



**Cooling down the risks of heat injuries / 4**

**More employers adding partner benefits/ 3**

# Business Insurance

August 11, 2003

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\$4

## Health cover tax credit enters key phase A blueprint for change?

By **JERRY GEISEL**

**WASHINGTON**—A small federal program that subsidizes the cost of health insurance premiums for certain workers and retirees could serve as a blueprint for significantly reducing the ranks of the nation's 40 million uninsured.

Congress last year, as part of trade legislation, set up and funded a new program that provides a 65% tax credit for eligible individuals to apply toward the premiums they pay for qualified health care coverage.

The credit is available to employees who have lost their jobs due to foreign competition and to employees and to those age 55 through 64 whose pension plans have been taken over by the Pension Benefit Guaranty Corp.

The credit can be used to offset the cost of a variety of health insurance plans, including COBRA continuation coverage; state high risk pools; and plans offered by commercial insurers that meet certain standards, such as not having exclusions for pre-existing medical conditions.

Unlike other types of federal tax credits, the health coverage tax credit—or HCTC—is available regardless of whether an individual owes any federal taxes. And as of Aug. 1, the HCTC can be immediately applied to offset 65% of the health insurance premium cost.

Under an "advance refundability" system implemented by the Internal Revenue Service, the beneficiary pays 35% of his or her premium to the government, and the government, typically through electronic transfer, remits the full premi-

um to the health plan or plan administrator.

The number of people eligible for the HCTC is small—roughly 200,000 according to an IRS official—with about two-thirds eligible due to a PBGC takeover of their former employers' pension plans. Equally modest is the cost of the HCTC program: \$1.6 billion over five years.

Although the HCTC program is small, its potential as a vehicle for expanding coverage to millions of others who could not otherwise afford the cost of health insurance premiums is huge, health policy experts say.

"I don't know of anything this good in making progress to reduce the number of uninsured," said Lynn Etheredge, an independent consultant in Chevy Chase, Md., and a former senior execu-

See **COVERAGE**/page 18

### Late News

#### Trenwick to file for bankruptcy protection

Trenwick Group Ltd. and certain subsidiaries will file for bankruptcy protection in the United States and the equivalent in several other countries after failing to meet an Aug. 1 deadline for repayment of \$75 million in senior notes, the insurer announced. As part of a planned winding up, Trenwick has also agreed to sell its Lloyd's of London underwriting operation—its only remaining active underwriting unit—to the unit's management.



PHOTO: AP/WIDE WORLD

Florida Gov. **Jeb Bush**, right, discusses the state's malpractice crisis with state senators, including **Tom Lee**.

#### Florida lawmakers agree on med mal reform

Gov. Jeb Bush and Florida legislative leaders have reached an agreement on key elements of proposed medical malpractice reform legislation. The governor and lawmakers support caps on noneconomic damages levied against emergency room personnel and facilities, with practitioner caps set at \$150,000 per claimant and facility caps at \$750,000 per claimant. Nonemergency room personnel and facilities would be subject to less-restrictive caps for noneconomic damages.

#### Employers augment reservist benefits: Study

Employers are supporting reservist employees called up for service in Iraq and their families beyond their legal obligations, See **LATE NEWS**/page 19

## U.S. multinationals likely to volunteer info on violations of corruption laws

By **ROBERTO CENICEROS**

**ST. PAUL, Minn.**—In a spirit of wider disclosure to minimize the risk of regulatory or shareholder actions, more U.S. multinationals are expected to voluntarily disclose potential violations of federal anticorruption laws.

Not only can such public announcements minimize liability for nondisclosure, which was at the heart of many recent corporate governance scandals, but they may also reduce the reputational risk of being caught engaging in potentially illegal activities outside the United States.

In a recent quarterly filing with the Securities and Exchange Commission, The St. Paul Cos. Inc. reported that its own internal investigation had uncovered possible violations of the Foreign Corrupt Practices Act, a federal law prohibiting the bribery of foreign officials. The potential violation of the FCPA stems from dealings at Afianzadora Insur-

See **CORRUPTION**/page 19



## Treaty would standardize air crash compensation

By **DAVE LENCKUS**

**WASHINGTON**—A standard worldwide system for compensating victims and their families for injuries and deaths resulting from crashes of international passenger jet flights could be just two months away following the U.S. Senate's approval of a treaty that formally updates an 84-year-old international agreement.

The Senate on July 31 approved a treaty that, under two key provisions, would impose strict li-

ability on airlines for passengers' deaths and injuries and allow passengers and their families to sue airlines for additional damages, if warranted, in the claimants' local courts.

The new liability system, known as the Montreal Convention, promises to eliminate the patchwork of government regulations and voluntary airline industry agreements on airline liability to international passengers. Those regulations and agreements have sprung up worldwide

See **TREATY**/page 17

### Benefits Management Take-Out

**NEW TECHNOLOGY & ONLINE SOLUTIONS**



**TOP BENEFIT INFORMATION SYSTEMS**

Ranking on page T4

# AD&D endorsements cover risk of commuter accidents

By **ROBERTO CENICEROS**

Workers have enough distractions during their daily commutes without having to worry about whether they and their families are adequately protected in the event of an accident.

Employers seeking to allay such concerns might consider following the city of Phoenix's example, benefit experts say. The city six years ago began offering commuter coverage to ensure that employees and their families are sufficiently protected in case of accidents while getting to or from their jobs.

Now, CIGNA Corp. is rolling the commuter coverage out nationwide, and other insurers are developing similar policies.

Phoenix began offering the benefit in 1997, after two police officers were killed in separate accidents

during their commutes. The officers' deaths made employee unions and the city's personnel department aware not only of the hazards of commuting, but also that the survivor benefits paid under a group life policy were inadequate, a spokesman for Phoenix said.

As a result, the city asked its group accidental death and dismemberment insurer, Philadelphia-based CIGNA Corp., to develop coverage that would provide additional money if employees are killed or injured while commuting, the spokesman said.

While accidents during commutes are covered under many such policies, this is believed to be one of the first policies designed to specifically address this risk.

The CIGNA commuter coverage will pay a benefit of up to \$25,000 above the normal AD&D policy

limits for incidents that occur while an employee is traveling between his or her home and office. The benefit applies regardless of the employee's mode of transportation, a CIGNA spokeswoman explained.

The coverage would pay other benefits, including up to \$10,000 to those injured or killed in carjackings, whether or not the incident occurs between home and work, the spokeswoman said.

On average, employees pay about \$10 to \$15 per month for CIGNA's AD&D coverage through payroll deductions, the spokeswoman said. Adding the commuter coverage increases the cost by about 5 cents to 10 cents per month, she said.

"It makes a lot of sense," said Marcia Carruthers, vp of the Disability Management Employer Coalition, a San Diego-based orga-

See **COMMUTE**/page 18

## American Society for Healthcare Risk Management

# Buyers seek med mal options

By **MEG FLETCHER**

**CHICAGO**—The hard market for medical malpractice liability insurance is prompting many health care providers and hospitals to explore alternative approaches to funding the risk.

But nearly all risk financing approaches come with downsides as well as upsides for potential buyers to consider.

"Medical malpractice coverage is difficult, if not impossible, in some areas, particularly for physicians," said Todd Cunningham, assistant vp-technical underwriting for New York-based AIG Risk Finance, a unit of American International Group Inc.

The negative climate for buyers stems from spiraling jury awards and a lack of federal tort reform, as well as the skyrocketing cost of medical malpractice insurance and its reduced availability, according to Mr. Cunningham. The hard market

is felt by the buyer in terms of higher retention levels, loss of key coverages, rate increases and single-year policies, he said.

Mr. Cunningham was one of several speakers who addressed risk financing alternatives for medical malpractice coverage at a July 28-29 forum in Chicago, which was presented in association with the Chicago-based American Society for



Healthcare Risk Management. The forum was organized by the Woburn, Mass.-based Center for Business Intelligence.

The current insurance climate means health care providers and hospitals are now searching for the most cost-effective and efficient risk financing program to protect themselves from medical malpractice liability.

AIG, for example, offers finite risk programs, trusts, risk retention groups and captives in addition to traditional insurance, Mr. Cunningham said.

To shop wisely, buyers need to evaluate the pros and cons of various risk financing approaches, said Hal Kinsey, division vp in St. Louis for Gallagher Healthcare Insurance Services, a unit of broker Arthur J. Gallagher & Co.

Although commercial insurance may be less available now, that form of risk financing offers complete transfer of risk for a fixed, tax-deductible premium as well as financial stability—assuming the insurer remains solvent and able to pay claims, Mr. Kinsey said.

The disadvantages of insurance, though, include cyclical markets that may cause premiums to increase, limited flexibility and the potential for coverage restrictions, he said.

See **ASHRM**/page 18



PHOTO: KRT

Attorneys for the plaintiffs discuss the Supreme Court ruling that struck down a Texas anti-sodomy law. That decision is one factor helping to bring domestic partner benefits to the forefront.

# More U.S. employers seen adding benefits for domestic partners

By **JUDY GREENWALD**

Greater recognition of work force diversity, competitive pressures and basic concerns about fairness are all factors encouraging more employers to extend benefits to employees' same-sex domestic partners.

Many employers also are discovering that adding domestic partner benefits, which offer medical coverage and other benefits to unmarried domestic partners, can be done at little added cost, benefit experts say.

The recent U.S. Supreme Court decision that declared Texas' anti-sodomy law unconstitutional is expected to provide added encouragement to employers to introduce the benefit to same-sex couples.

"I believe that it has been good for Shell that we did this, for two

reasons," said Ed Kahn, director of human resources strategy and integration at Houston-based Shell Oil Co., which offers domestic partner benefits to its employees.

"One is, it has expressed to all our employees that we have great respect and value their contribution to the company and that their private lives are essentially their private lives.

"Second of all, I think it makes Shell a more attractive employer. It's the kind of thing that says to people, 'We value diversity; we value differences,'" Mr. Kahn said.

The Village Voice, the New York weekly, was the first employer in the United States to offer domestic partner benefits to its lesbian and gay employees in 1982, according to Washing-

See **PARTNERS**/page 11

## Inside Business Insurance

### Smaller pills can lead to bigger savings

Some health plans are encouraging patients to split pills as a way to offset soaring drug costs. **Page 4**

### BI conference to offer workers comp experts

The 11th annual *Business Insurance* Workers Compensation & Disability Management Conference is set for Oct. 20-22 in Boston. **Page 4**

### IBM cash balance plan ruling a disappointment

The federal court decision finding IBM's pension plan discriminatory is no landmark ruling. **Page 8**

### Reviewing high court's record on key cases

Attorney Gerald L. Maatman Jr. writes that Supreme Court decisions on workplace issues will have an impact on employers. **Page 10**



### House of Lords deals life insurers a setback

Insurers cannot aggregate claims for improper pension sales for purposes of E&O coverage, boosting their retained losses. **Page 15**

## Online

- Searchable **Directory of Employee Benefit Information Systems** and all other *BI* listings of industry vendors.
- Register online for the **Business Insurance Workers Compensation & Disability Management Conference**.
- New **Opinion Poll** for readers: Does your employer currently offer, or plan to offer, domestic partner benefits?

## Departments

|                                |    |
|--------------------------------|----|
| Advertiser Index .....         | 18 |
| Classifieds .....              | 16 |
| Comings & Goings .....         | 14 |
| Commentary .....               | 14 |
| Insurance Services Guide ..... | 14 |
| International .....            | 15 |
| Letters .....                  | 8  |
| Opinions .....                 | 8  |
| Perspectives .....             | 10 |
| Ticker .....                   | 19 |

REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS.

# Worker health and safety concerns heat up in summer



Workers and their managers should be trained to recognize the signs and symptoms of heat-related illnesses.

## Risk managers take precautions to avoid heat risks

By JOANNE WOJCIK

When the temperature rises during the hot summer months, workers who spend most of the day working outdoors or in facilities without air conditioning face a greater risk of injury and sometimes death, occupational injury experts warn.

In some cases, the combination of heat, humidity and heavy physical labor can lead to fatalities, according to the Occupational Safety and Health Administration, which recently posted a series of advisories on its Web site to help employers learn how to reduce illnesses and fatalities related to heat.

In 2000, the last year for which

figures are available, 21 workers died and 2,554 others experienced heat-related occupational injuries and illnesses serious enough to miss work, OSHA reports. Additional illnesses may be underreported if workers and employers are not familiar with the warning signs, the government agency warned.

"In the shipyards, heat can be a real issue, especially for employees working in tanks that can reach temperatures of 100-plus degrees, or for welders who have on heavy equipment and are exposed to the added heat from welding," acknowledged Ellen Vinck, vp-risk management at United States Marine Repair Inc. in San Diego.

To prevent employees from suffering heat-related illnesses, U.S. Marine Repair trains employees and their supervisors on the symptoms of heat exhaustion and dehydration.

"In addition," she said, "we set up stations throughout the shipyard with water and Gatorade," a sports drink that replaces essential minerals such as potassium that are depleted when the body is dehydrated.

As a result of those precautions, U.S. Marine Repair has had only two employees suffer recordable heat-related injuries, according to Ms. Vinck. Those injuries occurred

See **HEAT RISK**/page 17

# Kansas Supreme Court blocks Anthem bid to buy Blues plan

By SALLY ROBERTS

**TOPEKA, Kan.**—The Kansas Supreme Court has blocked Anthem Inc.'s proposed acquisition of Blue Cross & Blue Shield of Kansas, ruling that the state's insurance commissioner acted appropriately when she rejected the plan last year.

The ruling comes more than two years after Indianapolis-based Anthem offered to acquire BC/BS of Kansas for \$321 million. Policyholders approved the deal in January 2002, but then-state insurance commissioner Kathleen Sebelius rejected the plan the following month, saying it would reduce BC/BS of Kansas' surplus and would increase rates for small group and individual policyholders in the state.

Wednesday's ruling reverses an earlier district court decision that

overturned Ms. Sebelius' ruling.

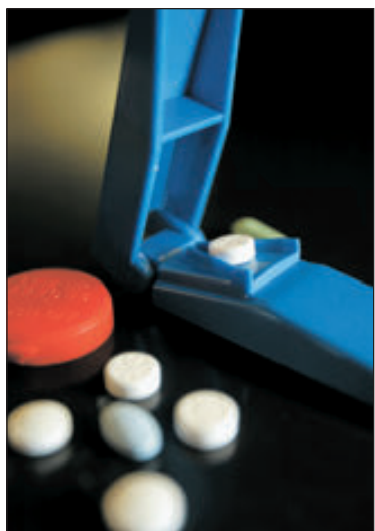
In a statement, Sandy Praeger, who succeeded Ms. Sebelius earlier this year, said: "I am pleased the Kansas Supreme Court has clarified the power of the commissioner of insurance regarding insurance company mergers and acquisitions. This decision clearly outlines the department's jurisdiction and statutory authority to make decisions in the best interest of Kansas consumers."

In a statement, Larry C. Glasscock—Anthem's chairman, president and chief executive officer—said that he is disappointed with the ruling. "We continue to believe the Shawnee County District Court in Kansas was correct when it ruled the commissioner's order disapproving the transaction be vacated," he said. "We feel strongly that the transaction would have been good for both companies and for the people of Kansas."



Kansas Insurance Commissioner Sandy Praeger hailed a court decision blocking Anthem Inc.'s bid to buy BC/BS of Kansas.

# High costs prompt some plans to seek savings by splitting pills



Pill splitters let patients double a supply of certain drugs at little additional cost.

By MICHAEL PRINCE

As prescription drug costs continue to escalate, some health plans are looking to have participants split higher-dosage pills as a way to save money.

But while some employers encourage this practice as a way to save money, others view the risks as too great.

Despite the concerns, more employers are looking into the issue, consultants say.

"It's a more-viable alternative than last year or the year before," said Sean Brandle, vp at The Segal Co. in New York. "Employers are going to start looking at it more as a little way to save money."

"It's a deceptively simple way to save money on drugs," said Jeffrey

Pettegrew, vp of risk management & insurance at Westaff Inc. in Walnut Creek, Calif.

For some popularly prescribed drugs, pill splitting is a proven way to cut costs because lower and higher dosages of some drugs are generally priced the same by the manufacturer. For example, a 30-day supply of Lipitor, a leading cholesterol-lowering drug, consisting of 20 mg. tablets costs roughly the same as a month of 40 mg. tablets. A person who buys the larger pills and splits them in half will convert the one-month supply into a two-month supply for the same amount of money.

In essence, splitting the Lipitor tablets cuts the prescription cost in half; the same is true for other pop-

See **SPLITTING**/page 6

11th Annual  
**WORKERS COMPENSATION & Disability Management Conference**  
October 20-22, 2003 • The Fairmont Copley Plaza, Boston

The 11th Annual Business Insurance WORKERS COMPENSATION & Disability Management Conference brings together risk managers and others responsible for workers compensation, safety and disability management from private organizations as well as state and local governments, in addition to representatives from insurers, brokers and consultants serving the marketplace.

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Register online at [www.businessinsurance.com/wcc](http://www.businessinsurance.com/wcc).

# Better management of work comp risks focus of BI event

By MEG FLETCHER

**BOSTON**—Sharing innovative ideas to better manage workers compensation and disability claims is all the more important to employers during hard market conditions.

The upcoming *Business Insurance* Workers Compensation and Disability Management Conference is designed to offer such exchanges of information and more. The conference, *Business Insurance's* 11th annual event, will be held Oct. 20-22 at the Fairmont Copley Plaza in Boston.

The 30 conference speakers—a diverse group of leading risk and disability benefits managers, loss control specialists, medical specialists, attorneys and consultants—will share their insights and suggestions about how employers can better survive this challenging time and lower their costs.

The conference also will present an extensive update on legislative and legal trends that affect employer programs.

Conference topics were chosen and developed with the help of nearly 20 members of a national advisory board, chaired by Jeffrey W. Pettegrew, vp-insurance and risk management at Westaff in Walnut Creek, Calif.

Preceding the formal conference agenda will be the annual Employers' Private Roundtable, a popular event at which employer representatives can candidly discuss pressing problems and seek advice from their colleagues. Moderating the roundtable will be Mr. Pettegrew and Paul D. Winston, editor of *Business Insurance*. Mr. Winston co-chairs the conference along with Meg Fletcher, senior editor.

Concurrently, a Service Providers' Roundtable will be held to exchange ideas about meeting clients' needs and concerns. Martin J. Ross III, publisher of *Business Insurance*, and Sharon A. Falkenburg, a managing director of Aon Risk Consultants Inc., will moderate the roundtable.

The conference is being pre-

See **COMP**/page 12

## Errors & omissions

• The name of the author of an Aug. 4 letter to the editor was misspelled and his company's name

was not in its preferred style. The author is Henry L. Good and the company is Rohm and Haas.

## Splitting: Costs prompt practice

Continued from page 4  
ular drugs.

"It's a lot cheaper," said Howard Tarre, managing director of Synhrgy HR Technologies in Saddle Brook, N.J.

One health plan that uses pill splitting is Oakland, Calif.-based Kaiser Permanente.

"We encourage pill splitting in certain select situations," said Albert Carver, director of pharmacy strategy and operations for the California division of Kaiser in Downey, Calif.

The health plan has declared seven prescription drugs appropriate for the program, he said. Before the drug appears on the list, Kaiser examines whether a small alteration in its dose would make a difference to the patient; if a small dosage change poses a problem, it's not appropriate.

And only drugs that would produce savings and can be physically cut in half by the patient are approved for pill splitting. Often pills are scored in the middle to make cutting easier. Kaiser even provides a small device to cut the pills when people receive a prescription for a drug on the approved list, Mr. Carver said.

"It would be irresponsible to not help patients to do this if it's clinically appropriate and it saves patients money," said Anthony Barqueta, senior counsel at Kaiser Foundation Health Plan in Oakland.

Recently, the concept received an endorsement when a judge in California dismissed a lawsuit filed in 2000 against Kaiser by a public-interest group that sought to

shut down Kaiser's program. The suit, which sought class-action status, claimed Kaiser's program jeopardizes patients' health by having them receive double-dose drugs.

But the Alameda Superior Court judge rejected this argument in his April opinion, stating that it is not for the courts to determine whether the program strikes the appropriate balance between saving money and protecting patients' safety. The plaintiffs have appealed the decision.

Not every health plan or prescription benefit manager, however, supports pill splitting.

For example, Aetna Inc. takes the position that safety concerns outweigh any cost savings, said Mark Rubino, chief pharmacy officer at Aetna Inc. in Blue Bell, Pa.

"We can't promote or endorse it," Mr. Rubino said.

In particular, he said that even if the managed care company endorsed the policy for a select list of drugs, it would be difficult to stop people from splitting other drugs. For some drugs, such as tablets with time-release coatings or those that are difficult to split in half, it could be very inappropriate, Mr. Rubino explained.

"We don't really want to advocate something where people will go out on their own," he said.

CIGNA HealthCare also discourages pill splitting, said Thom Stambaugh, assistant vp of clinical programs at CIGNA Pharmacy Management in Bloomfield, Conn.

"We don't feel the savings out-

weigh the potential risks," he said. "Medications, for the most part, are not meant to be split."

While he has some safety concerns about pill splitting, Mr. Pettegrew said more pressing drug safety issues are people mixing prescription drugs, over the counter medications and herbal supplements without a physician's supervision in ways that can be very dangerous.

Medco Health Solutions Inc. promotes pill splitting, but for just five drugs, said a company spokesman. The spokesman explained that, under the program, when a person fills a prescription for one of those drugs, Medco informs the pharmacist that the patient qualifies for the program. The pharmacist then notifies the patient of the pill splitting option and, if he or she agrees, gets the patient's physician to rewrite the prescription.

To date, though, only six employers have enrolled in Medco's pill splitting program, he noted.

Rather than split pills, CIGNA promotes doubling the dose. This program identifies people who are taking two pills that could safely be replaced with one double dose, Mr. Stambaugh said. So far, CIGNA has identified 20 drugs for which this can be done.

Generally, with this program, the patients would not see any savings, because they usually pay a co-payment for a month's supply, regardless of the pills' size. But the patients would be buying half the number of pills, typically saving the employer money.

## Paul Winston

### Drive yourself to distraction

I consider myself a decent driver. I've never been in an accident that was my fault.

What I really excel at, though, is managing to do five different things while driving my car. Steering with my knees, I can swap out CDs from the car stereo while keeping a coffee mug from spilling in my lap and scanning the headlines on a newspaper on the passenger seat, all while keeping a wary eye on my daughters in the back seat, lest they cross the invisible barrier that establishes their sides. All of this without crashing, and not even veering badly off course. If Cirque du Soleil ever does a show that requires an acrobatic driver, the rest of you should not even audition.

But provocative new research indicates that, while most people engage in such multitasking, one in four is terrible at it. The study, released last week by researchers at the University of North Carolina Highway Safety Research Center and funded by the American Automobile Assn. Foundation for Traffic Safety, found that about 25% of all traffic crashes are caused by people distracted from the demands of driving.

I should be glad to see that 75% of drivers are better at mastering things like talking on phones, eating food and rearranging the contents of the back seat without crashing, but we have to do better! The safety of our highways depends on ensuring that those other folks aren't running into the rest of us.

To better understand what activities drivers were engaged in while moving in traffic, the researchers planted small video cameras in the cars to observe a group of drivers. Here are the most common activities the subjects were observed doing while driving:

- Reaching for something or leaning away from the steering wheel, 97.1% of subjects.
- Manipulating the radio or audio controls, 91.4%.
- Eating and drinking, 71.4%.
- Talking, 77.1% (whether to themselves, slow or erratic drivers in front of them or pedestrians is unclear).
- Grooming, 45.7% (whether this refers to themselves, other passengers or small animals is unclear).
- Paying attention to a passenger, 44.4%.
- Reading or writing, 40.0%.
- Using a cell phone, 30.0%.

I am happy to say that I am able to engage in all of these activities and more, many of them at the same time, and still drive my car without an

accident. I'm sure three out of four of you are similarly adept at using drive time to get things accomplished.

There are people who are far better at this than I am. For one, mothers of quintuplets whose multitasking skills rival those of a driving octopus. Airline pilots also must be excellent at managing distractions while driving. Consider how many times you see pilots leave the cockpit—mid-flight!—to visit the lavatory or chat with a pretty flight attendant. Driving a car must be a cakewalk compared to driving a jumbo jet.

Since the invention of the Model T, automakers have responded to our needs by equipping our cars to do much more than simply get us from

point A to point B. With the decline of manual transmissions, there isn't enough to occupy our hands or left feet by merely driving.

Cars today have a variety of features aimed at enabling us to multitask.

Behold the cupholder. Behold multiple cupholders. Behold the late-night drive-in window.

Think about

advances in audio systems, which have expanded far beyond AM radio to now include audio decks with two dozen radio station presets, CD changers, hard drives for burning your own tracks as you drive, animated LCD panels, satellite bands and GPS systems. Cool!

Cars now come loaded with video, DVD and gaming systems, so we can now watch movies while driving. I admit this is a skill I have yet to attempt, and for the time being, I must content myself with watching the movies playing in other cars in the next lane or in front of me.

Cars used to come with cigarette lighters, but now those sockets are DC power outlets so that we can operate all manner of appliances while driving. I admit to not having plugged in a microwave to pop popcorn while driving, or a blender to mix daiquiris, but I am tempted to try it.

I haven't even covered the cell phone, which now comes with hands-free headsets to enable people to continue to perform added activities while driving. I do believe, though, that the researchers should check their figures again: 30% seems way too low.

The automakers have clearly done their part; now it's up to one in four of us to do better. I expect to see more of you in the shopping mall parking lots after hours, practicing.

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Paul Winston

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## Editorial

# IBM ruling not a landmark

**A** "LANDMARK"? That is how some opponents of cash balance pension plans describe a recent federal district court decision in which the judge ruled that IBM Corp.'s plan discriminated against older employees.

While there are a number of words that come to mind to label the ruling—"disappointing" probably would be the one we'd use—"landmark" isn't one of them.

If "landmark" means the first of its kind, then that word definitely would not apply to the IBM ruling, handed down by Judge G. Patrick Murphy of the U.S. District Court for the Southern District of Illinois. Nearly three years earlier, another federal judge, in a far better reasoned and researched decision than Judge Murphy's, came to the opposite conclusion in a case involving a cash balance plan sponsored by Onan Corp.

If "landmark" is to mean having a major impact, the IBM ruling, at least as we see it, doesn't qualify either. Judge Murphy's jurisdiction is limited to his own Southern Illinois district. As a result, the ruling, which IBM will appeal, has no direct impact on any other employer with a cash balance plan.

Still, it would be incorrect to dismiss entirely Judge

Murphy's decision. The legal status of cash balance plans is a very unsettled one, given the failure of regulators and legislators to provide clear-cut rules. In such a vacuum, courts will provide those answers. We don't think that is desirable, given the potential for dozens of differing court decisions, leading to less, not greater, certainty.

Thankfully, regulators have made a start to end the uncertainty. The Internal Revenue Service last year, after well over a decade of ducking the issue, published proposed rules that provide some basic guidance on the matter.

The proposed rules make clear, for example, that cash balance plans that provide the same pay-related and interest credits to all participants are not age discriminatory.

While the proposed IRS rules are a step in the right direction, at least when it comes to cash balance plans, courts are unlikely to pay them much heed until they are finalized. Judge Murphy, for example, completely ignored them. We hope the IRS affirms these rules soon so that cash balance plan sponsors can rely on fair and consistent rules, avoiding the uncertainty that now comes with such issues being decided court by court.

# Ratification late, welcome

**W**E ARE DISAPPOINTED that the U.S. Senate took so long to ratify a global treaty on airline liability for passengers injured or killed aboard international flights.

The treaty is important, because it is designed to minimize litigation over crash victims' damages. And, under its "fifth jurisdiction" provision, the treaty gives all U.S. claimants a better chance of recovering adequate additional damages, if warranted, by allowing them to press their claims in U.S. courts. Not all U.S. claimants litigating against foreign-based airlines had that right before.

The word now is that the treaty, known as the Montreal Convention, is "on a fast track." By week's end, it could be deposited with the International Civil Aviation Organization. Sixty days later, the treaty would become effective for the airlines and citizens of the 30 countries that have signed the accord.

Other nations that want in thereafter need only ratify the treaty, so there is a certain prestige to being among

the first 30 signatories. That explains the U.S. government's effort to move it along with dispatch now—especially since the United States fought hard to include the "fifth jurisdiction" provision in the treaty.

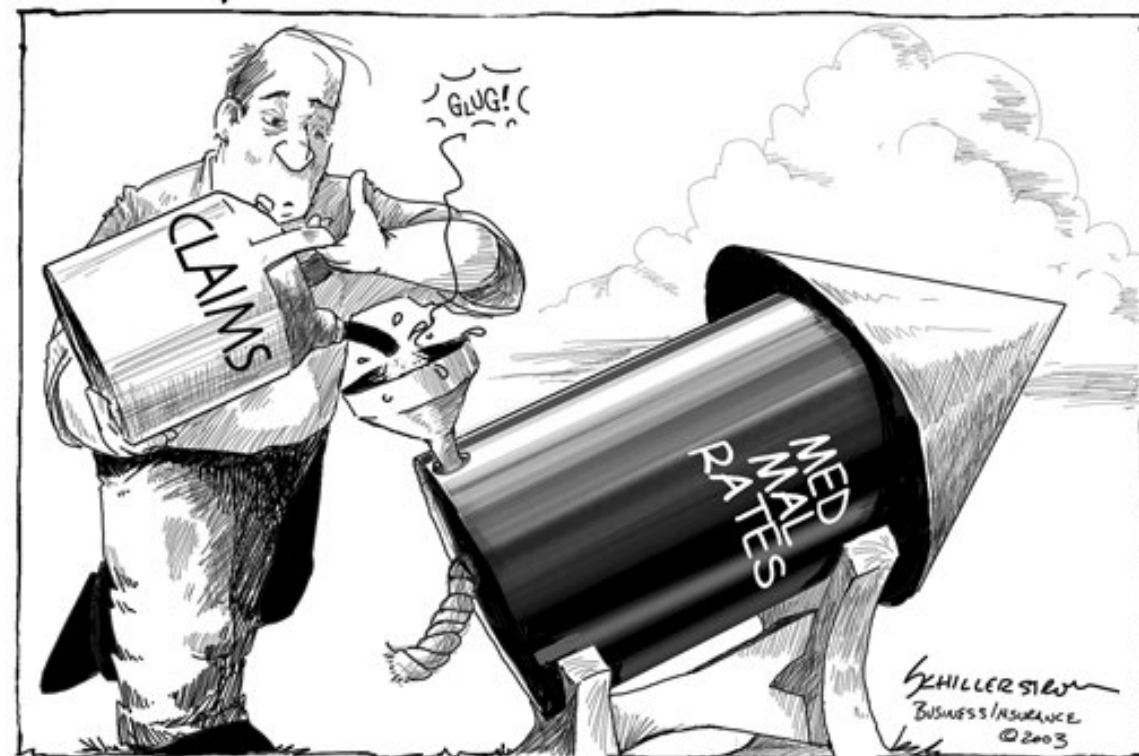
But considering that ICAO hammered out the treaty more than four years ago, one realizes that "fast track" might be a misnomer.

What was the holdup in the Senate? Airline industry observers first blame the 2000 election campaign. Then the treaty dropped in priority as the Senate focused on Sept. 11-related matters, tax cuts and judicial appointments.

Even though senators continue to focus on such issues, as well as preparations for the 2004 elections, the possibility that another country would be renowned as the 30th signatory spurred U.S. lawmakers to act.

Whatever their motivation, we are glad that U.S. lawmakers finally have signed on to this accord, which is a unique measure that will aid both the airline industry and the public it serves. It's a win-win for all.

## Schillerstrom



## Letters to the Editor

### Industry commitment to quality still lacking

To the editor: I read with interest your editorial "Grow By Giving High-Quality Service" in the July 21 edition of *Business Insurance*. As you may or may not be aware, I was the executive director of the Quality Insurance Congress years ago and am a lifelong student of quality management practices.

It is interesting that while most other major industries have embraced "quality management practices" beyond buzzwords and logos, the insurance industry still is light years behind the basic tenets of "quality."

Performance measurement, best practices and a host of other schemes are not "quality," nor have these ever made any improvement to the basic operating processes of the insurance industry. Neither have these schemes provided any verifiable bottom-line improvements for the customers or the suppliers. The industry seems to have adopted the themes of quality efforts but has failed miserably to even begin to address root causes of poor quality.

The QIC was abandoned by industry leaders because it was the first time the industry was put under a microscope, and the data on performance was embarrassing. The industry measured worse than the U.S. Postal Service in terms of customer satisfaction and the issues were perceived as proprietary in nature, so no one wanted to cooperate to make any systemic improvements. Subsequently, the QIC was shut down because it was the only vehicle that provided a true measure of "quality" from the customer's perspective.

The only power to force the industry to improve lies with the customer. Unfortunately, risk managers haven't evolved to a point of recognition within their own companies to effectively cause required changes. In addition, no one seems to understand the significant gains that corporations and the entire insurance industry could achieve if ever a serious improvement effort could be executed jointly among the carriers, customers and brokers.

Your effort to attempt to bring this issue up in the minds of your readers is worthy but, like the QIC, the attention span and extent of comprehension by your readers will not ignite anyone to lead effectively.

Jay T. Deragon  
Hendersonville, Tenn.

## Letters to the Editor

*Business Insurance* welcomes letters to the editor. This section is intended to be a forum for readers' opinions and comments. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Please send your letters to: Letters to the Editor, Business Insurance, 360 N. Michigan Ave., Chicago, Ill. 60601-3806; fax: 312-280-3174; e-mail: [pwinston@crain.com](mailto:pwinston@crain.com).

# High court rulings worthy of employer attention

By Gerald L. Maatman Jr.

Supreme Court rulings on workplace issues were a mixed bag for employers during the high court's term that ended last month.

Four of the high court's decisions interpreted major federal statutes governing the workplace, and three of the four cases resulted in plaintiff-friendly rulings. And the term's three blockbuster rulings—on punitive damages, the rights of homosexuals and affirmative action—also have significant implications for workplace litigation.



*Desert Palace Inc. vs. Costa* interpreted Title VII of the Civil Rights Act of 1964, the key federal anti-discrimination statute. The Supreme Court determined that lower courts had been misinterpreting the statute by requiring plaintiffs who sue for workplace

discrimination to produce direct evidence of discrimination in order to shift the burden of proof to an employer in a mixed-motive bias claim. In such cases, the employer gives legitimate reasons for terminating an employee but the worker alleges there was also an illegitimate basis for the personnel decision. Because *Costa* indicates plaintiffs no longer need to produce direct evidence of

discrimination to shift the burden of proof to the employer, circumstantial evidence of workplace issues will become more important in Title VII litigation. Plaintiffs are also likely to avoid summary judgment in more cases. For these reasons, the *Costa* ruling is decidedly plaintiff friendly.

*Hibbs vs. Nevada* involved the Family and Medical Leave Act of 1993. In its decision, the Supreme Court ruled that employees of governmental entities have the same right to seek damages under the statute as employees of private companies. While the underpinnings of the case focus on federalism principles and the remedial powers of Congress under the Constitution's 14th Amendment, the practical impact of the ruling likely is an increase in litigation by public employees over leave-of-absence situations. This will result in a more rapid development of a body of case law under FLMA, which also will have a direct impact on personnel decision-making by employers.

*Wells vs. Clackamas Gastroenterology Associates* examined the manner in which the threshold for coverage under the Americans with Disabilities Act is analyzed. The practical import of the ruling is that it will increase the number of ADA suits filed against small employers, partnerships and other hybrids of business organizations. In the case, the Supreme Court held that in determining whether physician-shareholders of a professional corporation are employees—and whether 15 such employees were present for purposes of coverage under the ADA—federal courts should consider up to six factors. However, it said that no single factor is

determinative, as courts should focus on a totality of circumstances. The six factors stem from Equal Employment Opportunity Commission guidelines. In essence, the degrees of control which shareholders or partners exercise over their professional corporations and partnerships will affect whether the organization is subject to suits under federal anti-discrimination laws.

The Supreme Court's final decision interpreting a workplace statute came in *Black & Decker vs. Nord*. In that case, the high court determined that the Employee Retirement Income Security Act does not require plan administrators to have specific reasons for rejecting the opinion of an employee's treating physician. The Supreme Court interpreted ERISA to require simply that any and all evidence may be used by plan administrators to reach a reasonable conclusion. In this respect, the decision favors employers.

Three blockbuster rulings last term on key business and social issues also are important for employers. The most celebrated ruling, *State Farm vs. Campbell*, focused on punitive damages. The Supreme Court held in its decision that punitive damage verdicts that exceed compensatory damages by a ratio greater than 9 to 1 generally violate the constitutional guarantee of substantive due process. *Campbell* will affect employment discrimination litigation by arming employers with an additional weapon to combat large punitive damage awards.

Gay rights activists hailed the 6-3 ruling invalidating a Texas law prohibiting intimate sexual conduct between same-sex individuals

in *Lawrence vs. Texas* as the bellwether ruling of the gay rights movement. In a series of majority and concurring opinions on due-process and equality issues, the justices made clear their concern about the rights of gay and lesbian individuals. As those issues percolate in the workplace, many expect activists to use the ruling as the basis of a litigation strategy to extend and enhance homosexual rights in a range of workplace situations involving benefits, privacy and discrimination protection.

Finally, the Supreme Court's 5-4 decision in *Grutter vs. Bollinger*, which upheld the University of Michigan Law School's admissions program, enables educational institutions to use race as one factor among multiple considerations in the admission process. The use of race as a factor for achieving a diverse student body is seen as a boon for employers looking to create a diverse workforce. It is expected that the ruling will support employers' affirmative action efforts, although the use of quotas is still strictly prohibited.

In sum, the U.S. Supreme Court gave employers, human resource professionals and risk managers much to think about in its 2002/2003 term. These rulings will undoubtedly shape the course of workplace law and workplaces for years to come.

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

# Act has safety, health, environmental import

By James Kendrick

The Sarbanes-Oxley Act of 2002 is much more than a "sweeping accounting measure," hence the 92-year-old American Society of Safety Engineers recently developed and distributed a technical report on the new law to our 30,000 members, who are occupational safety, health and environmental professionals.

The act not only mandates that chief executive officers and chief financial officers subject to Securities and Exchange Commission rules meet stringent corporate accountability requirements aimed at improving the quality of corporate financial reporting but also requires an organization to report an operation that has a failure—safety, environmental or property—that may significantly impact the organization's financial soundness. For example, a chemical spill on



company property requiring extensive time and costs to clean up could trigger the reporting element. On the other hand, if during the normal course of business a key production tool in a manufacturing plant were to be damaged beyond repair and replacement was necessary, this might not require reporting. But if the loss of the tool had a substantial impact on the total production capacity of the plant and the

operations' financial underpinnings were at stake, it may need to be reported.

Occupational safety, health and environmental professionals and risk managers play a major role in complying with the Sarbanes-Oxley Act, since it covers all corporate operations, including their own occupational safety, health and environmental systems. In effect, this measure may do more to improve workplace safety and raise awareness of its positive effect on a corporation's bottom line than any other recent laws.

Safety, health and environmental professionals and risk managers with compliance responsibilities are now placed in the position of navigating uncharted waters in regard to this act, while at the same time a series of legal proceedings will provide for more frameworks for the reporting and disclosure requirements included in the act. Until this additional guidance is available, though, it is incumbent upon all safety, health and environmental professionals to be aware of the depth of Sarbanes-Oxley and its significant role in the practice of the profession.

Yes, the Sarbanes-Oxley Act of 2002 was written with the intent of addressing some of the issues brought to light during the incidents with Enron and Arthur Andersen, but an offshoot of this legislation is the major impact it will have on safety, health and environmental professionals who work at companies subject to SEC reporting requirements. ASSE, through its Council on Practices and Standards, developed the technical report on the law to assist our membership in understanding the occupational safety and health implications of Sarbanes-Oxley.

Specifically, ASSE suggests that safety, health and environmental professionals discuss the law with senior management and legal counsel so that all parties are aware of what is expected. A legal opinion written by corporate counsel is recommended along with writing, implementing and documenting in detail the corporate communication structure. Safety, health and environmental professionals should ensure that safety, health and environmental audits are independent and that the results are reported and acted upon. Practitioners who write and/or sign those audit reports and who fail to follow up on the recommended actions may be subject to sanctions listed under the new act.

The new law creates protections for whistleblowers and imposes new criminal and civil penalties relating to fraud, conspiracy and interfering with investigations. Of importance to safety, health and environmental professionals and risk managers is that Sarbanes-Oxley requires companies to set up procedures for anonymous reporting of fraud allegations. This is significant to our profession as it seems that a culture does not exist in many organizations where safety, health and environmental issues, complaints and allegations are heeded. The law also includes criminal penalties for retaliation for reporting concerns about illegal conduct to a public official. Safety and health officials believe that providing these provisions is key as it helps create an atmosphere conducive to exposing financial crimes. It is also important because workers have no legal obligation to take concerns to public authorities.

Again, while the expectation is that there

will be a series of legal proceedings to address safety, health and environmental issues under this act, the act itself addresses compliance management from a high perspective and does not indicate whether safety, health and environmental performance is excluded. It is a fact that a significant safety, health and environmental incident has the potential to impact a company's operations or organizational structure, which would lead to the assumption that safety, health and environmental exposures meeting a still yet to be determined criteria or standard would also need to be disclosed.

Safety, health and environmental practitioners and risk managers should not believe that this is just an accounting matter, but be proactive as they may need to develop and implement new policies and procedures in order to safeguard their employers, employees and colleagues.

In the long run, Sarbanes-Oxley may do much more than return consumer confidence; it will increase the awareness of the positive impact effective safety, health and environmental systems have on the bottom line and lead to a safer work environment for all.

*The ASSE report titled "Identification of Risks and Other Issues – Sarbanes-Oxley Act of 2002 Public Law 107-204" can be found at [www.asse.org/prac\\_spec\\_cops\\_issues13htm](http://www.asse.org/prac_spec_cops_issues13htm).*

*James Kendrick is the president of the Des Plaines, Ill.-based American Society of Safety Engineers and manager of industrial safety and hygiene for Bell Helicopter, a Fort Worth, Texas-based unit of Textron Corp.*

# Partners: More companies extend benefits

Continued from page 3

ton-based Human Rights Campaign Foundation. Cambridge, Mass.-based Lotus Development Corp. became the first publicly traded company to introduce the benefit in 1992.

Today, more than 5,800 employers offer domestic partner health benefits, according to HRC. They include 198 of the Fortune 500 companies; 5,247 other private companies, nonprofits and unions; 187 colleges and universities; 162 local governments; and 10 state governments. Several cities, including San Francisco, require companies with which they have contracts to offer the same benefits to domestic partners as they do to married spouses.

Ilse de Veer, Norwalk, Conn.-based principal with Mercer Human Resource Consulting, said, "The trend over the last 10 years has sort of been industry by industry, so that one company in a particular industry begins to offer it, and then others of their competitors decide to do it for competitive reasons."

Columbus, Ohio-based Nationwide Insurance Co., which introduced its domestic partner benefits program in 2000, "recognized that the history of who's eligible for benefits coverage came from old insurance laws and regulations, and America's familiar households, if you will, have changed significantly from when most of those laws and regulations were passed," said Jack Towarnicky, associate vp of benefits planning.

"The major impetus was equal pay for equal work," said Stan Kimer, Research Triangle Park, N.C.-based program manager for gay, lesbian, bisexual and transgender initiatives at IBM Corp., which introduced its domestic partners program in 1997.

Because gay and lesbian couples were unable to get benefits, it meant they were receiving a lower compensation package than heterosexual couples, Mr. Kimer said. IBM's program also helps "to attract and retain the best employees."

Virginia LaFrance, benefits manager at New York-based American Express Co., which introduced its program in 1997, said, "We wanted to be able to attract and retain employees from all different parts of the population, all different, diverse groups, and we want to offer a competitive benefits package."

About two-thirds of employers offer domestic partner benefits to opposite-gender as well as same-gender couples, say observers. Some do it "just because if you're going to set it up administratively, you might as well do it for both," said Dean Hatfield, regional practice leader for Buck Consultants in New York. "But some employers feel it really should only apply to those of the same sex, because those of the opposite sex have the choice to get married."

Shell offers domestic partner benefits to both same-gender and opposite-gender couples. "I think the impetus for introducing benefits to same-sex partners was based on a premise of wanting to show our re-

spect to all of our employees, that they're all valued, and fundamental fairness, and so in that same spirit we decided it didn't make sense to offer it to some kinds of domestic partners and not to others," said Mr. Kahn.

IBM offers it only to same-gender couples because opposite-gender couples can get married, said Mr. Kimer. "We've also stated that if there is a time when same-gender marriage is accepted in the U.S., then we would no longer offer the benefit because then same-gender couples and opposite-gender couples would be on an equal footing."

Observers say many employers with domestic partner benefit programs offer a full package of health benefits packages to their employees, including medical, dental and vision benefits as well as life insurance. The philosophy is, "if you're going to do it, you might as well offer the entire package," said Mr. Hatfield. Some employers also permit domestic partners to receive survivor benefits from employees' pension plans and may offer other benefits as well, such as bereavement leave.

To qualify for domestic partner benefits, employees may be asked

to sign a statement or submit an affidavit asserting they live with a domestic partner and are financially interdependent. "Generally, it's going to be someone you have a live-in relationship with for at least 12 months, so that there's not a revolving door," said Karen Roberts, senior vp for Aon Consulting in San Francisco.

"We ask the people to execute a affidavit of domestic partner benefits, but we do not request that they send it in," IBM's Mr. Kimer said. "We just say IBM has the right to ask for it at any time and for the employees to keep it for safekeep-

ing."

Only about 1% to 2% of employees sign up for these benefits, say observers. This may be because many partners may have coverage through their own workplace. Furthermore, for many there are no tax advantages to obtaining the coverage. The Internal Revenue Service has held that domestic partners cannot be considered spouses for tax purposes, which means employees must pay federal income taxes on the value of the medical insurance that companies provide to cover their domestic partners.

Domestic partner benefits can be considered nontaxable only if the partner meets the IRS definition of a dependent, which is someone

Continued on next page

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## Partners: More companies extend benefits

Continued from previous page

who lives in the employee's household and receives at least half of his or her support from the employee.

"Most partners are both employees, so unless one partner has very poor benefits from their current employer, they don't want to pay the extra tax, and so the only people who are choosing the domestic partner benefits are those who don't have the coverage" and have no other option, said Mr. Hatfield.

This situation creates some added administrative cost for the employer, said Ms. Roberts. "That is definitely a slight complication for now

because payroll has to have this additional bucket" for the additional tax involved, said Ms. Roberts.

"It's pretty administratively cumbersome," concurred Nationwide's Mr. Towarnicky. "We'd like to be able to essentially administer it the same way" as, for example, the company does for married couples.

Overall, though, domestic partner benefits add little to employers' cost, observers say.

"The total cost of the benefit programs enrollment in these programs remains low, typically less than 1% of total costs, said Ms. de Veer.

IBM's Mr. Kimer agreed. "In terms of the overall expense to IBM, it is a fraction of a percent addition to our benefits cost," he said.

Despite some initial fears, AIDS is not a material factor in offering domestic partner benefits, say observers, who note that today other claims, including premature births, are considerably more expensive. "This concern that there were people in need of health insurance waiting in the wings to enroll as domestic partners in employer health plans has never happened," said Andrew Sherman, senior vp with The Segal Co. in Boston.

"It's certainly a philosophical issue and not a financial issue," said Aon's Ms. Roberts. "Any employer who has based their reason for not offering it on cost really has not done their homework."

Many observers believe more employers will offer domestic partner benefits in the future, although perhaps at a slower rate than in the past because many of those most

likely to introduce the benefit have already done so.

"The numbers show that every year there has been an increase in Fortune 500 companies offering domestic partner benefits, and I think that's going to continue to increase," Mr. Kimer said. "Companies are going to get more and more competitive in terms of offering competitive packages to employees," and the number offering it will continue to grow, he said.

"I think that we are seeing an increasing number of smaller companies and companies (that are) not on one of the two coasts also including domestic partner benefits in their plans," Mr. Sherman said. "A lot of smaller companies are able to do so now because there's insurance coverage available that there hadn't been in the past." Initially, only large, self-employed companies were able to introduce it, he said.

However, Randall Abbott, Philadelphia-based senior consultant with Watson Wyatt Worldwide, disagreed. Although about 40% of the Fortune 500 companies have already adopted domestic partner benefits, it may not be a benefit that smaller, closely held companies would feel comfortable adopting, he said.

Mr. Abbott said domestic partner benefits has been "pretty much a dormant issue since the recession began."

"I don't feel that we're going to see a sea change in practices, because even though the cost of implementing domestic partner benefits is nominal, it's still an additional

cost at a time when health care costs are rising," said Mr. Abbott.

Some observers believe that the U.S. Supreme Court's recent decision in *Lawrence vs. Texas* is spurring renewed interest in domestic partner benefits. The high court ruled that a Texas law prohibiting sexual conduct between same-sex persons violates the 14th Amendment's due process clause. Some employers who may have hesitated to offer domestic partner benefits before, because they feared that lent their imprimatur to an illegal act, may now introduce it, say some observers.

The Supreme Court decision, as well as approval of same-sex marriage in Canada and an expected ruling on the issue by Massachusetts' highest court, has created a greater awareness of domestic partner benefits in the last three or four months "than there's been in at least a couple of years," said Mr. Sherman. "Our sense is that this is certainly leading to more companies considering including domestic partner benefits."

However Daryl Herrschaft, deputy director for WorkNet, an HRC Foundation project, said, "I think a lot of companies are going to be offering the benefit in the coming years, but I don't think that's a function of the sodomy ruling.

"I believe it is a realization that in order to remain competitive in the labor market, in order to be an employer of choice, in order to hang onto or, rather, retain valued employees, these benefits are increasingly becoming standard business practice."

## Comp: BI event

Continued from page 4

sented with the assistance of The Harrington Co. in Minneapolis.

The interactive spirit of the roundtable is encouraged throughout the conference, as attendees are urged to ask questions and seek advice on specific problems from the moderators and panelists at the end of each session, during social gatherings and at a closing networking luncheon.

The conference will commence with a keynote speech by Edmund "Ted" Kelly, chief executive officer of Liberty Mutual Insurance Co. in Boston. Mr. Kelly will discuss current trends affecting workers comp costs and exposures, as well as review insurer and buyer challenges in the current marketplace.

In addition, other sessions will discuss ways for employers to improve the marketing of their workers comp programs, turn risk financing challenges into opportunities, keep a lid on expanding disability exposures and stop fraud.

Because most experts generally agree that preventing workers' job-related injuries and illnesses is the ultimate goal, a separate panel will consider best practices for improving safety and reducing lost-time injuries.

New this year will be a cyber café in the exhibition hall, which will allow attendees to check on their e-mail throughout the conference. In addition, luncheon presenter Mark Hinkley, executive vp with Odyssey Reinsurance Corp. of Stamford, Conn., will provide his incisive and satirical commentary on the state of the insurance industry.

The Web site for the conference, [www.businessinsurance.com/wcc](http://www.businessinsurance.com/wcc), offers the full conference program, including speakers and moderators; an online registration form; hotel details; and information on exhibit and sponsorship opportunities.

The conference registration fee for risk, employee benefit, claims or safety managers or other corporate executives is \$795, while the fee for service providers is \$1,095. A 15% early-bird discount is available for those who register on or before Sept. 1. In addition, a 10% group rate discount is available if two or more executives from the same organization register at the same time.

Registrations can be obtained and submitted online at [www.businessinsurance.com/wcc](http://www.businessinsurance.com/wcc), or mail or fax your registration form to Lisa Ferrer, conference coordinator, Business Insurance WORKERS COMP CONFERENCE, 4248 Park Glen Road, Minneapolis, Minn. 55416; phone: 952-928-4642; fax: 952-929-1318; or e-mail: [biwcc-registrar@crain.com](mailto:biwcc-registrar@crain.com).

Conference attendees who reserve a room by Sept. 29 can obtain a special rate of \$229 standard or \$249 deluxe by calling the Fairmont Copley Plaza direct at 617-267-5300 or 800-441-1414 and mentioning the *Business Insurance* conference.

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## Commentary

# Time for debate on the use of debate

Earlier this year, a certain House of Representatives committee began debating the merits of a medical malpractice reform bill. But "debate" is too kind a word, for debate implies a certain amount of reasoned discourse, a serious attempt to persuade those who do not share your position to embrace it upon its merits, to accept the crystalline beauty of your logic.

This was no debate. It wasn't even a shouting match, for at least in a shouting match, you aim your shout at your opponent. This was, instead, political theater of the lowest order, where the actors play for cameras that aren't there and to an audience that's already made up its mind, if it can muster the energy to pay attention.

Anybody who could count to 20 knew how the final vote would turn out. The only question about the final numbers on either side involved how many lawmakers would stray out of the room before the clerk called the roll. Yet the theater of the absurd continued for nearly two hours before the chairman was able to force a vote on an amendment that everyone in the room, including the amendment's author, clearly knew was doomed from the instant he'd risen to introduce it. Every once in a while, lawmakers rose simply to say that they wanted to be on the record regarding the matter at hand and proceeded to take their allotted five minutes to restate views they had expressed at every previous possible opportunity. By some small miracle, the measure actually got out of committee and to the House floor, where it ultimately won the approval of a majority of the members.

Fast forward to early July: The Senate takes up, of all things, a medical malpractice reform bill. Once again, proving that talk is indeed cheap, opponents and proponents repeated the same arguments that we've all heard far too many times. That's politics, folks. But there's a twist in Senate procedure—the filibuster. Put simply, the filibuster allows two-fifths of the Senate to talk a bill to death regardless of whether the other three-fifths wants to bring a bill to a vote.

Ironically, the opponents of the Senate medical malpractice reform bill didn't need to filibuster this particular legislation—it lacked the support of a simple majority. It would have died on an up-and-down vote, despite its merits.

As someone who generally takes a lower-case—and occasionally upper-case—libertarian approach to government, I guess tactics that slow the wheels of legislation shouldn't

bother me. If the government that governs least does indeed govern best—a central tenet of my personal political philosophy—there's something to be said for actions that hamper the workings of government, isn't there?

Unfortunately, all too often, the something to be said about such actions is that they're self-serving and even a bit dishonest. The beauty of our system of government is that, while the rights of the minority are protected, the will of the majority prevails.

Or at least it's supposed to. But, as the filibuster shows, the system doesn't always work the way it should and makes political arithmetic alien to anybody who's familiar with

the real arithmetic. In fact, the Senate's about the only place in the world where 51 isn't a majority of 100—it takes 60 votes to block a filibuster.

Sen. Zell Miller, the maverick Georgia Democrat, raised the call for reform of the filibuster months ago. He proposed that the number of votes needed to kill a filibuster be reduced on

each successive vote on a particular piece of legislation. This would allow opponents to make their points—perhaps repeatedly—but not thwart the will of the majority repeatedly.

Sen. Miller's argument for reform of the filibuster has been kicking around for months now, but no one has done much with it. Senate Majority Leader Bill Frist has advocated limited reform that would apply only to judicial nominees.

This might seem an arcane matter for risk managers, but in the next few months, the Senate will likely take up a number of issues of interest to risk managers. Class-action reform legislation seems almost certain to make it to the floor, some form of asbestos liability reform could follow it and even medical malpractice could re-emerge.

Supporters of the filibuster hold that, even though the Constitution is silent on the matter, the filibuster is a time-honored maneuver. But like some other enduring practices, the fact that the filibuster's been around for a long while doesn't make it entirely honorable. While its ostensible purpose is to foster debate, its practical impact is to thwart the will of the duly elected majority. Even in Washington, bad ideas—and occasionally good ones—most often fall of their own weight. Reining in the filibuster would allow them to do so honestly.

Senior Editor Mark A. Hofmann can be reached at [mhofmann@crain.com](mailto:mhofmann@crain.com).



Mark A. Hofmann

## Comings & Goings



Mr. Messner



Ms. Dituri



Ms. Ashland



Mr. Van Gilder



Mr. Brush

### Insurers:

Hamilton, Bermuda-based ACE Ltd. has named **Roger Gillett** as president of its new ACE Risk Management International unit. Previously, Mr. Gillett was executive vp, business development for ACE Bermuda.

The St. Paul Cos. Inc. has named **Gregory Vezzosi** as senior vp of specialty commercial insurance. Before joining the St. Paul, Minn.-

based insurer, Mr. Vezzosi was senior vp and chief underwriting officer for Royal & SunAlliance USA.

Michigan Construction Industry Mutual, based in Lansing, Mich., has named **Thomas J. Messner** as vp, chief operations officer-treasurer. Before being promoted, Mr. Messner was vp of underwriting and secretary-treasurer for the workers compensation insurer.

### Brokers:

London-based Willis Group Holdings Ltd. has made two senior-level appointments to its construction practice in California:

• **Sue Dituri** has been named senior vp. Ms. Dituri—who previous-

ly was executive vp of the risk management department for Northern California for USI Holdings Corp.—will be based in San Francisco.

• **Janice K. Ashland** has been named managing director for wrap-ups and will be based in Los Angeles. Before joining Willis, Ms. Ashland was director of construction sales for Aon Risk Services.

### Reinsurance:

**Terry Van Gilder** has joined Toa Reinsurance Co. of America in Morristown, N.J., as chief executive officer. For much of his career, Mr. Van Gilder was with Chubb & Son Inc., where he rose to chief underwriting officer. He replaces James A. Pilla, who will retain his position as executive vp and head of the underwriting department.

### Managed care:

Consortium Health Plans, based in Columbia, Md., has named **Anthony R. Masso** as president and chief executive officer. Previously, Mr. Masso was president of Strong Castle L.L.C., a consulting firm.

### Other suppliers:

**Rick Brush** has been named manager, private groups, for Sacramento, Calif.-based Bickmore Risk Services. Before joining the self-insurance group administrator, Mr. Brush was president and chief executive officer for the California Society of Association Executives.

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Asbestos maker seeks to sue brokers if coverage is voided

## More brokers can be named in U.K. suit

By CAROLYN ALDRED

**LONDON**—Affiliates of a broker involved in placing a disputed reinsurance policy can be named as defendants in the coverage litigation if the cedent also relied on their services when placing the risk, a British appeals court has ruled.

As a result of the July 22 Court of Appeals decision, Marsh & McLennan Cos. Inc. is becoming embroiled in the coverage dispute involving the captive insurer of former U.K. asbestos manufacturer Turner & Newall and European International Reinsurance Co. Ltd., a Bermuda-based subsidiary of Swiss Reinsurance Co.

Turner & Newall, now a unit of Southfield, Mich.-based Federal-Mogul Corp., in late 1996 obtained via its captive insurer a \$500 million excess-of-loss reinsurance policy designed to contain its asbestos liabilities. Federal-Mogul filed for Chapter 11 bankruptcy reorganization in late 2001 under the weight of mounting asbestos liabilities in the United Kingdom and United States.

In November 2001, EIR filed a writ to void its one-third share of the reinsurance policy, claiming nondisclosure of risks (*BI*, Feb. 4, 2002). Curzon Ltd., the Guernsey-based captive, denied the reinsurer's allegation but sought a declaratory judgment that if EIR were allowed to void the contract of reinsurance, then the broker that placed the coverage should be found liable for failing to exercise reasonable skill and care in placing the reinsurance.

The Court of Appeal agreed, upholding a lower court ruling that other broking affiliates involved in placing the risk could also be brought into the action. As a result, Sedgwick UK Risk Services Ltd., Sedgwick OS Ltd. and Marsh USA Inc. all can be included in the Curzon action alongside Sedgwick Ltd., despite the fact that T&N's letter of engagement was solely with Sedgwick Ltd.

The letter of engagement provided for an hourly fee, as well as a bonus for the successful placement, and limited Sedgwick Ltd.'s liability for loss or damage resulting from the provision of

the services to £1 million (\$1.61 million). Lawyers for SRS, SOL and Marsh claim that their involvement as agents or subcontractors of Sedgwick Ltd. was not an assumption of responsibility to T&N and that they should not be parties to the litigation.

Lawyers for Curzon claim, though, that the letter of engagement was with T&N and not Curzon. Curzon was not a party to the letter of engagement and therefore is not bound by it, the captive argued. Curzon was a separate entity, with separate interests from T&N—in particular a £500 million (\$804.3 million) exposure as T&N's insurer. Curzon claims it relied on advice "voluntarily" given by SRS, SOL and Marsh, in particular that of SOL employee Michael Hammond and Marsh employee Robert Herrick, court papers show.

The Court of Appeal agreed that Curzon had an arguable case, finding that the companies that employed the individuals involved in broking

See **ASBESTOS**/page 17

## World Updates

### Netherlands forms terrorism reinsurer

Dutch insurers and the country's government have set up a reinsurer of last resort to cover terrorism risks in the Netherlands. The new company, Netherlands Reinsurance Co. for Losses from Terrorism, will cover losses above an industrywide primary insurance limit of 1 billion euros (\$1.12 billion) for 2003. Dutch insurers have informed buyers that the reinsurance coverage will take effect Aug. 15. The reinsurance pool, which has capacity of 1 billion euros, is funded by Dutch insurers, the government and reinsurers.

### U.K. insurers, brokers set renewal notice rule

The Assn. of British Insurers and the British Insurance Brokers Assn. have published a statement of good practice for renewal notification that will take effect on Nov. 1. The standard calls on insurers to notify brokers of changes to liability coverage renewal terms at least 21 days prior to the renewal date. Brokers, in turn, must pass that information on to buyers "as soon as possible." Under the terms of the new standards, liability insurers would be expected to extend existing coverage if they fail to notify the broker of a nonrenewal within the 21-day notice period.

### Swiss Re, Mitsui swap cat risks

Swiss Reinsurance Co. and Mitsui Sumitomo Insurance Co. have agreed to a \$100 million catastrophe risk-swap. Under the terms of the deal, Swiss Re will cover a \$100 million layer of Mitsui Sumitomo's Japanese typhoon exposure, while the Japanese insurer will bear a \$100 million layer of Swiss Re's North Atlantic hurricane and European windstorm risk, explained Juerg Stoll, managing director of Swiss Re's financial services unit in Zurich.

### London's Brit exits direct aviation

London-based Brit Insurance Holdings P.L.C. has stopped underwriting direct aviation risks. Brit is ceasing underwriting direct lines, including general aviation and product risks, that were forecast to generate aggregate premiums of £60 million (\$96.5 million) in 2003, Brit said in a statement. About £22 million (\$35.4 million) of that premium has already been written, the company added, and the account is expected to return a profit for 2003. The company will continue to write aviation reinsurance, aviation war risk and space coverage, it said.



Prague's Ruzyně International Airport

PHOTO COURTESY: VACC

## Czech insurers form aviation pool to lower costs

High cost of reinsurance cited

By LUBOMÍR SEDLÁK

**PRAGUE**—A group of Czech insurers are forming an aviation insurance pool in an effort to curb high reinsurance costs.

Currently, four insurers are working on a co-operation agreement for the pool, which would offer coverage to Czech airlines. The group currently consists of Česká pojistovna a.s., Kooperativa a.s., CSOB pojistovna a.s. and Pojistovna České sporitelny a.s.

The four are joining forces in an effort to obtain better reinsurance terms from international reinsurers.

"When together in a pool, we will get better reinsurance terms from the London market, for instance," said a spokeswoman for Pojistovna České sporitelny. The pool would also help reduce administration costs, she said.

The pool will likely offer capacity of between \$6 million and \$7 million before reinsurance, she said.

Reinsurance rates for Czech aviation insurers have increased substantially over the past two years.

"Fleets of Czech airline companies are estimated to be worth dozens of billions of crowns and average annual premiums go into hundreds of millions of crowns," said a spokesman for Česká pojistovna.

The pool will have to be approved by both the Czech finance ministry and the Office for Protection of Economic Competi-

## Insurance companies not liable for fraudulent pension sales, court rules

By CAROLYN ALDRED

**LONDON**—Pension companies cannot aggregate the settlements of negligence claims against them related to the pension sales scandals of the late 1980s and 1990s, the United Kingdom's highest court has ruled.

The House of Lords ruling means that the pension companies involved will have to retain the cost of multiple settlements, rather than a single retention for a large claim that would trigger their professional liability coverage.

The ruling, *Lloyds TSB General Insurance Holdings Ltd. and others vs. Lloyds Bank Group Insurance Co. Ltd.*, is expected to influence the wording of aggregation clauses in other insurance contracts, several lawyers say.

Overturning two lower court decisions, the House of Lords on July 31 ruled that the plaintiffs cannot aggregate claims of using misleading sales tactics to sell pensions.

The case was watched closely by other pension companies that have paid billions of pounds in compensation stemming from the pension sales scandal that swept the United Kingdom in the late 1980s and early 1990s.

The claims stem from a 1986 change in U.K. legislation that allowed employees entitled to state funded occupational pension benefits to convert part of the state pension into private pension plans.

Many policyholders who opted to switch to personal pension plans subsequently found themselves at a disadvantage and alleged that they were not given a comparison of the costs and benefits of remaining in an occupational plan.

Many also alleged that sales of personal pension plans did not follow a code of conduct laid down by the Life Assurance & Unit Trust Regulatory Organization, a regulatory body set up by the U.K. government but funded by the companies it governs.

"The House of Lords handed down a highly significant judgment in a case that is bound to have a profound effect on the wording of insurers' aggregation clauses and the handling of notifications of multiple small claims," said

Michael Baker, a lawyer with London law firm CMS Cameron McKenna.

The ruling involves compensation claims paid to more than 20,000 people who were encouraged to buy personal pensions and reduce reliance on state-provided pensions.

Lloyd's TSB and the other pension companies filed claims with their professional indemnity insurers to cover the costs of the compensation payments.

The companies argued that the pension mis-selling claims were the result of a related series of acts and omissions and should be aggregated. But the insurers argued that the pensions were sold by different agents and should be treated as individual claims.

The pension companies' insurance policies provide £125 million (\$202.3 million) in coverage, with a deductible of £1 million (\$1.6 million) for each loss. Compensation payments to victims of the pensions mis-selling debacle received average payouts of about £35,000 apiece (\$56,630).

In a unanimous 5-0 ruling, the House of Lords overturned earlier decisions of the Commercial Court and Court of Appeal by ruling that the claims did not arise from "a related series of acts or omissions" but that each claim arose from a separate failure.

The Financial Services Authority, which regulates the U.K. financial services industry, estimates that pension mis-selling settlements already have cost the pension industry more than £11.5 billion (\$18.61 billion).

The decisions will "have a profound effect" on the efforts of other pension companies to aggregate their pension mis-selling claims in cases where their professional indemnity policy "contains an identical or very similar wording," said Mr. Baker. "In this regard, the decision will be welcomed with open arms by much of the (insurance) market," he said.

*Lloyds TSB General Insurance Holdings Ltd. vs. Lloyds Bank Group Insurance Co. Ltd.; Abbey National P.L.C. vs. Alan Godfrey Lee & Ors. (2003) United Kingdom House of Lords, 48*

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CHANCERY DIVISION  
 COMPANIES COURT

No 3308 of 2003

IN THE MATTER OF

### PAN ATLANTIC INSURANCE COMPANY LIMITED

and IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by an Order (the "Order") dated 22 July 2003 made in the High Court of Justice of England and Wales in the matter of Pan Atlantic Insurance Company Limited (the "Company"), the scheme of arrangement (the "Scheme") proposed to be made between the Company and its Scheme Creditors (as defined in the Scheme) pursuant to section 425 of the Companies Act 1985 which was voted on and approved by Scheme Creditors at a meeting held on 9 July 2003, was sanctioned. A copy of the Order was lodged with the registrar of companies on 24 July 2003, and the Scheme became effective on that date.

Scheme Creditors wishing to claim in the Scheme must complete and return Claim and Certificate Forms in accordance with the instructions accompanying them and the provisions of the Scheme, by the Bar Date, being 18 September 2003. Failure to do so will result in the Scheme Creditor concerned not being entitled to claim a dividend under the Scheme.

Should you have any questions regarding this Notice, please address them to Edward Walker at:

Grant Thornton, Grant Thornton House, Melton Street,  
 Euston Square, London NW1 2EP

Telephone: +44 (0) 870 991 2261. Facsimile: +44 (0) 20 7383 4077. Email: Edward.J.Walker@guk.com

## LEGAL NOTICE

IN THE HIGH COURT OF JUSTICE  
 (IN ENGLAND AND WALES)

CHANCERY DIVISION  
 COMPANIES COURT

REGISTRAR DERRETT

No 4853 of 2003

IN THE MATTER OF

### ARIG INSURANCE COMPANY LIMITED

AND IN THE MATTER OF THE COMPANIES ACT 1985

NOTICE IS HEREBY GIVEN that, by an order dated 31 July 2003 made in the above matter the Court has directed that a meeting ("Creditors' Meeting") of the Scheme Creditors (as defined in the scheme of arrangement hereinafter mentioned) of the above-named company ("Company") be held on 12 September 2003 at the offices of PricewaterhouseCoopers LLP ("PwC"), 1 Embankment Place, London, WC2 6RH, commencing at 10 a.m. (London time). All Scheme Creditors are requested to attend at such place and time either in person or by proxy.

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

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

The proposed Scheme and the statement required to be provided to creditors pursuant to Section 426 of the Companies Act 1985, together with voting forms for use at the Creditors' Meeting, have been circulated to known Scheme Creditors as well as brokers and other intermediaries. Copies of these documents, as well as blank voting forms, may be obtained by attending at, or on written application to, the offices of PwC at 3 St Philips Central, Bristol, BS2 0XJ, marked for the attention of Emma Pugsley or the offices of Clifford Chance Limited Liability Partnership, at 200 Aldersgate Street London EC1A 4JJ (prior to 26 August 2003) and at 10 Upper Bank Street, London E14 5JJ (after 26 August 2003), marked for the attention of Rachel Hugh-Jones.

Scheme Creditors are requested to lodge the voting form with PwC at the above Bristol address, marked for the attention of Emma Pugsley, by 4 p.m. London time on 10 September 2003. Voting forms may also be handed in at the registration desk prior to the Creditors' Meeting. A faxed copy of the voting form will be accepted if legible but Scheme Creditors are requested to send the originals, to be received by PwC at the above address by 9.30 a.m. London time on 12 September 2003, or to hand them in at the registration desk prior to the Creditors' Meeting.

The Court has appointed Dan Yoram Schwarzmann or, failing him, Mark Charles Batten both of PwC, to act as chairman of the Creditors' Meeting and has directed the chairman of the Creditors' Meeting to report the result of the Creditors' Meeting to the Court.

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

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A mandatory bidder's conference will be held August 28, 2003 at 1:00 p.m., at PEIA offices. Proposals are due no later than 5:00 p.m., October 1, 2003.

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## ADVISORY NOTICE

**To All Creditors of Pan Atlantic Insurance Company Limited in Provisional Liquidation:** As of January 13, 2000, all of Pan Atlantic's title to reinsurance recoverables, with the exception of claims against Lloyds Syndicates/Equitas Limited (the "Assigned Recoverables") were assigned to PAICO Receivables, LLC ("PRLLC"). All amounts due from reinsurers to Pan Atlantic in respect of the Assigned Recoverables are the property of PRLLC.

If you have claims against the Pan Atlantic estate, please note that the Scheme of Arrangement that was sanctioned by the High Court on July 22, 2003 calls for filing of claims on a gross basis (no netting of offsets). All claims must be submitted with the Scheme Officers on or before September 18, 2003 as provided for in the Scheme. The obligation, if any, of PRLLC to accept offset of amounts due a reinsurer by PAICO against amounts due on the Assigned Recoverables, may depend on various facts and circumstances. Please be advised that PRLLC does not intend to accept offset of any amount against any of the Assigned Recoverables for any claim not timely filed and accepted by the Pan Atlantic Scheme Officers.

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## LEGAL NOTICE

### POLICYHOLDERS, DEBTORS, PRINCIPALS, OBLIGES, CLAIMANTS, CREDITORS AND ALL OTHER PERSONS INTERESTED IN THE AFFAIRS OF LEGION INSURANCE COMPANY (IN LIQUIDATION) (LEGION) AND VILLANOVA INSURANCE COMPANY (IN LIQUIDATION) (VILLANOVA)

NOTICE IS HEREBY GIVEN: The Commonwealth Court of Pennsylvania ordered Legion Insurance Company (Legion) and Villanova Insurance Company (Villanova) into liquidation effective July 28, 2003. M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, was appointed the Statutory Liquidator, and was ordered to take possession of Legion's and Villanova's property and to liquidate their business.

The Orders of Liquidation enjoin all persons from instituting or continuing any action at law or in equity or any attachment or execution against Legion or Villanova or the Statutory Liquidator. All persons indebted to or having any property of Legion or Villanova in their possession, directly or indirectly, are hereby notified to tender an account of the indebtedness and to pay the same and deliver such property promptly to the Statutory Liquidator.

Anyone having a claim against Legion or Villanova, whether under an insurance policy or otherwise, must file a proof of claim against the company with the Liquidator not later than 5:00 P.M. EDT on June 30, 2005. A proof of claim must be filed even though a claim was made against Legion or Villanova prior to the date of liquidation. Proof of claim forms will be mailed to all known claimants and creditors of the company. Persons who need a proof of claim form who do not receive one within ninety (90) days should request one from the Liquidator.

All obligations of Legion or Villanova, other than with respect to those under covered policies, will be paid if funds are available at the conclusion of the liquidation process.

All inquiries should be addressed to:  
 Statutory Liquidator of Legion (or Villanova) Insurance Company  
 One Logan Square, Suite 1400, Philadelphia, PA 19103  
 Liquidator@legioninsurance.com; or by phone at (215) 979-7879.

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## Asbestos: More brokers can be named

Continued from page 15

the risks and SRS, the company that presented the reinsurance policies to reinsurers, had voluntarily assumed duties of care to Curzon sufficient to be brought into the action.

The excess-of-loss policy, designed to cap T&N's asbestos liabilities, was triggered when the aggregate cost of claims made or brought against the company after July 1, 1996, exceeded £690 million (\$1.07 billion), according to Federal-Mogul. During the initial stages of

the policy's negotiation, a trio of reinsurers—Swiss Re, Munich Reinsurance Co. and Centre Reinsurance Ltd.—were lined up to provide insurance for T&N. At a late stage in the negotiations, though, Curzon was asked to front the insurance as a reinsurance policy and EIR was subsequently substituted for Swiss Re, court papers state.

EIR claims that it is entitled to void its £166 million (\$267.0 million) share in the reinsurance policy because the contents of a London

market report—prepared by the law firm of Mendes & Mount, dated Aug. 28, 1996, and widely known in the London market—were not disclosed to it. The report estimated that as many as 70,000 new asbestos claims could be filed before the end of 1996 against the asbestos producer members of the Centre for Claims Resolution, following adverse legal developments in the U.S.

Curzon claims that the Mendes & Mount report was known to the Sedgwick and Marsh units by no

later than Nov. 13, 1996, when they disclosed it to both Munich and Centre Re.

Marsh would not comment on the dispute.

According to Federal-Mogul's latest filings with the U.S. Securities and Exchange Commission, T&N's asbestos liabilities account for \$1.3 billion of the group's total asbestos liabilities of \$1.56 billion. The company also recorded an insurance recoverable of \$595.7 million from the disputed reinsurance contract.

The SEC filings note that one of the three reinsurers is challenging the validity of its insurance contract and the other two have "issued separate declaratory proceedings seeking clarification of policy requirements related to the asbestos liability policy."

The SEC filings note, though, that Federal-Mogul believes that T&N will be entitled to recover payment under the policies.

*European International Reinsurance Co. Ltd. vs. Curzon Insurance Ltd. (2003) England and Wales Court of Appeal, Civ. 1074.*

## Heat risk: Worker health, safety concerns rise

Continued from page 4

three years ago at a small facility in Texas, and since the employer stepped up prevention efforts at that location, it has not happened again, she said.

But not all employers are in the same boat.

"We did have a subcontractor that keeled over and required three days' hospitalization, but I don't think the subcontractors were out doing the things we were doing," said Ms. Vinck.

"We're sensitive to it because in these tanks you can sometimes add 10 or 20 degrees on top of whatever your outside temperature is," she said, referring to the large steel tanks aboard ships that the workers at U.S. Marine Repair refinish when they are in port.

Other types of workers are equally at risk because of the nature of their work, according to Ed Stevenson, director of industrial hygiene at Liberty Mutual Insurance Co. in Hopkinton, Mass.

"Heat is such a common exposure. Where is it going to be? Either in hot environments or in the hot outdoors," he said.

While workers toiling outside may seem the most likely candidates for suffering from heat-related illnesses, "there are other types of jobs that you may not even think of," such as foundry workers and others exposed to hot indoor air temperatures or radiant heat sources like furnaces, asphalt or hot metals.

Workers who are required to

wear personal protective equipment and/or clothing can be even more susceptible since such gear can prevent air from reaching skin in order to cool it down, Mr. Stevenson said.

Furthermore, "the amount of physical activity will determine the risk level," he said.

For example, while walking around or using a table saw may be classified as a light or moderate workload, construction work such as shoveling sand or framing a house is usually considered to be a heavy workload, Mr. Stevenson explained.

Construction workers are a particular concern of ACE USA, which provides workers compensation coverage to builders in Las Vegas, Miami and Texas, where summer temperatures can average higher than even the hottest days in other parts of the country, according to Wayne Clifton, national construction safety manager in Philadelphia at ESIS Inc., the risk management consulting arm of ACE USA.

In those locations, "when you get heat waves, normal construction workers are still working outside. That's just the nature of the business," he said.

But often "they aren't acclimated to the heat condition, and most of them haven't been trained or informed of the signs of heat stress and heat exhaustion, because there's different levels," he explained.

To prevent the construction workers ACE insures from becoming

ill from the heat, ESIS stresses the training of both workers and superintendents on the signs and symptoms of heat exhaustion and heat stroke, Mr. Clifton said.

"You really have to know the difference," he said. "This is what training is all about, for a job superintendent to know when to punch 911 and get somebody out because they might be dead by the time they figure out they've got one animal over the other."

**'When you get heat waves, normal construction workers are still working outside. That's just the nature of the business.'**

Wayne Clifton  
ESIS Inc.

Heat exhaustion is a mild form of shock caused when the circulatory system begins to fail as a result of the body's inadequate effort to cool down after prolonged exposure to excessive heat. Among the symptoms are extreme weakness or fatigue, giddiness, nausea, headache, vomiting, loss of consciousness, clammy, moist skin, pale or flushed complexion, and normal or only slightly elevated body temperature.

By contrast, with a heat stroke, which occurs when the body's temperature regulatory system fails, the

victim's skin is hot, usually dry, red, or spotted. Body temperature is usually 104 degrees Fahrenheit or higher, and the victim is mentally confused, delirious, perhaps in convulsions, or may be unconscious.

Unlike heat exhaustion, from which many people recover after they've been cooled down, heat stroke can quickly become a life-threatening condition if left untreated.

In addition to providing training to workers and their supervisors to recognize the signs and symptoms of heat-related illnesses, employers can conduct heat stress surveys to identify potential exposures, said Mr. Stevenson of Liberty Mutual.

Such surveys monitor the environment to determine how ambient conditions are likely to affect workers using measurement criteria called the wet bulb globe temperature, or WBGT, index.

The "wet bulb" measures evaporation and factors in wind and humidity; the "dry bulb" measures the air temperature, and the "globe" measures the radiant heat from the sun.

The technique dates back to World War I and is based on research the U.S. Army conducted to determine how hard officers could safely push their troops, Mr. Stevenson explained.

In addition to the WBGT index, the American Conference of Governmental Industrial Hygienists in Cincinnati has established guidelines called threshold limit values,

or TLVs, for heat stress.

There are numerous loss control measures that employers can implement if such tests determine that workers are at risk of being exposed to potentially hazardous levels of heat, experts say.

For example, "if you know there will be a hot environment, you may use power tools rather than hand saws," suggested Mr. Clifton.

He also advises employers to adjust work schedules whenever possible so that workers are not exposed during the hottest part of the day.

"In Las Vegas, they start at 2 a.m. and quit early," he said.

It is also essential that worksites be furnished with plenty of water, ice and/or ice packs and emergency First-Aid gear, Mr. Clifton added.

Cooling vests with built-in ice packs are good for moderate work and usually last for two or three hours, said Mr. Stevenson.

He also recommends that workers be allowed to pace themselves.

"If I can self-pace, then I have less stress on my body and it can keep up with the heatload that's produced" by the activity, he explained.

Shade should be provided for outdoor workers during breaks, and indoors, proper ventilation should be installed to dilute hot air, exhaust hot air or to bring cooler air inside, Mr. Stevenson advised.

"Another engineering control is as simple as shielding radiant heat areas" so that workers are not exposed to the full force of the heat, he said.

## Treaty: Standardizing payouts

Continued from page 1

in recent years as governments and the industry have attempted to update the 1929 Warsaw Convention and subsequent amendments. Governments and the airline industry have been looking for an approach that provides passengers and their families with recoveries that are more in line with modern economic needs and that discourages costly litigation with airlines.

Under the treaty, which President Bush supports, airlines would be strictly liable for 100,000 special drawing rights (\$139,200) per passenger. An SDR is an instrument that consists of a basket of curren-

cies. Airlines could be held liable for unlimited damages beyond 100,000 SDRs if they cannot show either they were not negligent or that a third party was at fault.

The new system gives international crash victims and their families a slight legal advantage over U.S. domestic crash claimants, who first must prove an airline was at least partially at fault in the crash, noted airline attorney George N. Tompkins Jr. of Schnader Harrison Segal & Lewis L.L.P. of New York.

Another provision in the new convention allows claimants to sue airlines in the country where a pas-

senger permanently resided. The United States insisted on that provision because some families of passengers killed or injured in crashes of foreign carriers overseas complained that foreign courts did not award them adequate compensation.

Plaintiffs have been limited to filing suit in four jurisdictions: the countries in which the airline's head office was based or its principal business was located; the country in which the ticket was purchased; or the country of final destination.

The new convention was hammered out in May 1999 by the In-

ternational Civil Aviation Organization, an independent air transportation arm of the United Nations (BI, June 7, 1999).

To become effective, the treaty had to be ratified by 30 nations. Twenty-nine nations already have approved it, but some have been waiting until the United States acted, according to Mr. Tompkins, who represents the International Air Transport Assn., a group of about 240 airlines worldwide. Over the past half century, the United States has been a driving force in several other modifications of the Warsaw Convention but has not approved any of them because of their final language, Mr. Tompkins explained.

Among the governments that had been waiting for the United

States to ratify the treaty are China and the European Union, according to Mr. Tompkins.

Still, other governments intend to ratify the treaty, and the U.S. government did not want to lose the prestige associated with being one of the 30 original signatories to the treaty, Mr. Tompkins said.

Sixty days after the United States deposits it with ICAO, the treaty would take effect in all 30 countries that have ratified it. The treaty cannot be enforced anywhere before then, though many air carriers already are voluntarily abiding by some of its provisions.

The convention would become effective in additional countries as governments there ratify the treaty.

## Coverage: Plan enters key phase

Continued from page 1

tive at the federal Office of Management and Budget.

"It is a potential template for a broader group," said Andy Anderson, a consultant with Hewitt Associates Inc. in Lincolnshire, Ill.

Mr. Etheredge notes that the use of tax credits to expand access to health insurance enjoys bipartisan support in Congress, while the infrastructure developed over the last year or so to implement the HCTC could easily be expanded to cover other beneficiaries. And government officials overseeing the HCTC program agree with that assessment.

If legislators were to expand the program, "we are quite capable" of handling that, said Keith Taylor, director of the IRS Health Coverage Tax Credit Program in Washington.

Indeed, bipartisan legislation is expected to be introduced soon in the Senate that would expand the HCTC to the millions of people receiving unemployment compensation.

While only about 15 IRS employees are directly involved in the HCTC program, the IRS has worked with about a half-dozen contrac-

tors—including such heavyweights as Accenture—in designing and organizing the program.

Employers have a vested interest in the outcome of the HCTC program and its potential as a model for future government health care access initiatives.

If there is an increase in the number of people with health insurance coverage, hospitals and other providers will see a reduction in the amount of uncompensated care. That, in turn, should benefit employers, because there will be less uncompensated care cost shifted to patients covered under group plans.

No one knows by exactly how much provider cost-shifting inflates charges incurred by those in group plans. In one of the nation's smaller states—Maine—providers now incur \$275 million in uncompensated costs per year, state officials estimate. Providing coverage to that state's 190,000 uninsured could, through a reduction in cost-shifting and a requirement that health plans pass on some of those cost-shifting savings to the state, largely finance a coverage expansion, say state officials, who pushed through a bill in the legislature that is intended to

do just that (*BI*, June 23).

The biggest unknown—and an answer will not be known for some time—is whether a significant percentage of eligible HCTC beneficiaries will, in fact, use the tax credit to purchase coverage.

Some early signs, though, are encouraging. At several HCTC registration programs offered in Maine and Pennsylvania, about half of the people who attended signed up for coverage, said Mr. Taylor of the IRS.

By contrast, one of the failings of COBRA is that due to the high cost—family coverage can easily cost \$800 a month—so few beneficiaries opt for the coverage. Jessica Cole, vp for COBRA Compliance Systems Inc., a Coldwater, Mich.-based administrator, estimates that only 10% of beneficiaries opt for the coverage.

But the 65% advance tax credit makes COBRA and other health insurance plans much more affordable. An example provided by Blue Cross & Blue Shield of North Carolina, whose HCTC plan was recently approved by the state insurance department, dramatically illustrates how the tax credit brings down the out-of-pocket premium cost for

beneficiaries.

Without the tax credit, the monthly premium for a young healthy family of four for a plan with a \$1,000 deductible would be \$543. With the tax credit, the out-of-pocket monthly premium cost drops down to about \$190, according to the Blues plan.

"It is a great way for people to access health insurance that they could otherwise not afford," said Tim Cook, manager of government affairs in Detroit for Blue Cross & Blue Shield of Michigan, which recently began to offer plans to those eligible for the tax credit.

"If you so diminish the cost, you make coverage far more affordable" and increase the number of people likely to purchase coverage, said JoAnn Lamphere, a senior manager at The Lewin Group, a Falls Church, Va.-based consultant that assisted the IRS in implementing the HCTC program.

Another big unknown when Congress passed the HCTC legislation was the availability of health care options to beneficiaries. While COBRA, for example, is automatically considered a qualified plan under the trade law, COBRA often is not an option. That is because, in many cases, the beneficiary's former employer has gone out of business and, as a result, is not offering

COBRA.

But HCTC beneficiaries in many states do have options other than COBRA. As of last week, 20 states had approved HCTC plans—most of them Blue Cross & Blue Shield plans—and that number is expected to rise to about two dozen in the coming weeks.

"We have a commitment to helping the uninsured and the communities we serve," said Sandra Troia, director of consumer programs in Pittsburgh for Highmark Inc., a Blues plan.

Of those 20 states, about a half-dozen have opened up their high-risk pools to HCTC beneficiaries.

"We are very happy we can provide coverage to these individuals," said Richard Popper, executive director of the Maryland Health Insurance Program.

While insurers are opening up their plans, HCTC beneficiaries in many states still have only COBRA as an option, assuming their former employers still are in business. It is troubling, some say, that more coverage options are not available in every state.

For example, retirees in Illinois who are under 65 and once worked for National Steel Corp., a failed steel producer whose pension plan was taken over last year by the PBGC, can buy a HCTC plan through a state high-risk pool. But National Steel retirees who live in Missouri do not have such an option, because that state lacks such a program.

"While this is a program that benefits a large number of people, there are many similarly situated people who cannot benefit, through no fault of their own," said Tom Duzak, director of pension and benefits at the United Steelworkers of America in Pittsburgh.

While legislators need to address this and other eligibility issues, Mr. Duzak notes that this is a program that has "provided significant financial relief to thousands of our members."

Added Richard Cockrum, vp of government relations for Anthem Blue Cross & Blue Shield in Indianapolis, "This is a way where the resources of the federal government and the efficiencies of the private market can be joined to deliver services."

## Commute: AD&D cover add-on

Continued from page 3

nization dedicated to integrated disability and absence management.

Cell phones, larger workloads and longer commutes all are blurring the line between work hours and an employee's private time, said Ms. Carruthers, who noted that more employees are conducting business while traveling between home and office.

Some existing coverages for accidental injuries or death may not apply to commutes, or may not provide enough of a benefit, she added.

Workers compensation policies, for example, traditionally have not paid for accidents that occur while commuting, though work-

ers comp covers such risks in some states under certain circumstances, Ms. Carruthers said.

Progressive employers want their employees and their families to be compensated as much as possible, especially if the benefit is available for a reasonable price, Ms. Carruthers said.

CIGNA's commuter coverage would pay claims even if a workers comp policy were to provide benefits for a death or injury, said Michael Pellino, vp of product management for CIGNA in Philadelphia.

In a press release discussing the product, CIGNA points out that, according to U.S. Census data, the average American commute has increased to 26 minutes in 2000

from 22 minutes in 1990.

CIGNA first developed its new product when the City of Phoenix expressed a need, Mr. Pellino said. The product purchased by Phoenix, however, differs from what CIGNA is currently marketing to other employers.

Under Phoenix's policy, employees can receive up to \$200,000 as a death benefit if an accident occurs within two hours of leaving their home or work, according to information provided by the city. The city pays the premium for the commuter coverage.

Under the plan CIGNA is currently marketing for other employers, the insurer provides the commuter coverage as an endorsement to its AD&D plans, Mr. Pelli-

no said.

Although most accident insurance plans CIGNA sells are paid for by employees through payroll deductions, the endorsement also is available to employer-paid plans, he said.

"It is to an employee's advantage to purchase this type of coverage, given that automobile crashes are the biggest cause of accidental death," said Brenda McFarland, a consultant specializing in the design and pricing of AD&D insurance for Mercer Human Resource Consulting in Los Angeles.

So far, very few commuter insurance policies have been sold. But other insurers already are seeking regulatory approval for policies that would compete with CIGNA's product, said Ms. McFarland. She declined to name those other insurers.

## ASHRM: Med mal options sought

Continued from page 3

Mr. Kinsey also discussed the advantages and disadvantages of other risk financing approaches, which include deductibles, self-insured retentions and quota share programs.

Such approaches may lower participants' premiums, allow them to more closely manage claims, improve cash flow and create good loss experience that results in reduced premiums in the future, he said.

The disadvantages of such programs, though, include general financial uncertainty, deferred tax deductibility, added internal costs and the possibility of having to collateralize some risks, Mr. Kinsey said.

He noted that a "rent-a-captive" or a group captive approach is advantageous in that they have no capitalization requirements while providing a funding mechanism for a self-insured retention. In addition, participants may be able to deduct their premium payments and benefit from good loss experience, he said.

But the disadvantages of such approaches include higher fees for services and fronting and collateralization costs, Mr. Kinsey said. In addition, members may face a risk from improper underwriting or insolvency.

"I look at these as a short-term solution," Mr. Kinsey said.

A pure captive, which insures the

risks of a single company, can offer a longer-term solution, for at least three to five years, he said. Advantages of such programs include direct access to reinsurers, the ability to underwrite third-party risks—which can help hospitals provide coverage for their doctor groups—and the potential of benefiting from good experience, Mr. Kinsey explained.

Even pure captives have their downsides, though, he said. They require a participant to pay the costs associated with forming and operating the captive and face funding requirements established by the captive domicile.

In terms of structure, captives can operate in a variety of ways, includ-

ing using licensed insurers in some type of fronting carrier arrangement or segregating cells, in which participants retain their losses individually but share in paying the captive's costs for overhead and reinsurance protection, Mr. Kinsey said.

It is also possible to combine both types of approaches, he said.

Regardless of the structure, it takes several steps to establish a captive, including choosing a domicile and reviewing the financial costs of administration, premium funding, capital and taxes.

Mr. Kinsey offered several tips for establishing a captive, including using a qualified actuary to determine ultimate losses.

He calculated that the annual operating costs of a captive should be in the range of \$125,000 to \$150,000.

### ADVERTISER

## INDEX

### Issue of August 11

| ADVERTISER                      | PAGE #   |
|---------------------------------|----------|
| Aetna Corporate                 | T2       |
| AIG Corporate                   | T20      |
| Aon Corporation                 | 2        |
| Aon Risk Services/Georgia       | T2       |
| Benesight                       | T8       |
| Burnham Systems                 | T14      |
| Business Insurance              | T10, T12 |
| Carvill American Inc.           | 6        |
| Corporate Systems Corp          | T12      |
| Corvel Corporation              | 9        |
| Hunter-Alliance Group           | T14      |
| Infotech Consulting, Inc.       | T14      |
| Metropolitan Life Insurance Co. | T6/T7    |
| Mutual Of Omaha                 | T13      |
| POE Financial Group             | T11      |
| Private Healthcare Systems      | T11      |
| Travis Software                 | T10      |
| Trizetto Group The              | T5       |
| UnumProvident                   | T9       |
| Wausau Insurance Company        | 5        |
| WLT Software of FL, Inc.        | T14      |
| Zurich North America            | 7        |

August 11, 2003

## Late News

Continued from page 1

according to a survey by Buck Consultants Inc. For example, 23% of employers are continuing—for an unlimited period of time—full health care coverage to employees called up from the reserves, while 43% are offering coverage for a limited time period. A 1994 law requires—for military leaves up to 31 days—only that employers continue coverage on the same basis as prior to the leave. For leaves exceeding 31 days, employers have to extend COBRA-like coverage to employees called up from the reserves; employers can charge beneficiaries a premium equal to 102% of the group rate.



PHOTO: ZUMA

**A bomb at the JW Marriott in Jakarta, Indonesia, killed at least 10 and injured scores.**

### Jakarta Marriott insured by local owner

Marriott International Inc. will not suffer an insured loss from the deadly car bomb attack at a franchised hotel in downtown Jakarta, Indonesia, last week. Marriott operates the JW Marriott, which is owned by a Jakarta-based company. The local owner is responsible for insuring the property, according to Bradley R. Wood, vp-

risk management at Bethesda, Md.-based Marriott International. Mr. Wood said that he was unable to provide details of the hotel's coverage. The bombing killed at least 10 people and sent nearly 150 to hospitals.

### Bartholomay leaves Near North for Willis

William C. Bartholomay, president of Near North National Group, has been named group vice chairman of Willis Group Holdings Ltd. The move follows several other departures of key employees and clients from Near North, many of whom left to join Willis. Mr. Bartholomay, who has also been named vice chairman of Willis North America, joined Near North in 1991. He also is chairman of the Atlanta Braves and serves on the executive council of Major League Baseball, both of which are current Near North clients. Mr. Bartholomay said he did not sign any noncompete agreements with Near North.

### Guernsey names insurance director

Alan Fleming has been appointed director of insurance for the Guernsey Financial Services Commission. Mr. Fleming, who will take up the post on Nov. 1, succeeds Steve Butterworth, who has been director of insurance for more than 17 years. Mr. Fleming is currently managing director in the strategic account management unit at Aon Ltd. in London. He has also served as executive director and chairman of the London-based Assn. of Insurance & Risk Managers.

### Pillowtex workers eligible for health insurance credit

Employees of bankrupt textile manufacturer Pillowtex Corp. soon will be able to use a special federal tax credit to pay premiums for a health insurance plan to be offered by Blue Cross & Blue Shield of North Carolina. The North Carolina Insurance Department last month certified the Blues plan as qualified to offer coverage under the federal Trade Adjustment and Assistance program, which offers the tax credit to workers who lose their jobs due to foreign competition. The Blues plan is the first insurer in the state to offer a qualified product under that program.

### Judge rejects attempt to rescind Tri-State cover

A New Jersey Bankruptcy Court judge has rejected Great American Insurance Co.'s attempt to rescind four crime policies written for an armored car service. The judge ruled that although Tri-State Armored Services Inc. made misrepresentations on its applications, there was an abundance of evidence that money was being stolen from Tri-State and, therefore, Great American did not rely on information provided in the application in renewing the policy. The decision is the first to apply a new standard in New Jersey that makes it harder for insurers to rescind policies based on alleged misrepresentations, said John Ellison, partner with Anderson Kill & Olick P.C. in Philadelphia, which represents Tri-State's trustees.

### CNA sees big profit gain despite reserve boost

Realized investment gains, premium growth and cost-cutting initiatives helped CNA Financial Corp. record a 200% increase in profits for the first six months of the year, despite a \$308 million charge for reserve additions. For the first half, the insurer's net income totaled \$153 million, up 200% over the same period in 2002. CNA also said it had saved \$200 million in expense reductions, including staff cuts.

### Briefly noted

California Insurance Commissioner John Garamendi announced Thursday that he will run for governor on a ballot to recall current Gov. Gray Davis....A California state court judge has ordered various Lloyd's of London and London market underwriters, as well as Stonewall Insurance Co. of Cambridge, Mass., and Highlands Insurance Co. of Lawrenceville, N.J., to pay an **asbestos settlement trust** more than \$190 million of damages. The damages will cover a portion of the anticipated future asbestos claims against Fuller-Austin Insulation Co.

### Check out BusinessInsurance.com

Items in the Late News column originally appeared in *BI's* Daily News feature on [www.businessinsurance.com](http://www.businessinsurance.com). Visit the *BI* Web site to sign up to receive *BI's* Daily News by e-mail.

## Online Poll

[ 8/4 - 8/8 ]

**In your opinion, what has been the main driver behind medical malpractice insurance rate increases:**



|   |       |
|---|-------|
| Insurers seeking to recoup low investment returns | 32%   |
| Escalating claims costs                           | 50%   |
| No single main driver                             | 14.7% |
| Other   | 3.2%  |

## BI Stock Index

[ 8/4 - 8/8 ]

Up-to-the-minute data for all 84 companies that comprise the *BI* Stock Index can be found at [www.businessinsurance.com](http://www.businessinsurance.com)

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

|                       |       |
|-----------------------|-------|
| <b>BI Stock Index</b> |       |
| 1994.31               | 1.40  |
| <b>Dow Jones</b>      |       |
| 9191.09               | 0.41  |
| <b>S&amp;P 500</b>    |       |
| 977.59                | -0.26 |

### Largest gains

|                        |        |
|------------------------|--------|
| Meadowbrook Ins. Group | 17.61% |
| Argonaut Group         | 11.75% |
| Acceptance Insurance   | 11.11% |
| Gainsco Inc.           | 11.11% |
| Selective Ins. Group   | 9.50%  |

### Largest losses

|                     |         |
|---------------------|---------|
| Trenwick Group Ltd. | -80.95% |
| Oxford Health Plans | -12.03% |
| Health Net Inc.     | -11.63% |
| Vesta Insurance Co. | -9.92%  |
| PacifiCare          | -9.83%  |

### Weekly change by market segment

|                            |        |
|----------------------------|--------|
| Brokers                    | -1.84% |
| Insurers/Reinsurers        | 0.03%  |
| Managed Care Organizations | -7.41% |

Source: FinancialContent Inc. (<http://financialcontent.com>)

# Corruption: Increased disclosure expected

Continued from page 1

gentes, St. Paul's Mexican subsidiary and surety bond issuer.

St. Paul's quarterly filing also confirmed "non-compliance" with the insurer's internal controls by employees in Mexico, a St. Paul spokesman said.

There has been an increase over the past two years or so in multinational corporations reporting FCPA violations and instances of prosecution by the U.S. Justice Department and the SEC, said John Davis, a partner with Miller & Chevalier in Washington who specializes in the FCPA.

The passage of the Sarbanes-Oxley Act of 2002 and increased media scrutiny of corporate scandals following the collapse of Enron Corp. are driving more companies to voluntarily disclose FCPA violations, Mr. Davis said.

"There is a lot of opportunity for (violations of the act) to be implicated," he said.

One problem for companies is that the statute is "fairly broad," Mr. Davis said. While it applies to paying bribes only to foreign government officials, anyone who works for a state-owned company can be classified as a government official under the act, he explained.

Bribery is culturally ingrained in some countries, such as Mexico,

said Margaret M. Gatti at Margaret M. Gatti & Associates. The Haddonfield, N.J.-based law firm advises clients on foreign business operations. Even then, bribes usually are cloaked as some other payment, she noted.

Those factors make it tough for corporate headquarters to stamp out bribery by their foreign units despite implementing mitigation measures, the attorneys said.

But taking appropriate steps to prevent bribery does help reduce the penalties companies face when FCPA allegations arise, they agree. Still, fines are likely even when a company uncovers a problem on its own and takes corrective measures.

"There are potential benefits to voluntary disclosures," Mr. Davis said. But "it's very rare for a company to get off scot-free by doing that."

The penalties can be steep, Mr. Davis said. The Justice Department, for example, can fine a company up to \$2 million per violation and impose five years of imprisonment in criminal cases. Companies frequently settle before going to court, however, and fines typically amount to less than \$1 million, he said.

But in other cases, fines totaling tens of millions of dollars have resulted from prosecutors heaping on several charges arising from one in-

vestigation, Mr. Davis said.

Mitigating the fines can depend on a company's attempt to comply with the law. The FCPA, implemented in 1977, requires businesses to implement accounting controls aimed at stopping bribery.

Employers also should train foreign office employees in "issue spotting," Mr. Davis advises. When employees spot a potential problem they need to have a telephone number that easily connects them with the corporation's legal department or other corporate authorities that have further training in addressing the issue.

St. Paul may have followed the prescribed practice by uncovering the problem itself.

The insurer's spokesman, however, declined to provide details of the incident.

But he said the insurer reported the situation to the Justice Department, the SEC and to Mexican authorities. The company also reported to the SEC that its investigation did not identify any material adjustment to its financial statements.

The SEC has asked for additional information from St. Paul, the spokesman said.

"The amount of alleged payments under investigation are not significant" though the company takes the matter seriously, the

spokesman said.

In recent years, more countries have followed the United States' lead by outlawing bribery. Even some countries that formerly provided tax exemptions for amounts spent on bribes have outlawed the practice.

But Transparency International reports that sidestepping anti-bribery laws remains common in some countries, even among U.S. corporations operating overseas. TI is a Berlin-based organization dedicated to curbing corruption worldwide.

TI surveys risk analysts, business people, academics and others to determine their perception of bribery and corruption in specific countries worldwide.

Countries are scored on a scale of zero to 10 as to how they are perceived, with zero being the most corrupt.

According to the results of TI's 2002 survey work, Mexico received a score of 3.6. A score of 3.6 represents a very strong perception that corruption, including bribery, is a common practice in Mexico, a TI spokesman said. TI gives the United States a score of 7.7.

TI's research can be viewed at [www.transparency.org/surveys/index.html](http://www.transparency.org/surveys/index.html).

# Business Insurance

*Special Take-Out Section*

# *Benefits Management*

August 11, 2003

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# New Technology & Online Solutions



# Business Insurance

Special Take-Out Section

# Benefits Management

August 11, 2003

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T3

## Inside

### Online enrollment benefits employees

Online enrollment systems save employees time and prevent hassles, and some can aid with benefits decision-making. **Page T6**

### Staffing challenges can arise from changes

Employers need to address staffing issues when adding technology or outsourcing benefits work. **Page T8**

### Benefits calculators figure into decisions

Tools can help employees determine how much disability and life insurance coverage they need. **Page T10**

### Top employee benefit information systems

Rank EBIS software

- 1 **DataPath Software Suite**
- 2 **Powerplus**
- 3 **COBRA 3.0**
- DOS FlexComp 8.1**
- Employee Benefits Statements 3.0**
- FlexComp 9.0**
- Premium Billing 3.0**
- 8 **FACTS**
- 9 **FlexAdmin**
- FlexibleSoftware**

Ranked by number of installations in corporate employee benefit departments. **Page T4**

The full Directory of Employee Benefit Information and Communication Systems is available online, in the directories area of [www.businessinsurance.com](http://www.businessinsurance.com). The searchable directory allows users to locate benefit systems by company name, number of installations in employee benefit departments and type of system, among other information. The online database is free to subscribers of *Business Insurance*. PDF copies of the directory can be purchased by calling the Crain Information Center at 312-649-5476.



## Online benefits enrollment brings efficiency, savings

By MICHAEL PRINCE

More employers these days are allowing their employees to pick, click and enroll.

Recent years have seen a steady increase in the number of employers using Internet-based systems to enroll their employees in health care and other benefit plans. In addition, systems are becoming more sophisticated, with most preventing certain data entry errors and some helping plan participants select the benefit offerings most suited to their needs. And as more employers embrace online enrollment, other approaches, such as those that are paper-based, are vanishing. You can almost hear trees heav-

ing sighs of relief.

Online benefits enrollment is "really the standard method these days," said Jan Emery, health management consultant at Hewitt Associates Inc. in Lincolnshire, Ill.

"In 2003, we're seeing increased appetite in the marketplace for online enrollment," noted Jeff Verney, senior vp of e-commerce at CIGNA HealthCare in Bloomfield, Conn.

In 2002, about 75% of health care plan enrollment processed by Mellon HR Solutions was done online, said Will Applegate, a vp at Mellon in Fort Lee, N.J.

The number of Mellon clients using online enrollment is growing by 5% to 10% per year, said Mr. Applegate, who noted that he expects

this trend to continue. "We think we can get to 90% to 95%," he said. Surprisingly, he said, the percentage does not decline among organizations whose employees lack widespread workplace Internet access.

Web enrollment, though, is not nearly as common among employers that don't use an outside vendor, experts say.

Large employers that offer multiple plans generally use outside vendors for enrollment. These vendors are linked to the health plans, allowing enrollment data to flow seamlessly from enrollees to the plans. But among small and midsize employers that use only one plan,

See **ENROLLMENT**/page T5

## Technology a big help in educating consumers

### Web info key

By JUDY GREENWALD

A better-educated health care consumer is a better consumer.

With that in mind, a more and more employers are using the Web to provide health information to their employees to help them make sensible choices and manage chronic conditions such as diabetes and high blood pressure.

Rising health care costs are a major factor behind these efforts. Ed Pictroski, senior vp-compensation, benefits and human resource technology services at Cendant Corp. in Parsippany, N.J., said, "It's critically important, in an environment of 15% health care cost growth," that programs that provide access to information to maintain and improve health serve as "a restraint in the cost of care."

Computers are key to addressing this concern.

Nancy Lamb, global health promotion resource center manager for Midland, Mich.-based Dow Chemical Corp, said that computer technology "is an important component of a company's health strategy, because it's there for employees when they need it and when they want it."

Integral to the trend toward obtaining information from the Web is the move toward consumer-driven health plans and the attendant emphasis on employee decision-making.

"I'd say most employers are extremely interested in giving their employees better tools for choosing and using health care, because it fundamentally supports this whole trend toward consumerism," said Linda Havlin, Chicago-based Midwest unit practice leader for Mercer Human Resource Consulting.

Some employers are developing at least some of their own health information on their intranet sites. Virtually all, though, rely to some extent on links to Web sites operated by managed care firms, consumer-driven health plans, specialized health management firms and recognized authorities such as the

See **CONSUMER**/page T7

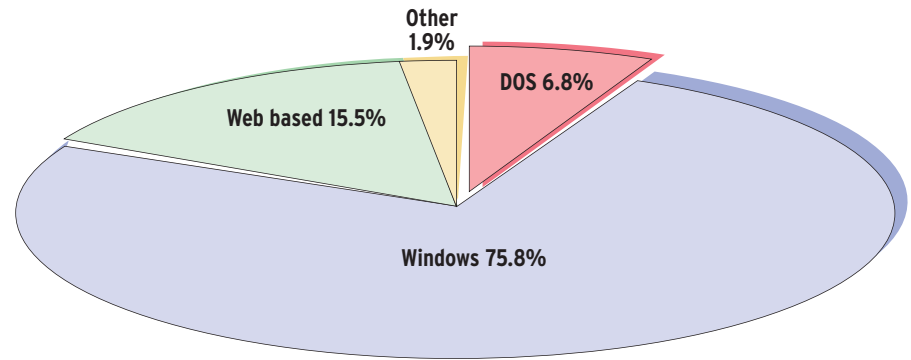
### LARGEST BENEFIT SYSTEM VENDORS BY CLIENTS

Ranked by total number of corporate employee benefit department clients

| Company                                | Number of benefit department clients |
|--|--------------------------------------|
| Human Resources Consulting Group Inc.  | 5,300 <sup>1</sup>                   |
| The TriZetto Group Inc.                | 450                                  |
| Flex Compensation Inc.                 | 279                                  |
| Colt Express Outsourcing Services Inc. | 200                                  |
| Computer Workware Inc.                 | 155                                  |

<sup>1</sup> Estimated  
Source: BI survey

### OPERATING SYSTEMS USED



Source: BI survey

# Largest employee benefit information systems

Ranked by number of installations in corporate employee benefit departments

| Rank     | Software name                    | Company/Address   | Phone/Fax/Web site   | Number of installations | Price                | First installation | Top executive                                    |
|----------|----------------------------------|---|--|-------------------------|----------------------|--------------------|--|
| <b>1</b> | DataPath Software Suite          | DataPath Inc.<br>1601 Westpark Drive, Suite 9<br>Little Rock, Ark. 72204            | 800-633-3841<br>Fax: 501-296-9940<br>www.dpath.com             | 500 <sup>1</sup>        | NA                   | 1995               | John Robbins Sr.,<br>Glen Hoffman,<br>principals |
| <b>2</b> | Powerplus                        | P+W Software Inc.<br>5655 Lindero Canyon Road<br>Westlake Village, Calif. 91362     | 818-707-7690<br>Fax: 818-707-9097<br>www.pwsoftware.com        | 350                     | \$8,000 to \$20,000  | 1987               | Thomas E. Philipp,<br>president                  |
| <b>3</b> | COBRA 3.0                        | Human Resources Consulting Group Inc.<br>1202 E. Dover Drive<br>Provo, Utah 84604   | 801-765-4417<br>Fax: 801-765-4418<br>www.hrconsultinggroup.com | 250                     | \$3,500 to \$7,000   | 1983               | Rob J. Thurston,<br>president                    |
| <b>3</b> | DOS FlexComp 8.1                 | Human Resources Consulting Group Inc.<br>1202 E. Dover Drive<br>Provo, Utah 84604   | 801-765-4417<br>Fax: 801-765-4418<br>www.hrconsultinggroup.com | 250                     | \$5,000 to \$50,000  | 1983               | Rob J. Thurston,<br>president                    |
| <b>3</b> | Employee Benefits Statements 3.0 | Human Resources Consulting Group Inc.<br>1202 E. Dover Drive<br>Provo, Utah 84604   | 801-765-4417<br>Fax: 801-765-4418<br>www.hrconsultinggroup.com | 250                     | \$3,500 to \$15,000  | 1983               | Rob J. Thurston,<br>president                    |
| <b>3</b> | FlexComp 9.0                     | Human Resources Consulting Group Inc.<br>1202 E. Dover Drive<br>Provo, Utah 84604   | 801-765-4417<br>Fax: 801-765-4418<br>www.hrconsultinggroup.com | 250                     | \$10,000 to \$50,000 | 1983               | Rob J. Thurston,<br>president                    |
| <b>3</b> | Premium Billing 3.0              | Human Resources Consulting Group Inc.<br>1202 E. Dover Drive<br>Provo, Utah 84604   | 801-765-4417<br>Fax: 801-765-4418<br>www.hrconsultinggroup.com | 250                     | \$3,500 to \$15,000  | 1983               | Rob J. Thurston,<br>president                    |
| <b>8</b> | FACTS                            | FACTS Services Inc.<br>1575 San Ignacio Ave., Suite 406<br>Coral Gables, Fla. 33146 | 305-284-7400<br>Fax: 305-661-6710<br>www.factsservices.com     | 215                     | NA                   | 1981               | Robert S. Graham Jr.,<br>president               |
| <b>9</b> | FlexAdmin                        | Flex Compensation Inc.<br>P.O. Box 220<br>Minneapolis, Minn. 55440-0220             | 800-333-5597<br>Fax: 952-544-8287<br>www.flexcompensation.com  | 200                     | \$1,500 to \$5,000   | 1986               | Gary Bohline,<br>president                       |
| <b>9</b> | FlexibleSoftware                 | BeneSoft Inc.<br>440 Wheelers Farms Road<br>Milford, Conn. 06460                    | 203-882-5807<br>Fax: 203-882-5811<br>www.benesoft.com          | 200 <sup>1</sup>        | NA                   | 1987               | Faisal A. Saleh,<br>president                    |

<sup>1</sup> Estimated  
Source: BI survey

The full Directory of Employee Benefit Information and Communication Systems is available online, in the directories area of [www.businessinsurance.com](http://www.businessinsurance.com). The searchable directory allows users to locate benefit systems by company name, number of installations in employee benefit departments and type of systems, among other information. The online database is free to subscribers of *Business Insurance*. PDF copies of the directory can be purchased by calling the Crain Information Center at 312-649-5476.

August 11, 2003

# Enrollment: Online process more efficient

Continued from page T3

online enrollment is less common, Mr. Verney explained.

The most efficient approach for employers is to make the entire enrollment process Web-based, eliminating all other methods, such as paper forms, interactive voice response systems and call centers, observers say.

"The more you can eliminate all paper and do everything through the Web, you will get the most effective delivery," said Jeri Stepman, senior consultant at Watson Wyatt Worldwide in San Diego.

For the most part, large employers are replacing their IVR systems with Web enrollment, Ms. Stepman said. And employers are finding that when both are offered, employees flock to the Web.

**The most efficient approach for employers is to make the entire enrollment process Web-based, eliminating all other methods, such as paper forms, interactive voice response systems and call centers.**

For example, a large employer Ms. Stepman worked with last year offered both Web and phone enrollment. Because only 5% of employees used the interactive phone system in the last enrollment period, the employer is thinking about dropping the costly phone system entirely, she said.

One major advantage to Web-based enrollment is that it reduces costs significantly, observers say.

For example, it generally costs between \$15 and \$20 to enroll an employee through a staffed call center, whereas online enrollment costs less than \$1 per person, Mr. Applegate said. These savings can then be passed on to the employer in the form of lower administrative costs.

"As we shift more transactions online, we could lower the cost of providing outsourcing services to our clients," Mr. Applegate said.

The savings don't immediately materialize, however. There usually are significant startup costs, either for an internal system or for employing an outside vendor. But, over time, that investment generates considerable savings, observers say.

"We definitely see a return on investment in three to five years," Ms. Stepman said.

Hope Walczak, senior benefits manager at Gateway Inc. in San Diego, said the company has reaped savings by implementing an online enrollment system. She expects the initial start-up costs for the system, which is operated by Watson Wyatt, to be paid off in five years. Much of the savings has come from cutting staff who are no longer needed to input data from the paper forms.

With online enrollment, "you don't need a large benefits department or a large employee service

center," Ms. Walczak said.

Another big advantage is the reduction in data errors. "Increased accuracy is really the name of the game," Mr. Verney said.

In paper-based enrollment, data from forms must be entered in several places by different people, greatly increasing the chance of an error.

In addition to eliminating the need for re-entering information, some Web-based enrollment systems can actually catch mistakes. For example, if a plan participant fails to provide certain required information, the system will prompt

the person to make the correction immediately.

"Before they push the send button, it's accurate," Mr. Verney said.

With fewer application mistakes, there are fewer problems with claims down the road, Mr. Verney said.

Web-based enrollment also eliminates some hassles from a benefit manager's work. "It made things a whole lot easier from an administrative standpoint," Ms. Walczak said.

Online enrollment "relieves them of the burden of managing the paper enrollment forms," said

Ralph Borzillo, director of e-business for middle-market accounts at Aetna Inc. in Blue Bell, Pa.

"It eliminates the hassle factor that plan sponsors have at enrollment time," he added.

Part of the convenience stems from employees' ability to enroll 24 hours a day, from work or from home, Ms. Walczak said.

Another advantage to some Web-based systems is that they offer sophisticated tools that help employees understand their benefits and select plans that are most suited to their needs, consultants say.

Such tools have transformed the

open enrollment process, Ms. Emery said. Now, employers want their employees to regard open enrollment as a time to examine their health care options "and see if this is the set of benefits and set of providers they want for the next year," Ms. Emery said.

"It's a great opportunity to do this education," she said.

Recently, such online systems have linked together different tools. These integrated systems place in one spot health care cost calculators, detailed explanations of plan options, decision-support tools and provider quality ratings. This combination allows people to look at their future costs and then select the plan that best meets their expected needs, Ms. Emery explained.



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# Employees benefit from online enrollment

By YVONNE TEEMS

Brown Brothers Harriman Co., which is always looking for ways to become more efficient and to boost the bottom line, found that an online benefits enrollment system helps it do just that.

"Before, we killed about three trees a year," said Donald Jannazzo, managing director of the Jersey City, N.J.-based private commercial bank. In addition, he noted that the paper-based benefits enrollment process could drag on for several weeks, whereas the online approach allows the company to complete the process much more quickly.

Indeed, online benefits enrollment systems save employees time, said Patricia Byrd, senior vp in charge of new product development and client implementation at Black Mountain Management Inc. Using the Black Mountain View online system, Brown Brothers Harriman's employees enter personal information, such as the names of their dependents, into the system only once, as opposed to rewriting the information several times on paper forms. In addition, employees can point and click to retrieve information about available plans, rather than having to thumb through binders of enrollment materials.

"Paper is always the worst," said Greg Hammond, executive vp of strategic development and general counsel for TriNet Group Inc., a human resource provider in San Leandro, Calif. In particular, paper-based systems are vulnerable to errors, because handwritten information provided by a company's employees can be misinterpreted by providers.

And, Mr. Hammond said, such errors tend not to come to light until they matter. Often, an employee will become aware of an error made during enrollment only when he or she tries unsuccessfully to buy a prescription or enroll a new baby.

Benelogic L.L.C., a Timonium, Md.-based company that develops benefits administration software, found a 60% error rate when customers use paper, said Christine Miki, vp of client integration.

Another problematic approach to enrollment is the use of interactive voice response systems, said Sachin Shah, vp of institutional business for Metropolitan Life Insurance Co. in Jersey City. "There's only so much complexity you can get out of nine buttons on a phone," he said.

For its fall 2002 enrollment, Fidelity Employer Services Co. found that more than 70% of its clients enrolled online, while less than 30% used a live phone representative and less than 3% use an IVR system, said Frank Armo, senior vp of the Marlboro, Mass.-based human resource and benefits service provider. "We find a diminishing percentage (use) IVR," he said.

Given the limitations of paper- and phone-based systems, the versatility and sophistication of Web-based enrollment tools are attracting a lot of employer interest, observers say.

For example, Fort Lee, N.J.-based Mellon HR Solutions has teamed with Asparity Decision Solutions

Inc. to offer a decision-support system that allows client employees to compare health plans by a variety of criteria.

Asparity offers four selection tools, said Colleen Murphy, president and chief executive officer of the Research Triangle Park, N.C.-based company. The preference module creates a profile of attributes employees select and then displays medical plans that fit those attributes. The comparison module compares details of plans according to the chosen attributes, and the performance module compares plans according to ratings based on

satisfaction surveys. Finally, the cost calculator creates a personalized cost outline for each plan.

In addition, employees welcome online tools that enable them to update changes to their dependents, download forms and applications and access physician directories, health research and online customer service, said Mr. Armo.

Bruce Lasko, senior manager of retirement plans for Avaya Inc., a communication systems and services provider in Basking Ridge, N.J., said that about 74% of Avaya's salaried employees use the Web for benefits enrollment, while 45% of

union employees do so.

He said the company provides a private kiosk where these employees can access computers. Online enrollment "has been extremely well received at Avaya. It has been one of our HR breakthrough initiatives this year," he said.

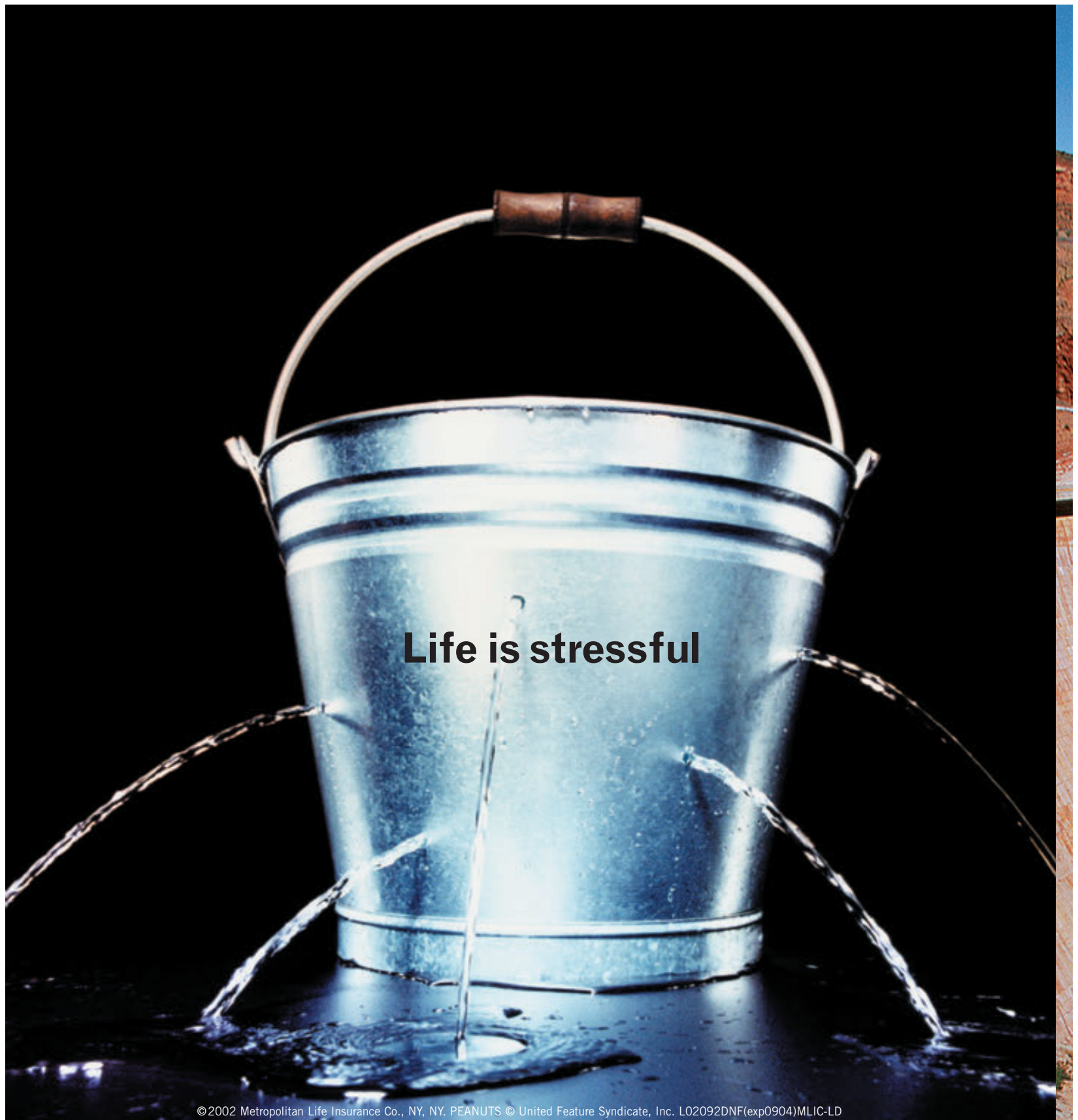
Jim Gemus, senior vp of institutional business for MetLife, said employers should bear in mind that not all individuals are comfortable using the Internet, especially older employees.

In order to be as user-friendly as possible, Web-based tools must be simple and concise, said Black

Mountain's Ms. Byrd. Because users' patience is limited, screens must be uncluttered, connections must be speedy and language must be simple, she said.

If employees encounter problems or frustrations when enrolling online, they will be wary of using the system the next time they enroll, noted TriNet's Mr. Hammond.

And when questions or concerns do arise, employees need to be able to talk with someone who understands their company, said Jeri Stepman, a consultant for Washington-based Watson Wyatt Worldwide. She suggested that employers should field such calls internally, because employees can become frustrated if they have to deal with an outside vendor's call center.



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August 11, 2003

# Consumer: Technology helps with education efforts

## Continued from page T3

American Cancer Institute, the Mayo Clinic and physicians from Harvard Medical School.

While some Web sites provide basic medical information, others also include health risk assessment questionnaires to help employees evaluate their health and potential health risks. This information is, in some cases, later used by care managers to follow up with employees when the need for further intervention is indicated.

Physician and hospital evaluation data is available on the Web as well, in addition to information on

the cost of medical procedures and drugs. Consumers, for example, may be able to compare the cost of generic and brand-name drugs. Some Web sites will also provide assistance to employees in helping them form the right questions to ask their physicians.

## Education efforts growing

More employers are presenting health care information to their employees, say observers. While many employers already are using the Web for functions such as enrollment, "for consumer education,

it's just starting," said Janet Hunt, senior consultant in The Segal Co.'s communications practice in New York. "There is a huge groundswell this year of clients looking for more of this from us, and we're in the middle of proposals and ideas about how to do it," Ms. Hunt said.

Providing this technology-based support is "really part of a bigger push in the health care industry to try to put as much emphasis as possible on the demand side" of health care, said Nicole Kelly, a principal with Buck Consultants Inc. in Pittsburgh. Employers have already wrung as much benefit as they can

from the supply side, and, as costs climb, "we really need to do something beyond that" by looking at the demand side as well.

Jim Huff, a Web solutions communications consultant for Lincolnshire, Ill.-based Hewitt Associates Inc., said employees are being asked to take a "much bigger role than they ever have in the past" in their own health care, including knowing how to interact with physicians and researching particular conditions or treatments. "The other side of the equation is to help them with this information" and direct them to good sites, Mr. Huff

said.

Such efforts form an integral part of the move toward consumer-driven health plans, observers say.

"I think there's a significant increase in interest in this area, because it is so important to the overall direction of consumer-driven health care," said Bill Sharon, senior vp at Aon Consulting in Tampa, Fla.

"I think a lot of employers are starting to get to the point now where they're saying consumer-driven health care is not necessarily a health reimbursement arrangement form of plan but it's a whole range of techniques to get employees engaged in the cost of health care," Mr. Sharon said.

In light of the higher deductibles and co-payments that are part of consumer-driven health plans, employees need better tools and infor-

**'There's a significant increase in interest in (providing health information), because it is so important to the overall direction of consumer-driven health care.'**

*Bill Sharon  
Aon Consulting*

mation to buy health care more wisely, said Mr. Sharon. "It's a critical component to the overall direction that many employers are in now," he said.

Jay Coldwell, product director-national accounts for Wausau, Wis.-based Wausau Benefits Inc., said, though, "I think there's really tremendous interest right now whether (employers are) using consumer-driven plans or not." Even employers that have not jumped into consumer-driven health plans "still want to provide that information to employers," he said.

## Too much information

A driving factor behind employers' desire to help employees with medical information is the overwhelming amount of information available on the Web. Entering the world "cancer" into an online search engine will yield 14 million responses, said Thomas Kolaski, a Boston-based Towers Perrin principal. "How do you make sense of all of that?" he asked.

Furthermore, much of the data on the Web is either presented by those with their own agenda, such as pharmaceutical manufacturers promoting their own drugs, or is just wrong. Some studies suggest that only half of the medical information on the Web is accurate, said Liz Dudek, Washington-based vp at Segal.

By some estimates, there are "over 20,000 health Web sites out there, and some are quality and some are not. So, from the employer's perspective, to be able to provide their employees with a trusted

See **CONSUMER**/next page

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# Consumer: Technology helps to educate consumers

Continued from previous page

source they can go to where they know they can get reliable information and guidance" is good for both the employee and the employer, said Mike Casey, director of the Rochester, Minn.-based Mayo Clinic health management resources, which provides Internet health information to employees on employers' behalf.

"There's good and bad on the Internet, no doubt about it. What

we're trying to do in health services is encourage people to seek out the credible Web sites," said Dow Chemical's Ms. Lamb. "Our health services staff is actively maintaining our knowledge base and keeping on top of the credible information that is out there, and that is what we are referring our employees to."

"We want to make sure the information we're providing our employees is current and accurate," said David Hoke, director of well-

ness and health initiatives at the University of Kentucky in Lexington. At the University of Kentucky, depending upon their health plan, employees sign onto Web sites maintained by one of its two third-party administrators—Louisville, Ky.-based Humana Inc. and Lexington, Ky.-based CHA-Health. Both Web sites also include a link to a Web site maintained by Redwood City, Calif.-based Healthtrac Inc. that offers workers a health care assessment questionnaire and intervention programs. All three offer medical information on their Web sites, said Mr. Hoke.

The degree of employer involvement ranges from employers that just provide links to other vendors, to sites where the information may be presented by others but is highly customized to the particular employer. Observers say there is little point in spending the time and resources to develop this information totally from scratch when there are reliable sources of information already available.

Cendant Corp., for instance, uses the Web sites of its health care providers—Philadelphia-based CIGNA Corp. and Hartford, Conn.-based Aetna Inc.—to provide medical information to 65,000 employees. The sites are accessed through The Answer Place, Cendant's in-

tranet site, which also provides a host of other benefits information, according to Mr. Pictroski.

"We find that those insurers do generally a good job of preparing and making available information through their Web sites," said Mr. Pictroski. "The problem is that people today face a profusion of Web addresses and passwords, and the

**'There's good and bad on the Internet, no doubt about it. What we're trying to do in health services is encourage people to seek out the credible Web sites.'**

Nancy Lamb  
Dow Chemical Corp.

profusion of information almost defeats their ability to get to that information.

"We believe that the better solution, rather than creating the information, is to make it easier for people to make use of all that information" that they can access by using the links on the intranet site, he said.

Hewitt's Mr. Huff said: "I think there's been a shifting, that a few years ago, it would have been more

like organizations would have just put some links out there to some of the big, popular Web sites. Now, it's gone a little more to their getting involved in content themselves" or working with a consultant to help them create that content and presenting it to employees as their own. Employers may also work with vendors to purchase content through an organization such as the Mayo Clinic, he said.

Dow's Ms. Lamb said there are three ways employers can get the information that is delivered to employees: They can purchase that information through vendors that offer customized health sites, they can use available resources on the Internet, or they can develop that information themselves.

"We use all three," said Ms. Lamb. Dow's site includes, for instance, an internally developed Web page that features a self-directed smoking cessation program.

Gary Earl, vp-benefits at Las Vegas-based Park Place Entertainment Inc., said in addition to customized Web sites developed by its business partners, the company also presents to its 55,000 employees medical information developed by experts in the company's 10 wellness centers. The aim, he said, is to make whatever is presented "consistent, accessible, friendly and inviting."



Web sites such as [www.mayoclinic.com](http://www.mayoclinic.com) sell their content to employers to aid employees in becoming better consumers of health care.

# Benefits administration changes create staffing issues

By SALLY ROBERTS

Employers that have spent millions of dollars on new technology to automate and streamline various benefit administration functions may not be getting the full return from that investment.

Many employers—whether they implement new benefits technology in-house or outsource administration to a third party—fail to properly address the staffing issues that arise after changing how benefit administration tasks are handled, consultants say.

Employers must address the need to redeploy, retrain or reduce benefits staff well in advance of implementing any changes, or else see anticipated savings evaporate, consultants say.

"Planning becomes so critical here...because this can absolutely blow up in your face," said Keith Greene, director of organizational programs for the Society for Human Resource Managers in Alexandria,

Va. "If you have not planned this out...it's going to create more work for you and more headaches for you, and that's obviously what you're trying to minimize," Mr. Greene said.

"The smart companies do take an early and upfront approach in the planning of how they are going to effect the people change," said Jeffrey Lanzet, executive vp with Aon Consulting in Winston-Salem, N.C. "We see probably a larger number of organizations, however, not doing the appropriate planning."

Scott Bolman, a principal in the technology and operations practice at Mercer Human Resource Consulting in Chicago, agreed that many employers fail to think about how the organizational structure of the human resources or benefits department is going to change as a result of implementing new technology.

They are not thinking, for example, of matching up new jobs to existing people and how "in some cas-

es, that means the existing people don't fit anymore, and you need to hire from outside or train people from inside," he said.

According to a recent Mercer study on HR department transformation, 50% of the 300 employers who were asked to rate how effective they had been at capturing their expected return on investment from their HR technology said they were either "ineffective" or "very ineffective." One of the barriers to realizing the expected ROI, cited by 6% of the respondents, was a failure to address job design and skill issues after a change, the survey revealed.

The same staffing challenges created by implementing new benefits technology are seen when benefits administration tasks are outsourced.

A recent study by AMR Research found that 40% of the 30 companies surveyed were inadequately prepared for the extensive retraining needed in the HR department



after outsourcing certain functions.

"One of the things that we found that companies tended not to address up front was what are they going to do with all the HR or benefits people after they outsource," said

Monica Barron, research director for human capital management at AMR Research in Boston. "And (re-training) became a pretty big source of stress as well as an incremental

Continued on next page

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August 11, 2003

**Continued from previous page**

cost that they didn't anticipate," she said.

"You think it's kind of a no-brainer that if you outsource, these people are not going to have any work to do anymore, but there was really not a lot of thought given to what they were going to do afterward," Ms. Barron said.

One of two things would end up happening, she said. "There was redundancy—people doing the work internally while the company was paying for it to be outsourced—or you had a lot of people floating free, not really knowing what to do."

Staffing changes can be further complicated by the fact that many HR and benefits people do not focus 100% of their energy on one particular area anymore, added Bill Pettrillo, national practice leader-employee service delivery for Watson Wyatt Worldwide in Boston. "More and more of their jobs are

sourcing provider—that needs to be clear upfront, because that's going to rule out a number of outsourcing providers," she said. Many out-sourcers are fully staffed and do not have room to take on additional employees, she noted.

Another alternative to layoffs is to redeploy valued employees into other positions within the benefits or HR department or to somewhere else within the company, consultants say.

In cases where employers outsource or implement new technology, new positions are often created, such as a vendor manager position or a systems manager position. These new positions offer employees a good opportunity to fill the new roles with existing employees

as long as they are properly trained and have the right skills, experts say.

In other cases, valued staff can be transferred into other roles within the benefits department, such as managing a wellness program or managing a retirement savings communications effort, consultants say.

"The important thing is to understand what are the skill sets of the people you have and what is it that they are likely going to be able to do or want to do," Ms. Barron said.

One of the ways benefit managers can help redeploy redundant staff is to work with the company's internal placement group, said Bernie Knobbe, senior director of compensation and benefits for San

Francisco-based Gap Inc., which outsourced its benefit call center and leave of absence administration two years ago. The move resulted in some redeployment within the company as well as some layoffs.

"The challenge is, they may find something sooner than you would have preferred" elsewhere in the organization, and that could interrupt the important transition period, Mr. Knobbe said.

When faced with that situation, Mr. Knobbe said he worked with the hiring manager to come up with a transition plan, "simply because we didn't want to get in the way of someone's opportunity to go to another area (of the company) knowing that their position was going away here. But if you have six

people doing something and all of the sudden five of the six find a job somewhere else too quickly, you're sort of in a challenge, too," he said.

Indeed, employers that are outsourcing or implementing new technology need to be mindful of the transition period and the level of expertise that is needed during that time, which helps prevent gaps in service delivery, consultants say.

"In an extreme case, I had a client that both took steps to immediately reduce (staff) and also had some involuntary turnover that led to a lack of sufficient expertise to effect a good transition," Mr. Lanzet said. "So, organizations need to consider how are they going to make sure the people that they

**'Organizations need to consider how are they going to make sure the people that they need to ensure a smooth transition are in place through the transition.'**

*Jeffery Lanzet  
Aon Consulting*

time-sliced into a little on compensation, a little on health and welfare, a little on pension and a little on 401(k) plans. It's difficult to eliminate those positions because you're only eliminating sometimes a fraction of their job," he said.

Consultants and employers say there are more ways to deal with the staffing issues that arise from changes in benefits administration than simply eliminating positions.

One approach is to transfer a portion or all of the HR or benefits staff to the third-party outsourcer.

Armonk, N.Y.-based International Business Machines Corp. did that a year ago when it outsourced its employee services organization and 700 of its employees to Fidelity Employer Services Co.

"It's been quite a change," said Bob Gonzales, a 23-year veteran of IBM who was vp of employee services in the human resources department until he moved over to Fidelity last July. He is now senior vp-client relations in business development for Fidelity Employer Services in Raleigh, N.C.

"The announcement went over well," Mr. Gonzales said of the transfer. "I think the folks realized that we were going from a staff function to now being part of a business. And this business was the business of what we do," he said. "So we are now part of the core, whereas with IBM we were not part of the core in terms of what IBM's real business is."

Mr. Gonzales said that had IBM not outsourced the employee services function, he would have had to lay off about 100 people in his department due to cost pressures.

AMR's Ms. Barron warns, though, that "if that's a goal of yours—to transfer your employees to the out-

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# Online insurance calculators figure into decision-making

By ALLISON REYNOLDS

More employers and insurers are offering online tools to help employees make the most of their life insurance and disability benefit choices.

Determining the correct amounts of coverage during enrollment can be difficult for employees, so companies increasingly are offering life and disability insurance calculators to give workers access to information and aid in decision-making.

Many insurers offer life and disability insurance calculators both online and off to help customers determine the right amounts of coverage. Employers can link the online calculators to their employee communication Web sites, through either a hyperlink or a company intranet, to give employees access to information and aid decisions on the amounts of insurance needed.

"The growing trend is to look to the Internet to understand the benefits of life insurance," said David DeGeorge, assistant vp of life products with New York-based Metropolitan Life Insurance Co.

The amount of life insurance an individual should have varies from

person to person and by age.

Individual insurance companies have general rules to follow and guidelines to help customers determine adequate amounts, but online life insurance calculators factor in

specific variables and produce estimates of life insurance with a more-personalized view.

"It's meant to be simple, easy to use and flexible," Mr. DeGeorge said.

Though online calculators differ from company to company, the variables most typically included to determine the proper amount of life insurance are current expenses, future expenses, debts, savings and existing life insurance. Future expenses include items such as funeral costs, children's education funds and making sure spouses and other dependents are taken care of in the event of the insured's death.

Additional factors typically used in online calculators include investments, estate administration expenses, taxes, Social Security income, the family's future income and the inflation rate.

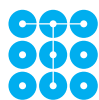
"This is a high-level worksheet that raises awareness on life insurance," said Cathy Tripp, national practice leader for health and welfare technology with New York-based consulting firm Watson Wyatt Worldwide.

Benefit calculators can be found

**Continued on next page**



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**Continued from previous page**  
 on most insurers' Web sites. Often, they are also made available in paper form, so that employees can crunch the numbers on their own.

"These calculators come in handy if a company has an online communication site for employees," said Steve Schloss, employee benefits services technology practice leader for New York-based risk and insurance services firm Marsh Inc. "It could be a utility tied in with that site to help employees."

Employers' key goal is to help their employees figure out how much life insurance they need and how much it's going to cost, said Ms. Tripp. Online benefits also permit the automated underwriting of the insurance, she said.

"From an employer's perspective, with their confidence in their life insurance carrier, they won't have a problem directing employees to the insurer sites," said Mr. Schloss.

**'These calculators come in handy if a company has an online communication site for employees. ... It could be a utility tied in with that site to help employees.'**

*Steve Schloss  
 Marsh Inc.*

Another important aspect of online benefits is that customers can look at their insurance information whenever they want to and are always able to change their benefits online, according to Mr. DeGeorge.

"Our goal is to drive life insurance, using these tools and communication, from a once-a-year to an evergreen box," to review and revise at any time, he said.

Online calculators related to disability insurance are also available from some insurers, though they are not as common as life insurance calculators, according to Mr. Schloss.

Typically, variables included in disability insurance calculators incorporate current expenses; Social Security disability benefits; income from disability policies; income; and expenses that would not be incurred if the insured were to become disabled, such as work-related expenses.

Other Web-based tools that companies can use to eliminate paperwork hassles and provide informa-

tion and planning tools about benefits, as well permit the purchase of selections, are online communication vehicles.

Such "online human resources departments" like WorkPlus.com can be used to model benefits scenarios, according to Mike Palumbo, president of Hilb, Rogal & Hamilton Consulting Group L.L.C., a division of Hilb, Rogal & Hamilton. The Glenn Allen, Va.-based company offers WorkPlus.com.

"It uses built-in calculators, so that employees can model out specific life and disability amounts and compare them with premiums to see what they can afford and what they can't," Mr. Palumbo said.

Marsh @WorkSolutions is another type of Web-based employee vol-

untary benefits platform that delivers online benefits to large employers, according to Monte Gollub, managing director and national sales leader for Marsh @WorkSolutions in New York.

Marsh offers the programs through a Web-enabled delivery system that can link to an employer's intranet. The Web site can be customized and includes a wide range of supplementary products and services that match the specific needs of the employee group.

Customer service representatives back up the Web site in case users have difficulty with the online calculators or need help understanding the information provided, according to Mr. Gollub.



The Web site for financial services provider TIAA-CREF features an online calculator that a visitor to the site can use to determine how much life insurance he or she needs.

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