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Business Insurance

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\$4

Ex-LTV workers form VEBA

Unusual move raises questions, benefit experts say

By JUDY GREENWALD

WARWICK, R.I.—In a rare, if not unique, move, laid-off employees and retirees of bankrupt steel-maker LTV Corp. have established a voluntary employees' beneficiary association to provide health insurance and other benefits.

A VEBA allows tax-deductible money to be set aside for employee health, disability or life insurance. VBAs are generally established and funded by employers or unions, either alone or together. VEBA formations involving bankrupt companies are rare, and establishment by former

workers makes this new VEBA even more unusual, observers say.

Nell Hennessey, senior vp with Aon Consulting Inc. in Washington, said, "I don't know of another instance where the participants have set it up initially themselves without any employer money."

Some benefit experts, though, question both the legality of a VEBA involving former employees and its likely financial viability.

Samuel H. Fleet, the Warwick, R.I.-based president and chief executive officer of Americana Financial/NEBCO, which is administering the

VEBA, maintains that the former LTV workers' VEBA both complies with the law and will be viable. Neither LTV nor the United Steelworkers Union of America is contributing to the VEBA, he said.

The Retired Steelworkers Benefits Plan, which takes effect May 1, is open to both union and salaried employees, said Mr. Fleet. An estimated 10,000 to 20,000 former employees and retirees are expected to participate in it. Contributions by the former workers and retirees would be tax-deductible.

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Late News

Hueppi to step down as head of ZFS

Rolf Hueppi will resign as chairman of Zurich Financial Services Group at the insurer's annual general meeting next month. The decision

follows a previous announcement that he would step down as chief executive officer by mid-2002. Mr. Hueppi, who will also resign his position on



Zurich's board at the meeting, said he was stepping down because his association with Zurich was hampering the company. "I consider it desirable and important that the new leadership of our group can be established unencumbered by the ongoing public controversy surrounding me," he said in a statement. Mr. Hueppi has come under increasing investor pressure over the past year as ZFS' profits and share price have flagged. Vice Chairman Lodewijk van Wachem is expected to succeed Mr. Hueppi as chairman.

First-quarter cat losses lowest in a decade

An extraordinarily mild winter has produced the lowest level of first-quarter catastrophe losses in more than a decade, according to the Insurance Services Office Inc.'s Property Claims Services unit. Insured property losses from three catastrophic events in the first quarter totaled \$580 million, down from \$705 million recorded in the first quarter of 2001, the previous low for cat losses since 1992. Three cat events were responsible for this year's first-quarter losses, including a January winter storm that caused \$265 million in insured property damage in seven states. Two other Midwestern storms in March caused another \$315 million in insured losses.

USI Holdings selling claims unit to CBCA

USI Holdings Corp. is selling USI Administrators Inc., its third-party benefit administration unit, to Oakland, Calif.-based CBCA Inc. Fort Worth, Texas-based USI Administrators was the 10th-largest claims administrator in

See LATE NEWS/next page

Barbs fly over ergo guidelines

Senate hearing stirs party-line split

By MARK A. HOFMANN

WASHINGTON—The Bush administration is coming under increasingly heavy political fire for attempting to reduce ergonomics-related injuries through voluntary industry-specific guidelines, education and selective enforcement rather than by issuing a federal standard.

Labor Secretary Elaine Chao's appearance before the Senate Health, Education, Labor and Pensions Committee last Thursday drew charges from Chairman Edward M. Kennedy, D-Mass., that the new approach represented nothing more than a "replay of failed strategies from the past," a contention shared by the panel's other Democrats.

Republican members countered with praise for Ms. Chao and condemnation of a Clinton administration effort to promulgate a "final" ergonomics standard after the November 2000 elections, an effort that led Congress to take the unprecedented step of invoking the Congressional Review Act to

See ERGONOMICS/page 34

Perception of disease is changing

More employers see risks, costs of obesity

By SALLY ROBERTS

Obesity, while still considered by many to be a condition resulting from certain lifestyle choices, is increasingly being recognized as a health problem that employers must address.

Many employers today promote healthy lifestyles through overall wellness programs, or they address obesity through programs designed to manage other conditions, such as diabetes. Most employers do not offer specific obesity-related programs, however, and most benefit plans

do not cover specific obesity-related treatments such as prescription drugs, gastric bypass surgery or weight-loss programs, experts say.

Part of this lack of coverage is due to the perception that obesity results from the lifestyle choices individuals make, they say. But as research continues to connect obesity to other, high-cost chronic conditions—including diabetes, hypertension, heart disease, arthritis and certain cancers—employers are becoming increasingly aware of the direct and indirect costs

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OBESITY COST FACTORS

Weight reduction reduces risk factors and costs for care for these obesity-related conditions:

Condition	Annual U.S. medical cost	% of cost attributable to obesity
Hypertension	\$1.6 billion	17%
Type 2 diabetes	\$2.4 billion	61%
Coronary heart disease	\$2.3 billion	17%
Gallbladder disease	\$705 million	30%
Osteoarthritis	\$57 million	24%

Source: Watson Wyatt Worldwide

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Inside

Medical records privacy is hotly debated

A Senate hearing last week amply demonstrated the lack of agreement as to how drastically the Department of Health and Human Services should alter medical records privacy rules issued in the final days of the Clinton administration. **Page 4**

Offering services to on-the-job new moms

With more working mothers opting to nurse their babies, the provision of lactation rooms and educational programs has become a concern to employers. **Page 6**

What's that supposed to mean?

Senior Editor Joanne Wojcik says that the definition supplied for any given word could depend on whom you ask—a policyholder attorney or an insurer attorney. **Page 6**

The only way for voluntary rules to work

The Bush administration's proposed voluntary approach to ergonomics safety standards will be effective only if every employer accepts the responsibility for making the standards work, one of this week's editorials says. **Page 8**

Product liability exposure increasing

Employers in South Korea are preparing for a new law that will make it easier for claimants to win product liability cases. **Page 29**

Australia sees first smoker award

The first smoking-related damage award ordered by an Australian court, made this month, could lead to more claims for compensation by other smokers. **Page 29**

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

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Business Insurance's 2002 ranking, based on \$105 million in revenues from self-insured clients in 2001. The sale will allow San Francisco-based USI "to focus exclusively on its core competency of distributing insurance and employee benefits products and offering other related outsourcing services," David L. Eslick, USI's chairman and chief executive officer, said in a statement.

Pennsylvania docs' suit against insurers rejected

A Pennsylvania health care law does not allow doctors to sue health insurers for failing to meet the law's prompt claim payment requirements, a state appeals court has ruled. The court affirmed a lower court ruling that threw out a physician class-action suit against United States Healthcare Systems of Pennsylvania Inc. and Aetna Inc. The suit charged that the insurers improperly delayed claim payments, breaching their contracts with physicians and violating the state's Quality Health Care Accountability and Protection Act, which requires payment of valid claims within 45 days. Violations of the Health Care Act do not create a private cause of action against insurers, but allow health care providers to file complaints with the Pennsylvania Insurance Department, the court ruled.

CalPERS approves 25% HMO rate hikes

The California Public Retirement System will raise its health maintenance organization rates an average of 25.1% in 2003. There will be no change in benefits. In addition to the HMO rate hikes, Sacramento-based CalPERS will introduce 18.9% and 22.1% rate hikes, respectively, for its two self-insured preferred provider organization plans. CalPERS also will drop Woodland Hills, Calif.-based Health Net Inc. and Santa Ana, Calif.-based PacifiCare Health Systems Inc. from its group of HMOs,

Late News

which will affect about 350,000 covered lives.

Fewer employers offering retiree coverage

The percentage of employers offering retiree health care coverage is continuing to drop, according to a survey released last week. Only 34% of U.S. companies with 200 or more employees offered health care coverage to Medicare-eligible retirees in 2001, down from 37% in 2000 and 41% in 1999, according to the study, which is a joint project of the Kaiser Family Foundation, the Commonwealth Fund and the Health Research & Education Trust. The survey also found that Medicare-age retirees, on average, pay 26% of the total cost of their health care premiums, compared with 13% paid by active workers in the same firms.

Aon says it won't meet first-quarter profit goal

Aon Corp. will not meet its profit target for the first quarter of 2002 due to increased employee compensation costs. Aon's profits for the first three months will likely be between 56 cents to 59 cents per share, including a one-time pretax income item of \$48 million that is the result of a tax settlement. That amounts to a profit of between \$155 million and \$163 million. Aon did not reveal its original earnings target for

the quarter. In 2001, Aon recorded first-quarter profits of \$19 million. Patrick G. Ryan, chairman and chief executive officer of Aon, said that "U.S. retail brokerage results pressured first-quarter earnings...due largely to increased employee compensation costs related to the business transformation," referring to a restructuring plan Aon announced in late 2000.

Little confidence seen in contingency planning

More than 75% of Fortune 1000 companies are not well prepared to recover from a "major disruption to their top earnings driver," and less than 25% believe their current contingency planning efforts are adequate, a new survey has found. Moreover, chief financial officers and treasurers are less confident in their company's contingency planning efforts than are risk managers, underscoring the need for better communication between these groups, the survey indicated. The survey also found that property-related hazards make up the majority of threats to company earnings. The survey was conducted by Factory Mutual Insurance Co.—which does business as FM Global—the National Assn. of Corporate Treasurers and management consulting firm Sherbrooke Partners.

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

Commercial buyers are reducing coverage or doing without

CIAB sees rate increases across all lines

By MARK A. HOFMANN

Rates for all lines of commercial insurance are continuing to rise, according to the Council of Insurance Agents & Brokers.

The 157 agents and brokers who participated in the CIAB's quarterly Commercial Insurance Market Index for the first quarter of 2002 also reported rate jumps for accounts of all sizes. Most respondents reported increases in the range of 10% to 30% for all of the lines cited when comparing current rates to those in January.

More than a quarter of the respondents said that large accounts—those generating commissions and fees of more than \$100,000—experienced increases of 30% to 50%, with 6% of the respondents reporting increases of 50% to 100% for such accounts and 1% reporting increases in excess of

100% for large clients.

The continued rate increases "reinforce the argument that the lack of terrorism coverage is causing some dramatic disruptions in the marketplace and that commercial consumers are struggling with how to insure themselves and continue to do business," said CIAB President Ken Crerar.

"Some of the information we gathered indicated that commercial consumers were either reducing their coverages or going without, and that's a very dangerous situation for most businesses to be in and has a negative impact on the economy," he said.

Ninety percent of the respondents reported increases of at least 10% in umbrella coverage. In addition, 32% reported increases of 30% to 50%; 18% reported increases of 50% to 100%; and 11% reported in-

See CIAB/page 35

Survey shows interest in terror cover growing

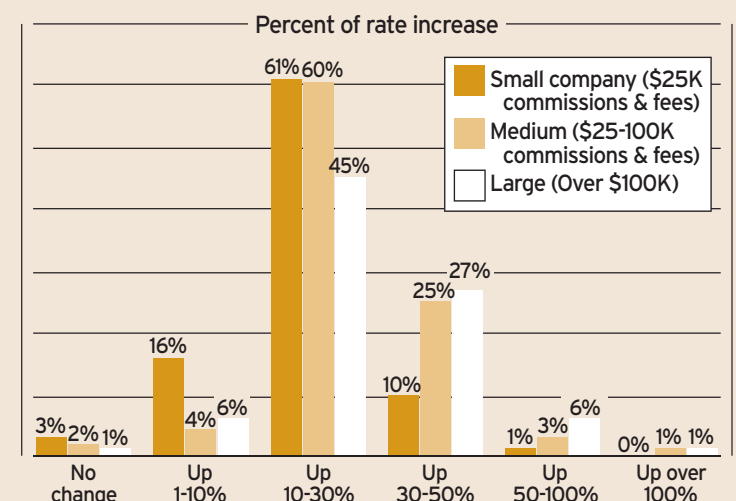
Risk managers at large corporations are becoming more interested in purchasing terrorism coverage, according to a survey by Boston-based RM Access. When asked what steps they are taking to address terrorism exposures, 22% of the respondents said they are going without terrorism coverage, 19% are not changing their coverage, 13% are using excess-market facilities and 3% said they are creating self-insurance programs. But 42% of the respondents said they are seeking other measures.

Briefly noted

Indiana Insurance Commissioner Sally McCarty last week ordered an outside consultant to examine the market conduct practices of **Anthem Insurance Cos.**, following complaints from providers. The examination will focus on whether the Indianapolis-based insurer has engaged in unfair claims-settlement practices or violated the state's "prompt pay" law, Ms. McCarty said.... **UnitedHealth Group** reported profits of \$295 million for the first quarter of 2001, a 39% increase over the same period last year. The health insurer's gross revenues increased 5.9%, to \$6.01 billion.... **Hilb, Rogal & Hamilton Co.** reported profits of \$19.1 million for the first three months of 2002, which is more than double its profits for the same period in 2001. The increase was due, in part, to an accounting change. The brokerage reported a 28.1% increase in gross revenues, to \$99.9 million.... Reinsurer **Max Re Capital Ltd.** warned that its profits for the first quarter of 2002 will be between \$1 million and \$2.8 million, compared with the \$10 million to \$11 million it had expected. The reduction was caused by lower investment income.... A.M. Best Co. has downgraded **IPC Group** to C from B+. IPC is a unit of Mutual Risk Management Ltd.

COMMERCIAL MARKET INDEX

Rate increases reported by CIAB member producers



Source: CIAB

GRAPHIC BY ADAM DOI

April 22, 2002

Bias case settled by trimming benefits

By JERRY GEISEL

ERIE, Pa.—A retiree health care suit that led to a stunning court decision has been settled, but disturbing national policy issues remain.

In August 2000, the 3rd U.S. Circuit Court of Appeals ruled that the Age Discrimination in Employment Act, the federal law that bars employers from discriminating against older employees, also applies to retirees' health benefit plans. The decision arose from a class-action lawsuit filed by a group of retirees that had worked for Erie County, Pa. The plaintiffs, who were old enough to be eligible for federally

provided Medicare health coverage, charged in their suit that Erie County's provision of dissimilar health care programs to Medicare-eligible retirees and to younger retirees was discriminatory (*BI*, Aug. 14, 2000).

The ruling was a bombshell, because it had been widely thought that the ADEA applied only to active employees. The health care plans employers provide to younger retirees almost always are richer than those they offer to older retirees, because older retirees receive most of their health care coverage through Medicare. In light of the 3rd Circuit decision, though, such employer practices present the possibility of a torrent of litigation.

In April 2001, U.S. District Court Judge Sean McLaughlin ruled that the county discriminated against Medicare-eligible retirees because younger retirees had received a better health care package (*BI*, April 30, 2001).

As evidence of the discrimination, Judge McLaughlin noted, among other things, that younger retirees received coverage from a point-of-service plan that was "objectively superior" to the Medicare health maintenance organization from which the older retirees received coverage.

That is because, Judge McLaugh-

lin said, a POS allows enrollees to decide on a service-by-service basis whether to stay in or leave the plan's provider network, while an HMO does not provide such a choice.

Judge McLaughlin also noted that younger retirees did not have to pay premiums for their POS coverage, while each older retiree in the Medicare HMO paid Medicare Part B premiums of about \$50 a month.

Last month, though, prior to a trial to determine damages, Judge McLaughlin approved a settlement between the retirees and Erie County. As part of the settlement, Erie

County will pay \$350,000. Of that amount, about \$205,000—or approximately \$1,800 per retiree—will go to the 114 plaintiffs that made up the class that sued the county. The \$205,000 represents the aggregate amount that older retirees paid for their Medicare Part B premiums over a three-year period. The remaining \$145,000 portion of the settlement will go to the retirees' attorneys.

In addition, prior to receiving approval of the settlement but after Judge McLaughlin found that the employer had discriminated, Erie County switched its younger re-

See ADEA/page 34

Pressure builds to offer paid family leave

FMLA expansion proposed

By JUDY GREENWALD

Employers already dealing with the cost and burden of administering the Family and Medical Leave Act may face yet another complication: paid family leave.

Spurred in part by a 1999 proposal by President Clinton to expand the FMLA, paid family benefit bills were proposed in at least 26 state legislatures last year. Several proposals were also made in Congress.

Most of these proposals lost their momentum because of the sluggish economy. But they are expected to be revived as the economy improves, say some observers, who warn this is an issue with which employers will contend for years to come.

Advocates of paid family leave say the 12 weeks of unpaid leave now provided by the 1993 FMLA fails to accommodate the many people who cannot afford to lose their salaries if they take time off.

But although many companies now voluntarily offer more family-friendly benefits, employers balk at the idea of mandates. "As an employer, I don't like mandates," said Jim Painter, director of human resources at Coon Rapids, Minn.-based ECM Publishers Inc., which has had a paid family leave program in place since 1998. "I would much rather have it on a voluntary basis."

Phyllis Ruez, a vp with Aon Consulting who is based in Hartford, Conn., said employers "universally support the intent of the FMLA, but they are struggling with the administrative burdens and the productivity burdens that the legislation seems to impose" and these problems will only be exacerbated with paid leave as more employees take advantage of the provisions.

The 1993 FMLA guarantees each employee at firms with 50 or more workers up to 12 weeks of unpaid leave each year to care for a newborn, a newly adopted child or a seriously ill family member; or to recover from his or her own serious medical condition.

But many who could take the leave do not because they cannot afford to sacrifice their paychecks. According to a survey commissioned by the U.S. Department of Labor and issued in 2000, of the 3.5 million employees who were eligible but did not take FMLA leave in the previous 18 months, 77.6% said it was because they could not afford to. This compares to the 65.9% who gave this response in a 1995 survey. A total of 87.8% of those who were eligible but did not take leave said they would have done so if they had received some pay.

In 1999, President Clinton directed the U.S. Department of Labor to permit workers who are on FMLA leave to care for newborn or adopted children to collect

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Questions remain on enforcement

NAFTA trucking safety rules greeted as step in right direction

By MEG FLETCHER

WASHINGTON—Extensive new federal safety standards for Mexican trucks and drivers operating in the United States are a big improvement over rules previously proposed by the U.S. Department of Transportation, risk managers and others say.

The requirements still raise questions, though, about officials' enforcement capabilities, as well as whether insurers will step in to provide needed coverages, given the already-hard market for U.S. trucking risks (see story, page 31).

The regulations, which were released last month by the U.S. Department of Transportation, are designed to implement the North American Free Trade Agreement by increasing the access of Mexican trucks to U.S. roadways (*BI*, March 19, 2001). Proponents of highway safety—including safety advocates, some U.S. insurer trade groups and the Teamsters union—generally considered these regulations to be much better than the department's original proposals, though some say a few loopholes exist.

The department's original proposals upset safety advocates who were concerned about significant differences between U.S. and Mexican trucking safety standards and feared that

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PHOTO: AFP

Risk managers are welcoming new federal safety regulations on Mexican trucks operating on U.S. roadways.

Amtrak self-insured for wreck

Railroad also has liability cover through Bermuda captive



PHOTO: ROBERTO GONZALEZ / KRT

The northbound Amtrak Auto Train No. 52 derailed in Crescent City, Fla., late last week, killing four people and injuring 133.

WASHINGTON—Amtrak is self-insured for claims arising from Thursday's fatal derailment of one of its Auto Trains in Crescent City, Fla.

Four people died and 133 were injured when the northbound Auto Train No. 52 derailed, resulting in 14 of the train's 16 passenger cars leaving the track. The train carried about 440 passengers and 28 crew members, according to Amtrak, which said it was investigating the cause of the accident. The derailment occurred on tracks owned, operated and maintained by CSX Corp.

An Amtrak spokesman said that Washington-based Amtrak is self-insured to "an undisclosed limit." He confirmed that Amtrak also has liability coverage from a Bermuda-based captive, Passenger Rail Insurance Ltd.

The Auto Train carries passengers and their vehicles between Lorton, Va., and Sanford, Fla. Amtrak suspended Auto Train service for April 19 because of the derailment.

By Mark A. Hofmann

Medical record privacy rule changes hotly debated

By MARK A. HOFMANN

WASHINGTON—Even congressional critics of the Bush administration's proposed revisions to a medical records privacy rule agree that the original regulation needs some work.

But, as a hearing before the Senate Health, Education, Labor and Pensions Committee last week amply demonstrated, there's no agreement as to how drastically the Department of Health and Human Services should alter the original privacy rules, which were issued during the final days of the Clinton

administration.

During the hearing, the committee's Democrats accused the HHS of undermining basic privacy protections, while the panel's Republicans—and HHS Deputy Secretary Claude Allen—held that the regulations as issued by the Clinton administration could have forced patients to choose between privacy and the provision of health care.

The Health Insurance Portability and Accountability Act of 1996 included a provision that called on Congress to enact medical records privacy rules. Congress failed to do so by its own deadline, and the task

of promulgating a privacy rule fell to HHS.

The department issued a "final rule" in late 2000 that critics charged went far beyond what Congress had intended (*BI*, Jan. 1, 2001). But a paperwork error made in the promulgation of the final rule allowed the new administration to reopen consideration of what a medical records privacy rule should and should not cover.

As originally written, the rule would have covered all electronic and written communications among health care providers, health plans and data clearinghouses,

even though Congress had initially intended the rule to govern only electronic data.

In addition, patients would have been required to give written consent for the release of virtually any information at every step of a course of treatment, which prompted critics to charge that physicians and pharmacies wouldn't be allowed to communicate with each other without the written consent of the patient. Violations of the rule would have resulted in civil and—under some circumstances—criminal penalties.

Employers and insurers generally

greeted the changes HHS Secretary Tommy G. Thompson proposed a few weeks ago with relief (*BI*, April 1). He proposed changing the requirement that patients give consent to the release of information prior to receiving treatment.

Instead, HHS proposes that while patients would have to be notified of their privacy rights, providers could treat them without first receiving a signed privacy consent form. The new HHS proposals also would tighten restrictions on the use of medical records for marketing purposes.

In his opening statement at the April 16 hearing, Sen. Edward Kennedy, D-Mass., blasted HHS' proposed changes.

"If we don't take steps forward to protect privacy in the information age, our most-personal information will be available to every employer, every health insurance company and every high-tech peeping Tom in America," he said.

Sen. Kennedy said that the new HHS proposals "would make medical records an open book." He added, though, that "certain narrow and common-sense exceptions are needed."

To illustrate the sort of exceptions that he would accept, Sen. Kennedy cited physicians phoning in prescriptions to pharmacists. In addition, "there is no reason you should have to make a separate trip to the hospital before surgery just to consent," he said.

But Sen. Kennedy stressed that "we can address these practical challenges without undermining core protections."

Other committee Democrats made similar observations, holding that any problems with the Clinton administration's proposal could be fixed through small changes.

But Mr. Allen made clear that HHS considers the original proposal well off base in its insistence that consent be given at every step of a medical process.

"Under the previous proposal, if a patient wanted or needed to receive care from a doctor, he had to choose between signing a consent form prior to seeing his doctor and not receiving care. This requirement was the same for all providers. Mandating consent is coercive in nature and does not provide meaningful control for the patient," Mr. Allen said.

During a question-and-answer period, Sen. Kennedy noted that the consent provision had not been part of earlier Clinton administration privacy proposals in the late 1990s. He noted that his committee had added it in response to public sentiment, and he asked if HHS had considered leaving the provision intact with some adjustments.

Mr. Allen said that the Clinton administration had swung from one stance to a totally different position in the process. When Sen. Kennedy somewhat heatedly agreed by stressing that the final position was one of "greater privacy," Mr. Allen replied that the primary reason for going to a physician is not privacy but to obtain care.

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More employers are offering lactation rooms for new moms

By MICHAEL PRINCE

With more working mothers opting to nurse their babies, breast-feeding has become a matter of concern to employers.

Furthermore, several states require employers to set aside private rooms for women to express milk while on the job, with more states likely to follow suit, observers note.

As a result of such developments, the number of employers that offer lactation rooms and lactation programs to new mothers has increased over the past three years, said Jane Lassner, senior consultant with Watson Wyatt Worldwide in Stamford, Conn. "It's not bizarre anymore," she said. "It's becoming more common."

This change in attitude has resulted, in part, from the increasing popularity of breast-feeding among new mothers. Carol Ann Friedman, the director of the Mothers At Work program at Lifecare Inc., a Pasadena, Calif.-based provider of work/life services, said that 55% of women breast-feed following delivery. That percentage, she said, is a considerable increase over the proportion from just a few years ago.

Although the percentage of mothers who continue nursing after they leave the hospital is lower, more women who breast-feed are returning to work while their children are infants, she said. She cited a recent study that found 60% of the women studied returned to work within six months of having a baby.

Legislative activity also is prompting employer attention to the needs of nursing mothers.

In 2001, California, Connecticut, Illinois and Washington state passed laws requiring employers to provide private rooms in which mothers can express milk. Several other states are considering similar legislation, and bills have been considered at the federal level as well.

Generally, the laws state that "employers must allow break time for mothers to express their breast milk at work," Ms. Friedman said. If a mother can't do it on her regular-



ly scheduled break time, unpaid time must be set aside for her. The laws can penalize an employer up to \$100 per day for its failure to comply, she noted.

The Connecticut law, passed in October 2001, is typical. It requires an employer to make "reasonable efforts" to provide a room—other than a restroom—near the work area where women can express milk in private. The law also prevents employers from discriminating against or disciplining women who decide to express milk at work.

Experts predict that if enough large states pass laws requiring lactation facilities, it could result in a de facto national mandate. Multi-state employers that have to provide the benefit in some states likely will feel obligated to provide the benefit at all worksites.

"How do you explain to employees that people in Connecticut can have it but employees in New York can't?" Ms. Friedman asked.

Employers that fail to offer lactation facilities at all worksites can "have a real employee problem on their hands," said Heather Hadley, Boston-based product manager of lactation programs for Minneapolis-based Ceridian Corp., a provider of human resources services.

And it's often simpler for an employer to have a companywide policy, Ms. Lassner said. "Employers also like to be consistent. They don't like having 50 different policies in 50 different states."

Another reason for the increasing popularity of lactation programs among employers is that they are relatively inexpensive. "It does not require a huge investment in equipment," Ms. Lassner said.

The largest expense is likely to be the cost of providing the space for the lactation room, and that can be negligible if empty space already exists, said Richard Federico, vp at The Segal Co. in New York. "It's a pretty easy payback, considering the low cost for providing the support."

In return, employers can get new mothers back to work sooner. And those women are also more productive, because they don't have to spend time seeking out private areas or return home to express milk.

The impact goes beyond nursing mothers, though. Having a lactation room or a lactation program tells employees that an employer supports women in the workplace, Ms. Lassner said. She compares it to providing health benefits for domestic partners; such benefits typically aren't used by many employees, she said, "but it sends a message" that an employer is willing to adapt to the needs of its workers.

International Business Machines Corp. recently expanded its provision of lactation room facilities into a full lactation program, said Lindsay-Rae McIntyre, program manager of dependent care initiatives for IBM in Raleigh, N.C. Last month, the company started a one-year pilot lactation program for all of its 150,000 U.S. employees. The program includes educational materials, vouchers for the purchase of breast pumps and access to a telephone help line for consultation with lactation experts, she said.

The goals of the program are to increase the retention of employees and to ease the return to work for new mothers, Ms. McIntyre said. "We want to make that decision and that transition smoother."

A recent survey of more than 50,000 IBM employees worldwide indicated that 34% of the company's female workers struggle to balance work and personal duties. IBM's lactation program, along with other work/life benefits the company offers, helps these women achieve some balance between the two, Ms. McIntyre said. And by doing so, she said, IBM's objective is that fewer of these women will leave the company, she said.

Commentary

Wordings define legal squabbles

When Shakespeare wrote "a rose by any other name," he probably had never read an insurance contract.

The world of insurance has its own vernacular, one in which the word "rose" could mean something completely different from the standard English usage. And just what that meaning was would depend, of course, on whom you ask—the policyholder attorney or the insurer attorney.

The fact is, certain words that we use every day have distinctly different meanings when they're put into the insurance context. And the task of deciphering these words has provided lucrative employment for coverage lawyers for decades, not to mention reams of copy for *Business Insurance*.

I recall that when the reporter who handled the "legal beat" at *BI* left journalism to become—you guessed it, a lawyer—there was much jockeying by the rest of us to capture that coveted job. Why, you ask?

The answer is simple. The one thing that writers care most about is language, and that's what most of the litigation involving insurance coverage is about.

Take pollution, for example. Who would have thought that the U.S. civil court system would be tied up for more than three decades trying to determine the meaning of the words "sudden" and "accidental" and even the meaning of the word "pollution" itself?

I can imagine a typical exchange between a policyholder attorney and an insurer attorney, as they argue semantics while attempting to negotiate a settlement:

"Did the pollution occur suddenly or gradually?" the insurer attorney might ask, opening the negotiation. "Our pollution exclusion bars coverage for pollution that occurs gradually. And when we say 'sudden,' we mean it in the temporal sense."

"But 'sudden' doesn't always relate to time," the policyholder attorney might counter. "According to the dictionary, the most common definition for the word 'sudden' is 'happening or coming unexpectedly.'"

"Furthermore," the policyholder attorney would continue, "something that occurs gradually over a period of time could have started suddenly. That would make it sudden in the temporal sense. For example, say an accident sets off a chain reaction of events that occurs continuously over a period of time. Wouldn't that make it a 'sudden' occurrence?"

"Then there's also this word 'accidental' in the policy: the pollution must be 'sudden and accidental,'" the policyholder attorney would add. "For something to be 'accidental,' it doesn't have to occur at a particular time. In fact, the word 'accidental' is synonymous with 'sudden.' It means, 'occurring unexpectedly or by chance.'"

"But the two words were used intentionally because they *do* have different meanings," the insurer attorney would respond.

"Even so, we still haven't determined whether the substance that was discharged was really pollution," the policyholder attorney would assert, hoping to prove that the so-called "pollutant" really

wasn't pollution and thus win coverage.

"Well," the insurer attorney would reply, "if you go by the first definition in Webster's New Collegiate Dictionary, which is what you used to define 'suddenly,' pollution means 'the action of polluting,' which encompasses just about anything."

"I hate it when definitions contain the

words they're supposed to define," the policyholder attorney would respond testily.

"Well, then, let's look up 'pollute,'" the insurer attorney would suggest. "It means 'to make physically impure or unclean; befoul, dirty; to contaminate (an environment) esp. with man-made waste.'"

"Ah ha! It says 'man-made,'" the policyholder attorney would cry out, pleased to have found a flaw in the insurer attorney's argument. "That means that something that occurs naturally, such as urea, isn't technically pollution."

"But if you ask Webster," the insurer attorney would reply triumphantly, "he says that a 'pollutant' is 'something that pollutes,' which means it can be almost anything, man-made or otherwise."

Touché for the insurer attorney.

After a while, all this semantic squabbling starts to sound like a modern-day version of the old "Who's on First?" comedy routine by Abbott and Costello.

Hmmm. That makes me wonder: Was it "accidental" that litigation would "gradually" pollute the English language this way? Or was it "expected" and "intended"?

Now there's a rhetorical question!

Senior Editor Joanne Wojcik's commentary appears periodically in *Business Insurance* and at www.businessinsurance.com. She can be reached by e-mail, at jwojcik@crain.com.



Joanne Wojcik

BI adds to staff

NEW YORK—*Business Insurance* has added to its communication services staff in New York.

Michael Ambrosio has joined *BI* as promotion manager. His responsibilities will include developing marketing and promotional programs. Before joining *BI*, Mr. Ambrosio was promotion manager at software and Web site services company DMIND Corp. in New York. Prior to that, he was associate creative services manager at the Ad Age Group, a division of Crain Communications Inc., which publishes *Business Insurance*.

Previously, he was marketing director/production manager for Penalty Recordings, a unit of Time Warner/Tommy Boy Music Inc.

Mr. Ambrosio has a bachelor of science degree in advertising copywriting from Boston University. He can be reached at 212-210-0780 or mambrosio@crain.com.



Mr. Ambrosio

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Editorial

Voluntary ergo rules can work

Voluntary safety guidelines can prevent ergonomics injuries, but the responsibility for making them work rests squarely with employers.

We join employers and insurers in applauding the Bush administration's proposal for voluntary safety standards, compliance assistance and targeted enforcement to reduce ergonomics problems. This plan would be less costly and give employers much greater flexibility than the mandatory standard promulgated during the final days of the Clinton administration and avoided only through an unprecedented congressional revocation.

That gave the new administration time to reconsider, and reconsider it did. Contrary to the charges of some of the plan's critics, we believe a voluntary

approach can be effective, provided that employers make it effective.

The new ergonomics proposals would give the Occupational Safety and Health Administration the ability to go after employers and industries with a track record of ergonomics injuries. This focuses regulatory efforts where they are most needed, rather than requiring OSHA to enforce standards in all companies, even though, in many cases, the risks might be minuscule.

The voluntary approach also would give employers the flexibility to tailor ergonomics safety efforts to meet their needs, rather than adopting a one-size-fits-all approach. After all, a meatpacking company has a different ergonomic risk profile than a retailer.

But while we favor the new proposed approach, we caution employers against taking the view

that a voluntary requirement means no action on their part is required. Nothing could be further from the truth. Companies must take appropriate action to safeguard their employees from ergonomics hazards, or else risk a regulatory crackdown, expanded liabilities and higher claims costs, among other unwelcome development.

It truly is in employers' best financial interests to strive to prevent ergonomics injuries. Musculoskeletal injuries, whether they are caused or aggravated by working conditions, cost employers dearly. They cut into productivity as workers are sidelined by injury. Morale suffers if workers are injured yet the causes of injury are not eliminated. And workers compensation and disability claims costs will rise unless steps are taken to make workers safe.

Employers that are given the latitude to correct ergonomics hazards but fail to do so may also find themselves the target of negligence claims. These not only would erode their protections under the exclusive-remedy doctrine but also likely would be more expensive than workers compensation benefits.

Employers understandably complained about the inflexibility of the previous administration's approach to ergonomic safety. They've now been given another chance to prove that they can solve ergonomics problems without being forced to do so. Those that fail to take advantage of this opportunity will have no one to blame but themselves if the government is compelled to step in and force them to do what they should have done on their own.

No one wins in Erie County settlement

Is this a victory for anyone? That's the question that should be asked in the wake of a court-approved settlement resolving a lawsuit brought by a group of retirees who once worked for Erie County, Pa. The retirees had charged that the county provided discriminatory health care benefits.

That suit led to a stunning ruling in August 2000 by the 3rd U.S. Circuit Court of Appeals. The court said that, under the Age Discrimination in Employment Act, discrimination suits could be

brought against employers providing lesser health care benefits to Medicare-eligible retirees than to other, younger retirees.

That ruling sent shock waves throughout the employer community, because companies had long regarded the ADEA as applying only to employees and not to retirees.

A few months later, U.S. District Court Judge Sean McLaughlin ruled that Erie County violated the ADEA by providing older retirees with a "lesser" health care benefit package.

Rather than continue the litigation to determine damages, the retirees and Erie County agreed to a settlement—approved by Judge McLaughlin—that ends the discrimination.

As we report on page 3, Erie County, under the settlement, will pay out about \$350,000. Of that amount, just over \$200,000 will go to retirees, which works out to about \$1,800 for each retiree in the class. The remaining amount will go to the plaintiffs attorneys. More significant than the

relatively small amount of money involved was the design change Erie County made after Judge McLaughlin ruled that its retiree health care plan discriminated against the older retirees.

In an effort to equalize benefits, Erie County eliminated a point-of-service plan it had offered only to younger retirees. Now younger retirees receive their health care coverage through a health maintenance organization, as have Medicare-eligible retirees for the last several years.

In addition, each younger retiree must now pay about \$50 a month for HMO coverage, equal to the amount an older retiree pays monthly in Part B Medicare premiums. Previously, the younger retirees paid no premiums for their POS coverage.

Arguably, the older retirees, with the small cash payments they are receiving, are a bit better off, at least for the moment. But can the same be said about the younger retirees? They have lost their POS plan. More significantly, though, they must now pay a portion of their health care premiums.

Do attempts to equalize benefits for the two retiree groups make for good public policy? We don't think Erie County's younger retirees would say so in light of the benefits cuts they have sustained.

We believe it would be good public policy for Congress to make clear what many believe was its intent when it crafted the ADEA—that the law does not apply to Medicare-eligible and pre-Medicare-eligible retirees. The failure to do so will almost certainly lead to more litigation and more benefits reductions, a result lawmakers surely do not want.

Schillerstrom



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Inside:

Employee theft risk tricky to manage

Risk managers must carefully address issues related to the thorny—and costly—problem of employee dishonesty.

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Current climate favors captive use

Changes in the insurance market and in regulatory attitudes have made the use of captive insurers a more attractive alternative to the traditional market.

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New avenues seen for risk transfer

The convergence of the insurance and capital markets is creating opportunities for companies to craft risk transfer programs that are better suited to their needs.

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Not retaining data can prove costly

Properly retaining electronic data as grown in importance as courts have shown that they have little sympathy for companies that cannot produce data during discovery in lawsuits.

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EPL claims warrant review of coverage

When facing employment practices liability claims, risk managers should carefully examine their insurance programs to ensure that all applicable policies are tapped for coverage.

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Luzzi receives Goodell award

Jorge Daniel Luzzi has received the Harry and Dorothy Goodell Award, RIMS' most prestigious honor, for his efforts to advance risk management in Latin America.

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Self-insuring comp not feasible for all

Self-insuring workers compensation risks may not be an option for many companies, because of high costs and difficulties in obtaining adequate stop-loss coverage.

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New tack needed for class actions

Changes in the nature of class-action lawsuits should spur risk managers to alter their approach to handling such litigation.

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RIMS Report

RIMS president cites challenges ahead

By MICHAEL BRADFORD

NEW ORLEANS—Risk managers have a chance to solidify their status as professionals as they respond to unique challenges in a post-Sept. 11 world, says the newly elected president of the Risk & Insurance Management Society Inc.

Christopher E. Mandel, who began his term last week at the society's 40th RIMS Annual Conference & Exhibition in New Orleans, told attendees at the group's annual meeting that his "call to this new level of service comes at a time of change in the world—and in our field—which is unparalleled. Sure, I remember the hard market of the mid-'80s and all the creative alternatives that arose from those difficult times. But these times, post-Sept. 11, are unique in my experience and, I suspect, most of yours."

Risk managers are "challenged not only in managing turbulent markets," Mr. Mandel said, "but also in defining our work, its importance and its place in our organizations."

In responding to the challenge, risk managers should strive to practice "world-class risk management," Mr. Mandel said. "It is an approach that is, on the one hand, not new," he acknowledged, "but variously defined." If risk managers create world-class programs, "in the end, I believe it will move our discipline closer to a broad recognition as a profession."

While it will mean "many different things to many different people," a world-class program, at its core, will revolve around "quality in our work," Mr. Mandel said.

He noted that RIMS was distributing at the conference its recently completed guidelines for

See **PRESIDENTS**/page 25



PHOTO: MICHAEL MARCOTTE

Christopher E. Mandel, left, succeeded David L. Mair as RIMS' president at the conference.

Exhibitors tout benefits, comp products



PHOTO: MICHAEL MARCOTTE

By ROBERTO CENICEROS

NEW ORLEANS—It's not often that discussions about employee benefits or workers compensation take place over platefuls of steaming jambalaya or involve a masked character decked in bright yellow tights and a black cape.

But spicy cuisine and colorful characters tend to be standard fixtures at successful events held in The Big Easy.

So serving up jambalaya proved a powerful draw for one exhibit hall vendor at the 40th Risk & Insurance Management Society Inc. Annual Conference and Exhibition. The conference was held April 14-18 at the Morial Convention Center in New Orleans.

In addition to the jambalaya, growing interest in integrated disability management was drawing conference attendees to his company's booth, said Tim Ward, vp of national practice for the Eastern region for Portland, Maine-based UnumProvident Corp.

Mr. Ward said he was at the conference to tell anyone who would listen about how UnumProvident's integrated disability management services reduce employee absences, whether or not the absences stem from work-related illness.

In the past, Mr. Ward said, he typically pitched his company's services to benefits managers and human resources personnel. Two years ago, how-

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The 40th RIMS Annual Conference and Exhibition in New Orleans featured 430 exhibitors.

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Employee dishonesty risk requires careful approach

By MICHAEL BRADFORD

NEW ORLEANS—Risk managers must carefully address issues related to the thorny—and costly—problem of employee dishonesty.

Employee theft is “one of my least favorite exposures to deal with,” said Ronald W. Stasch, director of risk management services for Federal-Mogul Corp. in Southfield, Mich. “Part of the reason is, in the crime area, you face problems both pre-loss and post-loss. It’s really a tough assignment.”

And it’s an expensive problem,

according to Carol G. Barton, senior vp, commercial lines at Johnston, R.I.-based Factory Mutual Insurance Co., which does business as FM Global. She pointed out that the U.S. Department of Commerce calculates that American businesses lose \$50 billion each year because of employee dishonesty. The agency also estimates that 75% of such crimes go unnoticed, leaving companies with no possibility of recovering the stolen assets.

Ms. Barton cited other Department of Commerce figures that show insurers in 2000 paid around

\$550 million in claims related to dishonest acts by employees. The problem was the focus of an educational session at last week’s Risk & Insurance Management Society Inc. conference in New Orleans.

Mr. Stasch told attendees that losses from employee dishonesty often are tough to handle because of management’s attitude toward the issue.

Denial is one problem, he pointed out. On more than one occasion, Mr. Stasch said, management at Federal-Mogul locations has responded to efforts by the compa-

ny’s security director with statements such as: “We never had losses before you showed up.”

In some cases, particularly at international operations, “there is a certain amount of animosity” toward investigators, Mr. Stasch said. “We don’t always get full cooperation if the U.S. headquarters is investigating a foreign location.”

“People have a tough time responding to employee dishonesty,” he said. Many believe when such activity is uncovered that it is just an isolated incident, he noted. “They just don’t get it.”

In the United States, businesses have come to accept that they will experience some “shrinkage,” or loss of goods for various reasons, Mr. Stasch pointed out. “The bad guys understand that and can work within the system.”

Lee Brewer, owner of Columbus, Ohio-based consulting firm Brewer, McGraw & Associates, said employers should prepare themselves for some paperwork once a loss is discovered. The first order of business is to let the insurer know that “you have a situation that could be a covered loss under your employee honesty policy.”

Employee dishonesty is a difficult exposure because, ‘in the crime area, you face problems both pre-loss and post-loss. It’s really a tough assignment.’

Ronald W. Stasch
Federal-Mogul Corp.

Then, generally within 120 days of the discovery of the loss, “there is a responsibility to submit a detailed proof of loss,” Ms. Brewer said. That means the “who, what, where, when and how the loss occurred,” she explained, along with an explanation of how the employer determined that theft had taken place.

Insurers typically will want to look at books and records that can trace the loss, Ms. Brewer said during her presentation at the session.

She warned employers to be careful if they decide to strike a deal with an employee who confesses. If, for example, the employee says he or she will help with an investigation and repay part of the stolen funds in return for staying out of jail, “put together an agreement with teeth.” A strong agreement will mean that if the employee is lying—which is not unlikely because that person already has stolen—he or she will be responsible for the entire repayment or face time behind bars, she said.

Care also needs to be taken in investigating losses and in making accusations, Ms. Brewer said. “Don’t jump the gun,” she told employers, because a false accusation or weak case can backfire and lead to a lawsuit and judgment against the company.

Ms. Barton of FM Global pointed out that, unlike with many other types of claims, the burden of proof is on the policyholder in an employee dishonesty claim. “It’s you alleging a dishonest act and going about proving that.”

She told session attendees that “your role as a risk manager is really to understand the exposure” and determine where the company is susceptible to loss. “Understand your duties in protecting the company,” Ms. Barton said. “And proactively manage the risk.”

Mr. Stasch was the session’s moderator. It was coordinated by Steven Zenofsky, senior communications consultant at FM Global.



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Allocation disputes can hinder claim resolution

By **SALLY ROBERTS**

NEW ORLEANS—When dealing with a claim that involves multiple policies, risk managers should examine their insurance arrangements to prepare for any coverage allocation issues that may arise.

When a long-tail liability claim triggers multiple policies, an insurer will often attempt to shift its share of the claim onto another insurer's triggered policy. Not surprisingly, such allocation issues often lead to heated coverage disputes between policyholders and their insurers.

Allocation involves complex legal, technical and financial matters, and the method of allocation used—which is determined by individual states—can greatly influence the amount of recovery policyholders seek in these legal battles, according to two allocation experts.

Speaking at a session during last week's Risk & Insurance Management Society Inc. annual conference in New Orleans, Jeannine Chanes, a partner with New York law firm Fried & Epstein L.L.P., gave risk managers a historical perspective of allocation laws and pro-

vided some advice on what to do when disputes arise.

Courts' approach to insurer liability allocation arose out of the "law of general average," a British maritime tradition in keeping with fair play, noted Ms. Chanes, who coordinated the session. Under that theory, when a ship was sinking and cargo had to be jettisoned, the cargo owners and the ship owner each shared in the cargo losses, she noted.

"When courts first had to deal with allocation and long-tail liability, they didn't really know what to

do," Ms. Chanes said. As a result, several courts turned to the law of general average to come up with models for handling long-tail liability.

Today, allocation practices still are driven by the same principles of fairness and equity, she said, but she noted that "administrative convenience" also plays a part.

"Courts can't spend 10 years figuring out exactly when which asbestos claim hit which policy," she said.

Determining proper allocation is generally a four-part process, Ms.

Chanes said. "You take the facts of the claim, you take the policy language, and then you look at the applicable law...and you end up with something that is a dollars-and-cents quantification of the problem," she said.

This dollar figure, though preliminary, can give risk managers "justification for your business judgment decisions about settling claims about whether to litigate or about the value of your policies," she said.

Speaking more specifically about what risk managers need to consider when examining a "block of coverage" after a long-tail liability claim arises, Ms. Chanes said that each insurance policy should be examined with an eye to aggregate limits.

"I think it's really important for us all to remember that many of the earlier policies did not have aggregate limits," she said.

Old commercial general liability policies often had no aggregate limits, and many of the policies written in the 1970s also had separate limits for bodily injury and proper-

'The law of allocation is fairly well developed when it comes to occurrence-based liability policies, but as far as claims-made policies, there's not much out there.'

*Jeannine Chanes
Fried & Epstein L.L.P.*

ty damage claims, she said.

To the extent that the policies include aggregate limits, policyholders should determine whether defense costs fall inside or outside of those limits, Ms. Chanes recommended.

For primary policies, defense costs typically are outside of policy limits. And, generally, with umbrella and excess policies, they are inside the limits, she noted.

Policyholders also need to determine whether coverage is provided under occurrence-based or claims-made policies.

"The law of allocation is fairly well developed when it comes to occurrence-based liability policies, but as far as claims-made policies, there's not much out there," Ms. Chanes said.

"So, we're not really sure how courts are going to interpret allocation of liability when they are faced with a bunch of CGL occurrence-based policies and there are claims-made policies as well," she said.

When examining the block of coverage, policyholders also need to look for exclusions, she said, such as those for pollution, certain products, geographical locations and intentional acts.

Robert W. Dennis, a partner in the insurance services division of PricewaterhouseCoopers L.L.P. in Chicago, also spoke during the session.

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Changes in market, regulation favor use of captives

By SALLY ROBERTS

NEW ORLEANS—Given the changes in the insurance market, economy, tax views and regulatory attitudes, now is a good time for risk managers to take a second look at forming a captive insurer, an expert said.

"We are at a time of critical change," said Kent J. Cummings, a partner with Hinshaw & Culbertson in Chicago. "Whether you talk about the insurance climate, the economic climate or the regulatory climate, everything is changing;

and in some cases, it's changing very fast. If you've looked at captives before, you need to look at them again," he said.

Speaking during a session at last week's conference of the Risk & Insurance Management Society Inc. in New Orleans, Mr. Cummings gave a crowded room of risk managers an overview of the current conditions that make forming an attractive option.

In regard to the insurance climate, Mr. Cummings said that hard market conditions such as decreased capacity and higher premi-

ums—which were exacerbated on Sept. 11—are prompting risk managers to look at alternatives, he said. Furthermore, he said, forming a captive gives companies a way to access directly the large amount of capital that has flowed into the reinsurance market—particularly in Bermuda—in the wake of the terrorist attacks.

The sagging economic climate has two contradictory effects on captives, Mr. Cummings noted. On the positive side, companies realize that they will not be getting the same investment returns that they

might be used to, so they may be more inclined to use their capital to fund a captive, he said. At the same time, though, one of the motivations behind forming a captive for many companies was that they wanted to benefit from the investment income on their premiums rather than let insurers pocket the gains. That is no longer much of a consideration, he said.

In addition, changes in the regulatory environment have made captives more attractive. Mr. Cummings noted that in addition to courts continuing their strong sup-

port for captives, the Internal Revenue Service last year dropped its longstanding "economic family" theory, which held that insurance premiums from related parties were not tax deductible.

At the same time, the Department of Labor also is changing its attitude toward allowing companies to fund employee benefits through captives, Mr. Cummings said. Most recently, Archer Daniels Midland Co. has sought regulatory approval to allow the agribusiness giant to use its Vermont-based captive to reinsure its group life insurance benefits. As more companies seek and are granted regulatory approval to fund employee benefits in captives, it will make it all that much easier for others to follow suit, he said.

"The new frontier (in captive formations) clearly is with employee benefits," Mr. Cummings said.

In addition, state regulators also are becoming more accepting of captives, he said. This is reflected in the number of states that have passed laws to attract captive formations, as well as by efforts on the part of existing domiciles to beef up their marketing efforts, he noted.

"The proliferation of domiciles has a positive effect for companies looking to start a captive," Mr. Cummings said. "You have a much greater chance of finding a healthier and friendlier regulatory environment" because of the increased competition, he noted.

Mr. Cummings said, however, that captives could come under closer regulatory scrutiny as a result of the Enron Corp. debacle. "Enron is going to make a lot of regulators examine companies, including captives, more closely," he said. He noted, however, that captives are solid and safe vehicles for funding risks.

Also speaking at the session were Kevin J. Doyle, president of Gallagher Captive Services Inc. in Itasca, Ill.; Richard E. Irvine, director of tax and legal services for PricewaterhouseCoopers L.L.P. in Hamilton, Bermuda; and Paul F. Buckley, director of business continuity for Lucent Technologies Inc. in Murray Hill, N.J. Mr. Buckley also was the session's moderator.

The session was coordinated by Barbara G. Bereskin, national director of marketing for Hinshaw & Culbertson.



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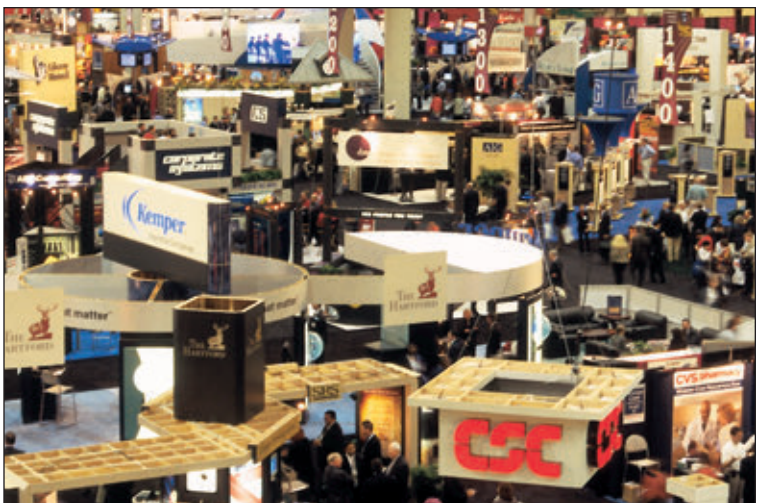


PHOTO: MICHAEL MARCOTTE

Insurers, reinsurers, brokers and other companies were among the more than 400 exhibitors at last week's RIMS annual conference.

Risk-transfer options increase with markets' convergence

By **RODD ZOLKOS**

NEW ORLEANS—The convergence of the insurance and capital markets can provide opportunities for companies to combine elements from both to create risk transfer programs that better fit their needs.

"It's really a matter of trying to find the best products from each area and putting them together so the customer can get the best fit," said Thomas A. McCarthy, a senior

vp with Kemper Insurance Cos.' Kemper Solutions unit in Philadelphia.

Mr. McCarthy spoke on a panel at the annual conference of the Risk & Insurance Management Society Inc. in New Orleans last week. He said the convergence of the two markets provides opportunities to incorporate capital market features into insurance products, through such approaches as integrated risk or variable risk structures.

Another opportunity lies in combining insurance features into capital markets products, such as catastrophe bonds or contingent-capital products.

Still another opportunity exists in creating new products combining capital markets and insurance features, such as weather-related derivatives, Mr. McCarthy said. "This is where, I think, there are some very exciting opportunities, he said.

Market participants in the area of convergence include insurers, reinsurers, energy, commodity trading companies, investors, banks and investment banks, Mr. McCarthy said.

"It might be appropriate for you to develop relationships with some people in your company who might have contacts with some of the other players in designing convergence approaches," he told risk managers.

For buyers, the new approaches

Derivative products are an area 'where, I think, there are some very exciting opportunities.'

*Thomas A. McCarthy
Kemper Insurance Cos.*

offer alternative sources of capacity; varied perspectives on risk, risk assessment and risk control; and products that might be better suited to a company's risks or risk tolerance.

And as insurance rates increase, risk managers need to take a more dynamic approach to analyzing risks and find programs that might be a better fit with their companies' exposures, Mr. McCarthy said.

Another panelist, Brian O'Hearne, the president and chief executive officer of Aquila Re Ltd. in Hamilton, Bermuda, said his company's convergence-type products—such as weather and weather-contingent structures, double-trigger structures, contingent capital and finite insurance—often have been developed through cooperation with buyers looking for new ways to manage risks.

"The types of products that we have can be written as a derivative or an insurance structure," Mr. O'Hearne said.

The wide variety of new products provide companies with "new opportunities to manage risk" at a time when risk managers must contend with ever more complex risks, he said.

It is increasingly necessary to incorporate cutting-edge financial and actuarial techniques in the risk transfer business, Mr. O'Hearne said, adding, "I think the answer is cooperation."

Kevin W. Hoskinson, director, global risk management, at Sun Microsystems Inc., moderated the session. Andrea Forman, corporate communications manager for Kemper, was the coordinator.

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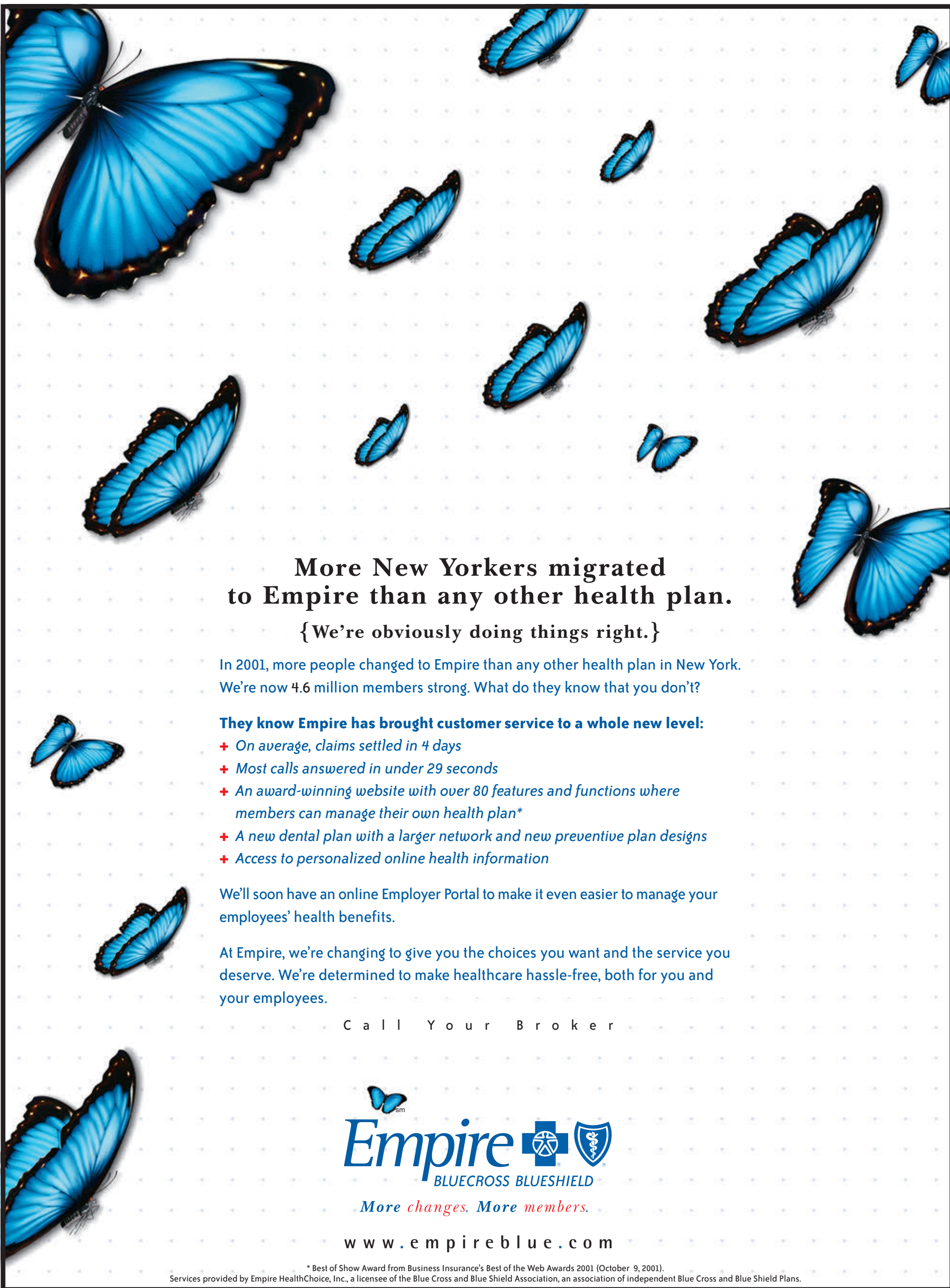


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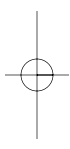
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Setting retentions calls for analysis, negotiation

By **RODD ZOLKOS**

NEW ORLEANS—Determining a company's ultimate retention is a function of analysis, how well the retention fits the company's risk appetite and market acceptance of that retention level.

But, according to one panelist discussing how to set the appropriate retention at last week's annual conference of the Risk & Insurance Management Society Inc. in New Orleans, there's no absolute number.

"You are one of the most impor-

tant steps in determining the ultimate retention," said Ben C. Schull, senior vp-risk management and consulting services at Near North Insurance Brokerage Inc. in Chicago. "It is a negotiation."

In considering retentions, as they approach insurance markets, "one technique many people use is they ask about many different levels," Mr. Schull said. "Then they back in."

But setting a truly cost-effective retention level begins with analysis, said another panelist, Roger C. Wade, senior manager at KPMG

L.L.P. in Chicago.

"The first thing we would look at is the data itself. How much data do you have?" Mr. Wade said. "Many times, you don't have a lot of data to work with, and then there is an issue of experience credibility if you don't have a lot of experience, particularly at higher layers."

In examining loss data, it's also important to determine whether the data reflect continuity of operations, exposure and experience.

After gathering appropriate data, "we would develop the anticipated loss forecast for overall losses," Mr.

Wade said. This action would be followed by mapping out losses by layer, for example, losses falling under \$250,000, losses from \$250,000 to \$500,000 and so on.

"Once you've done that, you're sort of part of the way there," Mr. Wade said. "But there's a great deal of variability, particularly as you get to the higher layers of retentions."

"It's a real question of how much risk does your firm want to accept...particularly from the standpoint of variability of results," Mr. Wade said.

While loss history is one part in

analyzing retention levels, exposure data is another important aspect in weighing potential losses, Mr. Wade said.

And, because very large losses can skew loss history calculations, "it's very important to divide out your primary losses and your excess losses," Mr. Schull said.

Ultimately, in looking at layers of losses, "when you see a layer that is stable over a period of time, that is a very good layer from the standpoint of a candidate to be retained," Mr. Wade said.

In doing the loss calculations, "nothing is set in stone," Mr. Schull said. Years can be added or removed from the calculations in order to provide a truly representative result, for example, or the analysis can be based on averages or weighted averages, whichever is more appropriate.

'A layer that is stable over a period of time...is a very good layer from the standpoint of a candidate to be retained.'

*Roger C. Wade
KPMG L.L.P.*

"There's a great deal of flexibility," he said. "You can be aggressive in your calculations."

And, Mr. Wade noted, "All this is prior to the marketplace telling you what the price is going to be for a given layer, which might drive you one way or another."

After choosing a retention level, if pricing is still too high at a low retention level, a company should ask for alternatives and test the pricing at higher retentions, he said.

In setting a retention, one key consideration for a risk manager is whether the company's chief financial officer, president and board will agree with the decision.

"It might be a very good to talk to the people you need to talk to about raising retention levels before you negotiate with insurance carriers," Mr. Schull said. Having top management approval in advance can give the risk manager added flexibility in negotiations with insurers, he said.

It's also important to consider whether the marketplace is willing to accept a retention lower than what is indicated by your analysis, Mr. Wade said. If it is, "then you should be willing to look at that and consider that in your analysis," he said.

And in looking at whether there might be a price benefit in taking a higher retention, Mr. Schull recommended that risk managers always start low in their negotiations.

"One thing I do suggest is start with lower retentions and go to higher retentions," he said. "You don't get the pricing break unless you negotiate up."

Norman E. Lange, director or risk management at information services company Wolters Kluwer United States in Chicago, moderated the session.

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Courts unsympathetic to deleted electronic data

By **DAVE LENCKUS**

NEW ORLEANS—Risk managers who do not ensure that their organizations' information technology departments properly retain electronic data could be ensuring big, future uninsured third-party losses, according to a defense attorney.

Courts have shown they will severely sanction companies that cannot produce electronic data during discovery in third-party lawsuits, noted defense attorney David M. O'Connor of O'Connor & Associates of Boston.

Judges, especially federal court judges, have little sympathy for companies that cannot produce the data because it has not been retained, Mr. O'Connor advised attendees during a session at the Risk & Insurance Management Society Inc. annual conference in New Orleans.

Referring to the information that paper documents indicate should be stored and available electronically, Mr. O'Connor warned attendees, "Courts are not terribly forgiving of companies when their electronic data doesn't match up with their paper."

And the sanctions for failing to produce that electronic data have

no bearing on the strength or weakness of the plaintiff's case, Mr. O'Connor noted. "They may not beat you on the merits, but they'll beat you on spoliation," or the loss of data that could have been important to their cases.

'There are going to be good people who will be impeached in the course of litigation by what they said in e-mails.'

*David M. O'Connor
O'Connor & Associates*

Meanwhile, when a defendant is unable to produce the electronic data a plaintiff has demanded, juries likely will draw an "adverse inference" about the kind of information the defendant had, what they knew and when they knew it, Mr. O'Connor said.

The flip side of the issue is the tremendous cost that a defendant can incur searching for the electronic data a plaintiff has demanded, he said. But, federal judges have little regard for the cost, which can run into seven figures, for producing electronic data from years past, Mr. O'Connor noted. Those judges

consider the electronic data retrieval costs a routine expense of litigating a case, he observed.

Mr. O'Connor emphasized that risk managers must consider their long-term future electronic data retention risks now. "Ten years from now, we're going to be concerned about what's on our (computer) backup tapes today," he said.

Data retention risk "is quite considerable," he warned, noting that studies show that U.S. employees receive millions of e-mails annually.

The importance of not only retaining electronic data but also reviewing it before litigation heats up is underscored in several high-profile cases, Mr. O'Connor said. In those lawsuits or hearings, litigants or witnesses were "impeached" by their own e-mail that was uncovered by their opponents, he said. As examples, Mr. O'Connor singled out cases involving Oliver North, Monica Lewinsky and Bill Gates.

"There are going to be good people who will be impeached in the course of litigation by what they said in e-mail," Mr. O'Connor said.

In crafting a corporate electronic data retention policy, risk managers should bear in mind the ques-

tions courts will weigh heavily in reviewing whether a defendant has adequately retained electronic data, Mr. O'Connor said.

- Has the defendant deleted too much important material?

- Did the defendant believe that deleted material might be important in future litigation?

- Does the defendant have the ability to stop purging material as soon as a court rules that it is vital

to a case?

Mr. O'Connor said risk managers should be asking their IT departments: "If we were sued tomorrow and ordered to retrieve backup tapes and stop purging, could we do that?"

The session was moderated by Meredith L. Drummond, manager of risk management for the Ground Round Inc., and coordinated by Mr. O'Connor.



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EPL cover not limited to tailored policies

CGL, workers comp policies also may offer coverage

By SARAH VEYSEY

NEW ORLEANS—When facing employment practices liability claims, risk managers should study their insurance programs carefully to maximize their coverage, a panel of experts says.

EPL claims may be covered under several policies in corporate insurance programs, not just under tailored EPL coverage, a broker, a lawyer and an insurance company representative told attendees last week at last week's Risk & Insurance Management Society Inc. conference in New Orleans.

In a session on insurance coverage for employment risks, Larry Eisenstein, partner at Washington-based Swidler Berlin Shereff Friedman L.L.P., told risk managers to review their other liability policies before filing a claim under an EPL policy. Coverage for EPL risks may be found in policies such as workers compensation and general liability,

'It is critical to give notice of (EPL) claims, because little claims can, in a few years, turn into bigger class-action claims.'

Tom Hams
Aon Financial Services Group

said Mr. Eisenstein, who coordinated the session.

When a claim is made against a company, the risk manager should determine the starting point of the allegations and look at the insurance program for that particular year. "Look at the earliest date that the allegations date back to and look at your coverage program for that year," Mr. Eisenstein said. "Your workers compensation and general liability policies could offer coverage."

It is crucial that risk managers understand the scope of their insurance cover, said David Keenan, vp of Chubb & Son Inc. in Warren, N.J. Many EPL policies are written on a claims-made basis, and many may include "prior acts" exclusions, he said.

Both EPL policies and general liability policies can be applicable when fighting class-action claims related to employment practices, the panelists said. And, one panelist noted, it is important for a risk manager to notify all potentially involved insurers when an EPL issue first arises.

"It is critical to give notice of (EPL) claims, because little claims can, in a few years, turn into bigger class-action claims," said Tom Hams, director and program manager for employment practices liability insurance at Chicago-based Aon Financial Services Group, a unit of Aon Corp. "Report these small claims" to your insurer, he said.

Class actions can take a long time to develop and can therefore some-

times straddle the coverage periods of several policies.

"You need to have a frank exchange with your insurers and start talking to them early," said Mr. Keenan. "Sometimes, the carrier's experience in dealing with these claims can be beneficial for insureds who may not have any experience with class actions," he said.

If risk managers buy coverage to protect against class-action employment practices claims, they should ensure that policy terms include de-

fense costs. "These cases tend to be extremely expensive to defend and tend to involve lots of different people," not just attorneys, he said. For example, labor economists and public relations firms, among others, may be hired to help defend against a claim. "So, if you are buying this coverage for class actions, make sure you have a broad definition of what constitutes defense costs," he said.

Although the panelists said they don't expect the hardening insurance market to result in a severe contraction of coverage for employ-

ment risks, risk managers should expect to see higher retentions and rising rates.

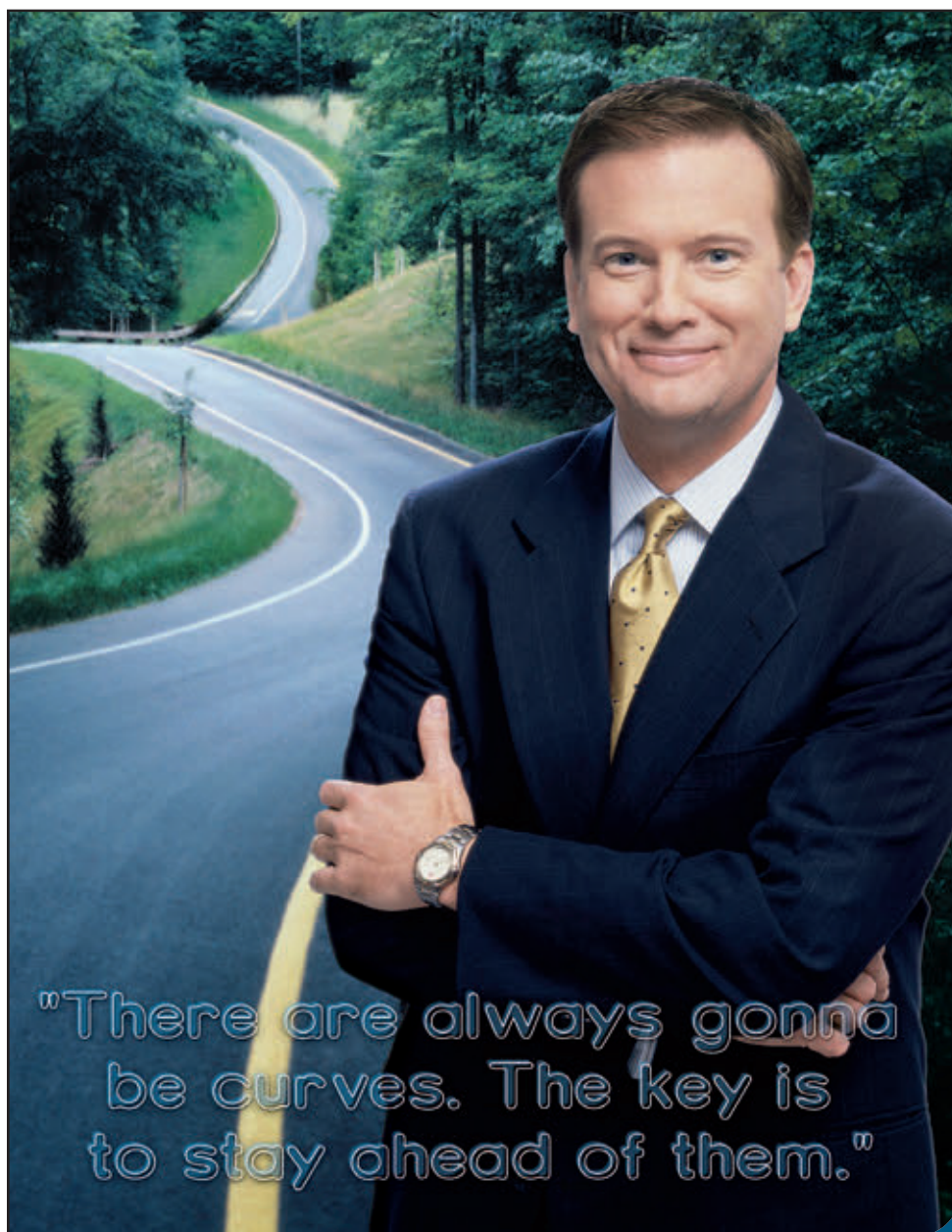
"Underwriters will be more selective, and different industries will have different situations," Mr. Keenan said. Industries such as retail or high tech, which are seen as more susceptible to EPL claims, will find that their coverage will be more expensive in future renewals, he said.

The session was moderated by John A. Fromholtz, who is director of global insurance and risk services for Merrill Lynch & Co. Inc.



PHOTO: MICHAEL MARCOTTE

New Orleans' Riverwalk offered RIMS-goers a break from conference activities.



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Exhibits: Benefits, workers comp products displayed

Continued from page 10

ever, risk managers began paying greater attention to employee absences, he said. Rising costs related to disabilities have been compelling risk managers to work with their companies' human resource departments to address the problem, he said.

Such growing interest has been instrumental in drawing risk managers to the UnumProvident booth, Mr. Ward said. He acknowledged, though, that serving jambalaya, right there among the 430 vendor booths lined up inside the convention center, "helped with the traffic."

More benefit consultants are also showing increased interest in his company's integrated disability management services, Mr. Ward noted. But few, if any, benefits managers stopped by the UnumProvident booth, he said.

Perhaps that is because, compared with the numbers of risk managers in attendance, few benefit managers come to RIMS conferences.

RIMS continues to offer some benefits management educational opportunities, said Mike McDonald, vp of conferences for New York-based RIMS. Historically, though, risk managers who also manage benefits have been a "significant minority" among RIMS members, Mr. McDonald said, and he noted that their numbers could be declining.

Over time, RIMS has cut back on educational sessions addressing employee benefits because past attendance was sparse, Mr. McDonald explained. RIMS must tailor confer-

ence session topics to meet member demand, he said.

Still, RIMS welcomes vendors that offer employee benefit products and services, Mr. McDonald said. Their audience, he acknowledged, "is really not here, although it could be."

At booths sponsored by several companies that offer consulting services both for property/casualty insurance and for employee benefits, booth representatives said their benefit teams were not attending the RIMS conference.

Some vendors at RIMS, though, do offer products that could entice benefit managers.

Radnor, Pa.-based HTH Worldwide, for example, contracts with doctors in 130 countries to help international employees, travelers and students obtain appropriate health care overseas.

The company offers a variety of related services and insurance, such as coverage for medical evacuations, said Brendan Sharkey, the director of business development for HTH Worldwide.

Mr. Sharkey noted that many domestic health plans do not provide such coverage.

The Morial Convention Center drew many returning RIMS exhibitors, such as Boston-based Liberty Mutual Insurance Co. and CorVel Corp., an Irvine, Calif.-based provider of managed care cost containment and disability management services.

There were also many vendors sponsoring booths for the first time at a RIMS conference.

Ergoweb Inc., for example, was among many companies touting er-

gonomic-related products and services.

Launched on the Web in 1994, Midway, Utah-based Ergoweb provides a variety of injury prevention services. Those services include job-hazard analysis, ergonomic education and training for corporate health and safety personnel intent on creating safer work environments.

RIMS welcomes vendors that offer employee benefit products and services, even though their audience 'is really not here, although it could be.'

*Mike McDonald
Risk & Insurance
Management Society Inc.*

Health Advocate Inc. was also a first-time exhibitor at the RIMS conference. The West Conshohocken, Pa.-based company says it provides "personalized attention" to employees, helping them in their dealings with their health care systems and health insurance programs. The company can, for example, direct employees to doctors who are among the best at performing specific procedures.

As its name indicates, the company also advocates on behalf of plan members when coverage claims are denied. "Sometimes the carriers are right; sometimes they are wrong," said Dr. Arthur N. Leibowitz, Health Advocate's executive vp and chief medical officer.

Even when an insurer properly denies coverage, Health Advocate still may be able to help, Dr. Leibowitz said.

For example, he cited a case in which an insurer rightly declined to pay for an assistive device needed by an employee's 12-year-old son. The boy, who suffers from cerebral palsy, needed the device to help him stand. Health Advocate's staff members arranged for payment for the apparatus by helping enroll the dependent in a state Medicaid program, Dr. Leibowitz said.

Representatives of Health Advocate were not the only insurers-turned-advocates to sponsor a RIMS exhibition booth. Troy, Mich.-based Employers Comp Advocate markets itself as "your workers compensation watchdog."

The company is staffed by many former claims managers for insurers and third-party administrators, said Anne L. Loverde, the director of ECA. Employers Comp Advocate staffers review and monitor new and old claims to ensure that claims are properly evaluated and, if approved, quickly addressed with the best possible health care.

ECA's services are needed because insurer and third-party adjusters sometimes are overworked or do not receive adequate training, Ms. Loverde said.

"Adjusters are just being thrown out there and left to fend for themselves," she said. "We end up, in many cases, educating the adjusters."

Another vendor, meanwhile, touted its ability to deliver physical and occupational therapy services to the workplace.

Only a small percentage of employers currently provide physical therapy for injured employees at their places of work, said Matthew X. Engels, Chicago-based vp for the Midwest region for Horsham, Pa.-based ArgosyHealth. But a growing number of employers are seeking workplace physical therapy for employees with workers comp injuries, Mr. Engels said.

When visiting workplaces, therapists are able not only to provide treatment but to see firsthand the demands placed on workers at their worksites. Consequently, they can teach employees how to care for themselves in their specific job environments.

"That's a huge part of it, the blending of the job and the treatment," Mr. Engels said.

With workers comp rates continuing to climb, many of the conference attendees who stopped at his booth were seeking information about alternatives to traditional insurance, said Charles D. Clausen, vp of strategic business development for ManagedComp. The Woburn, Mass.-based company blends managed care services with workers comp expertise.

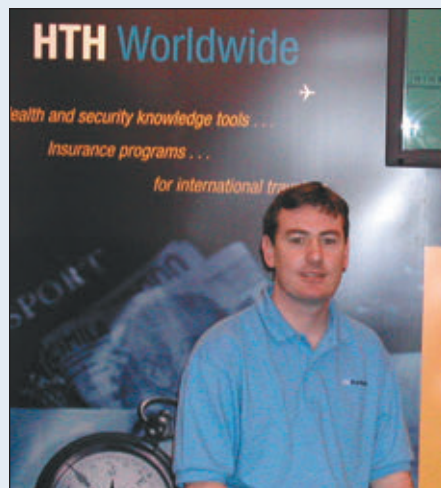
But a search for serious information wasn't the only thing pulling vendors to certain booths.

"Strataman," a superhero-like model in bright yellow tights, a yellow mask and a black cape, worked alongside another similarly dressed superhero type dubbed "Captain PPO." The duo garnered attention for a booth sponsored by StrataCare, a Newport Beach, Calif.-based provider of bill review software for workers comp claims.



Top: Tim Ward, vp of the national practice for the Eastern region for UnumProvident Corp., served up jambalaya to attendees.

Right: Brendan Sharkey, director of business development for HTH Worldwide, greeted visitors in the exhibit hall.



Above: Rachel Michael, ergonomics associate from Ergoweb.

Above right: Dr. Arthur N. Leibowitz, executive vp and chief medical officer for Health Advocate Inc.

Right: Anne L. Loverde, director of Employers Comp Advocate.

Far right: StrataCare got some superhero help in the exhibit hall from Strataman and Captain PPO.



PHOTO: MICHAEL MARCOTTE

Presidents: Mandel begins term as RIMS president

Continued from page 10

quality improvement. The guidelines are the first component in the society's effort to establish performance expectations among risk managers and their business partners. He suggested risk managers "take a close look at the quality-improvement process" as a start to building a world-class program.

"But there's more to world-class risk management than just quality," Mr. Mandel told his audience. He acknowledged that there is "no magic formula" that can be used to

get from "very good to world class," but he said that there are several principles that risk managers can use to make the transition.

Being "continuously innovative" is one such principle, Mr. Mandel noted. "Always look at process and practice and ask yourself, 'How can we solve problems in a completely new and different way?'"

Mr. Mandel also suggested that risk managers "employ widespread best practices regularly by scanning the landscape of your industry and related industries. Find out who is doing things most effectively and

efficiently."

Developing a well-trained and efficient staff is important in building a world-class program, Mr. Mandel said, as is "contributing significantly to stakeholder value. ...Whether it's cost reduction, new-revenue generation, customer satisfaction or cutting-edge approaches to new and old problems, you must add value to survive—and you must add significant value to thrive and wear a world-class label."

Risk managers will know they have achieved world-class status "when risk management is recog-

nized as a core competency in your firm," Mr. Mandel said. "You'll

'There is more to world-class risk management than just quality.'

*Christopher E. Mandel
Risk & Insurance
Management Society Inc.*

know you're there when you achieve what I call 'enterprisewide respect.'"

RIMS stands ready to help its

membership in a number of ways, and, in particular, through its Web site, Mr. Mandel said. "I want to help create a more virtual society," he said, in which RIMS' products and services that do not require face-to-face interaction are readily available to members. That means the society will have to make certain its Internet presence remains state of the art, he said.

Jack Hampton, RIMS' executive director, said during a presentation at the meeting that the society's Web site, www.rims.org, is receiving

See **PRESIDENTS**/next page



PHOTO: MICHAEL MARCOTTE



At top, third from left, Daniel H. Kugler of Snap-on Inc. receives the 2002 Risk Manager of the Year Award from (from left) Christopher E. Mandel, *Business Insurance* Editor Paul D. Winston and David Mair. Middle: Mr. Winston explains *BI*'s partnership with RIMS on the annual award competition. Bottom: Mr. Kugler speaks about the risk management program that he developed as director of corporate risk management for Snap-on, a Pleasant Prairie, Wis.-based manufacturer and distributor of tools and equipment.

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Presidents: Mandel takes helm

Continued from previous page
about 65,000 hits daily. "Variations of the term 'risk management' account for half of those queries," he noted, as users look for information to help them manage risk.

David Mair, associate director-risk management for the U.S. Olympic Committee in Colorado Springs, Colo., stepped down as RIMS' president at the annual meeting. During his speech, Mr. Mair told attendees that the RIMS Web site has surpassed expectations, generating approximately \$400,000 in revenue and savings after its launch a year ago.

The site's tens of thousands of visits each day confirm that those who are looking for information on risk management "are looking to us," Mr. Mair said.

In closing, Mr. Mandel urged risk managers to take advantage of the opportunity to excel after the tragedy of Sept. 11. The terrorist attacks, he said, "like all trials in life, can be made into something good, despite the evil intent of the perpetrators. Let me suggest that you use Sept. 11 and its implications as a catalyst for personal change and renewal. Think about your values and put them into practice. 'Walk your

talk,' as some would say. Be a role model to your team, your peers, your family, your friends and your community. Practice with excellence, and make world-class risk management more than a phrase. Make it your goal."

The day before the conference began, RIMS' executive council was

'Be a role model to your team, your peers, your family, your friends and your community. Practice with excellence and make world-class risk management more than a phrase.'

*Christopher E. Mandel
Risk & Insurance
Management Society Inc.*

elected at the society's house of delegates meeting. Lance J. Ewing, senior director-risk management at GES Exposition Services in Las Vegas, was elected first vp and chief risk officer. The position of first vp traditionally is the steppingstone to the RIMS presidency.

The other executive council members elected are:

- Nancy L. Chambers, risk manager for the Waterloo Region Municipalities Insurance Pool in Waterloo, Ontario; vp-conferences.

- Michael D. Phillipus, manager-risk management at Pennzoil-Quaker State Co. in Houston; vp-communications and external affairs.

- Mr. Mair; vp-international development.

- Carol A. Fox, director-risk management at Convergys Corp. in Cincinnati; vp-professional development.

- Joseph Restoule, senior risk consultant at NOVA Chemicals Corp. in Alberta, Calgary; vp-strategic opportunities.

- Randolph A. Thurman, director-risk management at Gaylord Entertainment Co. in Nashville; vp-governance and secretary.

- Ellen Vinck, vp-risk management and benefits at Unites States Marine Repair in Norfolk, Va.; vp-finance and treasurer.

- Michael Liebowitz, director, risk management at Bridgeport Hospital & Healthcare Services in Bridgeport, Conn.; vp-member and chapter satisfaction.

Luzzi receives Goodell Award for work in Latin America

By MICHAEL BRADFORD

NEW ORLEANS—Jorge Daniel Luzzi is the winner of the Harry and Dorothy Goodell Award, the most prestigious honor bestowed by the Risk & Insurance Management Society Inc.

Mr. Luzzi, who is director of risk management for Pirelli Group's Buenos Aires-based Latin America operations, accepted the award at RIMS' annual conference and exhibition in New Orleans last week. The society honored his work in forming risk management organizations in a number of Latin American countries and his efforts to advance the role of risk managers.

A founding member of the Argentine Risk Management Assn., Mr. Luzzi serves as the group's president. He also helped co-found the International Federation of Risk & Insurance Management Associations, an organization that was funded in 1994 partly with seed money from RIMS and partly with funds from the sale of Mr. Luzzi's car.

Mr. Luzzi also serves as counselor to the board of the Brazilian Risk Management Assn.

The society presented its Ron Judd Heart of RIMS Award to Wayne Salen, director of risk management at First Niagara Financial Group in Amherst, N.Y. Established in 1998, the award recognizes an individual for outstanding performance on behalf of a RIMS chapter. It is named after the late Mr. Judd, who was RIMS' first executive direc-

tor, who served from 1967 to 1989.

Mr. Salen, a member of the Upstate New York Chapter, was honored for his dedication and leadership as a risk manager. He serves on RIMS' board of directors and its external-affairs team and is chairman of the bylaws committee of his chapter. Mr. Salen teaches risk management at local colleges and serves as RIMS' chapter mentor, traveling to various chapters to work with members on strengthening their groups.

The Arthur Quern Quality Award, presented to a company that exemplifies the dedication to quality that marked the late Mr. Quern's career as chairman and chief executive officer of Aon Risk Services, was presented to American International Group Inc.'s Performance Management Program. The program was recognized for its Policy Issuance Quality Initiative, which improved AIG's policy issuance process.

William R. Hoyt, risk manager for the Metropolitan Airports Commission in Minneapolis, received the Richard W. Bland Award for legislative achievements. He was recognized for his work in risk managers' fight for a federal terrorism insurance program and, among other achievements, the numerous occasions on which he spoke to regional and national media outlets on the topic of terrorism coverage.

Educational achievements also were recognized at the conference. The Cristy Award, presented to the risk manager with the highest cumulative average in the three exams

leading to the Associate in Risk Management designation, went to George H. Ford, risk manager for the Watchtower Society in Brooklyn, N.Y.

Tracey S. Borland of Pearson-Dunn Insurance & Financial Services in Hamilton, Ontario, was presented with the Fred H. Bossons Award. The honor recognizes the highest academic average in courses leading to the Canadian Risk Management designation for the previous year. This award was presented last September at the Canadian Risk Management Conference in Ottawa, Ontario.

For the first time, RIMS and *Business Insurance* co-sponsored the magazine's annual Risk Manager of the Year award. Daniel H. Kugler, director of corporate risk management at Snap-on Inc. in Kenosha, Wis., was this year's recipient of the award.

Several RIMS chapters were recognized with awards. Each chapter was the winner in its size category for the following awards, although two awards did not recognize winners in all four size categories:

- Chapter programming—Greater Quad Cities, Santa Clara, Washington and San Diego (a tie), Houston.

- Advancing the profession of risk management—South Texas, San Diego, Houston.

- Outstanding member services—Greater Quad Cities, Southern Alberta, San Diego, Houston.

- Overall excellence—South Texas, San Diego, Houston.



PHOTOS: MICHAEL MARCOTTE

At top, incoming RIMS President Christopher E. Mandel outlines his vision for the coming year. Below, outgoing President David Mair, left, presents the Goodell Award to Jorge Luzzi.



Above top, Wayne Salen, left, received the Ron Judd Heart of RIMS Award from RIMS Presidents David Mair and Christopher E. Mandel.



Messrs. Mair and Mandel presented the Arthur Quern Quality Award to American International Group Inc.'s Performance Management Program, which is directed by Hank Ludington.

Self-insured workers comp not a good option for all

By JOANNE WOJCIK

NEW ORLEANS—Even under current market conditions, it may not be feasible for many employers to self-insure their workers compensation exposures, self-insurance experts say.

In some states, the cost of meeting regulatory requirements can make self-insurance more expensive than alternatives such as large-deductible plans, said Robert L. Glicksteen, senior vp and chief financial officer of Becher + Carlson Risk Management Inc. in Woodland Hills, Calif.

"Ninety-five percent of the time, that's not the case, but there are a couple of states where it's either more expensive or very close," Mr. Glicksteen said, citing Oregon and Florida as examples.

'You're going to want to do comparisons of buying insurance and other types of risk financing such as large deductibles, captives, etc., to pure self-insurance.'

*Robert L. Glicksteen
Becher + Carlson
Risk Management Inc.*

Because of the market hardening triggered by Sept. 11, some employers also may not be able to find adequate stop-loss protection to back up their self-insured workers comp programs, he added.

These are just two of the many financial considerations that employers should take into account before deciding whether to self-insure their workers comp risks, Mr. Glicksteen said. He spoke during a session on self-insurance at the Risk & Insurance Management Society Inc. annual conference held last week in New Orleans.

"You're going to want to do comparisons of buying insurance and other types of risk financing such as large deductibles, captives, etc., to pure self-insurance," he said. "You

look at things like front fees and premium taxes and commissions and funds administration and (letter of credit) fees and tax consequences."

And, "when you're looking at the various alternatives, you need to really focus in on the losses and the variability of those losses," Mr. Glicksteen said. He advised employers to hire actuaries to estimate future losses based on past experience and then convert them into present values. Employers also should compare how various self-insured retention levels would affect their pay-

outs, he said.

Another expense that employers should consider when deciding whether to self-insure is claims administration, said Michael R. Boutot, director of litigation management at Crawford Risk Management Services in Atlanta.

While in-house claims administration gives employers better control over investigations and file management, it requires a significant investment in staffing and training, which could make outsourcing more cost-effective, he said.

An employer also may be able to negotiate a gain-sharing arrangement with a third-party administrator, through which fees are waived if projected savings are not achieved or the employer shares any savings that exceed projections, Mr. Boutot said.


Even if actuarial projections indicate self-insurance to be a viable alternative, current market conditions may prevent some employers from going that route, Mr. Glicksteen said.

"Some states require excess insurance," he said. Since Sept. 11,

though, it has been difficult for many employers to obtain specific stop-loss insurance up to statutory levels or aggregate stop-loss coverage on an unlimited basis, he said.

In addition, "if you have a concern about terrorism, I'm not sure if you're going to get reinsurance for terrorism," he said.

Richard Davies, risk manager and insurance administrator for Chautauque County, N.Y., moderated the session. The coordinator was Gregory Myers, president and chief executive officer of Becher + Carlson Cos.



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Class-action changes require risk manager response

By MICHAEL PRINCE

NEW ORLEANS—Risk managers should change their approach to handling class-action lawsuits as the suits themselves are changing, two policyholder attorneys advised.

Previously, plaintiffs in class-action lawsuits would allege either bodily injury or property damage, but in the past several years, plaintiffs' lawyers have shifted strategies. Now companies also face class-action suits claiming breaches of state consumer protection laws, business practice laws or contracts, said Joshua Gold, partner in the New York office of Anderson Kill & Olick P.C. This represents "a major shift in the way class actions are pled," he said.

This shift in claims has caused insurers to deny many claims related to class-action suits and assert that their policies only cover bodily injury or property claims. For example, some suits may seek a change in the business practices of the defendant rather than monetary damages. In these circumstances, the insurers will often deny coverage for defense costs, stating "the relief being sought is not covered under the insurance policies," Mr. Gold told attendees during a session at the Risk & Insurance Management Society Inc.'s annual conference last week in New Orleans.

Risk managers can adopt several strategies to address the changes in the suits, said Jeffrey Posner, president of JM Posner Inc. a risk management consulting firm in Margate, Fla.

When named in a class-action

suit, a policyholder should examine every policy that could possibly provide coverage, he said. More than one policy might come into play, as class-action suits often involve numerous allegations naming many people as defendants. So

'You may not want your defense attorney being in direct communication with the insurance company.'

Joshua Gold
Anderson Kill & Olick P.C.

if a general liability policy won't cover the suit, a director and officers policy or a fiduciary liability policy might, he said.

And all of these insurers should be notified of the claims, Mr. Gold added.

The policy review should not be limited to current policies. "You also need to focus on historical insurance your company may have purchased," he said. This is particularly true with suits that refer to actions that took place years ago, he said.

Perhaps one of the biggest mistakes made by policyholders is not reporting the claims to their insurers in a prompt manner, both speakers said. After the claims are passed along, the communication with insurers should continue, they said. This is true, they stressed, even if the insurer issues a reservation of rights letter or denies coverage.

"There are very few penalties for

providing notice and withdrawing it later," Mr. Gold said.

And if lawsuits seek equitable relief and not money, attorneys should scrutinize them to assess whether an underlying bodily injury or property damage claim exists, Mr. Posner said.

"Understand (that) within those claims could be claims for property damage you can use as a hook to get coverage," he said.

Policyholders should also be wary when an insurer appoints a defense attorney for a claim after it has issued a reservation of rights letter. If the insurer controls the defense, it is in a position to influence the defense attorney so that the

case is fought in such way that the claims become ones that are not covered, Mr. Gold said. As a result "you may not want your defense attorney being in direct communication with the insurance company," Mr. Gold said.

An alternative course, allowed in some states, is for a policyholder to hire its own attorney, with the insurer required to reimburse its costs after issuance of a reservation of rights letter, Mr. Gold said.

Both speakers also recommended keeping the information flowing on a regular basis to all insurers, even if they absolutely refuse to provide coverage. Complaints get amended and documents are un-

earthed that might trigger coverage. But if a policyholder has stopped communicating with its insurer, especially by not providing notice of the suit or by settling the class-action lawsuit without allowing the insurers a chance to become involved, the insurer may successfully avoid coverage, they said.

In short, Mr. Posner said, once a policyholder receives a reservation of rights letter or denial of coverage from the insurer, it should do everything with one eye focused on the upcoming coverage litigation.

The session was coordinated by Finley T. Harckham, a partner at Anderson Kill & Olick.



PHOTO: MICHAEL MARCOTTE

Attendees of the 40th Risk & Insurance Management Society Inc. Annual Conference and Exhibition line up to register for the event, which was held April 14-18 at the Ernest N. Morial Convention Center in New Orleans.

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2002 Hines panel to field questions on causes, effects of hard market

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

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

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

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

The panelists for the symposium are:



- J. Patrick Gallagher Jr., president and chief executive officer of Arthur J. Gallagher & Co. in Itasca, Ill.
- Dirk Lohmann, group chief executive officer of Convergium Ltd. in Zurich, Switzerland.
- David Mair, associate direc-

tor for risk management for the United States Olympic Committee in Colorado Springs, Colo., and 2001-2002 president of the Risk & Insurance Management Society Inc.

• Richard G.M. Marko, senior vp of National Markets for Liberty Mutual Insurance Co. in Boston.

Kathryn J. McIntyre, former publishing director of *Business Insurance*, will serve as moderator.

The symposium follows a question-and-answer format and encourages audience questions throughout the program.

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

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

April 22, 2002

International

29

New South Korean law may bring increased product liability claims

By MICHAEL BRADFORD

SEOUL, South Korea—Employers in South Korea are preparing for a new law that will make it easier for claimants to win product liability cases.

Product liability legislation that passed in January 2000 and goes into effect July 1 creates a new exposure for South Korean companies. Although a flood of lawsuits is unlikely, the number of claims

could go up, according to a broker in South Korea.

"Companies do not expect the same level of legal activities" as in the United States with regard to product liability claims, said Hank Lee, senior vp with Marsh & McLennan Cos. Inc. in Seoul.

"However, since this law would impose a significant liability on a company, many large firms are preparing for the effect of the product liability law," he said.

Mr. Lee said that many South Korean companies are creating "product liability teams" to address the risk and safety concerns. Employees are being educated with regard to making sure products are safe, and employers are reviewing their insurance coverage.

In addition, large South Korean employers are launching public relations efforts to inform consumers about the law, as well as developing recall systems so they can quickly

retrieve defective products, according to Su Do Choe, managing director with Aon Korea Inc. in Seoul.

Mr. Choe said, though, that small companies are not nearly as ready for the new law.

He referred to a survey completed late last year by the Korea Federation of Small Business that showed that, of 271 companies, only 13.7% regarded themselves as prepared for the new product liability exposure.

See KOREA/next page

World Updates

AXA Corporate Solutions to get capital boost

AXA S.A. plans to boost the capital of AXA Corporate Solutions, the company's reinsurance and large-commercial insurance unit. Paris-based AXA did not disclose the size of the capital injection, which it said would come from its own corporate resources. An AXA spokeswoman said that the capital would help compensate for losses suffered by ACS in 2001 as a result of exceptional claims, particularly those related to the Sept. 11 terrorist attacks. ACS estimates its net loss from Sept. 11 claims at 350 million euros (\$312.0 million).

Equitable Life sues Ernst & Young

The new management of defunct U.K. mutual Equitable Life Assurance Society is suing Ernst & Young L.L.P. for £2.6 billion (\$3.7 billion), charging that the firm was negligent in its past audits of Equitable Life. In a lawsuit filed in London's High Court, Equitable Life claims that Ernst & Young "did or ought to have known that, within the insurance industry, the Society had a particularly high risk exposure" and that the firm "ought not to have signed the audit reports in the form that it did." Equitable Life closed to new business in 2000 after the House of Lords ruled that it must meet guaranteed annuities totaling more than £1.5 billion (\$2.2 billion).

U.S. CFOs fear domestic terror over risks abroad

Following Sept. 11, U.S. chief financial officers are more concerned about terrorism risks to staff and properties located in the United States than to those that are overseas, according to a survey conducted by Lloyd's of London. Lloyd's surveyed 50 CFOs of Fortune 1000 companies and found that two out of three believe their U.S. assets are at greater risk from terrorism than are their assets in areas such as the Middle East and South America.

SCOR securitizes credit reinsurance risks

SCOR S.A. has completed a 130 million euro (\$114.3 million) capital market placement to cover its credit reinsurance risks. The deal, which has a five-year term, is linked to Moody's Investors Service's credit ratings indices. In a statement, Paris-based SCOR's Chairman and Chief Executive Officer Jacques Blondeau said, "Apart from the direct benefits (the deal) will bring—protecting the group from systematic credit insurance risks over the next five years—this operation will further bolster our capital."

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PHOTO: AFP

Air China coverage led in London

PUSAN, South Korea—The Air China Boeing 767 that crashed into a mountainside in South Korea last Monday was insured for \$21.6 million, according to aviation market sources.

Reinsurance on the hull coverage was placed in the London market by brokers Marsh Ltd. and Willis Group Ltd., with Lloyd's of London insurer Amlin P.L.C. leading the coverage. Sources confirmed that Air China has liability coverage, though details were not available.

Thirty-eight of the 155 passengers and 11 crew members on board survived the crash, which destroyed the 17-year-old jet. Flight CA 129, which was en route from Beijing, crashed during its final approach to the Kimhae Airport, which serves Pusan, South Korea's second-largest city.

State-owned Air China said that the crash is the airline's first fatal accident in its 47-year history.

—By Edwin Unsworth

Hiscox buys cat bond for U.S. quake risks

LONDON—Hiscox Syndicates Ltd. has purchased a catastrophe bond to protect its Lloyd's of London syndicate 33 against earthquake risks in the United States.

The \$33 million of catastrophe risk-linked notes provide syndicate 33 with protection against earthquakes in California and the New Madrid seismic region, Hiscox said. The cat bond, which covers a three-year period beginning April 9, 2002, is the first such securitization deal to be used by a syndicate at Lloyd's, according to Hiscox.

The deal was structured and underwritten by Aon Capital Markets, the investment-banking arm of Aon Corp. The notes were issued by Bermuda-domiciled St. Agatha Re Ltd., a reinsurance company established for the transaction.

Charles Arthur, Hiscox's alternative risk transfer specialist, said that the securitized coverage offers several advantages. "The capital is fully collateralized, removing the credit risk associated with traditional reinsurance policies," he said.

In addition, Mr. Arthur noted that the bond "gives us loss pay-

ments which are received quickly and easily, assisting post-catastrophe event liquidity." Such liquidity is especially useful to Lloyd's syndicates, which are required to hold trust funds in the United States to cover losses, he said.

—By Sarah Veysey



PHOTO: USGS

A cat bond will protect syndicate 33 against earthquake risks in California, where a 1994 quake cost insurers \$12.5 billion.

First-ever award to smoker viewed as catalyst for future claims

Australia could see more tobacco suits



PHOTO: AFP

Rolah McCabe, a longtime smoker who suffers from lung cancer, is the first-ever claimant in Australia to be awarded damages in a case against a tobacco company.

By SIMONE ZENONI

MELBOURNE, Australia—The first smoking-related damage award ordered by an Australian court, made earlier this month, could lead to a surge in claims for compensation by other smokers.

"The result clears the way for other Australians to take on the tobacco giants, which have previously thwarted such claimants by outspending and outsourcing them, seeking countless legal delays and appeals and, apparently, destroying evidence," said Peter Gordon, senior partner at Melbourne-based plaintiff law firm Slater & Gordon, who represented the plaintiff in the case.

In *McCabe vs. British American Tobacco Australian Services Ltd.*, heard in the Victorian Supreme Court, a jury awarded cancer sufferer

Rolah McCabe \$700,000 Australian (\$374,360), finding that her lung cancer was caused by cigarette smoking. BATA, a Sydney-based unit of London-based British American Tobacco P.L.C., said it plans to appeal the decision. But if the decision is upheld, the award will be paid out of corporate funds, a BATA spokesman said.

Ms. McCabe brought her case against BATA in October 2001, seeking damages for personal injuries. Ms. McCabe, who has smoked for 40 years, claimed in her suit that she became addicted to cigarettes manufactured by BATA at age 12 and that her cancer was caused by smoking. Ms. McCabe claimed that BATA knew cigarettes were addictive and posed serious health risks but took no reasonable steps to reduce or eliminate such risks.

Furthermore, she claimed in her suit that

See SMOKE/page 31

Korea: Product liability claims may increase

Continued from previous page

Under current South Korean civil law statutes, a consumer is able to sue a product maker. But the burden of proof in civil law cases is on the claimant. That has meant there have been "a very limited number of cases" in which a company has been forced to pay damages, according to Mr. Lee. The new law transfers the burden of proof to the product manufacturer.

Mr. Choe said that consumers normally file complaints with the government's Consumer Protection

Center, which then refers them to the Consumer Dispute Mediation Committee for adjudication.

There is no cap on the amount of compensatory damages that can be awarded under the new law, but punitive damages are not permitted.

Mr. Lee said product liability coverage in South Korea generally is written to limits of up to \$5 million.

Higher limits are available for overseas exposures, which Korean insurance companies typically rein-

sure, Mr. Lee said.

Mr. Choe said that most large and medium-size companies are expected to buy coverage if they don't already have insurance in place. He said that beyond the typical \$5 million limits, local insurers can provide up to \$100 million in aggregate limits.

Insurers are attempting to expand their market share by offering policyholders consulting and other services to help them prepare for the new exposure, Mr. Choe said.

Mr. Lee pointed out that South

Koreans have been reluctant to file product liability claims, probably due, in part, to cultural influences and the structure of the current law. He said, though, that "with heightened consumer awareness" and the implementation of the new law, "the situation could change in the future."

Mr. Choe said injuries from defective products have occurred in recent years. "Two years ago, a Korean court held an electronics company responsible for an explosion of a TV set," he said. Automobile

manufacturers, electronics companies and various industrial companies have had to deal with consumers over product liability claims, he said.

Mr. Lee said the new law had been debated in South Korea's Congress since 1982. In 1996, the Korean Consumer Protection Board held a hearing on proposed legislation, he noted, and in 1998, the government declared the product liability legislation one of the top 100 issues in South Korea to be resolved.

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Smoke: Damage award may open floodgates to litigation

Continued from page 29

BATA ignored or publicly disparaged research results indicating the dangers of smoking and that the company targeted its advertising at children, according to court papers.

BATA denied that Ms. McCabe's illness was directly linked to cigarette smoking, noting that many smokers do not develop lung cancer, and refuted her claim that cigarettes are addictive, court papers note.

The company acknowledged that some people found it difficult to quit smoking, but said smoking was matter of choice and did not impair smokers' ability to make informed decisions, court papers say.

BATA argued in its defense that people in Australia were informed by government anti-smoking cam-

paigns and its health warnings about the dangers of smoking, and that tobacco advertising, cigarette-pack health warnings, and the sale of tobacco to minors all were regulated by law. Thus, BATA said, Ms. McCabe voluntarily assumed known risks associated with smoking.

Ms. McCabe also claimed it was BATA's strategy to confine any plaintiff's case to documents in the public domain and to destroy or hide other documents damaging to its defense.

Justice Eames, the judge in the case, struck down BATA's defense on the grounds that the destruction of potentially relevant documents by the company had rendered it impossible for Ms. McCabe to have a fair trial. He found BATA and its

law firm, Sydney-based Clayton Utz, had misled the court and the plaintiff as to the existence of documents discoverable in the trial and had failed to comply with discovery orders, which prejudiced the plaintiff.

Justice Eames found the primary purpose of BATA's policy was to ensure the destruction of potentially harmful material.

Mr. Gordon said the ruling has given new hope to the notion of bringing a class-action suit against tobacco companies. Slater & Gordon previously brought such a class action, but that case was rejected by the High Court in November 2000 on the grounds that each plaintiff's circumstances were unique, making a class-action suit inappropriate (*BI*, April 10, 2000).

World Updates

SVB reports loss for 2001

Lloyd's of London underwriting agency SVB Holdings Ltd. had a pretax loss of £110.1 million (\$160.1 million) in 2001 and more than doubled its reserves to £967.1 million (\$1.41 billion) from £479.3 million (\$697.0 million). Although the company's original loss estimate from the Sept. 11 World Trade Center attacks stayed unchanged at £30 million (\$43.6 million), losses from the underwriting agency's property account excluding the WTC loss "were extremely unsatisfactory," said SVB Chief Executive Officer Rupert Villers. Because of the losses, the agency has reduced its property risk excess business and has "virtually ceased transacting U.S. primary open-

market business," Mr. Villers said.

Briefly noted

Panama has agreed to cooperate with the Organization for Economic Cooperation and Development on the elimination by the end of 2005 of tax practices that the OECD views as harmful....The National Assn. of Insurance Commissioners' Reinsurance Task Force has completed the initial phase of its **review of Lloyd's of London**. The NAIC task force said that it found Lloyd's processes for estimating the market's Sept. 11-related losses to be "reasonable." Lloyd's previously increased the funds that it holds in trust for U.S. claims by about \$5 billion to cover its gross loss from the terrorist attacks.

NAFTA: New regulations for Mexican trucks in U.S.

Continued from page 3

those differences could lead to a deterioration of highway safety in the United States. They were subsequently successful in getting Congress to intervene and require that the department adopt stronger regulations as part of its appropriations bill, which was signed into law last December.

New rules require that Mexican trucking companies, trucks and drivers adhere to requirements for safety inspections and record keeping, including having drivers comply with drug and alcohol-testing programs as well as U.S. hours-of-service requirements, which are designed to prevent driver fatigue.

In addition, Mexican companies' must have valid insurance from a U.S.-registered insurance company. Also, their commercial vehicles will only be able to enter the U.S. at commercial border crossings and when a certified inspector is on duty.

"From the perspective of the Risk & Insurance Management Society, those revised regulations go a long way to alleviate the concerns I heard from many risk managers," said Michael Phillipus, vp-external affairs for the New York-based organization. Those concerns included not only highway safety but also the collectibility of Mexican trucking companies' insurance coverage in the event of an accident, said Mr. Phillipus, who is risk manager for Pennzoil-Quaker State Co. in Houston.

Such insurance coverage may be written by either surplus lines or admitted insurers, according to the broad interpretation that state insurance regulators have successfully urged federal officials to adopt, said Texas Insurance Commissioner Jose Montemayor. "A broad interpretation and the allowance of surplus lines are consistent with current practice," said Mr. Montemayor, who chairs the National Assn. of Insurance Commissioners' NAFTA

Subgroup.

Some major insurer trade associations also have supported that broad interpretation.

Allowing use of surplus lines insurers will be important "particularly in cases where the surplus lines insurance writers will keep the market viable and ensure availability as the Mexican insurance market matures," said David Golden, director of commercial lines for the National Assn. of Independent Insurers in Des Plaines, Ill.

It's "a pro-competitive (method) of enhancing public safety and will improve the potential insurability of Mexican trucks," said David Sny-

der, assistant general counsel with the American Insurance Assn. in Washington.

In addition, NAIC regulators support the industry's efforts to help develop databases in Mexico, such as one on drivers' records that would help underwriters assess risks.

While most safety advocates are pleased with the new regulations, a few have noted what they consider to be loopholes that they would like to see plugged.

For example, federal officials need to be more concerned about drivers' log books—which are historically suspect—and make log-

book-related violation a factor in determining whether a truck should be permitted to operate, said Jackie Gillan, vp of the Advocates for Highway & Auto Safety, a Washington-based coalition of consumers, health, safety and insurance organizations and companies.

A federal transportation department spokesman responded that such logbooks would be closely monitored under the new system.

"I don't believe that there are any serious loopholes," said Bill Webb, president of the Texas Motor Transportation Assn., an Austin, Texas-based group with 1,400 company

members.

"The rules are only as good as the enforcement," he said.

Federal transportation officials' ability to establish an adequate infrastructure of facilities and trained personnel to enforce the new regulations came under fire in a recent General Accounting Office report, which was released in December.

However, the department spokesman said: "We anticipate to be in a state a readiness when the border is opened soon."

While he said that no specific date has been set to open the border, other observers estimate that it could be as early as June 1.

Hard market a tough road for truckers

WASHINGTON—Mexican trucking companies may have trouble meeting new federal financial responsibility requirements because of the current hard market for trucking liability insurance coverages in the United States.

Under the new rules released last month by the U.S. Department of Transportation as part of the North American Free Trade Agreement, Mexican trucking companies must be able to demonstrate that they are able to cover liability judgments ranging from \$750,000 to \$5 million, depending primarily upon the type of cargo they haul.

For example, a truck transporting nonhazardous property with a gross vehicle weight of 10,000 or more pounds needs \$750,000 in coverage. A truck that size or smaller transporting various types of hazardous cargo needs \$5 million in coverage.

"It's going to be a challenge" for Mexican companies to obtain the required insurance coverage, said Mike Russell, spokesman for the American Trucking Assns. Inc. in Alexandria, Va.

U.S.-based trucking companies themselves are concerned about the affordability and availability of insurance, said Jose Montemayor, commissioner of the Texas Insurance Department.

U.S. trucking companies renewing their pri-

mary liability policies last year experienced an average rate increase of 32% before the Sept. 11 terrorist attacks and 37% after Sept. 11, according to an ATA survey of 1,000 companies. In addition, they reported an average umbrella coverage increase of 74% before Sept. 11 and, or 120% after the attacks.

U.S.-based truckers are examining ways to deal with liability and insurance issues in the tight market.

To lower rates for U.S.-based ATA members, "we are looking at making ourselves better customers" by reducing losses through better safety performance as well as seeking legal reforms to lower tort liability, Mr. Russell said.

Providing available and affordable coverage for Mexican-based trucking companies may require more diverse solutions, according to Mr. Montemayor.

He said options could include: admitting Mexican insurers to write in the U.S.; allowing joint ventures between U.S. and Mexican insurers and affiliates or other insurers; or fronting arrangements in which a U.S.-based insurer writes coverage which is reinsured by a Mexican insurer.

"Ideally, we would want to get to mutual recognition, though it may take a long time," Mr. Montemayor said.

—By Meg Fletcher



PHOTO: DAVID MCGREW / GETTY

A hard market for trucking liability coverage may make it difficult for Mexican trucking companies to comply with U.S. regulations.

Obesity: A health problem employers must address

Continued from page 1

associated with obesity and its effect on their business.

Earlier this month, in a ruling noting that "obesity is medically accepted to be a disease in its own right," the Internal Revenue Service determined that individuals who are diagnosed as obese could deduct the cost of participation in weight-loss programs as a medical expense on their taxes (*BI*, April 8). Benefit consultants now predict that employers increasingly will allocate more resources toward combating obesity.

But because weight management has such a large individual behavioral component and because no specific medical obesity treatment has been identified as effective, employers are uncertain which approach provides the best return on investment.

"There is a growing recognition by employers that obesity is a serious problem, both in terms of its impact on other diseases such as diabetes and the impact on health care costs," said Helen Darling, the president of the Washington Business Group on Health.

At the same time, Ms. Darling said, "employers are really very uncertain and very nervous about getting involved in something that has such an important behavioral component. If it was strictly medical, that's one thing," but so much of obesity is related to behavior, she said.

"I don't think employers yet know quite how to deal with this thing," Ms. Darling said.

According to a spokeswoman for the Washington-based American Assn. of Health Plans, about 95% of U.S. health plans provide coverage for some form of nutritional or exercise counseling, educational programs or health club fees.

But the spokeswoman noted that "you don't have a lot of coverage for obesity drugs, where there have been some problems," such as those associated with Redux and Fen-Phen (*BI*, Aug. 16, 1999). "And there is still variability with respect to some of the more aggressive surgeries, which carry risk and don't have really high success rates," she said.

Although there are few, if indeed any, proven treatments for obesity, its effects on the health of individuals and on national health care costs is staggering.

A national problem

The National Institutes of Health estimates that 39.8 million adults, representing 22.3% of the nation's population over age 20, are obese. The NIH defines obesity as having a body mass index—a ratio of weight to height—of 30 or more. Morbid obesity is defined as having a BMI of 40 or more.

The Department of Health and Human Services estimates that obesity results in approximately 300,000 deaths each year; only smoking causes more preventable deaths annually in the United States.

More alarming is the role obesity

plays in other chronic health conditions.

Watson Wyatt Worldwide estimates, for example, that of the \$2.4 billion spent annually on medical costs for type 2 diabetes, 61% is attributable to obesity. Nearly 25% of the \$57 million spent annually on osteoarthritis and 17% of the \$1.6 billion spent annually on hypertension are attributable to obesity.

Obesity has reached epidemic proportions, according to the U.S. Centers for Disease Control. The CDC found that, from 1991 to 2000, the number of obese Americans rose 61%. Just as alarming, the number of Americans with diabetes rose 49% during the same time period, according to the CDC.

"That's proving to be an eye-opener to employers," said Joe Marlowe, a senior vp with Aon Consult-

'Employers are really very uncertain and very nervous about getting involved in something that has such an important behavioral component.'

*Helen Darling
Washington Business
Group on Health*

ing in Philadelphia. "Employers are realizing they have to start making an investment in the whole weight loss reduction component in order to save money across all of the different diseases."

Mr. Marlowe said he believes the shift will be gradual, though. Right now, about 15% to 20% of Aon Consulting's clients cover weight-loss programs within their medical plans, he said. Mr. Marlowe predicted, though, that as employers become increasingly aware of the impact of obesity, "you're going to start seeing an increase in the coverage percentage."

Overall, "employers are considering more broadly the implications of health on their business," said Sue Willette, a national health and productivity management senior consultant for Mercer Human Resource Consulting in Minneapolis. "As more evidence is there to support the fact that obesity impacts not only medical costs but also impacts absences and other indirect costs, it will raise obesity as an issue employers need to consider," Ms. Willette said.

Some benefit consultants contend that the recent IRS ruling, in addition to raising awareness about obesity, will prompt employers to offer coverage for obesity-related treatments.

"I think the IRS ruling will have more influence on plan coverage than anyone thinks," said Bruce Kelley, a senior consultant with Watson Wyatt Worldwide in Minneapolis. "If the IRS is now saying weight management is tax-advantaged and employees can get reimbursement through their (flexible spending accounts) and (medical savings accounts), employees are

going to go to their employers and ask, 'Why you are denying coverage when the feds are saying this is a good thing?'"

One big impediment to action is the perception that obesity has more to do with lifestyle choices than chronic disease, observers say.

"In general, the public and even some health professionals have trouble thinking about (obesity) as a disease," said Morgan Downey, executive director of the American Obesity Assn., a Washington-based education and advocacy group. "We have a lot of health conditions where personal behavior plays a big role, but in obesity, that's the only thing people see," Mr. Downey said. "It tends to be defined as an individual's problem and not something employers or insurance companies need to look at."

Employer awareness

Employers increasingly recognize the health risks of obesity, but companies' responses to covering obesity in their benefit plans vary.

Dallas-based Southwest Airlines, for example, does not cover obesity treatments within its self-insured benefit plan, said Ralph Kimmich, Southwest's director of benefits and compensation. "We have specific exclusions for obesity," Mr. Kimmich said. "Our plans are predicated on not covering issues considered lifestyle kinds of things."

Mr. Downey noted that one of the ironies in the health care system is that employers pay billions of dollars each year for conditions that obesity generates—such as diabetes, hypertension, high cholesterol, arthritis and heart disease—but they do not cover obesity-related treatments.

"We just don't think it makes much sense," he said. "It's like having a leaky roof that you keep paying for pails to catch the water instead of paying for someone to go

up and fix the roof."

But some employers are trying to "fix the roof."

"Obesity is a concern for us," said Colleen Reilly, wellness manager for Coors Brewing Co. in Golden, Colo. According to preliminary findings from health risk assessment tests that Coors plans to complete next month, weight, cholesterol, blood pressure and blood sugar are the four top medical risk factors at the company, Ms. Reilly said. Coors is also finding that the biggest lifestyle risks among its employee population are poor diets, lack of exercise and stress.

"All of these contribute to the obesity problem," Ms. Reilly said.

To address the issue, Coors offers employees weekly weight management classes called "Weight Matters" at various worksites. While the program lasts only 10 weeks, Coors offers extended classes for those that "graduate" from the initial program, Ms. Reilly said. Coors also offers a "stepped-up" version of its Weight Matters class, geared toward obese employees.

Next month, Coors plans to roll out its new "10,000 Steps" program, to try to increase physical activity among its employees, Ms. Reilly said.

"We have not yet marketed this program, but we've gotten phenomenal response by just word of mouth," she said.

Through this program, a participating employee can buy a pedometer for \$10 to measure how many steps he or she takes in a day. The U.S. Office of the Surgeon General recommends about 30 minutes of exercise daily; pedometers can measure the amount of exercise an individual is getting, and that can help him or her follow the surgeon general's recommendations, Ms. Reilly said.

Jacob Lawrence, Coors' manager of health and welfare benefits, said that while the rules vary among Coors' managed care company

partners, obesity-related pharmaceuticals and gastric bypass surgery typically are covered if prior authorization is obtained.

Coors is not alone in its concern about obesity.

Tim McDonald, the manager-corporate health promotion for General Motors Corp., said that when GM was provided with data from health risk appraisals of its employees a few years ago, "we quickly realized our No. 1 health risk was obesity."

The Detroit automaker found that 63% of its employee population was considered overweight and 25% was obese, Mr. McDonald said.

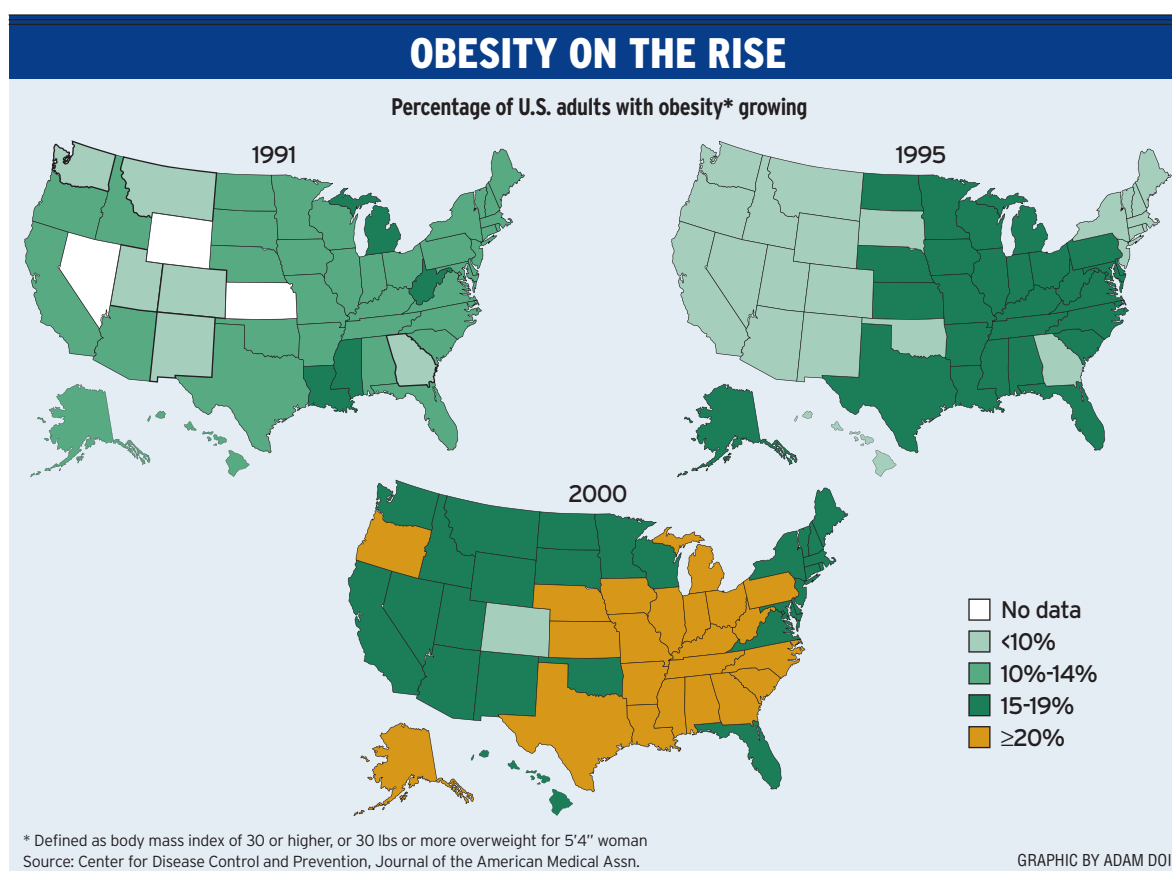
"Our first reaction was to provide short-term weight loss programs," he said. But when another health risk appraisal was done a year later, GM found that employees had put the weight back on.

"That didn't necessarily dampen our enthusiasm about weight loss programs," Mr. McDonald said, "but it meant that we really needed a different model." The model they sought was one that would result in long-term weight loss, he said.

"That's what we're trying to work on now, coming up with a strategy for this," Mr. McDonald said. That strategy will include more peer-to-peer support groups, ongoing nutrition and exercise counseling and cooking classes.

While GM will cover gastric bypass surgery for an employee with a BMI of 40 or more or an employee with a BMI of 35 to 40 and a comorbid condition such as diabetes, it does not cover obesity-related drugs for its salaried employees, Mr. McDonald said. Hourly United Auto Workers employees do have coverage for obesity drugs as part of their negotiated benefits plan.

"We may be ahead of other companies in recognizing (obesity), but we don't have the answers here," Mr. McDonald said. "We're trying to do the right thing by helping people, but we don't have the answer yet."



FMLA: States debate extending paid leave benefits

Continued from page 3

unemployment insurance benefits, and told the department to develop model state legislation to promote this.

The subsequent regulation, sometimes called the "baby UI rule," was promulgated in June 2000 and was immediately challenged by business groups and individual companies, including the U.S. Chamber of Commerce. They filed a complaint in federal district court in Washington, D.C., seeking to have the regulation withdrawn on the basis that it violates federal law, which only permits states to pay unemployment compensation benefits to the unemployed. The case is pending.

Several bills seeking to fund FMLA leave have been introduced into Congress, but observers do not expect any federal legislation without Democrat control of both houses of Congress. "I don't see any sort of FMLA expansion getting through Congress this year," said Jeanette Kozloff, a Washington-based consultant for Hewitt Associates L.L.C. "I think it will definitely come back again next year," though it is unclear how much momentum these proposals will have, she said.

State action may well precede any federal legislation, say some observers. Dennis Blair, Newbury Port, Mass.-based senior vp for Aon Consulting, said because family and medical leave laws were approved by several states even before the FMLA, it is likely that the states will once again take the lead on the issue of paid leave.

Although activity has been relatively quiet in recent months, last year family leave benefit bills were introduced in at least 26 states, according to the Washington-based National Partnership for Women & Families.

Many of the proposals, in line with the Labor Department regulation, called for using excess unemployment insurance to fund paid leave. In addition, there have been proposals that states extend their temporary disability systems to fund these programs. Another proposal calls for allotting general fund money or establishing tax credits for employers that provide family leave benefits, according to the National Partnership.

Businesses in New Jersey are particularly worried about A.B. 1892, which has strong labor support.

The bill, which may be voted on this fall, would mandate eight weeks of benefits for workers taking leave to care for children in the first 12 months after their birth or adoption, and four weeks to care for sick or injured family members. Workers would receive two-thirds of pay up to a maximum of \$400 weekly. The benefits would be paid from the state's temporary disability insurance system and would be tax-funded.

Opponents say using unemployment funds for paid leave is inappropriate. It is "like trying to play golf with a tennis racket," said Eric J. Oxfeld, president of the Washington-based UWC-Strategic Services on Unemployment & Workers Compensation, a national business

advocacy group that lobbies on workers compensation and unemployment issues.

"Unemployment insurance is a program created to help workers who have lost their jobs" and should not be used to fund paid leave, said Mr. Oxfeld.

Furthermore, this approach relies on the court-challenged Labor Department regulation. Dennis Fiszler,

'We strongly believe you don't need a mandate to treat your employees well.'

*Deron Zeppelin
Society for Human
Resource Management*

senior employee benefits attorney for Willis Group Ltd. in St. Louis, said insofar as state activity is concerned, "It'll be very interesting to see what develops as the litigation is resolved."

Some observers believe another approach may ultimately be taken on the issue of paid family leave. "Even among progressive policymakers, there's really a pretty ingrained sense that the unemployment insurance program is really only appropriate for people who lose their jobs," said Vicky Lovell, a study director with the Washington-based Institute for Women's Policy Research.

Some believe the most likely eventual approach will be to divide the cost of paid leave between the federal or state government, employers and employees, with employees' share coming in the form of lower pay while they are on leave. A similar approach has been taken in some European countries.

More states may also take the more moderate approach followed by Washington state, where last month Gov. Gary Locke signed into law a bill effective next year that permits workers to use sick leave and other paid time off to care for a sick relative.

The issue needs more work on policy design as well as some experimentation on the state level to determine what works best, said Ms. Lovell. Because of their different demographics and economic situations, "it'll be different in different states," she said.

But clearly any paid leave means someone is ultimately going to pay. "There's unfortunately no free lunch out there," said Ed Potter, president of the Washington, D.C.-based Employment Policy Foundation. "If, for example, employers provide the paid leave, that has implications for wages and other benefit increases workers would otherwise receive. It's misleading of people to think they can get paid family leave and there won't be other consequences that go along with that."

The issue is unlikely to go away, say observers. "It's going to constantly be brought up," said Veronica Hellwig, senior consultant for Watson Wyatt Worldwide in Boston. "I don't think it'll ever be

off the table."

Employers oppose legislation that would commit them to provide paid FMLA leave.

"We strongly believe you don't need a mandate to treat your employees well," said Deron Zeppelin, director of governmental affairs for the Alexandria, Va.-based Society for Human Resource Management.

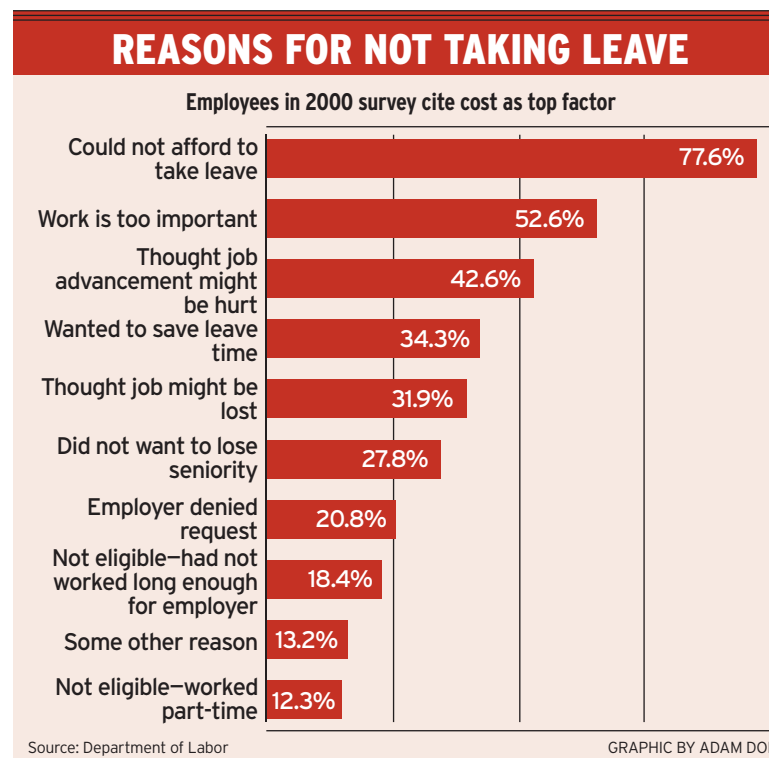
The best way is to "provide incentives, but not a heavy stick," said Jim Leonard, vp-government relations for the New Jersey Chamber of Commerce in Trenton. "Mandates never work."

Barb Ross, human resources manager at St. Louis-based Color-Art Office Interiors, said, "The FMLA is a great law, but I do not believe that people who elect to take 12 weeks of leave should be paid for that time. It's their option to take it."

Furthermore, any mandated plan is almost certain to mean additional costs for employers, they say. Not only may firms be responsible for paying at least part of their absent employees' salary but they will also have to hire more replacement workers as paid programs are likely to be more heavily used.

If there is paid leave, "I think more people would take it," said Ms. Ross. Furthermore, "I think you'd find more people abusing the system because they'll get paid for it."

Employers "believe that there would be an incredible increase in utilization, and any time there's lost time from work, there's a direct and an indirect cost to employers," said Mary Tavarozzi, Towers Perrin's Chicago-based national practice leader for absence and disability



consulting.

Research by Portland, Maine-based CORE Inc., an absence management firm, indicates that while 1% to 9% of employees will take unpaid family leave, this percentage soars to 20% to 25% when leave is paid, said Rebecca Auerbach, vp of research. CORE also estimates that replacing hourly workers can cost employers two to five times the salary of the employee on leave because of overtime or the higher hourly rates charged by temporary workers.

Also, other employees may resent having to fill in for employees taking FMLA leave, said Ms. Auerbach.

Watson Wyatt's Ms. Hellwig agreed. "There's always the struggle and the issue within the workforce of those individuals who are single or don't now have children who feel in some instances put upon by benefits for those who do," she said.

But some observers believe paid family leave may ultimately serve business well. If you have a sick parent, child or spouse, "it's important to be able to spend some time with them, and in the long run, it's good for business" because it helps keep workers productive, said Jodi Grant, director of work and family programs at the National Partnership for Women & Families.

Comings & Goings

Managed care:

Barbara Hill has been named president of Express Scripts Inc., a St. Louis-based prescription benefit management company. Ms. Hill formerly was senior vp of operations at CIGNA Healthcare and served on Express Scripts' board of directors.

Insurers:

Chuck Chokel has been named managing director of OneBeacon Insurance Group in Boston, a unit of White Mountains Insurance Group Ltd. Previously, Mr. Chokel was chief financial officer at Conseco Finance.

Reinsurance:

David E. Hosler has joined reinsurance broker John P. Woods Co. Inc. as a senior vp. John P. Woods Co. is a Jersey City, N.J.-based unit of Arthur J. Gallagher & Co. Mr. Hosler previously

was chairman and chief executive officer of Old Guard Group Inc., the public company parent of Old Guard Insurance Group.

Brokers:

Kevin W. Conboy has been named chief operating officer of Acordia Inc. in Chicago. Previously, Mr. Conboy was senior vp & regional managing director of Acordia's East region. He replaces **Robert C. Kent**, who is retiring.

Regulators:

Louis V. Pietroluongo has been named first deputy superintendent of the New York Insurance Department in Albany, N.Y. He previously was deputy superintendent. **Peter J. Molinaro** has been appointed senior deputy superintendent of the New York department. Previously, Mr. Molinaro was general

counsel at the New York State Workers Compensation Board.

Other suppliers:

Jonathan E. Kost has been appointed manager of the Claims Analytics Group of Marshall & Swift/Boeckh, a New Berlin, Wis.-based firm that provides cost data and estimating services for the property insurance industry. Mr. Kost previously was responsible for the company's IntegriClaim technology development, as well as leading the independent adjuster and catastrophe markets.

Joseph J. Schiavone, co-managing shareholder in the law firm of Budd Lerner Gross Rosenbaum Greenberg & Sade P.C. in Short Hills, N.J., has joined the firm's new Alternative Dispute Resolution Services Group. The firm specializes in insurance litigation and arbitration, including reinsurance, primary and excess insurance coverage disputes.

Ergonomics: Voluntary guidelines debated

Continued from page 1

rescind it a few months later. Tempers flared during last week's hearing and, at one point, a brief shouting match erupted between Sens. Christopher Dodd, D-Conn. and Jeff Sessions, R-Ala., over how seriously the Alabama lawmaker took the issue of ergonomic injuries.

Meanwhile, a bipartisan group of senators introduced legislation that would require the federal government to promulgate an ergonomics standard within two years. By invoking the Congressional Review Act, Congress had banned the Occupational Safety and Health Administration from issuing any ergonomics standard that is substantially the same as the revoked standard. After that action, Ms. Chao drew some senatorial fire for refusing to commit to promulgation of even a substantially different rule (*BI*, April 30, 2001).

The fact that Republicans on the Health, Education, Labor and Pen-

sions Committee were less than pleased with Sen. Kennedy's decision to hold another hearing into ergonomics was evident in the opening comments of the ranking minority member, Sen. Judd Gregg, R-N.H. He noted that hearings usually seek to gather information and then noted that last week's hearing was titled, "Over One Year Later: Inadequate Progress on America's Leading Cause of Workplace Injury."

"I have to conclude" that the hearing had been summoned to back a foregone conclusion, Sen. Gregg said. "To point the finger of blame" at the Bush administration "is an inappropriate and probably unproductive approach to the issue" of ergonomics safety, he said.

As senators staked out partisan ground, Ms. Chao defended the administration's approach to the issue as necessary to protecting workers as quickly as possible. Relying on voluntary adherence to industry-

specific guidelines, outreach, education and vigorous enforcement of the Occupational Safety and Health Act's "general duty" provision to reduce repetitive motion injuries will avoid costly delays in assuring safety, she said. Ms. Chao added that she thinks issuing a new rule would take at least four and a half years. Even that timetable would be stretched if the new rule became the target of litigation, she said.

Ms. Chao also announced that the first industry-specific ergonomics guidelines would be developed for nursing homes. But she came under harsh questioning from the panel's Democrats when she could not provide a deadline for issuing the guidelines.

And after Sen. Sessions remarked that he could not tell whether pain in his wrist stemmed from swinging a machete while cutting brush or from working out in a gym, Sen. Dodd asked Ms. Chao, "Is this a serious issue?" He added, "Our col-

league from Alabama doesn't think so." Sen. Sessions shouted that he did take the matter seriously and the ensuing exchange forced Sen. Kennedy to gavel the hearing back to order.

Although Ms. Chao declined to comment on the new legislation calling for an ergonomics standard because she had not yet read it, it's clear that the measure offered by Sens. John Breaux, D-La., and Arlen Specter, R-Pa., on Wednesday night runs counter to the Bush administration's approach.

The Breaux-Specter bill, which 22 other senators are co-sponsoring, would require any new federal labor rule to define clearly the circumstances under which an employer would have to address ergonomics hazards and the standards that would be used to measure compliance. It would also prohibit any new rule from expanding existing state workers compensation laws.

"I think it is significant because it

signals a willingness by a number of senators to insist that the department issue a new rule," said John Savercool, vp-federal affairs for the American Insurance Assn. But he added that he finds it "hard to envision how a rule that would be substantially different would emerge under the legislation." That is because the bill requires the Labor secretary to "basically use the data OSHA used in writing the old rule, so I don't know what new product they would come up," he said. He added that he doesn't think the Labor Department's leadership "believes there is a justification for a new rule."

Mr. Savercool speculated that the measure might be attached to the Labor/Health and Human Services appropriation bill because of the shrinking Senate calendar and because the ranking GOP member of that relevant appropriations subcommittee happens to be Sen. Specter.

VEBA: Unusual move questioned

Continued from page 1

LTV retirees approached Americana about organizing the VEBA when they learned it was in negotiations to take over LTV's existing VEBA, he said. The company subsequently decided against the plan, and the LTV VEBA was terminated as of March 31 for lack of funds, said Mr. Fleet.

Cleveland-based LTV filed for bankruptcy in 1986 and again in 2000, and the company is liquidating its LTV Steel operation. The Pension Benefit Guaranty Corp. earlier this month took over and terminated LTV's three massively underfunded pension plans. The plans, which have 82,000 participants and are underfunded by about \$2.2 billion, are the largest ever taken over by the PBGC (*BI*, April 1). The PBGC, though, does not guarantee health care benefits when companies fail.

The new VEBA will offer not only health insurance but also dental, life and critical-illness benefits. Coverage for former employees who are under 65 will be self-insured, with reinsurance provided by a consortium of companies led by White Plains, N.Y.-based Gerber Life Insurance Co., said Mr. Fleet.

Americana has negotiated contracts with several preferred provider organizations nationwide, Mr. Fleet said. Two health plans are offered under the VEBA: one has a \$250 deductible if network health care providers are used and a \$500 deductible for out-of-network providers, while the second plan has a \$2,500 deductible.

Payments start at about \$200 a month. By comparison, coverage under the Consolidated Omnibus Budget Reconciliation Act costs about \$580 monthly, said Mr. Fleet. Coverage for Medicare-eligible retirees that will fill gaps in the Medicare program will be offered through an insurer to be announced, with payments starting at

\$90 a month, he said.

The VEBA will apply to the Internal Revenue Service within 15 months for approval of its tax-exempt status, as required, he said. Americana will provide a service center for all the benefit programs, but former employees will staff the VEBA's board and serve as fiduciaries, he said.

VEBAs have existed since 1928. Although rare today, employee-sponsored VEBAs operated before the Employee Retirement Income Security Act was enacted in 1974, when "it was confirmed that it was appropriate for employers to actually sponsor VEBAs" themselves to help fulfill the law's requirements, said Michael Langan, principal and attorney with Towers Perrin in Valhalla, N.Y.

Even employer-sponsored VEBAs' popularity waned, though, after passage of the Tax Reform Act of 1984, which said employers could not receive tax deductions for contributions that boost their reserves above a certain level.

Diane J. Fuchs, a benefits attorney with Womble Carlyle Sandridge & Rice in Washington, said although the Internal Revenue Service may ultimately rule in the new VEBA's favor, one possible concern is whether former employees can technically be included in a new VEBA.

But Mr. Fleet said Americana's attorney has advised the company that it is acceptable. Russell Greenblatt, a benefits attorney with Katten, Muchin & Zavis in Chicago, said the original 1928 legislation was intended to give tax exemption to funds raised by self-help employee groups in the days before employer-provided insurance became standard.

Observers also say the VEBA could fall prey to adverse selection. Tom Boldt, Denver-based national director of client services for Watson Wyatt Worldwide, said, "It'll



Rallies last year did not keep LTV from going bankrupt, so ex-workers and retirees of the steel company formed a VEBA.

have a tough time being viable over the long haul just because it'll be subject to the same kind of dynamics any kind of insurance plan is subject to. Healthy retirees will likely shop for the best deal" and leave the VEBA, forcing it to raise prices. This in turn may cause even more members to leave, setting off a "death spiral," he said.

Mr. Fleet said that some of the younger plan members may leave as they get other jobs, but "we've thought long and hard and done a lot of analysis on this." The very sick will probably elect to stay with COBRA coverage, he said. The VEBA is a "limited benefit plan" that offers up to \$1 million in lifetime coverage, with a \$50,000 annual maximum. There is also a \$25,000 inpatient and a \$5,000 outpatient annual limit for immune system, cardiovascular and cancer-related disorders, he said.

The VEBA "could definitely make a go," but "someone's going to have to be prepared to make some difficult decisions if there's going to be bad experience," Ms. Fuchs said.

Similar VEBAs may follow, she said. "If it works here, it could work in similar circumstances elsewhere."

ADEA: Case settled

Continued from page 3

retirees to an HMO and required those younger retirees to pay monthly premiums equal to the Medicare Part B premiums paid by older retirees.

The settlement of the Erie County case resulted in developments some benefits experts had predicted after the 3rd Circuit ruled that the ADEA applies to retiree health care plans—that, in order to settle discrimination charges, employers would cut health care benefits for younger retirees.

"This is exactly what people were concerned about. It is what was feared but is not a surprising result," said John Piro, an attorney in the Norwalk, Conn., office of Hewitt Associates L.L.C.

"This should be a younger retiree's nightmare. You pay more and get less," said Rich Stover, a principal with Buck Consultants Inc. in Secaucus, N.J.

Indeed, experts note that the only practical defense for an employer against an ADEA discrimination charge involving retiree health care benefits would be to equalize benefits for younger and Medicare-eligible retirees.

Although employers could bump up the benefits provided for older retirees, these experts note, such moves would be unlikely in a time of rising costs. Instead, they say, employers would most likely diminish the benefits they provide to younger retirees to achieve equality.

Despite the 3rd Circuit ruling, there have been few such moves.

"Employers are watching and waiting," said Mr. Stover. He and others note, for example, that another court could rule differently and find that the ADEA does not apply to retiree health care plans.

"This issue still is tremendously unresolved," said Nancy Ross, a partner at the law firm of McDermott, Will & Emery in Chicago.

In addition, the Equal Employ-

ment Opportunity Commission, which originally incorporated the 3rd Circuit ruling in its enforcement manual, last year rescinded its policy deeming it discriminatory for employers to provide less coverage for Medicare-eligible retirees than for other policies (*BI*, Aug. 27, 2001).

At the time the EEOC withdrew the rules, its chairwoman, Cari M. Dominguez, said the agency would develop new rules that do not discourage employers from providing retiree health care benefits.

The EEOC has yet to develop those new rules, though, and last week a spokeswoman said she did not know when the rules would be published.

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April 22, 2002

FTR

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

RIMS may get partners for scorecard successor

The Risk & Insurance Management Society Inc. may soon have two new partners for its Performance

Satisfaction Measurement Tool. Speaking during a question-and-answer session at last week's 40th RIMS Annual Conference and Exhibition in New Orleans, outgoing RIMS President David Mair said that RIMS will announce, within the next 30 to 60 days, "significant partnerships" with the Council of Insurance Agents & Brokers and the American Insurance Assn. The Performance Satisfaction Measurement Tool is the successor to the RIMS/Quality Insurance Congress Quality Scorecard. RIMS and the CIAB "haven't reached a final agreement," said a CIAB spokesman. "But the Council looks forward to working with RIMS to release the scorecard some time in 2003." An AIA spokesman said the group has not yet seen details of the RIMS proposal.

Rising prices top buyer concerns

The most commonly cited concern for risk managers in the hard market is the increasing cost of coverage, according to a survey of insurance buyers. The survey results, released by Munich-American Risk Partners, show that 73% of insurance-buyer respondents cited rising insurance prices as one of the biggest

challenges they currently face. Coverage problems were cited by 48% and capacity concerns by 25%. The survey also found that of the 90 respondents, 59% said they have long-term relationships with insurers, but 69% of those respondents indicated that they expect those relationships to

change over the next 24 months.

P/C industry sees \$7.9 billion loss

The property/casualty insurance industry suffered its first-ever full-year net loss last year, according to an estimate by the Insurance Services Office Inc. and the National Assn. of Independent Insurers. The industry's net loss after taxes reached \$7.92 billion in 2001, compared with net income of \$20.56 billion in 2000, according to the ISO/NAII estimates, which are based on the reports of insurers that account for 96% of all domestic property/casualty business. The groups also estimate that the industry's statutory surplus fell to \$289.65 billion by the end of last year, from \$317.36 billion at the end of 2000.

RIMS, OSHA to partner on safety efforts

The Risk & Insurance Management Society Inc. and the Occupational Safety and Health Administration have entered into an alliance to promote safety and health programs. A primary objective of the alliance, which significantly expands a partnering charter OSHA and RIMS signed in 1998, will be to develop tools for measuring how safety and health can benefit businesses and organizations. The first step in the partnership will be the establishment of an implementation team made up of representatives from OSHA and RIMS.

Highlands Insurance mulls bankruptcy

Troubled insurer Highlands Insurance Group Inc. is considering filing for bankruptcy protection as it faces an April 30 deadline for repayment of \$47.5 million in bank debt and as its insurance subsidiaries reel from losses in 2001. Highlands, which ceased underwriting late last year, disclosed in its year-end 10-K filing that it is already in default on a bank credit agreement covering \$47.5 million in debt due at the end of this month. The company also owes \$62.85 million to holders of its convertible debentures, who could

accelerate the debentures' maturity dates if Highlands fails to repay its bank debt. Meanwhile, the 10-K discloses huge losses for 2001, which Highlands attributed largely to reserve increases for workers compensation, general liability, commercial multiple peril and auto business.

PHOTO: SPENCER PLATT/GETTY IMAGES



Workers at the World Trade Center recovery site have a lost-workday injury rate that is half that of a comparable work category.

Low injury rate seen in WTC recovery work

The lost-workday injury and illness rate among workers at the World Trade Center recovery site is only about half that of specialty construction, the work category that bears the closest resemblance to the work being done in New York, according to the Occupational Safety and Health Administration. The lost-workday injury and illness rate—which is calculated by dividing the number of OSHA-recordable injuries and illnesses by the number of hours worked—at the site was 2.3, compared with an average of 4.3 for specialty construction, OSHA said.

Claims service key factor in buyer decisions: Survey

Risk managers see claims service as a significant factor in their property/casualty insurance buying decisions, according to a survey conducted by Chubb Corp. According to the survey of 400 risk managers, 76% said that claims service is the major or a significant factor weighed in selecting new property/casualty insurers. In addition, 70% of respondents consider claims service "highly important" in evaluating current property/casualty insurers, and 36.2% said they have terminated a relationship with an insurer because of the company's

claims-handling practices.

Briefly noted

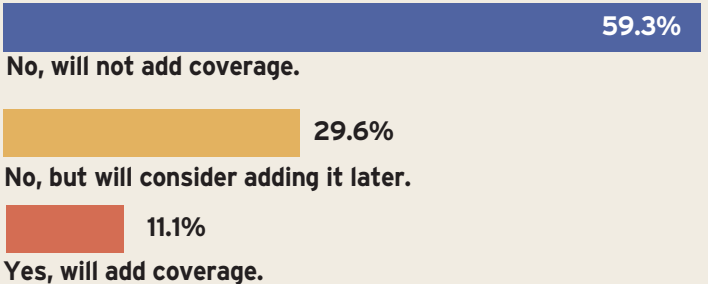
The Supreme Court refused last week to review a lower court's ruling that Jacksonville, Fla.-based Winn-Dixie Stores Inc.'s now-terminated

corporate-owned life insurance program constituted an illegal tax shelter (BI, July 2, 2001)...Paris-based reinsurer SCOR S.A. has agreed to sell Fulcrum Insurance Co. to Argonaut Group Inc. of San Antonio. Jerome Faure, president and chief executive officer of SCOR U.S., said in a statement that the surplus lines operations of Fulcrum, which SCOR acquired as part of its purchase of Sorema N.A. last July, did not fit with

SCOR's core reinsurance business. Scottsdale, Ariz.-based Fulcrum had gross written premiums of \$45.6 million in 2001. Terms of the sale were not disclosed...The Independent Insurance Agents of America has changed its name to the Independent Insurance Agents & Brokers of America, to better reflect the nature of the producer group, according to Robert Rusboldt, CEO of the Alexandria, Va.-based trade association...Judith A. Blades has been named Insurance Woman of the Year by the Assn. of Professional Insurance Women. Ms. Blades is senior executive vp of property/casualty operations for The Hartford Financial Services Group Inc. The award will be presented at a June 5 reception in New York...The Occupational Safety and Health Administration plans to perform comprehensive safety and health inspections at about 3,000 worksites during the next year. Inspectors will target employers that reported 14 or more injuries or illnesses that resulted in lost workdays or restricted activity, for every 100 full-time workers during 2000, excluding construction worksites. In addition, a new program will focus on hazards in nursing care facilities.

Online Poll [4/15 - 4/19]

In light of a change in IRS tax treatment, will your company health care plan now provide coverage of weight management programs?

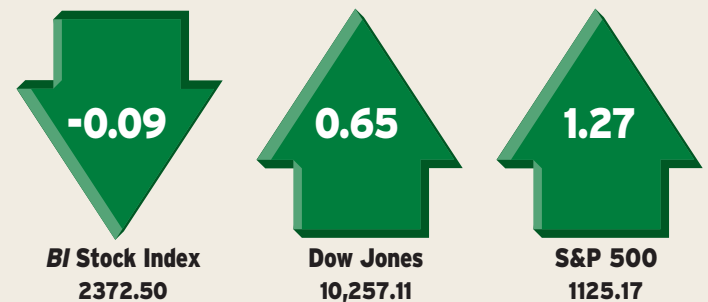


Take part in our weekly poll at www.businessinsurance.com

BI Stock Index [4/15 - 4/19]

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

Percentage change of BI Stock Index vs. key indicators



Largest gains

PacifiCare Health Systems	36.89%
Unico American Corp.	14.04%
United HealthGroup	11.69%
Sierra Health Services	11.15%
Humana Inc.	9.90%

Largest losses

Clark Bardes Holdings	-18.76%
Argonaut Group	-4.66%
AIG	-4.01%
W.R. Berkley Corp.	-3.53%
Navigators Group	-3.51%

Weekly change by market segment

Brokers	-1.80%
Insurers/Reinsurers	0.80%
Managed Care Organizations	9.43%

Source: CNET Investor (investor.cnet.com)

CIAB: Rates continue to rise

Continued from page 2

creases of more than 100%. Commercial property also hardened considerably, with 89% of the respondents reporting increases of at least 10%. Thirty-four percent reported increases of 30% to 50% for that line; 13% reported increases of 50% to 100%; and 3% reported increases of more than 100%. Eighty-three percent of the re-

spondents reported increases of at least 10% for general liability; 78% had increases of at least 10% for business interruption; 73% had increases of at least 10% for commercial automobile; and 66% had increases of at least 10% for workers compensation. Rate increases for those lines most commonly fell into the 10% to 30% range, though, with few respondents reporting in-

creases of more than 100%.

Thirty-nine percent of the respondents reported increases of at least 10% for surety bonds, though 31% did not respond to that question.

Respondents also reported that group medical premium rates have continued their rise since January, most frequently in the 10% to 30% range.



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