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Answers questions on preventive drugs, employer control of funds

Guidance on HSAs unveiled

By JERRY GEISEL

WASHINGTON—Eagerly awaited guidance released Friday by the Treasury Department and the Internal Revenue Service resolves many of the unanswered questions about health savings accounts.

With Notice 2004-50—as well as guidance issued earlier this year by Treasury and the IRS—employers should have enough regulatory guidance to make informed decisions on whether they want to offer the innovative plans to employees, experts say.

The latest guidance "provides needed answers to many of the priority issues" that employers have sought to clarify as they decide whether to offer HSAs, said Paul Dennett, vp-health policy at the American Benefits Council in Washington.

In one key clarification, the guidance states that the high-deductible health insurance plans to which HSAs must be linked can provide more generous coverage for prescription drugs that are preventive in nature—such as cholesterol-lowering drugs—and for most wellness and disease management programs and employee assistance plans.

The release of the guidance came nearly a month after Treasury Department officials' original target date. The delay stemmed from a prolonged debate within the Bush administration on whether employers that contribute to employees' HSAs can limit withdrawals of those

See **HSA**/page 6

Late News

St. Paul Travelers adding $1.63 billion to reserves

The St. Paul Travelers Cos. Inc. said it will increase its reserves by $1.63 billion in the second quarter as it conforms St. Paul's accounting and actuarial methods with those of Travelers Property Casualty Corp. The two insurers completed their merger April 1. Depending upon how the reserve boost is accounted for, it could result in a net second-quarter loss of $275 million to $300 million, the company reported.

TRIA extension bill introduced in Senate

Legislation to extend and expand the Terrorism Risk Insurance Act of 2002 has been introduced in the Senate. The bill, sponsored by Sens. Christopher J. Dodd, D-Conn., and Robert Bennett, R-Utah, would extend the original legislation through 2007 and would add several amendments. Among those changes is a provision that would require insurers, through the last year of the program, to make terrorism coverage available that is in effect for at least 12 months. The extended program also would apply to group life insurers under an amendment in the measure. Legislation to extend TRIA is also pending the House of Representatives.

Anthem, WellPoint merger rejected

California Insurance Commissioner John Garamendi has rejected the proposed merger of Anthem Inc. and WellPoint Health Networks Inc. The companies had received approval for their merger from the California Department of Managed Health Care, which regulates 90% of WellPoint's California business. Mr. Garamendi, though, expressed concerns that the cost of the transaction would have been

Mr. Garamendi

See **LATE NEWS**/page 19

Canadian cities facing quake risk, report says

By GLORIA GONZALEZ

Three of Canada's four largest cities—Vancouver, Montreal and Ottawa—are vulnerable to a devastating earthquake that could cause billions in insurance losses.

A report released by the Toronto-based Institute for Catastrophic Loss Reduction determined that these major cities, along with Victoria and Quebec City, are located in regions of high to moderate risk of earthquake damage.

"There will be an earthquake; it's just a matter of when," said Paul Kovacs, director of the ICLR. " The likelihood of an earthquake in the next five to 10 years is very low, but a damaging earthquake will take place in the next few decades."

The province of British Columbia is highly vulnerable to earthquake damage because it is located on Canada's West Coast within the "Ring of Fire," among the most active areas in the world for major earthquakes, Mr. Kovacs said. In fact, two strong earthquakes were recorded earlier this month in British Columbia, although the temblors occurred in fairly remote areas and caused no insured damage.

See **QUAKES**/page 17

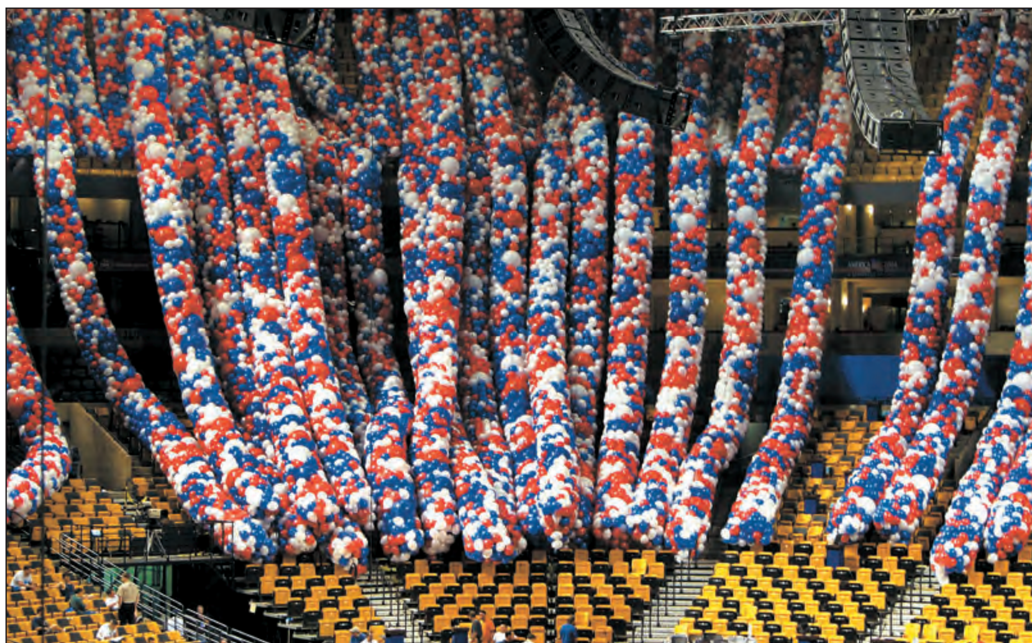

PHOTO: NEW YORK TIMES

Security plans for this week's political convention are expected to disrupt some businesses.

'The Dems are coming!' so Boston gets ready

By DAVE LENCKUS and RUPAL PAREKH

Designated as a National Special Security Event by federal officials, the Democratic National Convention poses numerous risks that Boston businesses, local and national authorities and the Democratic Party have been preparing for months and even years to mitigate.

The convention runs Monday through Thursday night this week at Boston's FleetCenter against a backdrop of heightened concerns that the event could be a terrorist target.

The city police and businesses also are gearing up for protesters.

But even if there are no major disruptions, the security measures designed to safeguard the convention and about 1,000 related offsite events raise some business continuity challenges, say risk management consultants and brokers.

See **CONVENTION**/page 18

International

U.K. GROUP URGES PENSION CHANGES

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NEWSPAPER

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Premera joins other Blues stymied in for-profit shift

By GLORIA GONZALEZ

Opposition from state insurance regulators has stalled the trend of nonprofit Blue Cross & Blue Shield health plans converting to for-profit companies.

Citing several reasons, including concerns over rate increases and the future independence of the plans, regulators in several states have blocked Blues plan conversions.

But while the conversions have been stymied for now, the companies will likely adapt their proposals to reassure regulators and the trend will pick up once more as the Blues plans seek to expand, observers say.

Mountlake Terrace, Wash.-based Premera Blue Cross is the latest Blues plan to fail in its attempt to convert to a for-profit company. Washington State Insurance Commissioner Mike Kreidler earlier this month rejected Premera's conversion application for several reasons, including the possibility that Premera would increase premium rates for small groups and individuals in eastern Washington, where the company has a large market share.

'I have concluded that investor-driven profit margins and goals would put subscribers and the insurance-buying public at an unacceptable risk for excessive rate increases.'
Mike Kreidler
Washington State Insurance Commissioner

"I have concluded that investor-driven profit margins and goals would put subscribers and the insurance-buying public at an unacceptable risk for excessive rate increases," he said in a statement.

Mr. Kreidler also expressed concern about Premera's ability to remain independent if it were to convert. Premera would have a fiduciary responsibility to its shareholders to consider legitimate acquisition offers, he said.

"Based upon the experience of

See BLUES/page 12

Agency didn't consider health effects on drivers: Appellate court

Insurers hail court's decision to vacate rules for truckers

By MICHAEL BRADFORD

WASHINGTON—Truckers and insurers are at odds over whether regulations struck down by a federal appeals court would make U.S. highways safer.

The U.S. Circuit Court of Appeals for the District of Columbia vacated the regulations on July 16, ruling that the Federal Motor Carrier Safety Administration failed to properly consider the effects that its new duty-time regulations would have on the health of truckers. The new rules took effect at the beginning of this year, and enforcement began in the spring.

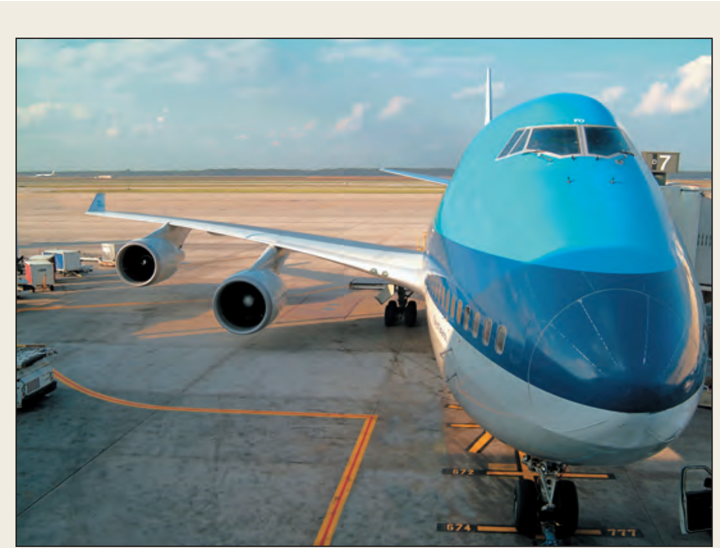
Those rules allowed, among other things, truckers to drive up to 11 consecutive hours over a 14-hour duty period. Under the old rules, drivers were allowed to spend 10 straight hours behind the wheel over a 15-hour period.

When developing the regulations, the agency said the new requirements were "science-based" and would allow drivers to work in line with their circadi-

See TRUCKING/page 19

PHOTO: PR NEWSWIRE

New rules governing truckers' duty hours have been struck down by a federal appeals court.



Germany, brokerages reach deal on airlines' coverage documentation

By PETA MILLER

BRAUNSCHWEIG, Germany—The German aviation authority and brokers have reached a compromise to resolve complications arising from Germany's adoption of a new airline liability treaty.

At issue was the aviation authority's implementation of the insurance requirements of the Montreal Convention, an agreement that aims to set worldwide standards for compensating victims and their families for accidents involving international passenger flights.

The Convention, which was developed by the International Civil Aviation Organization, took effect June 28 in 13 European Union member states, including Germany and the United Kingdom. U.S. airlines have been operating under the Montreal Convention since November 2003.

Like the Warsaw Convention 1929 it replaces, the Montreal Convention limits airlines' liability for losses stemming from lost or broken baggage and for passenger delays. Article 22 of the Convention sets liability for delays at 4,150 special drawing rights ($6,129) per passenger, while liability for lost or damaged baggage is capped at 1,000 SDRs ($1,477) per passenger. An SDR is an instrument that is made up of a basket of currencies.

However, unlike the Warsaw Convention, the Montreal Convention requires airlines to maintain adequate insurance for their liabilities.

Article 50 of the Montreal Convention says that "state parties shall require their carriers to maintain adequate insurance covering their liability under this Convention." Furthermore, "a carrier may be required by the state party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention," Article 50 states.

Airlines, though, often self-insure liabilities related to baggage loss and passenger delays, as many are unable to obtain coverage for such liabilities unless they arise from an insurable event, such as a crash, explained

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Inside Business Insurance

Boat companies float insurance proposal

Members of the yacht industry are seeking an exemption from a federal insurance program for workers. Page 4

Court to examine harassment defense

California's top court will rule on a free speech defense against sexual harassment allegations. Page 4

Potential pot of gold for trial attorneys

An offer on a box of Lucky Charms cereal sends a dubious message, Paul Winston writes. Page 6

Prompt guidance gives boost to HSAs

The Treasury Department should be commended for its prompt action in providing guidance on HSAs, one of this week's editorials says. Page 8

Aussie telecom's execs seeking defense cover

Jodee Rich, above, former CEO of Australian telecom One.Tel, is among a group of executives suing the failed company's D&O insurers. Page 13

Online

- The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info on your own event.
- Searchable **directories** provide access to all the listings of industry vendors found in *BI*'s Market Sourcebook.
- New **Opinion Poll** for readers: Should states limit the ability of people to sue fast food companies for causing obesity?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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States trying to trim obesity litigation

By MEG SHREVE

As plaintiffs continue to serve up health-related lawsuits attacking the fast-food industry, several states are saying that the companies deserve a break from some of that litigation.

Recent years have seen the launch of high-profile suits against fast-food chains and food manufacturers. For example, a U.S. District Court judge last year dismissed a suit against McDonald's Corp. that charged that the company's advertising and products contributed to obesity in children. Before that, a plaintiff sued McDonald's and three other chains—KFC Corp., Burger King Corp. and Wendy's International Inc.—charging that the companies' food made him obese.

To prevent what they see as frivolous litigation aimed mainly at fast-food chains, some states have introduced laws barring lawsuits that level certain charges against food makers and sellers, and the companies are looking at ways to minimize potential liability.

According to the Washington-based National Restaurant Assn., 11 states so far have passed laws barring most lawsuits against restaurants and food makers charging that their food contributed to plaintiffs' obesity. Another 15 states have considered such measures, the restaurant group said.

Most laws designed to curb obesity-related suits are based on a model bill that protects companies from state consumer fraud claims and prevents discovery before a court can rule on a motion, among other things, said Scott Riehl, vp of government affairs and associate counsel for the National Food Processors Assn. in Washington. He also pointed out that these bills do still allow claims based on state and federal violations, such as those involving labeling and manufacturing laws.

In late June, Missouri became the latest state to introduce a law—H.B. 1115—to bar the obesity-related lawsuits. A similar measure in Illinois—H.B. 3981—awaits the signature of Gov. Rod Blagojevich.

Mr. Riehl said the legislation faced little opposition in Missouri and Illinois. The Missouri law passed unanimously in the Senate, while the Illinois bill passed unanimously in both chambers.

The Missouri Assn. of Trial Attorneys worked closely with the bill's sponsors to ensure that only obesity-related lawsuits were covered, according to a spokeswoman for the Jefferson City-based group.

However, some observers say state legislation may be not

See OBESITY/page 17

PHOTO: EPA/GERO BRELOER

In recent years, consumer demand has resulted in ever-larger recreational boats and yachts.

Yacht industry seeks shelter under state comp laws

By MEG FLETCHER

WASHINGTON—Some consumers' bigger-is-better tendencies are responsible not only for oversized houses but also for longer yachts, which is prompting recreational marine employers to seek an exemption from costly federal Longshore and Harbor Workers' Compensation Act requirements.

Several marine industry representatives are supporting the Recreational Marine Employment Act, H.R. 1329, which would exclude them from a 20-year-old federal requirement that they provide longshore coverage for the skilled workers who build or maintain yachts that are at least 65 feet long.

Currently, nearly all employers that handle smaller pleasure boats are exempted from the Longshore Act; they need buy only state workers compensation coverage. If the bill were enacted, the exemption would extend to all employers that handle pleasure craft, regardless of length.

Employers want the exemption because, "over the years, yachts have grown," and "there are more than 250,000 recreational vessels longer than 65 feet," according to Larry Nelson, chairman and vp of Westport Shipyard in Westport, Wash., in written testimony to a congressional hearing. Mr. Nelson's company employs more than 600 workers and builds yachts beginning at 98 feet, he said in his testimony.

At the recent hearing of the House Committee on Education and the Workforce's Subcommittee on Workforce Protections, bill sponsor Rep. Ric Keller, R-Fla., testified that his "common-sense update" was encouraged by a recent survey. It indicated that recreational marine industry employers "would save an average of $99,000 per year if they were exempt from the Longshore Act." He added that "95% of those employers said they would use the savings to create additional jobs."

Furthermore, Rep. Keller said, employers have told him "that many jobs were being outsourced to the Bahamas, Canada and China," due to lower labor costs there.

Rep. Keller said the bipartisan bill, which has 24 co-sponsors

See YACHTS/page 6

Spencer Foundation to honor Thrower at anniversary gala

NEW YORK—In celebration of its 25th anniversary, the Spencer Educational Foundation Inc. is planning a gala dinner Sept. 9 in New York in honor of Ellen Thrower, a longtime leader in risk management education.

Ms. Thrower is a professor and the executive director of the School of Risk Management, Insurance and Actuarial Science at St. John's University's Peter J. Tobin College of Business. The School of Risk Management was formed following a merger with The College of Insurance, of which Ms. Thrower was president.

Before joining The College of Insurance, she was a professor and director of the Insurance Center at Drake University in Des Moines, Iowa.

Ms. Thrower was the APIW Insurance Woman of the Year in 1993 and was one of *Business Insurance*'s 100 Leading Women in 2000.

Ellen Thrower

The Spencer Educational Foundation's initiatives include internships, scholarships to graduate and undergraduate students in risk management and insurance, and grants to colleges and universities for risk manager-in-residence programs. The foundation is named for the late Robert Spencer, a risk manager and former president of the Risk & Insurance Management Society Inc., who was a proponent of education.

Since 1980, the Spencer foundation has awarded 278 scholarships totaling more than $1.7 million, according to Angela Sabatino, the foundation's administrative manager.

The Spencer dinner is scheduled for Sept. 9 at the University Club at 1 W. 54th St. in Manhattan. For more information, contact Ms. Sabatino at 212-655-6223 or by e-mail at *asabatino@rims.org*.

Court to hear harassment case targeting writers of 'Friends'

SAN FRANCISCO—California's Supreme Court agreed to hear a case involving a free speech defense against sexual harassment allegations brought by a writers' assistant on the television show "Friends."

Amaani Lyle, the plaintiff in *Lyle vs. Warner Brothers,* was fired from her job in 1999 after four months because she could not type fast enough to keep pace with conversations in writers' meetings and jokes and story lines were lost, the defendants claim. Ms. Lyle sued, claiming that writers and producers on the popular show subjected her to racial and sexual harassment through bigoted comments, gestures and sexual jokes told during writers' meetings, court records show.

The defendants admit the use of "sexually coarse, vulgar and demeaning language in the workplace but maintain such language was essential to the creative process of developing scripts for the show," court records state.

A Los Angeles trial court granted summary judgment in favor of the defendants. But in April, an appeals court in Los Angeles ruled that a jury should hear the case because creative necessity is not an affirmative defense against discrimination.

Last week, the California Supreme Court agreed to hear arguments over whether liability for sexual harassment would infringe on free speech.

—By Roberto Ceniceros

PHOTO: PS

The writers of the sitcom "Friends" are the focus of a legal dispute over whether freedom of speech pre-empts sexual harassment claims.

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HSA: Guidance provides answers

Continued from page 1

contributions to just the reimbursement of uncovered medical expenses.

In the end, the administration decided that employers could not impose such restrictions. Under law, though, employees withdrawing funds from HSAs would be taxed on those distributions if they were not used for medical expenses.

"Only the account beneficiary may determine how HSA distributions will be used," the guidance states.

That policy decision could discourage some employers from offering HSAs, experts say.

"Some employers don't want their contributions to be turned into general compensation. They want it used for health care," said Joe Walshe, a principal in the HR services practice of PricewaterhouseCoopers L.L.P. in Washington.

Barring employers from exercising any control over the use of HSA funds "may make many employers think twice" about contributing to an HSA, said Andy Anderson, a consultant with Hewitt Associates Inc. in Lincolnshire, Ill.

Instead, Mr. Anderson said, employers now may turn to another tool—health reimbursement arrangements. HRAs are somewhat similar to HSAs, though companies retain control over how HRA balances are used.

Others, though, doubt that the employer-control issue will be the deciding factor for many companies determining whether to offer an HSA-linked health plan.

"It is a matter of concern, but not a show-stopper," said Henry Saveth, an attorney with Mercer Human Resource Consulting in New York.

HSAs were created as part of Medicare prescription drug legislation passed last year. Employees, employers or both can contribute to HSAs, which must be linked to health insurance plans with minimum deductibles of $1,000 for individual coverage and $2,000 for family coverage.

Employees can withdraw tax-free funds from their HSAs to pay for uncovered health care expenses, such as those that fall within their deductible, and unused balances can be rolled over to pay for succeeding years' expenses. The theory behind such arrangements is that by directly exposing employees to more health care expenses, they will use health care services more carefully.

Experts say the most critical—and welcome—part of the guidance involves preventive care services.

Earlier guidance made clear that certain preventive services—including annual physicals, child and adult immunizations, smoking cessation and weight-loss programs—would be considered preventive and, thus, could be covered on a first-dollar or low-deductible basis by the otherwise high-deductible HSA-linked plans.

The latest guidance expands the category of preventive services entitled to more-generous coverage in the high-deductible plans.

Under the guidance, drugs prescribed for a person because he or she is at risk of developing a disease would be considered preventive. For example, medication taken to lower cholesterol to prevent heart disease would be eligible for more-generous coverage, the guidance notes.

Employers have supported such flexibility, because they believe encouraging employees to use certain prescription drugs through low-cost sharing requirements saves money by reducing the likelihood of employees developing far more serious and costly health problems later on, PwC's Mr. Walshe said.

Similarly, the guidance notes that wellness, disease management and employee assistant programs also could receive more-generous coverage, as long as the programs do not "provide significant benefits in the nature of medical care or treatment," according to the guidance.

For example, an EAP that consists of low-cost counseling would pass muster.

The latest guidance also makes clear that an employee can prospectively change during a plan year—for any reason—the amount he or she had earlier agreed to contribute to an HSA. That makes the accounts more attractive than flexible spending accounts, in which an employee is locked into contributions set at the start of the plan year unless there is a change in the employee's "status." Status changes include marriage or the birth of a child.

Additional flexibility permitted under the guidance includes letting an employer condition its contributions to HSAs, provided the HSA plan is part of a Section 125 flexible benefit program. For example, an employer could require its employees to participate in a health care assessment program as a condition of its contributing to the HSA.

An employer could also design its plan so that the level of its contributions to employees' HSAs would be contingent upon the amount the employees contribute to the accounts.

Yachts: State comp cover sought

Continued from page 4

including four Democrats, raises two major questions.

One question concerns whether the risks of working on yachts justify coverage under the Longshore Act, which was enacted in 1927 to cover longshoremen and harbor workers who handle cargo from ships, as well as those who build and repair ships. The limited pleasure craft exemption was added in 1984.

At the hearing, industry representatives downplayed the bill's impact on workers, citing statistics that showed a relatively low-risk environment.

The requirement to provide longshore coverage is "an ill-placed economic burden," especially because "claims for workers on vessels of 65 to 150 feet are at least 38% lower than those on vessels under 65 feet," said Ian Greenway, president and owner of St. Petersburg, Fla.-based marine wholesaler LIG Marine Managers.

Mr. Nelson's testimony concurred that claims were lower for workers on larger yachts, especially when compared with the rate of 22 injuries per 100 workers that builders of large ships experienced in 2000.

Countering those statistics was bill opponent Robert E. McGarrah Jr., the AFL-CIO's coordinator for workers compensation. He cited Bureau of Labor Statistics reports that the boat building and repairing industry has an injury rate of 11.1 per 100 full-time workers, compared to a national average of 5.3.

Greater hazards mean higher risk, which is reflected in insurance premiums, especially in the recent hard market, he said.

Several industry representatives complained about the high cost of longshore insurance, which can be more than double the cost of acquiring state workers comp insurance in 15 states and between 50% and 100% higher in another 19 states, Mr. Greenway said.

Another general concern about the bill was whether workers exempted from longshore coverage would be worse off, Rep. Keller said. The Florida congressman said that would not be the case; injured workers under both programs typically receive two-thirds of their wages, or even more, for example, in Iowa, he said.

The longshore program is generally considered to be more generous for workers overall—it offers higher maximums than most states. Employer spokesmen, though, emphasized that few injured workers earn enough for maximums to become an issue.

In addition, the longshore benefit cap is automatically adjusted to keep pace with average weekly national wages, said Virginia Reno, vp-research for the Washington-based National Academy of Social Insurance.

Mr. McGarrah added, "Today, sadly, state workers compensation benefits hover at or near poverty in most states," according to a soon-to-be-published NASI study.

Eric Oxfeld, president of the Washington-based business lobbying group UWC Inc. said he disagrees with Mr. McGarrah's characterization of states' benefit levels. Mr. Oxfeld said that UWC is "very sympathetic" to the affected recreational marine employers.

Mr. McGarrah said that, as he sees it, the issue should be "why the marine recreation industry, producing and servicing $10 million yachts, isn't willing to provide fair compensation to workers injured in this dangerous industry."

Paul Winston

Boneheadedness among the clover

I generally have a hard time sympathizing with people who file lawsuits over damages that clearly could have been avoided with a mild application of common sense. I resent when people who injure themselves in stupid fashion blame a third party rather than take responsibility for their actions.

That said, there are times when corporate boneheadedness almost makes me understand why people turn to the courts to bludgeon businesses.

Case in point: Lucky Charms.

Yes, I'm talking about the magically delicious cereal produced by General Mills Cereals L.L.C.—the one with the immoderately cheerful cartoon leprechaun (Mr. Lucky) on the box.

Paul Winston

I think we can all agree that the target market for this cereal is children. The oat cereal's sugar coating, its brightly colored marshmallow "charms" and the fact that its advertisements run predominantly during children's cartoon shows on TV, rather than on CNN or the History Channel, are all clues.

Let me amend that to say its target market is children *and* the young at heart (how else to explain the Lucky Charms box I recently found in the office kitchen, without giving rise to suspicions we are violating child-labor laws).

In any event, I recently had an opportunity to inspect a box of Lucky Charms.

The box is adorned with vivid colors, cartoon characters and a picture of a glowing bowl, overflowing with cereal and marshmallow clovers, rainbows, moons and enough other druidic symbols to keep Da Vinci Code fans occupied for weeks. There is a cartoon maze for kids to solve on the back, as well as a coupon to participate in General Mills' fundraiser for education.

So it was with surprise that I noted the advertisement printed on the *interior* of the box—which was already open when I found it (I swear). Ads, per se, are nothing new on cereal boxes.

What surprised me was that it was an ad to order a free set of four scissors.

These were not the cute stubby little shears designed to be safely used by little hands, but full-sized, stainless-steel cutting instruments with sharp edges and tips. The kind not typically left in reach of children. The kind that gives rise to the time-honored admonition, "Don't run! You could trip and put your eye out!"

Wise up, General Mills. I realize that relatively few kids are going to be as attracted to the offer of a free set of scissors as, say, a decoder ring or a toy leprechaun. But the offer of anything free is, as intended, a lure to action. This ad on a cereal aimed at kids may not be as ill-advised as advertising for whiskey, shotguns or condoms on a cereal box, but it's still a display of poor judgment.

Note that I said "poor judgment," not "negligence warranting lawsuits." Given my aversion to litigation, I'd settle for cartoon violence, such as a frying pan upside the head of a marketing executive or two.

Cure for a filthy mouth?

Some risks you can anticipate, others you cannot.

The Associated Press last week reported that people attending a music festival in Sweden this month were drinking liquid soap. Why? To get drunk, of course.

Apparently, the liquid soap used in the portable toilets at the festival is 62% alcohol, a fact that must outweigh the compelling presence of 38% worth of other ingredients—namely, chemicals designed for removing dirt.

After the first night of the three-day festival, all the soap on hand to replenish the latrines had vanished; by the end of the event, the soap dispensers in 65 portable toilets had been broken or were otherwise drained of their boozy cleansers, according to the AP report.

You'll be relieved to know that the thirsty Swedes were not drinking their 124 proof soap straight up, but were combining it with soda pop and other mixers. This soap swilling resulted in the brief hospitalization of a 14-year-old with stomach pains who did not get the mix of soap to soda just right.

Luckily, this event happened in Sweden, not in the United States.

I say that not out of patriotic pride in the knowledge that Americans would never engage in similarly bizarre means to intoxication. Rather, it's because I know that if it had happened in the United States, perhaps with a few more stomachaches or more serious consequences, I know that lawyers would be foaming at the mouth. And overnight, all manufacturers of soap products, out of a not unreasonable fear of litigation, would begin to label their goods with the obvious: Do not drink or eat the soap.

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American Business Media

Editorial

Swift HSA guidance welcome

WE COMMEND THE Treasury Department for its fast action in producing health savings accounts guidance that employers and many others have eagerly awaited.

As we report on page 1, the guidance, along with several earlier rounds of direction, gives employers the answers they wanted before they would commit to adding this innovative and untested design plan to their group health care benefits programs.

While we can't pass definitive judgment on the Treasury advice released late last week until it receives a more-thorough review, at first blush, we think it favorably resolves many issues.

For example, while HSAs must be linked to health insurance plans with deductibles of at least $1,000 for single coverage and $2,000 for family coverage, the Treasury Department will allow lower-deductible or even first-dollar coverage for such preventive benefits as wellness programs and disease management.

Given the tortuously slow tempo at which federal regulators typically produce vitally needed guidance on employee benefit issues—final COBRA rules, for example, were released this year 20 years after the legislation's passage—the pace the Treasury Department set on HSA rules is amazingly swift.

Certainly, that speed in producing the HSA guidance was a result of interest in this issue at the highest levels of the Bush administration. Indeed, President Bush has been an ardent proponent of HSAs.

Now, with the Treasury Department having fulfilled its duties, it is up to employers to decide if HSAs are a needed and wise addition to their health care benefits programs.

We do believe that the concept is sound. If employees are more exposed to the true cost of health care bills through a high-deductible insurance plan and have a financial incentive—building up and maintaining balances in their HSAs—they will use health care services more carefully.

With the guidance they needed to make this decision now in place, employers now can implement HSA programs and take advantage of the potential benefits they offer.

Trucking safety rules need revision

Proposed changes to U.S. rules governing the number of hours that truckers can drive without rest are in idle, giving regulators a chance to improve them.

A cursory comparison of existing regulations and the changes proposed by the Federal Motor Carrier Safety Administration might lead one to conclude that opponents of the revised rules are essentially quibbling over a one-hour extension of driving time and a commensurate increase in resting time. But the issue is far more complex than that.

When the changes to the decades-old rules were promulgated, the FMCSA based its proposals on scientific research of natural sleep patterns. The original proposals called for a move from the current 18-hour on-duty/off-duty cycle to a more-natural 24-hour cycle. It also called for increased resting time requirements. In addition, the FMCSA's original proposals also called for all truckers to use electronic onboard recorders—rather than written log books—to monitor their adherence to the new rules.

The final version of the rules, though, made several changes, apparently in an attempt to minimize trucking companies' cost of compliance.

These changes included allowing truckers to drive for 11 consecutive hours during a 14-hour period, instead of the previous 10 hours driving over 15 hours. This is despite evidence that drivers' concentration powers diminish noticeably between the 10th and 11th hours of duty.

Also—and perhaps of greatest concern—the final rules did not include the requirement for trucks to have electronic onboard recorders, or EOBRs, to monitor compliance. Instead, truckers will continue to fill out their logs, a practice that has long been held to be ineffective because truckers "edit" their entries in pursuit of driving longer hours to get their jobs done.

The expense of installing the devices and a lack of statistics on their effectiveness were cited as reasons for dropping that requirement.

Such arguments are unconvincing. Today's trucks are loaded with high-tech equipment, and adding another device should not be prohibitively expensive. And if they need to be tested for effectiveness, that, too, should not be a permanent barrier to EOBR implementation.

While we are mindful of the need to consider economic realities before imposing new safety rules on any industry, one needs to spend only a few seconds on a highway next to a swerving 18-wheeler to realize that some safety devices are worth the extra cost. The court ruling should offer a chance to get it right. Trucking company employees and other road users deserve the increased protection.

Schillerstrom

Letters to the Editor

Capping victim recoveries no cure for health care ills

To the editor: After reading Mark A. Hofmann's July 12 *BI* Daily News story on *www.businessinsurance.com*, "MICRA Helps Cut Med Mal Awards: Study," I am amazed by all the hoopla being made about the lowering of medical malpractice awards in California following the placement of a cap on pain, suffering, distress or disfigurement.

Doctors were invited to a white sale. It should not surprise them when linens cost less during the sale. After all, that's what a sale is all about—and what caps are all about.

Unlike the usual white sale, where there are no losers, victims of medical malpractice are the losers in the long-running white sale enjoyed by California doctors.

All of those who support caps should have the grace not to be quite so gleeful about their good fortune when that good fortune is at the expense of victims who suffer because of the thousands of medical errors committed every year.

The bad news for patients is that, according to Modern Healthcare, the health care system is the leading cause of death in this country. The good news for doctors in California is that their contributions to that outrage cost them less than it did before caps were imposed.

I suggest that doctors stop celebrating their financial good fortune and start cleaning their house of bad doctors who have placed all of us on red alert during this national crisis.

Jane Marshall
Clarksville, Tenn.

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EAPs can offer help in curbing comp costs

By Ann D. Clark

Most business owners are aware that workers compensation premiums have hit an all-time high. In Alabama, California, Florida and Tennessee—states in which the problem is especially severe—some companies are being forced to suspend operations and move elsewhere. While significant legislative changes are being proposed, meaningful reform is slow. In the meantime, businesses must take an assertive approach to curbing crisis-level workers comp costs.

Many experts have obligingly provided suggestions for improving the workers comp experience; unfortunately, to read much of the how-to advice for reducing workers comp costs is to be immediately underwhelmed. Well-intentioned suggestions include abuse monitoring, safety programs and the like. Although these suggestions may be well founded, most are beyond an individual employer's resources, and many require the use of outside support. Others, while theoretically effective, have no immediate payoff or cannot be applied across industries. A focus on causation is more likely to influence the statistics.

Studies show a substance-abusing employee is five times more likely to file a workers comp claim and 3.5 times more likely to have an accident at work than a worker who is not a substance abuser. Similarly, employees who are overstressed or preoccupied with personal and emotional problems are more likely to get hurt on the job. Consequently, employee assistance programs can offer to employers the hope of finding practical and effective techniques for reducing job-related injuries. A properly focused EAP can provide evaluations of claimants, including their symptoms and histories, with indications of areas that need change.

Employee assistance programs can offer to employers the hope of finding practical and effective techniques for reducing job-related injuries.

EAPs should train supervisors and managers to identify high-risk behaviors associated with job performance. Because managers and supervisors are closest to the problem, it is critical that they learn to use referrals to EAPs, either informally or as part of the disciplinary process.

An employer may adopt a policy requiring a mandatory EAP evaluation of every individual taking workers comp leave. The company may also require such psychological evaluations to gauge generalized stress, to confirm return-to-work fitness and to address other performance-related concerns. With appropriate releases, limited information may be shared with the employer. More importantly, intervention into problem areas such as substance abuse can provide employees with the help to resolve such problems.

Where the company has a significant number of employees on long-term leave, EAP interviews can provide surprising results. In a study conducted by San Diego-based Ann Clark Associates for Worldwide Restaurant Concepts of Sherman Oaks, Calif.—formerly known as Sizzler International—long-term disability subjects were interviewed by EAP counselors. This simple and cost-effective step resulted in recommendations that more than 15% of the claimants be returned to their duties or retrained for other positions. In one case, a claimant reported that she had been ready to report for work but was waiting for a call from the company!

Studies show that anger issues are the primary cause of legal involvement and, thus, costs in workers comp and disability cases. With an EAP referral, an employee is likely to find an empathetic listener. In one trial program, claimants were interviewed prior to returning to work from workers comp leave. In more than 90% of the interviews, the individuals expressed resentment toward the company—e.g., in regard to a lack of proper safety equipment, poor supervisory attitudes, etc. These issues were then addressed by the counselor. The results? In one case, a pending legal action was withdrawn. Many other cases resulted in corrective changes made by the company—again, a very cost-effective solution to a potentially costly problem.

EAPs can also help companies meet the formal requirements of a "drug-free workplace," qualifying them for direct savings. Alabama, Florida, Georgia, Mississippi, Ohio, South Carolina, Tennessee and Virginia, for example, offer companies so designated a discount of up to 5% on their workers comp premiums, translating into substantial savings.

The suggestions presented here are only a few of those available to a company willing to work with its EAP to develop creative strategies. Clearly, today's EAPs provide much more than just counseling. Substance abuse intervention, as well as stress and anger management tools, can significantly affect not only costs but the overall quality of employees' lives on and off the job. Work/life assistance for child care, elder care, wellness, pet care and education may also profit the company by helping to keep employees' minds on their work and off the stresses of everyday life. And employees who have the tools to solve personal problems have fewer accidents; it's that simple.

It is vital that legislative changes address the workers comp crisis soon, and it is also important that insurers and medical professionals make greater efforts to put an end to fraud and abuse in the near future. But it is equally critical that employers be given tools that address the problem right here and right now. Partnerships between employers and EAPs are one of those here-and-now tools.

Ann D. Clark is president and chief executive officer of San Diego-based Ann Clark Associates, which provides corporate employee assistance program services.

Try an ounce of prevention on malpractice

By Jackson Williams

For the third time in as many decades, doctors are facing stiff spikes in their medical malpractice insurance premiums. And, as in the past, they are demanding that damages awarded to injured patients be limited in hopes of reducing those premiums.

Consumer advocates oppose damage caps because their greatest impact is on the most severely injured victims and because they dilute the deterrent effect of tort law. But we do think legislatures can act to reduce doctors' liability premiums.

We call our proposal the Fair CAP, with "CAP" standing for "claims analysis project." In 1973, a blue-ribbon commission appointed by the U.S. Department of Health, Education and Welfare recommended that malpractice insurers dedicate a portion of each premium dollar to the study of malpractice incidents and creation of loss prevention programs.

Unfortunately, those companies did not follow the path of automobile insurers in funding organizations such as the Insurance Institute for Highway Safety. The auto insurers' efforts brought about stability in premiums not by restricting victims' compensation but by pushing for the redesign of vehicles and improved driver behavior, with tougher government safety standards for autos and beefed-up traffic safety laws.

Consumer advocates oppose damage caps because their greatest impact is on the most severely injured victims and because they dilute the deterrent effect of tort law. But we do think legislatures can act to reduce doctors' liability premiums.

But while doctors' insurers didn't heed the commission's call, one medical specialty society did. The American Society of Anesthesiologists funded a Closed Claims Project to analyze claims and develop standards for ensuring patient safety.

The result was remarkable: The number and severity of claims dropped dramatically. In 1970, anesthesiologists were the target of 7.9% of all medical malpractice claims; from 1985 to 2001, they were targets of only 3.8% of claims. In the 1970s, 64% of anesthesiology claims involved permanent disability or death; by the 1990s, only 41% did.

The increased safety paid off. The average anesthesiologist's liability premium remained unchanged from 1985 to 2002 at about $18,000—adjusted for inflation, far less. The safety effort proved far superior to damage caps in holding down awards. During the 1990s, the median malpractice award in California, home to the most stringent cap, doubled; the median anesthesiology malpractice award remained constant.

Nevertheless, every other major medical society has continued to demand damage caps—and only damage caps—to resolve their woes. They have gone so far as to refuse offers by lawmakers to provide subsidies for their premiums—surely unprecedented in the history of special-interest lobbying. Given doctors' angry, emotional reaction to lawsuits, there's little realistic expectation that another program like the ASA Closed Claims Project will be voluntarily adopted. The Health, Education and Welfare commission's 1973 recommendation must be mandated.

We suggest that state regulators, perhaps working through the National Assn. of Insurance Commissioners, determine a dedicated claims analysis project amount to be assessed on each insurance premium. A mere 0.15% assessment would produce the same amount auto insurers spend on their Insurance Institute for Highway Safety and Advocates for Highway and Auto Safety groups, and the funds could be used to form similar organizations. Or, medical specialties could opt out and direct their members' portion to a program operated by their specialty society. Either way, claims analysis would be conducted and safety standards adopted.

Many in the medical community have called for voluntary error reporting to collect data for patient safety efforts. But findings of a comprehensive study of medical errors at one hospital by an Illinois Institute of Technology team cast doubt on this approach. The researchers found that less than one-quarter of all errors were ever recorded in incident reports. Most reports dealt with complications and medications; few captured errors resulting from surgery or misdiagnosis. Claims files developed by opposing attorneys and their expert consultants, while fewer in number, yield far richer troves of information for patient safety research. It is a pity that these claims files are not put to greater use.

Jackson Williams is legislative counsel for Public Citizen in Washington and is a member of the National Assn. of Insurance Commissioners' Consumer Liaison Committee.

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Products & Services

Partnership offers absence management services

CHICAGO—Aon Consulting, a global human resources consulting division of Aon Corp., and Westminster, Colo.-based Reed Group, a provider of employee leave administration services and disability duration guidelines, have teamed up to offer absence management and consulting services to large-employer groups. This partnership intends to improve workforce productivity and to strengthen communications between employers and employees.

The program allows employers to complete absence reporting requirements via Chicago-based Aon Consulting's HR Portal, an online system that allows managers and employees to access information regarding their benefits and benefit products, including forms for disability and family medical leave and disability duration guidelines for returning to work.

The program allows employers to track lost-time costs and absence outcomes, and it permits employees to initiate their absence leaves and check their leave status online or via the Reed Group's call center.

For more information, contact Auburn Perkins, assistant vp of Aon Human Resources Outsourcing, at 336-728-2352 or at *auburn_perkins@aoncons.com*.

IFEBP publishes benefits data

BROOKFIELD, Wis.—The International Foundation of Employee Benefit Plans has published a new survey of employers' annual benefit statement practices.

The publication, "Annual Benefit Statements—Survey Results," presents data on statements from U.S. and Canadian public employers, corporate benefit managers, multiemployer salaried administrators and professional service providers concerning their annual benefit statements. It includes information from 653 respondents on the content, format, production and delivery of annual benefit statements. The IFEBP report breaks down results by employer size, sector, industry and region.

The publication also features 76 sample annual benefit statements from respondents.

To order a copy of "Annual Benefit Statements—Survey Results," contact the Brookfield, Wis.-based organization by telephone at 888-334-3327, option 4, or by e-mail at *books@ifebp.org*.

Philadelphia Insurance establishes sports coverage

BALA CYNWYD, Pa.—Philadelphia Insurance Cos. has launched a general liability coverage program targeted to the sports and recreation industry.

The product, the Amateur Sports Facilities Program, provides coverage for stadiums and indoor facilities—such as volleyball and basketball courts and soccer, football and baseball fields—that are leased and used by amateur and youth sport teams. General liability limits are available up to $1 million, and umbrella liability limits are available up to $10 million.

For more information, contact Marissa Burke, marketing coordinator, in the company's Bala Cynwyd office at 800-873-4552 or at *phlysales@phlyins.com*.

The Hartford expands coverage for truck cargo

HARTFORD, Conn.—The Hartford Financial Services Group Inc. has enhanced its carrier-for-hire cargo coverage for transportation businesses.

The expanded coverage aims to help trucking companies protect their business from transportation liability risks and address truckers' legal liability when carrying cargo under contract. The enhancements to the program include coverage for cargo recovery up to $25,000 after loss or damage occurs, optional coverage for a replacement vehicle if the original vehicle is unable to fulfill its delivery commitment and optional coverage for the mechanical breakdown of refrigeration or heating units that can cause cargo damage. Limits for particular lines of coverage have increased also, including earned freight, which covers up to $5,000 in uncollectible charges should a loss occur in transit.

More information can be obtained by visiting the Hartford, Conn.-based company's Web site at *www.thehartford.com*.

Broker creates new professional liability unit

NAPERVILLE, Ill.—Atlantic Specialty Lines-Midwest L.L.C., an excess and surplus and specialty lines wholesale broker, has created a new division dedicated to professional liability.

The Naperville, Ill.-based ASL-Midwest's new division will offer professional, directors and officers and employment practices liability coverage for public entities, nonprofit organizations, schools, media, technology risks and amateur or professional sports.

For more information, contact J. Kevin Sneed, managing director, at 800-362-6218.

Joint venture offers indemnity dental program

EAGAN, Minn.—Securian Life Insurance Co. and DeCare Dental Health International L.L.C., both based in Eagan, Minn., have formed an alliance to offer indemnity dental benefit products for small to midsize employers.

The joint venture, Securian Dental, offers four employer-sponsored and three voluntary indemnity plan options. Some of the plan highlights include allowing members to visit any dentist nationwide, international emergency coverage available 24 hours a day and seven days a week, and 100% coverage for all diagnostic and preventive services. Employers have the option to add orthodontic coverage, which provides coverage for children ages 8 to 18.

For more information, contact Securian Dental, at 866-222-6507, or visit its Web site at *www.securiandental.com*.

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Between the Lines

Compiled by Joanne Wojcik

All part of the game of life

Most benefits experts will tell you that developing a health plan is certainly not child's play, but researchers at the University of Michigan have made a game out of it.

Choosing Healthplans All Together, or CHAT, was developed to help people understand both the technical and the moral issues involved in health care coverage decisions, explained Dr. Susan Goold, co-creator of the CHAT program and director of the Bioethics Program at the University of Michigan Medical School in Ann Arbor.

The players are given 50 tokens to purchase various coverage options, such as prescription drug, hospitalization or mental health cover. Players then take turns drawing random "health events" from a computerized lottery tool to see how their individually designed plans respond. In a second round of play, players team up and develop a group health plan and then test it using the health-events lotto.

By putting patients in the role of purchasers, they learn that "these decisions are tough. It's politically difficult, it's morally difficult, intellectually difficult to decide what are more important priorities, what are less important priorities when it comes to health care," Dr. Goold explained.

"A game or simulation exercise is really a good tool for trying to simplify or distill down a complex set of issues," Dr. Goold said, adding that she hopes that employers, insurers and lawmakers use the game before making health care coverage and policy decisions.

CHAT is currently being adapted for the Internet. For more information, visit *http://healthmedia.umich.edu/chat/index2.html*.

At least lie about something worth stealing

A U.K. company that specializes in using psychology to detect insurance fraud has identified the music CDs people are most likely to lie about owning.

Absolute Customer Management helps insurers determine whether policyholders submitting claims are inflating the value of their losses, according to Bill Trueman, a director of Absolute.

PHOTO: ZUMMA PRESS

Kylie Minogue CDs are among those often listed as stolen by people filing fraudulent insurance claims, a firm has found.

"We do what Columbo does," he said, referring to the 1970s television detective played by Peter Falk, who feigned stupidity to ensnare murder suspects. "We speak to policyholders on behalf of insurers and encourage them to express their emotions, because you can't fake emotions."

Through its detective work, Absolute Customer Management has found that there are six CDs commonly listed as stolen by dishonest claimants in the United Kingdom. They include albums by Kylie Minogue, Irish boy band Westlife, Bryan Adams, Robbie Williams, an '80s best-of collection and the latest dance compilation.

"If Kylie and Westlife received the royalties for every copy of their CDs that are claimed to have been lost in car thefts, they'd be worth twice as much as they are now," Mr. Trueman quipped.

"While we know some genuine claimants will really have these CDs in their collections, our team has learned that these are the ones that fraudsters make up time and time again when they're put on the spot. We can only assume that most fraudsters aren't very original," he concluded.

But how long 'til the pizza's free?

A Pennsylvania hospital is really taking the "pay for performance" concept seriously by offering free emergency room care if patients don't receive treatment within 15 minutes of their arrival.

Since the new policy was instituted July 1, Central Montgomery County Hospital in Lansdale, Pa., has had to pick up the tab for only one patient, according to Jeanne Stark, director of marketing and business development.

But the 15-minute guarantee does have some limitations, Ms. Stark noted. It applies only to the hospital's facility fees and doesn't include any additional charges by emergency room physicians or other service providers, she said.

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

Blues: For-profit conversions

Continued from page 3

other converted plans, there is a high likelihood that if Premera converts to a for-profit company, it will be acquired by a national insurer such as Anthem or WellPoint," he said. "The risk is great that, contrary to Premera's goal of retaining independence, conversion would result in the loss of that independence."

Premera's rejection is just the latest of a series of upsets for Blues plans seeking to convert over the past 18 months.

In March 2003, Maryland Insurance Commissioner Steve Larsen denied the conversion application of Owings Mills, Md.-based CareFirst BlueCross BlueShield. The decision led the organization to abandon its proposal to merge with Thousand Oaks, Calif.-based WellPoint Health Networks. Mr. Larsen cited concerns that the transaction was undervalued and contained improper executive bonuses.

Topeka-based Blue Cross & Blue Shield of Kansas ended its plans to merge with Indianapolis-based Anthem Inc. in August 2003 after the Kansas Supreme Court upheld the decision by former Kansas Insurance Commissioner Kathleen Sebelius to reject the transaction. The commissioner had said the conversion would reduce the surplus held by BC/BS of Kansas and increase rates for small group and individual policyholders.

Blue Cross & Blue Shield of North Carolina withdrew its conversion application in July 2003 because state regulators wanted to exercise greater control over its finances and premiums. "It wasn't going to be a level playing field," a spokesman for the Chapel Hill, N.C.-based organization said.

Finally, Newark-based Horizon Blue Cross & Blue Shield of New Jersey announced to its employees in 2003 that it was abandoning its conversion efforts before even filing an application with regulators due to the difficult regulatory environments its counterparts in other states were experiencing (*BI*, Sept. 1, 2003).

Currently, only four of the 41 health plans licensed by the Blue Cross & Blue Shield Assn. are for-profit companies, though more than 25% of BC/BS enrollees are members of those four plans.

The trend of nonprofit Blues plans seeking to convert began in the mid-1990s, with WellPoint. In the late 1990s, the conversion trend stalled because of questions regarding the control of the assets of nonprofit Blues plans, said Joy Grossman, senior health researcher for the Washington-based Center for Studying Health System Change. This issue was resolved when plans agreed to place these assets in public trusts, she said.

A second round of conversions took place in 2001 and 2002, with the most recent Blues plan to successfully convert being New York-based WellChoice Inc. in 2002.

Since then, though, the conversion trend has slowed amid more regulatory concerns, Ms. Grossman said. "Regulators have become much more savvy in analyzing the conversions," she said.

Another factor impacting the conversion trend is the Anthem/WellPoint merger, Ms. Grossman said. Several Blues plans were attempting to convert so that they could be acquired by one of these two companies, she said, but Anthem and WellPoint are now focusing on completing their planned merger, which is still awaiting approval from California regulators.

Despite these issues, Ms. Grossman expects conversion activity to eventually accelerate again as the regulatory environment shifts and plans adopt alternative conversion strategies. "For now, plans are in a holding pattern," she said. "Plans have to regroup and think of ways to address regulators' concerns."

Employers are generally indifferent as to the status of their health plans, said Helen Darling, president of the Washington-based National Business Group on Health, which represents more than 200 employers. "We really don't care at all what their status is," she said. "We care about results."

There are, however, certain advantages of for-profit health plans for employers, she said. "Nonprofits can be very expensive and inefficient because they are not accountable to the public," Ms. Darling said. "For-profits are probably faster moving and more aggressive and more innovative."

The ability to raise capital through the stock market is an advantage for converted Blues plans as the current health care environment forces companies to become more innovative and expand their product offerings, observers say.

"It's really important that health plans be able to adapt more quickly to this new environment," said Joe Martingale, national health care strategy leader with Watson Wyatt based in New York. "It's a question of resources."

And for-profit companies, because they have access to the capital markets, tend to be more aggressive in purchasing and developing technology tools, Ms. Darling said. "They're more likely to be using new technology to make things happen."

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Automatic pension enrollment urged

CBI suggests approach can boost defined benefit plan participation

By SARAH VEYSEY

LONDON—A U.K. employer group is urging companies to turn to automatic enrollment as a way to boost participation in pension plans, especially defined contribution and hybrid plans.

That recommendation formed a key part of a group of pension-related proposals outlined by the London-based Confederation of British Industry. The recommendations accompany a report by the CBI's Pensions Strategy Group examining ways of "developing sustainable pensions provision" in the United Kingdom, the CBI said.

A spokesman for the CBI said that recent research by the organization showed that a large proportion of employers believed they had a duty to make some form of pension provision available to their workforce. Occupational pensions are also currently subject to certain tax-breaks in the United Kingdom.

The 21-person Pensions Strategy Group, formed in 2002, is made up of chief executives, pensions directors, benefits directors and finance directors, among others. It is headed by Richard Greenhalgh, chairman of Unilever (U.K.) P.L.C.

The CBI recommends that employers with occupational pension plans that can afford the extra expense introduce so-called automatic opt-in, whereby employees are automatically enrolled in workplace pension plans after a certain amount of time unless they request not to participate.

The CBI said research it conducted with Mercer Human Resource Consulting showed that automatic enrollment can significantly boost the rate of employee participation in pension plans. Among employers operating defined contribution plans with an automatic opt-in, participation rates averaged 97%; among those plans in which employees must specifically request to join, the average was just 38%.

The report noted that two U.K. companies have benefited from their automatic enrollment policies.

Cheshunt, England-based supermarket chain Tesco P.L.C. uses automatic opt-in for its defined benefit plan. In the United Kingdom, defined benefit plans often involve contributions from both employers and employees.

Eligible Tesco employees can join the plan at any time, the report

See PENSIONS/next page

PHOTO: NEWSPIX/NOEL KESSEL

Jodee Rich, former CEO of Australian telecom One.Tel, and other executives of the failed company are seeking coverage of legal costs from their D&O liability insurers.

Failed telecom's executives seek defense coverage

One.Tel suing D&O insurers

By ELIZABETH FRY

CANBERRA, Australia—The refusal by some directors and officers liability insurers to pay defense costs when directors are accused of fraud or deliberate misconduct will be tested by the High Court of Australia after several directors won the right to appeal a New South Wales Court of Appeal decision late last month.

Former executives from the failed telecommunications company One.Tel Ltd., which was placed into liquidation in July 2001, are suing Melbourne, Australia-based CGU Insurance Ltd. for legal costs under their D&O policy.

The two executives, Mark Silbermann, the former chief financial officer of One.Tel, and Jodee Rich, the former chief executive officer, were charged with fraudulent nondisclosure by the Australian Securities and Investment Commission in March 2004.

According to testimony at the appeals court hearing, CGU then refused to advance defense costs, based on an exclusion in the policy, which stated that the coverage could be voided due to "alleged fraudulent nondisclosures and/or fraudulent misrepresentation by the directors." The policy also contained a clause that stated the insurer had the discretion to advance legal costs and not an absolute duty to do so, court papers say.

Last November, the appeals court found that CGU was not obliged to advance legal costs to the executives, and that the insurer could apply the exclusion simply on the basis of the fraud charges.

See D&O/page 16

Australian legislation favors employers

Comp reform laws to ease coverage of long-tail claims

By ELIZABETH FRY

SYDNEY, Australia—Changes in New South Wales statutes will make it easier for employers to recover under workers compensation insurance for long-tail claims arising from the inhalation of asbestos and other harmful dust.

This legislation, adopted earlier this month, overturns a November 2003 ruling by the New South Wales Court of Appeal that held that workers comp policies are triggered by an employer's liability during the policy period, not by the occurrence of an injury during the policy period.

In that case, the appeals court had ruled that CGU Insurance Ltd. did not have to indemnify chemical company Orica Ltd. for claims brought by a former employee in a factory in Sydney. CGU had written three policies for Orica predecessor ICI Australia Ltd. for $20,000 each—the statutory limit of liability at the time—covering the period 1959 to 1961, when the claimant allegedly was exposed to asbestos dust. Symptoms of mesothelioma did not appear until 2001. Melbourne-based Orica settled the worker's claim and then sought compensation from Sydney-based CGU, which denied liability on the basis that its policy covered only liabilities arising during the policy period.

The New South Wales Dust & Diseases Tribunal, set up to adjudicate such disputes, held in 2002 that Orica's liability to compensate the claimant arose outside of the policy period and rejected its claim. The company appealed to the New South Wales Court of Appeal.

In its November 2003 decision, the appeals court upheld the lower court decision by a 2-to-1 majority. "While the injury may have occurred during the period of the policy, no 'liability' in the sense that that term is used in the policy had occurred during the period of the policy," the majority opinion held.

The legislation, lobbied for by employers, amends the state's workers comp statutes. The measure ensures that New South Wales employers will be able to seek coverage for long-tail claims arising from injuries occurring years earlier.

Under the legislation, an occupational injury and the damages arising from that injury are regarded to have occurred at the same time, even though the manifestation of damages might occur outside the policy period.

However, while the legislation will make it easier for employers to recover under old policies, it does not alter statutory caps on common law liability in place for several decades until 1980, noted a spokesman for Allianz Australia Insurance Ltd. in Sydney. Those caps started out as low as $6,000 in the 1940s, rising to $20,000 in the late 1960s and to $100,000 in 1980, after which they were lifted and unlimited liability under common law applied.

New South Wales has acted before to address liability insurance concerns over long-tail claims.

Recognizing that policy wording could preclude coverage for employers facing claims for dust-related diseases that take decades to emerge, the New South Wales government in 1995 mandated different wording in workers comp insurance contracts.

The Workers Compensation (General) Regulation 1995 stipulated that policies cover a common law liability of the employer for an injury to a worker received during the term of the policy, even if the damages arising from the injury did not occur until after the policy was

See WORK COMP/page 16

World Updates

Converium to boost U.S. casualty reserves

Converium Holding Ltd. has issued a profit warning and reported that it is again boosting reserves for U.S. casualty business. Converium, the rebranded Zurich Re, said that its second-quarter results, due to be announced July 27, will be adversely affected by loss developments on U.S. casualty business written between 1997 and 2001. Dirk Lohmann, chief executive officer of Zug, Switzerland-based Converium, said the company is still assessing its reserves for that business, with the results of an independent review expected in August. Ultimately, the latest reserve increase could be as large as $400 million, he noted. Both Standard & Poor's Corp. and A.M. Best Co. subsequently lowered the insurer's financial strength rating to A- from A.

Equitas, EnPro reach $118 million settlement

Equitas Ltd. has reached a settlement with Charlotte, N.C.-based EnPro Industries Inc. to resolve asbestos liabilities reinsured by Equitas. Under the settlement, Equitas, the runoff reinsurer for Lloyd's of London syndicates' pre-1993 long-tail liabilities, will pay $118 million to EnPro and to an asbestos trust to settle all current and future claims. EnPro, a manufacturer of engineering products, will receive $30 million; the rest of the funds will be paid into a trust established to handle asbestos-related claims made against the company's subsidiaries, which were insured by Lloyd's syndicates.

House of Lords to hear DVT case

The United Kingdom's highest court has agreed to determine whether airlines must compensate passengers who develop deep vein thrombosis, a claim that U.K. courts have so far rejected. The House of Lords last week gave a group of DVT victims' families until July 28 to appeal a 2003 Court of Appeal decision finding no liability on the part of several airlines. DVT, a circulatory condition that causes potentially fatal blood clots, has been linked to spending long periods of time in cramped conditions, such as on long-distance flights.

Lloyd's names new finance director

Lloyd's of London has named Luke Savage its new finance director. Mr. Savage, previously the global head of equity control at Deutsche Bank (U.K.), will be responsible for finance and risk management at Lloyd's. He replaces Andrew Moss, who left earlier this year to become group finance director at Aviva P.L.C.

Pensions: Auto enrollment urged to boost plans

Continued from previous page

notes, but once they have reached age 25 and have completed one year of service, they are automatically enrolled unless they opt-out. As a result, plan participation is 97%, the report notes.

Tesco's group pensions director, Ruston Smith, was a member of the CBI strategy group.

In addition, pharmaceutical company GlaxoSmithKline P.L.C.'s automatic opt-in policy for its defined contribution plan has resulted in a 99% participation rate, the report notes.

While there is not yet a huge trend toward using automatic opt-in policies, employers increasingly are looking at the approach when setting up new plans or making changes to their existing pension arrangements, said Raj Mody, a consultant at Hewitt Bacon & Woodrow in Leeds, England.

But, he noted, "automatic enrollment isn't for everyone."

Some companies, he said, would be burdened by the additional costs they would incur by having more employees in their plan. "For some (employers), it would blow apart their cost structure," Mr. Mody said.

In addition, automatic enrollment may not be practical for companies with higher rates of staff turnover, such as those in the hospitality industry, said Paul McGlone, a principal and actuary at Aon Consulting in London.

In addition to urging the use of automatic enrollment, the CBI also recommends that employers provide information on savings to employees and underscore the need for the government to commit to maintaining existing tax breaks on occupational pension plans.

While employers increasingly are looking at automatic enrollment when setting up new plans or making changes, the approach 'isn't for everyone.'

Raj Mody
Hewitt Bacon & Woodrow

The CBI also called for gradually raising of the state retirement age to 70, from 65, over the decade starting in 2020. That request, though, was quickly rejected last week by Secretary of State for Work and Pensions Andrew Smith.

Mr. Greenhalgh said that the CBI does not favor making pension participation compulsory for employers or employees.

He said that doing so would remove freedom of choice from individuals and may also lead employees to believe that any minimum pension contribution required is enough to generate adequate retirement savings.

"There is an onus on employers (to provide pensions), but we don't see compulsion as the answer," said John Cridland, deputy director general of the CBI.

Making pension participation optional allows employees with financial problems, such as high levels of debt, to make those issues a priority, noted Stephen Yeo, senior consultant at Watson Wyatt Worldwide in London.

Copies of the CBI report, "Securing Our Future—Developing Sustainable Pension Provision in the U.K.," are available from www.cbi.org.uk/bookshop. The cost is £40 ($74).

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LEGAL NOTICE

SOVEREIGN MARINE & GENERAL INSURANCE COMPANY LIMITED
("THE COMPANY")
NOTICE OF ANNUAL MEETING OF SCHEME CREDITORS

A Meeting of the Scheme Creditors of the Company ("the Meeting") has been convened by the Scheme Administrators, pursuant to Clause 8.1 of the Scheme of Arrangement between the Company and the Scheme Creditors ("the Scheme") for the purposes set out below.

The meeting will be held at the offices of KPMG LLP, 8 Salisbury Square, London EC4Y 8BB, on Thursday 2 September 2004 at 10.00am (London time). A report concerning the progress made in implementing the Scheme and the conduct of the Company's affairs generally since the last such report was prepared ("the Report") shall be laid before the Meeting pursuant to Clause 8.1.2. Scheme Creditors will have the opportunity to address questions to the Scheme Administrators concerning the Report at the Meeting.

A copy of the Report is being sent to the last known addresses of all known creditors, potential creditors and brokers of the Company. Any person entitled to attend the Meeting who has not received the Report by 2 August 2004 can obtain a copy free of charge from the Scheme Administrators of the Company at KPMG LLP, 8 Salisbury Square, London EC4Y 8BB.

Queries regarding Scheme Creditors' claims should be directed to the helpline on +44 (0) 1452 413 982.

A. J. McMahon, Scheme Administrator

LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE
No 2089 of 2004
CHANCERY DIVISION
COMPANIES COURT
IN THE MATTER OF
THE TANKER INSURANCE COMPANY, LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by an Order dated 2 July 2004 the High Court of Justice of England and Wales sanctioned a scheme of arrangement under section 425 of the Companies Act 1985 (the "Scheme") between The Tanker Insurance Company, Limited (the "Company") and its Scheme Creditors (as defined in the Scheme).

The Scheme became effective on 9 July 2004. Accordingly the Final Claims Submission Date by which Claims (as defined in the Scheme) must be submitted to the Company is 23:59 (London time) on 7 October 2004.

Scheme Creditors should note that Claims not included in a Claim Form (as defined in the Scheme) signed by the Scheme Creditor and received by the Company by the Final Claims Submission Date will be deemed to have been satisfied in full and the Scheme Creditor concerned will not be entitled to payment in respect of them.

Claim Forms as well as a copy of the text of the Scheme and of the Explanatory Statement required to be provided to creditors pursuant to section 426 of the Companies Act 1985, may be obtained from the offices of PricewaterhouseCoopers LLP, 31 Great George Street, Bristol, BS1 5QD, United Kingdom, Ref: Emma Pugsley.
Clyde & Co, 51 Eastcheap, London EC3M 1JP
Ref: GEQ/0403113

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re Petition of John C. Gibbons, as Liquidator of **NEW CAP REINSURANCE CORPORATION LIMITED**,
DEBTOR IN FOREIGN PROCEEDINGS
CASE NO. 99-B-42752 (CB)

NOTICE IS HEREBY GIVEN THAT ON JULY 14, 2004, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") PURSUANT TO 11 U.S.C. § 304. THE ORDER SHALL REMAIN IN EFFECT UNTIL JANUARY 20, 2005. A HEARING TO CONSIDER WHETHER THE ORDER SHALL BE CONTINUED BEYOND JANUARY 20, 2005 IS SCHEDULED TO BE HELD ON JANUARY 19, 2005 AT 2:00 P.M. (THE "RETURN DATE") BEFORE THE HONORABLE CORNELIUS BLACKSHEAR, IN ROOM 601 OF THE ALEXANDER HAMILTON CUSTOM HOUSE, ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING CONTINUATION OF THE ORDER BEYOND JANUARY 20, 2004 SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE CORNELIUS BLACKSHEAR AND SERVED ON COUNSEL FOR THE PETITIONER LISTED BELOW, SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE PETITIONER.

CHADBOURNE & PARKE LLP
ATTORNEYS FOR THE PETITIONER
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112
(212) 408-5100
ATTN: HOWARD SEIFE, ESQ.

LEGAL NOTICE

IN THE MATTER OF THE REHABILITATION OF
FRONTIER INSURANCE COMPANY
SUPREME COURT, SULLIVAN COUNTY
Index No. 1357/03
NOTICE

The Superintendent of Insurance of the State of New York as Rehabilitator (the "Rehabilitator") of Frontier Insurance Company ("Frontier") hereby gives you notice that he has presented to the Supreme Court of the State of New York a petition for an order ratifying and approving certain transactions with National Indemnity Company ("NICO") as set forth in the petition. A hearing is scheduled on the Petition on September 17, 2004 at 9:30 A.M. before the Supreme Court of the State of New York, Sullivan County at the Lawrence H. Cooke Courthouse, 414 Broadway, Monticello, New York 12701. If you wish to object to the Petition, you must serve a written statement setting forth your objections and all supporting documentation upon the Rehabilitator at the address appearing at the end of this notice, and the Clerk of the Court, on or before August 13, 2004.

The Petition and Report are available for inspection at the address appearing at the end of this notice. The Petition is summarized below. In the event of any discrepancy between the summary herein and the petition, the petition controls.

The Petition

In an Order to Show Cause dated August 27, 2001, the Court appointed the Superintendent of Insurance of the State of New York as temporary Rehabilitator of Frontier. On October 15, 2001, the Superintendent was appointed as Rehabilitator and directed to take possession of Frontier's property, conduct its business and rehabilitate the company. The Rehabilitator discusses, in the Petition, the financial circumstances, which led to the order of Rehabilitation, Frontier's financial arrangements with NICO and recent transactions with NICO since the Rehabilitator's appointment and seeks ratification and approval of such transactions.

Requests for further information should be directed to Barton W. Bloom, attorney for the Rehabilitator, at (845) 807-5169.

Superintendent of Insurance
of the State of New York
as Rehabilitator of Frontier
Insurance Company
195 Lake Louise Marie Road
Rock Hill, NY 12775
Attention: Barton W. Bloom, Esq.

LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE (IN ENGLAND AND WALES)
No 4138 of 2004
CHANCERY DIVISION
COMPANIES COURT
IN THE MATTER OF
THE HOME INSURANCE COMPANY
AND
IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by an order dated 5 July 2004 made in the above matter the Court has directed that a meeting (the "**Creditors' Meeting**") of the Scheme Creditors (as defined in the scheme of arrangement hereinafter mentioned) of the above named company (the "**Company**") be held on 8 September 2004 at the offices of Clifford Chance Limited Liability Partnership, 10 Upper Bank Street, London E14 5JJ, commencing at 10.30 a.m. (London time). All Scheme Creditors are requested to attend at such place and time either in person or by proxy.

The purpose of the Creditors' Meeting will be to consider and, if thought fit, to approve (with or without modification by the Court) a scheme of arrangement proposed to be made between the Company and the Scheme Creditors pursuant to Section 425 of the Companies Act 1985 ("**Scheme**").

The chairman of the Creditors' Meeting will address Scheme Creditors generally on the Scheme and on issues relevant to voting immediately prior to the commencement of the Creditors' Meeting.

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

The proposed Scheme and the statement required to be provided to creditors pursuant to Section 426 of the Companies Act 1985, together with voting forms for use at the Creditors' Meeting, have been circulated to known Scheme Creditors as well as brokers and other intermediaries. Copies of these documents, as well as blank voting forms, may be obtained on request from the offices of Ernst & Young LLP at 1 More London Place, London SE1 2AF, (contact Sarah Ellis; telephone +44 (0)20 7951 9955) or the offices of Clifford Chance LLP at 10 Upper Bank Street, London, E14 5JJ (contact Jeanette Best; telephone +44 (0)20 7006 1612).

Scheme Creditors are requested to lodge the voting form with the Company (c/o the Joint Provisional Liquidators) at Ernst & Young, 1 More London Place, London SE1 2AF, marked for the attention of Gareth Hughes/Sarah Ellis, by 5.00 p.m. London time on 6 September 2004. Voting forms may also be handed in at the registration desk prior to the Creditors' Meeting. A faxed copy of the voting form will be accepted if legible but Scheme Creditors are requested to return the originals either by handing them in at the registration desk prior to the Creditors' Meeting or sending them c/o the Joint Provisional Liquidators, at the above address (marked for the attention of Gareth Hughes/Sarah Ellis) within 7 days of the Creditors' Meeting.

Each Scheme Creditor or his proxy will be required to register his attendance at the Creditors' Meeting prior to its commencement. Registration will commence at 9.30 a.m. on the day of the Creditors' Meeting.

The Court has appointed Gareth Howard Hughes or, failing him, Margaret Elizabeth Mills both of Ernst & Young LLP, to act as chairman of the Creditors' Meeting and has directed the chairman of the Creditors' Meeting to report the result of the Creditors' Meeting to the Court.

If approved by the requisite majority of Scheme Creditors, the Scheme will be subject to the subsequent approval of the Court.

DATED 26th July 2004
Clifford Chance Limited Liability Partnership
10 Upper Bank Street,
London E14 5JJ

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re Petition of Gareth Howard Hughes and Martin Fishman, as Joint Liquidators of **BRADSTOCK LIMITED**, Debtor in a Foreign Proceeding.	In a Proceeding Under Section 304 of the Bankruptcy Code Case No. 04-B-14311 (ALG)

NOTICE IS HEREBY GIVEN that, in connection with the Petition filed on June 22, 2004, pursuant to section 304 of the Bankruptcy Code (the "Petition"), with respect to Bradstock Limited (the "Company"), the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has entered a Preliminary Injunction Order dated July 16, 2004 (the "Order"):

1. Preliminarily enjoining all persons and entities from seizing, repossessing, transferring, relinquishing or disposing of any property of the Company in the United States, or the proceeds of such property;

2. Preliminarily enjoining all persons and entities from commencing or continuing any action or legal proceeding in the United States in connection with any claim (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), including by way of counterclaim against the Company, or any property in the United States that is involved in the foreign proceeding, or any proceeds thereof, and seeking discovery of any nature against the Company;

3. Preliminarily enjoining all persons and entities from enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order, or arbitration award obtained in connection with any claim, and commencing or continuing any act or action or legal proceeding in connection with any claim (including, without limitation, arbitration, or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) or any counterclaim to create, perfect or enforce any lien, attachment, garnishment, setoff or other claim against the Company in the United States or any of its property in the United States, or any proceeds thereof; and

4. Requiring that every person and entity that has a claim of any nature or source and that is a party to any action or other legal proceeding (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) in which the Company is or was named as a party, or as a result of which a liability of the Company may be established, to place the Petitioners' United States counsel (Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, NY 10112, Attn: Francisco Vazquez, Esq.) on the master service list of any such action or other legal proceeding, and to take such other steps as may be necessary to ensure that such counsel receives: (a) copies of any and all documents served by the parties to such action or other legal proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or legal proceeding; and, (b) any and all correspondence, or other documents circulated to parties named in the master service list.

The Order shall remain in effect pending determination following a hearing to consider whether the Bankruptcy Court will (i) issue a Permanent Injunction Order, pursuant to section 304 of the Bankruptcy Code, and/or (ii) continuation of the Order, which hearing is scheduled to be held before the Honorable Allan L. Gropper, United States Bankruptcy Judge, United States Bankruptcy Court, One Bowling Green, New York, NY on September 9, 2004 at 11:00 a.m. (the "Return Date"). All papers submitted for the purpose of opposing the issuance of a Permanent Injunction Order and/or continuation of the Order after the Return Date shall be filed with the Bankruptcy Court, with a copy to the Chambers of the Honorable Allan L. Gropper and served on Chadbourne & Parke LLP (Attn: Howard Seife, Esq.) so as to be received at least fourteen (14) days prior to the Return Date.

Any party-in-interest that has not received a copy of the Petition, supporting papers and/or the Order should contact counsel for the Petitioners at the address below:

CHADBOURNE & PARKE LLP
Attorneys for the Petitioners • 30 Rockefeller Plaza • New York, New York 10112 • (212) 408-5100
Attn: Howard Seife, Esq. • Francisco Vazquez, Esq.

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LEGAL NOTICE

IN THE SUPREME COURT OF BERMUDA

CIVIL JURISDICTION

2004: No. 223

IN THE MATTER OF THE **SEVEN CONTINENTS INSURANCE COMPANY LIMITED**

AND IN THE MATTER OF THE COMPANIES ACT 1981, section 99

NOTICE

NOTICE IS HEREBY GIVEN that by Order dated 15th July 2004 the Supreme Court of Bermuda has directed that a meeting (the "Scheme Meeting") be convened to consider a scheme of arrangement (the "Scheme") pursuant to section 99 of the Companies Act 1981. The Scheme is proposed between the Company and its Scheme Creditors (as those terms are defined in the Scheme). The Scheme Meeting is convened for the purpose of considering and if thought fit approving (with or without modification) the Scheme. The Scheme Meeting will be held at the offices of Conyers Dill & Pearman, 2nd Floor, Richmond House, 12 Par-la-Ville Road, Hamilton HM 08, Bermuda on 17th September 2004 at 11.00 a.m. (Bermuda time).

Any person entitled to attend the Scheme Meeting can obtain copies of the Scheme, Proxy/Voting Claim Form and copies of the Explanatory Statement required to be furnished pursuant to Section 100 of the Companies Act 1981 of Bermuda, by logging onto **http://www.kpmg.bm/sevencontinent sscheme** where copies of all documents required to be served will be found. If a Scheme Creditor is unable to access the website, or otherwise requires a hard copy, they may contact the Company's insurance managers, QBE Management (Bermuda) Ltd., The Swan Building, 26 Victoria Street, Hamilton HM 12, Bermuda (attn: Roy Lumley. Fax No. 441 292 5302) and obtain copies of the documents free of charge.

The deadline for voting at the Scheme Meeting is 5.00 p.m. (Bermuda time) on 15th September 2004.

The said Scheme will be subject to the subsequent approval of the Supreme Court of Bermuda.

DATED this 19th day of July 2004
Conyers Dill & Pearman
Clarendon House, 2 Church Street,
Hamilton, HM CX, Bermuda

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LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re Petition of Gareth Howard Hughes and Margaret Mills, as Joint Liquidators of **BRADSTOCK BLUNT & CRAWLEY LIMITED**, Debtor in a Foreign Proceeding.

In a Proceeding Under Section 304 of the Bankruptcy Code

Case No. 04-B-14312 (ALG)

NOTICE IS HEREBY GIVEN that, in connection with the Petition filed on June 22, 2004, pursuant to section 304 of the Bankruptcy Code (the "Petition"), with respect to Bradstock Blunt & Crawley Limited (the "Company"), the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has entered a Preliminary Injunction Order dated July 16, 2004 (the "Order"):

1. Preliminarily enjoining all persons and entities from seizing, repossessing, transferring, relinquishing or disposing of any property of the Company in the United States, or the proceeds of such property;

2. Preliminarily enjoining all persons and entities from commencing or continuing any action or legal proceeding in the United States in connection with any claim (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), including by way of counterclaim or cross-claim against the Company, or any property in the United States that is involved in the foreign proceeding, or any proceeds thereof, and seeking discovery of any nature against the Company; provided, however, that AAHRU (as defined in the Order) and Sedgwick (as defined in the Order) are permitted to continue the prosecution of all of their claims in the AAHRU Litigation (as defined in the Order) against the Company in the Pennsylvania Court (as defined in the Order) for the sole purpose of liquidating the amount of their claims, if any, against the Company; provided, that, unless otherwise ordered by the High Court (as defined in the Order), any costs awarded against the Company in connection with the AAHRU Litigation shall be treated as a general unsecured claim against the Company and not as a cost or expense of the liquidation of the Company;

3. Preliminarily enjoining all persons and entities (including, without limitation, AAHRU and Sedgwick) from enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order, or arbitration award obtained in connection with any claims (including, without limitation, arbitration, or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), including by way of counterclaim, to create, perfect or enforce any lien, setoff, garnishment, attachment or other claim against the Company in the United States or any of the Company's property in the United States, or any proceeds thereof; and

4. Requiring that every creditor party (other than the parties to the AAHRU Litigation) to any action or other legal proceeding (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) in which the Company is or was named as a party, or as a result of which a liability of the Company may be established, to place the Petitioners' United States counsel (Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, NY 10112, Attn: Francisco Vazquez, Esq.) on the master service list of any such action or other legal proceeding, and to take such other steps as may be necessary to ensure that such counsel receives: (a) copies of any and all documents served by the parties to such action or other legal proceeding or issued by the court, arbitrator, administrator, regulator or similar official having jurisdiction over such action or legal proceeding; and, (b) any and all correspondence, or other documents circulated to parties named in the master service list; provided, however, that any pleadings, notices or documents to which the Company is entitled to receive in connection with the AAHRU Litigation shall be served upon its counsel of record in the AAHRU Litigation.

The Order shall remain in effect pending determination following a hearing to consider whether the Bankruptcy Court will (i) issue a Permanent Injunction Order, pursuant to section 304 of the Bankruptcy Code, and/or (ii) continuation of the Order, which hearing is scheduled to be held before the Honorable Allan L. Gropper, United States Bankruptcy Judge, United States Bankruptcy Court, One Bowling Green, New York, NY on September 9, 2004 at 11:00 a.m. (the "Return Date"). All papers submitted for the purpose of opposing the issuance of a Permanent Injunction Order and/or continuation of the Order after the Return Date shall be filed with the Bankruptcy Court, with a copy to the Chambers of the Honorable Allan L. Gropper, and served on Chadbourne & Parke LLP, (Attention: Howard Seife, Esq.) so as to be received at least fourteen (14) days prior to the Return Date.

Any party-in-interest that has not received a copy of the Petition, supporting papers and/or the Order should contact counsel for the Petitioners at the address below:

CHADBOURNE & PARKE LLP
Attorneys for the Petitioners • 30 Rockefeller Plaza • New York, New York 10112 • (212) 408-5100
Attn: Howard Seife, Esq. • Francisco Vazquez, Esq.

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Work comp: Long-tail claims spur reform

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in force.

But that change in the wording did not affect policies written prior to 1995, which is when exposure occurred for the majority of the dust-related disease claims now emerging.

"The Orica situation created real difficulties for companies that thought they had cover and found that they did not," said David Martin, director of the New South Wales Dust & Diseases Tribunal in Sydney.

Peter Carrick, workers compensation manager for Orica, said that initially its insurer tried to reach a settlement of the company's claims. But the offer was far lower than the $220,000 that Orica had paid its former employee, he said.

"We had paid our premiums, in good faith, all the way through...so we initially fought the insurer," Mr. Carrick said.

According to Mr. Carrick, mesothelioma cases in Australia are not likely to peak until 2010, so it is likely that many more long-tail claims will be made on older workers comp policies in the years to come.

"Many factories during the '60s, '70s and '80s had asbestos cement, covering pipes in walls and ceilings," he said.

The spokesman for Allianz Australia said he also thinks more claims will emerge compared with recent years.

He noted that the latency period of asbestos-related diseases is between 20 and 30 years. Given that time frame, the number of new claims from exposure prior to 1980, when statutory caps on employers' liability for such ailments were lifted, is likely to decline.

As a result, it is likely that a higher proportion of future claims will pose unlimited liability for employers and their insurers, the spokesman said.

More legislative reform is needed to provide a fairer basis of compensation for asbestos-related claims than the current common law liability, he added.

"The legislation...does little to address the many existing inequities and inefficiencies inherent in the existing compensation arrangements, based as they are on an adversarial common law system," the spokesman said.

D&O: Execs seek defense cover

Continued from page 13

Also last November, Daniel Wilkie, former chief operating officer of FAI Insurance Ltd., lost an appeal in his attempt to force his D&O insurer—Sydney-based Gordian RunOff Ltd., which was formerly named GIO Insurance—to advance defense costs.

Mr. Wilkie and other former FAI executives face criminal charges for their role in allegedly misleading FAI's auditor over reinsurance agreements the insurer made in 1998 with GeneralCologne Re Australia Ltd. The charges stem from the Australian Royal Commission's investigation into the collapse of HIH Insurance Ltd., which acquired FAI.

Like Messrs. Silbermann and Rich, Mr. Wilkie is trying to have this D&O coverage decision overturned.

Transcripts of the Canberra-based High Court's hearing to determine whether it would take the One.Tel case reveal that the justices raised several issues concerning the purpose of D&O coverage.

Referring to the construction of the former One.Tel executives' insurance policy, Mr. Justice Ian Callinan said at the June hearing that "These (discretionary) clauses place an insured in a very difficult position, because it ends up with the insurer having much the same interest as the plaintiff or claimant against the insured. I do not think that that is an irrelevant factor in the construction in cases of ambiguity of any kind."

> **'Let us face it: The reality is that there are always going to be all sorts of allegations by insurers to try to get out of the policy.'**
>
> *Justice Ian Callinan*
> *New South Wales Court of Appeal*

"You have an insurance policy, the premium has been paid," Justice Callinan continued. "There is no presumption in the first instance that the advantage of having or withholding the money should lie on either side. It is a very unfortunate consequence, but on the construction which you (the counsel for CGU) advance, it really does impose a very, very serious prejudice upon the insured. Let us face it: The reality is that there are always going to be all sorts of allegations by insurers to try to get out of the policy," he said.

Mr. Justice Michael Kirby suggested that the insurer could have worded the policy to make it clear that the exclusion clause covered instances where a policyholder company is charged with fraud.

According to Frederick Hawke, a Melbourne-based partner at law firm Clayton Utz, exclusion clauses exist in many policies, but nobody thought the insurers would interpret them in this way.

"People generally thought that the fraud exclusion only operated if there was a final finding of fraud (and) that the insurer wouldn't refuse to advance costs on a fraud allegation but would claw them back if the fraud were proven," said Mr. Hawke, who is not involved in the case.

The strict application of the fraud exclusion will like lead risk mangers to carefully review the D&O coverage they purchase, said Sid Levett, general manager of risk management and insurance at Amcor Ltd., a Melbourne-based paper and packaging company.

If an insurer issues a policy that provides coverage for defense costs, it should pay the costs and only seek to recover the costs if fraud is proven, he said.

James Hardie execs seek to avoid personal liability

By ELIZABETH FRY

SYDNEY, Australia—Directors of the fund created to pay the asbestos-related liabilities of former asbestos producer James Hardie Industries N.V. have sought court protection against being held personally liable for payments to asbestos victims in the event that the fund exhausts its resources.

The directors of the Medical Research & Compensation Foundation, which is currently projected to have a shortfall of $1.6 billion Australian ($1.17 billion), last week applied to the Supreme Court of New South Wales for protection because their directors and officers liability insurance had expired and there was little prospect of them obtaining replacement coverage, according to testimony.

The directors requested the court's permission to continue paying the liabilities of the former James Hardie entities—Amaca Pty. Ltd. and Amaba Pty Ltd.—that were folded into the foundation, rather than calling in a provisional liquidator. If the court orders the payments, the directors would likely use that as a defense against attempts to find them personally liable should the fund be exhausted.

James Hardie, which had been a major asbestos manufacturer in Australia, relocated to Amsterdam, Netherlands, in 2001. Prior to its relocation, the company established the MRCF with $293 million Australian ($214.5 million) to meet its liabilities for asbestos-related payments.

Over the past several months, James Hardie has been subject to government and public criticism over the adequacy of the funds.

The company maintains that the funds were deemed to be actuarially sound at the time of its relocation. Earlier this month, though, it offered to establish an additional fund in return for a guarantee that its liabilities would be capped (*BI*, July 19). A commission inquiring into the circumstances of the relocation is expected to report its findings in September.

Montreal: Compromise reached

Continued from page 3

Simon Richards, technical director at Willis Group Ltd. in London.

"The issue regarding delay is that, in the usual airline policy, it is not an event covered under every circumstance," Mr. Richards said.

In implementing the Convention, the Luftfahrt-Bundesamt, Germany's federal authority on civil aviation, changed its certification requirements for airlines, requiring them to demonstrate that they had obtained adequate insurance coverage for all liabilities. In making the change, the LBA said that "permission to enter German airspace for a foreign aircraft requires complete compliance with compulsory insurance provisions" of the Montreal Convention, according to a notice from the Braunschweig-based LBA.

Germany, however, was "the only E.U. country that decided it needed a new certificate to reflect this," said Ken Coombes, senior vp at Marsh Ltd. in London.

Shortly after the new requirements took effect, Germany demonstrated its willingness to enforce the rules. In late June, German authorities turned back a Turkish flight because it did not have the required evidence of insurance coverage on board, according to Sean Gates, senior partner at Gates & Partners in London."At one point, the German (authorities) were suggesting those people that had not deposited (certificates demonstrating coverage) would have notice given on existing certificates," Willis' Mr. Richards said.

As a result, the U.K. Department for Transport contacted the LBA, pointing out that "airlines usually self-insure for delay and baggage," a spokesman for the Department explained.

In response to such concerns, several large insurance brokers—including Willis, Marsh and Aon—worked with the LBA to develop a new certificate to reflect that reality.

And recently, the LBA accepted a new certificate stating that "the airline is covered by a mix of bought cover and self-insurance," the Department spokesman said.

"It is fair to say Marsh, Willis and Aon contributed to the market solution, which was to agree a certificate wording that the German authorities would accept," Mr. Richards said. Neither Aon Corp. nor the LBA was available for comment.

"The German authorities released requirements with comparatively little notice," said Mr. Richards. "Perhaps the lesson learned is that regulatory authorities should involve insurers and brokers at an earlier stage" when mulling changes to certification requirements, he said.

The coverage requirement was not as much of a concern for German airlines, as insurance is available in that market for a broader range of delay and damage causes, according to Wolf Müller-Rostin, general counsel for Deutsche Lufthansa A.G.'s captive insurer, Delvag Luftfahrtversicherungs A.G., based in Cologne.

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Quake: Canadian risks assessed

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According to Mr. Kovacs, an earthquake with a magnitude of at least 6.5 in the Greater Vancouver area of British Columbia could cause an estimated $30 billion Canadian ($22.91 billion) in total damage, with $10 billion Canadian to $12 billion Canadian ($7.64 billion to $9.16 billion) in insured losses.

By comparison, the risk of earthquake damage is more moderate in Eastern Canada, though small earthquakes are regularly recorded in the region that includes Ottawa, Montreal and Quebec City. Nonetheless, Mr. Kovacs said, even an earthquake of a lesser magnitude of between 5 and 6.5 in Montreal could also cause an estimated $30 billion Canadian in damage, $3 billion Canadian to $4 billion Canadian ($2.29 billion to $3.05 billion) of which would be insured. That is because the region is heavily populated and many buildings were erected before modern seismic safety codes were developed, he said.

"I think the risk of damage in Montreal and Ottawa is underestimated," he said. "The vulnerability is quite high."

Overall insured losses would be greater in Vancouver than Montreal because a higher percentage of homeowners in British Columbia have insurance that would cover them in the event of an earthquake, Mr. Kovacs said. About 85% of businesses in both British Columbia and Quebec purchase earthquake coverage as part of a standard all-perils policy, Mr. Kovacs said.

In the 'Ring of Fire'

Insurers are well aware of the high risk of earthquakes in the Greater Vancouver and Victoria area, which has had a significant impact on capacity, pricing and coverage conditions in the region, risk managers say.

"In recent years, a lot of organizations on the West Coast have found that they were not able to complete 100% placement because capacity wasn't available," said Gord Wainwright, manager, risk management, for Simon Fraser University in Vancouver. "Beginning Jan. 1 this year, capacity has gone way up, but pricing and deductibles have also gone way up."

The new capacity in the market comes from international insurers, either Lloyd's of London or Bermuda-based companies, risk managers say.

"We've certainly seen some increases (in capacity), and it's been good, but just extremely pricey," Mr. Wainwright said.

Brokers cited earthquake loading on property rates from one to three cents Canadian (.8 cent to 2.3 cents) per $100 Canadian ($76.37) of coverage in British Columbia.

Jeff Schaafsma, risk manager for the Corporation of Delta, a municipal government serving the communities of Ladner, North Delta and Tsawwassen in British Columbia, estimated his earthquake loading at 12 cents Canadian (9.2 cents) per $100 Canadian with an overall property premium of 18 cents Canadian (13.7 cents) per $100 Canadian because most of his properties are located in the extreme earthquake zone of British Columbia.

Bal Bhullar, risk manager for the Vancouver Port Authority, said her property premiums increased 500% in the hard market that followed the Sept. 11, 2001, terrorist attacks, despite a clean claims history. "The increases are essentially earthquake," she said. "That is our biggest exposure."

In addition, the minimum earthquake deductibles could be as high as $10 million Canadian ($7.64 million) in the region, Mr. Wainwright said. "The big kicker is the big increase in minimum deductibles," he said. "It has to be significant loss for the coverage to kick in."

"Deductibles are a big issue," said Dan Heaman, risk manager for B.C. Credit Union Central in Vancouver. "We have to assume so much risk…we're basically self-insuring the greatest exposures."

The average commercial customer in British Columbia faces a 5% to 10% earthquake deductible, although some insurers have attempted to impose deductibles of up to 20%, brokers and risk managers say. "We tend to see business gravitate to insurers who are offering more reasonable deductibles," said Gordon Brown, senior vp and property practice leader for Marsh Inc. in Toronto.

Insurers are sometimes wary of offering high limits in the earthquake-prone areas of British Columbia, observers say. "If you have a lot of valuables in a catastrophic zone, they will probably cap their offering of earthquake," said Edward Moreira, vp and director of marketing for Willis Group Ltd. in Montreal.

> **'If you want to buy coverage in British Columbia, they give you the same conditions you get in California.'**
>
> *Michel Turcotte*
> *Quebecor Media Inc.*

One insurance program Mr. Moreira had that covered several properties in the Greater Vancouver area featured a loss limit of $1.2 billion Canadian ($916.4 million) with a sublimit of $650 million Canadian ($496.4 million) for earthquake damage. Only in regions at high risk of earthquakes such as the Greater Vancouver area do insurers regularly impose sublimits on buyers, he noted.

Aon has a number of programs that have earthquake limits of $500 million Canadian ($381.9 million) to $1 billion Canadian ($763.7 million), said David New, national broking director for Aon Corp. unit Aon Canada in Toronto. "I'm not aware of any client that could not buy enough limits," he said. "If clients needed $500 million Canadian sublimits, they could get that at reasonable pricing."

Brokers, though, must often use four or five insurers to complete large programs, rather than one or two insurers as in the past, because insurers have to carefully monitor their accumulation of risk in British Columbia due to increased scrutiny of their exposures from federal regulators.

Elsewhere in Canada

Earthquake cover in other Canadian provinces is readily available without the terms and conditions imposed on B.C. companies, because the perceived risk of earthquake is substantially less, observers say.

"If you want to buy coverage in British Columbia, they give you the same conditions you get in California," said Michel Turcotte, risk manager for Montreal-based Quebecor Media Inc. "For the rest of Canada, it is not really difficult to get coverage."

Brokers and risk managers say earthquake deductibles for Quebec and Ontario usually fall in the range of 3% to 5%, with earthquake pricing usually included in the overall property rate and no limits imposed.

"From an insurance company point of view, we're not seeing any tightening of terms and conditions available for that region right now," Mr. New said. "We see minimal loadings on the rate, if there are loadings at all."

Risk managers in these provinces say they have had no trouble securing earthquake coverage despite a known history of minor earthquakes in the region. "In Quebec, earthquake is not a big concern," said Michel Rodrigue, director-risk management for Transcontinental Inc. in Montreal. "Limits are usually available, and at an acceptable price."

Earthquake coverage is easy to secure because insurers consider the risk of a major earthquake in these provinces low, particularly compared with that in British Columbia. "From a catastrophic point of view, we all recognize there is earthquake potential…but most insurers really don't penalize a client at all for that exposure," Mr. New said.

This mindset, though, is problematic, because people are underestimating the potential for a significant earthquake in the provinces of Ontario and Quebec, Mr. Kovacs said.

Part of the reason people underestimate earthquake risk is because Canada has experienced just six major earthquakes of a magnitude of at least 6.0 in the past 20 years, all of which hit in remote areas and caused minimal, if any, damage, observers say. Insurers, they note, tend to be more concerned with other catastrophic events, such as floods, windstorms or ice storms. A January 1998 ice storm was, by far, Canada's most expensive natural disaster, resulting in losses exceeding $2.7 billion Canadian ($2.06 billion), according to the Insurance Bureau of Canada.

The ICLR report may open some eyes in the insurance industry; it has been widely distributed since being released a few weeks ago. Still, its impact on the earthquake insurance market remains to be seen.

Mr. Kovacs said he believes the report will support pricing going forward, but he does not think that impact will be dramatic. "I don't think there are any big surprises, so I don't think it will completely change the pricing behavior," he said. "There's no question that, with certain customers, it will matter."

The report might have come too late to have an impact this year because many companies have already completed their renewals, Mr. Rodrigue said. "Maybe it will affect the rates for earthquake next year," he said. "The pricing is competitive, but maybe with the report that will change."

The amount of available earthquake capacity going forward will depend on the reinsurers, Mr. New said.

"If they decide they want to reduce the amount of catastrophic capacity available, that will have an effect," he said. "If there is another round of capacity restriction at some point, the forces of supply and demand will take effect and it will start pushing the price up. There's no indication that that will happen right now."

The report by the Institute for Catastrophic Loss Reduction, titled Earthquake Hazard Zones: The relative risk of damage to Canadian buildings, is available on the ICLR Web site at www.iclr.org/pdf/Hazard%20Zones_June%202004.pdf.

Obesity: Health-related lawsuits

Continued from page 4

enough to protect the food industry from health-related litigation.

Joanne Gray, a partner at the New York office of the Boston-based Goodwin Procter L.L.P. who specializes in product liability and mass tort law, said potential protection depends on the language of the state bill.

For example, the defense attorney said litigation could arise over a product that is labeled "low fat" but that fails to define what this assertion means. A consumer might use that as the basis for a suit claiming deceptive advertising, she said.

Ms. Gray stressed that food companies can take steps to reduce their exposure. "What you're looking for is how to reduce risk," she said.

She suggested that companies provide nutritional and ingredient labeling that is clear and easy to understand. Labels should disclose such information as the types of fats used and additives and should involve "realistic" portion sizes.

This kind of "proactive disclosure" makes manufacturers go beyond current labeling laws, but "ultimately, it will protect the industry," she said.

Currently, the U.S. Food and Drug Administration requires that labels provide a product's standard serving size, the number of calories per serving and the percentage of the daily value of nutrients per serving, based on a 2,000 calorie diet. By 2006, the FDA says it will require labels to disclose trans fatty acids found in partially hydrogenated oils.

Many fast-food restaurants now fully disclose nutritional information through brochures and Web sites, and their menus increasingly offer a range of healthier options.

In addition to reflecting a growing awareness of health issues among consumers, such offerings may allow a company to argue that a plaintiff could have eaten at an establishment regularly without experiencing ill effects, she said.

The most recent health-related suit against a fast-food company charges that Oak Brook, Ill.-based McDonald's failed to adequately publicize that it has not met its own timeframe for lowering the level of trans fatty acids in its products.

A nonprofit organization called BanTransFat.com filed the suit in federal court in San Francisco, which focuses on health issues related to trans fatty acids—such as heart disease—rather than on obesity, the group said.

McDonald's declined to comment on the suit but said the company issued a public announcement in February 2003 saying the switch in cooking oils had taken longer than was expected.

Charges of deceptive advertising are another exposure, observers said.

Dwight Davis, a senior partner at the Atlanta office of King & Spalding L.L.P., predicts plaintiff attorneys will target the misrepresentation of contents and deceptive advertising, especially with regard to children's health. Along with the full disclosure of the content of food, he also advocates a "careful review of advertising to avoid misleading claims."

Andrea Levine, the director of the National Advertising Division of the Council of Better Business Bureaus in New York, said that the fast-food industry needs to "err on the side of disclosure of all key information" to avoid claims of deceptive advertising.

Elizabeth Lascoutx, director of the Children's Advertising Review Unit of the CBBB, said the organization looks at a variety of issues with regard to the ways products are presented in ads. For example, the presence of fruit in an ad gives the impression that there is fruit in the product, which may not be the case. In addition, advertisers should be mindful of conveying the notion that children must eat large portions of a product to enjoy it, she said.

Ms. Lascoutx added advertisers have to be particularly careful because children's "cognitive ability is not as developed as teenagers' or adults'."

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Convention: Democrats pose risks for Boston business

Continued from page 1

The Boston Police Department, which estimates it is responsible for 95% of the security at the convention and related events, has been drawing up its plans since the week after Boston was awarded the convention in November 2002, a police spokesman said.

The police have a long-running contract dispute with the city, but there will not be a work stoppage during the convention, another spokesman said.

Meanwhile, Boston's host committee for the convention has lined up insurance to cover numerous perils ranging from general liability to event cancellation.

City officials and convention organizers have touted the fiscal benefits of the convention, which will draw 30,000 delegates and media from across the country. Boston Mayor Thomas Menino has projected that the four-day event will generate $154.2 million for the local economy.

But independent researchers predict that lost productivity, security costs and a drop in tourism during the event will offset those gains, despite the federal government's $50 million pledge toward convention security.

The Boston police department, which is tapping the resources of neighboring communities and the state police, is responsible for security outside the FleetCenter.

The entire facility will be cordoned off with a double security fence, a police spokesman said.

Protesters with city-issued permits will be allowed to demonstrate within a 29,000 square-foot area just outside the security fencing. The police will not infringe on the First Amendment rights of protesters who demonstrate elsewhere without permits, but they will not tolerate criminal behavior, the spokesman said. Crowd-control "assets" will be kept out of sight and used only "as a last resort" to maintain order, he said.

The U.S. Secret Service is responsible for security inside the facility, but it is drawing on some local police resources, the police spokesman said.

Admittance will be limited to prescreened and properly credentialed personnel, he said. Even police who are not assigned to the facility will be barred, he noted. And, "every bag will be searched," he said, characterizing facility security as tougher than airport security.

The U.S. Coast Guard is responsible for security in the harbor behind the FleetCenter.

Other agencies contributing to security efforts are the Capitol Police, which will provide security for the congressional delegation, and the U.S. Bureau of Alcohol, Tobacco & Firearms, which is providing bomb-sniffing dogs to supplement the city's three-dog unit, the police spokesman said.

Regulating traffic

Transportation restrictions designed to prevent a terrorist attack at or near the FleetCenter are the major sources of business disruptions.

Forty miles of several major arteries, including a portion of Interstate 93 that runs 40 yards from the FleetCenter, will be closed at times throughout the week. The stretch of I-93 near the FleetCenter will be closed afternoons and evenings during the convention.

The city also is closing the North Station commuter rail station for an entire week, beginning last Friday. The station is a major street-level hub at the FleetCenter.

Those restrictions will increase commuters' travel time by 1.2 million hours during the convention week, the Boston-based Beacon Hill Institute at Suffolk University has estimated.

In addition, public access to parking lots and garages near the FleetCenter will be heavily restricted.

Also, deliveries in the area must be made before 2 p.m. every day of the convention, and delivery personnel must show an invoice to gain admittance into the area.

Unannounced civil-authority actions, such as street closings and building-access restrictions, likely will further disrupt business, observers say.

Coverage decisions

Terrorism risk at the convention was a factor in some Boston businesses' decision to purchase government-backed terrorism coverage this year.

For example, among 25 businesses within a one-mile radius of the FleetCenter that have property valued at $25 million or more and that buy coverage through Hub International Ltd., nine purchased terrorism coverage this year, said Mike Chapman, chief sales officer for Hub in Wilmington, Mass. Eight others already had terrorism coverage, he said.

Nationwide, more buyers earlier this year began purchasing government-backed terrorism insurance because it became more affordable, noted Stephen A. Lundin, a senior vp and North American property insurance practice leader with Marsh Inc. of New York.

But, generally, the convention has not influenced businesses' terrorism insurance-buying decisions, brokers said.

"I'm not aware of any business that has bought terrorism insurance solely because of their proximity to either convention," said James H. Costner, a Nashville, Tenn.-based senior vp for Willis Group Holdings Ltd.

Risk managers also have not purchased broader business interruption coverage, brokers said.

"If it's just hard to get there or it's inconvenient, you're not covered," noted Paul McVey, property claims practice leader at Marsh Risk Consulting in New York. Only an act by civil authorities barring access to covered but undamaged property would trigger business interruption coverage, he noted.

"But there has been an increase of good risk management practices and good business continuity planning" in Boston, Mr. Lundin said.

Businesses have recognized that regardless how smoothly the convention week runs, the security measures pose business interruption risks by creating business-access challenges for customers, employees and vendors, risk management consultants said.

Bingham McCutchen L.L.P., a law firm with more than 800 employees, likely will face a 50% staff reduction this week, because commuting will be so problematic, a spokesman said.

As a result of the convention-related closures and delays, Boston employers will lose $36.7 million in productivity, according to Beacon Hill Institute estimates.

To minimize productivity losses, Mellon Financial Corp. and Digitas L.L.C. have arranged flexible work schedules and are allowing workers to telecommute, spokesmen said.

'I'm not aware of any business that has bought terrorism insurance solely because of their proximity to either convention.'

James H. Costner
Willis Group Holdings Ltd.

Some businesses are relocating employees to alternate facilities that are more accessible, said Donald Schmidt, the Boston-based emergency response planning practice leader for Marsh Risk Consulting, a unit of Marsh Inc.

With delivery hours restricted, businesses have rescheduled deliveries or have stockpiled supplies, he said.

The top concerns for businesses close to the FleetCenter are security and how they should respond if nearby protests become unruly, he said. If a dangerous situation develops, "police communication centers will be swamped and difficult to get through, so that's why pre-incident planning is so important," Mr. Schmidt said.

He said his clients are using "a combination of preparedness actions." That is important, because "there's always going to be a failure point somewhere. Hopefully, the other parts of the plan will be able to overcome that single point of failure."

Businesses are using existing emergency plans for fire, storms and acts of terrorism "and updating them based on this particular event" and numerous possible scenarios that could develop during the convention, he said.

Mr. Schmidt advised clients to modify plans to address communication needs, organizational needs and procedures for specific threats.

Under the communications section, businesses plan how they will relay their awareness of a threat not only to employees and visitors in their facilities but also to employees at home to ensure they remain safe.

The organizational section identifies specific roles for individuals during an emergency, Mr. Schmidt said. For example, one individual would be responsible for deciding whether to evacuate the building; another would be in charge of communications; and a third person would shut down the building's air-intake system if, for example, police were to use tear gas nearby.

The procedural section details how personnel should execute emergency actions, such as evacuating and responding to an explosion or fire outside the facility. Businesses typically have basic evacuation plans, but they also should have alternate exits so personnel "can avoid the epicenter of the problem," he said.

Guards at building exits and loading docks should be integrated into the plan, Mr. Schmidt said.

And businesses have to evaluate the costs and benefits of safeguarding their buildings for the week from car or truck bombs with concrete barriers, he said. More businesses are turning to strategically arranged concrete planters that would deter that kind of attack, he said.

Meanwhile, Boston 2004 Inc., the nonpartisan and nonprofit organizer of the event, has purchased insurance covering its risks during the week.

The host committee has a $1 million general liability policy and $100 million of umbrella liability coverage. Property limits total between $15 million and $20 million, according to the committee. It also has purchased $15 million of builders risk coverage and $3 million of event cancellation insurance. The committee bought directors and officers liability insurance but would not reveal limits.

The package includes government-backed terrorism insurance, for which the host committee paid $86,000, said David Passafaro, president of Boston 2004. The premium for the coverage is expected to total $2.6 million, a committee spokesman said.

The committee would not identify its insurers. The coverage was placed jointly by Marsh Inc. in Boston and West Insurance Agency, a minority-owned firm in Quincy, Mass. Jim Evans, a principal with Needham, Mass.-based Albert Risk Management Consultants, advised the committee pro bono.

PHOTO: NYTIMES

The U.S. Coast Guard is responsible for security in Boston Harbor during the Democratic National Convention.

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Business Insurance has a broad and comprehensive directory of industry-related Web links available on its Web site.

If you are searching for risk management or employee benefit management information, this is a great place to start.

If your site provides commercial insurance services or information, you can submit an online request for a free link.

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Late News

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borne by California policyholders, which the companies in a joint statement called "a blatant distortion of the facts."

P/C market softens in second quarter: CIAB

The commercial property/casualty insurance market continued to soften during the second quarter of 2004, according to the Council of Insurance Agents & Brokers' latest commercial market index. Thirty-six percent of small accounts, 57% of medium-sized accounts and 53% of large accounts experienced premium rate decreases of as much as 20% during the second quarter of 2004, according to the 157 brokers from across the country that responded.

Halliburton seeks to settle with insurers

Halliburton Co. still needs to finalize its settlements with insurers before its $4.2 billion plan to settle asbestos and silica claims can be implemented. The proposed claims settlement was contained in an order signed July 16 by Judge Judith Fitzgerald of the U.S. Bankruptcy Court for the Western District of Pennsylvania. The order confirmed the Chapter 11 bankruptcy reorganization plans for Halliburton subsidiaries including DII Industries L.L.C. and Kellogg, Brown & Root Inc. The subsidiaries filed for bankruptcy last December with a plan that included the settlement.

Federal agency seeks Caremark records

A federal agency is asking to review records obtained during the discovery process of a 2003 lawsuit that the state of Florida filed against prescription benefit manager Caremark Rx Inc. over the handling of mail-order drugs filled for state employees and retirees. The

inspector general of the federal Office of Personnel Management has requested to see all deposition transcripts and any records regarding Caremark's business practices being gathered as part of the discovery process, according to plaintiffs' attorney Michael I. Leonard, who is with Meckler, Bulger & Tilson. The OPM did not return phone calls seeking to confirm Mr. Leonard's claim.

HMO rate increases edge down: Hewitt

Health maintenance organizations are slightly reducing proposed rate increases for 2005 as negotiations with many employers continue. HMOs had initially proposed rate hikes averaging 13.6% for next year, but the increase is currently averaging 13.3%, according to updated information from Hewitt Associates Inc. But that figure, based on

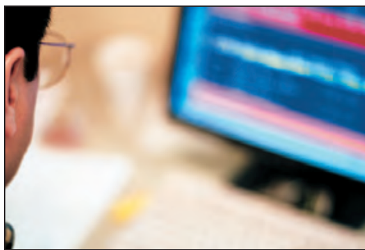
information from 160 employers with more 1 million employees, could change, because many employers still are negotiating with their HMOs, Hewitt said.

Aquila settles dispute over surety bonds

Aquila Inc., a Kansas City, Mo.-based utility, has reached settlements totaling $600 million with Chubb Corp. and the St. Paul Travelers Cos. Inc. to settle disputes over surety bonds that guaranteed prepaid natural gas supply contracts. Under the settlement agreement with Chubb, the insurer will receive $500 million of collateral but pay Aquila up to $15 million following the complete discharge of Chubb's exposure, for net proceeds of $485 million. The dispute involved two contracts with American Public Energy Agency. Aquila and its insurers disagreed over the terms of the surety bond, according to an Aquila spokesman. Aquila also agreed to pay St. Paul Travelers $90 million to support the insurer's surety bond on a contract with Municipal Gas Authority of Mississippi.

HHS promotes electronic records

The U.S. Department of Health and



Human Services released a report last week outlining a 10-year strategy to encourage the development of nationwide electronic health record systems. The report said EHR systems could lower administrative costs, improve the quality of care and reduce medical errors. The report can be found at the HHS Web site at *www.hhs.gov.*

AIG first-half profits up 30%

American International Group Inc. reported a 30.4% increase in net income for the first half of 2004 to $5.52 billion. Net premiums written in AIG's general insurance segment, which

excludes life insurance and retirement services, increased 20.5% to $20.59 billion in the first half. The segment posted a 92.8% combined ratio, vs. a 92.7% ratio for the comparable period a year ago.

Willis posts gains in first half

Despite continued premium rate declines across most lines of business, Willis Group Holdings Ltd. reported double-digit top- and bottom-line

growth for the first half of 2004. Total revenues at the broker increased 14.3% to $1.19 billion for the first six months of the year. Net income rose 23.9% to $244.0 million.

HRH sees organic growth stagnate

The softening property/casualty market and lower contingent commissions took a bite out of Hilb Rogal & Hobbs Co.'s organic growth in the first six months of 2004. Total revenues at the Glen Allen, Va.-based brokerage increased 8.7%, to $306.0 million, in the first half of 2004. Commissions and fees rose 8.5%, to $302.0 million. Net income rose 20.4%, to $44.7 million. But organic growth, defined as the

change in commissions and fees before the effect of acquisitions and divestitures, was down 0.2% in the second quarter and up a scant 2.5% for the six months.

IPC sees 11% profit increase

IPC Holdings Ltd. reported profits of $147.8 million for the first half of 2004, an 11.0% increase over the same period in 2003. The property catastrophe reinsurer posted gross premiums of $283.1 million in the first half of 2004, a 10.4% increase over the year-earlier period. The increased profits were due, in part, to "benign" catastrophe activity, Jim Bryce, IPC's president and chief executive officer, said in a statement.

Briefly noted

UAL Corp. unit **United Airlines Inc.** said that, as part of an agreement with lenders, it will stop making payments to its massively underfunded pension program while it is in bankruptcy. United already has missed a $72 million quarterly payment that was due July 15....Greg Doyle has been named chairman of **BMS Vision Re**, a reinsurance intermediary formed through BMS Group's recent acquisition of Vision Reinsurance Intermediaries Inc. Mr. Doyle was previously a senior executive at Guy Carpenter & Co. Inc....The **Workers Compensation Insurance Rating Bureau** of California said it is proposing a 3.5% average increase in pure premium rates for workers comp policies incepting on or after Jan. 1, 2005. Most of the proposed rate rise is attributable to recently enacted benefits increases, the San Francisco-based WCIRB said.

Check out BusinessInsurance.com

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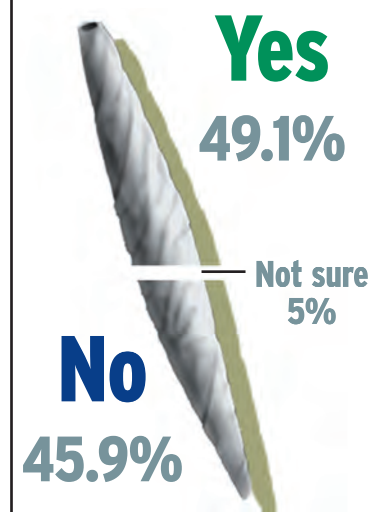
Online Poll

[7/19-7/23]

Should employers make accommodations for the use of medical marijuana by employees in states where it is legal?



BI Stock Index

[7/19-7/23]

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

Index	Value	Change
BI Stock Index	2178.07	-1.97
Dow Jones	9962.22	-1.75
S&P 500	1086.20	-1.38

Largest gains

Company	Change
United Fire & Casualty	5.87%
SAFECO Corp.	2.05%
Citigroup	1.58%
Gainsco Inc.	1.45%
Penn-America Group Inc.	1.17%

Largest losses

Company	Change
Selective Insurance Group	-13.51%
Willis Group Holdings	-10.54%
W.R. Berkley Corp.	-10.08%
WellChoice Inc.	-9.02%
EMC Insurance	-8.45%

Weekly change by market segment

Segment	Change
Brokers	-5.91%
Insurers/Reinsurers	-4.30%
Managed Care Organizations	-3.89%

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

Trucking: Court vacates duty-time regs

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an rhythms.

Insurers are praising the court decision, while a major trucking association is expressing the hope that the FMCSA can justify its reasons for the new rules and succeed in keeping them in place. The rules remain in effect for 45 days from the time of the appellate court ruling while the FMCSA considers whether to seek a rehearing or further appeal.

The American Trucking Assns. believes the FMCSA rules improve safety, said Robert Digges Jr., chief counsel in the Alexandria, Va.-based group's litigation section. "The court said to the agency: 'You've made this decision and not supported it well.' So it's up to the agency to provide its justification," he said.

The rules were challenged directly to the appeals court by Public Citizen, Parents Against Tired Truckers and Citizens for Reliable & Safe Highways. The Washington-based groups charged that the rules would contribute to driver fatigue and make the highways less safe. The American Insurance Assn. had opposed the rules on the same grounds in comments filed with the FMCSA.

"I think they need to go back and put a far higher priority on the health effects" that driving regulations have on truckers, said David Snyder, vp at the AIA in Washington. "They need to eliminate the parts of the rules that would allow more driving."

Mr. Digges said other changes in the new rules mitigate any health effect from adding an hour to consecutive driving time. For example, a "loophole" has been closed that, under the old rule, allowed drivers to stop and restart their duty period.

He also pointed out that mandatory off-duty time had been extended to 10 hours from eight, giving them the opportunity to sleep longer.

The agency is reviewing the opinion, and, with assistance from the U.S. Department of Justice, will determine its next move, according to a statement issued by Annette M. Sandberg, administrator of the FMCSA.

Ms. Sandberg said federal and state law enforcement authorities in the meantime would be advised of "their responsibility to continue compliance with the current rule."