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Market to absorb losses from air disaster / 3

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\$4

D&O market expected to tighten further

WorldCom adds to D&O ills

PHOTO: ZUMA PRESS



WorldCom is under scrutiny after it disclosed that billions of dollars in expenses were improperly accounted for, falsely inflating profits.

By **ROBERTO CENICEROS**

Corporations that restate their financial reports to correct errors may find insurers less willing to underwrite liability insurance coverage for their directors and officers.

Just as companies are scrutinizing their accounting practices for potential problems in the wake of several recent high-profile scandals—including the one now embroiling WorldCom Inc.—insurers also are looking to avoid any circumstances that could prompt lawsuits against insured directors and officers. In addition to raising rates and tightening coverage terms, D&O insurers also are backing away from writing new and renewal coverage for the

telecommunications industry.

Clinton, Miss.-based WorldCom has at least \$100 million in D&O insurance coverage. The increasing possibility that WorldCom will be sued—along with losses from other accounting scandals and a continuing trend of shareholder class-action litigation—will exacerbate an already-tightening D&O market.

"It's going to blow the lid off the D&O market," said Christopher E. Mandel, the president of the Risk & Insurance Management Society Inc., "at least for companies whose balance sheet and income statements are so complex people have trouble understanding what they do and how they do it."

See **WORLDCOM**/page 40

Late News

PBGC surplus declining

The Pension Benefit Guaranty Corp., whose surplus had grown so large that benefit lobbying groups said it was time for Congress to lower premiums that employers pay the agency, now is seeing that surplus dwindle amid big pension plan terminations and investment



losses. At its high point at the end of fiscal year 2000, the PBGC had a surplus of \$9.7 billion. By the end of fiscal 2001, the surplus slipped to \$7.7 billion and, based on an unaudited projection, was less than \$5 billion as of April 30. And the surplus could fall even more, PBGC Executive Director Steve Kandarian told the House Ways and Means Oversight subcommittee last month, as more troubled companies fail and their underfunded plans are terminated and taken over by the PBGC. Amid a deteriorating financial situation, the PBGC is carefully monitoring financially troubled companies with underfunded plans, Mr. Kandarian said. Among other things, the agency is considering whether it should terminate the plans of troubled sponsors now to prevent even bigger losses in the future, he said.

Xerox faces suit over 401(k) losses

After accounting errors forced Xerox Corp. to restate \$6.4 billion in revenues for the past five years, the company now faces a lawsuit from participants and beneficiaries in its 401(k) plan. The suit, which seeks class-action status, was filed July 1 in federal court in Connecticut. It alleges that Xerox, its plan administrators and its board breached their fiduciary duties under the Employee Retirement Income Security Act because they knew about or should have known about questionable and potentially unlawful practices that made Xerox's stock an inappropriate investment. Xerox's 401(k) plan



See **LATE NEWS**/next page

Employers fare well in high court's last term

By **MARK A. HOFMANN**

WASHINGTON—Businesses received favorable rulings on a range of employment liability issues before the U.S. Supreme court during its just-completed term, and are already looking ahead to the next term, when an important punitive damages case is on the court's docket.

The high court favored employers in three out of four major cases interpreting their obligations under the Americans With Disabilities Act, as well as in a major case involving their obligations under the Family Medical and Leave Act.

In the fourth major ADA case, though, the justices held that employment arbitra-

See **SUPREME**/page 42

Medicare drug benefit seen as unlikely this year

Bipartisan agreement on best approach still lacking

By **JERRY GEISEL**

WASHINGTON—When it comes to adding a prescription drug benefit to the federal Medicare program, a legislative replay of 2000 almost certainly is in the making.

Two years ago, the House of Representatives passed a bill that would have given Medicare recipients a new prescription drug benefit. But, as elections neared, the Senate failed to act and the legislation died.

A similar scenario for this congressional session is almost certain, benefit experts say. The House, on a largely partisan 221-208 vote, last month approved legislation that would add a voluntary prescription drug benefit to Medicare. The legislation, H.R. 4954, was backed by Ways and Means Committee Chairman Bill Thomas, R-Calif.

Senate Democrats are expected to unveil their bill later this month. Even if the Senate passes a measure, though, the likelihood that Republicans and Democrats can forge a compromise bill before the session ends later this fall and that President Bush will sign it is about zero.

"Right now, the odds of reaching an agreement are slim," said Frank McArdle, a consultant with Hewitt Associates Inc. in Washington.

"For passage, legislation of this magnitude must have broad bipartisan support and that is virtually absent," Mr. McArdle said.

Indeed, many say that legislators' motivation in crafting Medicare drug benefits legislation is not to get a bill passed but to gain political advantage.

"Each side is presenting a bill to prevent the other side from trying to gain credit," said Henry Saveth, an attorney with Mercer Human Resource Consulting in New York.

"It really is posturing," added Gretchen Young, vp-government affairs in the Washington office of Aon Consulting.

If a standoff does result, employers with retiree health care plans will lose what could be a financial windfall.

The House-passed bill could shave billions of dollars off employers' retiree health care bills and possibly slow the current trend of employers terminating retiree health care plans.

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Special Report

MIDYEAR MARKET REPORT

Begins on page 10



NEWSPAPER

Inside

Cyber-terrorism may increase D&O liabilities

If terrorists attack computer networks, directors and officers of public companies could face increased liabilities. **Page 4**

A bolt that makes him blue

Editor Paul D. Winston is struck—and saddened—to learn of the lengths to which a U.S. energy company must go to protect itself from liability in circumstances that common sense would say are unimaginable. **Page 6**

Insurers risk alienating customers

Unless some equilibrium returns to the insurance market, buyers will be driven to seek alternatives. Insurers need to remember this or risk alienating their customers, this week's editorial says. **Page 8**

U.K. safety agency proposes reforms

The U.K. Health and Safety Executive suggests that making employers bear more of the costs of work-related injuries and illness would lead to improved workplace safety. **Page 31**

Norwegian insurers propose mandate

Norway's insurance industry proposes the mandatory purchase of terrorism coverage to better spread the risk. **Page 31**

Bill aims to curb moves offshore

The House Ways and Means Committee chairman proposes legislation that would make it less attractive for U.S. companies to reincorporate in offshore domiciles. **Page 37**

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

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CONTINUED FROM PAGE ONE

permits participants to contribute up to 18% of their pay into the plan and to direct their contributions to various investment options, including a fund that invests solely in company stock. Xerox stock, which traded at about \$60 a share in 1999, was trading at just under \$7 at the end of last month.

Fremont Comp acquired by EICN

Employers Insurance Co. of Nevada has completed its acquisition of the insurance operations of Glendale,



Calif.-based Fremont General Corp. The acquisition of the Fremont Compensation Insurance Group, effective Monday, gives EICN renewal rights to Fremont's book of workers compensation business. EICN will operate the new business—with policyholders in California, Colorado, Idaho, Montana and Utah—under the name Fremont Employers Insurance Co. Inc., a wholly owned stock subsidiary. EICN is a mutual insurance company with more than 11,000 Nevada policyholders. Prior to the acquisition, Fremont Comp. held a similar number of policies and generated around \$120 million in annual premiums. Revenues for EICN are expected to double with the acquisition, and about 240 Fremont employees will join EICN. Terms of the deal were not disclosed.

IBM, Fidelity enter outsourcing deal

IBM Corp. has agreed to outsource its benefits administration to Fidelity Investments, and the two companies will begin jointly marketing each other's services. In the outsourcing arrangement, about 450 employees in IBM's Raleigh, N.C.-based Employee Service Center who provide human resource transaction

Late News

and administrative support to the company's U.S. employees and retirees will become Fidelity employees Aug. 1. Initially, the former IBM employees will continue to administer only IBM's benefits, though they eventually will be administering benefits for other employers, a Fidelity spokesman said. Fidelity also plans to expand the service center to accommodate growth in its human resources payroll and benefits outsourcing business. Under a separate joint marketing agreement, IBM will refer its business-consulting clients in need of benefits outsourcing services to Fidelity and Fidelity will refer its benefits outsourcing clients in need of business-consulting services to IBM, the spokesman said. Fidelity, a unit of Boston-based FMR Corp., administers defined contribution, defined benefit and health and welfare plans.

Chase suit charges insurers with fraud

JPMorgan Chase Bank is leveling fraud charges in an amended lawsuit



against 11 insurers that guaranteed \$1.9 billion in oil and gas deals between the bankrupt Enron Corp.

and an offshore entity financed by Chase. The filing counters insurers' claims that the transactions were fraudulently disguised loans that Enron used to inflate its balance sheet and earnings. Chase now charges that the insurers knew that oil and gas contracts between Enron and Mahonia Ltd.—a Jersey, Channel Islands, entity—were part of a financing transaction between Chase and Enron. The bank alleges the insurers knew that surety bonds they issued on the deals might violate state laws barring them from underwriting financial guarantees, but never told Chase. The insurers are seeking to rescind the bonds; they have charged that Chase and Mahonia never intended to take delivery of oil or gas and the deals were a sham intended to disguise Chase loans to Enron. In its amended filing, Chase said that "nothing about the transactions was disguised" and that insurers knew the surety bonds "were part of financing transactions in which funds advanced by JPMorgan Chase to Mahonia were ultimately used by Enron for general corporate purposes, not to secure future sources of the oil and gas to be delivered."

Life insurers' portfolios exposed to WorldCom

The U.S. life insurance industry had about \$5.3 billion in WorldCom Inc.-

related investments as of year-end 2001, or about 2.4% of its total consolidated statutory capital of \$198 billion, according to a report issued by Moody's Investors Service Inc. in New York. No U.S. life insurer was significantly exposed, however, to WorldCom, which has recently come under fire for its accounting practices (see story, page 1), Moody's said. Five insurers accounted for 30% of the entire industry's total WorldCom exposure, Moody's said. They are: New York-based American International Group Inc., with an exposure of \$415 million; Newark, N.J.-based Prudential Insurance Co. of America, \$321 million; Baltimore-based AEGON USA, \$317 million; Milwaukee-based Northwestern Mutual Life Insurance Co., \$285 million; New York-based Metropolitan Life Insurance Co., \$277 million. An AIG spokesman said the insurer's total exposure is now about \$350 million, which is "not material to AIG," and an AEGON spokeswoman said the insurer's exposure is now less than \$200 million. A Prudential spokeswoman noted that the company has significantly reduced its exposure since last year. A MetLife spokesman had no comment, and Northwestern officials could not be reached.

Briefly noted

The **Environmental Protection Agency's** inspector general's office reported that funding shortfalls would slow the pace of cleanup at 33 Superfund sites. Federal funds for Superfund cleanup have dwindled since Congress refused to reinstate special Superfund taxes in 1995. President Bush opposes reinstating the taxes, a position shared by business and insurers that want the controversial environmental cleanup program to undergo substantive liability reform before taxes are reinstated.... Martin Markoff has been appointed managing director of the Continental European operations of **Guy Carpenter & Co. Inc.** He previously was chief operating officer of Allianz Global Risk.

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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.

US Airways opts for independent management of plan holdings in its own stock

Airline taps fiduciary for pension plans

By **JERRY GEISEL**

ARLINGTON, Va.—In an unusual move, US Airways Inc. has named an Aon Corp. unit as an independent fiduciary to manage the financially troubled airline's common stock held in the company's defined contribution plans.

In a letter to plan participants, US Airways Vp of Human Resources and Development John C. Honor Jr. said the appointment of Aon Fiduciary Counselors Inc. as independent fiduciary "ensures that decisions regarding the US Airways stock held by the retirement plans are made solely in the interests of plan participants and beneficiaries and avoids any real or perceived conflict of interest in connection with these decisions."

Mr. Honor said the airline believes that using an independent fiduciary is the "most prudent course of action, given our current challenges and the uncertainties facing us." Arlington, Va.-based US Airways has warned that, due to massive losses, it will have to restructure, possibly through a Chapter 11 bankruptcy reorganization.

As independent fiduciary, Aon Fiduciary Counselors will have authority to continue, restrict or terminate the investment of defined contribution plan assets in US Airways stock.

US Airways' move marks what may well be the first time an employer voluntarily has sought an independent fiduciary for its defined contribution plans, said Nell Hennessy, a senior vp with Aon Con-

sulting in Washington.

Indeed, US Airways' voluntary move stands in sharp contrast to the actions of Enron Corp., which selected an independent fiduciary for several of its pension and savings plans only after receiving pressure from the Labor Department. In March, State Street Bank & Trust replaced an Enron administrative committee that had served as the plans' fiduciaries.

That move came after numerous lawsuits were filed by Enron 401(k) participants, charging that Enron had breached its fiduciary duties by misleading "participants and beneficiaries of the savings plan about the company's earnings prospects and business conditions," which encouraged participants to continue to make investments in Enron shares. Collectively, Enron defined contribution plan participants lost more than \$1 billion as the value of

Enron shares fell last year from a peak of \$80 to less than \$1.

US Airways' defined contribution plan participants also have seen the value of their investments in US Airways decline as the company's stock price has fallen sharply. On Sept. 1, 2001—10 days before the terrorist attacks led to a drastic falloff in air travel and massive losses for the nation's airlines—US Airways shares were trading at just over \$12, compared with just over \$3 last week.

Unlike Enron, though, whose plan participants' investments were overwhelmingly concentrated in company stock, US Airways defined contribution plan participants' investments have been more diverse. As of Dec. 31, 2001, just under 10% of plan participants' investments, or about \$92 million, was in company stock held through a master trust.

July 8, 2002

Liability probed Aircraft collision unlikely to shake market

By STACY SHAPIRO

UEBERLINGEN, Germany—Although last week's midair collision of a cargo plane and a Russian passenger jet won't be a major loss to the aviation insurance market, it will raise complex questions over who was liable and whose insurers will have to pay passenger compensation.

At 11:36 p.m. on July 1, a Bashkirian Airlines Tupolev 154, carrying 69 people—including 52 children—from Moscow to Barcelona, Spain, collided with a Boeing 757 cargo plane operated by DHL Worldwide Express over Ueberlingen, Germany. The DHL plane, which had a crew of two, was bound for Brussels, Belgium. Everyone on board the two aircraft perished, though, remarkably, no one was injured on the ground despite wreckage spreading over a 20-mile radius.

Everyone on board the two aircraft perished, though, remarkably, no one was injured on the ground despite wreckage spreading over a 20-mile radius.

The total hull and liability loss resulting from the collision is expected to be low and may not even reach \$45 million if international liability limitations are enforced. This total would include the value of the DHL Boeing 757, which was insured for \$38 million, according to market sources. Under the Warsaw Convention, as amended by the Hague Protocol, there will be a liability limitation of \$20,000 per passenger on the Russian flight if Bashkirian Airlines is found to be at fault.

If, however, DHL or the Swiss air traffic control are found to be responsible for the disaster, then the liability cap would not apply. DHL is a cargo carrier and thus is not governed by Warsaw rules, which apply to passenger flights; and the liability of Swiss air traffic control would be governed by local Swiss law, according to attorneys in London.

The Bashkirian hull and liability insurance is placed in the local Russian market and reinsured with a Russian company called Avicos. The Russian airline carries excess liability coverage for an unknown

See COLLISION/page 43

IRS clarifies status of DC plan 'restorative' payments

By JERRY GEISEL

WASHINGTON—Payments that employers make to defined contribution plans to compensate participants for losses resulting from an actual or feared breach of fiduciary duty are not considered regular plan contributions and are exempt from nondiscrimination tests and other government restrictions, the Internal Revenue Service says.

Employers can kick in what the IRS calls "restorative" payments due to an action or failure to act that creates a "reasonable" risk of liability for a breach of fiduciary duty, the IRS said recently in Revenue

Ruling 2002-45.

Restorative payments are not considered plan contributions and thus would not be subject to various government rules, such as those that limit the amount of money that can be contributed to a 401(k) plan or limit the amount of 401(k) deferrals that can be made by highly compensated employees to contributions made by rank-and-file employees.

The ruling, though, does not apply to payments an employer might make to a plan to make up for losses due to market fluctuations. Such payments would be considered plan contributions and thus be subject

to normal contribution limits and nondiscrimination testing.

The ruling resolves what Kyle Brown, an attorney with benefit consultant Watson Wyatt Worldwide in Washington, calls a gray area.

Court-mandated contributions made to a plan had been considered restorative payments and exempt from contribution limits and nondiscrimination testing.

But less clear were situations where employers feared potential liability for a fiduciary breach and wanted to make payments to a plan and thus head off a lawsuit from plan participants. The IRS ruling,

published last month, ends that uncertainty.

"You don't have to wait for litigation" to make payments, Mr. Brown said.

In its ruling, the IRS lays out a situation where payments to a defined contribution plan would be considered restorative. In that situation, an employer makes a payment to the plan after it determines, based on relevant facts and circumstances, that it is exposed to reasonable risk of liability for breach of fiduciary duty, even though no lawsuit has yet been filed.

In reaching this conclusion, the

See IRS/page 37



A wildfire burns out of control in Pine Valley, Calif., while a building in Pinedale, Ariz., is shown destroyed (inset), after the Rodeo/Chediski fires wept through the community, near Show Low, Ariz.

Insurers expecting at least \$25 million in losses Wildfires triggering claims

By NICOLE VOGES

The wildfires that scorched several Western states this summer are beginning to have an impact on property insurers.

Insurers have already dispatched adjusters to hard-hit areas of Arizona and Colorado, and the Insurance Services Office Inc.'s Property Claim Services unit last week assigned a catastrophe number to the Chediski-Rodeo fire in Show Low, Ariz., noted a spokesman for ISO in Jersey City, N.J. PCS issues catastrophe numbers when it estimates insured property losses reach at least \$25 million.

ISO is continuing to monitor the fires, though the spokesman was not immediately able to provide a loss estimate.

Much of the property involved in the Chediski-Rodeo fire is occupied by the Fort Apache Indian Reservation. That fire has already destroyed about 420 homes, and many more were evacuated, according to press reports.

P.J. Crowley, a vp at the New York-based Insurance Information Institute, said the fires are not yet comparable in scale to major earthquakes and tornadoes. Because many of the fires have not been 100% contained, however, estimates on total loss are purely speculation, he said. Property damage claims are

"likely to remain, under current circumstances, in the primary insurance layer, not the reinsurance layer of coverage," he said.

Until recently, much of the damage has occurred on federal land, which has minimized its effect on private insurers, the ISO spokesman said.

Other states experiencing wildfires include Georgia, Montana, New Mexico, South Dakota, Utah and Wyoming, according to the National Interagency Fire Center's Web site.

Boise, Idaho-based NIFC, an organization that combines resources from several federal agencies, estimates that fires have consumed nearly 3 million acres thus far this year, compared to 1 million for the same period in 2001.

Insurance claims from the fires outside Arizona so far have been limited, loss adjusters said.

Jeff Davis, Denver branch manager for Parsippany, N.J.-based GAB Robins, noted that even though most of the Colorado fires are being contained, evacuations continue. "It's mostly residential, so it's been a slow process on people making claims."

"The industry is in a bit of a holding pattern right now," said Rob Myers, executive vp at GAB Robins in Parsippany. "There's a whole range of potential claimant possibility, but no one knows until we can get into these areas."

Society for Human Resource Management Conference

Worker inquiries must be carefully handled

By MICHAEL PRINCE

PHILADELPHIA—Employers must exercise caution when investigating employees for potential wrongdoing, because missteps could expose them to liability, an employment attorney warns.

If an investigation were to be carried out incorrectly or if it were to venture into an employee's private life, it could lead to a lawsuit that not only could overturn any punishment handed out to the employee but also could result in a large damage award against the employer, said Robert Gregg, an attorney with Boardman, Suhr, Curry & Field L.L.P. in Madison, Wis.

An investigation must carefully balance the legal rights and the sometimes-competing expectations of a variety of employees, Mr. Gregg noted.

For example, he said, in a sexual harassment investigation, both the accuser and the accused may become upset—and may have a cause of action against the employer—because of the way the investigation was conducted.

"Often, no matter what you do, nobody is happy," Mr. Gregg told attendees at the 54th annual conference of the Society for Human Resource Management, held in Philadelphia late last month.

Mr. Gregg said that the first step in protecting an employer, to be taken before it begins an investiga-

See SHRM/page 28

Lack of readiness for attacks on computer systems could result in liabilities

Companies urged to prepare for cyber-terrorism

By GAVIN SOUTER

NEW YORK—Directors and officers of public companies could face increased liabilities if heightened fears of cyber-terrorism attacks prove justified, a panel of experts warns.

After a cyber-terrorism attack, directors and officers will likely be scrutinized to ascertain whether they had done enough to prevent such an attack.

The terrorist attacks of Sept. 11 increased fears about all types of terrorism, said Alice S. Fisher, deputy

assistant attorney general at the U.S. Department of Justice in Washington. And the al Qaeda terrorist organization made it clear, even before the attacks, that it would target U.S. citizens and buildings, she added.

"The U.S. infrastructure is a prime target," said Ms. Fisher at a seminar on corporate governance sponsored by Marsh Inc. in New York late last month.

Given the growing dependence of many elements of the nation's infrastructure on computers, terror-

ists may view cyber-terrorism as an effective way to carry out attacks, Ms. Fisher said. "Although there has been no cyber-terrorism attack yet that we've prosecuted, we are very sensitive to this possibility," she said.

The most likely targets for a cyber-terrorism attack, according to Ms. Fisher, are organizations involved in telecommunications, banking and other financial services, electrical power, oil and gas pipelines, transportation networks and other distribution systems,

emergency services, government operations and food supply.

Those companies also face heightened expectations regarding corporate governance, said James E. Tyrrell, a managing partner of law firm Latham & Watkins in Newark, N.J.

Previously, company directors would not be held liable for losses if they showed a "reasonable duty of care," he said.

"But post-Enron, judges and juries won't allow you to be that passive. They require now that you

have an affirmative duty of oversight," Mr. Tyrrell said.

That duty of oversight includes a requirement that board members obtain sufficient information to make governance decisions and that they have adequate due diligence systems in place, he said.

For example, boards cannot just hire outside experts to advise them on matters such as security against cyber-terrorism, Mr. Tyrrell said. "You have to make sure that this person has the necessary expertise to address the problem," he said.

Company boards should ensure protocols are in place to protect their companies against cyber-terrorism attacks, said Christopher Keegan, vp and regional practice leader of e-Business Solutions at Marsh in New York.

'Although there has been no cyber-terrorism attack yet that we've prosecuted, we are very sensitive to this possibility.'

Alice S. Fisher
U.S. Department of Justice

First, boards should ensure that they focus on the area of their business that could suffer the most from cyber-attacks, he said. In some cases, that area might be e-mail or online trading or another Internet-related function, he said.

Directors should also actively promote "safe behavior" by having competent personnel in place and informing them of their expectations for the management of computer systems, Mr. Keegan said.

They should also ensure that technical solutions, such as firewalls, are in place, he said.

Directors should also reward employees for complying with security protocols and ensure that deterrents are in place for breaches of security, Mr. Keegan said.

Directors should also ensure that an aggressive intrusion detection system is in place and that the organization has a recovery plan in the event of a cyber-attack, he said.

Having done what they can to reduce the risk of a cyber-attack, directors and officers should also review what insurance coverage arrangements they have in place, Mr. Keegan said.

In many cases, terrorism coverage has been excluded from insurance policies since the Sept. 11 attacks he said.

However, specialist cyber insurance policies do not exclude coverage for terrorism losses, Mr. Keegan said.

"They have continued to take that tack because the defenses are similar to defenses against hackers," he said.

The policies typically can cover theft of information, copyright infringement, security liability, software errors and omissions liability and loss of data, Mr. Keegan said.

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Submission deadline for nominations is Aug. 2

BI to profile up-and-comers

Business Insurance is accepting nominations for its upcoming special feature, "35 Rising Stars." The feature report, which coincides with *BI*'s 35th anniversary, will appear in the Oct. 7 issue and will profile 35 up-and-coming insurance industry professionals whom risk and benefit managers should know and keep an eye on.

The people selected will be drawn

from the ranks of property/casualty and life/health insurance companies, reinsurers, brokers, managed care organizations, risk management and employee benefit consulting firms and third-party administrators.

BI intends to profile professionals who have had significant accomplishments in these fields and who are poised for more success and

achievement in the future. Nominees must be no older than age 50 as of Oct. 7.

A panel of *BI* editors will choose the 35 Rising Stars from nominations received. To be considered by the editors of *Business Insurance*, completed nomination forms must be submitted by the deadline of Aug. 2, 2002.

Nomination forms and guidelines for the 35 Rising Stars report are available for downloading at the Datebook section of the *Business Insurance* Web site, located at www.businessinsurance.com.



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Commentary

A shocking lack of common sense

It's a sad state of affairs when businesses cannot rely on the common sense of individuals to avoid situations that could cause them harm. It's tragic when a similar lack of common sense leads those same individuals to believe their injuries are the fault of anyone but themselves. And it's pathetic when a jury rewards such behavior with compensatory and punitive damages.

These circumstances, which are all too familiar these days, are probably why so many risk managers and their insurers are brought nearly to tears by lengths they must go to to protect themselves from liability in circumstances that common sense would say are unimaginable.

If it weren't so absurdly costly to defend against such actions, and they were as rare as, say, lightning strikes, these sort of claims would be almost laughable.

Maybe that's why laughter was my initial reaction to a recent news story about the preposterous lengths

to which a U.S. energy company was going to minimize its potential exposure to litigation—litigation over a possible claim that, at first blush, seems ridiculously remote.

Reuters on June 24 reported that Raleigh, N.C.-based Progress Energy Inc. had issued a warning to the public that copying a scene from the new movie "Like Mike" could be harmful to one's health, if not downright fatal.

In the scene, the actor Lil Bow Wow's character retrieves a pair of basketball shoes from a high-voltage power line in the middle of an electrical storm. Naturally, in what Hollywood refers to as dramatic tension, the power line is struck by lightning as he reaches for the shoes.

In the magical world of the silver screen, however, the teenage boy falls to the ground dazed but unharmed, and the zapped pair of shoes magically endow him with the power of Michael Jordan and he successfully pursues a career in the NBA. Silly, fanciful, unrealistic, entertaining, right?

Not to Progress Energy, which sees the possibility of impressionable kids or mediocre college ball players rushing out to zap themselves and their shoes in the hopes of gaining new athletic powers with lethal consequences.

In the real world, Progress Energy warns a public that really ought to know better, lightning strikes can send upwards of 3 million volts of electricity through a

person. This, of course, is superfluous to the tens of thousands of volts already coursing through the power lines. In other words, the utility is saying, "Don't try this at home, kids."

My first reaction to seeing this story was that the utility was carrying paranoia over potential claims to new levels. Nobody would really try this stunt after leaving the theater, would they? They would know they have no business climbing power transmission pylons in any weather, let alone a lightning storm. They would know better, notwithstanding their vague recollections of Ben Franklin's experiment with electricity, that

sending electricity through mundane objects like shoes does little other than excite the molecules to the point of melting an object. And surely they would know that millions of volts of electricity passing their bodies would be about as good for their health as climbing in a microwave and being cooked on high for a few minutes.

And even if they didn't know these things and copied Lil Bow Wow's character, they (or their survivors) wouldn't really blame the utility company that supplies the energy, would they? After all, it was Twentieth Century Fox, not Progress Energy, that put this far-fetched scenario before the public.

But after a moment's reflection, I realized that as extreme as it seems, the company was being extremely prudent. That's because the real fantasy is the one in which companies would be immune from such claims and, even if they were brought, would be shielded from liability by a sensible and just jury. That's the kind of fanciful tale that would make a risk manager and his or her insurer really cry—from laughing so hard.

I'd like to think it's unlikely someone would try to re-enact the scene in "Like Mike," but I've seen too many absurd and frivolous lawsuits to know it's impossible. After all, lightning does strike more than once.

So even if such a warning by a company seems absurd at first blush, when an even more absurd claim emerges, the best protection might be "We warned you...."



Paul D. Winston

Editor Paul D. Winston's commentary appears fortnightly in *Business Insurance* and on www.businessinsurance.com. He can be reached by e-mail at pwinston@crain.com.

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Editorial

Let the sellers beware

FOR MANY RISK MANAGERS, midyear renewals have been costly and painful.

As this week's issue shows, commercial insurance buyers are paying more for less on virtually all lines of coverage this year. In the wake of 2001 losses, hardening of the market was not unexpected, but the degree and extent of rate increases, capacity withdrawals and tighter terms has caught many policyholders by surprise.

Unless some equilibrium returns to the insurance marketplace, ever more buyers will be driven to seek alternatives. Insurers need to remember that, in hard markets, they risk alienating their best customers. Already this year, captives and other alternatives are gaining more attention from buyers.

In the midst of this market, risk managers may get some relief from an unusual source: the federal government. The Supreme Court, for example, has used a series of decisions to clarify and restrict employer liability under the Americans with Disabilities Act. Both the House and Senate have approved terrorism insurance legislation, though differences between the bills remain to be ironed out. And the House approved class-action reform legislation months ago, and employer groups are vowing to prod the Senate to follow suit.

All of these developments eventually could improve insurance pricing and availability. In the current environment, though, buyers found the task of renewing most lines to be grim.

Market conditions reflect a combination of insurers recovering

from record losses in 2001, especially from the Sept. 11 catastrophe, and trying to make up for years of underpricing in the prolonged soft market.

The current conditions also reflect a new adherence to underwriting discipline and professionalism. Underwriters are demanding much more information from buyers about risks than in recent years, which is prolonging the renewal process and making it more challenging for some risk managers. In essence, underwriters' back-to-basics approach also is forcing risk managers to be similarly disciplined to achieve their goals at renewal. While even buyers recognize that some of the new demands for information on risks are necessary and perhaps overdue, they also see examples of overkill.

At midyear, rates remain high in virtually all lines, with some coverages—such as D&O and excess casualty—becoming very difficult for buyers.

Although industry capacity is still high, companies are less willing to devote as much of their capacity to single risks. This is resulting in a greater syndication of risks as buyers seek to complete programs.

At the same time, some buyers are buying less coverage—taking either higher retentions or lower limits or both—in an effort to keep premium increases moderate.

Property is among the hardest hit because of losses from Sept. 11 and a continuing heightened exposure to losses. Although a private market for terrorism coverage is emerging, it is expensive and the limits available are still relatively low com-

pared to what many buyers seek.

Liability rate increases remain high, with excess and umbrella rates doubling and tripling in some cases. Attachment points for excess programs are also rising, which makes the rates that much costlier considering that less coverage is provided. In addition, terrorism exclusions are beginning to creep into casualty policies, especially for businesses perceived as potential targets.

Excess workers comp coverage bought by self-insurers also is causing problems, as excess insurers exclude terrorism risks that primary programs must provide. As a consequence, some regulators are reassessing the financial strength of self-insurers to meet their statutory obligations. In the primary workers comp insurance market, rates remain high, and some buyers perceived to be at high risk of terrorism—such as companies in trophy buildings in urban areas—are finding themselves nearly uninsurable.

D&O rates are among the hardest renewals today but, unlike in other lines, that situation has little to do with the Sept. 11 attacks. Instead, the recent spate of corporate scandals is ensuring that the market firming that has been underway for over a year is bound to continue and intensify.

While buyers directly purchase reinsurance only in certain circumstances, the hardening conditions in the reinsurance marketplace are still very much a factor for them. Reinsurers report that, unlike year-end renewals, the current marketplace is far more orderly, albeit still charging more. Yet those higher

reinsurance prices are widely influencing how primary insurers meet buyers' needs.

For now, insurers may rightly regard current conditions as a seller's market. But they must remember that buyers do have alternatives, and if steep pricing, narrowing terms and vanishing capacity continue, they will act on them.

Letters to the Editor

Class-action lawsuits must pass scrutiny

To the editor: I have never been a litigating lawyer, let alone a class-action litigation lawyer, and I don't intend to start now. Even so, I must correct the impression left by David M. Golden's Perspective in the June 24 issue, "Class-action Suits Threatening Homebuilders."

Mr. Golden's statements would lead one to conclude that all a litigator need do is say, "Hey, I want to start a class action," and he or she is free to do so. The courts are not that foolish.

A litigator must first petition the court for permission to begin a class action, showing exactly why the named client is entitled to sue for all members of the aggrieved class. A court will deny class-action status to a petitioner who fails to make the necessary showing.

The court will grant class-action status only if the evidence it receives shows clearly the likelihood that a large number of individuals—the members of the class—have been severely aggrieved by the callous or careless behavior of the defendant. An example is the successful class actions against the tobacco companies.

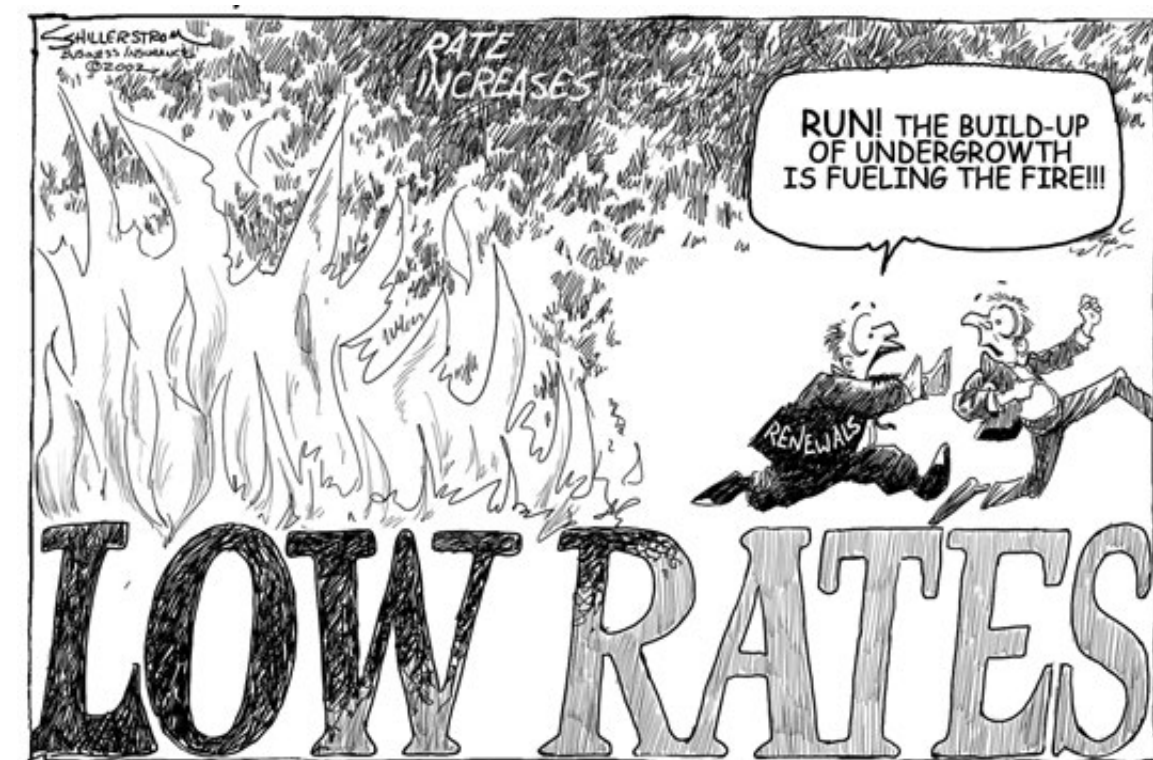
I am in full agreement with Mr. Golden that "manufacturers, builders and subcontractors all must be involved in new building product development." If they construct safe buildings, they will never be subject to "out-of-control" lawsuits. They will be subject to class-action lawsuits only if they wantonly erect out-of-control buildings.

Nathaniel B. Taft

Counselor-at-law

White Plains, N.Y.

Schillerstrom



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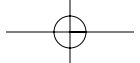
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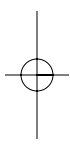
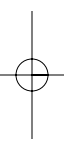
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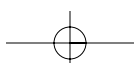
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Midyear Market Report: Buyers slugging it out at renewals

Property market sees rate hikes, diminished capacity

By **RODD ZOLKOS** and
MARK A. HOFMANN

The long-lived soft property insurance market is rapidly becoming a very distant memory.

Rates have risen, on average, from 30% to 50% during the past year, with triple-digit increases far from unknown. These rate increases come on top of pricing that was already

firming a year ago, a trend that was exacerbated by the terrorist attacks of last Sept. 11.

Capacity has shrunk, though the Bermuda

Property Midyear Market Report

market has become increasingly important to buyers in filling some of the shortfall.

And, of course, there is the question of terrorism coverage. Fortunately for buyers, the immediate post-Sept. 11 situation for terrorism coverage appears to be easing somewhat as new players enter the field.

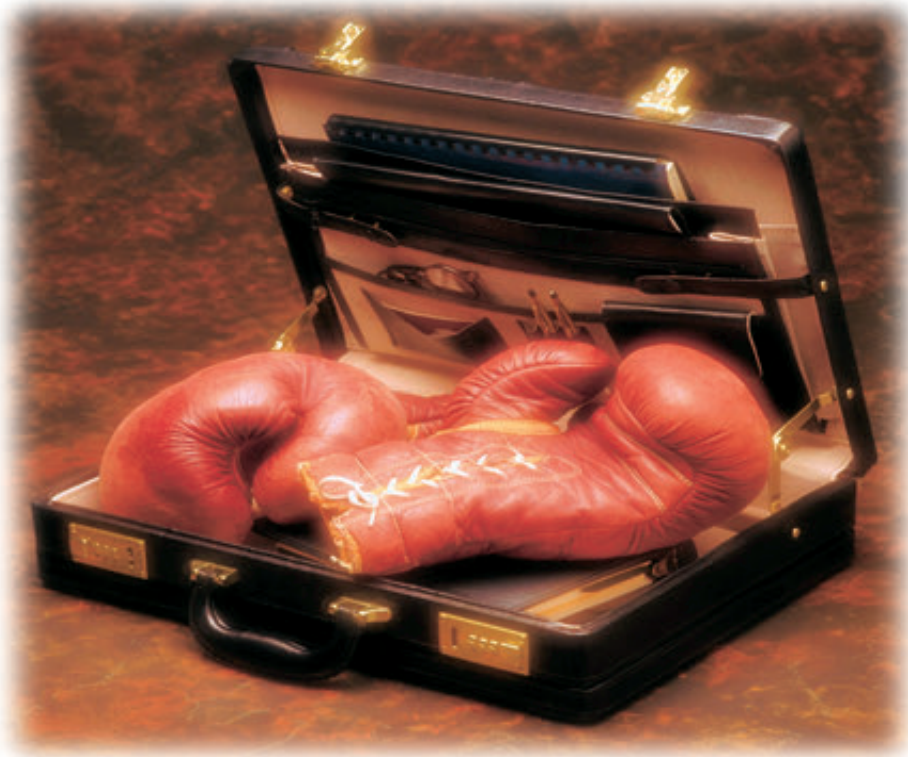
But every positive development in the property market comes with a price, and that price can be quite hefty.

"I would say if you got anything under 50% you'd be extremely lucky, and you could go to 200%" rate increases, said Suzanne Douglas, executive vp and managing director, national property practice leader for Willis North America Inc. in New York.

"A good renewal, on average, would be a 30% increase, and it would not be exceptional in some cases to see a 100% increase, or even a 200% to 300% increase," said Gary Marchitello, managing director-global property practice for Aon Risk Services in New York. He added that the size of rate increases varies with concerns such as occupancy and loss experience for property risks.

"The energy business—oil, gas, petrochemical and utilities—is seeing 100% to 200% increases with larger deductibles and lower limits," said Louis Parker, president and CEO of GE Employers Reinsurance Co.'s commercial insurance operations in Overland Park, Kan. "This is driven by historical results. We've also seen large price increases and tightening of terms in municipality and school busi-

See **PROPERTY**/page 23



Terrorism exclusions emerge in casualty lines

Hardening most severe for excess, umbrella lines

By **JOANNE WOJCIK**
and **SALLY ROBERTS**

"Arduous," "onerous" and "painful" are some of the words risk managers used to describe their midyear casualty renewals, especially for excess and umbrella coverage.

Rate hikes run the gamut from as little as 20% in primary liability coverage for clean risks to well over 100% for excess and umbrella coverage. At the same time, terms and conditions are becoming much more restrictive, with insurers invoking terrorism exclusions in some cases, especially for commercial policyholders with large concentrations of risks in major metropolitan areas.

"We're going through the renewal process now. And, yes, it is painful," said Lance Ewing, senior director of insurance and loss prevention at GES Exposition Services in Las Vegas, whose casualty programs renew July 31.

Casualty renewal rates were "fairly close to what we had anticipated for the most part, except for the excess side, which is huge," Mr. Ewing said.

Casualty premiums for a Southern California-based fast-food chain doubled even after it increased its self-insured retention, said the

fast-food chain's risk manager, who asked not to be identified. The insurer also sought greater control over claims handling and required an additional premium for legal expense coverage, the risk manager said.

"The risk managers of the world are not happy with the GL increases that are going on with no change in environment but double the insurance premiums," the risk manager said.

Rate hikes at the primary level are not quite as startling as they are for excess and umbrella coverages. And, in some cases,

buyers are moderating hikes by accepting higher deductibles or by providing information about the risks to sway underwriters' decision-making.

"They're seeing bigger rate increases or they're going to have to take a higher deductible of some sort," said Don Pickens, senior vp and chief underwriting officer at Liberty Mutual Insurance Co. in Boston.

For example, Mr. Pickens said, "if somebody were to get a rate increase of 25%, the deductible might have to go from \$25,000 to \$35,000, or something like that."

But if a risk won't accept the higher deductible, "then they might get the 30%" in-

See **LIABILITY**/page 26

Scandals likely to prolong hardening D&O rates

By **DAVE LENCKUS**
and **ROBERTO CENICEROS**

A wave of revelations about improper corporate accounting practices may not immediately affect directors and officers liability insurance rates or capacity, but risk managers can take little comfort in that.

Insurers already were boosting rates, pinching capacity and toughening coverage terms before the scandals, which are expected to trigger D&O claims, were uncovered.

"How do you exacer-

bate an already-exacerbated market?" asked Tony Galban, vp and worldwide underwriting manager for Simsbury, Conn.-based Chubb Specialty Insurance, a unit of Chubb Corp.

The answer: Risk managers should brace for more of the same market conditions for an extended period, Mr. Galban and other market experts say.

But a few buyers are refusing to pay the additional premiums or accept deteriorated coverage terms and instead have largely abandoned the coverage, market executives note.

Meanwhile, the errors and omissions market for large accountants and financial institutions—which, in many cases, is the same market courted by D&O risks—is hardening likewise. But other professionals seeking E&O coverage are having an easier time at renewal, market sources say.

In the D&O market, the immediate fallout from the accounting scandals will be that insurers will scrutinize buyers' financial statements, market experts predict. "Every customer is going to get the third degree," Mr. Galban said. "Underwriters are going to assume you're guilty until proven innocent."

Risk managers will have to differentiate their boards and their corporate governance compliance efforts from the perception currently tainting corporate America, said Lou Ann Layton, a managing director and the national D&O practice leader at Marsh Inc. of New York. A complicating factor is that companies will have to "hit a moving target" as

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Workers comp rates rising, terms tightening

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Health care rates rise in double digits

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Reinsurance market firm, less chaotic

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Comp buyers see prices soaring, terms tightening

By MEG FLETCHER

Analyzing the midyear renewal market for workers compensation coverage reveals major increases in pricing as well as new limitations on coverage, which are beginning to threaten the ability of some large employers' to self-insure their risks.

Some state regulators of self-insurance are starting to review the financial status of self-insuring employers, especially those with new policy limitations—such as coverage caps or terrorism exclusions on excess policies—that may threaten

employers' ability to pay workers' claims, risk managers and regulators say (*BI*, July 1).

Workers Comp Midyear Market Report

The statutory nature of primary workers comp coverage and the

presence of a state-mandated markets of last resort, however, still provide a safe haven for an increasing number of employers that want full coverage to states' statutory limits, without exclusions.

Total premium in those programs grew by 74% to \$615 million in 2001 and by 63% in the first quarter of 2002, compared with a year earlier, according to the National Council on Compensation Insurance.

For employers shopping in the voluntary market, the current renewal market "is certainly more adverse than buyers had expected,"

said Joseph Buono, senior vp and director of broker Willis of New York Inc.

Rate increases for excess workers comp coverage are generally in the double digits, ranging from about 50% to 80% over expiring pricing, he said. Several other brokers and insurers report broader ranges of increases, ranging from 20% or less to more than 400%. In addition, most acknowledged that some risks—such as a company with a large concentration of workers in a marquee building in a metropolitan area—may be effectively uninsurable due

to unavailable or unaffordable coverage.

Stan Smith, risk manager for Las Vegas-based Boyd Gaming Corp., said he was told that had he not been in the middle of two-year excess program that began July 1, 2001, "the price would have doubled, even though there have been no claims in 22 years." That combined excess program provides coverage to statutory limits above a \$500,000 self-insured retention in Nevada and a \$250,000 retention in Mississippi. While he continues to purchase traditional coverage in four other states where his company operates, he expects to explore self-insurance options in the future.

Finding coverage can be frustrating for risk managers, even those who start early.

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'The more that a customer can share information with the insurer, the better the underwriter quote you are going to receive.'

Brian Melas
Liberty Mutual Insurance Co.

to obtain quotes until the 11th hour," said Anita DiGiulio, risk manager for Hartz Group Inc., an owner/operator of commercial real estate and hotel properties, in Secaucus, N.J. "For our July renewals, we sent out renewal data in March," but as of late last month still didn't have "complete quotes," he said. "We had to wait in line behind other customers who renew before us."

Most sources say the duration of the relationship between a policyholder and an insurer may influence the outcome of negotiations. "This underscores the importance of a risk manager working directly with an underwriter, not just in tough years, but always," said Steve Giddens, risk manager for Atlanta-based SunTrust Banks Inc.

In addition, "the more that a customer can share information with the insurer, the better the underwriter quote you are going to receive," said Brian Melas, senior vp of commercial markets for Boston-based Liberty Mutual Insurance Co.

Even risk managers with long-standing relationships with their insurers, however, may face significant price increases because of the fundamental shift that occurred as a result of the terrorist attacks in September.

"It took 9/11 to send a wake-up call to the workers comp industry," Mr. Melas said. Following that disaster, insurers are seeking much more information, including details about employee concentrations within specific geographic areas, he said.

In addition, the amount of coverage available often is more restrictive than last year, according to several brokers, insurers and risk man-

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Workers comp: Buyers see soaring prices, tight terms

Continued from page 14

For example, some employers are finding that they have to double their self-insured retentions, to \$500,000, to keep a lid on premium prices.

In addition, obtaining statutory coverage may require involving two or three insurers rather than just one, as in the past, said Steven Link, executive vp of St. Louis-based Midwest Employers Casualty Co. In some cases though, statutory coverage is not available or affordable.

Other risk managers face more

complex situations.

For example, SunTrust has primary coverage, including terrorism protection, through its property/casualty insurance subsidiary, Madison Insurance Co. in Atlanta. Its reinsurance policy, however, is capped at \$20 million—rather than at statutory limits—and includes a terrorism exclusion. As added protection, the company purchased an extra \$10 million in reinsurance above that, Mr. Giddens said.

The recent report from Safety National Casualty Corp. that 12 states have approved a terrorism exclu-

sions for excess workers comp policies has increased concern about the negative impact an attack may have on an employer's financial ability to handle workers claims, said Gregory Krohm, executive director of the International Assn. of Industrial Accident Boards & Commissions in Madison, Wis.

"State workers comp regulators should consider an employer's entire portfolio of risk to determine its ability to pay underlying claims," he said. That could be done by adding a question about terrorism exclusions to a self-insured's renew-

al application and then by following up if such exclusions exist, he said.

While Safety National declined to identify the 12 states, it did list those states that have specifically banned such terrorism exclusions: Alaska, California, Colorado, Connecticut, Georgia, Hawaii, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Mexico, New York, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont and Wisconsin.

Despite those developments, other employers are seeking out self-insurance as an option.

"What we are seeing is an increasing number of companies re-evaluating their situation and moving into self-insurance or group self-insurance," said Gregory Berg, head of alternative markets for The Hartford Financial Services Group Inc. in Hartford, Conn.

Several insurers say that group programs have an advantage in the current market because they inherently include dispersed, rather than concentrated, risks.

Rising costs spur search for remedies

By MICHAEL PRINCE

2002 may be the Year of the Horse on the Chinese calendar, but for employers it should be named the Year of the Dragon, as a time to slay the beast of rising health care costs.

Rates have continued to rise through the first half of the year, with no relief in sight.

"It was bad in January, and it's as bad, if not a little worse," today, said Richard Sinni, senior vp at Aon Consulting Inc. in New York.

At midyear renewal season, rates are up, on average, between 13% and 17% for all types of health plans, with even greater increases

Health care Midyear Market Report



for small employers, health care experts say. Those increases are up a few percentage points from last year's midyear renewals.

The increases are driven by a variety of factors. Drug prices and drug utilization continue to increase. In addition, consolidation among hospitals has given them greater clout in negotiating with health plans, allowing them to push up prices for their services.

But perhaps the most significant contributor is an overall increase in the utilization of health care services, consultants and health plan executives say.

"People use more health care these days," said Richard Travers, chief executive officer of Travers, O'keefe & Associates Inc., an employee benefits and property/casu-

See **HEALTH CARE**/page 18

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Health care: Rising costs spur search for remedies

Continued from page 16

alty consulting and brokerage firm based in New York

In addition, the past few years have seen a shift toward less restrictive types of plans, with fewer tools by the plans to control costs, said Joe Martingale, national leader for health care strategy at Watson Wyatt Worldwide in New York.

Many employer, consumer and physician groups have pushed health plans to relax their restrictions, "and now we may be seeing some of the results of having lost the battle," Mr. Martingale said.

In response to rising costs, employers are trying a variety of strategies, hoping that one—or a combination of several—will have an impact.

"People are willing to try almost anything these days," said John Langenus, senior vp of national accounts at CIGNA HealthCare in Bloomfield, Conn.

Employers want to control price increases but are not willing to cut quality or the size of their networks. As a result, few solutions exist, he said.

The most common strategy is

simply passing the costs on to employees through changes in plan design. This includes raising employee copayments, increasing deductibles and making employees responsible for a greater share of the premiums.

"The employees will need to bear a greater percent of the cost increases, as the employers are not willing to do that," said Gregg Lehman, the president and chief executive officer of the National Business Coalition on Health in Washington, an organization of employer health care coalitions.

But this may prove only a temporary solution to the long-term prob-

'You can't just throw financial responsibility at people and expect a miracle to happen.'

Joe Martingale
Watson Wyatt Worldwide

lem of rising costs, consultants and health care executives say.

"This strategy will run out of gas

very soon," said David Snow, the president and chief operating officer at Empire Blue Cross & Blue Shield in New York.

The danger in this approach, Mr. Lehman said, is that it will eventually price many employees out of the health care system. But it remains a popular and effective strategy until a better one emerges, he said.

One remedy, many observers say, is for employers to adopt consumer-driven health plans. Skyrocketing costs have compelled many employers to look at this approach as a solution.

"Every employer I talk to wants to hear about it," said Aon's Mr. Sinni.

But, even though more employers are talking about it, few have actually adopted the concept, health care experts say.

"It's more talk and investigating" than purchasing, said Laurel Pickering, the executive director of the New York Business Group on Health Inc.

Regardless of whether employers adopt a specifically labeled consumer-driven health plan or simply adopt measures to turn health care users into health care consumers, a push toward consumerism is seen as a way to control rising costs, consultants and health care executives agree.

While he's not sure that consumerism will provide the ultimate solution for employers, CIGNA's Mr. Langenus said it "is a step toward a solution."

There are limits, though, on how much consumerism can change the health care marketplace, Mr. Martingale said. To succeed, it cannot simply make employees pay a greater share of their health care. "You can't just throw financial responsibility at people and expect a miracle to happen," he said.

Beyond consumerism, employers are looking at other approaches to curtail costs. In some markets, employers are paying more to providers that deliver higher-quality care, Mr. Lehman said.

In other areas, employers are adopting plans that charge employees higher co-payments for more costly hospitals, Mr. Snow said.

Employers also are expressing more interest in joining coalitions and working together to find a solution to skyrocketing costs, Ms. Pickering said.

Also, more employers are adopting a percentage copayment system for prescription drugs, instead of a fixed copay, to pass more costs on to employees, Mr. Travers said.

Under a percentage copay system, employees would pay a percentage of a drug's cost, often 20%. Employees automatically pay more when prices rise, without the employer having to change the plan design.

On a positive note, the rising costs have now gotten the attention of senior management, Mr. Lehman said, which will ultimately make significant changes easier.

"Cost increases are the ultimate wake-up call," he said.



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Reinsurance market firm, but renewals less chaotic

By **DOUGLAS MCLEOD**
and **JUDY GREENWALD**

The July 1 reinsurance renewal market is "orderly" and "disciplined," which isn't necessarily good news for buyers.

Reinsurers and brokers are using such words to describe a still-hardening market that is producing double- and sometimes triple-digit price increases along with a variety of restrictions in coverage terms.

The tightening is occurring across the board, with the biggest property price hikes hitting ceding insurers

with large Sept. 11 exposures and other losses and the biggest casualty

Reinsurance Midyear Market Report

increases coming in the umbrella liability and professional liability

lines, market observers say.

Terrorism coverage, a huge concern for ceding insurers since its exclusion from most contracts last year, is now reappearing in limited forms, but with continuing exclusion of nuclear, chemical and biological terror risks, reinsurers and brokers say.

On the plus side, the post-Sept. 11 chaos that characterized the Jan. 1 renewal market has ended and renewals are being completed smoothly. In most cases, capacity is available to complete programs where reinsurers are satisfied with

pricing, observers report.

A program that is only partially completed at a given price may quickly become oversubscribed if the price is raised, noted Stephen G. Tirney, president of Philadelphia-based reinsurer PMA Capital Corp.

"That says to me the market is disciplined," Mr. Tirney said. "You can't get things finished at inadequate rates."

"Rationality has come into the market. There's no desperation buying going on and no outrageous things being sold," agreed John Berger, president and chief execu-

tive officer of Chubb Re in Bernardsville, N.J. "A lot of it comes down to price. If (ceding insurers) are willing to pay the price, the capacity is there."

"Obviously, the rates are significantly higher than they were even six months ago, but there doesn't seem to be any shortage of capacity," said Richard Di Clemente, president of New York-based THB Intermediaries Inc. "The capacity is there if the price is there, unlike the hard market of 1985, 1986."

For property reinsurance programs, the price reinsurers demand is increasingly a function of a ceding insurer's experience with World Trade Center and other losses, as well as its exposure to future losses, reinsurers and brokers say.

"On catastrophe business, there's apparently ample capacity at reasonable increases in rates, dependent upon the experience of the individual client," said John N. Gilbert Jr., president and CEO of New York-based intermediary Holborn Corp.

Reinsurance buyers that have not experienced large losses in the last year may see rate hikes of only 15% to 25%, while those with Sept. 11 losses are facing increases ranging from 50% to 100%, several reinsurers say.

In some cases, though, a ceding insurer may get a sharp rate hike despite its good loss experience.

"Many underwriters have been instructed by management on the property side to obtain 35% to 75% price increases for each and every account, regardless of the experience, to help pay back the Sept. 11 losses," said Charles T. Black, president and CEO of Dallas-based intermediary EWI Re Inc. "Some markets have walked away from programs where they haven't received those increases, especially where underwriters' hands have been tied by management."

Market observers differ over the impact that several newly formed Bermuda reinsurers have had on the property catastrophe market. These reinsurers raised billions of dollars of new capital in the months after Sept. 11 and are now actively underwriting.

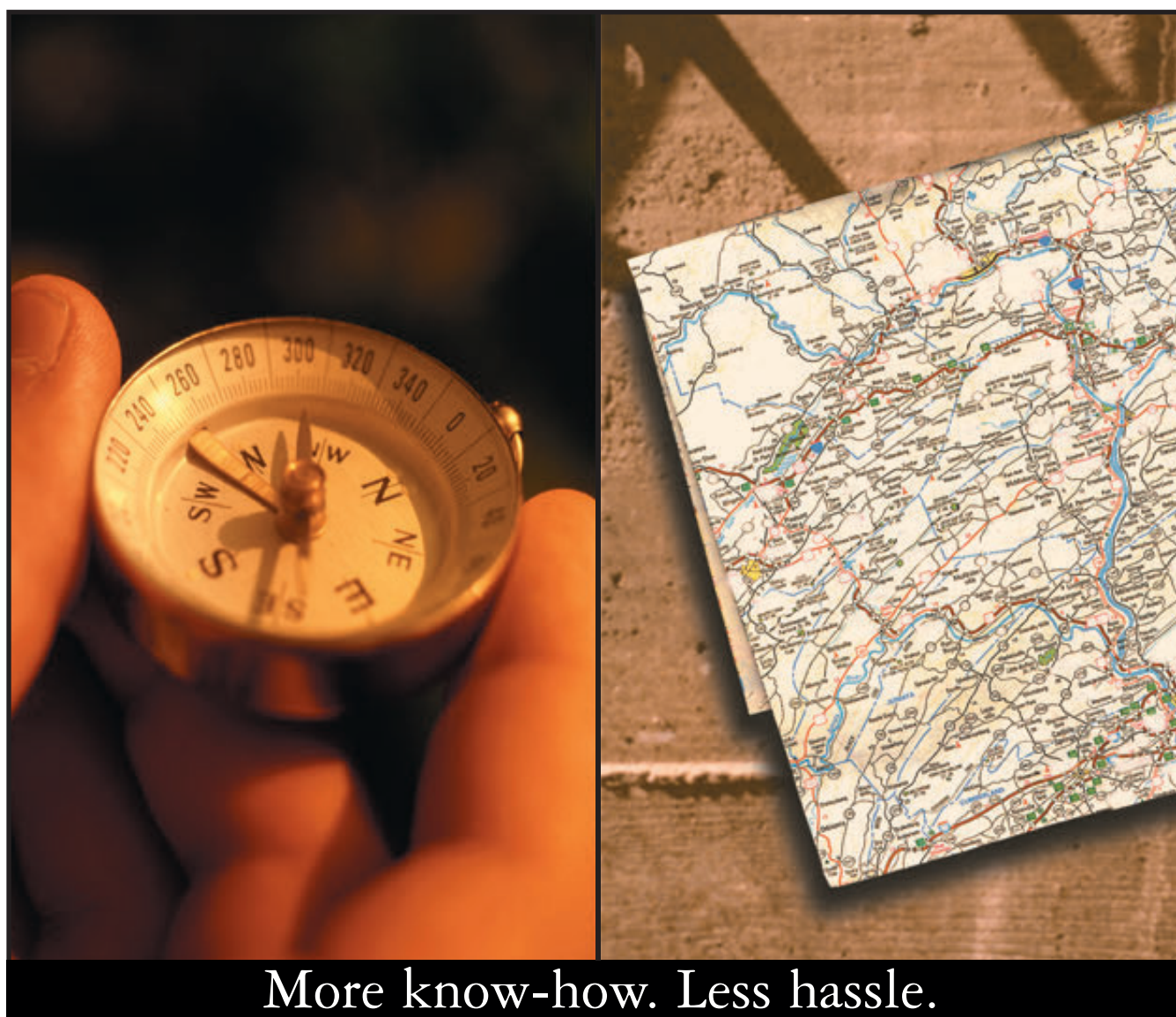
Sean F. Mooney, senior vp and chief economist at intermediary Guy Carpenter & Co. in New York, said property cat is "the one area where we see weakening," largely because of the Bermuda reinsurers. Although rates are still rising, the pace of the increase is slower than it was in January, he said.

"Without the new capacity, rate levels would have been higher," Chubb Re's Mr. Berger said.

Another factor holding down property cat rates is the exposure modeling that allows reinsurers to calculate the appropriate rate for a given risk, Mr. Mooney added. Accurate modeling makes it "very difficult for the reinsurer to get a price that's as high as the market will bear," he said.

While they may be putting the brakes on rising rates, Bermuda reinsurers are far from being recklessly

See **REINSURERS**/page 22



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Reinsurers: Market firm, but less chaotic

Continued from page 20

competitive, market observers say.

"The new reinsurers conducted themselves responsibly, seeming to be mindful of managing their aggregations by zone and also being mindful of risk accumulations on large risk programs," said Roderick P. Thaler, executive vp and national director for Willis Re in New York.

The huge commitment of capital to property catastrophe reinsurance—with relatively little money going into casualty lines—may create a "split market," said Stephen Bolland, senior vp at intermediary Gill & Roeser Inc. in New York.

"That might mean that prices hold up better, longer" for non-catastrophe business, Mr. Bolland said. But "that remains to be seen," he added. "A couple of hurricanes here and there could change that."

Some observers, however, say the additional Bermuda capacity is having little or no effect on market conditions.

'We have been so soft, sloppy and lax as an industry in the soft market. The just an across-the-board tightening of terms and conditions in property and casualty lines.'

*Rick Smith
Global P&C Re*

"It has not had any impact at all," said Rick Smith, president and CEO of the Global P&C Re unit of General Electric Co.'s Employers Reinsurance Corp. in Overland Park, Kan. Given huge industrywide losses in recent years, "\$12 billion, \$15 billion, \$20 billion, \$30 billion in new capital coming in from Bermuda is insignificant," he said.

The market for noncatastrophe property coverages, meanwhile, continues to harden, with rates climbing and terms and conditions tightening.

The property per risk excess market is "quite hard," noted Mr. Mooney. Unlike many other programs, per risk business tends to renew in July, which means this is the first time these programs have come up for renewal since Sept. 11. Per risk programs "had a lot of 9/11 losses, so, to that extent, they're being hit harder" than the average program, he said.

Reinsurers are also imposing a panoply of more restrictive conditions, ranging from higher ceding insurer retentions and reduced occurrence limits to sharp reductions in the ceding commissions allowed to reinsurance buyers, market sources say.

"We have been so soft, sloppy and lax as an industry in the soft market," Mr. Smith said. "There's just an across-the-board tightening of terms and conditions in property and casualty lines."

Terrorism exclusions, a major worry since their imposition after Sept. 11, may be loosening for some

buyers, though.

Reinsurers have "calmed down" and are now looking at each individual account, a change from last year, when "they went berserk," said Albert P. Amato, senior vp at Greenwich, Conn.-based C.L. Frates Reinsurance Intermediary Inc. "Obviously, you don't need to exclude terrorism on a fidelity treaty, right?" Mr. Amato said.

PMA Capital's Mr. Tirney agreed that a full terrorism exclusion might not make sense for, say, an Alabama personal lines auto insurer. Even these companies, though, are ex-

posed to what he called "NCB" risk—nuclear, chemical and biological terrorism—and so these risks continue to be excluded, even where the full terrorism exclusion has been withdrawn.

Ceding insurers that underwrite heavily in big cities carry a larger terrorism exposure and are likely to get a full exclusion, while insurers writing in rural areas may see the exclusion limited, reinsurers say.

The casualty reinsurance market, meanwhile, is hardening in lockstep with property.

Rising rates and tighter terms are

the norm across virtually all casualty lines, from workers compensation and general liability to professional liability and commercial auto business.

Rate hikes on liability business generally range from 40% to 70%, with much higher increases seen in some cases, brokers report.

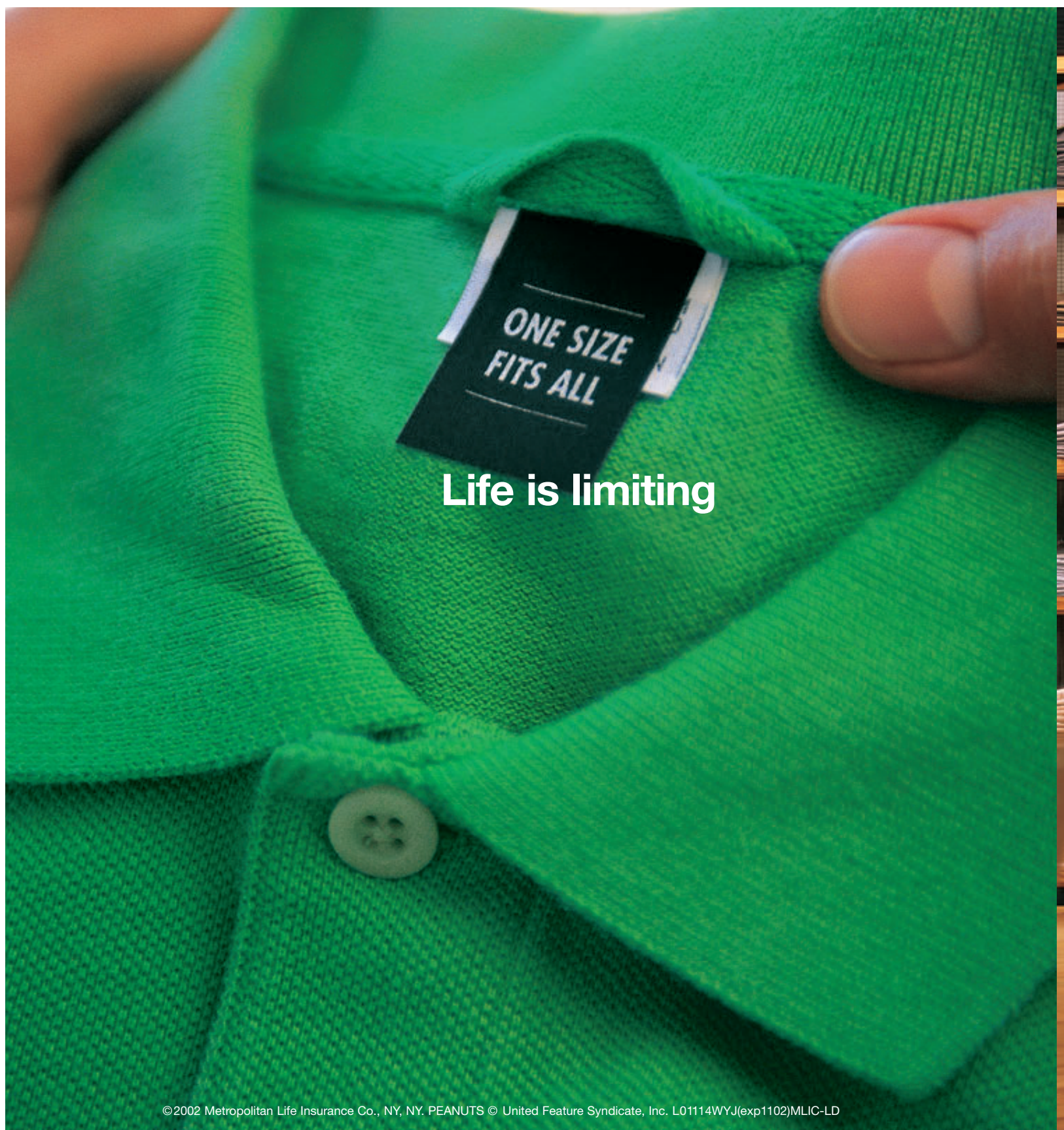
Large-capacity umbrella and general liability programs are among the toughest to place, bringing "strong double-digit" price hikes, Mr. Smith said.

Directors and officers liability and errors and omissions programs are

also being hit hard, "with hardly a day going by without some new revelation on some company having problems with its accounting," Mr. Mooney said (see story, page 10).

Despite the market tightening, July 1 renewals have gone smoothly for the most part.

This hasn't necessarily held true for new reinsurance programs, though, said David Cameron, senior vp at Benfield Blanch in Minneapolis. "It's hard to get (reinsurers) to pay attention to new deals because they're so focused on analyzing and selecting the best of what they've got on their books already and seeing what they should" get away from, he said.



Life is limiting

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Property: Higher rates, diminished capacity

Continued from page 10
ness," he said.

The pace of property rate increases may be slowing down, though.

"On average, I would've told you that, as of July of '01, price was increasing in the neighborhood of 20% to 30%," said Robert Howe, managing director in charge of property placement for Marsh Inc. in New York. After Sept. 11, rate increases jumped up into the 90% range, he said. "That pace, since January, seems to be dropping a little bit, but very slowly," he said.

Despite relative improvement in

pricing compared to last fall, "The property market is ugly," said Gary A. Baxter, assistant treasurer and director of insurance at Weyerhaeuser Co. in Federal Way, Wash.

Mr. Baxter is currently working on an Aug. 1 property renewal.

"I have been out meeting with some of our existing underwriters and some additional markets, because I think I may need additional capacity to get the job done," he said.

"I think the property market is as tight or tighter than any other area of the market," Mr. Baxter said. "I

think pricing is going to come close to doubling for accounts with good loss experience. I think carriers are going to demand higher attachment points."

For Weyerhaeuser, the timing of the market's turn may be particularly unlucky. "We've had real good loss experience if you go historically, but we've had two losses in the past year. Timing is everything," Mr. Baxter said. "We're really going to test some long-term relationships, I think."

Insurers, while sympathizing with the difficulty some buyers feel,

say the property market changes reflect a return to basics.

"It's a couple of different things. For buyers it's considered a hard market and a difficult market. For the insurers, it's a market of transition. In other words, we're stepping back and getting back to some fundamentals and really understanding our business again," said John Lawlor, vp of LMG Property, Liberty Mutual Insurance Co.'s property division in Boston. Underwriters are trying to understand total exposure, "equating premium to risk exposure and differentiating customers," he

said.

"The other thing that's happening in the marketplace is a resurgence of the need to know. Underwriters, starting with the reinsurers right on through to the primary underwriters, are asking more questions to understand the risk. I think there's a flight to quality going on among all the parties," said Mr. Lawlor.

"Companies are doing a lot of internal soul searching and trying to re-establish a more solid underwriting position for results," said Mike Petruzzello, senior vp and chief underwriting officer for Hartford Steam Boiler Inspection & Insurance Co. in Hartford, Conn. "Everybody's talking about appropriate pricing and risk selection. I think it's causing a lot of issues in terms of churning—customers are feeling the brunt of this since everybody is doing it." The reinsurance market, driven by poor results, is driving much of what the property market is doing, he said.

"The highest challenge issue for

'I think pricing is going to come close to doubling for accounts with good loss experience. I think carriers are going to demand higher attachment points.'

Gary A. Baxter
Weyerhaeuser Co.

our customers is the capacity and the price. We continue to hear some horror stories about customers trying to fill out their program," said Mike Turner, vp-marketing of Factory Mutual Insurance Co. in Johnston, R.I., which does business as FM Global. As a result, he said, many policyholders are taking a larger retention because of terms and conditions or going with "holes" in their coverage.

"The capacity is still out there, but the willingness of the underwriters to part with their theoretical capacity is diminished," said Ms. Douglass of Willis. "Certainly, what they give continues to be at a premium." She added that "the Bermuda markets have been helpful in filling some very important gaps in programs."

Looking at property insurers' reinsurance treaty renewals, Ms. Douglass said she's seeing insurers able to find property reinsurance capacity at rates that aren't as high as expected. "Unfortunately, we're not seeing that trickle down to direct pricing," she said.

"If you have a client that is willing to take a much higher retention, in some cases that doesn't have a pricing impact," Ms. Douglass said, because insurers generally are sticking to their guns on pricing.

"Capacity estimates remain relatively static," Aon's Mr. Marchitello said. "Capacity-wise, subject to ex-

See **PROPERTY**/next page



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Property: Higher rates, diminished capacity

Continued from previous page

ceptions, we're looking at bumping up against a maximum capacity of about \$1 billion worldwide."

"I wouldn't say there's been a huge influx of capacity into the marketplace, putting Bermuda aside," Mr. Marchitello said.

Mr. Baxter has met with some of the new Bermuda companies in working on Weyerhaeuser's renewal. "Those are the companies that are adding capacity to the property market, but my feeling is that while these are additional doors you can knock on, it's not going to change

things all that much," he said. "The capacity has been contracting so much these companies are just going to fill the gaps."

Excess capacity is also limited. "The challenge with the excess is the amount of capacity that's available—customers just can't buy the limits they bought six or eight months ago," said Liberty Mutual's Mr. Lawlor.

Larger retentions "are a pretty consistent feature of most renewals," said Mr. Marchitello. "More often the large retentions that we're seeing have in many cas-

es been dictated by the purchasers themselves, looking to moderate price increases."

"When you get away from the tougher classes, we haven't seen a huge push for the market to get these retentions," Mr. Marchitello said.

Finding coverage for terrorism exposures remains a problem, despite the increasing willingness of some insurers to write stand-alone policies at moderating prices.

"Excluding terrorism is still a very big issue for our clients," said Marsh's Mr. Howe. "The large ma-

jority of underwriters—certainly on big commercial risks—are seeking terrorism exclusions or sublimits to terrorism risks within their policies." Particularly hard hit by the terrorism exclusions are real estate clients and any other clients with financing arrangements in place under which they might be forced by lenders to purchase stand-alone terrorism coverage, he said.

In some cases, insurers won't write coverage in areas such as Manhattan because they can't get around fire-following requirements and reinsurance won't cover the fire

following, said Ms. Douglass. And, in some cases, buyers are willing to buy coverage without fire following, but can't do so because state law requires it. "We've had insureds say, 'I'll sign a letter agreeing that I won't have the coverage,' but that's an extracontractual matter and nobody knows how that will hold up in a court of law," she said.

"A stand-alone terrorism market has developed," said Mr. Marchitello, with American International Group Inc., Lloyd's of London, AXIS Specialty Ltd., Berkshire Hathaway Inc. and ACE Ltd. are all providing that coverage.

"The available capacity on a stand-alone basis is probably about \$1 billion, though the average purchase is probably more like \$100 million to \$200 million," Mr. Marchitello said. "Prices have moderated greatly."

The property market's harsh conditions have led some risk managers to shop their programs.

Hallmark Cards Inc. has "no horror stories to go along with those others you've heard yet, simply because we're winding out of a multiple year deal," said William M. Johnson, risk financing manager for the Kansas City, Mo.-based company.

"We're within weeks of kicking off a major project to market our global program," Mr. Johnson said. "We're going to start out early at least doing a little strategizing with the broker on this thing."

The existing five-year program, which took effect Jan. 1, 1997, includes caveats that allow the insurer, FM Global, to pass reinsurance increases through to Hallmark. Hallmark subsequently experienced a 35% premium increase on the global property program this past Jan. 1. "Here you've got fixed pricing subject to reinsurance cost passthroughs and you get socked by a 35% increase," Mr. Johnson said.

Hallmark has had its global property program with FM Global for more than 30 years, Mr. Johnson said. "But just like everything else, with the changes that are going to occur in terms and conditions as well as pricing the only way to be sure whether it makes sense in the world today is to market it against the competition."

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Specialists in the alternative risk market.

Liability: Hardening most severe in excess lines

Continued from page 10

crease, he said. The underwriters must feel comfortable with any risk they're assuming, Mr. Pickens explained.

"It comes down to, the more information you provide them with, the better position they're in to make a decision. I think that's the best way to mitigate any type of significant increases," he said.

"The industry is doing a more-appropriate job of matching the exposure to the price," said Dave Toombs, senior vp-casualty for CNA Insurance Cos. in Chicago.

But some risk managers think underwriters are going a bit overboard in their efforts to obtain information.

"The biggest thing in the casualty lines is a significant demand by carriers for information, some of which has very little relevance to what they are actually being asked to underwrite," said David L. Mair, associate director of risk management for the U.S. Olympic Committee in Colorado Springs, Colo. Mr. Mair acknowledged, though, that "some of the information is, frankly, a good-quality exchange of data that we should have been doing all along."

Mr. Mair said that he renewed some smaller specialty casualty programs such as medical malpractice and auto liability in April and May for roughly 40% increases, which stood in stark contrast to the 300% increase he received in February for his general liability program.

Although pricing is up, it is not because of the law of supply and demand. Market sources say that there is still plenty of capacity but underwriters are not as willing as previously to commit as much of it to single risk.

It is getting harder and harder to find all the coverage needed in any one place, and "trying to get those layers built up certainly is an expensive venture," said Mr. Ewing of GES.

"Limits are being used judiciously," said James Drinkwater, executive vp and national sales and marketing director for Stewart Smith Group Inc., the New York-based wholesale subsidiary of Willis Group Holdings Ltd.

Mr. Drinkwater said, for example, whereas \$50 million was once the norm for limits, insurers today are willing to put up about \$25 million today, and some won't go beyond \$15 million.

"Very few players are willing to put up more than \$25 million in a stretch," concurred Joe Peiser, managing director and head of global broking/excess casualty for Marsh Inc. in New York.

In addition to being stingy with limits, many excess and umbrella carriers are requiring higher primary attachment points.

This is forcing primary carriers to shop for facultative reinsurance to meet their policyholders' needs, according to Dan Schmitt, vp and general manager of underwriting at Liberty Mutual Insurance Co. in Boston.

"We're seeing a lot of pressure to

raise the primary attachment points, especially on auto," Marsh's Mr. Peiser said. Whereas in the past, the normal attachment point for excess coverage was \$1 million, there is pressure from insurers to push that to \$2 million now, he said.

The rate hikes for primary casualty business seem modest when compared to excess and umbrella, sources say.

Excess casualty coverage for large risk management accounts with "nondistressed" risks are "seeing average rate increases at just over 100%," said Mr. Peiser. "Ninety per-

cent of the accounts in the last couple of months ranged from 80% to 160% rate increases."

The picture is even bleaker for distressed risks, such as those with poor loss experience or those in such industries as chemical, pharmaceutical, trucking, energy and residential homebuilding. Such accounts can expect to see excess casualty rates increase anywhere from 200% to 400%, he said.

"When you look at it from a pure rate standpoint, it might be in line with the primary liability. The problem is that you're reducing your

limits at the same time," Liberty Mutual's Mr. Schmitt said of excess rates.

"So when you do a side-by-side, last-year-vs.-this-year comparison, if you're getting a 20% or 25% increase on your excess policy but you're taking your limit from \$10 million to \$5 million, you're getting a little bit more of an increase than you are on your primary," he said.

Although terrorism exclusions remain a bigger problem in the property and workers compensation markets, the issue is beginning to

creep into casualty policies, as well.

"We are seeing it become more frequently used on casualty forms," Stewart Smith's Mr. Drinkwater said. This is especially true for large resort hotels, high-risk buildings, casinos, public entities and utilities, he said.

Terrorism exclusions have become a more-significant issue in casualty coverage since April, when many insurers renewed their reinsurance treaties, Marsh's Mr. Peiser said.

Companies most affected by terrorism
See **LIABILITY**/next page

HOW DOES YOUR REINSURANCE COMPANY HOLD UP
IN THE FACE OF CHANGE?



July 8, 2002

Spotlight

Business Insurance / 27

Liability: Hardening in excess, umbrella

Continued from previous page

rorism exclusions are energy companies, owners of trophy real estate, American icons, sports teams, arenas and amusement parks, Mr. Peiser said. Because there is no stand-alone casualty terrorism policy available in the market, these companies are going without the coverage, he said.

At Liberty Mutual, terrorism is being written on an "account-by-account basis," according to Mr.

Pickens.

"In certain classes where there truly is not a significant peril associated with terrorism, the underwriter has some discretion as to whether to exclude it or not," he said.

As for commercial property owners, such as large mall owners with facilities in major metropolitan areas such as San Francisco, the District of Columbia or New York City, "I think they're struggling a bit," Mr. Pickens said.

D&O: More firming expected

Continued from page 10

Congress and securities regulators fashion new rules designed to forestall future scandals, she said.

Underwriters and brokers estimate that total D&O market capacity still approaches a hefty \$750 million. But few underwriters will offer their full \$25 million to \$50 million of limits.

Typically, insurers are writing \$10 million to \$15 million of coverage, though some insist on splitting their limits between low layers that are more susceptible to losses and presumably safer high-excess layers.

Loss-prone risks are having difficulties purchasing more than \$1 million to \$5 million of limits from any underwriter.

A hardening reinsurance market could further constrict capacity, market executives said. But, several executives noted that additional capacity should begin flowing from recently established Bermuda-based facilities by the fourth quarter.

Regardless, risk managers should expect to continue paying more premium, market executives said. Across their risk portfolios, insurers say rate hikes for primary coverage

average between 80% and 100%.

But the increases vary considerably based on a buyer's industry and loss history, insurers and brokers note. For example, highly capitalized publicly traded companies that have been hit with claims, have been poor performers or are in the loss-plagued telecommunications, technology, health care and financial services industries face rate hikes of 100% or higher, according to market executives. Large companies that have clean loss histories and operate in less volatile industries have been hit with 50% to 75% hikes.

At the low end of the rating spectrum are privately traded companies, which typically have been renewing at 15% to 30% increases, market executives said. At the high end, buyers coming off of multiyear deals have had to contend with twofold and threefold rate hikes, market executives said.

Insurers generally continue to rate low-layer excess coverage at

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Insurers generally continue to rate low-layer excess coverage at 70% to 90% of the underlying primary rate. But, 'if the underlying is not priced accurately,' the excess rate can rise to 100%.

*Jack Juhn
Kemper Financial Insurance Services*

70% to 90% of the underlying primary rate, market executives said. But, "if the underlying is not priced accurately," the excess rate can rise to 100%, noted Jack Juhn, president of Kemper Financial Insurance Services, a Berkley Heights, N.J.-based division of Kemper Insurance Cos.

"And, clearly, there are more situations where excess carriers are disagreeing with the primary pricing," said David McElroy, a senior vp in New York for the Hartford Financial Services Group Inc.

To prevent risk managers from shopping their coverage, insurers are demanding up to 150% of the expiring premium for a one-year extended reporting period. And some insurers will not offer an extend reporting period to a policyholder that decides not to renew.

Risk managers can dampen rate hikes by accepting coinsurance agreements, which underwriters say would compel policyholders to defend claims more vigorously. But many insurers report little success in implementing that cost-sharing strategy.

Risk managers are resisting coinsurance provisions because they do not understand insurers' motivation, asserted John Keogh, president of National Union Fire Insurance Co. of Pittsburgh, Pa., a subsidiary of New York-based American International Group Inc.

"We've got to do a better job of educating them," Mr. Keogh said.

See D&O/next page

D&O: More firming

Continued from previous page

"Without that, we'll see settlement values continue to escalate, and rates will go up."

Instead of accepting coinsurance, some risk managers are agreeing to at least double their retentions, market executives say.

Then there are the few but growing number of large, well-run but low-profile buyers that have decided to drop much of their D&O coverage until the market settles down, insurers and brokers note.

Those companies are confident that their directors and officers will not incur any losses that corporate

bylaws require the companies to absorb. So, for a considerable cost savings, those companies have abandoned the so-called "side B" D&O coverage that would cover them for such losses. But those companies still purchase "side A" coverage, which responds when directors and officers face losses for which their companies cannot reimburse them.

"I wouldn't say it's a trend, but there's a lot more interest in it," said Fred T. Podolsky, the New York-based chief executive officer for Willis Global Financial & Executive Risk, a division of Willis Group Holdings Ltd.

SHRM: Investigation risks

Continued from page 3

tion, is to draft strong employee guidelines. The policy should state both the nature of employee behavior that is unacceptable in the workplace and the fact that the employer intends to investigate claims of improper conduct, he said.

But Mr. Gregg warned that the policy should not warrant that any investigation reports would be kept confidential; typically, he said, an employer would have to make an investigation's findings public if a lawsuit were to be filed. Don't guarantee confidentiality, Mr. Gregg said, "because you can't deliver it."

When it comes to describing the potential punishment for violations of employee guidelines, the document should not indicate that all violations would result in reprimand or termination, Mr. Gregg said. Such language, he said, prevents the adoption of more-informal punishments, which, at times, could be what is needed. "Give yourself some latitude with the process," he said.

Mr. Gregg also recommended that the policy not detail how the investigation process would work. In particular, he said, the policy should not specify exact deadlines

for accomplishing specific steps in the process, such as for interviewing witnesses or producing a final report. Again, such language could lock the employer into a fixed process, and any deviation from that course could invalidate the ultimate outcome of the investigation, Mr. Gregg said. "If you don't follow it to the letter, your punishment can be overturned," he said.

Any investigation could result in a number of lawsuits by an employee against the employer, including suits alleging an invasion of privacy or defamation, if the probe was not handled properly, Mr. Gregg said.

In general, employees' expectation of privacy "depends on what you told them," he said. If employees are told that they have no privacy in the workplace, then they have none, he said.

To be effective, the employer policy needs to be put in writing and

An employer would have to make an investigation's findings public if a lawsuit were to be filed. Don't guarantee confidentiality, 'because you can't deliver it.

*Robert Gregg
Boardman, Suhr, Curry & Field*

sent to each employee, who should then be required to sign a statement indicating that he or she has received and understands the policy. Without this written policy regarding privacy, an employer's ability to investigate employee actions on its own premises could be limited, Mr. Gregg explained.

Confidentiality is another area in which an employer could be exposed to a suit by employees. Any investigation should be kept private, and the disciplinary action and the reasons for it should not be broadcast widely or shared with other employees, friends or family members, Mr. Gregg advised. He warned against speaking about an investigation in public or around the worksite, because others could overhear the conversations.

Another potential source of litigation concerns defamation of an employee, the making of false statements, either intentionally or unintentionally, about the employee.

Mr. Gregg said that a big concern for employers is negligent defamation, the unintentional making of false statements about an employee. To avoid such an exposure, the employer should be sure it has the facts to back up its statements. Mr. Gregg cautioned employers not to depend on unreliable witness statements or hearsay in reaching conclusions.

Mr. Gregg warned employers to "describe facts; don't label people." He cautioned, for example, against describing an individual as "an alcoholic." Rather, he said, specify the facts, such as, for example, that the employee was drunk at work on a given date, instead of drawing conclusions about the individual.

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Society for Human Resource Management Conference

Benefit offerings must fit corporate goals

By MICHAEL PRINCE

PHILADELPHIA—As health care costs increase, benefit managers need to review their benefit offerings to ensure they continue to meet corporate goals, a consultant says.

Benefit managers need to “take a look at the big picture,” and assess whether their current benefit program fits with overall corporate strategy, said Gary Kushner, president of Kushner & Co. Inc. a benefit consulting firm in Kalamazoo, Mich.

“How are my benefit offerings fitting into my HR and organizational strategies,” is a question that benefit managers should ask, Mr. Kushner told attendees at the 54th annual conference of the Society for Human Resource Management in Philadelphia last month.

The most pressing issue for benefit managers is coping with health care cost increases that show no signs of abating, he said. If the current trend continues, health care expenditures for large employers in 2007 will be double what they paid in 1999, with small employers fac-

ing even bigger increases, he said.

“So you want to think of today as the good old days,” he said.

To deal with these rising costs, employers need to look at reinventing how health care is delivered, Mr. Kushner said. One method that is growing is focusing more on value purchasing, he said.

During the 1990s, employers pushed to expand the size of their provider networks, he recalled. While this expanded choice, it also diluted employers’ buying power and lowered the discounts that could be obtained from network

providers.

More recently, employers have been pushing to shrink their networks by weeding out providers and hospitals that are found to be lower in quality or in value, he said.

“This is just beginning to catch on,” Mr. Kushner said.

But beyond health care, employers also need to rethink other benefit offerings with an eye on whether they continue to fit within the organization’s overall strategy.

For example, he said, many employers traditionally offer accidental death and dismemberment in-

surance. But if an employer wants to structure its benefit package to attract and retain employees, this coverage may not fit that goal because few employees care about it, he suggested.

Rather than offer benefits because they have traditionally been provided employers instead should take a fresh look at how each benefit supports corporate strategy, he advised.

Mr. Kushner also recommended re-examining who pays and how much for each benefit. Generally, everyone pays the same amount for benefits, without regard to an employee’s salary, but, he asked, does this make sense?

In response, he noted, some employers are implementing a tiered system, in which employees with higher salaries pay more for their benefits than those with lower salaries.

Another area in need of a strategic review is retiree health plans, Mr. Kushner said. Over the past few years, employers have been dropping retiree health plans as their costs have risen dramatically. But this could be a short-term solution that hurts corporate goals in the long run, he cautioned.

In 10-15 years, “I can make the case that retiree health will be your most valuable benefit offering,” he said.

This is because as the baby boomer generation nears retirement they will look for employers that offer retiree health benefits.

“The promise of retiree health may just be the thing to keep them here,” he said.

With a more strategic approach to benefits, an enhanced communication strategy is also necessary, he said. Too often, communication to employees is only done at open enrollment. But this is not sufficient to explain to employees the strategy behind the benefits they receive, he said. If a benefit is intended to promote a corporate strategy, that goal needs to be regularly conveyed to employees so they know of it and can support it.

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15,000 attend SHRM

PHILADELPHIA—More than 15,000 people flocked to Philadelphia to attend the 54th annual Society for Human Resource Management conference, held June 22-26. The conference featured more than 750 exhibitors and more than 150 educational sessions.

The meeting opened with a speech by former New York City Mayor Rudolph Giuliani. Other featured speakers included author David McCullough; Secretary of Labor Elaine Chao; and Gordon Bethune, the chairman and chief executive officer of Continental Airlines Inc.

Next year’s conference is scheduled for June 23-26 in Orlando, Fla. For more information, visit the SHRM Web site, at www.shrm.org.

HSE sees higher insurance costs spurring improved U.K. safety

By CAROLYN ALDRED

A radical reformation of U.K. occupational injury and illness insurance arrangements to make employers bear more of the costs of work-related injuries and illness—including the costs of medical treatment—would motivate employers to improve health and safety and rehabilitation, according to a research report commissioned by the Health and Safety Executive.

A complete overhaul of the current system, putting it on a par with those of other countries, could result in employers bearing more than 10 times their current employ-

ment liability costs, the report said. It also could create a much larger private insurance market by eliminating up to about £1.54 billion (\$2.35 billion) of the benefits now provided by the state.

The report, prepared following consultation with employers and insurers, compares the U.K. employer liability system with workers compensation systems in the United States, Canada, Europe and Australia and concluded that U.K. employers have far less financial motivation to improve safety, partly because of state-provided benefits, including free health care from the National Health Service.

"Insurance can be an important lever in motivating employers to practice good health and safety," said Peter Graham, the director of the HSE's strategy and analytical support directorate. "The U.K. can learn much from systems operated in other countries, and initial reaction to the research shows that there is a willingness from both employers and insurance firms to explore different options."

The report recommends further study of changes and suggests three options the government, industry and the HSE should consider:

- The development by government, insurers and employers of

best-practice models to improve health and safety standards and rehabilitation.

- Reform laws, regulations and court procedures so that, for example, employers must implement rehabilitation policies, judges can increase pain-and-suffering awards and reduce the burden of proof required by claimants.

- Replace the current fault-based litigation process and employer liability insurance with a no-fault occupational health and insurance requirement paid for by employers. The insurance would cover employees for their loss of earnings and

See HSE/page 34

Norway's insurers urge mandatory terrorism coverage

By GERARD O'DWYER

OSLO, Norway—Following months of discussions that began in April, Norwegian insurance groups have presented the government with a proposal that, if implemented, would require all commercial operations in the country to buy coverage for terrorism.

Copies of the proposal have been sent to the Department of Justice and to the Cabinet of Prime Minister Kjell Magne Bondevik.

Odd Einar Dorum, Norway's minister of justice, said he supports the insurance industry's view that an increase in the annual commercial premium will become inevitable as businesses recognize the need to obtain insurance coverage for acts of terrorism.

Business and consumer groups in Norway, though, have described the proposal as "whimsical" and "bizarre."

"It seems very strange, indeed, that insurance companies want a system that would require all Norwegian corporations to take out mandatory terrorist risk cover. It sounds like a tremendous money-generating idea," said Bjorn Erik Thon, a lawyer with the Norwegian Consumers Assn.

Most insurers readily admit that the likelihood of terrorist attacks in Norway is minimal. All contend, though, that attacks cannot be ruled out, particularly because of Norway's close relationship with the United States and its membership in NATO.

The majority opinion within the insurance sector in Norway, according to insurance executives, favors a



PHOTO: REUTERS

Insurers have sent Norwegian Prime Minister Kjell Mange Bondevik a proposal calling on the government to make commercial terrorism coverage mandatory.

new system that accommodates the risk of terrorist attack and lowers the risk of massive insurance payouts. They say that the insurance industry regards the legislative route as the best way to secure this objective.

"We sincerely hope the government and the Storting (parliament) will approve policies and laws that make it mandatory on companies and public enterprises to insure against the risk of terrorist attack," said a spokesman for insurer Gjensidige in Oslo. "If we can obtain such legislation, we would be well on our way to creating a highly effective insurance system."

See NORWAY/page 33

Brazil's government removes directors of big pension fund

By MICHAEL KEPP

RIO DE JANEIRO, Brazil—The Brazilian government's recent intervention in the country's largest pension fund was a rare move expected to make the fund more governable and reduce the volatility of its investment portfolio, according to government representatives and some consultants.

Social Security Minister Jose Cechin ordered the removal of the fund's directors after the \$14.6 billion pension fund of the state-owned Banco do Brasil refused to comply with a May 2001 law that changed how fund participants should be represented on the board.

The government-appointed "intervenor," Carlos Eduardo Esteves Lima, has named a six-member committee, made up of the fund's existing in-house asset managers, to make the day-to-day investments of the pension fund. Mr. Esteves Lima said he believes the process of electing and appointing new board members, based on the new law, will take no more than 60 days.

The fund—the Caixa de Previdência dos Funcionários do Banco do Brasil, known as Previ—has been criticized by government officials for being too heavily invested in stocks. But Jose Roberto Ferriera Savoia, the head of the Secretaria de Previdência Complementar, the pension fund regulatory agency, denied that had anything to do with the recent action.

The new law, No. 108, said the

boards of all pension funds sponsored by state-owned companies could have no more than six members and that there had to be an equal number of members elected by participants and appointed by the company. The law also gave the tie-breaking vote to one of the sponsor-appointed members, elected by the other two.

And it was that tie-breaking vote that was the sticking point for some of the directors of Previ.

In 1998, a change in the Previ bylaws allowed its executive board, which made day-to-day investment decisions, to have three participant-elected members and three sponsor-appointed members, with four votes needed to approve any decisions. The change also gave Previ's board of governors, which approved all investment and other decisions, four participant-elected members and three sponsor-appointed ones, with five votes needed to approve any decision. Neither board had a tie-breaking rule.

On both Previ boards, participant-elected members often took diametrically opposed positions with the sponsor-appointed members on important decisions, and deadlocks occurred. One such deadlock was whether to change the Previ bylaws to comply with law No. 108, with the participant-elected members on both Previ boards voting against compliance.

See BRAZIL/next page

World Updates

U.K. postpones pension rule

British companies no longer have to comply with controversial new pension reporting standard by December 2002, after the Accounting Standards Board announced a postponement last week. Many companies have closed their existing final salary pension plans in recent months because of the large liabilities that the new financial reporting rules would bring onto their balance sheets. FRS 17 requires companies to recognize actuarial gains and losses arising in defined benefit plans as they occur.

Trenwick arbitrating over securitization

Trenwick Group Ltd. has begun an arbitration proceeding to seek \$55 million in damages and other relief from Swiss Reinsurance Co. unit European Reinsurance Co. of Zurich in connection with a catastrophe equity put option between Trenwick and European Re. Trenwick said earlier this year that it would exercise the option to add capital to offset property losses incurred by Trenwick unit LaSalle Re Ltd. in connection with the Sept. 11 attacks. The option agreement entitles Trenwick to raise \$55 million by selling to European Re 550,000 convertible perpetual preferred shares at \$100 per share. "They haven't responded," said Alan L. Hunte, chief financial officer of Hamilton, Bermuda-based Trenwick. "So this was something that we felt we could do to expedite the process." A Swiss Re spokesman said European Re is in "the process of exercising its contractual right to determine whether Trenwick is entitled to exercise" the equity put option at this time.

Japanese insurers Yasuda, Nissan merge

Yasuda Fire & Marine Insurance Co. and Nissan Fire & Marine Insurance Co. have merged, forming one of Japan's largest casualty insurers. The new company, Sompo Japan Insurance Inc., will have a combined net premium volume of 1.23 trillion yen (\$10.29 billion) for 2002, the companies said in a joint statement issued earlier this year to announce the proposed merger. Sompo Japan, which is based in Tokyo, is headed by President and Chief Executive Officer Hiroshi Hirano, the president and CEO of Yasuda. Following the merger announcement, Sompo Japan was assigned an AA- financial strength and long-term credit rating by Standard & Poor's Corp. The rating agency said, however, that the long-term outlook on its rating for Sompo Japan is negative at this time.

Brazil: Government removes pension fund directors

Continued from previous page

Erik Persson, who was a participant-elected director on the executive board, explained the vote against compliance: "Giving a sponsor-appointed member the tie-breaking vote in any decision would have given the government all the decision-making power on Previ's board."

Mr. Persson and the other removed participant-elected directors are studying whether to take legal action to overturn their ouster.

The pension fund regulatory agency's Mr. Savoia said, "Congress approved law No. 108 to make pen-

sion funds more governable, especially where pension fund bylaws, like those of Previ, created decision-making deadlocks."

Mr. Savoia also said that all 85 other state-owned-company pension funds complied with the law. The great majority of those pension funds had no participant-elected members on their boards, with the rest having only one or two members.

The Associacao Brasileira das Entidades Fechadas de Previdencia Complementar, the national association of Brazilian pension funds known as ABRAPP, came out strong-

ly against the government's intervention in Previ. ABRAPP President Fernando Pimentel said, "The best formula for governing (state-sponsored) pension funds is through understandings between the two sides, not intervention."

Mr. Pimentel added that law No. 108 "allows for management alternatives that could satisfy the interests of the participants and the sponsor."

Mr. Persson agreed, saying, "Law No. 108 didn't make the (tie-breaking) vote a mandatory way of breaking pension fund board deadlocks but an optional one."

But Ana Maria Martins, the head of legal consulting for the Brazil office of William M. Mercer in Sao Paulo, disagreed. "Law No. 108 makes the...vote a mandatory, not an optional, one, unless under special circumstances, the government" approves waiving it, she said.

An underlying tension at the fund has been criticism of its heavy equity investments. In 2001, when the stock market dropped 22% in dollar terms, Previ produced a technical deficit of close to \$1 billion.

Speaking after the government's takeover, Mr. Cechin, the social security minister, said, "Our orienta-

tion is that, from now on, new Previ investments should minimize risk."

But Mr. Persson said Previ already has minimized risk. He said Previ now has 55.2% in stocks, down from 60.4% in mid-2000. Previ also increased fixed-income investments to 30.6%, from 22%; dropped real estate investments to 5.8%, from 6%; and decreased loans to participants to 8.4%, from 11.4%, in that time period.

Previ's current 55.2% in stocks, though, is still well above the 45% maximum permitted by a 2001 law for defined benefit pension fund participants.

"Previ had, in 2001, presented the government with a five-year plan to reach the maximum 45% stock investment allocation level for defined benefits plan participants by the end of 2005," Mr. Savoia said. "Given the volatility of the Brazilian stock market, that's a very long and risk-inducing time....Previ should have reduced its stock exposure more quickly. I believe that future Previ executive boards will more rapidly reduce the pension fund's stock exposure and meet, if not anticipate, its end 2005 deadline for doing so."

Mr. Persson said Previ's heavy stock allocation resulted from the government's encouragement of fund officials to take part in the privatizations of many state-owned companies during the mid-1990s.

"Previ was among the few local entities that had the financial resources to bid on big, for-sale state companies...and the government needed Previ's money to do so, not just to sell the firms but to encourage other bidders to take part in the bidding auctions and thus boost their final sales price," Mr. Persson said. "It's the government who is to blame for Previ's having such a high stock exposure position."

Many industry observers agreed with that view, in part. They added that when the bylaw changes brought participants onto the Previ board, the board deadlocked not only over how quickly to reduce stock exposure but also where to allocate money from the sales.

"As of 1998, Previ's elected members seemed more interested in allocating money to socially responsible projects rather than maximizing returns for participants, the role of a pension fund," said Luiz Roberto Gouveia, the general manager of the Brazil office of Towers Perrin, Rio de Janeiro. "The new Previ board should be able to make decisions more easily and take a more-conservative asset management risk, one that minimizes risk more."

Lauro Araujo, the head of investment consulting for Mercer's Brazil office, agreed. "The government's legal basis for intervening in Previ was its noncompliance with law No. 108. But such noncompliance was the result of one of numerous deadlocks between Previ board members, who took opposing political positions...rather than looking out for the best interest of participants."

Michael Kepp is a reporter for Pensions & Investments, a sister publication of Business Insurance.

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July 8, 2002

Norway: Insurers seek mandatory terror coverage

Continued from page 31

Mr. Aasebo noted that Scandinavian governments have played a key role since Sept. 11 in supporting the insurance industry through policy initiatives and state subsidies. Nordic governments have pledged financial guarantees to Stockholm, Sweden-based Scandinavian Airlines System; and Braathens and Wideroe, two Norwegian units of SAS.

Governments in Denmark, Finland and Sweden also back an initiative by insurers to raise rates and to require airlines to sign policies limiting war risk coverage to \$50 million per aircraft, well below the minimum \$750 million per aircraft coverage required by most European airports.

'The aftereffects of the Sept. 11 attacks are most visible in the property insurance policies of companies. The number of reinsurers can be expected to decline, and terms are much tighter.'

Harri Ek
Sampo Insurance Co. Ltd.

In May, the Copenhagen-based Danish Insurance Assn. appointed a seven-member special emergency task force to examine "all aspects" arising from terror incidents from a reinsurance cost and liability perspective.

The task force will examine not just the risks associated with domestic and international terrorist incidents but will produce wide-ranging reports assessing the potential impact of certain terrorist acts on the nonlife insurance industry, including accident insurers and reinsurers.

The DIA is also proposing the establishment of a claims fund containing a substantial cash amount. The fund would involve the Danish market's largest insurance groups, with contributions coming from both public and private sources.

Given the strong cross-ownership element that exists in the Nordic insurance sector, the DIA is also exploring the possibility of inviting major insurers in Denmark, Finland, Norway and Sweden to create a pan-Nordic fund.

The insurance industry maintains that, in the case of oil-producing Nordic nations such as Denmark and Norway, oil production platforms and refineries are highly

susceptible to terrorist attacks, and they say that additional premium loading here could be significant. Larger oil platforms, such as Troll and Ekofisk—owned by the state-run Statoil and located on the North Sea—could find it difficult to obtain insurance cover at any price.

"Premiums could increase by up to 60% in some cases, and extra

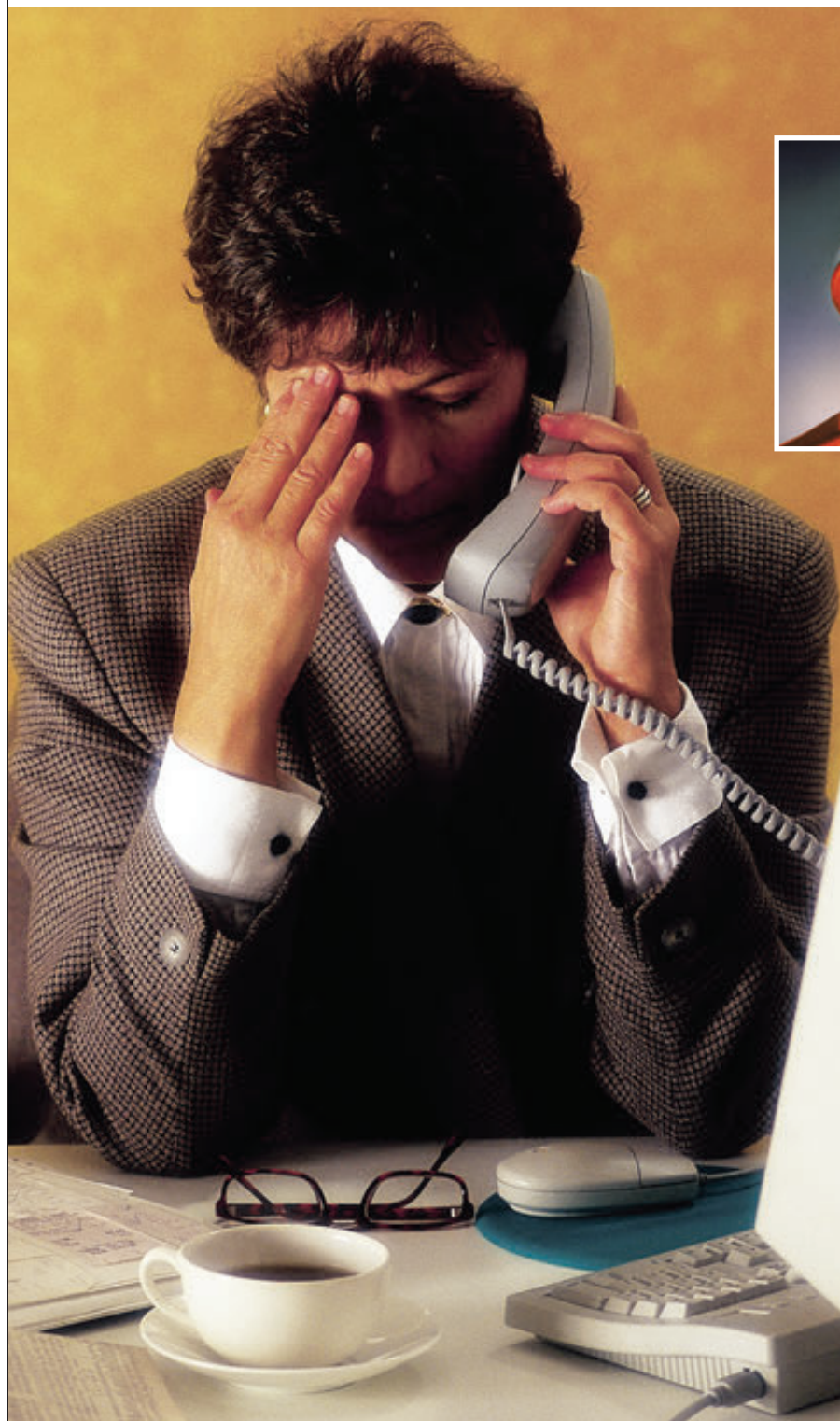
loading result as insurers incur additional reinsurance costs," said Ingvar Strom, head of the Norwegian trade finance association FNH, based on Oslo. The organization has asked the Norwegian government to support the country's business and industry by underwriting part or all of the increased insurance cost.

"The aftereffects of the Sept. 11 attacks are most visible in the property insurance policies of companies. The number of reinsurers can be expected to decline, and terms are much tighter," said Harri Ek, the head of the maritime insurance division of Finnish insurer Sampo Insurance Co. Ltd.

"The goal in Finland and Scandi-

navia will be to negotiate new terms and higher premiums before existing policies are discontinued. At this time, it is difficult to say by what amount premiums will rise. If insurance premiums for policies against war only double in the shipping business, those companies can consider themselves lucky," Mr. Ek said.

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HSE: Report explores safety, insurance cost link

Continued from page 31

health care costs, as well as their rehabilitation costs.

In the United Kingdom, two main systems of financial compensation exist for workplace injuries and illness: employer liability insurance, a fault-based system under which employees may receive damages for accidents or ill health; and the Industrial Injuries Disablement Benefit, a state-funded benefit provided on a no-fault basis.

"It has long been argued that the Industrial Injuries Disablement Benefit scheme offers no incentive for companies to improve their safety record and that there is little evidence the employers' liability insurance does so, either," the HSE said in a statement that accompanied the report.

The HSE commissioned research last year to examine possible changes to the insurance and compensation arrangements to motivate changes in safety performance and encourage greater business focus on this area.

"Our research indicates that U.K. employers would be motivated to improve occupational health and safety and rehabilitation if the cost of insurance increased and they believed there was a link between their performance and the cost of insurance," according to report au-

thors Michael Wright and Sara Marsden, of the Reading-based risk management consulting firm Greenstreet Berman Ltd.

'It has long been argued that the Industrial Injuries Disablement Benefit scheme offers no incentive for companies to improve their safety record and that there is little evidence the employers' liability insurance does so, either.'

U.K. Health and Safety Executive

The report said the current U.K. insurance system is designed to ensure that employers have funds to meet costs arising from employees' litigation for compensation rather than to motivate health, safety or rehabilitation. This system differs from other countries', the report's authors point out, citing the following examples:

- U.S., Canadian, Australian and German plans provide a financial motivation for employers to reduce

the number and severity of injuries and cases of illness, particularly by the use of experience rating and ensuring that all recognized costs are funded by a single benefit plan.

- Germany prioritizes rehabilitation over compensation, limiting compensation to the loss of earnings after rehabilitation and vocational retraining, and makes the provision of prevention services an integral element of insurer activity.

- U.S., Canadian and Australian plans reduce uncertainty about compensation costs and the level of legal costs by operating "no fault" systems.

- Canadian, Australian and German plans promote the availability of health and safety advice to small and medium-size enterprises as an integral part of insurer activity.

- Overseas plans cover all work-related injuries, often including those that result from traffic accidents, and, hence, place a wider boundary on "work."

The HSE report notes that the cost of employer liability in the United Kingdom cannot be compared with the cost of overseas plans, because the cost of injury and illness in the United Kingdom is spread across state benefits and insurance plans, while overseas plans are more integrated.

In the other countries surveyed

by the report, the cost of workers comp ranges from 1.5% to 3% of payroll, whereas the cost of employers liability in the United Kingdom is about 0.23% of the total salary bill.

'Our research indicates that U.K. employers would be motivated to improve occupational health and safety and rehabilitation if the cost of insurance increased and they believed there was a link between their performance and the cost of insurance.'

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Sara Marsden
Greenstreet Berman Ltd.*

However, the total tangible costs of work-related injury and illness in the United Kingdom—including NHS costs, salaries paid to employees absent from work through illness and IIDB payments—are about 1% of the U.K. payroll. This increases to 2.5% of payroll if pain-and-suffering awards are included, ac-

ording to the report.

According to the report, the total costs of work-related ill health and injury that could be included in a restructured "integrated" insurance system include £1.98 billion (\$3.04 billion), currently borne by employers; £577.4 million (\$884.6 million) to £581 million (\$890.2 million), currently borne by individuals through additional expenditure incurred on travel, medicine and other expenses; £1.04 billion (\$1.59 billion) to £1.54 billion (\$2.35 billion), currently borne by taxpayers for medical treatment, accident investigation, state benefit costs and administration.

This would bring the total cost to be borne by the employer through an "integrated" insurance plan to £3.60 billion (\$5.52 billion) to £4.10 billion (\$6.28 billion). That figure is 4.5 to 5 times the costs currently included in employers liability insurance. Including pain and suffering would bring the costs up to £9.10 billion (\$13.94 billion) to £9.60 billion (\$14.71 billion), an increase of 11 to 11.5 times the current level.

A survey of 658 U.K. employers conducted as part of the report showed that:

- Employers liability is perceived to be a significant business expense, **See HSE/next page**

EBC Call for Entries

Now in its 30th year, the Employee Benefits Communication Awards acknowledge excellence in communicating employee benefit programs. The EBC competition couldn't be more timely as the impact of rising healthcare costs demands even more effective and efficient use of employee benefits.

The competition judges the effectiveness of the benefits communication effort and no value is placed on the actual benefits offered by a particular company. A panel of executives knowledgeable in various aspects of communication will select winners from a variety of categories.

- All companies in the U.S. and Canada are eligible to enter their own benefit communication programs.
- There are no restrictions as to the size of company or cost involved in the preparation of the benefit programs.
- No generic programs are accepted.
- Consulting firms are invited to submit programs on behalf of their clients.

The deadline for completed entries is July 15.

To download the EBC rules and entry form, go to www.businessinsurance.com or for an electronic version, e-mail: bobrien@crain.com

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Business Insurance



SAVE THE DATE:
Winners of this year's EBC Awards will be announced in the December 9 issue of *Business Insurance* and honored at a luncheon in New York City.

HSE: Report explores safety, insurance cost link

Continued from page 31

health care costs, as well as their rehabilitation costs.

In the United Kingdom, two main systems of financial compensation exist for workplace injuries and illness: employer liability insurance, a fault-based system under which employees may receive damages for accidents or ill health; and the Industrial Injuries Disablement Benefit, a state-funded benefit provided on a no-fault basis.

"It has long been argued that the Industrial Injuries Disablement Benefit scheme offers no incentive for companies to improve their safety record and that there is little evidence the employers' liability insurance does so, either," the HSE said in a statement that accompanied the report.

The HSE commissioned research last year to examine possible changes to the insurance and compensation arrangements to motivate changes in safety performance and encourage greater business focus on this area.

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July 8, 2002

HSE: Link of safety, insurance costs explored

Continued from previous page

and most large and medium-size organizations are trying to reduce the costs. Employers believe they control health and safety in their organizations, but only half believe that the cost of employer liability is related to their standard of management.

- Employers generally agree that injured employees should have rehabilitation before compensation is settled. About half the responding employers agree that employers should pay for rehabilitation, and they say they would prefer to insure against the costs of rehabilitation.

- Only a minority of employers would accept a 20% increase in employer liability costs to pay for improved health and safety services.

- Most employers agree that a no-fault plan would lead to increased claims and increased cost and fraud, without reducing legal costs and without being fairer to employees.

- If the costs of employer liability increased significantly, most employers would attempt to improve health and safety, contest claims, improve rehabilitation and avoid the recruitment of previously injured persons.

- Most employers said they would be motivated by the prospect of a 50% surcharge or rebate to improve health and safety.

Meanwhile, discussions with and a survey of insurers showed that they are supportive of more rehabilitation and open to the idea of a no-fault insurance system, though they agreed that it probably would lead to more claims. Insurers were also found to be open to the idea of merging the employer liability and IIDB programs and supportive of making employers more aware of the fact that the state heavily subsidizes employers through the IIDB, NHS and other benefits.

The Confederation of British Industry would not welcome a complete overhaul of the existing employer liability system, though it recognizes faults in that system, said Janet Asherson, head of CBI's environmental affairs.

The CBI also would be opposed to the introduction of a total no-fault system, Ms. Asherson said, pointing out that industry already contributes to the state through its taxes.

An HSE spokesman said that the HSE would be promoting discussions of the report's findings with representatives of the insurance industry, business and trade unions.

Copies of the report are available through the HSE Web site, www.hse.gov.uk.

BI calls for Best of the Web entries

Business Insurance is seeking entries for its second annual Best of the Web competition.

The Best of the Web Awards were created by *Business Insurance* to recognize and promote excellence in Internet-based services for corporate risk and employee benefit executives.

Web sites that are designed primarily—though not necessarily exclusively—to serve buyers of commercial insurance services may be submitted for consideration.

Web sites will be judged on their functionality, interactivity, design, innovation and relevance to the

buyer of commercial insurance services (i.e., risk managers and employee benefit managers).

To be considered, a site must fit into one of eight specified contest categories: insurance services, claims services, risk management services, benefits management services, health plan services, claims services, legal services and educational/professional services.

Detailed information about the eight categories and rules and entry forms for the competition can be downloaded from the Datebook section of www.businessinsurance.com.

The deadline for submitting com-

pleted entries to *BI* is Aug. 12.

Web site sponsors from anywhere in the world may enter, though the sites must be accessible via the World Wide Web and should be understandable to English-speaking judges.

All contest entries will be screened by a panel of *BI* editors to ensure that they fit the specific contest categories for which they are entered and that they meet the criteria for entry.

A panel of independent judges—knowledgeable in various aspects of risk management, benefits management, insurance and technology—

will then score the entries and select the highest-scoring candidates in each category as *BI*'s Best of the Web.

The panel has the option to present additional Awards of Excellence in any category.

The winners of the 2002 competition will be announced and profiled in the Nov. 4 issue of *Business Insurance*.

To obtain an entry form and rules for the competition, visit www.businessinsurance.com or send an e-mail with the words "Best of the Web" in the subject line to: pwinston@crain.com.

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Certificates, compliance tracked online

LITTLETON, Colo.—Risk managers and others who must keep track of insurance certificates can access a free Internet-based service that can help them deal with that sometimes time-consuming task.

Ins-Cert.com allows users to track certificates, as well as generate e-mail and fax notices of noncompliance. Instead of archiving paper certificates, users can print certificates from the system, saving work time and storage space.

"We have created a database that can be accessed over the Internet by agents, brokers and certificate holders," explained William R. Hartigan, the president of Littleton, Colo.-based Ins-Cert.com. Input is handled by agents and brokers, who are charged \$3 per certificate. A 25-cent charge is assessed to the intermediary when a certificate is viewed.

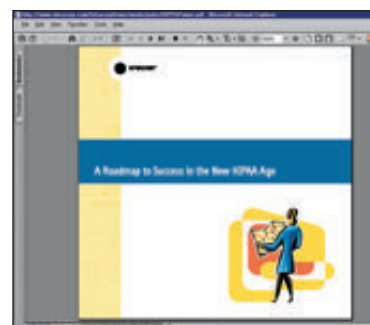
Mr. Hartigan pointed out that the charges are much less than the cost

incurred by agents and brokers to maintain certificates and issue copies to those who request them.

Ins-Cert, located at www.ins-cert.com, also allows users to:

- Print signed certificates.
- Compile expiration reports that save time in tracking and requesting renewal certificates.
- Verify insurance compliance from any location at any time.
- Produce reports that indicate whether proper insurance coverage is in place.

More information is available at the Web site, or by contacting Mr. Hartigan at 303-346-3889.



HIPAA compliance primer offered

PHILADELPHIA—Intracorp is offering employers a free primer to understanding the Health Insurance Portability & Accountability

Act and compliance with its rules by the April 2003 deadline.

The booklet, "A Roadmap to Success in the New HIPAA Age," is available for downloading from www.intracorp.com.

Included in the booklet's advice are "concrete steps that employers can take to create a corporate culture that supports HIPAA compliance and emphasizes the common sense, instinctual protection of confidential health data."

An employer checklist is included to help employers create a corporate culture that emphasizes data privacy and security. The booklet also outlines penalties for not complying with HIPAA requirements.

To download the booklet, click on the media center at Intracorp's home page and then click on publications and reports.



Software monitors workers' Internet use

VERO BEACH, Fla.—Employers worried about risks related to employees' Internet access have a new way to monitor that activity.

SpectorSoft Corp.'s Spector Professional Edition is designed to protect companies from the liabilities that could be created through inappropriate use of the Internet. Lost productivity and bandwidth consumption are other concerns that the software can address.

The product records both sides of chat room conversations and can alert administrators by e-mail when specified keywords are detected in conversations, e-mail or Web pages. Sophisticated keystroke journals are produced by the software, and it displays a list of all incoming and outgoing e-mail.

More information on the product is available at www.spectorsoft.com or by calling 888-598-2788.

Comp case management for self-insured employers

MINNEAPOLIS—RTW Inc. is launching a new business unit to provide its workers compensation case management and claims management services to self-insurers and other alternative markets.

The new unit of the Minneapolis-based manager of disability products and services will begin offering its services July 15. David M. Dietz will head the unit, RTW Self Insured Services, as director of self-insured services.

More information is available from RTW at 800-789-2242.

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Taxing transfer of assets offshore

Bill targets companies that reincorporate overseas

By DOUGLAS McLEOD

WASHINGTON—The chairman of the House Ways and Means Committee is planning to introduce legislation that would make it less attractive for companies to reincorporate offshore to avoid U.S. taxes.

Rep. Bill Thomas, R-Calif., has proposed legislation that would combine provisions targeting tax-motivated relocations to Bermuda

and other offshore domiciles, with a larger package of tax reforms favorable to U.S.-based multinational companies.

The bill, expected to be introduced after the July 4 recess, would discourage corporate inversions—in which companies reorganize under new offshore holding companies—by taxing transfers of assets overseas, according to a summary released by Rep. Thomas.

It would also impose an excise

tax on stock-based compensation paid to officials of expatriate companies and would penalize “earnings stripping,” a practice in which U.S. companies offset taxable income by making interest payments to a foreign parent.

The proposal does not go as far as other House and Senate bills that have addressed the inversion issue by calling for, among other things, disregarding inversions that meet certain criteria and treating invert-

ed offshore holding companies as U.S. corporations for tax purposes.

“Other legislation merely punishes companies that flee overseas without addressing the reason they chose to invert: a hostile tax system,” the summary states.

Along with provisions targeting inversions, the bill also would repeal a U.S. tax regime—the Extraterritorial Income Exclusion—that was designed to ease taxation of U.S. companies’ foreign revenue.

The exclusion is regarded as an improper subsidy by the World Trade Organization.

The bill would replace the regime with “more than 20 reforms,” including removing rules that hinder companies’ ability to defer U.S. tax on overseas income, and simplifying foreign tax-credit rules aimed at preventing double taxation of the same income by the U.S. and foreign jurisdictions, according to the summary.

IRS: DC rules clarified

Continued from page 3

employer in the IRS’ example considered these facts: A large portion of plan assets was placed in a high-risk investment. Plan participants already expressed concern to the employer about the investment. In addition, lawsuits had been filed against several other employers alleging a breach of fiduciary duty in connection with the same investment.

‘Let’s say investments were made in a fund that invested in high-tech firms of top quality. The value goes down because of market fluctuations. That kind of situation would not be covered.’

*Kyle Brown
Watson Wyatt Worldwide*

In such a situation, “The payment is made based on a reasonable determination that there is a reasonable risk of liability for breach of fiduciary duty and to restore losses to the plan,” the IRS said.

In no case, though, would amounts paid to the plan above what was actually lost due to a fiduciary breach be considered restorative.

The example provided by the IRS, though, is meant only to be illustrative. Ultimately, as the IRS says, whether a payment is considered restorative will depend on all of the relevant facts and circumstances.

But clearly, though, payments would not be considered restorative if they were made to compensate participants for losses due to market fluctuations where there was no apparent fiduciary breach.

“Let’s say investments were made in a fund that invested in high-tech firms of top quality. The value goes down because of market fluctuations. That kind of situation would not be covered,” Watson Wyatt’s Mr. Brown said.

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Endurance Specialty Insurance Ltd. is headquartered in Bermuda and is one of the largest specialty reinsurers in the world with shareholders' equity of \$1.2 billion. Endurance invites applications for the position of:

VICE PRESIDENT/ PROFESSIONAL LIABILITY UNDERWRITER

Function:

The Professional Liability Underwriter will be responsible for developing, underwriting and maintaining the company's excess professional liability business.

Reports to:

Executive Vice President, Excess Casualty

Duties and Responsibilities include, but are not limited to:

- Contribute to the successful implementation of the business plan
- Assisting in developing and maintaining suitable management information to evaluate the successful implementation of the business plan for the team
- Coordinating all stages of the underwriting process such as: marketing, risk analysis, contract negotiation and contract maintenance, developing and maintaining client and broker relationships.
- Evaluate and prioritize submissions.
- Pricing programs and submissions.
- Monitoring portfolio growth and profitability.
- Work with actuarial department through the rating process

Qualifications and Requirements:

- University degree in Business or similar field preferred.
 - CPCU or ACII designations highly desirable.
 - Minimum 5-8 years' underwriting experience in the areas of Directors and Officers Liability, Employment Practices Liability, Fidelity, Fiduciary and Miscellaneous Errors & Omissions.
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LEGAL NOTICE

LEGAL NOTICE

THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF THE LIQUIDATION)
OF WESTERN SPECIALTY INSURANCE COMPANY) 02 CH 8782

NOTICE OF CLAIM FILING DEADLINE AND PROCEDURES

PLEASE TAKE NOTICE, that on May 6, 2002, the Circuit Court of Cook County, Illinois, entered an Agreed Order of Liquidation against Western Specialty Insurance Company ("Western Specialty"). Nathaniel S. Shapo, Director of Insurance of the State of Illinois, is the statutory and court affirmed Liquidator of Western Specialty ("Liquidator").

TAKE FURTHER NOTICE, that on May 30, 2002, the Circuit Court of Cook County, Illinois, found that Western Specialty was insolvent as of the date of the entry of the Agreed Order of Liquidation.

TAKE FURTHER NOTICE, that pursuant to the Agreed Order of Liquidation, all rights and liabilities of Western Specialty and its policyholders, creditors and stockholders, and all other persons interested in its property or assets, are fixed as of May 6, 2002, unless otherwise provided in subsequent orders of the Court.

TAKE FURTHER NOTICE, that on June 27, 2002, the Circuit Court of Cook County, Illinois, entered an Amended Order Providing for the Filing of Claims and the Setting of Claim Filing Deadlines ("Claim Filing Order"). Pursuant to the Claim Filing Order, all persons, companies or entities who have, or may have claims against Western Specialty, its property or assets, or against a Western Specialty insured or policyholder, shall have the right to present and file with the Liquidator proper proofs of claim on or before May 6, 2003 at 4:30 p.m. (C.D.T.).

TAKE FURTHER NOTICE, that any insured under an insurance policy issued by Western Specialty shall have the right to present and file with the Liquidator a proper proof of claim setting forth a contingent claim on or before May 6, 2003 at 4:30 p.m. (C.D.T.). No contingent claim shall be allowed for purposes of participating in any distribution of estate assets that may be made at the fourth priority level, 215 ILCS 5/205(1)(d), unless such claim has been liquidated and the insured claimant has presented and filed evidence of payment of such claim to the Liquidator on or before May 6, 2004 at 4:30 p.m. (C.D.T.). Any contingent claim for which a proper proof of claim is filed on or before May 6, 2003 at 4:30 p.m. (C.D.T.), but which is not liquidated on or before May 6, 2004 at 4:30 p.m. (C.D.T.), may be estimated pursuant to 215 ILCS 5/209(4)(b) for purposes of participating in any distribution of estate assets that may be made at the fifth priority level, 215 ILCS 5/205(1)(e), unless otherwise directed by the Court.

TAKE FURTHER NOTICE, that the form and required contents of all proofs of claim are described in 215 ILCS 5/209. Proofs of claim, along with supporting documents, if any, are to be filed with, and may be obtained from, the Liquidator of Western Specialty, c/o the Office of the Special Deputy Receiver, located at 222 Merchandise Mart Plaza, Suite 1450, Chicago, Illinois 60654. A proof of claim shall be deemed "filed" with the Liquidator upon the Liquidator's receipt thereof. The Liquidator reserves the right to require such additional information with respect to any claim filed with him as he may deem necessary. The Liquidator further reserves any and all defenses available to Western Specialty upon all filed claims. All proofs of claim must be duly sworn to before an officer authorized to take oaths.

THE LAST DATE FOR THE FILING OF PROOFS OF CLAIM WITH THE LIQUIDATOR IS SET FORTH ABOVE. NO PERSONS, COMPANIES OR ENTITIES HAVING OR CLAIMING TO HAVE ANY CLAIM AGAINST WESTERN SPECIALTY, ITS PROPERTY OR ASSETS, OR AGAINST A WESTERN SPECIALTY INSURED OR POLICYHOLDER, SHALL PARTICIPATE IN ANY DISTRIBUTION OF THE ASSETS OF THE COMPANY UNLESS SUCH CLAIMS ARE PROPERLY FILED WITH THE LIQUIDATOR ON OR BEFORE MAY 6, 2003 AT 4:30 P.M. (C.D.T.)

Cathleen M. Travis
Special Deputy Receiver

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WorldCom: Accounting scandal adds to D&O ills

Continued from page 1

Conditions will not be as onerous for companies with traditional accounting practices that are easier to understand, added Mr. Mandel, who is assistant vp of enterprise risk management for USAA in San Antonio, Texas.

Proposed business accounting reforms called for by President George Bush, Congress and others are not likely to ease the tightening D&O market. That market was already reeling from its exposure to losses at Enron Corp. and other companies when WorldCom announced June 26 that it had inappropriately classified \$3.9 billion in expenses as capital expenditures.

Following WorldCom's announcement, D&O underwriters immediately retreated from writing and renewing coverage for companies in the telecommunications industry, according to Steven Anderson, vice chairman of the FINPRO division of New York-based Marsh Inc.

D&O insurers also pulled back from writing coverage for World-

Com's suppliers and customer companies, Mr. Anderson said. Even banks that conduct business with WorldCom will encounter D&O renewal problems, he said.

But the "knee-jerk reaction" by underwriters likely is temporary, he added. The underwriters are taking time to gauge their aggregate exposure to WorldCom-related losses, he said.

Mr. Anderson predicted that other industries will continue to face a tough D&O market but are unlikely to see such drastic changes.

Capacity in the D&O market generally is still available for non-telecommunications risks, though insurers may be less willing to providing high limits or coverage without restrictions on specific accounts.

D&O insurers now will be more likely to draw a line in the sand, demanding conditions they previously tried to impose but were not able to, Mr. Anderson said. For example, insurers now may demand that policies contain co-insurance provisions, he said.

WorldCom's debacle will add momentum, for example, to D&O insurers' desire for policyholders to purchase policies with co-insurance agreements, agreed Joseph C. O'Donnell, senior vp and head of executive protection in Simsbury, Conn., for Chubb & Sons Inc.

Insurers want policyholders to share a bigger portion of losses so that the policyholder and insurer interests more closely align over whether to fight or settle a shareholder lawsuit, Mr. O'Donnell explained. Oth-

erwise, policyholders might push to settle a claim when the insurer



PHOTO: BLACKSTAR PHOTOS

John Sidgmore, chief executive officer of WorldCom Inc., discussed his company's restated financial position at a July 2 press conference.

ers prefer to fight it.

D&O insurers already were calling for increased scrutiny of new and renewal business following the financial disintegration of Houston-based Enron that began last fall. Enron had \$350 million in D&O coverage when its troubles first surfaced in October (*BI*, Jan. 28).

Now, with WorldCom's woes and accounting scandals and fraud allegations emerging for other companies, D&O underwriters increasingly will demand to look beyond policyholder's financial statements when assessing the risk, Mr. O'Donnell said. Insurers will want to speak directly with chief financial officers, chief legal officers and chief executive officers, he said.

"If you can't rely on the financial statements we relied on in the past as a key underwriting tool, then you are going to have to dig deeper," Mr. O'Donnell said.

Insurers also are now asking individual policyholders at renewals whether they have any intentions of restating their previously reported financial positions over the next 12 months, Marsh FINPRO's Mr. Anderson said.

"That is a real concern because it is really a forward-looking warranty or representation the policyholder has to make," he said. "If they restate their financials during the ensuing policy period, you will have underwriters taking the position that they were misled in the underwriting process, and they may disclaim coverage or raise the threat of rescission."

But corporations often don't know whether they might restate their financial position so far in advance, RIMS' Mr. Mandel said. Restatements are not planned; they occur when the corporation discovers a problem, he said.

Following recent insurer losses, though, it would be natural for underwriters to want to make restatement a basis for coverage denial, Mr. Mandel acknowledged.

New York-based Fitch Ratings said that the insurance industry principally is exposed to WorldCom's troubles through invest-

ments in the long-distance telephone service company's equities, bonds and other investment instruments, not through potential losses on insurance policies (*BI*, July 1).

WorldCom stock was trading at 10 cents per share last week, down from 83 cents a share on June 25, before its announcement of the accounting errors, and down from a 52-week high of \$16.06.

Insurers have about \$5 billion in direct investment exposure. While the loss will be large, it is spread among many insurers, Fitch said. But insurer solvency ratios could suffer because of a broader impact on capital markets.

Moody's Investors Service Inc. reported that the U.S. life insurance industry is especially exposed to WorldCom investment losses, with approximately \$5.3 billion in WorldCom-related investments as of year-end 2001.

The insurers with the largest investment exposure, according to Moody's, are: American International Group Inc., \$415 million; Prudential Insurance Co. of America, \$321 million; AEGON USA, \$317 million; Northwestern Mutual Life Insurance Co., \$285 million; and Metropolitan Life Insurance Co., \$277 million.

In addition to general investment losses, the companies that insure WorldCom's D&O risks face possible negative rating pressure, Fitch reported. At the same time, it added, the D&O policy limits provided to WorldCom are likely to be relatively low compared to the ultimate loss.

AIG, CNA Financial Corp., Hartford Financial Services Group Inc., Swiss Reinsurance Co. and XL Capital Ltd. participated on WorldCom's D&O program, but all refused to comment.

Insurers may seek to deny WorldCom's D&O claims, because policies typically exclude coverage for the fraudulent practices of corporate executives. But insurance observers say that even if some executives committed fraud, typical D&O policies still provide insurance for the remaining innocent directors and officers.

After WorldCom revealed its improper accounting practices, the Securities and Exchange Commission filed a civil fraud lawsuit against the company and congressional investigators have subpoenaed company executives.

Revelation of WorldCom's book-keeping methods also led to renewed calls for congressional reform of business accounting practices, including new disclosure and auditor oversight requirements, among other proposals. Such calls arose after Enron's fall but subsequently died down.

President Bush said last week, though, that he is willing to work with congressional Democrats on reform legislation.

But if reforms do come, they will be too late to help the current D&O market, brokers, insurers and risk managers say. Accounting irregularities that already exist will likely affect insurer losses before reforms improve matters.

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July 8, 2002

Medicare: Prescription benefit unlikely this year

Continued from page 1

"Clearly, there would be a significant cost savings to employers," said Chip Kerby, a Mercer attorney in Washington.

'The reality is that a drug benefit will be added and it will be added in a few years. Today, a health plan can't really be considered one if it doesn't offer a drug benefit.'

Chip Kerby
Mercer Human Resource Consulting

Those cost savings would be achieved through a reinsurance mechanism that is a key part of the House bill.



The House of Representatives last month approved legislation that would add a voluntary prescription drug benefit to Medicare.

Under the measure's standard prescription drug benefit, which could be offered either by private insurers or directly by employers, a beneficiary would pay a monthly premium of about \$33 and pay the first \$250 of prescription drug costs. Expenses between \$251 and \$1,000 would be split, with plans paying 80% and beneficiaries paying 20%. For the next \$1,000 of expenses, costs would be divided equally between plans and beneficiaries. From \$2,001 to \$3,700, there would be no coverage, and prescription drug costs over \$3,700 would be fully covered by the plan.

Employers and insurers that offer a standard plan would be eligible for subsidies for Medicare.

In a standard plan, Medicare would reimburse plans for 30% of expenses between the \$1,001 and \$2,000 layer and 80% of costs exceeding \$3,700.

In all, through this reinsurance

mechanism, the government would subsidize roughly 65% of prescription drug costs for employers that offer the benefit, Ms. Young said.

"They (legislators) want to keep employers in," Ms. Young said, referring to the subsidies.

Providing subsidies to employers that offer prescription drug coverage sharply contrasts with the approach Congress took when it last expanded Medicare.

Under a 1988 law—repealed one year later—Medicare was expanded to cover a much greater portion of beneficiaries' hospital and physician expenses. That change allowed employers to cut back on retiree health care plans so their plans did not duplicate the expanded Medicare program.

But, rather than allowing employers to pocket the savings, the 1988 law required them to distribute the savings to retirees, either

employers with retiree health plans.

With prescription drugs becoming such an integral part of medical treatment and with the costs of those drugs escalating, legislators, facing enormous political pressure from the elderly, eventually will reach an agreement to expand Medicare to cover prescription drug expenses, observers say.

"One day we will have a prescription drug benefit as part of Medicare. Clearly, there is political momentum to do something, with support ranging from conservative

Republicans to liberal Democrats," said Helen Darling, president of the Washington Business Group on Health.

"The reality is that a drug benefit will be added and it will be added in a few years. Today, a health plan can't really be considered one if it doesn't offer a drug benefit," Mercer's Mr. Kerby said.

Still, if legislation is to be enacted, the two parties will have to overcome considerable differences. For example, Republicans in general want to see a prescription drug ben-

efit offered through insurers and employers, while Democrats generally favor an approach in which Medicare itself would offer and administer the benefit.

"Should the benefit be delivered by Medicare or by insurers...? That is a philosophical difference that divides the two parties," Aon's Ms. Young said.

Similarly, Democrats generally favor a richer and more expensive benefit program than Republicans, though the two sides are getting closer, Mr. Kerby said.

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by enriching other benefits or providing cash in a "maintenance of effort" provision, a concept not under consideration during the current debate.

While enactment of legislation seems unlikely this year, Washington observers say it would be a mistake to write off indefinitely enact-

'Should the (prescription drug) benefit be delivered by Medicare or by insurers...? That is a philosophical difference that divides the two parties.'

Gretchen Young
Aon Consulting

ment of legislation and with it the possibility of big cost savings for

Carvill
3 column x 6"

Supreme: Employment rulings on docket

Continued from page 1

tion agreements do not bar federal regulators from suing over alleged ADA violations. Employers also indirectly had a setback in the court's recent decision that the Employee Retirement Income Security Act does not pre-empt state laws governing HMOs' external review practices.

Employment practices cases are not likely to be as dominant in the court's next docket. In fact, the court has not yet accepted any ADA cases for the next term.

But the justices have agreed to hear other liability disputes of importance to business, including what could be the most critical punitive damages case since *BMW vs. Gore*, a 1996 decision that held punitive damages could be so disproportionate to actual damages as to be unconstitutional.

"By and large, the business community did pretty well," said Evan

M. Tager, a partner in the Washington office of Chicago-based law firm Mayer, Brown, Rowe & Maw. Mr. Tager participated in a discussion of the court's actions last week, which was sponsored by the Washington Legal Foundation a few days before the current term ended.

Not surprisingly, Mr. Tager cited the three major ADA victories as evidence.

In *Chevron USA Inc. vs. Mario Echazabal*, the court unanimously ruled that the ADA does not require employers to place workers in jobs that could cause them serious injury or death, even if the worker is aware of the hazards when requesting the job (*BI*, June 17). That ruling eased employer fears that they would be forced to decide whether to risk suits alleging ADA violations if they refused such worker requests, or liability suits if they granted the request and the worker subsequently fell ill or died.

In *US Airways vs. Robert Barnett*, the court held that under most circumstances, company seniority systems take precedence over ADA claims in determining job assignments (*BI*, May 6).

And, in what may have been the most significant case, *Toyota Motor Manufacturing, Kentucky, Inc. vs. Ella Williams*, the justices held that a worker's inability to perform a specific job does not automatically mean he or she is entitled to ADA protections (*BI*, Jan. 14).

"I don't know that they're ratcheting down any protections as much as trying to ascertain their own minds what Congress as a body was trying to accomplish," said Mr. Tager, whose firm represented Chevron.

He said he didn't "think the court likes the idea of having 300 million people, or whatever our current population is," being able to claim that they are disabled un-

der the ADA.

The three decisions "were critical to a reasonable interpretation of the federal law," said Quentin Riegel, vp-litigation and deputy general counsel at the National Assn. of Manufacturers in Washington. "Unfortunately, we're starting to see states adopt changes that will subject employers to different standards of liability under state ADA laws, notably California," he added.

Although the three decisions "appear to be 'pro-employer' rulings, decisions involving the ADA are necessarily dependent on the individual circumstances of every ADA plaintiff," noted Gerald Maatman, chair of the global employment law practice at Chicago law firm Baker & McKenzie. As a result, he predicted, "the broader significance of these rulings will be fought out in the years to come at the trial court level."

The trio of decisions "give managers the tools to assert defenses to ADA exposures in particular circumstances" but do not give "employers a license to ignore the workplace rights of sick, injured and disabled workers," Mr. Maatman said. "Sound risk management and loss control will continue to require employers to make informed, good-faith personnel decisions based on the individual circumstances of any ADA-protected employee."

Employers got a break in another area of employment law in the court's ruling in *Ragsdale et al. vs. Wolverine World Wide Inc.* (*BI*, March 25). In that case, the justices by a 5-4 margin held that employ-

ers are not required to provide more than 12 weeks of leave under the FMLA, even if they fail to notify employees that any leave they take will be counted against their FMLA entitlement.

But the justices dealt employers a small ADA setback in their decision in *Equal Employment Opportunity Commission vs. Waffle House* (*BI*, Jan. 21). In that case, the high court ruled that a pre-employment arbitration agreement signed by a worker does not bar the EEOC from pursuing victim-specific judicial relief, including back pay and damages in certain ADA cases. Some employment law experts said that the ruling could make arbitration a less attractive way to settle employment disputes for some employers.

Employers may have also suffered an indirect defeat with the court's decision in *Rush Prudential HMO Inc. vs. Debra Moran et al.* (*BI*, June 24). The justices held that ERISA did not pre-empt an Illinois law regarding the use of independent external review in health care coverage disputes. Such laws regulate insurers, which is properly a state function, according to the high court. Some employer groups expressed concern that the decision would increase the cost of employer-provided health care.

When the court reconvenes in the fall, it will revisit an issue of great importance to employers—punitive damages.

At issue in *State Farm Mutual Automobile Insurance Co. vs. Campbell* is whether a \$145 million punitive damages award against State Farm for its claims practices, where only \$2.6 million was awarded in compensatory damages, is constitutional.

Also at issue is whether the Utah Supreme Court acted correctly by taking State Farm's wealth into account when it reinstated the \$145 million punitive after a lower court had reduced the award to \$25 million.

"This is the biggest punitive damages case since *BMW*. It's an opportunity for the Supreme Court to give the lower courts guidance on what it meant and what it said on *BMW*," said Robin Conrad, senior vp of the National Chamber Litigation Center Inc., the Washington-based litigation arm of the U.S. Chamber of Commerce.

"Clearly, even within the parameters of *BMW*, this is excessive. And there are a number of sub-issues in the cases, including the extraterritoriality issue, meaning the ability of states to reach beyond their boundaries to punish out-of-state corporations," said Ms. Conrad.

"The role of wealth is one that the court didn't squarely address in *BMW*," said Mr. Tager. "The battle will be squarely joined on the issue of wealth."

In other matters of interest to employers, the high court has already agreed to review cases involving: the awarding of damages to people who fear they will contract cancer from exposure to asbestos; the relationship between ERISA and state "any willing provider" laws; and a challenge to a state law penalizing drug makers that refuse to sell medicine to the working poor at the same price they sell it to Medicaid recipients.

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For the Record

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.

Bill would mandate spousal consent

Bipartisan pension legislation introduced last week would require an employee seeking to take a lump-sum distribution from a defined contribution pension plan to obtain written approval from his or her spouse. The measure was proposed



Sen. Kennedy

by Senate Health, Education, Labor and Pensions Committee Chairman Edward Kennedy, D-Mass., and Sen. Olympia Snowe, R-Maine. In the absence of spousal consent for a lump-sum distribution, an account balance would have to be distributed in periodic payments payable over the expected lives of the participant and spouse. Or, a defined contribution plan could purchase an annuity to provide lifetime monthly

benefits to the participant and spouse. While the spousal consent would complicate plan administration, such as in automated systems where employees now can electronically request a lump-sum distribution, it also would increase the likelihood that spouses, especially in troubled marriages, receive a share of a defined contribution plan account balance. Other provisions in the legislation would require plan administrators to abide by state divorce court orders dividing pension benefits, even if such an order were issued long after the divorce.

COBRA subsidy bill closer to enactment

Trade legislation that would provide new federal COBRA health care premium subsidies to employees laid off due to foreign competition is headed to a congressional conference committee. Late last month, the House completed action on a trade bill that would provide displaced workers with a 60% tax credit to partially offset the cost of COBRA premiums or policies

purchased in the individual market. The credit would be fully available to individuals with adjusted gross incomes of less than \$20,000 a year and families with adjusted gross incomes of less than \$40,000 and would be phased out for those with incomes above those levels. Those health care subsidies differ from an earlier Senate-passed trade bill. That measure calls for a 70% health care premium subsidy and generally would limit the subsidy to COBRA coverage. In addition, employers would front the subsidy and then would be reimbursed by the government in a manner to be determined by the Treasury Department. Conferees are not expected to begin meeting to try to work out differences in the two measures, including the health care premium subsidies, for at least several more weeks.

NAM renews push for class-action reform

The National Assn. of Manufacturers intends to keep pushing for passage of a class-action reform bill that has won approval from the House of Representatives but has made little progress in the Senate.

Among other things, the Class Action Fairness Act would permit the removal of certain interstate class actions from state to federal courts. Supporters deem such a change necessary to reduce



"forum shopping," in which plaintiff attorneys seek the most pro-plaintiff state courts in which to bring class actions against out-of-state defendants. Although the House passed the measure in March, the Senate has shown no sign of following suit. Proponents of the bill, though, are not admitting defeat.

Briefly noted

Hilb, Rogal & Hamilton Co. has completed its acquisition of Hobbs Group L.L.C. Glen Allen, Va.-based HRH announced in May that it would pay up to \$274 million in cash and stock for Atlanta-based Hobbs in an effort to build up a large risk management client base (*BI*, May 20)...**Kemper Insurance Cos.** has finalized a transaction with Omaha, Neb.-based Berkshire Hathaway Inc. that includes a \$125 million investment by Berkshire in Kemper's commercial casualty and specialty insurance operations. Separately, Long Grove, Ill.-based Kemper completed the sale of its personal lines business last week to Chicago-based Unitrin Inc....**U.S. life/health insurers' profits** fell 42% in 2001, to \$15.3 billion, according to Weiss Ratings Inc. The Palm Beach

Gardens, Fla.-based rating agency attributed the decline to capital losses on invested assets and a drop in net operating income. Lines of business where profits fell the most included group health, which declined more than 50% to \$880 million in 2001...The **New York State Insurance Department** has moved to a new building in Albany, N.Y. The department's new address is 1 Commerce Plaza, Albany, N.Y. 12257. All telephone numbers remain the same....**A.M. Best Co.** has affirmed the A+ financial strength rating of **AXA Canada Inc.** subsidiaries AXA Assurances Inc. and AXA Assurance Agricoles Inc., both of Montreal. Best cited the insurers' strong market presence and operating results....**Warren, N.J.-based Chubb Corp.** has created a new business unit to provide specialty liability coverages and services for nonprofit and privately held organizations. The unit, which has not yet been named, will be headed by Jane L. Hodgson, a Chubb vp. Chubb's unit will write business for all sizes of nonprofits and focus on privately held organizations with annual revenues of \$250 million or less and 1,000 or fewer employees, a Chubb spokesman said.

Online Poll [7/1 - 7/3]

In the wake of the emerging WorldCom accounting scandal, D&O rates likely

Will increase across the board	86.0%
Will be unaffected by the scandal	10.5%
Will increase only for selected companies	3.5%

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

Crash: Midair collision probed

Continued from page 3

amount in London. The coverage, which is led by underwriters at Lloyd's of London, was placed by HSBC Insurance Brokers Ltd. The broker declined to comment on the airline's excess coverage.

DHL's hull and liability insurance program, which renews in November, is placed by Aon Corp. and is led by ACE Global Markets in London, a unit of Hamilton, Bermuda-based ACE Ltd. The Boeing 757 was insured for \$38 million, and the cargo carrier's liability limit is \$1 billion, according to market sources in London.

The level of liability compensation will depend on who is found to be at fault in the collision.

The Russian TU 154 was told by Swiss air traffic control to descend from 36,000 feet to 35,000 feet about 50 seconds prior to the collision, according to Bundesstelle für Flugunfalluntersuchung—or BFU—the German air safety department, which is investigating the crash.

"This descent was necessary for continuation of the flight to Barcelona and was also a means to achieve a vertical separation with respect to the (DHL) Boeing 757," stated BFU. "Whereas the crew did not react on the first instruction, they acted upon the second one

and started the descent 25 seconds before the collision," it said.

Shortly after the Russian airline began its descent, the DHL flight also started to descend after notifying the Swiss air traffic control that its traffic alert and collision avoidance system—or TCAS—had ordered the maneu-



Rescue workers in Germany sift through wreckage from the collision of a Russian TU 154 passenger aircraft and a Boeing 757 cargo plane.

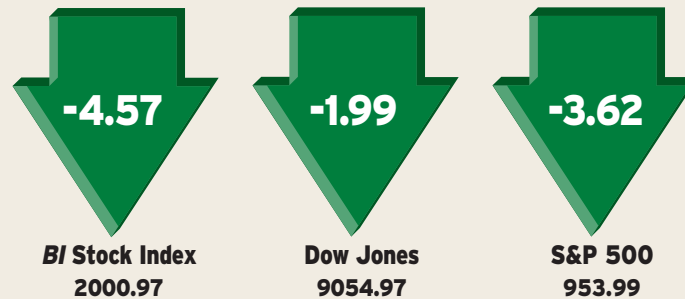
ver. Such systems are designed to warn aircraft crews about nearby air traffic and issue instructions to crews about how to react to avoid a midair collision.

"The reason why this warning also led to a descent of the Boeing 757 is not yet clear and will be subject to further investigations," stated BFU.

BI Stock Index [7/1 - 7/3]

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Percentage change of BI Stock Index vs. key indicators



Largest gains

EMC Insurance Group	4.98%
Argonaut Group	3.36%
Vesta Insurance Co.	1.40%
Unico American Corp.	0.37%
MetLife	0.35%

Largest losses

Clark Bardes Holdings	-23.16%
Acceptance Insurance	-19.51%
Trenwick Group Ltd.	-13.60%
Sierra Health Services	-13.56%
Gainsco Inc.	-11.76%

Weekly change by market segment

Brokers	-8.61%
Insurers/Reinsurers	-4.86%
Managed Care Organizations	-5.85%

Source: CNET Investor (investor.cnet.com)