Munich Re ups 9/11 losses, boosts U.S. reserves / 2

Risk of insurer accounting scandal downplayed / 3

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Corporate scandals turn spotlight on D&O risks

Crises spur push for reform

By RODD ZOLKOS and MARK A. HOFMANN

As the stock market continues to reel in response to a series of corporate financial restatements and charges of accounting irregularities, corporate governance issues are getting increased attention from corporate directors, politicians, and directors and officers insurers.

Washington's focus on corporate governance and accounting practices sharpened last week as the Senate took up accounting reform legislation and President Bush delivered a major address on corporate responsibility.

Meanwhile, a recent study shows directors are more concerned about corporate governance issues, and that the perceived liability exposure is keeping many individuals from accepting board positions.

The study by consulting firm McKinsey & Co. suggests that the liability risks directors now perceive could threaten the existing board governance system.

Of 186 directors responding, 55% said they thought the possibility of being held personally liable in their role as director has gotten somewhat higher in the past year, and 27% said they believed the risk has become very much higher. In addition, 25% said they had turned down an offer to serve on a board or had resigned previous directorships in the past year, at least in part because of liability concerns.

"It's getting a lot harder to attract directors," said Bob Felton, a Seattle-based director at McKinsey and leader of its corporate governance

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PHOTO: ZUMA PRESS

President Bush outlines plans to increase corporate accountability.

New Jersey taps guaranty fund to fill budget gap

By MEG FLETCHER

TRENTON, N.J.—New Jersey lawmakers' recent transfer of $40 million from the state's surplus lines guaranty fund to its cash-strapped general fund caught many in the insurance market by surprise.

Surplus lines representatives blasted the move, calling it an inappropriate use of the fund and warning that it represents an increasing willingness on the part of states to raid insurance-related funds to shore up budgets. The state also narrowed the types of claims eligible for coverage from the fund, which is of concern to buyers.

"I'm outraged by the action of the Legislature," said Richard Bouhan, executive director of the National Assn. of Professional Surplus Lines Offices Ltd. in Kansas City, Mo., which represents the surplus lines industry.

In what Mr. Bouhan called "the weekend heist," New Jersey lawmakers last month over a four-day period introduced and passed significant amendments to a 1984 law that created the surplus lines guaranty fund, which is the only state-sponsored

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401(k) reform bill advances in Senate

Passage not yet assured, some say

By JERRY GEISEL

WASHINGTON—Unanimous Senate Finance Committee passage last week of legislation to better protect 401(k) plan participants from Enron-type disasters could give a new and needed push to the reform drive, proponents say.

Committee Chairman Sen. Max Baucus, D-Mont., said he already has been in discussions with Sen. Edward Kennedy, D-Mass., whose Health, Education, Labor and Pensions Committee earlier passed a somewhat different reform bill, to try to find common ground on a compromise measure for the full Senate to consider. The House already has passed a reform bill with provisions that are closer to those in the Finance Committee bill than in the HELP Committee measure.

"We want one bill. We're all realists here. We know what can pass, what can't pass. We'll put it together by September," Sen. Baucus said following last week's Finance Committee vote.

Others, though, are less certain Congress will act before the session ends. "I'm skeptical if there is the will to compromise," said Kyle Brown, an attorney with Watson Wyatt Worldwide in Washington.

Still, the Finance Committee vote is the first sign of congressional bipartisanship on the issue since a spate of 401(k) reform bills were introduced in the wake of the Enron Corp. debacle. The collapse of the

See 401(K)/page 19

NEWSPAPER

International

COVERAGE OPTIONS INCREASE IN ENERGY MARKET: WILLIS

Begins on page 15

Late News

Kuwait aviation losses more than one event

The U.K. High Court last week ended to 11 years of legal wrangling in the London market when the judge ruled that airline losses in Kuwait after the 1990 Iraqi invasion constituted more than one event. In *M.A. Scott vs. Copenhagen Re*, Justice Langley ruled that damage caused to aircraft during the Gulf conflict arose out of two or more events. Former Lloyd's of London managing agency M.A. Scott Syndicates had argued that the loss of a British Airways 747 jet seized when Iraqi forces invaded Kuwait International Airport on Aug. 2, 1990, and destroyed in February 1991 should be aggregated into one excess-of-loss reinsurance claim with 15 Kuwait Airways Corp. aircraft and spare parts plundered in the 1990 invasion. The aviation war insurance market paid the $478 million in losses. But some excess-of-loss reinsurers argued the loss was more than one event and suspended payments on the claims. Justice Langley ruled that the losses' timing and causes were sufficiently different.

Terrorism coalition outlines coverage

The business-backed Coalition to Insure Against Terrorism has sent congressional leaders a letter outlining six components that the group believes a compromise terrorism insurance bill should contain. The July 11 letter urges that any compromise bill: contain a broad enough definition of "terrorism" to ensure coverage for future attacks, including those committed by domestic terrorists; allow the federal backstop to remain in place for the longest possible period; provide comprehensive coverage; include caps on individual company losses necessary to trigger federal intervention; fully cover business interruption; and include "sensible litigation management" provisions.

N.Y. comp rates static despite new factor

Although there will be no change in the average workers compensation rate in New York state, employers will face a new "disaster preparedness component" in their premiums.

See LATE NEWS/next page

Inside

Getting rules out quickly

The Treasury Department's top benefits official says the Bush administration is focusing on the speedy delivery of benefits guidance. Page 4

Merck delays PBM spinoff

Merck & Co., which has struggled with pricing the IPO of its prescription benefit management unit, last week postponed the spinoff. Page 6

Act decisively but wisely

Congress must act swiftly to stamp out fraud and restore investor confidence in corporate financial data, but lawmakers must also ensure that reforms don't penalize the vast majority of executives who play by the rules, one of this week's editorials says. Page 8

ADA rulings not a panacea

The U.S. Supreme Court's recent decisions in cases involving the Americans with Disabilities Act, while generally favorable to employers, still call for close scrutiny of individual issues, attorney Gerald L. Maatman Jr. writes in Perspectives. Page 10

Risk of terrorism still high

The risk of terrorist attacks remains high in the wake of Sept. 11, risk managers were told at the annual meeting of the Assn. of Local Authority Risk Managers. Page 15

Departments

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

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CONTINUED FROM PAGE ONE

"The state will allow insurers to build 'catastrophe loads' into their reserves to better manage potential disasters and ensure continued stability in the workers compensation system," New York Superintendent of Insurance Gregory V. Serio said in a statement. The average 3% catastrophe provision is designed to allow insurers to take into account large concentrations of workers in single locations. Beginning Oct. 1, insurers can apply the cat factor as a 3% addition to each employer classification, regardless of risk level, said Monte Almer, the president and chief executive officer of the New York Compensation Insurance Rating Board. Despite that, there will be no average increase in overall workers comp rates, because changes in other factors, such as loss trends, will offset the disaster component. The board had filed for a 9.4% average rate increase last month, after unsuccessfully seeking an 8% increase earlier this year (*BI*, June 3).

PHOTO: GETTY

Airline pilots are lobbying for legislation that would arm trained pilots with hand guns as a defense against terrorists.

Late News

Cockpit firearm bill stirs liability concerns

Airlines concerned about the liability posed by guns in the cockpit oppose legislation the House approved last week that would let pilots carry firearms. The proposal is expected to face opposition in the Senate. "Guns in the cockpit raise all kinds of questions, liability being one of the larger ones," said a spokesman for American Airlines Inc. Dallas-based American has not directly expressed opposition to arming pilots but maintains that information sharing and improvements in screening at airport checkpoints would do more to enhance safety, he said. A spokeswoman for Dallas-based Southwest Airlines Inc., which does not want to see guns in cockpits, said it is too early to determine the risk management implications. The Airline Pilots Assn. is lobbying for the legislation. A spokesman for the Herndon, Va.-based group said the union would like to see a 48-hour training program and background checks on pilots before they were approved to carry weapons.

Hawaii adjusts captive taxes

Hawaii Gov. Benjamin Cayetano recently signed into law a graduated premium tax structure for all captive insurance facilities domiciled in the state. Under the new law, captives must pay a tax of 0.25% on the first $25 million of written premiums, 0.15% on the next $25 million, and 0.05% on premiums in excess of $50 million. Previously, group captives paid a flat 1% tax on all premiums, explained Craig Watanabe, captive insurance administrator for Hawaii's Insurance Division. Pure captives paid a tax of 0.25%, regardless of premium volume. Currently, nearly all captives domiciled in Hawaii write less than $50 million in premiums, he noted.

Market conditions halt insurance IPOs

Deteriorating conditions in global stock markets prompted several companies last week to postpone plans for initial public offerings. Toronto-based Fairfax Financial Holdings Ltd. called off plans for an IPO of its Morristown, N.J.-based Crum & Forster Holdings unit. The St. Paul, Minn.-based St. Paul Cos. Inc. also cited market conditions in postponing the spinoff of its reinsurance operations in a Bermuda-based company known as Platinum Underwriters Holdings Ltd. And London-based HLF Insurance Holdings Ltd. postponed its stock exchange listing because of "uncertain" conditions in the London stock market.

PHOTO: GETTY

"As Good As It Gets" is among recent films that portray managed care unfavorably.

AAHP seeking to alter HMOs' film image

The American Assn. of Health Plans has retained talent agency William Morris to "reposition" the image of health plans in Hollywood. The AAHP, which represents more than 1,000 health maintenance organizations and other health plans, said the famed talent agency would help AAHP "foster a meaningful dialogue with producers, writers and directors." The AAHP said that because more Americans receive health care information from movies and television shows than from the nightly news, the AAHP could not ignore the role the entertainment media plays in shaping public perceptions. An AAHP spokesman stressed that the association is not seeking to criticize Hollywood for negative portrayals of HMOs but wants to promote health plans' positive contributions.

Briefly noted

A Chicago federal judge has stayed her order overturning an arbitration award in favor of **Sphere Drake Insurance Ltd.**, pending an expedited appeal of the order. The arbitration panel ruled 2-1 last year that Brighton, England-based Sphere Drake was not bound by six personal accident reinsurance contracts with Chicago-based All American Life Insurance Co. U.S. District Judge Rebecca R. Pallmeyer threw out the arbitration ruling, though, citing alleged partiality by the arbitrator appointed by Sphere Drake. Judge Pallmeyer has now stayed her order while Sphere Drake pursues an appeal to the 7th U.S. Circuit Court of Appeals. Under an expedited schedule, oral arguments are expected in September....The China Insurance Regulatory Commission has granted Zurich-based **Swiss Reinsurance Co.** approval to open a branch office to offer reinsurance services. Swiss Re said in a statement that the move represents the first step toward gaining a full license in the country....**Kathryn J. McIntyre**, the former publishing director of *Business Insurance*, was honored recently by the Insurance Marketing Communications Assn. as the 2002 recipient of the Golden Torch Award.

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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.

Munich Re adds $2 billion to U.S. unit and raises Sept. 11 payout projection

American Re boosts reserves

By CAROLYN ALDRED

MUNICH, Germany—American Re-Insurance Co. is strengthening its total reserves by $2 billion, while parent company Munich Reinsurance Co. is boosting reserves for the World Trade Center loss by $500 million, the German reinsurer announced last Wednesday.

American Re's decision to increase reserves follows a wide-ranging review of the Princeton, N.J.-based company's reserve situation and covers claims provisions across all areas of business, said Chief Executive Officer John Phelan. In particular, American Re has increased reserves for general liability by $524 million, workers compensation by $313 million and asbestos claims by $286 million.

Mr. Phelan said the reserve increase was prompted by emerging patterns of claims in the industry, not a specific issue relating to American Re.

The reserve increase at American Re will be funded by Munich Re, including access to additional retrocessional coverage, which will allow the company to continue to be a prominent player with "first-class security" in the U.S. market, Mr. Phelan said.

Meanwhile, the increase in reserves for the WTC loss is for incurred-but-not-reported losses, particularly relating to workers compensation, liability and business interruption, Mr. Phelan said.

He noted that the enormity and complexity of the WTC losses means that claims are developing more slowly than anticipated.

Despite the substantial reserve increases, Munich Re said in a statement that it likely will show a "high net profit" for the first half of 2002, partly due to shareholding transactions with Allianz as of June 30, 2002, that resulted in capital gains of 4.7 billion euros ($4.67 billion) and the continuing upward trend in reinsurance pricing.

REINSURERS' 9/11 LOSS ESTIMATES

Estimates by leading reinsurers, in millions of dollars

Company	Loss estimate
Lloyd's of London	$2,858
Munich Re	$2,690
Berkshire Hathaway	$2,400
Swiss Re	$1,776
Allianz	$1,365

Source: Company reports, Aon Re Services Inc.

Insurers unlikely as source of next accounting scandal

By JUDY GREENWALD

The high-profile accounting frauds that recently have roiled corporate America also could erupt among property/casualty insurers, but industry analysts and other observers say it's not very likely.

Even though insurers' reserves are an area ripe for mismanagement, most observers agree that the industry's regulation and other factors, such as statutory accounting requirements, make a major accounting scandal in the insurance industry unlikely.

In the wake of Enron Corp.'s collapse in 2001, a string of other large companies—including WorldCom Inc., Merck & Co., Xerox Corp. and Tyco International Ltd.—have all revealed accounting irregularities.

Perhaps the most spectacular of the recent scandals involves Clinton, Miss.-based telecommunications giant WorldCom, which reported more than $3.8 billion in everyday expenses as capital expenditures. Such accounting, which financial reporting standards do not allow, permitted the company to spread those expenses out and falsely boost reported profits.

"I think it's fair to say that it certainly is possible that this kind of thing could hit the insurance industry as well," said Jack Gibson, life sector leader for North America for Tillinghast-Towers Perrin in New York, discussing the entire industry. "When you look at the kinds of problems that have occurred, they're not really industry-specific," he said.

Although the extent of the insurance industry's regulatory oversight makes a scandal less likely, "there's still, as you know, a lot of room for maneuvering in reporting financial results," said Harold D. Skipper Jr., chairman of the Department of Risk Management and Insurance at Georgia State University in Atlanta.

See SCRUTINY/page 22

Global accounting standard for insurance contracts debated

By CAROLYN ALDRED and JUDY GREENWALD

A proposed new standard for how insurers account for assets and liabilities would, if adopted worldwide, radically change insurers' financial reporting practices.

Insurance regulators and accounting bodies agree, though, that universally recognized standards are necessary for an industry that is now global. In addition, the increased complexity of insurance-related products and the lack of transparency in the financial reporting of insurance are drawing the attention of regulators.

Momentum to develop an international accounting standard for insurers increased following a ruling in March by the European Parliament that all publicly traded companies within the European Union must adopt international accounting standards recognized by E.U. officials by 2005.

Work to establish an internationally recognized financial accounting standard for insurance started in the late 1990s by the London-based International Accounting Standards Board.

Wayne Upton, research director of the IASB, said there has been a growing consensus that insurance-related reform efforts should focus on the accounting treatment of insurance contracts. That's because, he said, so many corporations in a wide variety of financial and industrial sectors use insurance-related contracts.

"Insurance is the last great unexplored territory of financial reporting," said Allan Cook, technical director of the London-based Accounting Standards Board, which sets financial reporting standards for U.K. companies.

"There is enormous diversity among different countries, and even among individual companies, as to how they present their accounts," Mr. Cook said. He noted that "accounting has failed to keep up with the complexity of risks now being undertaken."

"Accounting for insurance liabilities is one of the few gaps in the armory of international accounting standards," agreed Peter Wright, a consultant with the London office of consultant Tillinghast-Towers Perrin.

Creating an effective reporting standard that would be applicable and accepted worldwide, though, is a huge and

See IASB/page 20

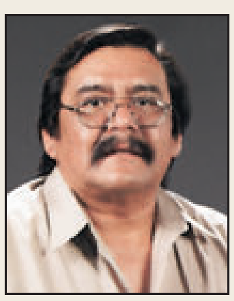
Navajo forum helps tribes manage risks and cut costs

By ROBERTO CENICEROS

LAS VEGAS—An excess insurance policy would cover the expense of a medicine-man ritual should a lightning-caused fire burn a building owned by the Navajo Nation.

Should one of the Nation's nearly 7,000 employees request medicine-man consultations to heal a workplace injury, that also is provided for under the tribe's workers compensation benefits.

The Navajo have unique insurance needs, explained David F. Shortey, risk manager for the Navajo Nation, a Window Rock, Ariz.-based tribal government. Mr. Shortey is also the president of the Arizona chapter of the Arlington, Va.-based Public Risk Management Assn.



The Navajo have been helping other tribes raise their insurance acumen by visiting them and sharing information.

David F. Shortey
Navajo Nation

Mr. Shortey's Navajo Nation owns about $2 billion in assets, including government facilities and plants and equipment that is used to operate several enterprises. The Nation governs over 25,000 square miles in the Four Corners region—where the state lines of Arizona, Colorado, New Mexico and Utah converge—and it manages one of the largest insurance programs maintained by U.S. Indian tribes.

Mr. Shortey was in Las Vegas recently to help lead the Nation's Insurance 2002 Conference and Expo. The conference began five years ago as an informal powwow. Back then, Mr. Shortey explained, the event was a barbecue picnic at which tribal managers and employees learned about risk management and loss prevention concepts.

The conference still aims to teach the Nation's workers about reducing property/casualty losses and improving tribal member health in order to reduce insurance costs.

But the event has grown steadily and now requires a hotel conference facility. This year about 500 people, including 90 children participating in a "Safe Kids Day," attended the conference, held June 26-28 at the Stardust Resort and Casino.

Members from about 15 other Indian tribes also attended, with some traveling from as far away as Alaska. Several members in attendance represent tribal housing authorities.

The Navajo have been helping other tribes raise their insurance acumen by visiting them and sharing information about the Navajo's arrangements, Mr. Shortey said.

See NAVAJO/page 19

Committee passes cancer test bill

WASHINGTON—Group health care plans would have to cover colorectal cancer screenings under legislation passed Wednesday by the Senate Health, Education, Labor and Pensions Committee.

The measure, S. 710, sponsored by HELP Committee Chairman Edward Kennedy, D-Mass., and Sen. Jesse Helms, R-N.C., and approved on a 16-5 vote, would mandate coverage for individuals 50 and older and those under 50 who are at high risk for colorectal cancer.

Employer groups oppose the legislation, warning that it could lead to higher health care costs at a time when rates are already increasing at near-record levels.

"At a time when employers are struggling to control health costs and maintain health benefits they provide for all their employees, this is no time to legislate additional burdens or take flexibility away from those who voluntarily offer health coverage," James Klein, the president of the Washington-based American Benefits Council, wrote in a letter to Sens. Kennedy and Judd Gregg, R-N.H., the committee's ranking minority member.

In addition, Mr. Klein wrote, it would be inappropriate for Congress to override health plan guidelines by requiring coverage of whatever "method and frequency of colorectal cancer screening deemed appropriate by the treating health care provider."

Advocates of the legislation, though, say early detection of colon cancer would save lives and money for group plans.

No official cost estimate of the legislation has been done.

Given the wide support the measure enjoys, Washington observers say it could go on the full Senate agenda for consideration this fall. The House of Representatives has not yet taken up comparable legislation.

The passage of colorectal screening legislation comes more than a year after the HELP Committee approved its last health care mandate: legislation that would have required health plans to cover mental disorders on the same basis as other medical conditions.

The mental health parity bill later died, though, when House Republican members of a congressional conference committee refused to accept its inclusion as part of a broader appropriations bill.

—Jerry Geisel

Treasury official acknowledges need for swift approval of plan designs

Quicker guidance pledged on benefits

By JERRY GEISEL

WASHINGTON—The Internal Revenue Service's recent and eagerly awaited guidance on health reimbursement accounts reflects the Bush administration's goal of speeding up the delivery of benefits rules, says the Treasury Department's top benefits official.

Although employers often have had to wait years for the government to provide guidance to resolve benefits questions, the goal now is fast action.

"We will try to get out guidance in a timely fashion," pledged William Sweetnam, the Treasury Department's benefits tax counsel.

Speaking last week at a conference in Washington sponsored by benefits trade group the Employers Council on Flexible Compensation, Mr. Sweetnam acknowledged that a focus on developing rapid guidance may mean that that not every issue will be addressed.

But that, he said, is far overshadowed by the advantages of getting rules out quickly.

It is crucial, he said, for the government to inform employers and their advisers about which benefit designs will pass government muster and which will not. In addition, Mr. Sweetnam stressed that the government's intent is not to micromanage plans but, rather, "to stop actions that are outside the law."

Mr. Sweetnam noted that a key part of developing guidance on plan design is weighing the input provided by employers and their advisers.

PHOTO: ROY KARTEN

Mr. Sweetnam

Although employers in the past often complained about the lack of accessibility of government benefits officials, the door to comments now is open, Mr. Sweetnam said. "We listened to people asking questions," he said. "We had been hearing from people. There were questions that had to be addressed."

In particular, Mr. Sweetnam said that providing guidance on health reimbursement accounts was crucial to enable employers to adopt the arrangements in time for the 2003 plan year.

Under that guidance, provided last month in Revenue Ruling 2002-41, the IRS for the first time gave its seal of approval to health reimbursement accounts, as long as the arrangements meet certain basic requirements (*BI*, July 1).

Among other things, the plans must be funded solely by employers and used only for substantiated medical expenses, such as bills that fall below a deductible.

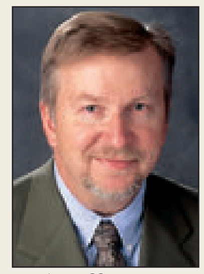
If those standards are met, the arrangements can be structured so that unused employer contributions can be rolled over to pay employees' expenses in succeeding years.

Proponents of HRAs see them as the linchpin of efforts to bring health care costs under control through the use of so-called "consumer-driven" health plan designs. They say that plan designs using HRAs, coupled with high-deductible indemnity plans, will make em-

See **GUIDANCE**/page 18

District manager joins *BI* in Boston

BOSTON—Ron Kolgraff has joined *Business Insurance* as a district sales manager, based in Boston. As district manager, Mr. Kolgraff will be responsible for accounts in New England. He replaces Jennifer Powers, who resigned.



Kolgraff

Mr. Kolgraff, whose career has included 25 years in the publishing industry, most recently was regional sales manager of The Industry Standard.

He has a bachelor of arts degree in history from the State University of New York at Stony Brook and a master of arts degree in English from Ball State University in Muncie, Ind.

Mr. Kolgraff can be reached at 617-292-4856 and by e-mail at *rkolgraff@crain.com*.

Errors & Omissions

- A July 8 article incorrectly identified XL Capital Ltd. as an underwriter of WorldCom Inc.'s directors and officers liability coverage.
- An item in the July 8 issue omitted some information on the pricing of an insurance certificate tracking service. Littleton, Colo.-based Ins-Cert.com charges agents and brokers $3 for inputting the certificate data, which occurs typically once per year. Agents and brokers are also charged 25 cents each time certificate information is viewed.


Claim Services When you have a claim to settle you can't afford to have someone drop the ball. That's why people enjoy the technical expertise and genuine compassion for injured and ill workers they get from Wausau. What's more, our teamwork approach facilitates problem solving and helps us effectively direct resources to get the job done. The result? Lower loss costs and greater employee satisfaction. When it comes to prompt, results-oriented claim handling, nobody beats Wausau.
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What can we do to help you?

Merck postpones PBM spinoff amid accounting questions

By DOUGLAS McLEOD

NEW YORK—Pharmaceutical giant Merck & Co. was struggling last week to launch the spinoff of its Medco Health Solutions Inc. unit amid weak stock market conditions and questions about Medco's revenue reporting practices.

Merck is hoping to raise up to $1 billion in an offering of 46.7 million of its shares of Medco, formerly Merck-Medco Managed Care L.L.C., one of the nation's largest prescription benefit managers. But the offering, representing nearly 18% of Medco's stock, has twice been postponed since late June, and Merck last week cut the planned offering price range of the shares to $20-$22 from $22-$24 before again postponing the IPO.

Investors have been rattled by Merck's disclosure that Medco booked $12.41 billion in revenues between 1999 and 2001 that it did not actually receive. The revenues consisted of copayments that members of PBM plans paid to pharmacies for their prescriptions, and they represented 18.2% of Medco's total net revenues of $68.23 billion over the three-year period, according to Securities and Exchange Commission filings.

Merck says that the copayment reporting practice, followed by at least one other PBM provider, complies with generally accepted accounting principles. The drug maker also deducted the copayments as operating expenses, meaning that they had no impact on Merck's net income, the company reported.

Still, the accounting questions appeared to dampen investors' enthusiasm for the Medco IPO as underwriters sought to line up buyers for the stock. Merck's own shares tumbled after the revenue reporting details were disclosed in SEC filings last week, and were trading last Tuesday at near a 52-week low of $46.55.

The drug company and several of its directors and officers were named last Monday in a proposed shareholder class-action complaint charging them with inflating Merck's revenues by including the Medco copayments.

Meanwhile, Medco disclosed that it has been named in six proposed class-action lawsuits filed by members of PBM clients, which charge that Medco violated fiduciary duties under the Employee Retirement Income Security Act by favoring Merck products and by accepting rebates from various suppliers. Plaintiffs have also threatened to add federal antitrust charges alleging that Medco has conspired to suppress price competition. Plaintiffs in ERISA-related suits include participants in plans sponsored by Northwest Airlines and DaimlerChrysler, according to Medco's SEC filings.

"Pending litigation relating to our financial relationship with pharmaceutical manufacturers could significantly limit our ability to obtain discounts and rebates that are essential to our profitability," Medco warns in the filings.

Medco also disclosed that federal prosecutors in Philadelphia subpoenaed it in 1999 as part of an investigation into whether the PBM industry is violating antikickback laws. The Philadelphia U.S. Attorney's office notified Medco last month that prosecutors are preparing a letter outlining their position on PBM-related issues. These issues could include compliance with antikickback laws and allegations of state pharmacy law violations raised last year in two sealed whistleblower lawsuits filed in Philadelphia federal court, Medco reported.

"The government's letter could seek payments and other remedies which could be material," Medco's SEC filing cautions.

Commentary

Minting new style for the greenback

We Americans like to think of ourselves as a people open to free thinking and innovation, with a "Go West" spirit of reinvention, but we can be pretty resistant to change some times—some of us more than others.

I'm thinking now of a recently announced plan to add color to U.S. currency. The goal is to thwart counterfeiting, made easier these days by advanced computer technologies. It seems like a pretty straightforward, reasonable idea. There's bound to be opposition.

In explaining its plan late last month, the U.S. Bureau of Engraving and Printing indicated no intention to put a beret on Ben Franklin or replace George Washington with Rich Uncle Pennybags of Monopoly fame. A key part of the redesign plan, referred to as NexGen by the folks at the B of E&P, is the "introduction of subtle background colors" to the $100, $50 and $20 notes, starting with the $20 bill as early as fall 2003.


Rodd Zolkos

Notes will remain the same size and use "similar portraits and historical images to maintain an American appearance."

I guess maintaining an "American appearance" is all well and good, but for me one highlight of traveling abroad has always been the local currency, often multicolored and highlighted by images of explorers, inventors, artists, beavers and the like.

We're not going to get any beavers under the current plan, only "subtle background colors." The colors alone won't enhance the security of the currency, the Bureau says, but will enable the use of other features that could help deter counterfeiting.

Sounds like good risk management to me. Still, somewhere I expect a voice to bellow, "THE FRAMERS MEANT FOR OUR MONEY TO BE GREEN."

The government's plan is a modest one—too modest, perhaps. I'm thinking there's an opportunity here, and if there's going to be opposition to change anyway, why not seize the day?

With the federal government back to deficit spending, now's a good time to pick up a little extra revenue. How about selling advertising space on U.S. currency? It works for NASCAR, it works for countless golf and tennis pros, so why shouldn't it work for the U.S. Treasury?

Imagine the possibilities. It could be as simple as replacing the seal of the Federal Reserve System with the Golden Arches. What could be more American than a teen-ager treating his sweetheart to a cheeseburger, fries and a soft drink after the big game, and getting change back from his McSawbuck?

And with the gloom cast on the economy by the stock market's troubles and the recent spate of corporate accounting shenanigans, why not put the fun back in economic fundamentals with corporate mascots? Imagine Charlie the Tuna or Mr. Peanut (with the top hat and monocle he looks downright statesmanlike!) peering out of your wallet instead of that glowering Andy Jackson.

Is Mr. Clean still around? As public officials seek to restore confidence in the stock market and financial reporting, his image on our paper money could reinforce our leaders' pronouncements that they're going to scour the corporate world clean of "bad actors."

The Jolly Green Giant would be a perfect fit. He's the right color, and his massive stature could symbolize the power of our economy, at least as far as such symbolism can go with a grinning, green leaf-covered gland case.

If that whole approach is deemed too crass, maybe Treasury could take a more subdued, PBS-style tack. A message across the bottom of the bill in tasteful typeface could explain that "This $20 bill is brought to you through the support of the Chubb Group of Insurance Cos."

For those concerned about the dollar weakening overseas, maybe we can bolster demand for our currency by tapping our number one export: pop culture. Let's replace the boring old pictures of presidents with hot Hollywood celebrities or NBA stars. Sure, Phil Jackson would face some headaches as Shaq and Kobe argue over who gets the $10 and who gets the $20, but the Zenmaster can handle it. And who better than Tom Cruise to put the "C" in C-note?

Ultimately, though, the Engraving and Printing folks probably are taking the right approach. Any changes to our paper money should be subtle, and they should maintain our bills' traditional appearance.

They can save Mr. Peanut for the redesigned quarter.

Senior Editor Rodd Zolkos' commentary appears periodically in Business Insurance and on www.businessinsurance.com. He can be reached by e-mail at rzolkos@crain.com.

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Editorial

Corporate governance failed

CONGRESS MUST ACT swiftly and decisively to stamp out fraud and restore investor confidence in the integrity of corporate financial data and the auditors and directors who review it.

Investors, employees and the free market demand zero tolerance for deceptive practices and fraud, and there also is no room for boards of directors who fail to halt improper pursuits that run contrary to shareholders' interests and the law.

But lawmakers also must take care that proposed corporate governance reforms do not penalize the vast majority of businesses and executives who are honest and play by the rules. Similarly, insurers must not overreact and unfairly tar all directors and officers with the same brush as officials at the handful of dishonest companies that have come to light—and others that surely will emerge in the weeks to come.

The House of Representatives passed legislation in April designed to redress corporate wrongdoing, in response to the collapse of Enron Corp., but the Senate took its time to follow suit. Now, in the wake of subsequent problems at other companies, including, most recently, WorldCom Inc., the Senate is considering various amendments to proposed corporate governance reform legislation that would prevent and punish corporate fraud. Last week, on an almost-daily basis, senators introduced new and more-severe proposals targeting corporate misconduct.

The sheer number and variety of proposals and the speed with which they were introduced and adopted creates a risk that some measures could have unintended consequences. Clearly, some of these proposals have more to do with winning political points in an election year than solving actual problems of corporate abuse. Fortunately, though, any measure eventually passed by the Senate will have to be reconciled with the House bill by a conference committee, which we hope will eliminate all but needed reform measures.

And reform of some sort is needed. Although laws and regulations already exist to guide corporate directors and officers and to prevent the kinds of accounting and corporate abuse that have come to light in recent months, they have failed to work as intended. Boards of directors are supposed to control corporate activities and management. Independent audits are supposed to verify the accuracy of figures and their conformity with established practices. Laws and regulations are supposed to prevent fraud, the destruction of documents and deceptive business practices. Federal securities and tax regulators are supposed to identify and deter such problems. But these corporate governance safeguards didn't work.

As a result, Enron, WorldCom and other companies were ruined financially and, in the bargain, investors, employees and business in general were harmed.

So existing rules and regulations may need to be toughened. Boards of directors should be more proactive, attentive—and independent. And the agencies charged with enforcing fair and proper business practices must be more vigilant.

As recent events demonstrate, action by Congress is needed, but we hope lawmakers are careful not to overreach and penalize honest businesses and executives. What is needed are reforms that effectively deter wrongdoing before it ruins entire companies and the lives of the individuals who work for them. What is not needed is a witch hunt that could further erode public confidence.

Change in climate for PBGC

ONLY A YEAR OR SO ago, it would have been hard to argue against lowering the premiums that employers with fully funded pension plans pay to the federal Pension Benefit Guaranty Corp.

At that time, the PBGC's insurance program for single-employer plans was enjoying a record $10 billion surplus, a dramatic turnaround for an agency that not so many years before had a $3 billion deficit and was seen by some in Congress as a likely candidate for a federal bailout to ensure its ability to pay promised benefits to participants in plans it had taken over.

Indeed, David Strauss, then the PBGC's executive director, advocated a premium cut, and we supported such a move.

Now, amid a dramatic and disturbing change in the agency's financial reserves and the overall slump in the economy, we are having second thoughts about the wisdom of a premium cut.

The PBGC's once-healthy $10 billion surplus has fallen to about half that amount, the result of both heavy investment losses for the agency and its takeover of massively underfunded plans of failed or financially troubled companies.

And there is no reason to believe that the decline in the PBGC's surplus is temporary.

In fact, as PBGC Executive Director Steve Kandarian told a congressional panel last month, the PBGC still faces huge exposures. The steel industry alone sponsors pension plans that collectively are $9 billion in the red, with nearly half of that in plans whose sponsors are in bankruptcy. A significant amount of underfunding also is concentrated in financially troubled companies in the airline and retail sectors.

Too often in the past, potential losses have become real ones. Witness the $1.6 billion loss—the PBGC's biggest ever—when the agency took over LTV Corp.'s pension plans at the end of March, an action that had long been thought inevitable due to the steelmaker's chronic financial problems.

Given the struggling economy and a strong chance of more big losses, it would be imprudent now to cut premiums.

It is far better for the PBGC to have a cushion to meet its obligations than to erode that surplus with a premium cut, leaving no safety net—as well as the possibility of a premium increase—if big losses continue.

Beyond that, we welcome Mr. Kandarian's comments that the agency is carefully examining, on a case-by-case basis, whether it is appropriate to move quickly to terminate plans of struggling companies, rather than waiting for a company to fail and then taking on liabilities that grew it moved toward dissolution.

Certainly, if the failure of a company is virtually inevitable, it makes sense for the PBGC to terminate a plan sooner rather than later, to prevent even greater losses to its insurance program.

We are encouraged that the PBGC recognizes this and is taking steps to minimize its exposure to potentially large losses in a difficult economic environment.

Schillerstrom

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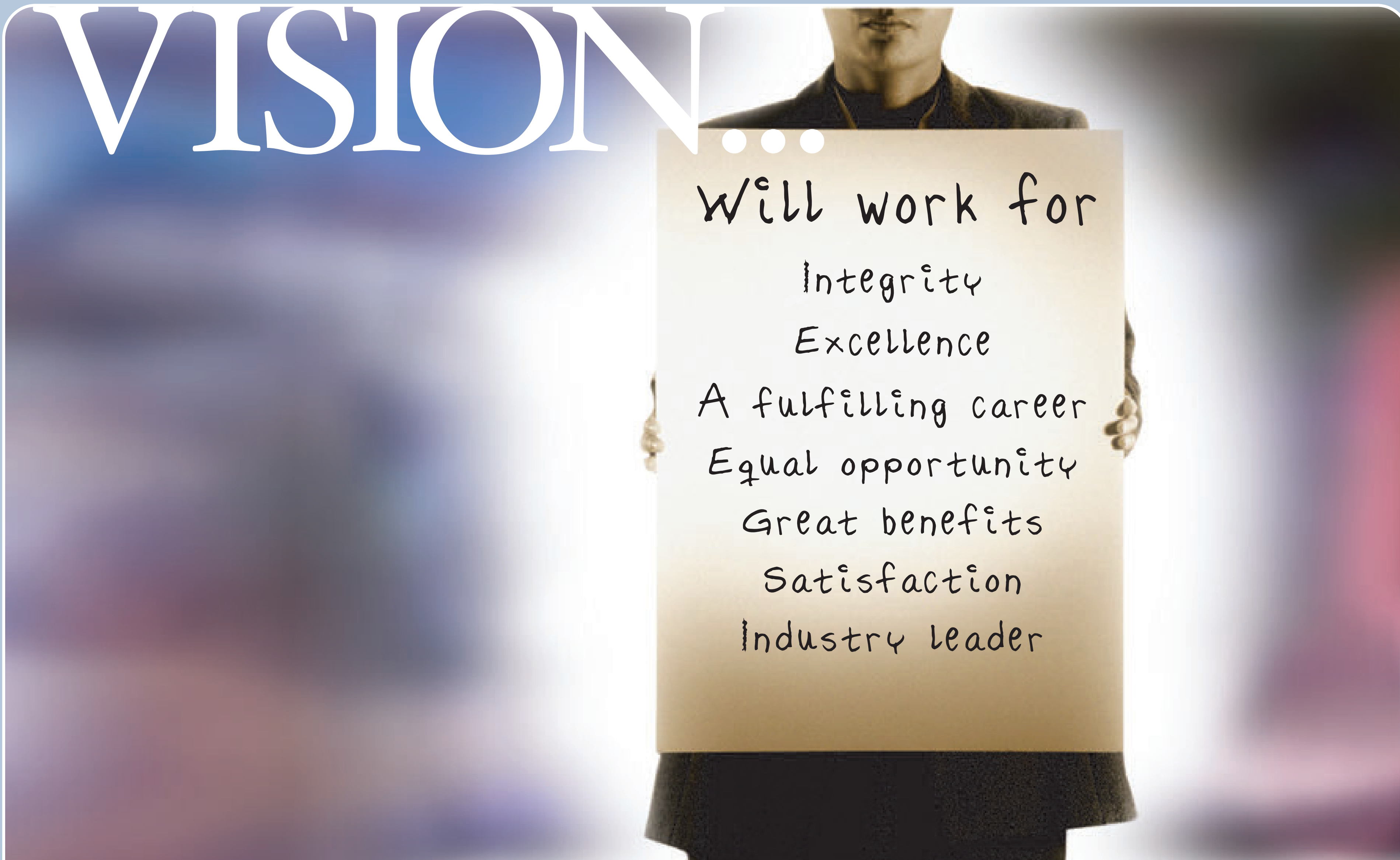

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Employers have duty to look at ADA issues

By Gerald L. Maatman Jr.

The U.S. Supreme Court decided several significant employment discrimination cases in its 2001-2002 term. As a result of three controversial rulings from that term—in *Toyota vs. Williams*, *US Airways vs. Barnett* and *Chevron vs. Echazabal*—some have described the high court as "hostile" to the Americans with Disabilities Act.

Should employers breathe a sigh of relief about their ADA-related responsibilities based on these rulings? Although the employers prevailed in *Williams, Barnett* and *Echazabal*, a closer examination of the decisions suggests that the Supreme Court stopped short of giving employers a free pass from ADA exposure. The rulings clarify important issues related to the accommodation process, medical evaluations and disability threshold definitions under the statute. But the key lesson to be learned from these decisions is that risk managers, corporate counsel and employers must continue to analyze ADA-related situations in their workplaces by making individual determinations on a worker-by-worker basis.

Toyota vs. Williams

Williams involved the proper standard for assessing whether an individual is substantially limited in performing manual tasks and is therefore qualified for protection under the ADA. The Supreme Court held that the essential question on this legal issue must be whether a worker is unable to perform a variety of tasks central to most people's daily lives and not whether an employee is unable to perform the specific tasks associated with his or her particular job.

While employers can take some solace from the holding in *Williams*, the case does not mean that plaintiffs with impairments that cause difficulties in performing manual tasks in the workplace are not necessarily covered by the ADA; conversely, employers cannot safely assume that a worker's mere difficulty in performing some manual tasks in the workplace would put him or her outside the protections of the ADA.

Instead, *Williams* encourages plaintiff lawyers to shift the focus of their litigation strategy away from an examination of an employee's workplace limitations toward the manner in which a worker's impairment adversely affects his or her daily activities. As long as the impairment significantly restricts an individual's ability to perform central, everyday tasks, the worker can advance a sound argument that he or she is protected by the ADA. *Williams* will shift the litigation battleground to a broader subject area, encompassing the impact of the worker's restrictions on all facets of his or her life, and it will increase plaintiffs' use of vocational experts to prove the impact that an impairment may have on a broad range of activities.

US Airways vs. Barnett

The *Barnett* case concerned seniority rights and the extent to which employers can deny an employee's request for a reasonable accommodation through job transfer to a position covered by seniority-based bidding procedures. The Supreme Court held that where a requested accommodation conflicts with a seniority system, it is not a reasonable accommodation as a matter of law.

At the same time, the Supreme Court recognized that, in certain circumstances, an employer could be required to deviate from the seniority system if an employee can show that an employer frequently makes exceptions to its seniority process. *Barnett* opens the door for deviations from other disability-neutral rules being required by the ADA, as the case will apply beyond the seniority context, and many open issues remain outside that context.

Chevron vs. Echazabal

This case examined whether the ADA permits an employer to deny employment to an individual whose job performance is likely to endanger his or her own health. In the parlance of the ADA, this issue turned on the contours of the "direct threat defense," which allows an employer to deny a request for a reasonable accommodation by showing that it would pose a risk to the health or safety of the individual with the disability.

The Supreme Court unanimously determined that the law does not preclude employers from applying qualification standards that include requirements that individuals shall not pose a direct threat to the health or safety of themselves or others in the workplace. While employers concerned about wrongful injury claims and workers compensation exposures can take heart from the ruling in *Echazabal*, the decision does not change the calculus of risk in circumstances where an employer denies a job based on an applicant's own health risks.

Employers are required to prove a significant risk of a substantial harm that cannot be eliminated or reduced by a reasonable accommodation. This is an exacting standard. The assessment must be individualized insofar as it is specific to the individual and based on the most current medical knowledge available. An employer cannot prove such a threat with generalized perceptions and paternalistic assumptions.

Impact on employers

Williams, Barnett and *Echazabal* do not relieve employers of the everyday challenge of dealing with the legal rights of sick, injured and disabled employees. The ADA requires businesses to take an individualized approach to the particular circumstances of any worker whose impairment substantially limits one or more major life activities, including the ability to work. Decisions involving hiring, disciplinary actions and employee requests for reasonable accommodation cannot be made based on generalized notions or assumptions about the characteristics or abilities of groups having specific types of disabilities. Rather, employees must be considered as individuals. And because every individual disability has a spectrum of differences, every worker—and every personnel decision—is unique.

Gerald L. Maatman Jr. is a partner at law firm Baker & McKenzie in Chicago. Mr. Maatman is chairman of Baker & McKenzie's global labor, employment and employee benefits practice group.

Plan choices helpful to midsize employers

By Alan Hoops

The midsize employer–the "middle child" of the employee benefits family–is in an unenviable position: too big to take advantage of government-sponsored pools for the small employer and too small to tap the resources available to larger companies, such as employer purchasing coalitions and self-funding.

Yet, these midsize employers are dealing with the same health care cost crisis as their competitors. With health care premiums projected to increase in the double digits each of the next five years, employers are facing a 75% increase in health care premiums over this period. A company with 500 employees can expect to pay an additional $4.3 million for health care benefits over the next five years.

Midsize companies—which form the majority of the nation's employers—must find ways to manage these costs, while at the same time maintaining attractive benefit packages to compete for valuable employees. This balancing act is made more challenging because today's consumer wants and expects flexibility and choice in their benefits, features that are not readily available in an affordable package.

To get some cost relief and to encourage employees to make more cost-effective choices in health care purchasing, many employers are educating employees about the value of their benefits and increasing the amount that employees pay for those benefits.

However, this cost sharing will likely be viewed by employees as a "take-away" unless accompanied by an added value, such as expanded benefit choices. Studies have demonstrated that employee satisfaction rises when more plan choices are offered. In a Kaiser/Harvard/Princeton study conducted in 1997, employees offered only one health plan gave a low satisfaction rating 39% of the time. Low satisfaction fell to 23% when offered an additional choice of health plans at the time of enrollment.

But midsize employers are hampered in their ability to offer more plan choices because of the costs required to purchase and administer multiple plans. Even when more than one benefit option is available to employees, it is often only a single brand choice of an HMO or a PPO. Meaningful choice—a choice of brands, products, benefit designs, networks and prices—is typically not available.

While employers are seeking strategies that manage costs that are also palatable to their employees, health plans are also struggling. In a competitive marketplace where health benefits are increasingly viewed as commodities and purchases are made based on price, health plans struggle for sustainable market share growth.

Midsize employers and health plans could both solve their problems if they could find a way to offer multiple plans from multiple insurers. Until now, barriers have existed that have made this impossible. Midsize employers are often fully insured, so offering employees a choice of insurers will "split" the risk pool, setting up the potential for adverse risk selection. Health plans are often reluctant to quote fully insured businesses in "shared" accounts, and they protect themselves by either refusing to do so or charging higher premiums. Also, the administrative burden of managing multiple insurers is daunting unless a company is large enough to absorb the cost of hiring specialized benefit managers.

An emerging concept called "the benefits choice center" can resolve this dilemma, giving midsize employers access to multiple insurers and multiple plans.

With a benefits choice center, a third party creates a platform in which competing plans can offer a broad array of products—health benefits and ancillary benefits—to the midmarket employer. The employer can designate a fixed contribution for each employee or, for example, can cover the full cost of the lowest-priced plan. Employees then can select the level of plan and benefit design that suits their needs, paying the additional cost themselves.

The normally prohibitive costs associated with offering and administering multiple plans is mitigated by new benefits administration technology. The third party provides online enrollment and customer service to reduce the administrative workload that would normally be required of the employer's human resources department. These services, plus back-end transaction processing, serve as a full replacement platform for HR benefits management.

Adverse selection is mitigated with a risk adjustment mechanism administered by the third party that adjusts payment to health plans based on the risk that is enrolled in the plan. The benefits choice center and its products are sold through brokers who receive competitive commissions for these sales.

The concept of the benefits choice center offers the majority of the nation's employers—the midsize market—a new solution to their health care benefits dilemmas.

It moves them along the continuum of consumer-directed care, providing appropriate incentives for all participants in the marketplace, and offers—through set contributions—some predictability for volatile health care costs. Employees receive a range of choices that will increase their satisfaction and enable them to select the products that truly meet their individual needs and budgets.

Alan Hoops is chairman and co-founder of BENU Inc., a San Mateo, Calif.-based online marketplace for benefit plans, and former CEO and co-founder of PacifiCare Health Systems.

HIPAA privacy rules threaten comp system

By Bruce C. Wood and Eric Oxfeld

Final medical privacy regulations promulgated by the U.S. Department of Health and Human Services will jeopardize our nation's workers compensation system if they are not fixed.

The regulations will impair the ability of insurers and employers to obtain quickly—if at all—medical information necessary to determine compensability, treatment and disability benefits. No doubt this will lead to confusion, delays, disputes and litigation over what can and cannot be disclosed—all of which will delay benefit payments and return to work, complicate disability management and disrupt labor-management relations.


Mr. Wood


Mr. Oxfeld

The regulations, required by the Health Insurance Portability and Accountability Act, are a comprehensive, pervasive attempt to restructure the relationship among medical providers, patients and the multitude of other parties participating in treatment, payment and liability determinations.

Unlike health care plans, medical providers and health care clearinghouses, workers comp insurers and self-insured employers are not "covered entities" under HIPAA. Even so, as drafted, the regulations would directly affect workers comp insurers. One problem is that the regulations do not ensure that covered entities can disclose information to noncovered entities, such as workers comp payers. The regulations are especially adverse to workers comp because the expeditious, free exchange of medical information is absolutely necessary to meet statutory payment deadlines, to ensure all reasonable and necessary medical treatment and to return the injured to work as quickly as possible.

By law, workers comp claims are not approved—and benefits are not paid—unless medical documentation exists to support them. Without that information, a worker's claim may be denied outright, and wage replacement benefits and medical care will be delayed. In those states that require the payment of "provisional benefits" pending the required medical reports, insurers and self-insurers are faced with paying out benefits for which they may not be ultimately responsible. These situations create unnecessary labor-management problems and drive up costs; they are the primary reason most states require medical providers to supply information without needing a signed medical authorization from the claimant.

The federal regulations' most direct impediment to the disclosure of medical information is the "minimum necessary" standard, a standard mandating that the covered entity disclose only that information it deems "minimally necessary." The standard imposes on doctors and other medical providers the responsibility to make legal determinations of what information is or is not relevant to a workers compensation claim. These providers are not qualified to make that call, and this will ultimately lead to disputes over whether a physician should have disclosed certain information, especially about a pre-existing injury or condition that could have a bearing on eligibility for benefits or on treatment itself. This is a roadblock to the timely acquisition of complete medical information, eroding workers comp insurers' ability to effectively manage disability and the return of injured employees to work.

Faced with doubt over what to release—and penalties for improper disclosures—physicians understandably will err on the side of caution and withhold information. Because an insurer will want to know what information it is missing, it will need to obtain subpoenas more often, at further expense and delay. This will inject contention into the workers comp system—a system that was intended to eliminate disputes and deliver benefits quickly, as required by statute.

The "minimum necessary" standard also permits patients to pressure their physicians to withhold information. Furthermore, the rule specifically authorizes doctors to let patients review a medical file to determine what is released. Claimant attorney pressure on treating physicians is already occurring in the California system, where aggressive attorneys have threatened doctors with sanctions for releasing information they deem prejudicial to their clients' cases. The regulations, therefore, are tantamount to an open invitation to fraud in a workers comp environment where "doctor shopping" and attorney referrals to claimant-friendly doctors are commonplace.

Hawaii's experience also tells us what can happen under similar medical privacy rules. In 1999, Hawaii lawmakers enacted a comprehensive medical privacy statute that penalized doctors for unauthorized disclosures. Doctors refused to disclose any medical information to employers and their insurers, and the workers comp system effectively shut down. One year later, the Legislature repealed the law.

Compounding the federal regulations' unworkable reliance on doctors to decide the legal relevance of medical information is the conflict between state and federal information-disclosure standards. The "minimum necessary" standard represents the first federal workers compensation standard. As such, HHS' enforcement machinery—the Office of Civil Rights—will always be able to second-guess medical provider, insurer, employer and—implicitly—state agency disclosure determinations as to what information is necessary.

Those with a stake in the continuation of a workable workers comp system need to act now and contact HHS Secretary Tommy Thompson to urge deletion of the "minimum necessary" standard as it applies to workers comp. Modifications to the final regulations are expected to be published in the fall, with compliance scheduled to begin April 14, 2003.

We must change the regulation—or the smooth flow of benefits to injured workers will cease and disputes and litigation will erode the credibility of our nation's oldest social insurance system.

That is a price that insurers, employers and American workers cannot afford to pay.

Bruce C. Wood is assistant general counsel of the American Insurance Assn. in Washington. Eric Oxfeld is the president of Washington-based UWC-Strategic Services on Unemployment & Workers' Compensation, a Washington-based business group that lobbies on workers compensation and related issues.

Modified vehicle deemed a legitimate comp benefit

Legal briefs

The Court of Appeals of Arkansas ruled that the Workers' Compensation Commission was not clearly wrong in holding that a modified van constituted an "other apparatus" within the meaning of the Workers' Compensation Act. Thus, the court held that the employer's insurer was liable for a modified van for a claimant whose legs were amputated as a result of a work-related injury.

Randall Chambers sustained a compensable injury in 1999 in an auto accident. As a result of those injuries, both of his legs were amputated. He was fitted with prostheses but relies primarily upon a wheelchair because he has little or no balance without the use of assistant devices and can walk only 10 to 15 feet with the use of a walker.

His employer's insurer paid to have Mr. Chambers' 1986 Lincoln Continental equipped with a wheelchair rack and hand controls, despite determinations by a prosthetic laboratory and his rehabilitation institute that these modifications would be insufficient. Mr. Chambers sought to have the insurer provide him with a wheelchair-accessible, hand-controlled van. The commission concluded that the insurer was obligated to provide a "suitable van" and the necessary modifications but also allowed the insurer a credit against liability equal to the present value of Mr. Chambers' 1986 Lincoln. Both parties appealed.

The appellate court noted that the state workers compensation law required an employer to provide an injured employee with "other apparatus as may be reasonably necessary in connection with the injury received by the employee." The court stressed that the law no longer tied "apparatus" to medical services.

Thus, the court said that the commission was not clearly wrong in ordering the insurer to provide Mr. Chambers with a suitable van. The court also ruled against the insurer's request for a credit on the cost of the modifications on the Lincoln. According to the court, the insurer was not entitled to a discount for insisting upon useless measures that needlessly delayed Mr. Chambers' prompt receipt of reasonably necessary apparatus. Justice Jennings filed a dissenting opinion; he wrote that a specially equipped van did not qualify as "other apparatus" within the meaning of the Workers' Compensation Act.

Liberty Mutual Insurance Co. et al., vs. Chambers, Court of Appeals of Arkansas, Jan. 9, 2002 (BI/04/Au.-$10)

Pro football player eligible for comp benefits

Professional football players are not exempt from coverage of the Workers Compensation Act when they suffer injuries in the game they are employed to perform, according to the Court of Appeals of Virginia.

Pro-Football Inc. employed Jeffrey A. Uhlenhake, a professional football player, as an offensive lineman for the Washington Redskins football team beginning in 1996. Prior to that, other professional football teams had employed him. During his career, Mr. Uhlenhake had a number of physical injuries in training, practice and games. Before he was employed by Pro-Football, he had some left knee clicking.

In 1993, he had reconstructive surgery on his left knee. In 1997, he sustained an injury to his left ankle and foot during a regularly scheduled game. In 1997, again during a game, he felt a "pop and pain" in his left knee. He filed a claim for disability benefits based upon injuries to his left ankle and foot and his left knee.

The Virginia Compensation Commission allowed benefits for his left ankle and foot but not for injury to his left knee. Both Mr. Uhlenhake and the employer appealed.

On appeal, the employer argued, in part, that injuries resulting from voluntary participation in activities where injuries are customary, foreseeable and expected are not accidental within the meaning of the state Workers' Compensation Act. The court said that the business of Pro-Football is to engage in the activity of professional football. "It employs individuals to constantly perform in a strenuous activity that has risks and hazards," the court said. Thus, the court said that the commission correctly ruled that professional football players are not exempt from the coverage of the act when they suffer injuries in the game they are employed to perform.

The court affirmed the commission's decision to allow benefits for the ankle and foot injury and also affirmed the decision to deny recovery for the left knee injury because it was the result of cumulative events.

Pro-Football Inc. vs. Uhlenhake, Court of Appeals of Virginia, Jan. 29, 2002 (BI/02/Au.-$10)

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

Employers keeping an eye on the till

Surveillance, security tools used to deter employee fraud

By SAMANTHA MARSHALL

NEW YORK—Investment banker Steven Markowitz installed video cameras at his New York business a year ago because he wanted to protect his office premises. He says his main motivation was employee safety.

But he's open about the cameras' secondary purpose: employee surveillance.

"I love every one of my employees, but they also know it's a business and we have sensitive client material here," said Mr. Markowitz, chief executive of small Wall Street firm Joseph Stevens & Co.

The economic downturn and a string of business scandals are fostering a growing fear of fraud among employers, which are investing in everything from high-tech surveillance systems to software that turns up minute inconsistencies in transactions that could be clues to major scams.

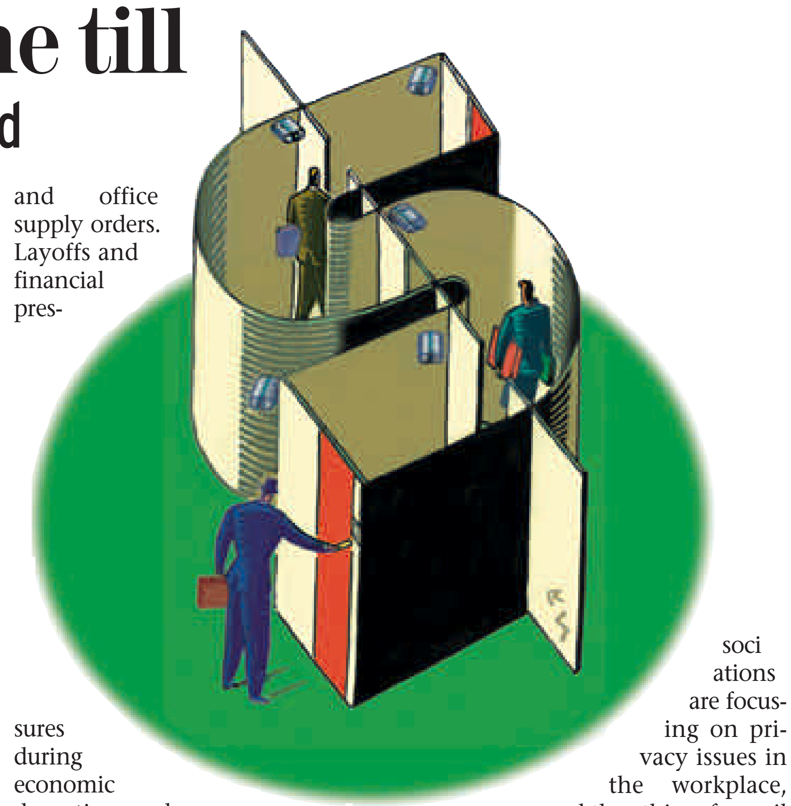
Mr. Markowitz, who has three security systems, including the video system as well as fingerprint scanners, says he'd like to buy more. "These days, you can't have enough security," he said.

Heightened security since Sept. 11 is giving employers the opportunity to add internal security without raising privacy concerns. Many of the measures taken to protect companies against terror attacks may end up serving another purpose: keeping tabs on employees.

"Employees might react to a level of intrusiveness, but we have generally found that when it's put into the context of physical security, it's more accepted," said Jeffrey Schlanger, chief operating officer of Kroll's Security Services Group, which is part of Manhattan-based Kroll Inc.

White-collar crime is nothing new. Nationally, about 6% of revenues, or $600 billion, will be lost in 2002 as a result of occupational fraud and abuse, according to the Assn. of Certified Fraud Examiners, which bases its estimates on a decade's worth of surveys by its members.

But, now the recession is forcing companies to take a closer look at their books and question suspiciously large expense statements and office supply orders. Layoffs and financial pressures during economic downtimes also add to the temptation among employees to take from the till. The ACFE's survey shows that 93% of people who commit occupational fraud are first-time offenders. The fraud ranges from creative accounting to make a company look better to investors, to outright theft.



"People dependent on a higher level of income may find themselves in a pinch when bonuses shrink or disappear," noted Toby Bishop, president and chief executive of the ACFE. "The pressure to boost income becomes so strong that people who wouldn't otherwise participate in fraud finally crack."

The latest corporate scandals, from Enron to WorldCom, are also making employers realize they could be held criminally responsible for the actions of individual employees. Accountants who cook the books to make the numbers look good to investors can bring down a whole business and ruin corporate reputations for years to come.

"Security is pretty hot stuff now," said Mark Hurd, president of NCR Corp., which produces computer systems that detect fraud.

To take advantage of the rising demand, security company conferences have been springing up all over town in New York. Recently, there has been a national seminar on workplace fraud and a tightly packed meeting of prospective clients for Kroll Inc. Among the services Kroll is selling, ostensibly as an antiterrorism precaution, is employee screening.

Of course, there's a danger that the increase in surveillance could turn into an invasion of employee privacy. Federal and state laws restrict the degree to which companies can monitor employees. Unless employers are well-versed in the legalities of internal investigations, they could open themselves up to litigation and lose cases they bring against employees who commit fraud, said Robert Anello, an attorney with Morvillo Abramowitz Grand Iason & Silberberg who specializes in white-collar defense.

So far, employee reaction to the surveillance measures has been muted. Several employee rights associations are focusing on privacy issues in the workplace, and the ethics of e-mail monitoring have long been questioned. The groups particularly object to urine testing, polygraphs and employee screening.

None of Mr. Markowitz's employees has complained, though. Earlier this year, when he installed a security identity system that scans fingerprints to track people as they come in and out of the office, staff members were thrilled that they no longer had to use the plastic ID cards they were always losing.

Mr. Markowitz says his employees also feel more physically secure that the premises are closely watched. But he makes no secret of the fact that an additional benefit to the monitoring is protection against internal theft.

If anything underhanded is going on in his office, it's mostly likely happening after 7 p.m., when most people have gone home. But computers and video cameras record who's in the office and when, "so I'll know if someone is in a secure room at an odd hour," he said.

For all of these efforts, however, it's hard to prevent fraud at the top. Some of the biggest losses come from schemes involving top management and executives. "Most traditional internal controls are vulnerable to being overridden by senior management," noted the ACFE's Mr. Bishop, who until recently was an auditor at Arthur Andersen.

Nor is technology much good against some accounting scams, which can take as long as 18 months to detect. Mr. Bishop advises business owners to establish fraud prevention procedures and a code of ethics to create a climate in which fraud is less likely to happen.

Mr. Markowitz uses a system of checks and balances to review the books with his partner and tries to foster an environment of goodwill with his employees.

But, "I don't know how you prevent an employee at their desk from playing around with the numbers," said Mr. Markowitz.

Samantha Marshall is a reporter for Crain's New York Business, a sister publication of Business Insurance.

INSURER TOPICS

A MONTHLY EDITORIAL SECTION SENT EXCLUSIVELY TO INSURERS AND REINSURERS

Marketing Strategies

Some still banking on benefits of cross-selling

By RODD ZOLKOS

The melding of banking and insurance offers insurance companies, agencies and brokerages a chance to co-brand insurance products "with a trusted adviser," while tapping a pool of bank customers who want and need insurance services, according to a group of speakers with experience in bank distribution of insurance products.

Efforts to tap the marketing opportunities offered by integrating banks and insurance have advanced "with fits and starts, successes and failures," noted Nanci Evarts, vp and manager of corporate communications for Aon Services Group, a division of Aon Corp. in Woodland Hills, Calif. Ms. Evarts moderated a session at the annual joint meeting of the Insurance Marketing Communications Assn. and the Life Communicators Assn. last month in Toronto.

But Mark Ogren, director of Aon's Financial Institution Alliance, a division of the brokerage that was formed to sell insurance products to and through financial institutions, cited several reasons that banks offer considerable opportunity for insurance marketers.

"Banking is the one industry that is related to every other industry and has an impact on all of them," Mr. Ogren said.

He said that there are more than 9,000 banks in the United States, 32% of U.S. households have three or more banking relationships, and 60% of households have been with their present bank for five or more years.

Still, when the Gramm-Leach-Bliley Financial Services Modernization Act came along in 1999, "everybody thought it was

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Banks: Cross-selling proponents see benefits for both sides

Continued from previous page

going to be a panacea for banks in insurance," Mr. Ogren said. "But, frankly, it hasn't worked out the way everybody anticipated."

Banks have marketing leverage, Mr. Ogren said, because their physical location is close to customers, they see customers often and they deal with customer life events such as the purchases of homes and autos, and "those are natural opportunities to sell insurance."

In addition, banks have a wealth of information on customers that can be used to provide a marketing advantage. "But it's amazing to find the number of banks today that don't know anything about their customers in detail," he said.

Banks' approach to dealing with insurance products has involved expanding their own operations to address insurance sales, partnering with insurance agencies or purchasing the capabilities by buying an agency, Mr. Ogren said. But, addressing the third option, he said, "I have not run across a bank yet that has effectively integrated that agency into its bank culture."

"Most insurance products that are sold today are sold through a subsidiary of the bank or a third party," he said. "The significance of that is it's not an integral part of the business of the bank."

'If you are fortunate enough to have a bank that has 1 million e-mail addresses...you can effectively use that.'

Jeffrey A. Oster
Aon Annuity & Insurance Services

There are several reasons banks haven't been satisfied with their insurance business to date, Mr. Ogren said. One is that most banks aren't good at developing insurance marketing strategies, he said.

But there is potential for success in those activities, because bank customers want and need the insurance services the bank can provide, he said, and a bank can organize itself to meet those needs.

In trying to market insurance, it's important for banks to remember that "it's not about selling insurance," Mr. Ogren said. "It's about the bank remembering that insurance solutions are an integral part of their customers' lives."

The bank has to leverage insurance marketing as part of its overall banking operation, he said, and it has to present insurance products in an integrated fashion with banking products. "It can't be an add-on," he said.

Lawrie McGill, vp-strategic initiatives at the CIBC Insurance unit of the CIBC Group of Cos. in Mississauga, Ontario, said that while his company has had tremendous success integrating insurance sales into its banking activities, its real success has come from distribution rather than the development of insurance products.

In addition to added revenue, distributing insurance products provided the bank with a potential for increasing customer loyalty, he said. "The more contacts we have with the customer, the better," Mr. McGill said.

Jeffrey A. Oster, managing director at Aon Annuity & Insurance Services in San Francisco, suggested that insurance industry companies can develop product marketing strategies like Web-based programs for banks linked to the bank's Web site, "and if you can develop these and turn them over to the bank on a turnkey basis, (banks will) look at you in a whole new light."

"One thing you might want to come to the bank with is" an actual selling site, Mr. Oster said. "This is a lead-generation program," he said. "The whole goal of a Web-based program is to feed the brokers and agents."

And, he said, "If you are fortunate enough to have a bank that has 1 million e-mail addresses...you can effectively use that," using e-mail to draw customers to the selling site.

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Annual conference of the Insurance Marketing Communications Assn.

Web design expert cites pitfalls of sites

By RODD ZOLKOS

In designing a Web site, the most important consideration for a company is ease of navigation, according to one Web design expert.

"Everything in your site revolves around navigation," Redmond, Wash.-based author and webmaster Vincent Flanders said last month at the annual conference of the Insurance Marketing Communications Assn. and the Life Communicators Assn. in Toronto.

"If they can't find it, they're going to leave," said Mr. Flanders, who was webmaster for Lightspeed Net from 1995 to 1997 and in 1996 launched WebPagesThatSuck.com as an offshoot of Web design classes he was teaching.

Citing a site that has demonstrated successful design, Mr. Flanders suggested a good rule of thumb in Web site design is "Would Amazon.com do it?"

"Most Web sites out there have some severe problems," he said, suggesting insurance companies "would go broke" if they insured against bad Web site design.

"When you look at a Web site, you should know exactly what it's about," he said. Too often, though, it's difficult to determine from the site what the company behind it actually does.

He suggested attendees apply the "man from Mars approach" to their Web design. "If a man from Mars came down, would he know what your Web site's about?" he asked.

"Remember, no one is going to write you a check because your Web site has won awards or because it's cool or because it's got a Flash (animation) that moves around," Mr. Flanders said. "They write you checks because you solve problems. Your Web site should solve problems."

For insurance industry Web sites, providing information is a key to being truly successful, he said.

"There's only three reasons people go to Web sites," Mr. Flanders said. "They go to buy something, they go to get information or they go to be entertained."

"Nobody goes to an insurance Web site to be entertained," he said. "I'm not sure you can sell insurance on the Web, so the selling angle is kind of out." Instead, he said, people are inclined to visit insurance industry sites because "they want you to 'Solve my problem now.' "

One factor Mr. Flanders said he often sees in unsuccessful Web sites is an excessive infatuation with design elements.

"People think if they add one more design element to their Web site, it's going to be good," he said. "No. Throw out unnecessary design items."

"Just because you can add a design element doesn't mean you should," Mr. Flanders continued. "In Web design, do you need to have the design element? Will anybody write you a check because you're using it?"

Failed Web sites problems often begin at the home page, the Web design expert said. "You've got to remember the home page is the most important page," Mr. Flanders said. "It's the first impression. Most screw-ups come from that."

It's also critical to know your audience, he said, and make sure the content of the page is appropriate for that audience. And the site shouldn't confuse the visitor. "Give them what they expect," he said.

"If you don't give your customers what they expect, they're going to be angry," he said, and that can lead to public relations nightmares.

While certain industries lend themselves to certain Web site characteristics and elements, "one of the problems with insurance company sites is you all look alike, sort of," Mr. Flanders said. "It's really difficult to design a site that's unique enough that people will instinctively recognize it."

Mr. Flanders listed a number of techniques and elements he thinks insurance companies and brokers should avoid.

"There is one technique that is always going to be bad," he said. "It's called 'mystery meat navigation' and that's where you mouse over a link to find out what it is."

That technique "is spreading, unfortunately," Mr. Flanders said. "It's very arrogant to think that your site is so important that people are going to memorize the navigation. They're not."

Another technique he recommended conference attendees avoid is Flash animation.

"If there's one technique your designers are going to want to try on your site and try to talk you into, it's Flash," he said. "There might be a reason for an insurance company using Flash on its Web site. I can't think of it."

Among its drawbacks, Flash uses up considerable bandwidth, and it interferes with site navigation, Mr. Flanders said.

Large Web pages are something else to avoid, he said. "Hold your breath," he advised. "If the page hasn't loaded by the time you gasp, it's too big."

Cheap clip art, three-dimensional logos and a lack of contrast between text and background are other frequently seen problems he recommended that insurers and agents avoid on their Web sites.

Annual conference of the Insurance Marketing Communications Assn.

IMCA presents Showcase Awards

By RODD ZOLKOS

The Insurance Marketing Communications Assn. presented its annual Showcase Awards last month at its 2002 conference in Toronto, the group's first annual gathering to be held jointly with the Life Communicators Assn.

The group's SAMMY award, the IMCA's Special Award from Members, went this year to Farmers Insurance Group.

The SAMMY, selected by the vote of company and associate members attending the IMCA's annual meeting, is presented to the one entry in the organization's Showcase Awards program deemed to make the greatest contribution toward raising the level of insurance marketing communications.

Other awards and their winners include:

Personal lines sales promotion to producers/agents: best of show, to Fireman's Fund Insurance Co. and The Hartford Financial Services Group; award of excellence, to Harleysville Group and Country Insurance & Financial Services.

Personal lines sales promotion to consumers: best of show, to Atlantic Mutual Cos.; award of excellence, to MetLifeAuto & Home, Fireman's Fund Insurance Co. and Country Insurance & Financial Services.

Commercial lines sales promotion to producers/agents: best of show, to Aon Services Group; award of excellence, to The Hartford, Atlantic Mutual Cos., Fireman's Fund Insurance Co.

Commercial lines sales promotion to business customers: best of show, to Utica National Insurance Group; award of excellence, to Harleysville Group, Commonwealth Risk, The Hartford (two), General Cologne Re, Universal Underwriters Insurance Co., Aon Services Group and CAMICO Mutual Insurance Co.

Personal lines print advertising to consumers: best of show and award of excellence, to Nationwide Insurance Group.

Commercial lines print advertising to business consumers: best of show, to The Hartford; award of excellence, to General Cologne Re and Marsh Inc.

Personal or commercial lines print advertising to producers: best of show, to RLI Corp.

Corporate image print advertising to producers or consumers: best of show, to American Contractors Indemnity Co.; award of excellence, to Farmers Insurance Group (three), Kemper Insurance Cos. and Nationwide Insurance.

Radio advertising: best of show, to Farmers Insurance Group; award of excellence, to Nationwide Insurance Group (two) and to the Workers Compensation Fund of Utah.

Television advertising: best of show, to Nationwide Insurance Group; award of excellence, to The Hartford, State Farm Group, Kemper Insurance Cos. and Farmers Insurance Group.

Audiovisual: best of show, to American Family Mutual Insurance; award of excellence, to Utica National Insurance Group, ProMutual Group and EMC Insurance Cos.

Total communications campaign: best of show, to State Farm; award of excellence, to GE Global Asset Protection Services (two), The Hartford (two), Marsh Inc. (two), Kemper Insurance Cos., ACE and Aon Services Group.

Public relations: best of show, to Missouri Employers Mutual Insurance; award of excellence, to The Hartford and American Family Mutual Insurance Co.

Company news publications for employees: best of show, to Harleysville Group; award of excellence, to Guide One.

Other employee communications: best of show, to The Hartford; award of excellence, to RLI Corp.

Annual reports: best of show, to ACE; award of excellence, to Harleysville Group and RLI Corp.

Event communications materials: best of show, to Zurich North America; award of excellence, to Commonwealth Risk and Venture Programs Inc.

Producer/agent publications: best of show, to The Hartford; award of excellence, to Country Insurance & Financial Services and Westfield Insurance Group.

Communications $1,000 and under: best of show, to Aon Services Group; award of excellence, to The Hartford and Universal Underwriters.

Total marketing budget under $1 million: best of show, to Workers Compensation Fund of Utah.

Special communications campaigns: best of show, to Fireman's Fund Insurance Co.; award of excellence, to Atlantic Mutual Cos. and ACE Ltd.

Marketing on the Internet: best of show, to The Hartford; award of excellence, to Royal & SunAlliance Insurance Co. and The Hartford.

The best idea never produced: best of show, to Atlantic Mutual Cos.; award of excellence, to Westfield Insurance.

Associate member media kits: best of show, to *Risk & Insurance*; award of excellence, to *Business Insurance*.

Associate member direct mail: best of show, to *Business Insurance*.

Associate member print advertising: best of show, to *Canadian Underwriter*; award of excellence, to *Best's Review*.

INSURER TOPICS

Trusted Choice campaign seeks to change Big I image

By NICOLE VOGES

The Independent Insurance Agents & Brokers of America has been hard at work changing the image of its members.

The Big I introduced its new branding program, Trusted Choice, with campaigns in the cities of Seattle and Louisville, Ky., in February, and it plans to go national next year.

Talk of a new image for independent insurance agencies began at the IIABA in 1998, and the Alexandria, Va.–based association hired a branding firm the following year. The IIABA supports the new program with funding from 16 regional and national insurance companies and fees from participating agencies.

The IIABA developed the new program out of necessity, said Robert Rusbuldt, IIABA's chief executive officer. The new image comes in response to outside research that revealed that consumers had negative views of the terms "independent," "insurance" and "agent."

According to the IIABA, consumers viewed the terms as meaning "small," "not affiliated with major brands" and "an agent of the company."

"The Big I logo did not connote anything to consumers," Mr. Rusbuldt said. "Consumers surveyed in the study decided that the Trusted Choice logo was preferred, even over the Big I," he said, though the IIABA plans to keep using the logo for its members.

Over 1,300 agencies have joined the Trusted Choice program, and "we have a goal of 2,500 agents by the end of the year," said Ronald Smith, the chairman of the Trusted Choice campaign and the president of Smith Sawyer & Smith, a Trusted Choice agency in Rochester, Ind.

The IIABA, which represents more than 300,000 agents and agencies nationally, will continue to offer its resources and services to members. The Trusted Choice program is an option for Big I members that want to increase their visibility with customers.

Mr. Rusbuldt acknowledged that, despite an increasing number of participants, some agencies are wary of the image change. "For a lot of agents for a long time, the Big I logo meant a lot to them," he said, "and it still does."

Mr. Rusbuldt said he knew it was time to create a new plan, though, because the competition—some insurers that do not use independent agencies—had been casting independent agents in a negative light.

According to the IIABA, consumers have seen "agents branded as unnecessary 'middlemen' by competitors."

Independent agents "need to define who we are," Mr. Rusbuldt said.

"It's been almost 20 years since the Big I did a major marketing campaign," he said. "A whole generation went by not understanding what independent agents do. We think we're going to regain it through this branding effort."

While the Big I is encouraging its members agencies to join the program, they must meet certain standards. Agents must sign the program's Pledge of Performance, agreeing to, among other things, provide service to customers 24 hours a day, seven days a week; return telephone calls and e-mails promptly; and guide customers through the claims process for prompt, fair resolutions to claims.

"The pledge works, but you would be surprised at how simple it is," said Alex Soto, the former chairman of Trusted Choice and the president of InSource, a Trusted Choice agency in Miami. "That's what consumers directly told us they wanted."

Member agencies must pay an annual fee to participate in the Trusted Choice program: $250 for an agency with nine or fewer employees, and $499 for an agency with 10 or more employees. Agencies must also commit to participate for at least three years.

"Sending your money is not the only part.… We have to put up the logo and have the employees talk up Trusted Choice," said Michelle Rupp, the Trusted Choice committee chair for Washington state and the owner of Nowogroski Rupp Insurance Group of Seattle.

Once an agency has agreed to the standards set forth in the performance pledge, it can take advantage of the Trusted Choice program immediately.

Mr. Rusbuldt said one major benefit of participation is being listed on the agency locator on the Trusted Choice Web site, *www.trustedchoice.com*. "If you're in Topeka, Kan.," he said, the locator "will give you the name and number of the nearest agent."

Another benefit of the Trusted Choice program is that insurers are including the brand in their marketing efforts, directing customers to participating agencies.

Mr. Smith said that though it is hard to gauge where business comes from, Trusted Choice can promise to give agents "the opportunity to communicate exactly what they do."

A press release announcing the choice of Seattle and Louisville as pilot cities for the Trusted Choice campaign noted that both cities' demographics closely mirror those of the national population. Three television ads were aired in the two cities for four weeks, at a total cost of about $400,000, Mr. Rusbuldt said.

Ms. Rupp said that consumers in Seattle are "starting to wake up" and take notice of the campaign. "There's a little bit of a buzz going," she said.

Although the Trusted Choice brand has yet to catch on nationwide, Ms. Rupp said she's "waiting for that mad rush." With 120 Trusted Choice agencies in Washington state, Ms. Rupp said she believes the state is "a little ahead of the curve."

Agents outside the pilot areas have also been marketing the brand in their own offices and locations. Garret Ratcliffe, a state national director for IIABA and a principal at Jones Raphael & Oulundsen, a Trusted Choice agency in New Britain, Conn., said that customers are impressed by the Pledge of Performance. "We took that pledge, put it on a card, we hand it to the person and go over it with them," he said.

"We've had fantastic response from the people we've sat down and gone over the pledge with, and we're getting more referrals than we've ever had," Mr. Ratcliffe said. He also called the pledge "a nice affirmation," not only for the customers but also for agency staff.

Mr. Ratcliffe recalled that one man was so impressed with his agency's promise to call customers back within the same day—one step beyond than the pledge's promise of a prompt return call—that he asked Mr. Ratcliffe to take over the business on some condominium property that another agent had been handling.

But it isn't just participating agencies that are involved in the Trusted Choice campaign. Bruce Allenbaugh, senior vp of marketing for Seattle-based SAFECO Corp., one of the four founding insurers funding the brand campaign, said SAFECO saw "a vital need to do this as a national carrier."

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INSURER TOPICS

Program protects against flying glass risks

By NICOLE VOGES

Project Safeguard, a group that works to educate people about the dangers of flying broken glass, is putting its message into practice through a loss control partnership.

Project Safeguard, which is chiefly sponsored by General Electric Co.'s Employers Reinsurance Corp. unit, is working with the Protecting People First Foundation to retrofit nonprofit day care centers by applying a shatterproofing film to facility windows, installing shatter-resistant light bulbs and securing heavy objects.

Approximately 300 employees of Overland Park, Kan.-based ERC have been volunteering their time to do the retrofits at day care centers both in the United States and the United Kingdom. Volunteers from other companies are also participating in the retrofitting to ensure the proper installation of safety features.

"Overall, Project Safeguard is an awareness and educational program," said Elaina Boudreau, public relations manager for ERC in Overland Park. And Project Safeguard delivers a powerful message: Flying glass can travel at speeds of up to 300 feet per second during disasters.

Ms. Boudreau became the driving force behind the community service project when it began in 2000, and she has helped Project Safeguard's volunteers complete 11 retrofitting projects.

Since its start, Project Safeguard has already proved its benefits during potentially dangerous situations. One night soon after a retrofitting was completed at the Salvation Army child care center in Kansas City, Mo., a heavy object was thrown at one of the windows during an attempted break-in. Although the window cracked from the impact, it remained in place.

"It really kept us protected," recalled Kathy Trager, the center's director. "When I called them about the break-in, they were out here immediately." Project Safeguard applied the safety film to the new window.

"You don't really expect or hope for a disaster, but, you know, you have to be prepared," Ms. Trager said. "We feel a little more confident and safe."

The St. Joseph Early Education Center in Shawnee, Kan., also benefited from the program. According to a recent ERC press release, seven windows in the center's building were shattered by tremors produced during construction work. The safety film installed during the retrofit kept the windows, as well as mirrors around the center, in place.

Project Safeguard is supported by ERC and businesses that include GE units GE Silicones and GE Lighting, as well as Bekaert Specialty Films L.L.C. and Simart Property Services Ltd. "The window film and shatter-

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IIABA: Trusted Choice

Continued from previous page

SAFECO ran a print ad campaign in several papers around the Seattle area.

One of the ads, described by Mr. Allenbaugh as "rather tongue in cheek," states, "Please. Call an agent who doesn't work for us." The ad promotes the Trusted Choice program, saying that its participating agencies "put your needs first. As do we." SAFECO also posted some additional pages its Web site "on why Trusted Choice makes sense."

Mr. Allenbaugh agreed with the IIABA that the most important step during the preliminary stages of the campaign is to inform independent agencies about the program. "We've seen a growing number of agents" joining Trusted Choice, he said. "Their reaction to this is what we're most happy about."

Mayfield Village, Ohio-based Progressive Corp., another insurer partner of Trusted Choice, also extended its commitment beyond financial support. "When these efforts started, we did work with local agents that wanted to be Trusted Choice, getting it kick-started with agents we work with," said Bob Williams, Progressive's agency group resident. "We try to direct business to Trusted Choice agents."

The IIABA's Trusted Choice committee plans to meet soon to discuss the progress of the program. Mr. Soto said that though it's too early to assess the brand's success, he is confident that the Trusted Choice logo will eventually come to signify value to consumers. Mr. Soto noted that while the campaign's advertising spending has not been large, "the more value in the product, the less time you have to spend on ads."

Mr. Rusbuldt concurred. "You don't have to have a boatload of money to market something if you have a good product or service," he said. "It might take a while longer, but eventually you will be known by consumers."

Safeguard: Glass risks

Continued from previous page

proof bulbs are donated; all other supplies we purchase," Ms. Boudreau said. Other supplies used during the retrofitting include locks for cabinets and hardware to secure heavy items such as bookshelves.

ERC's Project Safeguard formed an alliance with the nonprofit organization Protecting People First Foundation because ERC was "looking for a community project, and property made a lot of sense," Ms. Boudreau said. "It's been an excellent arrangement."

Ms. Boudreau noted that PPFF founder Aren Almon-Kok "is a very powerful speaker." Ms. Almon-Kok speaks globally on behalf of Project Safeguard, as well as nationally for PPFF. PPFF was launched in 1999 by Ms. Almon-Kok after flying glass and debris from the 1995 Oklahoma City bombing killed her 1-year-old daughter, Baylee. Baylee was attending day care in the Alfred P. Murrah Federal Building.

Another spokesperson for Project Safeguard, Sharron Davies, helped Ms. Almon-Kok promote the recent retrofitting of three child care centers in London. Project Safeguard saw Ms. Davies, a well-known advocate of child safety who recently completed a television series on parenting, as the right person to "bring the program home to the U.K.," Ms. Boudreau said.

Mary Rose Clackson, the playleader for the Barbican Playgroup—a child care center—and the chairman of the City Child day nursery in London, said she was pleased with the work done by Project Safeguard and the volunteers. Both centers were retrofitted on June 12, with Ms. Almon-Kok and Ms. Davies performing a demonstration of the materials used. "If you see a demonstration of how this stuff works, it's very reassuring," Ms. Clackson said.

Ms. Clackson said that before she received the call from ERC, she was seeking to meet the standards for additional certification for the child care centers, and the retrofitting helped with that goal. "They did an absolutely fantastic job," Ms. Clackson said.

The London retrofits add to those already completed in the Kansas City, Mo.; Oklahoma City and Miami areas. Ms. Boudreau said they plan to retrofit more day care centers overseas, possibly in Munich, Germany.

"If we can protect even one person as a result of these efforts, we feel we've done a good job," Ms. Boudreau said.

GE ERC employees secure shelving in a London day care center.

Market gets capital infusion

Hardening market, Sept. 11 spur growth

By Martin J. Nilsen

Perspective

Longtime observers of insurance and reinsurance industry market cycles will not be surprised that the unprecedented losses arising from Sept. 11, coming on the heels of a resurgent hard market that was gaining momentum in the months before the terrorist attacks, have acted as a catalyst for an infusion of new capital.

The hardening that began in both the property and liability markets in response to years of unrealistically low pricing is likely to continue. In addition, a round of mergers and acquisitions already underway in the industry will likely continue as insurers seek to protect their strategic positioning in a consolidating market.

Two powerful forces converged last year to help create a demand for capital in a stressed industry. First, there was the emergence of the long-awaited market firming, which this time around affected both property and liability markets. Such a change would normally result in higher premiums and would restore a measure of underwriting discipline, while affording an opportunity for the better use of capital by insurers and reinsurers.

This is so because in a hard market, insurers and reinsurers become far more selective about the risks they are willing to accept and sometimes retreat completely, as in the liability insurance crunch of the 1980s.

The second force was the World Trade Center disaster, which produced losses of unprecedented magnitude and removed a great deal of capital—capital that needs to be replaced—from the equation.

Merger and acquisition activity is generally a sign of competition and economies of scale in the market. The recent activity in the insurance industry was not unexpected and was in full stride early last year, urged on by rising prices and the opportunity to apply underwriting discipline to improve the bottom line.

Market recovery likely would temper the scale of consolidation somewhat, but there are signs that this is a time of growth for the industry. The events of Sept. 11 only served to add a level of urgency. It is arguable that, given the indications that fresh capital will continue to be available to the industry, mergers and acquisitions will continue for a variety of reasons, ranging from competition to survival. The question, though, is how and where the industry's new capital will be deployed.

A good argument can be made that much of the new or reallocated capital will continue to find its way into reinsurance ventures, as has already been demonstrated in the international marketplace.

After Sept. 11, industry executives had to rethink the availability of reinsurance and had to assume that many professional reinsurers, including some in Europe, would pull back from the market. New players in the market have been and will continue to be willing to provide a strong capital base for new reinsurance ventures. Not all new entrants, however, represent traditional reinsurance.

For example, there are indications that financial services companies in Europe might be willing to take advantage of increasing interest in the alternative risk transfer market. Many ceding companies are inclined to use this type of reinsurance as a normal part of their reinsurance programs.

Viewed in some quarters as the functional equivalent of capital, ART reinsurance vehicles would seem a natural fit for non-U.S. banks looking to expand. Other, more traditional European insurance conglomerates will likely continue to seek profitable ways to enter the U.S. market.

Other factors should be considered as well. Continued growth in the use of captives and the potential for growth in the securitization of large-scale risks may provide opportunities for investors inclined to the risk financing side of the business. This certainly could create demand for new, dedicated capital in offshore jurisdictions.

New, well-capitalized ventures will need to attract management expertise for market recognition and demonstrated underwriting expertise, which could lead to some interesting reallocations in the market. Depending on the extent of market consolidation, the addition of new capital may create an opportune time for the reallocation of human resources in the industry as well.

There is precedent for success. The hardening market and liability insurance crisis in the late 1970s and early 1980s was a prime force in the growth of the offshore insurance market in Bermuda and elsewhere. Today, the growth in the Bermuda market over the past 20 years is an excellent example of the application of a well-planned response incorporating capital, business acumen and management to a demonstrated need for capacity.

Of course, the danger is that too much capital could pour into the industry in the hope of finding profitable business. Excess capital can be a burden, because investor pressure for returns could lead to a breakdown in underwriting discipline. This is the other side of the hard market, which typically loses some of its steam after two years because of competition.

It is fair to say that the events of the past year provided an opportunity for the introduction of much-needed new capital into the insurance industry still struggling to recover from catastrophic losses.

It remains to be seen whether concerns about an overabundance of new capital are valid, given the extent of the capital drain experienced by the industry. In addition, continuing traditional industry consolidation may very well lead to a new round of strategic acquisitions and repositioning as insurers and reinsurers compete for the capital as a counterpoint to the entry of nontraditional players. The trick will be to find the right market and the right balance.

Martin J. Nilsen is a partner with the New York office of Edwards & Angell L.L.P., a law firm focusing on financial services, technology and private equity.

Insurer Topics ADVERTISER INDEX

Issue of July 15

Comings & Goings

Brokers:

Russell Queen has joined Summit Global Partners Inc. as senior vp specializing in property development, management and investment. He joined SGP in San Francisco after selling his insurance consulting business to the broker.

Richard B. Hite has been named president at Akron, Ohio-based Seibert-Keck Insurance Agency. Former President **James P. Berry** will maintain his roles as chief executive officer and chairman. Mr. Hite had been functioning as chief operating officer since November 2001.

Reinsurers:

New York-based Guy Carpenter & Co. Inc., the reinsurance intermediary subsidiary of Marsh Inc., has named **Susan Witcraft** as senior vp responsible for analytical services in the Minneapolis Instrat division, which provides computer modeling services to reinsurers. Ms. Witcraft had been a principal at Milliman USA.

Bermuda-based ACE Ltd. has made several promotions in its reinsurance operations. **David Furby**, director of reinsurance at ACE Global Markets with responsibilities for ACE Tempest Reinsurance Ltd. in the United Kingdom, has been appointed president of ACE Global Reinsurance. **Sean Ringsted**, currently co-president of ACE Tempest Re, has been named executive vp and chief risk officer of ACE Global Reinsurance. **Chris McKeown**, currently co-president of ACE Tempest Re, has been promoted to the position of president and CEO of ACE's flagship reinsurance operation.

Hamilton, Bermuda-based XL Capital Ltd. has named **James H. Veghte** as president, chief operating officer and chief underwriting officer of XL Re Ltd. Mr. Veghte, COO of XL unit Le Mans Re and general manager of XL Re's London branch, will relocate to Bermuda. **Charles Werner Skrzynski**, chairman of Le Mans Re, will succeed Mr. Veghte at the French reinsurance unit; and **David J. Watson**, senior vp and chief nonlife underwriter at XL Re in London, will succeed Mr. Veghte as general manager of the London division. **Henry C.V. Keeling**, CEO of XL's reinsurance operations, retains that position and will relocate to London from Bermuda.

Insurers:

Doreen Spadorcia has been named president and CEO of Travelers Bond, which provides surety and fidelity bonds and executive liability coverage. Previously, she was general counsel for Travelers Bond, a unit of Travelers Corp. in Hartford, Conn.

Ms. Spadorcia

Thomas Kilian, who was chief operating officer at Conseco Inc. before he left in January, has been named CEO and president of Ceres Group Inc. of Cleveland, replacing **Peter Nauert**, who retired as CEO. Mr. Nauert will remain chairman at Ceres until 2003.

Arch Capital Group Ltd. has named **Thomas G. Kaiser** president of property, energy and marine business at its Arch Insurance Group unit in Hamilton, Bermuda. Previously, he was a member of the management board at Zurich Financial Services Group and was CEO of Zurich Corporate Solutions.

Surplus Lines:

Tom Johns has joined Colony Insurance Co. of Richmond, Va., as senior vp of special projects. Previously, Mr. Johns was vp of American International Underwriters in New York, having served with American International Group Inc. since 1996. Colony is the excess and surplus lines subsidiary of Argonaut Insurance Group.

Business Insurance would like to report on senior-level changes at commercial insurance companies and service providers. Please send news of recently promoted, hired or appointed senior-level executives to: Joanne Wojcik, Business Insurance, 777 E. Speer Blvd., Denver, Colo. 80203-4212; jwojcik@crain.com.

Photos should be sent to: Kathy Barnes, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; kbarnes@crain.com.

Property loss control listings near

Business Insurance will publish its online Directory of Property Loss Control Consultants/Engineers in conjunction with the Aug. 5 issue.

That week's issue will include a Spotlight report on property loss control and a chart of the 10 largest property loss control consultants.

The directory is published online as an editorial service, and there is no charge to be included.

To be listed, companies must provide property loss control consulting/engineering services directly to corporations/institutions on an unbundled basis. In addition, a company must generate at least $100,000 in revenue from unbundled property loss control consulting/engineering and must report those revenues to be included in the directory.

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

The extended deadline for inclusion in the online directory is July 26.

Copies of the questionnaire also can be printed from the directories area of the *BI* Web site, www.businessinsurance.com.

Surge of capacity, launch of mutual creating alternatives in energy market

By CAROLYN ALDRED

LONDON—New capacity in the energy market—particularly in Bermuda—as well as the growth of mutual insurer Oil Insurance Ltd. and its just-formed sister mutual, sEnergy Insurance Ltd., will make it difficult for traditional energy insurers to recoup their losses, according to a review of the energy market by Willis Group Ltd.

"The combination of OIL and sEnergy providing both physical damage and business interruption coverage means that, for the first time, a complete mutual alternative to the commercial market is a reality, and, this being the case, many traditional energy insurers may find the way out of the woods blocked for good," the report explains. The Willis report was released earlier this month.

In May, OIL and excess liability insurer Oil Casualty Insurance Ltd., both industry-owned mutuals based in Hamilton, Bermuda, along with 12 of their members, formed sEnergy to provide a combined $200 million limit for property risks excess of $250 million and business interruption risks excess of $50 million (*BI*, May 6).

In 2001, "there was an exceptional frequency of catastrophically large losses," the report states, and, "despite rapidly increasing rates throughout 2001, estimated premium for the year is unlikely to cover more than 50% of final losses." The report adds that, "for many established energy underwriters, this is their final chance to get it right, and further loss will not be tolerated by their capital providers."

Although the energy market has experienced a considerable hardening of rates and tightening of terms during the last year, "since the end of April, there has been a feeling of change," according to the report, which notes that "the underwriting straitjacket so painfully worn is being loosened in places."

For example:

- There has been a "significant increase in utilizable capacity since the beginning of the year," with global onshore capacity for U.S. refining and petrochemical risks in the region of $900 million and $1.2 billion for international risks, exclusive of OIL and sEnergy, which adds another $250 million for physical damage and $200 million for business interruption. An additional

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Lloyd's syndicates boosting capacity, looking to expand

London Market

By SARAH VEYSEY

LONDON—Three Lloyd's of London syndicates are increasing their underwriting capacity, and the parent of one of the syndicates announced plans to begin underwriting through a Bermuda-based company.

Catlin Westgen Group Ltd., the parent company of Lloyd's managing agency Catlin Underwriting Agencies Ltd., said it planned to raise $532 million in new capital through an equity investment and a loan facility. The $482 million of equity capital is being provided by a consortium of investors led by Capital Z Financial Services Fund II, J.P. Morgan Corsair II Capital Partners, and the Cypress Group L.L.C. Investment bank J.P. Morgan Chase Bank is providing the $50 million loan.

Catlin said the transaction would allow it to increase the underwriting capacity of its composite Lloyd's syndicate 2003 and to begin underwriting via a Bermuda-based subsidiary, Catlin Insurance Co. Ltd.

Catlin Insurance is one of a few recent underwriting ventures outside the Lloyd's market by a Lloyd's agency. Wellington Underwriting P.L.C., which manages composite syndicate 2020, last month launched a new reinsurer outside the Lloyd's market (*BI*, July 1). Late last year, Goshawk Insurance Holdings P.L.C. launched a Bermuda-based reinsurer.

In a separate move, Berkshire Hathaway Inc. last week agreed to provide a £50 million ($76.4 million) quota-share reinsurance arrangement to Lloyd's-based insurer Euclidian Group P.L.C. Under the deal, written by Berkshire Hathaway's National Indemnity Co. subsidiary, Euclidian will increase the underwriting capacity of its composite Lloyd's syndicate 1243 to £213 million ($325.3 million).

In addition, Hiscox P.L.C. announced that it had entered into a quota-share deal to boost the capacity of its composite syndicate 33 to £655 million ($1.00 billion) from £504 million ($769.7 million). Hiscox said the quota-share reinsurance was placed with reinsurers rated AA and A, with Chubb Corp. subsidiary Chubb Re taking a leading line.

Meanwhile, Lloyd's and the London company market were given a boost by a Swiss Reinsurance Co. report that underlined the importance of London as an international insurance and reinsurance market.

Lloyd's and the London company market continue to form an important center for industrial insurance, marine and aviation business and global reinsurance, according to the report published by Zurich-based Swiss Re.

The study, "The London Market in the Throes of Change," acknowledges that only about 3% of the world's total nonlife insurance premium volume is written in the London market, but notes that London has a 10% to 15% share of the market

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PHOTO: AP/WIDE WORLD

Terrorist acts, such as this 2001 bombing of a shopping area in Ealing Broadway in west London, remain a threat for public entity risk managers, counterterrorism experts say.

Assn. of Local Authority Risk Managers

Terrorist attacks remain a threat

By SARAH VEYSEY

MANCHESTER, England—The risk of terrorist attacks remains high in the wake of Sept. 11, local authority risk managers were told at the annual Assn. of Local Authority Risk Managers meeting, held in Manchester earlier this month.

"There is still a real risk of terrorism. Organizations are still out there, and they still have the capabilities they had before Sept.11," said Justin Priestley, head of the counterterrorism division of Aon Ltd.'s special-risks arm in London.

Terrorism has always been a global problem, Mr. Priestley told delegates, and there is a cross-fertilization of ideas among terrorist organizations across the world. "We have to look at terrorism on a global basis," he said.

Mr. Priestley said that the terrorist threat could be divided into four broad categories: foreign terrorist groups, domestic terrorist groups, special-interest groups, and cranks and criminals.

One example of a foreign terrorist group is Al Qaeda, which has a global network and counts governments, businesses and civilians as its targets. Since Sept. 11, there have been a great number of interdicted attacks, Mr. Priestley said. Since Al Qaeda has tended to attack U.S. commercial and military interests, risk managers of local authorities that are home to such buildings should be aware that they could be at greater risk, he said.

Mr. Priestley said that domestic terrorist groups such as the Irish Republican Army—which is now active in the peace process in Northern Ireland—and the Basque separatist group ETA tend not to want to cause harm to civilians; rather, he said, they choose symbolic targets.

This type of group has the capability to use both small and large devices and favors weapons such as vehicle bombs, Mr. Priestley said.

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World Updates

Report urges U.K. pension changes

A government-sponsored report on the U.K. pension industry has recommended that employers be allowed to make participation in occupational pension plans compulsory if they wish. The review calls for giving companies greater control over how they run company-sponsored plans, including allowing employers to alter pension plan designs in response to economic changes. In addition, the report recommends that employers annually contribute at least 4% of an employee's salary toward his or her pension. The report also calls for the creation of a new regulator that would be more "proactive" than the existing Occupational Pensions Regulatory Authority. The government last year commissioned the review to look into ways to make it easier for employers to offer quality pension plans, for commercial providers to sell appropriate pension products and for individuals to accumulate pension benefits. The U.K. government will now consider the report's recommendations.

Employment bill to become law

The U.K. government's Employment Bill has received royal assent, the final step to becoming law in April 2003. The bill entitles working mothers to six months' paid maternity leave and a further six months' unpaid leave. Working fathers will be granted two weeks' paid paternity leave.

Managers make offer for Miller Fisher Group

A management consortium has offered to buy out U.K. loss adjuster Miller Fisher Group, which went into receivership earlier this month. The management team said it would buy the assets of Miller International Loss Adjusters in the United Kingdom and Dubai and all of the issued capital of the group's subsidiaries in Austria, Hong Kong, Latin America and Singapore.

Moody's gives A2 rating to Wellington Re

Moody's Investors Service in London has assigned an A2, or good, rating to Wellington Re, the new London-based insurer and reinsurer. Individual Lloyd's investors underwriting on Wellington Underwriting P.L.C.'s composite syndicate 2020 agreed last month to proposals to form the new company

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Terror: Risk of attacks remains

Continued from previous page

"A large vehicle bomb can cause a 400-meter radius of collateral damage and glass damage for up to 1-kilometer radius," he said. "So you don't need to be a target (of the bomb) to suffer collateral damage or business interruption."

Some special-interest groups, such as the animal rights group Stop Huntingdon Animal Cruelty (*BI*, May 13), have become very effective organizations, Mr. Priestley said. SHAC, for example, has now branched out and targets suppliers to, and shareholders in, Huntingdon Life Sciences, the medical research laboratory the group seeks to shut down.

The Internet, and the greater availability of information that it has brought, has enabled "cranks and criminals" to become more technologically aware, Mr. Priestley told delegates. Seemingly random acts of terrorism carried out by individuals are becoming more common, he said. He cited the 1999 nail bomb campaign carried out in three sites in London by David Copeland and targeted at minority groups such as homosexuals. According to Mr. Priestley, Mr. Copeland constructed nail bombs using information available on the Internet, and his bombing campaign led to several copycat attacks in the United Kingdom.

> **'You don't need to be a target (of a terrorist bomb) to suffer collateral damage or business interruption.'**
>
> *Justin Priestley*
> *Aon Ltd.*

Another area in which local authorities may be vulnerable to attack is cyberterrorism, according to Colin Brown, interdependency director at Aon Special Risks.

Government authorities have been a huge target for hackers in the United States, Mr. Brown warned, and he noted that at least 37 local authorities in the United Kingdom were subject to security breaches last year.

Risk managers must get involved in the planning process when their local authorities are adopting new technologies, Mr. Brown said. "The technology infrastructure, proprietary information, revenue and reputation are at risk," he said. "But this is just another risk, and it can be managed."

Risk managers must ask themselves how well their critical information systems are protected, how well that protection can be maintained over time, and how well prepared the organization is to minimize the impact when something happens. "It is when, not if," Mr. Brown said.

There will likely be more terrorist attacks in the coming months, Mr. Priestley said. "All terrorists have the advantage of time, place and method," he said. "You, as risk managers, have to have security right every day of the week."

ALARM sounds off in Manchester

MANCHESTER, England—The 10th annual conference of the Assn. of Local Authority Risk Managers, held in Manchester, England on July 1-3, attracted about 320 attendees from the United Kingdom and as far afield as the United States, Japan, South Africa, Denmark and France.

Ian Horwood, risk manager at Wycombe District Council in England, was elected chairman of ALARM at the conference. He will serve a two-year term and succeeds Kevin McGlone, assistant director of finance at Knowsley Metropolitan Borough Council. Mr. Horwood said that forging closer links with the government and other agencies to raise the profile of public sector risk management would be one of his priorities during his term as chairman.

For more information about ALARM, visit *www.alarm-uk.com.*

Assn. of Local Authority Risk Managers

Asbestos exposure rules pose concerns

By SARAH VEYSEY

MANCHESTER, England—Local government risk managers must begin work now to ensure they comply with new U.K. regulations on workplace asbestos exposure, which are scheduled to come into force in the spring of 2004, an attorney says.

Chris Phillips, head of the insurance litigation department of Manchester, England-based law firm Halliwell Landau, stressed to risk managers the urgency of preparing for compliance with the new asbestos regulations during a session at the Assn. of Local Authority Risk Managers' annual conference, held in Manchester earlier this month. Mr. Phillips represented insurers in a recent landmark asbestos case, *Fairchild vs. Dovener, Waddingtons and Leeds City Council* (*BI*, July 1; April 29).

The new rules, the Control of Asbestos at Work Regulations 2002, will be launched later this year and will take effect in 2004. Under the regulations, those in control of worksites will have to meet several requirements, which include:

- Taking reasonable steps to determine the location and condition of materials likely to contain asbestos.
- Presuming that such materials contain asbestos unless there is strong evidence that they do not.
- Maintaining up-to-date records of the location and condition of asbestos-containing materials or presumed asbestos-containing materials on the premises.
- Assessing the likelihood of anyone being exposed to fibers from these materials.
- Preparing a risk management plan for managing the materials.
- Taking the necessary steps to put the plan into action.
- Periodically reviewing the plan to ensure that it remains current.
- Providing information on the location and condition of the materials to anyone who is likely to work on or disturb them.

Local authority risk managers should now be reviewing and inspecting all of the buildings that fall under their authority and preparing the necessary documentation, Mr. Phillips said.

"I foresee that after (the regulations) come into force, the Heath and Safety Executive will come around and check if local authorities" are in compliance, he said. "Unless you start work now, it'll be very difficult and very expensive for you to comply."

Of particular concern to risk managers is whether the final regulations, which will be published in October, will apply to council housing that is funded by local authorities. If so, Mr. Phillips said, this increases the number of properties that must be reviewed and checked.

In the *Fairchild* case, Mr. Phillips had argued that because mesothelioma—a lethal cancer that can sometimes develop after even minimal exposure to asbestos—can be caused by just a single fiber of asbestos, a claimant must be able to show which of his or her former employers exposed the individual to that fatal fiber. Despite a Court of Appeal ruling backing Mr. Phillips' argument, the House of Lords ruled that a principle of "increasing the risk" should apply to such claims. Thus, the House of Lords ruled, a claimant must prove only that an employer exposed the individual to asbestos, increasing that individual's risk of contracting mesothelioma.

Mr. Phillips said that this legal development likely will change the nature of asbestos litigation in the United Kingdom. "I think claimants will now just try to find one defendant," he said. But he advised that risk managers defending such claims should attempt to find other possible defendants to spread liabilities.

Another trend of which U.K. risk managers should be aware, said Mr. Phillips, is that of "the walking well"—not-yet-impaired individuals—who make asbestos-related claims for the trauma and worry they suffer for fear of potentially developing a disease. He cited awards of $3.5 million and $20 million in California and Tennessee, respectively, and a case in the United Kingdom that was settled for £20,000 ($30,450).

Association of Local Authority Risk Managers

Climate-change risks call for vigilance

By SARAH VEYSEY

MANCHESTER, England—Local authority risk managers should be aware of the hazards that will accompany global climate change, one climate expert says.

David Crichton, a visiting fellow at University College London and the University of Middlesex, spoke on climate change in the United Kingdom at a session of the annual conference of the Assn. of Local Authority Risk Managers, held earlier this month in Manchester, England.

Increased flooding stemming from climate change is a major concern for U.K. risk managers, Mr. Crichton said. Global warming will result in hotter summers and wetter winters, greatly increasing the amount of precipitation during rainy seasons, he noted. And "it is not just rainfall" that is a concern, he said. "The sea level will rise, and this is a big issue—the rise could be as much as two to three feet by 2080," he said. Currently, about 10% of the U.K. population lives in flood-prone areas, and roughly £200 billion ($300 billion) of property is at risk from flood, he said.

The possibility of dam breaks is another significant risk, Mr. Crichton said. "There are 2,500 dams in the U.K., and more than half are more than 100 years old," he said. Many are built on earthen embankments, he added. And because the U.K. government does not publish a dam-break inundation map, planners may not know the location of "danger zones," Mr. Crichton said. As a result, he advised, "risk managers should look out for dams in their area."

Local authorities are under pressure to build more housing and are running out of places to do so, he noted. As a result, planners in some cases are looking to build new properties on flood plains, he said. "Planners are under enormous pressure from government to meet housing targets," he said. "And there is very little land left that they are allowed to build on."

"But if people can't get insurance on a house, they can't get a mortgage, so houses won't get sold," he added.

This is an area where local authority risk managers must be especially cautious, Mr. Crichton said. "It is a classic professional indemnity case study; I am surprised there hasn't been a case before," he said. "There is scope for professional indemnity claims against local authorities if they don't provide information about, and take precautions against, flood risk."

Climate change also could worsen the problem of subsidence resulting from drought and land erosion in certain areas, Mr. Crichton said. This problem already costs the U.K. insurance industry, on average, £1 million ($1.52 million) per day, he said.

Warming trends also will lead to changes in health problems in the United Kingdom. "This is potentially a major hazard, because the country is going to warm up significantly," he said.

Although there would be fewer deaths stemming from cold weather, significant global warming would result in such problems as increased instances of food poisoning, as well as a deterioration in air quality, which would lead to a growing number of asthma cases, Mr. Crichton said.

In addition, he noted that ozone depletion would increase the incidence of skin cancers.

Mr. Crichton called for greater cooperation and communication among government, insurers and risk managers in trying to find solutions to the risks posed by climate change.

World Updates

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outside of Lloyd's. Moody's said the rating reflected the company's experienced management and strong underwriting team, its good capitalization and negligible exposure to past year's losses.

Briefly noted

Aon Ltd. in London has set up a new professional indemnity arm, **Aon Professional Risks.** The division will be headed Elizabeth Mullins, who was previously managing director of the Solicitors Indemnity Fund....Bryan Joseph has been appointed chief actuary of **Castlewood (E.U.) Ltd.,** the runoff management company. Formerly, Mr. Joseph was a partner at PricewaterhouseCoopers.

London: Syndicates up capacity

Continued from page 15

for large industrial insurance business.

The London market has a nearly 40% share of the world's aviation insurance market and remains a key market for marine business, the report states, writing more than 60% of the worldwide insurance premiums for offshore oil and gas rigs. In addition, Swiss Re estimates that London has a 15% share of the global reinsurance market.

The Swiss Re report predicts that both the London company and Lloyd's markets will see further consolidation. The number of Lloyd's syndicates likely will drop from the current level of 86 to about 50 over the next few years, according to the report.

But the capacity of the consolidated Lloyd's syndicates will increase, the report predicts. "In the wake of the events of Sept. 11 and of the pronounced recovery in insurance prices, capacity in the 2002 insurance year has again risen by 10%," the report notes. "It is to be expected...that further capacity increases and quota-share reinsurance will cause underwriting capacity to rise to over £13 billion ($19.85 billion) by the end of the year."

But the report notes that Lloyd's remains at risk of not being able to attract enough capacity to deploy during the hard market. It notes that worldwide the insurance industry has already raised an extra $22 billion in equity since Sept. 11, and a further $9 billion has been "earmarked but not yet realized." Lloyd's share of this equity equates to about 5% to 7%, according to the report, leaving it "again at risk of not being able to build up enough capacity in the hard market phase."

"The next year will be crucial: Lloyd's will have to prove that it can carry on operating at the higher level, while at the same time coping with the high losses of the 1999 and 2000 underwriting years," the report states.

Copies of the report, sigma No. 3/2002, are available from Swiss Re's Web site, www.swissre.com.

PHOTO: AFP

Among the catastrophic losses that hit the energy industry last year was the Sept. 21 explosion at a petrochemical plant, owned by TotalFinaElf, in Toulouse, France, in which 29 people were killed.

Energy: Report finds more alternatives

Continued from page 15

$700 million of capacity is available "at a price," according to Willis.

- Rates still are increasing but at a slower rate.
- Although business interruption is a "key issue," attempts by underwriters to impose average daily value caps to restrict coverage have been "successfully rebuffed," according to the report.

Following Sept. 11, terrorism was largely excluded by energy underwriters, but during this year, "attracted by high demand and the prospect of entrepreneurial profits," special terrorism facilities and their combined capacity have continued to grow.

Currently, several insurers offer property damage and business interruption coverage for terrorism with limits ranging from $50 million to $200 million, including ACE Insurance Co. Ltd., AXIS Specialty Ltd., American International Group Inc., Berkshire Hathaway Inc., Endurance Specialty Insurance Ltd., Lloyd's of London syndicates and Renaissance Re Holdings Ltd.

Energy risks tend to be rated highly, because they are regarded as having higher loss potential, the report notes. Premiums have fallen, though, "as underwriters' post-Sept. 11 apprehension has receded."

The report outlines in detail insurance market conditions for offshore property, upstream energy, power generation utilities, onshore construction, international liability and North American casualty markets. It also details new capacity in the Bermuda and London markets and the OIL and sEnergy mutuals.

Copies of the Willis Energy Market Review are available online at www.willis.com.

Guidance: Faster delivery a goal

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ployees more aware of the cost of health care services and give them an incentive—being able to build up HRA balances over years—to compare costs and use health care services prudently.

That theory, Mr. Sweetnam said, remains to be tested. But it is an experiment that the administration believes should be carried out, he noted.

Treasury provided its guidance on the matter after hearing the cry to give employers more choice in plan design, he said.

The government's guidance on HRAs will not end with Ruling 2002-41. Indeed, at the same ECFC meeting, another Treasury benefits attorney, Kevin Knopf, provided answers to a slew of nuts-and-bolts questions ECFC members have raised since the revenue ruling was issued. Among other things, Mr. Knopf noted that:

- Employers have the discretion to decide whether an employee has to participate in a health plan to receive an HRA.
- Employers can decide whether to rollover an entire unused account balance or to cap the amount of credit that may be carried over.
- Employers may opt to offer HRAs only to retirees.
- Amounts credited to an HRA can be accounted as a lump sum or from payroll period to payroll period.
- An HRA can be used to pay for a spouse's health insurance premium from another employer.
- When an employee dies, the balance in an HRA can be used by a surviving spouse or dependent.
- Employers can require that an employee exhaust his or her flexible spending account before tapping an HRA.
- Employers do not have to offer the same HRA design to all employees.
- Unlike tax-favored medical savings accounts, HRAs do not have to be linked to a health insurance plan meeting specific government requirements.

Navajo: Forum helps tribes manage risk

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The conference is one more way to help other tribes learn that there are market alternatives, such as self-insuring and pooling arrangements, that might prove more beneficial than the purchase of traditional insurance.

Mr. Shortey said that some tribes are hampered because they depend on local insurance agents, who may not have the clout necessary to negotiate the best arrangements for them. "Whatever an agent or broker tells you, you don't have to believe them," he said. "You don't have to get whatever is off the shelf."

Conference attendees said that, when it comes to purchasing coverage, Native American tribes experience problems similar to those faced by other policyholders, such as a tightening market that makes certain coverages scarce. But tribes also face additional difficulties, such as traditional insurers that are unfamiliar with Indian reservations.

"Traditional markets are leery of tribal government and tribal laws because they don't understand them," said Rod Crawley, operations manager for Amerind Risk Management Corp. Traditional insurers "usually charge more money because they don't understand what they are getting into," Mr. Crawley said.

Amerind is an Albuquerque, N.M.-based risk pool. It provides property/casualty coverage and risk management services for about 220 members, representing about 400 tribes. It insures about $6.9 billion in property risks, prides itself in providing culturally sensitive services and operates only within Indian reservation boundaries.

"Trust and respect are the thrust of our business," said Tom Gillespie, Amerind's director of risk management.

The intricacies of insuring Native American property make trust essential. Some Southwestern tribes, for example, own meeting places known as kivas. By tradition, a kiva may be off limits to all but tribal leaders. No one else can enter them.

Therefore, if there is a fire or other insured damage, an insurance adjuster cannot enter the building to verify the destruction. Amerind will pay the claim and trust that the claimant accurately reported the extent of damage, Mr. Gillespie said.

Amerind helped sponsor the Navajo insurance conference and was among the 23 booth exhibitors. The exhibitors included some insurance industry stalwarts, such as CorVel Corp., an Irvine, Calif.-based provider of managed care services.

Another vendor, Poplar, Mont.-based Native American Mutual incorporated just last year to sell all lines of coverage, said NAM VP Dan Hawk.

The amount of federal funds available for Native American healthcare has been shrinking, Mr. Hawk said. Meanwhile, he said, many tribal leaders are looking to improve their population's well-being by spending gaming operation profits to purchase health care insurance products.

They are also looking to stretch their dollars. Several tribes that attended the conference are discussing arrangements to pool the purchase of employee benefits, Mr. Hawk said.

Some conference exhibitors, while representing established companies, were new to the Native American niche. Several said they hoped to learn about potential sales opportunities.

But when one such vendor heard that Navajo policies cover medicine-man rituals, she replied, "That is kind of hard to put under 'usual and customary.'"

Another vendor selling workers comp claims investigation services admitted it would be tough for his company's investigators to conduct covert video surveillance on a reservation. "We would stick out like a sore thumb," he said.

Traditional insurers and service providers might face other loss control concerns they are not accustomed to. For example, some reservation properties are concentrated in rural areas where fire services may be scarce. Or clan relationships may take precedence over workplace loss control measures, such as dismissing employees who present safety problems.

But conference participants are working to tackle some difficult issues confronting their nations.

Conference exhibitors, for example, included several Navajo Nation government service organizations, such as the Department of Behavioral Health Services. The department is working to reduce a high incidence of health and accident problems related to alcohol and substance abuse among the Navajo.

Conference education topics ranged from the fundamentals of risk management to stress reduction and from computer crime to benefits communications.

Meanwhile, the children attending the "Safe Kids Day" learned about fire, water and playground safety. Mr. Shortey explained that because many Indian children live in government housing, teaching them safety ultimately reduces tribal liability.

While improving child safety, the Navajo Nation is also pursuing sophisticated risk management arrangements.

The tribe's risk management department wants to use insurance reserves totaling $40 million to create a captive facility, Mr. Shortey said. The captive could self-insure employee benefits and property casualty losses.

The facility could be domiciled on tribal land by taking advantage of the tribe's sovereignty, which exempts American Indian nations from some federal regulations. But launching a captive remains about two years off, Mr. Shortey said.

For now, the Navajo Nation self-insures its health care and other benefits. It purchases medical stop-loss coverage from Sun Life Assurance Co. of Canada, which also provides the tribe with life and disability products. The Nation contracts with Tempe, Ariz.-based HMA Inc., for medical third-party administration services for about 23,000 Navajo Nation employees and dependents.

The tribe also purchases liability coverage limits of $9.5 million while maintaining a $500,000 retention. To protect its buildings and equipment, the nation purchases $35 million in coverage limits, while maintaining a $200,000 per-occurrence retention. Marsh places its property/casualty insurance.

Mr. Shortey noted that an excess insurance policy written by ACE Westchester Specialty adheres to Navajo custom. He explained that if the policy's coverage is triggered, it pays for a medicine man to bless or cleanse a building after a fire and then again after the structure is rebuilt but before it is reoccupied.

401(k): Reform measure advances in the Senate

Continued from page 1

Houston-based energy company collectively cost its 401(k) participants about $1 billion, as the value of the Enron shares they held in the plan plunged to virtually nothing.

The HELP committee vote was partisan, with all panel Democrats voting for the measure and all Republicans against, while the House of Representatives approval of its reform bill was largely partisan, with support coming mainly from Republicans.

The next challenge for the legislation is expected to come in September, when Senate Majority Leader Tom Daschle, D-S.D., will try to schedule a vote. Before that happens, though, the Senate Democratic leadership will have to forge an agreement on provisions it wants voted on.

The Finance and HELP committee measures have common elements. Both bills, for example, would allow 401(k) plan participants to sell company stock contributed as a match after three years of service.

That provision is a direct response to Enron's plan design, in which individual participants could not sell stock contributed as a company match until reaching age 50. That meant many participants were powerless to dispose of shares that were declining in value as Enron's financial problems surfaced. The forced holding of company shares also contributed to the heavy concentration of participants' investment in Enron stock.

Since the Enron meltdown, a growing number of employers—such as Mellon Financial Corp. of Pittsburgh and Gannett Co. of McLean, Va.—have voluntarily eased restrictions on the trading of company shares contributed as a match.

Still, some employer groups question if Congress should compel greater diversity in 401(k) plan participants' investments.

"There are a lot of people out there who are doing better with weighted portfolios than diversified ones," said Mark Ugoretz, the president of the ERISA Industry Committee in Washington.

The two measures also would require plan sponsors to give 30-day advance notice of any lockdown periods in which participants could not conduct transactions. That new requirement could be met easily by employers.

In addition, both measures would require employers to furnish plan participants with quarterly statements detailing the value of employer securities held in their accounts.

There are significant differences, though, in the two bills. For example, under the HELP bill, employers could offer company stock as a matching contribution or an investment option, but not both. The Finance Committee does not impose any limit on investments in company stock.

In addition, the HELP Committee bill would mandate employee representation on 401(k) boards of trustees, while the Finance Committee bill does not include a comparable requirement.

The Finance Committee measure, though, includes a large number of provisions unrelated to Enron or, for that matter, 401(k) plans.

Among other things, the Finance Committee measure would allow employers to use a more-liberal interest rate in valuing defined benefit pension plan liabilities for the 2001 plan year, reduce Pension Benefit Guaranty Corp. premiums paid by small employers that start up new pension plans and require the PBGC to pay interest on premium overpayments made by employers to the federal pension insurance agency.

401(k) PROTECTION MEASURES

Provision	Finance Committee	HELP Committee	House of Representatives
Investment diversity	Employees could sell stock contributed as a match after three years of service	Similar	Employer choice: employees could sell company stock after three years of service, three years in the plan or three years after receiving the stock
Limit on investments in employer stock	No provision	Employers could offer company stock as a matching contribution or as an investment option, but not both	No provision
Blackout periods	30-day advance notice prior to blackout or lockdown periods	Similar	Similar, except senior executives could not sell company stock during blackout periods
Tax treatment of investment advice	No provision	No provision	Employees could purchase investment advice on a pretax basis
Employee representation	No provision	Employee representation on 401(k) board of trustees	No provision

Governance: Corporate scandals spur reform drive

Continued from page 1

practice.

If that continued, "the whole system of governance in this country would break down," he said. "The good news is, if you can't attract directors, then you're going to have to reform."

The survey also showed that 44% of respondents think it would be somewhat appropriate to require independent review of a company's board and its governance practices as a condition of D&O coverage, with 29% suggesting such review would be very appropriate.

The increased attention to corporate governance issues in the United States is having an indisputable impact on D&O underwriting and pricing, said Donald Kramer, vice chairman at ACE Ltd. in Hamilton, Bermuda.

D&O insurance has become "a critical coverage for more companies," he said. "Nobody's going to serve (on a board) without it."

"So what's happened is, D&O pricing has gone up significantly, as you would expect, and demand has gone up also," he said.

With underwriters scrutinizing exposures, buyers are going to have to show "they adhere to all the rules of corporate governance and they have in place all the procedures for oversight and review," Mr. Kramer said.

John Keogh, president of American International Group Inc. unit National Union Fire Insurance Co. of Pittsburgh, Pa., said it's too soon to address the specific impact of corporate governance proposals in Washington.

But, "I think the environment for all of us in the D&O industry is going to be much more difficult than it has been in the past couple years, and the past couple years have been among the most difficult we have ever seen," he said. The claim environment will improve in the longer term, he said, but will be very difficult for the next 12 or 24 months.

Letters from the Securities and Exchange Commission asking the country's top 1,000 CEOs to personally review and recertify their financial statements may result in a "plethora" of restatements of financial reports before those CEOs sign off, Mr. Keogh said. "You could have a wave of restatements just from that alone that could result in shareholder suits," he said.

And, as companies that had been audited by Arthur Andersen bring in new auditors, in some cases the auditors might ask clients to restate figures from past reports, providing additional potential for suits, he said.

Given the uncertainty in the short term, D&O underwriters could "sit on the sidelines," Mr. Keogh said. But, "longer term, I think this all is going to be for the good. But it's this transition period that we're going through now where the pendulum swings too far that I think is going to be difficult."

Although recent corporate scandals will drive D&O prices up, as time goes on, companies in "a lower-risk business with good boards and good processes in place will pay less in their insurance rates," Mr. Felton said.

Corporate governance also was a hot topic in Washington last week.

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>
> *John Keogh*
> *National Union Fire Insurance Co. of Pittsburgh, Pa.*

The Senate's Public Company Accounting Reform and Investor Protection Act—already touted by its chief sponsor, Banking Committee Chairman Paul Sarbanes, D-Md., as much tougher on corporate wrongdoers than a similar bill the House passed in April—became more punitive still with an amendment sponsored by Judiciary Committee Chairman Patrick Leahy, D-Vt.

The Leahy amendment, which the Senate approved 97-0, would establish a new category of crime by punishing those found guilty of defrauding stockholders of publicly traded companies with prison terms of up to 10 years. The amendment also would introduce prison terms for shredding documents that could be used in an investigation.

The Senate also approved a Republican amendment calling for doubling to 10 years the maximum sentence for mail and wire fraud. President Bush called for the same step in his Wall Street address last week.

The Senate also approved an amendment offered by Sen. Joseph Biden, D-Del., that calls for increasing to 10 years—from the current one year—maximum prison terms for criminal violations of the Employee Retirement Income Security Act.

The House bill, sponsored by Financial Services Committee Chairman Mike Oxley, R-Ohio, does not provide for such tough criminal penalties but does call for enhancing the Securities and Exchange Commission's power to root out accounting irregularities and to institute other reforms.

The bill's provisions include making it illegal for corporate officials to interfere in audits, forcing companies to disclose financial information—including insider trading—more quickly and prohibiting corporate executives from buying or selling company stock during periods when employee retirement plan participants are banned from doing the same. The Senate bill contains most, but not all, of the House provisions.

The Senate's action came after President Bush on July 9 offered his proposals for corporate governance reform, which also include banning corporate directors and officers convicted of criminal fraud from serving as directors or officers. He also announced the creation by executive decree of a corporate crime task force within the Department of Justice.

Business groups generally praised the president's approach but remained concerned that lawmakers might go too far. In a July 8 press conference, U.S. Chamber of Commerce President and CEO Thomas Donohue said the group would fight any attempt to water down laws passed in the mid-1990s to limit securities-related class-action suits.

Jack Kuhn, president of Kemper Financial Insurance Solutions in Berkeley Heights, N.J., said it's difficult to assess what effect any of the proposed changes might have on D&O insurance.

"As underwriters, it's an interesting process to see how regulatory changes might impact the D&O market, but it's very premature to say what the impacts are going to be," Mr. Kuhn said. "It's encouraging that we're seeing these kinds of steps, but sometimes what the intentions are and what the final outcomes are, are very different."

IASB: Global insurance accounting rules debated

Continued from page 3

contentious task.

Fair-value approach

Thus far, those working on a draft statement of principles have adopted a fair-value approach. This essentially requires valuing assets and liabilities at their fair market value, as well as requiring that the value reflect an arm's-length price between parties, rather than a "fire-sale" valuation, according to a paper on the subject prepared by the Casualty Actuarial Society.

But for liabilities—particularly property/casualty liabilities—there is not a sufficiently active market for determining their fair value, according to the CAS.

The fair-value approach differs from the deferral-and-matching approach that is used in several countries, including the U.S. property/casualty industry. This approach aims to match revenues and expenses in the income statement for a given period and allows a company to defer any surplus contractual income flows and surplus costs in the balance sheet so they can be reflected in a subsequent periods, according to the CAS paper. So, for example, the portion of liabilities under an insurance policy that fall in a given period can be accounted for, with additional liability deferred to subsequent periods as needed.

Mr. Wright said that trade groups representing U.S., German and Japanese life insurers have lobbied the IASB in favor of the deferral-and-matching approach, while the U.K. insurance industry has come out in broad support for the fair-value approach.

He noted that "most heat in the debate is being generated by the life insurance industry. In contrast, comment from the (non-life) insurance industry is relatively muted."

Still, the ASB's Mr. Cook pointed out that "the U.S. is just waking up to the fact that this is happening and that it might affect them," which could influence the outcome.

GAAP differences

There are significant differences in insurance accounting among U.S. generally accepted accounting principles, standards in use in other countries and the current thinking at the IASB.

For example, some accounting practices used by European property/casualty insurers, such as the ability to set aside tax-deferred reserves for future catastrophe losses, are considered by the IASB to be "unacceptable," Mr. Upton said.

And while several European companies, particularly those with U.S. stock listings, have adopted GAAP standards, "our proposal is not close to U.S. GAAP," said Mr. Upton, who formerly worked for the Financial Accounting Standards Board, which sets U.S. GAAP accounting standards.

Mr. Upton said, for example, that, under GAAP, property/casualty insurers do not discount liabilities, whereas the IASB proposal would require liabilities to be discounted to determine a fair market value. Also, under GAAP, acquisition costs are capitalized as an asset, whereas under the proposed IASB system, they would be regarded as an expense.

There would also be "very significant differences" between GAAP standards and the IASB standard for the life insurance industry, Mr. Upton said. One major difference is that GAAP currently has several standards for various life insurance products, whereas the IASB proposes having just one standard for everything.

Mr. Upton said he thinks, though, "that if the IASB comes up with a model that's clearly superior conceptually and is a real improvement on the U.S. GAAP standards, the FASB might be inclined to do something.''

Tillinghast's Mr. Wright pointed out that, in general, accounting standards are moving toward a fair-value approach.

But he noted that opponents of the fair-value approach are concerned about the increased volatility of earnings, particularly where assets and liabilities are mismatched, as well as tax implications.

Global demands

Jeffrey Cropsey, project manager of FASB in Norwalk, Conn., confirmed that it "is monitoring what the IASB is doing."

Although the FASB favors a "convergence" to standards that are uniform worldwide, it will not necessarily support an IASB standard, said Mr. Cropsey, noting that U.S. companies, including insurers, are content with GAAP standards. "The need for worldwide or superior accounting would need to outweigh the costs of applying it," he said.

The Securities and Exchange Commission also favors "convergence to a single set of high-quality international accounting standards," said Robert K. Herdman, the SEC's head of accounting, in a speech earlier this year in Cologne, Germany. "The FASB and the IASB have to work together more closely" to achieve this, he said.

The United Kingdom's financial regulator, the Financial Services Authority, maintains that improvements are needed in insurance accounting and welcomes the work being done by the IASB, said a spokesman. He noted that the FSA supports the fair-value approach rather than the deferral-and-matching approach.

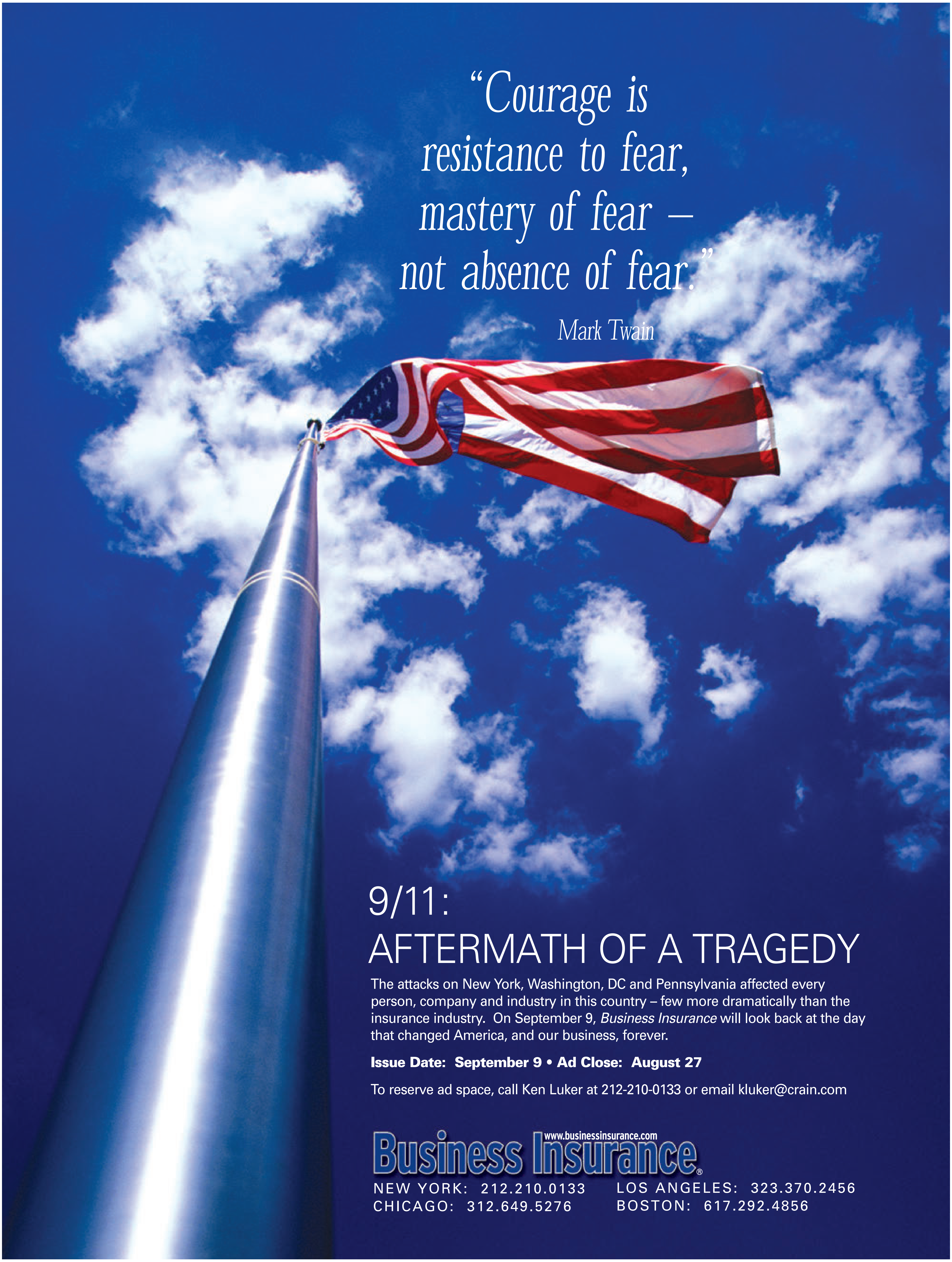
The adoption of IASB standards would mean a "paradigm change in financial reporting" for many companies, though, and would "result in a shake-up and consolidation" of the insurance industry, predicted Peter Vipond, head of financial regulation at the Assn. of British Insurers.

Harold D. Skipper Jr., chairman of the department of risk management and insurance at Georgia State University in Atlanta, agreed that the international standardization of accounting principles has "got to come about, because of the increasing globalization of financial services generally."

"As long as accounting standards are so oriented toward individual countries, then it makes it incredibly difficult, especially for large commercial buyers," Mr. Skipper said.

"The globalization of insurance requires a common language of accounting, a common understanding of what those financial statements mean," said John Wicher, a consultant with the San Francisco-based insurance investment bank Wicher & Associates.

"While there will be tremendous advantages in having consistent reporting, it's becoming clear even to the IASB that the issues are not as quick to get resolved as they might have thought," said Michael McLaughlin, a partner with Ernst & Young in Chicago.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resistance to fear,
mastery of fear –
not absence of fear."
Mark Twain
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Scrutiny: Accounting scandal unlikely for insurers

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"I would be foolish to rule out such a scandal in the property/ casualty business," Mr. Skipper said. But, at the same time, "I'm optimistic that we won't have one; or if we do, it won't be anything like the magnitude of what we see with WorldCom and Enron."

Most observers say they do not expect a major scandal, in large part because of the close scrutiny the industry continually undergoes.

Michael Paisan, an analyst with Williams Capital Group in New York, said regulators as well as analysts, rating agencies and auditors all examine insurers' books, which means "it would probably be less likely that something like what's happened with a WorldCom could actually get by all those different constituencies that are scrutinizing the industry."

John Ward, chairman of the Cincinnati-based Ward Financial Group, agreed. Although insurance is a complicated industry, "It would be unlikely that something of that magnitude would be brewing with all the scrutiny the industry gets. It seems like a long shot to me."

Darla Lyon, director of the South Dakota Division of Insurance in Pierre, said: "You can never say never, because things happen fraudulently, and sometimes those things can't be stopped. It's just a matter of time before they're caught." But, she said, "it would be a lot less likely to happen" to an insurer because of the industry's regulation.

Mark Charron, principal with Deloitte & Touche L.L.P. in Hartford, Conn., said, "When I look at the insurance industry, not only is there (generally accepted accounting principle) accounting, but there's also statutory accounting and there's more transparency in an insurance company's financial records that there is in what an WorldCom or an Enron can do." That transparency "is both required by the various regulators, and also it's kind of the industry standard." As a result, insurers are less likely to play a "shell game" with assets or liabilities, said Mr. Charron.

"That's not to say you couldn't have some other factor impacting the industry," such as a new exposure no one knows about, he said. "But from a purely financial reporting accounting standpoint, I think the likelihood is far less," Mr. Charron said.

Alan Murray, vp at rating agency Moody's Investors Service in New York, said: "My hunch is that the kind of accounting issues that seem to be plaguing some other sectors do not seem to be major issues for P/C insurers."

On the issue of revenue recognition, for example, insurers' earning of premiums "tends to deal with real cash and real cash flow," while revenues from marketable securities are generated predominantly by interest and dividends. "There doesn't seem to be a whole lot of room" for problems to develop, Mr. Murray said.

"I would offer that, if anything, the potential for that sort of event has been reduced in recent years because of the increased accountability of actuaries," who must now put their signature on annual statements, said Michael Smith, an analyst with Bear Stearns & Co. in New York.

> **'I would say the weight of history suggests the management, particularly of the large insurance companies, tends to have had "above average" (marks) on the integrity scale.'**
>
> *Sean F. Mooney*
> *Guy Carpenter & Co.*

"I think there's a degree of self-preservation among these people who want to continue in their careers, that if push comes to shove, they will step aside rather than put their name on what they view as a fraudulent reserve analysis," he said.

"A lot of the other scandals, whether it's Enron or WorldCom or Tyco, are all about ways of changing or modifying your financial statement in ways that investors would not have expected or didn't think about, whereas in the property/casualty industry, investors know specifically how the managers can do it, so there's no mystery in what they can do," said Gary Ransom, senior vp at Hartford, Conn.-based Conning & Co., pointing to reserves.

Some observers say reserve accounting is an area potentially ripe for poor management, but not necessarily dishonesty. If a scandal did occur, "I don't think it would be the type of scandal" that has hit other industries, said Cliff Gallant, an analyst with Keefe, Bruyette & Woods in New York.

In some of these other scandals, you "hear of blatant dishonesty that has happened. I guess the type of thing that might happen in the P/C industry might be better categorized as saying it could be a misestimation of what reserves should have been. That doesn't necessarily mean it was dishonest."

"Especially in casualty lines, actuarial uncertainty on reserves has been part of the business for decades," Moody's Mr. Murray said. But, "this, to me, is an actuarial estimation issue, more I would say than an accounting issue. And that uncertainty is just inherent in the business."

Estimating reserves is a challenge because determining ultimate liability is difficult, said Matthew Coyle, director at rating agency Standard & Poor's Corp. in New York. "Some of that may be ignorance, and some of that may be something less honorable," he said.

Stephen F. Bolland, senior vp at reinsurance intermediary Gill & Roeser Inc. in New York, said there are cases in which a company will suddenly announce a $3 billion addition to reserves for asbestos, and "then everything runs smoothly for years."

Observers are never quite sure in these cases if the company had overestimated those reserves and then used them to drive future profits by periodically releasing them. But that is a matter of fine-tuning results on a quarterly basis; "it's not the scandals we're talking about," said Mr. Bolland.

Beyond issues of reserves and regulatory oversight, though, the leaders of large insurers in particular are simply less likely than other corporate executives to be dishonest, said Sean F. Mooney, senior vp at reinsurance intermediary Guy Carpenter & Co. in New York.

"I would say the weight of history suggests the management, particularly of the large insurance companies, tend to have had 'above average' (marks) on the integrity scale," he said. "That's partly due to the nature of the business, because it is a business of trust. People are giving you money for uncertain returns, and so built into the business is a sense that insurance companies are going to be upright and make sure that the money is available to pay claims."

Guaranty: N.J. legislators tap surplus lines fund

Continued from page 1

fund of its kind in the country.

The state's fund was established 18 years ago, to protect New Jersey policyholders from the imminent insolvency of surplus lines insurer Ambassador Insurance Co. That insurer eventually was ordered liquidated by a court in Vermont, where it was domiciled.

Several national and local insurance industry leaders said they were unaware that the amendments to the law were being considered late last month.

In addition, legislators sought no formal comment on their proposal from the New Jersey Property/Liability Insurance Guaranty Assn., the nine-member board that oversees guaranty funds for surplus lines as well as admitted insurers, said Joe DellaFera, acting executive director of the association. However, he said he only learned of the proposal during the second day of deliberations.

The legislation, known as Senate Bill 1717, was one of about 10 bills designed to help the state—which was facing an unprecedented $6.1 billion deficit—to meet a constitutional requirement to balance its $23.4 billion budget by the June 30 end of its fiscal year.

Despite a 21-19 vote in the Senate, the amendments were approved on June 30, and Gov. James McGreevey signed the bill on July 1.

Under the law, the state can transfer to the general fund "any and all moneys in excess of $40 million in the New Jersey Surplus Lines Guaranty Fund as of June 24."

Essentially, the law split the fund's $80 million balance, which was prefunded by accumulated policyholder surcharges—not the typical post-loss insurer assessments on which most guaranty funds rely—collected between February 1985 and August 1993, Mr. Bouhan said.

The surcharges of up to 4% of surplus lines premiums were stopped in 1993, though, because market conditions were good and "there hasn't been an insolvency problem" in the state, Mr. Bouhan said.

The transfer leaves the surplus lines guaranty fund with a balance of $40 million, which is considered "sufficient to satisfy all existing covered claims," according to the law. Claim payments to policyholders of insolvent surplus lines companies in the state, however, will continue to be capped at the lesser of $300,000 per occurrence or policy limits, subject to any deductible.

In addition, the law limits the types of future claims eligible for coverage under the fund "to medical malpractice liability insurance policies and policies for property insurance covering owner-occupied dwellings of less than four dwelling units whose surplus lines insurer subsequently becomes insolvent."

The fund previously provided a much broader range of protection to New Jersey surplus lines policyholders or claimants. Specifically, it applied to most property/casualty lines written on a surplus lines basis, excluding only workers compensation; credit, title, fidelity and mortgage guaranty insurance; surety bonds; municipal bonds; investment return assurance; ocean marine; and reinsurance.

> **'Removing money from this fund can be a dangerous practice because it is essentially like a rainy-day fund. If it rains and the money is not available, it's consumers and taxpayers who will be hurt.'**
>
> *Jack Andryszak*
> *American Insurance Assn.*

It is "disturbing" to have the law "tremendously" limit the purpose of the fund, said Jim Griffith, a member of an nonvoting surplus lines advisory group to the state's property/liability association. He is president of Princeton Risk Managers Inc., a wholesale broker in Princeton, N.J.

Although tapping guaranty funds is not good public policy, it is difficult to be critical of legislators facing a budget crisis, said Mike Koziol, senior director and counsel of the National Assn. of Independent Insurers in Des Plaines, Ill.

Still, one must question the appropriateness of a state acquiring $40 million in surplus lines guaranty funds with "a stroke of a pen," said Mr. Griffith.

"Removing money from this fund can be a dangerous practice because it is essentially like a rainy-day fund. If it rains and the money is not available, it's consumers and taxpayers who will be hurt," said Jack Andryszak, assistant vp-Mid-Atlantic Region for the American Insurance Assn. in Annapolis, Md.

"It's unfortunate, but state governments…are very hesitant to tighten their own belt when services are threatened and instead take a very myopic view of supporting" excessive spending, said Wayne Salen, director of risk management for Lockport, N.Y.-based First Niagara Financial Group Inc. Mr. Salen is also a member of the board of directors of the New York-based Risk & Insurance Management Society Inc.

The newly amended law has raised some additional issues, too.

One concern stems from a provision that allows the New Jersey Property/Liability Insurance Guaranty Assn. which also governs the guaranty fund for admitted insurers, to borrow money from the surplus lines guaranty fund.

While some critics say that arrangement may pose a conflict of interest, Mr. DellaFera said he sees it merely as "a little administrative cleanup," because the surplus lines fund had previously borrowed money from the admitted guaranty fund during Ambassador's insolvency, he said. That loan has since been repaid with interest, he added.

Another issue involves who would be assessed for the future funding of any surplus lines insolvencies. It is unclear whether all surplus lines policyholders could be assessed or only those that purchase the two lines of coverage that the fund now protects—medical malpractice coverage and homeowners.

Mr. DellaFera said he is awaiting the outcome of legal research on such issues and he expects the property/liability association's board to discuss such matters later this week. The board has thus far not taken any formal position on the amended law, he noted.

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For the Record

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P/C industry posts first aftertax net loss

Dramatically higher underwriting losses and poor investment results combined to produce the property/casualty insurance industry's first-ever aftertax net loss, according to a new study by the Insurance Services Office Inc. According to the ISO study, the property/casualty industry lost $7.9 billion in 2001, down from earnings of $20.6 billion in 2000. Reflecting the loss and unrealized capital losses on investments, industry surplus fell 8.7%, to $289.6 billion, at the end of 2001, Jersey City, N.J.-based ISO said. The drop followed a 5.1% decline in the prior year, representing the first back-to-back declines in surplus since 1984 and the largest since 1974, when surplus fell 23.9%. The ISO study states that insured catastrophe losses, including the Sept. 11 terrorist attacks, were only partly to blame for poor underwriting results. Another significant factor, ISO said, was a 10.9% increase in noncatastrophe loss and loss adjustment expenses. An increase in asbestos and environmental losses and the strengthening of reserves for non-A&E losses contributed to the higher noncat loss and loss adjustment costs, the ISO report states. Meanwhile, the industry's net investment income dropped a record 8.9% in 2001. One bright spot for the industry in 2001 was premium growth. The rate of growth increased to 8.1% last year from 5.3% in 2000, 1.9% in 1999 and a record low 1.8% in 1998, ISO said. Copies of the ISO study can be ordered by calling ISO Customer Services at 800-888-4476 or by e-mail at *info@iso.com*.

GAO investigation of med mal rates requested

Three high-ranking House Democrats have asked the General Accounting Office to investigate why medical malpractice liability insurance rates are increasingly so sharply. The lawmakers—Rep. John Dingell, D-Mich., ranking member on the Energy and Commerce Committee; Rep. John Conyers, D-Mich., ranking member on the House Judiciary Committee; and Rep. John LaFalce, D-N.Y., ranking member on the House Financial Services Committee—want the GAO, Congress' investigative arm, to examine how reductions in insurers' investment income may be affecting the rates they are charging. The legislators also want the GAO to determine how current market conditions differ from those during other periods when rates also increased significantly. In addition, legislators have asked the GAO to investigate the degree of competition in those markets in which providers have been hit with the biggest premium increases. Some hospitals have recently experienced triple-digit rate increases. "We believe a thorough analysis of insurance industry practices is necessary," according to the legislators' letter to the GAO. The lawmakers have asked the GAO to report back by Sept. 3.

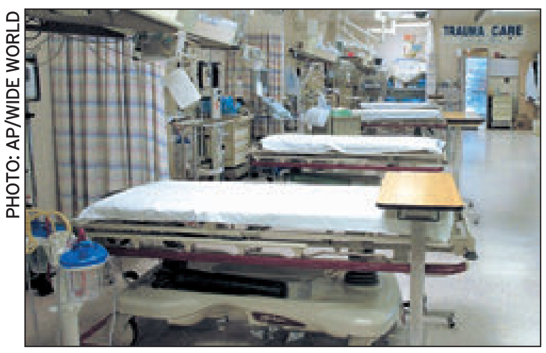


PHOTO: AP/WIDE WORLD

Soaring medical malpractice insurance rates forced the University Medical Center trauma unit in Las Vegas to close earlier this month.

Structured-settlement reform approved

The New York Legislature has approved a bill that would increase protections for consumers who receive structured settlements. The measure, the combined S. 3512 and A. 6936, requires increased disclosure of financial arrangements, as well as court approval, to sell a settlement. Structured settlements are voluntary agreements that provide long-term financial protection, primarily for personal-injury victims or workers compensation claimants. "Too often, factoring companies have persuaded people to 'sell' future benefits that they need for some quick cash. Unfortunately, sellers often find they have sold their benefits for a small fraction of their value and no longer have a stream of payments to meet their needs," said Michael Murphy, assistant vp-Northeast region for the American Insurance Assn. in Washington. The bill will now go to Gov. George Pataki. "We are not aware of any opposition from the governor, so we expect that he will sign it," a spokesman for the American Insurance Assn. said. Despite a new federal law addressing the issue, many supporters of structured settlements still see a need to seek legislative approval in the approximately 20 jurisdictions that have not yet adopted such requirements (*BI*, Feb. 25).

Pa. medical facilities face safety-plan deadline

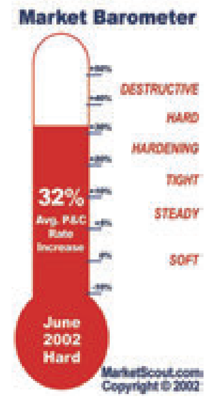
Medical facilities in Pennsylvania have until July 18 to file patient-safety plans with the state Department of Health, in accordance with a law that was introduced earlier this year. Under the state's new law, each medical facility must file a plan that includes the designation of a safety officer, the establishment of a patient-safety committee and the creation of a system for health care workers to report serious events and incidents related to patient safety. The safety plan filing requirement applies to surgical centers, hospitals and birthing centers operating in the state.

Lilly gets OK to offer asbestos drug

Eli Lilly & Co. said the U.S. Food and Drug Administration will allow it to provide a new drug to some patients suffering from asbestos-related cancer before the drug receives formal approval. Alimta will be provided free to certain patients suffering from malignant pleural mesothelioma who meet strict guidelines. The lung cancer, often associated with exposure to asbestos, is usually fatal within a year of diagnosis, the Indianapolis-based drug maker said. The FDA's decision follows release of a study by Lilly in May that showed Alimta, used in conjunction with the drug Cisplatin, helped extend the life of patients and reduce their pain. "This is simply the right thing to do. The expanded access program provides hope for patients who are battling a devastating disease," said Dr. Paolo Paoletti, leader of the Alimta team at Lilly, in a statement. Lilly is seeking FDA approval to market Alimta.

Market continuing to harden: MarketScout

Property/casualty rates continued to harden in June, according to MarketScout.com's Market Barometer. MarketScout, an online distribution channel representing more than 40,000 insurance professionals and 67 insurance companies, found that rates last month rose, on average, by 32%, up from 30% in May. "Rates continue to harden in anticipation of the July 1 treaty reinsurance renewals," Richard K, Kerr, chief executive officer of Market- Scout, said in a statement. Mr. Kerr said that buyers can expect additional price increases as admitted insurers opt not to renew accounts.



Former Kemper CEO dies at age 88

James S. Kemper Jr., the former head of Kemper Insurance Cos. and son of the insurer's founder, died July 2 at age 88. Mr. Kemper, who became chairman and chief executive officer of Kemper in 1969, led the insurer through a period of rapid growth and acquisition. He retired as chairman and CEO in 1979.

Online Poll [7/8 - 7/12]

Should the Medicare program be expanded to add a prescription drug benefit?

Yes	No
83.2%	16.8%

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

BI Stock Index [7/8 - 7/12]

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

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

BI Stock Index 1943.18	Dow Jones 8684.53	S&P 500 -3.42
-2.89	-4.09	-3.42

Largest gains

Acceptance Insurance	10.00%
SCPIE Holdings Inc.	6.36%
Navigators Group	5.69%
Sierra Health Services	4.71%
Meadowbrook Ins. Group	4.67%

Largest losses

Allmerica Financial Co.	-15.55%
Trenwich Group Ltd.	-13.58%
Gainsco Inc.	-11.11%
Aon Corp.	-10.79%
AXA-UAP Group	-10.14%

Weekly change by market segment

Brokers	-5.48%
Insurers/Reinsurers	-2.86%
Managed Care Organizations	-3.33%

Source: CNET Investor (investor.cnet.com)

BI publisher buys Workforce

Monthly magazine, Web site cover human resources

DETROIT—Crain Communications Inc., publisher of *Business Insurance*, has acquired Workforce magazine from ACC Communications Inc., a family-owned business that has published the title for more than 40 years.

Published monthly, Workforce provides human resources management news, trends and analysis to 47,500 human resource executives and 275,000 registered online subscribers.

Other brand extensions include a weekly e-mail newsletter, Workforce Week; a twice-monthly newsletter, Dear Workforce, providing a forum for HR expert Q&A; and the industry-respected Workforce Optimas Awards. Workforce is the leading information source in its field.

Current Workforce publisher and ACC president Margaret Magnus will remain as publisher. All of the publication's top management have accepted positions with Crain Communications.

Additionally, Workforce has approximately 20 full-time employees, with many freelancers contributing editorial content. Workforce's headquarters will remain in its current location in Costa Mesa, Calif.

"The publication is a good fit for us, particularly when considering both the family-owned philosophies and the potential readership dually reached in the pensions, investment and employee benefits area of the insurance markets with Crain publications Pensions & Investments and *Business Insurance*," said Keith Crain and Rance Crain, chairman and president of Crain Communications, respectively, in making the announcement.