

**EAP utilization grows  
since Sept. 11 attacks/ 2**

**Superfund tax proposal  
riles industry/ 3**

# Business Insurance

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March 11, 2002

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\$4

## GM driving care changes

By ROBERTO CENICEROS

In its efforts to reduce employee health care costs, General Motors Corp. wants more say in the building of hospital facilities, and it would like other employers to join its initiative.

Benefits managers for the Detroit-based automaker say they believe that competition among hospital systems is leading the systems to build more facilities in some

communities than are necessary. A building boom, in turn, spurs unnecessary utilization and higher costs and reduces health care quality, they argue.

The drive to rein in hospital building is part of a community health care initiative program sponsored by GM. The goal of the program is to improve employee health care while reducing costs. GM has community health care programs in five population areas

where its employees and their dependents are concentrated. They are: Anderson, Ind.; Flint, Mich.; Youngstown, Ohio; southeast Michigan; and Dayton, Ohio. In addition to its new hospital building focus, other GM initiatives include promoting disease management and teaching medical providers how to reduce waste within the health care system.

The health care sector is "upside down" and differs from other in-

dustries in how it treats its purchasers, said L.L. "Woody" Williams, executive director of GM health care initiatives in Detroit. Auto parts manufacturers, for example, constantly improve their product quality to ensure that GM is a content customer. But the health care industry rarely shows similar effort, Mr. Williams said.

Health care economics are also upside-down, because supply often

See GM/page 21

## Defunct firm wins asbestos coverage ruling

By JOANNE WOJCIK

**LOS ANGELES**—Policyholder attorneys are hailing a California trial court ruling that could make it easier for bankrupt companies to collect from their primary and excess insurers.

Insurers, however, maintain that the ruling contradicts an earlier state Supreme Court ruling, and at least one risk manager warns that the decision could increase insurance costs.

The Los Angeles Superior Court recently found in *Fuller-Austin Insulation Co. vs. Fireman's Fund Insurance Co. et al.* that insurers must pay into a trust created by the U.S. Bankruptcy Court to pay both present and future bodily injury claims against a defunct asbestos installer, even though no judgment has been rendered against the company.

The court also held that excess

See ASBESTOS/page 22

WTC collapse raising questions on fire safety standards

## Disaster offers lessons

By MARK A. HOFMANN

**WASHINGTON**—Existing fire code requirements for high-rise buildings do not address "real-world issues," a fire safety expert contends.

Glenn P. Corbett, assistant professor of fire science at New York's John Jay College of Criminal Justice, was one of several witnesses discussing the lessons of the World Trade Center collapse before the House Science Committee last week. Witnesses and lawmakers alike expressed frustration at the obstacles investigators have encountered as they have attempted to understand why the twin towers collapsed on Sept. 11, 2001.

The obstacles, they said, include a lack of coordination among federal agencies involved in the investigation, delay in obtaining documents such as blueprints and the loss of some potentially key pieces of evidence.

Introducing the hearing, Science Committee Chairman Sherwood Boehlert, R-N.Y., said that the committee wanted to learn as much as possible about what happened to help "ensure that such a catastrophic building failure, and the resulting loss of life, never happen again." He added that the current investigation "seems to be shrouded in excessive secrecy."

The investigation raises questions about federal re-



The collapse of the World Trade Center is driving debate about the adequacy of fire code rules in high-rise buildings.

PHOTO: PICTURE DESK PHOTOS

sponsibilities and federal policies that have broader applications than "this one terrifying—and, we pray, unique—incident," he said.

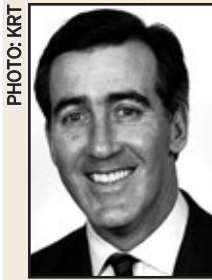
"The federal government, as a matter of course, takes on investigations of catastrophic building failures, whatever their cause. That's the only way we, as a nation, can learn from building failures and change our building and fire codes to prevent future ones. Indeed,

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## Late News

### Bills would block offshore tax advantages

Rep. Richard Neal, D-Mass., has introduced a bill, H.R. 3884, that would make a nominally foreign corporation subject to U.S. tax on its worldwide income if it is found to have engaged in a "corporate expatriation transaction." The bill would define such transactions as occurring when an offshore corporation acquires the property of a U.S. company and more than 80% of the acquirer's stock is owned by former shareholders of the U.S. company. The test would become stricter—with the 80% threshold dropping to 50%—if the acquiring company



Rep. Neal

has no "substantial business activity" in its offshore domicile and its stock is publicly traded mainly in the United States. A similar bill has been introduced by Rep. Scott McInnis, R-Colo. In addition, Sen. Paul Wellstone, D-Minn., said he will introduce a bill to address offshore tax advantages this week.

### Britain, Germany refuse to back terror pool

Plans to establish an international terrorism insurance pool for aviation risks suffered a setback last week when two key governments failed to support the plan. At a meeting of the International Civil Aviation Organization in Montreal, both the United Kingdom and Germany declined to back the proposed pool. The ICAO had proposed that airlines buy commercial insurance for terrorism risks up to \$150 million, while a fund created through a levy on air passengers would cover risks between \$150 million and \$1.5 billion. Governments would cover losses beyond that. A similar plan is being proposed by a group of European airlines (see story, page 15). A spokesman for the U.K. Treasury said that the government is reluctant to support a plan under which it would still be liable for aviation losses.

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## COURT BARS PUNITIVE DAMAGES IN SWISSAIR CRASH



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## Inside

### Enron surety suit to proceed to trial

A federal judge has rejected JPMorgan Chase Bank's request to force insurers to pay more than \$1 billion under surety bonds guaranteeing purported oil and gas deals between Enron Corp. and a pair of offshore corporations. **Page 4**

### Federal government shares responsibility

In Commentary, Senior Editor Mark A. Hofmann writes that the federal government failed in its constitutional duty to provide for the common defense and, therefore, should accept some of the responsibility for a terrorism insurance backstop. **Page 6**

### Bush right to deny benefits bailout

President Bush made the right decision in denying the struggling U.S. steel industry a federal bailout of its unfunded retiree benefits, this week's editorial says. **Page 8**

### Pension surplus uses at issue

A recent labor/management contract dispute has drawn attention to the issue of whether pension surpluses should be used to fund severance benefits for laid-off workers. **Page 14**

### Funding benefits through captives

Captive owners may learn from Archer Daniels Midland Co.'s experience in seeking approval to fund benefits through its captive, attendees at the recent Captive Insurance Cos. Assn. annual conference were told. **Page 19**

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

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#### CONTINUED FROM PAGE ONE

### Bill would let doctors bargain collectively

A bill that would allow independent health care professionals to collectively bargain with health maintenance organizations over fees is drawing criticism from employers. Reps. Robert Barr, R-Ga., and John Conyers, D-Mich., unveiled the Health Care Improvements Act of 2002 last week. The measure would grant providers limited immunity from federal antitrust laws so they could jointly bargain with health plans. The U.S. Chamber of Commerce condemned the proposal. "Giving doctors greater power to collaborate to boost their fees will not improve treatment options for patients," said Kate Sullivan, director-health care for the Chamber.

### Congress passes pension-funding relief

President Bush is expected to sign legislation, approved by Congress last week, that would grant employers temporary pension-funding relief. Tucked into economic stimulus legislation are provisions that would temporarily increase the interest rate assumptions employers must use to evaluate liabilities in their pension plans. Under current law, employers must use a rate that is between 90% and 105% of the four-year weighted average of the yield on 30-year Treasury bonds. In contrast, the economic stimulus bill would allow employers to use—for 2002 and 2003 only—an interest rate assumption of between 90% and 120% of the yield on the four-year weighted average on 30-year Treasury bonds. The change would slightly boost the interest rate assumptions employers can use in evaluating plan liabilities. The economic stimulus legislation also would extend by one year—through Dec. 31, 2003—the tax-favored status of medical savings accounts. Such accounts can be offered by small employers.

# Late News

### Blues study finds drugs driving care costs

A majority of employer health care purchasers say prescription drugs are the main driver of increasing health care costs in the United States, according to a survey conducted by the Blue Cross & Blue Shield Assn. Of the more than 500 corporate health care purchasers surveyed, 64% cited pharmaceutical costs as the main catalyst and, of those purchasers, 62% said that increased direct-to-consumer advertising is the main cause for the continued rise in pharmaceutical costs.

### AIG units suing reinsurer over Sept. 11 claims

Four American International Group Inc. companies are suing American National Insurance Co. for allegedly failing to pay losses related to the Sept. 11



terrorist attacks under reinsurance coverage of accidental death policies written by the AIG companies. The suit charges that ANICO has failed to pay nearly \$6.0 million owed the AIG companies thus far under an excess-of-loss treaty. ANICO was a 29% participant in the \$40 million excess of \$35 million per occurrence treaty. In response, ANICO contended in a statement that AIG had breached the reinsurance agreement by ignoring requests for documentation and records.

### California urges Ashcroft not to settle ELIC case

California Attorney General Bill Lockyer and Insurance Commissioner Harry Low have written to U.S. Attorney General John Ashcroft, asking him not to

agree to a rumored settlement proposal for fraud charges against French bank Credit Lyonnais. In June 2001, the U.S. Department of Justice issued an indictment against Credit Lyonnais and others connected to the takeover of the now-defunct Executive Life Insurance Co. Also that month, the California Justice Department filed a lawsuit seeking \$2 billion in damages from the bank

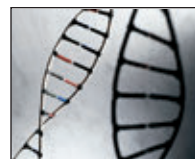


Mr. Ashcroft

Messrs. Lockyer and Low told Mr. Ashcroft that a settlement deal would be nothing more than a "slap on the wrist" for Credit Lyonnais' alleged misconduct.

### Measures target genetic discrimination

The White House is praising new legislation designed to provide individuals who are unfairly denied health insurance and employment because they may be predisposed to genetically related ailments with the same legal remedies available to



victims of other forms of unlawful discrimination. Sen. Olympia Snowe, R-Maine, introduced S. 1995—the Genetic Information Non-Discrimination in Health Insurance and Employment

Act of 2002—last week. A rival Democratic bill includes provisions that would allow victims of genetic discrimination to seek punitive as well as economic damages, a remedy not available to victims of other types of discrimination under federal law.

### Briefly noted

**Mutual Risk Management Ltd.** has agreed to sell its fund administration unit, Hemisphere Management Ltd., to the BISYS Group Inc. for \$110 million. Meanwhile, XL Capital Ltd. executives Michael Esposito, Fiona Luck and Bruce Connell resigned as directors of MRM last week. XL Capital led a \$112.5 million investment in MRM....**The St. Paul Cos. Inc.** has appointed Jerome T. Fadden as CEO of the St. Paul, Minn.-based company's St. Paul Re unit. He replaces James F. Duffy, who is retiring. Mr. Fadden joins St. Paul Re from UBS PaineWebber Inc., where he had been executive vp and director of strategic development in the office of the chairman....Former Sen. **Howard Cannon**, D-Nev., who played a pivotal role in the passage of the original Risk Retention Act of 1981, died Monday in a Las Vegas hospice. He was 90....Oakland, Calif.-based **Kaiser Permanente** announced last week that George C. Halvorson will become its chairman and CEO effective May 1. Mr. Halvorson currently is president and CEO of Minneapolis-based HealthPartners and will replace Kaiser's Dr. David M. Lawrence, who is retiring....The U.S. Senate approved an amendment Thursday to an Energy Department funding bill that would **extend the Price-Anderson Act**, which limits the liability of the nuclear power industry. The House had approved a similar extension earlier....London-based Willis Group Holdings Ltd. has entered into an agreement to sell the assets of the property/casualty division of **Willis Administrative Services Corp.**, its Nashville, Tenn.-based third-party administration unit, to Alternative Service Concepts L.L.C., a Nashville-based startup. Terms were not disclosed.

## Sept. 11 counseling increased awareness of plans

# EAP use remains high, employers say

By MICHAEL PRINCE

**NEW YORK**—Six months after the destruction of the World Trade Center, employers in New York are still seeing heightened use of employee assistance programs.

A combination of increased awareness of EAPs and a continuing need for counseling on the part of employees traumatized by the Sept. 11 attacks is driving the demand for EAP services, employers and consultants say.

While the use of EAPs has dropped from the levels seen immediately after the attack, employees are using the services more readily than they did prior to Sept. 11, they say.

In the days and weeks after Sept. 11, employers and their employees in New York flooded their EAPs with demands for services. In re-

sponse to the increased demand, EAPs added staff and worked at an unprecedented pace.

For about 10 weeks after the terrorist attacks, employees flocked to their EAPs for help, said Mark Cohen, a director at Harris, Rothenberg International, an EAP in New York with offices near the site of the World Trade Center.

"The volume of EAP use was more than double (what) it normally was," Mr. Cohen said.

Most of the EAP counseling after the attack dealt with post-traumatic stress suffered by workers, Mr. Cohen said. The symptoms included trouble sleeping, feelings of anxiety and an inability to concentrate, he said.

In many cases, EAPs were called in to conduct group counseling sessions for workers traumatized by

the attacks. For example, New York-based Verizon Communications Inc. held more than 600 group sessions in the weeks after the attacks, said Charles Bowman, the company's group manager for EAPs in Indianapolis. The company's two EAPs had to bring in outside counselors to assist with the work, he said.

"If you were a counselor in New York City, you did a lot of work in that two-month period," Mr. Bowman said.

The company also contacted employees by telephone and provided written materials to workers to help them cope with the trauma. Overall, the company's efforts reached almost 30,000 employees, Mr. Bowman said.

Like Verizon, Empire Blue Cross & Blue Shield saw a huge increase

in employees' use of its EAP, said Bob Lawrence, vp of human resources in New York. The health care company, which had 1,900 employees based in one of the destroyed towers, lost nine employees in the attack, and two employees lost spouses who had worked in other parts of the complex.

In the days following the attacks, the company held three mass meetings, with a total of 1,500 employees in attendance. Counselors from the EAP attended the meetings, provided grief counseling and met with people individually.

"They played a key role in the meetings," Mr. Lawrence said.

The high volume of calls to the EAP continued until November and then began to decline, he said.

Mr. Lawrence noted that the re-

See EAP/page 20

## Data-sharing plans raising concerns

By MEG FLETCHER

**WASHINGTON**—Federal proposals to better coordinate federal benefits with workers compensation benefits are raising concerns among representatives of employers, insurers and workers.

### MEDICARE & WORKERS COMP

A central element of these proposals is the collection of more data at the federal level about workers comp claimants. One proposal, for example, calls for self-insured employers and workers comp insurers to voluntarily report workers comp claimant data to federal authorities.

Private payers contend that these efforts would duplicate state reporting efforts and increase their administrative costs, while representatives of organized labor say they could violate injured workers' privacy.

One goal of federal data-sharing

proposals is to allow benefits administrators to use a claimant's Social Security number and other personal data to track benefits payments, which would help them determine the claimant's eligibility for other federal and state compensation programs, explained Eric Oxfield, the president of UWC Inc., a Washington lobbying group representing business interests.

Federal studies have found "significant" errors in federal compensation programs, according to a 36-page study issued by the U.S. General Accounting Office last May. Most of the errors were underpayments of benefits due, the study said, but they included overpayments.

Medicare officials are particularly interested in private benefits payments, because earlier research estimated that "about 8% of its beneficiaries have medical claims that may be the responsibility of another health insurer, liability insurer or (workers compensation) program," according to the GAO study.

Medicare's administrative agency, the Centers for Medicare

See **MEDICARE**/page 22

## Cleaning up Superfund

Efforts to bring back cleanup taxes spark debate, calls for liability reform

By MARK A. HOFMANN

**WASHINGTON**—Businesses and insurers say that any attempt to reinstate long-suspended Superfund taxes must be accompanied by significant liability reform of the controversial environmental cleanup program.

But since the odds of liability reform in the current Congress are poor, they vow to strongly resist any effort to reintroduce the cleanup tax.

PHOTO: UPI PHOTO SERVICE



Ms. Browner

cleaning up the environment without enriching lawyers. I think there's too much litigation when it comes to environmental cleanup," Mr. Bush said. "We're looking at ways to reform the system to make sure it works, make sure it actually accomplishes what the Congress wants it to accomplish."

The president's comments drew a sharp rebuke from former Environmental Protection Agency Administrator Carol Browner, who used a New York Times column

to accuse the president of wanting to shift the burden of paying for environmental cleanup to taxpayers from polluters. Superfund has proved that the principle of "polluter pays" works very well, wrote Ms. Browner, who as EPA chief under President Clinton fought vigorously against efforts to rescind the program's imposition of retroactive liability on potential polluters.

Ms. Browner's comments and a renewed effort by some congressional Democrats to revive the Superfund taxes—which haven't been collected since 1995—raised eyebrows among employer and insurance industry observers.

"The only thing that has happened here is that Superfund taxes have expired ever since Bill Archer took over the Ways and Means in 1995," said Joel Wood, senior vp-government affairs for the Council of Insurance Agents & Brokers in Washington, in reference to former Rep. Bill Archer, R-Texas.

"The only difference is the Clinton administration put the taxes in their budget, and they always got rejected. All that's happened is the president said, to no one's surprise, that he would not support reauthorization of those taxes in the absence of further Superfund reform." Mr. Wood characterized Ms. Browner's take on the polluter-pays principle as "cognitive dissonance. It's been an abysmal failure."

"We do not believe the taxes should be reinstituted until there is significant reform of the program itself," said Kenneth Schloman, Washington counsel for the Alliance of American Insurers.

John Arlington, assistant vp-federal affairs for the American Insurance Assn., said the Washington-based insurer group is "totally opposed" to reimposing taxes on businesses without liability reform.

Mr. Arlington pointed out that the Superfund program, created by the Comprehensive Environmental

See **SUPERFUND**/page 20

Varying approaches could hinder progress

## Hill to take up 401(k) reform

By JERRY GEISEL

**WASHINGTON**—Congressional committees soon will swing into action on the slew of 401(k) plan reform bills introduced in the wake of Enron Corp.'s collapse.

Next week, the Senate Health, Education, Labor and Pensions Committee and the House Education and the Workforce Committee are expected to consider and possibly vote on bills that take very different approaches to better protecting employees' 401(k) investments.

The committees' impending action comes about four months after thousands of Enron employees' 401(k) account balances were devastated after Enron's stock became virtually worthless when the company restated earnings to report massive losses and then filed for bankruptcy.

In all, the Enron meltdown cost its 401(k) plan participants more than \$1 billion. Enron employees were unusually exposed to losses because a high concentration of their investments was in Enron stock. That occurred because Enron matched employees' contributions only in company stock and prevented employees from selling that stock until age 50, and because employees voluntarily invested heavily in Enron stock.

An additional, though much less significant factor was that Enron prevented employees from selling shares during a brief period last year while the company was changing plan administrators.

In the aftermath of the Enron debacle, more than

two dozen reform bills have been introduced, with a bipartisan consensus that legislative changes are needed.

"There hardly has been an issue that has been the focus of so many approaches," said James Klein, president of the Washington-based American Benefits Council.

But whether that consensus on the need to act will translate into a compromise bill that is enacted into law is far from certain, given the huge differences among the measures that are expected to be the leading contenders for congressional consideration.

"Given all the publicity and congressional interest, you would think it a virtual certainty that Congress will do something. But with such different proposals on the table, it is, at least at the moment, hard to see a compromise," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Washington.

Others say a scenario similar to what has occurred in the last two congressional sessions, when the House and Senate each passed very different patient protection bills and then failed to reach a final agreement, is possible.

"We could end up like (the patient protection act), where both houses pass bills and then can't get an agreement because of fundamental differences," said Nell Hennessy, a senior vp with Aon Consulting in Washington.

Others, though, say the massive public attention on the issue virtually guarantees congressional action, if

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Sen. Edward Kennedy, D-Mass., introduced one of the 401(k) reform measures.

### NAPSLO Midyear Meeting

## Sept. 11, Enron push up rate hikes Losses speed hardening of market

By JOANNE WOJCIK

**SAN ANTONIO**—The hardening of the commercial insurance market, which was accelerated by the Sept. 11 terrorist attacks and the bankruptcy of Enron Corp., was long overdue, industry experts say.

But the duration of the hard market will depend on whether insurers remain disciplined about underwriting, the experts note.

"To me, this has been a long time coming. We've seen competitive pressures since the mid-'90s. It shouldn't be a surprise" to commercial insurance buyers, said Doug Behnke, executive vp and head of Overseas Partners U.S. Reinsurance Co.'s new Chicago-area office, during a panel discussion held at the midyear meeting of the National Assn. of Surplus Lines Offices Ltd. in San Antonio.

Although Mr. Behnke said he is "pleased" with the rising rates on the primary side, he said, "they've still got some ways to go," especially in certain professional liability lines. Mr. Behnke said he hopes the hard market will last another three to five years, to al-

low the industry to return to adequate pricing.

The hard market was needed because insurer profitability has been falling, said Paul Goodwin, vp and marketing manager for American Re-Insurance Co.'s domestic insurance company operations specialty group in Princeton, N.J.

Even "if you take Sept. 11 and Enron out," results have not been good, he said, citing asbestos and environmental liabilities as prime examples of troubled lines.

Mr. Goodwin noted that the rating agency A.M. Best Co. recently estimated that the property/casualty insurance industry is underreserved for asbestos and environmental liabilities by as much as 50%. "Where's it going to come from?" he asked. "We have to raise prices to cover that."

Medical malpractice, directors and officers liability, commercial umbrella and commercial auto lines all were hardening well before the terrorist attacks, said Bob Cohen, senior vp of sales and marketing at United National Insurance Co. in Bala Cynwyd, Pa.

See **MARKET**/page 12

# Insurers win round in Enron cover fight

By DOUGLAS McLEOD

**NEW YORK**—A federal judge has rejected JPMorgan Chase Bank's request for an immediate ruling that 11 insurers must pay more than \$1 billion under surety bonds guaranteeing purported oil and gas deals between Enron Corp. and a pair of offshore corporations.

In his ruling, U.S. District Judge Jed S. Rakoff found sufficient evidence to go to trial on insurers' contention that the deals were, in fact, fraudulently disguised loans intended to inflate Enron's earnings.

Chase sued the insurers last year on behalf of two Jersey, Channel Islands, companies—Mahonia Ltd. and Mahonia Natural Gas Ltd.—asserting that the insurers owe \$1.36 billion under surety bonds backing deals in which the Mahonia companies prepaid Enron for future oil and gas deliveries. Enron defaulted on the multiyear energy contracts shortly before its collapse last December.

The insurers, however, have sought to rescind the bonds, charging that the Mahonia deals were a ruse designed to conceal Chase

loans to Enron. On Tuesday, Judge Rakoff found that the insurers—including Travelers Property/Casualty Corp. and Federal Insurance Co.—presented evidence that “materially supports” their fraud allegations.

For example, evidence shows that on the same day that Enron entered one contract to sell gas to Mahonia, it signed another deal with another Channel Islands company, Stoneville Aegean Ltd., to buy identical quantities of gas on identical future dates.

While Mahonia agreed to prepay \$330 million to Enron under its

contract, Enron agreed to future payments totaling \$394 million to Stoneville. The Mahonia companies and Stoneville have the same director and same shareholders, the judge's ruling notes.

“Taken together, then, these arrangements now appear to be nothing but a disguised loan—or at least have sufficient indicia thereof that the court could not possibly grant judgment” to Chase, Judge Rakoff said.

The judge also found that insurers may seek to rescind the bonds on the grounds that the companies

were duped into issuing what amount to loan guarantees, a form of coverage they are barred from writing under New York insurance law.

“There is no suggestion that the sureties knew or were on notice of the allegedly circular arrangements between Mahonia, Enron and other entities that transformed what purported to be insurable sales contracts into disguised loans that the sureties were prohibited by law from insuring,” Judge Rakoff wrote.

In denying summary judgment to Chase, Judge Rakoff called for rapid resolution of the case, setting Sept. 16 for conclusion of pretrial discovery and Dec. 2 for the trial itself.

## Directory deadlines approaching

*Business Insurance* will publish its online Directory of Employee Assistance Programs and the Directory of Dependent Care Resource and Referral Services Providers on April 8. That week's issue of *Business Insurance* will include a ranking of the EAP providers and dependent care resource and referral providers, as well as a Benefits Management Take-Out Section on work and life benefits.

The EAP directory lists companies that provide EAP services directly to employers on a stand-alone basis, i.e., independently of other services the organization offers. To be listed, a company must generate at least \$100,000 in gross revenues from EAP services or provide such services in at least three states.

The dependent care directory lists companies that provide resource and referral services on a stand-alone basis. To be listed, a company must generate at least \$100,000 in gross revenues from dependent care and referral services or provide the services in at least three states.

Companies must report gross revenues to be listed. If your company meets the requirements for either directory and has not received a questionnaire, please request one by calling Directory Editor Kevin Edison at 312-649-5279. There is no charge to be listed.

Copies of the questionnaire can also be printed from the *BI* Web site at [www.businessinsurance.com](http://www.businessinsurance.com). Completed questionnaires must be returned by the extended deadline of March 27.

## Errors & Omissions

- A story in the March 4 issue on aviation war risk insurance incorrectly stated that Delta Air Lines Inc. carries about 700 million passengers a year. That figure is actually the approximate number of passenger enplanements—or passenger boardings—for the airline industry in 2000.

- A chart of the largest captive managers in the Feb. 4 issue provided an incorrect total for the number of captives managed by Marsh Management Services. The correct total is 891 captives managed in 2001.

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BUSINESS NEEDS CHAMPIONS

# NCQA proposes new standards for health plan accreditation

By MICHAEL PRINCE

**WASHINGTON**—The National Committee for Quality Assurance is considering changes to its health plan accreditation program that are designed to streamline paperwork and emphasize plan performance.

If implemented, the changes would become part of the organization's accreditation program beginning June 1, 2003.

The new requirements would apply to health maintenance organizations, point-of-service plans, preferred provider organizations and managed behavioral healthcare organizations.

The new requirements, for exam-

ple, would eliminate some of the current standards that are based on a plan's internal administrative procedures. In their place would be new benchmarks for plan quality based on HEDIS scores. HEDIS, or Health Plan Employer Data and Information Set, is a tool developed by the NCQA to measure various aspects of plan quality.

"The results a plan achieves are what matter most to consumers and, with every new version of NCQA's standards, results are increasingly what will determine an organization's level of accreditation," NCQA President Margaret O'Kane said in a written statement.

The changes would introduce

three new measures for the quality of diabetes care, as well as new pneumonia care measures for Medicare plans. New measures for detecting inappropriate drug dosage and dangerous drug interactions also have been proposed.

In addition, the new requirements would align the NCQA's privacy requirements with the 1996 Health Insurance Portability and Accountability Act and with Department of Labor regulations.

The draft standards can be viewed at the NCQA's Web site, [www.ncqa.org](http://www.ncqa.org). Comments may be submitted to the NCQA until April 1. Final standards are scheduled to be issued later this year.

# NFL lines up behind proposal for federal terrorism backstop

By MARK A. HOFMANN

**WASHINGTON**—The National Football League "strongly" supports legislation that would create a federal guarantee for terrorism insurance, according to a letter released last week by the House Financial Services Committee.

In his letter to the committee's chairman—Rep. Mike Oxley, R-Ohio—NFL Commissioner Paul Tagliabue noted that Congress has heard predictions for months that



"adequate terrorism insurance would gradually become inaccessible" without a federal

coverage backstop. "As existing policies expire and must be renewed, these predictions have proven accurate and the need for a bill has become more acute," he

said.

In addition, Mr. Tagliabue pointed out in his letter that the NFL has affiliated with the Coalition to Insure Against Terrorism, a group of business and trade associations, to push for a terrorism insurance bill. He noted that the House of Representatives passed such a measure in late November, adding, "we strongly support such legislation," and he expressed disappointment that the Senate has not followed the House's lead.

## Commentary

### Federal government has a duty to people

Today's lesson in political risk management comes from the most fundamental contract between the government of the United States and the people it represents: the Constitution of the United States.

The phrase "provide for the common defense" appears both in the Constitution's Preamble and in Article I, Section 8, which spells out the responsibilities of Congress. The framers obviously thought that one of the chief functions of government—perhaps the paramount function—is to protect the country from internal and external enemies.

While some of the powers and duties initially granted the federal government—such as the power to grant letters of marque and reprisal—have fallen into disuse, providing for the common defense remains a key governmental function.

Note that the Constitution does not direct the federal government to clean up Superfund sites, subsidize bison ranchers or issue commemorative stamps. But it twice instructs the government to provide for the common defense.

And protecting the life and property of its citizens is a function the federal government failed to fulfill on a bright Tuesday morning exactly six months ago today.

I bring this up not to point fingers at anyone. Congress will look into what happened, and, no doubt, there will be a good deal of finger-pointing before lawmakers issue a final report. This is, after all, an election year.

Instead, I bring up this failure to underscore the need for some federal action on terrorism insurance. The House of Representatives got off to a good start by passing a bill shortly after Thanksgiving. Even though the House bill fell short of what insurers and many risk managers wanted, it was a timely response that demonstrated how seriously the House took the issue.

But little has happened since. The Senate has yet to move on any of several terrorism insurance bills. Instead, myriad committees and subcommittees are focusing on the Enron collapse.

Being seen as an advocate for the insurance industry isn't nearly as much fun for a senator. In the long run, however, creating a federal backstop for terrorism insurance may be even more important than getting to the root of Enron's woes.

I deeply hope the nation will never have to draw upon a federal

terrorism reinsurance pool. But we can't pretend that something like Sept. 11 won't happen again. If even a fraction of the foiled terror plots of the past six months posed real threats, odds are that one day a similarly lethal attack will be carried out.

Look how close the alleged American Airlines shoe bomber came to achieving his goal. This was a guy very few people would mistake for a criminal genius. Still, he managed to board a transatlantic flight without luggage and allegedly prepare to blow it out of the sky before a flight attendant noticed something suspicious and passengers and crew intervened to stop him.

That someone like that could get

so far doesn't exactly inspire confidence that we're in the clear. If anything, it makes a pretty good argument that we've got a long way to go before we can say that we've taken all reasonable steps to make sure that we are prepared.

A federal terrorism insurance backstop ought to be part of that preparation. As leery as I am about

government involvement in economic matters, this is one area where the feds have a legitimate—albeit limited—role to play.

That role is simply to guarantee that if some horrendous event like the Sept. 11 attacks plays out again, the money will be there to pay claims. "Will be" is the operative phrase: nobody is asking the feds to guarantee payment for claims stemming from the Sept. 11 attacks. Nobody expects the feds to pick up the whole tab, either—we're talking quota share here or, under the House approach, a loan program.

Why should the federal government get involved? After all, there's no constitutional dictum that says that, in case of emergency, the federal government is the insurer of last resort.

But it is the federal government's failure to make good on the contract between it and its citizens, that justifies the establishment of a temporary federal insurance program.

That contract was broken six months ago today. Enacting some sort of federal terrorism insurance backup now will help ensure that there will be compensation if that contract is broken again.



Mark A. Hofmann

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## Editorial

## Bush denial of bailout avoided bad precedent

WE SUPPORT A GUTSY DECISION by President Bush not to cave in to political pressure and provide a government bailout of retiree benefit obligations that the U.S. steel industry and its unions had sought.

For months, the steel industry has pressed the federal government for relief of what the industry calls "legacy" costs, which are the billions of dollars in pension and health care benefits that steel companies have promised—but have not come close to funding—to current and future retirees represented by the United Steelworkers of America union.

And the steel industry made quite clear that the preferred relief it sought was the transfer of those benefit obligations to the federal government.

Why the steel industry should deserve this special treatment is beyond us—and, obviously, President Bush—who made his decision at the risk of losing support in states where tens of thousands of voters are connected to steel companies as employees or retirees.

There is no question that the domestic steel industry is hurting. Several dozen companies over the last decade have shut down or have been forced into operating in bankruptcy, with their survival in question.

Certainly, the crushing burden of retiree benefit costs is one of the factors behind the financial woes of many steel companies.

But one must ask why those costs have been so burdensome. The short answer is that, in one contract negotiation after another, industry and organized labor irresponsibly agreed on benefits that were increasingly unaffordable to the employer.

This should have been obvious to management and labor, and steps should have been taken to pare back benefit increases. Had that been done, perhaps more companies would have survived, preserving more jobs.

It would have been far more irresponsible, though, for the government—more precisely, the taxpayers—to

take on these companies' benefit liabilities. Such a move would have delivered a message—a terrible one from a public policy perspective—to employers and organized labor: Load up on benefits and don't worry about costs, because if times get tough, the government will bail you out.

Fortunately, the Bush administration rejected the steel industry's bid for relief. With no prospect for a taxpayer-funded bailout, we hope the remaining steel companies will now work to get their benefit plans and costs in line with what they can afford, something they should have done a long time ago.

This isn't to say that we don't have sympathy for the tens of thousands of retired steel workers who are losing their benefits. For example, retired LTV Corp. employees will lose health care benefits at the end of the month when a voluntary employee beneficiary association through which benefits had been funded runs out of money. LTV is in bankruptcy, and the buyer of its assets is not assuming the company's benefit obligations.

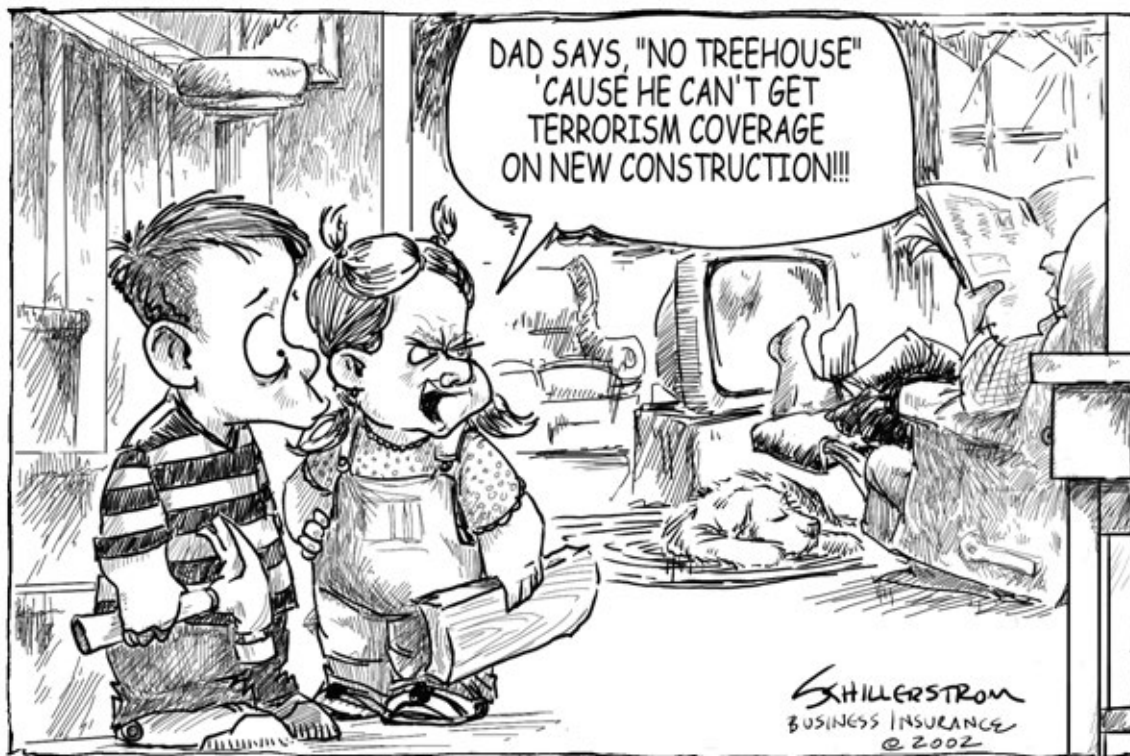
But we should note that those working in the steel industry, like other employees, do have a safety net, though perhaps not as broad as they would like.

If their employers fail, employees' basic pension benefits will be protected by the federal Pension Benefit Guaranty Corp. The PBGC, for example, will pay well over \$1 billion in benefits to LTV employees and retirees when the agency takes over the company's three underfunded pension plans.

And retired steel workers age 65 and older, like other older retirees, are eligible for Medicare, which covers a high percentage of hospital and medical expenses.

To be sure, the steel industry wanted that federal safety net to be stretched even wider—and just for steel companies. That would have set a terrible precedent, and it would have been only a matter of time before the next financially troubled industry went to Washington looking for a similar bailout.

## Schillerstrom



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## Letters to the Editor

## Airline security depends on screening suspects

To the editor: America's war on terrorism has been conducted extremely well by our military, CIA, Justice Department and FBI—so well that attacks on our homeland have been temporarily halted. On the other hand, homeland defense is still lost in the fog of war—particularly our airline security.

We have airline security by act of Congress. Based on his statements and actions, the secretary of transportation believes that his primary duty is to follow the new law. By doing so, he is making us officially secure. By having bag matching, we are "secure" against bombs in checked luggage. Unfortunately, Al Qaeda knows that bag matching just ensures that their "martyrs" will be transported to paradise as America's airliners explode!

In our business, we know that loss control is not achieved simply by following OSHA regulations. Similarly, following the Airline Security Act does not secure our airlines. What we must do is to have our screeners focus their primary efforts on those individuals who might have been recruited by Al Qaeda—thoroughly screening them, including their checked bags. We can lighten up on old men, women, families etc., letting screening move faster.

But isn't this profiling? Yes. Isn't profiling a civil rights violation? I don't think so under these circumstances. We are at war with an enemy whose objective is to kill as many of us as they can. Since bag-screening equipment is not currently available, profiling is the only effective way to stop these suicide bombers. We are protecting the most basic civil right of all people—the right to life.

**Leslie G. Walker Jr.**

Risk Management Consultant  
Adams Insurance Service Inc.  
Houston

## Recordkeeping to blame for most comp errors

To the editor: I was reading your Feb. 25 issue and found that the Perspectives article by Robert Kravitz, "Errors in Comp Info Can Inflate Premiums," was a blatant advertisement for his services.

Mr. Kravitz is accusing all workers compensation insurers of being dishonest and inept. Doesn't he realize how highly regulated workers comp is? Although there may be some errors made, the majority of the problems and discrepancies come from policyholders not maintaining proper records, failing to notify an insurer of changes in operations or paying claims themselves and when the claim blows up, then coming to the insurer, to name a few.

Mr. Kravitz should become part of the solution, rather than being part of the problem and profiting from it.

**James S. Kahn**

Risk Manager  
Lackawanna Casualty Co.  
Wilkes-Barre, Pa.

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## Perspectives

# Ask a casualty actuary

**Q : How reliable is the use of premium-to-surplus ratios in gauging the relative financial strength of an insurer?**

**A :** Well, we first have to acknowledge that everybody uses such ratios. We all calculate the premium-to-surplus ratio of any insurer we review. If that ratio is above 3.0, we get nervous. If the premium-to-surplus ratio falls below 1.0, we suspect the insurer is sitting on more capital than it really needs. After all, the first two tests of the National Assn. of Insurance Commissioners' Insurance Regulatory Information System—a set of tests applied by regulators to identify insurers that may be headed for financial trouble—are premium-to-surplus ratios.

That said, we must question the validity of this rule of thumb. As with every simplified approach, it has many weaknesses. The operations of an insurer are much more complex than to simply take in premium and tuck away surplus to guard against surprises. The NAIC recognized this long ago and developed a much better indicator of financial strength—the risk-based capital formula. Although far from perfect, the risk-based capital yardstick has several advantages over the old premium-to-surplus ratio.

The biggest problem with the premium-to-surplus ratio is that it measures only one type of risk—namely, that current business is underpriced. In contrast, the risk-based capital formula acknowledges the critical fact that insurers face several different types of risk and that the purpose of surplus is to provide a buffer against adverse variations from expected results.

The risk-based capital formula not only gauges current underwriting risk but also measures two other major types of risk: that loss reserves are understated and that invested assets might decline in value. The relative importance of these three types of risks—premium, reserve and asset—depends heavily on how much long-tail business an insurer writes, as well as on how long it has



been writing such business.

Let's illustrate this with an extreme example. Consider the case of the Old Long-Tail Insurance Co. OLTIC has written only workers compensation business for the past 50 years, but its current market share is much less than it was 10 or 20 years ago. Financially, OLTIC is primarily in the business of paying the medical bills and covering the lost wages of a large population of permanently disabled workers, most of whom were injured many years ago.

To accomplish its mission, OLTIC carries seemingly large claim reserves and, necessarily, must have a big portfolio of investments to match those reserves. For OLTIC, its reserve and asset risks are far greater than its premium risk. And yet the premium-to-surplus ratio does not take into account the insurer's two biggest sources of risk. Such an insurer could have a premium-to-surplus ratio of 0.5 and still have inadequate surplus.

A better way to look at various insurers is to peruse each insurer's latest financial statement, considering such issues as how much the insurer's surplus would decline if it were to suffer a 10% current operating loss (including investment income); its loss reserves were to come up 10% short; and the value of its assets were to decline by 10%.

Let's compare our answers for OLTIC and

the New Short-Tail Insurance Co. Each insurer currently writes \$100 million of premium. OLTIC has \$1 billion in loss reserves, \$1.3 billion in assets and \$200 million in surplus. NSTIC, conversely, has only \$10 million in reserves, \$40 million in assets and \$20 million in surplus.

OLTIC is operating with a premium-to-surplus ratio of 0.5, while NSTIC's ratio is 5.0. Let's compare what would happen to each of these insurers if our three adverse events all were to take place.

For OLTIC, surplus would drop by \$10 million if its rates were low, \$100 million if its reserves were light and \$130 million if its assets were to decline. OLTIC would be insolvent by \$40 million.

By comparison, for NSTIC, its surplus would drop by \$10 million if its rates were low, \$1 million if its reserves were light and \$4 million if its assets were to decline. So, its \$20 million in surplus would drop by \$15 million—a serious blow but not a fatal one.

In the above example, we see that even if the same set of misfortunes were to befall both insurers, the one with the premium-to-surplus ratio of 0.5 would fail decisively, while the one with the premium-to-surplus ratio of 5.0 would merely stagger.

If we had compared each of the two insurers on the basis of the ratio of its stated surplus to its risk-based capital, though, we

likely would have seen that OLTIC is much shakier than NSTIC.

Ideally, an insurer should have a surplus that is a healthy multiple of the "authorized control level" risk-based capital. The authorized control level is the amount of surplus below which a regulator is first authorized to take control of an insurer. This number is reported by every insurer in the five-year historical data exhibit of its annual statutory statement.

For further information on an individual insurer's risk-based capital, contact Claire Lenz of the NAIC. Ms. Lenz can be reached by telephone at 816-783-8706, or by e-mail at [clenz@naic.org](mailto:clenz@naic.org).



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

# Workers comp can benefit from TQM

**By Jay Blakey**

What the workers compensation industry needs today is a good dose of Deming.

No doubt, some of you were about to turn the page. You may have cringed and your eyes rolled at the mention of W. Edwards Deming, the father of total quality management. That's probably because an estimated four out of five TQM efforts fail. I can almost hear you shout, "Don't go there."

As an industry, however, we should go there. When TQM fails, it's not because the concept is faulty. TQM is hard work, often demanding too much from an organization. But when the principles of TQM are fully embraced and vigorously pursued, the results can be astounding.

Mr. Deming first introduced his principles as a statistician during World War II, helping to pioneer efficient new production methods for American industry. After the war ended, however, the country experienced such an

economic boom that skillful management took a back seat to mass production. Americans soon began to settle for products of inferior quality, believing that improved quality could result only from increased cost.

In Japan, the situation was far different. Japanese industry faced a massive rebuilding effort, and its leaders were far more open to new techniques than their American counterparts.

Using his principles of TQM, Mr. Deming taught the Japanese how to reverse-engineer American products, with higher quality and lower costs. In just a few decades, the Japanese economy rose to the summit of world leadership. Today, the annual Deming Prize is one of Japan's most coveted awards.

So what does all this have to do with workers compensation? Like postwar Japan, our industry faces the same need to increase quality and reduce costs to be competitive. But, like postwar America, we've been conditioned to believe that high quality and

low cost cannot coexist.

Too often, our quality assurance efforts focus solely on the most significant problem

**We are expected to deliver high-quality care, control costs and get it right the first time. To meet this challenge, we can look to W. Edwards Deming's principles for guidance.**

outcomes, then track backward to identify the source. It's like pulling a faulty widget off a production line and spending time and money to retroactively fix the problem, even as other defective widgets continue to be produced.

But we're not dealing with widgets; we're

treating people. We are expected to deliver high-quality care, control costs and get it right the first time. To meet this challenge, we can look to Mr. Deming's principles for guidance.

He advises us to "eliminate the need for inspection on a mass basis by building quality into the product in the first place." In a manufacturing environment, TQM enables workers to make corrections to the production process on the spot if they detect problems, improving quality without the added cost of redoing defective widgets.

Similarly, workers compensation has a "production line" involving employers, providers and payers. For the process to work most effectively, we must address quality at all points during the episode of care.

To do that, Mr. Deming suggests that we "break down barriers between departments." In a manufacturing environment, for example, a line employee would be

**See TQM/next page**

# TQM: Beneficial for workers comp

## Continued from previous page

encouraged to offer a product designer example, a line employee would be encouraged to offer a product designer feedback that may prevent a design flaw or production snag.

In workers comp, barriers often exist between employers, providers and payers. The employer demands efficient and timely care, the payer must control the cost of that care, and the provider wants to be compensated fairly. Again, we see a clash between high quality and low cost.

But all three groups actually have the same goal—to return the injured employee to work

expectations. Once that happens, overall as soon as possible—which can only be achieved when they understand each other's costs are reduced as the expenses of unnecessary care and lost work time are controlled.

Therefore, removing barriers, building teamwork and improving communication are critical. The Internet can be used to connect employers, providers and payers, allowing them to collaborate more efficiently as they monitor and manage the real-time status of the injured employee throughout the treatment process to ensure a quick and safe return to work.

We think this TQM-based platform will succeed because we believe workers compensation is ripe for change. Poor communication, inefficiency, waste and rework are all too common. The industry seems to be operating like TQM in reverse, with high cost and low quality.

We understand, however, that being "ripe for change" and "willing to change" are two different things. Mr. Deming himself admitted that his ideals would not be fully embraced by everyone. But he said something else that might motivate our industry to take change more seriously. While stressing the virtues of TQM, he added,

"In the competitive world of the future, companies that have not mastered these ideas will simply disappear. There will be no excuses."



Jay Blakey is senior vp at Dallas-based Em3 Corp., an Internet-based system for administering workers compensation programs.

Mr. Blakey

# Injury from work for boss covered

If a person in authority over an employee asks the employee to perform a service for the personal benefit of the employer or the employee's superior and the employee is injured during the performance of the task, the injury may be compensable under the Workers' Compensation Act, according to the Court of Appeals of Wisconsin.

Marshall E. Begel was pursuing a master's degree in civil and structural engineering at the University of Wisconsin-Madison. While enrolled, Mr. Begel worked as a research assistant for the university under the supervision of David Bohnhoff, an associate professor. In May 1997, Mr. Bohnhoff began building a new house. He and his family lived in a construction trailer at the construction site, where he had no telephone. As a result, Mr. Begel was required by the nature of his employment to travel to the construction site to meet with Mr. Bohnhoff about his research. During his visits at the site, in addition to consulting about the research he was performing, Mr. Begel often helped Mr. Bohnhoff with the construction. On June 22, 1997, Mr. Begel met with Mr. Bohnhoff at the site concerning his research. Afterward, Mr. Begel volunteered to help Mr. Bohnhoff on the construction. Rain later forced Mr. Begel to stop his task. Mr. Bohnhoff then asked Mr. Begel to assist him in lifting a joist so that the floor could be covered with a tarp. While performing this task, Mr. Begel fell through a hole to the basement, suffering a spinal injury that rendered him a quadriplegic.

Mr. Begel filed for workers compensation benefits. An administrative law judge found in favor of Mr. Begel but the state Labor & Industrial Review Commission reversed the decision. On further appeal, though, a trial court ruled in favor of Mr. Begel.

The appellate court said that when any person in authority directs an employee to run some private errand for the private benefit of the employer or superior, an injury in the course of that work is compensable. The practical reason for the rule, the court said, was that any other view places the employee in an intolerable dilemma: if the employee complies with the order, he or she forfeits compensation protection; if the employee does not comply, he or she gets fired. The court affirmed the award of compensation.

*Begel vs. LIRC, Court of Appeals of Wisconsin, May 3, 2001 (BI/01/M.—\$10).*

## Voluntary retirement doesn't preclude comp

In a case of first impression in that state, the Supreme Court of Tennessee ruled that an employee's voluntary retirement does not preclude workers compensation benefits for an injury arising out of employment.

## Legal Briefs

James Mackie installed asbestos insulation for much of his working life between 1948 and 1988. His last injurious exposure to asbestos occurred while he was working for Young Sales Corp. in 1973. Mr. Mackie stopped working sometime in 1989 or 1990 because he wanted to retire. Although he retained his union membership and could have returned to work, Mr. Mackie did not return to work at any time after his retirement. In January 1993, Mr. Mackie was diagnosed with asbestos-related malignant mesothelioma, caused by exposure to asbestos insulation. He died from the illness on May 15, 1993. Dorothy Mackie, his widow, filed suit seeking workers compensation benefits for her husband's death. The trial court ruled in her favor, awarding her the maximum weekly rate of \$318. The compensation appeals panel concluded, though, that because Mr. Mackie had voluntarily retired at the time of the diagnosis, benefits should reflect a minimum weekly compensation rate of \$35. Ms. Mackie appealed.

The appellate court said that, because they are remedial in nature, workers compensation laws must be construed liberally to accomplish their intended purpose. The appeals panel had argued that Mr. Mackie was not entitled to compensation based on the maximum weekly rate because he was voluntarily retired and lost no earnings because of the work-related illness. The court said, though, that disallowing compensation in these circumstances would conflict with the tradeoff that is at the heart of the workers compensation system—that the employee has a remedy for injuries arising out of and in the course of his or her employment and the employer has a limit on the amount of the liability and complete protection from tort liability. The court restored the trial court's award of benefits.

*Mackie vs. Young Sales Corp., Supreme Court of Tennessee, March 1, 2001, Rehearing denied April 6, 2001 (BI/04/M.—\$10).*

## Injury during smoking break is compensable in S.C.

An employee who was on an authorized smoking break when he sustained an injury was performing a "personal-comfort" activity and, thus, his injury arose out of his employment, according to the Court of Appeals of South Carolina.

Richard Dukes, an employee of Rural Metro Corp., worked as an emergency medical technician. Mr. Dukes, accompanied by his partner, Terry Salzman, left the office to take a

smoking break in a designated area. Because Messrs. Dukes and Salzman shared an interest in guns, Mr. Salzman produced a newly purchased pistol and handed it to Mr. Dukes. When Mr. Dukes returned the weapon, it discharged, and the bullet struck Mr. Dukes, fracturing his femur. Mr. Dukes then filed a claim for workers compensation, and the compensation commission awarded him benefits. The trial court affirmed the decision, and the employer appealed.

On appeal, the employer argued that Mr. Dukes' injury was not compensable because there was no causal connection between his job as a paramedic and the accidental shooting. But, the court said that proof of a causative relationship is not required when an accident occurs during a clearly defined break from work within the parameters of the personal-comfort doctrine. According to the court, that doctrine holds that certain on-the-job acts of personal comfort—including smoking—are, in effect, part of employment. The trial court decision was affirmed.

*Dukes vs. Rural Metro Corp., Court of Appeals of South Carolina, July 23, 2001, (BI/03/A.—\$10)*

## LTD insurer may offset Social Security benefits

A group long-term disability insurer was entitled to offset Social Security benefits paid to an insured after she became disabled, according to the Supreme Court of North Dakota.

The Bismarck Public School District employed Ann Hauer as a teacher. In 1993, she became permanently and totally disabled. Ms. Hauer was covered under a group disability insurance policy issued by Fortis Benefits Insurance Co. In May 1993, she began receiving monthly disability benefits of \$1,861 from Fortis. In February 1994, Ms. Hauer began receiving about \$1,029 per month in Social Security disability benefits. Then, in April 1995, Ms. Hauer began receiving about \$1,076 per month in disability benefits from the North Dakota Teachers' Fund for Retirement. Fortis began offsetting the monthly Social Security benefits against Ms. Hauer's monthly benefits under the long-term disability policy and also asked Ms. Hauer to repay overpayments represented by a Social Security lump-sum payment she had received. Fortis later stopped paying benefits to Ms. Hauer when it learned that she was also receiving benefits from the Teachers' Fund. Fortis also asked Ms. Hauer to repay \$33,213 it claimed it had overpaid her. Ms. Hauer refused to repay Fortis, and Fortis sued to recover the claimed overpayments. Ms. Hauer lost in the trial court.

The appellate court found that the language of the Fortis policy clearly and

unambiguously provided that Social Security disability benefits may be fully offset against Ms. Hauer's Fortis scheduled benefits. In addition, the court pointed out that the Teachers' Fund benefits may also be fully offset against the Fortis benefits because the Fortis policy explicitly provided for full offset of all disability benefits received by the insured from "any Governmental Plan." The trial court decision was affirmed.

*Fortis Benefits Insurance Co. vs. Hauer, Supreme Court of North Dakota, Dec. 5, 2001 (BI/05/A.—\$10)*

## Reimbursement requirement violates public policy

The Missouri Court of Appeals held that an agreement requiring an employee insured under a group health insurance plan to reimburse the plan for any recovery he received from a tort case violated public policy and was invalid.

Gary Hays, an employee of the Missouri Highways and Transportation Commission, and his son were insured under a group medical and life insurance plan provided by the commission. Mr. Hays' son was seriously injured in an automobile accident in February 1998, incurring approximately \$28,000 in medical expenses. Those expenses were submitted to the plan administrator for payment. The administrator informed Mr. Hays that before the claim could be processed, Mr. Hays must sign a document stating that he agreed to reimburse the plan if he were to obtain a settlement or collect upon a judgment against a third party. Mr. Hays refused, and the administrator declined to process Mr. Hays' claim for benefits. Mr. Hays then sued his employer, seeking a declaration from the court that the reimbursement agreement was invalid. The trial court ruled against Mr. Hays, who then appealed.

The appellate court said that the reimbursement agreement required by the plan administrator was void because it was contrary to a longstanding public policy. Therefore, the court said that the processing and payment of Mr. Hays' claim for benefits under the plan could not be conditioned upon his agreement to sign the reimbursement agreement. The trial court decision was reversed.

*Hays vs. Missouri Highways and Transportation Commission, Missouri Court of Appeals, October 30, 2001 (BI/04/A.—\$10)*

*These abstracts were prepared by Mayo H. Stiegler. Copies of these decisions are available, at \$10 each, by sending a check payable to Mayo H. Stiegler, to Business Insurance 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Provide the listed number for each opinion ordered.*

# Market: Underwriting standards may soften again

Continued from page 3

"There's not been a whole lot of traditional underwriting," Mr. Cohen said, because "many decision-makers in the industry today have never seen a hard market."

Instead, "investment income has carried a lot of companies," he said. "But when the investment income drops, what happens? You don't want investment income to hold up companies. No company can really succeed without a strong capital base."

Throughout the soft market, "ev-

erybody's been trying to run lean and mean," said Christopher B. McGovern, vp-national specialty programs at surplus lines broker All Risks Ltd. in Timonium, Md. And when budgets are tight, the training of underwriters is usually among the first expenses to be cut, he said.

As a result, "the people who are coming up aren't getting the training they need," Mr. Goodwin said. "The recognition of the risk exposure isn't there. But it's not due to lack of intelligence, but lack of training."

Traditional underwriting also has

**'Many decision-makers in the industry today have never seen a hard market.'**

Bob Cohen  
United National Insurance Co.

played a diminished role since the industry began relying on computer modeling in making risk-selection and pricing decisions, he said.

"They're taking verbatim what the computer spits out," Mr. Goodwin said. "But the use of computer models for pricing doesn't always work," he said. "There's no intuition there. An experienced underwriter can see if there are errors," such as data-entry mistakes.

Intelligent underwriting is key to a company's ultimate success, said Mr. Cohen of United National. But though the industry may be "getting back to underwriting the business as it should be," with prices reflecting exposures, Mr. Cohen said

he expects the market to begin softening for some lines as early as 2003.

"People forget," he said. "The industry has a habit of shooting itself in the foot."

Mr. Cohen said he hopes that "we'll go back to normal underwriting cycles." The last soft market lasted approximately 15 years, while previous market turns occurred every seven years.

"The industry needs that," he said. "We can't have protracted soft markets."

## NAPSLO midyear meeting

# NAPSLO brokers feeling pressured

By JOANNE WOJCIK

**SAN ANTONIO**—Stepped-up submissions in the surplus lines market are increasing pressure on retail brokers and wholesalers, which is putting insurance buyers at the risk of not getting the coverage they need.

As policyholders press producers on rising prices and reduced coverage, brokers and wholesalers also are being pressured by insurers to work harder and faster, which could lead to mistakes, underwriters and brokers warn.

"In this market, the errors and omissions issues are dramatic," stressed Dave Leonard, senior vp of Royal Specialty Underwriting Inc., a surplus lines insurer in Atlanta.

"Every time you change carriers, you create new exposures. Every company is a little different and has different exclusions, so agents need

to read the new policies carefully to make sure there aren't any gaps," Mr. Leonard said during a panel discussion on placements in a hard market, held at the 2002 midyear meeting of the National Assn. of Professional Surplus Lines Offices Ltd. in San Antonio Feb. 24-27.

Incomplete applications also are bogging down the underwriting process, the panelists concurred.

Royal Specialty is receiving "300 submissions in Atlanta in a day," Mr. Leonard said.

As a result, underwriters are focusing on complete applications first and putting incomplete ones at the bottom of the pile, he said. Buyers' risks, therefore, may not be getting the attention they deserve.

"We want the wholesalers to qualify the risks," he said, and that means getting all the information that underwriters need.

"I've been talking to underwriters

about being patient and responsive to the brokers" in seeking information needed to complete an application, he said. "It's not only many underwriters that haven't seen a hard market," he said. "Many brokers haven't, either."

Agents and brokers also need to make sure a particular risk belongs

**'The use of computer models for pricing doesn't always work. An experienced underwriter can see if there are errors.'**

Paul Goodwin  
American Re-Insurance Co.

in the E&S market, Mr. Leonard said. A 20% premium increase is not a sufficient reason, he said.

Brokers that use more than one wholesaler to shop the same risk also are tripping up the underwriting process, said Thomas B. Ahart, the president of the Independent Insurance Agents of America Inc. in Alexandria, Va. Underwriters are often overwhelmed because they are receiving multiple applications for the same risks, Mr. Ahart said.

The turnaround time on E&S submissions can be 60 days or longer, market sources say.

But retail brokers and wholesalers aren't the only ones to blame for the backlog, said Wiley H. Cooper, a director in charge of the property division of Birmingham, Ala.-based wholesale broker CRC Inc.

Insurers have been "extremely

negligent in hiring and training employees. There's no talent in the pipeline. And now that submission activity is tripling, they can't get to it," Mr. Cooper said.

Insurers' increasing reliance on computer modeling instead of hands-on underwriting analysis has also hurt the industry's bottom line.

"They're taking verbatim what the computer spits out," said Paul Goodwin, vp and marketing manager for American Re-Insurance Co.'s domestic insurance company operations specialty group in Princeton, N.J. "But the use of computer models for pricing doesn't always work. An experienced underwriter can see if there are errors. Maybe the information was input wrong," he said.

The increase in submission activity is being fueled, in part, by the introduction of new exclusions in reinsurance treaties such as those related to terrorism, mold and cyber risks, said Maureen Caviston, the president of Stamford, Conn.-based Partners Specialty Group L.L.C., a wholesale broker. Reinsurers are imposing exclusions on both the standard and E&S markets.

"Every carrier is sending out provisional nonrenewal notices," Ms. Caviston said. "This is also creating a lot of submission activity."

A provisional notice is a way for an insurer to hedge its obligation, depending on whether it can obtain adequate reinsurance.

This nonrenewal notice practice exposes brokers to increased E&O liability, Mr. Leonard said.

"You need to find a placement," he said, "just in case the nonrenew-

al sticks," leaving a policyholder without coverage.

Submissions arrive in the E&S market with "every extension of coverage known to man attached to them," Mr. Cooper said.

If the insurer rejects the extensions, "this creates liability for the agent. It looks like they're not adequately searching the market for a carrier that will cover all of the risks," he said.

Brokers also face increased E&O exposure if the insurer with which they have placed a risk is downgraded.

Brokers that provide coverage binders to policyholders before they receive their actual policies could face E&O liability if they later learn the insurer has added exclusions or sublimits, the panelists said.

Indeed, many insurers are relying on binders because of the delay in policy issuance, Ms. Caviston said.

It may be possible, though, for some policyholders to find most of the coverage they need if they are willing to compromise, Mr. Leonard said.

"We do like it when brokers come to us and say, 'If we exclude a particular risk, will you take it?' Then the deal may go through," he said.

Underwriters mainly are using the blanket exclusions to protect themselves because they are punished more for their bad loss experience than they are rewarded for their good experience, Mr. Ahart explained.

"Underwriters are gun shy and put on more exclusions than are necessary," he said.

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# NAPSLO attendance increases

**SAN ANTONIO**—Attendance at the midyear meeting of the National Assn. of Surplus Lines Offices Ltd. ballooned to 1,600 from the usual 500, partly as a result of the cancellation of last year's annual meeting, organizers say.

NAPSLO's 2001 annual meeting, originally scheduled for Sept. 12-16 in San Antonio, was canceled be-

cause of the Sept. 11 terrorist attacks. About 2,200 industry professionals had registered for the event.

The cancellation eliminated the opportunity for many NAPSLO members to meet and network with other members. To replace those lost opportunities, NAPSLO arranged to return to Texas to hold the midyear meeting, a spokesman

for the Kansas City, Mo.-based organization explained. The midyear meeting was originally scheduled to be held in Scottsdale, Ariz.

NAPSLO's 2002 annual meeting will be held Oct. 6-10 in Boston.

For more information, contact NAPSLO at 6405 N. Cosby, Suite 2001, Kansas City, Mo. 64151; 816-741-3910, or visit [www.napslo.org](http://www.napslo.org).

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# Comings & Goings



Mr. Gallant



Mr. Mullen

## Insurers:

**Timothy J. Padovese** has been named chief executive officer of Ophthalmic Mutual Insurance Co., a San Francisco-based risk retention group. Mr. Padovese previously was vp of underwriting at Norcal Mutual Insurance Co. Mr. Padovese succeeds **James F. Holzer**, who is retiring this spring after having served as the senior executive of OMIC for more than 11 years.

**Randi Cigelnik** has been appointed to the newly created position of general counsel for ACE Europe and ACE Global Markets. He previously was general counsel to ACE Bermuda, ACE Tempest Reinsurance Ltd. and ACE Financial Solutions International. He is based in Hamilton, Bermuda.

**Linda Dickson** and **Richard T. Reminger Jr.** have joined Long

Grove, Ill.-based Kemper Insurance Cos.' Small Business Group. Ms. Dickson, who had been assistant vp of commercial lines at CNA Insurance Cos., will serve as program executive. Mr. Reminger, who had been vp and branch manager at Swett & Crawford Group, will serve as marketing manager.

**Joseph L. Mullen** has been named controller of Boston-based Pilgrim Insurance Co. He previously was controller of The Yankee Group, a Boston real estate development firm.

## Reinsurance:

Endurance Specialty Insurance Ltd. in Hamilton, Bermuda, has appointed **Louis A. Adanio** as executive vp and chief property underwriting officer. He previously was president and chief underwriting officer at Cambridge Risk Technical Underwriters, a managing general agency.

**Richard Agatstein** and **Joan E. Kapfer** have been named senior vps of Berkley Capital Underwriters L.L.C., a specialty reinsurance underwriting management unit of

W.R. Berkley Corp. Mr. Agatstein most recently was principal of Financial Solutions Associates of Stamford, Conn. Ms. Kapfer had been director of strategic services and a member of senior management at Swiss Re America Corp.

Minneapolis-based reinsurance intermediary Benfield Blanch named **Steve Goldberg** senior vp in Benfield Blanch's Solutions Group. He previously was senior vp of underwriting at USAA Group.

## Other suppliers:

**Pierre Gallant** has been named CFO and COO of Seattle-based ClearPoint, an employee benefits consulting and administration provider. Mr. Gallant previously served as president, CEO and director of Oralis.com Inc., a provider of advanced procurement and sourcing technology solutions to health care providers and their suppliers.

**Timothy J. Stanton** has been elected partner in Gardner Carton & Douglas' Human Resources Law Department in Chicago. Mr. Stanton previously was an associate with the law firm. Before joining Gardner Carton in 1996, Mr. Stanton was managing editor of *Business Insurance*.

Three attorneys have joined the international law firm of Fulbright & Jaworski L.L.P. in connection with the expansion of the New York-based firm's insurance practice. They are:

• **Robert A. Ansehl**, who was named partner in the New York of-

fice heading the Insurance Regulatory and Corporate Practice Group. He previously was a partner at Bryan Cave L.L.P. and the head of its insurance practice group.

• **Michael C. Giordano**, counsel in New York. He was a partner and head of the regulatory practice at Bryan Cave.

• **Claudia M. Morehead**, counsel in Los Angeles. Ms. Morehead also was with Bryan Cave in California.

**John Gingell**, senior vp of the Segal Co., a New York-based benefit consulting firm, has been named head of the Chicago office.

**Kathleen Connolly** has been named senior vp of e-health marketing and product management for North America at BCE Emergis, a managed health care cost-containment and technology firm based in Rockville, Md. Ms. Connolly previously was vp of the Business Solutions Group of the Medica Health Plans at Allina Health System in Minnesota.

**Dr. Richard P. Vance** has been named CEO of CorSolutions Medical Inc. of Buffalo Grove, Ill. Dr. Vance had been president and COO of the chronic care management company.

**Christopher Gullen** has been named executive vp and COO of James E. Logan & Associates Ltd., a West Bloomfield, Mich.-based settlement consulting and structured settlement firm. Mr. Gullen had been director of risk management and public liability counsel for Kmart Corp.

## HMOs/PPOs:

Woodland Hills, Calif.-based WellPoint Health Networks Inc. has named four senior officers, all formerly of RightCHOICE Managed Care Inc., to lead WellPoint's newly created Central Region, based in St. Louis. They are:

• **John O'Rourke**, former chairman and CEO of RightCHOICE, has been appointed president of WellPoint's Central Region.

• **Sandra Van Trease** has been named president of UNICARE, a subsidiary of WellPoint. She most recently was president and chief operating officer of RightCHOICE.

• **Stuart Campbell** has been named president of Blue Cross & Blue Shield of Missouri. Most recently, Mr. Campbell served as CFO for RightCHOICE.

• **David Ott** will continue as president of HealthLink Inc., a former subsidiary of RightCHOICE.

**Marvin P. Rich** has been named executive vp of finance and operations at Woodland Hills-based Health Net Inc. Previously, Mr. Rich served as president of WebMD. He also has held executive positions at Oxford Health Plans and WellPoint Health Networks.

## Agents/Brokers:

**Edward Jette** has been named senior vp of SullivanCurtisMonroe Insurance Brokerage of Irvine, Calif. He previously was a senior vp at Wausau Insurance Co. in Riverside, Calif.

# Using pension surplus to pay severance scrutinized

By Chris Clair

**BASKING RIDGE, N.J.**—AT&T Corp. and its union workers found little common ground in recent contract extension talks, but disagreement over using the company's \$4 billion pension surplus for severance payments to thousands of employees expected to be laid off this year proved particularly thorny.

The Washington-based Communications Workers of America publicly blasted AT&T. The plan to use the company's pension surplus for severance was "a raid on our members' pension fund, enabling the company to push downsizing costs onto workers," said Ralph Maly, the union's vp for communications and technologies. "Our members would be financing their own job loss."

But AT&T officials say there never was any plan to use the surplus to pay severance, and the union distorted provisions of the company's contract extension offer.

AT&T's extension offer is now off the table. The two sides will meet March 11 to start negotiating a new contract for the 28,000 workers represented by the union. The current contract expires in May.

Amid the labor squabbles between AT&T and its union, however, lies a serious issue: whether companies should tap pension surpluses built over the years to pay severance packages to workers whose jobs are being eliminated.

Lucent Technologies Inc. of Murray Hill, N.J., said early last year it planned to use a small portion—less than 1%—of its roughly \$52 billion pension plan to finance severance packages for 10,000 employees it planned to lay off. At the time, Lucent's plan had a \$20 billion surplus.

"There's a trend toward using pension as-

sets for that purpose," said Bob Walter, principal and benefit consultant at Buck Consultants Inc. in New York. "We've seen quite a bit of it among our clients and other organizations."

Mr. Walter declined to name any Buck clients that have used pension surpluses to pay severance, saying layoffs and severance aren't things companies want to talk about.

The most obvious appeal for a company is that using surplus pension assets for severance pay frees operating capital to use for other purposes, Mr. Walter said. Employees can benefit because severance payments made from a qualified pension plan are eligible to roll over into other qualified investments, such as an individual retirement account.

But there are drawbacks, too. For laid-off workers younger than 55, a severance payment from corporate pension assets is subject to a 10% excise tax. If the company does not take that amount into consideration when calculating the payment, the employee immediately loses part of the anticipated severance to taxes, Mr. Walter said.

And for corporations, there can be more paperwork involved, complicating the process.

Additionally, companies with union workers must get the union's approval to use pension assets to pay severance, Mr. Walter said. That's something he hasn't seen many unions eager to do. As a result, using pension surplus to pay severance for non-union employees is more common.

Amy N. Moore, an employee benefits attorney with Covington & Burling in Washington, said unions often assert a claim to surplus pension assets.

"Sometimes that's made clear in the collective bargaining agreement, but sometimes it is not as clear to the company as it is to the

union," Ms. Moore said. "There's dispute over whether they (the unions) have that power. Some companies take the position that they've bargained over benefits, but as long as they provide them the surplus is not something the union has a say over."

A spokeswoman for the Communications Workers of America said her union would never allow such a provision in any new contract. "It's something we have to agree to and which we will not support," she said.

Ms. Moore agreed that more of her corporate clients are considering using or have used surplus pension assets to pay severance. She declined to name any of those clients.

She said companies generally only consider such a move when:

• Reducing their work force by offering employees early retirement or through voluntary separations or layoffs.

• Closing operations at a particular location.

• Making divestitures.

"All three things tend to happen more in a down economy and have been happening more over the last year or year-and-a-half," Ms. Moore said.

But not everyone has identified the trend. Richard L. Potter, executive consultant at Chicago-based Becker Burke Associates Inc., said he hasn't seen any evidence of companies using pension surpluses for severance. In fact, he added, the Employee Retirement Income Security Act tightly regulates how pension assets can be used.

"Any pension plan...is guided by a plan document that says what can be paid out of the plan," Mr. Potter said. "I'm not a legal expert or a drafting expert, but I would think that would have to be built into the plan for people to do it."

Ted Disabato, managing director of Disabato Associates Inc. in Chicago, said he has seen clients willing to amend employee vesting rules to immediately vest workers departing as part of a major downsizing who were close to becoming fully vested, allowing them to collect more retirement benefits.

Mr. Disabato said he didn't think using the surplus to pay severance is a good idea. "Those surpluses, when they do get built up, are meant to accommodate for times when markets underperform," he said. "Too often in this world we spend the surplus and then lament the deficits as though there's nothing we could have done about it."

Another issue is the Internal Revenue Service, which has not specifically endorsed the practice of paying severance out of pension assets, said Buck's Mr. Walter. In fact, an old IRS regulation says severance should not be paid from pension plans. But that can be worked around by listing severance as "supplemental pension credits," "transitional pension credits" or "shutdown benefits," he said.

Additionally, if a company's defined benefit plan is in the form of a cash balance plan, companies can merely add to an employee's cash balance account to pay severance.

"(Defined benefit) plans have developed (into) more of a lump-sum payment plan," Mr. Walter said, referring to cash balance and other hybrid plans. "Once you get used to lump sums, it's almost natural to start looking at other circumstances under which you might want to make a lump-sum payment. Severance is one of those."

*Chris Clair is a reporter for Pensions & Investments, a sister publication of Business Insurance.*

March 11, 2002

# International

15

DOHSA bars punitive damages in 1998 Swissair crash: Court

## Damages limited in crash suits

By MICHAEL BRADFORD

**PHILADELPHIA**—Defendants in lawsuits stemming from the crash of Swissair Flight 111 in 1998 are immune from punitive damages, a federal judge has ruled.

Judge James T. Giles of the U.S. District Court for the Eastern District of Pennsylvania ruled in two separate opinions late last month that punitive damages are not allowed because the crash is covered by the Death on the High Seas Act and one of the defendants is protected by the Warsaw Convention.

Both the DOHSA and the Warsaw Convention, an international agreement that restricts aviation liability, preclude punitive damages.

The rulings are not expected to affect the few

remaining cases that are unsettled in the crash of Flight 111, according to attorneys in the case. Plaintiffs attorney Lee Kreindler of the New York firm Kreindler & Kreindler did say, however, that he believes the opinion regarding DOHSA is in error. "I don't believe he's correct in applying DOHSA to Canadian territorial waters and think other judges will disagree" in future cases, he said of Judge Giles' ruling.

The Swissair MD-11 airliner crashed Sept. 2, 1998, in Canadian waters off Nova Scotia, killing all 215 passengers and 14 crewmembers. It was en route from New York to Geneva, Switzerland, when the crew reported smoke in the cockpit. The plane crashed as it attempted to make an emergency landing at Halifax.

Plaintiffs have charged in lawsuits that a fire

sparked by an entertainment system caused the crash. Defendant SR Technics A.G., which is owned by a unit of SAirGroup, was responsible for maintenance of Swissair's fleet. The suits charged that SR Technics was liable for punitive damages because of its role in overseeing installation of the entertainment system.

In response to a motion filed by four parties—SR Technics; Swissair; Delta Air Lines, which participated in an a cooperative operating arrangement with Swissair; and SAirGroup—seeking to dismiss punitive damage claims, Judge Giles ruled that SR Technics was afforded the same protections under the Warsaw Convention as the airlines.

The judge wrote that SR Technics was covered  
**See CRASH/next page**

### RIISING RATES STILL BELOW 1993 LEVELS IN AUSTRALIA

Commercial lines rates as a percentage of 1993 levels, adjusted for inflation

|                        | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002* |
|------------------------|------|------|------|------|------|------|------|------|------|-------|
| Property               | 100  | 99   | 91   | 74   | 59   | 52   | 51   | 54   | 62   | 69    |
| Commercial auto        | 100  | 99   | 95   | 88   | 80   | 75   | 76   | 79   | 85   | 89    |
| Liability              | 100  | 102  | 97   | 81   | 66   | 61   | 63   | 70   | 80   | 90    |
| Professional indemnity | 100  | 104  | 99   | 86   | 69   | 61   | 61   | 65   | 79   | 85    |

\* First half

Source: Deloitte Touche Tohmatsu

## Rates up Down Under

By DAMIEN TOMLINSON

Insurance rates for Australian risks have risen significantly since Sept. 11, but policyholders are still paying less for commercial insurance than they did in the early 1990s.

The J.P. Morgan Securities Australia Ltd./Deloitte Touche Tohmatsu/Trowbridge Consulting 2002 Interim Insurance Survey, released last month, shows commercial insurance rates increased, on average, 20% from June to December 2001. Reinsurance rates rose 25% in the same period.

Meanwhile, Australian commercial insurance buyers are trying to move up their negotiations in anticipation of more rate hikes effective July 1. Risk managers expect the full effects of the collapse of Sydney-based HIH Insurance Ltd. (BI, March 29, 2001) and Sept. 11 losses to become apparent during the June renewal season, the peak renewal period for most Australian businesses.

According to the latest survey, insurers are increasing rates to what they deem to be more appropriate levels, following several years of rate cuts during the 1990s.

"The events of Sept. 11 forced insurers to focus on the rates they were charging for risks being covered and determine whether the risk/reward position was appropriate," the survey says.

"Given the significant reduction in rates during the mid-1990s, in most cases the risk/reward position was found to be inappropriate and,

in the face of large payouts from Sept. 11, insurers had the resolve to reprice premium rates to an appropriate level," the report continues.

Insurance capacity, which had already contracted prior to Sept. 11, compressed further after the terrorist attacks, the report says.

But, according to the survey, commercial insurance rates, when adjusted for inflation, are still lower than 1993 levels, despite the increases in the past year (see chart).

According to the survey, liability coverage had the highest average percentage increase among nonlife classes in the second half of 2001, with rates that rose, on average, 28%. Rates are expected to rise an additional 4% for accounts that renew on July 1 of this year.

Property/business interruption rates rose, on average, 25% from last June to December and were particularly affected by the reinsurance market's reaction to Sept. 11 and subsequent property claims. Similar rate increases are expected at midyear renewals.

Professional indemnity rates increased, on average, by 20% and are expected to rise another 5% by June 30. The report says that the availability of capacity is a major concern, as are rising reinsurance costs.

Peter Caldwell, the national insurance industry group chairman for Melbourne-based Deloitte Touche Tohmatsu, said: "The increases have been a nasty shock for business, which had been enjoying historically low rates due to intense competition. But the spate of merg-

ers and collapses in the industry, in part a consequence of unsustainably low pricing, has served to magnify a problem where community expectations for compensation are out of kilter with business and consumer capacity to pay."

Shane Fitzgerald, a senior insurance analyst for Sydney-based J.P. Morgan, said that insurers are no longer willing to underwrite some liability risks due to the high frequency and size of claims. "It is a similar story in the indemnity areas for professionals and company directors," Mr. Fitzgerald said.

Australian corporate buyers are "bracing" for the midyear renewal period, when most commercial insurance contracts are renewed, said Bruce Ferguson, the group risk and insurance manager of the Sydney Water Corp. and the president of the Assn. of Risk & Insurance Managers of Australasia Ltd. Commenting on the survey, Mr. Ferguson said he has definitely noted a shift from a buyer's to a seller's market.

"ARIMA members are preparing for their contract renewals a lot earlier than in previous years. We began preparations in November for our May 31 renewal," he said. "Sydney Water has maintained a relationship with our London insurers for nine years, so we would hope for favorable treatment due to our loyalty through the soft cycle."

A summary of the report can be downloaded at Deloitte Touch Tohmatsu's Web site at [www.deloitte.com.au](http://www.deloitte.com.au).

## Europe's airlines consider coverage pool

By EDWIN UNSWORTH

**BRUSSELS, Belgium**—Europe's major airlines are considering the creation of an excess-of-loss pool to cover their third-party terrorism liability risks, claiming that commercial rates for the coverage are too high.

The proposal comes from the 26-member Assn. of European Airlines, which said last week that it wants to fund the coverage pool through a surcharge of about 50 cents per passenger. At that rate, the cost to airlines on a per passenger basis would be about one-sixth of what commercial insurance costs, according to the Brussels-based AEA.

**The per passenger cost to airlines participating in the pool would be about one-sixth of what commercial insurance coverage costs, the Assn. of European Airlines says.**

Brian Moore, chairman of the aviation unit at Marsh Ltd. in London, one of the brokers advising on the pool's creation, said the cost to airlines would likely be about 25% to 30% of the cost for commercial coverage.

Insurers canceled or drastically reduced third-party war and terrorism coverage for airlines after the Sept. 11 terrorist attacks.

Under the AEA plan, which is still in very early stages, European airlines would buy war risk and terror-

**See POOL/next page**

## World Updates

### French employers must pay asbestos claimants

France's highest court has ruled that 29 companies contesting their liability for asbestos claims must compensate their former employees made ill by asbestos exposure. The Court of Cassation ruling supports decisions issued by various French courts in favor of the plaintiffs during the previous seven years. Employers involved in the lawsuits include cement companies, automotive parts manufacturers and Alcatel S.A., a large telecommunications company. Although France did not ban asbestos use until January 1997, the Paris court ruled that, under contracts of employment, "the employer has a safety obligation, notably with regard to work-related illnesses contracted by the employee due to products made or used by the business."

### Groupama Insurances names chairman/CEO

Pierre Lefevre has been appointed chairman and chief executive officer of Groupama Insurances, the London-based subsidiary of Groupama-GAN S.A. of Paris. Mr. Lefevre was formerly chairman of the executive board of AXA Netherlands B.V. Last month, the planned sale of Groupama Insurances was called off, and Jean-Paul Bouquin, Groupama's group director of planning and control, took temporary control of the company.

### Amlin ups capacity by 48% for 2002

Lloyd's of London managing agency Amlin Underwriting Ltd. has boosted its underwriting capacity for composite syndicate 2001 by 48%, to £850 million (\$1.23 billion), for the 2002 year. Amlin said it had entered into a quota-share agreement with XL Re Ltd. to provide an extra £50 million (\$72.8 million) of capacity for syndicate 2001.

### Heath Lambert forms ART unit

London-based Heath Lambert Group has launched an alternative risk transfer unit. John Ryan, managing director of the new ART division—Heath Lambert Hybrid Solutions—said that the current hard market is the ideal backdrop for a new ART operation. "ART already has a market value of up to \$20 billion. We estimate that this figure is set to triple within the next five years," Mr. Ryan said. Heath Lambert's new ART operation will focus on risk securitization and captives, he said.

**See WORLD UPDATES/next page**

# Pool: Airlines consider cover alternatives

Continued from previous page

ism limits of up to \$150 million in the commercial market. The proposal calls for the pool to cover risks between \$150 million and \$1.5 billion, and for European governments to cover any losses beyond that point. Further details were not available.

The Montreal-based International Civil Aviation Organization, which promotes aviation security, is proposing a fund based on similar principles but with a wider participant base, including U.S. airlines and airports. But Mr. Moore said some governments have opposed this plan. The ICAO has about 187

member countries.

The U.S. Air Transport Assn. is also planning an airline risk retention group that would cover war liability risks for U.S. airlines and obtain reinsurance coverage from the U.S. government (*BI*, Feb. 11).

That proposed facility, called Equitime, has been assailed by some

private insurers, which contend that its use of government reinsurance is inappropriate and that coverage is available in the private market. But the group's U.S. airline organizers have countered that the coverage available is too costly and limited in scope (*BI*, March 4).

The European airline organiza-

tion appealed last week to the European Commission to extend by three months the period in which governments would provide coverage for airlines. The coverage is set to end after this month.

An AEA spokesman said the E.C. has forwarded the proposal to its transport committee for review and that a decision is expected by the end of the month. He also noted the proposal would still need consent from individual governments.

## World Updates

Continued from previous page

### 2001 P/C losses push SCOR into red

SCOR S.A. recorded a net loss for 2001 of 278 million euros (\$247.8 million), compared with a profit of 59 million euros (\$52.6 million) for the prior year. The Paris-based reinsurer's premiums, however, rose 41%, to 4.89 billion euros (\$4.36 billion), because of gains in market share. SCOR attributed the results in part to losses on property/casualty reinsurance and large corporate accounts, including Sept. 11 losses.

### Briefly noted

Net income at Paris-based **Assurances Generales de France S.A.** fell 15% in 2001, to 717 million euros (\$620.2 million). AGF, a unit of Allianz A.G. Holding, attributed the drop to reduced

property/casualty underwriting income, mainly outside France. Higher rates helped boost overall premiums written by 5.5%, to 16.6 billion euros (\$14.36 billion)....The London-based RISK reinsurance trading exchange has become a member of the **Assn. of Cooperative Operations Research & Development**. Pearl River, N.Y.-based ACORD works on the development of data standards....Rick Hodgdon has been appointed executive managing director of **Transamerica International Reinsurance Ireland Ltd.**, the Dublin-based arm of Charlotte, N.C.-based Transamerica Reinsurance. Mr. Hodgdon joined Transamerica in 1999....Derek Walsh has been appointed group legal counsel for London-based reinsurance broker **Benfield Group L.L.C.** Mr. Walsh will head the group's U.K. and U.S. legal teams.

PHOTO: REUTERS



Families of victims of Swissair Flight 111 visit the crash site, located off the coast of Nova Scotia.

## Crash: Punitive damages barred

Continued from previous page

by the convention because it "acted as an independent agent of Swissair, pursuant to a contract, and performed services related to flight...that the carrier would be bound to perform, either by law or in the interest of providing the best, safest and most thorough carriage services pursuant to the performance of its contract with its customers."

He referred to the 1977 case *Reed vs. Wiser*, in which the court reasoned that the Warsaw Convention restricted plaintiffs from recovering from an airline's employees more than could be recovered from the airline. Later cases expanded the restriction to recoveries from "employees and agents who perform services fundamental to" the airline's business, the opinion notes.

Judges Giles ruled in a separate motion filed by The Boeing Co.,

McDonnell Douglas Corp. and other defendants that joined the motion, that a version of DOHSA amended by Congress in 2000 applied in the Swissair crash. He disagreed with plaintiffs' lawyers, who argued that DOHSA cannot apply because the crash occurred in Canadian territorial waters that the attorneys contended are not included in the internationally accepted scope of the term "high seas."

The judge countered that when Congress amended the act to expand the definition of high seas, lawmakers obviously were "well aware of the large body of federal case law that had applied the Act to aviation accidents occurring on foreign territorial waters."

Mr. Kreindler said he expects the opinions to have little impact on the cases that remain unsettled. "Most of the cases are settled or they are governed by a stipulation"

that the amended form of DOHSA be applied, he said. "Neither decision has any practical importance. They don't have any impact on my firm's cases."

The attorney said his firm has just three cases related to the crash that are unsettled. Around 17 others yet to be settled are being handled by other firms, he added.

Charles Hart, an attorney with Philadelphia-based Wolf, Block, Schorr & Solis-Cohen, which represented Boeing, agreed that the opinions will have little impact on the Swissair cases because most claims have been settled.

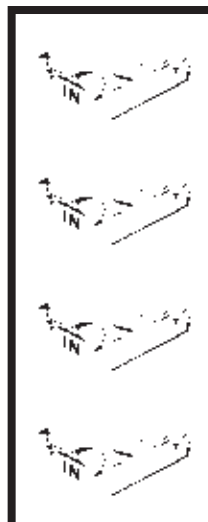
While noting that the opinions could influence future cases, Mr. Hart said they were handed down by "one district court in a multidistrict case. They are not binding on everybody. The question hasn't been decided by any circuit court," he said of the DOHSA issue.

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### AIRMIC head faults slow progress

## Terror coverage action urged

**LONDON**—The head of the Assn. of Insurance & Risk Managers has slammed the U.K. insurance industry and government for their "slow progress" in resolving risk managers' concerns about coverage for terrorism risks.

AIRMIC Executive Director David Gamble said in a statement that, despite several meetings involving AIRMIC, insurers, and the U.K.

Treasury, some buyers remain unable to obtain terrorism coverage.

Mr. Gamble said that the discussions have stalled in part because the U.K. insurance industry widened the debate on terrorism coverage to include liability issues. Although AIRMIC recognizes the importance such matters, questions about property and business interruption coverage should by now

have been finalized, he said.

Mr. Gamble also expressed concerns about the Treasury's intention to withdraw government support for the aviation industry on March 20. "The commercial insurance that has become available could evaporate if there was to be another attack on an airline, so this action gives no long-term certainty."

—By Sarah Veysey

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There will be no charge for RFCP bid documents. Solicitation documents may be requested by mail or fax at (212) 878-1203. Mail and fax requests should be provided on company letterhead and addressed to **Lauren Gregory, Esq., ARM, Director, MTA Risk and Insurance Management Department, 347 Madison Avenue, (341/18), New York, New York 10017.** Proposals will be due by Friday, May 3, 2002, at 11:00 a.m. Eastern Daylight Savings time.



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## LEGAL NOTICES

## LEGAL NOTICES

### NOTICE OF SALE OF INSURANCE COMPANY CHARTER AND LICENSES

Pursuant to the Receivership Court's Order of March 6, 2002, Carroll Fisher, Insurance Commissioner of the State of Oklahoma, solely in his capacity as Receiver ("Receiver") for Mid-Continent Life Insurance Company, ("MCLIC"), will offer for sale by sealed bid, the MCLIC Charter, without the name, and the thirty-eight (38) state licenses of MCLIC to the highest qualified bidder.

### DESCRIPTION OF PROPERTY AVAILABLE FOR SALE

The Receiver is offering for sale by sealed bid the original Charter and licenses of MCLIC, an Oklahoma domesticated life insurance company. The Charter will be sold as a shell and subject to a change of name. American Fidelity Assurance Company has been granted the rights to use the name "Mid-Continent Life Insurance Company" by the Receiver as part of the Assumption Reinsurance Agreement approved by the Receivership Court. The MCLIC Charter was granted in 1909 and has been continuously in existence since that time. The Charter has been cleared of any and all liability by Order of the Receivership Court on October 23, 2000.

MCLIC was licensed to do business in 38 states. These licenses will be sold together in an "as is" condition in a block along with the Charter. Any bidder must satisfy for themselves that they can meet the requirements of the various states to re-instate the MCLIC licenses. The Receiver cannot and does not guarantee the reinstatement of the licenses. The Receiver intends the statutory deposits within the various states to travel with the licenses to the new owner of the licenses. The Receiver agrees to assist the successful bidder with the transfer of these deposits but cannot and does not guarantee the final transfer.

### HOW TO APPLY TO BECOME A BIDDER

All bidders must be pre-qualified to bid. To become qualified, an applicant must gain the recommendation of the Receiver and the approval of the Receivership Court. All applicants must submit the following to the Receiver by 5:00 p.m. (CDT) on April 1, 2002:

1. A non-refundable fee of Ten Thousand Dollars (\$10,000.00);
2. The name and address of each person by whom or on whose behalf the acquisition of the MCLIC Charter and Licenses is to be effected;
3. A report as to the nature of the acquiring party's business operations over the past five years;
4. Any conviction of any felony or of a misdemeanor involving moral turpitude, dishonesty, or breach of trust, as well as any discipline or sentence imposed over the past ten years. This information must be provided for each and every person by whom or on whose behalf the acquisition of the MCLIC Charter and Licenses is to be effected;
5. An informative description of the business intended to be done by the acquiring party and its subsidiaries should the bidder prevail;
6. Fully audited financial information as to the earnings and financial condition of the acquiring party for the preceding five years;
7. An affidavit indicating that a verified Letter of Credit is being sought in an amount of Four Million Dollars (\$4,000,000.00) from a stable financial institution. The Four Million Dollars (\$4,000,000.00) will constitute the minimum bid the Receiver will consider.

### THE PROCEDURE

The Receiver will evaluate the provided information and make a determination as to whether or not the applicant is qualified under current Insurance Department Regulations and Oklahoma Statutes to hold a charter and license. If (1) the Receiver determines the applicant is qualified, and (2) the non-refundable fee is paid, and (3) the affidavit regarding the Letter of Credit is provided, the applicant will be recommended by the Receiver to the Court to be declared a qualified bidder, subject to presentation of the Letter of Credit on the day the sealed bids are opened. The Receiver will give notice to all applicants of their status on or before June 3, 2002.

The Receiver will present the Receivership Court with his list of recommended bidders in a hearing on June 17, 2002 at 1:30 p.m. (CDT). Anyone objecting to the Receiver's recommendation may appear and object at that time. After hearing, the Court will make a finding and Order as to which bidder(s) will be qualified to participate in the sealed bidding process. The pre-qualification process does not guarantee the acquiring party of Insurance Department approval in Oklahoma or any other state where MCLIC has a license. Only pre-qualified bidders will be allowed to submit sealed bids, and the sealed bids must be received by the Receiver on or before 5:00 p.m. (CDT) on July 1, 2002.

All bids must be in U.S. dollars with a minimum acceptable bid of Four Million Dollars (\$4,000,000.00). The Receiver reserves the right to cancel the sale if the minimum bid is not met. The prevailing bidder must present its verified Letter of Credit in the amount of Four Million Dollars (\$4,000,000.00) to the Receiver before being finally selected. The sale will be for cash only and will be final. The transfer of the Charter and Licenses will be by Receiver's Deed and subject to the approval of the Oklahoma Insurance Department in a Form A proceeding and final approval by the Receivership Court. The entire sale price will be due and payable at the time the time the Receivership Court approves the transfer of the Charter and Licenses to the acquiring party.

### TIME & PLACE OF OPENING OF SEALED BIDS

The opening of the sealed bids received will take place at the OKLAHOMA INSURANCE DEPARTMENT, 2401 N.W. 23rd STREET, SUITE 28, SHEPHERD MALL, OKLAHOMA CITY, OKLAHOMA, on the 8th DAY OF JULY, 2002, AT 1:30 PM. (CDT). Only those bidders pre-qualified by the Court at the June 17, 2002, hearing will be allowed to participate.

### FOR MORE INFORMATION

For additional information, please contact Andrew D. Downing, Esq. of Rhodes, Hieronymus, Jones, Tucker & Gable, P.L.L.C., Counsel for the Receiver, at: 918-582-1173 or P.O. Box 21100, Tulsa, Oklahoma 74121-1100.

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## CICA Annual Conference

# DOL may speed plan reviews

## Experts advocate captive financing of benefits risks

By DAVE LENCKUS

**TUCSON, Ariz.**—As Archer Daniels Midland Co. awaits regulatory approval of its plan to use its domestic captive insurer to reinsure group life insurance benefits, other employers should also consider financing employee benefits through captives, a panel of captive experts advises.

Department of Labor approval of ADM's proposal would open the door to an expedited approval process to other employers with similar arrangements. Employers have long been interested in expanding their captives to fund employee benefits risks for many reasons, including the potential to cut tax liabilities, according to the captive experts.

Employers, though, should bear in mind several factors to avoid running afoul of Labor Department requirements, the panelists said during the Captive Insurance Cos. Assn.'s annual conference, held March 3-5 in Tucson, Ariz.

Decatur, Ill.-based ADM is seeking permission to use its Vermont captive to reinsure life insurance policies that Minnesota Life Insurance Co. writes for the agribusiness giant's salaried and hourly employees (*BI*, Feb. 11).

ADM's proposal is based on the arrangement that the Labor Department approved in 2000 for Columbia Energy Group. In granting Columbia Energy an exemption from Employee Retirement Income Security Act provisions, the Labor Department allowed the company to reinsure its disability benefits program through the Vermont branch of its Bermuda-domiciled captive (*BI*, Aug. 21, 2000).

Approval of Columbia Energy's arrangement is significant because the Labor Department evaluated that transaction using criteria that were far more flexible than those the department established in 1979.

One 1979 Labor Department rule that essentially has blocked employers from funding employee benefits through captives is that 50% of the captive's business has to be third-party risks. Few employers want their captive insurers to assume that much unrelated business.

But the Labor Department softened its stance in 1999, when a department official said complying with the 50% rule no longer would be the only way employers could win departmental approval.

If ADM's proposed arrangement were approved, it would dramatically cut regulatory red tape for other employers. Other employers could obtain approval for similar arrangements in a fraction of the time that Columbia Energy had to wait—a waiting period ADM potentially faces as well, said attorney P. Bruce Wright, a partner with LeBoeuf, Lamb, Greene & MacRae L.L.P. in New York. Mr. Wright filed the Columbia Energy and ADM applications with the Labor Department.

Rather than waiting six months to a year for the Labor Department to act on an employer's proposal, a special expedited review process would require the department to make a tentative decision within 45 days, Mr. Wright said.

**If Archer Daniels Midland's proposed arrangement were approved, it would cut regulatory red tape for other employers.**

The expedited review process is triggered when an applicant can cite two substantially similar exemptions the Labor Department approved within the past five years.

Financing employee benefits through a domestic captive could mean millions of dollars in tax benefits for employers, noted Gary R. Bowers, a principal in the Raleigh, N.C., office of the accounting firm of Johnson Lambert & Co.

Several appellate courts have ruled that a parent company can deduct premiums paid to a captive provided the captive writes a significant amount of unrelated business. The 9th U.S. Circuit Court of Appeals ruled that a significant amount of third-party business could be as little as 30% of the captive's premium volume.

In a ruling that helps employers meet that 30% test, the Internal Revenue Service a year later ruled that group term life and accident/health insurance represents unrelated business (*BI*, April 26, 1993).

To illustrate the tax and financial advantages of using a captive to fund employee benefits, Mr. Bowers asked conference attendees to consider a parent company that covers

its \$15.5 million general liability exposure through a domestic captive and experiences \$5 million of known claims annually. Mr. Bowers said that by using the captive to also fund the parent company's \$8.5 million of employee benefits costs, the parent company would increase its tax deductions by \$7 million and increase its cash flow by \$2.2 million.

In structuring proposals to fund benefits through domestic captives, employers that want to avoid the Labor Department's 50% unrelated business test should follow the rules the department established in the prohibited-transaction exemption it granted Columbia Energy, according to Mr. Wright.

Those rules include that:

- The captive either has been audited by a certified public accountant within the past year or has undergone an examination by regulators in the state it is domiciled.
- The captive charges a premium comparable to those charged by similarly rated commercial insurers for similar business.

Mr. Wright suggested that employers work with the Labor Department to allow their captives to charge premiums that highly rated insurers charge, because lower-rated insurers may charge less in an effort to boost their business.

- The captive parent must retain an independent fiduciary at its expense to determine whether the captive is complying with Labor Department requirements.

The department's definition of an independent fiduciary "are requirements that are not horribly difficult to meet," Mr. Wright said. For example, less than 5% of the fiduciary's income can be attributed to work performed for the parent company, its captive or an affiliate.

Mr. Wright also suggested that employers might be able to fund their employee benefits through captive arrangements that neither meet the Labor Department's 50% test nor resemble the Columbia Energy and ADM arrangements.

Those captive structures include a pooling arrangement, an association captive and an operating group captive arrangement in which several organizations would co-own both an operating entity and a captive insurer that covers the entity's property/casualty exposures and employee benefits costs.

## CICA Annual Conference

# Fronting users find value: Survey

By DAVE LENCKUS

**TUCSON, Ariz.**—Despite higher fronting costs and new restrictions on their captive operations, most captive insurance company owners rate their fronting costs and the value of their fronting arrangements as reasonable, a new survey finds.

Captive owners also continue to consider fronting arrangements as fairly important to the success of their captives, according to the results of the annual fronting survey conducted by the Captive Insurance Cos. Assn.

"So, in general, they think it's a reasonably priced product and that they're getting a reasonable value for it," said Brian C. Donovan, the risk sharing/fronting survey chair for CICA.

Mr. Donovan, who also is the president of Vermont-domiciled group captive Steel Tank Insurance Co., released the preliminary survey results during CICA's annual conference conference, held March 3-5 in Tucson, Ariz.

Results of the survey are based on responses from 93 captive owners, 80 of which use fronting arrangements for their captives. Among the respondents, 64 represented single-parent captive owners, and 29 represented group captives.

The survey, which was completed in February, found that fronting costs average \$572,000 for single-parent captives and \$738,000 for group captives.

Those costs have increased significantly in the past years, 42% of the survey respondents reported. But the increases varied greatly for single-parent and group captive owners. Single-parent captives reported a 50% increase, while group captives' fronting costs rose just over half as much—28%.

But more than half of the survey respondents, 55%, reported that their fronting costs have not fluctuated within the past year. And 3% reported that their fronting costs decreased.

Most respondents, 69%, rated their fronting costs as reasonable, and 9% characterized their costs as inexpensive. Still, more than one-fifth of the respondents, 22%, labeled their fronting costs as expensive.

Overall, fronting costs eat up between 6% and 8% of captives' premiums, the survey found.

Despite some lower marks from captives this year on the importance of particular services that fronting insurers provide, captive owners continue to consider fronting arrangements as fairly important to the success of their captives.

In a rating of that importance on a scale from one to five, with

one being of greatest importance, fronting relationships received a 1.7 rating, on average, from group captives and a 2.5 rating, on average, from single-parent captives. Those results were unchanged from last year's survey.

Still, some captive owners this year reported they were less pleased with elements of their fronting arrangements.

One fifth of the respondents reported that their fronting insurers have imposed more restrictions on their captives' operating autonomy in the past year. About three-fourths, 74%, reported that their restrictions have not changed, and 6% reported that their restrictions have been eased.

In addition, on a one-to-five scale, the importance that captive owners place on several services that fronting insurers provide slid this year.

The importance of the claims services fronting insurers provide fell to 2.5 this year, from 2.2 a year ago, for captive owners, 47% of which reported they had total autonomy in handling claims.

"I was, frankly, shocked by this" high of a response of captive owners who report they have total claims-handling autonomy, Mr. Donovan said.

Among other survey respondents, 38% reported they had quite a bit of claims-handling autonomy, 14% reported they had some autonomy, and 1% reported they had none.

The importance of underwriting services slid to 2.6 this year, from 2.5 a year ago. The importance of marketing remained unchanged at 3.5.

Policy language was the only fronting insurer service that captive owners rated higher in importance this year. Captive owners rated that service 2.3 this year after rating it 2.5 last year.

The fronting insurers that the survey respondents use most are units of ACE Ltd., American International Group Inc., Kemper Insurance Cos., Liberty Mutual Insurance Co. and Old Republic International Corp. The survey results did not provide specific percentages.

The survey also found that a plurality of captive owners, 44%, used policy forms that are hybrids of manuscripted forms and standard forms developed by the Insurance Services Office Inc. of New York. Among the other respondents, 34% used only manuscripted forms and 22% used only ISO forms.

*The full results of the fronting survey are not yet available from CICA.*

## CICA Annual Conference

# Conference selects new board

**TUCSON, Ariz.**—The Captive Insurance Cos. Assn.'s annual conference, held March 3-5 in Tucson, Ariz., drew an estimated 360 attendees, including 26 exhibitors.

A year ago, CICA drew 337 attendees, including 24 exhibitors.

CICA elected its board for 2002/2003 at the conference. Michael B. Evans, an attorney with

Sutter Insurance Services Corp. in Sacramento, Calif., was elected CICA board chairman; Richard H. Hamilton, president and general manager of CSX Insurance Co. of Burlington, Vt., was elected board vice chairman and conference chairman; and Daniel S. Labrie, president and chief executive officer of the Housing Authority Insur-

ance Group in Cheshire, Conn., was elected secretary/treasurer and membership chairman.

The 2003 annual conference is scheduled for March 9-11 at the Hyatt Grand Cypress in Orlando, Fla. Additional information about the conference is available from CICA conference coordinator Chrissy Betz, 952-928-4655.

# WTC: New standards for buildings urged

Continued from page 1

the engineering of buildings to withstand earthquake damage has improved markedly as a result of federally supported efforts," Rep. Boehlert he said.

But those investigations are flawed, said Mr. Corbett of John Jay College.

**'The current World Trade Center disaster inquiry has exposed a gaping hole in the way we investigate disasters. We don't have a comprehensive plan for disaster investigations, except for plane crashes.'**

Glenn P. Corbett

John Jay College of Criminal Justice

"The current World Trade Center disaster inquiry has exposed a gaping hole in the way we investigate disasters," he said. "We don't have a comprehensive plan for disaster investigations, except for plane crashes, and we don't apply the necessary resources for complete and thorough investigations of disasters."

In his testimony, Mr. Corbett faulted model building codes for high rises for treating 100-story buildings the same as 15-story buildings in terms of fire protection. Although automatic sprinklers are the best protection against fire, he said that they need a backup "when we are 1,000 feet high in a building on fire. We need a proper balance of passive and active protection in larger high-rise structures."

Mr. Corbett also said a test used to establish the fire resistance of various structural elements of a building, such as the fire coating for beams, should be re-examined and updated because it remains basically the same as when it came into use more than 70 years ago. "I would argue that the fires of the 1920s are different from those of today," he said in his testimony.

"We can learn many lessons from the disaster at the World Trade Center. In fact, we must learn these lessons. The lessons may take the form of better building code regulations, enhanced building design methodologies, improved emergency procedures and enhanced protection against terrorist attacks. We must assure that these lessons are actually applied, increasing the level of safety and security for all our citizens," Mr. Corbett said.

Arden L. Bement Jr., director of the National Institute of Standards and Technology in Gaithersburg, Md., joined Mr. Corbett in calling for updating the fire endurance ratings.

Mr. Bement also warned that the "overwhelming majority" of commercial buildings "are vulnerable to terrorist attack on a number of

fronts." For example, they have no protection against chemical, biological and radiological threats. He said NIST wants to work with the Department of Defense to develop guidelines and technology to reduce buildings' vulnerability to such attacks.

But Mr. Bement and other government representatives came under some criticism from lawmakers for the lack of coordination among government agencies in investigating the World Trade Center collapse.

Several lawmakers noted that federal authorities investigating the twin tower collapse lacked the power to sequester evidence, in contrast to the powers enjoyed by members of the National Transportation Safety Board as they investigate plane crashes. As a result, much of the steel from the towers—which could contain clues about the nature of the collapse—has already been moved to scrap yards.

Rep. John Larson, D-Conn., said that trying to find out which agency was in charge of the investigation was like "the Abbott and Costello response of 'Who's on first?'"

"We have a very serious problem," he said.

Mike Burke, vp and chief engineer for Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global, said he agreed with portions of Mr. Corbett's testimony, "although I might change some of the conclusions."

"While we are absolutely proponents of automatic sprinklers and we still believe firmly that installing sprinklers is an absolute necessity, we have never looked at sprinklers vs. fire resistance as something where you do tradeoffs," said Mr.

**'Once the construction technique had evolved to a point where you could no longer count on the building itself confining a fire to one floor, then I think all bets changed'**

Mike Burke  
FM Global

Burke. "The way we look at a high-rise building from an engineering and underwriting basis is with the assumption that the sprinklers would be out of service."

Changes in construction methods over the years have played a role in the changing the vulnerability of high rises, Mr. Burke said. "Once the construction technique had evolved to a point where you could no longer count on the building itself confining a fire to one floor, then I think all bets changed. That isn't an issue of getting more and more fire resistance, that is an issue of paying more and more attention to the opportunities you provide in your design to permit the fire to spread uninhibited," he said.

# EAP: Sept. 11 raised awareness

Continued from page 2

turn of displaced employees to work was directly correlated to the decline in calls to the EAP. "Getting back to work was a big factor in helping people get back to normal," he said.

Calls to Corporate Counseling Associates Inc. stayed at the double the pre-attacks levels for two months, then they declined with the year-end holidays, said Robert Levy, the president of the New York-based EAP. Corporate Counseling has about 150 clients in the New York City area.

The volume picked up again, though, and in January and February the EAP was still receiving, on average, nearly twice as many calls as it did in the period before Sept. 11, he said.

At Verizon, the volume of calls to the company's EAP has dropped significantly since immediately after the attacks, but it is still about 10% higher than pre-Sept. 11 levels, Mr. Bowman said.

"We've seen a remarkable return to normal. But it's not necessarily because the trauma has gone away," he said. Employees might be choosing not to deal with their trauma rather than seeking counseling, he said.

Although employers have, by and large, ended on-site counseling and calls for Sept. 11-related trauma counseling have declined sharply, employee requests for assistance for a wide variety of concerns are up strongly from a year ago, said Corporate Counseling's Mr. Levy.

Calls for help with depression, drug and alcohol problems and stress have all increased, he said.

While Mr. Levy stressed that it is too soon to call the current heightened levels a new norm, he acknowledged that "it's a departure from what was before."

EAPs seem to have taken on a more-important role for both employers and employees, he said.

"Sept. 11 and the counseling that was provided made it acceptable for people to deal with issues that were chronic," Mr. Levy said.

"It became more acceptable to use the services," concurred Mr. Cohen of Harris, Rothenberg International. Employees are now more likely to use EAPs, agreed



PHOTO: AFP

**Last October, a makeshift counseling center was set up in Liberty State Park in Jersey City, N.J., to offer assistance to families of victims of the Sept. 11 attack in Manhattan. Utilization of counseling services for Sept. 11-related trauma has raised the overall use of employee assistance programs for other issues, benefit experts say.**

Verizon's Mr. Bowman.

He noted that EAPs received a lot of publicity within Verizon after Sept. 11, and this heightened level of activity "left a lasting impression."

As a result, Mr. Bowman said, managers and members of the human resources staff now promote the use of the EAP more actively.

If, for example, a manager were to notice that members of a particular unit were experiencing significant stress, an EAP counselor might be called in to help workers adjust, he said. While this service was always available, it is used much more now than it was before Sept. 11, Mr. Bowman said.

Many employees in New York are making greater use of EAPs, agreed Eileen Settineri, vp of health and welfare benefits at Aon Consulting Inc. in New York.

"Employers kind of took that service for granted," Ms. Settineri said. But now, she said, "there is a heightened awareness of their capabilities."

# Superfund: No new action likely

Continued from page 3

Response, Compensation and Liability Act in 1980, is "declining."

Most of the worst sites have already undergone remediation, Mr. Arlington said. "Carol Browner herself declared shortly before she left that 92% of all Superfund sites were either totally cleaned up or being cleaned up," he added.

Mr. Arlington said that the sudden focus on Superfund taxes might have more to do with the politics of energy than the politics of environmental clean up.

"The bottom line is new Superfund taxes aren't needed. It looks to us that this is simply an attempt to add a poison pill to the (Arctic National Wildlife Refuge) issue. Since most of the taxes hit the oil industry, it's clear that this was an attempt to put a poison bill in the Senate energy bill." The Bush ad-

ministration is pushing to allow oil drilling in Alaska's ANWR—a move that is vehemently opposed by environment groups and Democratic lawmakers.

**'The bottom line is new Superfund taxes aren't needed.'**

John Arlington  
American Insurance Assn.

Keith McCoy, director-environmental quality for the National Assn. of Manufacturers, said that he doesn't think the current dispute over cleanup taxes marks the beginning of an "all-out fight" over the Superfund program, which occurred during the law's reauthorization battle of 1993-94.

That fight, which led to bitter rifts within the insurance industry, revolved around proposed comprehensive reforms of Superfund's liability structure. Although an attempt to roll back retroactive liability failed, smaller incremental reforms, often designed to ease small business' liability burdens, have been instituted over the past eight years.

Businesses may have to settle for small reforms for the foreseeable future, said Mr. McCoy. "With the Senate we have now," major liability reform stands little chance of success, he said.

"We would love to see retroactive liability reform, but it's not going to happen, at least with this Congress. If that's not going to happen, or anything that resembles reform, I don't think we're going to support any of this," he said.

# GM: Discouraging hospital overbuilding

Continued from page 1

determines demand, Mr. Williams said.

GM is not alone in believing that a hospital building boom can unnecessarily add to a duplication of services, increased health care costs and reduced quality of care.

The Boeing Co. also is concerned about hospital capital expansion programs, according to a Boeing spokesman. The Chicago-based aerospace company plans to address the issue, the spokesman said, through Boeing's participation in the Leapfrog Group, a Washington-based employer organization formed in 2000 to promote patient safety.

Other large corporations are launching studies of the factors that increase hospital costs, including capital expansion in communities where they have large concentrations of employees, said Greger Vigen, a principal for William M. Mercer in Los Angeles.

The Washington-based Center for Studying Health System Change reports that hospitals nationwide are reverting to more-traditional retail marketing strategies. Retail strategies encourage hospitals to engage in one-upmanship, competing for patients and doctors by building new facilities.

The practice is driving a "medical arms race," according to the HSC, a nonpartisan policy research organization that tracks health care trends.

Retail marketing strategies waned during the 1990s, when managed care forced hospitals to slash costs and improve quality to win health plan contracts, according to the HSC. But with managed care in decline, retail strategies have returned and hospitals again



PHOTO: REUTERS

**Detroit-based General Motors Corp. wants more say in the building of hospital facilities in communities where its employees and their dependents are concentrated.**

are aggressively marketing to consumers.

Consolidation among hospital systems has not slowed the duplication of service, the HSC reports. Instead, a smaller number of hospitals are competing more intensely rather than complementing each other's services.

Supply induces demand as hospitals focus most of their building and marketing efforts on profitable facilities, such as cardiac care centers and other facilities staffed with medical specialists, an HSC spokeswoman said.

That is precisely what GM has noticed in some communities in which its employees are concentrated, according to Russ Towner, regional director for GM's health care initiatives in Anderson, Ind. GM has 100,000 lives covered under health care contracts in Indiana.

After one hospital system in Indianapolis revealed it was building a cardiac care facility, two other area hospitals announced they would also build new facilities and a fourth disclosed it would upgrade an existing cardiac center, Mr. Towner said.

"When one provider makes a move, all the other providers feel they have to follow suit to maintain their market share," Mr. Towner said. GM believes that this oversupply drives hospitals to perform more procedures, regardless of whether they are necessary, he said.

The practice also diminishes quality, Mr. Towner said. For example, he said, the building of more hospitals exacerbates an already-critical shortage of nurses, which, in turn, can lead to medical errors.

Mr. Towner acknowledges that GM is not an expert on hospital capacity, but he argues that facilities often are built and technology is acquired without consideration of the entire cost impact on a community. Employers, along with other community members, should have a voice in hospital expansion, he said.

Responding to charges of hospital overbuilding, a spokeswoman for the Chicago-based American Hospital Assn. said that the current level of hospital construction is necessary because many community hospitals are

old and must be replaced. Some communities also need more hospital space to keep pace with population growth, the spokeswoman said. Additionally, she said, an aging population is driving a need for centers that provide specialty services such as coronary care.

A few states have certificate-of-need laws, which require hospitals to obtain state approval for expansion. Those laws provide a forum for public input, and GM would like to see the concept expanded to more states, Mr. Towner said.

Employers lost much of their influence in regard to hospital expansions some years ago, when many states repealed their certificate-of-need laws during a deregulation movement, said HSC President Paul B. Ginsburg.

GM is also working on other fronts. The company's other community health care initiatives, for example, include the sponsorship of community health fairs and disease education programs. The fairs and other GM disease management efforts have reduced such problems as hospitalizations for asthma, Mr. Towner said.

Coordinating the programs also helps GM strengthen its relations with local medical providers. That, in turn, gives GM opportunities to informally lobby those providers, urging them to consider a community's entire needs—and not just the hospitals' profitability—when considering expansion plans.

Mercer's Mr. Vigen said that more employers were weighing community initiative measures about a decade ago. But employer interest receded, he said, when health care costs

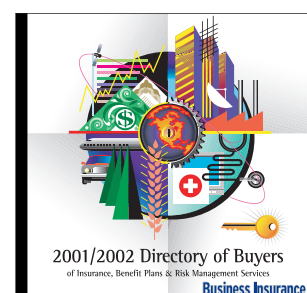
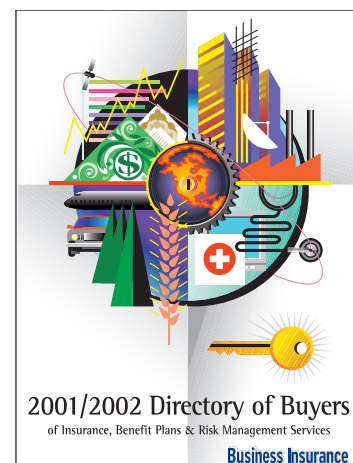
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# Asbestos: Court orders insurers to pay

Continued from page 1

and umbrella insurers must contribute, even if the primary insurance limits aren't exhausted, as long as the policyholder's potential liabilities would penetrate their attachment points.

Insurer attorneys argue that the Feb. 26 decision by Superior Court Judge Judith C. Chirlin runs contrary to a 2001 California Supreme Court ruling, *Certain Underwriters at Lloyd's of London et al. vs. Powerine Oil Co.*, which held that court-ordered damages are a prerequisite for obtaining coverage under commercial general liability insurance policies (*BI*, Feb. 12, 2001).

But the judge disagreed, asserting in her 38-page opinion in the *Fuller-Austin* case that "the confirmation of the plan of reorganization is, as a matter of law, a judgment...(and) as a judgment and an adjudication by a court, the liabilities established by the confirmed bankruptcy plan trigger coverage under the insurance policies."

"This is absolutely consistent with *Powerine*," said David Goodwin, a partner at Heller, Ehrman White & McAuliffe L.L.P. in San Francisco, who represented *Powerine* in the earlier dispute. "There was a contested proceeding in the bankruptcy court followed by a judgment, and there is nothing in *Powerine* that requires the judgment to be in an ordinary court vs. the bankruptcy court," he said.

"It's a fantastic ruling for policyholders," said Ed Joyce, a partner in the New York office of Heller, Ehrman. "It says the insurers are obligated to pay all sums the policyholder becomes legally obligated to pay," which is what the commercial general liability insurance policy states, he added.

But insurer attorneys and even some members of the risk management community said the decision creates coverage where previously there was none.

"It's an attempt to expand the scope of the insurers' obligation in

bankruptcy," said Thomas Brunner, a partner at Wiley, Rein & Fielding in Washington and counsel to the Complex Insurance Claims Litigation Assn., an organization of insurance industry coverage lawyers.

"This is an age-old effort by insureds' attorneys to turn the insurance industry into an ATM," said Patrick A. Cathcart, a partner in the Los Angeles office of Hancock Rothert & Bunshoft, who represented Lloyd's underwriters in the case. The collective liability of Lloyd's and several London market insurers in the case is approximately \$110 million.

"They want to ignore the terms and conditions of the policies and just get the limits," Mr. Cathcart said, adding that "no specific damage amounts" have been determined against the policyholder. In approving Fuller-Austin's plan of reorganization in 1999, the bankruptcy court found that both the timing and amount of future claims were immeasurable, Mr. Cathcart said.

However, liabilities against Fuller-Austin are estimated to exceed \$1 billion, according to Robert Horkovich, a partner with Anderson, Kill & Olick P.C. in New York, who represented the policyholder in the coverage suit.

Even though the decision, on its face, is a policyholder victory, Jeffrey Pettegrew, director of insurance and risk management at Westaff Inc. in Walnut Creek, Calif., was critical of the ruling, saying it will increase the cost of insurance.

"If insurers are held to this standard, ultimately, we're going to pay for it" in the form of higher premiums, he said. "Whether it's asbestos or any other horrific event in the future, premium was never collected to pay in that proportion. We cannot afford to just create policy in retrospect."

But Mr. Goodwin, *Powerine*'s attorney, disagreed, pointing out that the decision involves "old" insurance liabilities, for which insurers should have established reserves.

Fuller-Austin, a subsidiary of DynCorp, was the first company to undergo a fast-track bankruptcy proceeding under Section 524(g) of the U.S. Bankruptcy Code, which was created in response to the protracted reorganizations of asbestos manufacturers throughout the 1980s. Fuller-Austin emerged from bankruptcy in just four months, while the reorganization of Denver-based Manville Corp. took 10 years.

**'This is an age-old effort by insureds' attorneys to turn the insurance industry into an ATM.'**

Patrick A. Cathcart  
Hancock Rothert & Bunshoft

In its coverage litigation, Fuller-Austin and DynCorp are seeking a total of \$440 million in coverage under various CGL, umbrella and excess insurance policies issued between 1944 and 1985.

Until 1973, Fuller-Austin was in the business of installing asbestos, according to Mr. Horkovich. But when asbestos was determined to be hazardous, the company switched its operations to asbestos removal. Its business was concentrated in commercial properties and refineries in Texas and Louisiana.

In 1998, Fuller-Austin filed for bankruptcy protection in U.S. District Court in Delaware, presenting to the court overseeing its coverage suit a "prepackaged" bankruptcy plan, as is required under Section 524(g). The reorganization plan included creation of a trust into which all of Fuller-Austin's assets and insurance would be deposited and used to pay an estimated 77,000 asbestos personal-injury claimants through the year 2039. Insurers objected to the plan, but the federal court held that they lacked legal standing to block it.

Meanwhile, Fuller-Austin settled insurance coverage disputes with all of its primary insurers and some of

its umbrella and excess insurers. In addition to lead plaintiff American Insurance Co., which is a unit of Fireman's Fund, the remaining defendants are: Chicago Insurance Co., Columbia Casualty Co., Federal Insurance Co., First State Insurance Co., Highlands Insurance Co., The Home Insurance Co., International Insurance Co., certain syndicates at Lloyd's of London and certain London market insurers, New England Reinsurance Corp., Stonewall Insurance Co., Twin City Insurance Co., and Transcontinental Insurance Co.

In addition to finding that the bankruptcy reorganization triggered coverage, the court found that excess and umbrella insurers were required to pay their limits as long as the policyholder's liabilities penetrated their attachment points.

Because several of the underlying primary insurers had become insolvent, thereby making them unable to pay their portion of the coverage, the policyholder had asked the excess insurers to "drop down" and cover claims, which they argued was not in accordance with California law. And, one insurer—CNA Insurance Cos., parent of Columbia Casualty—contended that its excess policy provided no coverage where an underlying insurer becomes insolvent.

"No excess insurance company is being required to 'drop down,' below its stated attachment point," the judge wrote in her opinion. "As to the 'cease to apply' argument... the court rules that the insolvency of an underlying insurance company does not relieve the excess insurance company of its obligations."

Insurer attorneys have not determined their next course of action.

"We're analyzing it," said Ron Robinson, a partner at Berkes, Crane, Robinson & Seal in Los Angeles, who represents several of the insurers in the case.

*Fuller-Austin Insulation Co. vs. Fireman's Fund Insurance Co. et al., Superior Court of the State of California, County of Los Angeles, No. BC 116835; Feb. 26, 2002.*

## GM: Seeking voice in hospital expansion

Continued from previous page

leveled and health maintenance organizations assumed the role of controlling costs.

With health care cost increases again accelerating and providers more likely to dictate contract terms to managed care organizations, employers once more are considering community initiatives, Mr. Vigen said. Although many of those effort are still in an early phase, they could lead more employers to give hospital expansion closer scrutiny, he said.

GM would like other employers to help its lobbying efforts. So far, though, it has had difficulty getting

other employers interested in hospital building, Mr. Towner said.

Currently, most employers do not make hospital expansion a priority in their efforts to control costs and improve health care quality, said Brian Klepper, executive director of the Center for Practical Health Reform, a Jacksonville, Fla.-based group of health care experts from various disciplines.

Employers are more focused on increasing the use of medical standards in the treatment of certain diseases, Mr. Klepper said. Yet he stressed that hospital building and marketing strategies are a significant cost factor.

## Medicare: Payers oppose federal data gathering plan

Continued from page 3

& Medicaid Services, is becoming increasingly careful to avoid paying claims that are the responsibility of primary workers comp payers (*BI*, March 4).

In fact, President Bush's fiscal 2003 budget includes a provision that might require workers comp insurers to report to federal officials any comp payouts to Medicare beneficiaries, according to a spokeswoman for the Medicare agency. No details about the proposal are available, she said.

In its report, the GAO made several recommendations for improving the sharing of data among public and private compensation programs, including asking various federal government agencies to rework the way their systems share data with other agencies.

The GAO also suggested that private workers comp payers provide claimants' personal information to a central federal registry on a voluntary basis, although it noted that a mandatory reporting system might be called for if voluntary participation is limited. The GAO intends

later this year to review progress made on these recommendations.

Private payers generally oppose these proposals.

"I think that employers will oppose that," because it would increase costs, including attorneys' fees, said Billie Fae Fusch, director of workers comp for Methodist Healthcare in Memphis, Tenn. She also chairs the external affairs team of the New York-based Risk & Insurance Management Society Inc.

Establishing a central registry of workers comp claimants "is not something we see as necessary or appropriate" said Bruce Wood, assistant general counsel with the Washington-based American Insurance Assn. The reporting requirement would place an additional burden on insurers, which already provide this data at the state level, Mr. Wood said.

A spokesman for the AFL-CIO

said, "I would questions the appropriateness of a national registry because of its impact on a worker's privacy."

Some opponents of the federal proposal prefer that the government obtain the information directly from state compensation systems rather than from payers.

The Social Security Administration, for example, currently has a direct link to workers comp data in 11 states: Florida, Louisiana, Maryland, Michigan, Mississippi, North Carolina, New York, Ohio, South Dakota, Tennessee and West Virginia.

Federal officials typically use these data to identify a claimant's workers comp status, which is a key factor in determining his or her eligibility for Social Security and additional federal disability benefits.

In accordance with offset laws in effect in most states, a claimant re-

ceiving state workers comp benefits may have his or her federal benefits reduced so that total post-injury disability benefits do not exceed the legal limit of 80% of pre-injury earnings. Fourteen states have "reverse offset" policies, though, and instead use any shared data to reduce state workers comp benefits in order to comply with the limit.

Administrators of state workers comp systems are encouraging electronic data sharing among state and federal authorities because of a joint desire "to use contemporary, efficient business practices," said Gregory Krohm, executive director of the Lawrence, Kan.-based International Assn. of Industrial Accident Boards & Commissions. In addition, officials want "to do things right," he said, which includes sharing information to ensure that payments conform to applicable offset laws.

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# FTR

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## Travelers says IPO may top \$4 billion

Travelers Property/Casualty Corp. could raise up to \$4.39 billion in an initial public offering planned for

# Travelers

later this month. Hartford, Conn.-based Travelers, which is being spun off by Citigroup Inc., said in a Securities and Exchange Commission filing Monday that it plans to sell up to 231 million shares, including a possible over-allotment of 21 million shares, for \$16 to \$19 per share. Net proceeds will be used to pay debts to Citigroup.

PHOTO: REUTERS



Gov. Locke

## Washington delays enforcement of ergo rule

Washington Gov. Gary Locke last week ordered that enforcement of the state's ergonomics rule be delayed until July 2004, to allow

businesses more time to understand the regulation. Washington's Department of Labor and Industries in May 2000 promulgated the ergonomics rule, in an attempt to reduce the state's 50,000 annual musculoskeletal claims. But Gov. Locke subsequently asked that the department establish a panel to assess the state's readiness for the rule's implementation.



## SAFECO buying Swiss Re medical stop-loss book

SAFECO Corp. will nearly double its excess-of-loss medical coverage business for self-insured employers with the acquisition of a Swiss Reinsurance Co. book of business. Seattle-based SAFECO announced last week that it is acquiring \$240 million in medical stop-loss premiums and \$10 million in annual group life premiums from Swiss Re for an undisclosed amount. In 2001, SAFECO wrote \$280 million in excess-of-loss coverage for employers with self-funded plans.

## Near North hires interim CFO

Near North National Group has hired Cynthia Todd Jamison as interim chief financial officer. Ms. Jamison, a

partner at Tatum CFO Partners L.L.P., an Atlanta-based temporary CFO services firm, replaces Tom McNichols, who left the Chicago-based brokerage in late January. In a statement, Near North Chairman Fred Foreman said that the company anticipates "that the collaborative efforts of Cynthia, KPMG, our new external auditor, and our internal accounting staff will yield stronger, more effective accounting procedures equipped to manage the growth of our company."

## Oklahoma seeking control of comp insurer

Oklahoma Insurance Commissioner Carroll Fisher recently asked a state court judge to place Petrosurance Casualty Co. into receivership. The Oklahoma-domiciled workers compensation insurer, which is based in Arlington, Texas, "is impaired or insolvent" based on reviews conducted by Oklahoma insurance regulators, Mr. Fisher said in a statement. The company has "substantially less" than the minimum \$5 million in capital and surplus required by state law, a department hearing officer reported.

## Andersen settles E&O suit over audit

Arthur Andersen L.L.P. has settled a malpractice suit related to its audit of Baptist Foundation of Arizona for \$217 million. Andersen did not admit liability in the case, which was due to go to trial last week in state court in Phoenix. The case centered on Baptist Foundation of Arizona, which marketed investments and retirement accounts. The foundation filed for bankruptcy in 1999, with liabilities of \$650 million and assets of \$290 million. Andersen and its captive, Professional Services Insurance Co. Ltd. in Bermuda, will fund the settlement.

## Steel retiree benefits bailout bid spurned

President Bush last week rejected steel industry calls for some type of

government relief on so-called legacy costs, which are the billions of dollars in unfunded health care and pension benefits that unionized steel

companies have promised to their current and future retirees. The lack of immediate government relief not only continues a huge financial drain on the companies but also eventually could mean the end of health care benefits for the retirees of companies that fail in the future.

## Briefly noted

**Susan Rivera** has been named president of ACE INA Holdings Inc. She replaces Dennis Reding, who left this year to join a unit of Aon Corp. Ms. Rivera previously was president of American Home Assurance Co., a unit of American International Group Inc. ACE INA is the holding company for the former CIGNA Corp. property/casualty units that ACE Ltd. acquired in 1999....Mahmoud Abdallah has resigned as president of **American Re Corp.**'s international operations, in the second high-level departure at the reinsurer in 2002. Earlier this year, American Re said that Edward J. Noonan, its president



President Bush

and chief executive officer, had resigned, effective March 31. Mr. Noonan will be replaced by John P. Phelan, president of Munich Reinsurance Co. of Canada, which, like American Re, is part of the Munich Re Group....Idaho Gov. Dirk Kempthorne on Monday signed H.B. 492, which brings Idaho law in line with a 2001 federal law that lets employees 50 and older make tax-free **catch-up contributions** to 401(k) plans....California's Democratic voters decided in a primary election Tuesday that John Garamendi will represent them in the November election for **insurance commissioner**. Mr. Garamendi was insurance commissioner from 1991 to 1995. Gary Mendoza, a businessman, will represent the Republican Party in the fall election....Two months after expanding its outsourcing capabilities by acquiring the Unifi Network, Mellon Financial Corp. has renamed Mellon Employee Benefit Solutions as **Mellon HR Solutions**. Mellon HR Solutions said the change reflects its new emphasis on total outsourcing of human resources functions....New Mexico Gov. Gary E. Johnson on Monday signed an **insurance regulatory modernization law** that gives the state insurance superintendent the authority to exempt commercial lines forms from the approval process. The American Insurance Assn. has said the law would let insurers introduce innovative products more quickly.

## Online Poll [ 3/4 - 3/8 ]

In light of a current case before the U.S. Supreme Court, should employers be required to hire workers for jobs that could harm or even kill them?

**Yes 12.04%**

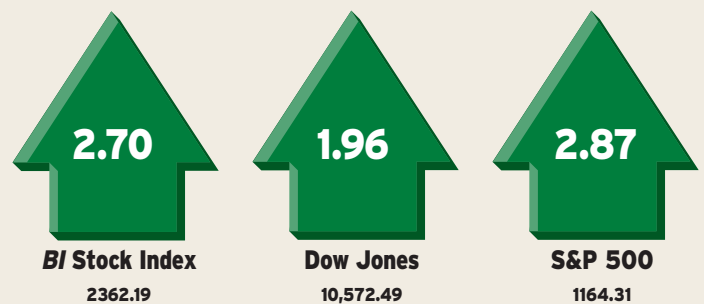
**No 87.96%**

Take part in our weekly poll at [www.businessinsurance.com](http://www.businessinsurance.com)

## BI Stock Index [ 3/4 - 3/8 ]

Up-to-the-minute data for all 87 companies that comprise the **BI Stock Index** can be found at [www.businessinsurance.com](http://www.businessinsurance.com)

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



### Largest gains

|                            |        |
|----------------------------|--------|
| EMC Insurance Group        | 15.60% |
| PacificCare Health Systems | 10.64% |
| AFLAC Inc.                 | 10.52% |
| AXA-UAP Group              | 10.52% |
| Baldwin & Lyons Inc.       | 9.22%  |

### Largest losses

|                        |         |
|------------------------|---------|
| Mutual Risk Mgmt. Inc. | -28.18% |
| Unico American Corp.   | -12.66% |
| Brown & Brown          | -10.32% |
| Gainsco                | -6.67%  |
| Meadowbrook Ins. Group | -5.33%  |

### Weekly change by market segment

|                            |        |
|----------------------------|--------|
| Brokers                    | -2.53% |
| Insurers/Reinsurers        | 0.68%  |
| Managed Care Organizations | -0.21% |

Source: CNET Investor ([investor.cnet.com](http://investor.cnet.com))

# 401(k): Legislation likely

Continued from page 3

not this year, then the next.

"If you look at the outcry and all the attention, it will be almost impossible for them not to do something. The question is more what will they do and when will they act, rather than if they will act," said Larry Sher, a principal and director of research for Buck Consultants Inc. in New York.

If action occurs, some big differences in legislative approaches will have to be bridged. Legislation introduced last week by Sen. Edward Kennedy, D-Mass., who chairs the Health, Education, Labor and Pensions Committee, is staunchly opposed by employer groups. The bill would require employee representatives on 401(k) plan boards of trustees, a provision dug up from a proposal that Congress considered

and rejected in 1989.

In addition, under the Kennedy measure, employers that offer only

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a 401(k) plan could make matching contributions in company stock or offer company stock as an investment option, but not both. Neither provision is in the two leading House bills, one introduced on behalf of the Bush administration by

Rep. John Boehner, R-Ohio, who chairs the Education and the Workforce Committee, and a similar measure sponsored by Reps. Rob Portman, R-Ohio, and Ben Cardin, D-Md.

Those two provisions, says Mark Ugoretz, president of the ERISA Industry Committee in Washington, make the Kennedy bill—from the perspective of employers—a non-starter.

Still, the various bills do share certain elements, if in slightly different form. The major bills, for example, all limit to three years the maximum amount of time employers could require plan participants to hold company stock before trading, while the measures also require advance notice of "lockdown" periods and greater investment education.