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\$4

Terror bill hopes renewed Senate vote expected on federal backstop proposal

By MARK A. HOFMANN

WASHINGTON—Advocates of terrorism insurance legislation are growing increasingly optimistic that the Senate will pass its long-delayed bill this week.

In fact, Senate Majority Leader Tom Daschle, D-S.D., filed a cloture motion Friday morning that would cut off debate on the bill and take it to a vote. Observers expect the cloture vote Tuesday, with a vote on the legislation to follow if cloture succeeds.

Enactment of legislation that would allow the federal government to act as a backstop to private insurers in the event of future terrorist attacks is still not a done deal, though. Any Senate bill would have to be reconciled with a measure approved by the House last November, and the two bills take widely different approaches to the matter.

The House bill would allow the federal government to lend money to in-

surers facing terrorism-related losses, while the Terrorism Risk Insurance Act of 2002—which the Senate began debating on Thursday—puts the government in the role of reinsurer. These differences would have to be resolved in a House-Senate conference committee.

But the need for compromise does not dampen supporters' optimism.

"After eight months of trying, it's show time for the industry to win the enactment of this legislation," said Joel Wood, senior vp of the Council of Insurance Agents & Brokers in Washington. "While the legislation may not be perfect, the Senate needs to enact it and get to the conference table with the House. We're working overtime to ensure that the 60 votes for cloture can be reached, that Sen. Schumer prevails on the critical per company retention issue, and that final passage is achieved on Tuesday," Mr. Wood said. Sen. Charles Schumer, D-N.Y., has been a leader in

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Sen. Chris Dodd, D-Conn., is one of the key lawmakers behind a bill, prompted by the Sept. 11 attacks, that would create a federal backstop for terrorism insurance.

PHOTO: AFP

Poor-quality care costly Change in payer focus urged

By JOANNE WOJCIK

Benefits experts are hopeful a new study detailing the economic toll of poor-quality health care will make employers realize that short-term cost savings may only cost them more in the long run.

Approximately 30 cents of every dollar spent on health care is wasted because of a combination of administrative inefficiencies and misuse of medical services, both of which employers have had a hand in perpetuating, according to the report by the Chicago-based Midwest Business Group on Health.

Employers, the report asserts, are only hurting themselves by contracting for health care ser-

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Supreme Court unanimous Court rejects ADA duty to give worker risky job

By MARK A. HOFMANN

WASHINGTON—Employer attorneys are hailing a unanimous Supreme Court ruling that the Americans with Disabilities Act does not require employers to place workers in jobs that could cause them serious injury or even death.

Employers had been closely watching *Chevron USA Inc. vs. Mario Echazabal* because of concerns that the high court would uphold a controversial decision by the 9th U.S. Circuit Court of Appeals in the case and thus place employers in what many considered a no-win situation.

"It's a very strong, common-sense decision," said Philip M. Berkowitz, a partner in the New York office of Seyfarth Shaw and co-chair of the

American Bar Assn.'s employment law committee of the international law section.

"The ADA prohibits discrimination on the basis of a disability. But, it permits employers to say, 'If your doing the job poses a threat to the health and safety of other employees, then we don't have to give you the job,' " Mr. Berkowitz said.

He noted that the Equal Employment Opportunity Commission allows employers to use as direct defense against claims of discrimination that an employee's presence in a particular job would present a threat to his own health or safety.

Despite that EEOC stance, the 9th Circuit in

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Late News

Senate panel to consider ergo bill

The Senate Health, Education, Labor and Pensions Committee plans to mark up legislation Wednesday that would direct the Occupational Safety and Health Administration to issue an ergonomics rule within two years of the bill's enactment. The bipartisan measure, S. 2184—which was introduced by Sens. John Breaux, D-La., and Arlen Specter, R-Pa.—is the latest development in a debate that began more than a decade ago over whether OSHA should promulgate an ergonomics standard. The bill would direct OSHA to "set forth in clear terms" the circumstances under which an employer has to take action on ergonomic hazards, what measures would be required of employers as well as their compliance obligations. In addition, the bill says that the secretary of labor "shall ensure that nothing in this rule expands the application of state workers compensation laws."

Berkshire in talks on German terror cover

Berkshire Hathaway Inc. is in final negotiations to be the lead reinsurer on the second layer of the 10 billion euro (\$9.44 billion) terrorism insurance program backed by the German government. Omaha, Neb.-based Berkshire Hathaway will cover at least 400 million euros (\$377.6 million) of the second layer of 1.5 billion euros (\$1.42 billion), sources say. Industry sources said final details on the terms of the coverage are still being negotiated, but the program is expected to be completed shortly. The German government announced plans in April to set up a government-backed pool to cover commercial and industrial risks. German insurers are expected to cover the first 1.5 billion euro layer, international insurers and reinsurers will cover the second 1.5 billion euro layer, and the government will cover the remainder. The German government's participation in the pool is expected to last three years.

Exxon Mobil seeks award reduction

Exxon Mobil Corp. filed a motion last week seeking a reduction of

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Special Report

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Inside

IRS clarifies FSA rules

The Internal Revenue Service has approved two approaches that employers can use to keep employees' flexible spending account arrangements intact during asset sales. **Page 4**

The height of chutzpah

Senior Editor Douglas McLeod tells how Credit Suisse First Boston Corp. has redefined the standard for audacity. **Page 6**

ADA ruling protects employers, workers

The high court's unanimous decision permitting Chevron USA Inc. to deny a worker a job that could harm him because the worker had a pre-existing medical condition provides protection to both employers and workers, this week's editorial says. **Page 8**

South Africa sees disparity in employer AIDS response

An estimated one in nine individuals in South Africa is infected with HIV or AIDS, but many companies are not doing enough to manage the risk of the deadly disease to their workforce, a new study says. **Page 17**

Benefit executives gather at Greenbrier

In the concluding installment of coverage of he Council of Insurance Agents & Brokers' 2002 Employee Benefits Leadership Forum, the forum examines the outlook for federal legislation and and other issues on benefits and health care. **Page 18**

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Standard Mail included in Edition 10



PHOTO: AFP

Exxon Valdez

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the \$5 billion in punitive damages awarded to the Alaskan fishing industry for the 1989 Exxon Valdez accident. The company said the motion is consistent with a decision reached in November by the 9th U.S. Circuit Court of Appeals. The appeals court declared the \$5 billion punitive award excessive and remanded the case, ordering the district court to make the damages consistent with constitutional limits. Exxon Mobil said it believes that punitive damages should be in line with a fine imposed by the federal government for the Valdez spill, which was \$25 million. Exxon Mobil suggested that punitive damages should not exceed twice the compensatory damages awarded to other plaintiffs in a private lawsuit; those damages were set at \$40 million.

Law caps Crown's asbestos liabilities: Court

A Philadelphia Court of Common Pleas judge has dismissed 376 pending asbestos cases against Crown Cork & Seal Co., citing a Pennsylvania law enacted in December 2001 that limits the asbestos liability of corporate successors. Crown, a Philadelphia-based bottle cap and can company, has faced thousands of asbestos claims as a result of its 1963 acquisition of Mundet Cork Co., a bottle cap company with a small insulation division. Crown sold the insulation division 93 days after purchasing Mundet's stock for \$7 million. The 2001 state law caps Pennsylvania companies' merger-derived asbestos liabilities at the inflation-adjusted total value of the merged company's assets. Crown said it has already made more than \$350 million in asbestos-related claims payments.

Late News



PHOTO: NOAA

Weather risk market increasing, survey finds

The weather risk market continues to grow, with the use of weather risk transfer instruments expanding throughout the world and into a broader range of industries, according to a new survey. The survey, conducted by the Washington-based Weather Risk Management Assn. and PricewaterhouseCoopers L.L.C., showed that the number of weather market contract transactions grew 43%, to 3,937, in the year ending March 31 over the prior survey, which measured activity through the year ending April 14, 2001. Total notional value of the transactions in the latest survey was more than \$4.3 billion, a 72% increase from that reported in last year's survey.

Few prepared for high-tech risks

Many risk managers remain unprepared to deal with high-tech risks, despite growing security concerns about conducting business on the Internet, according to a survey from The St. Paul Cos. Inc.

Only 12% of the surveyed risk managers said they view Internet liability as a major risk, though risk managers from the largest companies are twice as likely as those in the smallest companies to view it as a major exposure. In addition, the survey found that 76% of risk managers said their company had developed or implemented a companywide privacy policy, and 67% had worked with other departments to identify and quantify Internet risks. Barely half, though, had worked with an insurer or broker to identify such risks, and only 45% had developed employee awareness and training programs.

AIG disclaims ex-agent's placement authority

American International Group Inc. has published a disclaimer notice denying that it has issued policies through a former California agent with a history of regulatory trouble. AIG announced that Clarence Joseph Hall III and a company he heads, Harbour Entertainment & Sports Insurance, have no authority to issue policies for AIG units. Harbour maintains a Web site describing various property/casualty products it offers, including concert and special-events coverage, weather insurance, event cancellation and film production liability. Montana insurance regulators issued a cease-and-desist order to Mr. Hall and Harbour in October 2000 after finding they had improperly solicited business in the state for North American Specialty Insurance Co., a

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

Lloyd's taps outsider as chairman

By SARAH VEYSEY

LONDON—Lloyd's of London's new chairman says he will carry on the modernization efforts begun by its current head, Sax Riley, who will retire at the end of the year.

Peter Levene, Lord Levene of Portsoken, will become the first chairman in Lloyd's 314-year history to be selected from outside the market. He will be the 61st chairman of Lloyd's.

Lord Levene, who was Lord Mayor of the City of London from 1998 to 1999, is currently vice chairman of Deutsche Bank London, a unit of Deutsche Bank A.G.

Lord Levene, who will serve initially a three-year term as chairman of the market, said being the first outsider to take the post did not daunt him. Lord Levene said he was looking forward to starting what he described as "a fascinating job, a big job."

He has pledged to continue the work to modernize Lloyd's begun by his predecessor. Mr. Riley's Chairman's Strategy Group has made sever-

al proposals that will be voted on at an extraordinary general meeting of the market this fall. Those proposals include the elimination of unlimited-liability underwriting and a move to annual accounting from Lloyd's current three-year accounting system.

"Lloyd's has already succeeded in making a series of major improvements to its operation since the mid-1990s. The goal of a modern, transparent and profitable business for the 21st century is well within our grasp. My priority is to ensure we achieve it," Lord Levene said in a statement.

Sir Adam Ridley, the deputy chairman of the Assn. of Lloyd's Members, welcomed the news. He told a group of Lloyd's individual investors Friday that his "heart leapt" at the news of Lord Levene's appointment.

Sir Adam described the appointment as "very positive" and added that strong leadership was important to Lloyd's, citing the contribution made by Sir David Rowland, for example, during the 1996 reconstruction and renewal program.



PHOTO: COURTESY OF LLOYD'S OF LONDON

Lord Levene

Swiss Reinsurance Co. unit. In April 2001, the California Insurance Department revoked Mr. Hall's agent's license after he failed to respond to a department query about the Montana action, a California Insurance Department spokeswoman said. California and Texas regulators are now investigating Mr. Hall and Harbour, department representatives confirm.

Judicial crackdown on asbestos cases urged

Judges should take a more active role in managing asbestos liability cases, according to a former U.S. attorney general. Griffin B. Bell, a former federal judge who served as President Carter's first attorney general, spelled out reforms that he believes would help stem the flood of asbestos-related litigation. Among other things, Mr. Bell, now a senior partner in the Atlanta-based law firm of King & Spaulding, said courts should dismiss asbestos liability cases that are based solely on mass X-rays of potential plaintiffs; adopt a rule that plaintiffs be physically impaired before they can sue; and have claims reviewed by independent medical experts.

Briefly noted

Vermont insurance regulators have licensed **Equitime**, a risk retention group formed to write war risk liability coverage for U.S. airlines. The RRG will not start underwriting, though, until it finalizes a proposed reinsurance arrangement with the federal government. The U.S. Department of Transportation, which started insuring airline third-party war risks soon after Sept. 11, has not yet determined whether it will reinsure Equitime....The Senate Health, Education, Labor and Pensions Committee this week is expected to consider legislation, S. 104, that would require group health plans, including those offered by self-funded employers, to cover **prescription contraceptives** and devices approved by the Food and Drug Administration on the same basis they cover other pharmaceutical prescriptions.

June 17, 2002

Terror cover not lacking for pollution risk

By SALLY ROBERTS

Risk managers seeking insurance coverage for pollution liabilities caused by acts of terrorism are likely to have more success obtaining affordable coverage for this risk than for the risk of property damage from such attacks.

Like commercial property policies, primary pollution liability policies are generally being renewed this year with exclusions for terrorism and bioterrorism risks. But environmental experts note that in the marketplace for primary pollution policies—unlike in the property marketplace, where terrorism capacity has dried up and what coverage is available is exorbitantly expensive—a risk manager often can obtain terrorism coverage on a buyback basis or as an endorsement for

a reasonable price.

And for policyholders that are not considered terrorist targets, underwriters generally are willing to remove the exclusions from the policies altogether.

Interest in obtaining terrorism coverage on environmental policies has heightened since the Sept. 11 terrorist attacks but remains limited to select potential buyers, including managers of high-end properties, chemical manufacturers and water treatment plants, environmental experts say.

Coverage for a terrorist or bioterrorist attack would be triggered under a pollution liability policy only if the attack were to cause an environmental incident that, in turn, caused liability to the policyholder. In general, policies cover onsite and offsite cleanup, third-party bodily

injury and property damage. Limits are available up to \$200 million in the marketplace, but experts say \$50 million is more the norm. And they note that when terrorism coverage is purchased on a buyback basis, there is often a lower sublimit imposed for an additional premium of between 10% to 30%.

Whether a risk manager is successful in obtaining terrorism and bioterrorism coverage on a pollution liability policy depends not only on the company's class of business but also on what security methods it has implemented to mitigate its exposures, experts say.

"Virtually every policy we're seeing coming up for renewal on the environmental side has an exclusion for terrorism," said Kenneth W. Ayers, the chief executive officer

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PHOTO: AFP

From left, Tom Ridge, Christine Whitman and President Bush toured Kansas City, Mo.'s Water Treatment Plant recently with plant director Gurnie Gunter as part of a look at homeland security issues.



Underwriters of commercial trucking risks were advised to be aware of how some cargo, such as fuel, could be used as a weapon by terrorists in future attacks.

Inland Marine Underwriters Assn.'s 72nd Annual Conference

9/11 changed rules of the road

By RODD ZOLKOS

OAK BROOK, Ill.—For an industry already facing a hardening insurance market before last September, commercial trucking now faces an additional challenge as terrorism becomes an underwriting issue.

Speaking at the annual conference of the Inland Marine Underwriters Assn. earlier this month in Oak Brook, Ill., David Golden, director of commercial lines at the Des Plaines, Ill.-based National Assn. of Independent Insurers, said motor carriers experienced rising insurance rates in 2000 and 2001.

After Sept. 11, rates experienced an additional spike, particularly in excess layers, he said.

Now the risk of terrorism creates new issues, including exposure not just to the theft of cargo but to potential liability if it is used as a weapon.

"You've got a new definition of target cargo," Mr. Golden said. "You've got to look at the bulk good and what kind of weapon it can be turned into."

"Where cargo can be used as a

weapon, on the other end of the truck you're looking at a liability," he said.

Potential weapons could include such regularly hauled cargo as gasoline, industrial gases, fertilizers and chemicals, Mr. Golden noted, and he urged the underwriters of trucking coverages to research how cargo might be used as a weapon.

Faced with the terrorism threat, security is more important than ever, the NAII director said, adding that motor carriers' security must match the exposure of cargo to theft for sale or as a weapon.

And he told the underwriters group that they should be sure their trucking company customers are doing appropriate background checks of all employees, including not only drivers but also dispatchers, loading dock workers and others.

The background checks should include looking for any criminal history, as well as immigration status, Mr. Golden said.

And it's important to review

See **TRUCKING**/page 20

Employer's policy violates ADA, 9th Circuit rules

Court OKs ex-addict's bias suit

By ROBERTO CENICEROS

SAN FRANCISCO—An employer's refusal to rehire a rehabilitated drug addict because of an unwritten policy against re-employing workers who resigned to avoid termination violates the Americans with Disabilities Act, the 9th U.S. Circuit Court of Appeals says.

The case of *Joel Hernandez vs. Hughes Missile Systems Co.* involves a 25-year employee of Hughes who, in 1991, chose to resign rather than face termination after a drug test revealed that he had used cocaine, court records show. The company also knew that Mr. Hernandez had struggled with an alcohol problem.

After completing a drug rehabili-



tation program, Mr. Hernandez in 1994 applied for re-employment by Hughes. Hughes rejected his application based on an unwritten policy of not rehiring employees who

were terminated or resigned in lieu of termination, court papers show.

Mr. Hernandez then filed a complaint with the Equal Employment Opportunity Commission. The EEOC found reasonable cause for a suit. He sued, and a district court in Arizona granted a summary judgment in favor of Hughes, which argued that Mr. Hernandez failed to make a case for discrimination.

But on Tuesday, a three-judge panel of the 9th Circuit in San Francisco unanimously found that Mr. Hernandez had shown discrimination on the basis of a disability and that a jury could conclude he was qualified for the position he sought. The appeals court remanded the

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Plan would seek standards on life, disability products

NAIC drafts plan for compact

By MEG FLETCHER

PHILADELPHIA—State insurance regulators are racing to develop an interstate compact proposal as a way to speed up the introduction of new life and annuity products, though several unresolved issues may slow their progress.

Leaders of the National Assn. of Insurance Commissioners are seeking immediate public comment on the NAIC's latest draft on creating a compact commission, which has been under study since March. According to the 14-page draft, the commission would be a "central clearinghouse" to receive and review, using uniform standards, insurers' product filings and advertisements for life, annuity, disability and long-term care products. Regulators have not yet decided whether the commission's authority will extend to products marketed to groups as well as individuals.

Their request for comment, which follows a public hearing last week during the NAIC's summer national meeting in Philadelphia, is part of efforts to finalize a proposal and formally adopt it at the NAIC's fall meeting Sept. 9-12 in New Orleans, said NAIC President Terri Vaughan, the Iowa insurance commissioner.

"Our goal is to create a national, state-based system of insurance regulation for these products" with a single point of filing and uniform standards, while providing a high level of consumer protection and reducing regulatory costs, Ms. Vaughan said in a statement. Ms. Vaughan's timetable calls for state legislatures to consider the compact during their 2003 sessions, and she predicted that "a very critical mass"

of states will approve the measure within two years.

Among the factors behind the NAIC's swift move to finalize the proposed compact is pressure from Congress on assessing the pace of NAIC modernization efforts, as well as the need for a proposed federal charter for insurers.

The interstate compact would be, in essence, a new mechanism to implement the goals of the NAIC's Coordinated Advertising Rate and Form Review Authority, which 10 states launched and 12 additional states recently joined. CARFRA, which focuses on some life/health products, has been criticized for its inability to make states adhere to uniform standards.

The proposed commission's management committee would consist of 12 members, with one

See **NAIC**/page 19

IRS allows FSAs to remain intact in asset transfers

By JERRY GEISEL

WASHINGTON—Employees don't have to forfeit unused balances in health care flexible spending accounts and they can continue to contribute to their FSAs when they are transferred to another company as part of a corporate asset sale, the Internal Revenue Service says.

In a new revenue ruling that benefit consultants are hailing as a victory for common sense, the IRS is giving a green light to two designs that employers can use to keep employees' FSA arrangements intact during asset sales.

In one approved design, the seller would continue the FSAs for the affected employees for the remainder of the plan year. In the other IRS-approved design, the purchaser would continue the FSAs until the plan year were to end.

Regardless of which approach is taken, Revenue Ruling 2002-32 gives employees the same ability to tap FSAs to pay for uncovered health care-related expenses and to make contributions to their FSAs that they would have had if the asset sale had not occurred.

And through that result, said Henry Saveth, an attorney with



Mercer Human Resource Consulting in New York, "Everyone wins. Employers don't incur ill will, and employees' FSAs are protected."

"This is a great result for employees," concurred Andy Anderson, a consultant with Hewitt Associates L.L.C. in Lincolnshire, Ill.

The IRS ruling provides practical answers to a question that employers often raised on how to handle FSAs when they sell assets associated with business

units that are not separate legal entities. Employees of the sold division often are treated as terminating employment with the seller. Unless employees opt for COBRA, which can be expensive, they can lose the balances in their FSAs at the time of sale and the right to continue to make pretax contributions to the FSAs for which they had opted. That can be especially financially damaging to employees who have been building up their FSAs in anticipation of health care expenses later in the year.

"This is something employers have wrestled with for years," said Mark Hamelburg, a Mercer attorney in Washington.

Now, though, employers have guidance from the IRS about how to ensure the continuity of FSA coverage after such business transactions.

Under the first IRS-approved design, transferred employees could continue in the seller's FSA plan for the remainder of the plan year in which the sale occurred and could continue to make the previously agreed pretax contributions to their FSAs for that plan year.

Under the second approach, the buyer could agree to cover the seller's employees in its FSA plan. These employees would be considered as if they had participated in the buyer's FSA plan from the beginning of the plan year.

As a result, after the sale, employees would have the same account balances and elections that they had prior to the sale. In this arrangement, the buyer's FSA would be amended to reimburse claims for transferred employees. That would include expenses incurred before the sale but not yet reimbursed, as well as claims incurred after the sale, up to the amount of employees' elections, reduced by amounts previously withdrawn from the FSAs.

Which approach employers should take would depend on a variety of factors, benefit experts say. For example, if only a month or so remained in a plan year, the least disruptive approach might be for the seller to handle the FSA plan.

But Mr. Hamelburg noted that if the seller were going out of business, the only practical approach would be for the buyer to take on the responsibility of managing employees' FSAs.

Neither approach would allow employees to change the amount they had agreed—prior to the start of the plan year—to contribute to the FSA plan. "No change in the election would be allowed," said Mark White, a consultant with Watson Wyatt Worldwide in Washington.

The revenue ruling does not deal with stock sales, such as when one company purchases another. That omission, Mercer noted, is not particularly important. That is because the sold entity, at least for a certain period of time, remains intact despite its change in ownership.

"This entity can separately maintain FSA coverage for the employees and the employees are treated as having the same employer, before and after the sale," Mercer said.

Your Move.



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Coverage: Optimism increases

Continued from page 1

the effort to ensure that the bill contains a per-company retention in addition to an industrywide trigger, so that insurers that suffer disproportionate losses can receive federal assistance even if the industry-aggregate loss trigger of \$10 billion called for by the legislation has not been reached.

"We're still optimistic," said Julie A. Rochman, senior vp of the American Insurance Assn. in Washington. "There's still a long way to go. But there will be a conference with a very different House bill, so there's a lot of lifting left to do."

There's also the matter of tort reform. In fact, the introduction of terrorism insurance legislation was delayed more than six months in the Senate due to disputes over tort provisions.

And last week, four Bush administration officials, led by Treasury Secretary Paul O'Neill, outlined the need for such legislation in a letter to Senate Minority Leader Trent Lott, R-Miss. The officials wrote that, without terrorism insurance, another terrorist attack would mean "major bankruptcies, layoffs and loan defaults."

But Mr. O'Neill and the three other signatories of the letter—Lawrence Lindsey, director of the National Economic Council; Mitchell Daniels, director of the Office of Management and Budget; and R. Glenn Hubbard, director of the Council of Economic Advisers—said they would urge President Bush "not to sign any legislation that leaves the American economy

and victims of terrorist acts subject to predatory lawsuits and punitive damages."

The Senate bill—S. 2600, introduced by Sen. Chris Dodd, D-Conn., and co-sponsored by several other Democrats—would not ban punitive damages, though. It says only that punitive damages would not be considered insured losses under the terrorism insurance program it would create. It also calls for removing terrorism liability cases to federal courts from state venues.

The first amendment offered to the bill would have banned punitive damages in most terrorism-related civil cases, except when criminal acts had occurred. But that amendment—offered by Sen. Mitch McConnell, R-Ky.—was tabled on a close party-line vote. An amendment that would have regulated terrorism insurance rates—which was offered by Sen. Bill Nelson, D-Fla., a former insurance commissioner—was defeated overwhelmingly.

As introduced, the Senate bill would let the federal government act as a backstop to private insurers after a terrorist attack. Through the rest of this year, the trigger would be a participating insurer's market share—calculated by using its total amount of direct written property/casualty premiums in the two years before the terrorist event as a percentage of the aggregate of all such premiums during the same period—multiplied by \$10 billion. Through the end of 2003, the multiplier would increase to \$15 billion, decreasing the government's exposure.

The federal share would be 80% of the amount above the company retention, to \$10 billion, and 90% of the amount over \$10 billion. If aggregate insured losses exceeded \$100 billion, Congress would determine how to handle claims.

The bill would not give risk retention groups the right to offer property insurance, though an amendment expanding the reach of RRGs may be offered this week.

Insurance industry observers are heartened by what's happened so far. "We're extremely pleased the debate has been joined, and we are increasingly optimistic that the Senate will pass terrorism reinsurance legislation," said David Farmer, senior vp in the Alliance of American Insurers' Washington office.

"I think the Senate will pass terrorism reinsurance legislation, but it is necessary for any legislation to be bipartisan in nature," he said. Mr. Farmer said he believes that both Democrats and Republicans are engaged on the issue, which he said is "a very positive sign."

"We're very pleased that the Senate has begun debate. One of the critical issues for us is the inclusion of a per-company trigger—that's a key issue for NAII members," said Julie Gackebach, director of government relations for the National Assn. of Independent Insurers in Washington.

"We do expect a number of amendments; some of them will be very controversial," Ms. Gackebach said. "We're prepared to work with the senators and get this bill to passage and into conference."

Commentary Audacity of acts exceeded by claim

Chutzpah is not an unheard-of quality in stockbrokers; these are people who like to swap e-mails comparing the stock they've just sold you to a domestic canine, or worse. Now comes Credit Suisse First Boston Corp., raising the bar for world-class chutzpah, this time at the expense of insurers rather than customers.

Back in January, the securities firm paid \$100 million to settle regulatory charges that it shook down clients to split the huge profits they made selling shares in high-tech initial public offerings that CSFB underwrote. Since then, the firm has been trying to pass about half of that bill to its errors and omissions insurers, claiming that the settlement was a covered loss rather than a clearly excluded penalty.

I have losses like that, too, when my library books are overdue. They're not covered.

Here's what happened, according to the Securities and Exchange Commission. As underwriter, CSFB was able to allocate shares in IPOs among its 2,400 investor customers. These allocations were hugely profitable in the hot IPO market of 1999 and 2000: Buyers could sell their stock immediately for gains ranging from a mere 100% to nearly 700% in one case. Not solely focused on its clients' well-being, though, CSFB funneled IPO allocations to more than 100 customers who kicked back between 33% and 65% of their profits to the brokerage, the SEC charged.

CSFB traders weren't coy about this, regulators suggest. "I weaseled you guys some stock," one trader told a client, according to the SEC. "We've yet to see any leverage out of your guys for the free dough-reme. Does it make sense for me to continue to feed your guys with deal stock or should I take the stock to someone who will pay us direct for the allocation."

The kickbacks were disguised, the SEC charged, with clients paying CSFB hugely inflated commissions on subsequent sales and purchases of shares unrelated to the IPOs.

Without admitting wrongdoing, CSFB settled the charges by paying a \$30 million civil penalty, disgorging \$70 million of its allegedly ill-gotten gains and promising not to behave badly in the future. But the broker—which made \$717.5 million in fees managing high-tech IPOs in 1999 and 2000, according to Thomson Financial—is hardly ready to resign itself to a \$70 million haircut. Instead, it turned to

E&O insurers.

Chubb Corp.'s Vigilant Insurance Co. provided \$40 million in primary E&O limits above CSFB's \$25 million self-insured retention. Four others—Continental Casualty Co., Lloyd's of London underwriters, Travelers Casualty & Surety of America and Swiss Reinsurance Co.—wrote quota shares of a \$60 million excess layer.

CSFB wants the insurers to pay \$45 million, representing the disgorged profits less its retention, plus defense costs. The \$70 million portion of the settlement, it says, meets the primary policy's definition of "loss," which includes "reasonable and necessary" fees to defend and settle claims.

Chubb counters that the settlement is uninsurable on public-policy grounds and points to provisions barring coverage of fines and penalties as well as claims related to the "gaining of any profit or advantage to which the insured is not legally entitled."

Both sides have asked a New York court for summary judgment.

You can imagine where this might lead if CSFB succeeds. Insurers may be flooded with claims for parking tickets and video rental late fees. They may even start hitting each other up for the six-figure sums they routinely pay regulators to resolve market conduct and other violations.

OK, I'm exaggerating. The point, though, is that regulatory penalties are excluded from insurance policies for a reason. If a company accused of misconduct can dodge the financial burden of penalties, their deterrent value—however small it may be in practice—is lost.

It shouldn't matter whether settling companies admit wrongdoing—they typically don't—or whether settlement amounts are labeled "civil penalties" or "disgorged profits." CSFB's settlement, including the \$70 million forfeiture, is effectively a fine for violating securities regulations and NASD standards of "commercial honor." It should not be insurable.

To find otherwise is to put insurers at odds with securities regulators, forcing them to restore huge profits that regulators found were taken improperly.

Who would call that just? Only someone with world-class chutzpah.



Doug McLeod

Senior Editor Douglas McLeod's commentary appears periodically in Business Insurance and on www.businessinsurance.com. He can be reached by e-mail, at dmcleod@crain.com.

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Editorial

Ruling protects employees, too

THE U.S. SUPREME COURT has again provided employers with much-needed relief from an overly broad interpretation of the Americans with Disabilities Act.

As we report on page 1, a unanimous Supreme Court last week overturned an appeals court decision that held an employer could be sued for discrimination for denying a worker a job that could harm or even kill him because of a pre-existing medical condition.

If the decision had not been overturned, employers would have been in a no-win situation, facing the threat of litigation regardless of which way they turned.

This ruling was clearly a victory for employers. But, contrary to the

assertion of some disability rights advocates, it should not be seen as a defeat for disabled workers.

One disability rights advocate complained that the ruling itself demonstrates a bias that assumes that disabled individuals are unable to make informed, safe choices for themselves. In most cases, we don't doubt that workers would be capable of making such choices in their own best interests.

But that's not what happened in the very dispute before the court, *Chevron USA Inc. vs. Mario Echazabal*. In that case, both a Chevron physician and Mr. Echazabal's own doctor had warned that the refinery job he sought would likely aggravate an existing liver ailment and

could possibly kill him. In spite of this, he fought the employer in court to be put in that risky position.

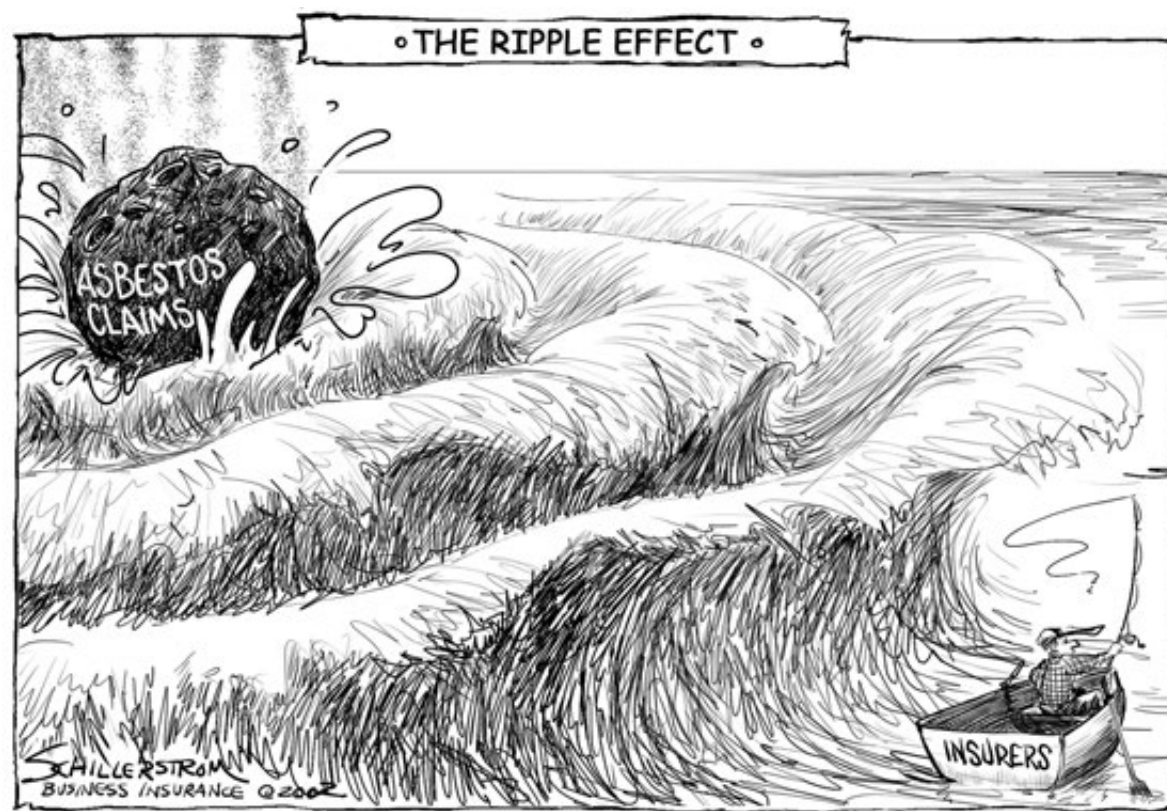
No one can anticipate all the risks to workers' health and safety in the workplace, and many jobs by their nature are hazardous. But to require employers to put workers in situations where they are likely to suffer serious bodily harm or even death is irrational. Not only does such a request run counter to employers' moral and legal duty to try to protect all workers from harm but it also would create new financial liabilities for employers. These include higher workers compensation costs and the potential for tort lawsuits that arise from bodily injury or

death.

While this decision avoids squeezing employers between the ADA and other obligations—particularly the Occupational Safety and Health Act—it does not eliminate or reduce their duty to reasonably accommodate workers with disabilities. Employers still must make a valid effort to accommodate the needs of such employees, and denying a worker a particular job will still require the employer to present strong evidence that a heightened risk of harm to the worker exists.

In all, we believe that although this decision comes as a great relief to employers, it also provides workers with greater protection from harm.

Schillerstrom



Letters to the Editor

Insurers expect 'tsunami' of diet supplement suits

To the Editor: Regarding your June 3 article, "Makers of Dietary Supplement Facing Scant Liability Coverage": no wonder. While litigation against ephedra has not yet reached firestorm proportions, early indications affirm this potential. TRIAL magazine, a publication of the Assn. of Trial Lawyers of America, has carried articles about the supplements. A major seminar provider for personal-injury lawyers offers "how to" sessions on ephedra litigation.

The size of the patient population, the relative lack of Food and Drug Administration regulation and the potential for side effects all create a strong recipe for future class-action and mass tort lawsuits. If—or when—this occurs, the expenses and logistics of waging legal warfare become so cost-prohibitive that the merits of the case may seem almost moot.

Your article quotes one broker as observing correctly that there has not yet been any mass tort litigation around dietary supplements. Quite true, but by the time insurers on such risks wait around for the tsunami to hit, they are on the risk and it's too late.

Kevin M. Quinley

Senior Vp, Risk Services

Medmarc Insurance Group

Chantilly, Va.

Letters to the Editor

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

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Former Crain publisher dies

David J. Cleary Jr., who was a former group publisher of Crain Communications Inc. responsible for *Business Insurance* and six other publications, died June 11 in Southern Pines, N.C., after a short illness. He was 83.

Mr. Cleary retired from Crain Communications in 1983 after a 30-year career with the company. At the time, he was executive vp and general manager of Crain and a group publisher.

Mr. Cleary joined the New York office of Advertising Age as a sales representative in 1952, coming from the New York Journal-American. In 1962, he was promoted to

district sales manager and the following year was elected a vp of Crain and named advertising director of Ad Age. He was named publisher in 1970.

In 1977, Mr. Cleary was promoted to group publisher responsible for Ad Age, *BI*, Collector-Investor, Crain's Chicago Business, Industrial Marketing (now BtoB), Modern Healthcare and Pensions & Investments.

Mr. Cleary became executive vp and general manager of Crain in 1980.

"Dave Cleary had a remarkable impact on our company," said Crain Communications President Rance Crain. "Dave had very pro-

nounced ideas on how our sales people should conduct themselves. (He insisted they must all carry a rate card in their breast pocket and have shined shoes.) And he was a mentor to many of our publishers and ad directors, who continue to draw on what Dave taught them. He had integrity and pride in his profession and our company that left an enduring legacy."

Mr. Cleary is survived by his wife, Kathleen; a daughter, Kathleen Look; a son, David J. Cleary III; and five grandchildren. One granddaughter, Kathleen Robson, is a member of the Modern Healthcare editorial staff.

E.U. Market Report

Spotlight editor: Sarah Veysey

Complexity a hallmark of E.U.'s workings

Hard to grasp for many

By SARAH VEYSEY

Although European economic and social cooperation is now well established, confusion still exists among many about how the European Union works.

An enormous and complex organization, the European Union is often viewed as a collection of so-called "Eurocrats," churning out red tape and passing laws regulating the size and color of bananas and the like.

But the European Union has considerable legal power and visionary aims. Its principal objectives include the establishment and maintenance of fundamental rights, such as human rights; ensuring the free movement of goods, services and labor; and the promotion of economic and social progress in its member states. In addition, the creation of a single European market for financial services by 2004 is one of its goals.

The European Union traces its origins back to the European Coal & Steel Community, a free-trade area formed by Belgium, France, Italy, Luxembourg, the Netherlands and West Germany in 1951. In 1957, those six countries signed the Treaty of Rome—later revised in the European Community Treaty—forming the European Economic Community. And, in 1992, under the Treaty of Maastricht, the European Economic Community became known as the European Union.

The European Union now has 15 members: Denmark, Ireland and the United Kingdom joined in 1973; Greece joined in 1981; Spain and Portugal became members in 1986; and Austria, Finland and Sweden joined in 1995.

There are currently 13 candidates for membership: Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey.

In terms of structure, the European Union has several institutions, each with its own responsibilities. Those bodies include the European Commission, the European Court of Justice, the European Parliament, the Council of Ministers and the European Council.

European Union laws and other legal measures are proposed and drafted by the European Commission, though this often is done at the behest of the Council of Ministers or the European Parliament.

The European Commission, which is based in Brussels, Belgium, has 20 members, appointed by the governments of the member states. The smaller countries have one representative each, while France, Germany, Italy, Spain and the United Kingdom each have two. Commissioners are appointed by the governments of the member states but are

See E.U./page 14



European risk managers expand their approach

By CAROLYN ALDRED and RODD ZOLKOS

The rapid growth of enterprise risk management in Europe is providing both opportunities and threats for the traditional risk manager, according to insurance and risk management experts.

Risk management is going far beyond traditional areas, and many European companies are adopting a completely new approach to risk, said Thierry van Santen, president of the Federation of European Risk Management Assns.

While enterprise risk management is also taking hold in the United States, U.S. risk management experts are mixed on whether European companies lead or lag their U.S. counterparts in managing risks across their organizations.

Wherever they fall on the enterprise risk issue, though, the U.S. risk management experts see other differences in the way the discipline is practiced on opposite sides of the Atlantic.

"The risk parameters in Europe have a slightly different focus than they do in the U.S.," said P. Richard Hackenburg, president and chief executive officer of Willis of Missouri Inc. in St. Louis.

Continued globalization of business,

though, "is starting to narrow the gap," he said.

For example, while the tort system puts an emphasis on managing liability risks in the United States, "at the end of the day, I think there is more of an emphasis on pure property risk transfer in Europe," said Mr. Hackenburg, a former president of the New York-based Risk & Insurance Management Society Inc.

But European risk managers' risk palette is expanding, Mr. van Santen and others say.

"Strategic risks, marketing risks, currency risks now have all become part of the new corporate risk management approach," said Mr. van Santen, who noted that "enterprise risk management is emerging very rapidly in Europe."

"I have been contacted by many large companies throughout Europe that are trying to establish a new approach to risk management," said Mr. van Santen, who is risk manager for the Paris-based food and agricultural conglomerate Groupe Danone.

Paul Taylor, vp of FERMA and a council member of the Assn. of Insurance & Risk Managers, agreed that European companies are adopting a broader approach to risk management than they have in the past, partly as a result of the changing risks companies face

See RISK MANAGEMENT/page 15

Intervention both helps, challenges businesses

E.U. may extend cover aid

By SARAH VEYSEY

Over the past year, the European Union has taken several steps that influence the risks faced by businesses operating in the E.U. countries.

Perhaps the most direct E.U. intervention into risk management came after the Sept. 11 terrorist attacks, when many European airlines faced the risk of being grounded if they could not find coverage. Aviation insurers' withdrawal of terrorism coverage and a steep hike in rates left many aviation risk managers without access to coverage.

But the European Union, normally known for its support of competition and free trade, allowed member states to offer emergency terrorism coverage to airlines. This aid has been extended several times since September, and last month the European Union agreed to let member states extend their aviation war and terrorism insurance packages for another month while an industry plan is developed. The packages had been scheduled to expire at the end of May, but the European Commission granted another extension of coverage until June 30.

"It will give the airline industry time to set up its own mutual insurance fund. We won't leave E.U. airlines" without coverage that their U.S. counterparts may have, an E.C. spokesman said in a statement.

The U.S. government continues to provide comparable backing to U.S.-based airlines. In addition, last month a group of U.S.-based airlines applied to license a Vermont-based risk retention group, known as Equitime, which initially would be backed by government-provided reinsurance (BI, May 27).

Efforts to establish a similar European mutual for airlines are being developed by the London operations of brokers Aon Group Inc., Willis Group Ltd. and Marsh Inc. The brokers intend to seek E.U. permission to set up a European aviation pool, called Eurotime. Their proposed pooling arrangement would provide war and aviation coverage of up to \$1 billion. The pool would be funded by a 50-cent surcharge per passenger, and the pool would initially be backed by E.U. funds until it had built up its own reserves, an Aon spokesman said, though no other details were available.

European transportation ministers are scheduled to discuss the proposal at a Council of Ministers meeting today. An alternative pooling arrangement for airlines is being proposed by the International Civil Aviation Organization.

In addition to such alternative risk financing options, Munich, Germany-based Allianz

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E.U. INSURANCE MARKETS

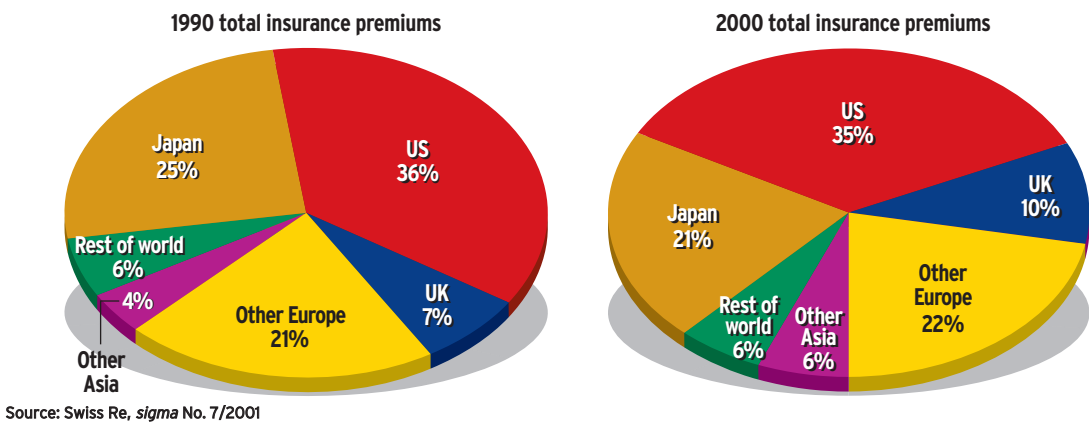
Member states' nonlife insurance premiums, in millions

Country	2000 premium volume	Percent change from 1999	Percent share of world market
Germany	\$67,465	-11.4%	7.31%
United Kingdom	57,218	1.4	6.20
France	37,148	-10.4	4.03
Italy	26,383	-8.1	2.86
Spain	15,712	-1.9	1.70
Netherlands	14,854	-6.8	1.61
Belgium	7,556	-10.4	0.82
Austria	5,776	-11.7	0.63
Sweden	4,374	-4.8	0.47
Denmark	3,805	-9.4	0.41
Ireland	3,521	2.6	0.38
Portugal	3,061	4.3	0.33
Finland	2,315	-3.5	0.25
Greece	1,091	-6.5	0.12
Luxembourg	659	-10.3	0.07

Source: Swiss Re, *sigma* No. 6/2001

LARGEST INSURANCE MARKETS OVER TIME

Measured by total life and nonlife premiums written



Source: Swiss Re, *sigma* No. 7/2001

CROSS-BORDER BUSINESS

2000 premiums written for nonlife risks based outside insurers' domestic market, in millions

Country	Premiums written	Share of total business
United Kingdom	\$13,849	24.2%
Belgium	1,394	18.4
Germany	1,010	1.5
Ireland	1,006	28.6
France	988	2.7
Italy	716	2.7
Norway	589	13.9
Luxembourg	244	37.1
Singapore	83	8.1
Total	\$19,879	2.2%

Source: Swiss Re, *sigma* No. 6/2001

WORLD INSURANCE PREMIUMS

2000 nonlife premiums in the global market, in millions

Country	Premiums written	Share of world market
America	\$473,396	51.3%
North America	446,284	48.4
Latin America/Caribbean	27,111	2.9
Europe	280,245	30.4
Western Europe	269,327	29.2
Central/Eastern Europe	10,918	1.2
Asia	147,160	16.0
Japan	102,521	11.1
South and East Asia	38,581	4.2
Middle East/Central Asia	6,058	0.7
Africa	6,525	0.7
Oceania	15,094	1.6
World	\$922,420	100%

Source: Swiss Re, *sigma* No. 6/2001

Hardening market has U.S. buyers traveling abroad

Available capacity, strong services in Europe attract risk managers to local insurers

By MICHAEL BRADFORD
and NICOLE VOGES

Insurance buyers in the United States find there are good reasons for covering their European exposures with local insurers.

In a hardening property/casualty marketplace that has limited the amount of capacity U.S. insurers are willing to offer, many risk managers must look overseas to fill out insurance programs covering European exposures, insurance industry sources say.

Risk managers increasingly are looking to European insurers to provide capacity to cover risks there, confirmed Richard S. Betterley, the president of Betterley Risk Consultants Inc. in Sterling, Mass. "It's a global insurance market, and they are looking everywhere," Mr. Betterley said of buyers.

Alfred Tobin, managing director at Aon Risk Services in New York, agreed that many buyers have to use European insurers because U.S. insurers do not have the capacity to handle the largest property risks. "For large property risks, there's no way to get it done competitively without the European companies," Mr. Tobin said.

Mr. Betterley and other industry sources say there are several reasons that policyholders choose European insurers rather than have U.S. insurers provide the coverage for overseas risks. Local knowledge is a key factor, he said.

Some buyers prefer European insurers because they can provide "services on the ground locally that are better attuned to local needs," he explained. "A risk manager may think that the local services are more effective."

Loss control and claims administration are among the services that some buyers prefer to have local insurers handle, Mr. Betterley noted. "They have people who are accustomed to working in that (geographic) area" and can be particularly helpful in claims and loss control matters, he said.

Charles Salek, vp-group function, risk and insurance management at ABB Group in Stamford, Conn., said the Zurich, Switzerland-based engineering services company uses European insurers partly because "we ourselves are a European company, and they are operating in the same neighborhood as we are."

Mr. Salek said better claims administration is reason to use those insurers. "We tend to do business with large, financially strong European insurers, particularly those from Germany and Switzerland. They have strong balance sheets, and we also feel they are very fair when it comes to the claims settlement process."

Among the European insurers ABB uses are Zurich Financial Services Group and Swiss Reinsurance Co.

Mr. Salek said European insurers typically are set up so that there is a

"close linkage between the underwriter who writes the policy and the claims guy." That keeps administrative hassles to a minimum, he explained, whereas often "there is a

'For large property risks, there's no way to get it done competitively without the European companies.'

Alfred Tobin
Aon Risk Services

Chinese wall in the U.S. between the claims department and the underwriting department."

Mr. Tobin said that European insurers often have "more analytical tools (than U.S. insurers) and they use that in their underwriting." Underwriters are "more efficient, more technical in their underwriting approach," than are many of their U.S. counterparts, he said.

Insurance buyers that choose not to use European underwriters for overseas risks typically have in place coverage arrangements similar to those of Marriott International Inc., the Bethesda, Md.-based hotel chain.

"We have a controlled master program that insures both domestic and international exposures to the extent that we can do so legally," explained Hector Mastrapa, senior director-insurance at Marriott. "So

we don't go to the European market to place specific coverage."

The underwriter on the master program can arrange local coverage if European regulations require it, Mr. Mastrapa said.

Of the U.S. companies that are seeking coverage in Europe, most are looking for high limits of property insurance, Mr. Tobin said. "That clearly seems to be the case post-Sept. 11," he said, and European insurers "have a large appetite for large well-risk-managed property accounts." He said that a conservative estimate of property coverage available in Europe would range from \$250 million to \$500 million on a per-account basis.

That doesn't mean, though, that European insurers are willing to take all risks that are presented to them, Mr. Tobin said. Most European insurers "do not want to write everything in Europe," he noted.

Brokers need to know what insurers are interested in and match those needs with buyers, Mr. Tobin explained. "It's about doing your homework" before trying to pair policyholders with insurers, he emphasized. "If it's the right risk, they will bring a lot to the table, generally in reasonable terms," he said of European insurers. "I think U.S. markets tend to put out less capacity and are more generalists, for the most part."

Praxair Inc. found European insurers to be more flexible with terms and conditions than were

U.S. insurers when the company was forced to find coverage to replace a fronted program that ended, said Richard M. Inserra, assistant treasurer and director of risk management for the Danbury, Conn.-based producer of specialty gases for chemical companies and other industries.

A global insurance program provides coverage for Praxair's property risks in several European countries and sits above \$5 million to \$10 million of underlying insurance. Although the underlying insurance was covered by Praxair's Bermuda captive in a fronting arrangement, Praxair currently uses local insurers in Europe for that part of the program, Mr. Inserra said.

He said the company finally settled on local insurers after "getting onerous terms and conditions" from U.S. insurers. Plans call for returning to a fronting arrangement when the coverage renews Nov. 1, Mr. Inserra pointed out.

There are also less-complicated reasons for using a European insurer, according to Mr. Betterley. There's nothing wrong with keeping the business in your own backyard, he said of policyholders with exposures in Europe.

"There's always, buy locally because it's good for business," he suggested. "That's more of a nonbusiness reason, but it's a good-neighbor reason" and one he hears from clients who buy coverage overseas, Mr. Betterley said.

INSURER TOPICS

A MONTHLY EDITORIAL SECTION SENT EXCLUSIVELY TO INSURERS AND REINSURERS

Information Technology



Market, industry and technology changes are prompting more use of automated systems

Commercial underwriter in a box?

By JOANNE WOJCIK

Automated underwriting, which has been used in personal lines for several years, is starting to make inroads into the commercial lines sector thanks to a maturing technology.

The hard market also is prompting the use of automated underwriting because many insurers, having downsized to trim expenses during the soft market, now lack sufficient in-house underwriting expertise to handle the deluge of new applications coming in. Furthermore, many of today's insurance company underwriters have never experienced a hard market.

However, while the use of automated underwriting may help insurers play catch-up now, and even ensure lower expenses when the market turns soft again, insurance industry experts say it is unlikely that technology will fully replace human expertise.

"There have been versions of this out there for a long time," said Ann W. Spragens,

senior vp for public policy development and general counsel to the Alliance of American Insurers in Downers Grove, Ill. "The concept actually is not new."

"We've seen this in what they call the 'Rapid Rater' for automobile insurance that's been around for a couple of decades," she said. "It takes some of the general elements that an underwriter would apply to any risk, and it automates the data evaluation process. For homogeneous products, for commodity-type products like personal lines, it's relatively simple to do."

Automated underwriting "has been in existence for 20 years in some rudimentary ways on the personal lines side," concurred Don Griffin, assistant vp of business and personal lines at the National Assn. of Independent Insurers in Des Plaines, Ill.

Mr. Griffin estimated that more than half of the NAI's 700 members use some form of automated underwriting in personal lines. By contrast, only a few use it in commercial lines. "It's just starting to get there," he said.

That's because "it's taken a while for the approach to mature to be able to engage the

more-complex issues presented by commercial lines," Ms. Spragens explained. "But the principles are the same."

Yet while some standard business insurance can easily be underwritten with these systems, Mr. Griffin was doubtful that large, complex risks ever will be.

"You have companies doing business in different countries; those will still have to be evaluated individually by a very experienced underwriter," he said.

Automation also is more difficult in commercial lines because the products are more diverse, Ms. Spragens said.

"The products are not that homogenous. In addition, they are not particularly simple. It's variety from product to product within a company, and there's a lot of variety from company to company in terms of the niches they market to," she said.

Filling the talent gap

But even if only standard business insurance is written with these expert systems, that alone could help fill the void of

hard-market expertise many insurance company underwriting departments are experiencing.

Using such systems is almost like cloning the most-experienced underwriters, because it is their interpretations of the underwriting "rules" that generally are downloaded into them, technology experts say.

Although young underwriters "have certain underwriting skills, they may not have the skills necessary to adapt to this kind of environment," Mr. Griffin said.

"This is certainly a way to deal with that issue," said Don Chase, executive vp of AscendantOne Inc., a 2-year-old technology firm based in Nashua, N.H.

AscendantOne has an online rating and underwriting engine that can be used to underwrite homeowners, personal auto and personal umbrella, as well as commercial general liability, commercial auto and commercial property. The Insurance Services Office Inc. has invested in AscendantOne, and ISO's insurance rating, rules and other information on 18 lines of business that ISO

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INSURER TOPICS

Automation: Underwriting systems making inroads

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supports will become available on AscendantOne platforms, beginning with the new business owners program in late summer.

"But this is a cyclical business," Mr. Chase pointed out. That means the deluge of business will eventually recede. Recognizing this, Mr. Chase emphasized how automation will reduce the companies' expenses both now and during lean times in his sales pitch to insurers.

"What's wrong with the industry in the first place is there's too

much cost in the process anyway," he said.

"We're promoting a process of actually looking at the operation and providing some real return on investment based on eliminating cost by providing real-time straight-through processing to deal with both the underwriting and rating issues without being touched by human hands."

"That's exactly what automation is intended to do," Ms. Spragens said. "Every company looks at the potential that automation can help it become more efficient and

improve its expense ratio."

"Will it make it possible to make underwriting decisions faster? Probably. But there are some that will still require more time invested," she said.

Better results uncertain

But will it make underwriting decisions better? That remains to be seen, industry observers say.

While industry experts say the automated systems insurers use to underwrite personal lines have improved loss ratios in those lines,

they point out there's no guarantee such systems will improve loss ratios in commercial lines.

For example, using credit scores in the underwriting rules employed by automated systems has helped improve auto insurance loss ratios for many insurers, Mr. Griffin said.

How successful automated underwriting is in improving an insurer's loss experience "depends on what the quality their underwriting has been up to that point," Ms. Spragens suggested. "It might make a difference for some. For others, it might not have a significant impact."

For example, "if you're using any

'You can't escape the element of human judgment that has to take place in an underwriting decision. It's just been automated at the front end.'

*Ann W. Spragens
Alliance of American Insurers*

kind of an automated system, if you make a mistake, that mistake is going to be repeated throughout your system," she said. "That's why a prophylactic defense...is going to become a part of everyday internal insurance company operations when they go to this kind of thing. You have to really keep a sharp eye on it."

It's like using the spell check function embedded in most word-processing software, she said. It catches most spelling errors but often misses homonyms, words that sound alike but are spelled differently.

"Automated underwriting began with the automation of basic human judgmental factors that were general enough that they could be modeled. So what you've done is automated a certain general level of judgment," she said. "When it's kicked out because those elements were not met, you simply are applying human judgment to it in a different way. You can't escape the element of human judgment that has to take place in an underwriting decision. It's just that it's been automated at the front-end."

This is the reason the process can never really be fully automated, and there will always be human oversight in the underwriting process, Ms. Spragens said.

"Any time you use an automated system, you have to stand back and look at the outputs and say, 'Is this consistent with reality as I know it?' That always has to be a part of this process," she said.

Human judgment essential

Because of this error potential, the automated underwriting systems on the market today all have the capacity for human intervention built in.

AscendantOne's software, for instance, is programmed with rules

established by company underwriters to analyze risks. If the rules are violated in any way, such as when a risk fails to fit within the guidelines, the program will alert the user. Then it will suggest possible actions to take, such as stopping the process entirely, completing the process and routing the transaction to a human underwriter for manual review, or allowing the underwriting to continue but with different terms and conditions, Mr. Chase said.

Likewise, if a risk fed into Caliber One Management Co.'s easyUmbrella or easyExcess systems doesn't fit the programmed underwriting rules, it is referred to specialist underwriters, according to Alan S. Ogilvie, vp of legal and e-commerce at the Yardley, Pa.-based surplus lines subsidiary of PMA Capital Corp.

Caliber One's system can be used to underwrite commercial excess and umbrella insurance using the ACORD application. This summer, the company plans to introduce commercial general liability, auto and property versions.

"It can do it in 15 minutes. It takes another five minutes to bind. Within three minutes, the actual policy is in the (electronic) in-basket" of the wholesale broker, Mr. Ogilvie said. "We've put zoos and amusement parks through this and got a quote in 15 minutes."

e-Policy Solutions' RightRisk also refers an application to a human underwriter if a risk doesn't fit the programmed guidelines, according to Rick Ulmer, senior vp-sales at the Torrance, Calif.-based insurance technology company. Mr. Ulmer said the company's automated underwriting software can be programmed to underwrite anything from simple personal lines risks to commercial risks as complex as medical malpractice.

Underwriters will always be necessary; it's just the way they work that will change, the Alliance's Ms. Spragens predicted.

"They'll have to become attuned to systems issues and systemic problems in addition to the way in which they are looking at individual risks that merit an individual underwriting evaluation," she said.

"That's why underwriting is an art," she said. "We have to remember that. Science itself has backed away a little bit from the hard-line mathematical approach. They, too, stand back and say, 'Wait a minute. Does the mathematical model fit reality, as we know it?'"

"There's still something that you get by looking at the whole picture yourself. The experience level and the gut feel that those people have is still something that cannot always be reduced to science," said Mr. Griffin, a former underwriter.

"Your company might be unique, your underwriting requirements might be unique, and your experience might be unique enough to be able to identify something that the computer does not," he said.

American Institute for CPCU
3 column x 10"

INSURER TOPICS

Adoption of XML still lags support for standard

Language would facilitate online deals

By MICHAEL BRADFORD

Insurers and agents are slowly but surely adopting extensible markup language, or XML, as a standard for online transactions. The development of an XML standard for insurance transactions continues apace, while its actual adoption and implementation by insurers and agents lags. Acceptance has been slow in part because as many of those who wish for widespread implementation are waiting for others to embrace the standard before jumping on board, experts say.

XML is a computer language that lets those who exchange data define the data in specific ways, enabling different computer systems to communicate. Agents have long clamored for the standard as a way to simplify their transactions among insurers and vendors. A common electronic standard would eliminate the time-consuming and expensive process of re-keying information to match various computer languages.

While some agencies are using XML standards, others are still developing a strategy for its implementation and 'many don't have a strategy at all.'

*Denise Garth
ACORD*

The ultimate goal is to create a process whereby everyone in the insurance distribution chain is using the same standard to process information.

The consensus at last month's in Lake Buena Vista, Fla., though, was that widespread acceptance of XML is still at least a few years away.

A recent survey by Gartner Inc. of life insurance and property/casualty agencies showed that "XML is still in its early stage," said Denise Garth, vp with Pearl River, N.Y.-based ACORD. While some agencies are using the XML standards, others are still developing a strategy for its implementation and "many don't have a strategy at all," she pointed out during a panel discussion at the conference.

And insurers "are still taking a wait-and-see attitude," Ms. Garth noted. She said, however, that insurers and agencies that have put XML in place are gaining a "strategic advantage" over their competitors by being among the first to use the new language to create more efficient processes.

While there is a "positive perception" of XML standards, Ms. Garth said, "everybody is kind of waiting for the other person" before moving to adopt the computer language.

Much of the adoption of XML to

date has been limited to internal uses by companies, according to Jack W. Tyniec, managing director of TCI Consulting & Research in Cresskill, N.J., and a participant in the discussion. "I think, in the future, the value is going to be as more industry suppliers and providers get on board," he said, which "will allow us to close the gap along the entire value chain."

Many feel XML will be adopted more widely throughout the

industry over the next three years, Ms. Garth said. And that means agents must ask themselves if they are positioned to adopt the standards to remain competitive, she emphasized.

Todd N. Eyler, senior analyst with Forrester Research Inc. in Cambridge, Mass., said he thinks the insurance industry actually is ahead of other industries in terms of adopting a data standard. Where the insurance industry is behind other industries, though, is in its reluctance to spread use of that standard, he suggested.

Once the XML standard is in place in insurance computer applications, the challenge is in using it, said Mr. Eyler, who also was a panelist. He urged those who have XML in place to be bold in going out to vendors and third-party service providers to encourage them to also implement the language so that more efficient online partnerships and new business relationships can be developed.

Others were not so quick to give the insurance industry credit for being out front with a data

standard.

"I see only a handful of companies doing heavy-duty implementation," said Kimberly H. Harris, research director, financial services industry with Gartner in Raleigh, N.C., and a panelist. She agreed with Ms. Garth that many are waiting for others to adopt XML. "If everyone waits for everyone else, we're never going to have industry adoption."

Uttam Narsu, vp with Cambridge, Mass.-based Giga Information Group, said financial

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INSURER TOPICS

XML: Slow to adopt standard

Continued from previous page

services companies other than insurers have finalized standards in recent years without waiting on a "broad consensus" from all users. "There is a tremendous amount of activity going on in the financial standards world," he said.

Mr. Narsu, who participated in a different panel discussion, said agents and insurers should not be too confident that they are ahead of others regarding implementation of a data standard.

Many agents and insurers are slow to adopt the standard because they can't see a return on the

investment needed to put it in place, according to Ms. Harris.

She said she is encouraged, though, by the enthusiasm for XML that she saw at the ACORD conference and the work by some to implement it. The industry has had to realize that the standard is not a "silver bullet" that will solve all their problems, Ms. Harris noted. "We've gotten past the hype now and people understand what XML means."

She said she expects it will be two or three years before industry players begin to move together towards widespread adoption of

the standard.

The Agents Council for Technology continues to push for adoption of the standard.

Jeff Yates, executive director of the group, said during a presentation at the conference that "we are big advocates of XML standards." He urged cooperation among agents, insurers and vendors to overcome the "spotty" implementation that marks current XML use.

"We've all got to be moving forward together," Mr. Yates said, if the standard is ever to gain widespread adoption.

Insurers, consumers see differing roles for use of Internet

By NICOLE VOGES

Insurers and agents are currently satisfied with how they use the Internet to conduct business with each other, but customers shopping for insurance information online are not feeling as fulfilled, according to the Future

One 2001 Technology Study.

The study, conducted by Future One, a cooperative effort of the Independent Insurance Agents & Brokers of America and 26 insurance companies, was based on three surveys of agents, insurers and insurance buyers.

Madelyn Flannagan, IIABA's vp of education and research, said the first-time study establishes a "definitive understanding of the opportunities the Internet and related technology present to the agency system."

The study, conducted mainly online in late 2001 and released in February 2002, surveyed 2,887 consumers, 201 small businesses, 666 agents and 35 insurance companies. According to the study, the purpose was to "explore whether the concerns and plans of agents and carriers coincide, and how these two groups can work together to optimize the role of technology in the insurance industry."

At the time of the study, 41% of consumers and 48% of small businesses had purchased a product or service, not necessarily related to insurance, online within the last year. However, only 22% of consumers and 28% of small businesses had shopped online specifically for insurance during the same time frame.

The study also suggested that consumers view agents' and insurers' Web sites as still lagging behind other financial services sites, such as those maintained by banking and investment firms.

Within two to five years, however, consumers can expect the services offered on insurance sites to rival those of banking and investment sites, said Ms. Flannagan.

While consumers and small businesses cite gathering information and requesting quotes as their main use of insurance Web sites, agents view the Internet as a means of dealing with insurance companies more efficiently and improving internal operations, the study found.

The survey found that agents have a definite interest in using the Internet for claims tracking and other policy service, but agents prefer to have personal interaction with new clients. While 79% of agents ranked improving customer service as an important element in their Internet strategies, only 32% viewed acquiring new customers with the same importance.

Agents are also very interested in insurers offering Internet capabilities that would allow them to bind business online without dealing with an underwriter or other company representative, but few insurance companies offered this at the time of the survey.

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INSURER TOPICS

Internet: Differing roles seen

Continued from previous page

According to the study, agents are gravitating toward insurers that offer more online capabilities and dropping those that don't emphasize Internet technology.

Technology issues that agents stress include the "perceived level of commitment to technology on a carrier's part, the speed and efficiency agents and brokers can serve customers, and the use of systems that can make an agent or broker's job easier or present workflow obstacles," according to the study.

The survey found that "independent agents and their carriers may be in danger of losing Internet marketing opportunities" if they continue at their current pace in embracing new technologies. Of the 666 responding agents, 67% currently have Web sites, but 33% remain without this technology. However, while the agents surveyed spend an average of about \$13,000 annually on Internet technology, almost half spend less than \$5,000.

The study found that "among agencies that spent more than \$10,000 on Internet technology in 2001, 63% increased relationships with certain carriers, compared with only 45% among agencies with lower technology expenditures."

By comparison, insurance companies also are spending significantly less on technology than is needed, according to the study. Insurers' average annual expenditures for technology in

2001 were approximately \$9.6 million, according to the study.

Of agents surveyed, 43% cited the cost of new technology as the top obstacle to Internet development, while 16% said their main problem as the lack of time for planning and implementation. Other problems cited include a lack of in-house expertise and a need for additional training. Only 4% of agents cited no barriers at all.

Of the 35 insurers surveyed, 85% currently provide company and product information to agents, and the remaining 15% expect to have these capabilities within two years. In addition, 55% currently have the technology available for agents to view loss histories for accounts.

Meanwhile, insurance companies surveyed see "enabling agents to handle more of the new business process themselves as the most important element in their Internet strategies," the study found. The Future One study found that 70% of insurers consider providing company and product information to agents and brokers as highly important.

Like agents, insurers in the survey are not highly interested in

direct online interactions with consumers. Although 79% of companies currently offer consumers product information online, only 38% consider providing that information as an important part of their Internet strategy.

Of the 35 insurers surveyed, 85% currently provide company and product information to agents, and the remaining 15% expect to have these capabilities within two years. In addition, 55% currently have the technology available for agents to view loss histories for accounts, and 45% expect to offer this within two years.

While only 25% of insurers offer customers the ability to report and track casualty claims online, 50% plan to offer this within two years, and the remaining 25% do not see it as a near-future possibility.

For property claims, only 8% currently offer online claim reporting and tracking, though 63% plan to offer it within two years, the study found.

There is no doubt that the Internet and other technological advances can continue to transform the insurance business, but according to the survey "today, the ultimate impact of the Internet remains murky."

Printed copies of the "Future One 2001 Technology Study" are available for \$59.95 by calling 800-261-4422 or faxing 703-683-7556. An order form can also be downloaded at www.independentagent.com.

AAMGA selects a new manager

By JOANNE WOJCIK

The American Assn. of Managing General Agents has selected a new management firm with extensive insurance industry experience, in an effort to improve service to its members.

King of Prussia, Pa.-based Accolade Management Inc., which is co-owned by former AAMGA President Tom Rogan and Bernd G. Heinze, who has served as AAMGA's interim executive director since January 2001, took over management of the association in February.

Mr. Rogan, who is an independent insurance industry consultant, is retired from MacNeill Group Inc., a managing general agency in Fort Lauderdale, Fla. Mr. Heinze, president and chief executive officer of Beacon Management Group Inc. of Wayne, Pa., has served as legal counsel in various insurance industry capacities since 1983.

AAMGA was forced to select a new management firm when its prior firm, Martin Fromm & Associates of Kansas City, Mo., announced it was dissolving in November 2000. Accolade was chosen from among 16 management companies that submitted proposals.

"The vote (to select Accolade) was unanimous, based largely on the board's belief that the selection of Accolade is in the best interests of AAMGA," explained Baron Garcia, AAMGA's past president and president of Oklahoma City Agency of Oklahoma City. "We will be their only client, and their

team knows our needs."

In addition to implementing the AAMGA board's directives, Accolade will offer ideas to enhance the association's role in the insurance marketplace and to expand the services it provides to members, Mr. Heinze said.

Among the improvements that Accolade is working on are: developing a component for AAMGA's Web site to let members exchange data electronically; offering registration for meetings and AAMGA University courses—the association's professional development arm—online; and creating a virtual trade mart where vendors can display information. Accolade will tap the AAMGA Automation and Technology Committee's expertise in implementing those changes, he said.

The change to Accolade also resulted in AAMGA's moving its headquarters to King of Prussia, Pa., from Kansas City, Mo., and the loss of two key staff members. Jeanne Corlew, director of meetings, was replaced by Marcia Reik; and Chris Behymer, who had been director of education, took an underwriting position at Markel Southwest Underwriters. Mr. Behymer is continuing to volunteer his services to the University while AAMGA seeks a new director of education.

For more information about AAMGA, visit the organization's Web site at www.aamga.org or call 610-225-1999. The AAMGA's new headquarters is at 150 S. Warner Road, Suite 156, King of Prussia, Pa. 19406.

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INSURER TOPICS

IASA 2002

Cat modeling more important post-Sept. 11

By JUDY GREENWALD

In this post-Sept. 11 era, catastrophe modeling as well as capital management techniques that rely on modeling are growing in importance as the industry struggles to recover and prepare itself for another potential terrorist attack.

Speakers discussed both types of modeling during a session at IASA 2002, the Durham, N.C.-based Insurance Accounting & Systems Assn. Inc.'s 74th annual educational conference and business show in San Francisco earlier this month.

With estimated total losses of up to \$70 billion generated by the Sept. 11 attacks—the largest catastrophic event in history—"we have a major change in the paradigm for what a large catastrophe is. The good news is the industry has responded," despite some initial fears it would call upon the war risk exclusion to avoid paying claims, said Patricia A. Teufel, a principal with KPMG in Hartford, Conn.

But Sept. 11 did not occur in isolation, said Ms. Teufel. "With 9/11, you saw that many disturbing events converge," including years of poor underwriting results.

Investment performance has been "equally unstellar," while the industry has been hurt by an economic downturn and asbestos losses. "What we had was the perfect storm" and many questioned whether the industry, particularly the property/casualty industry, could survive, she said.

The terrorist attacks and their aftermath have created an increased focus on capital management, she said. Pre-Sept. 11, the industry was perceived as overcapitalized. But, with the capital depletion created by Sept. 11, companies must now look to see how they are deploying their capital, said Ms. Teufel. It has also caused an evaluation of exposure "and not experience alone," she said. Companies also increasingly recognize the need to evaluate the exposure involved, she said.

Pointing to terrorism, Ms. Teufel said the question in the media has been not if, but when, another event will occur. And within the industry itself there is a continuing question as to whether terrorism coverage should be excluded, with some contending it is not insurable.

At the same time, increased attention has been paid to concentration of risk, said Ms. Teufel.

Just as Hurricane Andrew was a catalyst for examining natural catastrophes, Sept. 11 has created an opportunity to consider the possible impact of man-made catastrophes, Ms. Teufel said.

In the event of another terrorist attack like that on Sept. 11, "the property/casualty market would be seriously in jeopardy of losing its capital base," she said. Like catastrophe modeling, however,

"capital management techniques are evolving."

The different types of models, in



order of complexity, include: financial budgeting, where there is a static model with one set of

assumptions; scenario testing, where there is a range of expected outcomes; stochastic models, which describe critical assumptions and their combined financial implications in terms of ranges of results; and the more complex dynamic modeling. Dynamic modeling takes into account the interdependence of various assumptions involving investments, reserves and catastrophe risk. A dynamic model, for instance, would incorporate the stock market's reaction to a

catastrophe.

"Financial risk management is essential to long-term success," said Ms. Teufel.

Also speaking at the session was Peter W. Ulrich, managing director-enterprise risk management at Newark, Calif.-based Risk Management Solutions Inc., who discussed catastrophe modeling. Terrorism is "a very modelable risk," he said.

Among the lessons learned from the World Trade Center attack that can be applied to catastrophe

modeling is the awareness of the potentially significant correlation of losses across multiple lines of business, said Mr. Ulrich. It was also evident insurers did not have a clear understanding of where their exposures were located.

Companies, for example, that insured multiple lines of business did not have computers "that could talk to one another," he said.

A catastrophe model can translate the possible terrorist event to insured loss, explore the probabilities of various scenarios based on expert opinion and use a methodology that allows clients to select and weigh outcomes based on their own opinions and information, said Mr. Ulrich.

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INSURER TOPICS

IASA 2002

Successful M&A activity requires careful planning

By JUDY GREENWALD

Insurance company merger activity is relatively slow right now, but there are steps insurers can take now to guarantee success once the pace picks up.

Looking at the current insurance market, "I think there's a lot of indigestion right now," with the slowdown in insurer merger and acquisition activity attributable in part to the economy, said Michael J. McGuire, a senior manager in Deloitte & Touche's merger & acquisition services in San Francisco.

While the value of M&A activity increased in 2001 vs. 2000, the total dollar value of deals was skewed by American International Group Inc.'s \$23 billion acquisition of American General Corp. last year, he said.

"There's actually been a slowdown," said Mr. McGuire during a session at the Insurance Account-

ing & Systems Assn. Inc.'s 74th annual educational conference and business show in San Francisco earlier this month.

"Companies are retrenching" and trying to figure out what to do with their acquisitions, he said,



pointing to Citicorp Inc.'s plans to spin off its Travelers Property/Casualty unit.

Mr. McGuire predicted that future insurance company deals would be designed to achieve four strategic objectives:

- Specialization, including an enhanced focus on core competencies.
- Scale, which incorporates geo-

graphic reach, a more efficient structure and product breadth.

- Brand, which involves deals aimed at building value.
- Distribution.

All four factors have been M&A drivers in the past, Mr. McGuire said. Citicorp's \$36 billion Travelers Insurance Co. acquisition in 1998, for instance, "was probably a scale play," he said.

The first step in the M&A "lifecycle" is developing a strategy, said Mr. McGuire. It is surprising how many companies out there do not have one, and instead "buy for the sake of buying," he said.

Without an M&A strategy, "I think you'll see a lot of failures," he said.

The next stage is target screening, which involves identifying potential acquisition candidates based on specific criteria that could achieve the M&A strategy. The next two steps are transaction execution and integration.

In the early stages of the M&A cycle, not many people need be involved, Mr. McGuire said. But the process becomes harder and more complex as it advances and if there is no team working together, "it's extremely difficult," he said.

One of the major reasons why merger integration often fails is that it is not senior management's highest priority.

Senior management needs to say, "This is a priority. We need to do this," said Mr. McGuire.

Other factors in the failure of mergers include: poor coordination, which can include delays in executive decision making; a change in leadership, which can involve cultural incompatibility; and inadequate control, such as senior management not being visible to the newly combined organization.

"Integration is probably the most difficult part of the transaction, where you're going to fail the most," said Mr. McGuire.

"Integrate as fast as you can, but only as fast as you really should," he advised. While it is important for the buyer to integrate quickly, companies must also balance this "with the need to integrate properly," he said.

In addition, organizational structure must reflect the business' needs, "not the desires of the deal guys," he said. Companies should also keep in mind that "synergy estimates are a floor, not a ceiling," and synergies are "never as rosy" as the deal guy says they are, he added.

Mr. McGuire said steps to a successful integration also include the appointment of an acquisition integration coordinator, the use of integration teams lead by coordinator representatives, and the development of work plans.

Moderating the session was Elizabeth A. Mercier, vp at Windsor, Conn.-based SS&C Technologies Inc.

IT briefs

Selective sells software unit

BRANCHVILLE, N.J.—Selective Insurance Group Inc. has sold its software subsidiary, PDA Software Services Inc., to Covansys, a global consulting and technology services company, for about \$16.5 million.

Selective purchased PDA in 1998 as part of the company's Diversified Insurance Services operation. Additional terms of the sale were not disclosed.

Based in Branchville, N.J., Selective Insurance Group is a holding company for five property/casualty insurance companies offering primary and alternative market insurance for commercial and personal risks.

Separately, Selective last month received the Employer's Excellence Award presented by the Central Jersey Chapter of the CPCU Society. The annual award is presented to a New Jersey insurance company in appreciation of its continuous support and contributions to the members of the CPCU Society.

Best seeking award candidates

OLDWICK, N.J.—A.M. Best Co. has developed the E-Fusion Award, which aims to highlight outstanding, resourceful uses of Internet technology by an insurance organization.

The award will be presented during Best's Annual Insurance & Technology Conference, E-Fusion, in Washington this September.

Entrants can be insurance companies, reinsurers, third-party technology providers working with an insurer or brokerage, or related financial services providers engaged in insurance. The candidate

project, product or service must have been introduced or redeveloped within the past 18 months and must be directly related to the business of insurance.

Entries can include projects designed to sell, support, educate, underwrite, manage operations, handle claims or support any aspect of conducting an insurance or reinsurance business. Judges will make their selections based not only on the creativity and resourcefulness employed but also on whether a project succeeds in meeting its business mission and furthering the business of insurance.

The winner of the E-Fusion Award will be announced at a reception at the National Press Club on Sept. 30 as part of Best's E-Fusion 2002 conference. The conference will be held Sept. 29-Oct. 1 at the J.W. Marriott Hotel in Washington. Details, registration materials and entry forms are available at www.efusion2002.com.

NAMIC bank chief retiring

INDIANAPOLIS—Assurance Partners Bank has announced the retirement of David T. Fronek as

president and chief executive officer.

Mr. Fronek will remain with the bank until a successor is named. Assurance Partners Bank is an affiliate of the Indianapolis-based National Assn. of Mutual Insurance Cos. and is owned by 266 NAMIC member companies. The bank's focus is on marketing financial services through NAMIC members to insurance agencies and policyholders. Since opening for business in June 2000, it has developed referral programs with more than 300 agencies in 29 states and has \$20 million in assets. The bank offers a full array of consumer loan products, home equity and first-mortgage loans, and small-business financing through its network of related insurers and

agents.

Mr. Fronek joined the organization in 1998 and became the bank's first president and CEO in January 1999. Prior to joining Assurance Partners Bank, he headed the retail lending division at First Chicago NBD Corp.

Fujitsu, Intel enter automation pact

EDISON, N.J.—Fujitsu Consulting and Intel Corp. have announced a extensible markup language-based automation tool designed to reduce repetitive manual entry tasks and increase collaboration between business partners.

The iFIRST solution uses XML Web services integration technology to help insurance

companies and their partners exchange information. Using XML standards developed by the Assn. for Cooperative Operations Research & Development, the allows applications to interact via the Web service.

The tool eliminates redundant data entry and offers a seamless interface for the range of data sources that insurance companies can tap into when assembling the information used in underwriting. It also can be used by a mobile worker in sales or customer servicing.

Edison, N.J.-based Fujitsu Consulting and Santa Clara, Calif.-based Intel demonstrated a commercial auto insurance version of iFIRST at last month's ACORD conference in Orlando.

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E.U.: Complex workings of E.U. often hard to grasp

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constitutionally independent of them.

The European Commission issues, on average, between 6,000 and 7,000 legislative instruments annually—these can be directives, regulations, decisions, recommendations or opinions.

Perhaps the most important of these are directives, which set out policy objectives but must be implemented in each member state as part of national legislation. Article 189 of the European Community Treaty states that: "A directive shall be binding, as to the result to be achieved, upon each member state to which it is addressed but shall leave to the national authorities the choice of form and method."

Directives must be implemented into the national law of member states within two years of being issued. And if a state delays or writes a law that does not fully embody the directive's requirements, the European Court of Justice can intervene.

Regulations, in contrast, apply immediately, in all territories, without the need for national implementing legislation. A regulation is "binding in its entirety" and must be observed in full and as written. Typically, regulations concern highly specific and technical adjustments to existing E.U. laws.

A decision can address one or more member states, a particular undertaking or an individual. For example, a decision could be issued to authorize a grant from one of the European Union's funds or to institute a pilot program. "A decision shall be binding in its entirety upon those to whom it is addressed," according to Article 189 of the Euro-

pean Community Treaty.

Recommendations and opinions from the European Commission have no binding force, but the European Court of Justice does sometimes refer to them when handing down judgments.

The European Court of Justice, based in Luxembourg, is comparable in some ways to the U.S. Supreme Court. The ECJ's official function is to ensure that E.U. law is applied uniformly in all member states. While some legal arenas—criminal law, in particular—remain under the jurisdiction of individual member states, in other areas the ECJ is effectively the highest court of nations within the European Union.

The ECJ is made up of one representative of each member state, appointed by that state and then approved by all members of the European Union. These representatives serve six-year terms that can be renewed. The representatives elect a president who serves for a three-year term, which is also renewable.

The ECJ cannot initiate legal actions; instead, it must wait for a case to be referred to it by the European Commission, Council, Parliament or European Central Bank, or by the government or national court of a member state.

Most of the cases that come before the ECJ are those that have been referred to it by national courts, which are seeking so-called "preliminary rulings" from the ECJ. Such rulings constitute the largest category of cases that come before the court. Parties to a dispute can neither insist on a referral being made to the ECJ nor object to such a referral being made; only a national court can apply to the ECJ for

a preliminary ruling.

Once a referral has been made, the ECJ is obliged to respond. But it can respond only to the specific questions that have been put to it;

Directives must be implemented into the national law of member states, but regulations apply immediately.

it cannot pronounce upon, or try to influence, the outcome of the principal action. National courts must accept and apply the interpretations made by the ECJ in its preliminary rulings.

In addition, the ECJ has the power to impose financial penalties when it judges that a member state has not complied with its judgment or with the state's obligations under a European treaty. It can also annul acts adopted by the Commission, Council, Parliament or ECB.

Another E.U. body, the European Parliament, is responsible primarily for dealing with the budget of the European Union, though it can influence E.U. law though holding discussions with, or making recommendations to, the European Commission. Made up of elected representatives from each of the member states, the Parliament meets in Strasbourg and Brussels.

Currently, the European Parliament has 626 members; in December 2000, member states decided that, no matter how large the European Union grows, the size of the Parliament should not exceed 732 representatives. On average, Parliament assembles once a month in Brussels and meets less regularly in

Strasbourg.

Another E.U. institution, the Council of Ministers, is the principal meeting place for the national governments, and its main function is to determine policy and make legislative decisions. The Council of Ministers, though, can act only on the basis of proposals made to it by the Commission. The Council of Ministers is not a fixed group of national politicians; its makeup changes according to the subject under review. For example, for upcoming discussions of transportation matters—such as recent proposals about aviation terrorism insurance pools (*BI*, March 18), it is the transportation ministers from the member states who will gather. About 90 meetings of the Council take place annually, though other, informal meetings of national ministers also are held throughout the year.

Meetings of the Council of Ministers take place in the home nation of the current holder of the office of the Council presidency. The presidency rotates, alphabetically, among member states every six months.

In addition, the European Council, was created in 1974 to bring ministers from member states together to discuss the direction of the European Union and any business that could not be addressed by the Union's other institutions. Council meetings take place every six months and are attended by the prime minister and foreign affairs minister of each member state, as well as the president of the European Commission and one of his or her vps. Meetings are held in the home nation of the current president of the Council of Ministers, and special summits may also be held.

EUROPEAN UNION AND THE EURO



The euro became legal tender on Jan. 1, 2002, in the 12 European Union countries in the so-called "eurozone."

Those countries are: Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Portugal, the Netherlands and Spain.

The euro has replaced the national currencies of those countries, which were phased out according to timetables agreed upon by the individual member states.

Changes: E.U. actions pose challenges for businesses

Continued from page 10

A.G. Holding in April began offering a \$1 billion insurance program to cover third-party terrorism liability risks. The coverage would provide up to \$1 billion per aircraft and \$2 billion per airline for war and terrorism third-party liability claims, and premiums would be calculated on a per-passenger basis, Allianz said. A spokesman said that 10 other insurers, including Berkshire Hathaway Inc., Hannover Re Group and Partner Re Ltd., would participate in the program.

The governments of several E.U. countries, particularly Germany and the United Kingdom, are keen to see airlines return to the commercial insurance market.

"There are now possibilities to go back to the market. This is our position, and I hope this will also be followed by the others," German Finance Minister Hans Eichel said before the May meeting of European ministers.

Employment law

Apart from providing backing for airlines' terrorism exposures, two

recent initiatives will affect employment law in E.U. member states.

A directive passed in April will make it more difficult for employers to defend themselves against charges of permitting sexual harassment in the workplace.

The directive, which must be adopted by E.U. member states to take effect by 2005, will place the burden of proof on employers in cases alleging employer toleration of sexual harassment in the workplace. In addition, employers found guilty of permitting sexual harassment could face unlimited court sanctions. The directive, which amends the 1976 Directive on Sexual Discrimination, will, for the first time, outlaw sexual harassment as a form of discrimination in the European Union.

The London-based law firm of CMS Cameron McKenna said the new law will likely have its biggest impact in E.U. member states such as Greece and Portugal, which do not yet have national laws addressing sexual harassment.

In countries where sexual harassment is already outlawed, such as the United Kingdom, employers are

already well aware of the potential cost of such cases, the law firm said. "Much of the new law simply consolidates established U.K. practice. For example, it confirms that sexual harassment constitutes discrimination and that there is no upper limit on compensation," it said. "However, for the first time, sexual harassment is given a legal definition that is applicable across Europe."

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

The directive also expands the definition of workplace sexual discrimination to include such things as "sexual jokes," "sexual blackmail" and "remarks about looks." Under the directive, an employer taken to court must prove that it has created a "harassment-free" workplace. Employers must show that they have taken preventive measures, such as providing train-

ing for employees and publishing regular "equality reports" detailing their policies with regard to gender equality.

The Union of Industrial & Employers' Federations of Europe gave a guarded welcome to the directive. A spokeswoman for the Brussels, Belgium-based European employers federation said that while the federation welcomed the move to make sexual harassment illegal, it had concerns about the potential liability for employers. The federation was concerned about how an employer and individual employees could be held liable for the actions of a worker charged with sexual harassment, the spokeswoman said.

On another employment issue, a draft directive published in March could give temporary workers the same employment rights as full-time staff.

The draft directive, which E.U. ministers and the European Parliament must approve, could give temporary workers rights to the same remuneration as full-time employees doing comparable jobs. And the proposals could cover pensions, holidays, health insurance

and bonuses.

Digby Jones, chairman of the London-based Confederation of British Industry, has asked the president of the European Commission, Romano Prodi, to rethink the directive.

The London-based Chartered Institute of Personnel Development also said that the directive could be "damaging for the U.K." CIPD said the directive would limit the U.K. labor market's flexibility. "The U.K. government must stand firm and resist proposals in Europe for the directive to have a wide scope," said Diane Sinclair, CIPD employee relations adviser, in a statement.

"It must insist on a practical approach that protects flexibility for workers and employers," Ms. Sinclair added.

According to E.U. figures, the United Kingdom has one of the highest numbers of temporary workers. The European Union said that, in 1999, about 80% of all temporary workers employed throughout the European Union were to be found in the four member states of France, Germany, the Netherlands and the United Kingdom.

Risk management: Europeans expand their approach

Continued from page 10
and partly due to corporate governance issues in Europe.

An evolving approach

A new approach to risk management is spreading from European nations in the north—particularly the United Kingdom, Germany and France—to southern states such as Spain and Italy, said Mr. van Santen. He said that he thinks many European companies are adopting enterprise or strategic risk management to a greater extent than are

risk—an approach that is moving away from relying on insurance to cover all exposures, he said.

“The assets that generate the value of a company’s share price come from the company’s ability to manage itself, including its risks. More and more companies are trading on their brand value and reputation, and the brand must be kept intact,” noted Geoff Taylor, risk manager for Nike European Operations in Hilversum, Netherlands.

Given the changing nature of corporate risks, the current hard market and the unavailability of insurance for some risks, such as ter-

rorism, risk managers must rethink their roles, said Mr. Taylor, who is responsible for health and safety and security for Nike’s operations in Europe, the Middle East and Africa. He is not related to Kingfisher’s Mr. Taylor.

U.S., E.U. differ

Robert E. Hoyt, professor of risk management and insurance in the Terry College of Business of the University of Georgia in Athens, Ga., is among those who see European companies as ahead of those in the United States in adopting en-

terprise risk management.

“Clearly, the pressure has been greater for (European companies) over a longer period of time to move in that direction,” he said.

Mr. Hoyt cited a 2001 study by MMC Enterprise Risk and the Economist Intelligence Unit that showed 53% of European companies using some form of enterprise risk management, compared with 34% of North American companies.

Historically, though, U.S. companies have been much farther ahead in terms of traditional risk management structures and programs, he said, “partly because they faced

much greater legal risk exposure than companies overseas have.”

Willis’ Mr. Hackenburg said he sees corporate governance issues as having little impact in differentiating risk management activity in Europe from that in the United States.

“As far as corporate governance, I don’t see much difference at all,” he said. “I think all of those issues get a lot of attention on both sides of the pond, and should.”

Harold D. Skipper Jr., professor of risk management and insurance in the J. Mack Robinson College of Business at Georgia State University
See RISK MANAGEMENT/next page

‘Compliance with Turnbull has brought risk management into the boardroom.’

*Paul Taylor
FERMA*

their U.S. counterparts.

“What is clearly evolving is the need to have a better method of managing risk within business to ensure that people meet their business targets and seize opportunities,” said Mr. Taylor, head of business risk management development at London-based international retail company Kingfisher P.L.C.

In the United Kingdom, the 1999 Turnbull Report and the subsequent requirement for publicly listed companies to identify and manage their risks has helped focus attention on strategic risk management, Mr. Taylor said. Germany has similar risk reporting requirements.

“Compliance with Turnbull has brought risk management into the boardroom and is changing the way companies manage their risks,” he said.

Mr. Taylor said that his objectives as a risk manager are to “improve the understanding of risk and reward so that businesses can take advantage of the opportunities that risk presents and to provide the tools and processes to help improve the predictability of the group’s strategy and business plans.”

As a result, he helps senior managers to identify the risks involved in their areas of the business, evaluate the level of each risk and mitigate the greatest risks. Insurance may play a part in managing some of those risks, but it’s simply one of several methods of managing risks at Kingfisher, said Mr. Taylor.

Paul Hopkin, director of risk management for The Rank Group P.L.C., performs a similar role at Rank Group, an international entertainment company.

Mr. Hopkin holds annual workshops for different operations within the group where management can brainstorm about the exposures facing the organization’s finances, reputation and operations.

Risks that can be managed by insurance are just a fraction of the total risks a company faces, Mr. Hopkin said. Intangible risks—such as reputational damage, competitive risks, reliance on information technology and supply chains—are increasing. And that requires companies to take a new approach to

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Comings & Goings



Mr. Mulready



Mr. Edwards



Mr. Davis

Insurers:

Steve Mulready will succeed **Terry Broderick** as president and chief executive officer of Charlotte, N.C.-based Royal & SunAlliance USA. Mr. Mulready was president and chief operating officer of the company's commercial division. Mr. Broderick's retirement takes effect June 30.

In other insurer appointments:

Ralph Mucerino has been named president of New York-based American International Group Inc.'s Global Energy Division. Mr. Mucerino most recently served as senior vp of American International Underwriters, AIG's international property/casualty insurance operations.

Robert Walton was named regional executive for the Southwest and Northwest regions of Zurich North America's Middle Markets business unit in Glendale, Calif. Prior to joining Zurich North America Middle Markets, Mr. Walton was director of marketing for professional liability at Farmers Insurance Group.

Donald H. Dashiell was promoted to president of Companion Life Insurance Co., a subsidiary of South Carolina Blue Cross. He joined Companion Life, based in

Columbia, S.C., in 1994 as executive vp and chief operating officer.

Agents/brokers:

Richard H. Edwards was named president and chief executive officer of Columbus, Ohio-based insurance brokerage network Assurex Global. Mr. Edwards previously was an executive with J.P. Morgan Chase & Co. He succeeds Thomas W. Harvey, who retired from Assurex.

David M. Hofele has been named senior vp of Savannah, Ga.-based broker Palmer & Cay Inc. Previously, he was the company's general counsel.

Reinsurance:

William Davis Jr. was named senior vp of the reinsurance department at Allied World Assurance Co. Ltd. of Hamilton, Bermuda. Before joining Allied World, Mr. Davis held positions as senior vp and director of Skandia America Reinsurance Co. and as senior vp and executive management group member of St. Paul Re.

Shane Wright was named global risk and underwriting leader for

GE Employers Reinsurance Co.'s newly formed global property and casualty business unit. Mr. Wright joined Overland Park, Kan.-based ERC in July 2000 as global financial planning and analysis leader.

Brian R. Hanuschak was named president of Discover Re Managers Inc., a Farmington, Conn.-based member of The St. Paul Cos. Inc. Prior to joining Discover Re, Mr. Hanuschak held various positions with GE Capital, General Reinsurance Co. and The Hartford Insurance Co.

Jeffrey L. Radke was named president and chief operating officer of PXRE Group Ltd. of Hamilton, Bermuda. Previously, Mr. Radke was executive vp.

Surplus lines:

Daniel T. Muldowney has been appointed chief financial officer of Farmington Hills, Mich.-based wholesaler Burns & Wilcox Ltd. He previously was senior vp and treasurer at American Community Mutual Insurance Co.

Health care:

Charles J. Pendola has joined New York-based health network MultiPlan Inc. as executive vp. Mr. Pendola previously was an independent consultant in health care, human resources and financial management.

Jeffrey M. Folick was named to the newly created position of executive vp of regional health plans and specialty companies at Health Net Inc. of Woodland Hills, Calif. He will oversee Health Net health plans in the Northeast and Arizona, as well as MHN, the company's behavioral health care subsidiary. Mr. Folick previously was president and chief operating officer of PacifiCare Health Systems.

Risk management: Approach expands

Continued from previous page

in Atlanta, takes a different view, suggesting that U.S. companies are actually a bit farther along toward enterprise risk management than those in Europe.

Though cautioning that such generalization is "painting with a very broad brush," Mr. Skipper said that stricter corporate governance regulations are likely to drive companies to purchase insurance to mitigate risks, reducing the emphasis on managing exposures.

That would be in keeping with a traditional reliance by European companies on insurance, as well as their greater reluctance to retain risk than that shown by their U.S. peers, he said. "Historically, I would say European companies generally have had a stronger emphasis on insurance as a risk management solution than have companies in the U.S.," Mr. Skipper said.

William W. Johnson, risk financing manager at Hallmark Cards Inc. in Kansas City, Mo., sees that emphasis on insurance as the biggest difference between the risk management approach at his company's U.S. and European operations.

"The primary difference is the desire to transfer risk at a different level," he said, "the desire (in Europe) to transfer risk at fairly low levels and not put the effort into the analysis of retaining risk and what the payback is at different levels."

Mr. Johnson said he meets regularly with Hallmark's U.K. operations and its major operations in continental Europe, and "I've raised the issue more than once with them." But, he said, "I haven't been able to generate a lot of interest among our own operations in terms of retaining higher levels of risk."

Changing roles

Although several European risk managers have adopted a broader approach and reach for risk management within their own companies, not all insurance and risk managers are eager to follow that route. Meanwhile, there are other executives from different business functions who may be keen and just as able to take on the mantle of risk manager in the future, Mr. van Santen and his colleagues say.

"Human resource departments from some companies contact us for guidance on how to bring enterprise risk management training into their executive training programs," said Mr. van Santen. In some cases, senior general managers are being appointed as strategic risk managers, he noted.

The chief risk officer of the future could come from anywhere within an organization, including treasury, health and safety, business continuity or general operations, said Nike's Mr. Taylor, noting that the job requires communication skills, the ability to take responsibility and a broad understanding of risk.

In many U.K. companies, the internal auditors are taking the initiative in Turnbull compliance, but

there is no reason that more risk managers, with their experience in identifying and managing risk, should not take on that role, Kingfisher's Mr. Taylor said.

Both he and Mr. van Santen note, however, that although the changing nature and higher profile of risk presents risk managers with a great opportunity to widen their range and increase their status, many are content with their primary role as an insurance buyer.

As a result, risk management associations AIRMIC and FERMA increasingly must meet the needs of two divergent types of member, said Mr. van Santen and Kingfisher's Mr. Taylor.

"A big portion of our members are interested in insurance and traditional risk management, while a strong minority are interested in pure risk management. And our seminars increasingly reflect that," said Mr. van Santen, noting that FERMA is undergoing a two-year plan to assess whether there is a need to broaden the association.

Interest in the changing nature of corporate risk is not confined to risk management associations. The London-based Strategic Planning Society recently set up a risk discussion group co-chaired by Arif Zaman, a market analyst for British Airways P.L.C. and Amarjit Atkar, the head of business risk at Reuters Ltd.

"There is a need for people who have an interest in strategy and those who have an interest in risk to come together," said Mr. Zaman.

"Risk is becoming a boardroom and a leadership issue. Reputational risk and the relationship between a company and its key stakeholders is a key management issue," he said.

In the wake of the Enron Corp. collapse and the Turnbull Report, companies need a better understanding of risk, whether it be marketing, operational, physical or human capital risks; and they need to bring together people throughout the organization to address the culture of risk, said Mr. Zaman. "There is clearly a need and pressure for risk managers to get to grips with the intangible risks as well as the tangible," he said.

"Risk managers potentially have an increasingly important role. Risk is now seriously higher on the corporate agenda, and the pressures on the role of risk manager are increasing," said Donald Macdonald, the chairman of Aon Risk Consulting in London.

Mr. Macdonald conceded that internal auditors and the large accounting and management consultants had been successful in taking the lead in Turnbull compliance work, in part because of their access to the boardroom. But he pointed out that risk managers and brokers have the "experience and knowledge" to take risk up to the highest levels of management.

"Noninsurable risks are going to become increasingly pressing, and risk managers need to be alert to broader issues," said Mr. Macdonald.

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June 17, 2002

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International

Employers faulted for AIDS inaction

By SARAH VEYSEY

An estimated one in nine individuals in South Africa is infected with HIV or AIDS, but many businesses are not doing enough to manage the risk of the disease to their workforce, according to a recently published study.

A survey of 110 South African companies found that small to mid-sized companies lag behind their larger counterparts in terms of managing HIV and AIDS risks in their employee populations.

While 82% of companies with more than 500 employees said they have a formal HIV/AIDS policy in place, just 51% of companies with between 100 and 500 employees said they have such a policy. Only 6.5% of employees with fewer than 100 employees have a formal HIV/AIDS policy, according to the study. The research, published last month, was conducted by Deloitte & Touche Human Capital Consulting in South Africa in conjunction with the South African Business Coalition on HIV/AIDS and the United Kingdom's Department for International Development.

More than two-thirds of the respondents to the survey said they had not assessed their exposure to HIV/AIDS risks. The researchers found only 7.3% of respondents had conducted anonymous blood screening of employees, and just 4.5% had introduced saliva tests for their staff.

In addition, only 36.4% of respondents said that managers and supervisors had been trained how to manage HIV/AIDS-related matters in the workplace. What training existed was more prevalent at larger companies.

Among the larger companies—those with more than 500 employees—54% said they provided supervisors and managers with some training on managing those risks. Among companies with between 100 and 500 employees, though, that figure dropped to 27.6%, and among companies with fewer than 100 staff, it fell to 16.1%.

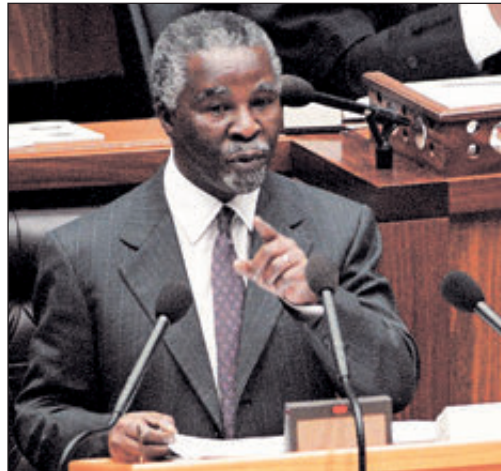
Almost two-thirds of respondents said their company had an HIV/AIDS education program in place, but only 11.8% said that employee attendance at educational sessions was compulsory.

Many respondents to the survey indicated that their medical insurance plans included a disease management program. Among the larger employers, 84% provided such a program, while 75.9% of those with between 100 and 500 employees, and 48.4% of those with fewer than 100 employees said they had such a program in place.

Among respondents, slightly more than half—53.3%—said they expect the incidence of HIV/AIDS in South Africa to have only a “moderate” impact on their business. A further 38.1% said they expected the virus to have little or no impact on them, while just 9% said it would have an “extreme” impact.

Those responses stand in sharp contrast to the view of Marika Fahlen, director of social mobilization and strategic information for the United Nations' AIDS organization, who has described AIDS as one of the greatest threats to global stability and development.

Deloitte & Touche suggested that a false pronouncement by South African President Thabo Mbeki that HIV did not lead to AIDS might have



South African President Thabo Mbeki has drawn criticism for his public statements on the consequences of HIV infection.

led to a sense of “denial” among some South Africans, including employers, about AIDS risks.

Despite the disparity in the scope of HIV/AIDS risk management practiced by those companies surveyed by Deloitte & Touche, some employers in South Africa have made strides in their attempts to educate staff and minimize the risks from the virus in the workplace.

Last year, Johannesburg-based telecommunications company Telkom received a Commonwealth Award for Action on HIV/AIDS in recognition of its work to combat the disease. Telkom's HIV/AIDS program for employees includes free confidential screenings for genital

See AIDS/next page

World Updates

Capital adequacy under scrutiny in U.K.

The U.K. Financial Services Authority has concerns about the solvency of nearly one-quarter of the United Kingdom's insurers, according to a new report from Fitch Ratings in London. The FSA confirmed that around 200 of the United Kingdom's 900 insurers fall under its “higher risk” categories with regard to the adequacy of their capital. The FSA said those companies, which were not named, would be contacted at a later date. The FSA in May proposed tougher capital-adequacy rules for insurance companies, and it plans to implement the rules by 2004. “The new proposals will send a strong signal to company management that they need to improve their controls or face the wrath of the regulator,” said Andrew Murray, author of the Fitch report.

Amlin to raise funds to boost capacity

Lloyd's of London-based insurer Amlin P.L.C. plans to raise £80 million (\$116.8 million) in new capital through a private placement and open offer of shares. Amlin said it hoped to use the money to buy up the capacity on its composite syndicate 2001 that it doesn't already own. Amlin currently owns 72.3% of the syndicate's capacity; the rest is supplied by individual names.

U.K. care costs outpacing inflation

Corporate health care costs for almost half of businesses in the United Kingdom are increasing at a rate above the rate of inflation, a study by Aon Health Solutions in London has revealed. The survey of 700 companies showed that 47% were paying at least 6% more for their corporate health care packages in 2001 than they did in 2000. In addition, about half of those surveyed described sickness management within their organization as “satisfactory” or worse than in previous years. More than 60% said their companies did not manage the costs associated with employee absence.

Latin American market growth slow

The insurance industry in Latin America generated premiums of about \$40 billion in 2001, according to a new report by Swiss Reinsurance Co. The study states that premiums in the property/casualty sector grew only in line with that of the gross domestic product. Swiss Re said this relatively slow growth was likely due to declining rates in that sector in the period 1995 to 2000.

See WORLD NEWS/next page

Norway reviews bank bid for Storebrand

By GERARD O'DWYER

OSLO, Norway—Norwegian regulators expressed concern last week over a \$2 billion cash and stock offer by state-affiliated Den norske Bank to acquire Storebrand, which is Norway's largest provider of life, pensions and group insurance products.

With shareowners in DnB and Storebrand scheduled to vote on the merger in August, Norway's competition authority expressed fears that the union would give the proposed new organization, DnB Storebrand, a dominant market position in key areas of insurance and banking.

The authority's fears are well grounded. The merger would give the DnB Storebrand group a 43% share of group insurance premiums and a 47% share of total insurance premiums written in Norway. The bancassurance group would become the market leader in all core banking and insurance products.

Competition regulators had hoped that Storebrand would seek out an international partner, rather than a large domestic player.

A \$2.6 billion cash and stock bid by Helsinki, Finland-based insurer Sampo to take over Storebrand in May 2001 was effectively blocked by DnB, after the state directed DnB to make a rival offer.

While unusual for a European government, Norway holds a 48% interest as well as seats on DnB's board, giving it considerable influ-

'We will take action if we feel that the merger will inhibit competition in the Norwegian market.'

*Knut Eggum Johansen
Norwegian competition authority*

ence over the bank as well as the country's financial services industry. At the time of Sampo's bid, the Norwegian government said it would consider new laws to restrict

foreign takeovers of domestic financial services groups.

Knut Eggum Johansen, the head of Norway's competition authority, said the regulatory body has concerns about a merger between DnB and Storebrand, “and we will not be slow to demand alterations to the merger. This is especially true in the case of life insurance. We will take action if we feel that the merger will inhibit competition in the Norwegian market.”

The competition authority could insist that the merged company reduce the size of certain operations, such as life insurance and property/casualty insurance, so that its market share in those areas is less than 40%.

Kreditkassen, the Oslo, Norway-based banking and insurance company, also began exploratory takeover talks with Storebrand, but this avenue was closed off as government officials promoted a merger with DnB.

The fact that Kreditkassen is owned by Nordea Holding—the Stockholm-based Swedish-Finnish bancassurance group that paid \$3.4 billion for Kreditkassen in November 2000—did not help the foreign-owned bank strengthen its case in Norway.

“We are anxious to maintain the highest level of competitiveness in banking and insurance in Norway. This is difficult when the state's role is so significant,” Mr. Johansen said. The authority may decide, as happened when Sampo bid for Storebrand last year, to consult with Eu-

See STOREBRAND/next page

New E&O insurer in London

By SARAH VEYSEY

LONDON—A new professional liability insurer is being established in London and plans to begin underwriting in September.

PRI Group P.L.C. is planning to raise about £130 million (\$189.9 million) through a share placement on the alternative investment market of the London Stock Exchange. The insurer is being set up by Andreas Loucaides, a former executive at Markel Corp. Peter Matson, previously lead underwriter at nonmarine Lloyd's of London syndicate 990, will be the chief underwriting director of PRI,

the company said in a statement.

PRI will specialize in professional indemnity, directors and officers, warranty and indemnity, and general liability coverages. Mr. Loucaides said that the insurer would target large and midsize corporations, as well as professional firms such as law firms.

“We intend to become one of the leading insurers in the professional liability sector of the U.K. insurance industry by pursuing a closely focused underwriting strategy,” Mr. Loucaides said in a statement.

PRI said it would purchase a shell company, authorized by the

Financial Services Authority, and expects to write premiums of £20 million to £30 million (\$29.2 million to \$43.8 million) by year end.

Martin Beagley, executive director of professional risks at Willis Group Ltd. in London, said that now may be a good time to launch a new D&O insurer. “Rates are going up, conditions are hardening, and people are buying increased limits,” he said.

He added that although there is not necessarily a gap in the U.K. D&O market, much of the current capacity is in demand and underwriters are dealing with a huge number of submissions.

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Specifications can be secured from the Insurance Coverage Office by contacting Debra Lawhead at the address above or by phone (302) 739-3651, toll free 1-877-277-4185 or by fax (302) 739-5345 or email dlawhead@state.de.us

LEGAL NOTICES

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

NO 04298 OF 1998

IN THE MATTER OF

BAI (RUN-OFF) LIMITED

(PROVISIONAL LIQUIDATORS APPOINTED)

AND IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that by an Order dated 24 May 2002 made in the above matter, the Court has directed that a meeting (hereinafter called the "Creditors' Meeting") be convened of the Scheme Creditors (as defined in the Scheme of Arrangement hereinafter mentioned) of the above named company (hereinafter called "the Company") for the purposes of considering and, if thought fit, approving (with or without modifications) a Scheme of Arrangement proposed to be made between the Company and the Scheme Creditors and that the Creditors' Meeting will be held at The Great Hall of The Chartered Insurance Institute, 20 Aldermanbury Square, London EC2V 7HY, United Kingdom on 11 July 2002 commencing at 3.00pm at which place and time all such Scheme Creditors are requested to attend.

Scheme Creditors may vote in person at the Creditors' Meeting or they may appoint another person, whether a Scheme Creditor or not, as their proxy to attend and vote in their place.

It is requested that voting forms be lodged with the Joint Provisional Liquidators, c/o Omni Whittington Insurance Services Limited, 8 Heritage Court, Lower Bridge Street, Chester CH1 1RD, United Kingdom facsimile +44 1244 347640 not less than 48 hours before the time appointed for the Creditors' Meeting but if these forms are not lodged they may be handed to the chairman at the Creditors' Meeting. A faxed copy of the voting form will be accepted.

By the Order, the Court has appointed Dan Yoram Schwarzmann or, failing him, Paul Anthony Brereton Evans, of PricewaterhouseCoopers, Plumtree Court, London EC4A 4HT, United Kingdom to act as chairman at the Creditors' Meeting or failing either of them, a director of the Company and has directed the chairman to report the result of the Creditors' Meeting to the Court.

Copies of the proposed Scheme of Arrangement under Section 425 of the Companies Act 1985 and the statement required to be furnished pursuant to Section 426 of the Companies Act 1985, as well as blank voting forms, are available from the offices of PricewaterhouseCoopers, Plumtree Court, London EC4A 4HT, United Kingdom.

June 2002

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AIDS: Employer inaction faulted

Continued from previous page

and urinary tract infections and the distribution to employees of 420,000 condoms monthly. The company is also undertaking an actuarial study into the medical, financial, psychological and legal costs to employees living with HIV/AIDS.

Johannesburg-based utility company Eskom said the rate of infection among its more than 33,000 employees is likely to have peaked, thanks to its medical risk management program. Eskom said the rate of infection in the company was

now 9%, compared with 12% in 1995.

The cost to Eskom of providing life insurance, education, death benefits and counseling to its staff is also in decline.

Eskom reported that HIV/AIDS-related spending peaked at 188 million rand (\$18.2 million) in 1999 but would fall to about 75 million to 80 million rand (\$7.3 million to \$7.8 million) by 2009.

Performance bonuses for Eskom managers also are linked to the HIV/AIDS training they provide within their areas of operation, the

company said.

HIV/AIDS group insurance policies are available from underwriters at Lloyd's of London, according to Mark Pattle, group chief executive of the London-based broker Glenrand Ltd. One such policy covers workers—such as nurses or police officers—whose professions carries the risk of infection while on the job, covering medical and funeral expenses.

Mr. Pattle explained that if a policyholder can prove he or she was infected in the course of work, the policy pays out.

World Updates

Continued from previous page

Briefly noted

Juliet Redfern has been named deputy class underwriter for bloodstock at XL London Market Ltd.'s syndicate 1209. She previously was at Hiscox P.L.C....**Paul Drake** was named director of risk management at XL London Market Ltd., where he will be responsible for risk control, including outward reinsurance, risk aggregation and underwriting management. He previously was a director at Cottrell Maguire Ltd. in London.... A.M. Best Co. downgraded its financial strength rating of **AXA Corporate Solutions** to A from A+. Best cited the Paris-based insurer's restructuring plans and deterioration in its balance sheet strength. In 2001, AXA Corporate Solutions posted a net loss of 227 million euros (\$202.4 million).

Continued from previous page

European Commission officials on the merger application.

The DnB and Storebrand merger is based on an exchange ratio of 1.33 shares in DnB for each share in Storebrand. Twenty percent of the settlement is being offered in cash.

Based on total assets of \$76.8 billion—DnB's \$46.7 billion and Storebrand's \$30.1 billion—DnB Storebrand would become the fourth-largest Nordic financial services company, following Nordea, SEB and Danske Bank.

The single most important factor in the merger, in which DnB would acquire Storebrand, is DnB's drive to create a Norwegian bancassurance group of sufficient size to repel what Norway's prime minister, Kjell Magne Bondevik, describes as "unwanted foreign suitors."

"It is government policy that a merged DnB Storebrand remains a state-controlled financial services giant in Norway. The state's ownership in DnB Storebrand will not fall below 34%," said Trade and Industry Minister Ansgar Gabrielsen.

The merger would create a bancassurance group with 2.8 million

retail and 83,000 corporate customers. Vital, DnB's insurance business, has a customer base of 410,000, of which 208,000 customers hold individual life insurance policies. With Storebrand, this base would expand to 1.2 million.

Vital is Norway's second-largest privately owned life and pension insurer after Storebrand. At year-end 2001, the company had total assets of \$8.2 billion. Vital, which was acquired by DnB in June 1995, was incorporated in 1990, when insurance companies Norsk Kollektiv Pensjonskasse and Livsforsikrings-selskapet Hygea merged.

The new Storebrand would specialize in group insurance and savings products for companies, public enterprises, local authorities and business associations.

A merger would also consolidate DnB Storebrand's international presence. Based in Oslo, the group would operate branch offices in Beijing; Cairo, Egypt; Santiago, Chile; Copenhagen, Denmark; Hamburg, Germany; London; New York; Murmansk, Russia; Rio de Janeiro, Brazil; Singapore; and Stockholm, Sweden.

2002 Employee Benefits Leadership Forum

Hospitals in 'recovery mode'

By **JERRY GEISEL**

WHITE SULPHUR SPRINGS, W.Va.—The deep price discounts that managed care plans wrung from hospitals in the mid-1990s are one of several converging factors that are propelling today's hospital cost increases, a top industry executive says.

Trying to maintain or expand market share, many hospitals underpriced their product in the mid-1990s in their negotiations with managed care plans, said Charles N. Kahn III, president of the Federation of the American Hospitals, a Washington-based trade group representing private hospitals and health care systems.

"There was so much underpricing," Mr. Kahn said in an interview at the 2002 Employee Benefits Leadership Forum sponsored by the Council of Insurance Agents & Bro-

kers in White Sulphur Springs, W.Va., last month.

As losses mounted, more hospitals merged, which squeezed out a lot of excess capacity, Mr. Kahn said. That, in turn, has resulted in a more-efficient hospital base but also a more-expensive one, because hospitals, due to their increased size, have much more clout.

The hospitals are using their power, health care experts say, to win rate increases from managed care plans and other health insurers.

Indeed, as Mr. Kahn says, "hospitals now are in a recovery" mode from the losses they incurred in the past, and that is reflected in their negotiations with health plans.

Other forces, some faced by employers as well, also are leading to higher hospital costs and their need to increase rates. For example, soaring prescription drugs costs directly

affect the nation's hospitals, he said. In addition, the scarcity of coverage and the big increases in medical malpractice insurance rates are boosting hospital overhead significantly.

"Hospitals have been searching for (malpractice) coverage that is more expensive and not as good as they had," Mr. Kahn said.

In addition, hospitals' employment costs, exacerbated by a shortage of nurses, have been increasing dramatically. "Hospitals face a tremendous labor problem. The 600-pound gorilla is the nursing shortage," Mr. Kahn said.

Finally, an aging population is driving up the demand for health care services. "You can't walk away from demographics," Mr. Kahn said, referring to the aging of the huge baby boom generation and their growing need for health care services.

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NAIC: Outlines plan for compact

Continued from page 3

from each of the six states with the largest premium volume for covered products, one member from each of the NAIC's four zones and at least two at-large members.

Regulators must resolve several issues, though. These include: determining the role of consumers, legislators and small states in the compact's management structure; the process by which a state can opt out of the commission's requirements; and whether long-term care insurance should be included.

In addition, some insurer trade organizations have urged that property/casualty coverages be included as well. But Ms. Vaughan said during a press conference that the inclusion of property/casualty coverages would be challenging because of the many regulatory differences among states.

An interstate compact is a voluntary agreement by states or their agencies to address multistate matters of concern, such as the mutual recognition of drivers' licenses, explained Frank M. Fitzgerald, the commissioner of Michigan's Office of Financial and Insurance Services. Mr. Fitzgerald co-chairs the NAIC's

Interstate Compact Working Group.

The United States has more than 200 such compacts, including an NAIC compact on receiverships, according to the NAIC. The receivership compact has had problems attracting more than three long-term members, though, in part because of a dearth of receivership-related problems and states' unwillingness to yield their sovereignty. It recently decided not to disband, however (*BI*, March 25).

The NAIC's effort to develop an interstate compact is motivated, in part, by Congress' ongoing hearings on the status of state-based insurance regulation, as well as pending proposals for the federal chartering of companies.

"State legislators are beginning to understand that concepts like a federal charter are a real and present threat," said Robert Mackin, executive director of the National Conference of Insurance Legislators.

NCOIL, which has long endorsed the general concept of interstate compacts, has not yet taken a formal position on the NAIC's proposed compact; Mr. Mackin said, though, that there appears to be sig-

nificant support for the NAIC proposal.

While a National Conference of State Legislatures insurance modernization task force is "receptive" to the idea of the compact, several concerns must be addressed before the organization can decide whether to endorse the NAIC's proposal, said Cheye Calvo, the NCSL's program manager for employment and insurance issues. These include the role of legislators, the composition of the management committee in terms of participation by both large and small states, and whether long-term care insurance should be included, he said.

Several consumer representatives also raised concerns and urged that they be given a strong voice in the commission's operations. In addition, a few protested the inclusion of long-term care insurance in the compact for fear that the commission's standards would be lower than those that now exist in states such as California.

Copies of the draft document are available on the NAIC's Web site, www.naic.org/compact. Comments should be sent to Andy Beal at ABeal@naic.org.

Rehire: Bias suit OK'd

Continued from page 3

case to the Arizona district court.

"Although the ADA does not protect an employee or applicant who is currently engaging in illegal drug use...it does protect qualified individuals with a drug addiction who have been successfully rehabilitated," wrote Judge Stephen Reinhardt. "Hughes' unwritten policy against rehiring former employees who were terminated for any violation of its misconduct rules, although not unlawful on its face, violates the ADA as applied to former drug addicts whose only work-related offense was testing positive because of their addiction," he wrote.

An employer attorney criticized the decision.

"It's another outrageous employment decision from the 9th Circuit," said William J. Emanuel, a partner and head of the labor and employment practice for the Los Angeles office of Jones Day Reavis & Pogue.

The ADA does consider a history of drug use a disability, acknowledged Mr. Emanuel, who did not represent Hughes. But the 9th Circuit's decision sets a negative precedent by ruling an employer must re-

hire an employee it essentially fired for using cocaine in violation of the company's employment policy, he added.

The ruling is particularly inappropriate because the company built missiles and the employee was charged with calibrating technology related to missile construction, Mr. Emanuel said. Fortunately, he added, it's not often that a fired employee returns a few years later seeking his job back.

Attorneys for Hughes, which has since been acquired by Raytheon Co. of Lexington, Mass., could not be reached for comment.

The 9th Circuit is the same appeals court that in 2000 ruled that under the ADA, employers are guilty of discrimination if they refuse to place workers with pre-existing medical conditions in jobs that could cause them serious injury or even death. That ruling was overturned by the U.S. Supreme Court last week (see story, page 1).

Joel Hernandez vs. Hughes Missile Systems Co., Hughes Aircraft Co., 9th U.S. Circuit Court of Appeals, No. 01-15512

2002 Employee Benefits Leadership Forum

Health care proposals could raise costs

By JERRY GEISEL

WHITE SULPHUR SPRINGS, W.Va.

—Health care-related legislation likely to win to congressional approval this year could have a direct impact on employer costs, a benefit lobbyist warns.

"Congress will do things that won't cost government money, but it will cost employers," said Kate Sullivan, director of health care for the U.S. Chamber of Commerce in Washington.

Speaking last month at the Council of Insurance Agents & Brokers' 2002 Employee Benefits Leadership Forum at the Greenbrier resort in White Sulphur Springs, W.Va., Ms. Sullivan predicted an 11th-hour deal on mental health care benefits parity legislation.

"They will do mental health parity, and it will cost you," Ms. Sullivan said, referring to the costs employers would incur by upgrading the level of coverage they offer for mental health care expenses.

Mental health benefits parity legislation seemingly had developed a strong head of steam last year when the Senate Health, Education, Labor and Pensions Committee unanimously passed a measure proposed by Sens. Paul Wellstone, D-Minn., and Pete Domenici, R-N.M. That was followed by approval of the parity bill several months later by the full Senate as an amendment to a broader appropriations bill.

But that parity measure, which would require group health plans to cover mental disorders on the same basis as other medical conditions, ultimately was stripped from the appropriations bill by a congres-

sional conference committee. The parity legislation was strongly opposed by conservative House Republican leaders, who said they were concerned about the cost of a mental health care mandate on group health plans.

Instead, Congress passed a one-year extension—through Dec. 31, 2002—of a limited 1996 parity law. Under that law, group plans cannot set annual or lifetime dollar limits for care for mental disorders that are lower than those they set for other health conditions.

But plans can—and many do—set higher copayments and deductibles. Many also limit the number of covered outpatient visits to therapists and inpatient days at hospitals without imposing comparable limits for other conditions.

A deal on a compromise measure, which Ms. Sullivan thinks likely, could be in the offing with President Bush pledging last month to work with key lawmakers to get a bill passed this year (*BI*, May 6).

And mental health care benefits parity legislation isn't the only benefits legislation Congress could pass this year. Ms. Sullivan and congressional staffers on the same CIAB panel said Congress also is likely to pass a trade bill that likely will include provisions establishing federal subsidies for COBRA premiums paid by employees who lose their jobs due to foreign competition.

In fact, under a trade bill passed by the Senate last month (*BI*, May 20), the federal government would pay 70% of COBRA premiums for affected employees. While the legislation would leave it to the Treasury Department to work out the details,

employers would front 70% of the premium and would be reimbursed—in an unspecified way—by the government.

The House-passed version of the trade bill, though, lacks a comparable health care premium subsidy provision.

"I think we will get a trade bill," and there will be health care subsidies, said Joel White, a Republican staff member of the Ways and Means Committee. But to win the needed support from House Republicans, those subsidies will have to be broadened, Mr. White said.

Congress 'will do mental health parity, and it will cost you.'

*Kate Sullivan
U.S. Chamber of Commerce*

Such a broadening, he said, could be accomplished by giving displaced workers a federal tax credit that could be applied to partially offset the cost of individual health policies, not just COBRA coverage.

Turning to another area, Mr. White said he expects House Republicans to soon propose soon and pass a Medicare reform bill that would add a prescription drug benefit to the program. While details remain to be worked out, Mr. White envisions that the proposal would call for a drug benefit with a \$250 deductible, with Medicare paying 80% of costs for the next \$1,000 of expenses and 50% for the succeeding \$1,000 layer. Above that, there would be a coverage gap until Medicare coverage again would kick in—

for 100% coverage of catastrophic expenses, defined as those exceeding roughly \$4,000.

For employers offering prescription drug benefits as part of a retiree health care plan, the Republican proposal would offer significant financial relief by shifting costs to Medicare, Mr. White said.

But another panelist—Elizabeth Fowler, a Democratic staff member of the Senate Finance Committee—said she doubts that Congress will act on the proposal. "I'm not sure we will find agreement on a comprehensive bill," she said.

The Chamber's Ms. Sullivan also questioned whether Congress will act. "It is just adding to costs of a program that already is running out of money," she said.

The legislative branch, though, isn't the only part of the government likely to see benefits activity this summer.

Ms. Sullivan predicted, for example, that the Internal Revenue Service is likely in the next few months to address the tax status of so-called "personal health care spending accounts" that often are used in consumer-directed plans.

These accounts are funded by employers, and employees can use them to pay for unreimbursed medical care expenses, such as those that fall under the plans' often high deductibles. Unused balances, unlike in flexible spending accounts, can be rolled over at year end to pay for the succeeding year's expenses.

But the IRS has yet to officially concur with that design feature, and Ms. Sullivan said she is expecting a largely negative ruling on the rollover issue.

2002 Employee Benefits Leadership Forum

200 gather at inaugural meeting

WHITE SULPHUR SPRINGS, W.Va.

—For decades, the Council of Insurance Agents & Brokers' fall meeting at the Greenbrier resort has been the place for property/casualty producers and underwriters to meet and forge relationships.

In all, about 1,200 people usually attend that meeting, a testimony to its success.

CIAB executives believe its new spring annual meeting on employee benefits—the first of which was held May 29-31 at the Greenbrier—will become to the community of benefit producers and insurers what the fall meeting has become to the property/casualty industry.

"Or goal is to really make this the industry meeting on employee benefits. We will fill this hotel in three to five years," said John L. Van Os-dall, CIAB chairman and a senior vp at USI Insurance Services Corp. in Houston.

Last month's meeting at the Greenbrier, called the 2002 Employee Benefits Leadership Forum, attracted nearly 200 people.

The meeting was held under the auspices of the CIAB's Council of Employee Benefit Executives, which the CIAB created last year.

Next year's meeting is likely to be expanded to three days and will be held May 28-30 at the Greenbrier. For more information, contact the CIAB at 701 Pennsylvania Ave. N.W., Washington, D.C. 20004-2608; 202-783-4400.

Inland Marine Underwriters Assn. 72nd Annual Conference

Terrorism reinsurance availability seen as improving

By RODD ZOLKOS

OAK BROOK, Ill.—Although reinsurance markets that were already firming prior to Sept. 11 have grown even harder, the market for terrorism reinsurance has become more favorable to buyers since Jan. 1 renewals, one reinsurance brokerage executive says.

Discussing the state of reinsurance markets at the annual conference of the Inland Marine Underwriters Assn. earlier this month in Oak Brook, Ill., Vincent D. Liotta, managing director at Guy Carpenter & Co. Inc., said prices are “dramatically dropping” for terrorism reinsurance.

Mr. Liotta, who is head of the marine and aviation department at the New York-based reinsurance brokerage, said capacity is readily available for terrorism reinsurance, with coverage available on an excess-of-loss and pro rata basis, as well as on an annual aggregate-of-ability basis.

The principal markets for terrorism reinsurance are Bermuda and London, Mr. Liotta said, and available coverage includes reinsurance for biological and chemical attacks.

Terrorism reinsurance activity has been particularly noteworthy in the Bermuda market, he said.

“Bermuda’s always been known as a property cat market, but since Sept. 11 the opportunity has been to make money any way they can,” Mr. Liotta said.

“How did Bermuda react to ter-

‘How did Bermuda react to terrorism? In a frenzy. They were writing the hell out of it. They saw an opportunity to make money.’

*Vincent D. Liotta
Guy Carpenter & Co. Inc.*

rorism? In a frenzy,” Mr. Liotta said. “They were writing the hell out of it. They saw an opportunity to make money.”

The Bermuda reinsurers are large writers of marine and aviation war coverages and terrorism-specific coverages, he said. Terrorism reinsurance rates have come down since the Jan. 1 renewal cycle in Bermuda, and large amounts of terrorism capacity remain available.

In terms of general reactions by the reinsurance market to Sept. 11 and to last year’s other losses, Mr. Liotta said that on property per-risk coverages, reinsurers are pushing

for clarity in terms of risk definitions, assessments of risk accumulations and large-risk participation. “The more information you can give, the better it is,” he said.

In addition, he noted that property reinsurers are imposing exclusions for terrorism, Internet-related risks and toxic mold, and that pricing is being driven by both exposure and experience.

Likewise, property catastrophe reinsurance coverages routinely include terrorism, Internet and mold exclusions, Mr. Liotta said.

In the marine market, the cost of capital has risen, and reinsurers are writing business selectively, the Guy Carpenter executive said. Rates are generally up by 35% to 100%, and clients are buying less reinsurance.

In the retrocessional market, reinsurers experienced significant losses in 2001 in addition to those of Sept. 11, Mr. Liotta said. As a result, price increases this year have been “astronomical,” with coverages now containing absolute terrorism exclusions and information technology hazards clauses.

The harder retrocessional market is one reason insurers now are facing a difficult reinsurance market, he said.

In the United States, another ef-

fect of reinsurers’ recent losses is that most companies are “reflecting on the past and contemplating the value of going forward,” Mr. Liotta said. “There have been reinsurance companies in the United States that have been very public about their intentions to sell their operations,” he said.

Among the developments in the London market, Mr. Liotta cited the continuing addition of corporate capital into Lloyd’s of London, a move Mr. Liotta said might serve Lloyd’s well in the long term, “because these big boys know what they’re getting into.”

“There will be more to come, no doubt,” he said.

In general, the impact of Sept. 11 on the relationship between reinsurers and insurers has been “quite critical,” said another panelist, Paul Walther, chief executive officer and principal consultant at Reinsurance Directions Inc. in Heathrow, Fla.

“The market has changed. There were things that have been done in the past that can’t be done today,” Mr. Walther said.

“Everybody’s going to have to change, at least for the short term, until reinsurers are back to a profitable level,” Mr. Liotta said.

Another change developing in the property reinsurance market is a move away from surplus-share coverage, said George M. Gottheimer, president and CEO of consultant Kernan Associates Inc. in Berkeley Heights, N.J. In a surplus-share treaty, similar to a quota-share contract, an insurer cedes a stipulated amount of risk in excess of its retention.

“Much of property reinsurance has been done on a surplus-share basis. We’re seeing some change to risk excess,” Mr. Gottheimer said. “What the reinsurer suffers on a surplus-share basis is a very erratic experience.”

Inland Marine Underwriters Assn. 72nd Annual Conference

Underwriting factors changing

By RODD ZOLKOS

OAK BROOK, Ill.—New exposures and issues surrounding Sept. 11-related losses have changed the environment for underwriters of business interruption insurance, according to one group of experts on the coverage.

Due to the complexity of losses from the terrorist attacks, some insurers and claims handlers are even bringing in economists to help assess certain aspects of business interruption losses, such as the effects of the recession on policyholders’ business, said Louis D. Magnan, managing partner at Magnan Graizaro & Associates CPAs L.L.C. in New York.

Speaking at the annual conference of the Inland Marine Underwriters Assn. earlier this month in Oak Brook, Ill., Mr. Magnan said insurers must be open to bringing in outside experts to help in settling complex business interruption claims.

Claims involving civil authority issues and denial of ingress/egress—or the inability to enter or leave property—are another thorny issue for insurers dealing with Sept. 11 business interruption claims, Mr. Magnan said. “It’s a difficult and complex issue,” he said.

Discussing the ingress/egress claims, another panelist, Lisa Powers, project manager at Zurich North America in Schaumburg, Ill., said the issue has caused her company to take a new look at business

interruption policy language.

“From a policy standpoint, we really went back and looked at the wording,” Ms. Powers said. “You really need to go back and look at where the coverage was written a year ago and where things are now and tighten things up a little bit.”

Steve Ptasnik, an underwriting specialist at Zurich North America in Chicago, said it’s important to understand the definition of words such as “ingress” and “egress” in the context of a business interruption policy.

“People really need to evaluate what those words really mean,” Mr. Ptasnik said. “As these claims get resolved, we will become more educated on the topic.”

E-commerce is another force that is reshaping the business interruption environment, Mr. Magnan said. Given the way business is evolving to become increasingly reliant on online activity, every company probably has some business interruption exposure from e-commerce, he said.

“I think that you’re probably writing risks that you aren’t even aware of,” he told the group of underwriters at the session.

In that context, the task is “to find out what type of risk it is, how long will it take to replace,” Mr. Magnan said.

“I think one of the biggest issues surrounding 9/11 cases has to do with the impact on computer operations,” he said.

In general, Ms. Powers said, busi-

ness interruption underwriters must understand the specific nuances of the industry they are dealing with if they are to underwrite the coverage properly.

“With the industry you’re looking at, you’d really better understand that industry and the economic cycles within that industry,” she said. And, she noted, underwriters shouldn’t be afraid to ask questions.

To help make proper business interruption coverage decisions, Ms. Powers said her company has created an online business interruption coverage calculator, available at its Web site, www.zurichna.com.

There are different versions of the calculator for different industries—manufacturing, hotel, casino, telecommunications, hospital and retail—and the insurer plans to develop additional versions, she said.

“We’ve created six versions of the tool and, in its simplest version, it functions as an electronic worksheet,” Ms. Powers said.

Although the online tool can help with business interruption decisions, it can’t provide absolute answers, the Zurich North America project manager said.

“This is just a tool that helps you get to something and start a discussion,” Ms. Powers said. “This is a tool that will help you and guide you in getting proper business interruption, but you’ll never be able to get an exact number because of business and the way it fluctuates.”

IMUA conference attracts 200

OAK BROOK, Ill.—The 72nd annual conference of the Inland Marine Underwriters Assn. drew more than 200 attendees to the Oak Brook Hills Resort & Conference Center in suburban Chicago on June 2-5.

In addition to the group’s business meeting, the IMUA conference featured educational sessions on such subjects as the relational mechanics of underwrit-

ing and reinsurance, legislative and regulatory affairs, the impact on the industry of Sept. 11 and quantification of values at risk.

Next year’s annual meeting of the IMUA is scheduled for April 12-16 at the Walt Disney World Swan Resort in Lake Buena Vista, Fla.

For more information, visit the IMUA’s Web site at www.imua.org.

Trucking: Road rules

Continued from page 3

how that employee information is secured in the client company’s office, he said.

In the current environment, it’s also essential to involve everyone in the security process, not just the motor carriers but also the shippers and consolidators or shipping agents, Mr. Golden said.

“Look at the trail your cargo is taking,” Mr. Golden said. “What are the weak links?” And, he added, “What’s on the side of your truck that tells what’s in it?”

As an example of the exposure, Mr. Golden cited the theft last month in Mexico of a truck carrying 10 tons of sodium cyanide. “Perfect example. Easy weapon of mass destruction,” Mr. Golden said. “It’s possible it was stolen to be resold for mining, but....”

Following a three-week search for the stolen cargo by Mexican and U.S. authorities, all 96 containers of the sodium cyanide were recovered in late May from two sites where they had been dumped by the thieves, who police said apparently didn’t know what they had stolen.

Given the changing nature of the risks facing motor carriers, Mr. Golden told the IMUA members,

“One thing I’m going to urge you is to have your inland marine folks and your commercial auto folks on a first-name basis. You’re both talking about two sides of the same risk.”

Another issue in the trucking insurance market is the anticipated move to fully open the Mexican-U.S. border to commercial trucking under the terms of the 1993 North American Free Trade Agreement, he said.

Although NAFTA cross-border trucking may become a reality this summer, thus far Mexican motor carriers have shown little interest in obtaining necessary U.S. Department of Transportation authority to drive into the interior of the United States, he said. Likewise, American truckers seem to be showing little enthusiasm for driving into the Mexican interior.

At the same time, few insurers have shown interest thus far in providing coverage to cross-border truckers operating under NAFTA, Mr. Golden said.

“Relatively few insurers in this country have come out and said, ‘Oh boy, new market, let’s go,’” he said. “It is a new market niche. It’s one of those things that will build over time.”

Pollution: Terror cover for pollution risks less limited

Continued from page 3

of Willis Group Holdings Ltd.'s environmental practice in Nashville. Mr. Ayers said that he has been successful, though, in obtaining the coverage for clients.

"It's kind of a hit-or-miss basis," Mr. Ayers said. "We have to go (into a client's facility) and look very carefully at what's going on and what is the likelihood of it truly being a terrorist target and what are the ramifications if a terrorist did target it? Based on that, we have, in some instances, been able to convince underwriters to add (terrorism coverage) back in or, for an additional premium, (let clients) buy it back. But we have not been successful across the board."

"There will be exclusions on most renewals, which some people will think is an indication that coverage is not available, when, in reality, underwriters are offering the coverage on a buyback basis," said David Dybdahl, the president of International Risk Group, a Littleton, Colo.-based specialty environmental risk management firm. "The exclusions are just enforcing the underwriting process."

"If there is a client need and underwriters can get their arms around it, they generally are willing to amend the exclusion...or craft coverage around the client," agreed John Hannah, a senior vp with Marsh Inc.'s environmental brokerage operation in New York.

"The environmental market, at least in this state of the marketplace...seems to be the most flexible with this issue," Mr. Hannah said, referring to terrorism coverage.

"One of the reasons is because it ties back to a covered peril," he said. "So any property issues are a little more drastic in terms of terrorism in the aggregate than environmental."

Environmental policies are not triggered without an environmental incident or a pollution release that causes liability to the insured. "That gives underwriters a greater ability to get their arms around the issues much more so than, say, a downtown New York property where every office building has a potential exposure for terrorism," Mr. Hannah said.

While interest in terrorism coverage on property policies is widespread, attention to the risk in pollution liability policies is more limited, experts say.

There's not much interest in terrorism and bioterrorism pollution coverage "unless you're dealing with high-end real estate or high-end chemical or refinery manufacturers," said Rick Klepper, a senior broker for Aon Environmental in New York.

Willis' Mr. Ayers said those most concerned about the terrorism exclusions are water treatment facilities, power plants and chemical-handling facilities.

"Obviously, we've seen a lot of interest in the coverage and, in particular, there's a heightened awareness in the commercial real estate area," said Ken Cornell, executive vp of AIG Environmental in New York.

"Being in downtown New York,

'If there is a client need and underwriters can get their arms around it, they generally are willing to amend the exclusion...or craft coverage around the client.'

John Hannah
Marsh Inc.

we're intimately familiar with the World Trade Center and the cleanup," Mr. Cornell said. "After talking with city officials, what struck us was all the environmental issues they encountered as they were working through the site."

Mr. Cornell noted that problematic substances include asbestos, lead, dry cleaning solvents, fuel oil, electric transformer oil, mercury and freon. "When you look at an office building," he said, "you don't think of these things. So I think there is a renewed concern from property management owners."

AIG's pollution legal liability policy form does not contain specific

exclusions for terrorism or bioterrorism coverage. Mr. Cornell said that if a client wants the coverage, a higher premium is charged. If a client informs AIG that it does not want terrorism or bioterrorism coverage, an exclusion is inserted in the policy, he said.

"From our perspective, (terrorism) was not an exposure we had contemplated...up until six months ago," Mr. Cornell said. "In order to insure an additional peril, we need to underwrite it and charge an additional premium for it, because we were not charging a premium for it before."

AIG is not alone in taking a closer look at terrorism coverage in its environmental policies.

"Generally speaking, Chubb Corp. excludes terrorism from policies and, generally speaking, Chubb Environmental Solutions, therefore, excludes terrorism from our policies for certain classes of business," said Michael J. Murphy, president of Chubb Environmental Solutions in New York.

"We don't exclude terrorism from all of our policies—only a certain subset of facilities," Mr. Murphy said. Those include airports; stadiums; refineries; water distribution facilities; and certain governmental entities, such as the U.S. Department of Defense, he said.

Mr. Murphy said that Chubb Environmental Solutions offers terrorism coverage on a buyback basis,

subject to a sublimit of about \$20 million to \$25 million.

One of the concerns environmental insurers face when it comes to offering terrorism coverage is reinsurance support.

"They're very sensitive to terrorism," said Claire Juliana, division attorney for Chubb Environmental Solutions.

"If we have a \$100 million treaty and \$35 million is ours, you may be able to get \$35 million in terrorism coverage if we're comfortable with the risk," Mr. Murphy explained. "But we may not be able to get the whole \$100 million, because while we are comfortable with the risk, reinsurers may be precluded from offering the risk."

Unless Chubb can go to reinsurers and convince them that the risk of terrorism is minimal, policyholders are not going to get full limits of the policy, he said.

"The entire issue gets back to quality of technical underwriting," Mr. Murphy said. "If you do a technically competent job of underwriting and evaluating the security measures of a facility, then you're going to be comfortable in offering or not offering the coverage."

Still, Ms. Juliana noted that, while "we may be ultimately comfortable with the preventative measures and may be absolutely convinced that there is no terrorism risk...reinsurers have the ultimate veto power."

ADA: Court upholds employer's health risk defense

Continued from page 1

2000 ruled that Chevron had unfairly discriminated against Mr. Echazabal when it refused to hire him for a refinery job that both the company's physician and Mr. Echazabal's own doctor said would aggravate an existing liver condition and possibly kill him. The appeals court found that the EEOC's rule that employers could defend against ADA bias complaints by showing that a particular job threatened a worker's health or safety overstepped the bounds of the federal disabilities law.

Employers feared that if the 9th Circuit's decision were upheld, they would face a dilemma: Refusing to hire an applicants for whom a particular job posed a health or safety risk could invite discrimination suits under the ADA, while hiring such individuals could result in Occupational Safety and Health Administration sanctions or liability suits if a worker were later hurt or killed because of the job's impact on a pre-existing medical condition.

But in its June 10 ruling, the high court put those fears to rest. Writing for the court, Associate Justice David Souter said that the EEOC regulation "exemplifies the substantive choices that agencies are expected to make when Congress leaves the interpretation of competing objectives both imprecisely marked and subject to administrative leeway," he wrote. "The EEOC

was certainly acting within the reasonable zone when it saw a difference between rejecting workplace paternalism and ignoring specific and documented risks to the employee himself, even if the employee would take his chances for the sake of getting a job," Associate Justice Souter wrote.

Employer attorneys hailed the decision.

The Supreme Court's ruling "recognizes that companies are in a difficult situation because they have to comply with potentially conflicting laws, specifically OSHA worker-safety rules and ADA," said Quentin Riegel, deputy general counsel for the National Assn. of Manufacturers in Washington. In addition, "it recognizes that ADA did allow for reasonable qualification standards for the job and the court did not limit those standards" to the presenta-

tion of a direct threat to the health and safety of other employees, he said. "So there may be a whole range of qualification standards that an employer can reasonably adopt," said Mr. Riegel.

"As the Supreme Court balanced competing concerns, the *Chevron* ruling is a victory for employers. It makes the use of company physicians even more important than before, as the effectiveness of the direct-threat defense is impossible without expert medical opinions," said Gerald L. Maatman Jr., chair of the global employment law practice at Chicago law firm Baker & McKenzie.

Mr. Maatman noted, however, that the opinion's final footnote "identifies the future litigation battleground, when employers may reject job applicants in the screening process

based on the safe harbor created by the *Chevron* ruling. "To take advantage of this ruling, employers should tighten up hiring requirements and clarify qualification requirements in job descriptions," he said.

Seyfarth Shaw's Mr. Berkowitz also stressed that employers will need to have strong, objective evidence that an employee would expose himself or herself to harm by working in a particular job. Such a decision cannot be based on prejudice or "stereotypical notions of how an illness" or disability might affect an individual employee, he said.

But if employers found the decision to be rooted in common sense, the National Council on Disability was "appalled" by it.

"The case is about who is best able to make those most personal of

decisions, which here involved encountering some future risk of health in the workplace," Marca Bristo, NCD chairperson, said in a statement.

Ms. Bristo said that the Supreme Court has endorsed "the assumption that people with disabilities are not competent to make informed, wise or safe" choices, which she called the "the most longstanding and insidious aspect" of the type of discrimination prohibited by the ADA.

Chevron USA Inc. vs. Mario Echazabal, U.S. Supreme Court; No. 00-1406, June 10, 2002.

Deadline nears for surplus lines listings

Business Insurance will publish its online directory of wholesalers on Aug. 19. That issue of *BI* will include a ranking of the top surplus lines brokers and MGAs/underwriting managers and a Spotlight report on the surplus lines marketplace.

The directory, which will appear on www.businessinsurance.com, is published as an edi-

torial service; there is no charge to be included. Eligible companies must simply submit a completed directory questionnaire by the extended deadline of June 28.

To be included, your company must serve as a wholesale broker, a managing general agent or an underwriting manager, regardless of whether you primari-

ly use admitted or nonadmitted markets. You must report premium volume and total gross revenues to be listed. If your company meets the criteria but has not received a questionnaire, please contact Assistant Directory Editor Carrie Brittain at 312-649-5313. Questionnaires also can be downloaded from www.businessinsurance.com.

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FTR

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

CIAB challenging countersignature laws

The Council of Insurance Agents & Brokers is suing insurance regulators in Florida and Nevada, seeking to have those states' broker countersignature laws overturned.

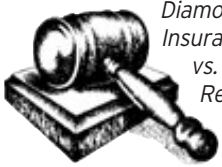


Such laws require brokers or agents that are not resident in a state to have a licensed resident producer countersign any policies the unlicensed brokers place for risks based in that state. Florida requires that unlicensed brokers pay 50% of their fee or commission to a Florida broker, and Nevada requires that out-of-state brokers pay the licensed broker 5% of the premiums or 25% of the commission, according to the CIAB.

Court turns down insurer defenses

A Pennsylvania trial court has ruled that insurers in the state do not have the right to raise either the fortuity or the loss-in-progress defense to deny a property insurance claim. The

court ruled that Pennsylvania courts have not adopted either insurer defense doctrine. The May 28 ruling came on a pretrial motion in



Diamond State Insurance Co. et al. vs. the Most Rev. Anthony G. Bosco and the Diocese of

Greensburg, Pa. The diocese is seeking about \$5 million to cover the loss of a school that it was forced to close after soil conditions led to severe cracking and structural damage at the facility.

Hewitt details plans for IPO

Hewitt Associates L.L.C. employees will still own the majority of shares in the benefit consulting firm after it completes its initial public offering. In its latest filing with the Securities and Exchange Commission, Hewitt disclosed its IPO will involve the sale of 11.2 million shares of common stock, at an estimated price of \$18 to \$21 a share. After the IPO is completed, Hewitt employees will own about 72% of shares. Currently, Hewitt is owed by an undisclosed number of employees.

OECD advises limited terror aid

Government programs to provide

terrorism insurance should be limited in scope and undertaken with an eye on the eventual reassumption of the risk by private insurers, a study by the Organization for Economic Cooperation and Development recommends. Insurers will, in time, develop statistical models that will let them price terrorism risk much the way that they do now for natural catastrophes, the OECD says.

Hershey, striking workers reach deal on benefits

Unionized workers at Hershey, Pa.-based Hershey Foods Corp. overwhelmingly approved the company's contract offer, ending their six-week strike over health care plan contributions. Approximately 2,700 local workers of the Bakery, Confectionery, Tobacco Workers' & Grain Millers' International union walked

off their jobs on April 26, after contract talks reached an impasse over Hershey's attempts to increase the amount that workers contribute to health care insurance premiums. According to a statement from the union, the workers accepted lower wage increases from Hershey in exchange for keeping employee health care benefit premium contributions at the same level as in the previous contract for the next four years.

Online Poll

[6/10 - 6/14]

Now that a terrorism insurance bill, S. 2600, has been introduced in the Senate, when do you expect action on the measure?

By July 1

5.6%

By Sept. 1

16.9%

By Dec. 31

21.4%

Other

9.0%

Never

47.2%

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

BI Stock Index [6/10 - 6/14]

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
2,085.62

Dow Jones
9,474.21

S&P 500
1,007.27

Largest gains

Gainsco Inc. 9.09%
Argonaut Group 8.14%
Hilb, Rogal & Hamilton 7.60%
Penn-America Group Inc. 7.50%
Humana Inc. 6.50%

Largest losses

Fremount General Corp. -17.95%
Seibels Bruce Group -13.79%
Odyssey Re Holdings -13.44%
SCPIE Holdings Inc. -11.23%
Trenwick Group -9.77%

Weekly change by market segment

Brokers 56.73%
Insurers/Reinsurers 33.07%
Managed Care Organizations 31.10%

Source: CNET Investor (investor.cnet.com)

Quality: Study finds poor-quality care expensive

Continued from page 1

vices based on price without also examining plan and provider performance; by using transaction-based, rather than outcomes-based, payment structures; and by failing to engage employees and their dependents in health care purchasing decisions.

The annual costs associated with poor-quality health care climb to between \$1,700 and \$2,000, which includes indirect costs, such as reduced productivity due to absence, the study estimates.

The costs of poor quality, the study says, stem from four basic problems:

- Overuse of certain procedures and treatments.
- Underuse, such as people not receiving needed diagnostic and therapeutic services, medications and procedures.
- Misuse, namely, problems related to preventable errors, drug misuse and hospital-acquired infections.

- Waste, primarily in the form of unnecessary administrative steps.

"One of the aims of the report is to show in dollars that there's something to be gained by working on quality," explained James Mortimer, president and founder of the Chicago-based MBGH, an employer

coalition that works to promote cost-effective, quality health care.

To estimate the costs of poor quality, the report's authors relied primarily on a review of published literature and data, interviews with experts and an analysis of the experiences of selected hospitals from 1987 to 2000.

Although progressive employers have been pushing health plans to improve quality, every employer must join in the effort to effect systemwide change, Mr. Mortimer said.

Coalitions can help by providing the expertise and other resources many employers cannot afford on their own, he said.

"A cooperative approach also creates added leverage and economies of scale, as providers and plans are more likely to pay attention to quality improvement initiatives if the sponsors of that initiative represent more people," the MBGH report suggests.

But individual employers can begin to help themselves by using the quality care criteria established by the Leapfrog Group when submitting requests for proposal to health plans, he added.

The Leapfrog Group is a coalition of large employers that have banded together to try to reduce hospital

errors by promoting the use of financial incentives that encourage best practices (*BI*, Nov. 20, 2000).

Employers also should take the four specific steps outlined by the MBGH as part of its Responsible Health Care Purchasing Policy, Mr. Mortimer advocated. These steps are:

- Analyzing employer-specific health care data to identify high-priority problems.
- Measuring the performance of plans and providers and engaging them in ongoing quality-improvement programs.
- Educating consumers and sharing performance information with them.
- Rewarding high-quality health plans and providers.

Many benefits experts concurred with the study's findings and praised the MBGH's efforts in spreading the gospel of health care quality.

"I think it's a really good call to arms," said Helen Darling, president of the Washington Business Group on Health, another employer coalition. "We need all the ammunition we can get to change things."

"It is a call from the business community for evidence-based medicine," said Susan Pisano, vp of

communications at the American Assn. of Health Plans, a managed care plan trade group in Washington. "Employers are moving toward greater and greater interest in the concept of value."

"It sounds right on to me," said Joe Martingale, national leader for health care strategy at Watson Wyatt Worldwide in New York. "There is so much inefficiency in health care."

But he also pointed out that to make the MBGH's recommendations work, employers need to get involved with promoting quality efforts at the provider level.

"Employers purchase plans, rather than care, so they're at least one step removed," he said. "You really need to get down to the provider level."

The MBGH report, "Reducing the Costs of Poor Quality Health Care Through Responsible Purchasing Leadership," was completed in conjunction with the Juran Institute, an internationally known research and training organization based in Wilton, Conn.; and the Severyn Group, a health care research and communications firm based in Ashburn, Va.

The MBGH will disseminate the report's findings and conduct demonstration projects based on its

recommendations.

The coalition also has issued a four-page memo calling on the nation's chief executive officers and other business leaders to take the lead in addressing the problem.

The MBGH also plans to schedule focus groups with CEOs, chief financial officers and other health care purchasing decision-makers, as well as health plans and providers, to get the message out, according to Mr. Mortimer.

Both the study and the memo are available on the organization's Web site at www.mbggh.org.

POOR-QUALITY CARE

Annual cost of poor-quality health care, per covered employee

Direct health care expenses
\$1,350

+

Indirect costs
(e.g., lost workdays)
\$350 to \$650

=

Total cost of poor quality
\$1,700 to \$2,000

Source: MBGH