

Brokers in dispute over noncompete pact/ 3

Panel examines changes to D&O market/ 4

Business Insurance

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\$4

COBRA rules get mixed reviews

Notification guidance welcomed, but new costs, burdens feared

By SALLY ROBERTS

WASHINGTON—Although the Labor Department's proposed COBRA notification regulations would provide needed guidance, employers should expect to pay significant costs if they are introduced.

The Labor Department last week published proposed rules that would set minimum standards for the timing and content of the notices required under health care continuation provisions of the

1986 Consolidated Omnibus Budget Reconciliation Act.

The proposed regulations, which would also establish standards for administering the notification process and provide two model notices for employers to use, are the first such guidance offered by the Labor Department since the statute's introduction, consultants say.

The proposed rules specifically address the general COBRA notice, the employer notice of a qualifying event, the employee or family

member notice of a qualifying event and the COBRA election notice.

The department also is proposing two new required notices: a notice of COBRA ineligibility and a notice for when COBRA coverage is terminated earlier than the full time period for which the coverage was offered.

Observers note that the proposed regulations are helpful, particularly in light of the previous lack of guidance and the current level of litiga-

tion surrounding the issue. Still, some observers say they have concerns.

Specifically, if the regulations were to be enacted in their current form, employers would not only have to draft and implement two new notices but would also have to review and revise all of their existing notices by Jan. 1, 2004. Critics of the proposals call this time frame unrealistic.

But even if the deadline were to

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Late News

California comp fund sues to block regulator

The State Compensation Insurance Fund is suing to prevent California Insurance Commissioner John Garamendi and the Department of Insurance from taking control of its operations. The lawsuit also seeks a ruling that statutory capital requirements for private insurers do not apply to SCIF, which is California's insurer of last resort for workers compensation risks. In recent months, Mr. Garamendi has directed SCIF to implement a business plan aimed at improving its financial condition and asserted that his department has taken regulatory control of SCIF, according to the suit. SCIF's lawsuit seeks to block Mr. Garamendi and his department from "falsely asserting they are in control of State Fund."

FASB holds off on cash-balance change

The Financial Accounting Standards Board decided last week to table for reconsideration a proposed rule that would have changed the way employers value cash-balance pension plan liabilities. The proposed rule, which FASB was expected to approve, would have required most employers with cash balance plans to use more conservative interest rate assumptions to value plan liabilities than they now use. Employer groups, including the American Benefits Council and the ERISA Industry Committee, oppose the change, arguing it could dramatically inflate reported plan liabilities.

Florida approves workers comp reforms

Broad workers compensation reform legislation designed to reduce workers comp rates in Florida is expected to be signed by Gov. Jeb Bush as early as this week. According to a Senate staff analysis, the measure would, among other things, expedite the dispute resolution process, give officials greater authority to combat fraud, revise certain wage-loss benefits, increase reimbursements for medical costs and modify the basis for paying attorneys fees. "The bill includes many of the system changes that insurers and the business community have been advocating

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Aetna deal not breaking new ground in health care

By MICHAEL PRINCE

Despite the widespread attention it has received, Aetna Inc.'s agreement to settle a long-standing lawsuit by doctors over the payment of claims is not expected to significantly alter the health care landscape.

In particular, the changes that Aetna has agreed to make to its business practices likely will have little impact on employers.

Health insurers have already undertaken many of the changes that Aetna has agreed to make, said Joe Martingale, national leader for health care strategy at Watson Wyatt Worldwide in New York. "There is not that much dramatically new," Mr. Martingale said.

"Those are just necessities within the managed care marketplace and are already mainstream," added Eric Wurzel, a partner with benefit consultant Travers O'keefe in New York.

In the past few years, health plans have been moving toward more administrative

See AETNA/page 20

Pharmaceuticals set up mutual insurer Rx for big property risks

By RODD ZOLKOS

HAMILTON, Bermuda—The formation by seven major pharmaceutical companies of a Bermuda-based mutual insurance company to provide excess property and business interruption coverage signals a trend, some say, toward companies with like risk management interests finding ways to work together to address exposures.

The new mutual company is "a mixture of U.S. and European and U.K. pharmaceutical companies—quite big companies," said a spokesman for London-based AstraZeneca P.L.C., one of the drugmakers involved in forming the new insurer, Pharmaceutical Insurance Ltd.

"It's been set up to provide mutual insurance coverage for things like fire and storm damage, and it will cover the damage to property assets and loss of sales due to business interruption in manufacturing," the AstraZeneca spokesman said.

Willis Management (Bermuda) Ltd. assisted with PHIL's formation and will manage the new mutual company, which will provide limits of \$150 million per claim excess of \$50 million. The

first policies will be issued July 1.

Neither Willis nor AstraZeneca would identify other members of the mutual.

According to Oliver Heyliger, managing director at Willis Management (Bermuda), the company was formed to provide its member companies long-term premium and coverage stability. "This was something they've been considering for

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PHOTO: NEWSCAST

The mutual will cover property and business interruption risks for facilities such as AstraZeneca P.L.C.'s plant in Bristol, England.

International

AUSTRALIA TO BACK MED MAL RISKS

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Brokers clash over staff pacts

Palmer & Cay sues to void Marsh noncompete restrictions on exec

By DOUGLAS McLEOD

SAVANNAH, Ga.—Privately held broker Palmer & Cay Inc. is suing rival Marsh & McLennan Cos. Inc. to void a pair of noncompete agreements that its president signed before leaving Marsh earlier this year.

Savannah-based Palmer & Cay charges that the agreements signed by its president and chief operating officer, James B. Meathe, are too broad to be enforceable and have unfairly hindered the smaller firm's ability to compete. Mr. Meathe led Midwest regional operations of MMC unit Marsh Inc. before joining Palmer & Cay in February.

Because of the provisions, Mr. Meathe "has been required to limit his activities in connection with his new employment as the president

of Palmer & Cay and, in turn, Palmer & Cay has been hampered in its ability to compete in the insurance brokerage industry against Marsh & McLennan," the complaint says.

The suit, filed in federal court in Savannah, seeks an injunction against Marsh and a ruling that the noncompete provisions are void.

Neither Palmer & Cay's lawyer nor Mr. Meathe could be reached. Marsh declined to comment.

Mr. Meathe had been a managing principal and shareholder of Johnson & Higgins until its \$1.8 billion sale to Marsh in 1997. He continued as a Marsh executive until he joined Palmer & Cay this year.

The 135-year-old Savannah brokerage, headed by Chairman and Chief Executive Officer John E. Cay

III, has about 832 employees, 31 U.S. offices and \$135 million in annual revenues. It was the 14th largest broker of U.S. business, based on 2001 U.S. brokerage revenues of \$108.8 million.

At the time of J&H's sale to Marsh, Mr. Meathe—like other J&H shareholders—signed an agreement promising not to "solicit, accept or service" business of clients, former clients or prospects that he'd dealt with while at Marsh for at least two years after leaving the company.

He signed a similar pledge in January 2003 as a condition of participating in a Marsh stock incentive plan, according to Palmer & Cay's complaint.

The noncompete provisions are unreasonable and unenforceable

See **NONCOMPETE**/page 21

P/C insurers see strong quarter

Rate hikes fuel gains, but softening seen in property

By JUDY GREENWALD

Commercial property/casualty insurers turned in a highly profitable first quarter and expect that trend to continue through 2003, to the delight of stock analysts.

Strong results are likely to be fueled by continued rate increases for most lines of coverage this year. One of the few exceptions is property insurance, where rate increases are likely to be lower.

The only big cloud on insurers' horizon is the continuation of historically low interest rates, which has cut insurers' investment income. Some analysts say, however, that this may be a blessing in disguise, as it forces companies to strive for underwriting profits.

And, despite the Hartford Financial Services Group Inc.'s \$3.91 billion gross asbestos reserve increase last month, most analysts do not expect more big reserve additions from insurers.

Excluding Hartford's results, the 14 remaining major property/casualty insurers that reported net income in *BI*'s survey had a 15.8% increase in net income, to \$3.49 billion, in the first quarter. In the same quarter last year, the 14 companies reporting results in this year's survey reported a combined net income of \$3.00 billion. Again, Hartford's results are excluded.

Other first-quarter results from the *BI* survey of 16 major property/casualty insurers were:

- All 16 insurers reported an average combined ratio of 97.2%, compared to 101.0% for the comparable period a year ago. All but five of the 16 had an underwriting profit, with a combined ratio below 100%.
- Net premiums written rose 16.0%, to \$30.48 billion.
- Policyholder surplus for the 14 insurance companies that reported this data increased 0.5%, to \$46.64 billion.

Property/casualty insurers

First-quarter RESULTS

Results were "as good as you can expect," said Michael Lewis, senior insurance analyst with UBS Warburg in New York. The combination of aggressive reserve actions in last year's fourth quarter and "getting a little lucky with the weather" in this year's first quarter enabled insurers to post truly superior results," he said.

It was "one of the best quarters we've had in insurance in a long

time," said Cliff Gallant, an analyst with Keefe, Bruyette & Woods in New York. The weather "worked with us," premium growth was strong, "and we finally saw the impact of higher rates in the combined ratios," he said.

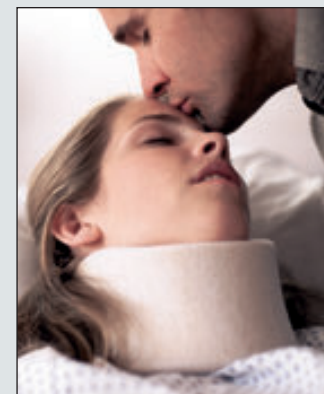
"I think that we are sort of beginning to see the ramifications flow to the bottom line of two to three years of

See **INSURERS**/page 22

High court ruling may increase risk of FMLA lawsuits

By MARK A. HOFMANN

WASHINGTON—Public employees could face increased employment disputes as a result of the Supreme Court's ruling last week that the U.S. Constitution does not shield states from lawsuits alleging violations of the Family and Medical Leave Act, a leading benefits lawyer says.



"The significance is not so much the ruling on whether or not a state is immune—it's the practical implications of applying FMLA to public employers," said Gerald L. Maatman Jr., a partner in the Chicago law firm Seyfarth Shaw.

"It's important because private employers think FMLA is the most difficult statute to administer and there will be an interesting interplay between what are normally complex civil service rules governing public employees as compared to FMLA's requirements for leaves of absence. The practical import is public employers facing more lawsuits," he said.

The case—*Nevada Department of Human Resources vs. William Hibbs*—involves a former Nevada state employee who requested and received 12 weeks' leave under the FMLA to care for his

wife (*BI*, July 1, 2002). The employee, William Hibbs, also requested and received 380 hours of paid leave from the state's catastrophic leave program. But according to court papers, the state told Mr. Hibbs that the state catastrophic leave would count against his FMLA leave period, a point he disputed. After Mr. Hibbs took more than the allotted FMLA leave, the state disciplined and ultimately fired him.

Mr. Hibbs sued, alleging violations of the FMLA, but Nevada countered that the Constitution's 11th Amendment granted it sovereign immunity against such suits. A district court agreed, but the 9th U.S. Circuit Court of Appeals reversed, holding that the 14th Amendment gave Congress the power to abrogate state sovereign immunity and that the FMLA did just that. The state appealed, and on May 26, the Supreme Court ruled by a 6-to-3 margin that state employees have the right to sue for alleged FMLA violations.

Congress is well within its authority to abrogate state law under certain circumstances, and the FMLA clearly met those circumstances, Chief Justice William Rehnquist wrote for the majority. It had created an "across-the-board, routine employment benefit for all eligible employees" so that "family leave would no longer be stigmatized as an inordinate drain on the workplace caused by female workers and that employers could not evade leave obligations simply by hiring men," he wrote.

Nevada Department of Human Resources vs. William Hibbs, U.S. Supreme Court; No. 01-1368. Decided May 27, 2003.

Inside Business Insurance

State vs. federal regulation revisited

A Washington forum discussed the pros and cons of state-based and federal insurance regulation. **Page 4**

Hurricane forecast sees storms ahead

Professor William Gray's team at Colorado State University is predicting another stormy hurricane season. **Page 6**

Asbestos proposal shows road to reform

Roadmaps are popular among lawmakers, but an asbestos liability reform plan offers some welcome directions, one of this week's editorials says. **Page 8**

Natural catastrophes remain biggest risks

Insurance executives acknowledge the potentially devastating cost of



manmade acts but point out that natural disasters remain the biggest risks facing property/casualty insurers and reinsurers. **Page 17**

Online

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

• Searchable **directories** of all the listings of industry vendors found in *BI*'s Market Sourcebook.

• New **Opinion Poll** for readers: Do you plan to add a debit card feature to your flexible spending account program?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS.

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Panelists debate future of regulation

By MARK A. HOFMANN

WASHINGTON—Replacing the current system of state insurance regulation with one that includes a federal role won't be easy but must be done for the sake of insurers and consumers alike, says the American Insurance Assn.'s top lawyer.

The existing system of regulating property/casualty insurers is "archaic, dysfunctional and prone to corruption," said Craig A. Berrington, the AIA's senior vp and general counsel. "Otherwise, of course, it's just fine," said Mr. Berrington during a discussion of the future of insurance regulation that was

sponsored by the Washington Legal Foundation last week.

Mike Pickens, the Arkansas commissioner of insurance who is also the current president of the National Assn. of Insurance Commissioners, disagreed. Although Mr. Pickens, like all of the other panelists, agreed that the current system has its faults, he said that even a system that allowed in-



Mr. Pickens

surers the option of choosing a federal rather than state charter would be worse.

Federal regulation of health insurance deserves "much of the blame" for the current problems in that line of coverage, he said.

Glenn Lammi, chief counsel-legal studies division of the Washington Legal Foundation, who moderated the discussion, opened the discussion

with the observation that he believed all of the speakers would agree that "the insurance regulatory framework is showing its age," a point which Mr. Berrington underscored.

"How insurance should be regulated and by what level of government is an old argument in the United States. We have new legislation addressing these issues, but these are not new issues and this is big-time stuff," said Mr. Berrington, noting that AIA supports legislation that would create a system of optional federal chartering.

The issue goes back at least as far as 1869, when the Supreme Court

ruled in *Paul vs. Virginia* that insurance was a matter for the states, said Mr. Berrington. The high court's 1944 decision in *U.S. vs. Southeastern Underwriters*, holding that insurance constituted interstate commerce subject to federal oversight, led to enactment of the McCarran-Ferguson Act a year later, which restored state primacy in insurance regulation.

The result is a system that is based on state government price controls and hostility to innovation in product offerings, charged Mr. Berrington. It stifles competition, denies consumers choice and fos-

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Officers' human relations expertise can reduce lawsuits stemming from heavy-handed police work.

Public Risk Management Assn. conference

Communication skills crucial for law enforcement

By ROBERTO CENICEROS

RENO, Nev.—The neighborly sheriff portrayed in the 1960s television series "The Andy Griffith Show" is a perfect example of how modern law enforcement officers should act, a risk management consultant says.

In the hit TV show, the easygoing lawman applied folksy wisdom and interpersonal skills to settle disputes and outwit criminals, the consultant explained.

Interpersonal communication skills and human relations expertise are crucial to reducing lawsuits stemming from heavy-

handed police work, which can occur when law enforcement agencies try to ratchet up their crime fighting efforts, said Randy Means, a partner at Charlotte, N.C.-based consulting firm Thomas & Means L.L.P.

The nature of police work usually means that increased law enforcement efforts bring not only lower crime rates but also more complaints, lawsuits, injuries and deaths, he said.

Aggressive crime-fighting efforts regularly conflict with a public risk manager's task of reducing liability losses, Mr. Means

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American Assn. of Managing General Agents Conference

Industry's goal is to educate

By JOANNE WOJCIK

BOCA RATON, Fla.—As financial woes force the standard market into retreat in some lines, surplus lines insurers are coming to the rescue of insurance buyers.

And the American Assn. of Managing General Agents is seizing the opportunity to spread the word that the surplus lines market is made up of solid insurers and is not just a dumping ground for undesirable risks.

When the market again softens, MGAs, which serve as the underwriting arm of the surplus lines industry, want to be seen as the "go-to guys" because of their reliability and expertise.

"We want to get our image out. We are truly a viable market. We're not a dumping ground for the inde-

pendent agents," Ronnie Moore, the newly installed president of the AAMGA, said at a press conference held during the association's annual meeting May 18-22 in Boca Raton, Fla.

Mr. Moore, president of The Southern General Agency in Bowling Green, Ky., also plans to use his tenure as the AAMGA's president to educate insurance regulators about the surplus lines industry.

"Most of them do not have a background in insurance, much less the excess and surplus lines business," said Mr. Moore, who served as Kentucky's insurance commissioner from December 1991 to November 1992.

"It is on our shoulders to educate the people in there, primarily the property and casualty directors and their staffs," he said. "These are the

people who actually do the work and stay the longest. I think we have been missing that area, and it's where we need to spend our time and efforts in explaining our distribution system."

Mr. Moore also wants the association to continue its efforts working with federal officials to protect state regulatory of insurance.

"We're looking at a volatile situation if federal people try to take over any of the state regulatory responsibilities," he said, referring to recent efforts to institute some federal oversight of the insurance industry.

Joe Hutelmeyer, president-elect of the AAMGA, said the association especially needs to educate independent insurance agents, which are the primary source of business for MGAs.

"A lot of agents out there don't

See **MGAS**/page 11

D&O cover nets higher prices, greater director engagement

By RODD ZOLKOS

CHICAGO—As tales of corporate scandal fill the news and shareholder lawsuits proliferate, companies and their directors are paying closer attention to directors and officers liability coverage issues.

But, with D&O insurers reacting to the same factors, the market for that coverage is a challenging one, according to participants in this year's Harold H. Hines Jr. Memorial Symposium, held May 29 in Chicago.

"The D&O marketplace is in a world of flux right now," said Megan Colwell, vp-strategic relations for broker Woodruff-Sawyer & Co. in San Francisco, with the degree of flux and complexity depending on the company and the board seeking coverage.

While coverage is generally available, "cost has increased significant-

ly over the last few years," particularly for publicly owned companies, Ms. Colwell said. Policy terms and conditions, meanwhile, are "all over the map," with large market capitalization companies, those in litigation or those with new top management having the most difficulty finding appropriate coverage.

"It's so individual that you have to be very proactive when you approach markets, and you can't expect a broker to suddenly show up with a placement for you," said Kevin T. O'Reilly, treasury director-risk management at Lucent Technologies Inc. in Murray Hill, N.J.

In today's environment, "I don't know why anybody in their right mind would want to serve on the board of a public company," said Dan A. Bailey, a partner with the Arter & Hadden L.L.P. law firm in Columbus, Ohio. He added that most corporate directors likely

don't understand the nuances of D&O coverage.

Ms. Colwell agreed that directors still don't understand the coverage, but she said that they are starting to ask better questions. "Boards are far more engaged in the purchase of D&O insurance than ever before," she said.

Mr. O'Reilly said Lucent's directors do understand D&O insurance issues, resulting in the company buying more Side A coverage, which covers directors and officers for claims not indemnifiable by the corporation.

Asked whether the presence of D&O coverage is a factor plaintiffs lawyers weigh in deciding whether to sue a company, Carol V. Gilden, a partner at Much Shelist Freed Denenberg Ament & Rubenstein P.C. in Chicago, said that, "as a practical matter, that is going to be very im-

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Gray revises 2003 forecast to include more named storms

By MARK A. HOFMANN

FORT COLLINS, Colo.—The Atlantic hurricane season that officially begins Sunday should feature above-average tropical storm activity, according to one of the world's best-known hurricane forecasters.

In a May 30 forecast, William Gray, professor of atmospheric science at Colorado State University in Fort Collins, predicted that 14 named storms will form, eight of which will grow into hurricanes.

That marks an increase of two named storms since Mr. Gray's April 4 forecast. The increase reflects the dissipation of El Niño and its replacement by El Niña conditions in the Pacific, according to Mr. Gray and his storm team.

Of the eight hurricanes—the same number Mr. Gray forecast in April—three are expected to become “major” hurricanes, packing winds in excess of 111 mph. Mr. Gray earlier had predicted three major hurricanes would form this season.

During a typical Atlantic hurricane season, which runs from June 1 to Nov. 30, an average of 9.6 named storms form, 5.9 of which become hurricanes; 2.3 of those storms grow into major hurricanes.

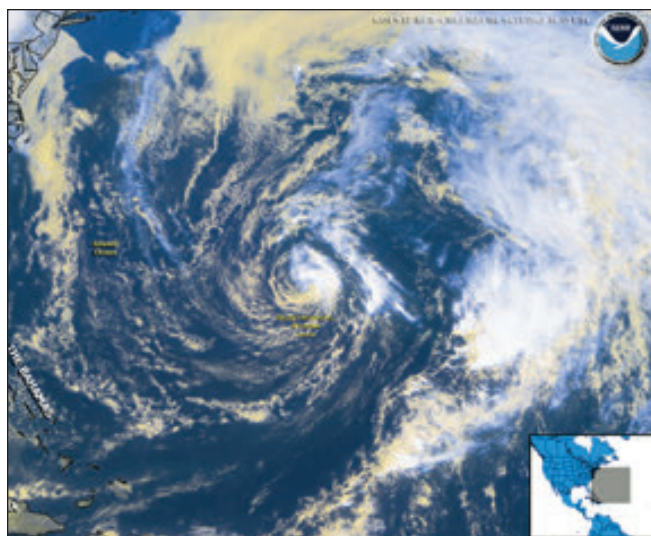


PHOTO: NOAA

Tropical Storm Ana, formed in April, was the first named storm of this year's Atlantic hurricane season.

Twelve tropical storms formed in 2002, four of which became hurricanes, two of which grew into major ones.

The complete May 30 forecast can be found at <http://hurricane.atmos.colostate.edu/Forecasts/2003/june2003>.

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Paul Winston

Need a holiday? Name your own

June is a weird month.

You may not realize it, but the midpoint of the year is marked by all sorts of holidays and celebrations that are not recognized, let alone noticed, by the mainstream population. I'm not even talking about the druidic goings on at Stonehenge, England, during the summer solstice later this month.

If you are looking for some excitement in your calendar this month, consider that June is: Adopt a Shelter Cat Month; Fireworks Eye Safety Month; Gazpacho Aficionado Time; International People Skills Month; National Accordion Awareness Month; National Iced Tea Month; and Rebuild Your Life Month, among many, many other special occasions.

I was delighted to come across this list at www.holidays.net—a repository of dates and listings for offbeat holidays—because I have long felt that we don't have enough months devoted to soup. As for fireworks eye safety, I guess it doesn't hurt to start

learning the true meaning of “you could put your eye out with that bottle rocket” a few weeks before fireworks and their attendant injury risks truly skyrocket on July 4. And almost anything could fit under the heading of Rebuild Your Life Month. Rebuild your life by adopting a pet, or eating more gazpacho, or being more aware of the accordion, and so on.

And this list is just the start of the celebration, as June is also noted for many special commemorative weeks and days. Don't overlook that National Headache Awareness Week starts June 1; National Hermit Week starts June 13; and that June 22 kicks off what I'm sure will become two of my favorites: Carpenter Ant Awareness Week and National Cheese Week.

Clearly, anyone who wants to celebrate a notable event, or recognize a notable thing or promote their notable product can declare a holiday in its honor. Such special observances bring cheer to our otherwise drab and dreary existences, allowing us to feel part of a larger group united in celebration.

These days, one group in serious need of a lift in their spirits is the community of risk managers. Day after day, they confront the misery of escalating exposures and rising rates for insurance. To make things worse, these professional challenges coincide with a business downturn, making it harder for

those who keep their jobs to win much praise for their considerable efforts.

I think they need a holiday or two, or seven, in their honor. I know some of you are thinking the Cheese Week and Gazpacho Time are enough for all of us to revel in, but those are universal festivities. Risk managers deserve a chance to observe their own notable events, things and products in their own special way.

I propose the following risk manager holidays, to be allocated throughout the year so that they can keep the good times rolling:

- Keep Your Job Appreciation Week.
- National Less Than a 25% Rate Increase Month.
- Take Your Defense Counsel to Work Week.
- Insurer Not in Rehabilitation Appreciation Month.
- National Renewals Are Fun Month.
- National Brokers Who Used to be Buyers Month.
- Dust Off Your Disaster Plan Days.
- EEOC Declined to Sue Appreciation Week.



Paul Winston

- National Premium Allocation Week.
- National Broker Golf Outing Week.
- National Broker Baseball Outing Week.
- National Reservation of Rights Month.
- Take Your Directors to D&O Renewals Week.
- National Collateral Requirements Awareness Week.
- National Tort Reform Month.
- Broker Merger & Acquisition Awareness Week.
- National Insurer Ratings Downgrade Days.
- National Risk Management Department Downsizing Month.
- Risk Retention Awareness Month.
- National Captive Day.
- National Board Meeting in Bermuda Week.
- Never Touched Asbestos Appreciation Month.
- National OSHA Site Inspection Week.
- National Additional Insured Awareness Week.
- National Policy Wording Ambiguity Week.

And next year, if all goes well, we can also roll out: The Upside to Rating Cycles Awareness Month (a.k.a. What Goes Up Must Come Down Appreciation Month).

Mark your calendars!

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Editorial

Follow the roadmap to asbestos reform

THERE'S A LOT OF talk in Washington these days about following roadmaps of one sort or another—the Bush administration's roadmap to Mideast peace being the best-known example—to get to a desired goal.

One such map that risk managers and their liability insurers should find most welcome is the plan unveiled by Senate Judiciary Committee Chairman Orrin Hatch the other day.

While the Utah Republican does not call his bill—the Fairness in Asbestos Injury Resolution Act—a roadmap, that's exactly what it is. And while it doesn't pretend to lead to anything as overarching as Mideast peace, Sen. Hatch's

roadmap could chart the course to a destination almost as elusive—a way out of the decades-old asbestos liability morass.

Sen. Hatch would achieve this worthy goal by setting up a national trust fund to compensate those who can prove that they suffer from asbestos-related diseases. The bill also calls for creation of a new federal asbestos claims court that would hear cases and determine compensation of up to \$750,000 per claimant depending on the disease. The trust fund—which would be paid for by defendant companies, their insurers and other sources—would provide a no-fault alternative to the current litigation-based compensation system.

And a welcome alternative route it would be if Congress approves the proposal.

The current asbestos compensation system is fraught with inconsistencies and unfairness to most stakeholders. Those who fear an asbestos-related malady—but have yet to manifest signs of any disease—can collect damages now, leaving less money to pay to the truly ill.

As former asbestos manufacturers have been driven into bankruptcy by the tide of asbestos claims, all claimants have had to cast an ever-widening net to find new potentially responsible parties with deep pockets.

This has resulted in companies

with only the most tenuous of past connections to asbestos being hauled into court.

The aim of any asbestos compensation system should be to fairly and efficiently compensate those who are truly harmed.

The current litigation lottery does neither; Sen. Hatch's legislation—if enacted—holds the promise of doing both.

The asbestos litigation morass has mired claimant and defendant alike for far too long. Fortunately, Sen. Hatch has provided the best map to date for escaping from this hazard. Now, Congress must follow these directions to get the compensation system back on course.

Aetna deal a welcome move

AETNA INC.'S RECENT agreement to settle class-action litigation with disgruntled physicians is a welcome sign that managed care plans are realizing the advantages of treating doctors more as partners than adversaries.

As we report on page 1, Aetna agreed not only to compensate doctors for past claims but also to change its business practices to reduce providers' administrative hassles. This will result in fewer headaches for benefit managers.

Observers say the impact of Aetna's settlement and similar changes by other managed care organizations on employers will be minimal. We think that reducing the frictional costs of dealing with

health plans and speeding up claims payments are very likely to lead to fewer complaints by employees.

Doctors have long complained about the hoops they say managed care companies require them to jump through. Add delayed payments to this, and it's no wonder many doctors choose not to accept certain plans.

And this doesn't just affect payers and providers. It also can frustrate employees, who may be forced to choose between remaining with their provider—at a higher cost—or selecting another doctor in the managed care network.

What recourse do health plan participants have in such cases but to complain to their employers?

Aetna has had a long and distinguished history, beginning as a multiline insurer. But its shift into health care business came with a cost to its reputation, and its sour relations with providers made Aetna a lightning rod for criticism of managed care. Fortunately, that is changing, and Aetna is improving not only its financial health but also its image.

Accessibility and affordability problems in health care are not easily resolved, but one way to ensure those problems continue is for managed care plans and doctors to fight each other. Steps such as Aetna's to improve relations with providers are bound to help all stakeholders in the health care system.

Schillerstrom



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Electronic data need careful handling

By Bruce R. Kaliner

We all know the drill when an insurance claim goes into litigation: The complaint is filed, an answer served and soon thereafter you, the risk manager, receive a call or letter from counsel asking for assistance in responding to a document demand. Today, as a result of document demands that include requests for the production of electronic data, your role as company representative has



expanded. Instead of just being responsible for paper files, you now have the added responsibility of identifying, procuring and preserving all relevant electronic documents.

Over the last few years, the use of electronic data has mushroomed.

Internal e-mails; outside e-mail communications with brokers, underwriters and other vendors; and all attachments thereto are all potentially discoverable.

Everyone immediately thinks of e-mail as electronic data. But electronic data also include attached text documents, spreadsheets and graphics files as well as internal databases. Electronic data also

include information stored on file servers, workstations and backup tapes.

Of course, the ever-expanding electronic data list may not be applicable to your particular case. Nevertheless, if you are responding to an electronic discovery request, you need to understand the different types of data that exist at your company and where that data reside. At times, you may have an affirmative duty to preserve the relevant electronic data. Every company should have a written and disseminated electronic data-retention policy. The policy can act as a shield from potential arguments of spoliation of evidence if electronic data are deleted as part of a scheduled process.

Once litigation is commenced, a party to the action is under a duty to preserve all relevant documents, including electronic data. Traditionally, a producing party can provide a copy of its paper files in full satisfaction of a discovery request. The same type of paper printout production of electronic data, however, may be contested by opposing counsel. When there are hundreds or thousands of e-mails or data-intensive spreadsheets, opposing counsel will most likely prevail on an efficiency argument that they have a right to receive files that can be electronically manipulated. Further, opposing counsel may argue that an electronic file produced only in paper form will omit the associated electronic metadata.

Metadata may identify the time and date they were created, sent, received and opened and further forwarding information.

Upon notification or commencement of a lawsuit or other type of formal claim, your role as risk manager is to preserve and identify relevant electronic data. The first step will be to contact all employees involved in the claim and request they preserve all electronic data that concern the dispute. Specifically, you will ask that employees not delete any files relating to the case. If possible, in order not to interrupt continuing business operations, ask your information technology or management information systems department to copy the relevant files onto a separate database or copy workstation hard drives. If your company has an electronic document retention policy that automatically deletes e-mails and other data after a specified period, request that this be halted so no further data will be deleted. Also, inquire whether backup tapes contain data beyond the automatic deletion date.

A prudent action will be to document steps taken to preserve electronic data since commencement of the action. In the case of an eventual deposition or motion to compel discovery, you will be able to verify that all reasonable steps were taken to identify, preserve and retrieve the relevant data. Otherwise, you may face allegations of spoliation of electronic data. Remember,

always work with your MIS or IT department to confirm that all data sources have been considered.

After you have identified and preserved the relevant and/or responsive data, you will need to provide the files to your counsel.

Depending upon the scope and nature of the document request, your counsel can move to limit the electronic discovery request to reduce the expense and burden to your company. An initial approach should be to restrict the request to relevant dates, employees, office locations and issues that are being litigated. Sometimes, seeking the same type of data from the requesting party will create an immediate compromise when the propounding party is faced with the identical costs and burdens. Depending on the volume and complexity of the electronic files, the processing and review of documents will likely be the most time-consuming and expensive aspect of complying with electronic data requests.

For better or worse, electronic discovery is here to stay. When responding to a claim, identify and preserve the requested data. An analysis can determine the extent to which the data must be retrieved and produced.

Bruce R. Kaliner is a partner in New York at Mound, Cotton, Wollan & Greengrass, which specializes in insurance and reinsurance law.

Execs of former broker A&A offer industry insights

"Spreading the Risks: Insuring the American Experience."

By John A. Bogardus Jr. with Robert H. Moore
Published by Posterity Press Inc., Chevy Chase, Md.
Available from www.spreadingtherisks.com.
\$35

By Meg Fletcher

No wonder it took John A. Bogardus Jr., the retired chairman and chief executive officer of former broker Alexander & Alexander Inc., more than 13 years to write "Spreading the Risks."

His initial plan was to write the history of A&A, which once was the world's second-largest insurance brokerage, but that project morphed into a 408-page overview of the American insurance industry and its roots.

Much of the well-documented book,

Book review

written with former colleague Robert H. Moore, uses A&A as a prism through which readers can view the development of the insurance industry in the United States during the past 200-plus years.

With telling detail, the authors explain how the concept of risk has evolved in the 20th century from the initial need to protect property from fire and weather-related losses, through the industrial revolution to the current computer-driven age.

For example, technological innovations such as the development of the automobile spurred the need for specialized policies. Inventions also led to exclusions: The Mutual Life Insurance Co. of New York, for example, excluded death by electricity from a life

policy written for Thomas A. Edison.

Meanwhile, societal changes, such as the increasing acceptance of the legal concept of liability—culminating in current problems of asbestos and environmental impairment liability—fueled the need for buyers to find ways to protect themselves from litigation.

The authors deliver on their promise to chronicle the history of A&A, which two brothers established in rural West Virginia in 1899. Mr. Bogardus joined A&A in 1950 as a trainee and rose through the ranks, retiring as chairman in 1988 and as a director in 1995.

Detailed chapters tracking A&A's growth and transition to a public company in 1982 are less interesting than those that describe "the chicanery and conflict" A&A found at London-based broker Alexander Howden & Swann Ltd. A&A acquired Howden in 1982 only to learn its so-called "Gang of Four" had "used overseas personal accounts to divert

funds for private use," the authors said. Coping with those problems cost A&A executives millions of dollars in personal and financial resources and offered some insights into problems with Lloyd's of London's operating structure during this period.

A&A's independent operations ended in 1997, when Aon Corp. merged the brokerage into its own operations.

This highly personalized account will be of great interest to agents and brokers as well as to insurance company executives.

Risk managers, meanwhile, may enjoy learning about the history of the industry, as well as about current topics such as the growth of alternative risk transfer mechanisms.

Meg Fletcher is a senior editor at Business Insurance.

Independent contractor's injuries not covered

A full-time worker who was hurt as an independent contractor for another company was not entitled to medical expense coverage under his employer's Employee Retirement Income Security Act health plan, the 6th U.S. Circuit Court of Appeals ruled.

Michael Egan, a buyer of logs at Goodman Forest Industries, was injured while cutting trees as an independent contractor for Newland Logging Inc., which did not provide workers compensation insurance for him. He filed medical claims with Goodman's ERISA plan administrator, but they were denied based on exclusions for workers comp-related injuries. He assigned a portion of his claims to the hospital that treated him. The hospital sued the plan but lost in trial court.

The appellate court said the denial of coverage was not arbitrary or capricious but was based on clear exclusionary language.

Legal Briefs

The trial court decision was affirmed.

Marquette General Hospital vs. Goodman Forest Industries, 6th U.S. Circuit Court of Appeals; Jan. 10, 2003. (BI/05/Jy.-\$10)

Injury on errand not compensable

An employee who was injured while on a personal errand during a workday was not entitled to workers compensation benefits, the Supreme Court of Hawaii ruled.

Richard S. Kawakami was a senior construction inspector for a City of Honolulu board. His normal workday was 7 a.m. to 3:30 p.m., and his employer provided

vehicles for supervisors' daily work duties. About 2:30 p.m. on June 18, 1997, he responded to a call for help from his girlfriend. While returning the vehicle, he was struck by a car and injured. His workers comp claim was denied. The Supreme Court affirmed the decision, ruling he had deviated from the course of his employment.

Kawakami vs. BOWS, Supreme Court of Hawaii, Dec. 24, 2002. (BI/04/Jy.-\$10)

Dishonesty policy triggered

Actions that forced an employer to repeal clinical drug trials fell within the coverage of an employee dishonesty insurance policy, the 3rd U.S. Circuit Court of Appeals ruled.

Scirex Corp. tests new drugs for pharmaceutical companies. Nurses were required to observe patients for eight hours

but often sent patients home after as little as an hour, yet recorded observations allegedly covering the full period. Scirex had a blanket employee dishonesty policy from Federal Insurance Co., which covered losses caused by fraudulent and dishonest acts. Federal denied coverage, and Scirex sued and lost in the trial court. The appellate court reversed the decision.

Scirex Corp. vs. Federal Insurance Co., 3rd U.S. Circuit Court of Appeals; Dec. 23, 2002. (BI/03/Jy.-\$10)

These abstracts were prepared by Mayo H. Stiegler. Copies of these decisions are available, at \$10 each, by sending a check payable to Mayo H. Stiegler, to Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806. Please provide the listed number for each opinion ordered.

June 2, 2003

MGAs: Group's goal is to educate about surplus lines

Continued from page 4

know the E&S/MGA marketplace," and they've never before experienced a hard market, said Mr. Hutelmeyer, who is president of Seaboard Underwriters Inc. in Burlington, N.C.

"When the market started to (harden), their instant response was sending anything tough to the MGA market. It was like the cereal commercial where they said, 'Let Mikey try it.' And during the soft market, that's all MGAs got," he said. "But now, the MGA market is looking for the better business."

MGAs also are more sophisticated than many in-house insurance company underwriters, as they have experience with hard-to-place risks, said Rob Giles, immediate past president of the AAMGA and president of Midwest General Agency in Eau Claire, Wis.

"We've been at it a lot longer," he said.

'When the market started to (harden), their instant response was sending anything tough to the MGA market. It was like the cereal commercial where they said, "Let Mikey try it."'

*Joe Hutelmeyer
AAMGA*

"Before, all they looked at was price," but now, "a lot of agents are surprised by the products and services we have," Mr. Hutelmeyer said.

For example, "we've all got interactive Web sites now," said Mr. Moore.

"We also can help them on the education side," Mr. Hutelmeyer said, particularly when agents and brokers need assistance in explaining to policyholders that using the surplus lines market is an alternative when the standard market has turned its back on them.

"All of our companies are rated A or better by A.M. Best," Mr. Moore pointed out.

The surplus lines industry is strong because MGAs must make an underwriting profit if they are to keep insurers' business, he explained.

"In order to have the pen of a company, we have to make them a profit," he said.

"There are some excellent results in the E&S industry," concurred R. Max Williamson, president of Scottsdale Insurance Co., who spoke during a panel discussion held during the AAMGA conference.

Mr. Williamson estimates that while the combined ratio for the standard property/casualty insurance market last year stood at 107.2% and the reinsurance industry's reached 121.3%, the surplus lines industry's combined ratio was just 95%.

Indeed, according to A.M. Best's "2002 Annual Review of the Excess & Surplus Lines Industry," most

professional surplus lines companies have maintained higher ratings than that of the property/casualty industry. The median Best rating for the professional surplus lines composite remains A, compared with the industry's median rating of A-

A.M. Best attributed the more-favorable ratings to four factors:

- Demands of the market that surplus lines carriers maintain a higher level of capital, due to their lack of guaranty fund protection in virtually all states.

- Surplus lines writers' tendency to operate with more-conservative

operating leverage, with sidelined capital waiting to take advantage of market opportunities.

- Disciplined underwriting coupled with strong risk management techniques that have consistently produced favorable loss experience.

- The fact that the majority of the leading surplus lines writers are strategic members of large, well-diversified insurance organizations.

Another reason for the solid performance of surplus lines insurers is that they all share "a fanatical focus on underwriting profit," according to Mr. Williamson.

It's easier for surplus lines to make better underwriting decisions, resulting in higher profitability, because they are not restricted by regulators, said William E. Donnell, president of Westport Insurance Corp. P&C Select, a division of General Electric Co.'s insurance operations that is based in Overland Park, Kan.

"The admitted market is so caught up in regulatory issues that it drives the decision over pricing risk appropriately," he said.

As a result, even if a particular line of business merits a substantial

rate increase because of poor loss experience, regulators may cap premium increases for political reasons, he explained.

By contrast, surplus lines insurers have "freedom of rate and form," meaning they can price products commensurate with risk and incorporate exclusions as necessary to limit liability without getting permission from regulators, Mr. Donnell said.

The result is that coverage, though it may not be cheap or all-encompassing, is available, Mr. Donnell said.

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American Assn. of Managing General Agents conference

AAMGA disputes PwC report on binding authority

By JOANNE WOJCIK

BOCA RATON, Fla.—Longtime managing general agents and some surplus lines insurers are taking issue with a new report that says binding authority given to MGAs has been eroding since the terrorist attacks of Sept. 11, 2001.

The report, released late last month by PricewaterhouseCoopers L.L.P., examines both the risks and benefits to insurers in using MGAs as outsourced administrators, marketers, underwriters and claims adjusters in the current hard market, as well as in past years.

The report notes that the collapse of several insurers has been blamed on their use of MGAs. As a result of those failures, the report asserts, insurers in London and the United States have curtailed giving binding authority to MGAs in the wake of Sept. 11.

"There are some instances where I've seen MGAs, not brokers or program managers, have overstepped their bounds in underwriting authority," said the report's author, Key Coleman, manager of PwC's Dispute Analysis and Investigations team in New York. The team advises insurers and their counsel on forensic accounting and other fraud investigations and conducts dispute analysis.

Drawing from his work with clients, Mr. Coleman said he has noticed that insurers are becoming increasingly reluctant to give MGAs binding authority.

"I think the ones who engaged in some looser underwriting practices in the late '90s are the ones losing the pen now," he said of MGAs. "The worst case was in the 1997-to-1999 time frame. A lot of it involved the comp market."

"Legion, for example, used MGAs to such an extent that it had no policy issuance system of its own immediately prior to its demise," Mr. Coleman wrote in his report, referring to Legion Insurance Co., a unit

of Mutual Risk Management Co. that now is in rehabilitation in Pennsylvania.

Reliance Insurance Co., now in liquidation in Pennsylvania, "can attribute at least \$100 million of its pre-rehabilitation losses to Unicovert, an Illinois MGA that doled out approximately \$1 billion in workers compensation losses to the industry," the report states.

MGAs contend the report unfairly paints all MGAs with the same brush.

While there may be a few bad actors in the MGA business, they are not representative of the group as a whole, asserted Joe Hutelmeyer, president of Seaboard Underwriters Inc., a 46-year-old MGA based in Burlington, N.C. "I've read the report. I think there's a lot of inaccuracies in it. I think there's a lot of stereotyping," he said.

Furthermore, "the examples are not representative" of the companies that belong to the American Assn. of Managing General Agents, added Mr. Hutelmeyer, who is president-elect of the AAMGA. The association has a strict code of ethics, he noted. Approximately 25% of the MGAs operating in the United States are members of the King of Prussia, Pa.-based organization, he estimated.

"Do I believe that the MGA marketplace underwrote some policies that turned out not to be profitable? Of course. But that's indicative of the soft market, not the business model," said Steven DeCarlo, president of American Wholesale Insurance Group of Charlotte, N.C., the third-largest U.S. wholesaler, with \$681.8 million in annual premiums (BI, Aug. 19, 2002).

And any reduction in binding authority, likewise, is not necessarily indicative of a reluctance to use MGAs, he added.

For example, since the market hardened, there are fewer insurers using the MGA/fronting model, which means there's less binding

authority business to go around, Mr. DeCarlo said. There are fewer fronting agreements, largely due to the insolvency of many insurers due to poor underwriting results, he explained.

'I think the ones who engaged in some looser underwriting practices in the late '90s are the ones losing the pen now.'

Key Coleman
PricewaterhouseCoopers L.L.P.

"The people who are doing it well are now a handful, but the people who were doing it during the soft market were numerous. And I think that's been a big change from an AAMGA/MGA perspective, in that binding authority for quality people has not gone away. But MGA contracts given out by fronting carriers supported by reinsurers, or the MGA participating in a captive, you've seen that model almost dry up," he said.

"Many companies have tightened their underwriting guidelines and limited authority levels over the

past year as market conditions have altered," said William E. Donnell, president of the P&C Select unit of Westport Insurance Corp., a unit of General Electric Co. based in Overland Park, Kan.

But insurers, such as Westport, are still seeking MGAs and granting them binding authority. In fact, Mr. Donnell said he was attending the AAMGA's recent annual meeting hoping to find 10 MGAs to underwrite package and monoline general liability coverage.

"We had the opportunity to speak with many promising binding authorities during the AAMGA convention," he said.

Larry Weisberg, president of VFS Insurance Group of Greensboro, N.C., attended the AAMGA conference in search of MGAs to write property insurance for the trucking industry.

But while they may grant MGAs binding authority, both insurance company executives also stressed that they give them strict underwriting criteria so that they don't get in trouble by stepping out of bounds.

"We have a narrowly defined underwriting box," Mr. Weisberg said.

"Within GE Commercial Insurance, we have taken a somewhat

similar approach," said Mr. Donnell. "First, we incorporated risk-sharing programs with our managing general agents to better align our interests with theirs. This allows both parties to benefit from decreasing loss ratios. Second, we're creating a tighter underwriting box," he said.

Insurers are still granting binding authority; they're just becoming more selective about which MGAs they give it to, Mr. Hutelmeyer said.

"The companies are doing a better job doing their homework, and the people who are getting binding authority are more responsible," he said. "They're doing what they should have been doing all along."

"They got slack when the market got soft, whether it was for cost reasons or whether they were running too hard in too many different directions—I don't know what the answer is. But now it's almost like the company markets have gotten religion and they're doing a better job monitoring the people they're doing business with," Mr. Hutelmeyer said.

A copy of PricewaterhouseCoopers' report is available from Wendy Amstutz at wendy.amstutz@us.pwcglobal.com.

American Assn. of Managing General Agents conference

1,261 attend conference

BOCA RATON, Fla.—The 77th annual meeting of the American Assn. of Managing General Agents, held May 18-22 in Boca Raton, Fla., drew record attendance of 1,261 managing general agents, insurance companies and wholesale brokers.

The meeting featured educational seminars that are part of the AAMGA University curricu-

lum, a panel discussion by several leading insurance company chief executives and a trade and vendor mart.

Attendees also witnessed the changing of the guard at the annual business meeting. New board members who were installed include incoming AAMGA President Ronnie Moore, president of The Southern General Agency in

Bowling Green, Ky.; and President-elect Joe Hutelmeyer, president of Seaboard Underwriters Inc. of Burlington, N.C.

Next year's meeting will be held May 19-23 in Scottsdale, Ariz.

For information about the American Assn. of Managing General Agents, visit the organization's Web site at www.aamga.org or contact Executive Director Bernd G. Heinze at 610-225-2363.

Comings & Goings

Insurers:

Steven C. Hess has been named executive vp and general counsel of Accident Fund Insurance Co. of America in Lansing, Mich. He had been general counsel of Blue Cross & Blue Shield of Michigan.

Eugene B. Kelly, former resident vp and branch executive for the New York City branch of Kemper Insurance Co., has joined Meadowbrook Insurance Group Inc. of Southfield, Mich., as senior vp of field operations.

New York-based insurer American International Group Inc. has made three senior-level executive

appointments:

• **Robert E. Lewis**, vp and chief credit officer, has been promoted to senior vp and chief credit officer.

• **Brian T. Schreiber**, vp-strategic planning, has been named senior vp-strategic planning.

• **Kathleen E. Shannon**, vp, secretary and deputy general counsel, has been appointed senior vp, secretary and deputy general counsel.

J. Michael Baldwin has been named managing director of the London branch of Allied World Assurance Co. (Europe) Ltd. He will be responsible for developing the insurer's property and casualty busi-



Mr. Zamary



Ms. Green

ness from U.K. wholesale and retail producers. Previously, Mr. Baldwin was senior vp in charge of Chubb Corp.'s commercial insurance division in Europe.

Brokers:

John Sacia has been named managing director of Acordia Inc.'s newly formed Northwest Area,

which includes the company's Seattle and Portland, Ore., offices. Mr. Sacia was the founder of Sacia Risk Solutions in Seattle.

Kim Green was named national practice leader of Willis Group Holdings Ltd.'s newly formed consumer products practice group in New York. Previously, Ms. Green was senior vp in Aon Corp.'s New York office.

Reinsurance:

Tony Marcello has been named global treasurer at Employers Reinsurance Corp., a unit of General Electric Co. in Overland Park, Kan. Mr. Marcello had been an assistant treasurer at GE unit GE Capital,

where he managed the division's European funding operation in Paris. He will continue to be based in London.

David Kalainoff was named executive vp and chief underwriting officer of Hamilton, Bermuda-based Max Re Ltd.'s traditional reinsurance operations. Mr. Kalainoff joins Max Re, a subsidiary of Max Re Capital Ltd., from Transatlantic Reinsurance Co., where he headed the company's specialty casualty treaty operations.

Other suppliers:

Bob Zamary was promoted to chief operating officer of the Frank Gates Cos., a national third-party administrator based in Dublin, Ohio. Mr. Zamary previously served as senior vp of national claims administration.

AGENT/BROKER TOPICS

A MONTHLY EDITORIAL SECTION SENT EXCLUSIVELY TO AGENTS, BROKERS AND CONSULTANTS



Information Technology

Tools provide single point of access for an array of services, information

Use of online portals growing rapidly

By MICHAEL BRADFORD

Computer portals that allow insurers and agents to bundle a wide variety of applications and information resources for easy access by clients are the latest technology trend.

In fact, portals are expected to become "the desktop of the future," according to Richard Hoehne, Atlanta-based solution executive in International Business

Machines Corp.'s financial services sector. He referred to a study that said developing portals soon will become so commonplace as to be considered "a cost of doing business."

The number of Web portals is growing dramatically, Mr. Hoehne pointed out, and they are "becoming a business-change agent for a number of organizations."

Speaking at the Assn. for Cooperative Operations Research & Development's 2003 conference in Orlando, Fla., last month, Mr.

Hoehne explained that a portal provides a "single point of access to different types of information and applications, and aggregates it in a way" that makes it easy to use.

Most computer users think of Internet services Google and Yahoo! as portals, he noted, because they provide access to information and services. But such portals are strictly gateways, Mr. Hoehne said. "They're not doing anything in and of themselves."

While early portals were no more than an "electronic brochure," today's version puts a number of applications in front of users, Mr. Hoehne said. "Portals have come a long way; they're no longer just a gateway to access a Web brochure."

Prudential Financial Inc. is an insurer that embraced portal technology as a way to deliver more responsive customer service while lowering operational costs.

Prudential policyholders until recently had

to access a different Web site for each line of business they did with the company, and customer account information was not consolidated. Using IBM's WebSphere Portal software and other IBM services, a portal was developed that supports 300,000 users.

Through the portal, which took five months to develop, Prudential policyholders and investors can access consolidated account information, learn about the insurer's products, read analysts' commentaries and more. A transactional component allows customers to handle asset reallocations, request coupon books for making premium payments, buy and sell mutual funds and submit changes such as new addresses.

A case study by IBM showed that Prudential's call center costs have dropped significantly since the portal was introduced, and the insurer claims its customer-agent relationships have been strengthened.

Mr. Hoehne said agents and insurers also see significant savings by developing portals

that can be used by employees.

Portal applications—which include such things as electronic meetings, instant messaging, virtual help desks and electronic learning—allow organizations to realize returns on their investment into a portal infrastructure, he said.

IBM's human resources costs, for example, have dropped by more than half since it began using portal technology, Mr. Hoehne noted. The company has saved \$350 million by giving employees access to electronic training programs and has handled 87 million customer transactions that would have been handled with telephone calls.

As for insurance agents, most have computer desktops that are a mess, Mr. Hoehne said, with a lot of different functions accessed through various programs and sites. A portal, he contends, allows the user to consolidate all those functions into one space and gives the agent a way to easily navigate through information. "The portal gives a clean look and feel," he said.

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AGENT/BROKER TOPICS

Electronic clearinghouses improve efficiency

By MICHAEL BRADFORD

Electronic clearinghouses are creating efficiencies and savings as they replace traditional, mail-based processes in some insurance transactions.

An electronic clearinghouse is a "centrally located entity that links together different trading partners" that exchange information in a business transaction, explained Linus C. Ogbonna, director of EDS*SEND, a unit of Plano, Texas-based Electronic Data Systems Corp.

Mr. Ogbonna was a member of a panel that discussed clearinghouses at the annual conference of the Assn. for Cooperative Operations Research & Development in Orlando, Fla., last month. The panelists agreed that the clearinghouse model is an easier and more cost-effective method for completing transactions than the more cumbersome process of envelope stuffing and mailing.

Frank S. Lent Jr., director of

property systems at the USAA Information Technology unit of USAA Group in San Antonio, explained how a clearinghouse arrangement works in transactions between his company and financial institutions that lend money to car buyers.

"When you buy a vehicle and finance it with an institution, they have a need to know if that vehicle is insured or not," said Mr. Lent. That means that for every vehicle USAA insures, it

has to notify the lienholder that coverage is in place. Notifications also must be sent if policy changes are made on an insured vehicle.

"It's a process that's imposed on the insurance company, and we are required by law to make that notification," Mr. Lent said.

In 1994, USAA turned to EDS for help in simplifying the notification process, which the insurer was handling through mailings.

Through the EDS clearinghouse, notifications are gathered by PDP

Group Inc., a Hunt Valley, Md., company that handles document-tracking duties for insurers and delivers electronic notifications from the clearinghouse. "Our business is to make sure that the insurance remains in force on the car," said Matthew W. Hopkins, senior programmer analyst with PDP.

USAA's clearinghouse arrangement has taken a burden from its staff and saved the company money, according to Mr. Lent. "When you have your folks who were previously printing, stuffing, mailing, routing and doing all these type things" freed from those duties, "you are able to get more work done with the same amount of people," he said.

"Obviously, if you are delivering a document electronically, it's going to be cheaper than if you're delivering that via (regular) mail," Mr. Lent said. "So the more documents we can deliver electronically, obviously, it's better for us."

On the receiving end, lenders see similar benefits from electronic delivery.

Mr. Hopkins explained that

lenders receive documents from hundreds of insurers writing auto policies. If those documents arrive in the mail, they have to be opened, sorted and stored until they can be processed. Employees have to be trained on data entry to enter information from the documents into the financial institution's computer records.

If the documents are processed electronically, all of that work—and the potential for data-entry errors—goes away, Mr. Hopkins said. Lenders, like insurers, get greater efficiencies with less human involvement.

Implementing a clearinghouse is not as complicated as it once was, Mr. Lent pointed out. When USAA became the first insurer to replace paper notices to lienholders with electronic delivery, "it was considered a pretty complex process," he said.

Ronald Dudley, vp-standards at Pearl River, N.Y.-based ACORD, called it "one of the easiest implementations there is." While working with an insurer, Mr. Dudley

helped the company make the transition to an electronic clearinghouse.

"It was a painless process to set up the entire operation," and merely involved supplying some information to EDS, which handled development of the clearinghouse, he said.

Mr. Lent predicted that clearinghouse transactions would continue to grow. "I think we would agree that we are seeing more and more demand for electronic exchange of data to simplify and find ways of doing things cheaper, better and faster," he said.

And, doing more with fewer employees is a kind of "mantra these days as far as businesses are concerned," Mr. Lent said. "Everybody is trying to find ways to do more with less."

Mr. Dudley told conference attendees that "if you are ever looking at putting in a cost-saving implementation that will really pay benefits in the long run, it's a simple one. I would encourage you that if you're not doing it, to take a look at it and take advantage of the clearinghouses. It will certainly help your process and it will help your bottom line."

1,600 attend meeting

The Assn. for Cooperative Operations Research & Development drew around 1,600 attendees to its annual conference in Orlando, Fla., last month.

Conferees chose from more than 75 workshops at the Walt Disney Dolphin Hotel, the site of the May 18-20 conference. In addition, around 120 technology vendors and others who provide products and services to agents and insurers had displays in the conference

exhibit hall.

Next year's ACORD conference will be held in conjunction with the Life Office Management Assn.'s annual meeting and is scheduled for May 23-25 at the Paris Hotel and Casino in Las Vegas.

More information on the conference is available from Pearl River, N.Y.-based ACORD at 845-620-1700 or by fax at 845-620-3600. Information on the association can be found at www.acord.org.

Microsoft, ACORD settle dispute

Software company questioned relevance of some data standards

By MICHAEL BRADFORD

Microsoft Corp. boosted its presence at this year's Assn. for Cooperative Operations Research & Development conference after resolving some differences with the insurance standards organization.

"We tripled our size—we're doing a much bigger presence," said Josh Lee, managing director and lead strategist for insurance at Redmond, Wash.-based Microsoft. He said the company's booth at the ACORD conference exhibit hall, like last year's smaller version, featured a number of business partners whose products

are applications that use a Microsoft platform.

Microsoft is a longtime exhibitor at the show, but in recent years it had stepped back as it questioned the relevance of some of ACORD's moves to implement data standards, Mr. Lee pointed out. He said ACORD's work with standards for insurers and agents didn't allow for "lightweight transactions" between them and Microsoft.

Those differences have been resolved, though, and Microsoft is working with ACORD on standards development, according to Mr. Lee. "We're back to a happy place now," he said.

Microsoft decided to increase its

presence at the conference, held last month in Orlando, Fla., because technological changes have caused "a lot of partners to emerge as new entities in the independent software space," and many are using Microsoft's platform, Mr. Lee remarked.

At the conference, Microsoft and ACORD announced that the association will provide more than 500 insurance forms built with Microsoft's new Office InfoPath 2003 application. InfoPath uses the extensible markup language—or XML—data standard and XML-based Web services to enable agents to complete forms once and link the data to other forms, databases, back-end systems and applications.

Older systems ill-equipped to spot fraud

Insurance fraud more likely: Study

By MICHAEL BRADFORD

An increase in insurance fraud is likely during today's tough economic times and agents and insurers with outdated computer systems are particularly vulnerable, an expert contends.

A survey of insurance buyers released earlier this year by Chicago-based Accenture showed that 66% of respondents believed that people are more likely to commit property/casualty insurance fraud during an economic downturn than in times of prosperity. Nearly half, 49%, said they believe people commit

insurance fraud because they can get away with it.

"It means we're going to see an increase—given the economic state that we're in right now—in the amount of fraud," said Michael A. Lucarini, a partner with Accenture in Philadelphia.

Accenture commissioned Horsham, Pa.-based Taylor Nelson Sofres Intersearch to conduct the survey by telephone last November. Respondents were 1,030 adults over 18 years of age.

Mr. Lucarini told attendees at the annual conference of the Assn. for Cooperative Operations Research & Development last month that the

survey showed 40% of respondents were unlikely to report fraud. "The burden is on the claims organization," he said, to make sure the proper tools and skills are in place to detect and prevent insurance fraud.

"Aging technology and inefficient processes make you a target," Mr. Lucarini stressed.

With more fraud likely and many unwilling to report it, "the theme here is that everything is stacked up against the insurer, from a consumer perspective," said Mr. Lucarini. In fact, 24% of those surveyed said they believe that overstating the value of a claim is acceptable. And 11% approved of


See FRAUD/page 12D

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AGENT/BROKER TOPICS

Fraud: Insurance fraud more likely: Study

Continued from page 12B

submitting claims to insurance companies for items that are not lost or damaged.

Insurance companies should be concerned, he said, and "if you don't address it and institutionalize how you address it, your long-term profitability will suffer."

To stop fraud, "we need something that is much more dynamic than what we have today," Mr. Lucarini said. The

system of training claims handlers to recognize red flags in claims and refer them to special investigative units is not an efficient way to address the problem, he said.

A computerized method of checking claims, not just when they are reported but also when changes are made, is a better way of determining whether fraud is being attempted, Mr. Lucarini said.

Simply put, such a system can be designed so that claims are first

sent to Insurance Services Office Inc.'s claims search service so that they can be compared with "all insurance company data as opposed to just our own data," Mr. Lucarini pointed out. Once that process is completed, claims should be filtered through a fraud detection package, he said, and results from both processes can be sent to a computer system accessed by adjusters, investigators and claims recovery personnel.

"What's important to understand is that every time the data changes...this process has to repeat itself," Mr. Lucarini said. If a new participant, such as a doctor or attorney, is added to a claim, or addresses, Social Security numbers or other "potential indicators that would change our score" are resubmitted, the claim should be rechecked, he said.

The technology won't make a decision as to whether fraud is

being attempted, Mr. Lucarini noted, but will indicate a decision needs to be made.

Despite the fact that nearly half of those surveyed believe fraud is committed because the perpetrators believe they won't get caught, a large percentage think insurers already have the means to detect fraud. Eighty-three percent said they think insurers are capable of identifying or preventing fraud related to property/casualty claims.

And, 80% said it is either extremely important or very important for insurers to investigate fraud.

Insurers confront legacy of outdated systems

By RODD ZOLKOS

As insurers seek to upgrade their information technology systems, in part to improve their relationships with agents and brokers, many are facing thorny problems involving their legacy systems.

"Organizations are trying to upgrade, enhance or move out of their legacy (systems) for a number of reasons," said Michael A. Jackowski, a partner in the insurance solutions group at Accenture in Chicago.

At the same time, though, "I have seen carriers struggle with legacy replacement over the past 10 years," Mr. Jackowski said. "For the most part, it always ends up being a much more lengthy, time-consuming process than they ever have imagined." One problem is that "some of these systems have been built up over 25 years," he said.

Given the age of many existing systems and companies' search for ways to do more and more efficient business, it's not surprising that many are looking at IT upgrades.

"Three out of four carriers are in

some phase of a system overhaul," said John Raguin, chief executive officer at Guidewire Software Inc. in San Mateo, Calif.

One major factor driving many insurers' moves to address legacy systems issues is a desire to improve their relationships with agents and brokers.

"Carriers have various relationships with their agents," said Mr. Jackowski. "I will say that touch point between a carrier and an agent is one of the things driving' legacy system changes."

Carriers increasingly want to make it easier for agents to do business with them, he said, "and in that, they have to put in new technology that benefits the agent."

In many cases, he added, it's in that ability to work with agents that the changes many insurers are making to existing systems are falling short of the mark.

A key in those systems is the flexibility to customize the way the carrier works with different agents, which puts a premium on system applications that allow customization for various groups of clients, agents or coverages, Mr.

Jackowski said.

There are other possible benefits insurers can gain through IT improvements—and that they can pass on to their agents.

"Eventually, cross-selling is a fundamental area where carriers can derive a lot of benefit," Mr. Jackowski said.

"As claims come in, you can understand characteristics of the

'That touch point between a carrier and an agent is one of the things driving' legacy system change.

Michael A. Jackowski
Accenture

customer," he said. "But the same thing can happen on the underwriting side."

"So it's really being able to capture that data and do it in a much more accurate and precise manner than most legacy systems currently can," Mr. Jackowski said.

In upgrading their systems, companies are taking different approaches, Guidewire's Mr. Raguin said. For some, a system overhaul might entail installing a document management system.

"Some are putting a new front end to their legacy system, some are installing a document management system to improve the paper flow, and some are looking at, 'How can I improve the business logic?'" Mr. Raguin said.

In trying to deal with evolving business needs and marketplace demands, insurers' approaches to dealing with their existing IT systems often involve three options: renew, rebuild or replace, according to Judy Johnson, vp of insurance strategies at consultant Sapiens Americas in Cary, N.C.

Deciding which route to take will depend on time, cost and complexity, Ms. Johnson said.

And she noted that there's less pressure and pain for an insurance company with a stable model as opposed to one undergoing a major change, such as merger and acquisition.

"Complexity is also high when the company is changing, and that change needs to be reflected in the system," Ms. Johnson said.

Cost, meanwhile, is often related to how much of the business is supported by particular IT applications, she said. A company whose major lines of business are supported by automation, for example, may experience a significant cost in making a change.

As for time, "When you're starting to spend 50% of your time maintaining a system, that's high," she said. A key concern is that time spent on system maintenance is taking away from time that could be devoted to system development to better meet customer and business needs, she said.

Some insurers face IT system challenges that span the complexity, cost and time considerations.

"Most applications have not only business logic that is embedded in them...they frequently have certain processes embedded in them as well," Ms. Johnson said. "As more and more of this happens, those applications become in some ways more useful, but in some ways, more cumbersome and difficult to understand."

And there could actually be factors the business no longer understands about policies and procedures that are embedded in the legacy system.

"If you lose the system, you lose all of that," Ms. Johnson said, an issue that becomes a factor in deciding whether replacement is the proper approach. "The more and more layers that are there, the more and more time it takes to do anything to that system. Can we make a distinction between what is current and what needs to go forward and what we can get rid of, and do we have time to do it?"

"Everything you do in terms of a system impacts on everything else that is going on, if it's a core system," she said.

"When you've looked at all those things, you have to look at how you

balance complexity, time and cost and make a decision," Ms. Johnson said. "If all of these are high, that probably points you directly to going out and buying a new one."

In many cases, a company can't afford not to make changes to its existing system. For example, if a company is looking to grow, it must decide whether its existing IT capabilities can support that growth.

Guidewire's Mr. Raguin cited a survey his company took of approximately 50 insurance companies' claims operations, and found that many of them had key operational initiatives driving desired changes in the claims process but lacked the systems to make those changes.

"The majority of them said the systems are hindering those initiatives," he said.

In meeting insurers' IT improvement goals, Mr. Jackowski said, Accenture takes an approach of doing so through components, "But doing it on a functional basis."

Many companies that have attempted to completely replace systems quickly have met with disaster, he said. "There have been a number of carriers that have tried to do it in 12 to 18 months and just outright failed."

Mr. Raguin agreed that complete system replacement isn't necessarily the only option.

"There are ways you can do it with a phased approach," he said. "They will replace it in time, but start by replacing noncore systems."

"Most carriers will tell you it will be a long time before they replace legacy systems, because they typically run financials, and that's a hard piece to replace," he said.

"The key element here is scope, containment and control," Mr. Jackowski said, emphasizing that the company must understand where the business benefit lies in the system change, and how they're going to realize it.

If companies don't look for the business benefits of any changes and rely on those benefits to drive the process forward, "It's just technology for technology's sake," he said. "You want to understand the impact on the bottom line."

Insurers' legacy information technology systems aren't without their positive attributes, Ms. Johnson noted, and they can be major assets for a company. The systems can be a repository of business knowledge, she noted. Another key advantage is that over their lengthy lives, they've been fully debugged. "They work," she said.

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June 2, 2003

Police: Officers' interpersonal skills important

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said during a session at the Public Risk Management Assn.'s annual conference in Reno, Nev., last month.

But by training police officers to become better communicators—capable of managing their own emotions as well as other peoples' anger and hostility—public risk managers can help achieve both goals, said Mr. Means, who specializes in police operations and risk management.

Mr. Means warned that risk managers who push for improved interpersonal skills in police departments

would encounter stiff resistance.

"Actually, there are some people in law enforcement who are remarkably good at doing this, and some people are remarkably bad at doing it, and they create a vast disproportion of our problems," he said.

Although interpersonal skills often are not taught as part of law enforcement protocol, many police officers understand their importance, the consultant said. When he surveyed more than 10,000 police veterans, asking them about the skills required to effectively fight crime, more than 80% ranked human rela-

tions and interpersonal communications as most important.

Yet most police officers won't engage those skills unless their leadership insists on it and provides mandatory training, he said.

Encouraging police to use interpersonal skills in their work has brought big returns, said Michael G. Fann, director of loss control for Tennessee Municipal League Risk Management Pool in Brentwood.

The self-insurance pool provides coverage for 500 Tennessee municipalities with a total of 260 police agencies employing about 6,000 po-

lice officers. Despite those numbers, over the past 10 years TML has averaged only \$1 million in annual law enforcement losses, which Mr. Fann says is low.

More than 50% of the \$1 million is spent on defense costs, he noted, so the pool's actual payouts to plaintiffs, including settlements, amount to less than \$500,000 annually.

Advocating human relations and interpersonal skills at the state's police academies and among city managers, police chiefs and police trainers helps TML keep its losses to those levels, Mr. Fann said.

"Everywhere we go, we talk about it," he said.

Mr. Means advocates that law enforcement agencies start the process

'You can't even get people fired for lying on search warrant applications in some places and here we are going to try to fire them because they are not nice enough?'

*Randy Means
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by hiring people who already possess strong communications abilities and who are inclined to apply those abilities to the job.

Agencies can design or purchase personality tests to screen job applicants for these attributes, he said.

One such test requires a job applicant to role-play in response to people and situations presented on a video. It's a very simple test, but it can provide insight into the job applicant's attitude, Mr. Means said.

Police departments also should test the abilities of officers who are already on the force, Mr. Means advises. Although they may object to an emphasis on better interpersonal skills, "You make it clear that this is not negotiable," he said.

Officers who score well on the tests should be made mentors, and remedial training should be provided to those who don't fare as well, he advised. And those who fail should not be fired, he emphasized, because an agency will run into more stumbling blocks, such as having to validate the test's effectiveness in employment lawsuits.

"You can't even get people fired for lying on search warrant applications in some places and here we are going to try to fire them because they are not nice enough?" he said.

Mr. Fann moderated the session.

2000 attend meeting

RENO, Nev.—About 2,000 people attended the Public Risk Management Assn.'s 25th Anniversary Conference, held May 18-21 in Reno, Nev.

Several risk managers attending the conference said that the high cost and scant availability of reinsurance coverage is one of the most critical issues they currently face.

Next year's conference will be held June 13-16 in Fort Lauderdale, Fla. More information about the 2004 conference is available at www.primacentral.org.

Public Risk Management Assn. conference

Education law prompts fears of litigation

By ROBERTO CENICEROS

RENO, Nev.—School districts nationwide should prepare for class-action lawsuits stemming from the No Child Left Behind Act, an attorney says.

President Bush in January 2002 signed the legislation, which imposes new testing requirements and accountability standards on public schools.

Parents already have filed law-

suits seeking to force school districts in New York and California to comply with the law, William P. Bila, a partner at Lord, Bissell & Brook in Chicago, told attendees of the Public Risk Management Assn.'s recent conference in Reno, Nev.

And it's just a matter of time before similar lawsuits arise in other states, Mr. Bila warned.

Because the law is so recent, it remains unclear whether a private right of action even exists under the act or whether only the government will be able to sue to enforce it, Mr. Bila said.

But given the threat that such lawsuits could stick, school risk managers renewing their liability coverage may want to ask their insurers whether they intend to cover lawsuits related to the act's provisions.

"The time to look for the answer to this question, obviously, is before you purchase the policy, not after the summons and complaint arrive," Mr. Bila said.

Such lawsuits can be very expensive to defend against, Mr. Bila said, noting that, unlike other types of cases, they often can't be settled with money.

In suits involving parents and educator performance, the emotional ties of plaintiffs and defendants can make reaching a compromise extremely difficult.

"You rack up a fortune in legal fees before you get anywhere," Mr. Bila said. "It's very difficult to resolve, settle or compromise these cases, because the emotions run so high."

Mr. Bila made his remarks during a panel discussion at the PRIMA conference. The panel asked and answered a series of hypothetical coverage questions related to emerging issues affecting public sector risk managers.

One such query was whether liability insurers would cover a hypothetical lawsuit filed by parents alleging that students were denied the right to transfer to better schools. In that example, the parents are seeking to force the school district to comply with the No Child Left Behind Act rather than seeking monetary damages.

One key issue to consider is whether the liability policy at issue states that it excludes either non-monetary demands or "relief other than damages."

"If you have that sort of wording in your policy, you are probably going to hear from the carrier that there is no coverage for that suit and that there is no defense for the suit," Mr. Bila said.

The panel also posed a hypothetical question concerning whether coverage would exist under a general liability policy in a case where a teacher engaged in a consensual sexual relationship with a student who was below the age of consent.

Such a case involves the crime of statutory rape, so there likely would be no coverage, said Barry M. Anderson, senior vp for Genesis Underwriting Management Co. in Stamford, Conn.

Policy language that excludes sexual molestation could also eliminate coverage for the teacher. However, the general liability policy still might provide coverage for the vicarious liability exposure faced by the school or principal, Mr. Anderson said.

A school board liability policy would also generally exclude coverage for criminal acts committed by a teacher, Mr. Bila said. But such policies often have "non-imputation" clauses, stating that such exclusions do not apply to innocent insureds, such as a school principal or the school board itself.

The clause should protect a principal or school board against "intent-type exclusions," such as those related to allegations that they failed to provide the teacher with adequate training, or that they should have known about the teacher's behavior.

But because of market hardening, insurers may begin tightening policy language relating to "innocent insureds," Mr. Bila predicts. In such cases, a school district could be excluded from coverage, Mr. Bila said.

Scott Clark, program director for the Rantoul, Ill.-based Assisted Housing Risk Management Assn., also participated on the panel.

Public Risk Management Assn. conference

Data key to getting best deal on cover

By ROBERTO CENICEROS

RENO, Nev.—In the current hard market, managers of public entity pools can help assure their reinsurance coverage submissions get more favorable attention by providing more than just raw quantitative data, reinsurance experts say.

Qualitative information that sheds light on the pool's operations and on its management can be equally important, according to a panel of speakers at the Public Risk Management Assn.'s 25th annual conference last month in Reno, Nev.

For example, submitting biographies of key individuals who provide the pool with loss control, claims management or actuarial services can help sway underwriters' impressions of the risk, said Robert M. Jones, vp for Genesis Underwriting Management Co. in Chicago.

It's very important for underwriters to know who provides those services and their level of expertise, Mr. Jones said. Biographical information for a claims manager can explain, for example, that the manager has serviced the pool for years and has intimate knowledge of such issues as liability immunities that exist in the jurisdictions in which the pool's members operate, he said.

Providing biographies of pool management can extend to financial and portfolio managers and other providers of operational support, whether their services are contracted for or provided in house, he added.

"Take the time to tell that story, to spell out who those individuals are," Mr. Jones said.

When making a market presentation, also provide specific information on how the pool's covered entities are able to take advantage of state tort reforms or liability immunities specific to where they operate, he advised.

"While we may be aware that they exist, we are not going to be as aware" of how they apply to your specific pool, Mr. Jones said. "So we look to you to tell that story as well, so we may understand how that might impact the layer where we participate."

Providing more complete information in coverage submissions is more important today as the market for public entity reinsurance has diminished, the panelists said.

"An underwriter that may have had 10 submissions on his desk two

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Pool: Data key to getting best deal on reinsurance

Continued from previous page

years ago probably has 30 or 40 on his desk now," said David G. Moline, senior vp of reinsurance broker Benfield Blanch Inc. in Minneapolis.

"To the extent that the presentation is concise and complete and provides information that the underwriter finds useful...those submissions are going to the top of the list," he said.

Pools seeking reinsurance coverage too often provide underwriters only with loss exposure, actuarial analysis and other quantitative

data, Mr. Jones said. While that data is crucial to reviewing a pool's risk exposure, failing to provide additional information can sell a pool short, he said.

That additional information might include the pool's guidelines for underwriting its members' risks, how the pool sets prices for its members' coverage and the pool's growth prospects, he said.

Identifying and segregating unusual member exposures can also help, especially if the pool underwrites risks that some reinsurers may not want to cover, said David

'Especially on pool accounts, (reinsurers) are going to want to look at what your financial situation looks like.'

David W. Adams
Berkley Risk Administrators
Co. L.L.C.

W. Adams, senior underwriting officer for Berkley Risk Administrators

Co. L.L.C. in Minneapolis.

Some reinsurers, for example, may not want to underwrite pools providing coverage for land-use liability, or sex abuse claims against schools, Mr. Adams noted.

For a pool that still wishes to cover such exposures but doesn't want to turn away reinsurers, the pool might provide sub-limits of coverage for such risks that fall within the pool's retention and do not pierce its reinsurance layers, he suggested.

While providing qualitative information reflecting on the pool's

management is important, data showing that the pool maintains a strong financial position remains critical, the speakers said.

Financial statements, reserve analysis, independent auditor reports and actuarial reports are all important elements of reinsurance submissions, they said.

"Especially on pool accounts, they are going to want to look at what your financial situation looks like," Mr. Adams said. "They may be reluctant to do business with somebody who has a shaky financial position."

Surveys due for online broker listings

Business Insurance will publish its online Directory of Agents and Brokers in conjunction with the July 21 Agent/Broker Profiles issue.

That issue of the weekly newsmagazine will contain a ranking of the top 10 brokers worldwide, as well as a list of the top 100 brokers of U.S. business.

The online directory will be available to *BI* subscribers on www.businessinsurance.com. In addition, the full directory will be included in *BI*'s 2003/2004 Market Sourcebook, a special printed compilation of all of *BI*'s directories and rankings that will be published in December.

To be listed in the directory, an agency or brokerage must deal directly with corporate or institutional policyholders and must generate at least \$500,000 in annual gross revenues from commercial retail insurance brokerage.

Listings are provided as an editorial service; there is no charge to be included. Companies simply must complete a *BI* questionnaire to be listed.

If your company meets the requirements but has not received a questionnaire, please request one immediately by calling Directory Editor Kevin P. Edison at 312-649-5279.

Completed directory questionnaires must be submitted by the extended deadline of June 27.

Copies of the questionnaire also can be printed from the directory area of the *Business Insurance* Web site, www.businessinsurance.com.

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Commentary

Class action never sounded so good

I am a hypocrite.

There, I've admitted it. But what makes it even worse is that I have managed to draw my wife and daughter into my web of hypocrisy. I would have drawn the cats in, too, except they lack legal standing.

I'm a hypocrite because I've joined a class settlement, after years spent railing about greedy trial lawyers soliciting grasping plaintiffs, thereby creating a tort system that amounts to little more than another form of legalized gambling.

What makes my first foray into mass litigation even more reprehensible is that no trial lawyers sought me out—I had to seek them out, or rather had to seek out their Web site. After a few keystrokes, all I had to do is wait for my share of the proceeds to come rolling in.

Until now, I've stuck to my principles when I have been solicited to claim my share of settlements to classes in which I had no idea I belonged.

Thus, I politely turned down the opportunity to participate in a nearly incomprehensible settlement involving hotels in which I may or may not have stayed. As I understood that one—and I'm not sure I did—I might be entitled to a small discount on an overnight stay at specific hotels, subject to qualifications not unlike those governing the redemption of frequent-flyer miles.

I also passed up the chance to receive as much as \$7.50 because I'd purchased a microwave oven that might or might not have something wrong with it.

I felt virtuous that I'd stuck to my principles. But those principles went right out the window when the money at stake hit \$15 or so.

I write "or so," because the settlement in question is truly like a lottery, in that the more people who win compensation, the smaller the individual checks will be. The settlement involves allegations of price-fixing against the recording industry, which put up \$44 million to pay claims. And anyone who bought a compact disc, cassette or record album between 1995 and 2000—i.e., virtually everyone—could file a claim. If the number of individual claims drove the average payout below \$5 a person, the money would go to the states, which would use it for various musical education purposes.

The catch was, the details of the settlement didn't get a lot of immediate attention, which was particularly important because you

actually had to register online to get your share. So one evening in late February—only days after we'd somehow stumbled across notice of the settlement and even fewer days before the offer expired—my wife, daughter and I took our turns at the home computer keyboard, tapped in our information and that was it.

I admit I felt kind of bad about doing this. To quote Dire Straits—albeit in a different context—it was "money for nothing." I'd done nothing to earn it other than to have spent similar amounts on too many CDs over the five-year period in question. But the money was there for the taking, and the checks ought to be in mail sometime this fall.

Given the nature of the settlement, I wasn't rushing out to tell my friends about this, either. After all, the fewer that signed up, the bigger the payout. Maybe I should add treachery to hypocrisy in the catalog of personal failings engendered by this once-in-a-lifetime offer. Also, since I'd allowed—indeed,

encouraged—my middle-school-age daughter to stake her claim, I guess I've also contributed to the delinquency of a minor.

It's remarkable how abandoning a single principle can set off a kind of domino effect. And, despite my better judgment, I enjoyed wallowing in my sense of having taken the system for a ride, albeit a very short and inexpensive one. I have absolutely no evidence that I suffered any harm because of the recording industry's pricing policies, but I was going to make them pay anyway.

I like to think my own lapse has given me a little insight into what goes through the minds of people who get involved in larger actions even when the harm inflicted upon them was minimal or nonexistent. They see the money—or the potential of getting the money—is there. If they don't take a shot at it, someone else will. It's just like the lottery—you have to play to win.

Like I said, I felt kind of bad about what I did, but not so bad I was going pass up my chance at getting my \$15 or so. In a way, it is kind of payback time. As a means of self-justification, I figure I'm simply doing my share to make the recording industry pay for the continued availability of Barry Manilow CDs after all too many years.

Senior Editor Mark A. Hofmann can be reached by e-mail at mhofmann@crain.com.



Mark A. Hofmann

Products & Services



Suite provides cover against cyber threats

NEW YORK—AIG eBusiness Risk Solutions has enhanced its AIG NetAdvantage Suite of network security coverages to address threats of viruses, hackers, information theft and cyber terrorism.

The suite of coverages now includes payment for online and offline business interruption losses following a computer attack as well as reimbursement of expenses to investigate such attacks. Among the coverages is liability insurance for losses related to theft of personal information of employees, customers or clients. Theft of hardware also is covered.

The product suite can be tailored to policyholders' needs.

More information is available at www.aignetadvantage.com.

Product recall guide now available online

MUNICH, Germany—GE Frankona Re is offering an online version of its product recall reference guide.

The guide, now in its 15th edition, is a compilation of recall transactions across a variety of industries and countries. Users can search for specific products and manufacturers as far back as 1984.

The compilation delivers data that allows users to monitor developments and trends in recalls and manufacturing defects.

GE Frankona, a Munich, Ger-



many-based unit of Employers Reinsurance Co. in Overland Park, Kan., said that while motor vehicles were prevalent in recalls for many years, there has recently been a significant increase in the number of recalls for products such as food, beverages and drugs.

The guide can be accessed at www.geercgroup.com/gpc/resource_center/product_recalls/index.html.

Workers comp audit available for contractors

BALTIMORE—Risk management consulting firm GuilfordPare has created a new division to serve the construction industry.

The division, staffed by former risk managers, offers workers compensation and injury management

services and performs a free risk management assessment called the Fight Back Audit.

The audit is available to contractors and construction companies with at least 25 open workers comp



claims. GuilfordPare specialists will examine case files, or an isolated worst-case file, and provide advice on how the company can most effectively contain and prevent work-related injuries.

Information on the new division and the audit is available by e-mail at fightback@guilfordpare.com or at www.guilfordpare.com.

Zurich bundles coverage for management liability

SCHAUMBURG, Ill.—Zurich North America is including several management liability coverages under one form for privately held middle-market companies.

The Schaumburg, Ill.-based insurer is providing the coverage for employment practices liability purchased in conjunction with directors and officers liability insurance, fiduciary liability, crime, kidnap and ransom, and extortion coverages as part of its Zurich Private Solutions package. Policyholders can choose the coverages, which can be written to a single aggregate limit of \$25 million.

The coverages are available to companies with less than \$250 million in assets and fewer than 750 employees.

More information on the various coverages is available from Zurich North America by calling 800-382-2150.

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Aussies to provide med mal backstop

Program welcomed, but calls continue for passage of tort reforms to curb rising cost of liability claims

By SARAH VEYSEY

CANBERRA, Australia—Doctors in Australia are tentatively welcoming a recently announced government backstop for medical liability claims.

The plan will provide short-term relief to doctors finding it difficult to find affordable coverage, but in the long term, state and territorial governments must pass tort reform measures to stop the increases in medical liability claims, medical groups say.

The Australian government announced May 23 that it will provide a financial backstop for the country's medical malpractice insurers. The move came following sharp rate increases for malpractice risks in Australia and concerns over the traditional malpractice mutual insurers' ability to meet large increases in awards and claims.

Under the program, designed to protect doctors from unlimited liability, Australia's federal government will pay any medical liability claims that exceed an insurance cap agreed upon by doctors and their insurers.

The backstop will be applied on a claims-made basis and the cap will likely be between \$20 million Australian and \$25 million Australian (\$13.0 million to \$16.3 million), according to the Australian Medical Assn.

The program will come into effect on July 1, 2003, but will retroactively cover claims filed since Jan. 1, 2003, the government said. The government also said it would ensure that the insurers, which are called medical defense organizations, will offer coverage to retired doctors to protect them from long-tail claims.

The government said that program had become necessary because of doctors' concerns about their potential exposure to large, multimillion-dollar claims—known in Australia as "blue sky claims," coupled with increasing rates for medical malpractice cover.

In announcing the program, the government said it hoped medical liability insurers would "offer the maximum amount of cover that can feasibly be sourced from the commercial reinsurance market." The government will recoup its claims payouts through charges on MDOs. The MDOs,

in turn, will likely make cash calls on their members to meet those charges, the government said.

The Australian Medical Assn. said blue-sky settlements would likely be very rare, "particularly if the states proceed quickly with tort law reform and a long-term care and rehabilitation scheme for the severely injured is established."

And the government said it hoped the states of Australia would introduce tort reforms to curb the rising costs of medical liability claims.

"Rapid action by the states and territories to progress tort law reform and develop effective damages regimes will reduce the excessive claims 'inflation' of the last decade, and will reduce the likelihood that doctors will need the Blue Sky Scheme," Prime Minister John Howard said in a statement announcing the plan. "Claims and payouts above contract limits should be rare, if they occur at all, and given the lags in finalization of claims, if any charge is payable it may not be until many years into the future."

"The government has...delivered on its end of the bargain to help resolve Australia's long-run-

See **MED MAL**/page 20

World Updates

Benfield plans IPO on London exchange

Reinsurance brokerage Benfield Group Ltd. said it plans to make an initial public offering on the London Stock Exchange. Benfield said that the IPO, scheduled for June 18, would offer £100 million (\$163.7 million) in shares priced at between 200 pence and 260 pence (\$3.27 and \$4.26). In October 2002, Benfield redomiciled to Bermuda and said it was considering an IPO in either the United States or London. Then, in November, the brokerage said it did not consider the U.S. regulatory environment attractive for a public listing at that time. A Benfield spokesman said last week that the brokerage would continue to be domiciled in Bermuda.

Willis forms team for Iraq projects

Willis Group Holdings Ltd. has formed an Iraq reconstruction team. Willis said the team would assist companies seeking to take advantage of the estimated \$10 billion in projects expected to be started in Iraq in the next five years following the lifting of economic sanctions.

E.U. to consider inquiry over Lloyd's

The European Parliament's Petitions Committee has approved a recommendation, made by a group of Parliament members, to conduct an inquiry into whether the U.K. government's oversight of Lloyd's of London satisfies the European Union's Insurance Directive. The matter will now go before the full European Parliament in June. The European Commission launched its own investigation into the oversight of Lloyd's in December 2001.

HSE releases report on Potters Bar crash

The U.K. Health and Safety Executive has published a third report on the May 10, 2002, Potters Bar rail crash. The report concludes that the derailment was caused by poor track maintenance. A criminal investigation, lead by the British Transport Police and the HSE, is still being conducted. No one has admitted liability for the accident, which killed seven people and injured 70.

Brit forecasts return on capacity

Brit Insurance Holdings P.L.C. has forecast a return on capacity of 12.5% for its multiline syndicate 2987 for the 2002 year of account. The syndicate had a capacity of £4.5 million (\$7.4 million) in 2002.

Survive business continuity conference

Supply disruption discussed

By SARAH VEYSEY

LONDON—Effective business continuity management must look beyond an organization's own risks and consider the exposures of its third-party suppliers as well.

Organizations such as supermarkets are heavily dependent on their suppliers and they should work with those suppliers to protect themselves from serious disruptions in their supply chains, said Steve Mellish, business continuity manager at Sainsbury's Supermarkets Ltd. in London.

Business continuity management in supply chain management is a relatively new concept in the United Kingdom, but it is increasing in importance, Mr. Mellish said at the 14th annual business continuity conference sponsored by consultant Survive in London last week.

"Our disaster could well be our competitors' opportunity," he said, explaining why business continuity management has become a priority at the supermarket chain.

Sainsbury's established a business continuity department in 1996, in response to the threats posed by the Irish Republican Army's bombing campaign, Mr. Mellish said. And since then, events such as the Y2K computer bug, the 2001 fuel shortage crisis and foot-and-mouth disease outbreaks in the United Kingdom, have highlighted the need for business continuity plans, he said.

The business continuity department at Sainsbury's has successfully make its own managers aware of business continuity risks and it is now turning its attention to forging such a culture among its third-party

See **SUPPLY CHAIN**/page 20

Reinsurance exec calls for more cooperation

Natural disaster still at top of risks for P/C insurers

LONDON—Despite the growing risk of manmade catastrophes such as large-scale acts of terrorism, natural catastrophes remain, by far, the biggest risk for property insurers and reinsurers, according to a Swiss Reinsurance Co. underwriting executive.

And, given the magnitude of the exposures, better sharing of information between cedents and reinsurers is needed to help underwriters set prices for natural catastrophe risks, said Werner Schaad, chief underwriting officer of Swiss Re's property and casualty business group in Zurich.

Mr. Schaad spoke at a May 29 Swiss Re briefing on natural catastrophe risks in London.

In the United Kingdom in particular, an increased incidence of flooding is causing insurers and reinsurers to look carefully at underwriting flood risk, said Gordon Fox, head of property treaty underwriting at Swiss Re U.K. in London, who also spoke at the event.

Swiss Re estimates that a major U.K. storm could cause insured losses of £9 billion (\$14.76 billion), Mr. Fox said. In the fall of 2000—the wettest fall in more than 270 years, according to the Assn. of British Insurers—rainfall caused widespread flooding, resulting in insured losses of more than £1 billion (\$1.64 billion), Mr. Fox noted.

While Swiss Re does not plan to cease writing U.K. flood reinsurance, it is urging the ABI and the U.K. government to continue working on finding ways to mitigate flood risk in the country, said Mr. Fox.



Flooding in Europe is causing insurers and reinsurers to take a careful look at underwriting flood risk.

In addition, Mr. Schaad said that Swiss Re is already beginning to see the impact of climate change on its loss figures. Although he said there is "no need to panic" yet, he noted that the reinsurer is closely monitoring climate change-related issues.

A recent Swiss Re report on natural catastrophes and reinsurance is available at www.swis-re.com.

—By Sarah Veysey

Survive business continuity conference

Good public relations crucial in a crisis

By NEIL HODGE

LONDON—Proper handling of public relations is a crucial part of crisis management, a public relations expert says.

Francis Thomas, the former head of media affairs at Nottingham, England-based pharmaceuticals retailer Boots P.L.C., illustrated that point to an audience of risk managers attending the 14th annual business continuity conference sponsored by consultant Survive in London last week.

Mr. Thomas said that in 1994, Boots faced a potential catastrophe when a popular U.K. investigative journalism television program said it had evidence that some of the

company's products could be linked to sudden infant death syndrome, known also as "cot death" in the United Kingdom.

According to Mr. Thomas, who is now director of global media affairs at the U.K. arm of Danish toymaker Lego Co. in Slough, the television program said that fire-retardant materials used in baby mattresses manufactured and sold by Boots could produce a noxious gas when mixed with sweat or urine, which could result in SIDS.

Boots, Mr. Thomas noted, was the country's second biggest retailer of the mattresses at the time.

The company was able to "weather the storm" by immediately pulling all such products from its

stores, addressing the matter with health action groups and, crucially, keeping the public informed of what it was doing.

'Isolating the crisis and dealing with it as a separate project will make it far less likely that your business goes under.'

Francis Thomas
Lego Co.

"It was not enough to simply pull all of these mattresses from our stores. Unless we were seen to do this through media coverage, our business was doomed," Mr. Thomas

said.

"The line that we took was that we were aware of the allegations, we had no evidence to dispute them at that stage, that we would remove the products from sale and that we would direct customers to where they could get independent advice and information about cot death.

"We, therefore, passed the responsibility of explaining cot death onto the experts and deflected some of the negative publicity away from ourselves," said Mr. Thomas.

Mr. Thomas added that, during the recall, Boots opted not to be confrontational about the allegations and tried to demonstrate good-faith efforts to resolve the situation.

"From the very beginning, we made it clear in every statement

that we made that we were not experts about infant mortality but that we were retailers. Once that message sunk in, people were more able to accept that we were trying to do the right thing," he said.

A subsequent government inquiry found no link between SIDS and the fire-retardant materials.

Mr. Thomas also underscored the importance of separating business management from crisis management in disaster scenarios.

"The crucial step is to make sure that management of the crisis does not interfere with the running of the business," he said.

"Isolating the crisis and dealing with it as a separate project will make it far less likely that your business goes under."

Boots, he said, "decided very early on that the chief executive should continue to run the business while a crisis management team formed from managers from several areas of the company would manage the crisis."

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NOTICE IS HEREBY GIVEN that, by three Orders dated 25 March 2003, in relation to each of the above companies the High Court of Justice of England and Wales has directed that meetings (the "Scheme Meetings") be convened of certain creditors ("Scheme Creditors" as defined in the schemes of arrangement referred to below) of each of the above named companies in relation to certain businesses (the "Scheme Companies" and each a "Scheme Company") for the purpose of considering and, if thought fit, approving (with or without modification) schemes of arrangement in identical form (the "Scheme") proposed to be made between each of the Scheme Companies and their respective Scheme Creditors. Scheme Creditors are insurance, reinsurance, or retrocession creditors of the Scheme Companies, in respect of certain businesses;

And that such Scheme Meetings will be held at the Chartered Insurance Institute, 20 Aldermanbury, London EC2V 7HY, United Kingdom at 11 a.m. on 10 July, 2003 at which place and time all Scheme Creditors of each Scheme Company are requested to attend. Registration will commence at 10.30 a.m. London time.

Scheme Creditors may vote in person at each Scheme Meeting or they may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their stead. A copy of the text of the Scheme and of the statement required to be provided to creditors pursuant to section 426 of the Companies Act 1985 as well as blank Forms of Proxy and Voting Forms may be obtained from Sara Dennis or Fiona Christie, PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT, United Kingdom (telephone: +44 (0) 20 7583 5000) during normal business hours before 10 July, 2003.

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Med mal: Providing a backstop

Continued from page 17

ning medical indemnity crisis," said Dr. Kerry Phelps, president of the Australian Medical Assn. "It is now up to the states and territories and MDOs to fill in the gaps by implementing tort law reform and putting downward pressure on indemnity premiums. Only then will it be safe to say the crisis is over," she said.

While the medical association welcomed the government's action—describing it as a small step that has averted a potential disaster—it said more work was needed to establish consistent tort law reform and statutes of limitations across the country's states.

Tony Lawler, president of the medical association's Tasmanian

While the Australian Medical Assn. welcomed the government's action, it said more work was needed to establish consistent tort law reform and statutes of limitations across the country's states.

branch, said the reform could actually make the medical indemnity

crisis worse and prompt an "exodus of doctors" from the profession.

Dr. Lawler said that, because the government will recoup any blue-sky claims from MDOs, the financial burden on individual doctors might increase if tort reforms were not enacted.

"We have very real concerns that this will increase the indemnity load on the practicing doctor," said Dr. Lawler. "This in and of itself has the very real possibility that it might increase the onus on individual practitioners to find more economical ways of practicing."

Mr. Howard said the plan would be reviewed after three years to determine whether it is still needed.

Aetna: Minimal impact seen

Continued from page 1

simplicity and transparency. This settlement represents a continuation of that trend, said Susan Pisano, vp of communications for the American Assn. of Health Plans in Washington.

The litigation is one of several suits that were consolidated in 2000 before U.S. District Court Judge Fed-

- Enhance the ability of physicians to register referrals, precertify procedures, submit claims and check for plan members' eligibility through an Aetna Web site.

- Establish an independent external review board to resolve billing disputes.

- Change the definition of "medical necessity" so that it is in accordance with generally accepted standards of medical practice.

- Stop the practice of automatically reducing some of the billing codes submitted by physicians.

- Utilize an electronic claim adjudication tool.

"It's a sea change in the relationship between physicians and Aetna," Dr. John Rowe, Aetna's chairman and chief executive officer, said at a press conference late last month announcing the agreement.

Many of these changes, though, involve provisions that are waning in importance, such as precertification and referrals, said Ralph Kimmich, direc-

tor of benefits and compensation at Southwest Airlines Co. in Dallas. As a result, Mr. Kimmich said, he does not see the agreement having much impact on the overall health care industry.

Helen Darling, president of the Washington Business Group on Health, said Aetna and other health plans have already made these changes in their business operations in the past few years. In some cases, health insurers have gone further than Aetna intends to, she said. So while Aetna said it will make it easier for doctors to obtain precertification, UnitedHealth Group Inc. has done away with precertification altogether, Ms. Darling said.

The formalized settlement, though, will prevent Aetna from backpedaling on its commitment, she said. "It keeps their feet to the fire," Ms. Darling said.

A spokesman for Minneapolis-based UnitedHealth said the company's business practices regarding

physicians will not change because of the Aetna settlement. Most of Aetna's proposed changes "have long been part of UnitedHealthcare's business practices," he said.

The changes that Aetna is making have already taken place at Humana Inc., according to a Humana spokesman.

Some of those changes have been made in response to the demands of employers, employees and doctors who want to eliminate the restrictions of managed care, he said.

The spokesman noted that these provisions are playing a lesser role as employees have been moving from tightly managed health maintenance organizations into less-restrictive preferred provider organizations.

While the changes may not be totally new, they do serve to raise the awareness of how insurers have altered their relationship with doctors, Ms. Pisano said.

Perhaps the biggest change that employers can expect to see will be a reduction in the level of complaints from employees about Aetna's services, Ms. Darling said. When there will be fewer billing problems between doctors and Aetna, there will generally be fewer billing issues with employees and fewer complaints about health plans, she said.

The changes may also reduce the disruption of Aetna's doctor networks, Mr. Wurzel said. Until the past few years, Aetna had a reputation as a tough negotiator with physicians, driving many from the Aetna networks, he said. That reputation has changed in the past couple of years, and this settlement should further reduce network turnover, he said.

Mr. Kimmich noted that if the new definition of "medical necessity" is adopted by the entire health care industry, it could expand the number of covered procedures.

By and large, though, the changes Aetna intends to make merely dabble at the fringes and do not touch the core of the health care system.

"This is the beginning of the fine-tuning of the managed care industry," Mr. Wurzel said.

Supply chain: Risk requires planning

Continued from page 17

suppliers, he said.

Sainsbury's buys products from about 2,400 suppliers worldwide and stocks about 23,000 different products, said Mr. Mellish. But 50% of those products are supplied by just 100 of the suppliers—highlighting the company's reliance on those third-party suppliers, he said.

To address this risk, Mr. Mellish said the company is forming an external supply chain business continuity plan that it hopes will be fully operational within about two years.

The business continuity team has asked directors of different departments of the supermarket chain to identify their top five suppliers, and it is examining the business continuity plans of those suppliers.

The team will make sugges-

tions if and when it feels those plans are inadequate, he noted.

There are challenges associated with trying to introduce business continuity into the supply chain, Mr. Mellish said.

Some suppliers may not want to discuss their programs for confidentiality reasons, some may not know how to set up

such a program, and some will want Sainsbury's to do it for them or to meet any extra costs of putting such a plan in place, he said.

But, he said, the supermarket would seek

to impress on suppliers that a supply chain business continuity structure can help protect the suppliers themselves and not just Sainsbury's.

"Our supply chain is the life blood of our organization and cannot be left unprotected," he said.

Fifty percent of Sainsbury's Supermarkets products are supplied by just 100 of its suppliers—highlighting the company's reliance on those third-party suppliers.

Regulation: Changes in oversight debated

Continued from page 4

ters a type of institutional corruption that makes pricing insurance a political rather than an economic matter, he said.

A measure that would allow insurers to choose a single federal reg-

If large insurers were to choose the federal charter, that would leave small single-state insurers and some regional companies to foot the bill for the state regulatory apparatus, something they would not be able to do.

ulator that would not dictate rates and forms would be a significant improvement over the current system, he said. Creating such a system will take time, but it will ultimately come into being, predicted Mr. Berrington.

"We can say unequivocally that the system is broken and cries out" for the option of federal regulation, said Bradford W. Rich, executive vp, general counsel and corporate secretary of USAA Risk Group in San

Antonio, Texas.

"Solvency oversight should be the most important" function of regulators, said Mr. Rich. But the states have too often failed to fulfill this function, leaving solvent better-managed companies to pay the costs of this failure, he said.

But another insurance executive on the panel questioned whether a federal charter could truly be optional. Wayne F. White, president and chairman of Conway, Ark.-based Home Mutual Fire Insurance Co., which operates only in Arkansas, said that large insurers would choose the federal charter. That would leave small single-state insurers such as Home Mutual Fire and some regional companies to foot the bill for the state regulatory apparatus, he said. They would not be able to do so and would be pushed aside by other federally chartered companies, he predicted.

The millions of insurance consumers are far better served by state regulation than they would be by an "untested" federal regulatory system, Mr. White said. Insurance companies—not insurance consumers—are the forces pushing for the change, he said.

The WLF is a free-market-oriented nonprofit foundation involved in litigation and public policy.



Judge Moreno

erico Moreno in Miami. The suits, brought by more than 700,000 physicians against nearly every large managed care organization, charge that the companies short-changed doctors on payments.

Last week, Judge Moreno gave preliminary approval of the settlement. Of the remaining defendants, only CIGNA Corp. has reached a settlement, but Judge Moreno has yet to approve the agreement.

In the settlement, Aetna agreed to pay the physicians \$100 million and their attorneys \$50 million and to spend \$20 million to fund a nonprofit health care foundation.

Perhaps more importantly than the money Aetna will pay are the changes it has agreed to make in the way it conducts business. The changes are designed to reduce administrative hassles for physicians and speed payments to them.

Specifically, Aetna has agreed to:

- Use automated adjudication of claims to speed payment to doctors.

June 2, 2003

Hines: Symposium examines D&O trends

Continued from page 4
portant."

"Obviously, directors and officers insurance is going to be used by these companies or the directors and officers as a means of satisfying these judgments," said Ms. Gilden. But, she said, as a plaintiffs lawyer considering a suit, she looks first at whether there is a valid complaint against the company, then she evaluates the extent of damage and tries to determine who is responsible.

"In sum, absolutely, (D&O cover-

age) is something that is taken into account," she said. "Is it the determining factor? No."

Mr. Bailey said he worries that a trend toward companies providing information about D&O coverage in their proxy statements could lead to more suits, because plaintiffs lawyers can more easily identify the companies that have the coverage.

But Ms. Colwell disagreed, saying she thinks the absence or presence of D&O coverage doesn't influence whether a company might be a tar-

There seems to be little chance for tort relief in the directors and officers area any time soon. 'In today's post-Enron environment, that dog won't hunt.'

Dan A. Bailey
Arter & Hadden L.L.P.

get of a shareholder suit. "I live in California," she said. "The ground

shakes there. People disclose that they have earthquake insurance because they feel that's something investors need to know about."

Mr. Bailey said he doesn't see any chance for tort relief in the D&O area any time soon. "In today's post-Enron environment, that dog won't hunt," he said.

Ms. Gilden said, though, that she doesn't think such relief is needed. "The notion that tort relief is somehow needed is something I totally disagree with," she said. Instead, what's needed is better corporate governance, better recordkeeping,

more honest disclosure to the marketplace and fewer incentives for corporate executives to "cook the books," she said.

The Hines Symposium is presented annually by the Chicago chapter of the Risk & Insurance Management Society Inc., the Insurance School of Chicago and *Business Insurance*. It honors the late Harold H. Hines Jr., who at the time of his death in 1984 served as president and chief executive officer of Rollins Burdick Hunter Co., now part of Aon Corp.

Kathryn J. McIntyre, executive vp of the Spencer Educational Foundation and former publishing director of *Business Insurance*, moderated this year's event.

Noncompete: Brokers clash over job pacts

Continued from page 3

under Georgia law, the suit says, because they prohibit:

- Solicitation of Marsh's "prospects," whether or not those prospects ever became Marsh clients.

- Solicitation of former clients of Marsh and its affiliates.

- Acceptance of business as well as solicitation.

Marsh has already tried to enforce similar agreements against

other former executives who left to join Palmer & Cay and should be enjoined from attempting to do the same to Mr. Meathe, Palmer & Cay's suit contends.

In cases involving insurance brokerages' noncompete agreements, courts have either ruled that the noncompete agreements are not legally enforceable or have refused to issue injunctions barring former brokerage employees from soliciting accounts.

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Property/casualty insurers' 2003 first-quarter results

Ranked by net income. All amounts in thousands of dollars.

	Corporate			Property/casualty operations					
	Net income 2003	Percent increase (decrease) 2003-2002	Consolidated revenues 2003	Combined ratio 2003 ¹	Combined ratio 2002 ¹	Premiums written 2003	Percent increase (decrease) 2003-2002	Policyholder surplus 2003	Percent increase (decrease) 2003-2002
American International Group Inc.	\$1,954,000	(1.3)%	\$18,927,000	93.1% ²	95.8% ²	\$8,243,000 ²	30.1%	N/A	N/A
Travelers P/C Corp.	340,000	233.0	3,603,000	99.4 ²	101.4 ²	3,166,500 ²	16.2	7,841,100	1.9
ACE Ltd.	247,444	25.1	2,231,701	90.6	93.1	2,930,052	47.5	6,702,445	8.0
Chubb Corp.	224,600	13.3	2,615,900	95.3	95.9	2,674,000	22.1	4,850,000	20.5
The St. Paul Cos.	181,000	36.1	2,113,400	97.3 ²	99.6 ²	1,976,800	(6.6)	5,353,100	5.3
Royal & SunAlliance USA	111,000	12.1	N/A	100.8	102.0	860,000	3.6	1,708,000	(33.3)
Old Republic International Corp.	104,386	9.2	739,087	94.8	100.1	348,201 ²	18.9	1,701,146	10.9
SAFECO Corp.	90,000	41.5	1,762,300	98.2	108.3	1,205,800	10.9	2,570,900	10.3
CNA Financial Corp.	83,000	315.0	2,850,000	107.9 ²	107.8 ²	2,070,000 ²	(17.2)	N/A	N/A
Cincinnati Financial Corp.	56,626	(24.4)	707,118	95.1	98.8	686,511	10.6	2,606,529	(13.7)
Argonaut Group Inc.	33,579	349.4	191,398	106.5	108.0	130,927	36.4	302,928	5.2
American Financial Group	25,100	1,692.9	839,100	97.4	101.4	556,700	(13.5)	1,468,200	(13.0)
Ohio Casualty Corp.	19,900	(26.0)	421,800	108.8 ²	106.5 ²	352,200 ²	(6.1)	733,800	(5.8)
RLI Corp.	14,436	58.6	120,215	91.2	96.6	106,096	23.8	407,049	33.6
Hartford Financial Services Group Inc.	(1,395,000)	NM	4,331,000	97.7	100.2	2,440,000	18.2	5,136,000	(12.3)
Liberty Mutual Ins. Co.	NA	NA	NA	104.4	115.9	2,828,000	17.5	5,261,000	(9.6)
Cumulative	\$2,090,071	(36.7)*	\$41,453,019	97.2%	101.0%	\$30,574,787	16.0%	\$46,642,197	0.5%

¹Includes dividends ²Statutory NM-Comparison not meaningful due to first-quarter net loss NA-Company did not provide data *Excluding Hartford, total net income rose 15.8% Source: BI survey

Insurers: Property rate hikes decelerating

Continued from page 3

a hardening rate environment," said Michael Paisan, an analyst with Legg Mason Inc. in New York. The industry is "beginning to see a convergence of strong rate increases with strong earnings momentum," he said. In contrast, in a typical cycle earnings power and pricing power develop sequentially, he said.

"What a difference a quarter makes," said Stephan Petersen, vp at Cochran, Caronia & Co. in Chicago. "We view first-quarter earnings as almost a 180-degree turn from that of the fourth quarter" of 2002, when many companies reported charges against earnings for reserve additions. The first-quarter results "provided clear evidence" that stronger pricing is driving earnings, said Mr. Petersen.

One factor that kept quarterly results from being even better was continued low investment yields.

Interest rates remained at histori-

cal lows, the equity markets remained relatively weak, and the economy is still sluggish, said John L. Ward, chairman of the Cincinnati-based Ward Group.

Mr. Paisan said, however, that the larger insurers generating the most cash flow "are not going to have a real issue with investment income despite a lower yield on that investment income. As long as they continue to generate strong cash flow, their total invested asset base will go up," so it will not be a major issue "for the most part."

"While interest rates are down, and portfolio yields continue to decline, cash flow levels are looking better," said Mr. Lewis, who added that the industry might be getting to the point where investment income "starts to stabilize."

He also said that it "bodes well for earnings into 2004" that the industry is being forced to aim for an underwriting profit because it cannot rely on investment income to

produce acceptable returns on equity.

The outlook is for continued strong results this year, say analysts.

"I'm expecting better pricing to continue driving cash flow and strengthening balance sheets into early next year," said Mr. Petersen of Cochran Caronia.

But others see potential brakes on the industry's earnings momentum.

"I'm optimistic, but out there are some ominous clouds on the horizon that we need to be careful and navigate around," said Mr. Ward. In property lines, in particular, there will be some moderation in rate increases beginning this year but especially next year, he said. "It's going from an all-out hard market to one that's a little more dependent on the line of business," he said.

Although U.S. property rate hikes are not as strong as they had been, Mr. Paisan said that "in most areas you're still seeing healthy rate increases, and I think that will proba-

bly last through this year, and you'll begin to see it level off in 2004."

"I think in commercial lines, pricing power is waning," said Chris Winans, a principal and senior equity analyst with The Williams Capital Group in New York. But, he added, there have been so many increases over the past two years that even if the rate hikes stopped altogether "the insurers would still be in very good shape in terms of their profit margins."

Meanwhile, most analysts do not expect additional reserve increases on the order of the Hartford's recent move.

"It's not the beginning of another wave of reserve strengthening," said Mr. Winans.

"I think it's the tail end of that wave," which started in 2001 with CNA Financial Corp.'s \$778 million addition to reserves for asbestos, environmental and mass tort claims. Several other insurers followed suit

in 2001 and 2002.

"I think what (Hartford) did was essentially what everybody else did at the end of last year, which was to shore up their balance sheet and make it as strong as they can so they can get the benefit of the rate increases filtering to the bottom line," Mr. Paisan said. "I think most of that stuff has been put behind the industry right now," he added.

Mr. Paisan noted that a critical factor will be what develops with asbestos reform proposals in Congress (BI, May 26). Insurers did not assume there would be tort reform when they did their financial modeling, so if it does happen, it will be a positive development, he said.

Mr. Gallant of Keefe, Bruyette & Woods said that reserve increases might be seen in areas other than asbestos, including workers compensation, medical malpractice and professional liability. "Almost any line could see some strengthening," he said.

Mutual: Rate stability sought

Continued from page 1

about a year," Mr. Heyliger said. "They were looking to reduce their reliance on the open market."

PHIL is licensed as a class 2 insurer in Bermuda. But while class 2 companies face a minimum capitalization requirement of \$250,000, Mr. Heyliger said, "PHIL is capitalized at way in excess of the minimum."

"Generally, mutuals are set up as class 2 companies under Bermuda regulation," he said.

Mr. Heyliger said there is the possibility that other pharmaceutical companies will join the new mutual insurer.

While pricing in the property market is widely seen as stabilizing, one risk management and alternative risk financing consultant said he sees several reasons for PHIL's formation as a property and business interruption insurance vehicle.

"I think what we're seeing on the property side is definitely a leveling off of prices. I don't think we're go-

ing to see rate reduction for quite some time," said Michael Maglaras, president of Michael Maglaras & Co. in Stamford, Conn.

"Where the real issue is, is the satisfaction of internal deductibles," he said. The consultant said he has seen some companies crafting vehicles to help finance larger property and business interruption retentions. In addition, there are issues of coverage inadequacy in the current business interruption market, he said.

Another factor Mr. Maglaras said he sees behind PHIL's formation is the trend of companies that might be competitors in the marketplace coming together for insurance reasons because they have common risk management interests. "We've seen several examples of that," he said.

The AstraZeneca spokesman said the mutual structure was a good fit for the major pharmaceutical companies. "Each of the companies knows each others' risks, and they all operate under the same set of rules," he said. "We each know basically what the exposures are if a plant goes down."

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June 2, 2003

Late News

Continued from page 1

for several years," said Cecil Pearce, vp-Southeast Region for the Washington-based American Insurance Assn.

Minnesota enacts law to protect comp insurers

Minnesota Gov. Tim Pawlenty has signed legislation barring tax-exempt insurers based in other states from writing workers compensation coverage in Minnesota. "This legislation was necessary to prevent



Gov. Pawlenty

tax-advantaged entities, such as the North Dakota state fund, from competing with private, Minnesota-licensed insurers," said Bill Schroeder, vp-Midwest Region for the Downers Grove, Ill.-based Alliance of American Insurers. The legislation goes into effect Aug. 1, according to a state spokesman.

S&P sees more difficulty ahead for reinsurers

Standard & Poor's Corp. in London

believes that 2003 will continue to be a difficult year for reinsurers and has given the industry a negative outlook for the sixth year in a row. S&P says that despite further price increases during the January 2003 renewal season, "the market continues to suffer from a diminished quality of capital, reduced financial flexibility, prior-year liabilities, the overhang of reinsurance recoverables and the likelihood that many companies' operating performance will fall short of expectations."

Zurich Financial Services sells U.S. life unit

As part of its efforts to focus on nonlife business, Zurich Financial Services Group is selling its U.S. life insurance unit, Zurich Life, to Bank One Corp. Under the deal, Bank One will pay \$500 million in cash for the Schaumburg, Ill.-based life operation. ZFS will retain its Kemper Investors Life Insurance Co. unit. "The sale of Zurich Life is consistent with our decisions to reallocate capital to nonlife businesses," ZFS Chief Executive Officer James J. Schiro said in a statement.

Sprinkler maker agrees to enhance recall terms

Central Sprinkler Co. and the Building Owners & Managers Assn. International have agreed to a settlement that will enhance a \$200 million voluntary recall of 37 million

fire sprinkler heads. In July 2001, Central reached an agreement with the U.S. Consumer Product Safety Commission to replace certain



models of its O-ring sprinklers installed in buildings nationwide. Central initiated the recall because the sprinklers' O-ring seals degraded over time, potentially malfunctioning in a fire. Under that program, Central Sprinkler of Lansdale, Pa., was to hire contractors to replace the sprinklers. But the settlement with Washington-based BOMA will allow building owners to use Central's contractors or hire their own contractors to perform the task.

ERISA plans found exempt from rule on disability

The Supreme Court ruled that Social Security's so-called "treating physician" rule does not apply to employee benefit plans governed by the Employee Retirement Income Security Act. The treating physician rule stipulates that a patient's treating physician should be given

deference in determining the extent of his or her disability. The case before the court—*Black & Decker Disability Plan vs. Nord*—involved a worker whose treating physicians said he was unable to carry out his job. An independent medical examiner said that the employee could perform other jobs, and the company denied the worker long-term disability benefits.

Briefly noted

Michigan enacted legislation limiting insurer exposure under the standard fire policy. Effective immediately, commercial property/casualty insurance policies are not required to cover a fire loss that ensues from an act of terrorism if the policyholder has refused to buy coverage offered under the federal Terrorism Risk Insurance Act....The Illinois Legislature approved H.B. 211, which requires health insurance plans that cover prescription drugs and devices to cover all Federal Drug Administration-approved prescription contraceptive drugs and devices provided on an outpatient basis.

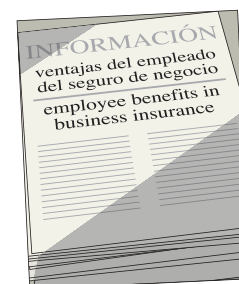
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Online Poll

[5/26 - 5/30]

Is your company planning to make more employee benefits information available in Spanish?



Yes 18.87%

No 81.13%

BI Stock Index

[5/16 - 5/30]

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

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

BI Stock Index 1906.44 **0.79**

Dow Jones 8850.26 **2.89**

S&P 500 963.59 **3.25**

Largest gains

Fairfax Financial	34.29%
Vesta Insurance Co.	15.00%
Argonaut Group	12.00%
Lincoln National	9.95%
AEGON N.V.	9.45%

Largest losses

ESG Re Ltd.	-24.87%
Unico American Corp.	-4.75%
Berkshire Hathaway	-3.86%
PXRE Corp.	-2.19%
American Financial Group	-1.78%

Weekly change by market segment

Brokers	1.61%
Insurers/Reinsurers	3.91%
Managed Care Organizations	2.10%

Source: CNET Investor (investor.cnet.com)

COBRA: New rules get mixed reviews

Continued from page 1

be extended, the administrative cost that would result from the proposed regulations would exceed Labor Department estimates, they say.

On the positive side, observers note that the proposed guidelines would offer some clarity. The model notices of the general COBRA notice and the COBRA election notice would prove valuable to employers, they add.

"I think it's helpful, from the perspective that until now employers have largely been operating on this issue without any guidance from the government," said Rich Gisonny, a principal with Tower Perrin in Valhalla, N.Y. "I also find the inclusion of the model notices in the regulations helpful."

"I think it does help clarify things and make it more comfortable for employers, but, of course, we were operating under the good faith standard anyway, so I think most employers were pretty much in compliance," said Leslye Laderman, an attorney and associate principal with Buck Consultants in St. Louis.

"I've been hearing for years and years and years that the DOL has been working on this project," said Mark Hamelburg, an attorney and principal with the Washington Resource Group of Mercer Human Resource Consulting. "There's never been guidance on these, and there's continued to be court cases surrounding COBRA notices."

"Case law has shown how am-

biguous the statute has been," noted Jessica Cole, vp-COBRA operations for COBRA Compliance Systems Inc., a COBRA administration firm based in Coldwater, Mich. "There are a number of notification issues

'I find it hard to believe that it's taken the Department of Labor 17 years to come up with this and they expect employers to comply with them in seven months.'

Andy Anderson
Hewitt Associates Inc.

that, because of the lack of notification guidance, had to be tried through the judicial system" and the courts have rendered conflicting decisions, she said.

Ms. Cole said that though guidance has been needed, the DOL did not go far enough in its efforts.

She notes, for example, that while the DOL would create two new notification requirements for employers, it wouldn't give guidance in other areas, such as what to do if the COBRA notice were to be returned undelivered and were to require correction. "I'd like to have seen guidance on that," Ms. Cole said.

Consultants have other concerns as well.

"I think these regulations are like swatting a fly with a sledgehammer," said Andy Anderson, legal practice leader for Hewitt Associates Inc.'s outsourcing business in Lincolnshire, Ill.

The Labor Department estimates that less than 1% of individuals each year either fail to receive COBRA notices or receive inaccurate notices, he said. While any problem with the receipt or accuracy of COBRA notices is troublesome, "this is asking the other employers and administrators who are cranking out the other 99% of the notices on time with accurate information to now make changes," he said. "Every single employer and/or COBRA administrator will need to review and revise the COBRA notices that they've been using, in many cases, for years, as a result of these regulations if they become final in this form. That will require a significant one-time expense, far more significant than the agency has estimated," he said.

In its proposed regulations the DOL estimates that the administrative costs associated with the first year the regulations were to be effective would be \$2.4 million, which would be borne by an estimated 415,000 group health plans currently required to offer COBRA coverage.

"I can't be certain, but I think, generally, the government tends to underestimate what the administrative impact will be," Towers Perrin's Mr. Gisonny said. "I think, when

employers start to extend the time and energy to review the rules and to make the changes they need to...those costs will likely add up to more than the government estimates."

One of the biggest concerns consultants see in the proposed rules is the Jan. 1, 2004 deadline.

"The effective date is pretty short, which concerns me," Mr. Hamelburg said. "Even if there isn't a whole heck of a lot that needs to be done, it takes a while for information like this to disseminate through businesses. ...People are already in process of printing items like (summary plan descriptions) for next year, and this will interrupt that process."

"I find it hard to believe that it's taken the Department of Labor 17 years to come up with this and they expect employers to comply with them in seven months," Hewitt's Mr. Anderson said. "They have a very unrealistic proposed effective date."

"I would hope that, after the department receives comments about these...they will make some perhaps significant changes—the most important of which would delay the effective date to at least 2005," he said.

The text of the rules is available on the Federal Register link at www.archives.gov. Written comments on the rules should be received by the Department of Labor by July 28.