Lloyd's to tap capital markets to secure Central Fund / 3

Bill would ease 401(k) rules for military reservists / 3

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Business Insurance

October 18, 2004

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$5

Spitzer files suit attacking contingent commissions

Marsh faces fraud charges

By DOUGLAS McLEOD

NEW YORK—Marsh & McLennan Cos. Inc. last week suspended its practice of collecting contingent commissions and began dealing with backlash from the New York attorney general's lawsuit charging it with fraudulent self-dealing and bid-rigging in its placement of clients' business.

New York Attorney General Eliot Spitzer's suit, filed Thursday in New York State Supreme Court, accuses MMC of steering business to insurers paying it the highest commissions and colluding with insurers to rig premium quotes on client programs. The insurers cited in the bid-rigging allegations—but not named as defendants in the suit—were American International Group Inc., units of ACE Ltd. and Hartford Financial Services Group Inc., and the Munich-American RiskPartners division of American Re-Insurance Co.

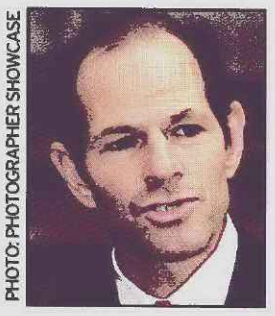

PHOTO: PHOTOGRAPHER SHOWCASE

'If the practices...are as widespread as they appear to be, then the industry's fundamental business model needs major corrective action.'

Eliot Spitzer

Mr. Spitzer also announced that two executives with the excess casualty unit of AIG's American Home Assurance Co. have pleaded guilty to felony charges related to the alleged scheme and are cooperating with investigators.

The suit against MMC is widely viewed as merely the opening salvo in a broader attack by the attorney general on brokerage com-

See MARSH/page 39

Advocates of TRIA hang hopes on next year

By MARK A. HOFMANN

WASHINGTON—The chances that Congress will extend the Terrorism Risk Insurance Act this year are slim, with next month's lame-duck session offering the last opportunity to get the job done in this Congress.

But many extension advocates—which include risk managers and insurers—realize that passage during the lame-duck session is the longest of long shots, and are already looking to next year. And supporters agree that insurers and policyholders are going to have to step up their efforts and work together to win passage of an extension bill.

TRIA, which was enacted in late 2002, creates a federal backstop for insurers facing losses from future catastrophic terrorist events. It was designed to both restore stability to the property/casualty market, which was severely shaken by the terrorist attacks of Sept. 11, 2001, and to give insurers time to develop a private market for ter-

See TRIA/page 40

Flu absences likely to rise

Vaccine shortage poses challenge for employers

By RUPAL PAREKH

Employers calling off flu shot programs in light of the nation's severe vaccine shortage should prepare for possible surges in absenteeism and plunges in productivity among their employees, experts say.

The federal government had projected that Americans would require a supply of about 100 million influenza boosters this flu season and was relying on Emeryville, Calif.-based Chiron Corp. to produce between 46 million and 48 million of those doses, according to the U.S. Department of Health and Human Services. But, earlier this month, Chiron announced that the United Kingdom's Medicines and Healthcare Products Regulatory Agency had suspended its license to manufacture the vaccine Fluvirin in its Liverpool, England, facility, citing a breach of U.K. Good Manufacturing Practices regulations. Chiron has not disclosed the nature of the breach.

With Chiron now barred from distributing its drug this year, HHS expects it will be able to secure only approximately 54 million flu shot immunizations—just over half of the anticipated supply—from the only other American-approved manufacturer, the Lyon, France-based Aventis Pasteur.

The U.S. Centers for Disease Control and Prevention in Atlanta estimates that up to 20% of the U.S. population contracts the flu each year, with over 200,000 people each year hospitalized

See FLU/page 41

PHOTO: PHOTOGRAPHER SHOWCASE

People line up in front of a Rite Aid drugstore in New York to receive flu shots. Manufacturing problems have resulted in a nationwide shortage in the supply of vaccine doses.

Late News

United National, Penn-America to merge

Surplus lines insurers United National Group Ltd., Penn-America Group Inc. and wholesale broker Penn Independent Corp. have agreed to merge. The merged entity, United America Indemnity Ltd., would have more than $700 million in direct written premiums and net commission revenues, the company said. United National Group unit United National Insurance Co. was the 10th-largest U.S.-based surplus lines insurer in *Business Insurance*'s 2004 ranking, based on $445.6 million in direct, nonadmitted premiums in 2003. Penn-America had direct, nonadmitted premiums of $159.2 million in 2003. The deal is being accounted for primarily as an exchange of stock and is valued at around $253 million.

Health care cost hikes expected to ease

Group health care costs are expected to rise by 11.3%, on average, to $7,542 per employee in 2005, according to an analysis by Hewitt Associates Inc. This year, costs—which reflect both employer and employee contributions to health care coverage—climbed by an overall average of 12.3%, according to Hewitt. For the purposes of Hewitt's analysis, projected costs do not reflect co-payments or co-insurance for medical, hospital and prescription drug coverage. On average, employees will each pay a projected $1,481 of their health insurance premiums in 2005, up from $1,288 this year. The survey is based on information from about 300 large employers.

Ivan insured damage at $6 billion: PCS

Last month's Hurricane Ivan caused an estimated $6 billion in insured property damage, according to the Insurance Services Office Inc.'s Property

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NEWSPAPER

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Spotlight report

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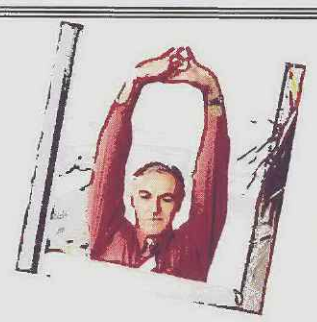

LARGEST SAFETY CONSULTANTS & REHABILITATION SERVICE PROVIDERS

Rankings on page 16 and 20

AON Focus
www.aon.com/focus

Workers' compensation costs force legislative reforms and drive corporations to re-evaluate workers' compensation programs.

Workers' compensation: Creating opportunities from trends

Anthony Addino is national managing director of Aon Technical Services Risk Consulting. He assists clients in developing and implementing workers' compensation cost management programs. Anthony can be reached at anthony_addino@ars.aon.com.

Despite the recent challenges in the executive risk arena associated with property and casualty market dynamics, compliance with corporate governance initiatives, etc., concerns and frustrations over workers' compensation remains a forefront issue for many organizations. Workers' compensation and related costs typically represent a significant component of a corporation's total cost of risk and, when inadequately managed, these costs rapidly escalate to a level that impairs acceptable financial performance.

In August of 2004, the National Academy of Social Insurance released the findings of an extensive survey and analysis of workers' compensation costs. The report confirmed that workers' compensation benefits payments grew at a higher rate than total wages as did employer costs for workers' compensation (premiums, benefits, and administrative costs for self-insurers).

Further to the continued challenge presented by workers' compensation costs, legislative reform developments such as California's SB899 are moving workers' compensation legislation matters out of insurance industry news and into the limelight among general business and financial press. This new dynamic of trends in legislative reform in part is driven by the desire to encourage better control of costs and retain or create favorable business environments and new job opportunities.

While it is too early to project the short- and long-term economic impact of such reforms, it is essential to craft strategies to maximize performance under these reforms. With recent headlines also focusing on costs associated with Texas and Tennessee workers' compensation, all indications are that legislative reforms by states and the federal government are sure to persist at an unprecedented rate.

With so many tactical techniques available, protecting the company's balance sheet involves much more than deciding to transfer or retain risk. To take full advantage of these reform trends, companies must first understand that the traditional approach to pre- and post-loss management and disability management may not be adequate. Therefore, it is critical for organizations to evaluate current workers' compensation best practices, re-evaluate early intervention programs, pre-loss mitigation approaches, and address any uncertainty.

Look to next week's issue of AonFocus for information about the release of the COSO ERM Framework.

Changes in employee stock options create employer opportunities, responsibilities

In March 2004, the Financial Accounting Standards Board issued a highly anticipated Exposure Draft regarding the accounting and valuation of employee stock options (ESOs). The changes in accounting for ESOs provide employers with an opportunity to carefully examine their equity incentive programs, keeping in mind that ESOs should be a cornerstone of a total compensation strategy. It is critical for employers to ensure that employees earn compensation only when corporate performance exceeds certain threshold levels of return, creating a true pay-for-performance system. To read a comprehensive report on the new valuation responsibilities and planning opportunities of ESOs, visit **www.aon.com/focus.**

Employer alert: Five messages every employee needs to hear

In the age of email and web-based communication, employees face an unrelenting barrage of company-generated messages. In this environment of continual communication, strategic business messages are often lost in the shuffle. However, there are five essential messages employees must receive to maintain productivity and help the company grow and evolve. These messages include becoming a wise health care consumer, being proactive about personal health, saving for retirement, preparing for change and maintaining individual marketability. Employers that communicate effectively on these topics can build a productive and satisfied workforce. To read a complete report, visit **www.aon.com/focus.**

"Workers' compensation is eating away at our bottom line. How do we control this expense?"

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401(k) bill offers reservists chance to contribute, cash out

By JERRY GEISEL

WASHINGTON—Employees called up from the reserves or National Guard to active military service could continue to make 401(k) plan contributions and take penalty-free withdrawals from the plans under legislation passed by the Senate last week.

The legislation would make clear that so-called differential pay, which many employers provide to make up for the difference between activated reservists' civilian and military pay, is, in fact, compensation, and thus is eligible for deferral to 401(k) plans.

The legislation also would exempt 401(k) contributions made from differential pay from the nondiscrimination tests that are run to guarantee that average deferrals made by highly compensated employees don't exceed by the permitted amount the average deferral rate of rank-and-file employees.

Additionally, the legislation would allow activated reservists to withdraw funds from their 401(k) plans without being slapped with the 10% tax penalty that normally is assessed on preretirement distributions from savings plans.

The distribution would be subject to regular income taxes, though, and the employee would have to wait for six months after receiving the distribution to resume contributions to the 401(k) plan. Additionally, the reservist would have to be called to active duty for at least six months to qualify for the waiver of the penalty tax.

Last week's Senate 401(k)-differential pay action—completed just before legislators recessed for a five-week campaign and election break—came after intricate maneuverings involving a corporate tax relief bill.

Those maneuverings began when congressional negotiators, who were working out differences in the tax cut bills earlier passed by the House and Senate, stripped a provision from the Senate bill that would provide federal tax credits to employers offering differential pay to reservists called up for active service.

The author of the tax credit provision, Sen. Mary Landrieu, D-La., was furious at the provision's deletion and vowed to bottle up final Senate consideration of the tax cut bill. Alarmed at that threat, coming as senators were anxious to recess to campaign, Senate Republican leaders worked on an agreement with Sen. Landrieu.

See 401(k)/page 42

Regulators seek new protocol

Illinois rule change on Kemper roils buyers, other states

By MEG FLETCHER

While Illinois regulators, major national brokers and Kemper Insurance Cos. representatives say the insurer is making progress with its orderly runoff, other state insurance regulators—and some risk managers—are concerned about not receiving timely information.

To help remedy this, the Financial Condition Committee of the National Assn. of Insurance Commissioners is proposing formal notification requirements, including imposing new deadlines, before a regulator could change accounting rules for an insurer in his or her state.

Several sources say the proposal stems in part from regulators' concerns about the Illinois Insurance Division's granting Long Grove, Ill.-based Kemper's main operating unit $1 billion in surplus relief in December 2003 (*BI*, March 15). In August, Kemper reported that its statutory surplus fell $183.5 million, or 86%, to $28.9 million for the first half of 2004.

Committee Chair Kevin McCarty, however, said the notification concept reflects the December 2003 goals of then-NAIC President Ernst Csiszar, who wanted to strengthen solvency regulation through uniformity and communication among states.

Specifically, the proposed change to the three-paragraph preamble to the NAIC's Statutory Accounting Principles would "standardize and codify the informal communication" that exists among state regulators in such situations, said Mr. McCarty, Florida's director of insurance regulation.

According to the proposal, a domiciliary regulator considering allowing an insurer to deviate from standard accounting practices—known as granting "a permitted practice"—must provide advance notice to regulators in all other states in which the insurer is licensed. The regulator also must disclose the nature of the accounting change as well as its cumulative financial impact on the company itself and any related affiliates.

The proposal also calls for providing a 30-day notice before approval, though a minimum 15-day notice would be acceptable if an explanation is provided.

The proposed change would reaffirm the authority of the nondomiciliary states. "The granting of a permitted practice by the domiciliary state regulator does not pre-empt or in any way limit any individual state's legislative and regulatory authority," according to the proposal.

The committee is seeking comment on the three-paragraph proposal through Oct. 26 and plans discuss it at a hearing in Atlanta

See KEMPER/page 42

Capital market boost to Central Fund is a first

Lloyd's debt issue to set precedent

By SARAH VEYSEY

LONDON—Lloyd's of London is planning to tap the capital markets for the first time in an effort to bolster its Central Fund.

Roger Sellek, commercial director at Lloyd's, said the market expects to raise about £500 million ($898.8 million) through an issue of long-term subordinated debt on the London Stock Exchange. The issue, which would likely have a 20-year term and would likely be redeemable by Lloyd's after 10 years, would be open to U.K. and European investors, he said.

Mr. Sellek said that the idea of tapping the capital markets was attractive because of the noncorrelation of capital markets and insurance markets. And, he said, the current low interest rate environment also made the issue of debt attractive to Lloyd's. Mr. Sellek said that Lloyd's decided on the approach after completing a review of its assets, which began last year.

The Lloyd's Central Fund, which is funded by levies on syndicates, is intended to meet syndicates' liabilities when they are unable to do so. The fund's assets currently total £781 million ($1.40 billion), which includes a reinsurance program with an aggregate limit of £500 million, according to Lloyd's. The reinsurance program, which expires at the end of the year, is currently the subject of arbitration proceedings stemming from a claims dispute between Lloyd's and the six reinsurers on the program (*BI*, April 7, 2003). The dispute is expected to be resolved by the second half of next year, Mr. Sellek said.

Rating agencies, which already provide financial strength ratings on Lloyd's, reacted posi-

See LLOYD'S/page 39

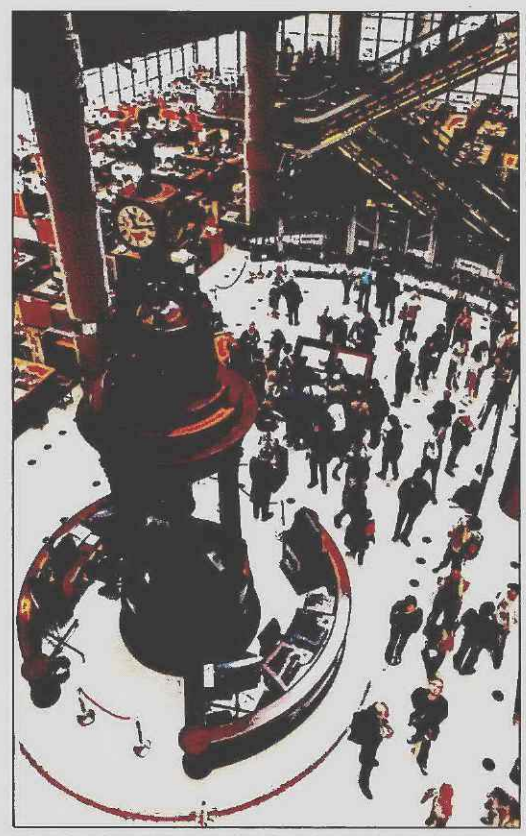


PHOTO: EPA PHOTOS

For the first time, Lloyd's of London will tap the capital markets to back up the Central Fund, which underpins syndicates' ability to pay claims.

Inside Business Insurance

Boards need help with new governance tasks

Risk managers have a key role to play in enhancing corporate governance: helping board members identify and deal with significant risks. Page 4

Use of cover grows for EIL exposures

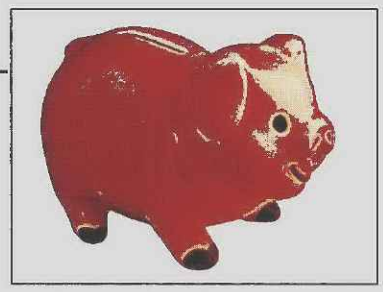
Companies need to assess their operations for risks that environmental coverage could address. Page 4

Nine named to select 2005 Risk Manager of the Year

BI is soliciting nominations for 2005 Risk Manager of the Year honors, to be judged by industry experts. Page 6

Flu vaccine emergency about bugs in the system

The shortage of flu vaccine shows that this country's tort and health care systems need a shot in the arm, one of this week's editorials says. Page 8



Changes considered to U.K. pension system

Changes may be needed to the pension system in the United Kingdom to ensure people have adequate savings. Page 37

Online

- The Datebook calendar lists upcoming industry seminars and meetings and allows you to add info on your own event.
- Searchable directories of safety consultants and rehabilitation management service providers, as well as other *BI* directories.
- New Opinion Poll for readers: Do you expect your 2005 group health care premium increase to be lower than the 2004 increase?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Ride Along Enclosed in Editions 09 and 10

Coventry goes national with acquisition of First Health

By GLORIA GONZALEZ

BETHESDA, Md.—Coventry Health Care Inc. will purchase First Health Group Corp. in a $1.8 billion deal in an effort to become a national player in the managed care market.

Bethesda, Md.-based Coventry said its acquisition of Downers Grove, Ill.-based First Health—announced last week—will enable it to operate nationwide and will add about 1.5 million health plan enrollees to its current rolls of 3 million, giving it greater negotiating clout with providers.

"Coventry Health Care has built a very successful market position in 15 markets throughout the United States. The acquisition of First Health enables us to extend our success beyond our existing borders," said Allen Wise, Coventry's chief executive officer, in a statement.

Stock analysts and others say, though, that Coventry could face difficulties folding First Health into its operations.

"It looks to be a transaction that will be full of integration challenges," said John Ward, chairman of the Cincinnati-based Ward Group.

One such challenge is the size of First Health, which has about half as many health plan members as Coventry. While prior acquisitions have helped to fuel Coventry's growth, those transactions involved mostly small, single-market health maintenance organizations that were purchased with internal cash holdings, analysts note.

In addition, First Health's business operations are very different than Coventry's; its main focus has been providing products and services to self-funded clients, while Coventry's major base is providing fully underwritten commercial health plans.

"First Health looks to me like less of an insurance company and more of a service company," Mr. Ward said. "It's not really obvious what the business case is of a HMO acquiring a services company in markets that are not overlapping."

The First Health acquisition will also thrust Coventry into lines of business, such as workers compensation, in which it has little or no experience.

"It definitely is a different strategic direction they're taking the company in," said Stephen Zaharuk, vp and senior analyst for Moody's Investors Service in New York.

Still, the transaction will result in a national health benefits company that will provide health insurance and administrative services to commercial and government clients in all 50 states, Puerto Rico and the District of Columbia. First Health will operate as a subsidiary of Coventry.

Coventry, which had $4.5 billion

See COVENTRY/page 42

PHOTO: ZUMA PRESS

Specialized coverage may be needed for risks such as chemical spills, though even milk and fruit juice have been considered pollutants in some cases, insurance experts say.

REBEX 2004

Use of cover grows for EIL exposures

By MATT SCROGGINS

CHICAGO—Got milk? If so, you may also have an environmental exposure.

Substances as seemingly innocuous as milk and cranberry juice can, under the right circumstances, become pollutants, said Tanya Andolsen, vp-environmental specialist at brokerage Palmer & Cay of Ohio in Cleveland.

In one incident, for example, a tanker truck hauling milk overturned and spilled its cargo into a waterway, killing fish in the area. In another incident, a tanker carrying juice overturned and caused similar pollution, Ms. Andolsen said.

But when the companies turned to their general liability insurers for coverage for related claims, the insurers refused to pay, citing pollution exclusions.

Such events underscore the need for companies to fully assess their potential environmental liabilities and to determine whether they need specialized coverage for such risks, said Ms. Andolsen.

She was speaking at an educational session at REBEX 2004, the annual conference of the Chicago and Wisconsin chapters of the Risk & Insurance Management Society Inc., held earlier this month in Chicago.

The marketplace for environmental coverage has changed considerably over the past decade, said Ms. Andolsen. She recalled a joke that was common 10 years ago: "You could buy environmental insurance, but you'd pay $1 million, you'd get a $1 million dollar limit and you'd have a $1 million deductible." While that is an exaggerated characterization, conditions certainly have improved in the market, she said, and more companies are using insurance to manage their environmental exposures.

"Deductibles are now reasonable, premiums are reasonable, there is significant capacity in the marketplace," Ms. Andolsen said.

When it first became widely available, environmental cover-

See EIL/page 34

APEX parts ways with Griffith

Brokerage unit Park Group to continue expansion plans

By SALLY ROBERTS

HAMILTON, Bermuda—Veteran insurance brokerage executive Gary R. Griffith, who last year formed specialty wholesale and reinsurance brokerage firm APEX Insurance Inc., has parted ways with the firm.

Shortly after stepping down from the helm of Dallas-based broker Summit Global Partners Inc. last October, Mr. Griffith announced the formation of APEX with the intent to grow the Dallas-based firm into a large-account-focused alternative risk management, reinsurance and specialty wholesale brokerage (*BI*, Oct. 27, 2003).

In its first move, APEX acquired Hamilton, Bermuda-based wholesaler and reinsurance broker The Park Group Ltd. from IAS Park Group, the Bermuda holding company for the brokerage and captive management operations formerly owned by Mutual Risk Management Ltd.

Upon closing the deal in December 2003, Park Group became a wholly owned subsidiary of APEX as its sole operating asset. It had revenues of more than $20 million in 2003.

Although plans called for Mr. Griffith to become chief executive of APEX, that never came to pass, according to Paul Scope, who was recently named APEX's CEO. Mr. Griffith served as a consultant to APEX's private equity provider—Dallas-based SunTx Capital Partners—and, last month, it decided not to renew his consulting contract, said Mr. Scope, who previously was chairman and CEO of Park.

Mr. Griffith did not return phone calls.

Mr. Scope said he is now in the process of changing APEX's name to Park Group Inc. for clarity.

Other than the name change, "nothing changes," said Terry Nichol, chief operating officer of Park. SunTx will continue to financially support Park, and the company will move forward with its strategic plan to expand its specialty wholesale insurance and reinsurance broking business through organic growth and acquisitions of quality people and companies, he said.

It remains to be seen whether Mr. Griffith, who has a track record for attracting capital and building brokerages, will seek to build another firm.

In addition to APEX, Mr. Griffith created Summit Global Partners in 1995 after the previous company he led, Bain Hogg Robinson Inc., was acquired by Acordia Inc. Mr. Griffith stepped down as SGP's chairman and CEO last September and last month SGP was acquired by Briarcliff Manor, N.Y.-based USI Holdings Corp., for an undisclosed sum (*BI*, Sept. 13).

29th Canadian Risk Management Conference

Risk managers have key role in governance efforts

By GLORIA GONZALEZ

WINNIPEG, Manitoba—Risk managers have a key role to play in enhancing corporate governance: helping board members identify key risks and make good risk management decisions.

Corporate scandals of recent years have made governance a hot topic and have radically changed the roles and responsibilities of board members of both public and private corporations, said Gail Cook Johnson, a partner with Mercer Delta Consulting Ltd. based in Toronto. She made her remarks at a session of the recent Canadian Risk Management Conference in Winnipeg, Manitoba.

Most boards traditionally have been passive, ratifying what the company's chief executive officer and management put before them, Ms. Johnson said. But the corporate governance movement has fundamentally altered that approach, she noted.

Boards must now go beyond rubber-stamping management's activities and try to certify for shareholders that the company's accounts are in proper order, that there is a proper CEO succession plan and that executives' compensation is appropriate, Ms. Johnson said. In some cases, boards must take on more of a management role if the company is having a financial crisis.

As board members' responsibilities grow, they need help from risk managers in deciding how to focus their attention.

"Risk managers play a very important role in identifying the kind of information and the kind of agenda topics that need to be brought before board members so they can make the proper decisions," Ms. Johnson said.

Risk managers need to make sure the board understands which questions to ask when reviewing company procedures, said Peter Watson, a consultant based in Edmonton, Alberta.

One way to help board members exercise risk management is to encourage the creation of a risk-review committee that is separate from other committees, including the audit committee, where many companies currently place responsibility for risk management, Mr. Watson said during the session.

Sun Life Financial has developed an executive risk management committee that meets monthly and is chaired by its chief risk officer, with senior representation from other key areas of the organization,

See GOVERNANCE/page 32

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Judges named for Risk Manager of the Year award

CHICAGO—Nine independent judges from all sectors of the risk management and insurance profession will select the 2005 Risk Manager of the Year and Risk Management Honor Roll.

Nominations for the awards, which will be announced in April, are being accepted until Nov. 22, 2004. Risk managers anywhere in the world are eligible to enter the competition. A nominee need not handle risk management responsibilities full time, but he or she must be a full-time employee of the organization whose program he or she directs.

The 2005 Risk Manager of the Year will be the 28th person to receive this honor. *Business Insurance* created the Risk Manager of the Year competition in 1977, on its 10th anniversary of publication, to recognize outstanding risk management practices. The first award was presented in 1978. *BI* created the Risk Management Honor Roll in 1981 to recognize outstanding achievements in risk management in employment categories not represented by the Risk Manager of the Year.

The winners will be profiled in the April 18 issue of *Business Insurance* and honored at an awards luncheon in Philadelphia, which will be held during, but independent from, the Risk & Insurance Management Society Inc.'s Annual Conference and Exhibition. *Business Insurance* and RIMS recently ended their informal partnership for the 2002-2004 awards.

Nine independent professionals will judge this year's entries. Honorees are chosen based on the judges' opinions of each nominee's program as detailed in the nomination form.

This year's panel comprises the 2004 and 2003 Risk Manager of the Year recipients, the 2004 Risk Management Honor Roll member, two insurer executives, two brokerage executives, a risk management consultant and an insurance educator.

Judges for the 2005 awards are:

- Joan Conner, director of Risk Management Services for the Maine Municipal Assn. in Augusta, Maine, and a member of the 2004 Risk Management Honor Roll.
- Steven A. Coombs, president of Risk Resources Inc., a consulting firm based in Elmhurst, Ill., representing risk management consultants.
- Frederick de Grosz, president and CEO of ABD Insurance & Financial Services Inc. in Redwood City, Calif., representing regional brokerages.
- Alan J. Maguire, president and CEO of AEGIS Insurance Services Inc. in Jersey City, N.J., representing mutual insurers.
- Christopher E. Mandel, assistant vp-enterprise risk management for United Services Automobile Assn. in San Antonio, and the 2004 Risk Manager of the Year.
- John J. O'Connell, the C.V. Starr Professor of International Risk Management at Thunderbird, The American Graduate School of International Management in Glendale, Ariz., representing educators.
- Brian O'Hara, president and CEO of XL Capital Ltd. of Hamilton, Bermuda, representing stock insurers.
- Sheila Small, assistant treasurer for risk management and insurance for Verizon Communications Inc. in New York, and the 2003 Risk Manager of the Year.
- Mario Vitale, chairman and CEO of Willis North America in New York, representing international brokers.

Judges will evaluate each entry based on 10 criteria (see related story). The nominee with the highest total score will be Risk Manager of the Year; the remaining individuals will be placed into one of four categories not represented by the RMOY:

- Corporations with sales exceeding $300 million.
- Corporations with sales of less than $300 million.
- Government entities, including public entity pools.
- Tax-exempt or nonprofit entities.

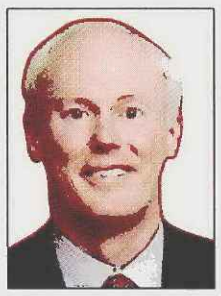
The highest-scoring individual in each field not represented by the RMOY will be considered for the Risk Management Honor Roll.

To obtain a nomination form for or for more information, please contact Karen Tucker, executive assistant of *Business Insurance*, at *ktucker@businessinsurance.com* or 312-649-5319. Forms and instructions also are available at *www.businessinsurance.com/cgi-bin/page.pl?pageId=40.*

Ms. Conner

Mr. Coombs

Mr. de Grosz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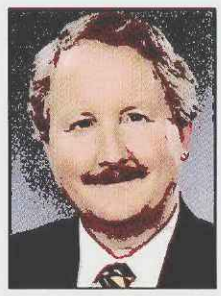
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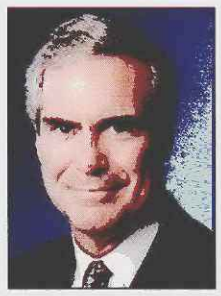
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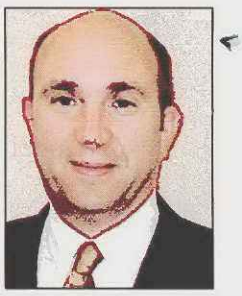
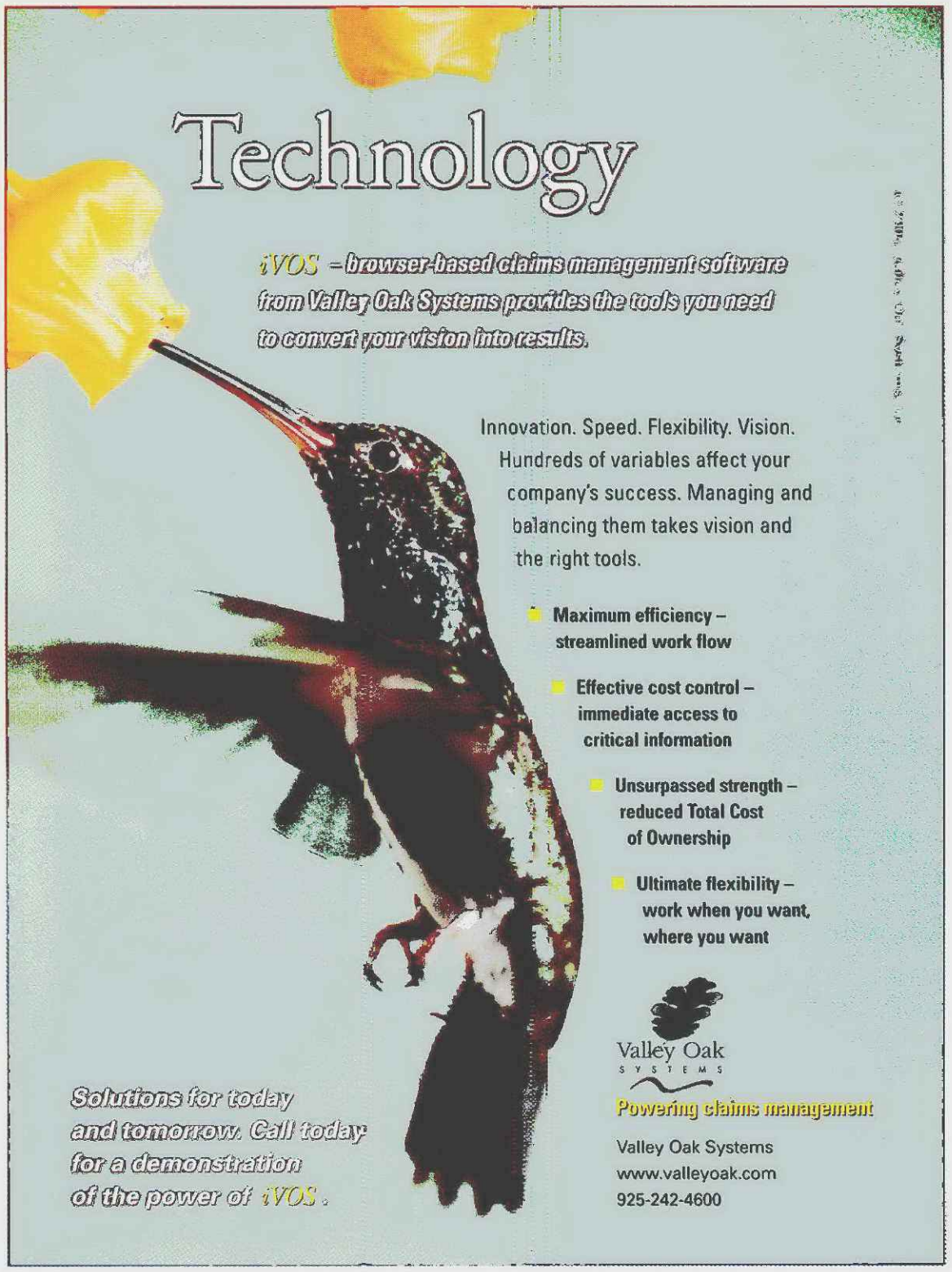

Mr. Vitale

Criteria for awards

Ten criteria are used to score the nominations for the annual Risk Manager of the Year Award and the Risk Management Honor Roll.

The panel of nine independent judges scores each nominated candidate on a scale of one to 10, according to how well he or she:

- Established and implemented an effective risk management program within the organization.
- Tackled and solved one or more major problems for his or her organization.
- Innovatively applies the diverse tools of risk management and insurance.
- Creatively and effectively uses the insurance markets to structure an insurance program that serves the needs of the organization (specifically addressing the types of policies purchased and manuscripted policies, if any).
- Established a workable intelligence system inside and outside the organization, culminating in a flow of information about events and activities that affect the organization's risk management and insurance (how the risk manager secures information from other departments in his or her organization and the use of risk management information systems are addressed in this criterion).
- Skillfully performs the functions of management in the overall organization and within the risk management/insurance department. The functions include planning, organizing, directing and controlling.
- Achieves the most effective risk management program at the optimum cost over the long term.
- Developed technical expertise in any or all of the broad categories included within risk management, leading to a better managerial grasp of the operational aspects of the job.
- Exhibits an attitude and performs activities fostering the advancement of the risk management profession (such as professional activities, speaking engagements, teaching and related activities).
- Develops in his or her career (as exhibited by job history, including current job description, education, honors and memberships).



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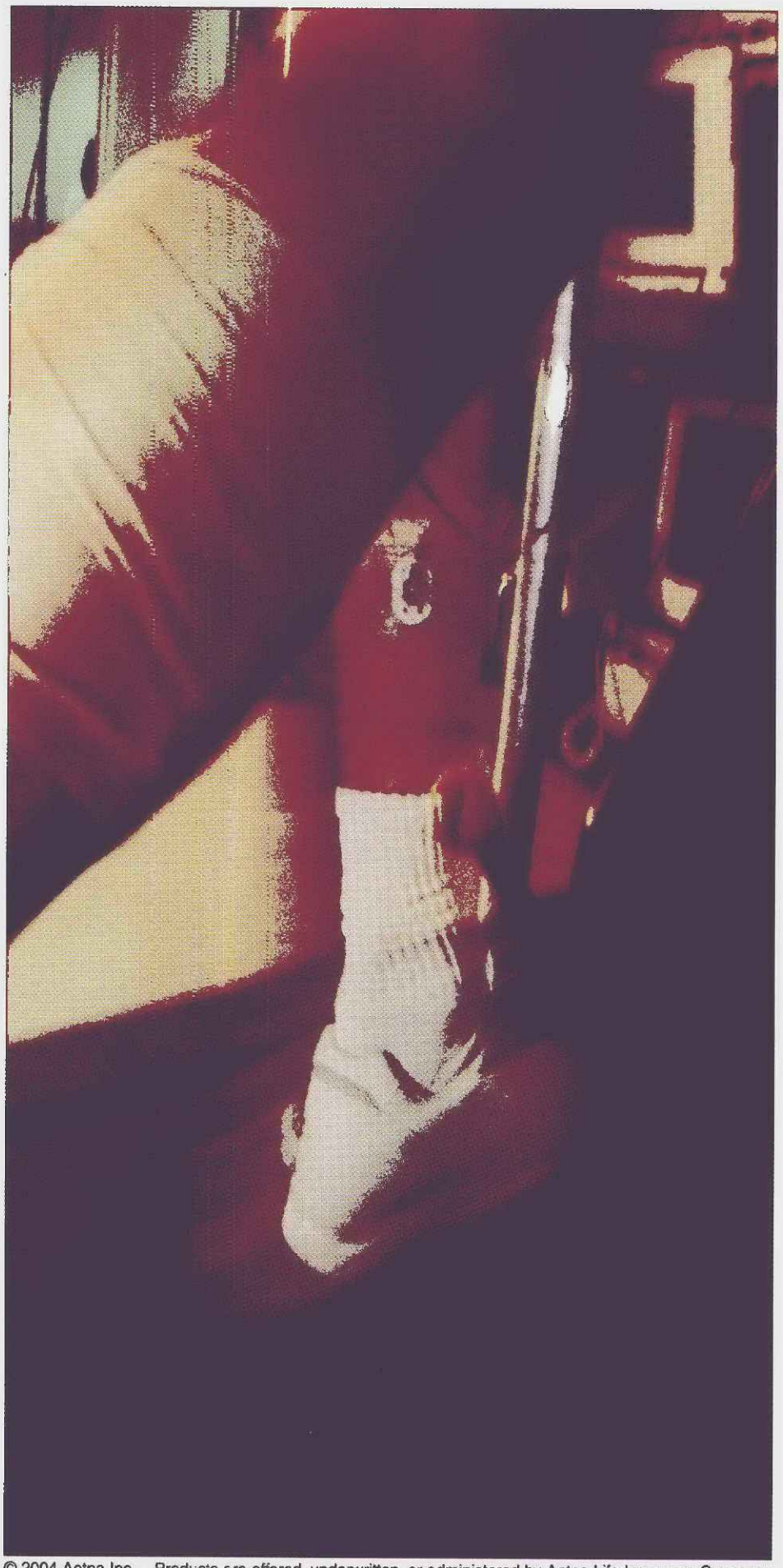

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Editorial

Lloyd's fund-raising plan a capital idea

LLOYD'S OF LONDON'S decision to raise some £500 million ($898.8 million) from the capital markets is a welcome development that should make Lloyd's a stronger and more financially sophisticated institution.

While individual companies with interests at Lloyd's regularly turn to the capital markets to raise funds, the planned issue of subordinated debt announced last week would mark the first time Lloyd's as a whole has turned to the money markets.

As we report on page 3, the proceeds will be used to bolster the Lloyd's Central Fund, which acts as a backstop for the whole market, and to ease the Fund's reliance on what has a been a problematic reinsurance program.

Lloyd's, despite all the problems it has faced over the past 15 years or more, remains an integral and valued part of the worldwide insurance and reinsurance market. Risk managers from numerous countries continue to rely on Lloyd's substantial capacity, and the market's underwriters remain some of the world's most innovative.

Yet, even though the underwriters themselves have often offered their policyholders sophisticated solutions to their coverage problems, the market's own finances have been supported by rather simplistic devices that leave little room for alternative funding options.

The debt offering will not only provide additional financial support for the market today but will also open the door to other capital market-based funding in the future.

Given the current interest rate environment, Lloyd's, in looking to the capital markets, appears to be taking a prudent risk management measure in diversifying its own financial support structure.

Liability ails vaccine system

EMPLOYERS ARE BRACING for increased absences and lost productivity during the flu season, thanks to a regrettable loss of half the usual supply of vaccine.

Influenza afflicts millions of people every year, claims tens of thousands of lives and carries a staggering financial cost to businesses in the form of lost workdays and reduced productivity.

As a result, many employers have long offered free vaccinations to their workers. But, as we report on page 1, the vaccine shortage is forcing many to cancel those plans and some to generously donate their supplies to people at greater risk of contracting the flu.

It seems to us that the recent shortage highlights some broader problems that legislators and businesses should address.

Risk managers may well ask, why wasn't the supply chain managed to prevent a regulatory violation in a major vaccine manufacturing facility from shutting down production? Trouble is, supply chain risk management works only when there are alternative suppliers.

In the case of flu vaccine, there currently are only two U.S.-approved manufacturers. With one of them now barred from distributing its drug this year, the federal government expects that it will be able to secure only approximately 54 million flu shot immunizations—just over half of the estimated need—from the only other approved influenza vaccine manufacturer.

The fact is, fear of liability and financial risks discourage many drug companies from producing vaccines. Indeed, President Bush during last week's presidential debate cited tort reform as one way to encourage greater supplies of vaccine in the future.

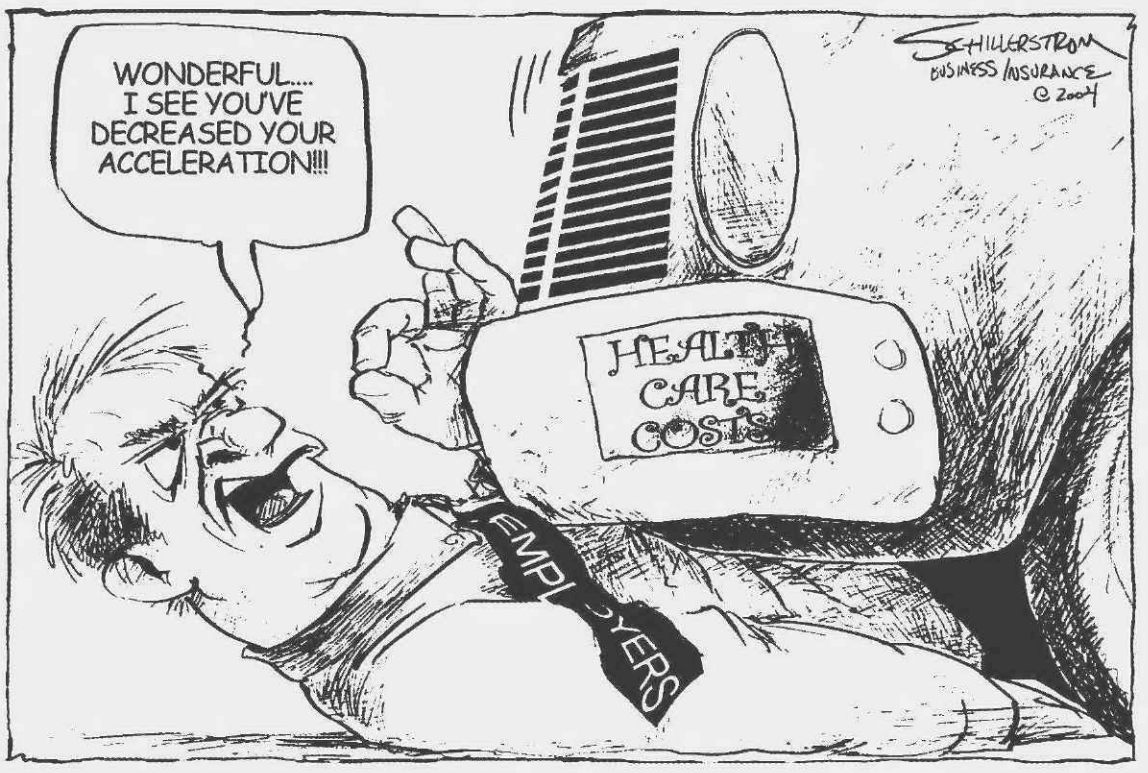
The Homeland Security Act of 2003 provided some liability protection for the makers of smallpox vaccine, but for other kinds of viruses, such protection is lacking. A smallpox outbreak is a frightening bioterrorism risk. Yet flu viruses are far easier to obtain and are often fatal to the very young, the elderly and those with compromised immune systems.

According the Atlanta-based Centers for Disease Control and Prevention, more than 200,000 people are hospitalized and 36,000 die because of flu and flu-related complications each year, on average, in the United States.

Where there is liability exposure and risk of financial loss, there is opportunity for the insurance industry.

We propose that businesses, lawmakers and insurers discuss ways to enact sensible tort reforms and create a bigger market for vaccine liability coverage. Doing so would help prevent another potentially life-threatening shortage of vaccine for the flu and other costly illnesses. Certainly sounds like good medicine to us.

Schillerstrom



And the beats go on...

To ensure continuing timely coverage, *Business Insurance* has formalized its reporters' beats. This list is not intended to be exclusive but rather to represent core subject areas of importance to *BI* readers. *BI* welcomes ideas and tips on these and other areas. Staff e-mail addresses comprise the first letter of the person's first name, followed by his or her entire surname and *"@businessinsurance.com."*

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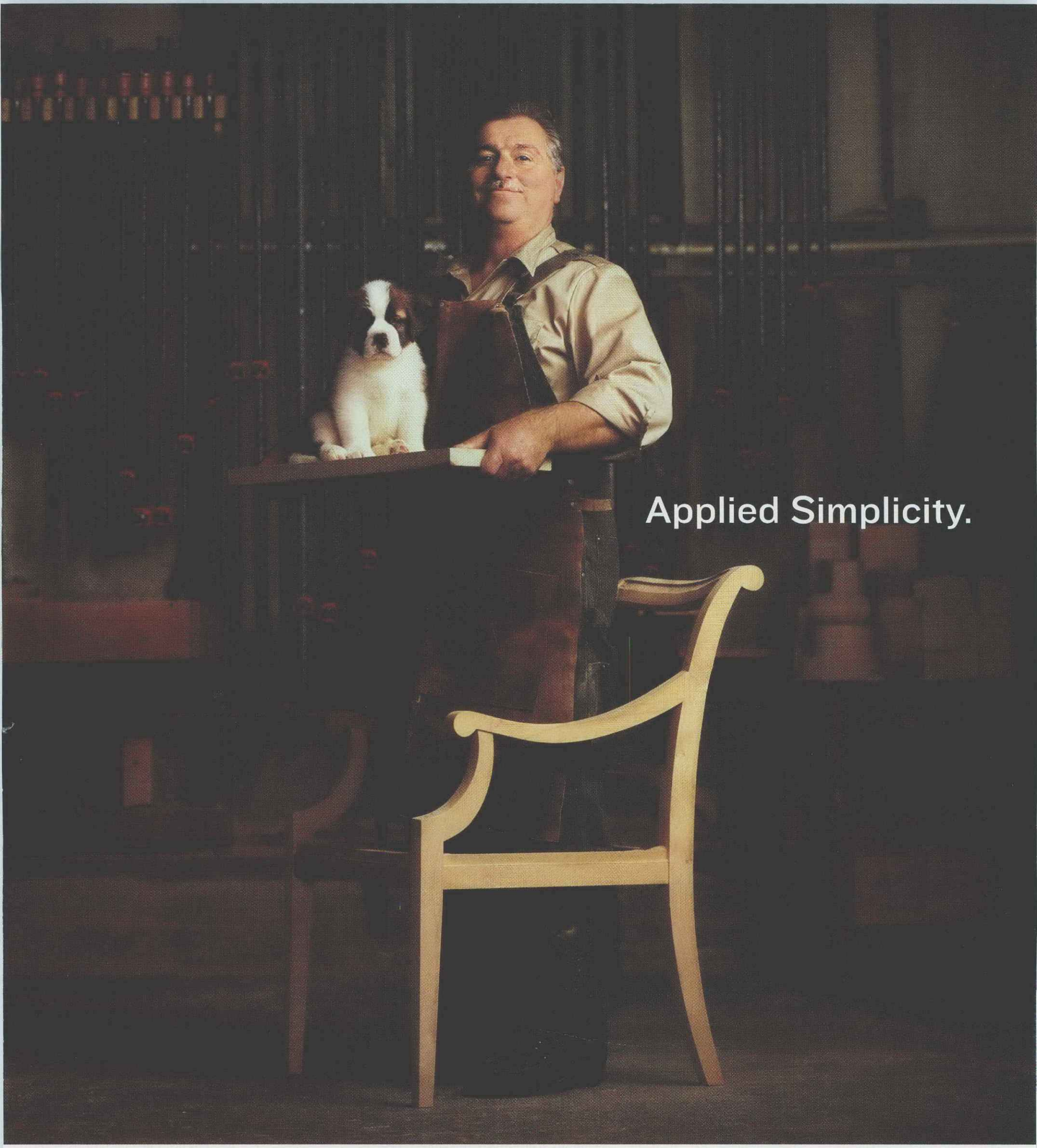

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Workers Compensation & Disability Management

Spotlight Editors: Roberto Ceniceros and Meg Fletcher

Disability programs widening scope on absences

By ROBERTO CENICEROS

Employers are now taking numerous approaches to integrated disability management as the concept continues to mature and companies seek to address employee absence regardless of cause.

Ten years ago, IDM advocates had a narrower focus. Employers mostly concerned themselves with consolidating the administration of claims for workers compensation and short- and long-term disability. They also considered integrating employee health care with the treatment for occupational injuries.

Over the years, though, melding together the treatment provided under various health care plans and workers comp programs has mostly fallen by the wayside, although some employers are merging employee health care data with employee absence data.

Instead, while integration paths now vary among employers, many are taking a much broader approach today than in the past. For example, they are combining the claims management for workers comp and short- and long-term disability with the administration of family and medical leave and incidental absence.

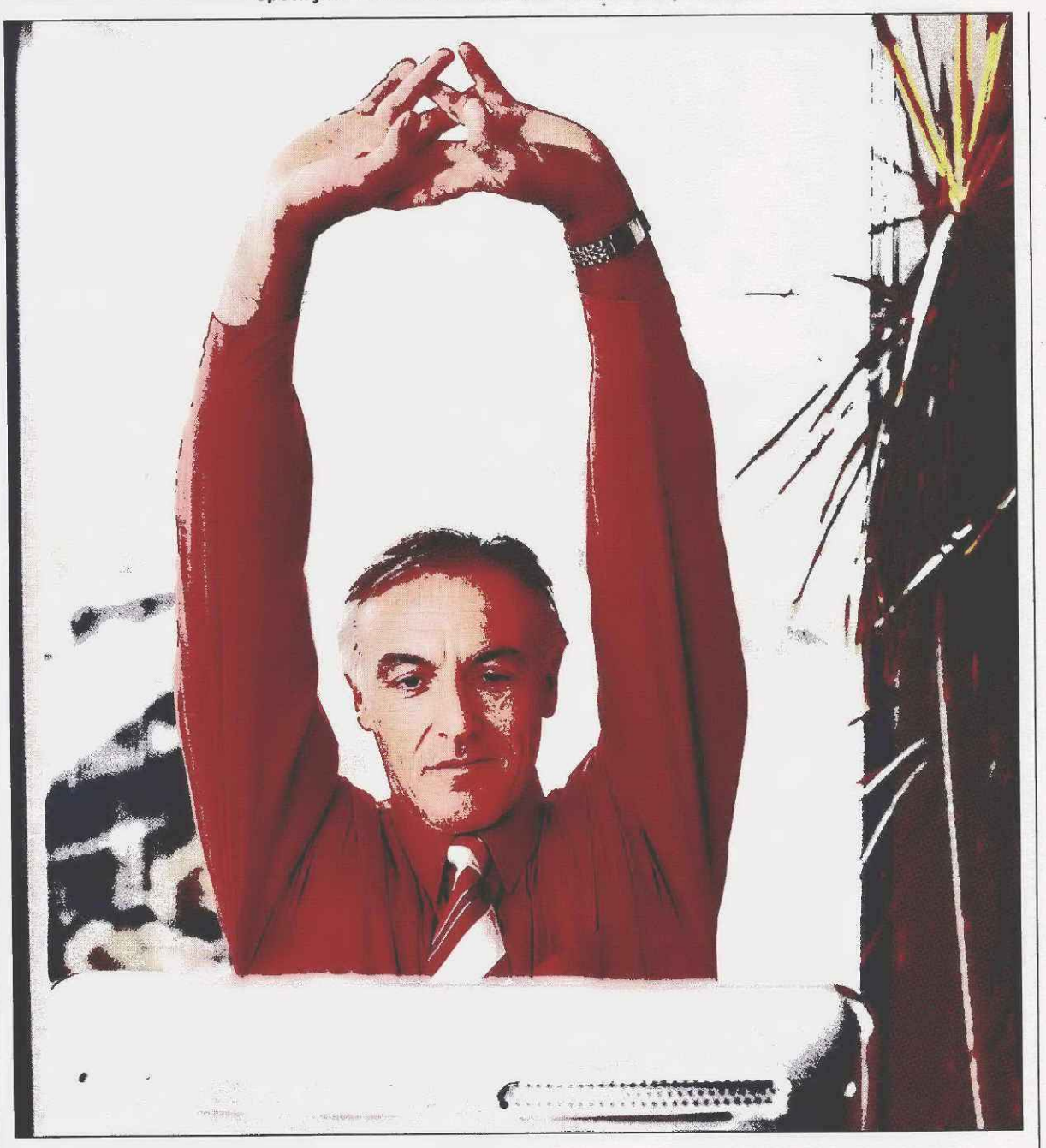
"The more cutting-edge employers have certainly added a lot of the incidental absence pieces, things like military duty, jury duty, vacation and unscheduled time, said Carol Harnett, national practice leader for group disability and life at The Hartford in Simsbury, Conn.

"There is talk of people trying to add health care back, but we have not seen anybody attempt it yet," Ms. Harnett said.

The growing realization that incidental absence affects a company's bottom line now drives more employers to include the monitoring of such absences in their IDM programs, other observers add.

A "full-cost benchmarking" study by the San Francisco-based Integrated Benefits Institute found that the

See IDM/page 12



Stretching programs may offer accident prevention benefits

By MICHAEL BRADFORD

Can a stretch a day keep workers compensation claims away?

It's hard to tell from what little research has been done, experts note. But there is a consensus that loosening up doesn't hurt and possibly helps keep accidents down as long as workers are committed to a long-term and regular stretching program.

Hard evidence that stretching contributes to fewer injuries "is a subject that is somewhat debatable at this point," said Rudy Suzich, loss control director for Fireman's Fund Insurance Co. in Novato, Calif. Some studies have contrasted stretching and injury rates among athletes and workers, he noted, which don't yield a true "apples-to-apples" comparison.

There is anecdotal evidence that companies that have implemented stretching programs have lowered injuries and workers comp costs, said Wayne Maynard, director of ergonomics and tribology—preventing slips and falls—at the Liberty Mutual Research Institute for Safety in Hopkinton, Mass. But employers that have seen such results generally already had in place a culture that encourages safe work habits, Mr. Maynard said.

Research that could isolate the benefits of stretching is difficult, he noted, because it is hard to filter out "confounding biases," such as other workplace safety measures, that would affect the results.

Part of the benefit of a stretching program may be mental, said Mr. Suzich. If management is concerned enough to implement a program, "this leaves a positive impression on the employees," he said. "The residual effect of that is that employees are feeling better about themselves when they're on the work floor. They are more cognizant of risk factors while they're working. It creates more awareness."

Used alone, stretching programs won't eliminate strains and sprains, said Mr. Maynard. "However, I've known companies with good safety programs that have put in stretch-break routines. They work well, and employees love them....If it works

See STRETCHING/page 13

Proposal would ban type of comp policy

By MEG FLETCHER

State overseers of workers compensation programs are proposing a controversial change to tighten the regulation of large-deductible insurance programs that would ban one type of deductible reimbursement policy countrywide.

In addition, the overseers are recommending a ban on employers self-administering workers comp claims unless they are state-approved self-insurers.

Those recommendations are two of 16 contained in a "Workers' Compensation Large Deductible Study," a white paper developed after lengthy deliberations by its drafters. The drafters are a joint working group of state insurance department regulators and representatives of state workers compensation administrators belonging to the International Assn. of Industrial Accident Boards & Commissions.

Controversy over some of the recommendations surfaced last month when the joint working group asked its parent committee, the Workers' Compensation Task Force of the National Assn. of Insurance Commissioners, to approve its 63-page study and pass it on for formal adoption by the NAIC.

After much discussion, the task force postponed consideration of the matter until the NAIC's quarterly meeting Dec. 4-7 in New Orleans to allow more time for comment.

Both regulators and industry representatives acknowledge that large-deductible workers comp insurance programs are important and widely used by large employers. The study discusses the broad impact of such programs on the workers comp marketplace; on the payment of benefits to injured workers; and on the gathering of data for rate making and taxation; as well as on insurer insolvencies, employer bankruptcies and guaranty funds.

"I think regulators are going down the right path in trying to keep better control of large-de-

See COMP/page 18

Surety market shakeup forcing self-insurers to seek letters of credit page 23

States keeping eye on savings after California adopts treatment guidelines page 28

Holistic health care turns to challenge of treating chronic pain page 30

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IDM: Programs now addressing incidental absences

Continued from page 10

amount spent on absences—including the cost of lost productivity and wage replacement payments—outpaces the amount employers spend on medical expenses, including workers comp medical costs, by a 4-to-1 margin.

The study, released in June, relied on data from 88 employers with a combined payroll of $190 billion and 3.3 million full-time equivalent employees.

At the very least, integration usually involves providing employees with a single toll-free number for reporting all absences or claims, regardless of their origin, observers say. It can also include data integration and integrated claims management.

IDM advocates say that, apart from addressing costs, the practice can also help employees optimize company-provided benefits while assisting employers with other issues, such as eliminating redundancies in benefit delivery systems.

'It really runs the gamut in terms of what employers are looking for. There isn't a one size fits all.'

Karen Ford
ESIS Inc.

Ten years ago, employers rarely knew how many of their employees were at work on any given day, Ms. Harnett said. That has changed with growing concern about employee productivity and absence management and has driven employers to integrate management components by borrowing strategies from across traditional corporate silos.

For example, employers are taking disease management strategies from the health care benefit side of the company and ergonomic practices that originated in the workers comp department, Ms. Harnett explained. They are applying those programs to prevent disability and to keep employees from exacerbating existing injuries and illnesses regardless of whether an injury occurs on the job.

Which components employers choose to integrate often depends on their comfort level and whether they have data available on their incidental absences across various corporate units, said Karen Ford, vp of product development and innovative services for ESIS Inc., a unit of ACE USA in Philadelphia.

Some employers say they are content with an IDM strategy that relies on their long-term and short-term disability insurers communicating with ESIS' workers compensation management services, Ms. Ford said. Other employers want more services included in the mix, such as disease management and behavioral health programs. ESIS does not provide those services but can coordinate with other vendors to provide them as part of an integrated package.

"It really runs the gamut in terms of what employers are looking for," Ms. Ford said. "There isn't a one size fits all."

There are now so many approaches to IDM that "you are seeing such a bewildering mix across benefits lines...it's almost impossible to define what it is except what is happening is silos are breaking down," agreed William Molmen, IBI's general counsel.

At Borgess Medical Center in Kalamazoo, Mich., one staff manages all leave of absence and disability payments, including those stemming from the Family and Medical Leave Act, workers comp and short-term disability, said Vincent Marcinek, integrated disability practitioner at Borgess. The same staff also manages the company's modified duty program.

As employers move forward with IDM, they usually still find that they must rely on several insurance and claims management vendors, especially if they have operations across several states. Although some employers would like to turn to a single vendor capable of managing all the areas they want integrated, they currently have few, if any, such options.

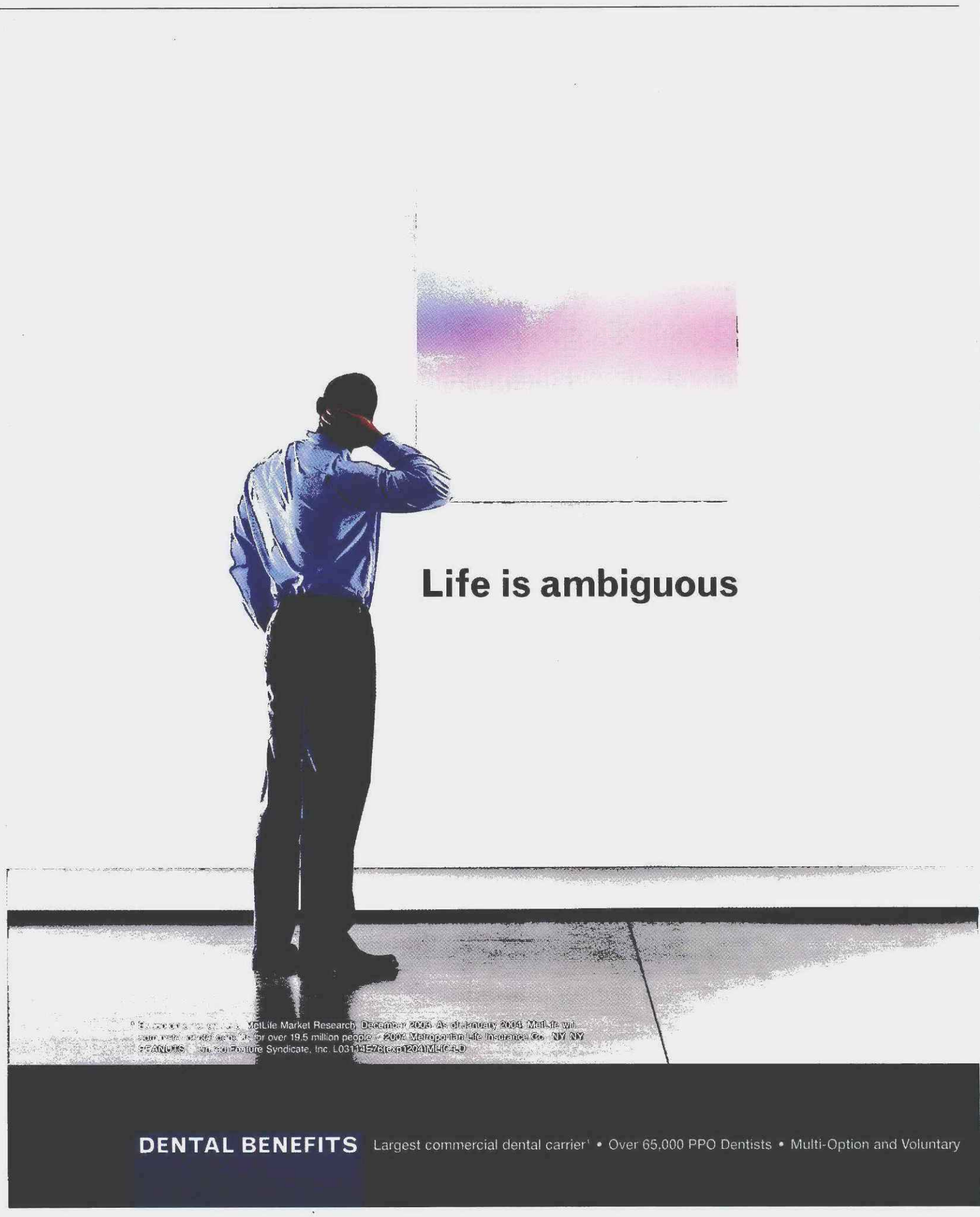
"That would be nice," said Mr. Marcinek, who also provides services to other employers under the name Vincent Consulting. "The trouble is finding a single vendor who really understands all aspects of workers compensation and then understands Family and Medical Leave Act and disability."

A firm that is strong in many of the necessary areas is likely to be a large operation, such as an insurer, Mr. Marcinek said, and having to coordinate across the various departments within a large insurance company may prove nearly as difficult as coordinating separate vendors specializing in specific fields.

Program features that vendors offer do differ significantly, and those features, along with product price, will influence employers' decisions on the mix of organizations they contract with, agreed Joe Wozniak, senior benefits analyst for the Automobile Club of Southern California in Costa Mesa.

Mr. Wozniak is also a founder and chief financial officer for the Disability Management Employer Coalition, a San Diego-based organization founded by employers to advance IDM. He said his company relies on a large insurer to provide

Continued on next page



Continued from previous page
workers compensation and long-term disability services but contracts with another vendor for short-term disability management, even though the large insurer offers that service as well.

'That is what an employer needs to know (about an integrated services vendor): do you already have your processes worked out, or am I your guinea pig?'
Karen Trumbull English
Spring Consulting Group L.L.C.

Mr. Wozniak said that though employers may talk about integrated disability management, without vendors that provide all the necessary components across all states, they may, in reality, just be practicing coordinated absence management.

Whether programs are truly integrated or merely coordinated is an important consideration for employers, said Karen Trumbull English, a partner specializing in workers comp and absence management at Spring Consulting Group L.L.C. in Boston.

The more integrated a program is, there is less chance of errors occurring, she said.

Ms. English categorizes programs as "fully integrated" when the same staff manages them by using the same processes and systems, she said.

"Coordinated" may mean that a vendor specializing in certain services outsources to other vendors for additional products that an employer wants included in its IDM program. That is appropriate if the vendors have coordinated their processes before contracting with the employer, Ms. English said.

"That is what an employer needs to know (about an integrated services vendor): do you already have your processes worked out, or am I your guinea pig?" Ms. English said. "Coordinated is OK, as long as it is seamless. But if it is just a handoff to another vendor, then that is not OK."

Stretching: Safety benefits possible

Continued from page 10
and people like it, why not?"

Some companies say they are seeing successes from stretching programs, albeit as part of their overall wellness efforts.

"It's a tool, not a solution, but it helps," said John A. Craigo, ergonomics program coordinator at The Jackson Laboratory, a facility in Bar Harbor, Maine, that performs genetic research on mice. Workers there sometimes suffer from elbow and shoulder problems in their work handling the animals.

Injury rates among the facility's 1,300 employees have fallen since the lab mandated twice-a-day stretches, he said, but it is not easy to apportion credit to stretching for the decrease in accidents.

"I would love to be able to say that by instituting this we have gotten our workers comp rate down. But there is so much that goes into this, it wouldn't be true. But we're doing something right," Mr. Craigo said.

Lab workers gather for around five minutes twice a day to stretch muscles in the forearm, back, neck and upper trapezius, Mr. Craigo said. The exercises are not warm-ups done at the beginning of the work shift but are performed later, when muscles are already warm from work.

One Oregon beverage company saw strains and sprains plummet 85% after the soft-drink maker implemented a prework stretching program.

At the Eugene Water & Electric Board, workers participate in a voluntary stretching program that seems to have helped lower injuries, according to Sherry Schumacher, disability program coordinator at the Eugene, Ore., municipal utility. The utility employs 460 workers.

Ms. Schumacher concedes that "we do have a pretty highly developed wellness program" that has a "strong value around prevention. Sometimes it is a leap of faith to say it is going to make a difference," she said of stretching, but the utility has seen a decrease of approximately 65% in musculoskeletal disorders since stretching became a part of the utility's wellness efforts four years ago.

The utility's workers who participate complete a "full-body stretch routine" before they begin work, Ms. Schumacher said, as a way to warm up shoulders, backs, hamstrings and other areas that are stressed by work movements.

Don Hadley, loss control consultant with Oregon's State Accident Insurance Fund, said a beverage company policyholder saw strains and sprains plummet 85% after the soft-drink maker implemented a prework stretching program. Two nursing homes and a hospital, also policyholders of the state accident insurance fund, are seeing some decreases in such injuries after requiring stretching, he said.

The one consensus among proponents of stretching is that a program won't go anywhere unless there is a strong commitment from management.

"The feeling is, that it is of benefit," Mr. Hadley said of stretching programs. The frustration is that

See STRETCHING/next page

Stretching: Programs may bring safety benefits

Continued from previous page
you rarely get people to buy in. I deal with 110 companies. Only 5% have it as day-to-day activities."

Employers have a better chance of finding success with stretching if they require it, Mr. Hadley said. Too often, he added, employers are "gung-ho for three weeks or a month and then it slowly goes away. It takes three to six months of someone being a champion. Once (a stretching program) gets to three to six months, it becomes a part of the culture."

Another key to success in maintaining a program is to pay employees to participate, Mr. Hadley said, rather than considering stretching an unpaid activity.

Employers considering stretching programs should understand that there can be a cost, Mr. Suzich said.

"I've read statistics where five minutes of warm-up can equate to approximately 1% of base payroll. That's something to consider, that there is an expense to having employees gather and stretch."

Sources also point out that stretching should be supervised by a health care professional or someone trained by a professional.

Mr. Maynard stressed that employers should not embrace stretching without first taking a look at work site ergonomics that could have a bearing on injuries. If employers looking for help in decreasing injuries "haven't explored that first," he said of ergonomics, and they want to implement stretching, "we might have some issues with that."

Instead of merely implementing stretching, "first we look at where the losses are," Mr. Maynard said. Then a comprehensive solution that could include stretching is developed.

There are detractors to stretching, though, who believe there is little need for it if proper ergonomics are considered.

"My argument is, look, let's do things that work," said Peter Budnick, president and chief executive officer of Ergoweb Inc., a Midway, Utah-based company that offers ergonomics consulting and training services.

While ergonomics matches work design and organization with human capabilities and limitations, "stretching, on the other hand, moves into human behavior," Mr. Budnick said. "People need to stretch because the ergonomics are not in place," he said.

Stretching in manufacturing operations, Mr. Budnick said, tends to be a "Band-Aid approach" to reducing injuries, whereas ergonomics "permanently improves the situation. That should always be your focus."

Mr. Budnick said that in situations where the "nature of the work is so static," such as some computer-operator jobs, standing up and moving around every hour could help. But he noted that workplaces also could be redesigned to cause computer operators to move around during the day.

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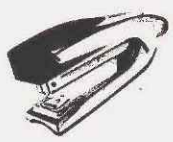
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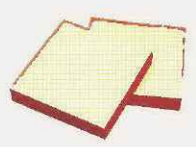
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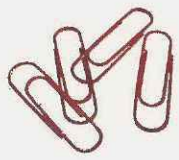
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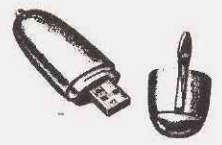
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SHARE OF THE SAFETY CONSULTING MARKET

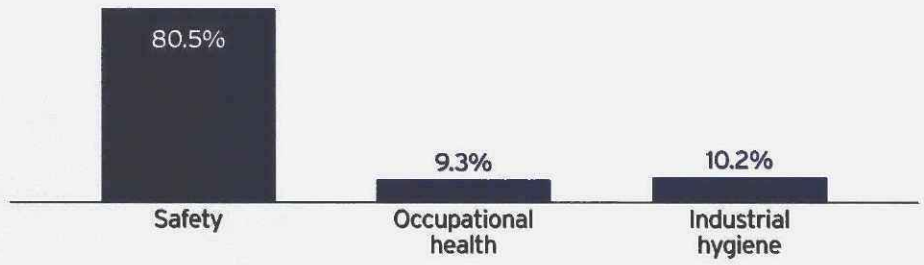
Percentage of market controlled by independent consultants vs. consultants owned by brokers/insurance companies

Independents	$98,487,000	42.6%
Brokers/insurance companies	$132,887,034	57.4%

Based 2003 unbundled safety consulting revenues for all companies surveyed.
Source: *BI* survey

GRAPHIC BY ADAM DOI

BREAKDOWN OF CONSULTANTS' STAFF



Source: *BI* survey

GRAPHIC BY ADAM DOI

Largest independent safety consultants

Ranked by revenues from safety consulting services

Rank	Company/Address	Phone/Fax/Web site	Unbundled safety consulting revenues	Staff	Total unbundled clients	Corporate/ institutional clients	Principal officer
1	Clayton Group Services Inc. 45525 Grand River Ave., Suite 200, P.O. Box 8008; Novi, Mich. 48376-8008	248-344-8577 Fax: 248-344-0229 *www.claytongrp.com*	$22,035,000	125	1,430	715	Philip J. Kaszar, president/CEO
2	Regional Reporting Inc. 40 Fulton St.; New York, N.Y. 10038	212-964-5973 Fax: 212-608-5074 *www.regionalreporting.com*	$17,000,000	200	300	300	Martin Myers, CEO
3	Broadspire NATLSCO Risk & Safety Services 4 Corporate Drive, Suite 100; Lake Zurich, Ill. 60047	847-719-5376 Fax: 847-719-5271 *www.choosebroadspire.com*	$15,300,000	103	350	320	Dennis Replogle, president/CEO
4	Risk Consultants Inc. 6611 Watson St.; Union City, Ga. 30291	770-964-1226 Fax: 770-969-7301 *www.riskcon.com*	$7,900,000	95	275	117	R. Michael Malone, president/CEO
5	Gage-Babcock & Associates Inc. 5175 Parkstone Drive, Suite 130; Chantilly, Va. 20151	703-263-7110 Fax: 703-263-1589 *www.gagebabcock.com*	$7,500,000	48	100	100	Cindy L. Cobb, president
6	F.A. Richard & Associates Inc., dba FARA 1625 W. Causeway Approach; Mandeville, La. 70471	800-259-8388 Fax: 985-624-8489 *www.fara.com*	$5,900,000	94	69	45	M. Todd Richard, president/CEO
7	Safety Resources 239 New Road, Building C; Parsippany, N.J. 07054	973-575-0900 Fax: 973-575-0901 *www.safetyresc.com*	$5,280,000	62	16	16	Jack Leonard, divisional president
8	North American Risk Management Inc. 100 First Ave. S.; St. Petersburg, Fla. 33701	727-287-1564 Fax: 727-287-1666 *www.narm.biz*	$4,980,000	90	174	76	H.R. Schade, president
9	National Safety Council 1121 Spring Lake Drive; Itasca, Ill. 60143	630-285-1121 Fax: 630-285-1315 *www.nsc.org*	$2,900,000	8	31	31	Alan McMillan, president/CEO
10	Strategic Safety Associates P.O. Box 80161; Portland, Ore. 97280-1161	503-977-2094 Fax: 503-977-3175 *www.ssafety.net,* *www.movesmart.com*	$2,850,000	9	108	108	Robert Pater, managing director

Independent companies include those not owned by brokers or insurers Revenues reflect safety consulting revenues provided on a direct, unbundled basis to corporate/institutional clients.
Source: *BI* survey

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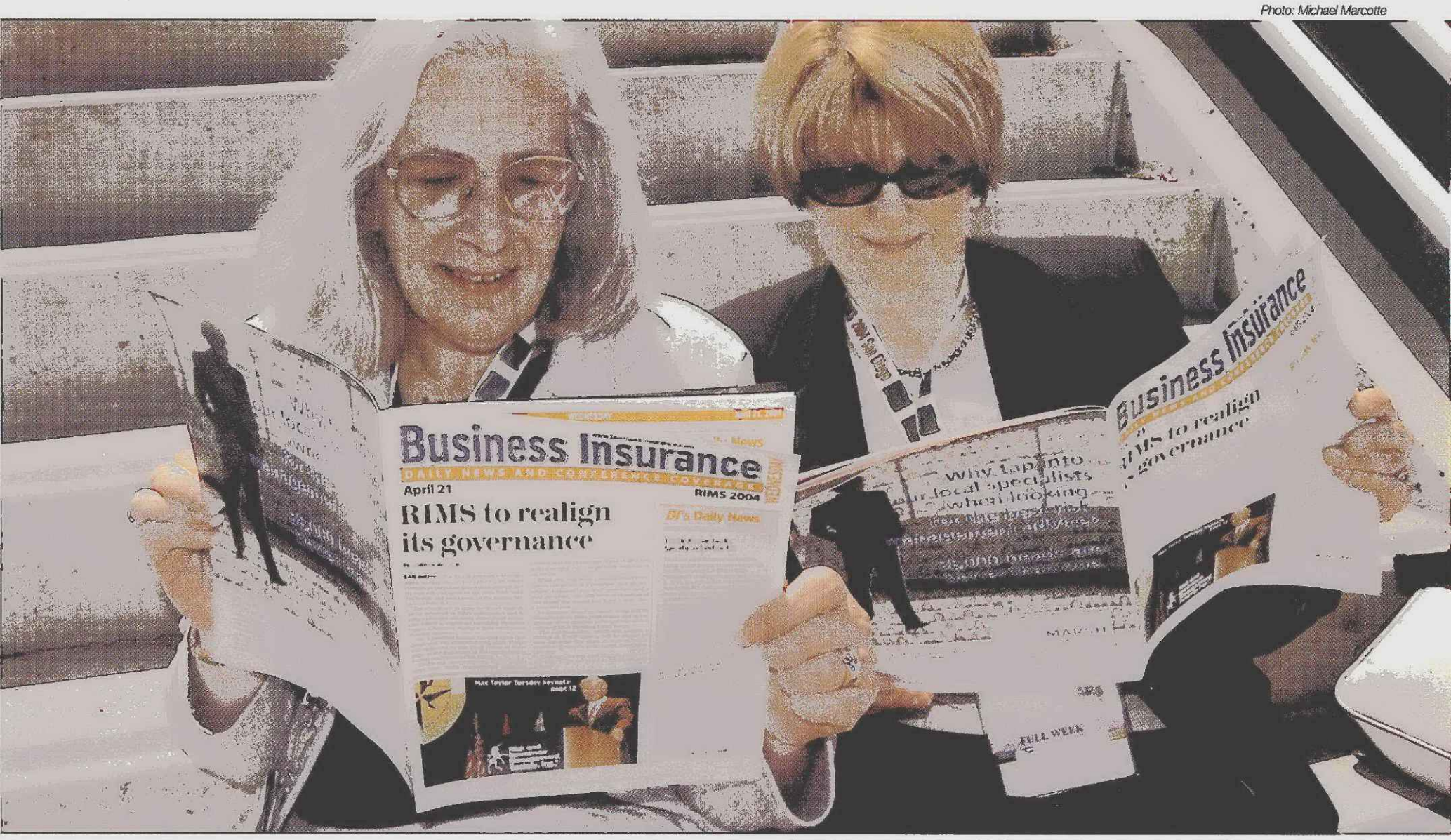

Dorothy Mayes and Maryla Sikora of FCCServices, Inc., Denver, CO at the 2004 RIMS Conference in San Diego, CA.

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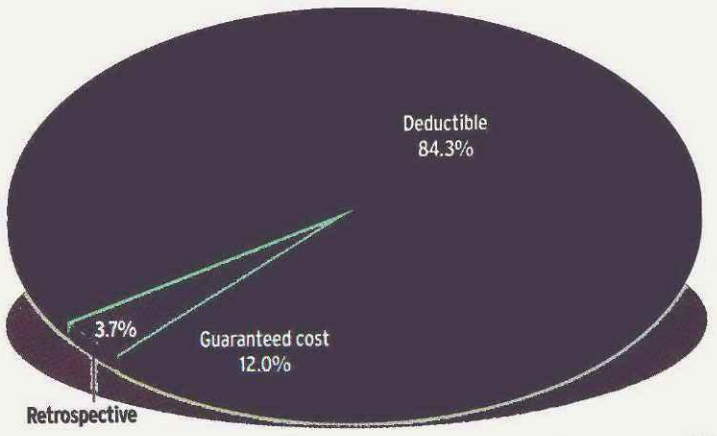
COMP PROGRAM DESIGNS

Workers compensation deductibles/retentions average $906,000 among large employers in a 2004 survey



Source: Marsh Inc.

GRAPHIC BY ADAM DOI

Comp: Proposed rule criticized

Continued from page 10

ductible programs," said Andi Schmidt, an attorney and risk management consultant with Pritchard & Jerden Inc., an Atlanta-based regional broker. "Because of the volume and diversity of (large-deductible) programs, I can see how easy it would be for them to lose control without specific regulation," she said.

Ms. Schmidt said her concern, though, is whether the administrative or legislative implementation of the recommendations will increase the costs of such programs. Although she is an associate member of the Risk & Insurance Management Society, Ms. Schmidt stressed that she was expressing her personal views.

Flexible employer option

"Large-deductible policies came into existence after the workers compensation market crisis in the late 1980s and early 1990s," the white paper says. The cost pressures that spurred the development of such programs "are with us today," said Bruce Wood, assistant general counsel with the Washington-based American Insurance Assn.

Currently, 84.3% of the large employers surveyed for Marsh Inc.'s 2004 Cost of Risk survey have deductible programs to cover their workers compensation risks, said Tim Brady, practice leader of Marsh's national casualty practice (see chart).

"Large-deductible policies are designed to give employers that are willing to retain most of the claims risk an option that reduces their insurance costs without depriving employees of the certainty of insured benefits," the white paper says. "When large-deductible policies operate as intended, they provide the best of both worlds—the employer gets cost savings from quasi-self-insurance, while its employees remain fully insured," the study says.

Large-deductible plans typically require the employer to post collateral, chiefly now in the form of letters of credit, to support claims.

When used to help provide workers comp insurance, though, states require an insurer to make a "unique" promise to protect workers from the default of an employer with a deductible program, the white paper notes. In contrast to general practice in other lines of insurance, the insurer must promise that "all valid claims arising out of injuries occurring within the policy period will be paid according to state benefit laws," the study says.

Consequently, the bankruptcy of an insured employer should typically have no effect on the payment of claims, although issues have arisen recently, including concerns about who owns the collateral supplied by a defunct insurer's policyholders. In addition, regulators are concerned about process-related problems that may delay benefit payments to workers, especially when employers with large-deductible programs go into bankruptcy.

While that matter is being litigated in some courts, both Pennsylvania and Illinois recently passed laws to shield such payments from being considered general assets of defunct insurers so they could be used to reimburse guaranty associations for payments made under the policies (*BI*, August 23).

Insurer failures in recent years have heightened risk managers' sensitivities to using only financially stable insurers, Mr. Brady said. One some occasions, risk managers will pay more to deal with a more financially secure insurer, he said.

Instead of focusing on insolvency-related issues, though, most of the white paper's recommendations deal with other process-related issues affecting ongoing companies.

For example, one of the most contentious proposals is a ban on one type of deductible reimbursement policy. According to the current wording in the white paper, the proposed ban would prohibit—or make subject to the approval of individual states—arrangements through which an employer purchases a large-deductible workers compensation policy and then pur-

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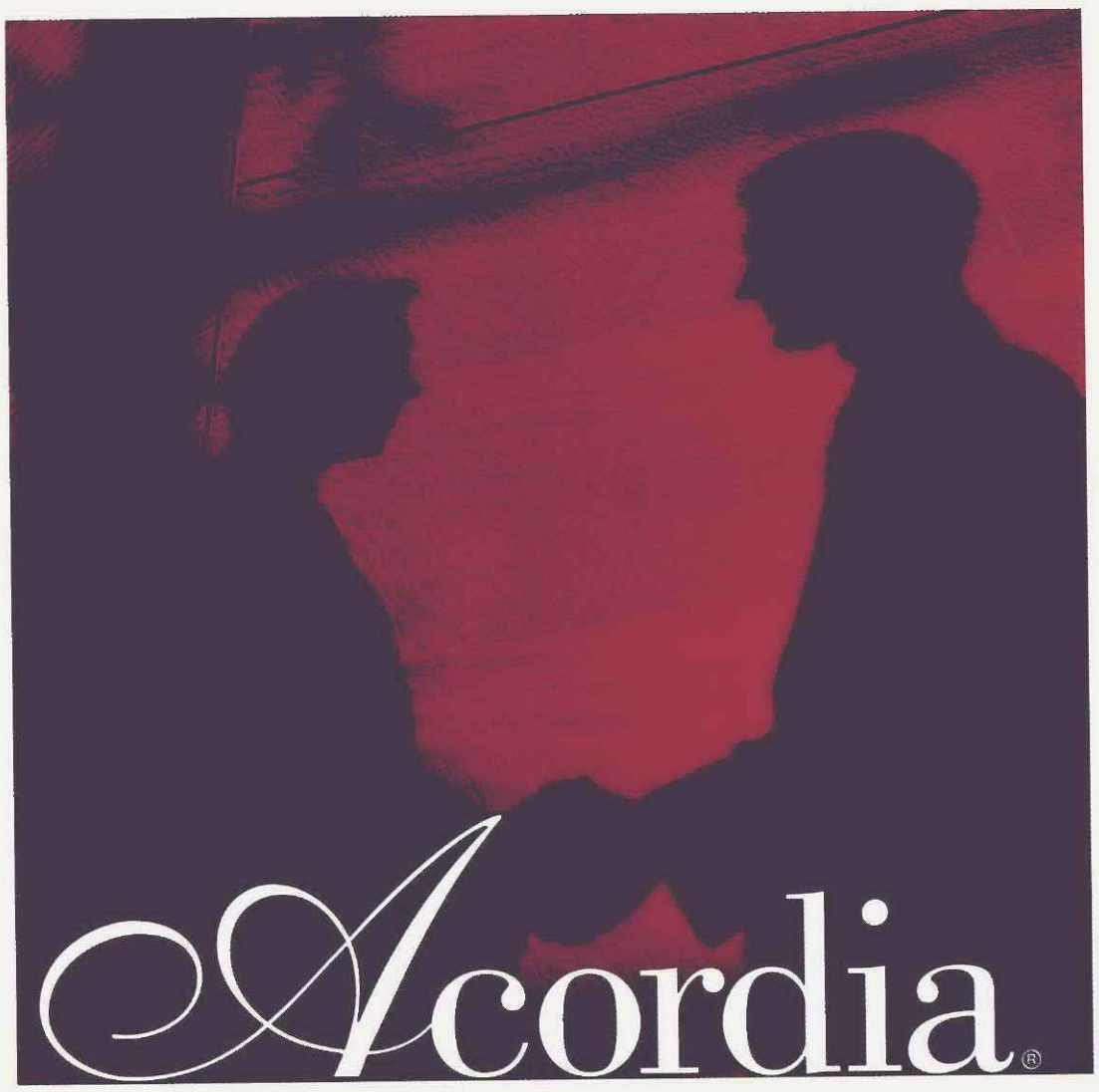

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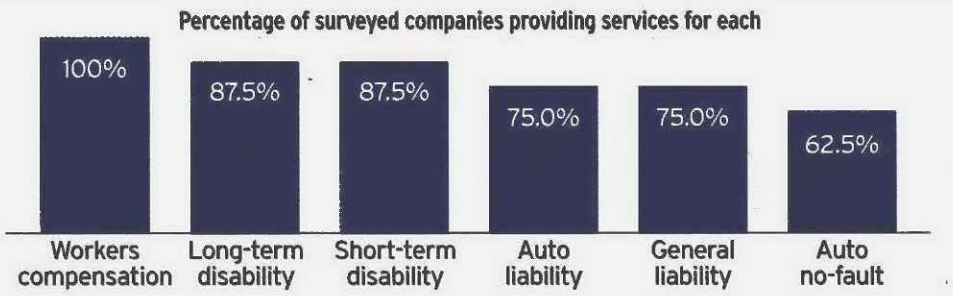

Source: *BI* survey

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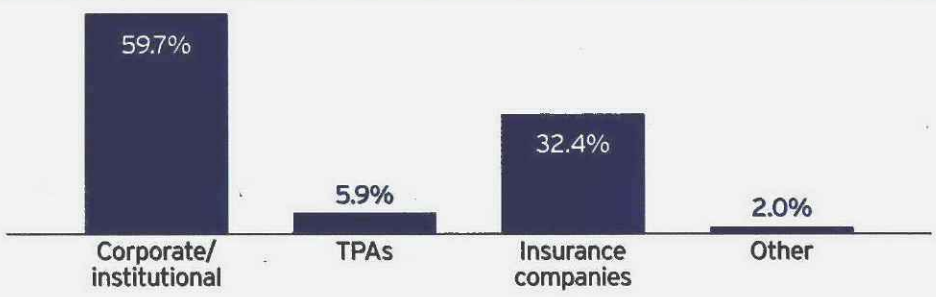
BREAKDOWN OF CUSTOMERS



Source: *BI* survey

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Largest rehabilitation service providers

Ranked by revenues from services provided directly to employers in 2003

Rank	Company/Address	Phone/Fax/Web site	Revenues from rehabilitation services in 2003	Professional staff	Total customers	Closed cases in 2003	Independent medical exam cases	Expert opinion cases	Principal officer
1	Concentra Inc. 5080 Spectrum Drive, Suite 400W, Addison, Texas 75001-4648	800-232-3550 Fax: 972-387-0550 *www.concentra.com*	$204,208,000	3,261	3,500	199,727	125,000	6,250	Daniel J. Thomas, CEO
2	Intracorp 1601 Chestnut St., Philadelphia, Pa. 19192	215-761-7100 Fax: 215-761-5538 *www.intracorp.com*	$173,000,000	1,292	691	198,460	4,540	31	Ken Ross, president
3	Corvel Corp. 2010 Main St., Suite 600, Irvine, Calif. 92614	949-851-1473 Fax: 949-851-1469 *www.corvel.com*	$138,000,000	1,200	2,000	55,000	60,000	550	Gordon Clemons, CEO
4	GENEX Services Inc. 440 E. Swedesford Road, Suite 1000, Wayne, Pa. 19087	610-964-5100 Fax: 610-964-1919 *www.genexservices.com*	$120,000,000	1,405	925	94,815	11,259	0	Peter C. Madeja, president/CEO
5	Crawford & Co. 5620 Glenridge Drive, Atlanta, Ga. 30342	800-241-2541 Fax: 404-845-3142 *www.crawford-andcompany.com*	$54,059,000	375	1,479	42,070	6,635	1,046	Marshall G. Long, CEO
6	MedInsights Inc. 4360 Chamblee Dunwoody Road, Suite 500, Atlanta, Ga. 30341	770-457-2400 Fax: 770-457-1500 *www.medinsights.com*	$18,420,000	87	250	32,000	565	0	Joe Zubretsky, CEO
7	GatesMcDonald 215 N. Front St., Columbus, Ohio 43215	800-336-4733 Fax: 866-587-7206 *www.gatesmcdonald.com*	$17,400,000	180	6,700	15,000[1]	8,000[1]	4,000[1]	Donna James, president/COO
8	F.A. Richard & Associates, dba FARA 1625 W. Causeway Approach, Mandeville, La. 70471	800-259-8388 Fax: 985-624-8489 *www.fara.com*	$7,153,000	55	158	4,300	0	0	M. Todd Richard, president/CEO
9	CareSys 15 River Road, Suite 200, Wilton, Conn. 06897	203-761-7300 Fax: 203-761-7311 *www.caresys.net*	$5,500,000	29	12	20,000	125	0	Peter Hotz, president/CEO
10	Jordan Services Inc. 900 Merchants Concourse, Westbury, N.Y. 11590	516-683-0100 Fax: 516-683-0259 *www.jordanservices.com*	$3,950,000	34	150	7,600	0	130	Morris Ehrenreich, president

Rehabilitation management services are defined as providing all services included in the medical management or vocational rehabilitation of an injured or ill individual. They do not include the delivery of physical rehabilitation or treatment, or case management for group life and health cases.
1 Estimated. Source: *BI* survey

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Comp: Regulatory proposal draws criticism

Continued from page 18

chases deductible reimbursement coverage for amounts falling under the deductible.

The reason for recommending the ban "relates to arbitrage, where an insurer and/or employer may be able to obtain more favorable tax or rating treatment by using the large-deductible program as a façade," the white paper explains.

The white paper, though, would make an exception for arrangements in which an employer "purchases a deductible reimbursement policy from an affiliated captive insurer, where the policy isn't used to service claims or to demonstrate financial responsibility."

A more limited ban

As of last week, though, the chief spokesman for the working group indicated that it is considering a more limited ban on deductible reimbursement policies. Alan Wickman, administrator of the actuarial division of the Nebraska Insurance Department, said, "The paper's dispute at this point is only with deductible reimbursement policies when used concurrently by the same insurer group that is writing the large-deductible policy."

In addition, Mr. Wickman indicated that the working group has no problem with using such products to commute past deductible experience. He also reaffirmed that the working group would accept most captive-related arrangements.

Responding to the original wording of the draft, spokespeople representing the American Insurance Assn. and the American International Group Inc. said they oppose this measure and disagree with the draft's analysis. A number of AIG clients, including nonprofit companies and public entities, "cannot by law open investment accounts of the type that would be used for cash collateral," wrote Virginia M. Doty, deputy general counsel for AIG's domestic brokerage group.

Some larger clients have found deductible reimbursement policies helpful because "insurers, especially in the hard market, have been pretty tough about collateral," including accepting letters of credit but not bonds, said Bill Granahan, senior consultant with Needham, Mass.-based Albert Risk Management Consultants.

"Collateral costs are going up significantly, and the availability and acceptability of bonds as collateral by insurers has decreased. Therefore, I would not like to see other options removed from the marketplace," said Wayne Naylor, director of risk management for York, Pa.-based York International Corp.

Another proposal of concern to risk managers would essentially ban employers from self-administering workers comp claims unless they are state-approved self-insurers. A related recommendation would require that only insurers and approved self-insurers contract with third-party administrators to handle their claims.

"Some regulators believe that large-deductible policies may exacerbate a tendency present in employers to self-administer their claims in order to save insurance or other claims administration costs," according to the white paper. "Self-administration of claims presents major problems: poor outcomes for the claimant if the claim is not handled properly; loss of data for ratemaking, research and system performance monitoring; and regulatory complications to resolve questions, confusion and disputes that arise from improperly handled claims," it says.

According to an IAIABC survey in June 2004, "workers compensation regulators widely shared the belief that nonreporting of claims, especially medical-only claims, was a practice in their state," the paper says. Smaller employers that are experience-rated were thought to be most likely not to report lost-time claims, the paper says.

"There is no evidence," however, that large-deductible policyholders are more likely to self-administer claims and/or to report these claims to their insurers, the white paper says. "Nevertheless, it would appear to be good regulatory practice to establish clear-cut laws prohibiting these undesirable practices and appropriate sanctions for employers detected violating the law (and insurers found complicit in such practices)."

In response to this proposal, several employer representatives emphasized the ability of employers generally to manage their claims fairly and appropriately. In terms of limiting TPA involvement, Mr. Wood said in preliminary comments that he is "unconvinced this is appropriate or necessary."

Mr. Wood also challenged the premise of the white paper, saying it is based on "untested assumptions" that large-deductible programs cause problems.

In addition, some insurers also were concerned about a recommendation that notice to the employer or the TPA handling claims should be considered as notice to the employer's insurer.

"Injured workers should not have their benefits compromised by the actions of an insured employer that attempts to handle a claim on its own," the white paper says.

Ms. Schmidt, however, said, "I feel that is fair."

Copies of the white paper are available by contacting Bob Card at the NAIC at *bcard@naic.org*. Comments should be submitted as soon as possible to Mr. Wickman at *awickman@doi.state.ne.us*, with a copy to Mr. Card.

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Surety market tightening boosts demand for credit

By JUDY GREENWALD

Some employers that self-insure their workers compensation risks are having a tougher time obtaining the surety bonds they often use to meet regulators' collateral requirements.

There has been a reduction in the number of insurers operating in that market, observers say, and those that remain often demand substantial collateral to back their bonds, set higher underwriting criteria and provide less capacity than was available before.

As a result, some employers are turning to letters of credit where state regulators permit their use. Letters of credit can be relatively easy to obtain, although banks are becoming more conservative about issuing them. While rates vary depending on the situation, letters of credit generally tend to be less expensive than surety bonds, industry observers say.

Napa, Calif.-based building materials producer Syar Industries Inc. found letters of credit to be "lots more cost-effective," said John Walker, risk manager. Surety bond insurers "kind of wanted belts and suspenders as far as their collateral went, so we chose to take (the letter of credit) option," Mr. Walker said.

Karen Banks, vp-risk management for Pleasanton, Calif.-based Shaklee Corp., said her company also is using a letter of credit rather than a surety bond. The market for surety bonds "had pretty much dried up, and you ended up having to post letters of credit to secure the surety bond anyway, so it's just better to post the collateral directly with the state," said Ms. Banks, whose company makes personal care and household products.

Observers say although they do not personally know of any cases where an employer has left the self-insured market because of this issue, it may at least give pause to employers who are considering self-insurance.

Market changes

There are several reasons for the reduction in insurers willing to write surety bonds for workers comp self-insurers. For one, bankruptcy filings by Enron Corp. and Kmart Corp. encouraged some surety writers—who were never large in number to begin with—to exit the surety market altogether, observers note.

Much of the surety bond liability for Houston-based Enron, which was estimated to be more than $2 billion at the time of its 2001 bankruptcy filing, is in the form of guarantees for product deliveries. But in Kmart's case, the Troy, Mich.-based retailer held $275 million in surety bonds for workers comp liabilities, which was a key factor in its 2002 bankruptcy filing. According to court papers, many of the companies providing the retailer with its surety bonds had demanded that Kmart post supplemental security.

Some underwriters entered the business in the early 1990s because it appeared to be a "pretty easy bond to write," but subsequently discovered the "financials can deteriorate very fast" as the overall economy worsened, said Bill Martin, vp at St. Louis-based Safety National Casualty Corp., which still offers surety bonds to self-insured employers. "Things really went bust, and some of the larger sureties may not have been knowledgeable about these types of bonds," he said. They "found out it was harder than they thought, and they just got out of the market."

Surety bond insurers 'kind of wanted belts and suspenders as far as their collateral went, so we chose to take (the letter of credit) option.'

John Walker
Syar Industries Inc.

The situation was exacerbated by the overall hardening of the market, the disappearance of some insurers and the merger of the St. Paul Cos. Inc. and Travelers Property Casualty Corp., which effectively left one fewer surety insurer in the market.

"We're in a tight underwriting cycle right now, and perhaps the effects are felt more with respect to workers comp bonds," given some of their inherent risk characteristics, including their larger amounts and long durations, said Robert Duke, director of underwriting for the Washington-based Surety Bond Assn. of America.

As a result, relatively few insurers are even available to write the business today, say observers.

"There's only been a handful of insurers that even considered this market, so it's not a competitive market" as it is for primary workers comp insurance, said Gregory Krohm, executive director of the Madison, Wis.-based International Assn. of Industrial Accident Boards & Commissions. "There's probably five or six that offer it in most markets."

"The surety market has shriveled up and is almost nonexistent for collateralization of workers comp programs," said Jeff Pettegrew, executive director of the Sacramento-

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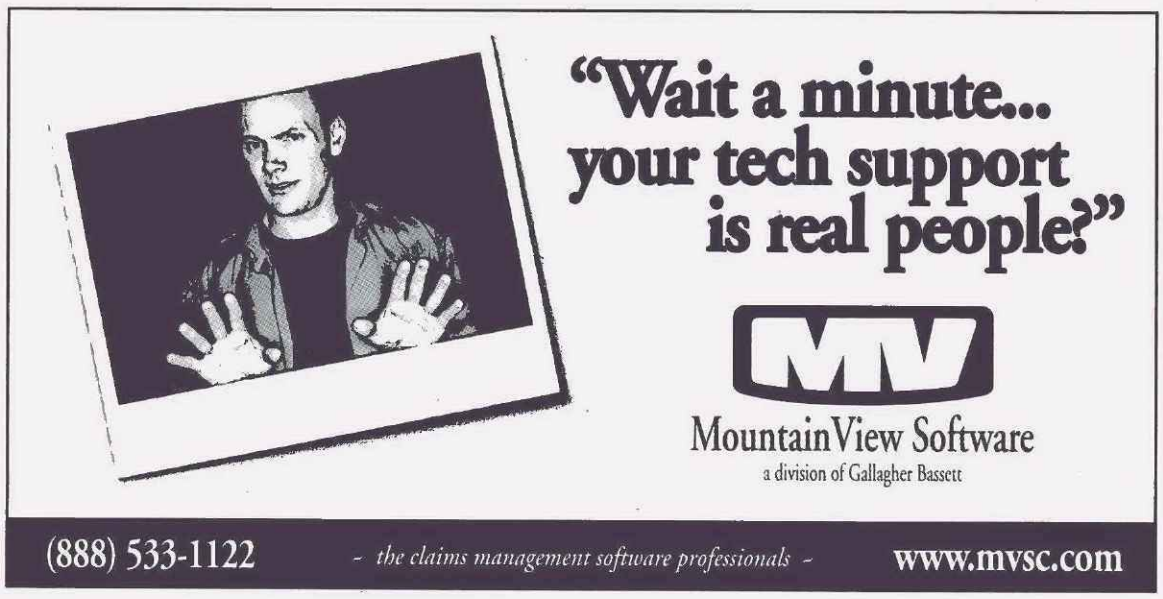

Surety: Market exits spur credit demand

Continued from previous page

based California Self Insurers' Security Fund. He noted the security fund offers an alternative security program for self-insured, investment-grade companies whose participants pay a fee to the fund in lieu of collateral.

"It's just not as easy as it used to be, and when you have a good surety, pretty much you're there, and you're going to stick there, because there just isn't the market that was there before," said Ellen Vinck, risk manager for U.S. Marine Repair Inc. in San Diego, which uses both a surety bond and a letter of credit.

Those insurers now in the market, though, are likely to remain, say observers.

"The sureties that provide the product today understand it, underwrite it well, and have sufficient capacity to service the industry at this time," said Ronald Richter, Plymouth Meeting, Pa.-based manager of marketing and reinsurance for Liberty Mutual Insurance Co.'s bond services group, which remains a market.

Remaining insurers are demanding more collateral, though, in some cases in the form of letters of credit. There has been little change in actual pricing, "but the collateral requirements have changed and increased," said Dale Haug, assistant vp at third-party administrator Berkley Risk Administrators Co., a Minneapolis-based unit of Greenwich, Conn.-based W.R. Berkley Corp.

The surety market 'remains in, I would say, a conservative or cautious position, with credit quality continuing to be a prerequisite for even consideration for providing a surety bond for self-insured status.'

Geoff Heekin
Aon Corp.

Underwriters say, though, that companies that are in strong financial shape have no problems obtaining surety bonds. "We provide the product for strong credits. We do not provide the product for weak credits," said Mr. Richter.

"The whole underwriting process is really subjective," he said, "and it depends on the creditworthiness of any given risk. So, it's very difficult to make any broad statement."

Safety National's Mr. Martin said self-insured employers that make a lot of money "probably don't have any trouble, but other companies might have trouble getting surety bonds, and might have to get a letter of credit because they can't get an uncollateralized bond for security."

Depending on the company, Safety National may ask for either no collateral at all, or up to a full 100% of its exposure to back a surety bond, said Mr. Martin. Even once the bond is issued, "you really have to have a sharp eye, looking at the company's financials once or twice a year, checking things out," he said.

The surety market "remains in, I would say, a conservative or cautious position, with credit quality continuing to be a prerequisite for

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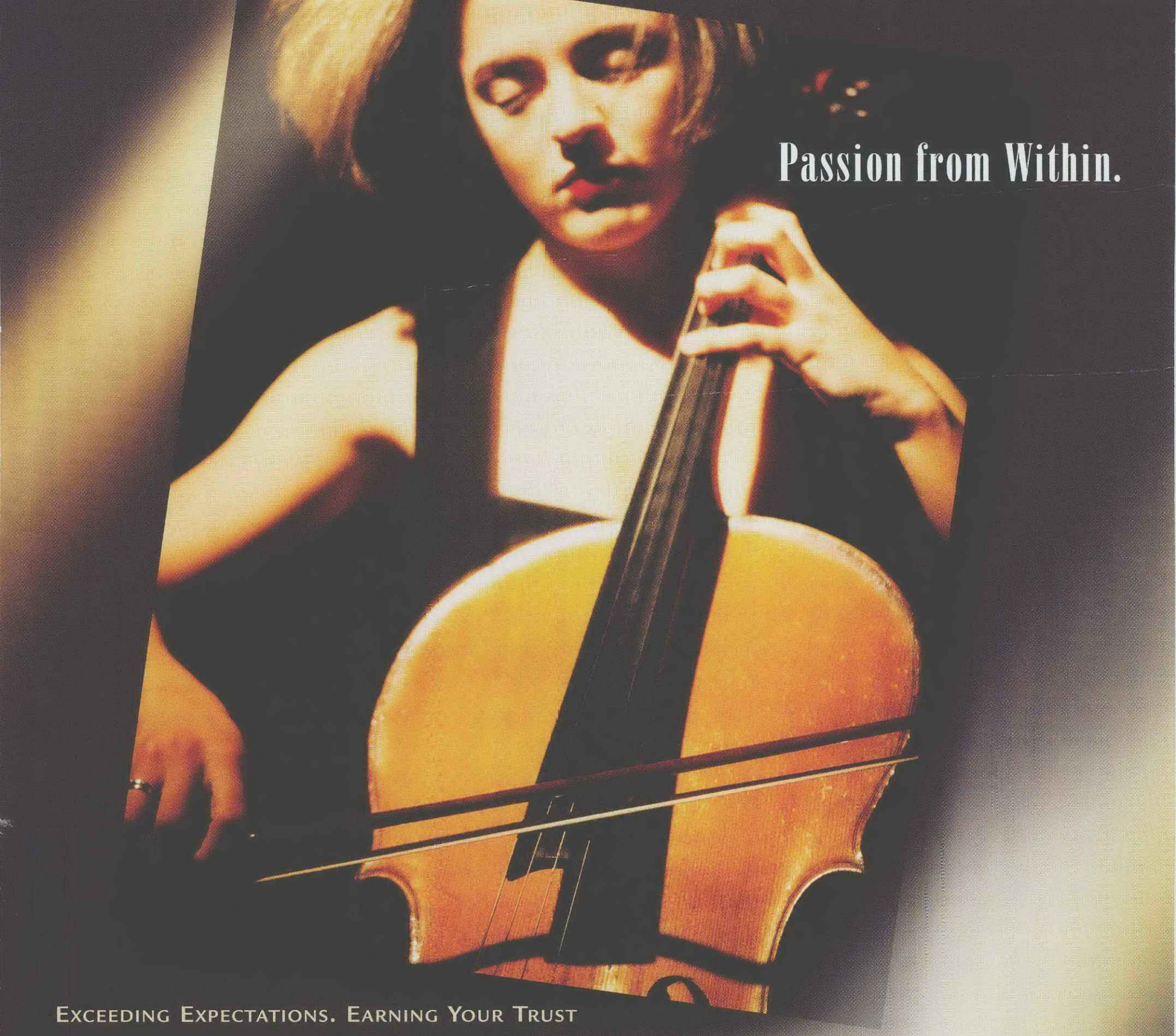

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Surety: Market tightening boosts demand for credit

Continued from page 24

even consideration for providing a surety bond for self-insured status," said Geoff Heekin, managing director of commercial surety services for Aon Corp. in Chicago.

The traditional players are providing self-insured workers comp bonds only for investment-grade companies, and even for those employers, "there is a finite amount available to any one name," said Mr. Heekin.

Furthermore, the cost advantages of surety bonds compared with letters of credit, which were "startlingly apparent in the '90s, have been tightened up, but I would say surety remains, from a total cost of capital (perspective), still a preferred product for those who could secure it vs. a letter of credit," he said. This is because a letter of credit calls for a capital commitment from the employer, and there are utilization and opportunity costs to consider as well. "The surety industry continues to offer an alternative capital pool to call upon outside of banks," said Mr. Heekin.

Use of letters

As a result of the difficult market, many self-insured employers are turning to letters of credit instead.

"I've found, overall, that more people are getting letters of credit as a percentage, compared to surety bonds, than they used to," said Mark Johnson, manager of the office of self-insurance plans at the California Department of Industrial Relations in Sacramento.

The Tallahassee-based Florida Self-Insurers Guaranty Assn. Inc. now has $112 million in posted surety bonds and $167 million in letters of credit, "and the trend has been most definitely the replacement of surety bonds with letters of credit," said Executive Director Brian Gee.

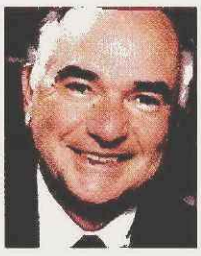
With some insurers asking for letters of credit to back their surety bonds, employers are simply replacing their bonds with the letters of credit, said Jeff Lapham, Helena, Mont.-based program manager for the Workers Compensation Regulation Bureau's self-insurance unit, which is part of the state Department of Labor and Industry.

Montana regulations permit both approaches, he said. "It doesn't make any difference to me whether it's a letter of credit or a surety bond, but (a letter of credit) does save the employer money," he said.

Certainly, banks "have an ability to secure and/or structure their credit in a variety of manners that aren't available to sureties," said Mr. Heekin. "The universe of customers who could secure a letter of credit is greater than those who might be able to qualify for sureties. In the past, we could have seen low-investment-grade companies being able to secure (sureties), whereas today that market really does not exist."

Observers say that, at least so far, the supply of surety bonds has apparently not led employers to leave the self-insured market.

"I haven't seen that be an issue," said Alan McLain, Little Rock-based self-insurance director for the Arkansas Workers Compensation Commission. "I'm sure it's a factor for people evaluating whether to come into self-insurance, but I haven't seen anybody leaving who's already self-insured."



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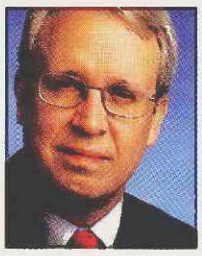

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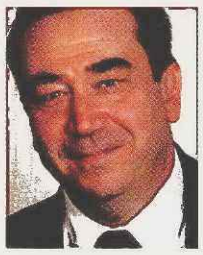

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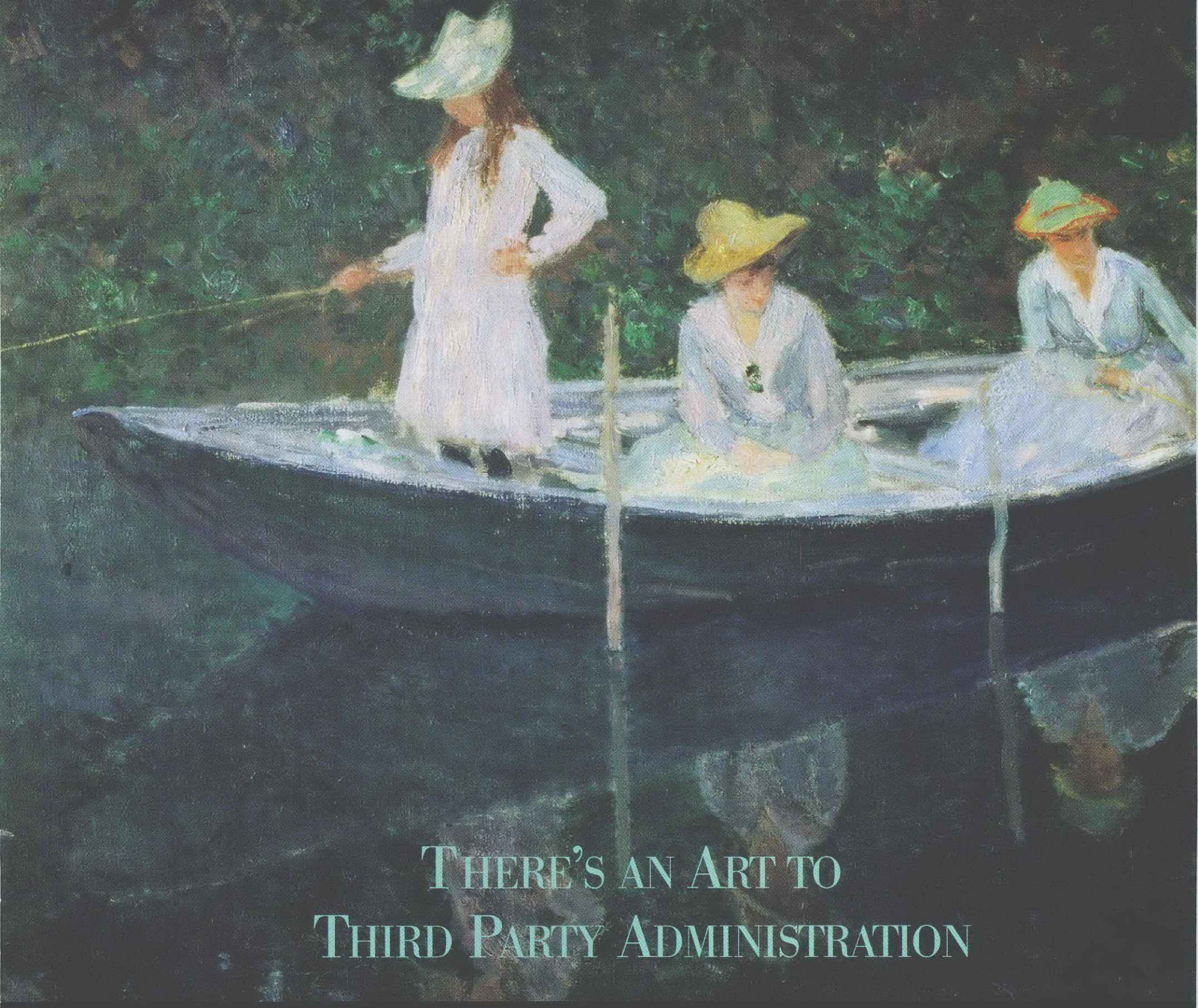

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Treatment guidelines can help keep comp costs down

By GLORIA GONZALEZ

Medical treatment guidelines have become a hot topic in the workers compensation insurance industry since the use of guidelines was mandated as part of an effort to control California's spiraling workers comp costs.

The adoption of the guidelines in California apparently has already had a significant impact on reducing workers comp costs and overutilization of medical services since workers comp reforms were passed earlier this year.

Medical treatment guidelines describe the consensus of occupational doctors about which therapies are most successful in treating employees suffering from the most common work-related injuries. "The guidelines basically give you a roadmap for every diagnosis," said Maddy Bowling, senior vp, director of managed care services for Memphis, Tenn.-based Sedgwick Claims Management Services Inc.

Although these guidelines have been used in the treatment of occupational injuries for at least 15 years, they are receiving increased attention this year due to California's adoption of the guidelines issued by the Arlington Heights, Ill.-based American College of Occupational & Environmental Medicine. While California is the only state that has officially adopted the ACOEM guidelines, other states are exploring the possibility of using them as well, an ACOEM spokeswoman said.

The other states are waiting to see how successful the guidelines are in reducing workers comp costs in California before incorporating them into reforms in their states, observers say. "If California is successful, others will follow," said Shelley Boyce, chief executive officer of King of Prussia, Pa.-based MedRisk Inc., which provides specialty managed care services to the workers comp insurance industry.

An early analysis of workers comp claims after enactment of the California reforms indicates that the use of medical guidelines has already had an impact in reducing utilization and claims costs.

In the three-month period following passage of the legislation, Sedgwick CMS saved about $2.5 million for its clients, Ms. Bowling said. "We're finding very good success with the ACOEM guidelines in California," she said. "There are real cost savings to be had when you utilize appropriate treatment."

Duluth, Ga.-based Professional Review Inc. has completed more than 500 chiropractic peer reviews in California since early April. In 55% of the reviews, the treatment regimen was modified through the use of guidelines and peer-to-peer discussion, while 40% resulted in a recommended denial of medical necessity for planned treatment. As a result of these peer reviews, potential savings are estimated at more than $2 million, according to PRI's CEO, Debra Borger-Cerrato.

California employers are anticipating favorable results from the use of the guidelines, although most say it is too early to tell what the cost savings will be. Bill Zachary, vp of corporate workers comp for Pleasanton, Calif.-based food and drug retailer Safeway Inc., said his company is already seeing "significant" savings being generated via utilization reviews as well as changes to the fee schedule for outpatient services.

'We're finding very good success with the ACOEM guidelines in California. There are real cost savings to be had when you utilize appropriate treatment.'

Maddy Bowling
Sedgwick Claims Management Services Inc.

"The employers have been pretty happy with the legislation as a whole," said Gary Glass, team leader, technology claims, for ABD Insurance & Financial Services Inc. in Redwood City, Calif. "I think the employers are optimistic that the costs are going to be controlled more than they have been in the past."

Medical treatment guidelines help manage claims by providing guidance on the most effective treatments for work-related injuries. Doctors who want to prescribe treatments outside the guidelines must now justify exactly why the treatment should stray from the guidelines, said Dr. David Deitz, vp, national medical director, for Liberty Mutual Group Inc. in Boston. If a doctor cannot give a valid reason for prescribing a course of treatment not recommended by the guidelines, coverage can be denied, he noted.

"If it falls outside the guidelines, we'd like to know why," Mr. Deitz said. "It gives us a way to focus claim management on some of these exceptions."

The guidelines and peer reviews for disputed treatments give insurers a way to cut down on overutilization of medical services, Ms. Bowling said. For example, before the adoption of the ACOEM guidelines in California, a doctor could prescribe 50 physical therapy treatments—a necessity only in the case of an unusual injury—and insurers

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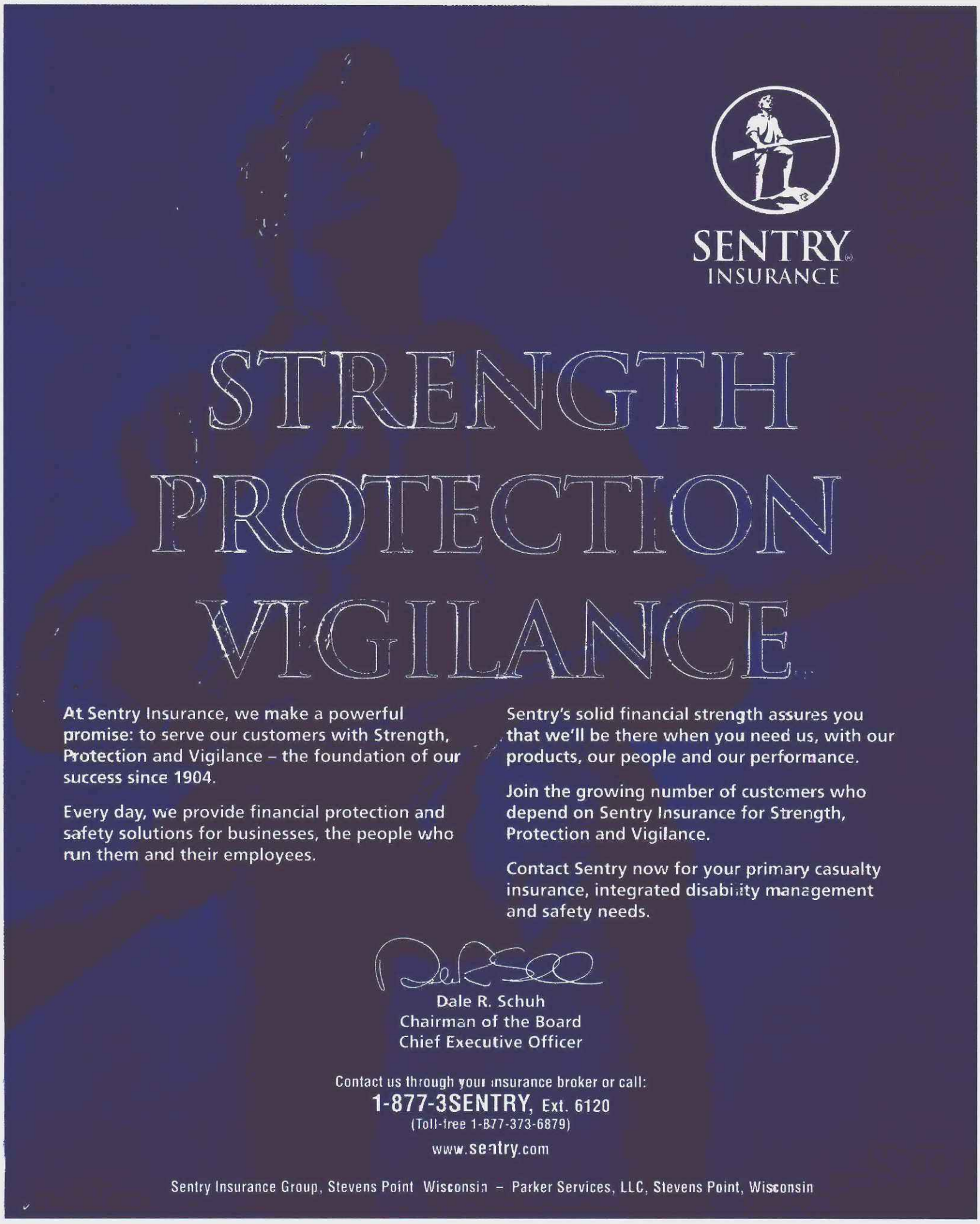

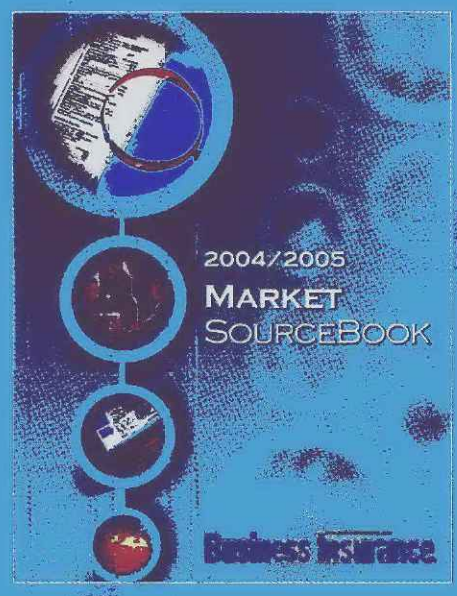

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Guidelines: Can help keep workers comp costs down

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had no mechanism in place to deny treatment. The ACOEM guidelines now allow insurers to negotiate the number of visits instead of automatically having to honor such a request. "Anything that is negotiated or denied is obvious savings," she said.

Although the ACOEM guidelines are the most widely used, hundreds of other guidelines exist. Colorado, Massachusetts, Minnesota, Texas and Washington state all have developed treatment guidelines that are often derived from multiple sources and may vary based on the scope of the injuries covered. The Work Loss Data Institute is one of several organizations that have developed evidence-based treatment guidelines. Insurers such as Liberty Mutual and The St. Paul Travelers Cos. Inc. in St. Paul, Minn., also have developed their own guidelines used in the management of workers comp claims.

Companies have seen good cost savings in states such as Massachusetts and Texas that have some form of treatment guidelines and mandatory utilization reviews, although observers note that the savings have been lower than those seen in California because the cost of care in that state was out of control, Ms. Bowling said.

'The concern I have as a claims professional and as an employer is to make sure the right care gets to workers, and sometimes people will say no because they can.'

Bill Zachary
Safeway Inc.

In Texas, for example, PRI clients have saved more than $35 million after the review of 15,500 cases, Ms. Borger-Cerrato said.

"The combination of the medical expertise and experience of the peer reviewer, combined with the use of evidence-based medicine, has been used successfully by the adjusters to identify and deny payment for medically unnecessary care, thereby helping to control medical loss costs," Ms. Borger-Cerrato said. "As medical costs come under better control, companies will find it more palatable to do business in states that help support those efforts through appropriate medical practices."

There have been objections to the use of medical treatment guidelines, though, with the key criticism of the guidelines that they have the potential to diminish the quality of care to injured workers. Proponents say, though, that there are safeguards in place to ensure that injured workers are not denied access to quality or necessary care. For example, utilization reviews are performed by peers, so that only a physician can deny appropriate care, and that physician "has to be someone with equal schooling," as the doctor who recommended treatment, Ms. Borger-Cerrato said.

In addition, proponents say that, because evidence-based treatment guidelines recommend treatments that have proven effective in the past, they actually help improve the quality of care. Patients, they say, are not subjected to unnecessary or ineffective medical procedures.

Safeway's Mr. Zachary cited one case in which a physician asked for three sets of six injections to treat a patient with a back injury, but could not justify this treatment during the peer review. The reviewing doctor recommended the treatment begin with one injection to see how the patient reacted.

"We were able to avoid having the patient going through this abuse," Mr. Zachary said. "A lot of the abuse of care is being stopped. We're holding these people to standards of care that are appropriate."

Although this practice is a form of utilization review that sometimes results in the denial of care, observers say the guidelines are not rigid and allow for treatment outside recommendations if a doctor can make the case for that treatment during the peer review.

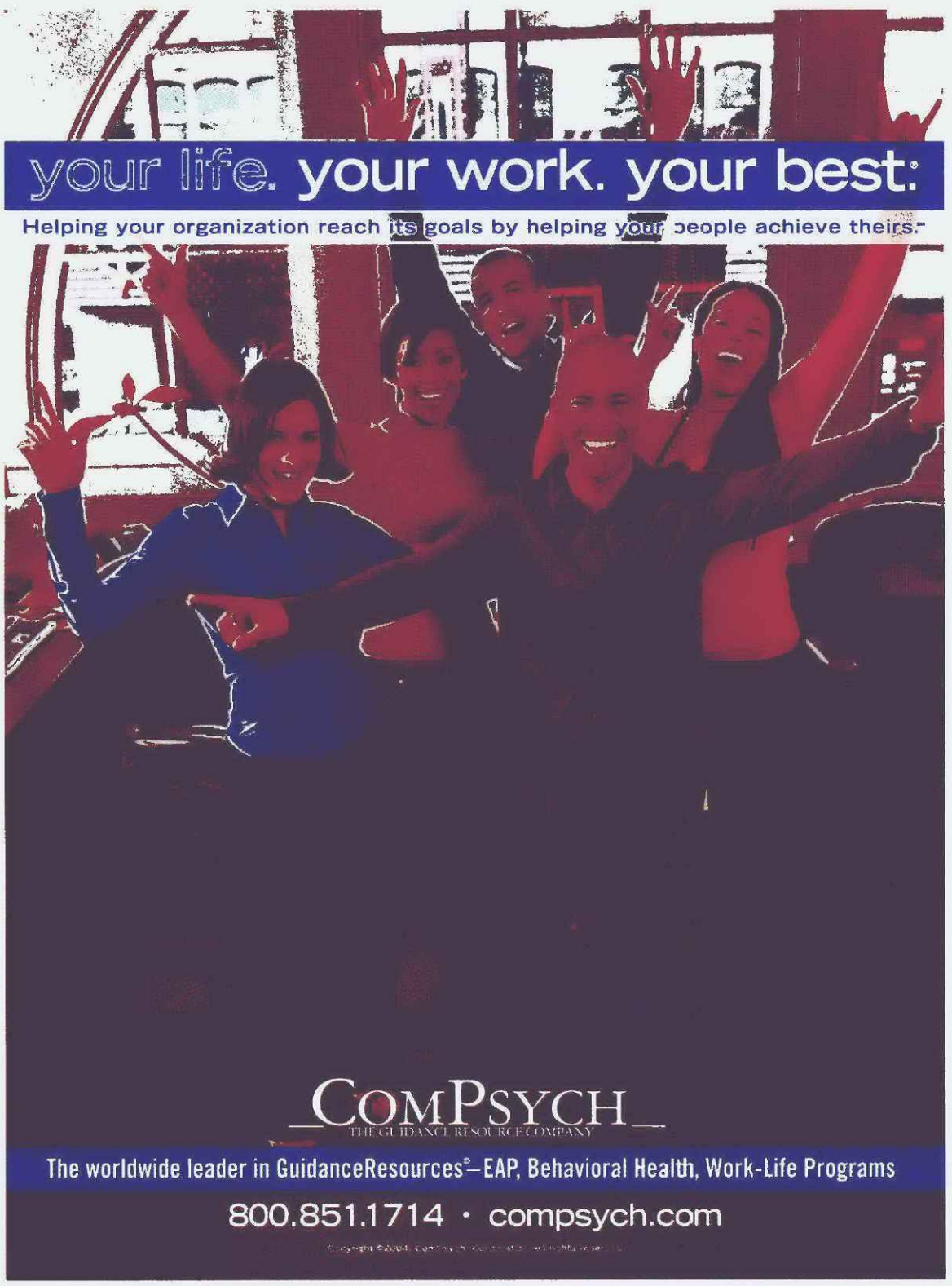
"These do not constrain individual providers' judgment," said Gregory Krohm, executive director of the International Assn. of Industrial Accident Boards & Commissions in Madison, Wis. "That's always the first attack on these guidelines. They all say that they're not meant to be followed strictly in all cases."

Mr. Zachary said he has heard that some organizations are denying treatment without following the protocols that require the use of doctors for peer reviews. This practice is disturbing, he said, because some injuries may legitimately require treatment that falls outside of the guidelines.

"You just can't say no," Mr. Zachary said. "The concern I have as a claims professional and as an employer is to make sure the right care gets to workers, and sometimes people will say no because they can."

The potential for this type of abuse of the system is a concern among lawyers for injured workers who feel their clients are not getting appropriate treatment and are trying to get the reforms revoked, said Alan Kaye, vp and claims executive for ABD Insurance & Financial Services. "In the political season we're in, with the perception that workers comp reforms are working, it would be an uphill battle to have these things changed or revoked," he said.

Another concern has been objections from the provider community to the use of the guidelines. The utilization reviews, though, are expected to ensure that doctors prescribe recommended treatments because insurers need not compensate for care that strays from the guidelines without good reason. "The treating physicians have a financial incentive to try to provide good care," Liberty Mutual's Mr. Deitz said.



Holistic approaches take on chronic pain

By JOANNE WOJCIK

Chronic pain is best addressed with a holistic early-intervention treatment program that acknowledges the connection between mind and body, some experts say.

But few workers compensation claimants receive such treatment because it's difficult to tell from the onset of a claim whether it will result in persistent pain.

Moreover, most workers compensation insurers are reluctant to refer patients to such interventions because they are expensive and do not yet have a sufficient track record to prove they are more effective than traditional medical treatment.

"One of the challenges is that there is no data collected by the term 'chronic pain,'" explained Tom Sawyer, president of Health Directions Consulting L.L.C. in Phoenix. "There is no diagnostic code for chronic pain. So you have to look for related diagnoses, such as musculoskeletal disorders," for which data is available to identify claimants who could potentially become candidates for chronic pain treatment.

"Chronic pain is a problem throughout health care, mostly because that's the No. 1 reason why people go to see the doctor. They hurt someplace," said Ralph Kendall, director of professional service at Tampa, Fla.-based PMSI, a leading provider of medications, medical equipment and supplies to the workers compensation industry.

Despite its prevalence, "we're very undereducated and unprepared to assess and treat pain," Mr. Kendall said. "Typically, in medical and other health care education, what we have a tendency to do is concentrate on definable entities. If you have kidney disease, you head off in a certain direction. There are pretty defined ways to go...unlike pain, which is very subjective."

"Chronic pain cases are one of the most frustrating issues in the workers compensation arena—both for the employer and the employee," said Carlos A. Sintes, workers compensation claim manager at W.W. Grainger Inc. in Lake Forest, Ill.

"The typical front-line supervisor/manager, because of the long-term nature of such cases, has a hard time believing the injured worker is really experiencing the pain, while the employee tormented by pain is desperately seeking relief," he said.

While no hard data is available on the cost of treating chronic pain in the workers compensation sys-

See PAIN/next page

Pain: Holistic approach applied to chronic cases

Continued from previous page

tem, a study published last year in the Journal of the American Medical Assn. estimates that pain-related lost productivity costs employers more than $61 billion annually. When treatment and indemnity costs are added to the equation, experts put the tab for chronic pain somewhere around $100 billion a year.

The introduction of expensive new painkillers is contributing to the skyrocketing cost of treating chronic pain in the workers compensation system, experts say.

The cost of prescription drugs for workers compensation patients rose by 10% to 20% in 2003, according to a report The Hartford Insurance Co. released earlier this year that also included a list of the top 25 drugs prescribed in workers compensation cases in 2003. The majority of the drugs on the list are painkillers, such as OxyContin, hydrocodone and Duragesic, but the list also includes antidepressants such as Wellbutrin and Zoloft, sleeping pills such as Ambien and Sonata and muscle relaxers such as Skelaxin, all of which are used to treat chronic pain.

'The pain medicine profession has grown and expanded remarkably over the last 20 years. ... Everything you invent increases the cost, especially in workers comp.'

Dr. William Nemeth
Texas Workers Compensation Commission

"The older drugs, which may work as well, are always abandoned for the new drugs," said Dr. William Nemeth, medical director of the Texas Workers Compensation Commission in Austin.

For example, new nonsteroidal anti-inflammatory drugs can cost up to $200 a month, while OxyContin, an opioid, can cost up to $800 month, he said.

But prescription drug costs are just one component of the increasing tab for treating chronic pain in the workers compensation system, experts say. Other common treatment options such as nerve blocks, morphine pumps and spinal decompression can be even more costly, they say.

"The pain medicine profession has grown and expanded remarkably over the last 20 years," said Dr. Nemeth. "Everything you invent increases the cost, especially in workers comp."

Pain treatment measures

Traditionally, the treatment of chronic pain claimants in the workers compensation system usually begins with prescription painkillers. But while such drugs may have a place in treating acute pain, they are not recommended for long-term use because claimants may develop a tolerance that requires them to be prescribed larger and larger doses, and they can be addicting. Moreover, such drugs can cause physical and mental impairment, which makes it difficult, if not impossible, for claimants to return to work, even on a limited or light-duty basis.

Many chronic pain claimants are also treated with nonpharmacologic measures such as physical therapy, chiropractic care, transcutaneous electrical nerve stimulators, cold packs, heat treatments, ultrasound, acupuncture and deep-tissue massage.

If the pain persists, claimants often undergo more aggressive treatment such as trigger point injections, chemical nerve blocks or surgery.

Finally, if all else fails, the patient is usually referred for psychiatric counseling.

But some pain management experts say claimants would respond quicker and treatment costs would be lower if a holistic approach were employed in chronic pain cases.

Rather than being seen by a single provider, chronic pain patients "should be really approached comprehensively, in other words, having the whole continuum of physicians who know how to deal with pain," said Dr. Marie Hatam, vp and medical director of the PMA Insurance Group in Blue Bell, Pa.

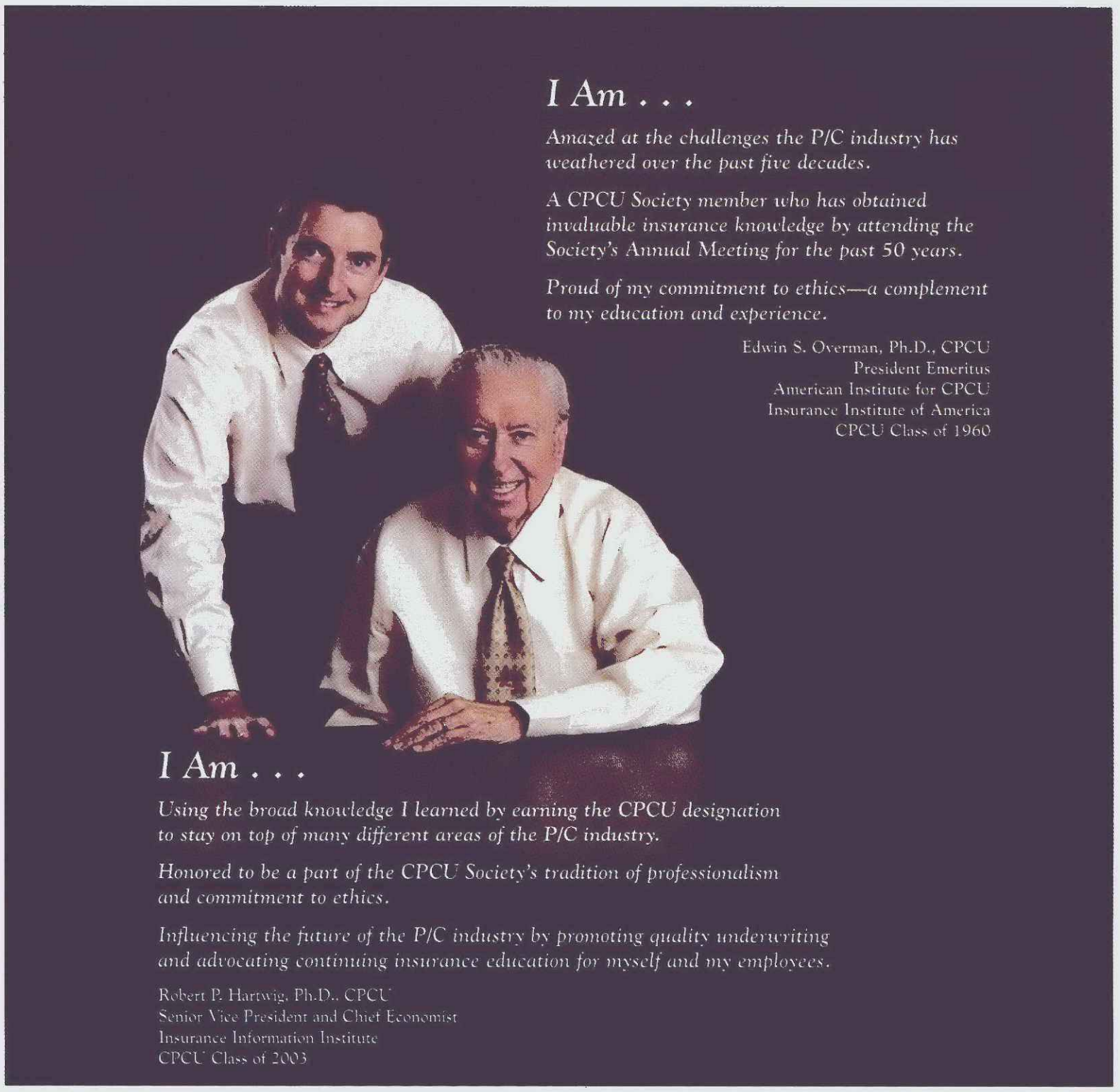
In addition, a lot of comprehensive programs have physical therapists and psychologists who teach claimants "how to deal with their pain, how to not allow the pain to become their entire focus in life," Dr. Hatam said. "That requires a whole team of professionals who understand the pain patient," she said.

Claimants should also continue working while enrolled in such treatment programs, experts agree.

"I think that keeping a positive mental attitude really helps the employee through, and keeping a job is a way to keep that positive mental attitude," said Andy Schoenecker, risk manager at Apogee Enterprises Inc., an automotive glass manufacturer in Minneapolis.

As soon as an employee files a claim for a condition that could potentially leave him or her in long-term pain, "keep them involved and keep them active," Mr. Schoenecker advised. "The longer that an employee is out, the probability of

See PAIN/next page



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Pain: Holistic approach applied

Continued from previous page

their staying out is exponential. If they're out for six months, there's very little chance that, beyond that, you're going to find them a position that they'll come back to and/or have a position that they'll come back to."

Pain becomes the disease

"Pain is not a simple thing," said Dr. Albert Ray, president of Pain Medicine Solutions L.L.C., a pain clinic that has been using a multidisciplinary approach to treat injured employees of the Miami-Dade School District for the past seven months.

"When we think of acute pain, or eudynia, it's the kind of pain that, if I fix the broken leg, it will go away; this is primarily due to nerve signaling. As time goes on, maldynia develops—that's when pain becomes the disease. That pain may not even be coming from the source of injury anymore," Dr. Ray said.

"This accounts for why this epidemic of chronic pain has developed," he said. "There are more components to pain than most people think."

Dr. Ray's clinic intervenes in cases involving claimants who have not responded to traditional, conservative treatment in 90 to 150 days. After an intensive initial evaluation is conducted, a coordinated treatment plan is developed involving a team of providers, including a mental health professional, a physician, a physical therapist and/or chiropractor, an occupational therapist, the workers compensation claims adjuster and/or case manager and, when possible, the employer.

But because such an approach is expensive, costing as much as $30,000 per claimant, claims adjusters are reluctant to refer claimants to such programs. Moreover, there is not enough evidence to prove it works.

"I have never seen stats that show they have a better outcome," said Janet Jamieson, a consultant at Medata Inc. in Las Vegas. "If you've got somebody pushing—either a lawyer or a pain clinic—a very expensive solution, you should be skeptical and ask for data. If there are outcome studies, it makes them more credible."

'There are some very good multidisciplinary programs–probably not more than five or six in the country. But these programs are dying because they can't get payers to support them.'

Dr. Deborah Day

"Washington state did a study that found the multidisciplinary approach didn't work, but they were treating injuries with two years or more of pain. It's got to be the right patient at the right time. That's like going to the graveyard, digging up a skeleton and expecting them to dance," said Peter Rousmaniere, president of Pain Disability Management in Hooksett, N.H.

"There are some very good multidisciplinary programs—probably not more than five or six in the country. But these programs are dying because they can't get payers to support them," said Dr. Deborah Day, an independent consultant in the field of occupational medicine in Charlotte, N.C.

"The problem is that old-fashioned claims people are using traditional treatment protocols rather than referring people to specialized programs, and, as a result, the claim is inflated little by little until it becomes a permanent disability and eventually exceeds the cost of a specialized pain management program," Dr. Day said.

Despite the lack of credible data to support their effectiveness, most pain management experts agree that such programs do help those individuals whose pain is likely to never disappear.

"One thing it's important to recognize is chronic pain often cannot be cured, and that's where the integrated pain management programs and having a treatment team well versed in dealing with these situations can help a claimant not only recognize that, but learn to deal with it, not let it completely run their life," said Dr. David Deitz, medical director of Liberty Mutual Group Inc. in Boston.

Dr. Hatam agreed: "Pain management, if approached appropriately, should be able to give the individual a level of function that they can go back to doing something in their life that's productive, but not everything."

Governance: Aiding boards with tasks

Continued from page 4

said Niver Rubenyan, director of operational risk for Sun Life in Toronto.

"We can give our boards ease of mind by implementing a process which allows the identification of risks throughout the organization and identifies ways in which these risks can be mitigated," she said. "The identification of risks is made bottom-up in the organization to capture the knowledge and expertise of those closest to the risk, but also top-down to ensure we capture the forward and long-term view of the executives in the organization."

Risk managers can serve as more of an independent voice to the board than can executive management, and an independent voice is something board members need because of time and information constraints, Ms. Johnson said. A study conducted by her firm showed only 28% of directors received information from parties other than their companies' chief executives.

"Boards now, because of the move to be more accountable and independent, are developing relationships that are independent of the CEO and management," she said.

Risk managers can also help the board by providing concrete examples to underwriters of their corporate governance activities to secure the best available directors and officers liability coverage, said Sarah Robson, senior vp and national practice leader of the executive risk practice for Marsh Canada Ltd.

"In particular, you have to demonstrate the cultural commitment of the organization to corporate governance," Ms. Robson said. "Now, it is absolutely crucial that you demonstrate how that particular governance works for the firm—that it's not just manuals that are sitting on a shelf."

Directors are now clearly focusing on their own personal liability, and risk managers can help them by properly protecting them from potential claims by securing adequate coverage and ensuring that the coverage cannot be rescinded or severed for honest and competent board members, she said.

"The bottom line is to help the underwriters differentiate your risks, to demonstrate that cultural commitment to governance," Ms. Robson said. "Your board will get a more meaningful product as a result of your ability to do this."

Ms. Rubenyan moderated the session.

29th Canadian Risk Management Conference

Panel stresses need for fiduciary cover

By GLORIA GONZALEZ

WINNIPEG, Manitoba—Fiduciary liability is a growing exposure in Canada, and risk managers need to make sure that they have the right insurance in place to protect themselves, experts say.

RIMS CANADA

Fiduciary liability insurance protects the organization, its directors, officers, employees and employee benefit plans against losses arising from claims alleging breaches of fiduciary responsibilities or wrongful administration of benefit plans. Such claims could involve charges of imprudent investment of plan assets, offering bad advice or failing to enroll employees or implement status changes.

Fiduciary liability is an area that risk managers have not paid enough attention to because they are preoccupied with other risks, according to Stephen Kelly, general manager of the insurance and risk management department of Toronto-based Sears Canada. Mr. Kelly moderated a panel discussion entitled "Unraveling the Mystery of Fiduciary Liability" during the 29th Canadian Risk Management Conference, held recently in Winnipeg, Manitoba.

Mr. Kelly said that he realized just how important fiduciary liability insurance had become when his chief executive and chief financial officers asked him about the coverage. "It was a lesson learned for me very quickly that you'd better pay attention, because it's now at the forefront," he said.

The coverage has become more important—and more expensive—in recent years due to an increase in claims related to employee benefits plans, said Mary Maloney, vp of specialty insurance for Toronto-based Chubb Insurance Co. of Canada. "There are a lot of large-dollar claims floating around there," Ms. Maloney said. "It's expensive to process these claims, more expensive to litigate them."

Adam Briklyn, vp of Toronto-based Marsh Canada Ltd., said underwriters are not used to seeing fiduciary claims, particularly of the magnitude of such recent settlements as Enron Corp.'s payment of $85 million to resolve fiduciary claims arising from the administration of its pension plans.

Even though the most notorious cases have occurred in the United States, the size of the settlements af-

See FIDUCIARY/next page

Fiduciary: Need for liability cover stressed

Continued from page previous

fects Canadian employers as well, because underwriters will spread the costs of these settlements across their books, he said.

"They're paying losses around the world," Mr. Briklyn said. "It's going to affect their executive risk portfolio, and it's going to trickle down to fiduciary liability. And it's going to affect all of us."

'You can't contract out your fiduciary liability.... Don't rely on third-party coverage to protect you.'

Mary Maloney
Chubb Insurance Co. of Canada

In addition, claims against Canadian companies have increased as class action lawsuits have become more common there. The trend in class action filings will be fiduciary claims alleging that companies improperly blocked their employees from selling their company stock before it became worthless, Mr. Briklyn predicted.

John Nicholl, a partner with the Montreal-based law firm of Nicholl Paskell-Mede, said risk managers need to pay attention to their fiduciary liability coverage for several reasons, including the aging of the baby boomers and the downturn of the stock markets in recent years, which has led to large pension shortfalls.

"There is an appalling ignorance about pensions and very high expectations, which are going to be unsatisfied," he said. "You have a lot of potentially unhappy and frustrated people."

The decision in the *Monsanto Canada Inc. vs. Ontario* pension court case in August will fuel employers' reluctance to fully fund pension deficits, which may lead to more fiduciary liability claims, Mr. Nicholl said.

In that case, the Supreme Court of Canada found that Ontario law requires the distribution of a proportional share of actuarial surplus when a defined benefit pension plan is partially wound up (*BI*, Aug. 9).

"Post-*Monsanto*, people are going to be trying to avoid creating surpluses so they don't have to pay them out on partial windups," he said. "People are going to become much less conservative in their funding assumptions. I think that's going to generate lots of claims, because, sooner or later, someone is going to get it wrong and the money's not going to be there."

When evaluating their fiduciary liability policies, risk managers need to be mindful of the featured exclusions, the panelists said. For example, there are often exclusions for deliberate fraud or willful violations that do not require alleged violations to be first proven in court before coverage is denied, Chubb's Ms. Maloney said. "Take a very hard look at the language of exclusions," she said. "You want language that makes it as difficult as possible for the insurance company to rely on that exclusion."

Companies that contract out the administration of their benefit programs should not depend on the insurance policies of these companies to protect them from liability, she added. Many administrators insist employers sign a waiver that frees them from liability unless they were grossly negligent, Ms. Maloney said. In addition, an employer can be held liable for either choosing the negligent administrator or for not handling the benefits itself, she said. "You can't contract out your fiduciary liability," Ms. Maloney said. "Don't rely on third-party coverage to protect you."

Risk managers should also check the severability clauses featured in these policies to ensure that the insurer can void coverage only for any negligent party rather than for the entire company, the panelists said. "You may have some independent or honest plan members or trustees who aren't going to have coverage now, so severability is very important," Marsh's Mr. Briklyn said.

Risk managers should feel free to challenge any attempts to tighten terms and conditions, Mr. Briklyn said. "If you have strong corporate governance and financial stability, why should you subsidize everybody else?" he asked.

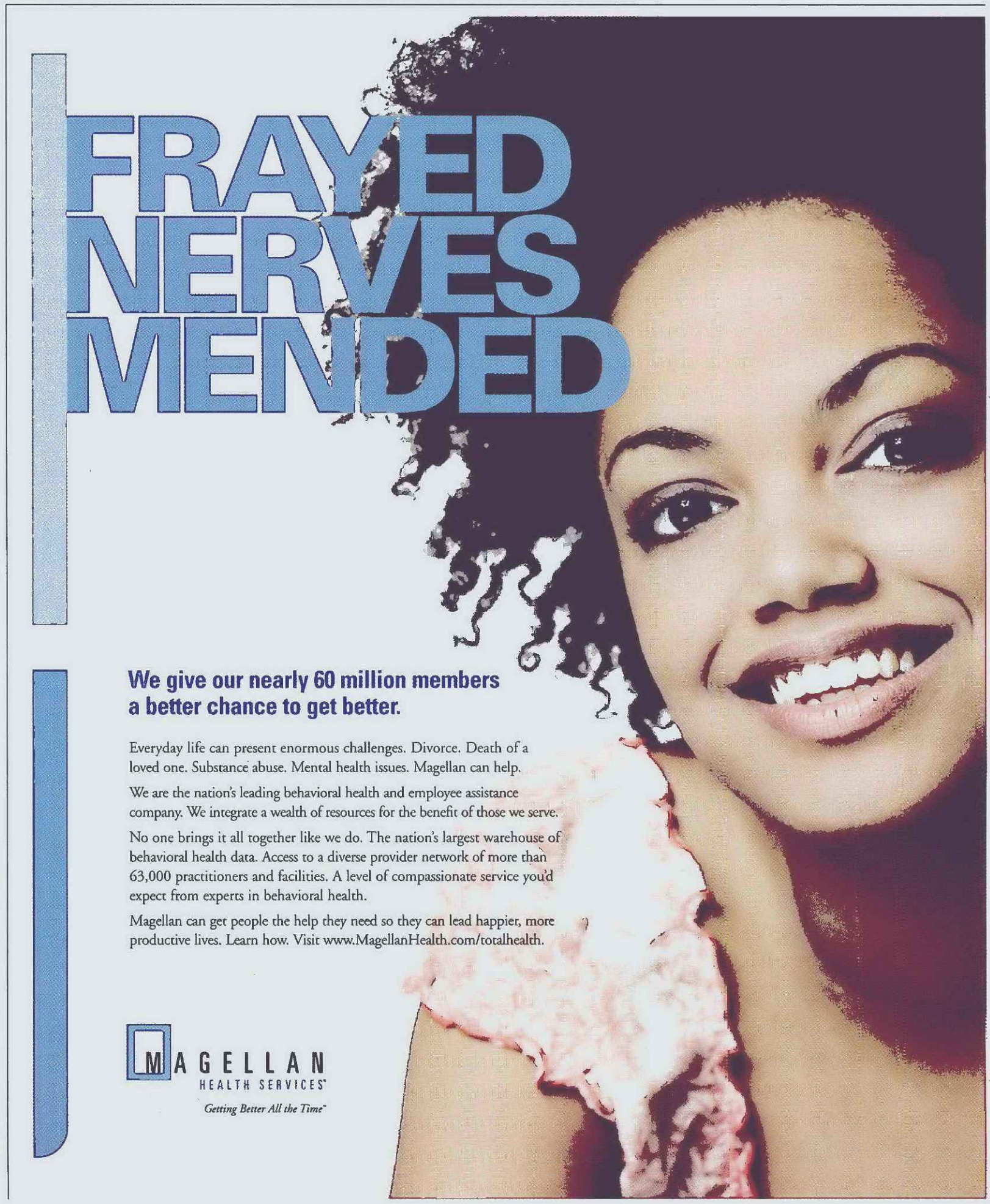
Montreal site for meeting in 2005

WINNIPEG, Manitoba—More than 500 risk managers attended the 29th annual Canadian Risk Management Conference in Winnipeg, Manitoba.

The conference, which was sponsored by the Canadian arm of the Risk & Insurance Management Society Inc., featured sessions on corporate governance, professional liability, enterprise risk management and the future of risk management.

Next year's conference will be held Sept. 17-21 in Montreal.

For additional information on next year's event, contact conference co-chairs Daniel Desjardins at 514-861-9481, ext. 3257, or Jocelyne Lee at 514-289-2716. Information also is available online at *http://montreal2005.rims.org*.



29th Canadian Risk Management Conference

Buyers divided on broker commissions

By GLORIA GONZALEZ

WINNIPEG, Manitoba—Canadian risk managers polled in an informal survey are split on whether the contingent commissions brokers receive from insurers pose a conflict of interest.

RIMS CANADA

The survey polled 125 attendees—roughly two-thirds of them risk managers—of a session at the Canadian Risk Management Conference in Winnipeg, Manitoba.

Contingent commissions are paid to brokers by insurers based on the volume or profitability of the business placed on behalf of the brokers' clients. These commissions, sometimes referred to as "profit-sharing arrangements," have been the subject of investigations and a recent civil suit by New York Attorney General Eliot Spitzer and others (see story, page 1). Several lawsuits have been filed against brokerages.

While 47% of respondents said the arrangements compromise a broker's ability to act on behalf of its client, about 38% said they do not, while 15% of respondents said they were not sure.

About 53% said they still are concerned about broker compensation arrangements even if they have the best insurance program in terms of cost and coverage, while 43% said they do not care about the commissions.

Representatives from two large brokerages defended the practice in remarks made during the session.

Contingent commissions make up a small portion of a broker's total revenues—1% to 2%—and are not problematic as long as they are properly disclosed, said Donald Callahan, president and chief executive officer of Toronto-based Guy Carpenter & Co. Ltd., a unit of Marsh & McLennan Cos. Inc.

"We're fully prepared to disclose what the arrangements are, and I think you'll find our competition is as well," said David Pegues, executive vp of Toronto-based Aon Reed Stenhouse Inc., a unit of Aon Corp.

Mr. Pegues noted that brokers offer clients several possible options and allow them to choose the best insurer for their needs, he said.

Susan Meltzer, assistant vp-insurance and risk management for Sun Life Financial in Toronto, said brokers are now being "dragged to disclosure" by Mr. Spitzer's investigation, which was launched in April. She moderated the discussion.

EIL: Use of insurance growing

Continued from page 4

age was purchased mainly by "operations that were required to carry the insurance," such as hazardous waste haulers, landfills and recycling centers, she noted.

Today, as more insurance products have become available and exposures are better understood, "there is not an industry or a type of operation that does not consider—and does not frequently purchase—environmental insurance," Ms. Andolsen said. Environmental impairment liability insurance provides coverage for a host of risks, including bodily injury, property damage, cleanup costs, natural resource damage and defense and investigation costs.

Many companies, though, have not adequately examined their operations to determine potential exposures.

"I wish I had a dollar for every time I've heard" someone at a company say its operations do not involve environmental risks, Ms. Andolsen said. She recommends that organizations consider several key issues in determining whether they likely have an exposure that environmental insurance could address.

A company, she said, should consider what it is storing onsite—including whether any industrial solvents are being stored—and what kinds of containers are used for storage. In addition, it should determine where stored substances would travel in the event of a container leak.

A company also must consider who its "neighbors" are, Ms. Andolsen said, and, in particular, must ask itself: "Have you been a good neighbor?" Have you done anything that would prompt someone "to come up with a reason to come after you?" she asked.

Even though a company may have an Environmental Protection Agency permit for, for example, the emission of fumes, that permit does not prevent those living or working near the operation from filing a class action suit, charging that the emissions pose a health hazard, she said. While the case may be baseless, the company still has to defend itself, and EIL insurance generally would cover the defense costs, Ms. Andolsen explained.

'There is not an industry or a type of operation that does not consider—and does not frequently purchase—environmental insurance.'

Tanya Andolsen
Palmer & Cay Inc.

Another key question is, what operated on the property before the company took it over? While current operations may not create pollution exposures, those previously on the property may have left problems behind, she said.

Under so-called "successor" liability, "if you acquire a piece of property and you're not fully aware of what's on that property," you can be pulled into a lawsuit if contamination is discovered, Ms. Andolsen said.

That issue also comes into play when planning an acquisition or divestiture. "In the last two years...over 50% of the calls I get for environmental insurance are the result of a merger or acquisition" or a real estate transaction, where "someone's not comfortable that the proper due diligence has been done on the property," Ms. Andolsen said.

She cautioned that, in purchasing EIL insurance, companies need to determine what coverages a specific insurance product provides. Unlike other liability lines, there is no standard policy form for EIL coverage, so risk managers need to carefully review their policies to determine what is covered, she said.

Another type of environmental insurance—cleanup cost cap coverage—is useful to companies already working to clean up contamination on their property, Ms. Andolsen said.

Such insurance essentially caps a buyer's costs for a specific remediation project if, for example, the extent of contamination is found to be greater than expected or the government later orders further remediation of the site. Such policies allow the buyer "to feel comfortable that you have a dollar amount on the liability," with the coverage funding cleanup efforts beyond the cost cap, Ms. Andolsen said.

"Basically, a cleanup cost cap policy can provide (cost) overrun protection that manages an economic risk," she said.

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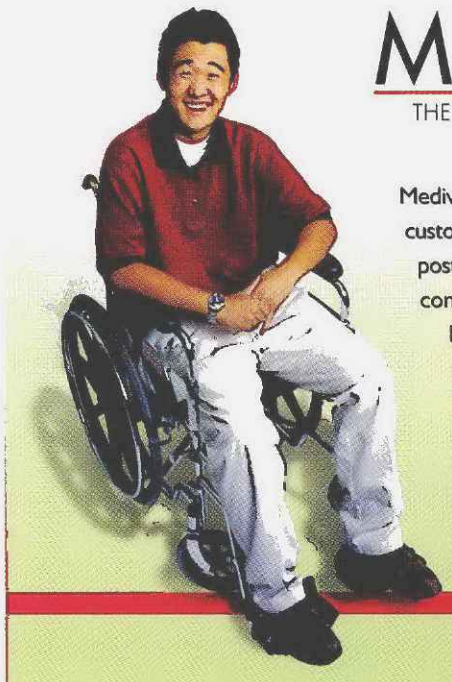

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REBEX 2004

Cost-cutting power of HSAs unknown

By MATT SCROGGINS

CHICAGO—Health savings accounts and the broader consumer-driven health care movement may be the next great contender in the fight against rising health care costs, but it is too soon to tell whether they will live up to their billing.

HSAs, which were authorized by Congress in 2003, are often touted as a key tool in efforts to promote consumer-driven health care. The tax-exempt accounts—which are funded by employers, employees or both—must be linked to a high-deductible health insurance plan. They can be tapped to pay for eligible medical expenses, such as those falling within a deductible, and funds in the accounts can be rolled over for use in subsequent years.

Proponents of the consumer-driven approach maintain that, by exposing consumers to the true cost of health care services through high deductibles—and by giving them a greater financial stake in their decisions through HSAs—they will become more prudent spenders.

A key problem with the current approach to health care is that "consumers are sheltered from the real cost of health care," Leslie McLeod, managing director of Mesirow Financial in Chicago, said during an educational session at REBEX 2004, held recently in Chicago. The annual event is sponsored by the Chicago and Wisconsin chapters of the Risk & Insurance Management Society Inc.

Because of plan-design elements such as copayments, consumers "think office visit and $10 or $20," rather than the actual cost of the service, which is much higher, she said.

But under the consumer-driven model, "what should happen is more rational consumption" of health care services, Ms. McLeod said. "In the words of one of my colleagues, 'I order differently when someone else is buying lunch,'" she said.

A key difference between HSAs

See HSA/next page

HSA: Unknown cost savings

Continued from previous page
and another type of health care account, flexible spending accounts, is that money in HSA accounts can be rolled over for use in later years, while FSA balances are surrendered at the end of a plan year.

'We need a lot more robust Internet data available to consumers before we can really turn them loose and expect them to be savvy in their consumption' of health care services.

Leslie McLeod
Mesirow Financial

"Money builds up and carries over—there's no 'use it or lose it,'" said Timothy J. Stanton, partner-HR law at Gardner, Carton & Douglas L.L.P. in Chicago. "That's the whole tie-in to empowering consumers—that you can have access to that money, you can use it, you can save it for next year's expenses, and you can build it up over time," said Mr. Stanton, who also spoke during the session.

However, the extent of consumer control over the funds is a concern for some employers, Mr. Stanton said. Under the rules governing HSAs, employers cannot require employees to use the funds in their accounts for medical expenses, though there is a tax penalty if funds are used for nonqualified expenses, he explained.

"We, as employers, don't have control over the money in these accounts," Mr. Stanton said.

Although there has been much discussion about the consumer-driven approach, it is still too early to tell whether it will prove effective in reducing costs, Ms. McLeod said.

Because HSAs were not authorized to start until Jan. 1, 2004, there was "virtually no enrollment this year," she said. Many vendors are not well established, and "there haven't been a lot of products in the market."

While more plans are scheduled to launch at the beginning of next year, many of those don't yet have their trustee agreements in place, which leaves little time before open enrollment, she said.

As a result, the employee participation needed to help determine the plans' efficacy likely won't come until 2006 at the earliest, she said. Another crucial aspect of consumer-driven care—providing employees information on health care—also needs to be developed further, Ms. McLeod said. To help employees make informed purchasing decisions, there needs to be more and better data on provider quality and the cost of services, among other things.

"A key issue in the success of these that is still missing is that we need a lot more robust Internet data available to consumers before we can really turn them loose and expect them to be savvy in their consumption" of health care services, she said.

REBEX draws 306 to Chicago meeting

CHICAGO—REBEX 2004, the annual conference of the Chicago and Wisconsin chapters of the Risk & Insurance Management Society Inc., drew 306 attendees to Chicago earlier this month.

The conference, which was held Oct. 6-7 at the InterContinental Hotel, featured educational sessions on a variety of topics, ranging from enterprise risk management to business interruption and the problem of rising health care costs.

The dates and location of next year's conference have not been determined.

For more information on REBEX 2005, contact Debbie Pederson at 847-480-9712 or by e-mail to *dpederson@sherwood-group.com*.

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Between the Lines

Compiled by Joanne Wojcik

Gov. Bush subpoenaed over Caremark meeting

Florida Gov. Jeb Bush is being dragged into a whistleblower lawsuit filed by two former Caremark Rx Inc. pharmacists who allege that the prescription benefit manager defrauded customers by failing to share rebates.

In a subpoena served earlier this month, the governor was given until 9 a.m. on Nov. 3 to produce "all documents relating to, reflecting or memorializing, in whole or in part," a June 2002 meeting he had with Caremark Chief Executive Officer Mac Crawford, as well as any other communications or meetings involving the Nashville-based PBM between Jan. 1, 2000, and the present. Caremark's CEO has also been ordered by the court to testify.

The court also recently approved a motion by the pharmacists to block the state's attempt to intervene in the case after raising concerns that other state officials might be influenced by their ties to the company.

Depending on what those documents reveal, the governor himself may be asked to testify in the case, according to Michael Leonard, the plaintiffs' attorney with Meckler Bulger & Tilson in Chicago.

In addition to leveling fraud charges, the lawsuit alleges that the PBM sold customers prescriptions that had been returned through the mail without first testing the drugs to ensure they were safe.

Neither Gov. Bush's office nor Caremark returned telephone calls seeking comment.

Costly errors

While most pay-for-performance initiatives usually offer medical providers "carrots" in the form of financial incentives, a Minneapolis-based health maintenance organization has decided to try a "stick" approach instead.

HealthPartners says it no longer will pay for medical costs stemming from serious medical errors made by providers, beginning Jan. 1, 2005.

The HMO plans to use the honor system to determine which events will be barred from reimbursement, according to a spokeswoman for the health plan. She said a new state law requiring hospitals to self-report 27 "never events," such as performing surgery on the wrong body part or making medication errors that result in death or disability, should help them determine which claims not to pay.

However, Minnesota's Adverse Health Care Events Reporting Law, which took effect July 1, does not require the hospitals to identify specific patients involved, which could make tracking down those claims a little bit difficult, the spokeswoman acknowledged.

"Reporting is an expectation under the new policy," she said.

Insure my ride

Fine art is in the eye of the underwriter.

Hagerty Insurance, known for insuring collector cars and classic boats, is adding certain so-called "lowriders" to the list of customized and collectible vehicles it will insure.

"If any genre of vehicle best exemplifies 'the car as art,' it's the lowrider," McKeel Hagerty, president of the Traverse City, Mich.-based agency, said in a statement announcing the new coverage option.

PHOTO: WWW.LOWRIDER.COM

"These unique and creative examples of American car culture, which began in Southern California's communities and now circle the globe, should be preserved for future generations. We hope that by expanding our specialty insurance coverage, it will enable more of these amazing vehicles to be available to collectors."

Sure, why not? It wasn't that long ago that Hagerty's underwriters broadened the definition of "collectible car" to include the Chevy Vega, the AMC Gremlin, the Ford Pinto and the Volkswagen Thing.

Tips and feedback from readers are welcomed. Please send information to jwojcik@businessinsurance.com.

Products & Services

CIGNA unit offers wellness coaching

EDEN PRAIRIE, Minn.—CIGNA Behavioral Health is offering personalized coaching programs designed to enhance wellness programs. The coaching services can be made available through employee assistance programs.

The Lifestyle Management Programs offer support and education for wellness programs and discounts for programs such as Weight Watchers, Habitrol nicotine replacement therapy and fitness club memberships.

Participants undergo an assessment and are then offered a customized program and assistance from a coach.

For more information, visit *www.cignabehavioral.com.*

Hub enhances program for embassies, consulates

NEW YORK—Hub International Ltd. has enhanced its Embassy Program, which provides property/casualty insurance to embassies, consulates and missions to the United Nations.

The program was developed by Kaye Insurance Associates Inc., a New York-based retail unit of Chicago-based Hub.

The enhanced embassy product now features a lower minimum premium for embassies, consulates and missions with property values under $1 million, revised from $2.5 million. In addition, Hub has extended its terrorism coverage to include liability insurance.

To expand the program into the District of Columbia, Hub has partnered with Washington-based Clements International; the firms will jointly offer auto and property/casualty coverage to embassies, consulates and missions.

For information, contact Cara Siegel at Kaye at 212-338-2204.

RMS launches model for global terrorism

NEWARK, Calif.—Risk Management Solutions Inc. has launched a tool to help insurers and reinsurers manage terrorism risks outside the United States.

The RMS Global Terrorism Risk Model allows companies to quantify property, business interruption and casualty risk associated with terrorism for locations in 227 countries. The model takes into account an assessment of local terrorist groups, the "attractiveness" of the location to terrorists, likely attack modes and historical terrorism loss in each region.

The company has also expanded the RMS Terrorism Scenario Model in its RiskLink catastrophe management software to cover 14 more countries. The model allows users to estimate multiline losses at any user-defined location under 30 attack scenarios, ranging from convention bombs to chemical, biological, radiological and nuclear attacks.

For more information, contact Peter Ulrich, managing director of the terrorism risk modeling unit of RMS, at 510-608-3341 or visit the company's Web site, *www.rms.com.*

Ascent offers HSA product

FORT WORTH, Texas—Ascent Assurance Inc. has launched a health savings account that works in conjunction with high-deductible health plans.

The MedEquity health plans are designed to promote greater consumer choice and control over health care decisions. They will be available to both individuals and families in most states.

Ascent Assurance is an insurance affiliate of a subsidiary of Credit Suisse First Boston.

For more information, contact Cynthia Koenig, chief financial officer of Ascent Assurance, at 817-878-3732, or visit the company's Web site at *www.ascentassurance.com.*

Benfield offers D&O report

WESTPORT, Conn.—Benfield Group Ltd., a London-based reinsurance intermediary, has published the inaugural issue of "Directions & Outlooks," a biannual report on the global directors and officers and financial lines markets.

"Stockholder, regulatory and environmental lawsuits represent a serious and ongoing risk to American corporations," said Linda Johnson, executive vp and D&O practice leader at Benfield's Westport, Conn., office. "Over a five-year period, the typical U.S. corporation has a 9% probability of facing a stockholder lawsuit...'Directions & Outlooks' will help our customers better understand the risks, anticipate trends and develop risk mitigation strategies."

Topics covered in the first issue include D&O settlements and claim trends in the mutual fund industry.

A copy of the report can be viewed at *www.benfieldgroup.com/research.* Copies also are available by e-mailing *gmc@benfieldgroup.com.*

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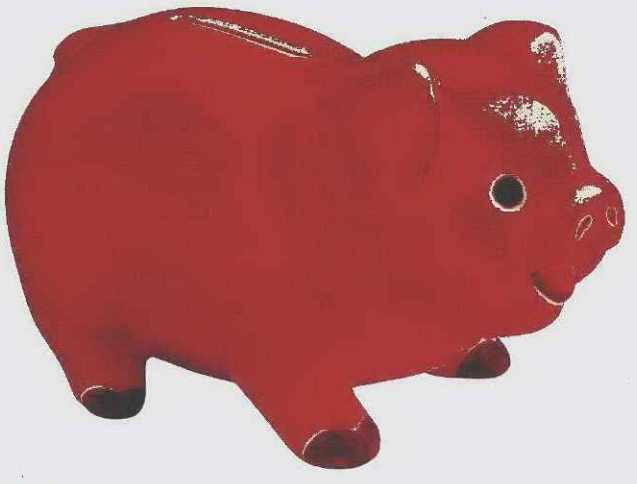
U.K. explores changes to pension system

By SARAH VEYSEY

LONDON—Changes to the U.K. pension system to encourage participation in occupational plans may be needed to ensure that more people have adequate savings at retirement, according to a report by an independent commission set up by the U.K. government to examine pension issues.

Automatic enrollment provisions, compulsory participation in pension plans and a higher retirement age are some issues that should be considered to alleviate the problem of pension funding, the commission says.



And employers, employees and the government must reach a consensus on how to deal with the looming problem of financing retirement, it says.

A further report, slated for publication next fall, will make specific policy recommendations.

The Pensions Commission was set up by the U.K. government in December 2002, and is headed by Adair Turner, formerly director general of the Confederation of British Industry and currently vice chairman of Merrill Lynch Europe.

The mission of the independent commission is to "keep under review the regime for U.K. private pensions and long-term savings, and to make recommendations to the Secretary of State for Work and Pensions on whether there is a case for moving beyond the current voluntarist approach."

Mr. Turner said the commission's research had found that about 9 million people in the United Kingdom are failing to make "provision that they will consider adequate" when they retire. He noted that this number likely would grow if the trend continues of employers moving away from defined benefit plans in favor of defined contribution arrangements.

Mr. Turner said that the U.K. government, employers and individuals must come together to find ways to tackle the problems of too little saving in pensions and an aging population.

Deborah Cooper, senior research actuary at Mercer Human Resource Consulting in London, said that while the report does not make specific recommendations to employers, it does give a "heads up" about the scale of the problems in the U.K. pension system.

The report "is a very useful consciousness-raising exercise," she said.

Among suggestions included in the Pension Commission's report is a "more widespread use of techniques such as automatic enrollment," whereby employees automatically become members of their employers' workplace pension plans unless they expressly opt out.

The CBI supports this approach as a way to increase employee participation in occupational pension plans, the organization said in a statement.

Stephen Yeo, a partner at Watson Wyatt Worldwide in London, said that according to research carried out by the consulting firm, "the most significant factor affecting the take-up of defined contribution pension plans offered by Britain's largest companies is whether membership is automatic."

A recent study of FTSE100 companies—the largest publicly listed companies in the United Kingdom—conducted by Watson Wyatt found that employees in companies whose pension plans do not have automatic enrollment are eight times less likely to join an occupational pension plan than workers whose company does have automatic enrollment. About 20% of FTSE100 companies currently have automatic enrollment, a spokesman for Watson Wyatt said.

Other suggestions in the Pension Commission report include the possible restoration of the ability of employers to make membership in an occupational pension plan a condition of employment.

This practice was ended in 1998 by the government as part of an attempt to boost participation in personal pensions, said Raj Mody, a consultant at Hewitt Bacon & Woodrow in Leeds.

Employers that already offer attractive pension benefits and who wish to boost participation in their plans would likely welcome a move to compulsory enrollment, said Paul McGlone, principal and actuary at Aon Consulting in London. But, he noted, such employers likely already have large participation in their pension plans.

Mr. Mody said that a danger of introducing any compulsory aspect to pension plan membership is that it could have unintended consequences. For lower-paid employees, for example, membership in an occupational pension plan may not be the best option, since it may cancel any state benefits they might otherwise

See PENSION/next page

Gen Re Australia execs step down after APRA probe

By ELIZABETH FRY

SYDNEY, Australia—General Re Australia Ltd.'s chief executive officer and two other senior company executives have stepped down from their positions, following an investigation by Australia's insurance regulator into reinsurance deals the company made with FAI Insurance Ltd. prior to FAI's acquisition by HIH Insurance Ltd.

Geoffrey Barnum—CEO of the Sydney-based General Re unit—Chief Financial Officer Christopher Byatt and Chief Underwriter Andrew Smith all have been disqualified from serving in their current positions by the Australian Prudential Regulation Authority. In addition, the men have been barred from holding senior positions in any other property/casualty insurer, APRA said.

Mr. Barnum has been replaced as CEO by Don Bradford, General Re Australia's Asia-Pacific regional manager for casualty facultative, who has worked in the Sydney office for the past two years. In addition, Jonathan Hewitt has been named chief underwriting officer, and Michael Brent has been promoted to general manager-finance.

Under certain purported traditional reinsurance transactions Gen Re Australia entered into with FAI Insurance, 'the risks for General Reinsurance Australia (were) removed through side letters.'

Australian Prudential Regulation Authority

In its investigation, APRA determined that General Re Australia had provided FAI with purported reinsurance transactions that, in fact, involved no genuine risk transfer. Under so-called "side letters" that accompanied the transactions, FAI agreed not to make any claims on the policies, APRA found.

"This arrangement improperly boosted FAI's 1997/98 profit and loss by being disguised as a number

See APRA/next page

Ratings can boost clout of captives

By PETA MILLER

LONDON—As captives struggle with a more difficult fronting environment, obtaining a credit rating could improve their bargaining power with potential fronting companies.

The number of insurers willing to provide fronting services for multinational captives has declined in recent years, and those still in the business are requiring strict security guarantees and are charging higher fees.

'The number of (fronting) insurers capable of handling multinational programs worldwide is a handful; therefore, they are taking advantage of their relatively privileged position.'

Peter McLean Standard & Poor's Corp.

"The number of insurers capable of handling multinational programs worldwide is a handful; therefore, they are taking advantage of their relatively privileged position," Peter McLean, associate director at Standard & Poor's Corp., said last week during a session of the Guernsey Insurance Forum in London.

Following the terrorist attacks of Sept. 11, 2001, many insurers that act as captive fronts became more concerned about the credit risks that such arrangements entail, said another speaker, Kevin Rye, director of Prism Insurance Management Ltd. in St. Peter Port, Guernsey. Mr. Rye also is chairman of the Guernsey Insurance Co. Management Assn., which sponsored the forum.

As a result, more fronting companies are requiring captives to provide letters of credit as proof of security, he said, noting that such arrangements are expensive, inflexible and tie up the captive's resources.

To obtain the needed letter of credit from a bank, a captive must deposit an amount equal to the fronting insurer's maximum annual exposure. This capital must remain with the bank until the risks have run off, which for long-tail casualty risks could take years, Mr. Rye noted.

"If it is fairly slow business, it could be some years down the line

See FRONTS/page 39

World Updates

Cargo plane crash cover led in London market

London-based insurer XL London Market Ltd. led the hull and liability coverage for an MK Airlines Ltd. Boeing 747-200F that crashed last week, sources said. The coverage valued the hull at $42 million and included protection against cargo and third-party liability losses, sources said. The plane, which was carrying a cargo of lobsters and tractors, crashed shortly after takeoff from Halifax International Airport in Nova Scotia, killing all seven crewmembers.

Lloyd's hurricane losses put at $2.33 billion

Lloyd's of London will likely record a net marketwide loss of £1.3 billion ($2.33 billion) from the four hurricanes that recently made landfall in the United States, a Lloyd's spokeswoman said. Total insured losses on an industrywide basis are generally expected to exceed $20 billion for the storms. Despite its loss, Lloyd's is expected to return a "healthy profit" for 2004, the spokeswoman said.

Converium share issue raises $426 million

Converium Holding Ltd. said that shareholders exercised nearly 100% of the purchase rights in its 533 million Swiss franc ($426.2 million) share issue. The roughly 107 million new shares, which were offered to existing shareholders, began trading last week. Converium noted that some shares will be placed in outside markets. Following the share issue, Standard & Poor's Corp. raised the financial strength rating of Converium to BBB+ from BBB.

Briefly noted

Lloyd's of London company **Ascot Underwriting Ltd.** is setting up a unit in Paris. The company, Ascot Insurance Services Ltd., is expected to have a premium volume of about 20 million euros ($24.6 million) and will be headed by Dominique Maurin, who was previously a senior vp at AXA Re, a unit of AXA S.A....**Hannover Reinsurance Co.** said it expects its loss from Hurricane Jeanne to be about 65 million euros ($80.7 million). The Hannover, Germany-based reinsurer said that its total loss from the recent U.S. hurricanes would total around 340 million euros ($422.2 million)....The U.K. government has announced plans to exempt about 300,000 limited businesses for which the owner is the sole employee from **employers liability insurance requirements.** Under the change, expected to become effective next year, the companies would not be required to purchase the coverage, which generally is mandatory.

Pension: Changes explored

Continued from previous page

have received, he said.

In a statement, John Cridland, deputy director general of the CBI, said that while the organization supports the use of automatic enrollment, it believes that "compulsion would be a complete blind alley."

The CBI believes that making occupational pension saving compulsory could force some lower-paid employees to contribute more than they can currently afford, a spokesman added.

A gradual rise in the average retirement age should also be considered as a means of dealing with the retirement financing problem, said Mr. Turner.

A spokesman for the London-based CBI, which represents employers, said that it supports a gradual shift in the state retirement age to 70, from 65, between 2020 and 2030.

Mr. McGlone of Aon said that employers would be interested to see how any lengthening of people's working lives is implemented.

'If we have to work longer, then all companies will be impacted by that.'

Paul McGlone
Aon Consulting

"If we have to work longer, then all companies will be impacted by that," he said. "Working longer is something that society will have to deal with at some point," he noted, "because it is not sustainable to have an economy where a smaller and smaller percentage of people are working."

Written comments on the report's findings will be accepted until January 2005.

The report, "Pensions: Challenges and Choices: The First Report of the Pensions Commission," can be viewed on the commission's Web site, at www.pensionscommission.org.uk.

APRA: Execs step down

Continued from previous page

of traditional reinsurance transactions with the risks for General Reinsurance Australia removed through side letters," APRA said in a statement.

The transactions allowed FAI to turn a loss for that year into an $8.2 million Australian ($6.0 million) profit, and HIH relied, in part, on that result in deciding to acquire FAI in 1999, a government investigation of HIH's 2001 collapse found. Investigators also determined that HIH's acquisition of FAI played a role in HIH's unraveling.

'While we fully support APRA's efforts to improve insurance industry regulation in Australia, we are nonetheless disappointed by their decision with respect to these individuals.'

Allan McDonald
General Re Australia Ltd.

General Re Australia in May agreed to pay $27.2 million Australian ($19.9 million) to HIH's liquidator to settle charges that reinsurance contracts it wrote were designed to hide FAI's true financial condition. General Re admitted no wrongdoing in agreeing to the settlement (*BI*, May 10).

Following APRA's disqualification of the General Re Australia execs, company Chairman Allan McDonald said, "While we fully support APRA's efforts to improve insurance industry regulation in Australia, we are nonetheless disappointed by their decision with respect to these individuals."

APRA said it has also disqualified two of Gen Re's Dublin, Ireland-based executives from holding senior positions in an insurer, due to their involvement in the FAI transaction. They are: Tore Ellingsen, who is currently senior marketer-international finite at Cologne Reinsurance Co. (Dublin) Ltd.; and John Houldsworth, who is chief underwriter-P&C international finite for that unit, according to an APRA statement.

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REQUEST FOR PROPOSALS

NOTICE OF SOLICITATION - REQUEST FOR PROPOSALS FOR MTA CAPITAL CONSTRUCTION COMPANY OWNER CONTROLLED INSURANCE PROGRAM

No. 7 Subway Line Extension

The Metropolitan Transportation Authority's Risk and Insurance Management Department is soliciting Requests for Proposals (RFPs) from qualified brokers/agents to provide Program Administrative and Insurance Marketing Services for an MTA Capital Construction Company Owner Controlled Insurance Program (OCIP) for the No. 7 Subway Line Extension.

Brokers/Agents must demonstrate:
(1) a clear understanding of the objectives and constraints of an OCIP;
(2) experience as Broker of Record handling OCIPs in the transportation industry, with construction values of at least $250 Million for an individual OCIP program;
(3) principal staffing in a location readily and easily accessible to MTA Service Area and
(4) commitment, capability and experience of key personnel proposed to manage these programs.

The OCIP will require an MBE/WBE goal participation to be determined.

The contract term of the OCIP is seven years. Information concerning the projects to be included in this OCIP will be mailed the week of October 25, 2004. Please fax request for an RFP to 212-878-1203. Responses to the RFP are due by 11:00 AM on December 17, 2004. Please submit ten (10) copies to **Ms. Lauren Gregory, Esq., ARM, Director, MTA Risk and Insurance Management Department, 347 Madison Avenue, (341/18), New York, N.Y. 10017**

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LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE
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COMPANIES COURT

No. 6037 of 2004

IN THE MATTER OF CHEVANSTELL LIMITED
- and -
IN THE MATTER OF ECCLESIASTICAL INSURANCE OFFICE PLC
- and -
IN THE MATTER OF NIPPONKOA INSURANCE COMPANY (EUROPE) LIMITED
- and -
IN THE MATTER OF QBE INSURANCE COMPANY (UK) LIMITED
- and -
IN THE MATTER OF MARLON INSURANCE COMPANY LIMITED
- and -
IN THE MATTER OF AIOI INSURANCE COMPANY OF EUROPE LIMITED
- and -
IN THE MATTER OF GUILDHALL INSURANCE COMPANY LIMITED
- and -
IN THE MATTER OF COMMUNITY REINSURANCE CORPORATION LIMITED
- and -
IN THE MATTER OF OSLO REINSURANCE COMPANY (UK) LIMITED
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IN THE MATTER OF
SOVEREIGN MARINE & GENERAL INSURANCE COMPANY LIMITED
- and -
IN THE MATTER OF OIC RUN-OFF LIMITED
- and -
IN THE MATTER OF WAUSAU INSURANCE COMPANY (UK) LIMITED
- and -
IN THE MATTER OF SPHERE DRAKE INSURANCE LIMITED
(together, the **Transferors**)
- and -
IN THE MATTER OF RIVERSTONE INSURANCE (UK) LIMITED
(**RiverStone**)
- and -
IN THE MATTER OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

1. Notice is hereby given that an application (the **Application**) for an order sanctioning a general insurance business transfer scheme (the **Scheme**) under Part VII of the Financial Services and Markets Act 2000 was on 8 October 2004 presented to the High Court by RiverStone. The Scheme provides for the transfer to RiverStone of the general insurance business of the Transferors carried on in the United Kingdom through the predecessor companies of RiverStone Management Limited (formerly known as Sphere Drake Underwriting Management Limited and Odyssey Re Management Limited) including Alexander Howden & Swann Agencies Limited, Trimark Underwriting Agencies Limited, Arpel Underwriting Agencies Limited, Arpel Trimark Underwriting Agencies Limited, Solar Underwriting Agencies Limited and Sphere Drake (Underwriting) Limited and, in respect of Sphere Drake Insurance Limited only (and subject to certain exclusions as described in the Scheme), all other general insurance business.

2. The reports on the terms of the Scheme prepared by an independent expert and a summary of those reports and of the Scheme are available at **http://riverstone.dentonwildesapte.com**. These documents can also be obtained from RiverStone Management Limited at the address given below.

3. The Application is directed to be heard before Mr. Justice Mann at the Royal Courts of Justice, Strand, London WC2A 2LL, on 6 December 2004. Any person (including any employee of any Transferor or RiverStone) who claims that he or she would be adversely affected by the Scheme may appear at the time of the hearing in person or by Counsel. Any person who intends so to appear and any policyholder of any Transferor or RiverStone who dissents from the Scheme but does not intend so to appear should give not less than two clear days prior notice in writing of such intention or dissent and of the reasons therefore to the Solicitors named below. Written representations concerning the transfer may be sent to Catherine Regan, General Counsel, RiverStone Management Limited, Park Gate, 161-163 Preston Road, Brighton, East Sussex BN1 6AU, England marked with the reference "Project 2004".

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Ref: DJP/SJM/EXW/21746/00025.

Lloyd's: Debt issue will set precedent

Continued from page 3

tively to the announcement of the debt issue.

Standard & Poor's Ratings Services in London said it would assign the debt issue a BBB+ long-term junior subordinated debt rating, A.M. Best Co. said it would rate the issue bbb+, and Fitch Ratings in London gave the issue an "expected rating" of BBB+.

In a statement, Best said the move would likely increase the solvency of Lloyd's.

Chris Waterman, a senior director in Fitch Ratings' European Insurance Group in London, said that issuing debt is an efficient way for Lloyd's to bolster its solvency.

A successful first issue would also likely bolster investor confidence in Lloyd's and enable it to make further use of financial instruments in the future, Mr. Waterman added.

A spokesman for the London-based Assn. of Lloyd's Members, which represents individual Lloyd's members, said the capital raising plan is a "sign that Lloyd's is now operating from a position of great strength."

Marsh: Suit levels fraud charges

Continued from page 1

pensation. In a press conference last week, Mr. Spitzer said he will be filing more lawsuits and criminal charges, and industry analysts expect other brokers and insurers to become targets.

"The insurance industry needs to take a long, hard look at itself," Mr. Spitzer said. "If the practices identified in our suit are as widespread as they appear to be, then the industry's fundamental business model needs major corrective action and reform."

Contingent commissions, in fact, could soon dwindle or disappear as a source of brokerage revenue, industry analysts and others say.

AIG Chairman and Chief Executive Officer Maurice R. Greenberg said in a conference call Friday that "it's likely" that AIG will cease entering such agreements.

MMC, which said it is taking Mr. Spitzer's charges "very seriously," announced that it will suspend collecting contingent commissions.

Industry analysts, though, warn that MMC's brokerage business could suffer significant damage if the charges are proven, particularly if rival brokers ultimately face less serious charges that do not include bid-rigging.

MMC collected $800 million in contingent commissions last year, about 8.5% of its $9.38 billion in brokerage revenues and more than half of its $1.54 billion in net income, according to Mr. Spitzer's complaint.

The broker will have a tough time making up the loss of this revenue in the near term by raising client fees and commissions, because clients "will be increasingly sensitive toward the company's compensation," Merrill Lynch & Co. analyst Jay Cohen states in a research report.

If Mr. Spitzer ultimately does not sue MMC's competitors or brings less serious charges against them, the damage to MMC's reputation "could be quite material," Mr. Co-

See MARSH/next page

Fronts: Credit ratings can boost clout of captives

Continued from page 37

before you have a clear picture of where claims are going to get. That is a drain on captive resources, as you are tying up resources on a letter of credit that you may want to use," he added.

But captives can boost their bargaining power with fronting companies and cut associated costs by using credit ratings to guarantee security, Mr. McLean said.

At S&P, a captive cannot achieve a higher credit rating than its parent, Mr. McLean noted, adding that this is not the case for all rating agencies.

In addition to looking at the financial position of the parent, S&P considers several other factors in issuing a rating for a captive, including the vehicle's management, strategy, operating performance, investments, liquidity, capitalization and financial flexibility.

The financial cost of a rating is difficult to calculate, Mr. McLean said, because it depends on the particulars of a company and the amount of work involved. The benefits, though, include greater recognition and acceptance of the captive by fronting insurers, which still do not always perceive captives as "real" companies, said Mr. McLean.

In addition, obtaining an insurer financial strength rating could benefit captives in jurisdictions that permit rated captives to write business directly. Such a rating would reduce captives' reliance on fronting arrangements, said Mr. McLean.

Responding to a question from the floor about how ratings affect fronting insurers' collateral requirements, Mr Rye said: "It gives you a much stronger bargaining position to start from if you can say you have an A rating, but it depends on the (fronting insurers) themselves and (their) internal rules."

In response to a question about the number of rated captives, Clive Thursby, manager-alternative markets at A.M. Best Europe Ltd., who spoke from the floor, estimated that about 5% of captives worldwide have ratings.

Corporate governance rules debated in Canada / 3
Calif. druggists threaten to shun comp scrips / 4
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Marsh: Spitzer lawsuit takes aim at contingent fees

Continued from previous page
hen notes.

Standard & Poor's Corp. also questioned the impact of the charges on MMC's senior management, noting that Mr. Spitzer said he will not negotiate settlement terms with current management. MMC's board of directors, however, expressed confidence last week in Chairman Jeffrey W. Greenberg and senior management. It also announced an internal investigation, headed by Michael G. Cherkasky, chief executive officer of MMC's Marsh Kroll consulting unit.

Clients of MMC's Marsh Inc. brokerage unit, meanwhile, have already expressed their displeasure.

"Are we angry? You bet," said the risk manager of a Fortune 200 financial services company and Marsh client, who requested anonymity. "The behavior that is alleged in there is reprehensible if it's true."

The risk manager said that he has already demanded that Marsh executives working on his company's account affirm that they did not engage in any of the practices outlined in the complaint.

Contingent commission agreements—under which insurers pay brokers based on the volume or profitability of business they produce—have long been debated as a possible conflict of interest but have largely been treated as requiring only a broker's disclosure of commissions to its clients.

Earlier this year, though, Mr. Spitzer launched an investigation into the practice, issuing subpoenas to Marsh, Aon Corp., Willis Group Holdings Ltd., Kaye Insurance Associates Inc. and several insurers, including AIG and Hartford.

None of the other brokers earns contingent commissions on the scale of Marsh's, industry analysts say. Such commissions may amount to roughly $200 million a year at Aon and about $55 million at Willis, various analysts estimate. Aon issued a statement Friday saying that bid-rigging and other allegations in the suit "would violate Aon policies and that, to the best of our knowledge, our employees have not engaged in" such practices.

While many observers expected the investigation to lead to tighter disclosure requirements, Mr. Spitzer's suit against MMC turned out to be what Merrill Lynch's Mr. Cohen calls a "worst-case scenario" for the brokerage industry, creating a shockwave that sent the stock of MMC and other publicly traded brokers and insurers plummeting.

According to the suit, Marsh:

- Developed an internal rating system for insurers to identify those paying it the highest contingent commissions and to help Marsh brokers steer business to those insurers.

Explaining the rating system to colleagues in 2002, a Marsh managing director said, "I will give you clear direction on who (we) are steering business to and who we are steering business from," according to the complaint.

"We need to place our business in 2004 with those that have superior financials, broad coverage and pay us the most," the suit quotes a Marsh Global Broking executive saying in a September 2003 e-mail.

- Pressured insurers to sign commission agreements or boost commission levels.

One effect of Marsh's alleged client-steering practices was that clients paid more than they had to for their coverage, according to the complaint.

In November 2003, a Marsh executive reported telling the president of an ACE subsidiary that ACE would have to raise its commission payments to win more business from the broker, the suit says. "I made it clear that if ACE wants us to meet significant premium growth targets, then ACE will have to pay 'above market' for such (a) stretch," the executive said in an e-mail cited in the suit.

Another insurer executive said Marsh threatened to "kill" the company if it did not "get to (the) right number" on its contingent commission agreement, the suit says.

- Solicited phony, artificially high quotes from insurers in a bid-rigging scheme to funnel clients' business to preferred insurers. Insurers providing the false quotes—known within Marsh as "B quotes"—knew they wouldn't get the business but expected to benefit from similar protection from Marsh on other accounts, the suit charges.

Marsh asked ACE, for example to raise its $990,000 quote on an excess casualty placement for Lincolnshire, Ill.-based Fortune Brands Inc. to avoid competing with AIG, the suit says.

"We were more competitive than AIG in price and terms," an ACE underwriter wrote in an internal e-mail cited in the suit. But Marsh "requested we increase premium to $1.1 million to be less competitive, so AIG does not (lose) the business."

AIG similarly provided fake quotes on business that Marsh wanted to place with other insurers, and a Marsh official warned AIG that it would lose its entire book of Marsh business if it did not provide such quotes, the suit alleges.

One effect of Marsh's alleged client-steering practices was that clients paid more than they had to for their coverage, according to the complaint.

Munich-American, for example, maintains a separate schedule of higher rates for Marsh clients to recoup the cost of the contingent commissions it pays, the suit says.

"Effectively, Marsh is secretly raising the price of insurance for its clients and putting at least some of the increase in its own pocket," the attorney general charges.

Marsh asserts that it discloses the existence of contingent commission agreements—which it calls "market services agreements"—but its disclosures are also false and misleading, the complaint alleges.

While Marsh claims the MSAs compensate it for marketing services, the broker actually provides no legitimate "service" to justify the payments and collects them only in exchange for steering business to particular insurers, the suit alleges.

The complaint charges MMC and Marsh Inc. with fraud and violations of securities and antitrust laws. It seeks to bar the broker from collecting contingent commissions and to force it to disgorge commissions already collected.

In a statement, MMC said it is cooperating with Mr. Spitzer. "We are committed to getting all the facts, determining any incidence of improper behavior and dealing appropriately with any wrongdoing," the company said.

AIG, ACE, Hartford and Munich-American also said they are cooperating.

MMC shares closed Friday at $29.20, down 36% from their closing price on Wednesday. In addition, several rating agencies placed the company's debt ratings under review.

TRIA: Passage of extension this year a long shot

Continued from page 1
rorism coverage. While TRIA met the first goal quickly, the creation of a totally private terrorism insurance market remains elusive, and the law is set to expire at the end of 2005.

That led policyholders and insurers to push for a two-year extension of TRIA in the just-completed Congress to ensure that policies under negotiation this year that would extend beyond Dec. 31, 2005, would still be backed by the federal program. The House Financial Services Committee gave its unanimous support last month to a bill that not only extended TRIA but also added its protection to group life insurance as well.

But getting that measure to the House floor before adjournment proved impossible. In an effort to address the concerns of House Majority Leader Tom DeLay, R-Texas, supporters scaled back the bill to a six-month extension. They planned to bring the stripped-down bill up under a suspension of the rules, a parliamentary tactic generally reserved for noncontroversial legislation. But cutting the extension to six months cost the measure the support of some Democrats, who remained committed to a two-year extension. Given that bills brought up under a suspension of the rules require a two-thirds majority to pass, supporters saw no point in bringing the measure for a vote when it appeared certain to fail. The measure was withdrawn on Oct. 8.

Looking ahead

"This period over the next few months is critical," said David A. Winston, senior vp-federal affairs in the National Assn. of Mutual Insurance Cos.' Washington office. Without the TRIA backstop, "major economic instability" could occur, he said.

He said that NAMIC would push to have the lame-duck session take up the issue. "It's our No. 1, 2 and 3 priority," said Mr. Winston.

But the nature of the lame-duck session works against TRIA reauthorization, said Julie Gackenbach, assistant vp-federal affairs for the Property Casualty Insurers Assn. of America in Washington. "This is going to be a very tightly controlled, very limited lame-duck session," she said. "We will continue to work to try to press this during the lame-duck session, but we likely will be facing this early next year."

"Given the limited appetite by congressional leaders for a lengthy lame-duck session, TRIA extension would be difficult, but it's certainly worth trying," said Joel Wood, senior vp-government affairs for the Council of Insurance Agents & Brokers in Washington.

"The politics of this issue will be driven by market dislocation, and so we expect to see extensive use of the (Insurance Services Office Inc.) exclusions on policies issued after Jan. 1. Given the mandatory coverage of fire-following and workers compensation, plus potential actions by individual state regulators to force coverage, the industry will be put in an extremely difficult position," he said.

"Chaotic market conditions could certainly be avoided, and we remain highly optimistic that, in the end, Congress will respond appropriately to this obvious need. It's just that it may be ugly getting there," Mr. Wood said.

NAMIC's Mr. Winston noted that the industry is "totally unified on this issue—that's very helpful." But both Messrs. Winston and Wood say that mere industry unity isn't enough to achieve TRIA extension.

Indeed, "it's now time for insurers and policyholders to rally their forces," said Francis Bouchard, senior vp and director-federal affairs for Zurich Financial Services Group Inc. in Washington.

Policyholder action is particularly important, said industry representatives.

"The policyholder perspective and voice is essential to the TRIA debate. This law was passed for them, and the ongoing debate focuses entirely on whether terrorism coverage will be available to companies that want it once TRIA expires," said Julie Rochman, senior vp at the American Insurance Assn.

The policyholders "need to get energized; they need to talk to their members of Congress. They need to understand that without the federal reinsurance backstop, many companies will not offer terrorism coverage," NAMIC's Mr. Winston said.

Policyholders have already played a key role in the promoting the bill, and their support will be even more critical next year, said PCI's Ms. Gackenbach. "The policyholders are going to have to step up to the plate a little more and explain the importance of getting this done quickly," she said. She pointed out that about 175 members of Congress are on record in favor of TRIA extension.

Policyholders say that they will rise to the occasion.

"Our stance has been for some time now that it's critical that this be extended this year," said Marty DePoy, steering committee coordinator of the Coalition to Insure Against Terrorism, a Washington-based policyholder group. He said that while coalition members were disappointed that TRIA was not extended before Congress adjourned, "we've certainly not given up hope, and we're going to be looking at any and all opportunities before the end of the year, including the lame-duck session, to get this done."

"We're disappointed that they failed to pass it before the recess," said Janice Ochenkowski, vp-external affairs for the Risk & Insurance Management Society Inc. in New York. "We're optimistic that this legislation will become law after the lame-duck session. It's very important legislation that impacts the nation's economy, not just the risk management community. We will continue to support the proposed legislation and urge legislators to enact it," said Ms. Ochenkowski, who is a senior vp at Chicago-based Jones Lang LaSalle.

If the measure does not win approval during the lame-duck session, supporters will have to explain why it's "imperative to do it absolutely first thing out of the chute," said Ms. Gackenbach. "It's a very bipartisan issue, and time is of the essence. Every day this goes by, there are more insurance contracts that extend beyond the expiration of the act," she said.

AIA's Ms. Rochman noted that TRIA has appeared doomed before but has been resurrected.

"This law has a history of coming back when people thought it was finished. I have jokingly called it the 'zombie bill,' because it keeps coming back," said Ms. Rochman. "We will—and policyholders will—continue to do everything we can to finish the TRIA extension legislation as soon as possible. We believe it will get done, but the important question is when, and can we head off the looming market dysfunction?"

Flu: Employers likely to see increased absences

Continued from page 1

from flu-related complications and as many as 36,000 dying from influenza. Groups at high risk for flu complications include children under two years of age, adults age 65 years and older, women who will be pregnant during influenza season, persons with underlying chronic medical conditions and residents of long-term care facilities.

The CDC cites vaccination as the best defense against contracting the flu, but, given this season's shortfall, those not in priority groups are being asked to forgo the vaccine.

"Most of the people are following the CDC's guidelines, and that's what we're recommending" to clients, said Jennifer Lim, national director of Vienna, Va.-based Comprehensive Health Services, a company that manages occupational health programs for large organizations, including several Fortune 200 firms and federal agencies.

Thousands of companies across the country have canceled onsite programs that immunize workers in an effort to ensure that high-risk individuals can obtain flu shots.

Thousands of companies across the country have canceled onsite programs that immunize workers in an effort to ensure that high-risk individuals can obtain flu shots.

Chicago-based Boeing Co., for example, which has for several years offered flu shots to employees free of charge, has canceled its program for this season and donated its vaccine supply to a local health department, a company spokesman said. General Motors Corp. of Detroit, which has over 320,000 workers, also made the decision to forgo its immunization program this year, a spokesman confirmed. And Atlanta-based BellSouth Corp., which earlier this month informed its 64,000 employees that free shots would not be offered this season, is grappling with how "to gauge the costs related to canceling the flu shot," a company spokesman said.

While it may be too soon for companies to calculate the losses related to the lack of flu vaccine, experts say that businesses should expect to feel the impact.

"Employers should brace themselves for increased absences and, in severe cases, short-term disability, because of the lack of availability of the vaccine," said Shelly Wolff, national practice leader for health and productivity for Watson Wyatt Worldwide in Stamford, Conn.

A study published in 1999 in the Journal of the American Medical Assn. found that recipients of the influenza vaccine experienced up to 27% fewer days of illness, up to 28% fewer days of work lost and up to 40% fewer days making health care provider visits.

In recent years, "more and more companies have been offering the flu vaccine, because there has been a proven connection between the flu vaccine and reduced illness, which translates into less use of sick leave," Ms. Wolff said.

A June survey conducted by the Alexandria, Va.-based Society for Human Resource Management showed that 60% of U.S. companies provide flu shot programs for their employees. "It works both ways," said a spokeswoman for SHRM. "Organizations are hoping that they'll see a decrease in sick days. Employees are very happy to have this benefit because they don't want the flu."

According to Sharon Kaleta, chief executive officer of the San Diego-based Disability Management Employer Coalition, which assists employers in developing cost-saving programs and returning workers to productive employment, those companies that vaccinate their employees are not only "reporting a decrease in sick time" but "some employers have indicated that there's been a decrease in their health care costs."

CCH Inc., a Riverwoods, Ill.-based firm that tracks human resources statistics, estimates unscheduled absences cost organizations, on average, $610 per employee annually.

"For those organizations that did not get the vaccine early," Ms. Kaleta predicted there will be "an increase in the absence rate, and in corresponding dollars. There will be a lesser impact on those employers that are able to vaccinate their high-risk employees but there will still be some impact," she said. "We just don't know to what degree yet."

The cost of the flu shot shortage for employers will depend, in part, on the severity of the flu season, which, according to the U.S. Centers for Disease Control and Prevention, varies in intensity and begins as early as October and ends as late as May.

The cost of the flu shot shortage for employers will depend, in part, on the severity of the flu season, which, according to the CDC, varies in intensity and begins as early as October and ends as late as May. "We don't have enough data yet to tell if it's going to be a mild, moderate or severe flu season this year," a CDC spokeswoman said.

Still, businesses can put into place some absence and productivity management strategies to mitigate the effects of not being able to immunize workers.

As an alternative to onsite vaccination, companies should "encourage their employees who are at high risk to get their flu shot from their physician or other health care provider," said Dr. Ron Davis, a Detroit-based physician who is also an AMA board member.

Doctors and benefit consultants recommend that employers communicate the importance of maintaining good hygiene in the workplace, using simple techniques such as hand washing and covering the mouth and nose when sneezing. Employers should also allow contagious employees to work from home so they do not spread the virus, they say.

Additionally, Gaithersburg, Md.-based Medimmune Inc. has made available 1 million to 2 million doses of FluMist, a nasal spray vaccine not recommended for higher-risk individuals but suitable for healthy patients between the ages of five and 49. Hartford, Conn.-based insurer Aetna Inc. and Woodland Hills, Calif.-based managed health care company Health Net Inc. announced they will cover the cost of FluMist.

"Larger employers that have self-insured plans" might find it "prudent to cover the FluMist," said Kathleen Strukoff, a vp with Chicago-based Aon Consulting, which provides risk management, human resource and employee benefit consulting. An alternative for smaller employers might be a vaccine reimbursement process through accounts payable departments, she suggested.

There are also three antiviral prescription drugs–amantadine, rimantadine and oseltamivir—that are approved and commercially available in the United States for preventing flu. While the CDC stresses that these drugs are not substitutes for the flu vaccine, they are 70% to 90% effective in preventing illness in healthy adults, the agency claims

Businesses can put into place some absence and productivity management strategies to mitigate the effects of not being able to immunize workers.

In the meantime, companies currently not licensed to sell the flu vaccine in the United States—such as Vancouver, British Columbia-based I.D. Biomedical, which supplies Canada with 75% of its flu vaccine—are in talks with the federal Food and Drug Administration to gain approval to supply additional doses. I.D. Biomedical has a stockpile of between 1 million and 1.5 million doses that have not been allocated, a company spokesman said.

Looking ahead, Chiron—which is now under investigation by the U.S. Securities and Exchange Commission to determine if the company had attempted to cover up problems at its vaccine plant in England—says it is committed to providing the flu shot next year.

"We take our responsibility to protect human health very seriously," Howard Pien, president and chief executive officer of Chiron, said in a statement, "and we are committed to taking all necessary actions to ensure an adequate vaccine supply for the 2005-06 influenza season."

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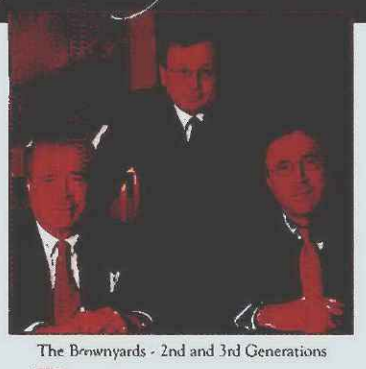

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401(k): Bill would aid reservists

Continued from page 3

Under that agreement, Sen. Landrieu said she would not hold up the corporate tax cut bill, which received final congressional approval last week.

In turn, Senate leaders agreed to take up an earlier House-passed bill, H.R. 1779, which includes the tax waiver for reservists on active military duty, and added to it the 401(k) differential pay proposal and a modified version of Sen. Landrieu's tax credit proposal. Under the revised provision, the tax credit would be available only to employers with 50 or fewer employees that provide differential pay to reservists while they are on active service, with the amount of the tax break not to exceed $15,000.

With the agreement in place, the Senate last week approved the House-passed 401(k) plan withdrawal penalty waiver measure, along with the differential pay provisions.

Sen. Landrieu said she is confident that the House will act on the revamped measure when it returns next month.

"I actually think it's very likely this bill is going to pass. I think it's going to be very difficult for the House to explain why they are not getting relief to the men and women on the front lines," Sen. Landrieu said at a news conference last week.

But others say final congressional passage is not a certainty. "Whether this gets done depends on the breadth of issues congressional leaders decide to look at and consider when Congress returns after the elections," said Frank McArdle, a consultant in the Washington office of Hewitt Associates Inc.

The tie between 401(k) plan contributions and differential pay emerged in the wake of the heavy mobilization of reservists and National Guard members due to the ongoing conflict in Iraq. Currently, more than 173,000 reservists are on active duty.

Many reservists have been on active duty for extended periods of time. In many cases, that has caused financial hardship, because the military salaries the employees earn often are far less than they had been receiving from their employers.

To alleviate that hardship, many companies now are offering differential pay benefits—also called salary continuation programs—which essentially pay the difference between what an employee would be earning if he or she were still working for the company and that individual's military pay.

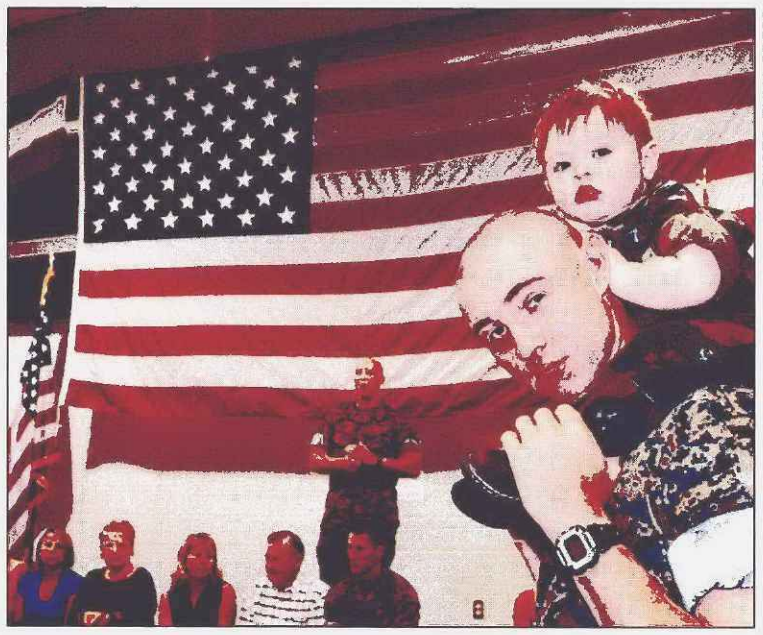

PHOTO: ZUMA PRESS

Under a bill passed by the Senate, reservists and National Guard members could contribute to 401(k) plans while on active duty if they receive so-called 'differential pay' from their employer.

For example, both United Parcel Inc. of Atlanta and Staples Inc. of Framingham, Mass., offer such differential pay programs to cover up to one year of military service, while Mellon Financial Corp. in Pittsburgh does so for six months, with salary continuation for reservists on active duty for more than six months reviewed on a case-by-case basis.

"Our policies regarding salary and benefits continuation reflect Mellon's appreciation for the sacrifices being made on our country's behalf by reservists serving on active duty," Mellon said in a statement.

But questions have emerged as to whether pay differential or salary continuation programs are, in fact, compensation, which traditionally is defined as payment for services rendered, and thus eligible for 401(k) plan deferrals.

"It has been a gray area, but this bill makes it clear that differential pay is compensation," Mr. McArdle said.

In addition, the legislation exempts 401(k) plan deferrals made through pay differential programs from nondiscrimination testing so long as the differential programs are offered to all employees who are called up for military service. Those individuals must be entitled to receive differential payments on "reasonably equivalent terms," according to the legislation.

"A company can't, for example, decide to give a pay differential to the boss's nephew, but not to anyone else," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Washington.

"They don't want to burden employers who are offering these programs with nondiscrimination testing, but they also don't want to open the door to abuse," said Allen Steinberg, a Hewitt consultant in Lincolnshire, Ill.

While nondiscrimination testing would not be required under the arrangement, the overall annual limit on annual 401(k) deferrals—currently $13,000—would still apply.

Coventry: Purchase broadens reach

Continued from page 4

in revenues last year, currently provides managed care products and services to members in 15 markets throughout the Midwest, Mid-Atlantic and Southeastern states, while First Health, with 2003 revenues of $890 million, provides health plan services such as preferred provider organizations to large, multisite employers.

Coventry officials said the company would be out of the acquisition market in 2005 while it focuses on integrating First Health's operations. Douglas Meyer, senior director of Fitch Ratings in Chicago, called the decision "prudent," noting that company officials are "going to have their hands full for a while" with this transaction.

There are, experts say, positives for Coventry, namely, opening up new markets and new business for the company on the national level. However, they stress that Coventry still will be dwarfed in size by other national managed care companies such as UnitedHealth Group Inc.

The major managed care companies are having a difficult time growing membership organically, so they usually try to grow through acquisition, as seen in this deal, Mr. Meyer said.

In addition, the focus on self-funded business is increasing because that business may have more growth potential than fully insured products.

"They're getting into a business that is showing better growth prospects, at least over the near term," Mr. Meyer said.

The transaction also will achieve substantial savings for the combined entity in several ways, including the elimination of duplicate corporate costs and the achievement of provider network savings, Coventry said. The combined company is expected to achieve annual operating savings of about $20 million to $30 million in 2005, $40 million to $60 million by the end of 2006, and more than $100 million by the end of 2007.

Coventry may be able to pass on these savings to its employer clients, Mr. Ward said. "To the extent they're able to integrate cost management tools, there may be potential to offer some benefits to the employers that way," he said. "I don't think, at the premium level, there is going to be much of an impact."

Concerns about the transaction were reflected in actions by the ratings agencies last week. A.M. Best Co. has placed its B++ and B+ financial strength ratings of the insurance subsidiaries of Coventry under review with negative implications. Best has also placed its A- financial strength ratings of the insurance subsidiaries of First Health under review with negative implications. Best said it would determine the appropriate rating action after meeting with company management and completing its review.

In addition, Standard & Poor's Corp. placed its BBB- counterparty credit ratings on Coventry and First Health under review with negative implications.

The integration of the two firms will come at a time when Coventry will be making some changes among the ranks of its top executives.

Mr. Wise, Coventry's CEO, is scheduled to retire and be replaced by Chief Financial Officer Dale Wolf effective Jan. 1, 2005. The company said it would announce who will succeed Mr. Wolf as CFO within the next 30 days.

Kemper: Regulators seek new protocol

Continued from page 3

sometime in mid-November, according to the NAIC. It may vote to adopt the proposal before the NAIC's winter quarterly meeting Dec. 4-7 in New Orleans, according to NAIC minutes.

Observers differ about the significance of the proposal.

Joseph B. Sieverling, senior vp of the Reinsurance Assn. of America, said, "This is a fairly significant change to the policy for granting permitted practices." For example, it could result in nondomiciliary regulators asking the affected insurer to refile its financial statements. They might then determine that the insurer was in a hazardous condition and order it not to write business in their states, he said.

"They don't want this situation (Kemper) to happen again," he said.

Mr. McCarty, however, said, "Florida does not view it as a significant change," noting that it "does not usurp the domiciliary regulators' authority in any way."

Deirdre K. Manna, acting director of the Illinois Insurance Division, said that the division does not have an issue with the intent of the proposed change. Illinois regulators historically have kept affected regulators informed, though informally, "as a matter of courtesy and consideration," said Jack Messmore, the division's chief deputy director. Regulators from Florida and Virginia confirmed that claim.

The Illinois division disagrees with the committee's process, believing the matter should be handled in the related technical working group, Ms. Manna said. Committee members, however, did not approve Mr. Messmore's attempt to transfer the proposal to that working group at the recent NAIC meeting.

Mr. McCarty agreed with keeping the matter at the committee level. "The proposed change is a regulatory communication issue rather than a technical accounting issue," he said.

Kemper does not intend to take a position on the issue, its spokeswoman said.

A few risk managers who have been frustrated by the lack of information they have received from Kemper generally supported the idea of regulators requiring more formal notice about the type of accounting-related changes that Illinois regulators allowed Kemper.

"We are still in the dark," said a risk manager for a Fortune 500 company that is a former Kemper policyholder. The increased notification requirement "can only be good news for insurance buyers."

"The problem is there is no centralized information source to moni-

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Late News

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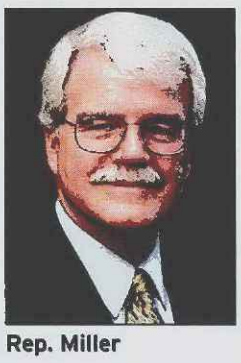
Claim Services unit. Florida bore the brunt of Ivan's fury, with an estimated $3.8 billion in insured damage. Hurricanes Ivan, Charley and Frances caused a collective $17.2 billion in insured damage, according to PCS, which is still tallying the damage caused by Hurricane Jeanne.

Bill would bar some deferred compensation

Employers in bankruptcy that terminate underfunded pension plans would be barred from paying or promising deferred compensation benefits to directors and officers for five years under legislation introduced in the House of Representatives by Rep. George Miller, D-Calif. The ban also would apply in situations where employers converted their pension plans to cash balance plans and didn't give those participants with at least 10 years of service the opportunity to remain in the former plan.



Rep. Miller

New Bermuda facility to provide terror cover

Units of Montpelier Re Holdings Ltd. and the Overseas Private Investment Corp. have formed a facility to underwrite stand-alone terrorism insurance products for U.S. businesses with overseas operations. Coverage of up to $250 million per project will be available from the Bermuda-based facility, and policy terms will last up to 10 years. Private insurance backed by the Terrorism Risk Insurance Act does not apply to overseas projects undertaken by U.S. companies.

North Carolina Blues plan waives copay for generics

To encourage health plan enrollees to use lower-cost generic drugs, Blue Cross & Blue Shield of North Carolina will waive copayments for members who choose generic substitutes for prescriptions filled from Oct. 1 through Dec. 31 at participating pharmacies. The copayment waiver, which applies to new prescriptions and refills, will affect 1.1 million members, including those in employer-sponsored plans.

AIG storm losses may top $500 million

American International Group Inc. estimates that its net aftertax losses from a series of U.S. hurricanes and Japanese typhoons will result in net losses of between $500 million and $515 million. The losses include both domestic commercial and personal lines business and foreign general operations. They also include AIG's prorated share of losses from its majority investment in Transatlantic Holdings Inc. and its participation in Lloyd's of London syndicate 1414 (Ascot) and minority investment in Allied World Assurance Holdings Ltd., IPC Holdings Ltd. and Fuji Fire & Marine Insurance Co. Ltd.

Holocaust survivor suits against Generali dismissed

U.S. District Court Judge Michael Mukasey last week dismissed 20 separate lawsuits claiming that Assicurazioni Generali S.p.A. failed to pay benefits to Holocaust survivors and their heirs for policies written in Europe in the years before World War II. In his ruling, Judge Mukasey said the suits are pre-empted by a federal executive branch policy "favoring voluntary resolution of Holocaust-era insurance claims through ICHEIC." The Washington-based International Commission on Holocaust Era Insurance Claims is a private organization that processes claims dating back to the World War II-era. An attorney for the plaintiffs said he plans to appeal the decision.

UnitedHealth Group posts nine-month gains

UnitedHealth Group Inc. reported profits of $1.85 billion for the first nine months of 2004, a 40.2% increase over the year-earlier period. The Minneapolis-based health insurer's revenues increased 25.4%, to $26.71 billion, for the period. During the third quarter of 2004, United completed its acquisition of Oxford Health Plans Inc., which accounted for a significant portion of the revenue increase.

ACE, XL report storm losses

The string of storms that hit the United States and Japan this year caused about $480 million in losses for ACE Ltd., the Bermuda-based insurer and reinsurer said. ACE expects to record an aftertax charge of around $400 million for the third quarter as a result of the losses. XL, meanwhile, estimated its losses from the U.S. hurricanes at $450 million. Around $260 million is expected to be paid by the company's reinsurance operations and $190 million from insurance underwriting, Bermuda-based XL said. XL said it expects to record an aftertax charge of $420 million as a result of the storms.

HUB undertakes rebranding initiative

Retail brokerage operating entities of HUB International Ltd. that have not incorporated "HUB International" into their name will do so this month under a rebranding initiative the Chicago-based brokerage announced last week. "A consistent HUB identity not only unifies over 3,000 employees across the United States and Canada but also helps us to leverage our scale with insurers and, ultimately, delivers better value to all customers across our brokerages," Martin P. Hughes, chairman and chief executive officer, said in a statement.

Check out BusinessInsurance.com

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Kemper: Regulators seek new protocol

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tor or track or determine what's happening at Kemper," according to a risk manager for a Fortune 1,000 company who is a long-term Kemper policyholder with pending claims. He said he gets most of his information from other risk managers who are the primary participants in three Internet discussion groups, including one sponsored by the New York-based Risk & Insurance Management Society Inc.

Both risk managers declined to be identified because they feared repercussions in their dealing with Kemper.

In response, representatives of both Kemper and the Illinois Insurance Division disagreed with those risk managers' negative assessments. They emphasized that progress has been made in enhancing communication to policyholders, through both personal meetings and conveying information through brokers.

In addition, Ms. Manna and Kemper expressed a willingness to meet with policyholders.

Broker representatives for both Aon Corp. and Marsh Inc. confirmed that progress is being made to enhance communication with policyholders.

Communication is "much improved" since late June, though remaining issues include collateral adjustments, said Anthony De Felice, managing director of Aon's national casualty practice. Communication also may improve in the future because Kemper recently devoted part of its staff to resolving such issues by March 2005, he said.

Kemper is now "much more aware of customer issues" and made strides in resolving many of them, although collateralization is still an outstanding issue, said Tim Brady, practice leader of Marsh Inc.'s national casualty practice in New York.

The NAIC's proposal is available online at *www.naic.org/frs/e_committee/09-Emin6a.doc*. Comments should be addressed to committee Chair Kevin McCarty and submitted by Oct. 26 to NAIC staff members Annette M. Knief at *aknief@naic.org* or Leslie Geel at *lgeel@naic.org*.

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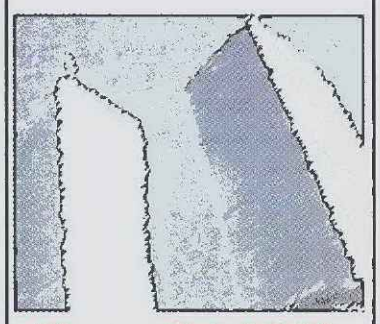
Online Poll

[10/11 - 10/15]

Will the upcoming phase of the World Trade Center coverage trial decide that the towers' destruction was one occurrence?



Yes 67.42%
No 28.09%
Don't know 4.49%

BI Stock Index

[10/11 - 10/15]

Up-to-the-minute data for all 87 companies that comprise the *BI* Stock Index can be found at *www.businessinsurance.com*

Percentage change of *BI* Stock Index vs. key indicators

***BI* Stock Index**	
2110.44	-5.11
Dow Jones	
9933.38	-1.21
S&P 500	
1108.20	-1.24

Largest gains

ESG Re Ltd.	20.00%
Alleghany Corp.	5.17%
Penn-America Group Inc.	5.00%
Gainsco Inc.	1.82%
Sierra Health Services	1.71%

Largest losses

Marsh & McLennan	-36.49%
Aon Corp.	-22.88%
Arthur J. Gallagher & Co.	-19.51%
USI Holdings Corp.	-15.23%
AIG	-13.53%

Weekly change by market segment

Brokers	-14.02%
Insurers/Reinsurers	-2.25%
Managed Care Organizations	-1.80%

Source: CNET Investor (investor.cnet.com)

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