Workplace violence threat often overlooked: ASSE/ **3**

Organizers preparing for Olympic risks/ **3**

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THREAT LEVEL RAISED TO ORANGE FOR FINANCIAL TARGETS

New alert underscores risks

PHOTO: SIPA

New York City police officers stand guard in front of the New York Stock Exchange.

By MARK A. HOFMANN

WASHINGTON—The federal government's decision to cite specific entities and even buildings as possible terrorist targets has ramifications far beyond the affected areas.

And that's the way it should be, say security and terrorism experts.

For risk managers outside of cited areas, the new "orange alert" in New York City, Washington and Newark, N.J., should serve as an impetus to review security, experts say. This includes reinforcing perimeter security while taking into consideration the mindset of terrorists, many of whom are willing to die carrying out a mission, the experts note.

Risk managers should also make sure that business continuity and emergency plans are up to date. And they need to realize that how they respond to the possibility of terrorist attacks could expose their organizations to new liability.

On Aug. 1, the Department of Homeland Security raised the threat advisory status to orange—

See ALERT/page 46

Late News

Hampton resigns RIMS' top post

John J. Hampton resigned last week as executive director of the Risk & Insurance Management Society Inc. A spokeswoman for New York-based RIMS said that Mr. Hampton left to pursue consulting work. A replacement has not been named. Mary Roth, RIMS' chief operating officer, will assume Mr. Hampton's duties during the transition.

Mr. Hampton

Mr. Hampton was hired in 2000 as the society's fourth executive director. He succeeded Linda Lamel, who served from 1997 to 2000. Eugene Ricci retired in 1997 after more than six years in the position. Ron Judd was the society's first executive director, serving for 24 years.

PBM Express Scripts denies N.Y. allegations

Express Scripts Inc. rebuts allegations in a lawsuit filed last week by the state of New York charging the prescription benefit manager with cheating the state out of as much as $100 million by inflating the cost of prescription drugs to the Empire Plan, the state's largest employee health plan. New York Attorney General Eliot Spitzer in a statement said the St. Louis-based PBM "improperly lined its pockets at the expense of health plans and

PHOTO: NY TIMES

Mr. Spitzer

See LATE NEWS/page 47

New OT rules likely will create added litigation against employers

By JUDY GREENWALD

Employers are likely to face at least an initial flurry of litigation in response to new federal overtime regulations that take effect Aug. 23, but this is likely to diminish over time as its provisions are clarified by the courts.

This is the first time in more than 50 years that federal overtime regulations under the 1938 Fair Labor Standards Act have been significantly revamped.

The updated regulations increase to $455 from $155 the weekly cutoff salary below which employees must receive overtime. They also clarify or change which executive, administrative, professional computer and outside sales employees

See OVERTIME/page 6

9/11 revenue losses spur coverage lawsuit

Hotel chain's claim is for lost business nationwide

By DOUGLAS McLEOD

NEW YORK—The extent to which business interruption coverage responds to certain Sept. 11-related losses will see another legal test in a hotel company's bid to recover millions of dollars in losses for locations far removed from the actual attack sites.

CDL Hotels (USA) Inc., a unit of London-based Millennium & Copthorne Hotels P.L.C., late last month filed suit in a New York federal court against Travelers Indemnity Co. of Illinois. The suit charges Travelers with breaching its insurance contract by refusing to pay Sept. 11-related business interruption claims of Millennium hotels in New York; Boston; Boulder, Colo.; Chicago; Los Angeles; Minneapolis; and St. Louis.

CDL argues that the shutdown of air traffic and other security measures imposed after the Sept. 11, 2001, terrorist attacks led to reservation and event cancellations and lost revenue. Travelers, the hotel company argues, is on the hook under policy provisions insuring against losses stemming from orders of civil or military authorities and from limitations on access to the properties.

The St. Paul Travelers Cos. has not responded to the suit, and a spokeswoman declined to comment on the litigation.

Policyholders have generally not fared well in trying to recover Sept. 11-related business interruption losses under the "civil authority" and "ingress/egress" sections of their policies.

The 5th U.S. Circuit Court of Appeals last year upheld an order denying coverage under the civil authority provision to New Orleans hotel owner 730 Bienville Partners Ltd. While Bienville ar-

See HOTELS/page 44

NEWSPAPER

Spotlight report

CATASTROPHE MANAGEMENT

Begins on page 10

LARGEST PROPERTY LOSS CONTROL CONSULTANTS

Ranking on page 14

U.K. risk managers denied regulatory exemption

By SARAH VEYSEY

LONDON—The U.K. Treasury has refused a request to exempt risk managers from possible regulation by the Financial Services Authority.

The London-based Assn. of Insurance & Risk Managers had asked the Treasury to formally exempt risk managers from the E.U. Insurance Mediation Directive, which takes effect in January.

The request stemmed from concerns that risk managers who purchase insurance coverage on behalf of company subsidiaries or joint venture companies—and are remunerated for doing so—might fall under the scope of the rules, and might, therefore, need to apply to be authorized by the FSA (*BI*, July 19; June 28).

The London-based regulator of insurance and financial services last month informed AIRMIC that it had "identified a possible legal basis for deciding that authorization may not be necessary" for group risk managers. But despite this reassurance, AIRMIC said it wanted an exemption to be granted by the Treasury, to ensure clarity on the matter.

The U.K. risk management association said in a statement last Friday that it had received a letter from the Treasury refusing this request.

"In their letter, the Treasury point out that the FSA have already identified an approach that makes it possible for group risk managers to avoid being regulated," David Gamble, executive director of AIRMIC, said in a statement.

"We presume from (the Treasury's) comments that they have concluded that no further action need, therefore, be taken," he added.

Mr. Gamble said, though, that individual risk managers and their legal advisers must now consider the implications of the Financial Services Authority's stance and communicate to their stakeholders, insurers, brokers and others why they consider themselves to be excluded from the scope of the insurance directive.

NIOSH says U.S. averages 17 murders at work each week

Workplace violence concerns not being addressed: Survey

By MEG FLETCHER

Many employers need to take a more formal and comprehensive approach to preventing workplace violence, according to a new report by the American Society of Safety Engineers.

According to the ASSE's findings, 74% of the 755 members who responded said their organizations had not yet conducted a formal risk assessment of the potential for violent acts in their workplace.

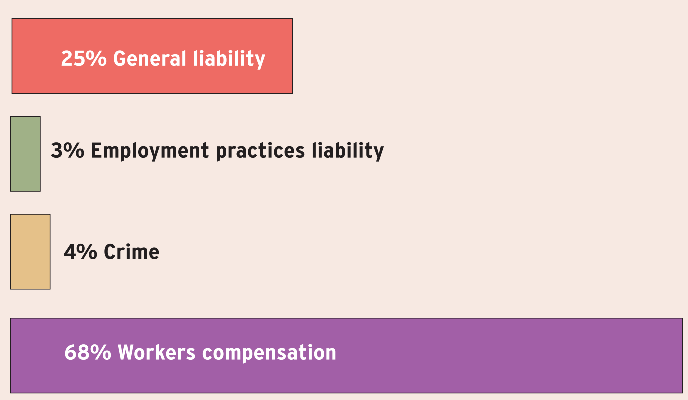
In addition, 80% of the surveyed organizations do not have a written policy addressing violent acts, while only 50% have procedures to notify management of threats from clients or the public, according to the report, which was prepared by the ASSE's Risk Management/Insurance Practice Specialty group.

"These are surprising results, and we are concerned that more is not being done to address workplace violence," said Gene Barfield, president of the Des Plaines, Ill.-based ASSE. He also is director of professional safety, health and environmental services for Acadian Integrated Solutions L.L.C. in Lafayette, La.

See VIOLENCE/page 40

COVERING VIOLENT ACTS ON THE JOB

Sources of insurance coverage applicable at respondents' organizations for workplace violence incidents.



Source: American Society of Safety Engineers

A high-tech security airship will feed real-time aerial images, inset, of Athens to security officials during the Olympic Games.

Security, coverage at Athens games set Olympic records

By SARAH VEYSEY

ATHENS, Greece—The 2004 Olympic Games will have in place one of the most comprehensive insurance and risk management plans in the history of the event when it begins in Athens, Greece, on Aug. 11.

The 2004 summer games—the first to take place since the Sept. 11, 2001, terrorist attacks—are also the first Olympic event for which the International Olympics Committee has purchased event cancellation coverage, including coverage for cancellation or abandonment due to terrorism.

In addition, the other organizations with interests at the games are purchasing separate cancellation policies should the Olympics be targeted by terrorists.

And security measures that are estimated to cost the Greek government $1.5 billion and are significantly more extensive than those implemented at previous Olympics have been put in place.

The Lausanne, Switzerland-based IOC bought $170 million in event cancellation coverage for the 2004 Olympics earlier this year, marking the first time the IOC has purchased such coverage.

The policy was brokered by Marsh Ltd. in London and much of the underwriting capacity was provided by Lloyd's of London, sources say.

The policy covers the organizing committee, the National Olympic Committees and the International Federations for losses in the event of the cancellation of the games due to terrorism.

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Inside Business Insurance

Terror fears prompt new rules for truckers

Trucking companies face new security measures for hauling certain hazardous materials. Page 4

Parity advocates aim to close legal loopholes

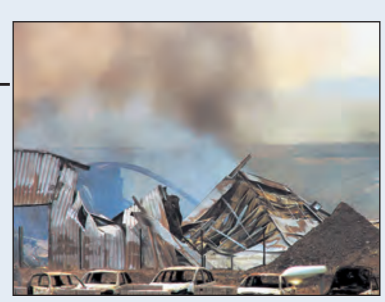
Efforts to close a loophole in federal mental health parity law are creating a sharp division between parity advocates and opponents. Page 4

Insurance obstacle removed from games

The end of the hard market removes a potential obstacle to some major sporting contests, Editor Paul Winston writes. Page 6

Florida wellness plan worthy of praise

A plan in Florida to reward employers that have wellness programs is a good idea, an editorial says. Page 8



Gas pipeline owner insured for explosion

A gas pipeline explosion in Belgium late last month killed 17 people and caused widespread damage in an industrial park. Page 41

Online

- The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info about your own event.
- New searchable **Directory of Property Loss Control Consultants,** as well as listings of industry vendors found in *BI*'s Market Sourcebook.
- New **Opinion Poll** for readers: Has your company adopted new security measures as a result of the heightened terrorism alert in some parts of the United States?

Departments

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS

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Terrorism concerns prompt security upgrades

Truckers face new hazardous transport rules

By MICHAEL BRADFORD

WASHINGTON—Trucking companies will have to implement new security measures before their drivers can haul certain hazardous materials that could become dangerous in the hands of terrorists.

A rule issued July 30 by the U.S. Department of Transportation's Federal Motor Carrier Safety Administration calls for the phasing in of a new safety permit after Jan. 1, 2005, for trucking companies hauling the materials. In order to receive the permit, the roughly 3,100 hazardous materials carriers must implement additional security measures, maintain satisfactory safety ratings and have in place a method of regularly communicating with drivers.

The FMCSA said it is requiring the permit because certain materials are dangerous if they are released in crashes and could be used in attacks if hijacked.

The permit will be required for motor carriers transporting certain types and amounts of radioactive materials, explosives, toxic inhalants and compressed or refrigerated liquid methane or natural gas.

The trucking industry will incur additional costs to comply with the measures, and although truckers would like to see some of the expense offset by lower insurance costs, there is no indication yet that that will be case.

The FMCSA estimated that the trucking industry will incur a $500,000 one-time cost in complying with the new requirements and will spend $2.8 million annually to remain in compliance.

"Any time there is a new government regulation, there is an expense to it," said Fred Burns, chairman of the American Trucking Assns. in Alexandria, Va. But, he added, "security is something we all have to pay for."

Mr. Burns, who also is president of Burns Motor Freight Inc. in Marlinton, W.Va., which does not haul hazardous materials, said the measures truckers must take to hold the new permit should lead to lower rates, "because more security lowers the risk."

He said requirements such as those put in place for the new permit are "generally good for the industry."

See TRUCKING/page 44

PHOTO: EPA

Trucking companies hauling hazardous materials must meet more stringent safety rules in 2005 under new government regulations.

Parity advocates aim to close loopholes in mental health law

Employers, insurers oppose bill

By GLORIA GONZALEZ

Federal legislation that would mandate increased parity in mental health care benefits by eliminating unequal plan limits on the number of inpatient days and outpatient visits has highlighted the deep divisions between parity proponents in the health care field and its opponents in the business and insurance communities.

Sens. Pete Domenici, R-N.M., and Edward Kennedy, D-Mass., and Reps. Jim Ramstad, R-Minn., and Patrick Kennedy, D-R.I., introduced the Sen. Paul Wellstone Mental Health Equitable Treatment Act of 2003, named to honor the Democratic Minnesota senator and longtime advocate for the mentally ill who died in an airplane crash in 2002.

The legislation proposes to expand on the existing Mental Health Parity Act of 1996 by requiring mental health parity for cost-sharing mechanisms and day and visit limits.

"Our goal is to close the loophole of the '96 law," said Pamela Greenberg, executive director of the Washington-based American Managed Behavioral Healthcare Assn.

While the 1996 act prohibits discriminatory annual and lifetime dollar caps for mental health benefits compared with benefits for other medical and surgical services, 87% of complying health plans have circumvented this restriction by replacing the dollar limits with limits on the number of inpatient days and outpatient visits or other restrictions, according to a May 2000 report by the U.S. General Accounting Office, which is now known as the U.S. Government Accountability Office.

The 1996 act was set to expire on Dec. 31, 2003, but was extended for one year while lawmakers debate the merits of a proposed bill that would expand its protections.

The likelihood of passage of the Wellstone bill, on which there is currently a hold, is uncertain due to continued opposition from employer and insurance trade groups. A major concern is that the bill would eliminate a provision in the 1996 law that allows a group health plan to claim an exemption if implementation of the law resulted in a cost increase of 1% or more. Sen. Judd Gregg, R-N.H., has proposed introducing an

See PARITY/page 38

Halliburton countersuing retirees over benefit plan cuts

By GLORIA GONZALEZ

HOUSTON—Halliburton Co. is seeking class action certification for a lawsuit filed against several retired employees who have challenged a company decision to eliminate health insurance coverage for Medicare-eligible retirees.

The dispute arose when Houston-based Halliburton decided to amend the benefits package for former employees of its Dallas-based subsidiary DII Industries, formerly known as Dresser Industries Inc. In November 2003, amendments were made to the medical benefits of 3,200 Dresser retirees because they had richer medical benefits coverage than did other employees, a Halliburton spokeswoman explained.

The amendments eliminate health insurance coverage for retirees over the age of 65 who are eligible for Medicare, effective Jan. 1, 2005, the spokeswoman said. The amendments also revise the prescription drug benefit for these retirees, although they would still have access to a prescription drug program toward which Halliburton would contribute $22 per month, she said.

Some Dresser retirees wrote to Halliburton demanding that the amendments be rescinded, though, arguing that the amendments are not permitted under the 1998 merger agreement between Dresser and Halliburton. The company denies that changes breach the merger agreement.

Halliburton filed the lawsuit to provide prompt resolution concerning the validity of the amendments so that, should the amendments be judged valid, the 3,200 employees

PHOTO: GETTY

would have adequate time to arrange for other medical coverage above what they receive through Medicare, according to the spokeswoman.

The lawsuit was filed Jan. 21 in the U.S. District Court for the Southern District of Texas. A court hearing is scheduled for Aug. 16 to certify the class action.

Florida seeking to reward investment in wellness plans

By SALLY ROBERTS

TALLAHASSEE, Fla.—Florida employers could soon see a rebate of up to 10% on their paid health insurance premiums under a little-known provision in a new state law that rewards employers whose employees maintain healthy lifestyles.

Florida's H.B. 1629, among other things, requires health insurers and managed care companies to provide premium rebates to employers of up to 10% when a majority of the members in a fully insured health plan have enrolled and maintained participation in an employer-sponsored wellness, health maintenance or improvement program.

To receive the rebate, employers must provide evidence of employees' health maintenance or improvement, as determined by an assessment of certain health status indicators agreed on by the employer and insurer. These indicators may include weight reduction and smoking cessation, according to the law, which became effective July 1.

Florida's Office of Insurance Regulation is finalizing the law's rules, which it hopes to publish before the end of the year so insurers can start offering the new rebate plans by January 2005. An informal public hearing on the proposed rules will be held Aug. 19.

Promoting healthier lifestyles continues to be a hot topic for state legislatures. Lawmakers' main focus this year has been addressing obesity and health for children in schools through regulating snack foods, school lunches and physical activity, according to Health Policy Tracking Services, a health legislative research firm based in Falls Church, Va. While some states have focused on curbing obesity-related lawsuits against fast-food restaurants, Florida may be the first state to offer employers money back for encouraging their employees to live

See REBATES/page 43

Errors & omissions

• Due to a reporting error, the July 5 and Aug. 2 stories on Kemper Insurance Cos.' solvent runoff plan misspelled the surname of Michael A. Coutu, the insurance company's acting president, chief executive officer and chief financial officer.

Overtime: More litigation feared

Continued from page 1

are exempt from receiving overtime.

The Department of Labor says the new regulations will strengthen the overtime rights of more than 6.7 million workers, including 1.3 million low-wage workers who were denied overtime under the old rules.

Surveys indicate that many employers are scrambling to comply with the regulation by the deadline date. One survey of more than 150 large companies by Lincolnshire, Ill.-based Hewitt Associates Inc., for instance, found that 20% of the responding employers do not believe they will meet the Aug. 23 deadline.

Further complicating the situation is that the regulations will not take effect automatically in 18 states that have their own overtime regulations. The FLSA does not preempt states that have stricter standards. Observers say that Illinois, which approved new overtime legislation earlier this year, is particularly problematic for employers.

Overtime is a major focus of litigation against employers. In the 12 months ended Sept. 30, 2003, 102 federal class action lawsuits were filed charging companies with violations of the FLSA, compared with 31 in 1997, according to the Washington-based Administrative Office of the U.S. Courts.

Observers say, though, that the rule changes will help clarify which employees are eligible for overtime pay.

Michael Eastman, director of labor policy at the Washington-based U.S. Chamber of Commerce, said: "We view it as certainly a significant improvement over the status quo. We didn't get everything we had hoped for in the regulations, but we do believe the final product is clearer—and more relevant to the current work force—than the old regulations."

Tracy Thurnell, a principal with Mercer Human Resource Consulting in Chicago, said the new rules provide an opportunity for employers to conduct an assessment "that, in many cases, may be long overdue and gives them an opportunity to get their house in order."

But although the federal regulations outline when employers may deny workers overtime, they may choose to pay it anyway because of other considerations. For instance, Fort Myers, Fla.-based Lee Memorial Health System will continue to pay its registered nurses overtime, although it is not required to do so under either the old or the new regulations, because of the demand for their services, said chief human resources officer Jon Cecil.

"When they're so hard to find, they're so hard to keep, there's such a great shortage out there, it just would not make sense to me, as a health care employer," to push the nursing staff into exempt status, said Mr. Cecil.

Impact on litigation

Employers generally are using the implementation of the new rules to review their work force with an eye toward making sure those employees who are entitled to receive overtime pay get it, rather than seeking to exempt workers who may already receive it, say observers.

Jack McGuire, director of employee relations at Madison, Wis.-based Madison Gas & Electric Co., said: "If something is going to be litigated, it's going to be on overtime pay, so people are looking at the positions very closely" to ensure that those who fall within the guidelines receive it.

Erik Winborn, Washington-based vp for national government regulations for Bentonville, Ark.-based Wal-Mart Stores Inc., said no one at Wal-Mart will be changed from a nonexempt to an exempt status as a

result of the regulations. "For us, the regulations just add clarity to the situation," he said.

Some employers say they expect the regulations to reduce litigation.

"We had so much litigation under the old regulation, I just don't see how it can increase litigation for us. It should lessen litigation," Mr. Winborn said.

According to the company's 2004 annual report, Wal-Mart is a defendant in numerous cases containing class action allegations brought under the FLSA as well as corresponding state statutes or other laws.

Speaking on behalf of the Alexandria, Va.-based Society for Human Resource Management, Terri Bednar, governmental affairs chairperson for the Akron, Ohio, area chapter of SHR, said that she is optimistic the new regulations will not lead to increased litigation. The old regulations were filled with ambiguities and inconsistencies that led to many lawsuits, noted Ms. Bednar, who is a human resources generalist at the Akron, Ohio-based Goodwill Industries of Akron. "Now that we have more clarification," she said, the litigation should decrease.

Many observers, though, say they expect, at least initially, stepped-up levels of litigation while the regulations' provisions are clarified. But, "to the extent these regulations clear up any misconceptions or provide more certainty over the long run, as employers begin to understand them and conform to them, there ought to be a decrease in litigation, because there's more certainty," said Gerald L. Maatman Jr., an employer attorney with Seyfarth Shaw in Chicago.

Still, Lee A. Schreter, an employer attorney with Jackson Lewis in Atlanta, said, "I think there will continue to be an awful lot of litigation," around the administrative exemptions in particular. While the new regulations add some helpful language, Ms. Schreter said, they "don't really advance the ball in terms of clarity." It is still unclear, for example, when secretaries, executive assistants and purchasing agents are exempt, she said.

The administrative exemption has already been the focus of one federal case. In a ruling last month in *Jerome Robinson-Smith vs. Government Employees Insurance Co.*, Judge Paul L. Friedman of the U.S. District Court for the District of Columbia said the new regulations cite insurance claims adjusters as an example of employees who could meet the administrative exemption requirement.

But Judge Friedman concluded that the GEICO claims adjusters do not exercise "discretion and independent judgment," which is needed to qualify for the exemption, and so they are entitled to overtime pay. He said the outcome of the case would have been the same had the new regulations not been considered.

Washington-based GEICO said in a statement that it disagrees with the decision and is preparing an appeal.

A complicating factor for employers is the 18 states in which the federal regulations do not take effect immediately. They are: Alaska, Arkansas, California, Colorado, Connecticut, Hawaii, Illinois, Kentucky, Maryland, Minnesota, Montana, New Jersey, North Dakota, Oregon, Pennsylvania, Washington, Wisconsin and West Virginia.

"A number of states have to take affirmative legislative action in order to adopt the federal rules, so for a period of time there's going to be a lot of ambiguity in terms of which laws will play by state," said Liz Fealy, a Bridgewater, N.J.-based senior consultant for Hewitt. "I do think that complicates things to a great degree."

Barb Altschwager, human resources manager at Denmark, Wis.-based BelGioioso Cheese Inc., said it is expected that Wisconsin's law will remain unchanged. As a result, said Ms. Altschwager, she has the "unenviable task" of having to examine both the federal and state regulations to determine which is most beneficial for each employee.

Many observers say that new legislation in Illinois in particular could cause complications for employers. The legislation, which was signed into law by Gov. Rod R. Blagojevich in April, adopts the higher salary threshold but keeps the previous job classification definitions in place.

Lori A. Goldstein, an employer attorney with Wildman Harrold in Chicago, said a big litigation issue in Illinois will be the extent to which the new federal regulations simply clarify or, in fact, change the old regulations.

"People are going to do what they think is the right thing and hold their breath and hope they're not challenged," Ms. Goldstein said.

Paul Winston

Insurance widens the world of sports

The hard insurance market is at an end. Let the games begin!

In recent years, numerous amateur contests of speed, skill and athleticism were at risk of being sidelined or derailed by scarce or unaffordable insurance. They were but some of many public event casualties—which also included parades, festivals and fireworks shows—that were suspended around the world when liability insurance became too pricey.

The timing of the turn of the cycle could not be more opportune, for as you know, some of the world's most prestigious athletic contests occur at this time year.

Oh, and the Olympic Games are about to start, too.

Meanwhile, in France, another world championship was recently decided: The World Snail Spitting Championship in Mogueriec.

Paul Winston

This contest, in which new speed records are set for the tiny gastropods, involves human contestants placing live snails in their mouths and then explosively ejecting them through the air ("Look at that escargot!"). This year's winner, from a field of 110 contestants representing 14 countries, was France's Alain Jourdain, with a 31-foot launch.

No doubt it is a challenge for competitors to resist the urge to prematurely release their projectiles the moment the mollusk sets its slimy foot on the tongue (known in the parlance of the sport as "the agony of de feet"). But true champions hold back, waiting for the optimum combination of saliva pressure, external wind speed and internal revulsion for a winning expectorant effort. That's what makes them such superb athletes.

Naturally, after the contest is decided, the equipment is consumed.

Lest you think France is alone in hosting elite sporting contests, let me draw your attention to other important world championships.

In the heartland of America, Chadron, Nebraska, plays host to the World Championship Buffalo Chip Toss. For the uninformed reader, "chip" here does not mean a fried vegetable slice or a small plastic disk used to make wagers.

This classic sporting event demands a rare combination of power, accuracy, nerves and dried buffalo dung. Last month's event was won by Ed Sydow of Sidney, Nebraska, with a winning toss of 108 feet, 9 inches. How Ed came by his superlative skills, I'd rather not contemplate.

In Llanwrtyd, Wales, another example of the pure sporting spirit: The Seventh World Mountain Bike Bog Snorkeling Championship.

This marriage of several very different and challenging athletic endeavors brings to mind such rigorous physical contests as speaking without vowels, the modern decathlon and synchronized swimming, combined. This event entails riding a specially modified bicycle through a 150-foot-long, six-foot-deep trench filled with the essence of bog. An unencumbered snorkel is all that stands between the contestants and a lungful of murky mire.

The course tested the endurance, training and will of the contestants, several of whom were unable to complete the event. The eventual winner, repeating his 2003 victory, was local Mark Parker, who is dominating this sport.

What a bleak world it would be if we did not have the drama and excitement afforded by such athletes in pursuit of excellence.

Yet participants in all of these important sporting championships would find it difficult to compete without the support and protection that insurance affords. Holding such competitions without insurance would be as precarious as a snail without its shell, dried dung without its dryness, or a bog biker without a snorkel.

Is this really true, you ask? No, it's not true. Snails can exist without their shells. They are called slugs. Plus, each of these events has been held for years through the turn of the market cycle without having to cancel the competition.

Yet lack of affordable insurance truly does lead to the cancellation of some sporting events, but it's usually the really dangerous ones, like William Tell-style dart throwing contests, Acapulco cliff diving and chess.

Late last month, a Hawaiian chess club was almost forced to cancel its weekly gatherings when the shopping mall that hosted its meetings insisted it buy a $2 million liability insurance policy. The Windward Mall Chess Club of Kaneohe was organized to provide adult mentoring and support for kids.

But before the mall could say "checkmate!" State Farm Group read about the club's situation and contacted a local agent to offer the club the coverage it needed for $150 a year, far less than the thousands of dollars club organizers believed it would cost them.

Thanks to insurance, this and other important contests can proceed. Now, let the pricing competition begin!

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Editorial

Use warnings to check preparedness

THE ORANGE TERROR ALERT that the Department of Homeland Security issued Aug. 1 shouldn't have risk managers seeing red or feeling blue.

After all, the unusually detailed alert, which names specific companies and even certain buildings, generally involves areas that were already considered to be at an above-average risk for terrorist attacks. In fact, New York and Washington, where some of the named targets are located, have been on heightened alert for almost three years, ever since the Sept. 11, 2001, attacks against the World Trade Center and Pentagon.

Still, this month's selective alerts, coupled with the formation of the Atlantic storm season's first hurricane a few days ago, should serve as reminders to risk managers everywhere that emergency plans—including business continuity and recovery plans—should not be treated as static documents, left to gather dust on a shelf until an emergency arises.

Indeed, the recent terrorism alerts and Hurricane Alex should serve as an impetus for risk managers to review their emergency response plans. Exposures can change quickly, as can the nature of the risks. A shift of a mere degree or two in a hurricane's path can place a facility in harm's way.

Just as unpredictably, a committed terrorist who finds his primary target unexpectedly impregnable may lash out at a secondary target rather than slink back to his safe house.

For most risk managers, neither the government's selective terrorism alerts nor the relatively mild hurricane that hit North Carolina's Outer Banks last week were cause for undue alarm. But both should be taken as an opportunity for reflection and reason to make sure that contingency and continuity plans are in place and up to date to deal with the next emergency that comes along.

Simple steps yield health cost savings

WE COMMEND Florida state legislators for approving a bold and innovative plan to reward employers that encourage employees to maintain healthy lifestyles.

As we report on page 4, health insurers and managed care plans in the state will be required to give fully insured customers premium rebates of up to 10% when a majority of a plan's enrollees participate in a corporate health wellness, maintenance or improvement program.

This is a win-win proposition. Because participating employees likely will be healthier, insurers should incur fewer and less expensive claims. Employers will pay lower premiums, conserving cash for other purposes, like plant expansion, hiring more employees and boosting pay.

This program is just one example of small but easy steps that can be taken to restrain health care cost increases.

Some of the forces that have driven up health care costs in recent years, such as provider consolidation and expensive new medications, are largely beyond the ability of any single employer to combat.

That said, much still lies within the ability of employers, insurers and, for that matter, legislators to control costs.

Despite their cost-effectiveness, many employers and their insurers have yet to implement health-screening programs for early detection and treatment of health problems such as high blood pressure and diabetes.

Many employers also don't give employees a sufficient financial incentive to use generic prescription drugs where they are available as alternative to costly brand-named medications.

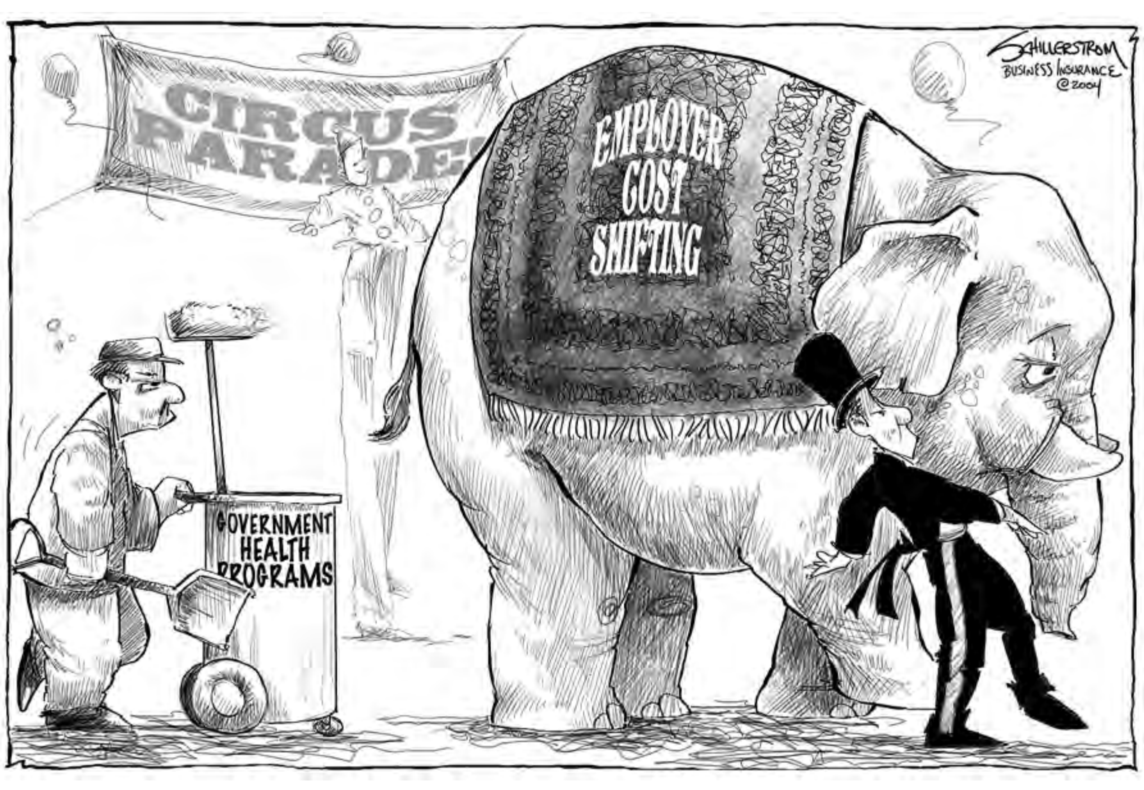
Insurers and managed care plans can do more to analyze health care claims data to better judge which providers achieve the best medical outcomes—and reward them for higher-quality care.

And legislators can play a role, too.

Maine, for example, soon will pilot a program that will provide state health insurance premium subsidies to lower-income employees working at small firms. That should increase the number of people with coverage, which, in turn, will mean less uncompensated care costs for providers and a reduced need to cost-shift to other patients.

No doubt there are many other relatively easy and effective steps that can be taken to control costs. This is a fine time to begin taking them.

Schillerstrom



Beat areas of *BI* editors

Business Insurance welcomes ideas and tips from readers on news and trends in risk and benefits management. Following is a list of *BI* beats and the principal reporters for each:

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

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CONSULTING SERVICES

Most common services by property loss consultants

Services	Percent of companies
General onsite plan loss prevention inspections	94.7%
Hazard identification	92.1%
Risk and hazard analysis	92.1%
Client training	89.5%
Fire prevention inspections	86.8%

Source: *BI* survey

PROFESSIONAL STAFF

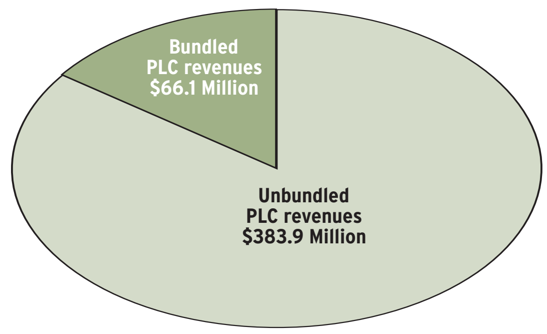
Ranked by number of professional property loss control staff

Company	Professional staff
Overland Solutions Inc.	600
ABS Consulting Inc.	520
Marsh-Risk Consulting Practice	330
Global Risk Consultants Corp.	179
Schirmer Engineering Corp.	170
Zurich Services Corp.	165
Regional Reporting Inc.	160
GE Global Asset Protection Services	121
F.A. Richards & Associates Inc. dba FARA	85
TVA Fire & Life Safety Inc.	75

Source: *BI* survey

BUNDLED VS. UNBUNDLED

Unbundled services account for the majority of the $450.0 million in total property loss control consulting revenues reported by the companies in *BI*'s directory



Source: *BI* survey

Largest property loss control specialists

Ranked by 2003 gross revenues from unbundled property loss control consulting[1]

Rank	Company/Address	Phone /Fax /Web	Unbundled property loss control revenues	% of total revenues from unbundled consulting	Total staff	Professional property loss control staff	Branch offices	Unbundled clients	Principal officer
1	ABS Consulting Inc. 16855 Northchase Drive Houston, Texas 77060	281-877-6100 Fax: 281-877-5925 *www.absconsulting.com*	$116,900,000	100	741	520	20	1,950	Frank J. Iarossi, chairman/CEO
2	Global Risk Consultants Corp. 100 Walnut Ave., Fifth Floor Clark, N.J. 07066	732-827-4400 Fax: 732-827-4490 *www.globalrisk consultants.com*	$33,778,000	100	252	179	27	667	William F. Ramonas, chairman/CEO
3	GE Global Asset Protection Services 20 Security Drive Avon, Conn. 06001	860-507-1321 Fax: 860-507-1313 *www.gegapservices.com*	$31,000,000	100	134	121	11	300	Dan Eudy, president
4	Schirmer Engineering Corp. 707 Lake Cook Road Deerfield, Ill. 60015	847-272-8340 Fax: 847-272-2639 *www.schirmereng.com*	$25,000,000[2]	100	230	170	25	630	Carl Baldassarra, president
5	TVA Fire & Life Safety Inc. 2820 Camino del Rio S., Suite 200 San Diego, Calif. 92108	619-296-5666 Fax: 619-296-5656 *www.tvafiresafety.com*	$9,350,000	93.5	150	75	9	45	James W. Tomes, CEO
6	HSB Professional Loss Control P.O. Box 585 Kingston, Tenn. 37763	865-376-1131 Fax: 865-376-5078 *www.hsbplc.com*	$6,000,000	100	62	42	3	26	MIchael E. Mowrer, executive vp
7	Gage-Babcock & Associates Inc. 5175 Parkstone Drive Chantilly, Va. 20151	703-263-7110 Fax: 703-263-1549 *www.gagebabcock.com*	$5,000,000	100	65	45	4	400	Cindy Cobb, president/CEO
8	Matrix Risk Consultants Inc. 3130 S. Tech Blvd. Miamisburg, Ohio 45342	937-886-0000 Fax: 937-432-2099 *www.matrixrc.com*	$3,210,184	100	20	15	2	19	Walter P. Luker, CEO
9	ISI Insurance Services P.O. Box 458 Chalk Hill, Pa. 15421	724-329-1525 Fax: 724-329-1529 *www.ageorgeinc.com*	$1,700,000	100	75	25	-	35	Alan George, president/CEO
10	Risk Logic Inc. 93 Apple Ridge Woodcliff Lake, N.J. 07677	201-930-0700 Fax: 201-930-8795 *www.risklogic.com*	$1,450,000	100	10	7	3	54	John Durante, president

1 Only those companies that derive a majority of their total revenues from unbundled property loss control consulting are ranked. 2 Estimated.
Source: *BI* survey

Visit *www.businessinsurance.com* for more information and to access the full searchable directory of Property Loss Consultants.

BI 08-09-04 A 16,18,20 8/5/04 5:28 PM Page 1

PHOTO: ASCR

Members of the Assn. of Specialists in Cleaning & Restoration are often called to provide expert advice following disasters that result in damage to property.

Restoration: Recovery after loss

Continued from page 10

FM Global does not recommend contractors," said Michael Hagan, vp and chief adjuster for the Johnston, R.I.-based insurer. "It is FM Global practice to work with clients to discuss their selection of contractors who can help with emergency actions and permanent repairs," he said.

Similarly, St. Paul Travelers Cos. Inc. does not steer its policyholders to any specific restoration contractors, according to Bob Gillis, director-property product development in Hartford, Conn.

"We would much prefer to work with our customers' contractors, as opposed to selecting one ourselves," Mr. Gillis said.

"A lot of times, the contractor is retained by the insured, because usually the repair of the property is their responsibility," explained Barry Flax, national loss coordinator at Adjusters International, an independent adjusting firm in Rockville, Md.

In those cases in which risk managers are unable to locate contractors, their insurers and adjusters may assist them in their selection, usually drawing from prior experience.

"We only provide names of contractors who have shown from past experience that they are capable of doing the required work," Mr. Hagan said.

Securing expertise

While experience may be helpful in selecting contractors in situations in which a similar loss has occurred before, some situations require specialized services that general restoration contractors typically cannot provide, experts say.

In those situations, if risk managers don't already know whom to call, the general contractors with which they have contracted will hire subcontractors with the required expertise to assist them.

Such was the case when the Villa Terrace Decorative Arts Museum in Milwaukee caught fire during restoration in May 2002. Putting out the fire caused subsequent water damage that, if not properly removed, could have led to deterioration of the artifacts as well as the mansion that houses the museum, which in and of itself, is a work of art, according to John Rath, director of risk management and insurance for Milwaukee County.

'We would much prefer to work with our customers' contractors, as opposed to selecting one ourselves.'

Bob Gillis
St. Paul Travelers Cos. Inc.

"We wanted to restore it to its original condition. The building was 80-some years old. The tile came from Italy," Mr. Rath said. "Then we had a difficult time with the wallpaper in the Zuber bedroom," he said, referring to a gallery of panoramic wallpaper. "That wallpaper was handblocked in France 80-some years ago," he added.

So the local franchise of Paul Davis Restoration, which the county had hired to do the job, "traced the tile and located some here in Milwaukee and in Italy to match. In fact, the original roofer, still in business, had some of the tile," Mr. Rath recounted.

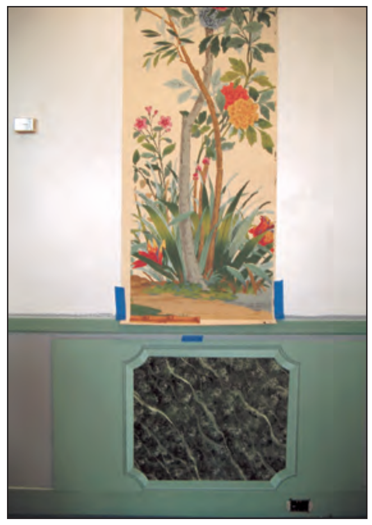
The restoration contractor also contacted Zuber Cie., the original manufacturer of the wallpaper in France, "which still had the handblocks and were able to restore the wallpaper identical to what was in there. The wallpaper for the bedroom alone cost $70,000," he added.

Damaged artwork was sent out to art restorers, and some of the museum's light fixtures could not be re-stored and had to be re-created, Mr. Rath said.

Membership in organizations such as the Baltimore-based Assn. of Specialists in Cleaning & Restoration enables restoration contractors to find these specialized resources quickly, according to Larry Jacobson, executive director of the 1,350-member ASCR.

See RESTORATION/page 18

PHOTO: PAUL DAVIS RESTORATION



PHOTOS: PAUL DAVIS RESTORATION

Restoring damaged property, such as the Villa Terrace Decorative Arts Museum in Milwaukee, which caught fire in 2002, left, may require specialized expertise.

Restoration: Buyers get help after loss

Continued from page 16

"When a member contacts us and says, 'I ran across this fancy painting. I have no idea whether it's a real Cézanne. It says Cézanne,' we have members who are experts, and they'll certainly know," Mr. Jacobson explained. "And, if the stakes are high enough, it's worth putting that guy on an airplane and sending him over to the other member to take a look. And that happens quite often," he said.

Contractors of varying specialties often work together in groups when they are confronted with large natural catastrophes, such as hurricanes that cause widespread flooding and water damage to property, Mr. Jacobson added.

"We're excellent responders," said Jim Wills, director of commercial restoration at Servicemaster Clean in Memphis, Tenn. When there's a large project, "we work with a network of people. We may work with a company like DryCo or Trade-Winds Environmental."

"We're a subcontractor to a lot of companies, including Servicemaster," confirmed Burgess Watts, chief executive officer of Northlake, Ill.-based DryCo Drying Services L.L.C., which specializes in water removal and temperature and humidity control on projects that require climate control.

While some contractors operate nationwide, many restoration contractors work only within limited geographic areas. But they often have relationships with other independent contractors.

Similarly, New York-based Trade-Winds Environmental Restoration Inc., as its name suggests, is known for its environmental cleanup expertise. Among the services that Trade-Winds has provided is the removal of anthrax contamination for the U.S. Postal Service.

Other companies, such as Rolyn Construction Inc. of Rockville, Md., have expertise in trauma scene cleanup and infection control in hospitals.

While some contractors, like Rolyn, operate nationwide, many restoration contractors work only within limited geographic areas. But they often have pre-existing relationships with other independent contractors in other parts of the country that they can call on if necessary.

Ensuring quality work

Some, like Servicemaster, are a network of independent franchise holders. And there are also numerous "mom and pop" businesses, though experts caution that the quality of their work may depend on the length of time they've been in the business and the extent of their training.

Certification is available to restoration contractors through two organizations: the ASCR and the Institute for Inspection Cleaning & Restoration Certification in Vancouver, Wash., which also creates standards for certain work, such as water removal or mold remediation.

In addition, most states require cleanup and remediation contractors to be licensed. In some states,

See RESTORATION/page 20


PHOTO: NEW YORK TIMES

The World Trade Center loss required disaster response on a grand scale.

Restoration: Recovery after loss

Continued from page 18

though, qualifying can be as easy as completing a form, while in others it is more extensive. In Florida, for example, restoration contractors must sit through a two-day exam to become licensed.

But just being certified or licensed may not be enough to ensure the quality of a restoration contractor's work.

There are times when contractors are called in to clean up after another contractor has performed shoddy work, acknowledged Damon Gersh, president and CEO of Maxons Restorations Inc. in New York.

"We also find that we're coming in after maintenance companies have tried to do restoration and cleanup work but didn't have the expertise necessary," Mr. Gersh said.

"In our industry, credibility is the most important thing from a marketing point of view. As a consumer, I would not hang my hat on any single training or association," said Mr. Gersh, whose firm was involved in the cleanup of buildings and their contents following the terrorist attack on the World Trade Center in 2001.

To ensure that they are getting high-quality contractors, risk managers need to research which contractors are in closest proximity to their facilities, interview them and then perhaps invite the leading candidates to their facilities so they can get an idea of the kind of work they would be doing, experts advise. Risk managers also should survey colleagues for their recommendations.

Another indicator of quality is whether a contractor is adequately insured for the work it does, experts say.

"That is a precursor to knowing whether you have a good contractor or not. They're already prescreened by their insurance carrier. So you can, if you never used anybody before, get a good idea of the quality of your contractor by looking at the quality of his insurance," suggested Michael O'Reilly, president and CEO of Trade-Winds.

After identifying restoration contractors with which they would feel comfortable doing business in the event of a catastrophe, risk managers also would be wise to enter into emergency response agreements that specify performance criteria, such as response time, pricing and insurance arrangements, experts say.

> **'In the last five years, emergency response agreements are way more popular than they have ever been.' The agreements act 'like a dormant contract that is only initiated when a loss occurs.'**
>
> *Damon Gersh*
> *Maxons Restorations Inc.*

For example, Linda Bagby, corporate risk manager for Graybar Electric Co. Inc. in St. Louis, a wholesale distributor of commercial electrical equipment, asks contractors to make their "insurance be primary and for a waiver of subrogation on the comp. We didn't want to buy any of their comp claims."

"In the last five years, emergency response agreements are way more popular than they have ever been," said Mr. Gersh of Maxons. "The contracts include pricing, terms, service expectations. It's basically like a dormant contract that is only initiated when a loss occurs."

And risk managers with such contracts can be assured they will be at the top of the list should restoration contractors become inundated with calls after a widespread catastrophe such as a hurricane, he said.

"When a hurricane hits the East Coast, we'll typically get anywhere from five to 20 calls from property owners," said Rolyn Construction's president, Sam Bergman.

But when a risk manager has entered into an emergency response agreement ahead of time, "we promise that we'll get the first triage crew there usually within two hours," he said.

Products & Services

ACE broadens offerings for midsize casualty risks

PHILADELPHIA—ACE Risk Management, a division of ACE USA, has expanded its risk management suite of products by assisting midsize companies in the casualty risk financing area.

The Philadelphia-based unit's Corporate Risk Solutions program has placed specialized teams in each of the company's branch offices to help midmarket firms—those that generate revenues between $100 million and $700 million—manage their risks by creating individualized risk management programs for them. The program offers coverage with retained limits of $250,000 for workers compensation. Lower retentions are available for general and automobile liability coverage. The industries targeted for this program include health care, financial services, retail, manufacturing, wholesale, restaurants and hotels.

To obtain more information on Corporate Risk Solutions, contact Ken Riegler, senior vp, at 212-642-7894, or visit the company's Web site at *www.aceriskmanagement.com.*

Aetna unit adds EAP services

HARTFORD, Conn.—Aetna Behavioral Health, a unit of managed care company Aetna Inc., has introduced a new employee assistance program to help employers address their workers' professional and personal stress as well as to boost productivity in the workplace.

The EAP services offered include information, counseling and referral services for stress

management, depression, addiction, elder care, parenting and personal finances, among others. Members can also access a Web site that provides information on mental health and wellness issues. In addition, the Aetna EAP will offer work/life services, which will be provided by LifeCare Inc., based in Westport, Conn. The work/life portion of the EAP offers life management services such as child and elder care referrals and academic information services.

For more information, visit the Hartford, Conn.-based company's Web site, *www.aetna.com.*

Wausau Benefits offers high-deductible plan

WAUSAU, Wis.—Wausau Benefits is offering a high-deductible health plan for self-funded employers to be offered in conjunction with their health savings accounts.

This health plan offers a deductible of at least $1,000 for single coverage and at least $2,000 for family coverage. It features a health and wellness and a disease management program, as well as online support tools. Employers that offer HSAs to their employees must link the accounts to high-deductible health insurance plans.

More information can be obtained by contacting Jay Coldwell, product director, by calling 715-841-6133 or e-mail to *jay.coldwell@wausaubenefits.com*, or by visiting the Wausau, Wis.-based company's Web site, *www.wausaubenefits.com.*

Liberty Mutual expands auto umbrella program

BOSTON—Liberty Mutual Group Inc. has increased its lead commercial auto excess umbrella program.

Boston-based Liberty Mutual has

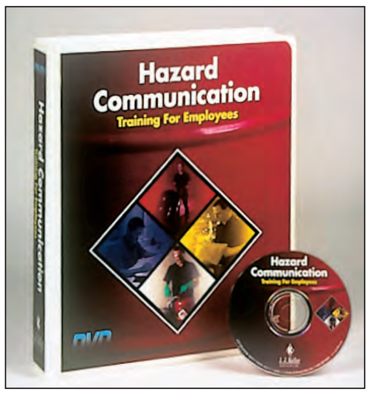
increased the umbrella program's capacity to $25 million per policy to provide coverage over primary commercial auto limits. The program is designed to offer buyers greater capacity without increasing their primary coverage, as well as making coverage more flexible through customization.

For more information, contact Kristen Fitzgerald, executive portfolio manager, at 617-654-3820 or visit *www.libertymutual.com.*

Keller offers DVD for safety training

NEENAH, Wis.—J.J. Keller & Associates Inc. is now offering a DVD version of its Hazard Communication for Employees training program.

The DVD includes a main menu and chapter selections, which allows specific training portions of



the program to be viewed without having to present the entire program. It also includes an interactive quiz.

The program aims to help companies comply with the Occupational Safety and Health Administration's Hazard Communications Standard. It provides information on how chemicals are placed on a hazardous chemical inventory and the importance of keeping the list up to date, as well as how to read hazard communications labels, tags and signs.

More information can be obtained by contacting the company at 800-327-6868, reference action code 01994, or by visiting *www.jjkeller.com.*

Partnership creates dental coverage options

OMAHA, Neb.—Mutual of Omaha and United Concordia Cos. Inc. have formed an alliance to offer employers a customizable dental health plan for their employees.

The program, DentaBenefits,

allows employers to choose the maximum benefit amounts, deductibles, coinsurance and specific coverages, including diagnostic, preventive and cosmetic benefits. In addition, plan participants will have access to United Concordia's dental network of over 62,000 dentists.

Omaha, Neb.-based Mutual of Omaha is the plan distributor, providing sales and service support. Harrisburg, Pa.-based United Concordia is the plan underwriter and is also responsible for managing claims, customer service and the dental network.

For more information, contact John Kohanek, manager-group dental marketing of Mutual of Omaha, at 402-351-5453 or *john.kohanek@mutualofomaha.com.*

Prime launches cover for contractors

SANDY, Utah—Prime Insurance Syndicate Inc. is offering a new excess and surplus lines program for residential and business contractors and developers.

Sandy, Utah-based Prime Insurance Syndicate now provides contractor's liability coverage and general liability insurance for premises, work performed and general operations. Available general liability coverage limits range between $100,000 and $2 million.

More information can be obtained by contacting Barbara Malkowski, marketing manager, at 312-983-7190, ext. 7801, or by visiting the company's Web site at *www.primeis.com.*

Book gives guidance on investment policies

BROOKFIELD, Wis.—The International Foundation of Employee Benefit Plans has published the fifth edition of its "Investment Policy Guidebook for Trustees."

The guidebook presents information on preparing an investment policy statements for multiemployer trust funds, and it is aimed at pension plan administrators, investment managers and consultants, trustees and attorneys.

The book provides updated information on brokerage services, corporate governance, custody and structured equity and also features sample investment policy statements and Department of Labor and AFL-CIO investment guidelines. In addition, the guidebook covers trustee responsibility, risk and return and asset allocations.

The guidebook was written by Eugene B. Burroughs, a Chartered Financial Analyst and an independent investment

Continued on next page

Parity: Bill would close mental health cover loophole

Continued from page 4

an amendment that would reinstate the 1% exemption.

In addition, a compromise bill that has been proposed but not officially introduced would give the secretary of the Department of Health and Human Services the authority to consider implementing the law for other aspects of coverage not specifically named in the statute. This provision aims to address a key criticism of the 1996 law—that plan sponsors were able to circumvent the annual and lifetime dollar caps by imposing other limitations—by giving the secretary the power to implement further parity requirements. Employers and insurers have objected to the provision; they say it awards the secretary overly broad authority to impose more restrictions. Sen. Gregg's amendment would strike down that provision.

One key concession made in the proposed compromise bill would eliminate a clause that defines "mental health benefits" as benefits for services for conditions listed in the current edition Diagnostic and Statistical Manual of Mental Disorders. The DSM, published by the American Psychiatric Assn., is the handbook used most often in diagnosing mental disorders in the United States. This concession is intended to address opponents' concerns that the bill would eliminate a plan sponsor's flexibility in determining which mental health conditions it would cover.

'I think there's a concern about the additional costs and the impact on the number of people uninsured, particularly among smaller employers.'

Steve Wojcik
National Business Group on Health

The main issue of contention is the potential cost increase of complying with parity mandates. Opponents of the Wellstone bill have voiced concern about higher health care costs as a time when they continue to significantly increase.

"As you mandate more coverage, the more expensive it becomes and the less affordable it becomes for more and more people," said Steve Wojcik, vp of public policy for the Washington-based National Business Group on Health, which represents more than 200 employers.

Proponents of the bill point to a Congressional Budget Office study that estimates the average cost increase would be 0.88%, but opponents say the cost increase for some employers could be as high as 17%.

Particularly worrisome is the impact of the legislation on small employers, Mr. Wojcik said. Although the bill would leave intact an exemption for employers with 50 or fewer employees, he said that smaller employers with more than 50 employees would have to decide whether they could afford to continue to offer mental health benefits.

"I think there's a concern about the additional costs and the impact on the number of people uninsured, particularly among smaller employers," Mr. Wojcik said. "For the larger employers, many already provide rich benefits, including mental health benefits. There would be less of an impact in terms of cost of benefits."

Like the 1996 act, the Wellstone legislation would apply to employers with both traditional and self-insured plans. While more than 30 states currently have mental health parity laws, their provisions do not apply to self-insured plans, because the requirements of the Employee Retirement Income Security Act preempt those state laws.

If the bill were to pass, large self-insured employers would also see less of an impact from individual claims due to their resources and stop-loss claims coverage, said Linda Bergthold, a senior consultant in Los Angeles with Watson Wyatt Worldwide. For smaller employers, one or two major claims could result in either a substantial increase in premiums or a significant bottom-line hit if they self-insure, Ms. Bergthold said.

'Whether or not it passes this year, I think there is a certain inevitability. At some point, this bill, or something that looks similar to this bill, will pass.'

Ralph Ibson
National Mental Health Assn.

Proponents, though, say any cost increases would be offset by the savings that arise from having a healthier and more productive workforce with access to necessary mental health services.

Anadarko Petroleum Corp., which implemented mental health parity for a full range of mental health conditions in May, does not expect a significant cost increase, said Ellen Tarver, manager-corporate benefits for the Houston-based energy company. In fact, the company expects to see reduced costs due to decreased employee absenteeism and increased productivity, she said.

"We're hoping that making this available to employees and covering this at a higher level will prompt them to get treatment and realize that these can be serious illnesses and can be effectively treated," Ms. Tarver said.

Anadarko eliminated all unequal mental health service limits in its health plan, such as a 60-day lifetime maximum for inpatient visits for mental health conditions. "We see it as the right thing to do," she said.

Despite strong bipartisan support, passage of the bill this year remains uncertain due to the congressional recess in August and the upcoming elections. "While the clock is ticking on the remaining days for this Congress to consider the legislation, it's by no means out of the question," said Paul Dennett, vp of health policy at the American Benefits Council in Washington.

The current hold on the bill, though, makes it unlikely that it can be discussed and passed before Congress adjourns for the August recess, observers say. "For right now, the Senate prospects for consideration are dim," Mr. Dennett said. "In the House, there has been relatively little movement in this direction on this legislation."

A more likely scenario is passage of another extension of the current parity law, which would give Congress more time to discuss the compromise bill, observers say.

Not surprisingly, there are two schools of thought on whether the bill will pass at all.

"There's an extremely determined opposition from the business community and the health plans community," said Neil Trautwein, assistant vp for human resources policy for the National Assn. of Manufacturers in Washington. "It's simply too expansive and too ill-designed to be able to coexist with existing benefits."

"Whether or not it passes this year, I think there is a certain inevitability," said Ralph Ibson, vp for government affairs for the Alexandria, Va.-based National Mental Health Assn. "At some point, this bill, or something that looks similar to this bill, will pass."

Surplus lines directory deadline approaches

Business Insurance will publish its online directories of surplus lines insurers and insurance wholesalers in conjunction with the Sept. 20 issue.

This issue will include a Spotlight report on surplus lines and rankings of the largest surplus lines insurers, wholesale insurance brokers and MGAs/underwriting managers.

The directories are published as an editorial service; there is no charge to be included. To be listed in the Directory of Surplus Lines Insurers, a company must be a nonadmitted surplus lines insurer that receives at least 50% of gross premiums or a minimum of $10 million of gross premiums from policies issued on a direct, nonadmitted basis covering commercial risks.

To be listed in the Directory of Insurance Wholesalers, a company must serve retail brokers as a wholesale broker, managing general agent or underwriting manager, regardless of whether it primarily uses admitted or nonadmitted markets. Companies must report premium volume and total gross revenues to be listed.

Completed questionnaires must be submitted by the extended deadlines of Aug. 20 for Directory of Insurance Wholesalers and Sept. 3 for surplus lines insurers.

If your company meets the requirements and has not received a questionnaire, please request one immediately by calling Directory Editor Kevin P. Edison at 312-649-5279. Copies of the questionnaire also can be printed from the *BI* Web site at *www.businessinsurance.com.*

The full directories and charts will be included in the 2004/2005 Market Sourcebook, which will be published in December.

Between the Lines

Compiled by Joanne Wojcik

Sit, stay, catch fraud...good boy

Buddy, not Jack, is the real name of an undercover Jack Russell terrier that helped fraud investigators nab two Sacramento, Calif., chiropractors last week for allegedly bilking auto and workers comp insurers.

After suspecting that the chiropractors billed insurers for treatments they never performed, a California Department of Insurance investigator took his dog in for treatment. The investigator introduced his dog as Jack and claimed the pooch was in an auto accident.

One of the chiropractors manipulated the dog, then billed a dummy insurance policy offered by the investigator as if the dog's owner received the treatment. Investigators believe the chiropractors engaged in similar practices before, even treating a rabbit, said a department spokesman. In case Buddy's testimony is deemed inadmissible, the department also had an undercover investigator obtain a job in the chiropractors' office. Treating pets and charging their owners' policies is likely a small part of the billing fraud, he said.

In addition to the chiropractors, investigators also arrested a couple of their associates on charges including conspiracy to commit illegal referrals.

Insurance industry salute to the troops

MarketScout.com is planning to honor U.S. troops who have served in Afghanistan or Iraq at a special event Sept. 11 in Dallas, and is seeking nominations of soldiers as well as support from the insurance industry.

PHOTO: REUTERS LIVE

MarketScout wants to honor U.S. troops at a special dinner on Sept. 11.

Richard Kerr, chairman and chief executive officer of the Dallas-based online insurance marketplace, says MarketScout will pay all the expenses to host soldiers and their spouses at a dinner at the Royal Oaks Country Club in Dallas.

Scheduled to attend are National Football League Hall of Fame quarterback and former U.S. Navy officer Roger Staubach and Major Gen. James D. Thurman, who commanded the 4th Infantry Division that captured Saddam Hussein in Iraq.

Among the industry companies helping sponsor the event are American International Group Inc. and Old American County Mutual Fire Insurance Co. For information, visit *www.marketscout.com/heroes*.

Lawsuit targets Israel exclusion

Tourists planning to visit Jerusalem and other locations in Israel may be surprised to find that is ground for rejecting their applications for life insurance. But a traveler's lawsuit may change that practice.

Israel is one of 26 countries listed by the U.S. State Department as dangerous for U.S. citizens to visit.

Last April, when a Los Angeles radio talk show producer planning a vacation to the Holy Land tried to buy a life policy from Banner Life Insurance Co., the Claremont, Calif.-based law firm of Shernoff Bidart Darras filed a suit on his behalf against Banner and 13 other insurers with similar practices. Banner declined to comment.

Last month, Allstate Life Insurance Co. settled the suit, agreeing not to automatically reject coverage applications for people planning to visit Israel. Allstate, like many other U.S. life insurers, does not issue policies to individuals planning to travel to any of the countries on the U.S. State Department's Travel Warnings list, an Allstate spokeswoman explained. The list is at *http://travel.state.gov/travel/warnings_current.html*.

William Shernoff, lead counsel for plaintiff Allen Estrin, is continuing to negotiate with the other insurers named in the suit with the hopes that they, too, will agree with Allstate that Israel is not as dangerous as other countries in the Mideast, despite its inclusion on the State Department's warnings.

"How much more dangerous is Jerusalem than New York or L.A.? Statistically, more Americans die in New York or L.A. than in Jerusalem," he said. "Many citizens of California, including those of the Jewish and Christian faiths, visit Israel as tourists or pilgrims to holy sites."

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

Violence: Not being addressed

Continued from page 3

The importance of the topic is underscored by the latest statistics available from the National Institute for Occupational Safety & Health.

Each week in the United States, "17 employees on average are murdered at work, and 33,000 on average are assaulted," NIOSH said in a recent statement.

In addition, "homicide in the workplace is the third leading cause of job-related fatalities and the second leading cause of job-related fatalities for women," the agency reported.

Forty-four percent of respondents reported incidents of workplace violence within the past five years.

The survey defined workplace violence broadly to include homicides, physical attacks, rapes, aggravated and other assaults, and verbal threats, according to survey co-author JoAnn M. Sullivan, senior vp of risk consulting in the Phoenix office of Marsh USA Inc.

According to NIOSH, factors that place workers at risk for violence include "interacting with the public, exchanging money, delivering services or goods, working late into the night or during early morning hours, working alone, guarding valuables or property and dealing with violent people or volatile situations."

In comparing results with a similar survey in 1999, ASSE researchers found few changes in the number and type of anti-violence programs at responding companies, which represented a wide range of industries and public entities.

Employers should consider implementing violence protection programs in the workplace for several reasons, including their own liability, observers note. Under federal and state laws, employers have a general duty to provide each employee with a workplace free of recognized hazards that are causing, or likely to cause, death or serious harm, Ms. Sullivan said.

> **'Homicide in the workplace is the third leading cause of job-related fatalities and the second leading cause of job-related fatalities for women.'**
>
> *National Institute for Occupational Safety & Health*

An employer's "liability exposure can be significantly larger than its workers compensation exposure," said survey co-author Steven NyBlom, assistant division chief of loss control and prevention for Los Angeles County in Los Angeles. If an employer is negligent, the employee may be able to recover punitive damages outside of the workers comp system. In addition, other types of violent incidents have led to recoveries under employers' other insurance coverages, including general liability, employment practices liability and crime insurance, according to the survey.

"Post 9/11, workplace violence has taken a backseat to terrorism" concerns among employers, said Robert Cartwright Jr., regional safety/health manager for the Northeast zone of BFS Retail & Commercial Operations L.L.C. in Exton, Pa. The operation is a part of Bridgestone Firestone America Holdings.

"An employer needs to have a proactive (violence prevention) program, not a reactive one," said Mr. Cartwright, who is also the Risk & Insurance Management Society Inc.'s vice chairman of its External Affairs Committee. Too often, employers define "workplace violence" too narrowly, such as the impact a robbery might have on the workforce, he said.

Bridgestone Firestone, however, has addressed workplace violence "broadly," and has comprehensive policies and programs that apply to managers and employees alike, he said.

Los Angeles County's anti-violence program, also, "has a lot of elements that a safety professional would like to see," Mr. NyBlom said. For example, the county, which has 90,000 employees, has a designated Office of Security Management to help resolve violent incidents as well the ability to draw on other response options, ranging from sheriffs' police to counselors, he said.

The potentially high cost of implementing a comprehensive program should not hinder employers' efforts to improve their violence-prevention efforts, Ms. Sullivan said. Employers can keep costs down by using free informational materials from government resources as well as public entities, whose Web sites are listed in the report, Ms. Sullivan said.

One of the latest options is a free new training and educational DVD from NIOSH that includes the Occupational Safety and Health Administration's guidelines for preventing workplace violence in health care settings, late-night retail settings and taxicab services.

The ASSE survey and report are available at www.asse.org or by calling 847-699-2929.

Cargo war rating body disbands

End of rate schedule could give buyers room for negotiation

By PETA MILLER

LONDON—Cargo war risk buyers may be able to negotiate better prices for coverage, following the disbanding last month of the London market body that for decades has essentially set rates for such risks.

The War Risks Rating Committee, which operated as a subcommittee of the Joint Cargo Committee, had recommended cargo war risk rates to underwriters since the end of World War II.

But on July 21, the JCC announced that, due to recent U.K. and European competition law, it instead will provide guidance on war risk hot spots to underwriters, who will have to determine cargo war risk rates themselves. The JCC is run jointly by the Lloyd's Market Assn. and the International Underwriting Assn.

As part of the change, the war risk committee's last schedule, issued in February, also was withdrawn. The schedules provided a recommended basic rate for cargo war business, a rating scale for cargo risks in different geographic areas and recommended enhanced rates for war risk hot spots.

Neil Smith, secretary of the JCC in London, explained that the subcommittee was disbanded because it was no longer exempted from competition laws for its rate-recommending practices.

On May 1, an E.U. competition regulation—1/2003—took effect in the United Kingdom through updates to the U.K. Competition Act 1998. Among other changes, the new regulation did away with the previous system under which companies could seek an exemption from competition law for certain agreements.

"We could have gone to the Office of Fair Trading in the United Kingdom (to seek the needed exemption), but given the way the European Union is enforcing regulations on competition, we felt that the time and effort would have been a significant cost to the marketplace and the outcome would be no different," Mr. Smith explained.

Now, rather than making rate recommendations, the JCC will provide only guidance to underwriters on areas of the world that it believes pose a greater war risk for cargo, Mr. Smith said.

See **CARGO**/next page

High court says surpluses must be distributed in partial terminations

Ruling roils Canadian pension system

By GLORIA GONZALEZ

A recent Supreme Court of Canada decision requiring distribution of surpluses for partially wound-up pension plans may have a significant impact on the way Canadian employers structure and fund their pension programs.

Some pension experts say the decision will encourage employers to either eliminate defined benefit plans or refrain from fully funding them out of concern that they will not have control over pension plan assets if the plans become overfunded. Others say the impact of the decision will be limited by union opposition to pension changes, regulatory oversight and employer ownership of pension surpluses of modern plans.

In *Monsanto Canada Inc. vs. Ontario (Superintendent of Financial Services),* Canada's high court upheld the superintendent's determination that the Ontario Pension Benefits Act requires the distribution of a proportional share of actuarial surplus when a defined benefit pension plan is partially wound up.

A partial wind-up refers to the termination of part of a pension plan and the distribution of the assets of the pension fund related to that part of the plan.

The Monsanto case originated in 1997 following a corporate reorganization of Winnipeg, Manitoba-based Monsanto Canada. At the time of the reorganization, the pension plans in question had a $19.1 million Canadian ($14.3 million) surplus. Monsanto submitted a pension wind-up report to the superintendent, who refused to approve the partial wind-up report because it failed to provide for the distribution of surplus assets related to the part of the pension plan being wound-up. The company appealed, and the case went through several legal challenges before the Supreme Court upheld the superintendent's interpretation of the statute.

The employers involved in the case say they are still unsure of the exact impact of the decision. A Monsanto spokeswoman said the company would likely have to file another partial wind-up report. "There's a very minimal impact on Monsanto Canada, probably $300,000 Canadian ($224,610) or less, but it has no direct impact on current Monsanto Canada Inc. employee pension benefits."

A spokesman for Toronto-based Pfizer Canada, which became a party in the Monsanto case after purchasing the pharmaceutical unit at the heart of the partial wind-up plan, said the company is reviewing the decision to determine what it needs to do to comply.

The Monsanto decision has a direct impact on the 281 partial wind-up reports filed with the Financial Services Commission of Ontario since 1992, because they have to be reviewed and possibly revised to incorporate mandatory distribution of pension surpluses. All of the pension plans featured in these reports had a surplus at the time their report was filed, a FSCO spokeswoman said.

See **CANADA**/page 43

PHOTO: AFP

A blast at a natural gas pipeline late last month killed 17 and damaged buildings in an industrial park in Ghislenghien, Belgium.

Belgian pipeline owner insured for explosion

BRUSSELS, Belgium—The owner of a Belgian natural gas pipeline that exploded July 30, killing 17 and damaging nearby industrial buildings, confirmed that it is insured for losses related to the accident.

The explosion occurred just before 9 a.m. local time at an industrial park near Ghislenghien, Belgium, southeast of Brussels, according to a spokesman for Fluxys N.V., which owns the pipeline.

He noted that workers caught in the blast were from both Fluxys and other companies operating in the industrial park. The company has not yet estimated its losses from the accident, whose cause is under investigation, he said.

Another spokesman for Brussels-based Fluxys confirmed that the company has "appropriate insurance for this type of accident." Market sources said the coverage was placed through Aon Belgium N.V. into the local market.

—By Peta Miller

World Updates

Pension deficits narrow at large U.K. companies

The defined benefit pension fund deficits of the 100 largest U.K. public companies fell 24%, to £42 billion ($76.40 billion), in the 12 months ending June 30, a study shows. London-based actuarial consultant Lane Clark & Peacock measured the deficits of FTSE 100 companies, as reported under Financial Reporting Standard 17.

Munich Re posts $1.46 billion profit

Munich Reinsurance Co. recorded a profit of 1.2 billion euros ($1.46 billion) for the first half of 2004, compared with a loss of 529 million euros ($608.4 million) for the same period last year. Munich Re's gross written premiums declined 5.2% to 19.7 billion euros ($24.0 billion) in the first half, in part because of exchange rate fluctuations, the company said. Last year's first-half loss stemmed in part from tax provisions for investment writedowns. A spokesman for the Munich, Germany-based reinsurer noted that 2003 results have been restated for comparability with the 2004 figures, under international accounting standards.

JLT reorganizes Risk Solutions

London-based broker Jardine Lloyd Thompson Group P.L.C. has reorganized its Risk Solutions division. Starting Sept. 6, Mike Hammond, a member of the group's executive committee, will become chief executive of the Risk Solutions team. Dominic Collins, a JLT director, will become chairman of Risk Solutions, replacing John Lloyd. Mr. Lloyd will then concentrate on the formation of a separately branded company, Lloyd & Partners Ltd., that will focus on independent retail business, largely from the United States. JLT expects the unit to be operating by year end.

Briefly noted

Gilles Bonvarlet has been appointed chief operating officer of London-based **Talbot Underwriting Ltd.** Mr. Bonvarlet was most recently managing director of XL London Market Ltd. He will take up the newly created COO role at Talbot in early November, the company said in a statement....An investment management company has created the Isle of Man's first **protected cell company.** Merrill Lynch Investment Managers (Isle of Man) Holdings Ltd. has named Willis Management (Isle of Man) Ltd. as the manager of its new cell company, Merrill Lynch Insurance PCC Ltd. A law allowing PCCs took effect earlier this year.

Cargo: U.K. war risk rating committee disbands

Continued from previous page

This information eventually will be freely available online to underwriters, who will then have to determine rates themselves, Mr. Smith said.

While the change is not expected to have any short-term effects on coverage prices, over time it could lead to greater negotiating leverage for buyers, especially larger ones, market sources say.

"Generally, brokers have given an undertaking to carry on with terms and conditions as they were immediately prior to the withdrawal" of the schedule, said Richard Golder, cargo underwriter at Amlin P.L.C.

But, as risks come up for renewal, "in theory, it will be easier to get a cheaper product, but that remains to be seen," said a broker who did not wish to be identified. The broker added that there might be downward pressure on rates for larger contracts.

Brendan Flood, marine underwriter at Lloyd's of London syndicate 33, which is operated by Hiscox P.L.C., also suggested that the withdrawal of the committee ratings may open up negotiating avenues for bigger buyers.

In addition, Amlin's Mr. Golder noted that now that war rates are nonstandard, underwriters may become less disciplined.

For example, he pointed out that after the Sept. 11, 2001, terrorist attacks, the war risk committee met and increased the basic rate to 0.05% of cargo value, from 0.0275%.

However, "going forward there will not be that coercion between the markets. Everyone will do their own thing," Mr. Golder noted.

In addition, he said, underwriters may see increased administration costs as, in the absence of the committee, they will have to give notice of rate changes to every account.

Eventually, the war risk cargo component of coverage could be swept up into the main cargo rate, which could make cover cheaper, sources said.

That incorporation into the physical damage part of the policy is already happening, according to Mr. Smith.

But another underwriter predicted the opposite could happen.

"You may find some syndicates will try and take the war away from the cargo policies," he suggested, seeking to write a book of war risk business, said the underwriter, who asked not to be identified.

Rebates: Wellness nets reward

Continued from page 4

healthier lifestyles, observers say.

"The intent (of the law) is to improve the health condition of the population, which is going to be something that not only helps the individuals themselves, but also, by having a healthy lifestyle, claims activity will be reduced and health insurance premiums will start to come down," said Frank Ino, chief actuary for the Office of Insurance Regulation in Tallahassee.

"So the motivation is both the improved health status of individuals plus the improved health of the marketplace in regards to insurance premiums," Mr. Ino said. Premiums "have been going up quite rapidly, and this is one method to try and curb that direction."

Plan details will be worked out by the individual insurers, he said.

"We're not going to attempt to establish standards of what (rebate) plans have to look like; that's going to be left up to the marketplace to decide," he said. The insurance department's role is to make sure that insurers offer the rebates on a nondiscriminatory basis and that participants get a fair rebate, Mr. Ino said.

Mark Wilson, a senior vp with the Florida Chamber of Commerce, described the law as "an exciting development" for employers in Florida.

Although he acknowledged that most of the Chamber's members are not yet aware of the new law, Mr. Wilson noted that "the employers that do know about it are encouraged by it."

"The bottom line is, it needs to get into the market and it needs six to nine months of employers knowing about it before we can say it's a great thing or not," Mr. Wilson said. "There's an old saying, 'Is the juice worth the squeeze?' Sometimes, if the paperwork and all the other requirements are going to cost 10% more, it's not worth the 5% rebate."

'The bottom line is, it needs to get into the market and it needs six to nine months of employers knowing about it before we can say it's a great thing or not. ... There's an old saying, "Is the juice worth the squeeze?"'

Mark Wilson
Florida Chamber of Commerce

Observers note that implementing and administering such rebate plans will be challenging.

"We support the concept of encouraging employees and individuals to participate in activities and wellness lifestyles that improve their health," said Randy Kammer, vp of regulatory affairs and public policy for Jacksonville-based Blue Cross & Blue Shield of Florida.

"If we can determine a way to do this in a manner that is logical, cost-efficient and truly rewards behaviors without creating any fraudulent situations, I think it's a good idea. But (Florida is) the first in the nation. We are a pioneer in this, and, as you know, most pioneers are the ones who have to struggle through the bushes to determine how this is going to work. So I think we'll have a lot of challenges trying to implement what is conceptually a very good idea but in practical application may prove to be very challenging," Ms. Kammer said.

Among the matters to be determined are the level of rebate and the standard of wellness, she said. "How are employers involved in this and how do they communicate this with employees, because it is their responsibility to communicate how many employees, for example, are participating in smoking cessation and have succeeded?" Ms. Kammer added.

"There's a lot of questions, for sure, that need to be answered before you can say that it's going to work or not going to work," agreed Howard Gruverman, managing partner of Chapman Schewe of Florida, a Fort Lauderdale-based health care consulting firm. "Theoretically and strategically, it's a great idea."

And even if not all the details are worked out, "at least you're starting to work in the right direction" to encourage people to be more collaborative in their health care purchases, he added.

Drug company settles charges over Claritin

By GLORIA GONZALEZ

PHILADELPHIA—Schering Sales Corp., a unit of drugmaker Schering-Plough Corp., has pleaded guilty to a federal criminal charge of violating the Anti-Kickback Act in an alleged arrangement it had with CIGNA Corp. over the allergy drug Claritin.

Federal prosecutors accused Schering Sales of paying CIGNA \$1.8 million to induce the company to keep Claritin on its drug formulary. Kenilworth, N.J.-based Schering-Plough will pay a criminal fine of \$52.5 million and pay \$293 million to various government agencies for losses stemming from its alleged overcharging for Claritin.

Philadelphia-based CIGNA will not face criminal charges for its alleged role in the arrangement, according to a spokesman for the U.S. Attorney's Office for the Eastern District of Pennsylvania. CIGNA did not return a call for comment, but the company issued a statement saying it has been cooperating with the investigation.

According to court documents filed by the U.S. attorney's office, the situation arose in the late 1990s when CIGNA demanded a price reduction in Claritin because it cost the company millions of additional dollars a year to purchase Claritin rather than Allegra, a cheaper, therapeutically equivalent allergy drug. However, Schering Sales refused to lower the price, in part because it knew it would also have to lower the Claritin price for the Medicaid programs, prosecutors charged.

PHOTO: GETTY

A Schering-Plough unit faces fines relating to a formulary deal involving Claritin.

After CIGNA decided to take Claritin off its formulary, Schering Sales developed a plan to make up the difference between the price of Claritin and Allegra in lieu of an actual price reduction on Claritin, the prosecutors alleged. CIGNA accepted the plan and retained Claritin on its formulary, according to prosecutors' court filings.

Canada: Court ruling roils pension plan sponsors

Continued from page 41

Mandatory distribution of surpluses from ongoing pension plans jeopardizes funding security for all plan members, consultants say. "The risk to all members is that (the pension plans) are not as likely to be well funded as they were in the past," said Stephen Pibworth, legal consultant for Hewitt Associates Canada in Toronto.

Pension experts say the Monsanto decision may force plan sponsors that did partial plan wind-ups in the past to distribute pension funds, even if the plan is currently underfunded.

"A plan that was in surplus 10 years ago may be in a deficit situation today," said Michael Beswick, chair of the Assn. of Canadian Pension Management's advocacy and government relations committee in Toronto. "The plan sponsor could be required to distribute that so-called surplus to those former members affected by the partial wind-up, driving the plan further into deficit today."

"It may mean they have to put fresh cash into the pension plan to distribute the surplus," said Paul Purcell, Canadian retirement practice leader for Mercer Human Resource Consulting in Toronto.

Companies that did not institute partial wind-ups of their pension plans when they had facility closures or reorganizations may be forced to retroactively examine their pension plans and distribute any surplus, said Randy Bauslaugh, a partner in the pensions and employee benefits practice of Toronto-based Blake, Cassels & Graydon L.L.P. These companies may face legal challenges from affected employees who will argue a wind-up should have occurred and demand a surplus distribution, said Mr. Bauslaugh, a lawyer who represented the ACPM in the Monsanto case.

The Supreme Court's decision will have far-reaching implications for Canadian employers with defined benefit plans, some pension experts say. Defined benefit plans in Canada have been dwindling for a number of reasons, including the slump in the equities markets that has reduced the value of plan assets. Faced with the prospect of having to make large contributions to boost funding, some Canadian employers have been terminating the plans, and others have closed their plans to new employees.

Forcing employers to distribute pension surpluses is another reason for them to shy away from offering defined benefit plans. "The decision in the long run will inspire the end of some defined benefit plans," Mr. Purcell said. "It's just another piece of the overall negative environment for sponsoring pension plans we've seen here in Canada."

However, companies that try to change the structure of their pension plans often meet strong union opposition, consultants say. So while the Monsanto case may give employers another reason to switch to defined contribution plans, they still may not be able to because unions could stymie their efforts, experts say. "Unions don't want any part of defined contribution plans," said Ian McLeod of John Chute & Associates, a benefit consulting firm in Toronto.

Some pension experts believe the decision will impact employer contributions to pension plans and their investment policy. Many plan sponsors favor a conservative funding approach, meaning that they try to maintain a funding cushion to counter market downturns, but the Monsanto decision will likely change this policy. "Many plan sponsors will now try to fund their plans without accumulating any surplus to avoid being forced to distribute it as a result of a partial wind-up," Mr. Beswick said.

The impact of any change in funding policy, however, will be limited by the fact that pension regulators will force companies to fund their pension deficits at certain levels, said Greg Hurst, a Vancouver-based pensions consultant with Heath Benefits Consulting Inc.

The Supreme Court of Canada decision ultimately raises more questions than it answers for pension plan sponsors in Canada, pension consultants say. For example, while the court upheld the superintendent's interpretation of the statute, the decision left open many questions related to surplus ownership.

Canadian companies bear the burden of pension plan deficits and argue that they should also have control over surpluses, but employees believe any pension surpluses are part of their wages and should be distributed to them, consultants say.

The issue of who owns the surplus will be determined by pension plan documents, negotiation and perhaps litigation, said Ian McSweeney, co-chair of the pensions and benefits practice with Osler Hoskin & Harcourt L.L.P. in Toronto.

Part of the uncertainty regarding ownership arises from the fact that pension plans are usually many decades old and the documents are ambiguous on the ownership issue. "That's only going to be an issue for employers who have pensions older than 20 years," Mr. Hurst said.

"I have a number of clients with defined benefit plans and this is not a problem for them because the issue is settled in the plan documentation," he said.

Even if employers own the surplus, however, they may still be forced to share it with the employees, pension lawyers say. In Ontario, legislation dictates they must get permission from the employees to withdraw the surplus, even if the employers own the surplus. This means that employers are often forced to share the surplus with employees in exchange for being allowed to withdraw any funds, they say.

When Cambridge, Ontario-based WCI Canada Inc. wound up part of its pension plan, the surplus for the wound-up portion was \$741,349. Even though the plan provided for payment of the surplus to the employer upon wind-up, WCI allotted 61% of the surplus to improving benefits for those workers with the remaining 39% paid to the employer, according to a partial wind-up report submitted by the company to the superintendent.

"Ontario says if employees own the surplus, they get it," Mr. Bauslaugh, "If employers own it, they have to share it."

Monsanto Canada Inc. vs. Ontario (Superintendent of Financial Services); Supreme Court of Canada, No. 29586, July 29. The case is available at www.lexum.umontreal.ca/csc-scc/en/index.html.

Hotels: Chain sues for lost revenue nationwide

Continued from page 1

gued that the Federal Aviation Administration's grounding of air traffic after the attacks triggered coverage under the provision, the court noted that the provision requires a civil authority to "prohibit" access to an insured property. The FAA action may have kept people from getting to New Orleans, but it did not prohibit access to Bienville's hotels, the court ruled.

Another hotel company, Oklahoma City-based Southern Hospitality Inc., similarly lost its case against Zurich American Insurance Co. An Oklahoma City federal court ruled last year that the impact of the FAA order was "tangential" to the company's losses and did not "prohibit" access to its hotels. Southern Hospitality has appealed the ruling.

Several airport owners—including the Massachusetts Port Authority and the cities of Chicago and Los Angeles—also have sued insurers for business interruption losses, citing either the civil authority or ingress/egress clauses.

The city of Chicago, for example, argued that the destruction of the WTC and damage to the Pentagon led to limitations on access to its airports, triggering coverage under the ingress/egress provision. A federal court in Chicago disagreed, though, finding the Sept. 11 damage too remote to trigger coverage. The city is appealing.

Terms differ

CDL's position is different from earlier plaintiffs', though, because the language of its civil authority and ingress/egress clauses is broader, according to Robert E. Juceam, a lawyer with Fried, Frank, Harris, Shriver & Jacobson in New York, who represents the hotel company.

Its civil authority clause, for example, is triggered when access to a property is "discouraged or prohibited" by a civil authority—rather than just "prohibited"—as a result of a covered peril such as terrorism, Mr. Juceam noted.

"Travelers and we will have a fight over what that means," he observed.

The ingress/egress provision, meanwhile, is triggered when access to a property is "prevented or hindered" by a covered peril.

CDL's civil authority clause is triggered when access to a property is 'discouraged or prohibited' by a civil authority—rather than just 'prohibited'—as a result of a covered peril such as terrorism.

Robert E. Juceam
Fried, Frank, Harris, Shriver & Jacobson

Travelers wrote a $400 million second excess policy for CDL from Jan. 1, 2001, to Jan. 1, 2002. The policy followed the form of an underlying $5 million primary policy written by American International Group Inc.'s Lexington Insurance Co. unit. A $5 million first excess layer was evenly divided between Essex Insurance Co. and Greenwich Insurance Co., according to CDL's complaint.

The primary and first excess layers of CDL's property and business interruption coverage were exhausted by claims for damage to the Millennium Hilton in New York, court documents show. That hotel—which was located near the World Trade Center site and was heavily damaged in the terrorist attacks—is the subject of a separate dispute between CDL and Travelers.

The Sept. 11 attacks caused losses in a variety of ways at nine CDL hotels other than the Millennium Hilton, the lawsuit alleges.

The FAA's nationwide ban on air traffic affected all the hotels, and local FAA orders in Los Angeles and Boston either halted or sharply reduced traffic in the days after the attacks, the suit says. In addition to ordering bridge and tunnel closures, New York City authorities also barricaded streets near the United Nations headquarters, impeding access to CDL's Millennium UN Plaza Hotel, the suit says.

Under the civil authority and ingress/egress provisions, CDL seeks $2.9 million in damages for the UN Plaza Hotel; $6.7 million for two other New York City hotels; and $2.4 million for hotels outside New York.

The suit also seeks damages under a one-year "period of recovery" provision that it says covers lost revenues while a policyholder is restoring its business to preloss conditions. Under this provision, CDL seeks $8.4 million for the UN Plaza hotel; $45.0 million for its other New York hotels; and $28.6 million for its hotels outside New York.

Travelers has refused to pay the claims and contends that it does not provide civil authority or ingress/egress coverage following the form of the Lexington policy, the complaint charges.

Separate action

The complaint follows a separate declaratory judgment action filed by Travelers last year, in which the insurer contends that it is liable for only a fraction of CDL's $74 million claim for business interruption losses at the Millennium Hilton in New York.

CDL responded last month with a counterclaim for breach of contract and declaratory judgment against Travelers on the Millennium Hilton claim.

CDL's total claim of $108.8 million on the building includes $33.6 million in property damage; $61.2 million in business interruption losses from the date of the attacks until the hotel reopened on July 1, 2003; $12.8 million in additional business interruption losses after the reopening, covered under an extended period of indemnity; and $1.2 million in other expenses.

To date, Travelers has paid CDL $46.5 million on its Millennium Hilton claims, but the two sides are in sharp disagreement over coverage terms.

As in its other suit, CDL argues that Travelers agreed to follow the form of the Lexington policy, which provides business interruption coverage with a three-year period of indemnity and a one-year extended period of indemnity. Travelers in fact issued its excess policy with a following form endorsement and no separate business interruption provisions, court filings say.

In an echo of the litigation that pitted WTC leaseholder Silverstein Properties Inc. against its insurers, Travelers argues that CDL and broker Willis Group Ltd. never provided a final version of the Lexington policy before the Sept. 11 attacks. Travelers contends that it agreed only to a one-year period of indemnity with a 180-day extended period of indemnity and should not be bound by Lexington's terms.

U.S. District Judge Michael B. Mukasey dismissed several of Travelers' claims against CDL in June, including a bad faith charge against CDL for failing to tell Travelers of the broader terms of the Lexington policy.

Travelers' demand for a declaratory judgment on the terms of its own policy is pending, along with CDL's counterclaim.

PHOTOS: AP/WIDE WORLD

The owner of the Millennium Hotel in St. Louis, top, contends that it lost revenues as a result of the Sept. 11, 2001, terrorist attacks. The attacks heavily damaged the Millennium Hilton in New York.

Trucking: Terror fears prompt new security rules

Continued from page 4

"The impetus behind the security rules clearly was Sept. 11," said Richard Moskowitz, assistant general counsel at the ATA. "But an underlying benefit is a reduction in cargo claims. So we would be cautiously optimistic" about insurance rate reductions.

Daniel G. Bancroft, managing director at Marsh USA Inc. in Philadelphia, said he doesn't expect truckers' rates to change because of the new requirement. "Rates are stable for quality motor carriers," he said, noting that in some cases truckers already are getting slight price breaks.

Mr. Moskowitz said many truckers, though, are seeing just the opposite in the current market, with rates firming as the economy strengthens and demand for transportation services rises.

Even without a break on insurance costs, there is a payoff, according to the FMCSA. The agency estimates that the measure will mean a savings to the U.S. economy of $3.7 million annually because of fewer accidental releases of hazardous materials.

The new requirement could leave some trucks in park, at least for a while. Other companies will have to make changes to comply in time to receive the permit.

Under the rule, a permit to haul the materials will not be issued to trucking companies that have a crash rating within the top 30% of the national average among motor carriers unless an FMCSA compliance review clears the company.

Trucking companies will have to show that they are in compliance with FMCSA regulations already in place that require a security plan for haulers of hazardous materials.

'The impetus behind the security rules clearly was Sept. 11...but an underlying benefit is a reduction in cargo claims. So we would be cautiously optimistic' about insurance rate reductions.

Richard Moskowitz,
American Trucking Assns.

They also must meet the standards already in place for training employees who handle hazardous materials.

The new rules require a trucking company applying for the new safety permit to develop a communications plan that allows for periodic tracking of a hazardous materials shipment.

Communications can be accomplished either through telephone calls or electronic monitoring or tracking systems.

The rule states that, "At a minimum, the communication plan must require contact from the driver or electronic tracking equipment at the beginning and end of transportation (during loading and unloading of a permitted material) or at the beginning and end of each duty period."

If the company has any reason to believe a shipment has been stolen, diverted or taken off-route, it must contact the Transportation Security Administration.

Companies hauling radioactive materials that require the new permit will be required to undergo a pretrip inspection by a government inspector, who will make sure the driver and his truck are qualified to make the delivery.

Mr. Bancroft said he believes motor carriers are, for the most part, prepared for the changes. For those who haul hazardous materials, their safety records "are of the utmost importance to them," he emphasized.

Rather than a major change, the new requirements represent a "continuation and evolution of the heightened awareness and focus on safety" that has occurred in trucking in recent years, Mr. Bancroft noted.

Olympics: Security sets new precedents

Continued from page 3

ism or natural catastrophes such as earthquake, flooding or landslide.

The events of Sept. 11 altered perceptions of terrorist risk in a way that previous acts of terrorism—such as the bomb attack on the 1996 Olympic games in Atlanta—did not, according to Michael Wright of Willis Group Holdings Ltd.'s national sports and entertainment group in Atlanta.

"Prior to Sept. 11, 2001, terrorism was not such a paramount concern on the event cancellation insurance side of the equation," Mr. Wright said.

Adding to fears was the explosion of a homemade bomb near an electrical substation outside Athens last week, though Greek authorities said that there were no injuries.

The IOC's purchase of cancellation cover is "unprecedented," according to David Mair, president of the risk management consulting firm Risk Excellence in Melbourne, Fla., and former director of risk management for the United States Olympic Committee.

"I think it is indicative of (the IOC's) level of concern for these games," Mr. Mair said. "It is a way of managing the risk that some attack on the world's largest peacetime gathering of athletes…could be disrupted by a terrorist event."

Mr. Mair noted that the terrorist threat to the Olympics had changed because terrorist organizations such as Al Qaeda do not have national boundaries. Previously, he noted, terrorist groups had frequently abated activity around the time of Olympic games because of a desire not to see athletes—and nations—punished by exclusion from the Olympic movement.

Other companies and organizations involved in the Athens Olympics have also been purchasing event cancellation coverage, market sources say.

Prices for such coverage have been "fairly spectacular" because of the terrorism risk, noted Adrian Thomas, a director of Aon Ltd.'s global risks division in London.

While terrorism could be included as part of event cancellation policies, brokers have placed much of the terrorism coverage on a stand-alone basis with specialist terrorism underwriters for the Athens games, he noted.

Parties that have sought event cancellation coverage include the sponsors of the event and television networks, sources say.

The New York-based National Broadcasting Co. Inc., which will be covering the games for American audiences, has a 10-year event cancellation policy that it purchased during the 1990s, sources say. Such a policy would be difficult to purchase now due to the unwillingness of reinsurers to provide multiyear coverage for terrorism risks, they note.

NBC risk managers could not be reached for comment.

Most other television companies with broadcast rights for the Olympics likely have considered purchasing coverage for cancellation in the event of terrorism, said James Hopper, broking director of Marsh Ltd.'s sports and leisure business in London. "Some of them will buy (coverage), and some of them will elect not to buy" because of the high cost, he noted. "It is a commercial decision."

Many companies that have purchased event cancellation coverage have had a difficult time securing large limits, brokers say.

The terrorism risk, coupled with other catastrophe risks such as earthquake, have made underwriters wary of taking a large line on Olympics-related risks, they say.

"Pre-Sept. 11, 2001, if one wanted to place, say, $250 million on a major event, one could do it with, really, quite a lot of ease. Now it is an extremely difficult limit to reach," noted Marsh's Mr. Hopper.

Other insurance coverages in place for the upcoming games include a 200 million euro ($240.5 million) liability program purchased by the Athens organizing committee, or ATHOC. That program was placed by Lloyd's broker Swinglehurst Ltd. in conjunction with a domestic Greek broker, underwritten by Athens-based Agrotiki Insurance S.A. and reinsured in the Lloyd's and London company markets.

The coverage period is March 2004 to year-end 2005, and it covers ATHOC for liabilities it may face as a result of injuries to athletes or the general public.

The policy does not include terrorism coverage, said Jonathan Monk, a partner at of Swinglehurst.

Swinglehurst also placed a property policy to cover ATHOC's nonfixed assets, such as security devices and computer equipment. That policy is adjustable on a monthly basis, according to the value of the assets in place at any one time, Mr. Monk said. The property policy does include terrorism coverage, he said.

Other organizations and companies have bought a wide array of coverages for Olympics-related exposures, including terrorism coverage for damage to camera equipment and group accident and health policies for teams of athletes attending the event, sources say.

Security has been a major issue for ATHOC, noted Mr. Mair, who pointed out that the security budget for the 2004 games—which the Greek government announced was about $1.5 billion—is approximately equal to the total budget for the Atlanta 1996 Olympics.

"Very clearly, one of the great security challenges is to let your imagination run loose in terms of what kinds of attack we might see," he said. "Certainly, a dirty nuclear device is a concern; it is something we were concerned about for Salt Lake (for the Winter Olympics) in 2002. Chemical or biological (threats are), obviously, something that you are going to be very concerned about."

Brokers noted that it is virtually impossible to buy insurance coverage against a biological or chemical attack.

The security efforts for the Athens Olympics also include increased international cooperation. For example, 400 U.S. special forces are due to be positioned offshore.

The cooperation is "unparalleled in the history of the games," said Mr. Mair.

Other measures put in place by ATHOC include the use of two high-sensitivity detectors—donated by the U.S. government—to scan the contents of heavy vehicles delivering equipment to Olympic venues.

In addition, several security-readiness exercises have been carried out, ATHOC said, and security briefings with National Olympic Committees have been held.

Alert: A warning to those outside specific cited areas

Continued from page 1

indicating a high risk of terrorist attacks—from yellow, or elevated risk, for specific entities in specific buildings in the three cities. All of the buildings and entities, believed to be specific targets of Al Qaeda-linked terrorists, are connected to financial services.

Ironically, such entities are better prepared than most to deal with terrorism, pointed out Anna Sabasteanski, the president of the Belmont, Mass.-based Asset Management Network and the publisher of the Terrorism Central newsletter.

"Financial institutions, in general, are very well equipped already to deal with this. They all got a message after Sept. 11," said Ms. Sabasteanski, who is also an associate member of the New York-based Risk & Insurance Management Society Inc. "It's not news to them that Al Qaeda is targeting financial institutions; they have known a long time."

"It is unusual—this is the first time publicly that the Department of Homeland Security has selected specific locations. Those locations need to take extra precautions. But any major facility that could have an impact on the economy or on the political landscape could be a target," said Vic Sordillo, global technical manager for Chubb Corp. in Whitehouse Station, N.J.

Mr. Sordillo said that while most large operations have improved their security since the Sept. 11, 2001, attacks, the heightened alert "reminds us that we need to ensure our discipline."

"We need to test our security, and we need to look at our perimeter protection," he said.

Mr. Sordillo noted that terrorists, unlike most criminals, often are willing to die for their cause. That means that traditional screening methods, such as searching cars once they are in a parking garage, won't necessarily prevent an attack.

"You won't capture someone who's willing to sacrifice his life," he said. "You've got to reassess your alarm systems, your guard service if you have one, and you have to look at the strength of the physical barriers that you have in place."

"You can further tighten up the controls on the normal flow of travel in and out of your building," Mr. Sordillo said.

"This is the point where normal screening needs to be ramped up," said Christopher Grniet, vp-Kroll Schiff & Associates, a security consulting and engineering unit of Marsh Inc. in New York.

For example, deliveries should be monitored carefully, he said, because the expected method of attack in the current alert is an explosive of some sort. Such a device could be placed in a backpack or briefcase, as well as in a vehicle, Mr. Grniet pointed out.

A spokeswoman for Prudential Financial Services in Newark, N.J.—one of the entities specifically cited as a potential target in the Aug. 1 warning—noted some of the steps that had been taken to secure the company's facility. By Aug. 4, she said, "it was return to normalcy, given the fact that there are still visible signs of increased security. Our own security team is visible both inside and outside the building. In addition, we have local law enforcement police presence, and we did add concrete barriers."

Contingency and business continuity plans are also critical, noted Rish Riswadkar, a business development consultant with Zurich Financial Services Group in Schaumburg, Ill. "Every company should think about business continuity planning. This is not a one-time deal; the threat of terrorism is with us all the time," he said.

ZFS has prepared a checklist for businesses seeking to decrease their vulnerability to terrorism (see related story).

"One of the steps is the risk assessment or threat assessment. Your company's threat is going to be different depending on who you are, where you're located. Based on the threat level, that's when you need to double up your plan commensurate with the threat level," Mr. Riswadkar said.

PHOTO: NY TIMES

New terror warnings from the U.S. Department of Homeland Security prompted an Aug. 2 sweep of a commuter train in downtown Washington by the district's Metro Transit Police Special Response Team.

John Phelps, director-risk management for Jacksonville-based Blue Cross & Blue Shield of Florida, said that the Florida Blues' contingency plan is no static document.

> **'Every company should think about business continuity planning. This is not a one-time deal; the threat of terrorism is with us all the time.'**
>
> *Rish Riswadkar*
> *Zurich Financial Services Group*

"Over the past two years, we spent a great deal of time re-evaluating our contingency plans. And, in addition to that, we've done a lot of evaluation of our facilities, to identify potential issues from a terrorist event, and have worked hard to fill those gaps and tighten security. One thing we're doing is developing a medical response team—we have a lot of people who have the education and experience—who can administer emergency first aid when community resources may be overwhelmed," Mr. Phelps said.

The threat is not likely to pass any time soon, pointed out Michel Leonard, chief economist and head of political risk consulting for Aon Trade Credit Inc. in New York. In fact, it's likely to remain until at least the November elections, Mr. Leonard said.

"It is different than previous alerts because it is selective, and, as result of that, it raises the bar in terms of response on the part of those targeted firms," he said.

Because of the nature of the warnings, companies could potentially be exposed to new liability, noted Mr. Leonard. "Here is a new potential liability, in terms of D&O and terrorist liability," he said. If there were an attack, questions could arise over whether companies took sufficient steps to protect their employees, he said.

And this should not concern only those companies named as targets, say experts. Kroll's Mr. Grniet asked, for example, what might happen if a terrorist, for some reason, could not carry out an attack as planned.

"If somebody had plans and was intent on doing something today, they have two choices: turn around and go home, or pick another target if they can't inflict the damage they anticipated doing to the original target," Mr. Grniet said. "If you live next door to (a named target), you should be as vigilant as if you were them," he said.

That message is not being lost on risk managers.

"Anything that the government sends out we're certainly looking at," said Lance Ewing, vp-risk management for Caesars Entertainment Inc. in Las Vegas. Mr. Ewing called the identification of specific buildings "a new twist and one that we will continue to watch closely in our industry." Both government and private sector entities "have to work in tandem when these types of announcements are made," he said.

And concerns don't stop at the U.S. border. Joe Hardy, director-risk management and insurance for Hudson's Bay Co. in Toronto, said that the Canadian retailer's risk management department has "ownership of our emergency response plan for the entire company."

"The plan is in place, and all we would do is just raise our level of awareness for people to implement the plan," he said. Even though "the likelihood of it happening in the U.S. might be greater than it is here," he said, "the accountability is with us."

Zurich's preparedness advice stresses plans review, control of access points

Zurich Financial Services Group is offering advice to business owners for responding to the recent elevation in the terrorism threat level. Among the steps the insurer advises businesses to take are to:

• Review site security and business continuity plans. If a business does not have such plans, they are long overdue.

• Increase perimeter surveillance, illumination and protection. Use physical barriers to restrict vehicular access to building entrances.

• Enhance access and visitor controls. As part of this, companies should verify the purpose of all visits and use identification badges and escorts. They also should institute search procedures for suspicious packages and limit access points into the premises.

• Ensure screening procedures in the receiving department and the mailroom for deliveries and mail packages.

• Protect and prevent unauthorized access to heating, ventilation and air conditioning air intakes.

• Update the emergency contact list for employees and the emergency response team and make sure it is accessible in case of emergency.

• Ensure that critical business records are backed up regularly.

• Review all standby vendor contracts and service level agreements for data center operations.

• Review telecommuting options for employees in case of an emergency.

• Conduct a tabletop simulation drill and a walk-through exercise to test the company's readiness.

—By Mark A. Hofmann

Late News

Continued from page 1

consumers, driving up the very drug costs it is supposed to lower." Express Scripts, however, responded in a statement that it has saved the state more than $2 billion in drug costs since 1998.

Enron fighting PBGC on plan takeover

Enron Corp. has asked a federal bankruptcy court to block the Pension Benefit Guaranty Corp. from taking over and terminating Enron's four underfunded pension plans. Enron, which filed for bankruptcy in late 2001, contends the PBGC is frustrating its reorganization efforts and interfering with the authority of the bankruptcy court to handle claims. The PBGC, though, has said Enron has not made any progress in terminating the plans, which are underfunded by about $320 million, through a so-called standard termination. In such an arrangement, an employer purchases annuities from a commercial insurer to cover promised benefits.

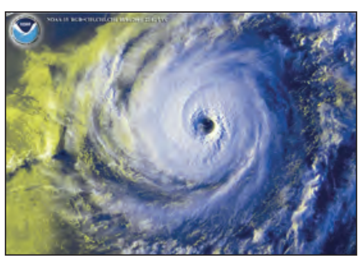


PHOTO: NOAA

An above-average level of activity is predicted for this year's hurricane season.

Hurricane forecasters update predictions

Forecasters are continuing to predict above-average Atlantic hurricane activity. In a forecast issued Friday, William Gray's team at Colorado State University in Fort Collins lowered to seven—from the eight it had forecast in late May—the number of hurricanes it expects to form this season. That compares to an annual average of 5.9 hurricanes from 1950 to 2000. The team lowered its forecast because of changes in atmospheric conditions. Meanwhile, London's Tropical Storm Risk updated its forecast Aug. 4, predicting 7.6 hurricanes, up from 6.6 predicted on July 5. TSR, a consortium of insurance industry and academic experts, based its forecast on wind speed and sea-surface temperature in the tropical North Atlantic. Both forecasters plan to issue updates in early September.

Captive premium growth outstrips rise in surplus

U.S.-based captive insurance companies have enjoyed substantial growth, but not without a cost, an A.M. Best Co. report says. Net premium writings grew 45%, while admitted assets rose by nearly 29% over a five-year period ending in 2003, the report says. The growth led to a concurrent increase in loss reserves of nearly 35%. Surplus, though, grew by 2% in the period. "As a result, while the underwriting risk covered by captives has grown, it has come at the cost of increasing leverage," Best reported. Best based the study on data from 159 U.S. captives that provide statutory financial statements.

UPS agrees to settle suit on parcel coverage

United Parcel Service Inc. will provide vouchers to customers to settle a consolidated class action lawsuit that alleged UPS overcharged shippers for excess-value package insurance written by a Bermuda-based company owned by UPS employee-shareholders. Atlanta-based UPS was hit with 27 such lawsuits across the country after a U.S. Tax Court judge ruled in 1999 that Bermuda-based Overseas Partners Ltd. was a "sham" intended to divert taxable UPS income from the excess-value program. A panel of the 11th U.S. Circuit Court of Appeals overturned the ruling, finding OPL served a legitimate business purpose.

Anthem seeking reversal of merger rejection

Anthem Inc. has filed a lawsuit to overturn the California insurance commissioner's rejection of its proposed merger with WellPoint Health Networks Inc. The lawsuit, filed last Tuesday in the Superior Court of California for the County of Los Angeles, seeks to set aside John Garamendi's decision to deny Indianapolis-based Anthem's application to acquire control of Thousand Oaks, Calif.-based WellPoint subsidiary BC Life & Health Insurance Co. The suit asks the court to declare that Anthem's application to acquire control of BC Life has satisfied all the legal standards for approval and to grant a permanent injunction barring the commissioner from blocking the completion of the deal, which was proposed in November 2003. In a statement, Mr. Garamendi noted the insurance code gives him full authority to reject the transaction to protect policyholders.

Malpractice reform has Kerry support: Aide

Democratic presidential nominee John Kerry supports "meaningful but enactable" medical malpractice liability reform, said one of the Massachusetts senator's health care advisers during a Washington panel discussion of health care as a campaign issue last week. Chris Jennings, president of Washington-based Jennings Policy Strategies Inc. and unpaid adviser to Sen. Kerry, said the nominee's policy would focus on preventing medical errors and promoting patient safety but would require that malpractice claims be reviewed by medical specialists to ensure that a "reasonable grievance exists."

PHOTO:EPA

Sen. John Kerry, left, is said to support malpractice reform.

Kentucky reassigns oversight of comp funds

Kentucky Gov. Ernie Fletcher last week transferred regulatory oversight for all workers compensation self-insurance funds from the state's Office of Workers' Claims to the Office of Insurance. His executive order follows an earlier disclosure that Louisville, Ky.-based AIK Comp faced a $40 million deficit (*BI*, July 19), but Gov. Fletcher last week said that an independent audit indicates the self-insurance fund faces a projected reserve deficit of $53 million through the 2003 policy year. The Office of Workers' Claims historically has regulated self-insured groups with less oversight than used for commercial insurers by the Office of Insurance, the governor said.

Gov. Fletcher

Pension funding rises among big employers

Aided by improved investment returns, the average funding level of large U.S. employers' pension plans rose in 2003 but is still well below that of a few years ago. On average, defined benefit plans sponsored by Fortune 1000 companies were 88% funded in 2003, up from 82% in 2002, according to a Watson Wyatt Worldwide survey. The improvement stemmed in part from a 19% average return on assets and an increase in employer contributions. In 2003, surveyed employers pumped $71.6 billion into their plans, up from $44.3 billion in 2002. Watson Wyatt projects that surveyed employers will contribute about $40.0 billion this year to their plans.

Briefly noted

ACE USA, a division of Bermuda-based ACE Ltd., has opened an **ACE Captive Solutions** office in Burlington, Vt., to offer alternative risk financing....Managed health care giant **UnitedHealth Group** of Minneapolis and **Harvard Pilgrim Health Care** of Wellesley, Mass., announced a new alliance, to go into effect Jan. 1, 2005, that will open up Harvard Pilgrim's provider network in Maine, Massachusetts and New Hampshire to self-funded UnitedHealth customers with at least 1,000 employees....**The City of Hope** has named Thomas R. Tizzio, senior vice chairman of American International Group Inc., as the 2004 recipient of its Spirit of Life award for fund-raising efforts. Mr. Tizzio will be honored by the Duarte, Calif.-based cancer research and treatment center at a dinner in Chicago scheduled for Nov. 18.

Check out BusinessInsurance.com

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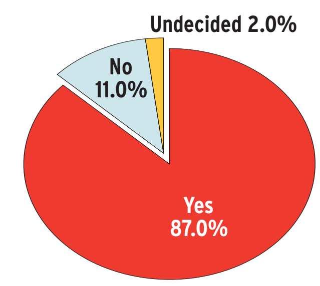
Online Poll

[8/2 - 8/6]

Do you think United Airlines should be required to fund its pension plans while in bankruptcy?



BI Stock Index

[8/2 - 8/6]

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

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

***BI* Stock Index**	2,197.15	-2.55
Dow Jones	10,139.70	-3.20
S&P 500	1,101.72	-3.43

Largest gains

Penn-America Group Inc	3.85%
Ohio Casualty Corp	3.21%
Aspen Insurance Holdings	2.33%
American Safety Insurance	2.15%
Meadowbrook Insur. Group	1.87%

Largest losses

Trenwick Group Ltd.	-66.67%
Clark, Inc.	-16.23%
Gainsco Inc	-14.29%
PMA Capital Corporation	-11.60%
Allmerica Financial Corp.	-9.09%

Weekly change by market segment

Brokers	15.26%
Insurers/Reinsurers	9.42%
Managed Care Organizations	14.49%

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