Risk managers who need to protect windows from debris that can be lifted and slammed into the glass have a few options, Mr. Davis explained. For example, laminated windows in special wind-resistant frames are available to reduce shattering. Shattering could lead to injury claims.

"The next best thing is a hurricane shutter," he said. The shutters come in different styles, made of corrugated metal or aluminum, for example. They generally roll up like a garage door and cover a facility's windows.

Plywood can be used on unprotected windows, but it's important to have it on hand well before the storm arrives, Mr. Davis suggested. "This isn't something you can run down to the lumberyard and get when you hear a

hurricane is approaching. Get the plywood, and make sure it is cut to size. Make arrangements as to how you will faster it."

Mr. Davis emphasized that any material that can be turned into a missile by a storm should be picked up or anchored.

Resort hotels in coastal areas are particularly vulnerable to such exposure. Some reduce their risks by tossing pool furniture into the pool as a storm approaches, he said.

Hector Mastrapa, manager of insurance at Marriott International Inc. in Bethesda, Md., said hurricane season prompts the hotel chain's lodging loss prevention department to identify which properties are in high-hazard areas and to "refresh their memories on hurricane preparedness."

He said franchised properties are asked to provide details of insurance, because they are insured outside of the program that covers Marriott-owned locations.

"We collect certificates of insurance from them and verify that all insurance is in place," Mr. Mastrapa said of the franchised sites. "We make sure it's at our fingertips if a problem occurs."

Mr. Davis also recommended that businesses in a storm-prone area make arrangements to have a source of backup power. At particular risk are companies that have refrigerated storage.

Businesses such as distribution centers for grocery stores "should seriously look into an emergency generator," he said. "Make sure it's maintained and you have plenty of fuel," he noted, because, in many cases, storms can knock out electricity for a week or longer.

For those whose business it is to re-

store electricity during storm season, "it's our busiest time of year," said Mikel Gusa, manager-risk management at Mississippi Power Co. in Gulfport, Miss.

Hot weather can bring special risks to companies such as Mississippi Power, much of whose workforce is outdoors. When the summer sun is baking the landscape, it can get hot enough to make workers do some strange things. "There is a relationship between heat and attention span," Mr. Gusa said. "Focus tends to decrease" when the heat is on, he noted.

The effect plays out in the number of vehicle accidents that rise during the summer, as some power company employees' concentration falters, Mr. Gusa said.

To help employees beat the heat, Mississippi Power starts to remind workers in the spring how to protect against high temperature. Educational programs teach how to determine the "heat index," a combination of temperature and humidity. "We encourage regular breaks and supply electrolyte drinks," he said.

Power company employees who work around lines of more than 1,000 volts must wear heavy flame-retardant clothing, which "makes it extremely tough" to work in hot weather and avoid heat exhaustion, Mr. Gusa noted.

Workers are told how to identify the symptoms of heat exhaustion—dizziness, nausea and clammy skin—and urged to keep an eye on fellow employees to make sure they aren't laid low by the summer sun.

Videotapes are shown to crews beginning this month that remind them "what the symptoms are," Mr. Gusa said. **BI**

Value

Continued from page 3

can focus on a goal, such as controlling costs, increasing productivity, or improving employee satisfaction, and structure their health plan to achieve the goal, the survey states.

"Employers should have a clear understanding of the connection between activity and the desired business result," said Rich Ostuw, head of health care for Watson Wyatt. Mr. Ostuw oversaw the survey from his office in Stamford, Conn.

Employers and providers have different ideas about how to control rising costs.

According to the survey, 74% of employers say they would shift costs to employees in response to higher costs, while 68% said they would renegotiate fees with providers. Only 24% said they would seek to create partnerships with providers to get a handle on rising costs, though 43% of provider respondents cited this as an option.

These differing views "are the result of a lack of complete communication between the parties," Mr. Ostuw said.

The communication gap is shown in the survey. Eighty-four percent of employers surveyed said they are effective at getting value for their health care dollar, while only 49% of providers said employers are effective at this.

In fact, 81% of provider respondents said that by improving how health care is managed, they could provide the same level of

care at the same or lower cost to employers. In contrast, most employers already believe they are getting good value, the survey shows.

"Why the differences? Providers may, in fact, believe that they can provide better value for the money. As providers are closer to the actual delivery of care than employers, they are more aware of how effectively—or ineffectively—resources are being deployed," the survey states.

To improve the relationship, providers and employers need to communicate better, Mr. Ostuw said. "If each of them are more focused on their own internal issues, we're not going to make progress, or at least it will be more difficult," he said.

As the survey shows, of those employers who said they had a partnership with their providers, 80% said they had regular, scheduled communications with their providers to discuss performance. Also, the partnering employers generally were more likely to view their health care costs as an investment, the survey showed.

Watson Wyatt surveyed 293 employers, covering 9.3 million members of health plans. In addition, the consultant teamed with the Healthcare Financial Management Assn. to survey 587 provider groups, including managed care organizations, hospital systems and physician groups.

The survey is available for \$100 by calling Watson Wyatt Worldwide at 800-388-9868 or by visiting its Web site at www.watsonwyatt.com.

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Insurer Topics

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to insurers and reinsurers



Relationships generally improving: Survey

By GAVIN SOUTER

Competitive property/casualty insurance market conditions are shaking up the relationships between agencies and insurers.

On the one hand, because of the soft market insurers are eager to win rivals' business and are prepared to work with agencies to do so. By offering onsite underwriting support, Internet-based underwriting and marketing support, insurers are striving to help agents thrive and produce more business.

On the other hand, insurers that flit in

and out of certain lines and the growing number of insurers seeking to increase business with alternative distribution systems are straining some agent relationships.

Insurer/agent relations generally are improving—or at least not worsening—according to a recent survey by the Independent Insurance Agents of America.

The survey, released in December 1998, is a qualitative study of 48 state leaders of the IIAA's state associations. It found that 35% of respondents thought that the overall state of their relationships with insurers had improved over the past two years; 33% considered that their relationships had stayed the same;

and 21% believed their relationships had worsened. In addition, 10% thought that their relationships had improved with regional companies but had deteriorated with national insurers.

Agents who reported improved relations are benefiting from the current competitive environment, in which insurers are facing severe difficulties as they seek out more business, said Jeffrey M. Yates, chief executive officer for industry and state relations at the IIAA in Alexandria, Va.

"Some of the most positive things that insurers are doing are when they give hands-on assistance to agents," he said.

For example, insurers are more often

sending underwriters on visits to agents, and occasionally underwriters work with agents in the agents' offices for extended periods, Mr. Yates said.

"I think companies are finding that the best way to develop a strong franchise is to develop good relationships (with agents)," he said.

Other support services that agents currently are receiving from insurers include education and training, marketing, automation, and financial support for acquisitions, Mr. Yates said.

Increased underwriting support is helping to improve relations between insurers and agents, agreed Kimberly

See **Relations** on next page

Inside:

Insurance companies are looking to form new partnerships, including alliances with banks, to distribute their products

Alternative distribution channels are creating some conflicts at insurers that also rely on agents

page 16C

page 16G

Relations

Continued from page 16A

Paterson, president of Creative Insurance Marketing, a consultant in Redbank, N.J.

More companies are appointing production underwriters, who are responsible for developing business, she said.

"Companies are putting the underwriters in the agents' offices, and they sit down with the agents and go over expiration dates and renewals and see what they can do to win that business," Ms. Paterson said.

Some insurers are also realizing

that the best way to win more business is to offer more coverage under existing policies, said Paul Breen, commercial insurance manager at Metro West Insurance Agency in Needham, Mass., and a director of allMass Group Inc., a network of independent agents.

"The business insurance market is shrinking because independent businesses are being taken over by chains or going away, so insurers can only grow by enhancing their products," he said.

By offering coverage that normally would require an endorsement under a conventional business owners policy, such as glass coverage, insurers can win business from com-

petitors, Mr. Breen said.

Technological improvements also are enhancing relations, said Ms. Paterson.

'Companies are putting the underwriters in the agents' offices' to go over renewals and win that business.'

— Kimberly Paterson

For example, more and more insurers are offering quotes over the Internet or allowing agents access to insurer systems to obtain underwriting and claims information, she

said.

In particular, computerized coverage submissions and policy issuance are helping agents in their jobs, she said.

"In the pre-technology days, they would have to enter all the policy information and then the company would enter it again, and inevitably it would come back with mistakes," Ms. Paterson said.

One computerized program that is making life easier for agents and winning more business for the insurer is Reliance National Insurance Co.'s CyberComp program, said Bob Arowood, vp and principal at Insurance Services Group, an agency in Clinton, Tenn.

Agents can use the program to obtain quotes and bind workers compensation coverage through the Internet for small and medium-sized accounts.

CyberComp offers coverage for companies with fewer than 50 employees. The maximum gross premium is \$100,000; the minimum varies by state, but can be as low as \$1,500, said Mark Benson, executive vp of CyberComp in Lawrenceville, N.J., which is a unit of Reliance.

The average premium for risks placed via CyberComp is \$10,000, Mr. Benson said. As of Dec. 31, 1998, Reliance had bound 8,149 policies and more than \$100 million in gross premiums through the CyberComp program, he said. The first policy was bound in August 1997.

The program greatly simplifies the process of securing workers comp business, said Mr. Arowood, who has been using CyberComp for more than two years.

Under the program, agents can contact the CyberComp Web site, enter responses to a set of underwriting questions, obtain a quote and bind coverage within a few minutes, he said.

Prior to the development of the CyberComp program, the process could take several weeks as agents and insurers submitted information and negotiated price by mail or fax, Mr. Arowood said.

Although there is no way to negotiate under CyberComp, that is more than made up for by the program's increased speed, Mr. Arowood said. Using CyberComp, agents can quickly secure a piece of business that might only generate a small amount of income, and then move on to other business, he explained.

The CyberComp quote is usually not the cheapest in the market, but it is "competitive," Mr. Arowood said.

"There are other markets that are cheaper, but it is a case of taking the path of least resistance," he said.

And policyholders are prepared to pay a bit more in return for reducing the time it takes to buy compulsory workers comp coverage, Mr. Arowood said.

"Most clients don't want to buy comp insurance anyway, so for them, the one that gets the deal done fast is the one they'll take," he said.

The program was designed to speed up the process and enable both Reliance and the independent



agents to make more money from small account business, said Mr. Benson of Reliance.

Reliance plans to launch a similar online program for marketing small business owners policies later this year, he said.

Other insurers already are offering small business owners coverage over the Internet and, again, such programs greatly simplify the process of obtaining coverage, said Mr. Breen of Metro West.

For example, Fitchburg Mutual Insurance Co. in Fitchburg, Mass., issues to agents a CD-ROM of rating information for its business owners policy. The agents can obtain a quote through the program and then submit the coverage request to the insurer over the Internet, he said.

The process works well for small risks, but larger or more complex risks still need to be negotiated, said Mr. Breen.

"It makes things quicker for the agents and less expensive for both of us," said Bob Anderson, vp-marketing at Fitchburg Mutual.

Other efforts by insurers to improve relations with agents include providing marketing support services, said Ms. Paterson of Creative Insurance Marketing.

This might include supplying an agent with marketing material for a trade show or providing other marketing material for an agency to use from its office, she said.

Traditionally, these marketing materials often have included the insurer's name, Ms. Paterson said. Now, however, more agents are requesting materials that promote only the agency, she added. In response to that issue, The Hartford Financial Services Group Inc. is making available marketing material that does not contain The Hartford's logo, said Mark Lange, senior vp of sales and marketing for agency personal lines in Hartford, Conn.

The package contains newspaper and Yellow Pages advertisements, direct mail materials, press releases and tapes of radio ads, all of which promote independent agents. These materials all can be easily customized to include the name of individual agencies, Mr. Lange said.

"There are a lot of ads out there bashing independent agents and saying that they don't add value, so we decided to come up with ads that agents could use to counter that," Mr. Lange said.

By issuing the ads, The Hartford hopes to strengthen its relationship with independent agents. Although the ads do not contain any references to The Hartford, the insurer still should secure more new business through them, he said.

Despite the number of agents who are seeing improved relations with insurers, there still is a substantial number of agents who say their

See **Relations** on next page

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Insurers banking on new partnerships

By **RODD ZOLKOS**

One of the hottest issues shaping insurer/agency relations in recent years—financial services modernization legislation that would allow banks to sell insurance—is heating up once again.

The House has been holding committee hearings on its version of the legislation this month, while the Senate passed its own version of the financial

modernization bill by a 54-44 vote earlier this month.

Jockeying between the House and Senate over which chamber should move first on the legislation, along with high-powered criticism of some of its details, threatened to derail action on the measure this spring, however.

Still, as insurers and agents have become increasingly aware, the absence of a new law doesn't mean progress won't continue toward the integration of banking and insurance.

Last year's \$70 billion mega-

merger of Citicorp and Travelers Group into Citigroup Inc. was a clear indication that such bank/insurer combinations would move forward without waiting for a new federal law eliminating the 1933 Glass-Steagall Act's prohibition on bank, insurance company and securities dealer affiliation.

Financial services reform bill H.R. 10 died last year with the end of the 105th Congress. But new legislation was quickly introduced as the 106th Congress began.

With those facts in mind, both insurers and agents have been closely studying the new environment and looking for ways to maximize their chances of survival.

Often, that means finding some way to partner with banks that seek to involve themselves in the insurance business.

"Our membership is being affected by this, as is the membership of many other trade associations, in that we have increasing bank involvement by our member firms," said Joel Wood, senior

INSURER/AGENCY RELATIONS

vp-government affairs at the Council of Insurance Agents & Brokers in Washington.

"I would say that nearly every one of our member firms has been considering the benefits or disadvantages of affiliating," Mr. Wood said.

Those affiliations can take various forms. See **Banks** on page 16F

Relations

Continued from previous page
relations with insurers are deteriorating.

The agents that reported worsening relations with insurers in the IIAA survey often are concerned about insurers developing multiple distribution systems, such as subsidiaries that engage in direct marketing of insurance via telephone, said Mr. Yates of the IIAA.

Also, some insurers are causing friction by increasing the minimum premium requirements for the appointment of agents or for agents' participation in profit sharing programs, Mr. Yates said.

In addition, mergers and acquisitions among insurers are causing problems for agents, as combined entities occasionally pull out of lines previously covered by one of the insurers. It also can become unclear after a merger or acquisition which people the agents should be dealing with at the combined company, Mr. Yates said.

Mergers and acquisitions are the primary focus of some insurers, and that focus often leads to worse relations with agents and customers, said Ms. Paterson of Creative Insurance Marketing.

"The focus seems to be 'How can I merge with the next company and get economies of scale or cut expenses?' That is not focusing on the customer," she said.

Publicly traded insurers often have more trouble maintaining good relationships with agents, said Mr. Arowood of Insurance Services Group.

"There is such pressure on their stock that it is difficult for them to maintain a long-term focus," he said.

Often small and medium-sized mutual insurers offer more stability to agents than do national insurers, Mr. Arowood said.

Large insurers are more inclined to move in and out of markets frequently in search of more profitable business to improve their quarterly financial results, he said.

"But when you have a lot of smaller items, what you are looking for is stability in a carrier," he said. **BI**

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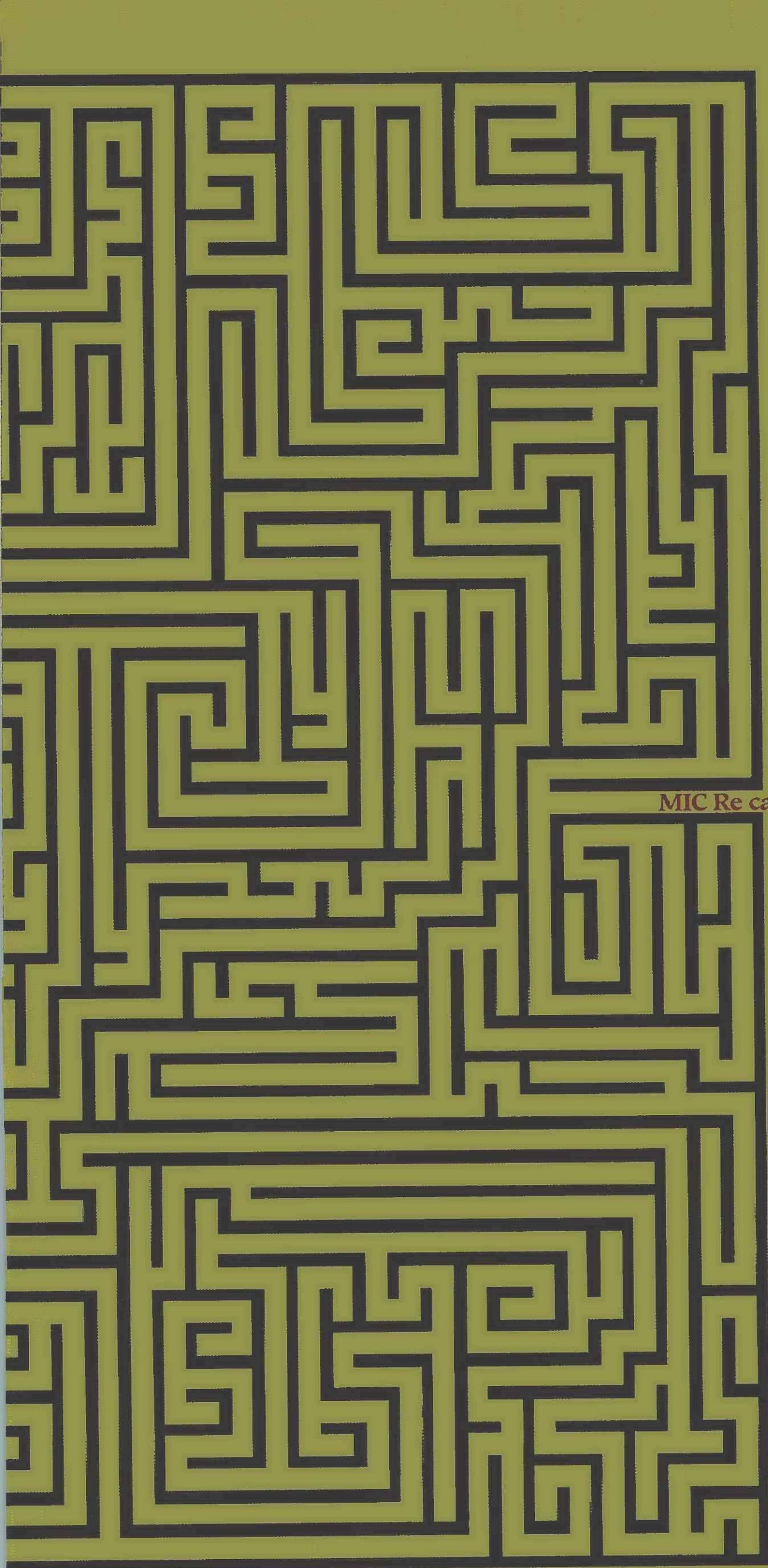
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Channels

Continued from previous page said.

To avoid channel conflict between its captive agents and its new independent agency distribution system, Liberty Mutual created strategic business units with clearly defined parameters. For example, the Commercial Insurance Holdings unit handles accounts up to \$75,000 in annual premium, and only through the independent agency system. The Business Markets unit handles all middle-market accounts, those with annual premiums of \$75,000 to \$2.5 million, and strictly

through Liberty Mutual's direct sales force.

A vast majority of accounts over the \$2.5 million premium range are handled by the direct sales force. The remainder is handled by large national brokers. "There have been no problems" with channel conflict in that segment, Mr. Marziano said.

Independent agents, however, did express concern at the beginning that Liberty Mutual's direct sales force would compete for their business, he said. "We explained to them how we were going to delineate markets through size and distribution source, and as time passed, they were just fine," he said.

"We've had virtually no clashes,"

Mr. Marziano said. "Once we let them know that we meant what we said" in terms of the strict boundaries, issues were resolved. "We've had no problems in over a year."

Schaumburg, Ill.-based Zurich U.S. also has a variety of distribution channels, including independent agents, captive agents, managing general agents, direct sales and the Internet, explained Tom Hite, executive vp-marketing. "We can sell similar kinds of products to the same customer group and not be in competition with ourselves," he said.

The insurer is committed to a multiple distribution system, and Zurich quickly tries to defuse any conflicts that arise, Mr. Hite said. **BI**

IT Briefs

Alliance picks chairman

SEATTLE—The Alliance of American Insurers has elected Thomas W. Crawford as its new chairman of the board of directors. He heads up the list of its new board officers.

The election took place as part of the association's 77th Annual Meeting, held in Seattle May 2-4.

Mr. Crawford, chairman of Prudential Property & Casualty Insurance Co., replaces Thomas A. Taylor as board chairman. Mr. Taylor is president and chief executive officer of Amica Mutual Insurance Co.

In addition, the Alliance announced that Edmund F. Kelly was named chairman-elect of the board. Mr. Kelly, president and chief executive officer of Liberty Mutual Insurance Co., replaces Mr. Crawford as chairman-elect.

Also, Bruce H. Lonnes and Thomas J. Tierney were named vice chairmen of the Alliance board. Mr. Lonnes is president of Austin Mutual Insurance Co.; while Mr. Tierney is president and chief executive officer of Vermont Mutual Insurance Co.

The Alliance of American Insurers, based in the Chicago suburb of Downers Grove, Ill., is a national association representing 275 property/casualty insurance companies.

RAA names chairman

WASHINGTON—John W. Smithson has been elected chairman of the Reinsurance Assn. of America.

Mr. Smithson is chairman and chief executive officer of PMA Reinsurance Corp. and The PMA Group. He is also past chairman of the Brokers & Reinsurance Markets Assn.

Heidi Hutter, chairman, president and CEO of Swiss Re America Corp., was elected vice chair of the RAA. Robert Lippincott III, chairman, president and CEO of AXA Reinsurance Co. was elected RAA secretary-treasurer.

All three officers were elected for one-year terms at the RAA's annual meeting in St. Helena, Calif., on April 30.

The RAA also announced that Chubb Reinsurance Co., based in Bernardsville, N.J., became the RAA's 26th member. **BI**

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Clarification

Comments by Brian Duperreault, chairman, president and chief executive officer of ACE Ltd., as quoted in the April 19 *Insurer Topics*, were incorrectly directed at the independent agency system when he was discussing middle-market business. ACE's strategic vision has not encompassed middle-market business; but that is not to say ACE dismisses the independent agency system.

Insurer Topics

ADVERTISER INDEX

Issue of May 17

ADVERTISER	PAGE #
American Institute for CPCU	16B
Compliance & Filing Solutions	16F
HomeCom Communications	16F
IMCA	16H
ING Reinsurance	16G
MIC Re	16D-16E
Strohl Systems	16C

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ASK A BENEFIT ACTUARY

How can I pay pensions to part-time workers?

The human resources executive who posed the question is seeing older workers with critical skills take early retirement and go to work for the competition as part-time employees. This executive works for an organization with a traditional defined benefit plan with normal retirement at age 65 and early retirement as early as 55.

The exodus of older workers means that significant organizational knowledge is walking out the door. At the same time, the executive is finding it difficult to replace these workers because of the tight labor market.

Early retirements can present an opportunity for employees to receive the early retirement pension and continue working for the competition on a part-time basis. In some instances, income from part-time work added to the defined benefit pension exceeds the employee's former full-time income. With such incentives, it is little wonder that workers are retiring early, starting their pensions and plying their trades elsewhere.

Such a problem arises because the Employee Retirement Income Security Act and the Internal Revenue Code do not easily accommodate a defined benefit plan sponsor allowing an employee to phase into retirement. Ideally, a phased retirement provides an employee with the opportunity to work a reduced schedule, while enabling him or her to offset lost income with the defined benefit pension.

This ideal approach to phased retirement is often difficult to achieve, as ERISA and the Internal Revenue Code do not allow pensions to be paid to an active employee before that employee reaches a defined benefit plan's normal retirement age. Once that age is reached, a plan can pay an employee his or her pension.

Despite the problems with the law, there are a couple of approaches for developing a phased

retirement program for older workers.

One approach is to review retirement plan provisions to determine whether plans can be altered to facilitate a phased retirement. The defined benefit plan should be reviewed to determine the feasibility of reducing the plan's normal retirement age from 65 to 55. By doing so, the plan sponsor could start an employee's pension for a phased retirement at any time after age 55.

But this change in normal retirement age could have implications for the way benefits are accrued under the plan. The plan sponsor who posed this question provides reduced pension at age 55. In order to change the normal retirement age to 55 and maintain a pension accrual pattern comparable to the current plan, the sponsor most likely would need to change the pension benefit formula to accommodate the new normal retirement age.

Where this first approach is concerned, the plan sponsor also ought to review the organization's other retirement programs to determine whether they could provide for a phased retirement. For example, the defined contribution plan should be reviewed to determine the extent to which benefits could be paid while the worker is still employed. ERISA and the Internal Revenue Code permit in-service distributions as early as age 59½.

Medical coverage during phased retirement also should be reviewed. Many medical programs either require increased employee contributions or provide reduced coverage to part-time workers. Those differences also need to be addressed in the context of a phased retirement.

A second approach to providing for a phased retirement requires a change in cash compensation programs. In many organizations, a worker moving from full-time to part-time status receives a pro rata portion of the full-time compensation. For example, a worker who shifts from a full-time schedule to a three-day-per-week schedule typically receives 60% of full-time wages. An alternative approach might be to offer a phased retirement program in which the employee gets 80% or 90% of full-time wages for a three-day schedule. This arrangement would be for a limited period of time preceding full retirement.

In some organizations, paying more than pro rata full-time wages for part-time work is counter to the organization's culture. The concept can be supported, however, by noting that the organization benefits financially from keeping the employee

working. Not only does the organization benefit by retaining the employee's knowledge, but the defined benefit plan also experiences a financial gain. The worker who phases into retirement under this approach forgoes pension payments during the phased retirement period and, in effect, the cost of the wage premium paid to the worker phasing into retirement is offset by the gain to the pension plan.

The U.S. labor market currently is characterized by a declining supply of younger workers, those between the ages of 25 and 44. Watson Wyatt Worldwide's research shows that the supply of workers from 25 to 34 will decline by 8.8% from 1996 to 2006; the number of workers from 35 to 44 will decline by 3% during this period. In light of this trend—coupled with our current low unemployment rates—it is not much of a stretch to think that there may well be increased pressure to retain older workers. And the case for phased retirement programs will only grow stronger. **BI**

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

Ask A Casualty Actuary, Ask A Benefit Actuary, Ask A Benefit Manager and Ask A Risk Manager answer written questions from readers on risk and benefits management issues and actuarial problems.



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

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

Thorough, prompt investigation a key to recovery

By Richard C. Glazer

LOSS IN BUSINESS is inevitable, no matter how much effort is directed to prevention.

When losses do occur, too many risk managers overlook real possibilities for recovery, choosing instead to walk away from what may be erroneously viewed as "act-of-God" property losses.

There is, however, a largely ignored legal means by which creative risk management can enhance the corporate bottom line.

What is that legal means? Recovery by risk managers.

Let's suppose a company has sustained a significant loss due to fire, flood, or some other catastrophic occurrence. If its risk management department were to initiate a thorough cause and origin investigation of the loss, the company would then have the option—after careful consideration—to legally pursue the responsible party.

Recovery by risk managers becomes an important and viable way to recoup a substantial loss when we examine it against the background of current corporate insurance trends. In recent years, many

large companies have switched to larger deductibles or self-insured retentions in their property insurance programs. A principal motive has been an attractive reduction in the premiums they then pay (typically, the larger the property deductible or SIR, the lower the premium). As a result, "Dollar One" property coverage has become a rarity.

Risk managers have an opportunity to help companies recover their losses, despite the insurance landscape of larger deductibles and SIRs. Often, the focus after a loss is on post-loss debris removal, claim documentation and resumption of business operation. By undertaking a thorough cause and origin investigation, however, the risk manager can put the company in a viable position to pursue those responsible for the loss.

This is by no means a suggestion to pursue a reckless "sue anyone and everyone" approach. Certainly, there may be valid reasons to refrain from pressing a claim against a responsible tortfeasor. However, unless the proper kind of investigation is performed—and performed promptly—the company will likely lose that opportunity forever.

Why the urgency? Largely because the site of the

loss will soon change due to a variety of factors, including: variable weather conditions, debris removal, clean-up efforts, scavengers and reconstruction. In addition, witnesses scatter, their memories and recollections fade, and important records and other relevant documents may be misplaced or may simply disappear. The only way to preserve the potentially valuable option of pressing a claim against a responsible third party is through an immediate and thorough investigation.

The importance of early and thorough loss investigation cannot be overestimated. Case after case proves the point: Without immediate action, critical details would have been overlooked.

Take, for example, an explosion and fire at a 10-building manufacturing complex in Lancaster, Pa. Because the concrete-block buildings and their contents—aluminum and aluminum products—could not easily ignite, the inferno, in which all 10 buildings burned to the ground, was a mystery.

Expert investigators were put to work immediately, interviewing the firefighters who were the first to arrive that night, as well as those who

Continued on next page

Continued from previous page

were called in at the very end. The first firefighters recalled seeing blue flames, indicating a gas-fed fire and, in fact, the plant had been heated by industrial gas heaters. Further evidence of a gas-related fire was provided by video footage taken by a local television station that covered the story.

Once the fire debris had cooled, experts were able to study the gas distribution system in the company's buildings. They learned that the building had been built over a period of years, and this add-on construction had resulted in an inappropriate connection of the gas service, forming a dangerous 10-legged "octopus" near the gas meter.

In addition, the gas main feeding these buildings ran under a heavily trafficked driveway that was used by trucks weighing many tons. A cleaning woman interviewed remembered smelling gas the night of the explosion. It was her memory that led experts ultimately to conclude that vibrations caused by the heavy trucks had loosened the underground fittings which, in turn, led to a natural gas leak. Once the gas accumulated, it was ignited by the pilot lights at the ceiling heating units, causing an explosion and fire that led to the destruction of the physical plant.

This case is a good illustration of the first key to successful recovery: a timely investigation. Without an early and thorough investigation, both the cause (faulty gas connection) and proof (the firefighters' eyewitness accounts, the cleaning woman's recollection of a gas odor, video footage, the "octopus" gas connection visible once the fire debris cooled) would have been lost in the effort to clear the site and rebuild.

At the same time, this case illustrates a related key factor in successful recovery—the careful preservation of evidence. Our cause and origin experts took great pains to meticulously gather and document evidence. They gathered recorded eyewitness reports, a photographic work-up of the fire scene—in black and white as well as color—and video footage from a television station. As a result, we were able to provide uncontaminated proof of our claim. That proof ultimately allowed us to prevail against the third party we deemed responsible—the local gas company.

This brings us to a related point—the importance of preserving evidence for all possible causes of the catastrophe. It often happens that cause and origin investigators only remove evidence of, say, the circuit breaker that they believe to be at fault. Experienced attorneys, however, are well aware that the defense can then bring up two objections.

The first objection is that investigators altered the condition of the site when they removed their evidence. They argue that such evidence is contaminated, and it may later be ruled inadmissible in court. The second objection is that another cause may be implicated and, for that, the defense will then have no countering evidence.

The best way to successfully circumvent both objections is to carefully preserve as much as possible—not just the circuit breaker but also the wires, cables and nearby appliances. Everything that might have contributed to the loss should be preserved. An experienced recovery lawyer understands the theories of liability needed to perfect the claim and can anticipate the defense's position.

One of the most important things to remember is that, unless all evidence is preserved from the beginning, there is a very real risk of losing the case because of contaminated evidence.

"Spoliation of evidence" is the legal doctrine that if one party alters, modifies or loses evidence, the party against whom that evidence would be used is entitled to legal sanction such as having the case dismissed or advising the jury, depending upon the jurisdiction of the case.

If, on the other hand, potential defendants are informed in writing that responsibility for the loss may be attributable to them and are invited to conduct their own investigation before the site is cleared (typically, in a matter of days), spoliation issues are avoided.

Another consideration when gathering onsite evidence to establish a cause is the proper elimination of alternative causes.

Office occupancy cases provide good examples of this aspect of the investigation process. Most offices contain a number of domestic appliances, such as a coffee maker, microwave oven, refrigerator, hot water heater, radio, television, photocopier, and any

number of plugs, outlets and cords.

Cause and origin experts should carefully examine each of these potential hazards in order to evaluate the actual cause of a loss. If, for example, the office coffee maker is suspected to be the precipitating factor in a fire, the expert investigator will know that the coffee maker would look very different if the fire started inside its wiring than if the fire started elsewhere.

At the same time, witnesses must be questioned carefully about what was in the area of origin and how the fire proceeded. This information can prove very useful in the gradual elimination of alternative causes.

This brings us to some final questions:

- Why hire both investigative experts and attorneys, if the experts' evidence is what makes or breaks a potential recovery?

The answer is that when an attorney is involved during the investigation stage, material developed by cause and origin experts may be protected from pre-trial discovery under attorney/client privilege.

- Are cause and origin experts always necessary? Aren't some losses the result of obvious causes?

The answer is that even when the cause appears obvious, there may be additional, latent causes. In addition, in all instances, proof is required to press a claim. For that, the expert investigation findings are crucial.

For the risk manager, ignoring the potential to recover all or part of a loss from the third party responsible is like throwing money out the window, a sad mistake that only compounds the loss. **BI**



Richard C. Glazer is chairman of the Subrogation and Recovery Department at Cozen & O'Connor, a commercial and business law firm with 13 offices in the United States and an office in London. Mr. Glazer practices in the firm's headquarters in Philadelphia.

Book formulates emerging disease theory

"Chemical Exposures: Low Levels and High Stakes" Second Edition

By Nicholas Ashford and Claudia Miller

Published by John Wiley & Sons Inc., 605 Third Ave., New York, N.Y. 10158; 800-225-5945
\$39.95

By Kevin M. Quinley

Few phrases spark as much fear in the hearts of risk managers as "multiple-chemical sensitivity."

This controversial medical theory has spawned countless toxic tort lawsuits against companies making a variety of products. A new book explains how daily variations in chemical exposure may cause unusual and increasingly unpredictable symptoms, including many that were previously diagnosed as psychosomatic.

"Chemical Exposures: Low Levels and High Stakes" describes how everyday, low-level chemical exposures can cause fatigue, memory impairment, headaches, mood swings, and Gulf War and sick building syndromes. Only fallen arches and the heartbreak of psoriasis seem to be ailments not conceivably triggered by exposure to low-level chemicals.

Authors Nicholas Ashford and Dr. Claudia Miller are among the pioneers attempting to describe and document the process of adaptation, a concept that provides a rational and scientific basis for understanding these symptoms.

In the second edition of this work, the authors offer evidence for an emerging theory of disease.

Books & Ideas

This theory is a toxicant-induced loss of tolerance, which may have far-reaching implications for medicine, public health and environmental policy.

It goes without saying that this theory would have huge financial implications for liability litigation and risk management, though the book does not address those issues.

The authors bring weighty credentials to the task. Mr. Ashford is a lawyer, holds a doctorate, and is a professor of technology and policy at the Massachusetts Institute of Technology. Dr. Miller is a medical doctor who serves on the faculty of the University of Texas Health Science Center.

"Chemical Exposures" may be the most comprehensive book written yet on sensitivity to low-level chemical exposure and the various health ills that some say are associated with it. The authors clarify the nature of chemical sensitivity, showing how it differs from traditional allergies and toxicity. Leaving the realm of science and venturing into public policy, the authors suggest how federal and state governments can help victims.

The whole notion of multiple-chemical sensitivity has triggered controversy, particularly among industry groups that want to debunk what they view as junk science. Some in the scientific research community believe that only "blind challenge tests"—which involve exposing subjects to undisclosed substances—are credible in understanding and defining the diagnosis.

Many industry representatives argue that blind

challenge studies disprove the existence of multiple-chemical sensitivity.

Mr. Ashford and Dr. Miller take on these studies and attempt to refute them. The authors also take turns trying to discredit many of the defense experts that they encounter in trials, some of whom Mr. Ashford and Dr. Miller believe are funded by the chemical industry.

As a magnet attracts metal shavings around opposing poles, so will "Chemical Exposures" likely evoke widely different reactions. This is not a book to which risk managers will warm. The book lends credence to claims against businesses for multiple-chemical sensitivity.

Risk managers and business interests are tempted to dismiss such diagnoses as vaporous junk science. It would be a mistake for risk managers to dismiss the book, however, just because its views are not congenial. The controversy will be resolved not in bookstores or in volumes such as this, but in the courts. **BI**



Kevin M. Quinley is senior vp of risk services for MED-MARC Insurance Co. Inc. and subsidiary Hamilton Resources Corp., both of Fairfax, Va. He holds the Chartered Property & Casualty Underwriter and Associate in Risk Management designations.

Award

Continued from page 3
guidelines for serious criminal wrongdoing," said Victor E. Schwartz, a partner in the Washington law firm of Crowell & Moring and a longtime advocate of punitive damages reform.

"Surely some guidelines can be developed in Alabama to keep the state from having a judicial system that has become a laughingstock throughout the United States in regard to punitive damages," he said.

The latest case involved the sales practices of a former Whirlpool subsidiary, Whirlpool Financial National Bank, and a Mobile, Ala.-based retailer called Gulf Coast Electronics. The plaintiffs claimed they had been scammed for \$612 for each of two satellite dishes because a salesperson told them they would be paying \$34 a month for three years to buy the devices when the contract actually ran four and half years.

The plaintiffs sued in 1997. Their attorney, Thomas J. Methvin, a partner in the Montgomery, Ala., law firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., told a Hale County, Ala., jury that Whirlpool had engaged in "systematic fraud" by targeting the poor and uneducated throughout Alabama. The jury agreed and ordered Whirlpool to pay \$975,000 in

compensatory damages and \$580 million in punitive damages to the plaintiffs.

"Jury awards like this serve a necessary interest in our society. They draw attention to a problem that needs attention. The system will work. The verdict will be lowered by the Alabama Supreme

and the jury has a duty to punish the company if the evidence warrants. If you tie their hands by capping punitive damages you will lose a very important function of the civil justice system, which is to deter misconduct," she said.

Not surprisingly, business representatives view the situation in an

Alabama's judicial system 'has become a laughingstock throughout the United States in regard to punitive damages,' says tort reform advocate Victor E. Schwartz.

Court. Therefore, there will be no 'windfall' for these victims; however, the message will still be here. That message is 'don't cheat the most vulnerable in our society in the name of making a profit,'" Mr. Methvin said in a written statement.

"It's likely that the verdict will get cut down, but I think the jury, even knowing that, felt that the verdict was an important message to send out," said Joanne Doroshov, executive director of the New York-based consumer group Citizens for Corporate Accountability & Individual Rights.

"I think this is a good example of a situation where there is egregious misconduct by a company

entirely different light.

"We had thought that the Alabama courts had been undergoing some sort of sea change in terms of controlling runaway punitive damage awards, but this latest decision indicates that they really haven't seen the light," said Robin Conrad, senior vp of the Washington-based National Chamber Litigation Center Inc. The center handles litigation for the U.S. Chamber of Commerce.

"This is further evidence that Congress needs to step in and take charge of the situation," Ms. Conrad said.

Lawrence Fineran, assistant vp-resources, environment and regulation for the National Assn. of

Manufacturers in Washington, agreed. While noting that the award must be reviewed in light of *Gore vs. BMW*, he said the case demonstrates the need for "uniform consistent standards of evidence where (punitive damages are) allowed and also to have clear national jury instructions" in cases involving punitive damages.

Mr. Schwartz said that correcting the situation rests with Alabama lawmakers rather than their federal counterparts. He said it would be "very difficult" to pass federal legislation now because reformers do not have the votes in Congress and, even if they did, President Clinton would almost certainly veto any reform legislation.

The Alabama Senate was debating a measure that would limit punitive damages to the greater of

three times actual damages or \$750,000 last week. The Senate had already approved two tort reform bills last week. One would require that lawsuits be filed only in the county where a substantial amount of the alleged wrongdoing had occurred, where the defendant had its principal office or where the plaintiff resided at the time of the alleged wrongdoing provided that the defendant did business there through an agent. The Senate also approved a bill requiring that judges hear from both sides in a dispute before certifying a class of plaintiffs.

The state House has not acted on any of the measures.

Barbara Carlisle vs. Whirlpool Financial National Bank et al., Circuit Court of Hale County, Ala.; No. 97-068. Decided April 6, 1999.

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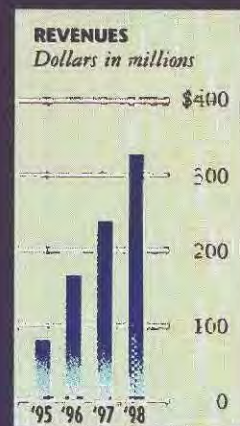
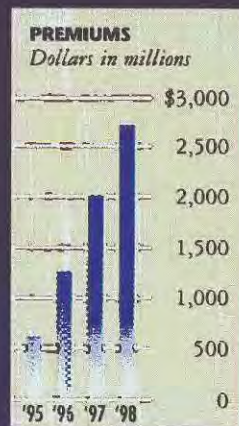
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INTERNATIONAL

Global Briefs

Insured losses from natural and man-made disasters in 1998 totaled \$17.5 billion, more than double the previous year, according to a study by Swiss Reinsurance Co. Natural catastrophes caused \$14 billion of losses, and \$3.5 billion from man-made disasters. Three major losses significantly contributed to the increase: \$3.5 billion from Hurricane Georges in the United States and Caribbean in September, \$1.3 billion from a hailstorm in Minnesota in May, and \$1.2 billion from ice storms in Canada and the United States in January. ... Marsh Inc. is selling its London-based financial adviser, Sedgwick Financial Services Ltd. No buyer has yet been named. ... Lloyd's of London has approved Price Forbes Ltd. as a broker to place business in the Lloyd's market. Price Forbes, which previously had placed business at Lloyd's through Sedgwick Ltd., said that while maintaining existing business, its focus will be to develop business from the United States and Canada. ... Losses from a fatal capsizing of a Bangladeshi ferry earlier this month likely are uninsured, according to a government spokesman. The sinking on the Meghna River claimed at least 200 lives. Bangladeshi officials are investigating the cause of the accident. ... More than 200 Australians agreed to invest \$4 million Australian (\$2.7 million) in a bogus insurance company set up on April Fool's Day by Australian regulators. The Canberra, Australia-based Australian Securities & Investment Commission set up a Web site April 1 that urged people to invest in a company called Millennium Bug Insurance. The effort was aimed at highlighting the risks of financial advice delivered on the Internet. "Taking advice over the Internet is the same as taking advice from someone on the street corner," said ASIC Chairman Alan Cameron. The 233 people who fell for the scam received a return e-mail from ASIC telling them it was a joke. ... Gemini Re Holdings Ltd., a start-up Bermuda life and health reinsurer (BI, Jan. 18), is running into problems with its management. David Brown, who was chief executive officer of Gemini Re, and Grant Gibbons, who was chief financial officer, both suspended their association with the company recently, "pending a resolution of strategic differences with other principals of the company," they said in a statement. Mr. Brown is the former president and CEO of Centre Solutions (Bermuda) Ltd., and Mr. Gibbons is the former Bermuda minister of finance. ... Chubb Insurance Co. of Europe S.A. has launched an employment practices liability policy. The policy protects a company, its managers and its employees by providing coverage for damages and defense costs as a result of an employment-related tribunal or court action. While aimed at companies in the United Kingdom and Ireland, Chubb said it can create global EPL programs for companies with worldwide interests.

Prettejohn reorganizes Lloyd's staff

By SARAH GODDARD

LONDON—Lloyd's of London's chief executive officer-in-waiting already is making his presence felt, although he does not assume the top job in the Corporation until July 1.

Last week saw the Corporation—the administrative, services and regulatory arm of the Lloyd's market—undergo restructuring as incoming CEO Nick Prettejohn started shaping the body closer to his vision. In total, one director position and four departments will be cut by the changes, though cost savings are thought by market sources to be minimal.



Mr. Prettejohn

a ferocious pace. (Lloyd's Chairman) Max Tay-

In an announcement sent to Corporation staff, Mr. Prettejohn wrote, "These initiatives are part of what is, and will be, a continuing process of change in every part of the Corporation. The need for us to change is paramount in an industry and a market where change is happening at

lor, I and the other directors will be working closely with you to face these challenges during the rest of this year and beyond."

Mr. Prettejohn, presently the managing director of Lloyd's North America and business development units, has been working with Ron Sandler, the current CEO, to ensure a smooth transition since Mr. Sandler announced his intention to leave at the beginning of this year (BI, Jan. 25).

In the latest shake-up, effective from June 1, Andrew Duguid will take over Mr. Prettejohn's business units as director of development. See Layoffs on next page

\$6.4 million ordered for lead cleanup

Action may popularize EIL cover in Mexico

By ROBERTO CENICEROS

TORREON, Mexico—A recent government order forcing a major mining company to fund up to \$6.4 million in health care treatment for injured children could force Mexican companies to focus more on pollution liability coverage, experts said.

Mexican authorities two weeks ago ordered Industrias Penoles SA de CV to reduce emissions, clean up lead contamination around residential zones adjacent to its metal refining facilities in Torreon and create the health care fund, company officials confirmed.

Penoles, one of the world's largest silver mining companies, also must pay to

relocate 440 families currently living near the facilities, a company official said.

Studies have found high levels of lead in the blood of more than 1,000 of Torreon's children. The town of more than 500,000 people is in the northern state of Coahuila.

Penoles will not be required to provide the \$6.4 million in one lump sum, said Federico Kunz, Penoles' legal director in Mexico City.

The money, which will be made available over several years, is roughly equal to 60 million Mexican pesos.

The cleanup of lead contamination will be paid for out of operating See Silver on page 25



Residents of Torreon, Mexico, march against the Industrias Penoles metal refining facilities to protest the high levels of lead in the blood of local children.

Risk managers seeking ART services: Study

By EDWIN UNSWORTH

More risk managers at major companies want brokers and consultants to offer them comprehensive risk management services, including alternative risk transfer options, according to a survey soon to be published.

The survey, Attitudes Towards Risk, Market Integration and Alternative Risk Transfer, showed, however, that more than half of the respondents claimed they had never been offered ART services.

Global Risk Finance, a London-based unit of Marsh Inc., conducted the survey of 1,400 companies worldwide. Five per-

cent of those companies responded to the survey.

The list of companies came from the Times 1000 and Euro 500, a compilation by The Times newspaper in London of the 1,000 biggest companies in the world and the 500 biggest in Europe.

The 1999 survey was heavily weighted to companies in the global oil, gas and petrochemical industries, though to a slightly lesser extent than the first survey in 1998. This year more European companies responded than last year.

The two surveys show a dramatic change over the past year See ART on page 25

ReAC raises reserves to cover '98 losses

By MATTHEW MacDERMOTT

SYDNEY, Australia—Reinsurance Australia Corporation Ltd. has boosted its 1998 unreported claims reserves by \$60 million Australian (\$38.3 million), appointed a new chief executive officer and announced plans to establish a Lloyd's of London underwriting syndicate.

Sydney, Australia-based ReAC recorded a \$42.8 million Australian (\$27.3 million) loss in 1998, compared to a \$68 million Australian (\$44.2 million) profit in 1997. The company attributed the poor 1998 result to losses stemming from Hurricane Mitch, Hurricane Georges and several satellite failures.

ReAC Chairman Peter Cadwalader said that many of last year's losses were unexpected, with 40% of the claims reported in the second and third weeks of

December.

He said ReAC has increased its 1998 claims reserves by \$60 million Australian in anticipation of additional claims from last year's hurricane and satellite losses. The \$60 million Australian is equivalent to 8% of ReAC's claims reserves as of Dec. 31, 1998.

ReAC's reserve increase comes on the heels of the provisional liquidation of the Bermuda-based underwriting operation of fellow Australian reinsurer New Cap Reinsurance Corp. Ltd. New Cap Re also has placed its Australian underwriting operation into voluntary administration (BI, May 3).

Meanwhile, ReAC has split its formerly combined roles of CEO and chief underwriter.

Mike Kelly, who previously held both roles, remains chief See ReAC on next page

Industry urged to innovate on new risks

By MATTHEW MacDERMOTT

SYDNEY, Australia—The insurance industry must work harder to develop solutions for risks once thought uninsurable, a reinsurance executive says.

Speaking at the Australian Insurance Institute's national conference in Sydney, Australia, May 3-5, James F. Duffy, president of St. Paul Re in New York, said insurers and reinsurers must provide new risk solutions for the corporations of the 21st century, "or someone else will."

He called on the insurance industry to develop coverage for traditionally uninsurable risks to turn the "insurmountable challenges" that risk managers face into "a dream, rather than a nightmare."

Mr. Duffy said non-traditional reinsurance, or highly customized reinsurance designed to meet specific financial objectives, will be the biggest growth area for St. Paul Re—and the reinsurance industry in general—over the next



five years.

He said the challenge is to address clients' broader needs by covering new business risks that "have appeared until now not to be in the

kingdom of insurance risk."

Examples of these risks include: • A turkey farmer experiencing a large increase in grain prices that could put the farmer out of business.

• The publisher of a daily newspaper facing a large increase in

the cost of newsprint.

• A brewery that encounters decreased beer sales due to an unexpectedly cool summer.

• A utility experiencing a sales drop during an unusually cool summer or warm winter.

Other financial risks that are being incorporated into traditional property and liability programs include: rogue trading, mergers and acquisitions, foreign exchange and interest rate risks, Mr. Duffy said.

"We at St. Paul Re see these and similar cases as examples of the special challenges that are being See Innovate on next page

ReAC

Continued from previous page
underwriter. Nick Steffey, former CEO of Sydney-based non-life insurer and reinsurer GIO Australia Ltd., has been appointed ReAC's chief executive officer.

Mr. Steffey left GIO last year after Sydney-based composite insurer AMP Ltd. gained 57.2% control of GIO following a hostile five-month, \$3.02 billion Australian (\$2.02 billion) takeover battle (BI, Sept. 21, Aug. 31).

Mr. Steffey was not available for comment on his appointment to

ReAC but said in a statement that ReAC's underlying strength and potential "will help it return to profitability in the near future."

At ReAC's annual general meeting April 23, Mr. Cadwallader announced that the company was planning to establish a Lloyd's of London syndicate.

"We are evaluating a proposal to seek approval from Lloyd's of London to start our own underwriting syndicate, which would initially write a direct property book," he said in the company's annual report.

A ReAC spokesman in London said last week that the application for the

syndicate is currently with Lloyd's regulators. Gary Starling has been named the syndicate's underwriter.

Meanwhile, ReAC has estimated its losses from the recent tornadoes in Oklahoma and Kansas at \$5 million.

Sydney-based GIO Australia Ltd. has been hit harder, estimating its exposure to the tornadoes at \$20 million Australian (\$13.4 million).

GIO's reinsurance division, which is expecting a \$30 million Australian (\$20.1 million) loss from the Sydney hailstorm (BI, April 29), has forecast a massive pretax loss of \$300 million Australian (\$201.1 million) for the 1993 fiscal year. **BI**

Layoffs

Continued from previous page
ment. In a slight change to the current structure, Mr. Duguid will have a new oversight role for the North America unit, and Julian James will become managing director there.

Mr. Duguid's current role as director of strategic planning will be eliminated, and various functions carried out by the area will be moved to other parts of the Corporation.

In particular, the scope of the business development unit is being expanded. The corporate communications department will be merged with the marketing department into a new department, which will be managed by the current marketing manager, Caroline Wagstaff. The position of corporate communications general manager, currently held by Peter Hill, is one of 11 posts to be made redundant by the changes. Mr. Hill will be leaving the Corporation at the end of June.

Also made redundant is Nick Doak's position as manager of media relations. Messrs. Hill and Doak headed up what, at times, was one of the most besieged press offices in London's financial services community. The pair dealt with the crises of the late 1980s and early 1990s as well as the reconstruction and renewal program.

Mr. Hill and Mr. Doak won several awards for their press office work. Mr. Doak's final day will be spent managing press relations at Lloyd's annual general meeting June 11.

Other departments being cut include the commercial policy unit and the capital management division. The work of these two areas will be brought under the business development unit, which now will encompass initiatives such as promoting captives at Lloyd's, developing alternative risk transfer mechanisms, investor relations and distribution. As a result, Barbara Merry, head of the commercial policy unit, will be leaving the Corporation, and Chris Aujard

will become head of development projects within the business development unit.

At the same time, Roger Sellek will become managing director of the market risk unit, which is part of the finance directorate, and will take responsibility for performance analysis and managing Lloyd's relationship with rating agencies.

Within the finance area, the regulatory policy unit is being disbanded. This move reflects the reduced role it has taken as the Financial Services Authority and the General Insurance Standards Council have assumed certain aspects of regulation.

Similar changes already are underway in the Insurance Services directorate, where about 300 out of 1,000 jobs are being eliminated as part of a bid to save £10 million (\$16.2 million) per year in costs. At the same time, the directorate, which includes the Lloyd's Claims Office and Lloyd's Policy Signing Office, is being streamlined to reduce duplication and increase efficiency. **BI**

Innovate

Continued from previous page
posed to us as we enter the 21st century," he said.

"Not only is it a challenge, but it represents a significant growth opportunity. We see these cases as reflective of the expanding and increasingly important area of non-traditional reinsurance that combines elements of traditional underwriting risks with financial risk protection," he said.

Mr. Duffy estimates that current insurance solutions represent only about 20% of the total business risks spectrum.

He said that St. Paul Re, in looking to capitalize on the broader risk market, is positioning itself as more of a "problem solver" than a reinsurer.

"The strong common denominator for non-traditional deals is clients are bringing us unique problems and calling on us to provide traditional and financial risk protection in a tailor-made program," Mr. Duffy said.

Mr. Duffy said there are risks involved in diversifying into new risk areas, and he predicts some insurers and reinsurers offering new coverages will "lose their shirts more than once."

In addition, he expects the broadening of insurable risks to heighten the importance of intermediaries.

"The more complex the risk transaction, the greater the demand for the involvement and expertise of the broker," Mr. Duffy said. "I expect, as we enter the age of enterprise risk and dynamic financial analysis, that brokers will take hold of the demand and create the supply for these complex risks." **BI**

Brokers evolving into risk advisers

By MATTHEW MacDERMOTT

SYDNEY, Australia—Insurance brokers increasingly are moving beyond their traditional role and becoming risk advisers.

That was the message from international insurance brokerage executives

each profession "sliding around into each other's patch."

"If we (brokers) (don't) get our act together quickly, we (are) in danger of being left out of advisory business and left with just insurance," he said.

Mr. Richardson said Marsh's global reach and size has allowed the broker to introduce a range of specialist advisory skills, such as engineering, environmental, crisis management and claims management.

Aon's Mr. Mahoney agrees that growing client demand for integrated corporate risk solutions has forced brokers to introduce value-added specialist services, such as actuarial studies and claims handling.

He said brokers must now understand a broader range of business issues, including cash flow and tax, rather than just focusing on insurance.

In addition, brokers' role as advisers has been driven by increased corporate interest in self-insuring, Mr. Mahoney said.

The wave of mergers and acquisitions sweeping across the business world has created more large, global companies with a greater ability and willingness to self-insure. "There is an increased appetite for risk," he said.

Mr. Mahoney said brokers now provide advice to captive insurance companies and clients that use alternative risk transfer programs, even though neither is directly linked to an insurance purchase.

Marsh's Mr. Richardson said, however, that the reinvention of the brokerage industry still has "a way to go" and that brokers have more to do to adjust to the changing global business environment. **BI**



speaking at the Australian Insurance Institute's recent national conference, held May 3-5 in Sydney.

John Richardson, chairman of Sydney, Australia-based Marsh Australia Pty. Ltd., a subsidiary of Marsh Inc., even suggested the brokerage industry move away from the name "insurance brokers" and instead be formally known as "risk advisers."

Mr. Richardson said that over the past 10 years, the amount of revenue in Australia from commissions has dropped significantly, to the point where it now is only 35% of Marsh Inc.'s revenues.

Income no longer comes mainly from transactions.

Dennis Mahoney, chief executive officer and chairman of Aon Group Ltd. in London, agrees with Mr. Richardson that consulting has become brokers' major role. He said the old insurance transaction chain is being "broken up" as more insurers and reinsurers are bypassing brokers and selling directly.

Mr. Mahoney said brokers increasingly must offer advisory services not necessarily linked to pure transactions. He said Aon's main focus now is on providing cost-effective risk mitigation advice. "We want to be resultants, not just consultants," he said.

Dieter Losse, deputy chairman of London-based reinsurance broker Benfield Greig Ltd., said that even smaller specialist brokers need to provide a range of services that "transcend traditional insurance placing."

Mr. Losse said client demand for value-added services has transformed much of the brokerage industry into "serious risk management advisers."

Marsh's Mr. Richardson said the barriers between brokers, accountants, lawyers and management consultants have become "slippery," with

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300 attend conference

The Australian Insurance Institute national conference was held at the Sheraton on the Park in Sydney, Australia, May 3-5.

The conference attracted more than 300 attendees from Australia, New Zealand, the United Kingdom, the United States, Hong Kong, Singapore and Papua New Guinea.

For information on future conferences, contact the Australian Insurance Institute, Level 17, 31 Queen St., Melbourne, Victoria 3000; 61-3-9629-4021; fax: 61-3-9629-4024; or visit www.aii.au.

INTERNATIONAL

Silver

Continued from page 23

expenses, Mr. Kunz said. Penoles has insurance coverage for pollution liability. But Mr. Kunz could not say whether its insurance will pay for any of the \$6.4 million the group must set aside to treat children suffering from lead poisoning. He also said he was not immediately aware which insurer provides Penoles' coverage.

Penoles is owned by Mexican holding company Grupo Bal, which also owns one of Mexico's largest insurers, Grupo Nacional Provincial. Market sources say the insurer provides pollution coverage for Penoles.

The government order is unlikely to trigger coverage, however, several Mexican insurance experts said. Mexican pollution policies generally require a sudden and ac-

cidental trigger, said Juan Julio Buendia, vp-international division in Los Angeles for Mexican insurer Seguros Comercial America. Gradual pollution generally is excluded.

Mexico has long had laws against corporate polluting, but they have rarely been enforced, observers say.

Penoles has operated metal processing operations in Torreon for decades, and activists for years have blamed Penole's operations for lead contamination.

Mexico has long had laws against corporate polluting, but they have rarely been enforced,

several observers said. Government enforcement in Torreon is likely the result of both growing awareness about the dangers of pollution and activism on the part of people residing near industrial sites, said Richard H. Atherton, vp and director of the Aon Risk Services global business unit in Mexico City.

That awareness could push Mexican authorities to take more enforcement actions. That, in turn, is likely to send policyholders looking for coverage under policies that may not be adequate for all pollution liability exposures, Mr. Atherton said.

It might also drive Mexican companies currently operating without coverage to evaluate purchasing pollution policies.

"It's going to be a growth market in the future, no question about it," Mr. Atherton said of pollution liability insurance. **BI**

ART

Continued from page 23

in risk managers' opinions of what services they receive from their insurance brokers are the most important.

In the 1999 survey, 41% of risk managers said the most significant service they receive from brokers is risk management advice, compared with 24% in the 1998 survey. Only 2% of risk managers now see claims handling as the most important service from brokers, down from 42% in 1998. The other major change between the surveys was in brokering/placing, with 39% of risk managers in 1999 seeing this as the most important broker service, up from only 5% in 1998.

Chris Mundy, the survey's editor and ART practice leader for Global Risk Finance, explained that the dramatic change in the survey's results is partly owing to the different sample, including a greater European-company weighting than last year. He also said the shift could have resulted, in part, from the greater importance being given this year to corporate governance, particularly in the United Kingdom, causing people to focus more on risk management issues; and to greater publicity of the issue of risk management.

Survey results suggest that receiving advice on managing risk is

more important to risk managers than in the past.

Asked to identify the most significant service that brokers are failing to provide, 45% said risk management, up from 14% in 1998.

Global Risk Finance says the replies make it clear "that more is required from brokers in respect of strategic or enterprise risk management."

Risk managers also want more information on ART solutions, ac-

dents said that when offered ART solutions, 25% of the time it was from consultants and banks, whereas 45% of the time it was from brokers and 30% of the time from insurers.

Asked about the likelihood of using ART mechanisms, the survey shows a shift away from risk managers who say they are likely or definitely planning to use ART solutions, but suggests the number of risk managers using ART has increased.

'The most startling of all the results of the survey' was that 54% of risk managers said they have never been offered an ART solution, Global Risk Finance says.

cording to the survey.

Global Risk Finance says "the most startling of all the results of the survey" was that 54% of risk managers said they had never been offered an ART solution. The 1998 survey did not pose this question.

According to the survey, ART products include finite risk insurance, dual-trigger policies, loss portfolio transfers and risk securitization instruments.

"All of the companies are buying products and services from the financial services and insurance market. None of them seem to be exhibiting signs of contentment (receiving the risk management and ART advice they want). So, there's an awful lot more to be done" by sellers of ART products, Mr. Mundy said.

Attempting to explain this response from risk managers, he suggested the major players are developing alternative risk transfer products but are not marketing them widely enough.

He also maintained that the survey results suggest the account managers might not understand ART much better than the buyers they're supposed to be advising.

"It takes a certain amount of vision to see that ART is a healthy development for people in the insurance sector and that it's not actually cutting them out of a job," said Mr. Mundy.

While the results indicate brokers and insurers have to work harder to suggest ART solutions to clients, another survey question suggested that they are doing more in this regard than specialist consultants and banks. Respon-

In 1998, 31% of risk managers said they were likely or definitely planning to use finite risk insurance. Although the same question was not asked in this year's survey, 13% indicated they are already using finite risk insurance. Similarly, last year 23% said they were likely or definitely planning to use dual-trigger policies.

Global Risk Finance says the survey indicates that, at least for the present, "alternative risk transfer is not a solution for all risk transfer ills."

As an "issue-driven" product, it added, alternative risk transfer tends to be used for a very specific, high-profile problem that is impacting either shareholder value or the performance of a specific contract. Global Risk Finance said this is why such a high proportion of risk managers—33% to 46%, depending on the type of ART mechanism—say "maybe" they will use some form of ART in the future.

"We would like to think this demonstrates that innovation in the insurance industry is out ahead of buyer demand... developing the solutions companies will need, rather than responding to change after it has occurred," Global Risk Finance said in the survey.

Attitudes Towards Risk, Market Integration and Alternative Risk Transfer is available free from Chris Mundy, ART practice leader, Global Risk Finance, Marsh Inc., The Sedgwick Centre, London E1 8DX, U.K.; 44-171-481-5325; e-mail: Chris_Mundy@sedgwick.com.

FTR FOR THE RECORD

Judge allows suit against Aetna

NEW YORK—A federal court in New York has made it easier for patients to sue health maintenance organizations for misrepresenting the quality of health care they provide.

U.S. District Court Judge William H. Pauley III ruled May 5 in *Aetna U.S. Healthcare Inc. vs. Irwin Malz* that Aetna could not use the Employee Retirement Income Security Act as a shield from such suits.

The decision stemmed from a lawsuit over the treatment of a 15-year-old boy with Crohn's disease. Ross and Mara Maltz, the boy's parents, had sued Aetna for false advertisement in November 1998. In a television ad that appeared in September 1998 in New York, Aetna said it had sent an enrollee with Crohn's disease to the Cleveland Clinic because of its "renowned expertise in treating" the disease. But when the boy's parents contacted Aetna about sending their son to that clinic for treatment, they were informed that enrollees in New York state—where the boy lived—were ineligible for treatment at the Cleveland facility.

Aetna sought removal of the suit to federal court, arguing that state court was not the proper jurisdiction because the complaint involved an employee benefit plan, which is pre-empted by ERISA. But Judge Pauley disagreed and remanded the case to the New York State Supreme Court.

Aetna officials could not be reached last week.

Fire forces closing of some processing units



AP/WIDE WORLD PHOTOS

A fire earlier this month has forced the partial shutdown of an oil refinery in Houston.

HOUSTON—Lyondell Chemical Co. of Houston said LYONDELL-CITGO Refining, a joint-venture refinery, was forced to shut down half of the company's crude oil processing units until mid-June due to a fire earlier this month.

One employee was injured in the fire.

The LYONDELL-CITGO refinery is insured for business interruption and repairs, but each type of loss has its own \$10 million deductible. The cause of the fire has not been determined, a Lyondell spokeswoman said.

Andersen cleared in class-action suit

PHOENIX—A jury in Phoenix has ruled that Arthur Andersen L.L.P. is not liable in a class-action shareholder suit for audit work it performed.

The suit was filed by shareholders of UDC Homes Inc., a publicly traded builder, after the company's stock plunged in 1994 and the company filed for bankruptcy the next year. The plaintiffs sought \$95 million in what Arthur Andersen called "general" damages and more than \$1 billion in punitive damages.

"We are grateful the jury ruled that Arthur Andersen acted properly," Jack Henry, Arthur Andersen's managing partner in Phoenix, said in a statement. "We stood by our client's financial reporting and our audit services from the beginning, and our resolve has been recognized and rewarded."

Information in brief

Liberty Mutual Insurance Co. has completed its \$1.47 billion purchase of the U.S. operations of Guardian Royal Exchange P.L.C. The purchase was part of a deal in which French insurer AXA Group bought U.K. insurer GRE for \$5.66 billion and then immediately sold the U.S. operations to Liberty Mutual. GRE had eight U.S. subsidiaries, which had a total \$1.3 billion in net written premiums in 1998. The eight companies will continue to operate independently. The two principal subsidiaries are Peerless Insurance Cos. and Indiana Insurance Cos. . . **General Motors Corp.** will appeal a Tarrant County, Texas, jury verdict finding the automaker liable for \$47.5 million. The verdict came in a suit filed by the family of a Fort Worth, Texas, man who died in 1997 after he was left a quadriplegic when his neck was broken in a 1993 crash involving his 1990 Chevrolet pickup truck. GM denies that the crash and resulting injuries were caused by a design defect in the truck. A company statement added that the vehicle, including its seat design, met applicable federal safety standards and that a head restraint behind the driver would not have prevented his injuries. . . **Ford Motor Co.** will appeal a \$20 million verdict handed down by a Kentucky jury that found Ford responsible for a 1995 van rollover accident in which three people were killed. The suit, filed in state court in Scott County, Ky., on behalf of the estates of two of those killed as well as the driver and another passenger who were both injured, alleged that the automaker was aware of the van model's tendency to roll over but didn't try to correct the problem. Ford denied any defects in the van's design and argued that the van rolled over after being sideswiped by a car because of actions taken by the driver after the van was struck. . . **New York-based U.S. Re Cos. Inc.** has completed its acquisition of a majority interest in Assurex Marketing Group, an affiliate of brokerage network Assurex International (BI, Oct. 26, 1998). Assurex Marketing Group provides marketing and underwriting management services to network members. . . The New York Attorney General has served **Oxford Health Plans Inc.** with a subpoena seeking documents over a possible violation of the state's Managed Care Reform Act. The documents sought relate to the health plan's disclosure of claims and complaints regarding emergency medical services. In another development, Oxford has made Dr. Norman Payson the new chairman of the board. Dr. Payson had been chief executive officer and board member since May 1998. He succeeds Fred Nazem, who had been serving as chairman since February of last year. **BI**

ADVERTISER INDEX

Issue of May 17

ADVERTISER	PAGE #
AIG Corporate	32
Burnham Systems	24
Business Insurance	22,28
Carvill America, Inc.	10
CRC	4
GAB Robins	11
General Reinsurance	12/13
Horizon Healthcare	22R
IRU, Inc.	21
KPMG LLP	6
Liberty Mutual	18
Outdoorsman Agency	10
Partner Reinsurance	17
The Hartford - EBD Group	14/15
The Travelers P/C Ins. Co.	7
USI Insurance Services	21
Wausau Insurance Company	5
World Captive Forum	16
Zurich U.S.	9

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LEGAL NOTICES

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UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

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

NOTICE IS HEREBY GIVEN THAT IN CONNECTION WITH THE PETITION FILED PURSUANT TO SECTION 304 OF THE BANKRUPTCY CODE WITH RESPECT TO OCEAN MARINE MUTUAL INSURANCE ASSOCIATION LIMITED (THE "COMPANY"), THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (THE "BANKRUPTCY COURT") HAS ENTERED A PRELIMINARY INJUNCTION ORDER DATED MAY 5, 1999 (THE "ORDER"):

1. ENJOINING AND RESTRAINING ALL PERSONS AND ENTITIES FROM: (A) TRANSFERRING, RELINQUISHING OR DISPOSING OF ANY PROPERTY OF THE COMPANY IN THE UNITED STATES, OR THE PROCEEDS OF SUCH PROPERTY, TO THIRD PARTIES; (B) COMMENCING OR CONTINUING ANY ACTION OR OTHER LEGAL PROCEEDING (INCLUDING, WITHOUT LIMITATION, ARBITRATION, OR ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY ACTION, PROCEEDING OR PROCESS WHATSOEVER), INCLUDING BY WAY OF COUNTERCLAIM, AGAINST THE COMPANY, OR ANY PROPERTY IN THE UNITED STATES INVOLVED IN THE FOREIGN PROCEEDING, OR ANY PROCEEDS THEREOF, AND SEEKING DISCOVERY OF ANY NATURE AGAINST THE COMPANY; AND (C) ENFORCING ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY JUDGMENT, ASSESSMENT OR ORDER OR ARBITRATION AWARD AGAINST THE COMPANY, AND COMMENCING OR CONTINUING ANY ACT OR ACTION OR OTHER LEGAL PROCEEDING (INCLUDING, WITHOUT LIMITATION, ARBITRATION, OR ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY ACTION, PROCEEDING OR PROCESS WHATSOEVER), TO CREATE, PERFECT OR ENFORCE ANY LIEN, ATTACHMENT, GARNISHMENT, SETOFF OR OTHER CLAIM AGAINST THE COMPANY, OR ANY OF ITS PROPERTY IN THE UNITED STATES, OR ANY PROCEEDS THEREOF, INCLUDING, WITHOUT LIMITATION, RIGHTS UNDER REINSURANCE CONTRACTS;

2. REQUIRING ALL PERSONS AND ENTITIES IN POSSESSION, CUSTODY OR CONTROL OF PROPERTY OF THE COMPANY IN THE UNITED STATES, OR THE PROCEEDS THEREOF, TO TURN OVER AND ACCOUNT FOR SUCH PROPERTY OR ITS PROCEEDS TO THE PETITIONERS;

3. REQUIRING EVERY PERSON AND ENTITY THAT HAS A CLAIM OF ANY NATURE OR SOURCE AGAINST THE COMPANY AND THAT IS A PARTY TO ANY ACTION OR OTHER LEGAL PROCEEDING (INCLUDING, WITHOUT LIMITATION, ARBITRATION, OR ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY ACTION, PROCEEDING OR PROCESS WHATSOEVER) IN WHICH THE COMPANY IS OR WAS NAMED AS A PARTY, OR AS A RESULT OF WHICH A LIABILITY OF THE COMPANY MAY BE ESTABLISHED, TO PLACE THE PETITIONERS' UNITED STATES COUNSEL ON THE MASTER SERVICE LIST OF ANY SUCH ACTION OR OTHER LEGAL PROCEEDING AND TO TAKE SUCH OTHER STEPS AS MAY BE NECESSARY TO ENSURE THAT SUCH COUNSEL RECEIVES (A) COPIES OF ANY AND ALL DOCUMENTS SERVED BY THE PARTIES TO SUCH ACTION OR OTHER LEGAL PROCEEDING OR ISSUED BY THE COURT, ARBITRATOR, ADMINISTRATOR, REGULATOR OR SIMILAR OFFICIAL HAVING JURISDICTION OVER SUCH ACTION OR LEGAL PROCEEDING, AND (B) ANY AND ALL CORRESPONDENCE, OR OTHER DOCUMENTS CIRCULATED TO PARTIES NAMED IN THE MASTER SERVICE LIST;

4. PROVIDING, WITH RESPECT TO ANY PARTY-IN-INTEREST, CLAIM, ACTION, ARBITRATION OR OTHER PROCEEDING WHICH MAY BE COMMENCED OR BECOME KNOWN TO PETITIONERS IN THE FUTURE (EACH A "SUBSEQUENT CLAIM"), THAT:

(A) WHEN INFORMED OF A SUBSEQUENT CLAIM, COUNSEL FOR THE PETITIONERS SHALL SERVE UPON THE HOLDER OF SUCH CLAIM A COPY OF THE SUMMONS, THE PETITION, AND THE MOST RECENT INJUNCTION ORDER ENTERED BY THE COURT;

(B) THE HOLDER OF A SUBSEQUENT CLAIM WILL HAVE TWENTY (20) DAYS FROM SERVICE OF THE SUMMONS IN WHICH TO FILE AN ANSWER OR MOTION WITH RESPECT TO THE PETITION; AND

(C) ON NOT LESS THAN TWO (2) DAYS NOTICE TO COUNSEL FOR THE PETITIONERS, THE HOLDER OF A SUBSEQUENT CLAIM MAY FILE A MOTION SEEKING AN ORDER OF THE COURT VACATING OR MODIFYING WITH RESPECT TO SUCH SUBSEQUENT CLAIM THE INJUNCTION ENTERED IN THIS PROCEEDING. SUCH REQUEST SHALL BE THE SUBJECT MATTER OF A HEARING AS SCHEDULED BY THE COURT. OTHERWISE, THE HOLDER OF A SUBSEQUENT CLAIM MAY FILE OBJECTIONS AND BE HEARD BY THE COURT IN ACCORDANCE WITH THE TERMS OF ANY ORDER OF THE COURT PROVIDING FOR A HEARING IN THE FUTURE ON THE RELIEF SOUGHT BY THE PETITIONERS IN THIS PROCEEDING; AND

5. PROVIDING THAT NOTHING IN THE ORDER SHALL IN ANY RESPECT PREVENT THE CONTINUATION OR COMMENCEMENT OF PROCEEDINGS AGAINST ANY PERSON OR ENTITY OTHER THAN THE COMPANY; PROVIDED, HOWEVER, THAT IF ANY THIRD PARTY SHALL REACH A SETTLEMENT WITH, OR OBTAIN A JUDGMENT AGAINST, ANY PERSON OR ENTITY OTHER THAN THE COMPANY, SUCH SETTLEMENT OR JUDGMENT SHALL NOT BE BINDING ON OR ENFORCEABLE AGAINST THE COMPANY OR ITS PROPERTY.

THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING TO CONSIDER WHETHER IT SHOULD BE CONTINUED, WHICH HEARING IS SCHEDULED TO BE HELD ON NOVEMBER 3, 1999 AT 10:00 A.M. (THE "RETURN DATE") BEFORE THE HONORABLE BURTON R. LIFLAND, IN ROOM 623 OF THE ALEXANDER HAMILTON CUSTOM HOUSE, ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OBJECTING TO CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE BANKRUPTCY COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE BURTON R. LIFLAND AND SERVED ON CHADBOURNE & PARKE LLP (ATTN: HOWARD SEIFE, ESQ.), SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE.

ANY PARTY-IN-INTEREST THAT HAS NOT RECEIVED A COPY OF THE PETITION, AND/OR THE ORDER SHOULD CONTACT COUNSEL FOR THE PETITIONERS AT THE ADDRESS BELOW:

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

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

IN RE PETITIONS OF JOHN C. MCKENNA, AS PROVISIONAL LIQUIDATOR OF NEW CAP REINSURANCE CORPORATION (BERMUDA) LIMITED, AND JOHN GIBBONS, AS ADMINISTRATOR OF NEW CAP REINSURANCE CORPORATION LIMITED, CASE NOS. 99-B-42745 (CB) AND 99-B-42752 (CB)

NOTICE IS HEREBY GIVEN THAT, IN CONNECTION WITH THE PETITIONS FILED PURSUANT TO SECTION 304 OF THE BANKRUPTCY CODE FOR NEW CAP REINSURANCE CORPORATION (BERMUDA) LIMITED AND NEW CAP REINSURANCE CORPORATION LIMITED (EACH A "COMPANY"), THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (THE "BANKRUPTCY COURT") ENTERED A PRELIMINARY INJUNCTION ORDER DATED MAY 5, 1999 (THE "ORDER"):

1. ENJOINING AND RESTRAINING ALL PERSONS AND ENTITIES FROM: (A) TRANSFERRING, RELINQUISHING OR DISPOSING OF ANY PROPERTY OF THE COMPANY IN THE UNITED STATES, OR THE PROCEEDS OF SUCH PROPERTY, TO THIRD PARTIES; (B) COMMENCING OR CONTINUING ANY ACTION OR OTHER LEGAL PROCEEDING (INCLUDING, WITHOUT LIMITATION, ARBITRATION, OR ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY ACTION, PROCEEDING OR PROCESS WHATSOEVER), INCLUDING BY WAY OF COUNTERCLAIM AGAINST THE COMPANY, OR ANY PROPERTY IN THE UNITED STATES THAT IS INVOLVED IN THE FOREIGN PROCEEDING, OR ANY PROCEEDS THEREOF, AND SEEKING DISCOVERY OF ANY NATURE AGAINST THE COMPANY; (C) ENFORCING ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY JUDGMENT, ASSESSMENT OR ORDER OR ARBITRATION AWARD AGAINST THE COMPANY, AND COMMENCING OR CONTINUING ANY ACT OR ACTION OR OTHER LEGAL PROCEEDING (INCLUDING, WITHOUT LIMITATION, ARBITRATION, OR ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY ACTION, PROCEEDING OR PROCESS WHATSOEVER) OR ANY COUNTERCLAIM TO CREATE PERFECT OR ENFORCE ANY LIEN, SETOFF, ATTACHMENT, GARNISHMENT, OR OTHER CLAIM AGAINST THE COMPANY, OR ANY OF ITS PROPERTY IN THE UNITED STATES, OR ANY PROCEEDS THEREOF, INCLUDING, WITHOUT LIMITATION, RIGHTS UNDER REINSURANCE AND RETROCESSION CONTRACTS; (D) DRAWING DOWN ANY LETTER OF CREDIT ESTABLISHED BY OR AT THE REQUEST OF THE COMPANY IN EXCESS OF AMOUNTS EXPRESSLY AUTHORIZED BY THE TERMS OF THE CONTRACT OR OTHER AGREEMENT PURSUANT TO WHICH SUCH LETTER OF CREDIT HAS BEEN ESTABLISHED; AND (E) WITHDRAWING FROM, SETTING OFF AGAINST, OR OTHERWISE APPLYING PROPERTY THAT IS THE SUBJECT OF ANY TRUST OR ESCROW AGREEMENT OR SIMILAR ARRANGEMENT IN WHICH THE COMPANY HAS AN INTEREST IN EXCESS OF AMOUNTS EXPRESSLY AUTHORIZED BY THE TERMS OF THE TRUST, ESCROW OR SIMILAR ARRANGEMENT;

2. REQUIRING ALL PERSONS AND ENTITIES IN POSSESSION, CUSTODY OR CONTROL OF PROPERTY OF THE COMPANY IN THE UNITED STATES OR THE PROCEEDS THEREOF, TO TURN OVER AND ACCOUNT FOR SUCH PROPERTY OR ITS PROCEEDS TO THE PETITIONERS;

3. REQUIRING EVERY PERSON AND ENTITY THAT HAS A CLAIM OF ANY NATURE OR SOURCE AGAINST THE COMPANY AND THAT IS A PARTY TO ANY ACTION OR OTHER LEGAL PROCEEDING (INCLUDING, WITHOUT LIMITATION, ARBITRATION, OR ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY ACTION, PROCEEDING OR PROCESS WHATSOEVER) IN WHICH THE COMPANY IS OR WAS NAMED AS A PARTY, OR AS A RESULT OF WHICH A LIABILITY OF THE COMPANY MAY BE ESTABLISHED, TO PLACE THE PETITIONERS' UNITED STATES COUNSEL ON THE MASTER SERVICE LIST OF ANY SUCH ACTION OR OTHER LEGAL PROCEEDING AND TO TAKE SUCH OTHER STEPS AS MAY BE NECESSARY TO ENSURE THAT SUCH COUNSEL RECEIVES (A) COPIES OF ANY AND ALL DOCUMENTS SERVED BY THE PARTIES TO SUCH ACTION OR OTHER LEGAL PROCEEDING OR ISSUED BY THE COURT, ARBITRATOR, ADMINISTRATOR, REGULATOR OR SIMILAR OFFICIAL HAVING JURISDICTION OVER SUCH ACTION OR LEGAL PROCEEDING, AND (B) ANY AND ALL CORRESPONDENCE, OR OTHER DOCUMENTS CIRCULATED TO PARTIES NAMED IN THE MASTER SERVICE LIST;

4. PROVIDING, WITH RESPECT TO ANY PARTY-IN-INTEREST, CLAIM, ACTION, ARBITRATION OR OTHER PROCEEDING WHICH MAY BE COMMENCED OR BECOME KNOWN TO PETITIONERS IN THE FUTURE (EACH A "SUBSEQUENT CLAIM"), THAT:

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THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING TO CONSIDER WHETHER IT SHOULD BE CONTINUED, WHICH HEARING IS SCHEDULED TO BE HELD ON NOVEMBER 18, 1999 AT 10:00 A.M. (THE "RETURN DATE") BEFORE THE HONORABLE CORNELIUS BLACKSHEAR, IN ROOM 601 OF THE ALEXANDER HAMILTON CUSTOM HOUSE, ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OBJECTING TO CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE BANKRUPTCY COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE CORNELIUS BLACKSHEAR AND SERVED ON CHADBOURNE & PARKE LLP (ATTN: HOWARD SEIFE, ESQ.), SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE.

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Jun 14 Jun 21 Jun 28	<i>PRIMA Report</i> <i>Benefits: Balancing Work & Life</i> ^{FS} <i>Directory: EAPs & Dependent Care Resource & Referral Services</i> <i>Distribution: SHRM</i>	GLOBAL FOCUS IT Information Technology ^{SS}	Jun 2 Jun 9 Jun 16
Jul 5 Jul 12 Jul 19	<i>Midyear Market Report: Property/Casualty & Health Care</i> ^{RS} <i>Information Resource: Risk Management</i> <i>Agent/Broker Profiles</i> ^{RS} <i>Directory: Agents & Brokers</i>	ABT Marketing Strategies ^{SS} IT Marketing Strategies	Jun 23 Jun 29 Jul 7
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Opinion on guns draws readers' fire

My recent column opposing the arming of teachers with guns and advocating stricter control over the manufacture, sale, ownership and storage of guns was very unpopular, to say the least.

Only one reader, the president of a large international reinsurance company, congratulated me on offering "strong comments of sanity and common sense."

Even he took me to task, though, for not taking a stronger position.

"I would like to encourage you to go even further," this reader wrote. "The United States is the only developed country in the world that has not implemented a strict, total, uncompromising ban on guns and weapons. How many dead kids will it take before we can join, at last, the ranks of the civilized nations?"

The vast majority of letters and e-mails called me "irrational," "reckless" and a "knee-jerk liberal." Many incorrectly accused me of proposing a total ban on gun ownership.

One such reader wrote: "The only conceivable outcome of banning privately owned firearms... would be the unavailability of firearms for the law enforcement market. Police weapons, paid for with public funds, are subsidized by civilian sales. The disappearance of the civilian market would make manufacturing firearms unprofitable."



Kathryn J. McIntyre

I highly doubt that effective gun control laws would so severely curb the sale of guns that it would no longer be profitable to manufacture them. But if fewer guns in the hands of irresponsible people drove up the cost of arming our police forces, I'd happily pay the higher taxes.

But let me set the record straight on my position: I do not advocate banning all privately owned firearms for self-defense in the United States.

I do, however, advocate stricter gun controls, and that includes better enforcement of the laws already on the books.

"Doesn't the fact that the two students in Colorado broke over a dozen laws in the planning and commission of their deathly pursuit suggest that more laws will not help prevent future atrocities?" asked a writer from Tennessee.

It's not the number of laws on the books that I am complaining about. It's what the laws require, or fail to require.

Some of the stricter gun control laws I have in mind would require: standards for the manufacture of guns to prevent accidental shootings and misfires; that every sale of a gun be preceded by a background check and registration; that the age to legally own a gun be raised to 21; that people who own guns store them under lock and key; and that if the reckless storage of legally owned guns allows them to fall into the hands of those who kill with them, the legal owners be held accountable.

One writer, who advocates permitting the licensed possession of concealed weapons, seemed to partially agree with me on the responsibilities of gun owners. He wrote: "Weapons of any kind do not belong in unsecured briefcases and purses at school, home, shopping plazas or any other location. Anyone who possesses a weapon for defensive purposes has a reasonable responsibility to make certain it does not fall into the hands of an untrained or uncaring user."

For the most part, readers responding to my column agreed with the writer who said, "Stricter gun control will not reduce the risk of loss to our schoolchildren or to those of us that love those children."

Another reader opposing more gun control asked, "Who says that the parents of these teens cannot be held liable for the actions of their children in civil action?"

Perhaps such civil actions would be warranted in some cases, but would this, or other legal measures, really preclude the need for gun control? I think not.

I also was chastised for ignoring the root cause of the Columbine High School tragedy, which had prompted my commentary. One reader wrote: "Guns in U.S. society were not the cause of this situation. Neglected, disassociated and extremely angry young adults, who felt left out by society and decided to exact revenge for the abuse they felt had been unfairly focused upon them during their lives, were part of the cause. The larger issue of how they got to that point is the true root cause."

Of course, the "root cause" of those murders needs to be addressed. I still believe, though, that enforcing more-effective gun control laws would reduce deaths by gunshot in this country.

Publisher and Editorial Director Kathryn J. McIntyre's commentary appears fortnightly.

Superfund

Continued from page 1
program. The Boehlert bill would reinstate special Superfund taxes; the Senate proposal would not.

Despite the modesty of the proposals, the Clinton administration has not rushed to embrace them. Ms. Browner, while praising the Boehlert bill—The Recycle America's Land Act, H.R. 1300—as a "good-faith effort," said she continues to oppose some of the liability relief the bill would grant. While Ms. Browner has yet to testify on the Chafee-Smith proposal, which has not been introduced, the Clinton administration has opposed any reauthorization of Superfund that did not include reimposing the Superfund taxes.

John Arlington, an assistant vp for the American Insurance Assn. in Washington, noted Ms. Browner's opposition to the Boehlert bill by asking, "You've got to ask yourself: Does this have something to do with environmental policy, or is this more campaign policy?"

Mr. Arlington was not alone in his assessment.

"It's like Lucy and the football," said Joel Wood, senior vp for the Council of Insurance Agents & Brokers in Washington, referring to the comic strip "Peanuts." Ms. Browner has been "playing Lucy to the congressional leadership's Charlie

Brown, snatching the football away at the last moment after grandiose promises of support for reform," he said.

David Farmer, senior vp in the Alliance of American Insurers' Washington office, said: "Our reaction in general is that we're appreciative of the efforts of thoughtful legislators like Sens. Chafee, Smith and Rep. Boehlert to try and move reform legislation forward. We applaud those efforts."

'On paper, (the Smith-Chafee proposal) appears to be a good starting point,' says Lance Ewing.

"On the other hand, we are disappointed, because it appears at least initially that the administration continues to oppose any meaningful reform of a program that is obviously failed and flawed," he said.

Mr. Farmer said the House bill "contains more of the kind of reform elements that the broad business and insurance community had been supporting, and that includes liability reform."

The AIA's Mr. Arlington said: "The Smith-Chafee bill is not a compre-

hensive bill. On the other hand, there are no new taxes, either." He said the bill looks as if its sponsors decided to include only issues upon which there is broad agreement and ignore everything else. He said the "debate will be over what's not in the bill": the reimposition of Superfund taxes.

The Smith-Chafee proposal drew some praise from the Risk & Insurance Management Society Inc.

"On paper, this proposed bill appears to be a good starting point," said Lance Ewing, chair of RIMS External Affairs Team and director-in-charge and loss prevention for GES Exposition Services Inc. in Las Vegas.

But he added that "it continues to amaze me and many other risk managers how few solid business proposals are coming out of EPA and the White House" in regard to Superfund.

Mr. Ewing said he thinks the business community welcomes the opportunity the bills provide to "put the brownfields issue to bed."

He added that while the proposal's liability section is "not perfect," it does offer companies "a window to offer solid defense for any contributory causation or to pay their fair share under the allocation system."

"Risk managers, however, must continue to review their old insurance policies to see if they are covered and prepare to battle not only EPA but their old insurers as well. Overall, it looks like a pretty good bill." **BI**

Ruling

Continued from page 2
was reversed on appeal and remanded for retrial. Mr. Miller then offered to settle the case within the windshield company's policy limits, but was turned down by Transamerica, according to the decision. The second jury trial resulted in a \$6.1 million judgment against Solaglas, including \$1 million in punitive damages, which was affirmed on appeal. Insurance covered all but the punitive award.

PPG then sued Transamerica for bad faith, seeking coverage of the punitive award. PPG argued that it would not be liable for the damages if the insurer had settled the case.

State trial and appeals courts rejected the claim, ruling that punitive damages are not insurable as a matter of public policy (*BI*, Oct. 21, 1996).

In a 4-3 opinion, a majority of the California Supreme Court agreed, setting forth three reasons why Transamerica is not liable to pay the punitive damages:

- Public policy does not allow liability for intentional wrongdoing to be offset or reduced by the negligence of another, in this case Transamerica.
- The purpose of punitive damages, which is to punish the defendant and deter others from future misconduct, would be defeated.
- Public policy prohibits indemnification for punitive damages.

The punitive damages here "were awarded not against the insurance company for its unreasonable failure to settle the lawsuit, but against the

insured for the insured's own morally reprehensible behavior in installing the windshield on the truck," the majority opinion holds.

However, the Supreme Court's minority opinion warns that the decision's result will be to "favor all insurers over all their insureds." The civil code states that for every wrong there must be a remedy, the minority opinion says. "That applies to the wrong the insured suffers at the hands of its insurer, as well as the wrong the insured's victim suffers at the hands of the insured itself."

Attorneys say the decision could alter how policyholders and insurers negotiate settlements with third parties.

The majority decision has "some potentially troubling implications," said Kirk A. Pasich, an attorney with Troop, Steuber, Pasich, Reddick & Tobey in Los Angeles, who represented PPG. "I think it changes how settlements can be conducted. I think it gives insurance companies leverage that they did not have before to cause an insured to settle claims that are otherwise insured," he said.

For instance, said Mr. Pasich, because punitive damages could be assessed at a multiple of compensatory damages, a \$1 million claim could lead to \$10 million in punitive damages at trial, which would be uninsurable. An insurer could use this threat to pressure policyholders to contribute to a settlement, said Mr. Pasich, who said he believes the decision will be influential outside of California.

"I just don't like the notion that even if the policyholder is fully cov-

ered by insurance, you can ask a policyholder to contribute" to a settlement, the policyholder's attorney said. "It lessens the value of insurance they purchased. Insurance used to be a full blanket of protection, and I'm not sure it is any more."

Paul Glad, an insurer attorney with Sonnenschein, Nath & Rosenthal in San Francisco, said, "I think that an insurance company will be able to explain to its insured that they will be required to contribute the component of a settlement necessary to eliminate punitive damages exposure."

"Also, the policyholder will not be able to hold the gun of bad faith to the head of the insurance company and demand a settlement," he added. "I think it will have a very dramatic impact on the way settlement conferences are conducted," he said.

However, John R. Brydon, of Haines, Brydon & Lea in Los Angeles, who represented Transamerica in the case, said "I don't think this impacts the way the insurer-insured relationship has been practiced over the years."

"My personal feeling is that had a different decision come down, it would have provided additional leverage to insureds, but I don't think because the decision came down as it did insurance companies would necessarily act any differently in terms of how they evaluate their obligations to accept or reject settlements within their policies where there's potential punitive damages exposure."

PPG Industries Inc. vs. Transamerica Insurance Co., Supreme Court of California, 99 C.D.O.S. 3388

Results

Continued from page 2
more rational behavior on the part of the HMOs in pricing their product at appropriate levels." And employers are "more accepting of the underlying cost trends and the factors driving the price increases that they're agreeing to, and that would be chiefly drug costs." This is a change, he added, from employers' attitude two or three years ago.

While analysts are optimistic about this year, they remain uncertain about the industry's prospects

beyond 1999.

Managed care companies can expect a steady improvement in profitability throughout the year, said Patrick Finnegan, senior vp at Moody's Investors Service Inc. in New York.

"A sound economic environment" has permitted managed care firms to implement high single-digit or low double-digit premium hikes, he said.

But Mr. Finnegan cautioned that beyond the next 18 months, "you have the uncertainty of whether or not employers will continue to accept those rate increases, whether or

not the economy's health and corporate earnings will tolerate those kinds of expense pressures."

Michael Barry, a director at rating agency Fitch IBCA in New York, said, "It seems that the rate increases that managed care companies continue to get appear to be more than enough to offset medical cost inflation, and considering that the consolidation trend is continuing, the major companies are realizing more and more efficiencies, so I have a positive outlook for the remainder of this year."

He added that "obviously the big

See Results on next page

Results

Continued from previous page

trump card" could be regulatory changes, considering that managed care is probably the single most heavily regulated industry. But given the considerable time it takes to introduce new regulations, the industry is likely to get through at least this year unscathed, said Mr. Barry.

"I think the companies that have exhibited positive momentum will likely continue to improve overall results sequentially during the course of the year," said Mark Jamilkowski, an analyst with Hartford, Conn.-based Conning & Co.

"I think the companies that are in a rebuilding mode also have potential to do this, although it's less certain that they will. Obviously, the few companies that missed (earnings expectations for the first quarter) have significant challenges in front of them because they have basically placed themselves a year or more behind everyone else," said Mr. Jamilkowski.

The situation in 1996 and 1995, when managed care companies experienced good first quarters and very disappointing second quarters, is unlikely to recur, said Rob Mains, an Albany, N.Y.-based analyst with Advest Inc.

"I think the fact that companies not only met the earnings (estimates), but also beat the earnings in the first quarter gives you some confidence about the second quarter," said Mr. Mains.

Among the reported HMO results:

- St. Louis-based RightCHOICE Managed Care Inc. reported first quarter net income of \$4.7 million, a 385.5% improvement from the first quarter of 1998.
- Oakland, Calif.-based Kaiser

Permanente posted net income of \$61 million for the first quarter of 1999, including a one-time, non-operating charge of \$28 million for a change in accounting principles. This compares with a restated \$54 million net loss in 1998's first quarter.

- PacifiCare reported \$74 million in net income for the first quarter, a 79.2% improvement from the first quarter of 1998.

- Bethesda, Md.-based Coventry Health Care Inc. reported \$8.3 million in net income, a 76.6% increase from the prior year period.

- Foundation Health reported a 59.9% increase in net income, to

'We think the improvement in performance is largely a function of increased premium rates...,' says Arun N. Kumar of S&P.

\$41.9 million.

- Hartford, Conn.-based Aetna U.S. Healthcare Inc., which includes the managed care, indemnity and group insurance products and services of Aetna Inc., reported \$133.5 million in first-quarter operating income before Year 2000 costs, which was a 32.8% improvement over the prior-year period.

- The HMO and indemnity operations of Philadelphia-based CIGNA Corp. reported operating income of \$157 million in 1999's first quarter, up 19.8% from the same period last year.

- WellPoint reported \$71.1 million in net income, excluding a one-time \$20.6 million aftertax accounting charge. This is a 5.8% increase over the first quarter of 1998, excluding discontinued oper-

ations.

- UnitedHealth Group in Minnetonka, Minn., reported \$132 million in net income, the same as the prior-year period.

- Los Angeles-based Maxicare Health Plans Inc. reported a \$7.7 million net loss, including \$8.5 million in special charges, vs. a \$2.7 million loss for the comparable quarter a year ago.

- Louisville, Ky.-based Humana Inc. reported a \$16 million net loss compared with a \$50 million profit for the comparable period last year. Results reflected in part \$90 million in additional medical claims expenses recorded during the first quarter of this year.

In general, "this is the best quarter I think I've seen in quite a while, and it speaks a lot to premium pricing," said Advest's Mr. Main.

"Premium increases seem to be more than adequate to offset any medical cost inflation," said Fitch's Mr. Barry. Furthermore, although "it took some time to put integration of the technical platforms behind them, there was not a lot of that noise in this quarter," said Mr. Barry. Last year, he noted, some companies experienced some unanticipated expenses related to the integration of such systems after acquisitions.

Arun N. Kumar, director at Standard & Poor's Corp. in New York, said, "We think the improvement in performance is largely a function of increased premium rates and a little less to do with cost containment."

But Moody's Mr. Finnegan pointed to managed care companies' "much more aggressive and concerted effort" to manage medical costs, as well as their "pushing back onto the employer and ultimately the individual employee the cost of health services." **BI**

Drug costs hitting HMOs hard

By JUDY GREENWALD

Rising pharmaceutical costs are casting a pall over managed care companies' otherwise bright prospects for this year.

"It's a problem for all of us in the industry, because the trend has been much higher than what we originally anticipated and higher than what our other trends are," said Greg Baird, senior vp of group sales for Woodland Hills, Calif.-based Blue Cross of California, a subsidiary of WellPoint Health Networks Inc.

"It's going to be challenging for the HMOs to manage those costs appropriately," agreed David Erickson, director of investor relations for Santa Ana, Calif.-based PacifiCare Health Systems Inc.

"Even with all of the abilities that HMOs and the pharmacy benefit management companies have to control costs, you're still talking about a rate of inflation that exceeds general health care inflation," which means prescription drugs are consuming a greater portion of the premium dollar, said Mr. Erickson.

He noted the industry's average inflation for drug costs is about 16% to 17%, though PacifiCare has managed to keep its rate down to a "respectable" 10% to 11%.

"I think it's going to be a continuing issue, and I think we need to be very diligent about managing pharmacy costs," said David Olson, vp-investor relations for Woodland Hills, Calif.-based Foundation Health Systems Inc. He added that one likely consequence is that HMOs will require plan members to assume more of the cost of pharma-

ceuticals.

Analysts and others say the rise in pharmacy costs is in part a reflection of a change in health care strategy, as physicians now focus less on surgery and other invasive medical procedures and more on newly developed drugs. To this extent, then, rising pharmacy costs merely reflect a shift in medical treatment.

But also contributing to the problem, say observers, is that the pharmaceuticals industry has become a direct marketing business. As a result, managed care companies must contend with customer demand fueled by an onslaught of advertising

'It's clear that everybody's very focused on the pharmacy costs as the soft spot in their cost controls...,' says Mark Jamilkowski.

and marketing campaigns launched by pharmaceutical manufacturers.

"It's clearly everybody's No. 1 cost concern," said Mark Jamilkowski, an analyst with Hartford, Conn.-based Conning & Co. "There's a lot of attention being paid to either restructuring benefit programs and to recontracting with pharmacy companies and benefit managers in order to sidestep any real increase in that cost category," he said.

"It's clear that everybody's very focused on the pharmacy costs as the soft spot in their cost controls, and to the extent they continue to

focus on it, I think that it brings to light the growing reliance we have on that type of therapy solution," Mr. Jamilkowski said.

Managed care companies generally have failed to get a handle on pharmacy costs, say analysts.

Rob Mains, an Albany, N.Y.-based analyst with Advest Inc., said: "It becomes less of an issue when premiums are going up, so you don't have to worry about them as much, but there's still no evidence they're being particularly well reined in."

Patrick Finnegan, senior vp at Moody's Investors Service Inc. in New York, said he does not really know "what the industry can do, at least at the present, to kind of corral" drug costs. Pharmaceutical companies "are always coming up with new drugs that are hitting the marketplace," he said.

Drug companies' advertising and marketing efforts lead consumers to demand those new medicines. "That in and of itself is not something that will abate," said Mr. Finnegan. "The pharmaceutical companies are in business to make a profit."

Tighter restrictions on formulas will help stem some of pharmaceuticals' rising costs, but that is a short-term measure, said Mr. Finnegan.

Ultimately, he said, "I think it boils down to a kind of an analysis of who has the greater bargaining power," the manufacturers or the managed care companies. Even though drug prices have come down, "It would seem that the leverage has been on the part of the pharmaceutical companies to date." **BI**

Updates

Lawsuits filed in bus crash

Continued from page 2

ly by the City of New Orleans.

"It is our understanding that part of the license renewal process includes a police background check and a drug test," she said in the statement. "The city would not have renewed Mr. Bedell's permit if he had failed either the police background check or the drug test."

The spokeswoman could not provide information regarding the bus company's liability insurance. Mr. Becnel said Custom Bus Charters has at least \$5 million in primary liability coverage.

A Casino Magic spokeswoman would not comment on the crash or litigation.

New rail safety standards issued

WASHINGTON—The Federal Railroad Administration has issued a rule requiring a broad new range of safety features for passenger railroad equipment to enhance their fire safety and escape features and their ability to withstand crashes.

Among other things, the new rule establishes comprehensive structural safety standards for rail passenger equipment, setting more stringent standards for high-speed trains.

It also enhances requirements for fire safety, including an evaluation of existing fleet compliance, and specifies requirements for passenger car emergency escape. There also are new standards for train inspection, testing and maintenance.

The rule applies to Amtrak and commuter railroad lines. New requirements will be developed separately for tourist, excursion or historic railroads.

The new rule essentially revises and codifies guidelines the FRA recommended in 1984 and updated in 1989, and because passenger railroads have been voluntarily adhering to those guidelines, most railroad cars already meet many of the new rule's standards.

Briefly noted

Moody's Investors Service Inc. has assigned a Ba1 rating to a \$100 million catastrophe note sold to provide a Japanese company \$100 million in earthquake coverage over five years. Oriental Land Co. Ltd., owner of the Tokyo Disneyland theme park, sold the notes through Cayman Islands special-purpose vehicle Concentric Ltd. Goldman Sachs & Co. arranged the deal, which is the first rated transaction in which a corporation transfers catastrophe risk to the capital markets rather than through traditional insurance. . . . **Vesta Insurance Group Inc.** announced Friday that it will discontinue its commercial lines underwriting and will focus exclusively on personal lines business. The insurer also reported substantially lower written premium volume in the first quarter, due in part to its sale of renewal rights to \$150 million of reinsurance business to The Hartford Group. A.M. Best Co. this month downgraded Vesta to B from B++. . . . A state court jury in Memphis, Tenn., last week ruled in favor of cigarette makers Philip Morris Cos., R.J. Reynolds Tobacco Co. and Brown & Williamson Tobacco Corp. in three lawsuits that were consolidated for trial. Plaintiffs, who were families of three smokers who died from lung cancer, failed to recover the cost of medical care and punitive damages. Brown & Williamson also won a verdict from a federal jury in Kansas City, Mo., last Thursday in a similar case brought by the family of deceased smoker Charles Edward Steele. . . . **John Engstrom** has been named president and chief executive officer of Tempest Reinsurance Co. Ltd., a unit of ACE Ltd. Mr. Engstrom previously was head of the short-lived Liberty Re Ltd. in London and before that was head of Mercantile & General Reinsurance Co. He replaces Donald Kramer, who remains vice chairman of ACE and who now will be responsible for communications and external affairs. . . . A ruling issued by a federal appellate court panel in San Francisco last week overturned a district court's finding and significantly expanded the potential number of free-lance and temporary agency workers eligible for **Microsoft Corp.**'s stock option plan to thousands from hundreds. A Microsoft spokesman said the company planned to ask for a rehearing on the issue before the full 9th U.S. Circuit Court of Appeals. . . . The Missouri Legislature last week approved and sent to the governor a bill that would exempt large commercial policyholders from rate and form filing requirements if they self-certify themselves as being eligible and either use an "independent insurance advisor" or meet certain other criteria. . . . A federal jury in Pocatello, Idaho, has convicted a small business owner of knowingly endangering his employees by ordering them to clean out a 25,000-gallon storage tank that held mining waste containing cyanide. The workers wore no protective gear, and one suffered permanent brain damage from cyanide poisoning. Alan Elias, owner of Evergreen Resources of Soda Springs, Idaho, was convicted under the Resource Conservation and Recovery Act of endangering his employees and illegally disposing of hazardous waste. The jury also convicted him of submitting a bogus safety plan to the Occupational Safety and Health Administration. Mr. Elias faces a maximum of 15 years in prison when he is sentenced Aug. 2. . . . Bloomfield, Conn.-based managing general agent **WEB Management L.L.C.** has filed a motion to dismiss a racketeering lawsuit in which Odyssey Re (London) Ltd. accuses it of participating in a scheme to defraud Odyssey on workers compensation reinsurance placements (BI, April 5). WEB, named along with several units of Stirling Cooke Brown Holdings Ltd., says Odyssey has failed to cite one instance of false or misleading statements by WEB and that Odyssey's only real dispute is with its own MGA, Euro International Underwriters Ltd. of London. . . . A federal grand jury in Chattanooga, Tenn., has returned a perjury indictment against Herbert E. Woll, an accountant who allegedly helped prepare bogus financial statements for the defunct **Genesis International Financial Services Inc.** The indictment charges that Mr. Woll lied to Securities and Exchange Commission investigators about his own previous criminal convictions. Mohamed K.M. Zayed II, Genesis' former chairman, remains a fugitive from 1997 criminal charges related to Genesis, which is unrelated to a General Re Corp. unit with a similar name (BI, May 19, 1997).

Agreement

Continued from page 3

man and chief executive officer, said in a statement.

"We have both made some tough choices, because we know that this agreement is in the best interests of all workers compensation stakeholders—regulators, insurers and employers," Bill Schrempf, NCCI president and chief executive officer, said in a statement.

The agreement resolves two of three key issues: It allows for a single rate filing process and single infrastructure. Provisions still are being negotiated for a single database that includes employers' experience rating modification factors.

Both organizations—as well as key regulators, who generally support the agreement—consider the experience mod issue, which previously had been agreed upon in principle, a minor point, especially because the organizations already exchange such information as needed.

ISO and the NCCI are optimistic that they will resolve the single database issue soon, because they realize it is in their best interest to do so. For example, the lack of a single database could allow unsafe employers to "game" the system by switching statistical agents to try to avoid their bad loss history or proper classification.

The agreement is expected to affect employers in several ways.

For example, insurers or self-insured employers in the states where IDR operates will be able to choose which organization will gather, analyze and process their data.

IDR currently has clients in Alabama, Arizona, Florida, Georgia, Illinois, Louisiana, Mis-

souri, Oregon and South Dakota.

The agreement also may save employers money. It should "reduce friction costs of maintaining access to multiple providers for the same information," said James Wolfe, the NCCI's chief communication officer.

The pact also should help employers by reducing confusion about forms and classification systems and may help enhance the privacy of an employer's records by reducing the number of organizations seeking access to them, he added.

In general, regulators are very supportive of the new agreement, which holds the promise of maintaining uniformity in the workers comp system nationally—at least for the time being.

"I do think it's good that they resolved their differences and can start to work together. That will be better for all of us," said Darla L. Lyon, insurance director for South Dakota. She chairs the Workers Compensation Task Force for the National Assn. of Insurance Commissioners.

"The agreement provides a lot of comfort and answers a lot of questions that regulators have been asking," said Mona Carter, director of the Kentucky Insurance Department's Property/Casualty Division and chairwoman of an NAIC study group on multiple rating agencies.

Other issues of concern to regulators include determining the impact of multiple statistical and rating organizations on data quality, assigned risk plans and state appeals processes, she said.

Her study group is preparing an NAIC paper for states to consider that analyzes these issues. She expects it will be completed this summer and reviewed during the fall NAIC meeting.

"Regardless of what NCCI and ISO do, states have to look at the critical issues for their own marketplace," Ms. Carter said.

Meanwhile, the agreement has caused Oregon to put on hold its effort to obtain a license to use the NCCI's classification plan. "But we could revive it at any time if the agreement fell through," said Nancy Ellison, Oregon's deputy insurance commissioner.

The new agreement also will resolve the legal dispute that began in 1996 when NCCI filed a lawsuit against IDR in federal court, alleging copyright infringement (BI, Dec. 16, 1996).

Both parties filed court papers last week asking a federal district court judge in West Palm Beach, Fla., to dismiss the lawsuit. While the agreement will be presented as a formality, it does not require approval from the judge.

The direct license agreement will be between ISO/IDR customers and the NCCI, though it will be administered by ISO/IDR, according to a recent letter to state insurance commissioners from Helen J. Westervelt, president of the NCCI's regulatory division. Neither statistical organization would provide a copy of the agreement.

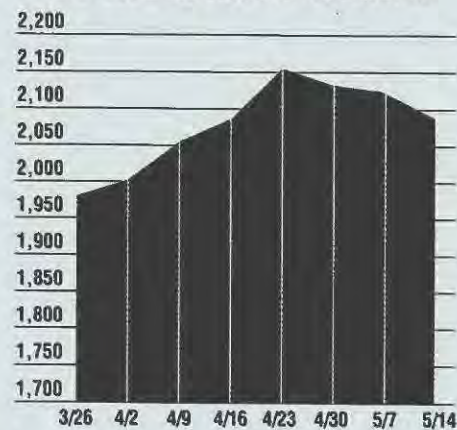
The agreement requires equal sharing of costs, which was a top NCCI priority.

"The royalties charged by NCCI to the ISO/IDR customers will be the same as the license fees NCCI charges its similarly situated affiliates. The fees for core materials will be set at NCCI's fully allocated costs," which can be changed with notice, Ms. Westervelt said in the letter.

However, no one is estimating how long the agreement will last.

"The duration of the current operating plan will depend upon what customers want," said an ISO spokesman. If its insurer members want uniformity, IDR will continue with the NCCI; if they want choice, then IDR has the option to develop its own materials and plans, he said. **BI**

BI Insurance Index



Base=100 on Dec. 29, 1978

Source: Nordby International Inc. (nordby.com) Boulder, Colo.

PCS catastrophe options

As of May 14			
Call spread	Price bid/ask	Call spread	Price bid/ask
National Annual 1999		California Annual 1999	
40/60	15.0/19.0	60/80	1.0/2.3
60/80	8.0/15.0	80/100	0.7/1.9
80/100	5.0/—	150C	0.5/2.5
150C	5.3/9.0		
200/250	3.6/6.0		
Southeastern September 1999		Western Annual 1999	
40/60	2.8/—	80/100	0.8/2.2
60/80	2.3/—		
80/100	2.1/—		
Eastern September 1999		Midwest June 1999	
40/60	3.3/—	10/20	6.5/9.5
		Florida Sept./Dec. 1999	
		100/150	1.8/—
Total volume: 0 Total open interest: 10,682			

Total volume: 0 Total open interest: 10,682

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

Source: Chicago Board of Trade

British Issues

Companies	Price	P/E	Div.	Yield	52-week high-low
Gdn Royal Exch	370	5.7	10.0	3.3	396-331
Legal & Gen	175	21.9	3.6	2.6	237-162
Royal & Sun	527	18.5	23.0	5.4	633-455

Brokers

Lmbt Fenchurch	92	7.5	5.7	7.7	94-58
JLT	237	10.7	12.0	6.3	248-166

Note: Prices are May 14 closings; other numbers from May 13.

Source: Nordby International Inc. (nordby.com) Boulder, Colo.

Media

Continued from page 3

concerned about free speech should be concerned about this," she said.

Geoffrey Fieger, the Southfield, Mich., attorney representing the Amedure family, did not return phone calls.

Experts say the verdict could have a significant effect on the media liability insurance market.

If it stands up on appeal, it will be "a noticeable loss to the market," said Chad Milton, senior vp-claims at Media/Professional Insurance, an underwriting manager in Kansas City, Mo.

"The media liability market is not all that big," he said, describing the size of the total market at between \$80 million and \$100 million in annual premiums. "This claim would knock 25% to 30% off that. That's a big chunk, and underwrit-

ers would notice that," he said.

"So far, plaintiffs have been unsuccessful with claims of this type," said Mr. Milton, adding that whether the verdict will stand on appeal remains to be seen.

"I think that it is likely to encourage plaintiffs to bring more of these types of claims," he said.

Leib Dodell, underwriting manager for Executive Risk Inc.'s media liability program in Simsbury, Conn., agreed that more cases like this are likely to be brought by plaintiffs.

As a result, Mr. Dodell suggests that media companies "carefully scrutinize" their media liability policies to make sure that negligence claims like this would be covered.

Media liability policies list the specific types of liability claims that are covered, such as libel, copyright infringement and invasion of privacy, he explained. Some media liability policies also exclude coverage of bodily injury and third-party property damage claims, and, in some cases,

errors and omissions coverage is not automatically built into the policy, he noted.

"Like a lot of First Amendment attorneys, I think the verdict is on extremely shaky ground," said Mr. Dodell, a former media attorney. He predicts that the verdict will be "significantly reduced, if not reversed altogether."

If the verdict is upheld, however, he thinks that media liability insurers "may become more cautious about giving E&O endorsements" in the future.

Mr. Schmitz was convicted of second-degree murder and was sentenced to 25 to 50 years in prison. The Michigan Court of Appeals later overturned the conviction on a technicality and ordered a new trial, set to begin in August.

Warner Bros.' Ms. Pope said that, unlike the first criminal trial, where "The Jenny Jones Show" played a major role, she does not believe that the talk show will play any part in the retrial of Mr. Schmitz. **BI**

BI Industry Stock Report MAY 10, 1999, THROUGH MAY 14, 1999

BROKERS

		Price	% change	% change	High	Low	Vol.(000)		Price	% change	% change	High	Low	Vol.(000)		Price	% change	% change	High	Low	Vol.(000)		
Aon Corp.	NYS	66.94	0.37	19.40	75.56	48.25	1734	CNA Surety	NYS	14.06	-1.75	-5.86	16.38	10.19	63	St. Paul Companies	NYS	33.88	2.65	-3.21	45.44	28.06	10297
E.W. Blanch Holdings Inc.	NYS	57.25	-3.27	22.62	62.00	34.88	285	EMC Insurance Group Inc.	NDO	11.13	0.00	-12.75	15.38	9.00	39	SCOR	NYS	54.50	4.81	-16.15	72.75	49.06	23
Gallagher Arthur J. & Co.	NYS	46.94	-1.31	7.29	50.63	34.88	123	ESG Re Limitec	NDO	17.00	3.03	-14.20	24.13	12.75	407	SAFECO Corp.	NDO	45.75	6.32	7.65	49.75	36.69	3705
Hilb, Rogal & Hamilton	NYS	19.13	3.73	2.68	19.88	15.38	89	Enhance Financial Services	NYS	19.81	7.46	-34.50	37.31	17.31	838	SCPIE Holdings Inc.	NYS	28.38	7.58	-5.61	38.38	23.69	NA
Kaye Group Inc.	NDO	7.69	9.82	6.03	8.06	5.00	12	Everest Reinsurance	NYS	33.00	5.81	-10.05	43.50	28.75	1162	Seibels Bruce Group	NDO	4.75	-19.15	35.71	7.75	2.69	51
Marsh & McLennan	NYS	75.75	1.08	28.12	81.13	43.38	3067	Executive Risk Inc.	NYS	89.63	5.44	66.36	92.25	35.50	552	Selective Ins. Group	NDO	19.25	-0.65	-4.94	27.50	16.69	316
Brown & Brown	NYS	35.88	7.29	2.68	42.50	29.31	38	EXEL Ltd.	NYS	62.63	2.66	-12.49	83.25	54.50	1539	Terra Nova Ins Co. Ltd.	NYS	23.50	5.92	-3.59	35.00	21.25	227
BROKERS	AVERAGE		2.89	11.57				Fremont General Corp.	NYS	20.13	6.27	-16.58	30.06	16.50	840	Tokio Marine & Fire	NDO	54.25	-9.77	-7.86	62.88	39.00	99
								Frontier Insurance Group	NYS	15.56	-1.19	24.50	24.69	10.88	908	Torchmark Corp.	NYS	35.31	-2.08	1.62	47.19	30.69	2047
								Gainco Inc.	NYS	4.50	4.35	-28.71	8.94	4.13	171	Transatlantic Holdings	NYS	78.19	3.05	3.39	94.50	73.63	76
								Harleysville Group	NDO	18.56	1.02	-27.21	27.25	17.00	268	Travelers Property Casualty	NYS	38.69	4.03	26.33	45.75	24.13	1137
								Hartford Steam Boiler	NYS	40.56	7.81	0.93	59.56	34.75	338	Trenwick Group Inc.	NDO	30.75	-0.81	-2.77	40.50	25.50	121
								HCC Insurance Holdings	NYS	21.69	3.58	28.04	23.19	16.00	1054	Unico American Corp.	NDO	10.38	1.22	-10.03	16.25	8.63	18
								ING Groep N.V.	NYS	55.19	-3.92	-9.53	76.75	36.06	360	United Fire & Casualty	NDO	25.88	-0.72	-22.25	41.50	22.75	21
								IPC Holdings Ltd.	NDO	20.13	5.23	-11.54	32.00	17.38	183	Unilint	NDO	34.75	1.83	-1.94	38.00	27.88	335
								Hartford Financial Services	NYS	63.25	0.50	13.33	66.44	37.63	3135	UNUM Corp.	NYS	58.50	5.29	-2.40	62.50	41.75	2166
								LaSalle Re Holdings Ltd.	NYS	14.38	-2.54	-30.30	39.19	11.63	286	Vesta Insurance Co.	NYS	6.00	18.52	4.35	56.00	3.38	1045
								Lincoln National	NYS	101.81	1.05	22.85	105.88	67.00	1331	Zenith National Ins.	NYS	23.13	0.00	0.00	29.06	20.31	72
								MAIC Holdings Inc.	NYS	27.94	-3.66	-12.70	33.13	23.25	130	INSURERS/REINSURERS	AVERAGE		0.61	-2.51			
								Markel Corp.	NYS	190.50	2.70	5.69	193.00	132.00	24								
								MBIA Insurance Group	NYS	69.19	-0.90	4.34	80.13	46.06	1360	HEALTH MAINTENANCE ORGANIZATIONS							
								Meadowbrook Insur. Group	NYS	13.69	1.39	-16.09	31.63	13.25	58	Foundation Health Systems Inc.	NYS	17.19	5.77	56.25	32.38	5.88	3916
								MMI Cos. Inc.	NYS	15.31	0.00	-8.24	23.44	13.75	121	Humana Inc.	NYS	12.88	-0.96	-32.01	32.13	10.06	7929
								Mutual Risk Mgmt. Ltd.	NYS	40.19	2.55	5.93	43.25	25.38	1133	Oxford Health Plans	NDO	19.50	-4.00	39.29	24.25	5.81	5624
								NAC Re Corp.	NYS	57.06	3.28	22.22	60.81	43.69	714	Pacificare Health Sys.	NDO	81.75	-6.57	14.34	98.13	53.75	186
								Navigators Group	NDO	14.00	-1.75	-8.20	19.50	13.25	127	Salguard Health Enter.	NDO	2.75	-32.31	-22.81	8.38	2.34	76
								NYMAGIC Inc.	NYS	12.50	-9.09	-40.12	33.13	12.38	121	Sierra Health Services	NYS	15.00	9.09	-28.14	26.00	10.44	386
								Ohio Casualty Corp.	NDO	39.75	1.76	-3.34	51.75	33.75	292	United HealthGroup	NYS	57.25	-2.97	28.47	73.94	29.56	4221
								Old Republic Int'l	NYS	19.94	1.59	-7.00	31.25	17.94	2198	Wellpoint Health Networks	NYS	73.56	-1.67	-14.34	87.88	50.50	1117
								Orion Capital Corp.	NYS	28.94	-2.73	-26.16	59.25	27.56	277	HMOs	AVERAGE		-4.20	5.13			
								Partner Re Ltd.	NYS	40.06	-0.47	-11.34	52.50	33.63	472	ALL COMPANIES	AVERAGE		-0.23	4.73			
								Penn-America Group Inc.	NYS	10.56	-0.59	14.19	19.50	8.13	31								
								PMA Capital Corporation	NDO	21.00	2.75	7.35	23.75	16.63	119								
								Philadelphia Cons. Holding	NDO	23.38	-2.60	10.00	25.50	18.63	295								
								PXRE Corp.	NYS	16.31	-3.33	-35.40	32.13	16.00	337								
								Reliance Group Holdings	NYS	10.25	10.07	-20.77	19.81	7.31	2614								
								ReliaStar Financial Corp.	NYS	41.00	1.86	-8.38	52.44	29.00	1796								
								RenaissanceRe Holdings Ltd.	NYS	36.00	0.35	-0.35	48.31	30.00	91								
								Risk Capital Holdings	NDO	16.25	-4.84	-23.08	25.50	12.00	87								
								RLI Corp.	NYS	33.44	4.90	0.19	45.63	27.88	81								

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