

Business Insurance

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

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Judge: Medicare HMOs can cut drug coverage in Massachusetts

BOSTON—Health maintenance organizations in Massachusetts can scale back prescription drug benefit coverage to Medicare beneficiaries, a federal judge has ruled.

U.S. District Court Judge Richard Stearns said a 1997 federal law pre-empts a 1994 Massachusetts law and regulation that requires Medicare HMOs to provide unlimited or no prescription drug benefits.

Judge Stearns' ruling follows nearly three months of battles between Massachusetts HMOs and the state's Division of Insurance

See Updates on next page

New Jersey seeks control of HMO

By JERRY GEISEL

TRENTON, N.J.—New Jersey regulators will go to court next week seeking to take control of one of the state's largest health maintenance organizations and place it in rehabilitation.

That action follows state supervision of Health Insurance Plan of New Jersey, after the HMO's financial condition deteriorated. At the end of June, the not-for-profit HMO reported a deficit of \$9.5 million, an amount that had risen to more than \$20 million at the end of August.

"Based on what we have learned, we have determined that the next appropriate step to protect members and health care providers is to seek legal action to keep the HIP health care network operating while we take control of the finances of the company," New Jersey Department of Banking and Insurance Commissioner Jaynee LaVecchia said in a statement.

State officials said providers cannot seek recovery from employers or enrollees of any claims HIP has not paid. Employers with contracts with HIP can continue

to offer HIP, but new enrollment is frozen for now. HIP has about 194,000 enrollees.

A spokeswoman for the department said it was premature to say what has caused HIP's financial problems.

Some observers say HIP's financial woes are a reflection of failing to keep rates up with expenses.

"They did not charge enough premium commensurate with expenses," said Paul Bonsee, a senior vp with Sedgwick Noble Lowndes in Roseland, N.J.

"Their rates tended to be low compared to others, though per-

haps their overhead was lower, too," added Eileen Settineri, a consultant with Watson Wyatt Worldwide in New York.

Others note that HIP's problems are a reflection of an environment that was, until recently, highly competitive, with HMOs holding down their rates to win market share.

"For the last couple of years, not many of the plans in the state have made money. Medical loss ratios have gone up, but premiums have been stable," said Paul Langevin, president of the New Jersey Assn. of Health Plans, a

state HMO trade group in Trenton.

HIP's financial problems came in the wake of significant change for the HMO. Last year, HIP sold 23 health care centers to Pinnacle Health Enterprises, a subsidiary of PHP Healthcare Corp. in Reston, Va. As part of that deal, Pinnacle agreed to provide health care services to HIP enrollees in exchange for capitated payments equal to a percentage of premiums collected by HIP.

According to the Department of Banking and Insurance, Pinnacle

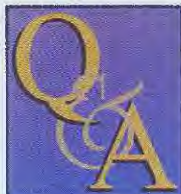
See HIP on page 31

Rules clarify birth law compliance

By JERRY GEISEL

WASHINGTON—Federal regulations issued last week provide long-awaited guidance to employers on how to comply with the law that sets minimum hospitalization coverage requirements for women and their newborns after delivery.

Under the Newborns' and Mothers' Health Protection Act of 1996, group health care plans must cover inpatient care for at least 48 hours after a normal vaginal delivery and 96 hours after a Caesarean section.



While the law's basic requirements are straightforward, questions have popped up in several areas, including:

- Exactly when the 48-hour and 96-hour clocks start ticking.
- What incentives, if any, health care

plans can provide to encourage women to leave the hospital before the mandated length-of-stay requirements expire.

The regulations, published in the Oct. 27 issue of the Federal Register, provide answers to those and other questions.

"In general, the rules appear to be a reasonable interpretation of the statute," said Pamela Scott, a principal with PwC Kwasha in Fort Lee, N.J.

The rules, which for most employers will go into effect Jan. 1, use examples to answer questions about the law. Some of the questions that have arisen include:

Q: The law bars health care plans from restricting hospital coverage to less than 48 hours following a vaginal delivery and 96 hours following a Caesarean section. Exactly when do those time periods begin?

A: In general, for births in the hospital, the coverage

See Births on page 22

Insured losses from Mitch are low

By RODD ZOLKOS
and SALLY ROBERTS

With Hurricane Mitch weakening considerably from its early fury by late Friday afternoon, owners of the commercial property that remains in the storm's path were breathing a sigh of relief and preparing for heavy rains.

The storm had wreaked havoc in some areas of Honduras, where it flooded neighborhoods, damaged bridges and tore the roofs from homes.

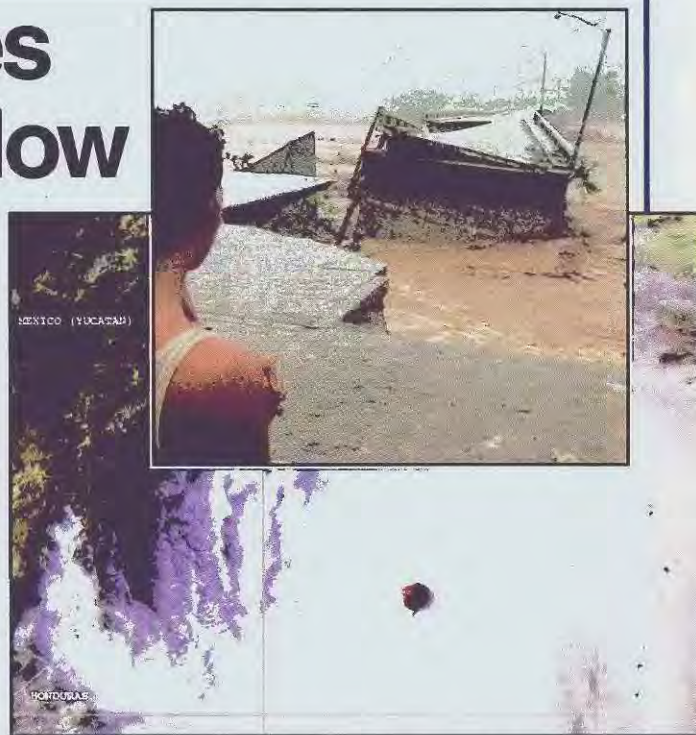
At least 50 deaths—primarily in Honduras, but also in Nicaragua and Mexico—had been attributed to the storm as of Friday, as Mitch moved slowly across Honduras, prompting fears of continued flooding in coastal regions.

Insurers and brokers who were questioned reported few commercial clients in Honduras and no indications of insured losses, however.

"It doesn't look like we have much exposure there," a CNA Insurance Cos. spokesman said.

While the company has "a little commercial" coverage through a fronting arrangement in Honduras, it hadn't received any claims and didn't anticipate any, the

See Mitch on page 30



PHOTOS: NOAA, AP/WIDE WORLD PHOTO

Onlookers in La Ceiba, Honduras, survey damage to a bridge that collapsed when hurricane winds battered the area (top). A satellite image shows the hurricane after it was upgraded to Category 5.

Publisher sued over benefits

Time Warner denies federal charges it misclassified temporary workers

By ROSEANNE WHITE

A government lawsuit sounds another warning that employers must be extremely careful if they exclude temporary employees or independent contractors from benefit plans.

The U.S. Department of Labor last week sued Time Warner Inc., Time Inc. and its subsidiaries, and plan administrators, alleging that Time Inc. and its various subsidiaries and divisions have misclassified workers as temporary employees or independent contractors. The misclassifications resulted in denying those workers participation in benefit plans, according to court papers.

The Labor Department also alleges that the companies "manipulated breaks in service" so that temporary workers could not meet the length of service that would put them in an employee class eligible for plan participation, according to the complaint, filed in U.S. District Court for the Southern District of New York.

The message employers should receive from the Labor Department's action is that plan sponsors must be "excruciatingly explicit" in stating in benefit plan documents which employees are included and which are excluded from participation, said Frank Cummings, a partner with LeBoeuf, Lamb, Greene & MacRae in

Washington.

Pamela Scott, a principal with PwC Kwasha in Fort Lee, N.J., said the issue of worker classification is a long-standing one, though it has become more visible because of the increased use of temporary workers and independent contractors.

If employers can reduce costs by excluding certain categories of employees from benefit plan participation, "the government may feel it needs to stretch the boundaries of the employer-employee relationship in order to include more employees," she said. "Clearly, the government is trying to challenge employers' views of which

See Lawsuits on page 4

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Updates

HMOs win drug benefit ruling

Continued from previous page
over the right of the HMOs to cut prescription drug benefits (BI, Aug. 24). That battle began in August, when several HMOs said they intended to pare back benefits to keep coverage affordable. The Division of Insurance said the cutbacks violated state law, and it sued Harvard Pilgrim Health Care to prevent any reduction in benefits. In turn, the Massachusetts Assn. of HMOs sued the Division of Insurance. Those suits later were combined before Judge Stearns.

Massachusetts is the only state with a prescription drug mandate on Medicare HMOs. But had state regulators prevailed, that could have given the green light to other states to impose their own benefit mandates on Medicare HMOs, raising the cost of coverage and making the plans less attractive to retirees.

A Harvard Pilgrim spokeswoman hailed the decision as enabling it to provide to its membership the "most generous benefits we can afford."

Massachusetts Attorney General Scott Harshbarger said he would attempt to work with the state's representatives in Washington to find a legislative solution.

Last month, Sen. Edward Kennedy, D-Mass., unsuccessfully tried to attach an amendment to a broader budget bill that would have protected the state mandate from federal pre-emption.

CIAB: Disclose compensation

WASHINGTON—The Council of Insurance Agents & Brokers is urging its members to disclose to their clients any compensation arrangements they have with insurers.

"The Council's members believe that their clients' interests and concerns are paramount. We think that this disclosure will permit open and frank discussion about compensation arrangements with insurers, if the client chooses," Ken A. Crerar, president of the Council, said in a release on the association's position on producer compensation.

In its position statement, the Council said it supports the long-standing practice in the industry of insurers compensating agents and brokers. "We believe that such arrangements enhance an agent's or broker's ability to access markets in the clients' interest. Such arrangements also enable and encourage agent and broker investments in technology, market research and risk management methods that deliver value to clients over the long term by lowering the cost of risk."

However, because "even the perception of a conflict of interest is detrimental to developing a trusting relationship," the Council urges members to disclose to clients that they may have compensation arrangements with some insurers and to discuss the matter further if clients have questions or concerns.

Aetna appeals Texas decision

NEW ORLEANS—Aetna Inc. is appealing a Texas federal court decision that upholds the right of injured patients to sue their health maintenance organizations for damages.

Aetna subsidiaries challenged Texas' groundbreaking "right to sue" law in 1997 almost immediately after it became law. But U.S. District Judge Vanessa Gilmore ruled on Sept. 18 that patients alleging inadequate care should have their day in court (BI, Sept. 28).

As part of her ruling, Judge Gilmore also invalidated an independent review process the law created for HMO members who are denied treatment by their health plan. Texas Attorney General Dan Morales has appealed that portion of the decision to the 5th U.S. Circuit Court of Appeals.

The case has been closely watched nationally because Texas was the first state to pass legislation allowing lawsuits against HMOs. Other states and Congress have been considering similar measures. Recent court decisions have permitted HMO malpractice suits in at least two jurisdictions:

- A federal judge in Connecticut ruled last week that patients can sue HMOs in that state for negligence. The ruling involved a 16-year-old who killed himself the day he was placed in a drug treatment program by Physicians Health Services, a Trumbull, Conn., HMO.

- A week earlier, a Pennsylvania appellate court issued a ruling opening the door to malpractice suits against HMOs in that state (BI, Oct. 26).

Aetna's appeal was filed just days before one of its subsidiaries became the first insurer to be sued under the 1997 law. The family of a 68-year-old Fort Worth man filed suit last Monday, alleging that NYLCare Health Plans denied him adequate hospitalization despite suicidal impulses and protests from his physician. After his discharge, the man drank antifreeze and died. NYLCare, which Aetna acquired in March, said it would vigorously defend itself against the allegations.

TIG mulls sale, other options

NEW YORK—Insurer TIG Holdings Inc. is "considering strategic alternatives" with its investment banker, Goldman Sachs & Co., including a possible sale, restructuring or recapitalization of the company, officials announced last week.

See Updates on page 30

Errors & omissions

- Due to an editing error, an item in the Oct. 19 issue incorrectly stated that Arthur Schwartz was leaving the National Society of Professional Engineers to join a law firm. In December, Mr. Schwartz will become a vp at Ames & Gough, an insurance agency with offices in Boston and Washington, D.C.

- The *Business Insurance* stock index was miscalculated in the Oct. 16 and Oct. 23 issues. On Oct. 16, the index should have been reported as 1734.06, up 13.66%. On Oct. 23, it should have been reported as 1733.09, down 0.06%. The Citicorp merger with Travelers Group wasn't reflected in the stock index for both weeks, thereby not downplaying actual gains.

Employers move away from strict sick days

By AMANDA MILLIGAN

Honesty is the best policy when a family issue requires an employee to take time off, employers say.

When an employer fails to address family needs, however, employees may feel they have to hide the real situation, often masking a family issue by taking a sick day, said Amy Richman, a senior research consultant for WFD, a Boston-based resource and referral service.

"(Employees) call in sick and use their sick time for their chil-

dren," said Ms. Richman. "It's a lot worse to have somebody who has to deceive their employer. . . . It's about developing an atmosphere of trust and support."

In a recent survey by CCH Inc., a Riverwoods, Ill.-based tax and business law information provider, the category of "family issues" was the most frequently cited reason for unscheduled absences—unseating "personal illness" for the first time in the survey's history. The survey was first conducted in 1995.

"Traditional sick-leave plans do

not address the real issues that are driving employee absenteeism," Paul Gibson, an attorney and human resources analyst with CCH, said in a statement about the survey. "There's little value in outdated plans that cost organizations more, are not flexible enough for today's workplace and fail to meet even the basic needs of the workers."

Time off to handle personal needs "is no longer a taboo thing to ask," said Chris Kjeldsen, vp of community and workplace pro-

See Sick days on page 6

Analysts hit performance of commercial P/C industry

By MARK A. HOFMANN

PHILADELPHIA—The commercial property/casualty insurance industry isn't writing at a profit and isn't likely to do so for the short term.

That prediction, made by a panel of stock analysts, wasn't the only projection made during Commonwealth Risk Services L.P.'s Third Annual Producer's Forum in Philadelphia late last month. There was a peek into the nature of risk management during the next millennium as well from *Business Insurance's* 1997 Risk Manager of the Year.

Right now, the outlook for traditional property/casualty insurers isn't all that inspiring, noted the three stock analysts assessing the state of the industry.

The Third Annual
Producers' Forum



"The industry is a brackish pond inhabited by a lot of pretty ugly ducklings," observed Alice D. Schroeder, managing director of Paine Webber in New York. The analysts assessing the present and future of the industry agreed that there's more than a little room for improvement.

"We conclude that the insurance industry is writing at no profit," said Weston M. Hicks, senior research analyst with Sanford C. Bernstein & Co. Inc. in New York. He said he believes the combined ratio for commercial lines is actually

See Forum on page 12

Study links wellness, costs

By ROBERT KAZEL

As do many employers, Chevron Corp. and Marriott International Inc. wondered whether they were conducting enough disease prevention programs to make a dent in overall health care costs.

But the two companies found that preventive programs were, for the most part, uncharted territory. For example, up-to-date data on helping depressed employees find therapy and support programs didn't exist or didn't yield a clear statement on how much the help would improve the companies' bottom line.

Chevron already believed it was doing quite a bit in the area of health services. The San Francisco-based gasoline and chemical company covered preventive health

exams at 100%, gave free prenatal health care and maintained fitness centers for its workers, said D'Ann Whitehead, manager of preventive health services.

In the case of Marriott, the Washington-based company already was running some wellness programs out of its corporate headquarters, though most of the hotelier's far-flung workforce had to settle for whatever preventive programs their health maintenance programs offered, said Karen King, director of benefit operations.

Marriott and Chevron, along with four other large employers, recently engaged in a study to see if such risk factors as stress, depression and diabetes could be associated with higher medical costs. Although this causal

See Stress on page 22

Deadlines near for upcoming directories

Business Insurance will publish its annual Directory of Employee Benefit Consultants in the Dec. 14 issue, which also will contain a report on the benefits market. To be included in the directory, companies must generate at least \$500,000 in revenues from direct, unbundled benefit consulting. Completed directory questionnaires must be submitted by the extended deadline of Nov. 13.

The deadline for returning questionnaires for the annual Directory of Managed Care Providers is Nov. 6. Companies must provide a health maintenance organization, point-of-service or preferred provider organization product to be included.

BI's directories are published as an editorial service; there is no charge to be included. If your company meets the criteria for either directory but has not received a questionnaire, please call Directory Editor Sandra Budde at 312-649-5279 and request the appropriate questionnaire.

Inside

- A new mandate for mastectomy reconstruction includes some puzzling and wasteful requirements, this week's editorial says. **PAGE 8**

- Losses from the latest flooding in Great Britain haven't been estimated yet, but the U.K. Environment Agency's warning system has again drawn criticism. **PAGE 23**

Departments

Advertiser Index	27
Ask a Casualty Actuary	19
Classifieds	26
Commentary	29
Global Briefs	23

Insurance Services Guide	24
International	23
Legal Briefs	20
Letters	8
Opinions	8
Perspectives	19
Ticker	31

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Microsoft's Scott Lange logging off

By DAVE LENCKUS

REDMOND, Wash.—Heeding his own advice to risk management students about not subordinating family life to career, Scott K. Lange will retire Dec. 1 as director of risk management for Microsoft Corp.

Mr. Lange, 43, said he is not leaving Microsoft to take another position. He said his decision is based solely on his desire and financial ability to leave Microsoft and spend more time with his family.

Mr. Lange said he prefers to consider his departure as his retirement rather than as a resignation. Resignation, he said, "has a potentially negative connotation."

Mr. Lange acknowledged that a few organizations have "enticed" him with opportunities and that he probably will return to the industry in some capacity. But the 1995 winner of *Business Insurance's* Risk Manager of the Year Award said he will not allow any future venture to cut into the time he wants to devote to his wife and three children.

Mr. Lange joined the software giant in January 1990 as its first risk manager. He

previously was the liability and aviation manager for The Boeing Co.

During an interview, Mr. Lange several times referred to his position at Microsoft as "the best risk management job in the world." He called his work "exciting" and said his position gave him the opportunity to do "a lot of innovative things."

Mr. Lange often professed the importance of risk managers stepping forward and helping senior management with their business strategy efforts. Risk managers can aid top management by helping them redefine risk and re-evaluate how to finance it, regardless of whether the exposures are insurable, he said.

Microsoft's marquee name, which makes "people want to deal with you," and Mr. Lange's relationships at the office also made him look forward to going to work every day, he said.

"I absolutely love this job," he said. "But, I can't get what I want with my family" and work at Microsoft.

Mr. Lange said his commute to and from his home in Edmonds, Wash., a community north of Microsoft's Redmond campus, ate

up two to four hours each day. Weeknights, he said, he often had only a half-hour to see his children: Danielle, 18; Michelle, 14; and Ryan, 11.

Moving closer to work was not an appealing option because he did not want to uproot his children from their schools and friends.

He also did not ask Microsoft management to allow him to reduce his work schedule, he said. "Microsoft got where it is today by people working hard. I wouldn't want to dilute that extremely hard-working work force by cutting back. It's a point of honor."

Mr. Lange said an observer's reaction to a speech he gave at the Risk & Insurance Management Society Inc. in San Diego last spring helped him decide how to balance his personal and professional lives.

Mr. Lange spoke to 300 risk management students on the importance of not subordinating their personal values to their careers. He advised the members of the Gamma Iota Sigma risk management fraternity not to uproot their families and move across

See Lange on page 30



Scott Lange will retire from Microsoft Corp.

Expropriation by 2 countries is alleged

Pakistan, Indonesia criticized

By MARIA KIELMAS

Political risk insurers could face potentially huge claims following government actions in Pakistan and Indonesia that insurers and brokers say are tantamount to expropriation.

Foreign investors in power utility projects in the two countries have seen their power purchase agreements suspended or threatened with cancellation, which could result in billions of dollars in losses.

In Pakistan, the government is waging an acrimonious battle with foreign investors, known as independent power producers. The government has threatened to cancel 21 power producers' electricity contracts unless they reduce their rates, which Pakistani officials charge were inflated due to corruption in the previous government of Benazir Bhutto. The power producers deny the allegations.

The power projects range in value from tens of millions of dollars to more than \$1 billion and represent a total foreign investment of more than \$4.2 billion by companies from the United States, Europe, the Middle East and Japan, according to the U.S. Department of Energy.

The situation is complicated by economic and political instability in Pakistan and Indonesia.

The government of Pakistani Prime Minister Nawaz Sharif defaulted on foreign debt payments earlier this year after the U.S. imposed sanctions after Pakistan's nuclear testing in May.

In addition, the power producers' primary customer, the state-owned Water & Power Development Authority, is debt-ridden. The Pakistani army seized WAPDA Oct. 18 to force the utility to make its payments.

"Pakistan is opening up a Pandora's box. It's going to have the effect of sending a chill around the foreign investment community," said Dan Riordan, head of

See Utilities on page 27

Company insured in explosion

Fire extinguished two days after blast



API/WIDE WORLD PHOTOS

Seven workers died as a result of an explosion and fire at this natural gas well.

BRYCELAND, La.—Federal and state officials are investigating the recent fatal explosion and fire at a natural gas well in rural Bryceland, La.

The Oct. 24 explosion occurred as a crew under contract to Houston-based Sonat Exploration Co. was equipping a well to go into production, according to a spokesman for parent company Sonat Inc. of Birmingham, Ala.

Seven workers were killed, and four were injured. The fire was extinguished two days later, after firefighters sealed the well with cement.

Sonat would not provide details on the insurance in place to cover losses from the incident. "Obviously, we carry what we believe to be an appropriate level of insurance for issues such as these," a spokesman said.

A Houston broker specializing in energy insurance said that generally, exploration and production com-

panies carry \$10 million of operators extra expense insurance, which covers three types of losses: the cost of bringing a burning well under control, such as cementing it in; the cost of redrilling the well down to the point where it went out of control; and any seepage, pollution and contamination liability resulting from the incident. In addition, a company would have about \$10 million in third-party liability coverage, the broker said.

The Sonat spokesman said the rest of its operation and the surrounding area in Bryceland were unaffected by the incident.

The investigation will take several months, and Sonat's own experts will join the government investigators, the spokesman said. If the findings of the investigation warrant, risk management and safety procedures would be changed, he said.

—By Roseanne White

Preparing for Y2K litigation

Attorney reviews possible claims, defenses to Y2K liabilities

By PAUL D. WINSTON

CANCUN, Mexico—With only about 425 days left until zero hour, businesses must prepare now to minimize their exposure to liability from the Year 2000 computer bug, an attorney says.

Although companies in many industries are doing all they can to eliminate the exposure from their own computer systems, they still may be exposed to claims on several fronts, she said. The question of whether those claims are insured has yet to be resolved, especially because some of

the defenses businesses use to avoid liability may also be used by their insurers to avoid coverage.



In the United States alone, Year 2000 remediation costs are estimated to top \$600 billion, noted

Julia Frost-Davies, an associate in the litigation department of Bingham Dana L.L.P. in Boston. Once litigation costs are factored in, that total could rise to \$1 trillion, she said.

Faced with this potentially enormous liability exposure, many businesses are asking what kind of insurance coverage they will have, Ms. Frost-Davies said during a presentation at a seminar on the Bermuda market, sponsored by broker Park International Ltd. in Cancun, Mexico, last week.

"When insureds are sued, they will first turn to their CGL policies for coverage, asking whether their insurer will defend or cover them," she said.

In many jurisdictions, she noted, there is a broad duty to defend the

See Defense on page 29

Sprinkler settlement gets preliminary OK

By ROBERTO CENICEROS

LOS ANGELES—Central Sprinkler Corp. received preliminary approval last week to settle a class-action suit brought against it in connection with the manufacture of its Omega line of sprinklers.

The settlement, to which a Los Angeles County Superior Court judge gave preliminary approval,

mirrors a recall agreement Central reached last month with the U.S. Consumer Product Safety Commission (CPS, Oct. 19).

The CPSC charged that the sprinklers fail to work, and building owners had sought funding to replace them.

Under the terms of the class-action settlement, Central would establish a multimillion-dollar fund to defer the costs of replacing

about 9 million sprinklers installed in homes and commercial and public buildings throughout the United States.

Also, members of the class would be barred from bringing any more claims regarding the replacement of installed Omega sprinklers.

However, plaintiffs still can opt out of the class or raise objections to the settlement terms. The court

is expected to give final approval at a hearing scheduled for Feb. 19, attorneys for plaintiffs and defendants said.

The Washington, D.C.-based Building Owners & Managers Assn. earlier had objections to settlement terms, but BOMA now has agreed to the settlement, a BOMA spokesman said.

BOMA was seeking class-action status for a separate lawsuit filed

in Philadelphia against Lansdale, Pa.-based Central. But a motion to certify the class was taken off the Philadelphia court's calendar, sources familiar with the case said.

A lawsuit Central has filed against several liability insurers to obtain coverage related to the settlement and the recall continues, a company representative said. **BI**

Lawsuit

Continued from page 1
workers they can include or exclude," she said.

The use of temporary employees or independent contractors is a trend that's here to stay, said Michael S. Gordon, an employee benefits attorney in Washington who represents both employees and benefit plans.

"We have people who may be evolving into a permanent class of temporary employee," Mr. Gordon said. What employers must realize is that "you can't write them off. You have to deal with them in the same responsible way as you do regular employees."

In its complaint, the Labor Department alleges that Time Warner and the administrative committee violated the Employee Retirement Income Security Act by fail-

ing to "ensure the consistent application" of the plans to all eligible employees. The department says they failed to identify all employees eligible to participate in the plans and did not ensure that all eligible employees were in-

employees with plan documents or information, according to the complaint.

A Labor Department spokesman said the government does not know how many workers were allegedly misclassified.

'The Department of Labor's action has no basis in law or in fact and is beyond the scope of its authority,' Time Warner President Richard D. Parsons says in a statement.

cluded as participants. The companies and plan administrators neither examined whether workers classified as temporary employees or independent contractors were eligible for participation nor did they provide misclassified

The Labor Department has asked the court to appoint an independent fiduciary to, among other things, identify all misclassified employees and determine what plans they should have been eligible to participate in and to

what benefits they were entitled. The department also has asked that the employees receive retroactive benefits.

Time Warner President Richard D. Parsons said in a statement in response to the lawsuit that "the Department of Labor's action has no basis in law or in fact and is beyond the scope of its authority." The company has filed a motion to dismiss the suit.

Additionally, the company also said it has filed three Freedom of Information Act lawsuits, alleging the Department of Labor "improperly has refused to provide" information in response to FOIA requests. Time says in its statement that it believes the information it is seeking "will demonstrate that the positions being taken by the DOL—seeking benefits for independent contractors and temporary employees—are unprecedented and represent a

clear departure from the DOL's longstanding recognition of the limits to its jurisdiction."

Mr. Cummings of LeBoeuf, Lamb agrees that this action is "an unprecedented expansion" of the Labor Department's jurisdiction under ERISA.

"There's very little doubt that Congress did not expect the department to bring actions simply to contest plan administrators' determinations of the eligibility of coverage," Mr. Cummings said. He said the department has tried to maintain jurisdiction by restating as a fiduciary duty claim what actually is a claim for benefits that should be brought by employees.

The request for retroactive benefits is "gouging" a deep pocket, and appointing an independent fiduciary in this case would be a "wild extension" of the circumstances under which such a fiduciary is generally appointed, he said.

But Mr. Gordon said the Labor Department would have standing in cases where there is a pattern or practice of incorrectly carrying out the terms of the plan with regard to certain classes of employees. He did say that together, the call for an independent fiduciary and the retroactive benefits are an "unusually strong action."

The case resulted from an investigation conducted by the New York Regional Office of the Pension and Welfare Benefits Administration into alleged ERISA violations, the Labor Department said in a statement. That PWBA investigation was prompted by complaints from Time Warner workers who were not granted eligibility for benefit plans, a Labor Department spokeswoman said.

The suit raises issues brought out in the case of *Donna Vizcaino et al. vs. Microsoft Corp.* The 9th U.S. Circuit Court of Appeals ruled in that case that, based on Microsoft's plan language and an Internal Revenue Service determination, the workers were employees and not independent contractors. That determination was made even though the free-lancers had signed contracts that they were self-employed and responsible for paying their own insurance and benefits (*BI*, Oct. 21, 1996).

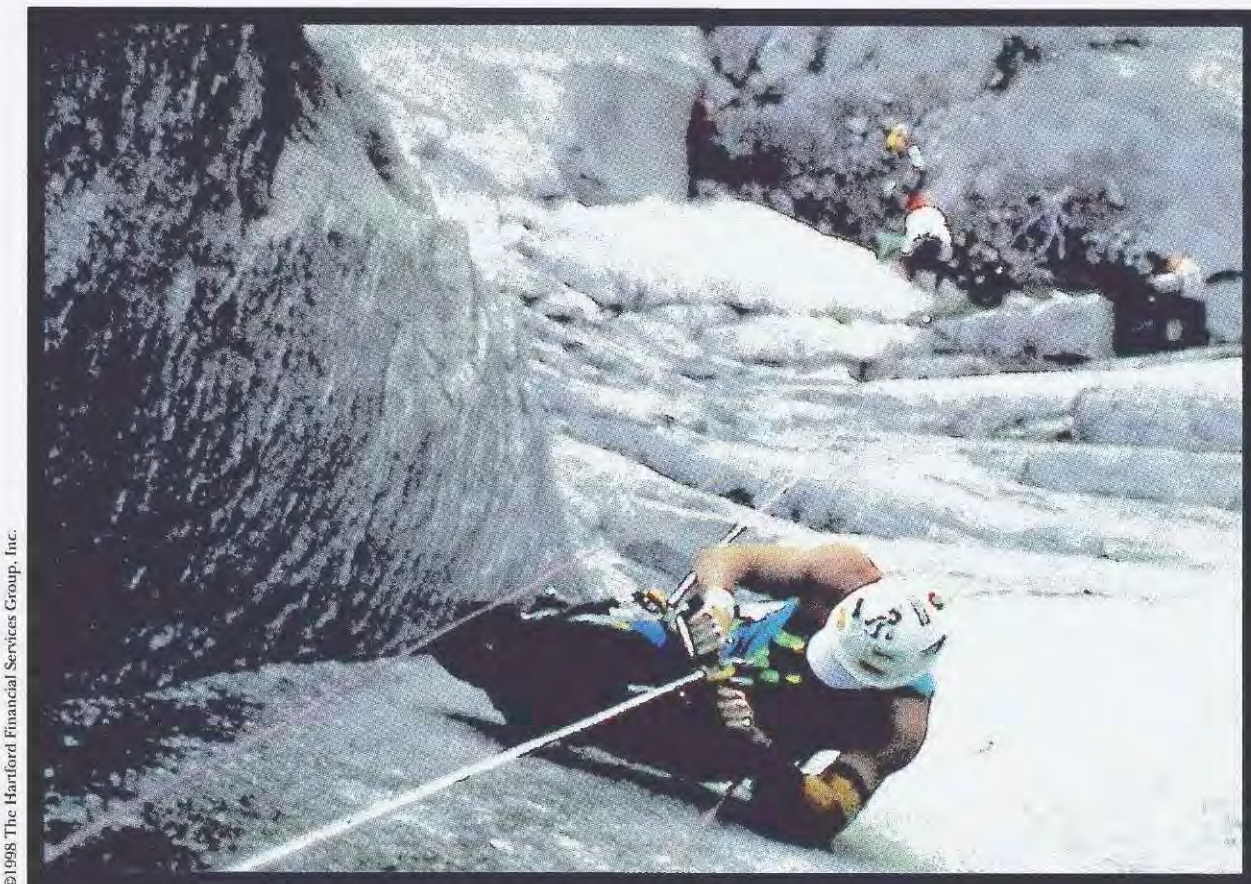
Last year, the 4th U.S. Circuit Court of Appeals found a former leased employee ineligible for benefits. In the case of *Ann Navey Clark vs. E.I. du Pont de Nemours & Co. Inc.*, the court found the late husband of Ms. Clark "was not a (plan) 'participant' because he was not eligible to receive benefits under the plain language of the plans" (*BI*, Jan. 20, 1997).

Some observers say that while the U.S. Supreme Court declined to review the *Microsoft* decision, it ultimately will have to address the issue of worker classification as it relates to benefits eligibility.

Stephen K. Strong, a partner with Bendich, Stobaugh & Strong in Seattle who represented plaintiffs in the *Microsoft* case, lauded the Labor Department's action.

"We've been encouraging the Labor Department to do more work in this area," Mr. Strong said. He said he hopes one result of the action will be for "employers to take more note of their duty" to properly classify employees.

Mr. Strong said problems arise when employers include categories of employees in plan language in order to meet the requirements of tax-qualified plans but then try to find ways of excluding members of those categories by reclassifying them in some way. **BI**



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We first met Mark Wellman through our sponsorship of Disabled Sports USA. An accomplished athlete who

You're looking at

refuses to let his disability get in the way of his dreams, Mark, and others like him, are the true inspiration for

the difference between

our unique approach to disability benefits. Our outcome-driven disability management and leading-edge

paying out a claim

products and services are redefining the essence of disability. As a result, we're better able to help employees

and reclaiming a life.

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Sick days

Continued from page 2

grams for health care products manufacturer Johnson & Johnson.

"We really encourage employees to talk about the need to take off for these reasons. . . . We've brought about a cultural change," he said.

In 1989, the New Brunswick, N.J.-based Johnson & Johnson instituted a Family Care Absence policy, in which personal time off is granted by an employee's immediate supervisor, Mr. Kjeldsen said.

This type of absence usually is paid leave to take care of situations such as providing emergency care for a family member or time to attend a parent/teacher conference.

"Historically, Johnson & Johnson has never had a set number of

sick days or personal days," Mr. Kjeldsen said. "We're silent on that."

As part of a work/family program, ice cream and yogurt maker Ben & Jerry's Homemade Inc. allows sick days to be used for the

ing use of a personal day, such as car repairs.

Without this prior notice, some industries can suffer from unscheduled absences, Ms. Hickman said. "If you're in retail or manufacturing, it does have an impact

By using a system of paid time off, which pools vacation, sick days and personal days, a 'company could actually be giving employees fewer days,' says Amy Richman.

employee or his or her dependents, said Carol Hickman, senior manager of benefits and human resources information systems. South Burlington, Vt.-based Ben & Jerry's asks employees to give advance notice for things requir-

on the business."

At Chicago-based Montgomery Ward & Co. Inc., employees can take up to four personal days for any absences other than vacation time, which eliminates the need to disguise personal issues, said Jill

Chapman, benefits director.

"If (the absence) is for a sick child, we understand that," she said. "If it's a personal day, (the employee) can use it however they want."

But Ms. Chapman agrees that an unplanned absence can leave the retail staff with an extra burden, especially during storewide sales or around the holidays.

"There are fewer people on the floor when someone calls in sick," she said. "It's harder for the people remaining. It complicates everything."

To curb problems with unscheduled absences, some companies have gone to a paid time-off system in which vacation days, sick days and personal days are pooled.

"By doing that, the company could actually be giving the employee fewer days," said WFD's Ms. Richman, because not everyone uses the maximum number of

the traditional three types of days off.

According to the CCH's survey of 401 human resource professionals working for U.S. companies, 25% of companies offer such a system.

"With PTO, employees have more ownership of their time off and how it's used," CCH's Mr. Gibson said in a statement. "This, in turn, allows them to schedule all but the most unforeseeable absences."

Palo Alto, Calif.-based Hewlett Packard Co. moved to a PTO system in 1982. Employee response to the program has been very positive, and the electronics and computer technology company has not experienced abuse of the policy, said a company spokeswoman.

"If somebody wants to go to a child's recital, they don't have to make something up," she said. "It seemed to make sense."

In CCH's survey, the presence of work/life benefits reduced the number of unplanned absences. Flexible scheduling, onsite child care and emergency child care were among the benefits scored as most effective.

When a company has backup child care, employees don't need to be absent as often, said Eleanor Nelson, CEO of Workplace Connections Inc., a resource and referral service in Waltham, Mass. "It's a real return on investment, because that person is at work."

Because of a demand for increased productivity, absenteeism is a problem for most employers in every industry, said Donna Klein, vp-workforce effectiveness for Marriott International Inc., a lodging and management contract service provider based in Washington.

Marriott instituted a PTO system in 1997. "It's designed to go after the unplanned absences," she said, and allows the company to be more proactive with scheduling.

But it is part of the 10-year-old work/life program that tells the Marriott success story. The company's resource and referral service, called the Associate Resource Line, boasts a 4-to-1 return on investment in terms of cost avoidance, Ms. Klein said, noting that the return rate is calculated solely on absenteeism, tardiness and turnover. Employees can receive legal aid, housing information and even pet care advice through this service.

A spokesman for Stamford, Conn.-based Xerox Corp. said that by offering employees a flexible work schedule, it experienced a dramatic reduction in absenteeism.

"When employees were given some flexibility and some say in how the job got done, absenteeism dropped by 30%," according to the spokesman. "Rather than making rigid policies about flexibility, the company has tried to create this culture and measure it over time."

Beyond just offering work/life benefits, employers should make sure managers are monitoring absenteeism, said Marsha Venturi, consulting actuary for Buck Consultants Inc. in Secaucus, N.J.

She added that employers do not always have good information about why an employee is absent. It's "an important area for employers to have their fingers on the pulse," Ms. Venturi said. "It's a grass-roots kind of business sense."

Copies of the 1998 CCH Un-scheduled Absence Survey are available for \$25, plus shipping, by calling 800-435-8878 and asking for offer number 06288001.

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Opinions

Mandate haste makes waste

IF THERE EVER WAS an example of the hazards of last-minute legislating in the employee benefit arena, a mastectomy coverage mandate approved by Congress last month is it.

As mandates go, this one is relatively innocuous, as most employers are already in compliance with its coverage terms. As we reported, the new law requires all health care plans that cover mastectomies to also cover breast reconstruction after a mastectomy and additional surgery to produce a symmetrical appearance.

The new law was prompted by complaints from women who were denied coverage for reconstructive surgery after mastectomies by health care plans that maintained such surgery was only for cosmetic purposes and thus was not covered.

Why any plan would deny coverage for this procedure is beyond us. The reconstructive surgery is performed because of an underlying medical condition. While we doubt that denials of coverage were widespread, apparently they were sufficient to trigger congressional interest and action.

Our complaint is not with the mandate, which for the vast majority of employers will be irrelevant because they already cover breast reconstruction after a mastectomy.

Instead, we take issue with the way Congress enacted the mandate. It tacked the measure onto a budget bill without any debate or consideration during the last hectic days of the session.

As a result of that hasty process, employers now are subject to several baffling requirements to comply with the law. For example, employers must notify all employees in writing by Jan. 1 of the new mandate to cover reconstructive surgery.

If an employer offers coverage for breast reconstruction surgery after a mastectomy, as most now do, why is such special notification necessary?

That strikes us as a waste of employers' time and money. Perhaps such notification would be justified if more employers did not already provide coverage, or if there were widespread complaints by employees that they were unaware they were eligible for reconstruction benefits. We certainly aren't aware of such complaints.

Even more puzzling is the requirement that "written



notice of the availability of such coverage shall be delivered to the participant upon enrollment and annually thereafter."

Exactly what does that mean? Does it mean that employers have to include in their annual benefit statements language that explicitly states they will cover reconstructive surgery after mastectomies?

If so, why? What is the logic of singling out reconstruction surgery after a mastectomy for specific mention in a benefits statement? Certainly such coverage is important, but so are dozens, if not hundreds, of other surgical procedures that are covered by health plans.

Employers could list every surgical procedure they cover, but soon benefit statements would be so long that few, if any, employees would read them. That is why benefit statements typically broadly state that surgical procedures are covered and only specify those procedures, if any, that are not.

We would hope that the Labor Department, which is charged with providing guidance on how employers are to comply with the reconstruction coverage mandate, can provide some regulatory relief from an unnecessary communications requirement.

Letters

Editorial on EMLICO off base: GE

To the editor: Your Oct. 7 editorial, "Don't Drop EMLICO Inquiry," about EMLICO's 1995 reorganization and redomestication from Massachusetts to Bermuda, misses the mark. It misstates the history of the EMLICO redomestication, ignores its most salient facts and recommends a course of action that only lawyers could love.

The editorial calls for an "independent" investigation into whether the insurance regulatory process was "subverted" in connection with the redomestication or whether the Massachusetts insurance "regulators merely exercised poor judgment in not questioning (EMLICO's) liabilities."

In 1997, however, the Massachusetts House of Representatives Post Audit and Oversight Committee conducted an extensive independent investigation into the Insurance Commissioner's role in approving the EMLICO redomestication. On the very issue on which this editorial is focused, the committee found unequivocally that "the filings and statements provided by EMLICO clearly raised and placed before the division and, ultimately, the commissioner," the company's likely insolvency.

The committee's conclusion is fully supported by the irrefutable evidence in the record of the proceeding. The principal purpose of the EMLICO reorganiza-

tion was to separate EMLICO's current and profitable policies from its long-tail General Electric Co. environmental and asbestos policies and to send the business entity that retained the latter to Bermuda to run off its assets against its claims for as long as possible. The material provided both to the Massachusetts and Bermuda regulators expressly informed them of hundreds of millions of dollars of GE environmental claims that could well put EMLICO into insolvency.

Moreover, it was precisely because the Massachusetts commissioner was so concerned about the possibility of EMLICO's insolvency in Bermuda that, before

See EMLICO on page 12

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Financing Enterprise Risks:

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LEXINGTON INSURANCE COMPANY PIONEERS IN REVOLUTIONARY PROTECTION

Forum

Continued from page 2

around 115%, with specialty lines such as reinsurance running around 105% and personal lines remaining the best performer with a 95% combined ratio.

V.J. Dowling, senior analyst at Dowling & Partners in Hartford, Conn., said he believes the insurance industry's underlying results are really worse than are being reported.

"Real returns on all except personal lines are approaching zero," concurred Ms. Schroeder. Some of the excess capital currently flooding the industry will eventually move elsewhere, she predicted.

Mr. Hicks said he didn't see anything on the horizon that would change the situation. Mr. Dowling said that perhaps—and stressed that there is currently no serious

movement to do so—a change from state to federal regulation could have impact on the industry's performance.

The panelists cited several factors that mark companies likely to thrive in the future. These included those with customer loss participation, integrated risk management and multiple distribution systems. Panelists also noted a move toward low-tax jurisdictions. As Mr. Dowling put it, "Bermuda is a better mousetrap, given the tax advantage."

Those companies "waiting for the turn" in market conditions would number among losers, said Mr. Hicks.

Norman L. Rosenthal, president of Norman L. Rosenthal & Associates in Philadelphia, moderated the session.

Judith M. Lindenmayer offered a view of the future from a different perspective as she discussed "risk management in the next millenni-

um." Ms. Lindenmayer, vp-Fidelity insurance and risk management for FMR Corp. in Boston and *BI*'s Risk Manager of the Year in 1997, described how the Japanese management concept of "kaizen"—which

The insurance industry's underlying results really are worse than what's being reported, analyst V.J. Dowling says.

was adopted by Fidelity more than a decade ago—fits into risk management.

Kaizen basically holds that if everybody does one small thing better every day, the company will grow, she said.

The concept has served as a cata-

lyst for re-engineering the risk management process at Fidelity, said Ms. Lindenmayer. It has spurred the staffing of a seven-member operational risk management team, the appointment of a chief risk officer to oversee financial risk management and the establishment of a risk oversight committee comprised of senior executives, she said.

The company assesses its risks month by month, because they change that quickly, she said.

"We also deal in what people are calling—and I don't like this word—'holistic' risk management," said Ms. Lindenmayer. Doing so means analyzing risk from a variety of perspectives—financial, business, market and the like. She noted that for Fidelity, the biggest risk is "reputational," because an investment company that suffers a blow to its reputation may be hard-pressed to recover.

Ms. Lindenmayer closed her talk

by offering a new model of enterprise risk management. Though the old model of risk management focused on net income, the new model focuses on cash flow, profit and value orientation. The old model role of the risk manager was that of an insurance buyer; instead, the new model is that of a consultant. Whereas the old risk manager followed a technical style, the new model is a communicator. The old model's objectives were results-driven, and the new model's objectives are results- and process-driven. Finally, the old model followed a philosophy of "no surprises," while the new model's philosophy is to enhance shareholder value, she said.

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Letters EMLICO

Continued from page 8

fore she approved of EMLICO's redomestication to Bermuda, she sought and obtained from General Electric a waiver of its right to file claims against the Massachusetts and U.S. insurer insolvency funds in the event that EMLICO became insolvent in Bermuda.

Finally, in the commissioner's 1995 ruling approving EMLICO's redomestication, she specifically considered and anticipated the insolvency of EMLICO and concluded "that the failure of EMLICO after redomestication to Bermuda would not be adverse to the policyholders of the commonwealth."

Indeed, the commissioner has acknowledged in a letter written to the House Post Audit and Oversight Committee on Nov. 17, 1997, that the "division recognized the significant exposure presented to EMLICO by its many years of GE coverage and used the leverage of the application to redomesticate to obtain GE's waiver of any possible claim against U.S. guaranty funds."

She wrote: "We concluded that the failure of EMLICO after redomestication could not be adverse to the policyholders of the commonwealth."

Although the editorial pays lip service to the fact that the Massachusetts insurance commissioner's responsibility in redomestication matters is to ensure that Massachusetts policyholders are protected, it ignores the fact that the commissioner did protect the interests of Massachusetts policyholders when she approved the redomestication, and the fact that the Massachusetts Supreme Judicial Court, in a September 1998 ruling, rejected an effort by the commissioner to set up a parallel EMLICO receivership in Massachusetts because it would be duplicative and wasteful and because "no Massachusetts party or interest will be harmed by the ongoing liquidation in Bermuda."

The course your editorial recommended would waste both Massachusetts taxpayer dollars and the assets of the EMLICO estate and would further pointlessly prolong a case that a Massachusetts federal court recently described as a "case which only lawyers could love."

Robert N. Risch
Manager-Government Relations
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Stress

Continued from page 2
relationship has been assumed widely by human resources professionals, the six employers wanted to know just how cost-effective it could be to pinpoint high-risk employees.

The other four employers were: Health Trust Inc., now part of Columbia/HCA Healthcare Corp.; Hoffmann-LaRoche Inc.; and the states of Michigan and Tennessee.

The study, conducted by Birmingham, Ala.-based Health Enhancement Research Organization, underscored what most employers expected but, until now, had no solid evidence of: spotting and treating high-risk workers saves money on the outcomes side of the equation.

The study looked at the experience of 47,500 employees between 1990 and 1996.

Depression, as detected by answers to a common questionnaire used by all six companies, proved to be the most reliable indicator of high medical costs ahead. Employees who reported feelings of depression averaged 70% higher medical costs than those who said they weren't depressed.

Workers who reported feeling stress had 46% higher medical costs than those who did not report stress.

Benefit managers and providers who have shown "a certain tendency to limit coverage for mental and nervous disorders," may in fact be driving medical costs up due to scant preventive programs, said R. William Whitmer, president and chief executive officer of HERO.

"It may be that you should be more aggressive" in detecting emotional problems, he said. "I think this will simply draw attention to the psychosocial diseases that are

treatable."

Workers may not wish to disclose feelings of depression or stress to their employer, however. For example, on the HERO questionnaire, only 2.2% of employees indicated they were depressed, and 18% said they were stressed, though many more may have not given open answers for fear of being confronted by employers, Mr. Whitmer said.

Benefit consultants say that some benefit managers might use the study as impetus for additional programs to promote health.

"There will be a mixed bag of reactions out there," said Leslie Schneider, a principal with Buck Consultants Inc. in Atlanta. "Employers have really tried to keep their mental health costs down."

Some employers likely will decide to allow more dollars to be spent for oral medication or therapy to combat depression and stress, and "many employers will want to wait

to see what other groups do," she said.

Another consultant was even more confident that wellness programs will garner more corporate funding in the future.

Veronica Hellwig, a senior consultant in the Wellesley Hills, Mass., office of Watson Wyatt Worldwide, noted "there has been a spotlight on prevention and wellness programs" during the past several years.

Employers can find out if this is cost-effective, she said, through the pooling of employment data in surveys such as that conducted by HERO. "I think benefit managers talking to their common (information) vendors about collaborative opportunities makes a lot of sense," she said.

Employers may think they are doing enough in the preventive medicine realm, but few are putting theory into action, said Ron Goetzel, a vp with the MEDSTAT Group

in Washington who was the lead author of the HERO study. Only 3% to 5% of corporate medical budgets is spent on prevention activities, he said.

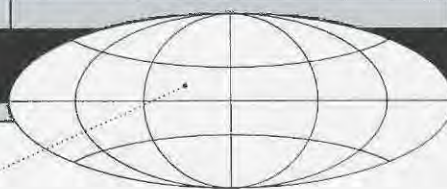
The study "is really the first step in the process of providing documentary evidence of the cost benefits of health promotion," he said.

Marriott's Ms. King said she believes a strong relationship exists between the mind and the body. Poor health in either can lead to "higher absenteeism, higher long-term disability, all of that. We would rather prevent illnesses than cure illnesses."

Free copies of the study, "The Relationship Between Modifiable Health Risk and Health Care Expenditures-An Analysis of the Multi-Employer HERO Health Risk and Cost Database," are available from the Health Enhancement Research Organization, 205-988-4417.

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Errors & Omissions

*Finding the
right keys for*

*loss
prevention*

*&
control*

Inside:

*Internet transactions
expand E&O exposure
and security risks*

page 16F

*Retrofit initiative
putting focus on
disaster mitigation*

page 16H

*Mutual trust between
employers, employees
can prevent lawsuits*

page 16I

Internet use requires E&O risk management

By RICHARD TROUT

Even though advances in technology are revolutionizing agents' business practices, avoiding errors and omissions liability on the Internet is a matter of old-fashioned common sense.

Confidentiality of information and unauthorized access probably will be the main issues surrounding E&O exposure on the Internet, said Bruce B. Coates,

profit center manager for the Insurance Industry Professional Group of Employers Reinsurance Corp., both based in Overland Park, Kan.

As agents and insurers contemplate a future of doing business on the Web, they also will have to consider ways to keep their systems secure. For example, hackers might be able to gather sensitive information on an insurance company's clients if the insurer's World Wide Web site has weak security.

"There are additional (E&O) exposures—though not insurmountable, by any means—that the traditional insurance policies haven't kept up with," said Chip Lawson, senior product manager at IVANS in Tampa, Fla. For example, agents' Web sites may contain complicated or inadequate explanations of coverage. IVANS provides information technology and networking services to the insurance industry.

But, agents' future Internet E&O liability exposure will de-

pend on how much business is transacted online, he said.

It is the end users, after all, who will determine whether selling insurance online will be a successful endeavor, let alone whether E&O liability will be a significant issue, said Mr. Lawson.

"There is a question whether consumers will realistically buy insurance on the Internet," he says.

At the same time, agents and insurers "need to understand



how their customers are probably more eager to start using these new technologies than they are," said Virginia M. Bates, president of Boston-based VMB Associates, an agency consultant.

Mr. Lawson said he is not aware of any agents or insurers that bind insurance policies on the Internet, though many do online marketing and provide informational Web sites. "The focus is on customer service and marketing, not selling, and there is a big difference between shopping and buying," he said.

Selling an insurance policy is a fairly complex financial transaction and, therefore, not ideal for the Internet, Mr. Lawson explained. "Making claims payments, renewing a policy or changing a policy are far simpler transactions with far less financial risk than buying insurance," he said.

If selling insurance online never takes off, it's possible the problem of E&O liability for Internet transactions will barely exist, Mr. Lawson added. Other E&O exposures may crop up among the community of users—among agents or between agents and insurers—but he said he doesn't foresee much E&O exposure for direct sales of insurance over the Internet.

Although the law of supply and demand ultimately will determine whether producers can take advantage of the Internet, reducing the number of mistakes in online transactions will make doing business over the Internet more attractive to buyers and thus increase demand.

Using disclaimers is one step agents can take to reduce their E&O liability, said Madelyn Flannagan, manager-information services for the Independent Insurance Agents of America Inc. in Alexandria, Va.

"Every agency has disclaimers on their answering machines about what you can and can't do via the voice mail or the telephone messaging system," she said. "Agents will need to have those same disclaimers on their Web sites...Those are things that we'll be working on and recommending as these things develop."

Ms. Flannagan said Internet E&O liability hasn't been a significant issue because most agencies have disclaimers on their Web sites to protect against potential E&O lawsuits. For example, a disclaimer may state that coverage can't be bound immediately if an e-mail is sent on

Continued on next page

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Continued from previous page

Sunday evening when the agency isn't open. "Those are places where misunderstandings can arise, so it is incumbent upon the agent" to make sure that the proper disclaimers are in place," she said.

Ms. Flannagan predicts best practices will come to the forefront as agencies conduct more business on the Internet. "An agency that operates itself ethically and always has will do so using this method as well," she said. "You sort of have to trust business to be conducted in an ethical manner using this method, just as you would any other way." Checking the authenticity of e-mails, for example, is no different from checking someone's identity on the telephone, she noted.

Ms. Bates of VMB Associates agrees that producers can avoid errors and omissions if they apply the same principles for electronic communications as they have for conducting business in the office environment. "An agency shouldn't be canceling a policy from an e-mail transmission, any more than they should be canceling a policy from a simple note in the mail," she said. "All e-mail is, is fast regular mail."

"Agencies should use their same E&O thought process for fast mail as they do for traditional mail. They're really not two separate thought processes," Ms. Bates said. Indeed, agencies should be more sensitive to e-mail transactions, because those are easier to forge. "It can be electronically clipped and saved to the electronic file much more credibly than paper can be copied and saved," she said.

There are four categories of risk involving E&O liability over the Internet, she said. They are:

- **Marketing.** Because Internet access is worldwide, agents and insurers have to put disclaimers on their Web sites that list the states or jurisdictions in which they are licensed to operate.

- **Agency licensing.** This category reinforces the licensing disclaimer of the first category by listing the states or jurisdictions in which the insurers they represent are licensed.

- **Viewing online transactions as normal operating procedure.** For example, explaining coverage incorrectly on an agency Web site can lead to an E&O claim just as explaining it incorrectly in policy documents would.

- **Accuracy of databases and e-mail transmissions in a new work environment.** Because agencies are beginning to link their databases to their Web sites, the agency is not the only user. "For instance, the insured contractor who is putting a bid together at night who needs to have a certificate won't have to wait until 9 o'clock in the morning and ask the agency to get a certificate to him," Ms.

Bates said, because he will have access to the agency's database.

"What e-mail is going to do is make the agent totally accessible, which means the agency's database is going to be totally accessible, which means the database has to be right, and agents are not in the habit of keeping their databases right," she said. In addition to being accurate, databases also have to be up-to-date, she added.

To reduce the potential for Internet E&O claims, agents will have to improve the accuracy and timeliness of their internal operations; they will have to advance technologically in a very

short period of time, Ms. Bates said. "Agents are going to have to change their internal operations to make them good enough not only for inspection but for use by the outside world."

However, Web site technology and e-mail might actually reduce E&O exposure, Ms. Bates stressed, because they allow agents to work more accurately and efficiently. She predicts that within two years, half of all business transactions now done via the telephone will be done through e-mail.

Electronic commerce holds opportunities as well as pitfalls, agreed Mr. Coates. "It gives

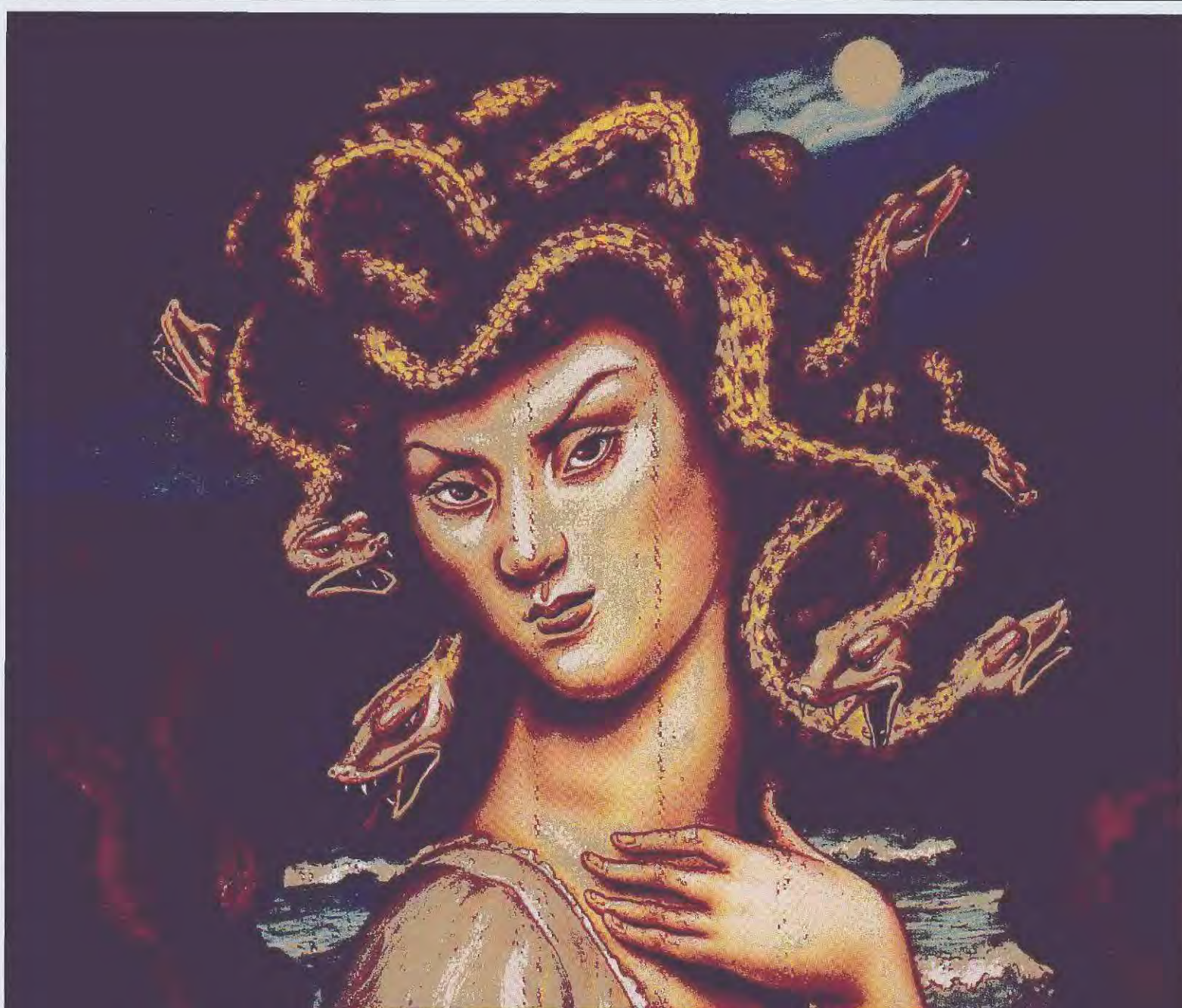
agents a tremendous opportunity to provide very fast, very efficient service and information to their clients whenever they want it—seven days a week, 24 hours a day," Mr. Coates said.

But a technological advance such as e-mail can be a two-edged sword. Because e-mail is permanent documentation, it can reduce the "he says, she says" confusion inherent in regular mail, such as when an agent mails an updated policy to an insurer but it never arrives. It is far easier to prove that an e-mail was sent and received, as opposed to a letter, phone message or fax.

Agents need to understand,

however, that deleting an e-mail message on their screen doesn't mean it's gone. The permanent nature of backup copies and electronic "carbon copies" should cause an agent to think twice before putting something in an e-mail that he or she wouldn't put in a letter to a client, said Mr. Coates.

E-mail poses another potential threat in that computer viruses can be attached to such communications, he added. If an agent gets an e-mail from an underwriter with a virus attached and sends that e-mail to a client, "does a general liability policy cover that? I'm not sure." **BI**



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Retrofit project aims to promote loss control

By AMANDA MILLIGAN

A few weeks ago Ed Todd spent two days volunteering in a day care center in Tillamook, Ore.

But he didn't have to change a single dirty diaper or comfort a teary-eyed toddler. Instead, Mr. Todd, a senior underwriter for Seattle-based SAFECO Corp., was placed on a team whose responsibility was to make sure desktop items such as fishbowls were secured

to surfaces.

A fishbowl seems harmless, but when a natural disaster strikes, it can become a deadly object, say volunteers in a pioneering project by the Institute for Business & Home Safety to retrofit the nation's day care centers to protect the children who spend much of their day in the centers.

The IBHS is a Boston-based insur-



ance industry initiative with the goal of minimizing the devastation of natural disasters from human suffering to property damage.

One IBHS goal is to retrofit 93,000 non-profit child care centers over the next five years. In doing so, the group hopes to show citizens how to protect themselves and their property from extensive damage caused by natural disasters. Many of these measures are alternatives to filing insurance claims to cover preventable damages, said Harvey Ryland, president and chief executive officer of

the IBHS.

In addition to attaching potentially mobile objects to secure surfaces, other volunteers placed plastic tubes over fluorescent lighting to catch the shattered glass from broken bulbs, attached reinforcements to shelves to prevent them from tipping, and installed "catch latches" to cabinet doors to hold them closed if they are rattled by tremors.

Comparing the group's disaster mitigation efforts to the car safety campaigns of 30 years ago, Mr. Ryland explained that it is important

to instill the loss control philosophy in school-age children.

"One day (these children) will not live or work in a building that is not safe from natural disasters," he said. "If we don't start today, we'll never get there."

Although he had never heard of the IBHS prior to this project, insurance agent Jeff B. Hurliman, principal of Jeff Hurliman Insurance Services in Tillamook and a retrofit volunteer, said he was pleased IBHS selected his community for the first retrofitting project. The small coastal town, about 75 miles west of Portland, Ore., has experienced severe flooding in recent years, and Mr. Hurliman said Tillamook is also projected as the site of a major earthquake within the next 10 years.

Because non-structural retrofitting requires only minor fixes, the cost of these day care projects is relatively small, Mr. Ryland said. IBHS member SAFECO and a local grocery chain footed the bill for the Tillamook center for costs not covered by donations.

Mr. Todd, who is also the chairman of SAFECO's community involvement program in the Portland region, said the day care retrofit project fit into the insurer's sense of giving to the community, and it leaves volunteers with a good feeling. "The work that's required to do this isn't rocket science," he said. "We feel that issues relating to promoting safety in the business and home are vitally important."

"It's Saturday-morning work experience for insurance company employees," said Mr. Ryland.

The IBHS also is working toward greatly reducing the costs for major structural retrofitting projects, such as ways to strengthen the roof, rafters and shingles of homes and commercial properties that have traditionally been subject to damage from high winds and water in natural disasters.

The IBHS deals with more than just making modifications to existing structures, though. The group also advocates enforcing building codes and encourages adding damage mitigation features as new structures are built; these changes typically raise construction costs by only zero to 5%, Mr. Ryland said. Also among the group's initiatives is encouraging property developers to be more aware of "natural hazard vulnerabilities," such as the hazards inherent in building in coastal areas or near fault lines.

A spokesman for the Independent Insurance Agents of America said the IBHS produces consumer awareness materials that the Big I's 300,000 member agents can disseminate. "They have the message, they have the research, we have the grassroots public relations," he said, saying that, as partners, the Big I and the IBHS can make a difference.

A spokesman for SAFECO also commented that the IBHS' message promotes responsibility for the care of one's possessions instead of relying solely on insurance. "They're right on the brink of having an impact based on the way people think about protecting their property," he said.

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Address potential workplace liabilities up front

Educate employees often about policies, and ask them about problems before they come to you

By Donald A. Phin

S EVEN-FIGURE employee verdicts and six-figure legal bills are becoming all too commonplace in today's workplace. Companies, including insurers and agencies, find themselves exposed to an ever-increasing number of employment law claims, despite their efforts at compliance. As Walter Olson, author of "The Excuse Factory" puts it, "There's no such thing as the golden shores of legal compliance."

Even when employers try to do things "right," they still find themselves on the wrong end of a verdict. Even when they "win" a lawsuit, they lose. As I tell my clients, a defense victory never is.

This article will discuss a proactive approach toward reducing exposure to today's employee lawsuits.

Culture of silence

One of the biggest complaints of employers nationwide is their liability for employee claims they arguably "knew nothing about." In fact, the majority of companies sued already have in place the nuts and bolts of legal compliance, including an Equal Employment Opportunity Commission statement and grievance mechanism. In my 15 years of handling employment law claims, I can count on one hand the number of cases where the employer was completely deficient in these areas. The fact is, the greatest exposure faced by employers today is what I call the "culture of silence." This is directly related to the victimology viewpoint of many employees, who think they are never responsible or at fault for their circumstances.

In the recent Supreme Court case of *Beth Ann Faragher vs. The City of Boca Raton*, a female lifeguard sued the city of Boca Raton, Fla., for acts of her supervisors that created what she alleges was a "hostile work environment." The supervisors allegedly touched Ms. Faragher without her consent, made crudely demeaning references about women and propositioned her for sex. Ms. Faragher did not complain to higher management about these activities. Both she and fellow female lifeguards made informal complaints to a lower-ranking supervisor, complaints that did not go anywhere. Not surprisingly, while the city of Boca Raton had a sexual harassment policy, it was never distributed to the lifeguards. The employers argued they should not be subject to sexual harassment claims where the employee fails to speak up about the alleged unfair conduct. The plaintiffs in those cases, as in many others, argued they didn't speak up for a garden variety of reasons, including fear of retaliation, being forced to complain to the very person discriminating

against them, their emotional instability, etc. The plaintiff was eventually awarded one dollar for her troubles.

The Supreme Court also struggled with the notion of when a company should be strictly liable for a supervisor's conduct. It essentially ruled that any time the harassment comes from a supervisor, there is the presumption he or she was using a position of authority to foster the unlawful conduct. In resolving this

A/BT Perspective

case, the court set forth this guideline: "The basic alternative to automatic liability (of a supervisor) would...allow an employer to show as an affirmative defense to liability that the employer had exercised reasonable care to avoid harassment and to eliminate it when it might occur, and that the complaining employee had failed to act with like

reasonable care to take advantage of the employers' safeguards and otherwise to prevent harm that could have been avoided. This composite defense would, we think, implement the statute sensibly, for reasons that are not hard to fathom."

Recent cases have begun extending this test to racial and other forms of discrimination outside the area of sexual harassment. Also note that this

holding applies only where there was no "tangible employment action taken," such as termination, demotion, etc. In those cases, the liability is automatic. The issue of when an employee's silence is reasonable under the circumstances is surely to be litigated for years to come.

The failure to speak up does not occur just in sexual harassment cases. The fact is, it's pretty much across the board. Most employees think twice before bringing forth complaints of unfair conduct or inappropriate activities. For example, in a recent article in *The Wall Street Journal*, it was reported

See **Employers** on next page

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Employers

Continued from page 16I
that fully 40% of a workplace's employees would not disclose an ethical violation.

As I tell my clients, if it's out in the street, chances are it's in your workplace. All of us by now are familiar with the stories of citizens who see criminal conduct and look the other way, not bothering to lend a hand or even to telephone 911. Chances are, they don't want to get involved. They view the issue as one for the police to deal with. We have found that simply abdicating responsibility for crime to the police doesn't work. The communities most successful at fighting crime are those that have engaged in active programs. Citizen groups not only patrol the streets but will actually picket unlawful activity such as drug dealing and prostitution, and their efforts work. It's a matter of defining and defending what you stand for. If the community steps up and says it won't tolerate crime, chances are they'll get a lot less of it. The same goes for inappropriate ac-

tivities in the workplace.

For many years, I struggled with creating some form of system that would help break past the culture of silence. The answer came to me one day when I was at a workshop on Dr. Deming's Total Quality Management principles. His methods emphasize the importance of front-end thinking. He often stated that a dollar spent on the front end is at least six times more effective than a dollar spent on the back end. While at that conference, another attendee and I were discussing our relationship with our sons. Unfortunately, his son was in crisis. He found out that the boy was not only using drugs but also dealing them. During our conversation it became clear he had done very little to educate his son about the issue and had never asked him "if there were any problems." In contrast, I constantly educated my sons about the problems not only of drug use but also of teen sex and drinking while driving. I would periodically check in on them to make sure there were no problems in these areas. The last thing I wanted was to be blindsided with a problem and to first find out

about it from the police, the school or another parent.

After returning to my seat, the solution to the culture of silence for which I was searching struck me all at once. If all problems have a beginning and an end, I asked, how can I go to the very beginning of the problem and take a proactive approach to resolving it? The answer became clear: Ask if there's a problem! I also realized that, before I asked someone if there was a problem, I had to make sure he or she understood the issue. Then, I thought, why not go one step further and ask if anyone thinks there's anything unfair in the work environment.

Dividing the concept of unfairness into distinct categories certainly helps define the problem, but it ignores the impact of any perceived unfairness on productivity, communications, etc. When I returned to my office after the Deming seminar, I generated a form entitled "Compliance Survey." It asks three simple questions:

1. Do you understand the company policies prohibiting harassment, discrimination and safety and ethi-

cal violations? Yes or no.

2. Are you aware of, have you witnessed, or have you been a victim of the violation of any company policy, including those prohibiting harassment, discrimination, safety or ethical violations? Yes or no.

3. Would you like to speak to someone about a harassment, discrimination, safety, ethical or other issue you feel needs to be addressed? Yes or no.

A few weeks later, I got to try out the form on one of my clients, a printing company with 80 employees. The first thing I was asked by the company president was, "Won't the employees view this as ratting on each other?" My response was, "Ratting about what? Legal violations, ethical violations, safety problems and unfair conduct? Why wouldn't you want people standing up against such conduct? Do your employees fully understand how damaging such conduct can be, not only to the company's well-being but to their own? Do your employees realize that to pay \$100,000 in legal fees to defend against one of these claims is the equivalent of \$1 million in revenue? Do they under-

stand how much it will affect their bonuses? Do they realize that it's no fun being dragged into a lawsuit? I think that once they fully understand the intent behind this form, they will actually embrace it. Not only that, but by distributing it on a quarterly or semi-annual basis, it will have the effect of forcing potential wrong-doers to second-guess their actions. A sexual harasser may be less willing to engage in wrongful conduct knowing that a disclosure survey would bring his wrongdoing out into the open."

After talking about this a little further, the president agreed to give it a try. The next week, we distributed the survey to all 80 employees. Much to our surprise, we received 10 responses from employees indicating they did not fully understand the company's policies and procedures. We clearly knew we had an education project on our hands. What was more surprising, however, was that three employees indicated that they had been victims of wrongful conduct. Interviews with these employees indicated a sexual harassment claim, racial discrimination claim and an OSHA concern that was being ignored.

The power of the compliance survey as a tool for eliminating employee lawsuits was immediately clear to all.

What to do about the problem

If half of the employee lawsuits I have handled involved issues that were never brought to the attention of management, the other half involved issues that were but then were poorly managed. None of us likes receiving or sharing bad news. The natural human tendency is to ignore, deny or bury bad information. Wrongful conduct that goes unchecked becomes quickly cancerous. The perpetrator who thinks he or she can get away with something is willing to go one step further. The manager who's willing to look the other way will find himself or herself at the mercy of the mutinous employee.

A number of months ago, I had dinner with my wife and four of her female friends. The next day, I was going to address a group of chief executive officers about managing their employees. I asked the women, "What would you want to

Continued on page 16L



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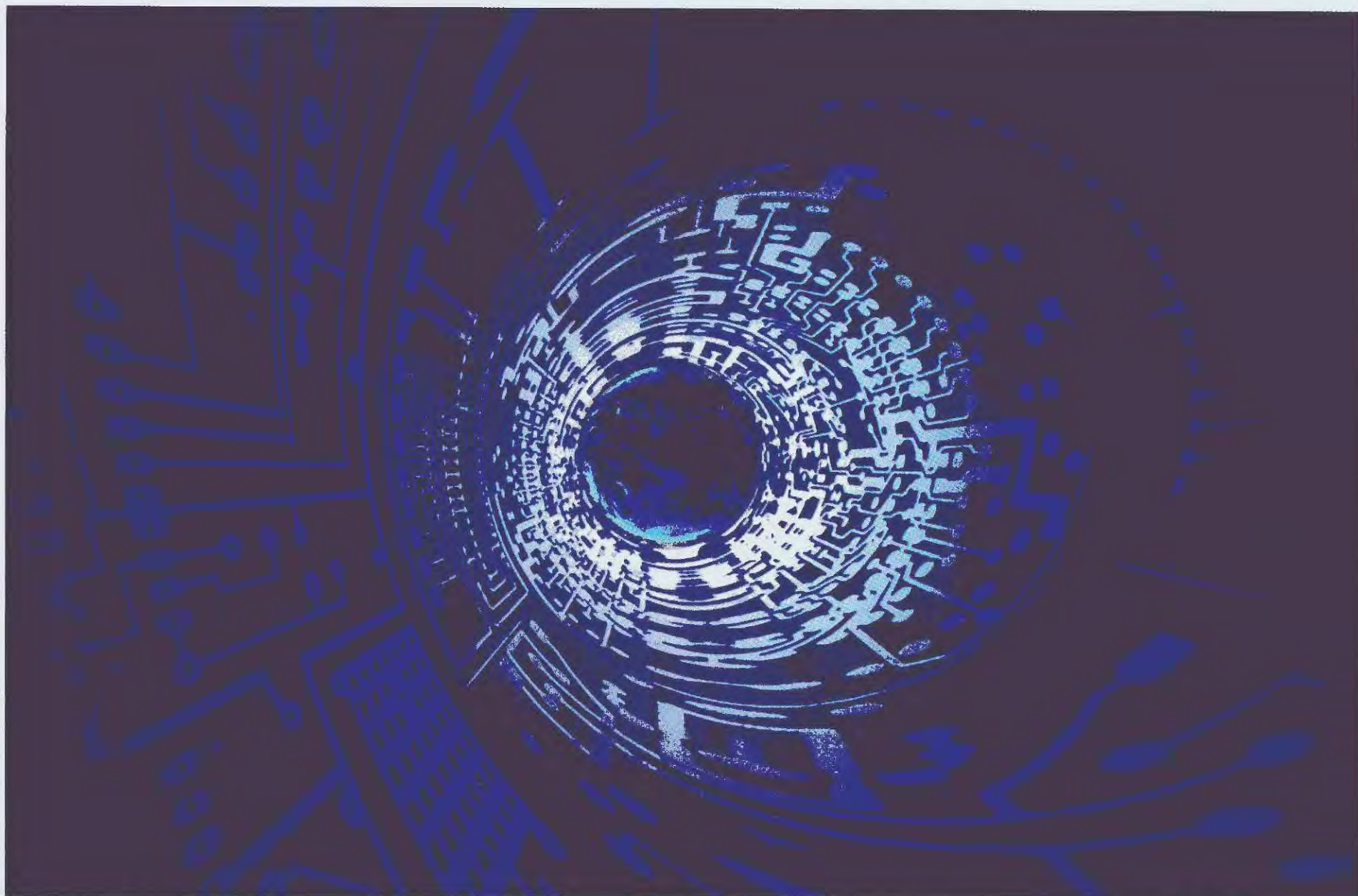
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Agent/Broker Topics

ADVERTISER INDEX

Issue of November 2

ADVERTISER	PAGE #
American Safety Ins. Co.	16L
Business Insurance	16K
Distinguished Program Dev.	16I
Greater NY Insurance Co.	16L
Marsh & Berry	16J
Mutual Marine Office	16G
Property Managers Inc.	16H
Standard Insurance Co.	16F



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Agent/Broker Topics

Continued from previous page
tell these CEOs about the issue of sexual harassment?"

To make a long story short, they basically said two things:

First, it is important to acknowledge that sexual harassment exists. Every one of them felt they had been sexually harassed at one point or another in their careers, and two out of four felt they were currently being sexually harassed. Second, when a complaint is made, do something about it! None of them was inclined to file a lawsuit; they just wanted the conduct addressed so that it would stop interfering with their ability to do their jobs.

When the reality of wrongful conduct is not acknowledged and complaints are not addressed, employees are left with two choices. One is to see a lawyer, and the other is to shut down and leave. Many a valuable employee has silently left a job rather than fight against unfair conduct.

The most powerful tool, when it comes to resolving conflict, is that of dialogue. As stated by the late great physicist and expert on the subject of dialogue, David Bohm, "Truth does not emerge from opinions." When faced with an employee com-

plaint, many employers, as well as their attorneys, will immediately jump to the conclusion that the complaint is unwarranted and the employee is simply a whiner or a gold digger. In light of this perception, the company representative will focus on "protecting" the company at the expense of active listening. What most people investigating complaints are after is confirmation of their own opinion, not the raw truth. If the truth hurts—and sometimes it does—then deal with it. Don't ignore, bury or deny it.

Ask the employee what he or she would like to see done. In my experience, their demands usually are reasonable. Unfortunately, the legal system has put us into a corner where we are afraid to issue an apology and to seek forgiveness for fear such actions would be considered an admission of guilt, thereby exposing us to punishment from the "victim" of wrongdoing. It is this thinking that results in seven-figure jury verdicts.

Conclusion

Let me summarize the points stated above. First of all, you have to know what your company stands for. Send a message

from the top. If you won't tolerate harassment, discrimination, ethics violations and other forms of wrongful or unfair conduct, then let your employees know this.

Second, educate your employees about these issues. Not just once in an employee handbook, but on a regular basis.

Third, don't wait for the problem to come to you; ask if there's a problem.

And lastly, engage in dialogue when investigating complaints. Acknowledge the claimants' feelings and try to do something about the situation, if warranted.

One final note: The best way to avoid employee lawsuits is to hire people you can trust and then keep them trustworthy. People who trust each other don't sue each other! Commit to building trust within your organization, use the techniques outlined above, and you will all but eliminate your exposure to today's insane legal environment. **BI**

Donald A. Phin is a labor attorney and certified management consultant and is president of ManagementThink, a management consulting firm in San Diego.

A/BT Briefs

Poe & Brown grows

DAYTONA BEACH, Fla.—Poe & Brown Inc. recently acquired Kelley-Rhodes Insurance Inc. of Houston, d.b.a. KRB & Associates, and Naples, Fla.-based Gulfcoast Commercial Insurance Inc.

KRB & Associates will become part of the Poe & Brown office in Houston, and Gulfcoast Commercial will become part of the Poe & Brown office in Naples.

Also, the Boulton Agency Inc. in Miami, d.b.a. Boulton Boon, became part of Poe & Brown through an exchange of stock, which will be accounted for as a pooling of interests transaction. Boulton Boon will be combined with Poe & Brown's existing Miami office.

J. Hyatt Brown, chairman, president and CEO of Poe & Brown, said the additions reflect the broker's intent to expand its presence in the Sun Belt.

PIA extranet

ALEXANDRIA, Va.—The National Assn. of Professional Insurance Agents is in the process of building an industrywide extranet to sup-

port PIA members' information, marketing and sales efforts.

The extranet will feature single sign-on access to a vast number of products and services provided by PIA and an extensive database of marketing and management resources provided by Insurance Marketing Management Services. The PIA is in partnership with several insurers that are working on the development of transactional capabilities for agents on the extranet.

The PIA signed a contract with Atlanta-based HomeCom Communications Inc., an Internet software solutions provider, to build the extranet in August. The architectural design started in September. It is expected to take one year to fully implement.

Web site enhanced

HATBORO, Pa.—The Penn-America Group Inc. has upgraded its World Wide Web site to include new features that increase the site's value for agents.

These new features include: access to claim information in a secure, password-protected environment; the ability to select and order marketing support materials online; direct access to five specialized agent publications; and improved functions to help other site users locate and contact agents.

The Web site can be accessed at www.penn-america.com.

Service center

HARTFORD, Conn.—Travelers Property Casualty Corp. recently launched a new business service center to support its independent agents writing small-business coverage.

The service center program offers a wide variety of options for agents by providing different levels of customer assistance. Options range from the one-time book of business consolidations to complete services of a policy after it is sold, including renewal processing, endorsement issuance, certificate requests, billing questions, claim interfaces and cross-selling opportunities.

Additional features and benefits of the service center include:

- The agency's name is prominently displayed on all welcome and renewal communications sent to policyholders.
- An integrated financial and compensation program.
- A dedicated account team to work with an agency.
- State-of-the-art phone and computer technology to handle incoming calls.

"Travelers is dedicated to supporting agents in ways that help them build their business and better serve their customers," said Douglas Elliot, senior vp-Select Accounts, Traveler's small-business account unit, in a statement. "By functioning as an extension of an agency's servicing operations, the new center enables agents to focus more of their time on sales and on their new business efforts." **BI**

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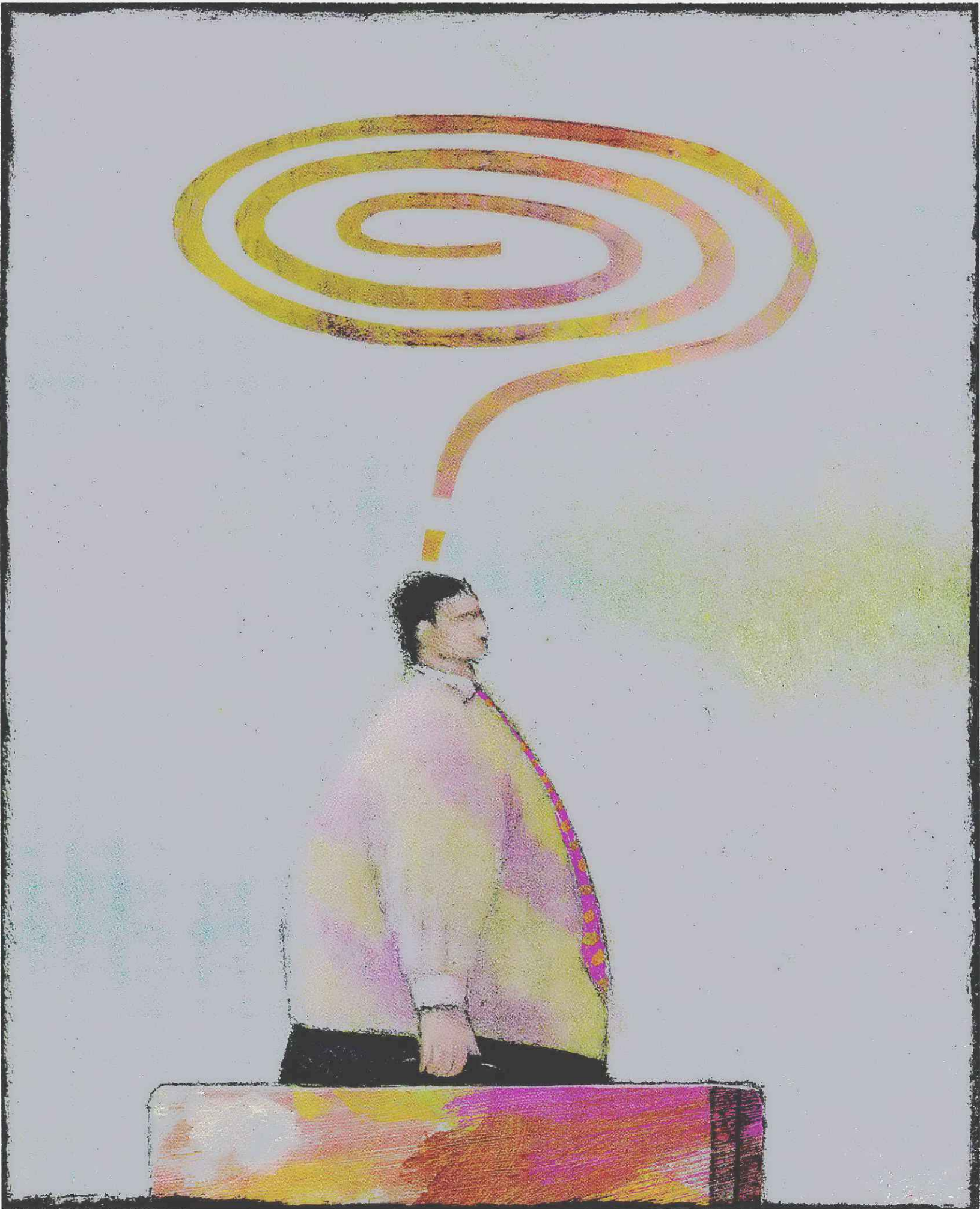
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ASK A CASUALTY ACTUARY

What are the most common pitfalls to avoid in comparing risk financing program options?

Q

A Unfortunately, there are several common pitfalls. They tend to fall into two categories because there are two key areas that should be assessed in comparing options for coverage or risk financing.

Those areas are:

- A comparison of expected total costs.
- An assessment of the degree of risk posed by different options.

Let's look first at common pitfalls in making comparisons of expected costs. Such costs often are estimated by taking recent losses and adjusting them to the current year or the next future year. Properly doing this usually requires making numerous adjustments. Among them are those needed to reflect the effects of claims inflation from the year the claim was incurred—that is, the year the accident occurred that gave rise to a claim—to the prospective year. Similar adjustments typically are needed to reflect changes in the number of exposure units—for example, payroll, sales, number of vehicles, budget, etc.—and in claim frequency trends. Further adjustments are needed to reflect loss development and the appearance of late-reported claims.

Incurred amounts from claims tabulations are only the starting point for deriving unbiased estimates of ultimate losses and other program costs.

Here is a classic example: Should an excess policy be purchased for claims exceeding \$500,000? A roster of all past claims of more than \$100,000 is reviewed.

The largest claim incurred in recent years is only \$330,000. Therefore, it is concluded that very little should be paid for such an excess policy.

However, if all of these past claims had been adjusted for inflation in the size of claims, then the trended size of four claims would exceed \$500,000.

Furthermore, if the fact that the number of exposures had grown very dramatically is reflected, those four claims should really be viewed as representing nine prospective claims that would be covered by the excess policy. This changes the whole tenor of the total cost comparison.

Another common pitfall is assuming that your own large claims experience is a reliable predictor of future excess experience. The main problem is often that there are so few large claims that whatever indication you derive from them is subject to tremendous variation on the basis of the chance occurrence or

absence of any one or more of those few claims. From a statistical viewpoint, what has been derived is unreliable and basically meaningless. To get around this problem often requires considering information from a large number of risks similar to your own regarding the relative proportion of large vs. small claims—or of losses in some excess layer vs. losses in some primary layer. Another way of tackling it is to fit a mathematical distribution to the number of small- and medium-size claims to derive an expectation of the number of large claims.

Another pitfall is failing to reflect shifts in the types of losses that have been occurring. New kinds of causes of loss may be becoming more frequent in current times—or the reverse could be true.

It may also be important to reflect changes in what different policies might cover in making cost comparisons. Key exclusions or endorsements can have a dramatic effect on what will or will not be covered by a prospective policy.

It should go without saying that making a fair comparison of alternatives normally requires reflection of the time value of money. This is most commonly done by estimating the present value of the total costs of each alternative.

Another entire area of common pitfalls involves the matter of reflecting the relative degree of risk that various options pose. It is not uncommon for this factor to not receive any explicit or implicit recognition. All that is done is a comparison of total costs on an expected—or best estimate—basis. This ignores the substantive value that risk transfer can have in dramatically reducing the degree of risk you are facing.

The issue of whether or not to transfer risk is really a question of weighing the risks of self-insuring against the rewards—expected cost savings—of self-insuring. The risk is that your total costs could significantly exceed the total costs of standard insurance. In today's soft market, it is not uncommon for the total costs of guaranteed cost coverage to be less than the expected costs of self-insurance. When that happens, the decision is a no-brainer. What is the point of assuming more risk if it is going to cost you more to do so than giving that risk to an insurer?

Of course, there are many extenuating circumstances that may still make self-insurance the better option even when insurance premiums are unusually attractive. One key consideration is the potential impact that a change in who adjusts claims may have on total costs.

When cost comparisons are made only at the expected level, then the consequences of a wide range of alternative scenarios are ignored. It can be very important to evaluate how different options compare in the event that total losses are such as would occur during a worse-than-average year or a catastrophic year.

It can be tempting to boil down the issue of risk to just one number. It is rarely as simple as that.

Let's look at another example. Suppose that the

projected cost of self-insurance is \$8.3 million, as compared with a guaranteed cost premium of \$6.8 million. This comparison leaves the strong impression that continued full insurance is the obvious choice. However, the \$8.3 million projection includes a \$1.6 million "margin for adverse experience," which is based on the difference between the 85% confidence level estimate and the expected estimate.

If we accept this margin for adverse experience as our best assessment of the degree of risk presented by self-insurance—note that there are many other measures—then you are risking \$8.3 million minus \$6.8 million, or \$1.5 million, by self-insuring. The potential reward for self-insuring is the positive difference, if any, between the expected total costs of self-insurance and full insurance. Suppose that difference is \$6.8 million vs. \$6.5 million, or \$300,000. This means that you would have been risking a possible \$1.5 million loss in order to earn an expected return of \$300,000.

That works out to a 20% rate of return. Because this is a quite attractive rate of return, self-insuring would probably be the best choice—all other things being equal. This is opposite to the recommendation suggested by the first approach.

Assessing the relative degree of risk posed by various alternatives does not have to be an entirely subjective process. There are several ways of measuring the degree of risk of each option and of systematically assessing the value of risk transfer.

BI

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Ask A Benefit Manager, Ask A Risk Manager, Ask A Benefit Actuary and Ask A Casualty Actuary answer written questions from readers on risk and benefits management issues and actuarial problems.

This month's column on actuarial issues in the casualty field is written by Richard E.



Mr. Sherman

Sherman, president of Richard E. Sherman & Associates Inc. in Ashland, Ore. Dennis J. Nirtaut, managing director of compensation and benefits for Arthur Andersen & Co. L.L.P. in Chicago, answers questions for benefit managers. Christopher E. Mandel, senior director of risk management at Tricon Global Restaurants Inc. in Louisville, Ky., answers questions on risk

management issues. William J. Miner, an actuary with Watson Wyatt Worldwide in Chicago, answers actuarial questions on benefits issues.

Address your questions to ASK, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Please give us your name, title and employer; however, Business Insurance will consider unsigned letters.

Verifying readiness of RMIS for Year 2000

By Mark Dorn

HOW TO BEST IMPLEMENT Year 2000-related data verification practices in risk management information systems can get pretty ugly. The technical staff can make a database approach sound tougher than an insurance renewal after a class-action lawsuit. The legal staff can get so focused on defining "compliance" that you start to develop Year 2000 paranoia even about the cheap green clock in your car radio.

Most risk managers can focus on a few basic topics in reviewing their own RMIS date exposures. These topics include how dates are stored, reported, calculated and

processed over in-house systems.

The \$64 million question for many RMIS is how the dates are stored or processed in the program to achieve Year 2000 compliance. The ideal situation is when the overall process of planning for four-digit years or Year 2000 issues was anticipated in the core architecture of the program.

Many newer RMIS since 1996 have that potential benefit. Dates and date/times stored using the National Institute of Standards & Technology standard date and time formats YYYYMMDD and YYYYMMDDHHMMSS present the least at-risk Year 2000 scenario. Products and programs that avoided using the "native" date and date/time data types of the underlying database similarly

also may have a Year 2000 benefit, assuming all data entry fields that accept dates require that a four-digit year be entered.

However, many older programs that do not store a physical date in the database depend on the database to interpret a stored variable that is used at run time. These older programs often can have a Year 2000 date exposure, as the year is assumed to be 19XX or is calculated as a certain number of days past a 19XX date. Because the database might be the primary vehicle used for processing the dates, it is not likely an application vendor can offer the Year 2000 comfort most individuals might want. My suggestion would be to move to a newer system to avoid

See Year 2000 on next page

Year 2000

Continued from previous page
the risks.

So how can you implement a Year 2000 system and data verification process for your own RMIS? Begin by defining the Year 2000 threats to your overall data processing. These threats tend to appear in three levels.

Level 1 threat: Desktop systems. The first Millennium Bug threat could easily be the date entry format set up in the Microsoft Windows user-specified system date format found in the Windows control panel. Because you probably set this up on your own personal computer, check it first. If you entered the user-specified two-digit year format, the data entry controls used by your RMIS program might not be Year 2000-compliant. This assumes the legal definition of compliance includes storing four-digit years in the data file.

A similar level-one threat for older PCs could be that the hardware basic input/output system program might not handle dates beyond 1999 unless they were manually reset to 01/01/2000. Some very old BIOS programs are not able to handle 01/01/2000 at all. After making a reassuring backup of your program and data, why not set your PC system date on one workstation to 2/1/2000 and see what happens with your PC? Verify that it meets your Year 2000 and leap-year processing expectations.

I'd also recommend programming your RMIS software to check for the system date format when it starts. This way, if the user has not set a four-digit year, a warning message will alert the user. The software should not run until the four-digit year is properly set. Also, the RMIS program can easily be programmed to check the current BIOS date and time and compare it to the data and time of the last login. Any discrepancy in the dates should trigger a warning.

Level 2 threat: Code review and regression testing. The second threat level involves the technical staff performing a programming code review and some regression testing to ensure that four-digit year and leap-year processing standards are met.

This involves the technical staff sending the company's program code out to a contract information systems shop to troubleshoot your program. Because the staff of the IS shop did not write the program and does not know risk or claims management, the IS shop is not likely to find things other than obvious date format problems. So, you're not really safe yet.

While this is being done or verified, make sure that all date ranges are computed correctly, including date ranges that span 01/01/1999 and 02/29/2000. Don't forget to check the dates you created in user-defined data fields. If these were done in a free-form text field, you might not have a reliable date edit process, and the standard program code review could miss your user-created fields since they were not official date fields in the database.

Find out if your program uses date controls from third-

party software companies. These controls programs are embedded in some RMIS programs to save time and development costs. Unfortunately, these same firms are small, they often go out of business and the date controls can contain Year 2000 performance problems.

A few simple RMIS programming tests for dates include:

Date differences

01/01/2000—12/31/1999 = 1 day

03/01/2000—2/28/2000 = 2 days (leap year)

Date add

12/31/1999 + 1 day = 01/01/2000

02/28/2000 + 1 day = 02/29/2000 (leap year)

Level 3 threat: Business rules and standards. This level starts to look familiar to risk managers because business rules and industry standards start to play a part in Year 2000 processing compliance expectations. For example, does your Occupational Safety and Health Administration lost-time calculation default to seven days or five workdays, or do days of lost work include or exclude the day the employee left work and the date the employee returned? Are holidays a part of the calculation? If so, what days, and how do you override these? What happens when you do not know a key date value at the time of date entry? Is the field left blank, is a default value entered, or is the field automatically filled at a later time?

Some key dates in RMIS to evaluate include: date of injury or death; insurer notified date; OSHA or state reported dates; statute of limitations date; payment and reserve dates; diary follow-up dates; claim, loss and events dates; suit and court dates; record updated; time/date stamp; reopen date; and policy expiration dates.

Because it is already late 1998, one might ask, "Do I need to do a second review of the Year 2000 situation at this time if I already did one?" Absolutely. You are at risk due to new hardware changes, new programs you may have loaded that change Windows settings, or dynamic link libraries program versions and the fact that Year 2000-compliant applications have a higher standard. Now the boardroom players and your auditors expect a lot more than just having programs work without defect after Jan. 1, 2000.

The overall benefits to risk managers for investing time in Year 2000 verification are both operational and financial. Operational benefits, such as breezing through a workers compensation check run or getting report results that reliably calculate lag times with compliance dates, are obvious. Perhaps not so clear are the financial benefits. Avoiding IRS Form 1099 errors and OSHA reporting fines and accessing all—not just some—claims files in the date selection run you gave your actuary can save a lot of money.

What steps might one take to prove that a RMIS is Year 2000-compliant? Year 2000 remediation and verification requires a multidimensional process. Do not depend solely on sending a legal questionnaire that asks or demands that the software is Year 2000-compliant or -compatible. This is not a bad step; it just does not prove that your systems,

programs and practices are being operated in a Year 2000-compliant manner within your processes.

Don't depend on a legal definition for Year 2000 comfort. Definitions for what is Year 2000-compliant can be a good reason to take a closer look. Is the program or technology Year 2000-compliant, or just Year 2000-compatible, certified, ready, resistant, immune, supported, functional, error-free or plain old working? Is the program providing dates on the display screens, reports, derived field calculations, database storage files and in input/output files, all in a four-digit year structure?

For every hour and every dollar spent on questionnaires or legal review, why not spend \$5 on a hands-on local technical and application operational review? Do some old-fashioned "show me" testing. Write procedures, enter test data, plan your next equipment upgrade and stay ahead of the baggage of having older technology systems. For example, disk operating system programs running on old Windows 3.1 systems are unlikely to ever be as Year 2000-compatible as you'll need. Why wait any longer to upgrade? Now is a good time to call your RMIS partner and plan your future, even if you need some new software.

How to do you keep improving data quality and dates after the new millennium is here? Create a role for data quality and process verification within your daily and monthly RMIS operations, or add it to your third-party administrator contracts as a funded expectation. Use the free DORN Claim Data Specification and resource exhibits, found on the World Wide Web at dorn.com, to focus on risk management dates that matter. Define who fixes data now and why. How often? What testing of dates, derived fields or financial calculation is occurring? What audit trail for data deletions, database tampering and program upgrades is being managed? Do you plan to test for Year 2000-type date issues after every upgrade or new hardware change? Oops. Time to stop before the Year 2000 paranoia takes over again.

So, let's move the current, limited Year 2000 discussions beyond the obvious nuts and bolts. Let's talk about solutions that work, with dates and other forms of data. In the long run, we'll accomplish a lot more.

The author's comments do not reflect the limitation or expertise of any specific product or vendor in Year 2000 data compliance issues, including that of DORN Technology Group Inc.



Mark Dorn is president of DORN Technology Group Inc., a Livonia, Mich.-based company specializing in risk and claims management information systems.

Exclusion does not apply to sexual contact: Court

Improper sexual contact is outside the scope of a general liability insurance policy exclusion for injuries arising out of the rendering or failure to render medical service or treatment, according to the Minnesota Court of Appeals.

Several former patients of an allergist employed by the Mork Clinic claimed the physician had sexually abused them during medical examinations. The patients sued both the physician and Mork. Mork gave notice of the claims to its general liability insurer, Fireman's Fund Insurance Co. The insurance policy provided indemnity and defense coverage against claims of bodily injuries caused by an occurrence. The policy contained an endorsement excluding from coverage bodily injury arising out of the rendering or failure to render medical services or treatment. Fireman's denied coverage. Mork settled with the claimants and brought this suit to obtain a declaration of Fireman's responsibility for indemnity. The trial court held Fireman's liable.

On appeal, Fireman's argued, in part, that the claims against Mork were defeated by the exclusion in the policy for injuries arising out of the rendering of medical services. But the court pointed out that the sexual contact

Legal Briefs

of the allergist here was not required for the medical services he was rendering. Thus, the court said, the claims against Mork did not fall within the medical services exclusion of its commercial general liability policy. The trial court decision was affirmed.

Mork Clinic vs. Fireman's Fund Insurance Co., Minnesota Court of Appeals, March 17, 1998 (BI/03/N-\$10).

Employer can't count Social Security

An employer could not offset against workers' compensation benefits the Social Security benefits an employee received on account of her husband's payment into the system, according to a Louisiana appellate court.

Marie Thompson was injured in the course and scope of her employment. She received workers compensation benefits until she failed to attend a scheduled independent medical examination. At that time, benefits were terminated. Ms. Thompson filed to force restitution

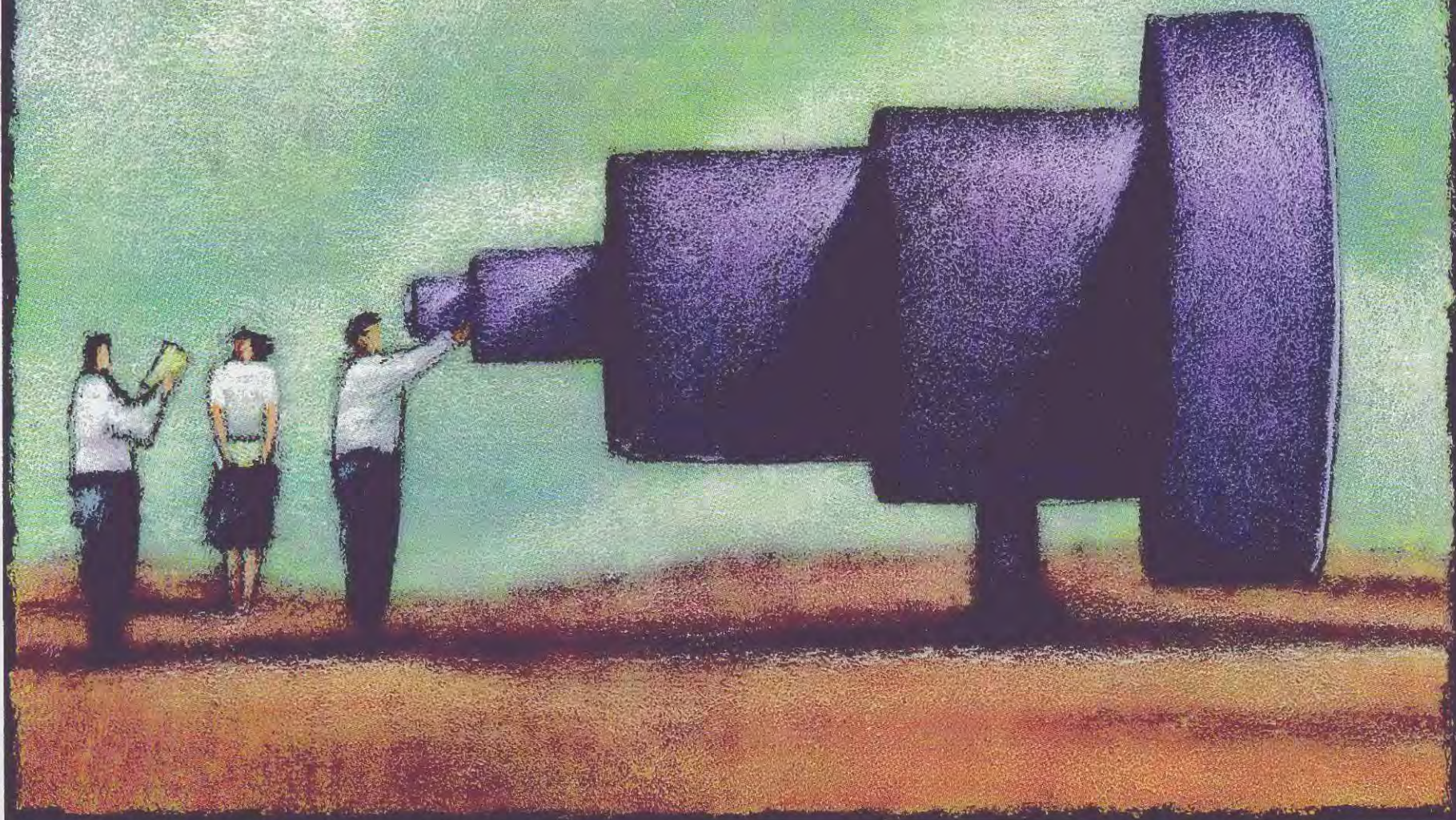
of benefits. The employer and its insurer demanded to offset Social Security benefits received by Ms. Thompson against their liability for payment of benefits. Ms. Thompson was receiving \$425.40 per month in retirement benefits through her husband's Social Security records. The workers comp judge denied the offset.

The appellate court said Ms. Thompson's Social Security benefits here represented payment made on behalf of her spouse. These payments are not retirement benefits paid because of her own payment into Social Security nor do they represent Social Security benefits received because of her own disability, the court said. To allow an offset here, the court noted, would give a windfall to the employer. The court agreed that it was not in error to have denied the offset.

Big Star of Many vs. Thompson, Court of Appeal of Louisiana, March 6, 1998 (BI/04/N-\$10). **BI**

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

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Oct 12			Sep 30
Oct 19		IT Fighting Fraud ^{SS}	Oct 7
Oct 26	Workers Compensation ^{RS} <i>Directory: Safety Consultants & Rehabilitation Services</i> <i>Information Resource: Workers Comp</i> <i>Distribution: BI Workers Comp Conference; Baden-Baden; CPCU; MCEIRMC</i>	GLOBAL FOCUS	Oct 14
Nov 2	<i>Distribution: ISCEBS</i>	ABT E & O/Loss Prevention	Oct 21
Nov 9	Reinsurance: Trends & Issues ^{RS} <i>Directory: Reinsurance Brokers</i> <i>Distribution: ARIMA; NAI; PLUS</i>		Oct 28
Nov 16	<i>Distribution: World Captive Forum</i>	IT Loss Control/CPCU Report	Nov 4
Nov 23	Benefits: Effective Benefit Communication/EBC Awards ^{RS, SS} <i>Directory: Benefit Communication Systems</i>		Nov 11
Nov 30			Nov 16
Dec 7	Risk Management Systems & Online Resources ^{RS} <i>Directory: Risk Management Information Systems</i> <i>Distribution: NAIC</i>	ABT Niche Marketing	Nov 23
Dec 14	Benefits: Market Report ^{RS} <i>Directory: Benefit Consultants</i>		Dec 2
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INTERNATIONAL

Pensions

Continued from previous page
insurance expert Klaus Vater. "The new finance minister will have the final say."

That could be bad news for employers. Germany's new finance minister, Oskar Lafontaine, was the driving force behind plans to roll back employer-friendly social insurance reforms initiated last year. "Few employers believe Mr. Lafontaine will sacrifice the over 3.3 billion marks (\$2.0 billion) in tax revenues required for the reforms," said Eugen Mueller, BDA director of social insurance.

The tax issue is critical. Under current German law, German employers must treat contributions to employee pension plans as wage costs. The resulting taxes boost employer-sensitive labor costs, which already are among the world's highest.

Mr. Mueller insists the tax revenue argument is shortsighted. "Everyone knows the social security system is wobbly. Fewer workers are supporting a fast-growing number of pensioners. Demographic change makes emphasis on company pension plans a must. Besides, pension funds with greater capital investment possibilities would fuel the economy."

Germany must modernize pension fund regulations by deferring taxation of benefits until an employee retires and offering the option of defined contribution plans, said Mr. Mueller, who favors incorporating elements of pension funds

found in other countries.

Last year, a government report commissioned by the Finance Ministry looked into the possibility of setting up in Germany private pension funds such as those found in the United Kingdom and the United States. The result gave validity to employers' concerns, said Mr. Mueller. "The study concluded that it wouldn't take much to improve the German system. We already have a form of pension fund, but it needs to be made more tax-friendly."

Defined contribution plans are among the employer-friendly elements needed, said Mr. Mueller. German employers can offer defined benefit plans but not defined contribution plans. Pension plans are often insurance-based and must adjust benefits in accordance with inflation. "Defined contributions would allow companies to set up plans that tie benefits to company performance. It would have more flexibility to tie benefits to company growth," he said.

Four changes are essential, says Mr. Mueller.

- Deferred taxation is needed for all company pension plans.
- Employers need the option of offering defined contribution plans as well as defined benefit plans.
- Pension fund administrators must have more investment options for plan assets. Under German law, no more than 30% of most plans' assets may be invested in securities.
- Employers' external pension fund reserves should be tax-exempt. Such reserves, which allow employers to draw on the funds for

other corporate purposes, are currently taxed.

Despite tax drawbacks, company pension plans are far from dead, contends Jens-Peter Stoehr, the

Among the employer-friendly elements needed are defined contribution plans, says Eugen Muller.

treasurer of Deutsche Shell A.G., a subsidiary of Royal Dutch/Shell Group. Deutsche Shell created a pension fund of 2 billion deutsche marks (\$1.22 billion) early this year to generate higher returns from its assets.

The pension plan is a book-serve account, a type commonly used by German employers, but it

is part of a separate trust fund, which gives Deutsche Shell greater freedom to invest in stocks and bonds.

According to Mr. Stoehr, the trust will enable Deutsche Shell to gain a greater return on its assets than the company would have in a conventional pension arrangement. Under the book-serve system, German companies can make tax-deductible pension contributions but must invest assets back into the company. Most large German corporations have pension plans based on book reserves, which Mr. Stoehr says is the most tax-efficient way of financing pension debt under German law.

Unfortunately, a trust fund solution is not open to all German companies, said Axel Heitkamp, an Aon Jauch & Huebener executive board member who helped develop Deutsche Shell's program. "Companies must be able to take advantage of U.S. accounting rules to

make full use of this option," he said. "And there is no way around having the transfer of reserves taxed (when switching them to external funds). Still, investment opportunity is a definite advantage. Pension contributions are still considered assets."

Mr. Heitkamp said he hopes Germany's new government will move toward the BDA's position. "Pension funds such as those found in the United States and Great Britain do have benefits. They allow for the flexible allocation of funds; have (deferred) tax advantages; and are not subject to insurance regulation, which restricts their investment policy."

For the time being, however, the trust solution may be the best Germany has to offer. For some, at least, it is the best move. Netherlands-based electronics giant Philips Corp. already has signaled it will launch a similar trust in Germany. **BI**

Flooding

Continued from previous page

Heavy rain and localized flooding was continuing in Wales well into last week, making it difficult to predict total financial damages.

A spokesman for the U.K. claims adjusting firm of Crawford-THG Ltd. said claims are coming in "thick and fast" but that it is too early to get an accurate picture of total losses.

Claims adjuster Ellis & Buckle's national service center in Cardiff, Wales, took 500 calls from policyholders over the weekend.

An Ellis & Buckle spokesman agreed that while river levels remain high, the full extent of damage cannot be measured yet.

It could take weeks for swollen rivers in Wales to subside fully, allowing a clear appraisal of damage, said Alan Wiseman, president of the U.K. Institute of Public Loss Assessors.

"It is still a case of wait and see," he said.

But Mr. Wiseman estimated that total insured and uninsured damages resulting from the storms could reach £500 million.

He said that estimate includes damage to municipal government properties—which in the United Kingdom are typically self-insured—plus business interruption losses, mainly in the transportation industry.

Ferry services were particularly hard-hit by the storms. Irish Sea ferry crossings between the United Kingdom and Ireland were al-

most completely suspended over the weekend. English Channel ferry crossings from Dover were subject to long delays, but there were no reports of canceled services. Brittany Ferries Ltd., of Plymouth, south England, was forced to cancel two return services to Santander, Spain, after heavy winds caused minor hull damage to one of its ferries.

Mr. Wiseman said there also were several reports of transportation companies' vehicles being stranded by the flooding. Those strandings could lead to further business interruption claims, he believes. He said there had been no reports of flooded industrial parks, which means major commercial property claims are unlikely.

Jeffrey Salmon, managing director of London-based claims adjuster Salmon Assessors Ltd., agreed that early flood reports indicate household properties are the worst affected and there is little commercial damage.

Mr. Salmon estimates total damages resulting from the floods could reach between £400 million (\$671 million) and £500 million.

But the ABI spokesman said he believed such figures are too high; he said the ABI's estimate of £100 million of insured damage is more realistic.

As with the Easter floods, the U.K. Environment Agency, which is responsible for public flood prevention and planning in England and Wales, was criticized for its performance during the latest

floods.

Most criticism again was centered on the agency's warning systems.

The Environment Agency was criticized last month in an independent report on the Easter floods and, subsequently, committed itself to improving its flood warning and defense systems (*BI*, Oct. 19).

But Mr. Salmon said he saw no improvement in the Environment Agency's performance.

Mr. Wiseman agreed that the agency's systems again were ineffective. "The warnings were no better than last time," he said.

An Environment Agency spokesman said it is too early for the agency to make a formal statement about its performance during the latest floods.

He said the agency always conducts a review of its performance after such events and will "take on board" any criticism. "We will look at the implications of these floods and see if further improvements in defenses and warnings need to be made in the wake of the report," the spokesman said.

Most of the Environment Agency's actions since the release of the Easter floods report have been focused on improving flood defenses in the parts of central England most affected by those floods, the spokesman said. He said some work has started on improving national flood warning and river gauging systems. But, he noted, the agency is not due to release its full plan on such initiatives until later this month. **BI**

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INTERNATIONAL

Risk managers told to show value

By KATE TILLEY

MANILA, Philippines—As Asian corporations cope with the region's financial crisis, they must avoid the temptation to trim the risk management department in any cost-cutting.

Such cuts were decried by numerous speakers at the Federation of Asia Pacific & African Risk Management Organisations' second biennial conference, held at the Peninsula Hotel in Manila Oct. 14-16.

But speakers told Asian risk managers they had to move from being simply insurance buyers to being true risk managers; that way, the speakers said, the risk managers could demonstrate their value.

Kevin W. Knight, risk management coordinator for Education Queensland in Brisbane, Australia, is the FA-PARMO secretary and an honorary life member of the Assn. of Risk & Insurance Managers of Australasia. He said one reason risk management is seen as "something that can be chopped in an economic downturn" is that there is no good way to show the

real cost of risk.

"We need good financial accounting systems that show the real cost of risk, including the hidden costs...not just the insurance costs," he said.

Levi R. Rebanal, FA-PARMO president and the managing partner of the Manila law firm of Rebanal, Hernando & Rebanal, said risk management is "just a toddler" in the Philippines and needs a lot of nurturing to help it grow. But he warned that the Asian economic crisis means companies are downsizing, retrenching, merging and consolidating, and risk managers often are the casualties because the benefits of their work are long-term and not well-understood.

Risk managers have to change boardrooms' views so that risk management will be seen as a profit center and not as a cost, he said.

Mr. Rebanal said most Filipinos' attitude toward risk was nonchalance. "We are fatalistic and live dangerous-

ly; call it masochism. We smile in the face of danger and adversity; call it resilience. But these attitudes can be disastrous in business," he warned.

But Mark A. DeLillo, president of the New York-based Risk & Insurance Management Society Inc. and vp-risk management for Tampa, Fla.-based manufacturer Celotex Corp., said adversity could be positive for risk management. A tragedy had been one of the drivers of risk management for his company. Celotex's 1972 purchase of a company that had made asbestos building products resulted in it seeking a Chapter 11 bankruptcy ruling in 1990 because of the huge

number of claims against it.

Mr. DeLillo said Celotex came out of bankruptcy in May of last year, having implemented a settlement trust to pay the 190,000 claimants. A more aggressive approach to loss prevention might have made the liabilities involved apparent before the purchase. "Insurance was beneficial but didn't solve our problem. We had no loss prevention policies in place at the time, but (the experience) showed that, by implementing sound risk management, we would never have to face such a tragedy again," he said.

Reg A. Bancroft, general manager (Pacific operations) for Sydney, Australia-based Royal & Sun Alliance Global Pty. Ltd., also sees long-term benefits for risk management in the

Asian crisis. "Major investors coming into the region will apply more stringent corporate governance rules, changing the way companies think and behave," he said.

Mr. Bancroft predicted "a very different business landscape" in two to five years, when the "present problems" are overcome. He predicted closer shareholder scrutiny of the "construction and operation of company boards." Other countries would follow Australia's lead and make compliance a legal requirement. Australian companies must report their risk management/corporate governance strategies to the Australian Stock Exchange annually.

Mr. Bancroft said the heightened emphasis on compliance will see risk management sponsored more directly by chief executive officers. This, he said, will make for more sophistication in risk/reward evaluation models. **BI**

PAL

Continued from page 23
crisis. Emergencies get the most attention during the first 24 to 48 hours, when facts are scarce."

He said newsrooms are the place where "your message is processed, scrutinized, dissected, mangled, or worse...thrown in the garbage bin."

The editor decides whether to publish or broadcast a press release based on news value, substance and importance. The editor is the virtual dictator. "In the newsroom, there is no place for democracy," he said.

Mr. Estabillo said hostile reporters and interviewers can surprise executives or put them off guard with un-

friendly questions. "The cardinal rule is to resist any combative instincts," he noted.

"You may be sorely tempted to strike back at what you consider unfair treatment. Even if you think the media is irresponsible, if you lose control of yourself, you will lose control of the situation," he said.

In a crisis, the media can be "your best friend or your worst enemy." The difference lies in preparation. Mr. Estabillo advised risk managers to build rapport with journalists. "Friendly media relations are based on trust and mutual respect."

He said PAL has been able to "surmount one crisis after another" because it implements effective communications plans. **BI**

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UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF MALCOLM L. BUTTERFIELD AND
ANTHONY J. MCMAHON, AS JOINT PROVISIONAL LIQUIDATORS OF
BELVEDERE INSURANCE COMPANY LIMITED,
CASE NO. 98-B-47660 (JLG)

NOTICE IS HEREBY GIVEN THAT, PURSUANT TO AN ORDER (THE "ORDER") OF THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (THE "BANKRUPTCY COURT"), IN CONNECTION WITH THE PETITION FILED PURSUANT TO SECTION 304 OF THE BANKRUPTCY CODE WITH RESPECT TO BELVEDERE INSURANCE COMPANY LIMITED (THE "COMPANY"), A HEARING WILL BE HELD ON NOVEMBER 4, 1998 AT 2:00 O'CLOCK P.M., BEFORE THE HONORABLE JAMES L. GARRITY, JR. IN ROOM 610-2 OF THE BANKRUPTCY COURT, ONE BOWLING GREEN, NEW YORK, NEW YORK (THE "HEARING"), TO CONSIDER THE PETITIONERS' REQUEST FOR A PRELIMINARY INJUNCTION ON THE TERMS SET FORTH BELOW, AND PENDING THAT HEARING A TEMPORARY RESTRAINING ORDER IS IN EFFECT:

(1) ENJOINING AND RESTRAINING ALL PERSONS AND ENTITIES FROM: (A) TRANSFERRING, RELINQUISHING OR DISPOSING OF ANY PROPERTY OF THE COMPANY IN THE UNITED STATES, OR THE PROCEEDS OF SUCH PROPERTY, TO THIRD PARTIES; (B) COMMENCING OR CONTINUING ANY ACTION OR OTHER LEGAL PROCEEDING (INCLUDING, WITHOUT LIMITATION, ARBITRATION, OR ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY ACTION, PROCEEDING OR PROCESS WHATSOEVER) AGAINST THE COMPANY, OR ANY PROPERTY IN THE UNITED STATES INVOLVED IN THE FOREIGN PROCEEDING, OR ANY PROCEEDS THEREOF, AND SEEKING DISCOVERY OF ANY NATURE AGAINST THE COMPANY; (C) ENFORCING ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY JUDGMENT, ASSESSMENT OR ORDER OR ARBITRATION AWARD AGAINST THE COMPANY, AND COMMENCING OR CONTINUING ANY ACT OR ACTION OR OTHER LEGAL PROCEEDING (INCLUDING, WITHOUT LIMITATION, ARBITRATION, OR ANY JUDICIAL, QUASI-JUDICIAL, ADMINISTRATIVE OR REGULATORY ACTION, PROCEEDING OR PROCESS WHATSOEVER), TO CREATE, PERFECT OR ENFORCE ANY LIEN, SETOFF OR OTHER CLAIM AGAINST THE COMPANY, OR ANY OF ITS PROPERTY IN THE UNITED STATES, OR ANY PROCEEDS THEREOF, INCLUDING, WITHOUT LIMITATION, RIGHTS UNDER REINSURANCE OR RETROCESSION CONTRACTS; AND (D) DRAWING DOWN ANY LETTER OF CREDIT ESTABLISHED BY, ON BEHALF OF OR AT THE REQUEST OF, THE COMPANY, OR WITHDRAWING FROM, SETTING OFF AGAINST, OR OTHERWISE APPLYING PROPERTY THAT IS THE SUBJECT OF ANY TRUST OR ESCROW AGREEMENT OR SIMILAR ARRANGEMENT IN EXCESS OF AMOUNTS EXPRESSLY AUTHORIZED BY THE TERMS OF THE CONTRACT AND ANY RELATED TRUST OR OTHER AGREEMENT PURSUANT TO WHICH SUCH LETTER OF CREDIT, TRUST, ESCROW, OR SIMILAR ARRANGEMENT HAS BEEN ESTABLISHED; EXCEPT, HOWEVER, NO DRAWING AGAINST ANY LETTER OF CREDIT SHALL BE MADE IN CONNECTION WITH ANY COMMUTATION UNLESS THE AMOUNT HAS BEEN AGREED IN WRITING WITH THE PETITIONERS OR PERMITTED BY FURTHER ORDER OF THE COURT;

(2) REQUIRING ALL PERSONS AND ENTITIES THAT ARE BENEFICIARIES OF LETTERS OF CREDIT ESTABLISHED BY, ON BEHALF OF OR AT THE REQUEST OF, THE COMPANY OR PARTIES TO ANY TRUST, ESCROW OR SIMILAR AGREEMENT IN WHICH THE COMPANY HAS AN INTEREST, TO: (A) PROVIDE NOTICE TO PETITIONERS' UNITED STATES COUNSEL OF ANY DRAWDOWN ON ANY LETTER OF CREDIT ESTABLISHED BY, ON BEHALF OF OR AT THE REQUEST OF, THE COMPANY, OR ANY WITHDRAWAL FROM, SETOFF AGAINST, OR OTHER APPLICATION OF PROPERTY THAT IS THE SUBJECT OF ANY TRUST OR ESCROW AGREEMENT OR SIMILAR ARRANGEMENT IN WHICH THE COMPANY HAS AN INTEREST, TOGETHER WITH INFORMATION SUFFICIENT TO PERMIT THE PETITIONERS TO ASSESS THE PROPRIETY OF SUCH DRAWDOWN, WITHDRAWAL, SETOFF OR OTHER APPLICATION, INCLUDING, WITHOUT LIMITATION, THE DATE AND AMOUNT OF SUCH DRAWDOWN, WITHDRAWAL, SETOFF OR OTHER APPLICATION AND A COPY OF ANY CONTRACT, RELATED TRUST OR OTHER AGREEMENT PURSUANT TO WHICH SUCH DRAWDOWN, WITHDRAWAL, SETOFF OR OTHER APPLICATION WAS MADE AND PROVIDE SUCH NOTICE AND OTHER INFORMATION CONTEMPORANEOUSLY THEREWITH; AND

(3) PROVIDING, WITH RESPECT TO ANY CLAIM, ACTION, ARBITRATION OR OTHER PROCEEDING WHICH MAY BE COMMENCED OR BECOME KNOWN TO PETITIONERS IN THE FUTURE, OR THE ENTITLEMENT OR ALLEGED ENTITLEMENT OF ANY BENEFICIARY OF ANY LETTER OF CREDIT ESTABLISHED BY, ON BEHALF OF OR AT THE REQUEST OF, THE COMPANY, OR A PARTY TO ANY TRUST OR ESCROW AGREEMENT OR SIMILAR ARRANGEMENT IN WHICH THE COMPANY HAS AN INTEREST THAT IS IDENTIFIED BY THE PETITIONERS IN THE FUTURE (EACH A "SUBSEQUENT CLAIM"), THAT:

(A) WHEN INFORMED OF A SUBSEQUENT CLAIM, COUNSEL FOR PETITIONERS SHALL SERVE UPON THE HOLDER OF SUCH CLAIM A COPY OF THE SUMMONS, PETITION, AND THE MOST RECENT INJUNCTION ORDER ENTERED BY THE COURT; AND

(B) THE HOLDER OF THE SUBSEQUENT CLAIM WILL HAVE TWENTY (20) DAYS FROM SERVICE OF THE SUMMONS IN WHICH TO FILE AN ANSWER OR MOTION WITH RESPECT TO THE PETITION.

ALL PARTIES-IN-INTEREST OPPOSED TO THE PETITIONERS' REQUEST FOR A PRELIMINARY INJUNCTION MUST APPEAR AT THE HEARING AT THE TIME AND PLACE SET FORTH HEREIN. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING THE PETITIONERS' REQUEST FOR A PRELIMINARY INJUNCTION SHALL BE FILED WITH THE COURT WITH A COPY TO THE CHAMBERS OF THE HONORABLE JAMES L. GARRITY, JR., AND SERVED ON CHADBOURNE & PARKE LLP (ATTN: HOWARD SEIFE) SO AS TO BE RECEIVED ON OR BEFORE NOVEMBER 3, 1998 AT 5:00 P.M. NEW YORK TIME. THE ORDER AND SUPPORTING PAPERS WILL BE MADE AVAILABLE UPON REQUEST AT THE OFFICES OF THE PETITIONERS' UNITED STATES COUNSEL AT THE ADDRESS BELOW:

CHADBOURNE & PARKE LLP
ATTORNEYS FOR THE PETITIONERS
30 ROCKEFELLER PLAZA
NEW YORK, NEW YORK 10112
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* As used herein "United States" is defined to include the fifty states, and all U.S. territories and possessions.

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INTERNATIONAL

Utilities

Continued from page 3

political risk at Zurich-American Insurance Co. in Washington.

The Asian financial crisis and regional currency devaluations further cloud the political risk outlook. The government of Indonesia has unilaterally suspended a number of power purchase agreements with foreign investors because the state-owned electricity utility, Perusahaan Listrik Negara, was unable to pay for power it contracted to buy.

"A lot of issues have been thrown up by the economic circumstances. We are looking at power projects with a little more skepticism," said Adrian Lewers, political risk underwriter at Lloyd's of London managing agency Brockbank Group P.L.C. "I think that where the cancellation of a PPA brings about the permanent shutdown of a power plant, it is insurable as a catastrophe," said Angus McCallum, managing director of London-based Sedgwick Group P.L.C.'s Financial and Political Risk division.

Political risk insurance covers any cancellation, revocation or abrogation of the power purchase agreement that causes a cessation, he explained.

Mr. McCallum said two basic issues arise in the Pakistani and Indonesian actions: The first is a devaluation of the local currency, which in the case of Pakistan was aggravated by the nuclear tests. The second was that the government deemed as too high the unit prices of electricity sold by the independent power producers. Pakistan has ordered the power producers to cut their rates on average between 30% and 40% or see their contracts terminated.

In Indonesia, attempts to increase electricity and fuel costs this spring led to rioting that overthrew President Suharto. In addition, the devaluation of the rupiah by more than 40% has meant that GDP is expected to shrink by 15% this year. A number of projects were canceled because the state power utility was unable to pay on the power purchase agreements it had signed.

These actions, while not an outright expropriation, have the effect of an expropriation, though over a longer period of time, insurers and brokers say.

"Governments have become extremely sophisticated in how they do this. It's no longer the case of sending tanks to surround the factory and throwing you out," said Mark Vandewater, international development vp at the Overseas Private Investment Corp. in Washington. OPIC offers long-term political

risk and credit guarantees to U.S. businesses investing abroad.

"You can restrict the profitability of an enterprise in many ways through taxes, surcharges, tariffs and levies," noted Mr. McCallum.

But, in the case of utilities, not all political risk insurance specialists agree.

"There is a difference between the actions of a government within its governing capacity and a government acting in its commercial capacity," said Geoffrey Lynch, head of political risk at Lloyd's of London managing agency Hiscox P.L.C.

The Pakistan government first confronted the private power sector in May when Power Minister Nadir Perwaiz said the government had proof, from government court actions against Benazir Bhutto and her husband, that a number of projects had obtained contracts through bribes and kickbacks to the Bhutto government. Then the Lahore High Court ordered the largest project, The Hub Power Project, to cut its tariffs by 57%. Hubco appealed the ruling and denied the corruption allegations.

Hubco is a consortium headed by U.K.-based National Power P.L.C. with Xenel Industries of Saudi Arabia and Mitsui Corp. of Japan. The project is a 1,294-megawatt, gas-fired, four-unit power plant costing \$1.77 billion.

Pakistani officials began an investigation into charges of corruption and overpricing; froze Hubco's bank accounts because of non-payment of taxes, which the company said it did not owe; and for a time barred some Hubco officials from leaving the country. The investigation ended, though Hubco has not reached an agreement with the government.

Sources at the World Bank in Washington who spoke on condition of anonymity said the matter is headed for arbitration. The World Bank is both a creditor and guarantor of the Hubco project and is eager to reach a settlement.

The settlement would be necessary to any international agreement to renegotiate Pakistani foreign debt, the World Bank sources said.

A Hubco spokesman in Karachi said: "Matters are still at a standoff. WAPDA is still buying electricity. One or two units out of four operate each day. The allegations are going on as usual."

According to Hubco, part of the project's financing was guaranteed under political risk insurance underwritten by the World Bank and the Japan Export Import Bank. A further proportion of the debt was guaranteed by export credit agencies such as Coface of France, SACE of Italy and Japan's Ministry of International Trade and Industry.

The Hubco project was the first project undertaken by the World Bank in a program to restructure the Pakistani energy sector that began in 1985. However, World Bank sources said the restructuring of the electricity sector is incomplete, accounting for the problems WAPDA faced.

Hiscox's Mr. Lynch confirmed this view following his conversations with the independent power producers. "WAPDA had a master plan drawn up with the World Bank on a logical basis, but then the government allowed anyone to bid for power stations, and they were located

Expropriation is no longer just 'sending tanks to surround the factory and throwing you out,' says Mark Vandewater.

ed in the wrong place," he said.

"The fundamental problem with creating independent power producers in developing countries is that initially it is based on political expediency. These things sometime bear no relation to economic reality," said Christopher Weston-Simons, director of the global property and casualty department, with responsibility for the IPP Focus Group, at London-based Willis Corroon Group P.L.C. He added that the independent power producers negotiate contracts in good faith, with prices decided at the time to respond to debt service and profit.

Future demand for electricity in Pakistan also has been overestimated, putting many of the projects at risk, he said. "From what I have seen, developing countries have negotiated for more power than they need, and so the PPA (power purchase agreement) cannot be sustained by the local economy. But no country is going to talk down its economic prospects," noted Mr. Weston-Simons.

Pakistan has a temporary power overcapacity, and WAPDA has difficulty paying its bills, the World Bank sources said.

Atlanta-based power utility Southern Co. canceled plans to build a 1,320-megawatt coal-fired power plant in Pakistan because "it appears that Pakistan did not need the electricity," a company spokesman said. The company had negotiated a PPA with the Bhutto government, though the company had "never put a value on the project," he said.

According to insurance industry sources in Pakistan and to reports in

the international media, the Southern Co. project is the only contract to have been canceled outright and is the subject of a political risk insurance claim. The utility spokesman denied the reports.

Another U.S. power utility, Arlington, Va.-based AES Corp., has received notices from the Pakistani government that it will terminate AES' power purchase agreement for two projects with a total value of \$700 million.

An AES spokesman said the company does not have political risk coverage for its Pakistan projects and that the dispute is now in arbitration. In a statement, AES denied government allegations of corruption.

Although the Pakistan government is attempting to renegotiate contracts with power producers, any reduction could result in a breach of contract claim, World Bank sources said. "If a local court orders a tariff to be reduced, that is a breach of contract. If WAPDA pays less (to the IPPs), then the government has to make up the difference," the sources asked.

Contracts in Pakistan are guaranteed by the government. "So you go back to looking at sovereign guarantees. But then what do you do if the government goes broke?" the sources asked.

Political risk insurance underwriters and brokers disagree on whether such a breach of contract should be classified as a commercial risk or political risk.

"You have to look at the individual elements. You could offer cover for non-honoring of sovereign guarantees. If you are looking at whether WAPDA as a buyer can pay, then that is a commercial risk. You wouldn't put that under politics. The issue of renegotiation can take place in a commercial context. At what stage do you deem a project to be expropriated? These are all issues which are new to investors and insurers," said Brockbank's Mr. Lewers.

The issue of inability to pay for power also arose in Indonesia. In January, the government suspended three projects operated by Omaha, Neb.-based CalEnergy Co. Inc. because the state electric utility, PLN, was unable to pay.

In a statement earlier this year, CalEnergy said it had a total investment in Indonesia of \$275 million and that after deductibles it expected about \$210 million would be recoverable under political risk insurance from OPIC. But Craig Hammet, CalEnergy senior vp and chief financial officer, said the company now wants to pursue compensation for loss of profits, which under its 30-year power purchase agreement

could have totaled billions of dollars.

But, Hiscox's Mr. Lynch and others say that "future income streams are difficult if not impossible to insure. If you spent \$30 million, you can get your money back."

An asset expropriation has a calculable impact on a company's balance sheet. Once the claim is paid for the asset, though, it is difficult to see why an insurer should compensate a company for more than one year's cash flow as the earlier investment may be reinvested elsewhere, Mr. Lynch said.

OPIC's Mr. Vandewater said that CalEnergy has not yet submitted a claim and that the insurer has a limit of \$200 million per project in Indonesia. OPIC does not cover failure to honor sovereign guarantees, he said.

Indonesia "basically reneged on a deal," Mr. Hammet said. All of the contracts specified payments by PLN to CalEnergy in U.S. dollars and were guaranteed by the Indonesian government. But Mr. Hammet rejected the idea that Indonesia is unable to honor its sovereign guarantees. "It's hard for me to imagine that a country as rich as Indonesia is broke," he said.

Political risk insurance specialists meanwhile are looking for new ways of covering the risks of utilities in developing countries. "Over the last two years we have been looking at the risk classification and evaluation associated with limited and non-recourse project finance," said Willis Corroon's Mr. Weston-Simons. The problem is to avoid piling on insurance premium costs that cannot be sustained by the project. "So we have to find a way of transferring the risk in a good manner to reduce the cost of borrowing. The market for this will not be the conventional one—probably (it will be) in the alternative market," he added.

But Mr. Lewers said that alternative risk financing products for political risks "can never take off all the risk."

Zurich-American's Mr. Riordan believes that in the future the political risks associated with water utility projects will be even more difficult to evaluate. **BI**

Survey

Continued from page 23

much money to allocate to employee benefits but then allow employees to decide individually how they want to use the money to meet their own needs, Ms. Freeman said.

She said benefit flexibility also can help employers recruit and retain staff, as well as give staff a greater appreciation of the value of employee benefits.

Company cars are the most popular flexible employee benefit offered, according to the survey. Of the companies offering this benefit, 93% offered employees some sort of choice about their company car. Three main choices, in order of employer preference, are currently offered: giving up a company car for another equivalent benefit; the use of a higher-value car in exchange for a reduction in

other benefits; or the use of a lower-value car in exchange for an increase in other benefits.

The Towers Perrin survey shows that U.K. employers are offering more flexibility on private health

Benefit flexibility can help employers recruit and retain staff, says Helen Freeman of Towers Perrin.

care arrangements. Twenty-nine percent of companies surveyed offer flexibility in the level of coverage available to those staff eligible for private medical insurance, up from 24% in 1996. The most popular choice is to allow staff to increase

their level of coverage, the cost of which is shared between employer and employee.

The Towers Perrin survey says pensions are the most difficult benefit for employees to understand and, because pensions are heavily regulated, the least flexible.

Nevertheless, the survey shows that 25% of U.K. companies offer some employees a choice in pension arrangements.

Pension benefit options are offered in a variety of ways, including allowing employees to choose a company-sponsored group pension plan, select between two or more defined contribution scales, and pick a level of company contributions to personal pension plans. Survey respondents often offered several pension choices.

The survey concludes that "core-plus" arrangements are the most common approach for U.K. compa-

nies implementing flexible benefit packages. Such arrangements ensure minimum benefit levels, coupled with additional options chosen by the employees.

The survey also concludes that several additional benefit options are becoming more common among U.K. companies.

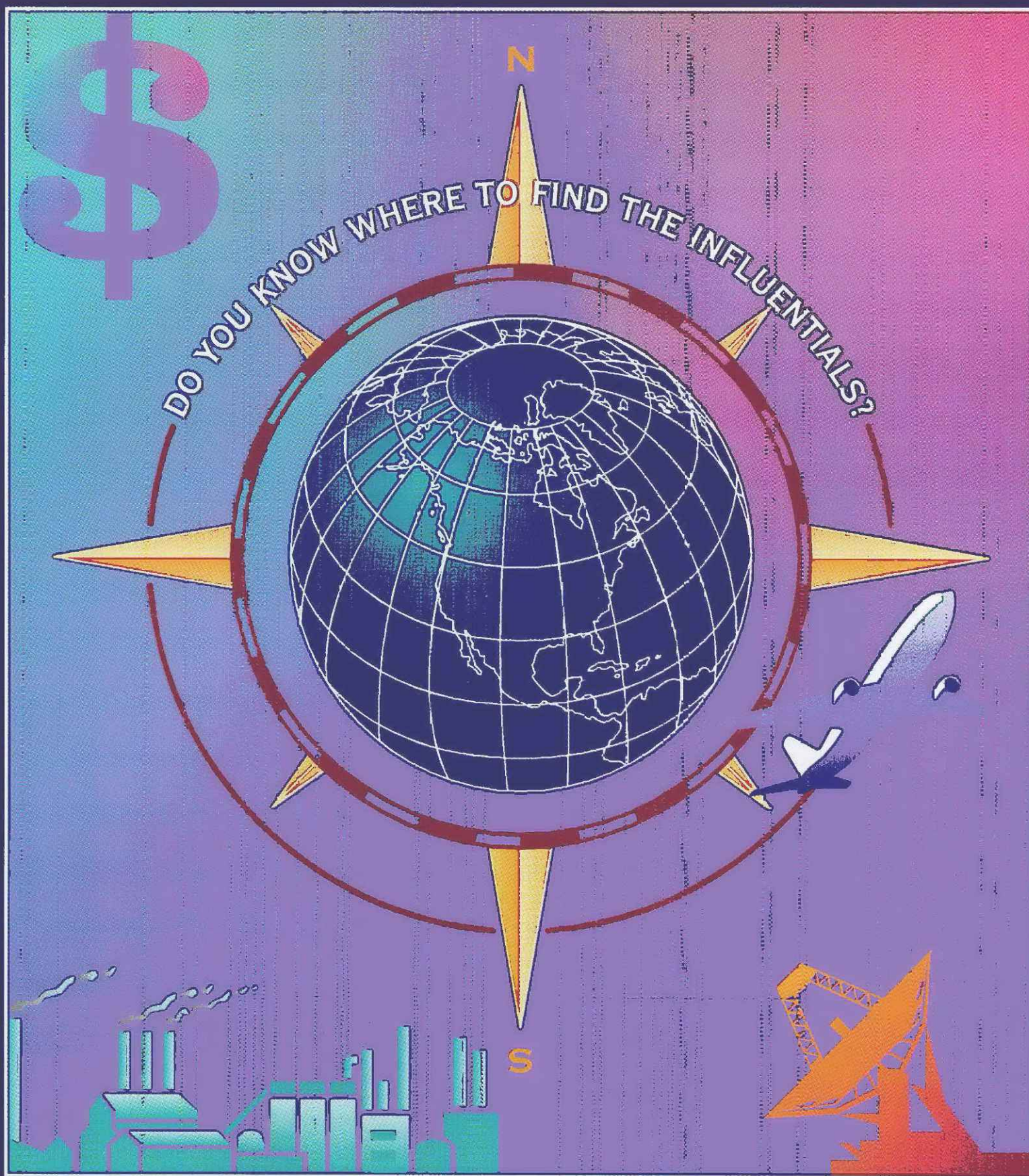
The top five additional benefits currently offered by U.K. employers are: subsidized cafeteria meals, offered by 71% of companies surveyed; personal accident insurance for employees, offered by 65%; parking facilities, 63%; annual health tests, 62%; and the use of company-owned season tickets for sporting and cultural events, 59%.

Copies of the "Benefits Package for the Future" survey are available free from Towers Perrin, Swan Gardens, 10 Piccadilly, London W1V 0AE; 44-171-379-4000; fax: 44-171-806-6401.

ADVERTISER INDEX

Issue of November 2

ADVERTISER	PAGE #
AIG Corporate	32
American Insurance Assoc.	25
Bene Com Associates	24
Burnham Systems	24
Business Insurance	18,21,28
Carvill America, Inc.	22
City of Hope	17
CNA/E&S	12
GAB Robins	7
Hobbs Group, Inc.	6
Kaiser Permanente	21
Leboeuf, Lamb, Greene, MacRae	16
Lexington Insurance	10-11
Markel Insurance Company	25
Metropolitan Life Ins. Co.	14-15
Munich-American Risk Partners	16A-D
State Comp. Ins. Co.	18
The Hartford	4
Wausau Insurance Company	5
World Captive Forum	9
Yasuda Fire & Marine Insurance	22
Zurich American/Diversified	13



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Commentary

Sorry Mitch, but hasta la vista

I'd like to say that when Hurricane Mitch came churning through the Caribbean last week on a heading for Cancun, Mexico, where I was attending a seminar on the Bermuda market, I stood my ground, grabbed a disposable camera and notepad and recorded the event like a responsible journalist.

The truth is I packed my bags, as did the rest of the conference attendees, dashed to the airport and waited in line to hop the first plane, any plane, out of there.

While getting out of Mitch's path wasn't easy, it was amazing to see how thousands of people can move when they put their mind to it. "Stampede" comes to mind.

As of this writing, Mitch has been downgraded from a Category 5 hurricane to a tropical storm and still hasn't reached the northeastern tip of the Yucatan, where Cancun sits. But it has buffeted Honduras with gusts of wind and gales of rain and up to 50 deaths have been blamed on the storm.

The first I heard of the storm was on the plane down to Cancun. The passenger beside me said he was flying to secure his sailboat on Isla Mujeres because of the approaching hurricane. Hurricane? What hurricane?

Arriving at the hotel where the seminar was being held, the palm trees leaned inland to point the wind's direction. The surf

was strong, but not so bad as to prevent a handful of people from swimming and playing in the waves. The next day, the waves were much bigger and hammered at the beach and straw umbrellas the hotel had placed in the sand.

Mitch was stalled hundreds of miles to the south, though it was increasing in intensity, with sustained winds of 180 mph and record low pressure.

While it seemed we had plenty of time before the hurricane reached our part of the world, I began to notice unnerving signs that people were preparing for the worst.

Clusters of concerned hotel workers stood along the beach wall, surveying areas at risk. Umbrellas along the beachfront pools were laid on their sides, to avoid being blown away. Hotel workers filled dozens of sandbags and climbed the dozens of palms along the beachfront patio, using ladders to reach unripe coconuts and cut them down, denying Mother Nature a few handy projectiles to throw at the hotel's windows. Later, the palm trees themselves were dug up.

Wary of being trapped by the storm, the seminar's organizers announced they would cut short the meeting a day early so everyone could get out of Cancun.

As I surveyed the crashing surf during a break in the compressed program, the hotel's general manager came to stand beside me. "The power of nature is something to behold," he said philosophically. When I agreed, he offered the assurance that the Mayans endured thousands of these storms. Well, yes, I thought, but where are the Mayans today?

The next morning, as the conference drew to a premature close, the skies were cloudy and the wind pushed against the coast, driven ahead of the spiraling hurricane. It was not hurricane force, but it bent the trees nonetheless and sent sand blowing onto the hotel's patio, which was vacant.

Staying put until my scheduled flight was to leave the next day no longer was an option. Not only did the airlines cancel all flights for the next day, but the hotel also was making plans to evacuate guests to an alternate location further inland.

At the airport were thousands of people with the same goal of getting out of Cancun. At every airline counter except Air Havana, lines six people wide and 50 feet long stretched back out the doors. In all, it is estimated that 500,000 people evacuated Central America last week in advance of the hurricane.

At the airport, behavior was getting ugly, as people badgered gate agents for answers to what they would do if they couldn't get out on a plane. People stood pressed to the windows watching the sky darken and the rain come down. Each time a plane landed, a cheer went up in the terminal.

Finally, I won a seat on the next-to-last flight that evening, bound for Miami. Hundreds of people had gone before me and hundreds remained in the airport.

I will always wonder what it would have been like to stay and witness such a storm firsthand. But at least I now have a pretty good idea what happened to the Mayans: They packed their bags and got the heck out of town.

Editor Paul D. Winston's column appears biweekly.



Paul D. Winston

Defense

Continued from page 3

policyholder under standard commercial general liability policies if the suit against the policyholder states a potentially covered claim, or if even only part of the suit's claims may be covered.

Indeed, she noted, insurers generally can avoid providing a defense only by seeking a declaratory judgment that none of the claims against the policyholder would be covered.

As a result, policyholders may be able to obtain coverage for defense of third-party Year 2000 suits, even in cases where indemnification is not assured, Ms. Frost-Davies said.

Another issue surrounding how CGL policies respond to Year 2000 claims is how coverage would be triggered.

Insurers may seek to argue that Year 2000 losses are the result of a known exposure and, therefore, are not fortuitous losses covered by the policy, Ms. Frost-Davies said.

"It's difficult to argue we didn't know the year 2000 was going to arrive," she said. It also can be shown that a policyholder hired companies to try to remedy the Year 2000 problem, she added.

Another issue is that "CGL policies often require property damage or bodily injury to trigger coverage," Ms. Frost-Davies noted. Many claims for coverage of Year 2000 lawsuits are not going to meet this threshold, she said.

Insurers also may argue that timely notice of a claim was not provided, thereby voiding coverage.

That argument will arise as a result of questions about what "occurrence" actually triggers coverage under the policy, Ms. Frost-Davies said. If it's successfully argued that the occurrence was the installation of defective computer equipment or software, that may have occurred several years ago. This could form the basis for an insurer to argue that it was not notified of a potential claim until years after the original occurrence, she said.

In addition to claims under CGL policies, the Year 2000 bug also is expected to trigger claims under directors and officers liability policies.

Shareholder and derivative actions are likely to follow any drop in a company's stock price allegedly caused by Year 2000 losses, Ms. Frost-Davies said.

Lawsuits against directors and officers most likely will assert a failure to adequately disclose Year 2000 problems, she said. This arises because the Securities and Exchange Commission requires that companies make adequate disclosure of risks, she said.

CANCUN, Mexico—Bermuda continues to be at the forefront of creating solutions to meet customers' complex insurance and financial needs, industry executives say.

A trio of Bermuda insurance companies showcased some of those solutions and new initiatives for risk managers and brokers during a seminar in Cancun, Mexico, last week sponsored by broker Park International Ltd.

Participating in the forum were representatives of ACE Ltd., Chubb Atlantic Indemnity Ltd. and EXEL Ltd., who provided overviews of their capabilities and recent developments.

ACE Ltd. has expanded significantly beyond its core excess liability insurance line.

The SEC has issued specific guidance, available on its Web site at www.sec.gov, as to what sort of Year 2000 information must be disclosed by public companies.

One risk manager in the audience expressed concern about being required to disclose information about his readiness for the Year 2000 problem that could be used in a lawsuit against the company.

Ms. Frost-Davies pointed out that President Clinton recently signed into law legislation that gives companies some immunity from liability lawsuits and relief from antitrust statutes if they share information about dealing with the Year 2000 bug (BI, Sept. 21).

However, that law does not protect statements made in SEC statements, she said. But a provision in the Private Securities Litigation Reform Act of 1995 provides a safe harbor from shareholder litigation for companies that make forward-looking statements, as long as the statements are accompanied by

Policyholders may obtain defense of Year 2000 suits, even if indemnification is not assured, says Julia Frost-Davies.

cautionary language noting that actual results could differ from those projected in the statement.

Therefore, she said, "you have to be cognizant of what you are saying—whether you are describing the current situation or forward-looking scenarios."

By the same token, some companies may be reluctant to disclose to their insurers any Year 2000 problems for fear of losing coverage if they are hit with a lawsuit.

But failure to fully and accurately disclose information about any known risks can be an even more powerful reason for the insurer to deny a claim, Ms. Frost-Davies warned.

In either case, the policyholder's goal should not be to broadly state that it has successfully eliminated the Year 2000 problem, but that it is taking all reasonable steps to do so, she advised.

An audience member echoed Ms. Frost-Davies' advice.

"The bet that the D&O underwriter takes is that the client has a reasonable plan for managing the problem. We can't evaluate how successful the client will actually be at eliminating the exposure, or we'd never write a policy," said Nicholas L. Bozzo, vp and underwriting manager-professional liability for Chubb Atlantic Indemnity Ltd. in

Hamilton, Bermuda.

"As long as they have a reasonable plan and are disclosing efforts at remediation, that's their defense," he said.

"The standard for defense is whether (directors and officers) took reasonable steps," agreed Ms. Frost-Davies.

"You want to avoid blanket statements like 'We are Y2K-compliant,' or 'We are not Y2K-compliant,'" Ms. Frost-Davies said. "Instead, focus on providing the details of the steps being taken."

As a side issue, Ms. Frost-Davies warned the audience to also avoid broad statements in internal e-mails regarding Year 2000 remediation efforts or audits. In any lawsuit against a company, e-mails are routinely sought as part of discovery, she said. The danger is that they may suggest or demonstrate a scenario contrary to a company's public pronouncements of its Year 2000 readiness.

Other insurance coverage that may be triggered by Year 2000 claims include professional liability policies and business interruption policies.

Companies that specialize in Year 2000 remediation or consulting, in particular, are likely to seek coverage under their errors and omissions policies, Ms. Frost-Davies said. "If their efforts don't work, or only partially work, they will likely be sued," she said.

As for business interruption coverage, Ms. Frost-Davies said some claims are possible in the wake of Year 2000 problems. However, so-called soft crashes, or business slowdowns caused by computer problems, may not be adequate to trigger coverage, she said. Ultimately, the applicability of business interruption policies to Year 2000 will depend on policy wording.

In addition to looking at many of these coverage issues, insurers are also grappling with whether to add specific Year 2000 exclusions to their policies, according to Ms. Frost-Davies. Both the Insurance Services Office Inc. and the Assn. of British Insurers have developed Year 2000 exclusions for insurers to adopt.

However, if a specific exclusion for coverage of Year 2000 losses is added to policies in 1999 or 2000, the policyholder may be able to successfully argue that coverage therefore must have existed in 1998 and prior years, she said.

Ultimately, Ms. Frost-Davies advised that in addition to making sure efforts are underway to remedy the Year 2000 problem within an organization, companies should also be sure there are contingency plans in place in case those remedies don't work. **BI**

Bermuda touts flexibility

Markets promote ability to meet customers' unique needs

By PAUL D. WINSTON

CANCUN, Mexico—Bermuda continues to be at the forefront of creating solutions to meet customers' complex insurance and financial needs, industry executives say.

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ACE Ltd. has expanded signifi-

cantly beyond its core excess liability insurance line.

ACE's diversification began in earnest in 1994, when it branched into the satellite and aviation business, and the next year it entered financial lines and property insurance, according to Fiona Luck, executive vp. More recently, it has formed a political risk managing general agency in partnership with EXEL Ltd., made significant acquisitions within Lloyd's of London and bought catastrophe reinsurance companies.

It also has entered the U.S. market through its acquisition of the Westchester Group, now under the umbrella of ACE U.S.A.

Ms. Luck heads up ACE's financial lines division, which provides

customized programs that involve risk transfer. The division, which began as the home for any non-traditional programs, has grown to become the largest single department within ACE, she said.

A "traditional" financial lines program is one that generally has no restriction on exposure but must be structured to meet certain requirements, Ms. Luck explained. Among the requirements, it must be a multiyear program; it must have the policyholder's participation in results; it must have significant risk transfer; and it must offer annual and term limits.

Examples of insured risks include second event coverage, retention funding, loss portfolio transfers and basket aggregate

See Bermuda on next page

Bermuda

Continued from page 29

programs, also known as concentric risk financing.

Also branching out from excess liability business is Chubb Atlantic, said Christopher Longo, president of the Bermuda subsidiary of Chubb Corp.

"All the things Chubb can do in the U.S. can be done in Bermuda, too. But Chubb Atlantic was really formed to offer non-traditional products," he said.

Some recent Chubb Atlantic programs include: punitive damages wraparounds, which finance this expense in states where punitive damages are not insurable; penalty premium protection, which protects policyholders at risk of having to pay retrospective penalty premiums, such as under a multiyear policy; and a \$100 million excess liability program that follows the form used by utility industry insurers Associated Electric & Gas Insurance Services Ltd. and Energy Insurance Mutual Ltd.

Chubb Atlantic also will provide financial guarantees and residual value insurance, as well as blended products that combine, for example, errors and omissions and employment practices liability coverage.

Chubb Atlantic derives about 30% of its premiums from providing reinsurance to captives, especially in the area of E&O coverage.

To formalize this business, the company earlier this year formed Chubb Atlantic Reinsurance Specialists Ltd. (BI, April 6).

To further serve the captive insurance market, Chubb Atlantic is

'The skills brought to bear... on casualty business solutions are now being applied to many other areas,' says Brian O'Hara.

rolling out a new product this week called CaptivEdge. CaptivEdge provides integrated directors and officers, E&O and EPL coverages for captives, depending on their individual needs. The program is designed to cover the risks faced by executives or employees of captive insurers.

EXEL is moving to take advantage of the convergence of insurance and capital markets, said Chairman and Chief Executive Officer Brian O'Hara.

"The vision of EXEL is to be the premier provider of strategic financial solutions," Mr. O'Hara said.

To better serve its customers, EXEL reorganized its operations into "customer business units" rather than along product lines. This focus encourages cross-selling of products, as well as finding new solutions for customers in similar industry segments, said Paul Dowden, a managing director.

Some of the new programs EXEL offers include: broad EPL coverage on a primary or excess basis; cross-class aggregate coverage, which protects against the risk of multiple deductibles or retentions being triggered by a single event; foreign exchange rate protection, in the form of a product called F/XL; and transmission and distribution coverage for utilities, among others. All of the products can be customized for coverage period, coverage triggers and terms.

EXEL's Mr. O'Hara summed up Bermuda's attraction as a marketplace for risk financing solutions.

"Bermuda continues to be at the forefront of change. The skills brought to bear originally on casualty business solutions are now being applied to many other areas," Mr. O'Hara said. **BI**

Mitch

Continued from page 1

spokesman said. Though early last week Mitch's winds topped out at more than 180 mph—making it one of the strongest Caribbean storms on record—by Friday it had slipped to tropical storm status, with wind speeds dropping as low as 40 mph.

Still, weather experts warned that Mitch could remain a threat in the northwest Caribbean region for several days yet, and risk managers of businesses with property in that region were keeping a wary eye on weather reports.

With Mitch's threat at its greatest early last week, more than two-thirds of the 30,000 tourists at Mexico's resorts of Cancun and Cozumel left rather than risk the

storm, according to government tourism officials.

"Obviously, the hurricane is some concern, although within the last few hours it appears that the wind speed has died down considerably," Hector Mastrapa, manager-insurance for Marriott International Inc. in Washington, D.C., said Thursday afternoon. "If it does go through the Yucatan Peninsula, we do have a couple of very large resort properties there."

Marriott has no properties in Honduras but does operate both a Marriott resort and a Ritz-Carlton resort in Cancun, Mr. Mastrapa said. He added, "At this point, we don't anticipate there will be any big problem for us."

"We may have lost some guests because of a fear of the storm," Mr. Mastrapa said. "But if you're looking at insurable business interrup-

tion, most policies require that you have some physical damage before you have an insurable business interruption loss."

By Thursday, the hotel chain was focusing its preparations on dealing with the possibility of heavy rains.

"If it would have remained at the 180 mph mark, we would have taken a stronger look at it," Mr. Mastrapa said. "But with the reduced wind speed, it looks like there will just be a lot of rain, and we are preparing for it accordingly."

Chicago-based Hyatt Corp. has no Honduran properties, and David Mikulina, assistant vp-risk management at Hyatt, said Thursday, "We've had no loss at this point."

"We have locations up in Cancun, but nothing's happened there yet," Mr. Mikulina said. "We'll see what happens next week if the hurricane hits." **BI**

Lange

Continued from page 3

country just to get a promotion and not to use others as rungs to move up the corporate ladder.

"Put your family first," he told the group. "By holding true to your values, you'll come out better in the end."

After the speech, a photographer covering the event approached Mr. Lange and said the speech had moved him to re-evaluate his life. In a note that Mr. Lange said he received a week later, the photographer said he was changing jobs so he could spend more time with his family.

"That really affected me," Mr. Lange said. He then began think-

ing about how much time he had devoted to his career while leaving most of the "burden and pleasure" of his children's rearing to his wife, Elizabeth.

"So I like to think I got through to myself" during that RIMS speech, he said.

While his departure from Microsoft will allow him to spend more time with his family, Mr. Lange said he does not want to drop out of the risk management industry.

"I'm a risk management junkie," he said. "I have no desire to hang up my bar charts and go build motorcycles," he said, referring to his hobby of restoring Harley-Davidsons.

Individual or private consulting is "a high likelihood" for his fu-

ture professional endeavors, he said.

Already, "there are a couple of things in the insurance technology area I'm being enticed on," he said. Asserting that risk managers need new technological tools, he said, "I think I'll find myself working toward that end."

He also said he would like to continue his work with RIMS, particularly with the organization's advisory council.

However, "anything I do will be subordinated to me spending time with my family," he said.

As for Microsoft, most of its insurance renewals are in July, and many coverages are part of multi-year programs, Mr. Lange said.

A Microsoft official could not be reached for comment. **BI**

Phoenix expands elder care

PHOENIX—The city of Phoenix is extending its successful elder care program, Elder Care Connection, to 4,000 city retirees.

Elder Care Connection was launched Jan. 1 and provides 24-hour telephone counseling for city workers on dealing with elder care issues. In addition, trained counselors will perform an in-home assessment, discuss different elder care options and

help find care for an elderly relative. The services are provided by Foundation for Senior Living, a Phoenix non-profit organization specializing in elder care issues.

Beginning Aug. 1, Phoenix extended the service to 4,000 retirees. Although most active employees use Elder Care Connection for help with a parent, "the retiree group uses it for themselves," said John Coyle, senior

vp at Segal Co. in Phoenix who helped set up the program.

The services are provided free to workers with the city paying Foundation for Senior Living on a capitated basis.

The elder care program is a significant upgrade from what Phoenix used to offer, Mr. Coyle said. Previously, workers received a booklet with local referrals for care.

—By Michael Prince

Updates

TIG mulls sale, other options

Continued from page 2

The announcement was included in New York-based TIG's third-quarter results, which showed an unexpected loss of \$46.8 million, compared with net income of \$39.8 million during the year-earlier period.

Factors in the weaker results included expenses related to the runoff of an automobile insurance program, increased allowances for reinsurance recoverables and other receivables, severance paid to former employees, Year 2000 expenditures and the write-off of certain capitalized software, the company reported.

Bermuda exchange sets rules

HAMILTON, Bermuda—The Bermuda Stock Exchange has developed new regulations aimed at attracting securitized insurance products, such as catastrophe bonds and swap contracts.

A stock exchange listing will become increasingly important for these products as they are marketed more widely to institutional investors that face limits on investments in unlisted securities, the BSX notes.

Under the new regulations, now in effect, cat bonds and other products may be issued by "special purpose" companies set up for the issues. The securities must be fully negotiable and may be purchased only by qualified investors in amounts not less than \$100,000.

The issuer also must maintain a paying agent acceptable to the BSX, and the securities must be eligible for deposit with the BSX's clearing and settlement facility or another such facility approved by the BSX.

The regulations also set out application procedures for securities issues, requirements for offering prospectuses and continuing obligations of issuers. For example, a prospectus must include general information about the issuer, a description of the structure of the deal and information about any simultaneous offering of some of the securities in other markets.

An issuer's continuing obligations include notifying BSX of material events that could affect the issuer's financial position and changes in any terms of the securities.

BSX fees are \$2,500 for an initial debt securities offering from a new issuer, \$1,000 for subsequent offerings from listed issuers, and an annual fee of \$1,000 for both categories.

Medical groups sue Oxford

NEW YORK—Three medical groups are suing Oxford Health Plans Inc., accusing the troubled HMO of withholding important information and failing to make required payments.

The three groups are Complete Medical Care PC and United Medical Care PC, both physician groups; and Comprehensive Health Care Corp., a medical management company, all controlled by Dr. Oscar Fukilman.

The groups allege that by withholding information about its members and failing to make payments for medical services provided, Oxford breached its capitation agreements. As a result, the suit claims the medical groups could not make payments to their physicians.

Filed in New York state court, the suits seek a total of \$155 million in compensatory damages and \$1 billion in punitive damages.

Plaintiffs' attorney Milton Mollen said through a spokeswoman that the \$1 billion amount was requested "to teach them a lesson."

In a written reply to the suit, Oxford called the charges "totally absurd." The HMO said it stopped paying the plaintiffs and started paying the physicians directly in August, "based on reports that these groups were not properly paying their affiliated physicians."

PBGC proposes rule change

WASHINGTON—Employers will be able to pay Pension Benefit Guaranty Corp. premiums at the same time they file the chief pension financial report with the Internal Revenue Service, if a forthcoming PBGC proposal is approved.

Under the change, the PBGC premium filing date for employers with calendar year plans would be pushed back to Oct. 15 from Sept. 15 to match the deadline for filing Form 5500.

The proposed change, which would take effect next year, is intended to cut employers' administrative burdens, said PBGC Executive Director David Strauss.

Briefly noted

The Risk & Insurance Management Society Inc. has released the **Quality Toolkit**. The toolkit teaches professionals how to use the Quality Scorecard, a customer satisfaction survey developed by RIMS and the Quality Insurance Congress. . . . **GE Capital Corp.** has completed its acquisition of Kemper Reinsurance Co., which will be renamed and become a unit of GE Global Insurance Holding Corp. . . . Gerling Global Reinsurance Corp. has completed the acquisition of **Constitution Re Corp.** and its subsidiaries. Gerling Global Re also has acquired Bermuda-based **Rex Re**. . . . Bermuda-based **PartnerRe Ltd.** said last week that it signed an agreement to purchase Winterthur Group's reinsurance operations in New York and Dallas. PartnerRe previously signed a similar agreement to acquire Winterthur's Swiss reinsurance operations (BI, Sept. 21). . . . The board of directors of **Poe & Brown Inc.** approved changing the name of the Daytona Beach, Fla.-based broker to **Brown & Brown Inc.** The change, a return to the original name before it merged with Poe & Associates Inc. in 1993, is subject to shareholder approval at the next annual meeting. . . . Insurance Commissioner James Long announced late last month that North Carolina's **workers compensation base rates** would remain unchanged in 1999. . . . **Charles E. Huff**, former chief fraud investigator for the Georgia Insurance Department, died of a heart attack last week at age 51. Mr. Huff, who led an investigation of insurance con man Alan Teale, left the Georgia department in 1995 to become a senior manager with Murphy & Maconachy Inc., a Fairfax, Va., investigations firm.

HIP

Continued from page 1

significantly reduced staffing at the health centers without proper authorization from the state and did not pay HIP providers on time.

To the extent that Pinnacle was not paying providers, the state was requiring HIP to post reserves, which may have been a factor behind HIP's growing deficit, speculated Joseph Kemka, vp and director of health care provider consulting at ASA Inc. in Somerset, N.J.

Last week, in a an unusual twist, Pinnacle President Paul Frankel, 50, was found dead in his Somerset, N.J., home. Police were investigating the possibility of suicide. A spokeswoman for PHP said the company had no further information.

In a statement, PHP President and Chief Executive Officer Jack Mazur said the company would evaluate all of its options, including the steps necessary to restore HIP to financial stability.

The Banking and Insurance Department spokeswoman said the department's goal is to rehabilitate the company.

Whether that is possible will depend on the loyalty of its customers and whether service, which many say has deteriorated over the past few months, can be improved.

"If I were an employer, I would want assurance that quality and continuity of care be maintained during this interim period," said Michael Thompson, a managing director with PricewaterhouseCoopers L.L.P. in New York.

If HIP cannot be rehabilitated, a likely move would be for the state to find a buyer for the

HMO, said Rich Stover, a consultant with Buck Consultants Inc. in Secaucus, N.J.

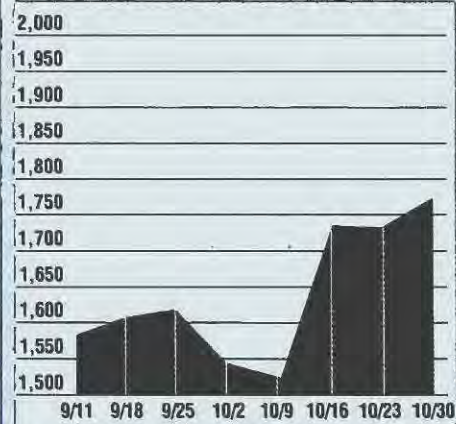
Traditionally, HIP's strength has been in the public entity and multiemployer market, in which another HMO, through acquiring HIP, could gain a foothold.

Aetna USHealthcare dominates the New Jersey HMO market, with about 845,000 enrollees. Other major HMOs in the state are HMO Blue, with 327,000 enrollees, and Oxford Health Plan of New Jersey, with 250,000 enrollees.

While fierce rate competition has hurt HMO results, the condition of the industry is improving as the underwriting cycle has turned and rates are starting to climb.

"Overall, the health of the industry is good. Underwriters are firmly in charge now, and the period of market share underwriting is over," said Sedgwick Noble Lowndes' Mr. Bonsee. **BI**

BI Insurance Index



Base=100 on Dec. 29, 1978

Source: Nordby International Inc. (nordby.com) Boulder, Colo.

Health system, IPA win risk management honors

CHICAGO—The University of Pennsylvania Health System and Arizona Physicians IPA have received this year's Excellence in Healthcare Risk Management Awards from *Modern Healthcare* magazine and MMI Cos. Inc.

The winners of the eighth annual awards were cited for crafting risk management programs that broadened the definition of health care risk while effectively addressing both clinical risk and economic impact.

UPHS was honored in the "hospitals/health care systems/integrated delivery systems" category for its health and disease management program, which focuses on an inpatient clinical pathway strategy and outpatient disease management programs.

Arizona Physicians IPA was honored in the health plan category for its Kids' Clothes Swap Meet, in which parents who bring children in for immunizations or well-child visits are given coupons that can be used toward clothing purchases at swap meets the IPA regularly sponsors.

Modern Healthcare is a sister publication of *Business Insurance*.

Comp pure premium to drop in Oregon

SALEM, Ore.—The average rate that Oregon employers pay for workers compensation insurance will drop by 4.8% in 1999, the state's Department of Consumer and Business Services has announced.

Rate decreases will vary by industry, the department said.

At the same time, a workers comp premi-

For the Record

um assessment will remain unchanged at 7.3% for 1999. The assessment pays for the state's administration of the workers comp system and safety programs.

A "cents-per-hour" assessment will rise in 1999 to 4.2 cents from 3.2 cents for each hour worked by an employee covered under a workers comp policy.

The assessment is used to reimburse employers that return injured employees to work under modified duty. Its payment is split equally between employees and employers. The raise is due to legislation requiring an increase in fund reserves used to pay for benefits when revenues fluctuate.

London market insurers ordered to pay in cleanup

BATON ROUGE, La.—London market underwriters must pay for the cleanup of polluted sites in Louisiana owned by Norfolk Southern Corp., a jury has found.

Last month, the judge overseeing the case also ordered that Louisiana law be applied to 30 sites owned by Norfolk Southern even though only three were located in that state, said Cory R. Cahn, a coverage attorney with the Slater Law Firm in New Orleans who represented the policyholder in the case.

"The jury found that every (comprehensive general liability) insurance policy issued by the London market defendants from 1969 to 1985 was triggered," he said.

The policies provide \$800 million in coverage in successive layers above self-insured retentions ranging from \$1 million between

1969 and 1972 and \$3 million between 1985 and 1986, court papers say.

While the jury decided the coverage issue, the bad-faith portion of Norfolk Southern's lawsuit against the insurers is to be tried sometime later this year or early next year, Mr. Cahn added.

So far, the cleanup bill for the three Louisiana sites totals \$157.5 million. Fifty other insurers involved in the coverage action settled before trial.

OSHA seeking input on preventing needlesticks

WASHINGTON—The Occupational Safety and Health Administration is seeking suggestions on how to better protect health care workers from injuries with contaminated needles.

OSHA is searching for information on the use of safer medical devices, such as substituting needles with other devices, modifying needles to reduce hazards, and incorporating safety features such as retractable-needle syringes designed to limit the risk of such injuries. It also requests strategies that have successfully eliminated or minimized the number of injuries related to contaminated needles and other sharp objects. Contaminated needles can spread the AIDS virus and other illnesses to health care workers.

Responses or comments should be submitted on 3.5-inch diskettes in WordPerfect. They should be postmarked on or before Dec. 8, 1998, and sent to the Docket Office, Docket No. H370A, Room N-2625, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210. Comments also may be submitted at OSHA's Web site: www.osha-slc.gov/html/needle-form.html. **BI**

PCS catastrophe options

As of Oct. 30	Call spread	Price bid/ask	Call spread	Price bid/ask
National Annual 1998	80/100	0.4/1.6	National Annual 1999	40/60 9.2/—
150C	—	—	60/80	4.0/—
National December 1998	10/20	—	100/120	2.0/—
20/40	0.3/—	—	150C	—/6.0
Eastern September 1999	40/60	—	Western Annual 1999	40/60 1.4/—
Southeastern September 1999	40/60	—	80/100	1.0/2.0
			Midwest June 1999	10/20 1.0/1.4
Total volume: 0 Total open interest: 16,253				

For information on PCS cat options, call the Chicago Board of Trade at 312-435-3674.

Source: Chicago Board of Trade

British Issues

Companies	Price pence	P/E	Div. pence	Yield %	52-week high-low
Gdn Royal Exch	285	4.4	13.4	4.8	495-227
Legal & Gen	708	19.4	13.3	2.5	796-450
Royal & Sun	560	13.4	23.6	4.4	825-437

Brokers

Lmbt Fenchurch	99	7.8	5.7	7.1	128-99
Lloyd Thompson	215	12.9	10.5	6.2	231-151
Sedgwick Grp	223	—	7.0	3.1	224-120
Willis Corroon	200	23.1	6.9	4.3	210-116

Note: Prices are Oct. 30 closings; other numbers from Oct. 29.

Source: Nordby International Inc. (nordby.com) Boulder, Colo.

BI Industry Stock Report OCT. 26, 1998, THROUGH OCT. 30, 1998

BROKERS

	Price	Weekly % change	Year to date % change	52-week High	Low	Vol.(000)
Aon Corp.	NYS 62.00	4.53	5.76	75.56	48.25	1412
Accel International Corp.	NYS 38.94	0.32	13.07	41.13	32.19	164
Gallagher Arthur J. & Co.	NYS 42.38	-0.29	23.05	46.56	33.56	73
Hilb, Rogal & Hamilton	NYS 19.00	-3.18	-1.62	19.63	15.38	33
Kaye Group Inc.	NDO 7.00	7.69	5.66	7.81	5.13	2
Marsh & McLennan	NYS 55.50	3.26	11.65	64.31	43.38	2785
Poe & Brown	NYS 38.69	8.03	30.04	42.50	26.69	33
Sedgwick Group PLC	NYS 18.81	1.01	52.79	18.81	10.31	381
Willis Corroon Corp.	NYS 16.56	-1.12	34.52	17.25	10.05	11
BROKERS AVERAGE		1.96	21.15			

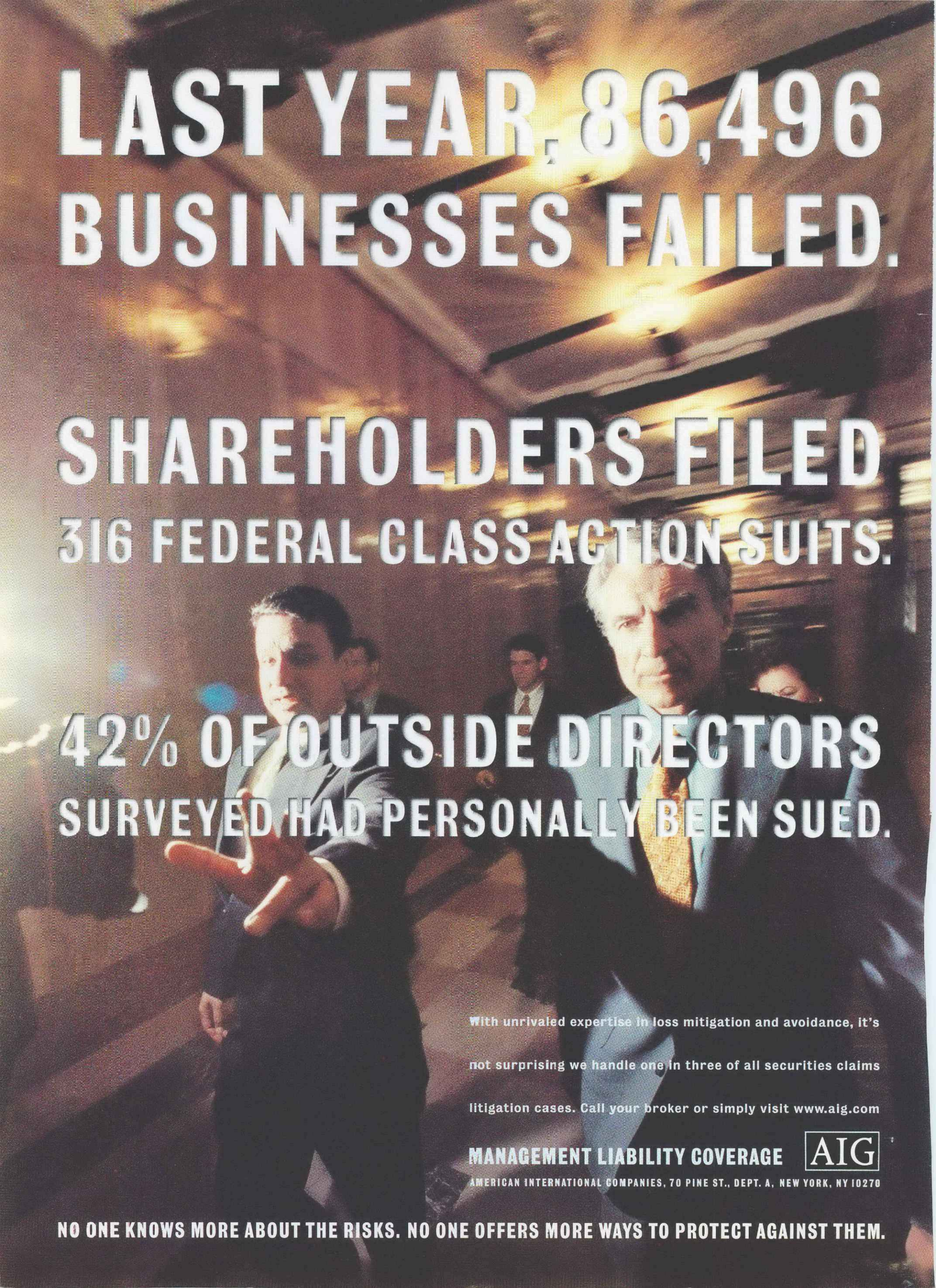
INSURERS/REINSURERS

	Price	Weekly % change	Year to date % change	52-week High	Low	Vol.(000)
ACE Ltd.	NYS 33.88	0.00	5.31	43.00	24.38	1260
Accel International Corp.	NDO 3.13	13.64	-13.79	4.12	2.12	60
Acceptance Insurance Cos.	NYS 19.63	-0.95	-18.86	25.75	17.44	37
AEGON N.V.	NYS 87.38	0.58	94.98	111.31	38.38	190
Aetna Life & Casualty	NYS 74.63	12.75	5.76	89.38	60.19	4048
AFLAC Inc.	NYS 38.13	13.81	49.14	39.00	22.13	4890
Allied Group Inc.	NYS 48.13	0.13	68.12	48.38	25.00	60
Allmerica Financial Corp.	NYS 50.00	9.59	0.13	75.25	38.38	1235
Allstate Corp.	NYS 43.06	2.84	-4.83	52.38	36.06	11596
AMBAC Indemnity Corp.	NYS 58.19	11.10	26.49	65.94	40.13	1313
American Bankers Ins.	NDO 44.69	6.88	-2.72	66.06	30.13	4518
American Financial Group	NYS 35.06	2.00	-13.02	45.75	30.50	239
American General	NYS 68.50	3.49	26.71	75.69	48.56	2160
American Heritage Life Ins.	NYS 20.81	3.74	15.63	26.06	17.06	204
American Indemnity/Fin'l	NDO 12.00	0.00	-13.51	15.38	9.50	14
American International	NYS 85.63	0.00	18.10	102.38	64.88	15066
American Safety Insurance	NDO 9.75	5.41	-20.81	15.06	6.75	99
Argonaut Group	NDO 25.44	3.56	-24.91	37.50	21.25	192
AXA-UAP Group	NYS 56.68	5.45	45.83	71.25	33.50	296
Baldwin & Lyons Inc.	NDO 22.97	6.52	-4.79	28.75	18.50	28
Berkley W.R. Corp.	NDO 30.16	-0.72	-31.27	49.88	25.25	685
Berkshire Hathaway Inc.	NYS 64500.00	2.87	40.22	84000.00	43700.00	2
Capital RE Corporation	NYS 18.31	-11.21	-40.99	38.69	14.75	1466
Capital Transamerica Corp.	NAS 19.00	-2.56	-10.85	26.00	15.00	36
Centris Group Inc.	NYS 9.44	9.42	-15.41	14.81	7.94	176
Charwell Re	NYS 24.88	-1.49	-26.30	34.63	21.94	43
Chubb Corp.	NYS 61.38	-4.10	-18.84	88.81	55.38	4792
CIGNA Corp.	NYS 72.94	2.28	26.94	74.50	50.94	3092

	Price	Weekly % change	Year to date % change	52-week High	Low	Vol.(000)
Cincinnati Financial Corp.	NAS 37.31	1.19	-20.47	47.13	28.88	1031
Citigroup	NYS 47.00	0.80	-12.76	73.50	28.50	63119
CNA Financial Corp.	NYS 41.63	5.05	-2.25	53.25	34.50	228
CNA Surety	NYS 14.06	2.74	-8.91	16.75	12.56	146
EMC Insurance Group Inc.	NDO 10.63	-3.95	-19.81	15.88	9.00	90
ESG Re Limited	NDO 18.50	0.00	-21.28	28.88	12.75	152
Enhance Financial Services	NYS 24.56	-2.24	-17.44	37.56	17.31	424
Everest Reinsurance	NYS 34.44	0.73	-16.52	45.25	28.75	1212
Executive Risk Inc.	NYS 47.50	7.80	-31.96	75.75	35.50	250
EXEL Ltd.	NYS 76.44	0.91	20.61	83.25	61.56	1277
Fremont General Corp.	NYS 49.38	0.00	-9.82	62.13	36.00	277
Frontier Insurance Group	NYS 16.31	8.75	-28.69	33.50	12.19	848
Gainsco Inc.	NYS 6.50	7.22	-23.53	10.00	5.75	148
General RE Corp.	NYS 220.00	2.77	3.77	275.00	192.50	1602
Gryphon Holdings	NDO 16.88	1.89	0.75	19.38	11.38	71
Harleysville Group	NDO 21.38	0.59	-10.94	28.50	17.25	125
Harford Steam Boiler	NYS 40.38	0.47	9.74	59.56	33.25	451
HCC Insurance Holdings	NYS 17.94	-5.59	-15.59	25.75	15.63	306
ING Group N.V.	NYS 49.38	2.33	16.69	76.75	36.06	659
IPC Holdings Ltd.	NDO 23.25	-7.92	-27.77	33.25	19.00	77
Harford Financial Services	NYS 53.13	7.73	13.56	60.00	37.63	2175
LaSalle Re Holdings Ltd.	NYS 23.63	5.59	-33.22	42.94	19.50	82
Life Re Corp.	NYS 93.31	0.74	43.14	93.75	53.00	246
Lincoln National	NYS 75.88	7.91	-2.88	98.88	66.69	2911
MAIC Holdings Inc.	NYS 27.00	-2.26	0.80	30.38	23.94	53
Market Corp.	NYS 148.63	0.25	-4.80	187.00	132.00	65
MBIA Insurance Group	NYS 61.13	10.01	-8.51	80.94	46.06	1479
Meadowbrook Insur. Group	NYS 24.63	2.60	-5.52	35.00	22.31	25
MMI Cos. Inc.	NYS 16.06	-10.76	-36.07	26.50	15.25	81
Mutual Risk Mgmt. Ltd.	NYS 33.81	0.19	12.94	39.94	25.38	416
NAC Re Corp.	NYS 48.44	-0.13	-0.77	55.88	43.50	208
Navigator Group	NDO 15.00	5.26	-20.13	20.75	13.25	22
Nobel Insurance Ltd.	NDO 0.72	-17.86	-94.52	1.00	0.40	117
NYMag Inc.	NYS 21.00	0.00	-23.81	34.25	21.00	14
Ohio Casualty Corp.	NDO 37.75	2.03	-15.41	51.75	33.75	345
United Healthcare Corp.	NYS 19.00	-19.79	-23.36	32.25	17.94	3301
Orion Capital Corp.	NYS 34.19	5.19	-26.38	59.25	28.00	336
Partner Re Ltd.	NYS 39.75	0.47	-14.29	52.50	33.63	479
Penn-America Group Inc.	NYS 9.44	7.86	-53.96	23.00	8.13	115
Pennsylvania Manufacturer's Co	NDO 19.63	2.61	17.16	23.75	16.25	47

		Price	% change	Year to date % change	52-week High	Low	Vol.(000)
Philadelphia Cons. Holding	NDO	23.38	7.47	31.69	24.50	15.50	200
PKRE Corp.	NYS	25.38	9.14	-23.54	35.25	22.25	546
Reliance Group Holdings	NYS	13.94	0.45	-1.33	19.81	10.75	503
Reliastar Financial Corp.	NYS	43.81	3.09	6.37	52.44	29.00	1114
RenaissanceRe Holdings Ltd.	NYS	37.75	-7.93	-14.45	50.75	37.75	155
Risk Capital Holdings	NDO	20.75	-3.49	-6.74	25.50	18.81	76
RLI Corp.	NYS	32.75	-0.38	-17.82	45.63	31.56	37
St. Paul Companies	NYS	33.13	-2.39	-19.27	47.19	28.06	2221
SCOR	NYS	57.25	-2.35	19.90	72.75	42.50	17
SAFECO Corp.	NDO	43.31	0.00	-11.15	56.00	38.25	3119
SCPIE Holdings Inc.	NYS	31.38	5.24	8.42	38.38	26.63	NA
Seibels Bruce Group	NDO	3.75	-6.25	-50.00	8.38	3.72	44
Selective Ins. Group	NDO	18.31	2.45	-32.18	29.25	16.69	348
Terra Nova Insurance Co. Ltd.	NYS	27.75	4.23	5.71	35.00	23.50	73
TIG Holdings	NYS	13.94	8.25	-58.00	34.94	11.63	1870
Tokio Marine & Fire	NDO	57.50	1.77	-0.43	60.13	39.00	149
Torchmark Corp.	NYS	43.75	9.38	3.70	49.81	31.81	1717
Transatlantic Holdings	NYS	78.00	-6.87	9.09	94.50	68.25	329
Travelers Property Casualty	NYS	30.69	-1.60	-30.26	46.06	24.13	2490
Twinnick Group Inc.	NDO	33.25	-0.75	-11.63	41.75	26.75	54
Unico American Corp.	NDO	12.88	-4.19	5.10	18.13	8.88	30
United Fire & Casualty	NDO	37.81	4.31	-14.55	47.00	32.13	16
Unitrin	NDO	71.13	3.27	10.06	74.13	55.56	270
UNJM Corp.	NYS	44.44	-2.34	-18.28	59.63	41.75	5370
Vesta Insurance Co.	NYS	8.00	19.63	-86.53	64.75	5.13	963
Zenith National Ins.	NYS	25.56	2.51	-0.73	30.50	23.00	35
INSURERS/REINSURERS	AVERAGE		1.72	-5.99			

HEALTH MAINTENANCE ORGANIZATIONS							
Foundation Health Systems Inc.	NYS	11.75	24.50	-47.19	32.63	5.88	10415
Humana Inc.	NYS	19.06	17.76	-8.13	32.13	12.25	6624
Oxford Health Plans	NDO	11.81	15.95	-24.10	28.80	5.81	16333
PfizerCare Health Sys.	NDO	72.63	12.60	44.53	88.58	46.75	359
Safeguard Health Enter.	NDO	5.00	-9.09	-62.96	14.13	3.63	46
Sierra Health Services	NYS	23.31	7.80	4.00	27.63	15.88	192
United Healthcare Corp.	NYS	43.56	19.15	-12.33	73.94	29.56	7178
Wellpoint Health Networks	NYS	73.63	17.56	74.26	75.00	38.63	2328
HMOs	AVERAGE		13.28	-3.99			
ALL COMPANIES	AVERAGE		5.65	3.72			



**LAST YEAR, 86,496
BUSINESSES FAILED.**

**SHAREHOLDERS FILED
316 FEDERAL CLASS ACTION SUITS.**

**42% OF OUTSIDE DIRECTORS
SURVEYED HAD PERSONALLY BEEN SUED.**

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