

# Business Insurance

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

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## Judge reaches plea agreement, will testify against commissioner

BATON ROUGE, La.—Judge Alfred Foster “Foxy” Sanders has reached a plea agreement with federal prosecutors and will testify against Louisiana’s top insurance regulator and other defendants who were indicted on conspiracy and other charges.

The judge was indicted, along with Louisiana Insurance Commissioner Jim Brown and four others, on Sept. 24 after the U.S. attorney’s office charged the defendants with conspiring to help the owner of failed Cascade Insurance Co. avoid a \$27 million

See Updates on next page

# Tough patient rights bill clears House

By MARK A. HOFMANN

WASHINGTON—A proposal that would expand the liability of health plans and the employers that sponsor them still has a long way to go before it becomes law.

That’s about the only consolation right now for employers and insurers that oppose the bipartisan Consensus Managed Care Act sponsored by Reps. Charlie Norwood, R-Ga., and John Dingell, D-Mich. Employer and insurer groups had fought the measure in one of the fiercest lobbying battles of recent history.

The bill’s opponents charge that its liability provisions—which would allow health plans and, in some cases, employers, to be sued for decisions that deny health benefits—could prompt employers to drop health coverage. Under the bill, beneficiaries would be able to bring suit without first going through the internal and ex-

ternal appeals processes the bill would establish.

Opponents also charge that employers that continue to offer coverage would pay more because managed care plans would pass along the costs of their increased liability.

“The thing that concerns me the most is the right-to-sue issue. My reason for that is simply that it’s going to drive up costs. . . . I think employers are going to be skeptical about this. Some may take action to pass on costs to employees and, in some cases, smaller employers may terminate coverage altogether,” said Dennis J. Nirtaut, managing director-compensation and benefits at Arthur Andersen L.L.P. in Chicago.

After rejecting three milder managed care reform bills, the House of Representatives last Thursday voted 275-151 for the Norwood-Dingell measure, with 68 Republicans going against

See Bill on page 6

## Congress to work out the differences

Provisions	Norwood-Dingell “Consensus Managed Care Improvement Act”	Senate “Bill of Rights Plus Act”
HMOs can be sued if coverage decisions ‘harm’ patients	✓	No
States can enact stronger protections	✓	No
Independent external review for denied coverage	✓	✓
Easier coverage for emergency room services	✓	✓
Direct access to ob/gyns	✓	✓
Scope of coverage	-All private managed care plans	Employer-funded self-insured plans

# Bipartisan bill calls for more pension info

By JERRY GEISEL

WASHINGTON—A new bipartisan bill introduced last week and immediately endorsed by the Clinton administration would require employers to give employees much more advance notice and provide more information when they change their pension plan design and reduce future benefits.

The legislation is a congressional response to recent major-employer conversions of traditional defined benefit plans to cash balance plans. It would require employers to give employees a 45-day advance notice of any change in pension plan design that could reduce future benefit accruals. Under current law, only a 15-day advance notice is required.

More significantly, for the first time, employers would have to give employees an easy-to-understand explanation of the current pension for-

mula and the new benefit formula. Employers also would have to provide specific examples of how the design change would affect any group of workers, such as employees over 50, whose future benefits were expected to be reduced.

The examples would be prepared in accordance with regulations that the Treasury Department would develop. These illustrative examples would have to provide comparisons of benefits that would be earned under the new plan with benefits that would have been earned under the old plan.

These comparisons would have to be based on assumptions, such as those involving interest rates, that an enrolled actuary would have to certify as reasonable. Alternatively, the Treasury Department would develop safe harbors on assumptions that employers could use.

In addition, employees See Disclosure on page 33

## Value of ACE offer tied to stock price

# XL bids for Capital Re

By GAVIN SOUTER

NEW YORK—Capital Re Corp. is the target of a takeover battle between Bermuda-based insurers ACE Ltd. and XL Capital Ltd.

The New York-based financial guarantee reinsurer must choose between a new unsolicited offer of \$456.3 million in cash from XL or ACE’s earlier offer of stock, which currently is worth considerably less than when the offer was made in May.

The XL bid currently is superior to ACE’s bid, but Capital Re shareholders will have to weigh other factors that could favor ACE’s offer, analysts say.

For example, they say, Capital Re already has established a joint venture with ACE, and the current depressed price of ACE’s stock could reverse in the coming months, making its offer more valuable in the long run.

### Offers for Capital Re\*

 CAPITAL RE

 XL CAPITAL  
\$456.3 million in cash

 ACE  
\$375.3 million in stock

\* value of offers as of Oct. 6, 1999

When ACE originally made its offer for Capital Re, the all-stock deal was worth \$605.9 million (BI, May 31), but by last Wednesday, the day XL made its bid, the ACE offer was valued at about \$375.3 million. ACE offered 0.6 shares of ACE stock for each Capital Re share.

The XL offer marks the second time XL has jumped in to spoil a potential ACE deal. ACE last year had begun preliminary discussions on the possibility of buying Mid Ocean Reinsurance Co. Ltd. when XL, a major shareholder in Mid Ocean, intervened with a successful \$2.2 billion bid.

Insurers and analysts say the rivalry over acquisitions should not jeopardize the working relationship between ACE and XL; that relationship includes joint ownership of a political risk insurer.

See Capital Re on page 33

# S&P reviewing credit ratings in light of Unicover exposure

By DOUGLAS McLEOD

NEW YORK—Standard & Poor’s Corp. has placed its credit ratings of Reliance Group Holdings Inc. and Lincoln National Corp. units under review because of potential losses stemming from the ill-fated Unicover Managers Inc. workers compensation facilities.

S&P’s concerns about Unicover’s impact on the capital and earnings of Reliance Insurance Co., Lincoln National Life Insurance Co. and several of their affiliates led the rating agency to

place their counterparty credit ratings on CreditWatch with negative implications, S&P said.



Reliance, which holds a BBB-counterparty credit rating, saw S&P in August cut its financial strength rating to A- from A over

worries about its capital adequacy and profitability.

Reliance is expected to raise capital to improve its financial position by the end of the first quarter of 2000, but its “involvement in and exposure to losses from Unicover could negatively impact management’s ability to successfully complete these plans,” S&P says. Some of the plans “may depend on resolution of its actual exposure to Unicover.”

Meanwhile, Lincoln National Life, which holds AA- counter-

See Unicover on page 33

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# Updates

## Louisiana judge reaches plea

Continued from page 2  
lawsuit (BI, Oct. 4).

Judge Sanders agreed eight days later to plead guilty to one count of conspiracy to commit mail fraud and witness tampering. He could face up to six months in prison and a \$25,000 fine. In return, prosecutors agreed to drop their original 43 counts of conspiracy, mail fraud, wire fraud, insurance fraud and witness tampering.

The Louisiana state judge will take the stand against the other defendants in the trial. No date for a trial has been set.

The other defendants are former Louisiana Gov. Edwin Edwards; Robert Bourgeois, director of the Louisiana Receivership Office Inc.; David J. Disiere, Cascade's owner; and Ron Weems, Mr. Disiere's Shreveport, La.-based attorney. Mr. Brown and the remaining defendants pleaded not guilty last week.

## California comp ratio at 141%

SAN FRANCISCO—California workers compensation insurers posted an estimated 141% combined ratio for accident year 1998, reports the California Workers' Compensation Insurance Rating Bureau.

"It doesn't take a rocket scientist to figure out this is going to challenge the solvency" of California workers comp insurers, a spokesman for the San Francisco-based WCIRB said.

Despite the 1998 combined ratio, the average charged rates reported in 1999 are about the same as last year, according to the WCIRB, which expects this year's combined ratio will be even higher due to inflation.

The spokesman said the California Insurance Department is expected to make a decision on insurers' requested 2000 workers comp rates in about two weeks.

## Quarter's property losses high

NEW YORK—Hurricane Floyd played a key role in pushing insured property damage for the third quarter of 1999 to an estimated \$2.1 billion, reports the Insurance Services Office Inc.'s Property Claim Services unit.

Insured damages from Hurricane Floyd are currently estimated at \$1.3 billion. Floyd was the costliest of seven events declared catastrophes—meaning, among other things, that they caused at least \$25 million in insured property damage—by PCS during the third quarter.

The \$2.1 billion in insured property losses makes the third quarter of this year the fifth-costliest third quarter in terms of catastrophe losses since PCS began keeping catastrophe records a half-century ago. The 1999 third-quarter total falls far short of 1992's record \$17.4 billion third-quarter losses, most of which stemmed from Hurricane Andrew.

PCS estimates that catastrophes have caused an estimated \$7.4 billion in insured property losses thus far this year.

## OSHA eases self-audit policy

WASHINGTON—The Occupational Safety and Health Administration will no longer routinely demand to see voluntary self-audits when making workplace inspections.

Prior to last week's announcement, requiring an employer to release self-audits often gave OSHA a way of identifying hazards on which to focus its investigations. Employers were reluctant to conduct such compliance audits out of concern that the internal acknowledgement of a hazard could be considered by OSHA evidence of a willful violation.

Under the new policy, conducting voluntary self-audits and attempting to take immediate corrective action will be considered evidence of an employer's good faith. These audits might entitle employers to reductions in penalties.

OSHA continues to reserve the right to obtain portions of voluntary self-audits if the agency thinks a hazard warrants investigation.

## Pru not fast enough: Court

WASHINGTON—Prudential Insurance Co. of America did not act quickly enough to opt out of an asbestos settlement in which it was a plaintiff and, thus, cannot pursue separate litigation against the defendants, the U.S. Supreme Court ruled last week.

The court let stand lower state court rulings that said Prudential failed to meet the deadline for choosing not to participate in a class settlement with asbestos manufacturers that agreed to pay \$7.8 million to end claims against them. Prudential wanted to opt out of the 1996 settlement of the 10-year-old suit so it could seek damages from some of the same defendants for the cost of removing asbestos from buildings it owned that were not covered by the agreement. Prudential had filed a separate suit against the asbestos makers in 1987.

The insurer, in a statement, blamed the missed deadline on "class counsel's inadequate representation of absentee class members" and said it will pursue the claim in federal court in New Jersey.

## Insurer changes parts policy

BLOOMINGTON, Ill.—Although still planning to appeal a \$456 million jury verdict, State Farm Mutual Automobile Insurance Co. announced last week it was temporarily suspending the use of aftermarket parts in repairs of policyholders' vehicles.

An Illinois state court jury in Marion last week awarded the \$456 million to State Farm policyholders in a class-action suit contending  
*See Updates on page 34*

## Errors & omissions

• Due to an editing error, several footnotes on an Oct. 4 chart of state surplus lines premiums and taxes were incorrect. Georgia, Hawaii, Maine, Oklahoma and South Dakota all reported on a fiscal-year basis ending June 30. Mississippi has a 3% tax rate on direct premiums. In addition, Ohio's \$140,708,000 in 1997 surplus lines premiums is a BI estimate.

# Exclusion not blanket

## Court says pollution clause applies only to part of CGL policy

By GAVIN SOUTER

ST. LOUIS—The pollution exclusion in commercial general liability policies does not apply to all coverages under the policy, a federal appeals court has ruled.

While the exclusion does apply to coverage for property damage, it is not applicable to personal injury coverage, the court ruled.

So, if a policyholder is covered for a pollution incident under the personal injury portion of the cov-

erage, the insurer has a duty to defend the policyholder in a liability dispute, the court ruled.

The ruling could open up a new coverage avenue for policyholders in the court's jurisdiction, a policyholder lawyer said.

In *Royal Insurance Co. of America vs. Kirksville College of Osteopathic Medicine*, the 8th U.S. Circuit Court of Appeals reversed a district court ruling that Royal did not have a duty to defend Kirksville College in a pollution

liability dispute because the college's CGL policy contained an "absolute" pollution exclusion.

The appeals court reversed that decision, ruling that the policy has, in fact, two elements of coverage: Coverage A, which includes property damage and a pollution exclusion; and Coverage B, which covers personal injury and does not contain a separate pollution exclusion.

"The insurers did not choose to  
*See Exclusion on page 35*

## Any size employer could offer accounts

# House approves MSA bill

By JERRY GEISEL

WASHINGTON—Employers of any size would be allowed to offer tax-favored medical savings accounts to employees under legislation approved last week by the House of Representatives.

The legislation, H.R. 2990, would remove a provision in a 1996 law that limits tax-favored MSAs to the self-employed and employers with no more than 50 employees.

In addition, the legislation would remove the current 750,000 cap on the number of MSAs that can be established as well as allow MSAs to be set up indef-

initely. Under a sunset provision in the 1996 law, MSAs only can be established through Dec. 31, 2000.

Other MSA-related changes in the bill passed by the House last week include lowering the deductibles in the health insurance plans to which MSAs are linked. For individual coverage, the deductible would be lowered to \$1,000 from \$1,500, while for family coverage the deductible would be cut to \$2,000 from \$3,000.

Other changes in the bill would exempt trade association-sponsored health insurance programs—known as HealthMarts—from state regulation and  
*See MSAs on page 6*

# Feelings strong on dereg effort

By MEG FLETCHER

ATLANTA—Sharp differences of opinion continue to surround the National Assn. of Insurance Commissioners' effort to develop a proposal for deregulating commercial lines.

Insurer representatives think the process is not moving fast enough and say regulators have not accepted their suggestions

for a more-flexible model. Meanwhile, regulators and consumer



representatives are concerned about protecting small commercial and individual policyholders.

The tension became evident af-

ter a status report by the Commercial Lines Re-Engineering Working Group to the Property and Casualty Insurance Committee at the NAIC's fall national meeting Oct. 2-6 in Atlanta.

That tension stemmed in part from the timetable to finish the model law, which is bringing the issue to a head. Working Group Chair David Eley, a senior policy  
*See NAIC on page 4*

# Benefit captive plan OK'd

By JERRY GEISEL

WASHINGTON—Union Carbide Corp. can use its captive to reinsure its employee supplemental life insurance program.

U.S. Department of Labor approval came last month after Danbury, Conn.-based Union Carbide notified plan participants of the proposed transaction and gave them the opportunity to comment to the Department. The Labor Department had earlier tentatively authorized the proposal. There were no objections to the transaction.

"We are just delighted that the process worked as we hoped and expected," said Union Carbide Assistant Treasurer Richard Inserra.

The arrangement, Mr. Inserra said, is driven by a desire to keep policy costs down and share in the policy profits with the primary insurer.

Union Carbide will use a new U.S. Virgin Islands branch of its Bermuda-domiciled insurance subsidiary, Westbridge Insurance Ltd., to reinsure a portion of life insurance policies written by Metropolitan Life Insurance Co. Met Life has written the policies for about 10 years.

The Labor Department's action is the first time the agency has authorized an employer to use an "off-shore" captive to reinsure employee benefit risks.

Under a 1979 regulation, known as a class exemp-  
*See Captive on page 35*



## Inside

• It's not a bad thing that the House Appropriations Committee voted to block temporarily the Labor Department's enforcement of the health care claims regulations it is now developing, this week's editorial says. **PAGE 8**

• A Japanese nuclear fuel processing company's liability insurance policy could be declared invalid under Japanese law if investigators prove that last month's accident at JCO Co. was caused by willful acts. **PAGE 27**

• The liability insurer for the two train companies involved in Britain's worst train crash in a decade has made funds available to provide immediate assistance to the accident's victims. **PAGE 27**

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# Lawsuits target HMOs' decisions

By MICHAEL PRINCE

Plaintiffs attorneys are setting their sights on health maintenance organizations, as three federal class-action suits have been filed against HMOs, alleging they misled plan members, and more are expected.

One suit, filed last week against Louisville, Ky.-based Humana Inc., alleges the HMO has engaged in "intentional concealment" of information about how it makes treatment decisions for members in its health plans. Two other suits filed last week against Aetna Inc. and its subsidiaries make similar allegations. All three suits seek unspecified monetary damages.

The suit against Humana alleges the company failed to disclose to plan members accurate information about how health care would be provided. Humana, the complaint states, told

members that treatment decisions would be made on the basis of medical necessity. Instead, "treatment and coverage determinations took account of a variety of concealed cost-based criteria that were unconcerned with, and sometimes inimical to, the medical needs" of plan members, the suit alleges.

Humana even offered cash bonuses to claims reviewers to deny coverage otherwise regarded as medically necessary, the complaint charges.

Also, the complaint alleges, Humana provides "direct financial incentives," including capitation agreements, to physicians to deny treatment to plan members. These incentives "restrict hospitalization, limit referrals to specialists and minimize diagnostic testing" for plan members, the suit alleges.

This alleged failure to disclose, the



See Lawsuits on page 34

# Drug maker uninsured for Fen-Phen liabilities

By MICHAEL PRINCE

PHILADELPHIA—After agreeing to one of the largest-ever product liability settlements, American Home Products Corp. is facing additional liability that could top \$1 billion—without insurance.

The pharmaceutical company last week announced it will pay up to \$4.83 billion to end the majority of suits over its recalled diet drugs. The settlement will compensate the millions of people who took the company's diet drugs Redux and Pondimin.

No part of the settlement is covered by insurance, however. American Home had \$400 million in liability coverage, but virtually all of that was consumed by defense costs and settlements of prior suits, a spokesman confirmed.

To pay for the recent settlement, American Home is taking a \$4.75 billion pretax charge against third-quarter earnings. Of that, \$3.75 billion will be for the settlement itself, while \$1 billion will be set aside for future litigation expenses, he said.

As many as 6 million people took either

Pondimin or Redux before both were recalled by American Home in September 1997 after studies indicated the drugs caused heart valve damage in some users. The diet drugs were often taken along with another drug phentermine, to form the popular "Fen-Phen" combination.

The settlement, however, will not end all claims against American Home. Individuals can opt out and pursue their own suits.

In addition, the settlement does not cover the more than 100 suits claiming the drugs caused primary pulmonary hypertension, a serious heart condition. Plaintiffs' lawyers estimate the company's liability in the primary pulmonary hypertension cases could reach a total of \$1 billion, which American Home would have to fund out of its own assets.

For those people who took the American Home diet drugs for less than 60 days, American Home will provide refunds. Much more money will be provided to people who took the drug for more than 60 days.

Two funds have been established for individuals in the latter category. The first, total-



See Settle on page 34

# Consider cultures in global policies on personnel: Panel

By AMANDA MILLIGAN

CHICAGO—When crafting international employment relations policies, cultural expectations should be considered alongside legal cornerstones, according to panelists at a Baker & McKenzie client seminar on global employment issues.

The role of unions, the regulatory environment, whether employment is "at will" or by contract, and the relationship between employers and employees are some of the components that should be factored into a corporation's thinking about international employment practices, said Gunther Heckelmann, partner in the law firm's Frankfurt, Germany, office. The seminar was held last week in Chicago.

"The biggest mistake of operating in Europe and globally overall is headquarters imperialism," he said, noting the tendency of multinational corporations to use the same approach to management issues and policies worldwide without regard for cultural differences.

For example, said Manuel Limon, almost every aspect of employment must be in writing in Mexico, which places considerable emphasis on the contract forged between employee and employer.

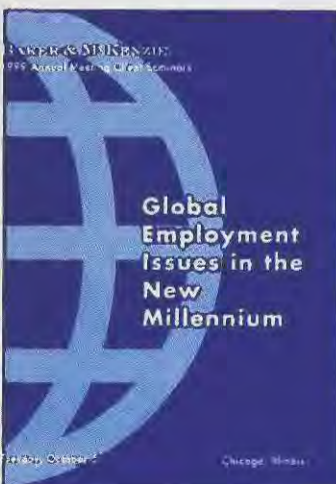
"It's not only the law, but it's the culture," said Mr. Limon, who is a partner in Baker & McKenzie's Mexico City office. "Companies have the burden of proof in the event of litigation. It's important to have the most that we can in writing."

In countries where employees hold employment contracts, terminating an employee can be difficult, said Mr. Heckelmann. Company-established grievance policies and procedures can add to the difficulty when they are used in other countries.

"Severing an employment agreement is sometimes more difficult than a divorce," according to Mr. Heckelmann.

Even in countries whose culture appears similar to that of the United States, it is important to remember that there are differences, noted Stewart D. Saxe, a partner in the law firm's Toronto office.

See Culture on page 10



# Work/life turns to teens

## Employers beginning to offer programs to help parents with teen-age children

By JUDY GREENWALD

When the Federal Reserve Bank in Chicago recently announced a workshop for parents of teen-agers, it expected about 25 people to show up.

Instead, 70 people attended, and an equal number appeared for a subsequent repeat session, said Peg Koenigs, assistant vp-human resource services for the bank. "It's simply a huge issue on people's minds," she said.

A still small but growing number of employers are beginning to focus more attention on teen-agers in their work/life and employee assistance programs.

There are several reasons for this. First, teen-agers have disproportionately been the victims in some of the recent shooting massacres, including the killings at Columbine High

School in Littleton, Colo., in April.

Additionally, with many progressive employers already offering child care and other programs directed at younger children, it is a natural next step to turn to teen-agers. The trend also reflects an increase in the number of teen-agers, as the children of baby boomers get older.

Employers are recognizing that more support provided to parents of teen-agers means more time that these employees spend in the workplace, said Stephanie Trapp, executive director of the Alexandria, Va.-based Alliance of Work/Life Professionals.

A teen-ager who is going through a difficult period "can take more time away from a parent than a newborn," according to Ms. Trapp, who believes more employers will introduce these programs in the future.

"There's a growing concern among parents that this is an in-between age, and (teen-agers are) not ready to stand on their own, and, if they are ready to stand on their own, do I feel good about leaving them on their own?" said a spokeswoman for Westport, Conn.-based DCC Inc., a work/life services provider.

"I think that employers respond to it when there's a crisis like Littleton, but, as a whole, it's just starting to become an issue that they're becoming aware of," the spokeswoman said.

In the past few months, three clients of Minneapolis-based Ceridian Performance Partners have approached the vendor seeking help for their employees in dealing with and talking to teen-agers, said Kathleen Nash, a Blue Bell, Pa.-based senior project manager for the company. Ms. Nash is now putting together an information packet for the parents of teen-agers

See Teens on page 14

## Consultant advises seeking root causes

# Analysis called prevention tool

By RODD ZOLKOS

CHICAGO—Root cause analysis not only can help risk managers determine why a specific loss or event occurred, but also, when done correctly, can help find ways to prevent such events from recurring, a consultant says.

Root cause analysis, while time-consuming, is a technique that also can aid risk managers in strengthening their organizations' loss prevention programs, the consultant adds.

Speaking at the annual conference of the American Society for Healthcare Risk Management last week in Chicago, Monica Santoro, a Westbury, N.Y.-based health care risk management consultant, said that root cause analysis goes beyond examining an adverse event as an isolated case.

Instead, the process aims to find ways to prevent such events from occurring again, and it can help risk managers design systems that mini-

mize the chance of human error. The root cause analysis process involves examining an event along with



any and all component parts involved in it, in an effort to identify its fundamental cause, she explained.

But finding that cause isn't an end in itself, Ms. Santoro cautioned. The process is really meant to be a "springboard," and the critical next step involves identifying and making

the changes necessary to reduce the likelihood of recurrence.

Root cause analysis "is really the beginning," Ms. Santoro said. "You have to develop an action plan."

Root cause analysis is a time-consuming and therefore costly process, Ms. Santoro said. Still, she suggested that risk managers don't have to wait for a serious event to occur before beginning the process.

"It can be used proactively as a loss prevention tool," the consultant said. "It also helps promote safety and the 'blameless environment.'"

In conducting a root cause analysis, Ms. Santoro noted that after an adverse event occurs, it's important to take "first things first."

"You have to create a timeline of the event," she said. "It does help focus the team once they convene, and it helps identify proximate causes of the event."

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# NAIC

Continued from page 2

analyst with the Texas Insurance Department, announced the timetable.

"We hope to have a substantially completed bill by December," after a conference call in November and two additional scheduled meetings as part of the NAIC's winter meeting Dec. 4-8, he said. The work on the new model law, however, will be done by the NAIC's March quarterly meeting, and then the group may consider also developing a new model regulation to implement the model law, he said.

NAIC drafters crafting a new uniform rate and form filing law clearly are interested in deregulating commercial lines and re-regulating the rest of the marketplace to lessen or eliminate needless burdens, Mr. Eley had said previously in an interview.

"When we have completed our course and presented the bill, you will

be amazed at the amount of regulatory freedom that will be provided," he told the committee last week at the meeting.

Announcement of Mr. Eley's timetable, however, dashed the hopes of many insurance industry representatives who have long been critical of the working group's conservative approach to implementing an NAIC white paper on deregulation that the NAIC adopted about a year ago.

Those hopes for a more liberal and flexible regulatory approach stemmed in part from the working group's willingness earlier last week to hear favorable reports about two alternative approaches. The first was the thriving condition of Illinois' deregulated marketplace. The second was an analysis comparing the NAIC proposed model with the National Conference of Insurance Legislators' Property and Casualty Form and Rate Model Act, which NCOIL adopted in February. Thus far, about 14 states

have commercial lines deregulation laws similar to the NCOIL model.

In response to a request for comment at the committee meeting, Michael Lovendusky, assistant general counsel with the American Insurance Assn. in Washington, said the insurance industry's concern is that the working group "is not on the right track" and that the NAIC is not taking "a leadership position" on the issue of deregulating laws on rates and forms (*BI*, June 21).

Many insurance industry spokespeople support the currently popular approach among states, which is the simpler, four-page NCOIL model law deregulating commercial lines of insurance with "exempt commercial policyholders" defined by legislators.

NCOIL's model provisions include: a "no filing" option; exemption from other statutory and contract requirements; coordination of regulatory requirements for multistate insureds; and elimination of a due diligence re-

quirement for surplus lines brokers.

Many insurance industry representatives also favor deregulating personal lines coverages, too, though the NCOIL model does not address that.

As Mr. Eley described it, "The NCOIL model is an adapter kit to existing rating laws," while the NAIC effort is much more comprehensive and all-encompassing.

The more complex, 40-page NAIC proposed model covers both personal and commercial lines. The proposed model currently does not include a "no filing" option or exemptions from other statutory and contract requirements. It does, however, exempt manuscript policy forms and endorsements—which the NCOIL model does not. In addition, the NAIC drafters' default on both commercial and personal lines forms is prior approval, while its default on both types of rates is file and use.

From Mr. Lovendusky's perspective, regulators' goal should be to

"normalize" the market for insurance with that of other products for which price controls have been eliminated. He said the working group's lack of responsiveness to this goal has frustrated insurer groups, and he urged regulators to reconsider the group's direction because the NAIC's model "definitely does not go far enough."

Two consumer representatives disagreed, however.

Birny Birnbaum of the Austin, Texas-based Center for Economic Justice said he thinks the model law goes too far and described Mr. Lovendusky's comments as "outrageous." The current NAIC model "moves far beyond deregulation," said Mr. Birnbaum, a former regulator with the Texas Insurance Department.

Also speaking on behalf of consumers was Kevin Hennoy, executive secretary of Spread the Risk Inc. in Kansas City, Mo.: "I believe commercial lines deregulation is a folly and personal lines deregulation is a foul."

Key risk managers previously said they feared small companies—some with as little as \$25,000 in annual insurance premiums—will have the same broad freedoms as larger companies though they may lack risk management expertise. Those freedoms could result in losses that might prompt a regulatory backlash, they said (*BI*, June 21).

NAIC drafters are considering redefining an exempt commercial policyholder; it now proposes that a state's insurance commissioner define such a policyholder. They also plan to review multistate waivers, revising surplus lines requirements and expanding a state commissioner's authority to find a rate excessive in a competitive market.

The fate of the NAIC model remains to be seen, even if the working group adheres to its timetable, observers say.

"The NAIC's motives are good, but they could easily wind up with something far more cumbersome than exists today," said Robert Mackin, NCOIL's executive director. "There seems to be a broad consensus for deregulation," he said. "The bill that allows the market to work is the one that will be accepted."

"As it is now, the industry is not supportive of the NAIC model," said Don Cleasby, assistant general counsel for the National Association of Independent Insurers. Mr. Cleasby said that, in his personal opinion, "it has less chance of passage than a model that everyone can agree to." **BI**

## New staffer hired at *BI*

CHICAGO—*Business Insurance* has added a new member to its editorial staff in Chicago.

Susanne Y. Beal has joined *BI* as assistant directory editor, replacing John Keagy, who left to join the *NewCity* newspaper in Chicago. In her position,

she will assist with the management, research and production of *BI*'s many in-publication directories.

Ms. Beal, 26, most recently worked at the Consulate General of Japan in Chicago as an

assistant to the consul general. Prior to that, she taught American culture and English in Japan from 1995 to 1997.

Ms. Beal holds a bachelor of arts degree in Asian studies and international studies from Northwestern University in Evanston, Ill.

She can be reached at 312-649-5313. **BI**

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# Bill

Continued from page 1  
the wishes of their own leadership to support the bill.

That's probably as far as the bill will go, however, for some time. The measure now must be reconciled with much less sweeping legislation passed by the Senate in July (BI, July 19). Although both bills include such measures as guaranteed external review of denied coverage, direct access to specified medical specialists and easier coverage criteria for emergency room services, they diverge greatly on two major points.

The Senate bill would not expand the liability of employers or managed care plans, and the Senate GOP leadership has indicated no appetite for an expansion of liability. Many of the Senate bill's provisions also would apply only to employer-funded self-insured plans, covering about

48 million people. The House bill, however, would govern all private managed care plans.

Further complicating the situation is the bundling of the Dingell-Norwood measure with the Quality Care for the Uninsured Act, which passed the House by a largely party-line 227-205 vote on the eve of the patients' bill of rights vote. In addition to expanding the number of employers eligible to offer medical savings accounts, the Quality Care for the Uninsured bill seeks to reduce the number of uninsured through the use of so-called "HealthMarts" and by giving people tax breaks for long-term care insurance premiums, provided that they pay for at least half of the cost of the coverage themselves.

HealthMarts are purchasing cooperatives that would allow small businesses to join together to offer benefits. HealthMarts would not be subject to state coverage mandates.

The measure would also allow creation of association health plans that would not have to meet state benefit mandates. It does not, however, contain any offset to make up revenues.

Although the Senate has approved

**'I'm not sure that such a package of provisions in one bill could get through either body,' says Mark Hamelburg.**

some similar provisions, many Democrats, as well as the White House, remain opposed to such funding mechanisms, particularly MSAs.

Several additional factors work against quick agreement on a compromise patient protection bill.

Among them is that Congress has several other matters to consider, including passing appropriations bills.

Members of Congress are "going to have enough trouble getting the appropriations bills passed in the time that's left in this session," said Mark Hamelburg, principal and attorney in the Washington office of benefit consultant William M. Mercer Inc.

Frank McArdle, a consultant with Hewitt Associates L.L.C. in Washington, said: "I think we'll know in a couple of weeks whether the conference will even start working seriously this year or let it carry over to next year. I think the size of the vote in the House and the large number of Republicans it attracted probably means that if they try and postpone the conference, there'll be a lot of unrest among members."

Still, "the differences between the two bills are so substantial that it will be difficult to reconcile," he said.

The House's rejection of three milder GOP managed care reform bills may have made crafting an acceptable compromise between Norwood-Dingell and the Senate bill much more difficult, noted Paul Dennett, vp-health policy for the Assn. of Private Pension & Welfare Plans in Washington.

"The difficult part of this is to see how the House and Senate come together from such polar opposite positions. Frankly, it would have been easier to see the endgame had any of the other three alternatives passed the House yesterday. The gulf is clearly much greater with the passage of the Dingell-Norwood measure," he said.

Mr. McArdle said: "Of all the options that have been on the table in terms of expanding liability, this is the worst. In addition, the independent external review process can easily be bypassed under this bill, whereas employers would prefer that all the disputes go through the administrative remedies before it goes to court."

Jeannette Jang, another Hewitt consultant in Washington, noted that the measure is coming at a time when "we're seeing a movement toward filing class-action suits against health plans, and successful class ac-

tions often mean very substantial damages, including the possibility of very big punitive damages."

Political considerations could trump ideological differences, said one consultant.

"My sense is that there's a political momentum which often overrides technicalities and the power of interest groups. Politically it takes on a life of its own, and people don't understand the details" and want to be perceived as being "on the side of the angels," said Helen Darling, practice leader-group benefits and health care for Watson Wyatt Worldwide in Stamford, Conn., and a former benefit manager at Xerox Corp.

"It becomes a litmus test, and going into an election year, nobody wants to be on the wrong side of a litmus test," she said.

Ms. Darling predicted that whatever bill comes out of the conference committee would have to contain expanded liability for managed care plans or it would simply die.

Mercer's Mr. Hamelburg, though, predicted a "rough" time in conference. He said the House GOP leadership probably will appoint opponents of liability expansion to represent it in the conference.

But ultimately, the tie-in with the proposals to expand access for the uninsured could kill the measure, he predicted. Some Democrats who strongly support the patient protections might vote against a final bill if it contains an MSA provision, while some Republicans who strongly support MSAs and other market reforms might vote against any bill that contains liability expansion, he said.

"I'm not sure that such a package of provisions in one bill could get through either body or would be signed by the president," Mr. Hamelburg said.

But no matter how the matter is finally decided, employers have not given up the fight, said APPWP's Mr. Dennett.

"There's no question that the Dingell-Norwood bill will galvanize the ranks of the industry efforts to oppose that measure as a final outcome. From CEOs on down, the word is clear that that poses a fundamental threat to employers of all sizes who offer benefits," he said. **BI**

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## MSAs

Continued from page 2  
give new tax breaks to long-term care insurance premiums (see story, page 1).

The broadening of eligibility for MSAs comes at a time when MSAs have been growing slowly. Through June 30, just under 45,000 MSAs had been set up, according to the Internal Revenue Service, a far cry from the 750,000 maximum that Congress set as part of a 1996 health care portability law.

Some MSA advocates had predicted that interest in MSAs would be so great that the congressionally set caps would be quickly reached.

Such predictions have not come to fruition, according to the IRS, whose MSA estimate is based on an analysis of tax returns, reports filed by MSA administrators and its own projections.

MSA backers say the potential of MSAs has yet to be realized because it has been difficult to explain to the public how MSAs work. In addition, the restrictions imposed on MSAs, such as excluding larger employers from offering them, has limited the market, they say.

Under a tax-favored MSA, which must be linked to a high-deductible indemnity plan, contributions earn tax-deferred interest.

MSA funds can be withdrawn tax-free to pay for uncovered health care expenses. Amounts withdrawn for other purposes are taxed as ordinary income but with an additional 15% surcharge.

The 15% surcharge, though, is not assessed on funds withdrawn by individuals after they turn 65.

Of the roughly 45,000 MSAs that have been established, about 10,000 were for individuals previously uninsured, according to the IRS.

Advocates have argued that MSAs have significant potential to reduce health care costs. Proponents say that is because employees have a powerful incentive—keeping the funds that accumulate in the account—to use health care services prudently.

However, MSA critics say that the accounts would mostly be used by younger, healthier employees who do not anticipate using much in the way of health care. That would leave older, less healthy employees in other health care plans, critics argue, causing the cost of those plans to rise sharply.

In addition, while MSAs may encourage employees to shop carefully for less-intensive medical services, employees in MSAs would lack the clout that big employers and managed care plans have in negotiating rates for costly medical procedures, benefit consultants say. **BI**

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## Opinions

## Pull the plug on claim rules

WHILE WE ARE NOT FANS of tacking unrelated employee benefit provisions onto broader legislative proposals, we'll make an exception for such an action taken recently by the House Appropriations Committee.

As we reported, the committee voted—as part of a measure appropriating funds for several federal agencies—to temporarily block the Labor Department from enforcing a health care claims regulation that the federal agency is developing.

Common sense, if for no other reason, dictates a pause in the Labor Department's efforts. Right now, legislators are moving aggressively to pass comprehensive patient protection legislation. That effort, if it indeed wins final congressional passage and is signed into law by President Clinton, will require the Labor Department to develop regulations to carry out that legislation.

A patient protection bill would almost certainly render obsolete the regulations now being developed. Why then, legislators correctly reasoned, should the Labor Department continue an effort that soon could be rendered moot?

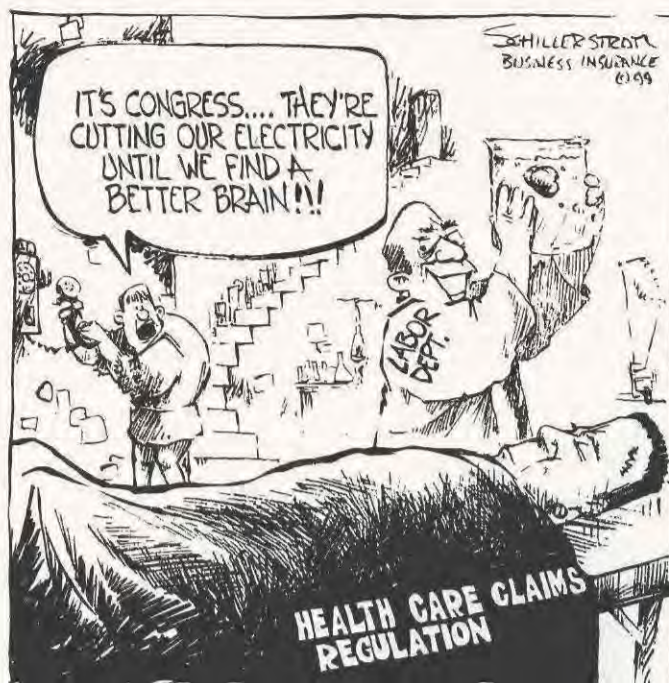
Even if Congress does not pass patient protection legislation, there is another good reason why Congress should slow down the Labor Department's rulemaking process: The proposed health care claims rule is so flawed that regulators need to essentially start over anyway.

The claims regulations are intended to force employers and insurers to speed up the processing of health care claims. As business and health industry groups point out, though, the proposed regulation fails to distinguish—in terms of response deadlines—between employee requests for whether a procedure is covered and claims for actual medical services delivered.

For example, in the case of non-urgent care, a plan would have 15 days to notify an enrollee whether coverage would be provided for a procedure or service. That seems a reasonable amount of time.

On the other hand, under the proposed rule, health plans also would have only 15 days from receipt of a claim to process it. If a claim is incomplete, a plan administrator would have just five days from receipt of the claim to notify a participant that additional information was needed.

Those deadlines for processing actual claims are far too



tight. To try to meet them, insurers and other plan administrators would have to process claims so fast that undoubtedly a huge surge in processing errors and less rigorous analysis to detect fraud would occur. That certainly would not be in the national interest.

Labor Department officials say they are working to address these concerns. But we would have a lot more peace of mind if the next set of regulations were in draft rather than final form, to give employers an opportunity to see if these and other concerns are met.

Having said that, there is no question that the more than 20-year-old health care claims regulations now on the books are badly dated. We agree that insurers and plan administrators can act on claims faster than the 90-day standard now required.

But we want to make sure the revised rules do not push claims administrators too far in the other direction, or be rendered obsolete by a patient protection bill. An enforced congressional delay will help to ensure that the Labor Department gets it right.

## Letters

## Floyd felt far beyond insured losses

To the editor: I just read the Sept. 20 article entitled "Floyd's Bark Worse Than Bite," and it fueled my growing anger and a sense that the aftereffects of this storm are going to smack the insurance industry with a big black eye.

Sure, the insured losses were far below what was anticipated. Why? Because the huge devastation created was from flooding—not covered by insurance. The brunt of this impact is being felt by people who can least afford to shoulder it, in a rural and more sparsely populated area that largely relies on local businesses and farm economy, all of which are now virtually washed away. The mortgage holder and banks now have no collateral that can be tapped for repayment; the local economy may never recover, which now places the burden for recovery and sustaining many of these families on the federal government—so we all pay one way or the other! Before you suggest that flood insur-

ance could have been purchased, let me advise you that many of these towns and homes were several miles from the rivers that engulfed them; who of us even in the insurance business would have thought that doubling your premium to cover flood was a good investment?

These events have happened all over the country, causing great economic hardship to local economies, to say nothing of destroying individual households, and yet any one episode is relatively localized.

It just seems to me that spreading the risk over a large population would be a much more cost-effective and actuarially prudent way to manage this exposure (isn't this the way insurance is supposed to work?). I realize that the NFIP was formed to handle this, because individual companies would not absorb the risk, but if flood were made part of the homeowner policy, with perhaps a sub-limit of \$100,000 so it would be a measurable exposure, and a reasonable premium were charged mandatorily, this whole ugly scenario could be avoided.

Instead of patting themselves on the back and breathing a sigh of relief that they "dodged the bullet," insurers could be making a real contribution by offering solutions for correcting this inequity.

While it wouldn't help the people of North Carolina this time, it would certainly send a more positive message about the industry than people are going to be taking away right now!

**Mari-Jo Hill**  
Risk Manager  
SAS Institute Inc.  
Cary, N.C.

\*\*\*

To the editor: I have finished reading your Sept. 20 article, "Floyd's Bark Worse Than Bite." I am completely taken aback that a periodical with a name such as *Business Insurance* could have a headline so callous and incorrect.

In North Carolina alone, more than \$6 billion in damage has been done and, when the total is tabulated, probably more than 60 people will have died due to the conditions.

Much agricultural loss has been seen, such as 1 million chickens and 100,000 hogs drowning, in addition to many crops being destroyed. Houses destroyed or severely damaged number in the thousands. Major losses in houses, buildings, offices and plants will cause a problem that eastern North Carolina will take at least 20 years from which to recover.

**M.E. Gilstrap**  
President  
Halifax Regional Medical Center  
Roanoke Rapids, N.C.

■ **Editor's note:** The headline referred to commercially insured losses from Floyd and was not intended to diminish in any way the obvious and far broader toll from uninsured damages, injuries and death wreaked by Floyd.

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

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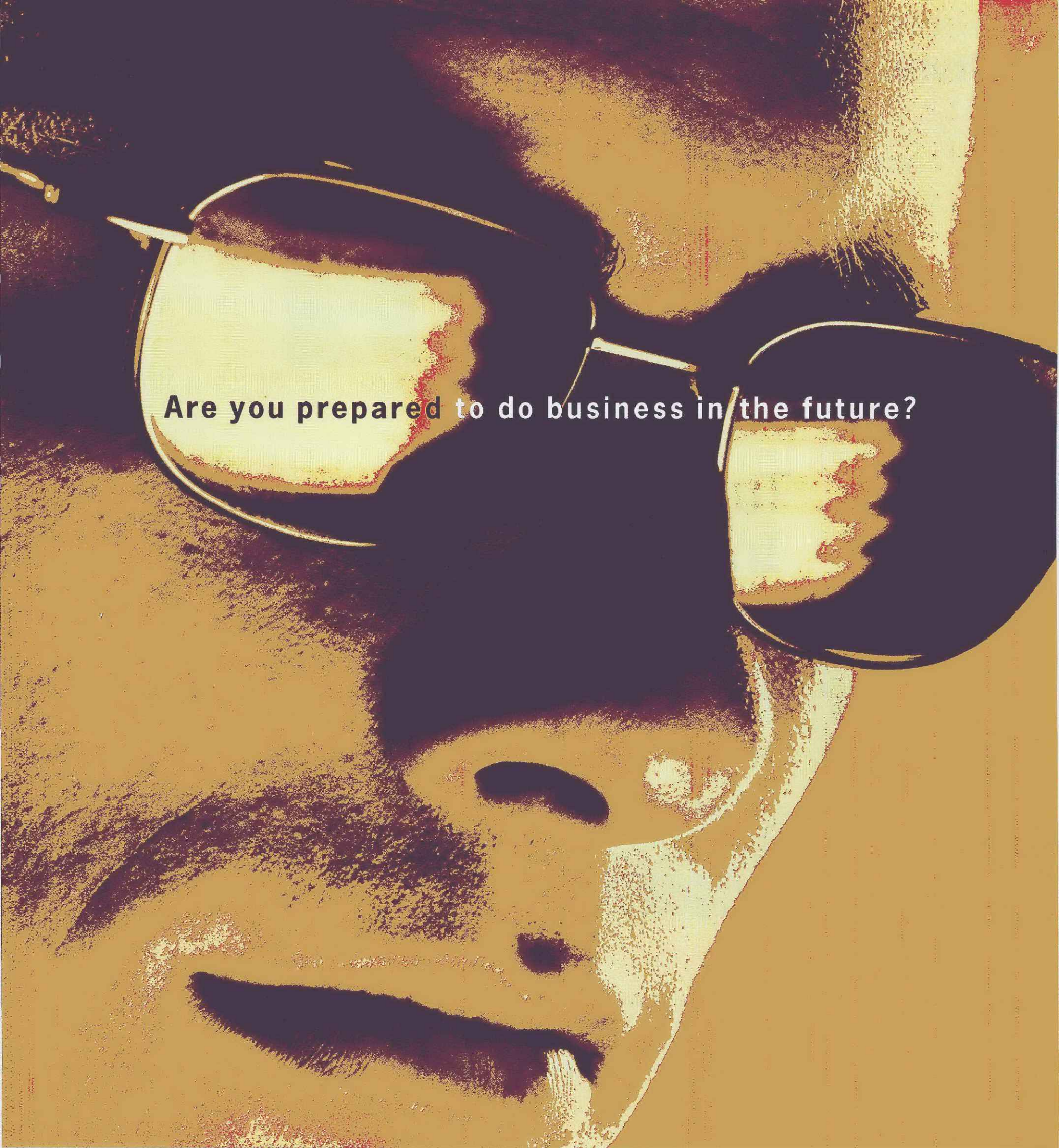
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# Culture

Continued from page 3

Cultural aspects of gender issues, harassment, discrimination and the value placed on enforcing these policies aren't consistent in every country, Mr. Heckelmann added.

Also, cultural differences may hinder the enforcement of corporate codes of conduct and employee handbook policies, said Mr. Heckelmann.

"Codes of conduct have provisions that govern not only the employee, but also family members, which is clearly illegal in most European countries," he said. He cited restrictions on family members' stock purchases as an example.

"To Europeanize a handbook, you have to find room in each topic," touching on areas not ad-

ressed by regulation, said Mr. Heckelmann. "In the end, the handbook determines the flexibility of the employer and where the flexibility is."

Although U.S. codes of conduct and employee handbooks "move very easily into Canada," Mr. Saxe said the U.S. codes may need to show cultural sensitivity, such as providing text in French for operations in Quebec. Also, some rules, such as prohibiting a marriage between two coworkers, wouldn't be permitted in Canadian jurisdictions.

Mr. Limon also noted that the definition of a hostile work environment can be subject to cultural norms in Latin America.

Gerald L. Maatman Jr., a partner in the Chicago office of Baker & McKenzie, and chairman of its global labor, employment and employee benefits practice group, moderated the panel. **BI**

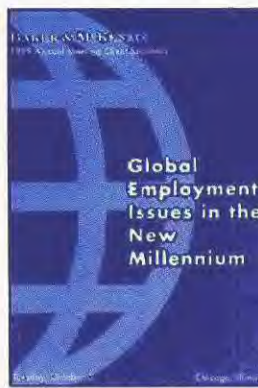
# If terminating, take pause

By AMANDA MILLIGAN

CHICAGO—Changing the terms of an employment agreement, terminating employees or restructuring international benefits offerings can present a thicket of legal and cultural issues for multinational employers, lawyers say.

When terminating an employee, sensitive issues such as confidentiality, trade secret protection, and non-compete agreements must be considered not only in the traditional legal framework of a country but also in what the employees and co-workers consider the cultural norm, according to the lawyers, who participated on a panel—part of law firm Baker & McKenzie's annual client meeting, held last week in Chicago.

"In dealing with one's departing employees, remember that once departed, they aren't as in love with you as they used to be. At least in the United States, culturally, it's a sort of 'no holds barred'—say as much as you can and do as much as you can. . . . It's very high stakes," said William L. Schaller, a partner in the Chicago



office of Baker & McKenzie.

office of Baker & McKenzie.

Apple Computer Inc., known in the late 1980s and early 1990s for its cutting-edge benefits, learned about the frenzy that can ensue during financial downturns, said Louisa Holzschuher, senior counsel of human resource law for the Cupertino, Calif.-based computer maker.

Amid a slump that began in the 1990s, Apple was forced to lay off workers and scale down benefits. Apple employees prepared for what they called the "death spiral."

"During the death spiral, the company was shedding employees as fast as you can imagine," said Ms. Holzschuher. "The executives were setting themselves up with big, fat severance packages seeing the handwriting on the wall. Internationally, the company was putting in place very generous social plans to last a very long time to make sure that everyone was taken care of after Apple had died. Well, Apple didn't die."

One of the untraditional benefits that the computer company offered was sabbatical leave. Ms. Holzschuher said such leave was even offered to manufacturing employees in its Ireland and Singapore locations, but Apple eventually had to withdraw the benefit.

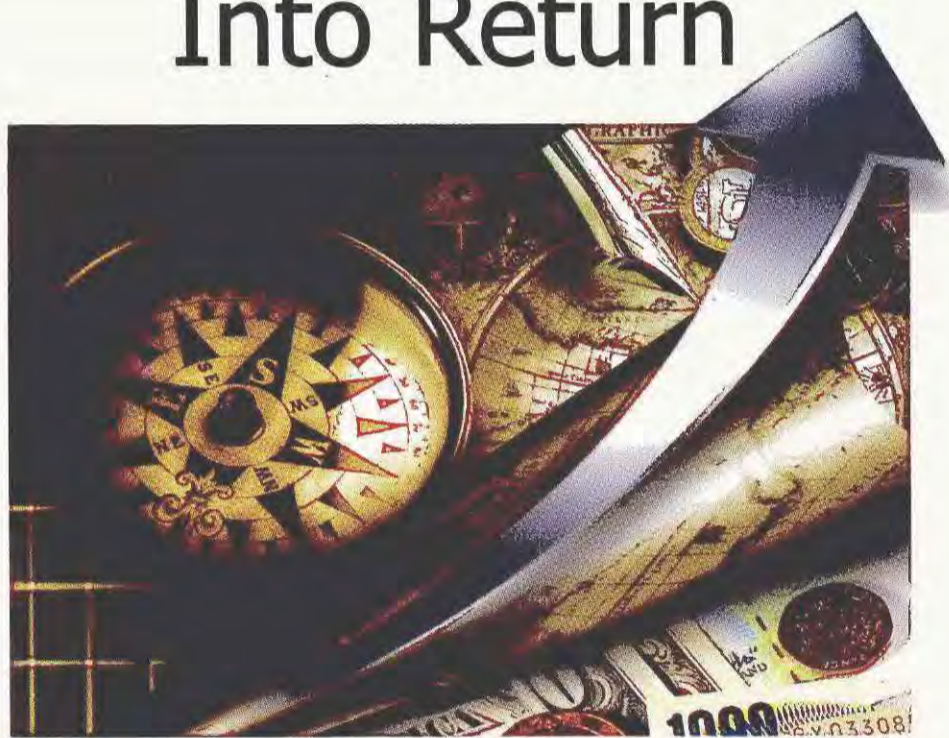
"(The sabbatical) is an extraordinary benefit. When the company was in the death spiral, people were more willing to accept losing a benefit that nobody else really had," Ms. Holzschuher observed. "Today, we have not had any legal problems from the elimination of sabbatical."

When Apple tried to reduce severance payments in Singapore, the company did, however, experience some cultural backlash. In order to preserve good will with its employees and the community, the Cupertino, Calif.-based company had to be more generous than what they were legally bound to be.

"What we discovered was while the law said one thing, the culture and the social norms were quite another," said Ms. Holzschuher. "Even though there was no legal entitlement to one month's severance pay, the expectation was so great, not only on the part of the employee, but on the part of the government officials who readily acknowledged that we didn't have any legal obligation, but they sure would like to see us treat our employees better."

Alejandro Valls, a partner in the Barcelona, Spain, office and Paul C.Y. Tan, a partner in the Hong Kong office, also participated in the panel discussion. Chicago Partner David W. Ellis moderated. **BI**

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# Laws on sexual harassment vary internationally

By AMANDA MILLIGAN

CHICAGO—Multinational corporations can benefit by understanding the legal and cultural backdrop that affects sexual harassment and the enforcement of anti-harassment policies in other countries, according to attorneys participating in a client seminar last week in Chicago.

Hiroshi Kondo, a partner in law firm Baker & McKenzie's Tokyo office, said the Japanese government was very concerned about how Japanese culture would be viewed in response to *U.S. Equal Opportunity Employment Commission vs. Mitsubishi Motor Manufacturing of America Inc.* case.

The EEOC and MMMA negoti-

ated a settlement in the case in May 1998. The class-action suit was brought by the EEOC on behalf of 300 women who alleged widespread sexual harassment in

**'We are still fighting against not having a specific definition (of sexual harassment),' says Augusto Dias Netto.**

Mitsubishi's Normal, Ill., plant (*BI*, June 15, 1998).

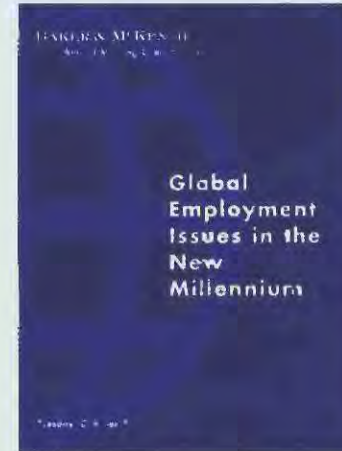
Moving quickly to reform an existing employment opportunity act in Japan, the Japanese govern-

ment also announced guidelines on prohibiting sexual harassment in the workplace. "We currently have very serious prohibitions of sexual harassment," said Mr. Kondo.

In Brazil, the emphasis on enforcing sexual harassment policies varies depending on the area, said Augusto Dias Netto, a partner in Baker & McKenzie's office in Sao Paulo, Brazil. In less-developed areas, the laws are not as stringent, and some areas have no such laws at all.

"We are still fighting against not having a specific definition (of sexual harassment)," Mr. Netto said.

During the past 15 years, Europe has come a long way in combating sexual harassment and dis-



crimination, said Christine Lagarde, chairwoman of the executive committee of Baker & McKenzie and a partner in its

Paris office. Efforts began in earnest after a survey revealed that 20% of working women in Europe had suffered from some form of sexual harassment. A European Union directive was issued in 1990, but there still is no commonly accepted definition of sexual harassment in Europe.

For harassment and discrimination policies to be enforceable in France, Ms. Lagarde said, documents outlining anti-harassment policy details must be written in French.

There have been some binding legal settlements, the details of which have been kept private, said Ms. Lagarde. Emotional distress and psychological damages are not common in Europe, she said. **BI**

## ASHRM

Continued from page 3

In gathering information for that timeline, Ms. Santoro cautioned: "Don't rely on hearsay. It is very important that you're getting it from the primary source."

And, she noted, flowcharts can be particularly useful in analyzing events involving a number of departments or complex processes, she said.

The root cause analysis team must be made up of representatives from the departments being reviewed. And it must include organizational leaders empowered to make changes.

It's also necessary to appoint a facilitator, preferably someone familiar with the root cause analysis process, Ms. Santoro said. To be effective, that facilitator should not be a "stakeholder" in the process being reviewed.

The facilitator should explain the process and summarize the case, then review the timeline and flowchart with the team.

Next, the team should be allowed to brainstorm about the event. "The rules of brainstorming: There's no bad idea," she said. "And you want to focus on the processes, not the people."

Brainstorming also serves another vital purpose, the consultant said. "People after a serious event really need to vent," she said. "You need to give people time to talk."

The next step is to create a cause-and-effect diagram, detailing how "people, procedures, place, provisions and the patient" contributed to the outcome being analyzed.

Along the way, documentation is essential, she said. "You have to write down everything that is discussed. You need to document this stuff."

And, once an issue has been analyzed, "there's never one root cause," she said.

After the causes have been identified, the final step is developing a plan, she said. "I've found you really have to keep this on a very tight leash," she said of such plans. It's critical to set a course of action, identify the party responsible for making those changes, and set a timeframe for implementing the change and a system to monitor its implementation.

"You really have to follow up," she said. "Everybody's really stretched in health care, and (otherwise) it just won't get done."

Ms. Santoro cautioned risk managers engaging in root cause analyses that "unless you have support from the top, you will crash and burn at the get-go."

She also noted that "If you identify something in the beginning, you have to follow through with the process."

And, she said: "You should focus on the systems and processes, not individuals. Ask why and why and why again." **BI**

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# Alternative medicine brings new exposures

By **RODD ZOLKOS**

CHICAGO—As alternative therapies continue to gain prominence on the U.S. health care scene, managing the risks associated with such treatments takes on ever greater importance.

To a large extent, alternative medicine and complementary care call for the same sorts of approaches health care risk managers apply in dealing with the exposures of conventional medicine.

But, according to one health care risk management expert, risk managers also must be aware of some special risks and challenges the alternative therapies can present.

Speaking last week in Chicago at the annual conference of the American Society for Healthcare Risk Management, Paula J. Holbrook, director of contracts and development at Appalachian Regional Healthcare in Lexington, Ky., noted, "Complementary care is not new."

"Worldwide, only 10% to 20% of people utilize what we consider conventional medicine," said Ms. Holbrook, who previously served as coordinator of risk management at ARH. Meanwhile, "70% to 90% use alternative therapies," she said.

And, in the United States, "74% of Americans would appreciate and endorse more natural health care," she said.

Examples of alternative medicine include massage therapy, hypnotherapy and herbal medicine and such techniques as acupuncture, naturopathy and homeopathy.

In some cases, a treatment approach is integrated, combining conventional medicine with alternative techniques.

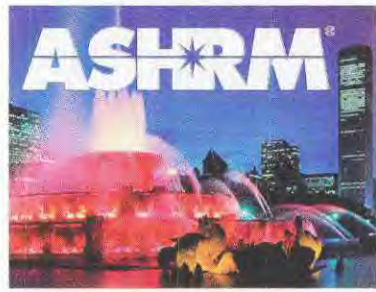
"Various states and federal laws affect complementary care and alternative therapies," Ms. Holbrook said. But, she added, "Those laws are inherently inconsistent."

She noted, too, that the treatments are subject to both state and federal consumer protection acts.

"The emphasis of most of the laws are a consumer's right to know," she said.

She told the risk managers that, as with their facilities' conventional medical services, they should be

reviewing advertising and marketing materials related to alternative



treatments.

She warned them to beware of materials that make outrageous claims or any sort of warranty or guarantee, implied or otherwise, in advertising the treatments.

"In your marketing and advertising materials you must exercise due

care," Ms. Holbrook said. "It's something you as risk managers should review."

Again, as with conventional medical techniques, the issue of informed consent is a critical one for risk managers in dealing with alternative therapies, Ms. Holbrook said. She stressed the important of making sure patients know all the potential risks of alternative treatments, and she suggested that risk managers review their relevant state statutes and case law.

Ms. Holbrook also recommended that health care risk managers consider whether the provider involved is qualified to present options to the patient, as well as the possible implications of any managed care organization gag clauses.

In informing the patient about al-

ternative therapies, it's also important to remember the "Dragnet Rule" in discussing the therapy, Ms. Holbrook said: presenting "just the facts."

And it's necessary to advise the patient about the experimental nature of any treatment and make it clear that the patient may withdraw his or her consent at any time.

Credentialing of alternative therapy providers can be another challenge for risk managers. Ms. Holbrook noted that what constitutes a licensed professional varies from state to state. "For example, California licenses more than 30 different types of health disciplines," she said.

Other risk management concerns include whether the institution's policies and procedures address al-

ternative medicine practitioners and whether the institution's other medical staff supports or discourages the use of such alternatives.

Ms. Holbrook issued a further warning to risk managers to beware of antitrust concerns in the latter area.

"There's some good case law out there with respect to antitrust and chiropractors," she said.

Another potential risk in some cases is battery, which could be the basis for either a criminal or civil claim by a patient.

Such battery claims could arise from non-consensual touching or touching that goes beyond the consent given by the patient for a treatment or a procedure, Ms. Holbrook said.

*Continued on next page*

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## ASHRM names officer

CHICAGO—This year's conference of the American Society for Healthcare Risk Management, titled "Reaching New Heights," drew approximately 2,200 attendees and exhibitors to Chicago Oct. 3-6.

During the conference, it was announced that Geri Amori, risk manager at Fletcher Allen Health Care in Burlington, Vt., has been chosen ASHRM's president-elect for 2000.

The current president-elect, Fay A. Rozovsky, president of the Rozovsky Group Inc. in Richmond, Va., will become ASHRM's president when the organization begins its new year Jan. 1.

Next year's annual ASHRM conference, the organization's 20th anniversary gathering, will be titled "Risk Management and All That Jazz" and will be held Nov. 2-5, 2000, in New Orleans. For more information, visit ASHRM's Web site, [www.ashrm.org](http://www.ashrm.org). **BI**

Continued from previous page

In terms of malpractice, Ms. Holbrook noted that the practitioner is held to the standard of care of his or her profession, but cautioned the risk managers that standards of care are not well developed for many alternative therapies—a fact that could be a “two-edged sword.”

Alternative medicine also can pose potential product liability exposures.

“If you recommend or prescribe an herb or vitamins, does that come under your state’s products liability law? Yes,” Ms. Holbrook said.

In general, Ms. Holbrook advised the risk managers that “what you need to do is consider the usual risk management guidelines and sound business practices.”

“If you have an alternative therapy or complementary care provider... monitor care as you would any other practitioner,” she said. **BI**

# ‘Damage control’ can help prevent suits

By **RODD ZOLKOS**

CHICAGO—After a serious event involving a patient, a sound approach to clinical damage control can help “stop the claim at bedside,” according to one health care risk management expert.

In explaining how to craft such an approach, Ruth L. Kilduff, vp in Boston at Marsh Inc., first outlined what she called “the Yellow Brick Road of litigation.”

Beginning with interaction, the next step on the path is dissatisfaction, followed by complaint, then claim, and, ultimately, a suit.

Incidents don’t have to result in a trip down that entire road, however, Ms. Kilduff said last week in a presentation at the American Society for Healthcare Risk Manage-

ment’s annual conference in Chicago. Finding ways to resolve issues early on the path can be a key factor in a successful health care facility loss control program.

A central element of such an effort is promoting event identification, with the risk manager helping the facility’s clinical staff to become “risk identifiers,” Ms. Kilduff said.

Clinical staffs should inform risk management about any event involving a complication that was preventable or of any complications that might not have been preventable but that damaged the facility’s relationship with the patient and/or his or her family.

Risk managers can provide clinical staffs the tools needed to become risk identifiers, both through

education and by providing necessary communications channels. In addition, risk managers can help promote an organizational culture that encourages risk identification.

For the risk manager, being on call seven days a week, 24 hours a day also can be an important factor in stopping problems early. Being on call can allow a risk manager quickly to take control of an adverse event when it occurs, while helping cement relationships with clinical staff who were present when the event occurred.

Ms. Kilduff noted that the process of clinical damage control includes several factors: documentation, disclosure, amenities (for example, anything the facility can do to help the family in the days immediately following the death of a

patient), consultation and preservation of evidence.

Other related issues include dealing with the news media, staff counseling, billing issues and meeting reporting requirements.

In working with clinical staff in the wake of an adverse event, Ms. Kilduff said risk managers “have an obligation not only to provide our staff the tools to get through some of these activities, but most importantly to provide them the support and the comfort” to get through them.

For example, she said, prior to meeting with a patient’s family to disclose findings of the institution’s evaluation of an adverse event, a dress rehearsal of the disclosure can help prepare staffers to deal with the family’s possible responses.

Long-term, the clinical damage control process can pay additional



dividends by helping clinical staff identify ways to better serve patients, Ms. Kilduff said.

“By going through and thinking through strategies of clinical damage control, working through your staff, you’re teaching your staff to the benefit of your patient population,” she said.

In cases where risk managers aren’t able to resolve an issue before it reaches the litigation stage, Ms. Kilduff suggested there are factors risk managers should keep in mind when using certain defense strategies.

In defense strategies relying on the patient’s assumption of risk, Ms. Kilduff said that, in her experience with informed consent cases, what has been important is not the consent form itself as much as the physician’s narrative note accompanying the form. Such notes outline the treatment’s “risks and benefits, including but not limited to...”

Of critical importance is the relevance of that information to the patient, Ms. Kilduff said, and an awareness that every patient’s situation poses different issues.

For example, a 5% risk of losing one’s voice as a result of a procedure would be much more relevant to an opera singer than to a painter.

In defense strategies based on “unforeseen complications,” Ms. Kilduff suggested risk managers should seek the assistance of physicians, who are better at “filling in those blanks” to help outline details of the defense.

Another defense strategy is to allege contributory negligence, in which a patient contributes to injury, usually through non-compliance with treatment instructions.

In such cases, that portion of negligence attributable to the patient can be deducted from any award. But relevant statutes vary from state to state, Ms. Kilduff said.

In order to benefit most fully from a contributory negligence defense, however, many health care facilities must do a better job of documentation, Ms. Kilduff said. Health care facilities often cannot use that strategy, though. “Why? Because we don’t document no-shows.” **BI**

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## Teens

*Continued from page 3*  
called "You Want to Pierce Your What?"

But relatively few companies are offering such programs. The 1998 Business Work-Life Study by the New York-based Families & Work Institute found that just 12% of all companies provide programs for teen-age children. The highest percentage, 22%, was among companies with 1,000 or more employees.

By industry, the biggest percentage—20%—of companies offering such programs were in the financial, real estate or insurance sector, according to the survey. The survey did not specify whether these are special programs about teens or merely represent the inclusion of teen-related matters among those of other

age groups in programs focused on meeting employee needs.

EAP and work/life programs directed at employees with teen-agers, as well as at the teen-agers themselves, cover a wide range of issues. Some help teen-agers to cope with violence when it affects them, as well as guiding parents in spotting potential signs of violence in their own children. Other programs range from giving advice on depression, alcoholism, drug abuse and stress to providing help in picking the right college and assistance with homework.

Some observers say services directed at teen-agers have existed all along. David Dintenfuss, national director of behavioral health practice for PricewaterhouseCoopers in Tampa, Fla., said EAPs have always helped families raise children. Mr. Dintenfuss admitted, though, that the focus has shifted to contemporary issues that address current needs. Ten years ago, for instance, the sort of violence that occurred at Littleton was unheard of, he said.

But others see signs of increased interest. Eileen Settineri, a benefits consultant with Watson Wyatt in New York, said that, although there is not a tremendous demand for these programs right now, "it's certainly on the horizon."

"I think, as employers become aware that people are so stretched out for time," they will offer their employees more "family-friendly features," said Ms. Settineri.

Right now, though, with health care costs on the rise, employers that have not already put in these programs are unlikely to do so, "unless they've endured something like Columbine," she said.

"I think it's going to become increasingly important," said Ellen Galinsky, president of the Families & Work Institute.

Greater interest in these programs has evolved as companies have moved beyond offering child care and elder care, said Ms. Galinsky. She added, "I think that Columbine and the school shootings were a shock to this country, and there's a feeling in the business community these people will become our employees in the future, and there may be things that we can do, working with schools, working with communities, to ensure that children grow up better."

Furthermore, said Ms. Galinsky, "I think that the company/community connection is getting stronger. There are more companies that are paying attention to community issues."

There is a need for teen-directed programs, say some observers. "People are having to re-think their home-life situations because teen-agers are more difficult to manage," said Ms. Settineri.

"You can pay someone to do child care for a younger child, but it's not that simple with teen-agers. So it'll be an evolution in that employers that are thinking this way are realizing that it could become a big problem in terms of absenteeism and things of that nature with parents."

Ms. Koenigs said the Federal Reserve Bank workshop was titled "Thinking about Colorado: What Can We Do to Keep Our Teen-agers Safe?" in a reference to the Littleton massacre.

But it covered a range of issues, including music, dress, lack of respect and factors that influence teens, said Ms. Koenigs. There was a "lot of sharing of stories—what works well, what doesn't work well," she said.

Not all the attendees were parents of teen-agers, however, said

See Teens on page 16

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## Teens

Continued from page 14

Ms. Koenigs. Some had younger children and were preparing themselves, she said.

Ceridian's Ms. Nash said the information her company prepares for distribution to employees discusses what is developmentally appropriate for teen-agers. Parents may readily consult a book for advice if a 2-year-old begins biting, but they may not be aware that constant mood swings "are actually age-appropriate for a teen-ager," she said.

Parents need to know what is appropriate behavior before they can determine what is not, she noted. "I think it's also important for parents to understand there are other parents in the same boat, that their teen-ager isn't the only teen-ager doing certain things and that developmental stages don't stop once a child enters elementary school" but are actually a lifelong process, said Ms. Nash.

Employers seeking this information are "very in touch with their employees" and are responding to their concerns, she said.

Denver-based US West Inc., a telecommunications company that works with Ceridian, is offering employees two kits that focus on teens as part of its "LifeBalance" program. The teen program is a project of US West's Family & Work Development Fund, which is overseen by a labor/management committee.

One, the "Smart Choices Teen Kit," includes a video and booklet for parents that provide strategies and advice for opening discussions; an audiotape for teens that includes discussions from other teens about avoiding situations that can lead to violence, and a community resources guide.

A second kit, "A Parents' Guide to the New Teen-ager," includes a book by a clinical psychologist, titled "Get Out of My Life, But First Could You Drive Me and Cheryl to the Mall?" and an audiotape, "Understanding and Talking with Your Teen-Ager."

Barbara Shull, manager of human resources for US West, said this program functions alongside the company's resource and referral

service, which includes employee workshops offered by the company. For instance, one workshop, offered in response to requests, focuses on parenting children age 12 and over.

Companies and their vendors have also been helping employees and their children cope with some of the recent shootings in schools.

For instance, Chicago-based ComPsych Corp. was brought in to Chase Home Finance in Denver, a unit of Chase Manhattan Bank, through its EAP after the Columbine shootings, said Delaine Cox, human resource generalist for the Chase unit.

Ms. Cox said the employer held a workshop for employees and offered counseling to all family members. Because of confidentiality concerns, she could not say how many teen-agers took advantage of the workshop.

Employees were presented with information at the workshop on how to help their children cope with the trauma, said Ms. Cox. "I had very positive feedback from the staff," she said.

An unexpected loss, whether from a shooting, a hurricane or a snowmobile accident, "brings up a lot of emotion, particularly for young adults," said David Levine, senior vp for ComPsych, whose services include work/life programs and EAPs. ComPsych was called in by several area clients after the Columbine tragedy.

"They may not have as large a frame of reference for loss and trauma. As a result... we try to normalize the emotional reactions that people are having in response to the event and also predict what emotions and symptoms they could feel in the future," he said. "Mostly, we try to get the emotions on the surface, to get people to understand that they're not alone."

There has also been increased interest in providing seminars to parents on how to perceive potential signs of violence in their own children, said ComPsych Chairman and CEO Richard A. Chaifetz.

The killers at Columbine "were obviously frustrated for a long time... and if the parents, I believe, were more attuned to the nuances of what was going on with their children," they could probably have stopped the tragedy, he said. "It's not difficult to ignore the warning signs because no one of us, psychologically, wants to believe a 12- or 13-year-old is going to shoot up a school," said Mr. Chaifetz.

"Parents are more concerned, so, in turn, the employers are becoming more concerned regarding their employees," he said. "We want to help parents deal with this way before it becomes a crisis." **BI**

propriate for a teen-ager," she said.

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# ASK A BENEFIT MANAGER

**Q**

There has been a great deal of discussion regarding cash balance pension plans and the equity and fairness of these plans. What are your thoughts about these plans, and what are the key points that employers should consider when evaluating whether a cash balance plan is appropriate?

**A**

As employers increasingly focus on attracting and retaining critical talent, they are looking at every possible way they can become the "employer of choice." This has resulted in employers examining their benefit plan offerings to

determine what their employees like about these plans.

Those employers attempting to retain critical talent—particularly in the area of technology—find themselves focusing generally on younger workers. And these younger workers find little or no value in traditional defined benefit pension plans. These plans are somewhat difficult to understand and focus on delivering benefits at a normal retirement age, generally at age 62. The typical employee in his or her 20s or 30s will not find such plans attractive.

Another issue fueling interest in alternatives to traditional defined plans is competition. Employers are continually reviewing their operations with an eye to squeezing as much cost out of their systems as they can in order to remain competitive. Cash balance plans can help lower employer costs.

The first cash balance plan was implemented in 1985 by Bank of America. Not many employers have offered these plans until the past five years, when they have become increasingly popular. Lately,

**Cash balance retirement plans are more easily understood by employees and are more likely to be appreciated. Employees also appreciate their portability.**

there has been a fair amount of press on these plans—much of which has been negative. My view is that the discussions regarding these plans have been more balanced in trade journals and publications focusing on employee benefits and general human resources issues; the general press has been significantly more critical of these plans.

In addition, there has been a great deal of discussion of late in Congress surrounding cash balance plans. The potential legislation is discussed in this article.

A cash balance plan is a hybrid pension plan: it has the characteristics of both a defined benefit plan and a defined contribution plan. Legally, though, cash balance plans are defined benefit plans. These plans give the employer flexibility in funding and provide a guaranteed retirement benefit that involves little to no risk for the plan participant. At the same time, these plans look like a defined contribution plan to a plan participant. That is because of their hypothetical accounts, which resemble the accounts in the very popular 401(k) plans.

The amount of plan contributions are based on actuarial assumptions, not on a fixed contribution

to an employee's account.

Shown below is a typical plan design for a cash balance plan:

The employer contributes, on the employee's behalf, 6% of salary.

The amount will be credited with interest equal to the one-year Treasury bill rate.

With this type of design, the employee can see contributions being made to his or her account, even though the account is hypothetical, and there are earnings applied to the account. If and when the employee leaves the employer, the employee can take the account with him or her through distribution or a rollover to a qualified plan or individual retirement account.

In terms of visibility, the biggest difference for employees with a cash balance plan vs. a typical defined benefit plan is that they can see an account balance and they know they can take their account balance with them. Employees typically find this very attractive.

Generally, employees do not have an appreciation for defined benefit plans, particularly employees under age 40, and defined benefit plans generally do not help attract and retain employees. However, cash balance plans are more easily understood by employees and are more likely to be appreciated. Employees also appreciate the portability of these plans, which is increasingly important for today's mobile workforce.

These plans can provide a cost savings for employers. They can be established so that future accruals are lower compared to a traditional defined benefit plan.

At the same time, most plans credit a generally low interest rate on current account balances. Employers make contributions to the plan, and the plan receives a return. If the crediting rate is 4% and the plan earns 8% to 10%, this would have the effect of significantly lowering the cost of such a plan. Of course there is investment risk for the employer, but over the long term, the plan should be able to earn far above, for example, the Treasury bill rate.

An attractive feature is the even accrual of the benefit under these plans and the absence of "cliffs." This is especially important if employers are adjusting their workforces.

For example, if there is a workforce reduction and employees are close to retirement age in a defined benefit plan, employees are severely disadvantaged, as the amount of their benefit is much lower if they leave before age 55.

With a cash balance plan, employees earn the benefit evenly each year and are not disadvantaged if they leave before retirement age. This can also work to the employee's advantage if the employee wants to leave early. Under a traditional defined benefit plan, on the other hand, an employee may stay with an employer only because he or she wants to attain the higher benefit from retiring after age 55.

Cash balance plans typically are favorable—or at least are viewed as being favorable—to younger workers. But the concern that has arisen involves longer-term employees who have been in the employer's traditional defined benefit plan. The employees most concerned typically are those near retirement or in mid-career, whose pay and interest credits under a cash balance plan in their remaining years of service may not build up a benefit equivalent to their projected retirement benefit under a traditional defined benefit plan.

The reason for this shortcoming is that the largest benefit accrual in a defined benefit plan is in the final years, as these plans are "back-end loaded." While cash balance plans are more like a career average pay plans, defined benefit plans are typically final-average-pay plans with heavy

accruals in later years.

One approach to overcoming these shortcomings for longer-service employees is by grandfathering in some provisions of the former defined benefit plan. Grandfathering provisions vary by providing the

**One approach to overcoming shortcomings for longer-service employees is to grandfather in some provisions of the former defined benefit plan.**

longer service employees with supplemental credits under the cash balance plan or by guaranteeing a benefit at retirement no less than what the employee would have received under the prior defined benefit plan. Many employers also give longer-service employees a choice of staying in the traditional plan or switching over to the cash balance plans.

Some of these grandfathering provisions can be very good for the longer-service employee. The downside for the employer is that it does not benefit as much from a cost savings perspective.

So what is Congress doing?

The legislative proposals tend to fit into one of three categories: general (non-individualized) disclosure requirements about the financial impact on employees of a conversion to a cash balance plan design; individualized disclosure requirements about the impact of a conversion to a cash balance plan design; and restrictions on plan design, including prohibitions against designs that result in "wear away" periods, during which employees do not receive accruals under a new cash balance formula.

It appears that there is little opposition to the proposals for increasing general disclosure requirements for conversions. There is broad agreement that employers should provide this sort of information to employees, and it is difficult to argue that this approach places a disproportionate burden on employers. Moreover, in light of the increasing—and largely unfavorable—publicity surrounding cash balance conversions, this approach may be an employer's best hope.

It is important to note that while the primary impetus for this legislative activity is the perception that some participants, particularly older participants, may be harmed by the conversion from a traditional defined benefit plan to a cash balance plan, all of the proposals would also apply to other pension plan modifications that significantly reduce future benefit accrual. Therefore, employers making other types of plan changes could also be subject to the proposed requirements.

I am always concerned when Congress steps in and attempts to legislate these types of matters. I can clearly agree with the disclosure issues. There is no reason employers should not be upfront and clear with their employees regarding a plan change. Employers should be honest and forthright in describing the impact of a change on an employee.

I am less supportive, though, of restrictions on plan design. If Congress restricts plan design, then employers have the right to terminate a plan. I would much rather see an employer change to a cash balance plan than terminate a defined benefit plan it thinks it can no longer afford. The balance in this equation is whether the new and/or revised plan will attract and retain the employees the employer needs.

As a result of the recent press about cash balance  
See Cash balance on next page

## Cash balance

*Continued from previous page*

plans, more employers are considering cash balance plans as an option in their benefit programs. A change as major as moving from a standard defined benefit pension plan to a hybrid plan such as a cash balance plan requires a great deal of thought. An employer should be sure that a cash balance plan will meet its needs, is consistent with the overall human resources strategy and will assist the organization in meeting its overall strategic goals. Although cash balance plans have become increasingly popular, there are other types of hybrid pension plans that should be considered and reviewed before any change is made. Examples of other hybrid pension plans include pension equity plans, life cycle pension plans, floor offset pension plans and target benefit plans.

The key to this issue is that employers need to know and understand their overall strategy and

how a cash balance plan may support or further enhance their strategy. Employers need to be careful not to get caught up in the latest benefit trend. Once you make a change as significant as eliminating your traditional defined benefit plan and implementing a cash balance plan, there is no turning back.

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*This month's column on employee benefit management issues is written by Dennis J. Nirtaut, managing director of compensation and benefits for*



**Mr. Nirtaut**

*Arthur Andersen L.L.P. in Chicago. Christopher E. Mandel, director-risk management at Tricon Global Restaurants Inc. in Louisville, Ky., answers questions on risk management issues. William J. Miner, an actuary with Watson Wyatt Worldwide in Chicago, answers actuarial questions on benefits issues. And Richard E. Sherman, president of Richard E. Sherman & Associates Inc. in Ashland, Ore., answers actuarial questions in the casualty field.*

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

# Ergonomics turning attention to the mouse

## As more injuries occur from its improper use, risk managers are devising innovative solutions

By Charlie Morgan

These days it seems that everyone is familiar with the term "cumulative trauma disorder," or CTD. In fact, an entire alphabet soup of acronyms has been created for a growing number of ergonomic maladies. These include RMIs (repetitive motion injuries), RSIs (repetitive strain injuries) and CTS (carpal tunnel syndrome). Far and away, the best known of these ailments is the last, a condition that most medical practitioners associate with prolonged periods of computer use.

Carpal tunnel syndrome affects the flexor muscles of the wrist, fingers and forearm, which are actuated by neural impulses that are transmitted along the median nerve. Unfortunately, the median nerve passes through a narrow passageway—the carpal tunnel—in the wrist with little room to spare. As the flexor tendons surrounding the nerve become inflamed from repeated trauma, such as can result from prolonged work with computers, they tend to expand and apply compressive pressure on the median nerve.

The resulting symptoms of repeated compression on the nerve in the forearm can range from numbness and loss of sensation to intense, crippling pain. And the effects are cumulative.

Most ergonomics experts these days tend to blame the computer keyboard as the primary culprit for this CTS, pointing to the awkward positions imposed on the wrist by the unnatural activities of keyboard use.

The solutions typically involve providing adjustable keyboard trays, many of which have negative slopes designed to offset the positive tilt of the board itself. This structure aims to achieve a "neutral" orientation for the keyboard. Some manufacturers even advocate the use of "split" keyboards, with the highest point in the middle and the keys sloping away gently to the left and right.

Another approach has been to thoroughly scramble the positions of the keys themselves, in effect scrapping the historical "QWERTY" configuration. This arrangement originally served to place the most commonly used letters on the periphery of the keyboard in an effort to slow the typist and prevent keys from striking one another and jamming the typewriter. With the advent of the computer, however, the principal effect of "QWERTY" was to force the user to cover more ground with his or her hands and fingers, thereby leading to increasing ergonomic woes.

While all of these preventive measures are well intentioned, computer use is experiencing a profound change that may render these changes less effective. Whereas five to 10 years ago word processing was perhaps the dominant form of computer use, the Internet is now the most common labor-intensive function for increasing numbers of computer users.

And as anyone familiar with the Web is well aware, the key to surfing the Internet is the mouse. As more and more time is spent clutching this

**Five to 10 years ago, word processing was the dominant form of computer use, but surfing the Internet is now the most common labor-intensive function.**

palm-shaped device, more injuries are being recorded due to its improper use. In recognition of this, risk managers are devising ergonomic solutions that address the exposures inherent in the extended use of mouse devices.

The Bankers Trust Co. of New York recently won honorable mention in the Center for Office Technology's 1999 competition for the "design and implementation of successful innovations in office ergonomics programs."

Russell C. Opferkuch, head of the operational and risk and insurance management department at Bankers Trust, notes the explosive growth in "the point-and-click mentality" and he has structured his firm's program accordingly. According to Mr. Opferkuch, the ideal position for the mouse is in close proximity to the work station, usually perched on some kind of articulated mouse pad platform within easy reach of the dominant hand.

The ergonomic innovations previously introduced for keyboard use are now beginning to be made for use of the mouse. Perhaps the most common theme in this emerging trend is placing the mouse pad as close to the keyboard as possible—in many cases directly over the numeric keys on the right. Jim Seils, president of the ergonomics consulting firm Ergomatrix in Jersey City, N.J., makes the this observation:

"When you look at the elbow position of someone

using a mouse, and see that it has moved away from his/her side and out of a neutral body position, you know that unnecessary stress is being placed on the body."

Although the majority of the population is right handed, an effective ergonomics program must be essentially "ambidextrous." That is, a computer workstation must be easily convertible to accommodate left-hand dominance.

One of the most innovative products to have achieved that goal is the Banana-Board, manufactured by WorkRite Ergonomics of Novato, Calif. Derek Timm, WorkRite's product manager, said that this product's curved platform readily converts to either a right or left "mouse-forward position," a feature that he said is particularly important to facility managers. While such managers want user-friendly workstations for their employees, they do not want to have to modify each workstation on a user-by-user basis, Mr. Timm said.

While the above modifications pertain to the hardware aspects of ergonomics and mouse use, some workstation experts argue that this is not, in fact, the whole story. They feel that the psychosocial variables cannot be ignored in trying to solve the ergonomics puzzle.

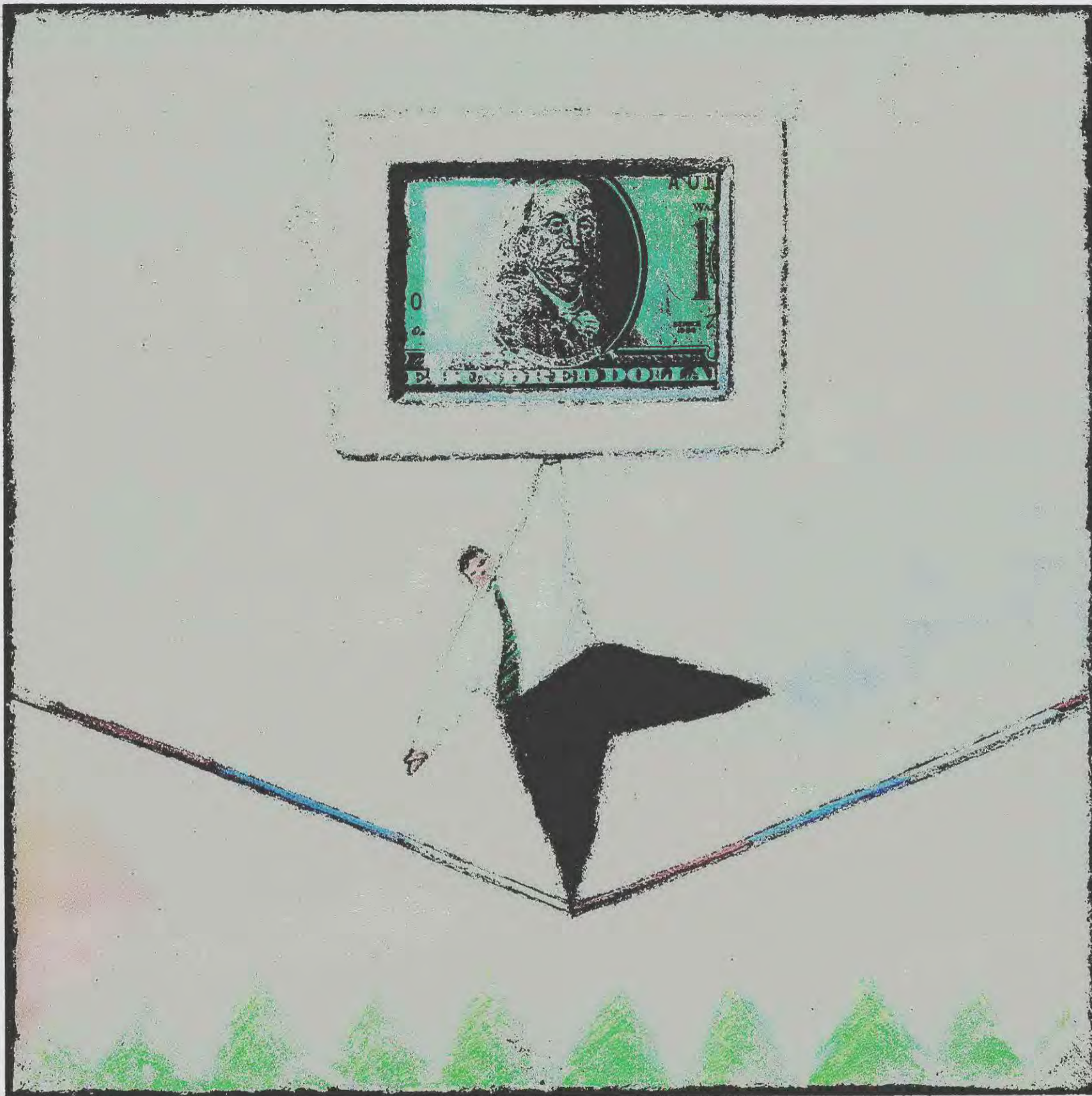
Terrie Frenson, a senior consultant at Global Risk Consultants in Iselin, N.J., offers this observation regarding these subjective concerns, "Now we're finding that company culture, stress, life and job satisfaction also play a not-so-minor role."

This merely scratches the surface of the ergonomics puzzle as far as mouse use is concerned. The reader can and will readily appreciate, however, that the solution requires a multidisciplinary approach, taking into account both the physical and psychosocial aspects of the problem. The bottom line, however, is that computer use will continue to grow, and that rational ergonomic programs must come to address the perils posed by the increased use of mouse devices.

BI



*Charlie Morgan is vp-risk management at Meeker Sharkey Financial Group Inc., a Cranford, N.J.-based insurance brokerage.*



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# M&M promotes Davis to vice chairman

Charles A. Davis has been named vice chairman of Marsh & McLennan Cos. Inc. in New York. Mr. Davis also is president and chief executive officer of Marsh's private equity investment subsidiary, Marsh & McLennan Capital Inc.

In other agent/broker changes: Near North Insurance Brokerage Inc. has appointed **Lori Shaw** senior vp of its Chicago Entertainment practice. Ms. Shaw comes to Near North

## Comings & Goings

from K&K Insurance Group, where she was a senior vp in charge of K&K's Venues & Gaming division.

**Larry D. Shatoff** has been named senior vp of U.S. Re Corp. in New York. He previously was managing director of Balis & Co. in Philadelphia, a unit of reinsurance intermedi-

ary Guy Carpenter & Co. Inc.

St. Louis-based The Daniel & Henry Co. has promoted **Richard Halpern** to executive vp. Also at Daniel & Henry, **David M. Winters** has been promoted to vp-loss control.

**Walter S. Robertson III**, senior vp and marketing/sales development manager for BB&T Insurance Services in Richmond, Va., has been named to the broker's senior management team.



Mr. Halpern



Mr. Winters

chief investment officer of The Hartford Financial Services Group Inc. in Hartford, Conn; she also was named president of Hartford Investment Management Co. Prior to joining The Hartford in 1996, she was vp and treasurer of the Sheraton Corp.

**Timberlee Tamraz Grove** has been named president and chief operating officer of Markel American Insurance Co. in Richmond, Va. She previously was a senior vp at American Underwriting Managers.

RLI Insurance Co. of Peoria, Ill., has named **James S. Davis** vp-programs. Mr. Davis previously was a vp with TIG Insurance Co. in Irving, Texas.

Jewelers Mutual Insurance Co. of Neenah, Wis., has promoted **David Sexton** to vp-select accounts.

## Reinsurers

**Frank J. Kehrwald** has been named senior vp, general counsel and secretary of GE Reinsurance Corp. in Lincolnshire, Ill. Also at GE Re, **Bill Faltas** has been named senior vp and chief actuary.

Sydney Reinsurance Corp. of New York, part of QBE Insurance Group Ltd., has promoted **Christopher Fish** to vp and controller of its financial services department. In addition, **John LaCava** has been promoted to chief information officer in the information services department.

**Tim I. Madden** has joined Mutual Reinsurance Bureau in Cherry Valley, Ill., as executive vp. Mr. Madden comes to MRB from CNA Re, where he was head of global treaty operations.

## Other suppliers

Shelton, Conn.-based Physicians Health Services has named **Nancy Yedlin** vp-planning operations and chief of staff. She previously was with Pitney Bowes Inc.



Ms. Yedlin

**Dr. Charles H. Roadman II** has been named president of The American Health Care Assn. in Washington, effective Oct. 11. He previously was surgeon general of the U.S. Air Force.

Spectrum Vision Systems Inc. of Overland Park, Kan., has appointed

## Insurers

Chubb Corp. of Warren, N.J., has named **Stephen J. Sills** executive vp. Mr. Sills had been president and CEO of Executive Risk Inc., which Chubb acquired in July.

Boston-based CGU Insurance has named **James Bily** vp-specialty programs. Mr. Bily, who will be based in Philadelphia, previously was vp and branch manager for CGU's Bothell, Wash., office. CGU is a unit of London-based CGU P.L.C.

**Phillip E. Apgar** has been named senior vp-finance and treasurer of Fairfax, Va.-based MEDMARC Insurance Group. Mr. Apgar replaces **Richard C. Eschrich**, who retired last month.

HSB Group Inc., parent company of the Hartford Steam Boiler Inspection & Insurance Co., has appointed **Theodore D. Kmiecik** corporate controller. He previously was a senior manager at PricewaterhouseCoopers.

Meadowbrook Insurance Group of Southfield, Mich., has made several promotions: **Jeffrey D. Novick** has been made vp-national program management; **Gary H. Bakalar** has been named senior vp-program marketing; **Archie McIntyre** has been appointed senior vp-strategic business development; and **Terry Wall** has been made Meadowbrook Agency's chief operating officer.

**Brenda Furlong** has been named

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**John T. Meitner** vp-sales. Prior to joining Spectrum Vision, Mr. Meitner was president of JTM Enterprises.

**Robert Hughes Associates Inc.** has named **John R. Oakley** executive vp. Before joining Dallas-based Robert Hughes, Mr. Oakley was vp of Oakley Marketing Associates Inc. **BI**

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Chairman  
9-29-99

# INTERNATIONAL

## Global Briefs

National Westminster Bank P.L.C. is abandoning plans for a £11 billion (\$18.21 billion) takeover of leading U.K. life insurer **Legal & General Group P.L.C.** NatWest's bid a month ago for the insurer was not well received by institutional investors, and the banking group said it would not extend its offer beyond the Oct. 11 deadline. . . Lloyd's of London underwriting agency **Amlin P.L.C.** has named John Stace executive vice chairman. Mr. Stace previously was chief executive of Angerstein Underwriting Trust, which merged with Murray Lawrence Holdings Ltd. in 1998 to form Amlin. In addition, Tony Holt has been named underwriting director of Lloyd's syndicate 2001, which is managed by Amlin. He will continue to be an underwriter on the syndicate. Amlin also announced that Richard Golder has been appointed cargo underwriter for its Lloyd's syndicate 902. Mr. Golder replaces Ken Boden, who will concentrate on developing syndicate 902's service company, Angerstein Transit Underwriting Agency Ltd. . . Duff & Phelps Credit Rating Co. has assigned an **A+ claims-paying ability rating to the Lloyd's market.** It said the rating, which encompasses policies issued by all syndicates from 1993 onward, "reflects Lloyd's superior competitive position and franchise, the influx of corporate capital from strongly rated entities, very high investment quality, and improved reserve adequacy." . . **Hardy Underwriting Group P.L.C.** has said "underwriting conditions remain difficult in all areas, and losses are beginning to emerge in the market." Although Hardy reported a first-half 1999 aftertax loss of £251,000 (\$395,902) after a corresponding £131,000 (\$218,469) profit in 1998, it said it nevertheless expects that it will earn a profit for the full year and that "a market upturn may come quickly." . . Marsh Inc. is acquiring **VidalInti**, Peru's leading insurance broker. VidalInti, which has been a correspondent for Marsh since 1964, will be combined with Marsh's current operations in Peru. . . Willis Corroon Group Ltd. has launched a **river flood assessment system** that aims to improve the ability of insurers and companies to assess the risks posed to their businesses by river flooding. The system, which uses airborne radar and geographic information systems, already has been applied to the River Thames in England and can be used for rivers in other countries, Willis says. . . Standard & Poor's Corp. has assigned its A+ long-term counterparty credit and insurer financial strength ratings to a number of operating entities of Portuguese insurer **Seguros e Pensoes GERE SGPS S.A.** The ratings, however, were placed on CreditWatch with developing implications in response to a bid by the group's parent, Banco Comercial Portugues S.A., for Companhia de Seguros Mundial Confianca. The units rated A+ are: Companhia de Seguros Bonanca S.A., Bonanca Vida Companhia de Seguros S.A., BPA Seguros S.A., BPA Seguros Vida S.A., Ocidental Companhia Portuguesa de Seguros S.A., and Ocidental Companhia Portuguesa de Seguros de Vida S.A. . . **Assicurazioni Generali S.p.A.**'s bid for Instituto Nazionale delle Assicurazioni S.p.A. has been cleared by Consob, the Italian stock market regulatory authority. . . Aon Group Ltd. has appointed **Eric Warner** as chief financial officer. Mr. Warner, who was previously senior relationship manager for selected European financial institutions for Societe Generale, will be responsible for Aon Group's strategic and financial planning.

## Seeks role as Asian hub

# Singapore sells itself

By **MATTHEW MacDERMOTT**

SINGAPORE—Having established itself as an international reinsurance center, Singapore now aims to play a bigger role as a major reinsurance hub for the wider Asian market.

A four-pronged Monetary Authority of Singapore strategy to expand the scope of Singapore's reinsurance activities was unveiled by Lim Hng Kiang, Singapore's minister for health and second minister for finance, at the opening of the fifth Singapore International Reinsurance Conference on Oct. 3.

Mr. Lim said the 48 reinsurers operating in Singapore, which include 20 of the world's 25

largest reinsurance groups, generated a total of \$1 billion in Singapore (\$602 million) in 1998 premiums in that market.

He said the island is also home to a "rich mix" of reinsurance brokers, captive managers and risk management consultants.

"Singapore can take on a bigger role as a reinsurance hub," Mr. Lim said.

"However, more work needs to be done."

Despite its well-established reinsurance industry and central location in Asia, Singapore reinsurers account for only about 9% of Asian—excluding Japan—non-life insurance risks ceded abroad, Mr. Lim said.

"The bulk (of such risks) still

See Singapore on next page



PHOTO: AFP

Police raided the Tokyo headquarters of JCO Co., seeking evidence of negligence at its Tokaimura nuclear fuel processing plant.

# Negligence may void nuclear coverage

By **MARIA KIELMAS**

A Japanese nuclear fuel processing company's liability insurance policy could be declared invalid under Japanese law if investigators prove that a serious accident at the company last month was caused by willful acts, an international nuclear lawyer says.

Thirty-nine workers were injured, with three still in critical condition last week, after the Sept. 30 accident at the Tokaimura nuclear fuel processing plant owned by JCO Co., a wholly owned unit of Tokyo-based Sumitomo Metals Mining Co.

Police raided JCO headquarters Oct. 5, investigating the Tokaimura plant on suspicion of professional negligence and violations of government regulations on nuclear plant operations.

Japanese nuclear liability law voids any insurance compensation in the event of willful and deliberate damage, according to Charles Petersen, a partner in the Washington-based law firm of Morgan, Lewis, Bockius. Mr. Petersen was part of a team that recently conducted a risk analysis of nuclear fuel processing operations.

Japan's nuclear liability law basically follows the 1963 Vienna Convention on nuclear liability. The convention was drawn up by the Vienna-based International Atomic Energy Agency, a part of the United Nations. Although Japan tends to follow the Vienna Convention, it is not one of the 32 signatories.

Japan is unique among countries that follow the Vienna Convention in that its laws exclude insurance compensation to third parties affected by deliberate nuclear accidents, Mr. Petersen said.

Under the Vienna Convention, compensation from insurers is excluded for the individual entity that carries out the deliberate damage, but all other affected third parties are compensated. But, he said, "in Japanese law, you see this special exception."

Mr. Petersen said that international nuclear lawyers have been trying to persuade Japan to change its laws for the past 20 years. "We have always told Japan, 'We can understand that you want to punish a (responsible) company, but you are also punishing the public,'" he said.

See Japan on page 30



PHOTO: AFP

Smoke pours from one of the cars involved in the crash of two trains near Paddington Station in London last Tuesday.

# Trains' insurer releases victims funds

By **EDWIN UNSWORTH**

LONDON—The liability insurer for the two train companies involved in Britain's worst train crash in a decade has made money available to provide immediate assistance to victims.

St. Paul International Insurance Co. Ltd. of Redhill, Surrey, is the liability insurer for the operators of both trains, First Great Western and Thames Trains Ltd.

Paul Elliott, St. Paul's marketing manager, said in a statement: "We have already provided both companies with funds to be used to provide immediate assistance to victims in the short term."

The crash last Tuesday morning of two commuter trains killed up to 100 and injured more than 150.

Shortly after the crash, which took place two miles west of London's Paddington station during the morning rush hour, Mr. Elliott said St. Paul had claims teams at the scene soon after the accident to assess damage. One of the teams working on St. Paul's behalf was from loss adjuster McLaren's Toplis.

Each of the private passenger rail operating companies, which were established after the 1996 privatization of British Rail, is required to have liability insurance coverage of at least £155 million (\$256.5 million). Mr. Elliott said that, in most cases, the coverage is spread through layers of insurance, reinsurance and excess coverage.

The death toll in Tuesday's crash was so high because several train cars, packed with early-morning commuters, burst into flames as the trains collided. More than two days later, disaster crews had not yet gained access to all parts of the wreckage.

Deputy Prime Minister and Transport Secretary John Prescott immediately announced plans for two inquiries. One will be a public inquiry into the accident itself, with a goal to establish what caused the accident; the other will be a separate inquiry that will look more generally at train safety systems. Between the two investigations, "I intend to leave no stone unturned to ensure a safe railway system," Mr. Prescott said. Both train companies and Railtrack P.L.C., the company that owns and operates the national rail network, will be involved in the public inquiry and probably in the separate inquiry.

Initial conclusions from the public inquiry should be ready before the year end, Mr. Prescott said.

Advisers and inspectors from the government's health and Safety Executive will carry out an initial investigation to establish the facts to be examined in the public inquiry, and its findings will be used to determine the precise form the full public inquiry should take.

Investigations will center on how the two trains—a high-speed train bound for London from Cheltenham and a local train from London to Bedwyn, in Wiltshire—ended up on the same track. Possibilities include driver error or a failure of the automatic train protection system, which is designed to stop a train if it passes a red light.

A joint statement from Railtrack and the two train companies said the First Great Western express train had a green light to proceed.

The statement added, "Investigations will now concentrate on the behavior of the Thames turbo train following reports that it had passed a signal at danger."

Railtrack said in the statement that the signals at the scene were working normally. It said tracks and signals in the area were among the most modern in the country, having been upgraded

See Rail on page 30

# Singapore

*Continued from previous page*

flow out of Asia to other centers in Europe and the U.S.," Mr. Lim said. The MAS strategy to further develop Singapore's reinsurance presence is based on:

- Prompting Singapore reinsurers to expand their scope and operations. To that end, the MAS will introduce a series of tax exemption plans.

These plans aim to encourage more writing of "big-ticket items" from around Asia, including marine, financial guarantee, energy and aviation risks. The plans are designed to aid the expansion of existing Singapore reinsurers and attract new international players to the market.

- Encouraging product innova-

tion. The MAS has released guidelines for Singapore reinsurers on alternative risk transfer rules, accounting treatment and disclosure requirements. The guidelines are designed to help Singapore reinsurers capitalize on the growth of financial reinsurance innovations. The MAS also is monitoring developments in risk securitization to help Singapore to take a leading role in the new market.

- Leveraging technological developments. The MAS will promote Singapore's latest communications information technology and business infrastructure developments to Singapore reinsurers to drive initiatives such as electronic risk placements, e-commerce networks and streamlined back-office operations.

- Nurturing a pool of reinsurance professionals. The MAS will offer

training grants to support and upgrade the skills base of Singapore reinsurers.

Mr. Lim said Singapore's opportunities to become a leading Asian reinsurance hub will continue to grow as countries such as China and India liberalize.

"Many parts of Asia are still relatively untapped and are at varying

degrees of liberalization," he said. "The concept of risk management is beginning to take root in Asia, and this presents new opportunities. We are confident that Singapore is well-positioned to work with existing, as well as new, players in order to harness these opportunities."

Commenting on the MAS strategy, Pierre L. Ozendo, head of Swiss

Reinsurance Co.'s Asia division, said that the Singapore government should be applauded for its commitment to building and investing in the island's reinsurance infrastructure.

Mr. Ozendo said the government's efforts are helping Singapore develop into a reinsurance center that is "world class." **BI**

## Reinsurers optimistic on Asia

### Long-term growth prospects are good, executives say

By MATTHEW MacDERMOTT

SINGAPORE—As Asia emerges from its economic crisis of the past two years, reinsurers have an important role to play in protecting the region's corporate recovery and supporting future growth.

That was the message from executives of the world's two largest reinsurers, Munich Reinsurance Co. and Swiss Reinsurance Co., who spoke at the Singapore International Reinsurance Conference, held Oct. 3-6.

Norbert Breboeck, head of Munich Re's Asia and Australasia division, and Pierre L. Ozendo, head of Swiss Re's Asia division, both were optimistic about the future of the reinsurance industry in Asia.

However, both agreed that reinsurers in Asia must work hard to improve their service, range of products and advice to insurers looking to capitalize on new growth opportunities in the region.

Munich Re's Mr. Breboeck said there is no doubt that the Asian economic crisis, which began in 1997, has had an impact on reinsurers' performance and plans for expansion in the region.

While the worst of the crisis appears to be over, it still will take "several years before (Asia's) economic motor is running smoothly again," he said. Therefore, it is important that reinsurers continue to take a long-term approach to the Asian market, he added.

Swiss Re's Mr. Ozendo said he agrees that the Asian economy has begun to rebound from the economic crisis.

He said stabilizing currencies, increased liberalization, less cronyism and improved business confidence have "set the pace for increased investment" in Asia. "I have great cause for optimism in Asia," he said.

Mr. Ozendo and Mr. Breboeck agree that the re-emerging Asian economy presents excellent opportunities for reinsurers that can deliver complete and sophisticated service to the region's insurers.

Mr. Ozendo said Asian insurers increasingly will require highly customized reinsurance approaches and solutions to support their own growth efforts in the Asian market.

"We must help Asian insurers grow by understanding their risk appetites," he said.

Mr. Breboeck said that the challenge is now there for reinsurers to "act as superior risk managers and carriers," and so provide the basis for further innovation and broad economic development in Asia.

He said reinsurers that can meet the challenge will enjoy growth opportunities from three principal areas: local Asian insurers, new international insurers attracted to Asia, and demand for expertise in the area of alternative risk transfer.

Mr. Breboeck said that greater liberalization and deregulation in Asia will increase the competitive

demands on local insurers. Reinsurers, through the use of sophisticated capital management, services, training and advice, can act as a "lifeline" to established local insurers facing unprecedented competition, he said.

The entry of new global insurers into Asia, either through acquisitions or new licenses, also will increase opportunities for reinsurers in the region.

Mr. Breboeck said new insurers in Asia will channel higher volumes of business to reinsurers in that market and expand opportunities for the provision of support services.

He said the increasingly deregulated and competitive markets in Asia will also raise demand from insurers and policyholders for choice and customization in reinsurance products.

"In the future, direct insurers in Asia will have higher expectations toward their reinsurers in the area of finite reinsurance and alternative risk transfer solutions," Mr. Breboeck said.

Swiss Re's Mr. Ozendo agreed that Asian reinsurers will have to take a greater role in alternative risk transfer.

He acknowledged that such products are not currently widespread in Asia because of the soft market for traditional insurance and the slowdown of the region's economy.

"But that is in the past," Mr. Ozendo said. "We believe there are significant opportunities, and (alternative risk transfer) will be available to this market. Many Asian corporates will see the need to access these solutions." **BI**



## Attendees venture from 34 nations

SINGAPORE—More than 650 attendees from 34 countries participated in the fifth biennial Singapore International Reinsurance Conference, held at the Westin Stamford and Westin Plaza hotels in Singapore from Oct. 3-6.

The theme of the conference, which was jointly organized by the Singapore College of Insurance and the Singapore Reinsurers' Assn., was "Beyond 2000—Implications for the Asian Insurance & Reinsurance Markets."

Jeffrey Yeo, chief general manager of Singapore Reinsurance Corp. Ltd. and co-chairman of the conference organizing committee, said he was pleased with attendance at this year's conference.

Attendance was particularly good, he said, considering the impact of the Asian economic crisis since the 1997 conference, which attracted about 650 attendees.

Attendees at this year's conference were drawn from Asia, Australia, Bahrain, Bermuda, Brunei, Canada, Europe, India, Kuwait, Pakistan, Sri Lanka, the United Kingdom and the United States.

The sixth Singapore International Reinsurance Conference will be held in Singapore in 2001. The conference venue and dates, however, have not yet been determined.

More information is available by contacting the Singapore College of Insurance at 10 Shenton Way #14-06, MAS Building, Singapore 079117. The phone number is 65-221-2336; the fax number is 65-220-6684. E-mail inquiries can be sent to sciextra@mbx3.singnet.com.sg, and the college's Web site is at www.sci-college.org.sg.



## Competition will alter market

By MATTHEW MacDERMOTT

SINGAPORE—The international insurance and reinsurance community might be unrecognizable in 10 years, a reinsurance executive says.

"The survival of our industry is at threat," Herbert N. Haag, president and chief executive officer of Partner Reinsurance Co. Ltd. in Bermuda, told delegates at the Singapore International Reinsurance Conference, held Oct. 3-6.

"Many of our players will survive in some form or another, but whether the industry will ultimately survive depends on what position we are taking now," Mr. Haag said.

"The next 12 to 18 months are very critical as to whether this industry could be replaced by the new financial services industry," he said.

Mr. Haag said new financial services and retail distribution channels are threatening traditional insurance and reinsurance systems and have the potential to revolutionize the whole industry.

"I would not be surprised if, 10 years from now, you do not recog-

nize the key players," he said.

"They will not be the same companies we know today. If McDonald's sells insurance to young people, in 10 years they will be the key insurance company in the world."

Mr. Haag said it is important to remember that, in the insurance industry, "there is a low barrier to entry... The only thing required to enter is capital."

Mr. Haag said reinsurers have a duty to the insurance industry to prepare for the competitive threat of new entrants into the market.

He said that, while some reinsurers have been preparing for such challenges over the past two to three years, many have not.

"It is a very critical moment," he said. "The key players are well prepared, but 70% of reinsurance companies are not well prepared. There will be a lot of losers and it will be very painful, but those companies that aren't prepared probably shouldn't stay."

Mr. Haag said the key to reinsurers' survival is underwriting discipline and price stability.

He said many reinsurers, relying on investment returns and hidden reserves to boost earnings, have stayed from solid underwriting.

Underwriting "has just become a machine to produce cash flow, which is very scary," he said.

Mr. Haag said it is essential that reinsurers stabilize pricing through more disciplined underwriting, rather than through drastic rate increases.

"The next time we raise prices substantially, there are parties waiting on the sideline to enter this business and offer a lower pricing," he said.

Mr. Haag said that reinsurers will never be able to raise rates again as they did in 1993 and 1985-86. "It will not happen again," he said. "We have to keep stability of price."

Mr. Haag said underwriting discipline, and associated price stability, must be reinsurers' area of expertise and what differentiates them from non-traditional players in the future.

The presence of new competitors "is not a dream," he said. "It is going to happen, and it can happen overnight. But we are in charge of our own destiny. Let's act before it is too late." **BI**



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# Taiwan counts losses

## Business interruption source of most claims

By **MATTHEW MacDERMOTT**

SINGAPORE—Insured property losses from last month's Taiwan earthquake are "reasonably contained," as most damage was centered in uninsured residential areas, according to a Singapore reinsurance broker who was in Taiwan when the disaster struck. Jimmy Ler Cho Seng, managing director of Kininmonth Lambert Singapore Pte. Ltd., said insured losses from the Sept. 21 earthquake still are being quantified but are expected to come mainly from business interruption claims.

He said the central Taiwan counties of Taichung and Nantou suffered the most damage, with more than 8,500 residential buildings and houses collapsed.

Earthquake coverage for such properties, however, is uncommon in Taiwan, meaning that insured losses will "not be substantive," Mr. Ler Cho Seng said in a report on the earthquake released at the fifth Singapore International Reinsurance Conference, held Oct. 3-6.

His comments were backed by conference speaker Herbert N. Haag, president and chief executive officer of Partner Reinsurance Co. Ltd. of Bermuda. Mr. Haag said the lack of earthquake coverage in Taiwan means the impact of the disaster will be small on the international reinsurance industry.

Several reinsurance executives at the conference agreed that insured losses from the

Taiwan earthquake will not be as large as was first expected. Most were unwilling, however, to estimate a final loss figure.

Kininmonth Lambert's Mr. Ler Cho Seng said some light industries in the predominantly rural Taichung and Nantou counties suffered insured losses, including a sugar business that had property damage of \$29 million Taiwanese (\$914,080) and three supermarkets, which had total property damage of \$100 million Taiwanese (\$3.2 million).

Taiwan's capital of Taipei emerged "somewhat unscathed" from the earthquake, with only two buildings collapsing, Mr. Ler Cho Seng said.

He said most insured losses from the earthquake will come from loss-of-profit claims from businesses in the Hsin Chu Science Park, the site for many of Taiwan's major electronics businesses.

However, the extent of such losses still is "vague," with speculative figures ranging from \$300 million to \$1 billion, Mr. Ler Cho Seng said.

He said losses could be intensified somewhat because insurers, reacting to strong competition in the market for loss-of-profits coverage for natural perils in Taiwan, had offered more-attractive terms for the coverage. They decreased the excess period for power outage—the period that electrical power must be out before coverage kicks in—to 24 hours from the traditional seven days. Power was not restored to the areas most affected by the quake until Sept. 25, four days after the earthquake. **BI**



# Japan

Continued from page 27

This exclusion in the insurance coverage is not widely known in Japan, so this issue has never come up before, he said.

Officials from the Japan Nuclear Insurance Pool would not comment on insurance coverage for individual nuclear facilities. "The contract (between the company and the pool) is strictly confidential," said Naoyasu Kawasaki, manager of the pool.

Mr. Kawasaki did say that any nuclear facility that is not a power-generating plant must, by law, carry a minimum of 1 billion

yen (\$9.3 million) in liability coverage. This coverage may take the form either of an insurance policy or a financial security such as a bank deposit. This limit is scheduled to rise to 2 billion yen (\$18.6 million) next year.

Limits for property damage and liability insurance offered by the JNIP for a nuclear facility that does not generate electricity are also 1 billion yen, he said. The Japanese government provides an additional indemnity of the same amount, effectively doubling such a plant's liability insurance. Under Japanese law, though, JCO faces unlimited liability above the insured amount.

Mr. Kawasaki said that the

JNIP has sent a team of loss adjusters to assess damage at the plant. "The losses could be very large, but we don't yet know how much."

According to Geoff Warren, chief executive officer of the British Insurance (Atomic Energy) Committee, colloquially known as the British Nuclear Pool, most of these insurance losses, if found to be compensable, are expected to be contained in the Japanese insurance market and carried by the 43 non-life companies that make up the JNIP.

Various countries' nuclear insurance pools reinsure with each *See Japan on next page*

# Rail

Continued from page 27

only three years ago. However, it said the investigation will examine the history of signal 109, the signal at the site of the crash. This signal was the location of a number of previous incidents "where signals were passed at danger," the statement says.

Sir Philip Beck, Railtrack's chairman, said, "The whole industry is determined to bring forward the implementation of safety devices that will help to prevent future accidents."

Incidents of trains going through red lights are far from uncommon. Railtrack said some 600 trains have gone

through red lights in the past year.

The accident took place just a few miles further along the same stretch of track where two other trains collided in September 1997 at Southall (BI, Aug. 29 and 22, 1997). The official inquiry into that crash, which killed seven and injured 147, opened only two weeks ago, having been delayed because of legal action threatened by victims and their relatives.

This summer, a London criminal court judge ruled that First Great Western, a division of FirstGroup P.L.C., must pay a £1.5 million fine (\$2.5 million)—the largest ever imposed for health and safety violations in the United Kingdom—for

dereliction of duty in that crash (BI, Aug. 2).

HSE Director General Jenny Bacon said at the time of the ruling that the prosecution and record fine "sends a vital message to the railway industry: Safety must come first."

First Great Western escaped a corporate manslaughter charge because there was no proof of gross negligence by one person in a position of authority. As a result of not being able in that case to prove manslaughter because of the gross misconduct requirement, efforts have been launched by prosecuting lawyers and a senior judge to change the law to broaden the definition of corporate manslaughter (BI, July 12). **BI**

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Copies of the RFP may be obtained by notifying Watson Wyatt Worldwide at the following email address on or before October 20, 1999:  
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<b>Administrative:</b>	
CEO's, Presidents, and Owners	4,194
Vice Presidents, General Managers and Other Administrative Personnel	3,965
<b>Financial:</b>	
Chief Financial Officers and Vice Presidents of Finance	4,190
Secretaries, Treasurers, controllers and other Financial Personnel	4,945
<b>Risk/Employee Benefits:</b>	
Vice Presidents, Directors, Managers, and other related department personnel of: insurance, risk, employee benefits, personnel, compensation, pension, safety, security, industrial relations, human resources and employee/labor relations	13,572
<b>Sub-total</b>	<b>30,866</b>
Associations	237
Government, Unions and Educational Institutions	972
<b>Commercial Consumers</b>	
Sub-total	32,073
Insurance Agents and Brokers	7,763
Accounting Companies	6,357
Accountants, Actuaries, Attorneys & Consultants	2,361
Adjusters, Appraisers, TPA's, Captive Managers & Health Care Providers	1,347
Others Allied to the Field	1,008
<b>Total qualified</b>	<b>50,909</b>
Non-qualified/Paid Subscriptions	21
Single Copy Sales	3
<b>TOTAL CIRCULATION</b>	<b>50,933</b>

\* Source Business/Occupational breakdown of qualified circulation, May 31, 1999 Issue, as submitted to BPA for June 1999 BPA Publisher's Statement



PHOTO: REGIS COCCIA

Nets at Notre Dame are designed to keep balls out of the stands.

**Injured fan's suit may continue**

INDIANAPOLIS—The Indiana Court of Appeals has ruled that a woman injured by a fan who lunged for a football kicked into the stands at a University of Notre Dame football game can proceed with a lawsuit charging the university should have taken steps to protect her.

The university contended such incidents are unforeseeable, and a lower court had dismissed the suit, ruling that Notre Dame had no duty to protect the woman from the criminal acts of a third party. But in reversing that decision, the appellate court cited evidence of previous injuries that occurred as fans tried to retrieve balls in the stands.

The woman was injured during a 1995 game, when several fans lunged for a ball kicked into the stands and one struck her, fracturing her shoulder and collarbone. Her suit seeks unspecified damages from the university, located in South Bend, Ind.

**Fast action merits dismissal**

SAN FRANCISCO—An employer that effectively distributes a policy prohibiting sexual harassment and moves promptly to correct a problem in the area cannot be charged with violating federal law, says a federal appellate court.

However, *Carrie Ann Montero vs. AGCO Corp.* is expected to proceed to trial in state court, says Ms. Montero's attorney, David A. Prentice of McGuire & Prentice in Sacramento, Calif.

Ms. Montero complained in 1995—almost two years after her hiring—that from the time shortly after she began work she had been sexually harassed and subjected to a hostile work environment. Ms. Montero had worked at a Stockton, Calif., parts division distribution center operated by Duluth, Ga.-based AGCO Corp., an agricultural equipment manufacturer.

The Sept. 28 appellate decision affirmed a lower court's dismissal of the case, basing its opinion on the U.S. Supreme Court

decision in *Faragher vs. The City of Boca Raton* (BI, June 28).

Once Ms. Montero complained, it took AGCO only 11 days to complete its investigation and to address her complaint "in a decisive and meaningful fashion," said the appellate court.

Furthermore, said the decision, by waiting so long to complain, Ms. Montero "unreasonably failed to take advantage of the company's preventive and corrective opportunities earlier, although she knew of their existence."

**Aon forms public sector group**

CHICAGO—Aon Risk Services Cos. Inc., the retail brokerage arm of Chicago-based Aon Corp., recently consolidated its public sector resources and expertise under one group, called Aon Public Sector Alliance.

The Alliance, which has principal offices in Chicago and San Francisco, focuses exclusively on providing a broad range of diversified risk management services and insurance products to public entities in the United States. Its expertise includes property/casualty brokerage, employee benefits consulting, construction wrap-ups, claims administration, loss control, risk management services and actuarial services.

In addition, Aon's Alternative Market Organization can develop specialized insurance products for public entities through its newly created managing general underwriting facility called ARTEMIS.

Gary Martin has been named chairman of Aon Public Sector Alliance, Cindy La Mantia was named vice chairman, Kathleen Howe was named national resource coordinator, and Jack Costigan was named executive vp of ARTEMIS.



**New policy covers identity fraud**

HARTFORD, Conn.—A new personal lines insurance coverage that provides financial assistance for victims of identity fraud has been introduced by Travelers Property Casualty Corp.

Although not typically held liable, a victim of identity fraud often must spend his or her own money to repair a damaged credit history and clear the problem with creditors. For a \$25-per-year addition to a Travelers' homeowner's policy, the coverage will protect the policyholder for up to \$15,000 in expenses resulting from such fraud.

The Identity Fraud Expense coverage is available in Maryland, New York, Pennsylvania, Virginia and the District of Columbia. It will be made available to Travelers-insured homeowners in most other states during the next year.

**Accountant sentenced for perjury**

CHATTANOOGA, Tenn.—An accountant who allegedly helped prepare phony financial statements for a surety holding company has been sentenced to 18 months in prison on federal

perjury charges.

A federal judge in August sentenced Herbert E. Woll after a jury found him guilty of lying to Securities and Exchange Commission officials investigating the now-defunct Genesis International Financial Services Inc., parent of Congress Re-Insurance Corp. Mr. Woll was charged with lying about his criminal history, which included several arrests and convictions, the SEC said.

Separately, Mr. Woll agreed not to violate securities laws in the future, and the SEC barred him from performing accounting work for public companies. The SEC had named him in a civil lawsuit along with Genesis President Mohamed K.M. Zayed II, who remains a fugitive on criminal fraud charges related to Genesis (BI, May 26, 1997).

**Comings & Goings: Industry**



Mr. Jean

Boston-based Liberty Mutual Insurance Co. has named **Roger L. Jean** president of Commercial Insurance Holdings, a group of regional property/casualty companies serving small to mid-sized commercial accounts. Mr. Jean came to Liberty Mutual from the U.S. operations of Guardian Royal Exchange P.L.C., which Liberty Mutual acquired earlier this year. . . . The Hartford Financial Services Group Inc. of Hartford, Conn., has named senior vp **Richard J. Law** head of Select Customer, its commercial lines operations for small busi-

nesses. Assuming Mr. Law's old position as head of The Hartford's marine unit is Senior Vp **Rex Sprunger**. . . **Bruce Spencer** has been named executive vp-healthcare at Zurich U.S. Specialties, which is part of Schaumburg, Ill.-based Zurich U.S. Mr. Spencer replaces **Barry Barron**, who has been chosen to lead Zurich Target Market Deliveries, a new group at Zurich U.S. . . . Matria Healthcare Inc. of Marietta, Ga., has appointed **George W. Dunaway** vp-finance and chief financial officer; he previously was senior vp and chief financial officer for Dun & Bradstreet.

**Information in brief**

North Dakota Insurance Commissioner **Glenn Pomeroy** recently said he will not run as a candidate in any statewide election next year. Mr. Pomeroy, an attorney, will complete his second four-year term as insurance commissioner in the fall of next year. . . . Chicago-based CNA Financial Corp. completed the sale of its personal lines business to Allstate Corp. of Northbrook, Ill., earlier this month. The CNA business will be called **CNA Personal Insurance**, and it will operate as a separate unit from Allstate. CNA Financial Corp. will earn a royalty fee for six years, and it holds a \$75-million, 10-year equity-linked note. **BI**

**INTERNATIONAL**

**Japan**

*Continued from previous page*

other, but this loss probably will be restricted to the domestic market and those foreign insurers that have operations registered in Japan and thus form part of the pool.

But Mr. Kawasaki confirmed that, in Japan, there are two exclusions to nuclear liability insurance. The first exclusion is for huge and exceptional accidents, such as earthquakes. And because operators cannot buy earthquake insurance, Japanese law protects them from earthquake-related liability. The second exclusion, Mr. Kawasaki confirmed, is if an accident occurs as a result of the ordinary operations of the plant, if the damage was caused by willful acts.

JCO officials have admitted that workers at the plant ignored not just the regulations stipulated in a government-approved operations manual, but also less-stringent guidelines in a separate operations manual that the firm had been following for years.

"Nobody could imagine this kind of thing happening," said Ted Sato, manager at the Tokyo-based broker Marsh Japan Inc., a division of Marsh.

JCO would not comment on media reports that the Science and Technology Agency, a government agency that oversees the nuclear industry, planned to revoke JCO's operating license.

The accident has also prompted concerns about disaster preparedness in Japan. "The biggest problem in Japan is that they didn't have an adequate system for emergency response. We saw this in the Kobe earthquake," said Omer Brown, a partner at the

Washington-based law firm of Harmon & Wilmot and a specialist in nuclear energy and risk management.

According to a JCO report that was submitted to the Tokai municipal government and reported in the Japanese media, the company took one hour to start checking radiation levels after alarms first rang at the plant.

The accident occurred at about 10:35 a.m. on Sept. 30 at JCO's uranium processing facility at Tokaimura, about 90 miles northeast of Tokyo. It took place at the experimental conversion building, where enriched uranium is converted into powdered form before it is delivered to fuel fabrication companies.

According to a statement first released by the Tokyo-based Japan Atomic Industrial Forum, a nuclear industries group, the facility was processing highly enriched uranium in an amount large enough to trigger a self-sustaining nuclear reaction. "There was a high likelihood of human error," the statement said. The accident exposed 39 workers to levels of radiation 10,000 times higher than normal.

The nuclear reaction was reported to have continued for 17 hours, with control of the situation regained only after 24 hours. The radiation was released into the area outside the plant, and 150 residents outside the facility were evacuated. In addition, local authorities urged 310,000 residents in a six-mile radius of the facility to stay indoors. On Oct. 1, residents were given the all-clear signal as radiation levels neared normal background levels.

According to a statement by the Paris-based Institut de Protection et de Surete Nucleaire, a French nuclear

safety advisory agency, workers at the plant appeared to have skipped a stage in the conversion process.

JCO senior executives have admitted at press conferences that they have been flouting government's operating guidelines for years; they said that guidelines in special manuals that were issued to cut corners were also breached. The company's executives admitted using buckets to mix the uranium solution rather than government-specified cylinders and that such buckets had been in use for seven to eight years. JCO executives have also admitted that their employees were poorly trained.

Executives from JCO's parent company, Sumitomo Metal Mining, have said they were unaware of daily operations at their subsidiary. They have not yet estimated potential damages. But Sumitomo Metal Mining Co. has announced that it will pay as-yet-un-calculated damages to those affected by the radiation leak from the plant.

Whether Sumitomo will receive government assistance in compensating third parties is not clear. Japanese law states that the government will pay when such compensation exceeds the financial security of a plant operator.

But according to Mr. Kawasaki, if the accident were found to have been caused by the day-to-day operations at the plant, voiding insurance coverage, the government would be under no obligation to compensate third parties. He said, however, that the government typically sets up a special committee to decide on compensation. The Japanese government has appointed a task force to investigate alleged criminal negligence in the plant's operations following admis-

sions of wrongdoing by JCO officials.

Mr. Warren of the British Nuclear Pool explained that the same ambiguity about government compensation exists in the United Kingdom. "It is for the government of the day to approve the necessary funds for compensation. You would expect them to do so, but there is no cast-iron guarantee," he said.

The Japanese government has also ordered a wide-ranging review of all nuclear power plants and nuclear fuel cycle facilities.

Vince Madden is the director of the London-based World Assn. of Nuclear Operators, an international nuclear industry group created after the 1986 Chernobyl nuclear plant explosion. Mr. Madden said that his organization was created on the theory that nuclear operators had to work together on safety, because all would be affected by any accident. WANO has a program to inspect all the world's nuclear operations by the year 2003. It sends a team of 18 qualified technicians to inspect a plant for two weeks and recommend improvements. The organization's members include all countries that have nuclear facilities. To date, about half of the world's nuclear plants have received WANO teams, Mr. Madden said.

An incident in December 1985 had raised concerns about nuclear safety in Japan. The accident occurred at Japan's first power-producing fast breeder reactor at Monju leaked two to three tons of non-radioactive sodium coolant. "There was no radiation, no fire, no one was hurt, but it was a significant engineering failure," Mr. Madden said. But attempts by the plant's operator to cover up information about the accident prompted a

fierce public reaction.

"The Japanese said afterwards that there must never, ever, be an accident in Japan," said Mr. Madden. "But you can't say never, ever. You can say that there is a low chance but that everything is in place to cope with the event." **BI**

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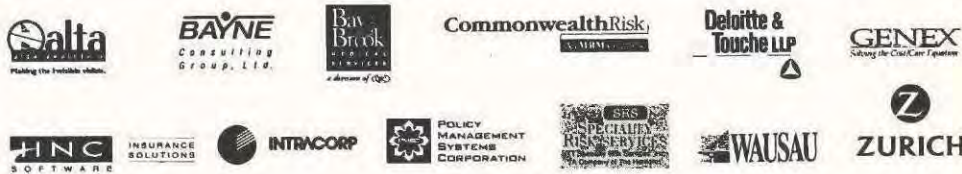
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# You can't get there from here

Each fall for the past 86 years, executives of the country's leading commercial insurance agencies and companies have gathered at the elegant and historic Greenbrier resort.

This year was no exception as hundreds of agents, brokers, insurers, reinsurers, spouses and hangers-on (such as myself) traveled by train, plane and automobile to the sleepy southeast corner of West Virginia where the resort is located.

It is not an easy voyage for most, as few direct routes to White Sulphur Springs, W. Va., exist. Furthermore, US Airways, the major airline that serves that neck of the woods, is notoriously fickle about whether it is flying in or out of there on a day-to-day basis. If you are lucky enough to fly as scheduled, there still is little certainty that your luggage also will make the trip.

I suffered on both accounts. Not only was my original flight canceled, but also my bags fell out of the loop on the alternate flight and were missing for 24 hours before they found their way to the Greenbrier. I thought that was inconvenient, but it turns out I was lucky compared with executives of Hannover Re and their spouses, who after six days still had not seen any of their luggage.

Because the resort itself is owned by railway conglomerate CSX Corp., I guess I should not be surprised that it is not convenient to commercial airline customers. However, as this was

once the location of a top-secret bunker where members of Congress were supposed to ride out an enemy attack or nuclear winter, I would have thought speed of travel might be a consideration.

In the old days, of course, no one traveled to the Greenbrier for a three- or four-day meeting. They instead made their way there, often with a full retinue of servants, to spend weeks, if not months.

It is this idyllic setting to which executives of leading insurance agencies and companies voyage each year to hold the annual Insurance Leadership Forum. This annual meeting provides an opportunity for executives to network with one another, fix their slice, discuss the state of the market, work on their short game, explore new challenges and opportunities, improve their putting and, given its timing, place a figurative finger in the wind to see which way the wind will be blowing at renewals.

I have several suggestions for making it easier for insurance industry executives to overcome the challenges of getting to White Sulphur Springs each year:

- Move the Greenbrier. My recommendation would be to put it near a major airline hub, such as on the edge of O'Hare International Airport or the Dallas-Forth Worth International Airport. Not as scenic, true, but very accessible.
- Build a new airport in White Sulphur Springs. Specifically, I would recommend turning the more than 500-yard 12th hole on the Old White golf course—known simply as "Long"—into a runway capable of handling your 747s and Airbus jumbo jets.
- Find alternative transportation. As long as the Greenbrier remains so wedded to tradition and formal wear, I think a more elegant form of transportation is called for, and one that can accommodate more people than the little prop-planes now in use. I think the zeppelin could make a comeback.
- Legalize casino gambling. The West Virginia Legislature has approved a proposal that would allow casino gambling at the Greenbrier resort, but the measure remains in limbo while awaiting a countywide referendum. I say go for it, as you would then be assured of at least a dozen flights daily to the Greenbrier, as is now the case with Las Vegas and Atlantic City, N.J. Slots and blackjack also could provide a stimulating diversion for visitors who do not play golf.
- Find a new conference partner. For years, the Greenbrier meeting has been a joint annual conference of the Council of Insurance Agents & Brokers and the Council of Insurance Company Executives. I bet if those two organizations invited the Aviation Insurance Assn. or the International Air Transport Assn. to join them, there would be no more trouble with the airlines.
- Take a virtual leap forward. With computer technology what it is today, the Greenbrier could offer a virtual resort experience from the comfort of your own home. You could strap on a pair of virtual reality goggles and explore the hotel's corridors and rooms, shop, take a horseback ride, whatever. And the virtual golf would have at least one advantage: In computer golf you can take as many mulligans as needed to get it right!

Editor Paul D. Winston's commentary appears fortnightly. He can be reached at [pwinston@crain.com](mailto:pwinston@crain.com)

## Disclosure

Continued from page 1

would have the right to request a personalized or individual benefit statement. Under this requirement, an employee could specify an age at which he or she expects to retire, and the employer then would have to provide a personalized statement detailing projected benefits under both plans.

This personalized statement would have to be provided within 90 days after the plan is changed.

Employees also would have to be told if the plan change would result in "wear away," a situation in which employees may not for some time earn benefits under the new plan.

The proposal, "The Pension Reduction Disclosure Act of 1999," was introduced in the Senate last week by Sens. Daniel Patrick Moynihan, D-N.Y., and James Jeffords, R-Vt., and in the House by Reps. Robert Matsui, D-Hawaii, and Jerry Weller, R-Ill.

The White House immediately embraced it. "This legislation would ensure that all Americans have the necessary information to plan for retirement. It would provide workers with meaningful and timely notice of plan changes and clearly demonstrate the impact of those changes now and in the future," President Clinton said.

The legislation comes after lawmakers over the past few months have been bombarded with complaints from older employees working for

employers that converted traditional plans to cash balance plans.

Employees complained that they had little advance notice of the change and were not provided with easy-to-understand information that would enable them to compare benefits they expected to earn under the new plan with their current pension plan.

The bill would address these complaints. Significantly, however, the bipartisan legislation would not go as far as some lobbying groups have demanded. It would not, for example, ban "wear away" situations, nor would it require employers changing pension plan designs to give employees a choice between staying in the old plan or moving to the new plan.

One group of disgruntled employees criticized that omission.

"Yes, employees across the country should have the right to meaningful disclosure, but they must also be given the right to choose which pension plan works best for them," said Janet Krueger, a former International Business Machines Corp. employee who left IBM after the company announced it would adopt a cash balance plan. She is with the IBM Employee Benefits Action Coalition.

But legislators and administration officials say issues such as wear away and benefit choice are complex and because of that, government officials will need more time to analyze what, if anything, to do.

The priority now, they say, is to improve disclosure of benefit changes,

for which there is bipartisan support.

"I think it will get through Congress. We have a good shot at it," said Rep. Sue Kelly, R-N.Y. Rep. Matsui said he hoped Congress would act on it within the next several weeks.

Employer groups label the legislation a significant improvement over other bills, such as those mandating employee freedom to choose between old and new pension plans.

"This is a constructive development," said James Delaplaine, vp-retirement policy at the Assn. of Private Pension & Welfare Plans in Washington.

"The legislation is going in a better direction," said Larry Sher, a principal at PwC Kwasha in Teaneck, N.J.

Others, though, wonder how useful the data employers would have to furnish would be to employees.

In projecting benefits, employers would have to make certain assumptions, and "the only thing we know about assumptions is that they will be wrong," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Bethesda, Md.

He also noted that preparing individual benefit statements would impose a huge administrative burden on employers. "Imagine the work involved in preparing 40,000 individual statements" to project benefits at different ages," he said.

Michael Johnston, an actuary with Hewitt Associates L.L.C. in Lincolnshire, Ill., said: "These are a very complicated set of requirements. Systems will have to be modified." **BI**

## Capital Re

Continued from page 1

"Both managements are smart enough to put business first," said Ron W. Frank, an analyst at Salomon Smith Barney in New York.

XL's offer last Wednesday came one day before Capital Re shareholders were to vote on the ACE offer. The shareholder meeting was canceled, and on Friday, Capital Re entered a confidentiality agreement with XL.

ACE reiterated its interest in buying Capital Re.

"We are disappointed by this 11th hour development and continue to believe that the combination of ACE and Capital Re is in the best interest of the stockholders of both companies," Brian Duperreault, chairman, president and chief executive officer of ACE, said in a statement. Also, ACE's stock offer would be tax-free.

Capital Re is having a difficult year. In the first half, it had a net loss of \$93.8 million, compared with a \$40 million profit for the year-ago period.

Both ACE and XL are trying to ex-

pand their financial guarantee business, and Capital Re would be an attractive purchase, said Mr. Frank.

For XL "it's a slam dunk in terms of rationale," he said.

XL would get Capital Re at a cheap price and enhance its ability to write financial guarantee reinsurance, Mr. Frank said. XL's current book of financial guarantees are mainly insurance.

The timing of the bid is in XL's favor, said Susan Spivak, vp at Donaldson, Lufkin & Jenrette Securities Corp. in New York.

XL currently is flush with capital, whereas ACE still has not finished raising capital for its purchase of the property/casualty and international operations of CIGNA Corp., she said.

The uncertainty over the CIGNA merger and the current poor operating environment for insurers have combined to depress ACE's stock price, said Michael A. Lewis, an analyst at SBC Warburg Dillon Read & Co. in New York.

Last Friday ACE stock closed at \$15.69 per share, down 56% from its 52-week high of \$35.81.

The possibility of ACE stock rising after CIGNA has been integrated,

however, could lead Capital Re shareholders to stick with the ACE deal even though, based on current prices, the XL offer is significantly higher, Mr. Lewis said.

"Obviously the ACE stock is highly depressed, but if the integration of CIGNA is successful, it could have a significantly higher value," he said.

Also, Capital Re will have to consider its existing relationship with ACE, Mr. Lewis said. Last year, the two companies formed a joint venture, ACE Capital Re Ltd., and earlier this year ACE invested \$75 million in Capital Re.

Whatever the outcome, the takeover battle is not likely to jeopardize ACE's and XL's other business relationships, which include joint investments in Sovereign Risk Insurance Ltd. and cooperation on individual coverages offered to policyholders, both insurers say.

"When we cooperate, we cooperate, and when we compete, we compete, and when we do that, we compete fiercely," an ACE spokeswoman said.

"It's a business-based relationship, not a personal one," an XL spokesman said. **BI**

## Unicover

Continued from page 1

party credit and financial strength ratings, "could incur substantial losses based on its participation levels" on Unicover business, S&P said.

Unicover, a Lisle, Ill.-based underwriting manager, operated three reinsurance facilities through which life insurers assumed low-layer "carve-out" risks, comprising the accident and health part of workers comp policies. The facilities fell apart earlier this year after an explosion of premium volume led several pool members to withdraw. Total losses—most of which are expected to be borne by the pool's retrocessionaires—are estimated to be \$2 billion or more.

Reliance acted as both a fronting company ceding workers comp risks to Unicover facilities and as a member of one facility. Lincoln National acted as both a member of Unicover facilities and as a retrocessionaire of the pool's own reinsurers.

A Reliance spokesman said the insurer does not have any estimate of its gross Unicover exposure but said it is protected by "valid and enforceable retrocessional reinsurance contracts."

A Lincoln National spokeswoman noted that insurer officials will meet with S&P analysts this month to discuss Unicover, but she declined to comment further. In its six-month 1999 Securities and Exchange Commission filings, Lincoln National said it is still investigating its Unicover participations and could not accurately estimate the amount or timing of claims from the programs.

Meanwhile, S&P affirmed the financial strength and credit ratings of four other insurers with Unicover exposures: General & Cologne Life Reinsurance Co., Phoenix Home Life Mutual Insurance Co., Sun Life Assurance Co. of Canada and John Hancock Mutual Life Insurance Co.

Phoenix Home Life was a member of the largest facility, a six-member pool, and Phoenix, General & Cologne Life and Sun Life wrote whole-ac-

count excess retrocessional coverage for the three Unicover facilities. John Hancock acted as a reinsurer of the retrocessionaires. While these insurers have substantial gross exposure to Unicover losses, S&P cited strong capitalization in affirming their ratings.

Phoenix Home Life last month began arbitration proceedings to rescind its Unicover contracts, following the lead of Sun Life, which made its arbitration demand earlier this year.

Separately, Bermuda broker Stirling Cooke Brown Holdings Ltd. has filed a motion to dismiss an amended racketeering lawsuit brought by Odyssey Re (London) Ltd. Odyssey Re, a unit of Toronto-based Fairfax Financial Holdings Ltd., charges that Stirling Cooke and others conspired to use it as a dumping ground for underpriced workers comp business, including contracts reinsuring Lincoln National's Unicover risks.

Stirling Cooke argues in its motion that it is not subject to the jurisdiction of the New York federal court where Odyssey Re filed the suit. **BI**

# Settle

Continued from page 3

ing \$1 billion, will pay for future medical testing and doctor visits for users to determine whether they suffered any heart valve damage. If a test shows valve damage exceeding a certain level, the patient is eligible for either \$6,000 cash or medical services worth up to \$10,000. The fund also will contribute \$25 million to medical research on heart valve disease.

Individuals who used the drugs and already have been diagnosed with heart valve problems qualify for settlement of \$2.55 billion. The amount an individual receives will depend on his or her age and the severity of the problem, up to \$1.5 million. An individual's compensation can be increased—up to the \$1.5 million limit—if his or her condition worsens over time, up to the year 2015, when payments from the fund will cease.

An unusual feature of the settlement provides individuals three opportunities to opt out of the settlement and sue American Home on their own.

In addition to the customary period at the outset, claimants can leave the settlement structure when they get examined and learn they suffer from heart valve dis-

ease, and individuals also may leave when their condition becomes severe enough to qualify for compensation from the second fund. In the latter two cases, those who opt out will forfeit their right to sue the company for punitive damages, though they may seek compensatory damages.

Plaintiffs often can receive huge punitive awards. In a Texas case this year, a jury awarded a woman who took Pondimin \$20 million in punitive damages and \$3.4 million in compensatory damages (*BI*, Aug. 16).

The settlement achieves "a full measure of justice" for the drugs' users, one of the lead plaintiffs' lawyers said in a press conference. The lawyer, Michael Fishbein of Levin, Fishbein, Sedran & Berman, said the settlement's structure addresses the concerns of all plaintiffs involved. Those who took the drugs can get tested to determine whether they have suffered any heart valve damage, and those who already have suffered heart valve damage can receive compensation, he said.

American Home denied any wrongdoing in the settlement. In a statement, American Home Executive Officer John Stafford wrote that the company agreed to the settlement so it can move on with its business. "We believe that this

agreement is a sound way to resolve the claims raised by diet drug users and represents a prudent course for our company," he said. "It offers peace of mind to those who used the drugs and permits the company to move beyond the uncertainty and distractions of litigation."

Final approval of the settlement is required by U.S. District Court Judge Louis Bechtle, who is presiding over the consolidated federal cases in Philadelphia.

Approval, however, is far from certain.

Last month, Judge Bechtle rejected a \$100 million settlement between defendants and Interneuron Pharmaceuticals Inc., the original developer of Redux. Judge Bechtle based his ruling on a Supreme Court decision from earlier this year that rejected a settlement of an asbestos case and cast doubt on the viability of mass tort settlements (*BI*, June 28).

But the plaintiffs' lawyers are confident they structured the settlement to overcome legal barriers. If this settlement is not approved, "then no settlement of a personal injury class will ever be approved," Mr. Fishbein said.

Although American Home could terminate the settlement if too many class members opt out, the company did not provide specific number. **BI**

# Lawsuits

Continued from page 3

plaintiffs charge, violates Humana's fiduciary duty under the Employee Retirement Income Security Act and also violates the federal anti-racketeering statute, the Racketeer Influenced and Corrupt Organizations Act.

The plaintiffs in the Humana suit are represented by Joseph Sellers, a partner with the Washington firm of Cohen, Milstein, Hausfeld & Toll, which is known for its work in class-action suits against the makers of diet pills and other large tort litigation. The firm is teaming on the case with Boies & Schiller, whose partner David Boies represents the United States in its antitrust suit against Microsoft Corp. Plaintiffs have asked to make the suit a class action, representing all people enrolled in all Humana plans during the past six years.

The suit seeks to have Humana disclose to plan members exactly how treatment decisions are made. In addition, the suit seeks unspecified damages equal to the difference between what members paid in premiums and what they should have paid for the type of restrictive health plan they actually received, and it asks Humana to return profits it made on the business in question. A damage award could be tripled if the HMO is found guilty of violating RICO.

In a written response, Humana said that 85% of its members are satisfied with the coverage they receive. In addition, the company said that a better way to improve

the health care of its members is an external review process, not "protracted litigation that may provide huge verdicts for a few people."

Mr. Sellers said last week that his firm also is preparing similar suits against other HMOs that could be filed shortly.

But it wasn't Mr. Seller's firm that sued Aetna Inc. and its subsidiaries. Instead, two other firms brought separate suits against the Hartford, Conn.-based insurer.

One suit was brought against

## A spokeswoman for the American Assn. of Health Plans says the lawsuits can only hurt the health care system.

Aetna in federal court in Philadelphia. The other was filed in federal court in Mississippi and alleges that Aetna violated ERISA and RICO by denying plan members health care in order to boost corporate profits.

The Mississippi suit seeks class-action status and asks for monetary damages, punitive damages and an injunction to prevent Aetna from continuing with its allegedly improper practices. The Mississippi suit alleges that Aetna's business practices contradict what it tells plan members and that they harm patient care. These practices include controlling the medical decisions of physicians, imposing financial incentives on doctors that dis-

courage expensive tests, and sanctioning doctors who challenge Aetna's policies on behalf of patients.

The Mississippi suit is the product of a team of law firms, led by Richard Scruggs of Scruggs, Millette, Bozeman & Dent, that have successfully sued tobacco companies.

In responses to both suits, Aetna said in a statement that it provides full disclosure on how its health plans operate. Aetna also called the Mississippi suit "outrageous."

A spokeswoman for the American Assn. of Health Plans called the lawsuits "spurious" and said they can only hurt the health care system while draining money from it.

Managed care companies should expect more suits to be filed in coming months, said Guy Collier, a partner with the law firm of Shaw Pittman in Washington who represents hospitals and managed care companies. "It's the proverbial tip of the iceberg," he said.

But Mr. Collier pointed out that sheer numbers alone don't ensure success for the plaintiffs. He said the plaintiffs face numerous obstacles, including getting the classes certified, demonstrating that the plaintiffs have standing to bring the suit, and calculating monetary damages.

He also said the Humana suit, despite its claim that it doesn't attack the concept of managed care, "goes to the heart of managed care." The suit asserts that capitation arrangements with providers and the use of outside firms to review claims, both common industry practices used in an effort to control costs, violate ERISA. **BI**

# Updates

## Insurer changes parts policy

Continued from page 2

the insurer breached its contract by specifying that less-expensive aftermarket parts be used in repairing cars rather than parts authorized by the autos' manufacturers.

Bloomington, Ill.-based State Farm contended during the trial that using the aftermarket parts kept repair costs and premiums down, and the company cited its guarantee to policyholders of satisfaction with the part as long as they own the vehicle. But the company said concerns over policyholder confusion regarding the quality of the aftermarket parts following the verdict prompted the insurer to temporarily suspend their use.

Bob Hurns, associate counsel of the National Assn. of Independent Insurers in Des Plaines, Ill., predicted the attorneys who sued State Farm would likely sue other insurers. "They started with the biggest fish in the pool. Now they're going to work their way down," he said.

If allowed to work their way down, the verdict might result in higher premiums, Mr. Hurns said. Although uncertain of the potential impact on commercial lines customers, he said, "It's going to have ripple effects everywhere."

## Launch coverage changes eyed

WASHINGTON—Congress is moving toward reauthorizing—for perhaps the last time—a government indemnification program that could help cover third-party losses resulting from commercial space launch failures.

By a voice vote last week, the House approved the Commercial Space Transportation Competitiveness Act of 1999. The act would extend through 2004 the Federal Aviation Administration's authority to seek up to \$1.5 billion from Congress after each launch failure to cover third-party losses that exceed the launch companies' liability limits. Congress, though, is not obligated to honor the requests.

The Senate is expected to act on the bill or its own version shortly. Since the indemnification program was implemented in 1988, the FAA has not had to ask Congress for any indemnification funds.

The House bill, though, would require the Secretary of Transportation to report to Congress within 18 months on the "adequacy, propriety and effectiveness" of the current risk-sharing regime, which was designed to stimulate the commercial space industry. Among other things, the House bill suggests the possibility of imposing strict liability on commercial launchers. The bill also suggests a regime resembling the airline industry's. For international flights, airlines are held to strict liability limits of about \$135,000 per passenger. Passengers or their families may recover additional compensatory damages if an airline cannot show either that it did everything possible to prevent an accident or that another party was responsible.

The report would have to include views from launchers and the insurance industry.

The commercial space industry would like to move toward a liability regime resembling the airline industry's regime, but "five years may be too soon," said Eric Stallmer, president of the Space Transportation Assn. in Arlington, Va.

## Briefly noted

Attorneys representing the city of Cincinnati in a lawsuit seeking reimbursement from gunmakers for expenses the city incurred due to gun-related crimes said they will likely appeal an Ohio county court judge's ruling dismissing the suit. In his ruling, the Judge Robert Ruehlman said the suit was an improper attempt to substitute the court's opinion for that of the Legislature and said the city had no authority to seek reimbursement for the cost of public services it has a duty to provide. . . . Mapfre Re, the reinsurance unit of Madrid, Spain-based Corporacion Mapfre, is expanding in the United States with an agreement in principle to purchase Chatham Holdings Inc., which owns Chatham Reinsurance Corp. Mapfre Re is making the purchase for an undisclosed sum from Ecclesiastical Insurance Group P.L.C. of Gloucester, England. A statement said that, once all legal and U.S. regulatory requirements have been met, Mapfre Re will increase the capital of Chatham Holdings and Chatham Reinsurance up to \$100 million. . . . PXRE Corp. has completed its reorganization and formed a new Bermuda holding company, PXRE Group Ltd. The reinsurer announced the move in July (*BI*, July 19). PXRE also will establish a Bermuda operating unit, but most of its operations will remain in Edison, N.J. . . . North American Specialty Insurance Co., a Manchester N.H.-based unit of Swiss Reinsurance Co., is buying surety insurers Washington International Insurance Co. and International Collections Inc. in Itasca, Ill., for an undisclosed amount from The Northland Cos. The combined surety operations of the three insurers will be headed by Paul Amstutz, president of WIIC. . . . New York-based Loews Corp. purchased 304,000 shares of Chicago's CNA Financial Corp. during September, a transaction worth more than \$10.9 million. Loews, a conglomerate controlled by the billionaire Tisch family, has acquired nearly 2 million shares of CNA this year, increasing its stake to 86% from 83%. . . . Standard & Poor's Corp. last week raised its financial strength and counterparty credit ratings on Clarendon National Insurance Co. and Clarendon America Insurance Co. to AA- from A. S&P cited Clarendon's strategic importance to parent Hannover Reinsurance Co., among other factors, for the upgrade. . . . The Pension Benefit Guaranty Corp. is taking over the underfunded pension plan of McCulloch North America Inc., a failed chain saw manufacturer that is now liquidating. The plan, which has about 2,000 participants, is underfunded by about \$7 million. . . . Lincolnshire, Ill.-based GE Reinsurance Corp. has received final regulatory approvals for its name. GE Reinsurance, a broker market reinsurer, was formed through the merger of Kemper Reinsurance Co. and First Excess & Reinsurance Corp. after GE Global Insurance Holding Corp. purchased Kemper Re last year. . . . Jonathan Bank, an attorney specializing in insurance and reinsurance disputes, has joined the global insurance practice of PricewaterhouseCoopers. Mr. Bank, formerly with Chadbourne & Park in Los Angeles, will help PwC build a restructuring practice for insurance companies in the United States.

# Intermediary deadline near

*Business Insurance* will publish its annual directory of reinsurance intermediaries in the Nov. 1 issue, which will also feature a Spotlight Report on trends and issues affecting the reinsurance industry. The directory includes both U.S.-based and non-U.S.-based reinsurance brokers.

Companies must report gross

revenues to be listed in the directory; intermediaries must generate at least \$500,000 in revenue from reinsurance brokerage to be included.

*Business Insurance* publishes the directory as an editorial service; there is no charge to be listed.

If your company meets the criteria for inclusion but has not

yet received the questionnaire, please call Directory Editor Kevin Edison at 312-649-5279 to request a questionnaire. Questionnaires also can be printed from the *BI* Web site at [www.businessinsurance.com/magazine/directories.html](http://www.businessinsurance.com/magazine/directories.html).

Questionnaires must be returned by the extended deadline of Oct. 18.



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