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$4

Expansion of RRGs sought

Proposal calls for allowing groups to fund property risks

By JERRY GEISEL

WASHINGTON—With coverage rates climbing and availability tightening, business groups soon will ask Congress to allow risk retention groups to fund property risks.

The National Risk Retention Assn., a trade group representing risk retention groups, is trying to line up support on Capitol Hill for legislation to expand the federal law that authorizes RRGs and gives the groups their special status. RRGs currently are authorized to write only commercial casualty risks.

"We would like to see the legislation introduced soon and see it pass this term," said Wendy Fisher, chair of the NRRA's government affairs committee.

"We have received positive responses from potential sponsors in Congress. I think we have a very good chance of getting positive results," said Ms. Fisher, who also is corporate secretary of regulatory and business affairs for National Home Insurance Co. (A Risk Retention Group) in Aurora, Colo.

A measure could be introduced this month, and efforts are expected to enjoy bipartisan sponsorship.

Under the NRAA's proposal, RRGs would be able to cover all commercial property and casualty risks, except workers compensation.

The tight property market justifies the expansion, backers say.

"Property now is becoming a big problem," said Gary Osborne, senior vp with USA Risk Group, a captive and RRG management company in Montpelier, Vt. For example, property rates for some real estate investment trusts have tripled recently, he noted.

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Andersen settlement held captive

Captive refuses to pay claim

By ROBERTO CENICEROS

PHOENIX—Arthur Andersen L.L.P.'s recent snag in settling a group of investor lawsuits is a rare example of a captive's refusal to pay a participant's claim.

Arizona's attorney general is demanding information from Chicago-based Arthur Andersen and its Hamilton, Bermuda-based captive, Professional Services Insurance Co. Ltd., after Andersen attorneys announced late last month that it could not honor a $217 million settlement because PSI is "unable to approve or pay claims at this time due to its financial position."

PHOTO: MIKE FIALA

Arizona Attorney General Janet Napolitano has subpoenaed Arthur Andersen for its captive's records.

Attorneys involved in litigation with Andersen say that its captive may require as much as $100 million in additional capital before it can fund the settlement. Neither Andersen representatives nor Bermuda regulators would comment on PSI's solvency.

Arizona Attorney General Janet Napolitano issued a sub-

See ANDERSEN/page 18

Health plans hail 2nd Circuit ruling

Formulary use clears challenge

By JUDY GREENWALD

NEW YORK—In a decision hailed by the health insurance industry, a federal appeals court ruled that state regulators cannot block a managed care firm's use of a drug formulary.

The 2nd U.S. Circuit Court of Appeals in New York ruled in *State of Connecticut vs. Physicians Health Services of Connecticut* that the state did not have standing to file suit to prevent the company from using a drug formulary. Drug formularies are lists of prescription medications that are preferred for use by individual health plans and eligible for coverage. Some plans restrict coverage to those drugs that are on their formularies.

"We're certainly pleased that we will be able to continue to use a very important tool that allows us to keep prescription drugs accessible and affordable for our members," said a spokeswoman for Woodland Hills, Calif.-based Health Net Inc., PHSC's parent company.

A spokeswoman for the Washington-based American Assn. of Health Plans, which submitted an amicus brief in the case, said it is an important decision. "There's been a lot of hand wringing about health care costs. At the same time, there's been an attempt to remove from managed care some of the tools that have been most successful at keeping health benefits within reach of most people, so…it seems pretty important that those continue to be available."

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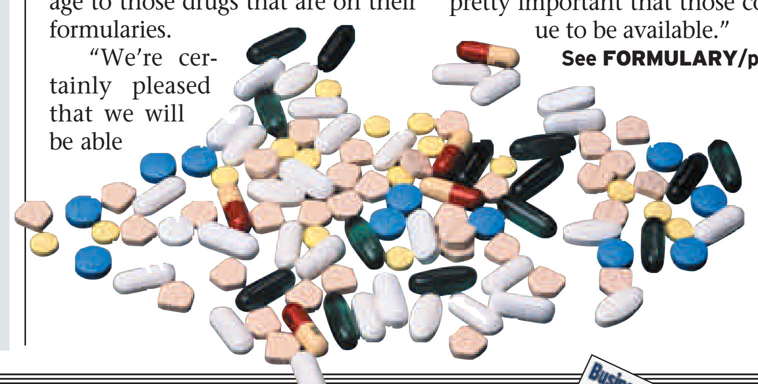

Special Take-Out Section

BENEFITS MANAGEMENT

Late News

OSHA to draft voluntary ergo plan

The Occupational Safety and Health Administration, forced to repeal a Clinton administration workplace ergonomics regulation, will draft voluntary guidelines for employers.

Labor Secretary Elaine Chao said the new plan will "prevent ergonomic injuries before they occur and reach a much larger number of at-risk workers." The plan will develop voluntary guidelines for selected industries and will encourage businesses to develop their own guidelines. OSHA also intends to provide specialized training and information on the guidelines and will administer training grants. OSHA says it will target employers with ergonomic problems that the agency has successfully prosecuted in the past.

House to consider 401(k) reforms

The House of Representatives is expected this week to take up legislation to protect 401(k) plan participants. The full House will consider a bill that will be merged from proposals passed earlier by the Ways and Means and Education and the Workforce committees. Both bills would limit to three years the amount of time employers could require plan participants to hold on to company stock contributed as a 401(k) match. Both measures also would require employers to give employees advance notice of any lockdown periods in which employees could not conduct transactions. Meanwhile, the Senate Finance Committee is developing its own proposal, and the full Senate is not expected to act until that committee completes its work. The Senate Health, Education, Labor and Pensions Committee earlier passed a bill.

IRS suspends rule on benefit plan filing

Effective immediately, employers with flexible benefit plans, adoption assistance plans and tuition reimbursement plans no

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NEWSPAPER

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

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longer will be have to file an Internal Revenue Service form known as Schedule F. The move will eliminate the filing of about 200,000 forms annually, Larry Langdon, commissioner of the IRS' Large and Midsize Business Division, said in a statement. Among other information, Schedule F requires employers to report the total number of people eligible to participate in the plan and the cost of the plan, which, in the case of flexible benefit plans, was the amount employees' contributed through salary reduction.

California jury issues record asbestos award

A San Francisco jury has awarded a record $33.7 million in an asbestos liability case. If it stands, the award would surpass the previous record of $20.5 million, made last year by an Alameda County, Calif., jury, according to a spokesman for Horsham, Pa.-based Jury Verdict Research. The San Francisco jury awarded $22.7 million in compensatory damages to a former electrician who claims he contracted mesothelioma while working on ship boilers in the 1970s. The jury also awarded $11 million to the worker's wife. Several defendants settled or were dismissed from the suit. The jury found the only remaining defendant—Hamilton, Bermuda-based Foster Wheeler Corp.—30% at fault. The company made boilers on which the electrician had worked. The remaining liability fell to the U.S. Navy and other manufacturers, but the Navy is immune and will not contribute to the award. Of the total award, Foster Wheeler is liable for $10.6 million. The company will move to set the verdict aside.

Greenberg to head ACE international business

Evan Greenberg, vice chairman of ACE Ltd., is responsible for ACE's international operations. Mr.

Late News

Greenberg, who joined Hamilton, Bermuda-based ACE last November to oversee development of its global reinsurance operations, also serves as chief executive officer of ACE Tempest Re. He takes responsibility for the international operations from Brian Duperreault, ACE Ltd.'s chairman and CEO. Before joining ACE, Mr. Greenberg was president and chief operating officer of American International Group Inc.

University sues over football player's death

Northwestern University in Evanston, Ill., is suing the makers and distributors of dietary supplements that Northwestern football player Rashidi Wheeler took before collapsing and dying during a practice in August 2001. The university charges in its suit that the supplements led to Mr. Wheeler's death. A Cook County, Ill., medical examiner ruled that Mr. Wheeler had died from a chronic asthma attack. His mother filed a wrongful death suit against Northwestern, the university's football coach, its athletic director and various other coaches, trainers and athletic department officials. In its suit in Cook County Circuit Court in Chicago, Northwestern seeks to recover from defendants the amount of any judgment that might be levied against the university in the wrongful death suit. A spokesman for a defendant, Pittsburgh-based General Nutrition Corp., said that "GNC would not sell this product if it believed it posed a danger to consumers during proper use when labeling is followed."

Global Crossing facing fiduciary liability suit

Participants in Global Crossing Ltd.'s 401(k) plan are suing the struggling telecommunications company, its directors and officers, and members of the employee benefit committee overseeing the plan, charging violations of fiduciary duty under the Employee Retirement Income Security Act. The lawsuit, filed in U.S. District Court in Los Angeles, seeks class-action status on behalf of participants and beneficiaries of the company's Employees' Retirement Savings Plan from Sept. 28, 1999, to the present. Plaintiffs allege that even though Global Crossing's plan fiduciaries did not require participants to invest in company stock, they violated ERISA by failing to discourage participants from investing in company stock because it was not a prudent investment. A fiduciary's duties of "loyalty and prudence" require that they "disclose and inform" plan participants of the risks inherent in investing in company stock, the complaint asserts. Turmoil in the telecommunications industry led the company to file for Chapter 11 bankruptcy protection in January.

PHOTO: AFP
Global Crossing Ltd.'s Beverly Hills, Calif., headquarters.

Briefly noted

The **British Virgin Islands**, the world's fifth-largest captive domicile in 2001, has agreed to cooperate with the Organization for Economic Cooperation and Development on the elimination of tax practices the OECD views as harmful....Oldwick, N.J.-based A.M. Best Co. recently downgraded the financial strength rating of Richmond, Va.-based **Reciprocal of America** to B- from A-. The rating, which also was put under review with negative implications, reflects adverse loss development in the fourth quarter of 2001, Best said. Reciprocal increased its loss reserves by about $39 million, reflecting difficulties in its workers compensation and medical malpractice lines of business, Best said....Mississippi Gov. Ronnie Musgrove on Tuesday signed into law S.B. 2912, which will increase disclosure and review requirements for state residents seeking to transfer **structured settlements.** Mississippi is the 32nd state to adopt similar legislation, according to the Washington-based National Structured Settlements Trade Assn.

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

IRS tax ruling recognizes obesity as 'a disease in its own right'

Prescription weight loss programs deductible

By JERRY GEISEL

WASHINGTON—The Internal Revenue Service is giving obese employees a new incentive to lose weight.

The costs of participating in weight-loss programs for individuals who are diagnosed by physicians as obese are now considered tax-deductible medical expenses, the IRS said.

That determination, Revenue Ruling 2002-19, is significant to employers and employees because only tax-deductible medical expenses can be paid through health care flexible spending accounts.

In addition, employers that pay for weight-loss programs could do so without the cost being added to employees' taxable income.

The cost of diet foods sold through weight-loss programs, though, would not be considered a medical expense, the IRS said. That is because diet food is considered a substitute for food an individual normally would consume.

The IRS ruling broadens a prior IRS position that said weight-reduction programs would be tax-deductible for overweight individuals who

suffered from related illnesses, such as hypertension. Under its latest ruling, the IRS recognizes obesity as a specific medical condition.

"Obesity is medically accepted to be a disease in its own right," the IRS said, citing findings from the National Heart, Lung and Blood Institute; the Food and Drug Administration; and the World Health Organization.

Although the ruling is retroactive to 1997, for practical purposes it would take effect this year for employees with FSAs.

That is because most plans require participants to file claims for reimbursement no later than three months after the close of the plan year, explained Henry Saveth, an attorney with benefit consultant William M. Mercer Inc. in New York.

Although obese employees who currently are in weight-loss programs could get reimbursement from their FSAs for this year's expenses, an employee could not now decide to change the amount he or she agreed to contribute to an FSA in 2002.

An employee's decision about how much to contribute to an FSA during a plan year is irrevocable, unless the employee experiences a change in status, such as the addition of a dependent or the termination of employment.

As a result, the greatest impact of the IRS ruling wouldn't be seen until later this year, when employees in FSAs begin to decide how much they will contribute to their accounts in 2003, said Andy Anderson, a consultant with Hewitt Associates L.L.C. in Lincolnshire, Ill.

D&O insurers want more information

Underwriters to request more details on boards, policies

By ROBERTO CENICEROS

Because who sits on a corporation's board of directors and board committees is of growing interest to directors and officers liability insurers, risk managers should expect to provide underwriters more-detailed information about those individuals.

D&O underwriters increasingly are demanding information on board auditing committees, for example, insurers and brokers say.

The information—such as committee member biographies, a corporation's charter outlining the committee's responsibilities and past audit committee reports—can help underwriters determine just how independent the auditing committee is from a company's upper management.

Underwriters now also want to see corporate policies addressing insider trading.

Around a year ago, insurers accepted a policyholder's word about matters such as an auditing committee's independence and the existence of a corporate policy limiting insider trading. Now insurers want documentation so they can see for themselves that such issues are addressed, say brokers.

Underwriters also are asking to see letters that auditors typically provide to corporate management, said Jack Flug, managing director in the FINPRO division of New York-based Marsh Inc.

Such letters generally outline potential deficiencies or business challenges a company may be facing. Additionally, underwriters often want to see management's response to the auditors' letters, Mr. Flug said.

The increased scrutiny has been building for the past year to

See **D&O**/page 17

PHOTO: HENNY RAY ABRAMS

The New York Stock Exchange suspended trading of Mutual Risk Management Ltd. last Tuesday.

MRM plans to move stock to OTC market

By MICHAEL BRADFORD

NEW YORK—Mutual Risk Management Ltd. is arranging for its shares to be traded over the counter in anticipation of a delisting by the New York Stock Exchange.

The NYSE last Tuesday suspended trading of Bermuda-based MRM's shares after its share price fell to 60 cents, below the exchange's $1 minimum requirement. MRM issued a statement last Wednesday saying that it expects its stock to be delisted.

Hamilton, Bermuda-based MRM, which operates captive management and insurance brokerage units, said in the statement that it is "working with the appropriate parties to arrange for its shares to be quoted on the OTC Bulletin Board." The board displays real-time quotes, last-sale price and volume information for over-the-counter securities. Details on the system can be found at *www.otcbb.com.*

The NYSE said in a statement released Tuesday that it had suspended trading in the shares after reviewing a partial 10-K filing by MRM. The statement said the exchange is "reviewing the continued listing of the stock."

MRM's troubles stem in part from its insurance units in the United States. MRM's Philadelphia-based companies, Legion Insurance Co. and Villanova Insurance Co., face problems with reinsurance recoverables and were placed in rehabilitation by Pennsylvania regulators late last month.

MRM also suffered a setback when rating agencies downgraded the Legion units' A ratings earlier this year.

MRM said in its statement that it continues to "evaluate strategic alternatives" with its financial adviser, Greenhill & Co. L.L.C.

Insurers, reinsurers form unit to insure property in Europe

Company to offer terrorism cover

By EDWIN UNSWORTH

LUXEMBOURG—Six leading insurance and reinsurance companies have formed a company in Luxembourg to provide property coverage for acts of terrorism in Europe.

The new company, Special Risk Insurance & Reinsurance Luxembourg S.A., has total committed capital of 500 million euros ($438.5 million), according to a statement. The insurer, which will cover property damage resulting directly from acts of terrorism, will limit coverage to 275 million euros ($241.2 million) within a given 600-meter area to prevent aggregation of losses. SRIR will not insure either business interruption or liability losses.

Subject to approval by Luxembourg regulators, SRIR plans to begin underwriting in the second quarter of 2002. It will accept business through insurance and reinsurance companies, insurance and reinsurance brokers and banks.

SRIR's investors are: Allianz A.G. Holding of Munich, Germany; Zurich Financial Services Group and Swiss Reinsurance Co., both of Zurich, Switzerland; Bermuda-based XL Capital Ltd.; and Hannover Re Group of Hannover, Germany—each of which has roughly an 18.2% stake—and SCOR S.A. of Paris, which holds 9.1%.

A spokesman for Hannover Re said SRIR will be an independent company, with none of the participating investors having control. It will have its own management board, which has not yet been named. Decisions about which risks to insure will be made by this board, he added.

The formation of SRIR is not intended in any way to undermine insurers' efforts to encourage governments to participate in providing terrorism coverage, the spokesman added. He said that SRIR's coverage limits and area underwriting restrictions mean there is still a need for government involvement.

Echoing that sentiment is the U.K. Assn. of Insurance & Risk Managers, which welcomed the formation of SRIR. AIRMIC previously has expressed disappointment with the slow progress in addressing the lack of adequate and affordable terrorism coverage since the Sept. 11 terrorist attacks. The association has sought an expansion of the limited coverage offered by U.K. terrorism reinsurer Pool Re.

"AIRMIC welcomes this move. Hopefully, it will encourage further participation from insurers and reinsurers, but it does not remove the need for a government-backed insurer of last resort, such as Pool Re," said David Gamble, AIRMIC's executive director. "AIRMIC is still calling for the extension of Pool Re beyond the areas it currently covers."

An AIRMIC spokesman said that AIRMIC would like, in particular, to see Pool Re cover business interruption and liability risks.

Court rejects hospital immunity for harm caused by mental patient

Judge finds mental health care brings a duty to protect the public

By MICHAEL PRINCE

NEW YORK—New York hospitals probably will not face more liability as a result of a federal ruling last month, despite the judge's rejection of hospitals' attempts to deny responsibility for injuries to individuals caused by patients.

In the opinion, the court rejected the argument put forward by the hospitals that they owe no duty to the public for the actions of their patients. Instead, the court ruled that such a duty exists and that the hospitals can, in certain situations, be held liable if the facts indicate negligence on their part.

"In general, medical doctors owe a duty of care to their patients and persons they knew or reasonably should have known were relying on them for services to the patient, but they do not owe a duty to the public at large," wrote Judge Denny Chin in his March 26 decision.

But the court found an exception to this rule. "In the case of mental health practitioners, however, in certain circumstances this duty is owed not only to patients and the narrow category of individuals the physician could expect to be affected by the

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Attacks make reinsurer results even more dismal

By JUDY GREENWALD

U.S. reinsurers this year will try to recover from a dismal 2001—a year in which already bad results were made significantly worse by Sept. 11 losses.

Risk managers will be major, albeit reluctant, partners in this recovery as higher rates and tighter terms and conditions flow from reinsurers to primary insurers and then on to corporate buyers.

"Now, everything is going up, and risk managers will have to bear some of the costs," said Todd Bault, a research analyst at Sanford Bernstein & Co. in New York.

The direct impact on risk managers will be nominal "except for the obvious" of higher rates and more stringent terms and conditions, which is normally expected in a hardening market, said Rick Smith, president and chief executive officer of the global property and casualty business for Overland Park, Kan.-based Employers Reinsurance Corp.

Capacity will be affected as well. Risk managers with larger risks in particular are finding it difficult to get adequate capacity and could face a choice of "either paying higher prices or retaining it net," Mr. Smith said.

The 30 reinsurers who report their financial data to the Washington-based Reinsurance Assn. of America posted a 142.9% combined ratio for 2001, compared with 114.2% for a comparable group in 2000.

The top 20 reinsurers, based on net premiums written, had even poorer results. They posted a 143.9% combined ratio for last year vs. a 108.4% for 2000.

The combined ratio "signals a much tighter market than anybody ever perceived," said Michael Smith, an analyst with Bear Stearns & Co. in New York. "You're looking at a combined ratio that now exceeds the peak of the last cycle."

"There's no question the whole insurance and reinsurance industry was a complete disaster before 9-ll," he said. Sept. 11 "simply puts a new dimension to it."

ERC's Mr. Smith agreed. Sept. 11 "accentuated the pain, but it was a difficult environment" before the terrorist attacks, he said. "Few, if any, of the reinsurers were close to the historical level that you'd expect to see so, even 9-11 aside, this reinforces the state of the industry as in need of significant improvement."

Mark P. Lescault, head of the divisional underwriting office at Swiss Re America Corp. in Armonk, N.Y., said the reinsurance industry's 2001 results "overall are not a pretty picture."

"Even without 9-11, losses had been steadily increasing from about 1997" through last year because of too much capacity, too great a focus on market share, steadily declining rates and broader terms and conditions, Mr. Lescault said. A correction for that situation had begun prior to Sept. 11, he added.

Donald Watson, a director at rating agency Standard & Poor's Corp. in New York, said the reinsurance industry incurred a combined ratio of about 117% to 120% in 2001 even without the Sept. 11 losses. Even that lower combined ratio "would have still made it one of the worst ever. Particularly given that we didn't have a huge Hurricane Andrew in that, that's pretty amazing."

Reinsurers

2001

RESULTS

Reserve strengthening, the effects of underpricing from previous years, Tropical Storm Allison and hailstorms were some of the other factors that also hurt reinsurers' 2001 results, Mr. Watson said.

The outlook for reinsurers in 2002 is brighter, market observers say.

"I see 2002 as shaping up as a much better year than we've seen in the past few years, based upon our (Jan. 1 renewal) results and our early indications that we're seeing from" April 1 renewals, ERC's Mr. Smith said.

"In the January renewals and the April renewals, we're seeing corrective action, which was needed, and we've seen significant rate increases cutting across all lines of business," said Swiss Re America's Mr. Lescault, who added that "rate increases have been tailored to what the exposures are and what the rate inadequacies were in particular lines of business or for particular insureds."

"It's clearly getting better on the pricing front," said Mr. Smith of Bear, Stearns. "I guess the only question is, how much more of the tail of 12 years of the down cycle has yet to catch up to the reinsurers?"

"We certainly expect a gradual improvement in results over 2001," said Karen Davies, vp and senior analyst at Oldwick, N.J.-based A.M. Best Co.

"I think there is still some concern as to how reserves will develop in 2002," she said. "While a number of companies have taken some reserve action at the end of 2001, I think one needs to keep in mind that the commercial lines primary carriers are continuing to fix their reserves, and that certainly could indicate there are potentially more reserve adjustments to come for reinsurers."

"The reinsurance industry is in a period of recovery coming out of some very dismal years," said Michael Paisan, a vp at Williams Capital Group in New York. "At least the outlook going forward is a little bit brighter, given some of the rate increases we began to see, particularly in the Jan. 1 renewal period."

It will be at least another two or three years before reinsurers "start losing their heads again, which inevitably will happen," Mr. Paisan added.

S&P's Mr. Watson also pointed to diminished investment income as a major factor influencing reinsurer results. For several years, the reinsurance industry "benefited substantially from the favorable returns in the investment markets. That's turned around in the last two years," and most companies' negative investment results have further depressed earnings performance.

In the future, "we would not expect to see significant improvement in investment income," which means income generated by underwriting "has become far more critical to the success of these companies."

As a result, "increasingly expect people to shoot for that magic 100% combined ratio," said Mr. Watson. The business written by reinsurers this year "will be priced to yield an underwriting profit," though the industry as a whole will not report an underwriting profit because of lingering problems, including asbestos, he predicted.

LARGEST U.S. REINSURERS' YEAR-END 2001 RESULTS

Ranked by net reinsurance premiums written. All amounts in thousands of dollars.

Reinsurer	Net reinsurance premiums written 2001	Net reinsurance premiums written 2000	Policyholders' Surplus (reinsurers only)	Net income (loss) 2001	Loss & loss adjustment expenses	Loss ratio	Underwriting expenses	Expense ratio	Combined ratio 2001	Combined ratio 2000
General Re Group [1]	$3,959,691	$3,516,783	$3,796,910	$(1,223,785)	$5,540,763	148.9%	1,040,452	26.3%	175.2%	111.7%
Employers Reinsurance Corp. [2]	3,706,697	3,996,052	6,001,175	1,990	3,740,251	101.3	1,114,431	30.1	131.4	112.0
American Re-Insurance Company	2,761,559	3,165,479	2,643,094	(979,309)	3,718,636	113.3	967,693	35.0	148.3	117.1
Transatlantic Re/Putnam Re	1,764,101	1,533,345	1,401,055	(55,954)	1,464,022	87.9	494,976	28.1	116.0	100.4
Swiss Reinsurance America Corporation	1,647,179	1,758,729	2,267,351	(79,161)	1,794,108	110.5	508,798	30.9	141.4	121.4
St. Paul Re* [3]	1,614,540	1,155,805	N/A	N/A	1,798,343	117.5	422,178	26.1	143.7	114.0
Everest Reinsurance Company	1,360,650	1,211,773	1,293,761	78,869	1,066,491	81.6	471,834	34.7	116.3	103.6
Berkshire Hathaway Reinsurance Group	1,216,511	862,957	N/A	N/A	1,120,249	111.9	144,326	11.9	123.8	119.7
Odyssey America Re Corp./Odyssey Re Corp. [4]	891,952	609,251	819,537	(22,400)	665,202	81.5	289,238	32.4	113.9	108.9
Hartford Re Company	848,900	825,878	N/A	N/A	972,875	114.2	251,705	29.7	143.9	108.8
Converium Reinsurance (North America), Inc. [5]	839,064	959,759	627,439	(496,793)	1,211,626	129.4	251,705	41.2	170.6	116.7
Gerling Global Group [6]	760,128	897,568	522,277	(109,968)	736,959	94.8	273,762	36.0	130.8	114.9
CNA Re *	684,528	951,241	N/A	N/A	1,826,725	227.9	239,232	34.9	262.8	109.1
SCOR U.S. Group [7]	597,597	624,271	364,151	(240,984)	751,379	104.4	159,860	26.8	131.2	134.1
Partner Re. U.S. [8]	500,073	369,264	373,468	(62,137)	390,045	89.7	159,675	31.9	121.6	118.2
Folksamerica Reinsurance Company	458,177	332,691	804,781	(35,320)	365,007	86.6	152,826	33.3	119.9	118.3
Berkley Insurance Co. [9]	436,319	444,684	623,094	(126,491)	510,870	115.6	145,183	33.3	148.9	108.1
AXA Corporate Solutions Reinsurance Company	359,548	275,768	252,916	(87,327)	243,885	86.1	157,195	43.7	129.8	108.0
Insurance Corporation of Hannover	350,079	213,728	157,876	(34,011)	274,893	88.0	90,336	25.8	113.8	112.1
PMA Capital Insurance Co.	316,945	244,535	559,578	(3,255)	260,521	87.2	99,475	31.4	118.5	124.9
Totals for Top 20	$25,074,238	$23,949,561	$22,508,463	$(3,476,036)	$28,452,850	114.2%	$7,434,880	29.7%	143.9%	108.4%
Totals for all companies	$26,687,636	$24,853,859[10]	$25,068,938	$(3,533,345)	$29,786,824	113.0%	$7,999,271	30.0%	142.9%	114.2%

*Results include combined U.S. and non-U.S. affiliate operations.

1 All data presented on a North American Consolidated statutory basis for the General Re Group (excludes other affiliates from the Berkshire Hathaway Group (2) Includes the combined results of Employers Reinsurance Corp., Westport Insurance Corp., First Specialty Insurance Corp., The Medical Protective Co. and GE Reinsurance Corp. (3) Excludes the corporate aggregate cover (4) Includes the combined results of Odyssey America Re Corp., Odyssey Reinsurance Corp. and Hudson Insurance Co. (5) Formerly Zurich Reinsurance (North America) Inc. (6) Includes the combined results of Gerling Global Reinsurance Corp. of America and Constitution Insurance Co. (7) Amounts include 12 months of SOREMA N.A. Re results; Net losses and loss adjustment expenses incurred reflect workers compensation discounting and loss portfolio gain. (8) Includes the combined results of Partner Reinsurance Co. of the U.S. and its subsidiary, PartnerRe Insurance Co. of New York (9) During 2001, the company prepared a plan to discontinue its Alternative Market division. The after-tax loss for this business was $97,146,678 for the year ended Dec. 31, 2001. (10) Total premiums written shown for December 2000 are those reported in the December 2000 Reinsurance Underwriting Report.

Source: Reinsurance Assn. of America


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What can we do to help you?

2002 Hines panel to field questions on cause, effect of hard market

CHICAGO—Registrations are now being accepted for the 2002 Harold H. Hines Jr. Memorial Symposium in Chicago.

This year's symposium, "Hard Questions for the Hard Market," will be held May 9 at the Union League Club of Chicago, 65 W. Jackson Blvd.

The annual event is held in honor of the late Harold H. Hines Jr., who at the time of his death in 1984 served as president and chief executive officer of Rollins Burdick Hunter Co., now part of Aon Corp. The event is co-sponsored by *Business Insurance*, the Chicago Chapter of the Risk & Insurance Management Society Inc. and the Insurance School of Chicago.

At this year's symposium, a panel of risk management and insurance executives will discuss the causes and effects of hardening market conditions and what these developments mean for the future.

The panelists for the symposium are:

- J. Patrick Gallagher Jr., president and chief executive officer of Arthur J. Gallagher & Co. in Itasca, Ill.
- Dirk Lohmann, group chief executive officer of Converium Ltd. in Zurich, Switzerland.
- David Mair, associate director for risk management for the United States Olympic Committee in Colorado Springs, Colo., and 2001-2002 president of the Risk & Insurance Management Society Inc.
- Richard G.M. Marko, senior vp of National Markets for Liberty Mutual Insurance Co. in Boston.

Kathryn J. McIntyre, former publishing director of *Business Insurance*, will serve as moderator. The symposium follows a question-and-answer format and encourages audience questions throughout the program.

Registration will be held from 2:30 p.m. to 3:00 p.m., and the program is scheduled for 3:00 p.m. to 4:30 p.m. A reception will follow. The Union League Club requires business attire.

To receive a registration form by e-mail, please contact Carrie Brittain of *Business Insurance* at 312-649-5313 or *cbrittain@crain.com*.

BI Datebook listings online

Business Insurance's online Datebook, located at *www.businessinsurance.com*, is a comprehensive listing of conferences, seminars and classes related to risk management, insurance and employee benefits.

Event sponsors can directly submit information about their calendar listings within the online Datebook area. Visitors also can quickly access information on a particular date or can simply browse the Datebook selections by week. The *BI* Datebook calendar is available at *www.businessinsurance.com*.

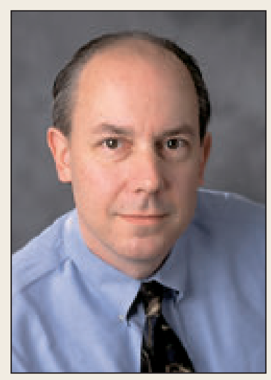
Commentary

Mom, apple pie and tax avoidance

In normal times, companies don't need to worry about whether their strategic moves appear patriotic, only about whether they make sense. Now they have to worry, especially if the move in question is to Bermuda.

A political furor is building over corporate inversions, in which U.S. corporations reorganize themselves under new offshore—read Bermuda—holding companies. Companies ranging from PXRE Group Ltd. to Ingersoll-Rand Corp. have already made the move. Still others, among them toolmaker The Stanley Works and oil driller Nabors Industries Inc., are packing their bags.

All offer the same mantra of justifications: Bermuda allows "operational flexibility," "access to international capital markets" and "improved ability to compete." But the fourth or fifth item on these lists is the real sine qua non of reincorporations—tax avoidance.



Douglas McLeod

U.S. corporations are taxed on their worldwide income, but a Bermuda company would owe U.S. tax only on the income of its U.S. subsidiaries, not on that of its overseas operations. This puts Bermuda companies on the same footing as competitors in Europe, where governments generally don't tax extraterritorial income.

Not all Bermuda migrants have been coy about this. Stanley says that its move, still in the works, would cut its global effective tax rate to as little as 23% from the current 32%.

But the trend is sticking in the craw of a Congress that lately has had no problem lavishing other sorts of tax breaks on corporations. Bills have been introduced in the House and Senate, by Democrats and Republicans, to gut the tax benefits of inversions.

Maybe it's partly impatience with Enronesque corporate subterfuge. Rep. Richard Neal, D-Mass., sponsor of one of the bills, decried the fact that nominally Bermuda-based companies continue to have their headquarters, employees and day-to-day operations in the U.S.

What really seems to offend politicians, though, is that inversions strike them as un-American.

"America goes to war against terrorism. America's fighting men and women are put in harm's way. American soldiers lose their lives. And American corporations go to Bermuda," Rep. George Miller, D-Calif., complained in the House last month.

"It's outrageous that some companies are willing to leave their country during a war and a recession just to save some taxes," added Sen. Charles Grassley, R-Iowa, ranking minority member of the Senate Finance Committee, who is expected to introduce another anti-inversion bill soon.

The rhetoric, even taking wartime into account, is running too high. Aiding a foreign enemy is un-American. Reincorporating in a country that sponsors terrorism would be un-American. Creating a Bermuda holding company is not un-American.

While the moves can certainly be criticized as a tax dodge, these companies are merely doing—legally—what American corporations and their legions of tax lawyers have done since the enactment of the Internal Revenue Code: looking for ways to cut their tax bills. Patriotism has nothing to do with it.

One of the things the emigration should do, in fact, is highlight the imbalance created by a U.S. tax system that imposes levies on non-U.S. income when foreign jurisdictions often impose no equivalent burden on U.S. companies' foreign competitors. If Congress takes up the anti-inversion bills, it should ask itself what conditions prompted companies to consider moving in the first place.

Companies also tend to look for the cheapest and easiest place to incorporate. Within the U.S., Delaware has benefited from this natural tendency; most companies incorporated there are actually located elsewhere.

Multinationals shouldn't be expected to behave differently.

It seems odd that the same Congress that seriously weighed repealing the corporate alternative minimum tax—a move that would have produced multibillion-dollar giveaways to a handful of big corporations—would rise in anger over corporate inversions.

Inversions are a fairly easy target, though, and patriotism has become a heavy weapon since Sept. 11. Members of Congress who want to go after companies that move offshore won't have to mount difficult-to-follow arguments over arcane tax laws; instead, they can simply raise questions about those companies' love of country.

Senior Editor Douglas McLeod's commentary appears periodically in Business Insurance and at www.businessinsurance.com. He can be reached by e-mail, at dmcleod@crain.com.

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Editorial

Congress should OK RRG expansion plans

In light of the rising prices and shrinking availability of property insurance, Congress should get behind a new effort to expand the federal Risk Retention Act to give buyers a needed alternative to the commercial market.

As we report on page 1, the National Risk Retention Assn., a trade association that represents many risk retention groups and their advisers, is spearheading a drive that it hopes will result in the enactment of legislation to enable RRGs to write property coverage. Under the current law, risk retention groups can be used to fund only casualty risks.

Congress last expanded the Risk Retention Act in 1986. At that time, the groups were limited under the original 1981 law to funding product liability exposures for member policyholders. But Congress, responding to the liability insurance crunch of the mid-1980s, wisely revamped the law so that the groups could fund all commercial casualty coverages, except workers compensation.

Businesses and professionals took advantage of the expanded Risk Retention Act, and dozens of groups—established by such diverse entities as educational institutions, hospitals, ski lift operators and livery service firms—were licensed.

Although some groups later shut down amid the prolonged soft commercial market, about 70 RRGs currently are operating and continue to be a vital and stable source of coverage for members.

The principal attraction of risk retention groups always has been a streamlined regulatory process. After meeting the licensing requirements of one state, a risk retention group can provide coverage to policyholder owners, such as members of a trade association, nationwide.

This eliminates the expense—faced by traditional captives—of using a commercial insurer that is licensed in most or all states to serve as a front. In addition, the regulatory arrangement means the groups don't have to comply with a hodgepodge of state rules, many of which probably serve little purpose for commercial insurance buyers.

The NRRA, by urging a much-needed change in the scope of risk retention groups' coverage, is now working to make RRGs even more attractive to insurance buyers.

When Congress passed the Risk Retention Act in 1981 and then expanded it in 1986, property coverage was readily available at a reasonable cost in the commercial market. Consequently, legislators didn't see a need to include property as a risk the groups could cover.

Such favorable conditions for property coverage have now disappeared, though. The growing scarcity of coverage and the soaring premiums for property insurance in the wake of the Sept. 11 terrorist attacks have been well documented.

One can debate endlessly whether insurers are justified in pushing for rate hikes of the size that many are seeking. But there should be no controversy about whether buyers should be permitted to band together to fund their property exposures through risk retention groups.

Even if market conditions didn't demand it, we would heartily endorse allowing RRGs to write property coverage. To us, there is no logic in requiring truckers in a risk retention group, for example, to buy property coverage in the commercial market, while allowing them to fund liability exposures through the RRG.

For two decades, risk retention groups have met their members' needs with great success. We now hope Congress gives the groups the ability to provide coverage where some of the greatest needs of their members now lie.

Schillerstrom

News Item: Court rules Government Contractors must provide Product Warnings about any potential Product Hazards....

Letters to the Editor

Better regulation needed for pension plans

To the editor: I just read your article about the LTV Corp. bankruptcy hitting the Pension Benefit Guaranty Corp. with $2.2 billion of unfunded pension plan liabilities. This follows the $124 million hit from Reliance.

These plans were not slightly deficient. They were short by approximately 50%! Where was the regulatory oversight, including annual audits and reporting?

Our company is being required to pay a fortune to state insurance guaranty funds related to the Reliance failure, and now we will have to pay higher premiums to the PBGC.

What good is all the red tape we go through, if it doesn't at least protect us from these types of "surprises"?

We don't need more regulations. We need regulators who are accountable for enforcing the regulations we already have, and civil and criminal penalties for unscrupulous managers.

David Hettinger
Chief Financial Officer
Permanent General Cos.
Nashville, Tenn.

Regulators have failed mutual policyholders

To the editor: In the April 1 issue of *Business Insurance*, there is an article about how class-action lawsuits are seen as a threat to the state regulation of insurance.

I am definitely not a fan of class-action suits (nor a fan of regulation in general). However, there are situations with which I am familiar, related to mutual and reciprocal insurers, where state regulators have failed in their fiduciary duty to exercise any meaningful supervision over those insurers.

Regulators also failed to protect the policyholders' financial interests in those companies, ultimately leaving those insurers' managements with virtually no oversight. Directors are handpicked by management, and it is all but impossible for a policyholder to get someone elected to the board.

Don't policyholders "own" mutual insurance companies? Aren't the policyholders insuring one another in the reciprocal? Aren't those policyholders entitled to a share of the profits of the mutuals and reciprocals? Is there not some point at which companies have too much surplus? If a premium-to-surplus ratio of 2-to-1 was acceptable 20 years ago for a highly rated (A or A+) company, does it need to be 0.5-to-1 (or four times as much surplus) today?

Several mutual and reciprocal insurers, predominantly large private passenger automobile insurers (one of the least risky lines of business),

See LETTERS/page 12

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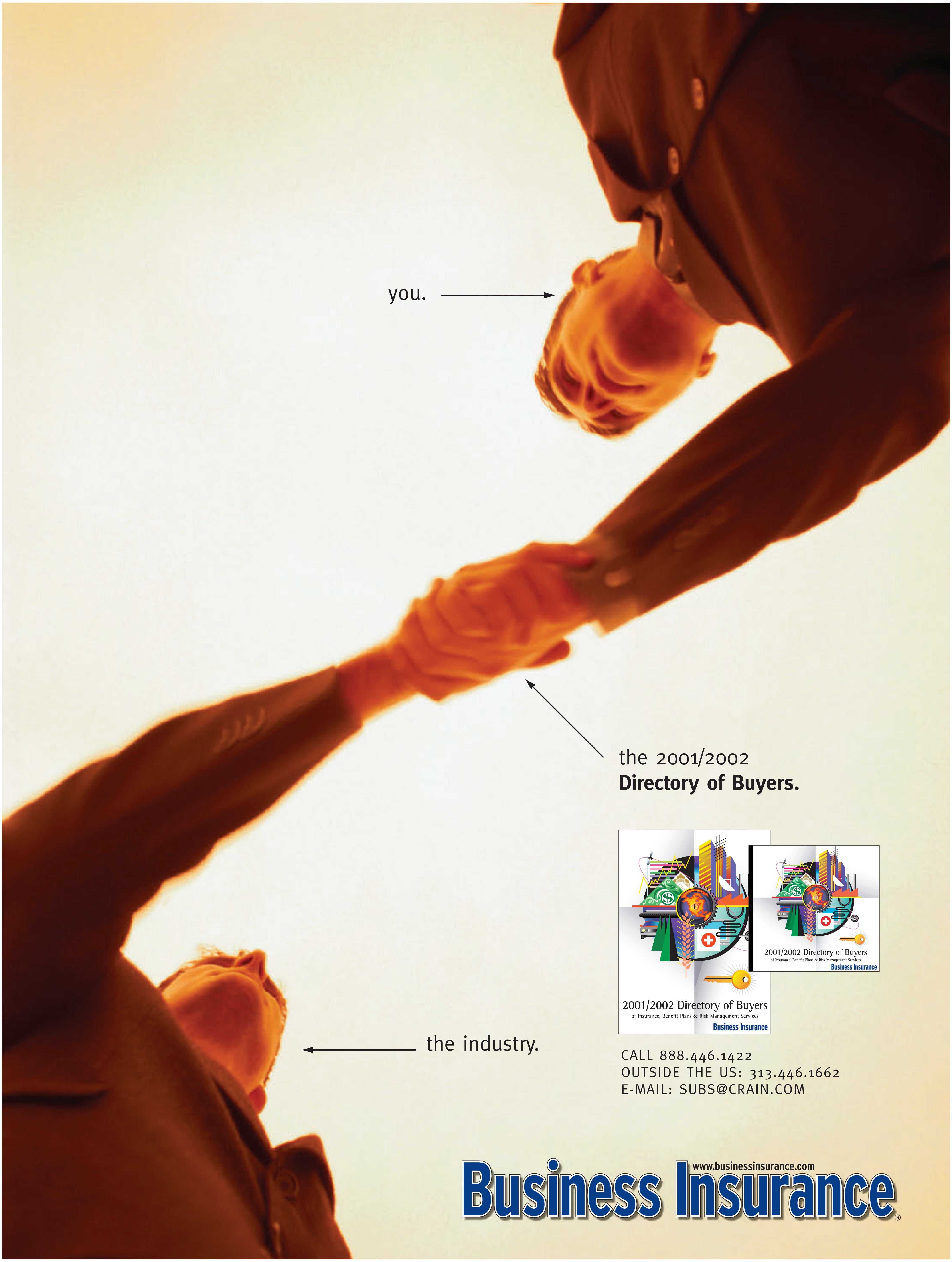
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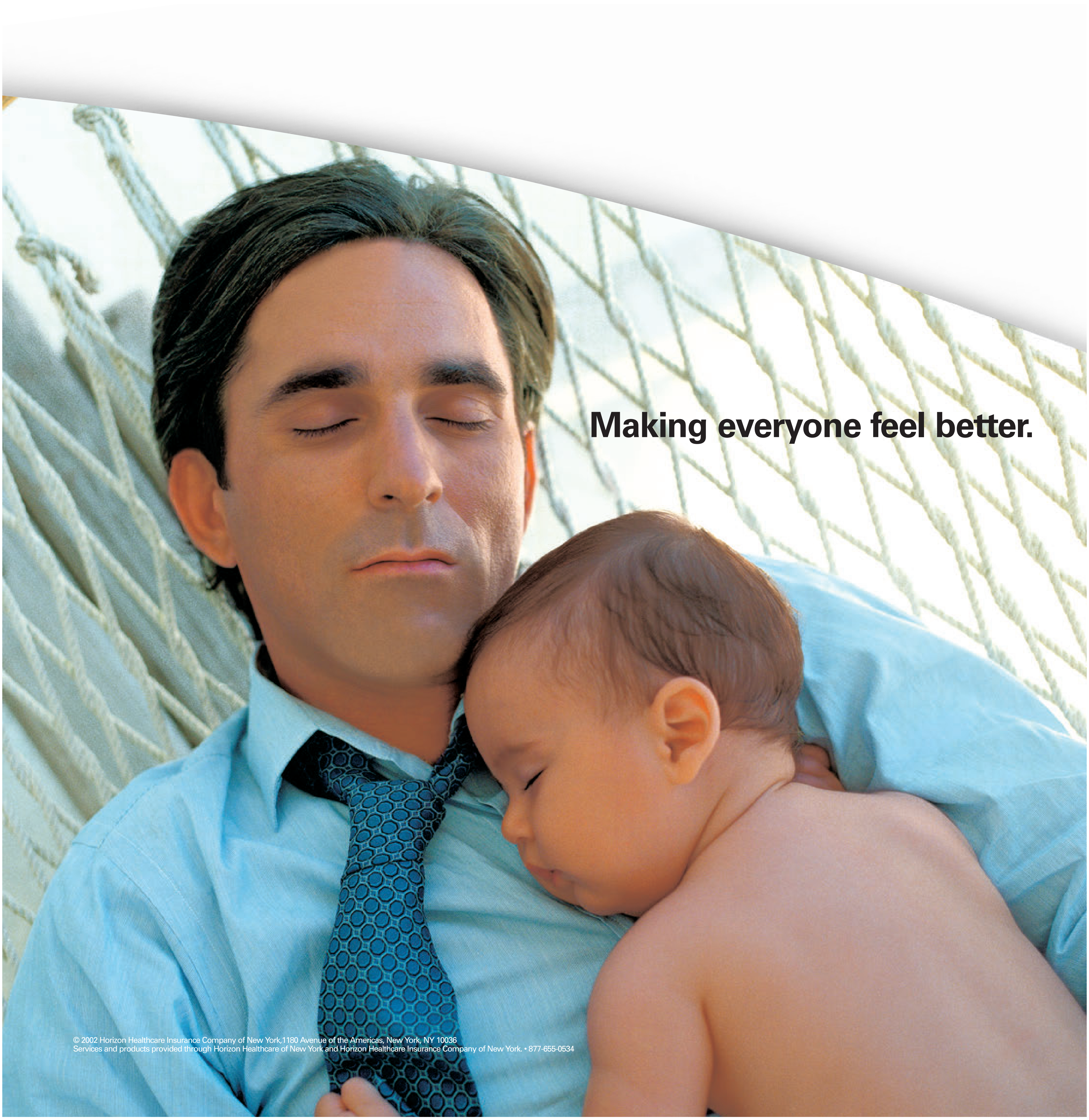

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D&O insurers should urge corporate reform

By Philip J. Edmundson

The Enron debacle comes on the heels of the worst year ever for directors and officers liability insurers. The Stanford Law School Securities Class Action Clearinghouse reported that D&O claims hit an all-time high in 2001, with 465 cases initiated last year.

According to the report, the amount of the average settlement since the passage of the Private Securities Litigation Reform Act of 1995 has increased to about $25 million, up from $8 million. The financial burden of this litigation falls primarily on the shoulders of the D&O underwriting community. Not surprisingly, the results for many of these insurers have been unfavorable for a number of years.

The reaction of even the most responsible D&O insurers to these conditions has been swift and harsh. Coverage terms have been tightening rapidly. Old exclusions such as that infamous catchall—the "failure to maintain insurance" exclusion—are returning to policy forms. Some insurers have reintroduced co-insurance in order to give insureds a greater financial incentive to settle cases for smaller amounts of money.

More appropriately, underwriting practices are improving. Underwriters are spending more time reviewing their policyholders' financial statements, their business plans and the capabilities of their management and boards. Some insurers are taking the time to visit with policyholders again—to develop relationships and to ask probing questions that will help underwriters to distinguish between the better and poorer risks.

And, of course, the price of insurance is marching upward quickly. Modest renewal increases in 2001 are being replaced by jumps in 2002 that range from 15% to 100% or more. Technology companies and highly leveraged companies are being hit particularly hard.

It is risk managers, of course, who end up delivering this message to corporate management. And while the trend in underwriting results may be of little surprise to chief executive officers, many of them are shocked at the magnitude of change in premiums and coverage terms from insurers.

But thoughtful boards of directors and CEOs are not just fuming about the insurance marketplace. Rather, they are looking to their risk managers for leadership in the post-Enron world. And effective risk managers with enough experience to have seen past underwriting cycles will provide their boards and management teams with the necessary steps to take to begin a reversal of the hard market for D&O insurance.

Notably absent, though, has been any efforts from insurance underwriters to seek changes in areas such as corporate governance, insider trading programs or relations with outside accountants.

A number of excellent recommendations have been made in the popular business press that speak to Enron and similar concerns. Among these recommendations are that:

- A company's audit committee should retain a separate accounting and/or law firm to review the reports of company accountants.
- Outside accountants should report to and be hired and fired by the audit committee, rather than by management.
- The company should not purchase accounting and consulting services from the same major accounting firm, as was the case at Enron.
- Restrictions should be placed on the hiring of former employees of the company's audit firm.
- Company policy should require changing the outside auditing firm every five years in order to eliminate improprieties.
- Company policy in regard to insider trading should incorporate U.S Securities and Exchange Commission rules 10b5-1 and 10b5-2y and strive for maximum transparency.
- The positions of chairman of the board and CEO should be held by separate individuals.
- More outsiders than insiders should be required to sit on the board of directors.
- Directors should have fixed terms that are not renewable.

Arguably, one or more of these steps should be considered as appropriate risk management in the post-Enron era. Insurance underwriters would likely see their results improved if some or all of these changes were implemented.

But what is missing is leadership from the insurance underwriting community in advocating these, or similar, reforms. In fact, D&O insurers should do more than merely indicate support for reforms of this nature; they should put some teeth into their recommendations. Insurers should mandate these types of reforms as a condition of policy renewals or offer premium credits in return for the adoption of such positive measures.

Unfortunately, downturns in underwriting cycles often lead to retrenchment rather than reform. It would be a welcome development to see D&O insurers take the steps necessary to reduce the likelihood of more cases like the Enron collapse.

Philip J. Edmundson is the president and chief executive officer of William Gallagher Associates Insurance Brokers Inc. in Boston.

Drug plans must consider larger cost picture

By Wayne Miller

With pharmacy costs increasing at a rate of 18% to 20% annually, employers and sponsors of pharmacy benefit plans, quite naturally, are searching for ways to reduce costs. But efforts to cut outlays must take into consideration the critical role that prescription drugs play in reducing overall medical costs—such as preventing the need for hospitalizations and additional treatment and improving medical outcomes. These developments significantly improve the quality of life for employees and the productivity of the workplace for employers.

Two of the most popular cost-incentive strategies used by pharmacy benefit managers and employers are formularies and tiered co-payments. A formulary is a list of the drugs that a pharmacy benefit plans will cover. A tiered co-payment plan assigns an ascending scale of co-payments to various categories of drugs. Typically, generic drugs have nominal co-payments; the most-preferred brand-name drugs have co-payments of $10 to $25; and the least-preferred name-brand drugs—usually the most expensive—have co-payments of $50 or more.

Intuitively, the use of such strategies would appear to lower costs. In determining their effectiveness, though, a plan's sponsor must take into account that plan's use patterns, the characteristics of the participant population and the way that plan participants are likely to respond to such cost incentives.

For example, an affluent population might not be deterred by the high co-payments of a tiered plan; thus, the anticipated decrease in the use of expensive drugs might not occur. In a population with limited financial means, by contrast, a tiered plan might deter individuals from purchasing those drugs they need, resulting in worsening health and subsequent medical treatment that might be far more expensive that the cost of the drugs in question.

Similarly, a well-considered prescription benefit plan that makes use of a formulary must make allowances for the coverage of nonformulary drugs when their use is medically necessary.

Denying a patient access to a needed drug could result in adverse medical developments. It is a more complex undertaking to maintain a "managed" formulary rather than an open formulary, but such a practice can balance the medical needs of employees with the cost-containment needs of the employer.

How are drugs selected for a managed formulary? And how can employers and pharmacy benefit managers measure the results of maintaining a managed formulary? The techniques for measuring the return on investment are complex, but such measurements can and must be made, so that employers can be sure they are making the best possible choices and can make adjustments if the results are not optimal.

Determining the return on investment for a pharmacy benefit plan must go beyond the consideration of mere dollar amounts. Such a determination must take into account:

- The actual cost of the drug, allowing for pharmacy network rates, rebates and discounts.
- Improved productivity, as indicated by such factors as a reduced number of sick days and an improved ability to work effectively. Productivity can be enhanced by medications that encourage compliance, such as those that require just one dose per day rather than three or four, and by drugs that produce fewer side effects.
- The ability of the drug to reduce the need for additional medical treatments, including physician visits and hospital admissions.
- The ability of the drug to reduce the use of other prescription drugs. If a patient gets the appropriate drug, will it reduce the need for other medications? If the appropriate drug produces no side effects that otherwise would have to be treated with additional medications, what are the savings? If the drug leads to an earlier recovery, how does that affect the need for additional medications? The average beneficiary fills about eight prescriptions annually; reducing this number by even one prescription per year can save an employer thousands of dollars.
- Increased employee satisfaction and improved quality of life.

Several recent programs illustrate how a broader consideration of return on investment can lead to cost savings. A program targeting physicians and patients for the appropriate use of antidepressive medications actually increased the use of this class of prescription medication but reduced overall medical expenses by 10%. It was found that when patients took antidepressants, they required fewer physician and therapist visits, as well as fewer hospitalizations.

Another program promoted the appropriate use of beta blockers, a class of medication that is used to help prevent second heart attacks; beta blockers reduce stress on the heart by decreasing its workload. The program, which had a patient population of just 1,700 individuals, saw hospitalization expenses drop by $400,000 over a one-year period.

Yet another program—this one promoting the appropriate use of injectables, a rapidly growing and expensive class of medications—resulted in a return on investment of 17 to 1. The distribution of guidelines and the coordination of the distribution system for these medications led to their more appropriate use and improved safety.

In summary, an employer must have a means to measure the overall return on investment for its pharmacy benefit program and should require its pharmacy benefit manager to provide quantifiable data on outcomes, cost and satisfaction.

This measurement of the return on investment must be based on the true value a drug delivers—taking into account its actual cost, its improvement of productivity, its prevention of other medical treatments and its enhancement of the quality of life for employees.

Wayne Miller is vp-client management for Prescription Solutions, a prescription benefit manager based in Costa Mesa, Calif.

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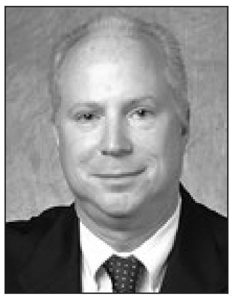
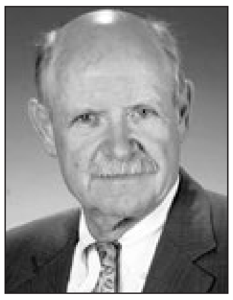
Ms. Elias


Mr. Horowitz


Mr. Sade

Reinsurance:

American Re-Insurance Co. has named a new senior management team to direct the five strategic business units of its U.S. property/casualty underwriting operations, and has appointed new chief underwriting and chief marketing officers. All of these positions will report to Albert J. Beer, who was recently named president of the company's strategic business units.

The new team consists of:

• **Dominic Addesso**, president of American Re Direct Treaty. He formerly was senior vp responsible for regional markets in American Re's direct U.S. insurance company operations.

• **Kevin Davidson**, president of American Re Direct Facultative. Mr. Davidson was formerly vp of national accounts.

• **M. Steven Levy**, president of American Re Credit. Mr. Levy previously was senior vp, credit enhancement.

• **William J. Moll** will continue to serve as president of Munich-American RiskPartners, which serves the global alternative market by providing insurance and reinsurance products and services to mid-size and large companies, public entities, nonprofit organizations and other self-insurers through captives, risk retention groups, pools and other self-insurance mechanisms.

• **George H. Roberts** will continue to serve as president of American Re Broker Market, which provides U.S. ceding companies, though reinsurance intermediaries, with a broad base of traditional treaty reinsurance and finite risk products.

• **Stephen J. Morello**, chief underwriting officer. Mr. Morello, who is responsible for management and oversight of all underwriting activities of American Re, previously was chief underwriting officer responsible for overseeing treaty and facultative underwriting within American Re's direct insurance company operations.

• **John H. Snyder**, chief marketing officer. He formerly was senior vp responsible for strategic planning, strategic investments and American Re's e-commerce development group, Am-Re Solutions.

In other reinsurance appointments:

Minneapolis-based reinsurance intermediary Benfield Blanch Inc. has named three new executives:

• **Rob Bredahl** has been appointed executive vp heading up the company's Financial Risk Management division. He formerly was chief executive officer of inreon Ltd., an Internet-based reinsurance trading platform, and vp of operations at Internet Capital Group.

• **Theresa Schugel** was named senior vp of Benfield Blanch and president of Paragon Reinsurance Risk Management Services Inc., a subsidiary providing services to insurance and governmental entities. Ms. Schugel most recently served as vp of sales and marketing at The St. Paul Cos. Inc.

• **Terry Carlin** was named senior vp in charge of the client origination group in the San Francisco office. Mr. Carlin was most recently a vp at American Re, heading the reinsurer's West Coast operations.

Swiss Reinsurance Co. has named **Ronald Klein** as global head of pricing for its life and health business group in Armonk, N.Y. Mr. Klein had been executive vp and chief pricing officer. He is being replaced by Neal Arnold, who previously was vp and managing director of Lincoln Re New Options Group.

Brokers:

Frank Schrader has joined Acordia Inc. in Seattle as senior vp of business development. Previously, Mr. Schrader was senior vp at Brown & Brown of Washington in Tacoma.

Daniel M. Peltz has joined Marsh Inc. as financial institution director of Marsh's environmental practice, based in Cleveland. He previously headed American International Group Inc.'s secured creditor program in Cleveland.

Insurers:

Paula Cox was named corporate counsel of Hamilton, Bermuda-based ACE Ltd. She previously was vp and senior legal counsel of global fund services at the Bank of Bermuda in Hamilton.

Hartford, Conn.-based life insurer The Phoenix Cos. has named **Coleman Ross** executive vp and chief financial officer. Mr. Ross previously was CFO at Bermuda insurer Trenwick Group Ltd. Alan Hunte, Trenwick's chief accounting officer, will replace Mr. Ross as CFO.

Judy Hart was named executive vp, hospital liability operations at Hamilton, Bermuda-based Endurance Specialty Insurance Ltd. Ms. Hart formerly was vp at Employers Reinsurance Corp.

Also at Endurance, **Ralph Serio** was named executive vp of alternative risk transfer, corporate operations and marketing. He formerly was president and chief operating officer of Custom Risk Solutions of Princeton, N.J.

John R. Glancy has been named president and CEO of Monterey, Calif.-based DPIC Cos., a unit of Royal & SunAlliance USA that provides insurance and risk management services for design and environmental professionals. He replaces William Meisen, who left to become president and CEO of Grocers Insurance Group, another RSA business unit. Mr. Glancy previously was executive vp of risk management at CNA Financial Corp. in Chicago.

Excess & surplus lines:

Melanie M. Elias has joined Farmington Hills, Mich.-based wholesaler Burns & Wilcox Ltd. as director of claims. She previously served as Michigan claim manager for Meadowbrook Insurance Group in Southfield, Mich.

Other suppliers:

James A. Clark has been named CFO of San Ramon, Calif.-based Diversified HealthCare Services Inc., a comprehensive national service bureau for workers compensation payors. He also will serve as CFO of Diversified's sister company, Innovent Technology Inc., which develops medical cost-containment software. Before joining Diversified, Mr. Clark had been CFO at StellarNet Inc.

Ken Horowitz has been promoted to the newly created role of president and chief operating officer of Employease Inc., a human resource technology provider in Atlanta. Mr. Horowitz previously was vp of sales.

Norman Sade, a shareholder in the Short Hills, N.J., law firm of Budd Larner Gross Rosenbaum Greenberg & Sade P.C., has joined the firm's new Alternative Dispute Resolution Services Group.

Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers. Please send news of recently promoted, hired or appointed senior-level executives to: Joanne Wojcik, Business Insurance, 777 E. Speer Blvd., Denver, Colo. 80203-4212; jwojcik@crain.com.

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

Letters to the Editor

Continued from page 8

are far more conservatively capitalized than large excellently rated commercial carriers and far more conservatively capitalized than their stock competition. Yet they have far less catastrophe exposure, far less risk of adverse development in loss reserves, and far less risk of adverse court decisions. The "regulated market," not surprisingly, has, in fact, resulted in tens of billions of dollars of capital being deployed where it is not needed. Class-action suits may free up some of that capital.

Just one company—State Farm Mutual Automobile Insurance Co.—had a premium-to-surplus ratio of 0.45-to-1 as of Dec. 31, 2000, according to Best's Key Rating Guide.

Allstate Insurance Co. was at 1.61-to-1 and could afford to pay a one-time policyholder dividend that, in the aggregate, would be larger than the 2001 federal income tax rebate.

State Farm Mutual probably is better capitalized than any other insurance company in the world, especially in relation to the types of business it writes, yet the Illinois Insurance Department, charged with "protecting" the interests of those policyholder-owners, submitted an amicus brief to a California appellate court that sounds as if State Farm Mutual is teetering on the edge of insolvency. It really is an amusing read.

Add in a few of the other large overcapitalized mutuals and reciprocals, and the class actions (if successful, which is by no means a certainty) could result in the significant "wealth" of these companies being transferred to the control of the legitimate owners of that wealth. That seems like a good thing to me.

Regulation has failed, so the lawyers are moving in. Of course, nothing prevents the state insurance regulators from intervening in the class-action lawsuits and providing their point of view. Courts and no doubt juries usually give great deference to regulators' opinions, rightly or wrongly.

Then again, the life insurance industry is demutualizing; maybe it's time to impose some market-based discipline that does not require the intervention of politically motivated regulators on the property/casualty mutual and reciprocal insurance companies.

Dale F. Ogden Jr.
Consultant
Dale F. Ogden & Associates
San Pedro, Calif.

Editor's note: Mr. Ogden is the Libertarian Party candidate for California Insurance Commissioner.

Lloyd's investment a tough sell

Market competing for new capital with facilities set up after Sept. 11

By CAROLYN ALDRED

LONDON—Further consolidation at Lloyd's of London is likely, analysts say, as syndicates continue to seek more capital and to do more cost cutting.

Although Lloyd's syndicates for 2002 raised additional capital to write more business at greatly increased rates, it is considerably less than amount of new capital that has been invested in Bermuda's crop of new companies.

Analysts say they are confident, though, that Lloyd's vehicles will seek out additional capital as market hardening continues, but they note that their success at raising that capital will depend on whether they can convince investors that underwriting results will improve and that reserves are adequate for Sept. 11 and other market losses.

"We have been through the first tranche of capital raising. Quite a few syndicates needed to raise capital, and there was some sympathy on the part of investors. But investors' patience has been tested as companies have come back for more," said David Hudson, a specialist insurance equity salesman for HSBC Bank P.L.C. in London.

For Lloyd's syndicates to attract additional capital, they will need more-positive things to tell investors, he said.

"Yes, rates are going up, but there is some disappointment with results," Mr. Hudson said. He said investors would be likely to put up more capital "if and when companies can demonstrate that the rate increases are starting to have an impact on results."

Some syndicates, though, "may not be able to wait that long and need the capital now to allow them to participate in the (market's) recovery," Mr. Hudson said. And syndicates that do not have sufficient capital, "will be forced to merge to reduce costs. That is inevitable," he said.

"Most of the capital raising around the world has focused on new companies, which are immunized from the World Trade Center and other losses," said Rob Jones, an analyst with Standard & Poor's Corp. in London.

See **LLOYD'S**/next page

PHOTO: AFP

A waiter stands at his post outside of the Lloyd's of London building.

PHOTO: ANDREW PARSONS

The Yarl's Wood Detention Centre, which sustained serious fire damage in February, shut down last week, after its management failed to secure adequate insurance coverage.

Lack of riot cover shuts immigration center

Insurer reduces center's limits after reassessment of risk

By CAROLYN ALDRED

YARL'S WOOD, England—Detainees at a U.K. immigration center were moved March 31 to other locations after the center's management company was unable to obtain sufficient insurance coverage at renewal, forcing the facility to close.

Yarl's Wood Detention Centre was badly damaged in February by fires allegedly caused by inmates and is the subject of a disputed £43 million ($61.6 million) insurance claim.

Broadway, England-based security management company Group 4 Falck Global Solutions Ltd. confirmed on April 2 that it did "not have adequate insurance cover" to meet its contractual obligations with the U.K. Home Office to manage the Yarl's Wood center.

David Pye, underwriter for Lloyd's of London syndicate 962, managed by Creechurch Underwriting Ltd., said the syndicate had renewed a property policy for the center providing limits of more than £100 million ($1.43 million) but with a "significantly reduced" limit for damages caused by rioting.

Following the fires, syndicate 962 "reassessed the risk" of insuring the detention center after "realizing just how desperate the asylum seekers are to get into the country

See **YARL'S WOOD**/next page

Government seeks to avert crisis

Australian buyers want more say in capacity talks

By DAMIEN TOMLINSON

CANBERRA, Australia—Corporate insurance buyers applaud moves by the Australian government and insurance industry to ease the nation's liability insurance capacity problems but want a role in the discussions.

At a national summit in Canberra late last month convened by Helen Coonan, the minister for revenue and assistant federal treasurer, Australian state government officials discussed proposed strategies to stem an affordability crunch for liability insurance. The demise of Sydney-based HIH Insurance Ltd. and the Sept. 11 terrorist attacks have accelerated rate firming in the Australian market.

Summit participants agreed to explore possible legislative reforms and educational campaigns on steps organizations can take to lower their insurance costs. The group will meet again in May.

But corporate insurance buyers say the proposed reforms agreed to by governments and insurers do not consider the role that risk management can play in reducing public liability claims and personal injury litigation, and therefore earning lower rates.

Bruce Ferguson, president of the Sydney-based Assn. of Risk & Insurance Managers of Australasia, who is risk and insurance manager for Sydney Water Corp., welcomed the progress made at the meeting, but he said "insurance end-users" need more consideration and consultation in any final legislative moves.

Ms. Coonan has said that a representative of the Sydney-based Insurance Council of Australia will be invited to the May meeting, but she has not invited representatives of ARIMA, attorneys or other stakeholders.

Governments are determined to tackle rising

See **TALKS**/page 15

World Updates

BVI agrees to work with OECD on taxes

The British Virgin Islands, the world's fifth-largest captive domicile in 2001, agreed Wednesday to cooperate with the Organization for Economic Cooperation and Development on the elimination of tax practices the OECD regards as harmful. The commitment means the BVI will work to improve the transparency of its tax and regulatory systems and to establish an effective exchange of tax information with the Paris-based OECD by the end of 2005, the OECD said.

SCOR sells Coface stake

French reinsurance giant SCOR S.A. has sold its stake in credit insurer Coface S.A. to Natexis Banques Populaires for 282 million euros ($245.8 million). Paris-based SCOR said that, subject to regulatory approval, it would sell its 35.2% stake in Coface for 62 euros ($54.00) a share. The acquisition gives Natexis Banques Populaires, the publicly traded arm of the Paris-based Banques Populaires Group, a majority stake in Coface. Jacques Blondeau, the chairman and chief executive officer of SCOR, said the sale would provide SCOR with additional funds for its own expansion and allow it to strengthen its shareholders equity.

U.K. firm takes asbestos charge

A £7.8 million ($11.4 million) provision for asbestos claims helped push U.K. textiles group William Baird P.L.C. into the red by £11.8 million ($17.2 million) for fiscal 2001, the company said. London-based Baird said that the asbestos claims stem from the group's former engineering subsidiaries, which were sold between 1992 and 1994. Baird said the £7.8 million provision would be used to pay anticipated claims over the next 15 years. Baird said the provision was necessary because of the recent collapse of Chester Street Insurance Holdings Ltd., the liability insurer for Baird's former engineering operations. Chester Street, formerly known as Iron Trades Holdings, shut down in January 2001 in the face of asbestos-related liabilities.

Spain's Mapfre Re joins inreon

Spanish reinsurer Mapfre Re Compania de Reaseguros S.A. has joined Internet-based reinsurance trading platform inreon Ltd. Madrid-based Mapfre

See **WORLD NEWS**/next page

Lloyd's: Increased investment a tough sell

Continued from previous page

Investors may re-evaluate their positions at Lloyd's after all Lloyd's results are known and the uncertainty surrounding the impact of the WTC loss has diminished, Mr. Jones said. S&P, which currently has placed its A rating of the Lloyd's market on CreditWatch with negative implications, will review its position in the next few months, after Lloyd's most-recent results are published, he said.

A report on Lloyd's published in March by Moody's Investors Service Ltd. in London, stated that "there is likely to be a significant need for more capital to underpin the market for 2003 and subsequently, especially when any additional rate rises for 2003 are taken into account."

Moody's points out that, despite the additional capacity raised for 2002, "Lloyd's market share appears to be dwindling."

Only three new syndicates started in 2002, while 14 were put into runoff and 15 ceased to exist due to mergers, Moody's says.

Moody's said that the "trend will continue toward larger, primarily insurance-company-backed syndicates with the independent listed vehicles forming a significant minority." The analyst's report adds that "further reductions in the number of both syndicates and managing agencies are expected over the medium term."

The report says, though, "in the immediate future, certain syndicates are likely to be affected by the negative impact on available capital due to the Dec. 31, 2001, solvency figures reducing the amount of available capital for underwriting for 2003."

Lloyd's share of the global marketplace "has been shrinking, and it is nowhere near as important as it was," said HSBC's Mr. Hudson. But he noted that Lloyd's "is still important in terms of esoteric risks and business that is hard to place. And London itself remains the international reinsurance center of the world, and there is a role for Lloyd's in that," he said.

An analyst's report on Lloyd's published in March by Moody's stated, 'Further reductions in the number of both syndicates and managing agencies are expected over the medium term.'

Lloyd's, which last month confirmed that it had completed the transfer of more than $5 billion to its reinsurance trust fund in the United States in order to meet U.S. regulatory requirements relating to claims arising from Sept. 11, responded in a statement to the Moody's report.

"Business is surging into the Lloyd's market. Managing agents operating in the market are reporting premium income up to 257% above their forecasts, and much of this is new business, not simply rising rates. Lloyd's syndicates are clearly providing the risk solutions clients are looking for," Lloyd's stated.

The Lloyd's response added that "underwriting purely for market share is a mistake all insurers have been guilty of during the soft market of the late '90s. The focus at Lloyd's is now to underwrite for profit. Any decline in market share is of little concern or relevance."

Meanwhile, as losses continue to be announced by Lloyd's syndicates, evidence grows that the need to raise capital continues.

Cox Insurance Holdings P.L.C. has announced that it plans to exit commercial property and reinsurance business by the end of 2002 in order to focus on personal lines insurance. The company, which estimates its Sept. 11 losses at about £125 million ($178.2 million), is proceeding with plans to raise capital to support its remaining business. Shortly before its announcement, Cox's share price had fallen to 36 pence (51 cents) from a 12-month high of £2.52 ($3.59).

Another Lloyd's company that has seen its share price plummet in the last 12 months is SVB Holdings P.L.C. The company announced that additional cash calls on its syndicates to cover Lloyd's U.S. reinsurance trust fund obligations would reduce the company's underwriting capacity at Lloyd's for 2002 to £347 million ($494.8 million) from £406 million ($578.9 million). The company pointed out that it "is exploring the use of qualifying quota-share agreements to provide underwriting capacity," as well as "considering a range of options for financing those classes of business that are expected to produce superior returns on capital in the long term."

Other syndicates that have arranged quota-share reinsurance treaties to maintain capacity include R.J. Kiln & Co., which has entered into a quota-share arrangement with Arch Reinsurance Ltd. and W.R. Berkley Corp. to increase syndicate 510's gross underwriting capacity. Last month, Amlin P.L.C. also arranged a £50 million ($71.3 million) quota-share facility with XL Re.

Announcing its results March 14, Wellington Underwriting P.L.C. confirmed that it is still working with a number of private equity investors to capitalize a non-Lloyd's, London-based, insurance company authorized by the U.K. Financial Services Authority.

Although Wellington raised £15.6 million ($22.2 million) in July 2001 and was able to meet the recent syndicate cash call for the U.S. trust fund relating to Sept. 11—a loss which Wellington now estimates will cost it £75 million ($106.9 million)—"it is clear that additional capital will be required to support the continuing growth of the business," the company said.

Wellington initially announced in November plans to set up a new insurance company, capitalized with at least £400 million ($570.3 million), to be operational by January 2002. Despite missing January's renewal season and the loss of its deputy chairman, Tony Taylor, who left at the end of last year to establish a new Bermuda-based reinsurer, Wellington said it still remains hopeful of establishing a new company to take advantage of the hard market.

Analysts are calling it a telling sign, though, that Wellington—like rival Lloyd's company Goshawk Insurance Holdings P.L.C., which set up a Bermuda-based reinsurer last November—has chosen to ask investors for capital to form a start-up company outside of Lloyd's.

World Updates

Re, whose business is largely concentrated in Latin America, said the move would help it expand its operations, particularly in Western Europe and the United States.

Goshawk expands anti-kidnap services

Lloyd's of London insurer Goshawk Insurance Holdings P.L.C. is expanding its crisis management services. Goshawk, which already works with kidnap prevention and response consultant Neil Young Associates, has entered into a partnership with Hong Kong-based risk management company Hill & Associates to provide similar services. Under the agreement, Hill & Associates will work with Goshawk syndicate 102, which writes kidnap and ransom coverage.

Briefly noted

Anthony Forbes will step down as deputy chairman of London-based insurer **Royal & SunAlliance Insurance Group P.L.C.** in May, RSA announced. Mr. Forbes will retire after eight years on the board of RSA. No successor has yet been named....London-based **Omni Whittington Insurance Services Ltd.** has been selected to manage the runoff of the U.K. branch of HIH Casualty & General Insurance Ltd.

Yarl's Wood: Forced shutdown

Continued from previous page

and the lengths they are prepared to go to," Mr. Pye said

He said the syndicate was unable to obtain any facultative reinsurance for the risk.

Meanwhile, premiums for the policy have increased "significantly" despite the reduction in coverage, Mr. Pye said.

Syndicate 962 has renewed property policies it writes for prisons managed by Group 4 to the full coverage value, because "prisons are built in such a way to minimize the risk of major damage in the event of a riot," Mr. Pye said.

"There is more separation, more security and the buildings are more fire-resistant," he said.

Yarl's Wood was "designed to house temporary detainees in a more-humane way," Mr. Pye noted.

Eighty-four detainees were moved to other detention centers temporarily, according to the Home Office, which said it is negotiating with Group 4 and its insurer to resolve the issue.

Syndicate 962 is seeking compensation for the loss from the Bedfordshire Police Authority under the Riot (Damages) Act 1886.

Talks: Buyers seek a say

Continued from page 13

rates and the reduced availability of public liability insurance, and they have agreed that "many of the issues are complex and cross-jurisdictional, requiring collective action…in the immediate and long term," Ms. Coonan said.

A report prepared for the meeting by Sydney-based Trowbridge Consulting Ltd. identified major factors behind the rate increases. The report cited society's willingness to litigate, judges' broadening views on what constitutes negligence, increasing compensation levels for injury claims, insurers' underpricing and poor profitability, the collapse of HIH, and insurers growing more selective about risks.

The report said insurer underpricing was due to "an insurance market dominated by defensive pricing and underwriting" and warned that rate increases could reach 1,000% for some policies unless a solution is reached.

Rate hikes for some risk managers renewing earlier this year have more than tripled, with some reporting liability rate increases of more than 500% (*BI*, Feb. 4).

The Sydney-based Law Council of Australia said, though, that the Trowbridge report's conclusion that judges' definitions of negligence have broadened is not backed up by court judgments.

Participants in the March 27 meeting decided that:

- Governments would amend tax laws to encourage structured settlements for personal injury compensation. Previously, lump-sum payments were taxed less than structured settlements.
- Governments would examine reducing claims costs by, for example, providing legal immunity for volunteers, community and sporting organizations; barring plaintiff attorneys from advertising their services; and changing legislation to take greater account of contributory negligence.
- State governments would encourage group insurance buying for community organizations.

Plaintiffs attorneys say responsibility for reducing insurance rates lies with insurers, and limiting citizens' rights to recover compensation is not the best way to lower prices.

Rob Davis, the president of the Sydney-based Australian Plaintiff Lawyers' Assn., said: "There is overwhelming evidence of the real causes—namely, mismanagement by insurers and the decline in competition in the insurance market. Insurers are increasing rates to make up for past mistakes and are blaming everyone else for their own errors."

Mr. Davis said that making it more difficult for injured parties to sue would not reduce rates. "Any changes to the rights of citizens in order to insulate the insurance industry against the consequences of its own mismanagement is offensive and ought to be rejected by every citizen," Mr. Davis said.

"This is a global insurance crisis. It extends much further than public liability cover. The industry is in a shambles and would like ordinary citizens, hurt through no fault of their own, to boost their profits," he said.

ARIMA's Mr. Ferguson said the current situation was the result of disastrous events occurring during a tough time for the industry.

HIH and Independent Insurance Co. Ltd., which together wrote the majority of liability insurance in Australia, collapsed when the market was hardening (*BI*, Sept. 3, 2001).

"Suddenly, the risk capacity of the Australian market was reduced dramatically," Mr. Ferguson said. "The old rules of supply and demand prevailed, and the slices of the insurance pie that policyholders were competing for were getting smaller and smaller."

He called the government's intention to solve the problem "a positive sign."

"It is pleasing," Mr. Ferguson said, "to see that this is not a flash in the pan."

Hannover Re Group securitizes cat risks

By EDWIN UNSWORTH

HANNOVER, Germany—German reinsurer Hannover Re Group has completed a portfolio-linked transaction for the securitization of catastrophe risks.

The transaction, announced last week, provides the Hannover, Germany-based reinsurer with $230 million in protection against hurricanes and earthquakes in the United States, windstorms in Europe and earthquakes in Japan, as well as worldwide aviation business.

Investors in the transaction, which is known as K3, are U.S. and Japanese organizations that will share in profits from the securitized business, Hannover Re said in a statement.

The program has a three-year term and gives the investors an option to renew it for a two-year period.

Hannover Re Chairman Wilhelm Zeller said that the securitization is one of several moves the company has made since last year that have allowed Hannover Re to enhance its capital position by more than 800 million euros ($696.8 million).

Hannover Re raised capital through a bond issue in the amount of 350 million euros ($305.1 million) last spring and an equity increase in December.

ChevronTexaco OKs stock sales during 'blackout'

By DAVE KOVALESKI

SAN FRANCISCO—ChevronTexaco Corp. is giving its 401(k) plan participants the option to shift assets from company stock to money market funds during the "blackout" period in which 401(k) records are switched over to the company's new record keeper.

Consultants say ChevronTexaco is on the leading edge of what could be a trend—particularly among very large employers whose participants have a lot of money in company stock—that has been fueled by the high-profile collapse of Enron Corp. About two-thirds of the $7.5 billion in ChevronTexaco's defined contribution plan is in company stock.

"Chevron's on the cutting edge of this," said William Schneider, the president of consulting firm Dimeo Schneider & Associates in Chicago. "I think you'll see a lot more of it. I think it will become standard operating procedure."

ChevronTexaco last fall selected Valley Forge, Pa.-based Vanguard Group as record keeper for the newly combined defined contribution plan created by the merger of Chevron Corp. and Texaco Inc.

The process of shifting records to Vanguard from Chevron's old record keeper, CitiStreet of Quincy, Mass., was scheduled to begin April 1 and take about two weeks, said David Smay, general manager of benefit plan investments at ChevronTexaco. The blackout period, therefore, should conclude by mid-April.

"ChevronTexaco has stepped up in a big way," said Paul Heller, head of Vanguard's defined contribution business. "They're not waiting for legislation to pass. They've really done a terrific job in getting out in front of the financial issues that their employees are going to face."

> **'Chevron's on the cutting edge of this. I think you'll see a lot more of it. I think it will become standard operating procedure.'**
>
> *William Schneider*
> *Dimeo Schneider & Associates*

Plan participants will be allowed to send one request to Vanguard to shift assets from company stock to money market funds during the blackout.

The option makes the conversion a little more complex, said Mr. Heller, noting the stock-to-money market transfers would be done manually. After the blackout period, participants will be free to move assets as they wish; assets moved from company stock will not have to be reinvested there.

ChevronTexaco employees have a substantial amount of assets in company stock, said Mr. Smay. A major shift to money markets from company stock could have an impact on the company's stock price, but there has been little shift from company stock since Chevron and Texaco merged last fall, he said.

ChevronTexaco plan participants receive company stock as an employer match; the stock also is offered as an investment option, said Mr. Smay. Plan participants can invest assets virtually without constraints and aren't required to hold the stock they buy for any specific period. ChevronTexaco's decision to grant participants full diversification was made before the Enron scandal.

The idea to allow participants the option to move into money market funds during the blackout period, however, was in response to Enron situation, said Mr. Smay. "We want to ease anyone's concerns that they can't do something during that two-week period, that some crisis could occur and they're going to be locked in."

ChevronTexaco stock has been strong, trading around $90 a share. Right now, it looks better to plan participants than many of the investment options, Mr. Smay said, but over the long term, the idea is to have participants understand diversification and make informed decisions.

To that end, the Vanguard platform includes financial advice for participants through a partnership with Financial Engines Inc. of Palo Alto, Calif.

Consultants don't think that there will be an exodus of company stock. Mr. Schneider doesn't expect to see many ChevronTexaco plan participants take advantage of the offer. But while he expects most employees will hold their shares, Mr. Schneider said the gesture is necessary. "By restricting plan participants, you're doing nothing but painting yourself into a fiduciary corner," he said.

Indeed, ChevronTexaco employees were deluged with letters and e-mails about the impending blackout period, said Mr. Smay, and participants have raised virtually no concerns. Company stock still accounts for around 66% of the assets in the plan.

Dave Kovaleski is a reporter for Pensions & Investments, a sister publication of Business Insurance.

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At a meeting of Scheme Creditors held at Chartered Insurance Institute, 20 Aldermanbury, London EC2V 7HY on 25 March 2002, the Special Resolution designed to bring about the early closure of the Scheme was approved by the requisite majority of Scheme Creditors. A copy of this notice verifying the outcome of the vote has been published on Andrew Weir's website, www.Andrewweirinsurance.co.uk

As detailed in the Special Resolution, all Scheme Creditors to whom the notice of the Special Meeting was given, will receive a Claim Form from the Scheme Administrator. Scheme Creditors have until the Bar Date, 25 September 2002, to submit details of their claims on their Claim Forms. Scheme Creditors who do not return their Claim Form before the Bar Date will be deemed to have accepted as their total claim against Andrew Weir the amount shown on their Claim Form as sent or made available to them, which may be nil.

Scheme Creditors should return the completed Claim Form by email to Andrew.weir@omniwhittington.co.uk or by post to the Scheme Administrator at the following address:

Andrew Weir Insurance Company Limited,
Omni Whittington Court, Whitfield Street,
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If you have any questions please contact the Andrew Weir team at Omni Whittington on the following telephone and fax numbers:

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Dated 8 April 2002

P A B Evans, PricewaterhouseCoopers
Scheme Administrator

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Formulary: Cost-control tool survives state challenge

Continued from page 1

The AAHP spokeswoman added that this is the first time a state attorney general has filed a suit of this kind.

William F. Hanrahan, an attorney with the Washington-based Groom Law Group, which filed the amicus brief on the AAHP's behalf, said that if PHSC ultimately had lost the suit, "I think the administration of drug benefit programs would become more expensive. Whether those programs would continue to be offered by the same range of employers who sponsor plans is always questioned when costs go up."

Connecticut Attorney General Richard Blumenthal said in a statement that he was disappointed in the decision and will review the ruling before deciding the next step, "but certainly we are committed to continued legal action that compels insurers to comply with their contractual and legal obligations. At a minimum, we will continue to pursue legal actions still pending and consider others to be brought."

According to the March 27 decision, Connecticut sued PHSC in 1999 under the Employment Retirement Income Security Act of 1974, seeking an order enjoining PHSC from using its drug formulary.

Connecticut argued that PHSC's drug formulary system violated provisions of ERISA that required the managed care firm to administer its health plans solely in participants' interests, disclose the full details of its plans to plan participants, and provide participants with adequate notice of reasons for claims denials.

The state sought an order requiring PHSC to continue to provide medicines ordered by attending physicians unless there were a court-approved substitution plan and to inform participants of the "true nature" of the prescription drug benefit.

It also wanted PHSC to issue a written notice to enrollees when coverage was denied, explaining the plan's reasons for denial and providing information about how the enrollee could appeal.

Connecticut claimed it had standing to sue the plan under two legal theories: as an assignee of the rights of eight plan participants, and under the "parens patriae" legal theory, which allows a government to protect its interest in the health and wellbeing of its citizens.

The federal appellate court's three-judge panel rejected both theories, upholding a lower court's ruling.

The state, "in its capacity as an assignee of the right to bring suit for equitable relief, did not suffer an injury of a nature that would confer standing upon it" to sue under the Constitution, the decision says.

Furthermore, the decision says, the "parens patriae" theory is not applicable because section 1132(a)(3) of ERISA says that only a "participant, beneficiary or fiduciary" can file a civil action for equitable relief to redress ERISA violations. It "carefully limits the parties who may seek relief," the decision says.

State of Connecticut, plaintiff-appellant, vs. Physicians Health Services of Connecticut, Inc., defendant-appellee, 2nd U.S. Circuit Court of Appeals, No. 00-7986.

Hospitals: Judge rejects blanket immunity

Continued from page 3

treatment, but to the outside public as well," the opinion states.

The ruling is not a harbinger, though, of greatly expanded liability for hospitals, said Lawrence Wasserman, a partner with the law firm of Gordon & Silber P.C. in New York. Mr. Wasserman represents Citiview Connections, a homeless shelter that is one of the defendants in the suit.

Rather, Mr. Wasserman said, the court is simply giving the plaintiffs an opportunity to conduct some discovery and investigate what the doctors knew about the patient. "The court is just delaying it and being cautious," he said.

The decision follows similar rulings made in at least seven other states, said Monica Berry, vp of risk management and loss control at Rockford Health System, a hospital and health system based in Rockford, Ill.

> **'The existence of a duty of care to the general public arising from the treatment of an outpatient turns on the facts.'**
>
> *Judge Denny Chin*

"It's consistent with the law in New York and also the law in many other jurisdictions," Ms. Berry said. "This is not a showstopper for me."

The case was filed by Edgar Rivera, who lost both legs after he was pushed onto the subway tracks in New York by Julio Perez on April 28,1999. Mr. Perez, who was homeless and mentally ill with a history of violence, had received treatment from three hospitals and two homeless shelters. Mr. Perez was ultimately convicted of attempted murder and assault for the attack.

Mr. Rivera sued the hospitals and shelters in 2000, claiming they were negligent in treating Mr. Perez and failed to take steps to prevent him from harming members of the public. Mr. Perez was treated as an outpatient for mental illness in 1999 at Bellevue Hospital and Elmhurst Hospital Center, both owned by the New York City Health & Hospitals Corp., court papers indicate.

Mr. Perez also received treatment in the past at New York Presbyterian Hospital–Columbia Presbyterian Campus and the U.S. Veterans Administration Hospital, where Mr. Perez was treated and released on the morning of the attack. Mr. Perez stayed at two homeless shelters, Citiview Connections and Fort Washington Men's Shelter, during the year leading up to the attack; both were named in the suit.

The defendants asked the court to dismiss the case, asserting that, under New York law, they cannot be held liable for the actions of a patient against third parties.

"They contend that providers of health care and other services for the mentally ill owe no duty of care to the general public arising from the care of an outpatient who is receiving treatment on a voluntary basis," the opinion states.

But Judge Chin rejected the defendants' arguments. He said that while the defendants are not necessarily liable in this case, the law does not give them blanket protection. "Rather, the existence of a duty of care to the general public arising from the treatment of an outpatient turns on the facts," he wrote.

The judge also ruled that homeless shelters could be held liable to third parties for the actions of their residents against the public.

Due to some deficiencies in the complaint, though, he dismissed the case against the shelters. The plaintiff has the option to modify the complaint and refile the suit in 30 days.

The case will now proceed to discovery to determine whether the hospitals were aware that Mr. Perez was a danger to others and whether they considered holding him involuntarily to protect the public.

Because the defendants still have the chance to show they acted properly in their treatment of Mr. Perez, the ruling does not mean they are liable, Ms. Berry said.

Not having a blanket protection "is okay," she said. "It still gives each of us our day in court. It still gives each of us the opportunity to establish the facts."

The case highlights the need for hospitals to follow well-considered discharge procedures when treating mental health patients on an outpatient basis, said Peggy Nakamura, the executive director of risk management and associate counsel at Adventist Health System West in Roseville, Calif.

"Mental health providers in outpatient settings have got to identify individuals that are clearly going over the edge and will pose a danger to others," Ms. Nakamura said.

Rivera vs. New York City Health & Hospitals Corp., U.S. District Court, Southern District of New York, 00 Civ. 5279, March 26, 2002.

D&O: More info sought

Continued from page 3

18 months, as the market has hardened and D&O losses have mounted. But the fallout generated by Houston-based Enron Corp.'s problems has accelerated underwriter appetite for more information, insurers say.

Rates also have been on the rise, with some accounts expected to pay 20% to 50% more for less primary D&O coverage (*BI*, Jan. 28).

Mr. Flug said that since Enron's troubles emerged, he is advising risk managers to make themselves and corporations' senior management members more available to D&O underwriters.

"Capacity is still there…but the underwriters are being more selective where they put their capital," Mr. Flug said.

The more information provided to them, the more comfortable underwriters will be with an account and the more likelihood policyholders will have an easier time of obtaining the limits they seek, he said.

Failure to provide the information underwriters seek could affect the coverage limits they provide or coverage price, insurers agree.

But other brokers and insurers point out that although the market has been hardening, there is still competition for accounts. Therefore, if a policyholder cannot provide all the information desired, that alone may not be enough for underwriters to restrict their terms.

"We haven't seen that actually happen," said Susanne Murray, senior vp and national D&O practice leader for Willis Group Holdings Ltd. in New York. "What we have seen is the threat of that happening. But they didn't actually follow through."

But clients are balking at the increased documentation insurers are looking for, Ms. Murray said.

In the future, though, underwriters may seek even more details about audit committees and committees that set upper-management salaries and nominate board members, said Tony Galban, vp and D&O underwriting manager for Chubb Specialty Insurance in Simsbury, Conn.

"Certainly, we are very tough on the auditing committees right now," Mr. Galban said. "I think we are going to be tough on the nominating committee; I think we are going to be tough on the compensation committees."

Underwriters are looking for more information from policyholders in part because of the tarnished reputation of accounting firms and stock analysts, Mr. Galban said.

Underwriters review auditor and stock analyst opinions, along with other information, to help them understand a policyholder's "underpinning business issues," and how susceptible they may be to lawsuits, Mr. Galban said. But the Enron debacle revealed that business ties can bias auditor and analyst reports, he said.

One way underwriters can make up for the diminished reliance on those reports is to probe deeper into the workings of a corporate board.

Enron revealed that it is not enough to have accomplished, high-profile board members, said Kevin LeCroix, president of Genesis Professional Liability Managers, an underwriting manager in Cleveland. Insurers would like to know that those board members are not performing just a perfunctory role but that they are engaged in overseeing the corporation.

> **'Capacity is still there…but the underwriters are being more selective where they put their capital.'**
>
> *Jack Flug*
> *Marsh Inc.*

Underwriters can't measure board member attentiveness to corporate dealings, Mr. LeCroix admits. But they can check whether a company has loss prevention measures, such as policies prohibiting insider trading. And they can look into who sits on an audit committee and how that committee interacts with outside auditors.

In the future, underwriters may even want to see that the committee—and not inside management—hires the auditors, Mr. LeCroix said.

For now, D&O underwriters want to see that board members are truly outsiders who can provide a "disinterested" review of corporate operations, said David McElroy, senior vp of Hartford Financial Services Group Inc. in New York.

Underwriters are looking to see whether board members have additional business connections to a corporation that might color their judgment.

Biographies can help underwriters judge how knowledgeable a board member really might be about the corporation's business and whether a board member represents other entities with business ties to the corporation, other observers say.

But Mr. McElroy points out that D&O liability underwriters also weigh the financial analysis and legal assessments of a corporation, and not just the makeup of the board, when setting terms and conditions.

RRG: NRRA wants groups to write property risks

Continued from page 1

Indeed, the NRRA's effort to expand the scope of RRGs "is market-driven," noted Ms. Fisher.

Market conditions led Congress more than two decades ago to pass the original Risk Retention Act. The law was prompted by a crisis in the product liability insurance market, in which premiums soared and available limits plummeted.

One of the causes of that crisis was panic pricing by insurers, the U.S. Department of Commerce determined. In response to that finding, Congress in 1981 passed the Risk Retention Act. That law gave buyers a new alternative to the traditional market.

Under the Risk Retention Act, once an RRG—essentially, a multiple-owner captive—meets the capital and licensing requirements of one state, it can write coverage for member policyholders nationwide without meeting regulatory requirements in other states. That gave RRGs a key cost-saving advantage over traditional captives, which typically must use a licensed commercial insurer to issue policies in states beyond their domicile.

The 1981 law limited RRGs to providing product liability coverage, and only a few were formed. But in 1986, Congress, responding to a broad liability insurance market crisis, expanded coverages the groups could write to all casualty lines, except workers comp.

Since then, nearly 150 risk retention groups have formed, though many shut down as conditions in the traditional market improved. Although only about 70 RRGs now operate, some have grown to significant size and are a key source of coverage, particularly for educational institutions and attorneys. About half of the groups are domiciled in Vermont, whose progressive captive law is attractive to RRGs.

Passage of the 1981 and 1986 risk retention legislation came amid opposition from regulators and agents. Insurers, while initially op-

'Buyers like one-stop shopping. There really is no rational reason to exclude property coverage from risk retention groups.'

Jon Harkavy
National Risk Retention Assn.

posed, ultimately remained largely neutral.

In particular, regulators warned that RRGs could be undercapitalized and that consumers could be hurt by the failure of the groups.

But backers of the current RRG expansion proposal say regulators' fears have proved to be unfounded.

"Risk retention groups have done very well and have demonstrated their ability to comply with the law," said Robert Myers, special counsel to NRRA and a partner with the law firm Morris, Manning & Martin in Washington.

"Single-state domiciliary" regulation has worked quite well, noted Joel Wood, senior vp-federal affairs for the Council of Insurance Agents & Brokers in Washington.

Still, some industry representatives question the need for expanding the Risk Retention Act, maintaining that current market conditions do not justify a change.

"To my knowledge, there is no widespread problem in property coverage…that necessitates a dramatic and unique customized response by the federal government," said Patricia Borowski, senior vp with the National Assn. of Professional Insurance Agents in Alexandria, Va.

Aside from giving buyers a new market alternative for property coverages, expanding the lines of coverage the groups could write would allow more one-stop coverage shopping.

Mr. Osborne notes, for example, that truckers buying liability coverage through RRGs currently must purchase property coverage in the traditional market.

"Buyers like one-stop shopping. There really is no rational reason to exclude property coverage from risk retention groups," said Jon Harkavy, a member of the NRRA's government affairs committee and vp and general counsel in the Arlington, Va., office of Risk Services L.L.C., a captive and RRG manager.

Andersen: Captive rejects claim for settlement

Continued from page 1

poena last week seeking extensive records from Andersen, PSI and Andersen Worldwide S.C. about the accounting firm's captive insurer.

In early March, Arthur Andersen

Andersen representatives told plaintiffs that the board's approval was a mere formality.

Richard G. Himelrick
Tiffany & Bosco

had agreed to pay $217 million to settle several professional liability lawsuits filed by Arizona officials, investors in the Baptist Foundation of Arizona and bankruptcy trust attorneys.

Andersen was the auditor of the collapsed BFA, which marketed investments and retirement accounts but filed for bankruptcy in 1999. BFA investors lost million of dollars, and several foundation officials were convicted of fraud. Plaintiffs charged that Andersen failed to conduct a proper audit of BFA and ignored losses that should have been investigated and disclosed.

In settlement discussions, Andersen representatives told plaintiffs' attorneys that a captive owned and controlled by Andersen would pay most of the $217 million, said Richard G. Himelrick, a securities litigation attorney at Tiffany & Bosco in Phoenix. He is the lead attorney for the 11,000 BFA investors who sued Arthur Andersen.

Plaintiffs were also told that PSI had $700 million available and could pay claims totaling $250 million annually, he said. Late in the negotiations, however, Andersen representatives added a clause stating that captive's board members first had to approve the settlement payment, he said.

PSI's board in late March, however, declined to pay Andersen's claim. Mr. Himelrick said that decision blindsided the plaintiffs' attorneys because they had been told that Andersen owned and controlled the captive. Andersen representatives told plaintiffs that the board's approval was a mere formality, he said.

Arthur Andersen did not return calls.

Attorneys note that disputes between captive owners and their captives over payment of claims are rare. In June 2001, Minneapolis-based General Mills Inc. settled a long-running battle that began when its Minnesota-domiciled captive, Gold Medal Insurance Co., denied coverage for a property claim (*BI*, June 4, 2001).

"In most instances, the captive board (members) are the same people that work for the parent company," said Stephen Cozen, a partner at Cozen O'Connor in Philadelphia who represented Gold Medal in the General Mills case. "So their interests are aligned."

This relationship also applies to a group captive, he said. "Most of the time, a claim of an insured against a captive is going to be honored by the captive because the insured and the captive are owned by the same people, even if it is a group captive."

Arthur Andersen owns less than 10% of the captive. The remainder is owned by international affiliates of Andersen Worldwide, a Swiss-based coordinating entity for autonomous international member firms that include Arthur Andersen L.L.P.

Bermuda-based Professional Services Insurance Co. Ltd. was licensed in 1991 and is managed by Marsh Management Services (Bermuda) Ltd. Marsh would not comment.

Plaintiffs' attorneys say statements in BFA settlement talks indicated that PSI declined to pay Andersen's claim because the captive faces other claims and regulators in Bermuda are concerned about the adequacy of the captive's capitalization.

Arizona's attorney general is seeking details about premiums Arthur Andersen paid to the captive and all correspondence regarding late or

'Most of the time, a claim of an insured against a captive is going to be honored by the captive because the insured and the captive are owned by the same people, even if it is a group captive.'

Stephen Cozen
Cozen O'Connor

delinquent premium payments. Ms. Napolitano also wants information about PSI's claims reserves and other settlement agreements involving PSI on suits brought by Andersen auditing clients.

She also said she would seek to sequester "insurance proceeds and other Andersen assets" and ask a mediator involved in the BFA settlement talks to declare Andersen's "actions in bad faith."

Edward F. Novak, an attorney at Quarles & Brady Streich Lang L.L.P. in Phoenix who represents Arthur Andersen in the BFA matter, said he planned to respond to the subpoena late last week. He said it would be impossible for him to supply all the information Ms. Napolitano sought, though, because he only represents Arthur Andersen, not PSI or Andersen Worldwide.

The embattled accounting firm is facing a criminal indictment by the U.S. Department of Justice for obstruction of justice due to its shredding of documents related to its audit of the failed Enron Corp. Investors in Enron also are suing Arthur Andersen in civil court.

An attorney involved in settlement talks between Enron investors and Andersen said the accounting firm also was looking to the Bermuda captive to help it pay a potential settlement. Plaintiffs are seeking several hundred million dollars.

But before Andersen could tap the captive, the firm first needed to provide PSI with $100 million in capital, the attorney said. The attorney described that scenario about two weeks before Arizona authorities were notified that Andersen could not fulfill its BFA settlement agreement because the captive would not pay the claim.

A captive regulator in Bermuda would not comment on PSI's solvency but said the insurer is under regulatory watch because of the Enron situation.

"We are aware of some potential problems and have taken steps to ensure all the powers we have…are being put in place," said Shelby Weldon, assistant insurance director for the Bermuda Monetary Authority. "We do keep an eye on companies in this particular situation."

PHOTO: AFP

Lee and Forrest Bomar lost nearly a quarter of a million dollars due to the collapse of the Baptist Foundation of Arizona. BFA investors are among the parties to a $217 million settlement with Arthur Andersen L.L.P. that collapsed when its captive would not cover its claim.

ADVERTISER INDEX

Issue of April 8

FTR

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

Captive association's president to resign

Lisa M. Ventriss will resign as president of the Vermont Captive Insurance Assn. June 1 to become president of the Vermont Business Roundtable. The roundtable is a nonprofit organization that studies Vermont public policy issues and makes recommendations with a focus on maintaining a sound economy in Vermont and preserving the state's quality of life. In a letter to VCIA members, Jean VanTol, the association's chairman and president of Vermont-domiciled Resort Hotel Insurance Co., called Ms. Ventriss' five years with the VCIA "a very productive and positive period in the association's history." The Burlington-based VCIA hopes to have a new president in place by June.

Mercer to adopt a new name

William M. Mercer Inc., the world's largest employee benefit consultant, has a new name. Effective today, the New York-based consultant will be known as Mercer Human Resource Consulting. The new name better reflects the full range of services Mercer can offer clients, said Dan McCaw, Mercer's U.S. chairman and chief executive officer. As part of the name change, Mercer also is launching a new Web site, *www.mercerhr.com*, which replaces *www.wmmercer.com.* Mercer is a unit of New York-based Marsh & McLennan Cos. Inc.

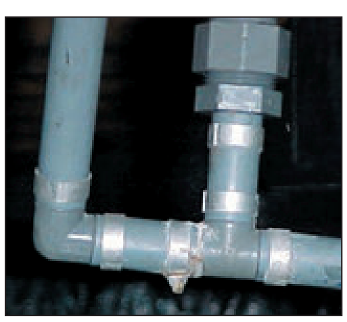


PHOTO:TOM SPORNEY

Insurers seeking a class action against makers of resins used in polybutylene plumbing were denied by a Tennessee judge.

Class status denied in pipe subrogation

A Tennessee judge has denied class certification to a group of property/casualty insurers seeking to recover millions of dollars in payments made in connection with leaking polybutylene plumbing. The insurers—led by Shelter General Insurance Co., Shelter Mutual Insurance Co., Liberty Insurance Corp., Liberty Mutual Fire Insurance Co., Liberty Mutual Insurance Co. and Trinity Universal Insurance Co.—sought to recover claims payments for water damage caused by leaking plumbing systems. The insurers charge that Shell Oil Co., Hoechst Celanese Corp. and E.I. du Pont de Nemours & Co. made inherently defective resins that were used in the plumbing systems, causing the leaking and subsequent damage. The proposed class action in the Chancery Court of Tennessee in Dresden was essentially the same as an action a similar group of insurers pursued unsuccessfully in the late 1990s in federal district court in New Jersey. Although class status was initially granted in that case in 1998, a federal judge later vacated the class order, and certification was subsequently denied in 2000.

DoubleClick settles privacy lawsuits

DoubleClick Inc. will pay $1.8 million and implement consumer protections to settle several class-action lawsuits alleging that it violated privacy laws by collecting information on Internet users. As part of the settlement, the New York-based Internet advertising company will no longer combine personal data about computer users with data on their Internet use that could be used to market to individual consumers. A federal district court judge in New York still must approve the settlement. Under the settlement terms, DoubleClick agreed to educate consumers about privacy protections, routinely purge consumer data collected online and limit the life of applications that gather information from personal computers. Much of the $1.8 million settlement offer would be used to pay plaintiffs' legal fees.

Kentucky to extend black-lung benefits

PHOTO: AP?WIDE WORLD

Kentucky Gov. Paul Patton (right) is expected to sign a bill expanding black lung benefits.

Kentucky Gov. Paul E. Patton is expected to sign legislation, introduced at his request, that would require the state's coal industry to pay increased black lung compensation benefits to former coal miners. The National Council on Compensation Insurance estimates the coal industry would face additional one-time costs of $14.7 million to $24.4 million for retroactive benefits under the bill, said Ken Christiansen, state relations executive for the Boca Raton, Fla.-based NCCI. That is primarily due to a provision in the bill, H.B. 348, that would reopen claims filed after 1996 and allow them to be re-evaluated under more liberal standards. It also would extend the time period for reporting claims. In addition, the coal industry is expected to pay out more benefits in the future because the pool of X-ray specialists allowed to review miners' test results is being expanded to include any expert in the state. The current requirement limits reviewing doctors to those affiliated with the state's two medical schools. Claimants also will be eligible for higher benefit awards in several categories, though many such benefits would be tied to requirements that claimants take part in job retraining programs.

Assurex network adds five brokers

Assurex Global Services, the Columbus, Ohio-based international brokerage network, recently added five broker partners. The new partners are: Lima, Peru-based Gray & Asociados Asesores y Corredores de Seguros S.A.; Tunis, Tunisia-based Gepar; Glastonbury, Conn.-based Smith Brothers Insurance Inc.; Orlando, Fla.-based Lassiter-Ware Inc.; and Dayton, Ohio-based The Brower Insurance Agency P.L.L. With more than 130 offices around the world, Assurex Global's insurance brokerage partners generate combined annual premium of more that $14 billion.

Arch Capital plans public offering

Arch Capital Group Ltd. expects to raise at least $165 million in a public offering scheduled for April 8. The Hamilton, Bermuda-based insurer and reinsurer plans to sell 6.5 million shares of common stock at $25.50 per share. The offering's underwriters have the option of purchasing an additional 975,000 shares. Arch Capital, which currently has about $1 billion in capital, has 15.7 million shares outstanding. The company's shares, which trade on the Nasdaq Stock Market under the symbol "ACGL," closed Friday at $27.65.

Destiny Health offers health care hot line

Consumer-driven health plan provider Destiny Health has introduced a toll-free information hot line for its plan members. Created in partnership with Timonium, Md.-based FutureHealth Corp., the hot line allows members in Oak Brook, Ill.-based Destiny's consumer-driven health plans either listen to recorded messages that cover more than 1,500 health topics or speak with a nurse. An additional feature of the service provides an expectant mother with a personal nurse she can talk with throughout her pregnancy. FutureHealth provides software to help insurers and self-insured employers track high-risk patients.

Briefly noted

HealthAmerica of Pennsylvania Inc., a unit of Bethesda, Md.-based Coventry Health Care Inc., has agreed to acquire **New Alliance Health Plan Inc.**, a privately owned health plan in Erie, Pa., with about 47,000 members. The acquisition, subject to regulatory approvals, would increase Coventry's membership in Pennsylvania to more than 580,000. Terms of the transaction were not disclosed....**Appleby Spurling & Kempe**, Bermuda's largest law firm and a specialist in insurance-related matters, announced that Peter Bubenzer has succeeded Dianna P. Kempe as managing partner of the firm, effective April 1. Mr. Bubenzer, who joined AS&K in 1980, formerly headed the firm's corporate/commercial department. Shaun Morris, an AS&K partner, will succeed him in that role. Ms. Kempe will remain a senior partner until early next year....Julianne Bowler was sworn in Tuesday as the **Massachusetts commissioner of insurance.** Formerly the first deputy commissioner, Ms. Bowler was appointed last month to succeed Linda Ruthardt, who resigned....Stan Griffin will become president and chief executive officer of **The Insurance Bureau of Canada** on June 5, succeeding George Anderson. Mr. Griffin, who joined IBC in 1975, has held a variety of senior positions with the Toronto-based property/casualty insurer trade association, most recently as executive vp of regional operations. Mr. Anderson has been invited to remain on the IBC's board of directors....The North Carolina Department of Insurance is reviewing a revised business plan by **Blue Cross & Blue Shield of North Carolina**, which is seeking to convert to a for-profit company. The North Carolina Blues initially filed the conversion plan in January, but the insurance department requested further information before commencing public hearings and final review.

Online Poll [4/1 - 4/5]

Should insurance companies have to operate for a minimum period of time before they become eligible for a rating agency grade?

Yes	No
85.71%	14.29%

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

BI Stock Index [4/1 - 4/5]

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

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

	BI Stock Index	Dow Jones	S&P 500
Change	0.54	-1.27	-2.15
Close	2378.12	10,271.64	1122.73

Largest gains

Gainsco Inc.	29.63%
Seibels Bruce Group	15.17%
EMC Insurance Group	8.35%
Hilb, Rogal & Hamilton	7.85%
Aon Corp.	7.11%

Largest losses

SCPIE Holdings Inc.	-12.37%
Vesta Insurance Co.	-6.17%
Argonaut Group	-5.63%
NYMagic Inc.	-4.84%
American Safety Insurance	-4.67%

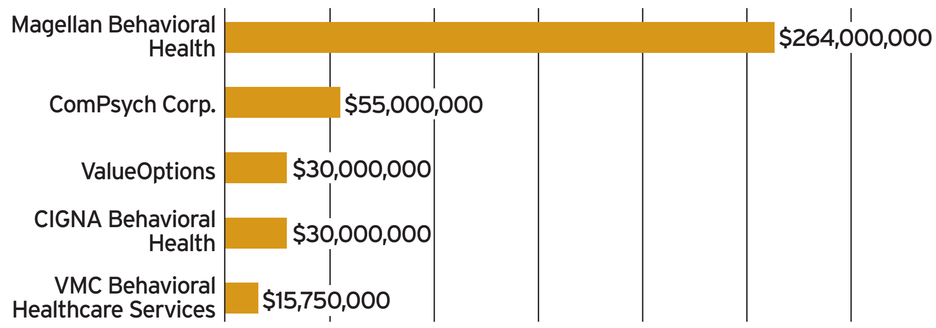
Weekly change by market segment

Brokers	4.20%
Insurers/Reinsurers	0.99%
Managed Care Organizations	2.90%

Source: CNET Investor (investor.cnet.com)

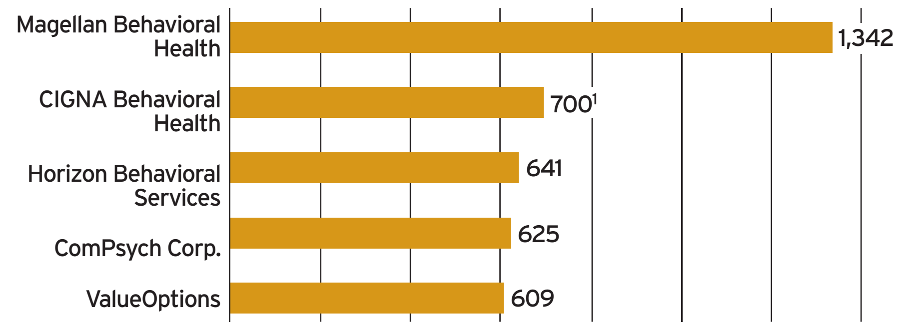
LARGEST EAP PROVIDERS BY REVENUE

Ranked by a *BI* estimate of revenue derived from EAP services.



Source: *BI* survey

LARGEST EAP PROVIDERS BY EMPLOYER CLIENTS



1 Estimated

GRAPHIC BY ADAM DOI

Largest EAP providers

Ranked by number of lives covered at year-end 2001

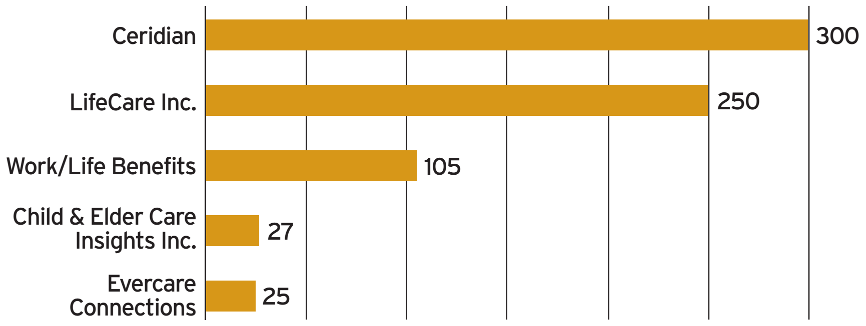
Rank	Company/address	Phone/fax/Web	Total lives covered	Total clients	Total salaried employees	Total contracted employees	Top officer
1	Magellan Behavioral Health 6950 Columbia Gateway Drive Columbia, Md. 21046	800-458-2740 Fax: 410-953-5200 www.magellanhealth.com	14,719,353	1,342	3,735	6,500	Dan Messina, president/CEO Magellan Health Services
2	ComPsych Corp. NBC Tower, 455 Cityfront Plaza, 24th Floor Chicago, Ill. 60611	800-755-3050 Fax: 312-595-3125 www.compsych.com	7,000,000	625	230	17,200	Richard A. Chaifetz, chairman/CEO
3	CIGNA Behavioral Health 11095 Viking Drive Eden Prairie, Minn. 55344	952-996-2000 Fax: 952-996-2659 www.cignabehavioral.com	4,000,000 [1]	700 [1]	933	12,280	Keith Dixon, president
4	ValueOptions 3110 Fairview Park Drive Falls Church, Va. 22042	703-205-7000 Fax: 703-208-8930 www.valueoptions.com	3,400,000 [2]	609	4,000	61,496	Ronald I. Dozoretz, chairman/CEO
5	Horizon Behavioral Services 1500 Waters Ridge Drive Lewisville, Texas 75057-6011	972-420-8200 Fax: 972-420-7793 www.horizoncare.net	2,208,285	641	279	18,500	Linda Laitner, president
6	Ceridian 3311 E. Old Shakopee Road Minneapolis, Minn. 55425-1640	800-729-7655 Fax: 314-872-8805 www.ceridian.com	1,800,000[1]	NA	563	5,600	Tony Holcombe, president-Ceridian Employer/Employee Services
7	VMC Behavioral Healthcare Services 100 S. Greenleaf Gurnee, Ill. 60031	888-645-2842 Fax: 847-249-2772 www.vmceap.com	1,725,174	210	39	9,163	Mary Vasquez, president
8	Bradman/UniPsych Cos. 7777 Davie Road Extension, Suite 100A Hollywood, Fla. 33024	954-704-8686 Fax: 954-704-8677	1,000,000	85	38	2,000 [1]	Leo H. Bradman, president
9	Ann Clark Associates 8910 University Center Lane, Suite 650 San Diego, Calif. 92122	800-932-0034 Fax: 858-452-7819 www.annclarkassociates.com	825,000	201	120	20,000	Ann D. Clark, president/CEO
10	Bensinger, DuPont & Associates 20 N. Wacker Drive, Suite 920 Chicago, Ill. 60606	312-726-8620 Fax: 312-726-1061 www.bensingerdupont.com	770,000	250	45	700	Peter Bensinger, president/CEO

1 Estimated 2 Employee lives only NA=Not available

Source: *BI* survey

LARGEST DEPENDENT CARE SERVICE PROVIDERS BY EMPLOYEES

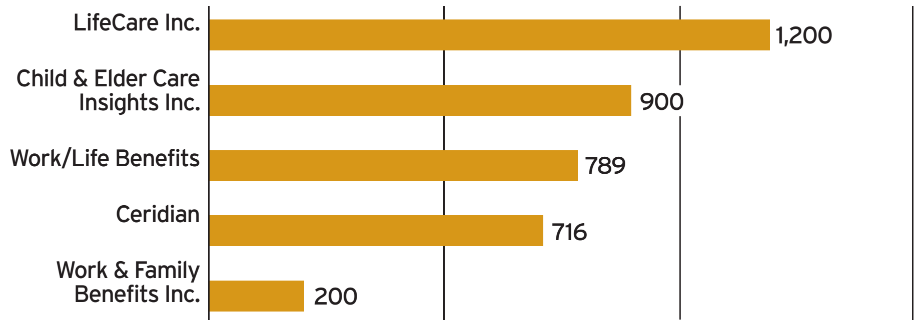
Ranked by number of employees dedicated to dependent care services



Source: *BI* survey

LARGEST DEPENDENT CARE SERVICES PROVIDER BY EMPLOYER CLIENTS

Ranked by the number of employer clients that receive dependent care services



GRAPHIC BY ADAM DOI

Largest dependent care resource and referral service providers

Ranked by number of lives covered at year-end 2001

Rank	Company/address	Phone/fax/Web	Lives covered	Employer clients	Staff	Top officer
1	Ceridian 3311 E. Old Shakopee Road Minneapolis, Minn. 55425-1640	800-729-7655 Fax: 314-872-8805 www.ceridian.com	7,600,000	716	300	Tony Holcombe, president-Ceridian Employer/Employee Services
2	Child & Elder Care Insights Inc. 19111 Detroit Road, Suite 104 Rocky River, Ohio 44116-1740	440-356-2900 Fax: 440-356-2919 www.carereports.com	6,000,000	900	27	Elisabeth A. Bryenton, president/CEO
3	Work/Life Benefits 11095 Knott Ave., Suite L Cypress, Calif. 90630	800-949-7948 Fax: 714-899-4444 www.wlb.com	4,300,000	789	105	Laurent Delmas, CEO
4	LifeCare Inc. 400 Nyala Farms Road Westport, Conn. 06880	203-226-2680 Fax: 203-291-3571 www.lifecare.com	4,000,000	1,200	250	Peter G. Burki, CEO
5	Evercare Connections 1115 S. Waldron Road Fort Smith, Ark. 72941	866-463-5337 Fax: 479-478-3202 www.searchforcare.com	500,000*	NA	25	Nancy Williams, executive director
6	Corporate Counseling Associates 475 Park Ave. S. New York, N.Y. 10016	212-686-6827 Fax: 212-686-6511 www.corporatecounseling.com	275,000	100	NA	Bob Levy, president
7	Work & Family Benefits Inc. 100 E. Hanover Ave. Cedar Knolls, N.J. 07927	800-644-2363 Fax: 973-267-0404 www.wfbenefits.com	230,000	200	12	William H. Mulcahy, president
8	FamilyCare Inc. 5820 Stoneridge Mall Road, Suite 230 Pleasanton, Calif. 94588	925-469-8060 Fax: 925-469-8061 www.famcare.com	150,000	50	10	Cathy Leibow, president/CEO
8	CPA Group 221 N. LaSalle St., Suite 2301 Chicago, Ill. 60601	312-263-0551 Fax: 312-263-2332 www.cpagroup.org	150,000	22	5	Mary Ellen Gornick, president
10	Employee Assistance Programs International 410 17th St., Suite 2000 Denver, Colo. 80202	800-327-2287 Fax: 888-892-8832 www.eapintl.com	52,436	11	13	Jodie Collins, president/CEO

* Estimated NA=Not available
Source: *BI* survey

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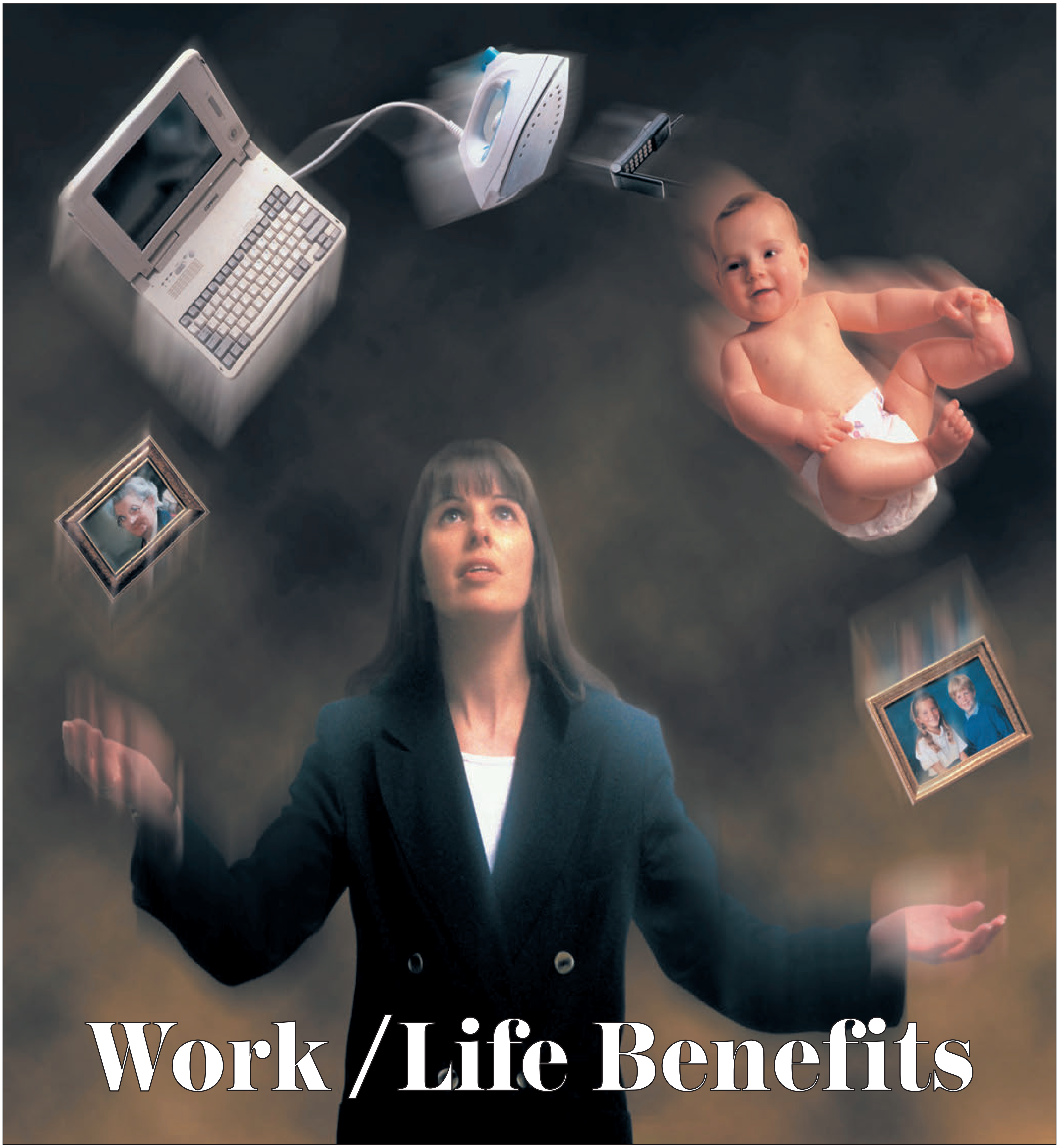

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Benefits Management

April 8, 2002

Inside

Helping parents save for college

Employers are offering working parents access to so-called 529 plans, a tax-favored way to accumulate money for children's education.
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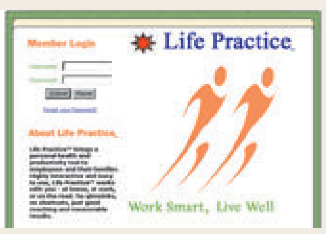

Wellness program takes a tech turn

Some employers are seeing success in getting employees to participate in an online wellness program.
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Telecommuting grows after 9/11

The terrorist attacks forced many New York-area employers to embrace telecommuting, and some still are.
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List of largest EAP providers

Business Insurance lists the largest providers of employee assistance programs.
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Dependent care resources

BI lists the largest providers of dependent care resource and referral services.
Page T14

Companies slow to employ alternative work options

Use of arrangements such as flextime is up only slightly, if at all

By SALLY ROBERTS

Employer interest in offering alternative work arrangements continues to grow, albeit at a slow pace.

The sagging economy, coupled with cultural issues within the workplace, has stymied stronger growth in the number of employers offering such alternative arrangements as flextime, part-time employment, telecommuting and job sharing, benefit consultants say.

Those employers that do offer such arrangements, however, are not only better positioned to attract and retain talented workers, but also are seeing improvement in their company's bottom lines, consultants say.

And while alternative work arrangements for now may be growing at a snail's pace, benefit experts say they expect the programs to grow at a faster pace in the near future. This will be due, they say, to an impending labor shortage in the United States, which will force employers to offer such arrangements to attract and retain talent.

At the same time, they point out that individuals born between 1965 and 1980—the so-called "Generation X-ers"—now are moving up in the workforce and are beginning to start families. And, unlike their Baby Boomer counterparts, this generation expects their employers to accommodate their needs.

According to Hewitt Associates L.L.C.'s most recent report on work/life benefits, 59% of the 945 employers surveyed offered flextime in 2001; 48% offered part-time employment; 30% offered telecommuting; and 28% offered job sharing. These figures go largely unchanged compared to the previous year's survey, which found 58% of the employers offering flextime in 2000; 48% offering part-time employment; 29% offering telecommuting; and 28% offering job sharing.

With such little growth, one might assume that employer interest in alternative work arrangements has peaked.

See **ALTERNATIVES**/page T10

Adoption benefits finding homes

By JUDY GREENWALD

When Mary Beth Preuss and her husband decided to adopt a second child, the help that her employer was willing to provide was very welcome.

Ms. Preuss' employer, the Washington-based Federal National Mortgage Assn., reimburses employees up to $10,000 for the costs associated with an adoption.

"I have a very positive outlook and appreciation for all that (Fannie Mae has) done to ease the adoptive process," said Ms. Preuss. "They really stand behind their employees."

Consultants and benefits managers say companies that offer adoption assistance have relatively little to lose and much to gain. Reimbursement for adoption expenses is considered a "cheap" benefit in the sense that it makes a company a more attractive employer and does so at a low cost, given the relatively small number of employees who actually take advantage of the benefit.

At Xerox Corp., for instance, only about 50 of its 46,000 domestic employees annually apply for the up to $3,000 in adoption benefits the company offers, a spokeswoman for Stamford, Conn.-based Xerox said.

Fannie Mae's adoption reimbursement program has cost the corporation just $300,000 for the 50 adoptions it has reimbursed since 1994, said Sandy Sarvis, director of diversity and work/life programs.

But offering adoption benefits is still far from universal. Only 34% of employers report they provide employees with adoption assistance, according to a 2001 Hewitt Associates L.L.C. survey. Most reimbursements are in the $2,000 to $5,000 range.

And at least so far, few of the employers that offer the benefit have increased it in light of a new tax law—the 2001 Economic Growth and Tax Relief Reconciliation Act—which boosted to $10,000 from $5,000 the amount of tax-free reimbursement employers can provide to

See **ADOPTION**/page T8

College savings plans are inexpensive, popular

By JERRY GEISEL

More and more employers are embracing Section 529 college savings plans as a benefit offering, to the delight of employees.

Section 529 plans are tax-favored vehicles for individuals to set aside and invest funds for a relative's college expenses. The state-sponsored savings plans were created by Congress in 1996 to complement prepaid tuition plans that many states already had set up. Last year, Congress made the plans even more attractive by making distributions from the plans completely tax free (see related story).

The plans are appealing to employers because, unlike many other benefit programs, the cost is low—expenses are generally limited to setting up a payroll deduction system to forward employee contributions to a 529 program manager—while employee appreciation is high.

Those twin features are prompting a growing number of employers to make the savings plans available to employees through payroll deduction.

"This is something we can offer to employees at essentially no cost. This makes savings very easy for employees and it makes our benefits program more cutting edge," said Tammy Skaife, benefits manager in the Dallas office of Publicis. The public relations and advertising firm will begin offering a 529 plan managed by a CIGNA Corp. unit later this month.

"We are looking for ways to help employees meet their financial needs. This further helps our goal of being an employer of choice," said a spokeswoman for defense contractor Raytheon Corp. of Lexington, Mass. Raytheon began offering a 529 plan managed by Fidelity Investments last October.

More large employers soon will add the college savings plans to their benefits lineup.

Ford Motor Co. is working with pension and investment giant TIAA-CREF to offer a 529 plan later this year for salaried employees.

Section 529 plans are a "valuable opportunity for employees and, where possible and feasible, we want to provide a way" for employees to contribute, said Mike Bush, Ford's manager of income and security programs for the Dearborn, Mich.-based automaker.

Statistics are not available on

See COLLEGE/page T6

529 plans grow after tax reform

The appeal of Section 529 college savings plans was greatly enhanced by a recent change in federal tax law.

The Economic Growth Tax Relief and Reconciliation Act of 2001 changed tax law so that distributions from the savings plans, taken to pay for college expenses, are tax-free. Previously, investment income earned on contributions was taxed when withdrawn.

Section 529 plans are sponsored by states, with 42 currently offering the programs. States, in turn, contract with professional investment firms to offer participants a variety of investment options—often a basket of mutual funds—for their savings. A parent, grandparent or other family member can open a 529 account for a beneficiary. Accounts can be set up by individuals working with professional investment firms and also increasingly are being made available as a benefit by large employers.

Annual contributions, under the federal gift tax law, are limited to $11,000. States, though, also limit lifetime contributions, with caps ranging from $100,000 to about $260,000.

Funds withdrawn for college expenses are not taxed. If these distributions—which can be used to pay for tuition, fees, required equipment, books and room and board at accredited schools—are taken for other reasons, they are subject to income tax as well as a 10% penalty tax.

If a 529 plan beneficiary decides not to attend college, the account's owner can name a new beneficiary.

There is no requirement that an account holder or employer live in the state that sponsors the 529 plan. However, those states that allow tax deductions for the contributions would give those deductions only to state residents.

—By Jerry Geisel

College: Plans proving popular

Continued from page T4
how much of the entire 529 plan market employer-sponsored plans constitute. But clearly, the market is aided by employer interest and growing by leaps and bounds.

At TIAA-CREF, believed to be the nation's largest 529 program manager, the number of accounts it administers jumped in the last year to 427,000 from 229,000, while assets in those accounts swelled to $2 billion from $950 million.

And, much like 401(k) plans, which exploded in popularity after a slow start, 529 plans still may be only in their infancy.

"There is just a huge potential out there," said Missouri State Treasurer Nancy Farmer in Jefferson City, Mo. Missouri is one of 42 states that sponsor the plans.

There is good reason for Ms. Farmer's optimism, Section 529 experts say.

"The plans are more generous than anything that previously existed," said David Musto, vp-product management for CIGNA Retirement & Investment Services in Hartford, Conn.

Section 529 plans have been around since 1996, but it was only last year that Congress, as part of the Economic Growth and Tax Relief Reconciliation Act, enormously increased the plans' appeal by changing tax law so that distributions taken to pay for college expenses are tax-free. Previously, investment income earned on contributions was taxed when withdrawn.

"While 529 plans were a good deal before EGTRRA, they are now an even better deal," said Charles DiVencenzo, a vp with Hartford Financial Services Group Inc.'s Investment Products Division in Simsbury, Conn.

"You now have tax-free growth. This is what makes the plans so attractive," said Donn Sharer, vp for MetLife Financial Services in Iselin, N.J.

"The legislation has just galvanized interest," said Kathryn Hopkins, an executive vp with Fidelity Investments in Boston.

Unlike 401(k) plans, a 529 plan can be set up by individuals on their own, dealing directly with state or program administers. Still, many see employment-based 529 plans as a key to the plans' growth.

Indeed, a recent Hewitt Associates L.L.C. survey found that 19% of respondents intend to set up payroll deduction-funded 529 plans, while 46% are considering doing so.

"Nearly 20% is a pretty good initial take rate," said Rob Reiskytl, a consultant in Hewitt's Minneapolis office.

Still, others, while convinced that payroll deduction plans will grow in popularity, say employers shouldn't be in a rush to offer the plans. That is because the 529 marketplace is changing, with states adding more investment options, for example.

"My advice is to get 529 on your radar screens, but don't necessarily offer the plans until you give the market a little more time to mature," said Alan Glickstein, a consultant in the Wellesley Hills, Mass., office of Watson Wyatt Worldwide.

Employers, said Marge Martin, a vp with Aon Consulting in Somerset, N.J., have to assess whether 529 plans are worth the time spent to set them up.

Ms. Martin noted that 529 plans, unlike 401(k) plans, can be opened up by employees on their own. As with payroll deduction plans, automatic deposit plans offered by program administrators can eliminate the hassle of writing out periodic checks, she said.

While that may be true, employers will be critical in providing information about the plans, said Bruce Steinhaus, a TIAA-CREF program director in Southfield, Mich. Such information, he said, can come through employee-sponsored seminars, workshops and newsletters.

Altering lifestyles through Internet fitness monitoring

Daily progress reports encourage healthy habits

By MICHAEL PRINCE

When it comes to leading a healthy lifestyle, most people know what they should be doing.

The trick is getting them to do it.

One new approach to promoting wellness uses the Internet—and some subtle psychology—to motivate people to live healthier lifestyles.

The idea behind the service, Life Practice, is for its users to develop healthy lifestyles by practicing the right behaviors every day until they become habits, explained Jim Grube, the president of The Teamwork Co. in Baltimore, which operates *www.lifepractice.com.*

Employers in recent years have turned to wellness programs as a way to address rising health care costs. In general, such plans seek to reduce certain health risks—and the associated treatment costs—by promoting healthier lifestyles among participants.

Although many companies can inform employees about how to become healthier, Mr. Grube said he believes that his company has a unique ability to get people to change their lifestyles.

"There are very few companies that can get employees to change behavior over time," Mr. Grube said.

The online Life Practice program focuses on changing behavior in four key areas: exercise; nutrition; sleep and stress; and life balance, which takes into consideration such factors as whether a participant spends time with his or her family. The voluntary program does not specifically address smoking or alcohol use within those categories, but a participant could add them as part of a so-called "personal challenge," Mr. Grube said.

Each day, an individual participating in the program answers a series of questions about his or her behavior during the previous 24 hours, providing information on how much food and water the participant consumed, how much exercise and

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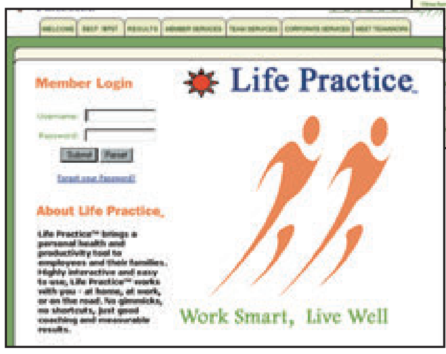
sleep the individual got, and other information. The program then computes a daily LPI—or life



practice index—from the data, which allows the participant to gauge how well he or she is doing in the program.

"Their score is their golfer's handicap—it's how their game is," Mr. Grube said.

The program also indicates how frequently each participant enters data, providing an indication of the individual's commitment to the program. Each day, participants receive an e-mail reminding them to visit the site.

The program also creates a monthly calendar for every category, with days colored either red—to show the person did not meet his or her goals for the day—or green, indicating that a goal has been met. A white square indicates that no data were provided for that day.

But the key to the program, Mr. Grube said, is the "online coach" that monitors each participant. That individual monitors the Life Practice data and will send a participant an e-mail of praise for making progress or nudge the person to pick up the pace if goals are not being met.

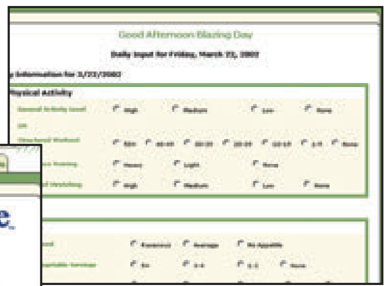
Knowing that someone is lurking over your shoulder and keeping track of your activities "means a lot to the user," Mr. Grube said.

Changing participants' behavior is the most difficult part of any wellness program, said Bruce Kelley, senior consultant for Watson Wyatt Worldwide in Minneapolis. But because Life Practice's approach has participants track their progress every day, "you feel compelled to try a little bit harder," he said.

Mr. Kelly said that several studies conducted over the past decade have found that promoting healthy lifestyles can help employers reduce health costs and increase productivity. In particular, he cited a 2000 study covering more than 45,000 employees that found that such factors as stress, excess body weight and low physical activity are associated with 25% of all health care costs. In addition, a 1998 study, which involved more than 10,000 people, showed that obese employees are more likely to be absent from work.

The wellness approach appeals to employers who are looking for ways to lower health care expenditures, particularly in light of the waning effectiveness of managed care in controlling costs, Mr. Kelly said. "They have to come up with something new."

The response so far from employers using the Life Practice program on a pilot basis has been



Each day, participants in the online Life Practice program are asked questions about their current health habits.

positive.

John Kaegi, senior vp at Vytra Health Plans in Melville, N.Y., said he likes the approach used by Life Practice because it is based on conventional wisdom about health, rather than on fads.

The program encourages "fundamental things that we know will give people a healthier outlook on life," said Mr. Kaegi, whose company has 125 employees involved in a six-month trial period that will end in May.

Mr. Kaegi also said that by reporting every day, participants feel greater pressure to meet their goals. "You don't want to report to yourself or your coach that you're failing in your commitments," he said.

Vytra is evaluating the program for long-term use by its own employees and considering offering the service to employers that use its health plans, Mr. Kaegi said. "If (clients') employees are healthier, then their costs go down and our costs go down," he said.

Another employer using the test program isn't hesitating to sign up for the long term.

"The response from our employees is really excellent," said Troy Gustavson, the publisher and president of Times/Review Newspapers Inc. in Mattituck, N.Y.

In the past, the company has tried to improve employee fitness by offering an onsite yoga class and by forming a walking club, both of which were short-lived, Mr. Gustavson said. With Life Practice, though, the 15 employees participating in the program seem to be staying put, he said.

"The daily reporting really works," Mr. Gustavson said. The e-mail "helps me stay on track and is generally received that way by the people here."

Knowing that the online coach is monitoring their progress motivates people to stay with their goals.

"It's embarrassing to have to admit I did not stick to the program for four or five days," Mr. Gustavson said. "You just don't want to do that."

Mr. Gustavson also praised the program's negligible administrative burden. "We didn't really have a direct role other than to encourage people to take it," he said.

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Adoption: Assistance benefits appreciated by employees

Continued from page T3
employees to cover adoption-related expenses. The new law also raises to $150,000 from $75,000 the maximum annual adjusted gross income employees can earn without being taxed on any reimbursement.

Even with employer assistance, adoption can be an expensive proposition for employees. An adoption could cost up to $30,000 as of 2000, according to the Washington-based National Adoption Information Clearinghouse, which is part of the U.S. Department of Health and Human Services.

Most employers offer adoption benefits as part of a broader work/life program. Reimbursable expenses, which generally are paid once the adoption becomes final, can include agency fees, legal costs, hospital costs for the birth mother and child, charges for temporary foster care and travel.

Under most programs, only one adoption per year is permitted. Generally, an employee must be full-time and have worked for the firm for at least one year. Adoption of stepchildren or grandchildren is usually excluded from these programs.

'I get e-mail from employees who say, "I feel very good about working for a company who offers" ' adoption benefits.

Catherine Hawkes
CIGNA Corp.

In addition to reimbursing expenses, more employers are offering paid or unpaid time off to care for an adopted child. Dublin, Ohio-based Wendy's International Inc., for example, offers six weeks of paid leave to employees with four or more years of service, while Fannie Mae introduced four weeks of paid leave in January.

Paid leave is generally deducted from the 12 weeks of unpaid leave provided by employers with 50 or more workers under the federal Family and Medical Leave Act. Companies sometimes also offer adoption resource and referral services, as well as information classes and seminars.

Benefits experts say offering adoption benefits can gave employees a big morale boost at relatively little cost to the employer.

Catherine Hawkes, assistant vp of employee health and work/life programs at Philadelphia-based CIGNA Corp., said adoption assistance "is one of our most well-regarded programs. Every time we announce it, I get e-mail from employees who say, 'Even though I'm not using this benefit, I feel very good about working for a company who offers it,'" she said.

And those who actually do use the benefit "feel tremendous gratitude toward their company when they're able to get support this way," said Ms. Hawkes, who has a 7-year-old adopted daughter.

Christine Rossman, manager of work/life solutions at Chicago-based Abbott Laboratories, said that, after her company increased its adoption reimbursement to $10,000 and added two weeks of paid leave this year, the company's chief executive officer received several letters from grateful employees. "So it was a very positive response," she said.

"It would seem to make good sense to help out somebody who's adopting children vs. someone who's having them on their own, just from an equity standpoint," said Rich Federico, vp with The

Continued on next page

Employers see advantages to offering adoption assistance benefits.

Continued from previous page

Segal Co. in New York.

Spurred by a 1996 law that permitted employees to receive up to $5,000 in reimbursement from their employers, more employers have introduced the benefit in the years since.

"I think people are more willing to provide" the adoption reimbursement benefit, said Jay Kirschbaum, national director of the national benefits resource for Willis Group Ltd. in St. Louis. "It's been an upward trend the past few years," particularly among larger employers, though the number is "still not overwhelming," he said.

Johnsonville Sausage L.L.C. in October introduced a program offering up to $3,000 in adoption benefits for its 700 employees, though no one so far has sought the benefit. "We just thought that adding something like this would be a family-friendly, indirect benefit," said Julie Schumann, indirect compensation coordinator for the Kohler, Wis.-based company.

The amount employers reimburse is also increasing, said Jon Van Cleve, work/life consultant with Lincolnshire, Ill.-based Hewitt. While the average reimbursement used be $2,500-$3,000, "now it's inching up toward $5,000," he said.

Although Abbott Laboratories is among the employers that have begun to offer up to $10,000 since passage of last year's tax measure, the law change was only one consideration, Ms. Rossman said.

'We're really trying to meet the diverse needs of our employees, and that changes over time.'

Nancy Thurber
W.W. Grainger Inc.

The primary driver, she said, was a desire to be competitive with other companies in "attracting and retaining talent."

Few other employers have followed Abbott and Fannie Mae in increasing their adoption reimbursement benefits, though.

"It's too new," said Mr. Kirschbaum. "A lot of the provisions of the tax act this summer are just now getting implemented," he said. It could also be that an employer "may not have been able to make it available" for this year but will do so next year, he said.

But Jane Lassner, senior consultant in the group and health care practice at Watson Wyatt Worldwide in Stamford, Conn., said she believes more employers have not increased their adoption benefit because "the benefit itself is new enough that employers haven't felt much of a push. It's not like this is a 20-year-old benefit" that companies realize should be increased, Ms. Lassner said.

Nancy Thurber, director of benefits at Lake Forest, Ill.-based W.W. Grainger Inc., which distributes maintenance, repair and operating supplies, said when the company introduced its adoption assistance program in January, it decided on a $5,000 maximum in part because the national average is about $3,000. "We thought we were being very competitive making ours $5,000," she said.

Furthermore, normal maternity expenses are around $5,000. "I wanted to make it relatively equitable for the people we would pay for their health coverage vs. an adoption expense," said Ms. Thurber, who added that the $5,000 maximum may be increased in the future.

Observers have different theories as to why most companies still do not offer any adoption assistance.

"It might be just a lack of awareness of what's available in terms of the tax relief," said Segal's Mr. Federico. Also, "it might be simply the feeling that so few are going to take advantage of it, why put it in?" he said.

These firms "might have other priorities" said CIGNA's Ms. Hawkes. "It might not have hit their radar screen. It might be something that they're thinking about, and they just haven't had an advocate within the company" to push for the benefit, she said.

Furthermore, some employers may not have formal, written adoption reimbursement policies but nonetheless offer adoption assistance, "sort of on a case-by-case basis," said Hewitt's Mr. Van Cleve.

"We're really trying to meet the diverse needs of our employees, and that changes over time," said Ms. Thurber about Grainger, which just introduced its adoption reimbursement program in January. "A benefits package is something that needs to be looked at on an ongoing basis," she said.

Alternatives: Employers slowly embracing flex

Continued from page T3

"I don't think that's necessarily the case," said Jon Van Cleve, work/life consultant with Hewitt Associates in Lincolnshire, Ill. "Interest is certainly there and certainly on the rise, be it ever so slightly," he said.

He noted that while the statistics may not show much growth, the Hewitt survey only takes into account employers that have written policies on the books. "A lot of organizations have alternative work arrangements in place but are still considered under the table," he said.

Nevertheless, such factors as the economy and other internal issues are stopping some employers from offering such benefits, consultants say.

One of the reasons that employers have not implemented such programs is "old-style reluctance…concerns about productivity and concerns about visibility control," said Tom Casey, a principal with Buck Consultants in Boston.

"So many things have happened in the last nine months. If you're just looking at the recession and an organization's willingness to be flexible, I would say they are less inclined because they don't have to be," said Jane Weizmann, senior human resource consultant at Watson Wyatt Worldwide in Washington.

> **If employers hire good people and give them flexibility, 'you reduce your hiring costs and you reduce your replacement costs.'**
>
> *Tom Casey*
> *Buck Consultants*

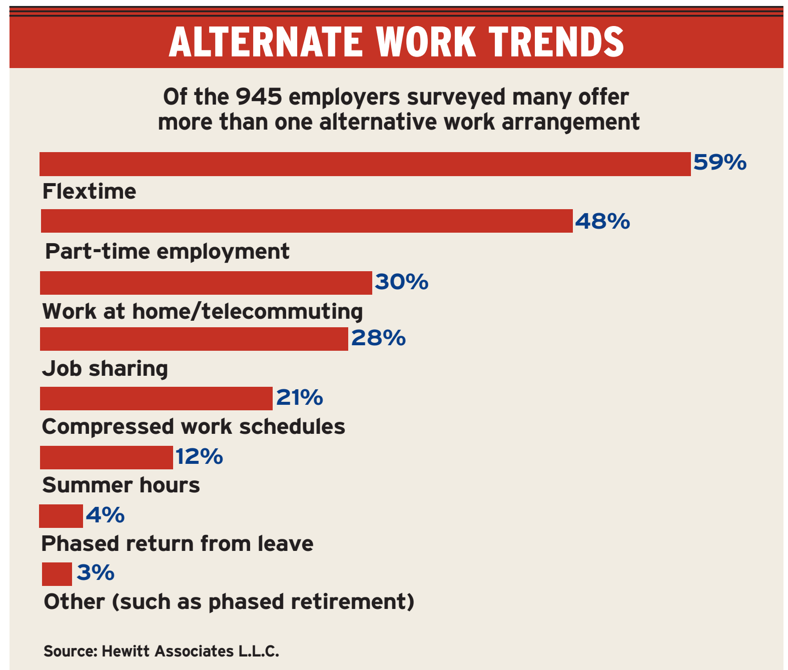
Jay Kirschbaum, national director of Willis Group Ltd.'s national benefits resource group in St. Louis, added that he thinks "with the dotcom blowout…the necessity to provide those arrangements has gone away with the meltdown."

"In the height of the dotcom boom, employees were demanding various work arrangements," he said. Today, though, there is less demand from employees.

Hewitt's Mr. Van Cleve pointed out, however, that "even though the economy has been bad and (employers) might have been through some layoffs, employers are beginning to realize that those left behind are working harder and more than ever and that they really need to keep them focused and productive."

Employers are realizing that offering alternative work arrangements "is a small price to pay for what they are getting in return," he said.

Flexibility within the workplace results in better productivity and more loyalty among employees, consultants say. But the benefits to employers do not stop there.



"The reality is, it's not only a social response, it's an economic response as well," Buck's Mr. Casey said. If employers hire good people and give them flexibility, "you reduce your hiring costs and you reduce your replacement costs," he said.

In addition, "if you have a more stable, productive and committed workforce, your customer acquisition and retention numbers will go up," Mr. Casey said.

"What you don't want to see happen is people in the position of leaving the company before they have had the chance to sit down and say they have to resign because they just can't make their schedules work," said Debra Capolarello, senior vp-human resources for Metropolitan Life Insurance Co. in New York. "That's not the position we want to be in at MetLife. We want to be proactive about using (alternative work arrangements) as a tool to attract our talent as well as to retain our talent," she said.

MetLife is in the process of "re-energizing" its work/life policies. In addition to creating a Web site that offers more information about all of its work/life benefits, it also is adding a new "teleflex" option to employees.

Under this program, which combines telecommuting with flexible work schedules, employees are able to spend the first part of their day in the office and finish the remainder of the workday at home.

"When you can have a positive impact on productivity and the results someone achieves from a performance perspective are such and we can meet their work/life demands from the standpoint of flexibility, it's like a win-win," Ms. Capolarello said.

According to Watson Wyatt Worldwide's most recent Human Capital Index study, employers that show more flexibility in work arrangements are able to capture the skills and knowledge of a wider range of talent, which pays off in a 3.5% increase in shareholder value.

Whether employers begin to realize the bottom-line impact of offering alternative work arrangements is irrelevant, consultants say. The emerging labor shortage in the United States will force employers that want to compete to offer such arrangements to employees.

"What's going to drive organizations to take a fresh look at flextime and telecommuting is the whole issue of the labor shortage," Mr. Casey said. "We have emerging in the U.S. a critical labor shortage at all levels, but particularly in the middle and lower levels," he said. The birth rate has dropped such that by 2006 the nation will see negative labor growth, he predicted.

"If you look prospectively, we will see dramatic movement in this area," Mr. Casey said.

In addition to the labor shortage, "if you look generationally, you've got Gen-Xers coming up in the workplace and starting families," said Stephanie Trapp, executive director of the Alliance of Work Life Professionals based in Alexandria, Va. "They have a different sense of work goals and different sense of entitlement. We are going to start to see an increasing number of folks saying, 'If you want me to work for you, you've got to give me flexibility.'"

At the same time, employers also are going to start having to redefine retirement as well, Ms. Trapp predicts.

"Employers will increasingly try to keep older workers on staff." This is not only due to the labor shortage but also due to the issue of "institutional knowledge" that will be leaving the company with retiring employees, she said. A large portion of the nation's workforce is going to be eligible for retirement in the next two years. All that history and knowledge of the company, its clients and inner workings "will be going out the window."

As a result, employers will begin looking at offering flexible work arrangements to these people, she predicts.

"Ten years from now, I think we will say, 'I can't even believe we thought it was a privilege.' It's going to become a way of life," Watson Wyatt's Ms. Weizmann said.

Telecommuting on the rise after Sept. 11 attacks

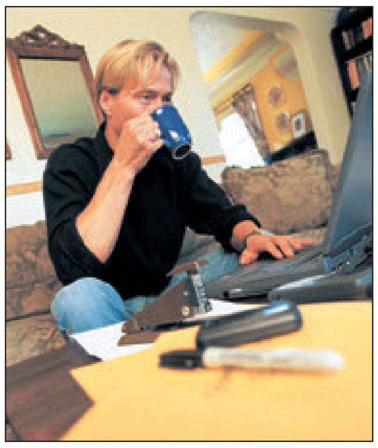
Growing company acceptance, stronger Internet security allowing more employees to work from home

By SAMANTHA MARSHALL

When American Express executive Mark Ryan works from home, he just has to tell his 2-year-old daughter one thing to keep her quiet.

"If you don't let Daddy do his work, he's going to have to go to stinky New Jersey."

His warning works. She knows the trip to New Jersey takes more than two hours, and that if he had to work in the office, he'd return



The terrorist attacks of Sept. 11 forced many companies in New York to allow employees to telecommute.

past her bedtime.

Mr. Ryan, whose company was displaced by the Sept. 11 terrorist attacks, is a new fan of telecommuting. Ideally, he would like to work at home part-time, even after American Express' downtown office reopens this spring.

The last six months have given hundreds of thousands of New Yorkers a taste for telecommuting. Supported by technology that became available just last year, people like Mr. Ryan are likely to fuel what was already a growing demand for work-at-home schedules.

"It's inevitable that telecommuting will rise," said Anne Chamberlain, who advises clients on employee retention strategies at Buck Consultants Inc. in Manhattan. People have become more comfortable working over longer distances, while employers anxious to hang on to talent despite the economic slump are searching for cost-effective ways to keep them happy, she said.

A growing number of employees have been using the information highway to bypass daily commuting for at least the past decade. About 23.6 million work from home either part-time or full-time, and telecommuting expands more quickly each year.

In 2001, about 3 million people across the nation began working remotely, a jump of more than 20% from 2000, according to the International Telework Assn. & Council in Maryland.

While there's no breakdown for Manhattan, most work/life consultants say that telecommuters are concentrated in the Northeast, particularly in New York City, where traffic congestion is most severe.

Just in the past year, online security has become sophisticated enough to allow workers to sign into their company intranet systems using only a secure ID and any Web browser. So employees no longer have to worry about carting a company laptop everywhere they go if they want to access office files.

While the appeal of telecommuting has been a no-brainer for employees, until recently it was a harder sell to employers. The number of companies willing to let workers telecommute, among other alternative work arrangements, has been inching up by about one percentage point a year to 30% this year, according to a national survey by Hewitt Associates L.L.C.

The events of Sept. 11 gave even the most reluctant companies no choice. According to a report issued by the New York state government on the economic impact of the attack, 563,097 employees in New York City were dislocated or disrupted, at least briefly, by the attack.

Many of them have since drifted back to the office as new headquarters have been established and buildings have reopened. There's little choice for some people, whose jobs, such as running operations in the back offices of banks or accounting firms, require an office presence.

In other cases, bosses simply prefer being able to see what their employees are up to. Davia Temin, who runs a marketing firm in Manhattan, said she trusts her staff. But if they were working from home, "I'd always be worried that they'd be sitting around e-mailing their friends and wearing fuzzy slippers," she said.

For more open-minded bosses, though, the aftermath of Sept. 11 offered proof that some employees work just as well, or better, at

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Telecommuting: Becoming more prevalent

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home.

"The best commercial for telecommuting is to throw managers into that situation to show them it can work," said Jon Van Cleve, a consultant at Hewitt who specializes in work/life issues.

Citigroup has been trying to expand, by a factor of five, its capacity for telecommuters to dial into its office systems since the World Trade Center attacks. While the office displacement is temporary, "telecommuting is growing (at Citigroup) because employees can work better, it's cheaper, and the technology is there," explained Steve Bernstein, a Citigroup executive who was given a new position just to handle continuity of office systems after Sept. 11.

Mr. Bernstein also found that the long commutes from Manhattan and Long Island to Citigroup's backup offices in New Jersey were interfering with worker productivity.

The continuing problems with congestion throughout the city may help convince other employers that telecommuting is a good idea. The Bloomberg administration may keep the single-occupant vehicle ban, which may cut down on congestion, but adds to drivers' inconvenience. And new bridge tolls are under consideration.

Mr. Ryan, who is in charge of government/industry development at American Express, said it can take him as long as two hours and 15 minutes to get to his company's offices in New Jersey—time that could be better spent on work projects.

He believes he works better at home. Despite the presence of his toddler daughter and infant son in his Upper West Side apartment, he finds he has fewer interruptions. Because he's out of sight and less accessible, he receives only the most important calls from work.

The need to telecommute also dovetailed with his personal circumstances. Last fall, Mr. Ryan's wife almost died giving birth. He had to take family medical leave to take care of his little girl and newborn son while his wife recovered. When his leave expired, he preferred to work remotely from home so he could be on hand, just in case.

Although he's gradually spending more time in the office and is scheduled to go back full-time this summer, he's now a convert. He would like to telecommute permanently, at least on Mondays.

Traffic congestion is at its heaviest on Mondays. And at home, "there's no wastage of time from people wanting to come in to your office and tell you about their wonderful weekend," he said.

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