

# Business Insurance

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## Oregon ruling weakens exclusive remedy, groups say

SALEM, Ore.—An Oregon Supreme Court decision that says a worker can sue his employer under certain circumstances undermines the exclusive remedy provision of the state's workers compensation act and opens the door for employees to pursue additional claims through litigation, say insurer groups.

The focus of the May 10 decision in *See Updates on next page*

## Pension reforms at risk in tax bill

By JERRY GEISEL

WASHINGTON—Enactment of pension reform legislation as part of a broad tax-cut bill may be in peril.

Only a few weeks ago, benefit lobbyists said it seemed likely that a version of pension reform legislation that overwhelmingly cleared the House would be incorporated in a final tax cut bill. That optimism was bolstered by the Senate Finance Committee's passage earlier this month of a tax cut bill that includes pension reform provisions—such as boosting 401(k) plan deferral limits and relaxing non-discrimination tests—that were also contained in the bill passed by the House.

That appeared to set the stage for inclusion of many pension reform provisions in the final tax cut bill that a congressional conference committee soon will begin to draft. The Senate is expected to pass its tax cut bill this week, while the House passed its version earlier this year.

That optimism began to fade last week, however, as benefit lobbyists and others began picking up signals that the pension provisions could be dropped by congressional Republicans, who want the tax package to be used mainly for reducing

*See Pension on page 26*

### Key differences in bills

The House pension bill would offer employees more and larger opportunities to save for retirement than the Senate proposals contained in the tax legislation.

#### House bill:

#### Senate bill:

#### Catch-up contributions

Employees age 50 and older could add extra \$5,000 to 401(k) annually starting in 2002

Employees age 50 and older could add extra \$500 to 401(k) annually in 2002-2004; rising to \$1,000 in 2005-2006

#### Maximum annual deferrals

Annual deferral limit would rise to \$11,000 in 2002; rising \$1,000 annually until \$15,000 in 2006

Annual deferral limit would rise to \$11,000 in 2002; rising by \$500 annually until \$15,000 in 2010

#### Maximum annual contribution

Per-employee contribution limit would rise to \$40,000 from \$35,000

Per-employee contribution limit would remain unchanged at \$35,000



PHOTOS: AFP

A new patient rights bill has the support of President George W. Bush, who opposes an earlier bill introduced by, above from left: Sens. John McCain, John Edwards and Edward Kennedy.

## Patient rights get new look

### Employers cold to new bill

By MARK A. HOFMANN

WASHINGTON—Employers aren't finding much to like in a new managed care regulation bill that is based on principles set out by President Bush.

That's not to say that some don't see it as an improvement over a broader measure proposed in February by Sens. John McCain, R-Ariz.; John Edwards, D-N.C.; and Edward Kennedy, D-Mass. (*BI*, Feb. 12). Many employers fear that measure could expose them to unlimited liability for the actions of the health care plans they sponsor.

But the Bipartisan Patients' Bill of Rights Act of 2001, unveiled at a May 15 press conference by Sens. Bill Frist, R-Tenn.; John Breaux, D-La.; and James Jeffords, R-Vt., also is giving employers pause.

That bill would allow them to be sued, under certain circumstances, for denial of coverage if independent outside review held that the treatment should have been covered. Such lawsuits could be brought in federal court, but only after all internal and external review of the decision had been exhausted. The bill would cap noneconomic damages in such suits at \$500,000 and would not permit punitive damage awards.

A summary released by the three senators said the measure "protects employers who do not make medical decisions from lawsuits. The legislation gives employers statutory authority to designate a party or parties (such as the insurance carrier or the third-party administrator) that will have clear and exclusive authority to make determinations that give rise to legal causes of action." Such designated decision-makers would be

*See Patients on page 26*

## Policyholders sue for more info

# Midland deal challenged

By DOUGLAS McLEOD

NEW YORK—Several Fortune 500 policyholders of the long-defunct Midland Insurance Co. are questioning a proposed runoff reinsurance deal that would result in the estate's first claim payments in 15 years.

The New York Insurance Department, Midland's liquidator, unveiled a plan earlier this year under which a Berkshire Hathaway Inc. unit would guarantee a dividend of 32% on allowed claims up to an aggregate limit of \$2 billion, equating to a total payout of \$640 million to Midland creditors.

The distribution would be the first for policyholders since Midland collapsed in 1986, according to the Insurance Department, which has contended

that Midland's liabilities were too hard to gauge and potentially too massive to allow payment of a dividend until now.

Since the plan was disclosed in court filings, though, several corporate policyholders and other large creditors of Midland have said the New York department has refused to provide information that would allow them to judge whether the deal is reasonable. After several failed efforts to learn more, the creditors sued the Insurance Department this month to force it to turn over data on the estate's finances, including details of its reinsurance recoverables, Midland's largest asset.

"The superintendent (of insurance) has refused to provide to his own fiduciaries the same materials he has given" Berk-

shire Hathaway, the policyholders charge in their suit. "Worse still, the superintendent is maintaining this untenable position even though...Berkshire Hathaway's profit would necessarily come at the expense of the creditors."

A state judge ordered the New York department to explain at a hearing scheduled for June 11 why it should not be required to turn over the information the creditors seek. Last week, New York State Supreme Court Judge Martin Schoenfeld revised the order to set June 11 for hearings on both the creditors' demands and regulators' request for approval of the Berkshire Hathaway deal.

Insurance Department officials and a lawyer representing

*See Midland on page 25*

Willis unveils details of proposed stock offering page 3

That's entertainment: Hollywood E&O risks growing page 3

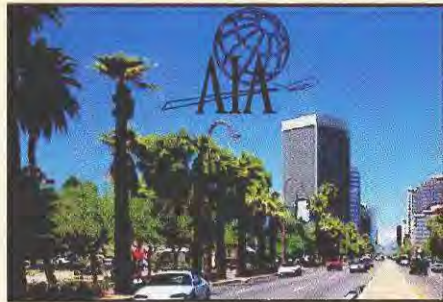
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**INSIDE**



● The chairman and CEO of United States Aviation Underwriters of New York encouraged market executives to stop the financial battering the market has taken due to inadequate rates. PAGE 4



● With an electricity shortage sending energy spot-market prices rising, a California electrical utility has purchased a weather insurance policy to protect its financial health. PAGE 6

● Businesses should lobby Congress on the importance of passing pension reform now, not sometime in the future, this week's editorial says. PAGE 8

● Federal appeals courts should subject large punitive damage awards handed down by trial courts to close scrutiny, the U.S. Supreme Court ruled. PAGE 18



● The mysterious loss of hundreds of unborn and premature thoroughbred foals in Kentucky is causing concern among underwriters that write "prospective foal" policies. PAGE 19

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**UPDATES**

Continued from previous page  
*Smothers vs. Gresham Transfer Inc.* is Oregon's workers comp statute, which requires the worker to prove that employment conditions were the "major contributing factor" in the claim. The court ruled these provisions are unconstitutional in certain cases. The case involved Terry L. Smothers, whose workers comp claim was denied by an administrative law judge who concluded that Mr. Smothers' exposure to chemical mist and fumes at work was not the "major contributing cause" of his respiratory condition. Mr. Smothers then sued his employer, charging negligence. The state Supreme Court overturned two lower courts' dismissals of Mr. Smothers' case, concluding that the exclusive remedy provisions of the state workers comp statute are unconstitutional in Oregon "to the extent that there is now a category of workers who have been injured at work but receive no compensation benefits, because they cannot prove that the work-related incident was the major contributing cause of their injury or disease." The court "has just struck down the most important part of Oregon's workers compensation law," said Mark Webb, vp-Western region for the American Insurance Assn. "Employers will now be held financially accountable for injuries already denied under the workers compensation system," he said. Mr. Smothers' attorney said the Legislature will have to redesign the system to ensure that injured workers are compensated, regardless of whether their job was a major contributing factor.

► **SAFECO NARROWS FOCUS** SAFECO Corp. will reduce its large commercial business premium volume by about \$100 million as part of a plan to cut costs and focus on small and midsize commercial risks. The Seattle-based insurer also plans to consolidate much of its remaining commercial business and cut about 450 jobs, said Mike McGavick, who joined SAFECO as president and chief executive officer earlier this year. SAFECO's small and midsize business operation will move from Indianapolis to Seattle, with underwriting operations in Fountain Valley, Calif.; Atlanta; Indianapolis; Dallas; and Seattle. The operation has an annual premium volume of about



\$1.3 billion. The insurer also will centralize its underwriting operations for the larger commercial accounts it plans to retain. SAFECO writes about \$200 to \$300 million in premium volume in large commercial account business, said Mr. McGavick. The company also is reviewing its SAFECO Select Markets operation, which includes medical malpractice, professional liability, specialty programs and surplus lines business and generates about \$200 million in premiums, he said. The reorganization is expected to create \$40 million in annual savings, he said. SAFECO reported an \$882.8 million loss in the first quarter, which stems from a \$916.9 million after-tax write off of goodwill primarily related to its 1997 acquisition of American States Financial Corp.

► **HAIL OF A STORM** Insurers are tallying losses from a fast-moving storm that raked the Midwest last weekend with hail and high winds. Hard hit was Eppley Airfield in Omaha, Neb. Baseball-sized hailstones pounded holes in roofs, cracked glass canopies and damaged aircraft and automobiles at the airport. The damage is expected to far exceed the airport's property deductible of \$100,000, said Stan Kathol, director of finance and administration at the airport. He said coverage was placed by broker Harry A. Koch Co. in Omaha and written by Travelers Property Casualty Co. The Property Claim Services unit of Insurance Services Office Inc. assigned the storm catastrophe number 42, meaning insured damage is expected to total at least \$25 million. Damage from the storm was spread across Nebraska, Iowa, Michigan and Wisconsin. The storm damaged 15 commercial airplanes and 10 general aviation aircraft at the



PHOTO: AP/WIDE WORLD

Large hailstones that fell recently on Nebraska and several other states caused insured damage totaling tens of millions of dollars.

Omaha airport. America West Airlines announced that two of its Boeing 737 jets still were grounded at the airport in Omaha yesterday because of hail damage. Planes of United Airlines, Frontier Airlines and Continental Airlines also were damaged. Mr. Kathol said 186 cars parked at the airport had glass windows knocked out and many more had cracked windows.

► **ARIZONA CAPTIVES** Arizona Gov. Jane Dee Hull has signed legislation allowing the formation of captive insurers in Arizona. The new statute is similar to Vermont's captive law, with variations to accommodate credit-life and disability reinsurers that already exist in Arizona, said Marc Lapointe, a Phoenix-based insurance consultant who helped develop Arizona's captive law. State Rep. Ted Carpenter, R-Phoenix, first introduced captive legislation two years ago (*BI*, April 5, 1999). Although that earlier legislation failed to pass, Rep. Carpenter reintroduced the proposal in H.B. 2116, which this year finally received the governor's signature.



Gov. Hull

► **MED MAL CLAIMS** Claims against nursing homes during the 1990s accounted for much of medical malpractice insurers' poor results, a study by Conning & Co. says. In 1999, the loss ratio for nursing home policyholders reached 300%, an amount that accounted for much of the entire medical malpractice line's dismal 129.5% combined ratio that year, Conning found. Excluding the nursing home results, medical malpractice in 1999 would have produced a combined ratio of 108%, in line with the industry's ratio for all lines of 107.7%, the study found. "From 1992 to 1997, medical malpractice insurers aggressively took down reserves to increase their investment portfolios," said Geri Riley, assistant vp at Hartford, Conn.-based Conning and author of the study. "This strategy helped them maximize their investments during the bull market," she added, but insurers now are using surplus to shore up depleted reserves.

► **BLACK LUNG RULES** The U.S. Department of Labor has filed a brief defending regulations promulgated by the Clinton administration that streamlined black lung claims from miners. That action ended a 60-day stay that the new Bush-appointed department head had sought to review the new regulations. "It's the department's duty to defend the law, regardless of whether they are this administration's regulations or the previous administration's regulations," Labor Secretary Elaine L. Chao said. The new rules, which went into effect Jan. 19, are being challenged in U.S. District Court by the National Mining Assn. and some workers compensation insurers. In other action, the Labor Department recently announced plans to launch a nationwide outreach program to notify energy workers, and some of their survivors, of benefits available under a new program for workers who have been exposed to

hazardous materials used in defense programs. The program will include the establishment of at least nine resource centers, a toll-free call center, a Web site with downloadable claim forms, site visits and a team to consult with the Department of Energy's related program for former workers, Ms. Chao said.

► **NCQA ADDS PPO INFO** The National Committee for Quality Assurance has enhanced its popular online Health Plan Report Card by adding, for the first time, information on preferred provider organizations. Users of [www.ncqa.org](http://www.ncqa.org) now can check on the quality and network access of providers in any of the PPOs the organization has accredited. The NCQA last year launched its PPO accreditation program and, to date, the nonprofit group has reviewed PPOs covering about 10% of the total enrollment in such plans. The online report card now also contains a link to the NCQA's certification-status list. That list provides health plans with detailed information and contacts for various NCQA-certified vendors, including physician groups and utilization management organizations.



► **BRIEFLY NOTED** Proposals for sessions to be held during the 40th Risk & Insurance Management Society Inc. annual conference next year in New Orleans can be submitted online. The Program Suggestion Form can be found at [www.rims.org/content/Conferences/conferences.htm](http://www.rims.org/content/Conferences/conferences.htm). The deadline for submitting session suggestions is June 8....The House of Representatives has unanimously passed H.R. 622, which would increase to \$10,000 from \$5,000 the tax-free reimbursement employers can provide to employees for adoption-related expenses. Employers may provide up to \$6,000 in reimbursement for adoption of children with special needs. The bill also would raise to \$150,000 from \$75,000 the maximum adjusted gross income employees can earn without being taxed on any of the reimbursement, and the tax break would be made permanent....A federal appeals court last Wednesday overturned a lower court ruling that had blocked Maine from implementing its prescription drug price control law. The ruling by a panel of the 1st U.S. Circuit Court of Appeals allows Maine to provide discounted prescription drugs to all state residents. A drug maker trade group that claimed the law illegally interfered with interstate commerce and violated the federal Medicaid law, challenged Maine and last year won an injunction from a federal district court. In a statement, the drug maker group said it will carefully monitor how the state implements the law....The Federal Motor Carrier Safety Administration added its support to increasing the United States' inspection and oversight of Mexican trucks engaged in cross-border trade, according to an interim report the agency released. Earlier this year, an arbitration panel found the United States was illegally restricting access by Mexican trucking firms, in violation of the North American Free Trade Act. Critics of unrestricted access had warned that state and federal authorities in the United States are not equipped to adequately inspect northbound trucks and enforce U.S. safety laws, which are tougher than those governing Mexico's truckers....The Senate has confirmed, without discussion, Ann Combs as an assistant secretary of the Department of Labor and head of the department's Office of Pension and Welfare Benefits Administration, which regulates employer-sponsored pension and health care plans. She previously was general counsel at the American Council of Life Insurers and before that was a consultant in the Washington office of William M. Mercer Inc.

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

# Willis planning \$230 million IPO

By GAVIN SOUTER  
and SALLY ROBERTS

LONDON—Insurance broker Willis Group Ltd. expects to raise up to \$230 million through an initial public offering of stock in a newly established Bermuda-based holding company.

Following the sale of 20 million shares in Willis Group Holdings Ltd., at an estimated price of between \$10 and \$12 per share, the world's third-largest insurance broker would have a market capitalization of about \$1.7 billion, according to documents filed last week with

the U.S. Securities and Exchange Commission. Willis intends to commence the IPO "as soon as practicable," the filing says.

The broker declined to discuss the IPO, saying it is in the midst of the SEC-mandated "quiet period."

Willis, based in London, recently redomesticated its holding company to Bermuda in preparation for the IPO.

Speculation surrounding the stock offering has focused largely on whether the move is part

of a potential exit strategy of Willis' majority stock owner, Kohlberg Kravis Roberts & Co. L.P., by creating a liquid market for shares in the company. According to the filing,

KKR will maintain its shares in Willis and a 63.9% majority ownership.

In addition, the decision to launch an IPO may have been prompted by Willis' need to raise capital to pay off substantial debt and to fund further growth initiatives (BI, April 23). Much of that debt stems from the acquisition of Willis in 1998 by Trinity Ac-

quisition P.L.C., a consortium of investors led by KKR (BI, July 27, 1998). The consortium also includes six insurers—AXA Group, Royal & SunAlliance Insurance Group P.L.C., Chubb Corp., The Hartford Financial Services Group Inc., Travelers Property Casualty Corp. and The Tokio Marine & Fire Insurance Co. Ltd.

As part of the stock offering, Willis will grant the IPO's underwriters—Salomon Smith Barney, J.P. Morgan Stanley Dean Witter, Bank of America Securities L.L.C., Merrill Lynch & Co. and UBS Warburg—options to purchase up to 3 million

total additional shares of common stock to cover overallocations.

Assuming a public offering price of \$11 per share and that the underwriters exercise their full options, Willis estimates that it will net about \$231 million from the IPO, after deducting assumed underwriting discounts and estimated offering expenses. The broker said in the SEC filing that it intends to use the proceeds to redeem preference shares of one of its subsidiaries or to repurchase senior subordinated notes of Willis North America, or both.

See **Willis** on page 24

## Willis

# Employer cost-cutting may trim HMO profits

By JUDY GREENWALD

Employers' efforts to mitigate the impact of double-digit rate hikes could begin to erode managed care companies' profitability.

Although health maintenance organizations are generally still continuing to report strong earnings, cost-cutting moves being made by employers—including increasing employee deductibles and copayments in an effort to lower premiums—could have an impact on managed care organizations' bottom lines by next year, some market observers say.

Perhaps the most prominent example of efforts to keep rate hikes down is California Public Employees Retirement System's announcement in April that it is doubling employees' copay-

ments for visits to HMO doctors effective next year, which will help keep CalPERS' average rate hike to 6% (BI, April 23).

"We see large accounts, those with 5,000 employees and up, typically looking

for product adjustments, benefit buydowns or cost shifts" in an effort to gain two to four percentage points in rate relief, said John S. Penshorn, director of capital markets communications and strategy for Minneapolis-based UnitedHealth Group Inc. Mr. Penshorn said

that while this trend is not new, it is accelerating.

There has been an increase in buydowns, with more interest by employers in increasing copayments and member contributions, said David Olson, vp-investor relations for Woodland, Calif.-based Health Net Inc. "Obviously, employers are concerned about increasing premiums," said Mr. Olson. "We believe that increasing member financial responsibility is a way to encourage intelligent purchasing of health care services, probably the best way."

"We anticipate employer groups will be looking for ways to mitigate the risk in premiums," said John Cygul, vp of investor relations for Thousand Oaks, Calif.-based WellPoint Health Networks Inc.

See **HMOs** on page 24



# Employee leave and law

FMLA complicates benefit administration, attorney says

By MEG FLETCHER

CHICAGO—Employers face several challenges in implementing legal employee attendance and absence policies, especially in light of the Family and Medical Leave Act, an attorney advised.

"Often, employers unwittingly violate the FMLA by applying a no-fault attendance policy," said Lori Goldstein, an attorney with the Chicago-based law firm of Wildman, Harrold, Allen & Dixon. Her comments were made during the firm's annual Labor and Employment Seminar held in Chicago last week.

"Firing an employee for absenteeism under a no-fault policy—even though the reasons for the absence are irrelevant to the policy—violates the FMLA if absences the employee is entitled to under the FMLA are included," Ms. Goldstein said in her written presentation.

One of the trickiest things

about FMLA leaves is that employees do not always have to specifically request such a leave, especially in situations involving unexpected illnesses, she explained. "An employee is not required to specify that a need for leave may be an FMLA-covered event. She needs only (to) put the employer on notice that this may be the case," Ms. Goldstein said.

"Most employers think of FMLA in terms of the extended leaves, but, in fact, an absence of even less than three days might be applicable," she said. "But, when an employee knows of the leave in advance, the act requires 30 days' notice be given to the employer," she said.

The FMLA applies to employers with 50 or more employees stationed within a 75-mile radius. It requires that the employer provide an eligible employee with up to 12 weeks of unpaid leave in any 12-month period due to a serious health condition of the

employee or a close family member of the employee. Furthermore, an employee may be eligible for such a leave if he or she has a child, adopts a child or agrees to provide care for a foster child.

To be eligible, an employee must have worked for the employer for at least 12 months and a minimum of 1,250 hours.

The FMLA both provides employers with rights and imposes obligations on them.

For example, an employer must notify employees about the existence of FMLA leaves through both postings and benefit-related written materials.

An employer must also promptly let an employee know if his or her time off will be counted against FMLA entitlement. An employer may require that an employee use accrued vacation or sick time, with the remainder of the leave unpaid.

The employer also must be See **FMLA** on page 23



PHOTO COURTESY OF FOX

Actions such as the CBS suit over Fox's reality show "Boot Camp" are causing the insurance market for entertainment risks to harden.

# Shows must go on, but E&O rates rise as lawsuits grow

By JOANNE WOJCIK

LOS ANGELES—Even though Stacy was voted off the island last year, she's still trying to win a piece of the "Survivor" jackpot by suing the producers of the television show for allegedly rigging the outcome.

At the same time, the producers of "Survivor"—the popular reality-based CBS TV series—themselves are suing Fox Broadcasting Co. for allegedly copying their concept when Fox created a show called "Boot Camp."

CBS itself successfully deflected a lawsuit related to its show: The 1980s rock band Survivor was unsuccessful in a 2000 lawsuit to force the studio to change the show's name.

Reality-based programming is just one contributor to a growing crisis in the entertainment errors and omissions liability insurance market for studios and large media companies, industry experts say.

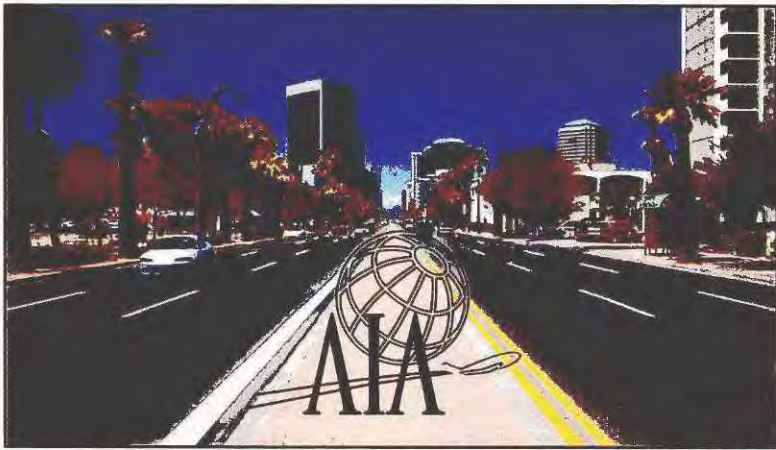
Increasing visibility of entertainment products due to the many distribution channels available today is creating more opportunities for lawsuits, which in turn trigger entertainment E&O claims.

Entertainment E&O, or producers liability insurance, covers a producer's legal and defense costs arising from lawsuits alleging copyright infringement, unauthorized use of titles, format, ideas, characters or plots, unfair competition, plagiarism or invasion of privacy, libel, slander, or defamation of character in connection with the insured production. Punitive damages are not covered. The coverage is often required by distributors, prior to the release of any theatrical or television production.

The huge sums being earned by movie studios—box office grosses are posted after the release of each new film—make the entertainment industry an appealing target for lawsuits.

"This is an increasingly litigious country, unfortunately, and See **E&O** on page 27

# Aviation market must stop nosedive, execs warn



The 25th annual Aviation Insurance Assn. conference was held May 5-8 in Phoenix.

By DAVE LENCKUS

PHOENIX—"It's time to say, 'No mas,'" underwriting executive Harold Clark implored a group of aviation and aerospace underwriters and brokers.

The phrase became famous years ago after professional boxer Roberto Duran stopped a match because he could take "no more" pummeling from his opponent. Mr. Clark, chairman and chief executive officer of United States Aviation Underwriters of New York, borrowed the expression to encourage aviation insurance market executives to stop the financial battering the market has taken for years due to inade-

quate rates and other problems.

Underwriting executive Peter L. Butler also illustrated for market executives, during a session at the Aviation Insurance Assn. conference, why a more restrictive market—featuring higher rates and deductibles and tougher underwriting standards—would benefit underwriters, brokers and policyholders.

The AIA held its 25th annual conference May 5-8 in Phoenix.

Both Mr. Clark and Mr. Butler, underwriting executive for London-based Global Aerospace Underwriting Managers Ltd., formerly British Aviation Insurance Group Ltd., employed lighthearted presentations in underscoring the serious financial

problems that underwriters have created and how they can correct the market.

Calling the aviation market "highly variable" and asserting that it is characterized by a withdrawal from reality and "dog-eat-dog" competition, Mr. Clark maintained: "There is no (aviation insurance) industry. Let's stop kidding ourselves."

Underwriters increasingly are embroiled in fierce competition and are posting bad results with "normal" losses, he said. "We're losing our shirts with routine losses. That's not good."

Mr. Clark lamented that the underwriting environment is the driver of the market, "much more than loss experience or capacity."

Mr. Butler agreed, criticizing the market for lax underwriting and for basing rates on passenger miles, revenues and what happened during the last round of renewals.

Rather than rating accounts uniformly based on the latest market trends, underwriters should be evaluating what "each account brings to the table" and "provide allowances" to good accounts and penalize others based on their individual performance, Mr. Butler said.

In a presentation that mimicked the popular television game show "Who Wants to be a Millionaire?" Mr. Butler detailed the reasons the commercial general aviation insurance market needs to harden if it hopes to survive.

He pointed out that the market last made an underwriting profit in 1995 and that it has had just two profitable years since 1987. From 1996 through 2000, London's marine and aviation company market reported a negative cash flow of £3.8 billion (\$5.43 billion), he said.

Exacerbating the problem is that recent changes in financial market conditions mean that aviation underwriters no longer can count on investment income to make up for underwriting losses.

Noting that major commercial airlines typically are lining up \$2 billion of liability limits, Mr. Butler said the market "simply can't cover anticipated losses without a major correction."

That led Mr. Butler to his \$1 million question: Who needs the market to have a profitable 2001? The answer, he said, is brokers and policyholders as well as underwriters.

Underwriters also should be boosting commercial airlines' deductibles, which have not been revised in large part since 1983, Mr. Butler said.

For wide-body aircraft, the \$1 million deductible that underwriters adopted nearly 20 years ago is worth \$328,000 in present-day dollars, Mr. Butler noted. The typical \$500,000 deductible for narrow-body aircraft is worth \$164,000 in present-day dollars, he said.

"I'm sure you will see changes over the next six to 12 months," Mr. Butler asserted.

He said that underwriters also must assess airline code-share agreements, under which airlines agree to fly the passengers of other airlines on specified routes. Such arrangements sometimes can dramatically increase an airline's—as well as its insurers'—exposure, Mr. Butler said.

In particular, underwriters have

See **Aviation** on page 16

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# Policy covers risk of hot demand for electricity

By ROBERTO CENICEROS

SACRAMENTO, Calif.—With California's electricity shortage making energy spot-market prices rise faster than heat off a desert floor, the Sacramento Municipal Utility District recently purchased a weather insurance policy to protect its financial health.

It did so to bridge a potential gap between the retail rates the electric utility can charge its customers and the spot-market prices it may have to pay this summer if higher-than-average temperatures drive up electricity demand, said Don Hroch,

SMUD's risk manager.

Purchase of the policy is based on the likelihood that the events triggering coverage will happen rather than not, Mr. Hroch said.

"It's a different way of perceiving risk," he explained. "It's moving away from insurance, where you are dealing with a fairly low probability of loss, to dealing with something that has a fairly high probability. There is a significant-enough likelihood that something is going to happen and is not that remote a possibility. But you are still able to cover it under an insurance program."

SMUD bought the policy from

Bermuda-based mutual insurer Associated Electric & Gas Insurance Services Ltd. A "syndicate" of reinsurers and derivative market participants reinsured the Climatic Risk Policy, said John Oehler, AEGIS manager of financial products in Jersey City, N.J. AEGIS is not revealing the identity of the syndicate members.

In the past three to four years, gas distribution companies have purchased similar weather-related products to offset reduced demand, which may be caused by mild winters reducing the sales of fuel below expectations, several energy-related insur-

ance experts say.

Electric utilities also have bought similar policies, but they have done so, for the most part, to cover losses related to the forced outage of production facilities, said Marshall Nadel, managing director of utility and power generation for Aon Risk Services in Dallas.

Mr. Nadel said that SMUD is the first electric utility he knows of to purchase such a policy to offset demand-related costs. But more electric utilities nationwide are likely to seek similar protection, due to both the deregulation of utility companies by states and the rapidly

rising spot-market prices, Mr. Nadel and other experts say.

"We are seeing a flurry of interest," Mr. Nadel said. "We are modeling one right now for a major utility."

Aon did not place SMUD's coverage. SMUD purchased its policy without the help of a broker, after obtaining bids from AEGIS; Tempest Reinsurance Co. Ltd., an ACE Ltd. unit; and Swiss Reinsurance Co.

SMUD, a producer and distributor of electricity, pur-



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chased the policy after examining about 50 years of temperature-pattern data obtained from a local municipal airport that also serves as a weather station. The data revealed a "fairly large" standard deviation, showing that once summer temperatures exceed a certain point, they tend to exceed the norm by a considerable amount.

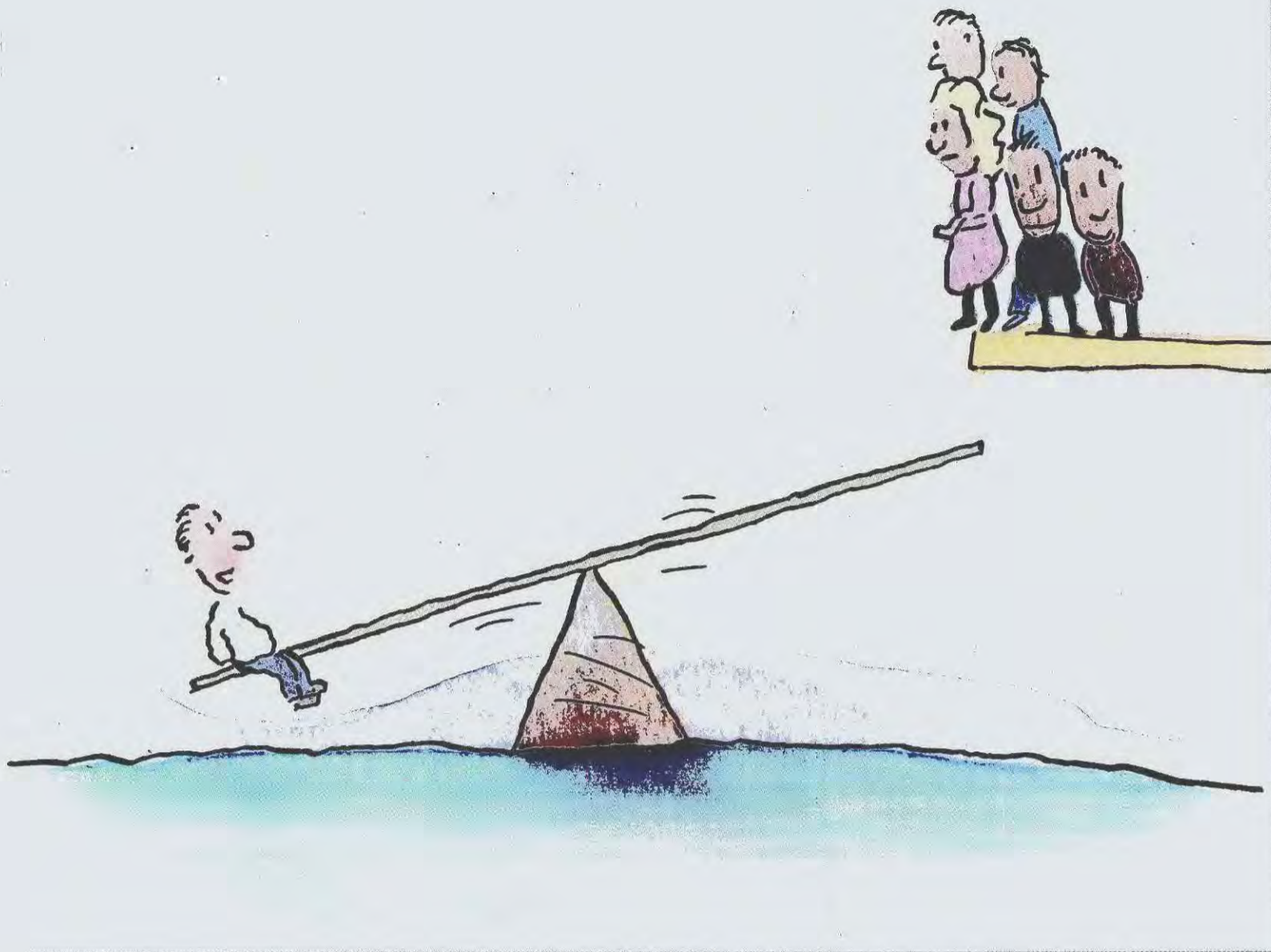
Although that is not a frequent occurrence, there is a high-enough probability for the coverage to make sense, Mr. Hroch said.

Sacramento occasionally experiences "heat storms" during summer months, he said. Temperatures will rise above 100 degrees over several days, with little cooling at night. The utility must then purchase electricity on the spot market to meet spikes in customer demand for air conditioning.

"That is where we will get killed, because the spot market is way, way up," Mr. Hroch said. "It's just totally out of line."

A year ago, the spot price was about \$25 per megawatt-hour, but more recently it has soared to nearly \$2,000, amid shortages and blackouts in California, ob-

See **Electricity** on page 23



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## OPINIONS

## Act on pension reform

**W**ILL THE PENSION REFORM LEGISLATION now in Congress suffer the same fate it has so many times in the past?

Benefit lobbyists are deeply worried that congressional conferees who will be meeting soon to iron out differences between Senate and House tax bills will jettison the pension provisions in the legislation.

The reason they fear pension reforms might be at risk: conservative House and Senate Republicans want the maximum amount of money to be available to the federal government to allow a reduction in basic tax rates and the elimination of the estate tax. To achieve that, the pension reforms—which could cost the government tax coffers roughly \$40 billion to \$50 billion over 10 years—could be cut.

While that may seem like small potatoes compared with the overall tax package, which would cut federal revenues by anywhere from \$1.3 trillion to \$1.6 trillion, legislators are likely to look for opportunities to offset the anticipated loss of tax revenues wherever possible.

It would be regrettable if pension reforms—proposals that otherwise enjoy wide support among lawmakers in both parties—fell victim to partisan squabbling over unrelated matters. Sadly, though, it would be far from the first time that pension reform has met that fate.

We have lost count of the number of times that Congress in the past was poised to pass pension reform legislation, with provisions not that much different from those in the current measures, only to have the reforms die at the last moment, because of squabbles among

lawmakers over other issues.

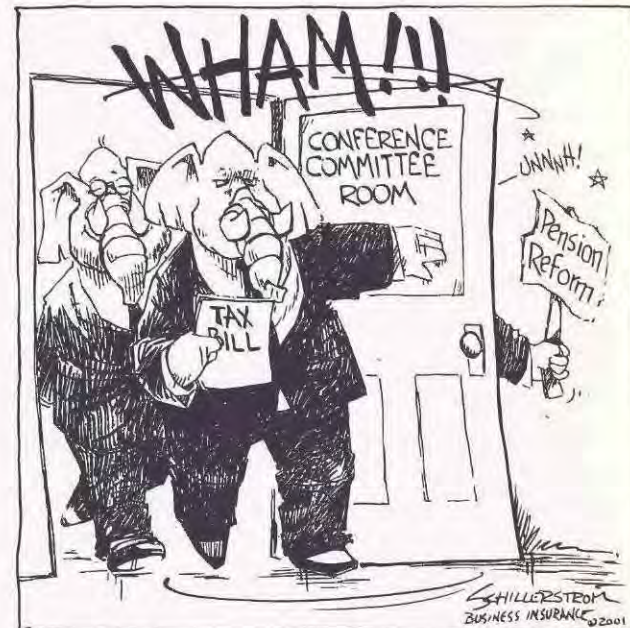
Business groups pushing for the reforms are not giving up. The American Council of Life Insurers, for example, says it will stay active and lobby legislators to keep the pension provisions in the final tax bill that emerges from the conference committee.

Similarly, the ERISA Industry Committee says this is the time for employers and employees to write and call their congressmen in support of the pension provisions. Indeed, the committee's president, Mark Ugoretz, says the battle can be won, but only if employers and employees get actively involved.

The pension legislation is well worth fighting for. Very simply, the measures would undo much of the damage that legislators themselves have inflicted on employer-sponsored plans.

For example, though in somewhat different ways, both measures would allow employees to contribute more to 401(k) and other retirement savings plans, while employers also could provide increased benefits through retirement plans. This would be of critical importance as the baby boom generation starts to retire over the next decade and many workers find—because of past misguided congressionally directed cuts—that their pension plans don't provide the benefits they had expected.

The current legislation also would reduce many of the hassles—such as overly complex nondiscrimination rules—that have discouraged employers, especially smaller firms, from offering pension plans. Indeed, the



only thing worse than an inadequate pension plan is no plan at all.

If the pension provisions do die, it is possible that they could resurface in a second tax bill that has been bandied about, or perhaps in another legislative package, such as one that would raise the minimum wage.

It is comforting to know that there might be a fallback position. Given the tendency of Congress to regard pension legislation as expendable, though, businesses should lobby legislators on the importance of these measures, so that they act on pension reform now, not later.

## LETTERS

## Fixing state regulation preferable to federal option

To the editor: As you noted in your April 23 editorial, "Keep Pushing for Change," the Alliance of American Insurers remains a strong supporter of state regulation for the property/casualty insurance industry. While we do welcome debate insofar as it will speed improvement to the state system, this is very much the silver lining of the federal charter discussion.

From our perspective, the recent proposals to create a dual charter system are unfortunate and would harm the in-

dustry.

The banking and insurance industries are quite different. The fact that dual chartering works for banks does not mean that it would for insurers. State law is the foundation of property and casualty coverages. Federal chartering would simply exchange state regulation by administration for state regulation by litigation. There would be an explosion of suits that are now precluded or defended by the McCarran-Ferguson Act.

The removal of companies from the

state system would create any number of other problems and inefficiencies. It would undoubtedly negatively affect residual market mechanisms. And companies would suffer from the loss of data used for pricing and planning. Even large insurers need this for most lines of insurance. Further, would safe harbors for data work? Companies didn't think so a decade or more ago.

Perhaps the most concerning aspect of all is that the existing proposals are all highly academic. They endorse a federal

charter option only if certain conditions are met—essentially eliminating consumer protections and exempting insurers from state pools and rate and form regulation. In today's legislative climate, this kind of proposal would be politically very difficult to achieve.

A much more likely outcome of dual chartering proposals would be simply the addition of an extra layer of federal regulation over existing state regulation. How would the addition of another fed-

See **Regulation** on page 15

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# A list of treasured risk management tomes

By Felix Kloman

Every five years I hazard an answer to the classic castaway's question: "What few risk management books would you take with you if you were to be out of touch for 10 years?"

My list, of course, aims at those key volumes that I consider essential to anyone who tries to make better decisions using the tools of risk management. Presumptuous, yes, but age and experience permit me considerable latitude.



For the 2001 version of the essential library for the risk manager, I reviewed my suggestions in July 1990 and 1995. There are changes. My list now totals 10, not five. Two repeat from 1995 but only one remains from 1990. I'm sure that I overlook some

gems and I trust readers will point them out to me.

Here is my current "must read" list:

- Peter Bernstein, "Against the Gods: The Remarkable Story of Risk" (John Wiley & Sons, 1996). This is easily the best-written discourse on the history of risk and risk management. Mr. Bernstein describes our growing ability to measure risk, from Pascal, Fermat and Bernoulli to Knight, Keynes, von Neumann, Black and Scholes. He warns of the growing reliance on mathematical models as a delusive religion.

- John Adams, "Risk" (UCL Press, 1995). From the United Kingdom and University College in London comes a philosophical dissection of uncertainty and how we culturally adapt to it. Mr. Adams' 12 "modest suggestions" on managing risk are as concise and practical a set of guidelines as I have seen.

- Harold Skipper (ed.), "International Risk and Insurance" (McGraw-Hill Higher Education, 1998). The most complete textbook that I've read, with articles on every facet of insurance and risk. Its global approach is refreshing.

- Vernon Grose, "Managing Risk: Systematic Loss Prevention for Executives" (Omega Systems Group Inc., 2nd edition, 1996). A crisp, punchy, and practical introduction to the discipline, written by a systems safety engineer, his system

of hazard scenarios, ranking by a risk jury and use of a risk "totem pole" has been used by many organizations.

- David McNamee and Georges Selim, "Risk Management: Changing the Internal Auditor's Paradigm" (Institute of Internal Auditors, 1998). This is both a review of the discipline and a practical textbook, written from the perspective of an internal auditor. It is the keystone to the enterprise risk management initiative of the Institute of Internal Auditors.

- John Ross, "The Polar Bear Strategy: Reflections on Risk in Modern Life" (Perseus Press, 1999). Aply subtitled "reflections on risk in modern life," this is an thoroughly entertaining and enlightening plea to avoid becoming too risk-averse.

- Peter Schwartz, "The Art of the Long View" (John Wiley & Sons, 1991). This is one of the bibles on scenario planning for risk assessment. First used at Royal Dutch Shell, scenario planning, as described by Mr. Schwartz, is an essential technique of risk management.

- Vlasta Molak (ed.), "Fundamentals of Risk Analysis and Risk Management" (Lewis Publishers Inc., 1997). In contrast to the Skipper book above, this text approaches risk management with a public policy view, looking at how policy is developed for major social, political and environmental issues.

- John Allen Paulos, "Innumeracy: Mathematical Illiteracy and its Consequences" (Hill & Wang, 1988). Numbers are easily misleading. Professor Paulos' book is essential for understanding the quantitative side of risk management and especially how others use, misuse and perceive the numbers we generate.

- William Strunk Jr. and E. B. White, "The Elements of Style" (4th Edition, Allyn & Bacon, 1999). If communication is the core of risk management, then how we communicate is critical. This 92-page paperback is the bible for any risk manager who tries to use the English language.

Other than Peter-Bernstein's book and "The Elements of Style," I could easily substitute others from my library for the remaining eight volumes.

William Leiss collaborated with co-authors in "Mad Cows and Mother's Milk: The Perils of Poor Risk Communication" and "Risk and Responsibility," exceptional volumes from Canada. The Bavarian Reinsurance Co.—now Swiss Re Germany—published two thoughtful compendiums of European authors, "Society and Uncertainty" and "Risk Is a Construct."

"Financial Risk Management," edited by Global Assn. of Risk Professionals' Marc Lore and Lev Borodovsky, is a comprehensive handbook for the financial arena. Frank Knight's "Risk, Uncertainty, and Profit" (1921) is cited by many academicians, but who has actually read it? I haven't, so it doesn't make my top list.

Ragnar Löfstedt and Lynn Frewer edited "Risk and Modern Society" in 1998, another readable review from England. Melvin Konner's "Why the Reckless Survive" looks at risk through the lens of human nature.

Fred Church's "Avoiding Surprises" remains the best short introduction for smaller organizations, and "The Greening of Industry," from John Graham and Jennifer Hartwell, recounts the rise of the risk management approach in industry's response to environmental problems in the United States.

Howard Kunreuther and Richard Roth's "Paying the Price" covers the status and role of insurance in natural disasters in the United States. The Software Institute of America compiled an exhaustive "Continuous Risk Management Guidebook" aimed at process engineers and software designers, and James DeLoach wrote a similarly extensive "Enterprise Risk Management: Strategies for Linking Risk and Opportunity."

Another excellent textbook is the 7th edition of "Risk Management and Insurance," by Arthur Williams, Michael L. Smith and Peter C. Young.

Older volumes holding their value include Peter Drucker's "Age of Discontinuity," Ralph Nader's "Unsafe at Any Speed," which started the consumer movement in the United States, and "The Invisible Bankers," a delicious dissection of the U.S. insurance business, by Andrew Tobias.

I should not leave this study of worthwhile books without noting that risk management also requires a sense of humor and humility. What better way to regenerate these frequently lost attributes by reading or rereading the Winnie the Pooh books by A. A. Milne, Kenneth Grahame's "The Wind in the Willows" and, of course, the incomparable "Alice in Wonderland" and "Through the Looking Glass" by Lewis Carroll.

Let's see what I suggest five years from now. BI

Felix Kloman, Editor, Risk Management Reports (adapted from the March 2001 issue) © Seawrack Press Inc., 2001.

Felix Kloman is the editor of Risk Management Reports in Lyme, Conn. He can be reached at [fkoman@aol.com](mailto:fkoman@aol.com).

## Property policy exclusion ambiguous, court rules

An exclusion from a commercial all-risk insurance policy for loss or damage caused by settling was ambiguous and should be interpreted in favor of the policyholder, a Colorado appellate court has ruled.

Russell Lee Novell purchased a commercial all-risk policy from American Guaranty & Liability Insurance Co. for a building he owned. The policy excluded coverage for damage from settling, but if the loss or damage resulted from "specified causes of loss," the insurer would pay for that resulting loss. "Specified causes of loss" was defined in part as "water damage," including "accidental discharge or leakage of water as the direct result of the breaking or cracking of any part of a system or appliance containing water." In 1993, Mr. Novell noticed cracking in the building walls. After investigation, the city found a substantial leak in an abandoned water line and repaired it. Mr. Novell advised the insurer that he thought that the water main break had caused the damage. However, Mr. Novell's claim was denied. He sued the insurer for breach of contract and won in the trial court.

On appeal, the insurer argued that the policy made no distinction between settling resulting from natural causes and settling caused by a leaking water main and that, therefore, the court should apply the plain meaning of the policy provision and conclude that coverage was not available. But, the court said that with reference to the exclusion for "settling," the policy contained only limited words of causation. That is, only losses "caused by or resulting from" the settling are excluded, the court ruled. The court deemed that it was not clear from this wording whether the efficient cause of the settling can be

### LEGAL BRIEFS

only water from a naturally occurring condition such as an underground water table or water from broken pipes. Thus, the court agreed that the exclusion was ambiguous and should be interpreted in favor of the policyholder.

*Novell vs. American Guaranty & Liability Insurance Co., Colorado Court of Appeals, Sept. 30, 1999. (BI/05/Ju.-\$10)*

### 'Employee' defined in ERISA plan case

An owner of a business is not considered an "employee" for purposes of determining the existence of an Employee Retirement Income Security Act health plan, the 9th U.S. Circuit Court of Appeals has ruled.

Thomas and Dana LaVenture, husband and wife, are the sole shareholders of Pacific Graphics Inc. In 1992, Pacific Graphics purchased a health insurance policy covering only Thomas and Dana. In 1994, Pacific Graphics enrolled in a disability insurance policy with the Printers Disability Trust covering only Thomas and Dana. During the interval between the application and receipt of the participating agreement, Dana's health began to decline leading to a diagnosis of fibromyalgia. She was advised to stop working because she was totally disabled. In May 1995, Pacific Graphics hired its first full-time employee and provided company-paid health insurance to the new employee. The employer did not,

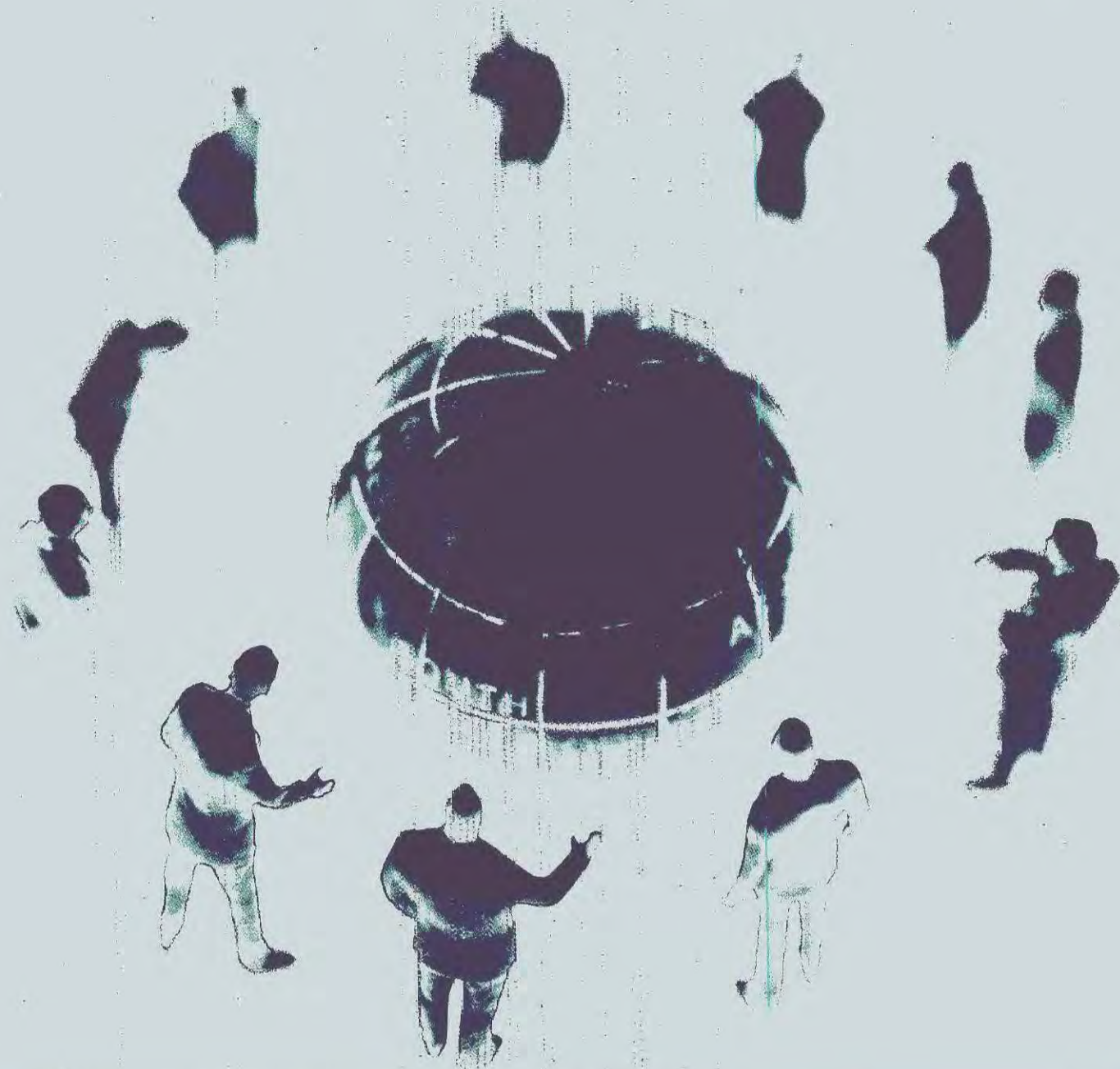
however, offer the new employee disability insurance.

Thereafter, Dana was also diagnosed with Lyme disease. She submitted a disability claim to PDT, claiming total disability since November 1994. Her claim was denied based on a pre-existing condition clause. Dana sued the insurer for breach of contract, emotional distress and breach of an implied covenant of good faith. The trial court dismissed her suit.

On appeal, the principal issue was whether a disability insurance policy, not originally covered by ERISA, is converted into an ERISA plan merely because the company offers its employees unrelated health insurance coverage. The court ruled that it is not. The court emphasized that here the evidence established that the two plans (the original disability policy and the employee health policy) bore no relationship to one another. According to the court, there was no evidence that the two plans were initially established with the intent to create one benefit plan. Thus, the court said that Dana's disability insurance policy was not part of one common welfare benefit plan subject to ERISA. Therefore, the appellate court said the trial court erred in granting the insurer summary judgment. The case was returned to the trial court for further proceedings.

*LaVenture vs. Prudential Insurance Co. of America, 9th U.S. Circuit Court of Appeals, Feb. 19, 2001. (BI/04/Ju.-\$10)* BI

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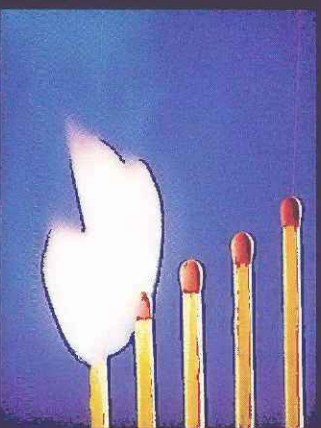
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## Employers caught in middle by 'reforms'

To the editor: Uncle Sam's policy toward employee health benefits swings back and forth between being generous and protective about mandating benefits and protections for covered participants—costs be damned—and then, just as the costs and effects of that generosity begin to sink in, Uncle Sam swings into the opposite panic mode about how terrible it is that costs have skyrocketed. In both cases, the employers that sponsor benefit plans and the entities that operate them are portrayed as the villains.

Uncle Sam is currently in the generosity/protective/mandate binge. However, this is an advance warning about the effect of that binge—and how government will forget that *it* is the cause of the problem it will be condemning.

In recent discussions with congressional proponents of patient protection legislation, I have commented that it seems that—especially if there is any new lawsuit liability—it could increase the cost of providing health coverage by 50% for sponsors of health plans. I hoped to hear these congressional proponents of patient protection gasp or argue; instead, I got agreement and honest answers from those who had worked most intimately with the details. They'd say, "I don't disagree with you a bit about the impact on costs, but protection is worth it."

What would fuel these cost increases? If there are lawsuit liability for employers, there will be the cost of premiums to buy malpractice insurance for the employers, third-party administrators, advisers, etc.

Add on projected double-digit inflation of actual medical costs. Also, factor in a variety of unpredictable costs for two privacy requirements—ones promulgated by the Health and Human Services Department and called for under the Gramm-Leach-Bliley Act—and whatever other mandates, protections and red tape the government imposes. My rough guess is that governmental kindness could boost the

cost of providing health coverage by about 75%.

The only silver lining is that government, federal and state, will be among the first to scream about the resulting cost impact, because as employers and workers pay 75% more for health coverage, their tax deductions for those expenses will also jump 75%. That's a big chunk of tax revenue lost—and governments don't like lower tax revenue.

Also, if workers and/or employers can't pay the higher cost, state and federal programs, such as Medicaid, will be flooded, will cost more, and

will face more demands for government to "do something."

It is sad because the mess is avoidable. It is mis-applied law. Some of the highest costs would come for Employee Retirement Income Security Act and other plans, which would be covered by the legislation but which were never intended to be targets for protecting patients from HMO-like medical practices.

Congress has painted itself into a corner on patient protection. It is a fuzzy, feel-good idea everyone wants to be "for." The intent and verbal references are to HMOs and

plans that actually directly provide or control access to, or amount of, medical care. About 30% of the covered lives are in such HMO-like plans for which the legislation was designed. However, the legislation applies to *all* kinds of plans. Applying patient protection provisions to the normal reimbursement/indemnity kind of plan typical of ERISA self-funding is bizarre and tragic. It is trying to bang a square peg into a round hole. The result? The very real possibility of an unnecessary 50% jump in health plan costs. It gets worse. Some in Congress are telling

employers and plan sponsors that they will be exempted from liability. That "exemption" from liability has gigantic real-world loopholes, to the point of being worthless.

Congressmen and their staffs are not doing this to be mean. They just don't understand how the benefits systems and the dozens of other major laws and responsibilities, such as ERISA fiduciary duty, work. If they don't hear that education and concern from employers, they're going to do something dumb. And then you'll be the first to scream. It is up to you.

**Frederick D. Hunt Jr.**

President

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## Regulation

*Continued from page 8*

eral bureaucracy increase the industry's efficiency?

The Alliance agrees that regulatory modernization is a key priority for property and casualty insurers. But wouldn't it be more efficient to update the system that for over 100 years has served the needs of insurers and consumers?

We believe the best approach for the property/casualty insurance industry is to work with states in modernizing and harmonizing our current regulatory system, rather than moving to a less efficient dual charter system.

**Rodger S. Lawson**

President

Alliance of American Insurers  
Downers Grove, Ill.

# Aviation

Continued from page 4  
to assess how an airline handles crash-related claims filed by the families of passengers whom the airline was transporting under a code-share agreement, he said.

Underwriters have had significant problems in the satellite market as well, posting an \$800 million net loss from 1998 through 2000, Mr. Butler pointed out.

More than 50% of that loss can be attributed to underwriters' failure to properly evaluate "new and unproven technologies," Mr. Butler said.

The market remedies that underwriters recently have been adopting are: reducing capacity, which drives up rates and shortens policy periods

so that underwriters can adjust rates more quickly in the future; imposing more coverage exclusions; and toughening their technical underwriting standards.

In the near term, the market must deal with several problems, but there also are some positive trends, according to Mr. Clark.

Among the pieces of "bad news" for the market, he said, are that:

- Policyholders' larger exposures mean greater potential for larger losses for underwriters.
- Many classes of business are resisting rate increases.
- Expenses are increasing.
- The market is facing a cash flow crunch.
- Long-term relationships are changing because of consolidation among manufacturers and airlines.
- There is "an apparent increase"

in coverage disputes.

• Financial products, such as sophisticated reinsurance programs, are disguising market results.

Mr. Clark said the "good news" for the market is that:

- Reinsurance is tightening, which is forcing aviation underwriters to write more prudently.
  - There has been a sustained rate increase on commercial risks.
  - Pricing for higher limits is staying strong, which means that "stupid capacity" is not jumping into the market in the wake of recent market consolidation due to withdrawals and restructurings.
  - Underwriters are tightening policy terms and conditions.
  - The market's distribution chain is getting shorter.
- "2002 looks better," Mr. Clark said. **BI**

# Fortunes mixed in aviation cases

By DAVE LENCKUS

PHOENIX—Aircraft manufacturers, owners and their insurers dodged some liability flak from plaintiffs in federal and state courts over the past year, but other plaintiffs scored direct hits, according to an aviation attorney.

The cases involved such topics as the availability of the government-contractor defense and successor liability in product liability litigation as well as the scope of the "other insurance" clause in a cov-

erage subrogation case, noted attorney Susan E. McKeon, a senior counsel with Cooling & Herbers P.C. in Kansas City, Mo.

Ms. McKeon enumerated the cases during a session at the 25th Annual Aviation Insurance Assn. Conference in Phoenix earlier this month.

In *Kerstetter vs. Pacific Scientific Co.*, the 5th U.S. Circuit Court of



Appeals in New Orleans last year refused to hold a military aircraft builder, a pilot restraint system manufacturer and a maintenance contractor liable for the death of a naval pilot who was inadvertently ejected from his aircraft.

The plaintiff alleged that the restraint system was defectively designed.

The 5th Circuit, however, ruled that the defendants met the standards set out in a 1998 U.S. Supreme Court decision to invoke the government-contractor defense against liability. Under those standards, contractors are immune from liability if they can prove that the government approved "reasonably precise" specifications, the equipment conformed to those specifications, and the contractors warned the government about equipment dangers that previously were unknown to the government.

Another defense contractor that issued equipment-danger warnings was not so fortunate in a jury trial in federal district court in Connecticut. That product liability case, *Densberger vs. United Technologies Corp.*, involved the crash of an Army helicopter equipped with a pair of fuel tanks that were suspended from the aircraft.

The plaintiff argued that the helicopter became dangerously unbalanced as one tank emptied during flight and the other remained full.

The jury found that United Technologies Corp. "failed to warn the Army that the (helicopter) could become uncontrollable during foreseeable flight conditions."

The court rejected UTC's post-trial motion for judgment as a matter of law. The court ruled that "a reasonable jury could have found from the evidence presented at trial that the product warnings provided by the defendant were not adequate," Ms. McKeon explained.

In a pair of cases in which state and federal courts interpreted aircraft manufacturers' liability under the provisions of the federal General Aviation Revitalization Act, manufacturers again came away with a victory and a defeat.

In *Burroughs vs. Precision Air-motive Corp.*, the plaintiffs—who were injured in a light-airplane crash—argued that the current manufacturer of an engine compo-

See **Litigation** on page 18

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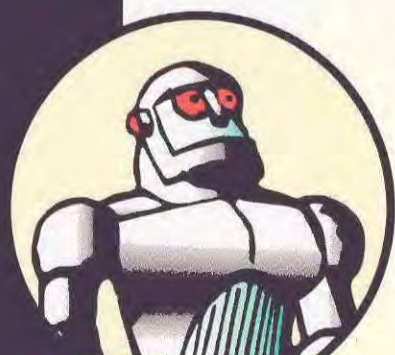
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## Litigation

Continued from page 16

ment that failed and caused the crash should be held liable.

The engine component manufacturer took over that engine component product line from another manufacturer, which had assumed the product line from the original manufacturer. The component that failed, a carburetor, was manufactured and sold 25 years before the crash. Production of the carburetor ended six years before the defendant acquired the product line.

Under the 1994 GARA statute, product liability claims must be filed within 18 years after an aircraft manufacturer produces an allegedly defective part.

The plaintiff argued that GARA did not protect Precision Airmotive Corp., because the defendant was not the original manufacturer.

The court ruled, though, that Precision "stood in the shoes of the manufacturer and was entitled to

the protection of GARA," Ms. McKeon noted.

Ms. McKeon said that what she liked best about the case was that Precision Airmotive had issued mandatory service bulletins about the carburetor but that the mechanic who serviced the plane last had ignored the bulletins. The mechanic later explained that he did not believe the bulletins constituted "airworthiness directives."

In a blow to manufacturers, the 9th Circuit in San Francisco essentially extended GARA's 18-year statute of repose by ruling that a flight manual is an integral part of a general aviation aircraft product and that revisions to the manual restart the 18-year period in which a plaintiff may file suit over that part.

The case, *Caldwell vs. Enstrom Helicopter Corp.*, centered on the crash of a helicopter that failed to burn the last couple of gallons of fuel that remained in its tanks. The helicopter dropped as though it had run out of fuel, killing the pilot

and a passenger and severely injuring another passenger.

The helicopter was manufactured and sold 23 years before the crash. But the plaintiffs claimed that Enstrom had updated the flight manual several times over the previous 18 years and never warned that the last two gallons in the fuel tanks would not burn.

The 9th Circuit remanded the case to a trial court and instructed it to allow the plaintiffs to amend their complaint to allege that revisions to the flight manual within 18 years prior to the crash failed to warn about the fuel burning problem and therefore caused the crash.

In other cases:

• An Indiana appeals court refused to adopt the "product line exception" to the general rule of successor liability, under which one corporation does not assume the debts and liabilities of the company from which it purchases assets.

The case, *Guerrero vs. Allison Engine Co.*, involved a helicopter

crash caused by an engine system manufactured by a company that had since sold that product line to the defendant. The original manufacturer still was in business.

• The 9th Circuit, interpreting Oregon law, refused to consider extrinsic evidence to determine the insurance coverage intentions of an aircraft lessor and lessee.

In that case, *Webb vs. National Union Fire Insurance Co. of Pittsburgh, Pa.*, a company that leased an airplane to an air taxi service explained that its fleet policy would not cover the air taxi business and that the lessee would have

to purchase insurance to cover the aircraft.

After a fatal crash, the lessee's insurer settled the resulting liability claims but then subrogated against the lessor's insurer. The lessee's insurer contended that both the fleet owner's policy and the air taxi service's policy covered the loss under their "other insurance" clauses.

The 9th Circuit, finding that both policies were unambiguous under Oregon law, refused to look beyond the insurance contract language and ruled that the fleet insurer must contribute to the settlements. EJ

## AIA draws increased attendance

PHOENIX—The Aviation Insurance Assn. awarded its Certified Aviation Insurance Professional designation to four individuals during the association's 25th annual conference in Phoenix earlier this month.

Earning the designation were: Mike Chevrette, a senior adjuster for AIG Aviation Inc. in Princeton, N.J.; Debra S. Fanjoy, a senior underwriter with Global Aerospace Underwriting Managers Ltd. in Chicago; Edward W. Green, claims manager/assistant vp with AIG Avi-

ation in Los Angeles; and Jon Riemenschneider, assistant vp/assistant regional manager for Global Aerospace in Chicago.

The CAIP recipients represent the second group of aviation market professionals who have completed coursework to earn the designation. The AIA bestowed the designation for the first time last year, when another group of four professionals received the designation at the association's annual conference.

The 2001 conference drew 569 attendees, including speakers, which marks an increase compared with attendance at recent conferences, according to association officials.

The AIA's next annual conference is scheduled at the Hyatt Regency Crown Center in Kansas City, Mo., April 27-30, 2002. Additional information about the Bloomington, Ind.-based association and its conferences is available from the organization at 812-323-7955 and at [www.aiaweb.org](http://www.aiaweb.org).

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## Appeals to review punitives: Court

By MARK A. HOFMANN

WASHINGTON—Federal appeals courts should scrutinize large punitive damage awards handed down by trial courts, the U.S. Supreme Court ruled.

The case, *Cooper Industries vs. Leatherman Tool Group Inc.*, involved a dispute between two tool manufacturers. Leatherman alleged, among other things, that Cooper had engaged in false advertising and unfair competition by using pictures of a modified version of a Leatherman pocket tool in advertisements promoting its own tool.

A U.S. District Court jury in Oregon awarded Leatherman \$50,000 in compensatory damages and then added \$4.5 million in punitive damages. Cooper appealed to the 9th U.S. Circuit Court of Appeals, which let the award stand in late 1999 after it subjected the lower court's ruling to a so-called "abuse of discretion" standard of review. That standard holds that, under most circumstances, an appeals court should defer to the trial court in such matters.

But other federal appeals courts have held that punitive damage awards should be subject to a "de novo" review, whereby the appeals court makes its own determination of whether a punitive damage award is constitutional. Businesses have tended to support this standard of review, and, last Monday, the Supreme Court ruled 8-1 that the de novo standard should govern review of punitive damages.

Writing for the majority, Justice John Paul Stevens noted that while states have broad discretion in levying both criminal sanctions and punitive damages, the due process clause of the 14th Amendment "imposes substantial limits" on that discretion. The 14th Amendment's due process clause makes the 8th Amendment's ban on excessive fines and cruel and unusual punishments applicable to states as well, Justice Stevens wrote. After reviewing applicable decisions, the high court held that "courts of appeal should apply a de novo standard of review when passing on district courts' determinations

of the constitutionality of punitive damage awards."

Associate Justice Ruth Bader Ginsburg dissented.

The decision drew praise from employer and insurer groups, many of which had filed amicus briefs in support of Cooper.

"Although the Supreme Court did not address the merits of the actual damages amount in the case, the decision essentially

states that the court of appeals should have done so in reviewing the award," said Jan Amundson, general counsel of the National Assn. of Manufacturers in Washington, in a statement. "This decision is a way of adding side rails to punitive damage awards and marks another important step toward sensible tort reform," she said.

The Alliance of American Insurers also praised the ruling. Patrick Watts, assistant vp-regulation, tax law and claims of the Downers Grove, Ill.-based group, said in a statement the decision "assures that appeals courts will review punitive damage thoroughly to determine if the awards meet constitutional standards."

Consumer groups took a different view of the decision, though. Joanne Doroshov, executive director of the New York-based Center for Justice & Democracy, wrote in a statement that the justices had "sided with the interests of the business community by giving appellate judges extremely broad powers to scale back punitive damage awards they deem 'excessive.'"

"If there were ever any doubt that the courts are perfectly capable of dealing with excessive punitive damage awards, this decision should remove all doubt. With this extraordinary decision now the law of the land, there is absolutely no reason why legislatures, awash in corporate campaign money, should interfere with the courts' authority and arbitrarily limit juries' powers to award punitive damages," Ms. Doroshov said.

• *Cooper Industries Inc. vs. Leatherman Tool Group Inc., U.S. Supreme Court, No. 99-2035. Decided May 14, 2001.*



## GLOBAL BRIEFS

The German federal parliament, the Bundesrat, has approved a bill to reform the German state pension system. Under the new law, Germans will be able to invest an additional 1% of their gross wages in private or occupational pension plans. This percentage will rise to 4% by 2008. Germans opting to invest in private plans will also receive a series of tax breaks, Walter Riestler, Germany's labor and social affairs minister, announced....The International Insurance Society has named Pat Kenny as president, succeeding the retiring John Meyerholz. Mr. Kenny previously was chief financial officer of Frontier Insurance Group Inc. of Rock Hill, N.Y....D.P. Mann Ltd. and Cologne Reinsurance Co. Ltd., both London-based units of General Reinsurance Corp., have been renamed to reflect their common ownership. Underwriting agency D.P. Mann is now called Faraday Underwriting Ltd., and its Lloyd's of London property/casualty syndicate 435 has been renamed Faraday Syndicate 435. Cologne Reinsurance Co. Ltd. will now be called Faraday Reinsurance Co. Ltd.... French reinsurer SCOR S.A. recorded premium volume of 1.08 billion euros (\$946.5 million) for the first quarter of 2001. Property/casualty business made up 358 million euros (\$313.7 million) of that figure; specialty reinsurance contributed 342 million euros (\$299.7 million); and life, accident and health business generated 378 million euros (\$331.2 million). SCOR did not publish results in last year's first quarter....French insurer AXA S.A. saw its revenues for the first quarter of 2001 rise 4.3%, to 20.60 billion euros (\$18.05 billion). Revenues from property/casualty insurance grew by 3.3%, to 5.02 billion euros (\$4.39 billion). Revenues from international insurance rose 40.5%, to 2.02 billion euros (\$1.77 billion). While revenues from North American property/casualty business rose just 0.1%, to 141 million euros (\$123.5 million), and European property/casualty revenues grew 2.9%, to 4.82 euros, revenues from property/casualty business in the Asia-Pacific region rocketed 72.4%, to 60 million euros (\$52.5 million), compared with the first quarter of 2000....German insurer Allianz A.G. Holding has made an offer to buy the 40% of Swiss insurer Berner Versicherung A.G. it does not already own. Allianz said the move was part of an effort to merge and rebrand the company's Swiss activities under one roof....The Hartford Financial Services Group Inc. has named David Rooney head of a U.K. subsidiary. Mr. Rooney will succeed Amy Gallant at the helm of Horizon Portfolio Management Ltd., which manages runoff operations in the United Kingdom....Birmingham, Ala.-based Vesta Insurance Group Inc. has bought a 9.9% stake in Chaucer Holdings P.L.C., the holding company of Lloyd's of London managing agency Chaucer Syndicates Ltd. Vesta, which paid \$8.2 million for the stake, will gain a seat on the Chaucer management board....London-based JLT Risk Solutions Ltd. has appointed two new partners. Julian Martin and Cecilia Hansson both currently work in the FINPRO division of Marsh Inc. in London....U.K. multiline insurer Royal & SunAlliance Group P.L.C. has confirmed that it has been approached about selling its life insurance businesses. Royal & SunAlliance declined to name potential suitors.



PHOTO: REUTERS



PHOTO: KRT

Equine insurers face substantial losses after the deaths of champion racehorse Dubai Millennium, above, and hundreds of unborn foals in Kentucky from a mysterious illness.

## U.K. employers find flex benefits helpful: Survey

By EDWIN UNSWORTH

Flexible benefit programs are becoming more attractive to U.K. employers, as companies increasingly compete for employees, a new survey suggests.

Of 307 employer respondents to the survey, 49 have implemented flexible benefit programs, 15 are working on flex plans and 17 are anticipating the implementation of flex plans within one year. Another 154 are considering implementing flex plans but are still in the early stages. The 2000 survey is the eighth annual

polling conducted by Hewitt Associates Ltd. in St. Albans, England, a unit of Lincolnshire, Ill.-based Hewitt Associates L.L.C.

Citing responses provided since 1995, the most recent survey finds that employers' main reason for offering flexible benefits has been to meet the diverse needs of their workers. In this latest survey, 26.9% of employers provided that as their main reason, compared with 27.6% in 1999.

Moving up the list of reasons, though, are "helping retention," in second place, at

See **Flexible** on next page

## Study looks at E.U. coverage

# Single-market shortcomings

By CAROLYN ALDRED

Insuring large commercial risks is the one area where major pan-European insurance groups



are benefiting from European integration, according to management consultant A.T. Kearney Inc.

In other areas, though, including coverage of small and medium commercial risks, the bene-

fits of a single European market are not being realized, the Chicago-based consulting firm says.

Indeed, only one of the nine companies interviewed by A.T. Kearney responded that it had developed a pan-European approach for small and midsize commercial risks. Similarly, only one company had developed a pan-European approach for selling via the Internet, and just one company had done so for mass-market products. A.T. Kearney would not identify the companies in the survey, released May 9, but confirmed that they ranked among the largest insurance groups operating across Europe.

See **E.U.** on page 23

# Equine losses hit bloodstock underwriters

By CAROLYN ALDRED

LONDON—Bloodstock underwriters face tens of millions of dollars in losses from the foal health crisis in thoroughbred breeding in the state of Kentucky.

The mysterious loss of hundreds of unborn and premature foals is threatening horse racing stock for next season and causing concern among underwriters that write "prospective foal" insurance policies.

At the same time, one of the London market's leading bloodstock underwriters faces a

record claim of £30 million (\$42.6 million) following the death of former champion racehorse Dubai Millennium in Newmarket, England.

The 5-year-old stallion, worth an estimated £50 million (\$71.0 million), was euthanized April 29 after contracting grass sickness, a disease of unknown origin that paralyzes the intestinal tract. Dubai Millennium had been put out to stud when a leg fracture sustained while exercising last August resulted in his early retirement. He had won the 2000 Dubai World Cup, the

See **Bloodstock** on next page



PHOTOS: AFP

Animal-rights protesters have targeted U.K. medical researcher Huntingdon Life Sciences as well as companies that have invested in HLS. Attacks on HLS staff and property have increased awareness of exposures.

## Activist campaigns create exposures

Attacks spur interest in protection

By SARAH VEYSEY

Activist crusades against companies, including a prolonged campaign by an animal-rights group, are prompting the U.K. government and risk managers and insurers to look at ways to protect companies from the actions of pressure groups.

Stop Huntingdon Animal Cruelty, or SHAC, a Cheltenham, England-based pressure group has, for more than a year, carried out a campaign to close down pharmaceutical-testing company Huntingdon Life Sciences Group P.L.C. because the company conducts tests on animals.

SHAC has staged demonstrations outside the offices of Cambridge, England-based HLS, its customers and its investors. The group also has published the names and addresses of directors of companies linked to HLS and has held demonstrations outside their homes.

In the months since SHAC began its campaign, there have been several violent attacks on Huntingdon employees and property, including firebombings of employees' cars. SHAC has disavowed any involvement with these incidents, stating that it does not condone acts of violence.

But the threat of violence and SHAC's high-profile campaign have seen many of HLS' investors and customers sever their ties with the beleaguered company.

In January, Royal Bank of Scotland Group P.L.C., which had been a target of SHAC protesters, announced it would not renew a £22.6 million (\$37.1 million) loan facility to

See **HLS** on page 21

## INTERNATIONAL

## Bloodstock

Continued from previous page world's richest horse race, and was expected to earn tens of millions of dollars as a top stud.

Dubai Millennium was insured by Lloyd's of London syndicate 2488, managed by ACE Global Markets Ltd., sources say. ACE refused to comment.

The loss of Dubai Millennium is unlikely to have a major impact on the bloodstock market, because, unusually for such a large risk, only one syndicate insured it, sources say. Some of the loss may fall on reinsurers, although most sources believe that reinsurance for the claim is not significant. ACE declined to comment.

Bloodstock insurance is designed to meet such losses, underwriters point out. Previous record racehorse losses include a £23 million (\$32.7 million) claim for U.S. racehorse Alydar in 1990 after he broke a leg in his stall, and a \$25 million claim for Cigar after he turned out to be sterile.

"The Kentucky foal situation is a more worrying event for our industry and for the whole global thoroughbred industry," said John Muir, managing director of leading London equine broker Hughes-Gibb, a division of Willis.

"Kentucky has the highest percentage of best brood mares in the world, and the very high number of unborn foals will have an impact on the horse racing industry next year," Mr. Muir said.

Although only 25% to 50% of the mares and lost foals are likely to be insured, it will still affect insurers in the United States and London, he said.

*'The reinsurance market has suffered considerable losses on bloodstock...and has hardened since January.'*

— Julian Lloyd  
Hiscox syndicate 33

"There are a substantial number of claims across the full range from \$10,000 to \$1 million, and these losses are very well spread throughout the marketplace, with no particular insurer having a dominant market share. As a result, the majority of claims will be retained losses and will have a negative impact on underwriters' loss ratios," Mr. Muir said.

As of May 15, Kentucky's equine population had suffered 468 early and late-term fetal losses—more than 700% above the normal rate of unborn foal losses expected during the breeding season in Kentucky, according to experts at the University of Kentucky in Lexington.

Scientists and staff from the university's Maxwell H. Gluck

Equine Research Center and the Livestock Disease Diagnostic Center have been working round the clock to identify the cause of the problem. The main area of investigation is contamination by a toxin-producing parasite of Kentucky's famous bluegrass pastures, possibly caused by unusual climatic conditions earlier this year, according to a daily briefing posted on the university's Web site on May 15. But "the scientific teams feel confident that Mare Reproductive Loss Syndrome is not an infectious or contagious disease," the briefing said.

Lloyd's of London bloodstock underwriters, who have temporarily stopped writing prospective foal insurance, held an emergency meeting May 11 to assess the situation and consider future action, said a spokesman for the Non Marine Assn. Livestock Committee.

Close contact is being maintained between underwriters, vets and breeders. Some mares may be rebred to deliver a foal before the breeding season ends in July, underwriters say.

It is a condition of the insurance policies that breeders seek to mitigate the loss by rebreeding the mare, if possible, said Mr. Muir. There would also be a financial incentive for breeders to try again, because prices for next year's foals likely will be high due to short supply, underwriters and brokers point out.

Prospective foal insurance covers the loss of the foal during pregnancy and to a specified time

after birth, said Julian Lloyd, bloodstock underwriter for syndicate 33, which is managed by Hiscox Syndicates Ltd.

Lloyd's is a licensed insurer in Kentucky and is one of the leading players in the bloodstock market.

Mr. Lloyd said that the Kentucky problem will affect the market only if the losses are particularly large. Since Jan. 1, reinsurers have been tightening rates, and direct underwriters have been trying to increase rates, but there is still plenty of capacity in the bloodstock market, he noted.

The scale of the losses also will depend on how many mares successfully rebreed before the season ends, Mr. Lloyd said.

"The reinsurance market has suffered considerable losses on bloodstock over the last few years and has hardened since January. This has led to some hardening of the direct market, and I would ex-

pect the market to continue to harden as a byproduct of this event," Mr. Muir said.

"The insurance market in London is viewing the situation in Kentucky very seriously," said David Ashby, global bloodstock underwriter for QBE International Insurance Ltd. in London.

Mr. Ashby, however, is not confident that the situation—or, indeed, the Dubai Millennium claim—will push rates up.

"Underwriters know rates should go up, but unless underwriters are prepared to accept that they are making an underwriting loss, they are not going to put rates up," he said, noting that he has seen no signs of rates increasing in the past few weeks.

QBE significantly reduced its exposure to the U.S. bloodstock market last year because of inadequate rates, Mr. Ashby pointed out. **BI**

## Flexible

Continued from previous page 19.8%, and "helping recruitment," in fourth place, at 15.0%. In 1999, these ranked 12.6% and 12.3%, respectively. Slipping to third place from second place in 1999 is the goal of increasing employee understanding of total compensation, at 17.5%.

Hewitt categorizes the flexible benefits offered into four groups: financial, lifestyle, health and security. In the financial category, flexible salary levels continue to be the most popular option, with 56.2% of respondent companies offering some employee options. Among lifestyle benefits, vacation options are the most popular, with 75.3% of companies offering some choice. In health, the provision of private medical insurance is closely followed by that of private dental insurance, with 80.3% and 74.0% of employers, respectively, offering them as options. And in the category of security benefit, life insurance continues to be the most popular benefit provision, with 87.6% of respondents providing that option.

Hewitt found, though, that the range of flexible benefits being offered is expanding; it includes such diverse perquisites as child care, mobile phones, bicycles, retail vouchers, sabbatical leaves, sports club memberships and pet insurance.

Cathy O'Bright, a Hewitt consultant in St. Albans, said competition to recruit and retain the best employees has moved up in importance, as the tight labor market last year has affected employers' outlook.

"In 2000, the 'talent war' became more than just a catch phrase. For many companies, it was their biggest issue and seriously endangered their ability to compete effectively. Flex plans are very appealing in that environment, as they allow you to develop creative, attractive packages that can be quite heavily tailored to your target recruits—while still controlling the cost," Ms. O'Bright said.

Employers will value this ability to control costs should the U.K. economy flatten out or enter a downturn, Ms. O'Bright predicted.

Asked to identify the greatest drawback to offering a flex plan, 30.1% of employers cited coping with administration. The percentage that cited that as the main drawback has declined over the years, though, from 52.4% in 1995. One reason for that decline, according to Hewitt, is that technological advances are making easier the management of programs and their delivery to employees. Corporate intranets, in particular, are considered a major component in the effective and cost-efficient administration and communication of programs.

The second-biggest drawback remains the cost of implementation, cited by 18.1% of respondents, nearly double the 9.2% who cited it in 1995.

When asked how they expect their flex plans to change over the next three years, 51% of those with such plans said they anticipated increasing their benefit offerings. In addition, 13% said they planned on extending flex benefits to a wider number of employees, 10% anticipated improving delivery through Web-based enrollment tools, and 5% expected to link their benefits plan funding with total remuneration.

As for the funding of flex plans, the sources have changed little between surveys. The most popular choice for funding flex benefits is to permit an employee to forgo a percentage of his or her salary, cited by 81.2% of companies, or to permit an employee to forgo other benefits, cited by 68.2% of respondents. Extra financing from the company ranks next, at 22.4%.

Of those employers offering flex plans, 63.5% offer them to all employees, 29.4% to senior management only, 10.6% to office and home-based employees only, and 7.1% to other employees only. No respondent reported offering flex plans solely to its blue-collar employees.

Copies of the report, "Employer Attitudes to Flexible Benefits—U.K. 2001," are available for £75 (\$107) each from Hewitt Associates Ltd., Prospect House, Abbey View, St. Albans, Hertfordshire AL1 2QU, England; or by contacting Helenka Sosna-Rose, at 44-1727-888-200 or at helenka.sosna-rose@hewitt.com.

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## INTERNATIONAL

## HLS

Continued from page 19

HLS. A consortium of investors, led by U.S. investment group Stephens Inc., stepped in to rescue the company—which posted a £10.9 million (\$15.6 million) net loss for 2000—from bankruptcy. Members of this consortium swiftly became a target of SHAC protesters, and this month, Allied Irish Banks P.L.C. announced that it would relinquish its portion of the loan to another lender. In April, stockbrokers Charles Schwab Europe and TD Waterhouse cut their links with HLS, saying they would no longer trade in HLS shares.

“While we would prefer to give our clients a full choice of investments, it is now impossible to trade the stock through normal channels. This, coupled with the increasing number of employees being personally threatened, harassed and intimidated by protesters, means that it is no longer viable for Schwab to continue trading in the shares” of HLS, Schwab said in a statement.

Other financial institutions that have canceled their dealings with HLS over the past year include: London-based HSBC Holdings P.L.C., one of the world’s largest banks; HLS’ two market-makers, London-based

Winterfloods Securities and Dresdner Kleinwort Wasserstein; London-based Barclays Bank P.L.C.; Merrill Lynch & Co.; Pershing, a division of Credit Suisse First Boston; London-based asset manager Philips & Drew, which held an 11% stake in the company; and London-based investment bank WestLB Panmure. Barclays Bank explained that it withdrew its stake in HLS because it did not want to put its own staff at risk of reprisals.

SHAC greeted the news of the withdrawal of HLS’ market-makers with a warning to potential replacements. “Our message to any companies thinking of stepping into their place as HLS’ market-makers is to think long and hard before supporting Huntingdon Life Sciences,” SHAC said in a statement posted on its Web site.

Several HLS customers have also cut their ties with the company. In April, British Biotech P.L.C. announced it would no longer use HLS’ services. “Anybody who is a customer of HLS is going to be in the firing line,” said a SHAC spokesman. “And no customers, no HLS. It’s as simple as that.”

HLS declined to comment on the situation.

The severity of attacks by activists on HLS staff and the staff of companies that invested in HLS has prompted the U.K. gov-

ernment to consider changes to U.K. company law to enable “at risk” companies to keep secret the home addresses of company executives.

*‘The recent attacks on directors and employees of Huntingdon Life Sciences and other companies have been very disturbing. It has brought the issue of (public access to) directors’ addresses to the fore.’*

— Stephen Byers  
U.K. Department  
of Trade and Industry

Currently, every U.K. company must maintain a register of all its directors and company secretaries. Among the information listed is the residential address of each company director. This register is available for inspection at no charge to shareholders or for a fee to anyone else.

Companies are also required to submit an annual filing with Companies House, a London-based record library. This information includes the name and residential address of every director of a company. Directors must notify Companies House of any change of address within 14 days of moving. This information is available to anyone who searches the Companies House register.

In March, Stephen Byers, U.K. secretary of state for trade and industry, announced measures to allow directors of companies at risk from pressure groups to keep their home addresses private. The measures were included in the criminal justice and police bill that received royal assent this month, allowing it to be enacted.

“The recent attacks on directors and employees of Huntingdon Life Sciences and other companies have been very disturbing. It has brought the issue of directors’ addresses to the fore,” Mr. Byers said in a statement. Therefore, he said, a clause had been introduced to the criminal justice bill to allow directors at risk of violence to keep their home addresses confidential. “However, this privilege will only be extended to those at genuine risk. This will be very much the exception, not the rule.”

The move was welcomed by the Assn. of the British Pharmaceuti-

cal Industry in London, which, along with other business groups, had proposed that addresses of at-risk directors be kept secret.

But HLS called upon the government to go further. “The confidentiality of directors’ home addresses is a very welcome step forward, but we have also called for protection to be given to shareholders’ addresses, as this would prevent the abuse, intimidation and threats suffered by those targeted in animal rights campaigns,” said Brian Cass, managing director of Huntingdon Life Sciences at a March meeting of the government’s all-party parliamentary group on the pharmaceutical industry. Mr. Cass, who was attacked last year outside his home, welcomed the changes to the criminal justice bill but said: “But they will have no impact on the more violent attacks that have been experienced in recent months. For over a year, we have called for national funding to improve both information gathering and the operational effectiveness of the police to control the increasingly unlawful activities of animal rights extremists.”

The issue of pressure group action is a difficult one for risk managers, said David Gamble, chief executive officer of the Assn. of Insurance & Risk Managers. And the HLS case is especially

See HLS on page 23

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### THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

#### IN THE MATTER OF THE LIQUIDATION OF ILLINOIS ENVIRONMENTAL SERVICES WORKERS COMPENSATION TRUST

**NOTICE OF CLAIM FILING DEADLINE AND PROCEDURES**

PLEASE TAKE NOTICE, that on March 22, 2001, the Circuit Court of Cook County, Illinois, entered an Agreed Order of Liquidation With a Finding of Insolvency and Injunctive Relief against Illinois Environmental Workers Compensation Trust ("ENVIRONMENTAL"). Nathaniel S. Shapo, Director of Insurance of the State of Illinois, is the statutory and court affirmed Liquidator of ENVIRONMENTAL ("Liquidator").

TAKE FURTHER NOTICE, that on April 24, 2001, the Circuit Court of Cook County, Illinois, entered an Order Fixing Rights and Liabilities and Providing for the Filing of Claims and the Setting of Claim Filing Deadlines (Fixing Order). Pursuant to the Fixing Order, all rights and liabilities of ENVIRONMENTAL and its policyholders, members, creditors and all other persons interested in its property or assets, are fixed as of March 22, 2001, unless otherwise provided in prior or subsequent orders of the Court.

TAKE FURTHER NOTICE, that all persons, companies or entities who have, or may have claims against ENVIRONMENTAL, its property or assets, or against an enrollee or policyholder, shall have the right to present and file with the Liquidator proper proofs of claim on or before March 22, 2002 at 4:30 p.m. (C.S.T.)

TAKE FURTHER NOTICE, that pursuant to Section 209(4) of the Illinois Insurance Code, 215 ILCS 5/209(4), any insured under an insurance policy issued by ENVIRONMENTAL shall have the right to present the Liquidator with a proof of claim setting forth a contingent claim, subject to the claim filing deadline of March 22, 2002 at 4:30 p.m. (C.S.T.). The final date by which evidence supporting the liquidation of any such contingent claim may be received by the Liquidator shall be March 24, 2003 at 4:30 p.m. (C.S.T.). No such contingent claim shall be allowed for purposes of participating in any distribution of estate assets that may be made at the class "d" priority level, 215 ILCS 5/205(1)(d), unless such claim has been liquidated and the insured claimant has presented evidence of payment of such claim to the Liquidator on or before March 24, 2003 at 4:30 p.m. (C.S.T.).

TAKE FURTHER NOTICE, that the form and required contents of all proofs of claim are described in 215 ILCS 5/209. Proofs of claim, along with supporting documents, if any, are to be filed with, and may be obtained from, the Liquidator of ENVIRONMENTAL, c/o the Office of the Special Deputy Receiver, located at 222 Merchandise Mart Plaza, Suite 1450, Chicago, Illinois 60654. A proof of claim shall be deemed "filed" with the Liquidator upon the Liquidator's receipt thereof. The Liquidator reserves the right to require such additional information with respect to any claim filed with him as he may deem necessary. The Liquidator further reserves any and all defenses available to ENVIRONMENTAL upon all filed claims. All proofs of claim must be duly sworn to before an officer authorized to take oaths.

THE LAST DATE FOR THE FILING OF PROOFS OF CLAIM WITH THE LIQUIDATOR IS SET FORTH ABOVE. NO PERSONS, COMPANIES OR ENTITIES HAVING OR CLAIMING TO HAVE ANY CLAIM AGAINST ENVIRONMENTAL, ITS PROPERTY OR ASSETS, OR AGAINST AN ENVIRONMENTAL POLICYHOLDER OR MEMBER, SHALL PARTICIPATE IN ANY DISTRIBUTION OF THE ASSETS OF THE COMPANY UNLESS SUCH CLAIMS ARE PROPERLY FILED WITH THE LIQUIDATOR ON OR BEFORE MARCH 22, 2002 AT 4:30 P.M. (C.S.T.)

Cathleen M. Travis  
Special Deputy Receiver

### THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

#### IN THE MATTER OF THE LIQUIDATION OF ALPINE INSURANCE COMPANY

**NOTICE OF CLAIM FILING DEADLINE AND PROCEDURES**

PLEASE TAKE NOTICE, that on June 28, 2000, the Circuit Court of Cook County, Illinois, entered an Order of Liquidation With a Finding of Insolvency and Injunctive Relief (the "Liquidation Order") against Alpine Insurance Company ("Alpine"). Nathaniel S. Shapo, Director of Insurance of the State of Illinois, is the statutory and court affirmed Liquidator of Alpine (the "Liquidator"). The Liquidation Order was affirmed by the Illinois Appellate Court on December 21, 2000, and on April 4, 2001 the Illinois Supreme Court denied a petition for leave to appeal.

TAKE FURTHER NOTICE, that pursuant to the Liquidation Order, except for those persons entitled to file contingent claims, all rights and liabilities of Alpine and its policyholders/enrollees, creditors and stockholders, and all other persons interested in its property or assets, including but not limited to persons with claims arising under or related to either a policy of insurance or reinsurance agreement issued by Transco Syndicate #1, Ltd. ("Transco") and assumed by Alpine effective December 31, 1996, are fixed as of June 28, 2000.

TAKE FURTHER NOTICE, that on May 4, 2001, the Circuit Court of Cook County, Illinois, entered an Order Providing for the Filing of Claims and the Setting of Claim Filing Deadlines (the "Claim Filing Order"). The Claim Filing Order further provided that persons, companies or entities who have, or may have claims against Alpine, its property or assets, or against a policyholder, regardless of whether such claim arises under a policy of insurance or reinsurance agreement issued by Alpine or Transco, shall have the right to present and file with the Liquidator proper proofs of claim on or before May 6, 2002 at 4:30 p.m. C.D.T., and that insureds possessing contingent claims shall have the right to present evidence to the Liquidator of the liquidation of any such contingent claim on or before May 6, 2003 at 4:30 p.m., C.D.T. Proofs of claim received after the claim-filing deadline of May 6, 2002 may not participate in any distribution of estate assets made on allowed timely filed proofs of claims.

TAKE FURTHER NOTICE, that the form and required contents of all proofs of claim are described in 215 ILCS 5/209. Proofs of claim, along with supporting documents, if any, are to be filed with, and may be obtained from, the Liquidator of Alpine, c/o the Office of the Special Deputy Receiver, located at 222 Merchandise Mart Plaza, Suite 1450, Chicago, Illinois 60654. A proof of claim shall be deemed "filed" with the Liquidator upon the Liquidator's receipt thereof. The Liquidator reserves the right to require such additional information with respect to any claim filed with him as he may deem reasonably necessary to complete his evaluation of the claim.

THE LAST DATE FOR THE FILING OF PROOFS OF CLAIM WITH THE LIQUIDATOR IS SET FORTH ABOVE. NO PERSONS, COMPANIES OR ENTITIES HAVING OR CLAIMING TO HAVE ANY CLAIM AGAINST: (1) EITHER ALPINE OR TRANSCO; (2) ALPINE'S PROPERTY OR ASSETS; (3) ARISING UNDER OR RELATED TO A POLICY OF INSURANCE ISSUED BY EITHER ALPINE OR TRANSCO; OR (5) ARISING UNDER OR RELATED TO A REINSURANCE AGREEMENT ENTERED INTO BY EITHER ALPINE OR TRANSCO, SHALL PARTICIPATE IN ANY DISTRIBUTION OF THE ASSETS OF THE COMPANY UNLESS SUCH CLAIMS ARE PROPERLY FILED WITH THE LIQUIDATOR ON OR BEFORE MAY 6, 2002 AT 4:30 P.M. C.D.T.

Cathleen M. Travis  
Special Deputy Receiver

**LEGAL NOTICES**

**LEGAL NOTICES**

Notice of meeting

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LIME STREET INSURANCE COMPANY LIMITED  
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MUTUAL REINSURANCE COMPANY LIMITED**

("the KWELM companies")

Notice is hereby given that the seventh ANNUAL MEETING of the Scheme Creditors of the KWELM companies convened pursuant to clause 8.1 of the Scheme of Arrangement ("the Arrangement") will be held at 2.00 pm CT (Central Time) on Thursday 21st June 2001 at The Sheraton Chicago Hotel & Towers, 301 E. North Water Street, Chicago, IL 60611, United States of America. The Scheme Administrators' report on the conduct of the affairs of the KWELM companies for the year ended 31 December 2000 shall be laid before the meeting.

The following resolution will be proposed at the meeting pursuant to clause 8.2.1 of the Arrangement: "That the appointment of pursuant to clause 6.2.2(d) of the Arrangement of JLT Risk Solutions as an additional member of the Creditors' Committee be and is hereby ratified." Scheme Creditors may attend in person (or, if a corporation, by a duly authorised representative) or they may appoint another person, whether a Scheme Creditor or not, as their proxy to attend in their place. Scheme Creditors wishing to vote at the meeting should submit a proof of debt setting out the amount they consider due to them by the KWELM companies.

Forms of proxy and the claims table for voting purposes for use at the said meeting, copies of the Scheme Administrators' report and the Arrangement documents incorporating the terms of the Arrangement are available on request from the Scheme Administrators at the address set out below, or electronically through the internet at [www.kwelm.com](http://www.kwelm.com).

It is requested that the forms of proxy and claims table for voting purposes be returned to the Scheme Administrators at the address set out below by 5.00pm (London time) on 15th June 2001. If not so returned they may be handed in on the day of the meeting at the place fixed for it after 12 noon (Central Time) and prior to the commencement of the meeting.

Dated this day 16th May 2001

CJ Hughes and IDB Bond  
Scheme Administrators of the KWELM companies

Address for correspondence:

John Stow House  
18 Bevis Marks,  
London EC3A 7JE  
United Kingdom  
Telephone: +44 (0) 20 7645 4700  
Fax: +44 (0) 20 7645 4777

## INTERNATIONAL

## E.U.

Continued from page 19

Consultants from A.T. Kearney's European offices in Amsterdam, Netherlands; Lisbon, Portugal; London; Madrid, Spain; Milan, Italy; Munich, Germany; and Paris interviewed nine of the largest pan-European insurance companies regarding the integration of their national operations in seven key activity areas: marketing, selling, processing and claims-handling information technology, human resources, asset management and support functions.

"The major finding is that, while all groups desire the benefits of European integration, little progress has been made in this direction," the report's authors, consultants Leonard Koningswijk and Christophe Angoulvant, concluded.

As a result, the authors estimate that Europe's 11 largest insurers are neglecting overall savings of at least 5 billion euros (\$4.38 billion).

"Just in terms of servicing, we have calculated potential savings of up to 2.4 billion euros (\$2.10 billion) through consolidation and the introduction of new technology on a larger scale," Mr. Angoulvant said.

"In claims handling, the advantages would be even greater. We identified savings of up to 5.3 billion euros (\$4.64 billion) in motor claims alone. Our overall savings estimate of 5 billion euros would be substantially larger if more lines of business and the life side were included," Mr. Koningswijk said.

The insurance companies pointed to language, cultural barriers and social constraints—rather than legal differences—as the main factors keeping them from maximizing their efficiency.

"Most of insurance companies' costs are labor-related," Mr. Koningswijk said. He added that, "till now, the industry has always

shied away from this kind of large-scale change involving redundancies and retraining of staff, due to the fear of social unrest and strikes."

Meanwhile, "respondents confirmed our observations that subsidiaries are largely left alone. They are seen as too different to easily consolidate activities. This, however, leads to many opportu-

*'While all groups desire the benefits of European integration, little progress has been made.'*

— A.T. Kearney

nities not being picked up," Mr. Angoulvant said.

In the opinion of A.T. Kearney "Europeanization will take the industry from three to six years, depending on the aggressiveness with which it is pursued. The new structure will feature Europe-wide products, European portals for commercial and individual lines, consolidated processing and claims handling on two or three platforms, and extended outsourcing for processes with insufficient scale or noncore character."

Information and communication technology and asset management are the areas where most progress is being made towards European integration, the consultants note. Meanwhile, servicing and claims handling is still largely being done locally, except for large commercial risks, the survey found.

For more information, contact Leonard Koningswijk at 31-204-099-232, or Christophe Angoulvant at 33-141-921-266. A summary of the report will be available soon at [www.atkearney.com](http://www.atkearney.com).

## HLS

Continued from page 21

cially problematic, he said. "It is a particularly tricky one, because you are dealing with an irrational and implacable group of people who won't accept under any circumstances" that animal research is valid, he said.

"If the government is unable to protect them, then almost certainly (HLS) will cease business in this country and go elsewhere."

A spokesman for London-based Control Risks Group Ltd., which advises companies on security risks, predicted that there would be "more cases like Huntingdon."

"Other activists are looking at how successful SHAC have been," he said, adding that SHAC is expanding its activities into continental Europe and the United States. "At the moment, the situation is worse in the U.K., partly because we are the

only country which publishes the home addresses of company directors," he said. But he predicted that the trend for activists to target company directors and their employees would spread worldwide.

Companies should look very carefully at their business, their suppliers and customers and assess whether they are at potential risk from activists, the spokesman said. Companies at risk should scrutinize their security arrangements and consider hiring security companies where necessary, he added.

Other security measures include restricting access to buildings and using closed-circuit televisions to monitor premises, he said.

One Lloyd's of London-based insurer is designing a policy to protect companies from losses caused by activists. Deborah Wyatt, political risk underwriter at Cox Syndicates Ltd., said Cox is in the process of formulating a pressure group policy.

This was prompted by the spate of actions against HLS, said Ms. Wyatt, who declined to elaborate on the specifics of the proposed policy.

One underwriter in London, though, questioned whether such specialized coverage is necessary.

"I know that some people have given thought to enlarging the current (political risk or terrorism) products to include pressure groups," said one underwriter in the Lloyd's of London market.

But the actions of such groups may, in some cases, already be covered by existing policies, explained the underwriter, who asked to remain anonymous. If physical damage is caused by activists or nongovernmental organizations, then policyholders may be able to claim under terrorism policies or political risk policies. Malicious damage is generally covered by such policies, the underwriter explained. **BI**

## Concorde insurers agree to settle claims

PARIS—Aviation insurers will pay more than \$100 million to settle nearly all the claims arising from the Air France Concorde crash last July.

The settlement with 92% of the claimants will likely hit most major aviation insurers, according to Thibaut de Mallmann, head of legal services for La Reunion Aeriennne in Paris, which was Air France's lead insurer.

In addition to La Reunion, the settlement involves the insurers of all the other parties with potential liability for the crash, according to Mr. de Mallmann.

That includes: the Concorde's makers, Aerospatiale of France and British Aerospace P.L.C.; Goodyear of the United States, which made the Concorde's tires; and Houston-based Continental Airlines. Continental's possible link to the crash comes from reports that one of its aircraft used the runway at Paris' Charles de Gaulle Airport just before the Concorde and lost a metal part, which possibly shredded the Concorde's tire, causing the accident.

The insurers of all the parties have agreed to jointly pay the claims, Mr. de Mallmann said.

He refused to name the other insurers involved or how much each would pay but said the loss would probably affect "the whole aviation community." He would not confirm the exact settlement amount but said it exceeded \$100 million.

The French accident investigation body, Bureau d'Enquêtes Accidents, is still investigating the cause of the crash, which occurred as Concorde Flight AF4590 was taking off for New York with a full load of mostly German passengers. All 100 passengers and nine crew died, as well as four people on the ground.

—By Edwin Unsworth

## Electricity

Continued from page 6

servers said. Having to purchase a large quantity of electricity in such a market could bring SMUD to its knees, Mr. Hroch said. Or it could force the utility to seek another customer rate hike soon after doing so for the first time in 10 years. But that is not a preferred solution, he said. So SMUD purchased the coverage to "keep our financial performance within an acceptable range."

The policy period is from June 1 through Sept. 30. The coverage trigger is based on "cooling degree days," an industry term for an average temperature between the high and low for the day compared to 65 degrees. It has been found, in general, that buildings must be cooled when temperatures rise above 65 degrees.

By reviewing the airport data, the utility found that 1,050 is the mean for the cumulative cooling degree days from June 1 through June 30. But coverage is triggered when

cooling degree days reach a total of 1,150 during the policy period.

The difference of 100 cooling degree days between the mean for the period and the trigger is similar to a self-insured retention, Mr. Hroch said. It represents the amount of higher-than-average temperatures the utility can tolerate financially.

SMUD decided to purchase coverage "because, if you cross over that threshold, the temperature just keeps on going," Mr. Hroch said. "You are going to really be into a very, very hot summer once you get 100 cooling degree days over the average."

In dollar terms, the retention of 100 cooling degree days amounts to about \$20 million, calculated on a cost to the utility of about \$200,000 per cooling degree day. Because the policy does not mitigate SMUD's entire risk, providing the coverage is palatable to insurers, Mr. Hroch said.

The contract should cover about two-fifths of the spot market costs that SMUD can expect to encounter by "blowing past the trigger," Mr. Hroch estimated. Between the

amount SMUD recovers from retail sales and what it might recover from the policy, the utility should be able to recover about four-fifths of its actual energy costs, he said.

But the policy was the most-expensive coverage he has ever purchased, Mr. Hroch said.

"The flip side is, if we don't have higher-than-normal temperature, then we will generate sufficient revenue to cover what we paid for this insurance," he said.

SMUD also weighed purchasing energy call options, but buying the insurance policy proved to be a more cost-effective way to cover the exposure.

SMUD's purchase of the policy is not related to the deregulation faced by utilities in several states. But energy observers say that deregulation could lead to the drawing up of more contracts like SMUD's. Distribution utilities may need similar protection, because deregulation mandates often lock in for years the rates they can charge customers (BI, Jan. 15) and those rates may not cover the utilities' costs of obtaining energy. **BI**

## FMLA

Continued from page 3

given written notice of a requirement for medical certification within two business days after the FMLA leave is requested. At the time the leave begins, the employer also must give specific notice of any requirement for medical certification or presentation of fitness for duty as a condition of reinstatement, Ms. Goldstein said.

During an FMLA leave, an employer must provide an employee with the company's usual medical coverage, and an employer must not retaliate against an employee for complaining about a violation, Ms. Goldstein said.

She suggested several steps employers can take to help them comply with the FMLA, including:

- Identifying and training a small number of supervisors to take employees' calls regarding absences.

- Providing those supervisors with a checklist to ensure that all important questions are asked, including questions about an employee's eligibility for an FMLA leave and the estimated time needed for medical treatment.

- If a supervisor determines that the FMLA may be involved but cannot get enough information at the time, the employee should be told to meet with a supervisor following the absence to discuss the details.

- If the absence was based on the illness or injury of the employee or a family member, the employer should require that the employee have a physician complete a medical certification form. If the form prompts other medical questions, the employer can get a second opinion.

- Once it is determined that the FMLA might apply, employers can choose to decide whether to exclude the absence under its attendance policy or get additional information.

Before disciplining or discharging an employee for violating the company's attendance policy, though, the employer should meet with the employee, providing him or her with an opportunity to confirm that absences were counted correctly and were not covered by the FMLA.

The seminar was moderated by David L. Weinstein, chair of the firm's labor and employment practice.

# HMOs

Continued from page 3

Employers are seeking buy-downs to help keep premium hikes down "for the simple reason that the underlying forces driving health care costs are not being abated. There's nothing curbing them," said Patrick Finnegan, senior vp at Moody's Investors Service Inc. in New York. He pointed in particular to pharmaceutical costs and the use of outpatient facilities as key drivers behind rising health plan costs.

Buydowns of premiums, he added, are a way for HMOs to act as business partners with employers in working out a solution.

This means, however, lower revenue—and potentially lower profits—for HMOs.

Rob Mains, an analyst with Advest Inc. in Albany, N.Y., said that while buy-downs may permit HMOs to maintain the same profit margins, because those margins will be based on lower premium revenue, it means lower profits.

Richard Shaw, an analyst with A.M. Best Co. in Oldwick, N.J., said next year's outlook is less secure for managed care organizations because of the trend of buy-downs. "There will be significant deviations in the benefit structures, meaning that employers may buy-down benefits due to price increases, so you can't bank" on the same level of profitability. However, "on balance, I think the insurance companies will still be profitable," Mr. Shaw added.

Peter Costa, an analyst with ABN AMRO Inc. in Boston, said although he expects an increase in buy-downs by purchasers next

year, it will not represent a substantial risk to the HMOs. "There have been benefit buy-downs going on over the last 10 years. It's something that the health plans are used to dealing with," he said.

Meanwhile, Douglas L. Meyer, senior director at Fitch IBCA in Chicago, said another possible result of the double-digit rate hikes could be a greater willingness by employers to shop their business, which they might otherwise be less inclined to do because of the disruption to their employees.

Most HMOs continued to report strong results for the first quarter. Key results, ordered by the size of earning increases, are:

- Oxford Health Plans Inc. of Trumbull, Conn., reported net income of \$67.6 million, a 134.7% increase compared with the year-earlier period.

- RightCHOICE Managed Care Inc. of St. Louis reported \$12.8 million in net income, up 63.2%.

- Humana Inc. of Louisville, Ky., reported \$27 million in net income, up 28.6%.

- Health Net Inc. of Woodland Hills, Calif., posted \$42.4 million in net income, a 24.6% increase.

- UnitedHealth Group of Minneapolis reported \$212 million in net income, up 21.8%.

- WellPoint Health Networks of Thousand Oaks, Calif., reported \$96.5 million in net income, a 21.2% increase.

- Trigon Healthcare Inc. of Richmond, Va., reported \$32.4 million in net income, up 14.8%.

- Kaiser Permanente of Oakland, Calif., reported \$156 million in net income, a 9.9% increase.

- CIGNA Corp. of Philadelphia reported \$276 million in net income, up 1.9%.

- PacifiCare Health Systems Inc. of Santa Ana, Calif., posted \$13.1 million in net income, an 82.4% drop that it blamed on rising health care costs.

- Aetna Inc. of Hartford, Conn., reported a \$48.2 million loss from continuing operations vs. a \$75.4 million profit for the comparable period a year ago. Aetna blamed the loss on higher-than-expected

*'There's a lot of concern about what the relationship between rates and costs is going to be next year.'*

— Todd Richter  
Banc of America Securities

medical costs.

The outlook remains generally positive for HMOs, most analysts agree.

"Generally speaking, I think premiums are still rising faster than costs, and that we're still on the early side of the upward cycle in the group," said Mr. Costa of ABN AMRO.

The earnings and other trends are "generally very good," said Michael LeConey, an analyst with Dirks & Co. in New York. "I think there's concern that with our economic environment, that customers are going to be tough on price, but I don't think people have a real choice" when it comes to dealing with HMOs, he said.

"I still think things look pretty good for the rest of the year. By

and large, things were pretty positive in the first quarter and generally as the first quarter goes so goes the rest of the year," said Mr. Mains of Advest.

But there are a variety of factors that could easily alter that outlook.

If the economy avoids a recession, business profits are not squeezed and people do not lose their jobs, "next year should be fine" for HMOs, said Mr. Mains. But, if any one of those factors fail to materialize, "I think some insurers could have some problems," he said.

"I've been cautious for a long time" about the outlook for HMOs, said Todd Richter, managing director at Banc of America Securities L.L.C. in New York. "There's a lot of concern about what the relationship between rates and costs is going to be next year," he said.

Jack Reichman, a director at Standard & Poor's Corp. in New York, said of medical costs' negative impact on Aetna and CIGNA's results, "We think it's a clear challenge for the industry as the medical cost trend continues to stay very high and the ability of the companies to raise premiums for a third and possibly fourth year in some cases becomes harder."

Meanwhile, the economy is also an issue. "There seems to be a lot of concern about the macroeconomic environment and its potential impact on the HMOs," said Mr. Mains. "Last time we had a recession, the HMOs were part of the solution. Now they're going to be viewed as part of the problem," he said, pointing to medical cost inflation.

Another economic factor is that unemployment means fewer lives

to cover, which raises the question "are the people losing their jobs sicker or healthier, younger or older," said Mr. Richter. Typically, it is the younger, healthier people who lose their jobs, "so you get something called pool deterioration, which shows itself as higher than expected cost trends," he said.

Health Net's Mr. Olson disagreed, however, "Our thinking right now is the unemployment rate would have to get over 7% for us to start to see (an impact), so we don't really see the unemployment issue as an issue near-term."

Fitch's Mr. Meyer said the economy might influence the types of products employers request. In a tight labor market, "employers buy more benefit-rich products, but when there's some weakness in the economy, they're going to be looking to trade down and buy benefit plans that are not as generous for the employee, he said.

The economy is "raising the profile of defined contribution plans as an alternative, and it's going to limit the ability of (managed care) companies to raise premiums," said Mr. Reichman.

Meanwhile, the nine stocks tracked in the *Business Insurance* Stock Index were down 10.9% for the year through May 11.

"I think they had a big run-up last year, and they've given that back this year," Mr. Meyer said of HMO stocks. Going forward, "there's an opportunity to see some appreciation in the stock," he predicted.

However, Mr. Richter said, "I'm not particularly bullish. After a very good last year, they've been performing very badly this year." **BI**

# Willis

Continued from page 3

Once the IPO is complete, Willis will continue its efforts to increase revenues and improve its position as the world's third-largest broker, the filing notes. As part of such efforts, Willis says it plans to establish an employee stock purchase plan, capitalize on its global reach, expand and cross-sell its employee benefits capabilities, create a single company culture and pursue strategic acquisitions and investments, among other steps, according to the filing.

Willis pointed out, though, that as a distant third to its larger bro-

ker rivals Marsh Inc. and Aon Group Inc., it may face difficulties in executing its growth strategies.

"Our approximate 7% worldwide market share is significantly smaller than the approximate 32% share held by Marsh and the approximate 25% share held by Aon, which may make it difficult for us to compete successfully against these large competitors," the SEC filing notes.

Willis also said that its substantial debt burden related to KKR's leveraged buyout may hinder its growth plans. As of March 31, Willis had \$935 million in long-term debt, notes the filing.

According to the filing, though, Willis may be ahead of schedule in

its debt repayment. During 2000, the broker repaid \$30 million of debt, and in February of this year, Willis repaid a further \$22.5 million, the filing shows. Willis' actual debt obligations for 2000 and 2001 were \$3.2 million and \$8.2 million, respectively.

In 2000, Willis made a \$9 million profit; in 1999, it had a loss of \$132 million. Willis' revenues fared better, though, increasing 5.6% in 2000, to \$1.31 billion. For the first quarter of 2001, net income rose 85% to \$26 million, while revenues increased 7% to \$352 million, according to the filing.

Willis' SEC filing also details some initiatives the broker has implemented since the KKR buyout,

including the naming of Joseph J. Plumeri as executive chairman and chief executive officer last October (*BI*, Oct. 2, 2000).

Those measures include the addition of more than 150 new managers and producers, and the termination of 275 other employees. Willis also has implemented a comprehensive restructuring plan for its North American operations

and a program-redesign plan that reduces duplication in finance, information technology and human resource management. The broker also noted that it has implemented new steps for monitoring its global operations.

Willis plans to sell its shares on the New York Stock Exchange under the proposed symbol "WSH." **BI**

## More states considering laws to protect structured settlements

The national trend of states adopting laws to better protect structured settlement recipients continues, with Indiana Gov. Frank O'Bannon signing such a bill into law earlier this month.

In addition, the governors of Florida and Texas are soon expected to sign similar bills.

A structured settlement is designed to provide long-term financial security for an injured individual who receives a monetary judgment by dispersing funds over time, rather than paying it in a lump sum that could quickly be dissipated.

But more and more states are enacting laws designed to pro-

tect structured settlement recipients from potential abuses by specialty financing companies—called "factoring companies"—that seek to exchange discounted cash now in return for the rights to the streams of payments over time.

The new consumer protection laws, which most insurance industry trade associations support, typically require full disclosure of a purchasing company's fees and costs, as well as formal approval by a judge or other administrative officer of any such transfer.

It is important to enact "some reasonable legislative protec-

tions so that aggressive settlement purchasing companies do not take advantage of people during times of vulnerability," said Ron Cobb, vp-Southwest region with the American Insurance Assn. in Austin, Texas.

Earlier this year, five states enacted similar legislation—Iowa, Massachusetts, Nebraska, Oklahoma and South Dakota

Nationally, 23 states have passed comparable legislation, according to information provided by Kirk Hansen, director of claims for the Alliance of American Insurers in Downers Grove, Ill.

—By Meg Fletcher

## EAP, dependent care listing deadlines near

*Business Insurance* will publish both its annual directory of employee assistance programs and its directory of dependent care resources and referral services on June 25. That issue also will contain a Spotlight report on benefit programs designed to help employees balance work and life.

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. To be listed, a company must have a minimum of \$100,000 in gross revenues from EAP services or provide these services in at least three states.

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

For both directories, gross revenues must be reported to be listed.

If your company meets the requirement for either directory and has not received a questionnaire, please request one immediately by calling Assistant Directory Editor Michel Schwartz at 312-649-5313. There is no charge to be listed.

Copies of the questionnaire can also be printed from the *BI* Web site at [www.businessinsurance.com](http://www.businessinsurance.com). Completed questionnaires must be returned by the extended deadline of June 7.

## COMMENTARY

# Ode on a different kind of earn

Is it really true that nobody reads poetry anymore?

About a week ago, I received by e-mail a copy of a "found poem"—a poem created from fragments of unconnected text that, by their selection, punctuation and organization, have a much different and poetic effect compared with their original context. You may remember creating stirring poetry like this in 9th-grade English class from such diverse sources as biology textbooks, newspaper stories and cereal boxes.

The found poem I received, called "Make the Pie Higher," was created from malapropisms uttered by President George W. Bush.

The poem was "edited" by Richard Thompson and published Jan. 21, 2001, in the Washington Post. Since then, it has taken on a life of its own on the Internet, appearing in numerous personal Web pages and being forwarded by countless e-mailers. A simple Internet search for the poem's title likely will turn up a copy.

After I stopped laughing, I wondered whether comparably evocative free verse might lie hidden in the depths of otherwise bland insurance industry prose, just as Mr. Thompson found hidden beauty and a rousing, patriotic theme in Mr. Bush's mangled commentary.

I leafed through a textbook on my desk called "Property-Liability Insurance Accounting and Finance" but my muse was silent, if not sent into a coma. I then pored over several insurer annual reports, looking for gems in accountants' opinions. Nothing.

Then I reviewed about a dozen first-quarter earnings reports by property/casualty insurers. My muse woke up and starting singing in verse. Excerpting actual phrases from these releases, I submit the following for your review. For some of you, it may be the first (and last?) insurance poetry you have ever read.

## "Actual Results to Differ"

This was an excellent quarter.  
A solid first quarter.  
A good quarter, overall.  
We are extremely pleased.

Benefiting from the hardening market.  
Increases in commercial pricing—  
After years of eroding rates—  
Produced excellent top-line growth.

Gross premiums up!  
Gross written premiums increased!  
Increased!  
Increased!

Executing on our strategies.  
Exiting unprofitable lines.  
The intentional reduction of business.  
We are pricing and pruning.

Improvement!  
(Excluding the cumulative effect of...)  
Impressive!  
(Excluding the impact of the change in...)

Partially offsetting these benefits were:  
Adverse prior-year development;  
Continued poor experience;  
Losses on investments.

Any forward-looking statements  
Involve risk and uncertainties  
That include, but are not limited to...  
Performance.

As a result.  
Actual results could differ.  
Actual results to differ.  
Actual results to differ materially.

Experience the turmoil!

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



Paul D. Winston

# Midland

Continued from page 1

the department did not return phone calls seeking comment. Ajit Jain, president of Berkshire Hathaway Reinsurance Group in Stamford, Conn., declined to comment on the record.

Midland, a former unit of Katy Industries Inc. of Englewood, Colo., was a large writer of Fortune 500 excess casualty coverages and assumed reinsurance in the late 1970s and early 1980s, just as huge liabilities for asbestos, pollution and other mass tort exposures were emerging.

The insurer was often a major participant on large corporations' liability programs. For example, it issued a total of 76 policies providing hundreds of millions of dollars in liability limits to Bristol-Myers Squibb Co. alone, according to New York department court filings. The insurer wrote liability limits for all of its Fortune 500 policyholders totaling \$7 billion under hundreds of policies, the filings say.

By 1985, Midland was in financial trouble, and in April 1986, it was ordered into liquidation after being found insolvent by \$47.2 million.

The insurer's financial condition has become dramatically worse in the intervening 15 years. As of last Sept. 30, the estate's assets totaled \$690 million, including \$513.7 million in projected reinsurance recoverables, according to court filings. Its liabilities,

## Midland at a glance

Selected financial details of Midland Insurance Co. as of Sept. 30, 2000

<b>Assets</b>	<b>\$690 million</b>
Reinsurance recoverables	\$513.7 million
<b>Liabilities</b>	<b>\$1,470 million</b>
Allowed claims	\$481.2 million
Reserves	\$975 million
<b>Insolvency</b>	<b>\$779.2 million</b>

Source: New York Insurance Department

meanwhile, ballooned to \$1.47 billion, including \$481.2 million in allowed claims and \$975 million in reserves for pending direct insurance and reinsurance claims. This translated to a shortfall of \$779.2 million.

New York regulators have spent 15 years dealing with an avalanche of Midland claims. By last Sept. 30, policyholders had filed 18,436 proofs of claim, each of which can represent numerous individual claims. Of these, 6,258 were so-called "policyholder protection claims," filed by companies to preserve their rights where expected losses haven't yet emerged.

Of the remaining 10,220 proofs of claim, 5,929 have been disallowed by the liquidator, 4,140 have been allowed and 1,958 remain open, according to Insurance Department court filings.

Regulators have also tried to marshal Midland's assets, and had collected more than \$200 million in cash by last Sept. 30, including \$120.6 million in reinsurance recoveries, court filings say.

But future reinsurance recoveries, on which the estate largely depends, remain chancy, regulators' court filings warn. Among roughly 300 Midland reinsurers, 58 have gone broke, several others are likely to become insolvent and 65 more are based outside the United States, making recoveries more difficult, the regulators say.

Meanwhile, though it has about \$148 million in Midland assets actually available for policyholder claims, the New York department has not been in any hurry to make partial payments to creditors.

The estate hasn't paid any of its policyholders or other creditors, regulators say, because "until recently, the total exposure on open claims was too great and too speculative to consider making a dividend." The estate's limited assets would not allow for a dividend of more than 5% to 10% in any case, the Insurance Department says.

Hoping to finally pay something to restive creditors, the New York department in February unveiled a proposal in which Omaha, Neb.-based Berkshire Hathaway's National Indemnity Co. would provide aggregate reinsurance to Midland, effectively taking over the runoff of its liabilities.

Under the proposal, regulators would set a Dec. 31, 2001, bar date for claims, after which no further claims would be accepted. National Indemnity would receive all of Midland's assets, including its future reinsurance recoveries. In return, it would guarantee payments to creditors of 32 cents on the dollar of allowed claims, up to a maximum of \$2 billion of allowed claims. Thus, the reinsurer's maximum payout would be \$640 million.

To the extent that reinsurance recoveries exceed 50% of the allowed claims, a profit-sharing provision would increase the 32% dividend payable to policyholders.

Resolute Management, another Berkshire Hathaway unit, would take over day-to-day management of the runoff, according to the proposal.

After the New York department disclosed the planned deal, several of Midland's large creditors sought more information about the estate's assets and liabilities and how the proposal would likely work. For example, creditors wanted details of Midland's reinsurance recoverables to help judge whether the 32% dividend rate is reasonable or whether the recoverables would ultimately produce a windfall for Berkshire Hathaway, creditor lawyers and court filings say.

Beginning in February, creditors represented by the Washington law firm Covington & Burling made a series of informal requests and, later, formal demands for Midland documents and deposition testimony. The New York department, though, repeatedly refused to provide them with the same materials it had turned over to Berkshire Hathaway during the two years in which the plan was being developed, the creditors charge.

While New York department officials met with creditors to discuss written questions about the deal, officials' responses to the questions were "inadequate" and were not backed up with documents the creditors requested, they claim.

Earlier this month, 10 Midland creditors sued the Insurance Department to force it to allow discovery of the insurer's financial records and other information. The group comprises metal refiner ASARCO Inc.; Eli Lilly & Co.; Lac d'Amiante du Quebec Ltee., formerly an asbestos mining affiliate of ASARCO; National Grid USA, an electric power distributor; Owens Corning Corp.; Pharmacia Corp.; Quantum Consulting Inc., which buys out policyholders' claims against insolvent insurers; The Sherwin-Williams Co. Inc.; the Transit Casualty Co. receivership; and Uniroyal Holding Inc.

Along with their discovery requests, the creditors also expressed worries about the year-end 2001 bar date, noting that it would cut off Midland's still-developing incurred-but-not-reported losses. Paint maker Sherwin-Williams, for example, has no liquidated claims against the estate but faces IBNR losses that could exhaust its Midland policy limits, according to the suit.

"Much is at stake for the many creditors of Midland, and this court should not countenance the Superintendent's attempts to push the proposal through without meaningful analysis," the creditors argued.

Judge Schoenfeld initially agreed to hear the creditors case, scheduling it for June 11 and pushing back the hearing on the Berkshire Hathaway proposal to Sept. 10. After the New York department objected, though, the judge issued another order last week saying he would hear arguments on both matters June 11.

Other creditors also have concerns about the Berkshire Hathaway deal and are asking the Insurance Department for more information.

Craig Litherland, a Washington lawyer representing Dow Chemical Co., Pfizer Inc. and several others, noted that a number of his clients whose claims have not matured also are concerned about the deal's bar date.

"This proposal doesn't give them anything," he said, adding that the companies have other questions about how the proposal would work and whether its structure could be improved.

At the same time, policyholders that have waited since 1986 to collect on claims also aren't ready to walk away from the proposal, suggested Mr. Litherland, who is with Gilbert, Heintz & Randolph.

"After 15 years, I don't think anybody would want to see this proposal die and then go another 15 years with not very much happening," he said. "I think we can universally agree that would be a disaster." **B**

# Patients

Continued from page 1

required to prove they could meet any financial obligations that stem from liability, either through the purchase of insurance or by "meeting certain capital and surplus requirements."

In addition to expanding the right to sue—albeit not to the extent that would be allowed under the McCain-Edwards-Kennedy bill—the new bill would require coverage disputes to be reviewed by independent experts; guarantee coverage for emergency room care; and ensure payment for visits to obstetrician-gynecologists and pediatricians, even if those physicians were outside the patient's plan. In some cases, external reviewers could require plans to pay for procedures not specifically covered in contracts.

President Bush issued a statement on May 15, saying that the bill "makes important progress in our efforts to provide patients with a strong and effective patients' bill of rights." He praised its authors and "the many patient and provider groups working with them for finding a common-sense compromise."

At the press conference, Sen. Frist called the bill he co-sponsored the only measure that "fulfills the principles that have been outlined by the president of the United States." One such principle was the avoidance of unnecessary litigation, and Sen. Frist said the bill "makes litigation

a last resort."

No companion legislation as been introduced in the House, and one of the House's most outspoken proponents of patient rights legislation—Rep. Charles Norwood, R-Ga.—has already denounced the measure. Rep. Norwood previously said he would not get involved in the matter until it became apparent what approach the president would back.

Observers differ on how much weight to give the new bill.

"I think the Frist-Breaux-Jeffords bill is something to be taken seriously," said Frank McArdle, a consultant in the Washington office of Lincolnshire, Ill.-based Hewitt Associates L.L.C. "The fact that it's also a bill that President Bush has endorsed makes it noteworthy, and the fact that Frist, Jeffords and Breaux are on it is also significant." Mr. McArdle noted that Sen. Breaux has been at the center of almost every successful legislative deal this year.

Mr. McArdle pointed out that the bill is being attacked by the left and the right, as well as by some consumer and health care industry groups.

"The sponsors feel that the fact that they're being attacked by both sides is a signal that they really have compromised and that the compromise is not what either side had wanted," he said.

Helen Darling, senior consultant-group benefits and health care in Watson Wyatt Worldwide's Stamford, Conn., office,

had a different impression of the measure.

"All I've seen looks very much the same. It isn't going to happen right now; everybody is playing out their public roles. It's a substitute for informed debate," Ms. Darling said.

"The problem is that compromise—which this intends to be—

*'We can't live with liability (in the bill) that penalizes an employer who does nothing wrong.'*

— Neil Trautwein  
National Assn.  
of Manufacturers

needs to draw support from each side," said Henry Saveth, an attorney with William M. Mercer Inc. in New York. "This bill is not doing that. In fact, it's drawing criticism from each side. It seems to be fanning the flames rather than extinguishing them," he said.

"At this point, it's going to have a tough uphill fight," predicted Mr. Saveth. "It's lacking for support in the House—there's no companion. In the Senate, even some of Bush's own party members are disturbed by it."

Employer groups are also disturbed by the measure.

"It's much more than we can support," said Neil Trautwein, director-employment policy for the National Assn. of Manufacturers in Washington. "There are elements that are an improvement on McCain-Kennedy. But we think that it is too dangerous for our health care system."

"We in the employer community have long said we can live with a reasonable patients' bill of rights bill, but the details absolutely matter. We can't live with liability that penalizes an employer who does nothing wrong," he said.

Kate Sullivan, director-health care policy for the U.S. Chamber of Commerce in Washington, noted that there "are substantive differences, the most obvious one is there are very firm caps on damages."

Ms. Sullivan also noted that the new bill "would keep most of the litigation in federal courts," which pleases employers. "There is an evolving case history that's expanding what kinds of cases can be heard in the state courts, but the McCain bill would have swept many more cases into the state courts. That's really important, because there may not be any limits on damages in state courts, and they have procedures that greatly favor plaintiffs in some state courts," she said.

"We're still concerned," Ms. Sullivan said, "because there is an expansion of liability and there would still be an increase in cost. One positive thing is that Frist recognizes that employers

cannot be insulated from their health plan actions because of the Employee Retirement Income Security Act and its fiduciary requirements on plan sponsors.

"Frist stipulates that employers and their plans have to designate who the decision maker is, so you avoid the prospect of secondary lawsuits against employers," she said.

"We don't endorse the bill," she said. "I'm afraid, at this point, this is going to be a starting point for negotiations, and we're going to inch closer and closer to McCain-Kennedy. Where some people see this as the end point, we see this, unfortunately, as the starting point."

"Anything that opens up employers or health plans to any new requirement—even those that, on the surface, seem harmless—becomes costly because of two factors. One, just the direct costs. The second, which I call the 'indirect costs,' I think are much more insidious—that is, making health plans and everybody feel that they simply cannot manage care, because anything they do could open themselves up to liability. So they stop really doing all the things that actually have improved quality and held down costs," said Watson Wyatt's Ms. Darling.

"The bottom line is," Hewitt's Mr. McArdle said, "there still won't be the kind of uniformity of law and rules that employers desperately want." **BI**

# Pension

Continued from page 1

both personal tax rates and the estate tax. President Bush has set a target of \$1.6 trillion in reduced tax revenue from the proposed package. The pension provisions are expected to cost roughly \$40 billion to \$50 billion in annual tax revenue.

"The dollars in the pension package are very much in demand" for lower tax rates and estate tax cuts or repeal, said Angela Arnett, senior counsel with the American Council of Life Insurers in Washington.

"As is typical with pension legislation, it is part of a bigger political picture, which is very contentious," added Ann Marie Breheny, a legislative specialist with benefit consultant Watson Wyatt Worldwide in Washington.

To be sure, benefit groups say the fight is far from over and they will continue to lobby for the pension provisions.

"We are working and lobbying very hard to be sure" that the pension provisions remain in the final bill, said Ms. Arnett.

Others say that, because of the uncertainty, this is the time for employers and employees to get involved.

"Employers, participants and other pension stakeholders have to get their calls and letters in. If they don't do it now, this may not make it," said Mark Ugoretz, president of the ERISA Industry Committee in Washington.

If the pension provisions are stripped by congressional conferees from the tax cut bill, the provisions are far from dead. In fact, discussion already has started

about finding another legislative vehicle for the pension provisions if they do not survive in the tax package. Possible candidates include a second tax bill that could emerge over the next few months or legislation to raise the minimum wage.

*'Pension reform by no means dies, even if it falls out of the tax bill' now before the Senate.*

— Frank McArdle  
Hewitt Associates L.L.C.

"Pension reform by no means dies, even if it falls out of the tax bill," said Frank McArdle, a consultant in the Washington office of Hewitt Associates L.L.C., referring to the other possible measures to which pension reform could be attached.

"This is not the end of the process," agreed James Klein, president of the American Benefits Council in Washington.

If congressional conferees agree to keep pension reform provisions in the current tax bill, they have a fair amount of work ahead of them to resolve differences between the freestanding pension bill, introduced by Reps. Rob Portman, R-Ohio, and Ben Cardin, D-Md., and the tax cut bill the Senate is expected to pass this week.

Some of those differences in the bills include:

- Catch-up provisions. The Portman-Cardin bill would, starting next year, allow employees 50 and older to put in an additional \$5,000 annually in their 401(k) plans.

This provision is aimed at women who are returning to the workforce after leaving to raise a family, and who missed out on years of contributing to the plans and earning interest. This provision is intended to allow them to "catch up."

The Senate bill goes in the same direction but would take much longer to get there. For example, in 2002, the maximum "catch-up" contribution would be capped at \$500 and be limited at that amount through 2004; rising to \$1,000 beginning in 2005. It wouldn't be until 2010 that a \$7,500 annual maximum set by the Senate bill would be reached.

"You give participants an extra \$500 a year, that is not much of a catch-up. Still, that is an improvement over current law," said Mr. McArdle.

- 401(k) deferral limits. Both bills would gradually raise the maximum annual 401(k) deferral limit to \$15,000, up from the current \$10,500 limit, but the House bill would get to that limit in 2006 compared to 2010 in the Senate bill.

The two bills, especially on the administrative side, have many provisions that are identical, or nearly so.

For example, both measures would simplify non-discrimination testing for 401(k) plans that allow employees to make pretax and aftertax contributions and would ease non-discrimination testing for employers with multiple lines of business.

The measures also would allow employees who move among the private, non-profit and governmental sectors to transfer funds between 401(k), 403(b) and 457 plans.

Another administrative change would make it easier for employers to "cash out" terminating employees from their pension plans. Under current law, an employer can remove a terminating employee from its pension roster if the cash value of his or her benefits is less than \$5,000.

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

Under both pieces of legislation, the \$5,000 cash-out limit would remain. But, unlike current law, the \$5,000 ceiling would be determined without counting any funds the employer rolled over, such as from a 401(k) plan, into his new employer's plan from a prior employer.

Other changes that are called for under both bills include:

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

- Allowing employers to prove through "facts and circumstances" that their pension plans do not discriminate in favor of highly compensated employees, even if the plans fail certain non-discrimination tests. Those facts and circumstances would be developed by the Internal Revenue Service.

- Creating so-called called Roth

401(k) plans. Under this type of plan, named for former Sen. William V. Roth Jr., R-Del., employees could make aftertax contributions to the plans. Those contributions—so long as certain requirements were met—then could be withdrawn with no tax imposed on the accumulated investment earnings.

Fred Rumack, national director of taxes and legal services at Buck Consultants Inc. in New York, describes Roth 401(k) plans as a "real gem" and an arrangement that could attract even more 401(k) participants, because of the plans' ability to earn what could be decades of tax-free investment income on contributions. **BI**

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# E&O

Continued from page 3

any time there's a deep pocket, they'll go after it," observed Marcia Rutledge, senior vp of Marsh Inc.'s Entertainment Group in Los Angeles.

People are also suing more because "there are more pictures and more media. It used to be that movies were only shown in theaters, but now there's more exposure with cable TV, pay-per-view, satellite dishes and the Internet," she said.

"The severity and the frequency of losses has been staggering over the last five to seven years," concurred Brian Kingman, a senior vp at Aon/Albert G. Ruben Insurance Services Inc. in Los Angeles.

To illustrate his point, Mr. Kingman noted that in March, a jury in Ann Arbor, Mich., ordered 20th Century Fox Studios to pay \$19 million in a copyright infringement case involving the 1996 film "Jingle All the Way."

He also pointed to a \$240 million jury verdict in Florida last August against The Walt Disney Co. for allegedly stealing the idea for a sports theme park.

Both of those verdicts are being appealed.

Such large jury awards have caused most insurers to pull out of the large entertainment E&O market. Those that remain are raising rates, increasing deductibles and, in some cases, requiring policyholders to pay part of the losses above the deductible, both Ms. Rutledge and Mr. Kingman report.

And few, if any, of the major entertainment studios whose entertainment E&O coverage is up for renewal will likely get the long-term contracts they had in the past, according to Mr. Kingman.

Those "three-year, prepaid, non-amendable, non-cancelable policies... will be harder to get if they're available at all," he said.

Depending on loss experience, some studios are seeing the premiums they paid for three years of coverage now being sought for

one year of coverage alone, and they're also being required to assume larger self-insured retentions, in some cases as much as \$5 million, he said. Retentions used to average between \$250,000 and \$500,000, he said.

Mr. Kingman said he also is seeing

*'The severity and the frequency of losses has been staggering over the past five to seven years.'*

— **Brian Kingman**  
Aon/Albert G. Ruben  
Insurance Services Inc.

ing insurers try to restrict policyholders' choice of defense counsel.

But even though entertainment E&O coverage will be more restrictive in the future, it will still be there, insurance industry experts believe.

"I think there will be a market, but it will cost us a lot more in terms of higher premiums and higher retentions," said an entertainment industry risk manager who asked not to be identified. "But not much of a market," he added.

"We've been in this business for 25 years, and now is no different than the past. E&O insurance has always been available, and it always will be. What's changed is who will underwrite it," observed Joel Smith, a partner at Leopold, Petrich & Smith in Los Angeles who has represented both insurers and policyholders in entertainment E&O cases.

It will still be around, albeit at a higher price, he said, because "in order to get a movie in a theater or a TV program on TV, the exhibitors require E&O protection."

"Say you're shooting a film using Marlboro cigarettes or Pepsi, then you have to go through a licensing and clearance procedure," which often involves paying usage

fees or providing film credits, Marsh's Ms. Rutledge explained.

And, "if it's a true story, they have to get everybody's approval who's in the story. Attorneys are involved from the get-go," she said.

Still, "errors happen, and that's what the insurance is there for," Ms. Rutledge said.

"There's been a history of insurers coming into the field expecting to make a profit and ultimately pulling out only to be replaced by another insurer," said Gail Title, managing partner in the Los Angeles office of Katten Muchin Zavis. Like Mr. Smith, Ms. Title also has been involved in entertainment E&O litigation for a quarter-century.

"Pacific Indemnity was the big carrier 25 years ago," she said, referring to the unit of Chubb Corp.

Then it was Fireman's Fund Insurance Co. for a while, then Transamerica Corp., and then CNA Insurance Co., she said.

But CNA is no longer writing the coverage, industry sources say.

In fact, just one loss—the \$240 million jury verdict against Disney—far exceeds the estimated \$10 million in entertainment E&O insurance premiums paid last year by all of the major studios combined. At the time, Disney was insured for its entertainment E&O risks by CNA.

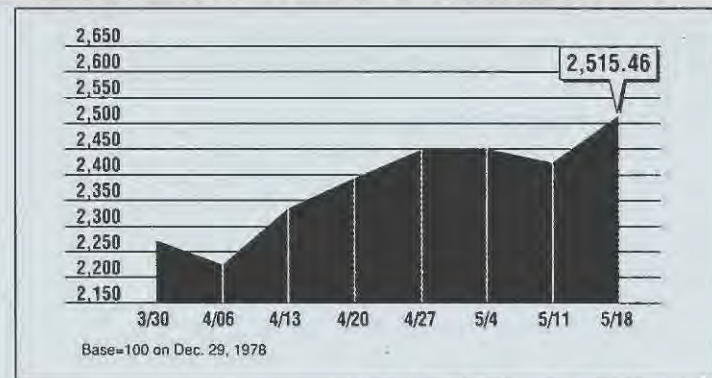
Today, American International Group Inc. underwrites the majority of the big studios' E&O risks, providing up to \$50 million in limits on a claims-made basis.

And Media Professionals, a managing general agency owned by Aon, is a minor player, writing entertainment E&O coverage on behalf of Scottsdale Insurance Co., a unit of Nationwide Insurance Group.

But Scottsdale will only take on relatively safe risks, such as documentaries, and only provides limits up to \$2 million, according to Gary Tjepelman, vp-underwriting.

"We like to do films with animals in them because orangutans don't sue," he quipped. **BI**

## B/Stock Index - 5/18/2001



Base=100 on Dec. 29, 1978

Weekly % change Year to date % change High Low Val. (000)

Price	% change	% change	High	Low	Val. (000)		
<b>BROKERS</b>							
Aon Corp.	NYS	34.05	3.65	-0.58	42.31	25.00	7403
Brown & Brown	NYS	42.55	4.29	21.57	46.10	19.75	134
Clark Barden Holdings	NDQ	17.75	26.79	75.31	17.88	7.25	270
E.W. Blanch Holdings Inc.	NYS	13.45	0.45	-22.87	29.50	6.70	258
Gallagher Arthur J. & Co.	NYS	24.99	4.12	-21.45	34.25	17.28	1893
Hilb, Rogal & Hamilton	NYS	43.50	8.72	9.09	44.16	28.00	127
Kaye Group Inc.	NDQ	13.75	-0.36	77.42	13.80	5.00	5
Marsh & McLennan	NYS	104.50	3.18	-10.68	135.69	80.30	3152
<b>BROKERS AVERAGE</b>			6.36	15.98			

**INSURERS/REINSURERS**

ACE Ltd.	NYS	37.30	5.82	-12.11	43.94	23.44	5668
Accel International Corp.	NDQ	0.07	0.00	-76.42	0.88	0.07	0
Acceptance Insurance Cos.	NYS	4.40	-6.98	-16.19	6.94	3.70	68
AEGON N.V.	NYS	30.40	-1.14	-26.64	43.00	25.92	598
AFLAC Inc.	NYS	32.35	4.59	-10.37	37.47	22.50	9387
Allmerica Financial Corp.	NYS	54.95	3.15	-24.21	74.25	46.30	976
Allstate Corp.	NYS	43.87	4.88	0.71	44.75	21.94	9810
Ambac Financial Group	NYS	56.21	4.36	-3.61	64.00	29.75	3167
American Financial Group	NYS	27.63	2.33	4.02	29.00	18.69	429
American General	NYS	45.95	1.88	12.76	46.36	26.69	20299
American Intl Group	NYS	83.62	1.85	-15.16	103.75	72.64	23303
American Insurance	NYS	10.20	6.25	66.53	10.25	3.25	19
Argonaut Group	NDQ	17.21	0.58	-18.05	21.25	13.50	90
AXA-UAP Group	NYS	31.15	2.81	-13.25	40.75	24.58	1428
Baldwin & Lyons Inc.	NDQ	24.82	3.42	6.75	28.75	15.25	17
Berkley W.F. Corp.	NDQ	39.72	-0.63	-15.83	48.75	18.13	506
Berkshire Hathaway Inc.	NYS	67100.00	-1.74	-5.49	74600.00	51600.00	1
Capitol Transamerica Corp.	NAS	15.25	5.24	22.61	15.69	10.00	56
Chubb Corp.	NYS	73.95	4.38	-14.51	90.25	58.56	3967
Cincinnati Financial Corp.	NYS	40.23	1.90	1.69	43.31	31.00	1828
Citigroup	NYS	50.86	3.25	-0.40	59.13	39.00	62277
CNA Financial Corp.	NYS	38.50	2.39	-0.65	41.94	28.31	584
CNA Surety	NYS	13.55	1.88	-4.91	14.94	10.38	284
EMC Insurance Group Inc.	NDQ	13.39	6.27	13.96	13.59	7.00	19
ESG Re Ltd.	NDQ	3.15	9.38	70.85	-4.63	1.72	57
Everest Reinsurance	NYS	67.75	4.34	-5.41	74.75	28.75	1220
Framont General Corp.	NYS	5.56	6.92	97.69	6.88	1.50	1931
Gainco Inc.	NYS	1.51	-1.31	-42.48	6.00	1.10	129
Halleyville Group	NDQ	26.00	0.08	-11.11	30.63	14.63	71
HCC Insurance Holdings	NYS	24.62	-3.07	-8.60	29.66	11.31	1200
ING Groep N.V.	NYS	64.80	-1.25	-19.13	83.94	52.44	731
IPC Holdings Ltd.	NDQ	22.50	-1.10	7.14	24.50	12.13	86
Hartford Financial Services	NYS	66.00	3.13	-6.55	80.00	49.44	3982
John Hancock Financial Serv.	NYS	38.20	1.33	1.53	40.00	17.38	3997
Lincoln National	NYS	48.75	4.10	3.04	56.38	32.50	3261
MAIC Holdings Inc.	NYS	14.95	0.34	-10.41	18.50	10.00	135
Markal Corp.	NYS	190.93	-1.58	5.49	207.47	133.50	173
MBIA Insurance Group	NYS	50.00	3.22	1.18	55.86	32.00	2450
Meadowbrook Insur. Group	NYS	3.09	6.55	-61.97	8.39	2.45	90
MeiLife	NYS	31.26	7.94	-10.69	36.63	16.19	9448
Mutual Risk Mgmt. Ltd.	NYS	9.29	7.77	-38.83	23.75	3.40	987
Navigator Group	NDQ	15.82	3.74	18.84	15.83	8.63	20
NYMAGIC Inc.	NYS	21.87	6.17	15.87	21.87	13.00	37
Ohio Casualty Corp.	NDQ	9.15	-0.22	-8.50	17.06	6.13	709
Old Republic Int'l	NYS	28.71	2.72	-10.28	32.06	14.31	1987
Partner Re Ltd.	NYS	55.10	1.16	-9.67	62.50	34.81	510
Penn-America Group Inc.	NYS	10.35	3.50	35.74	10.60	6.88	4
PMA Capital Corporation	NDQ	17.00	-3.68	-1.45	19.03	15.19	38
Philadelphia Cons. Holding	NDQ	25.73	6.71	-13.43	31.92	15.13	550
PXRE Corp.	NYS	17.75	0.00	5.19	20.10	12.50	94
RenaissanceRe Holdings Ltd.	NYS	66.85	0.75	-14.64	84.19	36.50	285
RIJ Corp.	NYS	41.10	1.68	-8.03	46.16	31.25	68
St. Paul Cos.	NYS	48.38	3.93	-10.92	57.00	32.75	4228
SCOR	NYS	43.49	1.73	-13.45	53.75	38.38	39
SAFECO Corp.	NDQ	27.54	4.36	-16.23	35.88	19.56	5172
SOPIE Holdings Inc.	NYS	19.45	1.04	-17.67	31.40	18.31	NA
Seibels Bruce Group	NDQ	2.83	-43.65	403.11	2.83	0.53	104
Selective Ins. Group	NDQ	24.69	5.20	1.81	26.94	15.25	121
Tokio Marine & Fire	NDQ	49.57	-4.71	-13.04	61.00	45.25	138
Torchmark Corp.	NYS	36.76	-0.30	-4.36	41.19	23.00	2298
Transatlantic Holdings	NYS	114.91	2.78	8.53	115.90	80.38	47
Trenwick Group Ltd.	NYS	22.95	12.01	-7.51	27.13	13.00	473
Unico American Corp.	NDQ	5.95	0.51	1.28	7.75	5.27	4
United Fire & Casualty	NDQ	30.50	0.86	54.43	30.80	15.50	63
Unifrin	NDQ	37.29	-0.53	-8.21	41.94	27.19	241
UNUM Corp.	NYS	32.75	4.30	21.86	33.75	15.25	10245
Vesta Insurance Co.	NYS	8.52	10.79	69.30	8.52	4.13	809
XL Capital Ltd.	NYS	78.40	4.19	-10.27	89.25	43.75	4768
Zenith National Ins.	NYS	26.45	2.12	-9.96	30.70	20.00	51
<b>INSURERS/REINSURERS AVERAGE</b>			3.16	4.35			

**MANAGED CARE ORGANIZATIONS**

Aetna Inc.	NYS	24.98	-0.95	-39.17	42.69	23.70	4009
CIGNA Corp.	NYS	93.71	0.76	-29.17	136.75	73.38	6099
Health Net Inc.	NYS	19.21	-0.05	-26.64	26.94	8.63	2494
Humana Inc.	NYS	9.42	1.40	-38.23	15.81	4.75	2084
Oxford Health Plans	NYS	27.13	-0.59	-31.32	42.75	17.88	5405
Pacificare Health Sys.	NDQ	23.33	-3.79	55.53	72.31	9.81	9155
Sierra Health Services	NYS	5.40	6.09	42.11	6.70	2.44	857
United HealthGroup	NYS	56.72	-2.96	-7.58	67.40	30.13	10988
Wellpoint Health Networks	NYS	84.00	-3.56	-27.11	121.50	66.75	7954
<b>MANAGED CARE COMPANIES AVERAGE</b>			-0.41	-11.29			

ALL COMPANIES 3.04 3.01

Top advancing issues: Seibels Bruce Group, Clark Barden Holdings, Trenwick Group Ltd. Leading decliners: Acceptance Insurance, Tokio Marine & Fire, PacificCare Health Systems. Most active issuer: Citigroup. The B/ Index increased 3.8%; the Dow Jones 30 Industrials rose 4.4%; the S&P 500 went up 3.7%; and the NYSE Composite increased 3.7%. Average P/E: Brokers, 23.1; Insurers/reinsurers, 26.8; and managed care companies, 14.8.

# Court upholds defense of employer's EPL policy

By LEE FLETCHER

CHICAGO—Employers may benefit from a recent federal district court ruling upholding a legal defense in an employment practices liability case, according to the attorney who represented the defendant.

U.S. District Court Judge John W. Darrah of the Northern District of Illinois earlier this month denied a motion by the Equal Employment Opportunity Commission attacking an employer's leave-of-absence policy under the Americans with Disabilities Act.

EEOC trial attorney Mary Manzo said the policy of the employer, Phoenix-based United Blood Services, Blood Systems Inc., "required automatic termination of any employee whose absence exceeded 90 days and therefore violated the ADA

which requires reasonable accommodation. The EEOC is representing 23 Blood Systems employees who allege they were unfairly terminated by the company.

Judge Darrah denied the "pattern and practice" motion because an employer "is allowed to put on its undue-burden defense on a companywide basis rather than on an individual basis," said Gerald L. Maatman Jr., who represented United Blood. Mr. Maatman explained that the undue-burden defense can be used when a single plaintiff must leave his or her company on medical leave for a short time, that time period expires and the employee still needs additional time off, causing a hardship for the defendant's business.

EEOC vs. Blood Systems is the first time a court has examined

an affirmative defense of undue burden companywide, rather than on a per-person basis, said Mr. Maatman, senior partner and chairman of global employment law practice at Baker & McKenzie in Chicago.

The case will "raise the issue if other employers will use this undue-burden defense applying to a group of employees," Mr. Maatman said, adding that "it's certainly a defense-minded victory."

Ms. Manzo said the court's denial of motion for a partial summary judgment is not a final, appealable, order and that the case is moving forward. The trial date for the case is Nov. 13.

"The court merely found that, at this stage of the litigation, (Judge Darrah) could not find that the defendant's policy violated the ADA as a matter of law," Ms. Manzo said.

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