

# Business Insurance

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

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## Florida Legislature passes tort reform measure

TALLAHASSEE, Fla.—Florida Gov. Lawton Chiles has about two weeks to decide whether to veto comprehensive tort reform legislation passed late last week by the state Legislature.

The bill, sponsored by state Sen. John McKay, R-Bradenton, among other measures would eliminate automatic application of joint and several liability in civil cases with total damages of \$25,000 or less. The bill also specifies that joint and several liability would apply only up to \$300,000 of the total economic damages

See Updates on next page

## The cost of recovery

# Transit receivership price tag high

By DOUGLAS McLEOD

JEFFERSON CITY, Mo.—The hugely insolvent Transit Casualty Co. may have earned many distinctions since it collapsed in 1985, but one stands out: It is the largest insurance failure ever to happen in a small town.

That town is Jefferson City, a state capital of 35,000 people in the middle of Missouri farmland, where state government is the largest employer and where friendships and political feuds are prominent in a way they might not be elsewhere.

The fact that the Transit receivership was organized here may explain its unique character: Apart from Transit's success in collecting

\$1 billion for its creditors—far more than many would have guessed a decade ago, though still far below its estimated \$3.5 billion in liabilities—the receivership is also notable for the large rewards it has paid those with personal or political connections in Jefferson City; its intense fights with the Missouri Insurance Department, which has virtually no control over Transit despite its nominal role as official receiver; and the unusual secrecy surrounding some of Transit's operations.

Receivership officials, supervised by Cole County Circuit Judge Eyrion L. Kinder, refuse to make details of their compensation public, and court files on the subject are sealed. But Transit documents

show, for example, that Special Deputy Receiver J. Burleigh Arnold and two top officers stand to collect several million dollars in deferred compensation from Transit, making them possibly the highest-paid property/casualty receivership officials in the country.

Funds set aside for the deferred compensation payments to the three men totaled \$7.4 million at the end of 1995, according to an Internal Revenue Service filing.

Mr. Arnold's compensation also includes an undisclosed six-figure annual salary; a \$5,000 monthly allowance for his home in Los Angeles, where the Transit receivership actually operates; and a leased Lexus automobile, Transit cash

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PHOTO: ROBERTO CENICEROS

Transit Casualty Special Deputy Receiver J. Burleigh Arnold receives an allowance for his home in Los Angeles, where the receivership operates.

## High court to hear pension plan case

By MARK A. HOFMANN

WASHINGTON—How the Supreme Court decides a case involving the use of surplus assets in a contributory defined



benefit pension plan could increase employer costs, force them to share surplus pension assets with employees and make offering contributory defined benefit plans less attractive, observers say.

The justices last week agreed to hear *Hughes Aircraft Co. vs. Stanley I. Jacobson, et al.* A group of Hughes retirees sued their former employer, charging that by amending the con-

tributory plan to change it to a non-contributory plan, Los Angeles-based manufacturer Hughes actually terminated the plan and must distribute its surplus assets to participants.

If the high court agrees with the 9th U.S. Circuit Court of Appeals that the Hughes retirees can pursue a suit under the Employee Income Retirement Security Act seeking to claim some of the plan's surplus, some observers fear employers will be less likely to offer contributory defined benefit plans as they could face increased exposure to litigation.

No date has been set for arguing the case, and a decision is not expected until late this year or in 1999.

Exactly how broadly the 9th Circuit's decision could be applied should be of particular concern to employers, say observers.

"How important it is to employers depends in large part on whether there is leakage over to other types of plans. If it's

See Pension on page 50

## Comp telemedicine studied

By MEG FLETCHER

AUSTIN, Texas—Using telecommunications networks to link rural workers with job-related injuries to specialized doctors could enhance Texas' workers compensation system and cut costs, a new research report says.

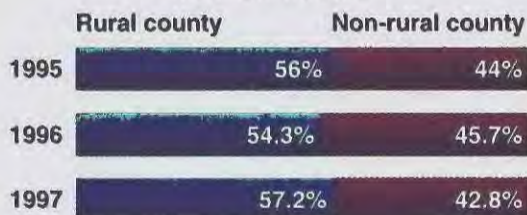
Telemedicine has great potential to benefit the workers comp system by accelerating diagnosis and treatment, improving the quality of medical assessments, improving medical records management and reducing travel costs, according to the report by Texas' Research and Oversight Council on Workers' Compensation, known as ROC.

However, representatives of workers and state administrators who reviewed the Texas study urge that

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### Texas workers comp claims

Percent of claims filed by rural vs. non-rural workers



Source: Texas Workers' Compensation Commission and ROC

GRAPHIC BY JOHN HALL

## Expanded liability costly: Study

Legislative provisions would raise health care premiums

By MARK A. HOFMANN

WASHINGTON—One of the nation's largest employer groups will urge its members to stop providing health insurance to their employees if Congress passes controversial health reform legislation that would expand employer liability in malpractice cases.

Bruce Josten, executive vp of the Washington-based U.S. Chamber of Commerce, threw down that gauntlet as he and several other representatives of em-

ployer groups that belong to the Health Benefits Coalition unveiled a new study of the impact of various legislative proposals on managed care plans during a news conference at the U.S. Capitol last week.

The group directed most of its criticism at the proposed Patient Access to Responsible Care Act, which critics charge would open up employers to possible lawsuits from employees who allege harm from employer-provided managed care plans.

The measure's supporters, notably its chief House sponsor—Rep. Charles Norwood, R-Ga.—have repeatedly denied that employers are the target of the measure, which the measure's supporters say is designed to correct perceived abuses by managed care plans.

The Health Benefits Coalition also criticized the House Democratic leadership's Patients Bill of Rights Act, a legislative proposal the HBC charges also would create

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## Updates

## Florida tort reform passes

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awarded when the defendant's portion of comparable fault exceeds 20% and is greater than the plaintiff's. Comparative fault would determine the defendant's share of the remainder of any award above \$300,000.

The bill also sets a 12-year statute of repose for products liability, authorizes more sanctions against frivolous lawsuits, and prohibits the award of repetitive punitive damages under some circumstances.

"It's a good bill, and we're going to encourage the governor" to sign it or let it become law without his signature, said Jim Brainerd, vp and general counsel of the Florida Assn. of Insurance Agents in Tallahassee. A spokesman for the Democratic governor said, however, that Gov. Chiles has 15 days after receiving the bill to decide whether to veto the measure. The governor had not received the bill as of late Friday.

## Oxford reports loss for quarter

NORWALK, Conn.—Oxford Health Plans Inc. reported a \$45.3 million net loss for the first quarter, compared to \$34.4 million in net income for the comparable period a year ago.

Results reflected a non-recurring after-tax restructuring charge of \$16.3 million for severance and other costs expected to be incurred in connection with restructuring certain administrative and management functions, according to the company, which would not comment on the results. Total revenues were \$1.2 billion, up from \$987.3 million for the same period a year ago.

Earlier this year, Oxford had reported a \$284.7 million fourth-quarter loss, which led it to announce it would seek \$700 million through a capital infusion from an outside investment firm and debt financing (*BI*, Feb. 23, March 2). It subsequently revealed in a Securities and Exchange Commission filing that it has had to obtain another \$100 million in bridge financing from a Donaldson Lufkin Jenrette Securities Corp. affiliate in addition to a \$100 million DLJ loan it had already obtained in February (*BI*, April 6).

## Blues sue tobacco makers

Blue Cross & Blue Shield plans across the country filed federal lawsuits against tobacco companies last week, seeking more than \$3 billion in compensation for health care costs they contend resulted from illegal activities by cigarette makers.

Thirty-seven plans joined three suits, filed in district courts in Seattle, Chicago and New York. Modern Healthcare, a sister publication of *Business Insurance*, last month disclosed the Blues' intent to sue.

The Blues plans contend tobacco companies violated federal antitrust, fraud and racketeering laws by concealing the addictive nature of tobacco, manipulating nicotine levels and targeting teenagers in marketing campaigns.

Pressured by increasing health care costs, Blues plans throughout the country are expected to raise premiums 5% to 10% this year, according to the national Blues association. Dr. Michael McGarvey, chief medical officer of Blue Cross & Blue Shield of New Jersey, said it might be justifiable to use any recoveries from the tobacco lawsuits to lower premiums because that could reduce the numbers of uninsured.

But Chris Martin, spokesman for the Blue Cross & Blue Shield Assn., said increasing premiums are not a factor in the plans' decision to sue the tobacco companies. There is no assumption the Blues plans will win their lawsuits, and even if they do, it could be years before they see any money, he said. What's more, Mr. Martin said, regulations in some states might require plans to spend a damage award for other purposes rather than returning it to their bottom lines.

Dr. McGarvey added that money is not the chief motive of the Blues plans.

## Briefly noted

The Supreme Court heard oral arguments last week in *Geissal vs. Moore Medical Corp.*, a case that could determine whether individuals covered by another employer's health plan at the time of their termination are entitled to **COBRA coverage** through their former employer (*BI*, Feb. 2). This is the first time the high court has reviewed a case involving the health care continuation provisions of the Comprehensive Omnibus Budget Reconciliation Act of 1985. . . . As expected, Denver-based Great-West Life & Annuity Insurance Co. said it has entered into a definitive agreement to acquire Piscataway, N.J.-based **Anthem Health & Life Insurance Co.**, a unit of Indianapolis-based Anthem Inc. that provides life, medical, disability and dental products to small and medium-sized businesses nationwide (*BI*, Feb. 23). The sale price will be based on the adjusted book value of the unit at closing. Book value is now about \$100 million. . . . The Occupational Safety and Health Administration issued a set of voluntary recommendations to reduce the injury and death rate of workers in late-night **retail outlets** due to violence. The recommendations include installing alarms, video surveillance and bulletproof enclosures. . . . The National Assn. of Insurance Commissioners voted by conference call last week to establish its own **International Holocaust Commission Task Force**, which will cooperate with a more broad-based commission to resolve survivors' insurance claims (*BI*, April 13). Thus far, 36 states have committed to signing a memorandum of intent to participate. . . . Affirming a San Mateo County Superior Court decision, a California appellate court last week thwarted **Unisys Corp.**'s second attempt to obtain guaranty fund coverage for portions of its 401(k) plan that were invested in GICs issued by the failed Executive Life Insurance Co.

## Errors &amp; omissions

• A RIMS TV segment on disaster planning that aired April 29 during the Risk & Insurance Management Society Inc. annual conference did not give the full name of Stephen M. Rogers' company. Mr. Rogers is a senior vp for HSB Industrial Risk Insurers in Hartford, Conn.

## Backup child care centers help parents focus on work

By AMANDA MILLIGAN

Tax season is a stressful time for many accounting professionals, but the long workdays are especially hectic for Bernard Pump, who has three children under the age of 6.

Mr. Pump, a senior manager in Deloitte & Touche L.L.P.'s Chicago office, and his wife, Karen Kao, a consultant with Chicago-based marketing consulting firm Bio-

Treasury Department report shows employers' investments in child care paying off...page 45

Strategies Inc., often have to work late on weekdays and Saturdays to accommodate their respective workloads. During the week, the children stay with a nanny from 7:30 a.m. until 6:30 p.m.; however, on weekends and after the nanny leaves, the children used to be

without reliable alternative care and often went to work with their parents.

"I can always work on the weekends," especially during tax season, said Mr. Pump. He noted that watching children and keeping them entertained while in the office poses a challenge that can impact the quality of an employee's work. "The work has to get done, which is why you're there in

See Backup on page 45

## Benefit plan differences add to M&amp;A complexities

By JERRY GEISEL

Sedgwick Inc. knew when it bought benefit consultant Noble Lowndes in 1993 that the employees would be moved into Sedgwick's benefit plans.

As an operating practice, "we have a single consolidated benefit program for Sedgwick colleagues in the United States," said Mary Heezen, Sedgwick's employee benefits manager in Memphis, Tenn.

While the end result—shifting

Noble Lowndes employees into Sedgwick benefit plans—always was clear, Sedgwick had to tackle a slew of issues to make that transition smooth.

For example, in moving Noble Lowndes employees from a preferred provider organization and a few health maintenance organizations to the nationwide Aetna-administered point-of-service plan Sedgwick used, Sedgwick knew there could be disruption for employees who had established relationships with health

care providers.

"We did not want to be in the position of disrupting continuity of care," Ms. Heezen said.

The solution Sedgwick hit on was to allow employees, in certain situations and for a limited period, to continue to see the providers in the previous Noble Lowndes plans with reimbursement at the preferred provider rate even if the physician was not in the Aetna POS network.

How Sedgwick dealt with

See Benefits on page 51

## A health plan all its own

Private clinics are good medicine for printer's bottom line

By ROBERT KAZEL

ATLANTA—A large Wisconsin-based printing company is

proving that it can successfully bypass managed care companies' middlemen by setting up its own provider networks to serve several of its worksites around the

country.

In doing so, the company is demonstrating it can move beyond an experiment in brick-and-mortar and toward a lasting philosophy of care that is winning the support of doctors and other health professionals.

Executives of Pewaukee, Wis.-based Quad/Graphics told a session of the National Managed Health Care Congress in Atlanta last month that they have moved far beyond a pilot begun in

1990—an independent medical clinic owned and operated by Quad/Graphics—and toward genuine control over its health insurance destiny.

Quad/Graphics, after opening its first clinic in Pewaukee, built a second clinic in West Allis, Wis., in 1995 in cooperation with Covenant Healthcare System, a Milwaukee-based health care network (*BI*, Oct. 23, 1995), and Quad/Graphics' health

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## Y2K may cost U.S. \$50 billion

By JUDY GREENWALD

WASHINGTON—U.S. firms could end up paying \$50 billion in Year 2000 remedial costs, says a Federal Reserve official, providing what may be the first federal government estimate on this issue.

Separately, a research firm estimates that few of the nation's information technology managers at large organizations have completed their Y2K projects, though

most have at least a commitment to the issue.



system and could temporarily have adverse effects on the performance of the overall U.S. economy as well as the economies of

"The Year 2000 problem will touch more than just our financial

many, or all, other nations if it is not corrected," said Edward W. Kelley Jr., a governor on the Federal Reserve board, speaking before the U.S. Senate Committee on Commerce, Science and Transportation.

He said his "educated guess" of \$50 billion reflects all costs, "whether explicitly stated or not." Mr. Kelley also noted one estimate places the worldwide cost at

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## Inside

• The Supreme Court has a chance to give employers some guidance in how far their liability extends in sexual harassment, this week's editorial says. **PAGE 8**

• The captive market has reached a "plateau" and must bring in new exposures, a speaker tells attendees at a conference in Paris. **PAGE 41**

• Worldwide insured catastrophe losses were lower in 1997 than in 1996 and below average for the 1989-1996 period, a report shows. **PAGE 41**

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# 1998 RIMS Report

## RIMS to enhance education, technology, quality

### DeLillo pledges improved services

By MICHAEL BRADFORD

SAN DIEGO—The Risk & Insurance Management Society Inc. wants its members to know a "continuum of leadership" is in place to respond to their needs.

It's a theme emphasized by the society's new president, Mark A. DeLillo, who told members in his inaugural address at the 36th annual Risk & Insurance Management Society Inc. conference and exhibition in San Diego last week that while the group is led by a new president every year, that doesn't interrupt the focus of its leadership.

"RIMS truly has a continuum of leadership," Mr. DeLillo said in his first speech as the society's 45th president. "The reason for the continuum is the scope of the challenge before us."

"Education, technology, quality," he emphasized, are "the tremendous challenges that have been identified by you, our members. Yet each of these issues is so complex that an annual concentration just doesn't do justice to

the work that is required."

Mr. DeLillo, vp-risk management at Celotex Corp. in Tampa, Fla., said RIMS over the next year plans to "enhance, improve and expand the measure of services we can provide to our membership" in each of those three areas.

RIMS' commitment to its members is to be "responsive, proactive and efficient" and to "deliver the products and services you and your company need to succeed in today's competitive environment."

Technology will play a large role in RIMS' efforts to meet member needs, Mr. DeLillo noted, "because of the expanding access and efficiencies it can provide."

An advisory council being formed by Scott Lange, director-risk management at Microsoft Corp. of Redmond, Wash., will explore, among other things, how RIMS can best use its resources to "rein in the appropriate technologies" it will need, how it can keep pace with innovations and avoid mistakes in choosing and using technology, Mr. DeLillo said.

See Inaugural on page 30



RIMS' annual conference at the San Diego Convention Center featured a changing of the guard, from outgoing RIMS President Stephen M. Wilder, left, to new President Mark A. DeLillo, top.

PHOTOS: MICHAEL MARCULLI

## Risk managers largely dissatisfied with insurer/broker service: Survey

By MICHAEL BRADFORD and RODD ZOLKOS

SAN DIEGO—Risk managers are not very satisfied with the overall performance of their insurers and brokers, according to a survey.

In a new quality score card developed by the Risk & Insurance Management Society Inc. and the Quality Insurance Congress and released last week at the RIMS conference in San Diego, buyers of insurance products and services gave their vendors overall low marks in satisfaction and performance.

While some insurers, reinsurers, brokers and third-party administrators got high marks individually, overall industry scores were at best mediocre.

Stephen M. Wilder, RIMS president during the 1997-1998 term, said the score card provides an objective measure that

risk managers can use to gauge the level of quality they receive from their providers.

The score card will be updated periodically and is intended to be used as a tool to encourage insurers, reinsurers, brokers and third-party administrators to improve the quality of their products and services.

"I'll also say that the quality score card did something else," Mr. Wilder added, which was to point out "who are the quality providers and who aren't. And while our goal is to create continuous improvement in the industry, we can't ignore the fact that there are people who didn't score very well."

Henry L. Good, president of the Quality Insurance Congress, said, "There is a perception in the industry that all the customer wants is the lowest price." The survey's results, however, suggest that "while

price is important, it's not the only thing," said Mr. Good, who also is director of insurance and director of corporate travel for Rohm & Haas Co. in Philadelphia.

Mr. Good agreed with Mr. Wilder that "there will come a time in the not-too-distant future" when risk managers will have to answer to their superiors for doing business with a company ranked poorly in the quality score card.

The score card gave brokers a performance grade of 73 on a scale of 100, while insurers and reinsurers managed a 68. Overall, respondents graded brokers with a satisfaction score of 69 and insurers and reinsurers with a 66.

Third-party administrators scored even lower overall, receiving a 65 for performance and a satisfaction grade of 60.

See Score card on page 36

## Integrated disability called a cost-saver

By ROBERT KAZEL

SAN DIEGO—Employers wishing to make disability programs cost-efficient, equitable and more helpful to workers should stop contemplating and start integrating.

This will not be easy, but it will beat perpetuating old, arbitrary traditions that have turned health and disability benefits at most employers into guarded, isolated turfs.

That's the advice of Pat DeJesus, supervisor of benefit plans of Atlanta-based Delta Air Lines, and Dr. Mary Jane England, president of the Washington Business Group on Health, a national coalition of leading health insurance buyers. Ms. DeJesus and Dr. England led a session at last week's Risk & Insurance Management Society Inc. conference.

The need for a more efficient, sensible and streamlined disability management strategy was underscored by Ms. DeJesus, who noted that occupational illness and injury in the United States costs nearly \$200 billion annually, or 3% of the gross domestic product. Annual disability costs can range from 8% to 15% of a com-

pany's payroll.

Further, the graying of Baby Boomers will trigger a 37% increase in disability costs in general over the next decade, she said.

Direct costs associated with disability include group health care and workers compensation program costs, short- and long-term disability insurance expenses, absenteeism and sick time, Ms. De-



Jesus said. Hidden costs often include overtime pay, low morale, decreased output, temporary staff and additional training.

Yet if the symptoms of the problem are the same for employers nationally, how a remedy can work for individual plan sponsors is often puzzling. Uniting the occupational and non-occupational medicine programs into an almost seamless continuum will look quite different depending on the company, Ms. DeJesus said.

"It is different for every single company we've dealt with," she said. "It's a process that needs to be fine-tuned to your individual

See Disability on next page

## Scoring vendors on quality

### Broker organizations

Top five brokers' overall ratings in the RIMS/Quality Insurance Congress quality score card

	Overall Satisfaction	Performance	Builds internal and external partnerships	Identify needs and create solutions	Two-way interactive communications	Trust and reliability	Operational efficiency and competitiveness	Developing and providing expertise
Overall industry	69	73	75	70	74	75	72	73
Willis Corroon	76	80	82	79	82	82	77	80
Hobbs Group	75	80	82	79	77	84	82	78
Aon	70	74	75	70	75	75	74	75
J&H Marsh & McLennan	66	71	74	68	74	73	70	72
Sedgwick	63	70	71	64	71	74	68	70
All others	71	72	75	71	74	76	72	71

## Conference highlights:

- Communication key to cutting workers comp costs . . . . . page 6
- Exhibitors spotlight integrated benefit products . . . . . page 12
- Air quality claims are nothing to sneeze at . . . . . page 22
- RIMS presents its top award and two new ones . . . . . page 32
- Exclusive remedy doctrine isn't entirely exclusive . . . . . page 33
- Safety incentive plans can benefit from changes . . . . . page 37
- Preventive steps help plan sponsors avoid lawsuits . . . . . page 40

# Disability

*Continued from previous page*  
needs. There's no cookie cutter out there that will work for everyone. You need to pull together the pieces that are out there and determine what will work based on the size of the organization and the complexity of the organization."

Trying to get benefits administrators and workers comp staff on the same page, Ms. DeJesus said, may prove to be a tough task because of their different professional cultures and years of independence.

Yet her objectives for Delta, now trying to implement integration strategies, remain high. "In trying to come up with some solution to how to (improve) health and disability management, we've identified that group health care, workers comp, controlling absenteeism and management of short and long-term disability is key," she said.

The critical link to spur action is to unite integrated disability management with corporate profitability and productivity, she said. Then the leaders of an organization will observe that disability management deserves more attention for its effect on the bottom line.

It should not be a tough sell. Definite reasons exist why an integrated strategy that combines administration of major medical insurance, workers comp, disability, absent days or some combination thereof can pay off for an employer, she said. It allows the plan sponsor to:

- Cut costs and boost efficiency.
- Monitor administration and costs more closely.
- Improve employee satisfaction.
- Improve employee health.
- Evaluate performance improvements.

Such an undertaking is complex enough to necessitate an organizational team consisting of the human resources officer, benefits manager, chief financial officer, corporate counsel, risk manager and occupational safety and health officer. Others may include the Family and Medical Leave Act coordinators, information systems director, employee assistance program manager, Americans with Disabilities Act coordinators and employees themselves.

"Getting employee buy-in is a critical key to the success of any of these operations," Ms. DeJesus said.

The next step, with a nod from management, is to gather design, funding and administration information on the various disability

benefits, quantify the risks and exposures associated with each of them, study the applicable laws and set up the objectives for the integration program. These probably will be cost management, administrative coordination, benefit increases or cutbacks, productivity enhancement and employee advocacy, Ms. DeJesus said.

**'This is an area where people realize we can do something today,' says Murray J. Pascual of Coopers & Lybrand.**

Delta has worked closely with the Integrated Disability Management Focus Group, a kind of corporate support group that now comprises about 40 large employers, including the U.S. Postal Service. All members are seeking to institute, or already have instituted, an integrated disability and health benefits strategy, said Murray J. Pascual, senior consultant at Coopers & Lybrand L.L.P. in Atlanta, who was the coordinator of the session.

The focus group, with the Washington Business Group on Health,

will release a guidebook this spring for vendors and employers interested in integration specifications for program components, such as the necessary databases.

The guidebook will describe technically what the group believes to be the best possible integrated disability management approach, ignoring the occupational or non-occupational nature of the illness or injury and concentrating on sending the employee back to work as soon as possible.

The guide, intended for vendors serving large employers, also will discuss structural barriers to integration that may exist both within an employer and within vendors interested in their business.

"I think this is an area where people realize we can do something today," Mr. Pascual said. "We can get control over our disability and absence management now, and in the future that's going to set us up to measure productivity as a whole."

The whole health care system is moving from a fragmented nature to a more integrated delivery network, Dr. England said. This is a more efficient means of making disabled workers' lives whole regardless of the cause of their problem and putting them back in their work sites quickly.

"In many ways, we do not know

what we want in clinical outcomes, but we sure know what we want in functional outcomes," she said. "We want people to be able to go to work, we want kids to be able to go to school, we want people to be able to function in their community—we want right, straightforward, functional outcomes. And the big issue now is to educate the health care community," she said.

"In this room, many of us have chronic illnesses, and all of us want to function, do our jobs, function at home, function in the community. And we have to think of health in a much broader sense than the old medical model. That's part of my job, to tell the medical community we need to look more broadly with a public health approach," Dr. England said.

A challenge will be to influence the insurance marketplace to produce the kind of quality products that employers wanting to integrate disability programs will need, she said.

The publishing of the focus group's guidebook, whose audience is viewed as the disability vendor market, is aimed at beginning that process.

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WORKERS BEGIN TO COMPLAIN. THIS CONSTANT  
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# Communication programs a matter of perception

By GAVIN SOUTER

SAN DIEGO—Workers compensation communication programs need to be well-defined and targeted to effectively reach all employees in an organization, a marketing expert said.

By identifying the current perceptions of employees and managers, risk managers can use effective communication techniques to correct any misconceptions and put forward a clear program, which in turn should help reduce workers comp costs, she said. For example, workers who have a clear understanding of the workers comp system are less likely to abuse it.

Middle management, in particular, needs to be well-informed of the pro-

gram, as those managers ultimately will determine whether it will succeed, a risk manager said. Those middle managers must be well-informed



about the program and procedures to implement the program effectively and communicate the details to employees they supervise, they said.

As a starting point, risk managers should set out to address everyone's question, "What's in it for me?" said Catherine Bennett, president of the marketing and communications division of Cost Control Concepts Inc. in Goodlettsville, Tenn.

Senior managers, in particular, need to know this because of the influence management has within an organization, she said.

"Employees see the workers comp program exactly as their boss wants them to see it," she said at a session on workers comp communication during the Risk & Insurance Management Society Inc.'s annual conference last week in San Diego.

But often the senior managers' views can hinder implementation of a program, Ms. Bennett said.

Common misconceptions, she said, include:

- Risk managers should deal with all the workers comp issues on their own.
- Accidents are just a cost of doing

business.

- When budgets are reduced to cut costs, the safety budget must be included, too.

- Workers comp costs can't be controlled.

To address these misconceptions, risk managers should set about educating senior managers on the workers comp system with an emphasis on cost, Ms. Bennett said. For example, senior managers need to know the impact a large-deductible program will have vs. a conventional insured program, she said.

To get the attention of senior management, risk managers should explain how poorly managed injuries can affect the revenues of an organization, she said.

For example, risk managers can cite the actual cost of the treatment; the disruption a poorly managed injury can cause among other workers, leading them to be less productive; the cost in management time of dealing with a claim; and any poor publicity that arises out of a mishandled claim, Ms. Bennett said.

On the positive side, risk managers should make senior managers aware of the corporate risk management strategy and point out any success stories that may have saved money, she said.

Middle managers, too, must fully understand the workers comp program, Ms. Bennett said.

She said common misconceptions among middle managers include:

- All workers comp claims are fraudulent.
- Injuries are not an issue because insurance covers them.
- The more employees know about the workers comp system, the more they will abuse it.

Again, middle managers need to understand the financial impact of injuries—for example, that the money paid in losses could have been used to buy new equipment, employ more staff or increase profit-sharing payments, she said.

Middle managers need to know the risk management strategy and how to respond, such as what to do when an injury happens, what the employee is entitled to when he or she is injured and who else should be informed about the injury, Ms. Bennett said.

Effective communication to middle management is crucial for a workers comp program, agreed Michelle M. Scott, assistant vp of risk management at Service Merchandise Co., a retailer based in Nashville, Tenn.

One of the major obstacles in dealing with middle managers is communicating to them the benefit of bringing workers back to work on light duty, she said.

Often organizations limit the amount of payroll hours that managers can use, so the managers want to ensure that workers are able to perform all of the tasks required, Ms. Scott said.

To overcome this problem, risk managers can implement a plan in which managers get refunds in payroll hours if they put injured workers on light duty, she said.

To help communicate the program, risk managers should work with human resources departments to ensure all new managers receive a workers comp information package as soon as they are hired, Ms. Scott said.

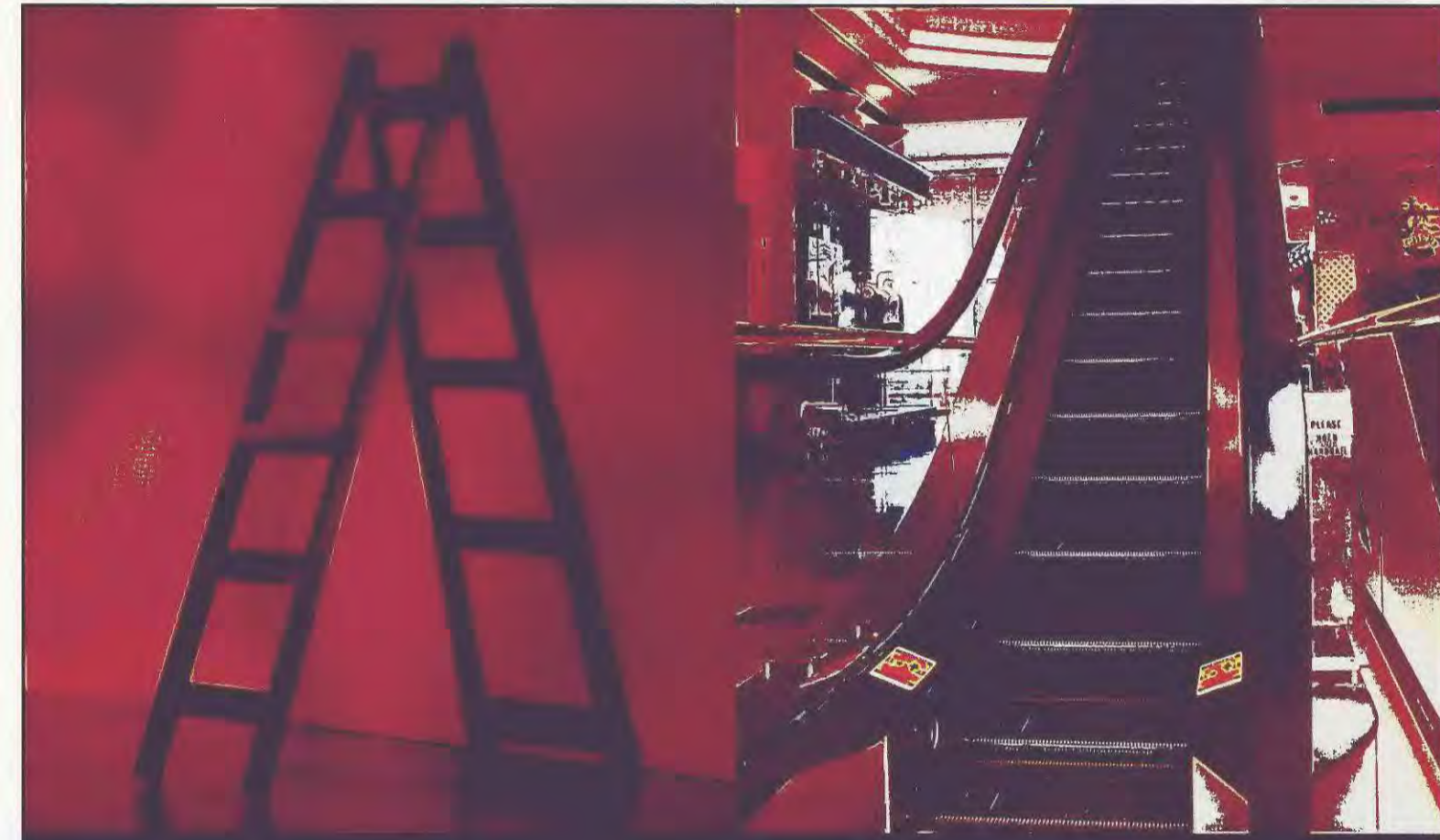
Risk managers also should use middle managers to communicate the workers comp program to employees they supervise, said Christopher E. Mandel, senior director of global risk management at TRICON Global Restaurants Inc., the Louisville, Ky., restaurant chain that was spun off from PepsiCo Inc. last October.

Middle managers and supervisors need continuous information about the workers comp program, he said.

The critical points of the program should be communicated "just in time" when the injuries occur, Mr. Mandel said. The average manager rarely deals with workers comp injuries, he said. "So put the information in front of them when they need it and keep it short and simple."

When risk managers communicate with managers and employees, they should strive to keep the information fresh, he said. Risk managers should consider using outside consultants to help them in this task, Mr. Mandel said. If possible, the information should be integrated with other information distributed by other departments, he said.

The RIMS session was coordinated by Ms. Bennett and moderated by Ms. Scott.



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## Opinions

## Clearing foggy EPL area

UNLIKE TRADITIONAL risk management issues, such as property loss control, employment law and the exposures it presents often do not provide clear-cut risk management solutions.

This is quite evident in the area of employer liability for the sexually harassing actions of supervisors. The law is murky on several fronts, as employers caught up in employment practices suits know only too well. Different courts have offered differing interpretations of where liability begins and ends.

One of the areas that calls for the most clarification is the nature of and legal standard applicable to employer liability under Title VII of the Civil Rights Act of 1964. For example, under what circumstances can an employer be held liable for sexual harassment by a supervisor if such conduct is specifically prohibited by a written company policy and the victim does not pursue his or her claim up the chain of command?

Fortunately, the Supreme Court already has heard three significant sexual harassment cases during this term, giving it the opportunity to shine some light into this uncertain area.

The high court already has done so in one case. That case, *Joseph Oncale vs. Sundowner Offshore Services Inc.*, had probably the easiest outcome to predict, even though the question presented to the court—is same-sex sexual harassment covered by the Civil Rights Act—is not exactly a routine one. There was little question that the justices would rule that harassment such as Mr. Oncale suffered did violate the Civil Rights Act.

But if *Oncale* was the easiest to predict, it is probably also the case with the least significant impact on business. Employers should keep a close eye on how the court decides the remaining two cases, *Beth Ann Faragher vs. the City of Boca Raton, Fla.*, and *Burlington Industries Inc. vs. Kimberly Ellerth*.

The first case involves a former municipal lifeguard who was sexually harassed by a pair of supervisors. She never complained to higher management but eventually sued the supervisors and her employer. The justices will decide to what extent employers can be held liable for the creation of a "hostile" work environment.

The second case centers around the experience of a



female employee whose supervisor made sexually suggestive remarks and indicated that she should give in to his sexual advances if she wanted to forward her career. She didn't give in and suffered no adverse job consequences. In fact, she got a promotion. In addition, the company had a written policy addressing sexual harassment. Nevertheless, she sued her former employer, charging that she was a victim of "quid pro quo" sexual harassment. The justices will rule on whether a quid pro quo claim can stand if there was no retaliation.

The cases are particularly important because the Civil Rights Act itself doesn't specifically mention "hostile" workplace environments or quid pro quo sexual harassment. It deals with job discrimination. But over the years, the interpretations of the law have broadened its scope.

Sometime in the next few weeks, the Supreme Court should hand down opinions that will shed some light on how far employer liability extends in some admittedly murky areas. While the justices may not draw the proverbial "bright line" clearly delineating where liability does and doesn't apply, any new light in this area will be more than welcome as employers grapple with the issue.

## Letters

## Picoult hits the mark on benefits of PEOs

To the editor: Myron M. Picoult is right on target in his assessment of the Professional Employer Organization as a dynamic and appealing entity that can reduce the overall costs and exposures of doing business in "PEOs Have Growth, Distribution Potential" (*BI*, April 20). This appeal is not limited to just employers. Increasingly, as Mr. Picoult points out, the insurance industry is beginning to understand the benefits inherent in the PEO-insurer partnership. The major reason for the success with employers and insurers? The risk management philosophy intrinsic within the PEO industry.

## Letters to the editor

*Business Insurance* welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Please send your letters to Letters to the Editor, *Business Insurance*, 740 N. Rush St., Chicago, Ill. 60611; fax: 312-280-3174; e-mail: [pwinston@crain.com](mailto:pwinston@crain.com)

PEOs generally are obsessed with the plethora of risks and exposures faced as a result of the co-employment relationship. Whether it be a sexual harassment claim; a terminated employee filing for unemployment; COBRA or Family Medical Leave Act compliance issues; or a work-related injury and its financial repercussions, it behooves the PEO to minimize, control or remove the exposure.

Risk control is evident from the first stages of the PEO sales process. PEOs with strong risk management departments are intricately involved with each client selection. Typically, underwriting efforts include site visits, client management interviews, loss run and modification reviews, detailed claim history reviews, unemployment history verification, and a forecast of possible future exposure. More often than not, a PEO's underwriting standards are more stringent than those of many insurers.

Once the relationship is implemented, many PEOs mandate a strict risk management program. Such devices as return-to-work systems, mandatory arbitration clauses, substance abuse screening and OSHA compliance programs are not options but instead are requirements. Fur-

thermore, many PEOs are on the cutting edge of risk management development. PEOs are developing such programs as benefits integration, human resource/risk management partnering, and employment practice exposure minimization through insurance and non-insurance means. With the PEOs' strong focus on risk management delivery systems and practice, the future of risk management procedure and service should be greatly advanced.

The end results of these efforts are quite clear. Employers receive the benefit of reduced insurance rates and safe, secure, litigation-free work sites. Insurers benefit from sophisticated, proactive partners who supply large premium bases and are just as interested in controlling losses and minimizing exposures as they are. And, of course, the PEO benefits from reducing exposure and maintaining a satisfied client base.

As Mr. Picoult might agree, the future looks bright for PEOs and their many partners.

**Sheldon A. Altschuler**  
Director of Risk Management  
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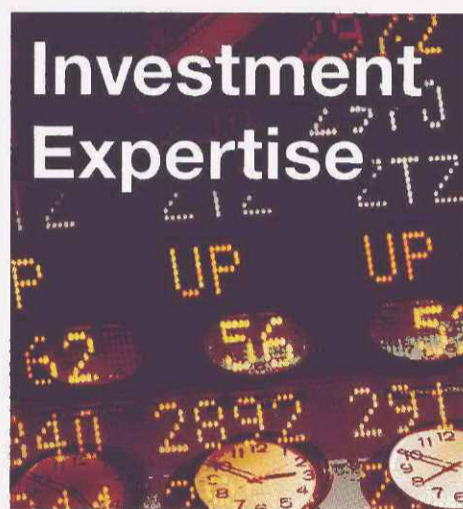
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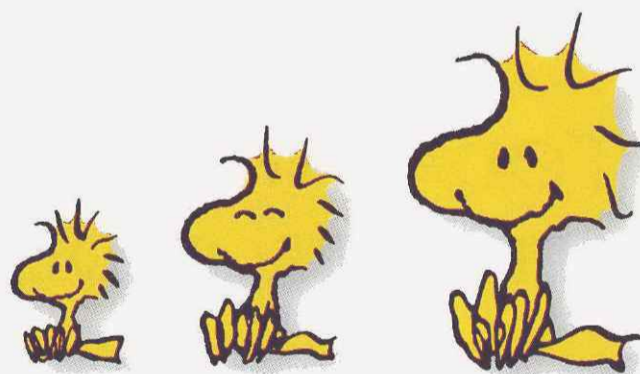
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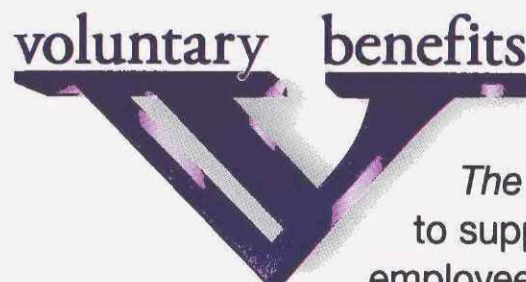
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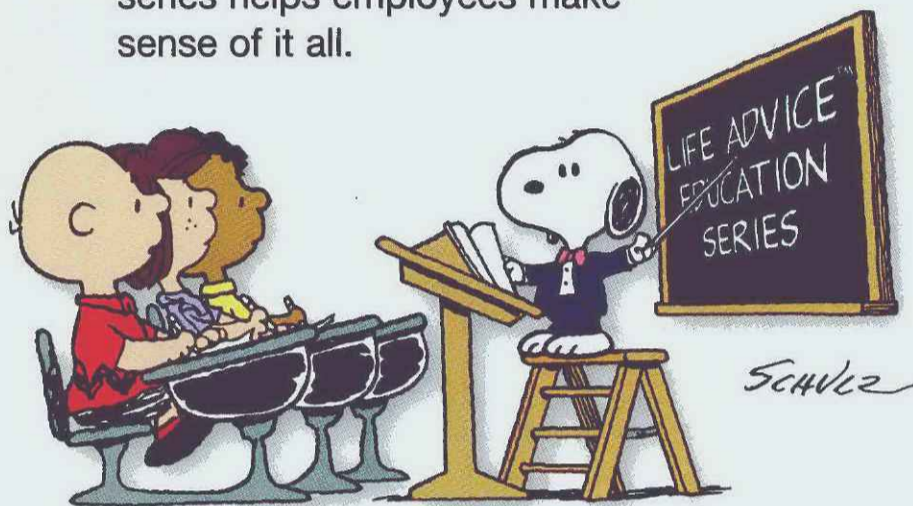


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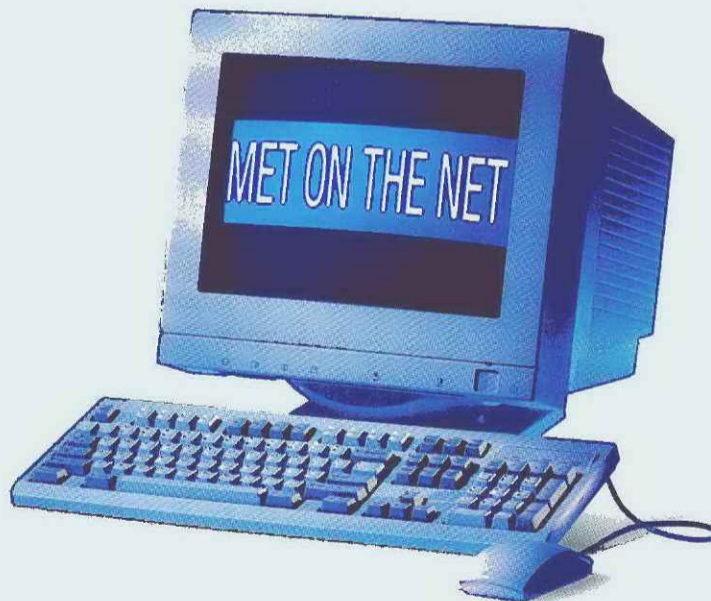
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# Benefits exhibitors feature comp-disability integration programs

## Companies also use RIMS to display technological products

By MICHAEL PRINCE

SAN DIEGO—"When in doubt, integrate" could have been the motto this year for exhibitors of employee benefit products at the Risk & Insurance Management Society Inc.'s annual conference.

Many exhibitors in the San Diego Convention Center used the yearly gathering to showcase products that integrate workers compensation with short- and long-term disability programs. One exhibitor, Travelers Property/Casualty Corp., announced the formation of its integrated product in conjunction with MetLife.

Allmerica Financial Group of Worcester, Mass., exhibited its integrated workers comp/disability product, MedCompONE. The product is designed "so you can stop the double-dipping from employees collecting both workers comp and disability," said Art Catapang, vp-underwriting for First Allmerica Financial Life Insurance Co., an Allmerica unit.

MedCompONE combines claims for group medical, workers comp and disability coverage into one reporting system to save employers time and money, the company says. One advantage, Allmerica says, is that it does the underwriting for all the products. This enables the company to provide the employer one price for the entire package.

Combined with the integrated claims-handling and administration, this will provide superior service and save employers money, Mr. Catapang said. The underwriting is performed by two sister companies, The Hanover Insurance Corp. and Citizens Insurance Co. of America, both part of the Allmerica Financial Group.

Under MedCompONE, employees call one toll-free number to report any claims. The system operates 24 hours a day, every day of the year. Unlike separate reporting systems for workers comp and disability, an employee doesn't have to determine what category his or her injuries fall under; Allmerica does that. The program was launched near the end of 1996; it has garnered increased interest the past six months, Mr. Catapang said.

At last year's RIMS conference, Kemper Insurance Cos. aggressively promoted its HealthyReturn managed care workers comp program. Building on that, this year the company is displaying ads for HealthyReturn Plus. This program extends the return-to-work aspects of HealthyReturn into the disability arena.

A major addition to Kemper's program was the acquisition last year of Integrated Disability Resources Inc. of Windsor, Conn. By adding an insurer, Kemper now can provide an insurance aspect to the program that previously was lacking, allowing employers that don't self-insure to participate in the program, said Robert Lindemann, senior vp for Long Grove, Ill.-based Kemper. Kemper previously offered the program only to self-insured companies.

Kemper's move into managed care for disability is a natural extension of the growth of managed care from group health to workers comp, said John Wiggin, president of Integrated Disability Resources, now a wholly owned subsidiary of Kemper.

What distinguishes HealthyReturn Plus, Mr. Wiggin said, is the focus on the injured worker. "The emphasis is on increased quality of health care, return to work and productivity," he said.

Another distinguishing feature is the greater emphasis on medical case management. Kemper's claims man-

agement force consists of 40% nurses, 30% claims examiners and 30% vocational rehabilitation specialists, a greater percent of medical personnel than in other managed care programs, Mr. Wiggin said. "We're trying to provide a totally balanced program," he said.

This greater emphasis on medical evaluation and rehabilitation, together with the company's emphasis on getting employees back to work, returns employees to the job sooner, saving employers money, the company says.

Some companies using the Kemper programs have experienced 10% to 15% drops in total loss costs, Mr. Lindemann said. The result, he said, was not only a reduction in costs but also employees who are happy to be back at work.

As in the HealthyReturn program, employees call a toll-free number to report occupational and non-occupational injuries and illnesses. Employ-



ees also are put into the Kemper network of providers that specialize in vocational rehabilitation medicine.

Kemper also can provide total absence management, including paid sick leave and leaves under the Family and Medical Leave and Americans with Disabilities acts. "It's kind of the next step with benefit service and absentee services," Mr. Lindemann said.

Travelers Property/Casualty Corp. of Hartford, Conn., used the RIMS conference to unveil an alliance with New York-based MetLife for an integrated workers comp and disability program. Saying the two companies create an "unbeatable team," Travelers Vice Chairman Stanton Long presented the program to attendees.

"We've come together to take disability to another level," Mr. Long said at a news conference. After working together for the past six months, the two companies will attempt to combine their abilities and offer select clients an integrated approach to workers comp and disability insurance.

What distinguishes the program from other companies' integrated programs, Mr. Long explained, is the approach to the problem. Rather than selling a product and then building a system to support it, Mr. Long said the two companies have developed the technology and administrative system for the program and will bring in customers only after it has been tested.

"We're talking about something we know works," said James Heston, vp and head of disability business for MetLife.

The integrated approach teams MetLife and Travelers employees, using the best systems from each company. This combines the success and strength of Travelers in workers comp with MetLife's success in disability, Mr. Long said.

Under the program, employees will have one toll-free number to call to report workers comp and all disability claims. Five regional call centers will be established throughout the United States: Atlanta; Chicago; Dallas; Hartford, Conn.; and San Francisco. Claims will be overseen by teams consisting of a workers comp specialist, a nurse and a disability specialist.

The program will emphasize returning employees to work. This will help reduce absentee days and increase worker productivity, they said.

Rather than market the program broadly, MetLife and Travelers are

approaching some selected customers that they think could benefit from the integrated program but that also have started to integrate themselves and possess a strong return-to-work ethic. "We need an employer that wants to save money across the board," Mr. Long said.

A different approach to integrating workers comp and disability is by using an onsite medical facility, said Daniel McGrath, vp of sales for IMC Health Care of Jacksonville, Fla.

IMC can become an outsource provider for a current onsite medical center or establish an onsite center if one does not exist. A center can be set up at any facility that has at least 1,000 employees, the minimum needed to make a center cost-efficient, Mr. McGrath said.

The advantage of an onsite center is that it controls medical costs and reduces lost time, he said. Two IMC clients saw workers comp costs drop 35% to 50% in the first year after installing their centers, Mr. McGrath said.

Another advantage, Mr. McGrath said, is that the company can direct employees to use that facility for workers comp and non-occupational injuries and illnesses. And because IMC receives a fixed fee negotiated up front, adding patients doesn't increase the cost of service. Also, because the providers are not company employees, employees will worry less that their employer may influence the doctors' diagnoses, he said.

Employees also appreciate an onsite center, he said. Employers can tell employees the onsite center is a benefit and "that the company cares enough about them to put a medical staff on site to take care of them."

Rather than integrating programs, OCI, an information management company based in Cheyenne, Wyo., believes integrating information with its WebOPTIS system is the best way to integrate workers comp and disability programs. "Integrating information is the easiest, lowest cost and most effective integrating strategy for large companies," said Michael Turner, OCI vp for business development.

At RIMS, Mr. Turner demonstrated the capabilities of WebOPTIS. The system gathers data from insurers and third-party administrators, produces specified analysis of the data, creates reports as requested by the customer and develops benchmarks using all of OCI customers' data. The system gathers data involving disability, workers comp claims, group health, sick leave days and human resource systems.

Mr. Turner said the advantage of integrating information is that it allows employers to choose different insurers for workers comp and disability and group health while still obtaining integrated information from all of them.

OCI was purchased in November 1997 by Portland, Maine-based UNUM Life Insurance Co. of America, the disability insurer, which plans to provide more than 2,600 of its customers with the system this year, he said.

Exhibitors also were demonstrating some technological products. Kemper used the RIMS conference to show off its new Internet claims reporting system, unveiled in April. Each Kemper client will receive a password allowing access to a section of the Kemper World Wide Web site at <http://www.kemperinsurance.com>.

Once access is gained, employers can choose a state from an online map of the United States in which to file a claim. An electronic form to report



PHOTOS: MICHAEL MARCOTTE

MedCompONE, an integrated workers comp-disability product from Allmerica Financial Group, was on display, above, at the RIMS exhibition. Kemper also touted an updated version, left, of an integrated product, now called HealthyReturn Plus.



Visitors to the RIMS exhibit hall in San Diego last week had plenty to see, above, including an onsite clinic idea from IMC Health Care, right, and the WebOPTIS workers comp-disability information integration system offered by OCI (below).



workers comp claims then will be made available.

Once the data is input, it is transmitted to Kemper, and a copy is printed for the employer's records. Later, the employer will receive a confirmation from Kemper with a claim number. All the transactions are encrypted to ensure confidentiality.

Electronic filing is better than filing by fax or telephone because it is more accurate, Mr. Lindemann said. Fax filings, he said, are not always legible, while telephone filing also can result in communication errors. Also, data input errors can exist with fax or telephone reporting, while that is less likely with electronic filing, he said.

Each form is regularly updated to reflect any changes in a state's workers comp law or regulations.

Terry Preece, vp of MountainView Software Corp., showed attendees a different workers comp claim reporting technology tool. Called Workers Companion, it's a software program that sits on a user's computer and allows the user to send claims electronically to its workers comp insurer.

One advantage of Workers Companion is that after filing, the infor-

mation is retained on the employer's computer, he said. This allows the employer to use this information for later analysis or to create the required OSHA reports, he said.

"There are some people who want to be very involved with the process," and this allows them to do so, Mr. Preece said. The system can create reports on injury type, break down reports by department or location, or the employer can design its own report. Kaysville, Utah-based MountainView released the software in November 1996 and issued an updated version in March.

Mr. Preece said the company's primary market has been insurance companies that provide the software to clients, though numerous large employers have bought the product. [E]



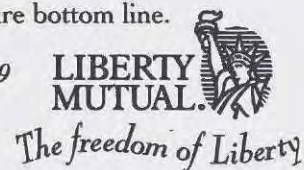
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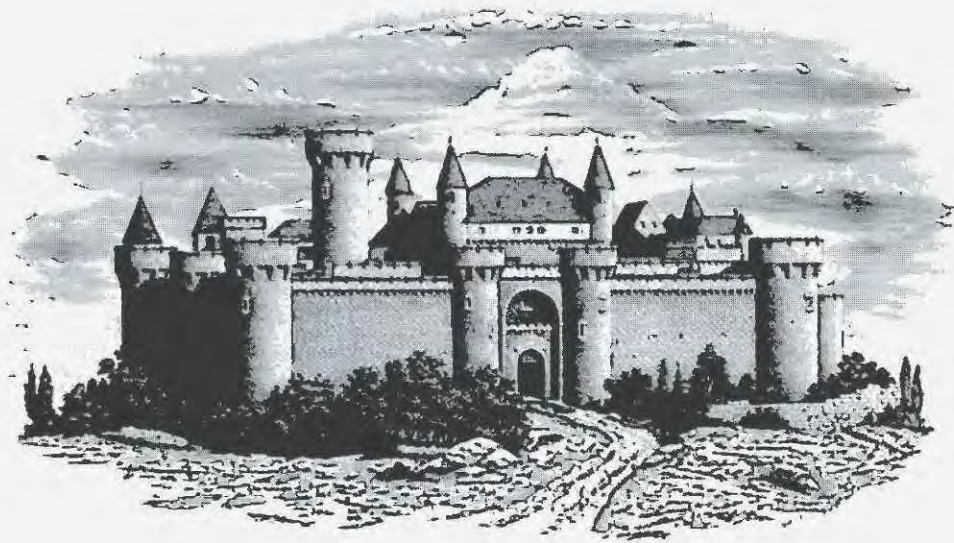
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# Combating entitlement attitude toward workers comp

By SALLY ROBERTS

SAN DIEGO—A few years ago, International Paper Co. thought the best solution to get facility management's attention to rising workers compensation costs was to charge plants \$10,000 for each lost-time injury.

The Memphis, Tenn.-based paper manufacturing giant had found that because each facility was so large, mill managers were more concerned about making money than babysitting chronic workers comp claimants, who tended to be "problem children" in other areas, such as absenteeism and low productivity, explained Gary W. Langsdale, corporate risk manager.

Senior management thought the

highly punitive allocation system would provide a good incentive for mill managers to get workers back to work quickly in a modified capacity. However, the actual result was more confusion among workers and managers, who were not educated about the workers comp system.

These problems and others led to an increase in what Mr. Langsdale referred to as "H.Y.M.N.S." or the "Hey You Owe Me Now Syndrome" which results when employees believe they are entitled to workers comp benefits.

International Paper has "recognized the errors of our ways" and has developed a better solution, Mr. Langsdale told attendees during a session at the Risk & Insurance Manage-

ment Society Inc.'s annual conference last week.

That better solution includes meeting with the employee/claimant to determine how much of his or her issue

## 1998 RIMS Report

is a workers comp claim and how much of it is not, he explained. This means that not only is the company not going to settle a workers comp claim at face value, it also is going to deal with the pure, mean fraud cases severely, he said. "We're going to be compassionate with legitimate injured people but deal with the bad ap-

ples severely."

The company also will direct employees to various avenues to pursue non-workers comp matters, Mr. Langsdale said. For example, if during a meeting a claimant reveals that he or she has a harassment complaint or an employee assistance program issue, Mr. Langsdale said he will direct that person to the appropriate place to pursue those claims. He said that, at times, he has directed employees to the Equal Employment Opportunity Commission.

International Paper also has found that by giving managers the authority to conduct surveillance on suspected workers comp fraud cases, "a lot of the mistrust goes away" on the part of

managers toward injured workers, he said.

International Paper is not alone in having to deal with H.Y.M.N.S.

Gary Jennings, a senior consultant at Coopers & Lybrand L.L.P. in Atlanta, who also spoke during the session, said, "The foundation where people feel companies owe them something" comes in part from corporate downsizing and a feeling that companies can afford to compensate every worker. This creates low morale, little loyalty and makes employees feel unappreciated, he said.

When employees feel unappreciated, "they will continue to look for ways to benefit outside normal packages," he said.

At the same time, human resource departments are being downsized, leaving HR professionals less time to spend on workers comp claim procedures and less time to explain workers comp to employees, he said.

Contributing to employee confusion over workers comp are various changing industry methods, including 24-hour coverage and managed care, not to mention various government programs, such as the Americans with Disabilities Act and the Family and Medical Leave Act, he said.

"Do we have a mess or what?" Mr. Jennings quipped.

As part of the solution, Mr. Jennings suggests risk managers or human resource managers need to develop standard procedures manuals on how to handle workers comp claims and conduct employee training. These standard methods and reports will help improve communication with insurers and third-party-administrators, too, he added.

"One of the big areas employers miss out on is supervisory training," Mr. Jennings continued. Supervisors need to be trained how to effectively communicate with employees and how to deal with employees so they feel needed and appreciated, he said. They also must be trained on accurate absence tracking and return-to-work efforts, he said.

Another solution Mr. Jennings suggests is to integrate disability programs and workers comp into one program. It is not 24-hour coverage, he stressed; "it's an alternative to 24-hour coverage." By integrating workers comp with short-term and long-term disability programs, there is one single-entry point to the administrative process, he said.

Mr. Jennings advises risk managers and human resource managers to pull the best practices from workers comp, STD and LTD in order to manage claims in the integrated program most effectively. This means return-to-work programs need to be instituted for all cases, whether it's workers comp or short-term disability. Case management and "three-point contact" also need to be used in occupational and non-occupational cases, he said.

If done effectively, integrated disability programs will increase administrative efficiency, enhance employee satisfaction and remove the "double dipping" that occurs when injured employees receive long-term disability benefits and workers comp benefits because each benefit has its own administrators and the two programs are run independently, he said.

"Frankly, I don't believe 24-hour coverage is ever going to cut it," said Mr. Langsdale. "But the integrated alternative makes a lot of sense to me. We've not done that yet, but it makes a heck of a lot of sense to me."

Terry L. Varner, director of corporate risk management for Perkins Family Restaurants Inc. in Memphis moderated the session, and Billie Fae Fuschi, assistant director-claims, safety and risk management at Methodist Healthcare in Memphis, coordinated the session.

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are not weighed  
in the same scales."**

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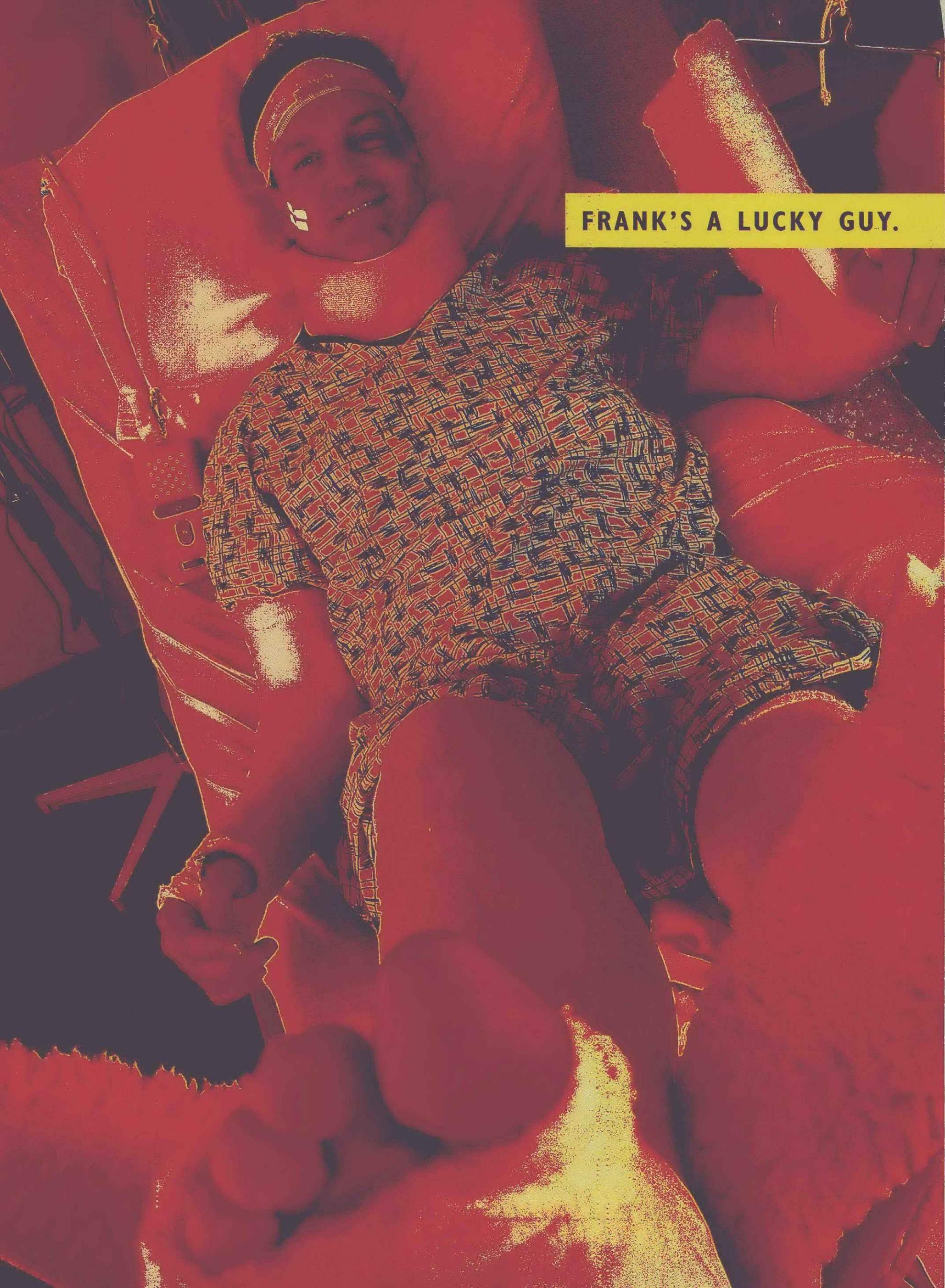
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# Employers warned of EPL lawsuit threat

By ROBERT KAZEL

SAN DIEGO—Sitting ducks.

That's what many employers are when it comes to vulnerability to lawsuits brought by disgruntled workers. The danger of being sued successfully has increased, and even more dramatic is the growth of recent jury awards in employment practices areas such as sexual discrimination. Yet many employers take almost no measures to shield themselves.

These were the grim pronouncements of Paul VanZuiden, Chicago-based risk management consultant for Tillinghast-Towers Perrin. He spoke at the Risk & Insurance Management Society Inc. conference last week with Rod Bushnell, a plaintiffs lawyer in the San Francisco firm of Bushnell, Caplan & Fielding.

Underscoring Mr. VanZuiden's point, Mr. Bushnell described extensively the emerging and lucrative opportunities that exist for litigation against employers today, with defendants ranging from top officers to supervisors and the litigant's colleagues.

A 1997 survey by the Society for Human Resource Management and Jackson Lewis, a New York law firm that defends corporate clients, showed that more than three out of four employers do not carry employment practices liability insurance or didn't know if they did—a fact that Mr. VanZuiden called "amazing."

"If you have firms out there that don't know if they carry EPL coverage or not, there's something wrong within that organization. That's a stunning percentage for firms and organizations not to have EPL coverage," he said.

Similarly, Mr. VanZuiden was surprised that the same survey showed that 37% of employers provided no EPL education to employees.

Risk managers, employee benefit managers and human resource professionals should be aware that EPL suits have become part of the corporate culture, with an impact that goes far beyond the litigants themselves and that can degrade shareholder value for publicly traded companies, he said. Because these suits tend to distract the employer from all other goals and leave a long-lasting public relations taint, their prevention and defense deserve attention from the highest levels of the company, he added.

Of course, prevention is far from easy, Mr. VanZuiden acknowledged, considering the wide range of federal laws on the books that can be used by plaintiffs. He counted 49 major federal statutes, from the Taft-Hartley Act to the Pregnancy Discrimination Act to the Tax Reform Act of 1986, that had the power to bring an employer before a jury.

"Basically, the law is a murky mess," he said.

Then what battle armor is a cautious employer to wear? He suggested this insurance as a minimum:

- Directors and officers liability.
- General liability with additional coverage for personal injury. The personal injury endorsement may be useful in certain narrow situations.
- Homeowners coverage on behalf of workers, for actions deemed outside the scope of work.
- Employment practices liability coverage. Can provide broad coverage of employees and the corporate entity at a good price and with substantial limits.

Significant awards in corporate discrimination cases are often given to plaintiffs who have been terminated, where it's obvious that there has been material damage to a person's life, Mr. Bushnell said. This kind of

case is "the atom bomb of my practice," and it is especially powerful in terms of money-generating potential when the litigant is older, he said.

"Remember, I'm going to present this case to a jury, and I'm going to ask that jury to award a lot of money—often hundreds of thousands of dollars. And I want them to feel the pain of my plaintiff. And I need a plaintiff that has had some pain.

"It's unfortunate that people are not hired, it's unfortunate that they're demoted, it's unfortunate that they're not promoted, but unfortunately that doesn't give them much of a case because there's not much damage," Mr. Bushnell said. "Termination for a person with kids in college and a mortgage and two cars and a dog and

you-name-it is devastating. It can lead to all sorts of personal problems."



"I look for bad acts—I look for evil employers," he said. One basic first step is to obtain a copy of the employee's work record and check to see if anything was placed there retroactively, he said.

"I look for things that do not 'gut,' things that are not fair in the workplace, and we all know it, we all see it, we can all smell it, we can all touch it. It's there; it comes in all different sizes and shapes," Mr. Bushnell said.

The key to getting a big award for a plaintiff is pulling the heart strings of the jury.

"If a jury gets outraged, the jury gets truly outraged in the behavior of the employer, they will most certainly give a multimillion-dollar verdict. And that's what I think you have to focus on the defense side—what is it that might give the jury the green light, the moral authority, to do that to an employer, even though it might seriously damage that employer?"

To Mr. VanZuiden, that kind of serious damage can be prevented by cultivating a level of corporate discipline that takes hiring and firing decisions seriously. For example, an employee's hiring and work record should be carefully documented, and

all employment procedures established should be followed. In addition, a termination appeal process and a harassment reporting procedure such as a telephone hot line should be created.

He also suggested the following steps to avoid litigation:

- Establish a meaningful diversity program.
- Have the board of directors' audit committee review risk management policies periodically.
- Consider using arbitration procedures to avoid court.
- Along with public relations colleagues, respond quickly and publicly to litigation to keep the damage under control.

The moderator of the session was Mark Schneider, director of insurance at Loyola University of Chicago. The coordinator was Jane Rastaliis of Watson Wyatt Worldwide. **BI**



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# New retiree health funding idea suggested

By ROBERT KAZEL

SAN DIEGO—An obscure form of medical savings account could help retirees pay their medical expenses, according to a public-sector risk manager.

Pierrette E. Ray, risk manager for the city of Westminster, Colo., for more than two years has been studying a little-known portion of the Internal Revenue Code, a subsection called 401(h) that seemingly would allow employers to set aside a portion of workers' pension accounts for use in retirement for health care-related expenses.

Westminster, a community of about 95,000 people near Denver, has a municipal workforce of 740. Although

they are on average young, these workers will increasingly face the need for health benefits during retirement, Ms. Ray said during a session at the Risk & Insurance Management Society Inc.'s annual conference in San Diego last week.

In trying to find a benefit that would be affordable for the city and tax-advantageous for the retirees, Ms. Ray stumbled upon a subpart of the IRS code's Section 401 that, unlike the immensely popular 401(k) plan, apparently has been tried by no employer to date since its passage in 1986.

Ms. Ray said that although the 401(h) provision "has been in the code for ages," she knew of "no one in the nation" that had one.

"I suspect the reason is that at the

time that some of these programs were put into place, most pension instruments were fully funded by em-

## 1998 RIMS Report

ployers, and most pension programs included some kind of prepaid retiree medical as part of the pension benefit. Well, here we are now... years later, and things have changed considerably. We have employers backing away from commitments to pay for retiree medical expenses."

According to the IRS code, the plan would work this way: The employer and employee would make contributions over time to an account embed-

ded within a qualified pension plan, with the funds being tracked and accounted for separately during, for example, an investment process. Both public and private employers are eligible for the fund.

The law limits the amount of the 401(h) portion of the pension reservoir to 25% of the account balance for that employee.

The 401(h) money could be withdrawn, but only to pay medical, dental or eye care expenses. Health expenses of spouses and eligible dependents also would qualify.

The law provides that money in the savings account may be invested and that earnings and expenses are to be allocated on a fair and equitable basis.

When the employee retires, the funds in the 401(h) account stay in the qualified pension plan and may be spent tax-free by the retiree for health-related expenses, without any limit. Each employer would be able to determine how to administer such programs, Ms. Ray said. No expenditures are allowed on items not health-related, and unused money in the account would revert to the employer after all health care bills are met—when the employee dies, for instance.

According to the law, a variety of health care-related uses for the money would be permissible.

"When you get around to retiring and you are dispensing out this money, as long as you use these funds for an authorized, approved medical expense, and there are just a ton of them—about the only thing that isn't approved is cosmetic surgery—then you kind of have the potential here of boosting the buying power of your pension dollars for an expense you know you're going to have, which is retiree medical," Ms. Ray said.

There is no dollar limit to how much can be taken out of the 401(h) account in a year. "This is very different from any other plan that we have in the code," she said.

Payments such as Medicare premiums qualify under the plan and remain non-taxed. The plan may be used in combination with defined benefit or defined contribution plans, including 401(k) plans, and employees may put into the fund as much of their salaries they wish up to the maximum of one-quarter of their overall pension account balances. Employees can determine how much to allocate to the accounts based on their predictions of health care expenses they'll incur during retirement.

The accounts are not intended as pensions in their own right.

"The 401(h) plan flows out of your pension plan, and the IRS code specifically states that the retiree medical benefits are subordinate to the retirement benefits provided by the plan," Ms. Ray said.

Also, employees may not make voluntary contributions to the fund apart from pretax payroll deductions.

"Voluntary contributions do not qualify and are not eligible for the 401(h) program because they are made after taxes. One of the (main) purposes of the 401(h) is that the money goes into your pension account, in a defined contribution structure, and this is all pretax dollars.

"The employee contributions are pretax, and, of course, the employer contribution is pretax. Then when you're setting up your 401(h) account, those monies remain pretax. To take voluntary contributions that have already been taxed and put them in there, you're going to screw up the bookkeeping," Ms. Ray explained.

Despite the potential advantages, some employees will hesitate to set up a 401(h) plan, because it requires that the employer maintain custody over the money until the employee demonstrates proof of medical need. For those workers, Ms. Ray suggests they not even open a medical account, because it will not satisfy them.

Ms. Ray, whose city government signed off on her plan but is waiting for the IRS to issue a private-letter ruling on the city's request to create the 401(h) accounts, believes approval is being delayed because even government experts are unfamiliar with the long-forgotten regulations.

"It has really turned out to be quite an adventure," she said. "There are things about being a pioneer that give you a stimulation. This is (my) retirement goal, and someday I will have this done. I will have a private-letter ruling on my wall."

Patricia Frahm, risk manager of ACX Technologies of Golden, Colo., moderated the session. **BI**

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**Q: IS IT BETTER TO EMPHASIZE SERVICE,  
VARIETY, OR INNOVATION?**



# Be flexible in fighting ergonomics problems: Speaker

By GAVIN SOUTER

SAN DIEGO—"One size does not fit all" are six words everybody involved in ergonomics should remember.

That advice comes from Pamela Simonian, assistant vp-risk services at Sedgwick of California Inc. in Orange, Calif. Even the most sophisticated and ergonomically sound equipment will not suit every employee in a company, she said during a session on ergonomics during the Risk & Insurance Management Society Inc. conference last week.

Consequently, companies should try a range of devices as they seek to build safe working environments, Ms. Simonian said.

When the problems arise, quick medical action should be taken, a doctor said.

Ergonomics problems can be solved by improving or replacing office equipment, but there are no universal solutions, said Ms. Simonian.

"So don't go out and buy the same chairs for everyone," she said.

As repetitive motion injuries are becoming such a large issue for many companies, detailed and time-consuming analysis of equipment sometimes is required to prevent injuries, Ms. Simonian said. "One of the companies that I work with measures every individual for elbow height so that they can all have their work stations at the right height."

But solutions to many basic er-

gonomics problems can be simple and inexpensive, Ms. Simonian said. For example, those responsible for an organization's ergonomics should spend



as much time as possible walking around its offices and work sites to see how employees position themselves as they work, offering hints on how to work more comfortably and trying to stop problems before they seriously affect workers, she said.

Workers also should get regular training in ergonomics to help them become aware of the issue and how to avoid injuries, Ms. Simonian said.

Once problems arise, they often can be fixed quickly and inexpensively, she said. Many devices can easily be fitted to equipment to prevent repetitive motion injuries, she said.

For example, simple monitor risers can prevent neck and back problems by bringing monitors to appropriate heights; soft wrist rests on sharp edges can help prevent wrist injuries; a mouse bridge on a keyboard brings the arm closer to the body and can help prevent injuries in the wrist and arm; and sliding staple removers can help prevent repetitive injuries in people who use jaw-type staple removers frequently. "Gadgets don't have to be expensive, and they can make a lot of difference," she said.

In some cases, companies may have

to spend more to prevent injuries, but nevertheless, they should make the investment, she said.

For example, people who use computers and spend a lot of time on the phone often crunch the receivers between their shoulders and heads, which can cause a wide range of problems. In those cases, companies will have to buy headsets, she said. "They cost between \$200 and \$300 but they will prevent injuries. All of the people in our claims department have headsets because they are continually on the phone and doing computer work."

When repetitive motion injuries occur, medical intervention often is necessary, said Dr. Randolph P. Jones, medical director of East Edinger Medical Center in Santa Ana, Calif. However, the intervention should be organized in phases to correct the problem as efficiently as possible, he said.

For minor complaints, doctors should be brought in to provide advice on any simple exercises that could be used to alleviate the problem, in conjunction with management's efforts to improve workstations and training, Dr. Jones said.

For complaints in the second phase, which involves pain that won't go away but has not developed into numbness, the doctor should be consulted about any medication or devices that could help. At the same time, the workstation should be re-evaluated. "If it is not getting better within two to three weeks, then get a testing done by a specialist," he said.

In the final phase, surgery should be considered, he said. Surgery can include cutting the carpal ligament in the wrist. Such surgery relieves the pain but does not totally heal the problem, Dr. Jones said. Patients will suffer a loss of strength in the hand, and it often can take several weeks before they can return to any kind of work.

When they do return to work, employees who have had carpal-tunnel surgery are often more susceptible to future repetitive motion injuries than are people who have not undergone surgery, Dr. Jones said.

While different approaches must be taken to solving ergonomics problems, recent legislation in California has provided simple, useful guidelines to ensure that companies deal with ergonomics problems, a workers compensation manager added.

Ergonomics standards introduced last year provide reasonable, flexible guidelines on ergonomics issues, said Diana Jeanne Rich, workers compensation manager at Freedom Communications Inc. in Irvine, Calif.

The standard, which took effect on July 3, 1997, compels employers to correct problems that cause repetitive motion injuries in a timely manner and provide training to employees to help alleviate problems.

Importantly, employers need act only when a repetitive motion injury affects more than one employee doing similar work, Ms. Rich said. "It recognizes that ergonomics processes are not going to solve every problem. . . so it allows you to have one claim for free."

However, the standard does not cap expenses that employers may incur to solve problems. But while employers have to spend "whatever it takes," Ms. Rich stressed that ergonomics problems affect both productivity levels and morale in the workplace. Therefore, she said, it is often in an employer's best interest to fix the problems even if the solutions are expensive.

Ms. Rich moderated and coordinated the session.



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# Agent/Broker Topics

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## Agency/Insurer Relations

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**Forming  
ties from  
the ground up**

# Sharing in clients' risks—and profits

Agents, brokers can earn more from business by forming captives, alone or with insurers

By **ROBERTO CENICEROS**

**F**orward-locking agents and brokers are forming their own captive insurance companies to protect their best customers and earn additional income from existing books of business.

The drive to form offshore captive insurance companies is changing agent and insurer relations as agents and brokers assume

risk and earn an underwriting profit rather than pass all the risk to an insurer. The risk-sharing arrangements are adding real meaning to the tired cliché of "insurer/agent partnerships," participants say.

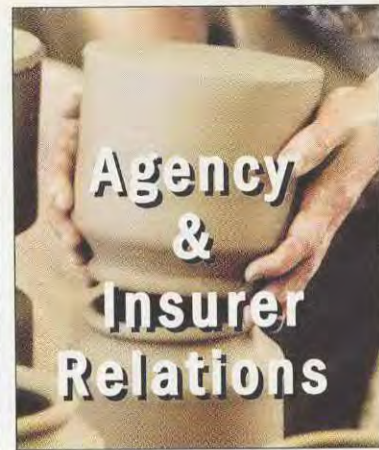
Some agents are starting their own captives, while others have turned to insurers that are expanding their business of helping agents establish offshore captives, a change from merely issuing them policies. Because agents and

brokers are assuming risk, insurers participating in the deals are not as likely to abandon a program, several experts say. Insurers involved in the process have more assurance than ever that agents will place only their very best and most profitable business into an arrangement where they are assuming risk.

The formation of agent captives is the fastest growing trend sweeping the alternative insurance market, which includes self-insured

entities, purchasing groups, risk retention groups and captive insurance companies.

Independent agents increasingly are discovering they also can earn an underwriting profit and set underwriting guidelines for a program or niche they want to protect from market vagaries, such as changing pricing, changing insurer management or vacillating insurer strategies, several experts said. To do so, agents and brokers sometimes are teaming up and



turning to several insurers and alternative-market vendors eager to help them establish offshore captives.

"It's just booming. We are probably working on 12 prospects right now that are agency captives," said Gary Osborne, senior vp for USA Risk Group, a Montpelier, Vt.-based alternative risk market provider. "The offshore captive market is chasing it because they see a need and an opportunity. The agents need some way to stabilize their livelihood."

Mr. Osborne and others say a captive can work best for niche, association, or program business. The policyholders share similar risks, and their agents have a strong understanding of that book of business and its potential losses.

Agents will want to use the strategy only for their most profitable business with the best loss experience, Mr. Osborne said. Even a few losses could sting substantially.

But even if the captive just breaks even on the underwriting side, there is still a potential for agents to earn investment income from the premiums paid into the captive, experts said.

Most agent-run captives currently are being formed for commercial customers that need a variety of coverages, such as day care centers or professionals needing liability coverage.

However, one agency captive began writing personal lines coverage just last month. It was formed in Barbados by 17 independent agents in South Carolina.

But it is difficult to place personal lines coverage in a captive, Mr. Osborne said.

In the current soft market, direct-writing insurance companies usually can provide competitive rates for personal lines business. Agents would have to match those rates and cover several captive operating costs. Agency captive operation costs can run from \$50,000 to \$100,000 a year and include captive manager and actuary services and government and legal fees, Mr. Osborne said.

To make a captive worthwhile takes a book of business that produces a minimum of about \$2 million to \$5 million in annual premium, depending on the risk and other factors, Mr. Osborne said.

Most agent captives are being formed in Barbados and the Cayman Islands, in the British West Indies. They have to be formed in offshore captive domiciles because they generally are writing purely

See **Captives** on page 26D

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# Captives

Continued from page 26B  
third-party business, Mr. Osborne said. States that have regulations and the infrastructure for the formation of captives, such as Hawaii and Vermont, strictly limit captives from insuring third-party business.

Many of the insurance facilities being formed for agents are rent-a-captives, which are existing facilities that can provide capital, surplus and legal capacity. But wholly owned agency captives are also common, observers said.

Independent agencies and bro-

kers of all sizes are flocking to participate in captive arrangements, said James R. Parry Sr., executive vp of Meadowbrook Insurance Group in Southfield, Mich. "We're seeing all sizes and from all sectors," he said, "from the national brokers, good regional agents and high-quality local agents. From agents that are forward-looking to bringing in the next millennium."

Meadowbrook manages captives and helps agents establish them. The insurer will quota-share the risk with the agent. As agents see banks and other financial companies moving into insurance, while insurers vacillate over time on

what they will cover, agents are turning to captives to assure they can provide their best customers

**'If the agent is in risk-sharing, it strengthens the relationship' between agents and insurers, says Richard P. Marshall.**

continuous coverage, Mr. Parry said. From 1996 to 1997, Meadowbrook saw a 30% increase in the number of agency captives it manages. Inquiries to Meadow-

brook's World Wide Web site also have increased.

Richard P. Marshall, vp of the alternative risk division in Rock Hill, N.Y., for Frontier Insurance Co., has been in the insurance business since the mid-1960s. Throughout the years, he has continually heard the empty cliché about insurer and agent partnerships, he said.

But insurers who partner with agents in establishing captives really will find it harder to divorce, he said. Because agents know they are sharing risk and earning an underwriting profit and investment income from premiums, insurers will find it too profitable a

business to ever walk away from the arrangement.

"The fact is, if the agent is in risk-sharing, it strengthens the relationship," Mr. Marshall said. "You have the salespeople who are out there selling the product, actually taking the risk."

Frontier has now helped arranged 14 agent captive programs and is working on several others. Most have been formed in the past two years, Mr. Marshall said.

Frontier can work as a fronting insurer, issuing policies for the agent's customers. Frontier will also quota-share with agents, with the percentage of risk assumed by agents and the insurer varying widely.

In fronting arrangements, the agents actually become reinsurers, even if they accept first-dollar risk. The 17 South Carolina agents who recently formed the Barbados captive have a 50/50 quota-share arrangement on the first \$100,000 per claim with Frontier. Policies are issued by Lyndon Property Insurance Co., a St. Louis unit of Frontier rated A+ by New York-based Standard & Poor's Corp., said James H. Suddeth, president of Keenan Insurance & Financial Service Inc. in Columbia, S.C.

Mr. Suddeth said he pooled the 17 agents together because insurers serving independent agents began leaving his state in 1989 after regulators rejected insurer rate increases.

The share of insurance that the state's independent agents place has declined to about 25% from 52% in recent years, Mr. Suddeth said. Meanwhile, direct writers have been making a healthy profit in South Carolina. "The independent agency system lost somewhere around \$35 million in commissions because of the abandonment of the market by our companies."

Originally, Mr. Suddeth thought of creating a domestic insurance company. But state regulators required about \$4 million to capitalize such an operation. An offshore captive required only about \$1 million, he said.

The agents involved in the captive, named The Masters Insurance Co. Ltd., are able to spread their risk because their agencies and business are spread throughout the state. They have a market target defined by consumer education and income level, and Lyndon has placed a dedicated claims adjuster in Mr. Suddeth's office.

A captive arrangement with an insurer eliminates "the inherent conflict" between agents and insurers, Mr. Suddeth said. Agents are no longer arguing with underwriters over what risks should be acceptable. And agents are no longer on the bottom of the food chain, merely earning a commission paid out by insurers.

"This gives us the opportunity, quite frankly, to be on top of the food chain," he said. "It's changing our relationship with insurers substantially, with the way we used to think, with the way we are going to have to think." **BI**

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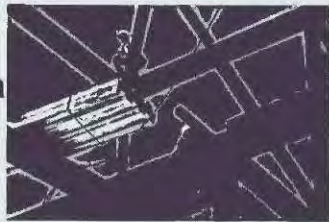
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# Electronic interfacing gains ground

Internet technology will increase agency/insurer communication, experts predict

By SALLY ROBERTS

Agencies and insurers continue to take advantage of the benefits of electronic interfacing. Single-entry multiple company interface, or SEMCI, while not a new work flow concept, is gaining momentum. By electronically uploading and downloading policy information to each other, agents and insurers are realizing they can work more efficiently, save money and enhance relationships.

And with new Internet technology growing in popularity and use, the SEMCI concept is bound to grow even more in the future, experts predict.

According to IVANS Inc., SEMCI is growing among agencies and insurers. The Greenwich, Conn.-based technology service organization that provides the necessary platform for agencies and insurers to electronically communicate via different systems says 71,342 pairs of insurers and agencies are currently interfacing.

That figure represents proprietary connections as well as SEMCI connections. It includes agencies that interface with just one company and those that interface with as many as 19 companies, explained IVANS' President Dan Carmichael, who moderated a panel discussion on current agency/company interface technology online during a keynote session at the Insurance Marketing & Management Services 25th annual conference held in San Francisco last month.

While current interfacing occurs via agency management systems with batch upload and download features using the same protocols for all insurers, the onset of Internet technology holds a future of conducting policy transactions online in real time.

"Just when we thought it was safe to do SEMCI, here comes the Internet," quipped Hugh Anderson, enterprise architect at The Hartford Financial Services Group in Hartford, Conn. The Internet not only will leverage growth opportunity as an agency interface tool, but it also provides information on products and services; interface and collaborative communication with brokers, insurers and customers; access to online underwriting tools; downloading of software; and individual World Wide Web sites for marketing purposes, Mr. Anderson said.

"Internet technology complements The Hartford's current agency interface strategy and enables us to extend its functionality and reach," he said.

"The next generation of SEMCI will be browser-involved," according to Barry Hollandsworth, agency automation manager at insurer Royal & SunAlliance USA in Char-

lotte, N.C.

"We're very supportive of the SEMCI process. It's a work process that is mandatory for agencies and companies to reduce expenses and to be competitive in the insurance market," he said. "Our philosophy is ease of doing business. That's why SEMCI and the Internet are so important."

Royal & SunAlliance recently polled 599 of its personal lines agents and found that 59% of them were SEMCI-capable and

that 67% will be by the end of 1998, Mr. Hollandsworth said. The insurer also found that 38% of the agents had Internet access in their offices, but 92% have plans to use the Internet in some capacity by the end of the year. "We think it's very important for agents and brokers to be (Internet) enabled," he said.

Larry Acord, vp-marketing for National Grange Mutual Insurance Co. in Keene, N.H., said he believes that in order to succeed in

the future, National Grange needs better alignment between its agency force and the ultimate buyer. "We feel the Internet creates flexibility to really meet evolving demands" put on insurers, agents and customers, Mr. Acord said. In the future, Internet technology will support improved customer service, enhance agency/insurer relations, improve accessibility of industry information and be cost-effective, he predicts.

In the meantime, batch upload-



ing and downloading is the best way to interface, the panelists agreed.

*Continued on next page*

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While the Internet is great for browsing, research, sending and receiving e-mail, updating software and obtaining up-to-date policy manuals, there are disadvantages right now to Internet interfacing, said Nancy Edwards, assistant vp and director of special products for State Auto Insurance in Columbus, Ohio.

First, there is a cost issue, she said. Internet interface is not integrated with agency management systems. So not only does everyone need access to the Internet, but multiple-modem technology and high-speed phone lines are expensive. Ms. Edwards estimates

the initial installation and hardware can cost \$2,500, and one can expect between \$250 and \$500 in monthly charges for special phone lines.

Security also continues to be a concern, albeit a "diminishing" one, Ms. Edwards said, adding that reliability and connection speed also can be a disadvantage.

Someday, maybe one to three years from now, the Internet will be a great place for high-volume policy transactions, Ms. Edwards predicts. "Right now, batch uploading and downloading is a little better because it is less expensive and easier to manage," she said. **BI**

## Bringing in new business key for agencies that want value

By SALLY ROBERTS

**I**ndependent agencies that plan to be high-value agencies in the new millennium need to put their efforts into generating new accounts, according to an agency management consultant.

The primary impact on agency value is not insurance rates or direct writers or the alternative risk financ-

ing market or banks or the Internet or the lack of capital or the lack of perpetuation planning, said John Jaques, who owns his own consulting firm, John H. Jaques Inc., in Palo Cedro, Calif.

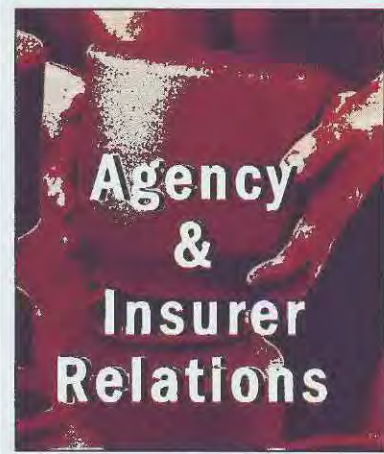
"The biggest issue hampering agency value is lack of net client count," Mr. Jaques said. "Agencies are not adding enough new customers each year."

"We keep rearranging the deck

chairs with automation, technology, staffing, mission statements, but we're not adding new clients. The rest is secondary," he said.

Mr. Jaques discussed what he believes needs to be done in order to improve agency value during a keynote session at the Insurance Marketing & Management Services annual convention in San Francisco last month. There are five keys to obtaining high agency value 10 years from now, Mr. Jaques said.

- First, agencies need "consistent annual net client count increasing in all segments," he said. Agencies need to become more marketing-focused, sales-focused. Mr. Jaques describes these as "two completely different



terms, philosophies and concepts." A good marketing effort will create opportunities to make sales, he said.

- Second, agencies need to increase employee productivity, Mr. Jaques said. "Productivity results from hiring quality employees and the ability to provide training, education, skill building, work flow design and motivating leadership," he said. "This is the principal responsibility of principal owners that's required for increased productivity."

Productivity is not the "net result of automation," Mr. Jaques warned. "It helps, but it's not in any way, shape or form a magic pill."

- Third, agencies need to recognize that an agency is "an insurance risk indicator and information processing organization," he said. "It is not a sales organization." Eighty percent of the day-to-day activity of an agency should be identifying risks and providing information, while the rest should be devoted to marketing, Mr. Jaques recommends.

"You must make it easy for clients to do business with you," he said.

- Fourth, agencies need to place a higher emphasis on insurer relations, Mr. Jaques said. Agencies need to work with insurers to develop new products and generate enough critical mass with them—\$3 million to \$4 million in premium volume—to obtain the best underwriting assignments and underwriting flexibility, Mr. Jaques said.

- Fifth, agencies need to develop more depth and breadth to the services they provide each client, he said. "You become much more important to each client. Selling only

See **IMMS** on next page

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## IMMS

Continued from previous page  
property/casualty policies" will not work to retain clients in the future.

Among his recommendations, Mr. Jaques told agents that they must get bigger. "Critical mass is the key, not economies of scale." Critical mass will offer agents the ability to compete, to increase their level of service, to afford quality employees, to improve insurer relations, and to improve customer service," he said.

"The worst position possible to be in in the new millennium is between \$750,000 and \$2.5 million in gross commissions," he said. "Why?

Because you don't have any capital to grow." An agency that size will not be able to develop new producers, attract highly successful producers, afford quality management, or provide meaningful volume to insurers. The owners will be spread too thin, and there will not be enough key people to form a pool for perpetuation, he said.

Mr. Jaques also recommends that agencies seek partners and form "a local or regional powerhouse." The very best firms today generate more than \$10 million in commissions, have multiple owners to run the businesses and have critical mass for insurers. They will provide alternative risk financing, risk manage-

ment, loss control, claims management and captive management services, he contends.

In profiling what he sees as a high-value firm in the year 2008, Mr. Jaques said the agency will have these characteristics:

- Gross revenues exceeding \$6 million.
- \$500,000 in average commissions per producer.
- Producer compensation of no more than 20% of renewals.
- An average of \$225,000 in commissions per employee.
- The average non-producer staffer will make \$50,000.
- An internal growth rate of 7.5% to 10%.

- Three to five owners who own more than 10% of the agency, but no owners who own more than 50% of the agency.

In terms of the breakout of a high-value agency's book of businesses, Mr. Jaques said 25% will be commercial lines, 10% personal lines, 15% association or specialty lines, 15% risk management fees, 25% employee benefits and 10% pension and retirement.

"This is the minimum basket of goods and services you must carry out to new clients in the new millennium," Mr. Jaques said. "Why? Because Citigroup will be offering this, and Sandy Weill will figure out how to do this without you." **BI**

## Georgia eases agent rule

**G**eorgia is the latest state to streamline insurance regulation by minimizing the need for a resident agent to countersign an insurance contract written by a non-resident agent for an in-state risk.

The popularity of the trend is marked by Kentucky and Iowa repealing similar laws in the past two months. Eight other states and the District of Columbia have repealed similar laws during the past two years, according to the Alliance of American Insurers in Schaumburg, Ill.

Georgia Gov. Zell Miller eased countersignature requirements last week when he signed H.B. 862, which limits the instances in which a resident agent's signature is required on an insurance contract to make it binding.

The law, which took effect immediately, eliminates this requirement for non-resident agents who represent only one insurer and for the companies that do not use agents to sell their policies in the state. However, all independent agents still are subject to the requirement.

By signing this bill, Gov. Miller demonstrated his desire to facilitate sales of insurance across state lines, encouraging competition, said Robert W. Herlong, manager of the Southeast region for the AAI in Atlanta. "This, in turn, will increase consumer choice. The bill also will streamline company operations and save insurers and agents the postage, stationery and handling costs associated with countersignature requirements," he said.

A proponent of reducing countersignature requirements is North Dakota Insurance Commissioner Glenn Pomeroy, president of the National Assn. of Insurance Commissioners. He says the requirements are an example of the type of laws and regulations that regulators should eliminate to facilitate cross-border commerce.

According to the Alliance, the eight other states that have eliminated countersignature requirements in the past two years are Arizona, Delaware, Illinois, Kansas, Louisiana, Massachusetts, Oklahoma and Texas. However, it also identified nine other states that still have "absolute" countersignature requirements: Alabama, Florida, Mississippi, Nevada, Pennsylvania, South Carolina, South Dakota, West Virginia and Wyoming.

—By Meg Fletcher

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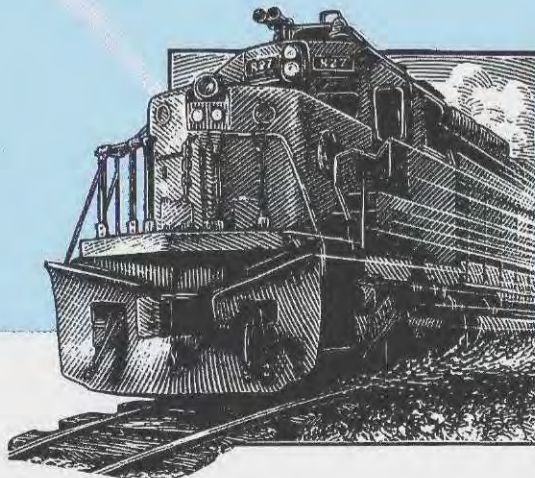
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# 'Big I' eyeing purchase of savings bank

IIAA-owned thrift will help agents serve policyholders' financial needs, officials say

By AMANDA MILLIGAN

**D**espite its history of opposing banks in insurance, the largest association of independent agents views its intent to acquire a federal savings bank charter as a proactive, member-targeted venture rather than a reaction to recent court decisions and pending legislation.

Independent Insurance Agents of America Inc. President Bud Wilson said his association will purchase an existing bank that will serve the financial service needs of customers of the Big I's 26,000 member agencies. The bank, which has yet to be named, will offer loan quotes, process applications and issue mortgage and automobile loans via a toll-free customer call-in service. Referring agencies will receive an undisclosed commission for each completed transaction.

"We believe that we know the customer as well as the bank does," said Mr. Wilson, who also is chairman of Chula Vista, Calif.-based Wilson Insurance Agency Inc. "The banks are moving into our areas, and it doesn't make sense to abandon any segments of the market to the banks or anyone else."

This endeavor will give the Big I's bank, in essence, 26,000 branches and 300,000 agents as a "potential sales staff," Mr. Wilson said.

Paul Equale, executive vp for public affairs for the IIAA, said this bank would "dwarf" Citigroup—the name of the entity to result from the proposed merger of Citicorp and Travelers Group Inc.—in the number of nationwide locations. "We will be the largest bank in America," he said.

The IIAA's plan to acquire a federal savings charter was approved by a unanimous vote of the association's board of directors. Mr. Wilson said he has received letters of encouragement from member agencies; however, until recently, the IIAA has not "had the resources or expertise" to buy a bank.

Joan Haddock, president of PIIAC, a combined association of the Colorado chapters of the National Assn. of Professional Insurance Agents and the Big I, was at the IIAA board meeting when the vote was cast.

"I was amazed at the overwhelming support," said Ms. Haddock, who also is corporate secretary for Haddock Insurance Agency in Boulder, Colo. "I would have thought there would have been the perception, 'Now, are we any better than they (the banks) are?'"

Both Ms. Haddock and Mr. Wilson said the 1996 Supreme Court *Barnett* decision, which held that banks could sell insurance in towns of 5,000 or fewer residents, changed the minds of many insurance agents on the issue of banks in insurance.

"Yes, I think some minds did change," said Mr. Wilson, crediting the decision with "opening the

floodgates" to allow intermingling of the two industries. "We don't fight banks. They are a very critical part of our economy, but so is insurance."

While Congress has yet to address pending legislation regarding regulation of both insurance and the financial services sector, many agents feel *Barnett* has made crossover action possible in smaller markets.

"Congress is way behind the times. They're tied up in knots, and the market is moving on without

them," Mr. Equale said. He said Congress' inactivity has spurred the Big I to plan to purchase a thrift as well, one of many business strategies the group expects to unveil in the near future.

"There are many other irons in the fire" he said. "This is not your father's trade association anymore."

IIAA officials emphatically state that this venture will not affect the political stance of the association. "There's no conflict ideologically, philosophically or practically with

the reforms in front of Congress," Mr. Wilson said.

The Big I still endorses H.R. 10, which would provide for the functional regulation of many aspects of financial services, from banking to insurance. Functional regulation, Mr. Equale said, requires that a company be supervised by the appropriate regulator for each type of service it provides.

Following this approach in purchasing the thrift, Mr. Equale said this division of the IIAA should be

regulated by the Office of Thrift Supervision. "The purchase of this charter is a business venture, not a political one," he said. "We are putting our money where our mouth is."

Building internal mechanisms through a for-profit division was one way the Big I began to make this initiative happen. "Our association is in a very strong cash position," Mr. Equale said, and the national board of directors voted to allocate funds from contingency assets to begin the process.

Both Mr. Equale and Mr. Wilson said \$50,000 was used as seed money, and the board's vote allows

See **Bank** on next page



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## Bank

Continued from previous page  
for \$1.5 million "earnest" money to be spent.

Ed Armstrong, president of member services, said membership dues will not be impacted by the purchase of a thrift.

Twelve banks in the Washington area are being considered as potential candidates for purchase, Mr. Wilson said. Talegis, a Reston, Va.-based consulting firm, is scouting viable banks and personnel for the association.

"Candidates for purchase will be savings banks that haven't been able to reach out to enough customers in their local area," he said.

Richard Davis, chairman of the IIAA's new products task force, said the Big I hopes to purchase a bank

within the next 12 months.

IIAA officials said the bank will be capitalized with stock, and Mr. Davis said member agencies interested in using the bank's services will be required to purchase a "low minimum" amount. No dates were given for the purchase of the stock or the opening of the new bank.

More information, such as a "how to" brochure, will be distributed to member agencies, and interested agencies will receive face-to-face informational visits by IIAA staff.

"It's our intent to put a few people on the road," said Mr. Davis, who also is president of Needham, Mass.-based agency Provider Insurance Group. "We like for people to be invested in what we're doing here."

Although other agent associations said they do not plan to emulate the Big I's venture, several gave kudos for its member-driven directive.

"I think it's great for their members," said Ken Crerar, president of the Washington-based Council of Insurance Agents & Brokers. "I applaud their acceptance of reality."

Patricia Borowski, division vp of PIA, said her association's chief concern with the banking industry is smoothing relations between agencies and local lending institutions.

She said the PIA has researched purchasing a bank a couple of times but hasn't found enough evidence that it would be useful to PIA's member agencies.

"We felt that our expertise and their money would best be spent on working with our agencies with improving relationships with banks," she said.

Seventy percent of PIA's members have sales of \$2.1 million to \$10 million, Ms. Borowski said, noting that the size of the Big I member agencies

is comparable to that of PIA's members.

Independent agents nationwide have expressed interest in the Big I's bank, though many said financial services were not a major area of interest for their individual companies.

Leon Wright, owner of Sheridan, Wyo.-based W-B Insurance Agency, said he would wait until he had learned more about the bank before deciding whether to use it. But Mr. Wright, who has been a member of the Big I for more than 20 years, said he would look at the services offered.

"I'm not tied to any local (lending) institution," he said. "I would want to support the Big I."

Ms. Haddock said the IIAA's bank services might be something her agency would offer its customers. "It's not going to be a big sign on our window, but it might come up in conversation," she said. "It won't be

our flagship."

Agency adviser Tim Cunningham of the Chicago-based INSIGHT Consulting Group said agents are wise to be wary of forays into the banking industry. Because of public perception, independent agents may have more trouble than banks will have with product crossovers. He also noted that banks are only one of several alternative distribution methods that could cut into agent business.

"I would recommend to an agency to stick to their knitting, focus on core insurance business and crank up a heavy-duty marketing campaign for their insurance products," Mr. Cunningham said, adding that this issue reminds him of literary figure Don Quixote's battle with the windmills. "If industry focused more on core business and not on the windmills, they would have more control." **BI**

## Trust, communication prevent employment claims

By SALLY ROBERTS

If agents and brokers want to mitigate the potential risk of being sued for workplace discrimination or harassment, they need to take a closer look at their workforce relationships, a labor attorney advises.

"The single most powerful way of preventing employment claims is by building powerful relationships," said Donald A. Phin, labor attorney and president of ManagementThink, a San Diego-based consulting firm. "People who trust each other don't sue each other."

Coping with the risk of employment practices liability exposure is a hot topic on many employers' minds these days.

Consider these statistics Mr. Phin cited during a session on avoiding employment claims at the recent Insurance Marketing & Management Services annual convention, held in San Francisco last month:

- More than 450 employment lawsuits are filed in the United States every day, according to USA Today.
- The number of employment discrimination cases filed in federal court has doubled since 1992.
- The U.S. Equal Employment Opportunity Commission has an 18-month backlog for resolution of discrimination cases.
- Fifty-six percent of all employment cases tried result in verdicts for the plaintiff.
- The average plaintiff's verdict

in employment law cases exceeds \$250,000, with 15% of all verdicts exceeding \$1 million.

• The fastest-growing categories of workplace discrimination claims are retaliation, sexual harassment and disability law violations.

• The largest number of employee lawsuits are filed in Texas, California, Florida and Illinois.

• The most common target for federal discrimination claims are private employers with between 15 and 100 employees.

Mr. Phin recommends that to contain employment lawsuits, the agency owner—or the individual whose position is equivalent to its risk manager—should audit and evaluate the levels of trust, direction, communications and commitment found in the

organization. Those four factors are the most important in establishing solid relationships, he said.

In analyzing EPL risk potential, the most important issue is not whether the company has established an EEOC policy or grievance procedures, contends Mr. Phin. Rather, the key issue is the level of trust within the organization.

In order to create trust within an agency or any place of employment, he said it's important to hire trusting people, he said. To do that, he said, "bring in people with both skill and character."

An employee with skills alone, said Mr. Phin, is not enough. For example, "Latrell Sprewell may have the skill to play on any bas-

ketball team, but I don't want him playing on mine," Mr. Phin said.

Often employers hire people without trust because employers get desperate, lazy or infatuated during the hiring process, Mr. Phin said. An employer will also often hire a specific person because a friend recommends that person or because preconceived notions get in the way of hiring the right person.

In addition to trust, many workplace relationships fail because management and employees are focused on different goals, he said. Employers need to share their visions and goals with their employees to make sure they are headed in the same direction, Mr. Phin recommends.

For example, if a company's vision is to take risks and to hire young and innovative employees, this might contradict the vision of the company's older workforce, who might be looking for more stability and security.

Communication also is key in containing employment lawsuits, Mr. Phin said.

"Dialogue is the single most powerful component of communications," he said.

People need to drop their judgments and be careful about various "physical programming that was gifted to us" in earlier years, Mr. Phin said.

For example, Mr. Phin said he grew up in a household where family members yelled when they were upset. As an adult, Mr. Phin initially did the same thing, but then he changed his "programming." Now, Mr. Phin said, when he is upset, he sits down, making it more difficult for him to yell.

In addition to watching what is said, Mr. Phin recommends employers become better listeners. In most sexual harassment cases, it is alleged that the manager did not listen to initial complaints. "In many EPL claims, the problem is not learned (of) until it is too late to do anything about it," Mr. Phin said.

See Claims on next page

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# Brokers' role in claims disputes called key

By MICHAEL PRINCE

**K**eeping policyholders happy is an important consideration for insurers in deciding whether to settle or fight claims, and brokers often play a key role in resolving disputes amicably, attorneys say.

Insurance companies "want to maintain good relations with their insureds," noted Shaun Baldwin, a partner with the law firm Tressler, Soderstrom, Maloney & Pries in Chicago who represents insurers. "It's important with them to get renewal business and minimize any kinds of conflicts."

When a policyholder files a bad-faith suit, "it tends to put a strain on their relationship," Ms. Baldwin pointed out.

Brokers, therefore, can serve as a bridge between the policyholder and insurance company.

Insurers look at many factors in claims disputes. Those include the amount of premium the policyholder pays, the policyholder's attitude toward settling, the cost of continuing the litigation, the risk of losing the customer if the suit continues, the cost of setting a bad precedent, the risk of bad publicity and the impact on the insurer's combined ratio, observers say.

For example, an insurer may settle a claim whose value is less than the premium on the policy, whereas the company might fight a claim that is many times the premium amount.

Maintaining good customer relations does enter into insurers' litigation strategy, said Harold Moskowitz, a partner with the insurer defense firm of Wilson, Elser, Moskowitz, Edelman & Dicker in New York.

In some cases, "the insurer will pay a claim that they might not otherwise pay," he said. The business strategy "will certainly influence the litigation."

Despite the difficulties involved, insurers can do several things to maintain a client relationship while litigating over a claim, insurer attorneys said.

To have a good relationship, "you have to be up front and honest with policyholders" at the outset, said Lori Nugent, a partner with Blatt, Hammesfahr & Eaton in Chicago.

Also, "trying to maintain the professional business relationship while litigation is ongoing is very important," Ms. Baldwin added. "Just because a case is in litigation does not mean the attorneys have to be involved in other areas not in dispute."

However, Eugene Anderson, a partner with New York-based policyholder law firm Anderson Kill & Olick P.C., said he thinks insurers do not care about their relationships with policyholders. Many policyholders have "a limited corporate memory" that "permits insurance companies to get away with this," he said.

For example, he said, a policyholder may decide never to do business with a certain insurer, but a few years later, that decision might fade from memory, or the person who made that decision may have left the company.

While policyholder suits have increased in some areas of insurance, litigation is down in others, lawyers said.

Intellectual property and advertising injury claim suits are up, for example, because the law on coverage is not well established in these areas, Ms. Baldwin said. On the other

hand, suits involving environmental claims have decreased as most state courts have clearly stated rules on policy interpretation.

The heat generated by a suit varies by the attorneys involved, she said. Bad-faith suits "can be more contentious" than coverage suits, as bad-faith actions allege wrongdoing by the insurance company, she noted. The amount at stake also is larger, as punitive damages can be awarded.

The soft market has strengthened some insurers' resistance to paying

claims in an effort to keep loss ratios in check, added Richard Archer, a claims resolution consultant in Santa Barbara, Calif.

He said insurer/policyholder disputes are more contentious than ever, as more money is at stake because of large product liability suits and the higher value of property.

Insurers and policyholders do agree that the broker plays an important role in resolving any dispute.

"The broker may be able to articulate to the insurer better than the insured" what the concerns are, said

Michael Brady, a partner with Ropers, Majeski, Kohn & Bentley in Redwood City, Calif., who represents insurers.

Inside insurance companies, a wall typically separates underwriters and claims handlers. Observers say brokers can breach that wall because they generally know both groups of people.

"The catalyst has to be the broker" to bridge the two sides, Mr. Archer said.

Dennis Connolly, senior vp with the special claims department of J&H Marsh & McLennan in New York, said policyholder attorneys sometimes hire brokers, such as  
*See Disputes on next page*

## Claims

Continued from previous page

All too often, the workplace excludes a culture of silence, he said. "I've sued employers with 15-page ethics handbooks for ethical problems because no culture existed to back it up," he said.

Employers need to establish a workplace with a culture that promotes open communications so they can deal with problems at a very early stage, he said. "When you have kids, you don't wait until they get pregnant before talking about teen sex," he said.

The fourth most important factor in curbing employment suits is commitment, Mr. Phin said. Not only do employers need to be committed to legal compliance, but "if you don't commit to (trust, direction and communication), you will have failed relationships," he warned.

Overall, Mr. Phin said, "you want to make employees feel that who they are makes a difference. Don't create any incentive in the workplace that creates one winner and several losers." **BI**

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SAN FRANCISCO—Nearly 250 people descended on the City by the Bay to attend the 25th annual Insurance Marketing & Management Services convention, held April 16-19.

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## Disputes

*Continued from previous page*  
himself, to help resolve disputes so the policyholder's law firm maintains an aggressive image rather than appear willing to negotiate with the insurer. In this role, brokers act as the "good cop" to the "bad cop" played by the law firm.

The broker can help resolve conflict "by explaining the thinking of each party to the other," Mr. Connolly said. Also, a broker can defuse animosity that may have arisen between the insurer and policyholder.

The broker also can "dampen unrealistic expectations" of both sides, he said. This includes explaining to policyholders that they might not collect as much from the insurer as they expected.

And because the broker generally has more claims experience than the policyholder, "a broker can educate the insured as to what the litigation environment is all about," he said.

Another role of the broker is to "make sure you have the right parties talking to each other," he said.

For example, in one negotiation in which Mr. Connolly was involved, a

general counsel and senior outside attorney for a major policyholder met a junior claims attorney to discuss a multimillion-dollar environmental claim. However, the claims attorney was not given authority to settle such a large claim. He said the best way to resolve claims is to arrange a meeting with senior negotiators from both sides and dispense with the preliminary meetings of their underlings.

Attorneys for insurers said their clients often settle disputes with policyholders to keep the relationship.

Insurers "look at their bigger picture and consider all kinds of business factors with insureds in deciding to pay a claim or settle," Ms. Baldwin said.

Dick Blatt, a partner with Blatt, Hammesfahr & Eaton in Chicago, said: "There is more to business than litigation. Commercial considerations apply, and often they should."

Mr. Anderson, however, said insurers rarely pay claims they don't think their policies cover.

Insurers sometimes consider the policyholder's perspective, but a far greater factor in settling is whether it helps the insurer, said Mr. Archer, the claims consultant.

Insurers' lack of concern stems from the frayed ties between policyholders and insurers caused by industry consolidation.

Terry Gilbreth, vp of risk management for Safeway Inc. in Oakland, Calif., said some insurers won't settle a dispute if the claim is significantly larger than the premium paid. In such a case, "they could care less" if the policyholder is upset, he said.

For example, Mr. Archer said an insurer would more likely settle a \$50,000 claim from a policyholder that pays \$1 million a year in premiums than a \$50 million claim from the same policyholder.

An insurer can help keep its customers happy by opening personal contacts with policyholders to explain the insurer's position, setting forth the legal basis for a coverage decision and inviting brokers into the process, Mr. Moskowitz said.

One way cases can get resolved is by having the insurer pay the claim, in exchange for the policyholder buying a new policy, J&H Marsh & McLennan's Mr. Connolly said. "The opportunity to do a little mutual benefiting absolutely should be something that is considered," he said. **BI**

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## Medical managers useful in wrap-ups

By **DAVE LENCKUS**

SAN DIEGO—Risk managers overseeing owner-controlled construction insurance programs likely will find that delegating authority over the management of workers' injuries to a professional medical manager will be far more effective than trying to deal directly with medical providers, a risk manager asserts.

The overriding benefit of medical managers is that they communicate with medical providers "in their own language," said Marge P. Layne, insurance manager of capital programs for the San Francisco International Airport.

"I can't do that," said Ms. Layne, who is overseeing a mammoth \$2.4 billion owner-controlled insurance program at the airport.

Crispness of communication is crucial if the providers are going to understand the ins and outs of the construction project's workers compensation program. Without it, risk managers and medical providers may find themselves at odds over planned light duty to bring injured workers back as soon as possible to hold down workers comp costs and the required injury reports for claims management purposes, Ms. Layne said. She spoke during a session at the Risk & Insurance Management Society Inc. conference last week.

Other benefits of medical management include improved medical outcomes for injured workers, more effective return-to-work programs and lower disability costs, said P.J. Hankins, the medical management director in Phoenix for Menlo Park, Calif.-based Argonaut Insurance Co. Argonaut is the workers comp insurer and medical manager for the airport's wrap-up program.

Under an owner-controlled, or wrap-up, construction insurance program, the organization that has hired construction contractors assumes the responsibility for arranging the various insurance programs the contractors will require during the project.

The primary benefit of a wrap-up program is that it should cost far less than if all of the contractors and subcontractors purchased their coverage separately.

Wrap-ups also eliminate the kinds of coverage disputes that can develop in the aftermath of a loss if contractors purchase coverage from different insurers and liability is disputed.

But in the workers comp area of such programs, risk managers should not cling to the notion of "owner-controlled," agreed Ms. Layne and Ms. Hankins.

The problem for risk managers is that medical professionals are reluctant to discuss treatment and reporting protocols with non-medical professionals, Ms. Layne and Ms. Hankins said. For organizations with wrap-up programs, medical managers—who have had various types of medical training—provide that necessary liaison with medical providers, they said.

Unlike case managers, medical managers do not help direct the medical treatment of seriously injured workers. They have the more "proactive" responsibility of planning medical management of injured workers before injuries occur.

To that end, their most crucial role is laying out to medical providers in medical terms the es-

sential elements of a workers comp program. Key elements of a program that medical providers might otherwise have problems with are clearing workers when possible for light-duty return-to-work activities and providing employers with injury information necessary to compile claims data.

Ms. Layne said her medical manager excelled in communicating all of that to a new staff two years ago at the airport's medical clinic.

The previous staff, led by the clinic's medical director, did not understand the numerous differences, in-



cluding patient privacy issues, before construction workers the airport employed and one for travelers. Nor was the staff willing to learn how they were expected to run the clinic in treating injured workers, she said.

After Ms. Layne eventually generated enough pressure on local government powers to replace the clinic's medical director, she called in a medical manager to educate the staff on what a medical treatment program for injured workers encompasses.

According to Ms. Layne and Ms. Hankins, the numerous measures a medical manager should take at the onset of a wrap-up program should include, among other things:

- Evaluating how well clinics and hospitals near the project treat seriously injured workers.

- In collaboration with medical providers, developing procedures for claim reporting, transitional work release, return-to-work programs and the billing process.

- Arranging for after-hours providers.

Back injuries, for example, may manifest after work hours. Though serious, the injuries may not necessitate expensive emergency room treatment, Ms. Hankins said. Medical managers should arrange for providers who can take those after-hours cases and should ensure that workers know whom to call in such cases.

- Identifying emergency responses.

Ms. Hankins recounted an interstate road reconstruction project in Utah in which, at the onset of the project, the medical manager decided the emergency phone number 911 would not be called after any serious injuries to workers. Instead of allowing fire trucks and ambulances answering the 911 calls to snarl traffic, the medical manager arranged to transport injured workers via air ambulances. An air ambulance is a quicker form of transportation, and it does not cause traffic snarls, she said.

- Educating medical providers, especially those in outlying areas, about the concept of wrap-up programs and their responsibilities in terms of the project's workers comp program.

For example, providers need to learn that injuries have to be coded in certain ways to ensure that the records of those injuries are linked with their projects.

Marlene Kosinski, assistant vp-medical management for Argonaut, coordinated the session, which was moderated by Jeanne M. Adelo, Argonaut's assistant vp-underwriting.

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# Inaugural

Continued from page 3

"In order to move forward—and we must—risk managers have to embrace the power of the technology made possible on our desktops," Mr. DeLillo stressed.

RIMS Executive Director Linda Lamel also is enthusiastic about the society's increasing use of technology. "It's redefining our world," she said during a presentation at the membership meeting. "It's also redefining management and RIMS."

She pointed out that RIMS' redesigned World Wide Web site is drawing more than 200,000 hits a month, compared with 25,000 per month a year ago. The redone site, at <http://www.rims.org>, includes "a number of members-only fea-

tures," she said.

In another area, changes have been made to the society's committee structure. "This new committee structure—one with fewer standing committees," Mr. DeLillo explained, "focuses all our resources and all of our volunteers' time and efforts on the issues that are important to you, the membership."

The structure means "we will move forward, quickly and efficiently, because that's what you expect, and that's what you deserve. . . . We are poised to address any issue that may arise. This is the delivery system of the future."

RIMS will continue to offer leadership on legislative and regulatory issues in the United States and Canada, Mr. DeLillo told his audience.

Next March, RIMS will hold its

## 1998 RIMS Report

first "Capitol Hill Fly-In," Mr. DeLillo said. The one-day event in Washington will focus on legislative training and awareness for members.

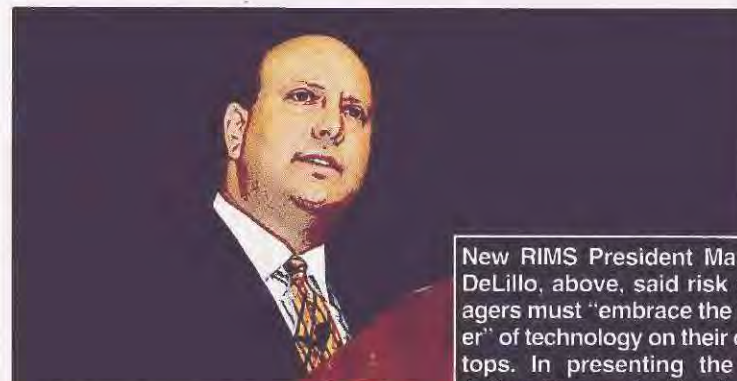
Outgoing President Stephen M. Wilder, vp-risk management at The Walt Disney Co. in Burbank, Calif., said he believes RIMS is providing a groundbreaking service to its members with the first quality score card, developed in conjunction with the Quality Insurance Congress. The rating system ranks insurers and brokers according to the level of service they provide, as graded by risk managers (see story, page 3).

"It's a monumental step," Mr. Wilder declared. "The score card provides powerful information" and gives the customer more influence.

RIMS' objective is that the score card will encourage those that are rated to consistently improve the quality of their products and services.

As the society works to meet members' needs, it does so from a strengthened financial position, according to Mr. Wilder. During a separate presentation, he told members, "RIMS has never been stronger financially, strategically and organizationally. We are truly well-positioned for the future."

RIMS' operating budget has reached more than \$10 million, the largest in the society's history, Mr. Wilder said. "We also have a



New RIMS President Mark A. DeLillo, above, said risk managers must "embrace the power" of technology on their desktops. In presenting the first Arthur Quern Quality Award, Jackie Quern, at left, described some ways her late husband defined quality. William Kronenberg III, below, accepted the Quern Award for ECS Inc.



capital reserve of \$4 million, which allows us to invest in our future."

Looking ahead, Mr. DeLillo predicted that RIMS and risk managers will face a number of challenges. For example, outsourcing will be among risk managers' concerns in coming months, he suggested. Mr. DeLillo said risk managers need to be asking themselves: "Does my company

see a value in my contribution? How can I grow within my organization?"

"As these challenges present themselves, they offer opportunities for the profession and for the individual," he added.

RIMS is up for the challenges it faces, Mr. DeLillo said. "Our past presidents, former leaders, have prepared us for this moment," he said. "And I believe we are ready for what lies ahead. Join me as we take our steps toward the new millennium." **BI**

## ECS gets Quern award for quality

SAN DIEGO—ECS Inc., an environmental risk services company, is the recipient of the Risk & Insurance Management Society Inc.'s first Arthur Quern Quality Award.

William Kronenberg III, president and chief executive officer of Exton, Pa.-based ECS, said in accepting the award that "quality is a belief that must be in the heart and mind of each employee in your organizations."

Mr. Kronenberg challenged risk managers and insurance industry professionals to be "fanatical" about bringing quality to their organizations.

The award, recognizing quality in risk management and insurance services, honors the late Arthur F. Quern, chairman and CEO of Aon Risk Services, who died in a 1996 plane crash.

In a moving presentation speech at RIMS annual membership meeting, Mr. Quern's wife, Jackie Quern, recounted parts of her life with her late husband and some of the ways he defined quality.

"A precept by which Art truly lived was that quality tells the truth and accepts the consequences," Ms. Quern said. Quality "isn't about being better than somebody else," she added. "It's about being the best you can be."

—By Michael Bradford

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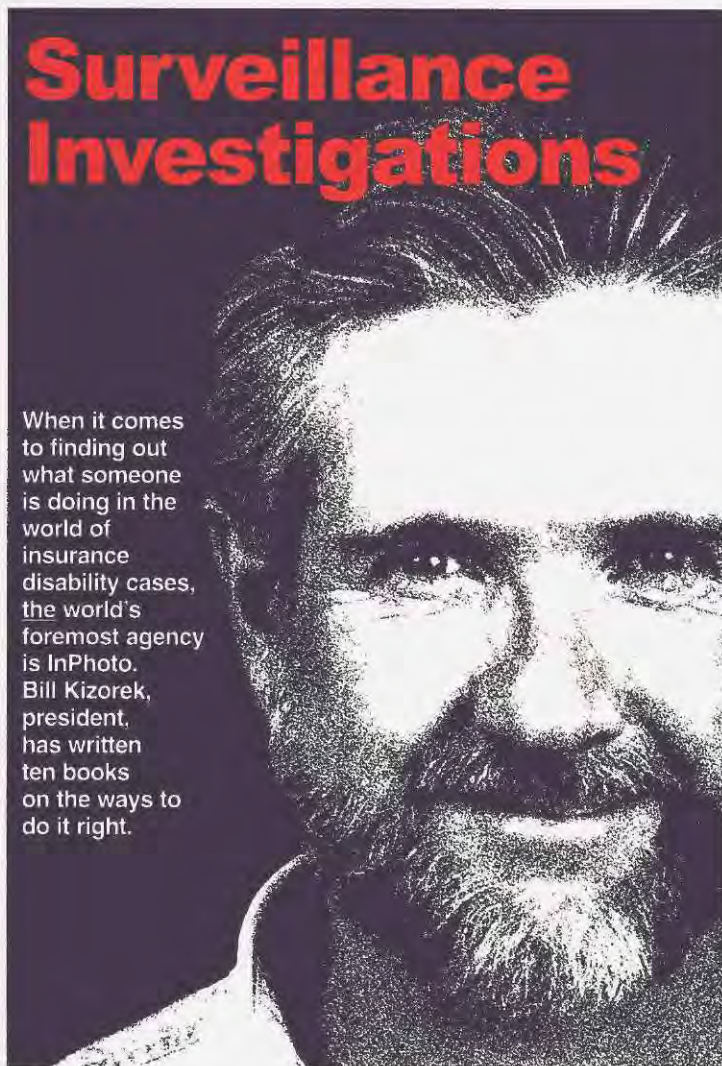
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# Betterley receives Goodell Award

## Annual membership meeting also features two new awards

By MICHAEL BRADFORD

SAN DIEGO—George M. Betterley's contributions to the risk management profession have earned him the Risk & Insurance Management Society Inc.'s highest honor: the Dorothy & Harry Goodell Award.

Mr. Betterley, known by many as the "dean of risk management," spent 45 years in the profession, retiring in 1991 from Betterley Consulting Group, the firm he founded in Boston 24 years ago.

He was presented the Goodell Award at the society's annual membership meeting that kicked off the week-long RIMS conference and exhibition last Monday. The award was established in 1978 by former RIMS President Harry Goodell and recognizes outstanding achievements in advancing the goals of risk management and RIMS.

Mr. Betterley was lauded for accomplishments that include his work to persuade universities to introduce risk management into their curricula. He was cited as an original thinker whose ideas helped shaped the profession and influence risk management practices. He has been a frequent speaker at RIMS chapter meetings.

"I am thrilled and overwhelmed by this award and what it represents," he said in accepting the award from RIMS President Stephen M. Wilder. "I am humbled and, finally, grateful to RIMS for this wonderful, wonderful honor," Mr. Betterley said.

"One reason I have always been a strong supporter of RIMS is because we march to the beat of the same drummer," he said. "We share mutual goals of advancing the practice of risk management through education."

The society also presented several other awards during the membership meeting.

The first Arthur Quern Quality Award was presented to William Kronenberg III, president and chief executive officer of ECS Inc. in Exton, Pa. (see story, page 30).

Another new award, the Heart of RIMS Award, was presented this year to recognize an individual who demonstrates a high level of dedication and the spirit of volunteerism to his or her chapter. The first Heart of RIMS Award went to Michael D. Phillipus of the Houston Chapter.

The Edith F. Lichota Award, which recognizes research that has practical applications to risk management, was won by Richard A. Derrig, senior vp of the Insurance Fraud Bureau of Massachusetts. Mr. Derrig was recognized for his paper titled "Insurance Fraud and the Monday Effect in Workers Compensation Insurance."

The award was established in 1984 and renamed in 1995 to honor Ms. Lichota, who died the year before. She was vp-administration of Bankers Insurance Co. Ltd. and was an independent consultant at the time of her death. Ms. Lichota was named the 1987 *Business Insurance* Risk Manager of the Year.

The Cristy Award, which goes to the risk manager with the highest cumulative average in the three exams required to earn the Associate in Risk Management designation, went to Martha L. Gifreda, risk manager of North American operations at Mettler-Toledo Inc. in Columbus, Ohio.

The award is named after Jim Cristy, a former vp-education at RIMS who encouraged the Insurance Institute of America to develop the ARM program in the 1960s.

Two people won the Richard W.

### 1998 RIMS Report

Bland Award, which recognizes outstanding efforts in the areas of legislation or regulation by deputy members of RIMS.

The winners were James E. Green, risk manager at Justin Industries Inc. in Fort Worth, Texas, for efforts to protect employers from medical negligence actions; and Michael F. Grace, risk manager at Denver-based Gary-Williams Energy Corp., for workers compensation reform lobbying.

Among chapters with 25 or fewer members, the Bluegrass Chapter won

the top spot in the Outstanding Chapter Programming and Overall Chapter Excellence categories of RIMS Chapter Recognition Program.

In the Outstanding Chapter Programming category, Santa Clara Valley in California took the top spot among chapters with 26 to 60 members, while the Dallas-Fort Worth chapter took top honors among chapters with more than 60 members.

The Houston Chapter, with more than 60 members, was tops among chapters its size in the Overall Chapter Excellence category.

Among chapters with more than 60 members, Houston and Dallas-Fort Worth were tops in the Advanc-

ing the Risk Management Profession category, while British Columbia won in the 26-60 member group. Winners in Outstanding Member Services were: South Texas, in the 25 or fewer member group; Santa Clara Valley, 26-60 members; and Atlanta, more than 60 members.

Outstanding Membership Development winners were: Greater Quad Cities, 25 or fewer members; British Columbia, 26-60 members; and Dallas-Fort Worth. Smoky Mountain, with 25 or fewer members, and the Delaware Valley chapter, with more than 60 members, captured the awards in Outstanding Student Outreach.



PHOTOS: MICHAEL MARCOTTE  
George M. Betterley accepts the Goodell Award and thanks RIMS.

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# Exclusive remedy has its exceptions

By GAVIN SOUTER

SAN DIEGO—The so-called "exclusive remedy" doctrine enshrined in workers compensation law is far from exclusive.

In numerous cases, old and new, courts have ruled that workers have the right to bring civil suits against their employers for injuries that occurred in the workplace, a panel of workers comp experts says.

Employees injured while being treated for other injuries, employees who suffered intentional injuries or emotional distress, and employees who are leased to other companies all have successfully sued for damages outside the workers comp system.

To effectively manage the problem,

the experts say that risk managers and brokers, therefore, should strive to learn more about the companies they work for and help educate other managers about the exceptions to the workers comp system.

When the workers compensation system was set up earlier this century, it was designed to give employees no-fault compensation for injuries suffered at work in return for giving up the right to sue their employers, said Julie Ann Welborn, manager-customer quality service at Zurich-American Insurance Group in Schaumburg, Ill.

"The hallmark is that payments are payable in the absence of a showing of employer fault," she said.

However, in many cases, courts

have ruled there are exceptions to that principle, said Theodore A. Penny, an attorney at Clopton Penny & Brenner in Los Angeles.



Several cases have involved situations where the employer is found to have acted in a dual capacity in dealing with an employee. Many of the cases involve employees at medical facilities who are injured on the job and suffer further injuries while being treated by others at the facility.

For example, in the 1950s, a worker at a California chiropractic partnership injured herself at work, and the

chiropractor treated her in a manner the employee then alleged was negligent. The provider said the only remedy was through workers comp, but the court ruled that the provider was treating her in a capacity other than as an employer and the employee could sue, Mr. Penny said.

In other cases, courts have held that employees are entitled to sue when they have been intentionally injured, he said.

A California case in the 1970s alleged that an employee was thrown to the floor and beaten by her boss.

"The court ruled that the actions were so egregious that by his behavior the employer had given up the right to exclusivity," Mr. Penny said.

Some courts also have held that

emotional distress can fall outside of workers comp, he said.

In a 1994 case in California, a sales clerk was subject to interrogation after the alleged theft of \$4.95. She was not allowed to leave the room or make a telephone call, and the managers falsely told her the theft had been witnessed. The woman subsequently sued her employer for false imprisonment (*BI*, May 30, 1994).

The court ruled that workers may sue their employers for actions that do not have a proper place in the employment relationship, Mr. Penny said.

The structure of businesses also can affect employer liability, he said. For example, courts have found that if an employee of one company is injured while working at a subsidiary, the employee is not restricted to the workers comp remedy, because the employee does not have a contract with the company where the injury occurred.

Modern employment relationships also can lead to liabilities outside the workers comp system, said Tim East, manager-risk management business process at The Walt Disney Co. in Burbank, Calif.

As employee leasing becomes more popular, employers need to consider how that different business relationship alters their liabilities, he said.

"There has to be a binding agreement," he said. If not, injured employees may be able to argue that they are not legally working for the company where they sustained the injury, Mr. East said.

For example, in 1975 a contractor was working with a subcontractor constructing a highway. Each agreed that the contractor could use a crane owned by the subcontractor but that an employee of the subcontractor would operate it. There was no contract and there was no payment by the contractor to the crane operator. An employee of the contractor was injured due to the alleged negligence of the crane operator, and the subcontractor decided that as the contractor was a co-employer of the crane operator, the injury should be dealt with in the workers comp system.

However, the court ruled that the contractor could sue the subcontractor. "The court said there was no payment, no written agreement and no giving up of the right of control," Mr. Penny said.

To address the problem of the numerous exceptions in the exclusivity system, risk managers must strive to be more aware of all aspects of their companies' business, said Mr. East.

"We really have to know the business well," he said. For example, risk managers must know exactly how their companies place products in the marketplace, how medical care is managed, what contracting work the companies do and what contracts they have with leased employees, he said.

Also, risk managers must help make other managers aware of the problem and how to deal with it, Mr. East said.

Management must recognize that employee plaintiffs could garner significant financial gains if employees succeed in having their cases heard in civil litigation, he said.

Brokers, too, must help to alleviate the problem, added Eugene R. Supparits, senior vp at Aon Risk Services Inc. of Illinois, a unit of Aon Corp. in Chicago.

Therefore, brokers need to know their clients well and know what coverages they have in place should a case be deemed to fall outside the workers comp system, he said. "Brokers should know what products there are out there in the market to transfer the risk," Mr. Supparits said.

Mr. Supparits coordinated the session, which Mr. East moderated. **BI**



# Tailor workers comp audits to each situation: Panel

By **RODD ZOLKOS**

SAN DIEGO—An effective and appropriate audit of workers compensation claims is essential if an organization's workers comp program is to operate at its top efficiency and without excessive costs.

But according to experts addressing the subject on a panel at this year's Risk & Insurance Management Society Inc. annual conference in San Diego, the appropriate audit for any organization should match that organization's unique characteristics. Many factors—including the nature of the organization, who initiates the audit, and what they want to learn—must be considered in planning and carrying out the audit.

"Workers comp claims audits can be done a lot of different ways, and they're going to be driven by a lot of different factors," said Mark Charron, a principal in the Actuarial & Insurance Consulting Group of Deloitte & Touche L.L.P. in Hartford, Conn. "Each situation is unique, and they're tailored," he said.

Linda P. Sundram, president of Sundram Claim Consultants in Blue Bell, Pa., agreed with Mr. Charron. "Before you begin any audit, I think you have to have clearly in your mind what are the objectives," she said. "What am I trying to get out of this? If you kind of pinpoint it in the beginning, I think you'll get a better result."

Mr. Charron said that the goals of an audit are often determined by who prompts it. For example, he said, audits instigated by an organization's chief financial officer or by third parties such as regulatory agencies or one of an organization's regular bankers often are concerned with reserve adequacy.

Highlighting the importance of carefully determining reserve adequacy, Mr. Charron de-

scribed a situation his firm recently was involved in that "cried out" for some sort of claims audit. The example involved the acqui-



sition of a large, self-insured company, he said, and a look at its books revealed a sizable shortfall in what the company had reserved for workers comp claims compared to its actual potential liabilities.

"As a purchaser of an organization, you want to make sure that all your future liabilities are clearly reflected before you set your purchase price," Mr. Charron said. In the case he described, the price was ultimately adjusted to reflect the actual magnitude of the workers comp exposure. "So right up front, we know workers comp can be material in a lot of instances."

"I can't emphasize enough the implications of understating reserves," Mr. Charron said. "If you get into an M&A situation, this area gets attention, I guarantee it."

Overreserving also can have negative implications, but of a different sort, he said. It typically can mean a significant amount of capital then isn't available for the organization to apply elsewhere.

Another perspective that Mr. Charron said might shape the claims audit process would be if it's motivated by a "hidden agenda." "The CFO might want to know how you're performing in your job," he said.

Other questions, Ms. Sundram said, could include ascertaining the drivers of workers comp costs; litigation strategy ("Are the claims professionals running the files or are the attorneys?"); evaluating adjusters or the pay-for-performance arrangements of third-party

claims handlers; or determining the effectiveness of a managed care program.

"An audit can help you determine the answers to a lot of these questions," Ms. Sundram said.

In conducting the audit, it's important to get beyond the numbers, looking not just at the numbers of claims closed, claims payments, litigation costs and the like, but also examining the claims files, Ms. Sundram said.

"If I had one recommendation for this group today, it's if you're doing an audit, call in those files," she said. "Check them out."

Among the important reasons to examine those files is that claims are often handled by less experienced adjusters. "You have younger, inexperienced adjusters talking to doctors, talking to attorneys, and frankly, they get intimidated," Mr. Charron said. "One of the things that you want to make sure of if you do have that inexperienced staff is that your hands are all over the file."

How claims are examined in the audit varies depending on the objectives, the speakers said. One consideration is examining all claims vs. a statistical sample. "How much more benefit are you going to get doing 100% vs. a statistically valid sample?" Mr. Charron asked.

Budget considerations also can determine how claims are sampled. "What kind of budget that you have is going to play heavily into what kind of sample you can have," Mr. Charron said. Whatever the considerations, if not sampling all claims, it's critical that any selected sample be statistically credible. Possible sampling approaches could involve looking at open vs. closed claims, examining lost-time claims vs. those that involved only medical costs, or litigated vs. non-litigated claims.

Furthermore, a claims audit can be done by internal staff, an outside consultant, or an au-

dit staff hired on a temporary basis and managed by internal staff. Whatever the case, it's important that the reviewers be sufficiently qualified in terms of experience and expertise. Because of the variety in statutory workers comp program requirements from jurisdiction to jurisdiction, it's also important that the reviewer be experienced in the applicable jurisdictions.

Typically, such an audit takes two to three months, Mr. Charron said, though it could be done in less time if, for example, a company needs to complete a comp audit quickly for a possible merger.

Gene W. Jackson, risk manager of Boulder County, Colo., moderated the session. **B1**



PHOTO: MICHAEL MARCOTTE

RIMS conference attendees walk between sessions in the San Diego Convention Center.

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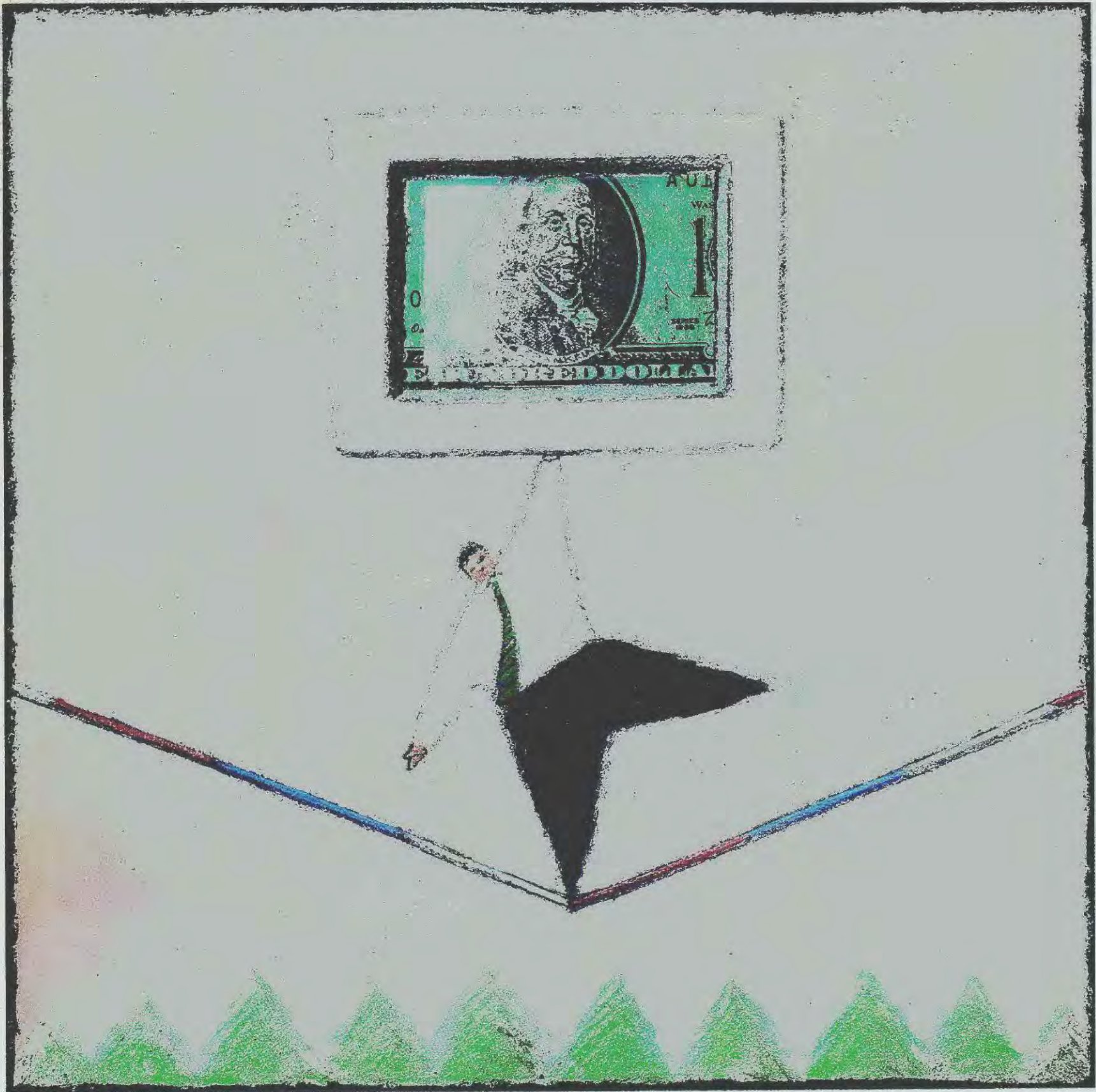
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# Score card

Continued from page 3

But the score card also indicated that some buyers are very pleased with individual performances by their providers of products and services.

Across all categories, only 4.2% of vendors received a satisfaction rating of 100. Among brokers, 5.3% were given a grade of 100, while 3% of insurers and reinsurers were given a perfect score and 5.5% of TPAs earned that mark.

In ranking individual companies, the score card only listed those that received enough evaluations to make the grading meaningful.

Among brokers, Willis Corroon Group P.L.C. had the highest overall scores, getting an 80 on performance and a satisfaction grade of 76. In descending order, other brokers that made the score card were Hobbs Group, Aon Group Inc., J&H Marsh & McLennan Inc. and Sedgwick Group P.L.C.

Aegis Security Insurance Group led the insurer list, scoring an 80 for performance and a 78 in satisfaction. Following in order, were Swiss Re America, The St. Paul Cos. Inc., CIGNA Corp., Reliance Insurance Group, Travelers Inc., Allendale Insurance Co., CNA Insurance Cos., Chubb Corp., Royal & SunAlliance Insurance Group, Zurich Insurance Group and American International Group Inc.

TPAs were not graded individually. Apart from performance and satisfaction ratings, vendors were graded by their customers on several "satisfaction drivers," such as trust and reliability, identifying customer needs and providing operational efficiency and competitively priced services.

The results are based on 1,702 evaluations by respondents who are buyers of insurance products and services. Of those responses, 640 broker evaluations were received, another 848 were insurer and reinsurer evaluations, and the remaining 214 were TPA evaluations.

All divisions and subdivisions were counted as part of a parent organization. For example, an evaluation of National Union Fire Insurance Co. of Pittsburgh, Pa., was figured in the AIG rating. Grouped that way, 143 different brokers were evaluated, and 134 insurers and reinsurers and 96 TPAs were identified and ranked.

The results were gathered and the data developed by the Katie School of Insurance at Illinois State University in Normal.

While respondents mentioned hundreds of insurers and brokers, survey results on those other than the hand-

ful listed in the final score card will not be made available—not even to the service providers named, according to Katie Insurance School faculty involved in conducting the survey. The faculty said those other numbers are "meaningless" because of the variance in responses naming those providers.

But Mr. Good suggested QIC members were disappointed that so few providers were mentioned in the final survey results. "There was a feeling that they wish more companies had been listed," he said.

Risk managers and their vendors pored over the score card during last week's conference and some began to form opinions on the results' impact on the industry.

The score card could lead to improvements in the quality of insurance products and services if those who are rated react properly, said Millicent Workman, corporate risk manager at Mueller Industries Inc. in Nashville, Tenn.

"If they take it seriously," she said, vendors might be encouraged to make changes. But, she stressed, most have been unconcerned up to now about making such improvements. "They're pretty clueless" as to what risk managers want in terms of quality products and services, Ms. Workman said.

While many risk managers attending the RIMS conference last week said they had heard about the survey's outcome, they hadn't yet seen the QIC survey results. Among those risk managers was Russell Opferkuch, vp of corporate risk and insurance for Bankers Trust Co. in New York. But, speaking in general about the study, he suggested that he thought the survey alone wouldn't drive the decision making of savvy risk managers.

"A lot of your professionals will take it with a grain of salt," he said. Some risk managers of smaller organizations, however, might say, "This guy is No. 1. I'm going with him," or "This guy is ranked last, I'm not going with him," Mr. Opferkuch said.

Willis Corroon was quick to note in press releases that it had secured the top score overall among brokers.

In a statement last week, J&H Marsh & McLennan said it did not have a chance to review the scores. The broker said it places "a high value on client feedback" and recently launched its own client satisfaction survey, however, which it will analyze along with the score card results.

The survey results are open to question and interpretation, said J. Patrick Gallagher Jr., president and chief executive officer of Itasca, Ill.-based Arthur J. Gallagher & Co. The broker, which is a member of the QIC, was

not ranked.

"I was disappointed in the way this whole thing was handled," he said at a debate on consolidation in the insurance industry held at the RIMS conference last week.

Of all the brokers in the United States, the survey only seemed to collect enough data to rank five, Mr. Gallagher said.

Also, any survey of this kind would have to include the possibility of a 5% deviation in results and the brokers that were ranked were scored so closely together that the ranking was meaningless when the deviation is considered, he said.

The real role of the QIC should be to get all the parties involved—the brokers, insurers, TPAs and customers—aligned to make the industry better, Mr. Gallagher said.

"I would hope that the QIC would go forward with a more positive approach to this, or we'll vote with our feet," he said.

However, speaking later, Mr. Gallagher said it was unlikely that Arthur J. Gallagher would leave the QIC. "It's a very important effort," he said of the QIC's mission.

While saying he thought the QIC was well-intentioned, Quill O. Healey, chairman and CEO of Sedgwick North America in Atlanta, noted that top-ranked broker Willis Corroon was one of the founders of the Quality Insurance Congress, while Sedgwick became involved in the organization "very late." "We will be fully ISO 9000 certified by the end of the year," he said. "We really take that as our focus on quality."

AIG declined to comment on the score card.

Liberty Mutual Group, which was not on the list, nonetheless is behind the effort to improve quality. "We did not get enough mentions to get listed," said John F. Ryan, vp and manager at the Boston-based insurer, which he noted does not indicate the insurer's performance one way or the other.

"We support it," Mr. Ryan said of the score card, and he contends that while he wasn't surprised by the overall low he scores, he is concerned with providing quality products and services. "We will be talking with our customers as we always do," he added, and Liberty Mutual will continue with its own customer surveys that help identify buyers' needs.

He said "the length of the survey was a little overwhelming," and while he was unsure how to condense it, he said Liberty Mutual will work with the QIC to help shape updates.

Gavin Souter contributed to this report.

# Employers advised on ways to minimize risk of EPL lawsuits

By ROBERTO CENICEROS

SAN DIEGO—The number of employment practices liability claims continues to explode, but employers can manage the risk with workplace policies, by treating employees with dignity and by evaluating claims honestly, several experts say.

One step employers can take to minimize their risk of employment practices suits is to sponsor classes to educate employees about sexual harassment and make sure employees understand the company's harassment policy. Suzanne Mast



Murray, senior vp of Willis Corroon's Advance New York, recommended having employees sign statements that they have attended the classes and understood the material and the company's policy on the issue.

"That's not the end of the story, but every time you do one little thing like that, that is a significant defensive move on your part," Ms. Murray said.

Other worthwhile practices include establishing good employee relations and treating workers fairly from the beginning, keeping them informed about the state of the company's business and never letting them find out about their termination from someone other than the person designated to inform them, said Michael J. Lotito, a management defense expert in the San Francisco law firm Jackson, Lewis, Schnitzler & Krupman.

Invest in employee training, Mr. Lotito said. Employers that regard computer equipment as a capital investment but consider employee and supervisor training an undesirable cost of doing business are likely to have problems, he said.

In 1996, 23,000 lawsuits were filed in federal court alleging wrongful termination because of discrimination, said Ms. Murray. The number increased by 12% in 1997, and the suits filed could increase another 20% during 1998. The number does not include claims filed in state courts or claims for other types of employment liability.

There has also been a shift in the federal Equal Employment Opportunity Commission's strategy, Ms. Murray said during a session at the Risk & Insurance Management Society Inc. conference last week. The agency has shifted from protecting individual employees involved in small, obscure disputes to focusing on higher-profile lawsuits that draw widespread attention.

Publicity is one factor driving the number of claims, Ms. Murray said during the session. Employees who file claims are more often realizing that employers are potential gold mines.

Job postings can be problematic documentation for employers if an employee or group of employees repeatedly applies for posted positions but consistently gets rejected, she said.

Fortunately for employers, em-

ployment practice liability insurance is very inexpensive today, and the amount of coverage available is generous, Ms. Murray said. Even if an employer does not purchase that specific coverage, an insurer's EPL insurance application can be beneficial as a road map to developing a risk management strategy. The applications ask questions about things such as the existence of an internal complaint mechanism.

"You want to come up with a constructive vehicle in order to resolve employee disputes," said Mr. Lotito. Employees working together will have disputes, problems and complaints, but employers can stop those from mushrooming into larger difficulties, he said. They need to let employees know that they do not need their own representation, because the company can get free redress for them through a alternative dispute resolution mechanism.

**'You want to come up with a constructive vehicle in order to resolve employee disputes,' says Michael J. Lotito.**

A survey of nearly 1,000 employees laid off from jobs in Ohio found that many workers who file claims do so because of the treatment they receive when they are terminated, Mr. Lotito said. Employees often were angered by employers' failure to be honest about the reasons they were dismissed.

"If all else fails, tell the truth," he said. "It is amazing how rare that is done, both about the good and bad."

Employers need a method for honestly and objectively evaluating and investigating the claims filed against them, said John D. Rapoport, a plaintiffs attorney in New York specializing in employment practices. That is the only way employers are going to effectively manage the claims.

"I guarantee you that I am far better at ferreting out any roadblock or stonewall that you build up than you are at building it up," Mr. Rapoport said. "And I guarantee you that when your company thinks about defending itself and if people get the bright idea that they are going to construct a defense made of anything but the truth, you may have just have inadvertently proved my case."

Knowing your defense counsel's philosophy also can help, Mr. Rapoport said. He recalled one instance when he would have settled for \$20,000. But the defense attorney treated him rudely so he sued. Before it was all over, he collected \$80,000, and the defense attorneys collected \$80,000 in legal fees.

"That was good for me and it was good for them, but it wasn't good for their client," he said.

Theresa E. Baus, risk manager in New York for The Old Mountain Co. Inc., an investment management company, coordinated and moderated the session. **BI**

## Insurers/reinsurers

Top 12 organizations' overall ratings in RIMS/Quality Insurance Congress quality score card

Overall Performance	Trust and reliability		Builds internal and external partnerships		Operational efficiency and competitiveness		Two-way interactive communications		Identify needs and create solutions		Developing and providing expertise	
	66	68	74	66	69	68	64	62	69	70	65	
<b>Overall industry</b>	66	68	74	66	69	68	64	62	69	70	65	
<b>Aegis</b>	78	80	84	82	83	78	82	74	79	82	81	
<b>Swiss Re</b>	73	76	83	74	76	67	81	74	88	72	72	
<b>St. Paul</b>	71	69	77	67	72	71	64	61	69	71	72	
<b>CIGNA</b>	69	68	72	66	70	71	65	61	72	73	65	
<b>Reliance</b>	68	68	74	67	69	70	62	66	70	72	66	
<b>Travelers</b>	66	71	77	68	73	72	69	67	72	74	71	
<b>Allendale</b>	66	70	76	71	70	73	68	61	71	71	70	
<b>CNA</b>	66	69	75	69	70	69	64	64	70	69	67	
<b>Chubb</b>	66	68	77	67	68	67	62	62	71	71	62	
<b>Royal</b>	65	68	77	68	70	67	66	59	75	71	62	
<b>Zurich</b>	66	67	76	66	68	66	61	62	69	66	62	
<b>AIG</b>	66	59	67	54	62	52	53	58	63	63	55	
<b>All others</b>	66	68	74	67	69	70	66	62	69	70	67	

# New approach and prizes keep safety program fresh

## Recognizing individuals is important

By **ROBERTO CENICEROS**

**SAN DIEGO**—When Service Merchandise Co. Inc. first created a safety incentive plan, the catalog retailer's employees liked the recognition they were receiving and valued the safety program's T-shirts, hats and prizes.

But after three and a half years, the company discovered it had left

managers cooking and serving hamburgers and hot dogs.

The company also sponsored a safety poster contest. Associates' children drew pictures with safety themes, and cash prizes were awarded to several winners. Their drawings were then made into calendars the company created inexpensively in its own printing facility, Ms. Scott said. The calendars now hang throughout the company.

Setting a specific time frame during which a safety plan will run is important for a successful program, said Sandra M. Jenson, senior vp for CNA Risk Management in Chicago.

Successful safety incentive plans also require positive reinforcement and immediate recognition for desired behavior. Employers also must be certain that the program and incentives happen as announced, she said.

Negative reinforcement will produce changes, but the changes will be sporadic and they will happen only while employees are being closely watched, Ms. Jenson said. Desired safety behavior will not become automatic when negative reinforcement is applied.

Being able to give employees feedback on their progress requires measurement. Failing to set up a measurement system in the beginning can be a big downfall for safety incentive plans, Ms. Jenson said.

"Make your measurement system a reasonable way to measure," she said. "Don't set up for yourself a complex set of reports that is going to take you 10 or 20 hours a month to track, because that is how measurement systems end up falling apart, and then your safety incentive plan falls apart."

Choosing appropriate rewards is also important. A pat on the back can go a long way in reinforcing good safety behavior, Ms. Jenson said.

"Think about the last time that your manager came in and said, 'You did a great job.' That is actually a very effective reinforcement," Ms. Jenson said. "But if you are running a safety incentive plan, you probably want to do more than that."

Taking appropriate research and development steps is important before launching a program. Identify problem locations, whether they're at distribution centers, certain manufacturing facilities or corporate headquarters, Ms. Scott advised. Then determine whether one size fits all, meaning,

will the one program have the same impact at all those varied locations?

Quantify your exposures for management, Ms. Scott said. "The more you can put the exposure into numbers and cold, hard facts, the better results you are going to get when you are trying to pitch this idea and get the funding for it."

Risk managers put themselves "on the line" when they quantify

exposures and project the savings derived from a safety incentive plan, Ms. Scott said.

"Hopefully, you have some good data to work with," Ms. Scott said. "I think it is very important, and if you feel strong enough about it and you actually feel that your company has a problem to the point where you want to put a safety incentive program out there, you have to feel comfortable in saying, 'This is what our expo-

sure is, what we are paying in claims every year, and this is what we think we will save by putting in a safety incentive program.'"

At Service Merchandise, if risk management can't quantify a proposed program and project return on investment, chances are it will not be supported, Ms. Scott said.

William Sweeney, director of risk management for The Marmon Group Inc. in Chicago, moderated the session. **BI**



the program in place too long without ever changing it, said Michelle M. Scott, assistant vp-risk management in Nashville, Tenn., for Service Merchandise. The initial program succeeded in pulling the issue to the forefront and making it a topic of discussion, Ms. Scott said. But it eventually failed to maintain interest, and the T-shirts, prizes and hats lost their appeal.

Safety incentive plans need to be refreshed with new approaches, goals and prizes, Ms. Scott said. When safety incentive programs are left in place too long, employees lose interest and forget there is even a program in place.

So in July 1997, Service Merchandise launched a second incentive plan. Although employees were members of safety teams as during the first safety incentive program, this time individual workers got rewards if they did not have an accident. During the first safety program, employees were given rewards only if their entire team went accident-free.

"We found that it is important to give that recognition to the individual so that they stay interested the entire month, as opposed to someone on your team having an accident and the whole team fails because of that; then what is to encourage the others to work as safely as possible?" Ms. Scott said.

The rewards also were changed. During the company's first program, employees got points that could be redeemed for prizes or accumulated until the end of the year for more valuable prizes or a day off from work. Accident-free associates were eligible for a year-end drawing good for one week-end getaway.

But under the second program, employees were awarded one half-day off and a \$25 Service Merchandise gift certificate for remaining accident-free for three months. Program kick-off events included picnics with company

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# Employers warned that comp networks not sole answer

By DAVE LENCKUS

SAN DIEGO—Risk managers who build managed care networks for employees injured at work will not automatically lower their companies' workers compensation costs, a risk manager and a workers comp management vendor agree.

The network will succeed only if employers have contracted with physicians experienced with workers comp injuries and if employers take a series of other steps beginning before injuries occur and continuing after injured workers have been sufficient-

ly rehabilitated and have returned to their jobs, they said.

"Being a risk manager, you should realize that when you build a workers comp network, you have to do more than just hope employees will visit the site," said Marshall Sherman, director of risk management-campus services for Philadelphia-based ARAMARK Corp., a provider of food, laundry, uniform rental and day care services.

During the five years since ARAMARK created its workers comp managed care network, claim frequency and severity have dropped,

Mr. Sherman said during a session he moderated at the Risk & Insurance Management Society Inc. annual conference last week.

The percentage of the company's



workers comp costs representing lost time has dropped to 18% from 25%, even as the company's revenues grew 10% annually during the past three years. The remaining costs are medical only costs.

The company has 90,000 domestic employees and 150,000 employees worldwide.

Mr. Sherman and Maddy Bowling, an Itasca, Ill.-based senior vp with workers comp management company Intracorp, outlined how managed care networks can help risk managers cut workers comp costs.

The quality of doctors who employers select for their networks is a "critical" factor in the success of a network, Ms. Bowling stressed. The physicians should be experienced in handling workers comp cases with a demonstrated ability in disability management. Ideally, a network should consist of board-certified oc-

cupational physicians, but they are in short supply, Ms. Bowling said. Employers can fill that gap by contracting with other specialists, such as internists, urgent care physicians, chiropractors and orthopedic doctors as well as with family physicians.

Another extremely important factor in selecting network physicians is a doctor's return-to-work policy. The policy should be "clear, specific and easy for employers to use," Ms. Bowling said.

For example, in describing the duties that a returning worker is able to perform, an employer would not want a doctor to report that the worker "is able to drive a forklift." Instead, the physician should specifically identify the worker's abilities and physical limitations, such as how long the worker could sit or stand.

"You want the employer to identify the jobs within those abilities and restrictions," Ms. Bowling said. "That's an important distinction."

A network of workers-comp savvy doctors is of little value, though, if workers do not know about it until after they are injured, the speakers said. Both Ms. Bowling and Mr. Sherman criticized any thought that educating all workers about the workers comp process prior to any workplace-related injuries or illnesses drives up workers comp costs.

A 1997 Intracorp-sponsored survey, conducted by The Gallup Organization, found that at least half of the 514 surveyed workers—all of whom had suffered workplace injuries or illnesses within the previous three years—were disappointed with the lack of information they had about their employers' workers comp programs at the time of their injuries.

That disappointment extended to their physicians as well. Seventeen percent of the respondents reported their physicians did not tell them how the workers' injuries would affect future job performance. Those workers were more likely to involve a lawyer in their claim and be out of work a month or longer, the survey found.

Only 20% of survey respondents said they received recommendations about which physicians they should see. Of those who received some direction, 95% sought treatment from the network physicians, and three-fourths were satisfied with the care, she said. Overall, the survey found that more than 75% of the respondents would have liked such direction.

Before workers sustain even a minor scratch or miss one day of work, "tell workers about the network, and tell them you're concerned about the care they receive," Ms. Bowling said.

"The survey shows that communication increases worker satisfaction and decreases lost work time and litigation," she said.

The survey results also show why risk managers should not overlook what the physicians should bring to the table for employees, Ms. Bowling said. In particular, she said, the physicians should be "first-visit friendly," because an injured worker's initial doctor visit will set the tone for the remainder of the claim-management process.

Mr. Sherman said workers comp statutes mean that workers comp is "an employee benefit." Rather than taking an adversarial approach to workers comp, employers should—as they would with other benefits—be an employee advocate and fight for "every penny" of benefit the employees deserve.

"Treat your employee as a friend and not an adversary, and you'll reduce overall costs," he said.

Hand-in-glove with that philosophy, ARAMARK educates its employees about safety and informs them of the managed care network that is available. Five years ago, the company educated every manager about the networks so they could pass along the information to employees. Because of relatively high employee turnover at the company, ARAMARK later this year will repeat that management education effort.

Some audience members, though, questioned how responsive unionized labor would be even when informed early about a physician network. The audience was particularly concerned about labor groups that are advising members to have their own workers comp physician lined up in the event the workers are injured on the job.

Mr. Sherman advised risk managers to involve unions in the physician selection process but not to expect them to fully buy into the program until the unions and management build trust over the issue.

Mr. Sherman also advised risk managers to personally check out doctors' offices to see what injured workers are experiencing. Key concerns should be the office's appearance and the waiting times. "Nothing is more frustrating than waiting in an office for two hours and being examined for 10 minutes," especially if the employee is already a little mistrustful about visiting a network physician, Mr. Sherman observed.

The convenience of location and office hours also are important factors for workers, he said.

Employers also should take some steps to retain their networks' physicians, Ms. Bowling said. Among other things, physicians need an advocacy system in which their various issues can be resolved. For example, continuous education should be offered; case managers should be directed to collaborate with, not oversee, physicians; and policy and procedures should be clearly communicated.

And employers must keep on top of the demographics of their networks so they can respond adequately to changes, Ms. Bowling said.

That means keeping track of physicians who join or leave the network, maintaining physician reimbursement methodologies and capturing case outcome data to evaluate how well network physicians are performing.

"Everything you do is fed by that network data," Ms. Bowling said.

Mr. Sherman said that maintaining physician reimbursement procedures that ensure quick payment is essential. Injured employees, especially those earning low wages, will not be happy if physicians are not reimbursed promptly and begin seeking payment from the workers, Mr. Sherman noted.

During the post-injury period, the injured worker should receive the same consideration that employees injured off the job receive, like get-well notes and calls inquiring about their progress, both speakers emphasized.

And, return-to-work programs, including modified-duty programs, help reduce lost work time and discourage workers from bringing in lawyers to handle their claims, Ms. Bowling said.

"If you have the trust of your employees, you can do wonders" in reducing workers comp costs, Mr. Sherman concluded. "But, you must make sure you deserve that trust."

Betty J. Nelson, director of communications for Intracorp, coordinated the session. **BI**

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# Disney World doesn't goof around with safety

By JOANNE WOJCIK

SAN DIEGO—Employers that demonstrate to their employees that they really do care about safety are likely to have fewer workplace accidents, loss control experts say.

For loss control to be effective, "you must have sincere management commitment and interest, you must have supervisors playing a key role, and you must have training," asserted James W. Smirles, a retired safety engineer from Long Grove, Ill.-based Kemper Insurance Cos.

Not only must supervisors have safety training but "you've got to train the employees at all levels," he said.

As part of that training, employers should send the message to their employees that "they're valuable to us, they're something to us, they're a family, and we don't want to see them hurt, like I don't want to see my children or my grandchildren hurt," Mr. Smirles insisted during a session held during last week's Risk & Insurance Management Society Inc. annual conference in San Diego.

Walt Disney World Co. in Lake Buena Vista, Fla., always has made safety a high priority, according to Jeanette Minor, director of risk man-



agement services there.

Unfortunately, despite management's commitment to safety, employees are more likely to focus on its contribution to profits than to company safety, she found.

In fact, 21% of Disney World's 45,000 employees said they didn't believe management "put safety first to provide secure, safe experiences for cast members," Ms. Minor said. Disney calls its employees "cast members," she explained.

"What we've got to do is to find a way to make it come natural to them to focus on safety at the same time that they're focusing on bringing dollars to the bottom line," she said.

In an effort to cultivate this safety consciousness, Disney World developed a communications program that combined an old Donald Duck cartoon titled "How to Have an Accident at Work" with information that defined the cost of workplace accidents in language employees could understand.

"What we wanted to do was introduce to our salaried staff employees a program that would somehow com-

municate the message that we need to care. We need to care just as much about our cast members and their environment as we do about our own families and our homes," Ms. Minor explained.

"We wanted to give them some tools that they could immediately implement to make a difference in their areas. We also wanted to stress to them they didn't necessarily have to be a supervisor or a manager, that they needed to be our eyes and ears out there, looking, recognizing and correcting unsafe acts and unsafe conditions, and that they have the authority to do that."

After employees viewed the cartoon, Disney World commended them for reducing their lost-time accident frequency rate 71% between 1992 and 1997.

Part of this reduction was attributed to the company's aggressive early return-to-work program, the cost of which was charged back to the areas where the accidents occurred, according to Ms. Minor. Disney World provides up to six weeks' light-duty work to injured employees, who are monitored by light-duty job coordinators.

But the company wanted to "raise the bar" in the safety area just as it had been doing over the past few years to improve the quality of its

product, Ms. Minor explained. "We were really good at taking care of things when they happened," she said, but "we wanted to move more from being reactive to proactive."

"So when we got through patting them on the back, that's when we made our call to action," she said. The motto of the program was "Safety is Magical...But It Doesn't Magically Happen."

During its employee safety program presentation, Disney World illustrated the effect of a 99% safety rate if it were translated into other disciplines.

For example, "if 99% were good enough, then...291 pacemaker operations will be performed incorrectly this year..." Ms. Minor said, reading her presentation slides. "That's why we have to have zero tolerance for accidents and injuries in the workplace," she insisted.

Disney World also showed employees what the company's top-five work-related injuries cost.

"The audience response was absolutely phenomenal, because even though they know they're expensive, they don't ever really hear the numbers," she said.

For the prevention part of the program, Disney World used comical black-and-white cartoon illustrations that begged the question, "What's

wrong with this picture?" Each illustration also showed what percentage of Disney World's total employee accidents were related to that particular peril. For example, burns, which occur at 24% of Disney World's locations, represent about 7.7% of the company's total work-related injuries.

To further demonstrate management's commitment to reducing workplace injuries, Disney World put its money where its mouth was. "We managed to get the executive vice president to get his vice president to agree to make (safety) part of his top-five measurements for bonuses," Ms. Minor said.

Less than a year after the program was implemented, Disney World's accident frequency rates declined significantly in all areas: housekeeping saw a 46% decline; water park injuries fell 35%; textile services injuries dropped 26%; energy services injuries dropped 22%; and parks custodial injuries fell 15%.

And Disney World's Risk Management Services department altered its vision statement to be more on target: "Together We Will Provide a Safe Environment that Results in a Magical Guest and Cast Experience," the statement now says, according to Ms. Minor.

Freida L. Jackson, president and risk manager of Park South Associates Inc. in Charlotte, N.C., moderated the session. **B**

## Fast returns promoted

### Consultant outlines return-to-work strategy

By JUDY GREENWALD

SAN DIEGO—A steel mill in an assigned risk pool that paid what amounted to more than \$6,000 a year per worker in workers compensation premiums clearly had an ineffective return-to-work program.

But a textile mill whose employees, in response to company incentives, ignored carpal tunnel syndrome symptoms to the point where they had to have surgery was a "bit overboard" and needed to make adjustments as well, said a consultant.

The ideal return-to-work program, in fact, "rests somewhere in the mid-



dle," though more toward the textile mill example, said Stephen Beigbender, manager at Deloitte & Touche L.L.P.'s Hartford, Conn.-based actuarial and insurance consulting group, drawing on his experience as a consultant.

Mr. Beigbender discussed return-to-work programs during a session at the Risk & Insurance Management Society Inc. conference last week.

Return-to-work programs should recognize that work determines our identity to a significant degree and people recover from disabilities faster when they are at work, he said. Sitting at home can lead to treatment for "emotional issues" that are not part of the original injury.

He suggested a good approach is found in sports medicine, where injured professional athletes will suit up, stand at the sidelines and perform functions such as calling plays.

"Injured players are still very much a part of the team," Mr. Beigbender said. "The closer people are to their regular work, the faster they get there."

Along with the "significant human element" involved in getting people back to work, there are financial considerations, according to Mr. Beigbender, who cited a 1996 study by

the Washington Business Group on Health that estimated overall disability costs will reach \$340 billion annually by the year 2000.

Return-to-work programs can save money through lower loss and adjustment expenses, increased productivity, and enhanced employee and labor relations, among other means, Mr. Beigbender said.

He said the ingredients for an effective return-to-work program include:

- Immediate response to a report of injury or illness. An employee's supervisor should be the one to take the initial steps, including taking him or her to the doctor, thus letting the employee know he takes first priority, said Mr. Beigbender.
- Established relationships with medical providers. It is better to have a support system that includes doctors familiar with workers compensation, he said. If a doctor should give apparently inappropriate advice, an independent opinion can be solicited.
- Root cause analysis and correction. It is important to take corrective action, or the employer risks prompting an Occupational Safety & Health Administration investigation, he warned.
- Reasonable accommodation guidelines for restricted-duty placement. Do not abdicate responsibility to vendors, where a third-party administrator's case manager may be juggling 200 cases, he said.

"Be a squeaky wheel," he said, "Make sure you know what's going on in these cases." Review cases regularly with the TPA, and select "point persons" so there are not nine human resources people talking to nine people at the TPA.

• Have a documented program communicated to all constituents. "Try to take away any excuse for not knowing what to do," he said.

Mr. Beigbender also coordinated the session. Carol Merit, director of occupational health marketing at the Oakland, Calif.-based Kaiser Permanente Medical Care Program, moderated the session. **B**

## A call to action in comp law

By MICHAEL PRINCE

SAN DIEGO—Risk managers must become familiar with the workers comp laws where they have operations and become involved with the legislators and regulators in those states to help guide development of the laws, two experts say.

"The rules of the game are set in the public debate and public sector," and as a result, employers that want to influence the law should become involved in the process and voice their opinions to the lawmakers, said Richard Victor, executive director of the Workers Compensation Research Institute in Cambridge, Mass.

The lawmaking process is 25% light and 75% heat, an improvement from where it was 10 years ago, when it consisted of 90% heat, he said.

Good information needs to get into the hands of legislators and the public to guide policy-making on workers comp issues, rather than anecdotal evidence dominating the debate, he said.

At the Risk & Insurance Management Society Inc.'s annual conference last week, Mr. Victor presented findings from a 1997 WCRI study that showed how each state and the District of Columbia is attempting to regulate workers comp.

State mandated fee schedules "are the most common way to regulate workers comp medical costs, but they are amazingly irrational," he said. Forty states use fee schedules to regulate the cost of medical services, but none has passed such legislation since 1995, he said.

The problem with fee schedules, he said, is they bear no relation to the real costs of services. Instead, they are the result of politics.

For instance, the study showed that fees in Connecticut on average are set at more than double those in Florida for the same procedures, he said. This is not because of differing costs but rather the outcome of a political process.

"Without good information, it's a highly politicized process," he said.

The fastest-growing area of state regulation concerns treatment guidelines. These guidelines tell providers what types of treatment should be provided to the patient and at what times certain diagnostic tests should be performed. They are designed to lower the variation in



patient outcome and costs. Only two states had such laws in 1992, according to the study. This number jumped to 12 states in 1995 and 21 states in 1997, the study showed.

Most commonly, the guidelines concern lower back pain, but some guidelines cover carpal tunnel syndrome and upper extremity injuries.

The treatment guidelines vary from state to state, demonstrating their political nature, Mr. Victor said. If they were based on purely scientific evidence, each state would adopt the same guidelines for the same injuries. Because people don't vary between states, "it might be that the politics are different from state to state," he said.

Beyond involvement with state lawmakers, it's also critical for risk managers to work with state regulators, especially when trying to establish a managed care organization, said Michael Davis, chief legal counsel and vp of government affairs and compliance at Intracorp in Philadelphia.

Numerous states have passed legislation permitting the formation of MCOs. These organizations provide the provider network and administration for an employer's workers comp program and allow employers one-stop-shopping for a workers comp program and the cost savings of a managed comp provider network. Also, an MCO permits employers to channel their employees into the network. This not only saves money but provides employees a

higher level of care, as the network providers generally specialize in occupational rehabilitation, he said.

But to become certified as an MCO requires a detailed application to state regulators, who review the applications critically, he said. He counsels applicants to not expect overnight approval of an application. "It's a long, drawn-out, tedious process with which you must be patient," Mr. Davis said.

An important consideration to keep in mind, he said, is that each state has its own laws and regulations. Also, because state regulators hold all the power with certification of MCOs, applicants should work with them and not adopt an adversarial stance.

"Fighting them doesn't help you in this arena," he said.

Because the MCO legislation is relatively new, many states are still grappling with their goals, and regulators aren't clear on the direction the legislature has provided. So it's important for risk managers to read the law itself rather than rely on someone else's interpretation.

"It's not as difficult as you might think," he said.

Also, because the laws can be interpreted differently by regulators, communicating with them can help guide their interpretation and help risk managers understand the regulator's concerns. Communicating with legislators to help them understand an employer's concerns also is important, he said.

Mr. Davis added that because the MCO legislation is relatively new for those states that have passed it, there is a certain amount of disorder among lawmakers and regulators. A risk manager, therefore, can try to create order; the best way to achieve this is to understand the regulators' wishes and address them while communicating to them your own concerns about the law.

Susan Fazo, director, marketing property/casualty managed care for Intracorp in Philadelphia, moderated the session.

# Dispelling preconceived notions about IDM programs

By MICHAEL BRADFORD

SAN DIEGO—Employers who take on the task of implementing an integrated disability management program must convince management and employees that some preconceived notions about the programs are inaccurate.

The programs are gaining popularity as businesses begin to incorporate workers compensation, disability and other benefit programs into single packages that cover occupational and non-occupational injuries.

"As with any organizational change, the notion of implementing an IDM program at your firm may be met with a lot of doubt," said H. David Hoovler, vp at J&H Marsh & McLennan in Grand Rapids, Mich.

"Is it easy" to set up an IDM program? asked Douglas C. Robinette, executive vp, customer services at Wausau, Wis. "No, it's not. But the rewards, as we have seen from the statistics, can be very, very large."

The programs were the topic of a panel discussion at the Risk & Insurance Management Society Inc.'s

conference last week.

Mr. Hoovler pointed out that "the first barrier is that workers compensation is not perceived as an employee benefit" and therefore should not be included in a package that contains such benefits as short-term and long-term disability.

"Any company which is beginning to consider the possibility of creating a disability management program must first come to terms with this erroneous perception," he warned. "Rather than viewing workers comp as merely a statutory requirement, employers and employees should view workers comp as part of a continuum of integrated benefits" that promote productivity and profitability while improving the health of employees, Mr. Hoovler said.

Another barrier involves "silo mentalities" in which risk managers and human resource managers perceive that they work separately instead of together as a single unit.

That barrier was overcome "very slowly and with some difficulty," for Steelcase Inc., according to Libby Child, manager, managed claims

and disability management services at the office furniture manufacturer based in Grand Rapids, Mich. Ms. Child was the session moderator.

Steelcase last year put in place an IDM program that covers the company's employees in five states. The company self-insures its workers



comp and short-term disability exposures and buys coverage for its long-term disability risk, all of which are rolled into the program. Compliance matters related to the Family and Medical Leave Act also are handled as part of the program.

Ms. Child said that in the early 1990s, the company recognized that employees viewed as somewhat inefficient the different systems in place to handle claims under the separate coverages that eventually became part of their disability management program.

A management board with an employee representative was formed to address all issues that in any way related to disability, she

said. Discussion focused on the responsibilities of different departments in the benefits process, and "by the time we were seriously considering integration, we were used to meeting together, looking at some common problems we were all experiencing" and developing ways to solve them together, Ms. Child explained.

Mr. Hoovler pointed out that some employers are somewhat hamstrung by a lack of benchmarking data that could make a cost-benefit analysis of an IDM program easier.

There's not a lot of information out there, Ms. Child confirmed. She said Steelcase management bought into the concept partly because of the advantages employees would realize in moving easier and with less confusion through the benefits process.

Ms. Child said top management also was convinced because they were aware that a more efficient claims management system and one that got workers back on the job faster would produce savings. That already had been proven by earlier changes to Steelcase's workers

comp processes.

She quickly debunked another barrier: the belief some workers and employers hold that medical treatment is different for occupational and non-occupational injuries.

"Do you really think there is a difference?" Mr. Hoovler, the session coordinator, asked.

"None," she answered. "Absolutely not," agreed Mr. Robinette. "The point is, you want to get the person back to work. . . . What's the difference if the injury happened off the job or on the job?"

Ms. Child and Mr. Robinette both said they have seen no evidence that another belief among some workers and employers holds water. That is, that managing care through IDM programs increases the number of workdays lost due to injury or illness.

"We haven't found that to be the case," said Ms. Child.

Mr. Robinette said he has seen programs that in fact have led to significant savings because employees are returned to work faster, which keeps down productivity losses and expenses related to training replacement workers. **BI**

# Preventive steps put employers on safer legal ground

By ROBERT KAZEL

SAN DIEGO—Employers that think they have a firm legal footing in today's benefits environment should beware: The ground below may be quicksand.

Legal challenges facing even knowledgeable and well-meaning plan sponsors have increased multifold as the benefits world has grown more complicated, two experts told a group of benefits and risk executives last week at the Risk & Insurance Management Society Inc.'s annual conference in San Diego.

Robert N. Sandler, a partner in the Philadelphia law firm of Saul, Ewing, Remick & Saul and a specialist in employment law, and William L. Granahan, senior consultant in Worcester, Mass., with Milliman & Robertson Inc., said employers may be less likely to be

on guard for vulnerabilities growing out of their own errors.

In short, everyone makes mistakes, but when an employer errs by giving employees wrong information or managing benefits funds incorrectly, the penalties



may be high. Employers also are responsible for the actions of those who help administer or manage plan assets on their behalf.

Plan sponsors should first identify the fiduciaries that first responsibility over ERISA plans, because these are the individuals or entities that will be held liable if, say, a clerical gaffe threatens to sink a pension fund or a terrible stock investment is made with employee savings, Mr. Sandler said.

Plans liable under the Employee Retirement Income Security Act and that may cause serious legal problems for employers that make administrative mistakes include profit sharing; 401(k) plans; employee stock ownership plans; accident insurance; supplemental unemployment; group health; dental and vision; disability plans; life insurance; prepaid legal services; and severance packages, he said.

Those not liable include workers compensation; non-qualified plans such as deferred compensation (generally for highly compensated executives); plans offered by state, federal and political subdivisions; and church plans.

Some prohibited ERISA transactions are investment of assets by fiduciaries who have conflicts of interest and investment in the employer's own stock or real estate.

Other common roots of ERISA

legal snafus include mergers and terminations of plans, negligence, plan disclosures, imprudent investment of assets, failure to pursue delinquent plan contributions, and administrative errors, he said. As preventive steps, Mr. Sandler suggested:

- Undergo an ERISA compliance audit.
- Go through the IRS Employee Plans Compliance Resolution System, a mechanism for identifying potential errors.
- Hire consultants.
- Carefully review impact of mergers and acquisitions on the plan.

In a more general sense, employers should take pains to avoid conflicts of interest, fund plans adequately, avoid banned transactions, and select competent fiduciaries, he said.

Also, contracts with providers should protect the plan sponsor.

"In your contract with your service provider, you should look carefully at the kind of language that you have with regard to the responsibility they're engaging in," he said. "There should be a section that says they'll be liable for anything due to their negligence. Also, see that your service providers have agreed to hold you harmless. They should. You're not an actuary. You're hiring them to be the actuary. You're not the accountant. So if you're audited, the accountant should hold the company harmless."

Every employer should fully analyze existing contracts, Mr. Sandler said.

"Look at the various contracts that you have," he advised. "Look at it from the viewpoint of the level of liability, but also so you know what they're doing. A lot of times I've seen companies that have retained parties that do overlapping services, and so they're paying too much—or, even worse, they think they've hired someone to do something and they're not doing it."

Companies that suspect an ERISA violation has occurred should get a lawyer and tell the

government without delay, he said.

"If you get caught, it's going to be significantly more major" than if you notify voluntarily, he said. "If you get caught, and it's not an operational error—if your plan document is wrong—then you have to amend the plan. I know of one case where a company had to write a check for \$10 million to the IRS—that's certainly by far the worst one I've heard—to prevent them from disqualifying the plan."

According to Mr. Granahan, the age of managed care has brought with it fresh legal perils for plan sponsors, because through their relationship with managed care organizations, employers have become potentially responsible for the misdeeds or mistakes of those organizations. The employer's use of utilization review, in this view, is a restraint on the independent judgment of physicians, and those employers that self-insure and deny some claims place themselves even closer to the center of responsibility for their actions.

An employer selecting providers for a health benefit plan could, for example, later be deemed responsible if any of those providers proved incompetent or did not have proper credentials, Mr. Granahan said.

"The fact of the matter is on a first-dollar basis, many of us offer HMOs, and maybe only HMOs, today," he said. "What that portends for our employees is the only health care they can buy will force them to go to a selected set of doctors. What if you're self-insured? If you're self-insured, and within that self-insured program you have an HMO, does that hold out more liability? I'm here to tell you it absolutely does. I don't know how the courts eventually will handle all of these cases, but I know that HMOs and managed care organizations and integrated delivery systems are gradually being drawn in, and ERISA is not pre-empting these plans."

Mr. Granahan coordinated the session. **BI**

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# INTERNATIONAL

## Global Briefs

Discussions are in progress to consolidate the electronic data exchange networks servicing the international insurance industry: the Reinsurance & Insurance Network, the London Insurance Market Network and the World Insurance Network. Kevin Ashby, Limnet chief executive, confirmed the three groups are in talks aimed at closer cooperation and consolidation of their electronic trading services, which may include a possible merger. "We haven't yet articulated what form (consolidation) may take," he said. Rinet, established in 1988, is owned by its 540 broker, insurer and reinsurer members internationally. Limnet, established in 1987, is owned by Lloyd's of London, the Lloyd's Insurance Brokers Committee, the London International Insurance & Reinsurance Market Assn. and the Institute of London Underwriters. WIN, established in 1995, is owned by Aon Corp., Marsh & McLennan Cos. Inc., Sedgwick Group P.L.C. and Willis Corroon Group P.L.C. Mr. Ashby said the three organizations are "singing a similar song," and there is "substantial overlap of ownership and membership." . . . Chicago-based **Aon Corp.** has announced an agreement in principle to acquire Norwegian broker Grieg Insurance. The privately owned, Oslo, Norway-based brokerage has 100 employees at offices in Oslo, Bergen, Kristiansund, Trondheim and Alesund. The transaction is subject to due diligence and regulatory approval. Aon would not disclose the sale price. . . . **Zurich Insurance Co.** of Zurich, Switzerland, has signed a letter of intent to acquire the industrial and marine business of Swedish insurer Trygg-Hansa Insurance Co. Ltd. of Stockholm for an undisclosed amount. Trygg-Hansa's industrial and marine division, which does business in Sweden, Denmark, Norway, Finland and the Baltic nations, wrote gross premiums of 1.3 billion Swedish kronor (\$167.3 million) in 1997. The sale, subject to approval by both companies' boards and insurance regulators, is expected to be finalized by mid-1998. . . . **Bad weather in the United Kingdom and Canada** this year has resulted in claims of £37 million (\$61.8 million) for U.K. insurer Guardian Royal Exchange P.L.C. of London. GRE said ice storms in Canada in January (*BI*, Jan. 19) led to claims of £12 million (\$20 million) and wet weather in the U.K. in January and Easter (*BI*, April 20) created total claims of £25 million (\$41.7 million). . . . Standard & Poor's has placed the single A+ claims-paying ability of the non-life insurance divisions of Norway's Gjensidige Group—Gjensidige Skadeforsikring and Gjensidige Marine & Energy Insurances—on credit watch with negative implications. The credit watch follows the announcement that Gjensidige, of Oslo, and the Union Bank of Norway plan to merge into a new group called Gjensidige NOR. S&P believes the merger has the potential for synergies and multiproduct distribution but said there is uncertainty about future capitalization. . . . One man was killed and four were injured in a gas explosion at **Rolls-Royce P.L.C.'s** main aerospace engine plant in Derby, England, last month. The explosion happened in the heat treatment section, where a piece of machinery used to coat turbine blades was undergoing maintenance, said a Rolls-Royce spokeswoman. A team from the U.K. Health and Safety Executive is investigating the accident, the spokeswoman confirmed. She said it was too early to comment on the financial loss to the company or any insurance arrangements.

# Insured '97 cat losses down

Almost half the \$6.7 billion came from the United States, report says

By SARAH GODDARD

Insured 1997 catastrophe losses, adjusted for inflation, were about half the 1996 level and way below the average for the years 1989 to 1996, according to a report by Swiss Re U.K. However, at \$6.7 billion, they were "considerably higher" than each year from 1970 through 1988, said the Sigma report, published last month. Europe turned out to be the most costly region of the world in terms of individual catastrophic events. Figures published in the report show that last summer's massive floods in Eastern Europe caused \$940 million in in-

insured losses. The second-most expensive loss was winter storm damage in the United Kingdom, costing insurers \$500 million. The report

**More than half of last year's disasters were in Asia, but the area had a low level of insurance coverage.**

estimates total overall losses from manmade and natural catastrophes came to \$28.8 billion.

Across the world, three fires—at Brussels' Zaventem airport, a spinning mill in Japan and a silicon wafer factory in Taiwan—and one major explosion at a gas factory in South Africa caused \$638 million in insured losses. In overall terms, the United States proved the most expensive geographic region, claiming \$3.1 billion—or 46%—of the total losses covered. In contrast, Europe was the location of 31% of the insured losses, reaching \$2.1 billion. But Asia was the most struck by disasters. More than half of last year's catastrophes happened in the region, causing more than 16,000 fatalities. Insurers, though, saw little impact

because of the low level of insurance coverage in the area, just \$857.7 million, or 13% of the total insured losses, emanated from Asian countries. Since 1970, there has been a continuous increase in the number of reported natural and manmade catastrophes, due in part to better reporting of disasters. In addition, the higher density of populations, increased siting of insured assets in risky areas and a higher concentration of assets in industrialized nations all have contributed to the trend. Sigma has not identified any discernible trend in the frequency of catastrophic events, but it

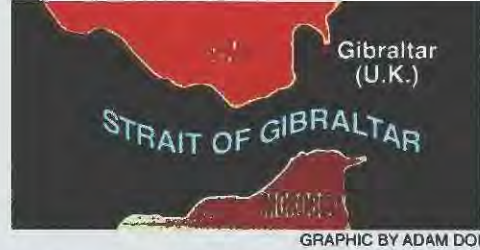
See Losses on next page

# Gibraltar solidifying its spot as a domicile

By SARAH GODDARD

**GIBRALTAR**—At the southwestern tip of Europe, the isthmus of Gibraltar, less than four square miles and attached to the European mainland by a narrow strip of land, has been the center of much attention over the past year. In June of last year, the United Kingdom's Department of Trade and Industry approved Gibraltar's Financial Services Commission as a competent authority to oversee the regulation of insurance business. This means FSC-approved insurers now can write pan-European insurance business, both direct and reinsurance. Gibraltar-based insurers and captive managers went into overdrive to promote the jurisdiction as soon as the announcement was made. Certain European insurance regulators were not convinced of the validity of the arrangement, and it took a formal notice from U.K. authorities to clarify the situation. Now, however, captive managers are satisfied most misunderstandings have been cleared up and that Gibraltar is being viewed as a legitimate jurisdiction. "Gibraltar has a lot to offer," contends Penny Murray-White, director of SINSER Captive Management, a SINSER agency in Gibraltar. "It has very high regulatory standards—the FSC must match the U.K. standards." The domicile has worked very hard to bring up standards, implementing European directives and providing legislation for areas such as fi-

nancial services, she added. In fact, earlier in the year, U.K. Foreign Secretary Robin Cook publicly praised Gibraltar's high regulatory standards, and many in the Gibraltar captive community saw his comments as holding up the domicile as the example others should follow, Ms. Murray-White and others said. Introducing passporting—the ability to write insurance business in other European member states without physical presences in those countries—has not started an avalanche of cap-



GRAPHIC BY ADAM DOI

tive formations. Gibraltar had eight captives at the end of 1997, up from six at the end of 1996. Several are in the pipeline to start this year. Norwich Union Fire Insurance Society (Gibraltar) Ltd., one of Gibraltar's leading captive management companies, has more than 30 inquiries about setting up captives at the moment, according to managing director Paul Savignon. But he is being cautious about the number that will convert into licensed captives. "We hope to have four (licensed) by the end of

June," he said, with the aim of another four on board by the end of the year. Other captive managers are taking a more gradual approach. "It's a slow process," said Bruno Callaghan, managing director of Willis Corroon Management (Gibraltar) Ltd. "We are more interested in getting the managers in rather than the players in—we are looking at the infrastructure first." Even so, Mr. Callaghan is actively promoting the domicile, particularly in the southern United States and Latin America. From Latin American clients' point of view, Gibraltar has a distinct advantage, he said. Even though English is the first language of the domicile, Spanish is almost as widely spoken, and conversations around the domicile often are in both languages. Another distinct advantage for Latin American clients is the proposed protected cell companies to be introduced in Gibraltar later in the year, according to Mr. Callaghan. While a number of U.S. and Latin American clients may be looking at the Cayman Islands to set up their captives, questions in Gibraltar over the validity of the Segregated Portfolio Companies legislation in place in Cayman may be to Gibraltar's advantage, he said. Government also is actively promoting the jurisdiction. It is embarked on an ambitious program of expansion in the financial services industry in Gibraltar, aiming to bring passporting legislation in for banking and asset management

See Gibraltar on next page

## Captives must add risks: Speaker

By MATTHEW MacDERMOTT

**PARIS**—Captive insurance companies must expand beyond their traditional scope by bringing in new types of risks. That was the message from the first European Captives Convention, held in Paris last month. Hugh Rosenbaum, convention chairman and principal in London of risk management consultants Tillinghast-Towers Perrin, challenged delegates to take the captive industry into "another dimension" by adding new exposures. He said the traditional captive market has reached a "plateau," evidenced by a downturn in net premium income and the withdrawal of some of the major buyers. "But new opportunities will carry (the industry) to its next succession," he said. Although the number of captives is increasing, Mr. Rosenbaum estimates net premium income in captives, his true measure of growth, was down 5% worldwide in 1997. He said the reduction indicates a "marked slowing in growth" and predicts the effects of the soft insurance market will be even stronger this year, with captives losing premium to the traditional insurance market. Mr. Rosenbaum said the major opportunity for the captive industry, including captive owners, managers and service providers, is "enterprise

See Risks on next page

## Reinsurers urged to offer captives more

By MATTHEW MacDERMOTT

**PARIS**—As captive insurance companies take on broader and more complex risks, reinsurers' services must keep pace, a reinsurance executive says. Captive owners are becoming more sophisticated in what they want from service providers, Erwin Zimmermann, chief executive officer of Swiss Re New Markets, told delegates at the European Captives Convention in Paris last month. He said reinsurers, as traditional capital providers to captives, are "still necessary but not sufficient." Reinsurers have to offer new products and services to captive owners, he said. Swiss Re New Markets is a division of the Swiss Re Group of Zurich, Switzerland, that was formed last year to identify and develop new market opportunities. For example, Swiss Re is working on developing combined-risk products for captives that want to incorporate new risks, such as credit and financial risks, Mr. Zimmermann said. He declined to elaborate on specific clients. While some captive owners "drive the process and challenge us, others stare us in the face (from lack of understanding). But there is enough interest to make it a worthwhile endeavor," he said.

See Reinsurers on page 43



# Losses

*Continued from previous page*  
warns that this is not any predictor for future risk exposures.

"A suspected climactic change leads to an increase in the uncertainty related to the level of claims," according to the report.

"The insurance industry must, in its future scenarios, take into consideration the possibility of a higher average claims burden with substantial fluctuations from year to year." This may lead to higher premium rates, states the report.

Nevertheless, despite continued concern that El Nino—an unusually warm current off the Pacific coast of South America—may cause greater losses in the future, there are no particular indicators that will happen, according to the report. But it warns that "primary insurers and reinsurers must, however, give their utmost attention to extreme meteorological events."

Last year saw exceptionally low insurance losses from U.S. storms, particularly because no hurricanes hit the East Coast of the country. This is most likely due to El Nino, says the report. Other effects, according to the Sigma report, are:

- More tropical cyclones in the northeast Pacific and South Pacific.
- Fewer tropical cyclones in the Caribbean and northwest Pacific.
- An increased risk of flooding on the Pacific coast of South America, in East Africa and parts of Europe and the United States.
- A greater risk of drought—and associated fire hazards—in South East Asia, parts of Australia and northern parts of South America. In addition, the Sahel zone and southern parts of Africa may also experience greater droughts. **BI**

# Risks

*Continued from previous page*  
risk management," or adding risks to captive insurance companies.

The challenge is to "incorporate those other kinds of risks, other kinds of businesses, that will, should, or may be combined with traditional captive insurance business, such as property and casualty," he said.

Mr. Rosenbaum said the captive insurance company, especially for a large company with lots of operating units, is a good vehicle to group all of that company's risks. There, it provides risk managers with a focal point to co-ordinate all of the company's exposures.

New risks that he said could be added to the traditional insurable risks of captive owners include employee benefits, pensions and life insurance; financial, credit and political risks; and difficult-to-place or unin-

surable risks that the commercial insurance market has been refusing or restricting, such as environmental liability, product liability and earthquake coverage.

"Captive owners are looking at it," Mr. Rosenbaum said.

However, he warned that the accounting industry, tax authorities and government regulators might try to thwart plans to add new risks to captives and urged the captive industry to move before that happens.

"The challenge for (the captive industry) is how are we going to be able to influence or be a step ahead of the standards that will be set?" Mr. Rosenbaum said.

He said another problem for the development of enterprise risk management is that many captive insurance industry service providers are "set in their ways." "When the captive insurance company concept emerged in the 1970s, it was the captive managers that educated potential clients. Who

will be the modern-day evangelists?" he asked.

Mr. Rosenbaum's challenge drew a positive response from delegates.

Oscar Tymon, senior vp of consultants Centre Solutions Ltd. in London, part of the Zurich Group, said the captive concept is "evolving," and he agreed there is an opportunity to manage a wider range of risks.

He said captives have traditionally covered a narrow range of risks but should become an "aggregational focal point" for all risks. "If companies are identifying and managing risks, they have to put them somewhere, and the captive is an effective and tax-friendly way of managing."

Ian McCathie, operations director of International Risk Management Group (Guernsey) Ltd. and chairman of the Guernsey Insurance Company Managers Assn., said the captive concept will continue to grow, leading to new, innovative approaches to using capital to benefit captive owners. "A

number of these things are under way," he said. "There is lots of analysis going into non-traditional risks. If you've got the capital and background, you can get into these areas," he said.

Steve Butterworth, director of insurance for the Guernsey Financial Services Commission, agreed the captive scene is becoming "less of a captive scene and more of an integrated financial scene."

He foresees a merging of financial risks into captives and believes different functions, including treasury functions, eventually will go to captive managers.

Eamon O'Brien, managing director of Aon Insurance Managers (Dublin) Ltd. and chairman of the Dublin International Insurance & Management Assn., said there is a trend toward offering captive owners a broader range of services, or a "one-stop shop."

"The use of captives is expanding. See Risks on next page

# Gibraltar

*Continued from previous page*  
later in the year.

Motivation for this came from the withdrawal of most of the U.K. Ministry of Defence operations in Gibraltar for various reasons over many years. That has caused the population of Gibraltar to drop more than 10% over a period of years to about 27,000, and MOD employment has fallen from more than 30% of the employed population working for the ministry to less than 6%, according to Mr. Savignon. "The transition to a private-sector economy is now coming through," he said, and the European Union is providing money to help that process.

In particular, the Assn. of Gibraltar Insurers & Managers is providing programs, backed by E.U. money, to train personnel—whether local or expatriate—at insurance companies and

captive managers.

At the same time, captive managers are keen to emphasize Gibraltar's high standard of education for local people. Many Gibraltarians pursue university educations in the United Kingdom—no higher education is available in the domicile—and a number will return "because it's nicer to be in Gibraltar" for climate and other lifestyle reasons, explained Ms. Murray-White.

This also explains why many expatriates who move to the domicile tend to stay for a long time. Alan Kentish, managing and technical director of BDO Fidecs Insurance Management Ltd., lives in Spain and commutes across the border—like many expatriates. Well-placed delays and blockades of the frontier are very much a thing of the past, he contends. If there is a problem, crossing by foot is an easy option.

In general, the relationship with Spain—traditionally tense since the

Spanish have reiterated their claim to sovereignty over the isthmus—has mellowed, according to Peter Montegriffo, Gibraltar's minister for trade and industry.

"The relationship with Spain is getting better" he said.

Last week, the Spanish government announced there will be general talks in Madrid during the summer between Gibraltar's Chief Minister Peter Carauna and senior Spanish ministers.

Other well-documented problems Gibraltar has experienced also seem to be dissolving over time. "Gibraltar has been unfairly treated," said Ms. Murray-White. The domicile's own checking systems have been beefed up.

On the insurance side, this includes the appointment in 1996 of Jim Costin, a former DTI regulator, as insurance supervisor.

"Generally speaking, (Gibraltar's) image seems to have been cleaned up," said Mr. Costin. "The supervisory structure is a hell of a lot better than it was," he added, and it matches U.K. standards. If the FSC is unsure on how to deal with a certain problem, it will refer to the relevant U.K. regulatory body, but it also retains its autonomy.

Even so, Mr. Costin's department has had to look to U.K. regulators to clarify the passporting situation.

A recent trip to the United States by Mr. Montegriffo and Anthony Fisher, director of the Gibraltar Finance Centre, aimed to answer the understandable questions thrown up over Gibraltar's status. After the trip, Mr. Montegriffo was confident "the profile of Gibraltar is limited but good" in the United States.

One particular aim of the visit was to find out what U.S. companies want from Gibraltar as a domicile, including allied services such as banking. The government's aim is to provide the necessary infrastructure but to let the players within the domicile define the direction business takes and attract more major players to Gibraltar.

So far this year, Chicago-based broker Aon Corp. has set up a captive management facility through Norwich Union and is looking at converting it into a full Aon office. Sedgwick Group P.L.C. also has been looking seriously at starting a captive management operation in the domicile, and Mr. Savignon hopes J&H Marsh & McLennan will follow.

"We recognize that it's important to get a particular scale of operation going," said Mr. Savignon. He sees the domicile becoming recognized as a fully fledged captive jurisdiction when it has between 200 and 300 captives operating.

Most risk managers see the main competition coming from Dublin, the

only other jurisdiction in Europe able to provide direct-writing facilities across the European Union. But costs are lower in Gibraltar, say the managers, and the tax environment, which has no value-added tax, wealth tax or capital gains tax, is much kinder.

In addition, once a captive has signed up and decided its tax status, the tax certificate it is granted lasts 25 years. Mr. Kentish anticipates changes to Gibraltar's overall tax system in the light of European tax harmonization moves, but he predicts this will mean the jurisdiction will move to an overall low-tax regime. The 25-year tax exemption certificates will retain their validity until they naturally run out.

Nigel Feetham, a barrister with the law firm of JA Hassan & Partners, said the domicile is beginning to look at altering the tax treatment of companies in the jurisdiction with an eye to the European harmonization proposals.

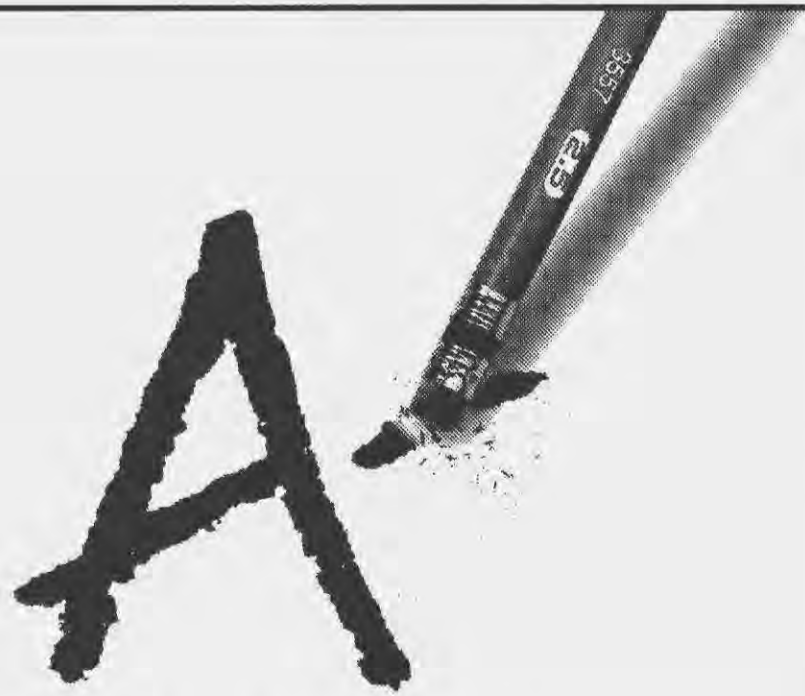
Norwich Union is targeting potential clients from the United States, Europe and the United Kingdom, "in that order," said Mr. Savignon. The United Kingdom is a particularly saturated market for captives, he said, though BDO Fidecs' Mr. Kentish is exploring the possibility of group and association captives from the United Kingdom. Japanese parents also have shown interest, according to Ms. Murray-White and Mr. Kentish. "Gibraltar is now on the shopping list," he commented.

Among the numerous visitors to the domicile since passporting was approved has been a "large Lloyd's agency" that is considering setting up in Gibraltar and writing liability business across Europe using the passporting provisions, according to Willis Corroon's Mr. Callaghan.

In the longer term, Gibraltar could become a fully established alternative risk transfer domicile, said Mr. Feetham. Its small size enables it to react quickly to new opportunities, he contends, and the will of the industry to become a major player in the international captive arena means managers are proactive in providing new opportunities for future clients.

Nevertheless, Gibraltar captive managers are aware that, as Gibraltar is the newest kid on the block, they need to tread carefully.

"We don't want any big names re-domiciling," said Mr. Callaghan. "We want to be part of the club" rather than upsetting managers in other domiciles. Instead, parents can benefit from setting up sister captives in Gibraltar to complement operations in Bermuda, for example, while at the same time avoiding fronting fees because they can write direct business across Europe. **BI**



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## INTERNATIONAL

## Risks

Continued from previous page  
all the time," he said. "I think you will find more and more merging of financial and insurance markets."

Mr. O'Brien thinks more captive owners will take money out of capital to work through captives, using them as a source to coordinate risks.

He said most interest is in the expansion of captives into pensions and employee benefits plans.

Mats Lindkvist, chief executive officer of Stockholm, Sweden-based international captive management company SINSER Group, agreed that life insurance, pensions and employee benefits represent a "fantastic expansion area" for captive insurers.

He said there has been a "lot of talk and effort" among captive owners to broaden the captive concept. "But the market has not been mature for it yet," he said.

However, Mr. Lindkvist believes that will change. He said the deregulation of state pension plans across Europe in particular could lead to more use of captives for corporate pension plans. "There is the potential for captives to come into areas previously held by the state." **BI**

## Reinsurers

Continued from page 41

Mr. Zimmermann said a learning process is involved in developing the new products, and he could not say when they will be finalized. "This is a complex process we are working on. We are part of the way there but can't say when we will roll out."

New combined-risk products will help "smooth the basket of risks" for large captive owners, Mr. Zimmermann said.

He said the changing captive insurance market represents a good opportunity for reinsurers willing to meet the challenges ahead.

Changes in the captive market are "more than just a fashion fad" and are "something serious," he said. The drivers of change include increasing globalization of business, creating larger and more complex risks; increasing litigation and volatility in the casualty market; increased performance pressures; new technologies; and tougher regulatory environments, according to Mr. Zimmermann.

"All this makes risk management a different game," he said. "It has moved from a compartmentalized, segregated game to an integrated game."

Integrated risk management encompasses all risks, coupling traditional insurable risks with new risks, such as financial, credit and business risks that traditionally have been the responsibility of chief executive or financial officers, Mr. Zimmermann pointed out.

Captives are becoming increasingly important for companies and will be used to create "a basket of risks to put capital against," he said.

If handled properly, the captive insurance company will be the "focal point for the aggregation of all risks and the definition of a company's total risk appetite," Mr. Zimmermann predicted.

"Captives can realign a company's focus toward the structuring of holistic risk financing solutions," he said.

Mr. Zimmermann said he believes that multiyear, multiline captive programs are now standard and will be overtaken by more complex structures.

He said the challenge for capital providers is to offer products that will help captives manage the broader range of risks. "Capital strength is in abundance, so you also need a breadth of skills," he said. **BI**

## Awareness, flexibility, savings key

## Captives risk management tools, not just tax havens: Panel

By MATTHEW MacDERMOTT

PARIS—The development of greater risk awareness throughout an organization, increased insurance flexibility and cost savings are the major advantages of captive insurance companies, says a panel of risk managers.

Four multinational corporate risk managers talked about the strategy behind their use of captives at a session at the European Captives Convention in Paris last month. All four agreed that captives are not just tax havens but highly effective risk management tools.

Jeremy Meyrick-Jones, director-group risk management for British Aerospace P.L.C., based in Farnborough, England, said captives help organizations get away from the insurance company mentality of "it's insured."

He said captives, if treated the same as other operating units, can significantly improve risk awareness throughout an organization.

"Losses quickly come to the notice of management and the board," he said. "At the end of the day, they can see that we (the company) are taking the first (insurance) hit."

British Aerospace, which makes military and commercial aircraft and defense systems, designs airports and develops property, has 370 operating companies at 400 sites worldwide.

The company has 70% of its total premiums in two captives: one onshore United Kingdom captive that has been licensed by the U.K. Department of Trade & Industry for 27 years, and an offshore captive domiciled in the Isle of Man

since its establishment nine years ago.

He said having two captives allows the company to absorb losses across a "wide range of insurance classes" but did not specify. He



said having two captives means British Aerospace needs to buy only pure catastrophe cover in the commercial insurance market.

Mr. Meyrick-Jones said operating companies, not the head office, generate risks, and that it is essential that risk awareness is promoted extensively in large, diverse organizations.

He said British Aerospace's captive companies have made a six-minute safety and risk-management video. So far, 20,000 of British Aerospace's 50,000 employees have seen it.

"Ultimately, the captives are protecting themselves and the group," he said.

Anders Bjarnehall, general manager of Akzo Nobel Risk & Insurance Management, a division of Akzo Nobel NV, based in Arnhem, the Netherlands, said captive insurance companies are an integral part of an overall risk management philosophy. "Other considerations, like tax advantages, play a subordinated role," he said.

Akzo Nobel makes chemicals, coatings, fibers and pharmaceuti-

cals in more than 60 countries. The company has two captives: a self-managed captive, Akzo Nobel Assurantie NV, domiciled in the Netherlands; and a reinsurance captive, Company de Reassurance Akzo Nobel S.A., domiciled in Luxembourg.

Mr. Bjarnehall said the key to successful risk management is obtaining risk awareness throughout an organization. He said captives provide the best vehicle to control risks, as they allow companies to get to know their risks and claims development more closely.

Through its own premium allocations, based on its own risk assessments, Akzo Nobel also can achieve lower long-term costs, Mr. Bjarnehall said.

"We can obtain a lot of flexibility and better control over costs," he said. "The traditional cycles of fluctuating insurance premiums can be avoided, making the costs stable and predictable."

Mr. Meyrick-Jones said the long-tail nature of British Aerospace's business and the high value of its products means it needs flexible insurance arrangements. He believes captives, through internal risk and premium ratings, offer maximum flexibility. "And by retaining more premium internally, we are minimizing cash flow out of the group," he said.

Olof Gustafsson, head of corporate risk management at international pharmaceutical company Pharmacia & Upjohn, based in Stockholm, Sweden, said captives provide the internal resources and insurance flexibility for his company to better manage its risks.

See Awareness on next page

# Carvill

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 Vice Presidents, General Managers and Other Administrative Personnel ..... 5,122

**Financial:**  
 Chief Financial Officers and Vice Presidents of Finance ..... 5,429  
 Secretaries, Treasurers, controllers and other Financial Personnel ..... 4,145

**Risk/Employee Benefits:**  
 Vice Presidents, Directors, Managers, and other related department personnel of: insurance, risk, employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations ..... 14,748

**Sub-total** ..... **32,154**  
 Associations ..... 286  
 Government, Unions and Educational Institutions ..... 1,019

**Commercial Consumers**  
**Sub-total** ..... **33,459**  
 Insurance Agents and Brokers ..... 8,083  
 Insurance Companies ..... 6,933  
 Accountants, Actuaries, Attorneys & Consultants ..... 2,705  
 Adjusters, Appraisers, TPA's, Captive Managers & Health Care Providers ..... 1,578  
 Others Allied to the Field ..... 757

**Total Qualified** ..... **53,525**  
 Non-qualified/Paid Subscriptions ..... 14  
 Single Copy Sales ..... 27

**TOTAL CIRCULATION** ..... **53,556**

\* Source Business/Occupational breakdown of qualified circulation, November 24, 1997 Issue, as submitted to BPA for December 1997 BPA Publisher's Statement

# INTERNATIONAL Awareness

*Continued from previous page*  
 He said Pharmacia & Upjohn has a heavy liability exposure that is difficult for commercial insurers to handle.

Pharmacia & Upjohn, which had 1997 worldwide sales of \$6 billion, has three captives: in Stockholm, Luxembourg, and Dublin, Ireland. The company had a total of \$29.3 million in net premium in its captives in 1997.

Mr. Gustafsson said captives' biggest advantages are their heavy involvement in loss prevention and claims handling. However, to provide the best service to its parent, it is es-

**'It is essential captives offer parents good, competitive premiums,' says Olof Gustafsson of Pharmacia & Upjohn.**

sential captives also offer good, competitive premiums.

Kenneth Aiken, general manager of Solen Versicherungen A.G., a self-managed captive of the Royal Dutch Shell Group, said premium rates are a real challenge for captive insurance companies. Ratings must be "justifiable and defensible," he said.

Solen, based in Zurich, Switzerland, insures 350 Shell operating companies in 150 countries. It issues 950 policies annually and handles 2,000 claims a year.

Mr. Aiken said Solen keeps its premiums competitive by encouraging commercial insurers to bid for business within the Shell group.

"Our (Solen) objective is to retain as much (Shell) business as possible, but it is healthy if we sometimes lose," he said. "If the price is right, the commercial market will win. It keeps the commercial market interested." **BI**

# Paris hosts conference on captives

PARIS—The first European Captives Convention was held at the Hotel Inter-Continental Paris April 20 and 21.

The convention, organized by IBC U.K. Conferences Ltd. of London, attracted 68 delegates from the United



Kingdom, Western Europe, Czech Republic, Bulgaria, Slovakia, the Channel Islands, the United States and the Caribbean.

Attendees included captive insurance company managers and owners, corporate risk managers, insurers, reinsurers, brokers, government regulators, actuaries, accountants and consultants.

At the present time, it's not known whether the convention will become an annual event. For further information, IBC U.K. Conferences Ltd. can be reached by telephone at 44-171-453-2706, or by fax at -44-171-323-4298. **BI**

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# Child care outlays yield savings: Report

By MEG FLETCHER

WASHINGTON—Employers that help their employees obtain high-quality child care are saving money and increasing productivity, the U.S. Treasury Department reports.

The new, Clinton administration-requested report contains many examples of employers' best practices and successes, which "carries an important lesson: Investments in child care can pay off in real dividends for employers and employees," Treasury Secretary Robert E. Rubin said in a statement last week. For example:

- Johnson & Johnson in New Brunswick, N.J., is saving more than \$4 in increased productivity for every \$1 invested in its "LifeWorks" program, which helps employees find and recognize quality child care, locate after-school care, plan for maternity leaves and prepare for adoptions.

- Lexis-Nexis in Dayton, Ohio, is reducing operating expenses by more than 45% through a telecommuting program and a flexible work environment. Savings result from higher productivity, fewer facilities, greater geographical hiring pools and better use of technology, the company said.

The 54-page report, "Investing in Child Care," spotlights the successes of those and other individual employers and provides guidance and resources to help other employers follow in their footsteps.

While many successes involve large employers, small and medium-sized employers also need to participate in meeting the great need for child care, according to business and labor leaders Secretary Rubin convened at President Clinton's request (*BI*, Jan. 5).

"Child care is an issue of enormous importance to employers, employees and the economy," the report said. "In 1996, 51 million Americans, representing 38% of the labor force, had children under the age of 18. Of the 10 million preschoolers of employed mothers, more than half were cared

for by someone outside the family. There are also 24 million school-age children in need of care during out-of-school time."

Employers have an important role to play in helping meet that need, though a recent study found that "only 1% of revenues for child care and early education came from the private sector," the report said.

To help replicate the successes, the report provides an extensive list of resources as well as a list of six steps employers can take:

- Conduct a survey or focus group of employees to identify work/family problems and potential solutions.
- Call your local resource and referral agency to learn about community needs and resources. Child Care Aware is at 800-424-2246.
- Provide information to employees through in-house communication vehicles such as newsletters.
- Look for information about what other companies are doing.
- Visit a local child care center and talk with the director about community needs and programs.
- Talk with other employers in your area to learn about existing programs or the feasibility of joint programs.

The report was developed in response to President Clinton's request, made after a special White House conference on child care last year.

"We've never had this kind of leadership on the issue before," said Judith Presser, a consultant with the Boston-based work/family consulting firm of WFD. President Clinton and the Treasury secretary have elevated the role of business, she said.

However, "any family-friendly program would have to reflect a company's culture and policies for it to be truly successful," Ms. Presser added.

*Copies of the report are available on the Internet at [www.treas.gov/press/releases/docs/chdcare.pdf](http://www.treas.gov/press/releases/docs/chdcare.pdf) or from the National Child Care Information Center at 800-616-2242.*

# Backup

*Continued from page 2*  
the first place."

Situations such as Mr. Pump's are not unique in today's workplace, experts on work/family issues said. To ease the stress on working parents, Deloitte & Touche, along with a growing number of employers, has invested in backup child care services that provide emergency child care when an employee's primary care giver is not available.

Marianne Yurko, human resource manager for Deloitte & Touche, said the corporation responded to the needs of employees with similar

er employers. Chicago's Deloitte & Touche office shares its Children-First facility with, among others, Chicago-based Sara Lee Corp.

Many corporations are drawn to the level of care and security offered by backup centers. Karen Batenic, executive director of human resources for Sara Lee, said that, as a mother herself, she wouldn't hesitate to leave a child at the backup center. "The (employees) that have used it felt very confident," she said. "(ChildrenFirst) thought out everything that would be a mother's fear."

Safety is a tremendous issue for backup facilities. Due to the audience they cater to, many centers are in urban areas, said Roger Brown,

**'We believe your best insurance policy is the way the centers are operated and the quality of the people and the environment,' says Rosemary Jordano.**

work/family conflicts by contracting with Boston-based ChildrenFirst Inc., which recently opened its second Chicago backup center. Deloitte & Touche has provided this type of benefit for a year and a half, but since the new facility opened—across the street from Deloitte & Touche's Chicago office—use by employees has tripled, Ms. Yurko said.

ChildrenFirst, which operates 14 backup facilities in major cities nationwide, allows many corporations with multiple offices to make this benefit available to all employees, not just those in the corporate headquarters. Sometimes this service is offered as part of a relocation package or as a way to integrate flex schedules or to ease the return to the workplace for women after maternity leave.

"We know people are coming back to work quicker and are facing these challenges the minute they walk in the door," said ChildrenFirst President and Chief Executive Officer Rosemary Jordano.

ChildrenFirst opened its first center in Boston in 1993. Since then, 160 companies of all sizes have contracted with them, either arranging for their own separate centers or participating in consortia with several oth-

CEO for Boston-based child care facilities designer Bright Horizons, and the need for security is greater than in many primary care facilities located closer to employees' homes. Pager or keypad entry mechanisms, video cameras and security guards are commonplace. Because these centers are not open to the public, they are often in discreet areas of buildings and are devoid of signage.

"We believe your best insurance policy is the way the centers are operated and the quality of the people and the environment," Ms. Jordano said. "At the end of the day, you carry real insurance, but the insurance is the end of the story."

Corporations using backup facilities often rely on the backup service provider to assume the risk of incident. Michael Carter, vp of the Hay Group, a Philadelphia-based benefits consulting firm, said some executives shy away from this type of benefit because they don't want to be responsible for the well-being of their employees' children.

"In all types of child care, the issue really comes down to due diligence and general prudence," Mr. Carter said. "It's an issue that makes some executives very uncomfortable."

Depending on the individual cor-

poration's needs, the cost of an individual "slot" at one of the various centers can range from \$14,000 to \$25,000 annually. ChildrenFirst's Ms. Jordano said that costs to build a center for one corporation typically start at \$500,000 for a facility that accommodates about 40 children.

Linda Bern, director of health adviser programs for New York-based American International Group Inc., said the insurer participates in consortium-style alternative care facilities because operating its own separate centers would be cost-prohibitive due to the geographic distribution of AIG's 14,000 U.S. employees.

"We really couldn't offer this type of benefit on our own," she said. "It takes a very high quality benefit and makes it affordable."

Bright Horizons' Mr. Brown said he has noticed a trend away from calling backup child care a "benefit." Just as you wouldn't say that having a computer is a benefit, providing alternative child care improves the performance of an employee, he said.

"(It's) another investment you would make in employee productivity," Mr. Brown said. "It's unlike a benefit... because it doesn't have the quality of equity."

Although some corporations were uncertain that this service was being used to its fullest potential, Mr. Brown said use in most centers is high among the 10% of employees who have children in the age group of infant to age 12. Over time, this 10% will apply to a different group of employees whose children come into that age group, he said, which will mean that more parents will have used the service than current center registration numbers illustrate.

"The experience is that it may really take a few years to get to the level (of maximization)," said Ms. Bern.

For Joann Duszczak, a performance and rewards consultant for Public Service Enterprise Group, having the Newark, N.J., backup care facility right across the street from her office gives her and the other 35 families who use its services more than just peace of mind. Ms. Duszczak, who used the facility twice last week, was able to visit her 5-year-old son during lunch.

"You actually have more quality time with them, because you know they're right here," she said. **BI**

# Work/life merger

## Combination has geographic reach

By AMANDA MILLIGAN

Two work/life program service providers announced last week that they have signed a definitive agreement for a stock-for-stock merger.

The merger of Boston-based Bright Horizons, a designer of child care facilities, and Nashville, Tenn.-based consultant CorporateFamily Solutions will create a combined entity called Bright Horizons Family Solutions, with headquarters in both cities.

Bright Horizons will hold 57% of the new company's shares and CorporateFamily Solutions will hold 43% of the shares, said Roger Brown, chief executive officer of Bright Horizons and Marguerite Sallee, president and CEO of CorporateFamily Solutions. The combined company will have revenues approaching \$163 million, based on the reported 1997 revenues of the two merging companies.

Prior to pooling their resources, Bright Horizons has focused on the East and West coasts, whereas CorporateFamily Solutions predominantly has served the Southeast and Midwest regions. Collectively, Bright Horizons and CorporateFamily Solutions will serve 30,000 families in 40 states, and it

will employ 8,600 people. No layoffs are expected.

"This is a growth story, not a consolidation story," Ms. Sallee said.

Because new product innovation comes from client input, Ms. Sallee said she foresees a "creative synergy" from the merger, which will affect 244 total clients. "We believe we will do a better job delivering service to all of our constituencies," she said, noting the merger will benefit families, clients and both corporations' employees.

Mr. Brown said Bright Horizons Family Solutions will be experimenting with primary school programs, such as onsite schools, and developing primary schools that keep a similar schedule to the business day. Additionally, the new company will actively pursue international ventures.

"We believe we have the capacity to change the way employers and employees view one another," Ms. Sallee said. "My personal goal (for the merger) is that the family-friendly workplace becomes the norm rather than the exception."

The merger, which must be approved by regulatory agencies and each company's shareholders, is expected to close in August.

# Clinic

*Continued from page 2*

care operations were renamed Quad/Covenant Corporate Health Services.

The company's priority now is to collect enough information about its clinic sites that it can build on its ability to do utilization review and its own third-party administration, said Dr. Leonard J. Quadracci, medical director of Quad/Covenant.

"Data is power," Dr. Quadracci said, "and to have access to our own health care data would be very important to understand where the dollars are going and to focus on the care and achieve greater flexibility in our plan design."

Covenant and the printing company signed a five-year agreement to develop clinics when Quad/Graphics executives realized there was a limit to what they could accomplish on their own.

A third clinic, 60 miles north of Milwaukee, opened in 1997 with 20 full-time providers, including doctors, nurses and others.

"We're going to hold each other's feet to the fire to see how this will work long term," John R.

Neuberger, director of business development at Quad/Graphics, said of the partnership.

The company also has begun direct contracting at sites in West Virginia and New York, and this year it will open a clinic for workers in Saratoga Springs, N.Y., in conjunction with a hospital there.

**Providers are learning that employers were mostly responsible for paying the medical bills, says John R. Neuberger.**

Employees from other companies also will be able to use the facility.

Dr. Quadracci emphasized that the company considers employee health to be a strategic means of keeping the corporate bottom line healthy.

"We look at our health plan really as an asset," he said, contrasting that view with those who see health coverage as a burden. "It's a corporate strategy to provide a committed, long-term healthy workforce and to further the overall goals of the company."

A big benefit of direct contracting is that providers are coming to understand the concept that employers were mostly responsible for paying the medical bills, said Mr. Neuberger.

"It became clear there was a huge gulf between employers and providers within the market," he said at the conference. "We said, 'We're your customer; we're paying the bills. . . . And it's not that we're going to hammer you with price, because we think we've gone as low as we can go in the market in terms of price. From this point on, we want to talk about quality.'"

Costs are keeping pace with other managed care networks, the company management believes.

"We're a good \$1,000 per employee per year in health care cost below our peer group, even though we had a very rich benefit program with very little cost to our employees," Dr. Quadracci said.

The company also has begun acting as its own claims administrator. In the past three years, administration costs have dropped \$2.2 million, the doctor said, and since 1993, average workers compensation costs per employee per year have dropped to \$270 from \$520. **BI**

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### LEGAL NOTICE

### LEGAL NOTICE

**UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK**

**IN THE PETITION OF COLIN GRAHAM BIRD AND PAUL ANTHONY BRERETON EVANS, AS JOINT PROVISIONAL LIQUIDATORS OF NORTH ATLANTIC INSURANCE COMPANY LIMITED, F/K/A BRITISH NATIONAL LIFE INSURANCE SOCIETY LIMITED AND BRITISH NATIONAL INSURANCE COMPANY LIMITED,**  
 Case No. 97-B-41602 (TLB)

NOTICE IS HEREBY GIVEN that on April 15, 1998, the Bankruptcy Court entered an order (the "Order") continuing the Preliminary Injunction Order pursuant to 11 U.S.C. §§ 105 and 304(b) originally entered in this case on April 7, 1997. The Order shall remain in effect pending a hearing scheduled to be held on October 27, 1998 at 10:00 a.m. before the Honorable Tina L. Brozman, Chief Bankruptcy Judge, in the Alexander Hamilton Custom House, One Bowling Green, New York, New York. Any person wishing to obtain a copy of the Order should contact Ivy Kepner at (212) 504 - 6402.

CADWALADER, WICKERSHAM & TAFT  
 100 Maiden Lane  
 New York, New York 10038  
 Tel: (212) 504 - 6000 • Fax: (212) 504 - 6666  
 Attention: Kenneth P. Coleman, Esq.  
 Lisa C. Dorr, Esq.

# Transit

Continued from page 1  
disbursement records show.

Transit's deferred compensation plans—which cover many other receivership managers and pay a percentage of salary based on the estate's recoveries—have recently come under fire from Transit reinsurers. Lloyd's of London underwriters are trying to void their contracts with Transit, charging in Cole County court filings that the receivership has intentionally inflated claims in order to boost reinsurance recoveries and fatten managers' deferred compensation accounts.

"This financial incentive to maximize reinsurance creates a conflict of interest that makes it virtually impossible for these key managers to honor their duty of utmost good faith to Transit's reinsurers," Robert Knuti, a Chicago-based Lord, Bissell & Brook partner representing Lloyd's, complained at a court hearing earlier this year.

"We believe these arrangements have distorted the Transit receivership's view towards their reinsurers and clearly have damaged Transit's relationship with various reinsurers," said John M. Wulfers, another partner of Lord, Bissell, which also represents Winterthur Swiss Insurance Co.

Transit officials label the Lloyd's charges "scurrilous," and Mr. Arnold and others defend the compensation plans, originally designed by Ernst & Young L.L.P. and The Hay Group, as necessary to keep qualified people in the receivership. Mr. Arnold also insisted that federal filings showing top managers' compensation totals are erroneous, though he would not say how.

"Show me a better mousetrap to retain people and keep them on board," Mr. Arnold said. "It's worked. It's retained the people."

Transit managers are not the only ones who have done well in the receivership, though.

Long faulted for cronyism by industry opponents and some former employees alike, Transit in fact has paid more than \$1 million in fees and salaries in recent years to several people with Jefferson City connections, an analysis of Transit's monthly cash disbursement records shows.

They include Mr. Arnold's sister-in-law, who is Transit's strategic planning manager; a former business partner of Judge Kinder who was named Transit's Jefferson City claims manager; an accountant who prepares Judge Kinder's personal income taxes; and the brother and son of Missouri State Sen. Phil B. Curls Sr., a Kansas City Democrat who heads the Senate's Insurance and Housing Committee.

Winterthur Swiss last year sought to disqualify Judge Kinder from hearing a dispute with Transit on the grounds that the judge's wife works for a lobbying firm owned by Transit's general counsel, former Missouri Sen. Thomas W. McCarthy III (BI, Dec. 1, 1997).

Mr. Arnold and Judge Kinder are unfazed by these criticisms and maintain that everyone Transit has hired is qualified for the work.

"This is a town of 35,000 people. Of that 35,000, a certain number of people have abilities in certain areas. I know all of them. All of them are my friends," Judge Kinder said. "Is that the reason they were employed? No. Did they get the job done? The answer is yes."

Transit's Jefferson City allies do not include Missouri insurance regulators, however, who have been virtually cut out of any role in managing Transit since a 1989 order by Judge Kinder that gave the special deputy receiver control over the insurer's day-to-day operations (see story, page 48).

The ill feeling between those controlling the receivership and the Insurance Department is barely concealed: "I've had seven different directors of insurance over the years, sir, and they are the wonderful people who gave us Transit Casualty," Judge Kinder remarked.

Missouri Insurance Director Jay Angoff counters that he has been in office more than five years but that Judge Kinder has made it clear the Insurance Department is only a "nominal party" in the Transit receivership.

In the latest in a series of skirmishes, Mr. Angoff last year asked the judge to amend the 1989 order and grant the department authority to estimate Transit's long-tail claims and close the estate early.

Mr. Angoff charged in his 1997 petition that Transit had spent more money administering the estate than it had distributed to creditors and that those expenses have shown no signs of falling.

Transit's costs, including funding of deferred compensation benefits, totaled \$25.2 million last

## Selected receivership expenses of Transit Casualty Co.

December 1992 to September 1997	
Payee	Total
Payroll	\$31,940,690
Key employee deferred compensation	13,146,754
McCarthy, Leonard, Kaemmerer, Owen Lamkin & McGovern (general counsel)	8,878,119
Ernst & Young	5,271,106
Central Bank of Jefferson City (investment management)	4,766,926
American Express (travel and meals)	1,760,334
Reinsurance Counsel <sup>1</sup>	1,487,227
Buchalter, Nemer, Fields & Younger	1,363,661
J. Burleigh Arnold	1,029,309 <sup>2</sup>
Law firms of G. Michael Curls	622,089
Chadbourne & Parke	538,127
Senior officer expenses	503,813 <sup>3</sup>
Parking-Los Angeles office	318,575
Krieger & Krieger	267,492
McChinn Properties	223,552
Corporate apartments	168,475
Cars leased to receivership	133,589
Alberstone Enterprises	64,787
Carlos Miro	33,780

<sup>1</sup>Formerly McCarthy & Lasley  
<sup>2</sup>Administrative expenses not reported as salary or benefits; includes roughly \$5,000 monthly housing allowance and yearly April payments ranging from \$64,883 to \$339,728.  
<sup>3</sup>Administrative expenses for six senior and assistant senior officers, not including J. Burleigh Arnold. Does not include American Express charges.  
Source: Cole County, Mo., Circuit Court records

GRAPHIC BY MIKE GARVEY

year, compared with \$20.7 million in 1996 and \$20 million in 1995. While not mentioned in the Insurance Department's 1997 motion, expenses have also included millions of dollars a year in legal and consulting fees and large travel expenses for Transit receivership employees, Cole County court records show.

The receivership has insisted its expenses are justified. It also argued that Transit's thousands of excess and umbrella liability claims from Fortune 500 policyholders aren't ready for estimation and that such a plan would wind up being more expensive than the current liquidation, which Ernst & Young projects may last until the year 2016.

Judge Kinder sided with the receivership, and exasperated Missouri regulators now appear reluctant to try to influence Transit any further.

For their part, Mr. Arnold and others brush off criticism of the receivership and point out that it has done more for creditors than anyone expected when Mr. Arnold took over the Transit morass in 1987.

The receivership has pulled together mountainous records from more than 1,000 managing general agents and sub-agents and grappled with a hugely complex reinsurance program that involved about 900 reinsurers around the world, many of which have themselves become insolvent.

As of March 31, the estate had marshaled \$987.7 million in assets for about 200,000 creditors and was still seeking to commute business with about 300 reinsurers, the largest of them outside the United States, Transit representatives say.

"We feel we've run a very first-rate business operation out here," Mr. Arnold said.

Some of Transit's large creditors agree. "For the last several years, it's been a good relationship with them," said Dale Stephenson, president of the National Conference of Insurance Guaranty Funds. He noted that Transit's distributions to creditors are on a par with the average of other property/casualty estates, some of them older than Transit.

"By and large, their distributions have not been that bad," Mr. Stephenson said, while adding, "We'd like to have more."

"They've done a better job than I thought they would do," said an official of a Fortune 500 creditor who requested anonymity. "I never thought anyone would see anything out of that deal."

A former creditor turned Transit consultant, John Gates, was blunt when asked if he ever thought Transit's recoveries would approach the \$1 billion mark. Mr. Gates, former director of the California Insurance Guaranty Assn., replied: "Hell no. Not at all. I thought if they got \$400 million, that would be doing good."

"They've done so much better with this receivership than anybody expected when we started this," Judge Kinder observed. "I take umbrage when people criticize it. It started out in absolute chaos."

### 'Titanic' morass

No one disputes that Missouri-licensed Transit was a morass when state regulators took control of its Los Angeles headquarters and ordered it into liquidation in December 1985.

Dubbed the "Titanic" of insurance insolven-

cies by a congressional subcommittee that later investigated the collapse, Transit was formed in 1945 as a St. Louis-based insurer of municipal transit systems. It was eventually acquired by Beneficial Standard Corp. and moved to Los Angeles, where in the late 1970s it developed a network of MGAs and became a large underwriter of heavily reinsured Fortune 500 liability business. Transit's gross premium volume grew rapidly in the early 1980s and hit a peak of \$277.9 million in 1984.

The business proved disastrous, hammering Transit with everything from asbestos and pollution losses to liability claims for products such as A.H. Robins' Dalkon Shield and Pfizer Inc.'s Bjork-Shiley heart valve.

Jefferson City lawyer John C. Cozad, a Republican campaign chairman for then-Missouri governor and now U.S. Sen. John Ashcroft, was initially named special deputy receiver and approved by Judge Kinder.

The receivership soon drew criticism from state guaranty funds, though, for the slow pace of its reorganization, its failure to make early access distributions and its use of Jefferson City-based claims commissioners, whose job under Missouri law then in effect was to review creditor claims.

The claims commissioners—whom guaranty fund administrators contended were unnecessary—were all Jefferson City lawyers and friends of Judge Kinder. The posts have since been eliminated, though one of the former commissioners—David Brydon, with the law firm of Brydon, Swearingen & England—continues to act as a court-appointed special master hearing Transit coverage disputes.

Another court-appointed Transit referee, Jefferson City attorney James Dalton, is a former insurance commissioner and a nephew of former Missouri Gov. John M. Dalton, for whom Mr. Arnold worked as an aide in the early 1960s.

In April 1987, Mr. Cozad resigned as special deputy and was replaced by Mr. Arnold, who was then senior vp and corporate counsel for Central Bank of Jefferson City and who was also an old friend of Judge Kinder.

Mr. Arnold had long been active in Missouri politics: After working for Gov. Dalton until 1964, he went on to serve on the Democratic National Committee and made an unsuccessful run in the 1982 Democratic primary for U.S. Senate.

Taking over Transit, Mr. Arnold brought in the Kansas City office of Arthur Young & Co. to help plan Transit's liquidation. At the time, the Arthur Young office was headed by one of Mr. Arnold's acquaintances, William Kimsey, who had briefly worked for former Missouri Gov. Joseph Teasdale in the 1970s.

Transit "was a shambles," recalls Mr. Kimsey, now deputy chairman and chief operating officer of Ernst & Young in New York. Most of Transit's employees were gone, and its computer systems had been shut down, he said.

The accounting firm ultimately recommended that the receivership rebuild Transit to be "in effect an (ongoing) insurance company minus the production side of it, the sales side," Mr. Kimsey said.

That is what Transit has done, maintaining its Los Angeles office to collect records, adjust and allow claims and generate billings to reinsurers, the estate's main asset.

After recovering only \$127 million in assets from 1985 to year-end 1989, the receivership has been pulling in between \$68 million and \$122 million a year since then. Total recoveries of \$987.7 million as of March 31 include \$654.5 million in reinsurance receipts, with the balance consisting of investment income and other recoveries, Transit reports. The receivership announced last week that recoveries had surpassed \$1 billion.

Since making its first distribution to creditors in 1995, the receivership has followed with distributions every year for a total to date of \$233.3 million, or 25% of approved policyholder claims.

Most of the rest of Transit's assets—which totaled \$564.9 million at March 31—are being held for future distributions while the estate waits for its incurred-but-not-reported losses to develop, the receivership reports.

Although Transit's staff has gradually declined from a peak of 147 full-time and 56 part-

time employees in 1990 to 92 full-time and 12 part-time employees at the end of 1997, its expenses have not done the same: Transit's administrative costs have hovered above \$20 million for seven years and hit a high of \$25.2 million last year, receivership figures show.

### High expenses

Overall, Transit's expenses as a percentage of its gross recoveries are higher than those of several other large receiverships, including Integrity Insurance Co. in Paramus, N.J., the London-based KWELM Cos.—which reinsured Transit and where Mr. Arnold is chairman of the creditors committee—and Los Angeles-based Mission Insurance Co. (see chart).

Transit's costs, including deferred compensation benefits and legal, accounting and asset management fees, have amounted to about 25.5% of its recoveries, markedly higher than Integrity and nearly double those of Mission.

Included in the Transit figure is \$43.1 million the receivership identifies as "infrastructure costs" incurred when it was rebuilding the insurer's records and systems. If those costs are excluded, Transit's expenses would amount to 21.1% of recoveries, closer to Integrity but still higher than KWELM and Mission, company financial reports show.

Cost comparisons, especially to the Mission liquidation, rankle Transit officials.

"Mission and Transit administratively are apples and oranges, if not apples and watermelons," said James C. Owen, a partner of McCarthy, Leonard, Kaemmerer, Owen, Lamkin & McGovern, Transit's Chesterfield, Mo.-based general counsel.

Mr. Arnold maintains that the Mission estate was in far better shape when its liquidators stepped in, and said, "We had to come in and build an entire computer information system" and struggle for such basics as a master list of Transit's policies.

"One shoe size does not fit all," he observed.

Still, the receivership so far has actually spent more administering the estate than it has distributed to its creditors.

And, after paying creditors, Transit's largest cash outlays over the last five years have been for salaries and benefits, including deferred compensation for key managers, a review of court records shows.

Public information about Transit officials' compensation is scarce: Unlike Mission and Integrity, Transit employment contracts submitted for court approval are filed under seal, and receivership officials refuse to discuss them.

Mr. Arnold and Mr. Owen, Transit's lawyer, cite several reasons for the secrecy, including a California Supreme Court ruling they say forbids disclosure of employment information and concern that reinsurers would use the information against the estate in litigation.

Some general information about the deferred comp plans came to light last week, when Transit officials convened a special meeting of creditors in St. Louis and disclosed that plans covering some three dozen employees have cost the estate \$21 million to date.

Previously, though, Transit financial reports have done little more than mention that the plans exist, and the last report, for 1996, says nothing about overall employee compensation except that it is based on Ernst & Young's recommendations and is approved by Judge Kinder.

While Mr. Arnold and other top Transit officials said nothing last week about how much deferred compensation they stand to collect individually or about their salaries, other public records suggest that they are reaping vastly larger rewards through the deferred comp plans than their peers at other receiverships.

In 1993, Transit filed a summary plan description with the federal Pension and Welfare Benefits Administration for a plan designated "005" that covered only Mr. Arnold; Transit Chief Operating Officer John LaMacchia, a friend of Mr. Arnold's and godfather to one of his daughters; and Chief Financial Officer Timothy Weisenberger.

The plan was to pay the three men awards using a formula based on Transit's gross recoveries and their base compensation, the filing says. The three officials would not be vested in their awards until Dec. 31, 1998.

Separately, the receivership has made yearly Internal Revenue Service Form 5500 filings for the plan. Form 5500 filings for 1992 through 1995 show that Transit has made yearly contributions to the plan ranging from \$1.5 million to \$2.2 million. At the end of 1995, the plan's assets totaled \$7.4 million, the filings show.

See **Transit on next page**

Continued from previous page

Documents don't disclose how the assets of the plan are to be split among the three.

Meanwhile, Transit also sent the PWBA a summary description of another plan, designated "006," covering an unidentified number of Transit "senior managers." Under the second plan, Mr. Arnold had authority to award senior managers up to an additional 22.5% of their base salaries, depending on performance. The plan was to run from 1992 to 1997, with participants not vesting until the end of the fifth year.

A 1994 Form 5500 filing for this plan, the latest available, shows that it covered nine managers at the end of the year, had received Transit contributions of \$184,379 and had total assets of \$519,581.

The only other public information regarding Transit compensation comes from a 1997 lawsuit in which Joshua Avidan, a former Transit information services officer fired in 1996, sued the receivership for breach of his employment contract.

The contract, attached to the lawsuit, shows that Mr. Avidan was making a \$110,376 salary and was participating in a "Key Managers Incentive Compensation and Retention Plan" running for five years from January 1996. Under the plan—a successor to plan 006—participants meeting performance goals would be awarded a minimum 22.5% of their base pay, with the percentage sliding upward based on the estate's gross recoveries. If Transit collected \$100 million, for example, the percentage rose to 24%, and if collections hit \$200 million, it would rise to 40%. Employees aren't vested in the benefits until the end of the five-year period.

Mr. Avidan previously participated in plan 006, but by agreement with Transit, he vested early, as of Dec. 31, 1995, and switched to the new plan.

Mr. Arnold and Mr. Weissenberger both say that Transit's Form 5500 filings contain "unintentional errors" and don't accurately reflect the incentive plans. They would not describe the errors in detail, though; Mr. Arnold would say only that the \$7.4 million asset total reported for the top managers' plan in 1995 was too high.

He also said that the plans have been revised and that 37 Transit employees are now participating in a single plan, with top-tier managers receiving "enhanced" benefits and employees in two lower tiers receiving less.

## Deferred compensation

At the creditors meeting last week, Mr. Weissenberger reported that the receivership has funded \$21 million in deferred compensation benefits from its inception, including \$6.7 million in contributions last year, \$3.2 million in 1996 and \$1.6 million in 1995.

Over nearly five years from December 1992 to September 1997, Transit incurred payroll expenses of \$31.9 million and paid \$13.1 million into deferred compensation trust accounts for its employees, Cole County court records show (see chart, page 47).

Those trust accounts have been administered by St. Louis-based Mark Twain Bank and a successor, Mercantile Bank. Coincidentally, Mr. McCarthy, Transit's general counsel, has served as a director of Mark Twain Bank.

Mr. McCarthy said, however, that he did not become a director until four years after the deferred compensation accounts were set up and that he "had nothing to say about any of it."

Mr. Arnold said he was concerned enough about a potential conflict that he sought an opinion from a Kansas City law firm. The firm told him Mr. McCarthy's presence on the board was not a conflict as long as he had no role or financial interest in managing the plans, Mr. Arnold said.

Defending Transit's plans, Mr. Arnold argues that the \$21 million cost is millions of dollars lower than it would have been had Transit adopted Mission's incentive plan, which pays all employees 20% of their salary every six months.

"It's indisputable that it's cheaper for Transit Casualty to have gone with the Ernst & Young/Hay Group method," Mr. Arnold said. "In my book, we've saved the creditors (millions)."

He added that the compensation plans were originally designed when Transit's recoveries were an estimated \$300 million and were intended to pay employees about 0.5% of the amounts collected. As the estate grew, though, the plan changed and now will pay out about 2% of recoveries.

"I think that was well worth the additional \$700 million in recoveries," Mr. Arnold said.

Several creditors contacted by *Business Insurance* before last week's meeting in St. Louis said they knew nothing about the deferred compensation plans and expressed surprise at the amounts reported in Transit's Form 5500 filings.

"That would raise my eyebrows. . . That's a pretty good chunk of change," one Fortune 500

appealed for several reasons, including concern that an appeals court would find he waited too long to challenge the 1989 order, which already was in place four years when Mr. Angoff took office in 1993.

In an earlier skirmish, Mr. Angoff tried to get Transit to comply with the department's Regulation 200, which would require the company to file financial data using a National Assn. of Insurance Commissioners form.

Transit balked. Mr. Arnold explains that the filings would cost the estate \$300 million by requiring it to report reductions in its case and incurred-but-not-reported loss reserves, weakening Transit's bargaining position with reinsurers.

Judge Kinder ruled that Transit need not follow Regulation 200.

Mr. Angoff said he also failed to dissuade Cole County Circuit Judge Thomas J. Brown III from boosting fees paid to Transit's general counsel, McCarthy, Leonard, Kaemmerer, Owen, Lamkin & McGovern; and could not persuade Transit to turn over a copy of a Coopers & Lybrand L.L.P. report on the insurer's loss projections.

"That's four strikes," Mr. Angoff said of his experience with the receivership. "I think it's futile. How many strikes are we going to take?"

James C. Owen, a partner of McCarthy, Leonard, counters that Transit has offered to make documents available to the Missouri department but that regulators have chosen not to take up the offer. Mr. Angoff has never visited Transit's Los Angeles offices, Mr. Arnold said.

"They just basically stay on the outside and throw stones," Mr. Owen charged.

## Cost of insolvencies

(figures in thousands)

	Total assets	Gross recoveries	Cost	Ratio of cost to recoveries	Distributions to claimants
Transit Casualty Co. <sup>1</sup>	\$564,900	\$987,700	\$251,800	25.5 %	\$233,300
Integrity Insurance Co. <sup>2</sup>	1,317,471	502,251	94,080	18.7	85,100
KWELM Cos. <sup>3</sup>	2,956,000	1,032,000	148,000	14.3	98,000
Mission Insurance Co. <sup>4</sup>	1,034,664	1,411,900	180,300	12.8	482,200

1. Assets as of 3/31/98; other figures 12/31/85-3/31/98. Costs include deferred compensation and \$43.1 million in start-up "infrastructure" cost. 2. Assets as of 12/31/96; other figures 3/24/87-12/31/96. 3. Assets of 12/31/96; other figures 3/92-12/31/96. 4. Assets of 12/31/97; other figures 2/27/87-12/31/97. Source: Company reports

creditor said. "That's the first I knew of it."

"I'm in the wrong business," said another creditor who also requested anonymity.

The NCIGF's Mr. Stephenson said he didn't recall Transit ever having disclosed information about deferred compensation to the guaranty funds until the overview offered by Mr. Arnold and Mr. Weissenberger last week.

If Transit's Form 5500 filings with the IRS are even roughly accurate, the receivership's top managers stand to collect far more than their counterparts at Mission or Integrity.

Mission has spent roughly \$18 million on its incentive plan from 1987 to 1997, with the number of covered employees ranging from a high of 204 in 1988 to a low of 51 last year, according to the California Insurance Department.

William S. Price, Mission's first deputy liquidator, collected an average annual salary of \$200,000 and an average incentive bonus of \$80,000 over his five years of service from 1987 to 1992.

Mr. Price's successor, Geoffrey Nicholls, was paid an average annual salary of \$168,000 and an average annual bonus of \$66,000 from 1992 to 1988. Mission's current deputy liquidator is an Insurance Department employee and doesn't get an incentive bonus, a department spokeswoman said.

Integrity's deputy liquidator, Richard L. White, earned a base salary of \$215,000 under a three-year contract he signed in 1995. The contract provided for annual raises of 5% and bonuses of up to \$25,000 the first year, \$30,000 the second and \$40,000 the third, court filings show.

Mr. Arnold has received other compensation in addition to salary and incentives, according to court filings.

For several years, Transit has been paying roughly \$5,000 a month to cover the cost of Mr. Arnold's Los Angeles house. Initially, the payments went to a company that leased the house to him. In 1995, though, Mr. Arnold and his wife bought the house for \$860,000, taking out a mortgage of more than \$600,000, Los Angeles County property records show. Transit has since made the monthly housing payments directly to Mr. Arnold.

Mr. Arnold's mortgage, the records also show, is with his former employer, Central Bank of Jefferson City, which has earned several million dollars managing Transit's assets since winning a bid for the work shortly before Mr. Arnold joined the receivership in 1987.

Mr. Arnold said he got no special treatment from Central Bank: "No breaks, no fun, period."

"I could probably get better rates here, but I'm not that well known in the banking community here," he said, referring to Los Angeles. He added that he does not believe Central Bank still holds the mortgage.

Transit's court filings also show that the receivership has made five- and six-figure cash payments to Mr. Arnold every April for several years. The largest, for \$339,728, was made April 4, 1997. Transit accounts for the payments as administrative expenses, not as salary or benefits.

Mr. Arnold refused to comment on these payments other than to say they are part of his employment agreement and are "not untoward."

Transit, which pays car allowances to many of its employees, also pays just under \$700 a month to lease a Lexus for Mr. Arnold, court filings show.

He pointed out the car is three years old. "We don't use Cadillacs or Lincolns or Jaguars or Maseratis or these things which always excite reporters," he commented.

Along with salaries and benefits, Transit's monthly filings with the Cole County court provide details of some of its other administrative expenses. For the period of December 1992 to September 1997, they include:

- \$8.9 million in legal fees to McCarthy, Leonard, Transit's general counsel. Details of the firm's hourly billings are sealed, though Transit

says its rates are below the \$230 per hour midpoint for fees the estate has paid to a range of lawyers.

- \$1.5 million to Reinsurance Counsel, a Pasadena, Calif., law firm headed by Linda Lasley and originally formed as McCarthy & Lasley. McCarthy, Leonard helped Ms. Lasley set up the firm at Mr. Arnold's request after she left Buchalter, Nemer, Fields & Younger, where she had represented Transit, Mr. Owen said. McCarthy, Leonard later received \$30,000 to \$50,000 when Ms. Lasley bought out its share of the firm but received no part of its billings, he said. Mr. Arnold said he wanted to keep Ms. Lasley on the Transit team, and for several reasons establishing the firm was the most feasible way of doing that.

Overall, Transit has paid \$33.8 million to more than 150 law firms since 1985, the receivership reports.

- \$1.8 million to American Express for employee travel expenses, which have ranged as high as \$76,000 in a month and frequently surpass \$50,000 a month. Transit employees have traveled extensively, attending the annual Rendez-Vous de Septembre, a reinsurance meeting in Monte Carlo, and visiting reinsurers from Europe to South Africa, South America and China.

The travel is necessary, Mr. Arnold says: "No Transit person travels anywhere unless there is Transit business to transact and the trip is justified by reinsurance collections," he said.

"It may seem like a large figure, but you have to remember that Transit is a \$1 billion business," he observed.

Transit also paid another \$503,813 in administrative expenses to six top officers, including Mr. LaMacchia and Mr. Weissenberger. These expenses would also have been for travel, hotel, meals or car allowances, Mr. Arnold said.

The receivership's expenses include a number of other less significant but still interesting items, records show.

For example, Transit has paid \$64,787 since the end of 1992 to Alberstone Enterprises, a Los Angeles wine and liquor distributor and coffee service company. These payments have ranged from a few hundred dollars a month to more than \$4,000 in a month. Mr. Arnold said the payments are for coffee service only: "We didn't buy any wine or liquor here, that's for sure."

Transit has also paid at least \$33,780 in consulting fees to Carlos Miro, a former managing general agent whom Transit accused of defrauding it and who was later jailed for bankrupting a Louisiana insurer he operated. Transit made the first of several \$5,000 payments in September 1995, two months before Mr. Miro was released from prison, records indicate.

Mr. Arnold said the receivership paid Mr. Miro for his testimony in a reinsurance dispute with Omaha Indemnity Co. "We collected \$10 million to \$12 million from that firm, partly based on Carlos Miro's testimony," he noted.

Transit also paid smaller amounts—\$500 and \$725, respectively—for testimony from James R. Wining and Willie A. Schonacher, former Omaha Indemnity MGAs convicted of defrauding the insurer.

## Well-connected staff

Also among the receivership's expenses are more than \$1 million in payments to staff employees and outside professionals with personal or political connections in Jefferson City, Transit's records show.

Since December 1992, for example, the receivership has paid \$622,089 in legal fees to a succession of Los Angeles law firms headed by G. Michael Curls, the brother of Missouri Sen. Phil Curls Sr., chairman of the Senate's insurance committee.

Michael Curls has handled a variety of cases for Transit and has followed mass tort litigation that affects the estate, according to Mr. Arnold, who noted that Mr. Curls previously worked for

See Transit on next page

## Regulators' role trimmed

### Efforts to gain greater control have failed

By DOUGLAS MCLEOD

JEFFERSON CITY, Mo.—Transit Casualty Co. receivership officials and Missouri Insurance Department regulators are not each other's biggest fans.

In a 1989 administrative order, Cole County Circuit Judge Byron L. Kinder gave Special Deputy Receiver J. Burleigh Arnold control over Transit's operations, effectively cutting out the Missouri insurance commissioner, Transit's official receiver.

Since then, Missouri regulators have tried sporadically to exercise some control over Transit and have failed. Receivership officials have complained that Insurance Department plans for the estate would damage it and that regulators have not shown consistent interest in its affairs.

The latest battle came last August, when Insurance Commissioner Jay Angoff asked Judge Kinder to amend the 1989 order to give him the authority to require Transit to estimate long-tail claims and close the estate early. Mr. Angoff charged that creditors have received "relatively little" from Transit, that its expenses are not going down and that Transit auditor Ernst & Young L.L.P.—which advised against estimation—had a vested interest in seeing the estate remain open.

The receivership denied this, and Mr. Arnold notes that most of Transit's assets have been held as reserves while hundreds of millions of dollars of long-tail claims develop. Transit also countered that the estimation approach, while a possibility at some point in the future, would only create litigation with reinsurers and increase the estate's expenses.

Judge Kinder ruled against the Insurance Department. Mr. Angoff said that he has not

## Commentary

# A little epsom salt might go a long way

Another RIMS conference is in the bag.

My feet, vertebrae and the blood vessels in my eyes are screaming their thanks.

Don't get me wrong; my brain enjoys the Risk & Insurance Management Society Inc. conference, and it's in charge of those whining nerve cells. There are a lot of interesting people to meet, colleagues to visit with, informative sessions to attend, products and services to learn about, and hospitality suites being hospitable.

But the world's largest congregation of risk managers and the companies that jockey to sell them things is a long affair.

On paper, even I think it sounds reasonable: Sunday night through Friday morning, 9 a.m. to 5 p.m. most days. But in reality, RIMS starts for me on a Friday (well, Thursday if one counts packing for the trip, and why not?) and typically runs daily from 7 a.m. to 1 a.m. It lasts until the next Friday only because some sessions are scheduled Friday morning to assure that no one bails out on the conference a day early. It's the marathon of conferences, and by Tuesday my body thinks it's Friday. It wonders when it will ever crash through the wall and get its endorphin rush. Caffeine helps.

Many risk managers say attending the entire RIMS conference is too long, and many exhibitors say it is too long. But neither wants to shorten the agenda and risk alienating the other.

I know I'm not alone in thinking that the RIMS conference can seem like an endurance contest. And because of that, I think some adjustments need to be made to keep people focused on the important stuff: the educational sessions, the networking and the exchange of ideas.

For starters, exhibitors should re-examine the goodies and trinkets they use to entice people to view their wares.

Instead of key chains, pens, golf tees, mints and tote bags, offerings should be tailored to helping people keep going throughout the conference. Exhibitors during the conference could fulfill the same role as those folks along marathon routes who offer cups of water that runners drink and then use to douse their steaming heads.

This year's RIMS conference featured a dessert reception in the middle of the exhibit hall, which was an excellent first step at boosting the energy levels of attendees with a massive intake of sucrose. But I think there are even greater possibilities to boost the energy and comfort of weary conference-goers.

How about foot massages or epsom salt baths for tired toes? What, you may ask, would be the benefit of having people soak their smelly and ill-manicured feet in your booth? Can you say "captive audience"? Attendees will gladly watch multimedia presentations or listen to a sales pitch while their aching dogs are being soothed.

Some exhibitors past and present have tried to offer helpful products, such as sewing kits, lint brushes and bandages, but these only scratch the surface. I haven't seen many people with bleeding wounds on the floor (but then I wasn't looking that closely).

Pain relievers distributed at booths would be a big draw for conference-goers. Packets of aspirin, acetaminophen or ibuprofen could sport corporate logos and sales messages. Grab some Eau de Reliance or Sedgwick Springs bottled water to wash 'em down.

In fact, the possibilities for pharmaceutical tie-ins are vast. Visine? Vivarin? Breath Asure? Maybe melatonin for people trying to reset or trick their body clocks thrown into disarray by time-zone travel? Antacids?

Exhibitors touting various claims and case management services staffed by qualified medical personnel would have a real edge in this area, because they could detail some of these staff to the conference to administer more advanced services: IVs to replenish fluids, B-12 vitamin shots for pep, chiropractic adjustments, and so on.

A person isn't likely to trot past a booth avoiding eye contact when such relief is at hand. That three-hour session on basis risks will look fresher.

What do you think? Heck, with the measures I've outlined, I think most people would be willing to stay for a two-week conference.

Editor Paul D. Winston and Publisher and Editorial Director Kathryn J. McIntyre write columns on alternate weeks.

## Transit

*Continued from previous page*  
California regulators on the Executive Life Insurance Co. insolvency. He denied that family connections influenced the hiring.

"We employ lawyers as we need them, and the fact that he has a brother in the Senate who I've known for many years played no part in the decision," Mr. Arnold said.

Michael Curls also said he was hired for his legal experience.

Sen. Curls said, "I don't imagine that (his connections) hurt," but added that "there was no leverage associated with (my) position that secured that for him."

Transit also employed Sen. Curls' son, Philip Curls, on a part-time basis while he attended law school, Mr. Arnold confirmed.

Another Transit employee, William Siebert, manager of the Jefferson City claims and records storage operation, is an old friend of Mr. Arnold and a friend and former business partner of Judge Kinder.

In a judicial disclosure filing five months before he approved Mr. Siebert's appointment as Transit special projects director in 1990, Judge Kinder reported that he'd received a \$1,000 "consulting fee" the previous year from Strategies Management Inc., a company owned by Mr. Siebert.

Judge Kinder said in an interview that the money came from a failed attempt by the two men to enter the pay phone business. "We tried it, it didn't work, and we made a grand total of \$2,000," he said, adding that he and Mr. Siebert also owned a resort facility together "for a couple of years."

The judge said Mr. Siebert's hiring did not present a conflict. Mr. Arnold said he hired Mr. Siebert for his management ability and previous experience overseeing receiverships for a Jefferson City hotel and a Missouri state employees pension fund.

"The fact that he knew Judge Kinder certainly didn't hurt the situation, but on the other side of the coin that's certainly not why he was selected," Mr. Arnold said.

Mr. Siebert referred questions to Mr. Owen, Transit's lawyer, whose comments echoed those of Mr. Arnold and Judge Kinder.

Mr. Siebert is also a partner of Jefferson City businessmen Paul E. Chinn and Robert H. McCurren III in a company that owns a Jefferson City office building. That building houses The McCarthy Group, the lobbying firm that is owned by Mr. McCarthy, Transit's general counsel, and that employs Judge Kinder's wife, documents show.

Separately, Mr. Chinn and Mr. McCurren are partners in another company, McChinn Properties, that has received \$223,552 in rent from Transit since December 1992 for a Jefferson City warehouse where Transit records are stored.

Mr. Chinn and Mr. McCurren could not be reached.

Another longtime Transit employee is Susan Sommers, Mr. Arnold's sister-in-law and Transit's manager of strategic planning. Mr. Arnold said her work includes charting the implementation of Ernst & Young's Transit liquidation plan. He added that she is also well-qualified for the job and holds a master of business administration degree from Pepperdine University in Malibu, Calif.

Meanwhile, the receivership has

also paid \$267,492 since December 1992 to Krieger & Krieger, a Jefferson City accounting firm that reviews Transit financial filings for Judge Kinder.

Judge Kinder said that the firm is his personal accountant and does his income tax returns, and that he picked the firm because he knows it: "Why not? I have to have confidence in (them)," he said.

Harold F. Krieger Jr., a principal with the firm, could not be reached.

Mr. Arnold and Judge Kinder acknowledge knowing many of the people who have gone to work for the receivership but insist they have not approved hiring on the strength of personal connections alone.

"I can't turn this into a megalopolis. It's a small town. It's a damn small town," Judge Kinder said. "I can't change the fact that we are a small group of people. It has its advantages and its disadvantages."

Transit representatives repeatedly emphasize that what matters is not who is on the payroll or what their particular expenses are, but whether those people and expenses have produced recoveries for the estate.

"The real question is how the total expenses of the receivership bear on the amount of money recovered," Judge Kinder said. "Am I comfortable with the amount of money expended? Yes, or I wouldn't have approved it."

Measured by its recoveries and its distributions to creditors, the receivership has been a success, Mr. Arnold said.

"I can't think of an estate other than Mission, which is winding itself down, that has paid out the kind of money Transit has paid," he observed. **BI**

## PARCA

*Continued from page 1*

ate new liabilities for employers and health plans. The measure got a boost last week when nine House Republicans announced support for the bill.

Despite the Chamber's action, other members of the HBC coalition said they would not specifically request that their member companies stop providing health care benefits if PARCA or other wide-ranging federal health-care legislation becomes law.

A spokeswoman for the Washington-based National Federation of Independent Business said it would not recommend that its members automatically stop providing coverage.

"If PARCA passes, which we certainly hope it will not, we will definitely educate and inform our members of the additional costs and the ramifications of the legislation," the spokeswoman said. "NFIB's belief is that the fear of litigation and the increased premiums due to mandates, many members will be forced to drop their coverage. The goal of health care reform is to be able to provide affordable health insurance, and PARCA definitely increases costs and will put more people on the lists of the uninsured," she said.

"We wouldn't have to tell our members. They would probably do it on their own, because obviously liability is such a huge issue for them," said Patrick Cleary, vp-human resources policy for the National Assn. of Manufacturers in Washington.

"We've heard from a number of them already that indeed they would drop insurance because it is such a wild card and a potentially damaging thing, certainly fatal to them in terms of being able to put them out of business," he said.

"Any decision regarding employee benefits would be up to the individual companies," said a spokesman for the American Insurance Assn., which also is a member of the HBC coalition.

The liability study, prepared by

Washington-based Barents Group L.L.C., unit of KPMG Peat Marwick L.L.P.—examined how much liability provisions in proposed federal legislation would increase the cost of health coverage. For example, PARCA would expand the liability of health plans and employers by changing the ERISA to allow state law actions for bad-faith claims denial suits and the like.

The Barents study—"Impacts of Four Legislative Provisions on Managed Care Consumer: 1999-2003"—is the first to specifically examine the cost of expanded liability. Other studies, including those by Coopers & Lybrand L.L.P. and Milliman & Robertson have focused on other aspects of PARCA (*BI*, April 27). Both those studies showed some increase in costs if PARCA were enacted.

The study also projected increased costs for any legislation that would eliminate the ability of plans to decide whether a service is "medically necessary" and therefore covered; institute any willing provider provisions; or deem utilization review the legal equivalent of practice of medicine.

But the employer groups' greatest concerns were with the possible impact of the liability provisions.

"We see the proposed expansion of liability as the greatest of many threats" posed by PARCA, said the Chamber's Mr. Josten.

"Opening the door to lawsuits" will drive up the cost of coverage to everyone, he said. "Can you think of a greater incentive not to offer insurance?"

According to the Barents study, prepared for the Washington-based American Assn. of Health Plans, an organization of managed care companies, changes in the liability system governing health plans would increase premiums by anywhere between 2.7% and 8.6%. The wide variation reflected both the use of differing assumptions for the cost of malpractice insurance for medical plans and the costs of taking "defensive medicine" actions, such as ordering

more tests to help in the defense of malpractice claims.

The increased costs associated with liability changes would cut the number of insured workers significantly by 1999, according to the study. Using the low estimate of a 2.7% increase in costs, roughly 561,000 workers would lose coverage. Under the high-end estimate, the number would jump to nearly 1.8 million.

The outlook for PARCA's passage in its current form is extremely uncertain, as both proponents and opponents of the measure have admitted, even though about half of the members of the House of Representatives have signed on as co-sponsors of the measure. A spokesman for Rep. Norwood did not return calls seeking comment on the Barents' study and the Chamber's intention to ask its members to stop providing health care coverage if PARCA passes.

Meanwhile, the Blue Cross & Blue Shield Assn. released its analysis of the impact of federal proposals on managed care quality last Friday. According to the Blues analysis, meeting the requirements of such proposals—reporting of patient and provider-specific medical information and measurement of health outcome/improvement—would mean less choice as open access plans such as preferred provider organizations would have to become more like tightly managed health maintenance organizations.

"The administrative cost and outcome management expectations of the federal quality proposals would create overwhelming pressures on PPOs and other relatively unrestricted network products to become indistinguishable from HMOs," according to the Blues.

"Impacts of Four Legislative Provisions on Managed Care Consumers: 1999-2003" is available from the American Assn. of Health Plans by accessing the research and library section of its World Wide Web site at [www.aahp.org](http://www.aahp.org) or by faxing a request to Don White at 202-778-7487.

# Pension

*Continued from page 1*

restricted to just contributory defined benefit plans, it's merely a bad decision. If there's leakage to others, this is a horrific decision," said Kyle Brown, retirement counsel with Watson Wyatt Worldwide in Bethesda, Md.

"There are two main issues in *Hughes*: The first is whether amending a contributory plan is a fiduciary act; the second is, what constitutes a plan termination. I think the 9th Circuit got both of them wrong," said Mr. Brown. "My fear is that the Supreme Court will decide only one of those issues. We'd be much better served if we got both of those issues clarified. What constitutes a plan termination obviously will affect any employer," he said.

The Pension Benefit Guaranty Corp. filed a brief in support of *Hughes*, holding that there was no termination of the plan.

"We have an abiding interest in pension law relating to plan termination," said an attorney for the federal agency. The attorney said the agency believed the 9th Circuit erred in its decision, which "upsets the expectations of the benefits to which employees will be entitled," said a PBGC attorney.

"It's a disincentive to well-funded plans," the attorney said. The decision "would be a disincentive for employers funding their plans well or maybe even continuing them."

"The case has some significance. However, many defined benefit plans

do not permit employee contributions, and the case is thought to be applicable only to plans with employee contributions," said Pam Scott, a principal with The Kwasha Lipton Group of Coopers & Lybrand in Fort Lee, N.J. "However, since so many pension plans have significant surpluses these days, all surplus-related litigation will be watched closely. It is significant that the Supreme Court chose to hear arguments," she said, adding that often means the high court intends to reverse a lower court decision.

The case stems from *Hughes'* amendments to its pension plan. The plan was originally funded by both employer and employee contributions. But *Hughes* amended the plan in 1991 so that it only depended on employer contributions and created a two-tier plan. Employees who retired before 1991 got higher benefits than those covered by the new plan. Employees who had not retired but who had worked for *Hughes* before 1991 could choose between continuing to make contributions or being covered by the amended plan.

Mr. Jacobson and four other retirees, acting as representatives of a class of retired and active *Hughes* employees, sued *Hughes*. They claimed *Hughes* had actually terminated the original plan and used the \$1 billion surplus built up over the years by both employer and employee contributions for its own ends and to fund the benefits of workers who had not contributed to the plan. The plaintiffs charged that in so doing *Hughes* had violated ERISA.

A U.S. District Court in California

issued a summary judgment in favor of *Hughes*, but a three-judge panel of the 9th U.S. Circuit Court of Appeals in San Francisco reversed the ruling by a 2-1 vote. Writing for the majority, Judge Harry Pregerson's Jan. 23, 1997, opinion read in part, "we hold that, when an employer is not the sole contributor of a pension plan, the employer does not have sole discretion to use the asset surplus of the plan. If employees contribute to the plan, the employer has a fiduciary duty to the employees when it amends the plan to use the asset surplus."

## 'The 9th Circuit decision upset conventional expectations as to the permissible use of surplus,' says Pam Scott.

The lone dissenting judge issued a sharp rebuke.

"The majority holds that plaintiffs have stated a claim upon which relief can be granted under ERISA on the theory that *Hughes* terminated the plan when it merely amended it to include a non-contributory benefit structure as well as a contributory benefit structure. Thus, the majority clears the way for plaintiffs to continue on their quest for their pot of gold, a share of the \$1 billion surplus," wrote Judge William A. Norris.

"In my view, there is no basis in ERISA, the case law or logic for the

majority's decision that in amending its pension plan, *Hughes* effectively terminated the plan," he wrote.

"The way the 9th Circuit has held threatens the ability of employers who have sponsored contributory plans to adopt benefit structures responsive to their competitive needs," said Sussan Mahallati, labor counsel for the National Chamber Litigation Center Inc., a unit of the U.S. Chamber of Commerce in Washington. The Chamber was one of several business groups that filed briefs in support of *Hughes'* position.

In its brief, the Center said employers who are required to fund any shortfall in a defined benefit plan will be less likely to offer defined benefit plans if any amendment of the plan that takes effect while the plan is overfunded can trigger termination and distribution of all surplus plan assets, Ms. Mahallati said.

"If the Supreme Court upholds the 9th Circuit decision, we'll see a lot more class actions being brought where there are surplus plan assets," she said.

Kwasha Lipton's Ms. Scott said, "If the court were to side with the retirees, we would be in the same situation that employers are effectively in now, in that they would be unable to use surplus that is attributable to employees."

Although the decision applies only to the 9th Circuit, advisers to most plan sponsors are saying sponsors should follow the decision, because there are no other cases on point, she said. "Many lawyers would be extremely hesitant to advise employers

to use surplus attributable to employees' contributions," she said.

If the Supreme Court reverses the appellate decision, plan sponsors will be able to use all the surplus in a plan for the benefit of all employees who are participants, not just those who have contributed, she said.

Before the *Hughes* case, many employers thought that under ERISA they could use surplus for the benefit of all participants and beneficiaries, she said.

"The 9th Circuit decision upset conventional expectations as to the permissible uses of surplus," she pointed out.

Watson Wyatt's Mr. Brown said: "There's good news and there's bad news. The bad news is if the Supreme Court holds against *Hughes*, employers would be well served to think twice about defined benefit plans. The good news is I think the chances of that are small."

Mr. Brown said he has "high hopes" that because of its decision in *Lockheed vs. Spink*, "the Supreme Court will bring a rational approach back to all this."

In *Lockheed Corp. vs. Spink*, the Supreme Court justices rejected a plan participant's claim that amending the plan was a fiduciary act and that Lockheed's board of directors thus did not run afoul of ERISA when they amended a pension plan to use surplus assets to fund an early retirement program. *Hughes* has argued that the 9th Circuit's decision in the case before the Supreme Court is in direct conflict with the high court's ruling in the older case. **BI**

# Texas

*Continued from page 1*

any telemedicine proposal be carefully scrutinized to protect workers' rights to personalized care and the confidentiality of their medical records.

Their scrutiny may be needed soon in Texas, because ROC researchers now are exploring the feasibility of establishing a pilot program to test the concept. The nine-member council is expected to vote, probably in December, on whether to recommend that the Texas Legislature consider approving such a pilot program, said June L. Karp, ROC's outgoing executive director.

"Telemedicine is often cited as one of the most promising new technology applications of the 'Information Age.' It is designed to eliminate the problem of distance in the delivery of medical care, thereby increasing system efficiency, effectiveness of treatment and access to resources," according to the 18-page ROC report.

"While telemedicine is an emerging form of medical care delivery in general medicine, it is virtually unknown in the field of workers compensation," researchers said. ROC researchers mailed a survey to all state

workers comp agencies on the topic. Of the 61% that responded, none was involved in telemedicine programs.

Telemedicine could help, for example, in impairment rating determinations if both sides could designate one doctor from a pool of experienced practitioners familiar with the workers comp impairment rating process. The doctor could participate in a live, two-way video teleconference with the injured worker, who would have the treating physician or another medical professional with him or her in person during the teleconference.

ROC researchers pursued the topic because it has special relevance in a state such as Texas, where 17 million residents are scattered over 261,914 square miles.

Claims from workers who live in rural counties consistently account for more than half of all workers comp claims in the state, researchers report. They amounted to 57.2% of all workers comp claims filed in 1997, which was slightly higher than the seven-year average of 56.2% from 1991 to 1997.

According to the report's definitions, a rural county has fewer than 50,000 residents and is not adjacent to a greater metropolitan area, such as Dallas or Houston.

Other factors contributing to the researchers' interest in telemedicine include a recent state law requiring many general health insurers to provide coverage for such services, as well as the availability of extensive medical facilities using the new telemedicine technology.

"Texas has one of the most extensive telemedicine infrastructures in the country," with major programs at medical facilities in Lubbock and Galveston and several smaller programs, according to the report.

However, one factor that may affect the process is that Texas allows an injured worker to choose the treating doctor.

While researchers did not address that issue, they did say telemedicine "might produce important system efficiencies" in obtaining impairment ratings by "designated doctors," whom workers and employer/insurers jointly choose to resolve impairment rating disputes. Those disputes occur in about half of all contested cases.

Resolution of those contested cases may be helped by real-time video conferencing or by the "store-and-forward" approach, which is the equivalent of electronic mail, the report said. In addition, medical records could be transmitted elec-

tronically in advance of the consultation or reviewed at the time of the consultation. Also, a video recording of the examination could be used for future reference.

ROC researchers said benefits of such a teleconference could include increasing conformity among ratings, minimizing problems created by inexperienced doctors, increasing collaboration among health care professionals, and increasing injured workers' satisfaction with the process.

In addition, researchers said similar efficiencies and benefits may result from using telemedicine to obtain second opinions about the advisability of spinal surgery, which the Texas system allows both workers and insurers to seek.

Researchers also identified general benefits from telemedicine as accelerated diagnosis and treatment, improved quality of care and improved medical records management. The new method also would reduce travel costs, which insurers are required to pay.

Despite ROC's listing of potential benefits, any proposal for a state workers comp system to adopt teleconferencing will undergo scrutiny before being tested.

"I'm a strong advocate of replacing current technology with computer

technology, but I'm a little nervous about using telemedicine to replace in-person medical examinations," said Melody Cathey, director of education and research for the International Assn. of Industrial Accident Boards & Commissions in Shawnee Mission, Kan. "Like managed care, people may fear that the new process may create barriers between patients and physicians," she said.

"I think providing telemedicine can be an advantage to workers, providing safeguards are there to prevent abuse of the system," said Don Judge, executive director of the Montana state AFL-CIO in Helena.

Adopting a ROC-type proposal in Montana could result in prompter and higher quality medical care for workers, he said. However, it also could depersonalize treatment and create confidentiality problems over dissemination of information contained in a worker's medical records.

In addition, the AFL-CIO would be concerned about how doctors are chosen to participate in such an evaluation process and whether they could become so tied to the workers comp system that their creativity might be stifled, he said.

A telemedicine proposal is worthy of review, but "the devil is in the details," Mr. Judge said. **BI**

# Year 2000

*Continued from page 2*

\$300 billion to \$600 billion.

"Obviously a great deal of work either is planned or is under way to deal with the Year 2000 problem," he said in his testimony. "But what if something slips through the cracks and we experience the failure of some 'mission critical' systems?"

"How will a computer failure in one industry affect the ability of other industries to continue to operate smoothly? The number of possible scenarios of this type is endless, and today no one can say with any confidence how severe any Y2K disruptions could be or how a

failure in one sector would influence activity in others," Mr. Kelley said.

He added, however, that there are many examples of how economic activity has been affected by disruptions to the country's physical infrastructure. "Although the Y2K problem clearly is unique, some of these disruptions to our physical infrastructure may be useful in organizing our thinking about the consequences of short-lived interruptions in our information infrastructure," Mr. Kelley said.

These include the early 1996 major winter storm that paralyzed large portions of the eastern United States (*BI*, Jan. 15, 1996), with commerce grinding to a halt for up to a week in some areas, and last sum-

mer's strike by United Parcel Service of America Inc. workers.

With the storm, "activity bounced back rapidly once the roads were cleared again," while the strike's overall impact on economic activity was small, Mr. Kelley said.

"Hopefully, any Y2K shock to our information infrastructure would also be transitory and would share the characteristics of these shocks to our physical infrastructure," said Mr. Kelley.

La Jolla, Calif.-based ZD Market Intelligence, which conducts a monthly ongoing survey of information technology professionals, analyzed information obtained from IT managers at more than 19,000 sites among 2,441 companies

that have at least 1,000 employees.

According to research results released last month, only 17% of the 19,000 sites contacted have completed their Y2K projects, though another 54% have ongoing Y2K projects, and 8% have plans to start projects, while 21% said they either have no need or plans to address the issue.

There were significant differences, though, based on the types of computers used. For instance, only 10% of sites with mainframe computers had completed their project activity, while another 70% had an ongoing project.

On the other hand, 19% of sites that use midrange systems or servers had completed projects, while another 54% had ongoing

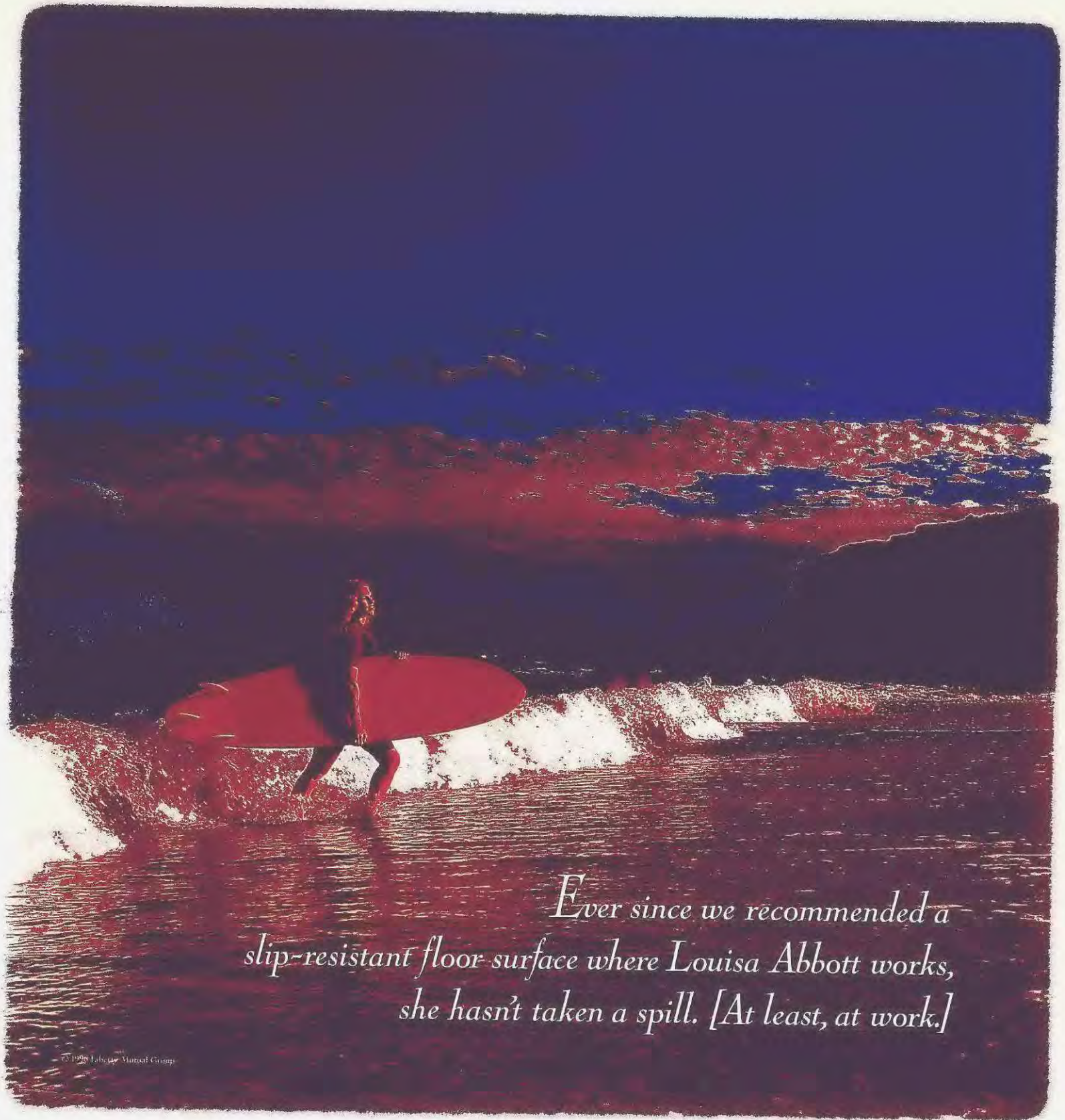
projects. Midrange systems are those where some of the work is done at the individual user's work station and some by a central file server or computer system. Among sites with personal computers, 13% had completed projects, while 38% had ongoing projects.

Jerry Berry, senior industry analyst-software and services, said considering that only 17% of all sites have completed their Year 2000 project, "I get a sense that many companies have underestimated the size of the problem and what it's actually going to take to complete the Y2K project."

"I think a lot of companies are going to fall short of being able to complete the projects on time," Mr. Berry said.



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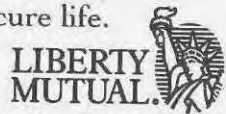


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