

Business Insurance

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Insured losses expected from global computer virus

The "Love Bug" virus that raced through computer systems worldwide last week could produce insurance claims for first-party and third-party losses, say brokers who specialize in Internet-related risks.

But by last Friday morning, those brokers had not seen any claims stemming from the virus that got its name after first appearing late Wednesday with the words "I Love You" on e-mail subject lines.

Computer owners likely are still assessing the extent of any damage, said Emily
See Updates on next page

Hawaii adds captive class

By ROBERTO CENICEROS

HONOLULU—A new law in Hawaii allows the formation of a new, special type of captive that would provide reinsurance or excess insurance for international risks.

The facilities also could write coverage for U.S. operations.

The new law expands Hawaii's existing captive statute to create a new type of captive insurer. These entities insuring risks located outside the United States would abide by the minimum reserve

standards set in the country in which the captive's ceding insurer is domiciled or the excess insurance risks are located.

For non-U.S. risks, the captives also may invest their funds according to the insurance regulations established by the jurisdictions in which the exposures are located.

Hawaii regulators, however, will have ultimate discretion in setting minimum capital and surplus requirements on a case-by-case basis. They also will have ultimate say in the investments and

where they are made.

Furthermore, the law will allow captives to use the accounting standards applied in other nations so they are not bound by the generally accepted accounting principles in the United States.

The new facility types are considered Class 5 captives under Hawaii's captive law. Previously established classes include pure captives, risk retention groups and leased facilities. Late last month, Hawaii Gov. Benjamin Cayetano signed into law the legislation creating the new captive

category. It became effective immediately.

Formation of the captives will raise Hawaii's stature as a captive insurance center, experts say. It will increase the domicile's focus on its own potential market sphere, which includes the West Coast and the Pacific Rim. It may also position the domicile to boost its business dealings with Japanese captive owners and Japanese insurers.

Experts also expect the facilities could bring increased special-
See Hawaii on page 57



Court restricts pollution exclusion

By MARK A. HOFMANN

OLYMPIA, Wash.—The absolute pollution exclusion does not apply to bodily injury claims based on negligent tort simply because a "potential pollutant" caused the injury, the Washington Supreme Court has ruled.

Attorneys disagree, however, over whether the decision will have any impact beyond Washington's borders.

Kent Farms Inc. vs. Zurich Insurance Co. began in 1994, when a man delivering diesel fuel to Othello, Wash.-based Kent Farms Inc. was blasted in the face with fuel because of a faulty intake valve on the farm's fuel storage tank. Steven Gugenberger suffered "significant injury," and sued Kent Farms in Adams County, Wash., Superior Court, according to the Washington Supreme Court decision. The claim was settled for an undisclosed amount, and Kent Farms, which had a commercial farm liability insurance policy underwritten by Zurich Insurance Co., sought coverage and defense costs from the insurer. Zurich refused, claiming that "coverage was precluded by a pollution clause in the policy," according to the decision.

The trial court disagreed with Zurich's position, as did the state court of appeals, holding that diesel fuel "is not a pollutant when used as intended." Zurich appealed to the state Supreme Court, which issued its ruling on April 27.

"This exclusion clause does not deal with the discharge of substances that may also be pollutants directly onto (and into) an individual; rather, this clause specifically addresses those situations in which injury was caused by environmental damage," wrote Justice Charles W. Johnson for the unanimous court.

The decision noted—and then dismissed—Zurich's argument that the exclusion clause applied because diesel fuel is a pollutant.

That reasoning "misunderstands the nature of the claim," wrote Justice Johnson. Mr. Gugenberger "was not polluted by diesel fuel. It struck him; it engulfed him; it choked him. It did not pollute him. Most importantly, the fuel was not acting as a 'pollutant' when it struck him any more than it would have been acting as a

See Pollution on page 57

Banks named in suits over failed insurers' assets

By DOUGLAS McLEOD

DALLAS—Years after their collapse left thousands of policyholders in the lurch, several fraudulent offshore insurers are returning to haunt a new group of businesses: the U.S. banks that managed trust accounts intended to protect policyholders but that ultimately proved worthless.

Receivers and claimants of two defunct Caribbean insurers—including one operated by infamous former London underwriter Peter Cameron-Webb—are suing Chase Bank of Texas N.A., charging that the bank helped conceal the insurers' insolvency for months while their operators siphoned premiums offshore.

The actions, involving Alpine Insurance Co. Ltd. of the Turks & Caicos Islands and Mr. Cameron-Webb's

Western Star Insurance Co. Ltd. of Antigua, follow a similar 1998 lawsuit against a New Mexico bank by the liquidator of the bogus Meadowlark Insurance Co. Ltd.

The New Mexico bank, since absorbed by Bank of America, settled the case earlier this year for \$900,000.

In all three cases, the banks executed standard form trust agreements drafted by the National Assn. of Insurance Commissioners to protect policyholders of alien insurers. The banks violated the agreements, though, by allowing the insurers to fund the trusts with questionable assets and by modifying the agreements to relieve themselves of reporting and other obligations, the suits allege.

The trusts were a handy marketing tool for the off-
See Banks on page 55

Employer facing challenges after shares plummet

Taking stock of purchase plan

By JOANNE WOJCIC KOCHANIEC

USEC Inc.'s employee stock purchase plan began as a success story.

A booklet that was awarded the Best of Show by a panel of independent judges in *Business Insurance's* 1999 Employee Benefit Communications Awards competition persuaded some 60% of USEC's employees to buy stock in the company. Usual initial participation in such plans is only about 30%, consultants say.

And generating interest in the plan had been an especially

formidable challenge for USEC, which is the world's leading supplier of enriched uranium fuel for commercial nuclear power plants. Not only had the company just gone public, it was also a newly privatized spinoff of the U.S. government, and many of its employees had never worked for an organization that offered stock.

But less than two years after the plan's inception, the stock that employees rushed out to buy has plummeted in value. USEC shares closed Friday at \$4.69, down 67% from \$14.25 at their initial offering.

The Bethesda, Md.-based com-

pany also has reduced its dividend to investors, and both Standard & Poor's Corp. and Moody's Investors Service Inc. have lowered USEC's credit rating to below investment grade. In addition, hundreds of USEC's workforce—possibly as much as 20%—are being asked to quit voluntarily or risk being laid off, according to press reports.

USEC's riches-to-rags story is not the first, benefit consultants say.

And with the growing popularity of stock being offered to employees as compensation by the
See Stocks on page 54



2000 RIMS Report
begins on page 3

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Updates

Claims expected from virus

Continued from previous page

Freeman, practice leader for Marsh Inc.'s e-Business Risk Solutions in San Francisco.

The bug is a particularly destructive one that attaches itself to computer files and then surfaces for later attacks, Ms. Freeman explained.

Various media sources reported late last week that the computer virus originated in the Philippines, attacked millions of computers and may cause \$1 billion in losses by forcing many businesses and government agencies to shut down their e-mail systems for repairs.

The virus can destroy or damage software and data and interrupt business, all of which could result in insured claims, Ms. Freeman explained.

In addition, it could also result in liability claims if a policyholder passes the bug on to another party and the virus causes losses, she said.

Insurance coverage for such losses could vary by policy type. Some specialty Internet products only cover first-party losses, others only pertain to third-party risks, and some products address both.

But nearly all those products are relatively new, and many business computer owners may not have any coverage, insurance industry experts said.

Any claims arising from the virus attacks are likely to be numerous but not severe for insurers, said Brad Gow, assistant vp-information technology products group for ACE USA in Philadelphia. ACE offers specialty coverage for Internet risks.

So far, the virus appears to have spared dot-com companies that provide Internet services for other businesses, said Peter R. Taffae, vp of the financial services division for surplus lines broker Brown & Riding in Los Angeles. Therefore, he expects most claims will be of a first-party nature, while third-party losses will be minimal.

Treasury reviewing retiree info

WASHINGTON—The U.S. Treasury Department is reviewing whether employers are providing early retirees sufficient information to enable them to compare the value of taking their pension benefit as a lump-sum benefit vs. taking them as a monthly annuity.

In a letter released last week by Sen. Tom Harkin, D-Iowa, Acting Treasury Department Assistant Secretary Robert Talisman said the information gathering should identify what types of disclosure are needed to best serve employees without inundating them with misleading or confusing data.

Currently, a lump-sum benefit does not have to be equal in value to an annuity in situations in which the employer provides a subsidized early retirement benefit. A subsidized annuity is one in which the employer does not fully reduce the benefit to reflect the fact that an employee is retiring before his or her normal retirement age.

Sen. Harkin, who said he welcomed the Treasury Department action, said it is "outrageous" that employers may "bury" the fact that a lump-sum benefit does not include early retirement subsidies.

Bermuda premier attacks tax plan

SAN FRANCISCO—A bill in Congress that aims to close an alleged Bermuda tax loophole is an attempt to dictate the tax policy of Bermuda, says Bermuda Premier Jennifer Smith.

Speaking at a meeting this week during the Risk & Insurance Management Society Inc.'s annual conference and exhibition in San Francisco, Ms. Smith said the measure, H.R. 4192, also unfairly singles out Bermuda as a target and ignores many other countries, including several in Europe, whose tax systems differ from that of the United States.

The bill received strong backing, however, from one of four U.S. insurers that proposed the legislation.

Dean O'Hare, chairman and chief executive officer of Chubb Corp. in Warren, N.J., labeled the transactions that the bill would penalize as "phony reinsurance" and said he was confident that the issue would be addressed this year.

The bill was introduced into the House of Representatives in March as an attempt to increase the taxes on the U.S. affiliates of Bermuda-based companies that reinsure U.S.-based risks with their Bermuda affiliates.

The insurers that backed the bill—Chubb, the Hartford Financial Services Group Inc., Liberty Mutual Insurance Co. and Kemper Insurance Cos.—contend that the loss reserves of the reinsured business grow tax-free in Bermuda, which gives the Bermuda-owned companies an unfair advantage over their U.S. competitors.

Bermuda-owned insurance companies, however, say that the reinsurance transactions are priced at commercial rates and that the premiums reinsured are subject to an excise tax in the United States.

Regardless of the details of the transactions, the legislation is an attempt by some members of Congress to interfere in the fiscal policies of another country, said Ms. Smith.

"They should not try to dictate the tax legislation of another country," Ms. Smith said.

The bill also is written in such a way that it would affect only Bermuda, while many other countries' tax systems differ from that of the United States, she said.

At a separate meeting earlier in the conference, Mr. O'Hare said
See Updates on page 58

Ruling may spur uptick in securities litigation

By JUDY GREENWALD

SAN FRANCISCO—A California appellate court decision that permits investors to sue stockbrokers under the state's unfair competition law could lead to a dramatic increase in litigation, attorneys warn.

Some attorneys, however, disagree and say the April 27 appellate court decision in *James Roskind vs. Morgan Stanley Dean Witter & Co.*, which held that federal law does not pre-empt suits

filed under the state law, is unlikely to lead to more lawsuits.

According to the decision by the California Court of Appeal for the 1st Appellate District, Mr. Roskind had ordered New York-based Morgan Stanley to sell 14,000 shares of Netscape Communications Corp. stock on his behalf. Instead of selling it at the \$68 a share at which it was then trading, though, the brokerage "traded ahead" and delayed the sale while it sold its own block of Netscape stock first.

By the time Morgan Stanley sold Mr. Roskind's stock, 77 minutes later, the price had dropped, causing Mr. Roskind to lose \$34,000 he claimed would have made had the firm acted promptly. Mr. Roskind complained first to Morgan Stanley and then to the Market Regulation Committee of the National Assn. of Securities Dealers Inc., a private, self-regulating group of dealers.

Under a settlement reached between NASD and Morgan Stanley
See Suits on page 55

Buffett defends reserves

\$275 million adequate to cover Gen Re's Unicover losses

By MARK A. HOFMANN

OMAHA—A \$275 million reserve set aside more than a year ago to cover the losses of a General Reinsurance Corp. unit from the collapse of the Unicover Managers Inc. reinsurance pool remains adequate to cover the exposure, according to Warren Buffett, chairman of Omaha-based Berkshire Hathaway Inc.

Mr. Buffett offered that assessment at Berkshire Hathaway's annual meeting late last month, as he fielded questions from shareholders about the performance of individual Berkshire Hathaway holdings, including Gen Re, and about his investment philosophy and market outlook.

Although he did not have to deal with a flood of questions many observers had expected about Gen Re—which suffered underwriting losses of more than \$1.18 billion last year—Mr. Buffett defended the reinsurer as having
See Buffett on page 56



PHOTO: AP/WIDE WORLD
Berkshire Chairman Warren Buffett fielded questions on unit General Re at the annual meeting.

Odd benefits draw critics

Plan consistency favored

By LEE FLETCHER

Although some exotic benefits may be offered to attract new employees, industry consultants and benefit managers agree that consistency, cost and utilization rates are important aspects to consider when determining which benefits to offer employees.

Mike Hayes, a Chicago-based managing consultant with Watson Wyatt Worldwide, does not encourage clients to offer exotic types of benefits to individuals because, he said, it inevitably leads to more of the same.

"Some employee requests are very individualistic. You're really not satisfying a broad need in any way, and you are opening yourself to numerous other requests," Mr. Hayes said.

Before a company offers an exotic benefit, Mr. Hayes said, management should assess the emotion of the situation; only in a unique situation is
See Benefits on page 55

Class-action suits to continue

By RODD ZOLKOS

ATLANTA—Class-action litigation is going to remain a feature of the legal landscape in the years ahead, so executives of businesses that might find themselves targeted should be prepared to deal with it.

"I have come to understand that there are abuses of our class-action rules," said Robert E. Hirshon, a shareholder in the Drummond Woodsum & MacMahon law firm in Portland, Maine, and president-elect of the American Bar Assn.

"The rule is not perfect. Like any rule, it can be, and has been, abused.

"But class action is absolutely essential to our American system of justice," Mr. Hirshon said. Consequently, eliminating the practice would be a serious mistake, he said.

Moderating a session on class-action litigation at the Alliance of American Insurers' annual meeting last month in Atlanta, Mr. Hirshon noted: "A fundamental objective is uniformity of decisions to people similarly situated. Class-action lawsuits provide access to our legal system where access might not
See Class on page 58

Inside

- The Department of Health and Human Services' proposals on privacy in medical records could end up causing more problems than they solve, this week's editorial says. **PAGE 8**

- Japanese non-life insurer Dai-ichi Mutual Fire & Marine folds, in the first failure by a non-life insurer in that country since World War II. **PAGE 49**

- Dutch insurance conglomerate ING Group is looking to expand its presence in the U.S. life and benefits marketplace with a planned \$6.1 billion purchase of ReliaStar Financial Corp. **PAGE 50**

- The National Council on Compensation Insurance's annual issues symposium looks at the changes taking place in the workers compensation market and their impact on employers. **PAGE 53**

Departments

Advertiser Index	56
Classifieds	54
For the Record	59
Global Briefs	49
Insurance Services Guide	52
International	49
Opinions	8
Ticker	59

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RIMS seeking to expand membership ranks

By MICHAEL BRADFORD

SAN FRANCISCO—As the Risk & Insurance Management Society Inc. moves into its second half-century, RIMS' president wants the society to broaden its ranks and become more relevant to its members.

RIMS, which celebrated its 50th anniversary at this year's annual conference and exhibition in San Francisco, is considering changes that the organization hopes will attract and retain members, said Roger L. Andrews, the society's new president. Mr. Andrews is general counsel and director-risk management at E.D. Bullard Co. in Cynthiana, Ky.

"The strength of RIMS lies in its volunteers," he told members at the society's annual membership meeting, which kicked off last week's conference. "As a member, each one of us has the ability to make a difference by supporting the efforts of our local chapter or joining a RIMS committee or task force."

But, he acknowledged, "while many are eager to volunteer, time, distance and expense" often prevent risk managers from contributing.

In fact, RIMS has seen its membership decline in recent years. Corporate consolidations, in which "two risk management positions become one," and outsourcing are responsible for some of the drop, while the increasing time demands risk managers face have also contributed, according to Mr. Andrews.

"In the past, we've enjoyed active participation on all levels, from senior risk managers to middle managers," he emphasized. "This is no longer the case. The demands and priorities at work and home preclude many of our members from becoming included in our activities."

"What does this mean for RIMS?" he asked. "It means we need to reach out. We need to make members volunteers, we need to gain new members while regaining lost ones."

RIMS members must become more effective advocates of volunteerism, Mr. Andrews said, touting the professional benefits and value of becoming involved with

the society.

Susan Meltzer, the outgoing president, said "there is something special about being a volunteer at RIMS. Accomplishing the society's missions by developing new programs, strengthening the chapters and increasing the profile of risk management have brought me a great sense of personal satisfaction."

"It has been an honor to serve RIMS as your president for the past year," said Ms. Meltzer, who is assistant vp-insurance and risk management at Sun Life Financial Services Inc. of Canada in Toronto.

Ms. Meltzer said the society has had a "special and productive year" as it embraced the theme of celebrating its 50th anniversary.

As for the year ahead, RIMS is re-evaluating its membership criteria and may make changes to help the organization attract and retain members.

"If RIMS is to accomplish its objective to be the leading association of risk management, it needs to be proactive in these changing times," Mr. Andrews said.

To illustrate how RIMS deputy members can suddenly find themselves on the outside looking in, Mr. Andrews pointed out that members who leave their companies but continue to do the same job on an outsourced basis are no longer eligible to participate in the society. Deputy members must be employed by a member company.

RIMS has created an Associate of the Society membership, which provides limited benefits for individuals not affiliated with a member company. Mr. Andrews said it could be time for a change that would make individual memberships more attractive.

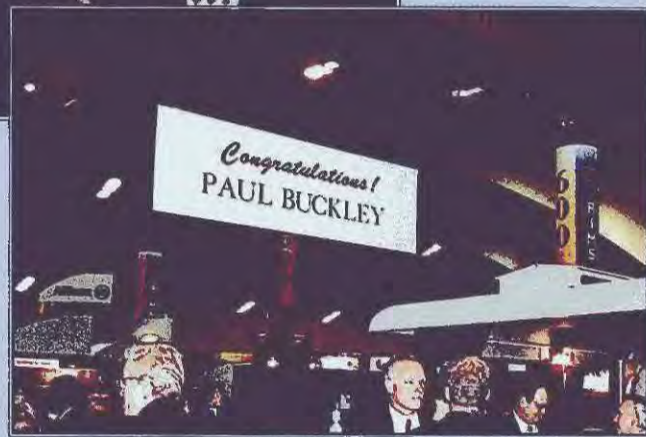
Toward that end, RIMS will consider implementing a full-benefits individual membership category, he noted.

Mr. Andrews said it is significant that, as RIMS strives to make itself more relevant, the media increasingly are calling on the society for risk management information. The past 12 months have seen coverage of the organization in both trade and mainstream

See Society on page 28



PHOTOS: MICHAEL MARCOTTE



RIMS kicked off its next 50 years during the 38th annual conference and exhibition in San Francisco. Outgoing President Susan R. Meltzer passed the torch to Roger L. Andrews, while exhibitors such as Reliance paid tribute to risk management excellence.

Policies on privacy issues help reduce employer risk

By DAVE LENCKUS

SAN FRANCISCO—An employer suspects that a worker is stealing material or trade secrets and searches his computer and briefcase and asks him to empty his pockets.

Another employer believes a worker is selling drugs at the worksite and installs hidden cameras in the work area and in the wash areas of rest rooms to obtain proof.

A third company, fearful of sexual harassment lawsuits, bars office romances. It also monitors phone calls, voice mails and Internet usage at work to make sure employees are not conducting excessive personal business on company time.

Employees may perceive those actions as invasions of their privacy, but employers have the law on their side in all three situations, according to two employment law attorneys.

"Absent a (state) law, there's not a heck of a lot of privacy (for employees), unless the employer gives it to them," said employment law attorney Paul J. Siegel, a partner with Jackson, Lewis, Schnitzler & Krupman of Long Island, N.Y.

Employees at private-sector employers "have zero federal privacy rights," Mr. Siegel said during a session at the 38th Risk & Insurance Management Society Inc. Annual Conference and Exhibition in San Francisco last week.

Employers, however, are best protected when they have implemented policies that advise employees not to expect workplace privacy, he said.

Mr. Siegel explained why workers' personal privacy expectations, which stem from privacy guarantees in the U.S. Constitution, do not extend to the workplace.

The Constitution is a "get off my back document," Mr. Siegel observed. "We pay taxes to the government, so we can tell them what to do. We pay wages to employees, so we get to tell them what their privacy is."

California is an exception; the state's constitution provides employees a right of privacy in the workplace.

Overall, while courts have come down squarely in favor of employers in the hotly debated employee privacy debate, employers still must be careful about violating employees' privacy, according to

See Privacy on page 6



Carefully handling layoffs could head off lawsuits

By GAVIN SOUTER

SAN FRANCISCO—Large-scale layoffs can create sizable risk management problems that have to be handled with care, risk managers warn.

When people lose their jobs, they also lose their incomes and, consequently, are more likely to file workers compensation claims and make employment liability-related complaints, risk managers say.

To minimize any increase in insurance claims and costs after large-scale terminations, risk managers should be involved in the whole process of downsizing, they say.

By making senior managers aware of potential insurance and risk management issues, risk managers can help ensure that terminated employees are cared for as well as possible and that employers are not exposed to large, unnecessary increases in insurance claims.

For example, PepsiCo Inc. went through a major round of layoffs shortly before Christopher E. Mandel, director of global risk management at Tricon Global Restaurants Inc. in Louisville, Ky., joined the company in 1993, he said.

A year after the layoffs, employees who stayed with the company were still scared about losing their own jobs, Mr. Mandel

said during a panel discussion on downsizing at the Risk & Insurance Management Society Inc. annual conference last week.

"There was a perspective of fear that permeated the place... and that was all due to the way it was handled. It was down, dirty and quick," he said.

PepsiCo had called in consultants to analyze the employment levels at the company.

After the consultants filed their recommendations, a "Black Friday" took place. Employees showed up at work and the ones to be fired were immediately escorted to their offices, told to pick up their belongings and

then escorted out of the building, Mr. Mandel said.

As a result, the company immediately saw a rise in wrongful termination lawsuits from former employees, as well as an increase in workers comp claims from existing employees who were unsure of their own positions, he said.

In 1997, when PepsiCo's restaurant business was spun off into Tricon, another round of layoffs took place, but this time it was handled with greater sensitivity and fewer problems arose, Mr. Mandel said.

The first difference was that management explained to the workers that, as the company was no longer owned by a larger hold-

See Layoffs on next page



Layoffs

Continued from previous page

ing company, it had to reduce costs to levels more in line with the restaurant industry and that such cost cutting would mean layoffs, he said.

"They told people early that it was a problem that we had to deal with," Mr. Mandel said. Employees better understood the reasons and that the firings were not random, he said.

As result of taking a more measured and less abrupt approach to terminations, neither workers comp claims nor employment related lawsuits have increased, Mr. Mandel said.

Service Merchandise Co. Inc. in Nashville, Tenn., also managed to avoid large increases in insurance-

related claims when it made large layoffs after filing for Chapter 11 bankruptcy protection in March 1999, said Michelle Scott, risk manager at the retail company.

As a result of the bankruptcy, Service Merchandise reduced its workforce by more than 10,000 and closed about 150 stores, she said.

Once management had decided which stores to close, Service Merchandise communicated with the store managers about three to five days before a public announcement was made, Ms. Scott said. "That gave them time to get used to it," she said.

The employees were also told how long the stores would remain open and were offered financial incentives to stay until the closures, Ms. Scott said.

Service Merchandise then sup-

plied placement packages that gave names and numbers of other retail companies that might be looking for new employees and lists of other job opportunities in the area, she said.

At corporate headquarters, workers who were to be laid off were informed of the decision and then were off the property within four hours, she said.

But the next day, they were invited to an offsite location to discuss their situation with human resources personnel, Ms. Scott said.

The delay gave the employees time to get over some of the immediate emotional impact of losing their jobs and to think of some questions they would want to ask in their meetings the following day, she said.

In addition to informing the

fired employees about their rights to benefits, human resources personnel offered advice on interviewing techniques and how to write a resume, Ms. Scott said.

Communicating with employees is crucial when wide scale lay-offs take place, agreed Billie Fae Fuschi, director of workers compensation at Methodist Healthcare in Memphis, Tenn.

Otherwise, workers comp and other insurance-related claims can surge, she said.

For example, if a company requires that remaining workers take on added work for which they are not properly trained, they are more likely to be injured, Ms. Fuschi said.

And fraudulent workers comp claims are likely to increase as workers who know or suspect that they will be laid off look for another

source of income, she said.

To help deter fraud, risk managers should ensure their companies have a corporate policy addressing workers comp fraud, post that policy and make employees aware that the company will prosecute employees who submit fraudulent claims, she said.

Also, exit interviews should always be conducted and employees should be asked to sign a statement regarding any injuries they have suffered, Ms. Fuschi said. Employees will be less likely to file fraudulent claims if they have already signed a document saying they had not been injured, she said.

The session was moderated by Mr. Mandel and coordinated by Catherine D. Bennett, vp at Cost Control Concepts Inc. in Goodlettsville, Tenn. **BI**



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Privacy

Continued from page 3
Mr. Siegel.

"Can we protect ourselves from our biggest risk, which is us?" he asked.

The first and most important step is to assess company policy to ensure that the company has not created an expectation of privacy among employees. Employers should establish policies that quash any expectation employees may have regarding the privacy of their work areas, their computer files, their briefcases and even their persons when their employer reasonably suspects them of wrongdoing, according to Mr. Siegel.

An ingratiating statement by a corporate executive that promises "we'll respect our employees' privacy" can kill a company's right to

monitor employees for illegal conduct or behavior that is harmful to the company, Mr. Siegel noted.

Establishing a corporate policy that informs employees about the company's significant legal rights to search and monitor them does not, however, give an employer the right to invade employees' privacy for the sake of curiosity, Mr. Siegel stressed.

Suspicion of employee wrongdoing, though, is ample justification, he said.

Employers can search almost any work area, including desks, briefcases and computers, according to Mr. Siegel.

If an employee refuses to cooperate, attempting to physically force him or her to comply is not advisable. But the employer can take disciplinary action against the employee for refusing to cooperate. That action could include termination.

Mr. Siegel advised against conducting a physical search of an employee. "I don't know that I would touch anybody," because of the lawsuit that a search may trigger, he said.

'When it comes to e-mails, people are knuckleheads,' which can put their employers in trouble, says Paul Siegel.

"But, you can ask them to empty their pockets," he pointed out. Refusing to cooperate can be grounds for termination, he said.

Employment law attorney Charles V. Verhoeven suggested that risk

managers at high-tech companies subject employees to even greater monitoring because of the growing risk of intellectual property theft by disgruntled employees in that industry.

Employers, however, still are awaiting the development of technology that effectively would monitor employees in an effort to control that risk, said Mr. Verhoeven, who is with Quinn Emanuel Urquhart Oliver & Hedges L.L.P. of Palo Alto, Calif.

Employers also have the right to use hidden cameras to surveil employees in public areas at the workplace, such as warehouse floors, offices, and even in the wash areas of rest rooms, Mr. Siegel said.

There is no expectation of privacy in those areas, he said.

A prime justification would be suspected illegal drug activity, Mr.

Siegel said.

Employers in Hawaii, however, have to be careful, according to Mr. Siegel. A state court in 1993 ruled that employees have a reasonable expectation of privacy in areas, such as employee break rooms, that the employer sets aside for them.

Employers are equally justified in stepping over the privacy line in efforts to prevent sexual harassment lawsuits.

Mr. Siegel advised session attendees to bar office romances. Office romances are "not a good idea," because of the harassment suits that employers may face if the subordinate claims he or she was coerced into the relationship. Mr. Siegel estimated that 15% to 25% of all civil cases involve sexual harassment claims.

He also recommended establishing a sexual harassment policy, reissuing it annually and making sure the message gets to employees by posting the policy on posters in lunch rooms and printing it on payroll stuffers.

Similarly, employees have few privacy rights when employers are trying to prevent employees from conducting excessive amounts of personal business over the phone, the e-mail system or the Internet, according to Mr. Siegel.

Employee phone monitoring is relatively common, Mr. Siegel noted. It is permissible under federal and most state laws, as long as one party in the conversation consents to the monitoring. Customers of any store or service who call a customer assistance center and do not hang up when a recording informs them that the call may be monitored for quality purposes provide the consent the company needs to listen.

But when monitoring shows that an employee is engaged in a personal phone call, the employer should stop monitoring the call immediately, Mr. Siegel warned.

Because voice mail is recorded, it has no protection under wiretap law, Mr. Siegel said. But to take the privacy-expectation argument away from employees, the employment policy handbook still should note that the employer has the right to monitor voice mails, he said.

An employer also can monitor an employee's use of company-provided e-mail and Internet access, Mr. Siegel said.

"When it comes to e-mails, people are knuckleheads," which can get their employers in big legal trouble, Mr. Siegel asserted.

Employees often e-mail offensive comments or jokes to large groups, which can trigger an expensive harassment claim by offended employees.

The offensive jokes that trigger those complaints go over "very poorly in court," Mr. Siegel pointed out. "Nobody laughs."

To reduce that risk, employers can discipline the offending employees, even if their actions do not ignite harassment claims by other employees. The employer's action would be strengthened by an existing e-mail/Internet-usage policy and a sexual harassment policy, Mr. Siegel said.

Employers can give workers some access to company-provided Internet and e-mail access for personal use, he said. But that perk would make employee monitoring more difficult and likely would decrease productivity among many workers, he warned.

Ron Schwenk, director of business risk for ClubCorp USA Inc., moderated the session.

Charles O'Connor, a litigation manager with Boston-based Liberty Mutual Insurance Co., coordinated the session.



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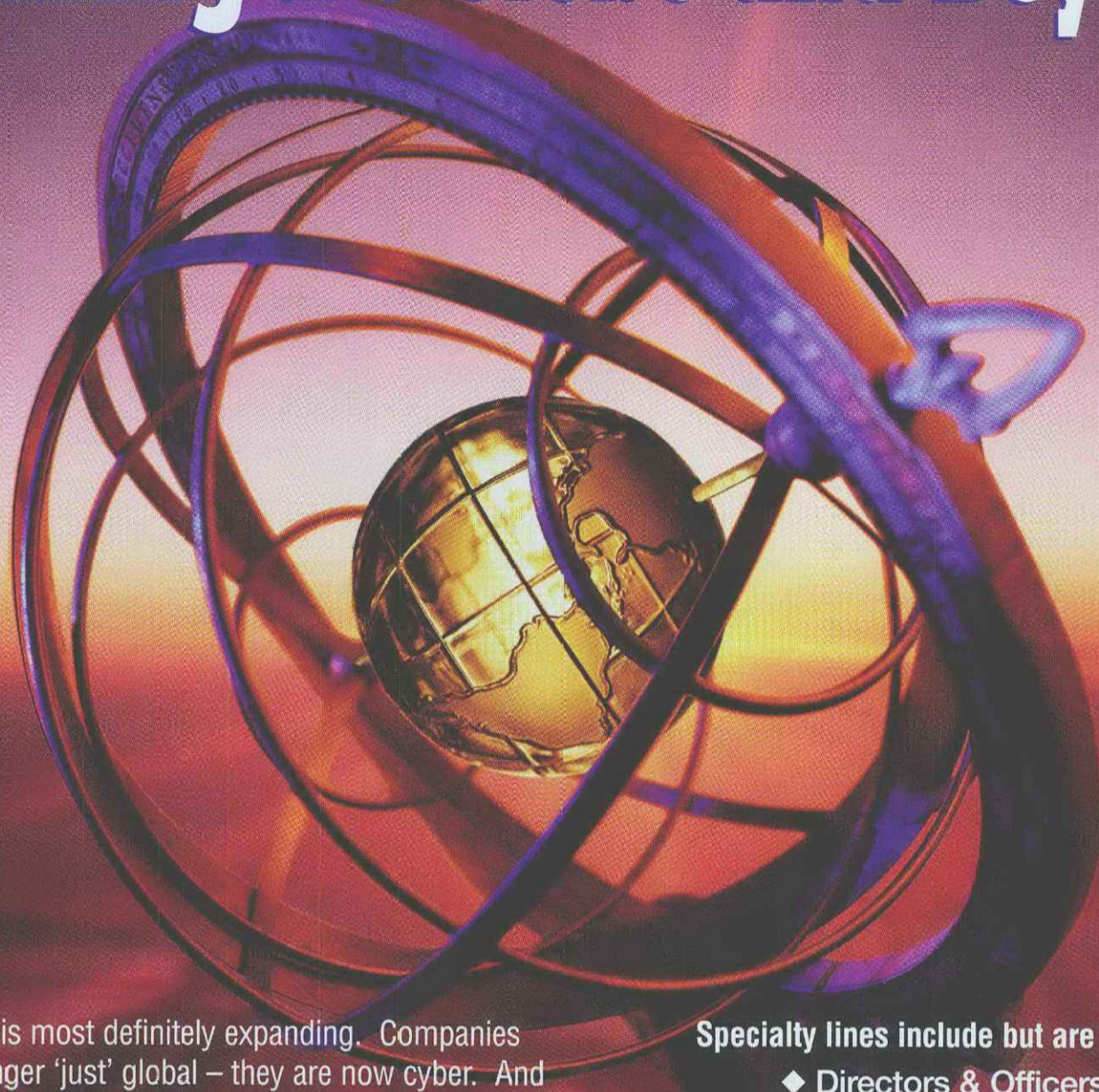
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Opinions

Make privacy rules uniform

SOMETIMES, ONE SIZE should fit all.

That's certainly the case with proposed medical records privacy regulations undergoing congressional scrutiny. The proposed regulations, drawn up by the Department of Health and Human Services after Congress failed to meet its own deadline for enacting privacy standards as called for by the Health Insurance Portability and Accountability Act of 1996, could cause far more problems than they solve.

That's because HHS, in the absence of congressional action, has proposed standards that would allow states to set medical records privacy regulations that are stricter than the federal standard. In short, the federal standard would act only as a floor—not as a uniform national standard. This would allow states to adopt extra medical records privacy requirements as they pleased, much as states can levy health benefit mandates on plans that aren't covered by the Employee Retirement Income Security Act.

Further complicating the situation is that HIPAA's requirements cover only electronically transmitted information, and apply only when that information is handled by health care providers, health plans or health care clearinghouses. As one witness before a recent Senate hearing on the matter told lawmakers, drawing a distinction between electronic and paper records where confidentiality is concerned is nothing short of "absurd."

Allowing the states to impose their own medical records privacy regulations over and above anything HHS imposes would be equally absurd. Even though employers would not be specifically targeted, the health care providers and insurers they deal with would have to comply.

After all, any new layer of regulation means new costs. Those costs would be passed along to the employers who offer benefits to their employees. Employers would either swallow hard and absorb the additional costs, pass the added costs onto employees, or reduce—and possibly even eliminate—benefits. Allowing a proliferation of state requirements



above any federal standard simply increases the odds of any or all of those unintended consequences occurring. Doing so also raises the odds that medical records privacy questions will end up in the courts.

No one should argue with the need for clear medical records privacy regulations. There have been instances where unauthorized parties have gotten access to confidential data and have misused it. Firm, understandable national rules—not based on the lowest common denominator enacted by a state but rather based on a consensus of all parties involved—would go a long way toward ending such abuse without the costly unintended consequences that are certain to arise out of a patchwork of state laws.

It's up to Congress to finish the job that it started but failed to finish—to adopt uniform, reasonable medical records privacy rules that pre-empt their state counterparts. Flexibility can be a virtue, but, in this case, a single uniform standard would fit the situation far better than a plethora of state rules.

Letters

Sovereignty key to tribal captive growth

To the editor: Messrs. Rudolph and Routmans' letter to the editor in the Feb. 28 issue of *Business Insurance* takes issue with my concern regarding their proposal to domicile insurance captives on Indian reservations (*BI*, Jan. 3).

Since the title of their letter to the editor suggests that I "misunderstood" their proposal, I feel compelled to respond. I believe that it is the authors who misunderstand the true boundaries of tribal sovereignty and Congress' ability and willingness to limit that sovereignty. The authors' proposal only works if tribal sovereignty continues as it exists today, yet Congress has clearly demonstrated that it intends to establish certain limitations on the scope of tribal sovereignty. Additionally, the authors took issue with my conclusion that a tribal domicile would need to offer captives an incentive, such as reduced regulatory over-

sight, to attract them.

I intended to make four points. The first is Congress' ability to limit a tribe's sovereign powers, as it did with Indian gaming. Unforeseen and unanticipated congressional limitations would destabilize tribally chartered insurance programs.

My second point was that, with alternative market forums already in place, what would cause an insurance company or a captive to select a tribal domicile? The authors rejected my phrasing "reduced regulatory oversight" as nefarious but offered "flexible regulation." Hmmmm.

My third point was that the author's proposal was presented as if no one had previously considered it. Knowing that at least two tribes have chartered captives or insurance companies and that there are others in various stages, I simply sought to correct a misconception. But in their response, the authors state that their proposal was less oriented toward captive formation and more focused on using captive management as a tribal economic development opportunity, which would, in fact, be something new. The problem is that a tribe would have to attract a volume of captives and insurance companies in order to justify the expense of developing and enforcing an insurance code and regulatory structure.

My fourth point was actually a compli-

ment to the authors. A tribe—or consortium of tribes—could follow the authors' blueprint and achieve substantial savings on their own risk management programs. And properly structured, many insurance needs of tribal members could be fulfilled. Congress has been less willing to restrict tribal sovereign authority when the impact applies to tribal members within the boundaries of a reservation or within Indian country.

Tribes have experienced numerous proposals that began as economic development for the tribes but ended up contributing little to the tribal economy. Intentionally or otherwise, there just wasn't much left after expenses. If the authors' primary (and sincere) goal is to create tribal economic infrastructure development and employment opportunities for tribal members, I applaud that effort.

In sum, I am delighted to see tribes succeed at exercising their sovereignty in all things, and I would especially enjoy seeing one or more tribes implement a program similar to that proposed by the authors. There are methods to increase the likelihood of a win-win situation for all, especially the tribes. One of the keys to that success is anticipating and addressing the inevitable attacks on tribal sovereignty.

Lee Backus
Washington

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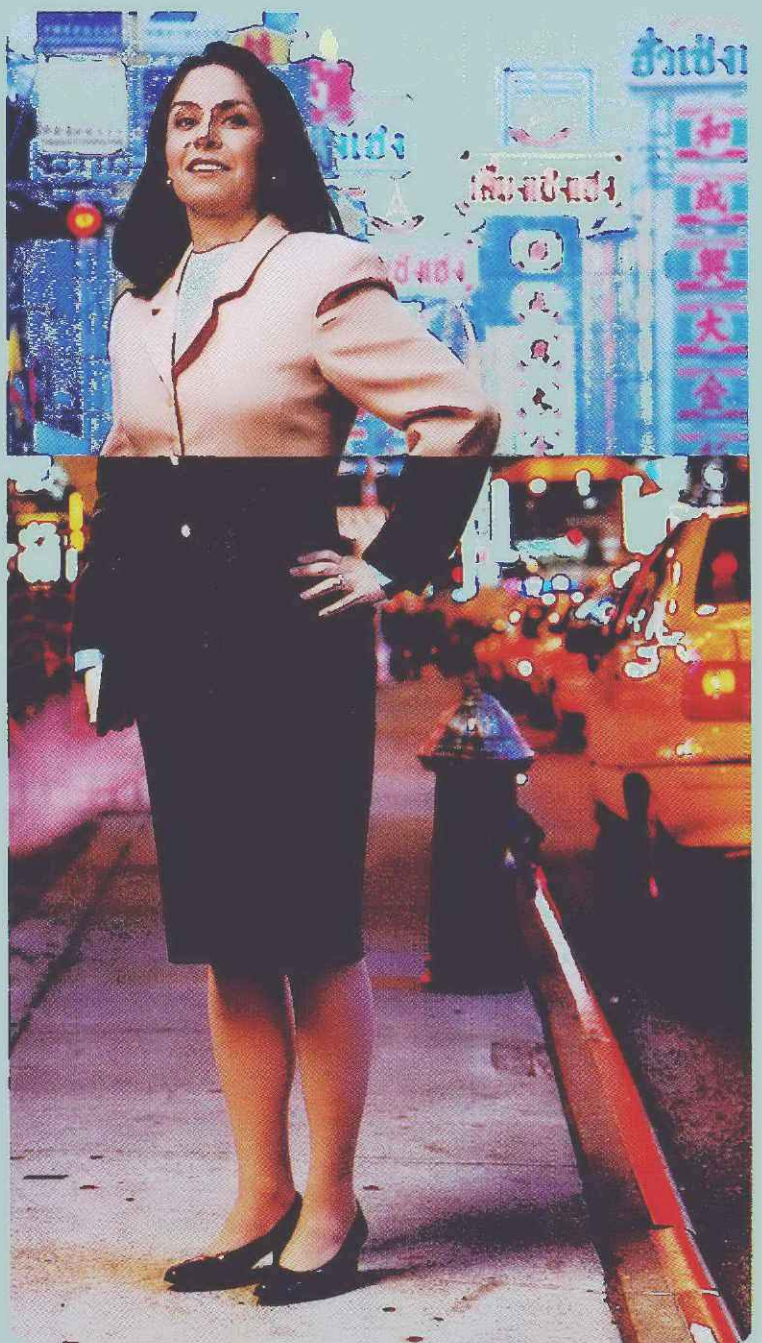
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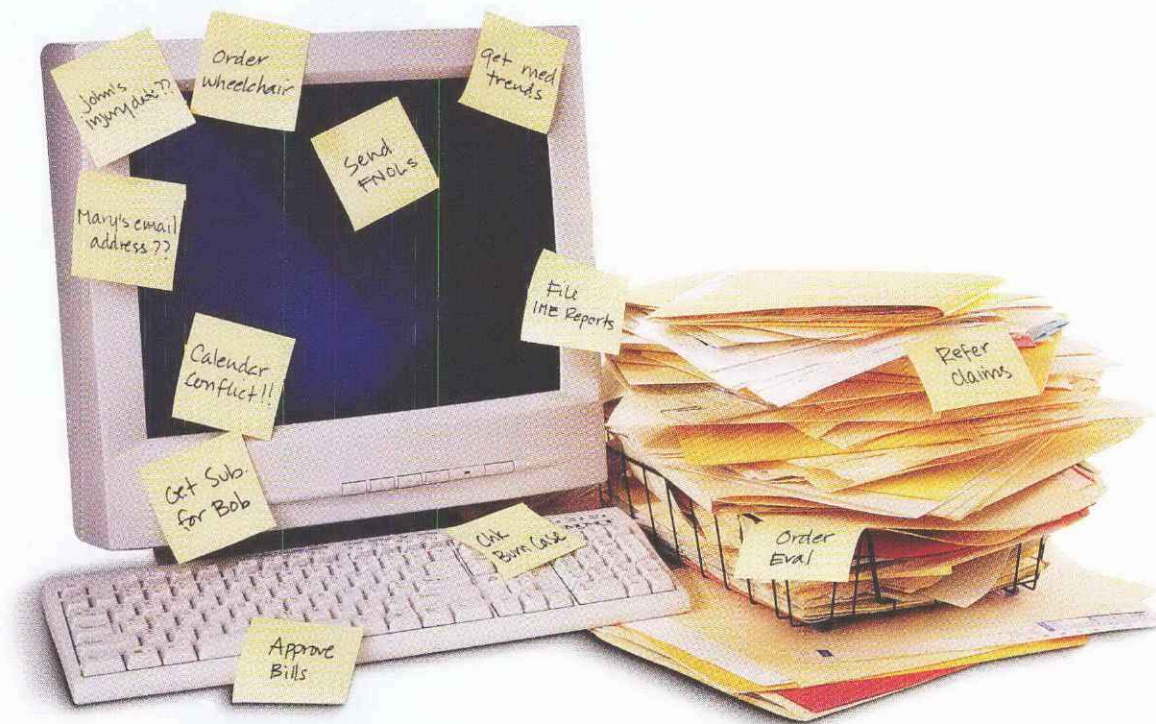
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Careful, balanced response crucial in fatal accidents

By MICHAEL BRADFORD

SAN FRANCISCO—It takes a cool, objective response to handle the events that quickly unfold following a death in the workplace, a panel of experts says.

The family and co-workers of the victim need to be comforted and taken care of, and "that is most important thing," said Robert D. Zordan, workers compensation benefits coordinator at Albany International Corp. in Albany, N.Y. "But underneath it all, you've got your corporation. There are issues that need to be dealt with."

Mr. Zordan was speaking as a panelist at the Risk & Insurance Management Society Inc.'s annual

conference last week in San Francisco. He suggested that, whenever possible, companies should have a team made up of corporate, not local, personnel to respond to workplace fatalities.

"While the local people will be caught up with the immediacy of things and will be dealing with their employees, you've got to be able to step back and begin the process" of investigating the accident, cooperating with authorities and making changes to ensure that the workplace is safe, Mr. Zordan said.

When a death occurs at work, there will be "a lot of confusion, a lot of upheaval," he said, with workers experiencing shock and

grief.

Therefore, a response team that is made up of management-level members and is based at a corpo-



rate headquarters can add a detached balance to the scene, Mr. Zordan pointed out. Individuals who are unfamiliar with the victim "can bring some calm" to an unsteady situation, he said.

Richard B. Wigzell, a risk man-

agement consultant based in Saratoga Springs, N.Y., agreed that "in the aftermath, there is a lot of emotion, confusion, disarray."

Mr. Wigzell said response team members must be able to make decisions that are not clouded by emotion, as doing otherwise could lead to moves that "may not be the best decision in all respects."

Clothing manufacturer Albany International has had to respond to two fatalities in recent years, Mr. Zordan reported. In one case, a worker was pulled into a piece of machinery; in the other, an employee was killed when a co-worker turned on a loom the victim was attempting to repair.

Mr. Zordan stressed that the cor-

porate risk manager is an important member of the group that handles details related to a workplace death. "There are a lot of insurance issues to deal with," he said, such as keeping insurers informed about the accident. "You want to make sure that everyone is notified."

"I can't overemphasize the importance of professional safety expertise being brought in" after a fatal accident, Mr. Zordan said. Such help, he said, will ensure that "there isn't a secondary injury" and that "you can begin the process immediately" of determining why the death occurred and how similar incidents can be avoided.

Another important member of a response team is an attorney who is experienced in dealing with Occupational Safety and Health Administration regulations, Mr. Zordan said.

"You would keep your corporate counsel advised," he said, but an OSHA specialist is needed when a serious workplace accident occurs. "It's a whole different ballgame when you get involved with OSHA."

Ronald J. Graves, senior vp-operations at Greenville, S.C.-based risk management services company Hewitt, Coleman & Associates Inc., said that multiple investigations will be going on simultaneously after a fatality occurs.

Among those investigations, OSHA will be looking for "basically one thing—whether you violated any of their regulations," he said. Also on the scene will be insurers and law enforcement officials, who will want their own answers.

Mr. Graves recommended that employers "shadow" OSHA investigators to make sure the company has all the information that the agency has gathered for consideration. He suggested videotaping the OSHA investigation so that "you know where they went and what they did when they were there."

If OSHA takes a picture, "you follow behind and take a picture of the exact same thing," Mr. Graves said. Employers also should make sure they have copies of all documents requested by the agency, he urged. "Any time they ask questions of individuals, take notes."

Shadowing OSHA, however, may give the agency's investigators the idea that the company has something to hide, warned Mr. Zordan.

That perception was a problem during the investigation of one of the fatalities at Albany International, he explained, and "it took a little while to get that rapport" with investigators that put them at ease.

In time, OSHA investigators will understand that the employer is following the investigation in part because the company wants to collect information that will help it make its workplace safer, Mr. Zordan said.

Stonewalling OSHA investigators by not turning over records is a mistake and is not worth the risk of alienating investigators, he warned. "If they want it, they can get it."

And, Mr. Wigzell told employers to accept the notion that OSHA will levy fines. "They are going to fine you for something," he said, and it very likely will have to do with how OSHA logs were kept.

But, he added, "the fines are negotiable," and employers often are able to get them lowered.

Mr. Zordan was the session moderator; Mr. Wigzell was the coordinator. **BI**

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Drug testing promoted as loss prevention measure

By LEE FLETCHER

SAN FRANCISCO—Implementing a drug-free workplace program can be difficult, but the effort is often a wise and cost-effective endeavor, some risk managers say.

At the Risk & Insurance Management Society Inc.'s annual conference in San Francisco, a panel of risk managers examined the benefits of successful drug-free workplace programs.

More than 7.4 million working Americans used illicit drugs last month, according to Vickie L. Cortese, vp of personnel/risk management at Federal Compress & Warehouse Co. Inc., a Memphis,

Tenn.-based cotton warehousing facility.

"You employ some of them. Drugs cross all boundaries—social and economic," Ms. Cortese said.

Employees who use illicit drugs are five times more likely to file workers compensation claims and 3.3 times more likely to injure themselves or another person in a workplace accident, she said.

Michael J. Jank, vp of risk management for the Spartanburg, S.C.-based Advantica Restaurant Group, which owns Denny's restaurants, discussed additional advantages of having a drug-free workplace program.

Denny's has about 35,000 employees in 800 restaurants nation-

wide and recently concluded a yearlong drug-free workplace pilot program.

Mr. Jank said that according to the Department of Labor, 16.3%



of employees in the "eating and drinking industry" abuse alcohol and/or drugs, and the annual business cost of an employee who abuses drugs in the restaurant industry is \$3,000.

Additionally, 38% to 58% of on-the-job injuries can be attributed to drug/alcohol use, and abusers are absent 16 more days per year than non-abusers, according to Mr. Jank.

The question really is "Why not do the drug testing?" Mr. Jank said.

If employees are "willing to do an illegal act, what's to stop them from doing that in the workplace as well? What's to stop them from taking from the register? It leads to other bad habits," he said.

In the pilot program, Denny's had four categories of drug testing: pre-employment, pre-promotion or placement, post-injury and reasonable suspicion. "If you have

an injury, we're going to test you," Mr. Jank said.

It's interesting, he said, that there were "fewer nicks, bangs and bumps" when employees going to see a doctor for an onsite injury were asked to take a drug test while there. "There were lots of cases of people suddenly feeling better," Mr. Jank said.

Ms. Cortese said she has seen posted signs inspire a similar change of heart in potential employees. "You'll be amazed at how many people will walk in, see that drug testing sign, turn around and walk back out. You want to deter drug users from entering your workplace," she said.

When deciding on which type of program to enact, it's important to take a hard look at state regulations, Ms. Cortese said.

Many of these regulations state that, unless evidence proves otherwise, when an employee is involved in a workplace accident

'You'll be amazed at how many (applicants) will walk in, see that drug testing sign... and walk back out,' says Vickie L. Cortese.

and tests positive for drugs and/or alcohol, related claims for workers compensation benefits often may be denied, she said.

"This is a major advantage to reporting to a state plan. The company often has to pay zero," Ms. Cortese said.

Both Ms. Cortese and Mr. Jank emphasized the need to communicate to employees on a regular basis.

"It's important for everyone involved to be prepared for what to expect. You're left in a world of hurt if the doctor's office isn't prepared and educated," Ms. Cortese said.

She advised employers to have a uniform routine, including a drug test package with standard materials.

Mr. Jank said it is also important to test for types of adulteration during drug testing. "You need to do this because people come up with all sorts of things" to test negative, Mr. Jank said.

For example, Ms. Cortese cited a case in which a South Carolina man sold his urine to drug users who wanted to ensure a negative test result.

In addition to the cost savings and safer workplace environment, Denny's pilot program showed positive results with fewer workers comp claims, increased sales and increased employee morale, Mr. Jank said.

Both Mr. Jank and Ms. Cortese said that while the positive results from workplace drug testing are apparent, companies need to maintain good documentation, treat all employees consistently, confirm results and, above all, respect the confidentiality of the process.

If you cannot do these things, "I'm not sure if the ends are worth the means," Ms. Cortese said.

Moderating the session was Floy Oliver Daugherty, director of insurance for Rollins Inc. in Atlanta. The session coordinator was Catherine D. Bennett, vp of Cost Control Concepts Inc. in Goodlettsville, Tenn. **BI**

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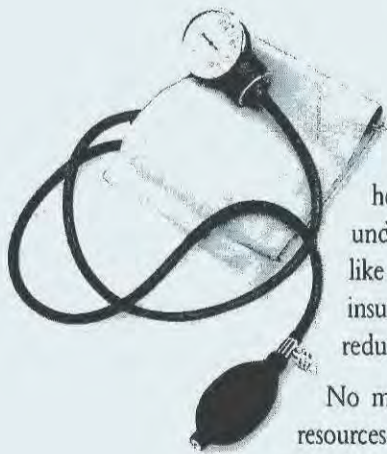
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Modified-duty program helps Home Depot build on success

By JUDY GREENWALD

SAN FRANCISCO—Home Depot Inc. considers its modified-duty program for returning injured employees to work a success.

Eighty-five percent of the injured employees at Atlanta-based Home Depot who participated in the program last year made the transition from injury, to lost time, to modified duty and then to full duty within a 12-week period.

And the remaining 15% of employees in the program were able to move—with no time lost at all—from injury to modified duty, said Stephanie Perilli, Home Depot's occupational claims manager. More than 3,500 injured workers partici-

pated in the program, Ms. Perilli said.

Ms. Perilli and Bart Canon Jr., director of risk management for Home Depot, discussed the modified-duty program, which was part of a revamped risk management program, during a session at the Risk & Insurance Management Society Inc.'s annual conference in San Francisco last week.

Mr. Canon noted that Home Depot, which currently has 950 stores, is growing rapidly. By 2004, he said, the chain will have more than 1,900 stores and a half million employees, up from 200,000 at year-end 1999.

In 1998, Mr. Canon said, the company took steps to enhance its risk management services, "create the

safest environment possible" and reduce the total cost of risk to increase shareholder return.

The company's culture played a



major role in the approach it took in that effort. Mr. Canon said Home Depot has certain core values, including excellent customer service, shareholder return, entrepreneurial spirit, taking care of its people; respect for all people; doing the right

thing and strong relationships "Our redesign had to enhance all of these," he said.

The initiatives included a risk management department redesign; a workers compensation claims redesign, including the modified-duty program; and a liability claims redesign. It also included an information systems redesign, safety program assessment and redesign, and increased store participation said Mr. Canon.

Discussing the company's return-to-work focus, Ms. Perilli said the best practices approach adopted by the company included promptly reporting all claims through an out-sourced claims reporting service.

In addition, the claims operation

was reorganized into eight dedicated regional claims teams "solely dedicated to Home Depot," said Ms. Perilli.

Other elements of the program included implementing a centralized, dedicated telephonic case management unit, which involves a team of nurses responsible for managing the medical aspect of Home Depot's workers comp claims. The company also is using a national medical provider network to support medical management initiatives, said Ms. Perilli.

The modified-duty program involves the use of teams to manage claims. Each team has three partners, each of whom has a distinct function in the process, said Ms. Perilli.

First, there is the telephonic case manager, who is responsible for the medical aspects of the claim and for obtaining a timely release to return the employee to work. "They are interfacing with the medical community," she said.

A Home Depot customer service representative assists in modified-duty replacement and acts as an employee and store advocate. In addition, a claims examiner is responsible for compensability issues, benefit payments and other statutory and legal requirements.

All three team members work with a "very sophisticated electronic feed," said Ms. Perilli. After an incident occurs, it is relayed to the claim reporting center. The center, in turn, conveys the data to the team members.

Then each gets to work.

The claims examiner, for instance, will investigate facts, determine compensability, value the case and set reserves, pay benefits, insure statutory compliance, manage litigation and see the case through to conclusion.

"We identify very specific tasks" as part of modified duty, said Ms. Perilli. And modified-duty assignments are productive, she stressed, and don't involve "counting paper clips." The employee is kept "very, very busy."

Mr. Canon stressed, however, that Home Depot does not advocate permanent modified duty. Twelve weeks is the maximum duration, with some modifications, he said.

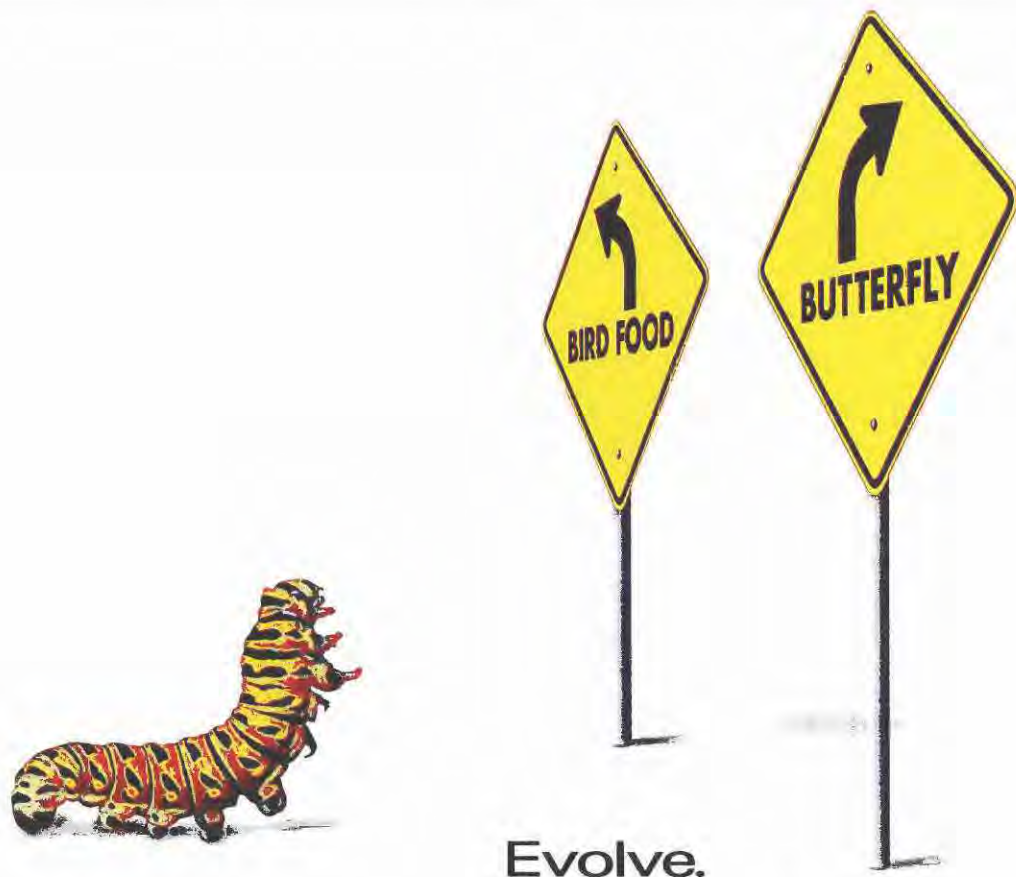
In cases where there is a question as to whether an employee can return, "we really deal with it on a case-by-case basis," said Ms. Perilli.

Also speaking at the session was Fred Scardelletto, vp, disability management product development for Philadelphia-based Intracorp, which provides health care and disability management services and works with Home Depot.

Mr. Scardelletto said Intracorp's best practices are built on providing important communication links with employees, ensuring that doctors set expectations with employees and facilitating return-to-work options.

Discussing the issue of managing growth, Mr. Scardelletto said you cannot "just add heads as you go." Improving efficiency comes first, while adding onsite head count comes second, he said. Other elements of managing growth include automating manual processes to free up staff, using alternative staff for certain functions and rarely using additional offsite support.

The session was moderated by Barbara Pelletreau, manager, workers compensation program at the University of California, who is based in Oakland. It was coordinated by Intracorp's public relations manager, Colleen Bergin. **BI**



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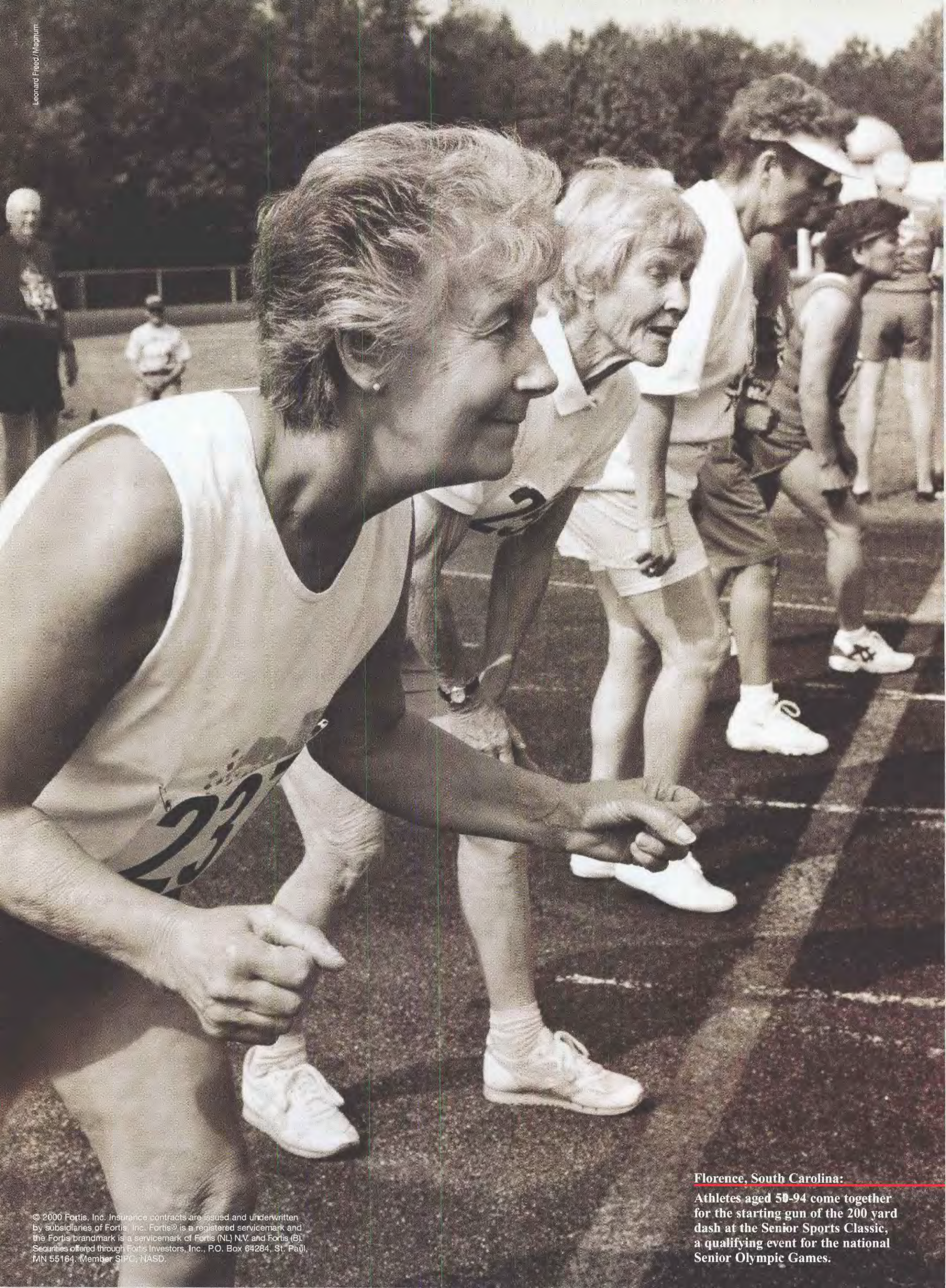
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Federal compliance a must for benefit plans

By **RODD ZOLKOS**

SAN FRANCISCO—Employers offering retirement benefits need to review their plans regularly to ensure they comply with federal regulations, as the costs of violations can be significant.

In recent years, Congress has increased scrutiny of tax-advantaged retirement plans, directing the Internal Revenue Service to "enforce current rules," according to one retirement plan consultant.

The possible consequences of running afoul of the IRS are good reason to keep retirement plans in line with current regulations, said speakers addressing the Risk & Insurance Management Society Inc. annual confer-

ence last week in San Francisco.

In the worst case, if a plan fails to comply with federal regulations and is disqualified, it loses its status as a tax-exempt trust and its deductions for certain plan contributions, all participants will be taxed on the vested value in the year the plan was disqualified, and plan distributions may not be eligible for individual retirement account rollovers.

"A plan is either qualified or not qualified—there's no in-between," said Michelle Lua, group manager of employee benefits at the Internal Revenue Service in San Francisco.

Carolyn Friedman, a senior manager at Ernst & Young L.L.P. in San Francisco, noted that approximately \$3 trillion in retirement assets was set



aside for U.S. workers at the end of 1999, "and they're all not taxed." Pension benefits typically are not taxed until benefits are paid out.

The IRS determines whether a retirement plan is "qualified" for favorable tax treatment, while the U.S. Department of Labor has jurisdiction over the fiduciary aspects of the plans.

Pensions represent a significant tax benefit, added Ms. Lua. "At the same time, Congress is looking at that and

saying, 'Wow. What if they don't deserve that benefit?'"

As baby boomers retire, pension issues have become big news, prompting even greater scrutiny of employers' retirement benefit programs, Ms. Friedman noted. She said a recent U.S. Senate investigation claimed that millions of Americans are being shortchanged in their pensions because of mathematical errors resulting from confusing pension laws downsizing and an increase in taking retirement benefits in a lump sum.

"So, of course, all it takes is somebody in your company to say, 'I wonder if I'm being shortchanged in my pension, and who do I contact?'" Ms. Friedman said.

Recent cases involving incorrec-

pension calculations, erroneous 401(k) hardship withdrawals, allocation violations and other problems have resulted in companies facing IRS sanctions of \$10 million or more.

Even so, "for a large employer, the IRS is the least of your problems at that point," Ms. Lua said. "Because once your employees hear that your plan is about to be disqualified, they are on your doorstep."

In recent years, the IRS has been involved with outreach efforts to educate employers on pension issues, Ms. Lua said, adding that an employer is responsible for any rules violations in its plan, even if the mistake was made by an outside administrator hired to run the program. "From the Internal Revenue Service perspective, the employer is responsible for the sanctions, and how heavy they are depends on the facts of the case," she said.

It also doesn't matter whether the rule was broken by the employer in a genuine attempt to assist the employee, Ms. Friedman noted. "It doesn't matter where your heart is on this or what your intentions are," she said.

Consequently, Ms. Lua said, "I really recommend that if you have a plan, become familiar with that plan."

Ms. Friedman noted that there have been tax changes involving benefit plans in each of the past 16 years. "If you changed your plan every year for the past 16 years, you're probably OK," she said. But, she added, "That's impossible to do."

The most common retirement plan violations employers face are employee misclassification, improper service crediting, erroneous benefit calculations, failure to properly conduct required non-discrimination testing, improper allocation to participant accounts, and failure to amend plans following changes in the law in 1974 and 1984, Ms. Friedman said.

Other problems employers potentially face are lawsuits from employees who discover accrual rules of their plans were incorrect, and the fact that employees are increasing their knowledge about the plans and using the Internet for research and to plan strategies for confronting their employers about concerns.

"I think this came out last year quite loudly with the big ruckus with cash balance plans," Ms. Lua said. "This is something to be aware of, because employers are more knowledgeable, and they are looking to use their resources."

The IRS encourages employers to correct any retirement plan problems they might discover, however.

To that end, Ms. Friedman suggested employers troubleshoot their programs, reviewing all plan documents, interviewing all administrative personnel involved with the plan, interviewing outside service providers, sampling plan data and procedures, and focusing on aspects that might be covered in an IRS or Department of Labor investigation.

"Approach the review of your retirement plan as part of risk management," Ms. Friedman said. "Once you've reviewed your documents, you want to evaluate whether they're major problems or minor problems."

"If you find something wrong in your plan, you can fix it within two years of the end of the plan year," Ms. Lua said.

"I think the bottom line is... it's fix it now or pay later, and I think that 'pay later' is really huge," Ms. Friedman said.

The session moderator was Linda L. Lull, corporate risk manager for R.R. Donnelley & Sons Co. in Chicago. Liz Simer, vp at Near North National Group in Chicago, was coordinator.



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What can we do to help you?

Communication key to fighting workers comp fraud

By LEE FLETCHER

SAN FRANCISCO—Fraudulent workers compensation claims are not uncommon, but experts say that by knowing how to respond and what to expect through good communication at all company levels, combating fraud is possible.

Two workers compensation experts speaking last week at the Risk & Insurance Management Society Inc. annual conference in San Francisco offered insight into reducing employer's workers comp fraud exposure.

"Make the (employee fraud) policy simple and basic. Have the policy and educate the staff. Building in a deterrence system is vital," ac-

ording to Philadelphia-based John C. Pikiell, director of the Special Investigation Unit for ACE USA Group's Claims Risk Control Services.

He emphasized that if employers send the message that fraudulent claims will be investigated, employees may think twice. For example, a hot line/reward program involves co-workers essentially "telling on" each other, but according to Mr. Pikiell, "it works."

Another type of fraud today is from medical providers. Mr. Pikiell said that closely monitoring billing practices for product switching, services not rendered and multiple office visits is an excellent way to prevent consequences of false claims.

Also, establishing a bill review program, "builds in a detection and



prevention system," Mr. Pikiell said.

Employers also may commit fraud, he noted. This type of fraud often occurs when companies underreport payroll, improperly designate job classifications, provide false business addresses and misrepresent their loss history, he said.

Especially when dealing with employee fraud, medical control through selected doctors should be incorporated at a very early state, according to Walter F. Noeske, a Detroit-based defense attorney specializing in workers compensation and insurance defense for Fortune 500 clients. He is a partner with Conklin, Benham, Ducey, Listman & Chuhnan.

Mr. Noeske said employers should make known to every employee the seriousness of on-the-job injuries. Although corporate policy should be caring and concerned, it needs to be firm.

"We want our employees to be happy, but we want them to know that every claim will be investigated.

Some employers don't take the extra step," he said.

He emphasized the need to take small, preventative steps in every claim, regardless of its size.

Good documentation is a crucial part of claim prevention and investigation. All gathered information and investigation should be in writing, signed and dated, according to Mr. Noeske.

"Red flags" of potential workers compensation fraud are numerous, Mr. Pikiell said. Some big indicators, he said, are unwitnessed accidents, rumors, employees who fail to appear for scheduled medical exams and injured employees who cannot be reached at a home telephone number.

Mr. Pikiell emphasized the need for rapid response after spotting a potentially fraudulent claim. He suggested immediately obtaining statements from all witnesses and the injured employee, photographing or videotaping the accident site and securing equipment maintenance or repair records.

"Take photos of the (equipment) manufacturer's name and serial number. Down the road, the machine may be obsolete and gone," Mr. Pikiell said.

Often private investigators are selected to look into the potential fraud. Mr. Pikiell recommended using a full-service company that can accommodate surveillance, background checks and interviews. He said to be wary of investigators using out-of-date equipment that may make the surveillance easier to spot.

"They can't simply have the tinted windows. They should blend—everybody is looking for that black van with tinted windows," Mr. Pikiell said.

It is imperative that all parties work together, according to Mr. Noeske.

"Effort must be coordinated and controlled," Mr. Noeske said. "Never presume that anyone is doing anything. Determine and confirm individual responsibilities in writing at onset. Meet or conference to discuss roles and activities. Communicate."

Although the steps may seem basic, "don't be scrambling to put these things together a week before a trial," Mr. Noeske said.

Although workers compensation claims are often legitimate, it's important to be aware and prepared for any fraudulence that may occur.

"Often the good outweighs the bad. If there are facts that clearly indicate a legitimate workers compensation case, it's OK. That is what workers compensation is for," Mr. Noeske said.

Before he joined Conklin Benham, Mr. Noeske was managing attorney and senior trial lawyer at Noeske, Kahn & Associates P.C. in Michigan, the defense counsel for CIGNA Property & Casualty and its policyholders.

Mr. Pikiell oversees the Property & Casualty Anti-Fraud program, which investigates fraudulent claims in the auto, property, liability and workers compensation units. He also deals with state anti-fraud regulatory issues, program quality control and finances and develops fraud awareness training programs for claims personnel.

Moderating the session was Sam J. McMurry, an administrator in workers compensation for Lockheed Martin Tactical Aircraft Systems in Fort Worth, Texas. Ginny Trainor, communications director at ACE USA Group, was coordinator.

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Careful planning helps avoid EPL claims

By MICHAEL BRADFORD

SAN FRANCISCO—Employers can lower their chances of being hit by an employment practices liability lawsuit with some up-front risk management practices, a group of experts contends.

A thorough, careful recruiting and hiring process helps eliminate some of the causes of EPL claims, said George J. Tichy II, an attorney with the San Francisco firm Littler, Mendelson, Fastiff, Tichy & Mathiason.

At the "very outset, you have to consider recruiting," he advised employers, because in many cases companies have a workforce that looks "all the same" in terms of demographics, leaving them open to the possibility of discrimination claims.

Speaking at a session at the Risk & Insurance Management Society Inc.'s annual conference and exhibition, Mr. Tichy said it is wise policy for employers to seek "protected-category employees...and certainly older workers, disabled workers and racial minorities."

And, he reminded employers, employment agencies cannot be used to "discriminate for you" and leave the employer off the hook for what might be determined later as discriminatory practices. "They are your agents and you are going to be responsible for what they do. If they do testing, screening or background checks, please make sure that they know what they're doing."

He told employers, when advertising for workers, to carefully craft truthful ads. "It is very important that you be accurate in your job description. Avoid promises," Mr. Tichy said, because they can be used in litigation filed by an employee who feels the promises were not fulfilled.

"And most importantly, avoid discriminatory statements" in ads, he urged, such as: "We're looking for a bright young person."

To further avoid charges of discrimination, Mr. Tichy suggested that when interviewing applicants, employers "use a script. Do not simply wing it."

He said that having a script will help interviewers stick to questions that are open-ended and avoid such queries as: "Do you plan to have children?" or "Where were you raised?" Such queries are ones that could raise questions of preferential hiring.

Sometimes interviewees will volunteer information that an employer would rather not know, Mr. Tichy said. For example, if a prospective employee talks about a workers compensation claim he or she filed at a previous workplace, "do not ask follow-up questions," he advised, because denying employment based on such a circumstance is unlawful.

Mercedes Colwin, an administrative law judge and attorney with L'Abbate, Balkan, Colavita & Contini L.L.P. in Garden City, N.Y., told employers at the session that they must be precise when crafting job descriptions for new hires.

"Make sure you have the essential functions of the job detailed," Ms. Colwin said.

As an example of how a poorly crafted description can become a liability, Ms. Colwin told of a nurse who brought a claim against her employer after the nurse lost her job because she could no longer lift patients out of their beds. "The hospital said, 'But your honor, we had a job description and that's an essential function of her job.' But lo and behold, the job description did not say that she was required to lift patients out of their beds. And it cost that hospital a quarter of a million dollars."

If pre-employment skills testing is used, Mr. Tichy cautioned that the testing "should be relevant" and reflect the actual job skills that the person will need if hired. That way, there can be no disagreement later over whether the hiree knew what was required for the job.

Mr. Tichy said risk managers should be aware that the Equal Employment Opportunity Commission will resort to subterfuge by using testers to determine whether an employer is complying with anti-discrimination practices.

"This concept of testers is very important for risk managers to recognize," Mr. Tichy emphasized. "The EEOC announced a year ago that they intended to use testers. The tester is an

individual whose function is to apply for a job but not to have any desire or



intent to take the job."

The tester, he explained, is on hand to determine if the employer's hiring processes are appropriate. "Just keep in mind that each individual who applies is an individual that you should consider in a good-faith way for employment."

Of course, an essential risk manage-

ment tool for protecting a company in the event of a claim is EPL insurance, said Sal G. Concu, claims counsel with Zurich U.S. in New York.

Mr. Concu offered a few tips for structuring EPL coverage so that an employer is adequately protected. He said, for example, that while it is available under a directors and officers liability policy, that should not be relied on as the sum total of an organization's EPL coverage.

"A lot of organizations feel that a D&O policy is enough to cover them for employment practices," Mr. Concu pointed out. "The main reason why you might want to do it under a separate policy," he said, is because under a D&O policy, the cost of an EPL claim will erode the overall policy

limits.

"What happens is, if you have one or two substantial EPL claims falling under a D&O policy, you may not have enough coverage for your directors and officers' in the event they face claims," Mr. Concu explained.

And, he noted, an EPL policy should be written to cover non-directors and officers who could have an EPL action brought against them. If it is written as an endorsement to a D&O policy, the EPL coverage will not be broad enough to cover other employees, Mr. Concu said.

EPL coverage typically is written on a claims-made basis, according to Mr. Concu, but can be structured to pay claims for acts that occurred prior to the policy period.

The session's coordinator and moderator was Michael Fenishek, risk manager for Pacific Tomato Growers in Palmetto, Fla. **BI**



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Employers must tread carefully in monitoring workers

By MICHAEL PRINCE

SAN FRANCISCO—Walk the walk and don't just talk the talk when it comes to electronic monitoring of employees, experts say.

Having a strong policy regarding employer access to employee communication is necessary but is not sufficient to protect employer rights. Behind a strong policy, employers also need to actually monitor employees' activities or risk liability for invasion of privacy, two speakers warned during a session at the Risk & Insurance Management Society Inc.'s annual conference and exhibition last week in San Francisco.

"Just because the company issued

a policy that e-mails can be opened and read is still largely not enough," said Henry Perlowski, an attorney with the firm of Arnall Golden & Gregory L.L.P. in Atlanta.

Employers have to balance employees' rights of privacy against efforts to limit the company's liabilities, said Karen Gordon, vp with ACE USA in Philadelphia. Many court rulings have held that employers can monitor their employees' telephone conversations, e-mail and Internet surfing, she said. But having the legal right, doesn't mean it can be done with impunity, she added.

With the explosive growth of e-mail and Internet usage, employers face a growing number of risks, she

said. These include liability for sexual harassment if inappropriate e-mails are sent, lost productivity of



workers spending time on the Internet, business interruption if the computer system fails because of a virus and theft of trade secrets and intellectual property.

"This is really coming to the forefront as a real risk," she said.

On the other hand, the right of

privacy has roots in centuries-old common law. In addition, federal and state laws have explicitly created the right of privacy, Mr. Perlowski said. These laws and court rulings limit an employer's actions in reading employees' e-mail and listening into phone conversations.

Certainly, few technological limits exist. Employers can read every e-mail sent or received by employees, even if they have been deleted. In addition, phone calls can be easily monitored. Even unsent e-mails can be read, as software exists that can monitor every keystroke made at a computer, Ms. Gordon said. Just because the technology exists, however, doesn't mean it can always be used.

So, employers are put in the middle of wanting to monitor employees to minimize their risks. But too much monitoring, or monitoring done incorrectly could breach an employees' right of privacy, giving rise to a suit, the speakers said.

The most effective way for employers to balance the competing forces of privacy vs. liability is to obtain an informed consent from each employee. This consent, done in writing, gives the employer permission to monitor the employee. Therefore, the first step for employers to take is create a corporate policy that tells employees they will be subject to monitoring. This should subject all employees to electronic monitoring, Ms. Gordon said.

The policy can be part of the employee handbook or contained in a separate document that the employee signs acknowledging it was read and understood. This signed document by the employee should be kept on file, as it represents the best evidence that the employee agreed to be monitored, Mr. Perlowski said.

But just having a policy is not enough. "It's not what you say in writing, it's what you actually do," Mr. Perlowski said.

If a suit arises where the employee claims an invasion of privacy, the court will want to see what the company did in addition to adopting the policy. To address this, employers should annually reissue the policy to all employees and actually perform random monitoring of phone calls and e-mails, he said.

Any technology monitoring policy should also clearly state that all technology systems are the property of the company and, therefore, should be used only for business purposes. The policy also should state that neither illegal uses nor uses that violate existing corporate policy about discrimination or sexual harassment are permitted, Mr. Perlowski said.

The policy should also make it clear that the employee should not expect any privacy while using the company's electronic systems. And the policy should make it clear that enforcement will be done randomly, not selectively.

What has often landed employers in trouble is how employee e-mail is treated. Although it becomes permanent, people most often treat it as a casual way to communicate. And e-mails are given to the opposing sides in lawsuits, just like written documents. It's better for everyone to view it as a written letter and don't put statements in it you wouldn't put in a formal letter. E-mail "is today's smoking-gun evidence," Mr. Perlowski said.

A policy should also include a routine schedule for deleting and writing over old e-mails. Once a lawsuit has started, e-mails cannot be deleted; it's the equivalent of shredding relevant documents. But if a regular schedule exists, then any missing e-mails that were purged prior to the suit can be explained.

Because of the growing risks for employers associated with the Internet, some insurance products have arisen to address them, Ms. Gordon said. She said an emerging trend in the field is to broaden existing coverage to include cyber-risk. Because of this, some duplication of policies may emerge and she recommends deciding which policy will become the primary coverage.

The session was moderated by Eric Hovanky, risk manager for MCI WorldCom Inc. in Washington. **BI**

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Society

Continued from page 3
publications such as the Wall Street Journal, Business Week, Time and U.S. News & World Report.

"We look forward to increases in that coverage and hope to enlighten the entire business community" about the importance of risk management, Mr. Andrews said.

"However, it is even more important that all of our members turn to RIMS as the authority on risk management. I have heard that some might regard the society as being irrelevant. I am committed to changing that perception," he said.

The organization, Mr. Andrews said, "needs to consistently deliver relevant risk management products at its educational offerings, at its conferences and within every other activity in its organization. This should be true at both the society level and the chapter level."

He said RIMS must be "so beneficial to risk managers and the business community at large that the RIMS unicorn (logo) becomes synonymous with relevance."

In its efforts to improve service to its members, RIMS brought on some additional personnel during the past year.

"RIMS spent a good portion of the past year looking at ways to position the society for the next 50 years and beyond," Ms. Meltzer noted, "by ensuring that we have the internal staff competency required to implement our future strategies."

Mary Roth was hired as deputy executive director, a new position with administrative duties, and will act as a liaison with other organizations. She assumed many of the functions of the executive director when Linda Lamel, who held that position, left RIMS when her contract expired earlier this year.

"Linda Lamel successfully completed her tenure this last February," Ms. Meltzer said. "Linda was instrumental in the success of a number of our initiatives, including the Quality Scorecard, online learning and the development of technology."

A RIMS search committee will seek a replacement for Ms. Lamel.

RIMS also hired Andy Stegges in the newly created position of director of information systems to handle RIMS' growing technology requirements.

"On the professional development front, we made great strides in 1999," Mr. Andrews said. "In particular, RIMS has expanded the Fellow in Risk Management program, previously offered only in Canada." The FRM program, which is now available to U.S. risk managers, is modeled after the Canadian Risk Management designation.

And, Mr. Andrews noted, RIMS "began administering programs in the newly established Global Risk Management Insti-

tute," which is a subsidiary organization of RIMS.

In addition, registration in RIMS' online professional development courses was up 77%, and traditional classroom participation increased by 6%, he said. "And we look forward to growing these numbers in the future."

Mr. Andrews said that "a risk management society of the future" will be one that holds virtual chapter meetings and offers online educational programs to a worldwide membership. "Will it be RIMS? I hope so."

To that end, RIMS must "find ways to maximize the latest technology," he said. In particular, the effort must include a "premium Web site for risk management" that can provide educational tools and links to related risk management sites and to RIMS' industry partners, Mr. Andrews suggested.

Conference registration, member surveys, an up-to-date news service and other offerings all should be part of RIMS' online effort, he said.

"We want the Web site to be the Yahoo! or America Online of risk management, and we're committed to making this dream a reality."

RIMS also used the meeting to announce the election of its new Executive Council for the 2000-2001 term.

David Mair, associate director-risk management for the U.S. Olympic Committee in Colorado Springs, Colo., was elected first vp. The position is the traditional steppingstone to the RIMS presidency.

Five vps were re-elected to the council. They are:

- Christopher E. Mandel, vp-member and chapter services. He is senior director of the risk management department at Tricon Global Restaurants Inc. in Louisville, Ky.
 - Michael D. Phillipus, vp-education. He is manager-risk management at Pennzoil-Quaker State Co. in Houston.
 - W. Michael McDonald, vp-long range planning and research. He is director-risk management at Walter Industries Inc. in Tampa, Fla.
 - Karen Fleming, vp-governance and secretary. She is manager-risk management at Bell Atlantic Corp. in Arlington, Va.
 - Ms. Meltzer, vp-international.
- There also are three newly elected council members. They are:
- Randolph A. Thurman, vp-conferences. He is director of risk management at Gaylord Entertainment Co. in Nashville, Tenn.
 - Lance J. Ewing, vp-external affairs. He is director-insurance and loss prevention at GES Exposition Services in Las Vegas.
 - Nancy Chambers, vp-treasurer. She is risk manager with the Waterloo Region Municipalities Insurance Pool in Waterloo, Ontario.

RIMS presents honors at annual conference

By MICHAEL BRADFORD

SAN FRANCISCO—Donald T. Browne, a man considered a pioneer of risk management, is this year's recipient of the Harry and Dorothy Goodell Award presented by the Risk & Insurance Management Society Inc.

Mr. Browne, president and chief executive officer of the Georgia Bankers Assn. Insurance Trust Inc., accepted the award—RIMS' most prestigious honor, named for the society's founder—at RIMS' annual conference last week in San Francisco.

He said his first reaction to learning that he had received the award was "one of humility. I knew Harry Goodell, an individual who epitomized qualities such as honesty, integrity and loyalty. He also knew the meaning of friendship."

Mr. Browne began his risk management career at First Atlanta Corp. in 1970. His responsibilities included risk

management, governmental affairs, government banking and serving as president of a life insurance subsidiary of Wachovia Bank, which merged with First Atlanta.

His accomplishments included work as a founding director of the Robert S. Spencer Memorial Foundation. He held posts on RIMS' Executive Council and served as president and director of the Atlanta RIMS chapter.

The award was established in 1978 by Harry Goodell to honor those who help advance the practice of risk management.

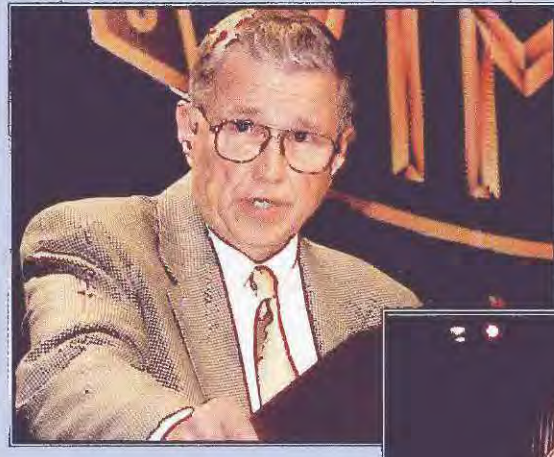
This year's Heart of RIMS award was presented to Ellen Vinck, vp, risk management and benefits at United States Marine Repair Inc. in San Diego.

Established in 1998, the award recognizes an individual nominated by his or her chapter for exhibiting qualities that enhance risk management at the chapter level.

Ms. Vinck is a member of the San Diego chapter and serves in the society's House of Delegates.

Her efforts to promote risk management included establishing a risk management curriculum at three major colleges and universities in the San Diego area. She is involved in many community service projects and is a frequent speaker on risk management topics.

See Awards on page 32



Donald T. Browne, above, a founding director of the Spencer Foundation, received the Harry and Dorothy Goodell Award, RIMS' most prestigious honor. At right, incoming RIMS President Roger L. Andrews and outgoing President Susan R. Meltzer addressed attendees after the awards ceremony.



PHOTOS: MICHAEL MARCOTTE

RIMS Awards



Above, RIMS presidents Roger L. Andrews, left, and Susan R. Meltzer present John Sacco with the Cristy Award. Mr. Sacco is senior manager of risk management at Cable & Wireless P.L.C. At right, RIMS Vp Karen Fleming, left, presents the Heart of RIMS Award to Ellen Vinck, president of risk management and benefits at United States Marine Repair Inc. Far right, Mr. Andrews, the incoming RIMS president, addresses attendees at the awards ceremony.



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Q

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PHOTOS: MICHAEL MARCOTTE

RIMS presented Lance Ewing, above, with the Bland Award for legislative achievements. John Sacco of Cable & Wireless, at right, received the Cristy Award.



Lichota Award winners Kristina Louise Behrens and Renato Mandaliti are flanked by RIMS Presidents Susan Meltzer and Roger Andrews.

Awards

Continued from page 28

Lance J. Ewing, director of insurance and loss prevention at GES Exposition Services in Las Vegas, was awarded the Richard W. Bland Award for legislative achievements. He serves as team leader of RIMS' external affairs team, which has produced numerous position papers addressing members' legislative concerns.

Mr. Ewing helped organize both of RIMS' legislative summits in Washington.

The risk management department for the City of Plano, Texas, won this year's Arthur Quern Quality Award for the department's Safety Olympics Program. The program stresses safety and accident prevention and promotes a team approach.

Each year, the city offers employees athletic activities—biking, for example—and emphasizes the safety aspects of the sport. Cyclists were taught to wear proper footwear and protective gear among other instruction.

John Sacco, senior manager of risk management at London-based Cable & Wireless P.L.C., was the winner of this year's Cristy Award.

The award is presented annually to the RIMS member with the highest cumulative average in the three exams leading to the Associate in Risk Management designation.

The Fred H. Bossons Award was presented at the Canadian Risk Management Conference in September to Ian Brian Mathers, senior adviser of transmission regulation at Ontario (Canada) Hydro and to Kathleen Kennedy, controller at Intercon Security Ltd. in Toronto. The award is for the highest academic average in the Certificate in Risk Management designation courses.

Charlene Butler, senior underwriter at Warren, N.J.-based Chubb Corp., won the Top Fellow in Risk Management Student Award for the highest academic average in the FRM-designation courses last year.

The Edith F. Lichota Award for research that has practical applications for risk management and employee benefits was presented to two recipients.

Kristina Louise Behrens, a student at the University of Utah, was given the award for her paper, "Risk Management Strategies in Developing the Light Rail System in Salt Lake City."

Renato Mandaliti won the Lichota Award in the graduate category for his paper, "Does Insurance Fit Genetically Engineered Food Risks?" Mr. Mandaliti is a student at the University of Wisconsin in Madison.

The Chapter Recognition Program presented RIMS chapters with the following awards:

- Outstanding Chapter Programming to Long Island, Oregon, San Diego and Houston chapters.
- Advancing the Risk Management Profession to San Diego and Atlanta chapters.
- Outstanding Member Services to San Diego and Minnesota chapters.
- Outstanding Membership Development to Greater Quad Cities, San Diego and Atlanta chapters.
- Outstanding Student Outreach to Western Michigan, Connecticut Valley and Atlanta chapters.
- Overall Chapter Excellence to Long Island, San Diego and Atlanta chapters. **B**

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Exhibitors showcase Web sites, services for managing benefits

By MICHAEL PRINCE

SAN FRANCISCO—Numerous exhibitors took advantage of the large gathering at the Moscone Center for the 38th Risk & Insurance Management Society Inc. annual conference and exhibition to demonstrate new ways for employers to address employee health and disabilities.

Maybe it's San Francisco's location near Silicon Valley, or perhaps it's just a reflection of where the economy is going, but many benefit exhibitors were launching Internet-based products and used the annual gathering as a showcase.

For instance, CorVel Corp. of Irvine, Calif., took advantage of the RIMS conference to announce the launch of its new Web-based approach to absence management, Care. The Web site, www.caremc.com, brings together employers, employees, providers and managed care vendors to manage employee absenteeism.

The Web site "gives employers the flexibility to have multiple vendors" that all work on the same Web site, said Gordon Clemons, president of CorVel.

Either the employee or the employer can enter any absence into the password-protected Web site. Within the site are the rules established by the employer as to when to refer an employee's absence to a workers comp or disability case manager.

With the system, existing workers comp and disability insurers also can log onto the Web site and get detailed information about a specific employer. In addition, a health care provider can check the site to learn the status of a specific case, Mr. Clemons explained.

An employer can also create reports that analyze its claims. For example, a report can be created that provides the number of back injuries sustained in a given month, or the number of days an employee has been absent because of a sick child.

The big advantage to the employer is that Care gets the absent worker to the proper provider. The system "shrinks the time delay in the case management process," Mr. Clemons said.

For example, he said, an employer can't put an injured worker into a return-to-work program until the doctor has examined that person. Care speeds up that process and gets the injured worker back on the job faster, saving the employer money.

"The real cost to employers is when employees stay home too long," Mr. Clemons said. "These time delays are really critical."

Another way to speed claims paying was touted by Coalition America Inc. The company links large multistate self-insured employers with preferred provider organization networks to create customized PPO networks that best suit each employer, explained Steve Wicinski, a regional account executive for the Atlanta-based company.

The advantage to an employer is that it deals with only one vendor—Coalition America—instead of the many networks that might be necessary to cover a geographically diverse workforce.

"We mix and match the best combination of networks for the employer," Mr. Wicinski said.

Currently, the company has contracts with 250 PPOs nationally and works with more than 300 employers and numerous third-party administrators, he said.

And since Coalition America deals with so many PPOs, it can offer an unbiased evaluation of which ones are best suited to a given employer's needs. The alternative, Mr. Wicinski said, is to talk directly to the PPOs and judge them based on their mar-

keting campaigns.

In addition, the company just launched an Internet site this year that allows employers to directly reprice their own individual claims in a matter of seconds. An employer, or any payer who receives claims directly from a provider, enters the claim information—such as the name of the provider, the diagnosis and the date of service—and the system reports the amount of the discount from that provider and the amount due for the service. Coalition America's system allows the fast and accurate payment of claims, Mr. Wicinski said.

The show was also the first public appearance for TriVanta, a newly launched division of Medex Global Group, a global travel insurance company. TriVanta goes beyond a worldwide 911 service and becomes a full-service travel benefit for employees, said Phil Dell, president and chief executive officer for the Minneapolis-based company. It offers "anything an employee might want in travel, globally," he said.

The company plans to have a Web site begin operating next January. The program is designed so that an employer can purchase the service and offer it to its employees or an insurer can buy it and bundle it with other services to employers.

The heart of TriVanta is its worldwide medical assistance program. This enables an individual who becomes ill or gets injured anywhere in the world to call a phone number and receive assistance. The company has contracts with 20 air ambulance companies globally and can admit people into 80 hospitals worldwide. In addition, the company will guarantee payment to these hospitals, eliminating the need to reaching a health insurer from a distant location to arrange for payment. These services are available for employees whether they are traveling for business or for pleasure. The cost varies from 40 cents to 50 cents per employee per month, depending on the exact level of service desired, Mr. Dell said.

Added to this is the optional Web site, called The Prepared Traveler, that will start next January. The site combines two of the most popular uses for the Internet, the provision of travel and health information. Once the service is supplied by an employer, a member can enter information into the site before going on a trip and receive detailed information about the area, including weather reports, local news and directions to specific locations.

"For the first time, it's a benefit that people can actually enjoy," Mr. Dell said.

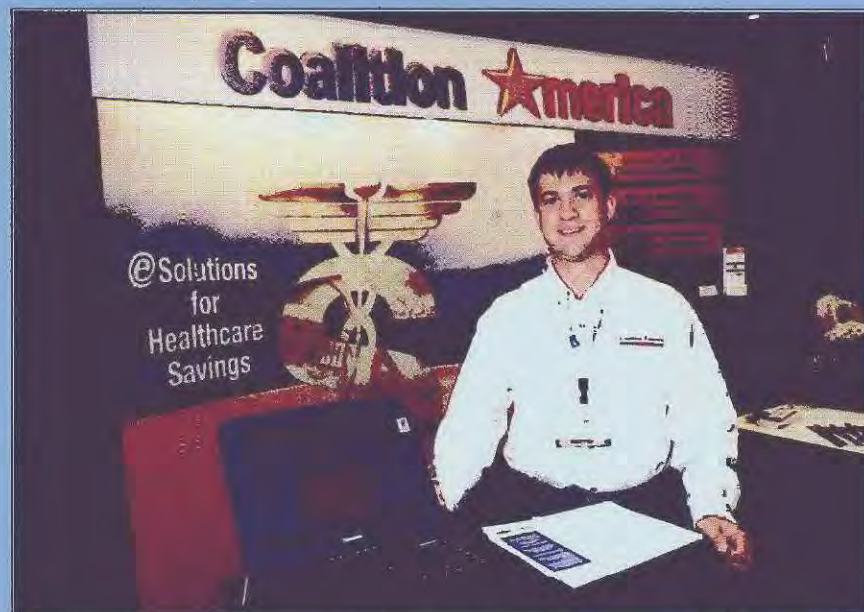
In addition, TriVanta will offer employees, at no cost to their employers, discounts on travel-related items and services such as books, airline tickets and auto rentals.

Mr. Dell said the company is targeting large employers, employer groups and affinity groups.

Another use of the Internet was demonstrated by Innovative Search Solutions, located in Long Beach, Calif. The company's Web site—set to open next month—will contain a listing of physicians in six states. An employer or an insurance company can use the site at no cost to gather the names of participating physicians, said Janet Parmelee, the president of this first-time RIMS exhibitor. The site is supported by fees from the listed doctors, who seek to solicit more business, she said.

Each listing contains detailed information about a physician, including his or her background and specialties. The listing even provides directions to the physician's office.

See Exhibitors on page 34



Many companies used the 38th Risk & Insurance Management Society Inc. annual conference and exhibition to showcase Internet-based benefit management products. Among them were, top to bottom, CorVel Corp., which announced the launch of Care, a Web site product that manages employee absences; Coalition America Inc., which creates customized PPO networks; and Total Health and Productivity, which unveiled its thap!net Web site, consisting of three products that handle employee absences.

PHOTOS: MICHAEL MARCOTTE



PHOTO: MICHAEL MARCOTTE

PMA Insurance Group promoted its case management skills and provided caricatures at its booth in the exhibit hall.

Exhibitors

Continued from previous page

Another first-time RIMS exhibitor, Total Health and Productivity, used the show to unveil its new thap!net Web site, www.thap.net.

The site provides three products designed to help employers better manage total absences.

The first product is thap!attend, which tracks all employee absences. Absences can be entered into the Web site by either employees or their employer, and the Web site is designed to record every possible reason an employee might be absent, said Dr. Phillip Polakoff, the president and CEO of the Emeryville, Calif., company.

In addition to gathering data on

absences, the site can also handle case management for work-related absences.

"From day one, an occupational nurse takes over and manages the acute episode to get you back to

Many companies exhibiting at RIMS featured Web-based products designed to help employers.

work," Dr. Polakoff said.

By using the Web site, all interested parties—the employee, employer, physician and insurer—can have access to relevant case information. One advantage of the

system is that the data is owned by thap!, which protects the employee's privacy.

"We become, in essence, an agent of the employer and an advocate of the employee," Dr. Polakoff said.

The third Web function of thap!net is the provision of detailed health care information. After receiving information about a particular condition, a user can contact a nurse for consultation.

The cost for the service varies, from \$3 to \$14 per employee per month, depending on the level of services selected. So far, Dr. Polakoff said, customers are seeing a return of \$3 to \$4 for every dollar spent.

Another company that was using the conference to promote a new product was HealthDirect Inc., a subsidiary of American International Group Inc. in Farmington, Conn.

Launched this February, the new product is a Web-based system for total absence management. Using the system, an employee can directly notify HDI by telephone or Internet when he or she will be absent for any reason. The employer can also input information on absences.

The system starts tracking all absences from the first day. When an employee has been absent for a time that has been predetermined by the employer, often five days, a nurse manager takes over the case, said Eric Bosnyak, director of sales and marketing for the company.

Only when an employer gets a total picture of all absences can it take measures to reduce absenteeism and improve productivity, said Marjorie Savage, clinical practice leader for HDI.

In addition to gathering information on absences, the system can perform all the functions an employer must complete to be in compliance with the Family and Medical Leave Act, such as tracking leave days and filing all necessary documents, Mr. Bosnyak said.

"We work with employers if they want to get out of the FMLA business," he said.

What makes HDI's approach different, Ms. Savage said, is that it offers a customized product. The system can work with an employer's workers comp and disability insurers, or the insurance itself can be added by HDI.

"We'll create a product on what exists already and what their needs are," Ms. Savage said.

And by using the Internet, an employer can call up reports that analyze absences, retrieve claims data and communicate by e-mail with HDI.

But not every exhibitor has gone high-tech.

The PMA Insurance Group was at the show to promote its tried-and-true integrated workers comp and disability program.

The key to that program, and what separates it from other such programs, is that the case managers "know both sides of the business," said Leo Tinkham Jr., assistant vp at PMA in Blue Bell, Pa.

The case managers are trained in both workers comp and disability, whereas other firms typically assign cases to two individuals, each handling one area, he explained.

This fully integrated approach also eliminates the internal squabbling between the workers comp and disability sides of the business that affect some other programs, Mr. Tinkham said. **B**

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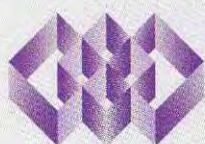
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Ergonomics efforts viewed as sound investment

By JOANNE WOJCIK KOCHANIEC

SAN FRANCISCO—Meeting new federal ergonomics standards will be much easier than most employers think, an ergonomics expert says.

And while there may be costs involved in complying with the proposed standard, there will be a substantial return on that investment, says Cynthia L. Roth, chairperson and chief executive officer of Ergonomic Technologies Corp. of Syosset, N.Y.

"If you have the makings of an ergonomics program with policies and procedures and the ability to

identify risk, you're going to be OK. There are so many companies doing nothing that, if you have something, you're better off than doing nothing," Ms. Roth told risk and benefit managers attending a session titled "Ergonomics—How will OSHA Help?" at the 38th annual Risk & Insurance Management Society conference and exhibition, held last week in San Francisco.

But merely identifying ergonomics-related risks will not be sufficient to pass muster with the federal Occupational Safety and Health Administration, Ms. Roth warned. Employers also must establish policies and procedures for

mitigating those risks, she advised.

"Don't identify risk and have an open book that says, 'Look what I did. I identified all these jobs that are high risk. Someday I'm going to do something about them.'"



Wrong. That's willful. That's knowledge. Don't do that," Ms. Roth admonished.

Ms. Roth also said that employers shouldn't be afraid of the proposed ergonomics standard, as they will find that establishing effective ergonomics programs will save them money in the long run.

In addition, she said, employers that take the initiative will have more control over how the standard is implemented in their workplace.

"Don't fear OSHA," Ms. Roth said. "Go ahead and develop your own program for your own company, because that way you can control your destiny. Once OSHA comes in and takes a look around, you've lost your own capability for control."

OSHA's proposed ergonomics standard, published in the Federal Register in November, was opened to public comment last month. The government agency was prompted to develop a standard in response to the increasing incidence of musculoskeletal disorders in the workplace, Ms. Roth explained.

Today, cumulative trauma disorders, such as back injuries and carpal tunnel syndrome, make up 34% of all lost-time illness and injuries, costing employers between \$15 billion and \$20 billion annually in workers compensation costs, Ms. Roth said. When indirect costs, such as lost productivity, are taken into account, CTDs cost employers anywhere from \$45 billion to \$60 billion per year, she estimated.

Today, workers with carpal tunnel surgery lose, on average, more than 25 days of work, compared with just 17 days for people with fractures and 20 days for amputees. Furthermore, workers with severe cumulative trauma disorders can become permanently disabled, she said.

And even though the incidence of ergonomics-related injuries has declined in recent years, that trend will likely be reversed because of the influx of immigrants into the U.S. workforce, Ms. Roth predicts.

While the immigrants who entered the American workforce at the turn of the last century were mostly Europeans of similar shape and size, today's immigrants come from Asia and South America, where people are typically smaller in stature. This makes redesigning jobs and workstations that much more critical, she said.

In addition, because of today's low unemployment rate, many older workers are entering the workforce, and these workers are more susceptible to injury than are younger workers, she said.

Establishing ergonomics programs will make American businesses more competitive in the global marketplace, because such loss control efforts actually work, she insisted.

"Ergonomics is good business," Ms. Roth said.

To prove her point, she pointed to an August 1997 report published by the Government Accounting Office that showed the savings achieved by five organizations that implemented ergonomics programs. The report, "Private Sector Ergonomics Programs," found reductions in: the number of illnesses and injuries per 100 full-time workers; the median days away from work; and the average cost of musculoskeletal claims.

Ms. Roth also shared the results of a case study she conducted of a company in the automotive manufacturing industry.

After a \$98,000 redesign of an assembly line, which reduced the amount of torque to which workers were exposed, the company reduced its annual workplace injury costs to \$486,000 from \$1.4 million in just two years. At the same time, the employer's workers compensation incident rate per 100 employees fell to 58.2 from 93.9 per 1,000 hours worked.

Remember, she said, "ergonomics is a science," meaning it's possible to develop solutions and measure results.

The session was moderated by Judy A. Rogers, manager of corporate insurance at Bank One N.A. in Chicago. **BI**



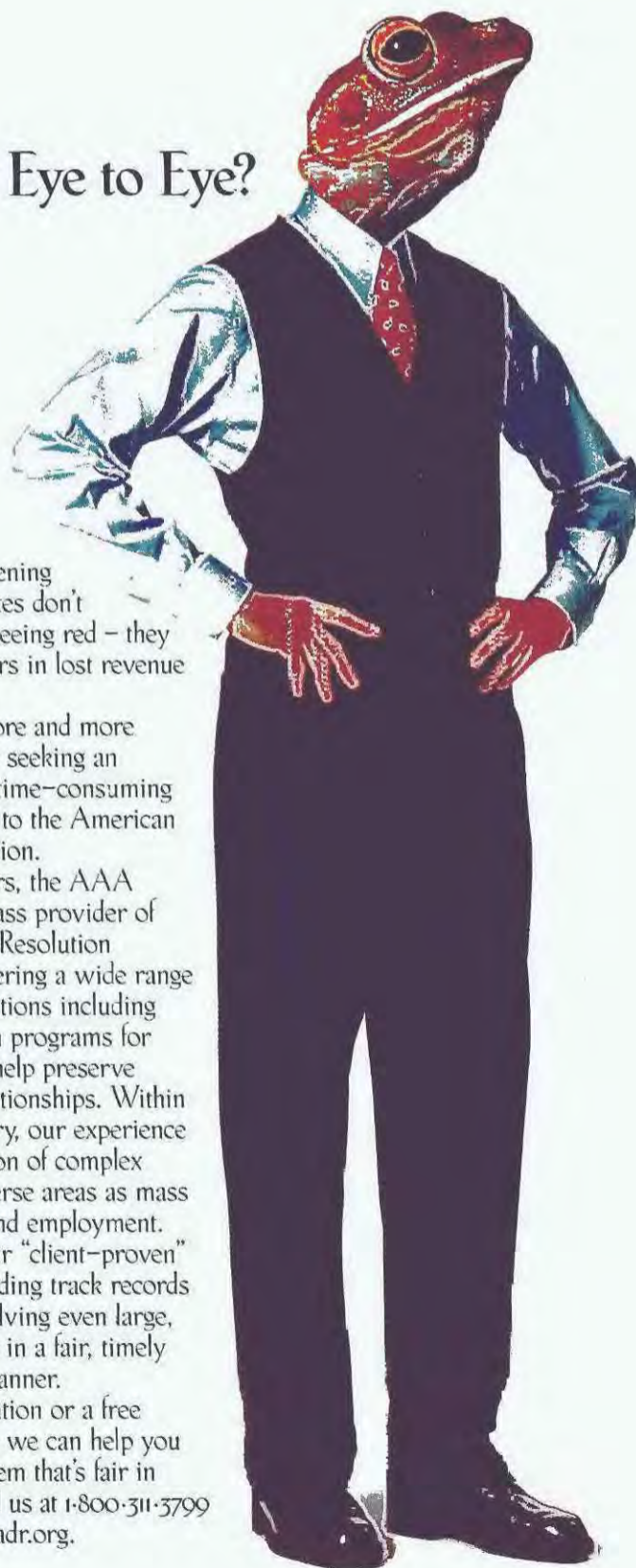
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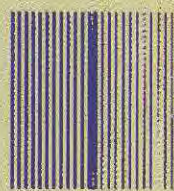
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BI's RIMSTV provided televised coverage of conference events.

Safety efforts need support from managers, employees

By DAVE LENCKUS

SAN FRANCISCO—Even the strongest safety program will not help reduce workers compensation costs if management and employees don't support the program, a panel of workers comp experts stressed.

Early intervention in a claim also is critical to controlling costs, meaning employers need to encourage their units to report claims promptly, the panelists said.

But employers should analyze carefully whether one early-inter-

vention technique, medical case management, is as effective as their managed care vendor may have promised it would be, noted one



panelist at a session during the Risk & Insurance Management So-

ciety Inc.'s annual conference and exhibition last week in San Francisco.

Last time "is the most controllable expense that risk managers can have an impact on," said Stephen N. Raimondi, director of risk management services for Norwalk, Conn.-based ABB Business Services Inc., an ABB Ltd. subsidiary. ABB Business Services has built a nuclear power plant in South Korea and offshore oil drilling rigs worldwide, among other things.

"Having a good written program on the shelf won't necessarily result in good loss control. Implementation is the key," observed Thomas B. Pomije, regional sales and marketing manager for NATLSCO, a unit of Long Grove, Ill.-based Kemper Insurance Cos.

He said the first step in implementing a program is making sure a facility manager understands

'When we work with the facility manager, we really have to put a program in financial terms,' says Thomas B. Pomije.

how it can benefit his or her operation.

"When we work with the facility manager, we really have to put a program in financial terms," he said. That involves spelling out the cost of injuries as well as potential savings in preventing them and better managing claims that do occur.

"If you don't sell them on the financial benefit, you probably won't get a real commitment from them," Mr. Pomije said.

An example of how this can work, he said, is a Missouri plant that ABB Business Services owns.

Mr. Raimondi said the plant had no workers comp problem until 1995, when its business increased significantly. At that point, its workers comp experience became "hellacious." Workers comp costs multiplied tenfold to \$1 million. The plant's incident rate jumped 200% in one year, and its lost-time ratio jumped 200% to 300% over a couple of years.

A NATLSCO study found that a key plant manager didn't realize that the unit, not the parent company, paid the workers comp costs.

Another problem was that the plant didn't have a program addressing safety, other than to ensure compliance with some government rules, Mr. Raimondi said. Those rules, however, "did not get to the crux of the company's workers comp problems." One problem was a severe lag—30 days or more—in reporting workers comp claims to risk management.

Mr. Raimondi cited a Kemper study that showed a 10-day lag drives up claim costs 29% and delays of 30 days drive up costs 48%.

He told the plant's senior managers how ballooning workers comp costs were hurting efforts to meet a profit-margin target and how that could derail their careers at the company. He also involved human resources and safety and

See Support on page 40

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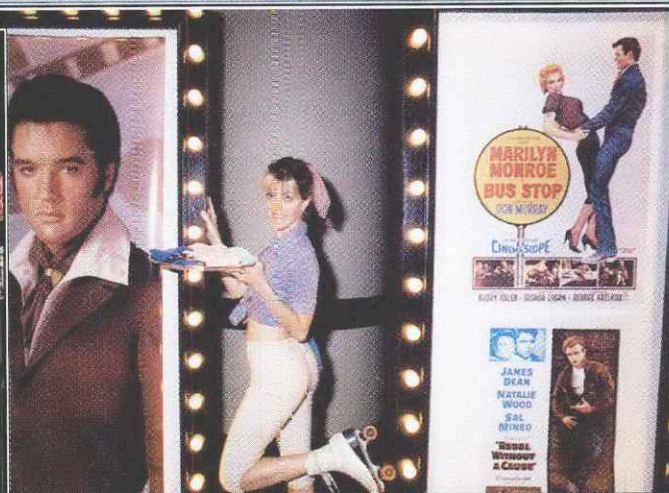
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RIMS celebrated its 50th anniversary with a '50s theme at the society's gala opening reception the night before the conference began. In addition to memorabilia from the era and an old-fashioned soda shop, the event featured a band that entertained attendees with rock 'n' roll tunes.



Support

Continued from page 38

made sure "everyone in the plant knew they had \$1 million of costs that was dragging them down."

Going to online injury reporting triggered aggressive and early post-loss management, Mr. Raimondi said.

The unit's new third-party administrator, Gallagher Bassett Services Inc., also implemented quarterly claims reviews in which the TPA evaluated all open cases and got injured workers back to at least light duty.

In one year, the incident rate decreased 80% and the lost-time rate dropped 86%. Developed claim costs fell 80% the first year and dropped 86% over three years.

All of that contributed \$560,000 to the business unit's profit over three years, with 80% of that coming in the first year.

Mr. Pomije suggested session attendees consider implementing a safe-behavior management approach, which he said gives workers a feeling of ownership of the safety program. This, he said, will be more successful than traditional management-developed safety programs in motivating employees to follow safety rules.

Under the safe-behavior program, management has employees identify the most hazardous jobs in the plant and determine how to perform them safely. After those guidelines are written down, employees observe one another and provide feedback.

Employees tend to follow their own rules better" than when a manager sets the rules, Mr. Pomije said.

Early intervention in the claims management process is as important as educating the workforce, according to Mr. Raimondi.

To get a jump on claims, ABB Business Services set up a toll-free phone system and an online, real-time claim reporting system.

A central reporting system is needed to determine which areas in the organization are not reporting claims in a timely manner.

But while early intervention is important for holding down claim costs, risk managers should be wary of savings promised by managed care providers, Mr. Raimondi advised.

An analysis by ABB Business Services' risk management department found the medical case managers saved only a fraction of what they had promised, though ABB addressed claims sooner and closed them faster.

"In my heart of hearts, I believe that aggressive managed care can reduce lost time, but it's not in the numbers right now," Mr. Raimondi said.

Reta Lewis, senior manager for Pier 1 Imports in Fort Worth, Texas, moderated the session. Patrick S. Clarke, corporate return to work administrator for Kemper Insurance Cos., was coordinator. **BI**

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PHOTO: MICHAEL MARCOTTE
San Francisco was host to the 38th annual RIMS conference.

Selling loss control efforts requires a bottom-line tack

By RODD ZOLKOS

SAN FRANCISCO—Competing as they are with other aspects of their organizations for both financial and human capital, risk managers must present proposed loss control and safety programs as good investments in order to obtain needed resources.

“The fact is, we have to return value on our investment,” said Lance J. Ewing, director of insurance and loss prevention for GES Exposition Services in Las Vegas.

Mr. Ewing, who moderated a session titled “What’s Your Rate of Re-

turn on Safety/Loss Control Investments” at the annual conference of the Risk & Insurance Management Society Inc. last week in San Fran-



cisco, said a recent visit to his company by representatives of an investment group drove that point home.

“My company is a publicly traded corporation,” said Mr. Ewing, who is chairman of RIMS’ external affairs team. “It was the first time in my career I’ve had an investment group come in and ask, ‘How many accidents have you had?’”

Scott J. Harkins, assistant vp loss control at Reliance National Insurance Co. in New York, noted, “There’s a struggle going on in every organization for capital—both money and human capital.”

“We need to make a case to management to show a return on investment for these safety projects,” Mr. Harkins said. “Competing for capital means we have to make a business case.”

Making such a case involves showing the expected financial consequences and business impact of the

‘We need to make a case to management to show a return on investment for these safety projects,’ says Scott J. Harkins.

proposed action over time. It should include the methods and rationale for quantifying the benefits and costs set out in the business case, Mr. Harkins explained. And it’s important that it be presented at the right time.

“You need to make sure your timing is right,” Mr. Harkins said. “The worst time you can do this is right after the final budget comes out (and you) go in and try to get approval for some loss control project.”

It’s also important that the case for the loss control proposal be made in terms the organization’s financial executives are accustomed to working with. “You don’t have to be a financial expert, but you should understand some of the terms and concepts,” Mr. Harkins said.

While the common language used in connection with safety projects might include lost day injury rates, property loss, workers compensation costs and regulatory fines, decisions on the financial side of the company tend to be made based on such notions as earnings or earnings per share, return on investment and payback period.

“I think the most important thing is to know what drives your organization,” Mr. Harkins said. “It’s very important that each of you understand what the drivers are, what makes things happen in your organization from a dollars-and-cents standpoint.”

And in presenting a loss control or safety project proposal, a risk manager must craft it with the recognition that “an investment is acceptable... if the return on investment is greater than the organization’s minimum acceptable rate of return, also known as the ‘hurdle rate,’” Mr. Harkins said.

But, he noted, “Good investment is a relative term.”

“An investment becomes a good investment when we can present to management a high level of confidence... that the rate of return is going to be more attractive than the organization’s hurdle rate for other projects.”

Presenting the project in such terms can require keeping in mind
See Returns on page 44



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Returns

Continued from page 42

such concepts as the time value of money, present value and rate of return.

"I think there's no question that if we are going to be successful within our organizations or with clients, we have to learn this language," said Regina M. Spratt, vp in risk control strategies at Marsh USA Inc. in Morristown, N.J., and session coordinator. "We need to be prepared to talk about things in terms of our investment decisions and in that language."

That begins with thinking about what is going to be important to the organization with regard to a certain loss control action, she said.

"It's going to take some time, but I think it will be time well spent in

order to be able to quantify what the costs and/or benefits will be to your organization," she said.

The process involves going outside the risk management department to get the necessary information, and it often entails considering a range of possible outcomes, rather than a single possible result, Ms. Spratt said.

"This is tough. It's difficult to do, but a lot of time we're limited only by the time and energy we're willing to invest here."

Ms. Spratt noted that making the business case involves presenting both the direct costs or benefits of a project—including labor costs, legal costs, workers compensation costs or production downtime—and the hidden or indirect costs or benefits, such as product quality, employee morale and customer image. **B**



PHOTO: MICHAEL MARCOTTE

San Francisco's Moscone Center hosted the 38th Risk & Insurance Management Society Inc. Annual Conference and Exhibition, where more than 400 companies displayed exhibits.

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**Business
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Prompt action needed after harassment claim

By MICHAEL PRINCE

SAN FRANCISCO—Investigating a claim of sexual harassment can save an employer money.

A prompt investigation of a sexual harassment claim is an important step in limiting liability. And when conducting this investigation, an employer should not focus just on getting to the bottom of what happened but do so in a way that would appeal to a jury that might one day sit in judgment, two attorneys said.

"Look ahead with every step with how it will look to a jury," said Royal Oakes, an attorney with Barger & Wolen L.L.P. in Los Angeles, who specializes in defending employment discrimination lawsuits.

"People have to be very careful in the workplace these days," Mr. Oakes said, addressing attendees at the Risk & Insurance Management Society Inc.'s annual conference last week in San Francisco.

Perhaps the greatest concern for employers is that even if a company does not know of the harassment, it is strictly liable for that conduct, he said.

But if an employer moves quickly to address the harassment, then it is not liable for many types of suits, he said. So, besides unearthing the truth behind an allegation, another goal of investigating a harassment charge is to show a court that the employer moved quickly and took action to correct the situation.

Roxanne Davis, an attorney in Los Angeles specializing in employment law, said that in her 12 years of representing both employees and employers, people often brought harassment suits because their employers did not listen to their complaints.

Therein lies the hidden value of an investigation, Ms. Davis said: it gives the employee an

opportunity to tell his or her story and be heard. "Nine times out of 10, an allegation won't turn into a lawsuit if you stop it in its tracks," she said. And the best way to accomplish this is to listen to the complaint and conduct an investigation, she said.

But investigating an allegation does not mean assuming what the accuser says is the whole story. Usually, there are at least two sides to an incident, and an investigation should focus on determining exactly what happened by talking to everyone with knowledge of the events.

So, an investigation should be conducted for two main reasons. First, it's the right thing to do, because sexual harassment can be destructive to an employee. Second, it's the best way to minimize liability if any suit does arise.

"If you take action right away, the employee might not have a valid legal claim," she said.

Once it is established that an investigation is warranted, what should an employer do next?

The first step is to assemble an investigative team. The team should be carefully chosen. Ms. Davis does not recommend that an in-house attorney conduct the actual investigation. Should a lawsuit arise, the investigator's notes can be subject to scrutiny from the plaintiff, she explained. Furthermore, Ms. Davis said, the investigator can be deposed and forced to tell about prior complaints of sexual harassment within the company, and an in-house attorney would probably have lots of information about prior complaints. To avoid this problem, Ms. Davis recommends hiring an outside investigator to do the work under the supervision of the in-house attorney.

Mr. Oakes also advised that any sexual ha-

arrassment investigation team should include at least one woman. In addition, none of the team members should have a history as the subject of a sexual harassment charge, he suggested.

The first step of an investigation is to talk to the accuser. An account of what happened and the time and location of each incident of harassment, along with the names of any other individuals who were present, should be noted. Afterward, a written statement should be prepared and signed by the employee.

From there, the investigators should ask all witnesses to verify or deny the allegations. Any documents involved also should be located.

It is important to make a record of these interviews. "A tape recording is the best evidence of what is said," Mr. Oakes said. But any tape recording must be done with the interviewee's consent, and that consent should, preferably, be recorded on the tape itself.

It is very important that investigators not slander the accused by telling interview subjects the accusations. Similarly, interviewers should ask no leading questions during the interviews.

At some point, the accused must be questioned. The questioning can take place near the end of the investigation, so that all the information has been assembled before the interview.

At the end of the investigation, the investigation team should prepare a final report determining what happened and recommending disciplinary action, if any is needed, the speakers said. The punishment should take into account both the severity of the conduct and any history of similar conduct. And it may be valid to conclude that the conduct was simply in

poor taste and warrants no punishment, Mr. Oakes said.

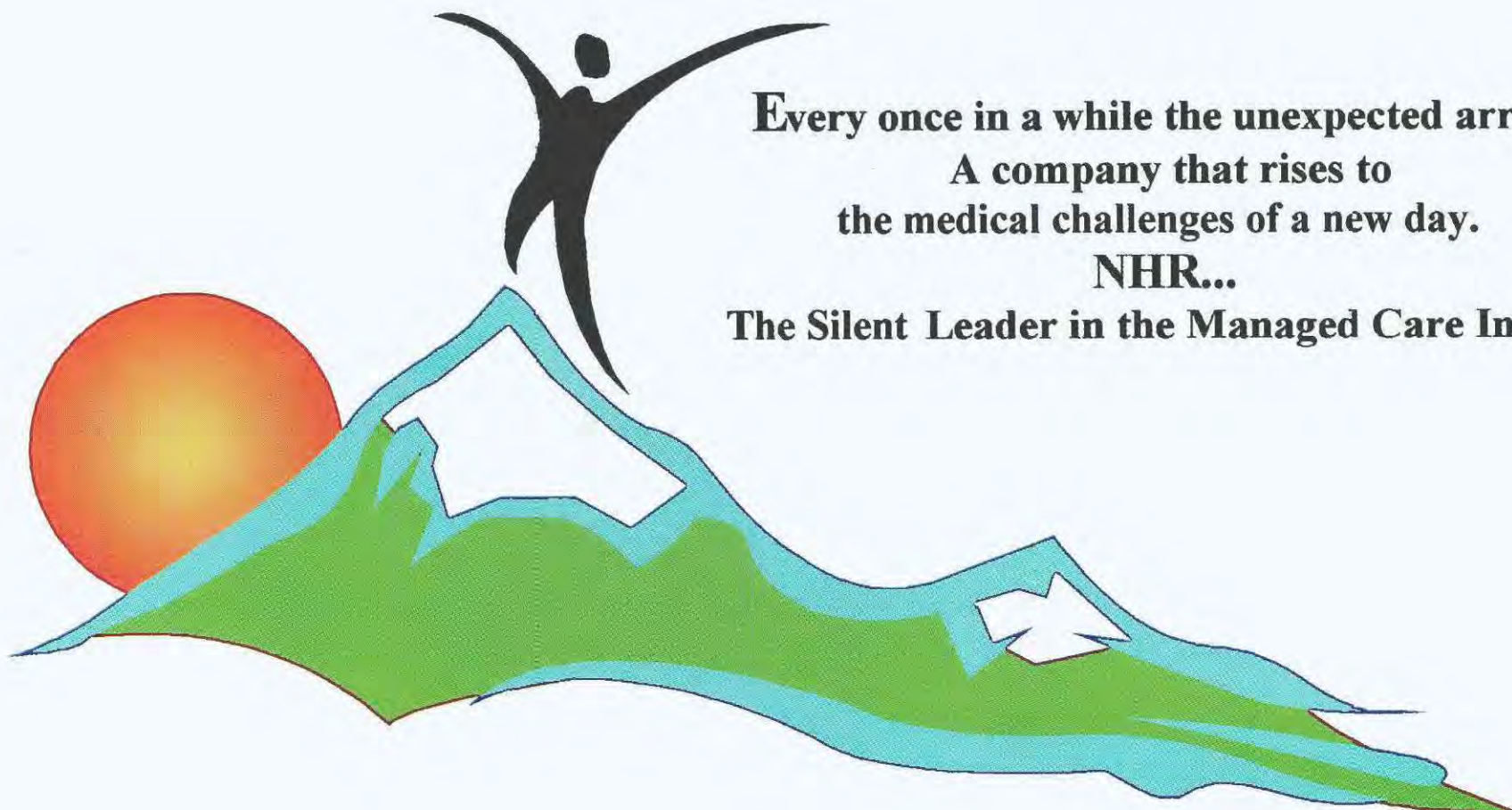
The findings of the investigation should then be relayed to both the accuser and the accused. This step tells the complaining employee that the company respects him or her. If the finding of the investigation is that there was no harassment, that should be told to the accuser tactfully, so that he or she does not perceive that the investigation was a sham or that he or she is being accused of lying, Ms. Davis said.

The session was moderated by Carol Arendall, director of risk management for Saks Inc. in Milwaukee. **BI**



PHOTO: MICHAEL MARCOTTE

San Francisco's historic cable cars were among the attractions during the 38th RIMS annual conference.



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Workers comp market shows signs of turning

By JOANNE WOJCIK KOCHANIEC

SAN FRANCISCO—Risk managers beware: The days of cheap, guaranteed-cost workers compensation insurance and multiyear rate guarantees are gone.

For several years, insurers overestimated the savings managed care would achieve and significantly underpriced their guaranteed-cost products in order to capture market share, said Robert L. Rey, first vp-risk management at Reliance National Insurance Co. in San Francisco.

And now those insurers have to pay the piper, he said to those attending a session titled "Future Shock in Workers Compensation" at the Risk & Insurance Management Society Inc. annual conference and exhibition last week in San Francisco.

Such pricing strategies, coupled with the recent unraveling of the Unicovert Managers Inc. reinsurance pool, are forcing a market turn that is working its way from the West Coast eastward, said James C. Halbleib, area senior vp in Gallagher Heffernan Insurance Brokers' risk management division in San Francisco. Gallagher Heffernan is a division of Arthur J. Gallagher & Co.

In fact, Unicovert's cheap reinsurance, which was provided by a group of "naive" life insurers, actually fueled the cash-flow underwriting, as it gave primary underwriters a false sense of security, he said.

Insurers thought that even though they were pricing workers comp insurance below loss costs, there was sufficient reinsurance available, he said.

But when Unicovert fell, many insurers were left holding the bag, and that bag was filled with workers comp losses on guaranteed-cost insurance policies that far exceeded the premiums paid. Unicovert's combined ratio for that business has been estimated at anywhere from 150% to 200%.

And because Unicovert provided reinsurance to approximately 25% of the nation's \$25 billion workers compensation market, its troubles were the catalyst for the changing market.

"It was like throwing a match on kerosene," Mr. Halbleib said.

"Now, guaranteed-cost policies are no longer available," or insurers will write them only for twice the premiums, he said. "What's happening in the year 2000 is anything but guaranteed cost," he said.

Indeed, the days of inexpensive workers compensation insurance are over, agreed Reliance's Mr. Rey.

Insurers' premium-to-surplus ratios for work comp business have deteriorated to 0.60-to-1 in 1999 from 2-to-1 in 1988, he said, citing figures from the National Council on Compensation Insurance in Boca Raton, Fla.

Unfortunately for insurers, "1999 and 2000 are history. We're not looking to recoup the mistakes that we made in those years. You're not going to let us," Mr. Rey acknowledged to his audience of insurance buyers. "But we are going to cover our costs" by pricing the products appropriately from an actuarial standpoint.

In addition, "the underwriting

of that work comp product is going to go to the more traditional reinsurer...we're not having life insurers doing casualty underwriting," he said.

"As the market turns, it usually starts in California and then works its way back east," he said. "I think that's what we're starting to see right now."

Indeed, the projected combined ratios for 1999 workers comp business are the worst: in California, at 132%, compared with 126% in New York, 116% in Pennsylvania, and 115% in New

See *Comp* on next page



PHOTOS: MICHAEL MARCOTTE

Reliance's booth congratulated Paul Buckley, the *Business Insurance* Risk Manager of the Year, while visitors at ProTemps' booth tested their putting skills.

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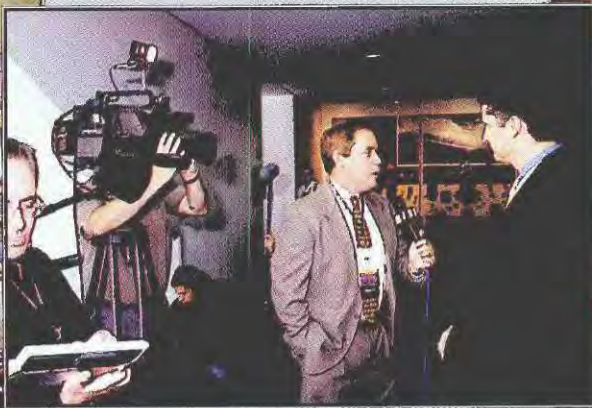
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More than 400 exhibitors were on hand last week during the 38th RIMS Annual Conference & Exhibition in San Francisco, where reporter Mike Sanford covered the exhibit hall for *Business Insurance's* RIMS-TV.

PHOTOS: MICHAEL MARCOTTE

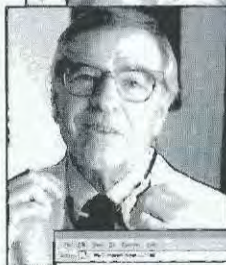
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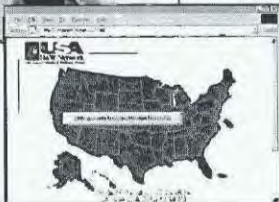


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Comp

Continued from previous page
Jersey, Mr. Rey said, citing NCCI figures.

Meanwhile, as the insurers attempt to base their prices on the actual risks, the risks themselves are changing, observed Jeffrey W. Pettegrew, vp-insurance and risk management at Westaff Inc., a temporary staffing service based in Walnut Creek, Calif.

The prosperous economic conditions the nation is enjoying are likely to contribute to workers compensation costs in the future, he predicts. Low unemployment rates mean that the pool of available workers has shrunk.

For example, employers are being forced to hire workers that previously have suffered work-related injuries, and those injuries may recur, he said.

In addition, many in the current employee pool have histories of substance abuse, making them more susceptible to on-the-job injuries, Mr. Pettegrew said.

"Have you ever done post-accident drug testing?" he asked the audience. "A significant percentage of employees injured on the job were using drugs." And "a lot of them test positive for using borrowed prescription medication," he said.

"In this economy, a lot of employees are bottom-fishing. They have to be careful about employee drug use," he warned.

Another problem is that, today, many injuries that are being deemed work-related may have been caused by recreational activities, Mr. Pettegrew said.

He cited as an example a case in which a woman who was a concert violinist and who was given a permanent disability award for carpal tunnel syndrome diagnosed while she worked for Westaff.

"She was a secretary to an executive and rarely did data entry," he said.

The changing nature of work due stemming from technology also is contributing to employers' workers compensation exposures, Mr. Pettegrew pointed out.

"People are doing tasks they've never done before," he said.

For example, in some cases, employees are using equipment from other countries that "often doesn't come with user manuals," and "the new high-tech dot-coms are not doing safety training" like the old manufacturing firms traditionally have done, he said.

Even the growing use of cell phones could eventually lead to work-related injury claims, Mr. Pettegrew suggested. "You've heard that cell phones may cause cancer," he said. "If you use a cell phone for work and get cancer, then the cancer could be work related."

"We really don't know, in the long term, what effect these things will have on us," he said.

Mr. Pettegrew served as the session moderator. **B**

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INTERNATIONAL

Global Briefs

A.M. Best Co. has affirmed its A, or excellent, rating of **Lloyd's of London**. Best said the rating is based on Lloyd's capital strength, its leading position in a number of important markets, its high-profile brand image, its global licenses and good regulatory oversight. The rating continues to carry a negative outlook, however, which reflects Lloyd's poor earnings in the past three years of account, Best said. . . . Paris-based **AXA S.A.** has reached an agreement with the directors of U.K.-based **Sun Life & Provincial Holdings P.L.C.** to acquire the 43.7% of **SLPH** it does not already own. Under a scheme of arrangement, which is subject to approval by **SLPH** shareholders, **SLPH**'s minority shareholders would receive 500 pence (\$7.80) in cash and an exceptional dividend of 5 pence (8 cents) for each **SLPH** ordinary share. A **SLPH** shareholders' meeting is expected to take place in June. . . . **Zurich Insurance Co.** has entered into an agreement to underwrite professional indemnity insurance for members of the London-based **Medical Defence Union**. The **Zurich Financial Services Group U.K.** property/casualty insurance business unit will acquire a minority interest in **MDU Services Ltd.**, currently a wholly owned subsidiary of **MDU Services Ltd.** will administer the joint venture. . . . **Lloyd's** managing agent **Amlin P.L.C.** plans to absorb two syndicates it has managed since it acquired **Angerstein Underwriting**. Subject to shareholder approval, former **Angerstein** syndicates 902 and 1141 will be merged into **Amlin** syndicate 2001. . . . London-based **Jardine Lloyd Thompson Group P.L.C.** and **New York-based** private investment bank **The Blackstone Group** have formed a joint venture, **Capital Risk Group L.L.C.**, that will design and place tailored risk transfer and risk-funding programs for major corporations. **JLT** will own 80% of the new venture; the remaining 20% of capital will be supplied by **The Blackstone Group**. . . . **ACE Bermuda Insurance Ltd.** and London-based broker **Willis Group Ltd.** have launched a strategic partnership to establish an **ACE-owned** protected cell company in **Guernsey**. **ACE PCC Insurance Ltd.** will be owned by **ACE** but operated under a partnership with **Willis**, which will provide management and marketing expertise. The venture will have net capacity of up to \$200 million, **ACE** said. . . . Switzerland-based **Winterthur Group** is to acquire **Colonial U.K.**, the U.K. subsidiary of Australian insurer **Colonial Group**. **Winterthur** will pay 12.2 billion Swiss francs (\$7.07 billion) for **Colonial**, which will be integrated into **Winterthur Life U.K.** The deal is subject to regulatory approval. . . . **Anti-capitalism** riots in London over the May Day weekend caused up to £500,000 (\$780,000) of damage, according to reports. A peaceful demonstration in London's Parliament Square ended in violence when a **McDonald's** restaurant in **Whitehall** was stormed by protesters. Among other damage, the **Cenotaph War Memorial** and a statue of **Winston Churchill** were defaced. . . . The **China Insurance Regulatory Commission** has announced a crackdown on illicit activity by insurers in the country. The **CIRC** said that some insurers, both domestic and foreign, have been breaking **CIRC** rules and that a cleanup is needed before the insurance sector can be opened up to wider competition. . . . German insurer **Gerling Credit Insurance Group** has opened a London office to coordinate its product range and sales worldwide. **Gerling Credit Insurance Services Ltd.** will offer tailor-made insurance programs for multinational companies.

Dai-ichi ordered to shut down

Failure leaves investor Kyoei Life short of capital

By DOUGLAS McLEOD

TOKYO—Tough market conditions for Japanese non-life insurers claimed their first victim, as Japanese regulators last week halted new underwriting by **Dai-ichi Mutual Fire & Marine Insurance Co. Ltd.**

Tokyo-based **Dai-ichi's** failure, the first by a Japanese casualty insurer since World War II, may have further repercussions: **Kyoei Life Insurance Co.**, which invested heavily in **Dai-ichi Mutual** last year, is now seeking new capital in the wake of the shutdown and is in discussions with **Prudential Insurance Co. of America** about possible financial assistance, a **Prudential** spokesman confirmed.

The two companies' troubles come as Japanese casualty insurers continue battling a withering combination of low inter-

est rates, shaky investment portfolios and the effects of insurance market deregulation.

Dai-ichi's failure, the first by a Japanese casualty insurer since World War II, comes amid low interest rates, shaky investment portfolios and deregulation.

tion.

While the non-life insurance industry is relatively healthy compared with other financial sectors in Japan, poor economic conditions and rising competition following deregulation will present challenges for

non-life companies for the near future, **Standard & Poor's Corp.** concluded in a review last year.

The difficult conditions will make it especially hard for smaller companies to survive on their own, the report suggested.

Japan's **Financial Supervisory Agency**, the nation's top regulator, ordered **Dai-ichi Mutual** to cease new underwriting after the insurer failed to raise new equity capital under an **FSA-managed** rescue plan, according to **S&P**. The insurer will continue to service existing policies and investment products.

Dai-ichi Mutual found itself weakened by poor asset/liability management and by non-performing loans and hidden losses in its investment portfolio, **S&P** said. Like other Japanese insurers, the company was also squeezed by a long period of low interest rates that have made it difficult for

See **Dai-ichi** on next page

QBE offer for LIMIT casts doubt on Wellington merger

By CAROLYN ALDRED

LONDON—A cash offer last week by Australian insurance company **QBE Insurance Group Ltd.** for **LIMIT P.L.C.** could scuttle **LIMIT's** proposed merger with **Wellington Underwriting P.L.C.**

LIMIT, which is one of the biggest corporate investors at **Lloyd's** of London, announced on May 2 that it had "received an unsolicited approach from **QBE**." Although it rejected the approach as undervaluing the company, **LIMIT** said in a statement that it recognizes that some institutional investors might welcome a cash offer and announced plans to seek a higher offer from other parties.

The company also announced that, although it planned to continue to work toward the deal with **Wellington**, "there is now uncertainty as to whether **LIMIT** will be able to complete its proposed merger."

QBE Managing Director and Chief Executive Officer **Frank O'Halloran** confirmed that **QBE** is prepared to make a cash offer for **LIMIT** at 120 pence (77 cents) per share. He added that the offer "followed the receipt of support from a number of **LIMIT's** significant institutional shareholders for the approach to be made."

The offer would be conditional on the proposed merger between **LIMIT** and **Wellington** not proceeding, **QBE** confirmed. That merger would create the largest underwriting company at **Lloyd's**.

LIMIT "believes this offer price, if it were to materialize as a firm offer, significantly undervalues **LIMIT**. (At Dec. 31, 1999), the net asset value of **LIMIT** was 160.1 pence (99 cents) per share, and its net tangible asset value was 132.8 pence (82 cents) per share," the **LIMIT** statement said.

Meanwhile, "**LIMIT** and **Wellington** have stated that the proposed merger would generate annual cost savings amounting to some 50% of the combined 1999 earnings of the merged group and believe that these and other benefits of the merger should generate significant value for shareholders in the medium term," the **LIMIT** statement said.

QBE pointed out in a statement on May 3 that **LIMIT's** share price at the time of its offer was just 85.5 pence (50 cents) per share and that the offer "takes into account the potential impact on **LIMIT** of the fall in the U.K. stock market and rising interest rates on bond portfolios (since Dec. 31, 1999); deferred tax on unrealized gains not

See **QBE** on page 52



PHOTO: SARAH VEYSEY

David Fleetwood, the chairman of **ALARM**, opened the conference at which the standards project was announced.

Team to develop risk management standards for U.K.

By SARAH VEYSEY

COVENTRY, England—The United Kingdom's three biggest risk management bodies have joined forces to develop internationally recognized standards for risk management.

The **Assn. of Local Authority Risk Managers**, the **Assn. of Insurance and Risk Managers** and the **Institute of Risk Management**, have jointly commissioned a team to create "the definitive parameters and standards for risk management."

At **ALARM's** annual conference on April 17 and 18 in **Coventry, England**, the three organizations announced that the team would be led by **David Ovenden**, former head of insurance and risk management for **P&O Steam Navigation Co.**, associate of the **Chartered Insurance Institute**, fellow of the **IRM** and a former **AIRMIC** chairman.

See **Standards** on page 51

EPL claims rise sharply in U.K.

By CAROLYN ALDRED

Employment practices liability is a growing risk for European companies, as recent statistics reveal that more employees are taking their employers to court.

The latest statistics from the **Advisory Conciliation and Arbitration Service**, a U.K. government-funded body that works to resolve workplace disputes, show that legal actions against British employers jumped by about one-third, to 164,525 for the year ending March 31, 2000, compared with the comparable prior year.

A similar increase was reported recently by the U.K. **Engineering Employers Federation**, which said that employee claims

against member companies increased by 30% in 1999, to 2,770 claims from 2,137 in 1998. At the same time, the cost of settlements also rose. In particular, settlement costs for discrimination cases increased more than 20%, according to the **EEF**.

Discrimination cases "are now a lot more complicated than unfair dismissal," which is seen in the increase in cases involving multiple charges by the same employee, said **EEF** legal adviser **Richard Linskill** in London. "The more claims that companies have to deal with, the more effort they have to put into it. The last thing businesses need to be doing is fighting tribunal cases," **Mr. Linskill** said.

"There is more employment legislation,

much of it stemming from the **European Commission**, and employees are more litigious and more aware of their rights generally. As a result, there has been a marked rise in employment disputes over the past few years," said an **ACAS** spokesman.

Underwriters also point out that the demand for **EPL** insurance in Europe, while still at a lower level than in the United States, is growing fast.

Since **American International Group Inc.** launched a stand-alone **EPL** policy, **Corporate Guard**, for the European market about a year ago, demand for **EPL** insurance has grown significantly, particularly in Germany, France and the United Kingdom,

See **EPL** on page 52

INTERNATIONAL

Work-related stress seen as top concern: ALARM survey

By SARAH VEYSEY

COVENTRY, England—Stress at work is the most serious emerging threat faced by the public sector, and by local authorities in particular, according to a survey of members of the Assn. of Local Authority Risk Managers.

The results of the survey were published at the association's annual conference, held in Coventry, England, on April 17 and 18.

The survey of 166 of the association's members, undertaken in March, revealed that 85% of them include "stress at work" among the top-10 most-important emerging risks. Four out of five also included "employee health" and "employee liability" in their list of the top-10 emerging risks faced by public sector risk managers.

"If the adage is true that an organization's greatest asset is its workforce, then local authorities and other public bodies would be well advised to review their personnel policies and procedures to incorporate professional risk management principles to reduce stress and employee health concerns," said David Fleetwood, chairman of ALARM and risk manager for Sunderland City Council.

Elaine Butterworth, a member of the organizing committee for the ALARM conference and assistant risk manager for the Coventry City Council, is to study workplace stress and American risk management practices during an exchange visit. In August, Ms. Butterworth will spend 10 days in St. Louis, Mo., as part of an exchange program with the Public Risk Management Assn.

"The depth of our concern about the problems caused by stress is illustrated by the fact that one of our leading members is to look at how the Americans tackle the issue. I'm sure

the lessons learned by Elaine in St. Louis will help local authority risk managers in the U.K. deal with stress-related issues," said Mr. Fleetwood.

The PRIMA Risk Management International Exchange Program "enables risk managers to compare and contrast legal systems in the United Kingdom and the United States, with particular emphasis on compensation awards for civil liability and employee injuries," according to an ALARM statement about the program.

The survey revealed that nine out of 10 ALARM members believe that an unhealthy "compensation culture" is growing in the United Kingdom. This culture is "fueled by society's increasing tendency to look for someone to blame and 'no-win, no-fee' legal advertising, exacerbated by media coverage of high compensation awards," ALARM said

in a statement about the survey.

Government-funded legal aid for personal injury claims was abolished last month in the United Kingdom, to be replaced with a conditional fee, or "no win, no-fee," arrangement, similar to the contingency-fee arrangement in the United States (BI, May 1).

Almost three-quarters of the respondents to the ALARM survey—71%—said they thought that the widespread advertisement of no-win, no-fee legal representation was encouraging weak or even frivolous claims, and 89% of respondents said they believed that, by spotlighting high compensation payments, the media was presenting a false picture of current claims adjudication fairness. The vast majority of respondents, 91%, said they thought the establishment of an improved risk management culture within public bodies would help to remedy this situation.

Community safety was a topic high on the agenda at the ALARM confer-

ence, and 87% of survey respondents said that risk managers have a major role to play in community safety. Almost two-thirds of respondents (63%) said they thought enough was being done in their organizations to promote community safety, but 91% called for more funding from the central government to solve community safety problems.

Three-quarters of ALARM members said that the police should not always be the leading body engaged in community safety planning.

"This has major implications for the future role of local authority risk managers," said Mr. Fleetwood.

The ALARM conference was addressed by Sir John Evans, president of the Assn. of Chief Police Officers and chief constable of the Devon and Cornwall Constabulary. He stressed the fact that community safety was an area in which local authority risk managers in the United Kingdom could collaborate with police.

He said there was a "need to acknowledge that the police service alone cannot deal with crime and community safety. We need to engage with local communities and develop partnerships with statutory and voluntary groups."

Sir John said that he had been encouraged by the setting up of so-called "community safety partnerships" in many areas of the United Kingdom. "I am heartened that, in recent years, we have seen many benefits of voluntary collaboration between the police service, local authorities and other local agencies in partnerships to reduce crime," he said.

The survey also questioned respondents about the so-called "Woolf reforms," litigation rules instituted last April in an effort to speed up litigation and make the legal system less expensive and more accessible to claimants (BI, Dec. 14, 1998).

A 92% majority of respondents to the ALARM survey judged the Woolf reforms to have been a success. 89% said the reforms had speeded up the claims process, and 75% said they had improved administration. But

77% of respondents said that the Woolf reforms had not reduced the volume of claims that their organization received.

Addressing the conference, David Grimley, technical claims manager for St. Paul International Insurance Co. and a member of the Assn. of British Insurers working party set up to contribute to the consultation phase of the Woolf reforms, said that

he had seen an improvement since the reforms were enacted a year ago.

"There has been a speeding up (of the claims process), and it has been beneficial. We have not been running around chasing hopeless cases, and we have stopped wasting time; the amount of litigation has diminished," Mr. Grimley said. "The cooperation from local authorities has been excellent, a distinct improvement." BI



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Standards

Continued from page 49

The team plans to publish its proposals for consultation in six months.

There currently are no national standards for risk management in the United Kingdom.

"The management of risk has evolved in recent years, and there has been a growing ground swell for a fresh look at the essential requirement, codes of practice and levels of competence required for this demanding discipline," said Terry Simister, chairman of the IRM.

Mr. Simister, who is overseeing the standards initiative, said that the development of standards was something the three organizations have been considering for some time.

"We have been looking at it for 18 months to two years, but we have had to wait for certain things, like the Turnbull Report, to happen before we could really do anything," he said. The Turnbull Report, released in September 1999, called for increased corporate governance and attention to risk management issues.

Mr. Simister served on a British Standards Institute committee that considered adopting risk management standards outlined in Australia and New Zealand in the United King-

dom. Although the committee ultimately decided not to adopt the Australasian standard, Mr. Simister said that it recognized the need for U.K. risk management guidelines.

"I was very concerned when I saw that the BSI had lots of rules which contained the words 'risk management' but don't define what they mean. So I asked the BSI whether the IRM, AIRMIC and ALARM could develop a standard that will be used voluntarily and then take that standard to the BSI and request that it becomes the U.K. standard," he said.

The team plans to submit its standards to the BSI to gain its official ratification. It will then seek worldwide recognition of the standards by submitting them to the International Standards Organization.

"We are trying to pick up on ISO definitions and trying to put standards in place around this," Mr. Simister said.

The three organizations hope to draw up a draft outline of the standards in time for the AIRMIC annual conference in June and to draft a set of proposals by September.

"With the authoritative backing of ALARM, AIRMIC and IRM, the work being undertaken to create new standards may well act as a seminal guide for other risk management practitioners in the world," Mr. Simister said.

ALARM Chief Executive Elizabeth Taylor and Mr. Simister described the cooperation between ALARM, AIRMIC and IRM as very significant.

"This is a landmark for the three associations, because it is the first time the three have worked together," Mr. Simister said. BI

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INTERNATIONAL

EPL

Continued from page 49

said Matthew Carr, corporate manager for the management liability department of AIG Europe (U.K.) Ltd. in London.

Until recently, many companies insured EPL risks through their directors and officers coverage, but "changes in employment law mean people now are focusing on EPL and are not willing to share their D&O limits with EPL risks," said Mr. Carr.

Mr. Carr predicted that the European EPL market will expand greatly over the next 12 to 18 months.

A spate of legislation across Europe, together with an increasing tendency among Europeans to take legal action, is increasing the pressure on employers and creating a greater desire for stand-alone EPL coverage, said Lloyd's of London underwriter Ian West. Mr. West is a professional and financial risks underwriter for syndicate 702, which is managed by R.E. Brown Underwriting Ltd.

The syndicate recently launched a stand-alone company liability policy offering coverage for employment disputes, securities transactions, investigation costs and shareholder derivative actions.

The policy "provides protection for the company itself without the

confusion created by extensions to D&O policies. The D&O program remains unimpaired, and concerns over ownership of cover, conflict of

Employment disputes are one of the fastest-growing areas of liability, and recent legislation and court cases have established a

'Changes in employment law mean people now are focusing on EPL and are not willing to share their D&O limits with EPL risks,' says Matthew Carr of AIG Europe (U.K.) Ltd.

interest and effectiveness are successfully avoided," he said. Mr. West said response to the new coverage has been good.

trend for increasingly frequent employment litigation and escalating damage awards, Mr. West noted.

In the United Kingdom, the Employment Relations Act 1999 "has considerably extended the rights of the employee as against his or her employer," according to information supplied with the R.E. Brown policy, which also notes that the U.K. Department of Trade and Industry expects unfair dismissal claims to increase fivefold as a result of the legislation.

"This trend towards increasing employment litigation is mirrored in the rest of Europe and across the globe," according to the syndicate.

The main provisions of the Employment Relations Act in the United Kingdom increase the maximum compensation payable by an employer for unfair dismissals to £50,000 (\$78,100) from £12,000 (\$18,744), reduce to one year from two the time a worker must be on a job before he or she can claim unfair dismissal, give part-time workers the same rights as full-time workers, and improve maternity and parental leave.

Many of the act's provisions are in accordance with European Commission directives. Other employment-related European Commission orders that have been implemented include the Working Time Directive, which limits the hours most employees can work per week to 48 hours, averaged over 17 weeks. The directive also requires employers to provide a 20-minute break after six hours of work and four weeks of paid vacation per year after three months of employment. Failure to adhere to the legislation may result in fines or prison sentences for employers. **BI**

QBE

Continued from page 49

brought to account; and possible underwriting losses from Lloyd's, including business underwritten for 2000."

The insurance sector, particularly the Lloyd's market, has sustained falling prices on the U.K. stock market in recent months.

At a price of 120 pence per share, the acquisition would cost QBE almost \$900 million Australian (\$526.4 million). Funding sources identified by QBE "may include a combination of short-term bridge finance; hybrid capital, such as

long-term subordinated Eurobonds; and an equity issue," Mr. O'Halloran said.

"The acquisition would add close to \$1.9 billion Australian (\$1.1 billion) per annum in premium income and investments of \$1.9 billion Australian, after allowing for the purchase price to QBE's diversified general insurance and reinsurance business in 33 countries. It would make QBE the largest underwriter in Lloyd's, with a team of specialist underwriters who have a history of outperformance," he said.

Currently, QBE Underwriting Agency Ltd. has four syndicates at Lloyd's under umbrella syndicate 2999, with a total capaci-

ty of approximately £110 million (\$171.8 million).

"We identified LIMIT two years ago as an excellent addition to QBE's worldwide operations. The recently announced merger proposal has provided QBE an opportunity to move now and provide LIMIT's shareholders a cash alternative," Mr. O'Halloran said.

The proposed merger between Wellington and LIMIT would create the largest Lloyd's-based insurance business, with combined gross written premiums of £1.3 billion (\$2.03 billion), according to a joint statement. The terms of the deal, under which Wellington shareholders would receive 91 shares of the new

company for every 100 Wellington shares held, had already been approved by the Wellington board, but the proposal has not yet been approved by LIMIT shareholders (BI, May 1).

Meanwhile, "QBE will only consider a recommended offer to all shareholders after completion of detailed due diligence and discussions with management and senior underwriters. Any recommended offer would be subject to conditions including the recently announced merger proposal of LIMIT and Wellington Underwriting P.L.C. not proceeding, regulatory approvals and achieving a minimum acceptance level," according to a QBE statement.

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Employers advised to keep eye on comp laws

MEG FLETCHER

ORLANDO, Fla.—Employers need to be aware of the potential effects of the “war of attrition” going on among insurers in the highly competitive workers compensation market, according to the National Council on Compensation Insurance.

Otherwise, employers may be caught unawares as state legislatures begin to more seriously consider workers’ proposals to increase benefits and undo previously imposed limitations on workers comp programs, according to Bill Schrempf, NCCI president and chief executive officer, who was interviewed during the organization’s annual issues symposium in Orlando, Fla., late last month.

Thus far, employers that purchase workers comp coverage generally

have enjoyed low rates that resulted from intense competition among workers comp insurers in the past several years.

Future premium rate hikes, however, are increasingly possible, due to deteriorating insurer experience, according to the NCCI.



The NCCI estimates that two key combined ratios will increase several percentage points for 1999. The accident-year ratio is predicted to climb five percentage points to a record 130%, while the calendar-year ratio is expected to climb seven percentage points to 115% (BI, May 1).

Although premium increases would not really affect large self-insured employers, all employers are affected by the decline that has occurred in the frequency of workers comp claims,

which are a key component of employers’ costs, Mr. Schrempf said.

“This issue of frequency and why it is improving is just as important to (employers) as it is to everyone else,” he said. All employers’ loss costs are going to be determined by what happens to benefits and to frequency.

Employers need to understand what drives their frequency numbers so they have the maximum control over outcomes, he said.

“Clearly, loss control makes a huge difference,” Mr. Schrempf said. “So, anything they can do to impact their own frequency may be the most significant thing they can do.”

Loss control, Mr. Schrempf said, has halved the likely losses on average in recent years. “It makes a big difference,” he said.

Although charts can indicate aggregate declines in frequency, it is harder for a single company to make a case,

because the risk manager is arguing about what would have happened. “That’s kind of like negotiating with a ghost,” he acknowledged.

However, “if you think about the arguments that workers are worse off than they were several years ago because reform has reduced their benefits, well, if 25% fewer workers are getting hurt, I would argue that an awful lot of workers are vastly better off,” he said.

“The best injury isn’t one you have adequate compensation for, it’s the one you never had,” Mr. Schrempf said.

He said employers probably need to be telling their employees that “twenty-five percent fewer of you got hurt in the last 10 years because of what we have done.”

Employers also should consider getting involved in legislative activities, particularly in key states where

they have operations.

During Kentucky’s recent legislative session, for example, there were proposals that would have increased benefits and rolled back reforms, many of which were unsuccessful.

Insurers and their trade associations were interested in those proposals, but the people who really make a difference are the employers and workers who vote in the state, he said.

“Legislators don’t care a lot about insurer outcomes,” so employers have a much greater opportunity to influence legislative outcomes, Mr. Schrempf said.

Employers also should consider joining alliances and working with insurer or agent groups, which often have useful information and analyses.

“Employers have the legislative and political clout to make a huge difference in the outcome in many of these debates,” Mr. Schrempf said. BI

Industry faces challenges

By MEG FLETCHER

ORLANDO, Fla.—The workers compensation industry faces a variety of financial, political and technological challenges it must meet if it wants to remain a competitive part of the insurance marketplace, according to industry executives and observers.

The specifics of those challenges were discussed during the recent annual issues symposium sponsored by the National Council on Compensation Insurance, held April 26-27 in Orlando, Fla.

Investors wary

Several factors are making investors increasingly wary about investing new capital in most of the property/casualty insurance market, which has been experiencing some diminished financial results recently, according to a panel of financial analysts.

Consequently, more questions are being raised than answered about commercial insurance prices, insurer performance and the frequency and significance of consolidations among insurers, said Nancy E. Carini, vp of Hartford, Conn.-based Conning & Co., a research organization.

“Prices are not hardening, but at least jelling,” she said. There have been some tentative rate hikes, but many are still inadequate, given the industry’s poor financial results, Ms. Carini said.

The trend toward financial services modernization is already being felt with increased interest in consolidations among banks and insurers, said Robin Albanese, a research analyst with Lehman Brothers in New York. Specifically, banks are still seeking to buy insurers—primarily life insurers—if the stock price is right, he said. The number of consolidations, has slowed.

Banks generally will not buy non-life insurance companies, said Thomas Cholnoky, vp-Goldman Sachs & Co. in New York. They are not considered as good an investment as life companies, in part because of the regulatory environment in which property/casualty companies operate, he said.

Property/casualty insurers, however, do have some advantages, investor panelists acknowledged.

For example, many insurers have a good “brand,” Mr. Cholnoky said. For example, Allstate Corp. “has a tremendous brand” that will help it expand operations.

In addition, the property/casualty

insurance industry’s greatest advantage is that its product—insurance—is a necessity, said John W. Zimmerman, senior vp and director of growth strategies for Active Equity Investments in St. Louis. The possibility of a crisis or catastrophe also could make property/casualty insurers more attractive, a few panelists half-jokingly added.

Cooperation urged

Federal financial modernization legislation is also creating challenges for insurers in terms of assessing appropriate regulation.

George Nichols III, president of the National Assn. of Insurance Commissioners, made a personal plea that insurers’ encourage state legislatures to approve several NAIC financial modernization initiatives, particularly a producer licensing measure.

The NAIC plans to use its Insurance Regulatory Information Network as a central clearinghouse for non-resident licensing information. If that is accomplished before mid-November 2002, the NAIC will be able to prevent federal creation of the National Assn. of Registered Agents and Brokers (BI, Dec. 20, 1999), as mandated by the federal act.

“Work with us, because I clearly think you have a better shot of getting insurance regulation right working with us than you will with Congress,” said Mr. Nichols, the insurance commissioner of Kentucky, which approved an agent licensing measure recently.

Other NAIC initiatives include analyzing the NAIC’s financial examination process for national insurers and exploring regulating such multicompany insurers as groups, with enhanced coordination among the states.

The Kansas City, Mo.-based NAIC also is encouraging its members to adopt a “speed to market” approach for insurance products to reduce the time it takes for products to be approved. In addition, the NAIC is encouraging several other changes including regulatory re-engineering policies, such as commercial lines reforms, and exploring regulatory options for the national treatment of insurers (BI, March 20).

If these proposed changes are implemented, “market conduct will become more of a priority and a regulatory tool,” Mr. Nichols said.

A survey of attendees, however, showed that many insurers were skeptical that the NAIC would be able to achieve its stated goals in a

timely way.

In addition, while half of those attending responded that they preferred a state-based regulatory system, 30% preferred a mixed state-and-federal system and 20% favored a federal system.

Meanwhile, other proposed federal programs seek to intervene in state-based workers comp programs in several areas, including enhancing benefits for nuclear industry workers, miners and victims of ergonomic injuries. In addition, proposed federal privacy rules could also impact the workers comp claims-handling process, he said.

Initiative threat

Growing dissatisfaction over the workers comp climate in California may result in an initiative battle over workers comp benefits, warns Stan Zax, president and CEO of Zenith National Insurance Co.

Workers are frustrated because many business interests still oppose the most recent proposed legislation, which contains modest increases in benefits for workers, he said.

To counter such initiatives nationwide, the insurance industry should establish an ongoing political fund to respond to such threats in the future, he said. Trade association representatives generally are ineffective in responding to such threats, he added.

“This industry must get political management,” Mr. Zax said.

Technology offers promise

Developments and Web site capabilities provide property/casualty insurers with new challenges and the prospect of “a bright future,” predicted Virginia M. “Ginni” Rometty, general manager-strategy and marketing for IBM Global Services in Somers, N.Y.

Insurers, however, “are historically behind the curve,” she said. That was demonstrated by a survey of attendees, the majority of whom said their companies are in the earliest stage of providing customers online access to their operations.

The majority have not yet expanded into more sophisticated interactions, such as participating in exchanges that link buyers and sellers through new business approaches, including auctions and affinity group sales.

In terms of technology’s impact, Mr. Nichols said that “the companies that will succeed are not the ones that become banks but those that mine information and bring to customers the products they want.”

Changing structure

NCCI reshaping will create three units

By MEG FLETCHER

ORLANDO, Fla.—The National Council on Compensation Insurance is making a major change in its corporate structure.

Following approval by its membership, the Florida-based non-profit workers compensation and data reporting organization will become a Delaware-based, non-stock, membership holding company with three non-stock subsidiaries.

“NCCI has traditionally provided all services through a single entity. In recent years, there has been a growing need for a structure that would allow us, when needed, to separate NCCI rating organization, statistical agent and elective functions and costs,” Vincent T. Donnelly, NCCI board chairman, explained in a letter to members. He is president and chief operating officer of The PMA Insurance Group in Blue Bell, Pa.

Changes at the Boca Raton, Fla.-based NCCI “are largely technical,” he said.

Creation of separate subsidiaries will, however, help resolve the concerns of a few state insurance regulators, he said. Those regulators have questioned the appropriateness of the NCCI’s use of a single entity to act as both statistical agent and rating organization, he said. Those regulators have suggested that having independent entities perform those duties would be more appropriate to safeguard collected data from unauthorized people, including rating organization personnel, Mr. Donnelly said.

Specifically, the restructuring calls

for the NCCI to establish three subsidiaries, each with a different business focus:

One subsidiary may perform all regulated functions, including rating and statistical work; another subsidiary may perform separate statistical agent functions; and a third subsidiary will service and maintain NCCI’s unregulated services and databases.

While the restructuring does not require regulatory approval, NCCI members advised regulators about the change in the past few months—and no opposition surfaced.

“The NCCI board of directors believes that the proposed corporate structure will provide NCCI with the flexibility to focus on core services, develop new products and services, provide maximum value to members and subscribers at the lowest possible cost and address regulatory issues,” Mr. Donnelly said.

The restructuring also will help NCCI minimize its overall tax payments and help keep expenses low. In addition, the new corporate structure will enable the NCCI board to issue dividends or rebates to members following profitable years of operation.

Given the NCCI’s good financial condition, members can expect a total rebate of \$1 million or perhaps \$2 million, said Bill Schrempf, the NCCI’s president and chief executive officer.

The reorganization, which needed support from at least two-thirds of the NCCI’s membership was approved virtually unanimously. It is expected to be implemented within the next few months, Mr. Schrempf said. BI

500 attend NCCI event

ORLANDO, Fla.—Some of the nation’s largest workers compensation insurers and their service providers were among the more than 500 attendees at the National Council on Compensation Insurance’s annual issues symposium late last month.

The April 26-27 conference at the Hyatt Regency Grand Cypress Resort in Orlando, Fla., hosted by the NCCI, a Boca Raton, Fla.-based data collection and services organization, focused on analyzing market conditions generally as well as its own performance.

In addition, the meeting included sessions during which the workers

comp insurance industry’s performance was assessed by a diverse group of observers, including insurer executives, investors, a key state insurance regulator, a technology expert and a lobbyist from California.



Attendees also were invited to participate in the NCCI’s “Cyber Cafe” in its exhibition area, which consisted of a few on-line computers that attendees could use to access other Web sites as well as their personal e-mail.

Next year’s NCCI issues symposium will be April 19-20 at the same location. For information, contact the NCCI at 561-997-1000 or www.ncci.com.

Stocks

Continued from page 1

startup dot-com companies, coupled with today's stock market volatility, they say it probably won't be the last.

"When stock goes south, it can be a real problem," said Greg Metzger, a consultant at Watson Wyatt Worldwide in Los Angeles. For example, the value of the laid-off employees' savings are depressed at a time when they most need them, he said.

That's why investment education is so important, Mr. Metzger stressed.

"Employees should realize that investing in a single security is dangerous," he said.

"It's very important for employers with stock purchase plans to communicate why you shouldn't invest in your company, as well as why you should," said Corey Rosen, executive director of the Oakland, Calif.-based National Center for Employee Stock Ownership. Employees should be told, "Don't invest excessively in the

stock of your employer unless you're really confident or you can afford to take the risk," he said.

In situations like USEC's, "where employees have jobs on the line and perhaps a substantial amount of their personal equity, they need to think really hard" about their investment choices, Mr. Rosen said.

When faced with falling share prices, publicly traded employers should inform their employee-investors about what factors are influencing the price, emphasizing the long-term nature of investing, said Linda Holleman, senior vp of Aon Consulting in Chicago.

And employers should allow employees to stop making regular payroll deductions to purchase company stock, Ms. Holleman added.

"The most effective communication with employees is to be upfront and honest," said Ron Gilbert, president of ESOP Services Inc. in Scottsville, Va. "Here's what happened, here's why it's down and here's what we're doing to turn it around."

He added that the communications should be especially sensitive to the fact that investments in employee stock purchase plans are made from employees' own resources, unlike in employee stock ownership plans, where shares are purchased on behalf of employees by the company itself.

Under the typical stock purchase plan, employees can set aside a specified pretax sum each pay period to be used to purchase company stock, typically paying 15% less than the share price at either the beginning or end of an offering period. Some plans also allow interim purchases.

Approximately 45.1% of publicly traded U.S. employers offer a Section 423 stock program, according to a 1998 survey of 395 U.S.-based companies conducted by consultant PricewaterhouseCoopers L.L.P.

Because the stock purchase is made only once each offering period, employees don't have to buy the stock if the price isn't attractive; instead, they can set aside money to use later.

When employees do buy stock,

however, they must pay income tax on the 15% discount they receive from their employer. And if the stock is not part of a qualified retirement plan, such as a 401(k) plan, employees also must pay capital gains tax on any profit made from the sale of the stock.

Under USEC's plan, launched in March 1999, employees could buy stock through payroll deduction at a 15% discount, and the company would pay the brokerage fees. Employees also could choose to include company stock in their 401(k) investment portfolios.

USEC did not return calls inquiring about the extent of employee stock ownership.

In April 13 testimony before the House Commerce Committee Subcommittee on Oversight and Investigations, USEC President and Chief Executive Officer William H. Timbers Jr. attempted to explain the company's financial troubles.

Since the company was privatized, he said there has been:

- A 15% drop in global market prices for uranium enrichment.
- An 18% drop in global demand for enrichment.
- A 12% drop in uranium prices.
- An 18% drop in global demand for uranium.

"At the same time, our costs have increased dramatically," he said. "Our summer power prices have tripled at Paducah (Ky.), and electricity is 55% of our production cost; our cost of purchasing the Russian material has increased—our purchase costs are now higher than our selling price; and our obligations have forced us to substantially reduce production levels, resulting in higher unit costs."

Unfortunately, the company has been unable to cut costs by reducing its workforce because of constraints under its privatization agreement with the federal government, according to Mr. Timbers. Those restrictions will expire on July 1, he said.

USEC's public offering of securities to investors yielded more than \$3 billion. **BI**

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LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

Petition of Colin Graham Bird and Paul Anthony Brereton Evans, as Joint Provisional Liquidators of NORTH ATLANTIC INSURANCE COMPANY LIMITED, t/a BRITISH NATIONAL LIFE INSURANCE SOCIETY LIMITED and BRITISH NATIONAL INSURANCE COMPANY LIMITED, a Debtor in a Foreign Proceeding.

Colin Graham Bird and Paul Anthony Brereton Evans, as Joint Provisional Liquidators of NORTH ATLANTIC INSURANCE COMPANY LIMITED,

Plaintiffs,

- against -

1976 EAGLE INSURANCE CO., et al.,

Defendants.

In a Proceeding Under Section 304 of the Bankruptcy Code Case Nos. 97-B-41602(JHG)

Adv. Proc. No. 99/8533 A

NOTICE OF ENTRY OF CHANNELING INJUNCTION

PLEASE TAKE NOTICE that on April 21, 2000, the Bankruptcy Court entered a Permanent Injunction Order pursuant to 11 U.S.C. §§ 105 and 304 (the "Order") which enjoins all persons except those specifically named in the Order from enforcing against Northwestern National Insurance Company any and all claims arising from various insurance policies and reinsurance contracts written by the United Kingdom Branch of Bellefonte Insurance Company (the "Bellefonte Claims"). The Order channels the Bellefonte Claims to the proceedings pending with respect to North Atlantic Insurance Company Limited in the High Court of Justice in London, England.

Any person wishing to obtain a copy of the Order should contact Lori Dillon at (212) 891-8890

Cadwalader, Wickersham & Taft
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Attorneys for Colin Graham Bird and Paul Anthony Brereton Evans, as Joint Provisional Liquidators of North Atlantic Insurance Company Limited.

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Suits

Continued from page 2

ley, the brokerage subsequently paid a \$35,000 fine and repaid Mr. Roskind more than \$34,000, but did not pay the entire interest he claimed he was due, according to the decision.

Mr. Roskind then filed suit in California court, charging that trading ahead falls under the unfair competition law and that Morgan Stanley had breached its fiduciary duty. Morgan Stanley unsuccessfully sought to have the case heard in federal court.

The ruling 'will make California a very hospitable environment for plaintiffs to bring securities actions,' says securities defense attorney Karen Kenard.

The decision, which overturns a trial court ruling, holds that federal law, including the Securities Exchange Act of 1934, does not pre-empt "a state law cause of action under the (unfair competition law) in these circumstances."

"Congress contemplated the federal law would generally only supplement, not replace, state laws which would otherwise apply in this area of securities regulation," says the three-judge panel in its unanimous decision.

"We do not accept Morgan's assertions that Congress or other federal lawmakers intended to legalize the practice of trading ahead and make it the basis of a uniform federal system, allowing violations of federal criminal law by securities brokers, and pre-empting the application of state laws to this unlawful practice," the ruling states.

A Morgan Stanley spokesman could not be reached as to whether the firm plans to appeal.

Karen Kenard, a securities defense attorney with McCutchen, Doyle, Brown & Enersen in San Francisco, said the decision could lead to increased litigation against stockbrokers in the state.

"Up until the Roskind case, most of the California trial court decisions that deal with this issue were finding that (California's unfair competition law) would not apply to securities claims because of the pre-emption issue, so we have been having fairly good luck" in defending this type of litigation, she said.

But this is the first published decision on this issue, and it "goes the other way," Ms. Kenard added. "I think it's a very unfortunate decision. It will enable plaintiffs to bring claims involving the securities law in ways that circumvent the restrictions under the California corporations code" and could lead to increased litigation, she said.

Compared with the California Corporate Securities Law, it is relatively easy to file litigation

under the state's unfair competition law. "The plaintiff did not even have to have suffered harm," said Ms. Kenard.

"I think it will make California a very hospitable environment for plaintiffs to bring securities actions," she said, noting that claims alleging securities violations are outside the scope of comparable unfair competition laws in at least 16 other states.

The decision does have the potential to open the floodgates to litigation against stockbrokers, said Robert W. Brownlie, a defense securities attorney with Gray, Cary, Ware & Freindenrich in San Diego.

He said the case could end up in the California Supreme Court "if you see investors starting to bring securities class actions, which Congress intends to have litigated in federal court under (the Securities Litigation Uniform Standards Act), in California state court."

That 1998 federal law prohibits securities fraud class actions that are based on state law. It supplements the 1995 Private Securities Litigation Reform Act, which was enacted to address abuses arising from securities litigation (*BI*, July 12, 1999). The case eventually may be heard by the U.S. Supreme Court, as well, said Mr. Brownlie.

This decision "shows how creative the plaintiffs securities bar has gotten getting around securities reform," said Charles R. Rice, a securities defense attorney with Shartsis, Friese & Ginsburg in San Francisco.

"It may be something the Legislature may have to step in on, because I don't think... what they want" is for state courts to become "a haven for frivolous securities claims," said Mr. Rice.

Although it may not necessarily increase the number of cases filed, the decision will increase the amount of litigation involved, because it gives plaintiffs "a whole other arrow in their quiver to pursue that claim and get people to cough up money in settlement," said Mr. Rice.

Other attorneys, however, say the decision is unlikely to lead to increased litigation.

Joseph J. Tabacco, an attorney with Berman, DeValerio, Pease & Tabacco, who represents Mr. Roskind in the litigation, said, "This case really stands for the proposition that the California state courts will not shy away from protecting California investors and consumers where there have allegedly been violations of laws dealing with securities trading."

"Because the facts here are pretty peculiar," though, the decision should not lead to increased litigation, Mr. Tabacco said. "The case is really limited to those situations where there have been underlying violations," he said, pointing to the fine paid by Morgan Stanley.

It will apply only in situations where there has been a violation of federal regulation or law relating to the securities industry that injures Californians, he said.

James Roskind vs. Morgan Stanley Dean Witter & Co., California Court of Appeal, 1st Appellate District, No. A087546.

company to deposit a minimum level of funds in a U.S. Federal Reserve System member bank. The deposit must consist of cash, "readily marketable securities," letters of credit from U.S. banks, or any combination thereof.

The late 1980s and early 1990s saw an explosion of offshore insurance companies, many of them formed in loosely regulated Caribbean domiciles by scam artists, who diverted premiums to themselves. Most collapsed within a few years, leaving millions of dollars of unpaid claims and few assets, despite the apparent existence of NAIC policyholder trusts.

One such company was Meadowlark, formed in the Turks & Caicos and operated from Kansas City, Mo., by Ferrell Travis Riley and his wife, Cheryl S. Coon. Both are now in prison after their 1996 convictions on federal racketeering charges.

Meadowlark set up its policyholder trust at Sunwest Bank of Albuquerque, N.M.—ultimately absorbed through a series of mergers by Bank of America—and Sunwest produced statements between 1990 and 1994 purportedly showing that Meadowlark had deposited more than \$2.5 million in the trust, court filings say.

A Missouri judge ordered Meadowlark into liquidation in 1996, and a court-appointed liquidator found that the trust assets were, in fact, never worth more than \$300,000. They included a leasehold interest in an overvalued Texas condominium project and other nearly valueless property (*BI*, Aug. 17, 1998).

See Banks on next page

Benefits

Continued from page 2

it wise to cater to a potential employee's request, he said.

"At some point, when you're dealing with an executive, there may be a need on the part of that person to feel that they are being made special. I would draw the line at the point that, if the only way to close the deal is to make this individual feel special and wanted," then it would be worth spending the money, he said.

According to Mr. Hayes, a lot of the exotic benefits are being offered by the dot-com companies, but they aren't the only types of companies currently offering such perquisites.

"The notion that we have a very strong economy right now, that executive talent is highly in demand—all of that is working in the favor of that sort of thing," he said.

Anne Lang, director of human resources-United States for Chicago-based Arthur Andersen L.L.P., said, "It's important to look at your different populations and, depending on what your demographics look like, try to target those benefits to where you're going to get the most cost-effective benefit," Ms. Lang said.

Citing a backup child care program that Arthur Andersen considered a few years ago, Ms. Lang recalled that "it wasn't the best utilization, because our clients are located all over the city, not just in one location."

Some benefits are 'a recognition of the fact that employees are spending a lot of time in the office,' says Mike Hayes.

"It's important to look at another, better, way of providing the same benefit in a more cost-efficient way. Perhaps it's giving employees x amount of dollars for child care," she said.

Mr. Hayes emphasized the rising popularity of "convenience" benefits among companies when redesigning benefit programs.

"Companies want to know, what can we do that doesn't cost a lot that will be perceived positively by as many of our employees as possible? I tend to categorize them into office conveniences, like game rooms, desk massages. They're fairly unusual benefits, but they are designed to make the workplace more enjoyable," he said.

Mentioning another category of benefits, Mr. Hayes said that if an employee is going to be in the office much of the time, "there are things we can do to make your outside life easier. That's the dry cleaning, travel arrangements for personal travel, sports and entertainment tickets, concierge services. Those are things that have nothing to do with the workplace, but they're basically recognition of the fact that employees are spending a lot of time in the office," he said.

Ms. Lang emphasized that, in today's labor market, it's important to find a way to attract—and then retain—top employees.

"With the whole aspect of voice mail, e-mail, kind of a 24-by-7 worklife, organizations are looking for ways to try to reach out to their people and to various interest groups," she said.

Also, according to Ms. Lang, new

growth in work/life consulting is helping clients learn what benefits are out there.

"I think what happens is that organizations look at that and, if perhaps pet insurance, for example, doesn't cost much to the employer, they'll implement it," she said.

According to Theawanna Sanders-White, manager of employee benefits for Enfield, Conn.-based LEGO Systems Inc., employees are the ones bringing new benefit ideas to the table.

"It's not so much that consultants are advising us; it's that employees are hearing about other companies that are offering these benefits, so it's of interest to them. Also, it helps them—things like concierge services, where employees have the opportunity and the benefit without leaving the workplace. Those are things that they're looking for," Ms. Sanders-White said.

Some of the convenience benefits LEGO offers are onsite oil changes for employee automobiles, dry cleaning services, fitness facilities, legal services and financial planning.

"These are examples of employee-driven results from focus groups. The company felt that the morale of the employees was pretty low, and they wanted to do something to improve it. Focus group feedback showed that, although employees thought the company's benefit program is good, some programs are underutilized," Ms. Sanders-White said.

She said that trial periods often are a smart way to test new benefits.

Ms. Sanders-White mentioned some potential new benefits for her company's 1,200 employees, such as quiet rooms, the opportunity to hold meetings outdoors, a homework hotline for employees' children, time off for community service, onsite doctor care, child care referral services, an adoption referral plan and discount purchasing with vendors in the area.

"We're looking to enhance a lot of the programs we already have in place. We want to be able to take care of their needs. It's an ongoing challenge," Ms. Sanders-White said.

Ms. Lang stressed the importance of looking at a company's size when evaluating needs.

"I feel that (with) the larger organization, especially since your demographics change so much, consistency is important, as well as doing things that really are valuable to all of your employees. In general, having a certain amount of equity and fairness is important," Ms. Lang said.

Mr. Hayes said that many organizations are putting their emphasis not on exotic benefits but on specific training and programs such as rotational projects that give employees opportunities to move around and increase their experience.

"A lot of younger employees aren't looking at jobs as a cradle-to-grave situation. They're saying, 'Let's make it good for you and good for me, the developmental stuff.' You can throw in a pizza on Friday nights, but it's not going to seal the deal," he said.

Although exotic benefits may make one organization stand out from another, they often are not the deciding factor for a potential employee, according to Mr. Hayes.

"All of the research we've done about what employees value in a job... it always comes back to pay, number one, and job opportunity and advancement, number two. Period," Mr. Hayes said.

Banks

Continued from previous page

In 1998, Meadowlark's liquidator sued Sunwest, charging the bank with breach of trust, negligence and fraud for allegedly helping the insurer bilk its policyholders.

The real estate assets Meadowlark contributed to the trust didn't meet NAIC requirements,

Regulators say Western Star wrote \$1 million in premiums a month and left \$8 million in unpaid claims when it collapsed.

but Sunwest and Meadowlark officials amended the standard trust agreement to purportedly allow deposit of the assets, the suit alleged. Neither party notified the NAIC, which would have to approve the change for the trust to be in compliance, according to the suit. The bank and the insurer also modified the agreement to relieve Sunwest of its obligation to certify the trust's assets in reports to the NAIC, the suit said.

In a deposition, Mr. Brace, representing the liquidator, asked a bank official, "At the time you executed this amendment which guts the trust, the entities or people that (the amendment) was detrimental to were the policyholders of Meadowlark. You can concede that?"

"Yes," that bank official said.

"And the only way that it would not be detrimental to those beneficiaries who you are a fiduciary of... would be that the assets were, in fact, real and their values were not overstated, correct?"

"Yes."

"But it is true, is it not... that you did absolutely nothing to verify the value of these assets?"

"That's true," the official replied. Bank of America paid \$900,000 earlier this year to settle the case.

An earlier, and still pending lawsuit, was filed against Chase Bank of Texas by the Florida Insurance Department as receiver of Mr. Cameron-Webb's Western Star, which collapsed in 1994.

Mr. Cameron-Webb left the United Kingdom in the 1980s as his Lloyd's of London managing agency, PCW Underwriting Agencies, dissolved amid fraud allegations. Moving to Florida, he formed a now-defunct management company, Broadview Services Inc., through which Western Star operated illegally in the early 1990s, court papers show.

In late 1992 or early 1993, Western Star went to Ameritrust of Texas N.A., since absorbed by Chase, to set up a \$5.4 million policyholder trust account, according to Florida's lawsuit.

Rather than use cash to fund the trust, Western Star produced a \$5.4 million certificate of deposit from an entity called First Asia Development Bank Ltd. of the Republic of Vanuatu, in the South Pacific. Western Star never had any money on deposit with First Asia Bank, but "rented" the CD for a fee of several thousand dollars from another foreign entity, Europe American Capital Corp., court papers say.

Chase—then Ameritrust—accepted the CD but asked that it be made payable to Ameritrust rather than Western Star. First Asia complied, modifying the CD to substitute Ameritrust's name, Chase concedes in its own court filings.

Chase also amended the standard NAIC trust agreement, deleting provisions requiring it to certify the value of the trust assets to an NAIC affiliate and requiring it to obtain NAIC approval to amend the agreement, according to the Florida Department.

Western Star went on to write roughly \$1 million per month in

premiums, mainly in California, before collapsing in 1994, leaving about \$8 million in unpaid claims, Florida regulators say.

As the receivership got under way, Western Star's lawyers reported that they had been informed that First Asia Bank had canceled Western Star's \$5.4 million CD and "disappeared" from Vanuatu, court filings show.

Chase first went to federal court in Dallas for a ruling on how to handle the allegedly worthless CD. After procedural wrangling that moved the case to a Florida state court, the Florida receiver returned to the Dallas court with a complaint charging Chase with breach of duty, fraud and conspiring to conceal Western Star's insolvency.

Chase filed a motion to dismiss the suit, arguing that only Western Star policyholders could sue the bank over the trust, but that such claims are barred by the trust agreement.

U.S. District Judge A. Joe Fish rejected the motion in January. "If the receiver cannot bring these claims because they belong only to the individual policyholders, and the individual policyholders cannot bring them because they are barred, then this court is at a loss as to who could bring a claim against Chase for the events alleged in the receiver's complaint. Many wrongs but no rights is not the hallmark of either Texas or Florida jurisprudence," the judge wrote.

Chase has since filed an answer denying the allegations and asserting that it believed the CD was a "cash equivalent" that satisfied NAIC trust requirements.

The bank has also filed a counterclaim against Western Star and third-party claims against several people it identifies as Western Star directors, officers, agents or employees. They include Mr. Cameron-Webb and Owen Guidry, a former Louisiana Insurance Department examiner who pleaded

guilty in 1998 to a federal charge of operating another fraudulent offshore insurer, Westwood Insurance Co. Ltd. of Antigua (BI, Dec. 14, 1998).

Meanwhile, the Texas bank has been hit with a second lawsuit charging it with similar breaches in its handling of a trust for the defunct Alpine Insurance, which was formed in the Turks & Caicos but was operated in the United States by Edmond H. Benton and James Southard Bowers, court documents show.

Alpine issued more than 10,000 policies in numerous states between 1991 and 1997, collecting more than \$15 million in premiums between 1993 and 1995 alone according to a proposed policyholder class-action complaint against Chase that was filed last month.

Unpaid claims left by the insurer's collapse total at least \$10 million, and this figure does not include several claims by U.S. policyholders, according to court documents.

The complaint alleges that Chase also improperly modified the NAIC trust agreement.

One of the largest is a \$2.2 million claim filed by Cameron County, Texas, under a construction bond provided by a contractor who failed to complete work on the county courthouse, according to Mr. Brace, who filed the policyholder suit.

In December 1991, Alpine set up its trust with Chase predecessor Ameritrust, according to the complaint. To fund the trust, the insurer contributed stock in a company, Monoclonal Medical Inc., purportedly worth \$3.7 million; other un-

specified stock held in another account at Paine Webber Inc. worth a reported \$1.3 million; and a \$3 million letter of credit issued by an entity called Intel Trust & Trade Development Bank Ltd.

Monoclonal stock—also used as an insurance company asset by the late con man Alan Teale—had its registration revoked by the Securities and Exchange Commission in August 1992. The Intel Trust LOC is also worthless, the complaint charges.

The California Insurance Department barred Alpine from the state in June 1993, citing the questionable Monoclonal stock and disallowing the Intel Trust LOC.

Through at least March 1994, though, Chase continued to produce statements showing the trust had more than the minimum required \$5.4 million in assets, the complaint says. In May 1993, for example, a bank officer wrote to a California surplus lines agent confirming that Alpine's trust held \$8 million in assets, though the letter noted that a market price for the Monoclonal stock had "not (been) available since 7/1/92."

Echoing charges in the Western Star case, the complaint alleges that Chase also improperly modified the NAIC trust agreement to delete requirements that it certify asset values to the NAIC.

"The misrepresentation by (Chase) delayed regulatory investigation into the solvency of Alpine, which gave the Alpine insiders the extra time needed to loot the premiums received by Alpine and artificially prolonged Alpine's insurance operation, pushing it ever deeper into insolvency," the complaint charges.

Chase has not yet answered the lawsuit, though a bank lawyer reported that the bank terminated the Alpine trust in March 1994 and returned trust assets to Alpine, documents show. Chase has no obligation to cover Alpine claims, the lawyer said. **BI**

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ADVERTISER INDEX

Issue of May 8

ADVERTISER	PAGE #	ADVERTISER	PAGE #
AIG Corporate	43	Inservinsurance	34
AIG Corporate	19	Insurance Overload Systems	51
American Arbitration Assoc.	36	Kemper Insurance Companies	5
ARAG Group	51	Liberty Mutual	9
AXA Nordstern Art Insurance	22	Liberty Mutual	35
Buck Consultants Inc.	32	Matrix Absence Solutions	44
Burnham Systems	52	National Healthcare Resources	46
Business Insurance	45, 53	NCR	30/31
Cambridge Integrated Svcs.	38	O'Brien & Hennessy	52
Guy Carpenter & Company	15	Old Republic Risk Management	37
Carvill America Inc.	56	PHICO Group	17
ChannelPoint, Inc.	16	PMA Group Inc.	26/27
CNA Re	4	Pre-Paid Legal Services, Inc.	52
Commonwealth Risk Service	42	Reliance National	7
Conning & Company	50	Royal & Sunalliance	60
Corvel Corporation	10/11	SBPA Systems, Inc.	52
Cramer Johnson & Wiggins	47	Scottsdale Insurance Company	24
Cross Border Underwriting Svcs.	52	State Comp. Ins. Fund	45R
Cybersettle.com	39	Stellarnet	12
ECS, an XL Capital Company	25	TIG Insurance	13
Facts Services Inc.	52	Uniprise	29
First State Management Group	40	USA Managed Care Organization	48
Fortis Inc.	20/21	Wausau Insurance Company	23
Gulf Insurance Company	14	Web MD	41
Healthaxis.com	18	WLT Software of FL, Inc.	52
Humana Workers Compensation	6		

Commentary

RIMS conference a golden event

The weather was perfect, the record-breaking crowd was happy and the exhibit hall was full of surprises at the 38th Risk & Insurance Management Society Inc. Annual Conference and Exhibition in San Francisco last week.

It was also a great conference program.

The sun was shining every day, except for a little morning fog on Tuesday that lifted by early afternoon. Most everyone complained that they should not have dragged their coats along, even though San Francisco's cool evenings called for one.

The atmosphere in the sessions, the exhibit hall and the evening parties was upbeat. I'm convinced that the mood of a RIMS conference is influenced more by the weather and physical beauty of the host city than it is by current business conditions. And everyone loves San Francisco, especially when the sun is shining.

Enhancing the festive atmosphere was the optimistic view that business conditions for the insurance industry seem to be improving, according to underwriters and brokers who contend that prices are firming—but not so much that it will create havoc for their customers.

The celebration of RIMS 50th anniversary also was cause for merriment. The opening reception, with a '50s theme and great bands, attracted and held more people for the early evening than in recent years. The California wine also was excellent.

The 50th anniversary video that was played at the annual membership breakfast was a nostalgic recap of RIMS' 50 years of growth and the increasing professionalism of risk management. It opened and closed, fittingly, with the late RIMS leader Doug Barlow uttering his famous quote, "All management is risk management."

The exhibit hall was abuzz with record numbers of exhibitors and attendees. And there were more computers and fancy flat-screen monitors in the exhibit booths than ever before at a RIMS conference. The mainstream, old-line insurance companies

were not going to be outflashed by the upstart dot-com companies exhibiting at RIMS for the first time.

In addition, more people were in business casual attire. Maybe it was the setting. We'll have to see whether that trend holds for Atlanta before deciding whether to leave more business suits at home.

Among the other surprises was an unexpected cameo appearance by Zurich Financial Services Chairman Rolf Hueppi. As the story was told to me, he was visiting San Francisco for reasons unrelated to RIMS and spotted people carrying black briefcases sporting a Zurich logo. Curious as to why all these people were advertising his company, he stopped an attendee, who told him Zurich was sponsoring the conference briefcases at RIMS. So he dropped by the Zurich booth, astonishing the Zurich employees doing booth duty.

A nasty surprise at the new Bermuda booth was quickly remedied. When the hosts discovered that the printer of the famous Bermuda bags had misprinted the country's motto: "Quo Fata Ferunt" (Whither the Fates Lead Us) as "Guo Fata Ferunt," those handy with felt pens corrected the mistake, making it nearly undetectable.

Another unpleasant surprise occurred at the Lloyd's booth early in the week. A laptop grew legs and left during the night. An expensive flat-screen monitor also disappeared from another booth. With all the powerful displays of technology comes the risk of loss.

As you are reading elsewhere in this issue, the educational sessions were interesting and informative. Unfortunately, however, ringing cell phones interrupted too many sessions. As I've said before, if someone is waiting for an important telephone call, he or she should be sitting by the phone out of earshot of attendees and speakers.

Equally bad, I was embarrassed at the Bermuda reception when the people of the back of the room continued to talk among themselves while Premier Jennifer Smith welcomed them to the party and pledged her government's commitment to the island's international insurance and reinsurance business.

The only other disappointment of the week was the dearth of juicy rumors. RIMS is usually good for a half-dozen ill-founded reports of mergers and acquisitions by the global brokers. I heard only one.

Unless, of course, I was ill-informed and Rolf Hueppi was never there.

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

Hawaii

Continued from page 1

ization to reinsurance products as the captive owners focus on specific niche coverages.

But overall, the reinsurance market will not see a substantial impact. Nor are U.S. reinsurers likely to establish facilities in Hawaii, predicts Steven Bolland, senior vp at Gill & Roeser Inc., a reinsurance intermediary in New York. Hawaii does not provide U.S. reinsurers any tax advantages for locating there.

"I don't see any U.S. companies running off to Hawaii unless they want a nice vacation place," he said. For their Pacific Rim business, U.S. reinsurers are locating in places such as Hong Kong, which offers tax advantages, an adequate infrastructure and proximity.

As for Hawaii, the first ventures expected to be formed under its new act will do so with existing insurance capital, said Craig Watanabe, captive insurance administrator for Hawaii's Insurance Division in Honolulu. They will not bring new capacity to the reinsurance market, he said.

By forming a Class 5 facility, a Japanese insurer, for example, will be able to reinsure or provide excess insurance for clients with Hawaii-based captives, Mr. Watanabe said.

Those potential clients may have insured operations in Asia, the United States and Mexico, he elaborated. Such is the case with Yazaki International Corp., a Japanese company with \$2.3 billion in annual sales that formed a Hawaii captive in March (*BI*, May 1).

A new Class 5 facility also could benefit U.S. insurers with joint ventures in the Pacific Rim, Mr. Watanabe said. They could use such a facility to reinsure affiliates in Asian countries.

Some U.S. and offshore organizations, including insurers, and current owners of captives in Hawaii already have expressed interest in forming Class 5 facilities, Mr. Watanabe said. He declined to name those organizations.

But he expects one to be in place within the next year and doesn't expect the initial formations to provide general reinsurance coverage. They likely will write specialty coverage and be used to meet advanced risk-financing needs, he said.

Hawaii's captive law provided room for the development of the reinsurance facilities because it is more flexible than the state's older insurance laws, Mr. Watanabe said. Adoption was proposed by the Hawaii Captive Insurance Council.

The Reinsurance Assn. of America, however, opposed passage of the law and urged legislators to reject it. RAA representatives argued that the facilities would be prone to solvency problems because the legislation they were created under lacks specific capital and investment standards.

Inevitably, U.S. policyholders and insurers will be at risk as multinational corporations place coverage in the facilities, said Marsha Cohen, vp of state relations for the RAA in Washington.

If one of the facilities became insolvent, she said, Hawaii's regulators could find it impossible to access assets invested in a foreign

country. Therefore, liquidation could be hindered.

Captive laws usually set minimum surplus and capital standards, she added.

In fact, Hawaii's new act sets specific minimum capital and surplus requirements for Hawaii's other four captive classes.

But the absence of a specific reserve and capital amount for the new class of captives is just the flexibility that captive laws and the alternative market need, said Jon Harkavy, vp and general counsel of Risk Services L.L.C. in Arlington, Va. Mr. Harkavy has reviewed the RAA's arguments.

In the wrong hands, such flexibility could present solvency problems, he said. But Hawaii's captive infrastructure and its regulators are very credible, he added.

"While I understand their position, I don't believe the RRA's concerns are warranted," Mr. Harkavy said. Additionally, "most captive statutes leave a tremendous amount of flexibility to the regulator."

Overall, Hawaii's new captive law will help Pacific Rim companies with business in the United States view the state as a gateway to that business, Mr. Harkavy said. It also shows Hawaii has grown increasingly sophisticated about its potential niche market.

Hawaii's original captive statute was enacted in 1986. It essentially copied Vermont's captive law, Mr. Watanabe said. But as the Aloha State's captive leaders realized that their interests lie with the West Coast and Pacific Rim, they began structuring their laws to meet needs in those areas. **BI**

Pollution

Continued from page 1

'pollutant' if it had been in a barrel that rolled over him, or if it had been lying quietly on the steps waiting to trip him. To adopt Zurich Insurance's interpretation would unjustly broaden the application of the exclusion far beyond its intended purpose."

Justice Johnson further wrote that the court's approach "is consonant with the understanding of the average purchaser of insurance and consistent with the provisions of the insurance policy as a whole; that is, the pollution exclusion clause was designed to exclude coverage for traditional environmental harms."

An attorney who represented Zurich pointed out that the Washington Supreme Court's decision in this case was consistent with its rulings in previous cases dealing with the pollution exclusion.

"It's not a surprise, and, therefore, it's not a big case because of the positions the Washington Supreme Court has taken historically," said Laura Foggan, a partner in the Washington law firm Wiley, Rein & Fielding.

"If this were a state that had upheld the 1970 exclusion and had issued a number of decisions that had upheld the absolute pollution exclusion, we would be talking about a big development," said Ms. Foggan.

"States have broken both ways. This is the state of Washington, which, unfortunately, in the past has shown a fair amount of hostility toward insurers' positions. For example, it's ruled against insurers on the application of the 1970 pollution exclusion, as this decision does now in respect to" the absolute pollution exclusion, which was introduced in 1985.

Ms. Foggan noted that state high courts in Florida and Louisiana, among others, have interpreted the exclusion broadly, while Maryland's high court—like Washington's—has

taken a much more restrictive approach. Other state supreme courts have ruled both ways, depending on the specifics of a case, she said.

"Certainly, if the court had ruled the other way, that would have been a huge decision for insurers in terms of signalling that we probably would not be facing a division of authority on this clause."

"As a practitioner in the state of Washington, I think the opinion is very poorly reasoned," said Jacquelyn A. Beattie, a partner in the Seattle law firm Karr Tuttle Campbell, who represented Zurich. She said she did not think other state courts would be greatly influenced by the decision, which she said "includes almost no analysis."

"I frankly don't think it will make much of a difference. I think other courts will analyze it in accordance with their own rules of insurance policy construction," she said.

"I was not particularly surprised by the decision. There's clearly a strong anti-insurer bias in our Supreme Court. This one merely echoes the previous decisions by our court that they're going to interpret exclusions very narrowly," said Robert Israel, a partner in the Seattle law firm Lane Powell Spears Lubersky, who has defended insurance companies for decades. Mr. Israel was not involved in the case.

"This is not a case I would have appealed or recommended my clients to appeal. I would be surprised if insurers throughout the country would take this position to bring this claim within the ambit of the absolute pollution exclusion," he said.

The attorney who represented Kent Farms disagreed about the ruling's importance. "It is a significant decision because the absolute pollution exclusion clause is contained in virtually every commercial general liability policy—both farm, commercial and every homeowners' policy," said Brian H. Miller, a partner in the Othello, Wash., law firm Dano Miller Ries.

"The ultimate significance is that

our state Supreme Court has ruled that this exclusion can only be applied to traditional environmental pollution cases. Prior to this decision, the insurance industry was interpreting the exclusion to apply very broadly, beyond its intended scope, and it was used to deny claims arising from ordinary negligence that had nothing whatsoever to do with environmental pollution. This decision will afford policyholders coverage the insurance industry would have routinely denied by the reading of the policy language."

"It satisfies what the reasonable expectation of a policyholder is when they purchase a CGL policy. They're do not think that they're buying 'almost-comprehensive' or something like that" general liability policy, he said.

"This is a very significant issue. If you exclude hazardous substances, you have a policy that covers only trauma injuries," said John MacDonald, senior shareholder in Anderson Kill & Olick P.C.'s Philadelphia office. Mr. MacDonald had filed a brief supporting Kent Farms' position with the Washington Supreme Court.

"Basically, I think it's clear that every court that factually looked at the history of this so-called absolute pollution exclusion has concluded that it is only intended to apply to traditional environmental injuries and damage. Insurance companies have increasingly exploited the definition of pollutant in the exclusion to apply it out of context to normal liabilities in which a hazardous substance happens to be the injurious agent," he said.

"What is at issue is whether or not this exclusion is going to apply to what the ordinary person would understand to be pollution or it would it apply to any hazardous substance," he said.

Kent Farms Inc. v. Zurich Insurance Co., Washington Supreme Court, No. 67635-6. Decided April 27, 2000.

Class

Continued from page 2
otherwise exist."

"As smart businesspeople, I think it is important for you to recognize that this tool we call class action has been with us a long time. And I don't think this tool is going to go away," said Georgia Attorney General Thurbert E. Baker, who was one of the panelists.

"The litigation is getting bigger, it is getting more sophisticated, and what you need to know is it will dig into your pockets a little bit deeper," Mr. Baker said.

"To a certain extent, social conduct has always been regulated through litigation," the attorney general said. But, he noted, "because of the scale and size of this litigation, legitimate questions are now being raised."

Tobacco litigation and other similar suits, such as those against handgun manufacturers, raise questions of "whether it is appropriate to achieve in the courts what has not been achievable in the Congress," Mr. Baker said.

"People are now looking at alcohol," he said. "Are we going to see major class-action litigation in the alcohol area?"

"The game has changed in significant ways in class and mass litigation," said Walter K. Olson, a senior fellow at the Manhattan Institute's Center for Legal Policy.

"A debate is beginning out there, none too soon, that you folks can be part of," Mr. Olson said. "Do not leave public affairs to your Washington representatives. Show some solidarity."

Offering a plaintiff attorney's perspective, Barry A. Weprin, a partner

with Milberg Weiss Bershad Hynes & Lerach L.L.P. in New York suggested that "Traditionally, class actions have been looked at as a supplement to government regulation."

That has particularly been true in the area of securities regulation, Mr. Weprin said. "In other areas, I think class actions have been sort of a spark to regulation," he added.

"The proper relationship between regulators and plaintiffs lawyers, in my view, is as partners, not as competitors," Mr. Weprin said.

Speaking from a defense attorney's perspective, Charles A. Newman, a partner with Bryan Cave L.L.P. in St. Louis, noted that class-action suits can have a dramatic impact on a business. "This is litigation unlike any other," and it "cannot be taken lightly."

He told the insurance company executives at the Alliance gathering that they need to be involved in the process of defending class actions their companies face.

Class actions against an insurer, he said, "can affect your policyholders—their perception of your company, their perception of their policy." Class-action litigation also can affect a company's agents and their ability to represent the insurer.

Such suits also can have an impact on a company's policy administration and on its sales and marketing, affecting product design, public relations and regulatory affairs.

"Regulation by litigation is a shifting of the regulatory function from the state's legislative and executive branches to trial lawyers in the courtroom," Mr. Newman said.

The cases often involve an approved product, with the attack focused on how the product was administered, he said, and cited three types of insurance class actions:

- Industrywide, challenging products and/or practices;

- Suits against a single company attacking one of the company's products and/or practices, often involving coordinated class actions in several states or "copycat" cases filed in several states; and

- Hybrid actions that might start by targeting a single company, with the outcome of that case determining whether other insurers are sued.

In pursuing class actions, plaintiffs' lawyers often seek support from public officials and use the news media to publicize "horror stories" to elicit public support, Mr. Newman said.

Companies can be intimidated by class actions because of concerns about adverse public relations and the potential for enormous liability, he said.

The uncertainty inherent in the cases is another intimidating factor for the defendant company, Mr. Newman said.

"Frankly, in many of these cases, there's a small risk of losing, but you face an enormous cost if you do," the defense attorney said. That scenario poses the dilemma of whether to fight or "pay ransom," he said.

Class-action suits also can present a company with a tremendous distraction from its usual business, Mr. Newman said.

To combat that intimidation, it's important that company executives understand the issues involved and participate in the defense of class actions brought against their firms.

"Don't be passive, but rather participate actively in the defense of these cases and in the political process," Mr. Newman said.

And, he advised the insurance company executives in attendance, "fight when you're right." **BI**

Updates

Bermuda premier attacks tax plan

Continued from page 2

the reinsurance arrangements are not legitimate and, in effect, deprive the U.S. Treasury of "hundreds of millions of dollars."

The bill could easily be passed this year, Mr. O'Hare said. And if it is not, he said, the Treasury Department could interpret the tax code addressing intercompany reinsurance in such a way as to produce the effects of the bill without the legislation. "With the Treasury Department attacking tax shelters, I think that Congress will have a difficult time not passing the bill," Mr. O'Hare said.

Colorado enacts deregulation

DENVER—Colorado Gov. Bill Owens has signed legislation aimed at stimulating competition in the insurance industry by streamlining the state's regulatory process.

The measure, Senate Bill 106, helps scale back the approval process for insurer rate filings to file-and-use from prior approval for several lines of insurance, including workers compensation, credit insurance and medical malpractice insurance written through the state's joint underwriting association, according to the National Assn. of Independent Insurers in Des Plaines, Ill.

In addition, the bill also eliminates prior approval for some personal lines insurance forms.

The measure reflects the Colorado General Assembly's determination "that open competition between insurers encourages lower prices for consumers and more efficient practices for insurers," the bill says.

In addition, the General Assembly found that prior approval by the commissioner of insurance of some types of personal lines forms "detracts from an insurer's ability to meet the immediate needs of the insurance market," according to the bill.

The bill ends a two-stage process aimed to speed up Colorado's rate and form approval process, according to Michael Harrold, state government relations director for the NAII.

The Colorado Insurance Division previously agreed to amend an existing regulation, imposing a stricter timetable on its review of filings. For example, since Jan. 1, all insurer rate filings that fall under the state's file-and-use system are considered complete unless they are returned by the division within 15 days.

In addition, the law eliminates one criterion the commissioner could use in rejecting a claims-made policy form. That provision required that defense costs be covered by the policy but be excluded from the claims-made policy aggregate.

Buffett

Continued from page 2

had a "terrific record over time." He added that Berkshire Hathaway had not expected Gen Re to have a bad year in 1999.

Berkshire Hathaway as a whole did not enjoy a very good year in 1999, a situation for which Mr. Buffett accepted full responsibility at both the annual meeting and in the holding company's annual report. "The capital allocation job I did was very poor," he told the thousands of shareholders at the April 29 annual meeting at the Omaha Civic Auditorium.

In fact, Berkshire Hathaway's 0.5% growth in the per-share book value of both classes of its stock was the company's worst annual performance in 35 years, Mr. Buffett noted. Since 1965, when the present management of the company took over, per-share book value has grown at an average annual rate of 24%.

Mr. Buffett warned there would be "down years" in the future, adding that it was a "fluke" that the value of Berkshire Hathaway has always increased in each of the past 35 years.

He reassured shareholders that Gen Re's \$275 million reserve for losses associated with Unicovert still appears adequate. Gen Re's exposure came through the participation of one of its Cologne Reinsurance units in the Unicovert pool, which unraveled last year (*BI*, March 15, 1999). Berkshire Hathaway acquired control of Gen Re in 1998.

Unicovert "was a mistake. It should not have been made," said Mr. Buffett. "That's a big mistake, but we've made bigger ones," said the investment guru.

"In insurance, you will get surprises. The test of good management is how many surprises you get," he said.

Both Mr. Buffett and Berkshire Hathaway's laconic vice chairman—whom Mr. Buffett introduced as the "ever-animated Charlie Munger"—said insurance, in general, provides great opportunities for con men.

"It's a field that attracts chicanery," said Mr. Buffett, noting that exchanging money for pieces of paper appeals to crooked people.

Mr. Munger, who is not known for wordiness, said simply, "perhaps the most irritating way to lose money is to be taken by an obvious lie."

Mr. Buffett said he thinks the insurance business, "which will continue to have surprises," will prove to be a good investment over time, provided the insurers involved are above par. "The average company is going to do poorly. We think we have some very special companies," he said.

In addition to Gen Re, Berkshire Hathaway's insurance holdings include personal-lines automobile insurer GEICO, Berkshire Hathaway Reinsurance Group and Berkshire Hathaway Direct Insurance Group.

"We do not expect our underwriting earnings to improve in any dramatic way this year," wrote Mr. Buffett in the company's annual report, which was dated March 1.

"At Gen Re, we are raising rates and, if there is no megacatastrophe in 2000, the company's underwriting loss should fall considerably. It takes time, however, for the full effect of rate increases to kick in, and Gen Re is, therefore, likely to have another unsatisfactory underwriting year," he wrote.

Mr. Buffett wrote in the annual report that Gen Re's business was "extremely underpriced, both domestically and internationally, a condition that is improving but not yet corrected. Over time, however, the company should develop a growing amount of low-cost float. At both Gen Re and its Cologne subsidiary, incentive compensation plans are now directly tied to the

variables of float growth and the cost of float, the same variables that determine value for owners."

The annual report showed Berkshire Hathaway's float at year-end 1999 as \$25.29 billion. That is an increase from the \$22.75 billion it registered in 1998, when it acquired Gen Re. As in 1998, Gen Re accounted for more than half of the company's total float. The report cautioned that while float growth is important, cost is "what's vital." The total \$1.39 billion in underwriting losses for Berkshire Hathaway insurance operation resulted in a float cost of 5.8%. In the report, Mr. Buffett wrote "our overall result must be judged extremely poor. Absent a megacatastrophe, we expect float cost to fall in 2000," but he added that "any decline will be tempered by our aggressive plans for GEICO," which include increased expenditures on advertising and sales counselors.

Mr. Buffett singled out Ajit Jain, president of Berkshire Hathaway's Reinsurance Division, for special praise in the report, saying it was "impossible to overstate Ajit's value" to the company. "Since Ajit specializes in supercat reinsurance, a line in which losses are infrequent but extremely large when they occur, his business is sure to be far more volatile than most insurance operations. To date, we have benefited from good luck on this volatile book. Even so, Ajit's achievements are truly extraordinary," he wrote.

Mr. Buffett fielded questions during the meeting about his refusal to invest in Internet businesses. He said the runup in such stocks operated on "the same principle as a chain letter"—those who bought early and cashed out would gain and latecomers would ultimately lose. He predicted the era of ever-skyrocketing Internet stock prices would be viewed as a period of "tremendous wealth transfer" but not wealth creation. **BI**

Recovery rules clarified

By JUDY GREENWALD

LOS ANGELES—An insolvent insurer's policyholders cannot directly approach its reinsurers for coverage, despite promotional material that suggested the reinsurers' readiness to share in the responsibility for policy limits, a California judge has ruled in a summary judgment dismissing the reinsurers.

Last month's decision in Superior Court in Los Angeles in *Gannon Trucking vs. Aon Corp.* will be appealed, said the policyholder's attorney, Robert S. Gianelli, of Los Angeles-based Gianelli & Morris.

Mr. Gianelli said there was evidence presented that reinsurers "knew, or should have known," of the promotional material distributed by Dallas-based American Eagle Insurance Co., which touted them as offering some protection to policyholders.

But Dean Hansell, an attorney with LeBoeuf, Lamb, Greene & MacRae in Los Angeles, who represents the reinsurers, said the court "clearly rejected" the plaintiffs' argument that an insolvent insurer's advertising and promotional programs could establish an obligation between reinsurers and policyholders.

Lodi, Calif.-based Gannon Trucking Inc. had obtained a general liability insurance policy from American Eagle in 1992. In 1993, a married couple, Amita and Bulbu Kadakia, filed an accident claim against Gannon after one of the company's trucks backed into a car driven by Ms. Kadakia in July 1993.

The case went to trial in 1997, and the Kadakias won a \$3.6 million judgment against the company. Shortly afterward, American Eagle was declared insolvent. The Kadakias and Gannon subsequently reached a settlement agreement un-

der which any recovery in this case would be given to the Kadakias.

Gannon is now seeking to recover the \$3.6 million judgment from American Eagle's reinsurers. Charges in the lawsuit include fraud, negligent misrepresentation and breach of contract, among others.

In granting summary judgment dismissing the seven reinsurers from the case, Commissioner Emilie Elias concluded that the reinsurers "never represented to plaintiffs that they would share in responsibility for the policy limits" under the American Eagle policy.

In addition, "no written contract or document evidencing the terms of a contract between plaintiffs and the reinsurers has been produced in this case," Commissioner Elias wrote in the summary judgment.

The court also concluded that American Eagle's reinsurance treaties do not provide for direct payments from a reinsurer to a policyholder, and that American Eagle's special deputy receiver has an exclusive right to the proceeds of the reinsurance treaties issued by the reinsurers.

Remaining as a defendant in the case is the reinsurance intermediary, Chicago-based Aon Re Inc. Mr. Gianelli said he is now negotiating a settlement with the company. An attorney for Aon Re declined to comment.

Reinsurer defendants named in the suit were Chartwell Reinsurance Co.; Kemper Reinsurance Co.; Prudential Reinsurance Co.; North Star Reinsurance Corp.; St. Paul Fire & Marine Insurance Co.; and Transamerica Reinsurance Co. and Skandia American Reinsurance Co.

Gannon Trucking et al. vs. Aon Corp. et al., Superior Court of the State of California, County of Los Angeles, Case No. BC 199481.

► RELIANCE OUTSOURCING Reliance Insurance Group Inc.'s e-commerce unit—Point, Click & Bind Inc.—is outsourcing its technology needs to a Florida service provider. Reliance has signed an eight-year agreement with St. Petersburg, Fla.-based Insurance Management Solutions Group Inc. to provide Internet technology, processing platforms and back-office support for on-line policy quoting and binding, policy issuance, customer service and claims administration, IMSG announced. The deal covers Reliance's eBOP small business owners' property and general liability product and its Umbrella Online programs.

► ZURICH U.S. DEAL Israel's government has entered into two reinsurance agreements with Schaumburg, Ill.-based Zurich U.S. to cover medium-term transactions in Eastern Europe and Latin America. The private-public partnership is the first of its kind between the government-owned Israeli Foreign Trade Insurance Corp. and a private insurer for political risk insurance on its medium-term program. Under the agreement, Washington-based Zurich U.S. Political Risk will insure cross-border transactions against loss stemming from political risk, including inconvertibility, expropriation and political violence. The two reinsurance agreements total \$90 million.

► COMP STUDY Workers compensation costs for employers and benefit payments to workers both declined relative to wages in 1998, according to a study released last week. In 1998, employers paid an estimated total of \$52.1 billion in insurance premiums or self-insurance expenses to help workers who sustained job-related injuries and illnesses; that figure amounted to 1.35% of total payroll. Meanwhile, injured workers received a total of \$41.7 billion in medical care and wage-replacement benefits, amounting to 1.08% of payroll, according to the National Academy of Social Insurance, a non-profit, non-partisan

organization of experts on social insurance. This marks the fifth consecutive year that both measures declined, although neither costs nor benefits were adjusted for inflation. The decade highs were 2.17% for employer costs in 1993 and 1.66% for workers' benefits in 1992. In 1998, employer costs as a percentage of payroll were down 38% from their 1993 high, and worker benefits as a percentage of payroll were down 35% from their 1992 high. Electronic copies of the report are available on the Web site of the National Academy of Social Insurance, www.nasi.org. Printed copies are available for \$15 each by calling 202-452-8097.

► ERGONOMICS HEARINGS The Occupational Safety and Health Administration will begin the final week of public hearings on its proposed ergonomics standard today in Washington. The hearings began in Washington in March and continued at forums in Chicago and Portland, Ore. In a related development, Assistant Labor Secretary Charles Jeffress continued his defense of the controversial proposal in testimony before the Senate Health, Education, Labor and Pension Committee's Subcommittee on Employment, Safety and Training late last month. Mr. Jeffress said OSHA has the legal authority to require that employers compensate injured workers despite the contention of insurers and others that the Occupational Safety and Health Act of 1970 specifically prohibits OSHA from getting involved in state workers compensation systems.



► OSHA, INSURER COLLABORATION Safety experts from the insurance industry and representatives of the Occupational Safety and Health Administration are scheduled to meet in Washington on May 18 to discuss how insurers and OSHA can work together to promote workplace safety. "There are numerous ways in which business and government can work together to improve worker safety. For too long they have been at loggerheads. The insurance

industry works cooperatively with both camps, and this meeting is just one of our many efforts to use our unique perspective to promote the use of voluntary and cooperative methods," Keith Lessner, vp-safety and environmental for the Alliance of American Insurers in Downers Grove, Ill., said in a written statement. The Alliance is one of six insurance-related groups that will participate in the meeting. The roundtable meeting, the second of its kind, will include an address by Assistant Labor Secretary Charles Jeffress, who heads OSHA. The first such meeting took place last October.

► EXPANDING HEALTH COVER President Clinton used an address to the Independent Insurance Agents of America last week to call for extending health care coverage to more Americans. The president told those attending the IIAA's National Legislative Conference in Washington that he hopes his goal will be achieved "this year, in this Congress." He also called for enactment of a \$3,000 annual tax credit for long-term care and the addition of prescription drug benefits to Medicare. The president did not, however, make any mention of managed care regulation or the so-called patients' bill of rights currently being hammered out by a House-Senate conference committee. During his appearance, Mr. Clinton praised the IIAA members for their efforts to modernize the business of insurance and called upon them to balance the benefits of technology with the need to protect customer privacy. Senate Judiciary Committee Chairman Orrin Hatch, R-Utah, preceded the president at the meeting. The one-time candidate for the GOP presidential nomination called for further tax reduction, drawing applause from his audience when he called for an end to federal death taxes, which he called "confiscatory" and which he said force heirs to sell off family businesses in order to pay.



President Clinton

► BRIEFLY NOTED John Shilts has been appointed administrator of Oregon's Workers Compensation Division, under the state's Department of Consumer and Business Services. He previously was manager of the Workers Compensation Division's Benefits and Policy Section. . . . Moody's Investors Service has confirmed its Aa3 insurance financial strength rating of Phoenix Home Life Mutual Insurance Co. following a review of the insurer's operations. Moody's examined Phoenix after a workers compensation insurance pool, run by the former Unicover Managers Inc. and in which Phoenix participated, unraveled in 1999. Phoenix directors, meanwhile, authorized the development of a demutualization plan. . . . Lloyd's of London broker Prentis Donegan & Partners has unveiled coverage for North American companies for costs associated with hostile takeovers. The policy will pay for takeover-related costs such as investment banking fees, attorneys, public relations and advertising, and proxy solicitation. The coverage is an addition to aborted-bid costs insurance, also developed by Prentis Donegan, which reimburses companies in the event a planned merger or acquisition fails. . . . The Washington-based American Insurance Assn. has criticized the Clinton administration's plan to send its own financial records privacy legislation to Capitol Hill as "premature." In a statement last week, Leigh Ann Pusey, AIA's senior vp-federal affairs, noted that regulations implementing financial data privacy legislation enacted late last year won't be issued until this week. She said that, "at a minimum," the White House should have consulted with industry representatives and state regulators before moving ahead. . . . F. George Dunham III resigned last week as chairman and CEO of INSpire Insurance Solutions, a Fort Worth, Texas-based administrator of property/casualty policies and claims. INSpire named R. Earl Cox III, a founding board member, as chairman and interim CEO while the company looks for another chief executive. President and COO Jeffrey W. Robinson noted that the remaining management team is in place. INSpire shares closed Friday at \$3.50, near the 52-week low of \$2.38.

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BI Industry Stock Report MAY 1, 2000, THROUGH MAY 5, 2000

BROKERS						INSURERS/REINSURERS						HEALTH MAINTENANCE ORGANIZATIONS												
	Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)		Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)				
Aon Corp.	NYS	26.13	1.70	-34.69	46.66	20.69	5410	Harleysville Group	NDO	15.63	5.93	9.65	20.88	11.63	36	Unilin	NDO	32.75	-4.38	-12.96	42.38	30.50	285	
Clark Bordes Holdings	NDO	13.81	2.79	-3.91	21.00	11.63	13	HSB Group Inc.	NYS	27.50	5.26	-18.87	42.25	21.50	597	UNUM Corp.	NYS	15.88	-2.68	-50.49	56.68	11.94	3537	
E.W. Blanch Holdings Inc.	NYS	17.75	-2.41	-71.02	71.75	16.56	1090	HCC Insurance Holdings	NYS	11.13	-12.32	-15.64	25.13	8.00	530	Vesta Insurance Co.	NYS	4.94	0.00	27.42	7.88	3.44	195	
Gallagher Arthur J. & Co.	NYS	32.94	2.13	1.74	33.25	23.00	805	ING Groep N.V.	NYS	55.88	-1.65	-6.40	63.94	46.81	298	ZL Capital Ltd.	NYS	45.88	-5.05	-11.57	67.19	39.00	1156	
Hibb, Rogal & Hamilton	NYS	28.25	2.03	0.00	29.13	17.00	24	IPC Holdings Ltd.	NDO	11.75	-2.08	-21.01	22.50	9.75	145	Zenith National Ins.	NYS	24.13	1.85	16.97	26.69	18.75	364	
Kaye Group Inc.	NDO	6.25	-10.71	-25.37	11.88	5.00	12	Hartford Financial Services	NYS	47.44	7.20	0.13	66.44	29.38	3520	INSURERS/REINSURERS	AVERAGE		0.76	-6.76				
Marsh & McLennan	NYS	96.69	1.11	1.05	110.69	61.75	3142	John Hancock Financial Service	NYS	17.31	-7.05	1.84	20.13	13.44	6310									
Brown & Brown	NYS	38.69	0.65	0.98	40.63	30.38	53	LaSalle Re Holdings Ltd.	NYS	12.56	-1.47	-23.86	18.63	10.88	49									
BROKERS	AVERAGE		-1.20	-15.44				Lincoln National	NYS	33.25	5.77	-16.88	57.50	22.63	2171									
								MAIC Holdings Inc.	NYS	19.75	-3.07	-6.78	29.05	16.63	138									
								Market Corp.	NYS	140.25	-3.19	-9.52	193.00	111.50	76									
								MBA Insurance Group	NYS	49.63	1.53	-6.04	71.88	36.31	1092									
								Meadowbrook Insur. Group	NYS	5.25	0.00	-20.00	15.31	4.75	15									
								MetLife	NYS	15.44	-3.52	8.33	17.25	14.25	21205									
								MMI Cos. Inc.	NYS	9.94	1.27	15.22	17.44	3.31	66									
								Mutual Risk Mgmt. Ltd.	NYS	17.00	-2.51	1.12	40.81	9.81	366									
								Navicators Group	NDO	10.00	-2.44	2.56	16.00	8.75	18									
								NYMagic Inc.	NYS	14.13	4.63	7.11	19.50	12.00	49									
								Ohio Casualty Corp.	NDO	15.88	0.78	-1.17	20.25	10.75	1121									
								Old Republic Int'l	NYS	12.50	-3.85	-8.26	20.69	10.63	1059									
								Partner Re Ltd.	NYS	35.63	-3.23	9.83	41.69	28.38	186									
								Penn-America Group Inc.	NYS	8.00	1.59	3.23	11.06	6.63	54									
								PMA Capital Corporation	NDO	16.63	-1.48	-16.35	21.13	15.50	36									
								Philadelphia Cons. Holding	NDO	14.88	0.85	2.59	25.50	10.81	81									
								PXRE Corp.	NYS	15.13	0.83	16.35	21.25	9.94	9									
								Reliance Group Holdings	NYS	2.63	7.69	-60.38	10.88	2.31	1986									
								ReliaStar Financial Corp.	NYS	28.75	0.44	-26.63	49.81	23.75	1764									
								RenaissanceRe Holdings Ltd.	NYS	38.25	1.83	-6.42	43.19	30.00	195									
								Risk Capital Holdings	NDO	15.38	-1.01	21.78	17.38	11.00	25									
								RLI Corp.	NYS	31.88	-0.39	-6.25	38.81	26.25	31									
								St. Paul Cos.	NYS	30.69	2.29	-8.91	37.06	21.31	3878									
								SCOR	NYS	44.44	0.99	0.42	56.75	40.00	23									
								SAFECO Corp.	NDO	20.75	-9.78	-16.58	46.75	18.00	4849									
								SCPIE Holdings Inc.	NYS	29.75	0.63	-7.39	36.94	23.69	NA									
								Seibels Bruce Group	NDO	1.50	14.29	-14.29	6.25	1.31	17									
								Selective Ins. Group	NDO	18.88	9.42	9.82	22.50	14.63	167									
								Tokio Marine & Fire	NDO	51.25	0.49	-13.32	67.00	45.00	63									
								Torchmark Corp.	NYS	22.63	1.12	-22.15	38.00	18.75	1628									
								Transatlantic Holdings	NYS	81.56	-0.84	4.48	87.00	68.75	28									
								Travelers Property Casualty	NYS	42.00	0.90	22.63	42.00	27.69	4578									
								Trenwick Group Inc.	NYS	13.08	-4.57	-22.88	32.00	12.00	44									
								Unico American Corp.	NDO	5.86	20.51	-18.07	10.75	4.50	33									
								United Fire & Casualty	NDO	17.75	-3.73	-21.55	27.25	17.38	14									

BI Insurance Index



Base=100 on Dec. 29, 1978

Top advancing issues: Kaye Group Inc., Old Republic Int'l, ReliaStar Financial Corp. Leading decliners: SCPIE Holdings Inc., Humana Inc., Acceptance Insurance Cos. Most active issue: Citigroup. The BI Index dropped 0.6%; the Dow Jones 30 Industrials went down 1.5%; the S&P 500 decreased 1.4%, and the NYSE Composite went down 0.9%. Average P/E: Brokers, 19.0; Insurers/reinsurers, 17.1; HMOs, 11.6

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

**Medium-Size Mass Merchandiser.
Company-Wide Computer Intranet.
One Slightly Off-Color Email Joke.**

Your Business. Your Risk. Understood.SM

These days, small corporate mistakes can equate to big insurance risks. That's why you need an insurance partner who knows your business inside and out. One that has walked a mile in your shoes. And one that can provide the best possible coverage, in 130 countries worldwide, for extremely serious matters like employment liability.

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