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Employers easing 401(k) rules: Study / 3

Business Insurance®

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April 29, 2002

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$4

St. Paul selling reinsurer

Move is latest in Fishman's transformation of insurer

By DOUGLAS McLEOD

ST. PAUL, Minn.—The St. Paul Cos. Inc.'s planned spinoff of its reinsurance operations, the latest in a series of restructuring moves, will leave a smaller, more narrowly focused and possibly more profitable commercial insurer, analysts say.

St. Paul announced last week that it will transfer its ongoing reinsurance business, which accounted for almost 18% of its 2001 consolidated revenues, to a newly formed Bermuda company that, in turn, plans to raise nearly $1 billion in capital in an initial public offering.

The Bermuda company, Platinum Underwriters Holdings Ltd., has already filed offering documents with the Securities and Exchange Commission to sell up to 46 million shares of stock. It plans to commit most of the $940 million in expected net proceeds to former St. Paul reinsurance units in the United States, United Kingdom and Bermuda.

The public offering would amount to 75.1% of Platinum's stock. St. Paul would retain a 24.9% stake in Platinum, though the stake would carry only 9.9% of the shares' voting rights to preserve tax benefits for the two companies, a St. Paul spokesman said.

Mr. Fishman

Platinum will reinsure St. Paul units for nearly all of the reinsurance contracts it entered into during 2002 but will not assume any liabilities for contracts in effect before Jan. 1, 2002. St.

See ST. PAUL/page 42

PHOTO: AFP

The April 23 collision of commuter and freight trains killed two people and injured about 270.

Further hardening likely to follow

Rail insurance market reels from two major accidents

By ROBERTO CENICEROS

Two fatal train accidents in recent weeks may accelerate hardening in the railroad insurance market, even though the companies involved are likely to retain significant losses from both accidents.

In the most recent accident, a double-decker commuter train owned by Metrolink, a Southern California commuter train operator, last week was struck head-on by a freight train owned by Burlington Northern Santa Fe Corp. The April 23 accident, which occurred in Placentia, Calif., during the morning commute, killed two Metrolink passengers and sent many more to local hospitals, with officials reporting about 270 injuries.

National Transportation Safety Board investigators last week were focusing on whether the freight train's engineer had run two warning signals before the crash. The two trains were on the same rail track, which is owned and operated by BNSF. Fort Worth, Texas-based BNSF declined to comment while the investigation continues.

See TRAIN/page 41

Partner files for spousal benefits in WTC death

By SALLY ROBERTS

NEW YORK—A recent case in New York in which a gay man is seeking workers compensation spousal benefits is bringing attention to state laws on domestic partner benefits.

Larry Courtney, whose partner of 14 years was killed in the World Trade Center collapse in September, is awaiting a ruling from the New York State Workers Compensation Board to determine whether he is entitled to workers comp spousal benefits.

While employers all over the country have slowly extended health care benefits to domestic partners over the last 20 years, this is the first case of a domestic partner seeking coverage under New York's workers compensation laws, according to the Lambda Legal Defense & Education Fund, a New York-based gay rights group representing the Mr. Courtney.

Vermont is the only state that extends domestic partner workers compensation benefits to surviving spouses, according to Adam Aronson, a staff attorney with Lambda Legal representing Mr. Courtney. In 2000, Vermont became the first and only state to recognize civil unions between same-sex couples. Under its civil union law,

See BENEFITS/page 42

Late News

Allianz offers terrorism coverage for airlines

Allianz A.G. Holding is offering a $1 billion airline insurance program to cover third-party terrorism liability risks. The coverage provides up to $1 billion per aircraft and $2 billion per airline for war- and terrorism-related third-party liability claims. Premiums will be calculated on a per-passenger basis. Although the coverage is provided to individual airlines, if four events occur that cause losses for any of the airlines covered under the program, the coverage will automatically be terminated. Ten other insurers are participating in the program, including Berkshire Hathaway Inc., Hannover Re Group and Partner Re Ltd., an Allianz spokesman said.

HIH investigation extended to 2003

The Australian government has given the Royal Commission investigating the collapse of HIH Insurance Ltd. until Feb. 28, 2003, to report its findings. The commission, headed by Justice Neville Owen, was originally due to present its report on June 30, 2002. Since it was established earlier this year, the investigatory panel has heard evidence on several complex matters, including differing opinions on whether financial reinsurance deals were used to cover up poor financial results for an insurer acquired by HIH.

Justice Owen

Medical costs, disputes drive up price of cover

Increased consumer demand, drugs, medical devices and other medical advances are behind nearly half the average 13.7% increase in health insurance premiums paid by large employers, a new study has found. The other half of the increase was driven largely by litigation, mandates and rising provider expenses, according to "The Factors Fueling Rising Healthcare Costs," a study prepared for the American Assn. of Health Plans by PricewaterhouseCoopers. The added spending in 2001 resulting from litigation, mandates and

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Spotlight

RIMS REPORT 2002

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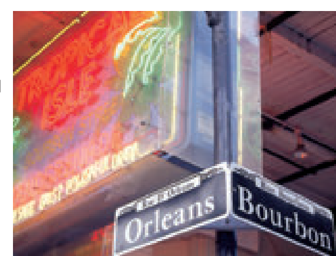

NEWSPAPER

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House vote set on COBRA proposal

Business groups are trying to convince federal legislators to amend a controversial COBRA provision. Page 4

Segway? No way!

Editor Paul D. Winston lacks optimism about attempts to incorporate a much-hyped newfangled scooter into the war on urban crime. Page 6

Directive provides protection to all

Employers should embrace a new E.U. directive that establishes sexual harassment as a form of illegal discrimination, this week's editorial says. Page 8

China focuses on work safety

The Chinese government is rolling out new workplace safety regulations. Page 37

Burden of proof shifts to employers

An E.U. directive on sexual harassment in the workplace shifts the burden of proof to employers. Page 37

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

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CONTINUED FROM PAGE ONE

Ms. Ignagni

fraud and abuse, which collectively amounted to $18 billion, could have insured 6.8 million more Americans, estimated Karen Ignagni, AAHP president and chief executive officer.

Late News

AIG profits rise 6.7% in first quarter

Rate increases helped American International Group Inc. post net income of $1.98 billion for the first quarter, a 6.7% increase over the year-earlier period. AIG's worldwide property/casualty insurance premiums increased 30.2% during the first three months of the year to a record $6.33 billion, the company said. Meanwhile, AIG's combined ratio for that business was 95.76%, compared with 95.89% in the first quarter of 2001. In the United States, AIG had record net written premiums of $3.45 billion in the first quarter—up 43.2%—with a combined ratio of 97.65%.

Germany to offer excess coverage for terrorism

The German government will provide 10 billion euros excess of 3 billion euros ($8.98 billion excess of $2.69 billion) in terrorism coverage for industrial and commercial risks, Chancellor Gerhard Schroeder announced last week. Following meetings between German industry and insurance representatives, the German government agreed to provide the state-backed coverage for German companies, with insurers providing the first 3 billion euro layer. The state-backed coverage will be guaranteed for three years, a German government spokesman said, adding that full details of the arrangement still need to be worked out.

Mr. Schroeder

Aetna posts $2.83 billion loss

Aetna Inc. reported a $2.83 billion loss for the first quarter of 2002, due to a mandated accounting change that forced the health insurer to take a $2.97 billion noncash charge against goodwill. The new accounting rule, Financial Accounting Standards No. 142, requires a company to set a value on its goodwill assets, record any impairment in that value and take a corresponding charge against shareholders' equity. After adjusting for FAS 142 on a pro-forma basis, Aetna's operating earnings more than quadrupled to $64.9 million. Revenues for the first quarter of 2002 fell 18.2% to $5.26 billion.

Tennessee doctors sue four HMOs

A Tennessee doctors group is suing four health insurers, charging that their health maintenance organization plans arbitrarily denied payments and engaged in other unfair and deceptive practices. The suit was filed by the Tennessee Medical Assn. Among the doctors' allegations are that the insurers—CIGNA HealthCare, Aetna Inc., Blue Cross & Blue Shield of Tennessee and United HealthCare—avoided payments for care, failed to properly staff utilization review departments, insisted upon one-sided contracts that compromise the doctor-patient relationship and improperly reviewed claims by using computer programs to automatically deny claims.

Briefly noted

The Leapfrog Group has announced it will expand its patient safety efforts to 12 new regions in the United States, adding to the seven regions originally targeted by the organization last year. Nearly 40% of the people in the United States live in regions the Washington-based group has targeted for implementation of its standards to reduce medical errors in hospitals, the group said....**WellPoint Health Networks Inc.** reported first-quarter profits of $141 million, up from $96.5 million during the same period last year. The Thousand Oaks, Calif.-based health plan increased its membership to 13 million after its acquisition earlier this year of Blue Cross & Blue Shield of Missouri and Healthlink....Tort reform legislation that would have limited damages in **civil suits arising out of construction defects** was voted down in the Colorado House of Representatives last week. The bill, H.B. 1398, had been backed by the Alliance of American Insurers....Robert S. Giles, president and chief operating officer of R.W. Scobie Inc./Midwest General Agency CMGA in Eau Claire, Wis., is the 2002-2003 president of **the American Assn. of Managing General Agents.** Ronnie C. Moore, president and owner of Southern General Agency in Bowling Green, Ky., is the 2002-2003 president-elect of the AAMGA. The two, along with a new slate of directors, formally take office during the AAMGA's annual meeting May 5-9 in Las Vegas. Baron Garcia, president of the Oklahoma General Agency in Oklahoma City is the outgoing AAMGA president....**Atrium Underwriting P.L.C.** has recorded a pretax loss of £15.2 million ($22.1 million) for 2001. Atrium, which manages Lloyd's of London syndicates 570 and 609, attributed the loss mainly to reserve increases related to Sept. 11....**Cox Insurance Holdings P.L.C.** has reported a £201 million ($292.7 million) loss for the 2001 year, in large part because of £125 million ($178.1 million) in estimated liabilities related to Sept. 11. London-based Cox plans this year to exit commercial property and reinsurance and to focus on personal lines.

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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.

PacifiCare settlement serves as warning

Government gets tough on billing errors

By MICHAEL PRINCE

WASHINGTON—This month's settlement by PacifiCare Health Systems Inc. of charges brought by the federal government concerning overbilling for insuring federal employees may signal a warning to health plans that the government is scrutinizing them more closely.

To settle a suit that it overcharged the government for health insurance for federal employees under the Federal Employees' Health Benefits Program, PacifiCare has agreed to pay the government $87.3 million, the largest settlement ever for contracts involving the FEHBP, according the U.S. Department of Justice, which prosecuted the case.

PacifiCare® Health Systems

Valerie Fletcher, a former employee of PacifiCare, originally brought the suit, under the False Claims Act in 1998. The federal government then took over the suit, as permitted under the law. The suit alleged that two predecessor companies of PacifiCare, FHP International Corp. and TakeCare Corp., violated federal government rules for the FEHBP program. The suit alleged, among other items, that the company failed to offer the government the same rate it charged its commercial customers from 1990 to 1997.

PacifiCare has denied the allegations, and in the settlement it admitted no wrongdoing. Ms. Fletcher will receive about $3.5 million under the settlement, which is permitted under the False Claims Act.

PacifiCare will continue to participate in the FEHBP program, a Justice Department spokesman said.

The settlement should signify a wake-up call to health plans involved in the FEHBP that the government is taking enforcement of the regulations more seriously, said two attorneys who represent health plans in similar suits.

"There is another federal program they (health plans) have to pay attention to," said Kathleen Karelis, partner with Miller &

See PACIFICARE/page 39

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RECONSIDERING RESTRICTIONS

How likely are employers to change the diversification/transfer opportunities in their 401(k) plans?

	Already decided to	Very likely	Somewhat likely	Somewhat unlikely
Ease restrictions	13%	27%	22%	0%
No change to 2001 restrictions	8%	22%	6%	1%

Source: Hewitt Associates L.L.C.

Employers loosen 401(k) restraints

Rules eased after Enron debacle

By JERRY GEISEL

In light of congressional efforts to protect 401(k) plan participants, many big companies are voluntarily moving to ease restrictions they impose on employees' right to sell stock obtained as a company matching contribution, a new survey finds.

Nearly 85% of large employers that make matching contributions in the form of company stock impose some type of restriction, such as requiring employees to keep stock until they reach a certain age, according to benefit consultant Hewitt Associates L.L.C.

But, Hewitt found in a survey of 280 large employers that 62% of companies with such restrictions either have or are strongly considering easing the limits. Surveyed employers had, on average, more than 22,000 employees.

The plight of Enron Corp.'s 401(k) participants and congressional efforts to reform 401(k) safeguards have highlighted for employers the issue of protecting 401(k) participants.

Enron's 401(k) plan participants collectively lost more than $1 billion last year when the value of company stock they held became virtually worthless after Enron restated earnings to report massive losses. Enron matched 401(k) contributions only in company stock, and it barred plan participants from selling such shares until they had reached age 50.

To reduce the likelihood of similar problems developing at other companies, the House of Representatives recently passed legislation that would limit the amount of time employees could be required to hold on to company-contributed stock. Under that bill, employees could sell stock when they complete three years of service or three years after they acquire the stock. The Senate is likely to consider a similar proposal.

The Enron fiasco and the resulting legislation are factors driving employers to ease restrictions, as is growing employer concern about the risks to employees of concentrating too much of their 401(k) investments in company stock, said Lori Lucas, a defined contribution plan consultant in Hewitt's Lincolnshire, Ill., headquarters. "Diversification has become a major priority," she said.

In all, 13% of respondents in the Hewitt survey said they already have eased restrictions on selling company stock contributed as a 401(k) match, while 27% said it was very likely they would do so, and 22% said it was somewhat likely.

Media giant Gannett Co. Inc. ear-

See 401(k)/page 41

Union stresses that plan lacks its endorsement

Steelworkers union critical of VEBA for LTV workers

By JUDY GREENWALD

PITTSBURGH—The United Steelworkers of America is warning former employees and retirees of defunct steelmaker LTV Corp. that a voluntary employees' beneficiary association established to provide them with health insurance is not endorsed by the union.

Americana Financial/NEBCO announced earlier this month that it would administer a VEBA, which allows tax-deductible money to be set aside for employee health and other benefits, on behalf of former and retired LTV workers (*BI*, April 22).

In an April 19 letter sent to Americana, the union asks for detailed information about the VEBA, including copies of all plan documents, the names of the former LTV workers who established the VEBA, and the methodology used to set payments for medical coverage under the plan, called Steelworkers Benefits Plus.

"In our view, this is, at best, a very mediocre product, and that's why we want our retirees to know that the Steelworkers Union has had absolutely nothing to do with it," Leo W. Gerard, international president of United Steelworkers, said in a statement.

One of the concerns expressed by Mr. Gerard involved the similarities between the VEBA's logo and that of the union.

"I'm outraged that the promotion materials use words and symbols that would cause a retiree to believe that this is an offering that has something to do with our union. Any attempt to mislead our retirees will be challenged with the full resources of our union.

"The workers and retirees of liquidated companies have had their health benefits wiped out at the most vulnerable time in their lives. We'll never allow them to be misled by schemes that take advantage of their desperate need to maintain their dignity and well-being," Mr. Gerard said.

See VEBA/page 43

Bills would narrow the scope of California privacy law

By JUDY GREENWALD

SACRAMENTO, Calif.—California employers should keep their fingers crossed that two proposed bills intended to clarify an anti-identity theft law that went into effect in January will be approved without a hitch, employer attorneys and others say.

Observers say that law, whose passage caught the employer community by surprise, creates onerous reporting requirements and could seriously hinder employer investigations of employee misconduct, such as sexual harassment. It could also increase litigation against employers, observers warn.

A.B. 655, which amended California's Investigative Consumer Reporting Agencies Act, was intended chiefly to protect individuals against identity theft by allowing consumers access to information collected about them, say observers.

But observers say the measure was so broadly written that it affects employers in ways not intended by either the Legislature or by the bill's sponsor, Assemblyman Roderick D. Wright, D-South Central Los Angeles.

> **The law is 'very ambiguous...It's clear that the Legislature didn't know what they were passing when they enacted this.'**
>
> *Brian Ashe*
> *Seyfarth Shaw*

Mr. Wright is now sponsoring two bills intended to correct such problems in the original legislation, and they are being given a strong chance of passage.

Under A.B. 655, data that employers gather through background checks and other investigations is considered an investigative consumer report, and employers must notify the targets of such a report in writing within three days of the date it is requested. Cases in which a current employee is suspected of misconduct are excepted.

Even where misconduct is suspected, the law requires that the employee or applicant be given a copy of the report within seven days of the date the employer receives it, or at the time of the meeting or interview with the individual, whichever is earlier. This applies even if the report was prepared in house.

This goes further than the federal Fair Credit Reporting Act, which requires only that a copy of a report

See IDENTITY/page 41

Reform group seeks to cool litigation fever

Malpractice lawsuit abuse first target of Common Good

By MARK A. HOFMANN

WASHINGTON—The fear of malpractice suits is driving many doctors to recommend unnecessary treatments, which is driving up medical costs, a legal reform advocate says.

And tinkering with the current system for resolving health care coverage and malpractice disputes will not alleviate that fear, said Philip K. Howard, a senior partner in the New York office of the Washington law firm of Covington & Burling and the chairman of Common Good, a recently formed legal reform advocacy group (see related story page 40).

Instead, radical legal system reforms are needed, including the establishment of special medical courts to hear cases involving medical judgment, Mr. Howard said.

"A clean break from what we have today is what is required," he said. The current system of adjudicating medical disputes does not work and drives up the cost of health care, he said, noting that the present system is "singularly ineffective" in holding doctors accountable for misdeeds.

Mr. Howard made his remarks at an April 24 discussion of medical justice in Washington, sponsored by the American Enterprise Institute–Brookings Institution's Joint Center for Regulatory Studies, a Washington-based think tank.

To support his argument, Mr. Howard cited a Harris Interactive Inc. poll of health care professionals conducted for Common Good. According to that poll, 79% of the physician respondents said that concerns about malpractice liability have prompted them at times to order more tests for a patient than they thought were necessary, and

See MALPRACTICE/page 40

Businesses hope to scale back federal COBRA relief

By JERRY GEISEL

WASHINGTON—Business groups say they are making progress in trying to convince legislators to amend a controversial COBRA provision that is part of a trade assistance bill that the Senate soon may consider.

Earlier this year, the Senate Finance Committee approved, as part of S. 1209, a measure that would provide federal assistance to workers who lose their jobs because of foreign competition. The federal government would pay 75% of the cost of COBRA premiums for affected employees. The subsidy would continue until the individual's coverage under the Consolidated Omnibus Budget Reconciliation Act expired.

Business groups were surprised by the inclusion of the COBRA provision in the trade bill. The Washington-based ERISA Industry Committee, for example, labeled the provision a "stealth COBRA expansion."

But now, amid intense lobbying, business groups and others say Republicans and Democrats are negotiating to soften the provision.

"My impression is we are making progress," said ERISA Industry Committee President Mark Ugoretz. "The original provision seems to have fallen out of favor," said a health care lobbyist who spoke on condition of anonymity.

Under a compromise provision now being informally discussed by senators, affected employees would receive tax credit of an as-yet-undetermined amount, which they could use to pay for COBRA premiums or for health care coverage from other sources.

"COBRA would be an option, but not the only option," the health care lobbyist said.

But the issue remains undecided.

"We are certainly not ready to celebrate. This issue is like a bouncing ball," said Neil Trautwein, director-employment policy at the National Assn. of Manufacturers in Washington.

Last week, for example, 21 House Democrats sent a letter to Senate Majority Leader Tom Daschle, D-S.D., urging the leader to replace COBRA subsidies with tax credits.

"Providing health care through a system of tax credits rather than a COBRA subsidy is intended to force beneficiaries into the individual health insurance market, which is likely to provide worse coverage and higher deductibles," according to the letter, signed mostly by Democratic members of the Ways and Means Committee. The trade bill passed by the House last year lacks a health care assistance provision.

Business groups have been warning members of Congress that the COBRA-only subsidy provision would have a major financial impact. While COBRA premiums are supposed to cover participants' claims, in reality claims' costs typically exceed premiums by at least 50%. That is because COBRA premiums are so expensive—family coverage can cost more than $7,000 a year—that individuals opting for coverage are those who are most likely to use health care services. Under COBRA, beneficiaries pay 102% of the group rate for active employees.

'We certainly are not ready to celebrate. This issue is like a bouncing ball.'

Neil Trautwein
National Assn. of Manufacturers

While adverse selection would be somewhat less, benefit experts, say, if beneficiaries had to pay only 25% rather than the entire premium, coverage still would be disproportionately selected by those who anticipate using health care services.

"Healthy displaced workers are far more likely to direct their limited resources toward finding a new job or pursuing educational opportunities than they are to pay a 25% of larger share of what they perceive to be costly and unnecessary health insurance coverage," the ERISA Industry Committee said earlier this month in a letter sent to senators.

Others note that employers, under the legislation, would face such administrative complications as keeping track of COBRA premium payments from both the government and from beneficiaries. In addition, while current law allows employers to cut off COBRA coverage for nonpayment of premiums, generally after a 30-day grace period, the legislation doesn't make clear if termination of coverage would be allowed if the government were late with payments.

So far, Congress has not been receptive to subsidize COBRA premiums. Last year, for example, a slew of proposals were introduced following the Sept. 11 attacks calling for the government to pay 50% of COBRA premiums for those who lost their jobs following the attacks. But none of those proposals gained enough support for passage.

Errors & Omissions

Due to outdated information supplied to *Business Insurance*, a chart in the April 22 issue on the health care costs of obesity-related conditions was misleading. Recent figures are substantially higher than those listed on the chart, but a single source of up-to-date information is not readily available.

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Advertiser
3 column x 5"

Commentary

To catch a thief, try using your feet

Urban police departments soon may be at risk of becoming the laughingstock of criminals.

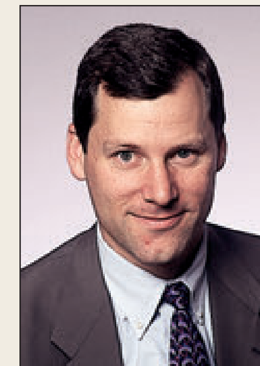
Citizens could soon be in an uproar over a slowdown in police activity, with complaints rising at a diametrically opposite pace.

And the Hollywood tradition of thrilling police chases in movies—not to mention new "World's Scariest Police Chases..." videos—might become a thing of the past.

Why all the fuss?

Because of a transportation experiment under way in some police departments to use the Segway Human Transporter, a newfangled motorized scooter, as a vehicle for stopping crime and public safety. I wish I were making this up, but I am not.

The Segway, unveiled last year amid hype that was reminiscent of the buzz over cold fusion, is a battery-powered, gyroscope-stabilized, two-wheeled scooter touted as enabling users to zip around and change direction with simple shifts of the body.


Paul D. Winston

"Zip" may be an overstatement, though, because its top speed is about 15 mph—when in turbo mode. Some people can run faster than that, including criminals with a strong incentive to get away from the law. While supporters of the Segway point out that few humans can outrun the device *for long*, all it takes is a short fence and the pursuing officer would be left in the dust, forced to unlimber from his scooter and employ muscles that may have grown unaccustomed to exertion.

The Atlanta Police Department is the latest to express interest in the Segway, following trials by police in Boston and Manchester, N.H., which is the hometown of Segway inventor Dean Kamen. Mr. Kamen invented the Segway to eliminate the bothersome need for walking.

I hope, for the sake of retaining the effectiveness of—and respect for—law enforcement, that they reconsider use of the Segway. Or that they relegate the device's use to the issuing of parking tickets (as long as it isn't raining).

Other government agencies have also expressed interest in the Segway, notably the U.S. Postal Service. That's probably not such a good idea either, but because no one really expects the mail to be delivered with rapidity, perhaps that venture carries little reputational risk.

But we do generally demand rapid action from the police. When we dial 911, for example, we require and expect a quick response. In pursuing and apprehending suspected criminals, speed is essential for police officers.

Police already get a bad rap from some folks for not responding quickly enough, a fault often attributed—rightly or wrongly—to being out of shape and overly fond of doughnuts. Will a device that is extolled as providing an alternative to walking overcome that poor perception? Probably not; if anything, it will exacerbate it.

Folks on Segways appear as though they might be having fun, just as the kids who stuck little motors on their skateboards or scooters looked like they were having more fun than those of us limited to leg power. But is fun what we want in terms of transportation for our police officers? Heck, why not get them in-line skates and pogo sticks? Those would certainly cost less than the Segway, which goes for about $8,000 for its "industrial" version.

For about three times the cost of a Segway, a municipal police department could afford a new Ford Police Interceptor with a powerful V-8 engine that reaches speeds of 140 mph, or more with a supercharged engine. The Interceptor seats four comfortably, holds a lot of extra ammo and gear in the trunk and comes with intermittent windshield wipers among its standard features. I'd venture to guess the Interceptor is fun to operate, too, if that's what we're after. But it's not.

I shudder to imagine how the Segway will transform routine police work. Roadblocks could become a thing of the past, as clusters of Segways failed to do the job. Speeding motorists could routinely blow past Segway cops with radar guns without slowing down. Low-speed Segway chases through busy intersections could become ultrahazardous for all involved. The dignity of mounted police patrols could give way to the spectacle of cops on cute little scooters. Police work could slow to a crawl.

Our only hope is that Atlanta opts to give up on this foolish experiment before it is taken up by other law enforcement agencies...or that criminals become as taken with the Segway as are government purchasing departments, so that cops have a chance.

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

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Editorial

Harassment rule overdue

EMPLOYERS IN EUROPE should welcome a new European Union directive that, for the first time, legally forbids sexual harassment in the workplace, even though some employers may face new liabilities as a result of the change.

The new directive, approved by the European Parliament and the European Commission earlier this month, states that sexual harassment in the workplace is a form of illegal discrimination.

While many European courts have come to the same conclusion, clear legislation on this matter was lacking and is long overdue. Legislation is needed to provide uniform protection of the basic rights of employees and to clarify employer obligations.

For many employers, the new directive will add the force of law to their efforts to provide safe workplaces free from harassment and discrimination. But employers in some countries—especially those in E.U. countries such as Greece and Portugal that have not developed law in this area—may be caught unprepared. Those employers should take this opportunity to adopt new risk management controls that not only protect workers but reduce their liability exposure.

The new directive not only clarifies that harassment is a form of illegal discrimination but also establishes that employers that do not take steps to prevent harassment can be held liable and face costly sanctions. The directive defines sexual harassment as "any form of unwanted verbal, nonverbal or physical conduct of a sexual nature (that) occurs with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment."

The directive specifies that this can include such actions as telling jokes of a sexual nature and making remarks about the appearance of a co-worker.

The directive places the burden on the employer accused of permitting harassment to prove that it maintains a "harassment-free" workplace. Employers will need to demonstrate that they have taken measures to prevent sexual harassment, such as providing employee education programs and regularly monitoring workplace conditions.

Employers that adopt such programs, therefore, not only minimize their liabilities but also create safer and fairer workplaces for employees.

The directive gives E.U. countries until 2005 to make the directive part of their national laws. That timetable provides companies with ample time to study risk management practices elsewhere—especially in the United States, which, unfortunately, has significant experience in attempting to eliminate workplace sexual harassment. European employers should use this time to improve their existing risk management programs and introduce new ones to eliminate discrimination and harassment.

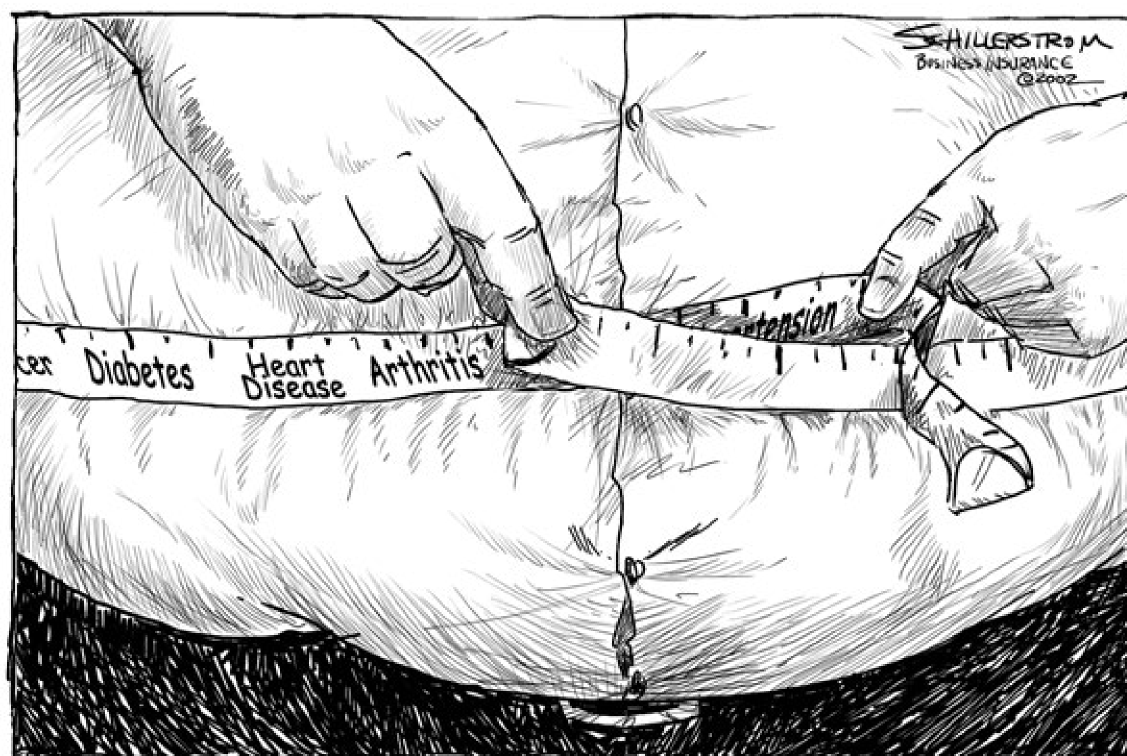
There are many effective measures for minimizing the risk of harassment and protecting the employer from liability. According to employment liability experts, key steps to reducing sexual harassment risks include:

- The adoption of a comprehensive formal anti-harassment policy that outlines improper practices and their consequences.
- The creation of a complaint mechanism that results in the prompt investigation and resolution of complaints.
- The communication of the anti-harassment policy among all levels of employees and management.
- The education and training of employees to make them more aware of what constitutes harassment and inappropriate behavior. This may be especially critical if legal penalties for harassment have not existed previously or if cultural norms have previously tolerated certain behavior.
- An ongoing commitment to review the effectiveness of the program and make improvements as needed.

In addition to implementing loss prevention measures, European risk managers may also take greater interest in specialized employment practices liability coverage. Such coverage is increasingly popular in the U.S. market, where the liability for harassment is more established. As European employers face new liabilities for workplace discrimination in its many forms, they may wish to explore risk financing mechanisms tailored to the problem.

It would be easy for employers to bemoan the burdens and potential liabilities created by the new E.U. directive. But smart risk managers will see this change as an opportunity to improve the protections available to all employees. For companies that take appropriate actions, the expenses associated with complying with the new directive will be minimal. But for companies that fail to take action, the costs will be significant.

Schillerstrom



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Letters to the Editor

Kudos due Kugler, Gregory

To the editor: It was a pleasure to read the articles in the April 15 issue on Daniel Kugler and Lauren Gregory as part of *BI's* Risk Manager of the Year coverage.

It is certainly clear from the articles that these two outstanding examples of risk management success are "poster children" for what the profession of risk management ought to be. Thanks for giving your readers a nice balance between who they are as people and what they and their risk organizations have accomplished!

Chris Duncan
Chief Risk Officer
Delta Air Lines Inc.
Atlanta

Gun suit story unbalanced

To the editor: A March 29 news item in your online edition, "Boston Drops Gun Liability Lawsuit," reported that Boston had dropped its lawsuit against gun manufacturers.

This article is clearly an example of biased reporting in that it makes no mention of the fact that, of 21 similar lawsuits recently filed by municipalities, 15 have been completely or partially dismissed at the trial court, appellate court or state supreme court level because gun manufacturers cannot be held liable for the illegal use of their products after they have been sold.

There is also no evidence to suggest that manufacturers have aimed sales of guns at criminals. As a matter of fact, all gun sales by licensed dealers (who are the only parties besides the government to whom manufacturers sell guns) are first cleared by the FBI.

Mr. Bradford neglected to mention this other side of the story in another article, "Appeals Court OKs Suit Against Gun Makers" in your Jan. 4 Daily News. After that story appeared, he was informed about the dismissed cases.

In both cases, this omission leads the reader to believe that gun manufacturers are bad insurance risks and are selling their products in an irresponsible way, which will result in many liability claims. Your publication is widely read by insurance executives who, as a result of this biased reporting, may unnecessarily increase rates and reduce the availability of insurance for manufacturers. This is a disservice not only to the gun manufacturers but also to the reader who is relying on your publication.

I urge you to correct this bias and print both sides of the story.

Doug Larson
Chairman
Citizen's League
for Unbiased Reporting
Scottsdale, Ariz.

Editor's note: Business Insurance has reported on numerous dismissals of lawsuits brought against gunmakers, several of which are now on appeal. BI rejects the argument that, simply because we have not reported on every dismissal—just as we haven't reported on every lawsuit filed against a gunmaker—our coverage is biased.

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The hardening of insurance rates will ultimately benefit insurance buyers, consultants say.
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Diverse risk tools on display

By JOANNE WOJCIK

NEW ORLEANS—Like the diverse ingredients of New Orleans' renowned Creole cuisine, exhibitors at the 40th Risk & Insurance Management Society Inc. Annual Conference and Exhibition made up a virtual gumbo of risk management products and services.

Whether it was to promote environmental risk consulting, terrorism risk modeling or a more humane way to protect delivery workers against animal attacks, vendors cooked up various creative recipes to entice visitors into their booths.

San Francisco-based USI Insurance Services Inc., whose booth in the exhibit hall offered risk managers the opportunity to be photographed in an open-cockpit race car, came to RIMS in New Orleans in part to show how the broker has changed since last year.

"We've expanded significantly, and we have added several different features to the organization in terms of services and risk techniques that we didn't have in the past," explained Greg Roberts, national managing director for USI's environmental risk mitigation group in Houston.

For example, "six months ago we embarked upon an environmental practice group, which is done a little differently than the rest of the brokers in that we actually are hired by other brokers to do some of their consulting work," he said.

USI also has partnered with Southwest Texas State University in San Marcos and the Environmental Risk Management Institute, a consulting group affiliated with the university, to develop environmental risk profiles for corporations, "so they understand better what

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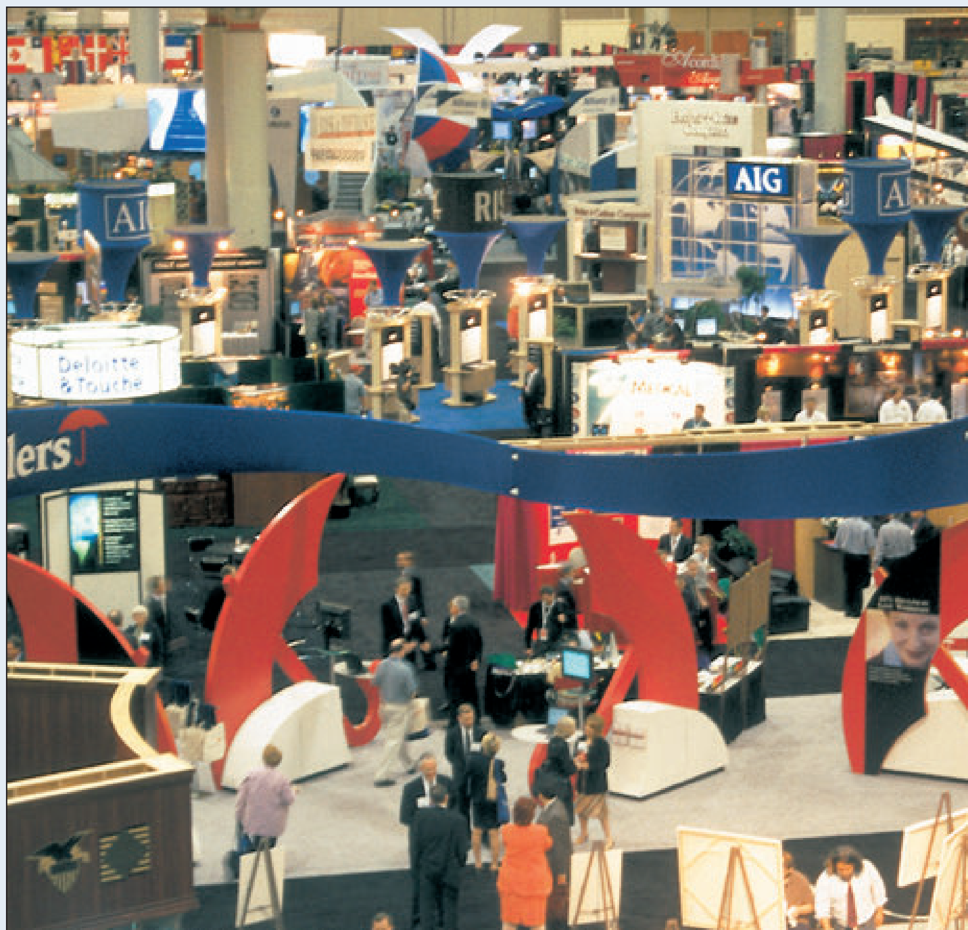

PHOTO: MICHAEL MARCOTTE

More than 400 insurance industry vendors from all over the world sponsored exhibits during the 40th RIMS Annual Conference and Exhibition recently in New Orleans.

ERM drawing support of CFOs

Broader scope of risk urged

By ROBERTO CENICEROS

NEW ORLEANS—Risk managers and their bosses in company financial departments are looking to enterprisewide risk management as they come under growing pressure to maximize shareholder return.

A risk management approach that encompasses the entire company's risk profile—and not just the needs of specific business units or company functions—can achieve that end, said Fernando Ruiz, vp and treasurer for The Dow Chemical Co. in Midland, Mich.

The implementation of enterprisewide risk management is a high priority for many chief financial officers, said Mr. Ruiz, who spoke at a session at the Risk & Insurance Management Society Inc. annual conference earlier this month in New Orleans.

Risk managers and CFOs are under increasing pressure to improve corporate returns, noted John F. Ryan, senior vp in Boston for RM Access, an insurance brokerage unit of Fidelity Investments.

Because of that pressure, chief financial officers don't want risk managers to limit their focus to the purchase of insurance, said Richard M. Inserra, assistant treasurer and director of risk management for Praxair Inc. in Danbury, Conn. CFOs want risk managers to present them with market alternatives, which requires thinking in a broad and bold manner, he said.

CFOs are "numbers people," so risk managers shouldn't approach them with insurance jargon, Mr. Inserra advised. He noted that CFOs are interested in the dollar cost and cents-per-share impact of potential losses. Providing information in financial terms helps CFOs make better decisions about the amount of risk they are willing to as-

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D&O insurers wielding 'hammers'

Clauses can harden blow of claims

By ROBERTO CENICEROS

NEW ORLEANS—Coinsurance and "hammer" clauses are resurfacing in directors and officers liability insurance policies, insurance industry executives said during a session at the recent Risk & Insurance Management Society Inc. Annual Conference and Exhibition in New Orleans.

Risk managers should try to negotiate away coinsurance in their D&O policies, said Kathryn G. Furr, vp in Los Angeles for broker James Econn & Co. Failing that, they should try to limit the areas of coverage to which coinsurance applies, she advised. Coinsurance that is applied too broadly defeats a policyholder's purpose in purchasing D&O coverage, Ms. Furr said.

Consequently, a risk manager, when evaluating policy quotations, should look closely to determine which of the many specific D&O policy coverages the coinsurance affects, she said.

For example, does the coinsurance apply to corporate reimbursement agreements? Ms. Furr noted that those agreements indemnify directors and officers; they do not address the entity's coverage. If the insurer applies the deductible to corporate reimbursement coverage, it will apply to a broad range of claims, Ms. Furr said.

Risk managers should make sure that "coverage A," or individual coverage for the personal property of officers and directors, is exempt from coinsurance, Ms. Furr advised. After all, the main goal of D&O insurance is to maximize the protection of officers and directors and save their personal assets, she said.

Coinsurance typically applies in addition to a retention, Ms. Furr said. On a policy with a $1 million retention and 20% coinsurance, for example, the coinsurance applies to 20% of defense or settlement costs above the $1 million retention. In some cases, excess policies will incorporate the coinsurance feature so that it applies to a policyholder's entire coverage limits.

"If you carry $100 million or

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Risk managers urged to oversee claims handling

By MICHAEL BRADFORD

NEW ORLEANS—Risk managers have a key role in making sure claims are settled fairly and properly.

"This is a process that begs for management," said John D. Dempsey, managing partner with Dempsey, Myers & Co., a Wilton, Conn.-based accounting firm specializing in claims preparation for policyholders. "It's our philosophy that the risk manager should be a part of the process."

Speaking as a panelist at the Risk & Insurance Management Society Inc. annual conference earlier this month in New Orleans, Mr. Dempsey said the claims settlement process should begin with a realization by the policyholder that personalities are an important element.

"Insurance is still a people business," he explained, and risk managers should bear in mind that they are dealing with another person and strive for a congenial meeting of the minds. "At some point, these personal relationships can either pave the way for a very rapid and successful settlement of the claim, or, they can get in the way," Mr. Dempsey noted.

"We should use the relationships very wisely," he advised, and not "go around the adjuster at the first sign of trouble and complain to his boss. I think we have to work things out on a personal level."

In fact, the risk manager should be familiar with the adjuster before the negotiations begin, according to Mr. Dempsey.

"I'm an advocate for selecting and organizing a claims team before a loss occurs. At the center of the claims team, for the insurance company, is the adjuster," he said. "I think the risk manager has a role in selecting the adjuster. ...Think about it, who's the guy that's on the line every day adjusting your big loss? Don't we want to work with him? Don't we want to make sure he's capable" and can communicate effectively?

"Talk to your brokers about it," Mr. Dempsey suggested. "It's very easy to identify the good adjusters."

Once negotiations are under way, the policyholder has to work to "keep the ball rolling," according to John B. Berringer, an attorney with the law firm Anderson, Kill & Olick P.C. in New York. "Once you get your demand in, the insurance company will want to sit on it," he said.

Mr. Dempsey agreed that one crucial part of achieving a favorable and speedy settlement is "continuous action." When his firm is involved in claims negotiations, it structures a timetable that sets dates for completion of such tasks as claim preparation, claim audit by the insurer and other steps in the process, right up to a day by which the claim should be settled.

> **'Anything the insurance company claims they need, duplicate it and send it out by Federal Express. Don't give the insurance company any excuse for delaying the process.'**
>
> *John B. Berringer*
> *Anderson, Kill & Olick P.C.*

One thing risk managers can do to help ensure a speedy settlement is make sure that insurers get the documents they need, Mr. Dempsey noted. "In every claim, there is an audit, and there will be a request for documents." Release such documents as soon as possible, he urged risk managers. "There's no more valuable piece of paper than the document that is going to settle your $2 million claim."

Mr. Berringer echoed that point. "Anything the insurance company claims they need, duplicate it and send it out by Federal Express. Don't give the insurance company any excuse for delaying the process."

If the process breaks down, litigation may be the next step.

Robert M. Horkovich, also an attorney with Anderson, Kill in New York, told risk managers that legal action should be undertaken only after very careful consideration. "Litigation is not for the faint of heart," he said. "Do not use the threat of litigation lightly."

Once such a threat is made, the other side will counter with its own legal moves, Mr. Horkovich pointed out, taking the negotiation into a contentious phase. Threatening litigation often brings a lawsuit rather than a counteroffer, he warned.

Mr. Horkovich said policyholders should make sure the decision to sue is motivated by financial—not emotional—considerations. Only after weighing the cost—including that of lost management time—should a policyholder consider legal recourse, he said.

The session was moderated by Sean McDaniel, director of claims management at Onyx North America Corp. in Milwaukee. Mr. Horkovich coordinated the session.

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PHOTO: MICHAEL MARCOTTE

Business Insurance's RIMS TV was on hand at the Risk & Insurance Management Society's annual conference to cover events and unique personalities within the exhibit hall.

Resources should be rallied to fight unfair claims denials

By SARAH VEYSEY

NEW ORLEANS—Contested claims and reservation-of-rights letters from insurers should not deter risk managers from pursuing claims they believe are covered, insurance industry sources say.

As claim amounts grow, the number of coverage contentions is increasing and will continue to do so, said Kathryn Bernard, executive vp and general counsel for CBS Personnel Services L.L.C. in Cincinnati. Ms. Bernard and others spoke at a session during the Risk & Insurance Management Society Inc. annual conference last month in New Orleans.

"A big reason this is an emerging issue is that it seems we are having a lot more contesting of claims and reservation-of-rights letters than in the past 10 years. So, clearly, economics is driving it," said Jeff Branca, senior vp at Aon Risk Services in Cincinnati.

Claim disputes occur for several reasons, including late reporting of claims and misrepresented policy wordings, Mr. Branca said. Frequently, reservation-of-rights letters are sent as a matter of course by insurers and may be prompted by questions over the interpretation of coverage, he said.

"Claims adjustment is more art than science," Mr. Branca said. "It is a negotiation process."

Risk managers should go over any reservation-of-rights letters with "a fine-toothed comb," Ms. Bernard said. If coverage has been constructed with the help of a broker, then the risk manager must maintain dialogue with that broker if a claim is disputed.

'Claims adjustment is more art than science.'

Jeff Branca
Aon Risk Services

"If your broker has said, 'This will cover you,' then send them a letter saying, 'This had better cover me, or, if not, we will go after the broker's errors and omissions policy,' " she said.

If the risk manager believes that a contested claim should be paid, one step is to bring in outside legal counsel, said Ms. Bernard. Before retaining counsel, though, a risk manager should be sure of the company's coverage position, have the support of senior management, be able to demonstrate conviction on the coverage and be prepared to undergo serious negotiations and a public dispute, she said. Such cases may be expensive to fight, she warned.

A risk manager who informs the insurer that he or she plans to bring in outside counsel may find the insurer is more willing to settle the case out of court in order to avoid bad publicity, she said.

Ms. Bernard advised risk managers to take steps to manage the cost of outside legal counsel, such as asking for itemized bills and keeping track of the amount of time spent talking to the lawyer.

Brokers also have technical resources on which risk managers can draw, said Mr. Branca. "Get brokers engaged in the process. Our primary responsibility is to advocate your interests," he said.

"Use brokers as your tool," Ms. Bernard advised. "And make sure they have a good E&O policy—they are your backup 'deep pocket' if things don't go well."

Ms. Bernard and Mr. Branca noted that alternative dispute resolution might be another way to settle contested claims. Insurers tend to prefer this method of settling disputes, Mr. Branca said, because it is less expensive and time-consuming than going to court.

The session was coordinated by Mr. Branca and moderated by Ms. Bernard.

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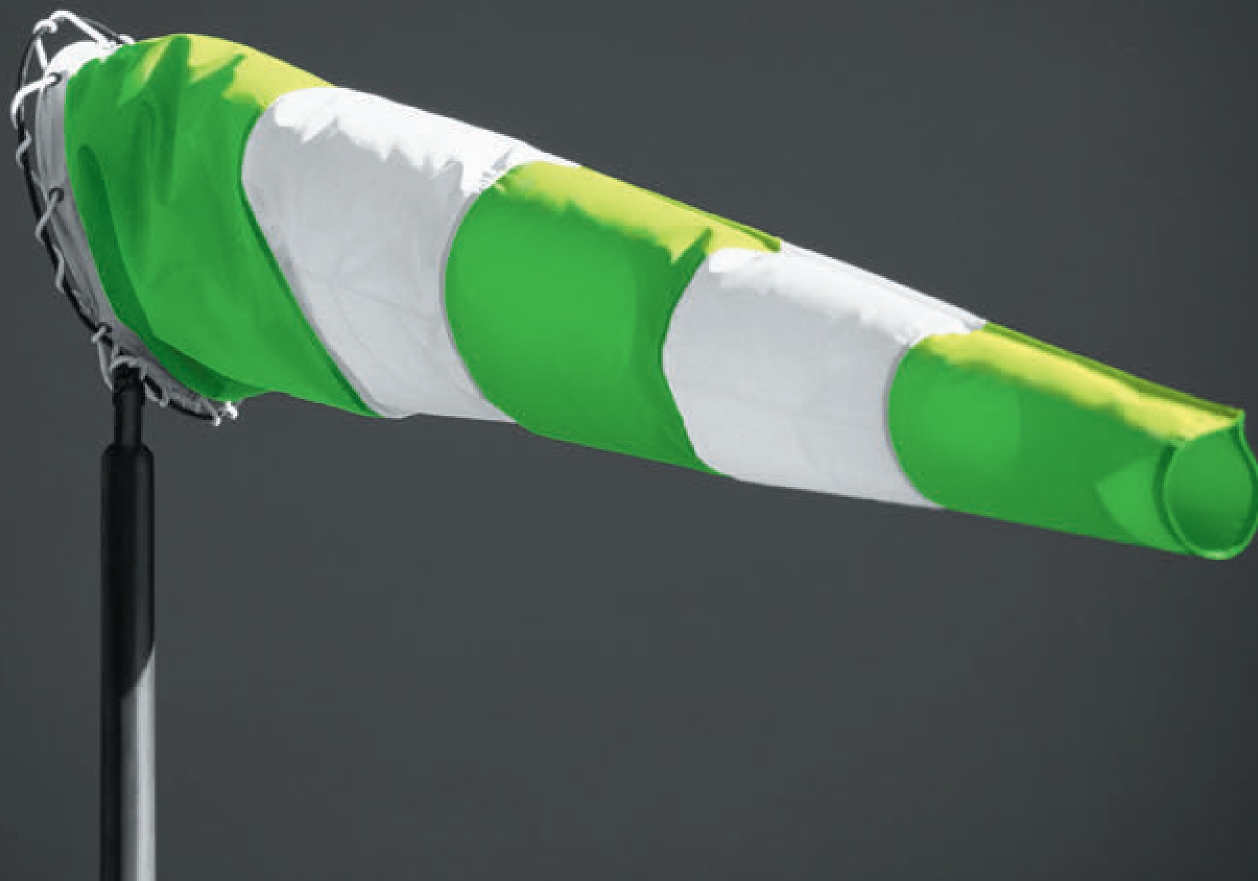

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Old policies for long-tail risks may be hidden assets

Insurers may buy back coverage

By MICHAEL BRADFORD

NEW ORLEANS—Risk managers at companies with long-tail exposures may find that old insurance policies can generate new cash.

A panel of experts speaking at the Risk & Insurance Management Society Inc.'s annual conference in New Orleans earlier this month urged employers to investigate whether there are occurrence-based policies in their files that cover such historical exposures as environmental contamination, product liability, asbestos and other risks.

Often, "insurers are more than happy to buy their way out" of policies such as those written decades ago on asbestos exposures, said Patrick J. Stangle, director-risk management at Contran Corp. in Houston.

For the policyholder, it's a process of "taking old insurance policies and monetizing them," said William J. Russell, chief executive officer of Dispute Resolution Management Inc. in Englewood, Colo. In other words, convert the coverage to cash and put it to work at a current rate of return.

Insurers are "not going to give away the store, but the atmosphere is right" to negotiate the buyback of coverage, he said.

The first step is to find the old coverage. While many companies say they have policies dating back to the mid-1980s, "that's not far enough," Mr. Russell said. It's more valuable if coverage can be traced back as far as around 1950. In the late 1980s, insurers were covering their bases on future payouts by writing claims-made policies that changed the occurrence trigger.

Finding old policies may take some digging and outside help by firms that specialize in insurance archaeology, Mr. Russell said. He told of traveling to Alaska and searching through crates in an abandoned railroad car before locating one company's documents.

"Companies tend not to throw away insurance papers," he said, "but they don't know why they are keeping them. They sometimes throw them in the corners," so it pays to look in out-of the-way locations.

Government agencies, such as those overseeing defense, forestry, energy and other areas, sometimes can provide certificates of insurance and other records that could yield clues, he said.

Many people are needed to conduct a thorough investigation of historical coverage, Mr. Stangle noted. "It's not the risk manager riding into the sunset like the Lone Ranger," he said. "It takes a lot of departments."

The risk management department should be the best source for tracking down old policies, but the policyholder's legal department also has a role, he said. "They are the best source of corporate history" and can provide details on acquisitions, divestitures and other history that could play into coverage matters, Mr. Stangle said.

> **A contractual indemnification policy to cover future claims is 'a way to make sure you're a hero today and not a goat tomorrow.'**
>
> *Kenneth B. Cornell*
> *AIG Environmental*

The finance department has a vital role as well, he noted, by coming up with totals on costs related to the exposures in question and by addressing tax issues once a coverage settlement is reached.

When a settlement is being negotiated, the final dollar amount usually is not very contentious, Mr. Russell said. "The harder issue is, what are you going to give them? They are going to want their old policies back."

That means insurers will want a guarantee that they are off the hook forever. In fact, insurers will want the policyholder to indemnify the insurer should any other claims be made against the policy, Mr. Russell noted.

Kenneth B. Cornell, executive vp at AIG Environmental, a New York-based unit of American International Group Inc., said companies can purchase a contractual indemnification policy to cover such future claims against the settling insurer.

Such coverage can be "crucial to allowing both parties…to actually do their deal and settle in the first place," because it lets the policyholder give the insurance company the indemnity guarantee while capping that exposure, Mr. Cornell explained.

"It's a way to make sure you're a hero today and not a goat tomorrow," he said. With the coverage, he said, if an indemnity claim does arrive, the risk manager can say: "Ahh! But we bought this insurance policy."

The session was moderated by Mr. Stangle and coordinated by Jim Hamilton, director of marketing at Dispute Resolution Management.

Risk Laboratories
4 column x 10"

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Exhibits: Risk tools displayed

Continued from page 10

their environmental risks are," Mr. Roberts said.

The consulting work runs from environmental pollution to bioterrorism and "good old mold," he said.

"Mold is a big issue right now, and there's a lot of research that we've done on the scientific and medical side and with ways to manage and mitigate the potential for environmental liabilities," Mr. Roberts said.

Though a first-time exhibitor at this year's RIMS conference, Houston-based ABS Consulting is not new to the field of risk management, according to Alle L'eveille, manager of marketing communications.

The firm, which once focused largely on identifying and mitigating offshore risks, acquired Oakland, Calif.-based earthquake engineering firm EQE International Inc. in July 2001 to expand its geographical reach its services in the area of structural engineering and risk management, she said.

And, since Sept. 11, ABS Consulting also has been helping companies and organizations that are seeking to reduce their exposure to certain terrorism risks. MIDAS-AT, an ABS Consulting division in Bethesda, Md., is working with organizations to model the effects of nuclear and biochemical releases, Ms. L'eveille said.

"So whether it's intentional, like anthrax in a building, or if it were a nuclear release, they can model either inside a building in the way the air flows, or they can model in a city the way the air flows, or they can model around a nuclear plant," she explained.

The company also can use its EQECAT modeling capabilities to measure workers compensation-related catastrophe exposures for companies and organizations that have a large concentration of workers in a single location, Ms. L'eveille said.

"For us, (terrorism risks are) not anything new. Our skill set is the same; we're just looking at a different set of vulnerabilities," Ms. L'eveille said.

As ABS Consulting promoted its high-tech risk identification capabilities, nearby first-time exhibitor Cotton Cat National Disaster Recovery Services was touting its disaster recovery capabilities. The Houston-based firm assisted numerous businesses that had been located in the World Trade Center, according to Randall Thompson, senior vp.

"We'll get businesses back in order, back operational as quickly as we can. Whether it's the structure, whether it's the contents, we have a complete catastrophe management program," he said. The firm also provides electronic data and document recovery services and assists with contingency planning, said Mr. Thompson.

First-time exhibitor Aquila Energy, a subsidiary of Aquila Inc. of Kansas City, Mo., offered information to risk managers about its weather risk transfer products.

Aquila Energy has developed coverage for some unusual risks, including a Japanese weather-linked contract related to eel consumption.

Although the company primarily is an energy provider, it has "branched into insurance, like energy products, where you've got actuarial techniques merging with the energy and commodity piece," said Brian O'Hearne, president of Hamilton, Bermuda-based Aquila Energy.

The company has provided coverage for some unusual risks, according to Todd Alexander, manager of product development.

Aquila has developed a Japanese weather-linked contract related to eel consumption, Mr. O'Hearne said. "When it gets hot, they eat more eel in the summer," he said. Because eel is purchased in advance, Aquila provides coverage "based on how hot it is in August during this prime eel-eating season," he explained.

"Japanese industries have been very exciting," Mr. Alexander said. "They keep very careful statistics on their businesses, which allows for really strong correlations to be made with weather. There are beer-drinking day contracts—temperature plays a big role in the amount of beer that's sold."

The television and film industry also has been showing a lot of interest because the cost of weather-related production delays can be significant, Mr. Alexander said.

The St. Paul Cos. Inc.'s booth at this year's RIMS conference featured a riverboat casino—decked out in patriotic red, white and blue—and gave risk managers a chance to try their luck on a video card game.

"The whole idea is to draw people into the booth, and this is a big draw. And that gives our salespeople the opportunity to talk to them while they're standing in line," explained Leslie Merritt, exhibit manager for the insurer in St. Paul, Minn.

The card game, dubbed "the St. Paul Shuffle," offered several prizes, including a red, white and blue tote bag and similarly decorated beach blanket.

Although John Connell, president of Richmond, Va.-based Premier Pet Products Inc., didn't bring along a dog to demonstrate his animal deterrent spray, he did present a video illustrating its effectiveness in preventing dog bites.

Mr. Connell noted that such injuries are sustained by approximately 1.5 million people in the United States each year. More than 500,000 of these bite sufferers require medical attention, and about 20 people die each year from their injuries.

The product, which is made from fragrant citronella grass, helps companies that employ home delivery workers avoid exposure to pet-owner liability lawsuits stemming from the use of pepper spray, Mr. Connell said. Such sprays can be harmful to eyes and mucous membranes and often make animals more aggressive.

The citronella-based deterrent spray also can help reduce workers compensation claims filed by employees who are injured when the wind causes pepper spray to blow back in their direction, he said.

Top: Broker USI Insurance Services Corp. displayed a race car at its booth during RIMS. Above: The St. Paul Cos. Inc. offered visitors a chance to try their luck aboard a riverboat casino. Below: Makers of sprays to protect against animal bites displayed their products.

D&O: Use of clauses shifts costs to buyers

Continued from page 10

more of D&O insurance, you don't want to have 20% or 30% coinsurance going all the way up to the top," Ms. Furr said.

"You want to try and cut off that coinsurance at $10 million, $20 million or wherever" it can be successfully capped, she said.

Coinsurance makes sense for insurers because it ensures that policyholders will have a greater stake in losses and, therefore, will be more likely to agree to reasonable settlement offers, Ms. Furr explained.

Coinsurance clauses formerly were routine in D&O policies. But insurers abandoned them when the market softened, Ms. Furr said. Now, with the market hardening, insurers are reintroducing the concept.

But John G. Pinner, assistant treasurer at Mattel Inc. in El Segundo, Calif., commented that all the risk managers he knows at large corporations have succeeded in fighting off insurance companies' attempts to apply coinsurance to their D&O policies.

Mr. Pinner, an audience member at the session, speculated that perhaps smaller policyholders have accepted coinsurance as a condition of coverage.

Michael A. Rossi, a speaker and policyholder attorney at the Insurance Law Group in Glendale, Calif., noted that, in the current hardening market, insurers also are reintroducing "hammer" clauses and "coinsurance hammers" that had disappeared during the mid-1990s.

Coinsurance clauses formerly were routine in D&O policies. But insurers abandoned them when the market softened.

Kathryn G. Furr
James Econn & Co.

Mr. Rossi explained that hammer clauses, which are also known as "consent-to-settlement provisions," can apply to policies in which insurance companies maintain a right to "associate" in a policyholder's defense.

Under such provisions, an insurer can negotiate a settlement with a claimant. If a hammer clause exists and a policyholder refuses to accept that settlement, the policyholder is responsible for all defense costs and settlement or judgment costs exceeding the insurer's settlement agreement.

A coinsurance hammer is similar, but in that case, a policyholder that does not accept the insurer's settlement offer is responsible for a percentage of the defense costs or a percentage of the settlement or judgment costs above the insurer's settlement agreement.

"I think, with the harder market, you are going to see more and more carriers insist on full hammer clauses," Mr. Rossi said.

Rae A. Knapp, risk manager in Costa Mesa, Calif., for the Automobile Club of Southern California, moderated the session. Ms. Furr coordinated the session.

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Continuity management requires commitment

By JOANNE WOJCIK

NEW ORLEANS—Business continuity management is not synonymous with contingency planning, risk management experts say.

The key difference between the two is that true business continuity management is an ongoing process that must be an integral part of an organization's culture, they say.

If commitment to that process does not extend across an entire organization, the approach really is nothing more than a contingency planning program that ceases once the disaster for which it was prepared ends, according to Carl J. Kotheimer, risk manager of the former Marconi Medical Systems Inc. in Hudson, Ohio, which manufactures medical imaging systems for health care providers. Marconi was acquired by a Dutch company in late 2001.

Business continuity management also requires a "big picture" understanding of all parts of the business—from outside sales to internal information technology—and how interdependent those elements are, Mr. Kotheimer said during a session at the Risk & Insurance Management Society Inc.'s annual conference earlier this month in New Orleans.

Risk managers often think they understand all aspects of their company's business when, in fact, they don't, said Michael P. Keating, vp of Marsh Inc. in Cleveland.

"To do this right, you really need the business-process owners and the business-process experts involved, because, ultimately, it's the businesses and the business processes that need to be supported in relation to internal customers, external customers and to suppliers," Mr. Kotheimer said. "Their perspective and understanding of the business is essential."

In formulating Marconi's business continuity plan, he conducted a business-impact analysis, measuring both tangible aspects—such as revenue and product inventory—as well as intangibles, such as reputation and employee morale.

To conduct his analysis, Mr. Kotheimer developed a scale that rated the impact that certain catastrophic events would have on the company's personnel, equipment and facilities. The scale ranged from none to "extreme," in which severe business interruption could cause serious losses of profits and market share. The scale he applied also took into account the fact that some events that might be devastating to Marconi's business, such as the interruption of phone service, would have no appreciable human impact.

After determining that information technology was the most vulnerable of Marconi's internal business processes because it supports all of its operations, a decision was made to outsource the company's mainframe computers. But outsourcing didn't remove the risk, Mr. Kotheimer decided; it just transferred it to someone else. Consequently, it was also necessary to audit the outsourcing vendor's business continuity plan to ensure that it would be adequate to support Marconi's needs.

> **Business continuity management requires a 'big picture' understanding of all parts of the business, from outside sales to internal information technology...**
>
> *Carl J. Kotheimer*
> *Marconi Medical Systems Inc.*

He also tried to measure how much downtime senior management would tolerate should one of the company's internal IT systems fail; what the organization's recovery capabilities were; and, because Marconi provides uptime guarantees to the buyers of its nuclear medical systems, how much impact downtime might have on its customers.

Mr. Kotheimer's scoring system also measured the probability of certain catastrophic events, such as an earthquake in Ohio, which had a low probability, or a tornado in Oklahoma, which is more likely.

He then applied various loss control measures to the loss scenarios and measured how they might reduce the hazard-impact scores.

For example, while the impact of a fire in a facility without sprinklers was rated high, it was reduced to medium when sprinklers were added. And by using various combinations of loss control measures, he was able to do a cost-benefit analysis for each exposure, thus improving the chances of obtaining necessary funding.

"If you come with a story prepared, and it looks like you've done your research, you've got a better chance of getting it done," he explained.

But sometimes a decision was made to accept certain risks.

"This is a reality of this game," Mr. Kotheimer acknowledged. "Sometimes, you have to plan with the resources you already have."

Mr. Kotheimer was the session's moderator and coordinator.

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K&R coverage important to crisis management

By SALLY ROBERTS

NEW ORLEANS—The recent kidnapping and murder of Wall Street Journal reporter Daniel Pearl in the Middle East further highlights the need for risk managers to assess their crisis management plans as well as kidnap and ransom insurance polices, experts say.

"The world has become a much smaller and much more dangerous place. We are confronting dangers today—here in the United States and abroad—that even a short time ago were incomprehensible," Louis Freeh, director of the Federal Bureau of Investigations was quoted as saying in 1997.

"That may have been five years ago, but it's so much more true today," said Michael Eremchuk, vp-risk management for First Data Corp. in Atlanta.

While the Sept. 11 terrorist attacks highlight this point, kidnapping remains a real danger, and corporations need to be prepared to respond, a panel of experts said during a session at the recent Risk & Insurance Management Society Inc. annual conference in New Orleans.

"As risk management executives, you all have tremendous duties and responsibilities in not only preventing crises from occurring, but also in honestly and quickly resolving issues when they occur," said Sean M. McWeeney, president of Corporate Risk International, a Fairfax, Va.-based security and investigative consulting firm.

Companies need to be prepared to respond to kidnapping and extortion, for example, he said.

Since April 1993, CRI has responded to 303 kidnappings and extortion cases on behalf of Professional Indemnity Agency Inc., a Mount Kisco, N.Y.-based managing general agency specializing in K&R insurance. Only one-third of those cases occurred in the United States.

Most kidnappings take place in Colombia, Brazil and Mexico, he said. In Colombia alone, about 1,000 kidnappings occur annually, or roughly three per day, Mr. McWeeney said.

If risk managers haven't already, they need to develop a crisis management team and define each person's role on the team, he noted. He also suggested that the team work through hypothetical situations involving kidnapping and extortion attempts.

In addition to crisis response teams, risk managers should also look to K&R insurance policies, said Mark E. Rattner, president of Professional Indemnity Agency.

A K&R policy "can be a beginning tool for you to be very proactive in the crisis management for your firm and eventually help you get through a situation much more smoothly than if you didn't purchase the insurance," he said.

Key roles that an insurer plays in kidnap and ransom and extortion cases include providing proper insurance protection and offering access to knowledge of current world and security issues, Mr. Rattner said.

A basic K&R policy should contain three triggers: kidnap and ransom, extortion, and detention, he said. Extortion cases outnumber kidnapping cases 10 to one, so risk managers should make sure their K&R policy covers extortion for business interruption, property, trade secrets, computer viruses and contamination, Mr. Rattner said.

In addition to ransom, standard K&R policies have several key expense provisions, he said. These include separate limits for transit, which would cover the cost associated with a lost ransom payment.

The policy also should cover the legal liability of the corporation. "It's not unheard of for victims or victims' families to take legal action against the company," even if the company responded in the best way that it could, he said.

Customized extensions to the standard K&R policy include accidental death and dismemberment, business interruption, emergency relocation expenses and infant abduction. The last coverage was added a few years ago for hospitals that were facing increasing risk of infant abductions, Mr. Rattner said.

In addition to basic coverage, it is very important that the standard K&R policy include access to a 24-hour crisis response team, he said. "Every carrier should have on retainer a crisis response company with the capability to handle situations all over the world, 24 hours a day," Mr. Rattner said. And risk managers should work with this team to develop a customized plan.

Most importantly, the crisis response company should provide policyholders up-to-date information about security around the world, he said. This data in turn needs to be disseminated to the appropriate people in the corporation.

Insurers need to develop and keep suitable case history information for proof of loss, he said. "It's not unusual for incidents of kidnapping to last several months to several years, he said. And it's not unusual or unreasonable for a policyholder to seek partial payment. Insurers need to be prepared and up to date on the case, he said.

Daniel W. Houston, senior vp and risk management practice leader for Hilb, Rogal & Hamilton in Atlanta, also spoke and coordinated the session.

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Internet creating new risk management challenges

Approach that blends technology, insurance urged

By SARAH VEYSEY

NEW ORLEANS—The potential dangers of Internet security breaches are creating significant challenges for risk managers.

Further complicating this situation are new technologies that are making it easier for computer criminals to gain access to sensitive company information, noted James Finn, a principal in Reston, Va., for e-business services company Unisys Corp. For example, hackers have developed a tool that enables them to intercept e-mails transmitted through a company's wireless systems, he said.

Mr. Finn and other panelists spoke during a session on legal and insurance issues relating to e-commerce during the recent Risk & Insurance Management Society Inc. annual conference in New Orleans.

Revenue, information and reputation are among the elements at risk when a company's Internet security is breached, Mr. Finn said.

Risk managers must be aware of these threats to security and seek ways to effectively manage them, said Lon Berk, a partner at the McLean, Va.-based law firm Shaw Pittman. "The new risks in the new world are exacerbated by the way information is stored," he said. "And in the new world, property is intangible."

Courts are having difficulty keeping up with many of the new legal issues and problems presented by the growing use of the Internet, Mr. Berk said. "The law is very conservative and wants to use old categories" to deal with such matters, he said. Although traditional legal approaches are being used to fight Internet crime—such as those involving defamation, public nuisance and negligence—such categories of law are not always adaptable to Internet abuses, he warned.

Mr. Berk said risk managers should ensure that their companies have a clear policy on employee Internet access and the need for system users to change passwords periodically. In addition, he said it is important for companies to conduct analyses of security breaches when they occur and to keep a detailed record of employee Internet use.

Five of the most effective ways to manage technology risks, Mr. Finn said, are to:

- Identify current exposures.
- Determine the business impact of those vulnerabilities.
- Create plans to fill gaps in security.
- Implement effective security technology and a security policy that outlines employee responsibilities.
- Introduce an ongoing procedure to test, maintain and report security breaches.

"Our job as risk professionals is to look at these new risks and assess how to mitigate them," said Ty Sagalow, executive vp and chief operating officer of AIG eBusiness Risk Solutions, a unit of American International Group Inc. in New York.

> **'Attempting to fit new-economy risks into traditional insurance is like putting a round peg in a square hole.'**
>
> *Ty Sagalow*
> *AIG eBusiness Risk Solutions*

Risk managers should adopt a "total" risk management approach that combines both security technology and insurance, he suggested. "Technology alone cannot eliminate security risk," he said. "And insurance alone cannot sufficiently mitigate security risk."

But traditional insurance often is of little use in regard to technology security breaches, Mr. Sagalow said. "Traditional insurance was written for a world that no longer exists. Attempting to fit new-economy risks into traditional insurance is like putting a round peg in a square hole," he said.

Several insurance coverages available in the insurance market were specifically designed to address e-business risks, Mr. Sagalow said. They are: Web content liability, e-business-specific professional liability, network security third-party liability, intangible information or property loss, business interruption and cyberextortion coverages.

He warned risk managers to check for e-commerce-related exclusions in policies they might buy and to ensure that they have express—not implied—coverage for Internet-related terrorism. Low sublimits for business interruption coverage also should be avoided, he said.

In addition, Mr. Sagalow said "there should be no restriction (in coverage) on definition of computer attack based on the motivation of the attacker."

Reggie Davis, senior litigation counsel and insurance risk manager at Yahoo! Inc., moderated the session.

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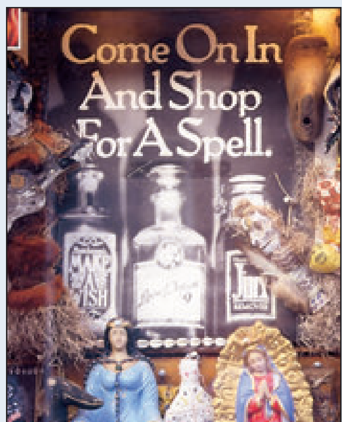

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One New Orleans emporium offered risk managers a novel way to deal with risk.

Terrorism heightens need for crisis plans

By SARAH VEYSEY

NEW ORLEANS—Proper crisis planning has become crucial in light of the growing threat to businesses from terrorism.

Jerry Bremer, the chairman and chief executive officer of Marsh Crisis Consulting in Washington and a former ambassador-at-large for terrorism, said the Sept. 11 attacks were not a surprise to anyone who had studied terrorism. But the attacks had not been anticipated—or planned for—by many of the companies affected by the disaster, said Mr. Bremer, who participated in a panel discussion on terrorism risks at the Risk & Insurance Management Society Inc. annual conference this month in New Orleans.

Mr. Bremer noted that some of the companies affected by the 1993 World Trade Center bombing never returned to business. And, he said, some of the organizations whose operations were disrupted by the Sept. 11 attacks may also be forced to shut down because of their "inability to deal with crisis."

When asked by an audience member about the likelihood of another terrorist attack in the United States in the near future, Mr. Bremer put the probability at 100%.

Another panelist at the session—Richard Andrews, vp of emergency planning at ABS Consulting—agreed that another terrorist attack on the United States was certain to occur. "I think there is a 100% chance we will see another attack of the same severity or worse; we just don't know the timeframe."

Panel member James Lee Witt, the president of James Lee Witt Associates L.L.C. in Washington and a former director of the Federal Emergency Management Administration, said he is concerned that suicide bombings might spread to the United States, creating new risks.

The nature of terrorism has changed over the past 40 years, Mr. Bremer said, pointing out that, increasingly, corporations—rather than governments—are being targeted by terrorists. Since the 1960s, he said, about 80% of all terrorist attacks in the United States have been perpetrated against business.

Consequently, risk managers for U.S.-based companies must be vigilant about preparing for the terrorist threat, he warned.

Addressing the risk of terrorism requires risk managers to devise adequate crisis management plans, Mr. Bremer said. Many such plans often fall short, he said, in that they "pay scant attention to (a company's) most valuable assets—its employees." Any crisis—and particularly one related to terrorism—will traumatize employees, he noted. As a result, "every crisis management plan should include comprehensive plans for humanitarian assistance," he said.

> **'Risk managers today are probably at a higher priority than they have ever been in their entire lives.'**
>
> *James Lee Witt*
> *James Lee Witt Associates L.L.C.*

Crisis plans also must be tested regularly, the panelists said. And communicating those plans to employees and to the media is crucial, noted Mr. Andrews, who suggested that effectively dealing with a crisis could be beneficial to a company's reputation.

Mr. Andrews outlined several steps a risk manager could take to mitigate a company's exposure to terrorism. The first, he said, was to exercise proper loss control, such as by as strengthening and ensuring the security of facilities. In addition, implementing a good crisis management plan and business continuity plan could help reduce the impact of a terrorist attack on a company's operations. Furthermore, he said, risk managers can transfer some of the risk through insurance.

"My guess is that terrorism insurance will become available, partly because of the inherent competitiveness of the insurance industry," said Mr. Andrews, who noted that alternative risk financing tools such as catastrophe bonds also could be used to transfer terrorism exposures.

The Sept. 11 attacks clearly have highlighted the importance of a good risk management strategy, all three panelists agreed. "Risk managers today are probably at a higher priority than they have ever been in their entire lives," said Mr. Witt.

The session was moderated by Terry Fleming, director-division of risk management, Montgomery County, Md.

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Enterprise: Risk management for the entire company

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sume, he said.

"Chief financial officers generally are willing to take more and more risk if you can quantify it and explain to them what it means for the organization," Mr. Inserra said.

Mr. Inserra noted that the enterprisewide process requires developing a framework for assessing, measuring and mitigating risk in order to increase shareholder value. But despite the broad scope of enterprise risk management, that process is not a mysterious or complicated one, he said.

Key to understanding the enterprisewide risk management process is a consideration of how the various individual risks the company faces can affect shareholder value, Mr. Inserra said.

Hazard risks and insurance purchasing, for example, affect shareholder value because any related losses can influence company earnings.

But other risks, such as foreign exchange, interest rates and operational risks, also affect earnings and must be managed, Mr. Inserra said.

'Chief financial officers generally are willing to take more and more risk if you can quantify it and explain to them what it means for the organization.'

Richard M. Inserra
Praxair Inc.

In 1990, Dow began implementing enterprisewide risk management and has thus far applied such principles to financial and operational matters, Mr. Ruiz said. The process, he said, requires several steps; they include identifying corporate objectives, assessing exposures, aggregating the risks into certain classes and developing and implementing new strategies.

But the very first step in the process required Dow's corporate risk managers worldwide, along with other participants in the process, to agree on common definitions for the concerns at hand, Mr. Ruiz said.

Dow's risk managers spent a considerable amount of time improving their communication to ensure the successful implementation an enterprisewide approach to risk management, he said.

It is very difficult for people throughout an organization to reach to the same ends if misunderstandings exist about what those goals are, Mr. Ruiz said. "Make sure communication exists not only vertically but horizontally," he advised.

The session was moderated by Mr. Inserra and coordinated by Mr. Ryan.

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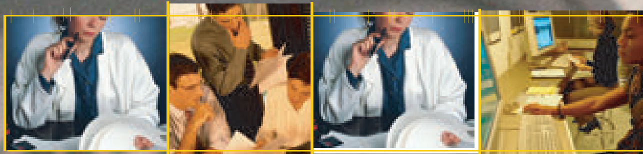

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Companies moving to comprehensive risk management

By RODD ZOLKOS

NEW ORLEANS—As business risks increase in severity and complexity, companies need to involve employees from across the organization in the effort to manage risks enterprisewide.

"Business risks are increasingly getting more complicated and actually more severe," said Daniel J. Ballard, assistant vp-risk management at AMA Insurance Agency Inc. in Chicago. "There is a need to move to a new and more innovative way of controlling risk."

Speaking at the annual conference of the Risk & Insurance Management Society Inc. earlier this month in New Orleans, Mr. Ballard said, "Comprehensive risk management is just good business."

With that in mind, chief executive officers are discovering risk management, Mr. Ballard said, "And some organizations' boards are now talking about risk management and they're making it their responsibility."

As companies move toward managing risks across the operation, it's important to install a risk management culture throughout the organization, Mr. Ballard said. People involved in the daily performance of a task are in the best position to manage risks associated with that process, he noted.

"The thing that I have preached to our senior management is that this is an evolution, not a revolution," he said. "It's an evolving of our culture."

An integrated approach to continuous risk assessment must start with a common risk language. "You've got to think about things in a way that is universal across the organization," Mr. Ballard said. "And I always say you start from the top. You've got to get the CEO thinking about this."

It's also necessary to develop a comprehensive business risk methodology that involves establishing controls and adopting processes based on an acceptable level of risk.

As risk management spreads throughout the organization, every executive's job begins to involve the assessment of business risk, the determination of risk limits, the evaluation of business controls, the identification of gaps in performance and the implementation of necessary improvements, Mr. Ballard said.

"The real value of this is you get a wide array of risk experts," he said.

A master risk management steering committee, involving stakeholders from across the organization, can look at such factors as total cost of risk. One way to address that subject with many company executives is by looking at cost of risk as a percentage of revenue, Mr. Ballard said. "When you're talking about risks to the organization, you've got to speak their language," he said.

The committee also can benchmark the company's cost of risk against that of competitors and get involved with claims data analysis, he said.

"When people have information, they make the right decisions," Mr. Ballard said. "So sharing claims data is, I think, important."

Ultimately, a business risk management strategy should focus on balancing risks and rewards, avoiding and transferring unacceptable risks and reducing retained risks to an acceptable level.

Successful companies will face some risks, Mr. Ballard said. "I think that's one thing we try to stress in our organization," he said, adding that employees at his company know they can take business risks as long as the organization knows and understands the risks and knows how much risk it can afford. "It's something we've tried to espouse in our organization," he said. "If you don't take risk, you don't move forward."

Kathy Kaminsky, director of risk management at the Metropolitan Pier & Exposition Authority in Chicago, moderated the session.

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Executives forecast further hard market conditions

By DAVE LENCKUS

NEW ORLEANS—Leading insurer and broker executives warn that the hardened property/casualty insurance market likely will only get tougher over the next few years.

Insurer executives, though, reject complaints that they are not underwriting good risks properly. They also say risk managers are criticizing them unfairly for refusing to underwrite terrorism risks.

The executives made their case during a packed forum session at the 40th Risk & Insurance Management Society Inc. Annual Conference & Exhibition, held earlier this month in New Orleans.

Numerous factors underscore the insurance market's current financial problems, said Thomas R. Tizzio, senior vice chairman of New York-based American International Group Inc. Mr. Tizzio pointed to the industry's soaring combined ratio, to which "the unparalleled losses" from the Sept. 11 terrorist attacks and additional losses related to Enron Corp.'s collapse and directors and officers liability claims were significant contributors.

Those problems "paint a bleak picture," Mr. Tizzio observed.

J. Patrick Gallagher Jr., the president and chief executive officer of Arthur J. Gallagher & Co. in Itasca, Ill., predicted that the financial crunch on insurers would result in a hard market for the next two to three years.

Mr. Gallagher pointed out that for insurers to produce a 15% return on equity—a standard corporate goal—they "would have to underwrite to an unprecedented 92% combined ratio" this year.

Brian Duperreault, the chairman and chief executive officer of Bermuda-based ACE Ltd., also suggested that the worst of the market woes for risk managers still lie ahead, as insurers continue to adjust pricing to reflect real risk rather than perceived risk. "I'm not sure the market is hard yet," he said.

Meanwhile, Mr. Duperreault said, several trends will make the market more disciplined for the long term, as well as during the next couple of years.

"New capital has raised the IQ of the industry," he observed.

Additionally, the market is more concentrated and global; regulations worldwide are becoming more consistent; and capital markets globally have increasing influence on insurers, Mr. Duperreault said.

"These changes will demand higher return on equity and press rate increases," he said. "And, when the soft market returns, you won't see as much mindless reductions" in rates.

The broker and insurer executives also fielded a barrage of tough questions from attendees.

Insurer executives denied that insurers have been opportunistic by imposing stiff across-the-board rate hikes after the Sept. 11 terrorist attacks.

> **The insurance industry 'would have had a cash-flow problem before 9/11.' The attacks 'only exacerbated the problem.'**
>
> *Brian Duperreault*
> *ACE Ltd.*

"The industry would have had a cash-flow problem before 9/11," Mr. Duperreault said. The attacks "only exacerbated the problem."

Risk managers complained that, after they have worked for months on preparing their renewal submissions and filing them early, insurers do not offer quotes until days before policies expire and seemingly ignore the submissions.

"Large, complex risks take a lot of analysis," AIG's Mr. Tizzio responded. Quotes, though, "shouldn't be" returned only 72 hours before the policy expires, he said. "Hopefully, we don't do that often," Mr. Tizzio said.

Before quoting a risk, Factory Mutual Insurance Co. of Johnston, R.I., conducts "a lot of engineering studies, and that takes time," said Shivan S. Subramaniam, the president and CEO of the highly protected risk property insurer, which does business as FM Global.

But Mr. Subramaniam acknowledged that providing quotes to risk managers earlier in the renewal process is "still something we need to work on."

The insurer executives also assured session attendees that insurers do not ignore renewal submissions.

A risk manager questioned whether insurers truly are underwriting when they slap huge rate hikes on good risks as well as poor ones.

Mr. Subramaniam responded that insurers' loss costs have risen more than expected, while stock market returns have been worse than anticipated.

Risks and jury awards change over time, Mr. Tizzio said. "We have to factor all of that in."

The insurer executives also defended their stance on refusing to underwrite terrorism coverage.

"There's no one behind us on the aggregation," which means there is little spread of risk in a terrorism loss, Mr. Duperreault said. "The aggregation is what drove the huge loss on 9/11," he said.

Citing federal flood and riot insurance, Mr. Duperreault said that insurers are not seeking unusual protection in their request for the government to backstop the industry's terrorism losses if insurers agree to underwrite the coverage.

Mr. Subramaniam said terrorist acts "come about due to the political actions our government has taken on our behalf." Therefore, he said, "it doesn't make sense" for the government to ask the insurance industry to shoulder these losses alone.

The session was co-moderated by Ronald Stasch, director of risk management services for Southfield, Mich.-based Federal Mogul Corp., and Stephen M. Wilder, vp-risk management for The Walt Disney Co. of Glendale, Calif. Terry Fleming, director of the division of risk management for Montgomery County, Md., coordinated the session.

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Hardened market puts focus on loss control data

By MICHAEL PRINCE

NEW ORLEANS—One consequence of the hard market is that underwriters want much more information from buyers on the adequacy of their property risk management efforts.

Insurers are requiring more and different information from buyers before they will write or renew insurance policies, particularly those for property coverage. That requirement is forcing policyholders to spend considerable time gathering this data, loss control experts say.

In the past 18 months, there has been an increase in visits to policyholders by loss control representatives from insurers, "and these visits are initiated by them," said Minh Jalley, corporate safety and lost prevention manager for OSI Industries Inc. in Aurora, Ill.

The nature of the visits has changed as well, Mr. Jalley noted. While an insurer's loss control experts in the past would typically provide buyers with recommendations for improving risk management programs, today they are visiting to gather information for their underwriters, he said.

This shift comes as insurers are reunderwriting most of their business and asking their loss control engineers to gather more data on risks, explained Armand Fernandez, director of services for the automotive manufacturing division of Zurich Services Corp. in Schaumburg, Ill.

Messrs. Fernandez and Jalley spoke during a session at the Risk & Insurance Management Society Inc.'s annual conference, held in New Orleans April 14-18.

As part of this new scrutiny, insurers are focusing more on risks to property than risks to workers, according to Mr. Jalley. While a company's biggest exposure may be employee-related losses, "a lot of the attention of the loss control rep is to property preservation," he said.

Mr. Fernandez echoed that view. "There is a lot more emphasis on property, that's true," he said.

This is because insurers are putting more emphasis on gathering COPE—construction, occupancy, protection and engineering—information about policyholders, according to Terry Ries, vp-loss control manager for Near North Insurance Brokerage Inc. in Chicago.

In recent years, insurers virtually ignored this basic information, Mr. Ries said. Now, though, any property insurance submission to an insurer without this information will result in either a rejection or a quote with a very high price, he said. Mr. Ries acknowledged that gathering this information is both time-consuming and costly for policyholders.

In the hard market, Mr. Ries said, insurers are seeking evidence that loss control measures have not merely been put in writing but have been implemented by policyholders. "If you can't prove it, it's probably not being done, from the insurer's view," he said.

Insurers also want to see progress by policyholders on the implementation of loss control recommendations made in prior years, Mr. Ries said. For policyholders, the best course is to communicate with the insurer as those recommendations are implemented, he said.

Mr. Ries said that this underscores another new aspect of the hard market, which is that policyholders, insurers and brokers must work together even more than they did in the past.

Mr. Ries said that a policyholder, for example, must communicate clearly to its insurer its loss-control goals and objectives. "Where do you want to be with your loss control programs?" he asked.

The policyholder should identify its priorities and focus on them and not try to resolve every concern and implement every recommendation. This focus presents the best picture to the insurer, which results in obtaining the best coverage at the best price, Mr. Ries said.

Timothy Howe, assistant vp-loss control at The Hartford Financial Services Group Inc. in Hartford, Conn., moderated the session.

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Supply chain management calls for close look at risks

By RODD ZOLKOS

NEW ORLEANS—Although companies have benefited from efficient supply chain management approaches, such as the use of just-in-time inventories, lurking within those supply chains are numerous critical risks that must be managed.

And, according to Craig Holmes, director of business continuity planning at Aon Risk Consultants Inc. in Southfield, Mich., it's important for risk managers to recognize that supply chains extend well beyond component flow processes, taking in other aspects of business, such as outsourcing.

Although many companies do manage the risks they face in many aspects of their supply chains, they often fail to consider the quality of risks at outsourced locations, he said.

Speaking on a panel discussing supply chain risk earlier this month at the annual conference of the Risk & Insurance Management Society Inc. in New Orleans, Mr. Holmes said, "supply chain risk management is operations risk management."

"It's like the rest of insurance," said another panelist, Steven P. Harris, vp at ABS Consulting in Oakland, Calif. "There are many factors and many perils that supply chains can be subjected to."

Mr. Holmes noted that though the degree of supply chain risk varies greatly with a company's particular situation, there are some common elements.

"I urge all risk managers to really go out and find where the single points of failure are," he said. Also, supply chain risk is "generally operational in nature, so you've got to go out and talk to the operations people," Mr. Holmes said.

Another panelist, John J. Marren, risk manager at Firmenich Inc. in Princeton, N.J., said that in the current marketplace, insurers are giving increased scrutiny to supply chain exposures.

"The insurers are also telling us there's limited reinsurance for this, so they're not able to or willing to provide us with the amount of coverage they could in the past," said Mr. Marren, who moderated the session.

> **'As a supplier, you're kind of at your customers' mercy to manage their own risks.'**
>
> *John J. Marren*
> *Firmenich Inc.*

Still, although it is the policyholder's responsibility to plan for contingencies and to identify contingent relationships, "what we're hearing is a lot of insureds aren't spending the time on this or even know how to tackle it to start with," Mr. Marren said.

Companies need to consider how much inventory they should maintain to continue production in the face of a supply chain interruption, the risk manager said. They also must contemplate how their customers will respond, he added.

"The bottom line is, if I don't respond to my customers' needs, my competition most likely will," he said.

"Contingency planning at suppliers is key," added Mr. Holmes. "The thing that we try to get risk managers to take a look at are risk factors associated with suppliers."

Companies should identify multiple sources for critical raw materials and equipment, Mr. Marren said, and should maintain contingency plans for obtaining needed supplies and services. They also should enter into agreements with key suppliers that provide incentives for those companies to maintain their own contingency plans.

"You need to recognize that your profitability is dependent on maintaining a high-quality, dependable supply chain," he said.

Companies also must be aware of risks associated with their customers, according to Mr. Marren, even though "as a supplier, you're kind of at your customers' mercy to manage their own risks," he said.

A company must be able to respond to a customer's needs in any situation to maintain business relationships and reputation. It also must have contingency plans to ensure that it can deliver products and should probably identify alternative sources for its product, if possible, in order to maintain the company's reputation.

Mr. Harris suggested that risk managers assessing their companies' supply chain risks start with a risk profiling process that identifies potential supply failure scenarios, their likelihood and the potential consequences. From there, a company could choose to move to more detailed quantitative risk modeling that allows a company to simulate supply chain interruptions to study their impact.

The process can offer a variety of benefits, Mr. Marren said.

"You're obviously demonstrating a commitment to your customer by going through this process," he said. "It's also important to your insurers and to your management."

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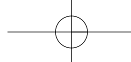

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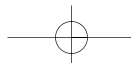


Risk management honors

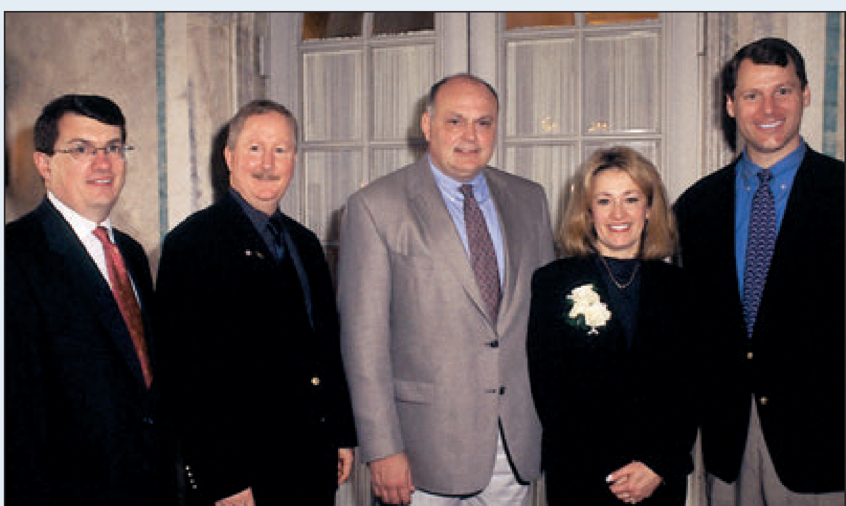
At a luncheon during the RIMS annual conference, *Business Insurance* presented the Risk Management Honor Roll award to Lauren M. Gregory, right, director of risk and insurance management at New York's Metropolitan Transportation Authority.

Gary G. Caplan, director-budgets and financial management in the MTA's Finance Division, congratulates Ms. Gregory.

Ms. Gregory gives credit to those who help her maintain the MTA's insurance programs. From left, brokers Richard Loughlin and Robert Kalbfell, both of Willis of New York Inc.; and Guy Ragosta of Willis Management in Burlington, Vt.

Kenneth J. Bauer, president of the Long Island Rail Road, is Ms. Gregory's former boss.

Ms. Gregory's associates at the MTA include, from left, Robert Lynch, manager- database management; Phyllis Rachmuth, assistant director-claims management and standards enforcement; Carol Childers, assistant director-risk assessment; Ms. Gregory's supervisor, Gary G. Caplan, director-budgets and financial management in the MTA Finance Division; Ora Moore-Cole, insurance examiner; and Christopher D'Antonio, assistant director-risk control and reporting.



Risk Manager of the Year Daniel H. Kugler, center, and Ms. Gregory are congratulated by, from left, *Business Insurance* Publisher Martin J. Ross III; RIMS President Christopher E. Mandel and *BI* Editor Paul D. Winston.

PHOTOS: MICHAEL MARCOTTE

Also attending the luncheon were previous risk management honorees. Seated, from left, are former *Business Insurance* Publishing Director Kathryn J. McIntyre, Sheryl Pixler, and Judy Lindenmayer. Standing, from left, are Judith Tornese, *BI* Director of Communications Ronnie Drachman; and Millicent Workman.

Integrating work comp, disability programs urged

By MICHAEL PRINCE

NEW ORLEANS—Employers can, and should, integrate their workers compensation and disability programs to save money, panelists said at a session during the Risk & Insurance Management Society Inc.'s annual conference earlier this month.

Even if neither an employer's workers comp insurer nor its disability insurer offers an integrated program, the employer should push them to create one, because it will save money and make life easier for workers, the speakers advised.

"Employers have the power to make this happen," said Wendy M. Manners, the director of integrated benefits at The Hartford Financial Services Group Inc. in Hartford, Conn.

'Work together with the benefits manager. ... It really makes a difference to have that partnership and sharing of ideas and knowledge.'

Kelly M. Pikor
The Hartford Financial Services Group Inc.

Kelly M. Pikor, the manager of risk financing at The Hartford, said that the handling of workers comp and disability programs by separate corporate divisions is often a major obstacle to integrating the programs.

In the past, workers comp was dealt with by The Hartford's risk management department and disability was dealt with by the human resources department, she said. Integration of the programs, which began in 1996, meant breaking down the walls that separated the departments, she said.

"Work together with the benefits manager," Ms. Pikor said. "It really makes a difference to have that partnership and sharing of ideas and knowledge."

A big step toward integration came with the introduction of a single toll-free number for employees to report their workers comp and disability absences. Once reported, both types of claims are coordinated by adjusters. The provider of the integrated service is itself a unit of The Hartford that offers the program to other employers.

While in the past the same absence could have initiated simultaneous workers comp and disability claims and investigations, coordination now eliminates such wasteful expenditures. In addition, Ms. Pikor said, having one number to call to report a claim is simpler for employees.

To date, the integrated program has been quite effective, she said. Surveys of employees show that they are pleased with the simpler system, and the company has saved money. Hartford has even added the tracking of Family and Medical Leave Act absences to the system.

Ms. Pikor acknowledged, though, that it still requires work to keep the channels open to the benefit manager.

While some organizations may assume departments deal with separate concerns and can never work together on an integrated program, that's not true, Ms. Manners said. Risk managers not only manage the workers comp plan, she said, "but you're there to manage the employee population and keep them as productive as possible."

Individuals often believe that integrating the two programs is difficult, but that's not always true, she said. "It's not rocket science. It's all about knowing your business," she said.

The goal of any integrated benefits plan, Ms. Manners said, is to reduce absenteeism and improve worker productivity. And an important aspect of this effort is getting people to return to work after absences, she said.

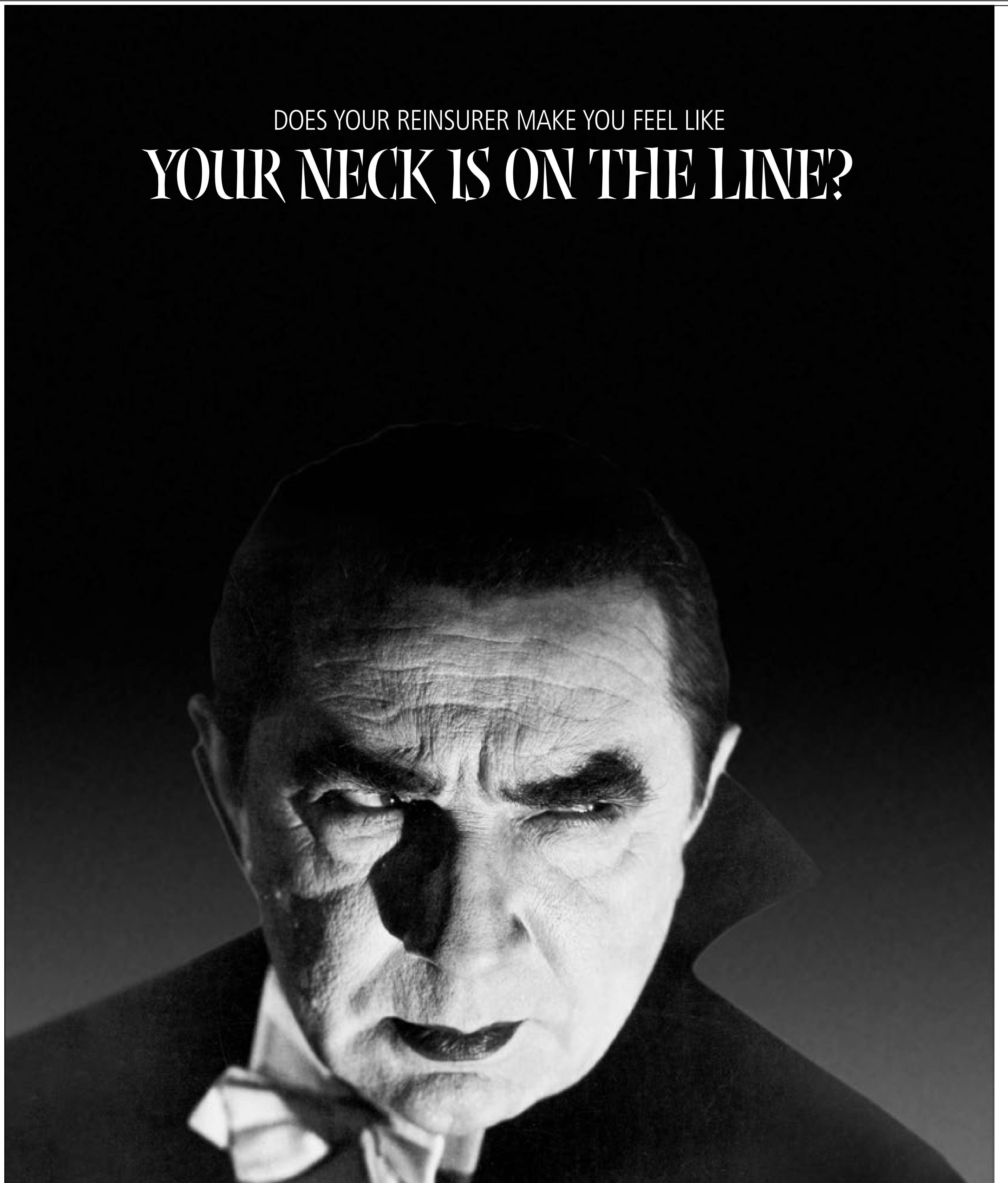
Ms. Manners noted that while promoting individuals' return to work has been a prominent feature in workers comp programs for a while, that has not been the case in disability plans. She advised that any integrated plan have a strong return-to-work element, including an incentive to motivate people to get back to work.

Recent studies that show the large financial impact worker absence has on employers have sparked new interest in program integration, Ms. Manners said. This new evidence can help risk managers and benefits managers press senior management for an integrated program, she said. "People are reframing the whole issue of integration," she said.

Another important component of successful integration is the use of either a single computer system or systems that handle workers comp and disability claims separately but can work seamlessly together, she said.

Ms. Manners noted that, for employers, a big advantage with an integrated system is in the area of claims reporting. With these reports, an employer can determine the incidence of claims by location, by department and by type of injury, she said. Furthermore, she said, an integrated system can help an employer identify patterns of abuse.

Ms. Pikor coordinated the session.



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ART tools offer solutions for array of risk appetites

Interest in alternatives growing in hardened market

By RODD ZOLKOS

NEW ORLEANS—Even in a soft insurance market, interest in alternative risk transfer approaches continued to grow, so it's no surprise to see interest in the techniques now that the market has hardened, one ART expert says.

"We were expecting a hard market to come back a whole lot of different times," said Edward S. Koral, senior vp at MMC Enterprise Risk in New York, a unit of Marsh & McLennan Cos. Inc. Although a hard market never materialized as many expected a decade ago, over the past 10 years "my phone never stopped ringing about things like captives or finite risk or other ways of skinning the cat," Mr. Koral said.

Now, among other developments, there is increased movement toward an integrated concept of risk management, as well as an interest in using the organization's capital to take and manage risk, he said.

Mr. Koral made his remarks as part of a panel offering a buyer's guide to ART earlier this month at the Risk & Insurance Management Society Inc. annual conference in New Orleans.

"Probably the most important thing to know is that everybody's problem is different," Mr. Koral said. "So, if somebody asked me to describe alternative risk transfer, it's really a more global approach to dealing with the way certain events or occurrences affect your balance sheet."

An ideal ART program, he said, achieves the optimal blend of risk retention and risk transfer at the lowest total cost of risk. The effort requires collaboration among the risk manager, the chief financial officer and the company's treasurer.

Mr. Koral set out the risk transfer tool chest along a continuum starting with guaranteed-cost programs at the "risk averse" end and moving through cash flow and retroactive dividend programs to self-insurance and captives and finally to securitization at the "risk taker" end of the spectrum.

Another panelist, Mark P. Charron, a principal at Deloitte & Touche L.L.P. in Hartford, Conn., allowed that, "For a lot of clients, a lot of organizations, guaranteed-cost insurance does have a good applicability." But such programs provide no benefit if the organization has no losses, offer no cash-flow benefits and provide no incentive for loss control activities, he said.

Retro programs, meanwhile, are "a good, solid, middle-of-the-road option for lots of organizations," he said.

Moving on to self-insurance programs, "now we're starting to talk about when you really want to formalize insurance risk management within your organization," Mr. Charron said. "It's not unusual to see top management really lending their support to this type of program and putting their weight behind it." But self-insurance is not a good fit for risks such as large property exposures, he said.

> **'We think you do have as much control in a captive as you will in any other risk financing option.'**
>
> *Mark P. Charron*
> *Deloitte & Touche L.L.P.*

"For a lot of organizations, they don't get much further than that," the Deloitte principal said. "It's retros and it's retentions and it's self-insurance."

For those who do move further along the continuum, captives represent an opportunity to stabilize an insurance program, reduce costs and increase control over the program, Mr. Charron said. "We think you do have as much control in a captive as you will in any other risk financing option."

And captives can act as a "shock absorber" between a company's subsidiaries and the insurance market, Mr. Koral said, with a captive used to take on higher retentions that might be problematic for the subsidiaries.

Mr. Koral said there is increased interest in finite insurance programs as insurers are demanding higher retentions. As for risk securitization, such deals "are still very much out there, and to the extent that they are still usually more expensive than the insurance market, they are usually not a viable option," he said.

Finally, multiline/multitrigger programs are "the way everyone should be buying insurance," Mr. Koral said. But the integrated risk market is somewhat limited currently, and it is very difficult to put together any sort of multiyear program, he said.

Denny Borne, insurance and claims manager at Canal Barge Co. Inc. in New Orleans, moderated the session.

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Rate hardening necessary for industry's financial health, consultants contend

By JOANNE WOJCIK

NEW ORLEANS—Risk managers must realize that insurers need to raise prices to restore their financial health, despite newspaper articles suggesting that the insurance industry is gouging consumers, two industry experts assert.

"The hard market is needed by and good for the industry, even if it's hard on the buyers," said Jenny P. Emery, principal and consultant at Tillinghast-Towers Perrin, during an interview with *Business Insurance* at the annual conference of the Risk & Insurance Management Society Inc., held in New Orleans earlier this month. Prior to speaking to *BI*, Ms. Emery, who works in Tillinghast's Hartford, Conn., office, had addressed pre- and post-Sept. 11 market conditions during a RIMS' educational session about the state of the insurance industry.

Ms. Emery recounted that the discussion at that session began somewhat contentiously, in response to an article that appeared in the April 15 edition of *USA Today*. The article cites the Washington-based Consumer Federation of America as saying that the impact on the insurance industry's bottom line was a loss of just 7.2% of its surplus, and it quotes Robert Hunter, author of a CFA study, as saying that at least a "taxpayer-funded bailout of this super-rich industry" is unwarranted.

Ms. Emery recalled that, following her presentation on the industry's financial condition prior to the terrorist attacks, one attendee stood up and, referring to the *USA Today* article, said, " 'I've got my CFO reading these kinds of things—we're just being gouged. What kind of answers do I give him?' "

> **Because of underpricing, 'the financial challenges of the industry predate Sept. 11.'**
>
> *Jenny P. Emery*
> *Tillinghast-Towers Perrin*

But Brian W. Merkley, a consultant in Tillinghast's Dallas office, noted that "three years ago, when you were paying three-quarters of your expected losses for a guaranteed-cost insurance policy, you didn't say, 'Hey, I'm not paying enough.' " Mr. Merkley, who was interviewed by *Business Insurance*, also spoke during the session on the state of the industry.

Because of this kind of underpricing, "the financial challenges of the industry predate Sept. 11," Ms. Emery explained. "Something was going to give anyway."

"As you look at how the insurers are faring right now, you have to conclude they responded just as you hoped they would from Sept. 11," she said. "They'll recover from Sept. 11 just fine. And, in fact, if share price is any indicator, at least for some segments of the insurance market, things are looking pretty positive."

But, because "stock prices are based on expected future cash flows," Mr. Merkley explained, insurers need the price increases to satisfy investors that they are in good financial condition.

Still, Mr. Merkley acknowledged that risk managers may feel they're being overcharged if they see their insurers' stock doing well.

Ms. Emery also said that today's market tightening differs from the last wide-scale hard market, in the mid-1980s, in that there is plenty of capacity, albeit at a price.

"There is appetite to underwrite risk if they can underwrite it appropriately and at the right price," she said. "The buyers may not like the price, and the sellers may want to do some pretty rigorous assessment of whether they want that exposure or not. But, in general, this is not like '85 or '86, when you just couldn't buy it."

"Risk managers are being forced to understand their risks again—as well or better than the carrier—and understand their financial ability to retain risk and also understand where they really don't need to buy the higher limits," Ms. Emery said.

"I think that a risk manager who feels that they've been blindsided by this hard market was naïve," she said.

"A risk manager needs to be paying attention to the financial health of the industry they're dealing with," Ms. Emery said. "And they need to know that if they've been riding the wave one way, they're likely to ride the wave the other way."

Securitization directory deadline approaching

The online directory of risk securitization specialists will be published in conjunction with the May 27 issue of *Business Insurance*.

The issue will also contain a ranking of the largest risk securitization specialists and a *BI* Spotlight report on risk financing options.

To be listed in the directory, companies must provide risk securitization consulting, which *Business Insurance* defines as: providing advice on a fee-for-service basis on packaging insurance risk using capital markets instruments.

This does not include underwriting traditional insurance or underwriting other forms of securities.

Companies must provide the number of risk securitization deals they were involved with in 2001 to be listed.

This directory is published as an editorial service; there is no charge to be included. To obtain a questionnaire for the online directory, please contact Directory Editor Kevin Edison at 312-649-5279 or download a questionnaire at the directory area of *BI's* Web site, *www.businessinsurance.com*.

The extended deadline for returning the directory questionnaire is May 17.

Loss portfolio transfers require know-how, analysis

By DAVE LENCKUS

NEW ORLEANS—A loss portfolio transfer can improve a company's balance sheet and protect a captive insurer's surplus, but a fair amount of work is necessary to arrange the transaction, according to a panel of experts.

"Usually, the only way these things get done is with a strong risk manager and treasurer who know what they're doing," said William T. Harris Jr., executive vp of Commercial Risk Re-Insurance Co. of Morristown, N.J.

In a session at the Risk & Insurance Management Society Inc. annual conference earlier this month, Mr. Harris and other loss portfolio transfer experts outlined the advantages and drawbacks of such transactions and the analysis required to successfully complete one.

In an LPT, an insurer or reinsurer charges a premium to assume a company's retained liabilities in an insured or self-insured program. Commercial Risk, which acquires 10 to 15 loss portfolios annually, will assume $1 million to more than $100 million of liabilities, Mr. Harris said.

Besides the premium, the transaction is attractive because the insurer or reinsurer would obtain a loss reserve tax break for which the policyholder likely was ineligible, he noted.

A loss transfer could, for example, relieve a company of the liabilities it has amassed in a large-deductible insurance program, Mr. Harris said. Another huge benefit is that it would free all of the collateral that policyholders have had to post as part of their large-deductible programs, in which insurers serve essentially as fronts, he noted.

For captive insurers, an LPT would result in surplus relief when loss development deteriorates unexpectedly, he said.

A loss transfer would let a policyholder close out the retrospectively rated years of a policy, noted Robert W. Hessel, an Atlanta-based senior vp with Becher + Carlson Risk Management Inc. and Becher + Carlson Insurance Services Inc., units of Am-Re Global Services Inc.

The transaction also could benefit a company that is being courted by a friendly suitor or a company that completes the transaction for a subsidiary it wants to divest but that is carrying an unattractive liability load, he said.

But there are some drawbacks, acknowledged Mr. Harris and Nicholas R. Polo, a Woodland Hills, Calif.-based senior vp with Becher + Carlson:

- Policyholders must provide cash up front to close the loss transfer deal.
- Premium payments may not be immediately tax-deductible.

If a risk manager is contemplating a loss portfolio transfer to obtain a tax break, "don't bother wasting your time," Mr. Harris said.

Mr. Polo agreed. "The tax benefits aren't all that great. You might shave off a few points here or there."

- Policyholders still might face future liabilities if the LPT limit is inadequate.
- The deal poses some complex accounting issues.

Policyholders considering an LPT should run a variety of tests to evaluate their loss variability, develop confidence in their estimates and adjust their loss estimates to highlight the true variability in those figures, Mr. Polo said. He advised risk managers to develop loss estimates on their liabilities out through the effective date of the loss transfer.

He also recommended running cash-flow analyses on the various LPT options a policyholder may have as well as on other types of risk-financing options, such as self-insurance.

Mr. Hessel advised risk managers that loss portfolio underwriters will want to perform a separate claims audit to ensure that reserves are adequate.

In marketing their loss portfolios, policyholders may have broader coverage than insurers currently offer, and this coverage should be highlighted for loss portfolio underwriters, Mr. Harris stressed.

When marketing a loss portfolio, risk managers should approach it as they would a renewal, Mr. Hessel advised. Policyholders should "be focused" and approach only two to four markets, he said. "You don't shotgun these things," he said. "It takes a lot of time, and it takes a lot of care."

Ellen M. Brunner, director of risk services for Six Continents Hotels, moderated the session, which Mr. Polo coordinated.

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China focusing on improving work safety

New standard expected to raise employer awareness

By CAROLYN ALDRED

BEIJING—Companies with operations in China are facing more stringent health and safety requirements as a result of Chinese government efforts to reduce the high incidence of industrial accidents and work-related illnesses.

Both domestic and international companies are subject to the more rigorous regulations, and international companies—many of which already have superior health and safety standards—are expected help usher in better standards throughout China.

According to the State Economic and Trade Commission, there were 11,681 fatal accidents at work in China in 2000. In the first six months of 2001, 5,471 people were killed in 4,545 industrial and mining accidents. By comparison, the number of U.S. workplace fatalities in 2000 was 5,915, according to the Department of Labor.

Much of China's existing occupational health and safety legislation is several decades old and needs to be updated to reflect the rapid growth in China's industrial output, Chinese government officials said.

In the first quarter of this year, in an attempt to address the problem, the government introduced a new national standard for occupational health and safety management systems—the GB/T 28001-2001 national standard. The standard will make companies more aware of health and safety, according to the State Administration for Standardization, which issued the new specification jointly with the China National Regulatory Commission for Certification and Accreditation.

A spokesman from the Department of Law and Supervision of the Ministry of Health urged foreign investors to study China's new regulations on worker safety before investing in China.

However, many multinational companies operating in China "have set a good example in workers' health protection," he noted.

According to official reports, new regulations include:

- Punishments and fines for employers causing employee accidents or illnesses.
- Provision of occupational health facilities in new factories.

See CHINA/page 39

PHOTO: AFP

China aims to increase safety at workplaces such as this shoe factory in Qingdao.

E.U. issues workplace harassment directive

By SARAH VEYSEY

BRUSSELS, Belgium—A new European Union directive will make it more difficult for employers to defend themselves against charges of permitting sexual harassment in the workplace.

The directive, approved by the European Parliament and the European Commission earlier this month, places the burden of proof on employers in cases alleging employer toleration of sexual harassment in the workplace. In addition, employers found guilty of permitting sexual harassment could face unlimited sanctions in the courts of member states. The European Court of Justice will become the final court of appeal for harassment cases.

The directive, which amends the 1976 Directive on Sexual Discrimination, must be adopted by E.U. nations by 2005 and will, for the first time, create legislation that outlaws sexual harassment as a form of discrimination in the European Union.

According to the London-based law firm of CMS Cameron McKenna, the new law will likely have the biggest impact in E.U. member states, such as Greece and Portugal, that do not yet have a body of law specifically designed to tackle sexual harassment.

In countries where legal restrictions on sexual harassment are more developed, such as the United Kingdom, employers are already well aware of the potential cost of such cases, the law firm said in a statement. "Much of the new law simply consolidates established U.K. practice. For example, it confirms that sexual harassment con-

See E.U./next page

Law Lords to hear appeal

Asbestos settlement halted

By CAROLYN ALDRED

LONDON—A Court of Appeal ruling that has halted the settlement of thousands of asbestos claims in the United Kingdom will be appealed to the House of Lords next month, after a last-minute attempt by the insurance industry to settle the case out of court was rejected last week.

Last December, the Court of Appeal court ruled that individual mesothelioma victims who had been exposed to asbestos at more than one workplace must be able to prove where they were employed when they contracted the disease in order to claim compensation (*BI*, Dec. 17, 2001). Mesothelioma—a malignant tumor, usually of the lung—can be caused by exposure to a single fiber of asbestos and is usually fatal.

The Court of Appeal ruling in *Fairchild vs. Dovener, Waddingtons and Leeds City Council* was hailed at the time by Halliwell Landau, a Manchester, England-based law firm that represented one of the defendants, as "one of the most significant decisions in the history of insurance law" and has led to the cessation of virtually all settlements to sufferers who had been exposed to asbestos from more than one source. Concern has grown, though, about the ruling's impact on thousands of mesothelioma sufferers who might now be unable to obtain compensation from former employers, leading to calls by unions, plaintiffs lawyers and parliamentarians, among others, for the House of Lords to hear the case soon.

As a result, an appeal by three claimants who had been exposed to asbestos from more than one source was granted a fast-track appeal to the House of Lords, which was scheduled to start April 16.

Efforts by plaintiffs attorneys to overturn the Court of Appeal ruling were nearly derailed last

See ASBESTOS/page 39

Generali leads coverage on Milan skyscraper

MILAN, Italy—Assicurazioni Generali S.p.A. wrote property coverage for the Milan, Italy, skyscraper hit by a light airplane on April 18.

A spokeswoman for Trieste, Italy-based Generali said that the company's net exposure from the incident was between 3 million euros ($2.7 million) and 4 million euros ($3.6 million). Generali did not name its reinsurers.

The superintendent of general affairs for the Lombardy region, which has its headquarters in the building, said in a statement that the 30-story building was insured for 400 million euros ($356.7 million) for all damage unrelated to terrorism and for 42 million euros ($37.5 million) for terrorism-related claims.

Milanese authorities are investigating the crash, which is thought to have been caused by pilot error. The plane hit between the 25th and 28th floors of the building, killing at least three people—including the pilot—and injuring about 30.

The building reopened April 22.

—By Sarah Veysey

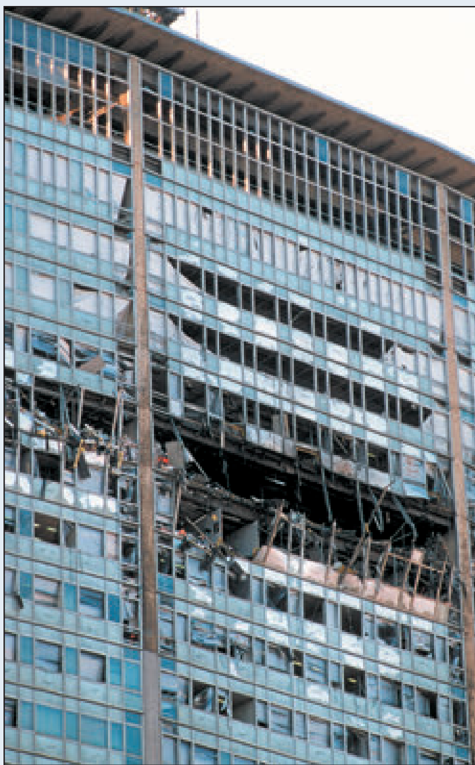

PHOTO: AFP

World Updates

Berkshire to fund new Lloyd's syndicate

Berkshire Hathaway Inc. has agreed to back a new syndicate at Lloyd's of London with £150 million ($217.3 million) of capacity. The new composite syndicate will be managed by Wellington Underwriting P.L.C. In addition, Berkshire will provide a 30% qualifying quota-share reinsurance arrangement for Wellington's composite syndicate 2020 for the 2002 year of account. Wellington said the moves would increase its capacity under management in 2002 by about 54%, to £963 million ($1.39 billion).

Kiln plans private share placement

Lloyd's of London-based insurer Kiln P.L.C. plans to raise about £47.6 million ($68.9 million) in capital through a private equity placement. Under the terms of the placement, known as a rights issue, current Kiln shareholders W.R. Berkley Corp., BRIT Insurance Holdings P.L.C., investment company Rostrum Investors L.P. and a Kiln employee trust will have the option to buy new ordinary shares in the company. Berkley has conditionally agreed to purchase 36.1 million shares at 47 pence (68 cents) per share, taking Berkeley's stake in Kiln to 20.1% from about 5%, Kiln said. Much of the proceeds from the rights issue will be used to underwrite on Kiln's composite syndicate 510, said Kiln Chief Executive Officer Ed Creasy.

Equitable Life sues former directors

The new management of the now-defunct U.K. mutual Equitable Life Assurance Society is suing 15 of the society's former directors for more than £3 billion ($4.34 billion). The lawsuit charges that the directors failed to recognize that there was a legal question about the validity of paying terminal bonuses to policyholders that varied in amount depending on whether the individual policyholder took an annuity or an alternative benefit; that they failed to act appropriately on legal advice that a test case filed by policyholders against the society might succeed; and that they failed to make proper financial provisions should that occur. Equitable Life closed to new business in 2000, after the House of Lords ruled that it had to meet guaranteed annuities totaling more than £1.5 billion ($2.17 billion). The 15 directors served on boards at Equitable Life between 1993, when terminal bonuses of varying amounts were introduced,

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E.U.: Directive would ban sexual harassment at work

Continued from previous page

stitutes discrimination and that there is no upper limit on compensation," it said. "However, for the first time sexual harassment is given a legal definition that is applicable across Europe."

Under the terms of the new directive, sexual harassment is defined as "any form of unwanted verbal, nonverbal or physical conduct of a sexual nature (that) occurs with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment."

The directive also expands the definition of sexual discrimination in the workplace to include such things as "sexual jokes," "sexual blackmail" and "remarks about looks."

Under the directive, an employer taken to court in a sexual harassment case must prove that it has created a "harassment-free" workplace. Employers will have to show that they have taken preventive measures against sexual harassment, such as providing training courses for employees and publishing regular "equality reports" detailing their policies with regard to gender equality.

"Although it has long been advisable for employers to have specific policies on equal opportunities and sexual harassment, it seems that employers may now need to be even more proactive in their approach," the CMS Cameron McKenna statement said, noting that employers will now be required to take preventive steps against workplace discrimination.

A spokesman for the London-based Assn. of Risk & Insurance Managers said that the group is confident that most U.K. companies already have a policy in place to address workplace sexual harassment. He noted that many companies have moved to tackle the problem because of the high profile that sexual harassment cases have had in the United Kingdom.

The Brussels, Belgium-based Union of Industrial & Employers' Federations of Europe gave a guarded welcome to the directive. A spokeswoman for the European employer federation said that while it welcomed the move to make sexual harassment illegal, it expressed concern about the liability the new directive places on employers.

"As (the directive) is written now, employers are liable, and how can that be done?" the spokeswoman asked. She said the federation was concerned about how an employer as well as an individual employee could both be held liable for the actions of that employee.

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REQUEST FOR INFORMATION

STATE BOARD OF ADMINISTRATION OF FLORIDA

The State Board of Administration (SBA) is soliciting competitive responses from firms offering actuarial consulting services to the Florida Hurricane Catastrophe Fund (FHCF). The Request For Information (RFI) will be available on May 1, 2002, and may be obtained from the FHCF web site: http://www.fsba.state.fl.us/fhcf/ (under "What's New"). The deadline for submitting responses is 4 p.m. EST on May 31, 2002.

LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT
NO. 004375 OF 1990
IN THE MATTER OF

NATIONAL EMPLOYERS' MUTUAL GENERAL INSURANCE ASSOCIATION LIMITED

(IN LIQUIDATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

NOTICE IS HEREBY GIVEN that we, the joint liquidators of National Employers' Mutual General Insurance Association Limited (in liquidation) ("NEMGIA"), have given notice of the value of each general business policy for which a determination has been made by us (in accordance with Rule 6 of the Insurance Companies (Winding Up) Rules 1985 ("the 1985 Rules")) by letter dated 21 November 2001 sent to the persons appearing from the records of NEMGIA or otherwise to be entitled to an interest in each such policy.

By order of the High Court dated 26 March 2002, it was directed that notification by (i) those letters dated 21 November 2001, (ii) by a further letter giving notice and enclosing a copy of the order, and (iii) by this advertisement should be the manner of notification of the value of each general business policy determined by the joint liquidators in accordance with Rule 23(1) of the 1985 Rules.

Pursuant to Rule 23(4) of the 1985 Rules any person given notice in the manner directed is bound by the value of each general business policy determined by the joint liquidators unless and until the Court otherwise orders.

MR ANTHONY J MCMAHON
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KPMG, 8 Salisbury Square, London EC4Y 8BB, United Kingdom

LEGAL NOTICE | **LEGAL NOTICE**

SOVEREIGN MARINE & GENERAL INSURANCE COMPANY LIMITED ("THE COMPANY")

NOTICE OF ANNUAL MEETING OF SCHEME CREDITORS

A Meeting of the Scheme Creditors of the Company ("the Meeting") has been convened by the Scheme Administrators, pursuant to Clause 8.1 of the Scheme of Arrangement between the Company and the Scheme Creditors ("the Scheme") for the purposes set out below.

The Meeting will be held in The Court Room, The Chartered Insurance Institute, 20 Aldermanbury, London EC2V 7HY, on Tuesday 21 May 2002 at 10.00 a.m. (London time). At the Meeting, a resolution will be put to the Scheme Creditors to ratify the appointment of John Mitchell Wardrop, a partner in KPMG, as a Scheme Administrator of the Company with effect from 21 March 2002 pursuant to Clause 6.4.4(b) of the Scheme. A report prepared pursuant to Clause 6.4.2 of the Scheme ("the Report") concerning the progress made in implementing the Scheme and the conduct of the Company's affairs generally since the last such report was prepared shall be laid before the Meeting pursuant to Clause 8.1.2. Scheme Creditors will have the opportunity to address questions to the Scheme Administrators concerning the Report at the Meeting.

A copy of the Report is being sent to the last known addresses of all identified scheme creditors. Any person entitled to attend the Meeting who has not received the Report by 30 April 2002, can obtain a copy free of charge from the Scheme Administrators of the Company at KPMG, 8 Salisbury Square, London EC4Y 8BB.

Queries regarding Scheme Creditors' claims should be directed to the helpline on +44 (0)1452 413 982.

A. J. McMahon, **Scheme Administrator**
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(Public Risk Management Association)
Closing: May 7

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Asbestos: Law Lords to review lawsuit

Continued from page 37

week, though, by a last-minute offer put before the claimants and the court by the defendant insurance companies and the Assn. of British Insurers.

In a joint approach to the court, the insurers offered to settle the three cases in full, while the ABI announced that, with the backing of its members, it was putting together a voluntary compensation plan for asbestos victims.

The proposal was rejected by at least one of the three claimants, though, who did not want to settle at the expense of an opportunity to overturn the Court of Appeal ruling, according to a lawyer representing the claimants.

As a result, the House of Lords announced that the appeal of the decision would go ahead provisionally on May 7.

An ABI spokesman said that the settlement had been offered not to ensure that the House of Lords did not overturn the Court of Appeal ruling but to permit a speedy resolution of the claims and to avoid additional legal costs.

Meanwhile, the insurance industry will reassess whether to proceed with its plans to set up an industry compensation plan following the House of Lords ruling, the spokesman said.

"If the House of Lords finds the Court of Appeal ruling correct and that the insurers are not liable, we would seek to establish a voluntary compensation scheme," the spokesman said.

Although the details of any insurance industrywide asbestos compensation plan have yet to be agreed upon, ABI members that write employment liability insurance have given their backing to a voluntary arrangement to allow asbestos victims to be compensated without claimants having to go through the courts, the ABI spokesman said.

The spokesman said that the plan, which would be voluntary, would probably consist of a pooling arrangement, with the insurer of the claimant's most-recent employer handling the claim.

China: Aiming to improve work safety

Continued from page 37

- The establishment of worker health records.
- Regulation of production to protect employees.
- Responsibility for workplace safety by the head of any enterprise.
- Emergency rescue systems to be established by local governments.

Chinese officials said the number of reported deaths from industrial accidents has increased every year since the early 1990s. More than 500,000 industrial plants and mines have occupational health hazards in China, and more than 25 million people are exposed to dust, noise or toxic chemicals.

In 2000, nearly 12,000 cases of workplace disease were reported, an increase of 14.5% over 1999. The lung disease pneumoconiosis, which is caused by inhaling dust or small particles, accounted for 77% of all cases reported, according to the Department of Health.

"It is time to strengthen the management of occupational health and safety. Workers have the right to enjoy a safe workplace and their health and lives are closely related to the country's social development and economic growth," said Shi Baoquan, deputy administrator of the State Administration for Standardization, in a statement.

The deputy administrator added that the new standard will help Chinese businesses compete and cooperate better with their foreign counterparts.

> **'Most multinational companies tend to have their own set of safety requirements that...are more comprehensive than local regulations.'**
>
> *Joseph Wu*
> *Aon Consulting Hong Kong Ltd.*

Most multinational companies with operations or joint ventures in China apply stringent health and safety guidelines and will not be impacted adversely by the new regulations, said Joseph Wu, managing director of Aon Consulting Hong Kong Ltd.

"Most multinational companies tend to have their own set of safety requirements that, in general, are more comprehensive than local regulations. Companies which subcontract work to local factories are likely to impose their own safety requirements on their vendors," he noted.

Paul Taylor, head of business risk management development at London based retail group Kingfisher P.L.C., agreed that multinational companies generally set a good example and encourage Chinese manufacturers to improve health and safety standards.

"We source a lot of products from China and have minimum standards that we expect our suppliers to adhere to. Where suppliers need to and are willing to raise health and safety standards, we will help them. Where they are not willing to raise standards and cannot meet our minimum standards, we will generally seek to use different suppliers," said Mr. Taylor, who also is vp of Federation of European Risk Management Associations.

Kingfisher and other multinational companies already advise Chinese suppliers on basic health and safety issues such as guarding of machinery, dust extraction and the wearing of personal safety equipment, he said.

The condition of workplaces in China "still has room to improve. It is no surprise that the Chinese government, like most countries in the world, is continuously setting new standards in this area," said Mr. Wu.

He added that the "Chinese economy has grown so much in the last 10 years, it is essential to ensure that the workforce has a healthy and safe work environment." This means there now are significant "opportunities in China in terms of health and safety," he said.

Earlier this year, the Chinese government decreed that foreign consulting companies should be allowed to provide legal services related to occupational health and safety for Chinese enterprises.

Such companies should be conversant with China's occupational health and safety laws and regulations, which aim to set up workplace-safety systems in line with international requirements and the trend toward globalization, said Yang Fu, director of the Technological Improvement and Equipment Department under the State Administration of Work Safety Supervisions.

Since July 2000, about 20,000 employees in 700 enterprises have accepted training on workplace safety, and 200 enterprises have set up safety management systems, according to the government department.

PacifiCare: Plans under scrutiny

Continued from page 2

Chevalier in Washington.

In the past, the government was more focused on suits involving fraud in the Medicare program. The settlement, however, may signal an increase in government scrutiny of other forms of health care coverage.

"Companies are going to have to start paying attention to the program to a degree they did not before," said Jay DeVecchio, partner with Miller & Chevalier in Washington.

The added enforcement, in all areas involving health care fraud of federal government programs, stems from passage of the Health Insurance Portability and Accountability Act in 1996, said a spokesman for the Department of Justice. Under HIPAA, a new antifraud unit was established at the Justice Department that focuses on cracking down on health care fraud. "That has allowed us to be far more aggressive," he said.

The law provided greater resources to the Justice Department, allowing them to add more attorneys and investigators dedicated to pursuing suits under the False Claims Act. The program has been so successful that claims brought by the government under the False Claims Act involving health care fraud have now surpassed suits against defense contractors, formerly the largest area, he said.

> **'Companies are going to have to start paying attention to the program.'**
>
> *Jay DeVecchio*
> *Miller & Chevalier*

PacifiCare stated that it is fully reserved for the settlement amount. The company also said that since taking over FHP in 1997 it has created a more rigorous compliance program to prevent billing errors.

"Since we implemented our comprehensive process, we have been able to demonstrate that our compliance program has been effective based on the results of 15 (U.S. Office of Personnel Management) audits in the ordinary course that have been conducted," Gregory Scott, PacifiCare's executive vp and chief financial officer, said in a statement.

With the increased enforcement by the government, health plans need to ensure that their compliance program is up to date and their people are trained to follow the rules, Mr. DeVecchio said.

The federal program pays more than $20 billion yearly in premiums to more than 200 health plans to supply health care to 9 million federal employees and their dependents.

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World Updates

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and 2000, when the House of Lords ruled that such variations were unlawful.

Malpractice costs plague U.K.'s NHS

Provisions for medical negligence liabilities faced by the National Health Service increased £500 million ($710.0 million) to £4.4 billion ($6.25 billion) for the year ending March 31, 2001, according to the NHS accounts for 2000/2001 published last week. A key reason for the increase was the growing size of court awards in malpractice liability cases, according to Sir John Bourn, the head of the U.K. National Audit Office.

Fitch affirms A- Lloyd's rating

Fitch Ratings Ltd. in London has affirmed its A- insurer financial strength rating on Lloyd's of London. In September, Fitch downgraded Lloyd's rating to A- from A+ and placed the rating under review, in part because of uncertainty relating to Lloyd's Sept. 11 losses. In affirming the rating, Fitch said that though Lloyd's Sept. 11-related losses still could increase, current estimates indicate some stability. In addition, Fitch said that, given the magnitude of the Sept. 11 loss, insolvencies among companies that reinsured Lloyd's could not be ruled out.

Briefly noted

Zurich London Ltd., the London arm of Swiss giant Zurich Financial Services Group, is relocating its commercial crime team to Lloyd's of London. Zurich London said it would write bankers blanket bond, bankers professional liability, directors and officers, commercial directors and officers liability and non-U.S. commercial crime coverage from Lloyd's as well as in the wider London market....Lloyd's of London insurer **Amlin P.L.C.** recorded a pretax loss of a £81.5 million ($118.7 million) for 2001, compared with a £26.4 million ($38.4 million) loss for the previous year. Amlin said its Sept. 11-related losses totaled £63.9 million ($93.0 million), which was "broadly in line with previous estimates."...Stephen Riley has stepped down as managing director at London-based **CNA Reinsurance Company Ltd.** Mr. Riley has been succeeded by Keith Davies, the chief executive officer of Chicago-based CNA Reinsurance's property/casualty insurance operations in Europe....Jon Parker has been appointed senior consultant to the MMT Computing P.L.C. team working on the **London Market Principles** project.

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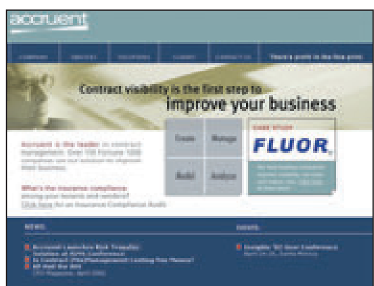
Products & Services



Insurance certificate tracking system

SANTA MONICA, Calif.—A new software program provides property owners and managers with an automated system for tracking and managing insurance certificates.

Risk Mitigation Manager, developed by Santa Monica, Calif.-based Accruent Inc., is a Web-based system that tracks certificates and key endorsements. It sends automatic requests, reminders and notifications to vendors, contractors, service providers and tenants.

"When it comes to insurance compliance, an alarming number of businesses operate under a false sense of security," Tom McCaffrey, vp of insurance for Accruent, said in a statement announcing the new product.

"Businesses involved in our early analyses that believed their vendor/tenant compliance with contract insurance provisions was over 90% were shocked to find their actual compliance was well below this percentage, in some cases 30% or lower," he said.

The system also identifies and sends notices to non-compliant parties.

More information is available at *www.accruent.com*.

Assistance with terrorism risks

NEW YORK—Marsh Inc. and Risk Management Planning L.L.C. have teamed up to offer risk assessment and management services to businesses and government entities that want to be prepared for the possibility of chemical or biological accidents or attacks.

"Managing risks associated with chemical and biological releases that result from an accident or terrorism calls for special expertise," L. Paul Bremer, chairman of New York-based Marsh's Crisis Consulting Practice, said in a statement.

He pointed out that part of Marsh's role will be to address "unconventional terrorist threats," while Waupaca, Wis.-based Risk Management Planning will use its "state-of-the-art modeling and real-time communications capabilities."

Mr. Bremer said Risk Management Planning worked with the 2002 Winter Olympic Games to protect against chemical or biological attacks and also has completed projects for railroads, ports, school systems, hospitals and other clients.

More information on the services is available at *www.rmpllc.com*.

Driver training CD-ROM offered

KING OF PRUSSIA, Pa.—Advanced Driver Training Services Inc. has launched the second title in its series of driver-training CD-ROMs.

The new program, Types of Collisions, provides training that is aimed at enhancing safety among fleet drivers and at preventing vehicle crashes. The program reviews the most common types of crashes and their causes, and then teaches drivers how to avoid such accidents. Topics include rear-end crashes, parking-lot crashes, various collisions at intersections and highway accidents.

The CD-ROM uses high-resolution, 3-D graphics and audio. A test measures drivers' understanding and retention of the material.

ADTS, based in King of Prussia, Pa., has also produced Principles of Safe Driving. The company prices both programs based on a company's number of fleet drivers and the CD-ROMs purchased.

More information is available from ADTS by calling 800-486-2387 or e-mailing *info@adtsweb.com*.

Lower cost medical plan

KANSAS CITY, Mo.—Employers that cannot afford costly comprehensive medical plans for their employees have a more affordable option from The Lewer Agency.

The Kansas City, Mo.-based agency developed Value+Care in a partnership with Fidelity Security Life Insurance Co. The fully insured indemnity plan offers medical benefits on a scheduled basis with coverage for inpatient and outpatient care. Coverage for routine office visits is included. There are three levels of coverage available and an option for prescription drug, vision and dental benefits.

The agency said the program is designed to help employers attract and retain employees in a competitive job market.

More information is available from Lesley K. Gagnon, director of managed care at The Lewer Agency, at 800-821-7715, ext. 148; or by e-mail at *lgagnon@lewer.com*.

Common Good fights against litigious culture

By MARK A. HOFMANN

NEW YORK—A recently formed legal issues advocacy group is working to counter what it sees as the fundamental problem in the American legal system—a culture of litigiousness.

The group, which is called Common Good, enjoys support from public figures with widely divergent political views, from George McGovern to Newt Gingrich.

"The main harm is not crazy lawsuits; they're the tip of a huge iceberg," said Philip K. Howard, the chairman of the group and a senior partner in the New York office of Washington law firm Covington & Burling.

"The iceberg is the fear that has infected the culture, making people go through the day looking over their shoulders instead of looking at where they want to go," said Mr. Howard, who won recognition for his 1995 book, "The Death of Common Sense." The paperback version of a 2001 companion volume, "The Collapse of the Common Good," recently appeared in bookstores.

"We ought to have a society in general where most people land in the broad field of common sense, and they ought to feel free to act. Anything can be a lawsuit, and as result the most common decisions are not being made," he said.

Mr. Howard cited as examples the inability of teachers to discipline students, the removal of seesaws from playgrounds and "stupid warning labels on every product."

Mr. Howard said that the group will focus on how the legal system deals with health care first and then will move on to other institutions that have been hurt, in the group's view, by the judicial system.

"We don't believe that it will be possible to fix either health care or education or other common institutions until we restore the capacity of individuals to use what they uniquely have—which is all their ingenuity and energy and values to make things work," he said.

"People no longer feel comfortable doing that when they know that any angry person, by threatening a claim, can basically paralyze everyone around them," Mr. Howard said. "So we have to restore the role of justice not only to be a vehicle of attack when people do something wrong but to affirmatively protect people when they do something right, which is most of the time. Our system of justice has forgotten the second half, the protection part."

He stressed that the group will not focus on tort reform. Instead the group hopes to change "the foundation of the current legal orthodoxy, which we think has turned the idea of rights upside down," Mr. Howard said.

Malpractice: Driving up costs

Continued from page 3

91% of the respondents said that they knew of other physicians who had done so.

The survey, conducted in March, drew responses from 300 physicians, 100 hospital nurses and 100 hospital administrators.

In addition, 51% said that liability concerns had led them to suggest invasive procedures, such as biopsies, to confirm diagnoses more often than they would have relying solely on their medical judgment, and 41% said they had prescribed more medicines than they otherwise would have.

Mr. Howard said the current system for resolving medical disputes is plagued by a "defective legal philosophy" that fails to protect reasonable actions.

"The question to me is not whether America needs a new system of medical justice—it has to have a new system of medical justice, because health care has lost the protection of law. The question for me is, what new system will restore trust in all constituencies?" he said.

Mr. Howard said that what is needed is the establishment of a new kind of medical court, which would resemble the patent and tax courts in the use of expert judges, he said. "This new court would not have juries, because most cases turn not on factual disputes, but on medical judgments."

Mr. Howard acknowledged that his idea would strike some as a "radical or perhaps naive" one. But he said that he believes that the right to sue has been extended too far.

Another speaker at the discussion was similarly critical of medical litigation.

"The legal system destroyed managed care," said Alain Enthoven, professor emeritus at Stanford University in Palo Alto, Calif. Like Mr. Howard, he said that juries should not decide cases involving medical judgments because jurors generally lack the scientific expertise needed to weigh such matters. In fact, Mr. Enthoven asserted that jurors with relevant knowledge are "systematically excluded" from case involving medical judgment. He also advocated imposing damage caps, limiting lawyers' contingency fees and instituting a system whereby losing plaintiffs in civil cases must pay at least part of defendants' legal costs.

> **'The question to me is not whether America needs a new system of medical justice—it has to have a new system of medical justice because health care has lost the protection of the law.'**
>
> *Philip K. Howard*
> *Common Good*

The panel's two other speakers—American Assn. of Health Plans President Karen Ignagni and Dr. Donald Palmisano, a board member of the American Medical Assn.—also advocated changes in the legal system. Ms. Ignagni called for measures that would "get junk science out of the courtroom," and Dr. Palmisano stressed support for bipartisan medical liability reform that was introduced last week.

A bipartisan group of House lawmakers unveiled the Help Efficient Accessible, Low-cost, Timely Health Care—or HEALTH—Act on Thursday, a reform bill that is modeled on California's Medical Injury Compensation Reform Act. The bill would in part require that malpractice lawsuits be filed within three years of the injury date, would cap noneconomic damages at $250,000 and would limit punitive damages to the greater of $250,000 or twice economic damages. The bill's backers say it would help hold liability costs down and discourage physicians from leaving their practices.

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401(k): Employers alter rules

Continued from page 3

lier this year amended its plan after the Enron debacle "heightened our sensitivity," a Gannett spokeswoman said at that time (*BI*, Feb. 25). Gannett now allows 401(k) plan participants to sell company stock contributed as a 401(k) match at any time. Previously, Gannett employees had to wait until they had reached age 55 to divest such shares.

In addition to easing restrictions on the sale of company stock, employers are taking other steps to help ensure that employees' 401(k) account balances are not heavily concentrated in one type of investment, the survey found.

Just over 20% of respondents said they provide access to online investment advice or education, while 7% said it was very likely that they would begin doing so and 20% said it was somewhat likely.

Meanwhile, the recent economic slowdown has not, according to the survey, had a significant impact on the size of employers' 401(k) matches.

While some large companies, such as Ford Motor Co. and General Motors Corp., have cut 401(k) matches, they are part of a small minority

Last year, just 1% of respondents in the Hewitt survey decreased their 401(k) match, while 10% increased the match. This year, just 1% of firms reduced the match while another 2% said it was very or somewhat likely they would do so. By contrast, 11% already have increased the match this year and another 2% said it was very or somewhat likely they would do so sometime this year.

Cuts in matching contributions have been "very industry-specific," Ms. Lucas said.

Free single copies of "Hot Topics in 401(k) Plans, 2002," are available from the Hewitt Associates Publications Desk. For more information, call 847-295-5000 or e-mail infodesk @hewitt.com.

Identity: Law creates problems

Continued from page 3

prepared by a consumer reporting agency be provided when the employer plans to take adverse action against the employee based on information in the report.

Penalties for not complying with the law are attorneys' fees and the greater of $10,000 or actual damages. The employer may also be subject to punitive damages if it is found to be grossly or willfully negligent.

The two bills proposed to clarify A.B. 655—A.B. 1068 and 2868—are now in committee. In one key provision, employees could indicate to employers whether they wish to receive a copy of any report that is prepared. Information that is a matter of public record, such as an arrest, must be conveyed to the employee before any adverse employment action is taken based upon that information. But the bills also would clarify that the law does not apply to reference checks or employee investigations—two areas that have raised concerns for employers—unless public records are involved.

Les Rosen, president of Novato, Calif.-based Employment Screening Resources, a consumer reporting agency, said that, in addition to more easily uncovering cases of identity theft, the law was intended to close a loophole in FCRA. Under that loophole, employees have the right to see information that is used against them if an investigation is conducted by an outside agency, but not if the employer conducts its own in-house investigation.

But, the California law is being interpreted to mean any information the employer receives must be turned over to the applicant or employee, including reference-checking data. In large organizations in particular, where there may be many people with hiring authority, "it's just an administrative nightmare to turn over all these reference checks to all these applicants. How do you do it?" said Mr. Rosen. "Instead of just closing that loophole, the law actually created lots of problems," he said.

Another concern, say observers, is that under the new law, employees suspected of wrongdoing such as sexual harassment will be given a report that includes information on who has complained about them, which will naturally discourage people from coming forward and filing complaints.

Victor Schachter, an attorney with Fenwick & West in San Francisco, said showing a report to an alleged sexual harasser has "got nothing to do with identity theft, which is the apparent purpose of the law, and it completely undermines the ability to conduct a thorough investigation which protects people from threats from invasion of their privacy, from retaliation, from being ostracized…all the other things that you don't want to arise in the context of this investigation."

> **'If this thing (A.B. 655) isn't fixed and fixed quickly, I think you're going to get a whole bunch of litigation.'**
>
> *Robert Blumberg*
> *Littler Mendelson*

The law is also ambiguous as to what constitutes an investigation, said Robert Blumberg, an attorney with Littler Mendelson in Los Angeles.

"Every time you talk to a coworker about an employee, is that an investigation?" he asked. "The burden of that is huge." Furthermore, requiring information uncovered during reference checks to be turned over not only could discourage candor on the reference's part, but also conflicts with the state labor code, said Mr. Blumberg.

"It's very ambiguous," Brian Ashe, an attorney with Seyfarth Shaw in San Francisco, said of the new law. "It's clear that the Legislature didn't know what they were passing when they enacted this."

Lisa Carp, human resources director at North Palm Springs, Calif.-based Enxco Inc., said the law does not represent a problem for her company, which has not limited employee access to information. But, "I think for a lot of employers it will be, because it's not a practice that they've had. Managing employee information is challenging enough. Now, maintaining it in a way employees virtually can have access to it is a whole new level of frustration for most employers," said Ms. Carp.

Employers are concerned because "what's being asked of them is ridiculous," said Mr. Schachter. He said employers now are faced with complying or maintaining the confidentiality of people who come forward to make complaints. "There's no easy answer, except to say it's very confusing," he said. Each employer "has to assess with their counsel what their risk tolerance is," he said.

M. Kirby Wilcox, an attorney with Paul, Hastings, Janofsky & Walker in San Francisco, agreed. "Until we can get clarification regarding (the law's) breadth, all we can do is disclose the level of risk regarding disclosure…and each employer will assess those risks and make their own judgment," he said.

Observers are hopeful that the proposed changes to the law will pass.

Sam McAdam, an attorney with Seyfarth Shaw in Sacramento, said prospects for the legislation are good. The Legislature tends to look favorably upon "cleanup" measures proposed by a law's author. "Those bills tend to receive the benefit of the doubt" and "tend to pass relatively quickly and easily," he said.

Many observers also are cautiously optimistic that the proposed legislation will address employers' concerns. But Wendy Lazerson, an attorney with Holland & Knight in San Francisco, said "a whole lot of legislation" has good intentions but has not been well thought out, "so I'm not extremely optimistic at this point."

Meanwhile, Mr. Blumberg said that he has already received a phone call from an employer that did not hire someone after her references did not check out. The applicant is now threatening to sue because she was not given a copy of the report.

"If this thing isn't fixed and fixed quickly, I think you're going to get a whole bunch of litigation," he warned.

PHOTO: ZUMA

Investigators are continuing to probe last week's fatal train collision in California.

Train: Accidents could drive up rates

Continued from page 1

That crash occurred less than a week after another deadly train accident on April 18 in Florida. In that accident, an Amtrak passenger train derailed in Crescent City, killing four people and injuring 133 more (*BI*, April 22).

For Los Angeles-based Metrolink—which is the operating name for the Southern California Regional Rail Authority, a joint-powers authority—last week's accident occurred as it is preparing to renew its excess liability insurance and reinsurance coverage programs on July 1.

"I have someone visiting all the hospitals trying to get a scope on how severe the injuries are," Metrolink Risk Manager Greg Graves said last week. That tally will help him determine whether losses from the crash likely will exceed its self-insured retention and pierce excess insurance and reinsurance coverage. He would not disclose the attachment point or limits of coverage.

Large railroads typically maintain retentions amounting to tens of millions of dollars.

Amtrak is self-insured "to an undisclosed limit" and also funds liability coverage through a Bermuda-based captive, Passenger Rail Insurance Ltd.

BNSF also self-insures liability exposures to an unspecified limit, above which it purchases excess liability coverage, a spokesman said. It also owns a Vermont captive, Santa Fe Pacific Insurance Co.

In spite of large retentions, the two accidents could exacerbate an already hardening railroad insurance market, insurance sources say.

Because of the accidents' severity, the limits some insurers make available as well as the rates they charge could be adversely impacted, said John Kurowski, an assistant vp with Lexington Insurance Co. in Boston. Lexington, a unit of American International Group Inc., writes coverage for railroads. Excess insurers and reinsurers in Bermuda and Europe also are major providers of the coverage.

The extent of any impact on insurance rates will depend on several factors, however, including how much of the losses exceed the large retentions typically maintained by railroad companies, said Jim Beardsley, managing director of national railroad practice for Aon Risk Services Inc. in Baltimore.

"Assuming that there is substantial insurance involved, it will probably add fuel to an increasing rate trend," Mr. Beardsley said.

Even before its accident, Metrolink was finding that there were significantly fewer insurers willing to provide excess and reinsurance coverage for a July 1 general liability renewal, said Mr. Graves.

Metrolink's problem in finding excess coverage does not stem from a difficult loss history, he added. After Sept. 11 "the reinsurance market is a ghost town," he explained. "There are not a lot of players out there right now."

Because Metrolink was not at fault in last week's accident, Mr. Graves said he does not think the disaster should discourage the few insurers that have indicated a willingness to provide it with renewal quotes.

"What we are trying to stress to the carriers at this point is that this was not Metrolink's fault," Mr. Graves said.

There are relatively few insurers that have expertise in underwriting railroad coverage, Mr. Beardsley said. "It's a limited market in light of the limits railroads tend to buy," he said.

For large railroads, those limits can reach into the hundreds of millions of dollars, another broker said.

Rate increases at renewals are running from 25% higher to "multiples" of the expiring rate, depending on a railroad's losses, its size, and the layer of coverage they are seeking, Mr. Beardsley said. Insurers are seeking greater rate increases for layers, for example, where they have experienced some losses.

Some railroad risk managers are bracing for firmer rates following the two recent accidents.

"They are certainly not going to help the environment," said Heidi J. Eddins, executive vp, secretary, and general counsel for Florida East Coast Industries in St. Augustine, Fla. The company owns Florida East Coast Railway. Ms. Eddins purchases insurance for the railway, which operates freight trains that run from Jacksonville to Miami.

Her railroad has not incurred any recent losses, Ms. Eddins said. Yet she expects that during upcoming renewals, she will have to pay more as a result of overall insurance market hardening, the impact of Sept. 11 losses and insured losses sustained by other railroad companies.

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Benefits: Domestic partners seek spousal payments

Continued from page 1

same-sex couples are extended all the benefits under Vermont state law that are extended to married couples.

In the New York case, Mr. Courtney's partner, Eugene Clark, worked for Aon Consulting Worldwide in the WTC. Aon's workers compensation insurer, Chicago-based CNA Financial Corp., denied Mr. Courtney's claim in March.

Under New York state workers comp laws, spouses of employees killed while on the job are provided two-thirds of the employee's salary, or up to roughly $20,000 a year, for the remainder of the surviving spouse's life or until the spouse remarries.

While same-sex couples can register as domestic partners in New York, they cannot obtain legal status as spouses.

"This is an industrywide issue, and we follow the laws in the states in which we operate," a CNA spokesman said.

Lambda Legal and Mr. Courtney appealed the denial to the New York State Workers Compensation Board last Tuesday. The case has been continued to July 16, and a decision is expected in mid-August.

"There is nothing in the law that says you have to have a marriage license to be a spouse," said Mr. Aronson. He said that his client "took all the legal steps available to formalize, legalize and to protect" his relationship.

"It's about asking for basic simple equal application of the law," he said. "We're asking for equality under the law, not special rights."

Extending workers comp benefits to domestic partners is an emerging issue highlighted by the events of Sept. 11, observers say. But while employers have slowly been extending health benefits to domestic partners, doing so with workers comp benefits will be a more difficult task because state laws must change, they say.

'It's about asking for basic simple equal application of the law. ...We're asking for equality under the law, not special rights.'

Adam Aronson
Lambda Legal Defense & Education Fund

"Workers compensation is a compulsory type of coverage," said Robert Hartwig, chief economist for the Insurance Information Institute in New York. "Who is the beneficiary is a matter of statute. It would literally require that state legislatures pass statutes that essentially say domestic partners are covered under state workers comp laws," Mr. Hartwig said. And to do so would be "an uphill battle," he said.

"It would be hard to imagine that what's happening here in New York today would suddenly bring state legislatures around the country to change workers compensation laws and suddenly make it inclusive of domestic partners. They haven't done so with other types of benefits," he said.

Mr. Hartwig was referring specifically to San Francisco's 1996 ordinance requiring companies doing business with the city to provide health care benefits to long-term partners equal to those provides to employees' spouses. Several other municipalities, including Los Angeles and Seattle, have followed suit.

The extension of workers comp benefits to domestic partners is not currently under consideration at the International Assn. of Industrial Accident Boards & Commissions, said Gregory Krohm, executive director in Madison, Wis.

"I've heard nothing about this from any of our members," Mr. Krohm said. Still, he said, "it may be an idea whose time has come."

Workers comp laws are "pretty conservative and traditional" in how a family is defined, he said. "A lot of benefits provided are based on old historical positions that are not always consistent with current situations."

"In the last 10 years, there's been enormous growth in the prevalence of domestic partner benefits," said Ilse de Veer, a principal with Mercer Human Resource Consulting in Stamford, Conn. "Over half of the Fortune 100 companies offer some form of domestic partner benefits today," Ms. de Veer said. The main focus, though, has been on extending health care benefits. "When it comes to workers comp, it just hasn't been on the radar screen," she said. "I do think, though, that the tragic events of Sept. 11 have brought that forward as an issue, but it's just emerging as an issue."

Karen English, a senior consultant with Watson Wyatt Worldwide in Boston, agreed. "I think the subject is coming up a lot as a result of Sept. 11. It's being talked about," she said.

PHOTO: AP/WIDE WORLD

Lambda Legal attorney Adam Aronson, left, consoles Larry Courtney, whose domestic partner was killed in the World Trade Center collapse.

But if change is going to happen, employers have to get involved, said Veronica Hellwig, a senior consultant for Watson Wyatt in Boston. "This cannot just come from an employee or an employee's partner," she said. "It has to come from employers, and that's the big question. Will employers get behind this?"

Much of that, Ms. Hellwig said, will depend on the cost involved and whether the employer has a domestic partner-friendly environment overall, she said.

If the cost of extending workers comp benefits is minimal, the question will be whether "employers step behind this and say, 'In our total-benefits area, we've taken a stance that domestic partners are part of our program' or, 'We've taken a stance that they're not,'" Ms. Hellwig said.

Whether momentum builds toward changing workers comp laws or not, the issue is likely to gain more attention.

Lambda Legal plans to take a similar case to the New York State Workers Compensation Board in July. Lambda Legal is representing Bill Valentine, whose flight attendant partner of 21 years, Joe Lopes, was killed in November 2001 when an American Airlines plane crashed in New York after taking off from Kennedy Airport. Mr. Valentine was denied spousal benefits from American Airlines' workers comp insurer, American International Group Inc.

An AIG spokesman declined to comment.

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St. Paul: Smaller, maybe more profitable

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Paul will retain those pre-2002 liabilities and $3.7 billion in related net reserves, St. Paul said.

Platinum's Bermuda underwriting unit will ultimately assume most of the company's worldwide business: For reinsurance written after July 31, 2002, Platinum Bermuda will reinsure about 70% of the business written by its U.S. and U.K. affiliates, offering documents show.

Platinum will employ about 180 people previously employed by St. Paul Re and will receive renewal rights to St. Paul Re's existing business.

The spinoff is intended to reduce the earnings volatility that has accompanied occasionally severe losses in the reinsurance sector.

Steven H. Newman, the former chairman and chief executive officer of Underwriters Re Group, has been named chairman of Platinum. Jerry Fadden, St. Paul Re's CEO, will take over as Platinum's CEO.

"This transaction is yet another step to improve the competitive positioning of The St. Paul," St. Paul Chairman and CEO Jay Fishman said in a statement. "It will, over time, free up capital to build our core commercial lines, specialty property and casualty and asset management businesses."

The insurer is now focusing its growth plans on U.S. small and middle-market commercial risks, a St. Paul spokesman said.

The spinoff is also intended to reduce the earnings volatility that has accompanied occasionally severe losses in the reinsurance sector, Mr. Fishman told analysts last week.

In the Sept. 11 attack on the World Trade Center, for example, St. Paul's commercial lines insurance operations recorded about $200 million in losses while its reinsurance operations suffered about $550 million in losses, the spokesman confirmed.

The reinsurance spinoff continues restructuring efforts that St. Paul began late last year.

In December, the insurer announced its withdrawal from the medical malpractice market and discontinuation of underwriting in several other insurance lines and geographical areas. St. Paul has withdrawn, for example, from writing casualty business at Lloyd's of London and has put its Lloyd's operation "under strategic review." It has also stopped writing business in several countries, including Australia, France, Germany, New Zealand and Spain.

One result of the moves will be reduced revenues: Reinsurance accounted for 17.9% of St. Paul's 2001 consolidated revenues of $8.94 billion, according to its 2001 10-K filing, while medical malpractice and other health care coverages accounted for another 8.9%.

St. Paul's narrower focus on what it considers its core businesses, though, should make it a more profitable company in the future, said W. Dolson Smith, an analyst with A.M. Best Co. in Oldwick, N.J. In addition to freeing up needed capital, the spinoff will also have the positive effect of reducing some measures of St. Paul's financial leverage, including its ratio of losses and loss-adjustment expenses to policyholders surplus, he observed.

Best affirmed St. Paul's A+ rating following the reinsurance spinoff announcement.

St. Paul also reported its first-quarter 2002 results last week. Consolidated revenues rose 7.2%, to $2.32 billion, from the previous year's first quarter. Investment losses, though, were partly responsible for a 30% drop in first-quarter net income, to $139.3 million. The combined ratios of the insurer's property/liability and specialty commercial insurance divisions—its largest business segments—dropped below 100% in the first quarter compared to last year's first quarter, when they stood at 103.8% and 102.2%, respectively.

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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.

Punitive damages cap upheld

A middle-aged couple roughed up by two Kmart Corp. employees plans to appeal a North Carolina appellate court's decision upholding the state's 1996 punitive damages limit. The litigation stems from a 1998 incident in which two Kmart employees injured the couple while restraining them in a store parking lot. The employees said they thought the couple had been rummaging through the store's garbage. The couple passed through parking lot during their daily walks, their attorney said. A jury ordered Kmart to pay nearly $19,000 in compensatory damages and $11.5 million each in punitive damages. The appeals court ruled that a 1996 state law that limits punitive damages to $250,000 or three times compensatory damages is constitutional.

Louisiana adds extra rate filing

Louisiana has enacted a law that allows insurers to make an additional rate filing per year. H.B. 149 permits insurers two rate filings per classification each year. Previously, insurers were allowed just one filing per classification. The law also allows insurers to revert to higher or lower rates previously in force without applying to the Louisiana Insurance Rating Commission, provided, the law says, that the change is "actuarially justified."

Court OKs termination over third-party suit

California public policy does not bar a medical center from terminating an employee on the grounds that the employee refused to drop a lawsuit against a third party, a state appeals court has ruled. The case involved Ester Jersey, a former employee of John Muir Medical Center in Walnut Creek, Calif., who was terminated because she refused to drop a lawsuit alleging sexual assault against a hospital patient. The medical center insisted that Ms. Jersey drop the suit, which she declined to do, and she was terminated. The hospital argued that the patient's behavior was due to head-trauma injuries.

MMC revenues flat in first quarter

Marsh & McLennan Cos. Inc. saw no growth in first-quarter gross revenues but reported a 13.3% gain in net income, largely on the strength of expense reductions. Revenue gains in MMC's risk and insurance services segment were offset by declines in its investment management and consulting operations. Risk and insurance services posted revenues of $1.48 billion—a 9% rise over the first quarter of 2001—but investment management revenues fell 13.9% to $594 million, and consulting revenues slid 3.7% to $565 million. Total gross revenues were $2.64 billion, virtually unchanged from the first quarter of 2001.

The Hartford sees first-quarter gains

Rising prices, new business growth and reduced catastrophe losses contributed to first-quarter gains at The Hartford Financial Services Group Inc. The Hartford's net income for the quarter was $292 million, a 22% increase over the first quarter of 2001. Revenues rose 5% for the quarter, to $3.9 billion.

Gallagher revenues increase 15%

Arthur J. Gallagher & Co. reported revenues of $216.7 million for the first quarter of 2002, a 15% increase over the same period last year. Profits increased 24.3% to $33.7 million. Commission income increased by 18% in the quarter, largely due to new business and increased rates, according to a Gallagher statement.

RenaissanceRe profits rise 94%

RenaissanceRe Holdings Ltd.'s first-quarter profits nearly doubled as a result of a big jump in premium volume and low losses. RenaissanceRe's net income for the first quarter was $87.3 million, a 94% increase over the year-earlier period. RenaissanceRe's gross written premiums more than doubled in the first quarter to $460.8 million, up from $198.2 million.

IPC profits up 82% in first quarter

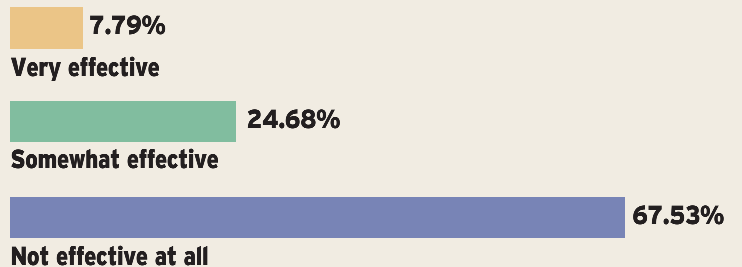
IPC Holdings Ltd. reported profits of $43.5 million for the first quarter of 2002, an 82% increase over the year-earlier period. Gross premiums more than doubled to $147 million in the quarter. The premium growth was due to rate hikes, increased business from existing cedents and new business, said Jim Bryce, president and chief executive officer. The increase in profits stemmed from the low number of catastrophes in the first quarter, he said.

Briefly noted

Fifteen of Florida's **health maintenance organizations**, which recently paid $550,000 in fines to the Florida Insurance Department for failing to make timely payments to health care providers, have agreed to establish procedures by June 1 to remedy the situation, according to a recent department statement. There are 32 HMOs operating in Florida....The Pension Benefit Guaranty Corp. has taken over and terminated an underfunded pension plan sponsored by **Durango Apparel Inc.**, a New York-based clothing manufacturer that has filed for bankruptcy. The Durango plan, which has about 7,000 participants, is underfunded by $25 million, with assets of $15 million and liabilities of $40 million....A U.S. bankruptcy court has approved the appointment of **State Street Bank & Trust** as the independent fiduciary for Enron Corp.'s pension and savings plans. State Street replaces various Enron officials who have been removed from administrative committees as part of an agreement with the Department of Labor....The Labor Department is giving a one-time 60-day grace period for employers that didn't file Form 5500 annual benefits reports for the 2001 plan year using the department's new computerized **ERISA Filing Acceptance System.** The department is returning, starting this week, reports that were filed on noncompliant forms and asking filers to resubmit their forms in an acceptable format within 60 days....A federal district judge dismissed a lawsuit filed in December claiming the health plans of Forth Worth, Texas-based **American Airlines** discriminate by allegedly covering Viagra for men but denying coverage for some women's health procedures. The airline said the lawsuit was frivolous because its health plans provide medical benefits equally to men and women....Twenty-eight senators—14 Democrats and 14 Republicans—have sent a letter to the Senate majority and minority leaders urging "prompt Senate passage of short-term **terrorism insurance backup legislation.**"...The Senate Judiciary Committee has approved a bill that would relax the **statute of limitations for filing securities-fraud related civil suits** and would provide corporate whistleblowers with additional protections. The House Financial Services Committee, however, has already rejected any change in the statute of limitation for such suits.

Online Poll [4/22 - 4/26]

How effective do you think OSHA's voluntary ergonomics guidelines will be in preventing repetitive stress injuries?

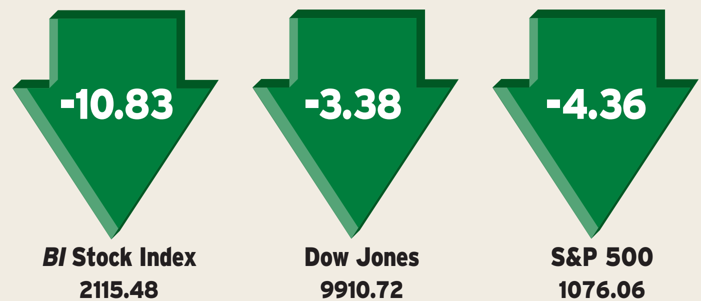


Take part in our weekly poll at *www.businessinsurance.com.*

BI Stock Index [4/22 - 4/26]

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

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



BI Stock Index	Dow Jones	S&P 500
2115.48	9910.72	1076.06

Largest gains

Company	Change
Aetna	9.77%
PacifiCare Health Systems	8.80%
Penn-America Group	6.86%
Wellpoint Health Network	4.70%
Odyssey Re Holdings	4.28%

Largest losses

Company	Change
Unico American Corp.	-12.31%
SCPIE Holdings Inc.	-11.93%
Clark Bardes Holdings	-11.05%
ESG Re Ltd.	-10.00%
Marsh & McLennan	-9.67%

Weekly change by market segment

Segment	Change
Brokers	-4.01%
Insurers/Reinsurers	-2.48%
Managed Care Organizations	2.61%

Source: CNET Investor (investor.cnet.com)

VEBA: Union distances itself

Continued from page 3

Samuel H. Fleet, Americana's Warwick, R.I.-based president and chief executive officer, said the company's attorneys are examining the letter and will respond in time.

"We feel very good about the plan we're offering. We feel it's actuarially sound. We feel we're providing a program that is affordable and provides a level of benefits" commensurate with on that affordability, Mr. Fleet said.

While acknowledging that the benefits it offers are limited, he noted that it is designed to be affordable. "Not everybody needs a Cadillac program," and the VEBA fits the needs of the "vast majority" of the displaced workers, he said.

The VEBA 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. The VEBA also will offer dental, life and critical-illness benefits.

> **'We feel very good about the plan we're offering. We feel it's actuarially sound. We feel we're providing a program that is affordable....'**
>
> *Samuel H. Fleet*
> *Americana Financial/NEBCO*

Mr. Fleet also said that Americana has complied with the union's demand and changed the logo of the plan's name on the Americana Web site so that it no longer resembles the union's logo. In line with the union's demand, the Web site also now carries a disclaimer that the VEBA is neither sponsored by nor affiliated with the union.

A United Steelworkers spokesman said those changes are "a step in the right direction." Nonetheless, he said, "we still have serious questions about the quality of the coverage."

The VEBA, which takes effect May 1 and is open to both former union and salaried workers, will be self-insured for former employees. Retirees will be covered by an insurer yet to be announced.

About 10,000 to 20,000 former LTV workers and retirees are expected to participate, said Mr. Fleet, who added that the initial response to the VEBA has been good.