

**Capital growth may
shorten hard market / 2**

**Uncertainty adding
impetus to rate hikes / 3**

www.businessinsurance.com

Business Insurance®

January 21, 2002

Entire contents copyright © 2002 by Crain Communications Inc. All rights reserved.

\$4

Arbitration dealt a blow

EEOC suits not barred: High court

By MARK A. HOFMANN

WASHINGTON—Employers may find the use of arbitration to settle employment disputes less attractive in the aftermath of a Supreme Court decision holding that an arbitration agreement does not bar the Equal Employment Opportunity Commission “from pursuing victim-specific judicial relief” including back pay and damages.

But the high court’s 6-to-3 decision in *Equal Employment Opportunity Commission vs. Waffle House Inc.* by no means marks the end of arbitration agreements as a means of

keeping employment disputes out of the courts, as even the EEOC chair noted in a statement issued shortly after the Jan. 15 decision.

“The ruling embraces the view that, as the agency trusted to enforce the federal statutes prohibiting discrimination in the workplace, the EEOC is not constrained in any way by a private arbitration agreement to which the EEOC is not a party,” said Cari M. Dominguez. “The decision also acknowledges, as does the EEOC, the goals of efficiency and economy that may be furthered in particular cases by the private arbitration sys-

tem.”

“Theoretically, it opens employers up to more exposure and claims, although practically speaking, the level of commission-initiated litigation over the last decade has been from 150 to 350 cases per year,” said Gerald L. Maatman Jr., chair of the global employment law practice at Baker & McKenzie in Chicago. He noted that the ruling “does not authorize a new category of damages and confirms that employers do retain defenses against EEOC lawsuits.

“Hence, employers who have
See EEOC/page 21



Late News

Lloyd's market to consider reforms

Lloyd's of London market participants will review radical reforms of Lloyd's operations over the next few months. The Council of Lloyd's last week cleared for consultation the proposed reforms,

drawn up by a strategy group formed last year by Lloyd's Chairman Sax Riley.



Mr. Riley

The proposals address both Lloyd's structure and reporting systems and include a move away from the three-year accounting system to generally accepted accounting principles. Also, unlimited liability underwriting and the annual venture system of raising capital would be abolished. Lloyd's said that no new unlimited liability names would be accepted into the market and that any existing names who wish to continue underwriting would convert to limited liability by January 2005. The structure of Lloyd's also would change, with a single franchise board replacing the existing regulatory and market boards.

Regulators hear terrorism loss warnings

There's no guarantee that insurers will be able to cover future terrorism-related losses, a wide range of witnesses told a panel of state regulators last week. Ron Ferguson, the chairman of Berkshire Hathaway Inc.'s General Reinsurance Corp. unit, warned that insurers can't take “another one, two or three” disasters along the lines of the destruction of the World Trade Center. “It isn't a bottomless pit,” he told members of the National Assn. of Insurance Commissioners' Reinsurance Task Force at a forum on the availability and affordability of terrorism reinsurance in Washington.

Bill would indemnify WTC contractors

When it reconvenes this week, the U.S. House of Representatives is expected to consider a bill under which the federal government would indemnify the contractors

See LATE NEWS/page 2

Court sides with retirees

Employer ordered to keep its promise of lifetime benefits

By DAVE LENCKUS

NEW YORK—In what some attorneys are calling a troubling ruling for employers, a federal appeals court says employers may not reduce promised lifetime retiree benefits if they did not reserve that right when they made the promises.

The Dec. 6, 2001, ruling by a 2nd U.S. Circuit Court of Appeals panel, which overturned a lower court's ruling, means that the reservation clauses that employers in Connecticut, New York and Vermont have added or will add to their retiree benefits plans apply only to employees hired after that point, the attorneys say.

Even if the lower court on remand rules that the employer in the case did not promise a lifetime benefit, the 24 plaintiff retirees could win back their full benefits under other legal theories that the

appellate court ruled the retirees could pursue.

The employer, Empire Blue Cross & Blue Shield of New York, is awaiting rulings on its Dec. 20 petitions for the full appellate court to rehear the case or stay it pending the outcome of Reliance Insurance Co.'s liquidation. Reliance underwrote the disputed benefit.

If those efforts fail, Empire would seek U.S. Supreme Court review, said defense attorney Gary H. Glaser, a partner with Seyfarth Shaw in New York.

The case focuses on the retiree life insurance benefits that Empire cut substantially in 1999 for retirees who left the company between 1989 and 1993.

Significantly, however, the 2nd Circuit “has not distinguished between different types of welfare benefits in its ruling,” noted em-

See BENEFITS/page 22

Campaign seeks to remove stigma of mental illness

By JOANNE WOJCIK

KANSAS CITY, Mo.—A Kansas City, Mo.-based employer coalition is embarking on an initiative to remove the stigma from depression so that more employees suffering from the disorder will come forward and seek treatment.

But the objective of the Mid-America Coalition on Health Care is not entirely altruistic; members of the coalition, which consists of 15 employers representing 140,000 covered lives, believe that their overall health care costs will decline if depression is properly diagnosed and treated.

In fact, a recent study by Costa Mesa, Calif.-based pharmacy benefit manager Prescription Solutions found that to be true. Although pharmacy costs spiked by an average of \$675 for each

employee after starting treatment for depression, total annual medical costs for each of these individuals fell, on average, \$1,610, producing a savings of \$935 per employee, according to the study, which was launched in 1999.

The results were mostly attributable to the fact that patients with mental disorders are heavy users of the health care system, averaging twice as many visits to their primary care physicians as patients without such illnesses, according to the American Psychiatric Assn.

“The effects of depression are everywhere, but the stigma of having it causes people to go to the doctor for (gastrointestinal) problems or headaches” rather than for the condition itself, said Dr. John Heryer, vp and medical director of Blue Cross & Blue

See DEPRESSION/page 22

International CHATSET PREDICTS LOSSES FOR LLOYD'S

Page 17

Inside

Mortgage lender enters WTC litigation

The mortgagor of the World Trade Center is suing to protect its interests, fearing that uncertainty over insurance payouts will prevent the lender from recovering funds. **Page 6**

EEOC litigation called into question

The Equal Employment Opportunity Commission, in taking to court the case of a dismissed worker who had signed an arbitration agreement, may be hurting the employees whose rights it seeks to protect, this week's editorial says. **Page 8**

IRS adds spice to benefit rule

Taking cayenne pepper for medical conditions can be a tax-deductible health care expense under some circumstances, according to the Internal Revenue Service. **Page 14**

Pension reform wins tentative support

German employers and insurers are guardedly welcoming the pension reforms that took effect Jan. 1, saying the reforms will reduce but not eliminate financial burdens brought on by the country's growing retiree population. **Page 17**

Insurers' reserves needing attention

Not only have property/casualty insurers' reserves not been keeping pace with higher insurance rates but they have been deteriorating, according to a new study by Conning & Co. **Page 20**

Departments

Advertiser Index	20
Books & Ideas	10
Classifieds	18
Comings & Goings: Industry	16
For the Record	23
Insurance Services Guide	16
International	17
Letters	8
Opinions	8
Perspectives	10
Ticker	23
World News	17

REPORTING WEEKLY ON CORPORATE RISK, EMPLOYEE BENEFITS AND MANAGED HEALTH CARE NEWS

Business Insurance (ISSN 0007-6864) Vol. 36, No. 3, is published weekly by Crain Communications Inc., 360 N. Michigan Ave., Chicago, IL 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to Business Insurance Circulation Department, 1155 Gratiot Ave., Detroit, Mich. 48207-2912. \$4 a copy and \$97 a year in the U.S. \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 0293512, GST No. 136760444, Printed in U.S.A. Copyright © 2002 by Crain Communications Inc.

CONTINUED FROM PAGE ONE

cleaning up the World Trade Center site. Introduced by Rep. John Sweeney, R-N.Y., H.R. 3549 would require the federal government to indemnify contractors that may incur liability from their cleanup efforts. The government coverage would be above any private insurance coverage the contractors have. The bill also would limit contractors' total liability to \$350 million. In addition, the federal government would not have to pay punitive damages. A source familiar with the insurance arrangements said the bill's real purpose is to relieve New York City of liability. After the destruction of the World Trade Center, the city agreed to indemnify the contractors and then purchase insurance coverage.



PHOTO: APF

Fitch Inc. has said the collapse of Enron Corp. may result in slashed insurers' profits in 2002.

2002 will be trying year for insurers: Fitch

Despite the huge rate hikes that insurers have imposed since Sept. 11, several factors—including the collapse of Enron Corp.—may dash some underwriters' hopes for a profitable year in 2002, according to Fitch Inc. Although 2002 should be better than 2001, insurers will still face challenges, the New York-based rating agency said in its review and outlook for 2001/2002. Enron's collapse could lead to \$2 billion to \$4 billion in losses for property/casualty insurers, Fitch estimated. Losses will stem from surety bonds, directors and officers liability coverage and errors and omissions coverage. Enron's D&O coverage, which Fitch said is "upwards of \$350 million,"

Late News

will likely be exhausted, the report notes. Reserve strengthening for asbestos-related losses also is likely to continue in 2002, Fitch said. In addition, workers comp losses in California continue to deteriorate despite recent rate hikes, the report said. And increased reinsurance costs also will hold down insurer profits, Fitch noted.

Leapfrog Group surveys hospital quality

Only 3.3% of hospitals participating in a new patient safety survey currently use computerized prescription order entry, a practice that many health care experts say would significantly reduce preventable medical errors. At the same time, only 10% of hospitals surveyed have fully implemented the practice of staffing intensive care units with intensivists, specialists in this form of care whose use is advocated by health care experts. These were among the preliminary findings of a national survey by the Washington-based Leapfrog Group, an employer organization formed in 2000 to promote patient safety (*BI*, March 27, 2000).

AEGON selling Mexican interests

Dutch insurer AEGON N.V. Friday announced the sale of its partnership interests in Mexican life/health insurer Seguros Banamex AEGON and pension fund manager AFORE

Banamex AEGON to Grupo Financiero Banamex. Grupo Financiero, one of Mexico's largest banks, is a unit of Citigroup Inc. AFORE, or Administradores de Fondos de Retiro, came into existence in July 1997 as part of efforts to privatize Mexico's retirement system. AFORE administers pension funds created with contributions from employers, the government and individuals. Under the deal, AEGON will receive \$1.24 billion, along with \$40 million in dividends on the 2001 profits of the two companies.

Brown & Brown profits rise 64%

Brown & Brown Inc.'s net income soared 64.4%, to \$53.9 million in 2001, the brokerage reported. Brokerage revenues at the Daytona Beach, Fla.-based insurance broker



increased 38.7% to \$361.3 million. Brown & Brown's gross revenues, which include gains from investment income, increased by 37.5%, to \$365.0 million. The improvements in results stemmed largely from growth in new business and from higher profit margins. J. Hyatt Brown, chairman, president and chief executive officer of the broker, said in a statement.

Check out Businessinsurance.com

To get breaking news as it occurs, visit *Business Insurance's* free online Daily News, at www.businessinsurance.com. Sign up for your daily e-mail of breaking news.

All the material in the Late News column, as well as other content in this week's issue, is generated from Daily News postings that appeared on the Web site in the previous week.

Asbestos liabilities sink NARCO

Mounting asbestos liabilities have claimed another defendant company, pushing a U.S.-based fireproofing materials unit of RHI A.G. into bankruptcy. Vienna, Austria-based RHI said its North American Refractories Co. unit has filed for Chapter 11 protection in U.S. Bankruptcy Court in Pittsburgh, following a sharp rise in asbestos claims and other problems, including "inadequate insurance coverage." RHI acquired NARCO as part of its 1994 takeover of another company, Didier-Werke A.G., which itself had acquired NARCO in 1986 from AlliedSignal Inc., later a unit of Honeywell International Inc. Although Didier-Werke had negotiated a deal with AlliedSignal over allocation of NARCO asbestos liabilities, disagreements over interpretation of that agreement contributed to the Chapter 11 filing, RHI said. A bankruptcy judge has approved a \$20 million debtor-in-possession financing facility for NARCO, which provided fireproofing materials, mainly to the steel industry.

Briefly noted

The New York Legislature has approved **Empire Blue Cross & Blue Shield's conversion** to a publicly traded for-profit health plan. The company has said that, under its conversion plan, more than \$1 billion will be placed in a charitable foundation to expand health care for children and the elderly....Paris-based **AXA Corporate Solutions** has agreed to provide cargo insurance for international clients of Paris-based BNP Paribas. The banking group offers several trade-related insurance products....A.M. Best Co. has assigned a financial strength rating of A to **Grand Central Re Ltd.**, a Hamilton, Bermuda-based joint venture of Max Re Capital Ltd. and Germany's HypoVereinsbank A.G. Grand Central Re will provide specialty coverages such as credit derivatives and will write quota-share retrocessional business for both life and nonlife risks.

New capital, old habits may bring early end to hard market: Panelists

Pricing discipline at risk?

By PAUL D. WINSTON

NEW YORK—The property/casualty industry's chances of maintaining pricing discipline and prolonging the hard market may be diminishing, according to industry executives and analysts.

That is in spite of looming exposures from terrorism and the failure of the industry to win any kind of relief from Congress.

Those were among the comments made within two panel discussions on the future of the property/casualty industry during the Property/Casualty Insurance Joint Industry Forum, held in New York last week. The two panels—one made up of industry analysts followed by another of insurer and

reinsurer chief executive officers—covered largely the same ground.

While the losses from Sept. 11 will erode a large chunk of the commercial property/casualty industry's capital, the billions of dollars that have flowed into new Bermuda facilities and elsewhere may weaken the market's ability to keep rates high, some panelists said.

It's tough to argue that the hard market will last a long time when the companies hit hardest by Sept. 11 losses generally had more capital at renewals than they had on Sept. 10, said Alice D. Schroeder, a managing director of Morgan Stanley Dean Witter & Co. in New York.

The current cycle will be shortened because the industry's ability to attract and deploy capital is bet-

ter today than it was 10 years ago, said Kenneth A. Froot, a professor of business administration at Harvard University in Cambridge, Mass.

In order for the commercial property/casualty industry to sustain its profitability, insurance executives must realize that "underwriting matters," said Michael Pritula, a director of McKinsey & Co. in New York.

Asked to predict the peak of the hard market cycle, the analyst panel was unanimous in saying that it would be sooner rather than later. In fact, Mr. Froot said, the market is already softening, having reached its peak on Jan. 1.

"I was extremely disturbed to hear others talk about shortening of the cycle," said Sax Riley, chairman

of Lloyd's of London, during the subsequent CEO panel. "If price firming doesn't continue for five years, we're going to die. We have to write for an underwriting profit."

The insurance industry's main challenge going forward will be to make money, agreed Raymond Barrette, chairman and CEO of OneBeacon Insurance Group in Boston. "It's a low-return business, and we're hoping for a hard market to save us," Mr. Barrette said.

For insurers to remain profitable, underwriting discipline will be essential, Mr. Barrette said. "I think we have to be more disciplined to survive," he said.

"There is no evidence that this industry has ever been able to disci-

See **FORUM** /page 22

January 21, 2002

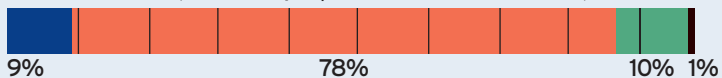
CIAB Market Index shows double-digit increases for risks of all sizes

Uncertainty adding impetus to rate hikes

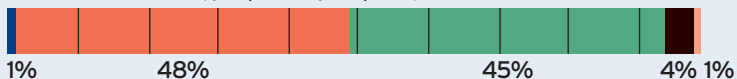
RATE HIKE VARY

Commercial property rate increases by size of account in 2001

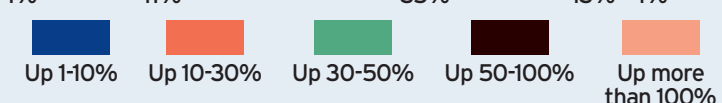
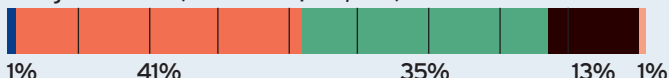
Small accounts (less than \$25,000 Commissions & Fees)



Medium accounts (\$25,000-\$100,000)



Large accounts (more than \$100,000)



SOURCE: CIAB:

GRAPHIC BY JOHN HALL

By MARK A. HOFMANN

Continuing market uncertainty following the Sept. 11 terrorist attacks is pushing already-rising commercial insurance rates even higher, according to a new survey by the Council of Insurance Agents & Brokers.

The CIAB's Commercial Insurance Market Index for the fourth quarter of 2001 showed significant rate increases—particularly for mid-size and large commercial accounts—when compared with both fourth-quarter 2000 and third-quarter 2001.

The index, which was released last week, is based on responses from 140 agents and brokers across the country. Thirteen percent of the respondents said that overall rates

for large accounts—those generating more than \$100,000 annually in fees and commissions—increased by 50% to 100% over the rates in the fourth quarter of 2000. An additional 35% reported overall increases of 30% to 50%, and 41% of producers reported increases of 10% to 30%. One percent reported increases of more than 100%.

Rates in the fourth quarter of 2001 also were compared with those in the third quarter. About 11% of the survey respondents said that large accounts experienced overall rate increases of 50% to 100% compared with the third quarter. Twenty-seven percent reported increases of 30% to 50%, while 41% of the respondents saw increases of 10% to 30%. Two percent reported increases of more

than 100%.

The rate increases for midsize accounts—those generating \$25,000 to \$100,000 in fees and commissions—were similar, although such accounts were slightly less likely to experience increases of more than 50%.

In a statement accompanying the report, CIAB President Ken Crerar said that while the market had not yet reached a "crisis situation," confusion and uncertainty "are sure to contribute to an overall unsettled business environment. It's too early to tell whether this disruption is a short-term response to the trauma of Sept. 11 or a more permanent market condition."

The rates of increase for commercial property and umbrella cover-

See **RATES**/page 20

Self-funding's star rising Tightening market piquing interest in ART

By MICHAEL BRADFORD

If there is one idea that has crossed the mind of nearly every risk manager in the past few months, it's self-insurance.

Already-rising rates that began to soar after the Sept. 11 terrorist attacks have prompted many buyers to consider alternative risk transfer techniques. Many are raising retentions and deductibles—some have been given no choice—while others look to form or reactivate captives or set up risk retention groups.

As the renewal season unfolds, many buyers are experiencing sticker shock. Insurers are figuring their reinsurance costs as their own renewals are completed and are pricing products accordingly. It is not uncommon for risk managers to receive quotes as much as 100% high-

er than they were last year.

"When you talk about price increases of that magnitude, people want to self-insure as much as possible," said Colin James, the president of Atlantic Security Ltd., a Bermuda-based captive manager. Rising costs and the rush to self-fund may result in a market reminiscent of the mid-1980s, he said.

Self-insurance is taking a growing slice of the commercial property/casualty market. By the end of this year, ART will account for 49% of the marketplace, according to an estimate by A.M. Best Co. That has grown from a 33% share recorded at the end of 1997. Oldwick, N.J.-based Best considered captives and pooling arrangements in its data, which it says make up the majority of premiums in the ART market.

The move to self-funding is gain-

ing momentum despite billions of dollars of new capital that has rushed into the market to take advantage of rising prices (*BI*, Dec. 10, 2001; Nov. 11, 2001). In Bermuda alone, more than \$9 billion has been pumped into startups and existing insurers and reinsurers.

"There's a lot of activity in newly formed underwriting facilities, but that seems to be a solution for completing programs," said Joe Lombardo, managing director-syndication at Aon Risk Services in New York. "It's more for filling in the holes rather than leading."

Captive domiciles provide a good barometer of the interest in self-insurance because buyers often turn to them when the market tightens.

For some captive managers, the inquiries have become heavy fol-

See **SELF-INSURANCE**/page 21

Employers receive guidance on plan document filing rule

By JERRY GEISEL

WASHINGTON—More than four years after Congress got rid of what many employers saw as a time- and money-wasting benefits plan filing requirement, employers have final rules to clarify compliance.

Tucked into the Taxpayer Relief Act of 1997 is a provision eliminating a requirement that employers automatically file copies of their summary plan descriptions, or SPDs, and of their summaries of material modifications, or SMMs, with the Labor Department. An SPD is supposed to explain, in language that can be understood by the average participant, the terms and conditions of an employee

benefits plan. An SMM details changes to a benefits plan made after an SPD is issued.

Benefits experts welcomed the elimination of the automatic filing requirement, saying that the reports ended up stacked away at the Labor Department and read by no one.

"It was a needless requirement," said Mark Hamelburg, an attorney in the Washington office of William M. Mercer Inc.

"These were reports filed and put away in boxes," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Washington.

In place of the mandatory filing of SPDs and SMMs with the Labor Department, the 1997 law gave the department the authority to request

the documents from employers, as well as the ability to assess fines up to \$100 a day against a plan administrator that did not furnish the document within 30 days of the government request.

The final regulations, which were published this month in the Federal Register and which closely follow regulations proposed in 1999, responded to questions and suggestions raised by employers.

For example, the Labor Department had received requests that any fines assessed for failing to turn over documents be paid by the employer's plan and not by the administrator, unless the department found that an administrator's fail-

See **SPD** /page 23

Vaughan starts one-year presidency New NAIC head seeks more say for regulators

By MEG FLETCHER

Although uncertainty about coverage for terrorism losses remains a significant concern for the insurance industry, the new president of the National Assn. of Insurance Commissioners also wants the NAIC to remain focused on modernizing state regulation.



Ms. Vaughan

In fact, Congress' recess last month before passing legislation to address the issue of terrorism coverage may help the NAIC increase its say at the national and international level.

Increasing the voice of the NAIC is one of several goals that Therese M. "Terri" Vaughan has for her term as president of the NAIC. Ms. Vaughan, who is commissioner of the Iowa Insurance Department, last month was elected to a one-year term as

president of the Kansas City, Mo.-based association.

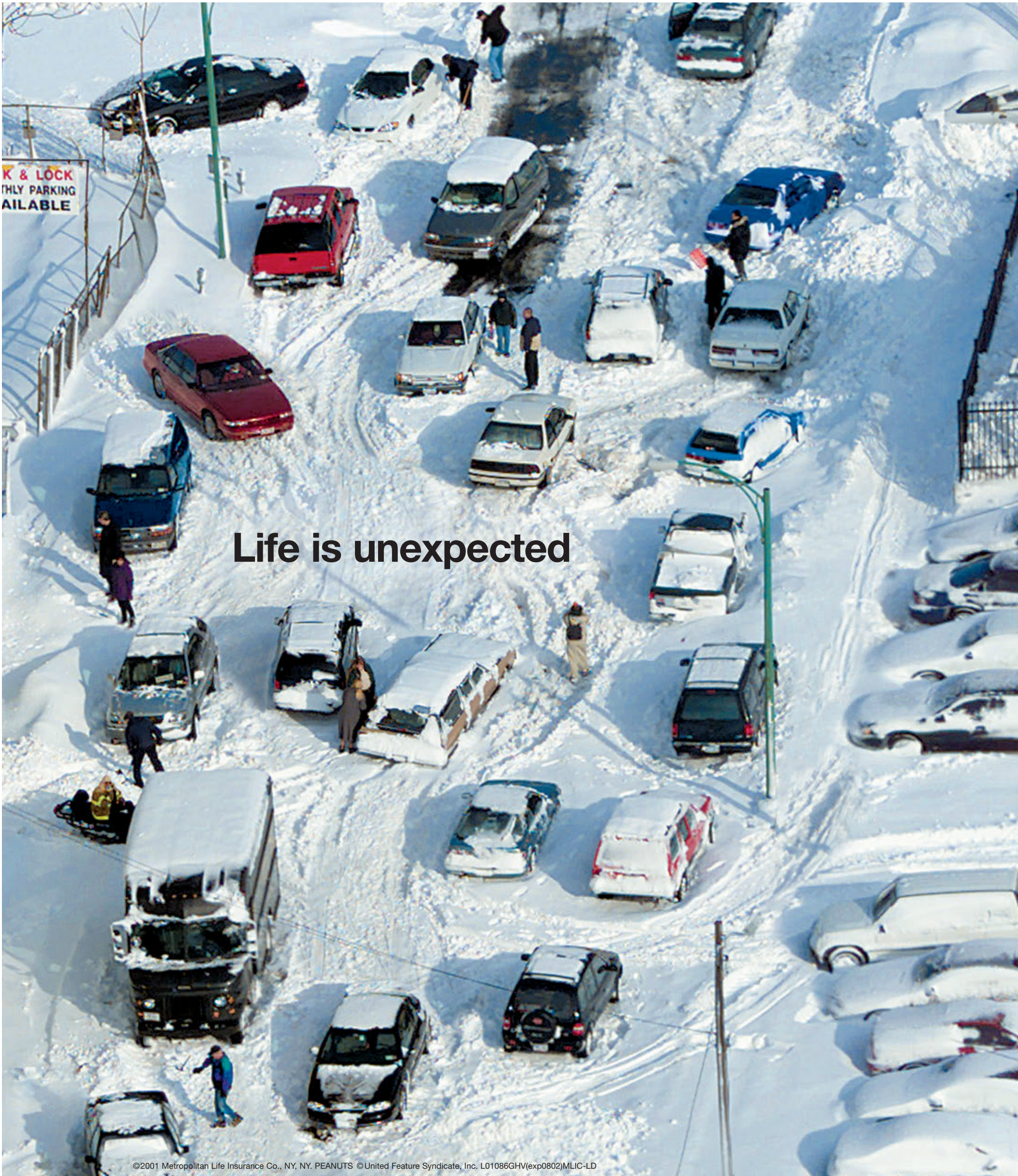
Following the Sept. 11 attacks, the NAIC drafted guidelines that regulators would like to see incorporated into any federal terrorism coverage backstop plan, such as the encouragement of loss reduction and hazard mitigation efforts. By providing general recommendations—rather than backing a specific approach—the NAIC is more likely to have a say in future debates after Congress reconvenes Wednesday, industry observers and regulators say.

And the NAIC continues to endorse the concept of a federal backstop for terrorism coverage as something that "would be helpful to the market," Ms. Vaughan said in an interview last week.

Policyholders have been complaining about "disruptions" in the marketplace, including policy cancellations and significantly higher premiums, she said. Many insurers, meanwhile, say they are being forced to retain more exposure to potentially unlimited terrorism-related losses—such as those for workers compensation and fire claims—than is financially prudent.

As a short-term solution endorsed by the NAIC, state regulators in nearly all jurisdictions—with the notable exceptions of California and New York—recently adopted terrorism exclusions that are at least as broad as

See **VAUGHAN**/page 15



Life is unexpected



MetLife is easier

The forecast can change without warning, but MetLife's benefit solutions can guide you through the ups and downs. Call your benefits consultant or MetLife representative.

©2001 Metropolitan Life Insurance Co., NY, NY. PEANUTS ©United Feature Syndicate, Inc. L01086GHV(exp0802)MLIC-LD

Broad Portfolio • 130 Years of Benefits Expertise • Responsive Customer Service and Delivery • Proven eBusiness Capabilities

**MetLife[®]** Benefit Solutions

www.metlife.com/business 1-877-638-2862

WTC mortgage lender suing over claim payouts

By DOUGLAS McLEOD

NEW YORK—A new front is opening in the legal war over the World Trade Center's insurance coverage, as the WTC's mortgage lender, GMAC Commercial Mortgage Corp., sues to protect its interest in payouts under the \$3.55 billion property program.

In a complaint filed in New York State Supreme Court in Manhattan, GMAC charges that entities affiliated with WTC leaseholder Silverstein Properties Inc. are trying to misuse reserve funds and insurance payments for such purposes as political lobbying to limit liability from the Sept. 11 attack.

GMAC loaned the Silverstein entities \$563 million last summer, allowing Silverstein to lease the trade center buildings from their owner, the Port Authority of New York and New Jersey.

Silverstein and its insurers have been embroiled since last fall in a dispute over whether the destruction of the WTC constituted one event or two. If it was deemed to be

two events, Silverstein could collect double the insurance program's limit of \$3.55 billion.

Silverstein has so far filed business income loss and property damage claims totaling one \$3.55 billion limit. Insurers have advanced \$150 million without saying whether the money is for business income or other property losses, court papers say.

With the World Trade Center's destruction, GMAC's only collateral is the trade center's insurance coverage. GMAC charges in its lawsuit that Silverstein has consistently ignored its obligations to the mortgage lender in efforts to control how any available money is spent.

For example, Silverstein has sought reimbursement from a \$25 million GMAC contingency reserve fund for the costs of lobbying federal, New York state and New York City officials on liability and Port Authority lease issues, the lender says.

Silverstein has also sought to continue collecting a \$700,000

monthly fee for managing the World Trade Center, even though the property no longer exists.

The Silverstein entities have also demanded that insurance payments for business income losses be used to cover its expenses, while the loan agreement requires the money to be used only to cover loan obligations, GMAC asserts.

GMAC has asked the court for a ruling on its rights to the reserve fund and insurance money.

Separately, the lender expressed growing concern that the widening insurance litigation leaves it "no assurances that significant payments from the insurers will be forthcoming anytime soon."

The attack's impact on insurers has increased the uncertainty, GMAC said. While the loan agreement, for example, requires 60% of the first \$500 million of coverage to be written by insurers rated AA or better, insurer rating downgrades that followed the attack have left only 52% of the insurers with the required rating, the suit says.

Commentary Pretzel exclusions show twisted logic

President Bush was doing well and back at work Monday after fainting briefly in the White House residence while choking down a pretzel a day earlier....In medical terms it is called vasovagal syncope. The body sends a signal to the heart via the vagus nerve, slowing heart rate enough that the person briefly loses consciousness.

Associated Press, Jan. 14, 2002

In light of new evidence of the health risks posed by pretzels, reinsurers and insurers have begun to exclude pretzel risks, much to the dismay of policyholders.

Insurers have dropped pretzel coverage from life, health and liability policies, though some are offering coverage by endorsement for a separate and costly premium.

With the Super Bowl only weeks away—one of the year's largest pretzel-consuming events—policyholders are scrambling to find replacement coverage or, in some cases, are going bare. For many, though, the prospect of being uninsured for this risk is about as palatable as an unsalted pretzel.

Policyholders say not all pretzels are risky, noting that traditional pretzels are curved and thus more likely to safely pass the vagus nerve, while varieties such as the soft or nugget-shaped pretzel pose no risk at all. Even pretzel sticks rarely cause injury, posing a danger only when they are not chewed and pass down the throat sideways.

Some angry policyholders are taking their case to Congress, hoping to elicit sympathy from the Republican Party and the White House. But the group, bankrolled by lobbyists from The Frito-Lay Co., has run into unexpected difficulty, which some pundits contend is related to a misunderstanding that the company has something to do with another Mr. Lay from Texas.

Congressional leaders from both parties, meanwhile, have asked the surgeon general to examine the health risks of pretzels and whether pretzel sticks and rods pose an unacceptable danger. They are expected to issue a report soon with recommendations on whether the pretzel should be taken off the market or required to carry the label: "The surgeon general has determined that swallowing pretzels without chewing them is hazardous to your health."

If either scenario comes to pass, pretzel manufacturers, distributors and party hosts could be exposed to a wave of new health-related liability claims. Government health warnings and recalls also could drive insurers to completely

withdraw even the limited capacity available for pretzel-related risks.

Already, some stores are pulling pretzels from their shelves rather than face the potentially unlimited liability without insurance. Airlines—which in recent years banished full meals from their flights because of the risk of not making any money and then banned peanuts because of the liability risk from nut allergies—have now abandoned the pretzel, too. Miniature packets of soft, inedible fruit jerky will now be available on some flights.

With dim hopes of success on Capitol Hill, pretzel policyholders have swamped state insurance departments' complaint lines. The hue and cry from those facing huge

rate increases for less coverage has prompted the National Assn. of Insurance Commissioners to appoint a task force to consider forming a subcommittee to discuss whether anything should be done. The group is slated to hold its first meeting at the NAIC's summer meeting, in five months.

The histories of insurance and pretzel consumption have long been intertwined.

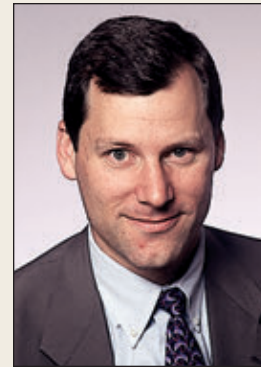
Following the pretzel riots of 1650, Austrian and German pretzel makers were dropped by their insurers because they were deemed excessively risky, especially in comparison to the dumpling guild. No matter that the true culprit behind the violence was the copious amount of beer that accompanied the pretzels.

Unable to afford their own insurance, they fled to the new world and settled in Lancaster County, Pa., where they were able to secure coverage and ply their trade. It is a little known fact that one of the first insurance societies created in Pennsylvania was the Pretzel Mutual Assurance Society.

For many years, especially during soft market conditions, modern underwriters paid little attention to pretzel risks and offered the coverage for no additional charge. Now, as part of widespread efforts to restore underwriting profitability, replenish reserves and recover from past losses, insurers and reinsurers are displaying a new vigilance for anything that might result in a claim.

Now that's a twist.

Editor Paul D. Winston's commentary appears fortnightly and on www.businessinsurance.com. He can be reached by e-mail at pwinston@crain.com.



Paul D. Winston

California judge bars attempt to mandate coverage of drug

By ROBERTO CENICEROS

SACRAMENTO, Calif.—A California superior court judge last week thwarted a regulator's attempt to force a health insurer to pay for a weight-loss drug that was excluded from its coverage but was deemed medically necessary by an independent review board.

Judge Joe Gray of Sacramento County Superior Court ruled that the California Department of Managed Health Care cannot authorize an independent review or enforce a review board's findings, because the insurer's decision to deny coverage was not based on medical necessity.

The insurer in the case, Blue Shield of California, denied coverage for the drug because its policy, purchased by an employer, specifically excluded coverage for outpatient prescription weight-loss drugs. The court granted Blue Shield's motion for preliminary injunctive relief from the demand made by DMHC and its director, Daniel Zingale.

Blue Shield, in its request for injunctive relief, argued that the DMHC overstepped its jurisdiction. The insurer also said that allowing the DMHC to require coverage specifically excluded by the health plan's contracts would raise coverage costs.

The increased costs could put health coverage beyond the financial means of some of Blue Shield's current members and result in employers dropping prescription coverage from their health benefits, the insurer argued.

Employers should welcome a decision that prevents a state agency from overriding an employer's contract with its health insurer, said Kirby Bosley, health care practice group leader in Los Angeles for William M. Mercer Inc.

"This is the kind of thing that causes employers great concern, because they carefully decide what is and isn't going to be covered by their plans," Ms. Bosley said.

The case was the second setback for DMHC in its attempts to force health maintenance organizations to provide coverage for certain prescription drugs. In July, a judge ruled that the state could not force Kaiser Permanente to cover the sexual-dysfunction drug Viagra.

Officials for the DMHC did not return telephone calls.

The case illustrates the difficulties that the DMHC has faced in attempting to aggressively enforce new state patient-rights laws that are still undergoing court clarification, observers say. Those recent laws include a requirement that health plans provide an independent review when coverage is denied because an HMO decides a treatment is not medically necessary.

The law became effective Jan. 1, 2001. Since then, about 600 cases have been submitted for review.

On the national level, the U.S. Supreme Court is considering the validity of independent medical reviews in an Illinois case, *Rush Prudential HMO Inc. vs. Debra C. Moran*. That case centers on whether the Employee Retirement Income Secu-

rity Act pre-empts Illinois law that calls for independent external review of health care coverage disputes.

Independent medical reviews have become popular in many states over the past several years due to a nationwide push for managed care reforms.

The Blue Shield of California case arose in September 2001, when a plan member was prescribed Xenical and then sought coverage for the prescription. Blue Shield declined to pay for the drug, saying that Xenical was specifically excluded under the terms of the plan. The member applied for an independent medical review, and the reviewing physician determined that Xenical was necessary to treat the member's medical condition.

The DMHC adopted the review board's decision and, in addition to ordering Blue Shield to comply, sought a \$100,000 administrative penalty and a \$5,000-per-day fine until Blue Cross did so, according to court records.

California's HMOs support the use of independent medical reviews, said Walter Zelman, president and chief executive officer of the California Assn. of Health Plans, which represents HMOs. But health plans never assumed the law would be used to force them into covering treatments excluded in their policies.

"There are all kinds of things that may be medically necessary that are not covered in every contract between a health plan and an employer," he said.

Business Insurance

Vice President/Publisher: Martin J. Ross III
(New York)

Editor: Paul D. Winston (Chicago)

Editor-at-Large: Jerry Geisel (Washington)

Managing Editor: Regis J. Coccia (Chicago)

Assistant Managing Editor - Graphics: Kathy L. Barnes (Chicago)

Assistant Managing Editor - News: Gavin Souter
(New York)

Senior Editors: Meg Fletcher, A.R.M. (Chicago);
Judy Greenwald (San Jose); Mark A. Hofmann
(Washington); Dave Lenckus (Tucson); Douglas
McLeod (New York); Edwin Unsworth (France);
Joanne Wojcik (Denver); Rodd Zolkos (Chicago)

Bureau Chief: Roberto Cenicerros (Los Angeles)

Associate Editors: Michael Bradford (New
Orleans); Michael Prince (New York); Sally
Roberts (Denver); Sarah Veysey (London)

Copy Desk Chief: Matt Scroggins (Chicago)

Copy Editors: Mary B. Nick (Chicago); Joe Walker
(Chicago)

Directory Editor: Kevin P. Edison (Chicago)

Assistant Directory Editor: Carrie A. Brittain
(Chicago)

Assistant Graphics/Online Editor:
Amy R. Kepka (Overland Park)

Executive Assistant / Reprint Manager:

Karen Brown Tucker (Chicago)

Editorial Cartoonist: Roger Schillerstrom
(Chicago)

Advertising Director: Kenneth F. Luker Jr.
(New York)

Midwest Advertising Manager: Robert L. Niesse
(Chicago)

District Managers: Chris Crain (New York); Lori
Lieberman (Los Angeles); Robert B. Murray (New
York); John L. Phillips (Chicago); Jennifer Powers
(Boston)

Classified Advertising Manager: Irais Amleshi
(Chicago)

Assistant to the Publisher: Pat Ghazvini (New
York)

Advertising Traffic: Stephanie Cress (New York)

Production Manager: J. Thomas Janka (Chicago)

Director of Communications: Ronnie I. Drachman
(New York)

Promotion Coordinator: Barbara O'Brien (New
York)

EDITORIAL: Chicago: 312-649-5398;
Denver: 303-698-7601; London: 207-457-1400;
Los Angeles: 323-370-2455; New Orleans: 504-
364-1908; New York: 212-210-0100; San
Jose: 408-774-1500; Tucson: 520-579-1937;
Washington: 202-662-7200

ADVERTISING: Boston: 617-292-4856;
Chicago: 312-649-5276; New York: 212-210-0133;
Los Angeles: 323-370-2456

COMMUNICATIONS: New York: 212-210-0132

SUBSCRIPTIONS: Detroit: 888-446-1422

Business Insurance is published by
Crain Communications Inc.

Chairman: Keith E. Crain

President: Rance Crain

Secretary: Merrilee Crain

Treasurer: Mary Kay Crain

Executive Vice President/Operations:

William A. Morrow

Senior Vice President/Group Publisher:

Gloria Scoby

Group Vice President/Technology, Circulation,

Manufacturing: Robert C. Adams

Corporate Circulation Director:

Maxx MacConnachie

Corporate Director/Production & Manufacturing:

Dave Kamis

G.D. Crain Jr. Founder (1885-1973)

Mrs. G.D. Crain Jr. Chairman (1911-1996)

S.R. Bernstein Chairman-executive committee
(1907-1993)

Published weekly at 360 N. Michigan Ave.,
Chicago, Ill. 60601-3806, Fax: 312-280-3174,
E-mail: biweb@crain.com. Offices: 711 Third Ave.,
New York, N.Y. 10017-5806, Fax: 212-210-0704,
CRAIN COM NYK; 473 Fairfield Ave., Gretna, La.
70056, Fax: 504-364-1337; Suite 814, National
Press Building, Washington, D.C. 20045-1801, Fax:
202-638-3155; 6500 Wilshire Blvd., Suite 2300,
Los Angeles, Calif. 90048-4947, Fax: 323-655-
8157; 967 Bermuda Court, Sunnyvale, Calif.
94086-6750, Fax: 408-774-1155; New Garden
House, 78 Hatton Garden, London EC1N 8LD
England, Fax: 207-457-1440; 4 Grande Rue, 49140
Jarze, France; 8157 N. Torrey Way, Tucson, Ariz.
85743, Fax: 520-579-3476; 777 E. Speer Blvd.,
Denver, Colo. 80203-4214; Fax: 303-733-2244;
11133 W. 108th St., Overland Park, Kan. 66210, Fax:
312-280-3174. \$4 a copy and \$97 a year in the
U.S., \$130 in Canada and Mexico (includes GST). All
other countries \$230 a year (includes expedited
air delivery). Don Mierendorf, circulation manager.
Four weeks' notice required for change of
address. Send subscription correspondence to
Circulation Department, *Business Insurance*, 1155
Gratiot Avenue, Detroit MI 48207-2912, Phone:
888-446-1422 or 313-446-0450, Fax: 313-446-
6777. Microfilm copies available: University
Microfilms, 300 Zeeb Road, Ann Arbor, Mich.
48103. Microfiche copies: Bell & Howell, Micro
Photo Division, Old Mansfield Road, Wooster, Ohio
44691. Portions of the editorial content of this
issue are available for reprint or reproduction in
other media. For reprints or reprint permission:
KAREN BROWN TUCKER, *Business Insurance*, 360
N. Michigan Ave., Chicago, Ill. 60601-3806, 312-
649-5319, Fax: 312-280-3174.

To subscribe, call 888-446-1422,
or 313-446-0450
outside the United States.



www.businessinsurance.com

Editorial

EEOC unwise to challenge pact requiring arbitration of disputes

THE SUPREME COURT DEALT alternative dispute resolution programs a serious blow last week.

The court's majority ruled that the Equal Employment Opportunity Commission is not restricted from pursuing a case by arbitration agreements in place between employers and employees if the EEOC believes the employer has violated federal law.

While we recognize that the EEOC has a right—indeed, a duty—to pursue violations of the law in the public's interest, we believe it would be preferable for the agency to restrict its legal efforts to those cases in which it hopes to set precedent, or to victim-specific cases where the claimant does not have available other means to make himself or herself whole.

In this case, the EEOC pursued a remedy in court, a forum not available to the claimant because of an agreement he signed to have all employment disputes heard by an arbitrator. By pursuing this case regardless of that agreement—which the claimant did not even attempt to use—the federal agency undercuts the ability of all such agreements to fulfill their purpose.

In a statement regarding the EEOC's victory, its own chair said that the agency, like the high court itself in earlier rulings, acknowledges "the goals of efficiency and economy that may be furthered in particular cases by the private arbitration system."

We couldn't agree more and wish that the EEOC had given deference to the arbitration system in place here to make the claimant whole before it pursued legal action on his behalf. While the court has affirmed the EEOC's standing to pursue violations of the law in court, we believe the agency could be more selective.

There was no precedent at stake in this case, and a fair dispute resolution mechanism that was already in place was not given a chance to work before the EEOC stepped in.

We fear that the court's decision may prompt some employers to drop effective arbitration programs because they now could be exposed to litigation on behalf of an employee regardless of whether they have already resolved a dispute. If employers drop these programs, then the employees whose rights the EEOC champions would be in a worse position than before this case was decided.

The case—*EEOC vs. Waffle House*—involved a cook who claimed he had been unfairly fired after he suffered a seizure at work. He had signed an agreement requiring that employment disputes be arbitrated. According to the Supreme Court, he has yet to submit his claim to arbitration. Instead, he filed a complaint with the EEOC alleging violations of the Americans with Disabilities Act, and the agency took up his case—seeking reinstatement, back pay and punitive damages—even though the claimant himself is not a party to the legal action.

Although a federal appeals court panel said that the EEOC had overstepped its bounds, six justices held for the agency. The majority held that under the ADA, the EEOC is "the master of its own case" once a complaint is filed, arbitration agreements notwithstanding, thereby freeing the EEOC to pursue victim-specific relief, including back pay and damages.

The advantages of arbitration over litigation are many and include far lower costs, easier access and faster resolution of disputes. We believe that, in most cases, these benefits outweigh the main disadvantage of arbitration, which is a limited right to appeal.

Schillerstrom



Letters to the Editor

To the editor: Many, many thanks to Dave Lenckus for his succinct commentary in your Jan. 14th issue.

I recently had an opportunity to read this commentary and wanted to take a few moments to express my appreciation to him for stating so aptly what many of us have felt in our hearts since the Sept. 11th tragedy.

Kudos to Dave, and may his remarks spark the attention of those responsible for paying tribute to those souls who so valiantly gave their lives for America.

Jan Massad
Chandler, Ariz.

BI's online forum

Visit BI's online forum, which offers unmoderated discussion areas for readers to exchange ideas or information on risk management, employee benefits, insurance and miscellaneous other topics. The online forum is located at: <http://www.businessinsurance.com/cgi-bin/boardView.pl>

Business Insurance welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments.

We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Please send your letters to:

Letters to the Editor, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; fax: 312-280-3174; e-mail: pwinston@crain.com

KEEP AN EYE OUT FOR THIS



BENEFITS MANAGEMENT

B I S P E C I A L T A K E - O U T S E C T I O N S

BI's regular weekly reporting and daily e-mail alerts deliver all the news important to executives responsible for employee benefits.

Now, when top-level corporate executives look for more information on significant trends and developments in employee benefits, *BI* delivers special **Benefits Management Take-Out Sections**. Each will contain exclusive rankings and statistics on

vendors of benefit services, while full directories of vendors will be available online. Each special take-out section will provide powerful reporting on topics vital to the success and profitability of businesses today.

These highly anticipated special take-out sections will be referred to by our readers all year long. Reach more than 134,000* corporate decision-makers and purchasing influentials. Advertise in the industry news leader.

* Includes pass-along readership.

MANAGED CARE TRENDS & ISSUES

Chart & Online Directory: Prescription Benefit Managers/Case Managers
Issue: February 11 • Ad Close: January 30

WORK & LIFE BENEFITS

Chart & Online Directory: EAPs & Dependent Care Resource & Referral Services
Issue: April 8 • Ad Close: March 27

NEW TECHNOLOGY & ONLINE SOLUTIONS

Chart & Online Directory: Benefit Information Systems
Issue: June 24 • Ad Close: June 12

GLOBAL BENEFIT TRENDS

Chart & Online Directory: Benefit Consultants
Issue: August 12 • Ad Close: July 31

PENSIONS/RETIREMENT PLANS

Chart & Online Directory: 401(k) Plan Administrators
Issue: September 30 • Ad Close: September 18

COMMUNICATION & EBC AWARDS

Chart & Online Directory: Benefit Communication Systems
Issue: December 9 • Ad Close: November 26

NEW YORK: 212.210.0133
CHICAGO: 312.649.5276

LOS ANGELES: 323.370.2456
BOSTON: 617.292.4856

Business Insurance[®] www.businessinsurance.com

Consider breadth of interruption cover

By William M. Shernoff
and Douglas M. Carasso

After the Sept. 11 terrorist attacks, many businesses that were located in and near the World Trade Center have attempted the seemingly impossible task of recovering. For these companies, making use of the protection afforded by business interruption insurance is a good place to start, and the scope of this insurance may well be broader than it might initially appear.

Most companies carry business interruption coverage, usually through endorsements or riders to their insurance policies. Typically, business interruption coverage is designed to protect a company's future and continued earnings when it is unable to pursue normal operations due to physical loss or damage to the company's real or personal property.

Such a policy generally requires the policyholder to provide a signed and sworn proof-of-loss statement within either 60 days of the date of the loss or 60 days of the insurer's request. If the extent of the loss is not completely known within this period, it is still necessary for the policyholder to file the proof of loss within the time limit, with the possibility of amending the statement later.

In general, business interruption coverage applies for as long as it takes the policyholder, working with due diligence, to rebuild, repair or replace its business operations. The amount to be paid to cover a loss can be either agreed upon in advance or determined after the date of loss by providing proof of lost net profits, costs

incurred to reduce the loss and continuing fixed charges and expenses.

The scope of coverage is usually the actual loss of business income sustained due to the necessary suspension of operations caused by the direct physical loss of or damage to property described in the policy.

Business interruption insurance is unique

Even losses sustained at business locations not identified in the policy may be covered under the business interruption provision.

because it not only restores the policyholder to the status quo before the loss, but also compensates for profits anticipated during the period of disrupted operations. Recovering lost prospective profits is permitted where this amount can be ascertained with reasonable certainty and reliability, based on the working experience of the company, the past volume of business and other provable data relevant to probable future sales.

These recoverable lost profits are net and not gross, though. The policyholder's "actual loss sustained" is income less continuing costs and expenses, including overhead.

The policyholder can recover the difference between the net profit it would have earned but for the period of business interruption and the net profit that the policyholder actually earned, if any, during the same period. Even if there were no profits before the loss, lost future profits can still be recovered, as long as they are based

on real data rather than mere speculation.

Can business interruption losses be recovered for a company headquartered outside of New York that had just a branch office at the WTC? Coverage typically protects against losses arising from the disruption of business activities due to the company's lost or damaged physical assets. If the policy lists the branch office as one of company's business locations, losses sustained by the company as a whole, including lost profits, may be recovered if they were caused by the destruction of the branch office.

And what about business interruption coverage for a company that was not located at the WTC but did business with one or more companies that were located at the WTC? In that case, coverage would depend initially upon whether the policy is limited to the damage to real or personal property owned by or on the premises occupied by the policyholder. If there is no such limitation in the policy regarding the damaged property, it is an open question whether business interruption coverage would apply.

Even losses sustained at business locations not identified in the policy but still interrelated and interdependent with those so identified may be covered under the business interruption provision.

If a policyholder were to opt not to resume its operations at all after the WTC attacks, an insurer typically would pay for the time it would have taken for the company to resume its business activities at or around the site.

While the "act of war" exclusion figures prominently in most business interruption policies, the exclusion probably does not

apply to claims arising from the WTC attacks. After all, there had been no declaration of war before Sept. 11. Furthermore, it appears unlikely that the terrorists responsible for the WTC attacks were a sufficiently unified group or had a sufficiently united purpose to constitute a "government." Nor did the conflict on Sept. 11 consist of an armed struggle carried on between two or more political bodies, each of which was exercising de facto authority over persons within a determinate territory. And, finally, the attacks were inflicted on civilians at their place of work—a location that had not played a part in any prior conflict.

In conclusion, depending upon the texts of the individual policies—including their fine print—the coverage afforded by business interruption insurance to those affected by the WTC attacks may be broader than it first appears.



Mr. Shernoff



Mr. Carasso

William M. Shernoff is a partner and Douglas M. Carasso is an associate at the law firm of Shernoff Bidart & Darras in Claremont, Calif.

Book on junk science offers risk assessment lessons

"Junk Science Judo"

By Steven J. Milloy
Cato Institute, 1000 Massachusetts
Ave., Washington, D.C. 20001;
202-842-0200; fax: 202-842-0779;
www.cato.org
\$18.95.

By Mark A. Hofmann

A few years ago, Steven J. Milloy and co-author Michael Gough wrote a slender volume called "Silencing Science." The book dealt with both junk science and how interest groups attempt to suppress valid scientific evidence that they find to be inconvenient to their version of the truth. Even though the book didn't deal directly



with risk management, I wrote at the time that risk managers would do well to read it, if only to adhere to the ancient doctrine of "know your enemy."

Risk managers would do well to read Mr. Milloy's "Junk Science

Judo" for the same reason.

In fact, Mr. Milloy begins "Junk Science Judo" with his Lesson 1, "Know Thine Enemy." This is how Mr. Milloy—publisher

Book review

of JunkScience.com—characterizes that enemy:

"Junk science users don't care about science. They don't care about your welfare. They're out for themselves, pure and simple. This might not be so bad if they admitted up front: 'Hey, we're about to start a health scare. But don't worry. It's only a scam.'

"There's the rub, though. At their core, they simply aren't an honest lot. Deception is their stock in trade. They'll never admit they were wrong for fear the public will permanently turn a deaf ear to their 'boy cries wolf' tactics. Instead they blame the public for health scares."

Strong stuff, and a hint of how this breezy examination of the theory and practice of junk science will progress. In fact, the book's very breeziness may turn some readers off.

That would be unfortunate. Despite a series of Supreme Court decisions that rein in the worst excesses of junk science, cases based on fringe theories still find their way into some courts. The expense of defending against such time-consuming suits forms the stuff of risk managers' and insurers' nightmares. While Mr. Milloy writes for a general audience—or least the type of audience that's likely to buy books published by a free-market think tank like

the Cato Institute—there's more than a little of value here for anyone who is interested in how risks should—and shouldn't—be assessed.

Among the examples of junk science cited by Mr. Milloy are an attempt to link certain plastic products to cancer, which was ultimately refuted by the World Health Organization's Agency for Research on Cancer; the infamous Alar pesticide scare, which caused panic when mice were reported to have developed a rare cancer after consuming doses of Alar "that equated to a human consuming on the order of 19,000 quarts of apple juice per day for life"; and Canadian researchers' failure to adjust results of a study linking secondhand cigarette smoke with breast cancer to reflect a variety of other risk factors that have nothing to do with smoke but could have something to do with developing cancer.

Mr. Milloy points the finger at the usual suspects—trial lawyers, activists of various stripes, regulators and the media—but also notes that businesses themselves aren't above using junk science for their own ends. He notes that "the vast majority of businesses aren't part of the junk science mob" and are instead its victims. But he also has the intellectual honesty to point out that businesses use junk science to undermine competitors, make bogus product claims and even to defend themselves against junk science attacks. He's willing to name names—some of which are of the household variety.

The author devotes most of the book to explaining how junk science works, how to spot it and how to refute it. As he puts it, "The scientific method places the burden of proving the truth of a scientific theory on its advocates—not on you. Your job is to doubt until they've met the burden of proof. Theories, anecdotes and assumptions aren't proof of anything."

Mr. Milloy ends by spelling out various ways in which his readers can further the fight against junk science. One of the most significant is to support so-called Daubert panels, or groups of experts selected by courts to review scientific and technical evidence before trial. These panels take their name from the landmark 1993 Supreme Court decision in *Daubert vs. Merrell Dow Pharmaceuticals Inc.*, which calls on federal trial judges to act as "gatekeepers" by determining whether evidence meets standards of admissibility. As Mr. Milloy points out, not all state courts convene Daubert panels, and he urges his readers to push for them on the state as well as federal level.

Sometimes frightening, sometimes ironically funny and consistently provocative, "Junk Science Judo" is a welcome addition to any bookshelf with room for a volume concerned with sound risk assessment.

Mark A. Hofmann is a senior editor in the Washington bureau of Business Insurance.

Fewer employers offering dual pension plan types

By ADIN BOOKBINDER

NEW YORK—Fewer large employers provide both defined benefit and defined contribution plans to their employees, according to a report by New York-based benefit consultant William M. Mercer Inc.

Seventy-five percent of companies with more than 50,000 employees offered both types of plans in 1995, Mercer's survey found. By 2000, only 64% of companies offered both, and by 2001, the number had dropped to 60%.

In comparison, 50% of companies with fewer than 2,000 employees offered both types in 2001. Utilities and nondurable goods manufacturers were the most likely to maintain both plan types. High-tech employers were the least likely, according to the report.

Cash balance plans, meanwhile, have increased in popularity. In 2001, they were offered by 19% of employers, compared with 16% a year ago, and 7% in 1997. At 69%, however, the traditional final-average-pay pension plan is still the most prevalent.

"Benefits don't change dramatically from year to year," said Kent Gregory, a Mercer consultant in

Louisville, Ky. "But from looking at several years' worth of data, you do notice trends."

The eighth annual "Spotlight on Benefits Report," prepared by Mr. Gregory, analyzed data as of June 30 from more than 700 large U.S. employers.

Mr. Gregory's analysis also found the financial industry pays the highest level of retirement and savings benefits to its employees, at 34% above the overall market median. The insurance industry ranked second, with 23% higher benefits. The utilities and durable goods

manufacturing industries followed, at levels 21% above the median.

Levels of benefits also varied among geographic regions. Employees in the north central states saw 11% higher retirement and savings benefit levels than the overall market median this year. Those in the Northeast took advantage of 10% higher levels.

West Coast employers, however, provided the lowest retirement and savings benefit levels, at 82% of the market median. In the south central states, benefit levels were at 91%.

The lowest level of benefits was in the combined industry of arts, entertainment and recreation, where retirement and savings levels were 37% of the median, Mercer found. In the professional, scientific and technical industry, benefit levels were 73% of the median.

The report "is more of a confirmation," Mr. Gregory said. "It reinforced what we knew."

Mercer's report did reveal striking contrasts, however, as those same arts and entertainment employers offered group health care and other benefits at levels of 88% of the me-

dian. The utilities industry led the health care category, at 19% above the median. And, in the finance industry, health and group benefits dipped to 95% of the median.

Copies of the "2001 Spotlight on Benefits" report may be ordered from William M. Mercer Inc. online at www.wmm Mercer.com or by calling 800-333-3070.

(Adin Bookbinder is a reporter at Pensions & Investments, a sister publication of Business Insurance.)

Business Insurance® www.businessinsurance.com

• SERVICES •

REPRINT SERVICES

BI's Reprint Department can provide reprints, in quantities of 100 or more, of any article that has appeared in the magazine. Legal permission complying with U.S. copyright laws also can be provided to companies that seek to reprint, on their own, materials that have appeared in the magazine. For information, please call or fax:

Phone: 312-649-5319
Fax: 312-280-3174

ARTICLE FAX SERVICE

For article photocopies sent by fax on the same day, please telephone and provide the BI issue date, the article headline and credit card information. The charge is \$10.00 per copy, per article. In-publication directories are not available by fax. For article photocopies, please call:

Phone: 312-649-5329

SINGLE-COPY SALES

To order any current or back issue of *Business Insurance*, call the single-copy sales division of BI's Circulation Department:

1-888-446-1422

LIST RENTAL

Portions of BI's subscriber database are available to qualified companies for list rental. For available titles and a price quote, call our list broker:

313-446-1625

For Advertising Opportunities please call

212-210-0133

LORD OF THE JUMBLE

Opportunity or obstacle?

Modernization is tearing down barriers in the

financial industry—but leaving a **tangled legal web.**

To master the new landscape, call Lord Bissell & Brook.

With a multibillion dollar **financial merger practice**

and nearly a century of experience with legal

issues affecting financial services firms, we can

help you realize **the promise of financial convergence.**

www.lordbissell.com

LORD BISSELL  BROOK
BUSINESS NEEDS CHAMPIONS

Employers' best offense against employee anxieties might be good self-defense

By SAMANTHA MARSHALL

Instead of being in their office on the 79th floor of 1 World Trade Center on Sept. 11, directly in the path of the first hijacked airplane, John Vaughan and his 12 employees were either still at home or on their way to work. A changed meeting time had saved their lives.

But weeks later, they still felt like victims.

Mr. Vaughan quickly realized that a sense of fear and helplessness was keeping his team from focusing on their jobs. Instead of bringing in a psychologist to counsel his employees, he brought in a trainer to teach them self-defense.

"I've used corporate psychologists before, and there's a place for that, but there's another way to get control of your fears," said Mr.

CDT course costs \$1,500.

Companies have long paid for security training for high-level employees who travel to parts of the Third World where personal attacks and kidnappings are common. What's different now is that rank-and-file employees want the training—and employers are willing to give it to them.

The irony is that the chances of employees using either the information or the self-defense techniques are remote, because the odds of a person ever becoming a target of terrorism are so small. The value of the security courses is almost entirely psychological.

"A lot of companies are hiring us because it gives employees the assurance that their employer cares about their personal safety," notes Alex Tabb, associate managing di-

has offered it to his staff since Sept. 11.

Mr. Vaughan is convinced that his own training, which he had more than a year ago, helped him remain calm as he gathered together his employees on the day of the attack.

Though everyday crime, such as mugging, and workplace violence are also covered in the CDT sessions, air safety has been the top concern of employees who've been taking the course since September.

"We give people the facts they need to know to keep from being unnerved when they go on flights," said Mr. Patire.

While the old rules told passengers to be passive in the event of a hijacking, Mr. Patire suggests that passengers can take on a potential hijacker with salt, fire extinguisher spray or any irritant that might temporarily blind or stun the individual.

Of course, it's important not to turn every employee into a security guard. "We want people to be vigilant, not vigilantes," said Mr. Patire.

New York City laws make people liable if their self-defense moves cause injuries. "You can't send your staff out there to go and hurt people," said Mr. Briffa, the liability lawyer.

This kind of training can also fuel paranoia in the workplace, warns George Dew, who will open the Manhattan office of Miami-based security company Ackerman Group next month. While Mr. Patire said he tells employees not to assume that everyone who appears to be of Middle Eastern descent is a terrorist, increased vigilance can lead to suspicion.

"Keeping an eye open for someone who looks like an Arab is a big mistake," said Mr. Dew. Racial profiling doesn't protect anyone and will only worsen tensions, he said.

Mr. Dew, who predicts that the security boom will level off as terrorism news dies down, said it's important for companies to improve their security systems and crisis management skills in the event of a building fire or bomb threat. But he said he believes there's no reason to spend a lot of money on security training at the grassroots level—beyond the psychological benefits.

Mr. Briffa points out how valuable those psychological benefits are. The WTC attack shook his staff's sense of safety so much that people were afraid in their own homes. Just when things seemed to be returning to normal, an incident involving a "shoe bomb" sparked more worries.

"I don't know if everyone is going to feel safe for a while to come," he said.

Samantha Marshall is a reporter for Crain's New York Business, a sister publication of Business Insurance.



Some employers in New York City are offering self-defense training to help allay employees' fears about terrorism.

Vaughan, chief executive of MarketDataInsight, which has since relocated to Manhattan's Chelsea neighborhood.

Security firms have seen a flood of interest since Sept. 11 from employers that want to assuage their employees' fears and give back to them a sense of control. Business has tripled at many security firms, and several new security companies have started up in the last three months.

The trend is particularly evident in major cities that have faced the realities of anthrax and bomb threats, such as New York. About 89% of businesspeople in New York, Boston and Toronto now view security as important, up from 40% before Sept. 11, according to a report released last month by Kroll Inc., an international security firm in New York.

Security training typically starts with information, such as where to go in case of a bombing, and proceeds to a self-defense lesson. CDT Training, which taught Mr. Vaughan's staff, uses a patent-pending form of nonlethal force that relies on everyday motions.

For example, the turning of the ignition key in a car translates into a push-and-twist motion into an attacker's stomach. The three-hour

rector of the security services group at Kroll, where business has "practically tripled" since Sept. 11.

In addition, arming staff members with information helps restore their confidence and gets them back on airplanes, which also is good for business, said Tom Patire, founder of Elmwood, N.J.-based CDT, which includes Michael Jackson and Rupert Murdoch among its clients. His company teaches personal protection to 8,000 people per month, up from just 1,000 before the WTC attack. His numbers peaked at 12,500 in October, when anthrax was in the news.

Mr. Patire, a trained bodyguard who has worked with the FBI and the Navy SEALs, tells employees they are in more danger of being pickpocketed on the subway than of being involved in a hijacking or bombing. He explains the mind-set of a garden-variety street thug and compares it with that of an extremist, who is less interested in individual targets than in large groups or symbols, such as the World Trade Center.

"The course made me realize that terrorists have no interest in killing you or me, and that reduces the amount of panic," said Gerald Briffa, a liability lawyer who took the CDT training before the attack and



RENDERING COURTESY OF FOREST CITY RATNER COS.

Displaced by the Sept. 11 attack, Empire Blue Cross & Blue Shield will open a new office at Brooklyn's MetroTech Center in May 2003.

Staff relocated after WTC attack

Quick response helps keep insurer running

By DANIEL GROSS

NEW YORK—Like other insurers, Empire Blue Cross & Blue Shield had contingency plans.

If the insurer's Web site crashed, there was a backup. If phones and computers went down in any one office, calls could be rerouted to others, so that the business of paying claims could go on.

But the company did not have a plan to deal with the unthinkable: the destruction of its 480,000-square-foot headquarters in 1 World Trade Center.

"We knew that replicating what they had at the World Trade Center was going to be virtually impossible," says Howard S. Fiddle, executive managing director at Insignia/ESG Inc., part of Empire's team of real estate advisers. Empire had about 10 floors in the trade center and was paying rent in the mid-\$20s.

On Sept. 11, David Snow, Empire's president and chief operating officer, was in Florida on business. He set up a crisis recovery center in his hotel. Through video- and teleconferencing, he was able to hook up with Chief Executive Dr. Michael Stocker, who had been in Washington, and other executives.

The Empire executives quickly got into contact with their real estate advisers, who also included Mary Ann Tighe and Joan Meixner.

The real estate recovery effort proceeded on several tracks. Empire pulled residency information on the 1,900 displaced employees. Based on expected commutes, the company sent people to work temporarily at existing Empire Blues operations throughout New York state: in Melville, Bohemia, Yorktown, Middletown and Albany.

In September and October, competition among displaced World Trade Center tenants for

large blocks of space was intense, and deep-pocketed financial institutions were locking up many possibilities.

"We could not find suitable space in large enough size that we could get all of our people back together in a single large block of space," Mr. Snow said.

Ultimately, Empire and its brokers decided to split the business that had been at the World Trade Center into two: headquarters and operations.

Another Insignia/ESG staffer represented Grey Advertising, which was interested in subletting some of its space at 11 W. 42nd St. So Empire agreed to take over about 105,000 square feet on three floors in the building for its new headquarters, signing a direct lease with owner Tishman Speyer Properties.

Some 300 Empire BC/BS employees moved into the new headquarters space in November.

Finding a larger chunk of space for the operations staff was a more difficult task.

After examining prospects in several parts of the city, "we found that the best way we could get a reasonably priced big block of space was to build it to spec," said Mr. Snow.

Empire BC/BS quickly entered negotiations with Forest City Ratner Cos., which had a design and site prepared for a 725,000-square-foot office building in its MetroTech complex.

In November, Empire agreed to take 325,000 square feet and become the anchor tenant at 9 MetroTech Center. In May 2003, about 1,300 Empire Blues employees, now housed in several interim offices around the city, will move into the company's new space.

Daniel Gross is a reporter for Crain's New York Business, a sister publication of Business Insurance.

INSURER TOPICS

A MONTHLY EDITORIAL SECTION SENT EXCLUSIVELY TO INSURERS AND REINSURERS

Financial Strategies



Insurers slow to move on convergence

Gramm-Leach-Bliley's main beneficiaries have been banks, observers say

By MARK A. HOFMANN

Enactment of the Gramm-Leach-Bliley Act was supposed to pave the way to true financial modernization by allowing banks, insurance companies and producers, and securities firms to enter each other's businesses.

But now, a little more than two years after then-President Clinton signed the measure into law, Gramm-Leach-Bliley is looking a lot more like a one-way street than the open road. While banking companies have aggressively branched into new financial services sectors—particularly the distribution side of insurance—neither insurers nor securities firms have followed suit to any significant degree.

In fact, the only high-profile merger of an insurer and a bank—the creation of Citigroup Inc. out of Travelers Group and Citicorp—took place before Gramm-Leach-Bliley became law. And even that didn't last: Citigroup last month announced plans to

spin off Travelers Property Casualty Corp. (BI, Dec. 24, 2001).

Observers give numerous explanations for why banks have taken far more advantage of their new freedoms than have other financial concerns.

One significant factor is the regulatory role of the Federal Reserve Board under the liberalized arrangement, according to Peter Wallison, a resident fellow at the American Enterprise Institute, a think tank in Washington.

Other than bank holding companies, "very few companies have wanted or will want to let the Fed determine what business they are permitted to enter," Mr. Wallison said during a roundtable discussion at the AEI in November.

"In other words, the act's requirement that companies that control banks engage only in activities that the Fed defines as 'financial in nature' is its fatal flaw," he said. Furthermore, he said, "while it was certainly possible to make a distinction between banking and nonbanking companies—

because banking has a relatively clear definition—it is not possible to make a principled distinction between financial and nonfinancial activities."

Banking organizations have been busy acquiring insurance and securities operations, he noted. But "of the hundreds and hundreds of transactions approved by the Fed in the last two years, only a handful have involved companies from outside of the banking business coming in to become a financial holding company," Mr. Wallison said.

Part of the reason that banks have been more active in convergence is simply the relative size of the parties involved, said Beth Climo, executive director of the American Bankers Insurance Assn. in Washington.

"The traditional bank-centered holding companies tend to be the acquirers, because of the banking industry's larger capitalization and market value," she said. Some insurance industry entities, however, have developed banking operations in recent years (see story, page 12B).

Ms. Climo also noted that, in general, banks haven't been looking at buying insurers but rather at becoming involved in the agent/broker side of the business. "The great activity is banks and bank holding companies acquiring or getting into insurance agency business," she said.

Like Mr. Wallison, Ms. Climo said that concern about the role of the Fed might be discouraging nondepository institutions from branching into banking. "I think there is a real hesitancy of those that have not been bank holding companies heretofore to become financial services companies and subject themselves to Fed jurisdiction," she said.

Others agree. "When an insurance company or a securities firm chooses to go into full banking integration, they are subjecting themselves to a very complex and comprehensive set of regulations and scrutiny from a very competent and far-reaching federal regulator," said Joel Wood, senior vp-government relations for the

See GLB/next page

Some insurance entities branching out / 12B

States differ on privacy requirements / 12D

INSURER TOPICS

GLB: Banks have been beneficiaries

Continued from previous page
Council of Insurance Agents & Brokers in Washington.

In addition, there's "very little" an insurer can do with a bank, said Michael A. Cohen, a vp at A.M. Best Co. in Oldwick, N.J. "It doesn't fit their existing business. The financial supermarket concept didn't work."

Debra Ballen, executive vp of the American Insurance Assn. in Washington, said that "at this point, most of the activity (among banks) has been on the distribution side, as opposed to the underwriting side."

Insurance companies generally have not been that attractive to banks, said Ms. Ballen, because insurers have a lower return on capital than what banks seek. In addition, she said that losses associated with the World Trade Center attacks "won't look good short term and might influence the bank sector to put its capital elsewhere" for the foreseeable future.

Some of the promise of financial services convergence may have been more imagined than real.

"Insurance agents fought banks for so long and for so hard to block them from the door of insurance agency activities that banks thought that there was money there," said the CIAB's Mr. Wood. He suggested that both sides might be learning that there was "more cachet" about being associated with each other's business when they were fighting for the right to enter

it than when they actually were allowed to do so.

Gramm-Leach-Bliley was "evolutionary as opposed to revolutionary. To some extent, the legislation was really catching up to where the market was a couple of years ago," said the AIA's Ms. Ballen. "It seems that the merger and acquisition activity seems to be driven by business—rather than legislative or public policy—perspectives."

'Insurance agents fought banks for so long and for so hard to block them from the door of insurance agency activities that banks thought that there was money there.'

Joel Wood
Council of Insurance Agents
& Brokers

"Looking at the insurance industry, there's been relatively less big merger activity over the past couple of years," said Ms. Ballen. "When you have less of it generally, you're going to have less of it at all levels."

The CIAB's Mr. Wood also noted that the ongoing debate over financial records privacy has the potential to undermine many of the basic advantages of financial

services convergence. He said it "was only through an act of God" that California did not adopt privacy provisions even more stringent than those provided by Gramm-Leach-Bliley.

The federal law requires that consumers be given the opportunity to opt out of having their financial information shared among parts of a financial services company; California would have required that consumers actually "opt in" before such information could be shared. If California were to adopt that more-stringent standard, it would become the de facto national standard, because companies won't maintain separate standards, said Mr. Wood.

AEI's Mr. Wallison said he believes that the Gramm-Leach-Bliley Act's days are numbered. He said that the law is "fundamentally flawed" in that it attempts to make a distinction between commerce and finance and gives the Federal Reserve Board the job of policing the line, he said. That makes it necessary for companies that want to acquire banks to give up their freedom to enter new activities.

The act gives the Fed what Mr. Wallison called a "conceptually impossible task." There is no way to distinguish between a financial and a commercial activity, he said, and the "arbitrary" decisions that emerge—as well as the failure to "create a true two-way street" in financial services—"will eventually require the act to be substantially modified or repealed."

Insurance entities see advantages in branching out

By SALLY ROBERTS

Although the convergence of financial services sectors has not occurred as widely as many had predicted, it is creating opportunities for some in the insurance industry to branch out of their traditional businesses.

For example, even prior to the 1999 enactment of the Gramm-Leach-Bliley Financial Services Modernization Act—which lowered barriers to convergence among the banking, insurance and securities industries—two insurance trade associations were busy creating their own banks. The new banks were developed to allow the associations' members to sell a full range of banking products in addition to insurance.

Business is now flowing into the banks, executives for the operations say, but they note that there have been certain obstacles along the way. In particular, changing an insurance agent's mindset to get him or her to think about selling banking products can be a big challenge, the executives say.

Carmel, Ind.-based Assurance Partners Bank, which is affiliated with the Indianapolis-based National Assn. of Mutual Insurance Cos., opened its doors for business in June 2000, after receiving the necessary approval by the Office of Thrift Supervision and the Federal Deposit Insurance Corp.

The bank, which received a \$12.5 million investment from 262 NAMIC member companies, initially operated only in Indiana but is now open in some 40 states where NAMIC has a concentration of members, explained Dave Fronek, the president and chief executive officer of Assurance Partners Bank.

The whole idea behind creating Assurance Partners Bank was to help member companies' independent agency distribution force to become more competitive—giving agents a "greater share of wallet," Mr. Fronek said.

He noted that business is growing each month. "We couldn't have processed any more business than what was available to us in October and November," he said.

And starting in 2002, Assurance Partners Bank will begin targeting a new group of clients—member insurers and their agencies, Mr. Fronek said.

Farmington, Conn.-based InsurBanc, which is co-owned by the Independent Insurance Agents

of America Inc. and W.R. Berkley Corp., began operations in April 2001. It operates as a full-service bank in Connecticut, Massachusetts and New Jersey, with plans calling for expansion during the next few years.

For the first six months of InsurBanc's existence, "we really focused on conducting training programs for independent agents," said Mike Herlihy, its president and CEO. "We trained 200 independent agents in three states, representing 100 agencies," he said.

And in addition to training agents to sell banking products, InsurBanc has been soliciting their business.

According to Mr. Herlihy, in order for agents to be effective in selling InsurBanc's products and services, "they really have to be a consumer of our products and services as well. It's a much more credible sale," he said.

Over the past two months, InsurBanc has changed its focus and has started to solicit referrals from agents.

Mr. Herlihy said that about 100 agents have signed an agreement to market InsurBanc's products to

clients, and business is beginning to flow into the bank.

Overall, "the response has been very strong and very promising," Mr. Herlihy said. "There's a lot of enthusiasm from the

independent agents' ranks for this concept," he said.

After obtaining the proper licenses and compliance training, the Connelly Agency Inc. in November began selling a variety of banking products through InsurBanc, said Mark Connelly, the president of the Fairfield, Conn.-based independent agency.

So far, "we have closed four lines of credit totaling \$1 million," he said, noting that he expects to close the agency's first residential mortgage loan soon.

"I see it as another valuable product offering for our clients," said Mr. Connelly.

He noted that most of his local competitors have been acquired by banks, which was not the path he wanted his agency to follow. At the same time, however, he did not "want to be caught short of the products and services clients view as valuable," he said.

InsurBanc has "allowed us to compete fairly easily with banks in our neighborhood and still allows us to be true independent business entrepreneurs," he said.

Dave Wyrsh, president of the Van Dyk Group, said that the Long

See FINANCE/page 12D



We can handle it.

Clausen Miller Lawyers.
Subrogation worldwide.

subro@clausen.com
312-855-1010

Chicago . Newark . Newport Beach . New York . Wheaton . London . Paris . Rome

Clausen Miller PC



*Imagine having this kind of
security in a reinsurance company.*

As one of the leading reinsurers, we provide strength and stability in the ever-changing business environment. Combine this with our consistent A+ rating from A.M. Best, and it's no wonder our customers feel so protected.

INSURER TOPICS

Finance: Insurers see advantages in branching out

Continued from page 12B

Beach Island, N.J.-based agency also is selling banking products through InsurBanc as a way to keep clients from going to other financial services companies.

"Today, you can't just have insurance products to offer. You have to offer customers one-stop shopping. That's the way I look at it," Mr. Wyrsh said.

It's not just insurance agencies that are benefiting from the newly established banks.

Brian Wilkin, president of Hingham Mutual Fire Insurance Co. in Hingham, Mass., noted that the establishment of Assurance Partners Bank has allowed the small mutuals to better compete with larger insurance companies.

"It gives small companies like

ours a chance to go out and compete head-to-head with other companies," Mr. Wilkin said. He also noted that working with the bank has allowed Hingham Mutual to offer its independent agency force the opportunity to sell financial products, something "they feel they really need," he said.

Those in charge of the associations' banks say that although business is growing, they have faced challenges along the way. One of the biggest, they say, is getting independent insurance agents to think like financial services providers.

"As a banker all my life, I can tell you banks have the same problem," Mr. Fronek said. "It's hard trying to get banks to think

about mutual funds and insurance, because they think like bankers."

And the opportunities presented by the hardening insurance market

'Today, you can't just have insurance products to offer. You have to offer one-stop shopping. That's the way I look at it.'

Dave Wyrsh
Van Dyk Group

are making that challenge even tougher, he said. "We have to command a portion of their time to think about the long term of

how to think like a financial services provider."

InsurBanc's Mr. Herlihy agreed that the mindset issue is a big challenge.

As such, he said InsurBanc's "biggest effort" continues to be educating and training agents. "We're getting together with agents and bringing them through the training program, focusing on what the changing roles mean, how they can participate and how they can recognize" opportunities, he said.

"It's a major paradigm shift and one that takes a while. But when it happens, it's very rewarding," Mr. Herlihy said.

Mr. Connelly from Connelly Agency agreed that while it might be a challenge for some agencies, it

was not difficult for his agency to focus on selling banking products. That's because in addition to selling property/casualty insurance products, the agency sells "an enormous amount of life and annuity business," he said, noting their similarity to banking products.

"Recognizing those opportunities and capitalizing on them, for us, that was an easy thing to work into our daily routine," he said.

Some state privacy laws rankle industry

Requirements imposing burdens, companies and agents say

By MICHAEL BRADFORD

States generally are adopting privacy regulations that insurers and producers can live with, but there have been a couple of notable exceptions, and all eyes will be on California this year.

Forty-four states and the District of Columbia had taken steps as of late December to implement privacy rules required by the 1999 Gramm-Leach-Bliley Financial Services Modernization Act, according to the Alliance of American Insurers. Of those, 35 have based their regulations on the model privacy legislation developed in 2000 by the National Assn. of Insurance Commissioners.

Under the 1999 federal act, affiliated companies within a financial industry holding company structure can share financial information on clients. The legislation requires that those clients be notified of such sharing and be given an opportunity to block any sharing of information outside the holding company "family."

Another requirement of the law is that all financial institutions establish privacy policies.

The thorniest issue in the Gramm-Leach-Bliley privacy debate involves how clients of financial services companies are notified of information sharing. While most states are adopting regulations that would allow clients to opt out of such sharing outside the holding company structure, a couple have decided the information could be shared only if clients "opt in."

There are some "really ugly" regulations in New Mexico and Vermont," said Rey Becker, vp with the Alliance in Downers Grove, Ill. "They go above and beyond just implementing Gramm-Leach-Bliley," he explained, by requiring an opt-in system of disclosure. The result could be burdensome and

expensive for insurers doing business in those states, he noted.

The cost of developing forms and procedures specifically for use in New Mexico and Vermont would be "unnecessarily costly," according to Mr. Becker, and the expense would be passed on to policyholders in the form of higher premiums.

"It makes those states much less attractive insurance markets," Mr. Becker said.

"The whole opt-in issue is of

'Each state is supposed to follow the NAIC guidelines on privacy. But some have and some haven't.'

Robert A. Rusbuldt
IIAA

major concern to agents," said Robert A. Rusbuldt, executive vp of the Independent Insurance Agents of America Inc. in Alexandria, Va. Like insurers, agents would find it burdensome to operate in states that require an opt-in disclosure, he noted. "If they are required to have that kind of customer consent, it could hinder the way agents do business."

Time will tell which way California will fall regarding the disclosure issue, Mr. Becker suggested, but many expect a repeat performance of last year's "legislative drama" in which a bill establishing opt-in rules was narrowly defeated in California's Legislature.

"When Jan. 1 rolls around, we will be back in the thick of California," agreed Julie Gackebach, director of government relations at the National Assn. of Independent Insurers in Washington. "It's considered a bellwether, and if we get a bad bill out of there, we could have some unforeseen problems."

Mr. Becker said that "we will

probably see bills here and there that propose an opt-in. We will have to react to those on a state-by-state basis."

Research conducted by the Alliance indicates that many states have reacted to concerns raised by that group and others by dropping or scaling back some of the provisions considered problematic in the NAIC model regulation. A dozen states, for example, have eliminated a provision that prohibited the distribution of personally identifiable health information unless the customer opts in and allows disclosure. And 13 eliminated language that would have applied privacy language to information involving workers compensation claimants, according to the Alliance.

Mr. Rusbuldt said that having so many different state regulations is making it difficult for agents and insurers to adhere to privacy rules. "Each state is supposed to follow the NAIC guidelines on privacy," he said. "But some have and some haven't."

Furthermore, "there seems to be some confusion on how far states could or should go" when drafting privacy regulations, Mr. Rusbuldt added. "States have been interpreting Gramm-Leach-Bliley in different ways."

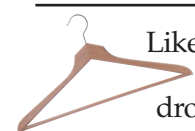
For example, some states say agents don't have to send privacy notices to clients if the insurer that writes the customer's coverage is sending a notice. Other states, however, say the agents must send a notice. "So some consumers are getting two or more notices for the same policy," Mr. Rusbuldt said. "We've advised our members that if they want to take the safest route, they should notify their clients."

On the federal level, "things have quieted down a little bit," according to Ms. Gackebach. She said legislation was introduced last year "to move to opt-ins rather than opt-outs," but the bill failed to advance in Congress.



Do you like to order in lunch?

Like the newspaper left at your door?



Like your dry cleaning dropped-off?

Like to shop by catalog or online?



Then you're going to love ...

BI's DAILY NEWS
delivered straight to your desktop daily!

Now the magazine that you go to for up-to-the-minute news will send the news directly to you.

BI's DAILY NEWS is a free e-mail service providing the latest headlines and links to the full articles online at **businessinsurance.com**

It's the best way to stay informed of breaking news in our industry.

Sign up today for **BI's DAILY NEWS!**
Log on to **businessinsurance.com/** or write us at **BIweb@crain.com**

It's free, it's easy, and it's the next big thing to come your way from...

Business Insurance
www.businessinsurance.com

Insurer Topics ADVERTISER INDEX

Issue of January 21

ADVERTISER PAGE #

Clausen Miller PC 12B

GMAC 12C

e-mail us @crain.com

Martin Ross, Publisher mross@crain.com
Paul Winston, Editor pwinston@crain.com

EDITORIAL

Jerry Geisel, Editor-at-Large jgeisel@crain.com
Regis Coccia, Managing Editor rcoccia@crain.com
Kathy Barnes, Asst. Managing Editor–Graphics .. kbarnes@crain.com
Gavin Souter, Asst. Managing Editor–News gsouter@crain.com
Meg Fletcher, Senior Editor mfletcher@crain.com
Judy Greenwald, Senior Editor jgreenwald@crain.com
Mark Hofmann, Senior Editor mhofmann@crain.com
Dave Lenckus, Senior Editor dlenckus@crain.com
Doug McLeod, Senior Editor dmcleod@crain.com
Edwin Unsworth, Senior Editor eunsworth@crain.com
Joanne Wojcik, Senior Editor jwojcik@crain.com
Rodd Zolkos, Senior Editor rzolkos@crain.com
Roberto Cenicerros, LA Bureau Chief rcenicerros@crain.com
Mike Bradford, Associate Editor mbradford@crain.com
Michael Prince, Associate Editor mprince@crain.com
Sally Roberts, Associate Editor sroberts@crain.com
Sarah Veysey, Associate Editor sveysey@crain.com
Matt Scroggins, Copy Desk Chief mscroggins@crain.com
Mary Nick, Copy Editor mnick@crain.com
Joe Walker, Copy Editor jwalker@crain.com
Kevin Edison, Directory Editor kedison@crain.com
Amy Kepka, Asst. Graphics/Online Editor akepka@crain.com
Karen Tucker, Assistant to the Editor ktucker@crain.com
Roger Schillerstrom, Edit. Cartoonist rschillerstrom@crain.com

SALES & MARKETING

Ronnie Drachman, Dir. Communications rdrachman@crain.com
Kenneth Luker, Advertising Director kluker@crain.com
Bob Niese, Midwest Advertising Mgr bniese@crain.com
Christopher Crain, District Manager ccrain@crain.com
Lori Lieberman, District Manager llieberman@crain.com
Bob Murray, District Manager bmurray@crain.com
John Phillips, District Manager jphillips@crain.com
Jennifer Powers, District Manager jpowers@crain.com
Irais Amleshi, Classified/Services Guide iamleshi@crain.com
Barbara O'Brien, Promotion Coordinator bobrien@crain.com
Pat Ghazvini, Assistant to the Publisher pghazvini@crain.com
Tina Vasilakis, Sales Assistant tvasilakis@crain.com
Stephanie Cress, Ad Traffic scress@crain.com
J. Thomas Janka, Ad Production tjanka@crain.com

**KEEP
IN
TOUCH**

Business Insurance www.businessinsurance.com

a publication of Crain Communications Inc

California health plans to use premium increases to reward physicians for quality patient care

By LAURA B. BENKO

WALNUT CREEK, Calif.—A group of California health plans, medical groups and employers announced a statewide healthcare initiative last week that uses money from insurance premium increases to reward physicians for improving the quality of patient care.

Under its "Pay For Performance" initiative, the Integrated Healthcare Assn., a managed care policy development group based in Walnut Creek, Calif., plans to create a statewide pool of funds that would be used to pay bonuses to doctor groups that do well according to a standardized set of performance measures.

The pool would be set up by health plans, which would chip in roughly 2% of premium increases associated with capitation payments annually for the next three years.

The concept of rewarding physicians for providing quality care—rather than for holding down costs—has gained momentum in recent years, partly because several Institute of Medicine reports have documented shocking defects in the way the nation's health care is delivered (*BI*, June 11, 2001). But until now, most efforts have come from individual health plans, each using its own performance measures and incentive scale.

Participation in the pool is voluntary. But if all health plans in the state were to contribute, the IHA said, a 2% pool would equal \$100 million to \$150 million. And, in addition to the additive nature of the pool over

'Incentives are powerful, proven motivators in virtually every human endeavor, but are still rare in health care.'

Kevin Piper
National Health Care
Purchasing Institute

three years, the value of the 2% set-aside would grow as premiums rise.

Premium increases "will remain in the high single digits or more for at least another three years," the IHA said on its Web site. "There is, therefore, a window of opportunity in the next 12 to 18 months to build a 'pay for performance' system that can be funded out of those coming increases."

The initiative is being spearheaded by six health plans: Aetna U.S. Healthcare of California, Blue Cross of California, Blue Shield of

California, CIGNA HealthCare of California Inc., Health Net Inc. and PacifiCare Health Systems Inc.

In a statement released before the announcement of the statewide initiative, the IHA touted the collaborative effort as a model for other states in tackling "the dual problem of escalating health care costs and alarming lapses in quality." At least one consumer watchdog group, though, questioned whether the initiative would prove much more than a publicity stunt.

"I wouldn't underestimate the timing of the announcement," said Jamie Court, executive director of the Santa Monica, Calif.-based Foundation for Taxpayer and Consumer Rights. "With the patients' bill of rights looming, HMOs know they have to create the perception of change."

According to its Web site, the IHA formed a committee in July 2000 to design a list of medical care standards, including "a balanced set of patient satisfaction, prevention and chronic care management measures." As part of the initiative, an independent organization would be hired to evaluate how physician groups perform on these measures using laboratory, pharmacy, administrative and patient survey data.

The medical groups with the highest scores would receive large bonuses from the pool. Those with average scores would receive less, and those with poor scores would receive nothing. Over time, this tiered reward system could improve quality industrywide by separating the provider wheat from the chaff, the IHA said.

"By design, this process will widen the gap between the best-performing and worst-performing groups, with the expectation that this, in turn, will accelerate the consolidation or exit from the market of the worst-performing groups," according to the IHA Web site.

Blue Cross of California garnered a great deal of media attention last July when it announced it would eliminate cost-containment bonuses and put all that money toward medical-quality incentives. Blue Shield of California also began phasing in bonuses for quality care last year. And PacifiCare encourages doctors by making public information about how well each of its medical groups takes care of patients.

But the California initiative is unprecedented-



ed, the IHA said, because it marks the first time that several health plans will work together under a joint incentive system.

A study released last week by the National Health Care Purchasing Institute found that rewarding physicians financially for high-quality clinical performance can indeed improve health care.

"Incentives are powerful, proven motivators in virtually every human endeavor, but are still rare in health care," Kevin Piper, director of the Washington-based institute, said in a written statement. "Incentives focus the mind, empower change and provide valuable resources for quality improvement."

But consumer advocate Mr. Court said the initiative could prove largely "cosmetic" because it does nothing to alter the flat per-patient fee that HMOs pay medical groups.

"Even a 10% bonus (for improving quality) is marginal when 100% of your salary is still tied to minimizing treatment costs," Mr. Court said. "The real change would be if doctors started getting paid on a risk-adjusted basis for treating sick patients."

Laura B. Benko is a reporter for *Modern Healthcare*, a sister publication of *Business Insurance*.

IRS rules cayenne a valid medical expense in some circumstances

By JERRY GEISEL

WASHINGTON—A spicy tale?

A recent Internal Revenue Service information letter says the cost of cayenne pepper recommended by a patient's naturopathic physician to treat Raynaud's disease, a circulatory problem affecting the blood vessels in fingers and toes in cold weather, qualifies as a bona fide tax-deductible medical expense. That determination is important to employers and employees because, for example, only tax-deductible medical care expenses can be funded through health care flexible spending accounts.

In Informational Letter 2001-0297, the IRS says that an expense is considered to be for medical care if its primary purpose is the diagnosis, cure, mitigation, treatment or prevention of disease.

Under tax regulations, medical care expenses are tax-deductible to the extent that they are limited to those incurred for the prevention or alleviation of physical or mental defects or illnesses. An expenditure for treatment that is merely beneficial to the general health of an individual would not be considered an expense for medical care, the IRS said.

An individual could prove that an expense of a "peculiarly" personal nature is for medical care by meeting several objec-

tive criteria, the IRS said. Those criteria include the diagnosis of a doctor, a link between the treatment and the disease, the effectiveness of the treatment, and the proximity in time to the onset or recurrence of the disease. The actual treatment of the disorder, though, could be directed by a naturopathic physician rather than a traditional doctor.

A patient also would have

to establish that the expense would not have been incurred "but for" the disease or illness.

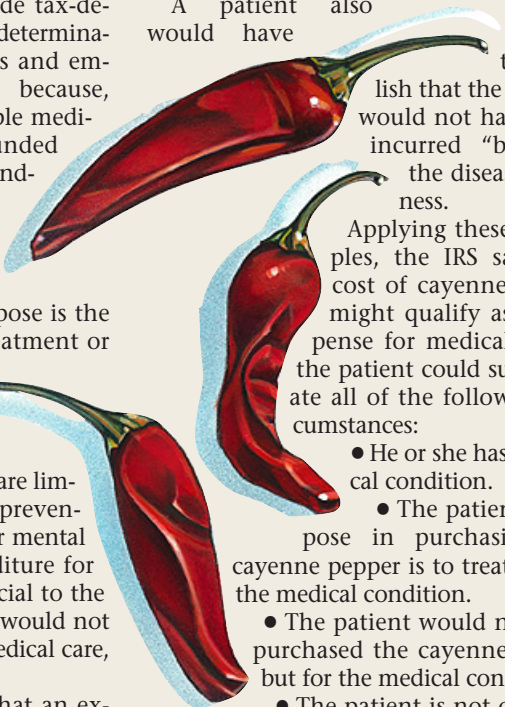
Applying these principles, the IRS said, the cost of cayenne pepper might qualify as an expense for medical care if the patient could substantiate all of the following circumstances:

- He or she has a medical condition.

- The patient's purpose in purchasing the cayenne pepper is to treat or ease the medical condition.

- The patient would not have purchased the cayenne pepper but for the medical condition.

- The patient is not consuming the cayenne pepper to satisfy normal nutritional requirements.



Business Insurance

"Be sure that you return it."

If you're racing through this issue of *Business Insurance* because you "borrowed" it from a colleague, you should have your own subscription. Then you'll be first on the list. You can take as much time as you like with all of *Business Insurance's* exclusive worldwide news of corporate risk, employee benefit and managed health care every week.

To subscribe, use the card in this issue or call 1-888-446-1422 toll free.

Subscription rates in U.S. dollars for 1 year, 52 issues.
U.S. \$97
Canada*/Mexico \$130
All other countries by expedited air \$230
* Price includes Canadian GST.

Ask about our special 20% off group rate for five or more subscriptions.

**Subscription Dept.
1155 Gratiot Avenue,
Detroit, MI, 48207-2912
Outside the U.S., call (313) 446-0450**

Vaughan: Increased say for NAIC sought

Continued from page 3

those proposed by the Insurance Services Office Inc. (BI, Jan. 14). A few regulators and large policyholders, though, continue to question the value of coverage that would be capped at \$25 million in total losses.

It remains to be seen whether Congress—in an election year—will want to tackle the issue of terrorism coverage if federal lawmakers think that state regulators have stabilized

the situation by approving some exclusions.

"I don't know what is going to happen," said Ms. Vaughan, who has served as Iowa's insurance commissioner since August 1994.

Prior to being appointed commissioner, Ms. Vaughan was director of the Insurance Center at Drake University in Des Moines, Iowa; before that, she held teaching posts at two Eastern schools. She also worked as a consultant with Tillinghast.

Ms. Vaughan's education has prepared her well for her work as an insurance regulator. She holds a bachelor's degree in business administration from the University of Iowa in Iowa City—where her father, an insurance professor, is in his third decade of teaching—as well as a doctorate in risk and insurance from the Wharton School of the University of Pennsylvania in Philadelphia. In addition, she holds

and was reappointed in 1998 by his Democratic successor, Tom Vilsack, who is up for re-election this year.

Ms. Vaughan said she welcomed the shift from academia to daily regulatory work and, after seven years, remains enthusiastic about her job.

"I think this is a fascinating industry with fascinating issues," Ms. Vaughan said. She added that she has been struck by "how diverse the issues are and how complicated they are...and how difficult they are to resolve, given the very diverse opinions of the people involved."

During her tenure, Ms. Vaughan has focused on introducing health insurance reforms, implementing a mutual holding company statute and improving regulatory efficiency at both the state and national level.

"We are a state that is very frugal with its resources," Ms. Vaughan said. Consequently, Iowa has been at the forefront in adopting automated systems, such as those for producer licensing, that make regulators' jobs easier. The NAIC has recognized those efforts, making Iowa the fifth state to earn its State Regulation 2000 award for participating in several NAIC initiatives to streamline regulation.

In addition, Ms. Vaughan is president of the National Insurance Pro-

ducer Registry, a nonprofit affiliate of the NAIC that is developing an electronic system for nonresident licensing of insurance producers.

On the national level, Ms. Vaughan said she will work to further modernize state regulation.

Her specific goals this year include expanding efforts to speed products to market, such as promoting uniformity among states' filing requirements, she said. In addition, Ms. Vaughan said she expects to see progress made in the area of market conduct, as states shift their focus from prior approval to follow-up assessments.

Ms. Vaughan also plans to continue her personal involvement in insurer/bank convergence issues, as well as to encourage the use of more-formalized procedures for assessing the activities of insurer holding companies and for examining insurers' risks. Another goal is to improve coordination with state legislators, she said.

Ms. Vaughan's husband, Robert Allen Carber, is a property/casualty insurance agent specializing in church risks. She is quick to note that she has created "firewalls" within the Insurance Department to avoid any conflicts of interest. Ms. Vaughan and Mr. Carber have a 4-year-old son.

Specialty Insurance Program

National Claims Management for Specialty Insurance Programs on Commercial Auto, Non-Standard Auto & WC.

We Will...

- Reduce Your Claims (Guaranteed).
- Reduce Your Claim Expense (Guaranteed).
- Reduce Your Legal Expense.

Our time tested, proven method of claims management & controls will result in lowering your claims and associated expenses. Get a competitive edge and call for more information.

Pacesetter National

For More Information Contact Paul Pearson at

(800) 844-8104 ext 323

email ppearson@pacesetter-adj.com

NAIC President Terri Vaughan says of the insurance industry that she is struck by 'how diverse the issues are and how complicated they are...and how difficult they are to resolve, given the very diverse opinions of the people involved.'

the Chartered Property & Casualty Underwriter designation and belongs to several actuarial societies.

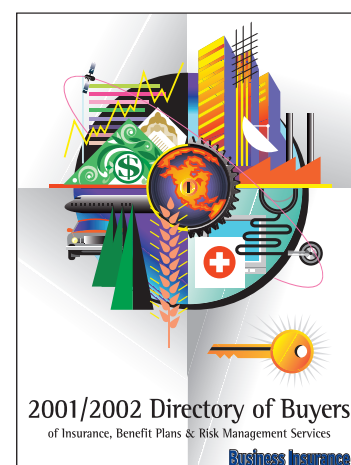
Ms. Vaughan was appointed to the commissioner post by longtime Republican Gov. Terry E. Branstad



you.

the 2001/2002
Directory of Buyers.

the industry.



CALL 888.446.1422
OUTSIDE THE US: 313.446.1662
E-MAIL: SUBS@CRAIN.COM

Business Insurance www.businessinsurance.com

Directory deadline nears

Business Insurance will publish its online Directory of Risk Management Consultants in February. The Feb. 18 issue of *Business Insurance* will include a ranking of the top consultants and a Spotlight report on enterprise risk management.

The directory is published as an editorial service, and there is no charge to be included. Companies must simply submit completed questionnaire by the extended deadline of Feb. 1.

To be listed in the directory, companies must provide risk management consulting services, which *BI* defines as: providing advice, on a fee-for-service basis, on the identification and analysis of an organization's loss exposures and on minimizing the financial impact of such risks.

We have also expanded the definition to include providing advice to an organization's

chief risk management officer on a broader range of possible losses or risks—such as enterprise risk management, risk securitization, financial risk management and even various forms of operational risk—as long as your company's advice is contracted for by the risk manager of the client organization or an executive to whom the risk manager reports.

Companies must generate at least \$150,000 of their gross revenues from risk management consulting and must report gross revenues to be included.

If your company provides these services but has not received a questionnaire, please request one by calling Assistant Directory Editor Carrie A. Brittain at 312-649-5313. Questionnaires also can be downloaded from the directory area of www.businessinsurance.com.

Products & Services Guide

To place your ad, contact **Irais Amleshi**
(312) 649-5340 / fax: (312) 649-7937 / E-mail: iamleshi@crain.com

CPCU® **IIA and CIC candidates**

You'll learn more faster with The Insurance System for CPCU®, INS, AIS, APL, AIC, AIME, ARM, AIC, AICM, AAP, ARP, APAC, AJAF, AMIM, AII, ASEP, AFSI, ASLI, FR and more—Guaranteed!

Call 1-888-BURNHAM Now!

Any Risk Management Questions?

Ask www.GeorgeLHead.com

Looking for QUALITY RESULTS?

Advertise in Business Insurance

Upcoming Issue:
January 28
EMPLOYMENT RISK MANAGEMENT
Closing: January 22

Call (312) 649-5340 to reserve your space!

Business Insurance

New Subscriptions

You can now subscribe to our publication over the Web. Simply fill out our subscription form and we will get your first issue to you right away.

Moving? Change of address? New job?

If you're leaving your current location, make sure you don't leave behind the late-breaking, agenda-setting news that helps you stay on top of your business. You can change your information with us online, immediately.

Billing or renewal inquiry?

Verify your subscription details or pay an invoice. If you receive a notice from us after you have paid, it is likely due to correspondence crossing in the mail. However, if you receive a second notice after you have paid, contact us and include a copy of both sides of your canceled check. For more information about a subscription, please contact the customer service department at

1-888-446-1422

www.businessinsurance.com

Comings & Goings



Mr. Waller



Mr. Wilson

Insurers:

David Lawless has been named senior vp and chief administrative officer of Public Service Mutual Insurance Co., a unit of the New York-based Magna Carta Cos. **John Hill** has been named senior vp of home office operations.

Philip V. Bancroft is joining ACE Ltd. as chief financial officer, based in Bermuda. Before joining ACE, Mr. Bancroft was partner in charge of the New York regional insurance practice at PricewaterhouseCoopers.

Mr. Bancroft is replacing **Christopher Marshall**, who has been CFO since 1992. Mr. Marshall is assuming the newly created position of executive assistant to the chairman with a focus on strategic initiatives.

Dick LaBrecque has been named national sales officer for the Los Angeles-based managed care company Health Net Inc. For the last year, Mr. LaBrecque has served as vp of sales and marketing for Health Net of the Northeast. **Susan Ross**, regional vp of business retention and development for Health Net of the Northeast, will assume Mr. LaBrecque's former responsibilities on an interim basis.

W.R. Berkley Corp. has named **Robert C. Hewitt** senior vp of risk management and **Michael E. Lombardozzi** senior vp of planning and operations. In addition, **W. Robert Berkley Jr.** and **Paul J. Hancock** have been named senior vps of the Greenwich, Conn.-based insurance holding company.

Most recently, Mr. Hewitt was a senior vp for Benfield Blanch Inc., a reinsurance intermediary based in New York. Previously, Mr. Lombardozzi served as senior vp, general counsel and secretary of Orius Corp., a telecommunications company based in West Palm Beach, Fla.

Mr. Berkley previously served as president of Berkley International L.L.C. and will retain that position in addition to taking on his new role. Mr. Hancock, who also will serve as chief corporate actuary of W.R. Berkley, most recently served as a vp in the company's actuarial department.

Rich Waller has been named to fill the newly created position of executive vp of e-business at Schaumburg, Ill.-based Zurich North America. Before joining Zurich, Mr. Waller served as the acting chief technology officer and chief architect of Cap Gemini Ernst & Young's Microsoft practice.

Reinsurers:

Michael Maloney has joined Folsamerica Reinsurance Co. as executive vp in New York. He will have broad responsibilities in the domestic treaty and facultative units and will be in

charge of all of Folsamerica's international reinsurance operations. Mr. Maloney previously served as senior vp of Zurich Centre Group. **David Gilligan** has joined Folsamerica Re in New York as senior vp with responsibility for marketing both treaty and facultative business. He previously was a vp at Benfield Blanch in New York.

Willis Re Inc. Executive Vp **Peter C. Hearn** has been promoted to president of the New York-based reinsurance broker. **George P. Reeth Jr.**, chief executive officer and president, is now CEO and chairman. The chairman post has been vacant since Peter T. Pruitt's retirement in December 2000. Mr. Hearn is based in Willis Re's Philadelphia office. Other executive appointments at Willis Re effective Jan. 1 include:

- **Roderick P. Thaler**, executive vp and national director, has taken on additional responsibilities leading the development of Willis Re's global accounts and managing key reinsurer relationships.

- Senior brokers **Anne C. Barrett**, **Craig Darling** and **David A. Hearn** have been promoted to executive vps. Mr. Darling also has been appointed manager of New York P&C and is responsible for all treaty, facultative and program activities. Ms. Barrett and Mr. Hearn are based in Philadelphia.

- **Tony Izzo**, senior vp, has been named manager of New York facultative.

- **Tony Ainsworth**, senior vp-facultative in New York, has assumed the additional post of national coordinator, working closely with Willis Group retail, wholesale and other group companies in maximizing joint production and cross-selling opportunities.

- **William H. Panning**, senior vp, has been named head of research and development in the analytical services division. He will have offices in Minneapolis and New York.

- **Yves Provencher** has been promoted to senior vp from vp in the actuarial department in New York.

- **Julie Serakos** has been promoted to senior vp and manager, catastrophe management services in Minneapolis. Ms. Serakos had been a vp.

- **Lixin Zeng** has joined the company's Minneapolis office as senior vp of product development. Mr. Zeng previously served as vp, risk analysis and technology services at Benfield Blanch.

Brokers:

Fred T. Pietropola has been named senior average adjuster and maritime consultant at The Graham Co. He joins the Philadelphia-based brokerage from Marsh Inc., where he served as senior vp, marine and energy claims.

Other suppliers:

Dennis Slabaugh has been named senior risk management consultant for Gulfshore Insurance of Naples, Fla. Mr. Slabaugh will head the company's newly formed consulting services division. He previously served as corporate risk manager for HCH Healthcare System in Naples.

Tom Wilson, former Swiss Re New Markets chief financial officer, has been selected to fill the newly created position of global head of finance and risk practice at New York-based Oliver, Wyman & Co., a risk and financial consultant to the financial services industry.

Mr. Wilson will divide his time between Oliver, Wyman & Co.'s operations in Europe and North America.

Patrick J. O'Connor has been named president and chief executive officer of Cozen O'Connor, an insurance litigation firm based in Philadelphia. He formerly was vice chair. **Stephen A. Cozen**, the firm's former president and CEO, will remain as chairman of the board.

Joseph P. Ratterman has been named executive vp for information technology and chief technology officer at LabOne Inc., a Lenexa, Kan.-based laboratory testing provider with risk assessment services, health care and substance abuse testing divisions. Mr. Ratterman most recently held the chief information and technology officer positions at Bridge Information Systems Inc. of New York.

John McMahon was named president and chief operating officer of IE-Engine Inc., a human resources technology firm based in Gloucester, Mass. Mr. McMahon formerly was executive vp for worldwide sales at Ariba Inc., a Sunnyvale, Calif.-based software developer.

Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers.

Please send news of recently promoted, hired or appointed senior-level executives to: Joanne Wojcik, *Business Insurance*, 777 E. Speer Blvd., Denver, Colo. 80203-4212; jwoj-cik@crain.com.

Photos should be sent to: Kathy Barnes, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; kbarnes@crain.com.

January 21, 2002

International

17

Losses lie ahead for Lloyd's market

Chatset projects multibillion-dollar losses for 1999, 2000, 2001 years

By SARAH VEYSEY

Lloyd's of London will record three consecutive years of loss for the open underwriting years 1999 to 2001, predicts Lloyd's analyst Chatset Ltd.

In its January 2002 review, Chatset said that optimism about a return to profit in the 2001 year had waned because of the Sept. 11 terrorist attacks.

Chatset said that Lloyd's would post a marketwide loss of £1.698 billion (\$2.743 billion) for the 1999 year—about 17% of the market's total stamp capacity—after members agents' charges. For 2000, it predicted a loss of £1.583 billion (\$2.364 billion) after such charges. And for 2001, Chatset said Lloyd's would record a loss of £1.740 billion (\$2.533 billion).

Aviation was the worst-performing class for 1999 and will record a loss of £147 million (\$237 million), or about 25% of its £600 million (\$969 million) stamp capacity, Chatset projected. The 1999 underwriting year is most recent to have closed under Lloyd's three-year accounting system.

Chatset said that nonmarine business will post the largest loss for 1999, with a predict-

ed loss of £804 million (\$1.299 billion), or about 20% of its £3.923 billion (\$6.337 billion) stamp capacity. For 1999, marine business will record a loss of £258 million (\$417 million), or 19% of stamp capacity. Composite syndicates will record a loss of £277 million (\$447 million) for 1999, 10% of their £2.713 billion (\$4.382 billion) stamp capacity, Chatset said.

Much of the losses from Sept. 11 will fall on the 2000 year of account, Chatset said, because of when the relevant policies were written. The aviation market will record a loss of £227 million (\$339 million) for 2000—82% of its stamp capacity—the analyst said. But the loss picture for aviation underwriters in 2001 is much improved, Chatset noted.

The marine market will make a loss of £302 million (\$451 million) for 2000, while the nonmarine market will record a £531 million (\$793 million) loss, Chatset said. Composite syndicates will post a loss of £460 million (\$687 million) for 2000.

The 2001 year will also see heavy losses, Chatset said.

"Any hope there might have been for this year has been dashed by the events of Sept.

See CHATSET/next page

LOSS FORECASTS

Chatset predicts that Lloyd's losses will continue to grow in the next three years. Figures listed in millions of pounds/dollars

Markets	1999	2000	2001
Marine	(£258) (\$417)	(£302) (\$451)	(£232) (\$338)
Nonmarine	(£804) (\$1,299)	(£531) (\$793)	(£807) (\$1,175)
Aviation	(£147) (\$237)	(£227) (\$339)	(£8) (\$12)
Total after members agents' charges	(£1,698) (\$2,743)	(£1,583) (\$2,364)	(£1,740) (\$2,533)

Source: Chatset Ltd.

World Updates

SCOR to exit program, health lines

French reinsurer SCOR S.A. said last week it is withdrawing from program business in the United States, which includes the reinsurance of medical and professional liability risks, as well as exiting health reinsurance globally, as the company has already done in the United States. The notice of withdrawals came as the Paris-based reinsurer forecast a loss for 2001 of 250 million euros (\$222.9 million) from the Sept. 11 destruction of the World Trade Center and other developments. SCOR previously said that it expected its share of losses from the terrorist attacks to reach \$200 million, but an "accumulation of negative factors" emerging late last year has led to lower earnings expectations, according to a SCOR statement. These factors include large losses in the fourth quarter of 2001, a need to reinforce reserves because of higher-than-expected claims and weaker investment results, SCOR said.

Bayer lawsuit seeks to add plaintiffs

Lawyers are attempting to add German plaintiffs to a class-action lawsuit they are bringing in the United States against German chemical giant Bayer A.G. and its subsidiaries over adverse side effects from the cholesterol-lowering drug Baycol. U.S. lawyer Kenneth Moll of Chicago is being joined by German lawyer Michael Witt in an attempt to add German claimants and, possibly, other non-U.S. citizens to a case to be filed in federal district court in Minnesota. Last August, Bayer withdrew Baycol, which is known as Lipobay outside the United States, after the drug was linked with more than 50 deaths globally. Leverkusen, Germany-based Bayer issued a statement last week, though, saying it was confident that U.S. courts would reject attempts to include German plaintiffs in the U.S. action.

IUA chairman says London market thriving

The chairman of the London-based International Underwriting Assn. has said that the London insurance market continues to thrive after the Sept. 11 terrorist attacks. The IUA's Stephen Cane said that the recent renewal season "demonstrated beyond doubt the market's continuing ability to serve its customers." Mr. Cane added that reform of the market is ongoing and that standardized London market slips would be introduced in the coming month.

See WORLD NEWS/page 19



PHOTO: AP/WIDE WORLD

Hendrik Phetlo is among a group of South Africans suffering from exposure to asbestos. Mining company Cape P.L.C. recently agreed to settle asbestos liability claims there.

Cape uninsured for payouts

Mining company settling claims over asbestos

By CAROLYN ALDRED

LONDON—Cape P.L.C. will pay £21 million (\$30.1 million) to settle claims and limit its liability to thousands of South Africans who claim they contracted asbestos-related diseases from working at or living near a mine operated by the company.

The settlement agreement, reached last month before a trial was scheduled to begin in April, comes in a case that set a precedent by allowing a U.K.-based

multinational to be sued by a group of plaintiffs in U.K. courts rather than in the home country of the plaintiffs.

The suit was brought by employees who worked at an asbestos mine operated in South Africa by Cape and by residents living near the mine, all of whom claimed they had developed asbestos-related diseases.

The settlement calls for London-based Cape to pay £21 million into a trust fund for current

See ASBESTOS/page 19

Employers seeing benefits in reform of Germany's pension system

By EDWIN UNSWORTH

BERLIN—German employers and insurers are guardedly welcoming pension reforms that took effect Jan. 1, calling them a step in the right direction but not a complete



PHOTO: AFP

Labor Minister Walter Riester proposed the pension reforms.

solution to pension problems.

Known as the Riester Reforms—named after German Labor Minister Walter Riester, who proposed them—the changes were designed to reduce the government's burden for state pensions by giving workers tax incentives to contribute to a personal or a company-sponsored pension. Companies that do not already offer an occupational pension plan are required to start one if their

workers request it. Although employers must bear the expense of setting up and administering the plan, contributing toward workers' benefits is voluntary.

The reforms were made in response to demographic shifts in Germany. As the population ages and number the number of retirees increases, the government faced increasing funding requirements. Without changes, Germany would have been required to increase taxes to finance the state pensions.

The Bundesvereinigung der Deutschen Arbeitgeberverbände, the federation of German employers, has given the reforms a guarded welcome.

The reforms will not solve all problems caused by a growing retiree population, but they are "the right first step towards a better mix between pay-as-you-go and a capital-funded system," said Volker Hansen, deputy head of the BDA's department of social security.

He said the reforms are a welcome alternative, though, to other ideas that had been considered, including a proposal for occupational pension plans that would have been fully funded by employers. Only 30% of German companies offer such pension plans, so it would have meant a large financial burden for the majority of German

See GERMANY /page 19

Chatset: Lloyd's facing three straight years of losses

Continued from page 17
11," Chatset said.

The Lloyd's analyst pointed out that while net premium for syndicates was increasing, "the combined loss ratios, as reported by the leading U.S. companies for general business, are higher than 2000, suggesting any increase in rates has been inadequate."

For 2001, Chatset predicted a £232 million (\$338 million) loss for the marine market, an £807 million (\$1.175 billion) loss for nonmarine syndicates, an £8 million (\$12 mil-

lion) loss for aviation underwriters, and a £714 million (\$1.040 billion) loss for composite syndicates.

Charles Sturge, editor of the Chatset report, described the performance of the marine market for the 1999 to 2001 years as "most disappointing and worrying, because it was always the cornerstone of Lloyd's."

In addition, Mr. Sturge characterized the three-year period as a "disastrous time" for the aviation market, culminating in the events of Sept. 11.

Mr. Sturge added that although 2000 had been a relatively good year in terms of catastrophes, several catastrophic events took place in 2001 and much of those losses would fall on the 2000 year.

"This time last year, no major catastrophe had struck 2000, and only £68 million (\$102 million) of incurred losses had been recorded," Mr. Sturge said. "How misleading this picture of hope has proved to be."

He pointed out that losses from the Petrobras oil rig sinking of

March 2001 (BI, April 2, 2001) would be split between 2000 and 2001, while some of the losses from Tropical Storm Allison in June 2001 (BI, June 18, 2001) would also fall on the 2000 year of account.

The 2001 year saw several other catastrophes that would impact Lloyd's, Mr. Sturge said. "In the third quarter of 2001, four major catastrophes hit Lloyd's: namely, the Tamil Tiger attack on Sri Lankan airports (BI, July 30, 2001), the loss of Panamasat Pas-7 satellite, the Toulouse petrochemical plant

explosion and, of course, the World Trade Center terrorism act."

Chatset predicted that the catastrophe cost for 2001 would increase dramatically from the incurred figure of £666 million (\$970 million) at Sept. 30, 2001.

Lloyd's is expected to release its official 1999 year results later this year.

Copies of the January 2002 review may be obtained from Chatset Ltd. by calling 44-207-648-4549.

Professional MarketPlace

To place your ad, contact **Irais Amleshi** at (312) 649-5340 / fax: (312) 649-7937 / E-mail: iamleshi@crain.com

Business Insurance, Classified Department, 360 N. Michigan Ave., Chicago, IL 60601-3806. Call for details on blind box and internet advertising

LEGAL NOTICES

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF THE LIQUIDATION OF)
UNITED CAPITOL INSURANCE COMPANY) NO: 01 CH 14957

NOTICE OF CLAIM FILING DEADLINE AND PROCEDURES

PLEASE TAKE NOTICE, that on November 14, 2001, the Circuit Court of Cook County, Illinois, entered an Order of Liquidation With a Finding of Insolvency against United Capitol Insurance Company ("United Capitol"). Nathaniel S. Shapo, Director of Insurance of the State of Illinois, is the statutory and court affirmed Liquidator of United Capitol ("Liquidator").

TAKE FURTHER NOTICE, that on December 7, 2001, the Circuit Court of Cook County, Illinois, entered an Order Fixing Rights and Liabilities and Providing for the Filing of Claims and the Setting of Claim Filing Deadlines ("Fixing Order"). Pursuant to the Fixing Order, all rights and liabilities of United Capitol and its policyholders, creditors and stockholders, and all other persons interested in its property or assets, are fixed as of November 14, 2001, unless otherwise provided in prior or subsequent orders of the Court.

TAKE FURTHER NOTICE, that all persons, companies or entities who have, or may have, claims against United Capitol, its property or assets, or against a United Capitol insured or policyholder, shall have the right to present and file with the Liquidator proper proofs of claim on or before November 14, 2002 at 4:30 p.m. (C.S.T.).

TAKE FURTHER NOTICE, that any insured under an insurance policy issued by United Capitol shall have the right to present and file with the Liquidator a proper proof of claim setting forth a contingent claim on or before November 14, 2002 at 4:30 p.m. (C.S.T.). No contingent claim shall be allowed for purposes of participating in any distribution of estate assets that may be made at the fourth priority level [215 ILCS 5/205(1)(d)] unless such claim has been liquidated and the insured claimant has presented and filed evidence of payment of such claim to the Liquidator on or before November 14, 2003 at 4:30 p.m. (C.S.T.). Any contingent claim for which a proper proof of claim is filed on or before November 14, 2002 at 4:30 p.m. (C.S.T.), but which is not liquidated on or before November 14, 2003 at 4:30 p.m. (C.S.T.), may be estimated pursuant to 215 ILCS 5/209(4)(b) for purposes of participating in any distribution of estate assets that may be made at the fifth priority level [215 ILCS 5/205(1)(e)] unless otherwise directed by the court.

TAKE FURTHER NOTICE, that the form and required content of all proofs of claim are described in 215 ILCS 5/209. Proofs of claim, along with supporting documents, if any, are to be filed with, and may be obtained from, the Liquidator of United Capitol, c/o the Office of the Special Deputy Receiver, located at 222 Merchandise Mart Plaza, Suite 1450, Chicago, Illinois 60654. A proof of claim shall be deemed "filed" with the Liquidator upon the Liquidator's receipt thereof. The Liquidator reserves the right to require such additional information with respect to any claim filed with him as he may deem necessary. The Liquidator further reserves any and all defenses available to United Capitol relating to all filed claims. All proofs of claim must be duly sworn to before an officer authorized to take oaths.

THE LAST DATE FOR FILING OF PROOFS OF CLAIM WITH THE LIQUIDATOR IS SET FORTH ABOVE. NO PERSONS, COMPANIES OR ENTITIES HAVING OR CLAIMING TO HAVE ANY CLAIMS AGAINST UNITED CAPITOL, ITS PROPERTY OR ASSETS, OR AGAINST A UNITED CAPITOL POLICYHOLDER, SHALL PARTICIPATE IN ANY DISTRIBUTION OF THE ASSETS OF THE COMPANY UNLESS SUCH CLAIMS ARE PROPERLY FILED WITH THE LIQUIDATOR ON OR BEFORE NOVEMBER 14, 2002 AT 4:30 P.M. (C.S.T.)

Cathleen Travis
Special Deputy Receiver _____

HELP WANTED

ACCOUNT MANAGER

Small brokerage firm, Wall Street, experienced, large accounts. Fax resume and salary requirements to: E. Johnston, 212-269-0399.

BUSINESS OPPORTUNITIES

Are looking to sell your agency?

We are a national brokerage firm with local offices who are customer driven and entrepreneurial in spirit. We offer the best of both worlds: the resources of a world-leading brokerage firm with access to top markets and service that is possible only through a local broker. Please contact:

Business Insurance
Blind Box #3171
360 N. Michigan Avenue
Chicago, IL 60601-3806

LEGAL NOTICES

HELP WANTED

Does your firm make decisions on an internal or institutional basis vs. a client focus?

Are you frustrated by that approach?

Would you like to work for a growing, national brokerage firm which is client focused that supports a strong producer-client relationship?

We are looking to grow by adding Property & Casualty and Employee Benefits producers or acquiring books of business.
Please contact:

Business Insurance
Blind Box #3170
360 N. Michigan Avenue
Chicago, IL 60601-3806

LEGAL NOTICES

REQUEST FOR PROPOSALS

PORTLAND PUBLIC SCHOOL DISTRICT #1J
REQUEST FOR PROPOSAL
FOR BROKER OF RECORD

Portland Public School District #1J is inviting proposals for the purpose of obtaining an insurance "Broker of Record". The District invites any experienced qualified firm/broker licensed to sell insurance in the State of Oregon to submit proposals for acquiring and servicing the District's **Fire, Property and Casualty, Workers' Compensation, and Surety Bonds**, and with demonstrated ability to perform cost-effective services as provided by the Rules of the Districts Public Contract Review Board, to submit proposals for consideration by the District.

Information packets are available from the office of Purchasing at the address listed below, or by calling (503) 916-3113. Sealed responses, in an envelope clearly listing the vendor name and proposal title, must be returned to Michael J. Hutchens, C.P.M., Director of Purchasing /Risk Management, Blanchard Education Service Center, 501 N Dixon St., Portland, OR 97227, no later than 2 PM, February 7, 2002.

IN THE MATTER OF
THE COMPANIES ACT, 1981
AND
IN THE MATTER OF
MAIDSTONE INSURANCE COMPANY LIMITED
(In Members' Voluntary Winding-Up)

NOTICE IS HEREBY GIVEN that a Final General Meeting of the Members of the above named Company will be held at the office of Deloitte & Touche, Corner House, Church & Parliament Streets, Hamilton, Bermuda on the 18th day of February, 2002 at 10 o'clock in the forenoon for the purposes of having an account laid before them showing the manner in which the winding up has been conducted and the property of the Company disposed of and of hearing any explanation that may be given by the Liquidator and also of determining by Resolution the manner in which the books, accounts and documents of the Company and of the Liquidator thereof, shall be disposed of.

Dated this 15th day of January, 2002.

Mark W.R. Smith
Liquidator

Recruit The Industry's Most Qualified Candidates in our EMPLOYMENT RISK MANAGEMENT issue!

Publishing: January 28
Closing: January 22

Call: (312) 649-5340 Fax: (312) 649-7937
e-mail: iamleshi@crain.com
Business Insurance

Business Insurance
Need a
Legal Notice
Business Insurance
or
Request For
Proposals
Business Insurance
Published?
Business Insurance
Call
Irais Amleshi
(312) 649-5340
Business Insurance

European buyers seeking capacity options

Facing difficulties in obtaining capacity in the traditional insurance market, some European companies are considering alternative risk transfer options.

The French risk management association announced last week that it is moving ahead with plans to set up a mutual insurance vehicle to provide fresh capacity to its members.

Philippe Detrez, chairman of the Paris-based Association pour le Management des Risques et des Assurances de l'Entreprise, said in a statement that the pool could be ready by early next year.

About 50 AMRAE members will form the pool, which is being set up because of rising insurance prices

and diminishing capacity, Mr. Detrez said.

He added, though, that no formal decision has been made on the vehicle's structure or the amount of capacity it would offer.

AMRAE first floated the idea of a self-insurance vehicle for its members in October in the wake of the Sept. 11 terrorist attacks on the United States (BI, Oct. 22, 2001).

In addition, German chemicals

giant BASF A.G. is considering forming a reinsurer out of frustra-

tion with its own attempts to get insurance coverage after the Sept. 11 terrorist attacks.

A spokesman for the Ludwigshafen, Germany-based company confirmed last Thursday that BASF is at a "very, very early stage" of investigating the formation of a

reinsurer. He declined to comment, though, on the type of company being considered, what risks it

Rising insurance prices and diminishing capacity have led about 50 AMRAE members to form a pool.

*Philippe Detrez
Association pour le Management
des Risques et des Assurances
de l'Entreprise*

Germany: Pension reforms take effect

Continued from page 17

employers, said Mr. Hansen.

The German insurance association, Gesamtverband der Deutschen Versicherungswirtschaft e.V., called the reforms "one step in the right direction," though not a comprehensive solution.

The GDV is particularly unhappy with aspects of the pension reforms that allow workers to make tax-exempt contributions to pensions and old age benefit programs, but not to direct insurance programs designed to provide retirement savings benefits.

This is especially unfortunate as "direct insurance is the most critical support leg for supplementary old-age provision in small and medium-sized companies," the GDV said in a statement.

Similarly, Munich Reinsurance Co.'s life insurance subsidiary, Ergo Versicherungsgruppe A.G., is "positive that the reforms will be a success," but notes that they only close

one gap in old-age provision by encouraging private provision, and do not provide all the answers to the pension funding problems generated by the aging population, according to an Ergo spokesman.

Under the legislation, in 2002 every worker is entitled to allocate 1% of gross income, up to a ceiling of 525 euros (\$464) a year, to a certified pension plan. The maximum contribution rises on a sliding scale to 4% in 2008.

In addition, workers can invest annually up to 4% of the maximum salary that is subject to social security deductions. The maximum salary will change annually, but for 2002 it is 54,000 euros (\$47,682). All of the contributions are tax-exempt, but the pension funds are taxable when paid out.

The biggest impact of the reforms on employers comes from the requirement for employers to provide pension schemes for employees who request them. Those employ-

ers that do not currently have a pension plan will have to establish one and pay the administrative costs.

Some employers are seeking to cut administrative costs by forming employer and union groups to collectively establish pension plans for their workforces.

For example, Germany's largest insurer, Allianz A.G. Holding, last month won a contract to organize a pension scheme for about 3.6 million employees in the engineering industry.

The engineering employers' federation, Gesamtmetall, and the IG Metall engineering union chose Allianz to administer its occupational pension scheme, known as Metall-Rente.

A spokesman for Allianz Lebensversicherung A.G., the Stuttgart, Germany-based life insurance unit of Allianz, said the insurer is "very positive" about the pension reforms in general.

"We expect that company schemes will play a more important role because Riester gives tax holidays to company pension schemes as well (as to individual pensions). We expect that it will be a push to company schemes in future, and they will retain a higher share of the provisions for old age," he added.

Several German insurers expect to take advantage of the burgeoning pension market through their links with banks.

Allianz, for example, acquired Dresdner Bank last year and through that operation intends to "offer all channels" through which pensions can be sold and managed.

Similarly Munich Re, whose insurance subsidiaries Ergo and Victoria Versicherung are also participants in the MetallRente scheme, expects benefits from its bankassurance partnership with Germany's second-biggest bank, HypoVereinsbank Group.

World Updates

Continued from page 17

Thompson, Heath buys T.L. Clowes

Lloyd's of London broker Thompson, Heath & Bond has acquired niche broker T. L. Clowes. London-based THB brokers commercial specialty markets business, nonmarine commercial business and media coverage, among other lines. THB said the acquisition would increase its annual brokerage revenues to about £21 million (\$30.2 million). T.L. Clowes' brokerage business includes aviation, motor sports and professional indemnity coverage.

U.K. limits awards for unfair dismissal

The U.K. government has imposed new caps on employment tribunal awards. Effective Feb. 1, the maximum total compensatory award for unfair dismissal will rise to £52,600 (\$76,217) from £51,700 (\$74,913). In addition, the maximum weekly pay used for awards for unfair dismissal or for severance payments will increase to £250 (\$362) from £240 (\$348).

XL increases stake in Le Mans Re

XL Capital Ltd. has taken a controlling stake in France's Le Mans Re. XL said Monday that it had completed a deal to increase its holding in Le Mans Re to 67% from 49%. Le Mans Re was set up in 1999 by Bermuda-based XL and Mutuelle du Mans Assurances Group. MMA's stake in Le Mans is now 33%. Charles-Werner Skrzynski will remain chairman of Le Mans, France-based Le Mans Re, but James Veghte will become the reinsurer's chief executive officer. Mr. Veghte will retain his position as executive vp and general manager of the London office of XL Re Ltd. Le Mans Re, which writes mainly nonlife reinsurance, had a gross premium volume of 287 million euros (\$270.5 million) in 2000.

Munich Re deal cuts stake in Allianz

Munich Reinsurance Co. on Thursday completed an asset swap that raised its holding in Germany's HypoVereinsbank A.G. to 25.7% from less than 10% and reduced its holding in Germany's largest insurer, Allianz A.G. Holding, to 21% from 25%. Munich Re has also built up a 10.4% stake in Germany's third-largest bank, Commerzbank, which reduces the likelihood that Italian insurer Assicurazioni Generali S.p.A., which holds a 9.99% stake, can gain control of the bank.

Asbestos: Mining company to settle suits

Continued from page 17

and future victims.

The trust will have five trustees: two nominated by the South African government; one by Cape; and two by the claimants' lawyers. Participants in the U.K. litigation are eligible to receive compensation from the trust, as is anyone else who can satisfy the trust's conditions.

The level of payments will correspond to the severity of the disease up to a maximum of £5,250 (\$7,535), designated for mesothelioma sufferers.

The trust would be funded in several installments, with £11 million (\$15.8 million) to be paid by June 30, provided that various conditions are met. These conditions include a confirmation that the South African government will not fund any future legal claims against Cape and that it will not pursue Cape for any cost of rehabilitating its former asbestos mines; and that Cape obtains the approval of its bankers and shareholders for the deal and is able to raise the necessary funds.

Cape Chairman Paul Sellars said that the settlement was not covered by insurance.

The second £10 million (\$14.4 million) will be paid into the trust over a period of 10 years at a rate of £1 million (\$1.4 million) per year, with Cape's ability to meet these further installments dependent on the continuing viability of Cape.

'The settlement is a salutary warning to multinationals generally against double standards.'

*Richard Meeran
Leigh Day & Co.*

Mr. Sellars in a statement described the settlement as "an important development in the recovery of Cape. Ending this litigation will enable the board to look forward to the future."

Cape initially had argued that South Africa—rather than the United Kingdom—was the proper forum for the claims.

The London Appeal Court in November 1999 agreed, but was overruled by a House of Lords judgment in July 2000. The House of Lords ruled that the London court was an appropriate jurisdiction for such a large group of South African claimants suing an English company, partly because of the lack of established procedures and funding arrangements for handling group legal actions in South Africa.

"Central to the claimants' case is the principle that multinational companies undertaking hazardous operations overseas in breach of domestic health and safety regulations should be legally responsible for resultant injuries. The settlement is a salutary warning to multinationals generally against double standards," said Richard Meeran, a partner of London-based plaintiffs law firm Leigh Day & Co, who handled the case for the South African plaintiffs.

Conning study finds P/C rates not rising quickly enough to offset high losses

By DOUGLAS McLEOD

Property/casualty rates may be rising fast, but not fast enough to offset growing deficiencies in industry-wide loss reserves, a study by Conning & Co. concludes.

Loss experience in most casualty lines has been deteriorating since 1997, and the total reserve shortfall for nine lines studied by Hartford, Conn.-based Conning grew to \$16 billion, or 6% of carried reserves, by the end of 2000.

"The good news is that premiums are increasing in every line. The bad news is that these increases are not sufficient to offset higher losses. As a result, industry combined ratios continue to climb," Conning analysts say in their report.

The loss trends and the catastrophic impact of the Sept. 11 terrorist attacks mean insurers should start boosting reserves in most of these lines, the analysts say.

Conning's study, "Property/Casualty Reserve Adequacy: Truth or Consequences," used statutory financial data from more than 3,000 insurers to scrutinize reserving in seven commercial casualty lines and two personal lines. The commercial lines covered are: workers compensation, commercial multi-peril, claims-made and occurrence-based other liability, commercial auto and truck liability, and claims-

made and occurrence-based medical malpractice.

Experience in several of these lines improved through much of the 1990s, with accident-year combined ratios generally falling be-

'The good news is that premiums are increasing in every line. The bad news is that these increases are not sufficient to offset higher losses. As a result, industry combined ratios continue to climb.'

Conning & Co.

tween 1992 and 1997, Conning's data show. The latter year marked a turning point for the industry, though, as fierce rate competition and other factors began pushing combined ratios up, a trend that has continued each year since.

Despite premium volume growth, the industry produced a combined ratio of about 110% in 2000, and Conning suggests that actual results may have been worse. In 2000, for example, insurers reported declines in "carried," or incurred, losses for such lines as work-

ers comp, commercial auto and medical malpractice. At the same time, though, paid losses for the same lines increased, suggesting that future incurred loss development might be worse than insurers have reported, Conning says.

"All these facts appear to point to increasing reserve deficiencies," Conning analysts say.

Eight of the nine lines reviewed in the study showed reserve deficiencies as of year-end 2000, with only claims-made other liability business showing excess reserves, Conning says.

Overall, the nine lines produced reserve shortfalls totaling \$16.36 billion, or 5.9% of the insurers' total carried reserves of \$276.42 billion. Commercial lines were in the worst shape, accounting for \$15.89 billion of the shortfall, or 8.2% of carried commercial lines reserves of \$193.57 billion.

The biggest percentage shortfall was in occurrence-based medical malpractice liability reserves, which Conning estimated to be deficient by \$3.40 billion, or 40.7% of carried reserves. Occurrence and claims-made malpractice business, which Conning describes as "a line in crisis," together showed a shortfall of an estimated \$5.02 billion, or about 25% of carried reserves.

The largest dollar shortfall was in the workers comp line, where insur-

ers' reserves were deficient by \$4.53 billion, or 7.3% of carried reserves, according to Conning.

While the deficiencies may be small when compared with total reserves, Conning expressed a few worries about the numbers. For one thing, most of the shortfalls are driven by losses in recent accident years, raising the possibility that worse-than-expected loss development will widen the deficiencies.

Another problem is the direction of the reserving trend: Several of the studied lines have historically boasted excess reserves, making even a small deficiency a significant change of direction in insurers' loss experience.

Conning analysts also criticized the willingness of some insurer managements to accept a given year's "good" results without questioning reserving assumptions and to raise questions only when problems arise.

"They must question the adequacy of loss reserves to ensure that reported results accurately reflect the results of the operations," Conning advises.

Copies of Conning & Co.'s report, "Property/Casualty Reserve Adequacy: Truth or Consequences," can be ordered for \$950 each at www.conning.com.

"Be sure that you return it."

If you're racing through this issue of *Business Insurance* because you "borrowed" it from a colleague, you should have your own subscription.

Then you'll be first on the list. You can take as much time as you like with all of *Business Insurance's* exclusive worldwide news of corporate risk, employee benefit and managed health care every week.

Subscription rates in U.S. dollars for 1 year, 52 issues.

U.S.	\$97
Canada*/Mexico	\$130
All other countries by expedited air	\$230

* Price includes Canadian GST.

To subscribe, use the card in this issue or call 1-888-446-1422 toll free.

or online at www.businessinsurance.com

Ask about our special 20% off group rate for five or more subscriptions.

Business Insurance
www.businessinsurance.com

Subscription Dept.
1155 Gratiot Avenue,
Detroit MI 48207-2912
Outside the U.S.,
call (313) 446-0450

CIAB: Commercial rates continue to rise

Continued from page 3

ages were the most dramatic of seven lines of coverage broken out in the index. Ninety-six percent of respondents reported that umbrella accounts experienced rates that were at least 10% higher than a year ago. Of those respondents, 13% reported increases of more than 100%, 28% of respondents reported increases of 50% to 100%,

and 34% saw increases of 30% to 50%.

Comparing fourth quarter 2001 rates with those in the third quarter, 90% of respondents reported increases of at least 10%. Of those, 10% reported increases of more than 100%, 22% reported increases of 50% to 100%, and 35% reported increases in the 30% to 50% range.

Ninety-nine percent of the re-

spondents reported increases of at least 10% for commercial property rates compared with a year earlier. Among such respondents, 5% reported increases of more than 100%, 26% saw increases of 50% to 100%, and 38% reported increases of 30% to 50%. In the fourth-quarter/third-quarter comparison, 2001, 5% reported increases of more than 100%. Sixteen percent of respon-

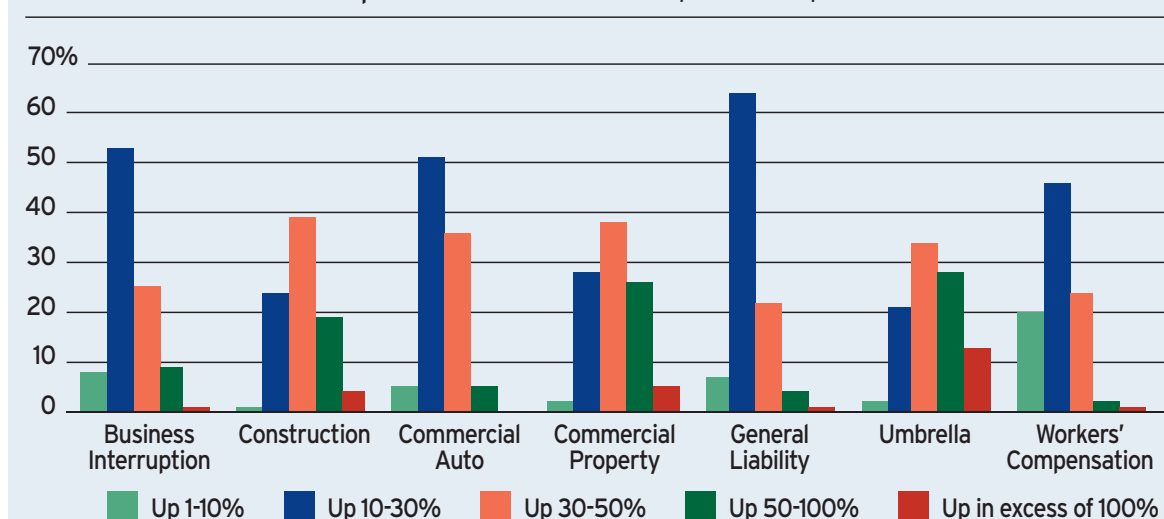
dents said commercial property rates had increased by 50% to 100%, and 36% said rates had increased between 30% and 50%.

Group medical rates continued to rise as well, although not as significantly as many commercial property/casualty lines. Forty-one percent of respondents said that large accounts experienced increases in the 10%-to-30% range over a year ago, and 31% said rates had increased in that same range compared with three months ago. None reported increases of above 100%.

Copies of the fourth-quarter market index results as well as those of previous surveys are available at the Council's Web site, www.ciab.com.

TRACKING 2001 RATE INCREASES

Comparison of rate increases from Jan. 1, 2001 to Jan. 1, 2002



SOURCE: CIAB

GRAPHIC BY JOHN HALL

ADVERTISER

INDEX

Issue of January 21

ADVERTISER	PAGE #
Business Insurance	7,9,13,15
Lord Bissell Brook	11
Metropolitan Life Insurance Co.	4/5
Pacesetter National	15
Royal & SunAlliance	24

Self-insurance: Interest in alternatives growing

Continued from page 3

lowing Sept. 11. David J. McManus, president of Arthur J. Gallagher Management (Bermuda) Ltd., said his firm is considering limiting the time it spends "talking about what we can do....We have to be efficient in weeding out the ones who (just) need basic information" and focus on serious inquiries, he said.

"We've certainly seen a big upsurge in inquiries about captives" and how they can be used in an insurance program, said Alan Cossar, executive director of Aon Insurance Managers (Bermuda) Ltd. "We're getting a lot more calls on how to use existing captives" that may have been nearly dormant during the soft market, he noted.

"We're seeing an influx in interest in rent-a-captives," said Mr. James of Atlantic Security. "That's the quickest mechanism to set up to insure the working layers."

Forming a full-blown captive takes time, and it will be months before it is known how many policyholders choose that route or opt to dust off their old facilities to provide some relief.

David Ives, chief executive officer of NIIS/Apex Group, a Salem, Mass.-based third-party administrator, pointed out that while "the appeal of captives diminished in the early to mid-1990s...there certainly has been an increased use of captives in insurance programs" recently. Mr. Ives noted that "some who let their captives go dormant are reactivating them" as their traditional insurance costs go up.

"We're looking at expanding our self-insurance programs through a captive we recently formed," said David Hennes, director of risk management at The Toro Co. in Minneapolis. Toro may add automobile liability, general liability and workers compensation coverages to its Bermuda-based captive, which already writes product liability and some workers comp insurance.

The captive, formed Sept. 1, 2001, wasn't created "in reaction to the hard market," Mr. Hennes noted. But it was "certainly timely," he said.

Mr. Ives said he believes risk managers will increasingly turn to self-insurance to fund their property exposures. "For the last decade, the property market has been very soft. The clear decision was just to buy coverage." Now, many risks such as large office buildings and manufacturing plants are much more expensive to cover, he said.

"We may start raising our deductibles on property," said Michael Benishek, risk manager at Pacific Tomato Growers in Palmetto, Fla. While the farming operation escaped much of the market turmoil with an August renewal, Mr. Benishek is preparing for what's to come. With a \$25,000 deductible on windstorm risks and \$5,000 on other property risks, he figures there is room to increase the deductibles if premiums get too high.

"We're too small for a captive; we looked at that," Mr. Benishek said. "And we looked at a rent-a-captive." But when faced with what he felt were too-high administrative costs and burdens, he decided to stick with the commercial market.

Already in place at Pacific Tomato Growers is a large-deductible workers comp program written by Liberty Mutual Insurance Co., Mr. Benishek said.

"The large-deductible comp programs are going to come back in vogue, I believe," predicted M. Todd Richard, the president of F.A. Richard & Associates Inc., a TPA based in Mandeville, La. "I expect to see a lot of activity in that area."

Ralph Cagnetta, managing senior financial analyst at Best, said that workers comp pooling arrangements also are attracting attention. "We've seen more interest in pools being looked at or a pool that was a sleeping entity becoming more vi-

able."

On the liability side, deductibles are rising to between \$10,000 and \$25,000 for many risks, Mr. Richard said. He cited one client, a long-haul trucking company, that had to take a whopping \$250,000 deductible. "The long-haul trucking market has been hit very hard," he stated.

While buyers increasingly are investigating the ART market, the real demand for alternatives may come later, Mr. Richard said. "I'm not sure it will peak this year. The first round was the sticker shock. Then you have to start looking around."

While Mr. Richard said he expects some midyear insurance cancellations as policyholders head for the ART market, he said that "it may be six to 12 months before we see a major demand for self-insurance."

Mr. Ives said some medical facilities are finding compelling reasons to self-insure as they are being forced to take very large deductibles. There has been a "substantial shake-up" in the medical malpractice market, with insurers pulling out of that area, he said.

But for those that decide to assume some portion of their risk, there remains the hurdle of finding excess insurance. "The first issue is, is it available?" Mr. Ives asked. "Second, it may not be affordable, and, third, the exclusionary language may make it undesirable."

Risk managers looking to set up captives may also find fronting and reinsurance obstacles, said Carol Pierce, assistant vp at Best. Ms. Pierce pointed out that reinsurance capacity has tightened for captives and fronting insurers are becoming more selective as to what programs they will take on.

"Anybody using a captive to do workers comp or auto liability will have a fronting problem," Ms. Pierce said, "because they need admitted paper."

Ms. Pierce noted that fronting insurers have come and gone in the marketplace, frustrating many captive owners. Some may turn to risk retention groups, she suggested, because those companies are not required to use fronting insurers.

Mr. Cagnetta said that "companies that don't want to deal with the fronting issue may take a high deductible and stay with their insurers."

Risk retention groups, meanwhile, are getting more attention.

Gross written premiums in the groups reached an estimated \$894.9 million in 2001, up 11.5% from the year before, according to Karen Cutts, the managing editor of The Risk Retention Reporter in Pasadena, Calif. With seven new formations and two closures, 70 groups were in place as of September 2001, compared with 65 at the same time in 2000.

"There's lots going on," Ms. Cutts said. Washington, D.C., now has a

captive law that allows the formation of RRGs, and South Carolina is "going great guns," she said. "They have licensed four in late December and early January." There is increasing activity in Montana as well, where a new law allows the groups to set up in that state.

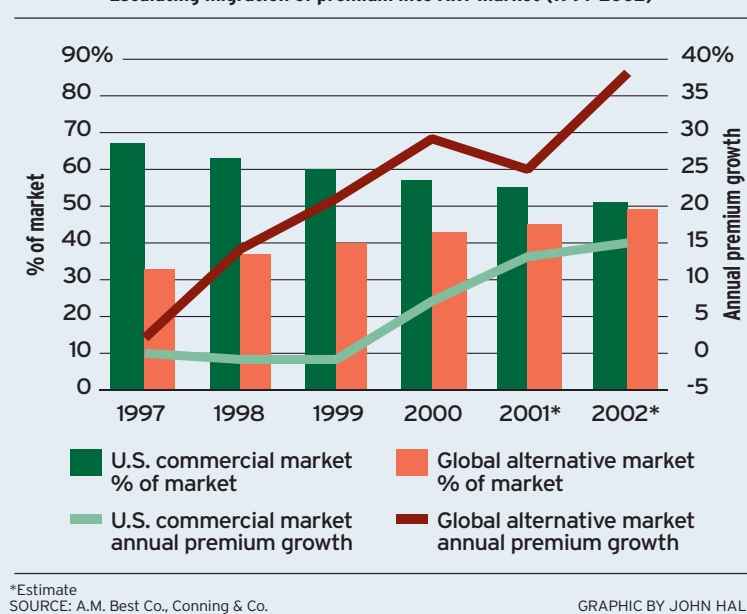
"I think we will see risk retention groups come into a broad range of business areas," Ms. Cutts said, as the need to form the companies in a tightening insurance market increases.

Whatever they decide in terms of self-funding or traditional insurance, buyers are finding themselves busier than ever.

"This is a challenging market," Mr. Ives said. "This is a market where the risk manager earns his or her money. Now it's not just finding the broadest coverage at the best price. Now there are a range of risk management mechanisms that have to be analyzed and considered."

EMPLOYERS MOVE TO ART

Escalating migration of premium into ART market (1997-2002)



EEOC: Court upholds standing to sue employer

Continued from page 1

used workplace employment agreements to reduce their exposure to individual lawsuits—and reduce their costs of litigation by transferring those cases into arbitration—will continue to enjoy those benefits, but their employment practices will continue to be at risk to challenge by the EEOC where the commission decides it needs to sue to effectuate changes in the workplace through nonmonetary relief," he said.

The case began when Eric Baker filed a complaint with the EEOC, claiming that he had been unfairly fired after he suffered a seizure while working as a short-order cook at a Waffle House restaurant in South Carolina. The EEOC filed suit against Waffle House, charging that its treatment of Mr. Baker violated the Americans with Disabilities Act and seeking relief for Mr. Baker, who was not party to the enforcement suit. Waffle House held that

because Mr. Baker had signed an agreement to settle employment through arbitration, a district court should stay the EEOC suit.

The district court backed the EEOC, but the 4th U.S. Circuit Court of Appeals held that the EEOC could not seek victim-specific relief, such as back pay, because of the Federal Arbitration Act.

But the Supreme Court in its ruling said the ADA "clearly makes the EEOC the master of its own case," with the power to determine whether to seek victim-specific relief regardless of the FAA or whether the alleged victim has joined the suit, wrote Associate Justice John Paul Stevens for the majority.

"The only issue before this Court is whether the fact that Baker has signed a mandatory arbitration agreement limits the remedies available to the EEOC. The test of the relevant statutes provides a clear answer to that question. They do not authorize the courts to balance

the competing policies of the ADA and the FAA or to second-guess the agency's judgment concerning which of the remedies authorized by the law it shall seek in any given case," he wrote.

In a dissent in which Chief Justice William Rehnquist and Associate Justice Antonin Scalia joined him, Associate Justice Clarence Thomas said that there was an "utter lack of statutory support for the Court's holding."

Philip Berkowitz, chairman of the American Bar Assn.'s Employment Law Committee's International Law Section and head of the employment law practice in the New York office of Salans Hertzfeld Heilbronn Christy & Viener, said that the decision "kind of throws a monkey wrench" into the high court's "own affirmation of arbitration" as a way to settle employment disputes without litigation.

Under the decision, the EEOC can seek not only injunctive relief,

"which there was no dispute about, but also can recover victim-specific damages for individual employees, including punitive damages and emotional distress damages. And I frankly think that the bigger the employer, the more this has to be a concern, because it's more likely they will be a target for the kind of high-profile lawsuits that the EEOC tends to bring," he said.

Quentin Riegel, assistant vp and deputy general counsel for the National Assn. of Manufacturers in Washington, said that while the decision is an "understandable reading of the EEOC's power, it illustrates the conflict between that power and the Federal Arbitration Act, which was enacted to allow parties to settle disputes by themselves. It is obviously unfair for an employee to agree to arbitrate employment disputes, and then to turn around and bring in the EEOC to sue the employer."

"Now that employers know what

the rule is, they will be less certain that arbitration clauses will be as effective as had been hoped. Employees now have two opportunities to make a claim against an employer: If they fail to convince the EEOC to intervene on their behalf, they can still proceed with arbitration on their own. And if the EEOC intervenes, a company must face the power of the federal government," Mr. Riegel said.

"Nevertheless, we expect that companies will continue to use arbitration extensively, in part because it is quicker and simpler for both sides, and in part because EEOC suits have traditionally represented a relatively small fraction of all employment-related litigation," said Mr. Riegel.

Equal Employment Opportunity Commission vs. Waffle House Inc., U.S. Supreme Court, No. 99-1823. Decided Jan. 15, 2002.

Benefits: Court limits reductions for retirees

Continued from page 1

ployer attorney Nancy Ross, who is not involved in the case.

"It sets a terrible precedent for other circuits to pick up on," said Ms. Ross, a partner at McDermott, Will & Emery in Chicago.

The ruling suggests "you can never correct your mistakes," she said. Ms. Ross noted that many employers have revised their plan documents to reserve their rights to modify the retiree benefits they previously promised to active employees.

Benefits attorney Henry Saveth agreed that the ruling is "a new approach" and "problematic" for employers, and he predicted that at least some other circuits would follow the ruling.

As a result of the ruling, employers that did not initially reserve their rights to modify retiree benefits now would have to take special measures to reduce those benefits, said Mr. Saveth, an attorney with benefit consultant William M. Mercer Inc. in New York. For example, employers might have to offer early

retirement incentives that require participants to waive their vested lifetime benefits, he said.

The case "just shows how intensely careful employers have to be in laying the groundwork for any future reduction in benefits," he said.

Empire, however, clearly intended to provide a lifetime benefit, said the retirees' attorney, pointing to various extrinsic evidence. "A child who read that language could understand that you got that benefit for a lifetime," said Meredith H. Savitt of Hite & Savitt P.C. in Albany, N.Y.

But Mr. Glaser said that earlier retiree plan changes—even if they were only benefit improvements—gave employees adequate notice that their retiree benefits did not vest.

In the case, the plaintiffs retired under one of Empire's early retirement incentive programs in 1992 and 1993 or under Empire's normal retirement program beginning in 1989. Empire's reservation clauses in the incentive programs did not

expressly state that Empire could later reduce the life insurance benefit, according to court documents. Empire did not reserve that right for its traditional retiree benefit plan until it added that clause to a 1987 employee handbook.

This case 'just shows how intensely careful employers have to be in laying the groundwork for any future reduction in benefits.'

Henry Saveth
William M. Mercer Inc.

In an October 2000 ruling, a New York District Court judge found that only the 1987 handbook and the incentive plan documents were applicable in the case and that all contained unambiguous reservations of rights. Relying on a 1993 5th U.S. Circuit Court of Appeals ruling, the judge ruled that the absence of reservation clauses in pre-

1987 plan documents does require Empire to provide lifetime retiree benefits.

The 2nd Circuit, relying on its own 1997 ruling, disagreed. It ruled that a plaintiff could get to trial by showing that ambiguous plan language could be reasonably interpreted as creating an employer promise to vest the plaintiff's lifetime benefits.

Then, in analyzing Empire's pre-1987 plan documents, which promise life insurance benefits to retirees who meet certain age and tenure criteria, the 2nd Circuit ruled: "This provision can be construed as an offer that specifies performance as the means of acceptance." As a result, the court continued: "Where the offeror did not explicitly reserve the power to revoke, such an offer cannot be revoked once the offeree has begun to perform."

If the lower court on remand rules the documents did not create a promise for lifetime benefits, the plaintiffs still could recover under the legal theory of promissory

estoppel, the 2nd Circuit ruled.

In overturning that portion of the lower court's decision, the appeals court panel found that a trial court could reasonably conclude Empire used the retiree benefits package to induce its employees to work decades for the organization at wages lower than the employer's competitors offered. That premise satisfies the "extraordinary circumstances" requirement that plaintiffs needed to raise to pursue this argument, the 2nd Circuit ruled.

The district court also could rule that Empire breached its fiduciary duty if the court finds that Empire issued misleading plan descriptions, the 2nd Circuit panel ruled. That ruling overturns another portion of the lower court's decision, and attorneys say it could lead to full reinstatement of the retirees' benefits.

Francis J. Devlin et al. vs. Empire Blue Cross & Blue Shield, 2nd U.S. Circuit Court of Appeals; Docket No. 00-9469, Dec. 6, 2001.

Depression: Initiative to remove stigma

Continued from page 1

Shield of Kansas City. The health plan, which provides coverage to about 800,000 individuals in the region, is participating in the initiative both as a provider and as an employer. BC/BS of Kansas City has about 1,000 employees and dependents enrolled in its company-sponsored health plan.

'There is a real fear of mental health. The employee doesn't want the employer to know they are suffering from depression because they fear it will end their career.'

William L. Bruning
Mid-America Coalition on Health Care

When depression is not properly diagnosed, "it manifests itself in headaches, migraines, low-back pain, irritable bowel syndrome" and other conditions, Dr. Heryer said. The indirect costs of depression are more than twice those of its direct medical costs, he said.

According to the National Institute on Mental Health, depression cost U.S. employers more than \$44 billion a year in direct medical costs, absenteeism, reduced productivity and mortality in 1993, the last year measured.

And despite the findings of a just-published study in the Journal of the American Medical Assn. that the number of Americans being treated for depression soared to 6.3 million from 1.7 million between 1987 and 1997, depression remains the most undiagnosed medical condition. The NIMH estimates that as many as two-thirds of depressed workers go without treatment.

This revelation was the primary reason the Mid-America Coalition decided to pursue its depression initiative, said William L. Bruning, the coalition's president.

Initially, the coalition will focus on patient and physician education. Later phases of their initiatives will cover the determination of depression-related costs, the efficacy of various benefits plan structures, best practices for treatments, formularies and levels of physician reimbursement.

"There's a real fear of mental health. The employee doesn't want the employer to know they are suffering from depression because they fear it will end their career," he said.

At the same time, Mr. Bruning said, "PCPs are concerned they may not get reimbursed by the health plan," because many health plans do not provide the same level of coverage for mental health treatment as for other types of medical care.

Depression also was selected because it affects all demographic groups, said Holly McCoy, vp of human resources at Farmland Industries Inc., who is co-chair of the initiative committee. Farmland, an agricultural cooperative, provides health care coverage to approximately 1,000 employees and dependents in the Kansas City area.

"Our goal is to attack the stigmatization of depression," so that more employees seek treatment and more employers and health plans encourage it, Mr. Bruning said.

And even though "the employers know that if the study works, their drug costs will spike," they hope that their overall health care costs will tumble, he said, pointing to findings of the Prescriptions Solutions study.

"The employers that I'm dealing with get it," Mr. Bruning said.

Forum: New capital may soften hard market

Continued from page 2

pline itself," said Edmund F. Kelly, chairman and CEO of Liberty Mutual Insurance Co. in Boston. "We've destroyed far more capital through mismanagement than terrorists ever did," he said.

During the analysts' panel, Morgan Stanley's Ms. Schroeder made several suggestions she termed "extreme" on how the industry could improve its profitability.

One approach, she said, would be to eliminate state guaranty fund protection for commercial lines risks. "Why should insurers pay for their competitors' mistakes?"

Ms. Schroeder also said that insurance companies should lend more support to rating agencies' decisions. Otherwise, she warned, there will continue to be no competitive reward for maintaining a high rating. The rating agencies "should have more respect, especially from the top-rated companies," she said.

She also advocated optional federal chartering of insurers. One reason that Congress has not stepped up to help insurers with terrorism protection, she said, is that the federal government "has no skin in the game."

Congress' failure to enact terrorism insurance protection was a disappointment to participants on both panels, yet they remained pessimistic of such efforts' chances in 2002.

Ms. Schroeder said that the insurance industry needs to do a better job of making a public policy argument for federal relief from terrorism losses. Insurance premiums should not go toward covering society's risks, she said. The debate in Congress needs to be focused on public policy, not on the insurance industry's desire to cover its own losses.

"Terrorism is not an insurable event. It's an act of war and should be borne by the state," said Liberty Mutual's Mr. Kelly.

"We were disappointed that Congress did not react to the need for government relief," said David B. Mathis, chairman and CEO of Kemper Insurance Cos. in Long Grove, Ill. "As long as we have a declared war on terrorism, the risk is uninsurable and we need government assistance," he said. Without that assis-

tance, he added, losses on certain lines of coverage, such as workers compensation, could bankrupt some insurers.

Without government relief, excluding terrorism from existing policies and writing it as a separate line will be the best way to proceed, Mr. Mathis said.

'We were disappointed that Congress did not react to the need for government relief. As long as we have a war on terrorism, the risk is uninsurable and we need government assistance.'

David B. Mathis
Kemper Insurance Cos.

Regarding the chances of terrorism protection proposals in Congress this year, Mr. Pritula of McKinsey noted that most pundits are pessimistic. One reason for this pessimism, he said, is that "legislation by anecdote doesn't go far. We've heard stories about some economic activity not occurring, but there needs to be more evidence."

Harvard's Mr. Froot said that he believes the market has shown that it can handle the terrorism exposure without federal relief. It already is coping with the losses from Sept. 11, and it continues to attract capital, he said. Going forward, the industry would be able to underwrite what he termed "normal" terrorism risks, and would face extreme, unexpected losses only in rare circumstances.

Ms. Schroeder said that while such self-sufficiency might satisfy policyholders, it would not be of comfort to shareholders.

Sean F. Mooney, chief economist and research director for Guy Carpenter & Co. Inc. in New York, moderated the analysts' panel. Lawrence G. Brandon, professor emeritus of the American Institute for CPCU and the Insurance Institute of America in Malvern, Pa., moderated the CEO panel.

FTR

This roundup of news from the previous week is generated by *BI's* daily news reporting. To get breaking news as it occurs, log on to www.businessinsurance.com, or sign up online for free *BI* Daily News by e-mail.

High court to hear ADA punitives case

The Supreme Court has agreed to decide whether government entities can be required to pay punitive damages for violations of the Americans with Disabilities Act. *Kay Barnes et al. vs. Jeffrey Gorman* arose after the wheelchair-bound Mr. Gorman suffered injuries while being transported in a police van following his arrest at a Kansas City, Mo., club. Mr. Gorman charged in his suit that he told the arresting officers that their van lacked the proper equipment to transport him and his wheelchair safely. Mr. Gorman claimed the police violated his rights under the ADA and another federal statute, and he sued several Kansas City officials. A jury awarded him slightly more than \$1 million in actual damages and \$1.2 million in punitive damages. Kansas City appealed, claiming that the ADA does not allow punitive damage awards against government entities. But the 8th U.S.

Circuit Court of Appeals in St. Louis ruled in Mr. Gorman's favor last year.

Asbestos liabilities sink NARCO

Mounting asbestos liabilities have claimed another defendant company, pushing a U.S.-based fireproofing materials unit of RHI A.G. into bankruptcy. Vienna, Austria-based RHI announced last week that its North American Refractories Co. subsidiary has filed for Chapter 11 protection in U.S. Bankruptcy Court in Pittsburgh, following a sharp increase in asbestos claims and other problems, including "inadequate insurance coverage." RHI acquired NARCO as part of its 1994 takeover of another company, Didier-Werke A.G., which itself had acquired NARCO in 1986 from AlliedSignal, later a unit of Honeywell International Inc. Although Didier-Werke had negotiated a deal with AlliedSignal over allocation of NARCO asbestos liabilities, recent

disagreements over interpretation of that agreement contributed to the NARCO Chapter 11 filing, according to RHI. A bankruptcy judge has approved a \$20 million debtor-in-possession financing facility for NARCO, which provided fireproofing materials mainly to the steel industry. NARCO operates four plants and employs 800 people.



PHOTO: AFP

Logan International Airport in Boston.

Airlines, security firms face suits over Sept. 11

The families of some of the victims aboard three of the passenger jets that terrorists hijacked and crashed on Sept. 11 have filed federal lawsuits against two airlines and two airport security firms. The suits name American Airlines and United Airlines and airport security firms Huntleigh USA Corp. and Argenbright Security Inc. Huntleigh provided security at Boston Logan International Airport, and Argenbright provided security at Newark International Airport on Sept. 11. In filing the four lawsuits on Jan. 11, the families became ineligible for recovering financial losses from the federal Victims' Compensation Fund. But the families want to "expose years of ineffective security practices, know the truth, improve security and accord accountability," according to a statement released by Baum, Hedlund, Aristei, Guilford & Schiavo, the law firm representing the plaintiffs.

Federal backstop tops AIA agenda

A trio of issues tops the American Insurance Assn.'s legislative agenda, officials of the insurer group said last week. No. 1 on the agenda is the creation of a federal mechanism to help insurers pay for future catastrophic terrorism-related losses, said Leigh Ann Pusey, AIA senior vp-federal affairs in Washington. Such a proposal will become law only when the economic ramifications of a lack of capacity "are knocking at the door," she said. AIA also hopes to create a more efficient and equitable method of compensating victims of asbestos-related diseases. A broad-based reform coalition, including some representatives of the plaintiffs bar, is promoting the introduction of legislation that would, among other things, set medically objective criteria for determining asbestos-related impairments and lengthen statutes of limitations on asbestos-related claims. The third issue is the creation a system of optional federal chartering for insurers, said Ms. Pusey.

Online benefits enrollment increases

Among employers that give their employees a choice, the Internet has become the dominant way for employees to enroll in benefits programs, according to research conducted by benefit consultant Hewitt Associates L.L.C. Among employers that in 2001 offered employees the choice of enrolling in benefits plans through the Internet, call centers or interactive voice

response systems, 70% of employees enrolled through the Internet, up from 51% in 2000 and 36% in 1999. Correspondingly, enrollment through call centers plunged to 22% last year, down from 33% in 2000 and 34% in 1999, while enrollment via interactive voice response systems fell even more dramatically, declining to 8% last year from 15% in 2000 and 30% in 1999.

Briefly noted

Insurance regulators in Alaska and Rhode Island have approved **terrorism exclusions** for commercial lines policies, bringing the number of approving jurisdictions to 47-45 states, the District of Columbia and Puerto Rico-according to the Insurance Services Office Inc....**Riskclick Inc.** has signed a contract with Bechtel Corp. to provide electronic services to increase the efficiency of Bechtel's risk management activities. Riskclick, which is based in New York and London, develops information-sharing software for the risk and insurance industry....The U.S. Supreme Court heard oral arguments in *Rush Prudential HMO vs. Moran* last week. The case centers on whether the Employee Retirement Income Security Act pre-empts Illinois law that calls for independent external review of health care coverage disputes. The high court should decide the case by

late June....California state Sen. John Burton, D-San Francisco, has introduced legislation that would increase **workers compensation benefits** in the state. Many employers oppose S.B. 1156, contending that the bill, like three past attempts to increase benefits, would cost employers more than \$3 billion.



Online Poll [1/14 - 1/18]

As the property/casualty market hardens, has your use of alternatives like captives:

Increased	Decreased	No change
46.25%	11.25%	42.50%

Take part in our weekly poll at www.businessinsurance.com

SPD: New filing guidance

Continued from page 3

ure to supply requested documents was willful.

But the Labor Department said that, in the absence of statutory language to the contrary, "liability for payment of civil penalties is a personal liability of the person against whom the penalty is assessed and not the liability of the plan."

The Labor Department said in the final regulations, though, that expenses incurred to comply with a departmental request for documents would be considered a reasonable expense in administering a plan and thus could be paid out of plan assets.

In addition, the Labor Department rejected a suggestion that benefits plans should be able to charge the department for the copies of plan documents they provide.

Simply put, the Labor Department said, there is no statutory basis for plans to impose such charges on the government.

Also, resolving uncertainty in the proposed regulations, the Labor Department said its document requests would be limited to SPDs, SMMs and other instruments, such

'The value of such access is predicated on the rights of participants and beneficiaries to choose not to go to the plan or plan sponsor for such information.'

U.S. Department of Labor

as collective bargaining agreements, under which benefits plans are established or operated.

While the Labor Department typically would request a document only after a plan administrator had failed to provide it to plan participants, the department could, on its own, request such information.

Congress intended that "the de-

partment would exercise its authority to ensure that participants and beneficiaries would have an independent source of SPDs," the regulation says.

"The value of such access is predicated on the rights of participants and beneficiaries to choose not to go to the plan or plan sponsor for such information," the regulation concludes.

The 1997 law did not change the requirement that employers automatically provide employees with SPDs and SMMs.

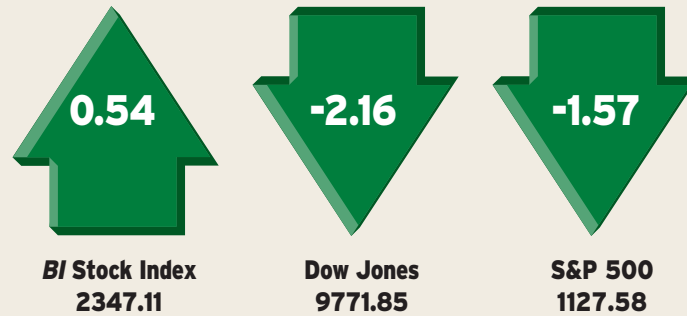
Generally, an SDP has to be provided to a new employee within 90 days of the individual becoming covered by a plan. A new SPD has to be provided every five years if there are have been major changes in benefits.

Those changes have to be detailed in an SMM, which must be provided within 210 days after the close of the plan year in which the changes were made. If no changes have been made, a new SPD must be issued every 10 years.

BI Stock Index [1/14 - 1/18]

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



Largest gains

Meadowbrook Insurance Group	16.96
PacifiCare Health System	12.55
ESG Re Ltd.	7.53
Brown & Brown	6.94
EMC Insurance Group Inc.	6.81

Largest losses

SCOR	-18.48
Mutual Risk Management Ltd.	-13.68
Gainsco Inc.	-9.34
Baldwin & Lyons Inc.	-8.56
Vesta Insurance Co.	-6.92

Weekly change by market segment

Brokers	1.06
Insurers/Reinsurers	-0.88
Managed Care Organizations	1.43

Source: CNET Investor (investor.cnet.com)

Your Business. Your Risk. Understood.SM

Providing customer focused insurance solutions for nearly 300 years.

Royal & SunAlliance is one of the top 10 multi-line insurance companies in the world and is one of the few companies with the capability to follow you and your business to over 130 countries.

TRANSFORMING customer expectations

Providing Commercial and Personal Insurance Solutions

A member of the worldwide Royal & Sun Alliance Insurance Group plc © 2002, Royal & SunAlliance USA, Inc.

ROYAL &
SUNALLIANCE

www.royalsunalliance-usa.com