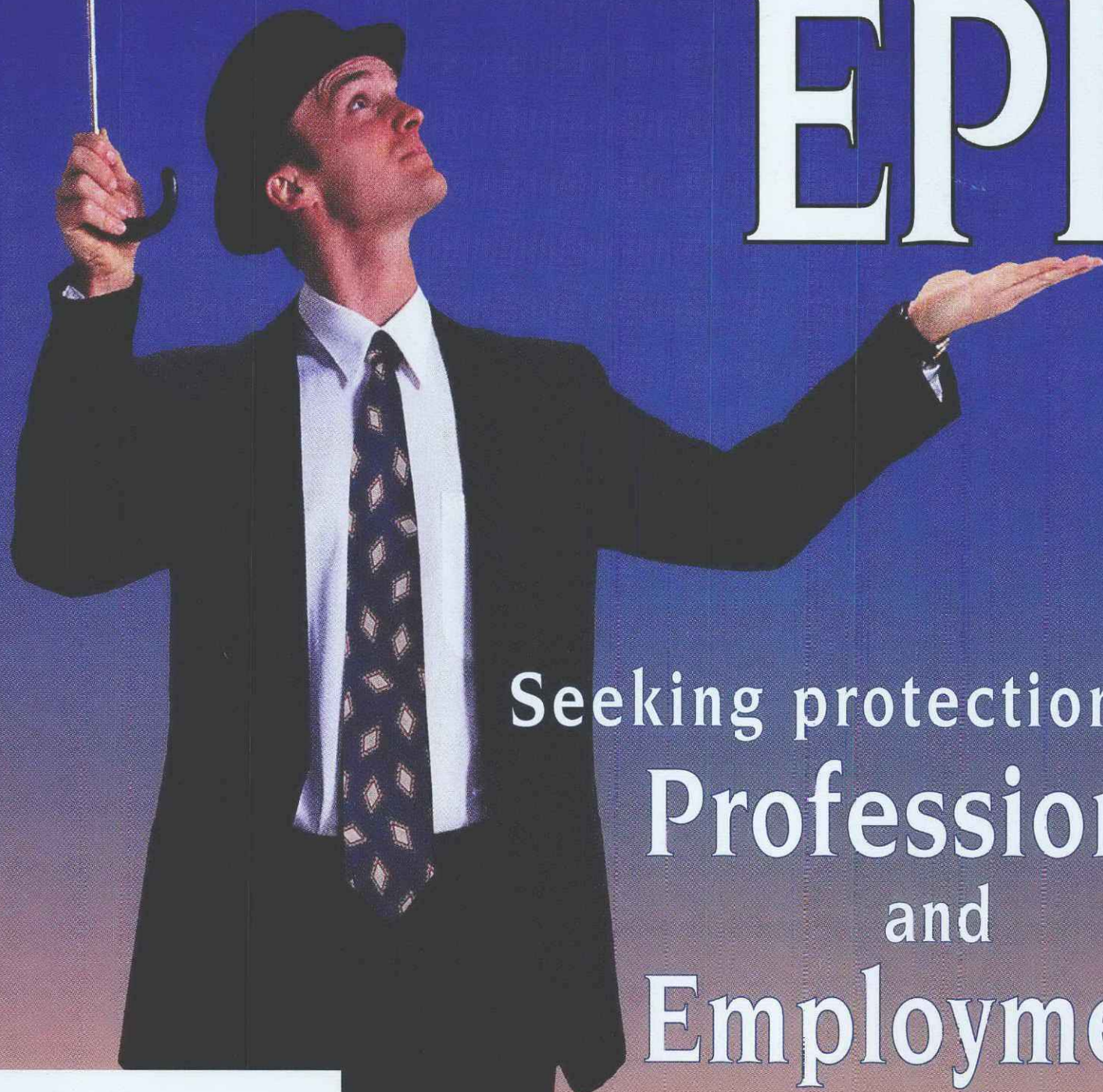
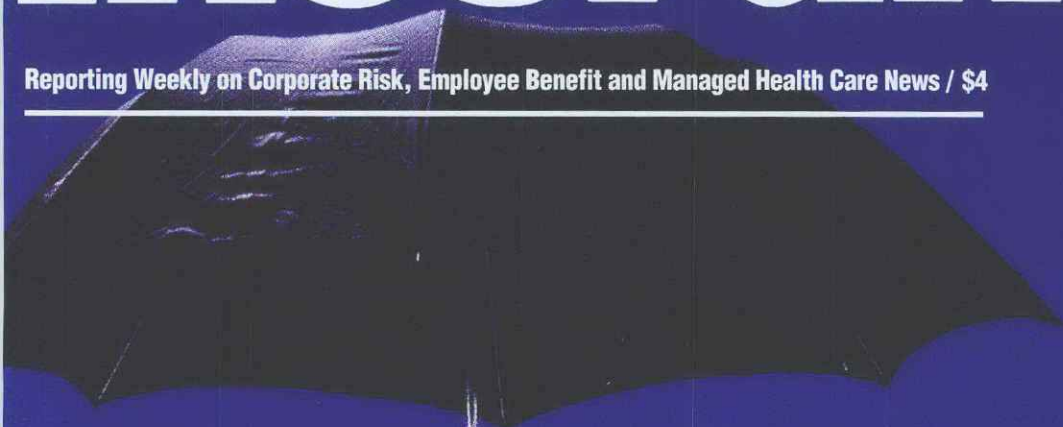


NOVEMBER 6, 2000

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Aon to cut jobs, take charge in new restructuring plan

CHICAGO—Aon Corp. will incur \$250 million to \$325 million in added costs over the next three quarters for a new restructuring plan, which includes the elimination of 3,000 jobs worldwide.

The Chicago-based broker said the 6% cut in its workforce is part of a new "comprehensive business transformation plan," which was announced in conjunction with Aon's nine-month results. The news surprised investors, though, and Aon's stock tumbled 18% on Thursday.

See Updates on next page

Sale of Lloyd's unit caps CGNU refocus

By EDWIN UNSWORTH

LONDON—CGNU P.L.C. is about to complete its withdrawal from the market for large commercial insurance buyers and to focus on small business, life and personal lines.

The final step in the insurer's exit from large commercial risks came with the Nov. 1 announcement that CGNU has agreed to sell Marlborough Underwriting Agency Ltd., its Lloyd's of London underwriting business, to Berkshire Hathaway Inc.

In the last few months, London-based CGNU has announced a number of other sales or planned disposals.



Last month, it sold its U.S. property/casualty business, CGU Insurance Co., at a loss to White Mountains Insurance Group Ltd., which was backed by Berkshire Hathaway, in return for a 30% stake in White Mountains (BI, Oct. 2).

On Oct. 27, CGNU announced that it was putting up for sale its New Zealand general insurance company, State Insurance Ltd. State Insurance has a 19% share of the New Zealand general insurance market, as does another CGNU subsidiary, New Zealand Insurance Ltd., which CGNU is retaining.

Commenting on the State Insurance sale, Philip Twyman, CGNU executive director responsible for international business, said that, although the company has a strong performance record and a leading market position, the sale "is consistent with our focus on shareholder value generation."

See CGNU on page 46

Pension bill kept alive

Tax bill talks postponed until after election

By JERRY GEISEL and MARK HOFMANN

WASHINGTON—Pension reform legislation is still alive, its fate to be decided when Congress returns to Washington after this week's elections for a lame-duck session.

The pension bill seemed doomed last month, when President Clinton said he would veto the tax bill that Republican congressional leaders had fashioned and to which the pension provisions are attached.

Republicans warned that if the

bill, which the House passed but the Senate did not act on, was vetoed there would not be enough time before the session ended to try to work with the administration on a compromise bill.

That scenario did not develop because Republicans decided not to send the tax bill to President Clinton prior to the elections, and instead to return sometime this month to complete action on it.

That decision keeps alive the tax bill, which, in addition to the pension provisions, includes a provision that would require the Treasury Department to study the

taxation of offshore insurers with U.S. affiliates and would extend for two years a 1996 law that allows small employers to offer tax-favored medical savings accounts to employees.

The lame duck session also could allow time for the administration and congressional Republicans to negotiate a compromise on a controversial Occupational Safety and Health Administration ergonomics standard.

The last time both the House and Senate met for a special session after an election was in 1994.

See Lame duck on page 49

But judge decries underwriting 'failure'

Names lose Jaffray case

By SARAH VEYSEY

LONDON—Lloyd's of London was handed a major victory last week when it won the *Jaffray vs. Lloyd's* fraud case, but some names may seek an appeal, citing a recent U.K. human rights law.

Before a packed courtroom at the Royal Courts of Justice in London, Mr. Justice Cresswell ruled that Lloyd's was not guilty of making fraudulent misrepresentations to names and potential names over the period from 1978 to 1988.

The judge added that he hoped this ruling would mark an end to litigation against Lloyd's on the matter of asbestos-related losses.

LLOYD'S



"It is high time that Lloyd's and related litigation here and overseas comes to an end," he said.

"This is a landmark decision that closes a distant and troubled chapter in Lloyd's history," said Lloyd's Chairman Max Taylor. "For five months during the trial, the names were given every op-

portunity to air their grievances in court. It has been a thorough, lengthy and exhaustive process, culminating in the judgment we were always confident we would receive," Mr. Taylor said.

The suit, which involved 216 names—individual investors at Lloyd's—was originally filed by property developer Sir William Jaffray, who launched the case as a countersuit to Lloyd's debt-recovery proceedings related to asbestos losses (BI, July 24; June, 19). The names charged that senior figures at Lloyd's had made false representations in brochures, global reports and accounts and had concealed from

See Jaffray on page 47



PHOTO: AFP

Insurance will cover Singapore Airlines for the Oct. 31 crash despite indications that the pilot tried to take off on the wrong runway.

Higher rate hikes likely after crash of Singapore Air

By DAVE LENCKUS

TAIPEI, Taiwan—Already facing hull and liability rate hikes of up to 30% this fall, airlines with checkered loss experience can expect even stiffer rate hikes in the aftermath of the crash of a Singapore Airlines Ltd. jet last week.

Singapore Airlines, however, will escape any rate hikes for about 20 months under a long-term program it negotiated, aviation insurance sources say.

At least 81 people were killed and scores more were injured at Taiwan's Chiang Kai-shek International Airport in Taipei late at night on Oct. 31, when Singapore Airlines Flight SQ 006 crashed and burst into flames on takeoff.

The pilot, who elected to take off during a driving rainstorm that had moved into the area in advance of an approaching typhoon, turned onto a closed runway by mistake and plowed the jet into parked construction equipment.

The flight, which was en route to Los Angeles, was carrying 159 passengers of various nationalities and 20 crew members.

At least 23 of the 47 U.S. citizens on board the plane were killed, including five employees of Schaumburg, Ill.-based Motorola Inc.

The jet was a 4-year-old 747-400 manufactured by Boeing Co. of Seattle. It was valued at \$124 million.

The airline immediately defended the captain's decision to take off during a rainstorm, saying that weather conditions at the airport "were within safe operational limits." The airline also noted that the captain, Chee Kong Foong, who survived the crash, was familiar with the airport.

But two and one-half days after the crash, the airline accepted the Taiwan's Aviation Safety Council's findings that the pilot had attempted to take off on the wrong runway, which runs parallel to the open runway he should have used.

"It is critical that we understand exactly what happened and precisely what made the cockpit crew believe that they were on the correct runway," said Singapore Airlines Deputy Chairman and Chief Executive Officer Cheong Choong Kong. "We will be looking at human factors, and also what could be done to make airports safer."

"This is a terrible tragedy, and we are deeply sorry," he said.

Pilot error would not limit insurance coverage of the airline's crash-related losses. If the pilot's use of the wrong runway was at the direction of air traffic controllers, the airline's insurers likely would subrogate against the airport to recover their losses.

The airline said that it would provide immediate relief of \$25,000 to the family of each

See Crash on page 50

Aon to cut 3,000 jobs, retool

Continued from previous page

In a statement, Aon said its plan would take advantage of previous investments in technology that have produced improved processing, accounting and administrative systems.

"We have anticipated the changing needs of our clients, and now is the right time to transform our business practices," Patrick G. Ryan, chairman and chief executive officer, said in a statement.

The plan will be implemented over the next five quarters. Most of the restructuring charge will be taken in the fourth quarter of 2000 and the first quarter of 2001, Aon said.

Major steps in the plan include: implementing a proprietary policy management and accounting system and then redesigning the business processes around that within the U.S. retail brokerage network; finalizing an outsourcing agreement for information technology infrastructure and telecommunications in the United Kingdom; creating a single services infrastructure across the United Kingdom to reduce administrative costs; and leveraging existing technology investments across the global network.

A majority of Aon's restructuring charge will cover costs associated with the elimination of approximately 3,000 jobs, mainly from its U.S. and U.K. brokerage segments.

For the nine months that ended Sept. 30, brokerage and consulting revenue, which includes investment income, increased 6.1%, to \$3.72 billion, compared with the same period in 1999. Total revenues, including Aon's underwriting operations, improved 4% to \$5.41 billion. Net income rose 15% to \$391 million.

After Thursday's announcement, Aon's stock dropped 18.3%, closing at \$33.19. On Friday, Aon stock closed at \$30.06, a 9% drop from the day before.

Blanch reports steep losses

DALLAS—E.W. Blanch Holdings Inc. jolted stockholders with announcements of a series of write-offs, a third-quarter net loss and a possible sale of the company.

Blanch, the world's fourth-largest reinsurance broker, reported a 9.6% revenue decline for the first nine months, to \$162.1 million, from the same period in 1999, and a 30.2% drop in third-quarter revenues, to \$41.1 million, compared with last year's third quarter.

Net income plummeted to \$1.5 million for the first nine months, from \$28.1 million in the year-earlier period, while the third quarter produced an \$8.8 million net loss, compared with a \$10.8 million gain in 1999's third quarter.

Included in the results is a \$7.5 million reversal of previously reported revenues, stemming from a "third-quarter renegotiation" of a reinsurance deal Blanch brokered in the second quarter. While Blanch officials have declined to identify the deal's participants, market observers speculate that the placement was to cover Reliance Group Holdings Inc. in its now-abandoned acquisition by Leucadia National Corp.

Also included in the third-quarter numbers are a \$3.2 million reversal of revenues related to reinsurance placements through the ill-fated Uncover Managers Inc. workers compensation facilities, a \$2.9 million write-down of a Blanch investment, and a \$1.6 million write-off related to two Blanch assets that the broker said are now unrecoverable.

In reporting the results, Blanch also announced an "expense realignment program," under which it will divest nonperforming and non-core assets and cut operating costs and corporate expenses. The program, details of which are still to be worked out, could produce a fourth-quarter restructuring charge, Blanch officials said.

"We are taking difficult actions to address contingencies and past issues to position the company for long-term growth and profitability," Chairman and Chief Executive Officer Ted Blanch said in a statement.

Meanwhile, Blanch said it has hired investment banker Lazard Freres & Co. L.L.C. to help it "explore strategic alternatives," including a possible sale.

"The company is currently in discussions which may lead to a business combination or sale of the company," Blanch reported, adding, "there can be no assurance that any transaction will occur."

Blanch shares closed Friday at \$15.13, down nearly 8% from Thursday's close.

Rainbow/PUSH targets insurance

ORLANDO, Fla.—The Rev. Jesse Jackson is bringing his Rainbow/PUSH Coalition to the insurance industry.

In addressing members of the Independent Insurance Agents of America Inc. last week in Orlando, Fla., the civil rights leader said the insurance industry will be a "major focus" for the Rainbow/PUSH Coalition's Wall Street Project beginning in January. The three-year-old Wall Street Project uses research, education and negotiation to lobby corporate America to hire and promote more minorities, to name more minorities to corporate boards and to award more contracts to minority businesses.

During his address to the IIAA, Rev. Jackson challenged the insurance industry to reach out to minorities and become more inclusive.

"Has the insurance industry caught on yet that diversity means more market, more talent, more money and growth?" he asked the audience rhetorically. "Has the insurance industry caught on yet that expansion is value added? Has it caught on yet that red lining is another way of saying 'I fight for the right to limit my market?'"

As part of its own effort to encourage diversification, the IIAA hosted its annual convention in partnership with the National African American Insurance Assn. and the Latin American Assn. of Insurance Agencies.

See Updates on page 51

California law to broaden definition of 'disability'

By JUDY GREENWALD

SACRAMENTO, Calif.—A little-noticed California law that takes effect in January will significantly increase the number of employees who could be considered disabled and make it more difficult for employers in the state to accommodate them.

Consultants, attorneys, employers and others say A.B. 2222, which was signed into law by Gov. Gray Davis on Sept. 30, will force California employers to re-

evaluate their hiring practices and more carefully document efforts to accommodate disabled employees. In particular, it will complicate procedures for multistate employers, because other states' disability laws are generally consistent with the federal Americans with Disabilities Act.

Some observers also describe the state's disabilities law as a major boon to the plaintiffs bar that will dramatically increase the number of suits filed against employers and, by exten-

sion, raise their legal costs.

"They're opening a Pandora's box," said Tom Martin, speaking on behalf of the Employers Group, a Los Angeles-based non-profit human resources organization.

While the employer already in California is "going to have to live with it," any employer considering moving to the state should "think long and hard whether they want to walk into an environment like this," said Mr. Martin, who is insurance and safety manager for the Pomona, Calif.-based Coast Foundry & Manufac-

See California on page 51



Contract to fund future third-party maintenance

Finite risk Superfund deal set

By DAVE LENCKUS

REDDING, Calif.—One of the largest-ever Superfund settlements with a single potentially responsible party will be financed largely by finite risk insurance—an arrangement that is unique in Superfund cases but one that may become a popular pollution-liability financing tool.

Under a proposed settlement with Stauffer Management Co. of Wilmington, Del., finite risk insurance would finance the \$201 million estimated cost of hiring a professional environmental contractor for 30 years to operate a water treatment plant designed to purify some waterways heavily contaminated by acidic drainage from the Iron Mountain Mine site near Redding, Calif.

An endorsement to the policy would provide a government agency in 30 years \$514 million more to cover the cost of protecting the environment from acidic

drainage from the mine in perpetuity.

Stauffer Management's contribution under the settlement would total approximately \$160 million. Most of that amount—about \$139.4 million—is earmarked for obtaining the finite risk coverage from American International Specialty Lines Insurance Co., a subsidiary of American International Group Inc. of New York. Marsh Inc. of New York brokered the coverage.

The settlement, which Stauffer Management reached late last month with the U.S. Environmental Protection Agency and several other federal and California agencies, is subject to federal court approval, following a public comment period after the accord's recent publication in the Federal Register.

Brian Spiller, president of Stauffer Management, said he hopes the deal is finalized by the end of the year.

See Mine on page 28

Reinsurance market hardens

Baden-Baden meeting finds firmer resolve to raise rates

By CAROLYN ALDRED

BADEN-BADEN, Germany—It is no longer a question of whether reinsurers will be able to raise rates at year-end renewals but how high they will go.

Most insurance companies now recognize that they will have to pay more for reinsurance capacity, particularly property catastrophe coverage, and reinsurers now are more confident of making higher rates stick than they were even a few weeks ago, during the Rendez-vous de Septembre in Monte Carlo.

At least one ceding company executive says that insurers will pass those higher costs along to risk managers—especially those at multinational companies—renewing at year-end.

Those were among the messages from attendees of this year's reinsurance gathering in the German spa town of Baden-Baden. Unlike the Monte Carlo gathering in September, which generally is more social, the Baden-Baden meeting attracts hundreds of European reinsurers and insurers who are prepared to get down to business and negotiate actual con-

tracts. As a result, the October meeting often provides a better indication of how reinsurance renewals will go.

"There is a big difference between Monte Carlo and Baden-Baden. In Monte Carlo, we talk, we pass on messages and gauge reaction. In Baden-Baden, we put it into practice," said Pierre Champvillard, managing director of SCOR Reassurance in Paris, responsible for non-marine reinsurance in Europe, Africa and South America.

This year, the mood of under-

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● We hope that after Election Day the new Congress and administration can work together better than the outgoing ones, this week's editorial says. **PAGE 8**

● The Self-Insurance Institute of America sees a continued threat from federal legislation. **PAGE 20**

● In a Perspective, Dilip Khatri and Roy Fewell discuss the merits of international building codes. **PAGE 27**

● The 9th U.S. Circuit Court of Appeals has set a limit on claims alleging hostile work environments. **PAGE 32**

● New York employers, health plans and physicians are in talks to improve health care quality. **PAGE 33**

● Insurers are tallying losses from storms that swept across Britain and Northern Europe. **PAGE 43**

● Lawmakers are asking the Labor Department to delay new health care claims-handling deadlines. **PAGE 47**

● A trade group warns of state delays in extending insurers' deadline for complying with privacy law. **PAGE 48**

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Professional and Employment Risks

D&O liability market showing signs of hardening

By GAVIN SOUTER

The directors and officers liability insurance market appears to be going through a transition.

Rates are holding steady or, in some cases, increasing. Coverage terms are rarely being broadened, and insurers are more frequently restricting the amount of capacity they are willing to grant problematic accounts.

It is still too early to call the D&O market "hard," but many of the signs are pointing that way, brokers and insurers say.

And the huge increase in exposures and losses over the past several years make rate increases justifiable, insurers say, noting that the run-up in the market capitalization of many companies and the increasing number of securities-related lawsuits has not been

reflected in the rates charged for D&O coverage.

"We are definitely seeing a hardening in pricing and coverage terms," said Paul Schiavone, vp and chief underwriting officer of National Union Fire Insurance Co. of Pittsburgh, Pa., a New York-based unit of American International Group Inc.

At the beginning of 2000, D&O rates stopped falling and the number of new coverages being offered slowed, Mr. Schiavone said.

Now, insurers are imposing rate hikes on many policyholders, particularly those conducting initial public offerings as well as companies that are involved in telecommunications, other technology companies and health care, he said.

"They have definitely seen an increase in rates and a status quo

on coverage," Mr. Schiavone said.

"We are seeing things beginning to tighten...Some accounts may see 10% to 15% (hikes), and others may have larger increases, so it depends on the account; but we are not really seeing anything staying the same or going down," said John Kuhn, president of Kemper Insurance Cos.' Financial Insurance Solutions unit in Berkeley Heights, N.J.

Kemper entered the directors and officers liability insurance market on Nov. 1 last year. Mr. Kuhn, who previously was chief underwriting officer at Chubb Executive Risk, brought Greg Tully and Michael Ferguson with him to Kemper from Chubb Executive Risk to set up the unit, he said. The insurer offers \$50 million in limits for primary and excess D&O coverage.

See D&O on next page

Largest D&O underwriters

Based on 1999 gross premium volume for primary directors and officers liability business

Insurer	U.S. market share
American International Group Inc.	29%
Chubb Executive Risk Inc.	23
Lloyd's of London	14
AEGIS Insurance Group	7
CNA Insurance Cos.	4
Admiral Insurance Group	2
Genesis Insurance Co.	2
Great American Insurance Cos.	2
Reliance Insurance Group	2
Zurich U.S.	1

Source: Tillinghast-Towers Perrin

Web-based companies face a host of risks

Dotcoms finding coverage in E&S market

By ROBERTO CENICEROS

Internet-based operations face a variety of professional liability exposures that create special risk management and insurance purchasing challenges.

Among those challenges are security against hackers, protecting the privacy of customer data, infringement of intellectual property and stock volatility, which attracts plaintiffs attorneys targeting the high-tech industry. These are also among the exposures putting upward pricing pressure on errors and omissions policies and directors and officers insurance for high-tech companies, insurers and brokers say.

The size of the company, and whether it is an established entity venturing into e-commerce, or is a new dotcom entity, can be factors that influence those exposures.

Dotcoms tend to be small companies or start-up operations that do not have a risk manager or dedicated insurance purchaser. Much of their energy usually is focused on getting their business operations up and running rather than on insurance concerns, brokers and insurers say.

Unlike larger corporations that can purchase coverage for Internet-related losses from admitted-market insurers, dotcoms must rely more on the surplus

lines market. That factor is likely to hold true at least until more is learned about the potential losses associated with dotcom companies, said Mary Bieker, senior vp of insurance operations in Parkton, Md., for surplus lines insurer INSUREtrust.com L.L.C. Insurers currently have little loss history for the dotcom world and Internet losses.

While first-party and third-party losses from hackers breaking into Internet sites remain among the most pressing concerns facing any company conducting business over the Internet, a breach of computer security often is excluded

See Dotcoms on page 19

INSUREtrust.com
Insure and Secure the Net

INSUREtrust.com pioneered the field of e-business risk management. Our Total LifeCycle Risk Management Solutions include loss control consulting and network security assessment services along with the world's first suite of back-office insurance policies. Combined into a multidisciplinary risk management process, INSUREtrust.com delivers the best value solution to effectively insure and secure the net.

Meet Steve Hesse, CEO of INSUREtrust.com, on CNET Radio
• Detail of Online Attacks
• Online Banking Security

Surplus lines insurers such as INSUREtrust.com are offering liability coverage to smaller Internet-based entities.

More employers putting EPL coverage to work

Rise in lawsuits changing attitudes toward risks

By SALLY ROBERTS

Employers are taking employment practices liability insurance off the back burner.

Whereas just a few years ago it was rare that a risk manager would purchase EPL insurance coverage, today, most, if not all, employers have at least considered the possibility of transferring their employment-related risk to the insurance marketplace. And a majority of them are deciding to do so, EPL experts say.

This attitude shift is a result of better education and understanding of employment-related risks, as well as the continued rise in the frequency and severity of discrimination and harassment lawsuits against employers nationwide, they say.

Kansas City, Mo.-based Interstate Brands Corp. is one of the latest examples. The Fortune 500 baking company, which has no EPL coverage, was hit with a \$132 million race discrimination verdict in August—\$120 million of which was punitive damages (BI, Aug. 7). A state court judge later reduced the damage award, which IBC is appealing, to \$27 million.

EPL experts do not see the pace of these types of employment practices suits slowing down soon. In fact, they expect even more claims to be filed, as the plaintiffs' bar continues to aggressively enter the employment practices market.

The legal environment is not only prompting risk managers to consider purchasing the coverage but it also has some EPL insurers taking a hard look at their policies.

While insurers and brokers say that rates in the EPL market lag behind the general commercial liability marketplace and remain stable, some say that underwriters cannot continue to offer cheap, low-deductible policies. As a result, some EPL insurers are looking for increases in rates and attachment points.

Overall, EPL experts say that risk managers have come full circle from a few years ago.

"I've met with hundreds of risk managers about this coverage...and there has been a tremendous shift in attitude," said Jeffrey P. Klenk, senior vp-executive liability for Travelers Insurance Co. in Hartford, Conn. "It's shifted from, 'This can't happen to me'...to 'It doesn't matter what the culture is; every employee is a potential plaintiff,'" Mr. Klenk said.

Clive Tobin, president of XL Insurance Ltd. in Bermuda, said that, while EPL was "on the periphery" three years ago, "risk managers do see EPL today as a part of their standard menu of coverage that they need to be considering."

Paul Cunningham, vp-EPL division of Lexington Insurance Co., said that the Boston-based subsidiary of American International Group Inc. is selling more EPL policies today than ever before.

While Lexington had been successful over the years in selling its EPL policy, Mr. Cunningham said, "the hit ratios were certainly not what they are today."

Gina Higgins, managing director and EPL practice leader for FINPRO, Marsh Inc.'s fi-

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EPL interest growing in Europe page 15

Health care liability rates rising page 17

Spotlight Editors: Gavin Souter and Mark A. Hofmann

D&O

Continued from previous page

"The market is in the midst of a correction," said Steven Anderson, a managing director at Marsh Inc. in New York.

Insurers are sitting on a backlog of claims, which makes D&O business marginally profitable at best, he said.

Many policyholders are being quoted single-digit increases, while those with poor loss experience or those involved in high-tech or health care business are being quoted increases of up to 35%, Mr. Anderson said.

Rates have to increase, said David McElroy, senior vp at Hartford Specialty, a New York-based unit of the Hartford Financial Services Group Inc.

The losses from 1997, 1998 and

1999 are making those years far less profitable than D&O business was in the early 1990s, he said.

Technology companies, which are particularly volatile risks due to shareholder actions, should expect 10% to 15% rate increases when they renew, and large public companies should expect no further rate decreases and, perhaps, some modest increases, Mr. McElroy said.

"It's still competitive, but we are managing to get some rating increases," said Giles Stockton, the active underwriter for Janson Green Ltd. syndicate 79 at Lloyd's of London.

The increases were first seen at high-tech and IPO risks, but now they are being imposed on most publicly traded corporations, he said.

Lloyd's underwriters are generally seeking 10% to 25% increases for publicly traded policyholders, Mr. Stockton said.

"But there are still a lot of competitors in the U.S.," he said.

But D&O reinsurers everywhere are seeking rate increases, and that will, in turn, lead to even more pressure on insurers to increase rates, Mr. Stockton said.

There is increased pressure on the part of insurers to raise rates across the board, particularly insurers in London, said Fred Podolsky, a senior vp at Willis North America Inc. in New York.

London underwriters are looking for increases of up to 20% for most risks and are pushing for hikes of up to 40% for accounts that have suffered losses or have had suits filed against directors and officers, he said.

"They are not being completely successful, and there have been a number of accounts that have left London," Mr. Podolsky said.

London-based underwriters were

particularly aggressive in the pursuit of high-tech accounts in the mid-1990s and they have now suffered large losses on that portfolio, so they are under more pressure to raise rates now, he said.

"In the U.S., there is still healthy competition for good or even marginal accounts," Mr. Podolsky said.

Large public companies with exceptional losses are seeing unchanged D&O rates, or at most 3% to 6% increases. And a few accounts are still seeing some decreases, he said.

Companies with management or structural problems are seeing demands for 5% to 10% rate increases but insurers are not always successful in making those increases stick, Mr. Podolsky said.

But companies going through initial public offerings are seeing some dramatic increases, particularly for

multi-year deals, he said.

Two years ago, IPO policyholders would have been charged 2.1 times the annual premium for D&O coverage, whereas now, the premium is between 2.8 and 2.95 times the annual premium, and many IPOs are not able to obtain multi-year deals, Mr. Podolsky said.

And reinstatements on those deals that have been agreed upon also have increased dramatically, he said. A year ago, a reinstatement premium would be about 150% of the annual premium, whereas as today, it is between 250% and 275%.

Policyholders will likely find it hard to find attractively priced multi-year policies, agreed Mr. McElroy of the Hartford.

Up until last year, multi-year deals had been popular among policyholders as they wanted their coverage to span the transition from 1999 to 2000 to avoid coverage issues related to Year 2000 losses, Mr. McElroy said.

"Now underwriters are looking at multi-year deals and saying 'How can I assess a dynamic corporation over three years?' so they want to get back to annual deals," he said.

Last year, the D&O book now handled by The Hartford consisted of about 35% multi-year deals, but that likely will fall to 20%, Mr. McElroy said.

The Hartford greatly expanded its involvement in the D&O market through the purchase of the renewal rights to the D&O business of Reliance Insurance Co. Also, Mr. McElroy and about 160 other former Reliance staff joined The Hartford.

The Hartford has renewed about \$250 million of the Reliance portfolio and has a total \$450 million of former Reliance business in force due to multi-year deals, Mr. McElroy said.

Three-year single aggregate policies with reinstatements have become more difficult to place, said Mr. Anderson of Marsh.

And those multi-year policies that can be obtained are experiencing significant rate increases, he said.

Whereas prior to the hardening, multi-year premiums were in the range of 2.25 to 2.5 times the annual premium, now they are 2.7 times the annual premium and more, Mr. Anderson said.

"Insurers believe that losses will continue to trend upwards and they don't want to underwrite out for two to three years without being able to underwrite each year," he said.

Insurers are particularly keen to increase rates for publicly quoted companies due to the significant increase in the size of settlements and claims in that sector over the past several years, said Tony Galban, vp and D&O underwriting manager at Chubb Executive Risk, a Simsbury, Conn.-based unit of Chubb Corp.

The run-up in the stock market in the mid- to late 1990s led to a huge increase in the market capitalizations, which in turn led to larger claims and settlements due to larger swings in share prices, he said.

"Companies can lose billions of dollars in value in a day and that has led to larger settlements," Mr. Galban said.

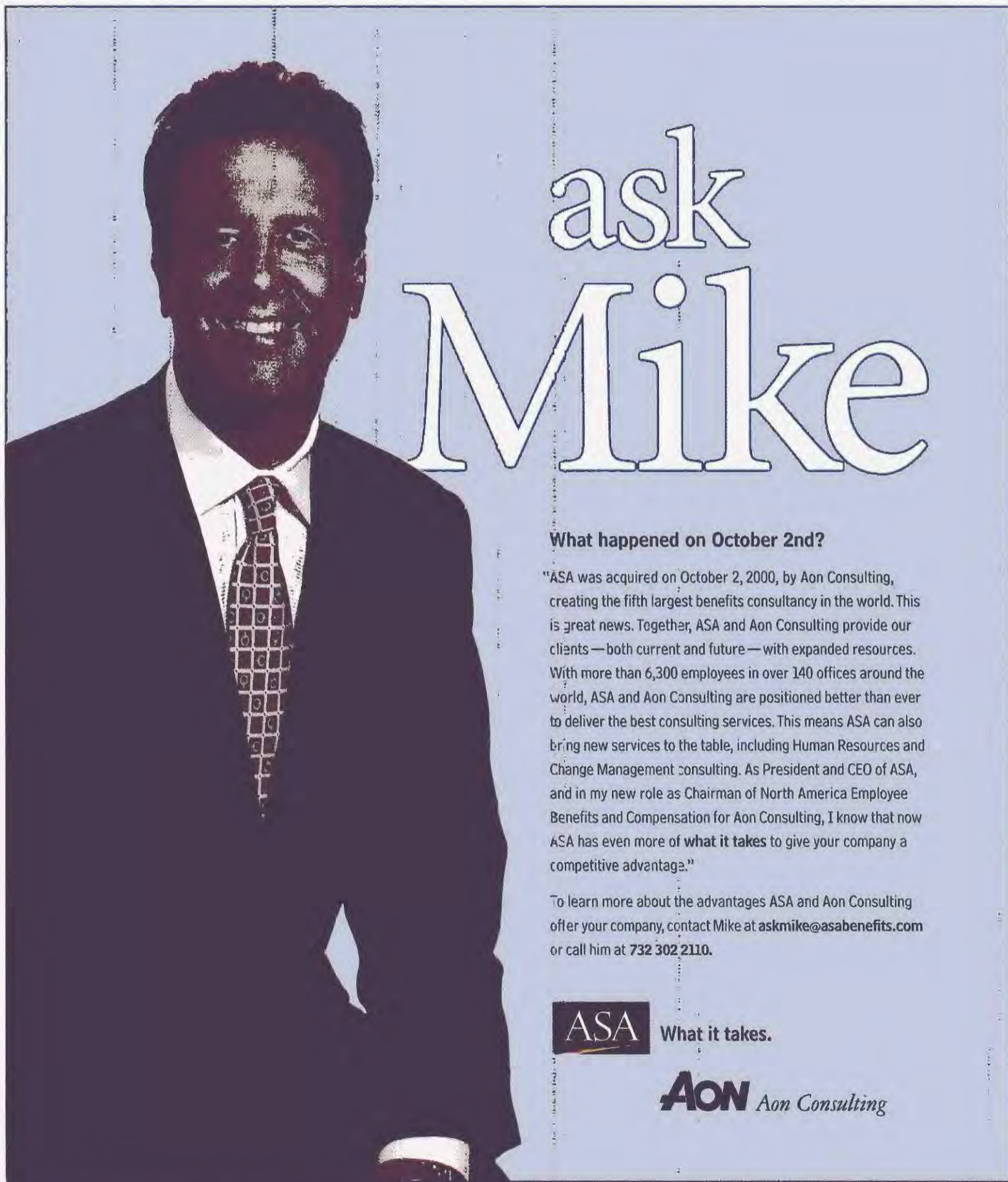
In addition to increasing rates, insurers are limiting the amount of capacity they are willing to offer policyholders with a poor loss history, he said.

"We are seeing increases now. We've gone through the time when we just talked about them," Mr. Galban said.

But the hardening market will not be like the last hard market for D&O in the mid-1980s, when much of the capacity dried up and rates increased sharply, he said.

"I don't think it will be the same. It'll be much more gradual this time,"

See D&O on page 6



ask Mike

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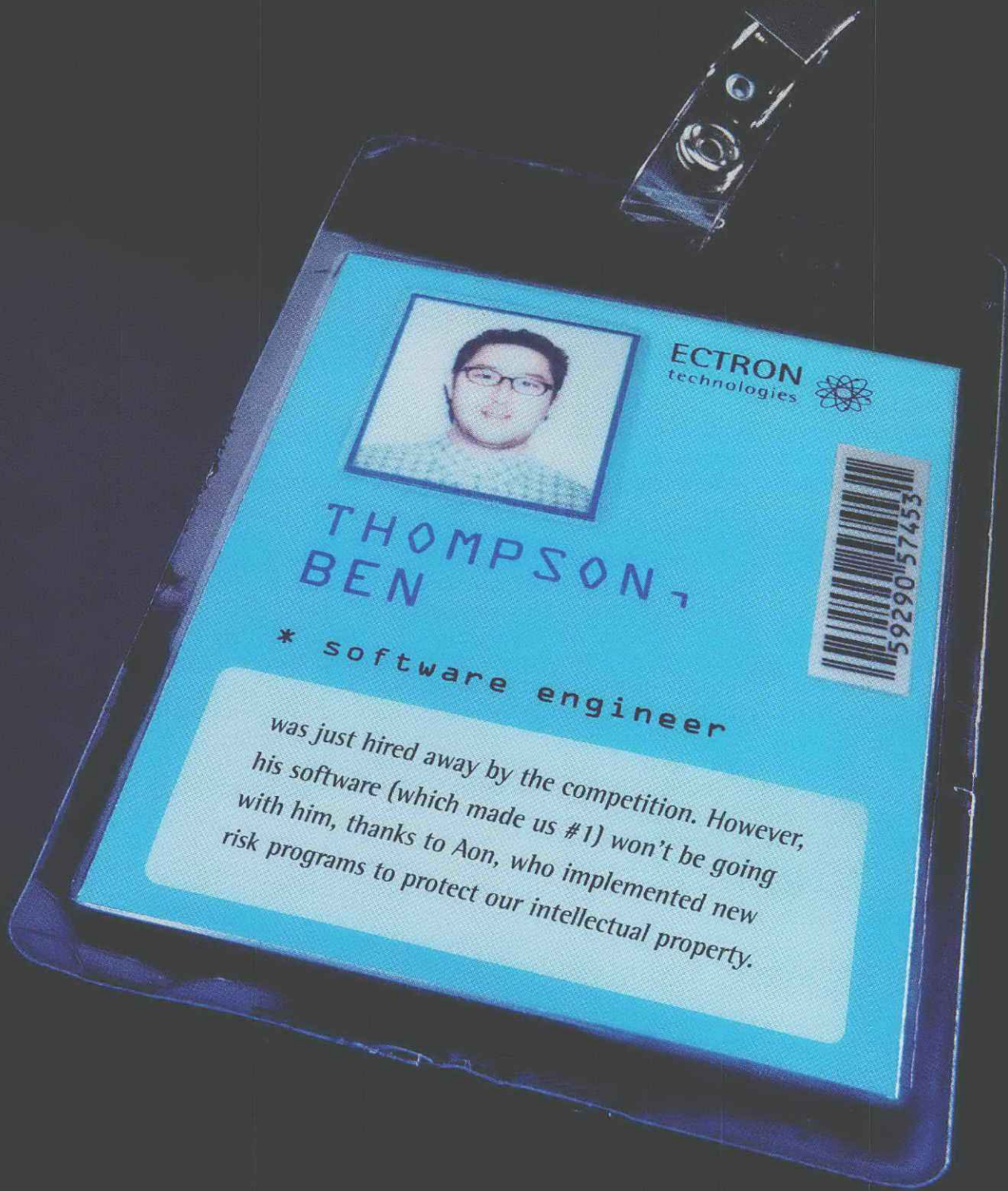
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OPINIONS

Cooperation needed on Hill

WHILE WE DON'T know the outcome of this week's elections, we hope the result will be a Congress and an administration that can work together better than the outgoing politicians.

The partisan squabbling between the parties and the White House that has marked much of the 106th Congress has stymied progress on several legislative issues that truly would have benefited employers and employees alike. The most recent example of this lack of negotiation and progress is the tax bill, which contains pension reform measures that would encourage more employers to offer retirement plans.

Not so many years ago, congressional Republicans and Democrats and the Executive Branch were able, after much negotiation and debate, to pass legislation that truly was in the national interest.

To take one example, congressional negotiators from both sides of the aisle, as well as the Clinton administration, were able to forge a legislative package that became the Health Insurance Portability and Accountability Act, the 1996 law that curbed the use of pre-existing medical condition exclusions. That measure, which makes it easier for employees to change jobs without fear of losing coverage for current medical problems, was shepherded through Congress by Sens. Nancy Kassebaum, a moderate Republican from Kansas, and Edward Kennedy, the liberal Massachusetts Democrat.

Passage of that measure was by no means easy: Conservative Republicans wanted a provision in the HIPAA bill to allow all employers to offer tax-favored medical savings accounts; the Clinton administration was opposed. Serious but good-faith negotiating occurred and a compromise was struck allowing MSAs only for small employers. Thanks to that give and take, the entire measure passed.

Today, though, the atmosphere in Washington is so poisoned that the kind of negotiation among the two major parties and the Executive Branch that resulted in the passage of HIPAA is an exception rather than the rule.

Consider the recent wrangling over the tax bill, which contains numerous provisions to encourage employers to offer pension plans. The stalemate over this measure has resulted in Congress having to return in a lame duck session after the elections to try to break its deadlock with the administration.

If you imagined that this postponement occurred after administration and congressional Democrats and Republicans and their staffs arduously worked to iron out details and find compromise, you couldn't be more wrong. Rather, the Republican leadership presented the adminis-



tration with a proposal and in so many words said, "Take it or leave it."

Excluding the other political party and the administration from the process doesn't seem logical, if one's goal is to get a law enacted.

The Republican leaders aren't the only ones guilty of practicing the politics of exclusion, however. The Clinton administration itself laid claim to that first in 1993 when it tried to assemble a sweeping health care reform bill. That effort failed for the simple reason that the proposal's approach—essentially putting government in charge of the nation's health care delivery system—was dead wrong and lacked broad support. The chief reason the administration came up with such a fatally flawed approach is that it closed its doors to those who might have contributed views that differed from its own.

Neither party has a monopoly on good ideas. Bipartisanship and negotiations in good faith not only result in better legislation but also legislation that can win final approval.

The upcoming lame-duck session and the pending tax bill would be a good starting point for a return to an era of negotiation. That bill—whose pension provisions, with higher contribution limits and a reduction in administrative hassles for employers, truly are in the national interest—should not be left to die.

LETTERS

Focus technology on service, not sales

To the editor: Your Oct. 16 commentary, "A marketing idea for clothes-minded," regarding Progressive Insurance Co.'s research, confirms what I have postulated as many in the industry get caught up in e-commerce fever. The hard reality is that the typical buyer of commodity insurance prod-

ucts does not give a rip about the product.

Accordingly—as Progressive determined—buying underwear receives more consumer price attention than does buying insurance. Constructively, I believe the industry needs to move away from its infatuation with e-commerce sales and put the

same capital and resources into technology as a service and communication tool that may also drive some modest cost efficiencies.

Timothy J. Cunningham
IMCG
Chicago

OSHA violates mandate with proposal

To the editor: In your Oct. 23 issue, Assistant Secretary of Labor for the Occupational Safety and Health Administration Charles N. Jeffress wrote a glowing endorsement of OSHA's proposed ergonomics regulation that the agency is planning to promulgate before the end of the year. It was long on generalities and short on specifics, which is the only way to write an endorsement of this fatally flawed rule. The specifics, however, tell a different tale: the creation of a new federal regime that

violates the exclusive remedy doctrine that is the foundation of the no-fault state workers' compensation system.

The American Insurance Assn. finds OSHA's proposed ergonomics standard especially troubling because, in creating the agency, Congress explicitly limited the agency's mission to injury prevention and expressly prohibited OSHA from interfering with state workers' compensation programs.

Section 4(b)(4) of the OSH Act—which

states: "Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law..."—expressly states that OSHA is to oversee injury prevention matters, and prohibits OSHA from mandating or prescribing injury compensation.

Workers compensation is intensively regulated by the states, through state workers compensation agencies and insurance de-

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Dave Schoenrock,
Underwriter, New York



EPL

Continued from page 3

nancial and professional services unit in New York, said that she, too, is seeing increased interest in Marsh's EPL products.

Marsh's middle-market EPL program is "almost selling itself," Ms. Higgins said. And "we have seen a huge surge" in Marsh's EPL insurance program for Fortune 1,000 companies. "It's the No. 1 selling product now in FINPRO," she said.

Indeed, according to figures from Tillinghast-Towers Perrin's annual Directors and Officers Liability Survey, more employers are purchasing EPL coverage.

The survey found that the percentage of private companies—defined in the survey as those with

fewer than 500 shareholders—that had not purchased EPL coverage has dropped to 16% in 1999 from 28% in 1998. Likewise, the number of public firms, defined as those with 500 or more shareholders, that had not purchased EPL coverage decreased to 21% in 1999 from 47% in 1998.

The survey shows that a majority of policyholders have purchased EPL endorsements or policy forms that broader D&O coverage, as opposed to stand-alone policies. Of the more than 1,200 policyholders that responded to the 1998 and 1999 surveys, 67% had purchased broad D&O forms in 1999, compared with 41% in 1998. Only 15% of the policyholders purchased stand-alone EPL policies in 1999, compared with 19% in 1998.

Not only have risk managers'

attitudes toward employment practices changed over the last couple of years but the policy itself has changed. For the most part, experts say, EPL policy forms are pretty standardized today. Most policies offer broad EPL coverage, including coverage for punitive damages and third-party liability.

"Forms are looking more and more alike," said Carolyn True, branch manager of Professional Risk Co., a Seattle-based division of managing general agency Wexford Underwriting Managers that specializes in EPL for employers with up to 1,000 workers. "Everyone has good broad coverage."

"When people are shopping around for insurance coverage, they are looking at risk management services, the company paper and the price and then making

their decision," Ms. True said.

In conjunction with the policy, most, if not all, EPL underwriters offer various loss control services, including employment practices audits, toll-free anonymous hotlines and a variety of legal services.

Although EPL insurers and brokers say that these loss control services go a long way toward preventing EPL claims, the number of employers actually taking advantage of the services is not as large as they would like.

"We can all do a better job of educating clients of the added value of loss prevention issues," said Michael J. Maloney, vp and EPL underwriting manager for Chubb Executive Risk in Simsbury, Conn.

Mr. Cunningham pointed out that the Supreme Court has made

it clear that if employers have policies and procedures in place, properly communicate those policies and procedures to employees and promptly correct harassing behavior, they can reduce, or even eliminate, their liability in harassment claims.

The Supreme Court set the standard of vicarious liability, as well as an affirmative defense for employers, in two 1998 rulings: *Burlington Industries Inc. vs. Kimberly B. Ellerth* and *Beth Ann Faragher vs. the City of Boca Raton* (BI, June 29, 1998).

Ann Longmore, vp-North American EPL practice leader for Willis Group Ltd. in New York, said she is sorry to note that employers are not taking advantage of the loss control and risk management services being offered

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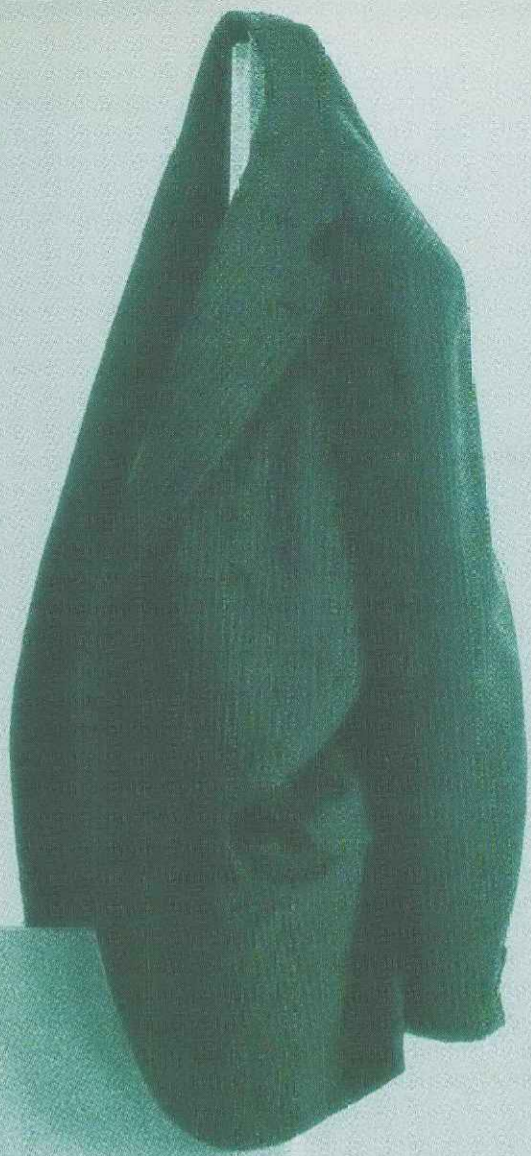
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EPL

Continued from page 12
with the policies.

Willis is really urging its clients to use the services, Ms. Longmore said. But "a lot of time, the notification of available services goes to the wrong person," she said. Ms. Longmore said it should go to the human resources or legal department.

Ms. Longmore and others point out that, in some cases, employers feel more comfortable using their own law firms and handling loss control services in-house.

"I think clients feel under control with their own internal and external partners," Mr. Cunningham said. "There might be a little apathy as well."

Lance Ewing is a risk manager who prefers to handle the loss-control services in-house.

"We've tried to cover as many bases as we, as a corporation, can without having to go to insurers as a last resort," said the risk manager for Las Vegas-based GES Exposition Services.

For example, Mr. Ewing said, he has implemented various in-house diversity training programs, begun to do some equal-opportunity background checks on outside contractors and placed corporate compliance officers in each GES subsidiary. In addition, each employee's computer now displays a permanent icon that provides the company's toll-free anonymous hotline number, through which individuals can report improper

activities, he said.

Mr. Ewing said he believes stopping an incident internally before it results in an EPL claim is the best way to mitigate the company's exposure. At the same time, though, he said that he is looking at the possibility of purchasing an EPL policy with a large deductible to cover any potentially catastrophic class-action suit.

"We're in the consideration mode," Mr. Ewing said.

Much of the impetus to purchase EPL policies experts say, comes from the increase in the number of employment-related cases being filed in both state and federal courts.

Interstate Brands Corp. is certainly not alone in the headlines. Texaco Inc., Mitsubishi Motor Manufacturing Co., Lockheed Martin Corp., Merrill Lynch & Co. and The Coca-Cola Co. are just a few of the large employers that have made headlines over the last few years as the targets of multimillion-dollar discrimination and harassment settlements.

If two New York law firms have anything to say about it, more EPL class-action suits will be filed against large employers in the near future.

Last month, the New York law firm of Milberg, Weiss, Bershad, Hynes & Lerach, best known for its securities class-action practice, announced that it was moving into the area of employment law. Milberg, Weiss announced that it had agreed to work on big employment cases with Leeds, Morell & Brown, a small employ-

ment law firm based in Carle Place, N.Y.

Lenard Leeds, a partner with the smaller firm, was quoted as saying that the firms plan to work on a combined 20 to 50 major cases during the coming year.

It is this kind of legal environment that has caught the attention of at least one risk manager of a Fortune 500 company, who decided to buy a stand-alone high-deductible EPLI policy for the first time in late 1998.

'What we will see within the next year is a hardening' of the EPL market, says Marsh's Gina Higgins.

"We finally went for it," said Sherry Pixler, risk manager for Storage Technology Corp. in Louisville, Colo. "We'd been looking at it for a long time."

"The trend out there in the legal world is going toward employment practices-related suits, and in a big corporation, it is very, very difficult to control what your managers and employees are doing on a day-to-day basis," Ms. Pixler said. In addition to purchasing a policy, "it became obvious to us that we really needed to put a training venue in place for managers and employees."

The legal environment also has some insurers re-evaluating their

EPL policies.

Overall, insurers and brokers say that pricing in the EPL market is stable, but they predict that rates will start to increase in the near future as the frequency and severity of EPL claims continue to escalate.

"The market is still somewhat soft," said Ms. Higgins of Marsh. "What we will see within the next year is a hardening of the market," she predicts. That is because the increased litigation and various EPL claims are beginning to hit reserve levels, she said.

"Although our results are slightly profitable, we certainly feel we are in need to obtain rate improvement and attachment improvement to ensure future profitability," said Mr. Cunningham of Lexington.

"Lexington has been lucky. We've not been hit with a large class-action claim; nothing on the scale of a Texaco or even close to that," he said. "But that type of stuff is going on. I certainly don't think Fortune 1,000 and Fortune 500 companies are safe."

EPL brokers and insurers say those underwriters that have been offering low-deductible EPL policies with broad coverage are feeling the effects of increased claim activity. Often, the defense costs from just one claim can deplete a low deductible or self-insured retention.

"There's a lot of bleeding going on," said Willis' Ms. Longmore. With those policies with \$5,000 to \$10,000 retentions, "it would take a decade or more to write that ac-

count to make up for one claim," she said.

"Insurers are now reviewing where those retentions should be," Ms. Longmore said. So, for those that had a \$10,000 retention last year, it might be \$50,000 this year, she said.

Those underwriters that have written primary coverage with low attachment points with a duty to defend are "feeling a little bit of pain," agreed William Wharton, a vp in the professional liability underwriting group of XL Insurance Ltd. "With the claim frequency, even if the litigation is successful, the defense and internal expense of handling the claim is somewhat burdensome," Mr. Wharton said.

At the same time that EPL experts predict more claims and suits to come, some risk managers continue to take their chances.

"We took a look (at EPL coverage) two years ago and decided that it did not make economic sense for us," said Lance Davis, manager-global risk management for Xerox Corp. in Stamford, Conn. "We continue to keep our eye on the marketplace and to determine whether or not the product would add value."

The risk management department at Denver Water, the city's water authority, also took a look at purchasing an EPL insurance policy.

"We determined that, with our loss exposure, claim experience and in-house legal counsel, we didn't need to purchase the policy," said James E. Crockett, manager-risk and benefits. **EI**



Europe witnesses growing popularity of EPL insurance

By CAROLYN ALDRED

Demand is growing for employment practices liability insurance in Europe, as both small and large companies recognize their growing exposure, according to EPL underwriters.

A raft of European Union-initiated employment legislation is increasing the number of claims being filed by employees in Europe who are accusing their employers of unfair dismissal, discrimination, harassment, bullying and unfair working practices.

Figures released by the United Kingdom's Advisory, Conciliation and Arbitration Service in late October show that the number of employment claims against U.K. employers has risen to 164,000, an increase of 32% in the last year. Most of the claims allege unfair dismissal (52,791, up 23%), but racial discrimination claims increased by 20%, to 3,922, and disability discrimination rose by 22%, to 3,583. Claims related to wages or working hours increased by 37%, to 36,837, mainly due to new E.U. worktime regulations,

which seek to standardize working hours throughout Europe.

Employment tribunals, judicial bodies established to hear workplace disputes, are dealing with far more claims today, said Chris Hill, an underwriter for syndicate 33, which is managed by Hiscox.

"And that's just the tip of the iceberg; many cases are settled before tribunal," he said.

The "growth in litigation is alarming," said John Cridland, deputy director general of the Confederation of British Industries.

And the CBI fears that new European discrimination laws approved in October by the E.U. Social Affairs Council "will lead to more employment tribunal applications, the number of which is already increasing at an alarming rate," said Mr. Cridland, in a statement issued in late October.

As a result, more companies now are looking for coverage, Mr. Hill said.

"There's a much greater demand (for EPL coverage), as companies are seeing greater exposure from the changing legal environment and changes in employment

See Europe on next page

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Europe

Continued from previous page law," agreed Dax Gulmohamed, London-based United Kingdom and Ireland EPL product manager for Brussels-based Chubb Insurance Co. of Europe S.A.

Mr. Gulmohamed said that, each week, his department receives four times the inquiries about EPL coverage that it did just one year ago.

The early buying of EPL coverage during the last few years in Europe was "prompted by the need for European companies to protect their U.S. exposures," said Karen Morris, Paris-based head of product development for Chubb Insurance Co. of Europe.

But now, European companies are recognizing that they have

growing exposures at home as well.

Very fast-moving legislative changes, including recently enacted European Union legislation on working hours and pending E.U.

ees are more aware of their rights.

As a result, more large European companies are now buying EPL coverage through global insurance programs, rather than buying EPL coverage solely for their U.S. op-

ing global programs, because EPL is an issue in other countries now. Frequency of claims in Europe is increasing," said Angela Howe, account executive for Aon Risk Services Ltd. in London.

Meanwhile, medium and small companies also are looking for EPL coverage. That's because an employment claim can have a big financial impact on a smaller company, in addition to taking up management time and incurring bad publicity, underwriters point out.

"Small companies are becoming more interested, because the damages often are more meaningful, and one claim can affect the bottom line," said Chubb's Mr. Gulmohamed.

"We are getting a lot more inquiries from small companies with less than 200 employees," said

Aon's Ms. Howe.

Part of the lack of demand in the past has been that many small firms were unaware of the existence of EPL coverage. Meanwhile, in large organizations, there may have been little communication between the human resource departments, which tended to be aware of the exposure, and the risk management and insurance departments, which were more likely to be ignorant of such risks.

That is now changing, particularly as the insurance industry develops more insurance and risk management EPL products.

"One of the major things stopping companies buying cover is that they are not aware of the cover. Human resource managers traditionally have not had so much contact with risk managers in Europe," said Hiscox's Mr. Hill.

Now, though, "human resource managers and risk managers are working together more closely," said AIG's Mr. Carr.

AIG, which was one of the first insurers to offer EPL coverage in Europe, is about to launch a human resource risk management product called Employment Practice Control, for its director and officers and EPL policyholders. For a flat fee of £500 (\$727), one of six regionally based law firms specializing in employment law will undertake a human resource audit of a policyholder, including examination of recruitment, discrimination and bullying policies, Mr. Carr said.

Chubb policyholders are also offered ready access to a pool of employment lawyers that can perform employment practice audits and can help the companies manage the risk better, said Mr. Gulmohamed.

And more insurers now are offering EPL products, which, Ms. Howe said, is leading to lower rates.

The EPL "market has developed. More insurers now are offering the cover, and because of that, competition rates have got lower," she said. Ms. Howe estimates that 10 insurers now have specialized EPL products for European companies.

The EPL market is still at a "nascent stage for pan-European risks," but it is a "very fast-moving environment," Ms. Morris said. **B**

'Clients who had domestic EPL policies in the U.S. now are buying global programs, because EPL is an issue in other countries now,' says Angela Howe.

legislation on other employment issues, such as parental leave and discrimination, are leading to a much-higher frequency of employment claims, said Ms. Morris.

Furthermore, she said, employ-

erations, said Matthew Carr, corporate manager in the financial lines division of AIG Europe (U.K.) Ltd. in London.

"Clients who had domestic EPL policies in the U.S. now are buy-

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Providers, nursing homes seeing higher med mal rates

By LEE FLETCHER

After a decade of soft pricing, the medical malpractice liability market is showing signs of firming, particularly for nursing home operators, a line that has been plagued by significant losses in recent years.

"I think that this is a market that truly needs correction. If you go back and look at medical liability from the later '80s through the mid-'90s, this was the singularly most profitable segment of the U.S. insurance marketplace," said Timothy R. Morse, president of St. Paul Health Care, a St. Paul, Minn.-based unit of the St. Paul Cos. Inc.

"It's become the single most unprofitable sector, and that's happened because of extensive predatory competition and a reluctance to look into pricing products appropriately," Mr. Morse said.

As a result of rising losses, providers of long-term care, specifically the nursing home seg-

ment, are seeing availability and affordability problems with liability coverage in many parts of the country, he said.

"We've seen a rapid escalation in both the frequency and severity of claims. In many venues or states across the country, if insurance is available, it's virtually unaffordable," Mr. Morse said. Furthermore, he said, long-term care risks are "virtually uninsurable" given the volatility associated with them.

"Our (medical) professional liability rate increases, on average, across the country will be in a double-digit number," Mr. Morse said of St. Paul. St. Paul, which earlier this year acquired medical malpractice specialty insurer MMI Cos. Inc., is the nation's largest medical malpractice insurer. In fiscal 1999, St. Paul wrote \$575 million in net health care liability premiums.

Dick Bucilla, executive vp of Lexington Insurance Co. and divisional executive for AIG Health Care in Boston, agreed that providers of long-term health care

are seeing the highest malpractice liability rate hikes. Buyers of managed care errors and omissions liability coverage are seeing the next-highest increases, followed by purchasers of hospital malpractice coverage, Mr. Bucilla said. Although rates for physician liability coverage also are increasing, that segment has hardened the least.

Changes in the medical malpractice insurance market this year have created some uncertainty, Mr. Bucilla pointed out. So far, this year has seen consolidation—including St. Paul's acquisition of MMI—as well as ratings downgrades and financial problems at other companies.

"A lot of additional business is out in the market looking for alternatives from what it's had in past years. You have various carriers that have had result problems or lowered Best ratings, or an acquired book of business with new underwriters looking at the risks and not necessarily looking at them as positively as the previ-

See Malpractice on next page

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Malpractice

Continued from previous page
ous individual underwriters have looked at them," Mr. Bucilla said.

"I think the hardening that we're seeing and the escalation of loss costs in the experiences of a lot of clients and prospects is really more of a nationwide phenomenon than just isolated" to a handful of states, he said.

Florida and Texas, however, stand out among states where loss costs for long-term care providers are increasing the most, Mr. Bucilla said. Rates for long-term care providers in Florida are at least "five or ten times what they were a couple of years ago, with Texas not far behind," he said. Alabama and California also have some problems in that area, Mr. Bucilla

said.

Ed Wrobel, a principal with Tillinghast-Towers Perrin in Simsbury, Conn., said: "It's a lot of variability from jurisdiction to jurisdiction, but it's not completely widespread throughout the country. Florida is an extreme example."

Jeanne H. Pores, senior vp of Physicians' Reciprocal Insurers in Manhasset, N.Y., agreed that the pricing of nursing home liability coverage is hardening quickly, though she, too, noted that the increases vary by region.

Nevertheless, "There is that tainted brush that comes from being in the same field," Ms. Pores said.

She said that PRI is prepared to write business for nursing homes but that the coverage won't come cheap. "We've never written nurs-

ing homes (in the past), because I've always felt that they are significantly underpriced. You get one patient with a slip-and-fall (claim), and it's worth \$50,000.

we're very happy to write nursing homes as long as we can charge what we think is appropriate for a facility," Ms. Pores said.

Ms. Pores said she's heard from

'I think now, with the long-term care industry hardening, you'll see a lot more brokers looking to establish captives for their books of business,' says Jeanne Pores.

Now that the losses have come in, everyone's looking around like, 'How could this happen?'—it was so obvious. Our position had always been not to write it, but now that the market is tightening,

some brokers about long-term care liability insurance price increases of up to 40%.

As losses mount for insurers, pressure to raise rates grows, Mr. Wrobel noted. "These reserve re-

dundancies from prior years that have helped to support the profitability of med mal carriers over the last decade have been drying up, and in some cases, we've seen evidence of reserve inadequacies with a small number of companies. That's all served to put real upward pressure on pricing that's out there," he said.

In response to the firming in the medical malpractice market, some health care providers are beginning to look more closely at captives and other alternative risk-financing options.

"I think now, with the long-term care industry hardening, you'll see a lot more brokers looking to establish captives for their books of business. There are some lines of doctor business where the brokers also feel that they're going to get increases just because it's health care and they're looking to protect their books and move them offshore," Ms. Pores said.

Captives have always been quite popular in health care, she said. "Many facilities that have good experience prefer to hold on to their money rather than just pay it out to a commercial carrier. Having a captive or a rent-a-captive allows them to do that," she said.

Mr. Wrobel agreed that there has been an increased interest in captives and other types of self-insurance alternatives.

"There are a lot of multiyear coverages that were written within the last couple of years. As those two- and three-year deals wind out at favorable pricing and those players get back into the market where the pricing has firmed up considerably, we may see a little bit more activity" with companies revisiting self-insurance alternatives, Mr. Wrobel said.

Ms. Pores suggested that as the market tightens, insurers will probably want to consider increasing the risk management support they provide to their clients.

She said she hopes insurers will exercise caution in underwriting.

"I would imagine now that we are at the very beginning of a difficult market that may last for the next three to five years. I would hope that the basic principles of underwriting would come back into play, where those carriers left standing would not forget what happened and go back" to taking on business just for the sake of growth. "Also, I hope those carriers that had previously been jumping into opportunities looking to make a quick buck would think twice about it. Maybe the reinsurers will put pressure on in terms of expansion plans to say that we're not going to take the risk on that because we don't want to go through that again," Ms. Pores said. **BI**

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Dotcoms

Continued from page 3

from the E&O policies sold to high-tech companies, explained Ms. Bieker.

It is common, therefore, for high-tech companies to purchase E&O insurance for many liabilities and then purchase additional coverage for losses arising from breaches of computer security. In-

'The dotcom D&O market is starting to see the same (market tightening) we saw in 1985,' says Peter R. Taffae.

urers vary in how they sell such specialty products for high-tech companies; some sell the products bundled and others sell them separately, she added.

Currently, the dotcom and middle-market clients of INSUREtrust.com can purchase the insurer's Electronic Information Errors and Omissions Liability Policy. The policy allows the policyholder to choose from one or more of the following coverages with a variety of options: technology E&O, intellectual property offenses, and breach of security.

Policyholders will pay a minimum of \$4,600 annually for the first \$1 million in coverage limits, but that price will vary according to the risk. INSUREtrust.com currently has the capacity to provide up to \$25 million in limits, "but we can build more," Ms. Bieker said.

Reinsurers' desire to improve profitability and a concern about "aggregated losses" is now driving up the rates they charge ceding companies, she noted. In turn, insurers are increasing pricing and deductible amounts for E&O coverage sought by high-tech operations. Ms. Bieker said she expects to see even more price increases after year-end renewals.

"It's beginning to tighten now, but I think you will really see a little bit more of a difference after the Jan. 1 renewal of reinsurance treaties," she explained.

The potential for "aggregated losses" stems from the possibility that a single computer virus could simultaneously strike numerous high-tech companies, triggering multiple claims from numerous policyholders.

Peter R. Taffae, president and CEO of e-perils.com, a Los Angeles-based wholesale brokerage, said he is seeing signs of firming in the E&O market for dotcoms, with some domestic insurers pulling out of that market. But London-based insurers are very much interested and have created new facilities, he said.

Ms. Bieker said firmer pricing for E&O coverage is not limited to the high-tech industry, with other industries facing similar increases in rates.

But that is not necessarily the case for directors and officers liability insurance. The high-tech industry for some time has faced sharply higher D&O rate hikes than other industries. D&O rate increases for high-tech firms could continue to outpace increases for other industries, though expert opinions differ on just how severe those price increases may be.

Continued stock price volatility, a drying up of venture capital, and rising claim severity are all factors pushing up D&O coverage costs

for high-tech companies, said Kevin LaCroix, president of Genesis Professional Liability Managers in Beachwood, Ohio.

Volatility in the stock market, common to high-tech companies, often accelerates shareholder class-action lawsuits naming the directors and officers of a company.

"Some of the market cap declines are staggering," Mr. LaCroix said. "They run into the hundreds of millions and sometimes billions of dollars. That is a significant risk factor any D&O underwriter is going to take into account."

The drying up earlier this year of the stream of venture capital flowing into dotcoms is also a concern because it leads to more bankruptcy filings in the industry.

"Bankruptcy is one of the nastiest things to have happen to one of your D&O insureds," he added. It significantly complicates D&O claims, leading to an increase in severity of claims, Mr. LaCroix explained.

An increase in claim severity already has been noticeable during the past two years, Mr. LaCroix said. He said there were about a dozen securities-related class-action lawsuits brought during that time that each resulted in settle-

Firmer pricing for E&O coverage is not limited to the high-tech industry, says Mary Bieker.

ments and judgments above \$50 million, he said.

High-tech companies should be paying about \$200,000 annually for \$5 million in D&O coverage, Mr. LaCroix said. But market competition is keeping rates below where they should be, he added.

"If anything, \$200,000 for \$5 million for those companies probably is not enough," Mr. LaCroix said. "From an actuarial standpoint, they probably ought to be paying more."

Recently there have been more insurers entering the D&O market, creating some additional competition, said Mr. Taffae of e-perils.com. Nevertheless, Mr. Taffae said he sees the D&O market hardening significantly for dotcom policyholders.

"The dotcom D&O market is starting to see the same things we saw in 1985 (a period of substantial market tightening)," Mr. Taffae said. "There are a lot of declines and a lot of players only interested in (writing) excess coverage."

He recently has witnessed some D&O renewals where rates were up 50%, Mr. Taffae said.

Meanwhile, Internet companies face a host of other unique exposures, including trademark and copyright infringements, Mr. Taffae noted.

"Cyber-squatting," a type of trademark infringement, is an issue driving losses in this area, he said. The practice involves creating an Internet address similar to an existing one, changing only the domain, he said, with the purpose being to siphon traffic from the established site. One well-known example is the use of a name similar to the one for the official White House site. A change in the domain from ".gov" to ".com" sends the user to a pornographic site.

Cyber-squatting are lead-

ing some insurers to decline renewals or offer only sublimits for intellectual property coverage, Mr. Taffae said. As an example, an insurer might sell a liability policy with \$1 million in limits for losses other than trademark infringement. The same policy might have a separate sublimit of, say, \$25,000 for trademark infringements.

Dotcoms, like other companies that depend on Internet content, are also susceptible to claims of copyright violations, experts said, especially if they hire contractors or freelance writers to create content. Without adequate supervision, the contractors could steal material that has copyright protection from another company.

One way to minimize that potential loss is to have someone responsible for screening and approving all copy placed on a company's Internet site, and not allowing content that has not been cleared, said Rich Reed, vp of electronic products for Chubb Corp. in Warren, N.J.

Another concern for dotcoms, as well as other companies involved in e-commerce, can be third parties hired for fulfilling functions such as packaging and shipping of goods a company sells over the Internet, Mr. Reed said. Entities that hire them should be able to establish that they have secure systems so that confidential customer data, while in their hands, is not stolen by a hacker or one of their employees.

Some of those contractors make it difficult for customers to audit their facilities to determine how secure their systems are. Others are more cooperative, Mr. Reed said.

Yet another growing concern for high-tech companies is a possible rise in class-action lawsuits alleging the violation of customer privacy rights.

That could involve companies that, as a part of their business, collect information about their customers, such as credit card numbers, demographic information and lists of merchandise customers have purchased. The number of lawsuits with privacy allegations could increase because the Internet represents the "Wild,

The Internet represents the 'Wild, Wild West of sloppy business practices,' says Reed R. Kathrein.

Wild West of sloppy business practices," said Reed R. Kathrein a partner in the San Francisco office of Milberg, Weiss, Bershad, Hynes & Lerach L.L.P. The firm has gained renown across the Silicon Valley for bringing numerous securities class actions against high-tech companies.

More recently, it has brought class-action lawsuits that allege companies are allowing their customer data to flow to other companies, such as advertisers, who can benefit from such information. Or, they just don't pay close attention to their business practices, allowing information to leak out of their Internet sites, he said.

Companies most vulnerable to these types of lawsuits are those that know they have a potential for security leaks yet fail to act on them, Mr. Kathrein said. Even more in danger are companies that know they have a security leak and fail to repair it. **BI**

Ooh



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SIIA sees 'continuous threat' from federal laws

By MICHAEL BRADFORD

ANAHEIM, Calif.—Self-insured employers and those whose livelihood is tied to self-insurance are breathing a sigh of relief as Congress wraps up the year without passing a major piece of legislation that directly affects them.

It won't be long, however, before self-insurance professionals again are holding their breath, waiting to see what lawmakers will do, according to an attorney for the Santa Ana, Calif.-based Self-Insurance Institute of America. Fights with lawmakers over self-insurance issues are becoming almost an annual occurrence, he adds.



"The good news is that Congress is about to go out of session, and we may well have dodged the bullet again in terms of any adversarial legislation as it impacts self-insurance," said George Pantos, Washington counsel for the SIIA. The bad news, however, is that Congress "will be back in January, and we'll start the whole process over again," he added.

Speaking at the SIIA's 20th Annual National Educational Conference and Expo, held last month in Anaheim, Calif., Mr. Pantos said proposals to narrow the breadth of the Employee Retirement Income Security Act's pre-emption of state laws are sure to be on federal legislators' 2001

agenda. The federal benefits law pre-empts state laws and regulations that "relate to" employee benefits.

There is a "continuous threat to self-insurance on the national agenda," Mr. Pantos said. "It comes in a variety of fashions, but, essentially, it is directed at limiting the scope of ERISA pre-emption and preventing self-insured employers and those in the industry from operating without government interference."

There is a "calculated effort" among some lawmakers, as well as those who lobby them, to change "the rules of the game" as they relate to self-insured health plans, Mr. Pantos remarked.

The SIIA's job, he said, is to "keep the government off the back

of self-insurance, to make sure that you have the complete flexibility to operate your businesses without government interference."

That is accomplished by protecting regulatory pre-emptions that have been contained in ERISA since it was enacted in 1974, Mr. Pantos stressed.

ERISA "allowed self-insurance to become an industry that today provides health coverage for over 44 million people," he said.

Mr. Pantos said the push in Washington for a patients' bill of rights that contains managed care reforms has created an "adversarial atmosphere," in which doctors, consumer groups and trial attorneys have squared off against insurers and employers. "And you've got a battle."

"Part and parcel of this whole struggle is that ERISA has been brought in," he said, and that regulatory pre-emption is under attack.

If proposed patients' rights legislation had passed, it would have had a "significant impact on the way you do business," Mr. Pantos told SIIA members. Not only would managed care plans have felt the effects of being subject to state laws, he said, but employers, doctors, hospitals, utilization review firms and others would also have seen changes. "Everybody would have been affected."

Mr. Pantos warned that "there is a lot of money flowing in and out of Washington on these issues. And those folks who may necessarily have some axes to grind...are putting a lot of money on the table. And this is affecting the kind of legislation that comes out from people who benefit from that kind of campaign contribution."

Legislation that affects self-insurance doesn't "just fall out of the sky," Mr. Pantos said. Measures are "drafted, introduced and lobbied by a lot of people who have their own particular interests in mind."

Mr. Pantos pointed out that the health care issues that are concerns for employers, medical providers and others have been highlighted this year because of the presidential election. "All you have to do is turn on the television and see that health care is at the top of the agenda. It's one of the key issues in the election."

Health care has a higher election-year profile than other highly politicized issues, such as education, crime, the economy and the national budget, Mr. Pantos contends. "Health care always comes out No. 1." In fact, he noted, the issue of prescription drugs under Medicare "may well be the wild card in the 2000 election as both candidates position themselves on either side of that issue."

SIIA President James D. Blinn, who is a partner with Ernst & Young L.L.P. in New York, pointed out during a separate session at the conference that the association has become more active on the state level.

In Michigan, for example, "we were involved in blocking a stop-loss regulation that would have made it more difficult for employers to self-insure. In addition, related to that, we're very close to finalizing a master model act...that can be used in this stop-loss arena," Mr. Blinn said.

Self-insured employers purchase stop-loss insurance to cap their exposure to claims. Insurance regulators in some states, most notably Maryland, have claimed that stop-loss policies with low attachment points often are merely an effort to avoid state regulation and are not true self-funding arrangements.

The association has battled with regulators over the stop-loss issue since the National Assn. of Insurance Commissioners developed a model act that places restrictions on how stop-loss insurance is written. The NAIC model mandates minimum attachment points for stop-loss insurance. To date, it has been adopted by more than two dozen states.

The SIIA also has stepped up activities on the state level by forming divisions in several states that make sure that concerns of the self-insurance industry are addressed in legislative and regulatory matters. **BI**

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Reinsurers clamp down

Stop-loss MGUs see dwindling numbers, stricter guidelines

By MICHAEL BRADFORD

ANAHEIM, Calif.—Managing general underwriters writing stop-loss insurance are being pressured by reinsurers to shape up or ship out.

"It's been a shakeout year for MGUs; the reinsurers are mad as hell and they're not taking it anymore," said Jack C. Zoeller, president and chief executive officer of Atlanticare Risk Management, a Vienna, Va.-based managing general underwriter.

Reinsurers are more closely scrutinizing these intermediaries—which have underwriting authority on behalf of an insurer or reinsurer and are sometimes referred to as managing general agents—and they are using fewer of them to generate business, Mr. Zoeller said during a panel discussion at the Self-Insurance Institute of America's annual conference, held last month in Anaheim, Calif.

Top reinsurers generally deal with eight to 10 MGUs today, compared with 15 to 30 in previous years, he pointed out.

He said MGUs are being given "stricter guidelines, tighter limits on discounts off manual, quarterly reviews, regular audits" and the dictum that "there will no longer be one size fits all."

Stop-loss MGUs that are "not able to retool" to meet the special demands of reinsurers "will have a difficult time staying in business," Mr. Zoeller said.

He said he has seen figures that indicate there were 270 stop-loss MGUs in 1998, and "it's possible that two out of three will not be in business by 2002."

Many stop-loss MGUs are recording combined ratios of 125% or higher, he pointed out.

MGUs' problems don't stem from a lack of great producers or underwriters, Mr. Zoeller explained. Instead, it's because MGUs haven't done a good job of collecting and analyzing risk data, putting proper systems in place or paying enough attention to claims management, he said.

"One likely outcome is that some full-service MGUs will become sub-MGUs or production offices," working along with other MGUs that retain full underwriting and claims authority for insurers or reinsurers, he predicted.

MGUs also face problems in relationships with third-party administrators, according to Mr. Zoeller. In a survey conducted by Atlanticare, 90% of 64 TPA respondents said they had ended at least one relationship with an MGU.

The reasons for ending the relationships were "uncompetitive quotes, poor service on quotes and problems with claims," Mr. Zoeller said.

Richard Lyons, assistant vp of Safeco Life Insurance Co. in Atlanta, said MGUs and TPAs both are looking harder at relationships before building alliances. Both sides are do-

ing more "due diligence" before they begin working with each other to put together coverage for a TPA's self-insured client.

Stop-loss MGUs are interested in building relationships with TPAs with a long-term strategy that includes plans to not only provide coverage but renew it as well, according to Mr. Lyons, who participated in the panel discussion. "They want to plan and pre-sell renewals."

Meanwhile, he pointed out, TPAs "have to tell their customers what to expect and have it actually happen."

Mr. Lyons said there is an emerging trend among TPAs to "go back to basics" and focus on services, instead of merely seeking out the lowest-priced stop-loss coverage.

Mr. Zoeller said that MGUs, direct writers and reinsurers are, in some cases, all guilty of one thing in the current marketplace: They tend to offer attractive pricing to prospects and then tighten the cost a year later at renewals. "This is unwise and counterproductive," he said.

Such a philosophy encourages clients to move from underwriter to underwriter while shopping prices, Mr. Zoeller said.

Also participating in the panel discussion were Bradley J. Quinn, vp-production at Medical Reinsurance Co. L.L.C. in Eden Prairie, Minn.; and Robert L. Feil, senior vp at Reinsurance Services of Princeton L.L.C. in Princeton, N.J. The session moderator was Kurt J. Ridder, president of Spectrum Underwriting Managers Inc. in Indianapolis. **BI**



20th annual meeting feted

ANAHEIM, Calif.—The Self-Insurance Institute of America celebrated its 20th annual meeting last month in Southern California.

The 20th Annual National Educational Conference & Expo, which was held Oct. 24-28 at the Anaheim Hilton & Towers, drew approximately 1,300 registrants. A golf tournament kicked off the conference, followed by four and one-half days of educational sessions and social events.

Midway through the conference, an anniversary celebration commemorated two decades of gatherings by self-insurance professionals. The first conference, held 20 years ago in New Orleans, drew about 140 attendees.

Those who made it to this year's conference heard speakers on a variety

of topics, including legislative and regulatory developments, the impact of mergers and acquisitions on self-insurance professionals, the state of the stop-loss insurance market and many others.

The association hosts a number of meetings during the year. The SIA's 15th Annual Legislative/Regulatory Conference is scheduled for Feb. 7-9, 2001, at the Washington Court Hotel in Washington. The conference will offer an opportunity for attendees to meet with legislators during "A Walk on Capitol Hill" and attend a special congressional reception in the Rayburn House Office Building, where House members' offices are located.

The legislative conference will focus on such topics as medical records pri-

vacy, state regulation of stop-loss insurance and whether the 107th Congress will take a shot at legislating employer/administrator liability based on state law remedies.

The SIA's 12th Annual MGU/Excess Insurer Executive Forum is scheduled for April 10-12, 2001, at the Miramonte Resort in Indian Wells, Calif. The association's 11th Annual TPA Executive Forum is set for those same dates and location.

More information on the association's meetings is available at www.siaa.org.

Next year's annual conference and expo is scheduled for Oct. 2-6, 2001, in Chicago. Information is available from the SIA at P.O. Box 15466, Santa Ana, Calif. 92735-0466; telephone: 714-508-4920; e-mail: webmaster@siaa.org. **BI**



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Self-directed care brings empowerment, savings

By MICHAEL BRADFORD

ANAHEIM, Calif.—Employees are expected to assume greater control of their health care decisions as the battle to reduce medical costs shifts to the Internet.

The emerging trend of "self-directed" health care will allow employees to use the Internet to access information on medical conditions, providers, costs and other topics and then make decisions on what benefits they need, said Gregory R. Morris, vp-reinsurance at HealthMarket, a Wilton, Conn. firm that offers a version of such Internet health services.

HealthMarket's services allow employers, individuals, brokers and

insurers to find, evaluate and purchase coverage and services over the Internet. Mr. Morris said he believes self-directed plans will eventually become a common part of employee benefit offerings.

Under a self-directed scenario—also known as the defined-contribution approach—employees can choose those benefits and providers that are best suited for them, and then direct funds from special accounts to pay for coverage. Giving employees control over their spending will encourage them to make smart health care decisions, Mr. Morris explained. Employers also will see a number of efficiencies from the Internet-based system, he

said.

Speaking at the Self-Insurance Institute of America's annual conference last month in Anaheim, Calif., Mr. Morris pointed out that self-directed health care is in its in-

termediate health care models—indemnity and managed care plans—which haven't worked, either in keeping health care costs in check or in satisfying consumers, Mr. Morris said.

"People aren't happy with the

coming more and more disenfranchised."

As discontent has grown, employees have found that the Internet provides a wealth of health care information. Mr. Morris pointed out that it now is common for patients to approach their doctors with information about their conditions that they have obtained online.

Baby boomers with strong analytical skills are particularly eager to gain more control of their health care and are great candidates for self-directed care, he said.

Under managed care, "there is no economic incentive for (employees) to be involved," Mr. Morris said.

Managed care, which was developed to control the high costs related to indemnity plans, "really did the job of controlling health care expenditures for a while," he noted. "What we're seeing now is that some of the utilization procedures that were focused so heavily on have been squeezed out of the system. And now medical inflation is rising once again."

Mr. Morris said employers are finding that the Internet can provide a way to control rising health care costs. Many have taken administrative procedures, such as plan enrollment, online. Going online creates money-saving efficiencies over paper-based administrative processes, he said.

Under an Internet-based self-directed plan, employers could gain further efficiencies by establishing a defined contribution plan that lets workers direct their health care expenditures in much the way they can control their pension plan investments.

"We do think some of that is coming in health care," Mr. Morris said, "although probably not as fast as it is coming in the pension arena."

Under a defined contribution health care plan, the employer would provide an amount of money that is "divided into two buckets," Mr. Morris explained. "One is some version of a spending account that is there to fund routine expenses. The other is there for catastrophic expenses."

Employees would then be able to use Internet information sources to compare the features and prices of coverage and providers, thereby building their own health plans and using the funds in their accounts to pay for coverage.

There are downsides to such arrangements, Mr. Morris acknowledged. Employers might feel that workers are "left out on an island," without the knowledge to make the best choices. "There needs to be a huge infrastructure built up to help," he said.

And, Mr. Morris said, a self-directed plan is not for everyone. Some employees won't want the responsibility of researching their conditions and making coverage and provider choices. "There will be a segment of the population that absolutely loves that," while others will have no interest in it, he remarked.

A few large employers are offering such plans as alternative options, though none has made it mandatory, he explained. But that could change if the economy cools, Mr. Morris said, because in the current competitive marketplace, employers are not eager to make demands on workers who could decide to leave.

The session moderator was Thomas J. Lynch, president and chief executive officer of BCS Underwriters in Minneapolis. **BI**

Baby boomers with strong analytical skills seek more control of their health care and are great candidates for such programs, says HealthMarket's Gregory R. Morris.

fancy. But, he stressed, it holds promise as a way to control medical inflation.

Self-directed care can replace the

current system," he said. "Something is wrong with managed care; I don't know if I would go so far as to say it's broken, but people are be-



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eBenX Exchange allows consolidated medical billing

MINNEAPOLIS—Employers using eBenX Exchange now can check their consolidated health plan bills online to ensure their accuracy and make corrections as needed.

This new capability frees both the employer and the health plan from the cost and burden of bill reconciliation, reducing administrative costs for both parties, according to John Davis, president and chief executive officer of Minneapolis-based eBenX Inc., which offers online health plan purchasing and administration (BI, March 6).

The eBenX Exchange allows employers to obtain a single online bill representing multiple health plans with which they contract for group coverage.

Sometimes, health plans do not keep abreast of changes in enrollment, such as when employees leave a company, leading to overcharges. The new technology will enable employers to make appropriate enrollment changes online, for example, and then simultaneously move both dollars and eligibility changes to the health plans affected by the revision, Mr. Davis explained.

"Health plan bills are based on those employees who are eligible for coverage. Since eligibility changes all the time, the bill can be outdated as soon as it is generated by the health plan," he said. "Additionally, there are likely to be eligibility changes up to the time the health plan receives payment. This requires both health plans and employers—but especially health plans—to use armies of clerks to constantly reconcile who owes what to whom.

"Retroactive adjustments just complicate the matter further," Mr. Davis continued. "eBenX solves these issues through automation and improved data accuracy—paying health plans correctly by tying enrollment data directly to dollars."

For more information about eBenX, contact Susan Busch at 763-614-2126 or via e-mail at susan.busch@ebenx.com.

Real-time claims data

PARSIPPANY, N.J.—Risk management and insurance professionals have access to real-time property/casualty claims information through ClieTelligent, a new Internet-based service from GAB Robins North America Inc.

Two levels of ClieTelligent service are available from GAB Robins, a Parsippany, N.J.-based loss adjuster and third-party administrator.

ClieTelligent Pro lets users view and print loss analysis reports and instantly assign claims. ClieTelligent Plus adds to those capabilities real-time access to claims information, allowing users to monitor the entire life cycle of a claim. Plus users can review, update and manage their claims information in real-time. They also use a customized home page that provides a summary of month-end claims statistics, including open and closed status of claims, closure ratio, average days to close, an inventory of open claims and turnover ratio.

ClieTelligent's desktop applications allow users to download claims information that can be used in local computer systems, which allows users to integrate the information with other desktop tools for generating reports and analyses.

More information on ClieTelligent is available from David J. Ian-

PRODUCTS & SERVICES

notte at 973-993-3219 or via e-mail at iannott@gabrobins.com.

Online benefits services

NEW YORK—Mid-sized employers not only can enroll their employees in benefit plans online, but also can administer and purchase benefits via the Internet with a new product developed by MoreBenefits of New York.

MoreBenefits, formed by benefits broker and consultant Gary Wood Associates, is an integrated administrative services provider that automates employers' benefits purchasing in an online auction environment, administers those benefits online and allows employees to enroll themselves via the Internet.

Unlike many other online benefits administration systems, MoreBenefits can provide wireless access to employees and human resource professionals via Palm Pilot or Visor hand-held computers, according to Chief Technology Officer Ash Patel. MoreBenefits also will provide free-standing computer kiosks for employers that do not provide Internet access to employees. A telephone-based interactive voice response system that is integrated with the Internet product also is available, as is "live" personal assistance from benefit enrollment specialists for employees who are uncomfortable with using Internet technology, he said.

In addition to administering core group benefit plans, such as life and health, MoreBenefits' interactive technology also can be used to manage voluntary benefits, such as vision and long-term disability plans, according to David Wood, president and chief executive officer.

Because MoreBenefits is licensed as a broker, there is no charge for the online service it provides; it is compensated on a commission basis.

So far, MoreBenefits has signed up more than 100 insurers nationwide to participate in online reverse auctions, in which employers put their benefit plan needs out to bid, Mr. Wood said. The auctions are so named because, unlike traditional auctions, where an item goes to the highest bidder, the business goes to insurers that can provide benefits on the most cost-effective basis, he explained.

It takes MoreBenefits between four and six weeks to convert an employer's health plan data for use in an Internet environment and another four to six weeks to complete the auction process, according to Mr. Wood.

For additional information about MoreBenefits, contact Mr. Wood at 212-889-0500.

Construction risk portal

DENVER—C-Risk Inc. is offering an insurance and risk management Web site and information portal for the construction industry.

C-Risk, a Denver-based insurance and risk management firm for construction industry clients, has put together a number of resources that are available to users at www.c-risk.com. The information is available to all users, not just C-risk clients.

A risk management section at the site helps employers with initial risk planning and includes links to pa-

pers written about construction insurance issues. Another section provides links to architecture and engineering firms, design firms, contractors, insurers and others in the construction industry.

Users can take advantage of an extensive reference library that features, among other things, links to dictionaries, both standard and specialized for the construction industry. Links to glossaries, codes and standards also can be found at the site.

C-Risk, which recently relocated from Chicago, specializes in construction contract reviews, insurance reviews, insurance program design and construction wrap-up insurance programs.

Great-West adds 401(k) options

DENVER—Great-West Life & Annuity Insurance Co. is adding several new investment funds to two of its 401(k) product lines.

"In today's booming economy, companies want to offer a competitive benefits package to attract and retain qualified employees," said Patricia Neal Jensen, vp of employee benefits pension sales at Denver-based Great-West. "That's why we constantly monitor and evaluate the funds in our 401(k) packages to help employers make sure they're providing the best selection of investment options."

Five funds were added to the Great-West Core 401(k) package: a Dow Index Fund, a NASDAQ-100 Index Fund, Dreyfus Emerging Leaders Fund, INVESCO Dynamics Fund and Lord Abbett Growth Opportunities Fund.

In addition to these funds, the Berger Small Company Growth Fund also was added to the Core Plus lineup.

The additions bring the total number of investment options available in the Core 401(k) package to 18 and the number in the Core Plus package to 28.

For more information, contact Ms. Jensen in Los Angeles at 818-409-0880.

Online disease management

KING OF PRUSSIA, Pa.—America's Choice Healthplans, an online third-party claims administrator based in King of Prussia, Pa., is offering employers access to Web-based disease management tools to better manage a range of chronic diseases, including asthma, diabetes, hypertension and congestive heart failure.

The sites were created in partnership with Protocol Driven Healthcare Inc., which has been developing branded, medically credible interactive Web sites for chronic conditions since 1997.

"Presently, an estimated 80% of all health care dollars are spent managing a relatively small number of chronic diseases," said Steve Jolley, president of Bernardville, N.J.-based PDHI. "As the first health care provider to embrace the power and potential of the Internet, America's Choice Healthplans has taken an important step in providing employers a strategic tool in managing health care costs, as well as giving employees a way to improve their quality of life."

Continued on next page

The industry hasn't been this excited in years.

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Continued from previous page

In addition to the disease management function, MyAmericasChoice.com lets employers monitor, review and adjust employee health claims and eligibility, as well as generate reports that can be used to manage programs on a day-to-day basis. The site also lets employees review claims, locate health care providers and receive detailed explanations of their benefits.

For more information, contact PDHI's Steve Jolley at 908-630-9380 or Clelland Greet of America's Choice at 610-962-1985.

Health care data exchange

NAPERVILLE, Ill.—Resource Information Management Systems Inc. has developed an Internet portal to help health care payers exchange information that can be used to expedite the claims resolution process.

Through e-First, insurers, self-insured employers and TPAs can access an Internet database of more than 800 frequently asked questions and can send e-mail questions to experts on more complex issues.

In addition, the ARC Xchange section of e-First lets users network with peers and industry experts, as well as providing access electronic bulletin boards, chat sessions and "Webinars" on emerging industry trends and issues, which are hosted by Naperville, Ill.-based RIMS.

Users also have access to newsletters, technology bulletins, case studies, white papers and constant industry news and stock feeds that are not offered to the public. The site also includes links to government and regulatory sites.

For more information about RIMS or e-First, contact Kevin Evans at 630-428-5119 or via e-mail at kse@rims.com.

Site expands benefit offerings

STAMFORD, Conn.—EmployeeMatters has added several insurance products from Prudential Insurance Co. of America to its stable of employee benefits offerings available via the Internet.

EmployeeMatters is now offering small and midsize employers Prudential's basic term life, accidental death and dismemberment, optional term life, optional accidental death and dismemberment, and short- and long-term disability products on a national basis via its Web site, www.employeematters.com.

In addition to insurance products, Stamford, Conn.-based EmployeeMatters provides employers with human resource outsourcing services, including payroll, benefits, retirement plans, business insurance and compliance.

—By Joanne Wojcik and Michael Bradford

American Airlines adding match to 401(k) plan

By FRED WILLIAMS
Crain News Service

FORT WORTH, Texas—American Airlines Inc. is joining the crowded skies of companies that match participants' 401(k) contributions.

Starting Jan. 1, 2001, American will offer a dollar-for-dollar match up to 5.5% of salary. All contributions to the \$3.4 billion plan have come strictly from employee deferrals.

Nearly 29,000 non-union American Airlines employees are being offered a one-time choice of either opting out of the company's \$6 billion defined benefit plan and into the 401(k) plan, or remaining in the defined benefit plan. William F. Quinn, president of Fort Worth, Texas-based AMR Investment Services Inc., which manages the plans, said about 25% of the

company's non-union employees have elected to switch to the revamped 401(k) plan. Newly hired non-union workers also are being given the same choice. He said the cutoff date for employees to select one plan or the other was Sept. 1, but that has been extended into 2001.

The defined benefit plan will remain in place and funded for employees who choose it. For those opting out, accruals for credited service will be frozen but will remain subject to salary growth.

American will add the company match to help its competitive position in a tight employment market. 'It's really a recruiting tool more than anything,' said Mr. Quinn.

Originally, American officials were leaning toward putting all new hires in the 401(k) plan as of Jan. 1. They extended the window, however, to

gather more information on employee selection patterns, said Mark Johnson, managing director-benefits compliance and pensions at American Airlines. New employees will have access only to the 401(k) plan starting in 2002, he said.

While the changes affect only non-union employees, American is willing to discuss similar changes with its unionized employees during contract negotiations, he added.

Changes in American's 401(k) plan were part of an overall restructuring, in which the number of investment options more than doubled to 26 from 11 and moved to daily valuation from monthly. American also began offering non-American AAdvantage Fund choices for the first time.

At the same time, four new American AAdvantage funds were added, including an emerging markets fund,

international equity index fund, small-cap index fund and a large-cap growth fund. American uses a manager-of-managers approach in its funds.

American was one of a relatively small group of large employers that didn't have a matching provision in its 401(k) plan. Most large employers have long since started providing a match, said Joe Hessesenthaler, principal at Towers Perrin in Philadelphia. Between 85% and 90% of the large employers in the Towers Perrin database provide a company match, and 80% of those provide a 50% or greater match on the first 6% of employee contributions, said Mr. Hessesenthaler.

Fred Williams is a reporter for Pensions & Investments, a sister publication of Business Insurance.

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Ethyl using pension surplus to reduce debt

By VINEETA ANAND
Crain News Service

RICHMOND, Va.—The same stock market that has rewarded Ethyl Corp.'s pension fund has punished the company's shares.

But, because Ethyl's investors can't buy shares in its hugely profitable pension fund, the chemicals manufacturer is offering what it considers to be the next best thing—tapping a portion of its surplus pension assets to clean up the company's balance sheet, hoping the maneuver will help its stock bounce back.

Ethyl will shut down its pension fund at the end of the year and use \$50 million of the surplus to retire corporate debt. It will establish a new plan on Jan. 1 with \$60 mil-

lion in surplus from the previous plan.

Ethyl's current pension fund has racked up huge surpluses from investing all its assets, barring a small cash position, in equities. At the same time, the company has seen its own stock, reflecting lower profits, nose dive to an all-time low of \$1.44 per share on Oct. 2, down from \$4.75 a year earlier. The stock was removed from the S&P Midcap 400 stock index at the end of September.

By the end of 1999, the pension fund had a surplus of \$235.3 million, almost half of its \$546.4 million in total assets. The pension fund had \$311.1 million in liabilities, making it 175% funded.

Ethyl's plans won't come without a cost, particularly with taxes.

Setting up a "replacement" plan that uses at least 25% of the surplus lets Ethyl cut its tax penalty for dipping into the pension fund to 20%; companies that revert pension assets without setting up

they must also pay income taxes on the assets they siphon from the plan.

Because the firm could pay as much as 40% in federal and state income taxes, and a 20% reversion

'The money as it is now in the pension surplus is of no use to the company or to shareholders,' says Mary Habel, director of employee benefits for Ethyl.

a new plan must pay a 50% penalty. And because companies don't pay taxes on money they contribute to their pension funds,

tax on top of that, Ethyl could see as much as \$100 million of its surplus vaporize. Still, Mary Habel, director of employee benefits, said

the company thinks it's worth the cost. "The money as it is now in the pension surplus is of no use to the company or to shareholders," she said.

The amount of surplus pension assets the company hopes to use to reduce its debt is about the same amount of cash flow the company generates in a year, said David A. Fiorenza, who is in charge of investor relations at Ethyl.

Federal pension law also requires companies that shut down their plans to vest all accrued pension benefits and pay participants' pensions owed to date. Ethyl plans to buy annuities for all its retired workers by the third quarter of 2001 and hopes to get the government clearances to revert its surplus pension assets at about the same time, Ms. Habel said.

Younger employees will be able to choose between taking a lump-sum payout or collecting monthly pensions when they retire.

The company recently started holding meetings to educate workers about how to invest the lump sum, if they take that option, and it intends to hold meetings next spring to help workers figure out how to invest their retirement money, Ms. Habel said.

The company's new pension plan, which kicks in on Jan. 1, will be identical to the existing plan, except that it will take into account the benefits workers already have received, Ms. Habel said.

The new plan will be substantially smaller, but because Ethyl will pay off all the benefits it owes workers so far, it will have a much smaller liability—\$20 million to \$25 million—to pay for future benefits it owes, Ms. Habel said.

"The new plan will also be overfunded," she said.

The market's recent convulsions are unlikely to affect the company's plans, because its surplus won't be calculated until the third quarter of next year, when Ethyl will pay off the benefits it owes workers so far. Ms. Habel said the firm is hopeful the market will go back up. "If it doesn't, the surplus will be smaller, but we don't anticipate that market conditions are going to seriously impact" our plans, she said.

But, because the company's pension fund also is a huge contributor to its bottom line—accounting rules permit companies to take their pension surpluses into account when calculating earnings—the question remains whether Ethyl is slaughtering the goose that lays the proverbial golden egg. Ethyl reported \$14.6 million in pension income and \$59.3 million in income from operations last year. Its pension income this year is much higher because it bought annuities for retirees and shrank its pension liabilities proportionally. Accounting rules let companies take more of their pension income into account when they take pension obligations off their books. As a result, Ethyl's pension fund contributed \$57 million to the bottom line for the first half of 2000; in contrast, the company earned \$16 million before taxes from operations during the period.

The company also is examining its investment strategy and money manager lineup with the help of investment consultant Evaluation Associates of Norwalk, Conn.

Vineeta Anand is a reporter for Pensions & Investments, a sister publication of Business Insurance.



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Codes: 0 is deadly, 3 are good, 1 is best

By Dilip Khatri and Roy Fewell

What's in a building code? Everything. Since the 1920s, the construction industry has attempted to formulate standardized practices for every aspect of the building industry. The origins of the modern building codes currently in use in the United States can be traced back to 1905, when an insurance industry organization, the National Board of Fire Underwriters, published the first model building code. Between that time and 1950, three model building codes developed by regional associations of public safety officials emerged and became predominant in the United States.

These were: the National Building Code, published by the Building Officials and Code Administrators International, based in Country Club Hills, Ill.; the Uniform Building Code, published by the International Conference of Building Officials, based in Whittier, Calif.; and the Standard Building Code, published by the Southern Building Code Congress International, based in Birmingham, Ala. For the last half of the 20th century, these three codes governed their respective regions of the United States.

From a risk manager's and insurance industry perspective, the purpose of building codes is to:

- Create a uniform standard of construction and design for all buildings, so that the industry is accountable to the same governing document.
- Provide one central forum for modifications and alterations that promote progress in the building industry.
- Eliminate duplicate standards.
- Create a central platform to ensure the life, safety and welfare of the occupants of buildings, thus serving the interest of the public.

It stands to reason that building codes are very important. Imagine a world without codes. Every contractor, engineer and architect would, literally, make up the rules as he or she went along. There would be no central mechanism for evaluating a problem or resolving a malpractice claim.

But don't take my word for it; it's easy to see a world without codes by taking a short plane ride to any developing country where codes don't exist, aren't enforced or are simply ignored.

In India, with over 1 billion people, there is no concept of

a building code or of uniform construction practices. So every building has a different floor-to-floor height. No two stairways are alike. The run-to-rise ratio of stairway steps vary for each building and, in many cases, for each step!

In India, there are no fire safety or earthquake design requirements. And the same can be said for many other Third World countries: Mexico, most of the nations of Africa and many countries in Central and South America.

Get the idea?

Note, for example, two areas that experienced major earthquakes in 1999: Turkey and Taiwan. Structural engineers from the United States have presented their findings regarding these two earthquakes, and the conclusions are identical: there was no enforcement of basic building code practices. Structures were poorly designed and/or used inadequate construction practices, and contractors took shortcuts to avoid costs.

This simple conclusion has been drawn over and over again in every major disaster—particularly in earthquakes and hurricanes—throughout the Third World. For those of you managing properties or insuring them in foreign lands, beware—U.S. laws have been left back home along with your three-car garage and your Chevy Suburban. The entire concept of construction quality is totally different in these countries.

So, it should be clear that building codes are vital.

And in 1994, after years of deliberation, collaboration, negotiation and international détente, the three organizations behind existing U.S. codes—BOCA, ICBO and SBCCI—formed the International Code Council to write the International Building Code 2000.

The ICC could be called the United Nations of code development, and the IBC 2000 could be regarded as the ultimate peace treaty among the three "nations within a nation."

The IBC 2000 is the end result of the merging of all codes to form one uniform building code for the entire country. For the 21st century, we shall move toward one national code that will apply from coast to coast.

Finally, structural engineers in New York will be able to talk about earthquake design methods while enjoying lunch at their corner hotdog stand, and structural engineers in Los Angeles will be able to speak of tornado design elements while hanging out at Venice Beach. The structural engineers in Miami will be able to converse

about snow loads while dancing the samba, and structural engineers in Wyoming will be able to discuss the finer points of hurricane force winds over their steaks.

The development of the IBC 2000 has several positive implications for risk managers:

- Risk managers working in large companies that have real estate assets spread out across the United States can now evaluate their companies' risk portfolio without having to readjust to code variations.

For example, a commercial building in Miami that has severe hurricane potential risk will be evaluated using the IBC 2000, as will a commercial building in Los Angeles for earthquake risk. Although the two risk curves are different, one engineer can be hired to do the task and the standard document won't change.

- Risk managers will have one superior standard that raises the performance requirements of the industry to a common level. This will be of benefit to owners and insurers, because the IBC 2000 mandates the same wind design standard for buildings in all hurricane zones using wind speed formulation. This differs from the previous method of setting design standards, which depended on local jurisdictional variations to codes. The IBC 2000 raises the standard by imposing one national requirement.

And that means better buildings for everyone. BI



Mr. Khatri



Mr. Fewell

Dilip Khatri is principal and founder of Khatri International Inc., a consulting structural and engineering firm based in Pasadena, Calif. Roy Fewell is vp-public policy for the International Conference of Building Officials and is based on Whittier, Calif.

Mislabeled products not property damage under CGL

A policyholder's mislabeling of a client's promotional products did not result in any "physical injury" within the meaning of a commercial general liability insurance policy's definition of "property damage," according to the Supreme Court of Wisconsin.

A company owned by Wisconsin Label Corp. allegedly failed to properly label products of a client. The mislabeling caused the products to be sold at less than their intended retail price. After the distributor of the products was forced to pay the retailer for the resulting losses, the distributor sought reimbursement from Wisconsin Label and offset invoices for the completed work against the amount due for reimbursement.

Wisconsin Label notified its insurer, Northbrook Property & Casualty Insurance Co., of its intention to seek indemnification for its losses under its CGL insurance policy.

Under the CGL policy, covered property damage was defined as physical injury to tangible property. Northbrook denied coverage because it alleged that no "physical damage" had occurred. Wisconsin Label sued Northbrook for breach of contract. The trial court ruled for the insurer. The court of appeal affirmed the trial court's decision.

The Wisconsin Supreme Court said that the phrase "physical injury" ordinarily refers to some sort of physical damage. According to the court, no physical damage occurred in this case. "The products were improperly labeled," the court said, "but both the products themselves and the packaging remained

LEGAL BRIEFS

physically undamaged at all times."

"CGL policies do not provide coverage for the insured's liability for repairing or replacing the insured's defective work; they provide coverage for the insured's liability for physical injury to, or loss of use of, another's property," the court said. The Supreme Court agreed with the lower courts that the CGL policy here did not provide coverage in this case.

Wisconsin Label vs. Northbrook Property & Casualty Insurance Co., Supreme Court of Wisconsin, March 21, 2000 (BI/03/S. -\$10)

Separation incentive not a benefit plan

An employer's voluntary separation incentive program did not qualify as a benefit plan subject to the Employee Retirement Income Security Act's fiduciary requirements, according to the U.S. Court of Appeals for the District of Columbia.

Ronald Young and 16 other former employees of Washington Gas & Light Co. had been employed as supervisors or managers prior to their respective retirements during a period from Jan. 1 through June 1, 1996. As such, they participated in the employer's retirement plan, which was subject to ERISA. In 1995, the employer began to work on a plan to restructure the company. On June 28, 1996, the employer formally announced the plan, which included a retirement

incentive program offering employees classified as "first-line supervisors or above" a one-time opportunity to receive specified severance benefits upon voluntary separation from the company.

Before retiring, each of the employees here asked the company whether a retirement incentive program was being considered and, in each case, the employer replied that none was. These employees sued the employer, claiming a breach of fiduciary duty under ERISA by failing to disclose. The trial court ruled against the employees.

The appellate court said that whether a benefit is regulated by ERISA turns on the nature and extent of the administrative obligations that the benefit imposes on the employer. The court said that ERISA is not implicated by the requirement of a one-time lump-sum payment triggered by a single event—as was the plan under consideration here—because to do little more than write a check can hardly constitute the operation of a benefit plan. The trial court decision was affirmed.

Young vs. Washington Gas & Light Co., U.S. Court of Appeals for the District of Columbia Circuit, March 31, 2000 (BI/04/S. -\$10) BI

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

Mine

Continued from page 2

Contrary to an EPA press release reported on in *Business Insurance* last week as well as in other newspapers, the settlement will not hold Aventis Crop-Sciences USA Inc. of Collegeville, Pa., liable for any portion of the settlement. Aventis, formerly known as Rhone Poulenc Inc., had to sign off on the deal, though, because of its status as a potentially responsible party for pollution liability at the site. Aventis, a crop protection and production company, was a PRP for the site because the company years ago acquired a portion of another company that once owned the mine.

"This agreement is an important milestone in the history of Superfund," said Lois Schiffer, assistant attorney general in charge of

the Environment Division at the U.S. Justice Department, which filed the settlement with the U.S. District Court in Sacramento on behalf of the EPA.

"While we have reached thousands of agreements to clean up the country's most polluted sites under Superfund, this accord truly stands apart," Ms. Schiffer asserted.

The settlement will ensure long-term control of more than 95% of the pollution released from Iron Mountain, the largest source of toxic metals in the United States and the source of the most acidic mine drainage in the world, according to the EFA.

The drainage causes various environmental problems, such as a threat to salmon spawning in the Sacramento River.

At least one policyholder attorney says the unique deal likely signals a new trend that could fa-

cilitate future Superfund settlements and help corporate America clean up its balance sheets.

Attorney Larry Eisenstein, a partner with Swidler Berlin Shreffler Friedman L.L.P. of Washing-

ton, said that a few companies with pollution liabilities have turned to finite risk insurance in the past year to cover their share of the cost of cleaning up multiple sites.

The Iron Mountain Mine case is different because it involves a sin-

gle, huge Superfund site and because another party—an environmental engineering contractor—assumes liability for cleaning the site.

"We're likely to see more and

'While we have reached thousands of agreements to clean up the country's most polluted sites under Superfund, this accord truly stands apart,' says Lois Schiffer.

more of this" kind of arrangement as companies look for more creative ways to manage their environmental risks and liabilities, Mr. Eisenstein predicted.

He said he also sees a growing interest among environmental consultants and insurers to enter

such arrangements, now that nearly two decades of pollution site cleanup experience is available. The Comprehensive Environmental Response, Compensation and Liability Act of 1980 created Superfund to cover the cost of cleaning up the nation's most polluted sites.

"Twenty years ago, there was not enough analysis to make that kind of bet," Mr. Eisenstein said.

IT Corp., the contractor that will take over the operation of the Iron Mountain Mine's water treatment facility, hopes "to be doing more of this in the future," a spokesman said. The contractor is a subsidiary of The IT Group of Monroeville, Pa.

Mr. Eisenstein also predicted that such options for companies might facilitate future Superfund liability settlements. "These kinds of solutions can enable you to reach a solution, where before there was no way to value the uncertainties" involved in cleaning a polluted site, he said.

Thomas Bloomfield, the lead negotiator for the EPA in this case, said the Superfund settlement proposal for the site had to be "innovative" to take into account an unusual situation with the site.

Most sites require large upfront costs from many PRPs and "insignificant" funds to contend with future site-maintenance problems, explained Mr. Bloomfield, assistant regional counsel for the EPA.

That is not the case with the Iron Mountain Mine site.

Mining of various metals at the site began in the late 19th century and continued through 1963.

The Mountain Copper Co. Ltd.'s underground and surface mining operations fractured the mountain, which triggered the environmental problems at the site. Mining exposed the mountain's mineral deposits to oxygen, water and certain bacteria, and altered the mountain's hydrology.

The combination of those events caused tremendously acidic mine drainage to flow from the mine and into nearby waterways, including the Sacramento River and its tributaries.

In 1963, when mining operations ceased, the federal government constructed the Spring Creek Debris Dam to control the release of polluted drainage from the mine.

But the EPA and the state of California continued pressing to remedy the acidic drainage from the mine. In 1994, 11 years after the EPA listed Iron Mountain Mine as a federal Superfund site, the treatment plant that the EPA ordered Stauffer Management to build began removing nearly 100% of the metals from the polluted water sent to the plant, according to the EPA. Not all of the contaminated water can be treated at the plant, but the plant treats about 95% of the mine's acidic drainage, according to the EPA.

Stauffer Management, which alone will fund the Iron Mountain Mine Superfund settlement, is a PRP for the site because it manages the assets and liabilities of the former Stauffer Chemical Co. Stauffer Chemical acquired Mountain Copper in the late 1960s and merged all operations under the Stauffer name.

Stauffer Chemical was acquired in 1987 by a large British chemical company that later became part of pharmaceutical giant AstraZeneca P.L.C. of London. Stauffer Management, now a wholly-owned subsidiary of AstraZeneca, was formed in 1987 to

See *Mine* on page 30

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Mine

Continued from page 30

manage the assets and liabilities of Stauffer Chemical that were retained by the chemical company's new parent.

Some pieces of Stauffer Chemical, though, were sold to the former Rhone Poulenc, now Aventis. While Aventis is the legal successor to Stauffer Chemical, the assets that Aventis acquired did not include Iron Mountain Mine. The Superfund settlement releases Aventis from all liability for the site.

Stauffer Management will fund the cost of the settlement from reserves and through the commutation of some of Stauffer Chemical's "older CGL policies," Mr. Spiller said.

Mr. Spiller would not discuss which insurers wrote the coverage or any details about the commutations. He also would not say whether

Stauffer Management is still attempting to recover from any of Stauffer Chemical's insurers.

Because of those reserves and the insurance commutations, Stauffer Management's cost of settling its Superfund liability already has been accounted for, which means the settlement will have no financial impact on AstraZeneca, Mr. Spiller said.

In addition, the settlement releases Stauffer Management from all past and future pollution liability at the site.

Under the complex settlement, the responsibility for running the water treatment facility at the Iron Mountain Mine will be assumed by IT Corp. The treatment plant until now has been run by contractors hired by Stauffer Management.

The settlement assumes that running the facility will cost IT Corp. \$4.1 million annually, or \$201 million, taking into account inflation,

over the next three decades, the EPA's Mr. Bloomfield explained.

The finite risk policy will pay IT Corp. 90% of its total routine annual costs of up to \$4.1 million to operate the facility.

IT Corp. assumes responsibility for the other 10% of its operating costs—some of which Mr. Bloomfield described as a company "markup"—as an insurance copayment. Stauffer Management, however, must pony up around \$2.5 million to defray some of that copayment expense for IT Corp., which immediately receives that payment in a lump sum.

While IT Corp. assumes some risk of eating costs that exceed \$4.1 million annually, the policy does contain some protections for the company.

For example, if normal operating costs exceed \$4.1 million by as much as \$900,000 in a year due to high inflation, IT Corp. can carry forward that extra cost to a future year when costs fall below \$4.1 million, Mr.

Bloomfield said.

The policy also contains a cost cap feature designed to protect IT Corp. if unusual events, such as excessive rains or an earthquake, drive up its costs of operating the plant, Mr. Bloomfield noted. The policy provides a total of \$100 million of cost overrun protection that is triggered when perils such as excessive rainfall or earthquakes drive up IT Corp.'s operating costs or damage the facility. The provision contains a \$5 million sublimit per peril.

If IT Corp. can hold down its total costs of operating the plant over the next 30 years to less than \$201 million, the policy would pay the company a portion of that savings, according to Mr. Bloomfield. The government also would earn a share of the savings, he said.

There is little expectation, however, that IT Corp. will be able to come in under budget, Mr. Bloomfield noted.

The settlement also requires IT Corp. to carry \$10 million of property insurance for the site excess of the \$5 million sublimit of coverage provided by the finite risk policy's cost cap provision.

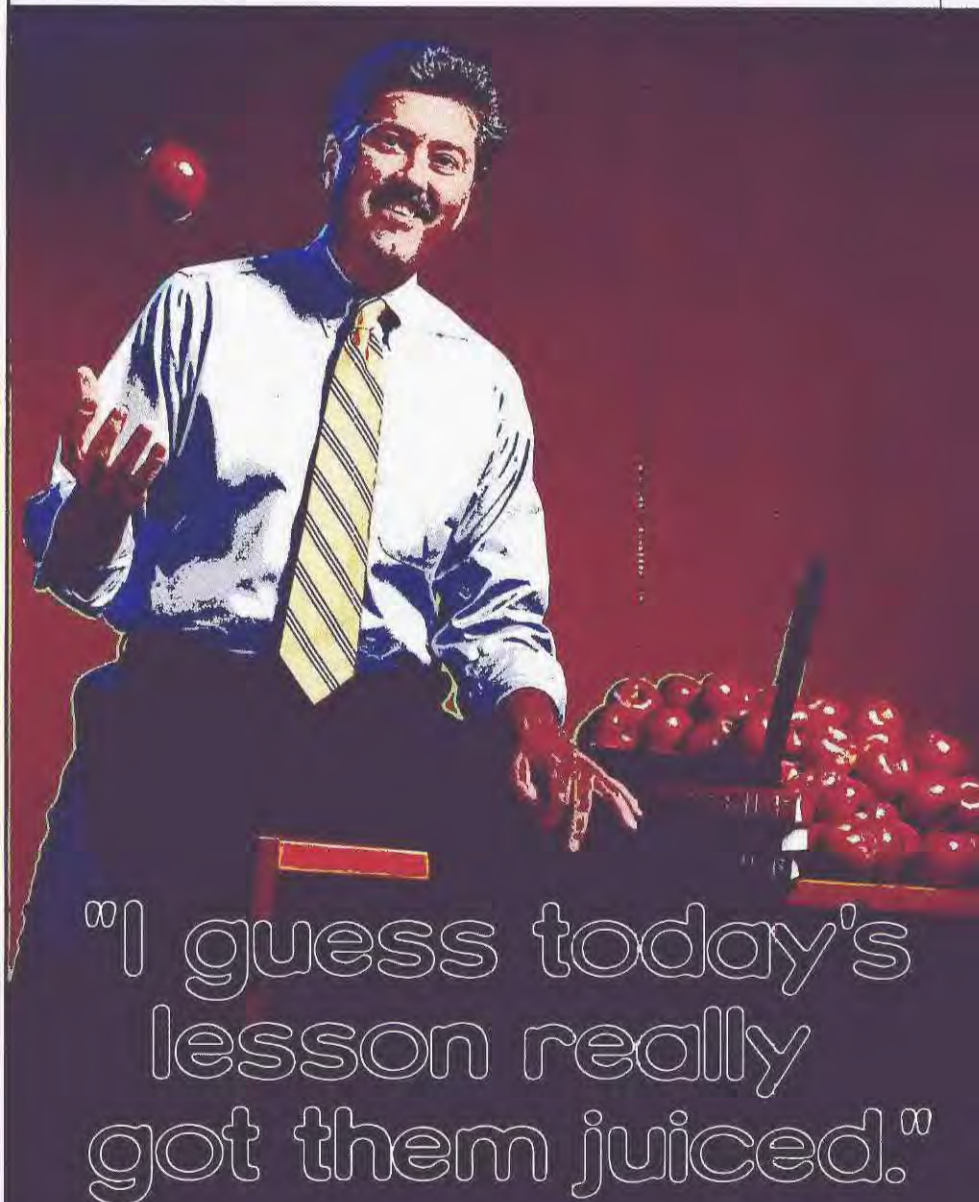
That excess coverage will be provided by The IT Group's corporate property insurance program, said Anne Alger, director of risk management for The IT Group.

In 2030, when IT Corp.'s contract for running the facility expires, a guaranteed investment contract endorsement to the finite risk policy will pay either the federal government or the state of California \$514 million in a lump sum to cover the future costs of controlling acidic drainage from the mine. The payment will be made to the government agency responsible at that point for overseeing pollution cleanup at the site, explained Michael B. Hingerty, deputy chief of the EPA's regional hazardous waste branch in San Francisco.

Besides purchasing the finite risk insurance, Stauffer Management must pay \$7.9 million to the EPA and \$10 million to a board of natural resource trustees from various federal and California agencies to fund other environmental projects at the site. Those projects will include restoring natural habitats and the ecosystem as well other as yet undetermined projects, Mr. Bloomfield said. **B1**

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Spencer to aid part-time students

NEW YORK—The Spencer Educational Foundation for the first time will make scholarships available to part-time graduate students in risk management and insurance for the 2001-2002 academic year.

Students pursuing master of business administration degrees who complete a minimum of four courses during a 12-month period will be eligible for scholarship awards of up to \$10,000 per year, according to the foundation. Like all Spencer awards, scholarships will be based on merit. Awards to part-time MBA students will vary, depending on factors such as the number of courses taken, tuition and fees.

The Spencer Educational Foundation, founded in 1979 in memory of risk manager Robert S. Spencer, historically has granted merit-based scholarships only to full-time undergraduate and graduate students. The foundation awarded nearly \$160,000 in scholarships and grants this year, said Angela Sabatino, administrator of the foundation. Since 1980, Spencer has awarded 244 scholarships and grants, totaling more than \$1 million, she said.

The Spencer Educational Foundation's mission is to provide scholarships and educational grants to stimulate, promote and encourage students of risk management disciplines.

Applications for Spencer programs will be available in early November. For information, contact Angela Sabatino at 212-286-9292, ext. 221, or via e-mail at asabatino@rims.org.



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Court issues ruling on hostile work environment

By JUDY GREENWALD

SAN FRANCISCO—A single, isolated sexual harassment episode that is promptly addressed by an employer does not support a hostile work environment claim, a federal appeals court has ruled.

The 9th U.S. Circuit Court of Appeals also held in *Patricia A. Brooks vs. City of San Mateo* that an employer's effort to educate its employees regarding sexual harassment cannot become the basis for a retaliation claim. The unanimous Oct. 23 decision by the three-judge panel upholds a lower court's dismissal of the case.

"We consider the legal implications of a single, rather unsavory, episode of workplace sexual harassment," says the decision.

Ms. Brooks, a telephone dispatcher for the City of San Mateo, Calif., said she was touched inappropriately one evening on the stomach and breast by a co-worker, Steven Selvaggio.

She immediately reported the incident, and the following day Mr. Selvaggio was placed on administrative leave. He subsequently resigned his position and spent 120 days in jail after pleading no contest to misdemeanor sexual assault charges.

The 9th Circuit Court says one incident of sexual harassment is unlikely to create a hostile environment.

Ms. Brooks had trouble recovering from the incident, according to the decision. She took a leave of absence immediately afterward and began seeing a psychologist. She returned to work six months later.

Ms. Brooks said her work environment had dramatically changed upon her return, however, with male employees ostracizing her and supervisors mistreating her. She then sued the city, the police department and its chief for sexual harassment and retaliatory discrimination. The decision examined both issues based on Title VII of the federal Civil Rights Act.

While Ms. Brooks alleged sufficient facts to support the subjective portion of her hostile work environment claim, the court said, "The question remains whether her apprehension was objectively reasonable."

The 9th Circuit concluded it was not. An isolated incident rarely creates a reasonable fear that sexual harassment has become a permanent feature of the workplace, according to the ruling.

The employer "will have had no advance notice and, therefore, cannot have sanctioned the harassment beforehand. And, if the employer takes appropriate corrective action, it will not have ratified the conduct."

"In such circumstances, it becomes difficult to say that a reasonable victim would feel that the terms and conditions of her employment have changed as a result of the misconduct," the court's decision stated.

To hold San Mateo liable for sexual harassment, Ms. Brooks must show she had a reasonable fear of being subject to such misconduct in the future because the city encouraged or tolerated Mr. Selvaggio's harassment.

In contrast, the decision notes, the incident with Mr. Selvaggio was a single episode that occurred within a few moments. And he "had no

chance to become bolder," because he was removed once his actions were uncovered.

"Our holding in no way condones Selvaggio. Quite the opposite: The conduct of which Brooks complains was reprehensible," but because it was an isolated incident, "in no sense can it be said that the city imposed upon Brooks the onerous terms of employment for which Title VII offers a remedy," the court held.

In discussing Ms. Brooks' retaliation claim, the decision says that "because an employer cannot force employees to socialize with one another, ostracism suffered at the hands of co-workers cannot constitute an adverse employment action."

The decision also says that Ms. Brooks had complained about being required to attend group therapy

sessions and discuss the incident in front of co-workers. The sessions, in which all city workers were required to participate, were workshops designed to better inform the city's workforce of its sexual harassment policy.

"Her complaint seems to boil down to the non-private character of the sessions," says the decision. "But the employer has an interest in educating its employees about the adverse effects of misconduct that has occurred in the workplace. An employer's legitimate effort to deal with a traumatic workplace situation and educate its employees regarding sexual harassment cannot be the basis for a retaliation claim under Title VII."

The appeals court issued a similarly worded decision in June. The

Oct. 23 decision, which also denies a petition for a rehearing by the full court, is the 9th Circuit's final decision.

Commenting on the decision, San Mateo's attorney, Nancy E. Pritikin of Littler, Mendelson in San Francisco, said the ruling tells employers "that it's very important to use the procedures that are available, so that where a situation arises in the workplace that involves inappropriate conduct, that it's dealt with promptly."

"And that's what happened in this case. The employer did what it was supposed to do," said Ms. Pritikin. "The employee made the report, and then they terminated (Mr. Selvaggio's) employment and he was ultimately criminally prosecuted as well," she said.

The decision also is important in terms of determining what constitutes a hostile work environment and whether a single incident is sufficient to do so, said Ms. Pritikin.

"I think the broader and more-important issue is to remind employers that they need to have sexual harassment policies in place, and, by taking prompt, effective action and by giving effect to their policies, they can avoid certain kinds of legal claims," she said.

Patricia A. Brooks, plaintiff-appellant, vs. City of San Mateo, a municipal corporation; San Mateo Police Department; John Stangl, Chief of Police; Steven Selvaggio, defendants-appellees, United States Court of Appeals for the Ninth Circuit, 00 C.D.O.S.8503.

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New York health care stakeholders collaborate

By MICHAEL PRINCE

NEW YORK—What happens when employers, physicians and health plan executives get together in the same room?

It may sound like the start of a joke, but just such a group has been gathering to do serious work on improving the quality of New York's health care system.

Created by the New York Business Group on Health, the "task force" has been meeting secretly for more than a year to enhance quality while keeping costs under control. The NYBGH announced the group's existence this fall.

The task force was created because there was "a lot of dissatisfaction with the current health care system," according to both employers and physicians, said Laurel Pickering, executive

director of the NYBGH. And in New York, "employers and doctors have never communicated before," she said, because the health plans they use act as intermediaries.

The task force's goal is to find out "what could we do that would not dramatically increase costs but would make life dramatically better for doctors, patients and the people who pay the bills, the employers," said Dr. Bernard Schayes, a primary care physician in New York and a member of the task force.

Dr. Schayes said he became involved because physicians are "pretty much fed up with the way health care has evolved."

Just getting all three groups together was an accomplishment—especially physicians and health plan representatives, said a benefit manager in-

involved with the talks who asked not to be identified. "They're probably oil and water in this whole scenario," the benefit manager said.

The first few meetings served as "venting sessions" for the employers and physicians, but since then the discussions have been very productive, said Dr. Marjorie Schulman, senior medical director for New York City and Long Island at Aetna U.S. Healthcare Inc. in New York.

So far, the task force is focusing on:

- Improving the dialogue between the three stakeholders in the system.
- Simplifying the managed care process and improving efficiency through technology, such as online referral approval and electronic access to prescription drug formularies.
- Educating patients to make them better consumers.

Initially, the task force only consisted of employers and physicians. But, after a few meetings, they all realized that health plans had to be included. The talks have now turned toward getting input from the doctors about what they think is wrong with the system, then having the employers and health plans work to resolve these problems. The doctors think employers have more clout with the plans because employers pay the bills and therefore can push for changes that the physicians cannot get.

"Employers are trying to take a more active role" in changing the cost trend, Ms. Pickering said.

Many employers "feel they are looking to change the trend of 8% to 10% increases they are getting, and there has got to be a better way to do this," she said.

The original group of doctors and employers first met in the fall of 1999 with five employers. Since then, five health plans have joined the discussions, including Aetna U.S. Healthcare, PHS Health Plans, United-Healthcare, CIGNA Corp. and Empire Blue Cross & Blue Shield. Employers now taking part in the discussions include Verizon, the City of New York and the law firm of Skadden, Arps, Slate, Meagher & Flom L.L.P.

The three-way talks have been informative for all sides. "Since they don't communicate, they often don't understand each other's positions," Ms. Pickering said.

For example, the doctors did not understand why the employers offered so many different plans to their employees. Meanwhile, employers wanted to know why the doctors so often criticized managed care plans when speaking to their patients, Ms. Pickering said.

"We all agreed that managed care is a work in progress," Dr. Schulman of Aetna said.

From the physicians, the group heard that because of the paperwork required by managed care plans and the low reimbursement rate, many middle-aged doctors have quit their practices, Dr. Schayes said. To correct this, the health maintenance organizations need to pay doctors more, he said.

"If you don't reimburse us, we can't afford to keep our offices," he said. This added money could come both from higher reimbursement and from less paperwork that allows doctors to cut costs and staff who deal with this paperwork.

A big example, Dr. Schayes noted, is paperwork associated with referrals to specialists. Since virtually all patient referrals are approved, the paperwork is "nonsense" and only drives up costs, he said. By working with health plans to eliminate the extra paperwork, quality would improve and costs would drop, he said. Dr. Schayes said he has one staff person solely devoted to handling the paperwork for referrals.

The referral procedures made sense when HMOs first took hold in the early 1990s, "but I think today it has no rationale," he said.

"You can't just put more money in the system. You have to find where economies" exist, he said.

Dr. Schulman said Aetna wants to address problems with the referral process both in New York and elsewhere. The dialogue helped the company learn that "the referral process is a real lightning rod," she said.

For now, the task force is looking at the areas where doctors have indicated unhappiness with the system. Early next year, the members plan to bring together focus groups of physicians "to confirm what the problems are with a broader group of physicians," Ms. Pickering said.

On the other hand, Dr. Schulman said she learned from the talks how badly employers have been squeezed by the tight job market and how much trouble they have cutting health care costs because it could upset their workers.

For now, while the talks are still at the theory stage, agreement is not difficult, Ms. Pickering said. But this could change when the talk turns to action and money becomes a big issue. At that point, the participants' differences could show, she noted.

At the moment, the biggest obstacle will be turning talk into action, the benefit manager said. But after one issue gets resolved, further accomplishments will be easier.

"Jumping the first hurdle is always the hardest," the benefit manager said. "After that, we will be able to sail through several of these issues." **BI**

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Scope of regulatory authority at issue in case

By MARK A. HOFMANN

WASHINGTON—The Supreme Court will decide a case that, at first glance, appears strictly for the birds.

Solid Waste Agency of Northern Cook County vs. U.S. Army Corps of Engineers—which was argued before the Supreme Court last week—revolves around whether the Corps of Engineers may assert jurisdiction over certain intrastate waters because the waters serve—or have the potential to serve—as habitat for migratory birds. Some employer groups, however, see its impact as extending far beyond a few acres of would-be landfill near Chicago.

“The bigger question here is the authority of the federal government to regulate in areas where the states should have more authority or sole authority. In a lot of issues, like environmental issues especially, businesses have a better stake in dealing with their local or state regulators than federal regulators,” said Glenn Lammi, chief counsel of the Washington Legal Foundation. The WLF, which handles litigation on free-market issues, filed an amicus brief in the case.

The question in the case is whether the Constitution’s commerce clause and the Clean Water Act give the Army Corps of Engineers the authority to regulate isolated intrastate wetlands. The case began in the mid 1980s when the Solid Waste Agency of Northern Cook County, a group of 23 local governments, began negotiations to buy a 533-acre tract straddling northwestern Cook County and neighboring Kane County to use as a

landfill. The site, which includes a former strip mine, contains some wetlands, 17.6 acres of which would be filled in. The wetlands aren’t navigable, and they aren’t connected to any navigable or interstate waters. The Clean Water Act covers navigable waters.

After initially claiming that it had no jurisdiction over approval of the site, the corps denied the permit for the landfill in 1994, citing the presence of several species of migratory birds at the site. The corps had adopted a migratory bird rule without congressional action in 1986, and it has held that the rule allows the corps to claim jurisdiction over any waters that are used by migratory birds.

The Illinois agency filed suit, but both a federal district court and the 7th U.S. Circuit Court of Appeals sided with the corps. In its 1999 decision, the appeals court said that the commerce clause—which gives Congress the right to regulate interstate commerce—applies to the case, because millions of people spend a total of more than \$1 billion annually in activities—ranging from bird watching to hunting—that involve migratory birds. The Cook County agency appealed to the Supreme Court.

Last week’s arguments included heated exchanges over the meaning of “navigable waters,” with Associate Justice John Paul Stevens at one point asking Timothy Bishop, the attorney who represented the solid waste agency, whether a body of water that could support a rowboat would be considered navigable. Associate Justice Stephen Breyer asked whether the

government could regulate isolated bodies of water where mosquitoes carrying the West Nile virus breed. At one point, Mr. Bishop—a partner in the Chicago law firm of Mayer, Brown & Platt—noted that the Founding Fathers never intended the federal government to have jurisdiction over every problem.



Deputy Solicitor General Lawrence Wallace came under pointed questioning as well, once again in regard to the meaning of “navigable waters.” At one point, Mr. Wallace drew a sharp rebuke for attempting to answer a justice’s question before the question was completed. “If a justice asks you a question, I suggest you remain quiet until he finishes,” admonished Chief Justice William Rehnquist.

In an impromptu press conference after the arguments, Mr. Bishop said that if the government can regulate any body of water because a migratory bird lands there, then it can regulate every tree as well.

That sentiment echoed those of the U.S. Chamber of Commerce in a brief filed in support of the Illinois agency.

In its brief, the Chamber argued

that the case “does not challenge the power of federal agencies to regulate activities that cause the pollution of interstate waterways, their tributaries or adjacent wetlands.” Congress has “ample authority” over “truly interstate and commercial problems,” the Chamber’s brief says.

“The case instead presents the question whether the federal government may set land-use policy for 17.6 acres of hydrologically isolated wetlands, whose only connection with interstate commerce is the fact that they are actual or potential landing zones for migrating birds. Under the ‘migratory bird interpretation’ of the U.S. Army Corps of Engineers, the answer to that question is an emphatic yes that puts the federal government in the leading role in land-use decision-making for, not just this isolated plot, but every ‘damp depression’ in the nation. The migratory bird interpretation threatens to impose Army jurisdiction over every backyard in the United States,” the brief says.

“The scope of the commerce clause is important, and the reach of these agencies that regulate environmental matters, be they EPA and the Army Corps of Engineers, coming up with these incredible jurisdictional stretches, like ‘If a bird lands on it, we can regulate it,’” said Robin Conrad, senior vp of the National Chamber Litigation Center Inc., which handles litigation for the U.S. Chamber.

“It’s also that they’re saying this has a connection to interstate commerce. What better group than the U.S. Chamber to stand up and say, ‘Commerce is commerce, but this is ridicu-

lous’? It is sort of the paradigm of regulatory overreaching,” Ms. Conrad said.

Last week’s arguments in the wetlands case marked the beginning of an unusual streak of activity in terms of cases of interest to employers.

On Nov. 6, the justices will hear arguments in *Circuit City Stores vs. Adams*, which involves the use of binding arbitration agreements as a condition of employment.

The court will take on another example of what some employer groups regard as regulatory overreach on Nov. 7, when the justices consider *American Trucking Assns. Inc. vs. Browner and Browner vs. American Trucking Assns. Inc.* In these paired cases, the justices will decide whether the Clean Air Act requires the Environmental Protection Agency to ignore all other factors except the impact on health of air pollutants when setting nationwide air quality standards. “ATA is a little different, because it deals with the ability of agencies to regulate if Congress hasn’t given them clear direction,” said Mr. Lammi of the Washington Legal Foundation.

On Nov. 8, the justices will revisit the question of how broadly the Employee Retirement Income Security Act pre-empts state law, as they listen to arguments in *Egelhoff vs. Egelhoff*, which revolves around a complicated estate dispute involving the deceased’s most-recent ex-wife and his children from an earlier marriage. At stake are the proceeds from an employer-provided life insurance policy and pension plan. **BI**

Accountants

Many firms show gains in first nine months of 2000

► The following roundup of nine-month results reports was compiled from items that originally were daily news postings at www.businessinsurance.com.

American International Group Inc.

NEW YORK—American International Group Inc.'s net income was \$4.14 billion in the first nine months of 2000, a 10.6% increase over the same period last year.

The company's gross revenues increased 12.8% to \$33.46 billion.

The increase in revenues was in part due to increased premiums from property/casualty business, AIG Chairman and Chief Executive Officer Maurice R. Greenberg said in a statement.

"In the domestic commercial property/casualty marketplace, we are seeing a continuation of rate increases for many classes of business. We have every reason to believe that this momentum will continue," Mr. Greenberg said.

Chubb Corp.

WARREN, N.J.—Dramatically lower catastrophe losses and rising rates helped Chubb Corp. post a 19.4% increase in net income for the first nine months of this year to \$546.2 million.

Although Chubb suffered \$135 million in catastrophe losses that added 9.4 percentage points to its

combined ratio in last year's third quarter, cat losses amounted to only \$8 million, or 0.5 percentage points, in this year's third quarter, the company reported. Chubb's nine-month combined ratio this year is 99.9%, compared with 103.4% for the same period in 1999.

Overall, net written premiums for the first nine months expanded 10% to \$4.73 billion.

Total operating income for the first nine months rose 27.3% to \$515.2 million. Chubb also recorded investment gains, including gains on the third-quarter sale of its 50% interest in Associated Aviation Underwriters Inc.

"Overall premium growth was outstanding, reflecting both new business and higher rates," Chubb Chairman and Chief Executive Officer Dean R. O'Hare said in a statement. "We see the industry environment continuing to favor rate increases, and that bodes well for continued premium growth."

"Comparisons with last year's third quarter were helped substantially by the near-total absence of catastrophe losses this year compared with heavy catastrophe losses last year, mostly related to claims from Hurricane Floyd," Mr. O'Hare added.

Hilb, Rogal & Hamilton Co.

GLEN ALLEN, Va.—A continued focus on producer productivity and operating efficiencies, coupled with acquisitions and modest pre-

mium increases, gave rise to an 18.5% rise in commission and fee revenues at Hilb, Rogal & Hamilton Co. for the first nine months of 2000.

Commissions and fees increased to \$191.4 million, while total revenues, including investment and other income, improved 15.8%, to \$195.0 million, compared to the same nine-month period in 1999. Net income rose 8.7% to \$17.8 million.

The third quarter marks the first time that results for the comparative 1999 period fully reflect HRH's acquisition of American Phoenix Corp., which closed in May 1999.

During the third quarter, HRH acquired two agencies: San Diego-based Red Hawk Insurance Services; and Shelton, Conn.-based Thomas M. Murphy & Associates. In October, HRH acquired Insurance One Inc., a full-service insurance agency based in Rockville, Md.

In a statement, Chairman and Chief Executive Officer Andrew L. Rogal said that the broker will continue to explore additional opportunities for acquisitions in the months ahead.

"Carefully selected acquisitions of middle-market commercial insurance brokerage firms continue to provide us with opportunities to build our presence in existing markets, open new geographic territories, expand specialty lines, and apply our operating model to a larger base," Mr. Rogal said.

Kaiser Foundation Health Plan Inc.

OAKLAND, Calif.—Kaiser Foundation Health Plan Inc., Kaiser Foundation Hospitals Inc. and their subsidiaries expect to end the year on a profitable note after three years of losses.

The losses were the first in the organization's nearly 60-year history, a spokeswoman said. "Since then, we have embarked on a turnaround, and we hope it will never happen again," she said. Kaiser's changes included shedding underperforming operations in the Eastern United States.

Kaiser's net income for the nine months that ended Sept. 30 soared to \$479 million, compared with \$81 million for the same period in 1999. Operating revenue grew about 4%, to \$13.1 billion. Kaiser reported.

"We continue to make significant progress in our turnaround effort," Kaiser President Dale Crandall said in a statement. "However, we must continue our vigilance on our path to fiscal recovery. Although we are a not-for-profit organization, we need to generate enough income to meet the large investment and capital requirements for our long-term sustainability."

Kaiser Permanente is the brand name for the parent of Kaiser Foundation Health Plan Inc. and Kaiser Foundation Hospitals. The integrated health care program serves 3.1 million members in 11

states and the District of Columbia.

Kaye Group Inc.

NEW YORK—New business, high retention rates and a firming pricing environment contributed to Kaye Group Inc.'s 10.2% rise in brokerage revenues for the first nine months of 2000, to \$31.3 million.

Total revenues at the New York-based broker, which include underwriting and investment income, rose 13%, to \$57.0 million, over the comparable period in 1999. Net income jumped 32.3%, to \$6.9 million.

In a statement, Kaye Chairman and Chief Executive Officer Bruce D. Guthart said that much of the broker's new business is coming from its wholesale operations.

Mr. Guthart also noted that "the trend toward more-rational pricing of property/casualty coverages appears to be taking hold among many classes of business." Mr. Guthart called the trend "encouraging for future growth."

According to *Business Insurance's* annual broker rankings, Kaye Group was the 30th-largest broker of U.S. business, with \$47.2 million in 1999 brokerage revenues (*BI*, July 17).

Marsh & McLennan Cos. Inc.

NEW YORK—Marsh & McLennan Cos. Inc.'s revenues for the

See Results on next page

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ability.

Results

Continued from previous page
first nine months of 2000 rose to \$7.68 billion, a 13% increase over the same period last year.

Profits for New York-based Marsh & McLennan increased 22% to \$895 million.

Revenues at the company's insurance brokerage unit, Marsh Inc., grew 5.2% to \$3.58 billion. The brokerage unit's operating profits increased 15.5% to \$728 million.

Marsh & McLennan's consulting unit, Mercer Consulting Group Inc., reported revenues of \$1.59 billion, a 9.7% increase. Operating profits increased 21.3% to \$233 million.

Putnam Investments Inc., Marsh & McLennan's investment management company, was the best-performing operation. Putnam's revenues increased 27.5% in the nine months to \$2.5 billion, while operating profits increased 25.9% to \$793 million.

Oxford Health Plans Inc.

TRUMBULL, Conn.—Oxford Health Plans Inc. reported revenues of \$3.07 billion for the first nine months of 2000, a decrease of 2.9% from the comparable period last year.

Net income for the nine-month period, however, increased 705.8% to \$146.4 million, boosted in part by third-quarter profits of \$80.6 million.

Dr. Norman C. Payson, chairman and chief executive officer of Trumbull, Conn.-based Oxford, attributed the third-quarter income gain to Oxford's success in working with

physicians to achieve better-than-expected health care costs, as well as improvements in operations and administrative costs.

SAFECO Corp.

SEATTLE—A strong third quarter could not turn around SAFECO Corp.'s results for the first nine months this year, which means the insurer will boost commercial and personal insurance rates sooner than planned.

SAFECO reported \$45.5 million of net income during the third quarter, a nearly threefold increase from the \$16.1 million reported for the same period last year. For the first three quarters, though, SAFECO reported \$104.4 million of net income, a nearly 50% decrease from the first nine months of 1999.

SAFECO's total revenues in 2000 have increased marginally. For the first nine months, revenues grew 4.7% to more than \$5.43 billion. Third-quarter revenues this year were nearly \$1.78 billion, a 2% increase from last year's third quarter.

"Even though our profits are up from the third quarter a year ago, we were expecting more progress by this time," said Roger H. Eigsti, chairman and chief operating officer of the Seattle-based insurer.

"While performance of personal auto and small-business insurance met our expectations for the quarter, our other major property and casualty lines did not fare as well," Mr. Eigsti said. SAFECO reported higher-than-expected losses in commercial auto and workers compensation insurance for large businesses.

Boh Dickey, president and chief

operating officer, stressed that the insurer is focusing on improving profits and expects better underwriting results over the next several quarters.

"We're increasing prices—ahead of schedule—on almost all property and casualty products. These increases are starting to be reflected in our earned premium volume," Mr. Dickey said.

SAFECO is boosting rates 15%, on average, for large-business risks, including workers compensation policies. The insurer is raising rates 14%, on average, for small-business

insurance.

UnitedHealth Group

MINNEAPOLIS—UnitedHealth Group reported a 7.7% increase in total revenues for the first nine months of 2000, to \$15.7 billion, while net earnings rose 28.0% to \$526 million.

In a statement, Chairman and Chief Executive Officer Dr. William W. McGuire attributed the Minneapolis-based health care giant's strong results to its broad product offerings and use of technology.

"The strength and consistency of results across our business segments reflect accelerating growth as the marketplace responds to our segments' broad-based product offerings, our effective and practical application of information technology and our focus on excellence in consumer and provider service," Dr. McGuire said.

According to UnitedHealth Group, its commercial health benefit business increased the number of people serviced in continuing market segments by a total of 1.2 million people in the last 12 months. **BI**

Motorola workers embrace new hybrid pension plan

By ARLEEN JACOBIOUS
Craio News Service

SCHAUMBURG, Ill.—Close to 60% of Motorola Inc.'s 72,000 employees opted to join the company's new portable, hybrid defined benefit pension plan.

The rest will stay in the company's \$3.4 billion traditional plan.

When the one-time defined benefit plan choice went into effect July 1, Motorola executives also selected a new recordkeeper for its \$6.4 billion 401(k) profit sharing plan and managers for that plan's five new investment options from its group of 12 existing managers, said Sheila Forsberg, director of global retirement benefits strategy for the Schaumburg, Ill.-based company.

The investment managers oversee the assets in both the 401(k) and defined benefit plans, she said.

Northern Trust Corp., which manages the index investments in Motorola's pension plans and was trustee for the defined benefit plan, was selected to provide administration and recordkeeping for all of the plans.

Motorola's new portable defined benefit plan is a pension equity plan, a hybrid offering a lump-sum payment that can be taken when an employee leaves Motorola. Employees who worked for Motorola before July 1, 1999, had a one-time choice between the existing defined benefit plan and the new portable plan. Those who were hired after that date, or who failed to choose, were enrolled in the

portable plan. The portable plan became effective July 1.

The traditional defined benefit plan was frozen as of June 30, Ms. Forsberg said. Employees' accrued benefit in that plan as of June 30—and any benefit under the Supplementary Contributory Retirement Plan, a plan to which employees made voluntary contributions until Dec. 31, 1977—were added to their benefits earned under the portable pension plan, she said.

"Quite a few older individuals in their mid- to late 60s requested the portable plan," so that they could get lump-sum distributions, Ms. Forsberg said. That feature will make the portable plan a bit more expensive for Motorola, Ms. Forsberg said.

See Hybrid on next page

No liability

Hybrid

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The new defined contribution investments—all separate accounts—more than double the number of options in the plan's menu of investments to nine from four, she said.

The investment options added to the 401(k) plan July 1 were: long-term indexed bond; international indexed equity; midcap indexed equity and small-cap indexed equity funds, all managed by Northern Trust; and a balanced fund run by all 12 investment managers.

The remaining lineup of investment managers is the same. The equity investment managers are: Jennison Associates L.L.C. and Ark Asset Management Co. Inc., both of New York; Lincoln Capital Management and Northern Trust, Chicago; and The Boston Co. Asset Management Inc. and Independence Investment Associates, Boston. The fixed-income managers are Harris Investment Management and Stein Roe & Farnham Inc., both of Chicago; Scudder Kemper Investments Inc., Boston; and Weiss Peck & Greer L.L.C., New York.

The existing investments in the 401(k) plan are a large-cap equity index fund run by Northern Trust; a balanced fund run by all 12 managers; a short-term bond portfolio managed by Scudder Kemper, Stein Roe and Weiss Peck; and Motorola stock, Ms. Forsberg said.

To prepare the employees for making the choice between the defined benefit plans, the company hired Arthur Andersen's Human

Capital practice to run a five-month employee education program, Ms. Forsberg said.

The education campaign included 1,300 seminars at Motorola's U.S. offices, a personalized benefit statement, help-line counseling,

and an online tool allowing employees to model the differences between the two defined benefit plans, she said.

"We got real nice thank yous from employees," she said. "They were pleased with so much infor-

mation and in so many different forms."

Those who used the online modeling tool liked it. However, employees needed to have the right computer browser in order to access it, Ms. Forsberg said. A

Northern Trust Web site for Motorola employees will be launched Dec. 1.

Arleen Jacobius is a reporter for Pensions & Investments, a sister publication of Business Insurance.

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NEXT >

Di...ity.

DATEBOOK**NOVEMBER**

NOV. 12-15. Society of Insurance Research 30th Annual Conference in San Antonio. S.I.R., 691 Crossfire Ridge, Marietta, Ga. 30064; 770-426-9270; 770-426-9298; stanhopp@mindspring.com; www.sinet.org.

NOV. 13. Insuring the E-Commerce Account Workshop in Altamonte Springs, Fla., sponsored by the CPCU Society; \$99 for members and \$114 for non-members. John Kelly, 800-932-2728, ext. 2773; www.cpcusociety.org.

NOV. 13-14. National Business Coalition on Health Conference in Washington. \$600 for members and \$670 for non-members. NBCH, Office of Meeting Management, 1 Bridge Plaza, Suite 350, Fort Lee, N.J. 07024; 800-642-2515.

NOV. 13-15. World Captive and Alternative Risk Financing Forum in Palm Beach Gardens, Fla., sponsored by *Business Insurance*, Skandia/SINSER and Tillinghast-Towers Perrin; \$975 for members and \$1,250 for non-members. World Captive Forum; 952-928-4653; fax: 952-929-1318; www.captive.com/captiveforum.

NOV. 13-16. 20th International Risk Management Institute Construction Risk Conference in Atlanta; \$335. Jennifer R. Hill, IRMI, 12222 Merit Drive, Suite 1450, Dallas, Texas 75251; www.irmi.com.

NOV. 14. Critical Healthcare Issues Facing Employers Seminar in Brookfield, Wis., sponsored by the Wisconsin division of the Self-Insurance Institute of America Inc.; \$95 for members and \$125 for non-members. SIIA, P.O. Box 15466, Santa Ana, Calif. 92735-0466; 800-851-7789; www.siaa.org.

NOV. 14. The Commercial Account Workshop in Fort Wayne, Ind., sponsored by the CFCU Society; \$105 for members and \$115 for non-members. John Kelly, 800-932-2728, ext. 2773; www.cpcusociety.org.

NOV. 14-16. Cambridge Fourth Annual Reinsurance and Runoff Symposium in Philadelphia, sponsored by Cambridge Integrated Services Group; \$250. Kelley Coleman 8 Centre Dr., Jamesburg, N.J. 08831; 609-655-8383; fax: 609-655-0503.

NOV. 15. Independent Insurance Agents of Connecticut Midyear Convention in Plantsville, Conn.; \$95 for members and \$150 for non-members. IIAC, 30 Jordan Lane, Wethersfield, Conn. 06109; 860-563-1950; fax 860-563-6730.

NOV. 15. Managing the Crime Loss Exposures Workshop in Chicago, sponsored by the Insurance School of Chicago; \$125. ISC, 330 S. Wells St., Suite 300, Chicago, Ill. 60606; 312-427-2520; fax: 312-427-8528.

NOV. 15. Personal and Commercial Lines Seminar in Chicago, sponsored by the Insurance School of Chicago; \$125. ISC, 330 S. Wells St., Suite 300, Chicago, Ill. 60606; 312-427-2520; fax: 312-427-8528.

NOV. 16-17. Third Annual Property/Casualty Claims Congress in New Orleans, sponsored by Mitratech and Law Audit Services; \$1,495. Conference Administration, Global Business Research Ltd., 510 Sacramento St., Nevada City, Calif. 95959; 800-868-7188; fax: 530-478-1773.

NOV. 17-18. 2000 West Regional Conference in San Jose, Calif., sponsored by Agency Management Systems Users' Group; \$299 for members and \$399 for non-members. AMS Users' Group, 8615 Freepoint Parkway, Suite 250, Irving, Texas 75063; 972-929-8803; fax: 972-915-2163; www.amsug.org.

NOV. 19-22. Assn. of Risk & Insurance Managers of Australasia Conference in

Sydney, Australia. Intermedia Convention & Event Management. P.O. Box 1280, Milton QLD, 4064 Australia; 61-7-3369-0477; www.arima.com.au.

NOV. 21. Certificates of Insurance Workshop in Chicago, sponsored by the Insurance School of Chicago; \$95. ISC, 330 S. Wells St., Suite 300, Chicago, Ill. 60606; 312-427-2520; fax: 312-427-8528.

NOV. 27 Annuity Basics Training Course in Wethersfield, Conn., sponsored by the Independent Insurance Agents of Connecticut; \$55 for members; \$80 for non-members. IIAC, 30 Jordan Lane, Wethersfield, Conn. 06109; 860-563-1950; fax: 860-563-6730.

NOV. 29. Overview of Commercial Property Casualty Insurance Seminar in Chicago, sponsored by the Insurance School of Chicago; \$125. ISC, 330 S. Wells St., Suite 300, Chicago, Ill. 60606; 312-427-2520; fax: 312-427-8528.

NOV. 29. Safety, Prevention, Cost Control and Workers Compensation in Illinois Seminar in Chicago, sponsored by Lorman Education Services; \$219. LES, P.O. Box 509, Eau Claire, Wis. 54702-0509; 715-833-3959; fax: 715-833-3953; www.lorman.com.

NOV. 29-30. Information Privacy and Security for E-Healthcare Conference in New Orleans, sponsored by International Quality & Productivity Center; \$1,599. IQPC, 150 Clove Road, P.O. Box 401, Little Falls, N.J. 0742-0401; 800-882-8684; fax: 973-256-0205.

NOV. 30. Commercial General Liability Insurance Workshop in Chicago, sponsored by the Insurance School of Chicago; \$125. ISC, 330 S. Wells St., Suite 300, Chicago, Ill. 60606; 312-427-2520; fax: 312-427-8528.

NOV. 30. Understanding Marine Insurance Workshop in Chicago, sponsored by the Insurance School of Chicago; \$125. ISC, 330 S. Wells St., Suite 300, Chicago, Ill. 60606; 312-427-2520; fax: 312-427-8528.

312-427-8528.

DECEMBER

DEC. 1. Time Management in Insurance and Risk Management Workshop in Chicago, sponsored by the Insurance School of Chicago; \$95. ISC, 330 S. Wells St., Suite 300, Chicago, Ill. 60606; 312-427-2520; fax: 312-427-8528.

DEC. 2-6. National Assn. of Insurance Commissioners Winter Meeting in Boston; \$450 for non-regulators. Miriam Hennessy, 2301 McGee St., Suite 800, Kansas City, Mo. 64108; 816-783-8101.

DEC. 5-8. 12th Annual National Forum on Quality Improvement in Health Care in San Francisco, sponsored by Institute for Healthcare Improvement; \$895. IHI, 135 Francis St., Boston, Mass. 02215; 888-320-6937; www.ihl.org.

DEC. 6. Introduction to the Insurance Industry Seminar in Chicago, sponsored by the Insurance School of Chicago; \$125. ISC, 330 S. Wells St., Suite 300, Chicago, Ill. 60606; 312-427-2520; fax: 312-427-8528.

DEC. 6-9. Certified Risk Manager Designation Courses in Costa Mesa, Calif., sponsored by Certified Risk Managers International; \$395 per course. CRM, P.O. Box 27027, Austin, Texas 78755-2027; 800-633-2165; 512-343-2167; www.scic.com.

DEC. 11-12. Life Insurance Compliance Forum in Washington, D.C., sponsored by the Institute for International Research; \$1,995. IIR, 708 Third Ave., Fourth Floor, New York, N.Y. 10017; 941-951-7885; fax: 941-365-2507; www.iir-ny.com.

DEC. 19. Business Income Insurance Comprehensive Review Workshop in Chicago, sponsored by the Insurance School of Chicago; \$125. ISC, 330 S. Wells St., Suite 300, Chicago, Ill. 60606; 312-427-2520; fax: 312-427-8528.

JANUARY

JAN. 9. Florida Long-Term Care

Symposium in Fort Lauderdale, Fla., sponsored by the American Assn. for Long-Term Care Insurance; \$120 for members and \$140 for non-members. AALTCI, 4165 E. Thousand Oaks Blvd., Suite 335, Westlake Village, Calif. 91362; 888-599-5997.

JAN. 29-30. XML for Insurance Conference in New York, sponsored by Marcus Evans; \$2,295. Jill Faulkner, 303 E. Wacker, Chicago, Ill. 60601; 312-894-6392; fax: 312-894-6390.

JAN. 29-30. Financial Convergence Conference in New York, sponsored by Marcus Evans; \$3,995. Jill Faulkner, 303 E. Wacker, Chicago, Ill. 60601; 312-894-6392; fax: 312-894-6390.

FEBRUARY

FEB. 14-16. Second Annual Windstorm Insurance Conference in Orlando, Fla., sponsored by Windstorm Insurance Network; \$225 for members and \$275 for non-members. WIND, P.O. Box 30486, Pensacola, Fla. 32503-1486; 850-469-9052; fax: 850-435-2949.

The Datebook is compiled from notices sent to Business Insurance. Notices for meetings should be sent at least eight weeks in advance to Datebook, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590. Please include the cost, if any, to attend the meeting and information on registration for interested readers. Business Insurance reserves the right to select those meetings of greatest interest to its readers and cannot guarantee that notices will be printed. Datebook listings also are available on the World Wide Web at www.businessinsurance.com.

Profit

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partments, with payment and insurance obligations strictly enforced. Sound workers compensation jurisprudence imposes a financial obligation on an employer only where the injury meets the legal test of work causation.

It provides all reasonable and necessary medical treatment for work-related injuries and diseases, without copays and deductibles and without limitation in duration or amount; and benefits for replacement of lost wages, until the employee is able to return to work, sometimes for life.

Because the proposed ergonomics standard does not limit compensation to injuries proven to arise out of and in the course of employment (as defined under each state's workers compensation law), employers whose liability for workplace injuries is limited to the obligations under workers compensa-

tion statutes would be subject to new and uncertain liability for medical and wage replacement benefits mandated by the standard.

In addition, the proposed standard obligates employers to payment of full salary and benefits, which is inconsistent with payments provided under workers' compensation. The higher OSHA payment is not only a larger direct expenditure, it also inflates compensation costs by thwarting return to work incentives built into the workers' compensation benefit design.

The Congress was correct in passing the Enzi/Northrup amendment to prohibit OSHA from racing to implement the ergonomics rule. Employers and workers can only hope that prohibition is retained in the final bill. Otherwise, the 100 years that states have spent refining the nation's oldest social insurance program will be wrecked in 60 days, the amount of time allowed

for implementation of the radical changes imposed by the federal ergonomics rule.

Robert E. Vagley
President
American Insurance Assn.
Washington

To the editor: The recent ramblings of OSHA's Charles Jeffress in an Oct. 23 Perspective article makes one wonder if anyone is really at home when he talks about ergonomics and his drive to get his OSHA ergonomics standard passed.

Corporations for years have been addressing these safety issues without government mandatory oversight and promulgated standards. If Mr. Jeffress wanted to truly help businesses in this area he would be offering more training and consultation to companies, not ramming some ill-thought standard down our throats.

Mr. Jeffress conveniently fails to mention that his new standard would require employers to pay 100% in workers compensation for ergonomic related injuries. So the employee who has his leg amputated by a machine at work only receives 66.66% of their salary, while the company clerk who develops CTD gets to stay at home with 100% workers comp pay. Hello?

Mr. Jeffress also fails to mention the fact that OSHA paid \$10,000 for supporters of the OSHA ergonomics standard to attend congressional hearings,

while the very businesses he says he wants to help save money for, were left paying their own way (BI, Aug. 14). Anybody home?

OSHA needs to offer help, assistance and positive consulting efforts before issuing edicts that will drive costs up.

Lance J. Ewing
Senior Director
Insurance & Loss Prevention
GES Exposition Services &
Exhibit Group
Giltspur, Nev

RMIS directory deadline approaches

Business Insurance will publish its annual directory of risk management information systems in the Dec. 4 issue.

The issue will include a Spotlight Report feature on risk management technology solutions.

The directory is published as an editorial service, and there is no

charge to be included. Companies must simply submit a completed questionnaire by the extended deadline of Nov. 15.

To be listed in the directory, your company must produce risk management software products for risk management personnel on a stand-alone basis; i.e., not bundled with

computing hardware or any other services.

If your company provides these services and you have not yet received a questionnaire, please request one by contacting Assistant Directory Editor Michel Schwartz at 312-649-5313; mschwartz@crain.com.



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LITIGATION MANAGEMENT

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Renewals

Continued from page 2

writers also changed between the two big reinsurance meetings, he noted.

In Monte Carlo, reinsurers were hoping that prices would rise, but by Baden-Baden they were "committed to and convinced of" increased prices, he said.

A hardening market

"The market is definitely hardening in most areas at last," said Mr. Champvillard, adding that "talking to clients, they are in the same mood" to increase underlying premiums.

"The market is hardening. Even loss-free accounts will see an increase. Everybody is aware that rates will have to go up," agreed Franz Hertl, a marketing director at Munich Reinsurance Co. in Munich, Germany, responsible for industrial insurance clients in the German market.

"Catastrophe rates are going to increase across Europe, with (storm-affected) countries such as France, Denmark and Switzerland seeing significant increases," said Thomas Mahoney, managing director of St. Paul Reinsurance Co. Ltd. in London.

Property catastrophe reinsurance rates are increasing throughout Europe, from about 5% to 10% in some countries, to as much as 300% in France, which was hit badly by late 1999 winter storm losses, according to Erik Holst-Andersen, assistant general manager of Danish Reinsurance Co. in Copenhagen, Denmark.

"The major reinsurers are looking for price increases. I haven't heard of anyone ready to sell off capacity at lower or even the same rates as last year," said Arno Junke, regional chief underwriter for the German market at GeneralCologne Re in Cologne, Germany. GeneralCologne Re is the brand name for the combined General Reinsurance Co. and Cologne Reinsurance Co.

"The insurers appreciate the situation" reinsurers are in, Mr. Junke noted.

"I can confirm very strongly" that the market is hardening, said Jakob Eugster, market executive for the Swiss and Austrian markets at Swiss Reinsurance Co. in Zurich, Switzerland.

"There is a clear change. The market was hardening slightly last year but is now making great strides," he said.

"It is now very clear. Look at the non-life figures at reinsurers. They are unacceptable. Now is the moment of truth," said Mr. Eugster, adding that Swiss Re is "prepared to lose business in this renewal" if it cannot increase prices.

Reinsurance executives agree that capacity has not shrunk but that reinsurers now are only prepared to sell capacity at the right price.

"There is capacity in the reinsurance market but a lack of appetite from reinsurers for new business," said SCOR's Mr. Champvillard. "People are happy with the business they've got and are not looking at writing new accounts. We are all trying to improve our existing accounts," he said.

"There is no withdrawal of capacity if the price is right," noted GeneralCologne Re's Mr. Junke.

"If the pricing is right, the capacity will be there," agreed Mr. Mahoney of St Paul Re.

"It is a very strange marketplace at the moment. We are moving out of the greed stage," where reinsurers compete for business, and into

a stage of "fear, with reinsurers trying to rebuild their balance sheets," he said.

Property cat rates

Reinsurance for natural catastrophe risks was the "main topic" at Baden-Baden following the severe losses sustained by the industry following the Lothar and Martin storms, which resulted in billions of dollars of claims in several European countries—including France, Switzerland, Germany and Denmark—last winter, said Mr. Eugster. The storms struck in late December 1999, after reinsurance contracts for 2000 had already been set, meaning the premiums did not cover reinsurers' losses.

French insurers in particular will pay much higher prices for their natural catastrophe reinsurance, seeing increases of up to 300%, Baden-Baden attendees

generally agree.

"Hearsay has it that, in France, rates for cat layers will triple. I am not surprised. A lot of French insurers also had inadequate catastrophe programs in place" and are seeking additional capacity, said Mr. Junke.

'It is a very strange marketplace at the moment. We are moving out of the greed stage,' says Arno Junke.

"Lothar and Martin have left a very deep mark on what can happen to insurers and reinsurers and made it clear that the price for catastrophe capacity has to be adequate to give long-term cover,"

said GeneralCologne Re's Mr. Junke.

The storms "really sent a bit of a shock wave through the industry and showed that a storm event, which is not considered unusual in Europe, can lead to huge economic and insurance losses," he pointed out.

As a result of the losses, European reinsurers are seeking higher rates while ceding companies are looking for additional catastrophe cover, executives say.

"Following the big losses of last year there is a lot of nervousness among European insurers, many of whom are looking to buy more catastrophe cover," said Nigel Ralph, property underwriter for ACE Global Markets Ltd. in London.

Loss-affected accounts throughout Europe can expect to pay increases of 200% to 300%, and even loss-free accounts will pay some-

what higher rates for catastrophe cover, said Mr. Ralph.

Property catastrophe cover in the German market "is definitely going to harden," said Mr. Junke. "Many German insurers are seeking more capacity, and while additional capacity is not restricted per se, prices will increase," he said.

Natural catastrophe reinsurance prices for the Swiss and Austrian insurance markets likely will increase more than 50%, according to Swiss Re's Mr. Eugster. "This is a big step but not a dramatic increase, as rates before were so low," he said.

Swiss Re recently published a report warning that prices for natural catastrophe reinsurance for European risks are woefully inadequate partly due to the increased loss potential of European storms (B.I., Oct. 30).

Continued on next page



Continued from previous page

In Belgium, catastrophe rate increases will be between 30% to 50%, according to Danish Re's Mr. Holst-Andersen, who is responsible for Belgian, British and Irish markets.

Rate increases in the United Kingdom likely will range between 5% and 15%, while those in Ireland will be between 10% and 20%, he estimated.

Industrial fire rates

It is not just property catastrophe coverage that is likely to cost insurers more this renewal, but also reinsurance for industrial fire risks, Baden-Baden attendees said.

Facultative reinsurance prices for industrial property risks will increase, and reinsurers also are pressuring insurers to increase their underlying rates for property business written on a proportional

basis.

"There are clear signals of increases for industrial fire business," said Swiss Re's Mr. Eugster.

Unlike catastrophe reinsurance, which is written on an excess-of-loss basis, it is much harder for reinsurers to tighten the market for industrial fire business, because most of it tends to be written on a proportional basis, so it is dependent on the original rates used by insurers, noted SCOR's Mr. Champvillard.

However, reinsurers are applying more pressure on their cedents to increase underlying prices and clients are now "in the same mood to improve underwriting," he said.

For example, loss participation clauses, which impose financial penalties on ceding insurers who make a loss on their proportional accounts, are "coming back into fashion," said Mr. Champvillard.

Significant moves already have

been made by insurers in most European markets to increase industrial fire rates, although "we are still not satisfied by the German insurers' industrial fire business," said Mr. Champvillard.

'The big programs already have seen increases in rates and tighter terms and conditions,' says Franz Hertl.

GeneralCologne Re's Mr. Junke agreed that rates for German industrial business still are inadequately priced.

"We are having more discussions with clients about their industrial fire treaties. We are trying to support our clients across their

whole book of business, but we may have to write more non-proportional business or even cancel treaties" if improvements are not made, said Mr. Junke, adding that "we will have to work very hard in the upcoming weeks to finalize deals that satisfy both us and our clients."

However, "there are efforts being made, and there is a hardening of the (insurance) market" for industrial fire business, he said, noting that German industrial and commercial risk managers "already are paying higher premiums and should expect further increases next year."

Commercial and industrial property business in the German market "has been underpriced for many years," agreed Munich Re's Mr. Hertl.

"The big programs already have seen increases in rates and tighter terms and conditions," he noted.

Interest in alternatives

European reinsurance executives do not anticipate a major move toward alternative risk transfer products this renewal period, despite increasing rates from traditional reinsurance.

However, the threat of competition from ART products and the capital markets may temper the degree to which reinsurers can raise prices, some executives note.

"Reinsurers are aware that if they do not impose rational increases, clients will look at the ART and capital markets," said Mr. Mahoney of St. Paul Re, who added that once business leaves the traditional market, "it doesn't come back."

"Everybody is going to be much more equitable this time" as the market hardens, rather than pushing across-the-board rate hikes, he said. "It doesn't do the industry any good to increase rates" indiscriminately, he explained.

"There is a tremendous opportunity for alternative markets in a hard market, but the transactional costs still are very high," said Mr. Junke, who said he does not expect to see many clients turning to the ART market this renewal season.

"Some clients are discussing alternative models. But the pricing of ART products has not been able to compete with the traditional market in a soft market. Now, ART price levels will become more attractive (in comparison), and next year I expect more clients to discuss alternative models," said Swiss Re's Mr. Eugster.

Insurance rates to follow

One reinsurance buyer who attended the Baden-Baden meeting expects that insurers will pass on higher rates to risk managers this renewal season.

The industrial and commercial property insurance market is "hardening significantly," said Bernard Mageean, a manager for Royal & SunAlliance P.L.C. in London, who specializes in underwriting U.K. commercial business. As a result, risk managers of multinational companies all face increases in their upcoming renewals, he warned.

'Baden-Baden was a good opportunity to present our key messages to 40-odd reinsurers,' says Bernard Mageean.

Royal & SunAlliance, which attended Baden-Baden as a reinsurance buyer, began a major project in April to better manage the risks in its multinational account and to develop a stronger relationship with its reinsurers, said Mr. Mageean.

"We have done a lot of work to make sure that we have excellent (risk) data, which will be very important in a hardening market," said Mr. Mageean, adding that "Baden-Baden was a good opportunity to present our key messages to 40-odd reinsurers."

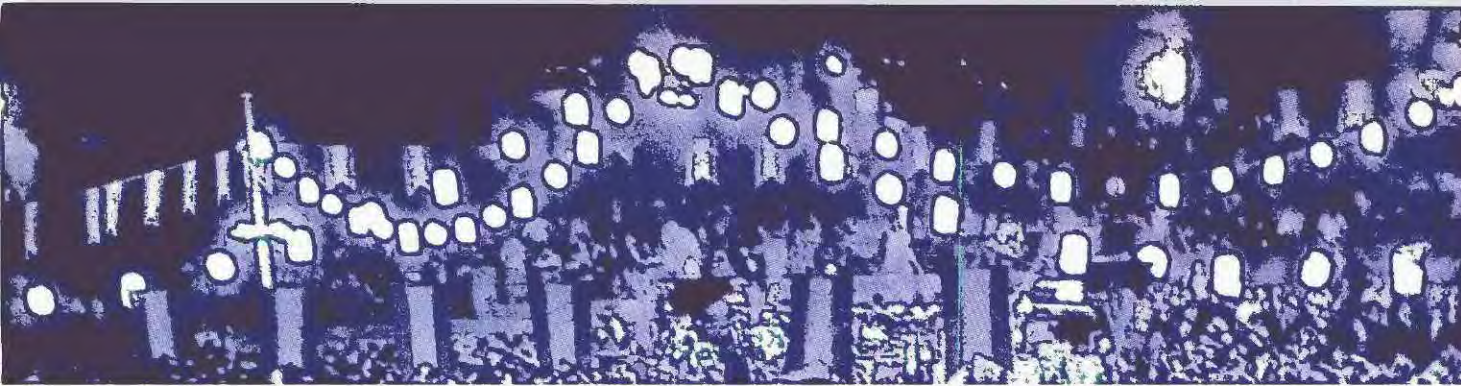
The insurance market for multinational clients already is hardening, partly driven by a hardening reinsurance market, said Mr. Mageean.

But the key driver has been the insurers' own poor results in writing multinational business, which has prompted some insurance companies, such as CGNU P.L.C., to pull out of the sector completely, he noted. **BT**

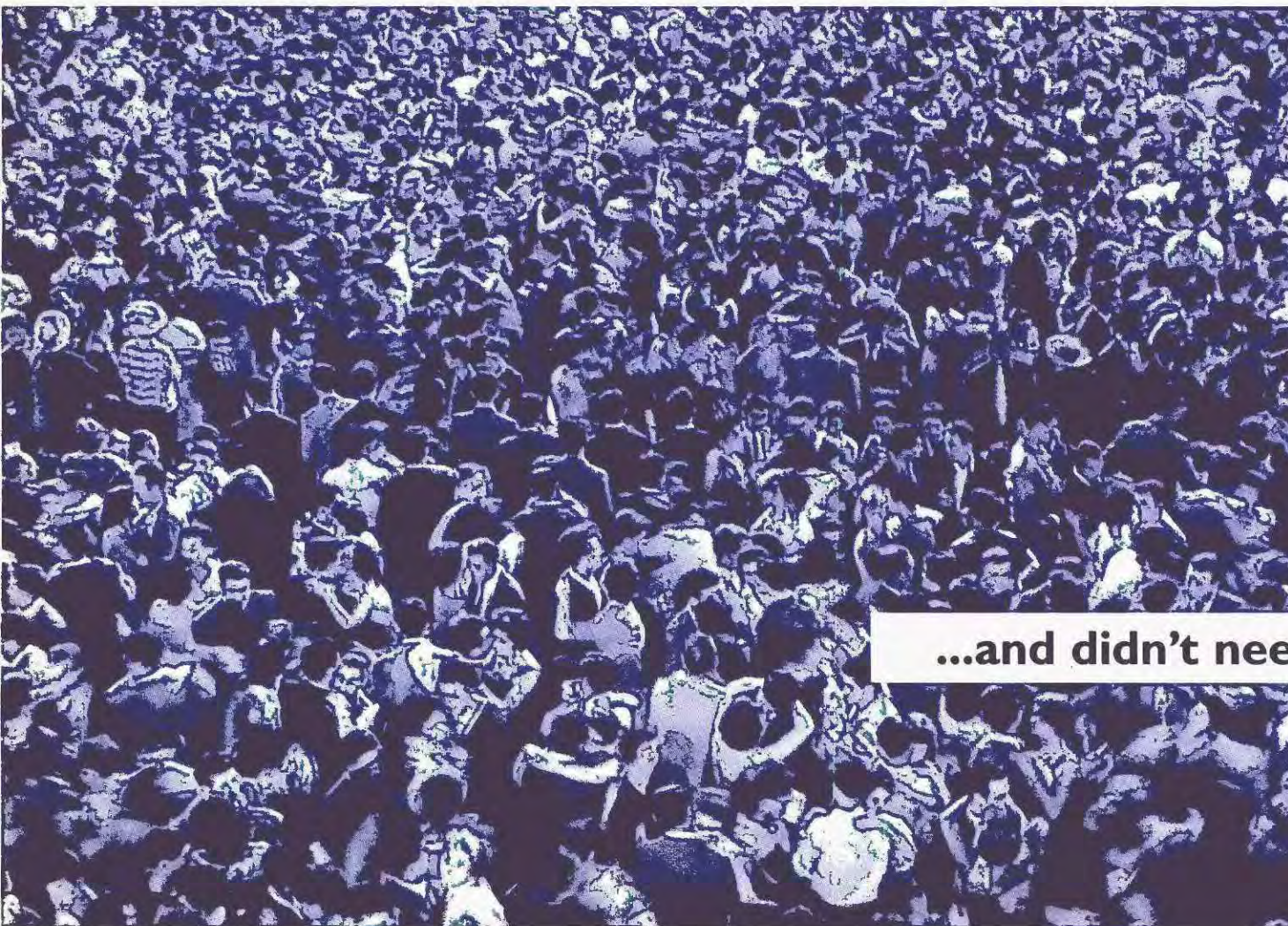

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Congratulations to this year's Spirit of Life award winner, Brian Duperreault, for his outstanding work as a fundraiser and community leader. We'd also like to thank the hundreds of individuals and companies in the Insurance Industry Council who have raised more than \$4.5 million since 1993.

GLOBAL BRIEFS

Three Japanese non-life insurers have announced plans to merge in April 2002, in a move that would create Japan's second-largest non-life insurer. The three Tokyo-based companies—Nissan Fire & Marine Insurance Co. Ltd., Taisei Fire & Marine Insurance Co. Ltd. and Yasuda Fire & Marine Insurance Co. Ltd.—all belong to the Mizuho Financial Group and said they would also seek an alliance with Dai-ichi Mutual Life Insurance Co., one of Japan's largest life insurers. "We have come to believe a merger would be the shortest way for the three of us to make a further leap forward in the changing business environment," the companies said in a joint statement. Separately, Tokyo-based Sumitomo Marine & Fire Insurance Co. Ltd. and Sumitomo Life Insurance Co. will form a business alliance to cross-sell each other's products. The insurers said they are not seeking to merge....Hanover, Germany-based Hannover Ruckversicherungs A.G. has reported an 11.9% increase in gross written premiums for the first half of 2000, to 3.75 billion euros (\$3.23 billion). Hannover Re recorded a net underwriting loss, though, of 160 million euros (\$137.8 million) for the first half. Announcing the results, Wilhelm Zeller, chairman of the executive board of Hannover Re, said that for market conditions to continue to improve, there was a need for a "turning away from primarily volume-based considerations and a move towards profit-oriented underwriting on the part of all market players."...Interest groups at Lloyd's of London have welcomed proposals by Lloyd's and the International Underwriting Assn. to streamline the way business is transacted in the London market. The Lloyd's Market Assn. announced last week that it approved the proposed plans put forward in the LMP2001 Standards and Protocols Report. All market underwriting and brokering organizations in London will be asked to sign the report. Other Lloyd's market associations to give the report their approval are: Lloyd's Aviation Underwriters' Assn.; Lloyd's Insurance Brokers Committee; Lloyd's Motor Underwriters Assn.; Lloyd's Underwriting Agents Assn.; Lloyd's Underwriters Assn.; and Lloyd's Underwriters Non-Marine Assn....Aleco Kairis has been elected chairman of the board of the U.K. P&I Club, the world's largest shipping mutual. Mr. Kairis, a director of London-based Greek ship operator N.J. Goulandris, succeeds Nils-Gustaf Pamgren as chairman of the club. Meanwhile, the U.K. P&I Club has announced it has ordered a 7.5% increase in rates for the 2001 policy year. "The board noted that the downward trend in premium rates was leading to underwriting deficits, despite a relatively flat trend in claims levels of late, and that it was necessary to reverse this trend by increasing the premium levels going forward," the club announced in a statement. The club also announced it had cut the supplementary call, a request for additional premiums, to 30% of their original premium for the 1999 policy year, from 40% previously....London-based Moody's Investors Service Ltd. has published the methodology for its Lloyd's syndicates performance ratings. The ratings aim to assess syndicates' potential future performance over the insurance cycle relative to other syndicates, Moody's said. Moody's noted that the small-business nature of many Lloyd's syndicates, continuing consolidation and losses affecting their capital support meant that many syndicates are potentially fragile. "In the last downturn, of the approximately 87 syndicates that started to trade in the period 1986-1991, some 86% ceased to trade," Moody's said in a statement.

Weather brings U.K. to standstill

By SARAH VEYSEY

LONDON—Businesses and insurers across the United Kingdom are counting the cost of the severe storms that swept across Britain and Northern Europe on Oct. 28, 29 and 30. The storms left at least six people dead in Britain, and in France, at least three people are known to have died.

In the United Kingdom, the storms coincided with closures on much of the nation's rail network, caused by emergency safety checks ordered by U.K. rail operator Railtrack P.L.C. in the wake of the Oct. 18 crash in Hatfield, Bedfordshire (BI, Oct. 23). The safety work, combined with the bad weather, forced Railtrack to close

many lines across the country, leaving many commuters unable to get to work.

"This has been the worst day on the railway since the great storm in 1987," said Gerald Corbett, chief executive of Railtrack. "I have been forced to authorize the closure of the entire southern zone."

A hurricane that ravaged the south of England in October 1987 caused about £1.05 billion (\$1.97 billion) in insured losses, according to the London-based Assn. of British Insurers. Severe storms and flooding across the British Isles in January and February 1990 caused an estimated £2.08 billion (\$4.01 billion) in insured losses. See Storms on next page



PHOTO: ZUMA PRESS

Severe flooding following storms late last month in the United Kingdom stranded this resident of Shrewsbury, Shropshire, in western England.

Safety check, storms stall trains

British rail problems prompt government, passenger demands

By EDWIN UNSWORTH

LONDON—Britain's rail service providers are learning a costly risk management lesson after a combination of events forced a disruption of service that could last months.

Normal rail service is not expected to resume until late December, following a major renovation of the rail network by Railtrack P.L.C., the company responsible for maintaining the track infrastructure.

Railtrack was forced to undertake the renovation after a broken rail was found to have

caused an Oct. 17 crash in Hatfield, Bedfordshire, that killed four and injured 34. The accident came slightly more than a year after one of Britain's worst rail disasters, at London's Paddington Station, in which 31 people died, and it was followed by the collision last week of two freight trains and unusually severe weather.

Floods, fallen trees and high winds have added to the chaos and last Monday contributed to a temporary shutdown of rail service in many areas of the United Kingdom, including the entire southern network.

The disruptions are expected to cost Railtrack and 25 train operators millions of pounds.

Deputy Prime Minister John Prescott last week called for a meeting with Railtrack's Chief Executive Gerald Corbett, at which he demanded to see a timetable for repairs by this week.

Passengers, represented by the Rail Passengers Council, a London-based consumer organization, are seeking compensation for delayed and canceled train service.

Anthony Smith, national director of the RPC, said he

thought the compensation would exceed £10 million (\$14.6 million).

A spokesman for the RPC later added, though, that because the rail operators have introduced amended schedules, which take into account their inability to offer normal services, the liability for making payments may be significantly reduced.

Railtrack estimates the disruptions are costing it over £1 million (\$1.5 million) a day since the Hatfield crash, in which a train derailed and partially overturned. After the cause of

See Rail on page 45



PHOTO: AFP

The tanker Ievoli Sun, which sank Oct. 31 off the French coast near Britain's Channel Islands, had a cargo of toxic chemicals.

Sunk tanker poses chemical threat

By SARAH VEYSEY

CHERBOURG, France—The severe weather that recently has plagued Northern Europe led to a potential environmental disaster last week as an Italian-registered tanker carrying 6,600 tons of toxic chemicals sank off the coast of France.

The 8,309-ton Ievoli Sun, which sent out a distress signal during a storm on Oct. 30, sank the next day while being towed by a salvage tugboat toward the French port of Cherbourg. The cause of the accident has not yet been determined. The ship's 14 crew members were evacu-

ated by helicopter.

A spokesman for The Standard Steamship Owners' P&I Assn. (London) Ltd. confirmed that it had insured the tanker's liability risks but would give no further coverage details.

The tanker's principal cargo was roughly 4,400 metric tons of styrene, a material used to make plastics, rubber and resins. The ship was also carrying isopropylene—or rubbing alcohol—and methyl ethyl ketone, a solvent. Reports last week suggested that some chemicals had begun to leak from the tanker, and French of-

See Tanker on next page

Insurer practices criticized

Aussie TV show hits arson inquiries

By KATE TILLEY and DAMIEN TOMLINSON

BRISBANE, Australia—A Lloyd's of London syndicate has failed to stop a damning current affairs program that is highly critical of non-life insurers from appearing on television in Australia.

R.J. Kiln & Co. applied to the Queensland Supreme Court for an injunction against the Sydney-based federal government-owned Australian Broadcasting Corp. to stop the Oct. 23 broadcast of the "Four Corners" investigative program being shown in Queensland, where the syndicate is currently in litigation with a claimant. The circumstances of the disputed fire claim were featured in the program.

Judge Glen Williams rejected the application, though. In his rejection of the request, Judge Williams said that the civil lawsuit would be heard before a judge, not a jury, and that the program could not influence a judge.

But the program was not aired in Victoria after an application by the state's director of public prosecutions was upheld. A criminal trial is pending in the Victoria Supreme Court, and the DPP successfully argued that, because the trial involved a man accused of mur-

dering his son and attempting to murder his wife by burning his house down and the Four Corners program highlighted allegations of insurance fraud arsons, the jury could be "open to influence" if jury members saw the program. The man has since been found guilty.

The Four Corners program was highly critical of insurers, suggesting they use unscrupulous investigators in insurance claims and condone the fabrication of evidence and illegal tactics because that helps them avoid claims. "Time and time again, insureds are accused of arson so insurers can reject the claims," the program said.

The program profiled an investigation into a hotel fire on July 12, 1999, in Monto, a town 120 miles northwest of Brisbane. R.J. Kiln & Co. had insured the hotel but denied liability because its investigator's report suggested the owner of the hotel, George Nagy, deliberately lit the fire. Mr. Nagy is suing the underwriter for breach of contract, seeking payment of his claim of \$608,000 Australian (\$318,349). A hearing is scheduled for late January 2001.

The man appointed to investigate the claim, Brisbane investigator Peter Thomas, was accused in the program of using

See Fire claims on page 45

Insurance leaders address industry challenges

By SARAH VEYSEY

LONDON—Focusing on customers, harnessing the power of the Internet and addressing issues of globalization are some of the most important challenges for the insurance industry, according to executives who gathered at a recent forum in London.

"Customer-relationship management is very important, and it is something I am yet to see anyone do well," said Jonathan Bloomer, chief executive officer of London-based Prudential Group P.L.C.

Mr. Bloomer was one of six leading insurance industry executives who were invited by the Geneva Assn. to participate in a debate on the biggest challenges the industry faces. The forum was held Oct. 25 at the Institute of Actuaries in London.

"Customer-relationship management is key," said Henri de Castries, chairman of Paris-based AXA S.A. "On average, most of us sell two products per client, but we need to move to selling three or four per client."

"In the end, there is only one strategic challenge: How can we get customer-centric?" asked Rolf Hueppi, chairman and CEO of Zurich, Switzerland-based Zurich Financial Services Group Inc. "So we have to worry about how many customers we get per year and how we get a relationship with customers and how intensive is our relationship with our customers."

The ease of doing business via the Internet and the transparency that approach brings create huge challenges for what Mr. Hueppi described as "the old insurance industry."

"Customers are very much redefining what they want from us—they don't want the hassle of the old insurance industry," he said. Thus, information technology legacy systems pose a huge challenge for insurers, he said.

Mr. Hueppi said that for underwriting large corporate clients, ZFS is 'totally Web-enabled.'

"We shuffle no paper," Mr. Hueppi said. "I have mandated: No paper in any business transaction."

"The challenge is to bring legacy systems to a different level. We have to Web-enable the entire group, and we will spend \$1 billion just to do that," he said.

But, Mr. Hueppi cautioned, "you can't do business as you always did and just add e-business—that doesn't work," he said.

'It is essential that we insist on sensible underwriting and prudent reserving,' says Chubb Corp.'s Dean O'Hare.

Dean O'Hare, chairman and CEO of Warren, N.J.-based Chubb Corp., cited the impact of e-commerce as one of the three biggest strategic concerns for the global insurance industry.

The other two issues, Mr. O'Hare said, are, first, the impact of globalization and consolidation; and, second, the need for adequate regulation around the world.

"We are not nearly as far along in (e-commerce) as many would have us believe," he said.

But Mr. O'Hare added that an important point is how the industry would be regulated, noting that "the Internet is a great equalizer."

"How will regulators deal with the purchase of insurance over the Internet sold by insurers not regulated by them?" he asked.

Mr. O'Hare pointed out that the quest for global size in a soft market had led to underreserving and undisciplined underwriting by some players. "It is essential that the leaders among us insist on sensible underwriting and prudent reserving," he said.

"The U.S. insurance industry is underreserved by about \$80 billion—it's astonishing," Mr. O'Hare said. "And I don't think the situation is any different in Europe."

Juergen Zech, chairman of the board of Cologne, Germany-based Gerling Konzern Allgemeine Versicherungs A.G., predicted that risk management would become much more important in the future, particularly for corporate

risk insurers such as Gerling.

"Risks are getting more complex, more global and bigger," Mr. Zech said. "Risk managers are looking at us to solve more comprehensive risks and to smooth their balance sheets."

Mr. Zech also pointed out that image and reputation were becoming more important to companies. "So companies are looking to us as risk mitigators," he said.

Bob Scott, CEO of London-based CGNU P.L.C., argued that the most important concern the insurance industry faces is the role of insurance companies in the provision of services, such as health care and pensions, that traditionally have been provided by the government.

This problem, Mr. Scott said, is particularly prevalent in Europe, where 80% of pensions are provided by national governments and where, on average, the population is growing ever older.

"There is a huge job to be done in the private sector on pension provision," Mr. Scott said. "And we will be competing against banks, too." **BI**

Storms

Continued from previous page

losses, according to ABI figures. In last week's severe weather, London Underground was forced to close the Piccadilly line, which runs from Heathrow Airport to Cockfosters, after a tree fell onto a train near Osterley, West London. The train carried no passengers at the time, but its driver sustained severe injuries.

Sections of some of the United Kingdom's largest highways were also closed because of the danger of high winds, and, in many areas, drivers were warned not to go out in their cars unless absolutely necessary.

Many businesses in London and Southeast England were left short-staffed as a result of the transportation problems. The London Chamber

of Commerce and Industry, an interest group for London businesses, estimated that the storms could have cost the economy of London and Southeast England up to £100 million (\$145.1 million) in lost production.

"Central London generally was very badly affected," said a spokesman for the London Chamber of Commerce. "Many banks remained closed, and many shops in the West End (London's main commercial district) were also closed. So the lost production was across the capital as a whole."

Winds of almost 100 mph and torrential rain wreaked havoc across the United Kingdom, with many homes and businesses suffering damage and many left without power.

The ABI warned that damage caused by similar incidents in 1987 and 1990 ran into billions, but a

spokesman at the ABI said, "we simply don't know at this stage how much these storms will cost."

Southern England was one of the areas worst affected by the storms. Two tornadoes struck West Sussex—on Oct. 29, Bognor Regis was hit by a tornado, and, in the early hours of the morning of Oct. 30, nearby Selsey was also pummeled.

'Weather difficulties like these are more frequent—it is a wake-up call,' says Deputy Prime Minister John Prescott.

Another spokesman for the ABI said, though, that he did not expect huge claims as a result of the freak winds. "Tornadoes are very dramatic, but they tend to cause damage only in very narrow areas," he said.

But the catastrophe modeling team at London-based Risk Management Solutions has released an initial estimate of £500 million (\$725.5 million) of insured losses across Northern Europe. "The actual damage appears minor, but it is spread over a very wide area," said Michael Drayton, principal modeler at RMS.

A spokesman for U.K. multiline insurer London-based Eagle Star Insurance Company Ltd. said that the insured losses from the storms were likely to be less than those caused by the storms of 1987 and 1990.

"We had 700 claims by 11 a.m. (on Oct. 30), but it's not a catastrophe on the scale of 1987 or 1990," the spokesman said. "The trees that were going to be uprooted and the chimney stacks that were going to fall disappeared then," he said, meaning that the damage done during the previous storms left fewer weakened trees and chimneys to fall during the latest storms.

Deputy Prime Minister John Prescott said the freak weather conditions should serve as a warning. "Weather difficulties like this are more frequent, and we have to change the name of the game—it is a wake-up call," he said. "I do think that, for a long time, we've avoided the circumstances that really have shown the pattern of very bad weather. Let us start learning the lessons, instead of saying these are exceptional circumstances. They are not."

Speaking in the House of Commons on Oct. 31, Mr. Prescott ordered a review of emergency procedures in the wake of severe weather conditions. "Our infrastructure should be robust enough and our preparations rigorous enough to withstand the kind of weather we have just experienced," he said.

Fresh rains in the middle of last week brought fears of further storm damage across the United Kingdom, where severe flood warnings remain in place on 24 rivers. "Heavy rain is forecast over the Southwest and Wales, and the forecasts through to the weekend do not look particularly good," said a spokesman for the London-based Environment Agency

on Nov. 2. Flooding and track damage on many rail lines continued to cause severe delays to many networks.

The chaos followed floods in Southern England a week earlier that the ABI estimates could cost the insurance industry between £20 million (\$29.0 million) and £30 million (\$43.5 million).

In a new report titled "Climate Change: Implications for Insurers," the ABI points out that four out of the warmest years since records began being kept in the United Kingdom in 1659 have occurred since 1989—1989, 1990, 1995 and 1997. One impact of this warming could be an increase in the number of flood incidents, said the ABI.

"Changes in weather patterns will have a direct impact on insurers. Last year alone, weather damage cost the industry £861 million (\$1.25 billion)," said Mary Francis, director general of the ABI. "The risk of increased flooding and subsidence and the general wear and tear on buildings as a result of climate change could push these costs up further."

Boston, Mass.-based Applied Insurance Research predicts a stormy season for the United Kingdom and much of Northern Europe. "AIR meteorologists forecast that storms this winter are likely to be more frequent and potentially more severe than historical averages would indicate," AIR said in a statement.

"This prediction is based on what has been learned about the connection between climate and current ocean temperature and land surface conditions," the statement said. **BI**

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Tanker

Continued from previous page

ficials said the incident highlighted the need for stricter shipping safety regulations. "This incident underlines the urgent need for the introduction and application of more-binding international and European Community regulations regarding the safety of maritime transport," said Jean-Claude Gayssot, the French transportation minister.

French President Jacques Chirac called for tougher maritime legislation to be passed at the European level before France's presidency of

the European Union ends in December 2000.

French officials have been calling for more stringent maritime safety laws since the Italian tanker Erika broke up and sank off the coast of Brittany late last year, spilling tens of thousands of tons of oil (BI, Dec. 20, 1999).

A French navy minesweeper was sent Nov. 1 to determine the exact location of the Ievoli Sun. The minesweeper's crew reported a strong odor of styrene above the wrecked tanker, which is lying on its side in about 214 feet of water, 11 miles off the island of Alderney, one of the British Channel Islands. Traces of styrene and fuel oil have

also been reported around the wreck.

A team from the United Kingdom's Maritime and Coastguard Agency has been sent to Cherbourg to help develop a salvage plan.

The vessel is owned by the Ievoli family, which runs the Naples, Italy-based Marnavi Shipping Co.

On Oct. 26, the 11-year-old Ievoli Sun was detained for four days in the port of Moerdijk, in the Netherlands, because of problems with its electrical circuits and watertight doors.

The captain of the tugboat, which had been attempting to bring the tanker safely into Cherbourg, described it as rusty and in poor condition. **BI**

Fire claims

Continued from page 43
unscrupulous methods to extract information and of fabricating evidence of claims fraud against Mr. Nagy.

Mr. Nagy said Mr. Thomas had bought the house a round of drinks at a bar while in the town investigating the claim, saying the drinks were "on Lloyd's of London."

He said the only evidence Mr. Thomas had was fabricated. One Monto woman told the program that she had been offered a bribe of \$10,000 Australian (\$5,236) to give false evidence against Mr. Nagy.

The television program accused Mr. Thomas of fabricating evidence in other fire claims to show the policyholders were guilty of arson and the insurers were, therefore, not liable.

Mr. Thomas, who refused to be interviewed on the program, did not return telephone calls.

The program said the Sydney-based Insurance Council of Australia, which represents non-life insurance companies, would not comment on Mr. Thomas's actions, nor on policyholders' allegations that insurers knew of his actions.

An ICA media spokesman said the ICA had sent a detailed statement to the program outlining the financial impact of fraudulent claims on the Australian insurance industry, but the statement was not mentioned in the program. The spokesman said the ICA had refused to be interviewed because it would not comment on individual cases.

"There was a strong message in the story suggesting these prac-

tices are widespread, but the story referred to five cases, all in Queensland, and all but one relating to one private investigator," the ICA spokesman said.

The ICA's statement said fraud costs an estimated \$500 million Australian (\$261.8 million) annually. "Of that, fraudulent arson costs about \$46 million Australian (\$24.1 million) a year, and non-fraudulent arson costs insurers \$119 million Australian (\$62.3 million) a year," the statement said.

Grant McKay, a Brisbane-based private investigator, told Four Corners that insurers would have to be "deaf, dumb and blind" not to know the methods some investigators used to ensure claims were rejected.

Mr. McKay called for a federal commission of inquiry into the non-life industry, saying the pro-

gram had "opened a can of worms."

Another case that Mr. Thomas had investigated, which was highlighted on the TV program, involved Brisbane pathologist Bruce Gutteridge, whose \$2.2 million Australian (\$1.2 million) claim

Insurers would have to be 'deaf, dumb and blind' not to know the methods some investigators use, Grant McKay says.

was denied after his 1875 historic mansion burned down in February 1993.

Mr. Thomas alleged that Mr. Gutteridge's wife had lit the fire,

though a government inquiry found no evidence implicating her.

The insurance company, Canberra-based Defence Forces Homes Insurance Scheme, a federal government plan for war veterans, settled out of court in 1994 for \$1.9 million Australian (\$1.0 million) after Mr. Gutteridge sued the insurer for refusing to pay the claim.

Steve Nance, director of communications for the Australasian Institute of Chartered Loss Adjusters and an adjuster with Sydney-based Technical Assessing Pty. Ltd., said the program highlighted the need for insurers to use qualified, professional loss adjusters who are members of AICLA.

Institute members must have minimum qualifications to join, upgrade their skills through con-

tinuing professional development and abide by a strict code of ethics, Mr. Nance said.

"I urge all insurers to check the bona fides of the adjusters they appoint. Consumers should do the same. Ask whether the adjuster is a member of AICLA, and if not, why not?" he said.

Mr. Nance said AICLA broadened its membership rules last June to allow adjusters employed directly by insurers to join.

"This means anyone working as a loss adjuster ought to be a member and be bound by our stringent code of conduct," he said. "Allegations of breaches of the code are investigated thoroughly and action taken against any member found to have contravened the code."

Mr. Nance confirmed that Mr. Thomas was not a member of AICLA. **BI**

Rail

Continued from page 43
the crash was determined to be a cracked rail, Railtrack decided to overhaul its entire track network, including an "urgent review" of the condition of 81 sections of track (BI, Oct. 30). The company said last week that normal service might not resume for up to three months.

A Railtrack spokesman said the track maintenance company will have to pay compensation to the train operating companies for not

U.K. passenger train companies have no standard policy on issuing refunds to passengers.

meeting its contractual obligations, but the spokesman said that he had "no idea" whether Railtrack has insurance that would cover such payments. The spokesman added that this was a "commercial matter" that the company would not discuss in any case.

The passenger train companies have no standard policy on issuing refunds to passengers when their journeys are disrupted or cancelled. Compensation for a delayed journey typically ranges from about 20% to 50% of the fare paid. Usually, this is paid in the form of rail vouchers, and although train companies may give cash refunds, they generally try to avoid doing so. **BI**

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INTERNATIONAL

CGNU

Continued from page 1

In June, CGNU announced that it plans to sell off its Canadian life businesses. It said that, with some 1% of the Canadian life market, the business "lacked the scale and platform" to achieve its target of being within the top-five companies in all its markets.

Bob Scott, CGNU's chief executive officer, said the agreement to sell Marlborough now "completes the major repositioning of general insurance business."

Marlborough Underwriting Agency manages five Lloyd's syndicates, two of which are in runoff. Syndicates 62 and 1861 underwrite marine business, with combined underwriting capacity this year of £186 million (\$300.4 million). Syndicate 1047 underwrites non-marine liability business and this

year has capacity of £32 million (\$51.7 million). The syndicates in runoff are 744 and 1242, the former of which was one of 19 syndicates that Lloyd's regulators in June ordered to increase their capital for the 2001 year of account.

Financial details of the Marlborough sale were not disclosed, but CGNU said it would take a £448 million (\$650.1 million) pretax charge against earnings in its nine-month results to cover outstanding liabilities of the three syndicates.

CGNU will also purchase reinsurance from Berkshire Hathaway to provide £1 billion (\$1.45 billion) of coverage in excess of CGNU's claims reserves of £1.2 billion (\$1.74 billion). The reinsurance applies to international business written both at Lloyd's and elsewhere from London prior to Oct. 1, 2000, the date CGNU officially quit London market business.

Mr. Scott said the sale "will im-

prove the quality of the group's future earnings by removing the uncertainties relating to London market risks and any further exposure to this business."

Berkshire Hathaway made no comment on the acquisition.

CGNU's Lloyd's interests were 'fairly sizable but not large on a global scale,' says Simon Harris of Moody's.

Simon Harris, insurance analyst with Moody's Investors Service Ltd. in London, said the disposal of Marlborough "makes sense" in terms of the strategy unveiled in February, when

two major British insurers, CGU P.L.C. and Norwich Union P.L.C., announced their plans to merge and form CGNU.

That strategy is for CGNU to concentrate on life and asset management business, personal and small commercial lines general insurance, and to withdraw from lines or markets where it believes it could not achieve leading market positions or improved returns.

Mr. Harris noted that CGNU planned, as part of that strategy, to retain property and casualty business where it is sizable, and, he said, "what they had at Lloyd's didn't fall into that category." Its Lloyd's interests, Mr. Harris said, were "fairly sizable, but not large on a global scale."

Mr. Harris said CGNU also wanted to get away from property/casualty business because of its "perception that their shareholders don't want the volatility that that business brings,

and Lloyd's business can be more volatile."

Shortly after CGNU was formed, Moody's had placed its financial strength and debt ratings under review for a possible upgrade. Mr. Harris said the ratings remain under review, and he expects the review will conclude shortly.

Another insurance analyst, Roman Cizdyn of London-based Merrill Lynch Pierce Fenner & Smith Ltd., agreed with Mr. Harris that the sale of Marlborough is logical, given CGNU's overall plans.

Mr. Cizdyn said the sale "is the putting into effect of stated policy that they would review this business because they were fearful of the volatility that would result."

He added that it would be "years and years" before anyone could determine if the extra reinsurance was a shrewd move by CGNU. **BI**

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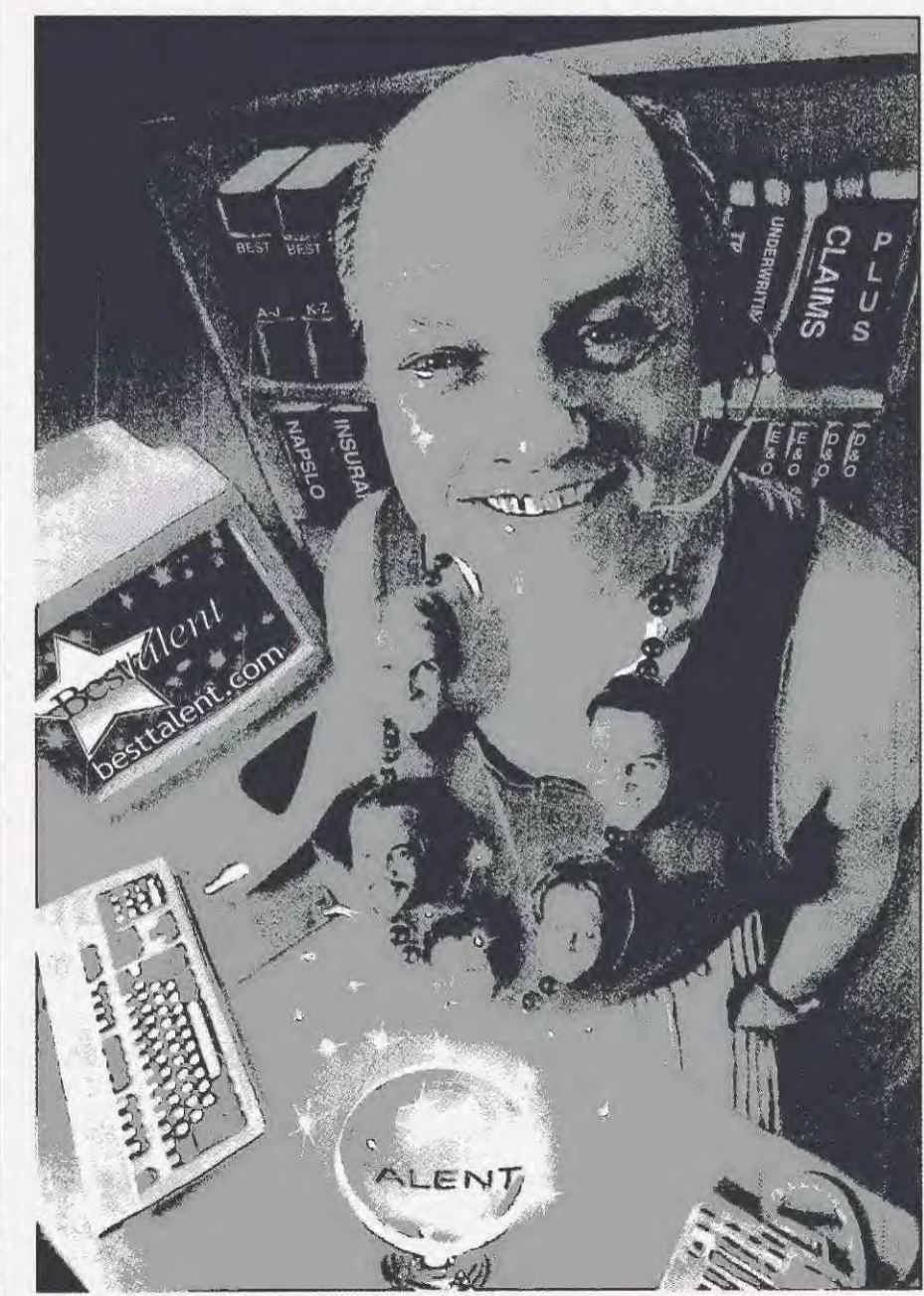
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Jaffray

Continued from page 1
names the true extent of the asbestos-related losses about to hit the market in the 1980s.

The names contended they had been persuaded to invest in Lloyd's as part of a so-called "recruit-to-dilute" policy. That policy, names charged, sought to bolster Lloyd's capital to prepare for asbestos-related claims that executives knew would cripple the market. Asbestos claims, along with a series of natural disasters, resulted in Lloyd's sustaining losses of £8.1 billion (\$11.71 billion at the current exchange rate) over the years 1988 to 1992, prompting Lloyd's to develop its reconstruction and renewal plan in 1996. That plan, among other things, created Equitas Ltd., the runoff reinsurer for Lloyd's pre-1993 long-tail liabilities.

The names in the case had rejected the 1996 R&R settlement offer by Lloyd's and refused to pay premiums into Equitas. Lloyd's, which had to pay those premiums itself, can now seek to recover those debts from the

names.
While the judge acknowledged that there may have been negligence on the part of certain members' agents in their syndicate and portfolio selection advice to names, he rejected names' allegation that the Committee of Lloyd's had deliberately conspired to conceal information from them. The names had accused 33 senior figures at Lloyd's, including former Chairmen Sir David Rowland and Sir Peter Miller, of concealing from them the true extent of Lloyd's exposure to asbestos-related claims and fraudulently painting a healthy picture of Lloyd's financial status in the global reports and accounts. Mr. Justice Cresswell ruled that at all times during the period in question, the Committee of Lloyd's had acted honestly.
But, the judge said, "The catalog of failure by underwriters throughout the 1980s is staggering and brought disgrace on one of the city's great markets." Names, regardless of whether they had accepted the 1996 R&R plan, were "innocent victims" of this failure, he said.
In handing down his verdict, Mr.

Justice Cresswell suggested that an independent panel, set up by Lloyd's but staffed by independent legal advisers, should be created to settle matters of debt collection and the treatment of the so-called refusenik names. He said that while it was not within his jurisdiction to order the establishment of such a panel, he would strongly recommend that the Council of Lloyd's meet within the next two weeks to discuss the matter.
Caroline Wagstaff, head of marketing at Lloyd's, said that the door had always been open to names to discuss with Lloyd's the settlement of their debts. "Obviously, we will take the judge's suggestion on board," she said.

The Jaffray case is the last that can be brought against Lloyd's in U.K. courts over allegations of fraud with regard to asbestos-related losses from the period 1978 to 1988. However, Lloyd's hopes that the verdict would bring an end to asbestos-related litigation were dealt a blow with the news that some of the names will seek to appeal the decision under the European Convention on Human Rights, which was signed into U.K.

law in early October.
The names claim that Article 14 of the 1982 Lloyd's Act—in which Parliament granted Lloyd's immunity from suits charging gross negligence, permitting only fraud-related litigation—contravenes their rights under the U.K. Human Rights Act.

'The catalog of failure by underwriters throughout the 1980s is staggering,' says Mr. Justice Cresswell.

One name present in court addressed the judge and said: "I contend that this is unlawful under the European Convention on Human Rights. Lloyd's remains immune from lawsuits apart from fraud. This is unlawful. We should have been allowed the simpler option of bringing a case of negligence." He contended that while the Jaffray names had been unable to prove fraud, they had

presented a case that there had been negligence at Lloyd's.
Ms. Wagstaff said that Lloyd's believes that any attempt to contest the verdict invoking the Human Rights Act would be unfounded. "This judge has ruled that there was no misrepresentation and, therefore, there was no negligence," she said.
"Allegations that have been made on and off for a decade by disgruntled names have been utterly disproved. The judge made it very clear from the beginning this would be the last opportunity for names to raise these allegations," said Mr. Taylor. "The terms of this judgment mean the Human Rights Act issues being raised by names are completely irrelevant to this case," he said.
Mr. Justice Cresswell granted the names and their lawyer, Simon Goldblatt, 12 days to provide the court and Lloyd's counsel, Charles Aldous, with a demonstration of how they will rely on the Human Rights Act in any appeal proceedings. The court will reconvene Nov. 23 to discuss the matter, as well as other issues arising from the judgment, such as costs. **BI**

GOP seeking delay of new claims-handling rules

By JERRY GEISEL

WASHINGTON—Lawmakers are urging the Labor Department not to issue long-delayed final regulations that will set new and faster deadlines for resolving health care claims until Congress reconvenes.

The lawmakers, Rep. William Goodling, R-Pa., who chairs the House Education and the Workforce Committee, and Rep. John Boehner, R-Ohio, said issuing the regulations after adjournment "would effectively prevent appropriate and timely congressional review of the matter."

In a letter sent last month to Secretary of Labor Alexis Herman, Acting Assistant Secretary of Labor Leslie Kramerich and Office of Management and Budget Director Jack Lew, the two congressmen urged the department "to respect the limitations of its authority, particularly when Congress is considering legislative action on the identical issues," a reference to stalled pa-

tient protection legislation that most Washington observers believe is dead for this session.
But Ms. Kramerich said the department intends to publish the regulations by the end of the year, not-

'Congress is considering legislative action on the identical issues,' the congressmen say in their letter.

ing that department officials have been working for roughly three years on them. She denied published reports that the department would issue the rules just before the election.
When the regulations were issued in proposed form in September 1998, they drew a flood of protests

from employers and insurers, which said the deadlines for resolving claims were so tight that they could drive up administrative costs anywhere from 30% to 50%. In response, Ms. Kramerich said the department was open to suggestions for change. "We have been sensitive to comments," she said.

But the department, she adds, is committed to producing new regulations to replace two-decades-old regulations that require health care plans to act on claims as soon as possible—but allow up to 90 days.

By contrast, the proposed regulations would vastly speed up claims handling. For example:

- In the case of urgent care, a plan would have 72 hours to notify a member whether coverage would be provided for a procedure or service. For non-urgent care, the deadline would be 15 calendar days.

Those deadlines would apply in situations such as those in which plans require precertification before

a beneficiary can obtain coverage for operations performed in hospitals.

If coverage were denied, a beneficiary would have 180 days in which to appeal the decision.

- In the case of services that already have been performed by providers, health care plans generally would have 15 calendar days to process the claims. If a claim were incomplete, a plan administrator would have five calendar days from receipt of the claim to notify a participant or the provider of that fact and of the information needed to process the claim.

- Plan participants would have to be notified how claims are resolved, even if the claim was not contested.

The most significant objection that health insurers and employers have raised to the proposed regulations is that deadlines are the same for benefit determinations made before and after a service is performed.

They acknowledge that requests for preauthorization need a very quick response. On the other hand, they say the proposed deadlines for processing claims are too short.

While the proposal says health plans would have 15 days to process claims, the effective deadline would be five days. That is because health plan administrators would have only five days to determine if all information needed to process a claim was available.

A five-day standard, plans say, would, among other things, result in significantly higher administrative costs, a reduced ability to spot provider fraud and more mistakes in processing claims. The net effect, they say, would be a significant increase in health care costs.

The Labor Department's Ms. Kramerich said the issue of imposing the same deadline on plans for authorizing a service and processing a claim is one that is being examined by the department. **BI**

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Court rejects E&O claim

By DAVE LENCKUS

ALBANY, N.Y.—A law firm did not commit malpractice by failing to advise a client that the firm's legal defense costs might be covered by the client's general liability insurance policy, New York's highest court ruled late last month.

In a 5-0 decision, the New York State Court of Appeals found that, while legal journals in the early 1990s discussed the possibility of securing patent infringement coverage under the general liability policy's advertising injury provision, case law in the states where the law firm and its client were based had rejected policyholders' attempts to tap the provision for such coverage. That meant that the client's insurers had no duty to defend patent infringement claims.

In the case, the New York law firm of Darby & Darby P.C. sued former client VSI International Inc. in 1996 to recover more than \$209,000 in legal billings. Darby had represented the Fort Lauderdale, Fla.-based manufacturer of non-prescription reading

glasses from December 1990 through October 1993 in a lawsuit that charged that VSI had violated patent, trademark and trade dress law.

In December 1997, VSI countersued, charging Darby with malpractice and breach of fiduciary duty for not informing VSI that its legal defense costs might be covered by the advertising injury coverage provision of its general liability policy. VSI noted that its subsequent legal counsel obtained defense cost coverage under that provision shortly after taking over the patent infringement case.

A trial court refused to grant Darby a summary judgment motion. But an appellate court overturned that decision, and the state's high court affirmed that ruling. "With Florida and New York, the two most relevant states, having rejected coverage, and the theory of coverage being largely unrecognized elsewhere, (Darby) had no duty to advise (VSI) of possible coverage for patent infringement claims," Judge Carmen Beauchamp Cipatrick wrote for the court.

"We agree that attorneys should familiarize themselves with current legal developments so that they can make informed judgments and effectively counsel their clients. However, (Darby) in this case should not be held liable for failing to advise defendants about a novel and questionable theory pertaining to the insurance coverage," Judge Cipatrick wrote.

"This decision kills the idea that has been retailed by the policyholders' bar that a lawyer has to voluntarily undertake the responsibility to know about every cockamamie insurance theory that the policyholders' bar comes up with," said Darby's lawyer, independent attorney Jeffrey Jannuzzo of New York.

VSI attorney Steven Cooper, a partner with Anderson Kill & Olick P.C. of New York, said the case was fact-specific and that the ruling does not give lawyers sweeping protection. "Lawyers have to keep informed on the availability of insurance" that would cover the cost of legal work for their clients, Mr. Cooper said.

NAII warns of failure to extend privacy deadline

By MEG FLETCHER

DES PLAINES, Ill.—Insurance companies may soon face a new liability for privacy violations because many states have not yet formally extended the compliance date for a federal financial modernization law, a trade group warns.

The privacy regulations under the Gramm-Leach-Bliley Act are technically scheduled to go into effect Nov. 13. Federal financial authorities, however, previously extended the mandatory compliance date until July 1, 2001 for banks and securities firms under their jurisdiction. It was left up to states to enact similar extensions for the insurers they regulate.

The National Assn. of Insurance

Commissioners in June unanimously endorsed a resolution that said: "State insurance regulators intend to promulgate privacy regulations providing for a uniform compliance



date of July 1, 2001."

The National Assn. of Independent Insurers warns, however, that states are in varying degrees of compliance with the rule, with inaction by some resulting in insurers being subject to the original Nov. 13 deadline for compliance with the laws privacy provisions.

The NAII's concern arises because states differ in the degree of authority they have given their respective insurance commissioners to enact such a resolution. Some commissioners need only to send out a special bulletin or circular while others need to follow rules for the promulgation of emergency regulations or seek special action by the state's legislature.

According to an Oct. 27 tally by the NAII, only about one-third of states have taken specific action to officially extend the compliance date, according to Kathleen Jensen, insurance services counsel for the Des Plaines Ill.-based NAII.

"The NAIC doesn't regulate each individual state," Ms. Jensen said. "Just because commissioners supported the resolution doesn't mean

that the extension will automatically go into effect," she said.

Insurers located in a state that has not formally adopted the extension could face legal liability under the federal act if the insurer violates privacy rules related to the handling of "personally identifiable financial information," as defined by the federal law.

"This is not a huge concern for (property/casualty) insurers, but it is out there as a possible risk," Ms. Jensen said.

A state insurance regulator and NAIC officer downplays the risk insurers could face.

Kathleen Sebelius, who chaired the NAIC's Privacy Working Group, said she believes the likelihood of an insurer facing liability over this issue from either an indi-

vidual or a state attorney general would be "very remote."

"A lot of regulators feel their signing the resolution really was enough guidance for companies," said Ms. Sebelius, who is also the Kansas insurance commissioner. In her case, she not only signed the NAIC resolution but also issued a bulletin to expressly clarify the situation for insurers in Kansas. However, she noted, only the Kansas Legislature, which is not in session, has the authority to issue an emergency rule.

Other states such as Illinois, where the commissioner has independent rulemaking authority, took stronger action: Illinois essentially modified its administrative code to reflect the new compliance date. **BI**

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Magellan hit by suit charging deception

ST. LOUIS—Magellan Health Services Inc., one of the nation's largest specialty managed care companies, is facing a suit that claims Magellan misrepresents the nature of its coverage to policyholders.

The suit, which was filed Oct. 23 in federal court in St. Louis and seeks class-action status, alleges that Magellan's practices violate the Racketeer Influenced and Corrupt Organizations Act and the Employee Retirement Income Security Act. The Columbia, Md.-based behavioral health care company covers more than 70 million lives.

Among the suit's allegations are that Magellan, which usually acts as the behavioral health care carve-out for a general health plan, fails to identify itself as the behavioral health insurer to plan members. The suit also claims that Magellan does not explain its role as a decision-maker and risk taker for all behavioral health claims, even if the company does identify itself as an insurer.

"They're the insurer, but you don't know it," said Stephen Anand, partner with Cohen Milstein Hausfeld & Toll in Washington, who represents the plaintiffs in the case. Also, the criteria that Magellan uses to accept or deny claims are unduly restrictive and do not "comport in many instances to concepts of good medical practice," he said.

The complaint states that Magellan uses physician advisers to make coverage decisions but instructs them "to restrictively apply Magellan's undisclosed criteria so as to deny care and coverage."

The suit seeks to compel Magellan to repay policyholders the difference between the premiums paid and what should have been paid based on the coverage provided. The suit did not specify dollar figures.

A Magellan spokeswoman would not comment on specifics of the suit, saying the complaint was "totally without merit" and that the company's actions fully comply with the law.

—By Michael Prince

At election time, judge the judges

I'll be one of those people hogging the voting booth on Tuesday.

I will take longer to vote than many of my neighbors, but not because I am indecisive about my choice for president. I will take longer because I will be one of the few voters carefully picking through the ballot for judges of the Illinois Supreme Court, the Illinois Appellate Court and the Circuit Court of Cook County.

In Illinois, we elect our judges, and we've elected some pretty lousy ones, according to lawyers who practice in Cook County and a judicial watchdog group.

According to the Chicago Bar Assn., six of the 77 Cook County judges seeking to remain on the bench are not qualified to continue on the court. The Chicago Council of Lawyers agrees that five of those six should be booted, and it adds another 14 whom it thinks should not be retained.

The Illinois Civil Justice League is disgusted with most of the Cook County judges. Only 12 of the 77 participated in its evaluation process, which precluded the ICJL from making recommendations on 65 of the judges and permitted them to recommend against retention of only one judge, who, by the way, is deemed qualified by the other two groups.

The ICJL notes on its Web page, "Voters can decide for themselves if this unwillingness to answer questions is an indication of arrogance, or of judicial discretion, and whether the judge should be retained or rejected."

It appears the ICJL, which represents businesses, professionals and government entities, doesn't have the clout to convince the judges to answer its questions. That's not entirely surprising, given that two of the Cook County judges up for retention refused to cooperate even with the Chicago Bar Assn.'s Judicial Evaluation Committee, resulting in the

group recommending they not retain their seats.

Unfortunately, the judges appear pretty secure on the bench. To keep his or her job, a sitting judge needs only a 60% "yes" response from those voting on the question of whether he or she should be retained. In 1998, all seven judges I voted not to retain managed to hold onto their seats, despite recommendations to the contrary by the Chicago Bar Assn.

As the ICJL comments on its Web page: "Most Illinois voters don't know the names of the seven members of the current Illinois Supreme Court, nor the names of the 42 Appellate Court Judges, nor the names of the 505 Circuit Court Judges and Associate Judges. Historically, many Illinois voters ignore the judicial section of the ballot because they know little about the candidates and, in some cases, don't seem to care."

I suspect that is the case in the dozen or so states where judges are elected, which is appalling.

To quote the ICJL again, "The men and women who serve on the bench have the power to sentence people to jail, or to death; the power to take millions of dollars from one person's pocket, and put it into the pocket of another; the power to decide in which family a child will spend his formative years; the power to overturn the carefully considered actions of the elected governor of the state, or the elected representatives of the people who serve in the Illinois General Assembly."

Or, as the Chicago Bar Assn. puts it succinctly, "The CBA believes that the quality of the administration of justice in our courts is determined in large part by the quality of our judges."

I'm voting not to retain 21 of the Cook County Circuit Court judges, based on the recommendations of the Chicago Bar Assn., the Chicago Council of Lawyers and the ICJL. Based on the groups' recommendations, I'm also voting against six judges running unopposed for open seats, although I suspect they will get elected anyway.

Moving up to the Appellate and Supreme Court, only two of the four judges standing for retention are supported by all three groups, which is causing me some concern.

I take heart, though, that all three groups endorse the unopposed candidate for an Illinois Supreme Court vacancy. If only that were the case for the other seats.

Publisher and Editorial Director Kathryn J. McIntyre's commentary appears fortnightly and on www.businessinsurance.com. She can be reached at kmcintyre@crain.com.



Kathryn J. McIntyre

Lame duck

Continued from page 1

During that session, Congress passed a broad trade agreement, which included provisions to plug loopholes in a law that had made it relatively easy and inexpensive for employers to terminate underfunded pension plans and shift their liabilities to the Pension Benefit Guaranty Corp.

But it isn't certain that Congress and the Clinton administration will be any more successful after the election than before in overcoming the acrimony and deep divisions that prevented an agreement from being reached on the tax bill.

"The tax bill still is very much on life support. It isn't clear to me what would be the driving force to reach an agreement. There was wrangling going on before the election, and who is to say that won't continue after the election? Nothing may really have changed," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Washington.

Others, though, are more sanguine about the prospects for the tax bill and, with it, the pension reform package.

"The election changes the dynamics. It may take the edge off things," said Mark Ugoretz, president of the ERISA Industry Committee, a Washington-based benefits lobbying group representing large employers on benefit issues.

Yet others say there are too many unknowns to say with any certainty whether an agreement can be reached on the tax bill during the lame duck session.

"Optimistically, members of Congress may approve bills more readily after the elections. On the other hand, some may feel that a popular tax bill would be something a new president would want to take credit for, so why let the current president get the credit," said Frank McArdle, a consultant in the Washington office of Hewitt Associates L.L.C.

"It's very clear that a lame duck session of any Congress can be unpredictable," said David Farmer, senior vp-federal affairs in the Washington office of the Alliance of American Insurers.

While the chances of the tax bill being enacted during the lame duck session are uncertain, bene-

fit lobbyists are relieved that Congress didn't call an end to the session just yet.

"Things could have been worse. Until the session concludes, the pension legislation still is on the table," said James Delaplane, vp-retirement policy with the American Benefits Council in Washington.

If Congress does take up the tax bill, benefit lobbyists do not expect legislators to make any significant changes in its pension provisions.

"There may be a tweak here and a tweak there, but nothing major," Mr. Delaplane said.

The administration had criticized the bill for not including in the pension package a provision—earlier approved by the Senate Fi-

vision that would extend to Dec. 31, 2002, from Dec. 31, 2000, a provision in current law that allows employers with 50 or fewer employees to set up tax-favored MSAs linked to high-deductible medical plans.

On the property/casualty side, the tax bill includes a provision calling for a Treasury Department study on the extent to which income taxes on insurers' investment income is being avoided through the use of affiliated companies in Bermuda and other offshore locations.

That study is a response to charges made by several U.S.-based insurers that a tax loophole gives an unfair advantage to offshore companies with U.S. affiliates. This alleged advantage oc-

'Things could have been worse,' says James Delaplane of the American Benefits Council. 'Until the session concludes, the pension legislation still is on the table.'

nance Committee—that would provide additional tax breaks for small employers starting up new pension plans. In addition, the administration had a more general concern about provisions that would loosen certain pension non-discrimination tests.

But those concerns, Mr. Delaplane said, were not central to the administration's opposition to the bill. The administration has opposed the tax bill because it believes that the tax breaks are too skewed in favor of higher-income taxpayers, among other issues.

Among other things, the tax bill would significantly increase contributions employees could make to pension and 401(k) plans, as well as benefits that could be funded through pension plans. Other provisions would ease non-discrimination testing procedures, allow employees changing jobs between the private, non-profit and public sectors to transfer funds between 401(k), 403(b) and 457 savings plans, and make it easier for employers to remove from their pension rosters terminating employees who have accrued small benefits (BI, Oct. 30).

The tax bill also includes a pro-

posal when the U.S. affiliate writes a risk, reinsures the risk with an offshore parent and then can earn tax-free investment income on the reserves held by the offshore company. By contrast, U.S. insurers have to pay a 35% tax on investment income.

Even if the tax bill dies, the offshore insurance company taxation issue could be examined during the next congressional session, said Joel Wood, senior vp-government affairs for the Council of Insurance Agents & Brokers in Washington.

The OSHA dispute involves an ergonomics regulation the agency wants to issue. Congressional Republicans proposed allowing OSHA to issue the regulation, but would have given the incoming president until June 2001 to, if he so chose, halt enforcement of the regulation. But the Clinton administration failed to go along with that limitation. The current version of a bill to fund the Labor, Health and Human Services and Education departments, therefore, contains a provision specifically barring OSHA from using funds to implement the ergonomics proposal. **BI**

School fee denied tax break

By JERRY GEISEL

WASHINGTON—Kindergarten fees are not considered dependent care expenses and therefore do not enjoy tax-favored status, according to the Internal Revenue Service.

Under the Internal Revenue Code, employees can contribute up to \$5,000 on a pretax basis, such as putting funds into a flexible spending account, to finance dependent care expenses. Alternatively, employees can take tax credits of between 20% and 30%—depending upon their income—for up to \$2,400 of annual dependent care expenses for one child and \$4,800 in expenses for two or more children. The tax breaks are available for parents with children 12 years old and younger.

In an information letter, the IRS says the dependent care tax breaks are available for expenses incurred "for the care of a qualifying individual that are incurred in order to allow the taxpayer to be gainfully employed."

In addition, bona fide dependent

care expenses are those whose primary purpose "must be to assure the individual's well-being and protection."

But kindergarten expenses do not qualify as dependent care expenses because the character of a

Kindergarten is 'primarily educational in nature and any care provided is incidental,' the IRS says.

kindergarten program is "primarily educational in nature and any care provided is incidental," the IRS said.

Even though sending children to kindergarten may allow parents to work, that is not enough for the kindergarten fees to be considered tax-favored dependent care expenses, the IRS says.

"The taxpayer must satisfy both the requirement that expenses are

incurred to enable the taxpayer to be gainfully employed, and the requirement that the services provided are primarily for care," the IRS said.

The IRS letter, No. 2000-0246, should eliminate any uncertainty or confusion on whether kindergarten fees were considered dependent care expenses, said Henry Saveth, an attorney with William M. Mercer Inc. in New York.

A typical dependent care expense would be payments a working parent makes to an individual or facility to take care of an infant or toddler.

Although few employees make contributions to flexible spending accounts to fund dependent care expenses, the funds contributed are large. Roughly 3% of eligible employees use FSAs or other flexible benefit plan arrangements to fund dependent care expenses. However, contributions—including amounts funded through salary reduction and through contributions of flex dollars or credits—typically are in the \$2,000 to \$3,000 range, benefit consultants say. **BI**

FOR THE RECORD

Excerpts from BI's Daily Online Updates, Oct. 30 - Nov. 3, 2000

► CAVOORES JOINS WHITE MOUNTAINS John Cavoore, the former chief operating officer of Reliance Group Holdings Inc.'s insurance operations, has joined White Mountains Insurance Group Ltd. In his new position, Mr. Cavoore will be managing director of the as-yet-unnamed holding company for CGU Insurance Co.—the U.S. property/casualty operations of U.K. insurer CGNU Group P.L.C.—which Hamilton, Bermuda-based White Mountains is buying for \$2.53 billion. Prior to working for New York-based Reliance, which he joined in April, Mr. Cavoore was president of National Union Fire Insurance Co. of Pittsburgh, Pa., the directors and officers liability insurance unit of American International Group Inc. in New York. Prior to that, he was chief underwriting officer at Chubb Corp. in Warren, N.J. Mr. Cavoore joined Reliance as part of a turnaround team, but the retooling plans were largely scuttled in June, when the insurer's financial strength ratings were downgraded to levels that were unacceptable to many of its customers. Much of the company has since been sold off, and the remaining units have ceased writing new business. White Mountains' principal U.S. offices are in Hanover, N.H. Longtime insurance executive Jack Byrne serves as its chairman and chief executive officer.

► TUFTS, PARTNERS TOGETHER AGAIN Tufts Health Plan and Partners HealthCare System Inc. reached an agreement last week that keeps Partners' hospitals and doctors in Tufts' network. The deal was reached despite announcements in the prior week by both sides that Partners would end its relationship with Tufts, based in Waltham, Mass. The reversal came after the two sides spent several days working out their differences, which resulted in Tufts members receiving access to Boston-based Partners' well-known hospitals, such as Massachusetts General Hospital and Brigham & Women's Hospital, as well as numerous smaller facilities and doctor groups throughout the Boston area. Terms of the deal were not announced, but a Tufts spokeswoman said it would cause employers' premiums to rise, starting in 2002. Partners was seeking a 27% rate increase over three years to make up for a \$42 million

shortfall it incurred in the past three years from its deal with Tufts. In a joint statement, the two organizations said they both compromised to reach an agreement, hinting that Partners will receive a sizable rate increase. "For physicians and hospitals, resources must be available to maintain the highest standards of patient care," the statement said. About 20% of Tufts' 930,000 members would have been affected if the contract with Partners had lapsed. Those individuals would have had to use non-Partners physicians or change to those health plans that had agreements with Partners.

► PRESCRIBING TOOL Providers in the San Jose Medical Group in San Jose, Calif., are using hand-held electronic devices to write prescriptions. The hand-held computing devices, provided by Lifeguard Inc., a San Jose, Calif.-based health maintenance organization, use software developed by Libertyville, Ill.-based Allscripts Inc. The tools are designed to improve provider efficiency and reduce prescribing errors. To use the device, a physician selects a diagnosis from a list that is programmed into the software. The unit then displays the list of drugs usually prescribed for that diagnosis and whether the drug is on Lifeguard's formulary. The device also conducts a complete drug utilization review, checking for possible interactions, duplicate therapy, proper dosing and prior adverse reactions. The prescribing unit has wireless capabilities, allowing physicians to send prescription orders to an onsite pharmacy, a retail pharmacy or an Internet pharmacy. The unit also can generate hard-copy printouts for patients that are more legible than hand-written prescriptions.

► ABSENCE MANAGEMENT Employers that adopt a trio of disability and absence management techniques have a 74% lower worker absence rate than employers that do not, a recent study finds. Employers that simultaneously utilize disability case management, involve line supervisors in absence management and designate an internal absence manager have an absence rate of only 1.4% compared with 5.3% for employers

not using these techniques, according to the fifth annual Washington Business Group on Health/Watson Wyatt Worldwide survey on integrated disability management. "Given the tight labor market, employers need to ensure that their existing workforce is at its full potential. This means not only ensuring that employees are able and willing to work, but being proactive about managing absences," said Veronica Hellwig, a senior health and productivity consultant with Watson Wyatt and co-author of the study, in a released statement. The survey included responses from 106 employers with more than 1,000 workers.

► CIGNA PROFITS UP CIGNA Corp. has reported \$825 million in operating income, excluding certain charges, from continuing operations for the first nine months of 2000, an 8% increase over the comparable period last year. Revenues for the nine-month period increased 7% to \$14.9 billion, excluding discontinued operations. "We continue to achieve good earnings momentum and strong margins in our health care business for both our core products and specialty offerings," Chief Executive Officer H. Edward Hanway said in a statement. Consolidated operating income for the first nine months of this year excludes aftertax charges of \$127 million associated with its runoff reinsurance business, principally for reserve strengthening. Last year's results for the corresponding period exclude: a \$1.2 billion aftertax gain from the sale of CIGNA's property/casualty business to ACE Ltd.; a \$400 million aftertax charge attributable to certain Brazilian investments; and \$10 million of aftertax restructuring charges for cost-reduction initiatives subsequent to the sale of the P/C business.

► ACE POSTS BIG GAINS ACE Ltd. produced large gains in premium volume and net income for the first nine months of this year, reflecting not only its July 1999 takeover of CIGNA Corp.'s property/casualty operations, but also rising rates and new business

production, the company said. For the first nine months of 2000, Hamilton, Bermuda-based ACE's gross premiums more than doubled to \$5.95 billion, though results of the former CIGNA operations were not included for most of the 1999 nine-month period. For the nine-month period, net income hit \$429.2 million, compared to \$212.9 million for the first nine months of 1999.

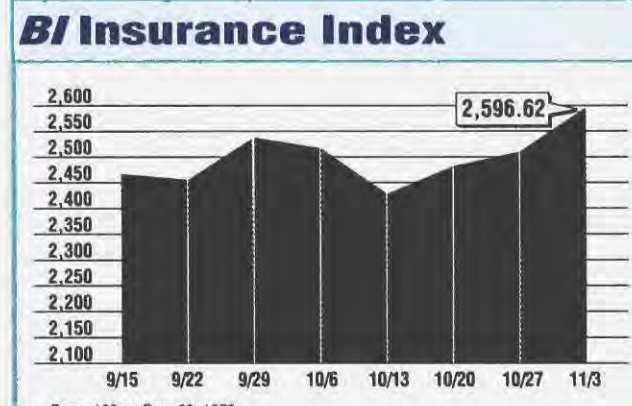
► BRIEFLY NOTED Shares of German insurance holding company Allianz A.G. Holding began trading on the New York Stock Exchange last week. Allianz registered its shares with the Securities and Exchange Commission effective Oct. 31. Allianz's stock will be traded in the form of American depositary shares, and its ticker symbol will be AZ. Allianz shares will now be available on the Frankfurt, London, Paris, Zurich and New York stock exchanges...Meteorologists at catastrophe modeling company Applied Insurance Research predict a stormier winter than average this year in northwest Europe, including countries that were hard hit by the late 1999 storms Lothar and Martin. This winter's storms are likely to be more frequent and potentially more severe than historical averages suggest, according to Boston-based AIR...London-based insurance broker Willis Group Ltd. has opened a subsidiary in Johannesburg, South Africa. Mark Floyd, chief executive of the new Willis South Africa, said the company intends to grow in the country both organically and by acquisition...Aetna Inc.'s net income for the first nine months of 2000 fell 8.4%, to \$533.2 million, due to reduced income from its managed care business, the company reported. Revenues for the period increased 29.2%, to \$24.17 billion.

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

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BI Industry Stock Report OCT. 30, 2000, THROUGH NOV. 3, 2000

BROKERS					INSURERS/REINSURERS					HEALTH MAINTENANCE ORGANIZATIONS					ALL COMPANIES								
Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(300)	Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)	Price	Weekly % change	Year to date % change	Year to date High	Year to date Low	Vol.(000)						
Aon Corp.	NYS	30.06	-24.73	-24.84	42.75	20.69	32723	Frontier General Corp.	NYS	3.63	9.43	-60.85	9.63	2.89	1073	Unilin	NDQ	30.94	0.61	-17.77	-39.75	27.19	256
Brown & Brown	NYS	33.88	9.27	76.84	34.81	15.63	215	Frontier Insurance Group	NYS	0.47	36.36	-66.36	7.00	0.19	881	UNUM Corp.	NYS	27.75	2.07	-13.45	36.19	11.94	3274
Clark Bardeas Holdings	NDQ	12.63	23.17	-12.17	17.88	8.50	117	Gaisco Inc.	NYS	4.06	1.56	-24.42	6.38	3.50	172	Vesta Insurance Co.	NYS	5.00	8.11	29.03	7.88	3.44	166
E.W. Blanch Holdings Inc.	NYS	15.13	-18.79	-75.31	64.75	15.13	1857	Harleysville Group	NDQ	22.38	-2.19	57.02	23.06	11.63	292	XL Capital Ltd.	NYS	72.81	-5.13	-40.36	80.00	39.00	2801
Gallagher Arthur J. & Co.	NYS	60.00	0.73	85.33	64.00	23.06	760	HSB Group Inc.	NYS	39.44	-0.31	16.64	-40.63	21.50	833	Zenith National Ins.	NYS	23.38	6.72	13.33	24.94	-18.75	127
Hill, Rogal & Hamilton	NYS	40.25	5.23	42.48	42.13	25.00	179	HCC Insurance Holdings	NYS	20.00	7.35	51.66	22.94	10.06	535	INSURERS/REINSURERS	AVERAGE		2.24	12.18			
Kaye Group Inc.	NDQ	8.69	6.11	3.73	11.88	5.00	13	ING Groep N.V.	NYS	72.00	9.92	18.03	72.00	48.81	710	Foundation Health Systems Inc.	NYS	20.75	13.70	108.81	21.88	6.63	3973
Marsh & McLennan	NYS	128.25	1.18	34.03	135.69	70.50	4961	IPC Holdings Ltd.	NDQ	19.25	-5.81	29.41	20.75	9.75	195	Humana Inc.	NYS	12.63	11.63	54.20	12.88	4.75	8970
BROKERS	AVERAGE		0.62	27.85				Hartford Financial Services	NYS	72.00	-3.20	51.98	78.69	29.38	6333	Oxford Health Plans	NDQ	34.81	-0.89	174.38	35.63	10.63	5904
INSURERS/REINSURERS								John Hancock Financial Services	NYS	28.94	-2.11	70.22	32.00	13.44	8264	Pacificare Health Sys.	NDQ	12.06	14.88	-77.24	72.31	9.81	3574
ACE Ltd.	NYS	39.06	-0.48	134.08	41.00	14.06	7331	LaSalle Fin Holdings Ltd.	NYS	18.88	0.00	14.39	19.38	10.88	0	Sierra Health Services	NYS	5.88	16.11	-12.15	10.00	2.44	479
Accel International Corp.	NDQ	0.51	16.70	-49.00	1.19	0.44	8	Lincoln National	NYS	46.31	-0.27	15.78	56.38	22.63	3183	United HealthGroup	NYS	106.13	-3.25	99.76	117.00	46.38	8093
Acceptance Insurance Cos.	NYS	5.50	-2.22	-4.35	15.13	2.75	40	MAIC Holdings Inc.	NYS	13.50	1.89	-36.28	23.80	10.00	67	Wellpoint Health Networks	NYS	113.88	-0.11	72.70	121.50	56.63	5044
AEGON N.V.	NYS	40.75	2.35	-14.66	49.13	31.50	322	Market Corp.	NYS	146.94	4.21	-5.20	174.88	111.50	101	HMOs	AVERAGE		7.44	60.07			
Aetna Life & Casualty	NYS	63.25	11.33	13.33	73.69	38.50	8774	MBIA Insurance Group	NYS	65.81	-5.98	24.62	75.25	36.31	2010	ALL COMPANIES		3.43	33.36				
AFLAC Inc.	NYS	69.94	2.85	48.21	74.94	33.56	7524	Meadowbrook Insur. Group	NYS	4.38	2.94	-33.33	8.75	3.94	18								
Allmerica Financial Corp.	NYS	61.81	0.00	11.12	67.19	35.06	1456	MelLife	NYS	26.38	6.30	85.09	29.00	14.25	18606								
Allstate Corp.	NYS	36.56	-1.85	51.95	40.31	17.19	18662	Mutual Risk Mgmt. Ltd.	NYS	18.89	-4.55	11.15	23.75	12.50	696								
Ambac Financial Group	NYS	74.13	-3.66	42.04	83.38	38.88	3321	Navigator Group	NDQ	13.38	-3.60	37.18	14.13	8.63	13								
American Financial Group	NYS	20.31	-0.31	-22.99	30.25	16.38	378	NYMag Inc.	NYS	15.88	-2.31	20.38	16.25	12.25	27								
American General	NYS	77.75	-1.89	2.47	82.19	45.83	5738	Ohio Casualty Corp.	NDQ	8.91	5.56	-44.55	17.88	6.13	1565								
American Intl Group	NYS	94.94	0.26	31.71	99.94	52.38	20655	Old Republic Int'l	NYS	24.00	-9.65	76.15	27.81	10.63	4531								
American Safety Insurance	NYS	5.06	15.71	-22.12	7.38	3.25	23	Partner Re Ltd.	NYS	52.44	-3.12	61.66	55.19	28.38	1383								
Argonaut Group	NDQ	17.25	-0.72	-13.21	25.13	14.44	360	Penn-America Group Inc.	NYS	7.63	-6.15	-1.61	9.75	6.63	6								
AXA-UAP Group	NYS	70.69	13.10	-0.44	81.50	58.25	3306	PMA Capital Corporation	NDQ	17.25	6.15	-13.21	20.06	15.38	45								
Baldwin & Lyons Inc.	NDQ	18.91	-0.49	-14.55	23.94	15.25	39	Philadelphia Cons. Holding	NDQ	24.50	15.98	68.97	24.50	14.13	333								
Berkley W.R. Corp.	NDQ	34.88	1.82	67.07	37.13	14.00	1638	PXRE Corp.	NYS	13.88	-3.90	6.73	17.56	9.94	232								
Berkshire Hathaway Inc.	NYS	64500.00	5.95	14.97	68900.00	40800.00	3	Reliance Group Holdings	NYS	0.06	-33.33	-99.06	7.75	0.06	6686								
Capitol Transamerica Corp.	NAS	12.13	11.49	20.50	13.25	9.38	11	ReStar Financial Corp.	NYS	53.94	0.00	-37.64	53.94	23.75	0								
Chubb Corp.	NYS	80.75	-0.62	43.40	86.38	43.25	5026	RenaissanceRe Holdings Ltd.	NYS	67.00	-9.31	63.91	77.75	35.88	969								
CIGNA Corp.	NYS	116.09	1.25	44.10	123.00	60.75	5466	RLJ Corp.	NYS	39.31	0.32	15.63	39.63	26.25	53								
Cincinnati Financial Corp.	NYS	37.69	2.55	18.24	43.31	26.19	1486	St. Paul Cos.	NYS	48.13	-2.28	42.86	51.88	21.31	4239								
Citigroup	NYS	53.94	7.34	28.82	59.13	35.34	54470	SCOR	NYS	47.06	4.29	6.36	53.63	38.38	26								
CNA Financial Corp.	NYS	34.69	-3.65	-10.91	42.13	24.56	350	SAFECO Corp.	NDQ	23.69	1.07	-4.77	30.69	18.00	2970								
CNA Surety	NYS	11.69	-1.04	-10.10	14.94	9.81	155	SCPIE Holdings Inc.	NYS	20.44	9.70	-36.38	-38.94	18.31	NA								
EMC Insurance Group Inc.	NDQ	9.56	-1.92	4.79	11.38	6.81	21	Selbels Bruce Group	NDQ	1.00	14.29	-42.86	3.88	0.53	113								
ESG Re Limited	NDQ	3.44	12.24	-50.45	7.75	2.50	232	Selective Ins. Group	NDQ	17.84	4.96	3.82	20.38	14.63	301								
Enhance Financial Services	NYS	13.56	15.43	-16.54	19.31	8.63	1734	Tokio Marine & Fire	NDQ	57.13	3.86	-3.38	67.00	45.00	54								
Everest Reinsurance	NYS	54.19	-0.34	142.86	58.63	20.69	2532	Torchmark Corp.	NYS	32.81	-4.17	12.90	36.00	18.75	2034								
								Transatlantic Holdings	NYS	92.00	-3.09	17.85	95.75	68.75	104								
								Trenwick Group Inc.	NYS	20.06	7.36	18.45	21.25	12.00	541								
								Unico American Corp.	NDQ	7.25	-4.92	3.57	8.25	4.50	6								
								United Fire & Casualty	NDQ	17.50	3.32	-22.65	23.38	15.50	46								



Top advancing issues: Frontier Insurance Group, Clarke Bardeas Holdings, Accel International Corp. Leading decliners: Reliance Group Holdings, Aon Corp., E.W. Blanch Holdings Inc. Most active issue: Citigroup. The BI Index rose 3.1%; the Dow Jones 30 Industrials increased 2.2%; the S&P 500 went up 3.4%, and the NYSE Composite rose 3.2%. Average P/E: Brokers, 22.0; Insurers/reinsurers, 25.9; and HMOs, 15.4.

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



He has a loving wife, three great kids, and no logical explanation for what he's about to do.

As an insurance company, we've uncovered an idea some CEOs would rather overlook: consensual or not, it can be a costly affair.

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AND BEING A PARTNER ARE TWO
DIFFERENT THINGS.
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