

**Buffett muses on results  
at Berkshire, market / 2**

**MRM restructuring  
to play up strengths / 3**

# Business Insurance

www.businessinsurance.com

May 13, 2002

Entire contents copyright © 2002 by Crain Communications Inc. All rights reserved.

\$4

## Deals aid Kemper retooling

### Demutualization deemed a possibility

By DOUGLAS MCLEOD

**LONG GROVE, Ill.**—Kemper Insurance Cos. has entered into a series of stock and reinsurance deals with Berkshire Hathaway Inc. as part of a large-scale restructuring that could ultimately lead to the 90-year-old insurer's demutualization.

Seeking to boost its capital and surplus, Kemper is selling a 15% stake in a newly formed downstream—or subsidiary—holding company to Berkshire for \$125 million. At the same time,

Berkshire will reinsure Kemper under a trio of contracts providing quota-share and adverse-development coverage for its ongoing business and catastrophe protection for the runoff of personal lines business that Kemper is divesting.

Kemper saw its policyholder surplus drop to \$1.5 billion at the end of 2001 from \$2.07 billion the previous year, in large part because of a \$550 million increase in reserves for asbestos-related claims in 2001, the Long Grove, Ill.-based company reported.

To gain access to further capital as it builds its commercial lines portfolio, Kemper is also mulling the eventual demutualization of a group that began as Lumbermens Mutual Casualty Co. in 1912, said William D. Smith, Kemper's president and chief operating officer.

"We are certainly looking at that, and at some point in time, I'm reasonably certain that's going to happen," Mr. Smith said.

The Berkshire deals cap a multiyear retooling program that has changed Kemper from a wide-ranging property/casualty insurer into a more narrowly focused commercial underwriter target-

See **KEMPER**/page 24

## Strike highlights growing opposition

### Union workers not sweet on Hershey cost shifting

By SALLY ROBERTS

**HERSHEY, Pa.**—The nearly three-week-old strike by union workers at Hershey Foods Corp. over rising health care cost contributions may be a harbinger of things to come, as more employers go to the bargaining table seeking to shift rising health care costs onto union workers.

The Hershey workers soon may not be alone. The culinary workers and bartenders unions in Las Vegas are threatening to strike if the 35 hotels where they work decide they want workers to begin contributing toward their health insurance premiums.

Benefit and labor experts say that, at a time when employers across the country are being socked with double-digit health care cost increases, cost-shifting is becoming a contentious issue during contract negotiations. More strikes are likely as a consequence, they say.

"It's clearly escalating as an issue in negotiations; there's no question about that," said Rick Bank, the director of the center for collective bargaining at the AFL-CIO in Washington.

"It's a situation where both parties are being affected," Mr. Bank said. "Clearly, there is conflict over increases in health care costs, and, clearly, it will play out at the bargaining table. There will be strikes, but there also are possibilities of cooperation here, where unions, companies and even the health care providers can work together to lower costs."

On April 26, after negotiations over a new collective bargaining agreement broke down at Hershey, 2,800 local workers of the Bakery, Confec-

tionery, Tobacco Workers' and Grain Millers' International Union walked out on their jobs at two plants in Hershey, Pa. The union members' contract expired in November 2001, and they have been negotiating on a new contract since last July.

The main sticking point, according to the local union, is Hershey's attempt to increase the amount union workers pay for health care coverage by decreasing the number of flex dollars they

See **HERSHEY**/page 26



Union workers at Hershey and elsewhere are opposing the shifting of costs to employees.

## Long-tail loss allocation ruling favors insurers

By DAVE LENCKUS

**ALBANY, N.Y.**—In a ruling that policyholder attorneys assert rewrites general liability coverage, New York's highest court says a long-tail loss must be allocated among all insurers on the risk and that an insurer cannot be held jointly and severally liable for the loss.

The 7-0 ruling scuttles a common policyholder practice of holding a select number of insurers on a risk responsible for covering a loss that developed over multiple policy periods. Policyholders have been able to select which insurer they want to respond to long-tail losses by relying on common liability policy language that obligates an insurer to cover "all sums" the policyholder becomes legally obligated to pay.

The ruling is useful for insurers not only in pollution liability cases like the one decided by the New York Court of Appeals—the state's highest court—but also in several other types of long-tail liability cases, such as construction defects liability and pharmaceutical liability cases, noted insurer attorney Laura A. Foggan. Ms. Foggan is counsel for the Complex Insurance Claims Litigation Assn., formerly the Insurance Environmental Litigation Assn., which filed an amicus brief in the case, *Consolidated Edison Co. of New York Inc. vs. Allstate Insurance Co. et al.*

See **POLLUTION**/page 25

## Late News

### Senate to vote on COBRA subsidy proposal

The federal government would pay 70% of COBRA premiums for employees who lost their jobs due to foreign competition, under a trade bill the Senate is expected to vote on this week. Although details are still being worked out, employers providing the coverage would receive a federal tax credit equal to 70% of the COBRA premiums, while displaced workers would pay the rest. Some laid-off workers would have an alternative to COBRA coverage: They could use the 70% tax credit to offset the cost of an individual policy if that policy had been covering them for at least six months.

### Burlington Northern settles DNA testing suit

Burlington Northern Santa Fe Corp. has agreed to pay 36 workers a total of \$2.2 million to settle lawsuit allegations that it violated the Americans with Disabilities Act by genetically testing employees without their knowledge. In February 2001, the Equal Employment Opportunity Commission sued BNSF, when railroad workers complained after determining that they were being required to take blood tests for genetic markers after filing work-related injury claims. The lawsuit was the first case of EEOC litigation that challenged genetic testing under the ADA.

### AXA mulling revamp of ACS unit

Less than two years after it formed AXA Corporate Solutions, AXA S.A. is exploring a reorganization of the reinsurance and industrial risks unit. A spokeswoman for Paris-based AXA said that, in the wake of losses and changes to the insurance market stemming from the Sept. 11 terrorist attacks, the company was considering various ways to restructure the operation. One possibility is for AXA to split the reinsurance and industrial risks operations into separate divisions, the spokeswoman said. ACS, which was formed in August 2000, comprises the former operations of AXA Re, AXA Global Risks and AXA's reinsurance buying arm, AXA Cessions.

See **LATE NEWS**/next page

## Spotlight GOVERNMENT RISK MANAGEMENT

Begins on page 10



## Inside

### Potential liability in public remarks

California's highest court rules a company can be sued for public statements that are construed as false advertising. **Page 4**

### Complimentary commentary

Editor Paul D. Winston tells the world's brightest, most talented and best-looking readers how to get the lowest rates from insurers. **Page 6**

### Looking beyond cost-shifting

In attempting to curb high health insurance costs, employers must make efforts in areas such as educating workers about the economics of health care, supporting tort reform and maintaining vigilance about fraud, this week's editorial says. **Page 8**

### Protesters target service providers

Risk managers and insurers face increased pressure from animal-rights groups, as the activists expand their protests to target companies that provide services to companies that perform scientific tests on animals. **Page 21**

## Departments

Advertiser Index .....	26
Classifieds .....	22
For the Record .....	27
Insurance Services Guide .....	18
International .....	21
Letters .....	8
Opinions .....	8
Products & Services .....	23
Ticker .....	27
World News .....	21

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

Business Insurance (ISSN 0007-6864) Vol. 36, No. 19, is published weekly by Crain Communications Inc., 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Periodicals postage is paid at Chicago and at additional mailing offices. POSTMASTER: Send address changes to Business Insurance Circulation Department, 1155 Gratiot Ave., Detroit, Mich. 48207-2912. \$4 a copy and \$97 a year in the U.S. \$130 in Canada and Mexico (includes GST). All other countries, \$230 a year (includes expedited air delivery). Canadian Post International Publications Mail Product (Canadian Distribution) Sales Agreement No. 0293512, GST No. 136760444, Printed in U.S.A. Copyright © 2002 by Crain Communications Inc.

### CONTINUED FROM PAGE ONE New York seeks to ease property coverage rules

The New York Insurance Department is preparing a policy statement that is expected to make it easier for New York businesses to buy commercial property coverage, Insurance Superintendent Gregory V. Serio said last week.



Mr. Serio

He is seeking insurance industry comment on a circular letter proposing that such property be insured for its actual

value, rather than for the more traditional replacement value. The change is designed to provide insurers with greater certainty about the dollar amount of the risk that they are underwriting, Mr. Serio said.

### High premiums ground Canadian air show

The 2002 London, Ontario, Airshow and Balloon Festival has been canceled because organizers could not afford the higher insurance premiums the event faced this year. According to the Leesburg, Va.-based International Council of Air Shows Inc., three dozen other Canadian air shows will face the same situation this year, as many airports in Canada are now requiring air show organizers to obtain \$50 million in general liability coverage per show site as well as coverage for war and terrorism risks. According to the council, premiums for that coverage are estimated at \$115,000 Canadian (\$73,588) per show site.

# Late News

Previously, the most coverage any Canadian air show had obtained was \$20 million Canadian (\$12.8 million) at a premium of \$15,000 Canadian (\$9,598), the council said.

### U.K.'s FSA proposes new capital rules

The Financial Services Authority, the United Kingdom's financial services regulator, has published proposals designed to ensure that insurers have enough capital to cover potential risks. The FSA said it planned to implement the proposals, which are now under review by the market, for all insurance companies by the start of 2004. Proposals include individual capital-adequacy standards that would be based, in part, on self-assessment by companies.

### Philip Morris to appeal \$100 million award

Philip Morris Cos. Inc. will appeal a \$100 million punitive award to the family of an Oregon smoker who died of lung cancer in 1999. A jury in state court in Portland, Ore., awarded the estate of Michelle Schwarz \$150 million in punitive

damages and \$168,500 in compensatory damages on March 22. But last week, Multnomah County Circuit Judge

Roosevelt Robinson reduced the punitive damages to \$100 million. William S. Ohlemeyer, vp and associate general counsel at Philip Morris, said in a statement that the "trial was plagued by errors" and even if the court believed the cigarette maker to be liable, "there must be some reasonable relationship between the punitive and compensatory damage amounts."

### Andersen settlement to proceed

Arthur Andersen L.L.P. has revived a \$217 million settlement agreement stemming from professional liability lawsuits filed by a bankruptcy trust and investors in the failed Baptist Foundation of Arizona. As part of the settlement, Chicago-based Andersen obtained the consent of Bermuda insurance regulators to assign funds from its captive insurer to the

plaintiffs. The agreement also calls for Andersen to recapitalize the Hamilton-based captive, Professional Services Insurance Co. Ltd., according to settlement terms. A previous settlement fell apart after Andersen disclosed that PIS could not pay claims due to its financial position.

### Briefly noted

Iowa Gov. Tom Vilsack has signed legislation that will cut the state's premium tax in half over the next five years. The new law incrementally reduces the state's premium tax rate on insurers writing business in Iowa from 2% to 1% by 2007....Kevin R. Callahan has been named chief executive officer of Burbank, Calif.-based **Allianz Insurance Co.** Mr. Callahan comes to Allianz from Aon Corp., where he was chief executive officer of Aon Capital Markets. AIC is Allianz A.G. Holding's industrial insurance provider in the United States....New Bermuda insurer **AXIS Specialty Ltd.** reported profits of \$31.7 million for the first quarter of 2002. AXIS reported gross premiums of \$265.7 million for the first quarter....**Sulzer Medica Management A.G.** has received final court approval for a \$1.0 billion settlement of its product liability case. The plaintiffs in the case are nearly 4,000 individuals who received allegedly defective hip and knee implants from Sulzer Orthopedics Inc., an Austin, Texas-based unit of Switzerland-based Sulzer Medica....**CNA Financial Corp.** had net income of \$78 million in the first quarter, down 73.6% from last year. CNA said last year's first-quarter results benefited from higher investment yields, limited partnership income and net corporate reinsurance recoveries.

## Check out Businessinsurance.com

To get breaking news as it occurs, visit *Business Insurance's* free online Daily News, located at [www.businessinsurance.com](http://www.businessinsurance.com). Sign up for your daily e-mail of breaking news.

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.

### Berkshire chairman credits renewed discipline

# Buffett bullish on Gen Re

By MARK A. HOFMANN

**OMAHA**—Warren Buffett is predicting that General Re Corp. will become Berkshire Hathaway Inc.'s "No. 1 asset."

In fact, Mr. Buffett—the chairman of Omaha, Neb.-based Berkshire Hathaway—assured shareholders at the company's annual meeting in Omaha on May 4 that the company's insurance operations as a whole stand to do well in the coming year. He pointed out that, during the first quarter of this year, Berkshire Hathaway's combined insurance operations—which include Berkshire Hathaway's Reinsurance Group, personal lines insurer GEICO Corp. and other units—registered an un-

derwriting profit of \$20 million. Most of that, though, was due to GEICO.

Still, the first-quarter underwriting losses for Gen Re and Berkshire Hathaway Reinsurance announced by Mr. Buffett at the annual meeting reflected significant improvement over those of the previous quarter. While official first-quarter results were scheduled for release after the end of trading on May 10, preliminary figures for the quarter showed Gen Re's underwriting losses at \$88 million. That compares with an underwriting loss for Gen Re of \$126 million in the first quarter of 2001 and an underwriting loss of \$1.27 billion for the fourth quarter of 2001.

See **BERKSHIRE**/page 24



Berkshire Hathaway Chairman Warren Buffett (left) and Vice Chairman Charles Munger spoke at the company's annual meeting.

PHOTO: GETTY IMAGES/ERIC FRANCIS

# advocate adversary

Business Interruption • Property Damage • Employee Dishonesty • BI Values • Litigation Support

Let's clarify. Lately, the line between advocate and adversary is, well, a little bit fuzzy. You hire a firm to be there for you. But are they? Exactly. We're Dempsey Myers. Our specialty is claim preparation and resolution. We provide independent and unbiased advice and counsel to the Fortune 500 at a fair price. Because we know what's on the line.

Dempsey, Myers & Company  
THE PEOPLE YOU TRUST.

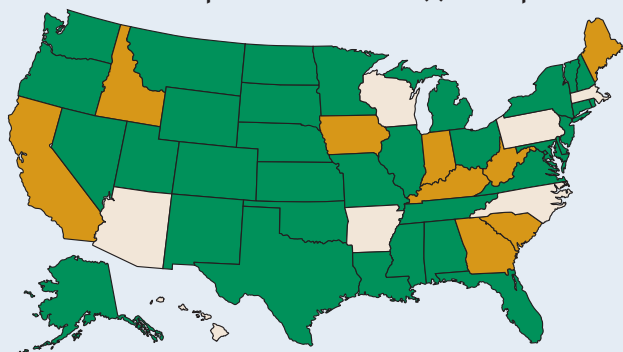
908.879.4976 or visit us at [www.dempseymyers.com](http://www.dempseymyers.com).

dm

May 13, 2002

## CATCH-UP MOVES AHEAD

States in compliance with federal 401(k) catch-up law



■ States whose laws recognized catch-up contributions as of Jan. 1, 2002  
 ■ States where conformity legislation passed this year  
 □ States where conformity legislation has not yet passed

GRAPHIC BY ADAM DOI

## States recognize catch-up law

### Expected 401(k) problems avoided

By JERRY GEISEL

**WASHINGTON**—Employer fears that a provision in last year's tax law allowing older employees to make extra contributions to their 401(k) plans could create significant administrative burdens for them and prove costly for employees are not being realized.

The concerns were generated by the failure of 16 states to modify their tax laws to reflect last year's change in federal law that authorizes catch-up contributions so that employees' adjusted gross incomes would be reduced by the amount of their catch-up contributions. In other states and under federal tax law, the contributions are considered pretax.

Such contributions are authorized under the Economic Growth and Tax Relief Reconciliation Act that Congress passed last year. Under that law, each employee age 50 and older can contribute an extra \$1,000 this year to his or her 401(k), 403(b) or 457 plan, with the maximum catch-up contribution rising in annual increments of \$1,000 until the maximum reaches \$5,000 in 2006.

Benefits lobbying groups and others warned that the failure of states to modify their tax laws so that catch-up contributions can receive favorable tax treatment would lead to recordkeeping problems for employers, such as when an employee moves from a state with a law that recognizes catch-up contributions to one that does not.

At the same time, employees' catch-up contributions would be hit with a state tax bite, reducing the value of those catch-up contributions.

But an aggressive lobbying campaign by benefits groups, as well as a growing recognition by

state legislators of the consequences to both employers and employees, has led states to conform their laws with EGTRRA.

"This has been a remarkably successful effort in getting the states to adopt a uniform set of rules," said Mark Ugoretz, the president of the ERISA Industry Committee in Washington.

So far, EGTRRA conformity legislation has been signed into law in nine states: California, Georgia, Idaho, Indiana, Iowa, Kentucky, Maine, South Carolina and West Virginia.

In addition, the passage of EGTRRA conformity legislation is expected soon in Arizona and Hawaii. That would leave Arkansas, Massachusetts, North Carolina, Pennsylvania and Wisconsin as the only nonconforming states.

The Arkansas Legislature does not meet this year, but employee benefits groups say the legislature next year will retroactively adopt a conformity measure, while the North Carolina Legislature is expected to take up the issue when it reconvenes later this month.

Conformity legislation has been proposed in Massachusetts and Wisconsin, but its fate in those two states is not clear. No action is expected in Pennsylvania, because that state taxes 401(k) salary deferrals, the only state to do so.

Business groups attribute the states' move to conform their laws to EGTRRA, at least in part, to their lobbying efforts.

"We contacted all the relevant state committees and did so early. We made a lot of calls to state legislators and staff with jurisdiction. This was a major issue for us," Mr. Ugoretz said.

States also have acted with alacrity because of the popularity of catch-up contributions

See CATCH-UP/page 18

## Operations, management restructured

# MRM plan aims to restore investor confidence, profits

By MICHAEL BRADFORD

**HAMILTON, Bermuda**—Mutual Risk Management Ltd. is betting that a restructuring will preserve the value of its captive management and brokerage businesses at a time when the fate of its troubled insurance operations is uncertain.

In a preliminary agreement reached last week, MRM outlined a deal with debt holders to restructure its debt and sell parts of the company. At the same time, it stressed the autonomy of its fee-based businesses and emphasized that two of those units—MRM Global Captive Group Ltd. and MRM Specialty Brokers Ltd.—will continue to operate independently of its U.S. insurance operations,



Mr. Ezekiel

which are in rehabilitation. Management changes also have been made. David Ezekiel was named chief executive officer of MRM Services Ltd., which operates MRM's fee-based captive management and brokerage businesses. He will continue as president of MRM Global Captive Group and International Advisory Services Ltd., a captive management firm. Robert Mulderig remains chairman and CEO of parent

Mutual Risk Management Ltd.

Mr. Ezekiel stressed that MRM is working to protect and strengthen the captive management and brokerage businesses. "The restructuring was very much designed to clarify the position of the service companies as being profitable units that are very separate from the troubled insurance companies," he said.

As part of its plan, though, MRM is shedding two units of MRM Services. Mr. Ezekiel said the company is close to a deal to sell Captive Resources Inc. and Mutual Trust Management Ltd. to the management of those companies. In March, MRM sold Hemisphere Management Ltd. for \$110 million.

Under MRM's proposed restructuring

Under MRM's proposed restructuring

Under MRM's proposed restructuring

Under MRM's proposed restructuring

See MRM/page 23

## California to restrict use of Social Security numbers

# State privacy law may force costly changes in benefit IDs

By JUDY GREENWALD

A California law taking effect July 1 that prohibits the use of Social Security numbers in benefits mailings—and, eventually, on health insurance cards—has employers worried.

Many observers say the law, intended to curb identity theft, will force employers to juggle separate identification numbers for their employees' medical, dental, disability, life, pension and other benefit programs, in place of the one Social Security number that most now rely upon.

"It's going to be a logistical nightmare," said Jeff Calder, vp at Oak-

land, Calif.-based Saylor & Hill Co., a brokerage and consulting firm.

Furthermore, observers say, many employers are either not prepared to comply with the law—which applies to any business that has em-



Health care firms in California will not be able to use Social Security numbers for identification.

ployees in California—or do not fully understand its provisions.

Another complication is the question—which may, ultimately, have to be decided by the courts—of whether self-insured plans will be able to claim an exemption from the law under the Employee Retirement Income Security Act of 1974.

Eventually, employers in other states are likely to face this issue as well. Similar bills have already been proposed in at least three states—Ohio, Pennsylvania and Vermont—and additional legislation can be expected on both the state and federal level in response to the growing concerns about identity theft and

See ID NUMBERS /page 26

# Benefits experts rebut report hitting cash balance payouts

## Official contends that plans short-change participants

By JERRY GEISEL

**WASHINGTON**—Benefits consultants are attacking as biased and misleading a report by the Labor Department Office of the Inspector General that employers are short-changing employees in cash balance pension plans by giving them less than what the workers are legally entitled to when they leave.

The inspector general's report examined 60 cash balance plans with more than 209,000 participants and found that, in 13 of those plans, employees who left employment before normal retirement age did not receive the pension benefits to

which they were legally entitled. The inspector general's report estimates that, for the plans it reviewed, plan participants may be underpaid \$17 million a year.

Extrapolating those results to all cash balance plans—the inspector general cited industry estimates of a total of 300 to 700 such plans—plan participants leaving before retirement may be underpaid by between \$85 million and \$199 million annually, the report says. Employers sponsoring the plans were not identified.

The report, says Rep. Bernard Sanders, I-Vt., one of Congress' most vocal critics of cash balance

plans, "proves that a number of companies are illegally slashing the pension benefits of their employees by hundreds of millions of dollars every single year by shifting to cash balance plans."

But Ann Combs, the Labor Department's assistant secretary for pension and welfare benefits, wrote the inspector general, questioning whether the study proves there is a need for greater federal scrutiny of cash balance plans.

"A number of questions came to mind as to whether the sampling methodology employed by the audit team was appropriate for reach-

See CASH BALANCE/page 27



Nike Inc. has drawn fire from activists who claim that the company uses sweatshop labor overseas.

## Suit over Nike public statements upheld

By ROBERTO CENICEROS

**SAN FRANCISCO**—Statements that companies make about their operations are not protected free speech and are open to claims of false advertising, the California Supreme Court has ruled.

In addition, when those claims are brought under California's unfair-competition law, which typically allows only injunctive relief or restitution, companies generally will be unable to make a claim on their commercial general liability policies, several legal experts said.

The state high court's May 2 deci-

sion in *Marc Kasky vs. Nike Inc.* stems from a lawsuit brought against the Beaverton, Ore.-based athletic apparel manufacturer by a San Francisco resident, charging that Nike made false and misleading statements about the nature of some of its overseas operations.

Court documents charge that the false statements were made in response to media reports from 1996 and 1997 that subcontractors manufacturing Nike's products overseas abused workers and violated local labor laws by subjecting workers to sweatshop conditions.

In response to those allegations,

Nike launched a public relations campaign in which it said that overseas workers are often paid double the local minimum wage and that, in many cases, they receive free meals and health care, court records show.

Marc Kasky, a San Francisco resident, later sued Nike on behalf of the general public under the state's unfair-competition law. His suit charges that those claims were made "with knowledge or reckless disregard of California laws prohibiting false and misleading statements."

Lower courts ruled that Nike's

statements, regardless of their accuracy or intent, were "noncommercial" and, thus, were subject to First Amendment protections.

But, in a 4-3 ruling, the California Supreme Court concluded that Nike's statements about its operations were intended to promote product sales. Therefore, the statements constitute commercial speech, which is subject to state law barring false and misleading advertising.

When a business promotes or defends its sales and profits and "makes factual representations about its own products or operations, it must speak truthfully," Justice Joyce L. Kennard wrote for the majority. The justices then remanded the case to the lower courts to determine whether Nike actually had made false statements.

One of the dissenting justices, Ming W. Chin, argued that providing free-speech protection to one side while imposing strict liability for the other will hamstring debate on important subjects.

Nike said in a statement that it is encouraged by the dissenting justices' conclusion that the lower courts' dismissal of the case should be affirmed. The company also said that the majority opinion "sets a dangerous precedent by restraining companies, such as Nike, from making public statements about their business practices when challenged in an area of public debate."

Nike said it is exploring its options, including an appeal to the U.S. Supreme Court.

The plaintiff's suit asks Nike to "disgorge all monies...acquired by means of any act found...to be an unlawful and/or unfair business practice." If Mr. Kasky were to prevail, Nike could, in theory, be forced to surrender profits earned in California during a certain time period, observers said. The plaintiff also wants Nike to pay for a public information campaign correcting any false or misleading statements.

Despite the possibility for large awards for restitution, the state's unfair-competition law generally precludes claims on insurance coverage.

Because the California Business and Professions Code 17200 allows only injunctive relief and restitution—but not the awarding of damages—CGL insurance policies generally will not provide coverage for claims stemming from violations of the business code, said Robert Kavanaugh, an insurer attorney with Nixon Peabody L.L.P. in San Francisco.

Policyholders should review directors and officers and umbrella liability coverages because those policies may provide coverage in such cases, said Michael A. Rossi, a policyholder attorney for Insurance Law Group in Glendale, Calif. Those policies, however, may contain exclusions that preclude coverage, he said.

Nike did not return calls seeking information about its insurance coverage.

*Marc Kasky vs. Nike Inc., California Supreme Court, No. S087859.*

# LORD OF THE JUMBLE

## Opportunity or obstacle?

Modernization is tearing down barriers in the financial industry—but leaving a **tangled legal web.**

To master the new landscape, call Lord Bissell & Brook.

With a multibillion dollar **financial merger practice** and nearly a century of experience with legal issues affecting financial services firms, we can help you realize **the promise of financial convergence.**

[www.lordbissell.com](http://www.lordbissell.com)

LORD BISSELL  BROOK  
BUSINESS NEEDS CHAMPIONS

**A CAPTIVE WITHOUT THE  
BACKING OF A FINANCIALLY STRONG  
PARTNER IS LIKE BUILDING A  
SANDCASTLE AT LOW TIDE.**



**INTEGRITY. THAT'S A GOOD POLICY.**

In a business that deals with uncertainty every day, you don't need to be questioning the viability of your captive partner. With 90 years of experience, Kemper gives you the solid foundation from which to build traditional and alternative risk solutions. From Single Parent Captives to Rent-A-Captives to Captive Management, put your faith in one of the industry's most venerable firms. Because who needs that sinking feeling? For more about Kemper Insurance, visit us at [www.kemperinsurance.com](http://www.kemperinsurance.com) or call us toll free at 1-866-2KEMPER.



# IRS requires employers to give more notice of plan changes

By JERRY GEISEL

**WASHINGTON**—Employers must give employees more advance notice and information about pension plan changes that reduce future benefit accruals.

Regulations issued by the Internal Revenue Service last month require employers to give plan participants, in general, 45 days notice of changes in plan design that could reduce future benefit accruals.

The notice itself would have to give employees an easy-to-understand explanation of the current pension formula, the new benefit formula and the magnitude of the reduction. In certain situations, such as when an employer moves from one type of pension plan to another, the employer will have to provide illustrative examples comparing the benefits that would be earned under the new plan with benefits that would have been earned under the old plan.

The regulations, published in the April 23 issue of the Federal Register, were mandated by tax legislation—the Economic Growth and Tax Relief Reconciliation Act—Congress passed last year.

Tucked into that measure are provisions developed after long and, at times, acrimonious congressional debate on whether employees understood the financial ramifications when their employers converted from traditional final average pay pension plans, which are designed

to favor longer-service employees, to cash balance plans, under which benefits are more skewed in favor of shorter-service employees.

Pension activists complained that employees had too little time to digest those changes and were not given enough useful information describing the changes. Under prior law, an employer could simply provide a copy of the actual pension plan amendment change as little as 15 days before the amendment was to take effect.

**'A 45-day (notice) requirement should not cause a lot of difficulty' for employers.**

Tom Pogue  
Hewitt Associates L.L.C.

Activists wanted Congress to amend the law so that employers would have had to provide individualized statements to affected employees projecting what they would have received under both plans at certain points in time.

Employers complained that such requirements would be costly. An employer with 1,000 participants in its pension plan, critics said, would have had to perform tens of thousands of actuarial calculations, at what could have been a cost of millions of dollars.

In addition, because so many

variables would have been involved, projections of future benefit for any individual employee would have been impossible to make accurately, critics said.

Legislators heard those criticisms, and a compromise was reached—employers would have to provide faster and more useful information, but the information would not have to be individualized.

The law, though, said only that employers had to provide notice of the change in a "reasonable" time, leaving it to the IRS, in its regulations, to determine what a reasonable time should be.

The regulations specify that notification, in general, would have to be provided 45 days prior to the change, a requirement that should not prove burdensome, benefit experts say.

"A 45-day requirement should not cause a lot of difficulty," said Tom Pogue, a consultant in the Atlanta office of Hewitt Associates L.L.C.

"In most situations, that should give employers sufficient time," said Larry Sher, a principal and director of research for Buck Consultants Inc. in New York.

There are exceptions, though, to the 45-day notice requirement. For example, advance notice of just 30 days would be required for a plan amendment that would affect only early retirement subsidies and would be made in connection with a business merger or transaction.

Carvil  
3 column x 6"

## Commentary

### Unmerited praise still has its merits

"Baloney is flattery laid on so thick it cannot be true, and blarney is flattery so thin we love it."

—Fulton J. Sheen

You've heard the expression flattery will get you nowhere? A group of scientists with apparently nothing better to do has now proved that to be false.

Dutch researchers studied a group of modern-day lab rats, known as college students, to try to discover why people tend to think highly of anyone who flatters them, according to a report by Amy Norton of Reuters News Service. After a series of experiments, the researchers learned that people like their flatterers not because they believe what is said about them or because they lose their critical faculties in the face of compliments. Rather, they just like anyone who says nice things about them...even if they know the compliments to be untrue.

The scientific conclusion about our species is that we are suckers for sweet talk, no matter how deceitful.

I'm not sure this research breaks any new ground. It just means a lot of time and money was spent to confirm a hypothesis that many of us already have tested through personal experience.

We've all held our noses and winced at hearing someone paid compliments that didn't have any basis in fact, only to be amazed that the subject responded favorably to such hokey. How many times have you kicked yourself for adhering to the dictum that honesty is the best policy, when some other slimeball used flattery to far greater advantage?

If nothing else, though, this research should provide a helpful reminder of options to anyone trying to influence others or improve their chances of getting what they want.

In today's difficult insurance marketplace, where many buyers are running out of strategies for getting better prices and terms for their programs, it's worth a shot.

Or, if insurers won't budge, maybe you can use this strategy on CFOs and other management to keep your job secure. It's worth a try.

Here are some suggestions to get you started on the road to successful flattery:

- Most insurers are sissies, but I know you have the courage to continue to provide terrorism coverage as part of my property policy with no additional premium.

- Your golf game is really incredible. Have you ever considered trying out for the Tour? I mean it. Now about my workers comp premium...

- I think you are the most brilliant underwriter I know. And, when you agree to lock in my D&O program for five years, you will look like a genius to your managers for all the money you will have made off my account.

- I know that when other risk managers hear me sing the praises of how swiftly, fairly and fully you have handled my liability claim without a reservation of rights, they will be beating a path to your door.

- Have you been training for a triathlon or something? You look marvelous! About this business interruption claim...

- Any insurer could write our program, but I really hope to stay with you because I know that you are the very best. I felt I just had to tell you that.

- Quality people like you are the reason I would never consider forming a captive,

because I could never do as good a job as you do in handling our risk.

- What does the home office know? You're so much smarter than those hacks in the back office and understand that we're a good risk.

- You should be proud of not being a lemming like so many others in the industry today. It's so refreshing to encounter an independent thinker like you, who won't jack up my rates just because everyone else is doing so.

- You must make all the other insurers jealous. They have to charge so much more because they have not figured out how to operate as efficiently as you have.

- Very few insurers have the expertise to understand a sophisticated risk like mine, but you clearly have what it takes. Why you aren't running the company, I can't figure.

- What does it feel like to be the only smart underwriter in the industry today?

- I think I can die happy now, because working on our claim with a professional like you is heaven.

Even if they don't believe a word you say, the research proves they'll like you anyway. And maybe that's the edge you need.



Paul D. Winston

Editor Paul D. Winston's commentary appears fortnightly and at [www.businessinsurance.com](http://www.businessinsurance.com). He can be reached at [pwinston@crain.com](mailto:pwinston@crain.com).

## Business Insurance

**Vice President/Publisher:** Martin J. Ross III  
(New York)

**Editor:** Paul D. Winston (Chicago)

**Editor-at-Large:** Jerry Geisel (Washington)

**Managing Editor:** Regis J. Coccia (Chicago)

**Assistant Managing Editor - Graphics:** Kathy L. Barnes (Chicago)

**Assistant Managing Editor - News:** Gavin Souter  
(New York)

**Senior Editors:** Meg Fletcher, A.R.M. (Chicago);  
Judy Greenwald (San Jose); Mark A. Hofmann  
(Washington); Dave Lenckus (Tucson); Douglas  
McLeod (New York); Edwin Unsworth (France);  
Joanne Wojcik (Denver); Rodd Zolkos (Chicago)

**Bureau Chief:** Roberto Cenicerros (Los Angeles)

**Associate Editors:** Michael Bradford (New  
Orleans); Michael Prince (New York); Sally  
Roberts (Denver); Sarah Veysey (London)

**Copy Desk Chief:** Matt Scroggins (Chicago)

**Copy Editors:** Mary B. Nick (Chicago); Joe Walker  
(Chicago)

**Directory Editor:** Kevin P. Edison (Chicago)

**Assistant Directory Editor:** Carrie A. Brittain  
(Chicago)

**Assistant Graphics/Online Editor:**

Amy R. Kepka (Overland Park)

**Executive Assistant / Reprint Manager:**

Karen Brown Tucker (Chicago)

**Editorial Cartoonist:** Roger Schillerstrom  
(Chicago)

**Advertising Director:** Kenneth F. Luker Jr.  
(New York)

**Midwest Advertising Manager:** Robert L. Niesse  
(Chicago)

**District Managers:** Chris Crain (New York); Lori  
Lieberman (Los Angeles); Robert B. Murray (New  
York); John L. Phillips (Chicago); Jennifer Powers  
(Boston)

**Classified Advertising Manager:** Irais Amlishi  
(Chicago)

**Assistant to the Publisher:** Pat Ghazvini (New  
York)

**Advertising Traffic:** Stephanie Cress (New York)

**Production Manager:** J. Thomas Janka (Chicago)

**Director of Communications:** Ronnie I. Drachman  
(New York)

**Promotion Coordinator:** Barbara O'Brien (New  
York)

**Promotion Manager:** Michael Ambrosio (New  
York)

**EDITORIAL:** Chicago: 312-649-5200; Denver:  
303-698-7601; London: 207-457-1400;  
Los Angeles: 323-370-2455; New Orleans:  
504-364-1908; New York: 212-210-0100;  
San Jose: 408-774-1500; Tucson: 520-579-1937;  
Washington: 202-662-7200

**ADVERTISING:** Boston: 617-292-4856;  
Chicago: 312-649-5276; New York: 212-210-0133;  
Los Angeles: 323-370-2456

**COMMUNICATIONS:** New York: 212-210-0132

**SUBSCRIPTIONS:** Detroit: 888-446-1422

*Business Insurance* is published by  
Crain Communications Inc.

**Chairman:** Keith E. Crain

**President:** Rance Crain

**Secretary:** Merrilee Crain

**Treasurer:** Mary Kay Crain

**Executive Vice President/Operations:**  
William A. Morrow

**Senior Vice President/Group Publisher:**  
Gloria Scoby

**Group Vice President/Technology, Circulation,  
Manufacturing:** Robert C. Adams

**Corporate Circulation Director:**  
Maxx MacConnachie

**Corporate Director/Production & Manufacturing:**  
Dave Kamis

**G.D. Crain Jr.** Founder (1885-1973)



**Mrs. G.D. Crain Jr.** Chairman (1911-1996)

**S.R. Bernstein** Chairman-executive committee  
(1907-1993)

Published weekly at 360 N. Michigan Ave., Chicago,  
Ill. 60601-3806, fax: 312-280-3174,  
E-mail: [biweb@crain.com](mailto:biweb@crain.com). Offices: 711 Third Ave., New  
York, N.Y. 10017-5806, fax: 212-210-0704, CRAIN  
COM NYK; 473 Fairfield Ave., Gretna, La. 70056, fax:  
504-364-1337; Suite 814, National Press Building,  
Washington, D.C. 20045-1801, fax: 202-638-3155;  
6500 Wilshire Blvd., Suite 2300, Los Angeles, Calif.  
90048-4947, fax: 323-655-8157; 967 Bermuda  
Court, Sunnyvale, Calif. 94086-6750, fax: 408-774-  
1155; New Garden House, 78 Hatton Garden, London  
EC1N 8LD England, fax: 207-457-1440; 4 Grande  
Rue, 49140 Jarze, France; 8157 N. Torrey Place,  
Tucson, Ariz. 85743, fax: 520-579-3476; 777 E.  
Speer Blvd., Denver, Colo. 80203-4214; fax: 303-733-  
2244; 1133 W. 108th St., Overland Park, Kan. 66210,  
fax: 312-280-3174. \$4 a copy and \$97 a year in the  
U.S., \$130 in Canada and Mexico (includes GST). All  
other countries, \$230 a year (includes expedited air  
delivery). Don Mierendorf, circulation manager. Four  
weeks' notice required for change of address. Send  
subscription correspondence to Circulation De-  
partment, *Business Insurance*, 1155 Gratiot Ave.,  
Detroit, Mich. 48207-2912. Phone: 888-446-1422 or  
313-446-0450. Fax: 313-446-6777. Microfilm copies  
available: University Microfilms, 300 Zeeb Road, Ann  
Arbor, Mich. 48103. Microfiche copies: Bell & Howell,  
Micro Photo Division, Old Mansfield Road, Wooster,  
Ohio 44691. Portions of the editorial content of this  
issue are available for reprint or reproduction in  
other media. For reprints or reprint permission:  
Karen Brown Tucker, *Business Insurance*, 360 N.  
Michigan Ave., Chicago, Ill. 60601-3806, 312-649-  
5319, fax: 312-280-3174.

To subscribe, call 888-446-1422,  
or 313-446-0450  
outside the United States.

[www.businessinsurance.com](http://www.businessinsurance.com)

## Editorial

Cost-shifting not only way  
to control runaway costs

AS HEALTH INSURANCE premiums continue to increase by double-digit percentages, employers and insurers must redouble their efforts to curb excessive costs where possible.

If they do not, some employers either will be unable to afford to provide health care coverage to employees or they will shift so much of the added cost that it becomes less an employee benefit and more a burden.

Changing plan designs to increase cost-shifting to employees is one strategy that employers have resumed to ease the impact of cost increases. Cost-shifting, in a climate of high health care inflation, is necessary to keep plans affordable for companies, but it is by no means the only option available. And cost-shifting brings its own problems, if not handled carefully, as a recent strike by employees of Hershey Foods Corp. illustrates (see story, page 1).

Other avenues for controlling health plan costs can be identified by examining the various factors that make up the premium dollar. A recent study by the American Assn. of Health Plans provides a review of some of these cost drivers that should direct employers to other cost factors upon which action is needed.

The AAHP study, prepared by PricewaterhouseCoopers L.L.P., found that large employers are paying nearly 14% more for health insurance this year.

The study found that new pharmaceuticals, medical devices and advances in diagnostics and treatment accounted for 22% of the increased costs. General inflation and rising provider expenses each contributed 18%. Government benefit mandates and regulation were responsible for 15% of the increase, as was higher consumer utilization. Litigation and risk management, largely in the form of defensive medicine, were responsible for 7%, while fraud and health care system abuses represented 5% of the increase, according to the AAHP.

Some of the factors behind the double-digit cost hikes are those over which employers have little control. For example, provider expenses are rising because doctors and hospitals, through consolidation, have acquired greater leverage. They have exercised their clout not only in seeking fee increases but also in rejecting managed care mechanisms that had kept costs in check.

Other cost factors, though, demand greater attention

from employers.

Cost-shifting, for example, is one of the most effective tools for addressing excessive utilization of medical services, as well as consumer demand for costly brand-name prescription drugs and new medical services, which the survey found to be significant factors behind rising premiums.

But simply shifting costs is not enough. Employers need to do more to educate workers on the economics of health care and on the direct link between higher-priced health care services and larger out-of-pocket costs. Employers must redouble their efforts to explain the drivers of health care inflation and the extent to which employee choices contribute to those increases.

The increasing cost of litigation and defensive medicine signals a critical need for more tort reform efforts. A culture of litigiousness and consumers' push in recent years for expanded rights have combined to make liability a more-costly component of the health care dollar. In other industries, history has shown that liability crises drive companies out of business, make them uncompetitive and add to the cost of goods and services. It is no different in the health care sector.

The risk of malpractice suits has caused a dramatic contraction in the medical malpractice liability insurance market, as companies have left the market or collapsed under the weight of losses. Unless this liability is stemmed by tort reform, the higher cost of malpractice insurance will be passed on to payers, becoming an ever-larger component of premium inflation.

Fraud and system abuses simply demand better vigilance on the part of health care providers and payers. Such problems also warrant enlisting more law enforcement support for prosecuting fraud to curb abuse. And health plan participants need to understand how misusing the system—just like overutilizing the system—makes their costs increase.

Where employers can make a difference, cost control efforts require a big investment on the part of health care payers. But, unless that investment is made, health insurance costs will continue to grow and will exceed the ability of some companies—and their employees—to pay. If that happens, then the health plan choices available to both will be severely limited.

## Schillerstrom



## Letters to the Editor

D&O 'hammer' article  
hits nail on the head

To the editor: An April 29 article by Roberto Cenicerros, "D&O Insurers Wielding 'Hammers,'" was right on the mark. The article draws attention to a crucial component of the purchase of a directors and officers liability insurance policy—your D&O liability insurance company's claims-handling philosophy.

As the market for D&O liability insurance has tightened, policyholders have been met with attempted massive premium increases and gambits by D&O insurance companies to narrow coverage. The reintroduction of so-called "hammer" clauses into D&O policies is but one of those attempts to cut back on coverage.

A few insurance companies dominate most of the D&O marketplace; a large number of insurance companies, though, have offered this product. For the past decade, this has meant that at least some policyholders could at least find D&O policies at competitive rates. The current turmoil in the insurance and stock markets, the after-effects of Enron and Sept. 11 and basic opportunism have all contributed to increases in D&O liability insurance premiums.

This makes the claims-handling philosophy of your D&O liability insurance company even more important. Choose a policy from an insurance company with a good reputation for paying claims. As a lawyer working with policyholders seeking bought-and-paid-for insurance coverage, I know from repeated first-hand experience that an improper and miserly claims-handling philosophy can largely neutralize the value of your D&O liability insurance. Buy insurance policies from companies that will pay when needed, rather than fight for the sole purpose of reducing the value of your D&O insurance.

Thank you for drawing attention to one of a continuing series of matters to keep in mind when evaluating D&O insurance.

**William G. Passannante**  
Co-Chair, Insurance Coverage Group  
Anderson Kill & Olick P.C.  
New York

*Editor's note: The April 29 article was based on information presented during a session at the 40th Risk & Insurance Management Society Inc. Annual Conference and Exhibition.*

## BI's Online Forum

Visit BI's Online Forum, which offers unmoderated discussion areas for readers to exchange ideas and information about risk management, employee benefits, insurance and other topics. BI's Online Forum is located at [www.businessinsurance.com/cgi-bin/boardView.pl](http://www.businessinsurance.com/cgi-bin/boardView.pl).

*Business Insurance* welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments.

We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Please send your letters to:

Letters to the Editor, *Business Insurance*, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; fax: 312-280-3174; e-mail: [pwinston@crain.com](mailto:pwinston@crain.com).

**Casualty insurance can either open doors or close doors in your financial strategy. Which is yours doing?**

By freeing your collateral, our Exposure Buyback Program allows you to manage your balance sheet while still managing risk. Its innovative virtual captive structure provides unprecedented flexibility in up-front collateral investment, freeing capital to pursue other objectives. It's the product of more than 40 years of experience developing off-shore funding vehicles to serve the unique needs of large customers around the globe.



*INSURANCE IN TOUCH WITH BUSINESS*



**Risk Management**

For more information, visit [www.cna.com](http://www.cna.com)  
CNA is a service mark and trade name of CNA Financial Corporation. Copyright 2001-2002. All rights reserved.

# Government Risk Management

## Cities try to alleviate skatepark liabilities

By MEG FLETCHER

As the popularity of skateboarding grows, public entity decision-makers face several questions when considering whether to establish a park for skaters—both expert and novice—to perform their gravity-defying jumps and grinds.

Interestingly, there is no single approach to reducing skatepark liability that is right for all types of facilities in all types of communities nationwide, say several skatepark managers and insurance pools that cover such facilities. Some, for example, require skaters—and, in some cases, their parents—to sign liability waivers, while others have no such rule. In addition, skatepark managers disagree on whether staffing the parks reduces the potential for liability. These divergent opinions stem, in part, from the almost total lack of recent liability claims stemming from skatepark injuries.

Despite these differences of opinion, experts overwhelmingly agree about the importance of other loss control techniques that municipalities should follow to minimize the likelihood of skatepark liability. These approaches include using professionally designed facilities, posting warning signs and performing daily maintenance checks.

The sport of skateboarding, which began in the late 1950s in California as "sidewalk surfing," later used bowl- or pool-type structures, said Shawn Elliff, a senior risk control consultant in Lees Summit, Mo., with the St. Paul Cos. Inc.

Subsequently, the popularity of skateboarding waned, in part because deteriorating structures resulted in liability losses and were eventually shut down. The sport has since taken on new life and has evolved to include "street" skating, in which skaters perform their maneuvers on readily available—often public—structures such as steps, benches and railings.

As the popularity of street skating grew, so, too, did complaints from public and private property owners, including merchants, who were worried about skateboarders driving away customers and damaging property.

Determining how best to accommodate and regulate skateboarding "certainly is an issue," said Jim Hirt, executive director of the Public Risk Management Assn. in Arlington, Va. Public entity risk managers around the nation "are trying to be proactive" in striking a balance between providing recreational opportunities and protecting municipal property such as curbs and railings from damage caused by skateboarders, he said.

An important part of a community's planning process should be getting input from

See SKATE PARKS/page 16



[Spotlight Editor: Meg Fletcher]

## Protecting those who protect the community

### In a disaster, protecting public workers a priority

By ROBERTO CENICEROS

When a 6.8-magnitude earthquake struck the Seattle area on Feb. 28, 2001, one of the initial challenges for the Washington Cities Insurance Authority was accounting for its staff.

All but one employee of the self-insured municipal risk management pool was accounted for following the quake, which struck during business hours, recalled Lewis



In the aftermath of the 2001 earthquake, Seattle implemented a new plan to account for public employees.

Leigh, executive director of the Renton, Wash.-based WCIA. Mr. Leigh said that nothing was known of the whereabouts or well-being of that employee, who had been on the road, training WCIA members.

As it turned out, the employee was safe, though he had been unsuccessful in his efforts to contact either his family or his employer. The earthquake had rattled a telephone receiver off its cradle in his home, and the telephones at the WCIA were working only sporadically.

Following that experience, Mr. Leigh's staff implemented a plan by which employees, their families and co-workers could share information about each others' location and welfare following a catastrophe: They instituted a simple telephone tree.

"As soon as the lights stop swaying, call in," Mr. Leigh now advises his employees, who might be in any of several cities working with pool members on any given day.

Keeping government employees safe and ensuring that they have a crisis communication plan is important, ultimately, to helping their constituents weather a disaster, say government risk managers and insurance professionals. If their employees aren't safe or are unable to maintain contact with others, they can't help the communities they are supposed to serve.

Some disaster preparations, such as the WCIA's phone tree, are simple. Another basic measure Mr. Leigh has taken is to make sure his employees know they would be reimbursed for hotel expenses if an earthquake were to close bridges or ferries, preventing them from reaching their homes from their work sites.

See STAFF/page 18

## Fleets drive new risks for public entities

By MICHAEL PRINCE

Police cars, ambulances and fire trucks can be lifesavers, but they also represent significant vehicle risks for government risk managers.

Public entity risk managers face a variety of concerns arising from not just emergency vehicles but also other fleet vehicles, such as sanitation trucks, construction equipment and passenger vans. To address these risks public risk managers employ a variety of loss control measures, such as training drivers to drive safely.

"It crosses across many different types and kinds of public entities," including municipalities, states, counties and public universities, said Dorothy Gjerdrum, director of public entity and scholastic risk management at Arthur J. Gallagher & Co. in Minneapolis.

Emergency vehicles pose a unique problem, said Allen Hyman, managing director at Marsh USA Inc. in Sunrise, Fla. "They are the only vehicle on the road that has the ability to violate a number of normal driving rules without being ticketed," he said.

Emergency vehicles often run stop signs, red lights and exceed the speed limit. "And that presents an exposure to the public entity," he said.

While the vehicles are specially equipped for evasive driving, and drivers are trained for this type of activity, they still get into accidents, he said.

A significant concern with public vehicles is that "one incident can impact multiple lines of self-insurance," said Stewart Ellenberg, risk manager for the city of Fort Collins, Colo.

An accident can trigger a workers comp claim, a property claim and possibly a liability claim, he said. This means three different self-insured retentions. For example, one incident can cost up to \$650,000 in self-insured losses to Fort Collins before insurance coverage begins, he said.

Another concern is that people involved in an accident with a government vehicle will often look to profit from the experience.

"We are a target. We are considered deep pockets," said Toni Peyton, safety coordinator in the risk management division of the Broward County Board of County Commissioners in Fort Lauderdale, Fla. The county has about 4,000 vehicles, including 150 buses in a mass transit system, fire, rescue, sanitation and road building vehicles. Broward County also owns a seaport and an airport.

"So our drivers have to be much more aware, more defensive drivers," she noted.

To limit their exposures, risk managers employ a variety of measures. Perhaps none is more important than making sure that the drivers are up to their task.

See VEHICLES/page 13

New ARM designation gains favor/12

Tracy Dahl-Webb is new PRIMA president/14

# Education program helps public risk managers

By SALLY ROBERTS

A relatively new professional designation for public entity risk professionals is helping those individuals address the unique exposures of governmental entities.

The Associate in Risk Management-Public Entity—or ARM-P—was introduced in 1999 by the Insurance Institute of America in cooperation with the Public Risk Management Assn.

Since that time, about 100 people have obtained the ARM-P designation. In addition to completing the Risk Management for Public Entities course by passing the exam, ARM-P candidates must also complete the three required courses for the ARM designation. More than 300 people have completed the RMPE course, according to the Malvern, Pa.-based Insurance Institute.

**'There were enough distinctive aspects about public entity risk managers that we knew we could create an entire course on that—and we did.'**

*James J. Markham  
Insurance Institute of America*

Executives say a course and designation dedicated to public entity risk management was needed, given the unique nature of the field.

"We recognized that public entities had distinctive challenges when it comes to risk management," said James J. Markham, senior vp and general counsel for the Insurance Institute, who leads the curriculum department.

"They have distinctive exposures...distinctive financing...and distinctive decision-making processes. There were enough distinctive aspects about public entity risk managers that we knew we could create an entire course on that—and we did," he said.

In addition, many public entity risk managers were assigned the job on "pretty short notice" and had no way of looking at the overall risk issues for public entities, said Lawrence T. Pistell, director of risk management education for the Insurance Institute.

The RMPE's course's textbook, *Risk Management for Public Entities*, covers in one volume such issues such as administration, exposure identification, risk control, claims and litigation management, risk financing, pooling and disaster planning and emergency response, as they pertain to public entities.

"Our challenge was to make the book challenging but not daunting," Mr. Pistell said.

With the text, individuals can prepare for the exam by attending a class, by organizing study groups or by studying independently.

"There's a huge need for this program," Mr. Pistell said. But, given that only 300 people have taken the

class so far, he describes the program as "a sleeper with huge potential. We've seen steady interest, but there's a very, very large audience out there," he said.

"I was thrilled that there was what I consider to be a continuing education component to the ARM designation, especially one that was specializing in public entities," said Debra Carson, risk manager for the city of Longmont, Colo., and outgoing president of PRIMA. "I took it as soon as I could."

Ms. Carson earned her ARM-P designation in September 2000, af-

ter setting up a two and one-half day tutorial and an exam through the Colorado chapter of PRIMA. Roughly 30 people came and took the test, she said. "I really liked the course. I thought it was very, very valuable," Ms. Carson said.

Other public entity risk managers say they also are glad they pursued the ARM-P designation.

"I just want to be smarter than the average bear," said Christina Hannon, risk management director for Lake County in Tavares, Fla., who passed the exam in February. "I thought it was absolutely the

most challenging course I've ever taken."

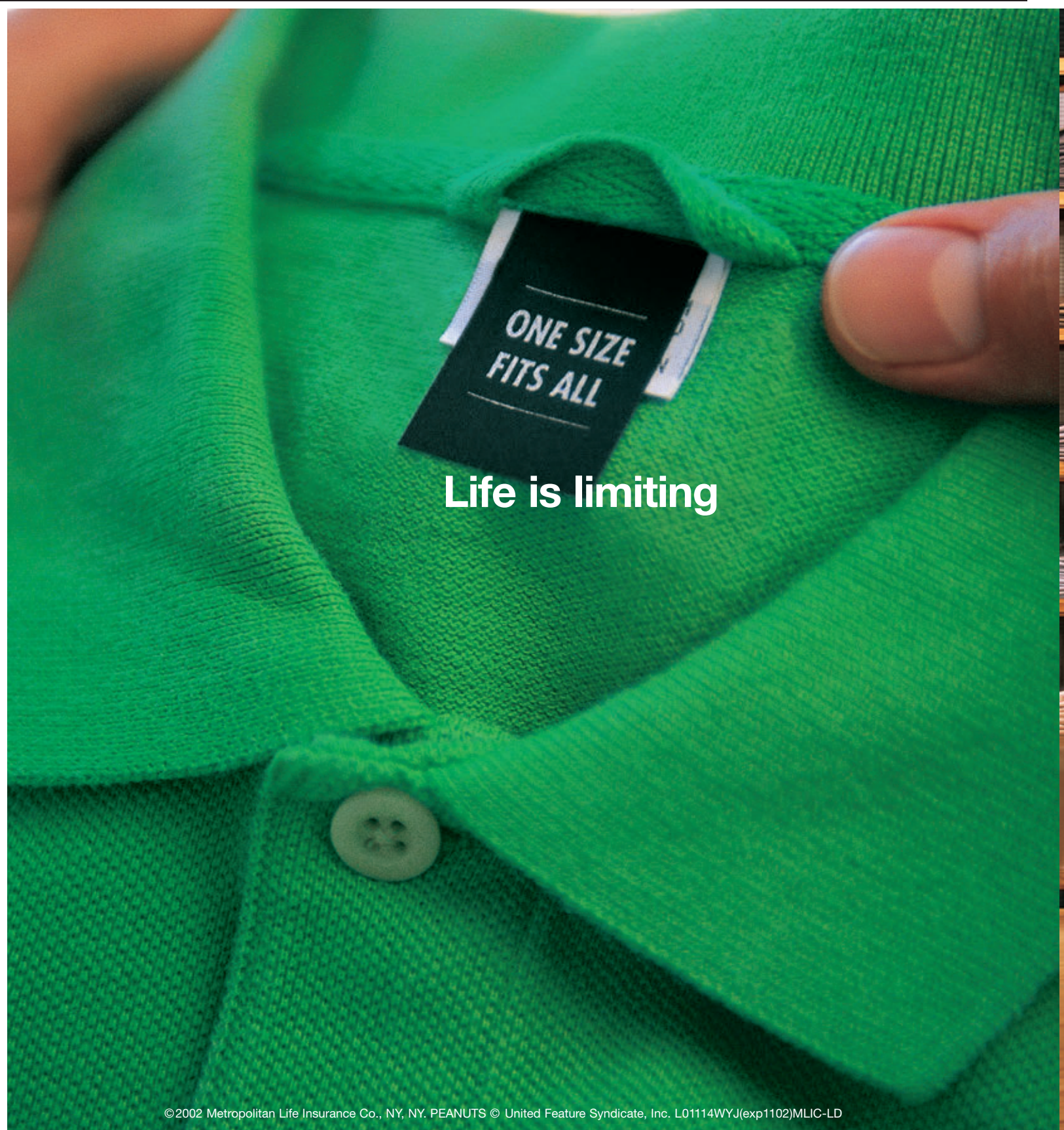
"I've been working in the public sector risk management field for a very long time. I wanted the credentials to sort of prove what I know," said Dorothy M. Gjerdrum, director of public entity and scholastic risk management for Arthur J. Gallagher & Co. in Minneapolis.

Ms. Gjerdrum took advantage of a three-day crash course and test during PRIMA's government risk management seminar held in March.

"It was a great way to do it," Ms. Gjerdrum said.

Kenneth L. Bell, risk manager for the city of Battle Creek, Mich., also received his ARM-P designation while at the PRIMA seminar in March.

"There are a lot of differences between public entities and the way the private world works," said Mr. Bell, who has followed the development of the RMPE course. "Once it became available, I was interested in taking it. It was a good refresher in some areas and it provided new information."



©2002 Metropolitan Life Insurance Co., NY, NY. PEANUTS © United Feature Syndicate, Inc. L01114WYJ(exp1102)MLIC-LD

Broad Portfolio • 130 Years of Benefits Expertise • Responsive Customer Service

May 13, 2002



Emergency vehicles, such as fire trucks, don't need to follow normal traffic rules and therefore can present liability exposures.

## Vehicles: Fleets pose challenges for public risk managers

Continued from page 10

Before any drivers are hired by the city of Longmont, Colo., a background check is conducted to look for criminal history and driving violations, said Debra Carson, risk manager for the city.

"And if there is any concern about someone's driving record, they are brought forward before hiring," she said.

Longmont also has numerous employees holding commercial driver's licenses. Federal law re-

quires CDL holders to report moving violations every year. But risk managers also should conduct a yearly driver's license check of all drivers "to see if we have anybody who is at risk," she said. Ms. Carson said she has found city employees with suspended licenses every year.

Before any newly hired driver takes the wheel they also should undergo thorough training, Mr. Hyman said.

"Everyone has to go through that initially, and I believe that drivers

should go through a refresher course to keep their skills fresh," he added.

Those found to have a violation might receive additional driver training or receive a reprimand, Ms. Carson said.

For example, in Broward County, once a driver experiences three preventable accidents he or she is barred from driving for 18 months from the first preventable accident, Ms. Peyton said. An accident is deemed preventable after a review determines the driver could have avoided the accident with better defensive driving.

While reprimanding drivers with bad records is important, Mr. Hyman pointed out that rewarding those with good ones should also be done.

**'Just because a person comes with a CDL does not necessarily mean they have time in the seat.'**

*Toni Peyton  
Broward County, Fla.*

Fort Collins considers training important but did not like existing programs. "We were not happy with canned programs on the market, so we created our own," Mr. Ellenberg said.

Similarly, Broward County requires its drivers of heavy equipment vehicles to undergo specialized training. "Just because a person comes with a CDL does not necessarily mean they have time in the seat," Ms. Peyton said.

A major safety issue involves 15-passenger vans. In a warning issued in April, the National Highway Traffic Safety Administration said that these vans, commonly used to transport small groups of people such as youth sports teams or members of community organizations, have a propensity to roll over during single-vehicle accidents.

To reduce the incidence and severity of rollovers, only those employees who are experienced with such vans should drive them, the NHTSA suggested. In addition, using seat belts has been shown to greatly reduce injuries to passengers if the van does roll over.

"Organizations that own 15-passenger vans should have a written seat belt use policy. Drivers should be responsible for enforcing the policy," the warning states.

Because of the vans' poor safety record, federal law bans their sale to public schools. But no ban exists on schools using them, and some do, as well as towns and universities for transporting people, Ms. Gjerdrum said.

While many would like to replace the vans with a safer option, "they have budget constraints that prevent them from getting safer vehicles in place," she said. "So risk management is really the way to go on this, for now."

**MetLife is easier**

When it comes to benefits, one size doesn't fit all.  
That's why MetLife designs solutions to fit your company.  
Call your benefits consultant or MetLife representative.

and Delivery • Proven eBusiness Capabilities



**MetLife® Benefit Solutions**

▶ [www.metlife.com/business](http://www.metlife.com/business) 1-877-638-2862

# Receiving much from PRIMA, giving much back

## New president says the organization's strength is in sharing information

By MEG FLETCHER

The incoming president of the Public Risk Management Assn. credits the organization with helping her learn the risk management profession from the bottom up.

Nine years ago, when the City of Brookings, S.D., hired Tracy L. Dahl-Webb to run its human resources office, risk management was considered a subsidiary function of that office. Meanwhile, Brookings' finance department pur-

chased the insurance coverages for the city of about 26,200, nearly one-third of whom are students enrolled at South Dakota State University's main campus there.

Ms. Dahl-Webb, a native of Volga, S.D., knew Brookings well, having earned a bachelor's degree in business economics with minors in mathematics and accounting at the university.

Her human relations background included working for meatpacker John Morrell & Co. and the state's

supplemental retirement plan before joining the city of Brookings. In addition, she subsequently earned a designation from the Society of Human Resources Management as a senior professional.

Ms. Dahl-Webb developed her risk management expertise during the past nine years, primarily through a variety of specialized courses, programs and conferences sponsored by the Arlington, Va.-based PRIMA. As her experience grew, so did her risk management

responsibilities.

"Just as valuable were the connections I made" with risk managers for governmental entities, she said. Over the past several years, she has come to appreciate their willingness to help a colleague by sharing their insights and expertise—often using an online PRIMA-sponsored chat room—about ways to cope with the new and varied risks that public risk managers face, Ms. Dahl-Webb said. "I think that is the most fantastic part" of being part of



Ms. Dahl-Webb

PRIMA, she said.

In her role as city risk manager, one of the biggest challenges she faced was overseeing the insurance-related aspects of constructing the "MultiPlex," an \$11 million multi-purpose public building that includes an arena and annex as well as smaller conference and meeting rooms. The building's flexible layout was designed to accommodate a variety of community events, including conventions, concerts, rodeos, religious services and weddings.

Ms. Dahl-Webb enhanced her own risk management expertise in drafting the wording for insurance-related and building contracts by soliciting advice from PRIMA colleagues. The city's comprehensive risk management program became critically important when "a terrible windstorm" in 1996 flattened the project, which was then about one-third complete. "We were so fortunate that the right language was in the contracts to protect the city's interests," she said. In addition, she said PRIMA colleagues also provided good advice about handling claims in the aftermath of the collapse.

Ms. Dahl-Webb's growing expertise enhanced the stature of the city's risk management operation to the point where she is now considered director of both human resources and risk management operations for the city. Her responsibilities include risk management, loss control and insurance buying in addition to personnel management, benefits administration and labor negotiations. She also serves on the South Dakota Retirement System Board of Trustees, representing state municipal employees.

During the past nine years, Ms. Dahl-Webb also increased her involvement with PRIMA as an organization. She is a charter member of the Iowa, Nebraska and South Dakota Chapter—PRIMA's only tri-state chapter—and has served as its secretary/treasurer, vp and president. Her outstanding service was recognized when PRIMA awarded her its Chapter Service Award at its annual conference in 2000.

On the national level, she has served as PRIMA vp of her region since 1999 and has worked on various committees during her tenure, including scholarship selection and conference planning. She also

See PRIMA/page 16

# Puzzled?

## RLYOHCELPOID

What is the scrambled word  
"covered" by the umbrella?

## Think. Think again!

For Puzzle Solution: [www.legalinnovators.com](http://www.legalinnovators.com)

At **DICKSTEIN SHAPIRO MORIN & OSHINSKY**, our **Insurance Coverage Practice** assists corporate policyholders to enforce coverage under their liability and other insurance policies. As a recognized national leader in insurance coverage law, Dickstein Shapiro has had extraordinary success in protecting corporate policyholders' rights. Our team of more than 50 attorneys in Washington, DC and New York helps clients convert obstacles into opportunities.



Legal Innovators

Washington, DC • New York, NY  
(202) 785-9700 • (212) 835-1400



## In a shifting marketplace, it helps to have specialists on the ground.

Sudden change can have a clarifying effect. Leaders emerge. Experience and insight gain new power.  
And partnering with a global specialist becomes essential.

At Guy Carpenter, we've created a powerful global network with keen local insights.  
Which means that, with more than 40 offices and 2,000 professionals worldwide, we can bring  
the industry's top talent and specialized, regional knowledge to each reinsurance transaction.

And with decades of experience building solid market relationships throughout Europe,  
the Americas and Asia, it means that we can be a powerful advocate for our clients—however and  
wherever their interests take them. It's what clients have come to expect from their  
Guy Carpenter broker for nearly 80 years, and will need even more in the months and years to come.

[www.guycarp.com](http://www.guycarp.com)

**GUY CARPENTER**

Risk and reinsurance specialists for a changing world.

# Skateparks: Loss control moves vary

Continued from page 10

skateboarders and a cross-section of other community members, said Gary Balling, executive director of the park district in Oak Park, Ill. That community is currently considering replacing three tennis courts with a skatepark.

Skateboard proponents emphasize that the sport is safer than some other recreational choices available to youth, such as football and ice hockey.

Nevertheless, the American Academy of Pediatrics says that skateboard-related injuries each year account for an estimated 50,000 emergency room visits and 1,500 hospitalizations among U.S. children and adolescents. The most-common injuries are those to the ankle, wrist and face, and most hospitalizations stem from head injuries, according to the U.S. Consumer Product Safety Commission.

"Skatepark areas, by their nature, pose a risk of serious injury to patrons," according to a statement by Brett Davis, risk management ser-

vices manager for the Park District Risk Management Agency. The Lisle, Ill.-based park district insurance pool protects 141 independent park districts—including 20 skateparks—in Illinois.

Skateboarders also risk cervical spine injuries, including quadriplegia, according to PDRMA's liability waiver, which is used by some of its skateparks.

To help prevent such injuries—and resultant liability claims—nearly all public entities advocate several loss control techniques.

In terms of risk financing, most skateboard parks are included in overall policies for public sector entities and are not written on separate policies, according to spokesmen for St. Paul, PDRMA and some other public entity pools.

In addition, "skatepark risks can be managed with loss prevention controls prior to construction and during operation," Mr. Davis said.

A thorough approach to loss control is important because "possible liability claims could stem from al-

legations of negligence in design, supervision and maintenance," said Tracy Dahl-Webb, human resources and risk management director for the city of Brookings, S.D., which operates a skateboarding facility.

For example, parks should be professionally designed and should use commercially available ramps and jumps, which would be backed up by product liability insurance, said James R. Noonan, insurance/risk manager for the City of White Plains, N.Y. That is particularly important for his city's skatepark, because it is reinstalled annually as a warm-weather alternative to the city's covered outdoor ice skating rink.

In addition, all public skatepark managers cite the need for extensive use of signs, including those that warn of the hazards of the sport, state the terms and conditions for using the facility and clarify that the park does not assume responsibility for injuries.

Unstaffed parks typically post signs that provide information about the location of the nearest

telephone, so help can be summoned promptly in the event of an emergency.

And public skatepark operators encourage daily, documented safety inspections. Damaged ramps should be taken out of service and quickly repaired, park operators say.

Nearly all skateparks have signs strongly urging skateboarders to use proper protective gear, including helmets as well as pads to protect knee and wrist joints. But most unstaffed skateparks—including the eight parks insured by the Assn. of Washington Cities in Olympia, Wash.—stop short of requiring equipment use, because they can't enforce the rule.

In addition, many public entities urge that parks be fenced and locked during off hours, though unstaffed parks have less control over when the facilities are used.

Illinois' PDRMA pool permits each individual member to decide whether a given situation is risky enough that it should try to shield itself from liability claims by requiring a signed waiver from every participant and, for any skater under the age of 18, from the youth's parent or guardian.

Unstaffed skateparks, though, typically do not require liability waivers.

"In a public park setting, unmanned is the way to go to minimize the liability exposure," according to St. Paul consultant Mr. Elliff, who has provided advice for about 10 to 15 skateboard parks in the Midwest. Essentially, the skaters themselves assume more personal risk at an unstaffed facility, he explained.



PHOTO: AP PHOTO/THE PITTSBURGH MORNING SUN, C. COTTRELL

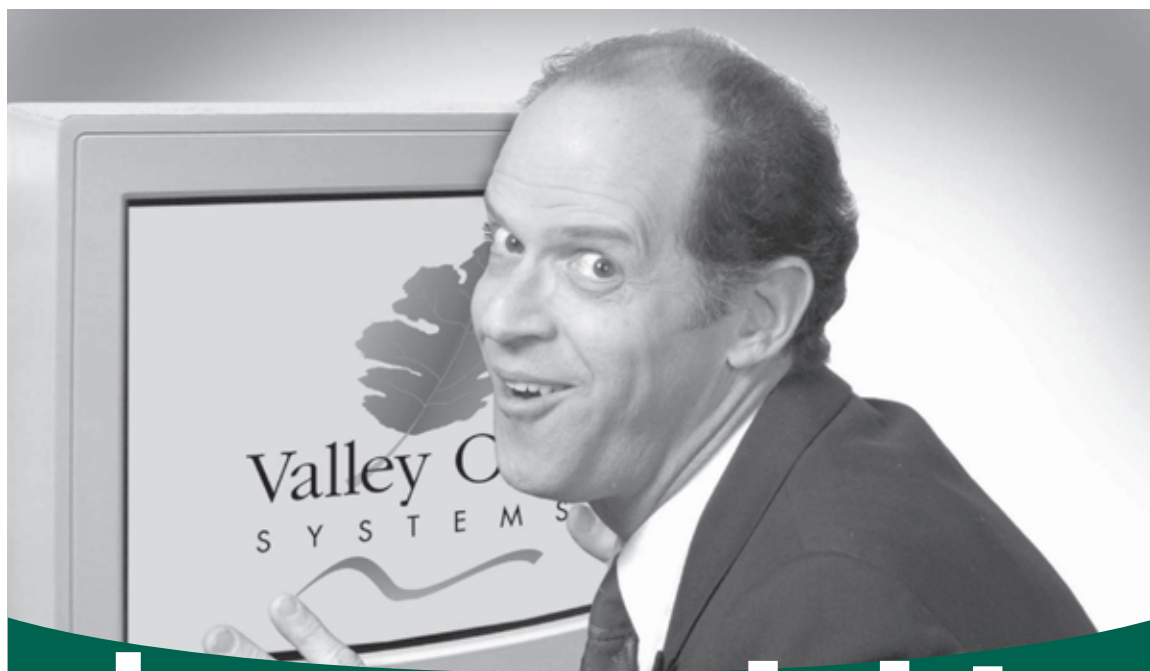
While nearly all public skateparks post signs urging the use of protective gear, such as helmets and knee and wrist pads, most unstaffed parks stop short of requiring the equipment because they can't enforce such rules.

Among the public entities that do not staff their facilities or require liability waivers are the Assn. of Washington Cities as well as the city of Brookings, which both tend to use less-elaborate equipment and which are located in areas of the country that are considered less litigious.

The 12 skateparks operated by members of the Assn. of Bay Area Governments Pooled Liability Assurance Network typically do not require waivers for all but a few portable parks, said Marcus Beverly, director of risk management in Oakland.

A California law that declares skateboarding a hazardous activity provides limited immunity for public entity skateboard parks from claims by anyone age 15 and over. Cities expect to replace that law, which sunsets Jan. 1, 2003.

Meanwhile, the city of White Plains staffs its skatepark, in part because it operates a complex facility that is used by both skateboarders and in-line skaters. It also makes use of extensive liability waivers.



## Love at first sight.

What first attracts people to Valley Oak Systems' claims administration software?

We're told it's the look and feel of the screens. They're easy to navigate and show the whole picture all at once - no backtracking to do your work. Our correspondence piece is attractive too - all the form letters and legal documents that you'll need. And, they're client customizable and secure.

### Valley Oak Systems:

- supports multiple lines of insurance
- converts clients' data accurately and rapidly
- incorporates 'best practices' from our clients and the industry
- offers outstanding reporting and graphing capabilities
- provides functionality consistent with how examiners and managers actually handle claims
- we're Windows™-based and Internet-enabled
- automates client-specific business rules for greater efficiency
- provides superior flexibility, customer responsiveness and support

The fact is, we've never lost a client.

Contact us today for a demo and more information:  
925-552-1650 [www.valleyoak.com](http://www.valleyoak.com)  
See us in Booth #220 at PRIMA

Because our outstanding software is more than just a claim



## PRIMA: Sharing info

Continued from page 14

chairs the planning committee for PRIMA's 23rd annual conference, which will take place May 14-17 in San Antonio, where she will take over the office of president.

As PRIMA president, she plans to continue her commitment to strategic planning, identifying core competencies for public entity risk managers and developing programs with a variety of partners to help risk managers achieve those skills, Ms. Dahl-Webb said.

She supports PRIMA's program of national audio seminars on topical issues because they can cost-effectively educate risk managers and

their staffs for a nominal cost. She particularly supports the new program that tailors the Associate in Risk Management certification to public entity risk managers by allowing them to take an additional test to earn an "ARM-P" designation (see related story, page 12).

"We want to put public entity risk management in a professional light," she said. A public entity risk manager should be equipped with the information "to be at the table and be a decision-maker, not just a resource," she said.

Ms. Dahl-Webb and her husband, Bill Webb, have four children.



# THE ADVANTAGE OF EXPERTISE



Whether you are looking to solve a complex problem, design a custom-structured insurance program to meet tomorrow's needs, or handle day-to-day concerns — expertise is of the essence. For more than 40 years, Old Republic Risk Management has focused solely on the alternative insurance market. This specialization has enabled us to not only deliver a unique advantage to our clients, but to do so confidently, with assurance your needs are met.

As a specialist in the alternative risk market, we have developed an enviable reputation in helping companies structure responsive insurance programs. In fact, Old Republic helped pioneer

the alternative risk market through development of captive reinsured programs and the concept of the unbundled approach to insurance-related services. Not content to rest on our laurels, however, we continue to update our portfolio of products in response to the dynamic needs of our customers and the marketplace we serve.

By listening carefully, we remain as committed as ever to managing and reducing your cost of risk. To learn more about how our custom-designed programs can benefit you, see us at [www.orm.com](http://www.orm.com) or call (262) 797-3400.



Specialists in the alternative risk market.

# Staff: Public workers must be safe, in contact

Continued from page 10

Other preparations require more extensive planning and execution. That was the case in the state of New York, where officials in May 2001 enlisted insurer participation in the creation of an emergency operations center.

Getting insurer help in preparation efforts was a way to tap industry resources that usually are deployed only after a catastrophe, said New York Insurance Superintendent Gregory V. Serio.

Initially, officials expected that the operations center would expedite damage assessments and claims payments that stemmed from natural disasters. But it was a manmade catastrophe that forced the New York State Insurance Department to activate the emergency operations center in September 2001.

Planned redundancy called for the center to operate from facilities either in New York City or in Albany, depending on which location would be out of harm's way. Albany turned out to be the site used to address the losses related to the destruction of the World Trade Center.

Insurer representatives reported to the site and helped staff it. That improved communications among insurance companies, state emergency officials and policyholders in need of immediate help.

From inside the emergency center, insurer representatives and state officials worked on laptop computers, posting and tapping into information available on restricted-access Web sites. They also used a videoconferencing system to communicate with personnel working around the WTC site.

In that way, they were quickly able to estimate insurer losses and to deploy claims adjusters and mo-

bile claim payment centers for policyholders in the affected area. The videoconferencing equipment and laptops helped all parties share visual information, such as maps, while they developed strategies.

The preparations and operations center proved their worth, Mr. Serio said. Among other accomplishments, the center sped loss information to the Federal Emergency Management Agency, so that aid funds could start to flow.

**Preparations aimed at assisting the public are only part of disaster planning, say government risk managers. Crisis planning must also consider employee welfare.**

Increasingly, Mr. Serio said, FEMA determines the awarding of emergency aid by comparing the amount of losses that are insured to the loss amount that is not insured. "That was one of the actual underpinnings of the disaster program to begin with—recognizing that insured vs. uninsured loss is a significant component of the federal aid equation," he said.

Not only did the emergency operations speed the delivery of loss information to FEMA, but the improved communications process also ensured that relayed information was accurate and complete, Mr. Serio said.

But preparations aimed at assisting the public are only part of disaster planning, say government risk managers. Crisis planning must also consider employee welfare.

The Community Redevelopment

Agency of the city of Los Angeles, for example, has enough emergency food and water stored in its offices to supply about 250 people for two to three days. Employees of the agency, which redevelops blighted areas, could use those supplies if a crisis were to force them to remain in their offices for an extended time period.

That was nearly the case in 1992, when rioting followed the verdict in the Rodney King trial, recalled Diane Wren, risk manager for the CRA/LA. The rioting forced some CRA/LA employees to remain in a field office until police declared it safe for them to leave. Fortunately, the workers did not have to stay overnight in the office. But shortly after they evacuated their building, looters attacked it, Ms. Wren said.

"We always thought of earthquakes, but we learned during the riots that there are other reasons people may have to stay here," Ms. Wren said.

In addition to storing food and water, CRA/LA arranges for some of its employees to be trained by the city's fire department in search-and-rescue and fire suppression techniques, Ms. Wren said.

To coordinate planning, the agency maintains an emergency preparedness committee. Members of that committee, along with other designated employees, have agency-supplied wireless telephones. The telephones, which can double as walkie-talkies, permit workers to report on building damage and on their own safety status during a catastrophe.

Ms. Wren admitted, though, that she has one significant frustration with the preparedness plans.

CRA/LA's headquarters are in a downtown area of Los Angeles that is home to several other city, state



PHOTO: L.A. TIMES PHOTOS /KIRK MCKOY

During the 1992 riots in Los Angeles, some employees of the city's Community Redevelopment Agency were forced to remain in a field office until police declared it safe for them to leave.

and county agencies. And although it is possible that those agencies have their own emergency preparations and supplies, Ms. Wren said she is not sure they do, because it has been difficult to pull together representatives from all the organi-

zations to discuss the matter.

If those other agencies are not prepared and an emergency were to occur, Ms. Wren said she fears that their combined needs could overwhelm her search-and-rescue workers and their stored supplies.

## Catch-up: States coming into line

Continued from page 3

with voters. "The states did not want to be in a position of putting a damper" on these contributions, Mr. Ugoretz said.

While the issue of conformity with state laws is largely, or soon will, be resolved, other problems involving catch-up contributions remain. One problem involves the IRS' universal availability rule and how it applies to employers with union-represent-

ed employees, the employer, under the universal availability requirement, could not offer catch-up to any other eligible employee.

"A single union, representing a tiny fraction of the employer's workforce, can deprive all employees of the chance to make catch-ups," John Vine, a partner at Covington & Burling in Washington, said in testimony made on behalf of the ERISA Industry Committee at an IRS hearing last month.

While no one knows if this scenario actually would develop, giving unions that kind of veto power is causing some affected employers to delay adding catch-up provisions to their 401(k) plans, consultants say.

The remedy to that potential problem is for the IRS to make clear that the universal availability requirement would be satisfied if an employer were to offer a catch-up opportunity to employees represented by labor unions, even if the union were to decline to agree to the provision, Mr. Vine told the IRS.

That issue aside, benefits experts forecast that most large employers with 401(k) plans will have added catch-up to their plans by the end of next month.

"A clear majority are implementing this," said Michael Weddell, a consultant in the Southfield, Mich., office of Watson Wyatt Worldwide.

"The lion's share will have added it," said Rob Reiskytl, a consultant with Hewitt Associates L.L.C. in Minneapolis.

**'A single union...can deprive all employees of the chance to make catch-ups.'**

*John Vine  
Covington & Burling*

ed employees.

Under this rule, an employer has to offer catch-up contributions to all employees in its 401(k) plans by Oct. 1 or it can't offer them to any employees. In the case of an employer with employees covered by a collective bargaining agreement with a 401(k) plan, the universal availability requirement does not kick in until the first plan year beginning after the bargaining agreement expires.

Under the universal availability rules, unions would have, in effect, veto power over whether an employer could offer catch-up contributions to other eligible employees.

That is because if a union were to refuse to accept an employer's offer to add catch-up contribu-

# Products & Services Guide

To place your ad, contact **Irais Amleshi** at (312) 649-5340 / fax: (312) 649-7937 / E-mail: iamleshi@crain.com  
Business Insurance, Classified Department, 360 N. Michigan Ave., Chicago, IL 60601-3806. Call for details on blind box and internet advertising



**WLT SOFTWARE, INC.**  
Insurance Specialist

**Windows Based Solutions & Direction For The New Millennium**

**Solutions**  
Claims Management Software Including:  

- Health Claims Management • Fully Integrated Network PC Software
- HIPAA • EDI • Auto Adjudication
- Claims Processing • Claims Editing • Integrated Billing
- Workers' Compensation Claims Management
- ODBC • Open Relational Database

**Direction**  
NT Based Solutions Utilizing:  

- Internet Connectivity • EDI Web Enabling
- Integrated Systems • Scanning • OCR
- Mailroom Outsourcing • Customer Service
- Numerous Cost Savings & Productivity Boosting Technologies

[www.wltsoftware.com](http://www.wltsoftware.com)

For more information on WLT's fully integrated product line please contact us toll free at: **877-807-4730**

**CPCU®** AIC, ARM, IIA, CLU/ChFC, and CIC candidates

Executive Summaries so good, you'll pass the first time, every time or your money back!

**Call 1-888-BURNHAM Now!**  
[www.BurnhamSystem.com](http://www.BurnhamSystem.com)

Any Risk Management Questions?

Ask [www.GeorgeLHead.com](http://www.GeorgeLHead.com)

**Fax us your ad**  
**(312) 649-7937**

you. →

← the 2001/2002  
**Directory of Buyers.**



← the industry.

CALL 888.446.1422  
OUTSIDE THE US: 313.446.1662  
E-MAIL: SUBS@CRAIN.COM

**Business Insurance** www.businessinsurance.com



**Last year we signed up 250,000 new members.**  
 {More than any other health plan in New York}

In 2001, more people changed to Empire than any other health plan in New York. We're now 4.6 million members strong. What do they know that you don't?

**They know Empire has brought customer service to a whole new level:**

- + On average, claims settled in 4 days
- + Most calls answered in under 29 seconds
- + An award-winning website with over 80 features and functions where members can manage their own health plan\*
- + A new dental plan with a larger network and new preventive plan designs
- + Access to personalized online health information

We'll soon have an online Employer Portal to make it even easier to manage your employees' health benefits.

At Empire, we're changing to give you the choices you want and the service you deserve. We're determined to make healthcare hassle-free, both for you and your employees.

C a l l Y o u r B r o k e r



*More changes. More members.*

[www.empireblue.com](http://www.empireblue.com)

\* Best of Show Award from Business Insurance's Best of the Web Awards 2001 (October 9, 2001).  
 Services provided by Empire HealthChoice, Inc., a licensee of the Blue Cross and Blue Shield Association, an association of independent Blue Cross and Blue Shield Plans.

May 13, 2002

21

Railway dismissed employee who raised safety concerns

# Whistle-blower wins compensation

By CAROLYN ALDRED

**LONDON**—In an employment tribunal ruling that could encourage more litigation under a U.K. whistle-blower act, a rail employee dismissed after raising health and safety concerns has been awarded compensation for emotional injury and aggravated damages.

The ruling is one of the most publicized made thus far under the Public Interest Disclosure Act of 1998, a law introduced to protect whistle-blower employees who report wrongdoings or health or safety concerns at their places of work, according to the rail employee's lawyer, Paul Maynard.

Mr. Maynard, a partner with the Tonbridge, Kent-based law firm of Clarke Kiernan, said it also is the first time aggravated damages and compensation for emotional injury have been awarded in an unfair-dismissal case. In the Unit-

ed Kingdom, aggravated damages are awarded at the court's discretion when it finds a defendant has been particularly wronged.

Simon Watson, a partner in the employment department of the London-based law firm of Simmons & Simmons, said that the PIDA is increasingly being cited in unfair-dismissal claims, "partly because compensation awarded is uncapped." Standard unfair-dismissal claims are capped at just over £50,000 (\$73,445) by law, while cases claiming sexual or racial discrimination and those brought under the PIDA are not capped, Mr. Watson explained.

Laurance Holden, the rail employee, was awarded £54,320 (\$79,791), including £18,000 (\$26,440) for emotional injury and aggravated damages. Mr. Holden had been a train driver for British Railways—which became Connex South Eastern after its privatization—since 1977; in 1993, while maintaining his driver duties, he was

appointed a health and safety representative.

Mr. Holden raised numerous safety concerns with management, including overheated driver cabins, inadequate safety-signal training and overlong hours worked by train drivers. In 1999, the company disciplined him after he sent two reports criticizing safety standards to Her Majesty's Railway Inspectorate, and Mr. Holden resigned, complaining that the company had breached the PIDA.

According to Mr. Maynard, the PIDA was introduced to protect whistle-blowers from subsequent victimization, thus encouraging other individuals to come forward with their concerns. Mr. Maynard represents employees in two other cases that allege breach of the act but said that "surprisingly few employees still are prepared to come forward."

Mr. Maynard said, though, that the success of

See SAFETY/page 23

## World Updates

### Lloyd's to reconsider buyout of names

Lloyd's of London Chairman Sax Riley says the market will reconsider a proposal to buy back names' rights to underwrite on specific syndicates. The proposal, part of reforms to modernize Lloyd's, called for eliminating the so-called security of tenure for Lloyd's names. Under that arrangement, names have the right to invest in the same Lloyd's syndicates every year. One proposal calls for offering names a lump sum to surrender this right. In a letter to names this week, Mr. Riley said that this proposal had prompted concerns in the market and would be reconsidered.

### Germany to seek end of E.U. airline cover

German Finance Minister Hans Eichel said his government will push for an end to E.U. member states' provision of terrorism coverage for airlines because adequate coverage is again available in the private market. He said airlines now can obtain commercial insurance. The E.U. Council of Ministers is expected to state soon whether guarantees for coverage, set to expire May 31, will again be extended.

### KWELM liquidation completion projected

The liquidation of the KWELM companies could be complete within four years, said the administrator. About \$2.2 billion has been paid out to creditors of the five insolvent London companies—Kingscroft Insurance Co. Ltd., Walbrook Insurance Co. Ltd., El Paso Insurance Co. Ltd., Lime Street Insurance Co. Ltd. and Mutual Reinsurance Co. Ltd. The remaining liabilities are estimated at \$6.5 billion. Under the scheme of arrangement, which began in December 1993, the group will ultimately pay out about 50% of total liabilities, said administrator PricewaterhouseCoopers. About 90% of the group's 100,000 policyholders are U.S.-based. They were mainly insured for long-tail risks, such as asbestos, pollution and health hazards.

### Briefly noted

The Assn. of Insurance & Risk Managers, Lloyd's of London and think tank Global Futures have launched a research project to assess risks faced by businesses and society after the **Sept. 11 terrorist attacks**. London-based **Royal & SunAlliance Insurance Group P.L.C.** posted a £67 million aftertax loss (\$96.5 million) for the first quarter of 2002, compared with a restated £234 million loss (\$337.0 million) for the comparable period in 2001.



An EgyptAir jet, left, en route from Cairo crashed May 8 while attempting to land in Tunisia, Tunisia, during bad weather. At least 14 of the 62 people on board were killed when the plane crashed into a hilly area on approach. The accident was the second major loss in two months for EgyptAir.

PHOTOS: AFP

At least 148 people died when an Executive Airline Services plane, right, crashed in a residential area in Kano, Nigeria, May 4. Seventy-two of the 76 passengers and crew on board died, as did an estimated 76 people on the ground.



## Series of airplane crashes not yet worrying market

By DAVE LENCKUS

**LONDON**—Three passenger jet crashes in early May likely will not financially strain the commercial aviation insurance market, but a series of even small losses through year end could hurt the market because of its greater net loss retentions this year, market executives agree.

Crashes in Nigeria and Tunisia and off China's Northeast coast claimed about 260 lives and destroyed aircraft valued at more than \$33 million. But several factors will mitigate the financial impact of those losses, market executives say.

Annual market losses historically total around \$1.8 billion, and losses have been light so far in 2002, market executives noted.

"These losses are tragic, but they're very much part of the loss scenario that would occur in a typical year," observed Nigel Weyman, managing director of the aerospace division at Heath Lambert Group, the retail brokerage division of HLF Insurance Holdings Ltd. of London.

Further minimizing the market loss will be the lower recoveries that the families of victims who reside outside the United States or Europe can expect and the relatively low value of the destroyed hulls, market executives say.

In addition, while the commercial aviation market has seldom made an underwriting profit over the past decade, the market is on pace this year to generate \$4 billion of premium, including premium from the \$1.25 surcharge per ticketed passenger for \$50 million of third-party terrorism coverage. With premium volume increasing two- to threefold this year, the recent losses pose a smaller threat than they would have in previous years, market executives said.

Noting that there is only an annual loss pattern, not a month-to-month pattern, and that a series of year-end losses could quickly turn 2002 into another unprofitable year, the executives said that assessing this year's loss pattern would be premature.

And with the market's new reinsurance

See AIRLINES/page 23

## Vendors targeted HLS activists take protest to Marsh

By SARAH VEYSEY

**LONDON**—Risk managers and insurers are facing increased pressure from animal-rights groups, as the activists expand their protests to target companies that provide services to companies that perform scientific tests on animals.

While risk managers have long understood the risks of animal-rights activists attacking companies that use animals for research, the new tactic by the protesters exposes more companies to protest-related risks, including insurance services providers, risk managers and insurers say.

Insurance broker Marsh Inc. is currently the target of protests, following claims by campaigners against Cambridge, England-based pharmaceutical testing company Huntingdon Life Sciences Group P.L.C. that Marsh is HLS' lead broker.

The Cheltenham, England-based pressure group Stop Huntingdon Animal Cruelty staged demonstrations outside Marsh's London offices and the London offices of its subsidiary, Mercer & Co., on April 24 to protest the brokerage's links with Huntingdon. And SHAC's U.S. arm is urging supporters to contact Marsh's headquarters in the United States to demand that the company "sever all services to HLS."

Marsh would not comment on the protests.

Last year, several institutional investors pulled money out of Huntingdon following protests targeting the investors (*BI*, May 21, 2001). The current protests against service providers are leading risk managers and underwriters to look more closely at the links they have with targeted companies.

David Gamble, the executive director of the London-based Assn. of Insurance & Risk Managers, said that, from a risk management standpoint, companies should maintain a dialogue with protesters and try to find some sort of solution. He cited the example of petroleum company Royal Dutch Shell, which had been the target of peaceful protests by the environmental pressure group Greenpeace. After discussions with Greenpeace, Shell set up an environmental program for which it has been widely praised.

One Lloyd's of London insurer who did not

See PROTESTS/page 23

# Professional MarketPlace

To place your ad, contact **Irais Amleshi** at (312) 649-5340 / fax: (312) 649-7937 / E-mail: iamleshi@crain.com  
 Business Insurance, Classified Department, 360 N. Michigan Ave., Chicago, IL 60601-3806. Call for details on blind box and internet advertising

**HELP WANTED**

**Senior Insurance Broker**

Towers Perrin is a global, privately held professional services firm that helps leading organizations execute their business strategies through innovative cost-effective approaches to managing people, performance and risk.

The Consultative Placement Practice is the retail broking and risk management arm and provides the financial and risk management communities with a one-firm solution delivering specialized retail placement services, plan design, risk financing and analytic consulting.

We're looking for an experienced individual to work in our Stamford, Connecticut office as a Senior Insurance Broker with a specialty in Risk Management Casualty.

**Responsibilities:**

- Marketing and broking activities
- Identifying and analyzing risk exposures and recommending and designing risk transfer/financing programs that address these exposures
- Managing general client servicing including: administration, marketing, finance and claim management activities on assigned accounts
- Executing specific client servicing including: developing and/or coordinating proposals to prospective clients; effectively explaining insurance coverages and services to insurance buyers who possess varying levels of knowledge about underlying insurance concepts and products; maintaining close relationships with current and prospective clients and supporting policy management activities
- Maintaining solid relationships with key underwriters

**Qualifications:**

- Thorough understanding of underlying concepts of property/casualty insurance including a minimum of seven years experience marketing and managing Fortune 500 or similarly sophisticated risk management accounts
- Proven experience managing and growing established books of business, and contributing to new business marketing opportunities
- A Bachelor's degree and ARM or CPCU certification is preferred

We offer opportunities for professional growth complemented by an excellent compensation package.

Please respond to this opportunity by sending your resume via e-mail to [jobs@towers.com](mailto:jobs@towers.com) and include the job code BI- SIB in your subject line.

Towers Perrin is an Affirmative Action/Equal Opportunity Employer.

**Towers Perrin**

BUILDING RELATIONSHIPS • PRODUCING RESULTS

[www.towersperrin.com](http://www.towersperrin.com)

**HELP WANTED**

**HELP WANTED**

**NEW YORK CITY INSURANCE BROKERAGE**

Seeks Experienced Commercial Account Executive

20% Year End Bonus for Increasing Existing Book of New Business

Fax Resume to: (212) 269-0399

**BUSINESS OPPORTUNITIES**

**PROGRAM MANAGERS AND REINSURERS NEED A FRONT COMPANY? Equity Investors Invited**

Need a policy issuing carrier for your Program? Clean NY domiciled P/C carrier available for NY programs. We can also provide policy and claim administration. You supply the surplus and acceptable reinsurance security. Reply to P.O. Box 563, Patchogue, NY 11772, (Attn: SH) and provide your telephone contact. All replies will be treated in strict confidence.

**LEGAL NOTICE**

NOTICE OF SANCTION OF SOLVENT SCHEME OF ARRANGEMENT IN THE HIGH COURT OF JUSTICE (IN ENGLAND AND WALES) CHANCERY DIVISION COMPANIES COURT No 916 of 2002 IN THE MATTER OF **HASSNEH INSURANCE CO. (UK) LIMITED**

and IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by an Order dated 25 April 2002 made in the High Court of Justice in England and Wales in the matter of Hassneh Insurance Co. (UK) Limited (the "Company"), the scheme of arrangement proposed to be made between the Company and its Scheme Creditors (as defined in the Scheme) pursuant to section 425 of the Companies Act 1985 (the "Scheme"), which was voted on and unanimously approved by Scheme Creditors during the meeting held on 17 April 2002, was sanctioned. A copy of the Court Order and Scheme was lodged with the registrar of companies on 26 April 2002, and the Scheme became effective on that date.

It is requested that Scheme Creditors complete and submit Claim Forms by 31 July 2002 marked for the attention of Anne Bagshaw to the address below. Returned Claim Forms must reach the Company on or before this date.

Should you have any questions regarding this Notice, please address them to Anne Bagshaw at:

Chiltington International Limited, 8-10 St. Saviours Wharf, 23-25 Mill Street, London SE1 2BE, United Kingdom

Telephone: +44 (0) 20 7252 0316

Facsimile: +44 (0) 20 7252 0306

**HELP WANTED**

*Trust is the foundation of all success.*

**Executive Recruitment**

- Risk Management
- Insurance Brokerage
- RMIS Technology
- Safety & Loss Control
- Claims Management
- Risk Management Consulting

Also ask about Temporary Opportunities  
 call: 973-765-9000 fax: 973-765-9009

15 James Street, Main Level  
 Florham Park, NJ 07932  
[www.rmainc.com](http://www.rmainc.com)

**RIMA**  
 Richard Meyers & Associates, Inc.

**HELP WANTED**

**HELP WANTED**

**HELP WANTED**

# Energy

It is at the heart of our work, not only the energy we provide to the entire world, but also the energy which drives our people. The following represents our needs in Saudi Arabia within the Treasurer's Organization:

**RISK MANAGEMENT SPECIALIST**

This high-profile position is involved with the development of policy and procedures to manage the company's global risk exposures, particularly in the area of marine fleet operations. Key functions include identifying, evaluating and recommending alternatives for the management of global risk exposures and financing. In addition, this role advises senior management on trends and forecasts in risk cost as well as consults and negotiates with insurance brokers, underwriters and adjusts on company risk issues.

Candidates must possess a Bachelor's degree in Finance plus an MBA or CPCU and 15 years' experience in property/casualty/marine insurance or a risk management field.

For a detailed description of the above position, visit our website at [www.jobsataramco.com](http://www.jobsataramco.com). For consideration, please send a resume to Aramco Services Company, reference code 06J-BI, in one of the following ways: E-mail: [resumes@aramcoservices.com](mailto:resumes@aramcoservices.com) (please cut and paste rather than send an attachment); Fax: (713) 432-4600; Mail: P.O. Box 4530, Houston, TX 77210-4530.

ارامكو السعودية  
 Saudi Aramco



**HELP WANTED**

Genesee County, Michigan is recruiting for the position of **Risk Manager**. Genesee County, with a population of 436,000, is ideally located in Southeast Michigan and has been experiencing unprecedented new housing growth. Genesee County's attractive, affordable housing and reasonable cost of living make it a desirable place to live and work. Five colleges and universities and three major medical centers call Genesee County home.

The **Risk Manager** will implement programs to reduce exposure to losses and protect the County's interests in its operations, properties and insurance programs. The successful applicant will have at least five years of experience in risk management and possess a Bachelor's degree in a related field such as Risk Management, Actuarial Science, Business or Public Administration. Associate in Risk Management (ARM) professional designation is preferred. Experience and qualifications will be considered in setting the starting salary in the range of \$50,196 - \$69,229.

Genesee County, as governmental employer, provides an excellent fringe benefit package and is a great place to work. Come join our team. To apply send resume and transcript to:

GENESEE COUNTY HUMAN RESOURCES  
 1101 BEACH STREET, ROOM 337  
 FLINT, MI 48502  
 FAX 1-810-768-7097

Resume must be received by MAY 17, 2002. Transcripts must be received by MAY 24, 2002.

**BI**

**NEXT ISSUE**  
 May 20  
**Bonus Distribution:**  
**ACORD Technology**  
**Conference**  
 Closing: May 14

**LEGAL NOTICE**

IN THE SUPREME COURT OF BERMUDA CIVIL JURISDICTION 2001 : No. 30 IN THE MATTER OF **ANECO REINSURANCE UNDERWRITING LIMITED** IN LIQUIDATION AND IN THE MATTER OF THE COMPANIES ACT, 1981

NOTICE IS HEREBY GIVEN that, by an Order dated 25 April 2002 made in the Supreme Court of Bermuda in the above matter, a meeting was ordered to be convened of the Scheme Creditors (as defined in the Scheme of Arrangement hereinafter mentioned) of the above named Aneco Reinsurance Underwriting Limited, in Liquidation (hereinafter called the "Company") for the purpose of considering and, if thought fit, approving (with or without modification) a Scheme of Arrangement proposed to be made between the Company and the Scheme Creditors (as therein defined) and that such meeting will be held at The Chamber of Commerce, Front Street, Hamilton, Bermuda on 24 June 2002 commencing at 11.00am (Bermuda time) at which place and time all such Scheme Creditors are requested to attend.

Copies of the Scheme of Arrangement, Explanatory Statement, Claims Summary Statements or Claims Statements and Forms of Proxy may be obtained from the Joint Liquidators at the addresses appearing below during normal office hours.

Scheme Creditors may vote in person at the said meeting or they may appoint another person, whether such person is or is not a Scheme Creditor, as their proxy to attend and vote in their place and are requested to complete the Form of Proxy and return it to the Company at Dorchester House, 7 Church Street, Hamilton HM11, Bermuda (facsimile number (441) 295-1242) or Plumtree Court, London EC4A 4HT, England (facsimile number 44 20 7212 6121). Forms of Proxy and Claims Summary Statements (or any revisions to Claims Summary Statements) must be received on or before 21 June 2002 by 5.00pm (Bermuda time or GMT respectively). Faxed proxies will be accepted.

Each Scheme Creditor or his proxy will be required to register his attendance at the meeting prior to its commencement. Registration will commence at 9.30am (Bermuda time).

By its Order, the Court has appointed Peter C B Mitchell or failing him Christopher J Hughes to act as Chairman at the said meeting and has directed the Chairman to report the result of the meeting to the Court.

The Scheme of Arrangement will be subject to the subsequent sanction of the Court.

Dated this 25 April 2002

**PETER C B MITCHELL** Joint Liquidator  
**CHRISTOPHER J HUGHES** Joint Liquidator  
 Aneco Reinsurance Underwriting Ltd, In Liquidation  
 c/o PricewaterhouseCoopers, PO Box HM 1171, Hamilton HM EX, Bermuda

## Business Insurance Classifieds

- For Sale
- Education
- Help Wanted
- Web Services
- Legal Notices
- Announcements
- Position Wanted
- Situation Wanted
- Request For Proposals
- Business Opportunities
- Request For Information

Whatever your needs in the Corporate Risk, Employee Benefit or Managed Health Care arenas, advertising in **BI** can help you fulfill them.

Call Irais Amleshi at (312) 649-5340  
[iamleshi@crain.com](mailto:iamleshi@crain.com)

Business Insurance

**BI** More classifieds online  
[www.businessinsurance.com](http://www.businessinsurance.com)

## Safety: Whistle-blower wins suit

Continued from page 23

Mr. Holden's case would encourage more individuals to use the act and to claim aggravated damages. He noted that, in the past, aggravated damages usually were awarded only in race discrimination cases, but he predicted that tribunals now will be more prepared to award such damages in other cases.

According to the ruling by the employment tribunal, "there seemed to be no sense of urgency or sense of realism on the part of the (Connex) management in tackling health and safety issues raised" by Mr. Holden.

In a statement issued by the rail operating company, Connex said it "accepts fully its responsibility in these matters and regrets that it did not respond adequately to Mr. Holden's concerns at the time. However, a step change in the company's responsiveness was underway when Mr. Holden chose to resign at the end of 1999. The safety of our passengers and employees is of paramount importance, and so Connex has introduced robust and stringent health and safety processes and procedures."

According to the tribunal ruling, Mr. Holden raised his concerns about safety with the managing di-

rector of Connex in April 1997 and asked for a copy of a risk assessment that had been carried out when Connex changed drivers' work-shift patterns. When he failed to receive a copy of the assessment, he asked the safety standards manager for one in December 1997 and was refused.

In January 1999, Mr. Holden expressed his concerns in a report to Her Majesty's Railway Inspectorate, the government body that oversees the rail industry.

His report stated that "a very serious situation has been created by making a group of safety-critical workers work for excessively long hours." In the report, Mr. Holden warned that a "very serious incident is waiting to happen." Among the concerns he expressed was that increased fatigue could lead to drivers passing danger signals.

Mr. Holden was warned by the area operations manager not to send reports to the railway inspectorate.

On Oct. 10 of that year, Mr. Holden sent to HMRI a second report, alleging deteriorating safety standards and reduced drive training about danger signals. This was sent just five days after the Ladbroke Grove train disaster, in which

31 were killed, and three days before another train crash in Lewes, East Sussex, in which one person was injured.

The Ladbroke Grove crash was later found to have been caused by a train passing a danger signal. Mr. Holden's report was extensively quoted in the national media following the train crashes, and Connex accused Mr. Holden of distributing a report that contains "personal opinions and statements that are damaging to the company."

After an internal disciplinary hearing ruled against him, Mr. Holden resigned from Connex, claiming that the company's behavior had been "intolerable," that it had breached its employment contract with him, and that the company had been in violation of the PIDA.

The employment tribunal ruled that Mr. Holden had been wrongfully dismissed.

According to the ruling, Mr. Holden "was a fully committed health and safety representative and took his responsibilities seriously (but) found it impossible to sustain any meaningful dialogue with management over safety issues."

## Protests: Activists targeting associates

Continued from page 21

want to be identified said underwriters do not usually investigate their clients' business links. But he said that action such as that against Marsh might prompt underwriters to scrutinize more closely the potential risks of such relationships.

**Companies should maintain a dialogue with protesters and try to find some sort of solution.**

David Gamble  
AIRMIC

Pressure-group action is also leading to the development of new coverages, said Geoffrey Lynch, class underwriter of Lloyd's of London managing agency Liberty Syndicate Management's syndicate 282. For example, London-based Strike Risks Management Ltd. offers a policy that covers contingent business interruption from such events, which Liberty leads at Lloyd's, he said.

Lesley Allan, director and underwriter at Strike Risks Management, said the policy would pay out after a loss of income or revenues because of an event such as a protest

or blockade. A supermarket that was unable to access its warehouses, for example, could make a claim under the policy for loss of income even though no physical damage had been caused to its property.

In a separate development, HLS announced last month that its U.S. arm, Huntingdon Life Sciences Inc. of East Millstone, N.J., had joined an amended complaint against animal-rights activists who protested against one of its shareholders, Stephens Group of Little Rock, Ark.

HLS said the action was pending in federal court in New Jersey. The suit, which asserts claims under the Civil Racketeer Influenced and Corrupt Organizations Act, alleges that SHAC and other groups waged a campaign against Stephens Group that included physical attacks on employees, death threats, bomb threats, destruction of property, harassment and intimidation. "The amended complaint also asserts claims for interference with contractual relations and economic advantage," HLS said in a statement.

In 1997, a similar HLS suit against People for the Ethical Treatment of Animals and others resulted in a settlement under which the defendants agreed to stop their campaign, the company said.

## MRM: Plans return to profits

Continued from page 3

turing of \$235 million in debt, senior debt holders would be able to exchange their debt for options to take 15% of MRM and 80% of MRM Services.

XL Capital Ltd. is among the debenture holders, having led a group that invested \$112.5 million in April 2001 in a turnaround plan proposed by MRM. XL, which contributed around half of the investment, will not be the largest stakeholder when the restructuring is finalized, Mr. Ezekiel said.

A spokesman for Bermuda-based XL would not comment on whether XL plans to retain its stake in MRM, but Mr. Ezekiel said he doesn't expect any investors to "act separately" and abandon the restructuring attempt.

MRM is battling to regain its footing after taking heavy hits over the past year. The company posted a net loss of \$86.2 million for 2001. Its financial problems led A.M. Best Co. and Standard & Poor's Corp. to downgrade their ratings of MRM's insurance operations, and the company was delisted from the New York Stock Exchange earlier this year after its share price plunged below the stock exchange's \$1 minimum level. Now traded over the counter, MRM's stock has sold in recent days for about 12 cents per share.

Even with the restructuring, analysts say MRM faces a tough road ahead, and some clients aren't waiting for the company to resolve its problems.

"They needed to restructure the debt in order to give themselves some breathing room and flexibili-

ty to either breathe new life into the company or sell it," said Joyce Sharaf, managing senior financial analyst at A.M. Best in Oldwick, N.J. Still, MRM faces big hurdles in trying to overcome financial problems.

With MRM's Legion Insurance Group in rehabilitation, "the value of that part of the company is in question," Ms. Sharaf said. The loss of Legion to regulatory intervention adds to MRM's problems because the insurer served as the fronting company for its considerable rent-a-captive business.

Ms. Sharaf also pointed out that MRM's reinsurance recoverables, amounting to around \$2.6 billion, could take time to collect because they are tied to long-tailed workers compensation writings.

Ira Zuckerman, an analyst at Nutmeg Securities in Fairfield, Conn., said business on Legion's books could be an ongoing problem. "Regardless of what they can do going forward, they still have to deal with all those old liabilities" and no premium coming in to help pay claims, he said.

Mr. Ezekiel said, however, that Legion went into rehabilitation not because of "open-ended claim development but because of the recoverables question." While "the percentage of those that go into rehabilitation and then come out is not a big number," he added that Legion may be able to buck the trend.

The insurer entered rehabilitation with a "substantial surplus" of more than \$400 million, he explained. "Most of its problems were liquidity problems, and if those can

be solved," there is a chance that the insurer will survive rehabilitation, he said. "Whether they will write again is perhaps a much more difficult question."

Of the disputes with reinsurers, "one or two are close to resolution," Mr. Ezekiel said, and he expressed confidence that what is owed can be recovered because it was written mostly by "high-quality reinsurers."

What value a restructuring will bring to policyholders remains to be seen, Ms. Sharaf said.

"On the Legion side, the only way it can help them going forward is if MRM is a viable company earning money that could fill any shortfall in recoverables or cover any other issues that might create problems," she said.

A sale of MRM to a stable company or a successful restructuring would "definitely be in the policyholders' best interest," Ms. Sharaf said.

"If there are any deals going forward," she noted, "you will have to look at the terms of the transaction to see how it will benefit policyholders."

Mr. Ezekiel confirmed that some clients aren't waiting for MRM to resolve its financial problems before taking legal action. Late last month, the Bermuda Supreme Court froze \$3 million in the company's assets pending resolution of a dispute with a U.S.-based rent-a-captive client.

Such actions are not unexpected at a time when some policyholders may move to protect their assets in the MRM programs, Mr. Ezekiel said.

## Airlines: Crashes not worrying market

Continued from page 21

structure, a series of \$50 million to \$60 million losses could hurt the market, a broker pointed out.

A leading aviation underwriter agreed. A year or two ago, underwriters could find reinsurance that would respond to market losses ranging from \$50,000 to \$50 million. But this year, reinsurance will not respond until a market loss hits \$150 million to \$400 million, market executives said.

The losses also likely will encourage underwriters to sustain their rating discipline, the underwriting executive said.

Two of the passenger jets crashed May 8.

A China Northern Airlines McDonnell Douglas MD-82 crashed off Northeastern China, killing all 112 aboard. The airline is insured along with other Chinese airlines in a program led by Lloyd's syndicate 2001, managed by Amlin Underwriting Ltd. China Northern has \$1.25 billion of liability coverage through the program. The jet was valued at \$10.5 million. Marsh Ltd. and Willis Group Holdings Ltd. in London placed the coverage.

The crash was the program's second major loss recently. More than 120 passengers were killed when an Air China Boeing 767 crashed April 15 in South Korea (BI, April 22).

In Tunisia the same day, 14 of 62 passengers and crew were killed when an EgyptAir Boeing 737

crashed while trying to land during bad weather.

La Reunion Aeriennne of Paris is the airline's lead underwriter, sources said. The airline has \$1.25 billion of liability limits. The jet, which was arriving from Cairo, Egypt, was valued at \$22 million, sources said. Willis placed EgyptAir's coverage.

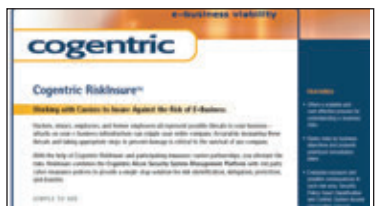
The crash was the second recent significant loss for EgyptAir as well. An EgyptAir Airbus A320-200, valued at \$30 million, sustained \$6.75 million of damage during a bad landing April 2 in Cairo. No passengers were harmed in that incident.

On May 4, around 148 people were killed in the crash of an Executive Airline Services BAC 111 in Kano, Nigeria, when the 21-year-old jet plowed through a residential neighborhood shortly after takeoff. Seventy-two of the 76 passengers and crew were killed, as were an estimated 76 people on the ground, sources said.

Houston-based Houston Casualty Co. led the EAS coverage. The London lead was Lloyd's syndicate 1208, managed by Cox Syndicate Management Ltd. The airline had at least \$50 million of million of coverage, but sources were unsure whether EAS had purchased any high-layer excess coverage. The jet was valued at \$750,000, sources said.

HSBC Insurance Brokers Ltd. of London placed the coverage.

## Products & Services



### Web tool gauges cyber risks

**PORTSMOUTH, N.H.**—A new Web-based tool aims to help risk managers assess their exposure to cyber attacks.

RiskInsure, developed by Portsmouth, N.H.-based Cogentric Inc., measures the potential damage to electronic information from hackers, viruses and current or former employees. The Web-based interface guides the user through questions regarding security procedures and business operations, and RiskInsure

produces a plan to correct vulnerability.

The results can also provide risk-related information for underwriters and brokers that offer cyber insurance policies.

"Cyber insurance, an emerging multibillion-dollar market in annual premium, lacks the loss history and market data of other types of traditional insurance policies," Cogentric President and Chief Executive Officer William Fandrich said in a statement.

More information on RiskInsure is available at [www.cogentric.com](http://www.cogentric.com).

### Chubb opens Asia-Pacific political risk office

**MELBOURNE, Australia**—Responding to a growing demand for political risk insurance in the Asia-Pacific region, the Chubb Group has opened an office in

Australia.

Located in Melbourne, the new office will offer limits of up to \$75 million for confiscation, expropriation, nationalization and deprivation risks and up to \$37.5 million for contract frustration and wrongful calling of guarantee exposures.

All the products can be written for terms of up to 10 years.

Information on Chubb's political risk coverage is available from the insurer's underwriters or from Pat Skold, senior vp and worldwide underwriting manager for political risk, at [pskold@chubb.com](mailto:pskold@chubb.com).

### Riskclick provides fax, e-mail certificates

**NEW YORK**—Riskclick Inc., a provider of Web services to risk managers and the insurance industry, has introduced a new product to speed the handling of insurance certificates.

The company's new Certificates Module allows risk managers, brokers and insurers to quickly set

up and issue certificates by e-mail or fax, eliminating a paper-based issuing process that was time-consuming and expensive, according to Riskclick.

The module allows users in different offices to access the service and generate certificates. It supports both ACORD data standards and customized certificates and automatically creates a directory of certificate holders for reissuance and renewal.

More information is available at [www.riskclick.com](http://www.riskclick.com).

### Small businesses offered 401(k) options

**ENFIELD, Conn.**—GE Financial Employer Services Group has entered the small-business retirement market with the launch of GE Retirement Solutions 401(k) Plan Designs.

The new product offers affordable and customizable 401(k) options for employers. Under the plans, employers can select investments with well-known

mutual fund organizations.

The plans can be designed to "meet the needs of employers regarding vesting, matching contributions and administration," Gary Baker, president of GE Group Retirement Inc., a unit of the Employer Services Group, said in a statement.



Employers can choose GE RapidK, a turnkey plan that allows the user to design, install and manage 401(k) plans online. GE Custom 401(k) is a full-service alternative that provides quarterly statements, onsite enrollment and online access to information.

More information is available at [www.gefinancialbenefits.com](http://www.gefinancialbenefits.com).

## Kemper: Deals support restructuring plans

Continued from page 1

ing large-account casualty and specialty lines products.

In recent years, Kemper has divested its reinsurance, boiler and machinery, and highly protected risk property businesses. Last month, it sold the renewal rights to its personal lines book to Chicago-based Unitrin Inc., a decision that Kemper officials called "difficult" because of the company's long history as a homeowners insurer.

As it refocuses its underwriting, the insurer has taken steps to stabilize a balance sheet hammered last year by ongoing asbestos exposures. Kemper eased the impact of the losses in an initial reinsurance deal with Berkshire, ceding \$550 million in asbestos, environmental and other mass tort reserves for a cash payment to Berkshire of \$352.5 million. The transaction created a gain of \$197.5 million for Kemper in 2001, a spokeswoman confirmed.

Last week, Kemper announced a new series of transactions in which Berkshire will become both an equity investor and a more significant reinsurer of the company.

To accomplish the deals, Kemper is forming a stock subsidiary of Lumbermens to be called Kemper Insurance Group Inc. KIG, in turn, will be the parent of a new Illinois-domiciled reinsurer, Kemper Commercial Insurance Co.

Berkshire will buy 15% of KIG's stock for \$125 million and will have an option to purchase another \$25 million of the shares, Mr. Smith said. Berkshire will also have a right of first refusal if Kemper decides to sell additional shares, he added.

As part of the restructuring, Lumbermens will transfer \$3.5 billion in reserves on existing business to Kemper Commercial. Lumbermens—which manages a pool of all of the Kemper companies' business—will then cede 80% of the

pool's premiums, net of reinsurance, to Kemper Commercial.

Berkshire will reinsure the reorganized operation under three contracts, Mr. Smith explained.

Under one contract, Berkshire will provide \$400 million in coverage for adverse loss development on the \$3.5 billion in non-asbestos and environmental reserves transferred to Kemper Commercial. The reserves relate to business written in 2001 and prior years, he said.

In a second quota-share contract, Berkshire will reinsure 80% of a block of Kemper Commercial middle-market business, amounting to about \$535 million in ceded premium, Mr. Smith said. This treaty allows Kemper to reduce its net written premium volume in the wake of last year's asbestos-linked drop in surplus but is intended to be temporary, Mr. Smith explained. As Kemper's earnings improve in 2002 and 2003, it expects to generate

enough new surplus to render the treaty unnecessary, he said.

The third Berkshire contract is catastrophe reinsurance covering the runoff of Kemper's personal lines business for the remainder of this year. "We won't be impacted if the homeowners book takes a hurricane hit this year," Mr. Smith said.

The restructuring and reinsurance deals are intended not only to raise capital—which the mutual would otherwise be hard-pressed to do—but also to isolate the results of discontinued and prior years' business from those of its current core business, analysts note.

Kemper officials have emphasized that they are not pursuing a "good bank/bad bank" strategy of separating loss-plagued old business from profitable new business, pointing out that Kemper Commercial will assume both reserves and premiums from new underwriting, said Donald Watson, director with

Standard & Poor's Corp. in New York.

The structure will make it easier, though, to judge the performance of Kemper's newer core lines and would smooth the way if the insurer later opts to demutualize, he said.

"It certainly makes it easier and more attractive to do so," Mr. Watson said. "Why go to this trouble if you aren't planning to do that?"

Demutualization isn't likely for at least a few years, as Kemper builds a track record with its revamped business portfolio, he added.

A.M. Best Co. last week downgraded Kemper's financial strength rating to A- from A, citing the drop in year-end surplus. Best also noted that Kemper's financial flexibility is "currently very limited," despite the surplus relief and equity capital the Berkshire deals have brought.

Best is reviewing Kemper's A- rating pending the expected completion of the Berkshire transactions. Best expects the deals to close, though, and would then affirm the rating, said Karen A. Horvath, an analyst at Oldwick, N.J.-based Best.

## Berkshire: Buffett optimistic about Gen Re's future

Continued from page 2

In his annual letter to stockholders in March, Mr. Buffett took the blame for Gen Re's poor results, saying that he had allowed the reinsurer to take on business without a safeguard and that the error had caught up with Berkshire in the wake of the Sept. 11 terrorist attacks (*BI*, March 18).

"We stumbled in a big way in 2001," Mr. Buffett wrote in his annual letter, saying that, among other things, Gen Re had been both underreserved and overly competitive in seeking and retaining business. "In long-tail reinsurance, where years of unawareness will promote and prolong severe underpricing, ignorance of true costs is dynamite," he wrote.

Mr. Buffett credited Gen Re's improved outlook to Joseph Brandon,

who was named chief executive officer of the reinsurer last September (*BI*, Sept. 10, 2001). In addition, he said that the insurance marketplace as a whole has changed, and, "barring some really mega-catastrophes, I think we're doing quite well."

In answer to a shareholder question, Mr. Buffett said that he did not think executive compensation policies had caused Gen Re's problems.

"I think compensation plans lead to a lot of silly things," but not at Berkshire, Mr. Buffett said. Gen Re's losses reflected an "enormously successful operation" that had drifted away from underwriting discipline, he said. "I think (Gen Re) is probably stronger than ever," he said.

But Mr. Buffett had a gloomier assessment of the outlook for another area of interest to risk managers.

Neither Mr. Buffett nor Berkshire Vice Chairman Charles Munger saw much hope for stemming the growth in asbestos-related litigation. While assuring stockholders that Berkshire's insurance operations' liability was capped, Mr. Buffett called the continuing litigation "a cancer on the American corporate world."

"There's an enormous amount of fraud" involved in asbestos claims, with many legitimate victims going uncompensated while undeserving claimants and their attorneys win, Mr. Munger said. He added that he would be surprised if there's a "constructive solution" to the asbestos litigation problem within the next five years.

Mr. Buffett also struck a somber note in his answer to a question about the impact of the Sept. 11 ter-

rorist attacks on his investment strategy.

He mused that the attacks "made everybody realize" that while humans haven't progressed in terms of how they behave toward one another, they have in terms of how much harm they can inflict on each other. He said that the terrorism threat obviously affects Berkshire's insurance operations more so than it does the company's other holdings, which include ice cream, apparel and building supplies.

Mr. Buffett noted that, before the attacks, U.S. underwriters, having seen what happened in Great Britain in World War II, had excluded war risks. "But we didn't take into account something we knew was possible but we hadn't seen," namely, large-scale terrorism, he added.

He said Berkshire has sold "quite a large amount of terrorism insurance" that excludes nuclear, biological and chemical exposures, as well as fire following terrorism losses in jurisdictions where that exclusion is allowed.

One or two such terrorist acts could ruin the insurance industry, he said.

The World Trade Center attack created the largest workers compensation loss in history, he said. A biological terrorist attack would create workers comp losses "that would boggle your mind," he said.

On a lighter note, 71-year-old Mr. Buffett responded to a question as to whether he had ever considered looking into the possibility of being cryogenically preserved by saying, "We are for anything that extends our productive years."

# Pollution: Allocation ruling favors insurers

## Continued from page 1

But the decision leaves some allocation issues unresolved for future cases, asserted policyholder attorney David L. Elkind, who represented Con Ed.

Con Ed sought pollution liability coverage from two dozen insurers that wrote general liability for the utility between 1938 and 1986. Con Ed maintained that it was covered for the estimated \$51 million necessary to clean up groundwater that was contaminated during that period by pollution that leached from a former Con Ed manufactured gas site. Con Ed wanted to select specified policies to respond to the loss, but the Court of Appeals ruled the loss had to be allocated among all of the utility's insurers.

The Court of Appeals ruled that two lower courts did not err when they applied a "time on the risk" formula in dismissing some excess insurers from the litigation. The lower courts ruled that those excess insurers' policies would not be triggered under that formula.

But, the Court of Appeals said one of many other allocation formulas could be applied when damages are determined later in the case.

The May 2 decision did not expressly dictate how losses should be allocated when a policyholder was

either self-insured or covered by a now-defunct insurer for a portion of a loss. But the implication is that policyholders now must bear that portion of the loss, attorneys agreed.

Mandated coverage allocation among all insurers on a risk is unappealing to policyholders in many other respects as well. For example, it could reduce overall coverage if an insurer's allocated portion of a loss is inadequate to trigger excess coverage that would have fully covered the loss.

Fourteen state high courts now have equally split on the allocation issue, which Ms. Foggan said is a key coverage concern for insurers.

Considering the number of state high courts that have not ruled on the issue and the influence that the New York Court of Appeals traditionally has had with courts in other states, the ruling is "very, very significant," Ms. Foggan said.

In addition, courts in other states presiding over coverage disputes involving policyholders that were headquartered in New York when they purchased their coverage often apply New York law if the contaminated site is located within the state, said insurer attorney John G. McAndrews, a partner with New York-based Mendes & Mount L.L.P. Mr. McAndrews represented Lon-

don market underwriters in the Con Ed case.

The ruling restores fairness to the coverage process in New York, asserted Ms. Foggan and Mr. McAndrews.

But policyholder attorney Robert M. Horkovich, who was not involved in the case, disagreed. "New York continues to be the jurisdiction most favorable to the insurance industry and most unfavorable to policyholder consumers of insurance products in the country, if not the world," said Mr. Horkovich, a partner with Anderson Kill & Olick P.C. of New York. He said he doubts that other courts would be influenced by this decision.

Mr. Horkovich noted that the court "recognizes the all sums language and then wreaks havoc with it." He pointed out that the court notes that Con Ed's policies did not mandate an allocation but that the court applied one to the coverage dispute anyway. "They're just a bunch of judges deciding to rewrite the policy," he said.

Ms. Foggan said policyholders' "all sums" argument is "almost humorous."

"There's a lot of other language in the policy that defines the scope of coverage," such as the owned property exclusion, she said. In ad-

dition, the "all sums" phrase refers to liabilities that develop "during the policy period."

In future cases in New York, courts will have to use "a lot of creativity" in sorting out the allocation issue, because the Court of Appeals did not fully resolve it, said Mr. Elkind, Con Ed's attorney.

"Clearly, there's going to be an allocation, but what's going to be the allocation in the next case is unclear," because the Court of Appeals did not endorse any specific formula, said Mr. Elkind, a Washington-based partner with Dickstein

Shapiro Morin & Oshinsky L.L.P.

He also pointed out that Con Ed was unable to show how much damage occurred in any of the years the utility was insured.

"That may not be the case in other situations," he said. "The court's opinion seems to indicate that if you could quantify the amount of damage in any particular year, they would view it differently."

*Consolidated Edison Co. of New York Inc. vs. Allstate Insurance Co., et al., New York Court of Appeals; 1 No. 39; May 2.*

## ERMC directory deadline nears

*Business Insurance* will publish its annual Environmental Risk Management Consultants online directory in conjunction with the June 10 issue. The issue will include a ranking of the largest environmental risk management consultants as well as an editorial feature on environmental risks.

The directory is published as an editorial service, and there is no charge to be included. Companies must simply submit a completed directory question-

naire by the extended deadline of May 29.

If your company provides environmental risk consulting on an unbundled basis, with gross revenues of at least \$250,000, and has not yet received a questionnaire, please request one by calling Directory Editor Kevin Edison at 312-649-5279. In addition, questionnaires can be downloaded from the directories area of the *BI* Web site at [www.businessinsurance.com](http://www.businessinsurance.com).



Business Insurance TENTH ANNUAL  
**WORKERS COMPENSATION**  
**AND DISABILITY MANAGEMENT**  
CONFERENCE

Presented in conjunction with IBF • International Business Forum

OCTOBER 21-23, 2002 HYATT REGENCY SAN FRANCISCO

STAY ON TOP OF THE LATEST DEVELOPMENTS IN WORKERS COMPENSATION AND DISABILITY MANAGEMENT

Hear and meet employers and industry experts who will review challenges, solutions and best practices

**CONFERENCE HIGHLIGHTS:**

**INDUSTRY EXPERTS TO ADDRESS BEST PRACTICES AND CASE STUDIES**

- Buyers and sellers face off over market conditions
- Successful strategies for reducing costs
- Coping with catastrophes
- New legislative and legal developments

---

**EMPLOYERS' PRIVATE ROUNDTABLE: EXPERIENCES, VIEWS AND IDEAS**

Employer representatives responsible for their organizations' workers compensation and disability management programs will gather behind closed doors for an informal, off-the-record discussion of experiences, complaints and ideas.


---

**WHO SHOULD ATTEND:**

This annual event attracts risk managers and other workers compensation and safety managers from private organizations as well as state and local governments, in addition to representatives from insurers, brokers and consultants.

**TO VIEW FULL AGENDA, REGISTER, OR OBTAIN MORE INFORMATION:**

100 Merrick Road, Suite 500, West Building  
Rockville Centre, NY 11570  
Email: [cathy@ibfconferences.com](mailto:cathy@ibfconferences.com)  
Phone: 516-594-3000 x21  
Fax: 516-594-5979  
Web: [www.ibfconferences.com](http://www.ibfconferences.com)



For Sponsorship information  
contact Jennifer Fauci,  
(516) 594-3000 x19 email:  
[jennifer@ibfconferences.com](mailto:jennifer@ibfconferences.com)

# Hershey: Union not sweet on cost-shifting efforts

Continued from page 1

receive from the company. Under the flexible benefit plan, workers can choose from five different health plans. Under the expired contract, flex dollars equal 94% of the premium for the lowest-cost health plan offered—a self-insured point-of-service plan with a gatekeeper. Under its final offer, Hershey wants to lower its contribution to 90% immediately and to 88% within four years. At the same time, Hershey also wants to carve out prescription drug benefits into a separate benefit option for its union workers.

What this offer would mean is that, for the lowest-cost health plan, the cost for family coverage for a Hershey employee would increase from \$32.98 per month to either \$57.20 per month or \$83.98 per month, depending on which of the two prescription drug plan options the individual were to choose. For the richest health care plan offered—an insured HMO plan—the cost for family coverage would increase from \$87.20 per month to either \$245.40 or \$272.18 per month, depending on prescription options.

"Keep the coverage the same and keep the costs the same—that's what we're asking," said Bruce Hummel, business agent for the BCTGM Local 464 in Hershey, Pa. "Our people are not going to pay \$272 a month for a plan that is less."

While Mr. Hummel said that the union is aware that many employers are shifting the cost of health care onto employees as costs continue to rise, he notes that "Hershey is not hurting financially."

"What they are doing is advocating corporate greed," he said. Hershey declined to comment for this story.

But it, like other employers, is facing sharp increases in health care costs. After absorbing three years of double-digit cost increases, many employers are shifting more of the increased costs onto their employees, in the form of higher co-payments, co-insurance and premium contribution levels. Observers note that, for employers with union workers, this can be especially difficult; in general, they say, unions fight hard to maintain the benefits they have.

"Companies are under relentless pressure to get a handle on their costs, and (health care) is one of the items that's causing a problem," said Harvey Sobel, a principal and consulting actuary for Buck Consultants in Secaucus, N.J.

Mr. Sobel said that it's tough for employers, "because most unions, as a general rule, will consider it their duty to resist what they view as a benefit takeaway."

And if a recent survey by

the Washington-based publisher Bureau of National Affairs Inc. is any indication, the future appears to hold more conflicts and strikes.

BNA, which surveyed 128 employers with collective-bargaining agreements expiring in 2002, found that 42% of the employers said they will bargain during 2002 contract talks to increase their employees' share of health care expenditures. While this figure is down from 51% that intended to try to shift costs last year, the survey found that attempts to increase workers' health

care contributions still are far more widespread than they were a few years ago. In 1998, for example, only 26% of the respondents said they planned to shift more health care costs onto employers.

Increases in premium contributions will be the primary vehicle for expanded health care cost-sharing, according to the survey. Among employers whose current contracts already impose premium contributions, 44% said they will bargain to raise workers' payments in 2002. And 38% of the firms that do not currently ask for employee contributions will press for such contributions in upcoming contract talks.

"Cost-sharing and health benefits are a sensitive issue with labor," said Joe Martingale, a consultant with Watson Wyatt Worldwide in New York. "But that doesn't mean there aren't ways labor and management can cooperate to find solutions that are satisfactory all around."

In some places, though, satisfactory solutions are tough to find.

The Culinary Workers Union Local 226 and the Bartenders Local 165 in Las Vegas, both part of the Hotel Employee & Restaurant Employee International Union, will vote May 16 on whether to strike.

"They haven't given us a specific proposal yet; they just expect workers to pay part of the cost for family health insurance, which has traditionally been free here," said Glen Arnodo, the political director for the local Culinary Workers Union. "Workers don't make a great deal of money. A big part of their economic security is free family health insurance. It clearly means the most to workers, and it's one benefit that we intend to preserve."

"There's no question that health care costs are going up, but we're talking about giant gaming corporations, some of which are giving millions of dollars in bonuses to executives," Mr. Arnodo said.

A spokesman for MGM Mirage in Las Vegas, which operates seven hotels in the area, said that there is no proposal at the moment that would have workers pay for health care costs. "To my knowledge, none of the major hotels here are proposing that employees make contributions yet," the spokesman said.

"Two, three, four years down the road, none of us can predict what will happen. We do believe there are other ways to attack this, and that's what we need to talk to the union about," the spokesman said. "The question that is before us is how do we make the health and welfare fund solvent, or keep it solvent, when there is obviously everyday increasing pressure and not enough money."

## SHIFTING COSTS TO WORKERS

Percentage of employers in 2001-2002 benefits survey that do not require employee contributions for family coverage:

	Union employees	Nonunion employees
Indemnity	37%	10%
PPO	23%	2%
POS	42%	5%
HMO	37%	2%

Average monthly contribution for coverage for a family of four:

	Union employees	Nonunion employees
Indemnity	\$163.78	\$127.24
PPO	\$97.94	\$163.39
POS	\$92.81	\$129.41
HMO	\$80.36	\$128.93

Source: Hewitt Associates L.L.C.

# ID numbers: New prohibitions

Continued from page 3

privacy. The new California law, which was signed by Gov. Gray Davis in October, prohibits the use of Social Security numbers on any materials that are sent through regular mail, except on documents such as W-2 forms, on which the number is required by federal or state law. In addition, applications and forms sent by mail still may include Social Security numbers, though there is some confusion as to which forms are exempted from the law.

Also prohibited by S.B. 168 are: printing Social Security numbers on identification materials such as health insurance cards; requiring the transmission of a Social Security number over the Internet unless the connection is secure or the Social Security number is encrypted; requiring the use of a Social Security number to access a Web site unless a password is also required; and publicly posting or displaying a person's Social Security number.

Employers that have previously used Social Security numbers in such ways can continue to do so. However, beginning this year, employers must provide annual disclosures to all plan participants, giving them the right to prohibit the use of their Social Security number.

And employers would be unable to use Social Security numbers for new hires after July 1. This means businesses face the choice of either introducing an unwieldy two-track

system using Social Security numbers and some other identifier, or of switching all employees over to a new system.

The law would not affect communications done directly between benefit managers and their service providers.

Health care insurers, health maintenance organizations, pharmacy benefit managers and other health care entities with group policies have until 2005 to stop using Social Security numbers on plan participants' identification cards. Several health care organizations withdrew their initial opposition to the legislation when it was amended to give them extra time to comply. Observers note that the extra time diminishes the chances of conflict with an expected national provider identifier system, which is called for under the Health Insurance Portability and Accounting Act of 1996.

Violators of the California law could be subject to civil penalties of up to \$2,500 per violation under provisions in the state's business and professions code.

The law has many employers concerned, observers say.

"It confuses the heck out of employers as to what they can do or cannot do, because it's such a multilevel piece of legislation," said Mike Fowler, a San Francisco-based independent attorney. "There's not enough guidance" in the law, he said.

Furthermore, "there's going to be

a substantial downside...to try to figure out how you keep track of four, five numbers on one individual," said Robert Carrol, an employer attorney with Littler Mendelson in San Francisco. "It does represent an extraordinary hardship that's going to have to be borne by each employer."

**'It confuses the heck out of employers as to what they can or cannot do.'**

Mike Fowler  
San Francisco-based attorney

Andy Anderson, a consultant with Lincolnshire, Ill.-based Hewitt Associates L.L.C., noted, though, that the law focuses on the public display of Social Security numbers. Employers will continue to use Social Security numbers internally, although "they will be more circumspect with respect to their external use of that information," Mr. Anderson predicted.

Meanwhile, there may be some government guidance. An advisory committee appointed by California's Office of Privacy Protection, which is part of the Dept. of Consumer Affairs, is expected to issue recommendations on how to protect the confidentiality of Social Security numbers. It will take into account the new law and will recommend practices for managing Social Security numbers internally, ac-

ording to Joanne McNabb, the privacy office's chief.

Members of the San Francisco-based Pacific Business Group on Health, an employer group, are awaiting the committee's recommendations, said a PBGH spokesman.

Observers disagree as to the likelihood of an ERISA pre-emption. Some argue the law will be preempted because it involves health plans; others contend the law will not be preempted because it is not benefit legislation per se and its impact on self-funded plans is only incidental.

"If I were a self-funded plan, or representing a self-funded plan, I would argue that pre-emption applies, but I wouldn't take it to the bank," said John C. Garner, chief executive officer of Pasadena, Calif.-based Garner Consulting. "It depends on how aggressive the employer wants to be."

Meanwhile, observers say, employers may decide to use either truncated Social Security numbers or bar codes in their employee communications to comply with the law.

The issues involved are "not insurmountable, necessarily, but you need to have a good review of all your human resource and benefit functions and a good action plan for how to come into compliance," said Laura Paszkiewicz, an associate principal with Buck Consultants Inc. in Orange, Calif.

But many employers will not be ready for the new law, observers say. "I think they're scrambling to try to come up with some sort of so-

lution," said Cathy Stamm, a state law specialist with Mercer Human Resource Consulting in Washington. At least for now, large national employers are searching for an expedient way to deal with just their California employees, she said.

"We have some clients who are actively pursuing compliance strategies," said Ms. Paszkiewicz, but there are other employers, she said, who "are not really paying attention to it. There are probably going to be lots and lots of employers on July 1 who are not prepared to comply."

## ADVERTISER

# INDEX

### Issue of May 13

ADVERTISER	PAGE #
Business Insurance	20, 25
Carvill America, Inc.	6
CNA Risk Management	9
Dempsey, Myers & Company	2
Dickstein, Shapiro & Morin	14
Empire Blue Cross / Blue Shield	20R
Guy Carpenter & Company	15
Kemper Insurance Companies	5
Lord Bissell Brook	4
Metropolitan Life Insurance Co.	12/13
Munich-American Risk Partners	19
Old Republic Risk Management	17
Royal & SunAlliance	28
Valley Oak Systems, Inc.	16
XL Environmental, Inc.	11
Zurich NA	7

**FTR**

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

## Florida revamps regulation of insurance

Florida Gov. Jeb Bush is expected to sign legislation that would create a hybrid insurance regulatory scheme under which an appointed official would share authority with an elected one. Under the plan, insurance regulation would be handled by a new state Department of Financial Services, led by an elected chief financial officer. Insurance regulatory matters such as rate approvals and rulemaking, though, would fall under the authority of an insurance director appointed by the governor.

## IRMI renames award to honor Bird

The International Risk Management Institute Inc. is renaming its award for best practices in construction risk management to honor Gary E. Bird, a senior vp at Marsh Inc. who was killed in the Sept. 11 World Trade Center attack. Jack Gibson, president of the Dallas-based IRMI, said that, over his career, Mr. Bird



Mr. Bird

always sought to expand "the risk management horizon in search of new ways to manage the risks of large construction projects."

## KKR to give up majority stake in Willis

Willis Group Holdings Ltd. owner Kohlberg Kravis Roberts & Co. L.P. plans to give up its majority holding in the brokerage through a secondary offering. The secondary offering is expected to raise \$450 million, with the deal's underwriters having the option to purchase stock worth a further \$67.5 million, according to Willis. The offering will dilute KKR's holding in the London-based brokerage to about 45% from 53%.

## VCIA names Lambert as new president

The Vermont Captive Insurance Assn. has named Molly Lambert, Vermont's current secretary of commerce and community development, as its new president. Ms. Lambert will succeed Lisa Ventriss, who is resigning from the Burlington-based association on June 1 to become president of the Vermont Business Roundtable. Ms. Lambert joined Vermont Gov. Howard Dean's cabinet in 1998.



Ms. Lambert

## MIIX's New Jersey unit enters voluntary runoff

The MIIX Group Inc. is placing its beleaguered medical malpractice insurer MIIX Insurance Co. into voluntary runoff while the company pursues plans to form a physician-supported insurer in New Jersey. In announcing a \$29.5 million reserve adjustment and a \$45.4 million loss for the first quarter of 2002, the medical malpractice liability insurer said the New Jersey Department of Banking and Insurance has approved the voluntary runoff. MIIX Insurance will cease writing business in all states other than New Jersey.

## Briefly noted

Western Specialty Insurance Co., an Oak Brook, Ill.-based property/casualty insurer, has been ordered into liquidation by Illinois Insurance Director Nat Shapo. Western Specialty, formed in 1986 as a unit of now-defunct First Oak Brook Corp. Syndicate, was sold in 1996 to Western Holdings Inc. Western Specialty wrote primarily commercial multiperil, workers compensation, liability and private passenger auto coverage in nine

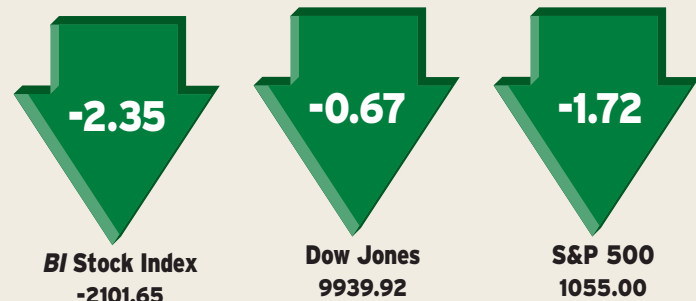
states, including Illinois and California. The company reported \$7.5 million in gross written premiums at year-end 2001....Redwood City, Calif.-based ABD Insurance & Financial Services Inc. and online training company Syntrio Inc. have created **CyberSure University**, a Web-based risk management training program. The program aims to help ABD clients train employees on workplace issues, including health and safety and employment practices....American International Group Inc. has named Nicholas C. Walsh president and chief executive officer of **American International Underwriters**, the company's international property/casualty unit. Mr. Walsh, an AIG vp, had been president of AIU's United Kingdom/Ireland division....

**PartnerRe Ltd.** reported profits of \$63.3 million for the first quarter of 2002, a 33.1% decline from the same period last year. The first-quarter 2001 results benefited from a one-time accounting change. Gross premiums written rose 37.5% to \$846.9 million....**Max Re Capital Ltd.** reported profits of \$2.6 million for the first quarter of 2002, about half the level of its profits a year earlier. The reduction was due mainly to lower investment returns. Gross premiums at the Bermuda-based reinsurer increased 38.5% to \$382.5 million....Robert Landry was named president and chief executive officer of **Zurich North America Canada**, a unit of Zurich Financial Services Group. Previously, Mr. Landry was president of the Toronto-based unit's commercial division.

## BI Stock Index [ 5/6 - 5/10 ]

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

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



### Largest gains

Seibels Bruce Group	29.27%
Meadowbrook Ins. Group	12.73%
Unico American Corp.	10.39%
American Safety Ins.	6.32%
Vesta Insurance Co.	5.90%

### Largest losses

Penn-America Group	-34.94%
Fremont General Corp.	-15.40%
SCPIE Holdings Inc.	-14.52%
Argonaut Group	-11.48%
Harleysville Group	-10.18%

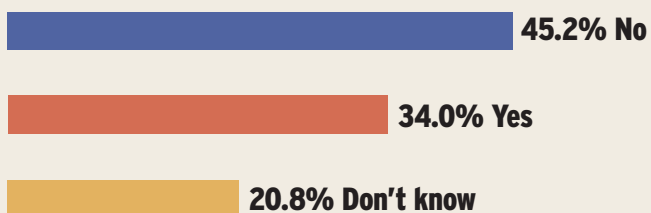
### Weekly change by market segment

Brokers	-2.26%
Insurers/Reinsurers	-2.84%
Managed Care Organizations	-3.17%

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

## Online Poll [5/6 - 5/10]

Are employee claims for chronic pain the biggest factor in your organization's workers compensation costs?



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

# Cash balance: Report assailed

ing such a broad conclusion and whether the assumptions used to extrapolate the error from the sample to the overall population were correct," she wrote.

In the absence of the inspector general providing the Labor Department with more detailed information, "we cannot commit to redirecting our enforcement resources to cash balance plan benefit calculations at this time," Ms. Combs wrote.

Benefit consultants, who have examined the report in detail, said in most cases, employees in the plans the inspector general examined received the balances to which the plans said they were entitled.

"There is no evidence presented that the participants didn't receive what was promised to them by the plans," said Larry Sher, a principal and director of research at Buck Consultants Inc. in New York.

Consultants say the report based

its findings on a method of calculating benefits that has never been required by the Internal Revenue Service.

Others say the report is so biased as not to be creditable.

"I cannot accept that this was done by an unbiased evaluator," said Ethan Kra, chief actuary at William M. Mercer Inc. in New York.

A cash balance plan combines elements of defined benefit and defined contribution plans, though legally cash balance plans are defined benefit plans. Like defined benefit plans, employees in cash balance plans are protected from investment risk. The employer agrees to provide a certain benefit, based on a percentage of pay. In addition, the employer credits the benefit with interest, such as the prevailing rate on 30-year Treasury bonds.

Like defined contribution plans, benefits are expressed as an account

balance or lump sum, which employees can take when they leave or retire. Employees also can take the amount as a monthly annuity, though few do so.

Benefit consultants' chief gripe with the report is that nearly all the shortfalls cited by the inspector general are not the result of employer mistakes. Rather, consultants say the shortfalls the report identified are due to the inspector general's reliance on a methodology outlined in an IRS notice—but which was never formally proposed as a regulation and has been rejected by at least one federal court.

"The inspector general is relying on something that hasn't even gotten to the level of a proposed regulation, and they are citing it as the gospel," Mr. Kra said.

"This is clearly an unsettled area of the law," said Alan Glickstein, a consultant in the Wellesley Hills, Mass., office of Watson Wyatt

Worldwide.

At issue is whether there can be situations where cash balance plan participants are entitled to more than their account balances when they leave. In the 1996 notice, the IRS said the account balance must be projected to normal retirement age using the interest rate specified in the plan.

In an example provided by the IRS notice, an employee terminates employment at age 45 with an account balance of \$45,000. The plan provides interest credits of 8% a year. Using the 8% interest rate, the \$45,000 account balance projected to normal retirement age would be \$209,743.

Under the IRS methodology, the \$209,743 would be discounted using the 30-year Treasury bond rate—an index set under a 1994 federal law. The example assumes a 30-year T-bond rate of 6.5%. If \$209,743 is discounted to age 45 at 6.5%, the present value of the employee's account balance would be \$59,524.

As a result, the IRS said in its no-

notice, if the cash balance plan paid the account balance of \$45,000 instead of \$59,524, the employee would receive \$14,524 less than the amount to which the employee is entitled.

The result, known as "whip-saw," can be avoided, under the IRS notice, if an employer uses the 30-year T-bond rate as an annual interest credit or one of several other interest rates, such as the one-year Treasury bill rate, plus one percentage point.

In March, a federal court, in a case involving Georgia-Pacific Corp.'s cash balance plan, rejected this methodology.

Contrary to what the inspector general is suggesting, "this is a methodology that never has been finalized and has been rejected by at least one court," Mr. Kra said.

Copies of the report, "PWBA Needs to Improve Oversight of Cash Balance Plan Lump Sum Distributions," is available at the Office of Inspector General's Web site, [www.oig.dol.gov](http://www.oig.dol.gov).