

**New pension reform effort
launched in Congress / 3**

**Florida lawmakers at odds
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Business Insurance

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\$4

SARS fears spreading

Warnings prompt event cancellations, policy exclusions

PHOTO: GETTY/DON MACKINNON



Health care workers await patients at a new severe acute respiratory syndrome clinic established recently at St. Vincent's Hospital in Vancouver, British Columbia.

By CAROLYN ALDRED

The spread of severe acute respiratory syndrome, or SARS, is prompting contingency underwriters to impose exclusions and employers to adopt precautions.

The pneumonia-type virus broke out in China and Hong Kong late last year, and, as of last Friday, there were 2,781 total cases and 111 deaths, according to the World Health Organization, which has issued travel advisories for the affected areas.

Cases in mainland China total 1,290, with 55 deaths, while 998 cases and 28 deaths have been reported in Hong Kong. Other countries hit by the virus include Singapore (126 cases, nine deaths), Vietnam (62 cases, four deaths), Canada

(97 cases, 10 deaths) and the United States (154 cases but no deaths).

The spread of the virus has led to the postponement or cancellation of numerous exhibitions, conventions, and sporting and entertainment events in affected areas. And event cancellation insurers, fearful of an aggregation of claims, have begun excluding the virus from policies.

"SARS now is being excluded," said contingency broker David Close of London-based broker Adam Brothers Contingency Ltd.

"It is very unlikely that underwriters will insure any event in Hong Kong, China and, possibly, Singapore and Vietnam happening before the middle of June," said James Hopper, broking director of

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Late News

**Texas hail claims
put at \$450 million**

A series of hailstorms that struck the Dallas/Fort Worth metropolitan area earlier this month caused an estimated \$450 million in insured damages, according to a regional insurer group. Baseball-size chunks of ice caused "major damage in the form of dents in vehicles, planes and roofs as well as broken glass," said a spokeswoman for the Austin-based Southwestern Insurance Information Service, which represents property/casualty insurers in Texas and Oklahoma.

**Delaware's tort system
the fairest, survey says**

Corporate attorneys have ranked Delaware's tort system the fairest overall for the second year in a row, according to a survey by the U.S. Chamber of Commerce. And, for the second year in a row, corporate lawyers ranked Mississippi at the bottom of the list in terms of the fairness and reasonableness of its tort system. Survey respondents were asked to grade the states on a number of aspects of tort law, including judges' impartiality and competence, treatment of class-action suits and juries' fairness and predictability.

**Maryland opens health
plan to retirees**

Maryland Gov. Robert Ehrlich Jr. signed legislation that will automatically allow Bethlehem Steel Corp. retirees age 55 to 64—and their dependents—to obtain comprehensive health care coverage through a new state health plan. Monthly premiums paid by retirees 55 through 59 for



Gov. Ehrlich

coverage in the new Maryland Health Insurance Plan will be \$287, while premiums for those 60 to 65 will be \$308. Once the Pension Benefit Guaranty Corp. takes over Bethlehem Steel's underfunded pension plan, company retirees purchasing coverage through the state plan will be able, under a

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Punitives ruling clarifies standard

By MARK A. HOFMANN

WASHINGTON—Businesses are hailing as a potential legal landmark last week's Supreme Court decision reaffirming that a punitive damages award could be so disproportionate to the underlying compensatory damage award as to be unconstitutional.

The 6-to-3 decision in *State Farm Mutual Automobile Insurance Co. vs. Campbell et al.* involved the Utah Supreme Court's decision to reinstate a \$145 million punitive damage award against State Farm in a claims-handling dispute. The underlying compensatory damages in the case totaled \$1 million.

Some observers caution, though, that the April 7 Supreme Court decision, which rejected the punitive

award, still leaves some questions about such damages unanswered.

A jury had initially awarded Curtis and Inez Campbell \$2.6 million in compensatory damages and \$145 million in punitive damages because of the way State Farm handled claims stemming from a 1981 fatal car accident. The trial judge later reduced the compensatory award to \$1 million and the punitive damage award to \$25 million. But the Utah Supreme Court, after considering allegations regarding State Farm's conduct in numerous other states and what it termed the insurer's "massive wealth," reinstated the \$145 million punitive damage award while leaving the reduced compensatory award intact.

State Farm appealed to the U.S.

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HIPAA rules deadline finds some not ready

Complexity of privacy regs a challenge

By JUDY GREENWALD

Today is the deadline for employers to comply with the privacy regulations included within the federal Health Insurance Portability and Accountability Act, but not everyone is ready.

Even employers that have made an effort to comply with the privacy rules are stymied by the complexity of the regulations and what they consider inadequate guidance from the U.S. Department of Health and Human Services, which developed the rules.

For now, though, the HHS is ex-

pected to contact employers about noncompliance only if it receives a complaint from an employee. And even in cases of a violation, the department's initial focus will be on helping the employer comply rather than punishment.

Under the regulations, any employer that sponsors a health plan and possesses privately identifiable health information about its employees must implement policies and procedures to protect that information and keep it confidential. The restrictions are designed to ensure that health data is not used in

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**Spotlight report
RIMS 2003
CONFERENCE
REPORT**

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Tennessee, Virginia regulators in turf battle

Receivership spurs conflict

By DOUGLAS McLEOD

RICHMOND, Va.—The collapse of a Virginia malpractice insurer and three related risk retention groups has sparked a regulatory turf war and a barrage of policyholder lawsuits against the Virginia company's reinsurer, General Reinsurance Corp., and several others.

Virginia regulators earlier this year seized Glen Allen, Va.-based Reciprocal of America, which had seen its surplus eroded by rising medical malpractice and workers compensation losses and problems collecting from a Bermuda captive reinsurer. The move prompted Tennessee regulators to take over three Tennessee-domiciled medical and legal malpractice RRGs that had the same management as ROA and that reinsured virtually all of their business with the Virginia company.

Since then, the receiverships have become an open battleground between the Virginia and Tennessee insurance departments.

While the Virginia receivership continues to pay claims of ROA direct policyholders, it has so far re-

fused to pay claims from the RRGs, treating them as reinsurance debts subordinated to ROA's direct claims.

Tennessee regulators, however, insist that the RRGs' roughly 25,000 policyholders should be given equal priority and that the Virginia receiver is depleting ROA assets that should be available to the RRGs' hospital, physician and attorney claimants.

The RRGs collectively have only \$28.6 million in liquid assets but are owed \$251.6 million by ROA for pending claims, Tennessee Insurance Commissioner Paula A. Flowers told a state legislative panel earlier this year.

Tennessee officials are pressing administrative appeals of the Virginia receivership's actions, steps that Virginia officials have labeled a "fundamental attack" on the ROA receivership.

Meanwhile, lawyers for RRG policyholders this month filed proposed class-action complaints charging the three RRGs, RRG management officials, ROA reinsurer General Re and others with racke-

teering and fraud. Among other things, the suits allege that General Re conspired with the insurers to conceal their deteriorating financial condition and entered into a "secret" agreement that relieved General Re of liabilities to ROA.

"What these companies did is pretty much the same as the massive frauds committed by Enron, Tyco, WorldCom, HealthSouth and many other large corporations," Jere Beasley, a Montgomery, Ala.-based policyholder lawyer, said in a statement.

Robert Graham, senior vp and assistant general counsel with General Re in Stamford, Conn., labeled the charges "baseless and groundless" and said the reinsurer will "defend (the suits) appropriately."

ROA, originally founded in 1977 as The Virginia Hospital Insurance Reciprocal, was managed along with the three Tennessee RRGs by The Reciprocal Group of Glen Allen. While each of the insurers is an independent entity, all shared the same top officers, who were also officers of Reciprocal Group.

See ROA/page 26

Senate panel OKs litigation reforms

By MARK A. HOFMANN

WASHINGTON—The Senate floor is the next stop for class-action reform legislation approved by the Senate Judiciary Committee late Friday morning.

The panel had initially intended to vote on the bill on the morning of April 10, but Judiciary Committee Chairman Orrin Hatch, R-Utah, angrily recessed the committee after he and Sen. Edward Kennedy, D-Mass., fell into a heated argument over an unrelated bill. At the time, Sen. Hatch said that he wanted a quick vote on the Class Action Fairness Act, holding out the possibility that he would reconvene the panel that night or the next morning.

After nearly two hours of largely pro forma debate on Friday, the committee approved the measure—S. 274—by a vote of 12-to-7, with Sens. Dianne Feinstein, D-Calif., and Herb Kohl, D-Wis., joining the committee's unanimous GOP majority in support of the bill.

Opponents of the bill had earlier conceded that they did not have the votes to block committee approval of the bill, although that did not stop them from offering a slew of amendments on Friday. Among those proposals were attempts to strip tobacco companies and gunmakers from the bill's provisions.

The measure, which is similar to one introduced in the House last month, would permit the removal of certain class actions to federal from state courts when the claimants and defendants are from different states. It would also subject settlements to more thorough judicial scrutiny, particularly those involving the use of coupons, rather than cash, to

compensate class members.

The measure also forbids awarding class members who are physically closer to the courthouse larger amounts of compensation than other, more remote members of the class receive.

The sole amendment accepted by the committee was one offered by Sen. Feinstein. Her amendment raised to \$5 million the minimum amount of money that must be at stake to remove a case to federal from state court.

The bill previously set that figure at \$2 million.

The Feinstein amendment also set additional criteria in terms of class composition for moving cases to federal court, holding that cases in which at least two-thirds of a class were residents of the same state in

which the defendant had its principal place of business would automatically be heard in state court. Cases where a third or less of the class fit that criteria would go to federal court, and federal judges would set the venue for cases that fell in between.

Sen. Hatch had initially planned a vote on the bill for March 27, but agreed to two delays, including one to allow panel members to review the proposal to raise the monetary threshold for removing a case to federal court to \$5 million.

Despite admitting that they lacked the votes to block the bill, the measure's opponents wasted no opportunity to blast it as serving only corporate interests.

"Who wants this bill?" Sen. Richard Durbin, D-Ill., asked, answering by saying that the bill's supporters are polluters, gunmakers, pharmaceutical companies and "every insurance company in America" during debate.



Sen. Hatch

Portman, Cardin unveil bill with broad pension reforms

By JERRY GEISEL

WASHINGTON—The two congressmen who spearheaded the last successful drive to enact comprehensive pension reform legislation are launching a new reform effort.

Reps. Rob Portman, R-Ohio, and Ben Cardin, D-Md., introduced a bill Friday that contains more than a dozen retirement savings reforms.

Among other things, the bill would direct the Treasury Department to create a new index—based on the yields of long-term, highly rated corporate bonds—that employers would use to value pension liabilities and the amounts they must contribute to their pension plans. The new approach would re-

place the current index, which is based on the yield of 30-year Treasury bonds, and would save employers billions of dollars annually in pension contributions, pension experts say.

"That change alone would justify passing the bill," said Eric Lofgren, global director of benefit consulting at Watson Wyatt Worldwide in Philadelphia.

Other provisions in the legislation would give employers with defined contribution plans a new way to fund retiree medical expenses, while retirees for the first time would be able to take tax-free a portion of retirement distributions, such as a monthly pension annuity, to pay for retiree health care insur-

ance premiums.

Additionally, the legislation, which already has drawn significant bipartisan support, would accelerate the increases in maximum annual salary deferrals and "catch-up" contributions that can be made to 401(k) and other savings plans. Those higher deferrals and "catch-up" contributions are set in a 2001 federal law that Reps. Portman and Cardin championed. Their new bill also would eliminate certain rules that complicate pension administration.

The measure also would allow employees to transfer to 401(k) and other defined contribution plans up to \$500 in unused flexible spending

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Inside Business Insurance

Record industry targets workplace downloading

Employers may face significant liability if they don't try to prevent music file-swapping at work. **Page 4**

N.Y. court slashes GE asbestos cover

A state court has greatly limited the amount of excess cover General Electric Co. can tap for asbestos claims. **Page 4**

RIMS' kind of town, Chicago isn't

Why Chicago isn't a great RIMS conference host and other impressions of Paul Winston. **Page 6**

High court guidance on punitives welcome

Supreme Court guidance on what constitutes a reasonable punitive damage award is a welcome development. **Page 8**



Cruise line loses dispute over contingency cover

The U.K. High Court says a cruise line is entitled to only a fraction of the coverage it sought for a post Sept.-11 business slowdown. **Page 23**

Online

• Streaming video lets you watch the 2003 RIMS TV broadcasts again or for the first time.

• The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info on your own event.

• New **Opinion Poll** for readers: How concerned is your organization about the impact of SARS on its people and business?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS.

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Florida governor threatens special session if impasse continues

State lawmakers at odds over med mal reform

By **MICHAEL BRADFORD**

Florida's medical malpractice battlefield is rapidly taking shape.

The Florida Senate and House of Representatives have dug in with opposing bills aimed at solving a crisis that has seen premiums rise dramatically and the number of insurers writing malpractice coverage dwindle to less than a handful.

Legislators have come up with two very different bills addressing the malpractice problem and are expected to square off in the coming weeks over the final version that will be sent to Gov. Jeb Bush.

"We're on a collision course between the House and Senate in Florida," said a spokeswoman for

the American Insurance Assn. in Atlanta. "These are two very different approaches."

Gov. Bush has weighed in on the issue, saying that he will call a special session if he doesn't get a malpractice bill he likes by the time the regular session ends on May 2.

The House has passed its version of medical liability reform, and a Senate bill in early April was moving through committees toward finalization. The House and Senate will have to agree on a final bill that is sent to the governor, and that is expected to be difficult.

The two sides are at odds over a number of issues, among them a cap on noneconomic damages and a rate rollback.

Insurers and doctors are supporting H.B. 1713, which would cap noneconomic damages in malpractice cases at \$250,000. The cap is a feature that Gov. Bush has said he would like to see in any bill that reaches his desk.

The House version would also:

- Remove joint-and-several liability in medical negligence cases.
- Require mediation if a malpractice lawsuit were to be filed.
- Clarify bad-faith standards for medical malpractice insurers.
- Strengthen requirements for medical experts who testify at trials.
- Require hospitals to adopt patient safety plans and appoint patient safety officers.

See **MED MAL**/page 27



PHOTO: AP PHOTO/PHIL COALE

Florida Rep. Edward Jennings, D-Gainesville, enters the Florida House of Representatives, which passed medical liability reform legislation. A sign directs doctors to the Senate, which has yet to vote on its bill.



Employers put at risk by employee use of illegal music files

By **MICHAEL PRINCE**

For employers that ignore their employees' Internet habits, it may be time to face the music.

Numerous companies face potential liability—which could amount to many millions of dollars—because their employees are sharing copyrighted music files on workplace computers.

Sharing copyrighted material, including uploading and downloading music files over computer networks, violates copyright law, attorneys say. And the recording industry, which maintains that illegal music-sharing is significantly cutting into its profits, is making a concerted effort to stop the practice.

While its initial focus was on Internet file-sharing services—including the popular Napster Inc., which the recording industry successfully shut down—it is now targeting other entities, such as employers that permit

Internet file-swapping on workplace computers.

Last month, the Recording Industry Assn. of America sent letters to about 300 companies notifying them that some of their employees are using company computers to illegally swap music files. The letters, which were sent to chief executive officers and general counsels of the companies, warn that they may be financially liable if they allow the file-sharing to continue.

"These acts of infringement could expose your employees and your company to significant legal damages," the letter states. "Indeed, federal copyright law imposes stiff penalties for acts of infringement. For example, copyright owners can collect statutory damages of up to \$150,000 per copyrighted work infringed as well as legal costs and attorneys' fees," it states.

A spokesman for Novell Inc.

See **THEFT**/page 25

Errors & omissions

• An April 7 item in the Late News column did not provide the correct full name of a new interna-

tional claims adjusting network. The correct name of the company is vsr UNI-VERSE Adjusters Network L.L.C.

Occurrence argument rejected

Ruling limits GE's excess cover for asbestos claims

By **DOUGLAS McLEOD**

NEW YORK—General Electric Co. stands to lose millions of dollars of excess liability coverage for asbestos claims under a New York state court's ruling that each claimant's exposure to asbestos in GE turbine engines is a separate occurrence under the company's insurance program.

State Supreme Court Justice Ira Gamerman last week rejected GE's contention that the thousands of asbestos claims it faces are a single occurrence triggering two decades of policies that attached ex-

cess of GE's primary coverage with the now-insolvent Electric Mutual Liability Insurance Co. of Bermuda. Justice Gamerman found that each claimant's exposure was a separate occurrence and that excess policies in force between 1965 and 1985 are triggered only to the extent that each occurrence exceeds EMLICO's primary limit of at least \$5 million.

EMLICO's policies during that period did not include an aggregate limit, and none of the asbestos claims against GE has exceeded the EMLICO limit, the ruling noted.

Justice Gamerman's ruling

granted summary judgment to Apalachian Insurance Co., a unit of Factory Mutual Insurance Co., but will also apply to numerous other GE excess insurers that either joined the motion or will seek to benefit from it.

A GE spokesman said the company would appeal the ruling.

GE faced relatively few asbestos claims until 1991, when it became a target in widening liability litigation. By April 2002, the company had been named in 413,717 claims, the vast majority related to asbestos insulation used in GE's custom-de-

See **EMLICO**/page 25

Lawmakers consider changes to cash balance plan regulations

By **MARK A. HOFMANN and JERRY GEISEL**

WASHINGTON—A flurry of cash balance plan legislative activity took place last week, but the shape of future rules on the plans remains far from clear.

Among the developments were:

- The withdrawal of parts of Treasury Department-proposed rules that would have increased the likelihood of plans failing nondiscrimination tests in situations where employees may choose between an existing pension plan and a new cash balance plan.

- Hearings by the Treasury Department and Internal Revenue Service on the cash balance and other pension plan nondiscrimination rules the agency issued last December.

Attendees said the IRS and Treasury officials presiding over the hearings gave little indication of possible changes to the rules.

"I thought they asked tough questions" of proponents and crit-

ics, said Eric Lofgren, director of global benefits consulting at Watson Wyatt Worldwide in Philadelphia.



Among other things, employers are asking the two agencies to modify the rules to accommodate another pension hybrid, known as pension equity plans. Most such plans, under the proposed rules, would be considered age discriminatory.

• The introduction of legislation by cash balance opponents Reps. George Miller, D-Calif., and Bernard Sanders, I-Vt., which, among other things, would require employers

converting traditional plans to cash balance plans to give participants over age 40 and with at least 10 years of service the choice of participating in either plan. The measure also would require the Treasury Department to withdraw the cash balance plan regulations.

At the IRS/Treasury hearing, Rep. Sanders said changing pension systems to cash balance from traditional defined benefit systems was simply "unacceptable."

Some witnesses complained of negative impacts of cash balance conversions, but others defended the plans. As Brian H. Graff, executive director of the American Society of Pension Actuaries in Arlington, Va., put it, "any worker with only a 401(k) would welcome" being allowed to participate in a cash balance plan. More than 80 million workers have no defined benefit plan to draw upon in retirement, he said. "For better or worse," cash balance plans and other hybrids are the best hope for defined benefit plans, he said.

HIPAA: Compliance efforts vary

Continued from page 1

making employment-related decisions, among other things.

The complex regulations, which technically do not apply directly to the employer but to the health plan itself, mandate a host of requirements.

These include developing policies restricting employee access to others' health information, distributing to employees a notice of privacy practices and appointing a privacy officer. Health plans that paid less than \$5 million in premiums—or,



for self-insured employers, less than \$5 million in claims—have another year to comply.

Employers' degree of readiness varies.

"It really gets down to the sophistication and size" of the organizations involved, with larger employers tending to be better prepared, said Brian Gradle, an attorney with Washington-based Epstein Becker & Green. "I think that the awareness is increasing, but will there be 100% compliance by April 14? Certainly not."

"Most large employers are certainly on the way to compliance," said Serena G. Simons, an attorney with Washington-based Chevalier & Miller. "Some of them believe they will literally be done by Monday. I think others will trail out from that point, but everybody in our experience will have gotten a start, anyhow."

However, Elizabeth Vollmar, St. Louis-based vp with Willis National Benefits Resource, a division of Willis North America Inc., said that many middle-market employers are struggling to come into compliance.

"It's very difficult to get these things in place and to get everything taken care of, and it's very difficult for a lot of employers to spend time on this when they have so many other priorities—like health care costs—to focus on," Ms. Vollmar said.

Steve Miller, president of Milwaukee-based BeneCo of Wisconsin Inc., an employee benefits firm, said employers "are only as well prepared as their legal firm and their (third-party administrator) have prepared them." He added that "I think it ultimately comes down to what's going to change as of April 14" and whether there will be disgruntled individuals with questions about the policy and the information that has been provided.

Employer readiness for the regulations is "all over the board," said Katherine Klug, director of HIPAA services in the Minneapolis office of Buck Consultants Inc.

"I think many of them have done the basics," including sending the required privacy notices to employees by today's deadline. But many employers are still "working on policies and procedures" and may not have all their employee training completed by today, said Ms. Klug. She estimates that between 25% and 40% of employers are not entirely ready.

Kathy Bakich, national director of health care compliance for The Segal Co. in Washington, said: "I'm getting a lot of cold calls from people who are saying, 'Is there some kind of packet of forms that I can sign and I'm done?' And there's not."

Helena Rubinstein, a consultant with Hobbs Group Employee Benefits in Boston, said that while some employers will be prepared to meet the HIPAA deadline, "there are many who kept their eyes closed and their fingers crossed and hoped against hope that this would go away, and they're not prepared because they've either done nothing" or got started too late.

Indeed, it may take a highly publicized situation—such as a suit charging that an employee was fired because he or she has an ill child—to get people to comply with the law, said Kirk J. Nahra, an attorney with Wiley Rein & Fielding in Washington. "That is going to be a poster-child situation, and I think it's going to scare people.

Right now you've got lots of people who don't even know the rules are out there."

"It's going to take one ugly incident to get a lot of the noncompliers rushing to comply," said Ms. Rubinstein. "Shame tends to bring a lot of the noncompliers to the table. It shouldn't, but it does."

Meanwhile, even those who are making a good-faith effort are struggling to comply because of the regulations' ambiguity.

Observers say HHS tended to focus on providing guidance to the health care providers and clearinghouses that must also comply with the regulations, rather than to the health plans.

Anthony Knettel, vp-health affairs at the Washington-based ERISA Industry Committee said that while the group's employer members "are all pressing forward, the principal problem, I think, has been with the lack of guidance in several areas within the regulation." Much of the lack of readiness stems from "ambiguity or confusion about the requirements," said Mr. Knettel.

Segal's Ms. Bakich said among the areas of uncertainty is whether employers who operate call centers must obtain authorization before talking to a spouse about an individual's claim. It is a "very unclear issue under the regulations."

In resolving these ambiguities, "it's going to be similar to what we've seen with some of the other employment laws," such as the Americans with Disabilities Act or the Family and Medical Leave Act, said Buck's Ms. Klug. "It's going to really come down to a matter of interpretation, either by a court or an agency."

However, "I think employers' good-faith effort at trying to be in compliance is better than no effort at all," said Ms. Klug. "Don't wait until they come to audit you," she warned.

On the plus side, compliance efforts have encouraged employers to limit the number of employees who have access to others' health information, said Tom Meagher, Somerset, N.J.-based senior vp with Aon Consulting's national tax and ERISA practice. Employers have "gotten a much better sense of how important health information is, how sensitive it can be and how important it is that only appropriate, designated individuals have access."

Paul Winston

My kind of town, Chicago is (usually)

The 41st Risk & Insurance Management Society Inc. Annual Conference is in the bag (along with about two dozen brochures, various cab receipts, scraps of paper and booth tchotchkes).

Even though I work in Chicago, live nearby and think it's a great place, I don't believe it is well suited to hosting a RIMS conference in early spring. For one, the convention center is miles away from most hotels. Also, because Chicago is a large city, restaurants and other attractions are fairly spread out, requiring cabs or other transportation rather than a quick stroll. And finally, the weather is iffy until at least June.

I know that such comforts as

temperatures above 50 degrees Fahrenheit and conveniences like short distances between destinations have no bearing on the quality of educational sessions or the ability of attendees to network with colleagues and service providers. But the reality of attending a five-day conference is that many people would

like to be able to get back and forth with ease or grab a quick meal near the convention center with a minimum of hassle and discomfort.

Herewith are some impressions from a nearly weeklong educational and endurance event:

Diversify your revenue stream.

Hopefully, RIMS gets a cut of the proceeds from coat check services provided at the convention center and other venues. Coat checks are a rarity at most RIMS conferences because overcoats generally have not been required for attendees since Toronto in 1996.

Best offsite promotion. Liberty Mutual's bubble-wrapped buses made its safety message pop. While this cladding may have caused more than a few Chicagoans—including one police officer I observed—to scratch their heads, conference-goers were impressed with the safety gimmick and no doubt some had to restrain the urge to puncture the bubbles.

Overheard conversations. "I have to go find what booth has those squishy brains."

"Well, you're welcome to mine."

Walk a mile in my shoes. While the odometer on most attendees' feet registered that McCormick Place is one of the world's largest convention complexes, that was underscored by the construction of an entirely different exhibit hall floor elsewhere in the complex for the Construct America show while the RIMS exhibition was under way.

Safety no-no 101. At 12:01 p.m. on

Thursday, seconds after the exhibit hall officially shut down, teams of workers began ripping up the carpet in the aisles between booths. It didn't seem to matter that hundreds of people were still trying to navigate these paths without stumbling over the bumps and rolls created by carpet removal and coils of tape ripped from the floor.

RIMS exhibitors I'd like to see.

Expense form reconstruction services, sleep deprivation counselors, luggage management services.

Eye-catching booth give-aways.

American Technical Services' hula hoops. Many attendees carried several of the fluorescent hoops on their arms, but how do you get

them on the plane home? I also enjoyed RiskLabs' little people-shaped sticky darts (and so did my kids).

Faux pas. If you are a company doing business around the globe, it's probably not wise to make jabs at the French for their opposition to the U.S.-led war in Iraq, especially if you've invited a dozen or so of your French

employees to the occasion. Former Speaker of the House Newt Gingrich made several jabs at the French during remarks at a breakfast hosted by Marsh Inc. during the conference. But the final straw for some was when Former Ambassador L. Paul Bremer, a Marsh executive, joined in with his own undiplomatic remark about friendly fire and the French. After the event, Mr. Bremer was seen with several of the French attendees registering their displeasure. Appropriately, he defended himself *en français*.

Sharing the wealth. Insurers, brokers and other service providers did not stint when it came to lavish receptions and dinners for clients during RIMS. From attracting big-name musical acts like Ramsey Lewis and the band Chicago, to feeding dessert to thousands of clients and would-be clients, evening events were plentiful, extravagant and well attended. Risk managers must have felt good knowing they were receiving some dividend for their high premiums.

San Diego, here I come. Despite Chicago's impediments as a host city, the RIMS conference, as always, provided an excellent chance to catch up with friends, make new ones, learn about new skills and trends and compare notes. I'm looking forward to more next year—in San Diego.

Editor Paul Winston can be reached at pwinston@crain.com.



Paul Winston

BI adds a reporter in London

LONDON—Business Insurance has added to its editorial staff in London.

Neil Hodge has joined the magazine as an associate editor in the London office, where he will work with London Bureau Chief Sarah Veysey and report on U.K. and European risk management and employee benefit issues.

Mr. Hodge, 31, previously worked for Smith de Wint, an editorial and publishing services agency in Nottingham, England, where he was deputy editor of Internal Auditing & Business Risk magazine. He also has written articles on a variety of business-related topics for other publications.

He has taught courses in English as a foreign language at various schools and colleges in Lithuania and Turkey.



Mr. Hodge

He holds a diploma in journalism from Darlington College of Technology and a master's degree in history from the University of Aberdeen.

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Editorial

Fair punitive damage limits set

THE U.S. SUPREME Court erected a guidepost on the way to a more-equitable civil justice system nearly seven years ago, when it ruled in *BMW of North America vs. Gore* that some punitive damages awards could be so disproportionate to underlying compensatory damage awards as to violate the Constitution.

But the high court left it at that—that there was some point where punitive damages became unconstitutional, while not spelling out where that point might be.

Fortunately, the court at least

partially remedied that problem last week in its decision in *State Farm Mutual Automobile Insurance Co. vs. Campbell*.

Faced with a Utah appellate court decision in which a couple was awarded \$145 million in punitive damages on top of a \$1 million compensatory award in a case involving insurance claims handling, the majority of the Supreme Court justices agreed that the award violated the standards set in *BMW vs. Gore*.

But the majority went a step further, spelling out that, in most cas-

es, a punitive damages award that is more than a single-digit multiple of the underlying award probably fails the constitutional test.

In addition, the majority agreed that in cases where a "substantial" compensatory award had been made, punitive damages might equal only the compensatory award before straying into unconstitutional territory.

The Supreme Court's guidance is most welcome. We don't think that there can be a so-called "bright line" that sets one mathematical formula for determining all puni-

tive damages awards—every case has its own twists and turns.

But we do think that there can and should be a general band of acceptable ratios of punitive to compensatory damages, beyond which awards become constitutionally unacceptable. And that band, we believe, the court outlined in last week's *State Farm* decision.

As such, it's another welcome guidepost to the type of fair, balanced and predictable civil justice system that the American people and businesses both need and deserve.

Plans hold promise of cost control

ARE CONSUMER-DRIVEN health care plans helping employers to control health care costs?

While we don't think the answer to that question will be fully known for years, some early results are encouraging.

One study of more than 800 families conducted by a benefit consultant found that utilization of health care services dropped by an average of 11% after their employers adopted the new plans (*BI*, March 31).

In addition, an analysis by a plan designer of eight employers with consumer-driven plans found that the actual costs of employees using the plans were 10% and 40% lower than initial projections.

Just as significantly, more em-

ployees are voluntarily enrolling in these plans in cases where a consumer-driven plan is among the plan choices an employer offers.

And perhaps most encouraging of all, one employer with a consumer-driven plan, Medtronic Inc., reports that the volume of employee calls to a nurse-staffed help line ran three times higher than for any other health plan the company offered. That may indicate, company officials say, that employees are changing their behavior and seeking alternatives to office visits.

To be sure, the evidence to date on the plans is far from conclusive. Still, we think the design holds promise as a means to controlling costs.

The plans typically feature a very

high deductible, sometimes as much as \$5,000, with an employer funding an account that the employee can tap to cover a portion of the expenses that fall within the deductible. Unused account balances can be rolled over to cover succeeding years' health expenses. Often the plans are paired with preferred provider organizations so that employees have an incentive to use providers who have agreed to limit their fees to a negotiated amount.

The plan design—imposing a high deductible and then setting up accounts that reimburse employees for only a portion of the expenses that fall under the deductible—truly does give an employee incentive to use services carefully. Such incentives are, we think, lacking in

designs like PPOs and HMOs that offer virtually first-dollar coverage for services delivered within their network of providers.

To be sure, consumer-driven plans do not begin to address all the forces that are driving up costs. Such plans, for example, would have no impact on very expensive procedures, like open-heart surgery, whose costs would significantly exceed a plan's deductible.

Still, by making employees more aware of the cost of health care, they may be driven to take better care of themselves, reducing the likelihood, perhaps, that they will need expensive medical procedures.

In all, the approach is promising enough for employers to examine carefully.

Schillerstrom



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RIMS' core competencies stressed

By MICHAEL BRADFORD

CHICAGO—It will take leadership and integrity for the Risk & Insurance Management Society Inc. to reach the goals set by the group's new president, he says.

Lance J. Ewing told attendees at the 41st RIMS Annual Conference and Exhibition last week that those qualities "will be the two foundational blocks for the term of my presidency."

Mr. Ewing, who is executive director of risk management at Park Place Entertainment Corp. in Las Vegas, was elected president of the society to succeed Christopher E. Mandel, whose term ended. Mr. Mandel is assistant vp-enterprise risk management at USAA Group in San Antonio.

"In the coming year, RIMS will focus on four core competencies to help answer the issues facing our members and their companies," Mr. Ewing said. "This will require good fundamental blocking and tackling."

Every RIMS member must embrace the qualities of leadership and integrity if the society is to be successful in putting the four core competencies in place, Mr. Ewing emphasized.

As for the first, he said, RIMS will "continue to grow and enhance our educational and professional development courses....Second, the conference will continue to be our premier resource to find answers and solutions" to ever-changing issues related to managing risk. "We will look to partner more with others who have conferences, not just here but internationally as well," Mr. Ewing said.

"Technology will be a spotlight for RIMS as we expand the potential of your RIMS Web site, create on-line course capabilities and make technology a systemic and integral part of how we do business," he told the society's members.

Mr. Ewing said the remaining core competency involves attracting new members by approaching

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PHOTO: MICHAEL MARCOTTE

Lance J. Ewing gave his first address as the new president of the Risk & Insurance Management Society Inc. last week at the 41st RIMS Annual Conference and Exhibition in Chicago.

Hard market elevates profile of risk managers

By JOANNE WOJCIK

CHICAGO—Many risk managers remain frustrated by the hard market, particularly by the additional information being sought by underwriters, last-minute changes in coverage terms and conditions at renewal, and the lack of capacity for some exposures.

But risk managers who embrace the situation as a challenge and use it as an opportunity to demonstrate their knowledge will be in a

stronger negotiating position with underwriters, and will gain greater recognition from upper management, industry observers say.

And, with the prospect of the hard market continuing at least through the end of 2003, risk managers will be on call even more.

"This is becoming a market for risk management pros," observed Mary Lynn Bangs, vp of risk services at McQueary Henry Bowles Troy in Dallas, who moderated a panel discussion on hard market strategies at

the 41st Risk & Insurance Management Society Inc. Annual Conference and Exhibition last week in Chicago.

The Sept. 11, 2001, terrorist attacks and recent corporate scandals have increased many people's perception of risk and have elevated the profile of risk management, said Chris McShea, a partner at Ernst & Young L.L.P. in Chicago, during the session.

"Right now, risk is center stage in

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RIMS issues preliminary benchmark survey data

Hikes slowing in most lines

By ROBERTO CENICEROS

Rate increases appear to be moderating across most lines, though prices are still rising at a fierce clip for directors and officers liability coverage, according to a survey of 600 risk managers.

D&O premiums shot up 83%, on average, during the first quarter of this year, according to preliminary results from benchmark survey data compiled for the Risk & Insurance

Management Society Inc. That increase compares with a 103% rise from 2001 to 2002 and a 40% increase from 2000 to 2001.

Property premiums, meanwhile, increased an average of just 4% during the quarter, compared with an increase of 80% from 2001 to 2002 and 58% from 2000 to 2001.

Excess casualty insurance premiums rose 19% during the quarter, compared with 118% from 2001 to 2002 and 62% in the prior period.

Fiduciary liability insurance premiums increased by 22% during the quarter, compared with 43% and 19%, respectively, for the two previous periods.

RIMS, in partnership with New York-based information services provider Advisen Ltd., released the survey results last week in kicking off the 41st RIMS Annual Conference and Exhibition in Chicago.

This year marked an expansion

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PHOTO: MICHAEL MARCOTTE

Ronald W. Stasch, center, receives the Harry and Dorothy Goodell Award from RIMS President Lance J. Ewing, left, and Christopher E. Mandel, the society's immediate past president.

Ronald W. Stasch wins Goodell award

RIMS presents annual honors

By MICHAEL BRADFORD

CHICAGO—Ronald W. Stasch, director of risk management services at Federal-Mogul Corp., has been awarded the 2003 Harry and Dorothy Goodell Award, the highest honor presented by the Risk & Insurance Management Society Inc.

Mr. Stasch accepted the award at the society's annual membership meeting at the 41st RIMS Annual Conference and Exhibition last week in Chicago. The

Goodell Award recognizes an individual who has furthered the goals of risk management and RIMS. It is named after Mr. Goodell, the society's first president, and his wife.

Mr. Stasch has worked at Southfield, Mich.-based Federal-Mogul since 1975. He joined RIMS in 1973 as a member of the Detroit chapter, eventually becoming the chapter's president, and he has held several positions at the national level. In 1989, he

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Inside:

Captive insurance constitutes major topic of conversation at conference.
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RIMS attendees say current tort reform proposals are too narrowly focused.
Page 17

AIG's chairman and CEO outlines a plan to move tort reform forward.
Page 20

Market: Profile of risk managers is elevated

Continued from page 10
the economy," he said.

And implementation of the Sarbanes-Oxley Act, which requires risk identification as part of corporate governance reforms, will give risk managers even more visibility within their organizations, he added.

The collapse of Enron Corp. was a real wake-up call," said Brian O'Hara, president and chief executive officer of XL Capital Ltd. in Hamilton, Bermuda. Prior to Enron, enterprise risk management was theoretical, he said during an interview at the RIMS conference. "It's

real now."

He added that when coverage is cheap, corporations are less likely to provide funding and resources for risk management. But now that premiums are have increased and, in some cases, coverage is unavailable, risk management budgets are growing.

Some risk managers are increasing their loss control efforts in response to the hard market.

"In trucking, we've got a lot of exposure, and we're trying to reduce it with driver training," said Ronnie Vaughn, southern division risk manager at Roadway Express

Co. in Atlanta.

Though the driver education program has been in place for several years, there is greater emphasis on it now, he said.

The prolonged hard market has strained some longstanding relationships between risk managers and their insurers, noted Millicent Workman, director-risk management of Mueller Industries in Memphis, Tenn.

Insurers are unwilling to assume certain risks, so it is not always possible to place all exposures with a single insurer, she said.

Ms. Workman also expressed her

frustration with underwriters adding exclusions at the last minute, forcing organizations to scramble for coverage or to turn to self-insurance.

"As price becomes a more significant factor, it affects relationships," said Tony Kuczinski, president of Munich-American RiskPartners in Princeton, N.J. "Twice as many risk managers are considering captives for terrorism, professional liability lines and areas where capacity is a problem."

Like the companies they insure, insurers also are also paying more attention to managing their risks.

For example, insurers are scrutinizing the concentration of risks they are taking on from individual policyholders, said Susan Rivera, president of ACE INA in Philadelphia.

"So risk managers have to understand that not only can you be graded based on your individual risk characteristics but you also are underwritten and looked at potentially today based on how your overall portfolio risk adds to my overall portfolio risk that already exists," she said.

This increased concern about risk concentration is the reason many underwriters are requesting additional underwriting information, according to Ms. Rivera.

'Treat your underwriters like investment bankers. It will serve you well.'

*Chris McShea
Ernst & Young L.L.P.*

But several risk managers attending the RIMS conference complained that underwriters are being nit-picky.

One risk manager, who declined to be identified, said she thought it was excessive to have to gather the vehicle identification numbers on a fleet of 5,000 vehicles for an underwriter before he would even quote the risk.

But the additional information should enable underwriters to better price the coverage, and maybe offer better deals to companies that can prove they have good loss control measures in place, according to John H. McCue, chief marketing officer at the Insurance Services Office Inc. in Jersey City, N.J.

"Treat your underwriters like investment bankers. It will serve you well," advised Mr. McShea of Ernst & Young.

Whirlpool Corp. of Benton Harbor, Mich., used that strategy and acted as a "seller of risk" to promote its business to underwriters, according to Christine Snow, risk analyst for the company.

"We even put together an electronic submission," she said.

As a result, "we actually got a \$1.1 million reduction in all lines."

Depending on how you look at it, "it's not a fun time to be a risk manager," said Mark G. Schneider, director of insurance at Loyola University Medical Center in Maywood, Ill. "You have to work harder."

But by keeping upper management informed, risk managers will win the support they need to pursue innovative strategies such as self-insurance, he said.

Conversely, risk managers who took credit for the low insurance rates during the prolonged soft market will have a harder time navigating this market cycle, Mr. Schneider said.

"We're like the weatherman," he said. "We can't take credit for good weather anymore than we can be blamed for bad weather."

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Captive domiciles, such as Bermuda, that exhibited at the 41st Risk & Insurance Management Society Inc. Annual Conference & Exhibition reported an increased interest in captive formation.

Captives gaining attention as risk managers seek options

Interest rising in funding larger retentions, new risks

By **RODD ZOLKOS**
and **SARAH VEYSEY**

CHICAGO—Captive insurance companies were a hot topic of conversation at the Risk & Insurance Management Society Inc.'s annual conference last week in Chicago, with considerable discussion both of new captive formations and new uses for existing risk financing vehicles.

David Ireland, risk manager of Vinci P.L.C. in London and chairman of the London-based Assn. of Insurance & Risk Managers, said that his company has recently been in discussions about setting up a new captive.

Although the company has had a Guernsey captive for years, a recent expansion of the group, which has come under French ownership, is

prompting Vinci to explore setting up another captive for both European and U.S. risks, Mr. Ireland said.

"Captives are a great way of bringing stability to an insurance program," he noted. "You can tailor it to your needs and in a hard market increase your retentions and in a soft market, decrease them," he said.

Mr. Ireland said Vinci does not use its captive for complex or open-ended risks.

But, he noted, captives are increasingly being used for "uninsurable risks" and then reinsured. "That's another benefit of captives—you can get access directly to the reinsurance market."

That direct access is one reason Waukesha, Wis.-based Construction Resource Management Inc. is considering forming a captive, said Nora S. Vrakas, the company's risk manager.

Accessing the reinsurance market through a captive would likely reduce the company's costs, she said.

Moderating a RIMS session on expanding captive programs, Ms. Vrakas said that if the company does form a captive, it could be used as a profit center by insuring third-party risks, such as trucking contractors that work for the company.

The company could use a captive to craft a fronted program to cover its surety exposures, she said.

Another risk manager participating on Ms. Vrakas' panel—Michael Lusk, vp at Archer Daniels Midland Co. in Decatur, Ill.—described new uses his company is finding for its Vermont captive.

For example, the company plans to reinsure a portion of its employee benefits program in the captive, following the U.S. Department of Labor's approval of the plan in March (*BI*, March 10). Among other things, writing the employee benefits through the captive diversifies its portfolio, Mr. Lusk said.

The company's proposal is currently in a comment period, and, if there are no objections, "we expect to get the formal approval sometime before the end of April," he said.

Mr. Lusk said that seeking the DOL approval was "a process" but said the company hopes to recoup the costs of seeking approval in two to three years.

Speaking after the session, Mr. Lusk said he has heard from some other companies considering putting employee benefits in their captives. "I wouldn't say it's a lot. But I'm meeting with a lot of people here at RIMS," Mr. Lusk said.

In addition, ADM is writing terrorism coverage through its captive. The company has decided not to reinsure that exposure. Speaking after his RIMS session, Mr. Lusk said, "We just felt that the price that the market charged was too high," giving

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Captives: Seeing use in new applications

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en the company's exposure, he said.

Among other programs ADM is considering putting in its captive are employee long-term disability and foreign employee benefits, stop-loss coverage on the company's self-insured workers compensation program and a possible insurance program for ADM suppliers.

Allen G. "Scott" Barry III, president-captive operations at Liberty Mutual Insurance Co. in Bala Cynwyd, Pa., said his company is seeing a "substantial increase" in submissions from companies interested in tapping captive solutions.

Many of the submissions Liberty is seeing involve workers compensation, automobile liability and general liability, he said.

He said his company also is seeing more small companies looking to take a more independent position.

"We're seeing some who were in group captives saying, 'I would like to do this on my own,'" possibly through a rent-a-captive, or for larger companies, through a pure captive, he said.

Vermont officials at this year's RIMS conference said they were meeting with a number of risk

managers interested in forming captives. A difference from years past, however, is how far into the process they already are.

"We've got a lot of inquiries, a couple of Fortune 500s, a Fortune 100," said Leonard D. Crouse, Vermont's director of captive insurance.

"A lot of the traffic has been, 'We already know we want a captive, we know we want it in Vermont, we're doing the feasibility study now and we'll see you in a couple of months,'" said Derick White, Vermont's assistant captive director.

"It's amazing what risk managers

know about alternative markets today," said Mr. Crouse. "It's part of their business now."

For many companies, interest in captives is being driven by the larger retentions their insurers are forcing on them.

"In many cases captive activity in the past couple years has simply been to find funding mechanisms," said John B. Stites, vp in national accounts commercial lines at Travelers Property Casualty Corp. in Hartford, Conn.

"Customers' retentions are going up. Auditors are looking at accruals on balance sheets. Having a formal

mechanism for funding retained losses is becoming more prudent," Mr. Stites said.

Speaking on Ms. Vrakas' panel, Paul W. Smith, vp at Gallagher Captive Services in Itasca, Ill., offered a similar opinion. With most companies seeing retentions increasing, "the best thing to do is put some money in the captive and start funding those retentions," Mr. Smith said.

Roger C. Gillett, executive vp-business development at ACE Bermuda Insurance Ltd., noted that captive business in Bermuda is "still significant and still growing," and he agreed that larger retentions are a major factor.

Another panelist on Ms. Vrakas' RIMS panel said his company has been involved in various structured risk financings that use captives.

'Customers' retentions are going up. Auditors are looking at accruals on balance sheets. Having a formal mechanism for funding retained losses is becoming more prudent.'

*John B. Stites
Travelers Property Casualty Corp.*

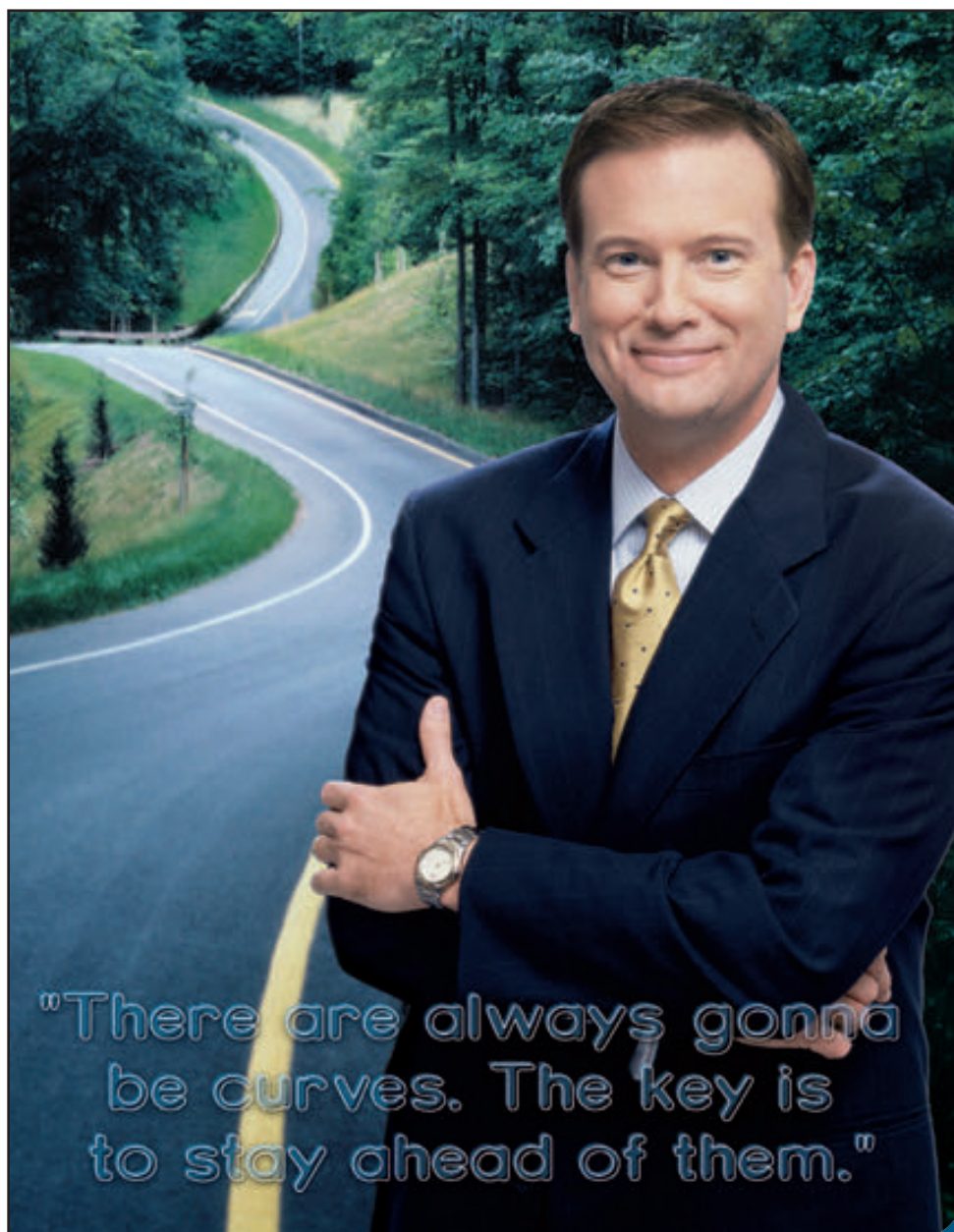
Robert E. Curtis, vp of American International Group Inc. unit AIG Risk Finance in New York, said those programs have been crafted to address such issues as errors and omissions exposures, asbestos liability, replacement power price spikes, nontradable commodity hedges and trade credit.

Michael Gibbs, president of Kensington Management Group Ltd. in Cayman, said he sees many risk managers expanding the business they are putting into their captives, both in terms of lines of business and volume.

For example, a group with an already established medical malpractice captive might now be looking to put workers compensation, directors and officers or auto business into that captive, he said.

The question of putting employee benefits cover into captives is a hot topic at the moment, Mr. Gibbs said. "Employee benefit captives have to be structured in certain ways, and there are a lot of restrictions," he noted. "But people are looking at ways of doing it because there is so much money involved," he added.

One issue that risk managers who operate captives are concerned about is insurer solvency, according to David Gamble, executive director of the London-based Assn. of Insurance & Risk Managers. Major fronting insurers of captives have been raising questions about the solvency of other insurers and reinsurers, he noted. This is causing concern for risk managers who may see the protection of their captive companies compromised if an insurance or reinsurance company should fail, he said.



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RIMS attendees favor comprehensive tort reform

By MICHAEL PRINCE

CHICAGO—Comprehensive tort reform is needed at both the state and federal level, according to many attendees at the Risk & Insurance Management Society Inc.'s Annual Conference and Exhibition.

The tort reform measures under consideration are too narrowly drafted and will do little to resolve the problem of excessive jury awards, risk managers and insurance executives said at the RIMS conference last week in Chicago.

"They are definitely too narrow in their focus," said Jeffrey Pettegrew, vp of risk management and insurance for Westaff Inc. in Walnut Creek, Calif.

Many of the current proposals, including a bill passed last month by the U.S. House of Representatives, have at their core a cap on noneconomic damages in medical malpractice suits. These initiatives, many of which cap such awards at \$250,000, simply are not sufficient, attendees said. The House bill is pending in the U.S. Senate.

"Caps are not tort reform," said Donald Kramer, vice chairman of ACE Ltd. in Hamilton, Bermuda. "Caps are a quick fix." If the industry supports that effort, "they have a losing argument," he said.

Plaintiffs can circumvent caps, rendering them ineffective, said James Flaherty, claims manager for Baystate Health System in Springfield, Mass. For example, Massachusetts has a \$500,000 cap on noneconomic damages in malpractice suits, but the law permits plaintiffs to seek higher awards by arguing that the defendants' acts were egregious, he explained.

Imposing caps on noneconomic damages is helpful, "but they are only half the equation," said Michael Liebowitz, director of risk management and safety at Bridgeport Hospital in Bridgeport, Conn. The other half is based on lost wages and costs for future medical expenses, often the largest part of multimillion-dollar awards, he said, and these are not subject to caps. Instead, broad changes to the entire tort system are needed, he said.

Changes are necessary because the number of large awards in recent years has skyrocketed, A. Louis Parker, president and chief executive officer of commercial insurance at Employers Reinsurance Corp. in Overland Park, Kan., said at a RIMS session on tort reform. The number of medical malpractice insurance payouts exceeding \$1 million has risen to over 800 in 2002 from about 200 in 1996, he said.

"It's a lottery concept now," Mr. Pettegrew said.

Insurers are not the only ones taking hits. Advocate HealthCare upped its self-insured retention last year to \$15 million per occurrence from \$2 million, said Scott Beckman, vp of risk management for the Oak Brook, Ill.-based hospital system. At these levels, virtually all medical malpractice losses are covered by the hospital system, he said.

Malpractice reform is just one area that needs attention, attendees said. All areas of the tort system need to be changed, they said.

Attendees were quick to state, though, that any changes must still leave injured individuals an avenue to bring suit. What's needed is to focus on taking away juries' ability to destroy an organization with an outsize award, Mr. Pettegrew said.

"Juries are giving away stupid amounts of money," said Jeffrey Gehrle, director of risk management at Corporate Express Inc. in Broomfield, Colo.

What is needed is a "reasonable system to compensate people for errors," Mr. Pettegrew added.

Changes, therefore, must walk the fine line between protecting individuals and punishing corporate wrongdoing, Mr. Gehrle said. It's important to permit suits to punish

corporations, especially to rein in those that consistently injure people, he said.

Any reforms must also make it harder to certify a class action, said Brian O'Hara, president and CEO of XL Capital Ltd. in Hamilton, Bermuda. "That would go a long way in creating certainty for corporations and their insurers," he said.

Comprehensive tort reform requires both national and state legislative changes, attendees said.

Without a national program, plaintiffs could sue in the state that has the most favorable laws, Mr. Flaherty said. Also, he said, opponents are more likely to successfully challenge state laws in court.

Polls show more people want changes made to the tort system, said J. Ric Gass, a policyholder attorney with Kravit, Gass, Hovel & Leitner in Milwaukee, at the tort reform session. He is involved with organizations that support reform.

"The American public is less willing to accept the litigious nature we have had in the 1980s and 1990s," Mr. Gass added. This shift in attitude, he predicted, will lead to federal legislation this year.

Mr. O'Hara, though, is less optimistic about the possibility of federal action. "It's an uphill battle to get any significant legislation through

the Senate," he said.

Attendees also hailed last week's U.S. Supreme Court decision that declared punitive damages could be so disproportionate to the underlying compensatory award as to be unconstitutional. The high court said "few awards exceeding a single-digit ratio between punitive and compensatory damages will satisfy due process" (see story, page 1).

Don Kramer called the decision a "landmark." Fewer suits will be filed because of it, he predicted, and the value of many cases will be reduced.

Mr. O'Hara also praised the ruling. He said, though, that he's concerned how trial courts would apply it in the future.

General session speaker Maurice R. Greenberg, chairman and chief executive officer of American International Group Inc., also addressed tort reform (see story, page 20). He announced an AIG program, to be conducted in conjunction with the U.S. Chamber of Commerce, to develop a ranking of state tort systems. The New York-based insurer will take out full-page newspaper ads that will indicate the business-friendliness of each state, he said.

Mr. Greenberg said the ads would be "a wake-up call" to many governors, informing them how the business community views their states.

What can you find in many employees' life insurance records?

C O _ _ W _ _ S



Ewing: Address stresses RIMS' core competencies

Continued from page 10

professionals in areas not previously targeted. "Professions such as finance, human resources, accounting and safety all are facing new risks. RIMS will be there for them," he said.

The society's new president said during his inaugural address that "leadership is not about the prestige of the title or the position one has within RIMS. It is about character and action."

Leaders tend to have three distinct qualities, Mr. Ewing said. "First, leaders keep their commitments....They realize the responsibility that they have been given and are always willing to stay focused, even if it means stretching outside of their comfort zone."

Mr. Ewing hinted that the society may have some stretching to do as well. "RIMS itself may require re-configuration," he said, "and this will take true courage and commit-

ment to orchestrate and carry out these changes."

"Secondly, leaders keep their promises," Mr. Ewing remarked. "They say what they are going to do and then accomplish it."

"Finally, leaders make the hard choices and are accountable," he said. "Leadership takes ownership for decisions. The RIMS leadership will be committed to our goals. We will keep our promises both to our members and our partners, and we

will be decisive and accountable in the coming year."

As for integrity, Mr. Ewing said RIMS members need to make sure they are not just "doing the easy things and start to work on doing what is right. We need to become the consciences of our organizations. We, as risk professionals, have to make the tough calls."

Mr. Mandel said during his final presidential address to members during the same meeting that progress was made over his term in enhancing relationships with risk managers' industry partners. "One example is our continuing rollout of the quality improvement process," he said.

RIMS' quality committee over the past year developed what is called the risk manager and broker partnership tool, based on guidelines introduced at last year's conference in New Orleans, Mr. Mandel said. "This template, complete with instructions, will guide a risk manager and a broker through the process of developing performance expectations and the agreement that can codify those. The tool is now available to members on the RIMS Web site (www.rims.org) and will be sold later to nonmembers."

The society elected its 2003/04 executive council at its House of Delegates meeting during the annu-

al conference.

Mr. Mandel will serve on the council as vp, chief risk officer and secretary.

Nancy L. Chambers, risk manager for the Waterloo Region Municipalities Insurance Pool, was elected first vp, the position that traditionally leads to the presidency.

Others who will serve on the council are:

- Joseph Restoule, senior risk consultant at Calgary, Alberta-based Nova Chemicals Corp., vp and treasurer.

- Ellen Vinck, vp-risk management and benefits at United States Marine Repair Inc. in San Diego, vp-conference.

- Janice Ochenkowski, vp at Chicago-based Jones Lang LaSalle Inc., vp-external affairs.

- Deborah Luthi, director-risk management services at University of California, Davis, vp-professional development.

- Michael Liebowitz, director of risk management at Bridgeport, Conn.-based Southern Connecticut Health System, vp-membership.

- Randy Thurman, director-risk management at Nashville, Tenn.-based Gaylord Entertainment Co., vp-communications.

- Sanford Bragman, vp-risk management at Dallas-based Tenet Health System, vp-technology.



Attendees of the 41st Risk & Insurance Management Society Inc. Annual Conference & Exhibition last week took time to visit the hundreds of booths set up in Chicago's McCormick Place.

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April 14, 2003

Awards: Winners announced at RIMS conference

Continued from page 10

was elected president of the society.

Mr. Stasch continues to work on various committees and advisory groups at the national and local levels.

The society presented several other awards during the opening membership meeting.

Business Insurance and RIMS, joint sponsors of the Risk Manager of the Year Award, presented this year's award to Sheila Small, assistant treasurer-risk management and insurance at Verizon Communications Inc. in New York. Also recognized were the three members of the 2003 Risk Management Honor Roll—Roger L. Andrews, director of risk management for E.D. Bullard Co. in Cynthiana, Ky.; William G. Chapin, director of facilities and risk management for the Diocese of Rockville Centre, N.Y.; and Johanna Zschomler, director of the risk management division for the state of North Dakota in Bismarck.

The Ron Judd Heart of RIMS Award was presented to Marybeth Hughes, corporate risk manager at Pacific Life Insurance Co., based in Newport Beach, Calif. The award is given to an individual for outstanding performance on behalf of his or her chapter.

Bradley Wood, vp-risk management at Marriott International Inc. in Washington, received the Richard W. Bland Memorial Award, which recognizes contributions in the areas of legislation or regulation related to risk and insurance.

RIMS also recognized individuals for educational achievements.

Anthony E. Stephens, corporate safety director at Armon Inc. in Fort Myers, Fla., won the Cristy Award, which is presented to the individual

with the highest cumulative average in the three examinations leading to the Associate of Risk Management designation.

The Fred H. Bossons Award, which recognizes the highest academic average in Canadian Risk Management courses, was presented last September at the 2002 Canadian RIMS Conference to Jacqueline Rocheleau, risk analyst for the risk management and insurance division of the government of Alberta.

Several chapter awards also were presented during the meeting in Chicago.

Overall chapter excellence awards were presented to the San Diego and South Texas chapters. The outstanding member services award went to the Greater Quad Cities Chapter.

The Connecticut Valley, Orange County and Ontario chapters won outstanding chapter programming awards. The Houston Chapter won

an award for advancing the risk management profession.

The South Texas and San Diego chapters also won awards for advancing the risk management profession and for outstanding member services.

RIMS awarded the Arthur Quern Quality Award to Liberty Mutual Insurance Co.'s loss prevention department for its development of interactive and Web-based training programs.



PHOTOS: MICHAEL MARCOTTE

Sheila Small, assistant treasurer-risk management and insurance for Verizon Communications Inc. is honored as the 2003 Risk Manager of the Year by, from left: Lance J. Ewing, RIMS president; Christopher E. Mandel; past RIMS president; and Paul D. Winston, editor of *Business Insurance*.



Marybeth Hughes, left, corporate risk manager at Pacific Life Insurance Co., receives the Ron Judd Heart of RIMS Award. At right, Karl Jacobson, senior vp of loss prevention at Liberty Mutual Insurance Co., accepts the Arthur Quern Quality Award on behalf of Liberty Mutual's loss prevention department.



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c o b w e b s

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Between the Lines

Compiled by Joanne Wojcik



Risk managers in Chicago last week for the 41st RIMS Annual Conference were greeted with the Second City's typically fickle April weather, which included subfreezing winds and a few inches of snow. Following are some "RIMSicles" derived from events during the conference:

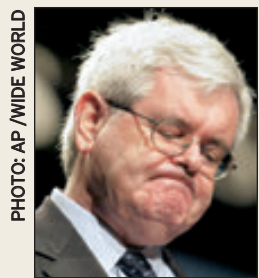
Coach, the new business class

Cost control is apparently being taken more seriously by some insurance industry companies. The head of a major U.S. reinsurer was spotted flying coach to the RIMS conference in Chicago. At least he got a window seat.

Networking in action

Two young women at the Spencer gala Sunday night dug into their own pockets to get the chance to rub elbows with the insurance industry's elite. Recent University of Wisconsin graduates Maria Lindblom and Melissa Weber joined RIMS this year to access its online job bank and thought the annual conference would be a good opportunity to mass market their skills. One risk manager was astounded by their inventiveness. Like most of her colleagues, she said she had entered the field "by accident."

Newt's faux pas



When former U.S. Secretary of State Henry Kissinger was unable to fly in for a Tuesday speech, RIMS leaders saw former U.S. House Speaker Newt Gingrich on TV, made a few calls and, voila, had a replacement. Mr. Gingrich, however, took a few pot shots at the French for their reluctance to support the U.S. attack on Iraq. In the audience were several offended international brokers and underwriters.

Excluding even mold studies

Despite the industry's insistence that mold doesn't make healthy people sick, a group of scientists has been unable to get insurers to help fund a study on the effects of mold. Dr. Janet Weiss, director of toxicology for TheToxDoc, a Berkeley, Calif.-based indoor air consulting firm, had approached Farmers Insurance Group, which was hit with a multimillion-dollar jury award for mold damage, but she came up empty. She is hoping a building construction association will back the study, which researchers need \$500,000 to \$600,000 to complete.

Leadership lessons

Rudy Giuliani, loss control consultant? The former New York mayor's firm, the Giuliani Group, is partnering with Aon Corp. to offer security and crisis management consulting services, the broker's chairman and CEO, Patrick G. Ryan, noted at a Tuesday press conference in Chicago. "So I can bring Rudy to our next underwriting meeting?" queried RIMS President Lance J. Ewing. After a chorus of laughter, the Aon chief replied: "Absolutely! And you can bring all your members, too!"



Safety dances

At the start of a session on emergency planning, speaker John Sullivan of Loss Control Innovations instructed attendees on the proper procedure for evacuating the room. He noted that although the conference room in Chicago's McCormick Place had an emergency exit, it lacked a floor plan, an important component of any emergency evacuation plan....Loss prevention people from Liberty Mutual Insurance Co., which hosted a party at Chicago nightclub Excalibur, combed that building top to bottom to make sure it was safe, a spokeswoman for the Boston-based insurer said. Recent tragedies in Chicago and Rhode Island have heightened safety concerns. Excalibur, which Aon uses for its annual St. Patrick's Day bash, has framed floor plans on every level....Liberty Mutual took pains to promote the concept of protection; the insurer wrapped several RIMS shuttle buses in bubble wrap.

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

Greenberg tackles tort reform

AIG, U.S. Chamber to run ads rating state tort systems

By MICHAEL BRADFORD

CHICAGO—American International Group Inc. is using advertising as its latest weapon in its fight for tort reform.

Maurice R. Greenberg, chairman and chief executive officer of New York-based AIG, said during a speech at the 41st Risk & Insurance Management Society Inc. Annual Conference and Exhibition last week in Chicago that the tort system in the United States is "clearly is out of control." Over the past year, he said, he has spent a lot of time trying to change that.

Efforts to pass meaningful federal tort reform legislation are ongoing, Mr. Greenberg noted, but such laws are just one part of the fight to bring the system under control. "I'm very skeptical that you can get both sides of the aisle to get sufficient (national) reforms through that will be meaningful," he said. "You have to fight this battle on a state-by-state basis, which we've been doing."

AIG's next move in the battle for reform at the state level will show up in the insurer's ads, Mr. Greenberg promised.

In conjunction with the U.S. Chamber of Commerce, AIG has developed a ranking of state tort systems. The full-page newspaper ads will highlight how friendly states are to business, with a breakdown by county, according to Mr. Greenberg. In some counties, "you haven't got a chance if you're a defendant," he said, because of the "cozy relationship between the trial bar and the judge and the juries."

"Why would you want to invest in a state that takes you to the cleaners after you've invested there?" he asked. "Why should we buy their municipal bonds?"

He said that most states are facing budget problems and "every governor should be conscious of

the fact that if they have a reputation that is viewed adversely by the business community," they need to do something to bring about change. "And I think this will be a wake-up call for many," he said.

Mr. Greenberg called on attendees at the RIMS conference for help in the tort reform effort. "This is not a battle by the insurance industry. Really, it's a battle for the consumer and for companies." The expense related to a dysfunctional tort system is passed along to buyers of products and services, he explained. "There is no free lunch. And if the trial bar is the only beneficiary, what's the point of it?"

Risk managers understand the "need for this kind of change," Mr. Greenberg said, "and I would hope that once you see these ads, you could influence your senior management," who should be eager to accomplish tort reform.

Risk managers, in fact, have found themselves in recent years to be valuable in a challenging business and economic environment, according to Mr. Greenberg.

He urged attendees to "take on more responsibility in your firms, because you're a member of a team that today is dealing with multiple risks that didn't exist before. If they existed, they were much more benign than they are today. Today, the volatility and speed by which these things are changing requires a management group that must include the risk manager. Failing to do that, I think, leaves a very valuable asset on the sidelines."

He said that risk managers are "concerned about where the insurance industry is going." He said the "pain of prior years" brought on by the erosion of insurance prices, broadening of forms and heavy losses is not over for many insurers.

Adverse loss development haunts some insurers, as do poor investment results, Mr. Greenberg said.



PHOTO: MICHAEL MARCOTTE

AIG Chairman and CEO Maurice R. Greenberg told RIMS attendees that the U.S. tort system is out of control.

"It's obvious that industry needs to raise capital, and, failing to do that, there's going to be a shortage of capacity. It's difficult to raise capital in an industry that has very, very negative results."

He told conference attendees that insurers, like many of their own companies, want a return on equity that justifies investments in the company. That's one reason insurance rates have risen to current levels, as insurers seek higher returns, Mr. Greenberg said.

But, "it's a competitive industry and always will be," he noted, with some insurers taking different views on risk than others. Insurers that operate like AIG, Mr. Greenberg said, take a long-term view. "We think we have to have a return on equity that justifies where we are in this business."

AIG, he said, tries to "understand risk in a world that is riskier than ever" and prices its business accordingly. "Until we get the tort system changed, we have to do what we have to do," he said of pricing. The insurer will attempt to offer risk managers what they need "at a reasonable profit to ourselves," Mr. Greenberg said.

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Business Insurance

April 14, 2003

Spotlight

Business Insurance / 21

Benchmark: Rate increases slowing across most lines

Continued from page 10

of the survey designed to provide more information about companies' insurance programs. In addition, changes were made to ensure that the information was as current as possible.

For previous studies, RIMS surveyed risk managers about their insurance purchases for the prior calendar year, and it took several months after the data was collected for the survey findings to be released.

As a result, the survey results were based on data that was, in some cases, nearly a year old, said Thomas P. Ruggieri, chief executive officer of Advisen.

"Let's face it, the benchmark report in the past was always dated," said Christopher Mandel, the outgoing president of RIMS. "It was at least 6 months old or older by the time it hit hard copy."

In contrast, for the current survey, U.S. and Canadian risk managers submitted their insurance schedules to Advisen using e-mail. Confidentiality agreements were arranged to ensure that the data was not misused.

The current survey project helped produce a broader understanding of risk managers' purchases and programs than could be obtained from previous benchmark surveys, according to RIMS and Advisen.

"For the first time in the history of the Benchmark Survey, we can see nearly real-time indications of the size and make-up of insurance programs and, therefore, a virtual snapshot of the market dynamics currently affecting buying decisions," Mr. Mandel said.

Risk managers can use such information to negotiate better terms from their insurers and to show upper management how their programs compare with others at similar companies, he said.

"Management likes nothing less than to have data put before them that is antiquated and less reliable," Mr. Mandel said.

The current survey results provide information on the average percentage change, from year to year, in the number of policies respondents purchased to fill out each insurance program.

Those results confirm that risk managers have struggled to place coverages and have contracted with more markets to obtain needed limits, according to RIMS.

In the D&O market, for example, risk managers experienced an 11% rise in the number of policies during the first quarter of 2003. From 2001 to 2002 they experienced a 20% increase, compared with a 16% rise from 2000 to 2001.

The greater the percentage change, the more markets risk managers are contracting with to fill out their coverage limits, Mr. Ruggieri said.

In contrast to the D&O market, the number of policies needed to fill out property programs declined by 2% during the first quarter of 2003, the survey found. The increase was 15% from 2001 to 2002 and 27% from 2000 to 2001.

Past RIMS benchmark surveys did

not report information on the number of policies per program, according to Advisen.

This year's survey also provides information on how risk managers have adjusted the limits they are purchasing.

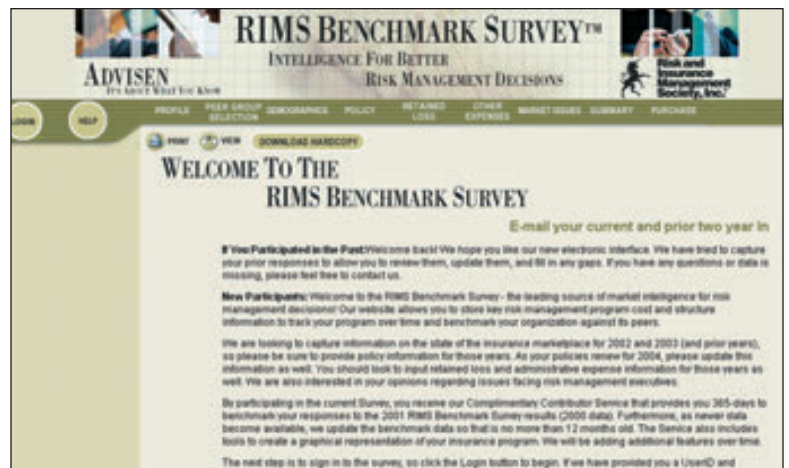
Excess liability limits purchased by respondents stayed flat during the first quarter of 2003 after rising 8% from 2001 to 2002 and 6% from 2000 to 2001. D&O limits rose 1% during the first quarter of 2002, compared with increases of 4% from 2001 to 2002 and 14% from 2000 to 2001.

In addition, the survey provided

a look at risk managers' average percentage change in self-insured retentions.

D&O retentions increased 21% during the first quarter of 2003, compared with 219% from 2001 to 2002 and 63% from 2000 to 2001. Property retentions rose 5% during the first quarter, compared with 163% from 2001 to 2002 and 242% from 2000 to 2001.

To participate in the "RIMS Benchmark Survey" or to receive a copy of the report, contact Advisen at 800-655-6590.



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(Provisional Liquidators appointed)

and IN THE MATTER OF THE COMPANIES ACT 1985
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The purpose of the Scheme Meeting will be to consider and, if thought fit, to approve (with or without modification) a scheme of arrangement proposed to be made between the Company and the Scheme Creditors pursuant to s425 of the Companies Act 1985 ('the Scheme').

A downloadable file of the proposed Scheme Document, Explanatory Statement and Appendices are available on the Company's website at www.unitedstandard.co.uk. Should an email or a printed copy be required, please send your request to the Joint Provisional Liquidators at the address below, and one will be sent to you.

Scheme Creditors may vote in person at the Scheme Meeting or they may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place. Voting forms for use at the Scheme Meetings are attached to the Proxy Form which has been sent to all known creditors together with this Notice.

It is requested that proxies and voting forms be lodged with the Joint Provisional Liquidators, United Standard Insurance Company Limited, c/o PricewaterhouseCoopers LLP, PD/PC251, Plumtree Court, London, EC4A 4HT, Fax: +44 (0) 20 7804 5203, as soon as possible and no later than 4.00pm Wednesday 21 May 2003. A faxed copy will be accepted if legible.

By the same Order the Court has appointed Douglas Nigel Rackham of Plumtree Court, London EC4A 4HT or, failing him, any partner of PricewaterhouseCoopers LLP of Plumtree Court, London EC4A 4HT to act as Chairman of the Scheme Meetings and has directed the Chairman to report the result of the Scheme Meetings to the Court.

In the event that the Scheme Creditors vote in favour of the Scheme of Arrangement will be subject to the subsequent approval of the Court.

Dated this 10th day of April 2003

D J FREEMAN

43 Fetter Lane, London EC4A 1JU, United Kingdom
Solicitors for the Joint Provisional Liquidators of
United Standard Insurance Company Limited

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April 14, 2003

International

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Mixed insurers at a disadvantage

A new U.K. insolvency law may soon steer cedents to pure reinsurers

By NEIL HODGE

LONDON—A European Union directive designed to protect policyholders could put at a disadvantage U.K. insurers that also write reinsurance.

The European Union's Insurers' Reorganization and Winding Up Directive, which must be enacted into U.K. law by April 20, seeks to harmonize the differing national approaches to insurance insolvency across the European Union by creating various classes of creditors.

Under the directive, if an insurer were to become insolvent, claims payment priority would be given to

individual and corporate customers who bought direct insurance. The directive would not apply to pure reinsurers but would apply to insurers that write both direct and reinsurance business.

Under current U.K. insolvency law, all creditors—after preferred groups such as employees and the government—rank equally. Insurers and their trade associations are concerned that the directive will put insurers that offer both insurance and reinsurance at a disadvantage. That's because cedents might prefer to place their coverage with pure reinsurers that are not affected by the directive, they say.

"We are very concerned," said Pam Byrnes, director of knowledge management at International Underwriting Assn. in London, which represents 57 insurers operating in the London market, most of which offer both primary insurance and reinsurance.

Paul Evans, an insurance insolvency partner with the accounting firm of PricewaterhouseCoopers L.L.P. in London, said that companies caught by the directive might be forced to restructure, creating separate reinsurance entities and splitting the capital allocated to direct insurance and reinsurance.

"Companies may be reluctant to

buy reinsurance from a mixed provider if they think that it will be unlikely that they would receive any compensation after direct insurance customers have been paid out first," said Mr. Evans. "It, therefore, makes more sense for companies to buy reinsurance from a reinsurer rather than a mixed provider, as reinsurers are not affected by this new directive."

But Ms. Byrnes of the IUA, said the costs of splitting insurers' capital would be prohibitive. Also, insurers want the flexibility to switch the balance of their underwriting between insurance and reinsurance,

See **DIRECTIVE**/page 24

World Updates

ABI proposes hike in pension savings cap

The Assn. of British Insurers is urging the U.K. government to increase its lifetime limit for pension contributions to £1.8 million (\$2.8 million) from the current £1.4 million (\$2.2 million). According to the London-based ABI, £1.8 million is the amount currently needed to buy an annuity that would provide £65,000 (\$100,952) in annual income—the maximum allowed under occupational pension rules. The recommendations are part of the ABI's response to a consultation document on pension tax reform that was circulated late last year by the U.K. tax authority, Inland Revenue.

AXA reports large loss on GAAP basis

French multiline insurer AXA S.A. reported an estimated 2.9 billion euro (\$2.74 billion) loss in 2002 under U.S. accounting standards. The loss under U.S. generally accepted accounting principles compares with a 949 million euro (\$897.2 million) profit under French accounting standards, which AXA reported in February. French and U.S. accounting standards differ in several ways, including how investment values are reported. When AXA reported its results under French rules in February, it had estimated that its U.S. GAAP loss would be 1.6 billion euros (\$1.51 billion). The estimated loss has widened due to increased estimates for the deterioration of the Paris-based insurer's investments.

Lloyd's chairman calls for collateral reduction

Lloyd's of London Chairman Peter Levene is urging U.S. regulators to reduce collateral requirements for Lloyd's reinsurance operations, which are currently required to post security equal to 100% of gross U.S. liabilities. Lord Levene, in a speech to the National Press Club in Washington last week, said lower requirements would allow coverage to be priced more competitively and economically.

Pohjola sells finance unit

Finnish insurer Pohjola Group has sold its corporate finance unit, Conventum Corporate Finance Ltd., to the unit's management. Pohjola says that the sale will streamline its business structure and enable it to focus on its core business of non-life insurance and asset management. The sale price corresponds to Conventum's net assets, a Pohjola spokesman said. The spokesman declined to give any other information on the sale price.



Judge cuts cruise line claim

By CAROLYN ALDRED

LONDON—Luxury cruise operator Silversea Cruises Ltd. is entitled to only \$5 million in coverage of the more than \$47 million it claimed for reduced bookings and cancelled cruises following the Sept. 11, 2001, terrorist attacks, London's High Court has ruled.

The contingency claim is one of many disputed loss-of-profits claims resulting from the attacks and one of the first to have been decided in a U.K. court.

Silversea, which is based in Fort Lauderdale, Fla., and licensed in the Bahamas, has a contingency insurance policy that was prepared by Garden City, N.Y.-based The Berkely Group and placed with If P&C Insurance Ltd. in London. The policy, among other things, covered loss of income caused by terrorist activity.

The cruise line claimed that it suffered cancelled and reduced bookings as a result of customers' reluctance to travel in the months after the Sept. 11 attacks. Silversea made claims of \$18 million for cancelled tickets, \$19.5 million for loss of potential revenues and \$10 million for credits given for alternative cruises.

Silversea claimed that bookings were down so sharply that the company had to put one of its four cruise ships, the Silver Wind, in dry dock for the remainder of

2001 and all of 2002. Another ship, the Silver Cloud, took over the itinerary of the Silver Wind—which was in need of refurbishment—and its own itinerary was canceled.

Silversea claimed that the canceled bookings constituted an interference with its scheduled itinerary under its policy. It also claimed that the policy covered loss of anticipated income projected for 2002.

In his ruling, High Court judge Mr. Justice Tomlinson agreed that the cruise line was severely impacted by the reluctance of many people to travel in the months after the Sept. 11 attacks. He awarded \$5 million to Silversea for the loss of potential revenues, a part of the policy that carried an aggregate limit of \$5 million for the whole fleet, the judge ruled.

However, cancellations of bookings because of the attacks did not amount to interference with the cruise line's scheduled itinerary, and the company's decision to lay-up one of its four cruise vessels and cancel one vessel's entire itinerary was its own choice, the judge ruled.

"In my judgment, Silversea's argument proceeds upon a misconception as to the essential structure of the cover," the judge ruled.

Silver Cloud's itinerary was not cancelled because of any perception that the places it was sched-

uled to visit were unsafe, he said. Although the Silver Cloud was due to visit some eastern Mediterranean, Red Sea and Gulf of Aden ports in late 2001 before its own itinerary was canceled, the Silver Wind visited all these ports only weeks after Sept. 11, 2001, the judge noted. Meanwhile, the Silver Cloud was not due to visit the eastern Mediterranean or Africa at all in 2002, although she ended up visiting ports in those regions after taking on Silver Wind's itinerary.

Silver Cloud was due to spend 2002 in the Far East, Australia and New Zealand, which were not places perceived to be unsafe because of terrorist activity, the judge noted.

The decision to cancel Silver Cloud's itinerary was commercial and based on the belief that its 2002 itinerary was more difficult to sell than others and had not been sufficiently marketed in the early part of 2001, the judge ruled.

The cruise line is planning to appeal the decision.

"Silversea are disappointed that their financial recovery from insurers was not sufficient to address all of their 9/11-related losses. They are accordingly appealing the judgment," said Alex Panayides, a partner with the London-based law firm of Clifford Chance who represents Silversea.

U.K. workers blamed for comp costs

By NEIL HODGE

LONDON—The head of the Confederation of British Industry blames rising rates for employers liability insurance in large part on excessive compensation claims filed by workers.

CBI Director General Digby Jones told delegates at the Assn. of British Insurers' annual conference in London last week that a growing number of injury claims made by workers against their employers was resulting in "spiraling insurance premiums" and "inadequate cover."

"There is a cultural belief in the United Kingdom that business will pay for injuries caused through work and that the cost will be written off, or that it is fine to seek as high a claim for damages as possible because companies can afford to pay," said Mr. Jones.

"This is simply not the case. In fact, premiums for employers liability cover are rising so much that some companies are being forced to make redundancies in order to pay the insurance costs. That is no way to encourage business growth," he added.

Employees, he said, have a "responsibility not to burden business through seeking to make large claims" for work-related injuries.

Employers liability coverage, which has been compulsory in the United Kingdom since 1972, covers the cost of compensating employees for work-related illness or injury. The ABI estimates that for every £1 of premium paid in the last three years, insurers have paid out £1.47 in claims, thereby necessitating rate increases.

Owen Tudor, senior policy officer at U.K. labor organization the Trades Union Congress, called Mr. Jones' remarks "incredible."

"The responsibility—legal and moral—is on the employer to provide adequate protection for employees from injury," Mr. Tudor said.

Directive: Mixed insurers/reinsurers at disadvantage

Continued from page 23

she said. "The directive has taken the industry by surprise."

"Insurers only started to realize about 18 months ago that the new law could have a serious impact on the reinsurance business of mixed providers and that the U.K. could be the hardest hit by the directive," because more U.K. insurers write reinsurance business in addition to insurance than insurers in other E.U. countries, Ms. Byrnes said.

"It is too early to say what impact the new directive will have" on insurers' bottom lines, but rating agencies "might downgrade some

companies because of the possibility of them being forced to abandon new reinsurance contracts, which may result in them losing even more business," Ms. Byrnes said.

David Anthony, director of the financial services group at Standard & Poor's Corp. in London, agreed that some mixed providers might be downgraded if companies decide to opt for pure reinsurers to cover their reinsurance needs. "Some companies may see their ratings suffer if they start to lose reinsurance business, which could make them even less attractive to potential customers," he said.

Peter Vipond, head of financial regulation and taxation at the Assn. of British Insurers, said "we recognize the problems with the implementation of the directive, and we are keen to work with the Treasury to promote the implementation that best supports the growth of the managed fund business."

The directive also applies to Lloyd's of London, though the U.K.'s Treasury has noted it is still unclear how the directive will affect Lloyd's syndicates.

So far, Lloyd's has made no real impact assessment nor any moves to implement the directive, blam-

ing the Treasury's slowness in issuing a final version of the directive.

Nick Prettejohn, chief executive at Lloyd's, said, "it is something that we are still in discussion with the Treasury about to know what effect it will have on us."

A spokeswoman for Royal & Sun Alliance P.L.C. in London, which recently closed its reinsurance book, said that the company is "assessing its position with regard to the reinsurance contracts it places with its reinsurers to see what impact the directive might have on them."

A spokeswoman for Aviva P.L.C.

in London, which has both insurance and reinsurance operations said: "We are currently assessing how the new E.U. directive might impact our operation. We've decided to incorporate within our approval process a review of whether a company underwrites both direct and reinsurance business within the same legal entity. We consider this a prudent measure to take, with the new directive coming into force."

The Treasury said that the directive would be enacted by April 20 but added that it was still consulting with the industry about how it could best be implemented.

SARS: Disease warnings prompt policy exclusions

Continued from page 1

the sports practice of broker Marsh Ltd. in London.

Impact on events

Mr. Hopper confirmed that several events in Hong Kong and China have been canceled due to the virus. For example, many European soccer teams, which often play exhibition games in the Far East, are canceling such visits.

"Underwriters are very concerned about the potential of aggregation and have introduced a clause to exclude SARS," noted Phil Pavay, a director at Miller Insurance Services Ltd. in London.

Events so far that are likely to generate claims include conferences and exhibitions; sporting events; and concerts, including two Beijing dates of the Rolling Stones tour, brokers and underwriters confirm.

Cancellation coverage generally covers all unforeseen perils, so something such as SARS typically would be covered until it became a

known, recognized peril and exclusions were introduced, brokers note.

"I would expect SARS to be an insured peril for most policies written before its identification by the WHO and consequent exclusion by underwriters," said Mr. Hopper.

Still, event organizers that canceled events before the WHO issued warnings may find insurers disputing the coverage, warned Danny Burns, contingency underwriter for Lloyd's of London syndicate 102, managed by Goshawk Syndicate Management Ltd. "Fear of a peril is not covered; otherwise, insurers could end up with systemic exposure because of fear."

Cancellations made before the WHO warnings in early April, which recommended the cancellation of all but essential travel to Hong Kong and Guangdong province in China, were "premature" and are unlikely to be covered by insurance, said Mr. Burns.

Meanwhile, events outside the WHO-identified areas that have

been postponed or canceled or reported reduced bookings also are unlikely to be covered, he noted.

Among the major events that have been affected by reduced attendance, cancellation or postponement by the SARS virus are two international jewelry and watch conventions in Switzerland this month, which traditionally attract large numbers of Hong Kong exhibitors; and conventions in affected cities, such as Toronto.

Taking precautions

Companies with operations in the Far East or that trade with suppliers and customers in the area also are taking precautions.

UBS Warburg in London has stopped all employee travel to or from Hong Kong, China, Singapore and Vietnam, and any employees who recently returned from affected areas must work at home for 10 days, said a spokeswoman for the investment bank. All UBS employees in Hong Kong are being issued

gloves and face masks, she noted.

Many other companies are taking similar precautions.

The Business Travel Coalition Inc., a Radnor, Pa.-based travel advocacy organization, reports that 58% of companies whose employees travel to Asia have banned such travel, and other companies are considering similar restrictions.

Some of the business sectors most affected by supply-chain concerns or by falling demand include: information technology, which gets many components from China; clothing and retail, which relies on goods made in Guangdong; and the airline industry, which has seen bookings on Asian routes fall.

Several multinational high-tech corporations have introduced travel restrictions and have sent employees in the affected areas home.

Santa Clara, Calif.-based Intel Corp. sent home for 10 days one floor of its three-floor marketing and sales operation in Hong Kong after an employee showed symptoms of the virus, said a spokesman. Intel has introduced travel restrictions in the affected region and has canceled two of its Intel Developer Forums due to be held in Beijing and Taiwan this month because of the virus, the spokesman said.

"We are not seeing our business impacted by the virus, but we are carefully monitoring the situation, cooperating fully with local health authorities and looking after our employees," said the spokesman.

Airlines also are taking business and employee health precautions. Many airlines have reduced the number of flights in affected areas, stopped staff layovers in affected cities and taken precautions to stop the infection from spreading.

"People checking in on flights from affected areas, including Hong Kong, Singapore, Toronto and Beijing, are being asked a series of questions recommended by WHO, and if we suspect that any traveler may be infected or have come into contact with an infected person, we call the port health authority," said a spokeswoman for London-based British Airways.

The British airline has canceled one of its two daily flights to Hong Kong, and its employees no longer are stopping over there, the spokeswoman said.

North American response

U.S. and Canadian businesses also are taking steps to prevent and control SARS by monitoring and educating workers about appropriate precautions.

Most businesses are relying on governmental Web sites, which outline risk management steps, ranging from frequent handwashing to quarantining suspected cases.

"Everybody looks to the Centers for Disease Control and Prevention for authoritative guidance on how to identify, treat and prevent the spread of SARS in hospitals, homes and community settings," said Gina Pugliese, vp of the Oak Brook, Ill.-based Safety Institute. The institute provides safety programs for Premiere Inc., an alliance of 1,700 U.S. hospitals. The institute summarizes key CDC and corporate risk management advice on its Web site, www.premierinc.com.

In Toronto, site of one of the larger outbreaks outside Asia, businesses are consulting a government site, www.toronto.ca/health/sars, said Rupak Mazumdar, risk management adviser for Toronto-based Technical Standards & Safety Authority. His private company contracts with governmental entities to provide testing services.

Boston-based Beth Israel Deaconess Medical Center already has protocols to deal with infectious diseases but is taking special steps because of SARS, said Jeff Driver, chief risk officer. For example, it has implemented a special triage procedure to help identify and isolate new cases. Then, health care workers treating those patients must don proper protective clothing, including masks, gloves, gowns and goggles, he said.

In addition, Beth Israel is asking staff members to report if they have traveled in risk-prone areas or been exposed to someone who has, added Mr. Driver, who is president-elect of the Chicago-based American Society for Healthcare Risk Management. Caution and preparedness are important because "we could be on the brink of a major epidemic," he said.

Senior Editor Meg Fletcher contributed to this report.

Pensions: Bill outlines reforms

Continued from page 3

account funds, allow employees to use pretax dollars to pay for retirement planning expenses and allow employees in 401(k) plans to sell company stock contributed as a match generally no later than five years after receiving the stock.

In scope, the measure matches, if not exceeds, the retirement plan provisions the two congressmen attached to what became the Economic Growth and Tax Relief Reconciliation Act of 2001.

"This is a very important bill. It could be a major milestone," said Frank McArdle, a Hewitt Associates Inc. consultant in Washington.

Rep. Earl Pomeroy, D-N.D., a bill co-sponsor, said the measure has "strong prospects for passage." Rep. Portman said he is prepared to "shrink" the bill if the potential revenue loss is judged too high, in order to win passage.

Reps. Portman and Cardin are "a good team and they will work at it until they reach an agree-

ment," said Janice Gregory, a vp with the ERISA Industry Committee in Washington.

Others, though, say winning passage of "Portman-Cardin II" will be hard because the government is operating at a big deficit.

"It will be more difficult this time around," said James Klein, president of the American Benefits Council in Washington.

Atop the list of "urgent" changes, experts agree, is the provision that would require the Treasury Department to develop a new index for determining pension funding levels and the amount employers have to contribute.

Currently, employers must use an index based on 30-year Treasury bond yields. Because the yield is so low on such bonds, which are no longer issued, the value of liabilities is inflated. That forces employers to add more to the plans than necessary, which Rep. Portman says is a disincentive for offering a defined benefit plan.

Perhaps the most innovative provisions in the measure would let retirees take—tax-free—part of pension plan distributions to pay for medical insurance premiums. Initially, the amount would be \$500 a year and would increase over the next several years.

That provision, the congressmen say, would put retirees on the same footing as workers who pay for health insurance with pretax dollars through salary reduction.

Giving retirees such a tax break comes at a time when they are shouldering more health care costs as employers increasingly eliminate or reduce the value of their retiree health care programs.

The bill also would let employers with defined contribution plans, such as profit-sharing plans, designate a portion of their contributions to the plans to prefund retiree health care costs. Currently, such an approach only is permitted in certain situations for employers with defined benefit plans.

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EMLICO: Ruling

Continued from page 4

signed turbine engines, according to Justice Gammerman's opinion.

GE and EMLICO in 1992 reached an asbestos claims handling agreement under which all turbine-related claims were to be treated as a single occurrence under EMLICO's primary policies.

Justice Gammerman ruled that the agreement is not binding on excess insurers, though, and he rejected GE's argument that its design, manufacture, sale, installation and servicing of the engines was a single, continuous occurrence under the excess policies.

EMLICO's relationship with GE became a subject of controversy in 1995, when the insurer redomesticated to Bermuda from Massachusetts and promptly declared itself insolvent by more than \$500 million because of underreserving for GE asbestos and pollution claims. During months of litigation that followed, EMLICO reinsurers charged that GE controlled EMLICO and engineered its move to Bermuda in part to speed up reinsurance recoveries under more favorable Bermuda liquidation laws. GE denied the charges and the disputes were later settled.

Theft: Employers put at risk

Continued from page 4

confirmed that the Provo, Utah-based software provider received a letter from the RIAA but would not comment on the content of that letter or Novell's response.

A growing practice

Over the past few years, a growing number of people have been sharing music files over the Internet.

Typically, file-swapping is done using any of a number of programs—which are free and readily available online—that allow computer users to search for and download song files stored on other computers running the same software. According to the RIAA, billions of files are shared every month.

While the RIAA declined to discuss the legal basis for any future suit, copyright attorneys say that such a suit could be brought under a theory known as "contributory infringement." However, for such an approach to succeed, the recording industry would have to establish that the employer knew about—and failed to try to stop—the copyright infringement. By sending letters notifying employers of the file-sharing, the recording industry may be trying to create a basis for charges of contributory infringement, lawyers say.

But the law is still unclear about what responsibility, if any, an employer has for infringement on the part of its employees, said Bart Lazar, a partner with Seyfarth Shaw in Chicago. Mr. Lazar said he is unaware of any suits against an employer "for an employee's personal activity in infringing."

That may change, though, because the letter "is setting the table for such an action," he said. "Holding someone responsible on that theory (of contributory infringement) is a fascinating question," said Richard Charnley, of counsel at Nelsen, Thompson, Pegue & Thornton in Santa Monica, Calif. "It may be a lot of smoke and mirrors," he said, but employers need to take the matter seriously.

"Just ignoring it makes no sense," said Mark Matuschak, a partner with Hale & Dorr in Boston.

If a suit successfully establishes that an employer knew about the practice and took no action to prevent it, damages could amount to \$150,000 per file swapped, attorneys said. As a result, an employer's liability could potentially reach into the millions, lawyers say, as each download could be considered a separate infringing act. For example, an employer with 10 employees who downloaded 100 songs

each could face claims of \$150 million.

Although special copyright infringement coverage could respond to such claims, employers that fail to act on the RIAA letter likely would face coverage denials from their insurers, Mr. Lazar said.

A new target

The RIAA would not comment on what further steps it plans to take against companies that received the letter. But Mr. Lazar noted that the RIAA has in the past brought lawsuits to protect members' copyrights.

The RIAA is "shifting the risk for its inability to control their products on the Internet to corporations," he said. "They are looking to have corporations be their henchmen."

And, Mr. Lazar noted, "employers have deep pockets."

Along with the letter, the RIAA sent each employer a CD-ROM that lists all the copyrighted songs contained on one employees' computer that were available for sharing.

By using file-sharing software, the RIAA was able to obtain the Internet Protocol—or IP—addresses of those using the software to swap music files. The IP addresses of individuals using corporate computer

systems can be easily identified, which allowed the RIAA to generate its list of targeted companies.

Employers that receive such letters should take a two-pronged approach to minimize their liability, attorneys say.

At the very least, the employer should use the IP address provided in the letter to identify the employee user, tell him or her to stop swapping music files and delete the file-swapping software and any copyrighted material, Mr. Matuschak said.

The company should also communicate to all its employees that, as a matter of company policy, downloading copyrighted material is not allowed. In addition, the company could install software on its network that blocks access to the Internet sites at which employees can download file-sharing software. Also, employers could perform random checks of employees' computers to see whether the policy is being followed, lawyers say.

Mr. Matuschak noted that the federal Digital Millennium Copyright Act of 1998 may afford employers some protection against copyright infringement liability, but only if they take steps to eliminate illegal practices once made aware of them.

Ignoring the RIAA's notification letter is a mistake, he said, because it limits an employer's ability to take advantage of such provisions in the law.

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Award: On punitives

Continued from page 1

Supreme Court, which rendered its decision last week.

Writing for the majority, Associate Justice Anthony Kennedy referred to the high court's landmark 1996 decision in *BMW of North America vs. Ira Gore*, the first case in which the Supreme Court ruled that a punitive damage award could be unconstitutionally disproportionate to a compensatory award. Under the principles outlined in that case, "this case is neither close nor difficult," Justice Kennedy wrote. The Utah court's action violated the due process clause of the 14th amendment, he wrote.

While holding that State Farm's handling of the claims "merits no praise," Justice Kennedy said that the insurer could have received a lesser punishment. The Utah high court was wrong to punish State Farm for conduct that occurred outside Utah's borders, conduct that may be legal in other states, he said.

Justice Kennedy moved on to the question of whether the punitive damage award was so disproportionate to the underlying compensatory award as to violate the Constitution. Noting that the court has been reluctant to draw a "bright line" separating the constitutional from the unconstitutional, he nonetheless said that "few awards exceeding a single-digit ratio between punitive and compensatory damages will satisfy due process."

In fact, where a compensatory award was "substantial," which is how the court described the Campbell award, then a punitive damage award "perhaps only equal to compensatory damages, can reach the outer limit of the due process guarantee," according to the decision.

In one of three separate dissents to the decision, Associate Justice Ruth Bader Ginsburg said the court was not justified in interfering in what should be a state matter. She added, though, that the size of the punitive damage award in the Campbell indicated that legislation capping of such awards "may be altogether fitting and proper." Associate Justices Antonin Scalia and Clarence Thomas filed their own separate dissents, saying that the Constitution said nothing about punitive damages.

Employer-oriented observers hailed the decision as a significant victory, albeit with some reservations.

"It's an all-out great decision. It addresses multiple issues that have bedeviled the business community for a number of years and resolved them favorably from business' viewpoint," said Steve Bokatz, executive vp of the National Chamber Litigation Center Inc. in Washington. "*Gore* was significant because it was the first decision, but this one goes significantly further. As far as punitive damages, this is as close to a grand slam home run as you get from the Supreme Court," Mr. Bokatz said.

"The decision is very significant because, for the first time, the Supreme Court provides rules with specifics on constitutional limits about punitive damages," said Vic-

tor Schwartz, general counsel of the American Tort Reform Assn. in Washington. "It does so by explaining two of the so-called *Gore* factors—namely, reprehensibility and proportion. With reprehensibility, they limit the use of out-of-state evidence, and with ratio, they say when compensatory damages are 'substantial,' it can no longer be greater than single digits, which would be, at best, nine to one."

"There's no downside to the decision, and certainly from the standpoint of insurance companies as defendants, in bad-faith cases, it's a huge win and it should bring uncontrolled punitive substantially under control," said Andrew Frey, a partner in Mayer Brown Rowe & Maw in New York. Mr. Frey had presented BMW's case before the Supreme Court in 1996.

"The court leaves open the question of how, if at all, the outcome would differ if there were physical injuries (to the claimant). So for product liability cases, there remains an opening for state courts that don't like this decision to try to escape the limitations of the constitutional analysis of *State Farm*. But that said, the decision is tremendously helpful to everyone in the business community. Perhaps most significant in the long run will be the court's statement that you cannot use corporate finances to justify an otherwise excessive award."

Quentin Riegel, vp-litigation for the National Assn. of Manufacturers in Washington, also pointed to some limitations in the decision.

"Clearly, there's some excellent language in the opinion limiting the size of punitive damages," he said. "They did talk about the need to prevent the court from allowing irrelevant evidence from out-of-state activity but left the door open to trial lawyers to try to show that that evidence is connected to their claim. That was a big issue in this case, whether the activities of State Farm throughout the country had any bearing on the specific complaint by this plaintiff. The Supreme Court found that it did not, but that will be a contested issue in future cases," Mr. Riegel predicted.

In another case followed by businesses, the high court ruled 8-to-0 on April 7, with Justice Thomas not taking part in proceedings, that managed care plans could require that physicians submit employment-related claims to binding arbitration if the physicians had agreed to settle employment disputes through arbitration. The arbitration agreements are valid even when claims allege violation of federal laws, the court ruled. *PacificCare Health Systems Inc. et al. vs. Book et al.* involved claims brought under the Racketeer Influenced and Corrupt Organizations Act.

State Farm Mutual Automobile Insurance Co. vs. Campbell, et al. U.S. Supreme Court, No. 01-1289. Decided April 7, 2003.

PacificCare Health Systems Inc. et al. vs. Book et al. U.S. Supreme Court. No. 02-215. Decided April 7, 2003.

ROA: Turf battle

Continued from page 3

The RRGs are: Doctors Insurance Reciprocal, formed in 1990 to write physician malpractice coverage; American National Lawyers Insurance Reciprocal, formed in 1992 to write legal malpractice; and The Reciprocal Alliance, formed in 1995 and specializing in malpractice coverage for hospitals, nursing homes and managed care organizations.

From their inception, the three RRGs reinsured virtually all of their business with ROA, which, in turn, retroceded most of the business to General Re. General Re acted only as a fronting reinsurer, though, ceding the business on to First Virginia Reinsurance Ltd., a Bermuda-based captive controlled by Reciprocal Group officers, according to court records.

The Reciprocal Group companies grew steadily through the 1990s and rapidly after 2000, when ROA acquired smaller malpractice and workers comp group self-insurance plans in a number of states. ROA's gross written premium volume jumped 44% to \$235.2 million in 2001, partly on the strength of acquisitions, according to Oldwick, N.J.-based A.M. Best Co.

At the same time, though, ROA was running into financial trouble. Best downgraded the group's rating to B- from A- in March 2002 after ROA was forced to boost loss reserves by \$39 million in 2001. ROA responded by raising \$53 million in new capital from its policyholders, but Virginia regulators and the insurer's auditor later found further deficiencies and ROA had to boost reserves by another \$33 million.

As of the beginning of 2002, General Re also withdrew as ROA's reinsurer and commuted its contracts with First Virginia Re. General Re capped its liability under pre-2002 policies at \$135 million and provided ROA with a separate "tail cover" for claims arising from incidents occurring before 2002. First Virginia Re was to indemnify ROA for losses exceeding General Re's \$135 million cap, but ceased paying

claims last year, a move that cost ROA \$29 million during 2002's third quarter.

Best cited ROA's increased exposure to unreinsured losses, among other problems, when it downgraded the group to C- in January. By the end of that month, Virginia regulators had placed ROA in receivership and Tennessee regulators had followed suit with the three RRGs.

The unusual structure of the Reciprocal Group—in which the three independent RRGs were nearly 100% reinsured by ROA—is one root of the brawl that has erupted between Virginia and Tennessee regulators.

Under Virginia receivership orders, ROA is still paying claims of its own direct insurance policyholders but has classified RRG policyholder claims—even those of Virginia-based RRG members whose claims are otherwise identical to ROA claimants—as reinsurance debts that carry a lower payment priority, receivership documents say.

Tennessee receivers argue that Reciprocal Group operated all four insurers as a single enterprise and that ROA and RRG policyholders should be treated equally regardless of the RRGs' reinsurance arrangement. The reinsurance program was a "de facto fronting arrangement" that should allow direct claims by RRG policyholders against ROA, Tennessee officials say.

The Virginia receiver's "dissipation" of ROA assets—including the RRGs' premiums—to pay only ROA policyholders also violates constitutional due process and equal protection rights, Tennessee receivers charge.

Tennessee officials also complain that Virginia has blocked their access to RRG records held at Reciprocal Group's Virginia headquarters and to former Reciprocal Group employees.

Virginia officials, however, counter that they have provided nearly two million pages of RRG files to the Tennessee receivers. "They've got the documents. It's

not our fault if they won't open the boxes," a spokesman for the Virginia State Corporation Commission said.

The Virginia receiver counters that Tennessee has no right to "unfettered access" to ROA's offices and that the RRG receivers have launched a "fundamental attack on the Virginia receivership" by claiming that RRG policyholders should be paid by ROA.

The Tennessee receivers have formally asked their Virginia counterpart to reconsider his stance. If he turns aside the objections, they may appeal to Virginia Insurance Commissioner Alfred W. Gross, to the State Corporation Commission and, ultimately, to the Virginia Supreme Court.

Lawyers for RRG policyholders, meanwhile, have taken matters into their own hands, filing three class action racketeering suits in Tennessee and Alabama federal courts over each of the failed RRGs. In addition to the RRGs, ROA and Reciprocal Group officers, the suits name General Re, ROA auditor PricewaterhouseCoopers and actuarial consultant Milliman USA.

The suits charge, among other things, that General Re and Reciprocal Group officials conspired to hide the insurers' declining financial health, which worsened considerably with the alleged "secret" agreement to reduce General Re's support of ROA, a reference to the General Re commutation with First Virginia Re.

The commutation was never approved by the RRGs' boards of directors and was not explained to the directors until several months after the fact, Tennessee receivership officials have charged.

PricewaterhouseCoopers and Milliman knew of the allegedly fraudulent reinsurance transactions but negligently or intentionally overlooked them, the law suits charge.

General Re's Mr. Graham dismissed the allegations, saying, "We entered into a normal, arm's-length reinsurance agreement and a normal, arm's-length retrocessional agreement that we ultimately decided to commute."

A New York-based PricewaterhouseCoopers spokesman said the suits are "totally without merit and we intend to defend them vigorously."

A Seattle-based Milliman spokeswoman declined to comment.

Comings & Goings: Industry

Reinsurance:

Switzerland-based Zurich Financial Services Group has named **Thomas Hurlimann** global head of group reinsurance, responsible for the global management, development and implementation of Zurich Reinsurance's policy and strategy. He succeeds **Robert Stevenson**, who returned to the United Kingdom from Switzerland to become director of reinsurance of Zurich's U.K., Ireland and South Africa region. Mr. Hurlimann previously held senior posts at Zurich-based Swiss Reinsurance Co.

Insurers:

Andrea C. Kanefsky and **Charles W. Lefevre** have been named senior vp/chief financial officer and senior vp/chief operating

officer, respectively, for West Windsor, N.J.-based Princeton Insurance Co. Ms. Kanefsky was vp of accounting since 1993 and replaces **Emil D. DeVito**, who retired in February. Mr. Lefevre was a vp of underwriting since 1997.

David H. Klein, president of The Lifetime Healthcare Cos., also has been named chief executive officer, following the retirement of **Howard J. Berman**. Rochester, N.Y.-based Lifetime Health is the parent of several health care and employee benefit-related companies, including Excellus Blue Cross & Blue Shield, one of the largest nonprofit health insurers in New York.

Carol Zacharias was named senior vp of ACE USA's Diversified Risk division based in Philadelphia. She most recently was counsel to CNA Global Specialty Lines.

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Late News

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federal law, to take a 65% federal tax credit on premiums they pay for the state coverage.

States with caps have lower med mal losses

Doctors in states with caps on noneconomic damages consistently have lower average medical malpractice losses, according to a study by Milliman USA. The actuarial consultant examined medical malpractice loss costs in the 15 largest states from 1990 to 2001. The lowest-cost large state, California, which has a \$250,000 cap on noneconomic damages, reported a \$2,884 annual loss per doctor for malpractice losses, whereas Pennsylvania, which does not have a cap, reported the highest average loss, at \$9,386 per doctor.

Leading workers comp claims grow more costly

The direct cost of claims from the 10 leading disabling work-related injuries and illnesses grew 8.3% between 1998 and 2000, outpacing inflation, Liberty Mutual Insurance Co. reports. Employers paid \$42.5 billion in wage-loss and medical payments in 2000, the insurer reported in its 2003 Workplace Safety Index. Overexertion injuries nationwide cost employers \$11.9 billion in direct costs in 2000, while falls on the same level cost \$5.4 billion and bodily reaction, such as bending or slipping without falling, cost \$4.4 billion.

PHOTO: AP/WIDE WORLD



In terms of insured losses, the March 18 blizzard is the most costly Colorado snowstorm ever.

Colorado blizzard claims at \$93 million

The blizzard that blanketed Denver and the surrounding area with snow last month caused \$93.3 million in insured property damage, according to the latest estimate by the Rocky Mountain Insurance Information Assn. The March 18 blizzard is the most expensive Colorado snowstorm on record, according to the group. The majority of the damage results from collapsed roofs, porches, awnings, carports and outbuildings, an RMIIA statement said.

Property rate hikes slowing in 2003: Aon

After a year of steep increases, property rate hikes are beginning to subside, according to Aon Corp. Property rates increased by 62% on average in 2002, according

AON

to an Aon study. But rate increases are likely to slacken somewhat this year, said Gary Marchitello, a managing director of Aon Risk Services Cos. Inc. in New York. Rate increases will likely ease by between 5% and 10% in each quarter this year, he said.

PHOTO: AI WIRE



The claims dispute centers over a back injury by Dodgers pitcher

L.A. Dodgers sue insurer over disability claim

The Los Angeles Dodgers have filed suit against Hartford Life Insurance Co., contending the insurer owes the team more than \$4 million in connection with a disability policy on injury-plagued pitcher Kevin Brown. In 1999, the Dodgers signed a seven-year contract that paid Mr. Brown \$15 million per year on a guaranteed basis. Mr. Brown missed parts of both the 2001 and 2002 baseball seasons because of an elbow injury, which was followed by a back injury.

Hartford claims the back injury is not covered under its policy.

Contingent commissions boost Brown & Brown

A hefty increase in contingent commissions contributed to a 30.4% rise in gross revenues at Brown & Brown Inc. in the first quarter of 2003. The world's ninth-largest broker recorded \$144.7 million in revenues, while profits soared 51.5%, to \$30.5 million, in the quarter. In a statement, Brown & Brown noted that revenues were "enhanced" by an 83% increase, to \$18.2 million, in contingent commissions—fees paid by insurers based on books of business placed—earned in the first quarter.

Briefly noted

Rep. Cal Dooley, D-Calif., introduced legislation last week that would require claimants in **asbestos liability cases** to prove that they suffer from asbestos-related illness before filing suit....Greenwich, Conn.-based **W.R. Berkley Corp.** has formed an excess liability division at its Admiral Insurance Co. unit. The division will be headed by William F. Murray, who was previously a senior vp at General Star Management Co.

Check out BusinessInsurance.com

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Online Poll

[4/7 - 4/11]

When will property/casualty insurance rate increases begin to level off?



Already have 35.6%

Year end 2003 31.4%

2004 or later 33.0%

BI Stock Index

[4/7 - 4/11]

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  **1769.74** **-0.73**

Dow Jones  **8203.41** **-0.89**

S&P 500  **868.30** **-1.20**

Largest gains

NYMagic Inc.	12.38%
ING Groep N.V.	9.76%
Brown & Brown	6.48%
Zenith National Insurance	5.86%
SCPIE Holdings Inc.	5.84%

Largest losses

Gainsco Inc.	-22.22%
Argonaut Group	-21.03%
PMA Capital Corp.	-9.30%
Clark Bardes Holdings	-6.63%
Selective Insurance Group	-3.71%

Weekly change by market segment

Brokers	0.40%
Insurers/Reinsurers	-0.21%
Managed Care Organizations	-0.84%

Source: CNET Investor (investor.cnet.com)

Med mal: Florida lawmakers at odds

Continued from page 4

• Extend the state's excess profit law to medical malpractice insurance by requiring insurers to return profits to policyholders if insurers post excessive earnings for three consecutive years.

"They have a number of very good ideas," said James Taylor, southeastern regional manager in Tallahassee, Fla., for the National Assn. of Independent Insurers. The House bill addresses "the heart of the matter," he said, "which are huge verdicts against medical practitioners."

The Florida Medical Assn. Inc. said in a statement last month that it favors a final bill that contains the \$250,000 cap. Such a cap would "help bring back balance to this health care crisis," Sandra Mortham, the association's chief executive officer, said in the statement.

A report released earlier this year by the Florida Governor's Select Task Force on Healthcare Professional Liability Insurance shows how the malpractice crisis has evolved in Florida.

There are just four insurers writing new malpractice policies in the state, down from the 66 that provided the coverage in 1999, according to the report. It goes on to say that medical malpractice premiums

in Florida were 55% higher than the national average last year, and the state's average premium has increased 64% since 1996, compared with a 26% rise nationally.

The Senate is taking a different approach from the House to solving the malpractice problem.

Neal Roth, co-chairman of the

'The doctors have demonstrated that they are not politically sophisticated. They have married themselves to those who are charging them these premiums.'

Neal Roth
Academy of Florida Trial Lawyers

Academy of Florida Trial Lawyers' medical liability committee and a past president of the group, said the "biggest problem right now is a lack of competition as a result of price wars that occurred in the '90s and (insurers) not knowing what they were doing and getting into trouble."

He called the House bill "draconian" and said there is "no sentiment in the Senate for caps on damages."

Mr. Roth said physicians are misguided in their support for the

House bill. "The doctors have demonstrated that they are not politically sophisticated," he said. "They have married themselves to those who are charging them these premiums."

Doctors "ought to peel off from the insurance companies," Mr. Roth suggested, and consider alternative ways of financing their risks. The Senate is proposing to allow physicians to form medical malpractice self-insurance funds, a measure that also is contained in the House version and one that the governor supports.

While there are a few medical malpractice bills being considered in the Senate, the most comprehensive is S.B. 2080. It would call for a rollback of malpractice rates for policies issued or renewed after July 1, 2003, to levels at least 20% less than the rate for the coverage that was in effect on Jan. 1, 2001. Some estimates put the actual rollback at around 60% of current rates.

Gov. Bush has proposed a rollback or premium credit be instituted if changes are made to the state's bad-faith laws. He has criticized those laws as encouraging insurers to settle cases even when they believe they have not acted in bad faith. Florida law allows doctors to sue insurance companies for failing to settle cases.

Among other things, the Senate bill also would:

- Require that insurers apply a premium discount or surcharge based on the medical provider's loss experience and regulatory disciplinary history.

- Increase fines for insurers that violate requirements for reporting claims.

- Limit rating organizations to "collecting, compiling and disseminating historical data on paid claims or reserves for reported claims." This is a general provision that would apply across all lines of coverage.

- Require the Office of Insurance Regulation to hold public hearings on rate filings when requested by insureds.

"It's a truly horrible bill," said William Stander, government affairs representative in Tallahassee for the Alliance of American Insurers. In fact, he said, "it's punitive."

With only four companies writing medical malpractice coverage in the state, the Senate proposal would do little to increase the amount of coverage available in the state, Mr. Stander suggested.

Mr. Taylor of the NAI speculated that "if something like that passes, companies will have to think terribly hard about doing business in Florida."