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June 14, 2004

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A cold day in state's 'judicial hellholes'?

Mississippi tort reforms hailed

By MARK A. HOFMANN

JACKSON, Miss.—A state once cited by tort reform advocates as an example of a civil justice system run amok is now being hailed as an example of a successful tort reform campaign that other states should emulate.

The state is Mississippi, where Republican Gov. Haley Barbour plans to sign comprehensive tort reform legislation into law later this week.

Tort reform supporters consider the state's passage of the comprehensive tort reform legislation as a particularly sweet victory, given Mississippi's reputation as one of the most plaintiff-friendly states in the union. Several Mississippi jurisdictions have previously been named "judicial hellholes"—jurisdictions where there is a systematic bias against defendants—by the American Tort Reform Assn.

And pro-reform forces in other states should take a cue from their Mississippi counterparts by pushing for reform even in the face of setbacks, say reform advocates.

HB 13, Mississippi's comprehensive tort reform package, won final passage on June 4 (*BI*, June 7). The measure, which was one of Gov. Barbour's legislative priorities, will, among other things, cap noneconomic damages in medical malpractice cases at $500,000 and cap noneconomic damages in other civil cases at $1 million. It will also tie maximum punitive damage awards to a defendant's net worth and replace the existing system of joint and several liability in civil cases with a system based on pure allocation of fault. Most provisions of the bill will take effect on Jan. 1, 2005, according to a spokesman for Gov. Barbour.

Perhaps most significantly, the measure also contains venue reform, said Mark Behrens, a partner in the Washington office of Kansas City, Mo.-based law firm Shook Hardy & Bacon.

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Late News

Lawmakers urge extension of TRIA

A bipartisan group of more than 100 members of the U.S. House of Representatives is urging the Treasury Department to support extension of the Terrorism Risk Insurance Act. In a letter to Treasury Secretary John Snow last week, the lawmakers note that the General Accounting Office has reported "there is no evidence that a sustainable marketplace for terrorism insurance will exist beyond the expiration of TRIA," which currently is set for Dec. 31, 2005.

PHOTO: NY TIMES

UAL to shift costs of retiree benefits

UAL Corp. retirees will pay more for their health care benefits under an agreement reached with former employees of the airline. The agreement, combined with an earlier pact with employees, will save the company more than $300 million through 2010. The deal was needed to facilitate company's reorganization plan, according to the airline. Details were not made public. However, a UAL spokeswoman said the agreement will require retirees to contribute more to the cost of their medical benefits.

Court limits recovery of cleanup costs

The 4th U.S. Circuit Court of Appeals has limited the ability of private parties and government entities to directly sue the insurers of bankrupt Stoller Chemical Co. in an effort to recover their pollution

See LATE NEWS/page 39

Equitas' latest reserve boost seen as spur for settlements

By SARAH VEYSEY

LONDON—Equitas Ltd.'s announcement that it has again boosted its asbestos reserves—and seen its surplus fall—is expected to prompt more policyholders to pursue settlement deals with the runoff reinsurer.

In publishing its results for the year ending March 31, Equitas revealed that it had increased reserves for asbestos by £296 million ($544.6 million), bringing the gross undiscounted total to £4.0 billion ($7.36 billion). As a result, the group's accumulated surplus after tax fell by 12.7% to £460 million ($846.4 million), according to Scott Moser, chief executive of Equitas in London.

The latest boost marked the fourth asbestos reserve increase in five years at Equitas, which is the runoff reinsurer for Lloyd's of London syndicates' pre-1993 long-tail liabilities.

In addition, Equitas reported that it paid gross claims of £1.4 billion ($2.58 billion)

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PHOTO: NY TIMES

Senate legislation would extend health care coverage to members of the National Guard and military reservists, even those now covered under employer-sponsored plans.

Military cover extension would benefit employers

By JERRY GEISEL

WASHINGTON—As more members of the National Guard and Reserve are called up for active military service, Congress is considering new proposals to ease health insurance burdens on those individuals and their employers.

Earlier this month, as part of a still-pending Department of Defense spending bill, S. 2400, the Senate approved a bipartisan amendment that would extend a military health insurance program to all members of the Guard and Reserve—including those with access to employer-based coverage.

The amendment, sponsored by Sen. Lindsey Graham, R-S.C., also would provide federal health insurance premium subsidies for those reservists called up for military duty who decide to retain their employer-provided coverage for their families.

If enacted by Congress, the amendment would have broad implications for employers, employees and, perhaps, the nation's health care system as a whole by possibly bringing down by a notch the number of individuals in the United States without health insurance.

Under the amendment, all reservists and mem-

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Spotlight report

GOVERNMENT RISK MANAGEMENT

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LARGEST PUBLIC ENTITY RISK POOLS

Ranking on page 12

Spitzer widens investigation of broker commission deals

PHOTO: GETTY

New York Attorney General Eliot Spitzer has subpoenaed several insurers and brokers.

NEW YORK—New York Attorney General Eliot Spitzer's investigation into compensation arrangements between brokers and insurers continues to widen as at least four more insurers announced that they have been subpoenaed by Mr. Spitzer.

Aetna Inc., CIGNA Corp., Hartford Financial Services Group Inc. and MetLife Inc. reported last week that they had received subpoenas seeking information on the compensation agreements the insurers have with brokers, and each insurer said it is cooperating with the investigation.

The subpoenas are part of an industry-wide inquiry into whether contingent commission or profit-sharing agreements—which reward brokers based on the volume or profitability of business they place with an insurer—represent a conflict of interest for the broker's representation of its client to the market.

Mr. Spitzer launched the investigation in late April. Since then, several insurance brokers, including Marsh & McLennan Cos. Inc., Aon Corp. and Willis Group Holdings Ltd., said they have received subpoenas. Last month, Chubb Corp. said it had received a subpoena from Mr. Spitzer.

—By Sally Roberts

Liberty Mutual unit seeking shutdown of state comp fund

By ROBERTO CENICEROS

PORTLAND, Ore.—A unit of Liberty Mutual Group Inc. is drawing criticism from several Oregon employers over efforts to abolish the state-owned workers compensation insurer.

Liberty Northwest Insurance Corp. is seeking to place an initiative on the November ballot that would require Oregon's State Accident Insurance Fund Corp. to cease writing new business and renewing existing policies.

The initiative also calls for using SAIF's assets "to support education, prescription medications, local law enforcement and workforce training, rather than to provide an organization to selectively sell insurance in the retail market," according to filings with Oregon Secretary of State Bill Bradbury.

According to SAIF, the state-backed insurer currently provides coverage for 42% of the Oregon market, or about 45,000 policyholders. Liberty Northwest, meanwhile, has the second-largest market share, insuring about 16% of the state's employers, a spokesman for Liberty Northwest said.

Most of the remaining employers in Oregon either self-insure or are units of corporations that purchase coverage from other, nationwide insurers for their multistate operations, sources said. Observers say no other insurers have a strong presence in the state's workers comp market.

Portland-based Liberty Northwest acknowledged it has backed the initiative by funding political action groups and radio and television commercials.

For their part, several Oregon employers say they oppose that effort, contending that the existence of SAIF has helped workers comp rates stay flat—and, in some cases, decrease—for more than a decade, while rates in neighboring states have gone up. They also say that SAIF's influence on rates helps Oregon attract and retain businesses.

"The presence of SAIF alone helps keep rates down," said Jeri Ray, insurance administrator for Timber Products Co., a multistate employer based in Springfield, Ore., that purchases coverage from SAIF.

"That is important in Oregon. We are struggling with our economy. I believe SAIF is a positive part of the economy. Their detractors will tell you they are not, and I will disagree wholeheartedly," Ms. Ray said.

"My members are more adamant on this issue than I have seen them on an issue in a long time," said Jessica Adamson, a lobbyist for Associated General Contractors, an employer group based in Wilsonville, Ore. The group's workers comp program is underwritten by SAIF. "This is a direct bottom-line issue for them. Oregon's workers comp system provides incredible benefits for employers, and this ballot measure seeks to disrupt a system that has produced incredible results over the last 14 years."

Oregon's Legislature created SAIF in 1913 to protect employees with work-related injuries. In 1980, SAIF was transformed from a state agency to a public corporation, which has a five-member board of directors appointed by the governor. Critics, including Liberty Northwest, contend that SAIF has abandoned its role as insurer of last re-

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PHOTO: AFP

Pfizer Inc. faces several lawsuits related to a subsidiary's marketing of the epilepsy drug Neurontin. The alleged marketing practices occurred before Pfizer acquired the company in 2000.

Lawsuits mount over marketing of epilepsy drug

By DOUGLAS McLEOD

NEWARK, N.J.—Pfizer Inc. is facing a barrage of lawsuits following the guilty plea of one of its subsidiaries to federal charges of illegally marketing the epilepsy drug Neurontin.

Two health insurers, a pair of union health plans and other plaintiffs have filed seven proposed class action lawsuits in recent weeks seeking billions of dollars of damages from Pfizer, its Warner-Lambert Co. subsidiary and Warner-Lambert division Parke-Davis for alleged racketeering, fraud and violations of state deceptive trade practices laws.

The plaintiffs—including Aetna Inc., Guardian Life Insurance Co. and a Teamsters health and welfare fund—accuse Pfizer units of reaping huge profits from the illegal marketing of Neurontin for medical conditions it was never approved to treat. In the process, the company provided false information about Neurontin's effectiveness, and it paid kickbacks to physicians to prescribe the drug, the lawsuits charge.

Warner-Lambert last week pleaded guilty to federal felony charges stemming from its Neurontin marketing and has agreed to pay $430 million to settle actions brought by federal and state law enforcement authorities. The payment includes a $240 million criminal fine, $152 million in damages to Medicaid programs and $38 million to fund a remediation program for consumers.

Pfizer, which acquired Warner-Lambert in 2000, after the alleged illegal marketing occurred, also agreed to a compliance program governing its sales practices. The New York-based phar-

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Inside Business Insurance

Canadian pension woes prompt benefit cuts

Many Canadian companies' are making benefit cuts in response to large pension funding deficits, a report finds. Page 4

Better safe than sorry, companies say

Some safety managers are working to develop more aggressive ways to prevent injury and illness. Page 4

If it can make it there, it can make it anywhere

A successful campaign to enact tort reforms in Mississippi should encourage reformers elsewhere, one of this week's editorials says. Page 8

Cable company sues captive over claim

A cable company is trying to force payment of a claim for lost revenues from a construction delay. Page 33

Insurers urged to respond to climate-change risks

A report by the Assn. of British Insurers says that insurers and policyholders will face growing weather-related risks, citing climate change predictions. Page 33

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: How likely is it that other states will follow Ohio and Mississippi and approve significant tort reform legislation?

Departments

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS.

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Pension deficits in Canada spur benefit cuts

By GLORIA GONZALEZ

Substantial pension funding deficits are forcing many Canadian companies to take drastic measures to limit their overall benefit costs, including changing the structure of their pension plans and eliminating or reducing both pension and nonpension retirement benefits.

Many Canadian companies are being forced to make special payments to cover shortfalls in their pension programs, benefit consultants say. A study released last week by the Certified General Accountants Assn. of Canada reveals that 59% of all Canadian defined benefit plans are now underfunded. According to the study, it will take $160 billion Canadian ($118.4 billion) in special payments to cover the shortfall.

"We've moved from a world where nothing was being paid to a world where large deficits are being paid in five years," said Ian Markham, director of pension innovations for Watson Wyatt Worldwide in Toronto. "There's a huge drain of cash away from the business into pension funds."

A number of factors have contributed to the deficit problem for Canadian companies, including recent weakness in the equities markets. An important element, consultants say, are federal and provincial laws that prevent employers from completely controlling plan surpluses. That, they say, discourages employers from putting more money into their pension programs.

In most cases, employers currently remain fully responsible for covering any deficits but often must share surpluses with plan members, according to Steve Bonnar, a principal with Towers Perrin in Toronto.

"The biggest single reason is the uncertainty over any surplus assets in the plan," Mr. Bonnar said. "The legal status of the surplus and the ability to use the surplus is uncertain. That causes employers to prevent surpluses from occurring. We've got a system where it encourages employers to push contributions as far out into the future as possible."

Mr. Bonnar co-wrote a recent Towers Perrin paper on the Canadian pension system that suggested several regulatory changes, including establishing one national pension regulator, easing minimum funding standards and giving control over surpluses to employers.

Some of Canada's biggest companies are facing enormous deficits. Toronto-based Nortel Networks Corp. had an estimated pension deficit of about $2.6 billion Canadian ($1.92 billion) as of Dec. 31, 2003, according to the company's annual report. Montreal-based Air Canada Inc. and Hamilton, Ontario-based Stelco Inc., both of which are undergoing court-supervised restructuring of their business operations, have funding deficits of $1.2 billion Canadian ($888.1 million) and $750 million Canadian ($555.1 million), respectively.

Many Canadian companies have made large contributions toward funding their pension programs. Calgary-based Canadian Pacific Railway, which reported a deficit of about $721 million Canadian ($533.6 million) at the end of 2002, made a $300 million ($222.0 million) special payment into the company's defined benefit pension plans in Canada last year. Nortel Networks made cash contributions of about $325.7 million ($241.1 million) toward its pension funding deficit.

These special payments are often accompanied by the introduction or increase of employee pension contri-

See PENSIONS/page 36

Metrics improve safety through better statistics

By MEG FLETCHER

Increasing numbers of safety managers are striving to develop statistically-based systems to help prevent injuries and illnesses, rather than taking a reactive approach to safety analysis.

In their work to assess their safety efforts, safety managers are putting more emphasis on measuring and reporting "leading" indicators, such as compliance with machine guard use requirements because statistics show that fewer workers are injured when such guards are in place.

The goals of a company's safety program determine the type of safety data it needs to collect and analyze.

The change in emphasis from historical analysis of loss data to proactive analysis of the effectiveness of safety measures is significant, experts say.

Previously, safety managers focused more on "lagging" indicators—such as statistical reports on the number of worker injuries or their lost workdays—which reflect the reporting requirements of the Occupational Safety and Health Administration, according to Christopher A. Janicak. He is an associate professor of safety at Indiana University of Pennsylvania in Indiana, Pa.

"The historical health and safety measurement mindset is one of tracking failure, showing loss avoidance and not a positive contribution to business," said Paul Esposito, president of STAR Consultants Inc., which is based in Annapolis, Md.

The new trend in prevention may require the use of a safety metrics program, which consists of quantifying and analyzing data to determine if an organization's safety goals are being met, said Mr. Janicak, who has written a book on the subject. For example, a safety manager asked to determine the appropriate height to install an emergency shut-off switch might use standard tables of workers' average reaching height and then factor in normal distributions and standard deviations to determine a height that 98% of all workers could be expected to reach, he said.

The goals of an individual company's safety program determine the type of safety data that it needs to collect and analyze, said Lon Ferguson, chairperson of the Safety Sciences Department at

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Errors & omissions

● A May 31 article on the California Public Employees Retirement System misspelled the surname of David Joyner, senior vp-network management at Blue Shield of California in San Francisco.

Supreme Court clarifies rules for early retirement benefits

By MARK A. HOFMANN

WASHINGTON—A pension plan cannot expand the categories of post-retirement employment that trigger suspension of early retirement benefits and then deny benefits already accrued, a unanimous Supreme Court ruled earlier this week.

The case—*Central Laborers' Pension Fund vs. Thomas E. Heinz et al.*—involved Illinois construction workers who took early retirement in 1996. Thomas Heinz and Richard Schmitt were entitled to the same monthly retirement benefits they would have received if they had "retired at the usual age," according to the Supreme Court decision. But to receive the payment, the early retirees—both of whom were 39 at the time—had to agree not to engage in any "disqualifying employment," which in this case was defined as "any job as 'a union or nonunion construction worker,'" the decision notes. The provision did not cover supervisory jobs, and when the men accepted such jobs, the plan continued to pay their pension benefits.

But in 1998, the plan amended its definition of disqualifying employment to include any job in any capacity in the construction industry. The plan stopped paying the men their benefits, and

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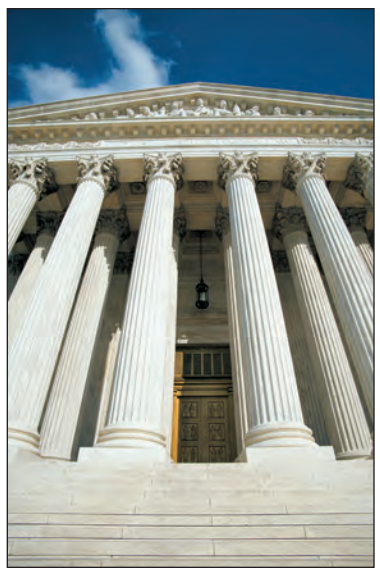

CEBE Employee Benefits Leadership Forum

Employers advised to analyze plan designs in light of trends

By JERRY GEISEL

WHITE SULPHUR SPRINGS, W.Va.—Employers need to prepare for broad trends that could dramatically affect their employee benefit programs, a benefit expert says.

While many parts of the crystal ball are clear, too often employers are "immediate-oriented" and are not preparing for broad changes, said Gary Kushner, founder and president of Kushner & Co., a Portage, Mich.-based consultant and benefit plan administrator.

Speaking at the third annual Council of Insurance Agents & Brokers Employee Benefits Leadership Forum, held this month at the Greenbrier resort in White Sulphur Springs, W.Va., Mr. Kushner outlined some of those trends and their impact on benefit plans.

The most striking recent trend has been escalating health care costs. Over the last few years, Mr. Kushner said, many employers have seen their health care plan costs increase by double-digit percentages annually.

That's a dramatic change from the mid-1990s, when the shift to managed care from traditional indemnity plans, coupled with fierce price competition among managed care organizations, kept rates stable for several years.

Now, though, Mr. Kushner said, "employers are getting desperate. Is the status quo sustainable? I have yet to find someone who says yes."

Indeed, if current cost trends continue, employers, within a few years, may be spending more each year on health care coverage for their lower-paid employees than on their wages, he said.

Those high cost increases may, at least in part, be rooted in how health care plan design has evolved. Back in the early 1960s, for example, many health care plans covered only catastrophic expenses, such as hospital bills.

But as plans evolved, they began to cover an ever-growing share of medical costs. Now, Mr. Kushner said, employers pay most costs, with employees consequently becoming separated from the costs of services.

That situation is resulting in an interest in new designs, ones that give health plan enrollees financial incentives to use services more carefully. Examples of these new designs, Mr. Kushner said, are health

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Continued coverage on page 30

Mississippi: Governor to sign tort reform

Continued from page 1

"The venue reform provision may have the greatest impact," said Mr. Behrens, a longtime tort reform advocate. "The new law provides that venue must be proper for each individual plaintiff in a case. Mississippi courts must now dismiss cases brought by nonresidents that have no logical connection to the state."

Mississippi, which does not have a class action rule, "has allowed for very liberal consolidation of individual cases," said Mr. Behrens. "The law had been that if venue was proper for one plaintiff, it would be proper for all," he said. As a result, de facto class actions involving out-of-state defendants, but few local plaintiffs, would be brought in a handful of plaintiff-friendly jurisdictions, he said.

The change will "go a long way toward curbing forum-shopping abuse," he said.

"If it can happen there, it can happen anywhere," said William Stander, regional manager for Property Casualty Insurers Assn. of America in Tallahassee, Fla. "This is really an opportunity for Mississippi to show that it can lead the nation on important issues."

Mark Leggett, director-government affairs for the Mississippi Manufacturers Assn. in Jackson, said that the state's reputation helped spur the drive for reform. "Enough people realized that we had to do something. This is a major change. This is going from reverse to going forward."

Risk managers, insurers and reformers alike hailed the change.

"Gov. Barbour of Mississippi has made great strides for a state which has historically had significant tort reform issues," said Janice Ochenkowski, vp-external affairs for the Risk & Insurance Management Society Inc. in New York. "By passing this bill, Mississippi acknowledges the importance of mitigating the economic effects that occur when a company is forced into fighting egregious lawsuits, expending money and resources that could be put back into the company and back into the American economy. RIMS is pleased that Mississippi is working to create a viable and fair system for legitimate lawsuits that cannot be resolved through mediation," said Ms. Ochenkowski, who is also senior vp at Chicago-based Jones Lang LaSalle Inc.

Robert Vagley, president of the American Insurance Assn. in Washington, issued a statement calling passage of H.B. 13 "a major accomplishment for insurers and our coalition partners in the Mississippi business community. Achieving comprehensive civil justice reform has been a multiyear process" that began in 2002, he said.

"All Mississippians have been hurt by the economic impact of the state's out of control litigation environment," said Sherman Joyce, president of the American Tort Reform Assn. in Washington. "The reforms should serve as a model for other states that want to restore balance to their civil justice system, keep health care affordable and accessible, and attract business and jobs to their state."

Maintaining unity and momentum was a key factor in winning approval of the legislation, said Mr. Leggett.

"We hung together—the business and the medical community. Another factor was we had a special session two years ago that lasted for 83 days; in most years, our legislature only meets 90 days. It was devoted to tort reform. That was a key—we got something two years ago and we told them at the time, 'We'll be back.' "

Mr. Leggett also noted that pro-reform forces were heavily involved in the 2003 election, managing to increase a core of about 40 pro-reform House members to about 60 of the 122 members.

"One of the messages for insurers and other businesses is that problem jurisdictions can be improved," said Mr. Behrens. "The legal climate in problem jurisdictions can be improved if a long-term commitment is made and people stay focused on what they're trying to achieve. One of the things we see in tort reform efforts in some states is (that) businesses come in for the short term, they try to get something and if they don't get something right away, people got discouraged and leave. The reforms in Mississippi were the result of a what was a fairly long-term commitment to improve the state's legal climate," he said.

"Reform is possible if people make a long-term commitment to get involved in the legislative process, get involved in the governor's race. What was also significant in the end was that the biz community hung together—people didn't go off and cut their own deals," Mr. Behrens said.

Both Mr. Behrens and Mr. Stander noted that the courts could still intervene and overturn some or all of the law.

Mr. Behrens noted that there will be four state Supreme Court seats at stake in the November elections. "The challenge will be in the races. If candidates who are restrained judges, who don't see their job as sitting as a super-legislature, this new law should be found constitutional. But if the plaintiffs bar is able to install an activist majority, that will be a challenge."

"Tort reform is not done until the bill is upheld constitutionally. The courts hold a large amount of power overall on this issue and the Supreme Court can decide that the bill, or any provision of that, is unconstitutional," said Mr. Stander.

Paul Winston

Editor Paul Winston's weekly column will return in the June 21 issue

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Editorial

Mississippi's tort reform success

FOR ALL TOO MANY years, Mississippi enjoyed—if that's the right word—the dubious distinction of being a prime example of what can go wrong with a state's civil justice system.

Rampant forum-shopping, generous jury awards and a not-always hidden bias against out-of-state defendants all gave Mississippi a bad reputation. In fact, the situation got so bad that the American Tort Reform Assn. branded several Mississippi jurisdictions as "judicial hellholes" that blatantly favored plaintiffs.

But something happened in Mississippi the other day that can't help but change all that.

As we report on page 1, the Mississippi Legislature gave approval to comprehensive tort reform legislation that had been a legislative priority of Gov. Haley Barbour. Gov. Barbour plans to sign the bill into law this week. Once the law goes into effect, many of the perceived abuses of the state's civil justice system ought to be no more than unpleasant memories.

What happened in Mississippi merits close study by tort reform advocates elsewhere. Several factors played key roles in achieving the reforms.

One was the ability of the pro-reform forces to stick together. Some other tort reform efforts have fizzled because the trial bar or other anti-reform forces have managed to peel off part of a pro-reform coalition by offering to cut a separate deal favorable only to that particular segment of the reform group. The Mississippi reformers resisted any attempts at divide and conquer, proving that unity is critical if reform is to succeed.

Another factor was that the pro-reform forces made and kept a long-term commitment.

The most recent reform drive in Mississippi took two years to complete, and pro-reform forces suffered setbacks along the way.

In fact, Gov. Barbour had to call the Legislature into a special session to win passage of the comprehensive package this month after lawmakers failed to act during the regular session. Despite legislative foot-dragging, proponents of reform didn't give up.

Reformers also worked to increase the number of friends they had in high places.

They backed pro-reform candidates for the statehouse in last November's elections. Increasing the core of pro-reform lawmakers by roughly 50%—and thus to about half of the membership of the state House of Representatives—certainly didn't hurt. Electing a governor who had made tort reform one of his key campaign issues proved to be critical as well.

Mississippi proved that persistence pays. Reformers elsewhere should take heart and take heed from what happened there—if tort reform can succeed in Mississippi, it can succeed just about anywhere else in the country.

Keeping competition fair

COMPETITION AMONG insurers generally is a good thing for insurance buyers, and efforts to reduce market competition would potentially hurt consumers. That's why a proposed ballot initiative in Oregon creates a dilemma for employers in the state.

As we report on page 3, some employers are criticizing a Liberty Mutual Group Inc. subsidiary's drive to bar the State Accident Insurance Fund Corp. from writing new or renewal workers compensation business. A ballot measure backed by Liberty Northwest Insurance Corp. would require SAIF to exit insurance.

At first glance, this effort would appear self-serving to Liberty Northwest, which is Oregon's second-largest workers comp writer, behind the state fund. But Liberty Northwest and other supporters of the ballot measure contend that SAIF, which was originally formed to be an insurer of last resort, is unfairly competing with private insurers.

Oregon isn't alone; Nevada and Utah are among the states whose public workers comp funds are now competing with private insurers not only within their borders but also in neighboring states.

Liberty Northwest contends that SAIF, with more than twice the market share of the Liberty Mutual unit, keeps workers comp rates in Oregon artificially low because of its tax-advantaged position.

The state accident fund disputes the charge, but many employers agree that rates would rise sharply if the state fund withdrew from the market.

The dilemma for employers is whether to support SAIF and an uneven playing field for competition, or seek a more competitive environment, which would raise their costs in the near term.

We suggest that buyers need to take a longer view. Low rates in the short term do little good if underpricing ultimately forces private insurers out of a market.

If SAIF wishes to continue to be more than a market of last resort, perhaps it should form a for-profit subsidiary to compete on a fairer basis.

Unfair competition doesn't serve anyone's interests.

Schillerstrom

And the beats go on...

In an effort to ensure continuing timely coverage of risk management, insurance and employee benefit-related news, *Business Insurance* has formalized a list of its reporters' assigned beats. This list is not intended to be exclusive but rather to represent core subject areas of importance to *BI* readers. *BI* welcomes ideas and tips from readers on these and other areas. Following is a list of the beats and the principal reporters for each:

Agents/brokers: Sally Roberts.
Asian markets: Michael Bradford.
Aviation/space risks: Peta Miller.
Benefits–health care and ancillary benefits: Joanne Wojcik.
Benefits–retirement savings/pensions: Jerry Geisel.
Canada–risk management and benefits: Gloria Gonzalez.
Captives/alternative risk transfer: Michael Bradford.
Claims management: Meg Fletcher.
E.U. regulatory/legislative: Sarah Veysey.
Employment practices: Judy Greenwald.
Environmental risk management: Sally Roberts.
European benefits management: Sarah Veysey.
European industry operations: London bureau.
European public entity risks: Carolyn Aldred.
European reinsurance: Sarah Veysey.
European risk management: Peta Miller.
Federal regulation/legislation–benefits: Jerry Geisel.
Federal regulation/legislation–risk management: Mark A. Hofmann.
Health care industry operations: Gloria Gonzalez.
Inland marine/transportation: Michael Bradford.
Insurance coverage litigation: Douglas McLeod.
Insurance fraud: Douglas McLeod.
Latin American markets: Roberto Ceniceros.
Marine risks: Peta Miller.
Property/casualty industry operations: Judy Greenwald.
Professional liability: Dave Lenckus.
Property loss control/catastrophe risks: Mark A. Hofmann.
Regulation of insurance: Meg Fletcher.
Reinsurance: Judy Greenwald.
Risk management profession: Dave Lenckus.
Risk securitization/capital markets risk financing: Carolyn Aldred.
Runoffs/receiverships: Douglas McLeod.
Safety/ergonomics: Meg Fletcher.
Surplus lines/wholesalers: Roberto Ceniceros.
Tort reform: Mark A. Hofmann.
Work/life benefits and EAPs: Sally Roberts.
Workers compensation: Roberto Ceniceros.

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Government Risk Management

Spotlight Editor: Meg Fletcher

Governments' immunity to drug injury lawsuits questioned

By GLORIA GONZALEZ

Purchasing prescription drugs from Canada has become a popular cost-cutting measure for some local governments, but the practice has prompted questions about whether those governments could be liable for any injuries or fatalities caused by reimported drugs.

Officials for the municipalities that sponsor reimportation programs say they realize that they face the possibility of lawsuits but believe they are sufficiently protected from any potential exposures. Legal experts, though, say the liability protection the governments are counting on may not withstand legal challenges, because reimportation is illegal.

In recent months, Burlington, Vt., and Caldwell County, N.C., have given employees the option of buying drugs from Canada, where prices are significantly lower.

In recent months, Burlington, Vt., and Caldwell County, N.C., have joined the list of municipalities that give employees the option of purchasing prescription drugs from Canada, where government price controls ensure that most prescription drugs are significantly lower priced than in the United States. In addition, Minnesota, New Hampshire and Wisconsin have created Web sites allowing residents to purchase prescription drugs from Canadian pharmacies that the states have visited and found to be safe and reliable.

However, the reimportation of prescription drugs by anyone other than the original manufacturer is still illegal under federal law. The illegality of the practice leaves the city and state governments open to the possibility of being held liable for injuries or fatalities stemming from drugs purchased through their

See DRUGS/page 24

Delayed disclosure enrages lawmakers and consumers

Lead contamination in water prompts call for overhaul

By MEG FLETCHER

A furor over excessive levels of lead found in District of Columbia tap water has heightened public scrutiny about water quality nationwide.

In addition, congressional testimony has emphasized the need for the public entities that operate water districts to provide early notification of contamination to affected consumers and distribute practical information to help them cope with the problem.

According to an Environmental Protection Agency report on the problem, tests of District of Columbia tap water during 2002 and 2003 found lead contamination levels that sometimes greatly exceeded the federal limit of 15 parts per billion.

For example, a private testing firm informed a day care center in Dupont Circle, an affluent and popular neighborhood in Washington, that levels at some of its sinks and water fountains had readings up to 5,900 parts per billion, a representative of a parents' group said in written testimony prepared for a U.S. Senate hearing in April.

According to estimates by the District of Columbia Water and Sewer Authority, about 23,000 customers—mostly households—were affected. Larger buildings containing government offices, businesses and hotels using larger water lines were generally not affected, according to a spokesman for the independent, quasi-governmental regional entity.

Though the water officials' testing revealed excessive lead levels in 2002 and 2003, most residents learned of the problem only in January 2004, when local news outlets reported the situation.

In its April report on the problem, the EPA faulted WASA for failing to comply with "several of the public education requirements" of the federal Lead and Copper Rule, which is one of the federal laws governing drinking water nationally.

The news of the tainted water prompted hearings by federal law-

See WATER/page 14

Municipalities strive to quell violence on recreational playing fields

By MICHAEL BRADFORD

Municipalities are finding that there's an unpleasant side of recreation risks that needs just as much risk management attention as the fun and games.

Increasingly, violence among fans, players and coaches has caused municipalities to pay more attention to making sure tempers are kept in check. And sexual harassment, racial discrimination and other such risks have to be carefully managed in an environment in which competitive attitudes can sometimes overrule good judgment, risk management experts say.

Violence in youth sports has come into sharp focus as scores of incidents have occurred in which parents have attacked coaches, players or other parents.

"Municipalities have to really watch out," said Karen Graham, Denver-based national director of the public entity and scholastic division of Arthur J. Gallagher & Co. Not only are coaches, players, officials and volunteers being sued over incidents of violence or harassment, but the municipal entities that provide the sports facilities and programs are facing such litigation as well, Ms. Graham said.

Violence in youth sports has come into sharp focus in recent years as scores of incidents have occurred in which parents have attacked coaches, players or other parents.

A 2003 survey by SportingKid Magazine revealed that more than 80% of the parents, coaches, youth sports administrators and kids who responded had witnessed violent verbal behavior by parents toward coaches, children or officials.

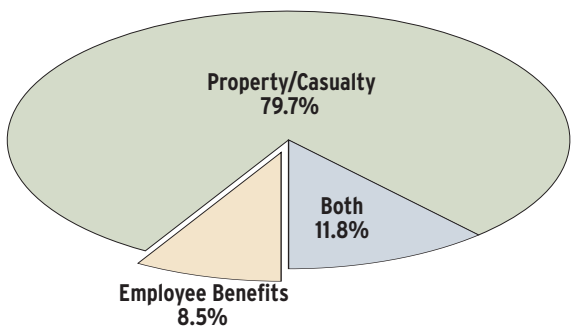
See RECREATION/page 22

BI ranking of largest public entity risk pools page 12

L.A. schools' workers comp costs spur risk management revamp page 16

New PRIMA president promoting board's responsiveness to members page 26

TYPES OF RISK POOLS



Source: *BI* survey

LARGEST MANAGEMENT COMPANIES

Ranked by number of pools managed

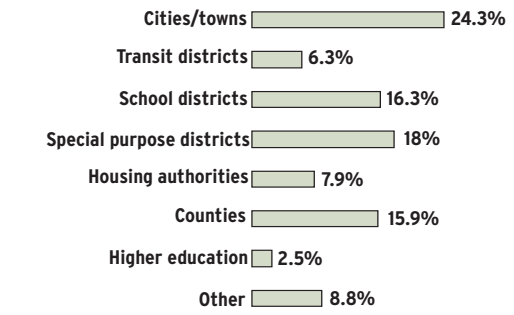
Rank	Management company	Pools managed
1	Public Entity Risk Management Administration Inc.	19
2	Bickmore Risk Services	13
3	Cashan & Co.[1]	6
4	PELICAN Insurance Management Ltd.	2
4	RiskCap	2

1 Cashan & Co. is a division of Arthur J. Gallagher & Co.

Source: *BI* survey

WHO'S IN THE POOL

Types of members in public entity risk pools*



* Pools may cover more than one membership type
Source: *BI* survey

Largest public entity risk pools

Ranked by member contributions in 2003

Rank	Pool's name/Address	Phone/Fax/Web	Sponsoring organization(s)	2003 member contributions	2003 members	Member type	Risks covered	Principal officer
1	HealthTrust 25 Triangle Park Drive, P.O. Box 617, Concord, N.H. 03302-0617	603-224-7447 Fax: 603-224-5406 *www.healthtrust-online.org*	New Hampshire Local Government Center	$205,000,000	337	Cities, towns, townships, counties, housing authorities, school districts, special purpose districts, transit districts	Employee benefits	John B. Andrews, executive director/ fund administrator
2	California State Assn. of Counties Excess Insurance Authority (CSAC EIA) 3017 Gold Canal Drive, Suite 300, Rancho Cordova, Calif. 95670	916-631-7363 Fax: 916-631-7112 *www.csac-eia.org*	California State Assn. of Counties, California Public Entity Insurance Authority	$153,285,161	114	Cities, towns, townships, counties, housing authorities, school districts, special purpose districts, transit districts, public hospitals	Auto and equipment liability, auto damage, bonds, employee benefits, employment practices liability, general liability, property, public officials D&O and E&O liability, workers compensation	Michael Fleming, general manager
3	Texas Municipal League Intergovernmental Risk Pool P.O. Box 149194, Austin, Texas 78714-9194	512-491-2300 Fax: 512-491-2311 *www.tmlirp.org*	The Texas Municipal League	$116,779,400	2,461	Cities, towns, townships, housing authorities, special purpose districts, transit districts	Auto and equipment liability, auto damage, bonds, criminal defense expense reimbursement, employment practices liability, general liability, property, public officials D&O and E&O liability, workers compensation	R. Marvin Townsend, executive director
4	Texas Assn. of School Boards Risk Management Fund P.O. Box 400, Austin, Texas 78767	512-467-3510 Fax: 512-467-3619 *www.tasb.org/risk*	Texas Assn. of School Boards	$101,185,697[1]	1,124	Higher education, school districts, county appraisal districts, educational co-ops, other educational entities	Auto and equipment liability, auto damage, bonds, employee benefits, employment practices liability, general liability, property, public officials D&O and E&O liability, unemployment compensation, workers compensation	Dubravka Romano, associate executive director- risk management services
5	Housing Authority Insurance Group[2] 189 Commerce Court, Cheshire, Conn. 06712-0189	203-272-8220 Fax: 203-271-2265 *www.housing-center.com*	None	$79,807,883	875	Housing authorities	Auto and equipment liability, auto damage, bonds, criminal defense expense reimbursement, employment practices liability, general liability, property, public officials D&O and E&O liability	Dan Labrie, CEO
6	Texas Assn. of Counties Health & Employee Benefits Pool P.O. Box 2131, Austin, Texas 78701	512-478-8753 Fax: 512-478-1426 *www.county.org*	Texas Assn. of Counties	$72,143,382	157	Counties, special purpose districts	Employee benefits	Jim Jean, director-program administration
7	BETA Healthcare Group 1443 Danville Blvd., Alamo, Calif. 94507	925-838-6070 Fax: 925-838-6088 *www.betahg.com*	None	$53,000,000	87	Counties, special purpose districts, nonprofit health care facilities, nonprofit hospitals	Auto and equipment liability, auto damage, employment practices liability, general liability, medical accident coverage	Thomas J. Wander, CEO
8	Alliance of Schools for Cooperative Insurance Programs (ASCIP) 12750 Center Court Drive, Suite 205, Cerritos, Calif. 90703	562-403-4640 Fax: 562-403-4644 *www.ascip.org*	None	$46,225,926	90	School districts, community colleges, district offices of education	Auto and equipment liability, auto damage, employment practices liability, general liability, medical accident coverage, property, public officials D&O and E&O liability, workers compensation	Paula Tanguay, chief administrative officer
9	Michigan Municipal Risk Management Authority 14001 Merriman, Livonia, Mich. 48154	734-513-0300 Fax: 734-513-0318 *www.mmrma.org*	None	$42,679,487	341	Cities, towns, townships, counties, higher education, special purpose districts	Auto and equipment liability, auto damage, employment practices liability, general liability, property, public officials D&O and E&O liability	Michael L. Rhyner, executive director
10	Montana Unified School Trust (MUST) P.O. Box 4579, Helena, Mont. 59604	406-457-4400 Fax: 406-442-4161 *www.ms-sf.org*	Montana Education Assn.-Montana Federation of Teachers, Montana School Boards Assn., School Administrators of Montana	$41,635,407	155	School districts	Employee benefits	Robert Robinson, CEO-Montana School Services Foundation Inc.

1 Fiscal year ends 8/31. 2 Includes Housing Authority Property Insurance and Housing Authority Risk Retention Group
Source: *BI* survey

Visit *www.businessinsurance.com* for more information and to access the full searchable directory of Public Entity Risk Pools.

Water: Overhaul of U.S. delivery system proposed

Continued from page 10

makers on the adequacy of monitoring the public water supply nationally, as well as on proposed reform legislation. Congressional representatives are particularly interested because they not only are responsible for overseeing the district's government but consume the local water themselves.

The delayed disclosure prompted "outrage and sadness," especially on the part of parents concerned about the "serious health threat to children and pregnant women," according to a statement by Sen. James M. Jeffords, I-Vt.

Sen. Jeffords is the ranking minority member of the U.S. Senate's Committee on Environment and Public Works, which oversaw the hearings in April. In addition, he introduced a bill to overhaul the current system for regulating water, "The Lead-Free Drinking Water Act of 2004."

'Safe drinking water is a right, not a privilege.'
Sen. James M. Jeffords I-Vt.

"Children exposed to lead experience low birth weight, growth retardation, mental retardation, learning disabilities and other effects," Sen. Jeffords said in his statement.

"Safe drinking water is a right, not a privilege," he said at a Senate committee hearing that reviewed water officials' actions, communication problems and ways to improve them. The hearing also reviewed the health-related effects of lead on children, pregnant women and other adults.

The U.S. House of Representative's Committee on Government Reform also held hearings on the issue of water quality in March and May. It focused on the status of the problem, including its cause and the officials' responses. It also considered the adequacy of current laws and programs to ensure water quality.

Several congressional legislators also have asked the General Accounting Office to formally investigate the EPA's enforcement of the Safe Drinking Water Act's lead provisions, using Washington as a case study.

In addition, federal lawmakers have introduced similar bills into both chambers of Congress that would overhaul the current system for regulating drinking water. Among other things, the legislation would require the elimination of lead pipes and supply lines in the nation's water system. The measures also call for the immediate testing of the water supply nationwide, especially in homes, schools and day care centers; the prompt notification of such customers whose water supply contains elevated lead levels; and the provision of filters where lead is a problem.

WASA "continues to believe that it took appropriate steps to comply with the Lead and Copper Rule," as it continued its consultation with the EPA and the D.C. Health Department, WASA General Manager Jerry Johnson said in written testimony before a U.S. Senate hearing. The authority went beyond the requirements of environmental regulation by working directly with customers, he also said.

Consumers concerned about the lead contamination have filed at least one lawsuit against the District of Columbia.

WASA does have insurance coverage above a self-insured retention that may respond to such claims, according to the WASA spokesman. After consulting with legal advisers, he added: "We don't believe that we have direct statutory immunity. However, there is case law that suggests that we do."

The issue of lead contamination at a household's tap is a particularly complex one for water utilities, because lead contamination can occur at several points in a water distribution system.

According to the D.C. water authority, water treated by the Washington Aqueduct and delivered to most D.C. homes at the water main in the street has "extremely low levels of lead"—less than two parts per billion.

However, the pipes that connect homes to the main district-owned water main, which typically runs down the center of a street, might contribute more to higher lead levels at a homeowner's tap.

For example, at least 23,000 properties in the District of Columbia have lead "service lines" that carry water from the water main to the individual residences. Those secondary lines may be owned by the public utility or by homeowners. Also, lead contamination may leach from the lead pipes within an older home.

Generally, it would be "very difficult" to prove that any water district was liable for lead contamination because there are several other potential sources of exposure, said William F. Devine, an attorney in the Norfolk, Va., office of the law firm of Williams Mullen. Those other sources include in-home plumbing, lead paint, dust and drinking water consumed elsewhere, said Mr. Devine, who has defended municipal water systems in contamination cases.

Complicating this situation is the fact that the mix of chemicals that a public utility uses to treat water may increase the likelihood of lead

Continued on next page

Continued from previous page

leaching from any lead pipe.

For example, the D.C. water district previously reported that its use of certain chemicals, such as chloramine, might have inadvertently exacerbated the leaching of lead in affected systems. It has taken steps to change that practice and now plans to add orthophosphate to the water supply. That corrosion inhibitor is expected to form a protective coating inside lead service line pipes and fixtures in customers' homes to prevent lead leaching. It may take six months or longer for the reductions in lead levels to occur, however.

Rep. Tom Davis, R-Va., identified the progress that has been made during one of the hearings last month by the U.S. House Committee on Government Reform. For example, he said that the D.C. water utility and related agencies have taken several steps, "including supplying water filters to affected District residents; additional testing of residences, schools and libraries; blood screening for affected children under six as well as pregnant and nursing women; and expanded public outreach."

Outreach efforts included disseminating information about how to reduce contamination from lead service lines. The district recommends 10 minutes of high water usage—such as showering—followed by flushing the tap for one minute before collecting and storing water in the refrigerator for future use. Also, young children as well as pregnant women and nursing mothers should drink only filtered tap water, according to the water agency.

'Many cities around the country rely on pre-World War I-era water delivery systems....Aging pipes can break, leach contaminants into the water they carry and breed bacteria–all potential prescriptions for illness.'
Natural Resources Defense Council

While congressional lawmakers have been focusing on the water district's responsibilities, "it's important to remember that a building owner has an obligation in testing and maintaining his internal plumbing and fixtures to ensure that they are not providing lead contamination at the faucet," a spokesman for the D.C. water utility said.

For example, George Washington University "really tried to be proactive about this and get the information out there as it became available to the community," according to a spokesman for the college. The college tested about 135 buildings—including some older townhouses—and found that 20 of them had elevated lead levels in "first draw" samples, those taken immediately after turning on a faucet.

George Washington University instituted an extensive public information campaign, including Web site alerts, and replaced a few lead service lines, according to a spokesman for the university, which has about 20,000 students enrolled.

Meanwhile, District of Columbia homeowner Pam Wolfe said she was "pretty happy" with the water utility's willingness to provide her with a testing kit, pick up water samples and process the results—although it took nearly a month to get the results. While her test results were very favorable, Ms. Wolfe, who is also the manager of education and training for the Public Risk Management Assn., said she has friends who are coping with the problems created by significantly higher lead levels.

The problems that water utilities face nationally vary significantly.

The Washington-based National Resources Defense Council said in a peer-reviewed study of 19 U.S. cities "that pollution and deteriorating, out-of-date plumbing are sometimes delivering drinking water that might pose health risks to some residents."

"Many cities around the country rely on pre-World War I-era water delivery systems and treatment technology," according to a summary of the June 2003 report.

"Aging pipes can break, leach contaminants into the water they carry and breed bacteria—all potential prescriptions for illness. And old-fashioned water treatment—built to filter out particles in the water and kill some parasites and bacteria—generally fails to remove 21st-century contaminants like pesticides, industrial chemicals and arsenic," it said.

Lead contamination is not a particular problem for some other municipally owned water districts, especially those in the Western United States, which were developed more recently and did not typically use lead pipes.

They do, though, face other concerns.

The Coachella Valley Water District, which serves customers outside of Palm Springs, Calif., is concerned about allegations of cancer clusters in one of the cities the district serves, said Lesley Cohen, the district's risk manager. Her district, which began operating in the 1960s, primarily used ductile iron pipe for transmitting water, Ms. Cohen said.

In addition, forest fires that leave blackened debris in its watershed mean consumers of Denver Water sometimes notice a smoky smell in their tap water for short periods of time, said Jim Crockett, manager of risk and benefits for the utility, which serves about 1 million customers.

While national scrutiny of water utilities continues, Sen. Jeffords said that many of the members of Congress and their families who live in Washington have switched to bottled water.

The senator noted, though, that he is "disturbed that, because bottled water is not regulated in the same manner that tap water is, we cannot even find out if our bottled water is safe."

Schools' comp costs spur risk management revamp

Los Angeles district using aggressive reforms to reduce litigation, boost return to work

By ROBERTO CENICEROS

The $176 million in workers compensation claims that the Los Angeles Unified School District is expected to pay this year could fund 4,250 new teacher salaries.

Or, the millions spent annually on workers comp costs could provide each of the district's approximately 100,000 employees with a 4.7% salary raise, fund 173 million student meals, or pay for millions of new textbooks, according to David Holmquist, director of risk management and insurance services for the financially strapped school district.

Translating workers compensation costs into a portrait of missed opportunities helps him to explain to district employees, union leaders, principals, school board members and other participants how the losses affect them, Mr. Holmquist said.

His message, delivered during group training sessions for district employees and managers, is part of an ongoing drive to overhaul the self-insured school district's risk management department and minimize its workers comp exposures. The district currently faces $566 million in outstanding workers compensation liabilities.

Recent annual workers comp cost increases of about 25% for several years in a row spurred calls to revamp the district's risk management functions, which had been neglected and understaffed, said Mr. Holmquist, who was hired in mid-2003 to help lead those efforts.

"Before, there was not a lot of energy put into risk management," Mr. Holmquist said. "It was considered a benefit delivery system and not something anyone could control."

But in September 2002, the school district's Office of Environmental Health and Safety reported to its Board of Education that reducing workers compensation costs required "aggressive reforms."

That warning followed an April 2002 evaluation by PricewaterhouseCoopers L.L.P. of the district's risk management efforts, including claims administration. The evaluation found that far more than half of the 7,000 workers comp claims filed annually by school employees ended up in litigation.

PricewaterhouseCoopers also found that "skill sets and experience needed to bring the district's risk management functions to 'best practices' level must be obtained through external hires."

The evaluation reported that the current staff of long-tenured risk management employees had "not had the opportunity to gain experience from the insurance risk management operation of other organizations currently at 'best practices' level."

'Before, there was not a lot of energy put into risk management....It was considered a benefit delivery system and not something anyone could control.'

David Holmquist
Los Angeles
Unified School District

With the call out for "external hires," Mr. Holmquist left his former job as risk manager for the City of Beverly Hills. He now works for a school district that is attempting to overhaul and improve its operations from the top down.

The district is headed by Superintendent Roy Romer, a three-term Democratic governor of Colorado from 1986 to 1998. A longtime advocate for educational issues at the state and national levels, Mr. Romer likes to apply private-sector business practices to solve public-sector problems, an assistant to the superintendent said. The Los Angeles Board of Education hired Mr. Romer in mid-2000 to fix the city's troubled schools and improve education for the 750,000 students they serve.

"Part of turning around the district and making it function effectively for the kids includes turning around its management and its business practices," the assistant added. "When you have a bureaucracy that is bogging you down on the business side, it has an effect on the instruction side."

Mr. Holmquist reports directly to Tim Buresh, a chief operating officer whom Mr. Romer hired to bring a business sense to district operations, Mr. Holmquist said.

In April 2003, Mr. Buresh made reforming the district's workers comp program one of his top priorities. Many of the district's efforts toward that goal are "typical things they do in business and we do now," Mr. Holmquist said.

Creating a "stay at work/return to work" program, for example, was one of Mr. Holmquist's first actions.

See SCHOOL DISTRICT/page 18

School district: Using aggressive reforms to cut costs

Continued from page 16

California has a long-standing law allowing any public school employee with a compensable claim to take off 60 days while receiving full pay, no matter how minor the injury. So it was no coincidence that half of all Los Angeles school district claims resulted in absences with an average of 59 lost days, Mr. Holmquist said.

"One of the first things I did is, I went right to the school board, kind of like a bull in a china shop," he said. "I got the board to adopt a mandatory stay-at-work program. I didn't have any of the procedures worked out. I just went in and got them to say, 'You have to be at work, and if you are not, we don't have to pay you.' "

Then Mr. Holmquist informed labor unions for teachers and other school workers about the change. Many of the unions cooperated in developing guidelines for the stay-at-work program.

Some employees, though, were infuriated, Mr. Holmquist said. But by then the board had approved the program on a 7-0 vote. Now the district can order an employee back to work provided it offers modified duty that accommodates any work restrictions that the individual's doctor places on the injured worker.

A school risk manager from the opposite coast of the United States concurs that assertive steps are sometimes needed to rein in workers comp losses. Katherine M. Peeling, risk management specialist for Anne Arundel County Public Schools in Annapolis, Md., maintains that an aggressive risk manager at the helm can help school districts not only reduce costs but also improve education.

Return-to-work programs are especially effective at reducing losses stemming from claims filed by teachers, noted Ms. Peeling, who also is a board member for the Alexandria, Va.-based Public Risk Management Assn. Typically it is easier to accommodate the physical limitations placed on teachers than those placed on school workers in more physical jobs, such as custodians or other support staff, she explained.

Under such programs, students' education doesn't suffer from an interruption in their school routine and the duration of the teacher's claim is reduced, said Ms. Peeling. "The quicker you get somebody back to work in any capacity, the quicker they are back in full capacity, and the longer they stay out, the harder it is to get them back," she said.

Improving student education, not just reducing costs, is an important goal of the district's return-to-work efforts and other claims management programs, Mr. Holmquist agreed.

Among other risk management reforms, Mr. Holmquist said he is trying to prevent workers from making attorneys and employee unions their first stop following an occupational injury.

He is attempting to do that through several means, including: expanding his department to 43 employees from 28, so there are more people to spend adequate time responding to injured employees' concerns; creating a Web site to provide workers compensation information to injured workers; and insisting on a customer service attitude from his staff and the district's third-party claims administrator, Sedgwick Claims Management Services.

'The quicker you get somebody back to work in any capacity, the quicker they are back in full capacity.'

Katherine M. Peeling
Anne Arundel County Public Schools

Under a $10-million-a-year contract implemented after Mr. Holmquist's hiring, Sedgwick dedicates 88 full-time workers to the school district's claims, he said.

So far, these efforts are starting to show results. Litigated claims have decreased to about 4,000 annually from about 4,800 when he first took the job, Mr. Holmquist said.

He noted that a "big push" to reduce open claims, including some that have lingered since the 1950s, will take advantage of workers compensation reforms signed into law in April by Gov. Arnold Schwarzenegger.

Among other changes, the state reforms repeal a law that presumes that an employee's treating physician is always correct. The law is retroactive, meaning it applies to all claims, regardless of the date of injury.

With the presumption of correctness stripped away, claimants and their attorneys have lost some negotiating clout, allowing the district to "cut some pretty good deals" and to more quickly close claims, Mr. Holmquist said.

The district faced about 9,900 open claims when he became its risk manager, Mr. Holmquist said. The number is now down to 8,200.

Still, there is plenty more to do, including possibly eliminating old claims someday through a loss portfolio transfer, Mr. Holmquist said.

"Check with me in a year," he said. "Maybe my story will be better. Right now, it's a mix between some successes and beliefs about successes that are coming."

Recreation: Quelling violence

Continued from page 10

Of the 3,300 responses, 79.8% said they had been victims of such abuse.

The threat of such violence can leave the public entities where games are played vulnerable to lawsuits.

"If an entity hasn't put the risk management in place" by developing tight recruiting policies, anti-harassment rules and other procedures aimed at curbing violence and abuse, it is putting itself at risk of a lawsuit, Ms. Graham warned.

"It's always been a problem," she said of the violence and harassment worries that municipalities face. But in recent years, the entities have become particularly cautious about the risk because of some headline-grabbing cases.

Protecting the municipality with the proper insurance coverage simply means making sure the public entity and every type of worker who could become involved in a claim—officials, coaches and volunteers, for example—is listed on the liability policy, Ms. Graham emphasized.

Harassment claims can result from a number of situations, she noted, such as a child accusing a coach of sexual impropriety or a player accusing a teammate of bullying. Violence claims can also be leveled against coaches or players by fans or overzealous parents, experts say; an argument can get out of hand, and a coach or player can react violently toward the parent who may have started it.

Risk management sources say that, in any violence or harassment charge, the municipality stands a chance of being accused of neglecting to provide proper supervision or failing to carefully screen the workers involved in an incident.

How municipalities manage the risk of violence is something underwriters want to know, according to Bob Kahl, senior underwriter with City County Insurance Services, a Salem, Ore.-based pool that writes coverage for about 300 municipalities.

"It's one of the things you're looking for," Mr. Kahl said. "If you've got a parks department that has a sports department they're running, our loss control folks are looking at what sort of programs they have."

The pool's loss control experts, he said, work with city and county members to make sure they have the proper programs and procedures in place to help prevent incidents of violence.

And despite the tendency of a relatively small number of violence cases to attract widespread media attention, most municipalities' risk management efforts have kept them out of trouble, he said.

"We see more issues and anxieties about sewer backups, maintenance issues" and other such problems faced by public entities than those that result from violence at recreation facilities, Mr. Kahl said.

"We do watch it," said Kurt Treiber Jr., risk manager for the Town of Wallingford, Conn., but "we've been fortunate in this town not to have any incidents."

As is the case for most small municipalities, Wallingford provides playing fields for league sports but doesn't operate the leagues. When an entity maintains that arm's length relationship with the leagues, the risk of a violence claim is reduced, sources say.

Mr. Kahl said larger municipalities face the biggest risk of a violence claim because they typically operate their own sports programs, subjecting them to more exposure than small entities that simply lease playing fields.

Pam Gardner, risk manager for the City of Boca Raton, Fla., said the number of dust-ups at sports events in her city has fallen over the last few years, since the city mandated training for players' parents and coaches.

Parents and coaches have to sit through what Ms. Gardner described as a mix of anger management training and etiquette classes. Parents, like coaches, are taught to control their tempers, to avoid behaving in ways that could lead to violence and to defuse potentially violent situations. "We teach what's appropriate and what's not appropriate so that there's no fighting on the field," she said.

"The most important thing is that our people are trained appropriately," she said of city employees who work at sports events. Staffers are trained to quickly call police if an incident should flare up and to try and calm the participants, Ms. Gardner explained.

Ms. Graham said public entities should have a policy stating that any worker found to have instigated violence is quickly let go. "Violence is one strike and out," she said, with "no lenience." And "quite extensive anti-harassment policies can be put in place" to make sure there are strict consequences for such behavior, she suggested.

Sometimes, though, no amount of insurance, oversight and training is enough, acknowledged Valerie Saiki, risk management consultant with City County Insurance Services. "There are so many things that you can't regulate by insurance mandates, and that's one of them," she said.

It's difficult to enforce no-violence policies among participants in recreational events, Ms. Saiki said. As a result, it's important to have staff on hand who are trained to control such situations should they develop, she said.

Ms. Gardner pointed out that municipalities can get some help in training recreation department staffers from the National Alliance of Youth Sports, a West Palm Beach, Fla.-based nonprofit that offers a variety of programs and services for those involved in youth sports.

The NAYS operates the National Youth Sports Administrators Assn., an organization of league presidents, boards, commissions and others responsible for planning and implementing nonschool sports programs. The group offers risk management and insurance training, along with help in such matters as fund-raising and parent involvement.

Another NAYS program, the National Youth Sports Coaches Assn., has trained more than 1.8 million coaches since it began in 1981. The training is designed to make coaches aware of their responsibilities and hold them accountable under a strict code of conduct.

That conduct is defined by a code of ethics to which coaches must pledge. Among several other promises, the code requires a coach to pledge to provide a safe playing situation for players. The last line of the pledge is a promise by the coach to "remember that I am a youth sports coach, and that the game is for children and not adults."

Drugs: Governments' immunity debated

Continued from page 10

reimportation programs, lawyers say.

"Violation of a law, in some circumstances, can be considered a factor in the equation of liability," said Claude Dorais, an attorney with Goleta, Calif.-based Dorais, McFarland, Grattan & Polinsky, which specializes in insurance law.

Municipal officials say they have considered the possibility of lawsuits but do not feel the risk is great enough to stop them from promoting reimportation as a way to save money on prescription drugs. They say they believe they are adequately protected from liability through either their insurance programs or the legal principle of sovereign immunity—a doctrine that precludes the initiating of a lawsuit against a government without its consent.

"In North Carolina, we have government immunity from these kinds of issues," said David Hill, Caldwell County's director of human resources in Lenoir, N.C. "If accidental death were caused by a Canadian-purchased drug, then we would merely invoke government immunity."

But courts might rule that sovereign immunity cannot be invoked when the government knowingly fostered illegal conduct, observers say. Sovereign immunity varies from state to state, and some states run the risk that their immunity laws would not prohibit lawsuits related to illegal activities, said Michael Fann, director of loss control for the Tennessee Municipal League Risk Management Pool. "Some will have good protections, and others will be exposed to negligence claims," Mr. Fann said.

A plaintiff could challenge the sovereign immunity doctrine on the basis that if it were not for the state's illegal conduct, he or she would not have been injured, said Brian Waldman, a partner in the food and drug group of the Washington law firm of Arent Fox. "It really does depend on the strength of that sovereign immunity defense," Mr. Waldman said. "If the concept of sovereign immunity applies, they would be somewhat protected. I'm not sure it would apply in this case."

If they are found to be liable for damages, several municipalities have said that they have general liability insurance policies that would respond. "It would cover us from any potential naming of us in a suit from our practices," said a spokesman for Montgomery, Ala., Mayor Bobby Bright.

Observers question, though, whether the coverage would extend to reimportation programs. "Generally, you're not covered for intentional or criminal acts," Mr. Fann said.

Some government officials concede that their insurance policies may not cover them for any incidents involving reimported drugs. "You can't buy insurance to protect you from illegal activities," Mr. Hill said. "Technically, all of this is still illegal."

A spokeswoman for St. Paul Travelers Cos., which writes general liability policies for many public entities, confirmed that the St. Paul, Minn.-based insurer's policies do contain exclusions for illegal activities.

To avoid liability, some local governments are insisting that participants in drug reimportation programs sign waivers releasing them from any responsibility for incidents involving reimported drugs. The city of Montgomery, for example, mandates that participants sign a customer agreement form that contains "hold harmless" language designed to protect the city from liability, Mayor Bright's spokesman said. "It gives us an ability to transfer the risk to the actual provider," he said.

The effectiveness of waivers, though, is debatable, lawyers say; participants may challenge the legality of the waivers by arguing that they had no choice but to sign them in order to receive necessary medications. In addition, any attempts to shift liability to the Canadian pharmacies would be challenged in court because the pharmacies have limited resources, they say. "The plaintiffs always go after the deep pocket, and the state is a deep pocket," Mr. Waldman said.

But attorney Mr. Dorais noted that local governments might also try to shift liability to the drug manufacturers if they could prove that an incident was caused by a problem with the drug itself. Unless the pharmacist polluted the product, the ultimate responsibility would lie with the drug company, he said.

Despite the possibility of legal action, local officials generally believe that the possibility of a lawsuit involving their reimportation programs is unlikely because, they say, the Canadian health system is as safe as the U.S. system.

While Mr. Dorais said he would advise local governments to do whatever they could to minimize their risks, he does not consider the exposures great enough to discourage local governments from facilitating reimportation of drugs from Canada. "The exposure, while real, may be pretty small," he said. "I don't think there is, ultimately, a great liability exposure."

Government officials say they have taken adequate steps to minimize any potential exposures. They say they have strict risk management policies, including "no first-fill" rules, which means patients must first have eligible prescriptions filled by local pharmacists and must have taken the prescribed drugs for at least 30 days to ensure there are no adverse effects.

In addition, only pharmaceuticals approved by the U.S. Food and Drug Administration in FDA-approved dosages are included in the list of drugs that can be obtained from Canadian pharmacies through reimportation programs. Observers believe that, because the FDA has approved the drugs being reimported from Canada for use in the United States, the safety of the drugs themselves is not in question. "When you are limiting importing to drugs that are approved for use in this country … then the only issue becomes price," Mr. Dorais said. "Where that's the only issue, I don't think you have a heck of a lot of liability from being the conduit for bringing the drugs in."

Municipal officials have also sent inspectors to the Canadian pharmacies providing the drugs for their programs to verify the safety of their handling and dispensing procedures. This could minimize any potential exposure by proving the governments are behaving reasonably, Mr. Dorais said.

Mr. Waldman questioned, though, whether merely inspecting these facilities would be enough to avoid liability. "Without testing, the authenticity and the quality of the product is in question," he said. "But that's too expensive. I don't see a state doing that."

While the states and municipalities are vulnerable to lawsuits from individuals, they are protected against legal actions from pharmaceutical companies, attorneys say.

Although the drug companies are, technically, the only entities allowed to reimport under the U.S. Food, Drug and Cosmetic Act, the federal law does not establish a private right of action; therefore, the drug companies cannot sue the federal government to compel it to enforce the act nor can they sue organizations for violating the act, Mr. Waldman said.

Drug companies could potentially sue Canadian pharmacies for breach of contract, but it would be difficult to justify a similar cause of action against the local governments because the drug companies' business agreements are not made with these governments, lawyers say. So far, drug manufacturers have limited their actions to rationing or cutting off supplies to Canadian pharmacies believed to be selling drugs to U.S. citizens.

University risk manager to lead organization

PRIMA president to focus on serving membership

By DAVE LENCKUS

From ensuring that the national board is responsive, to helping local chapters provide professional development opportunities and recruit new leaders, the incoming president of the Public Risk Management Assn. is focused on making PRIMA work as efficiently as possible.

While much of her year at PRIMA's helm will be influenced by decisions already made by the organization's board, Cindy Davis said she still sees opportunities to steer PRIMA along a course that will make the organization even more responsive to its membership.

"One of my main strengths is making sure the (PRIMA) board responds to the members," said Ms. Davis, who takes over as the top PRIMA officer on June 16 during the organization's annual conference in Fort Lauderdale, Fla.

To that end, strengthening the communication between PRIMA members and the organization's board "is going to be very important to me," she said.

Ms. Davis is director of university risk management at the University of Colorado-Boulder Campus. In becoming PRIMA's president, she succeeds another risk manager for an institution of higher education. Outgoing President Ruth A. Unks is the risk manager of the Tempe, Ariz.-based Maricopa County Community College District.

One way Ms. Davis envisions bolstering the communication link between PRIMA members and the national board is by conducting member surveys on the board's performance.

In addition, she said that re-evaluating PRIMA's committee structure should help ensure that the organization responds to members' needs.

As PRIMA's new president, Ms. Davis already is responsible for appointing committee chairs. But, in addition, she wants to review the committees "to make sure they're functioning well" and are accomplishing their "core purpose."

Strengthening the communication between PRIMA members and the organization's board 'is going to be very important to me.'

Cindy Davis
Public Risk Management Assn.

Keeping committees "meaningful" and "alive" may mean altering their structure by rotating in new members ahead of schedule, she said.

"Sometimes you have to change a committee's structure to make sure it's functioning well," Ms. Davis said.

She has no intention of unilaterally restructuring any committee, which is not even within her authority. Still, she said she plans to evaluate PRIMA's committees and encourage changes where they would help.

Among the committee appointments that Ms. Davis will have to make is replacing herself as chair of the Chapter Relations Committee, which she says will play an important role in ensuring that PRIMA is responsive to its members. Ms. Davis chaired the committee last year because of her desire to build stronger relations between PRIMA and its state chapters by offering stronger member services.

With public entities facing significant budget cuts, many have refused to cover PRIMA members' costs for attending national meetings, Ms. Davis noted. But local PRIMA chapters often do not have the resources to provide members the education they are missing when they cannot attend national PRIMA meetings, she said.

"So, developing a partnership with chapters is valuable, because they don't always have the best resources" to aid their members with educational programs, Ms. Davis said.

The committee is working on determining how best to accomplish its goal. Ms. Davis noted that PRIMA's assistance "won't necessarily be in the form of financial resources." Instead, PRIMA could direct some education resources to its local chapters, she said.

"The whole idea is to make the best use of our resources and provide services to our members," Ms. Davis said.

Meanwhile, PRIMA is investigating enhancing several national education programs in hopes of providing the programs more cost-effectively. Failing in that goal would drive members into education programs offered by other organizations, Ms. Davis said.

PRIMA is eyeing Web-based and Internet-based training and will once again evaluate offering virtual seminars, Ms. Davis said.

PRIMA also has spaced its two main education events much farther apart to give its members a better chance of being able to attend both.

PRIMA's late spring annual conference is the organization's main education opportunity, followed by its Government Risk Management Seminar. In the past, PRIMA has held those two events within several weeks of each other, which created budget and time-management problems for some members who would have liked to attend both, Ms. Davis said.

Consequently, PRIMA moved the GRMS program to October.

In addition, PRIMA has taken greater control over the focus of speakers' presentations to avoid duplication of material and to ensure that all speakers are on point.

PRIMA also is trying to develop other education opportunities.

Its education committee is considering creating new formal conferences that would be offered by "education partners" at a discount to PRIMA members, Ms. Davis said. Those partners would be organizations that focus on training in a particular area, such as ergonomics or sexual harassment in the workplace.

In the hope of creating greater economies of scale for education program costs, PRIMA has approached the University Risk Management & Insurance Assn. with the idea of pooling the two groups' resources on education programs that would mutually benefit each group's members.

"Issues such as transportation, athletic events and contracts impact K-12 schools as well as higher education facilities," she noted, illustrating similar problems that PRIMA and URMIA members face.

Another membership outreach effort that Ms. Davis will be overseeing during the next year is designed to improve member representation and develop new national leaders from the ranks of local chapters.

As the result of a recent governance change, PRIMA's board no longer will have a vp representing each of the organization's six regions nationally. Instead, each region will elect a board director, but the directors will represent PRIMA members nationwide.

At the same time, PRIMA needs "to ensure there is the proper outreach to all local chapters to ensure good strong leadership going forward," Ms. Davis said.

To that end, PRIMA has created a leadership development committee, which Ms. Unks will chair. The new committee will work with chapter leadership to identify future leaders from the chapters who could eventually step into leadership roles with national PRIMA.

Leadership development is important, especially as directors now will represent all PRIMA members, because some regions have had problems finding two candidates to square off in regional vp elections, Ms. Davis noted.

Summing up her outlook on the year ahead, Ms. Davis said: "We do have to make sure we have quality programs. We have to make sure we are offering the services our members need."

Property loss control directory deadline nears

Business Insurance will publish its online Directory of Property Loss Control Consultants in conjunction with the Aug. 9 issue.

The issue will contain a Spotlight report on catastrophe management as well as a ranking of the top 10 independent property loss control consultants.

In addition, the ranking and full directory will be included in the 2004/2005 Market Sourcebook, which will be published in December.

The directory is published as an editorial service; there is no charge to be listed. To be eligible for the directory, a company must provide property loss control consulting on an unbundled basis and must generate annual gross revenues of at least $100,000 from these services.

Directory questionnaires must be submitted by the extended deadline of June 28. If your company meets the eligibility requirements but has not received a questionnaire, you may request one by calling Assistant Directory Editor Carrie Brittain at 312-649-5313.

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

Trends: Plan designs changing

Continued from page 4

savings accounts and health reimbursement accounts linked to high-deductible health insurance plans.

Under these arrangements, employees have a financial incentive—building up their HRA or HSA balances, which they can use to pay for future health care expenses—to use services carefully, advocates say. But if services are used excessively, the account balances are wiped out and employees are directly exposed to big health care bills under the high-deductible health insurance plan.

Those designs are a way to give employees "some skin in the game," Mr. Kushner said.

Along with adopting HRAs and HSAs, employers trying to bring health care cost increases under control are rethinking the wisdom of other plan designs, he said.

For example, one of the long-held tenets of managed care is that networks have to be as broad as possible to attract employees. But now, employers are reconsidering that idea, coming to the conclusion that broad networks may do little to keep costs in check.

Instead, employers are starting to gravitate toward what Mr. Kushner described as "value purchasing," which involves networks composed of those providers that produce the best medical outcomes.

Costs, though, are just one driver of change; legislation is another. One legislative trend employers need to prepare for is the adoption of benefit mandates, Mr. Kushner said.

Years ago, Congress, as a way of encouraging employers to offer employee benefit plans, gave benefit programs hefty tax breaks. For example, in 1954, Congress amended the U.S. Tax Code to make clear that employers could provide tax-free health insurance coverage to employees, while in 1978 the code was modified to permit employees to make tax-deferred contributions to savings plans.

"In the past, employers were given incentives to offer benefits," Mr. Kushner said. But now, legislators "may be replacing the carrot with the stick," he said.

For example, in 1986, Congress passed legislation—often referred to as COBRA—that requires employers to extend health insurance coverage to terminating employees and the divorced or widowed spouses of employees. Then, in 1993, Congress passed the Family and Medical Leave Act, which mandates that employers provide 12 weeks of job-protected leave to employees who need to take time off due to such family situations as childbirth, their own illnesses or the illnesses of their children.

More recently, Congress passed legislation that will, starting in 2006, add an outpatient prescription drug benefit to the federal Medicare program.

The theme unifying those three federal laws, Mr. Kushner said, is a belief by legislators that access to benefits is a right; he added that more benefit mandates can be expected.

Mr. Kushner noted that benefits as a source of revenue for legislators growing concerned about the ever-mounting federal budget deficit also could emerge as a trend. But he observed that if Congress did, for example, decide to tax a portion of employer-paid health insurance premiums, that could be a "tipping point" for employers, who might then decide to give employees cash in lieu of the benefits.

Employers also need to be aware of and prepare for demographic changes and their impact on benefit plans. One big demographic change is increased longevity. Future retirees could spend as many years living in retirement as they spent working.

That demographic reality may force employees to stay on the job longer—reversing a long-standing trend of earlier and earlier retirement—in order to build funds needed for their retirement.

Mr. Kushner noted that it might be in employers' best interests to try to retain these older workers, such as through flexible work schedules. With a smaller pool of younger employees, employers may need to hold to more members of the Baby Boom generation than they once may have anticipated, Mr. Kushner said.

Employee Benefits Leadership Forum

Health care system changes in the offing: Gingrich

By JERRY GEISEL

WHITE SULPHUR SPRINGS, W.Va.—Health care cost increases are likely to slow over time, predicts a former congressional leader.

"Health care will be less expensive," said Newt Gingrich, a former speaker of the House of Representatives who now is chief executive officer of The Gingrich Group, a Washington-based consulting firm.

Speaking earlier this month at the Council of Insurance Agents & Brokers Employee Benefits Leadership Forum in White Sulphur Springs, W.Va., Mr. Gingrich said his optimism about declining health care costs is based on several factors.

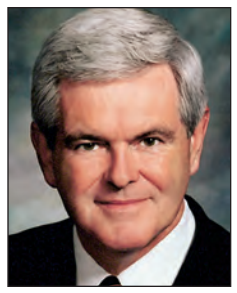
One key factor, he said, is that advances in medical science will bring about cures or less expensive treatments for some extremely costly diseases. Mr. Gingrich, for example, predicted that by 2015, cancer would be no more than a chronic disease, treated, like high cholesterol today, with prescription drugs.

He noted that such breakthroughs are likely because of the number of medical scientists working today.

Another force that will slow cost increases is public demand for changes in the health care delivery system, Mr. Gingrich said.

"The health care system is incredibly anachronistic," he said, with thousands of people dying because of medical mistakes. "The old order cannot be defended."

Eventual changes that will reduce costs and improve the quality of care include the widespread use of electronic medical records, an increase in publicly available information about the cost and efficiency of prescription drugs, and development of systems that will lead to better medical outcomes.



Newt Gingrich delivered the forum's keynote.

To those who say such changes are not possible, Mr. Gingrich noted that transformation is happening at a rapid pace in many areas and that there is no reason to believe that health care will be different.

Today, for example, automatic teller machines, online airline ticket sales and cellular phones are commonplace. Health care, he said, must catch up with practices that are the norm in other sectors of the economy.

Benefits forum sees growing attendance

WHITE SULPHUR SPRINGS, W.Va.—Over three years ago, the Council of Insurance Agents & Brokers created an employee benefits unit and decided to hold an annual meeting on benefits issues at the Greenbrier resort in White Sulphur Springs, W.Va.

"The need was there and the time was right," said CIAB Chairman Frederick J. de Grosz, who also is president and chief executive officer of ABD Insurance & Financial Services in Redwood City, Calif.

The CIAB's goal in creating the Council of Employee Benefits Executives in 2001 was to provide an annual forum in which benefit producers and insurers could forge relationships, much as the CIAB's annual fall meeting—also held at the Greenbrier—has become for the property/casualty industry.

The meeting "increases the networking opportunities" and allows insurers to present their products to distributors, said Debora Karstetter, vice chair of the CEBE, who also is executive vp at ABD.

Brokers and insurers have responded to that opportunity. This year's meeting, known as the Employee Benefits Leadership Forum and held June 2-5, attracted about 400 people, compared with 350 last year and about 175 in 2002.

In addition to networking opportunities, the meetings also have featured well-known politicians—this year's keynote address was delivered by former Speaker of the House Newt Gingrich (see related story)—as well as benefits experts.

Next year's meeting will be held June 1-4 at the Greenbrier. For more information, contact the CIAB at 202-783-4400.

Between the Lines

Compiled by Joanne Wojcik

Indicted drug dealer bought life insurance

An accused Maryland drug dealer probably thought she had an insurable interest when she allegedly purchased life insurance policies on the lives of some of her customers, paying for them with the money she made by selling them cocaine and heroin.

But federal authorities didn't think so after they noticed she apparently was collecting thousands of dollars in insurance payments after some of her drug contacts met untimely, violent deaths.

A federal grand jury last week indicted Paulette Martin of Takoma Park, Md., and 30 others—including a local insurance agent—on charges of drug trafficking and money laundering in connection with the scam that dates back to 1995.

According to a U.S. Immigration and Customs Enforcement statement, Burtonsville, Md., insurance agent Richard Gunn helped Ms. Martin secretly acquire more than 17 life insurance policies on the individuals, many of whom also had criminal backgrounds, and split the claims proceeds with him.

The release did not, however, say how much the policies were worth.

Hard drives, easy access

There's an old joke about Jaguars that says the reason the British decided to make cars instead of computers was that they couldn't figure out how to make computers leak oil.

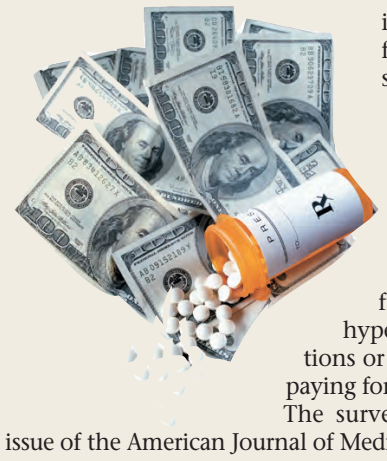
Well, a European security firm has discovered that some computers do leak.

Laptops whose hard drives contain sensitive financial and other information can be bought for a pittance at auctions, according to Stockholm, Sweden-based Pointsec Mobile Technologies.

The firm reported last week that its technicians were able to pull sensitive data from the hard drives of 70 of the 100 laptops Pointsec purchased from various Internet and public auctions during the past two months.

In one case, the firm obtained a hard drive from online auction site eBay that apparently once belonged to one of Europe's largest insurance companies. The hard drive contained details of customers' pension plans, payroll records, personnel details, log-in codes and administration passwords for the insurer's intranet site. Customers' home addresses, telephone numbers and dates of birth were also listed in 77 Microsoft Excel files, the security firm said.

Patients rarely asked if they can afford medications



Physicians treating chronically ill patients rarely ask if they can afford the medications they are prescribed, a new survey shows.

Only 16% of 4,050 adults over the age of 50 who were surveyed said that a physician or nurse ever asked them about their ability to pay for the medications they were prescribed. Yet 37% of the adults, who suffered from such chronic conditions as hypertension, diabetes, cardiac conditions or depression, said they had trouble paying for prescription medication.

The survey was published in the June 1 issue of the American Journal of Medicine.

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

Employee Benefits Leadership Forum

Urgent needs of health system may unite buyers, providers

By JERRY GEISEL

WHITE SULPHUR SPRINGS, W.Va.—The growing instability of the health care system could ultimately lead buyers and providers to agree on a set of reforms to avert a system collapse, one health care reformer maintains.

Signs of that growing instability abound, including a decline in the number of individuals with health insurance, an increase in health care costs and an impending collapse of the safety net that now ensures the medical treatment of the uninsured.

But while health care purchasers and providers rarely agree on much, "no one wants the health care system to grind to a halt," said Brian Klepper, the founding director of The Center for Practical Health Reform in Atlantic Beach, Fla.

Speaking earlier this month at the third annual Council of Insurance Agents & Brokers Employee Benefits Leadership Forum, held at the Greenbrier resort in White Sulphur Springs, W.Va., Mr. Klepper said the desire to avoid further market instability could provide the major stakeholders in the nation's health care system with a basis of agreement for a common ground of reforms. "That is the one thing everyone can agree on," he said.

There is little doubt, Mr. Klepper said, that the health care system is destabilizing. For example, some health care plans are reporting declines in enrollment for the first time in memory—a result of employers dropping coverage amid unrelenting health insurance premium increases.

As employment-based coverage declines, hospitals are being hit with big increases in the numbers of people seeking charity care. The financial burden of providing uncompensated care is too much for some hospitals to bear, Mr. Klepper said.

"The safety net is collapsing," he said.

Mr. Klepper said that if the health care system were to fail, the effects on the economy would be enormous; approximately $1 of every $7 in national spending is related to health care, he noted.

But interest in preventing a collapse could overcome the roadblocks that have held up previous reform efforts. The threat of a collapse could help forge what Mr. Klepper described as a "grudging new collaboration" among historical adversaries.

Still, for the reforms to succeed, they must be guided by several key principles, he advised. First, the reforms should be sufficiently "robust" to drive costs down to more manageable levels.

Next, the reforms should not favor one group over another. "No one's ox can be gored," Mr. Klepper said. The reforms might be equally unpalatable but ultimately prove acceptable to all, he said.

Mr. Klepper said that a basic reform principle that most could agree on and recognize as in everyone's best interest is to ensure coverage for all Americans. He noted that, for employers, universal coverage would mean a reduction in provider cost shifting, while providers would be relieved of the huge financial burden of uncompensated care.

Mr. Klepper said he believes universal coverage could be achieved at very little additional cost. If they had health insurance coverage, more individuals would probably seek care sooner, reducing the likelihood both that more expensive treatment would have to be provided later and that those individuals would need time off from work.

According to Mr. Klepper, the next reform principle should be the implementation of what he described as "standardized management." For example, evidence-based best practice guidelines should be developed and promoted, and information about the performance of medical providers should be made more readily available.

Additionally, medical information should be transmitted and exchanged through compatible technology platforms and a better means to assess the value of new medical technologies before they are marketed should be implemented.

Finally, the medical tort liability system, Mr. Klepper said, should be overhauled to ensure that patients would be protected while the health care system remained intact.

Not all groups, he acknowledged, would immediately be receptive to these reforms. Health care providers, for example, have historically opposed the disclosure of performance data, he said.

But if costs keep soaring and more employers leave the system, providers could face a shrinking revenue pool. And that shrinkage, Mr. Klepper said, ultimately could be the catalyst for transforming the health care system.

"There is good reason for everyone to work in the same direction," he said.

Climate change already affecting insurance business, report says

Industry warms to climate effects

By CAROLYN ALDRED

While the world may not face disaster the day after tomorrow, the impact of climate change projections is already being felt by businesses and the insurance industry.

"Climate change is not a remote issue for future generations to deal with. It is, in various forms, here already, impacting on insurers' businesses now," said Andrew Dlugolecki, author of a report on climate change published last week by the Assn. of British Insurers.

In response to the changes in climatic conditions some insurers have modified their policy wordings and some policyholders have taken action to protect their operations from the changing environment.

And other policyholders are paying greater attention to all weather-related risks as a result of increased concerns about the changing climate, some insurers say.

Although climate change remains a contentious issue, there is a growing view among scientists that the world has become significantly warmer in recent decades and that this century could see dramatic temperature increases that result in extreme weather conditions, the report notes.

"The 1990s were the warmest decade globally since records began, and 1988, 2002 and 2003 were the three warmest years," according to the ABI's report, "A Changing Climate for Insurance."

The report, which focuses on the impact of climate change in the United Kingdom, notes that "underwriting risk has changed. Small changes in the severity of extreme events can result in increases in damage of four to five times greater."

According to the latest projections, by 2080, average wind speeds in the southeast of England could increase by about 6%; intense rainfall events may be 5% to 20% heavier; warmer summers will result in summer moisture reductions of 40%; sea levels could be 86 centimeters higher and up to 50% more winter depressions could cross the United Kingdom, the report notes.

"Climate change has a direct impact on property insurance precisely because it will increase the frequency and severity of extreme weather events," the report states.

"Managing risk is central to our industry, and insurers must be equipped to analyze the new risks arising from climate change, and to help customers protect against them," said John Parker, head of general insurance for the London-based ABI.

PHOTO: EPA/JOHN GILES

Studies predict an increase in natural disasters, such as flooding, as global temperatures increase.

"Many more insurers now are aware of climate change and are starting to do something," said Oliver Peterken, head of analytical services at London-based Willis Re, a unit of Willis Group Holdings Ltd. Insurers, he said, are looking to manage their aggregate exposures to windstorm and flood and are incorporating climate change predictions into catastrophe modeling.

Christopher Walker, managing director of the New York-based Greenhouse Gas & Environmental Solutions unit of Swiss Reinsurance Co., said that "Swiss Re believes that the way businesses deal with climate will be one of the keys to determining successful long-term business for both clients and the company."

Some companies already are taking steps to evaluate and address climate change-related risks.

As a multinational company, GlaxoSmithKline faces various exposures that likely will increase because of climate change, said Richard Reddaway, risk and insurance manager for the London-based pharmaceutical company.

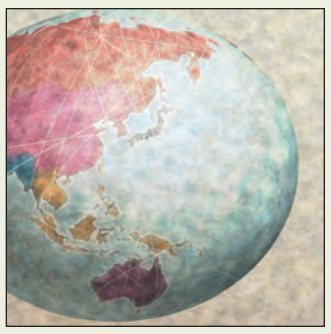
For example, the company has a

See CLIMATE/next page

Cable firm sues captive over claim

By PETA MILLER and SARAH VEYSEY

LONDON—Australia Japan Cable Ltd. is suing a defunct Isle of Man-domiciled captive insurer, seeking payment of a $92.5 million claim for loss of revenues related to the delay of a construction project.



In a suit filed last week in the Commercial Court in London, AJ Cable said it had obtained coverage from Pender Insurance Ltd., the former captive insurer of London-based Cable & Wireless P.L.C., for various risks during the construction of its Australia-Japan cable link in 2000 and 2001.

On Jan. 27, 2001, 3,500 kilometers of cable loaded on a vessel bound for the project was damaged in bad weather, according to the complaint. This delayed the project's completion date by about four months, the suit charges.

Hamilton, Bermuda-based AJ Cable then filed a claim for the loss of revenues from the delay, which Pender denied on the grounds that the policy did not cover financial losses until the cable had been laid, said Guy Hardaker, a partner at London-based law firm Holman Fenwick & Willan who represents AJ Cable.

Mr. Hardaker said that representatives from Pender, in negotiating the policy, had assured AJ Cable that it would provide coverage for the loss of anticipated revenues and profits stemming from a delay in the completion date that was caused by physical loss or damage to the network. The policy provided £200 million ($368 million) in coverage for various risks, Mr. Hardaker said.

In addition, "there is an issue as to whether (Pender) has sufficient funds to pay the claim," he said. Pender was placed in runoff in 2003.

Cable & Wireless declined to comment on the litigation.

Aussie code aims to speed up service

Draft applies to commercial insurers

By ELIZABETH FRY

SYDNEY, Australia—Commercial insurers in Australia would be compelled to provide timely and efficient service to policyholders if the industry adopts a draft General Insurance Code of Practice published earlier this month.

The draft, which was formulated by the Insurance Council of Australia Ltd., would, among other things, impose requirements on insurers aimed at accelerating claims payments.

It would apply to both commercial and personal lines insurers. The existing code of practice for property/casualty insurers only covers personal lines insurers. In addition, the new code would be extended to apply to other companies in the insurance industry, such as brokers, agents and claims management companies.

The ICA is currently seeking public comment on the draft insurance code and plans to implement a final version by the end of the year, to update the existing code that was established by the industry in 1994.

"Extending the code to all classes of insurance, including commercial insurance, is ground-breaking and it will be a challenge for the insurance companies to implement, because of the different classes of business and the way in which claims are handled," said Philip Maguire, deputy chief executive of the Sydney-based ICA.

Claims management standards are a central feature of the draft code. Federal regulatory reforms introduced last year incorporate many of the provisions of the 1994 code but do not contain provisions to regulate insurers' claims handling processes, Mr. Maguire said.

The draft code would require, among other things, that claims be handled promptly, that insurers keep policyholders informed of the status of claims and provide reasons for the rejection of any claims.

Specifically, the draft would require that insurance companies provide a response to personal lines claims within five days, compared with 15 days under the existing code, and that the companies seek to establish response benchmarks for commercial claims.

"A step like changing the (personal lines) response time will have

See CODE/page 36

World Updates

Merrill Lynch faces $13 million bias claim

A former U.K. employee of investment bank Merrill Lynch & Co. Inc. is seeking compensation of around £7 million ($12.9 million) in a claim alleging unfair dismissal and sexual discrimination. If the claim is successful, the award would be one of the largest in a U.K. employment practices case. Merrill Lynch maintains the individual was dismissed because her unit was performing poorly. A spokeswoman said Merrill "utterly refutes" the allegations.

Vietnam to sell stake in state-owned insurer

The Vietnamese Ministry of Finance will auction 30% of state-owned Bao Minh as part of plans to reduce its stake in the nonlife insurer to 51% by 2010. The ministry said it needs to raise 130 billion dong ($8.0 million) to boost the insurer's capital to the legal minimum of 434 billion dong ($26.6 million) to convert Bao Minh into a joint stock corporation.

Bahrain proposes insurer standards

The Bahrain Monetary Agency is seeking comments on proposed standards for insurers that it plans to implement in 2005. Bahrain gave the BMA responsibility for regulating insurance and capital markets in August 2002. Among other issues, the proposals discuss requirements pertaining to appointing auditors and actuaries, recommending, for example, that the various parts of an insurance group have the same auditor. The proposals are available at *www.bma.gov.bh.*

Currency moves reduce Forbes' revenues

Alexander Forbes Ltd. posted revenues of 4.4 billion rand ($695.8 million) for the year ending March 31, down 10.2% from the prior-year period. The South African brokerage cited currency fluctuations for the drop. Profits fell 11.4% to 842 million rand ($133.2 million), due to currency fluctuations, pension funding requirements and compliance with new rules, among other factors.

Briefly noted

Wellington Underwriting P.L.C. is buying a U.S. excess and surplus lines insurer and plans to begin writing managing general agency-produced small commercial property/casualty business. A Wellington spokesman said the company will pay $2 million to AXA Corporate Solutions for the shell company and its U.S. licenses and will capitalize the operation with about $38 million.

Climate: Concern about possible changes

Continued from previous page

factory in Puerto Rico, an area that is experiencing increasing wind speeds, he said. And in Montrose, Scotland, GlaxoSmithKline recently contributed financially to efforts to counter coastline erosion to protect its facility there.

Higher wind speeds and coastal erosion stemming from higher sea levels and increased wave heights have been linked to global warming trends.

The company is also concerned about an increased prevalence of dust due to warm, arid conditions stemming from climate change, Mr. Reddaway said. The dust issue is critical to a pharmaceutical company that must have "clean" facilities, he said.

The ABI report also notes that climate change is likely to affect business interruption and liability coverages as well as property.

"Increasing severe weather events, particularly those resulting in prolonged electricity network failures, may change the pattern of future business interruption losses," the ABI report states.

"The business interruption implications are enormous," said Charles Crosthwaite Eyre, practice leader for climate change solutions for Aon Risk Consulting in London. For example, he said, "windstorm damage to the (power) transmission and distribution networks can lead to significant physical damage to networks. But the associated business interruption and loss of earnings can be even greater."

The ABI report also predicts that "businesses responsible for high emissions of greenhouse gases could be held liable for the damage that is caused by climate change."

Swiss Re's Mr. Walker noted that the reinsurer already has introduced a climate change exclusion to directors and officers liability policies for some clients.

"We were the first in the industry to pinpoint and act upon potential climate change-related risks in directors and officers insurance (recognizing that) directors as senior managers may in the future be held liable if their companies fail to comply with emissions regulations," he said.

Other areas of insurance likely to be affected by climate change are employers liability and health insurance, the ABI points out.

"Insurers should carry out preliminary studies such as examining the need for new climate-related factors in underwriting employers liability" coverage, the report advises.

In the United States, though, Mike Burke, vp and manager of catastrophe exposures for Johnston, R.I.-based Factory Mutual Insurance Co., said annual variations in weather can have more impact on risk managers than gradual changes in the climate.

"Whatever is happening regards climate change, it is quite small in relation to the normal variations we get from year to year. Annual variations are so much larger than the subtle trend that may, or may not, be happening," he said, noting that the insurers' clients tend to prepare for extreme events regardless.

Mr. Burke said, though, that the debate itself is having a positive effect in that it has raised businesses' awareness of the impact of extreme weather events.

The ABI's report is available at www.abi.org.uk/climatechange.

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The Polk County Board of County Commissioners (BoCC) is currently seeking a Safety Manager. This position is responsible for planning, developing, updating, and managing safety and safety health programs for the Board of County Commissioners and elected officials. Manages and oversees the work of a Safety Technician. Responsible for planning, developing, and managing the safety budget. Manages the safety incentives programs. Plans, develops, implements, and manages injury prevention programs. Requires: BA/BS degree in a safety related field and have a minimum of one (1) year experience in Occupational, Industrial, or Safety Engineering or a safety related field; or a high school diploma and a minimum of five (5) years experience as a safety coordinator. Must possess a valid driver's license and be able to secure a valid Florida driver's at the time of employment. Excellent Benefits. Submit application/resume to: Polk County BoCC, Personnel Division, P.O. 9005, Drawer CA03, Bartow, FL 33831-9005 or an application may be completed online by visiting our website at: **www.polk-county.net**, M/F/D/VP.

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REQUEST FOR PROPOSALS

Dallas Area Rapid Transit is seeking competitive sealed proposals from firms qualified to offer administration of group medical benefits, prescription drug benefits, dental benefits, vision benefits, COBRA, flexible spending accounts, and HIPAA administration.

Solicitation information is provided as follows: Solicitation Number - P-1007889; Issue date - June 14, 2004; Pre-proposal Conference - June 18, 2004; Proposal due date - July 9, 2004.

DART reserves the right to reject any or all offers and to waive any or all informalities. For copies of the solicitation and additional information, contact Leneé Goyette at **lenee_l_goyette@aoncons.com**, fax (817) 339-2016 or Andrea Silva at **andrea_s_silva@aoncons.com**, fax (817) 339-2016.

REQUEST FOR PROPOSALS

Sealed proposals will be received by the Board of County Commissioners, Pinellas County, Clearwater, Florida, in the office of the Director of Purchasing, County Annex Office Building, 400 South Fort Harrison Avenue, 6th Floor, Clearwater, Florida, and will be opened and read aloud for the following:

INSURANCE AGENT/BROKER SERVICES - RISK MANAGEMENT 034-626-P (GG)

TO BE OPENED: JUNE 29, 2004 @ 3:00 PM

"Persons with disabilities requiring reasonable accommodation to participate in this procedure/event, should call (727) 464-4062 (Voice/TDD) Fax (727) 464-4157, not later than seven days prior to the proceeding".

Further information may be obtained by contacting the Purchasing Department, at the above address or telephone number (727) 464-3311. Bid Information may be obtained by visiting the Pinellas County Purchasing Department web site **www.pinellascounty.org/purchase.** Any bids received after the specified time and date will not be considered.

e-mail
iamleshi@BusinessInsurance.com

REQUEST FOR PROPOSALS

Azerbaijan

Institutional Capacity Building Technical Assistance for the State Oil Fund of Azerbaijan (SOFAZ)

USTDA RFP# 2004-80017A

The U.S. Trade and Development Agency (USTDA) has awarded a U.S. $1,091,840 grant to SOFAZ for technical assistance (TA) related to Azerbaijan's efforts to better manage its oil-related revenue. This TA will entail: reviewing and refining SOFAZ's current asset and risk management guidelines and policies; advising on software needs and preparing a portfolio management software selection and implementation report; providing legal interpretations of standardized agreements common in the asset management industry; and developing an operations manual for SOFAZ. Travel to Baku will be required. A detailed Request for Proposals is available from USTDA's Information Resource Center (IRC) at 1000 Wilson Boulevard, Suite 1600, Arlington, VA 22209 or fax (703) 875-4009. SOFAZ will evaluate all proposals for this assistance. Proposals must be submitted in English, Russian and Azeri languages. Interested firms, their subcontractors and employees must qualify under USTDA's nationality requirements. All goods and services to be provided by the selected firm shall have their nationality, source and origin in the U.S. or Azerbaijan. The U.S. firm may use subcontractors from Azerbaijan for up to 20% of the USTDA grant amount.

Equitas: Asbestos reserves

Continued from page 1

during the year, up from £1.1 billion ($1.74 billion) the previous year.

Equitas' total provisions for outstanding claims stood at £5.35 billion ($9.84 billion) at March 31, down from £7.04 billion ($11.12 billion) a year previously. Despite the decrease in its surplus, the reinsurer's solvency margin—its accumulated surplus expressed as a percentage of net claims outstanding—improved to 9.8% at March 31, up from 8.7%.

Mr. Moser noted that Equitas settled several of its largest exposures during the year, including three of its five biggest direct insurance exposures and its largest reinsurance exposure.

The decision to boost asbestos reserves stemmed mainly from an increase in payouts to victims of mesothelioma—an asbestos-related cancer—as well as a worsening claims experience among some of its key policyholders, Mr. Moser said.

In an effort to slow the growth of its asbestos-related liabilities, Equitas in 2001 imposed rules designed to ensure that only claimants who could provide medical evidence of an asbestos-related injury or illness would receive compensation (*BI,* May 7, 2001).

Mr. Moser said that while "it is impossible to prove a negative" and demonstrate that fewer unimpaired claimants are receiving payments, Equitas believes that the documentation requirements have succeeded in reducing such claims.

However, mesothelioma awards have increased in some cases, he said.

The decision to boost asbestos reserves stemmed mainly from an increase in payouts to victims of mesothelioma.

Scott Moser
Equitas Ltd.

Jenni Biggs, a principal at Towers Perrin in St. Louis and chairperson of the Washington-based American Academy of Actuaries' mass torts subcommittee, said that there has been an increase in the size of mesothelioma court awards and out-of-court settlements.

In 2001, the average jury award for mesothelioma was $9.0 million per defendant, she said. In 2002, that figure rose to $13.4 million, and it increased again in 2003 to $16.9 million. She noted, though, that the 2003 figure was skewed by a large award in Madison County, Ill.

In addition, Ms. Biggs said that in her work with corporate defendants, she has seen an increase in the average out-of-court settlement for mesothelioma. Most such cases are settled out of court, and settlement amounts tend to be lower than jury awards, she noted.

Marc Mayerson, a partner and policyholder attorney at the Washington-based law firm Spriggs & Hollingsworth, said that anecdotal evidence indeed indicates that mesothelioma claims, particularly in certain jurisdictions, are rising in value.

Equitas' decision to boost its reserves, and the fact that its surplus has slipped below £500 million ($920 million), will likely prompt more policyholders to consider settlement agreements with the runoff reinsurer, experts said.

Equitas entered into several large deals in its last fiscal year. In March, it reached a $245 million settlement with Hartford, Conn.-based Travelers Property Casualty Corp., which is now part of St. Paul Travelers Cos. The deal applies to all current and future reinsurance claims made by Travelers against Equitas, as well as all claims made by reinsured syndicates against Travelers. The agreement settled Equitas' largest outstanding reinsurance exposure, the company said.

Earlier this year, Equitas reached a $575 million settlement with Houston-based energy company Halliburton Co., capping its largest single direct liability. And in April 2003, another large deal—a $472 million settlement with Honeywell International Inc.—was struck.

Mr. Moser said that Equitas would continue to seek settlements, which are in the interests of both parties in "reducing transaction costs and eliminating credit risk."

And policyholder attorneys said that renewed concerns over Equitas' long-term future would likely increase policyholder interest in such deals.

Mr. Mayerson said that "going below £500 million on the surplus is scary" and he said he "would certainly expect a number of policyholders to take the business decision to settle now."

Laurence Eisenstein, a policyholder attorney at Eisenstein Malanchuk in Washington, said that there would likely now be "an even greater urgency…to settle with Equitas while there is still time."

The decrease in Equitas' surplus is a matter of concern, noted Mark Plumer, chair of the insurance practice at Swidler Berlin Shereff Friedman in Washington. And, he said, it will likely spur some policyholders to seek settlements deals. Others, though, will decide that their future liabilities are dramatically greater than any settlement amount they may be able to negotiate and, thus, will choose to litigate or to wait until those liabilities become clearer, he said.

ASBESTOS RESERVES

Equitas asbestos reserves over the last four years.

Year	Boost	Reserve
2004	£296m	£4.0b
2003	£399m	£5.3b
2002	–	£8.0b
2001	£1.5b	£8.0b

Equitas' fiscal year ends 3/31.
Source: Equitas

Pensions: Deficits spur cuts

Continued from page 4

butions. For example, Canadian Pacific Railway successfully negotiated a restructuring of its benefits program set to begin in 2005, which includes an increase in employee contributions to the pension plans.

While most of the major Canadian companies with pension funding deficits declined to comment on their situations, consultants say many are taking drastic steps to reduce or eliminate pension liabilities. The most popular measure is to convert defined benefit plans to defined contribution plans, which shifts the investment risks to the employee, they say. The percentage of pension plans in Canada that are defined benefit plans is expected to fall to 39% by 2006, down from 49% in 2004, according to a recent Hewitt Associates Inc. survey.

"There has been and continues to be an exodus from defined benefit plans to defined contribution," said Ian McLeod of John Chute & Associates, an employee benefits consulting firm in Toronto.

Companies are now taking other measures as well to reduce pension costs, mainly the elimination of early retirement provisions, consultants say. Most defined benefit plans allow for retirement before age 65 either without penalty or on a subsidized basis, but companies have been eliminating early retirement incentives in a big way, said Fred Vettese, chief actuary at the Toronto-based human resources consulting firm Morneau Sobeco. Some companies now allow early retirement but reduce pensions by 5% for each retirement year preceding age 65, Mr. Vettese said. They are also reducing costs by changing their pension formulas to base the pension benefits on a five-year average of earnings instead of a three-year average, he said.

"It doesn't make sense that companies are subsidizing people to leave early," Mr. Vettese said. "It's a lot more costly to let employees receive pensions at 50 than 65."

Some Canadian companies are reducing or eliminating ancillary benefits such as indexing, which boosts pension benefits to match or partially reflect inflation. Other ancillary benefits being reduced are bridging benefits—supplemental pension benefits payable from the date of early retirement until the age of entitlement for government pensions—and post-retirement survivor benefits. Elimination of these benefits can reduce costs significantly, he said.

In certain jurisdictions, plan sponsors are able to eliminate ancillary benefits for past service if employees have not yet satisfied all the conditions for receiving their pensions, Mr. Vettese said. If, for example, an employer provided unreduced pensions at age 60 for those with 20 years of service, it could change that benefit for an individual who has only 10 years of service, he said.

Most Canadian companies are automatically eliminating these benefits for new hires, which helps them reduce future costs but does not immediately reduce their pension deficits, consultants say. "Over time, they will start to reap some benefits," said Scott Simpson, national retirement practice leader for Mellon Financial in Toronto.

Some companies are also taking a broader look at their overall benefits packages and gradually phasing out nonpension post-retirement benefits in order to keep the total compensation package in line, consultants say. For example, several companies are providing post-retirement health benefits for current retirees and those who will retire within five years but eliminating these benefits for everyone else, Mr. McLeod said.

Several studies indicate that some Canadian companies are completely eliminating nonpension post-retirement benefits. According to a Morneau Sobeco study, 37% of companies offered nonpension post-retirement benefits coverage last year, but that number is expected to drop to 32% in 2004.

Several companies with large deficits are opting to do nothing except make the necessary contributions in hopes that interest rates will increase and reduce their pension liabilities. For example, Toronto-based RBC Financial contributed $540 million Canadian ($399.7 million) to its pension plans last year but has made no changes to the plans, said Gary Dobbie, senior vp-compensation and benefits. "The assets are performing well, but the lowering of interest rates is continuing to increase the liabilities. It's a short-term situation."

Other companies would like to make changes to their benefit programs but strong union opposition has stymied their efforts, consultants say. In fact, Air Canada's restructuring efforts were nearly derailed earlier this year due to its unions' refusal to accept a change of plans.

Furthermore, consultants note, changing their benefits packages means companies have to go back on promises they have already made to their employees, which could affect morale and productivity. "It's a blatant takeaway," Mr. Vettese said. "It's hard to do."

Code: Updated rules

Continued from page 33

a potential spin off to the commercial side as well even though you know that it is going be impossible for the response time for a professional indemnity claim to be as fast," said Mr. Maguire.

The draft also would require that insurers disclose their reasons for declining cover, nonrenewing, and canceling policies.

Brokers and other service providers would be affected by changes suggested in the draft code, mainly in the work they carry out on behalf of insurers, and by requirements to alert their clients to any potential conflicts of interest they may encounter, and requirements not to perform services outside of their areas of expertise.

The only areas not covered by the draft code are: workers compensation and compulsory third party motor vehicle insurance, which are regulated at the state level; and marine insurance which is regulated by the Marine Insurance Act.

Judith Harriss, insurance manager at Sydney-based AGL Ltd., welcomed the additional disclosure that would be required by the draft code.

"Since the level of disclosure for all corporate insurance policies has increased over the last few years, it is reasonable to expect that those in the insurance industry—brokers, claims managers and other service providers—are obliged to be more open in their dealings with their corporate clients," said Ms. Harriss, president of the New South Wales chapter of the Assn. of Risk & Insurance Managers of Australasia Ltd.

The code would be enforced by an existing industry-owned dispute resolution body, Insurance Enquiries and Complaints Ltd., which has the power to impose sanctions and name offenders. Following the three-month public consultation period, the ICA will seek Australian Securities and Investments Commission approval of the draft code.

Meanwhile, Mike Wilkins, president of the ICA, was critical of proposed corporate governance reforms for general insurers that have been formulated by the Australian Prudential Regulation Authority at a conference last week in Sydney sponsored by APRA and the ICA.

The proposed reforms, which are contained in a discussion paper issued by APRA in November 2003, would apply specific corporate governance requirements for insurers.

Mr. Wilkins said the insurance industry supports the principle of good corporate governance, but the method of achieving that objective as set out in APRA's discussion paper caused concern, particularly about overlapping responsibilities between APRA and the Australian Securities and Investments Commission.

"ICA did not believe that a clear case could be made for sector specific corporate governance provisions relating to director independence, board composition, director resignations, audit committee and risk committee requirements, performance standards for board and management, and length of service for directors," he said.

The proposals were part of a package of reforms in response to the Royal Commission inquiry into the collapse of HIH Insurance Ltd.

SAIF: Liberty unit seeking shutdown of Oregon fund

Continued from page 3

sort to market to larger businesses.

Liberty Northwest supports the ballot initiative because it contends SAIF uses its tax-free status as a public corporation and maintains excess reserves to keep rates artificially low and pursue a near-monopoly, the insurer's spokesman said.

Furthermore, SAIF's sway with employer associations gives it "enormous political influence" that renders useless any attempt by Liberty Northwest to remedy the situation through the state Legislature, the spokesman added. SAIF and many of the state's employer associations acknowledge that their workers comp programs are underwritten by the state fund.

There is "a tremendous wall of political protection for the state fund, which is one of the reasons that we, Liberty Northwest, ultimately considered…a ballot measure," the spokesman said. "We were unable to get our concerns dealt with in the Legislature."

SAIF and its proponents see the situation differently.

Liberty Northwest has "been relentless in their attempt to take over the entire workers compensation market in Oregon to make it private," a SAIF spokesman said. "They would like to squeeze any profits they can out of this market, take that away from Oregon business and send it back to shareholders in Boston."

Political action groups must gather 75,630 signatures by July 2 to place an initiative on the November ballot. Their TV commercial currently airing in Oregon hopes to drum up support for the initiative by blaming SAIF for the state's unemployment rate.

In the spot, an announcer says that Oregon has "one of the nation's worst unemployment rates" in part because SAIF has "drained half a billion from our economy."

The figure refers to $500 million in "excess reserves" that SAIF maintains, and that money should be used for public policy needs, said Lisa Gilliam, director of Oregonians for Accountability, a political organization funded by Liberty Northwest.

The SAIF spokesman, though, said the $500 million figure is an exaggeration.

"I don't know where they get a half billion dollars out of any figures we have shown in our annual report or that we have filed," he said.

At the end of 2003, SAIF had $376 million in surplus with about $250 million of that in "risk-based capital" reserves required by regulators, SAIF's spokesman said.

SAIF's board would like to maintain $500 million in surplus—and would pay dividends if it reached that amount—but the investment environment has prevented it from doing so, the spokesman said.

Michael McCallum, president and chief executive officer of the Oregon Restaurant Assn. in Wilsonville, Ore., said he doesn't "have a dog in the fight." SAIF insures about half of his group's 3,000 members; Liberty Northwest insures the other half.

SAIF, he said, keeps rates low and thus creates an artificial market, Mr. McCallum said. The low rates are good for Oregon business, Mr. McCallum added. But if SAIF's reserves reached a point where the fund could no longer subsidize rates, the market could be thrown into disarray without more private insurers, he said.

SAIF is mandated by state statute to drive down market rates, the fund's spokesman responded.

Other business associations that provide workers comp programs underwritten by SAIF are siding with their insurer.

For example, Associated Oregon Industries—the equivalent of a state chamber of commerce in Oregon—is telling its members that SAIF's lower costs do not stem from tax advantages, because the insurer pays the same taxes as other insurers.

SAIF's lower costs reflect operational efficiencies, according to AOI. If SAIF were abolished, some businesses would be thrown into a high-risk pool and forced to pay rates that are 30% to 50% higher than SAIF currently charges them, according to the AOI.

But the AOI is biased because SAIF underwrites its workers compensation program and pays to publish an AOI member newsletter, the Liberty Northwest spokesman charges. SAIF pays to publish the newsletter because it contains work-safety articles, SAIF's spokesman responded.

Metrics: Improving safety through better statistics

Continued from page 4

Indiana University of Pennsylvania. Companies should not use "a cookie-cutter approach," he said.

Detroit Edison Co.'s Fermi 2 nuclear plant uses safety metrics to track both leading and lagging indicators in its effort "to drive continuous improvement in our safety performance by establishing 'stretch goals' targeted for best-in-class" operations, said David A. Varwig, principal technical specialist-safety, assessment and planning at the Newport, Mich., plant. The facility generates electrical power for southeastern Michigan.

The utility periodically tracks, reports and evaluates 47 measures, including 26 that relate to safety, by comparing its performance against benchmarks, including ones established by the industry-rated top 10% and top 25% of similar nuclear power plants.

"Personnel safety measures include tracking a worker's exposure to radiation. They also include tracking human performance errors and incidents," Mr. Varwig added. Other safety measures track the operation of the nuclear reactor as well as public safety measures, which include emergency plans and monitoring of effluents.

The Fermi 2 reactor plant uses a mix of reporting formats, including scorecards and trend graphs, he said.

Using safety metrics has had a positive effect on operations, because "we have advanced beyond the 'what gets measured, gets done' slogan to formalizing expectations that facilitate involvement and promote ownership, acceptance and accountability for our safety results at all levels of the organization," Mr. Varwig said.

Everyone at the plant understands his or her safety roles and how he or she can contribute to plant safety, he said.

The negative aspect of using such metrics, however, is "that the more you learn about your operations and further specify your safety metrics, the more you increase the possibilities of data/information overload…increasing the potential for 'paralysis of over-analysis,'" he said.

Among other safety metric measures that some employers use is a scorecard that Mr. Esposito said he is helping a federal agency develop to rate supervisors. It will evaluate them on their use of the agency's inspection, hazard analysis and accident investigation programs.

Other companies are taking simpler approaches than analyzing comprehensive injury statistics. But even simpler means of leveraging information can help improve workplace safety efforts.

For example, safety professionals working for the San Francisco Public Utilities Commission's $3.6 billion capital improvement program participate in daily "toolbox" meetings, during which project managers discuss the work to be done that day, including safety issues.

Safety professionals also visit the worksite during the day to make sure that workers are performing appropriately, said Marge P. Layne, manager of the owner-controlled insurance program for the project, which seeks to improve delivery of water to the area.

"It's simply a day-to-day process and there is no follow-up record keeping" unless an accident occurs, Ms. Layne said. Any accident would be investigated and a report would be made, primarily to educate safety personnel and workers about hazards to help prevent future injuries and illnesses, she said.

While interest in injury analysis is growing, safety consultant Eddie Greer estimates that "only about 30%" of safety professionals routinely emphasize collection of data and analysis of leading injury indicators.

Mr. Greer, who operates his own safety consulting firm in Sugar Land, Texas, is a former president of the Des Plaines, Ill.-based American Society of Safety Engineers.

One reason safety managers and companies have not adopted the approach is that "they know that it will take an investment of time," though establishing such a system would ultimately save a safety manager time in the long run, Mr. Esposito said.

Products & Services

ASSE publishes safety guide

DES PLAINES, Ill.—The American Society of Safety Engineers has published a new book designed to help companies strengthen their workplace safety efforts.

The book, "How Smart Managers Create World-Class Safety, Health, and Environmental Programs," provides insight on how companies can implement the Voluntary Protection Program guidelines established by the Occupational Safety and Health Administration. The book also addresses how corporations can minimize workers compensation costs and reduce the risk of employee injuries.

The publication was written by Charlotte A. Garner, corporate safety director for Webb, Murray & Associates of Houston.

To order the book, contact the Des Plaines, Ill.-based ASSE's customer service department at 847-699-2929 or visit the organization's Web site at *www.asse.org*.

CIGNA launches EAP for expatriates

EDEN PRAIRIE, Minn.—Global health care provider CIGNA International has teamed up with CIGNA Behavioral Health to offer an employee assistance program for expatriate employees of multinational firms.

The EAP program allows CIGNA International participants to access a multilingual support and counseling network. Employees and their dependents can receive assistance through telephone or personal visits for a wide range of behavioral health and work/life concerns. The program is designed to help employees better manage stress and anxiety, depression and substance abuse, as well as to help them lead healthy lifestyles.

For more information, contact Dawn Bowden, assistant vp of CBH in Eden Prairie, Minn., at 952-996-2403.

Markel offers cover for U.K. go-carts

LONDON—Markel International, a unit of Markel Corp., is offering a new insurance package program for the professional go-cart industry in the United Kingdom.

The Kart Circuits Insurance

Program is available to go-cart track operators and provides employers liability, public liability and accidental death, loss and dismemberment coverage to policyholders.

The limit available for employers liability coverage is up to £10 million ($16.3 million); public liability coverage is up to £5 million ($8.2 million); and accidental death, loss and dismemberment benefits are up to £25,000 ($40,853).

For more information, e-mail Peter Smith, professional sports underwriter, at *peter.smith@markelintl.com*.

Best offers non-U.S. report on CD-ROM

OLDWICK, N.J.—A.M. Best Co. has released the updated version of its 2004 "Best's Insurance Reports-Life & Non-life-Non-U.S." on CD-ROM.

The product, originally released in February, contains reports on more than 4,000 companies and includes 785 updated ratings. Each report examines the financial strength, financial performance, operations and management of insurers operating outside of the United States. The analysis also explores Best's rating rationale.

The CD-ROM allows users to search and sort data fields, create lists and export data to Microsoft Excel and to Lotus 1-2-3.

For more information, contact the A.M. Best customer service department at 908-439-2200, ext. 5742, or by e-mail at *customer_service@ambest.com*.

Reservists: Program would 'help our employers greatly'

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bers of the National Guard could enroll in a military health insurance program known as Tricare. Under current law, only reservists called up for active military service and their families are eligible for Tricare.

A reservist not in active military service still could enroll in Tricare by paying a premium, backers of the legislation estimate, of $530 a year for single coverage and $1,860 for family coverage.

Tricare coverage would be available to reservists even if they were employed and eligible for coverage from their employers. In that situation, an employee would have to choose between the two plans rather than having dual coverage.

While most employees likely would choose an employer plan due to certain restrictions in Tricare—for example, a beneficiary generally must use a military facility for inpatient services if one is nearby—nothing in the legislation would preclude employers from offering employees financial incentives to enroll in Tricare and thus reduce their own health insurance costs.

"If you hire a Guard or Reserve member, and if they sign up for military health care, it is less expensive for you to hire them," Sen. Graham said on the Senate floor, adding that the amendment would "help our employers greatly."

And for those enlisting in the Guard who now are uninsured, enactment of the proposal would put into reach insurance coverage at a fraction of the cost they would have to pay for coverage in the personal lines market. That could result in a reduction in the number of individuals in the United States without health insurance, now about 44 million.

For employees called up from Guard or Reserve units who would want to retain coverage from their employers for their dependents, the amendment would subsidize the health insurance premiums they would pay their employers to continue that coverage.

That provision typically would come into play in those situations in which employers, as many now have been doing voluntarily, extend health insurance coverage to employees called up for military service on the same basis as before activation.

Under the provision, the government would cover the portion of the premium paid by the employee. Additionally, in situations in which an employer does not extend regular coverage and offers COBRA continuation coverage, a portion of the COBRA premium also would be paid by the government.

The government payment would be capped at the per-capita cost of Tricare coverage. Per-capita cost figures were not available last week but are thought to be sufficiently high to cover the premium contributions made by employees for those employers extending coverage as well as a good chunk of COBRA contributions.

The amendment has drawn the strong support, not surprisingly, of organizations representing military personnel.

"This program will improve readiness, since nearly 20% of Reserve component members do not currently have health insurance," wrote James Staton, executive director of the Air Force Sergeants Assn. in Temple Hills, Md., in a letter to Sen. Graham.

Sen. Graham said extending Tricare coverage to reservists would boost recruitment efforts. He added that such an extension has an equity aspect.

"You can be a part-time federal employee...and you get health care. You can be a part-time citizen soldier, training to defend America, and get zip," he said.

Administratively, though, the portion of the proposal under which the government would cover employee premium costs in situations in which employers extend coverage to reservists called up for active duty could present challenges.

"What would be the payment process and the timing of it?" asked Kelly Traw, a senior manager with the human resources services unit of PricewaterhouseCoopers L.L.P. in Washington.

Still, though, "employers would do anything to help their men and women," said John Piro, an attorney with Hewitt Associates Inc. in Norwalk, Conn.

While the proposal passed on a 70-25 vote, it faces an uncertain future. The Senate Republican leadership, including Majority Leader Sen. Bill Frist, R-Tenn., and, oppose the amendment.

One Republican opponent, Sen. Don Nickles of Oklahoma, said the proposal, estimated to cost $5.4 billion over five years, would crowd out other defense spending, such as money for munitions. He added that it should not be the government's responsibility to provide health care for part-time military personnel.

"I don't believe the federal government should pay for an individual and/or their families' health care cost...because they do two days a month of Guard duty," he said on the Senate floor.

The debate on the Graham proposal comes as many employers, responding to the call-up of their employees from the Reserve, have been extending health care coverage by paying the same percentage of the premium they paid out be-

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Pfizer: Civil lawsuits seek billions from drug maker

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maceutical giant, with $45.2 billion in 2003 revenues, took a $427 million pre-tax charge against last year's fourth-quarter earnings in anticipation of the settlement.

A Pfizer spokesman said the company will "vigorously defend" the proposed class action suits and "does not believe that efforts to certify these suits as class actions are supported by law."

The cases should be decided on individual doctor/patient relationships that led to Neurontin prescriptions, the spokesman said, adding that "we are not aware of any patients who suffered any harm as a result of the Warner Lambert conduct" outlined in the criminal complaint.

Neurontin, developed by Parke-Davis, was approved by the federal Food & Drug Administration in December 1993 as a supplemental anti-seizure medication for epilepsy patients. The drug has since become one of Pfizer's best-selling products: Between 1995 and 2003, annual sales grew from $97.5 million to $2.7 billion, according to court filings and Pfizer's financial reports.

A large part of Neurontin sales, though, have been for uses other than approved epilepsy treatment, including pain and mental disorders. These so-called "off-label" prescriptions expanded from 50% of Neurontin sales in 1996 to 90% of sales by 2003, court filings say.

While doctors are free to prescribe a medication for uses not specifically approved by the FDA, federal law restricts pharmaceutical companies from promoting their products for off-label uses.

The controversy over Warner-Lambert's marketing of Neurontin surfaced in 1996, when Dr. David Franklin, a former Parke-Davis employee, filed a sealed whistleblower complaint charging the company with violating Medicaid anti-kickback provisions and knowingly promoting Neurontin for uses that are not eligible for Medicaid reimbursement.

Federal prosecutors later brought criminal charges against Warner-Lambert, and attorneys general of the 50 states and the District of Columbia sued for violations of state consumer protection laws, leading to this month's guilty plea and settlement.

The settlement, however, does not resolve the claims of health insurers and other private parties that paid for off-label Neurontin prescriptions, and several of these parties have filed suit since Pfizer and Warner-Lambert announced their agreement with prosecutors last month.

The complaints, filed in federal courts in Massachusetts, New Jersey and Louisiana, all seek class action status, most on behalf of third-party payers who paid for or reimbursed Neurontin purchases after Jan. 1, 1994.

In addition to Aetna and Guardian Life, plaintiffs include the Teamsters Health & Welfare Fund of Philadelphia & Vicinity; an Alaska State Employees Assn. health benefit trust; Harden Manufacturing Corp., a Haleyville, Ala.-based furniture maker whose benefit plan covered Neurontin prescriptions; and two Louisiana individuals suing on behalf of that state's consumers.

The allegations in the complaints are virtually identical and mirror the charges first brought against Warner-Lambert in the whistleblower complaint.

The ASEA lawsuit, filed this month in U.S. District Court in Newark, for example, alleges that Warner-Lambert developed an illegal marketing strategy for off-label uses of Neurontin after deciding it would be too time-consuming and costly to win FDA approval for those uses.

The strategy resulted in huge sales of Neurontin for a wide range of unapproved uses for which there was little or no evidence of its effectiveness, the suit charges. The uses included treatment of bipolar mental disorder, pain disorders, Lou Gehrig's disease, attention deficit disorder, migraines and drug and alcohol withdrawal seizures, court filings say.

Off-label prescriptions expanded from 50% of Neurontin sales in 1996 to 90% of sales by 2003, according to court filings.

Federal law allows drug companies to provide independent research about the off-label use of their products in response to unsolicited requests from physicians, the suit notes. As part of its Neurontin marketing plan, though, Warner-Lambert and Parke-Davis allegedly:

- Hired and trained "medical liaisons" to act as a surrogate Neurontin sales force, cold-calling doctors and soliciting requests for information about off-label uses of the drug.

The suit quotes a Parke-Davis marketing executive telling medical liaisons during a 1996 teleconference that the FDA-approved use of Neurontin "is not where the money is" and that "I want you out there every day selling Neurontin" for pain management and other uses.

- Encouraged medical liaisons to falsely represent themselves as medical researchers. The liaisons also routinely misrepresented the existence or results of clinical research on the off-label uses of Neurontin, the suit alleges. Liaisons claimed, for example, that clinical trials showed the drug was an effective treatment for bipolar disorder and pain syndromes when no such evidence existed, the suit says.
- Paid kickbacks to doctors in the form of cash, travel and entertainment expenses based on the number of Neurontin prescriptions they wrote and their ability to convince colleagues to prescribe the drug for off-label purposes.

The company disguised the payments by hiring the physicians as "consultants," though they performed no consulting services; paying them to attend "medical education seminars" where Neurontin was promoted; and paying them to lend their names to scientific articles that were actually written by others and that often concerned off-label uses of Neurontin, the suit charges.

- Coached doctors and pharmacists on how to conceal the off-label use of the drug on health insurance claim forms.

Some of the proposed class action complaints—including those filed by ASEA, Harden Manufacturing and the Teamsters fund—level civil racketeering charges along with fraud and other allegations. Others, including Aetna's, simply charge violations of state consumer protection laws.

ASEA earlier this month filed a motion to consolidate all of the actions in federal court in Newark. That motion is pending.

Once the venue and class certification issues are resolved, the plaintiffs will likely seek summary judgment against Pfizer and its units based on Warner-Lambert's guilty plea to the federal criminal charges, a lawyer representing Aetna predicted.

"Summary judgment on liability is certainly appropriate given the guilty plea," said Peter A. Pease, a lawyer with Berman, Devalerio, Pease, Tabacco, Burt & Pucillo in Boston.

ADVERTISER INDEX

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Late News

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cleanup costs. Under the Resource Conservation and Recovery Act, pollution claims can be made directly against insurers, but RCRA's direct-action provision "by its plain language...applies only to claims concerning present and future threats to human health and the environment." As a result, plaintiffs cannot sue under that provision to recover the cost of past cleanup efforts, the court ruled.

PHOTO: ZUMA PRESS

Claims of $75 million to $100 million are expected from storms in Texas earlier this month.

Storms cause big losses in Colorado, Texas

Insured damage from two back-to-back storms that hit eastern Colorado last week is expected to top $100 million, according to the Rocky Mountain Insurance Information Assn. Homes, businesses and automobiles from Denver to Golden were pelted with golf ball- and baseball-sized hail during the storms. Meanwhile, a string of severe storms that battered North Texas earlier this month will result in insured losses of $75 million to $100 million, according to the Southwestern Insurance Information Service.

Employers scrutinize 401(k) fees: Survey

Concerned about the total cost of their 401(k) plans, employers are examining what they can do to reduce the cost of investment management fees, according to a survey. Sixty percent of 140 employers recently surveyed by Hewitt Associates Inc. said they either have taken or intend to take action to reduce investment management fees, which often make up 70% to 80% of a 401(k) plan's cost.

Garamendi questions WellPoint merger costs

Anthem Inc. and WellPoint Health Networks Inc. should be forced to justify the compensation package for company executives related to the merger of the two managed care companies, said California Insurance Commissioner John Garamendi. He voiced concern over the up to $350 million in estimated costs of providing bonuses to executives who stay with the company and providing severance to those who leave following the merger. Mr. Garamendi raised the compensation issue during hearings conducted by the California Senate Insurance Committee. California is the last of 11 states whose approval for the merger is needed.

Policy purchase doesn't create bias: Court

A cab company did not discriminate against a 72-year-old employee by temporarily discharging the driver after it learned that its automobile liability policy excluded coverage for employees older than 70, the 9th U.S. Circuit Court of Appeals ruled. The employer, Salemkeizer Yellow Cab Co. in Salem, Ore., did not learn until after purchasing the policy in mid-1999 that it excluded coverage for employees older than 70 or younger than 23, court records show. The driver then refused to undergo a physical examination requested by the insurer in order for it to consider waiving the exclusion.

Briefly noted

Axel P. Lehmann has been named chief executive officer of **Zurich North America Commercial**, a unit of Zurich Financial Services Group. Mr. Lehmann, who heads Zurich's continental European general insurance operations, succeeds John Amore, who will become CEO of Zurich's worldwide general insurance operations. Messrs. Lehmann and Amore will begin their new roles in September....The California Department of Insurance has received $110 million on behalf of policyholders of the defunct **Executive Life Insurance Co.** as part of a settlement of a criminal fraud case against Credit Lyonnais and other French investors involved in the 1991 purchase of assets of the failed insurer....Richard F. Smith has been named chief operating officer of Overland Park, Kan.-based **Employers Reinsurance Corp.** Mr. Smith was previously president and CEO of ERC's Global Property/Casualty division....Argonaut Group Inc.'s public entity insurance unit, **Trident Insurance Services L.L.C.**, has purchased U.S. Risk of Oregon Inc. from U.S. Risk Insurance Group Inc. for an undisclosed sum.

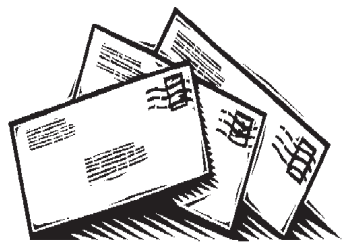
Check out BusinessInsurance.com

Items in the Late News column originally appeared in *BI*'s Daily News feature on *www.businessinsurance.com.* Visit the *BI* Web site to sign up to receive *BI*'s Daily News by e-mail.

Online Poll

[6/7 - 6/11]

Do you plan to use the Labor Department model notices to communicate COBRA health care coverage rights to employees?



Yes	45.4%
No	13.6%
Do not know	41.0%

BI Stock Index

[6/7 - 6/10]

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**	2281.62	0.38
Dow Jones	10410.10	1.63
S&P 500	1136.47	1.24

Largest gains

EMC Insurance Group Inc.	17.74%
SCOR	6.38%
American Safety Insurance	4.74%
Fairfax Financial	4.38%
Harleysville Group	4.37%

Largest losses

PacifiCare Health Sys.	-4.27%
Vesta Insurance Co.	-3.28%
Aspen Insurance Holdings	-3.02%
Humana Inc.	-2.17%
RenaissanceRe Holdings	-1.77%

Weekly change by market segment

Brokers	1.17%
Insurers/Reinsurers	0.92%
Managed Care Organizations	-1.01%

Source: FinancialContent Inc. *(http://financialcontent.com)*

Reservists: Benefits

Continued from previous page

fore the employees were activated.

For example, New York Life Insurance Co. matches the percentage of its employees' premiums—about 80%—that it had been paying prior to the activation. That coverage continues throughout the period of employees' active military duty.

"New York Life always has been committed to its employees and agents and their families. If called to active duty and making such a sacrifice, we are going to support them in every way we can," said Jim Tomney, New York Life's corporate vp-human resources.

And some employers have been lengthening the period of time they will extend coverage. Last year, Pittsburgh-based Mellon Financial Corp. extended to one year from 90 days the period of time it would pay its share of the health insurance premiums for employees called up for active military duty.

"Mellon's extension in the duration of its benefits support for reservists reflects the longer deployment reservists have been called upon to serve," a spokesman said.

As of last week, just over 168,000 National Guard and Reserve members were on active duty. Since Sept. 11, 2001, there have been about 380,000 deployments of Guard and Reserve members for active duty.

Most employers say only a handful of employees have been called up, though some large employers report higher numbers.

Retailer Staples Inc. of Framingham, Mass.—which has about 60,000 employees—says 272 employees have been activated since Sept. 11, including 59 now on leave. United Parcel Service Inc. in Atlanta—which has a U.S. workforce of 320,000—says 1,750 employees have been activated since Sept. 11. As of mid-March, the most recent period for which it had information, 860 UPS employees were on active military duty.

Retire: Rule changes

Continued from page 4

they sued to force the plan to resume payments. Although a district court upheld the plan's position, a divided panel of the 7th U.S. Circuit Court of Appeals held for the retirees. The plan then appealed to the Supreme Court.

Writing for the court, Associate Justice David Souter noted that, with two exceptions that had no relevance to the case, the Employee Retirement Income Security Act's anti-cutback rule holds that "the accrued benefit of a participant under a plan may not be decreased by an amendment of the plan," a provision that was further clarified in 1984 to include early retirement benefits.

Justice Souter said that Mr. Heinz "worked and accrued retirement benefits under a plan with terms allowing him to supplement retirement income by certain employment, and he was being reasonable if he relied on those terms in planning his retirement. The 1998 amendment undercut any such reliance, paying retirement income only if he accepted a substantial curtailment of his opportunity to do the kind of work he knew. We simply do not see how, in any practical sense, this change of terms could not be viewed as shrinking the value of Heinz's pension rights and reducing his promised benefits."

Associate Justice Stephen Breyer wrote a concurring opinion, joining the decision on the "assumption" that it would not prevent the secretaries of Labor or the Treasury from issuing "regulations explicitly allowing plan amendments to enlarge the scope of disqualifying employment with respect to benefits attributable to already-performed services."

Central Laborers' Pension Fund vs. Heinz et al., U.S. Supreme Court, No. 02–891; June 7, 2004.