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Business Insurance®

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

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Updates

Physicians' fraud lawsuit draws protest from HMOs

SAN FRANCISCO—Three health insurance plans say they were blindsided by a lawsuit filed against them in federal court by the California Medical Assn., because the plans had been "talking" with the medical association in hopes of reaching an agreement over their disputes.

The CMA said that it turned to the courts because doctors were frustrated by a lack of progress in negotiations.

"Talking is one thing, but getting to solutions is another," said Dr. Ron Bangasser, a

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Leucadia to acquire Reliance

By GAVIN SOUTER

NEW YORK—The proposed $318 million purchase of Reliance Group Holdings Inc. by Leucadia National Corp. should ease the immediate financial pressures on the troubled insurer.

While the deal will give Reliance some breathing space, the company still has operational problems it must address, analysts say.

The recently appointed management team headed by industry veteran Terry Van Gilder—which is expected to remain in place—needs to cut expenses further and return the company to profitability, analysts say.

The proposed purchase "does a lot of favorable things for Reliance, but questions still remain about the operations of Reliance and whether they will be able to return to profitability," said Robert Partridge, a director at Standard & Poor's Corp. in New York.

Mr. Van Gilder and his team will still need to "substantially change" Reliance and continue to sell or close other parts of the company, he said. Mr. Partridge would not specify which Reliance units should be disposed of.

The sale to Leucadia will relieve Reliance of the problem of servicing $237.5 million of debt that is due in August, because Leucadia has substantial cash reserves, Mr. Partridge noted.

According to filings with the U.S. Securities and Exchange Commission, at the end of the first quarter, Leucadia had $241.6 million in cash and marketable securities, plus access to substantially more in liquid assets.

The proposed sale will provide some immediate financial relief for Reliance, said Eric Simpson, a senior vp at A.M. Best Co. in Oldwick, N.J.

"On the surface, the transaction could address the immediate liquidity issues that Reliance faces," he said.

Leucadia is only at the beginning of its due diligence process, however, and it has the option to walk away from

See **Reliance** *on page 21*

A quick comparison

Key data as of March 31

	Reliance Group Holdings Inc.	Leucadia National Corp.
Assets:	$14.21 billion	$3.12 billion
Shareholder's equity:	$1.12 billion	$1.12 billion
Net income:	$145.5 million	$25.6 million

Source: SEC filings

Hawaii may form own captive for state risks

By ROBERTO CENICEROS

HONOLULU—Hawaii could set a trend for other states to follow if it succeeds in forming a captive to insure the state's general liability exposures.

No state currently sponsors its own captive, but that could change after Hawaii Gov. Benjamin Cayetano signs into law legislation that would authorize the formation of a captive facility for insuring the general liability risks of Hawaii and all its agencies. The governor is scheduled to sign the measure May 30.

The legislation also would give the state's risk manager broad authority over state risk management and insurance issues, and it calls for the Hawaii Insurance Division to study using a captive for the state's property risks and "all other insurance coverage that the insurance commissioner deems appropriate."

In addition, Hawaii's Legislature passed legislation that would allow companies to form "branch captives," which are affiliates of offshore captive facilities. That proposal, also before the governor, is expected to promote new growth in Hawaii's captive industry.

Although other state risk managers have considered forming captives, political and fiscal issues have prevented them from taking the step, said Bruce F. Birdwell, president of Harris & Harris Risk Management Services Inc. in Austin,

See **Hawaii** *on page 4*

AP/ WIDE WORLD PHOTOS

Gov. Benjamin Cayetano

Bankruptcy reform bill

Pension assets exposed

By JERRY GEISEL

WASHINGTON—Congressional negotiators trying to hammer out a final bankruptcy reform bill are putting aside earlier proposals that would have allowed creditors to lay claim to employees' pension benefits.

The measure still includes, however, a provision that would bar protection for assets—including rollovers from employer-provider pension plans—exceeding $1 million in individual retirement accounts.

Eliminating the earlier proposals that could have put employers in the middle of tussles between employees and their creditors is—on one level—good news for employers.

"Employers should be happy. There will be no administrative problems or dealings with bankruptcy courts," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Bethesda, Md.

On the other hand, notes Angela Arnett, senior counsel with the American Council of Life Insurers in Washington, the current provision is inconsistent with national policy to encourage individuals to save for retirement.

The potential interaction of bankruptcy reform and pension benefits has been negotiated behind the scenes for months, as congressional Republicans have been informally meeting to try to resolve differences in bankruptcy reform measures passed earlier by the Senate and House. Congressional Democrats have been excluded from these meetings, as Republicans have worked under a strategy to first reach agreement among themselves and then present the package to Democrats. A final agreement, which is still not certain, could be reached next month.

Under the Employee Retirement Income Security Act, benefits in employer-sponsored plans are

See **Creditors** *on page 22*

NAIC may expand reach

Talk of applying privacy rules to work comp

By MEG FLETCHER

KANSAS CITY, Mo.—Risk managers and insurers are concerned about state regulators' consideration of a proposal to extend to workers compensation claimants new consumer privacy protections required by federal law.

Under Title V of the Gramm-Leach-Bliley Act, which removed barriers between banks and insurers, federal and state regulators of such institutions were charged with implementing rules for assuring the security and confidentiality of consumer information within their respective jurisdictions.

At a recent National Assn. of Insurance Commissioners meeting in Kansas City, Mo., a group of

NAIC

regulators working on insurance-related privacy regulations discussed making workers comp claimants eligible for the same protections as insurance policyholders.

Risk managers and insurers fear that any restrictions on their access to claimant information could hinder their efforts to manage care and speed return to work. Those concerns echo complaints about the impact of medical records privacy proposals on workers comp.

"At the heart of the issue is whether workers compensation claimants should be included in a notification that their personal information could be given to a nonaffiliated third party for marketing," as required under the law, said Robyn Rowen, senior counsel for the Des Plaines, Ill.-based National Assn. of Independent Insurers, who was at the meeting.

Regulators want to protect a workers comp claimant with a recent back injury, for example, from being targeted by marketers selling chiropractic services or mattresses, according to Ms. Rowen, who is based in Washington.

"The definition of privacy protection written in the act is 'protection for individuals who obtain financial products for household or personal purposes,'" she noted. "However, regulators appear to be

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Updates

HMOs blast suit filed by CMA

Continued from previous page

member of the CMA Executive Committee.

The suit, filed last Thursday by the CMAin federal court in San Francisco, charges that the three for-profit health plans have forced doctors to provide substandard care by imposing unfair contract terms, denying and delaying payments for medically necessary treatments and deliberately underpaying doctors. The CMA accuses the plans of violating the federal Racketeer Influenced and Corrupt Organizations Act and also accuses the companies of coercive and fraudulent practices.

The California Assn. of Health Plans opened a dialogue with doctors following a panel discussion at its annual meeting in April that featured representatives of both health plans and the medical association, a CAHP spokesman said.

CAHP President Walter Zelman had recommended an independent third party be brought in to facilitate discussion, the spokesman recounted. "They were very agreeable to it," he said, and since then, letters have been sent back and forth discussing how to make it happen.

"Then, all of a sudden, we were slapped with this lawsuit," said a spokeswoman for PacifiCare of California, a unit of PacifiCare Health Systems Inc. that is named in the lawsuit.

"This lawsuit and others like it only serve to drain money out of a system that's already squeezed by rising cost of care, skyrocketing pharmaceutical costs and inflation, and the only winners really are the attorneys, not the physicians, not the patients, not our health care system," said a spokeswoman for HealthNet, also named in the suit. "We have been ready and willing to sit down with the CMA and work out the issues. Lawsuits like these don't solve the problem," she added.

A spokesman for WellPoint Health Networks Inc. said his company was "mystified" that it was even named in the suit, which specifically criticizes capitation payments, because "the overwhelming majority of our members are in open access plans" in which doctors are paid on a fee-for-service basis. Only 25% of WellPoint's membership is enrolled in HMOs that pay doctors on a capitated basis.

All three health plans also were named in a lawsuit the CMA filed last year in San Diego seeking payment from the plans after the independent practice associations to which they belonged went bankrupt. That suit, however, has been dismissed.

The CMA is being represented by Archie Lamb L.L.C. in Birmingham, Ala., a law firm that has won large verdicts against tobacco firms in class-action litigation. The law firm filed a similar suit earlier this year on behalf of doctors in Alabama against several health plans.

Quackenbush subpoenaed

SACRAMENTO, Calif.—California lawmakers last week subpoenaed Insurance Commissioner Chuck Quackenbush, making him the first statewide elected official in decades to be ordered to testify before a legislative hearing.

The Senate Rules Committee issued the subpoena after the commissioner surprised legislators last Tuesday by refusing to testify before an Insurance Committee oversight hearing. The hearing was on Mr. Quackenbush's management of millions of dollars in fines levied against insurers for mishandling Northridge earthquake claims.

The commissioner told the oversight hearing committee he was declining to testify on the advice of his attorney who said the hearing was an ambush arranged by Democrats. The commissioner cited an e-mail memo that he had obtained referring to his appearance at the hearing.

The e-mail, dated March 23, 1999, urged a chief consultant to the Insurance Committee not to confront the commissioner about the issue of secret settlements with insurers because "if we do not completely ambush him he will slide out of it." The e-mail was sent from an Assembly staff member.

Meanwhile, Mr. Quackenbush last week asked the California Highway Patrol to investigate the leaking of Insurance Department documents related to the 1994 Northridge earthquake.

Harvard Pilgrim rehab outlined

BOSTON—Harvard Pilgrim Health Care Inc. is expected to be removed from temporary receivership within a month, following last week's approval of a rehabilitation plan by the Massachusetts Supreme Judicial Court, says Massachusetts Insurance Commissioner Linda Ruthardt.

Harvard Pilgrim, the state's largest health maintenance organization, has been in receivership since January (*BI*, Jan. 10). "As far as I know, there haven't been many large HMOs that have gone into and gotten out of receivership," said Ms. Ruthardt. "This is a happy event."

Elements of the rehabilitation plan, which were announced earlier this year, include permitting the HMO to boost its statutory net worth from a negative $100 million to a positive $137 million by carrying certain of its real estate assets at market value. Currently, these assets are reported at their purchase price less depreciation (*BI*, March 27).

Harvard Pilgrim's financial turnaround plan has also included restructuring its operations and reducing its workforce, withdrawing from Rhode Island, recontracting with all its Massachusetts physician groups, introducing a three-tier pharmacy benefit to hold down its prescription drug costs, increasing premiums, and engaging in an effort to improve its claims processing and information systems.

The HMO, which had a $227.7 million loss in 1999, has a projected loss of $5 million for this year. It reported a $13.4 million net loss for this year's first quarter, and operating revenues of $634.7 million. Membership at the end of the first quarter totaled 1.1 million.

Doctor antitrust bill postponed

WASHINGTON—Rep. Tom Campbell, R-Calif., is promising to fight to get the full House of Representatives to vote on his controversial bill, which would exempt physicians from federal antitrust laws when they negotiate with health care plans.

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Employers await ruling in arbitration case

By MARK A. HOFMANN

WASHINGTON—The Supreme Court's decision to review a California employment law case has significant ramifications nationwide for employers that require their employees to sign arbitration agreements as a condition of employment.

The case, *Circuit City Stores Inc. vs. Saint Clair Adams*, involves the scope of the Federal Arbitration Act, which took effect in 1925. The act permits contracts with binding arbitration agreements to supersede state law, with one exemption. The exemption holds that "nothing herein shall apply to contracts of employment of seamen, railroad employees or any other class of workers engaged in foreign or interstate commerce."

Accordingly, federal and state courts have held that the law, which seeks to encourage arbitration, applies to employment and labor contracts covering those workers who are not specifically exempted.

"The act really carves out certain types of employees, but basically applies to everyone else in all work categories so they can be bound by binding arbitration," said Robert E. Meade, senior vp of the American Arbitration Assn. in New York.

But a three-judge panel of the 9th U.S. Circuit Court of Appeals in Pasadena, Calif., broke with the usual reading of the law last November, ruling in the *Circuit City* case that the Federal Arbitration Act does not apply to employment contracts. Richmond, Va.-based Circuit City Stores appealed, and the high court agreed last week to review the case.

The court's decision to review the case drew praise from an influential employers' group.

"I'm pleased that the court has

See **Court** *on page 21*

Insurance woman of the year

APIW honors Aon's Pahl

By LEE FLETCHER

Teresa L. Pahl, executive vp and board member of Chicago-based Aon Group, has one more social function to add to her already-full schedule of professional, community and personal obligations.

On June 6, she will attend a reception at which she will be honored by the Assn. of Professional Insurance Women as their Insurance Woman of the Year.

"She has energy for everybody and everything," said APIW President Diane Askwyth. "You have to scratch your head and say, 'How does this woman do all of these things?' " she said.

"She's clearly a superstar and clearly meets all of our criteria with flying colors. I'm personally delighted that she has won the award," Ms. Askwyth said.

According to the APIW, the organization named the 41-year-old Ms. Pahl its Insurance Woman of the Year in recognition of her outstanding achievements and leadership within the insurance industry, as well as her commitment to the advancement of women.

Ms. Pahl

Ms. Pahl said that, to her, success means providing a livelihood for others and helping them do great work.

"I explain to my children that their mom is helping build something, and in what we're building, we're providing jobs for a lot of people. Behind every person that's doing a job in this company, there's a family, there's a life, there's things that they're supporting," Ms. Pahl said.

Ms. Pahl said that when she is mentoring others,

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Reports optimistic, rate hikes are expected

By JUDY GREENWALD

The real story of commercial property/casualty insurers' first-quarter earnings lies not in the results themselves but in the numbers behind the numbers, analysts say.

Many commercial insurers reported reduced earnings for the first quarter compared with the comparable period a year ago.

Analysts are focusing more, however, on property/casualty industry efforts to raise rates, though the price increases were not reflected in the quarterly results.

Although analysts generally expect that firmer pricing eventually will lead to improved property/casualty earnings, some question how long the push to raise rates can be sustained by the industry. Another question hanging over future earnings is the adequacy of insurers' reserves and the need for additions.

"I think the overall results

See **Results** *on page 10*

Inside

- Employers should look at the growing array of new health care plan designs with a critical eye, this week's editorial says. **PAGE 8**
- Jon Harkavy of Risk Services L.L.C. in Arlington, Va., writes in Perspectives that legislation to close a so-called Bermuda tax loophole could threaten the interests of commercial insurance buyers. **PAGE 13**
- The risks of going global with a Web site must be carefully managed. **PAGE 17**
- European insurers welcome the news of an agreement between the European Union and China, one that offers the prospect of further liberalization. **PAGE 17**
- Lloyd's of London will allow foreign brokers and non-Lloyd's brokers to access the market beginning in January 2001. **PAGE 17**

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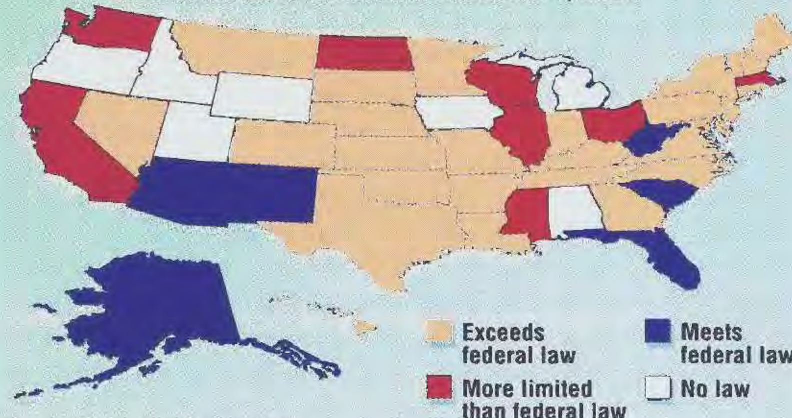
States enact parity laws

Mental health benefit reform spreads, as Congress revisits issue

By JERRY GEISEL

As federal legislators debate whether to expand a loophole-laden 1996 mental health care benefits parity law, states continue to move ahead and enact their own parity laws.

So far this year, governors in Kentucky, Massachusetts and New Mexico have signed mental health care benefits parity measures, which generally bar employers from offering lower limits of coverage for mental health care benefits than they offer for other medical and surgical benefits.



GRAPHIC BY JOHN HALL

The approval of those three measures brings to 44 the number of jurisdictions, including the District of Columbia, that have parity laws. Just over 30 states have passed parity bills since the early 1990s, with most of those passed since Congress approved a watered-down federal parity bill.

Most of those state laws—which apply only to plans sold by insurers and health maintenance organizations—go well beyond the federal statute in scope.

The federal law, which also applies to self-insured plans, bars all group health care plans—except those offered by employers with 50 or fewer workers—from offering lower annual and lifetime dollar limits for mental health care benefits than they offer for other medical benefits. The federal law, however, allows plans to impose

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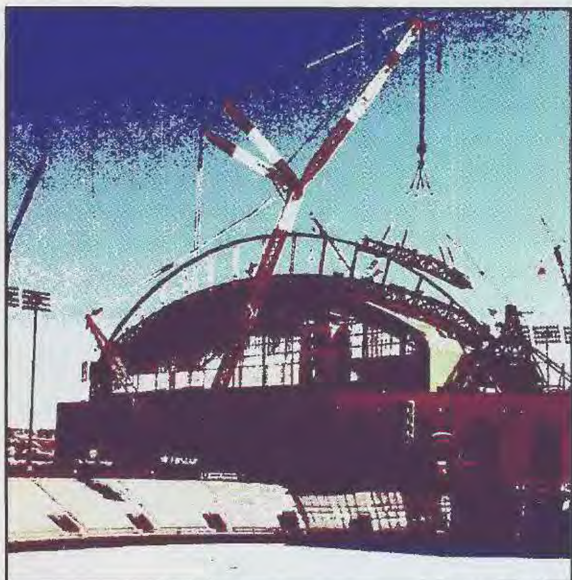


PHOTO: REUTERS

Construction work resumed in January on the new Miller Park in Milwaukee, the site of a July 1999 crane accident that killed three ironworkers.

Insurer striking out with policyholder

By RODD ZOLKOS

MILWAUKEE—Chubb Corp. says it is paying claims from last year's construction crane collapse at a stadium being built for Major League Baseball's Milwaukee Brewers as quickly as they come in, despite statements to the contrary from the authority building the ballpark.

In an April 26 memorandum to the board of the Southeast Wisconsin Professional Baseball Park District, Michael R. Duckett, the authority's executive director, used strong terms to describe his dissatisfaction with the pace of the authority's recoveries from its builder's risk insurer.

"There are a number of dark clouds looming on the horizon—and they become more ominous every day," Mr. Duckett wrote. "As we enter the next phase of processing our claim, I am troubled by the actions, words and conduct of Chubb and its representatives."

In July 1999, the base of a 567-foot crane known as "Big Blue" collapsed as it was lifting a 400-ton section of the retractable roof of the new Miller Park. Three construction workers died in the accident, and damage to the new ballpark delayed its opening from this year until the 2001 season.

The ballpark authority's builder's risk property insurance program has total limits of $325 million, with various individual sublimits within the overall policy. The district also has a separate liability policy with Chubb.

See Stadium on page 16

BI's Ross named officer of Crain

NEW YORK—Martin J. Ross III, associate publisher and advertising director of *Business Insurance*, has been elected a vp of Crain Communications Inc., which publishes *BI*.

"It's particularly fitting that the board of Crain Communications has recognized Marty's contributions to the company just as Marty has celebrated his 15th anniversary with *BI*," said Chairman Keith Crain.

PHOTO: DAIVD LUBARSKY

Mr. Ross

Mr. Ross, 42, is a 1981 graduate of St. John's University in Jamaica, N.Y., where he earned a bachelor of science degree in business administration.

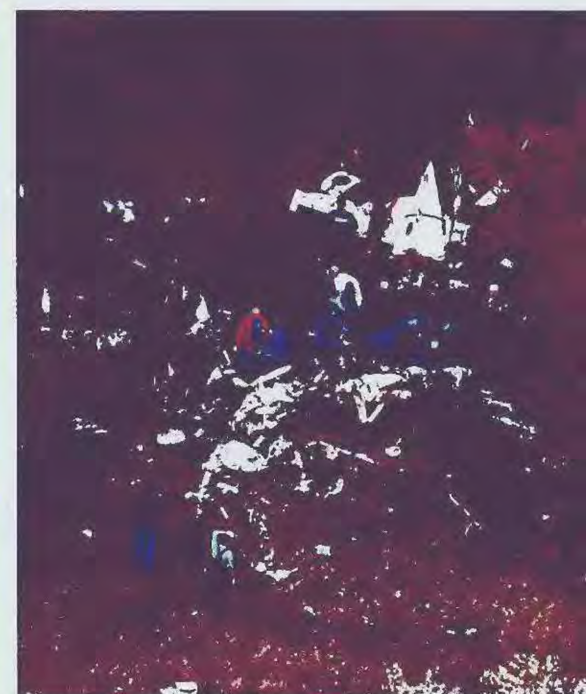
He began his career in 1980 as an administrative assistant to the vp of the New York Mets, working on promotion activities and players' contract reviews. He moved to Lanier Business Products in 1983 as a national account representative.

He joined *Business Insurance* in New York City in 1985 as a district sales manager. Mr. Ross was promoted to Eastern advertising manager in 1988, overseeing the four-person New York sales staff. He was promoted to advertising director in 1990 and was named associate publisher in 1997.

His responsibilities include management of all sales and promotion activities at *BI* as well as expanding circulation and new product development. Mr. Ross also represents *BI* at numerous industry functions.

"We are all very proud of Marty's appointment," said *BI* Publisher/Editorial Director Kathryn J. McIntyre.

Mr. Ross can be reached at 212-210-0228. BI



AP/ WIDE WORLD PHOTOS

Investigators inspect the site of a May 21 plane crash near the Wilkes-Barre/Scranton (Pa.) International Airport. All 19 people on board died.

Airline insured for crash losses

WILKES-BARRE, Pa.—Executive Airlines is fully insured for claims resulting from last Sunday's twin-engine chartered plane crash that killed all 17 passengers and two crew members on board.

Both engines of the turboprop BA-31 Jetstream reportedly failed while making its second approach to land at the Wilkes-Barre/Scranton International Airport in light rain and heavy fog.

Passengers were returning from an overnight gambling trip to Atlantic City, N.J. The plane, chartered by Caesars Atlantic City Hotel Casino, crashed in a dense and remote northeastern Pennsylvania forest.

The National Transportation Safety Board has said that it is investigating all the variables that are associated with the operation of the plane's engines, including the fuel system, ignition system and weather.

Farmingdale, N.Y.-based Executive Airlines has $100 million in limits on its liability policy, which was recently renewed with Associated Aviation Underwriters Inc. of Short Hills, N.J.

Executive Airlines also placed $1.5 million in hull insurance with AAU.

Hull deductibles for this class of aircraft typically range from $25,000 to $50,000, aviation sources say.

— By Sally Roberts

Harold H. Hines Jr. Memorial Symposium

Risks, rewards of e-business

By RODD ZOLKOS

CHICAGO—As the Internet and intranets change the way companies do business, the answer to the question of whether those changes represent a minefield or a gold mine to the insurance and risk management community may well be "Both."

Certainly, that was the conclusion to be drawn from the comments of industry experts discussing both the risks and the opportunities posed by changing technology at last week's annual Harold H. Hines Jr. Memorial Symposium in Chicago.

In discussing her company's e-business initiative, Pamela Rogers, director of risk management for Sears, Roebuck & Co. in Hoffman Estates, Ill., said she sees the company's online exposures in much the same terms as its traditional risks.

"The reality is we are a brick-and-mortar business that has now gone onto the Internet," Ms. Rogers said. "And when I look at the risks online, they're really not that different from our bricks-and-mortar businesses.

"What we believe the Internet does is really to exacerbate the risk we have" in the traditional business, the risk manager said. "The Internet is simply one more way that we allow our customer to get to us."

Among the exposures Ms. Rogers said she sees accompanying Sears' e-business are:

- Denial of service. "That concerns us, that our customers can't get to us," she said.
- Computer hackers. "Are we concerned about hackers? Yes. Is there a lot we can do about them? No," Ms. Rogers said.
- Order fulfillment. The company currently uses a third-party business for "pick and pack" order fulfillment, but it plans to bring that process in house, the risk manager said.
- Identity theft. "Again, not new. We're used to credit card fraud," she said.

While agreeing with Ms. Rogers' suggestion that e-business risks are, to some extent, the same as those in bricks-and-mortar business, Daniel M. Harris, an information security

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Hawaii

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Texas.

Other state risk managers, however, now may be emboldened by the support of legislators, the governor and state agencies in Hawaii for such a venture, said Mr. Birdwell, who is the former risk manager for the state of Texas and a former president of the Public Risk Management Assn.

"That is progressive," Mr. Birdwell said. "If it works out for (Hawaii), I'm sure other states will do it."

For many states, though, simply having legislation that would consolidate all state agencies under a single risk management program, as would the Hawaii bill, would be a big step forward, he added.

Hawaii lawmakers have supported the state's captive industry and with this bill are "trying to practice what they preach," said Julie Ugalde, acting risk manager for the state of Hawaii.

Under the legislation, S.B. 3043, the state comptroller, through the state's risk manager, would be able to place all liability coverage for the state and its agencies in a captive. Hawaii's risk manger reports to the state comptroller.

The legislation calls for the state comptroller to first conduct an assessment of whether forming a captive is financially feasible. This study would be performed by a private consultant to be hired by the state's Department of Commerce and Consumer Affairs with the assistance of the risk manager, according to the legislation. The Department of Commerce and Consumer Affairs oversees the Insurance Division, which includes Hawaii's office of Captive Insurance Administrator.

Any conflict of interest resulting from the state regulating its own captive is expected to be minimized by requiring the state captive facility to adhere to the same tax structure, filing and licensing regulations as any other captive.

The state comptroller would have final say in whether or not to create the captive and how it is managed,

'That is progressive. If it works out for (Hawaii), I'm sure other states will do it,' says Bruce Birdwell

according to the legislation. The comptroller reports to the state's Department of Accounting and General Services, which is separate from the Department of Commerce and Consumer Affairs.

That separation eased conflict of interest concerns that briefly arose when lawmakers were voting on the measure, said Sen. Brian Taniguchi, D-Honolulu.

Cost savings to taxpayers is the chief reason for approval of the legislation, said Sen. Taniguchi, who introduced the legislation and is chairman of the Consumer and Commerce Committee.

According to the legislation's text, the state currently pays about $5 million in premiums per year for liability coverage and maintains self-insured deductibles that range from $50,000 to $3 million per occurrence.

"The state will save money under the proposed scheme since the state-owned captive insurance company will allow the state direct access to the discounted premium rates available in the insurance market," the legislation's text states.

Forming a captive could give the state more control over its insurance costs and related services, such as claims administration, said Mr. Birdwell, the former Texas risk manager.

Additionally, it could allow the Hawaii risk manager to implement creative risk financing programs, such as allocating premiums to individual agencies or accumulating a "risk margin" fund by charging agencies slightly more than their annual risk costs, he said.

Such a fund, in conjunction with interest earned from the captive's operation, could reduce the need to seek insurance funding each year from legislators, observers said.

In addition to authorizing formation of a captive, the legislation also would broadly empower the state risk manager to oversee most insurance and risk management programs for the state and all its agencies, including determination of whether to insure or self-insure risks.

The risk manager, however, would not oversee workers compensation and employee benefits programs, according to the legislation. Sources familiar with the legislation say that placing workers compensation in the state's captive facility is an eventual possibility, however.

The legislation also would give the risk manager the authority to contract for services, such as actuarial, claims and risk management consulting. It also would authorize the comptroller to obtain reinsurance for the captive.

Individual state agencies that are not satisfied with the risk manager's coverage arrangements would be able to request that the comptroller review those arrangements, the legislation states.

In addition to the captive legislation, Hawaii's governor also is expected to sign a separate bill, S.B. 3190, that would allow the formation of "branch captives." Branch captives are affiliates of captives domiciled outside the United States that allow their owners to bring a portion of their captive insurance business onshore, which may be attractive for regulatory or tax purposes.

Allowing branch captives could increase the volume of business the domicile gets from non-U.S. companies, particularly Japanese companies, and also could smooth the way for funding employee benefits and other U.S.-regulated coverages through a branch facility in Hawaii, said Gerald Yoshida, a partner at Char Hamilton Campbell & Thom in Honolulu. Mr. Yoshida is chairman of the Hawaii Captive Insurance Council and president of the Coalition of Alternative Risk Funding Mechanisms.

Vermont last year, in anticipation of the U.S. Department of Labor allowing employers, under certain circumstances, to write employee benefits through captives, adopted a law allowing branch captives (*BI*, April 12, 1999). One of the Labor Department's requirements for a U.S. company seeking to fund employee benefits through a captive is that the facility be licensed in a domestic state or territory.

Although Vermont's law only allows branch captives to insure employee benefits, Hawaii, by contrast, would allow all commercial risks now insured under Hawaii's captive statutes to be written by a branch captive, Mr. Yoshida said.

Typically, companies forming a Hawaii captive must incorporate in the state before obtaining a captive license. With the new branch law, however, they would be allowed to register with the state as an "alien corporation doing business in Hawaii" rather than as a corporation. **BI**

"Rose" diamond necklace with mysteriously set ruby and diamond brooch and ear clips courtesy of Van Cleef & Arpels.

Jewelry by Van Cleef & Arpels.
Insurance by AXA Nordstern Art.

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What can we do to help you?

Privacy

Continued from page 1

interpreting the spirit of the act to open the door to include commercial claimants, including workers compensation claimants," she said.

The issue arose during a May 16 meeting of the NAIC's Privacy Working Group. It is one of several working groups established to recommend insurer-specific regulations for implementing the privacy provisions in Title V of the Gramm-Leach-Bliley Act (*BI*, March 27).

Although there is no consensus among working group regulators about protecting workers comp claimants, "I am sure that this is an issue regulators will be grappling with, because it is a thorny one," said Matthew All, counselor to Kansas Insurance Commissioner Kathleen Sebelius, the NAIC vp who chairs the working group.

Ms. Sebelius and Glenn Pomeroy of North Dakota, the working group's vice chair, were unavailable for comment.

As word of the regulatory discussion spread, it sparked strong comments from representatives of some risk management and insurer associations. They voiced concerns about regulators' apparent willingness to extend privacy protections aimed at individual consumers to include workers compensation claimants.

"The Risk & Insurance Management Society is very concerned that the proposal might cut off the flow of necessary information" to employers about injured workers' job-related accidents and illnesses, said Daniel Barry, RIMS' director of government affairs in New York. Employers typically need medical and related information about injured workers' accidents or illnesses to efficiently process claims and administer return-to-work programs, he said.

'I am sure that this is an issue regulators will be grappling with, because it is a thorny one,' says Matthew All.

As long as that flow of information to the employer is still permitted, RIMS would not oppose restrictions on further dissemination of personal information, he said. However, "we need to see the language and put it in the context of the Gramm-Leach-Bliley Act to assess its impact," he said.

Until now, the issue of employer and insurer access to an injured worker's personal information has primarily arisen as a result of pending federal and state legislation dealing with health-related legislation, rather than the consumer privacy protections available under the federal financial modernization law.

The American Insurance Assn. also is very concerned about the possibility that regulators may try to extend privacy protections to workers comp claimants.

"We strongly believe that it would be inappropriate for the NAIC to include commercial lines in the scope of Title V state insurance privacy regulations," even though states do have the authority to go beyond what federal regulators will require of banks, said Debra Ballen, executive vp-public policy management for the AIA in Washington.

It is inappropriate for state regulators to extend the law's privacy protections to workers comp insurance claimants, who are not customers of the insurers but third-party claimants, said Ms. Ballen, who also attended the meeting. Title V calls for a system for financial institutions to communicate their privacy policy and provide opt-out rights to customers, she explained.

"We aren't saying that third-party claimants don't have privacy rights, but this mechanism isn't designed to address them," Ms. Ballen said of the federal law.

From a regulator's perspective, though, "it's an odd distinction to make" between workers as health consumers and injured workers as third-party claimants, because it is the same kind of information that is being given out and the same kinds of privacy concerns, said Mr. All of the Kansas department, who also attended the meeting.

No other commercial lines coverages are included in the current discussions, he added.

State insurance regulators are working hard to quickly develop regulations to implement the insurance-related portion of the federal financial modernization act.

They will probably have a proposed written draft ready for the NAIC's summer quarterly meeting, June 10-14 in Orlando, Fla., Mr. All said. It is uncertain now, though, whether that proposal will include protection for workers comp claimants, he said.

Regulators hope to thoroughly discuss the draft at the meeting and prepare a final version of it as soon as possible. The NAIC has revised its meeting schedule specifically to allow adequate time for discussions relating to this and other issues associated with the financial modernization law.

The NAIC is expected to prepare a model proposal that states can adopt legislatively or administratively, he said. For example, the Kansas Legislature previously gave Ms. Sebelius authority to adopt insurance-related privacy rules for the state, he said.

Establishing deadline dates is a particular concern.

Insurance industry representatives generally want state insurance regulators to extend the enforcement deadline for the insurance-related privacy rules, as federal agencies did earlier this month for financial institutions. Specifically, federal agencies have adopted rules for financial institutions that are effective Nov. 13, though the enforcement deadline was postponed until July 1, 2001.

Although regulators have not yet decided to extend such deadlines, "they are very sensitive to (the risk of) putting insurers at a competitive disadvantage," Mr. All said. BI

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Opinions

Give health plans critical eye

HARDLY A WEEK GOES BY without the unveiling of another new design through which employers could offer health care benefits to their employees.

This onslaught of new health care plan proposals is largely a response to payer, participant and provider dissatisfaction with current health care models, especially managed care. As health care costs continue to rise, and as patient protection legislation threatens to expand employer liability for health plan decisions, more employers are likely to consider such proposals.

We would urge caution, however, that in the rush to avoid problems with existing health care plans, employers do not forfeit the many advantages that current designs also may offer.

Earlier this month, for example, Vivius Inc., a Minneapolis-based company, said it would soon begin marketing a program in which employees would select their own panel of providers from among physicians who would agree to provide all necessary services in exchange for a fixed, monthly fee that the providers themselves would set.

Coincidentally, another Minneapolis-based concern, HealtheCare, is promoting a program in which employees would use pretax contributions made by their employers to purchase basic health care coverage as well as additional levels of coverage.

At the same time, an increasing number of benefit experts are advocating that employers wishing to avoid the hassles and costs of health care purchasing adopt a straight defined contribution-type approach to providing and funding health care benefits. Under such an approach, employers would provide employees with a fixed amount of money, and it would then be up to employees to use those contributions to purchase their own coverage.

Its hardly surprising that so much thought and reexamination of the health care system is taking place.

Faced with sharply rising costs and fears that Congress may increase corporate liability for health care decisions, employers have good reason to consider new options. For some, the only other option would be to drop health care benefits entirely.

Providers, resenting what they consider second-guessing on the part of managed care plans, also are receptive to new designs as a way to regain control over treatment decisions and to reduce the financial risks they currently assume.

The new options also are enticing to employees, many of whom have lost their ability to choose their own providers.

At one level, this intense questioning of basic health plan design assumptions is a good thing. Anything as costly and important as health care demands periodic examination, review and improvement.

Indeed, plan designs that we take for granted today—such as health maintenance organizations, preferred provider organizations and point-of-service plans—grew out dissatisfaction with the way health care previously had been delivered and financed.

Having said that, some elements of the new plan designs being advanced today themselves deserve intense questioning and scrutiny.

Consider, for example, proposals to give providers more autonomy in making medical care decisions.

We shouldn't forget that restraints on physician autonomy—such as precertification prior to hospitalization or second opinions prior to surgery—weren't adopted in a vacuum.

These utilization management controls were widely adopted by health plans and became a centerpiece of managed care aprocedures in different communities around the country. The obvious conclusion was that too much unnecessary medicine was being delivered, prompting calls for more monitoring and controls.

Another common proposal would have employers adopt a defined contribution-style approach to funding health care benefits.

On the surface, such an approach would appear to make sense. With a fixed amount of dollars to spend on coverage from their employers, employees, the theory goes, would become better consumers of health care services.

One obvious flaw in this approach is that health care costs and needs vary by age and health status. The 57-year-old employee with numerous health care problems is going to pay a lot more for health care coverage than a healthy 27-year-old. If the employer makes the same contribution for all employees—regardless of age or health status—the purchasing power of some employees would suffer considerably.

On the other hand, trying to adjust contributions based on employee age and health likely would prove overwhelming for employers.

Putting purchasing responsibility in the hands of individual employees also results in a big tradeoff that many employees will overlook: the loss of purchasing clout that comes from buying health care coverage and services on a group basis.

Individuals will likely find purchasing their own health care coverage more expensive than it would be when included in a group plan. And few employers are likely to raise their contributions beyond current levels to offset this diminished clout.

In spite of these concerns, we welcome scrutiny of current models and suggestions for reforming how employer health care benefits are provided and funded. We do not believe these new designs ought to be rejected, but do suggest a more critical eye be given to claims that such designs present a panacea for all that ails the current health care system. We'd hate to see employers and employees turn to a cure that winds up being worse than the disease.

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Results

Major property/casualty insurers' first-quarter 2000 results

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

Rank 2000		Corporate: Net income 2000	Corporate: Percent increase (decline) 1999-2000	Corporate: Consolidated revenues 2000	Corporate: Combined[1] ratio 2000	Corporate: Combined[1] ratio 1999	Property/casualty operations: Net premiums written 2000	Property/casualty operations: Percent increase (decrease) 1999-2000	Property/casualty operations: Policyholders' surplus 2000	Property/casualty operations: Percent increase (decrease) 1999-2000
1	CNA Financial Corp.	$141,000	2,920.0%	$3,510,000	113.5%	112.4%	$2,130,000	(25.5%)	N/A	N/A
2	Reliance Group Holdings Inc.	145,499	1,035.7	1,023,233	114.6	106.7	605,100	(12.8)	$1,305,881	(5.0%)
3	The St. Paul Cos.	357,458	116.8	2,252,753	108.0 [2]	109.9 [2]	1,399,919	11.7	5,798,500	21.2
4	Royal & SunAlliance USA[2]	35,854	81.3	929,076	110.6	112.1	820,830	121.6	2,544,612	(14.3)
5	Travelers P/C Corp.	330,500	64.8	2,569,400	100.3 [2]	99.9 [2]	2,036,900 [2]	(2.9)	7,791,000	7.3
6	ACE Ltd.	174,513	35.3	1,344,481	96.0	86.2	1,457,022	327.7	4,568,394	2.6
7	Cincinnati Financial Corp.	79,363	23.1	571,270	98.8	106.0	432,130	9.0	2,506,723	(12.0)
8	American International Group	1,346,093	12.3	10,890,359	95.8	95.3	4,226,296	4.3	N/A	N/A
9	Hartford Financial Services Group	238,000	—	3,499,000	103.2	101.4	1,826,000	8.9	7,136,000	(14.0)
10	RLI Corp.	6,540	(0.6)	60,002	93.0	91.8	61,468	(4.3)	291,111	—
11	Hartford Steam Boiler	19,800	(5.7)	156,500	93.3	87.7	101,900 [2]	15.5	444,200	3.6
12	Chubb Corp.	153,700	(17.8)	1,767,000	101.9	99.2	1,589,300	13.1	3,365,100	2.3
13	American Financial Group	44,700	(19.2)	878,300	104.2	99.4	647,500	23.4	1,612,300	(12.9)
14	Old Republic Int'l	55,363	(25.0)	493,270	110.9	104.9	209,270 [2]	(0.8)	1,345,316	(7.4)
15	SAFECO Corp.	29,800	(74.9)	1,795,800	111.7	103.4	1,152,700	5.4	2,559,800	(15.5)
16	Fremont General Corp.	1,337	(95.4)	295,333	111.7	96.3	285,631	45.1	509,664	(22.2)
17	Argonaut Insurance Co.	(72,527)	(737.7)	44,158	558.3	121.9	26,467	28.6	470,697	(27.7)
18	Ohio Casualty Corp.	(75,013)	(766.4)	432,673	122.9 [2]	104.9 [2]	394,644	(0.7)	832,079	(17.2)
	—Kemper Insurance Cos.	N/A	N/A	725,773	110.4 [2]	110.6 [2]	716,725 [2]	2.8	2,544,006	(0.9)
	—Liberty Mutual Ins. Co. [2]	N/A	N/A	N/A	114.3	114.6	2,175,000	16.5	7,136,000	(4.2)
	Cumulative	$3,011,980	20.1%	$33,238,381	105.5%	103.7%	$22,294,802	9.6%	$52,761,383	(3.5%)

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

Source: *BI* survey

Continued from page 2

were a mixed bag. There were some very bad individual company performances," while some insurers did better than expected, said Michael Lewis, senior insurance analyst with Warburg Dillon Read in New York.

"More importantly, for the better-managed companies, the numbers behind the numbers were really starting to look good for the sector," Mr. Lewis said. Rate increases are growing in size and scope, while retention levels "were holding up very well, better than might have been expected beforehand," he said.

"I think this was the main message that was delivered, that the industry was showing a much more disciplined approach to underwriting," said Mr. Lewis of the first-quarter results.

Ron Frank, an analyst with Salomon Smith Barney in New York, agreed. "The earnings themselves were not nearly so significant in my mind as what managements had to say about the pricing environment," he said.

"You now have the virtually unanimous view among major players that the U.S. commercial middle-market cycle is indeed turning," Mr. Frank said. "Virtually all of the companies are now talking in terms of double-digit increases or the near-term prospect thereof, coupled with renewal retention rates that are essentially stable or, in some cases, improving."

In addition, he said, "a couple of companies are even talking about getting rate increases in lines where they don't even need them, and that's a sign of a classic hard market," Mr. Frank added.

Michael Smith, an analyst at Bear Stearns & Co. in New York, said that "the rate increases seem to be accelerating," with a push toward low double-digit hikes and increases broadly spread among different lines. "Even the brokers now are starting to get excited about midyear renewals, and brokers haven't been excited in 15 years," he said.

John L. Ward, chairman of Cincinnati-based Ward Financial Group, said, "Primarily, the story was restructuring and re-underwriting, and companies for the first time in a long time seem to be making a real, concerted effort to price their business properly, raise rates and non-renew the unprofitable accounts.

"But, on balance, it was still a difficult quarter" because some of the commercial underwriters are just starting to exercise the discipline they should have shown years ago, said Mr. Ward.

"It'll take a while for many of the rate increases that are being implemented this time to really take hold. The real benefit of this may not be seen this year, but it is a good move, a smart move, long overdue by most of the companies," Mr. Ward said.

The 20 commercial property/casualty insurers surveyed by *Business Insurance* as a group posted a 20.1% increase in net income for the first quarter to $3.01 billion, though half reported reduced or flat earnings compared with the first quarter of 1999.

In addition, while Reliance Group Holdings Inc. reported a 1,035.7% increase in net income to $145.5 million, it reported a $36.5 million operating loss for the quarter.

BI now includes results from Hamilton, Bermuda-based ACE Ltd. in its quarterly review.

Other first-quarter results in the *BI* survey include:

- Net premiums written increased 9.6% to $22.29 billion.
- The combined ratio for the insurers surveyed increased to 105.5% from 103.7% for the comparable period a year ago.
- Policyholder surplus decreased by 3.5% to $52.76 billion for the 18 insurers that reported this information.

"I would say it was a mixed quarter from an earnings perspective," said Gary Ransom, senior vp at Hartford, Conn.-based Conning & Co. "Some companies demonstrated some real underlying improvement, while others were still getting worse," he said. For the companies that improved, "it wasn't so much the rate increases as much as the re-underwriting and getting rid of the less profitable businesses that seemed to have a more immediate impact on the numbers; and then there's others that seemed to make no progress at all and still seem to have terrible results," said Mr. Ransom.

"There's a pretty wide disparity in results" between those insurers that did not underprice and do not have shortfalls in their balance sheets, and those that do have shortfalls, said Eric Simpson, senior vp at Oldwick, N.J.-based A.M. Best Co.

Many analysts say the property/casualty outlook is positive.

Ken Zuckerberg, an analyst with Keefe, Bruyette & Woods in New York, said that while insurers are introducing rate increases, "it's very important to remember that there's a lag between the time that companies announce rate increases to the time that it flows through to the book of business."

Because of increased underwriting discipline, "we're encouraged the operating results for the sector will look better in the second half of the year into 2001," said Mr. Lewis.

Conning's Mr. Ransom said, "I would say the outlook is for gradual improvement, but recognizing that a lot of companies could have results get worse before they get better."

Stephen Lilienthal, executive vp-U.S. insurance operations for The St. Paul Cos. Inc. in St. Paul, Minn., said while there has been a "steady improvement in pricing, to the point where overall effective pricing is over and above any effective inflation," there have been some troublesome areas as well.

In particular, workers compensation "has shown steady signs of deterioration," he noted. "We are guardedly optimistic in terms of what we see for the remainder of 2000 and beyond," said Mr. Lilienthal.

Some analysts question whether the industry's push for firmer pricing can be sustained.

Matthew Coyle, director at rating agency Standard & Poor's Corp. in New York, said, "I think, going forward, we're all going to be watching closely to see if this is sustainable and if the second round of renewals will also experience some level of rate improvement, because for most companies, one round of rate increases is not going to do it."

Overcapacity in the market could dampen both the degree and the duration of the firming, said Best's Mr. Simpson, adding "It's just doubtful that it would last much beyond the year 2000 at the rate it's going."

Although market leaders are making a concerted effort to increase rates—an effort that seems to be meeting with less resistance in the marketplace—"the level of rate increases could very quickly subside later this year," Mr. Simpson said.

Firmer pricing should continue at least through next year's first quarter, said St. Paul's Mr. Lilienthal. "At that point, given the history of the commercial lines segment, it's really too early to tell," he said. "It certainly would not surprise me if the industry were to return to its price-cutting ways somewhere down the line," he added.

Mr. Ward said that "pricing discipline will remain intact for some time because it's just good business, and sometimes tough decisions are difficult to make, but once you make them, you can sustain the results for the time being. I don't see this as a short-term move."

Some analysts also pointed to continuing concern about reserves. Mr. Coyle said S&P has a negative outlook for this year because, despite anecdotal evidence of rate increases, "you still have the issue of reserve adequacy, or, in this case, lack thereof."

Some of the "major areas of concern" with regard to reserve adequacy are workers comp, commercial multiperil and commercial auto liability lines, he said.

"We would expect some of this improvement in rates, which probably won't show up until the latter half of this year, will be overshadowed by carriers taking reserve charges to address deficiencies," Mr. Coyle said.

"I think the biggest trend that's going on is the reduced amount of prior-year reserve development, and, at the same time, the growing number of companies facing distinct reserve deficiencies," Mr. Lewis said.

He pointed specifically to the California workers compensation market. "There'll be a significant number of companies over the remainder of the year addressing their reserve deficiency problems, and I don't believe that the Superior National filing of Chapter 11 is the last one we're going to see," he said.

"You're coming to that point where a number of companies are basically hitting the wall right now, and that's going to cause a shakeout in the group, which makes it easier to get rate increases as the market realizes just how underpriced these coverages have been," Mr. Lewis said. BI

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Chuck Quackenbush, Insurance Commissioner of the State of California, in his capacity as Conservator of the above captioned insurance companies (the "Companies") has issued a Request for Proposals for participation in a Rehabilitation Plan for the Companies. Those persons or entities interested in obtaining a copy of the Request for Proposals may do so by contacting Richard Krenz, Deputy Conservator, in care of the Commissioner's financial advisor, Marsh & McLennan Securities Corporation, 114 W. 47th Street, New York, NY 10036 or calling Geoffrey Sweitzer at 212-345-2785. All proposals should be submitted pursuant to the terms of the Request for Proposals and must be received by the Deputy Conservator on or before June 1, 2000.

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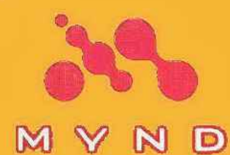

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Bermuda 'loophole' should remain

Tax Code changes outlined in H.R. 4192 illogical, damaging to insurance industry

By Jon Harkavy

A SMALL GROUP OF U.S. insurance companies, led by Chubb Corp. and Hartford Financial Services Group Inc. and including Liberty Mutual Insurance Co. and Kemper Insurance Cos., are seeking changes in the U.S. Tax Code through the enactment of H.R. 4192.

The bill's recent introduction appears to have been spurred largely by the acquisitions of a few U.S. insurance companies by Bermuda insurers and by the redomestication of several insurance holding companies to Bermuda.

Essentially, H.R. 4192 seeks to impute to domestic U.S. affiliates the investment income earned by certain foreign insurers on interaffiliate reinsurance cessions and to tax this imputed income at the U.S. "safe harbor" rate. Industry supporters of H.R. 4192 contend that this change in the tax code is needed to close a parity gap between U.S. insurers and their Bermuda competitors who, they argue, do not incur the same U.S. tax burden as do U.S. insurers.

Congressional supporters of H.R. 4192 argue that the so-called "Bermuda tax loophole" results in a significant loss of revenue to the Treasury Department because U.S. affiliates reinsure portions of their business to their Bermuda parents. Opponents of this measure—of which this writer is one—regard H.R. 4192 as inherently dangerous, not only to the best interests of insurance consumers but also to the very foundations of the insurance industry itself.

Have the industry proponents of the bill been overblowing their supposed lack of parity with Bermuda-based insurers? U.S. companies with Bermuda parents pay significant taxes to the United States, and the related reinsurance business in place is already governed by U.S. Internal Revenue Service rules. Indeed, industry supporters of H.R. 4192 have noted that they have weighed the tax and regulatory benefits afforded by redomesticating to Bermuda but found that the U.S. tax imposed on the redomesticating company eliminated the benefits of such a move.

With respect to cessions between affiliates, federal transfer pricing rules require that reinsurance transactions must take place at arm's length to ensure that a fair ceding commission is paid for the business reinsured. That ceding commission is paid to the U.S. affiliate, which must pay tax on the commission to the United States. Additionally, a 1% federal excise tax is paid to the United States on premiums reinsured abroad.

Moreover, the argument that cessions to offshore affiliates result in a significant revenue loss to Treasury assume that the business reinsured is profitable. This is a giant leap of faith, considering the combined ratios of the industry over the last decade. Given the realistic scenario that the business ceded to an offshore affiliate may be unprofitable, Treasury is spared a portion of losses which could otherwise be deducted by the U.S. affiliate, while the solvency and capacity of the ceding affiliate is strengthened through the interaffiliate reinsurance cession.

Particularly in the case of quota-share reinsurance cessions, which predominate the marketplace, neither the ceding affiliate nor the parent reinsurer is assured of the profitability of the business ceded. Indeed, A.M. Best Co. estimates that the combined ratio for the industry in 2000 will reach 108%.

Similarly, to contend that revenue is lost when a U.S. insurer redomesticates or is acquired by an offshore insurer is speculative at best. The former CIGNA companies owned by ACE now pay U.S. income taxes, whereas for several years prior to the purchase, they were losing money and did not pay substantial federal income taxes on the business they insured. To view the reinsurance transaction simply in terms of potential revenue lost to the ceding insurer—as H.R. 4192 proponents do—ignores the spread of risk, solvency and operational efficiencies gained by the ceding insurer in the reinsurance transaction.

H.R. 4192 supporters should acknowledge where the parity argument inevitably leads. In the case of an XL Capital Ltd. or ACE, two prime targets of the legislation, their supposed unfair advantage stems not so much from their affiliations with U.S. companies, but rather from their utilization of reinsurance entities taxed at a lower rate than are their U.S. counterparts. An affiliation between ceding insurer and offshore reinsurer may augment that advantage, but the real lack of parity complained about by H.R. 4192 supporters stems from variations in domiciliary insurance/reinsurance taxation and regulation between the United States and Bermuda.

While H.R. 4192 is a protectionist boon to certain U.S. insurers, its enactment may, in the short term, hike premiums and, in the long run, would deny consumers needed leverage.

With little or no internal logic to support the distinction, H.R. 4192 and its supporters would treat a cession between ACE's U.S. affiliate and ACE Bermuda as a "loophole" which must be closed, while a cession between Chubb and a Bermuda non-affiliate would remain unaffected. The only difference between the two transactions is that, in the former, Chubb complains about a lack of parity, while in the latter, a domestic reinsurer makes the same complaint.

Years ago, the Reinsurance Assn. of America sought to increase significantly the federal excise tax on reinsurance ceded abroad, citing almost identical parity arguments in support of such an increase. Was it coincidence that the proponents of H.R. 4192 seriously considered proposing an increase in the federal excise tax before opting for the imputed income approach of the legislation instead? Of course not.

If one argues that disparate multinational tax treatment of domiciliary insurers and reinsurers causes an actionable lack of parity among U.S. insurers and reinsurers, ultimately the only logical response would be an increase in the federal excise tax. Such an increase would levy a sliding federal excise tax on all reinsurance transactions so that each cession reflects the tax rate that the United States would have imposed on the ceding insurer had the cession not taken place.

If one accepts H.R. 4192's premise that access to reinsurance markets with lower taxes than their U.S. counterparts creates an unlevel playing field for U.S. insurers and reinsurers, then one can readily expect more-Draconian "leveling" measurers than are contained in the legislation's present form.

To address these parity issues, H.R. 4192 would impute otherwise non-taxable income of an alien insurer to its domestic U.S. affiliate, thereby taxing the parent, indirectly, through its U.S. affiliate.

No matter how one attempts to justify such an approach, H.R. 4192 imposes the U.S. view of how much certain foreign countries should tax their own domiciliary insurers on cessions received from U.S. affiliates. Would not any foreign nation that taxes its own domestic insurers at a higher rate than the United States be justified in imposing, either directly or indirectly, its taxes on domestic affiliates of U.S. insurers, or, worse still, on all cessions between their domestics and U.S. insurers/reinsurers?

H.R. 4192 may likely ignite a trade war that would create not a level playing field, but a minefield threatening the operation of the international reinsurance marketplace crucial to the industry in achieving spread of risk and, ultimately, solvency.

What justification is there for H.R. 4192 to ride roughshod over long-established treaty definitions assigned to prevent double taxation of income?

Chubb Chairman Dean O'Hare, in a letter to *Business Insurance* published April 17, contends that if the playing field is not level, "U.S.-owned insurers are weakened by the unfair disadvantage and the foreign-owned companies (will) raise rates in the face of weakened competition."

Perhaps Chairman O'Hare should note that ACE and XL were initially formed because it was the same U.S. domestic insurance industry he now seeks to protect that turned its back on U.S. commercial insureds during the insurance availability/affordability crisis of the mid-1980s. Without Bermuda, and the self-help alternatives that the island's regulatory climate and low tax policies helped create, U.S. commercial insurance consumers would have been far more pressed to deal with the capacity crisis of those years.

Put bluntly, while H.R. 4192 is a protectionist boon to certain U.S. insurers, its enactment may, in the short term, hike premiums and, in the long run, would deny consumers needed leverage to deal with future capacity crises. Consumer benefit should not be attributed to H.R. 4192, which sacrifices policyholder well-being on the dubious altar of certain insurers' self-interest.

In the early part of 1999, H.R. 2749—the Catastrophe Reserve Bill—was introduced in Congress on a bipartisan basis with strong insurance industry support. The legislation seeks to protect the capacity of the U.S. insurance industry to insure potentially catastrophic risks by enabling insurers to establish and build up special tax-deferred loss reserves.

Thus, on one hand, the industry is arguing that the present U.S. tax rate on insurers and reinsurers inhibits the carriers from building adequate loss reserves to meet the capacity needs of the American public. While, on the other hand, the Chubb-Hartford coalition contends that we must close a "loophole" creating an unlevel playing field when certain insurers have access to reinsurance markets whose governments have concluded, per the logic of H.R. 2479, that a lower level of taxation on insurers is the best means to promote capacity and solvency for the industry. One wonders why the industry's recurring lament that it is misunderstood rings hollow.

H.R. 2749 delineates an alternative approach that the Chubb-Hartford coalition could take to address their parity concerns: reduced levels of U.S. taxation on its domestic carriers and reinsurers.

Switzerland's insurance/reinsurance industry is taxed at approximately 20%—significantly more than in Bermuda but significantly less than the U.S. tax rate.

Under H.R. 4192, a reinsurance transaction between a U.S. affiliate and its Swiss parent would not trigger imputed income to the U.S. affiliate. Why not? Presumably because the disparity between

See **Loophole** *on next page*

Loophole

Continued from previous page

U.S. taxation and Swiss taxation is not great enough to trigger the parity concerns of H.R. 4192's supporters.

Why, then, shouldn't the proper solution be to lower the U.S. tax rate and thus obviate the need to erect the protectionist barriers of H.R. 4192? Indeed, it would be most ironic if a Republican-controlled Congress so committed to the cause of domestic tax reduction passes this legislation, whose intent is to punish Bermuda for the "sin" of maintaining a low tax environment for its domestic insurance industry.

If, as the Chubb-Hartford coalition contends, certain insurers are abusing the reinsurance mechanism to avoid U.S. taxation, the IRS has substantial tools at hand to deal with any abuse. The transfer pricing rules of Internal Revenue Code Section 482 allow the IRS to "distribute, apportion, or allocate gross income, deductions, credits or allowances between or among (related parties) if (the Commissioner) determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income" of the related parties.

Under Section 6038A of the Code, every foreign-controlled corporation is required to maintain contemporaneous records of transactions with its foreign parents, which effectively serve as "road maps" for the international examiners during an audit.

In addition, there are special rules governing related-party reinsurance, which function in a manner roughly similar to the transfer pricing rules. Code Section 845(a) provides that the commissioner may reallocate "income (whether investment income, premium, or otherwise) deductions, assets, reserves, credits or other items" related to reinsurance agreements between related parties, or "recharacterize such items, or make any other adjustment." Taken together, these and other IRS Code provisions represent substantial and well-developed means to prevent tax avoidance.

Indeed, as recently noted by Chubb's Mr. O'Hare, "The Treasury Department could interpret the tax code addressing intercompany reinsurance in such a way as to produce the effects of the bill without legislation" (*BI*, May 8). Why, then, is the Chubb-Hartford coalition opening the Pandora's box of H.R. 4192, when abuses could be dealt with under existing law and regulations?

Some senior Treasury officials appear to be concerned about the potential for abuse of treaty exemptions to avoid payment of both corporate income tax and the federal excise tax. Is it unreasonable to expect that in enforcing H.R. 4192, Treasury will contend that these treaty exemptions are being abused and that new restricted exemptions and/or treaty overrides are required to fix the problem?

In the case of captives, the alternative insurance market community is equally concerned about the springboard for anti-captive actions that H.R. 4192 provides.

Although largely rebuffed by the courts, Treasury still takes the position that any affiliation between the captive and its affiliate voids the insurance/reinsurance transaction, so parental premium deductions are disallowed and income earned by the captive is imputed to the parent. In many ways, H.R. 4192 and Treasury's current position on captives mirror one another. Both would tax transactions between affiliates by imputing income to the parent in a manner precluded by current law.

Over the past decade, Treasury has continually pushed Congress to pass legislation that would preclude or limit tax recognition of an insurance transaction between parent and captive. With Treasury continuing its perpetual attempts to close the captive "loophole," H.R. 4192 would make an ideal vehicle either in itself, with minor changes, or as separate legislation using the H.R. 4192 format to impose added burdens on parent/captive transactions.

For these reasons, as well as the bill's negative impact on insurance consumers, the Coalition of Alternative Risk Funding Mechanisms—CARFM—is opposed to H.R. 4192. CARFM is a coalition representing the Hawaii Captive Insurance Assn., the Captive Insurance Company Assn., the Illinois Captive & Alternative Risk Funding Insurance Assn., the Vermont Captive Insurance Assn., the Colorado Assn. of Captive Entities, and the National Risk Retention Assn.

The insurance industry's political track record of bringing its internal squabbles to Congress for resolution has not been a bright one. In the mid-1980s, a proposal by one segment of the industry—stock insurers—to modestly raise taxes on mutual insurers (again, in the name of leveling the playing field!) resulted in a huge $8 billion tax hit on both mutual and stock companies.

Some supporters of the bill have said that while they were aware of that exposure, they feel strongly enough about the measure to pursue it despite concerns about this problem.

The problem, of course, is that the rest of the industry, including insurers, reinsurers, captives, risk managers and consumers, will be sucked into the H.R. 4192 maelstrom and pay the consequences of the Chubb-Hartford initiative.

The captive and risk management communities should not depend on the targeted parties to defeat H.R. 4192. We should voice our opposition to H.R. 4192 directly to Congress and to the Chubb and Hartford insurance companies that have fathered this legislation so adverse to commercial insurance consumer interests. BI

Jon Harkavy is vp and general counsel of Risk Services L.L.C. in Arlington, Va., and former president of Coalition of Alternative Risk Funding Mechanisms.

Court: Stress wasn't caused by duties

An employee's stress caused by the possibility of a future transfer was not compensable under the workers' compensation law, according to a Connecticut appellate court.

Martin Tartaglino started work for the state of Connecticut in 1982 as a corrections officer. In 1989, the facility to which he was assigned experienced overcrowding and, on occasion, guards were placed in situations in which they faced potential harm from inmates. As a result, Mr. Tartaglino began to experience work-related stress requiring treatment from a psychotherapist.

In 1982, the facility's security level was decreased when it became a drug rehabilitation center. The work environment was virtually stress-free and Mr. Tartaglino's symptoms disappeared. In 1993, it was announced that the facility would be closed and Mr. Tartaglino was slated for transfer to another facility with a high level of security. After this notification, he began to experience stress-related symptoms. Failing in his effort to rescind the transfer, Mr. Tartaglino resigned. He then filed a claim for workers compensation. His application was denied.

The appellate court agreed with the determination that Mr. Tartaglino's stress was not the result of his employment duties or an activity that was incidental to his employment. "Administrative policy decisions to open or close a facility or to arrange a transfer of an employee," the court said, "are not considered to be in the regular course of an employee's duties or incidental to his employment."

The court emphasized that Mr. Tartaglino's stress was caused by the possibility of a future transfer and, therefore, did not fall within the scope of his employment duties. The court affirmed the decision to deny him benefits.

Tartaglino vs. Department of Correction, Appellate Court of Connecticut, October 5, 1999 (BI/01/Ju-$10)

Victim's estate gets half of pension

The Wisconsin Court of Appeals held that the estate of a wife murdered by her husband was entitled to a constructive trust on an undivided one-half interest in the husband's pension.

Bradley and Diane Hackle were married in 1988. In 1996, as the two were divorcing, Mr. Hackle murdered his wife. Mr. Hackle was convicted of the crime and sentenced to prison for life. Mr. Hackle had worked as a union mason for almost 40 years and had contributed to a pension fund since 1957. From prison, he applied for and began to receive monthly pension benefits.

In probate proceedings of his late wife's estate, her personal representative asserted that the pension was marital property and claimed an undivided one-half interest in his pension as an estate asset. Mr. Hackle objected, asserting that his wife's interest in his pension terminated upon her death. The trial court ruled against him and imposed a constructive trust on an undivided one-half interest in the pension.

On appeal, Mr. Hackle argued that state law terminated his late wife's interest in a deferred employment benefit plan when she predeceased him. But the appellate court said that the common law principle that murderers should not profit from their crimes applied to the facts here. Finally, the court agreed with the trial court that it was equitable to impose a constructive trust on Ms. Hackle's marital property interest in Mr. Hackle's pension.

In RE Hackle, Court of Appeals of Wisconsin, October 7, 1999 (BI/02/Ju.-$10)

Patent infringement not covered

The U.S. Court of Appeals for the Federal Circuit ruled that a general commercial liability insurer had no duty to defend its policyholder in a patent infringement suit.

U.S. Test Inc. manufactures and sells an ultrasonic device used to detect leaks in underground fuel storage tanks. U.S. Test solicits sales of its product by advertising in national trade journals, mailing brochures to potential customers and presenting the product at national trade shows.

After NDE Environmental acquired an exclusive license to two patents directed to the ultrasonic gauging of tanks, NDE sent letters to several of U.S. Test's customers charging them with infringement of these patents in their use of U.S. Test's products. U.S. Test then sued in federal court seeking a declaration that its actions did not infringe NDE's patents and that those patents were invalid and unenforceable. NDE countersued U.S. Test for infringement of its patents.

U.S. Test then sought to incorporate its CGL insurer, United Coastal Insurance Co., as a third party defendant in the suit. U.S. Test alleged that under the "advertising injury" provision of its CGL policy, the insurer was obliged to defend its policyholder in the patient infringement suit brought by NDE. The trial court ruled for the insurer.

On appeal, U.S. Test argued that the insurer had a duty to defend it in NDE's suit under the "infringement of copyright, title or slogan" portion of the "advertising injury" provision of the CGL policy. The court reviewed Louisiana law where the alleged infringement occurred, and concluded that the plain language of the relevant provision of the CGL policy unambiguously precluded coverage for allegations of patent infringement.

The court emphasized that the definition of "advertising injury" in the policy did not include patent infringement—only infringement of "copyright, title or slogan."

According to the court, the omission of the offense of patent infringement reflected the parties' clear intent that allegations of that offense were not covered by the policy. The trial court decision was affirmed.

U.S. Test, Inc. vs. NDE Environmental Corp., U.S. Court of Appeals for the Federal Circuit, Nov. 11, 1999, Rehearing Denied Dec. 17, 1999 (BI/03/Ju.-$10) BI

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

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Pahl

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especially young women in the insurance industry, she explains that "there is sacrifice when you want to get ahead."

"What I tell young women is... you're going to have to work very, very hard. Understand that you've got to pace yourself, but also understand that there are going to be times when too many people are depending on you and you're going to just have to do it," she said.

Ellen Thrower, president of the College of Insurance in New York, said she is impressed with Ms. Pahl's devotion to furthering the careers of women in the insurance industry.

"She works very hard, takes time to introduce women in the business to other women in the business where she really believes they'll benefit from knowing each other and networking. She's direct, she's open, she's a great role model for young women and also for women who are moving up through the ranks," said Ms. Thrower, who nominated Ms. Pahl for the award.

Ms. Pahl said that mentoring young women in the industry is more than simply giving them the telephone number of a contact and pointing them in the right direction. She said it is important to encourage young women to make insurance their career and to set aside time for them, either through dinners or relaxed meetings, "where you can truly give of yourself."

"I tell them the best piece of advice is to develop a strong technical discipline—whether underwriting, actuarial or technical brokering/marketing. This is an industry that demands technical excellence. Also to become extremely conversant on the impact of e-commerce in the industry, because that's going to be a big part of our future. The third thing is to constantly broaden one's scope to world affairs, popular trends—it's important to being a well-rounded professional and a well-rounded individual," Ms. Pahl said.

Ms. Thrower noted that Ms. Pahl fits very well into the senior ranks of what is predominantly a male-oriented industry. "I think she has already made it easier for more women to move up into the upper echelon of the industry," Ms. Thrower said.

Ms. Pahl attributes much of her success to meeting the right people and networking effectively. She said that, even today, she has several external mentors from whom she seeks advice.

"I'm one of those lucky people that, every job I've held, I've had a lot of fun with, and there probably isn't one job that I wouldn't go back and do," she said. "I was lucky enough to be given the opportunity by several good, strong mentors to do a variety of different positions. Each job put me on a springboard for the next one."

"Terry's been successful in the insurance business, and she has succeeded by taking on challenges and making them happen," said Linda H. Lamel, an industry consultant who was the 1988 APIW Insurance Woman of the Year. "She's really produced the ventures that she's undertaken. Sometimes you see people who move around and get promotions but you wonder what they have actually accomplished.

"In Terry's case, it's very tangible—she's either increased production or she's set up a new operation or she's developed a new capability for her employer," Ms. Lamel said.

Ms. Pahl graduated from the University of Iowa with a bachelor of science degree in economics and received an executive master's degree in business administration from Northwestern University's Kellogg Graduate School of Management. Her industry credentials include Chartered Property & Casualty Underwriter, Associate in Research Planning and Associate in Risk Management designations.

Ms. Pahl started her career in Chicago, working as a quantitative economist with the Federal Reserve Board, and then spent three years at CNA Financial Corp. as a division supervisor in its property underwriting division.

Ms. Pahl next moved to Zurich Financial Services Group Inc., where she worked in field operations, product development, marketing and international operations. She was one of the first women to hold an officer position at Zurich. In 1990, Ms. Pahl joined the Advanced Risk Management Services division of Willis Corroon Corp. as senior vp of its international division.

Ms. Pahl has served as an instructor for the Society of CPCU and wrote a monograph published by the society about global brokerage operations. She has been a member of the National Assn. of Insurance Brokers, which has since merged with the Council of Insurance Agents & Brokers, serving as chairwoman of its international committee from 1995 to 1997, and she has been a member of the APIW since 1993.

Ms. Lamel, a member of the APIW nominating committee, said that although there were several nominees for this year's award, Ms. Pahl stood out as "a knockout."

Ms. Lamel emphasized the strong degree to which Ms. Pahl contributes to the insurance industry through her participation in professional programs.

"You've got a job, you've got kids, you've got your own education to keep up with, and Terry is also able to do the outreach. She does things in the community as well as in the business community, which is quite commendable, because that's time she's taking away from herself," Ms. Lamel said.

Ms. Pahl lives in Glen Ellyn, Ill., with her two children, Steven, 17, and Jessica, 13. BI

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Stadium

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"With total losses from the accident estimated well over $100 million, many of the claims remain in a 'pending approval' category, and any checks that are now issued are only authorized by Chubb after a lengthy, complicated, drawn-out process," the executive director wrote. "Chubb is not helping make this a cooperative effort, despite its previous public statements."

In the days immediately following the accident, Chubb moved quickly to assure the authority and taxpayers of the five-county region contributing to the stadium's construction that it would cover losses caused by the accident, Mr. Duckett noted.

But, he claimed, "as we moved forward in the following months to actually process the claim and make payments to our contractors and subcontractors, it became increasingly clear that Chubb had attached significant strings to how the money would be spent and placed cumbersome restrictions for future payments."

"Now, in the succeeding months, Chubb and its representatives have implemented a strategy that has come close to grinding the process to a complete halt," the executive director wrote. "By using an army of adjusters, so-called 'loss-control' consultants and aggressive attorneys, Chubb has succeeded in making the overall insurance claim process slow and difficult, and I believe it puts the taxpayers at risk."

Mark Greenberg, senior vp and chief communications officer at Warren, N.J.-based Chubb Corp., paints a very different picture.

"That's not the case. They put out the word that we owe $100 million and have only paid $20 million," Mr. Greenberg said.

In fact, he noted, the $100 million is the stadium authority's estimate of the ultimate cost of the loss.

"We've been paying bills just as soon as they make the claim. And that's what the policy calls for," Mr. Greenberg said. "We did not guarantee the construction of the park. We underwrote the accident insurance and liability insurance."

"They have not submitted claims for $100 million, so we cannot possibly owe them $80 million," he said. "It's entirely possible that it might end up costing that much, but we can't possibly know until all the claims are filed."

In fact, Mr. Greenberg said, including the additional $10 million the insurer recently advanced the authority, the $30 million the insurer has now paid the authority goes well beyond the $20 million in claims actually approved thus far.

"They have received payments in excess of the claims that have been approved," he said. "We were shocked by the criticism and don't know why they did that."

And, in response to the authority's suggestion that claims payments have come with "strings attached," Mr. Greenberg noted that there are more than 100 subcontractors involved in the project.

"We can't just hand out the money without strings," he said. "The money has to be earmarked to pay specific subcontractors' bills."

Mr. Greenberg suggested that, in fact, the stadium authority has been "slow in submitting claims," and said Chubb has maintained a presence at the site in an effort to speed claims handling.

"We have nine people on the site and a trailer on the site to speed the processing," he said.

'We've been paying bills just as soon as they make the claim. And that's what the policy calls for,' says Mark Greenberg of Chubb.

But in his memo, Mr. Duckett identified the local presence as part of the problem.

"Chubb's local representative, Mr. Steve Mortensen, apparently has no authority on this matter," Mr. Duckett wrote. "Because this is likely the largest property claim currently being handled by Chubb, the power and decision-making has moved to the East Coast, where Chubb's home office is located."

The situation makes it difficult for the authority to determine who is adjusting its claim, Mr. Duckett suggested, adding "Chubb has up to one dozen people on site, and countless more behind the scenes working on this effort. While they pretend to engage us in dialogue, what we get are mixed signals, confusing messages and a lot of buck-passing."

Mr. Duckett also called the insurer's retention of the Minneapolis law firm of Robins, Kaplan, Miller & Ciresi L.L.P. "one of the more ominous signals Chubb has sent."

"In doing so, Chubb retained a highly specialized insurance counsel, Mr. David Bland, who has created increasingly bad will and has led Chubb's efforts to delay making necessary payments," he wrote.

Members of the stadium authority's board did not respond to requests for comment on the dispute. Top officials of the district have met with Chubb executives in recent weeks to discuss their concerns, however.

Chubb's Mr. Greenberg noted that there have been various disagreements that are being worked out through the discussions. "Those are normal things that happen in the course of adjusting a claim like this," he said. BI

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Agent/Broker Directory deadline extended

Business Insurance will publish its 29th annual Agent/Broker Directory in the July 17 Agent/Broker Profiles issue. Completed directory questionnaires must be submitted by the extended deadline of June 9.

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

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

Copies of the questionnaire also can be printed from the *Business Insurance* Web site at www.businessinsurance.com.

INTERNATIONAL

Global Briefs

Rating agency **Standard & Poor's Corp.** issued a negative outlook for the German property/casualty insurance market. S&P said the outlook reflects a significant deterioration in underlying operating performance, sluggish premium growth and continued pricing pressures exacerbated by the industry's overcapitalization. . . . South Africa-based insurance brokerage **Alexander Forbes Ltd.** has reported a 33% increase in revenue for 1999. More than 43% of the group's £228 million ($335 million) in revenues for the fiscal year ending March 31 was derived from international operations, the company reported. . . .SINSER Holding A.B., the insurance management arm of Swedish-based Skandia Insurance Co. Ltd., has acquired the London consulting firm of **Risk & Insurance Research Group Ltd.** Under terms of the acquisition, RIRG will continue to function as an independent consulting firm and extend its activities to provide business strategy support for SINSER operations. . . .London-based broker Willis Group Ltd. plans to acquire a majority holding in South African insurance broker **Floyd & Associates Ltd.** After the acquisition, Johannesburg-based Floyd & Associates will operate under the Willis name. . . .Moody's Investors Services Ltd. has announced it will become the first rating agency to offer **credit ratings of all Lloyd's of London syndicates**. Moody's currently gives performance and volatility ratings to syndicates but said it would now issue credit ratings for all 123 Lloyd's syndicates. . . . Zurich Financial Services Group Inc. has launched a new unit, Zurich Professional, dedicated to the professional indemnity market for **solicitors in England and Wales**. The launch of the new unit coincides with the scheduled expiration of a requirement that solicitors in England and Wales purchase compulsory coverage from the Solicitors Indemnity Fund. The requirement expires on Aug. 31, 2000. . . . London-based SVB Holdings P.L.C. has announced the creation of its second insurance unit. **SVB Underwriting Services Ltd.** will sell commercial insurance policies via retail brokers in the United Kingdom. In July 1999, SVB launched FUSION, an Internet-based underwriting service. . . .Shareholders in the Paris-based management consulting firm of **Cap Gemini** have approved the acquisition of the consulting arm of New York-based Ernst & Young. At a shareholders meeting, Cap Gemini investors approved the issue of 42.7 million shares of Cap Gemini stock to Ernst & Young and payment of 375 million euros ($339 million). . . .Lloyd's of London, the International Underwriting Assn. and the Lloyd's Insurance Brokers' Committee have published recommendations for **reform of the London insurance market transactions**. The key recommendations of the consultation document are the designation of a single lead underwriter for each transaction to manage the underwriting and administration process, as well as the designation of a single claims lead. Other recommendations include a restructuring of the market slip to clarify responsibilities when a contract is written; and the creation of a market standards agency to collate, verify and publish statistics. . . . Regulators are seeking comment on proposals to increase oversight of **Australian insurers' reinsurance arrangements** in the wake of heavy losses and insolvencies in 1999 by some Australian reinsurers. Under draft standards issued by Australia's financial services regulatory body, regulators would review the reinsurance arrangements of Australian insurers as well as the Australian affiliates of foreign insurers. The central proposal of the Australian Prudential Regulation Authority is a requirement for all insurers to implement a reinsurance management strategy.

Internet brings global liabilities

Web site leads to exposure in hundreds of jurisdictions

By CAROLYN ALDRED

Most companies, big and small, face new, and probably uninsured, liabilities due to the Internet, lawyers, insurers and risk managers agree.

And the risks from the headline-grabbing hackers and viruses are just a tiny fraction of the new liabilities risk managers must face.

Millions of companies that have set up Web sites have become international companies overnight, as details of their products and services now can be accessed across the globe. This potentially exposes the companies to hundreds of different jurisdictions and new liabilities.

The risks of "going global" via a Web site must be carefully managed and plans must be developed to minimize those risks, according to the London-based law firm of D.J. Freeman.

"The ease with which a Web site can be set up encourages many businesses to do so without adequately planning for the risks involved, and the global reach of the Internet exposes Web site operators to criminal and civil liability in other countries," according to the guide "Web Sites: Managing the Risks of Content Liability." "Web Sites" is one of a series of booklets on Internet liability prepared by the D.J. Freeman law firm.

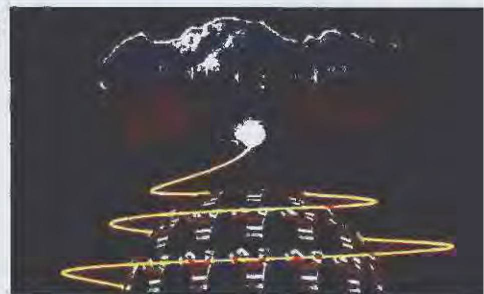
Even companies that have not yet developed their own Web sites are not immune to the liabilities associated with Internet technology.

E-mail, both internal and external, and e-commerce already have prompted litigation in Europe, Australia and the United States. And while different courts grapple with applying existing law to the new technology, a raft of new European legislation is being launched to deal specifically with the Internet and e-commerce.

In recognition of the new liabilities, the United Kingdom-based Assn. of Insurance and Risk Managers, or AIRMIC, has set up a special-interest group to focus on Internet and e-commerce liabilities, said a spokesman.

A workshop on tackling risks on the Internet also is planned for AIRMIC's annual conference, to be held in Birmingham on June 5 through 7.

"Although most people are aware that there are risks associated with e-communication, e-commerce and having a Web site, they are not sure how to fully identify and evaluate them. This situation highlights the need for risk management strategies and control systems to be implemented as soon as possible and updated on an ongoing basis," said Robin Wilkinson, product development director of the London-based risk modeling company Arium Ltd. Ms. Wilkinson will speak at the AIRMIC conference.



More companies are seeing the need for a code of practice to deal with potential Internet liabilities, said David Engel, an associate partner at the London law firm of Theodore Goddard.

But the policies "are not being drafted by the right people. They are often being drafted by (information technology) people, whereas they need input from management, human resources and legal departments and, of course, risk managers," Mr. Engel said.

The policies also need to be enforced and employees need training, he said.

Furthermore, risk managers should be looking at getting insurance to cover the liabilities

See **Internet** *on next page*

PHOTO: AFP

Corporate killing offense proposed

LONDON—The British government outlined proposals last week that will make it tougher for U.K. corporations and their directors to escape criminal charges for deaths caused by their businesses.

The Home Office proposed a new criminal offense, corporate killing, which would make a company accountable under criminal law in cases where its conduct falls "far below what can be expected in the circumstances." Corporate killing would carry maximum penalties of an unlimited fine and a remedial order to correct the cause of the accident.

A consultation paper published on May 23 proposed the new offense, as well as three others, to replace current British law on involuntary manslaughter. In announcing the proposal, Home Secretary Jack Straw acknowledged that the present law on involuntary manslaughter is "undeniably ineffective."

"It is too wide in its scope, and this has often led to problems for judges in sentencing," Mr. Straw said.

The proposals are seen as a direct response to prosecutors' inability to bring corporate manslaughter charges against rail officials over the Paddington rail crash of Oct. 5, 1999, in which 31 people died. The Law Commission, a government-funded body that examines possible changes in U.K. law, first advocated the creation of a corporate killing offense four years ago.

The proposals were welcomed by representatives of both employers and workers.

Ruth Lea, head of policy at the Institute of Directors in London, said the organization supported the proposals as "a step in the right direction." She added that it is not in the interests of business to be perceived as getting away with reckless conduct.

John Monks, general secretary of the Trades Union Congress in London, also welcomed the proposals. "It is right that those at the top of companies should take their share of the responsibility when things go wrong," he said.

—By Edwin Unsworth

E.U. gains more insurer access

China accord struck

By EDWIN UNSWORTH

BRUSSELS—European insurers have welcomed an accord between China and the European Union that paves the way for them to operate more freely behind the Great Wall and offers the prospect of further liberalization to come.

The deal, reached May 19, opens wider China's doors to E.U. trade in a number of areas, including insurance, and cleared the last obstacle in China's 14-year effort to join the World Trade Organization.

In particular, China will offer additional licenses to seven as-yet-unnamed European insurers and will bring forward by two years measures to liberalize trade. China will now liberalize its trading policy within three years of joining the WTO, rather than the five years previously agreed upon.

Les Howell, secretary general of the Paris- and Brussels-based Comite Europeen des Assurances, which represents European insurers, said that E.U. insurers are pleased with the "highly satisfactory outcome" of the talks between E.U. and Chinese officials.

Mr. Howell said the CEA is "especially pleased" with China's concession to grant seven additional licenses to European insurers. He said the choice of insurers would be up to the Chinese authorities, based "on the respective merits of those European insurance groups which have already tabled an application for a license."

He said he also wanted to underline "the very real success" of bringing forward the timetable both for foreign insurance activity in China and for the opening up of Chinese regions to insurance business.

The newly formed World Federation of

See **China** *on page 19*

It's a family (leave) feud

P.M.'s wife fights parental leave cutoff date

By SARAH VEYSEY

LONDON—Just four days before giving birth to her fourth child, Cherie Booth, the wife of U.K. Prime Minister Tony Blair, was in the High Court, challenging U.K. parental leave rules that came into force at the end of last year.

Ms. Booth, one of the United Kingdom's leading employment rights lawyers, was representing the Trades Union Congress in its legal action challenging the Department of Trade and Industry of her husband's government.

The Parental Leave Regulations incorporated the European Union's Parental Leave Directive of 1996 into U.K. law. The E.U. directive gives both the mother and father of a child the right to take 13 weeks unpaid leave from work to care for the child. This leave can be taken at any time before the child's fifth birthday.

Under the U.K. government's regulations, though, parental leave can be taken only by the parents of children born or adopted on or after Dec. 15, 1999. The TUC estimates that this restriction excludes up to 2.7 million working parents from claiming their right to parental leave.

In January, Ms. Booth provided a legal opinion to the TUC, saying that the Dec. 15 cutoff date was a breach of E.U. law.

The TUC contends that the U.K. government's Parental Leave Regulations are unlawful for two reasons. First, the TUC argues, the underpinning Parental Leave Directive, which the regulations are meant to implement, does not allow European Union member states to include such a cutoff date. Second, the TUC contends, the regulations were issued under the U.K. Employment Relations Act of 1999, which also does not permit regulations to carry cutoff dates.

In a report to the TUC, Ms. Booth wrote: "The directive lays down minimum requirements to be implemented in each of the member states in question. The member state is, of course, free to increase the protection afforded. However, the minimum requirement must be respected."

In April, the European Commission issued an official opinion against Ireland, which had also introduced a cutoff date into its parental leave regulations. The Irish government has said it is now taking steps to put the com-

See **Leave** *on page 19*

Internet

Continued from previous page

either through stand-alone policies or through additions to current coverage, he said, pointing out that the insurance market for Internet liabilities is increasing.

Lloyd's of London syndicate 33, managed by Hiscox P.L.C., is one of the market leaders in London in Internet coverage.

The syndicate started looking at providing stand-alone coverage for Internet liabilities two years ago; in June, it is launching a policy with new wording aimed at both brick-and-mortar and dot.com companies, said senior underwriter Robert Goldhawk.

The new Hiscox policy will cover:

- Third-party liabilities, including infringement of copyright, defamation, breach of privacy, misuse of information and unintentional transmission of a virus.
- First-party losses, including damage caused by hackers and business interruptions caused by viruses.
- Denial-of-service attacks, when potential clients are unable to get through to a particular site or Internet service provider.
- Web site or network damage.
- Fraud from external services.
- Employee crime.
- Human error, such as defamatory e-mail.

Interest in Internet insurance coverage has is soaring, Mr. Goldhawk said.

Companies now face a host of liabilities from the Internet, Mr. Engel said. By creating a Web site, a company becomes a publisher, and so automatically faces content liabilities, such as defamation, negligent misstatement and breach of confidence. Meanwhile, trading online brings with it another set of legal concerns, such as contractual and jurisdictional issues, Mr. Engel pointed out.

Many of these concerns can be addressed through the use of appropriate warnings to visitors to a Web site, by stating terms and conditions and the fact that trading may be restricted to certain countries, he explained.

"A prudent business needs to be aware of the legal issues in order to protect itself from unknown risks and liabilities and to exploit safely the opportunities which the Internet presents," according to the D.J. Freeman "Web Sites" booklet.

"A Web site exposes a business to the potential risk of being sued in any country where its products are sold. Your online trading conditions should attempt to manage this by specifying what law governs the contract and where disputes will be held. You may want to specify that the goods or service are only available in certain countries where consumer protection and intellectual property laws are appropriate to your product," the booklet says.

"Particularly with services such as online insurance and travel services, there may be local regulatory requirements that must be complied with. It would be advisable to review any proposed e-trading operation with your insurers, who will be able to advise whether there is any need to extend product liability or other cover," according to the D.J. Freeman booklet "Legal Issues Concerning E-Contracts."

"Because of the worldwide reach of the Internet, material contained in a Web site in any country may fall foul of the laws of any other country. If this occurs, the offended party may try bringing an action. . .in its country. Foreign courts—particularly the U.S.—have increasingly shown themselves willing to exercise jurisdiction over such actions even when (the Web site operator) and the server onto which the Web site is loaded are based outside that country," according to the "Web Sites" booklet.

"The implications for Web site operators are serious; they need to consider the effects of being sued in any country of the world," the law firm writes in the booklet. "Practically speaking, an e-commerce business should look to include clauses in its terms and conditions governing jurisdiction and choice of law in order to retain control, to the extent that this is possible, of disputes arising out of its Web site," the booklet adds.

"Web site operators should carefully consider the threat as well as the opportunity afforded by trading and make sure that they understand all of the potential legal and business risks," the booklet states.

Meanwhile, the law relating to the Internet is changing almost as fast as the technology itself, lawyers note.

In addition to recent case law in courts across the world, national governments also are grappling with new legislation covering e-commerce.

Among the current European Union directives that will affect e-commerce are:

- A directive to provide a common framework for electronic signatures. This directive was adopted by the European Council on Dec. 13, 1999, and went into effect on Jan. 19. The deadline for implementation in member states is July 19, 2001. The directive aims to create a harmonized legal framework for the use of e-signatures throughout the European Union.
- A directive on certain legal aspects of electronic commerce in the internal E.U. market. This was adopted by the European Council in early May and will go into effect as soon as the directive is published in the official journal of the European Council. The aim of the directive is to "stimulate economic growth, competitiveness and investment by removing the many legal obstacles to the internal market in online provision of electronic commerce services," said an European Council spokesman.
- A proposal for a directive on the harmonization of certain aspects of copyright and related rights in the information society. This directive is now before the European Council, according to the E.C. spokesman. It aims to adapt legislation on copyright to reflect technological developments.
- A directive on the protection of consumers in respect to distance contracts. This directive was passed in 1997 and is due to be implemented by all member states in June. It aims to harmonize legislation in all E.U. countries concerning distance contracts between consumers and suppliers, protecting consumers who make purchases by mail, telephone or fax or through electronic means. BI

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Notice of increase in payment percentages

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WALBROOK INSURANCE COMPANY LIMITED

and

EL PASO INSURANCE COMPANY LIMITED

and

LIME STREET INSURANCE COMPANY LIMITED

(formerly Louisville Insurance Company Limited)

and

MUTUAL REINSURANCE COMPANY LIMITED

("the KWELM companies")

With effect from 24 May 2000, the payment percentages have been revised as follows:

	Existing percentage	Increase	Revised percentage
Kingscroft	24%	6%	30%
Walbrook	16%	4%	20%
El Paso	26%	7%	33%
Lime Street	26%	7%	33%
Mutual	16%	4%	20%

Payment at the increased levels will commence in May 2000.

24 May 2000

C J Hughes and I D B Bond
Scheme Administrators
of the KWELM Companies

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United Kingdom
Telephone +44 (0) 20 7645 4700
Fax +44 (0) 20 7645 4777
Email: kmsl@kmsl.co.uk

LEGAL NOTICES

Notice of Meeting

KINGSCROFT INSURANCE COMPANY LIMITED

(formerly Kraft Insurance Company Limited, Dart and Kraft Insurance Company Limited, and Dart Insurance Company Limited)

and

WALBROOK INSURANCE COMPANY LIMITED

and

EL PASO INSURANCE COMPANY LIMITED

and

LIME STREET INSURANCE COMPANY LIMITED

(formerly Louisville Insurance Company Limited)

and

MUTUAL REINSURANCE COMPANY LIMITED

("the KWELM companies")

Notice is hereby given that the sixth 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 on Wednesday 28 June 2000 at Le Meridien Boston, 250 Franklin Street, Boston, MA 02110, United States of America. The Scheme Administrators' report on the conduct of the affairs of the KWELM companies for the year to 31 December 1999 shall be laid before the meeting.

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 representative to attend in their place. Forms of representation for use at the said meeting, copies of the Scheme Administrators' report and the Arrangement document incorporating the terms of the Arrangement are available on request to the Scheme Administrators at the address set out below.

24 May 2000

C J Hughes and I D B Bond,
Scheme Administrators
of the KWELM companies

Address for correspondence:
PricewaterhouseCoopers
Plumtree Court, London
EC4A 4HT, United Kingdom
Telephone +44 (0) 20 7583 5000
Fax +44 (0) 20 7212 6708
Email: kwelm@uk.pwcglobal.com

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HELP WANTED

Medical Claims Supervisor. Analyze, eval, audit & review med & pharm ins claims & related med records pursuant to contracts w/urology practice & Canadian ins companies covering Canadian visitors, consid. appropriateness of medical service, cost, usual & customary charges, avail alt proced & med & eligibility criteria, legal guidelines & ins limits re Canadian provincial, private & travel ins cov, using CDL Healthcare Systems Sftwr. M-F. 9AM-5PM, $18.50 hr. B.Sc. healthcare filed & 2 yrs exp in job or health care ind where int part of job involved similar med claims duties. Resume to Bureau of Workforce Program Support, P.O. Box 10869, Tallahassee, FL 32302-0869. RE: Job Order #FL2075787.

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INTERNATIONAL

China

Continued from page 17

Insurance Intermediaries, also Brussels-based, welcomed the deal, because "it opens up the Chinese market for the bulk of services offered by brokers".

Chris Collins, WFII chairman, said, "As insurance brokers offer services that facilitate not only economic growth but trade in all sectors, this deal is also very positive for both Chinese and foreign commercial and financial enterprises in the development of their business in China."

The Bureau International des Producteurs d'Assurances et de Reassurances, which represents European brokers, also welcomed the accord. Its chairman, Nicholas Davenport, called it a "very positive outcome for our sector."

E.U. Trade Commissioner Pascal Lamay, who led negotiations with the Chinese, said he thought the seven licenses to insurers would be granted within three months.

The European Union's breakthrough with China is credited with having helped President Clinton get the votes he needed in the House of Representatives last Wednesday for passage of the deal his administration struck with China last November granting China permanent normal trade relations status. The Senate is expected to vote on the issue in June. BI

Leave

Continued from page 17

mission's opinion into effect.

Ireland and the United Kingdom are the only members of the European Union to have introduced cut-off dates into their parental leave rules. Sweden and Italy have granted leave for the parents of children as old as eight years of age.

The High Court has not yet made a judgment on the U.K. case.

John Monks, general secretary of the TUC, said: "It was with great reluctance that the TUC agreed to go to court over the issue of parental leave. We take no pleasure from seeing the government in court, but the rights of several million working parents are at stake—they are depending on us."

Before the court hearing, a spokesman for the prime minister said, "We are implementing this directive with a balanced approach which acknowledges the particular demands on parents whilst avoiding unnecessary and unexpected costs."

A proposal has been drawn up by Ruth Kelly, a Labour member of Parliament, to grant the parents of children under the age of five up to £150 ($222) per week in paid parental leave for a maximum of 13 weeks; the proposal is being considered by Trade and Industry Secretary Stephen Byers. But employer's groups criticized the proposal, claiming it would add undue administrative responsibilities. "Having just been through the most radical overhaul of the labor market regulation in 20 years, we would be very concerned about any proposals which would increase the red-tape burden," said a spokesman for the Confederation of British Industry.

'The rights of several million workers are at state—they are depending on us,' says John Monks.

Ms. Booth gave birth to her fourth child, Leo, in London on May 20. Following raging debates in the U.K. media, Mr. Blair decided to take two weeks parental leave, temporarily handing over his duties to Deputy Prime Minister John Prescott.

Ms. Booth had expressed admiration for Finnish Prime Minister Paavo Lipponen, who recently took parental leave when his wife gave birth to a baby daughter. "I, for one, am promoting the widespread adoption of this fine example," Ms. Booth said.

In Finland, optional paid parental leave is available, for a minimum of six days to a maximum of 12 days, to be taken within 105 days of the birth of a child. During Mr. Lipponen's six-day parental leave, his government position was filled by Finance Minister Sauli Niinistoe. BI

Five OK'd to bid on Brazil reinsurer

RIO DE JANEIRO, Brazil—The Brazilian privatization authority, the Conselho Nacional Desestatizacao, will meet June 6 to determine a new date and price for the sale of a 45% stake in reinsurer IRB Brasil Resseguros S.A.

The original April 25 date for bids was postponed when auditors questioned the adequacy of a minimum asking price of 502 million reals ($270.6 million).

Five companies have been pre-approved as bidders for IRB: Munich Reinsurance Co.; Swiss Reinsurance Co.; Transatlantic Reinsurance Co.; Bradesco Seguros, a Brazilian insurer; and an investment group led by Banco Opportunity, a Brazilian bank.

The winning bidder will own 45% of the IRB and 5% will be owned by IRB's management. The remaining 50% will be owned by Brazil-based insurers.

IRB has long held a monopoly of reinsurance in Brazil.

The deregulation of the reinsurance industry in Brazil has long been anticipated by many foreign reinsurers, which are anxious to tap the potentially huge market.

—By Gavin Souter

Lloyd's broker rules change

LLOYD'S

LONDON—Lloyd's of London will allow foreign brokers and other non-Lloyd's brokers in the United Kingdom direct access to the Lloyd's market beginning January 2001.

The action will end the centuries-old practice of allowing only London-based brokers regulated by Lloyd's access to underwriters in the market.

Under the new rules, all U.K. brokers regulated by the industry-backed regulator, the General Insurance Standards Council, who also meet a set of Lloyd's accreditation standards, will be allowed to place business in Lloyd's. The Lloyd's accreditation standards will cover such issues as information technology, to ensure that brokers have compatible systems, and claims, to ensure that brokers' claims processing systems meet Lloyd's requirements.

And, as of July 3, all current Lloyd's brokers will have to become members of the GISC, effectively transferring most of the regulation of Lloyd's brokers to the new body.

Brokers in other countries will be able to access Lloyd's if their home country regulations are approved by Lloyd's.

The move to open Lloyd's to other brokers has been planned for several years, but it was not implemented due to an agreement with Lloyd's brokers in 1996 that allowed them continued exclusive access to the market for five years in return for their financial contributions to the Lloyd's reconstruction and renewal project.

—By Gavin Souter

Hines

Continued from page 3

specialist at Aon Corp.'s Aon Net Information Security group in Owings Mill, Md., cautioned that the Internet brings some significant new twists.

"There are some very big differences," he said. "On the Internet, it is very easy for one person to make an attack. . .and show it to the entire world."

And, so-called Trojan horse data attacks also pose a significant new threat, the security expert said.

"The fact that there are databases online, this presents a real risk because the data is the crown jewel of the organization," Mr. Harris said. And although data theft is a significant problem, alteration of that data may be even worse, because "how do you know which data has been altered and how much," he said.

And, Mr. Harris noted, although most attention is given to Internet threats originating outside the company, "the biggest risk that we face is our employees, the insiders, the trusted people."

Discussing insurance coverage for e-business losses, Richard P. Reed, a vp at Chubb & Son Inc. in Warren, N.J., noted that, generally, existing policies would respond to some extent.

In the liability area, most exposures could be covered through endorsements grafted to the general liability policy, Mr. Reed said. On the property side, however, some major problems exist, he said.

"A traditional crime policy is really intended to cover employee theft, but it is very limited in what it addresses," he said. In addition, a significant portion of the loss may be from damage done by the employee hacker. "And as long as the standard in the property policy is damage to tangible property, there is some coverage," Mr. Reed said.

But, he noted, while existing policies provide some coverage, there are also significant gaps, some of which have not been addressed.

"The industry has developed some responses, but they're not holistic responses," Mr. Reed said. In particular, he said, they fail to address the value of data that is lost or damaged. Such exposures must be dealt with, Mr. Reed said, though he acknowledged the difficulty of valuing that asset.

Mr. Reed also noted that Chubb has looked at including in its e-business policies some form of extra expense coverage, which is aimed at getting customers back in business quickly after an e-business loss.

"An extra expense component of a property policy is critical," he said.

John A. Childers, a vp with Johnson & Bell Ltd. in Chicago who practices defense law, noted that business has only begun to figure out what the losses and litigation are going to be from e-business. As a result, he said, its difficult to determine the form that the new insurance policies should take.

"You're trying to look at traditional legal principles, and you don't know if they apply," he said.

Mr. Childers cited e-mail as a source of particular concern.

"The problem with e-mail is that most companies, I think, are deficient in training people in the use of e-mail," he said.

"To the extent that your intranet is being used by external personnel—contractors—information they consider proprietary can be misappropriated, creating potential liability for you," Mr. Childers said.

And, he noted, "people are getting into the financial databases and reproducing that information," creating potential liabilities.

"From a security perspective, my biggest concern and my biggest nightmare is e-mail," agreed Mr. Harris. He said the impact of the recent Love Bug virus would have been even greater had it been distributed around Valentine's Day, predicting that "if the bad guys are smart," there will be even more damaging attacks around Christmas or New Year's, when e-mail users are expecting to receive numerous greetings.

The biggest solution to the e-mail problem is education, Mr. Harris suggested.

And, Mr. Childers said, "Part of the education process is driving into people the knowledge that somebody is reading your e-mail. People need to realize that they may be saying things in e-mail that they don't want to share with other people."

Overall, Mr. Harris suggested that the companies need to view e-business security as a process, rather than a one-time fix. "Security is a process. It's dynamic. It's ongoing," he said.

In terms of the Internet's benefits for risk managers, Ms. Rogers suggested there are some "great research tools out there."

But, she added, "as far as communicating with our brokers, some do a great job, some don't do quite as well."

She noted that all Sears insurance programs are multiyear programs that last renewed in 1998, so she hasn't yet used the Internet to renew coverage. But, she suggested, she doesn't see the Internet replacing brokers.

"I think we can do a lot of the deal on the Internet," Ms. Rogers said. But complex covers will still require sitting down and working out the details face to face, she said.

Mr. Reed offered a similar view.

"One of the greatest things the Internet has brought is timely information that really facilitates the whole underwriting process," he said, adding that he believes online communication has liberated people's time and made them more efficient.

"The final thing is the actual transactions," he said. "And I think there are a number of areas where it has actually started to take off." But, Mr. Reed said, coverages with more "subtlety," such as directors and officers or product liability, will be less likely to be placed online.

The Hines Symposium honors the late Harold H. Hines Jr., former president and chief executive officer of Rollins Burdick Hunter Co., now Aon Group Inc.

The event was presented by the Chicago chapter of the Risk & Insurance Management Society Inc., the Insurance School of Chicago and *Business Insurance*. The discussion was moderated by Kathryn J. McIntyre, publisher and editorial director of *Business Insurance*. BI

Hines Symposium panelists included, from top: John A. Childers, vp of Johnson & Bell Ltd.; Daniel M. Harris, information security specialist at Aon Corp.'s Aon Net Information Security; and Pamela Rogers, director of risk management for Sears, Roebuck & Co. The discussion's moderator was Kathryn J. McIntyre, publisher and editorial director of *Business Insurance*.

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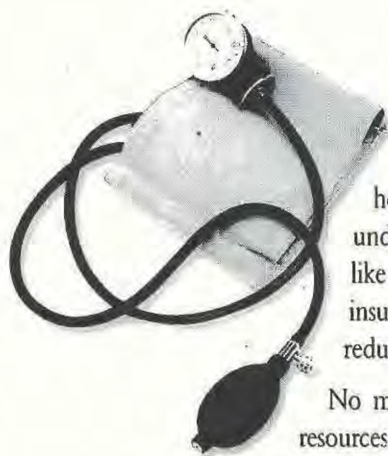
New Math for Healthcare Providers



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Commentary

Loosening the ties that bind

Like many managers seeking inexpensive but valuable perks with which to satisfy employees, I keep returning, like a moth to a porch light, to the idea of allowing more-casual attire in the office.

It seems as if it would be such a simple decision to make, but I agonize over this as much as an individual in a burning building agonizes over whether jumping out of a 20th-story window would be a better option.

I know that, by now, I'd hardly be breaking any new ground in the world of work; in fact, by some estimates, the majority of American businesses have made this shift, ditching neckties, hosiery and stifling suits for more-comfortable and relaxed attire. Levi Strauss & Co., which has been at the forefront of pushing for a more-casual business dress code—for obvious reasons—estimated that at least 75% of U.S. businesses now have a policy of casual attire in the office, up from only 14% in 1992.

Many companies have promoted this policy as an employee benefit. I think calling casual attire a benefit is a bit of a stretch but, hey, if a company can sell that line to its employees, go for it. It's a far less expensive perk than defined benefit pensions, transplant networks or Christmas bonuses.

Once I decide to take the plunge, the next step is to determine if I should set some boundaries. Do I leave it to my co-workers to use their best judgment and interpret the new policy for themselves, with the possibility that I will regret that decision later, or do I take the risk of sounding like the fashion police? Ultimately, I opt for the latter, resolving that making bad fashion policy is less of a problem than arriving at work one day to find someone in pajamas.

Paul D. Winston

After deciding to make this big change, I find myself studying the clothing of everyone around me. It becomes a game for me to try to guess, based on their attire, whether these people work in offices like mine, make their living serving double skim lattes, or are professional rodeo clowns.

Scouring the Internet for information on dress code policies, I find multiple sites that strongly urge employers to set clear written boundaries for what is and is not allowed under a casual-attire policy. If casual clothing is an employee benefit, then these written policies must represent the managed care approach, a sort of sartorial pre-admission review.

I read some of these policy statements, but that does little to quell the unease I have over taking this step. Surely my co-workers know the following would be inappropriate for the office—wouldn't they?—without me spelling it out: Spandex, T-shirts with profanity, T-shirts with nude or semi-nude pictures, T-shirts with suggestive cartoons, ripped clothing, baggy pants worn low to reveal underwear (or no underwear), jogging or warm-up suits, see-through clothing, flip-flops, tank tops and gang attire, to name a few examples seen in online guides.

I decide to bypass the list of fashion disasters and focus on more-mundane issues, such as whether to allow jeans in the office. And how about T-shirts?

Jeans can be risky. Sure, they can look neat, but they also can look sloppy. Having spent my childhood in jeans that were always about two inches too short ("Hey Winston, when's the flood coming?"), and ridden with holes in the knees, frayed hems and ball-point-pen marks, I'm prejudiced, I guess.

But while there is a wide universe of trouser fashions out there, for some reason, the prevailing alternative to jeans is tan khaki pants. Prohibiting the wearing of jeans would limit the unimaginative solely to tan khakis, and this somehow seems a worse option.

Tan khakis are the fashion equivalent of vanilla pudding. It would be as if I'd issued a directive to dress as blandly and homogeneously as possible. I imagine everyone arriving for work clad in Dockers and denim shirts, looking like a mini-convention of accounting software salespeople or a gaggle of T.G.I. Friday's waitpersons.

I don't want to be responsible for the Dilbertization of the office any more than is necessary, so I decide that jeans are in.

I draw a line in the sand, though, at T-shirts. All too often, T-shirts serve as ads for individuals' political, sporting, television, brewed and distilled beverage, religious and musical preferences. Proselytizing for Metallica is best done outside the workplace.

Our new policy is set to take effect today. I am looking forward to seeing if one co-worker makes good on his threat to show up resplendent in a "full Cleveland," another in a kilt and third in a thong ("you didn't *say* thongs were banned").

As for me, I'll be the one wearing the pudding pants and the denim shirt.

Editor Paul D. Winston's commentary appears fortnightly and on www.businessinsurance.com. He can be reached at pwinston@crain.com.

Court

Continued from page 2

decided to resolve the conflict" over whether the Federal Arbitration Act applies to employment contracts, said Sussan Mahallati Kysela, labor and employment counsel for the National Chamber Litigation Center Inc., which is the legal arm of the U.S. Chamber of Commerce in Washington.

The case began when Saint Clair Adams filed a lawsuit against Circuit City in state court in November 1997, alleging that he had been the victim of workplace harassment at a Santa Rosa, Calif., Circuit City store. Mr. Adams' suit was based on the California Fair Employment and Housing Act.

But Mr. Adams had signed a "dispute resolution agreement" as part of his job application two years earlier. The agreement required that employees submit all claims and disputes to mutually agreeable binding arbitration. Circuit City sought to have the arbitration agreement enforced, and a U.S. court granted summary judgment in the employer's favor in May 1998. Mr. Adams appealed, and the appeals court panel—citing the 9th Circuit's May 1999 decision in *Craft vs. Campbell Soup Co.*—held that the Federal Arbitration Act does not apply to any employment or labor contracts.

Circuit City appealed to the Supreme Court. In its brief seeking review, the employer noted that the 9th Circuit's *Craft* decision was "contrary to every other federal appellate court" by holding that the act's exemption "must be read broadly to exclude coverage of all contracts of employment."

'It's fair to say the act did not contemplate anything like current anti-discrimination law,' says attorney William Schaller.

Instead, the brief holds, looking at the law, the "more logical view" of the act's scope is that "Congress had in mind specific transportation workers for whom special arbitration legislation already existed."

The brief for Mr. Adams specifically disputes that interpretation, noting that Congress did not view its authority over employment relationships very broadly at all 75 years ago. "Viewed from the perspective of 1925, the decision by Congress" that Circuit City holds—"limiting FAA's coverage only to those employment contracts *least* evidently within the reach of federal authority—would have been a curious choice indeed," the brief notes.

Outside observers say much is riding on the high court's decision to accept the Circuit City case. The Supreme Court last looked at the Federal Arbitration Act in 1991 in *Gilmer vs. Interstate/Johnson*, but it did not elaborate on the "interplay" between the Federal Arbitration Act and anti-discrimination laws, said William Schaller, a partner in the Chicago law firm of Baker & McKenzie.

"The more precise question is there's a provision in the FAA's Section 1 that seems to exempt from its scope employees, but a lot of the cases have dealt with employees who actually work in interstate commerce," said Mr. Schaller, who noted that lower courts have tended to view the exemption very narrowly.

If the high court agrees with the 9th Circuit, the decision "might have a profound effect in limiting the availability of arbitration," Mr. Schaller said. But, he said, "it's vastly more likely" that the justices will continue to read the exemption narrowly and allow the Federal Arbitration Act to apply to cases brought under federal anti-discrimination laws.

Still, he said,"I think it's fair to say that, at the time the act was written, it did not contemplate anything like current anti-discrimination law." BI

Reliance

Continued from page 1

the deal if it finds problems at Reliance that it does not want to address, Mr. Simpson said.

Also, the deal is not likely to close until after the insurer's August debt payment is due, so interim financing measures will have to be agreed upon, he said.

Under the terms of the proposed deal, Reliance stockholders will receive 0.11059346 of a share of Leucadia for each Reliance share, or about $2.55 a share. The total purchase price will be about $318 million, based on Thursday closing prices.

Following the announcement on Friday morning, Leucadia closed at $25.94 on Friday, up more than 11%; Reliance closed at $2.56, up from $2.38.

The largest portion of Reliance shares is held by the company's flamboyant founder and longtime senior executive, Saul Steinberg, who owns 31.3% of the 125 million shares of outstanding stock. Mr. Steinberg recently resigned as chief executive officer, but he remains chairman of Reliance. He is not expected to have an executive role at the company after the sale.

Mr. Steinberg's brother, Robert Steinberg, owns 10.3% of the stock. He was moved out of his executive position at Reliance last year.

The deal is subject to a vote from Reliance stockholders and the completion of the due diligence review of Reliance by Leucadia. If a higher offer should emerge for and be accepted by Reliance prior to the closure of the deal, Leucadia will be paid a $12.5 million breakup fee.

In addition to the breakup fee, Leucadia could make substantially more money out of the deal if a higher bidder emerges. Under the terms of the deal, Reliance has granted Leucadia a stock option for 9.9% of the shares, at $2.50 a share, and other unnamed shareholders have agreed to sell another 33% of the stock to Leucadia, also for $2.50 a share if a higher bid is accepted.

But the appearance of another bidder for Reliance seems unlikely, analysts say.

Reliance has been shopped to numerous potential buyers over the past several months, and none was interested in taking on the whole company, said one stock analyst.

The proposed sale comes after a turbulent period for Reliance. The insurer was a large cedant of business to the Unicover Managers Inc. reinsurance pool that unwound last year. Unicover liabilities and other poor-performing business caused Reliance to increase loss reserves by $227.2 million in the second quarter of 1999, which contributed to a $156.9 million loss for the quarter.

Since last fall, Reliance has made management changes, suffered ratings downgrades and shopped itself to buyers.

In 1999, Reliance lost $310.5 million, including the cost of a $100 million settlement of its Unicover liabilities, announced in January.

In 1999, Reliance's share price tumbled from a high of $13.69 to $5.94 at year-end. Reliance stock was at its peak of $18.94 in April 1998.

Since last fall, Reliance has made management changes, suffered ratings downgrades and shopped its various units and the group as a whole to potential buyers.

In March, Travelers Property Casualty Corp. agreed to buy its most profitable unit, Reliance Surety, for $580 million (*BI*, March 6). The deal is expected to close soon. But until last Friday, no takers had stepped forward with offers for the entire company.

Reliance has continued to have operating problems in 2000. In the first quarter, it reported profits of $145.5 million, but that was mainly due to the sale of assets. The insurer actually had an operating loss of $36.5 million.

Leucadia is the holding company for diverse businesses, including insurers, a bank, a plastics manufacturer, wineries, a gold mine and real estate companies.

Its president is Joseph S. Steinberg, who is not related to the Messrs. Steinberg at Reliance. In terms of assets, Leucadia is much smaller than Reliance (see chart, page 1), but that is not surprising, given that insurance is a small part of its current holdings, said Mr. Simpson of Best. Insurers build up substantial assets due to the accumulation of loss reserves, he explained.

Leucadia specializes in buying poorly performing companies and trying to turn them around. It has had a mixed record with its insurance investments. In 1991, it bought Colonial Penn Group and subsequently sold it to GE Capital Corp. for a substantial profit.

In 1992, it bought Empire Insurance Co. in New York; that company is still struggling due to poorly performing automobile business.

According to SEC filings, Leucadia's insurance operation, which mainly consists of Empire, posted a $1.46 million loss in the first quarter of 2000. In the first quarter, Empire dropped much of its unprofitable business and fired 122 people, or about 23% of its staff, SEC filings say.

The sale of Reliance to Leucadia should help turn Reliance around, Saul Steinberg said in a statement.

"Leucadia has a strong financial position, extensive experience in the insurance industry and an exemplary track record of performing on behalf of its shareholders. Reliance will be a much stronger company and a more-effective competitor in the marketplace," he said.

Executives at Reliance and Leucadia would not comment further on the deal. However, in a memorandum to Reliance staff, Mr. Van Gilder and Reliance's chief executive officer, George Baker, said: "We believe this transaction will be good news for our producers and customers, and this should mean that our products and services will be more favorably received in our markets. Our initiatives to build a more market-focused and productive company will proceed according to plan, and our current management team will stay in place." BI

Creditors

Continued from page 1

protected from creditors. Initially, legislators, as part of the bankruptcy measure, proposed that this same protection be provided to non-ERISA pension plans, including 457 plans, which cover employees working for state and local governments, and certain types of 403(b) plans, which cover employees working for tax-exempt organizations, such as colleges and universities.

Legislators later, however, floated various proposals to remove the protection ERISA offers. Under one proposal, employees would have been allowed to waive this ERISA protection. Benefit lobbyists feared that creditors would have exploited this by inserting "boiler plate" language in loan agreements that would have caused employees to unknowingly waive the ERISA protection.

A succeeding proposal would have established a sliding scale in which the amount of pension assets protected from a bankrupt employee's creditors would have been based on an employee's age. The scale would have ranged from $250,000 for a 21-year-old to $1 million for a 65-year-old employee.

Congressional backers of a cap said individuals shouldn't be able to shield assets in retirement plans while their creditors were not paid.

"The issue is whether people who file for bankruptcy should be able to shield assets in retirement accounts at the direct expense of their creditors," said Sen. Charles Grassley, R-Iowa.

'This could be the first step in the chipping away of the security of retirement plan assets,' says Dick Prey.

"Mom-and-pop small businesses shouldn't be forced to absorb financial losses while their debtors get to keep a substantial amount of money simply because that money is in a retirement account," he added.

Pension experts said federal restrictions make it impossible for individuals to shield vast sums in employer-provided pension plans. Currently, for example, the maximum annual deferral employees can make to 401(k) plans is $10,500.

"The likelihood of an average pension plan participant being able to stash away large sums of money in a 401(k) plan is implausible," wrote Dick Prey, executive vp at The Principal Financial Group in Des Moines in a letter to Sen. Grassley.

From a public policy perspective, not shielding pension benefits from creditors was a "chilling" prospect, said James Delaplane, vp-retirement policy at the Assn. of Private Pension & Welfare Plans in Washington.

"What employer would want to establish a pension plan it knew that one day it would have to deal with bankruptcy courts?" he asked.

At the same time, giving creditors the right to seize employees' pension benefits is totally inconsistent with encouraging individuals to save for their retirement, Mr. Delaplane said.

Apparently, these arguments have had an impact: under the latest proposal, only assets in IRAs and only assets exceeding $1 million would not be protected from bankrupt individuals' creditors.

While an improvement from earlier proposals, benefit experts worry about the precedent that could be set.

"This could be the first step in the chipping away of the security of retirement plan assets," Mr. Prey said.

"It is still bad retirement policy," added the ACLI's Ms. Arnett. BI

Parity

Continued from page 3

higher deductibles and copayments for mental health care services than those used for other medical treatments. The federal law also allows plans to cap the number of outpatient visits and inpatient visits allowed under mental benefits, even if there are no comparable limits for other medical benefits.

By contrast, the new Kentucky law requires full parity between mental health care and substance abuse benefits and other medical benefits.

"This eases the discrimination the mentally ill have suffered," said Sheila Schuster, executive director of the Kentucky Psychological Assn. in Louisville.

The new Kentucky law, which does not apply to employers with fewer than 50 workers, goes into effect July 15.

The Massachusetts law is not quite as far reaching. It mandates complete parity for mental health care coverage of severe biologically based illnesses, including schizophrenia and bipolar disorder. On the other hand, the law allows group health plans to cap the number of outpatient visits to 24 per year and number of inpatient days to 60 annually for other psychological problems.

The Massachusetts law generally takes effect on Jan. 1, 2001. Employers with fewer than 50 employees, however, do not have to comply until Jan. 1, 2002.

The New Mexico law, which goes into effect on July 1, also mandates total parity between mental health care benefits and other medical benefits.

'Ways are being found around the law. . . . That's why I believe it is time for change,' says Sen. Pete Domenici.

The law does, however, allow employers whose costs increase because of the parity mandate to choose from several options to mitigate the cost impact.

For example, employers with at least 50 employees whose health care costs increase by more than 2.5% as a result of upgrading their mental health care benefits can do one of the following:

- Pay the full premium increase.
- Share with employees the cost of the increased premium that exceeds the 2.5% threshold.
- Reduce coverage to cut the premium increase to no more than 2.5%. Benefits, however, could not be cut to a level below what the employer offered prior to the new law.
- Seek permission from regulators to not increase benefits. This would require demonstrating to the satisfaction of the state's Insurance Department that the amount of the premium increase exceeding 2.5% is due exclusively to the mental health benefit mandate.

Meanwhile, the authors of the 1996 federal parity law are urging that that statute be expanded.

For example, Sen. Pete Domenici, R-N.M., who has introduced legislation that would mandate complete parity for all biologically based mental disorders, says the 1996 law was a good start but is not working as intended.

"Ways are being found around the law by placing limits on the number of covered hospital days and outpatient visits. That is why I believe it is time for change," he said.

In fact, a recent U.S. General Accounting Office report found that most employers that amended their health care plans to eliminate discriminatory annual and lifetime dollar caps added new restrictions for mental health care coverage, such as limits on the number of outpatient visits and inpatient days they would cover (*BI*, May 22).

The federal law—unless Congress takes action, as is almost certain—expires on Sept. 30, 2001. BI

Court upholds airbag defense

WASHINGTON—Federal regulations that required automakers to install airbags in some, but not all, 1987 model cars pre-empts any product liability suits brought under state law that allege automakers were negligent for failing to install the airbags in all automobiles, the Supreme Court ruled by a 5-to-4 margin last week.

The case, *Alexis Geier et al. vs. American Honda Motor Co. Inc.*, focused solely on airbags. Ms. Geier suffered injuries when her 1987 Honda Accord—a car that was not legally required to have airbags—struck a tree. She and her parents sued American Honda under District of Columbia tort law, claiming that Honda had designed the car negligently and defectively because it didn't include an airbag.

Both a district court and appeals court rejected Ms. Geier's suit, holding that both the National Traffic and Motor Vehicle Safety Act of 1966 and the 1984 federal motor vehicle safety standard governing the installation of airbags in some cars provided automakers with immunity from such suits. Ms. Geier appealed, noting that state courts were divided on the issue of federal pre-emption of state tort laws in such cases.

Writing for the narrow majority, Associate Justice Stephen Breyer held that suit actually conflicted with the standard and the 1966 act. The standard was not a minimum standard; rather, it was a way to provide manufacturers with a range of choices to implement passive restraint systems, he wrote.

The high court last week also let stand a 1999 California Supreme Court ruling, *Oscar Aguilar vs. Avis Rent A Car System Inc.*, that barred an Avis supervisor from making any derogatory racial or ethnic remarks in the workplace and charged Avis with monitoring his compliance with the gag order (*BI*, Aug. 9, 1999). Attorneys had said the case not only raises constitutional free-speech issues but also creates daunting, if not insurmountable, enforcement problems for employers, as well as a potential exposure to penalties.

—*By Mark A. Hofmann*

Updates

Doctor antitrust bill postponed

Continued from page 2

The House had been expected to vote on the Quality Health Care Coalition Act last week, but GOP leadership withdrew the measure from consideration Thursday after the Rules Committee failed to set a rule governing the terms of floor debate on the measure. At a Capitol Hill press conference on Friday, Rep. Campbell said that he had been assured by House Speaker J. Dennis Hastert, R-Ill., that the bill would be voted on in June. Rep. Campbell noted, however, that the speaker has promised action on the bill twice before.

Employers and insurers, as well as the Clinton administration, oppose the measure, which they claim would allow doctors to act as cartels. The American Medical Assn. says the measure is necessary to allow doctors to be effective advocates for their patients.

Bill to curb OSHA faces veto

WASHINGTON—An appropriations bill that would deny the Occupational Safety and Health Administration funds to promulgate its proposed ergonomics standard will face a presidential veto, Labor Secretary Alexis Herman warned last week.

The full House of Representatives still must pass the measure, which was approved by the Appropriations Committee.

Ms. Herman called the bill "unacceptable' in a written statement issued after the committee's vote. She reiterated President Clinton's threat to veto the measure, which also would cut funds for worker training.

Chevron loses ADA case

SAN FRANCISCO—Employers cannot use the Americans with Disabilities Act to bar disabled employees from jobs that pose a direct threat to their own health or safety, according to a federal appeals court.

A three-judge panel for the 9th U.S. Circuit Court of Appeals held in *Mario Echazabal vs. Chevron USA Inc.* that under the ADA, employers can require that employees not pose a significant risk to the health or safety of other individuals in the workplace.

But, "it does not permit employers to shut disabled individuals out of jobs on the ground that, by working in the jobs at issue, they may put their own health or safety at risk," said the May 23 decision, which overturns a lower court decision dismissing the case against San Francisco-based Chevron.

The case began when Mario Echazabal was denied a position in a coker unit at Chevron's El Segundo, Calif., oil refinery after a pre-employment physical exam indicated there was a risk his liver would be damaged. Chevron also asked that the maintenance contractor for whom Mr. Eschazabal was already working at the plant place him in a position that eliminated his exposure to solvents and chemicals. As a result, he was no longer permitted to work at the plant, said the decision.

Dems clarify employer liability

WASHINGTON—Two key Democratic lawmakers have attempted to clarify the circumstances under which employers could be sued for denying care under patient rights legislation currently being worked out by a House/Senate conference committee.

Sen. Edward Kennedy, D-Mass., and Rep. John Dingell, D-Mich., wrote to the chairman of the conference committee—Sen. Don Nickles, R-Okla.—last week in an attempt to reach agreement on the liability question and other outstanding issues. In their letter, the two lawmakers proposed to change the House bill's employer liability provision. They said their changes would "clarify that an employer may be sued only if the employer makes a decision denying a specific claim and that decision results in the injury or death of the patient."

Briefly noted

CNA Financial Corp.'s Continental Casualty Co. unit has withdrawn its tender offer for the roughly 38% of **CNA Surety Corp.**'s stock that it does not already own. CNA cited the rise in CNA Surety's share price following its March offer of $13 per share, which at the time was a 17.4% premium over the surety company's average price for the preceding 30 days. CNA Surety shares fell 17% on Friday to close at $11.63 . . .Rep. Bill Thomas, R-Calif., and Sen. Ron Wyden, D-Ore., said last week they would work together to develop a bipartisan measure to expand **Medicare to cover prescription drug costs**. . . .The U.S. House of Representatives will pass the Portman-Cardin **pension reform package** again this year, Rep. Roy Blunt, R-Mo., told the ERISA Industry Committee's 2000 Spring Benefits Conference in Washington on Tuesday. But Rep. Blunt, the House's chief deputy whip and a longtime supporter of employer-sponsored retirement programs, said he did not know whether the Senate would take up the measure. . . .**Frank J. Coyne**, president of the Insurance Services Office Inc., will take on the additional title of chief executive officer on July 1. He succeeds Frank R. Marcon, who will remain chairman of New York-based ISO. . . .The California Insurance Department is seeking proposals from insurers that wish to take over the business of insolvent units of **Superior National Insurance Group Inc.** California regulators are soliciting bids to take over assets and associated liabilities on policies issued by Superior National units on or after April 5. Proposals must also provide for third-party administration of claims runoff on Superior National policies written before April 5. . . .The Insurance Services Office Inc.'s Property Claim Services unit estimates that the May wild fires that ravaged **Los Alamos, N.M.**, and the surrounding area caused about $70 million in insured property damage. Insurers anticipate receiving more than 6,000 claims from the conflagration.

FTR FOR THE RECORD

Excerpts from *BI*'s Daily Online Updates, May 22-26, 2000

NORTHRIDGE CLAIMS BILL A bill that would reopen for one year a claims filing period for damage blamed on the 1994 Northridge earthquake cleared the California Senate last week and is headed to the state Assembly. The National Assn. of Independent Insurers opposes the bill, which its members maintain would "open the floodgates to fraud." S.B. 1899 also would place insurance companies in the difficult position of trying to determine whether new damage claims really were the fault of an earthquake that occurred six years ago, the NAII testified before California lawmakers. In other action, the California Senate Constitution Amendments Committee voted down a measure to give voters the opportunity to change the office of insurance commissioner to an appointed from an elected position. As a result, the proposal will not appear on the Nov. 7 ballot.

SPEEDWAY ACCIDENT PROBED Investigators are focusing on corroded steel cables located inside precast concrete as they seek a cause for the collapse of an 80-foot span of a pedestrian bridge earlier this month at Lowe's Motor Speedway. The collapse of a section of the 320-foot long walkway that crossed a highway between the Concord, N.C., race track and parking areas injured more than 100 people exiting a NASCAR race. The race facility is owned by Harrisburg, N.C.-based Speedway Motorsports Inc. Speedway Motorsports said in a statement that the bridge had been built to both state and federal transportation department regulations. Meanwhile, North Carolina transportation officials have said they will begin inspecting privately owned pedestrian bridges. Speedway Motorsports officials did not return phone calls seeking comment. Industry sources, however, said the company likely has liability coverage for such incidents through a spectator participant liability policy, a far-ranging general liability policy specific to the motorsports industry, placed through Fort Wayne, Ind.-based K&K Insurance Co. K&K officials declined to comment on the matter, as it remains under investigation.

PHOTO: KRT

SALVAGE REQUEST WITHDRAWN Lloyd's of London will not seek to salvage insured jewels and other valuables from the ocean floor below the crash site of Swissair Flight 111, which went down off Nova Scotia in September 1998. The clarification of its intent follows an outcry from some families of the 229 victims killed in the crash, who feared that Lloyd's plan to send divers to search the site would disturb the victims' resting place. Lloyd's had applied to Canadian authorities for a license to obtain exclusive salvage rights in the crash area. The application was made only as a precautionary measure to prevent speculators from diving at the site in search of valuables that had been insured by Lloyd's, a Lloyd's statement said.

FRAUD SENTENCING A federal judge has sentenced a former senior executive of broker Sedgwick James Inc. to three years probation for allegedly helping two Arkansas officials divert money from a workers compensation self-insurance program. William Charles Thomas, a retired top executive in the Little Rock, Ark., office of Sedgwick, pleaded guilty in February to a single mail fraud charge stemming from a scheme to funnel $226,992 from a workers comp program covering the Arkansas School Boards Assn. Prosecutors charged that Sedgwick—since acquired by Marsh Inc.—won an administration contract for the self-insurance program in 1994 with the help of inside information provided by former state Sen. Nick Wilson. Mr. Thomas, they charged, then used public school funds to pay off Mr. Wilson, who in turn split the money with Burton Elliott, a state Education Department director. Mr. Wilson pleaded guilty to a racketeering charge in March; charges against Mr. Elliott were dropped in return for his cooperation. Mr. Thomas must serve six months of his sentence at a halfway house and six months in home detention, confirmed his Little Rock lawyer, Rita Looney. He was also fined $20,000.

ONLINE DERIVATIVES Swiss Reinsurance Co. has begun online sales of weather derivative products aimed at utilities, oil and gas distributors and others needing to hedge their exposure to fluctuating temperatures. The Swiss Re put and call options use heating degree days and cooling degree days as the basis for indices that show how much daily average temperatures in a given period deviate from a threshold of 65 degrees Fahrenheit in the United States or 18 degrees Celsius in Canada and Europe. The indices show how much energy is needed to heat or cool a room to a comfortable level. In exchange for a premium, a heating degree day put, for example, would then provide a payment for each degree day the underlying index falls below the option's strike price. The products can be used by power utilities, heating oil companies and gas distributors to hedge the risk of lost sales resulting from cooler-than-expected summers—when air conditioning use declines—or warmer-than-expected winters, when heating demand falls, the reinsurer notes. Swiss Re is offering the products through ELRiX, an electronic risk exchange on its Web site at www.swissre.com.

E-COMMERCE COVER ONLINE Marsh Inc. is offering an e-commerce security assessment and quotes for up $10 million in limits in related insurance coverage over the Internet. The service will be offered through a dedicated Web site, www.netsecuresite.com, and quotes will usually be available within a week, said Emily Q. Freeman, practice leader for e-Business Risk Solutions at Marsh Inc. in San Francisco. Under the system, risk managers can register on the site, answer 67 multiple choice questions on e-commerce security and receive an assessment of their exposure. Then, if they wish, they can download a coverage application and submit it to the insurers, which are Fidelity & Deposit Corp., a unit of Zurich Financial Services Group Inc.; and underwriters at Lloyd's of London. Submissions for coverage with limits up to $200 million also can be done through the Web site, but the insurers will likely require additional underwriting information, Ms. Freeman said. The product includes coverage for loss of intellectual property; loss of income due to network disruptions; theft of credit card information; third-party financial losses associated with computerized business; breach of privacy; and Web-related defamation, copyright infringement and false advertising.

BRIEFLY NOTED California Gov. Gray Davis' last week vetoed legislation that would have extended **family leave benefits to domestic partners.** The California Chamber of Commerce and other business interests had opposed S.B. 118, claiming it would be too costly and difficult for employers to manage. . . .PricewaterhouseCoopers' Global Human Resources Solutions practice has changed its name to **UNIFI Network.** The new name reflects the New York-based firm's new focus on delivering services via the Internet, the company said. The fourth-largest benefit consultant, according to *Business Insurance*, is under Global Business Leader Reed Keller. . . .A.M. Best Co. affirmed its A+ financial strength rating for Paris-based **SCOR S.A.** BI

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

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BI Industry Stock Report MAY 22, 2000, THROUGH MAY 26, 2000

BROKERS

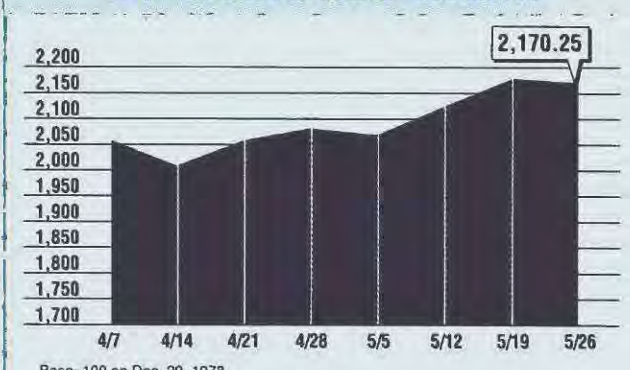
Company	Exchange	Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
Aon Corp.	NYS	35.00	6.06	-12.50	46.41	20.69	3404
Clark Bardes Holdings	NDQ	16.69	4.30	16.09	21.00	11.63	63
E.W. Blanch Holdings Inc.	NYS	24.13	-2.53	-60.61	71.75	16.56	753
Gallagher Arthur J. & Co.	NYS	39.06	2.80	20.66	39.50	23.06	1005
Hilb, Rogal & Hamilton	NYS	30.88	2.07	9.29	31.00	18.25	224
Kaye Group Inc.	NDQ	7.00	0.00	-16.42	11.88	5.00	0
Marsh & McLennan	NYS	107.88	3.29	12.74	111.38	61.75	3552
Brown & Brown	NYS	45.38	3.57	18.43	45.38	30.75	75
BROKERS	AVERAGE		1.53	-2.65			

INSURERS/REINSURERS

Company	Exchange	Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
ACE Ltd.	NYS	26.19	-3.68	56.93	35.25	14.06	7306
Accel International Corp.	NDQ	0.69	-11.01	-31.30	2.56	0.50	111
Acceptance Insurance Cos.	NYS	4.88	20.00	-15.22	15.94	2.75	211
AEGON N.V.	NYS	73.63	-0.25	-22.91	98.25	63.00	326
Aetna Life & Casualty	NYS	64.06	3.85	14.78	99.88	38.50	6207
AFLAC Inc.	NYS	50.88	4.76	7.81	54.69	33.56	3544
Allmerica Financial Corp.	NYS	58.88	1.51	5.84	64.81	35.06	979
Allstate Corp.	NYS	26.81	0.23	11.43	40.75	17.19	20931
Ambac Financial Group	NYS	51.50	5.10	-1.32	63.00	38.88	1522
American Financial Group	NYS	26.94	2.38	2.13	36.81	18.38	307
American General	NYS	62.69	5.14	-17.38	82.19	45.63	4892
American Intl Group	NYS	113.56	-2.42	5.03	123.94	78.56	16360
American Safety Insurance	NYS	4.50	0.00	-30.77	10.00	3.75	122
Argonaut Group	NDQ	18.13	-2.36	-8.81	27.94	16.56	150
AXA-UAP Group	NYS	70.50	6.82	-0.70	79.94	53.75	601
Baldwin & Lyons Inc.	NDQ	16.75	1.52	-24.29	24.05	15.94	22
Berkley W.R. Corp.	NDQ	21.75	2.35	4.19	28.00	14.00	138
Berkshire Hathaway Inc.	NYS	57400.00	-3.04	2.32	74400.00	40800.00	1
Capitol Transamerica Corp.	NAS	11.00	-4.35	9.32	15.25	9.38	2
Chubb Corp.	NYS	71.25	4.78	26.53	76.38	43.25	5486
CIGNA Corp.	NYS	87.75	1.30	8.92	98.63	60.75	3922
Cincinnati Financial Corp.	NYS	40.00	3.39	25.49	43.31	26.19	1514
Citigroup	NYS	58.25	-4.41	4.60	65.44	40.13	47221
CNA Financial Corp.	NYS	34.44	5.15	-11.56	45.31	24.56	447
CNA Surety	NYS	11.63	-18.42	-10.58	15.56	9.75	1068
EMC Insurance Group Inc.	NDQ	8.00	-0.39	-12.33	13.38	6.81	38
ESG Re Limited	NDQ	4.44	7.58	-36.04	20.06	3.19	63
Enhance Financial Services	NYS	13.31	2.90	-18.08	22.63	8.63	340
Everest Reinsurance	NYS	33.81	-0.73	51.54	35.69	20.50	1115
Fremont General Corp.	NYS	4.44	-4.05	-39.83	21.44	3.88	2393
Frontier Insurance Group	NYS	1.06	-5.56	-69.09	17.25	0.63	871
Gainsco Inc.	NYS	5.25	-2.33	-2.33	6.94	3.94	124
Harleysville Group	NDQ	16.38	-1.50	14.91	20.88	11.63	340
HSB Group Inc.	NYS	29.25	5.41	-13.49	42.25	21.50	645
HCC Insurance Holdings	NYS	15.50	4.20	17.54	25.13	8.00	718
ING Groep N.V.	NYS	59.00	4.42	-3.28	63.94	46.81	491
IPC Holdings Ltd.	NDQ	14.88	0.85	0.00	22.50	9.75	180
Hartford Financial Services	NYS	59.13	4.88	24.80	66.44	29.38	5503
John Hancock Financial Service	NYS	22.50	9.76	32.35	23.25	13.44	4449
LaSalle Re Holdings Ltd.	NYS	13.00	0.00	-21.21	18.63	10.88	137
Lincoln National	NYS	37.69	10.85	-5.78	57.50	22.63	3651
MAIC Holdings Inc.	NYS	10.75	1.78	-49.26	29.05	10.00	107
Markel Corp.	NYS	143.00	2.42	-7.74	193.00	111.50	93
MBIA Insurance Group	NYS	55.50	7.25	5.09	71.88	36.31	2326
Meadowbrook Insur. Group	NYS	5.13	-4.65	-21.90	14.13	4.75	23
MetLife	NYS	19.75	8.59	38.60	19.75	14.25	9696
MMI Cos. Inc.	NYS	9.94	0.00	15.25	17.44	3.31	0
Mutual Risk Mgmt. Ltd.	NYS	17.00	13.33	1.12	40.50	9.81	774
Navigators Group	NDQ	8.81	-1.40	-9.62	16.00	8.75	86
NYMagic Inc.	NYS	13.94	-3.88	5.69	19.50	12.00	5
Ohio Casualty Corp.	NDQ	12.56	0.00	-21.79	20.25	10.75	3061
Old Republic Int'l	NYS	17.88	1.42	31.19	20.69	10.63	2548
Partner Re Ltd.	NYS	37.31	0.17	15.03	41.44	28.38	548
Penn-America Group Inc.	NYS	9.00	3.60	16.13	11.06	6.63	430
PMA Capital Corporation	NDQ	18.44	0.34	-7.23	21.13	15.50	108
Philadelphia Cons. Holding	NDQ	16.69	3.49	15.09	25.19	10.81	72
PXRE Corp.	NYS	14.75	0.85	13.46	19.56	9.94	50
Reliance Group Holdings	NYS	2.56	5.13	-61.32	10.88	2.25	5272
ReliaStar Financial Corp.	NYS	51.50	0.86	31.42	51.75	23.75	1818
RenaissanceRe Holdings Ltd.	NYS	42.50	2.56	3.98	43.56	30.88	242
Arch Capital Group Ltd.	NDQ	15.25	0.00	20.79	17.38	11.00	197
RLI Corp.	NYS	34.94	2.57	2.76	38.81	26.25	37
St. Paul Cos.	NYS	37.13	2.06	10.20	38.75	21.31	4914
SCOR	NYS	38.75	-3.43	-12.43	56.75	38.38	17
SAFECO Corp.	NDQ	23.81	4.38	-4.27	46.75	18.00	3769
SCPIE Holdings Inc.	NYS	23.69	-4.29	-26.26	36.94	23.06	NA
Seibels Bruce Group	NDQ	1.56	16.28	-10.71	6.25	1.25	90
Selective Ins. Group	NDQ	19.50	-3.11	13.45	22.50	14.63	368
Tokio Marine & Fire	NDQ	56.00	1.36	-5.29	67.00	45.00	149
Torchmark Corp.	NYS	26.25	5.00	-9.68	38.00	18.75	1699
Transatlantic Holdings	NYS	87.25	-0.50	11.77	88.75	68.75	37
Travelers Property Casualty	NYS	42.00	0.00	22.63	42.00	27.69	0
Trenwick Group Inc.	NYS	14.38	7.48	-15.13	32.00	12.00	191
Unico American Corp.	NDQ	6.25	-5.66	-10.71	10.75	4.50	18
United Fire & Casualty	NDQ	17.38	3.35	-23.20	27.25	16.00	128
Unitrin	NDQ	31.94	-0.58	-15.12	42.38	30.69	456
UNUM Corp.	NYS	20.81	3.10	-35.09	56.88	11.94	6356
Vesta Insurance Co.	NYS	5.75	2.22	48.39	7.88	3.44	260
XL Capital Ltd.	NYS	58.00	9.69	11.81	67.19	39.00	3281
Zenith National Ins.	NYS	23.94	0.00	16.06	26.69	18.75	27
INSURERS/REINSURERS	AVERAGE		1.70	-0.83			

HEALTH MAINTENANCE ORGANIZATIONS

Company	Exchange	Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)
Foundation Health Systems Inc.	NYS	11.81	3.85	18.87	20.06	6.25	3057
Humana Inc.	NYS	5.81	-8.82	-29.01	15.19	5.75	4089
Oxford Health Plans	NDQ	22.50	0.28	77.34	23.13	9.75	10117
Pacificare Health Sys.	NDQ	59.06	2.61	11.44	98.13	31.13	994
Sierra Health Services	NYS	4.44	-2.74	-33.64	16.25	2.75	559
United HealthGroup	NYS	75.88	-0.65	42.82	79.25	39.38	7769
Wellpoint Health Networks	NYS	72.81	-2.35	10.43	97.00	48.25	1408
HMOs	AVERAGE		-1.12	14.03			
ALL COMPANIES	AVERAGE		0.71	3.52			



Base=100 on Dec. 29, 1978

Top advancing issues: Acceptance Insurance Cos., Seibels Bruce Group, Mutual Risk Mgmt. Ltd. Leading decliners: CNA Surety, Accel International Corp., Humana Inc. Most active issue: Citigroup. The *BI* Index decreased 0.2%; the Dow Jones 30 Industrials went cown 3.1%; the S&P 500 dropped 2.1%, and the NYSE Composite went down 1.7%. Average P/E: Brokers, 20.4; Insurers/reinsurers, 17.2; HMOs, 12.7

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

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