

Business Insurance

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

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ACE extends its reach again with purchase of Capital Re

NEW YORK—ACE Ltd. plans to buy Capital Re Corp. for about \$606 million in stock.

The deal would further expand ACE's rapidly growing empire of insurance and reinsurance companies with a reinsurer that specializes in financial guarantee, mortgage guarantee, title reinsurance and trade credit reinsurance.

The proposed purchase of Capital Re follows the establishment of a Bermuda joint venture by the two insurers in March 1998 and a commitment by ACE earlier this year to invest

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Space insurance cited in Cox report

Potential security risks seen in placing satellite cover

By MARK A. HOFMANN
and EDWIN UNSWORTH

WASHINGTON—A congressional recommendation that would subject satellite insurance to export controls could unnecessarily boost the cost of space insurance, warn some insurance industry observers.

That recommendation—the only one of 38 recommendations that directly addresses insurance—is part of a three-volume report issued last week by the bipartisan House Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China.

The committee, which was chaired by Rep. Chris Cox, R-Calif., did not accuse any insurers or brokers of wrongdoing. Although the bulk of the report dealt with alleged Chinese attempts to steal U.S. nuclear, military and satellite technology, one chapter of the report concerns the role of commercial space insurance in technology transfer to China.

The heavily footnoted chapter deals with the aftermath of a 1996 accident in which an Intelsat 708 satellite launched by China's space agency was destroyed when its Long March 3B rocket crashed. The satellite had been insured for \$204.7 million.

The report notes that underwriters and

reinsurers involved in the program for the Apstar 1A satellite, the next satellite scheduled to be launched on a Long March 3B after the Intelsat 708 crash, "were concerned about the reliability of the Long March rocket." It says the French underwriters "pressured the launch service provider, China Great Wall Industry (Corp.), through their insurance broker, J&H Marsh & McLennan, to create an Independent Review Committee" to find out what went wrong. It then goes into considerable detail about dealings among the review committee, J&H Marsh & McLennan and other interested parties.

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U.S. NATIONAL SECURITY
AND MILITARY COMMERCIAL
CONCERNS WITH THE
PEOPLE'S REPUBLIC OF CHINA

PHOTO: KEN LAMBERT / WASHINGTON TIMES VIA NEWSMAKERS

Employers track workers' online activity

By DAVE LENCKUS

It is a high-tech and high-spirited permutation of water cooler hijinx at the office.

Scanning the Internet using their companies' computer systems, employees download material they consider humorous or titillating and then distribute it to colleagues over the company electronic mail system.

But, employers—citing their potential liability for allowing a hostile work environment as well as productivity concerns—are not amused. Some employers, especially large companies, monitor these activities and discipline employees who are involved.

Despite federal and state laws on electronic eavesdropping, labor and employment law experts see little risk to employers that engage in such monitoring. That risk largely is eliminated if employers warn employees that such activity will not be tolerated and that the company will be monitoring their use of company systems.

While employers that police use of e-mail and the Internet clearly have the law on their side, however, legal experts warn that employers still can unwittingly become ensnared in invasion-of-privacy litigation that may be tough to escape unscathed.

According to a recent American Management Assn. survey, more employers over the past two years have begun storing and reviewing their employees' e-mails. Among 1,054 employers that responded to the survey, 27% currently store and review e-mails, compared with 20.2% last year and 14.9% in 1997.

More than 16% of the respondents do not inform their employees about the e-mail storage and review policy, the survey found.

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Century alters course as big plans fall apart

By DOUGLAS McLEOD

WASHINGTON—The parent of Washington-based U.S. Insurance Brokers last month made an announcement that was unusual even in times of broker consolidation: It said it was negotiating to be acquired by an Internet gambling software developer.

The proposed deal between publicly traded Century Industries Inc. and Interactive Gaming & Communications Corp. could be a first, creating the only corporation with interests in insurance services, steel fabrication and online sports and horse race betting systems.

Century's announcement follows four years of failed efforts by its

*Century's
Complex
Connections*

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U.S. Insurance Brokers subsidiary to generate brokerage and underwriting revenue. These efforts included attempts to build association program business and to start a new Florida property/casualty insurer under the management of former American International Group Inc. officer Joseph P. DeAlessandro.

Insurance buyers haven't been harmed in these efforts, but Century shareholders haven't fared well, watching the stock sink from a high of more than \$3 per share in 1997 to 25 cents last week.

A look at Century's past four years in fact shows that its latest strategy is only one of many unusual features of its operations.

Through at least 1997, for example, USIB's checking account was largely controlled by Michael Arthur Strauss, a convicted con man who uses the name "Theodore Schwartzbeck Sr." and who was not a USIB employee, according to Securities and Exchange Commission documents, Century officials and

See Century on page 10

Employers sponsor new resource

Facility aids elder care

By AMANDA MILLIGAN

ELMHURST, Ill.—For workers exhausted from number-crunching, problem-solving and report-writing, time out of the office doesn't always let them rejuvenate and relax from the daily grind.

In fact, for the 14.4 million U.S. employees who also act as caregivers to elderly dependents, taking vacations or traveling on business may not be so easy, say elder care providers, employers and consultants.

"It's very stressful to have to leave town and worry, 'Are they taking their medicine, will someone help them to the restroom, will they be able to get out of bed?'" said Pearl Brown, human resources adviser for International Business Machines Corp. in Minneapolis.

To reduce this stress, Armonk, N.Y.-based IBM has teamed up with five other national employers to offer

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PHOTO: COURTESY OF METROPOLITAN FAMILY SERVICES

The Suzanne W. Knuepfer Guest House in Elmhurst, Ill., is managed by Metropolitan Family Services.

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Updates

ACE to buy Capital Re Corp.

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\$75 million in Capital Re.

Under the terms of the letter of intent for the acquisition, Capital Re stockholders would receive 0.6 ordinary shares of ACE for each share of Capital Re subject to a maximum valuation of Capital Re at \$22 per share. Based on ACE's May 26 closing price, Capital Re would be valued at \$605.9 million.

Meanwhile, Capital Re announced that one of its subsidiaries, KRE Reinsurance Ltd., has reinsurance exposures of \$67 million with entities affiliated with International Financial Services Life Insurance Co., which regulators are currently investigating as part of a probe to find \$950 million in missing assets (BI, May 24, 1999).

Partner benefits law upheld

SAN FRANCISCO—A company that lost a city contract for refusing to provide benefits to unmarried partners will appeal a federal judge's ruling last week that upholds San Francisco's domestic partner law.

The decision by U.S. District Judge Claudia Wilken marks the first time a federal court has upheld a city law requiring a private company to treat employees with domestic partners in the same way it treats married families, observers say. Tallmadge, Ohio-based S.D. Myers Inc. argued in *S.D. Myers Inc. vs. City and County of San Francisco* that San Francisco's ordinance forced it to support a lifestyle it disapproves of on religious grounds.

In its lawsuit, S.D. Myers Inc. was represented by televangelist Pat Robertson's American Center for Law and Justice, which said it will appeal. Myers serviced hydroelectric equipment for San Francisco.

In a related decision handed down on the same day, Judge Wilken ordered airlines at San Francisco International Airport to provide certain benefits, such as family medical leave and free travel, to the partners of unmarried workers. Judge Wilken in April 1998 ruled that airlines could not be forced to provide health and pension benefits to unmarried partners because those benefits are governed by the federal Employee Retirement Income Security Act. But last week she said San Francisco has a right to prevent discrimination, and all other benefits not subject to ERISA must be provided to domestic partners.

New IRS term life tables finalized

WASHINGTON—New Internal Revenue Service tax tables on how employers are to calculate the cost of employer-provided group term life insurance coverage exceeding \$50,000 will go into effect July 1, the IRS will announce this week.

To reduce administrative burdens on payroll systems, however, the IRS is providing a special transition rule affecting employees under age 30. Under the new tables, the current "under 30" age bracket is divided into an under-25 age bracket and an age bracket for those who are 25 to 29. The transition rule will allow employers until Jan. 1, 2000, to use the 25 to 29 bracket for all affected employees under age 30.

The new tables, which will replace tables published in 1983, will significantly reduce taxes paid by employees with employer-provided term life insurance (BI, Jan. 18). For example, under the new table, a 50-year-old employee who has \$150,000 in group term life insurance would have \$276 in taxable income for that coverage, compared with \$576 under the old tables. The new tables reflect increases in life expectancy.

Efforts for benefits parity advance

More states and the Clinton administration are taking steps to require group health care plans to boost coverage for treatment of mental disorders.

Nebraska Gov. Mike Johanns last week signed into law a requirement that group health care plans provided through insurers and health maintenance organizations offer the same number of covered inpatient days and outpatient visits for treatment of severe biologically based mental disorders as they do for physical ailments. Parity, though, is not required on copayments and deductibles, and group plans with 15 or fewer employees are exempt from the law.

In Missouri, Gov. Mel Carnahan is expected to sign legislation that would require parity in the number of covered inpatient days and outpatient visits for treatment of severe biologically based mental disorders and physical ailments. In the case of substance abuse, though, plans could impose a 30-day annual inpatient limit and a 20-visit outpatient limit. Employers that experience a 2% increase in premiums from upgrading their mental health coverage to comply with the legislation's requirements can request an exemption from the Missouri Department of Insurance.

Meanwhile, the Clinton administration next month is expected to propose that the plans participating in the health insurance program for federal employees and retirees provide equitable coverage for mental disorders. Depending on its scope, the mandate could have a significant impact on expanding coverage in the roughly 350 plans that participate in the federal program, which covers about 9.2 million federal employees, retirees and dependents.

Publisher's insurer settles case

BOULDER, Colo.—The general liability insurer for publisher Paladin Press has decided to pay \$5 million to settle a closely watched case involving the book "Hit Man: A Technical Manual for Independent Contractors."

Two families sued the book publisher in 1995, alleging that the book aided and abetted in the 1993 contract killing of Mildred Horn, her 8-year-old quadriplegic son, Trevor, and Trevor's nurse, Janice Saunders.

Lawrence T. Horn, Ms. Horn's former husband, was sentenced to life in prison for hiring James E. Perry to kill his wife and son to inherit his son's \$1.7 million medical malpractice award. Mr. Perry, who is on death row, allegedly bought the "Hit Man" book a year earlier and followed steps

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Appeals court overturns judge's reversal of jury

By DOUGLAS McLEOD

PHILADELPHIA—A Pennsylvania appeals court has reinstated a jury verdict voiding several of a chemical company's excess liability policies for fraud, finding that the trial judge wrongly threw out the verdict.

A three-judge panel of the Pennsylvania Superior Court said the jury correctly found that Rohm & Haas Co. intentionally concealed arsenic pollution at one of its sites over several years as it went to insurers for additional excess liability limits.

The panel's ruling overturns the trial court's \$21 million judgment in favor of Rohm & Haas under excess policies issued between 1964 and 1971 by London market insurers, The Home Insurance Co. and American International Group Inc.'s American Home Assurance Co. unit.

The panel also turned aside in-

surers' attempts to force the trial judge off the case for bias, though it found that insurers had a "strong case" against the judge based on his "highly unusual" meeting with the jury after its

verdict, according to the appeals court decision.

During that meeting, the judge told jurors that they were wrong, that he had seen evidence they

See Reversal on page 23



Excavation of arsenic-contaminated lagoons began in 1998 at this site in Myerstown, Pa.

PHOTO: ENVIRONMENTAL PROTECTION AGENCY

Student harassment threshold set

Court: Schools may be liable

By MARK A. HOFMANN

WASHINGTON—Schools can be held liable under some circumstances when students have been sexually harassed by other students, the Supreme Court ruled by a 5-4 vote last week.

The court's majority opinion in *Aurelia Davis vs. Monroe County School Board et al.*, written by Associate Justice Sandra Day O'Connor, held that mere teasing would not constitute the level of harassment necessary to trigger liability. Harassment has to be sufficiently severe "that it effectively bars the victim's access to an educational opportunity or ben-



efit" to violate Title XI of the 1972 Education Amendments and thus give rise to recovery, wrote Justice O'Connor. The amendments bar sexual discrimination in schools that receive federal money.

But Associate Justice Anthony Kennedy, writing for the minority, held that Congress had never intended the law to cover what he called "immature, childish behavior" and accused the majority of violating federalism and of setting the stage for a "flood of liability."

The case began in 1992 when LaShonda Davis, See Schools on page 23

New York HMOs scored on quality indicators

By MICHAEL PRINCE

Big differences in quality exist among health maintenance organizations in New York state, according to a new study.

The quality of New York HMOs as a group is generally in line with HMOs throughout the country, though quality can vary greatly among plans, the study shows.

"There are huge differences between HMOs," said Dr. John McGrath, health policy advisor for the New York State Health Accountability Foundation in Lake

Success, N.Y. The foundation authored the study.

Using data from 1997 for 30 HMOs contracting with employers in New York, the survey focused on such quality indicators as: member satisfaction; ability to get a referral to a specialist; and percentage of members receiving care, such as for early prenatal care, childhood immunizations and breast cancer screening.

The study shows that Capital District Physicians Health Plan had the highest member satisfaction, with 75% of its members rat-

ing it very or completely satisfied. Prudential Health Care Plan of New York Inc. scored the lowest, with 41%. The average for all HMOs in the state was 59%.

Looking at how HMOs helped members avoid illness, three plans stood out as ranking above the state average for all six categories studied, the study found. These HMOs are Blue Cross/Blue Shield of the Rochester Area, Capital District Physicians Health Plan, and Kaiser Permanente.

NYLCare Health Plans of New See Quality on page 21

Inside

• The announcement last week of a pilot project to give federal judges access to unbiased technical knowledge marks a welcome development in helping courts make decisions based on sound science, this week's editorial says. **PAGE 8**

• Much of the \$1.12 billion in flood damage in Germany this month will be uninsured. **PAGE 15**

• P&I insurers for a cruise liner that sank off Malaysia may be forced to pay the cost of removing the ship from the water. **PAGE 15**

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Fairfax revamps London units

Odyssey Re London dismantled

By SARAH GODDARD

LONDON—Fairfax Financial Holdings Ltd. is restructuring its London reinsurance holdings to better integrate its TIG Reinsurance Co. acquisition while running off operations of the former Sphere Drake Holdings Ltd. Odyssey Re (London) Ltd. ceased writing new business



Odyssey Re

last week. Some of the London reinsurer's operations will be merged into TIG Re in London—which for now keeps its name—and Odyssey Re Bermuda.

Toronto-based Fairfax said the decision to close the Odyssey Re London operation was part of a worldwide reorganization of Odyssey Reinsurance Corp.

The closure follows Fairfax's announcement earlier in May that it had purchased \$1 billion in stop-loss reinsurance coverage for any losses that exceed its insurance and reinsurance operations' aggregate reserves for 1998 and prior years (BI, May 24). The move also coincided with Fairfax's purchase of a major stake in runoff specialist TRG Holding Corp. of Chicago.

In a letter to market contacts, Odyssey Re London Chief Executive Officer Michael Watson said that Fairfax's recently completed acquisition of TIG Holdings Inc. gives the organization an opportunity to "rationalize the London market presence of Odyssey Re and TIG Re."

TIG Re will continue to write London market business through both its London office and a Lloyd's of London agency it owns, the letter stated.

Mr. Watson will remain part

of Fairfax in London, though his role has yet to be defined, a spokesman for Odyssey Re London said.

Odyssey Re's entry to the London reinsurance market was achieved via its 1997 purchase of Sphere Drake Holdings Ltd., a reinsurer with operations in London and Bermuda (BI, June 30, 1997). Mr. Watson was CEO of Sphere Drake.

Sphere Drake was merged into Fairfax's Odyssey Re subsidiary, which was formed following its 1996 acquisitions of Skandia America Reinsurance Corp. of New York and Paris-based Cie. Transcontinentale de Reassurance. Apart from its London operation, Odyssey Re today has operations in New York; Stamford, Conn.; Toronto; Hamilton, Bermuda; Stockholm, Sweden; Dublin, Ireland; Paris; and Singapore.

Before Fairfax's purchase, Sphere Drake had attempted to turn around its image and balance sheet by reorganizing its business. This effort included exiting marine, professional liability and financial institutions business while focusing more on reinsurance. These moves, however, neither impressed rating agencies nor improved Sphere Drake's results.

In 1996, Sphere Drake had granted a binding authority to a London-based managing general agency, Euro International Underwriters Ltd., to write personal accident insurance and facultative reinsurance. This business has proved quite costly for Odyssey Re London, however.

In a civil racketeering lawsuit filed in the U.S. District Court in New York earlier this year, Odyssey Re London charges that Euro International, along with other MGAs and Bermuda-based broker Stirling Cooke Brown Holdings Ltd., used Odyssey Re as a dumping ground for underpriced coverages (BI, April 5).

The suit charges that the placements have resulted in losses of more than \$35 million and loss ratios as high as 1,118% for Odyssey Re. Stirling Cooke has rebutted the

See Fairfax on page 19

U.S. awarded jurisdiction in international dispute

By GAVIN SOUTER

NEW YORK—U.S. courts can have jurisdiction in disputes with foreign entities controlled by foreign governments even if an entity claims independence and is based offshore, a federal judge has ruled in a surety bond case.

The ruling, which is being appealed, could have significant implications as U.S. companies become more involved in construction projects overseas, according to the lawyer who represented the U.S.-based surety bond insurers

in the case.

The case involved a Cayman Islands-based oil company, Braspetro Oil Services Co., known as Brasoil; United States Fidelity & Guaranty Co., now part of The St. Paul Cos. Inc.; and American Home Assurance Co., a unit of American International Group Inc.

In 1995, the insurers issued surety bonds totaling about \$270 million backing the construction of two oil production platforms in Brazil. The consortia constructing the platforms ran into "serious fi-

nancial difficulties" in late 1995, and in 1997 the sureties received default notices, court papers say.

Payment under the bonds is under dispute because the insurers allege that the defaults occurred due to drastic changes in the project ordered by Brasoil.

The insurers filed for a declaratory judgment on their obligations under the bonds in U.S. District Court for the Southern District of New York. Brasoil sought dismissal of the case for lack of jurisdiction.

See Brasoil on page 6

California employers eye comp savings

HCOs get a new look

By ROBERTO CENICEROS

SACRAMENTO, Calif.—Large employers with California operations are showing renewed interest in a managed care arrangement that increases employer control over workers compensation medical care.

An employer that contracts with a state-certified "health care organization" can direct an employee's medical treatment beyond the 30 days usually allowed under California law. In some cases, this period can be extended to as long as a year.

Some employers maintain that HCOs can help them improve medical treatment and

control costs. A steady rise in average claim severity in California—one of the most expensive states for employers to operate in—is driving them to seek new solutions that include HCO test pilots, they added. Revised regulations for HCOs also have contributed to increased employer interest.

St. Louis-based The May Department Stores Co., The Walt Disney Co. in Burbank, Calif., and Bentonville, Ark.-based Wal-Mart Stores Inc. are among employers in California with a revitalized interest in HCOs.

Health maintenance organizations, disability insurers and workers comp health care

provider organizations all can apply for HCO certification from the Department of Industrial Relations' Division of Workers' Compensation.

In other states, managed care has proved helpful in reducing workers comp costs, said Steve Carter, director of workers compensation for Claims Management Inc., a third-party administrator and wholly owned subsidiary of Wal-Mart. Those programs have been most effective in states with few mandated treatment protocols, allowing employer-chosen doctors to apply the techniques they find most efficient for treating

See HCOs on next page

Emerging nations called risky

Proper assessment, thorough program can help: Brokers

By GAVIN SOUTER

NEW YORK—Turbulent political and economic conditions in emerging countries pose risks for U.S. companies with operations in those areas.

But a carefully considered, thorough risk management program can effectively mitigate many of the risks inherent in overseas projects, two brokers say.

By properly assessing the risks affecting their companies and developing programs that incorporate factors not normally found in domestic risk management programs, risk managers can help their companies address crises on foreign soil, they say.

The first step in developing a risk management strategy for overseas projects is to review corporate risk profiles, said Heidi Hepburn, a vp at Marsh Inc.



in New York.

To determine this, risk managers should review where the operations are and assess whether there is any aggregation of risk in a particular area, she said.

This can help determine the potential catastrophe risk to a company if a country or region suffers any political or economic upheaval, Ms. Hepburn said at a recent seminar sponsored by the New York chapter of the Risk & Insurance Management Society Inc.

Risk managers then should assess the individual countries among emerging markets where they have operations, she said.

Knowledge of local business practices is key, Ms. Hepburn said. "And this is something that many companies don't do a good enough job at."

See Overseas on page 6

Poor 1999 results predicted

Reinsurers heartened by some signs of changing market conditions

By JUDY GREENWALD

1999 is not going to be a good year for U.S. reinsurers, as they continue to contend with soft pricing and deteriorating underwriting results.

But reinsurer executives and analysts are optimistic that some signs of market hardening that have started to appear in the primary market also are becoming visible in the reinsurance sector.

Reinsurers are moving toward a greater resolve "to get the price right and stop writing when it isn't," said Jerome Karter, president and chief executive officer of SCOR U.S. Group in New York.

Adrienne W. Reid, senior vp and chief

treaty underwriting officer for Zurich Reinsurance Centre in New York, said that while "I think right now everyone's in a holding pattern for July 1," reinsurers later in the year "are going



to take some serious looks at what their experience has been on their treaties and just try to make it a stable market."

"We're hoping the market has bottomed out, but who knows?" said Steve Tirney, president and chief operating officer of Philadelphia-based PMA Reinsurance Corp.

"We're looking forward to a better rate environment because I don't think things can get any lower," he added.

Kaj Ahlmann, chairman, president and CEO of Overland Park, Kan.-based Employers Reinsurance Corp., said, "The short story is that the property market is extremely competitive, and with the catastrophes we had last year and what we've seen so far this year, my prediction is a number of reinsurance companies are considering what to do with their property book."

The choices, he said, are: "You can increase prices, or you can just let it be, or you can exit certain areas."

"We're beginning to see some tighten-

See Results on page 19

Leading U.S. reinsurers

Based on net premiums written in the first quarter of 1999

Company	Net premiums
1. Employers Re	832,086
2. American Re	735,671
3. General Re*	648,131
4. Berkshire Hathaway	508,000
5. Transatlantic/Putnam	331,927
6. Everest Re	244,902
7. St. Paul Re	228,673
8. Zurich Reins. (N.A.)	227,811
9. Hartford Re Co.	218,048
10. Gerling Global Re	189,106

Source: Reinsurance Assn. of America and Business Insurance

HCOs

Continued from previous page injuries, he added.

In California, employers said, they have an added incentive to determine whether an HCO will help them reduce costs. 1993 reform legislation allows employers using HCOs to control an injured employee's medical treatment for 90 days. In addition, an employer that has an HCO program and pays more than 50% of an employee's non-occupational medical plan premium can control treatment for 180 days. And an employer can control treatment for 365 days if it has an HCO program, pays for more than 50% of an employee's non-occupational medical plan premium, and the employee's non-occupational doctor also participates in the HCO.

"Good medicine practiced consistently is what we all win with," Wal-Mart's Mr. Carter said. "So you are

just looking for the model that will help you get there. In California, we think it is at least worth a try to see if a managed care model will help us get there."

State reforms in 1993 established HCOs. But implementation of HCO programs soon sputtered when open rating and competitive pressures forced down insurance rates and muted interest in innovative programs. Back then, HCOs relied mostly on insurers, which paid for the HCO programs for their own policyholders, said Stuart J. Baron, a promoter of HCO use and president of Workers' Compensation Claims Control Co. in Cerritos, Calif.

Now, more self-insureds are showing interest in HCOs, with insured and self-insured employers willing to pay the cost themselves to contract with HCOs, he said. Insured policyholders then negotiate with their insurers for a premium discount equal to the cost of the contract. The premi-

um discount is given at their next renewal, Mr. Baron said.

"The employer is giving its insurer 180 days of medical control," he explained. Extended control has the potential to cut costs for employers and

'So the key metric here is not just savings but satisfaction with the overall program,' says Tim East.

insurers in several ways, including: the elimination of dueling medical opinions provided by employer- and employee-selected providers; the elimination of double sets of medical evaluations; reduced disability costs; and improved disability ratings, Mr. Baron added.

In California, the average total loss per indemnity claim, a measure of loss severity, increased to \$25,318 in 1998 from \$23,315 in 1997 and \$20,992 in 1996, according to an April report from the Workers' Compensation Insurance Rating Bureau in San Francisco.

Between 50% to 60% of all claims costs are for medical treatment. But medical treatment controls indemnity costs, explained Tim East, Disney's manager risk-management business process in Glendale, Calif. So employers are being driven to evaluate programs that will improve medical treatment and indemnity costs.

Extended control of medical care and the use of doctors who understand the injured employee's work environment can reduce costs, employers said. But whether HCOs will produce savings remains to be seen. Their effectiveness will depend on several factors, including whether employers provide quality medical

care that encourages employees to participate in an HCO, employers said.

State regulations require that employers with HCO programs contract with at least two HCOs and notify employees annually that they have options, including forgoing participation in an HCO for treatment from a personal physician, should they have an injury. In experience with the current small number of HCO programs, most employees agree to be treated under the HCO, Mr. Baron said.

"Ultimately, if an employee is dissatisfied with the medical treatment, then anything is going to end up costing you more in litigation, in delays and conflict with your injured workers," Disney's Mr. East said. "So the key metric here is not just savings but satisfaction with the overall program."

Disney shares workers comp benchmarking data with May Department Stores, and May's pursuit of an HCO program has piqued Disney's interest in evaluating a program, Mr. East said.

May, a self-insured retailer, is notifying employees at several of its California stores that they can seek treatment through a state-certified HCO if they are injured at work.

May's workers comp costs are two to five times greater in California than in other states where it operates, Ken Klee Jr., May's regional director-risk management in Redondo Beach, Calif., recently told a group of employers gathered in Sacramento, Calif., to discuss workers comp issues. To help May stem its costs, the retailer soon will test the HCO concept at several stores and a distribution center before rolling it out to all of its California employees.

Mr. Klee served on an advisory committee for the Sacramento-based Californians For Compensation Reform, which pushed the state's Division of Workers' Compensation to issue revised and clarified HCO regulations for employers. The clarifications are expected to be officially released soon, but several employers already are aware of the changes.

The streamlined regulations have encouraged them to re-evaluate HCOs, they said. The revised regulations eliminate duplicative reporting requirements, spell out more precisely what an employer must do to gain additional control of treatment, and clarify an employer's responsibility to notify employees about their HCO participation options.

Like other employers, Wal-Mart's Mr. Carter said the new California regulations have encouraged his company to revisit HCOs. Wal-Mart and its units have 39,000 employees in California. It has not decided just how it will implement an HCO program, but the company is in discussions with an HCO over implementing a targeted test program at some of its facilities.

Meanwhile, California has reduced the bureaucratic hurdles and expense faced by workers comp vendors seeking certification as HCOs, said Julie Hess, HCO administrator for CorVel Corp. in Concord, Calif. The certification process now is completely in the hands of the Division of Workers' Compensation. Before, certification also required approval from the Department of Corporations, which regulates HMOs.

CorVel, a workers comp managed care company, was certified as an HCO in March, but was experiencing increased requests for HCO services even before that.

"About a year ago we started getting inquiries from some national customers and prospects as well as California customers and prospects saying: 'I understand you have applied for certification. Any idea when you are going to receive your certification?'" Ms. Hess said. **BI**

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What can we do to help you?

Overseas

Continued from page 3

In particular, any company operating in a foreign country should obtain solid information on the legal and regulatory environment there, she said.

Risk managers should then make a "guesstimate" about the likelihood of political change in the countries and whether any change will be sudden or gradual, Ms. Hepburn said.

Also, risk managers should investigate whether violence and unrest are likely, she said.

Once the risks associated with the countries are determined, risk managers can assess the risk profiles of the individual projects, Ms. Hepburn said.

Factors to consider include whether a project is in the national interest, such as an infrastructure

project, she said.

"These often have a high priority with local governments," Ms. Hepburn said.

And, especially if a government entity is a partner in a project, the government may be more willing to help protect the interests of a foreign company, she said.

But on the other hand, government involvement also can lead to the abandonment of a project if there is a change in power, Ms. Hepburn warned.

"If a government is overthrown, there can be serious consequences," she said.

Regardless of whether they are involved in joint ventures, foreign companies should try to incorporate risk mitigation provisions within the general contract for a project, Ms. Hepburn said.

For example, provisions concerning subrogation and arbitration, power supply issues, foreign ex-

change indexation, and government commitment on the availability of hard currency all can be incorporated into the contract, she said.

And for risks that cannot be mitigated, there is ample political risk insurance capacity available from public and private insurers, Ms. Hepburn said.

Political risk insurance can cover a wide range of issues, including confiscation and expropriation of equipment, physical damage due to political violence, and contract frustration or cancellation, she said.

The private political risk market currently offers nearly \$1 billion in capacity, and government and quasi-government entities offer another \$1 billion in capacity, Ms. Hepburn said.

In addition, risk managers often will need to access local insurers in emerging countries for property and casualty coverage for plants or

projects in those countries, said Philip Gawthorpe, managing director-Global Business Practice Group at Aon Risk Services Cos. Inc., a unit of Aon Corp. in Chicago.

Wherever possible, risk managers should strive to place coverage with local insurers, he said.

Frequently, local regulations require this, Mr. Gawthorpe said. And because insurance often is an important part of the local economies, by buying coverage locally, foreign entities put themselves in good stead with the governments and local business communities, he said.

The local insurers, however, often are poorly capitalized, so foreign entities should arrange for the risks to be reinsured out into worldwide reinsurance markets, he said.

Also, many emerging economies often have tariff systems in place. Foreign policyholders, however, should not just accept the word of

their local contacts on the tariffs for insurance rates, Mr. Gawthorpe said. When local insurers are approached directly, theoretically inflexible tariffs can be waived, Mr. Gawthorpe said.

"Don't accept all the time that everything is tariff-rated, because often it is not," he said.

When buying coverage, risk managers should carefully review several areas, including:

- The adequacy of property values and currency fluctuations.
- Directors and officers liability exposures, which previously were ignored but now are becoming a factor.

- Legal liabilities, which also are becoming an issue in many countries.

- Risks related to the Year 2000 computer problem.

Once a policy is bought, risk managers should review it every two to three years in the same way they would review coverage in the United States, Mr. Gawthorpe said.

Peggy Brockmann, assistant risk manager at Tishman Realty & Construction Co. Inc. in New York, moderated the session. **BI**



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Brasoil

Continued from page 3

Among other things, Brasoil argued that it is exempt from U.S. jurisdiction under the Foreign Sovereign Immunities Act of 1976.

The FSIA clarifies circumstances when U.S. litigants may sue foreign states, court papers say.

Brasoil argued that it was not subject to the FSIA because it was not a foreign state and not owned by a foreign state. U.S. Judge John G. Koeltl, however, found that Brasoil was controlled by and shared employees with a Brazilian state oil company, Petrobras Internacional S.A., and was the alter ego of Petrobras, court papers say.

Under the FSIA, foreign state-owned entities are entitled to immunity from U.S. courts unless they fall under the commercial activity exception, and the Brasoil contract with the insurers falls under that exception, the ruling holds.

And because the surety bonds were negotiated and purchased in New York, disputes concerning the bonds can be heard in U.S. courts, Judge Koeltl said.

"Brasoil purposefully chose to obtain performance bonds in New York, from American sureties, through American brokers, with any payment obligations incurred by the sureties to be paid in U.S. dollars from their bank accounts to Brasoil's New York bank account. Clearly, therefore, this Court has an interest in resolving this dispute locally," he wrote in the judgment.

The decision is significant for the increasing number of U.S. companies dealing with foreign-owned entities involved in construction projects, said Ian A.L. Strogatz, a partner at Wolf, Block, Schorr & Soli-Cohen L.L.P. in Philadelphia who represented the insurers in the case.

Construction projects in many countries often involve government entities, and the decision rules that disputes with those entities can be heard in the United States even if the government does not directly own the entity, he said.

United States Fidelity & Guaranty Co. and American Home Assurance Co. vs. Braspetro Oil Services Co., Bank of Tokyo-Mitsubishi Ltd. and the Long-Term Credit Bank of Japan Ltd., U.S. District Court for the Southern District of New York, 97 Civ. 6124.

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Opinions

Effort to aid judges praised

A LITTLE KNOWLEDGE can indeed be a dangerous thing as courts are asked to decide cases involving increasingly complex technical and scientific questions.

Dueling experts often proffer testimony that few laymen can follow, raising the possibility that dubious—or even downright erroneous—claims will be accepted as scientifically plausible. Judges, though expert in the field of law, can't be expected to understand all the myriad scientific and engineering details that come up in, say, a complicated product liability case. Yet, as the U.S. Supreme Court made clear in its landmark 1993 decision *Daubert vs. Merrell Dow Pharmaceuticals Inc.*, federal trial judges must serve as "gatekeepers" in determining what constitutes admissible expert scientific testimony. The high court recently made clear that that gatekeeper responsibility for judges extends to other forms of technical expertise as well.

That's why last week's announcement of a pilot project to give federal judges access to unbiased technical knowledge is so welcome. The Court Appointed Scientific Experts project was conceived by the National Conference of Lawyers and Scientists, a joint standing committee of the American Assn. for the Advancement of Science and the American Bar Assn.'s Science and Technology section. If all goes as planned, the project should be up and running by the fall.

The AAAS will provide experts in a variety of scientific and technical fields to serve as court-appointed experts in complex cases. The AAAS is working on a way to recruit and screen the experts to assure their independence and lack of conflicts of interest before recommending them to judges who request experts.

The idea of having federal judges call upon scientific experts is not new. In fact, judges have had the power to appoint their own experts under the Federal Rules of Evidence since 1975. But the lack of a formal link between the bench and the scientific community meant that judges didn't take advantage of that power very often.

There have been a few exceptions, notable for their rarity. U.S. District Court Judge Sam C. Pointer Jr. in 1997 appointed an independent panel of medical experts to assess scientific evidence on whether silicone breast implants cause systemic illness and disease (*BI*, July 28, 1997). The four-member panel in late 1998 reported that it could find no causal link



between the implants and disease (*BI*, Dec. 7, 1998).

U.S. Supreme Court Associate Justice Stephen Breyer also hasn't ignored the ability of judges to appoint experts. In his concurring opinion in the 1997 case *General Electric Co. et al. vs. Joiner et ux.*—a case that dealt with the admissibility of expert testimony—Justice Breyer wrote that district court judges should take advantage of the outside expertise available to them as when dealing with complex scientific issues.

Of course, the AAAS project faces some potential problems. For example, we're sure that once the system is in place, there will be challenges in some cases over whether an expert is truly unbiased. Such challenges could lead to delays and, in some cases, perhaps even mistrials. Certainly, extreme care will have to be exercised in checking the backgrounds of the experts.

But we certainly think it's worth it. If the project works as planned, there will finally be a formal framework for judges to tap the expertise they need to make sound decisions in difficult cases. This project doesn't change the rule of law, but rather helps assure that judges have best possible—and impartial—input when applying the law. The more expert knowledge they have at their disposal, the more likely that courts' decisions will be grounded in sound science as well as sound law.

Letters

Benefits of captive brokers overstated

To the editor: Can anyone really believe that a large company's risk manager who expects a captive agency could reduce costs by 20% to 25% would have the competence and skills to manage such an agency?

In the May 17 article on captive agencies, brokerage executive Richard Kerr cannot be serious that an insurance buyer "paying at least \$5 million in premiums" can really save more than \$1 million by replacing the services of the broker with his own staff.

I have been involved in the insurance business for more than 50 years and as a fee-for-service risk management consultant for the past 20 years. I have worked with competent risk managers who use both outside brokers and captive agencies.

There are advantages and disadvantages to both, but substantial savings are rarely realized by changing the process for purchasing insurance. Rather, substantial cost savings, if any, are more

likely to be realized by changing brokers.

Moreover, few risk managers are so knowledgeable that they can't realize important gains from the advice and professional guidance they receive from their brokers, as well as from their own personnel.

I seriously question whether one risk

Mr. Nutter's opinion is just one

To the editor: I saw the article about the testimony of Frank Nutter on global warming in the March 8 issue of *Business Insurance*.

There are some people who see the subject of global warming very differently. I received in the mail a report from Citizens for a Sound Economy, which finds that the same scientist who reported in 1988 that global warming would bring catastrophic temperature increases now has written that predicting global temperature with

manager in 10 spending only \$5 million in insurance premiums would be well served by even considering a captive agency. And certainly not for a \$40,000 initial fee plus \$5,000 a month.

Eric S. Tachau
President
Insurance Consultants Inc.
Louisville, Ky.

climate models is "all but impossible." This is in direct contrast with the testimony of Mr. Nutter.

Perhaps you should report that what Mr. Nutter says isn't agreed with by the whole world. The statement by Mr. Nutter seems to say, "Of course we all know that the world is in danger from global warming."

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Century

Continued from page 1
other sources.

Theodore L. Schwartzbeck, Mr. Strauss' stepson, is president and treasurer of Century, and other members of Mr. Strauss' family, including his wife and son, have served as directors or officers of Century or USIB.

Two of Century's former directors—including Mr. Strauss' wife—previously managed an Irish insurance group's Washington-based brokerage unit and Bermuda-based underwriting subsidiary, both of which collapsed in the early 1990s.

While unaware of Mr. Strauss' criminal history, Century's outside auditor in 1997 raised concerns in SEC testimony about Mr. Strauss' role at USIB and about the auditor's discovery of trading in Century stock by a USIB consultant and an off-shore company the auditor believed to be a Century affiliate.

The SEC investigated the auditor's suspicion that the trading might be an illegal attempt to maintain an active market for Century stock, but it took no action. Century fired the auditor, Donna Miller & Associates of Herndon, Va., in 1997.

Meanwhile, Century has made a series of optimistic—and ultimately incorrect—projections in recent years about its insurance-related revenues in both SEC filings and materials promoting its stock. These documents also have featured several inaccurate or questionable statements about USIB's business, including incorrect claims that USIB was an agent for a licensed life insurance company and that it had a joint venture agreement with a longtime

Washington insurance agency.

Mr. Schwartzbeck insists those statements were accurate.

He and Robert J. Flynn Jr., Century's lawyer, also deny any improper stock trading and dismiss Donna Miller's concerns. They point out that the SEC closed its investigation without taking action and that Donna Miller later reissued an unqualified audit opinion on Century for 1995, the year before the controversy arose.

Mr. Schwartzbeck acknowledges that Mr. Strauss formerly acted as "general manager" of USIB. He and Mr. Flynn both insist, though, that Mr. Strauss no longer plays any role at USIB or Century, even though he works at Century's offices on matters they say are unrelated to the company.

"I've told the company he cannot be involved in a manager-, director- or officer-like role," Mr. Flynn said. "It's just not going to fly, and the company knows that."

Mr. Strauss still might advise Century, particularly in cases where the company itself is concerned it might become a victim of "wrongful conduct" by others, Mr. Flynn said.

"Would anybody choose to bounce off him a mechanism by which the company could be adversely affected? Would anybody seek his advice? Sure," Mr. Flynn said.

"Mike Strauss is to this company what Richard Nixon was to Ronald Reagan," he said.

Efforts to reach Mr. Strauss were unsuccessful.

Mr. Schwartzbeck, meanwhile, expressed regrets about USIB's poor performance, which has helped erode Century's stock price.

Continued on next page

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Continued from previous page

"We put a lot of time and a lot of effort into" developing USIB's association business, "and it's a disappointing result," he acknowledged. "We have not had a successful run in the financial services arena, to say the least."

With its new focus on Interactive Gaming & Communications, Century might sell its only revenue-producing insurance unit, third-party administrator Scibal Associates Inc., back to its principal, David Scibal, Mr. Schwartzbeck said. Century acquired Scibal Associates in 1997.

"We feel IGC is a better allocation of our energy right now," he said.

Century's history

Century has never lacked for diversification.

The company was incorporated in Washington in March 1993 by Mr. Schwartzbeck and Joel Gundersheimer—with Mr. Flynn acting as registered agent—to serve as a holding company for Century Steel Products Inc., a steel fabricator founded by Mr. Gundersheimer in 1979.

Century then merged with a publicly traded shell company, becoming publicly traded itself on the NASDAQ over-the-counter market. Century's shares later were additionally listed on the Philadelphia stock exchange.

In 1995, it bought USIB, a newly formed Washington-licensed broker headed by Mr. Schwartzbeck, for 1 million shares of Century preferred stock.

It later acquired Scibal Associates and invested in a limited partnership that owns Century (Overseas) Insurance Co. S.A., described in SEC filings as a Dominican Republic captive insurer.

"The steel and insurance combination has always made people's heads spin," Mr. Schwartzbeck admitted.

For year-end 1998, Century reported consolidated revenues of \$12 million and a net aftertax loss of \$1.1 million. Expenses included \$1.6 million in salaries, \$802,775 in professional fees and \$2.6 million in "general and administrative" costs, according to SEC filings.

Scibal produced most of the 1998 revenues—\$7.7 million—along with operating income of \$357,844. Century Steel Products generated \$4.3 million in sales and an operating loss of \$83,059, while USIB produced only \$4,818 in revenues and a loss of \$1.5 million, SEC filings show.

USIB, in fact, was not the first foray into insurance services for some of Century's officials: In the early 1990s, certain officials and Century Steel Products were entangled in the bizarrely complicated collapse of Underwriters Insurance Group Ltd. of Ireland and its subsidiaries, Mid Atlantic Insurance Brokers of Washington and Covent Insurance Co. Ltd. of Bermuda.

The president of both Mid Atlantic and Covent was Andres R. Romero, who later acted as an insurance producer for USIB and served a one-year term as a director of Century in 1997.

Century's 1996 10-K report describes Mr. Romero as president of Romexx Capital Corp., a New York reinsurance intermediary. According to the New York Insurance Department, though, Romexx never was licensed as an intermediary, and state records show the company dissolved in 1993 for non-payment of taxes.

Mid Atlantic's corporate secretary was Jan K. McDaniel, also a Century director in 1997. Ms. McDaniel is Mr. Schwartzbeck's mother and roughly two decades ago was married to Century's Mr. Gundersheimer. She is now married to Mr. Strauss, several Century officials confirm. Efforts to reach Ms. McDaniel were unsuccessful.

Mid Atlantic filed for bankruptcy in October 1991 amid litigation over allegedly worthless securities Mid Atlantic had borrowed to acquire and

Century's Complex Connections

recapitalize Covent.

During the bankruptcy proceedings, UIG and Covent sought financial advice from Underwriters Capital Corp., a mysterious entity described variously as a UIG unit, a Washington corporation previously known as Mid Atlantic and the "doing business as" name for another Irish company, Financial Security Trust Co.

Underwriters Capital officials included Ms. McDaniel and Mr. Strauss, who was then using the name "Art Strauss," according to court records and a lawyer involved in the case.

Mr. Flynn, now Century's lawyer, represented UIG and Mid Atlantic.

Despite salvage efforts, Mid Atlantic was ordered liquidated in 1993, and Covent followed in 1995. UIG itself was struck from the Irish register of companies in 1995.

In August 1993—after Mid Atlantic had filed for bankruptcy but before UIG collapsed—Century Steel Products executed a stock swap in which it traded 5,000 shares of its preferred stock for 100,000 UIG shares. Century Industries, the steel company's newly formed parent, initially reported the UIG stock as a \$1 million asset on its balance sheet—its largest single asset—but by 1995 had written the stock down to \$57,500 and in 1997 wrote it off entirely, SEC filings show. The \$1 million valuation had been based on the value UIG itself had put on its shares in a 1991 private offering of UIG stock that was never completed, SEC filings show.

USIB's development

As its first investment in the insurance business soured, Century Industries in 1995 acquired the parent of USIB—a deal in which Mr. Schwartzbeck signed as both buyer and seller—for 1 million Century Industries shares valued at \$560,000, SEC documents show.

At the time, USIB had net assets of only about \$17,000 but also had contracts to market coverages through "a couple" of national membership organizations that an appraiser had valued at more than \$1 million, according to an SEC deposition of Mark Todd, a Donna Miller accountant who audited Century.

One of these contracts was with The Charles J. Givens Organization Inc., a membership group headed by investment guru Charles J. Givens, though this contract later fell through, according to the deposition of Mr. Todd.

USIB continued to push plans, though, to mass market property/casualty and life/health coverages through joint ventures with national industry associations. In SEC filings and an offering memorandum for a 1996 private placement of \$5 million in USIB preferred stock, Century listed many industry groups and insurers with which it said it had either signed contracts or was negotiating.

Industry groups included associations of lumber dealers, Korean grocers and municipal water and sewer agencies; insurer names included CIGNA Corp., Fireman's Fund Insurance Co., Golden Rule Insurance Co. and others.

Revenue projections were rosy: In its 1995 10-K, filed with the SEC in April 1996, Century projected \$104 million in premium volume from the lumber dealers and municipal sewer agencies, with commissions to USIB totaling more than \$3 million. Subsequent quarterly SEC filings repeatedly predicted that commission revenues would begin flowing into USIB within months.

USIB "is poised to be an explosive growth company," a brokerage official said.

See Century on next page

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Century

Continued from previous page
cial wrote in a 1996 solicitation letter to prospective buyers of USIB's preferred stock. "The potential for strong, profitable returns are a reality."

The returns never appeared, though. USIB produced no significant brokerage revenues in 1996, 1997 or 1998 and recorded operating losses each year, SEC filings show.

In addition, descriptions of USIB's business in several Century documents proved questionable in various respects.

For example, in Century SEC filings and in the prospectus for USIB's unregistered, self-underwritten stock offering, USIB is described as an appointed agent for Phoenix Home Life Mutual Insurance Co. A 1996 ad tout-

ing "undervalued" Century stock—placed in airline in-flight magazines by a stock promotion company hired by Century—prominently featured Phoenix Home Life's name and logo, documents show.

In September 1996, though, a Phoenix Home Life lawyer wrote to Mr. Schwartzbeck demanding that USIB stop using the insurer's name. Calling the ad "very troubling," the lawyer noted that while USIB had signed a standard brokerage agreement with Phoenix Home Life, it was never appointed as an agent and never produced any business.

Mr. Flynn, Century's lawyer, later circulated a letter of apology, blaming the "unwitting violation" on "faulty, inaccurate and invalid legal advice rendered by an individual who is no longer with USIB," copies of the letters from the Phoenix Home Life

Century's Complex Connections

lawyer and Mr. Flynn show.

Meanwhile, a September 1996 Century business plan outlines a joint venture that the company says USIB had formed with Howard W. Phillips & Co., which Century describes as a managing general agency with underwriting and claims settlement authority for insurers.

In fact, Washington-based Phillips & Co. is an 80-year-old independent agency, not an MGA, and never has had a joint venture with USIB, according to Mike Cauley, vp with Phillips. The agency had "some brief discussions" with USIB about trying to place the lumber dealers' program, but the talks never went anywhere, Mr. Cauley said.

Mr. Schwartzbeck disputes this, though. "We certainly signed an agreement of some sort with Howard Phillips," he said. "We would not have disclosed that we had an agreement we didn't have... If we said we had it, we had it."

Mr. Schwartzbeck said he would try to find a copy of the agreement but by last week had not produced one.

USIB's association plans were stymied by "a couple of unforeseen situations," including that the premium quotes the broker obtained weren't low enough to tempt association members away from their local brokers, Mr. Schwartzbeck explained.

"The soft insurance market certainly didn't help," he added.

Dispute with auditor

Century had other worries in late 1996, though, as a dispute began to develop between the company and its auditor, Donna Miller & Associates.

The dispute led Century to fire Donna Miller in early 1997, triggering an SEC investigation of the auditor's reported concerns.

On Oct. 31, 1997, an SEC lawyer deposed Mr. Todd, the Donna Miller accountant; the deposition, obtained from the SEC under the Freedom of Information Act, offers a glimpse inside Century's offices.

Mr. Todd testified, for example,

that Mr. Strauss—whose name appears nowhere in Century's SEC filings or other public documents—was Century's "insurance person" and was the principal signatory on USIB's checking account.

This bothered Donna Miller auditors, Mr. Todd testified, because Mr. Strauss was not a USIB employee. In addition, though USIB paid Mr. Strauss as a consultant—with payments made out to a company he controlled rather than to Mr. Strauss himself—USIB did not have a written consulting contract with him, Mr. Todd said.

USIB also paid consulting fees to other members of Mr. Strauss' family, including Mr. Schwartzbeck, Ms. McDaniel and Patrick Strauss, Mr. Strauss' son, though the broker never produced consulting contracts for them, Mr. Todd testified. Patrick Strauss was a USIB vp and secretary in 1996 and 1997, according to brokerage documents.

Donna Miller auditors, meanwhile, also found that USIB had bought Mr. Strauss a car and was paying a number of his personal expenses, including credit card bills, yacht club fees and residential phone bills, Mr. Todd testified.

Asked where USIB—which had \$300 in a checking account when Century acquired it—got the cash to pay consultants and other expenses, Mr. Todd testified that it was from the proceeds of the broker's 1996 preferred stock sales. USIB also transferred some of the proceeds to Century Steel to make the steel unit's payroll, though Century Industries denied needing the money to make payroll, Mr. Todd said in the deposition.

Asked whether Mr. Strauss has "any type of criminal background," he replied, "Not that I know of."

Mr. Strauss' background

That background, in fact, is extensive: The 60-year-old Mr. Strauss, the son of a convicted con man, earned his first conviction in Atlanta in 1968 on 20 counts of larceny arising from a loan fraud scheme, according to "The Fountain Pen Conspiracy," a 1973 book profiling Mr. Strauss and other swindlers by the late Wall Street Journal reporter Jonathan Kwitny.

At least two other convictions followed, the most recent a federal fraud conviction in Philadelphia that landed him in a Lexington, Ky., federal prison in the early 1980s. Mr. Strauss was released to a halfway house in Washington in 1985, according to a story in the Knoxville, Tenn., News-Sentinel.

After his release, Mr. Strauss went to work as a paralegal for Mr. Flynn, later leaving to manage a newly created Washington securities firm, Mr. Flynn confirmed.

In 1986, Mr. Strauss and Mr. Flynn were named with several other defendants in a civil suit filed by a Tennessee bankruptcy trustee to recover \$150,000 in bonds allegedly concealed from the estate of jailed former banker C.H. Butcher Jr.

In an interview, Mr. Flynn said he settled this case without making any payment to the trustee.

Mr. Flynn also offered words of support for Mr. Strauss, asserting that he provided "undercover" help to the Internal Revenue Service in its investigation of the fraudulent Butcher banking empire and has aided other government operations.

Mr. Strauss provided "invaluable assistance" in the U.S. overthrow of Gen. Manuel Noriega of Panama, according to Mr. Flynn. "I'm not in a position to tell you how," he said.

Asked why Mr. Strauss now uses the name "Ted Schwartzbeck Sr.," Mr. Flynn said, "I have no way of knowing."

But Mr. Schwartzbeck, his stepson, said the reason is "to avoid some bad press on some indiscretions that occurred over 20 or 25 years ago."

"People around him suffer as a result" of this publicity, Mr. Schwartzbeck observed.

Century stock trades

While Century's SEC filings reported that the company bought USIB's parent from Mr. Schwartzbeck in 1995, Mr. Todd said in his deposition that USIB's actual principals were Mr. Strauss and Richard Campanaro, then Century's chairman. Efforts to reach Mr. Campanaro, who resigned in 1997, were unsuccessful.

Mr. Schwartzbeck was identified
Continued on next page

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A time line of events in the history of Century

- 1979: Century Steel Products formed.
- March 1993: Holding company Century Industries Inc. incorporated by Joel Gundersheimer and Ted L. Schwartzbeck.
- April 1995: U.S. Insurance Brokers Inc. incorporated in Washington as a unit of U.S. Auto Owners Coverage Assn., headed by Mr. Schwartzbeck.
- December 1995: Century acquires U.S. Insurance Brokers and its parent from Mr. Schwartzbeck for 1 million shares of Century stock.
- February 1996: USIB launches \$5 million self-underwritten private offering of preferred stock.
- April 1996: Century SEC filing projects more than \$3 million in annual revenues for USIB from association insurance programs.
- June 1996: Century acquires claims administrator Scibal Associates Inc. for cash and stock.
- September 1996: Phoenix Home Life Mutual Insurance Co. demands that USIB stop claiming in stock promotion material that it is an agent of the insurer; Century attorney Robert J. Flynn Jr., in letters to those who might have seen the information, apologizes and blames the mistake on "faulty, inaccurate and invalid legal advice" by a former employee.
- February 1997: Century fires auditor Donna Miller & Associates after the accounting firm raises concerns about "potential illegal acts" at USIB. Century denies wrongdoing. The SEC later investigates but takes no action.
- May 1998: Century unveils plans for a \$7 million private offering of preferred stock—later increased to \$10 million—to capitalize a new Florida property/casualty insurer projected to generate \$40 million in annual premiums. Joseph P. DeAlessandro hired to manage the insurer; he is later named chairman of Century.
- September-December 1998: The stock offering founders; Mr. DeAlessandro resigns his posts with Century.
- February 1999: Century agrees to provide \$2.5 million to fund a joint venture with Interactive Gaming & Communications Corp. to develop Internet horse-race betting software.
- April 1999: Century signs tentative deal to be acquired by Interactive Gaming. In SEC filings, Century reports that USIB, which has never produced an operating gain, now plans to market insurance coverage to foreign visitors to the United States through their embassies.

—By Douglas McLeod

Continued from previous page
in sale documents as the broker's shareholder, but the payment of 1 million Century shares for USIB went into a trust whose beneficiaries were Mr. Schwartzbeck, Mr. Gundersheimer and two offshore entities, Earlswood Enterprises Ltd. and Grupo Romvil S.A., Mr. Todd testified.

In an interview, Mr. Flynn confirmed that the four are beneficiaries of USIB Trust, which Century has reported as a significant shareholder in its SEC filings.

Mr. Todd said he was unable to find out anything from Century or Mr. Flynn about Earlswood and Grupo Romvil, both of which he said used USIB's mailing address.

He was curious about the companies, though, because a Donna Miller auditor working at USIB's offices found a stock brokerage statement showing numerous small "in and out" trades in Century stock by Earlswood in the second and third quarters of 1996, he testified.

The same day, the auditor was told by an accountant working as USIB's bookkeeper that USIB also had advanced about \$23,000 over the final three quarters to A. Jay Pignatello—then working for USIB as a consultant and now Century's corporate secretary—for the purpose of trading in Century stock. When the auditor asked why, the bookkeeper, Neal Klipfel, said the purpose was to maintain an active market in Century shares, Mr. Todd testified.

Mr. Klipfel, who did not return several phone calls seeking comment, later backtracked and said this only "may" have been a reason, Mr. Todd told the SEC.

Between mid-July and mid-October of 1996, Century's over-the-counter shares rose from \$1.25 a share to more than \$3, trading records show, though there is no indication that trading by Earlswood or Mr. Pignatello affected the price.

The trading raised red flags at Donna Miller, though, about the auditor's obligation under federal law to disclose "potential illegal acts."

"We thought that based on the stock trading and the fact that the internal controls seemed so weak, that there may be some illegal activities," Mr. Todd testified.

Donna Miller wrote to Century's board about this and several other concerns in January 1997, and "the response was termination," Mr. Todd said.

Mr. Todd and Donna Miller, the firm's principal, declined to comment on Century.

In interviews, Mr. Flynn and Mr. Pignatello flatly deny any improper stock trading, and Mr. Flynn complained that his own investigation of the dispute was hampered by what he described as Donna Miller's failure to cooperate with him.

They also said that the advances to Mr. Pignatello were part of his compensation and that he had actually lost money in Century stock trading that he pursued on his own.

Information about Earlswood and Grupo Romvil, meanwhile, is hard to come by.

Century's 1995 agreement to acquire USIB's parent company—an agreement signed by Mr. Schwartzbeck—said Earlswood had a management contract with USIB's parent, a copy of the document shows.

In 1995, Mr. Flynn and another lawyer also represented Earlswood and other plaintiffs in a civil lawsuit filed in federal court in the District of Columbia. There, Earlswood described itself as a New York company headed by Patrick Strauss—Michael Strauss' son—as president, and Theodore Strauss as chief executive.

Mr. Schwartzbeck said he believes Earlswood is an investor group but insisted that it is not re-

lated to Century or its directors and officers. He also said "it's news to me" that his stepbrother was ever president of Earlswood. He added that he believes Grupo Romvil to be a Peruvian company.

Mr. Flynn said he knows nothing about the ownership or location of either Earlswood or Grupo Romvil.

Mr. Flynn, meanwhile, also denied that Michael Strauss controlled USIB, even though he conceded that Mr. Strauss had authority over its checking account.

"I can see how it would have that appearance, certainly, but it's not the case," Mr. Flynn said.

Mr. Pignatello was made a USIB officer and took over as check signatory in 1997, he added.

By then, Century was changing gears, its SEC filings show. Descriptions of USIB's moribund association program business dwindled, and the 1997 10-K report disclosed new plans to form a start-up property/casualty insurer in Florida to assume business under a state program to depopulate Florida's homeowners' joint underwriting association.

To manage the insurer, Century hired Joseph DeAlessandro, the widely respected former president of AIG's National Union Fire Insurance Co. of Pittsburgh, Pa. He was also named a Century director and in July 1998 was appointed Chairman and Executive Counselor of Century itself.

Mr. DeAlessandro, who heads insurance units of New York-based American European Group, said he was approached by Century officials to manage the insurer after he had declined some of USIB's association business for American European's underwriting units. His appointment as Century chairman, Mr. DeAlessandro said, was intended to speed Florida's licensing of the insurer. He already was managing an unrelated Florida insurer writing JUA business.

Offering for Florida insurer

To capitalize the Florida insurer, meanwhile, Century launched a \$10 million private placement of convertible preferred stock. The company hired Raymond Dirks of Security Capital Trading Inc. in New York to handle this and a possible secondary offering of between \$12 million and \$15 million to make other insurance acquisitions, including a possible takeover of Chicago-based Reinsurance Co. of America Inc., SEC filings show.

Revenue projections again were optimistic: Century predicted \$40 million in first-year written premiums for the Florida insurer based on assumption of 30,000 to 60,000 JUA policies, with \$3.8 million in first-year earnings and additional fees to USIB as a service provider, SEC filings show.

By the fall of 1998, though, the stock offering was foundering: Mr. Dirks and Century officials blame the stock market downturn of last August, among other factors, for the failure to attract buyers for the full \$10 million offering.

Century then began to look for capital in Europe, visiting potential investors in Italy, Germany and Ireland, company officials say. Century already had borrowed \$600,000 from a European company to cover the cost of its Florida license application, SEC filings say.

The efforts to raise capital failed, though, and by the end of the year the Florida insurer plan was dead. In December, Mr. DeAlessandro resigned his positions with the company.

"I kept indicating that time was of the essence or there would not be any (business left) in the JUA to take," Mr. DeAlessandro said. He resigned, he explained, because the capital never materialized and because "I'm not a steel per-

son."

Mr. DeAlessandro also said that while he was introduced to "Ted Schwartzbeck Sr." at the start of the venture, he had never heard of Michael Strauss.

Century never filed a license application for the Florida insurer, a Florida Insurance Department spokeswoman confirmed.

New partner possible

Mr. Schwartzbeck expressed frustration over the failure, but Century quickly regrouped.

In February, it announced a plan to invest \$2.5 million in a joint venture with Interactive Gaming & Communications, a Plymouth Meeting, Pa., gambling software developer that also is represented by Mr. Flynn. The joint venture would develop an Internet live video betting system for thoroughbred horse racing and a stock market information search engine.

The relationship has developed rapidly: Last month, the companies announced a preliminary agreement on a stock swap in which IGC would acquire at least 60% voting control of Century in exchange for IGC stock warrants.

The purpose of the deal is to allow IGC—which recently was trading on the over-the-counter market at 50 cents a share—to "upgrade" its stock to meet listing requirements for the Philadelphia exchange or American Stock Exchange, said William F. Balla, a Century vp. The stock then becomes easier to sell than it would as an OTC "penny stock," he added.

"With our subsidiaries and their sizzle, it makes sense," he said.

IGC, which began operating in 1994, initially ran an online casino based in Grenada.

In 1997, though, IGC Chairman and CEO Michael F. Simone was indicted on felony gambling charges by the Missouri Attorney General. After losing an extradition battle, Mr. Simone agreed last September to plead guilty to misdemeanor gambling promotion charges; he and IGC agreed to pay \$27,500 in fines.

IGC last year sold the casino operation and now draws its revenues from licensing its "WiseGuy Sports Wagering" software to others and from Web page design, SEC filings show. In its most recent filing, for the third quarter of last year, IGC reported nine-month revenues of \$326,525 and expenses of \$680,183, creating a pretax operating loss of \$363,659. Net income totaled \$1.3 million because of an extraordinary gain related to the casino sale.

Century expects to decide by mid-June whether to go ahead with the proposed IGC deal, Mr. Flynn said.

USIB continues to operate as a Century unit. In its latest 10-K filing, Century says the broker is now planning to market policies to foreign visitors to the United States through their embassies. "To date, no embassy has been identified as a customer," the company reports.

The filings continue to prove less than 100% accurate. The latest 10-K, for example, reports that USIB "is corporately and individually licensed to do business in Virginia, West Virginia, New Jersey, Maryland, North Carolina, Wisconsin and Tennessee."

Mr. Schwartzbeck conceded, though, that this statement, filed in April, is based on agent licenses held by a USIB employee who left the company last year. USIB in fact is licensed only in the District of Columbia, he said.

The inaccurate information may have been carried over from previous filings by mistake, he explained. "That might have slipped through the



Michael Arthur Strauss, in an Atlanta Police Department mug shot taken in 1966. He was convicted in Atlanta on 20 counts of larceny in 1968.

cracks," he said.

As of last week, Century's Web site, apparently not updated in several months, continued to describe its efforts to form a Florida insurer but incorrectly reported that the insurer "was formed." The Web site also reports that Century "recently purchased" Chicago-based Reinsurance Co. of America, though no such deal actually happened. Century officials discussed a possible offer for the reinsurer two years ago, but "they never even came in here with a definitive letter of any kind," said Fred H. Pearson, chairman and CEO of RCA. Messrs. Flynn and Schwartzbeck could not be reached for comment regarding the Web site. Century's latest 10-K reports that it has not succeeded with either the RCA acquisition or the Florida insurer plan.

In any case, Century is not focusing as much attention on USIB and its other insurance operations and may divest TPA Scibal Associates, its only revenue-producing insurance unit, Mr. Schwartzbeck said.

Mr. Scibal confirmed that he has made an offer to reacquire the company, adding that his decision to sell in 1997 was based on the expectation of new business promised by USIB's national association programs.

"We're (now) going in different directions," Mr. Scibal said.

Other Century ventures

Meanwhile, Mr. Schwartzbeck and Mr. Pignatello are branching out into new ventures. The two men last year formed V Twin Acquisitions Inc. in Washington to act as a holding company for motorcycle dealerships they plan to buy. After merging with a publicly traded shell corporation, V Twin itself is now a public company and has reported that it may sell stock through a private placement or public offering, SEC filings show.

Virtually all of V Twin's \$662,648 in initial capital consisted of 350,000 shares of Century stock contributed by Villa Beau Holdings Ltd., a Bahamas corporation, in exchange for V Twin shares, SEC filings disclose.

The 350,000 Century shares, valued initially at \$612,500, make V Twin among Century's largest stockholders. V Twin had written down the stock's value to \$133,000 as of March 31 because of the falling price of Century shares.

Even in this latest venture, figures reappear from Underwriters Insurance Group, the Irish company that dissolved after the collapse of its subsidiaries in the early 1990s.

The president of Villa Beau Holdings and the owner of the public shell company with which V Twin merged is Clara D. Cespedes, SEC filings show. Ms. Cespedes was previously a director of UIG, 1991 UIG stock offering material shows.

V Twin's official incorporator and its interim president was Sebastian Davila, former president of Underwriters Capital, the company represented by Mr. Strauss that advised UIG and Covent Insurance Co., court documents show.

Ms. Cespedes gives her address in V Twin incorporation papers as Century's administrative office in Reston, Va.; Mr. Davila listed his as a Washington office formerly used by USIB.

Mr. Schwartzbeck said he believes Ms. Cespedes represents an investor group based in Peru and New York but said he knows little else about her. He added that he has never met Mr. Davila.

Mr. Flynn, who also represents V Twin, said of Ms. Cespedes, "I have no idea who she is." He also said, though, that the dormant public company she headed and merged into V Twin may have received Century shares for assisting with Century's acquisition of Scibal Associates.

He added that Mr. Davila's name "sounds vaguely familiar" but he does not know him.

Ms. Cespedes and Mr. Davila could not be reached.

Underwriters Insurance Group P.L.C.*
(Dissolved 1995)
Victor Llerena, president
Clara Cespedes, director

Mid Atlantic Insurance Brokers Inc.
(Declared bankruptcy 1991)
Andres Romero, president
Jan K. McDaniel, secretary

Covent Insurance Co. Ltd.
(In liquidation in Bermuda)
Andres Romero, president

Underwriters Capital Corp.
Sebastian Davila, president
Michael A. Strauss, aka "Art Strauss," agent
Jan K. McDaniel, secretary

* Stock swap between Underwriters Insurance Group and Century Steel Products, a unit of Century Industries

Source: SEC filings, court records

Complex connections

Companies tied by directors, officers, stock deals

Century Industries Inc.*
Theodore L. Schwartzbeck, aka "Ted Beck," president
Joel M. Gundersheimer, director
A. Jay Pignatello, secretary
Andres Romero, former director
Jan K. McDaniel, former director

U.S. Insurance Brokers
Theodore L. Schwartzbeck, aka "Ted Beck," president
Michael A. Strauss, aka "Ted Schwartzbeck Sr."
A. Jay Pignatello, vp
Patrick Strauss, former vp

V Twin Acquisitions Inc.
Theodore L. Schwartzbeck, aka "Ted Beck," chairman
A. Jay Pignatello, executive vp
Clara Cespedes, former owner
Sebastian Davila, former president

USIB Trust
Joel Gundersheimer
Theodore L. Schwartzbeck, aka "Ted Beck"
Earlswood Enterprises
Grupo Romvil S.A.

Villa Beau Holdings Ltd.
Clara Cespedes, president
Jose Tamarez, secretary, controlling shareholder

■ Parent/
Subsidiary
■ Stock swap
— Consulting relationship
.... Major shareholder

Respite

Continued from page 1

employees in the Chicago area the option of temporarily leaving an elderly person at a new respite care facility.

This group of employers, the American Business Collaboration for Quality Dependent Care, collectively gave \$85,000 to Metropolitan Family Services of Wheaton, Ill., to help fund a facility similar to one MFS operates in West Chicago, Ill. The new facility is scheduled to open in June in Elmhurst, Ill.

The five-bedroom facility looks like a home. It strives for "a warm and homey" atmosphere that encourages interaction among temporary residents, said Kelly Reid, a supervisor in senior services and guest house programs for Metropolitan Family Services in West Chicago.

Of the 8,000 IBM employees in

Chicago and the surrounding suburbs, 3% said they currently had a need for respite care, and 7% said they saw a need for the service in the future, said Ms. Brown.

"Business is changing, and people are on the road more. . . (Care) needs are not just for children," she said. The respite facility complements IBM's elder care benefit program, which also encompasses elder care service provider fairs nationwide and transportation subsidies.

Ms. Brown said she expects the respite care center to increase employee productivity and decrease absenteeism. Having access to a place about which workers feel comfortable leaving an elderly dependent enables employees to focus on their work, she said.

Skip Schlenk, director of AT&T's Family Care Development Fund in Morristown, N.J., said the company has been offering elder care benefits to employees for more than five

years. AT&T also is an ABC member. Citing a 1997 study conducted by the National Alliance for Caregiving, Ms. Schlenk said the total cost to businesses for lost productivity due to elder care demands ranges

'There's a great deal of guilt and anxiety about not being able to caregive all the hours one needs to,' says Elisabeth Bryenton.

from \$11.4 billion to \$29 billion per year.

"Elder care is compelling. This is a business issue today, and it's growing," said Ms. Schlenk, describing why AT&T became involved in the Elmhurst, Ill., respite house. "This is an investment for today and tomor-

row."

For employers, the payoff of elder care benefits will continue to grow as the baby boom generation ages, said Richard Federico, vp and national practice leader for work/life benefits at New York-based The Segal Co. An elder care-supportive workplace also can ease the stress on employees, he said.

When facing elder care issues, "it's awfully hard when you're in the world of work, dealing with customers and putting on a (happy) face," said Mr. Federico. "I think there's more opportunity for empathy from the board or senior management. It's not like you can get a nanny for your parent easily."

Employers have a unique opportunity to help their employees seek out quality elder care through resource and referral services, said Elisabeth A. Bryenton, president and chief executive officer of Child & Elder Care Insights Inc. in Cleve-

land.

"We just don't have an elder care vocabulary in the U.S. today," she said. Although most people know about nursing homes, she noted, they lack an understanding about other senior support services, such as respite care. Ms. Bryenton said many people don't seek information on these services until they are faced with an emergency.

Janet Driscoll, director of senior services for MFS in Wheaton, Ill., pointed out that most families wait until they are emotionally and physically exhausted before reaching out to others for elder care help.

"The use of supportive services like respite (care) is really important for the health of the older adult and the caregiver," she said. The incidence of depression among caregivers is 40% to 60% greater than for those not caring for an aging loved one, she added.

And caregiver burnout has become extreme in some households, said Ms. Bryenton.

"There's a great deal of guilt and anxiety about not being able to caregive all the hours one needs to," she said. "It's a matter of not having time and feeling pressed personally."

Mary-ellen Rogers, CEO for Family Care & Workforce Diversity Consultants in Wethersfield, Conn., agrees. "If (caregivers) have respite, their stress level decreases, and often it makes them feel like they can handle their job and caring for their elder."

In addition to offering respite care services, employers also can help employees deal with the guilt associated with caring for an elderly person. By sponsoring support groups or seminars about coping with such guilt, employers may prompt more employees to utilize the respite benefit, said Ms. Rogers.

"Letting go of that guilt is the biggest task for an employee, and it's probably the most important," Ms. Rogers said. If an employee feels guilty about leaving a parent in respite facilities, the vacation time will not have maximum impact, she noted.

"You need to take care of yourself before you can take care of another," added Ms. Rogers.

After a respite break, both the senior and the caregiver return refreshed, Ms. Reid said.

"Often when you become a primary caregiver, there's not a lot of warning," remarked Ms. Reid. "We help the caregiver understand that if they totally rein in their life, they're more likely not to be a caregiver for as long."

Ms. Schlenk said the elderly person also could benefit by being away from the frenzy of a busy household and having a chance to receive personalized care from geriatric professionals.

Guests at the Elmhurst facility will be able to participate in certain household operations, such as frosting a cake or clearing the table if they wish, or they can pursue their own interests, said Ms. Reid.

The Elmhurst center's fee ranges from \$50 to \$80 per night and is determined on a sliding scale based on family income, said MFS's Ms. Driscoll. The home can accommodate eight guests per night, and employees of an ABC company have priority over other community families.

The new center is scheduled to accept its first guest on June 18, and guests may stay up to 30 days per visit. The average duration of a visit at the MFS senior guest house in West Chicago is about two weeks, said Ms. Driscoll.

The other participating ABC companies involved in the new respite facility are Bank of America, Citigroup Inc., Lucent Technologies Inc. and Xerox Corp. **BI**



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INTERNATIONAL

Global Briefs

A London appeals court has ordered Lloyd's of London to pay \$820,000 to concert promoter Quinta Communications after pop star Michael Jackson canceled a 1997 concert in Barcelona, Spain, because he was upset by the death of Princess Diana. Lloyd's underwriters had denied the claim despite already having paid \$345,000 for losses incurred when Jackson postponed an earlier concert in Belgium for the same reason, but the court ruled there was a link between the two tour events. . . . French mutual insurer Maaf Assurances is joining Eureko B.V., the Amsterdam, Netherlands-based alliance of now eight insurance companies. As the first French insurer in the group, Maaf will open up the French market to Eureko one year after the partnership failed in a bid to acquire French insurer GAN S.A. . . . The British Insurance & Investment Brokers' Assn. has stepped up action to prepare U.K. brokers for the Year 2000 computer problem. Its Information Technology Forum, a group within BIIBA, has compiled a "help pack" to enable brokers to address business continuity issues, particularly in the areas of cash flow, customers, staff, premises and the supply chain, with insurers and software houses. In conjunction with the Assn. of British Insurers, the Forum also has sought assurances from software houses that they have disaster recovery programs in place to minimize disruption to brokers and insurers. . . . An insurance fraud detection service started in New York now is being offered in the United Kingdom. The service was developed by Anthony Brown, chief executive officer of London law firm Bechelet Bivona, and London-based ArmorGroup, an international supplier of fraud prevention and business intelligence services. It aims to help detect fraud both within insurance companies and by policyholders and to reduce fraud by assisting with claims management, including litigation, investigation and mediation. . . . U.S. law firm Cozen & O'Connor marked the opening of its new London office with a presentation to insurance professionals on how subrogation and recovery approaches developed in the United States can be used to help London-based insurers with recoveries, particularly in the wake of the Woolf reforms, which are expected to spark more litigation involving insurers. . . . ACE Global Markets Ltd., a unit of Bermuda-based ACE Ltd., is stepping up its major property accounts business with two appointments. Jonathan Tay was named to the new position of head of property underwriting; Richard Housley was named property underwriter. Both come from Brockbank Syndicate Management . . . London-based international broker SBJ Ltd. has increased the size of its professional indemnity team by recruiting four brokers from Lloyd's of London brokers P.W. Kininmonth and Minet Ltd. The brokers, Stuart Donnan, Martyn Shorrocks, John Taylor and John Walsh, specialize in business from Israel, Australia and the United Kingdom. . . . Royal & SunAlliance Insurance Group P.L.C. has named Duncan Boyle to the newly created post of managing director of U.K. commercial business; he will take the post Sept. 6. The new position is part of a reorganization of U.K. commercial lines operations. . . . Mexican officials last week ordered mining company Industrias Penoles SA de CV to slash output by 52% at its Torreon, Coahuila, refining facilities in an emergency effort to stem lead poisoning found in children living nearby. The government earlier ordered the company to reduce emissions, cleanup lead contamination and provide up to \$6.4 million toward health treatment of area children (BI, May 17).

Bavarian flooding won't soak insurers

By MARIA KIELMAS

MUNICH, Germany—Insurance claims are likely to be only a small fraction of rising flood losses in Bavaria this month caused by heavy rains and melting snow.

Total damage in Bavaria from the flooding was estimated at 2.1 billion deutsche marks (\$1.12 billion) by state government officials in Germany.

Insured losses, however, are expected to be much less.

Few homeowners and businesses in Bavaria purchase property and business interruption coverage for losses caused by natural catastrophes, such

as the floods, insurance industry sources note.

Some insured industrial losses, however, have been reported.

Herbert Steiber, head of property insurance at broker Gradman & Holler Marsh & McLennan GmbH in Stuttgart, Germany, cited a textile plant and a water utility that together will have claims totaling up to 50 million deutsche marks (\$26.7 million).

The recent flooding began May 22, following heavy rain and melting snow in the Swiss Alps. Water levels in Lake Constance, on the borders of Germany, Switzerland and Austria, have reached their highest level in

See Flooding on page 17



PHOTO: AFP

The Bavarian town of Eschenlohe is surrounded by floodwaters, while a restaurant owner in Diessen attempts to keep his furniture afloat.

U.K. competition laws to stiffen

By CAROLYN ALDRED

LONDON—Risk managers and insurers must prepare for new competition regulations due to take effect next year in the United Kingdom, a London lawyer warns.

The Competition Act 1998, which will take effect in March 2000, will bring U.K. competition laws in line with European Union law and will mean most insurance and reinsurance agreements no longer will be exempt from U.K. competition regulations, according to John Milligan, a lawyer with London-based Clyde & Co.

The new regulations are much more stringent than existing U.K. regulations, and the penalties will be much stiffer for any company found to be in breach, several experts say.

Under existing U.K. law, the Restrictive Trade Practices Act 1976, all agreements between insurers are exempt. This exemption will be removed under the new regulations, though a European Commission Block Exemption still exempts some insurance and reinsurance agreements, such as compilation of premium statistics, and guidance over some standard policy conditions. Meanwhile, marine mutual insurance has been granted a separate exemption (BI, April 26). As a result of the new regulations, any agreement that has the intent or effect of restricting competition will be illegal unless specifically exempted by the European Commission or the government-funded Office of Fair Trading.

According to Mr. Milligan, the insurance arrangements that will fall under the new

regulations include coinsurance arrangements; multiyear policies; coverage provided only when a policyholder agrees to buy other coverage; and rates that have been agreed upon by multiple insurers.

One risk manager said the new regulations probably would be good news for buyers, as insurance will be more competitive, though it may mean more work for those risk managers who need to ensure their companies comply with the regulations.

The new legislation will have a "significant (positive) impact on the insurance market and risk managers," according to David Gamble, executive director of the Assn. of Insurance & Risk Managers.

The Assn. of British Insurers welcomes the new legislation, as it will bring the U.K. See Compete on next page

E.C. adopts plan to unify market

By CAROLYN ALDRED

BRUSSELS, Belgium—Europe's vision of a single financial market came a step closer this month with the European Commission's adoption of a five-year Action Plan.

Among other things, the

financial services, open and secure retail markets, and adequate regulation and supervision of financial services.

The Action Plan describes a framework for a uniform approach to supplementary pension funds, including a proposal for directives on regulatory supervision; further talks about tax harmonization on pension plans; and removal of obstacles to workforce mobility. Employment-related pension funds "should be able to operate in a coherent single-market framework," according to the plan.

The five-year plan also sets out a directive on insurance intermediaries: "Member states have developed consumer protections and safeguards in relation to insurance intermediaries, but varying national legislation has been drawn up along very different lines, which acts to hamper the free provision of services.

"Given their key importance in enhancing the functioning of the single market, there is a need to provide a clear and common approach in regulation of insurance intermediaries," the plan states.

In a speech in London the See Plan on next page



plan aims to address national variations in the regulation of supplementary pension plans and to create more-uniform standards for the regulation of insurance brokers.

On the same day the plan was announced, the European Commission published a statement on supplementary pension plans (see story, page 16).

The Action Plan, released May 11, suggests priorities and timetables for proposals to improve the European Union's single financial market. It sets forth three strategic objectives to that end: a single market for wholesale

Insurers may face cruise ship salvage

By EDWIN UNSWORTH

LONDON—Protection and indemnity insurers for the Sun Vista cruise liner that sank May 20 will face a hefty salvage bill if they are forced to comply with a Malaysian government order that the sunken ship be removed from the sea bed.

Michael Stevenson, claims director for the West of England Ship Owners Mutual Insurance Assn., the P&I club that provides liability coverage for the Sun Vista, said the club believes the removal order is unenforceable and unnecessary and is consulting legal experts to assess the validity of the order.

He said information from the club's representatives in the wreckage area indicates that the ship is located outside Malaysian jurisdiction and at a depth that poses no hazard to shipping.

The 30,440-ton Sun Vista sank in the Strait of Malacca after a fire in its engine room during a six-day cruise. All 1,104 passengers and crew were safely evacuated (BI, May 24).

Initial reports said the sinking of the 36-year-old vessel may have resulted after sea water was pumped on board to put out the blaze, causing the vessel to list and capsize. The ship's owner, Singapore-based Metro Holdings Ltd., has ordered an internal inquiry into the cause of the fire and sinking.

The Sun Vista's hull was insured for \$60 million with a number of

insurers. Coverage is led by Norway's Vesta Forsikring, which has a 20% participation in the cover. Vesta is owned by Skandia Insurance Co. Ltd. of Stockholm. The lead broker for the cover is Marsh Inc. in London.

Wreck removal, if the Malaysian order stands, is likely to be the biggest claim to fall on the West of England club. The club also faces possible claims for pollution resulting from the spillage of the liner's 2,000 tons of fuel oil, causing a slick reported to be 10 nautical miles long.

Mr. Stevenson said, however, that his understanding is that the slick is under control and drifting away from land. He said divers have plugged a hole in the vessel which was causing the fuel spill, though he added that three other holes have been found from which there might be some "slight" leakage.

Mr. Stevenson said last week that it was too early and that there were too many uncertainties to know what level P&I claims might reach.

The West of England club is a member of the International Group of P&I Clubs; membership allows it to pool claims on any one loss once they exceed \$5 million. Mr. Stevenson said last week it was not yet known whether claims will exceed this level, though he added they certainly would if the club has to pay for wreck removal. BI

Compete

Continued from previous page
regulations in line with Europe, said Jenny Frost, a member of the British Insurers' International Committee, a subcommittee formed within the ABI.

Insurers recognize that the current exemption of insurance agreements is not consistent with E.U. competition rules, and most insurers already are compliant with the E.C. regulations, said Ms. Frost. As

'The reforms are unlikely to have any significant practical effect on insurers,' says Alastair Evans.

a result, the new legislation "will make life easier for insurers" as they will have to adhere to one set of regulations rather than two, she said.

Alastair Evans, manager of international affairs at Lloyd's of London, also welcomes the new Competition Act.

"The reforms are unlikely to have any significant practical effect on insurers. The advantages of consistency between U.K. and E.U. competition law more than outweigh the narrowing of the exemption for insurance agreements in-

troduced by the Act," he said.

Tougher enforcement and fines will mean that all companies, whatever their business, face a greater risk in violating the law, Mr. Milligan predicts.

The act "is the most radical overhaul of U.K. competition law for over 40 years, repealing much of the existing legislation, and will affect companies of every scale," said Mr. Milligan.

The new legislation will give the U.K. Office of Fair Trading greater powers of investigation and enforcement, as well as the power to levy fines of up to 10% of a company's U.K. gross revenues, he observed.

"A serious case could wipe out a company's profits for the year and ultimately put a company out of business," he noted. The OFT is recruiting an additional 50 staff members to implement the new competition regulations, he said, and it will have the power to carry out surprise inspections on company premises. Such inspections, for example, might uncover documents as evidence of price fixing arrangements.

Kay Flanagan, a lawyer with London law firm Davies Arnold Cooper, agrees companies should take the new legislation seriously. "This government is taking a very strong line in favor of the consumer and will be tough in stamping out anti-competitive behavior," she said.

The new legislation "will not come as a surprise to most larger

companies, as it is simply bringing us in line with European legislation. What will be a surprise is that the level of enforcement and investigation will be much greater," said David Gabathuler, a legal adviser with the Confederation of British Industry.

The OFT has recommended that

all businesses take steps to ensure they comply with the new regulations. That includes, for large companies, implementing a compliance program. Mr. Milligan suggests, for example, that companies audit all of their commercial agreements to ensure they will comply with the new regulations; compile a set of

written instructions for staff of key infringements to be avoided; and develop a set of instructions on how to react in the event of a dawn raid by the OFT.

The OFT has publicly stated that it will take compliance programs into account when determining fines, said Mr. Milligan. **BI**

Plan

Continued from previous page
day after the plan was announced, Mr. Monti pointed out that the European Community still has a long way to go to improve the single financial market.

"The single market is still not a seamless market in which cross-border transactions are as easy to execute and conclude as those within national territories. The bottom line is that, in commercial terms, national frontiers still matter," said Mr. Monti.

"Despite 15 years of unstinting efforts to create a single financial market in Europe, cross-border provision of some financial services—for example, insurance—is still virtually non-existent," said Mr. Monti.

David Gamble, executive director of the London-based Assn. of Insurance & Risk Managers, agrees that more equitable and transparent financial services across Europe will benefit all European businesses.

The Assn. of British Insurers welcomes the E.C. Action Plan but has certain reservations on some aspects, said Jenny Frost, a member of the British Insurers' International Committee.

For example, the ABI thinks any directive on electronic com-

merce should not affect established insurance networks such as the London Insurance Market Network. The ABI also believes that proposed regulations for non-face-to-face selling of non-life insurance, which would give buyers 14 days to withdraw from the contract, do not recognize that property/casualty insurance is very different from life insurance. The proposed regulations also fail to take into account buyers' appreciation of the ease and speed of telephone selling, which is now popular in several E.U. countries, said Ms. Frost.

Other initiatives outlined in the plan include:

- Moves to bring insurance, banking and securities legislation up to the highest standard, including formulating common rules for the liquidation of banks and insurance companies; ensuring market access and adequate regulation of electronic money; and proposals to amend solvency margins for insurance companies and to amend capital framework for banks and investment companies.

- The removal of outstanding barriers to raising capital on an E.U.-wide basis.

- Creation of a common legal framework for integrated securities and derivatives markets.

- Creation of a single set of fi-

nancial statements for publicly held companies. Such documents are necessary, the plan states, because the lack of comparability "will discourage cross-border investment because of uncertainty as regards the credibility of financial statements."

- Creation of a secure and transparent environment for cross-border restructuring, including legislation on cross-border merger and takeover bids.

- A directive on non-face-to-face selling of financial services to improve the information, transparency and security for cross-border selling of retail financial services, particularly with the spread of e-commerce. "Proposals for e-commerce and distance selling directives are on the table, which will facilitate the emergence of these activities."

- An effort to prevent counterfeiting and fraud in payment systems.

- A proposal for a directive on the prudential supervision of financial conglomerates.

The plan also highlights the need for eliminating tax obstacles and differences. As a result, the European Commission plans to further examine with member states ways to eliminate tax differences on cross-border financial products, in particular, on insurance and pension funds. **BI**

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Occupational pensions need uniform rules: E.C.

BRUSSELS, Belgium—The European Commission's Communication on Supplementary Pensions recommends a uniform framework for the European Union's occupational pension plans.

At present, a pension fund cannot have members in more than one E.U. country, though a directive the Commission adopted last year will allow employees posted overseas to continue—for up to five years—to make contributions to a company pension plan in their home country.

To ensure freedom of investment and facilitate cross-border membership, while also protecting pension members' rights, the Commission recommends introducing legislation to establish rules for pension fund management, investment contributions and fund liabilities. The legislation also would create supervisory authorities for cross-border pension plans.

Adoption of a directive on pension fund regulation is expected by the beginning of 2000, the E.C. said in its communication.

State-provided pensions have been addressed by the E.C. rules. These rules allow workers to move freely from country to country while still receiving a state pension based on the aggregation of their work in the European Union. No such rules,

however, exist for occupational pensions.

"This constitutes a real barrier to free movement on the part of those European citizens who are covered by such systems. This barrier will, if Member States choose to rely increasingly on supplementary pensions, damage the capacity for mobility within the European labor force," the E.C. document warns.

As a result, the Commission proposes further consultations with member states on the tax arrangements for pensions, a study of cross-border pension membership and the creation of a pensions forum. The pensions forum would allow "dialogue on pensions and labor mobility" with the Commission, according to the document.

"The creation of a single market for supplementary pensions would mark an important stage in the full integration of financial services in the Union," according to a statement by Mario Monti, the European Commission's financial services commissioner, in a response to the pensions document.

The plan to improve cross-border pension funds "has got to be good news, especially for the big company with employees throughout Europe," said Hugh Loader, Lausanne, Switzerland-based President of the Federation of European

Risk Management Assn. He added that there already is "a lot of mobility in the labor force, and something that allows the continuity of employment has got to be good news."

David Gamble, executive director of the London-based Assn. of Insurance & Risk Managers, agrees that the concept of cross-border pensions is "desirable" for both employers and employees.

"A solution to the problems caused by differing tax treatment (in Member States) is becoming increasingly urgent, given the adverse effects on supplementary pensions of migrant workers and the barrier raised to the taking out of life insurance across frontiers," said Jenny Frost, a member of the British Insurers' International Committee.

While Brussels, Belgium-based William M. Mercer pensions consultant Geoffrey Furlonger welcomed the E.U. document on pensions, he said he believes the European Commission faces an uphill task to achieve tax agreement among member states. As a result, Mr. Furlonger is continuing to drum up company sponsorship to mount a legal test case to stop tax discrimination, which, he claims, is preventing the creation of pan-European pension funds (**BI**, March 29).

—By Carolyn Aldred

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Flooding

Continued from previous page
200 years.

Thomas Loster, a geoscientist for Munich Re, said the water accumulation surged down the Alpine rivers and tributaries into the Danube, smashing dikes and dams. The flooding covered parts of east and central Switzerland in the Zurich, Thurgau and St. Gallen cantons bordering Lake Constance, flooding parts of the cities of Konstanz in Switzerland and Breganz in Austria. The water flowed north to lower elevations, hitting Bavarian cities in the direction of Augsburg, Ulm, Ingolstadt and Regensburg.

The flood waters then moved east along the Danube to Passau, which is near the border with the Czech Republic. The Bavarian capital of Munich was not affected. The rainfall caused flooding and landslides in the Austrian Tyrol, blocking roads but had not caused catastrophic damage.

As of last week, Bavarian govern-

ment authorities had reported nine deaths due to the flooding. They said about 27,000 acres—or 12,000 hectares—of land were inundated and that 25,000 dwellings were damaged, affecting a total of 100,000 people in Bavaria. The collapse of a Danube River dike upstream from the city of Regensburg caused widespread flooding in the city of Neustadt, and 2,000 residents had to be evacuated.

According to a statement by Christa Stewens, the Bavarian state environment secretary, economic losses arising from the flooding will cost Bavaria at least 2.1 billion deutsche marks (\$1.12 billion). Ms. Stewens said most of the damage was due to a sharp rise in the level of ground water.

But Munich Re's Mr. Loster said the estimated toll is likely excessive.

"We have noticed that the official figure, the first guess, is always high," he said, adding this could be due either to politics or to authorities wanting to draw attention to the catastrophe.

Mr. Loster instead estimated that

property losses in Bavaria could be approximately 500 million deutsche marks (\$267.3 million), with damaged infrastructure and agricultural losses of 1 billion deutsche marks, for a total of about 1.5 billion deutsche marks (\$801.9 million).

Mr. Loster said, however, that only about 10% of that total would be insured. Private individuals in Bavaria typically do not buy endorsements for coverage of flood or other natural catastrophe losses, known in Germany as "elemental risks" coverage, he explained. By contrast, in Baden-Wurttemberg in the southwest of the country and the state through which much of the upper Rhine flows, the prevalence of this coverage among homeowners is quite high, he said.

Gradman & Holler's Mr. Steiber explained that the reasons for this can be traced to coverage historically offered—or not offered—by regional insurers. In Baden-Wurttemberg there was a state-owned monopoly property insurance company, Gebaude Versicherung Baden-Wurttemberg, that has his-

torically included "elemental risks" coverage as part of its standard fire insurance policy. The monopoly was abolished under E.U. rules in 1994, and the company was privatized and later sold to a consortium of banks.

As a result, although most corporate buyers in Baden-Wurttemberg now purchase property insurance elsewhere, about 80% of the monopoly's personal lines clients remain with the privatized company and continue to have coverage for elemental risks.

This kind of property insurance monopoly has never existed in Bavaria, however, so there is only a low level of catastrophe coverage purchased by corporate and personal buyers alike, Mr. Steiber explained.

Risk managers in Bavaria have adopted various strategies for their disaster exposure.

"This is not a problem for us because as a multinational a flood in Bavaria is the same as an earthquake in California," says Stefan Sigula, risk manager at Munich-based electronics and engineering

company Siemens A.G. Mr. Sigula said he buys all-risks property coverage when he believes it is necessary for the company's facilities.

A risk manager at an automobile manufacturer in Bavaria, however, said he does not buy all-risks coverage in Bavaria because all of the company's installations are in areas not prone to flood risk.

Meanwhile, German shipowners and river cargo companies also face increasing losses following the halting of traffic on both the Danube and Rhine rivers from the flooding. Most of these businesses do not have business interruption coverage, as they deem the cost as too high, said Gerhard von Haus, managing director of the shipping industry association, Bunderverband der Deutschen Schifffahrt in Duisburg, Germany. Mr. von Haus said he could not estimate shipping losses.

Shippers on the Danube already have faced difficulties from the conflict in Kosovo, where NATO bombing has destroyed bridges on the lower stretches of the river (BI May 3).

FTR FOR THE RECORD

LaSalle Re names Blake's successor

HAMILTON, Bermuda—Guy Hengesbaugh will succeed Victor H. Blake as president and chief executive officer of catastrophe reinsurer LaSalle Re Holdings Ltd. on July 1.

The decision is part of a transition plan at LaSalle, Mr. Blake said in a statement.

"Good corporate planning should extend to an early signal as to one's successor. As a CEO approaching 64 years of age I advanced a succession plan to the Board, recommending Guy Hengesbaugh as my successor," he said.

Mr. Hengesbaugh is currently executive vp and chief operating officer of LaSalle. His brother, Bernie, is the recently appointed CEO of Chicago-based CNA Insurance Cos. Guy Hengesbaugh was an underwriter at CNA prior to joining LaSalle when it was formed in 1993. CNA is one of the founding investors in LaSalle and has a 15.8% stake in the reinsurer.

Court denies gradual pollution cover

AUSTIN, Texas—A Texas company plans to seek a rehearing or appeal a state appellate court ruling that the sudden and accidental pollution exclusion bars liability coverage for gradual pollution.

The 2-1 Texas Court of Appeals ruling against Houston-based scrap metals company Gulf Metals Industries Inc. on May 13 relied on a 1998 Texas Supreme Court decision that laid out how Texas courts should handle alleged ambiguities in insurance policies. The dissenting judge in the Gulf Metals case asserted, however, that the majority "got it backwards."

That earlier Supreme Court decision, written six months after a trial court had ruled against Gulf Metals, centered on language in a homeowner's insurance policy. The Supreme Court had ruled that the "circumstances surrounding" the policy's promulgation could be considered in sorting out the policy's meaning.

But, according to the majority in the Gulf Metals case, the state high court allowed such evidence only because the policyholder first demonstrated that the policy's language was ambiguous.

In the Gulf Metals case, the appellate court majority refused to allow Gulf Metals to submit policy promulgation evidence. The majority explained that Gulf Metals had failed to first demonstrate that the exclusion's language was ambiguous. The majority also held that the only reasonable interpretation of "sudden" is swift, because "accidental" means unexpected.

The dissenting appellate judge in the Gulf Metals case, though, asserted that the state Supreme Court's 1998 ruling held that insurance regulators' intentions when revising a policy form "could be considered in determining whether either party's interpretation of the policy was reasonable."

The dissenting judge also maintained that Texas courts generally define "accidental" as unintended, not unexpected, in insurance contexts.

Soot fits pollution exclusion: Court

HELENA, Mont.—The 1970 pollution exclusion bars coverage for smoke and soot damage to a home caused by burning scented candles, the Montana Supreme Court has ruled.

The May 11 decision in *Sokoloski vs. America West Insurance Co.* was the first time the Montana Supreme Court has addressed the meaning of the word "sudden" or the concept of a "pollutant," according to the Insurance Environmental Litigation Assn. The IELA is an insurer trade group based in Washington.

The case involved a homeowners policy that used the 1970 pollution exclusion created by the Insurance Services Office to exclude coverage for the discharge of pollutants.

The policyholders filed a claim against their insurer when their walls, ceilings and floors were damaged by smoke and soot from the burning of scented candles in the home over several weeks. The trial court ruled in favor of the insurer, finding that the pollution exclusion barred coverage.

The Montana Supreme Court agreed.

"Although the case involves a homeowner's policy, the opinion and its reasoning plainly will apply equally to commercial cases," observed Thomas W. Brunner, a partner in the Washington law firm of Wiley, Rein & Fielding that is counsel to the IELA.

Grant targeted at improving PPOs

WASHINGTON—The American Accreditation HealthCare Commission/URAC has received a grant of about \$25,000 from the New York-based Commonwealth Fund to examine how preferred provider organizations can more effectively report on quality of care.

URAC's PPO Quality Initiative will begin by examining how the Consumers Assessments of Health Plan Survey, a national survey developed by the Agency for Health Care Policy and Research, can be used to obtain information

on patient experiences and satisfaction with PPO-delivered care. As part of the study, which is expected to take six months, URAC also will examine other methods of measuring performance. It also will make recommendations to its board on ways to encourage PPOs to report on quality.

Liza Greenberg, vp of research and quality initiatives at URAC, said in a statement that although more Americans are enrolled in PPOs for health care delivery than in any other health care system, unlike health maintenance organizations, "PPOs have largely not been required to make public reports on quality."

This project "has important policy implications for moving forward in the improvement of PPO accountability," said Ms. Greenberg.

U.S. outlines Listeria-fighting steps

WASHINGTON—The United States Department of Agriculture's Food Safety and Inspection Service announced new steps last week to decrease the likelihood of the bacteria *Listeria monocytogenes* infecting ready-to-eat meat and poultry products.

The foodborne bacteria causes listeriosis, a potentially fatal condition that can cause stillbirths, miscarriages, meningitis and flu-like symptoms, particularly in persons with weakened immune systems.

The agency advises food processing plants to make sure the proactive Hazard Analysis and Critical Control Points survey adequately addresses Listeria contamination. Additionally, the FSIS advocates testing the plant environment, surfaces that the meat might touch, and the final product for contamination.

The FSIS also outlined long-term goals to further study post-production growth of the bacteria; to develop a verification protocol for examining a plant's HACCP procedures for Listeria; to develop a Listeria risk assessment in conjunction with the Food and Drug Administration; and to develop food safety standards for ready-to-eat goods that will focus on all foodborne pathogens.

Project aims to provide judges expertise

WASHINGTON—A new project will allow federal judges to tap into scientific and technical expertise as they consider specialized evidence.

The Court Appointed Scientific Experts project grew out of the work of the National Conference of Lawyers and Scientists, a joint standing committee of the Washington-based American Assn. for the Advancement of Science and the American Bar Assn. The AAAS, which announced the five-year pilot project last week, plans to design a system for identifying and recruiting independent scientific and technical experts, with a special panel for uncovering conflicts of interest. Judges will be able to appoint experts to help them understand scientific methodology, comment on expert testimony and educate judges and juries on technical issues. Experts will be compensated. The AAAS expects that judges will be able to use the system by September.

U.S. Appeals Court Judge Pamela Ann Rymer, who chairs the advisory committee overseeing the project, noted that judges have had the authority to appoint their own experts since 1975, but relatively few have done so. "We don't see this as adding or subtracting" to what courts can already do, she said at a Washington news conference last Tuesday. "The key thing about this process is it is a resource" to help judges better understand complex matters that does not affect the way judges handle a particular case, she said.

Information in brief

Under a new presidential mandate, federal employees will be able to use accrued sick days to care for ill family members. The policy, announced last week by President Clinton as part of a commencement address at Grambling State University in Grambling, La., would permit federal employees to take up to 12 weeks of paid sick leave to care for an ill child or parent. Prior to this announcement, the maximum allowable sick leave for federal employees was 13 days annually. The newly introduced policy would expand the existing Family and Medical Leave Act, which the President described as "just meeting a fraction of the need." . . . Group legal insurance provider ARAG Group of Des Moines, Iowa, recently launched Senior-Advocate, a new benefit program that aims to provide advice and assistance to employees dealing with elder care and aging issues. The benefit would provide employees access to attorneys, financial and tax advisers, and elder care counselors. Ceridian Performance Partners will provide Social Security, Medicaid and Medicare advice, and Arthur Andersen will assist with tax and financial information. . . . Third-party administrator Gallagher Bassett Services Inc. has opened a new branch office in Portland, Ore. Itasca, Ill.-based Gallagher Bassett has been approved by 35 insurance carriers to handle workers compensation claims in Oregon, and will handle claims for self-insureds in the state as well. Gallagher Bassett Services, a subsidiary of Arthur J. Gallagher & Co., plans to continue its expansion in the western United States later this year with the opening of a Las Vegas office. The TPA has more than 130 offices in North America, Australia and the United Kingdom. . . . The Occupational Safety and Health Administration last week launched a Web site dedicated to providing small businesses with the latest safety and health information, which may be useful for large businesses too. The Web site can be accessed from the agency's home page at www.osha.gov. According to an agency statement, the site contains various links, including: OSHA interactive software advisers; onsite consultation services; OSHA local offices; training resources; technical information; and easy-to-follow guides to specific OSHA standards.

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TRANSCOM Inc., a New Jersey non-profit corporation, is requesting proposals for the design, implementation and administration of a comprehensive benefits plan to be offered to approximately twenty-eight active management, professional, and clerical employees. The contemplated plan includes but is not limited to health, dental, vision, prescription, disability, life insurance, and retirement and pension.

Request for Proposal documents can be obtained by calling TRANSCOM AT (201) 963-4033.

All proposals will have to be submitted in sufficient time so that they are received by TRANSCOM no later than 3:00 P.M. on June 21, 1999. Proposals must be addressed to:

TRANSCOM Inc.
Newport Financial Center
111 Pavonia Center - 6th Floor
Jersey City, New Jersey 07310-1755
Attention: Jacqueline Erlanger
Manager, Finance & Development

HELP WANTED

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Prominent, national financial services and the largest independent insurance agency in Illinois is expanding its national Personal Lines practice. We are seeking an experienced CSR to join our Private Client Insurance Practice in our Chicago office. The ideal candidate will have at least 3 years personal lines experience, preferably in the affluent market. Excellent communications skills, computer skills, and Illinois P&C license are a must. Responsibilities include providing assistance to Account Executives such as managing the renewal process, processing new business and endorsements, communicating with clients and carriers. We offer competitive salary, incentive compensation and advancement opportunity along with a complete benefit package. Qualified candidates, please fax resume with salary history to: (312) 202-6301

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No Telephone Calls or Walk-ins Accepted

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Financial Institution Operations Manager

HRH Insurance, 7th largest insurance broker, is actively recruiting for our Pittsburgh location for a manager to oversee all call center activities. Must have 5 years experience, call center mgt., insurance designation, technical knowledge, customer service champion. Contact Gary Ryan, Human Resources, (804) 747-3111 for confidential interview. Fax credentials to (804) 747-3146.

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For consideration please
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Expanding financial services company and MGA subsidiary desires to attract underwriters or program managers with a following or book of business who are seeking an opportunity on their own. Also seeking possible MGA mergers countrywide, but with an immediate interest in the Chicago region. All replies strictly confidential.

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HELP WANTED

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Dynamic Fortune 500 company has an opportunity for a hands-on Director of Risk Management in the St. Louis area. The successful candidate will be highly motivated, focused and a strategic thinker. Excellent communication skills will be necessary as the incumbent will interact with the brokerage community as well as senior management of the firm. Five to eight years of demonstrated success in dealing with all lines of corporate insurance is required, as well as an undergraduate degree. An MBA and/or professional certification is highly desirable. Please send, fax or email your resume to:

Bayard Confidential
999 18th St. Suite 3080 Fax: 303.292.1264
Denver, CO 80202 heather_g@bayardad.com

LEGAL NOTICES

LEGAL NOTICES

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF MALCOLM EUTERFIELD AND
ANTHONY McMAHON, AS JOINT LIQUIDATORS OF
BELVEDERE INSURANCE COMPANY LIMITED,
CASE NO. 98-B-47663 (JLG)

NOTICE IS HEREBY GIVEN THAT ON MAY 20, 1999, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") CONTINUING THE PRELIMINARY INJUNCTION ORDER PURSUANT TO 11 U.S.C. § 304 ORIGINALLY ENTERED IN THIS CASE ON NOVEMBER 4, 1998. THE ORDER SHALL REMAIN IN EFFECT PENDING A HEARING TO CONSIDER WHETHER IT SHALL BE CONTINUED, WHICH HEARING IS SCHEDULED TO BE HELD ON NOVEMBER 18, 1999 AT 9:45 A.M. (THE "RETURN DATE") BEFORE THE HONORABLE JAMES L. GARRITY, JR., IN ROOM 610-2 OF THE ALEXANDER HAMILTON CUSTOM HOUSE, ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE JAMES L. GARRITY, JR. AND SERVED ON COUNSEL FOR THE PETITIONERS LISTED BELOW, SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE PETITIONERS.

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

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LEGAL NOTICES

LEGAL NOTICES

North Atlantic Insurance Company Limited (In Provisional Liquidation) Company Number: 361726

NOTICE TO ALL CREDITORS OF BELLEFONTE UK BRANCH BUSINESS

North Atlantic Insurance Company Limited ("North Atlantic") went into provisional liquidation on 6 March 1997, and CG Bird and PAB Evans were appointed as joint provisional liquidators ("JPL's") of North Atlantic at that time.

Since the summer of 1998, the JPL's and North Atlantic have been involved in litigation with Armco Inc., a US corporation and various of its subsidiaries ("Armco Group"). Litigation is currently taking place in a variety of jurisdictions, primarily in the United States, but with ancillary applications also having been made in Jersey.

The JPL's have now reached a settlement of all outstanding issues with the Armco Group. Under the terms of this settlement the JPL's are to apply to the High Court for the sanction of the compromise with Armco Group and to seek a direction to apply to the US Bankruptcy Court for a permanent injunction as detailed below.

The application to the High Court has now been made, and a hearing has been listed for Friday 16 July at 11:15 am.

Pursuant to the compromise, the JPL's are obliged to use reasonable endeavors to notify of the hearing before the High Court all known creditors under a book of business known as the Bellefonte UK Branch Business. This consists of business written by Bellefonte Insurance Company ("Bellefonte") (the legal predecessor to Northwestern National Insurance Company ("Northwestern"), a US insurer which is part of the Armco Group), through its UK branch. The majority of the business was written between 1972 and 1981. Policies were underwritten by the Bellefonte UK branch commonly using either the underwriting stamps "Bellefonte Insurance Company per GE Heath & Co Agencies Limited" or "Bellefonte Insurance Company". The aim of this advertisement is to provide such notice.

Bellefonte creditors are also entitled to notification of their opportunity to object to the application which the JPL's have been made. Could you please contact the JPL's in writing (quoting reference PBE/RK/NAIC) at PricewaterhouseCoopers, Plumtree Court, London EC4A 4HT United Kingdom as soon as possible if you propose to object.

The reason for contacting any party who is a policyholder under the Bellefonte UK Book of Business is that if the JPL's obtain the relief they seek from the High Court and the US Bankruptcy Court, this may affect the rights of such policyholders as they will be permanently prohibited from proceeding against Northwestern in the US as a result of permanent injunction granted by the US Bankruptcy Court. Instead, policyholders who wish to pursue a claim under the Bellefonte Book of Business will be only able to pursue such claims against North Atlantic.

PAB Evans
Joint Provisional Liquidator
North Atlantic Insurance Company Limited

Notice of increase in payment percentages

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"))

With effect from 18 May 1999, the payment percentages have been revised as follows:

	Existing Percentage	Increase	Revised percentage
Kingscroft	20%	4%	24%
Walbrook	13%	3%	16%
El Paso	20%	6%	26%
Lime Street	21%	5%	26%
Mutual	13%	3%	16%

Payment at the increased levels will commence in June 1999.

Dated this day 31 May 1999

CJ Hughes and IDB Bond

Scheme Administrators
of the KWELM Companies

Address for correspondence:

PricewaterhouseCoopers,
Plumtree Court, London EC4A
4HT, United Kingdom
Telephone: +44 171 583 5000
Fax: +44 171 212 6708
email: kwelm@uk.pwcglobal.com

Fairfax

Continued from page 3

charges and filed a motion to dismiss the Odyssey Re lawsuit (BI, May 3). Last week, Stirling Cooke filed a motion seeking to have the suit moved to the United Kingdom from New York.

A spokesman for Odyssey Re in London said the workers comp placements will take a "long time to sort out," but he noted that Fairfax has pledged to pay all valid claims coming from Odyssey Re London.

In the market announcement, Mr. Watson wrote, "I wish to assure you that plans for the orderly, efficient and, most importantly, solvent administration of (Odyssey Re London) have been drawn up. . . . Fairfax Financial Holdings Ltd. is fully com-

mitted to ensuring that the legitimate claims of (Odyssey Re London's) policyholders are honored in full.

"Fairfax has substantial financial resources, including a market cap. of \$6 billion Canadian (\$4.1 billion) and an asset base of \$30 billion Canadian (\$20.4 billion). Those resources were further augmented by last week's purchase of a \$1 billion adverse loss development cover which includes workers compensation carve-out business written by (Odyssey Re London)."

Odyssey Re London is capitalized at \$165 million, said the spokesman. Its book will be distributed across other Fairfax reinsurance operations, though this plan is still awaiting regulatory approval, according to Mr. Watson's letter. Odyssey Re plans to put the ongoing insurance and North

American casualty treaty business into TIG Syndicate Management Ltd., a Lloyd's agency that manages non-marine syndicate 1218. TIG Re provides all of the syndicate's \$25 million (\$39.9 million) capacity.

Property/casualty, property risk excess, marine and aerospace reinsurance business will be transferred to Odyssey Re Bermuda.

Following the Fairfax announcement, New York-based rating agency Standard & Poor's Corp. downgraded Odyssey Re London to BBB- from A- and placed it on CreditWatch with "developing" implications. "Standard & Poor's no longer considers Odyssey Re London to be strategically important to the Fairfax Group, and thus its rating will reflect its stand-alone financial strength," S&P stated.

Matthew Coyle, an analyst with S&P in New York, said the decision to shut down Odyssey Re's London market operation was part of the Fairfax reorganization and its evolving reinsurance business. He applauded Fairfax's purchase of the \$1 billion stop-loss cover last week but said he would like to see it explicitly applied to Odyssey Re London.

A London-based insurance analyst said he was not surprised at Fairfax's decision to shut down Odyssey Re London, particularly because of its experience with U.S. workers compensation business. The withdrawal of Odyssey Re London "is not going to make a difference to the market as a whole," the analyst said, but he predicted it is among the first of a number of small withdrawals to come that will gradually result in a sub-

stantial amount of capacity exiting the market.

Meanwhile, Fairfax last week also reached an agreement to acquire all of the Class I voting shares of TRG Holding for \$97 million. TRG was created in 1993 to manage the runoff of International Insurance Co. and other discontinued lines of business written by the TALEGEN Group, the holding company for Xerox Corp.'s insurance units. Those units included Crum & Forster Corp., which Fairfax acquired in 1998.

Xerox will continue to hold outstanding Class II shares of TRG. After the purchase, TRG will be responsible for managing Fairfax's discontinued books of business, runoff operations and reinsurance recoveries. The TRG purchase is expected to be completed during the summer. **BI**

Largest U.S. reinsurers' first-quarter 1999 results

Ranked by net reinsurance premiums written. All amounts in thousands of dollars.

Reinsurers	Net reinsurance premiums written 1999	Net reinsurance premiums written 1998	Policyholders surplus (reinsurers only)	Net income 1999	Losses & loss adjustment expenses	Loss ratio	Underwriting expenses	Expense ratio	Combined ratio 1999	Combined ratio 1998
1. Employers Re	832,086	826,176	5,107,466	202,735	540,350	68.1	273,481	32.9	101.0	101.4
2. American Re	735,671	679,893	2,559,527	5,113	374,490	66.7	247,592	33.7	100.4	98.9
3. General Re*	648,131	672,306	5,785,143	167,995	406,608	64.3	233,747	36.1	100.4	98.3
4. Berkshire Hathaway	508,000	511,000	N/A	N/A	352,000	95.9	8,000	2.2	96.1	102.6
5. Transatlantic/Putnam	331,927	292,642	1,349,589	63,974	227,396	73.9	83,955	25.3	99.2	99.8
6. Everest Re	244,902	243,523	1,063,261	31,346	169,685	71.6	76,118	31.1	102.7	102.9
7. St. Paul Re	228,673	276,402	N/A	N/A	144,583	59.8	78,344	34.3	94.1	99.5
8. Zurich Reins. (N.A.)	227,811	272,904	962,875	47,878	133,414	60.3	91,553	40.2	100.5	97.6
9. Hartford Re Co.	218,048	151,213	N/A	N/A	112,196	74.4	60,526	27.8	102.2	103.2
10. Gerling Global Re	189,106	136,356	693,469	1,453	130,149	75.0	56,108	29.7	104.7	104.5
11. Swiss Re America	178,605	185,297	1,866,548	27,873	152,493	75.0	64,167	35.9	111.9	103.7
12. SCOR U.S. Group	138,133	155,540	404,930	562	106,627	76.0	55,299	40.0	116.0	103.8
13. NAC Re	117,915	121,298	732,907	20,787	72,468	63.4	45,996	39.0	102.4	102.9
14. Signet Star Re	102,093	80,490	247,889	(3,214)	67,918	76.0	34,751	34.0	110.0	102.3
15. Underwriters Re	93,830	111,027	600,538	15,569	69,847	72.8	28,606	30.5	103.3	102.2
16. TIG Re Co.	81,487	112,332	561,131	10,909	73,144	74.0	32,857	40.3	114.3	107.2
17. PMA Re	71,364	70,934	282,024	3,285	32,302	71.0	21,428	30.0	101.0	102.9
18. Risk Capital Holdings Group	64,437	44,408	308,651	(32,721)	80,732	128.3	24,936	38.7	167.0	105.9
19. Reliance Re	58,834	54,780	N/A	N/A	28,759	66.9	21,881	37.2	104.1	97.3
20. Folsamerica Re	49,930	58,542	341,470	5,976	38,389	71.5	17,098	34.2	105.7	104.0
Totals for Top 20	5,120,983	5,057,063	22,867,418	569,520	3,313,550	71.6	1,556,443	30.4	102.0	101.0
Total for all companies	5,118,836	5,036,864	26,899,077	663,524	3,268,013	69.3	1,737,820	33.9	103.2	100.1

*Berkshire Hathaway's worldwide operations and General Re's domestic operations continue to be reported separately.
Sources: Reinsurance Assn. of America and Business Insurance

Results

Continued from page 3

ing, but it's not a groundswell at this point," said William J. Adamson, CEO of CNA Re, a unit of CNA Financial Corp. in Chicago. "It is beginning to head that way," he added. "I think we're going to see continual

changes as the year goes on."

Improved pricing in the primary market will take time to appear in insurers' financial results, however, and "it'll probably take that much longer to flow through to reinsurance," said Charles T. Troiano, president and CEO of Gerling Global Reinsurance Corp. of America in New York.

"In the meantime, I would expect deterioration in results and probably still some decline in premium volume for many of the reinsurers," he said.

"It's still a little early" for any firming in the primary market to be reflected in the reinsurance market, agreed Greg Doyle, president of domestic insurance company operations for Princeton, N.J.-based American Re-Insurance Co.

Changes in the primary market, though, will "translate into increased opportunities on the reinsurance side," he predicted.

Mr. Doyle said the stock market will be a key factor. "Results are deteriorating, there's still plenty of capital, returns on equity are getting smaller, investment yields are down, but I think the thing that is now really pushing us over the top" is most publicly traded insurers and reinsurers are trading below book value, and the obvious action to take is in the pricing area, he said.

David Robb, president of reinsurance operations for the Hartford Insurance Group in Hartford, Conn., pointed to shrinking retrocessional capacity. "I think we're beginning to

see that retrocessional capacity is starting to shrink, and that reinsurers who buy retrocessional capacity are probably going to be spending more money for less protection."

That might eventually trickle down to the reinsurance market itself, though it is still very early in the process, said Mr. Robb.

Ken Zuckerberg, an analyst with Keefe Bruyette & Woods in New York said he believes, however, that the reinsurance market still is "a mixed bag. I'm having a difficult time believing whether a lot of discipline is getting back to the reinsurance business," he said.

Don Watson, director at rating agency Standard & Poor's Corp. in New York, said, "Our outlook is generally pessimistic, given the declining rate environment and the increased incidence of property losses."

The 36 reinsurers who report their results to the Washington-based Reinsurance Assn. of America posted a 103.2% combined ratio for the first quarter of 1999, vs. a 100.1% combined ratio for the first quarter of last year.

The Top 20 reinsurers, based on net premiums written, posted a 102% combined ratio vs. a 101% combined ratio reported by a comparable group in 1998's first quarter. *Business Insurance* includes the results of the Berkshire Hathaway, which continues to report its results separately from General Re Corp; Berkshire Hathaway acquired Gen Re in 1998.

The 36 reinsurers posted \$5.12 bil-

lion in net premiums written, just a 1.6% increase from the \$5.04 billion reported by a comparable group for the same period in 1998.

The 1999 first-quarter Top 20 reinsurers posted a 1.3% increase, to \$5.12 billion, from \$5.06 billion those same companies posted in the year-earlier period.

John L. Ward of the Cincinnati-based Ward Financial Group said, "It looks like the reinsurance segment has been impacted by many of the factors that affected the primary carriers, namely a slight decline in investment income as a result of lower realized capital gains."

In addition, "to varying degrees, they've been impacted by cat losses in the first quarter," he said. Furthermore, "pricing remains extremely tough, and is starting to impact the bottom line."

But, Mr. Ward added: "Overall, I think the segment remains very well capitalized, and strong financially. It's just that the underpinnings of the business right now . . . have had some downward turns."

Moody's Mr. Murray also pointed to first-quarter catastrophe losses. Although 1998 was a big year for catastrophe losses, with higher frequency than severity, "for the most part those losses were retained by primary insurers," said Mr. Murray.

"However, we've seen in the first quarter that reinsurers have taken some lumps for tornadoes in the U.S.," he said. "We've also seen as reserve redundancies have worked

their way through primary insurers' income statements over the past three years, there's perhaps heightened concern now that reinsurers may be also exposed to some reserve deterioration on liability business," said Mr. Murray.

The top end of the market, which reflects the well-capitalized, strong reinsurers, "is continuing to show generally superior results," said Michael Smith, an analyst with Bear, Stearns & Co. in New York.

"Underwriting results are better than industry averages, the cash flows—and therefore investment incomes—are stronger than average, the earnings are coming in pretty much in line with expectations," he said.

But at the bottom end of the market, "those companies have found that they've had to do some riskier things in order to generate some business and to put out capacity for dicier programs, and the result is clearly evident in the numbers, where the smaller companies are coming in with much more erratic results, and it's among the smaller companies where we're seeing some of the bigger, uglier surprises," said Mr. Smith.

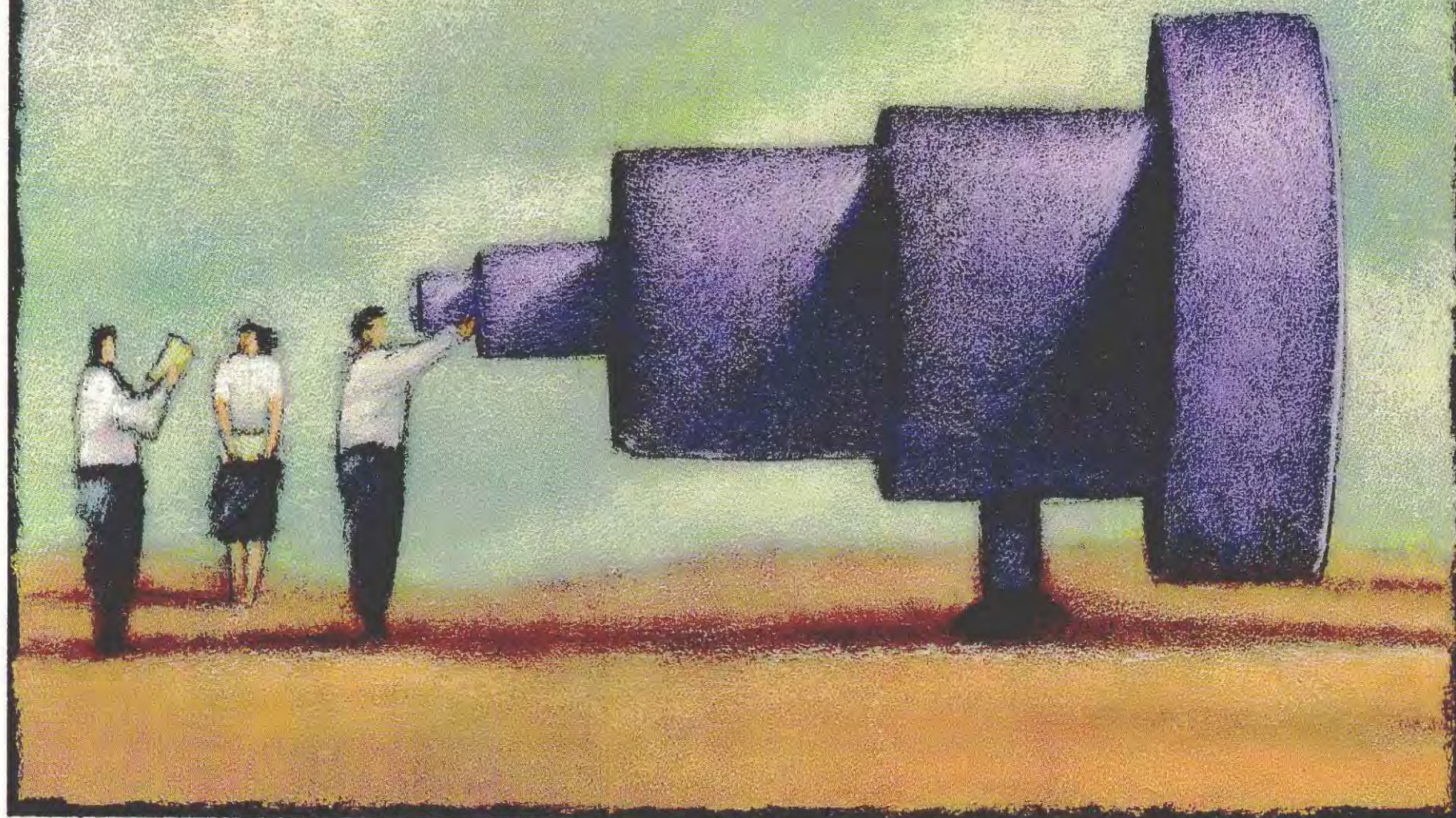
CNA Re's Mr. Adamson said, however, that while there may be some smaller reinsurers that are writing more volatile business, "I think some of the larger reinsurers are out there for market share and not profitability and so far have not been willing to shed business." **BI**

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Commentary

Gun control issue far from one-sided

For every letter of objection I write to an editor or columnist, I will now also write one of thanks or encouragement.

This is the lesson I have learned from taking on gun control in a recent Commentary.

I've learned in the last week that many readers of *Business Insurance* support stricter gun control and advocate banning certain types of weapons. They wrote, however, only after reading excerpts from the barrage of mail I received blasting me and my position favoring stricter gun control.

"I was saddened, but not surprised, by the fact that only one reader congratulated you for your commentary advocating stricter gun control laws. I was saddened because I realized that, like many others, when something ticks me off, I'm often very quick to shoot off a loud letter of protest. But when I agree with an opinion, I murmur my approval and move on," wrote an insurance trade association leader.

"So I have to blame my own silence and laziness (and the silence and laziness of people like me) for the overwhelming lack of positive support for your commentary. I applaud the courage you took to speak up on such an important, emotionally charged issue. This country needs more leaders like you, voicing what is already, apparently, the majority (but underfunded) view," he wrote.

An insurance company executive wrote: "Please forgive me for not providing my support earlier. I suspect that those like myself have become so jaded with the preposterous support bought by the National Rifle Assn. that not only are we not surprised by the negative comments, but also have come to expect them. I am a former member of the NRA and dropped my membership years ago in protest to their ridiculous position on firearms, both registration and limits on the types available for 'sporting' purposes. Please keep up the pressure."

A veteran in the brokerage business wrote: "Do not be discouraged," noting that "The usual 'NRA' type goes ballistic whenever the phrase 'gun control' is mentioned. No serious reformer is proposing a complete 'gun ban,' although certain powerful military weapons should be banned. On the other hand, no sensible person is proposing, as the NRA and related organizations do, 'right-to-carry laws' that will turn every U.S. town into a mini-Dodge City, Kansas, circa 1870. There is plenty of room for licensing, registration, storage requirement and a requirement of personal liability."

This writer also sees the "insurance" issue in stricter gun control. "I have privately urged certain segments of the insurance industry to help out; it is in their interests. For example, exclude product liability coverage for manufacturers of guns of all sorts. Since the insurance industry is also paying the workers compensation, general liability and death claims, lobby for strict liability for gun owners. In other words, raise the risks and pass the costs back to the owners, perhaps by requiring them to carry personal liability insurance."

He notes that insurers can help reduce gun deaths just as the "insurance personal lines industry has played a positive role in mitigating drunken driving by greatly increasing the costs coverage for drivers with driving under the influence convictions and active public relations, as well as support of organizations like MADD."

Other writers support a ban on certain types of guns. The insurance trade association leader said: "What we really need is a ban on handguns and assault weapons. Only law enforcement officers should be allowed to have them. Gun control opponents claim that there still would be a black market and that, initially, criminals would have handguns and law abiding citizens would not. . . eventually the tide would turn, and these weapons would be so hard to get and so expensive that the balance of power would once again favor the police on the street."

A risk manager wrote: "I totally agree with your comments in your recent articles on gun control. I believe the majority of American people are against the widespread availability of guns and would definitely support a ban or stricter controls on semi-automatic weapons. . . There is no reason for anyone to have such weapons."

"I am actually in favor of a total ban on most guns. . . The days of the Wild West Era are over. Let's join the rest of the world and civilize this aspect of our society."

I'm sure those who disagree are saying that the third column in a row from me on gun control is surely three too many. But to ignore these letters from people who support gun control would leave the false impression that readers of *BI* are overwhelmingly opposed to more gun control.

This second wave of response sets the record straight. And, it reminds us all that to prevent the opponents from holding center stage, it's as important to cheer the advocates of a cause we believe in as it is to chastise the opponents.

Publisher and Editorial Director Kathryn J. McIntyre's commentary appears fortnightly. She can be reached at kmcintyr@crai.com.



Kathryn J. McIntyre

Space

Continued from page 1

The congressional report also includes a discussion of the nature of the space insurance market, noting the highly technical nature of information exchanged among all parties involved in a transaction. The committee report cited concerns about procedures for the disclosure and handling of sensitive information by the "insurance community" in its dealings with the Chinese. In a one-page summary of implications for the space insurance industry, the report concludes: "It is unclear whether, or to what extent, the transmission of controlled technical information to and from the space insurance industry is reviewed in advance or monitored by U.S. Government officials."

Marsh Inc. declined to comment on the report beyond a written statement: "Marsh complies with existing space technology security requirements specified by the U.S. government and will continue to do so with regard to any new requirements that may be promulgated."

Other observers, however, are not so reticent about the report and its recommendations.

"There's no real change in the substance of the requirements, except in regard to technical data for launch vehicles. At first blush, it seems to be not so much an issue for the underwriting and reinsurance community as it is for the brokers, manufacturers and operators," said Dennis Burnett, a space law expert who is a partner in the Washington law firm of Pierson & Burnett L.L.P.

"The substance really hasn't changed; it's the emphasis on compliance. There's going to be a lot more attention on the insurance industry to ensure compliance. However, at the end of the day, there are issues with which the underwriters and reinsurers will have to contend. For example, will restrictions on the number of underwriters to receive data be accepted? Can acceptable assurances be given to U.S. authorities to convince those authorities to allow any foreign access to sensitive technology?" he asked.

Mr. Burnett said that while he has heard that the compliance issue has affected the placing of "some programs," he has no direct knowledge that it is affecting anything ongoing. He said he believes the only real implication is that "advance planning will be required to take into account the processing time and avoid project delays."

He added he doesn't think "U.S. underwriters will be affected by this at all." The burden will fall on "foreign underwriters, and it will lie in what kind

and what detail of technical information they need before they write their insurance or they pay claims. In particular, I think that there may be problems with data related to U.S. launch vehicles—the satellites not so much so," he said.

There are two issues to which we "don't know the answers yet": How many foreign underwriters will receive data, and what levels of technical detail are involved, added Mr. Burnett. The level of detail applies mainly to U.S. launch vehicles and to new or highly advanced satellites and should not matter much to well-established communications satellites in common use today, he said.

"The real question is whether

'The report contains a disturbing record of significant breaches of national security. Insurers, like all Americans, are deeply disturbed,' says David Farmer.

there will be an artificial restriction of the market that drives up the cost of insurance. Such a result may well disadvantage not only U.S. satellite manufacturers and operators but most particularly U.S. launch service providers," he said.

The Cox recommendations shouldn't cause much worry for insurers, said Simon Clapham, managing director of Marham Space Consortium at Lloyd's and a strong critic of recent changes in the United States to the International Traffic in Arms Regulations (ITAR, April 5).

The ITAR amendments—which implement the Strom Thurmond National Defense Authorization Act of 1999—require an export license not just for U.S.-built communication satellites but also for the technical data needed by insurance providers and underwriters.

Mr. Clapham said U.S. manufacturers of satellite products and their clients should be more worried "because if they can't give us the information to enable us to underwrite the risk, the amount of market they can go to is limited, with prices likely to rise."

If U.S. manufacturers can't export, "then potential operators will go to the Europeans for their satellites," Mr. Clapham said. "Essentially what the Americans are doing is strangling themselves" with these export regulations.

"The report contains a disturbing record of significant breaches of national security. Insurers, like all Americans, are deeply disturbed," said David Farmer, senior vp in the Alliance of

American Insurers' Washington office.

But, he added, "in regard to the insurance aspects of the report, it would probably be premature and perhaps counterproductive to apply export control laws to insurance underwriters without carefully examining the policy implications of such a move."

"There already exist export controls on commercial satellites as a result of actions taken in March 1999 by the U.S. Department of State. The rule that was issued requires satellites to have export licenses. . . To create any new restrictions on the insurance industry would probably in the short run export jobs and in the long run have little impact on the

growing space insurance market due to its global nature."

Marham's Mr. Clapham said U.S. export license requirements for the exchange of technically sensitive information "make it more difficult to make a claim (on a policy). So everything they're doing is against their own."

"In theory we can get this information sooner or later; they just need to get an export license. It takes a number of months to do. I would have said it wouldn't have made any difference four weeks ago, but bearing in mind there's pressure to increase rates, any delay in buying insurance will have swelled rates by that much more," Mr. Clapham remarked.

Mr. Clapham said he thinks export licenses are an unnecessary hindrance, as insurers have been signing non-disclosure agreements for years. He is seeking help from the British government to persuade the United States to drop or ease its license requirements. He's written to Lord Sainsbury, undersecretary of state for science, and is scheduled to meet June 1 with him and Marsh brokers who place satellite risks.

"The U.K. government is very interested in our position. I'd like to see that they help in enabling us to speak to the right people in the States. We just need to sit down and talk about it, assure the Americans that we are a strong ally of theirs."

"I also believe that since the Cox report was issued, part of the U.S. government is aware of what these Draconian rules have started," he said. **BI**

Quality

Continued from page 2

York Inc. was the only HMO to not score at average or above for any category. Both Prudential and NYLCare have since been purchased by Aetna Inc., parent of Aetna U.S. Healthcare Inc.

One striking result of the study is the variation between plans on some areas of wellness. For example, only 16% of children in NYLCare received all their recommended immunizations by age 2, compared to the statewide HMO average of 71% and the top

score of 89% by Health Care Plan in Buffalo, N.Y.

"It's an unacceptable percent," Dr. McGrath said of the results his study found for NYLCare. "It stands out particularly since employers have around New York state other plans that have demonstrated they do better."

Similarly, 35% of heart attack victims in Vytra Healthcare of Long Island received a beta blocker drug—the recommended treatment—after the attack, compared with a 73% average for all HMOs and 98% at Blue Cross & Blue Shield of the Rochester Area, the top performer.

Dr. McGrath said employers armed with this data can pressure their HMOs to improve quality. Employers, for example, can negotiate to provide the HMO a bonus for exceeding a quality benchmark but withhold part of the premium for failing to hit the mark, he said.

The New York Business Group on Health and IPRO, a non-profit health care evaluating organization, are co-sponsors of NYSHAF.

The study is available free by calling Dr. McGrath at (516) 326-7767, ext. 221, or visiting the Web site at www.nyshaf.org.

Monitor

Continued from page 1

One employer that for the most part handled a recent hostile work environment claim in a manner recommended by labor and employment law attorneys is St. Louis-based stock brokerage Edward D. Jones & Co.

Jones in late April fired 18 employees, allowed another to resign and issued written warnings to 41 more employees. The workers, using a company-owned Internet-access and e-mail system, had distributed what a company spokeswoman described as "inappropriate material" in the workplace. Jones began its investigation after an employee complained about receiving the material.

The severity of discipline was based on how egregiously employees had violated company policy, the spokeswoman said. Jones' 17,000 employees worldwide sign a "very strict" policy that "very clearly" limits their Internet and e-mail usage to business purposes and subjects their usage to company monitoring, the spokeswoman said. Jones, though, does not routinely monitor such activity, she said.

The company also informs employees that policy violations can result in discipline, including termination.

The incident highlights the competing interests of employees and employers.

Employees have privacy rights under common law in most states. In California, that right is guaranteed in the state's constitution.

But employees' private activity on company computers could create a hostile work environment, which employers are legally obligated to prevent and eradicate under federal and state laws and two 1998 U.S. Supreme Court decisions on sexual harassment (*BI*, June 29, 1998).

Employees who spend an inordinate amount of time e-mailing and surfing the Net for personal reasons also limit their own productivity.

In balancing those interests, courts have considered whether employees had a reasonable expectancy of privacy, legal experts said.

That is why "we, in the strongest way, advise employers to have written policies to diminish employee expectation of privacy," said employer attorney Bill Earley, a partner at Luce, Forward, Hamilton & Scripps L.L.P. of San Diego, Calif.

Mr. Earley noted that even the California constitution protects employers with such written policies from liability for invasion-of-privacy claims.

Union and employee attorney Debra A. Jensen agrees that employers can easily shield themselves against such claims.

"For an employee who is well-advised by an employer that there is a policy and the system belongs to the employer and it is to be used profes-

sionally and can be monitored and the employee can be disciplined, there is no privacy expectation," said Ms. Jensen, managing partner with Galfand Berger L.L.P. in Philadelphia.

Opinions differ on the necessity of employees signing off on the policies.

One federal district court judge, though, has ruled that a company can break its promise to employees that e-mails are confidential and will not be intercepted and used against them.

The plaintiff in that case charged his employer, the Pillsbury Co., with wrongful termination. The company fired the plaintiff and his supervisor after a company executive inadvertently intercepted the pair's e-mail, which contained threatening remarks against the executive.

The plaintiff, who contended the threats were not serious and that Pillsbury promised employees that e-mails would be kept confidential, argued that Pillsbury violated his common law right of privacy.

In dismissing the complaint in 1996, the judge ruled that regardless of a company's promise, employees who voluntarily send e-mails to supervisors over corporate computer systems cannot reasonably expect such communication to remain private.

Even if that expectation were reasonable, it is outweighed by the employer's interest to prevent illegal activity and unprofessional comments over its e-mail system, the judge ruled.

Pillsbury attorney Steven R. Wall noted that the company's e-mail system warned employees that their e-mail activity could be monitored. For legal expediency, he said, Pillsbury did not challenge the plaintiff's contrary claim.

What employers legally can do to police employees' use of e-mail and the Internet and what employers "ought to do" are two different things, according to American Civil Liberties Union attorney Lewis Maltby, director of the employment rights office for the New York-based organization.

Mr. Maltby said expecting employees to never use company computers for personal reasons is unreasonable.

"The truth is you can't draw a watertight line between work and home," he said. "Employees ought to be able to send personal e-mails while sitting at their desks eating lunch."

Mr. Maltby acknowledged, though, that employers have "legitimate concerns" about how their employees' e-mail and Internet usage impact the work environment and productivity. But, he said, those concerns "can be addressed less intrusively."

Mr. Maltby and several other legal experts, including employer attorneys, agreed that employers should monitor for excessive personal use—not all personal use—of e-mail and the Internet. And only transactional

data, such as the amount of time spent at an Internet site or the recipient of e-mails, should be analyzed.

For example, if transactional data indicate an employee is sending an excessive number of personal e-mails, ask the employee to describe the nature of the communications, said Clifford Fishman, a law professor at the Catholic University of America in Washington. If the employee insists the messages were business-related, ask permission to read them, Prof. Fishman said. Refusals open the employee to disciplinary action, he said.

Employers, though, should not visit the Internet sites employees frequent or review e-mails, experts advise.

Otherwise, employers will "learn some things they wish they never had," the ACLU's Mr. Maltby said.

For example, an employer may find that instead of an Internet pornography site, an employee routinely has been hitting sites that focus on AIDS, cancer, substance abuse or incest.

That could trigger an invasion-of-privacy claim against the employer, some legal experts said.

Having that information in hand also could handcuff an employer that had planned to discipline the employee for some other reason, said employer attorney Russell H. Gardner, a partner with Piper & Marbury L.L.P. in Baltimore. The employee may gain leverage in arguing that the disciplinary action is a ruse for discrimination against the employee based on the employer's knowledge of that personal information, Mr. Gardner said.

Mr. Gardner, though, like many employer attorneys, supports the notion that employers routinely should be looking for activity that suggests employees are abusing their computer privileges. Routine monitoring of transactional data falls under employers' obligation to prevent hostile work environments, the experts said.

Also, random monitoring could expose employers to bias suits if many or all of the monitored employees belong to classes protected by anti-discrimination laws, noted Finbarr McCarthy, associate professor of law at Temple University in Philadelphia.

Even if the monitored employee activity is not unlawful, it may be unprofessional and grounds for termination, noted employer attorney Jeffrey Pasek, a partner with Cozen & O'Connor in Philadelphia.

The ACLU's Mr. Maltby disagreed about what he called "employer fishing expeditions."

"You don't have to act on a complaint you didn't get," he said.

Legal opinions are split over whether federal and state eavesdropping laws permit real-time monitoring of e-mail communications. Many legal experts said that because e-mail systems automatically archive messages, employers typically should limit their monitoring activities to that stored material. **B**

Updates

Publisher's insurer settles case

Continued from page 2

The settlement was reached May 21, days before the jury trial was set to begin in a federal district court in Maryland. Under general liability policies, insurers have the right to settle cases without the consent of the policyholder.

"We are extremely disappointed with this development," Peder C. Lund, president and publisher of Paladin Press, said in a statement. "Paladin and its attorneys were both fully prepared and anxious to be heard at trial."

Des Moines, Iowa-based Employers Mutual Casualty Co. wrote the policy and negotiated the settlement. Employers Mutual was ordered to defend Paladin by a judge in Boulder district court in 1996, after the insurer denied coverage.

Coopers & Lybrand suit settled

NEW YORK—Coopers & Lybrand's U.K. unit will pay \$108.1 million to Maxwell Communications Corp. P.L.C. to settle claims that the accounting firm should have spotted financial irregularities that led to the 1991 collapse of the media conglomerate headed by the late Robert Maxwell.

Maxwell Communications had initially sought \$480 million from Coopers & Lybrand, charging in a suit filed in British courts in 1994 that the accounting firm was negligent in its audits of Maxwell's books.

The settlement will be paid with a combination of insurance and funds Coopers & Lybrand set aside prior to its merger with Price Waterhouse.

HIAA supports health vouchers

WASHINGTON—Lower-income workers should receive vouchers to help them pay health insurance premiums, the Health Insurance Assn. of America says.

As part of a package designed to reduce significantly the 43 million non-elderly Americans without group coverage, the Washington-based HIAA says federal health insurance vouchers should be provided to people with incomes of up to 200% of the federal poverty level. The poverty level for a family of four in 1998 was \$16,530, according to a preliminary estimate by the U.S. Bureau of the Census. Those in group plans could use the vouchers to cover employee contributions. Those not in group plans could use the vouchers to purchase coverage from commercial insurers.

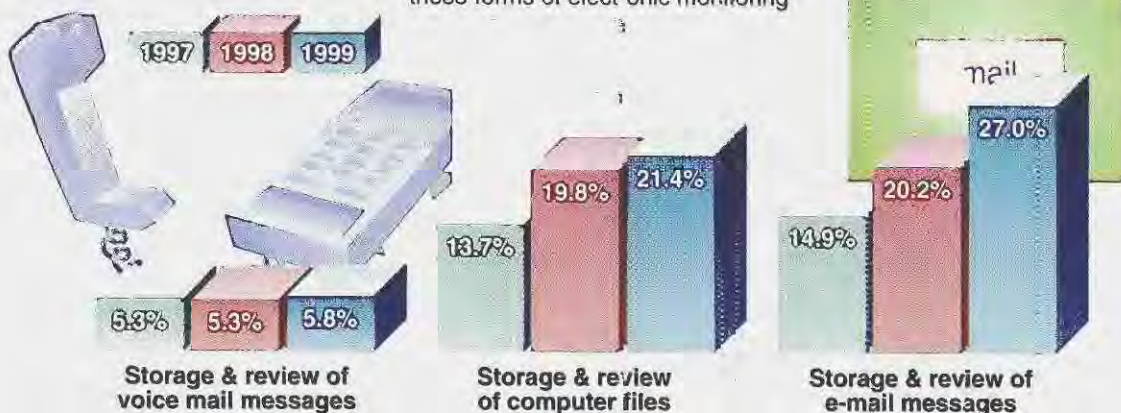
Other elements of the HIAA package include pre-emption of state-mandated benefit laws, allowing employers of all sizes to offer medical savings accounts, giving small employers tax credits if they offer group coverage and allowing employees to use pretax dollars to cover their share of a group health insurance premium. Under current law, employee health insurance premium contributions are considered pretax only if the health care plan is part of a Section 125 flexible benefits plan.

Briefly noted

The family of a student slain in the **Columbine High School** shootings filed a \$250 million wrongful-death lawsuit last week against the parents of the two teen killers. It is the first lawsuit to be filed since the April massacre—in which 12 students and a teacher were killed before the suspects killed themselves—and it is expected to be amended to include more defendants. . . . The Labor Department will not challenge an April 9 ruling by the U.S. Court of Appeals for the District of Columbia barring the **Occupational Safety and Health Administration** from implementing its proposed Cooperative Compliance Program (*BI*, April 12). . . . Florida Gov. Jeb Bush has signed a **tort reform** bill that, among other things, eliminates joint and several liability for defendants found to be less than 10% at fault, limits vicarious liability of automobile owners and creates a 12-year statute of repose for lawsuits against manufacturers of most products. . . . Alabama Gov. Don Siegelman has signed into law two **tort reform** bills passed by the legislature last week. One limits so-called "forum-shopping" by plaintiffs' attorneys; the other imposes new requirements on class-action suits. The state House is expected to vote this week on a measure that would cap punitive damages. . . . Illinois Gov. George Ryan is expected to sign a **patients' rights bill** that the state Legislature passed last week. The bill would impose broad reforms on HMOs regulated by the state. Major provisions including banning so-called gag clauses on physicians; providing consumers with additional grievance procedures; increasing access to specialists; and giving patients the option of buying drugs from local pharmacies at the same discounts as large chains. . . . The Labor Department is asking employers for comments to assist the agency in developing rules to enforce a 1998 law that requires health care plans offering coverage for mastectomies to cover **reconstructive surgery** on the same basis as they cover other surgical procedures. . . . A group of 20 state insurance regulators visited 120 members of Congress last Tuesday to lobby against the proposed **financial services modernization legislation**, H.R. 10. They timed their effort to coincide with deliberations on the bill by the House Commerce Subcommittee on Finance and Hazardous Materials, which ultimately approved the bill last week. The full House Commerce Committee is expected to consider H.R. 10 sometime in June. . . . The **Britannia Steam Ship Insurance Assn. Ltd.** and the **Standard Steamship Owners' P&I Assn. (London) Ltd.** are set to merge and become the largest protection and indemnity club within the International Group of P&I Clubs. Their union is planned as part of the intended merger announced last week of their London-based managers, Charles Taylor Group P.L.C. and Tindall Riley & Co. . . . Senate Finance Committee Chairman William Roth, R-Del., said last week that an attempt to develop a bipartisan health care **patient protection bill** with ranking committee minority member Sen. Daniel Patrick Moynihan, D-N.Y., has fallen apart, complicating efforts to get a measure to the Senate floor. . . . South African broker **Forbes Group** has changed its name to **Alexander Forbes Ltd.** The change was unveiled along with the broker's fiscal 1998/99 results, which included a 48% increase in gross revenues to 1.56 billion rand (\$268.3 million), and an 89% gain in profits to 212 million rand (\$36.5 million).

Workplace monitoring on the rise

% of U.S. company respondents using these forms of electronic monitoring



Source: American Management Assn.

GRAPHIC BY JOHN HALL

Wake up, you're dead.

Tom Ranney Ph.D.



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// You've just hit a tree. Slammed into an embankment. Or maybe even another vehicle. That's when I wake you up and end the test. At the Liberty Mutual Research Center, we keep truck drivers awake for hours, and then put them in our driving simulator to test the effects of road fatigue. Because every year, thousands of accidents are caused by drowsiness. So, to keep the road safe, we're developing tools to measure fatigue factors like road vibration and mirror glare. Because I'd rather someone crash in here than out there on the road. //



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