

Talks may mean payers' blues

BC/BS of Illinois, hospital group square off over reimbursement rates

By SARAH A. KLEIN

CHICAGO—The Chicago area's largest hospital group is gearing up to take on Blue Cross & Blue Shield of Illinois—the area's largest health insurer—in contract negotiations that will either increase insurance rates for employers or leave hundreds of thousands of Blue Cross members scrambling to find new doctors.

Advocate Health Care wants Blue Cross to boost reimbursement rates for physicians working in its 10 hospitals, arguing that the physicians have not received a reasonable share of the double-digit premium increases levied on employers in the last three years.

To accomplish its goal, Advocate plans to present Blue Cross with a termination notice on Sept. 30, canceling its hospital contract effective Jan. 1. At the same time, Advocate will inform the insurance giant that if it wants to renegotiate the contract, it will have to set new rates for at least 1,400 physicians, who until now have accepted the one-size-fits-all fee schedule issued by Blue Cross annually to all doctors in the region.

"We expect a positive outcome," said Lee Sacks, the Oak Brook, Ill.-based hospital system's executive vp and chief medical officer. But, he added, physicians who have signed over their negotiating rights to Advocate are prepared to deal with the consequences if no agreement is reached.

Risk for doctors

It's a high-stakes gamble for the physicians. Blue Cross says it may

challenge Advocate's right to negotiate on physicians' behalf. In addition, the insurer would consider removing from its network any physicians who join Advocate's rate-hike push.

The brinkmanship isn't new for Advocate. The hospital system played hardball with Connecticut-based Aetna Inc. in 1995, canceling its contract in a dispute that kept Aetna members out of Advocate hospitals until last year, when a new agreement was reached.

While Advocate officials express optimism that an agreement can be reached without inconveniencing patients or burdening ratepayers, Blue Cross officials are less certain.

That's because the nonprofit health insurer has always negotiated its contracts with physicians and hospitals separately—a practice that stems from the years when Blue Cross and Blue Shield were separate companies that negotiated contracts with hospitals and physicians, respectively. Its one-fee system for physicians' services, which ensures that, say, an allergist in Chicago is paid the same amount as an allergist in nearby Evanston, Ill., is also deeply entrenched.

But, beyond the logistical difficulties of changing systems, Philip G. Lumpkin, Blue Cross' vp of provider affairs, says the insurer objects to paying one physician more than another.

"It would present me with a huge dilemma," Mr. Lumpkin said. "Is it fair to say, because Advocate has a bigger arm and muscle, their doctors should get more than other doctors who are doing great things?"

Blue Cross would have to decide

whether to change rates for all physicians in the region, or end its relationship with Advocate.

Because Advocate controls roughly 15% of the local market, giving up this business would be a challenge for Blue Cross.

'Ugly' negotiations ahead

Passing the expense of an across-the-board increase on to employers and employees throughout the region isn't an easy proposition, either. Asked whether Blue Cross could serve members without Advocate hospitals, Mr. Lumpkin said, "We would be reluctant to, but it's not impossible."

The two sides are at the beginning stages of negotiations, which observers expect to be contentious.

"This is going to be ugly," said Steve Reidl of benefits consulting firm Towers Perrin in Chicago. Both organizations are tough adversaries, he says, who will use all tools at their disposal, including calling on large employers willing to lean on one side or the other.

Advocate officials say the public will be sympathetic to their argument that Blue Cross has been underpaying physicians. The company did not give physicians any rate increases in 2000 or 2001, and increased rates 7% this year, Dr. Sacks said, noting that those rates are not in keeping with premium increases or medical inflation.

Blue Cross, meanwhile, insists it is a "middle-of-the-pack" payer.

Linda Ruth, a senior health care strategist with Hewitt Associates Inc. in Lincolnshire, Ill., says employers worried about premium increases may support Blue Cross, while those whose employees use Advocate doctors may take the other side.

Whatever the result, "This is very typical of what is going on the U.S., as we see the providers consolidate and wield a lot more power than they have in the past," Ms. Ruth said.

Sarah A. Klein is a reporter for Crain's Chicago Business, a sister publication of Business Insurance.

Commentary Superstitions' hounding effects

Another Friday the 13th passed this month, apparently with little incident. Actually, the whole Friday the 13th thing doesn't particularly bother me, and I probably wouldn't have noticed at all if my wife hadn't called it to my attention.

I told her as much when she alerted me to the date. "But you are superstitious," she replied. "Nonsense," said I. While I might observe the rare pattern of behavior that might appear "superstitious," in fact they all have sound basis in logic and reason and even good risk management.

I won't walk under ladders, for example, not because I fear bad luck, but because I'm wary of having a bucket of paint dropped on my head.

I avoid breaking mirrors because the sharp edges can play havoc on fingers, and once those little shards get on the floor they're murder on bare feet.

But I don't particularly worry about spilling salt or stepping on cracks, and black cats crossing my path upset my black dog far more than they do me.

Anyway, the dictionary calls superstition "a belief or practice resulting from ignorance, fear of the unknown, trust in magic, in chance or a false conception of causation." Certainly none of my behaviors fits that definition.

"What about sports?" my wife asked. Well, sports are different. Everybody has sports superstitions. Some golfers will use only white tees or balls with a certain number. Some baseball players step on the foul line each time they go on or off the field, others have to hop over it.

And anyone serious about sports knows superstitions can be just as important for a fan as for the players themselves. So, if a certain hat or sweatshirt or hat and sweatshirt combination has my team on a hot streak, I stay with it. On the other hand, if it's been a particularly wretched first half, I might change hats or shirts at halftime. I do this only at home, mind you. I have yet to travel to a game with lucky wardrobe options.

Sometimes, of course, this means not being dressed altogether appropriately, even by sports fan standards.

A couple of years ago, I had the good luck to attend the Rose Bowl, where most Midwestern visitors enjoyed the rare opportunity to spend a January afternoon sitting in the sun in shorts and T-shirts. None of that for me, though. Taking one for the team, I spent the afternoon dressed in my then lucky

combination of dark brown chinos and polar fleece shirt.

The lucky clothing combo didn't work that day, as sometimes inexplicably happens. On the plus side, my game day outfit had not included a lucky down parka.

So, it would appear that sometimes superstitions can cause a bit of discomfort. Or worse, evidently. Late last year, a group of academics from the University of California at San Diego determined that it's not uncommon for the superstitious to routinely scare themselves to death.

The group, led by UCSD sociology professor David Phillips, called the syndrome "The Hound of the Baskervilles Effect."

It's named after Sir Arthur Conan Doyle's Sherlock Holmes story in which the character Sir Charles Baskerville dies from a fear-induced heart attack.

The study focused on a Chinese and Japanese superstition regarding the number four, considered unlucky and associated with death. The researchers found that among Americans

of Chinese and Japanese ancestry, on the fourth of each month, cardiac deaths jump 13% above normal!

This particular superstition is based in language. In Mandarin, Cantonese and Japanese, "death" and "four" are pronounced nearly identically. The absence of such a connection between 13 and death in English probably accounts for the lack of a similar effect on the 13th each month, the researchers conclude.

All this has me thinking about two things. First, I wonder if the folks doing the mortality calculations at the life insurance companies factor things like the Baskervilles Effect into their figuring.

Second, looking ahead at the calendar, I see the next Friday the 13th falls in December, right smack in the middle of Jan. 1 renewal season. Given that underwriters are rational people, I can't believe superstition would come into play in the renewal process.

Still, I wonder if anywhere there might just be an insurance or reinsurance contract ready for signing that Friday in December, that just happens to find its way into a drawer until Monday.

Senior Editor Rodd Zolkos' commentary appears periodically and on www.businessinsurance.com. He can be reached at rzolkos@crain.com.



Rodd Zolkos

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\$4

California OKs paid FMLA-type leave

By JERRY GEISEL

SACRAMENTO, Calif.—Political compromises made to ensure passage of California's new family and medical paid leave law will reduce the impact of the pioneering measure on employers.

Backers of the law, which Gov. Gray Davis signed last week, say it still will provide significant financial benefits to employees, while business groups complain that the paid leave mandate will disrupt employer operations.

Under the new law, which takes effect July 1, 2004, employees will be entitled to take up to six weeks of paid leave per year to care for a newly born or adopted child or to take care of a seriously ill child, spouse, parent or domestic partner.

While on leave, employees will receive payments from a state fund to replace 55% of wages, up to a maximum of \$728 a week.

An employee who applies for paid leave would be eligible for benefits after a waiting period of seven consecutive days. Employers can require an employee to take as much as two weeks of unused vacation time before receiving family leave, one week of which would be used to cover the waiting period.

The new benefit will be fully funded through employee payroll deductions, the size of which will be based on salary. A minimum-wage worker would pay about \$11 per year, with the maximum annual contribution set at \$70. State officials expect the average cost to be about \$27 per worker per year. Employee contributions will begin on Jan. 1, 2004.

Leave taken under the new law would be counted against the 12 weeks of unpaid, job-protected leave employees are entitled to under the federal Family and Medical Leave Act. Unlike the FMLA, which exempts employers with fewer than 50 employees, the California law applies to virtually all employers in the Golden State. In all, about 13 million of California's 16 million workers would be eligible. The largest group to be excluded is state em-

See FMLA/page 6

Silverstein appeal may delay cover trial

By DOUGLAS McLEOD

NEW YORK—Silverstein Properties Inc. has asked a federal judge to delay the scheduled November trial of the World Trade Center property insurance dispute while it appeals the judge's ruling that three insurers may treat last year's terrorist attack as a single occurrence.

In a letter to U.S. District Judge John S. Martin, lawyers for Silverstein, the WTC's leaseholder, said they will ask the 2nd U.S. Circuit Court of Appeals to review the judge's ruling last Wednesday that the attack was one occurrence under the Willis Group Holdings Ltd. policy form to which

the three insurers agreed.

Silverstein will also ask the appeals court to rule on whether a Travelers Property/Casualty Corp. policy issued after the attack—which Silverstein says should govern the entire \$3.55 billion program—defines the loss as one event or two.

Silverstein was joined in its request for a delay by The Port Authority of New York & New Jersey, the WTC's owner; and Westfield Holdings Ltd., a WTC retail leaseholder.

Insurer representatives seized on the request and the ruling that preceded it as clear signs that insurers will ultimately prevail on coverage issues.

See OCCURRENCE/page 27

Students + lawsuits = multiplying risks

Litigation against school districts grows

By JUDY GREENWALD

In Reno, Nev., a gay former student who sued his school district, claiming sexual harassment, received a \$451,000 settlement earlier this month.

In Los Angeles, a teacher won a \$4.35 million jury award in March after she sued her school district, charging students sexually harassed her, though the school district was subsequently granted a new trial.

And in Florida, parents of a 14-year-old who was shot and killed by a classmate outside his school in 1997 won a \$1.6 million jury verdict against the Palm Beach County School District in February.

Sexual harassment and school violence are just two of the growing array of exposures for school districts nationwide. New federal legislation, special-needs children and mold are among some of the emerging issues that pose potential liability for schools, school districts and administrators these days (see story, page 24).

Risk managers, insurance pool administrators and attorneys say that in addition to those factors, parents' fierce advocacy on their children's behalf, combined with today's litigious environment and the poor economy, is spurring more lawsuits.

The number of lawsuits is "definitely increasing," said Lee Lloyd, vp of underwriting and chief

See SCHOOLS/page 24

Late News

**Judge OKs docs'
HMO class action**

A federal judge has granted class-action status to litigation against several major health maintenance organizations that charges fraudulent denial of payments to physicians. Judge Federico Molina of the U.S. District Court for the Southern District of Florida in Miami also denied class-action status to a lawsuit filed on behalf of patients against the HMOs. Judge Molina ruled that those plaintiffs' claims were too different to constitute a class.

**P/C insurers' first-half
profits rise 66%**

U.S. property/casualty insurers reported a combined \$4.6 billion in profits for the first half of 2002, a 66.4% increase over the same period in 2001, according to a survey by the Insurance Services Office Inc. and the National Assn. of Independent Insurers. The increase in profits reflects the hardened insurance market, according to an ISO statement. Total net written premiums for U.S. insurers increased 12%, to \$182.4 billion.

**Chubb CFO's exit
adds to exec search**

Weston M. Hicks is resigning as

chief financial officer of Chubb Corp. to become executive vp of Alleghany Corp. The move creates uncertainty about two

top positions at the insurer, as Chubb has not yet named a successor to chairman and chief executive officer Dean R. O'Hare, who is scheduled to retire at the end of the year. Mr. Hicks said he

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Benefits Management Take-out

**PENSIONS/
RETIREMENT PLANS**



**LARGEST
401(k) PLAN
ADMINISTRATORS**

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Inside

Legion wins cover from Hancock

A state court has affirmed an arbitration victory for Legion Insurance Co. against John Hancock Life Insurance Co. that will help secure millions of dollars for the defunct insurer and will be closely watched by other insurers. **Page 4**

Don't overreact to state's leave law

A new California law that would allow employees to take up to six weeks of paid leave is unlikely to be as onerous for employers as many fear, says one of this week's editorials. **Page 8**

New prescription for PBMs needed

Too many prescription benefit managers are rewarded for the volume of transactions they handle, rather than the savings they deliver to employers, write the authors of this week's Perspectives article. **Page 10**

The black cat policy exclusion

One person's superstition is another's sound risk management, writes Senior Editor Rodd Zolkos in Commentary. **Page 18**

E.C. mulls aviation liability requirements

The European Commission has proposed minimum aviation liability coverage requirements for all airlines flying in and out of the European Union. **Page 21**

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

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CONTINUED FROM PAGE 1

had learned from Chubb's search committee that he would not replace Mr. O'Hare. "Had I still been in the running to succeed Dean now as CEO, I might not be leaving Chubb," said Mr. Hicks.



MGM Grand Hotel in Las Vegas

Court OKs bias suit over sexual orientation

A Las Vegas hotel employee who was subject to repeated unwelcome physical conduct of a sexual nature and harassment by his male co-workers because he was gay is protected under Title VII of the Civil Rights Act, a divided 9th U.S. Circuit Court of Appeals ruled. Sexual orientation is irrelevant for purposes of Title VII, which prohibits discrimination in the workplace based on race, color, religion, sex or national origin, the court ruled. As a result, Medina Rene, a gay butler who worked for MGM Grand Hotel, may sue his former employer for sexual harassment.

Sept. 11 raises workplace fatality rate: BLS

Fatal occupational injuries rose more than 48% to 8,786 in 2001 from 5,920 in 2000, an increase due entirely to fatalities stemming from the Sept. 11, 2001, terrorist attacks, according to the Bureau of Labor Statistics. When the 2,886 work-related fatalities associated with attacks are excluded, workplace deaths actually fell slightly to 5,900 in 2001. But BLS notes that the rate of workplace fatalities remained unchanged between 2000 and 2001 because of a decline in total employment.

By DAVE LENCKUS

WASHINGTON—As most defendants in a unique and massive asbestos liability lawsuit in West Virginia settled out of the case last week on the eve of their trial, a U.S. Senate committee began considering tort reforms that could prevent similar litigation.

To maximize recoveries for claimants who are seriously ill, tort reform proponents want to limit recoveries to only claimants who meet certain medical criteria.

Other federal asbestos liability tort reform efforts have failed to build much steam in Congress, but business and insurer representatives say a new ally will make their run at

Late News

Grants to fund care quality efforts

Three private foundations are planning to award \$4.9 million in grants to six pilot projects seeking to improve the quality of health care. The grant program encourages physicians and hospitals to meet specific quality goals tied to medical outcomes and clinical performance. The program will use both financial and nonfinancial incentives, such as local provider recognition. The grants are provided primarily by the Robert Wood Johnson Foundation, with assistance from the California HealthCare Foundation, and the Commonwealth Fund.

ZFS sells \$100 million stake in Endurance

Zurich Financial Services Group has sold its \$100 million investment in Endurance Specialty Insurance Ltd. to the Bermuda-based startup's holding company. The proceeds of



the sale are also \$100 million. The sale "is in line with our intention to reduce our exposure to equity investments. This frees up risk-based capital that will be redeployed in core operations promising sustainable and profitable

growth," said David Wasserman, head of the global asset business division of ZFS and chief investment officer.

Scholarship fund for Canadian risk managers

A scholarship fund has been established in Canada to help risk managers pursue advanced educational opportunities. The William H. McGannon Foundation for Advanced Risk Management will provide research grants, academic awards and scholarships to working risk managers seeking to further their education in the fields of risk management and insurance. The foundation is being named after Mr. McGannon, a veteran risk manager who now teaches at the University of Calgary and owns his own consulting business.



WellPoint, CareFirst reviewing merger plans

WellPoint Health Networks Inc. and CareFirst Inc. announced that they will review their existing agreement and plan of merger because of issues that have arisen concerning the proposed deal. One of the issues is that Maryland lawmakers—who

Check out Businessinsurance.com

To get breaking news as it occurs, visit *Business Insurance's* free online Daily News, at www.businessinsurance.com. Sign up for your daily e-mail of breaking news. All the material in the Late News column, as well as other content in this week's issue, is generated from daily news postings that appeared on the *BI* Web site in the previous week.

Online this week:

- New **Directory** of 401(k) Plan Administrators, plus other **searchable directories**.
- Check the **Datebook** calendar for upcoming industry meetings and events or add your own.

- New **Commentary** from Rodd Zolkos joins pieces from other regular columnists, including Paul Winston.
- **Online forum** allows readers to exchange ideas and information.

Push to prioritize claimants draws support from some plaintiffs' attorneys

Asbestos liability reform efforts continue

By DAVE LENCKUS

WASHINGTON—As most defendants in a unique and massive asbestos liability lawsuit in West Virginia settled out of the case last week on the eve of their trial, a U.S. Senate committee began considering tort reforms that could prevent similar litigation.

To maximize recoveries for claimants who are seriously ill, tort reform proponents want to limit recoveries to only claimants who meet certain medical criteria.

Other federal asbestos liability tort reform efforts have failed to build much steam in Congress, but business and insurer representatives say a new ally will make their run at

reforms much stronger this time. Now supporting some reforms are members of the plaintiffs' bar, who are concerned that failing to prioritize claimants not only will lead to smaller awards per individual but also will dry up funds for future claimants.

Other trial lawyers, however, argue that the main goal of reform efforts is to minimize the liabilities of the various types of asbestos liability defendants, which are: asbestos producers, manufacturers of products that contained the material, and employers and property owners that exposed workers and others to asbestos used as a building material at their facilities.

In the West Virginia case, all of

those types of companies were named as defendants by around 8,000 plaintiffs, some of whom are seriously ill and others whose exposure to asbestos has not impaired their health.

The litigation was so unwieldy that the West Virginia judiciary set up a system for classifying the original 125 defendants as either asbestos manufacturers or installers and then assigning them to one of two judges. The judges were scheduled to conduct two separate but simultaneous trials in the litigation in Kanawha County Circuit Court.

Two of the defendants—Mobil Corp., now part of Exxon Mobil, and Honeywell International Inc.—asked the U.S. Supreme Court to de-

questioned whether nonprofit CareFirst should be merged into a for-profit company—are requiring an all-cash deal, which is different than the original definitive agreement that was announced last November, said a spokesman for WellPoint.

Court clarifies D&O exclusion for claims

A directors and officers liability insurance policy's insured vs. insured exclusion bars coverage for suits filed against a company by a former director and officer, even if that individual had allegedly attained those positions fraudulently, a Florida federal court has ruled. The judge ruled that the only concern for purposes of the exclusion was whether an executive bringing suit was properly elected or appointed. Because the director's appointment did not violate the company's corporate governance, he was duly appointed, and the company's claim is barred by the D&O policy's exclusions, the judge ruled.

Briefly noted

Aetna Inc. plans to reduce its workforce by about 9% over the next year. The 2,750 job cuts will take place throughout the Hartford, Conn.-based insurer's operations and will result in a third-quarter charge of \$58 million....The House of Representatives passed a White House-backed **medical malpractice reform bill** Thursday. The "Help Efficient, Accessible, Low-Cost Timely Health Care Act," H.R. 4600, would, among other things, cap noneconomic damages in medical malpractice cases....**Royal & SunAlliance Insurance Group P.L.C.** has launched an electronic trading platform for facultative reinsurance business. The system, known as eFacRe, allows London-based RSA to purchase all of its facultative property and casualty coverage online, the group said....**Zurich London Ltd.**, a London-based unit of Zurich Financial Services, will start writing contingent liability and contingent business interruption coverage Oct. 1. Robert Wood, head of media, sports and leisure insurance at Zurich London, will underwrite the contingency risks.

Flooding is biggest loss concern from storm

Hurricane Isidore soaks coast but unlikely to soak insurers

By MICHAEL BRADFORD

NEW ORLEANS—Floodwaters from Tropical Storm Isidore will cost insurers millions of dollars, but claims won't rival the numbers from bigger storms that have soaked the United States.

After scattering damage across the tip of Mexico's Yucatan Peninsula, Isidore lost some of its strength and touched land as a tropical storm early last Thursday in southern Louisiana. The storm moved quickly through that state, dumping more than 20 inches of rain in some areas. Northern states took the last of the storm's rainy punch as it swept a long arc east-

ward toward the Atlantic Ocean.

Insurers were tallying claims last week and were reluctant to estimate the storm's total impact. Most claims will come from homeowners and automobile owners whose property was damaged by flooding, insurers said.

State Farm Group said it expects claims to amount to around \$25 million in Louisiana, with about \$15 million paid to auto owners and \$10 million to homeowners. A Monroe, La.-based spokesman for the insurer said State Farm likely will see around 8,000 claims from the storm.

"A \$25 million storm is not anything to minimize," the spokesman

said, but it is not nearly as severe as some other natural catastrophes that have struck the Gulf Coast of the United States in recent years. "We're thankful that it passed through relatively quickly and was not too intense," he said.

Damages from Isidore are expected to be far less than those in June 2001 from Tropical Storm Allison, which caused insured damage of \$2.5 billion in Texas and elsewhere.

Allstate Corp. late last week reported receiving 190 property claims, 31 automobile claims and 86 claims from policyholders who bought coverage from the federally funded National Flood Insurance

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PHOTO: UPI

New Orleans residents waded through floodwaters after Hurricane Isidore swept through Louisiana last week.

Taking stock of market woes

Employers investing in efforts to educate workers on saving

By MICHAEL PRINCE

When the stock market goes down, the need for investor education goes up.

Many employers are responding to the declining stock market by providing more education to help make their employees better savers and investors.



"Employers are beefing up education programs," said Gregory Metzger, director of defined contribution consulting at Watson Wyatt Worldwide in Los Angeles.

As retirement plan account balances drop, employers are concerned that workers will stop investing in their 401(k)s or other savings plans or shift money into investments with lower long-term returns, consultants and

plan administrators said.

Retirement benefit experts say it's important during a bear market—some say more important than ever—to continue saving and investing wisely.

St. Louis-based Charter Communications, for example, last year decided to switch plan administrators to Fidelity Investments. The cable television company made the change in large part because Boston-based Fidelity offers volumes of online education that employees can use, including tools that help people determine their optimum savings level and investment options, said Don Broecker, director of employee benefits at Charter.

But numerous questions from employees about the falling stock market this year led Charter to publish two articles in an internal newsletter "that address the concerns of the 401(k) plan as an investment," he said.

Many other employers also are adding investor education programs in response to employee requests.

A survey released this month by CIGNA Retirement & Investment Services in Hartford, Conn., found that 89% of employees said it would be helpful if they received personalized financial planning advice from their employer, and 83% said specific investment information would be helpful. CIGNA's "2002 Workplace Report on Retirement Planning" indicated that workers give their employers generally high

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High court to tackle damages

Justices to review punitive issue in upcoming session

By MARK A. HOFMANN

WASHINGTON—A Supreme Court that handed employers numerous victories in employment practices cases in its last term is poised to deal with another issue of considerable importance to businesses—punitive damages—after it launches its 2002-2003 term on Oct. 7.

In fact, the flood of cases involving the Americans With Disabilities Act and Civil Rights Act that marked recent Supreme Court sessions has slowed to barely a trickle this term, though that could change when the high court announces additional cases for review.

"I guess they covered employment last year. I guess they're going to skirt it this year," said Stuart Cohen, managing attorney at the

Washington-based AARP Foundation Litigation, which handles litigation for American Assn. Retired Persons. He spoke at a Supreme Court preview hosted by the AARP

Foundation Litigation.

Instead, justices will deal with asbestos-related litigation, federal preemption of state common law claims, the scope of the Employee Retirement Income Security Act and whether the federal Family Medical and Leave Act applies to state employees during the new term.

Of all the cases, though, the punitive damage case—*State Farm Mutual Insurance Co. vs. Campbell*—has drawn the greatest attention from employers and insurers. The case revolves around the question of whether State Farm's due process rights were violated by a Utah court's decision to impose punitive damages for the insurer's out-of-state policies and practices. The

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WTC cleanup firms in talks to form captive with U.S. funds

By DOUGLAS McLEOD

NEW YORK—Construction companies that excavated the World Trade Center site are negotiating the formation of a federally funded captive insurer to handle liability claims arising from their work.

Contractors that cleared debris from the site in the months after the Sept. 11, 2001, terrorist attacks were unable to buy liability coverage because of insurers' concerns about claims for exposure to asbestos and other toxic materials.

After the terrorist attacks, New York City agreed to indemnify the construction companies, and Congress considered legislation that would have provided federal indemnification.

Under the current proposal, some of the \$20 billion in federal disaster aid earmarked for New York would be used to fund a captive insurer that would provide liability coverage to the four main World Trade Center contractors and their subcontractors.

The four principal contractors were Bovis Lend Lease of Sydney, Australia; the Turner Construction Co. unit of Hochtief A.G. of Essen, Germany; United Kingdom-based AMEC; and New York-based Tully Construction Co.

Peter Davoren, a Turner senior vp, confirmed the captive discussions but declined to provide details until negotiations with city officials are complete, possibly as early as this week.



PHOTO: FEMA/NY PHOTO PRESS

The World Trade Center excavation site in March 2002.

Court affirms carve-out reinsurance owed to Legion

Other cedents, reinsurers facing similar disputes

By CAROLYN ALDRED

PHILADELPHIA—Legion Insurance Co., now in rehabilitation, has won a major arbitration ruling against John Hancock Life Insurance Co. that will help secure millions of dollars for the defunct insurer.

The Pennsylvania court ruling, which involves workers compensation business ceded to the life insurance company in the mid-1990s, also is likely to hearten other insur-

ers that are battling with John Hancock over workers compensation carve-out claims, according to sources close to the disputes.

It also will be of interest to many other insurers and reinsurers embroiled in other disputes surrounding hundreds of millions of dollars worth of claims from workers compensation business written by life insurance companies in the mid-1980s that are now spiraling though the personal accident reinsurance market (*BI*, June 3).

Last month, the Commonwealth Court of Pennsylvania in Philadelphia affirmed two arbitration awards that held John Hancock must pay claims totaling \$5.9 million, interest of \$1 million and 90% of Legion's attorneys fees and costs. The damages relate to claims as of Oct. 31, 2000. A third arbitration will consider awarding additional damages to Legion for claims incurred since then and those not yet incurred, according to court papers.

Earlier this year, Pennsylvania

regulators put Legion into rehabilitation following concerns about its reinsurance recoverables.

Much of the difficulties in Legion's cash flow surrounded a handful of reinsurance disputes, including the one with Hancock, according to a source close to the company.

A spokesman from the Pennsylvania Insurance Department, which is seeking an order to liquidate Legion, said it was too early to comment on the impact of the arbitration on the company's liquidation (*BI*, Sept. 13).

Legion, a subsidiary of Bermuda-

based Mutual Risk Management Ltd., would not comment on the arbitration.

Boston-based John Hancock would not comment on "matters which are in legal dispute."

The insurance company said in a statement, however, that "we remain comfortable with the after-tax reserves of \$134 million that we established at year-end 1999 to cover our exposure to workers compensation carve-out reinsurance arrangements, and we continue to actively seek resolutions, including through negotiated settlements, which we are always interested in."

BI directory approaches in October

Business Insurance will publish its online directories of safety consultants and rehabilitation service providers in conjunction with the Oct. 21 issue. The issue will include a Spotlight report on workers compensation and charts of the largest safety consultants and rehabilitation service providers.

The online directories will be available to subscribers on www.businessinsurance.com and will be included in *BI's* 2002/2003 Market Source Book, a special printed compilation of all of *BI's* directories and rankings, which will be published Dec. 23.

The directories are published as an editorial service, and there is no charge to be included. To be listed in the safety consultants directory, companies must provide unbundled safety consulting services directly to corporate or institutional clients. In addition, companies must generate \$200,000 or more in revenues from these services and provide total gross revenues.

To be listed in the directory of rehabilitation service providers, your company must provide rehabilitation management services directly to employers for workers compensation or liability cases.

BI defines rehabilitation management as providing all services included in the medical management or vocational rehabilitation of an injured or ill worker. In addition, companies must generate \$200,000 or more in revenues from these services and provide total gross revenues.

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

Completed questionnaires must be submitted by the extended deadline of Oct. 11.

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FMLA: Paid leave mandated

Continued from page 1

ployees, who already have a similar program.

Lawmakers changed the legislation in two significant ways since it was introduced earlier this year by Sen. Sheila Kuehl, D-Santa Monica. Originally, the benefits provided under the measure, S.B. 1661, would have been funded equally by employers and employees. In addition, benefits would have been offered for up to 12 weeks, rather than the six mandated by the new law.

Those changes were needed to ensure passage, say advocates of the proposal. "It was clear that the business community saw those issues as barriers. While we disagreed, we recognized that a compromise would be needed" to win passage of the legislation, said Pam Haynes, legislative advocate in Sacramento for the California Labor Federation, which represents organized labor.

Even with the changes, the new law is a "huge step in the right direction...to help workers to meet critical family needs," she said.

"This ensures that workers have a safety net," said Jodi Grant, director of work and family programs for the National Partnership for Women & Families, a Washington-based family and health care advocacy group.

Advocates view the new law as beneficial to both employees and employers. "When workers come back, they will be far less stressed and be prepared to work," Ms. Haynes said.

But employers are concerned that access to time off with pay will increase the number of employees taking leave and put more pressure on other workers.

"In tough economic times, companies already are operating very lean. When someone goes out, it can create a real hardship, as other employees will have to work longer hours," said Lea Gerber, director of risk management and benefits at Elixir Industries, a manufacturer in Gardena, Calif.

Business groups and others warn that the law will increase costs for employers. "It is not a no-cost bene-

fit to employers. There are costs to train and hire new employees," said Martyn Hopper, California director of the National Federation of Independent Business in Sacramento.

"There are hidden, but real, costs in any legislation that mandates benefits, regardless of whether employers directly pay," pointed out Ken Drummer, a consultant for Watson Wyatt Worldwide in San Francisco.

While advocates of paid leave view the California law as a model for change elsewhere, others states may not follow suit.

"Other states don't necessarily jump on the bandwagon of California's crazy labor laws," said Allan Zaremberg, president of the California Chamber of Commerce in Sacramento.

"With the economic situation so uncertain now, other states may hold off because they first want to see what the experience in California will be," said Connie Harden, a principal with Buck Consultants Inc. in San Francisco.

Paul Winston No simple remedy for coverage woes

There was an amazing story in the news last week that illustrates what I think is one of the biggest problems with the U.S. health care system.

The story was about the disabled actor Christopher Reeve, famous for portraying Superman, who has regained some mobility in his hands and sensation in his extremities. What's amazing about this is that he suffered a paralyzing spinal-cord injury in a horseback riding accident in 1995, and was told by doctors that he would never be able to move or feel below his head again. That is the prognosis for many spinal-cord injury victims.

Mr. Reeve's breakthrough is a shock not only to the public, but also to the medical establishment.

In fact, his own doctors are not really certain how he regained limited movement and sensation, but the change comes after an experimental form of therapy to exercise his limbs and electrically stimulate his nervous system. None of the other participants in his therapy group have had the same success.

Mr. Reeve's improvement no doubt owes a great deal to his strength of will and the attention of committed physical therapists and neurologists. As well as lots of money.

One reason few quadriplegics have had similar breakthroughs before now is that doctors could not offer them any hope of improvement, so many gave up trying. For those who don't give up, such lengthy and costly treatments are beyond the scope of most private and public insurance programs. Without being famous or rich, therefore, other spinal-cord injury patients don't have a chance.

Nevertheless, stories like Mr. Reeve's will give new hope to many other quadriplegics who will seek—and demand—similar treatment and coverage of the costs from their insurers. Few insurers, though, are likely to provide such coverage, owing to the experimental nature of the therapy and its small success rate. And even if insurers are willing to pay, the premiums for covering such lengthy treatment would be prohibitive for most people.

When coverage is found lacking for this miraculous breakthrough—as occurs any time an experimental treatment emerges offering a hope of success—people will sue their insurers, complain to lawmakers and the media and the insurance industry will get another black eye for its handling of health care issues.

Whenever dilemmas like this arise, I find myself wondering

whether subjecting our health care to free-market forces and underwriting by private sector insurers is in our best interests.

Looking at insurance as a business, which it surely is, it's hard to argue that insurers should be forced to cover health risks for which the premium is likely inadequate or the outcome of a funded treatment is uncertain.

But that economic model runs headlong into the belief of most people, rightly or wrongly, that health care is an entitlement.

One alternative to the current system would be government-funded universal health care. But the public didn't embrace that option the last time it was seriously considered, in 1994. If people want

their medical insurance from the private sector rather than the government, however, then they can't complain when a company acts in its own financial interests, rather than for their extracontractual well-being.

At the same time, when actual health care remedies—or potential ones, as in the example of Mr.

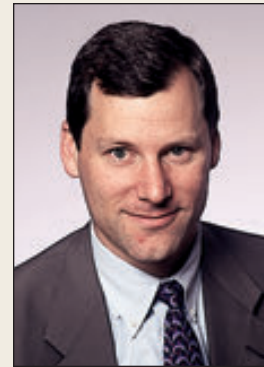
Reeve—are available, it's equally difficult to see people go without care for want of being able to afford it, or because their policy won't cover a certain treatment.

So this is the problem: economic rationing of care because the system is more concerned with its financial vigor than in the health of the patient. No one—patients, providers, insurers and the government—seems real pleased with the status quo.

If universal health care is not palatable to the public, then perhaps an alternative solution might be found in the current proposals for the government to provide a backstop to insurers for future catastrophic terrorism losses. Maybe the government should provide high-level stop-loss coverage to health and disability insurers, thereby protecting them from catastrophic costs and bringing more predictability to their losses. In exchange, some sort of federal panel could be charged with determining what treatments should be covered vs. what is still deemed experimental or ineffective, and insurers would have to abide by it.

Such a public-private system won't cure all that's wrong with health care, but it might increase the odds that more people would have access to needed medical care, without superhuman effort.

Editor Paul Winston can be reached at pwinston@crain.com.



Paul Winston

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Editorial

FMLA pay worries overstated

CALIFORNIA'S MANDATE of paid family and medical leave has drawn immediate criticism from employers, but their fears may be overstated.

True, the state is requiring employers to offer paid time off to workers with a new child or a sick family member, but the benefit will be funded entirely by employee payroll taxes. That's a far cry from mandating that employers pay for all or part of it, as was originally proposed.

As we report on page 1, the new California law will allow workers to receive 55% of their pay for up to six weeks of leave—compared with up to 12 weeks of unpaid, job-protected leave provided under the federal Family and Medical Leave Act. The program's financing comes from California's disability insurance system, which is funded by additional taxes on employees' pay. The governor estimates it will cost workers an extra \$27 a year for the paid leave program, which goes into effect in July 2004.

Still, few employers may take solace in the fact that employees themselves will be paying for the extra time off to care for new children or ill family members.

While the law will make some workers' lives easier during a period of disability for themselves or a family member, employers still bear the costs of extended absences and limited resources. Employers will have to find ways to get the work done when an employee's family situation calls for weeks away from the job. This challenge isn't new, though; the FMLA left employers nationwide with this problem to solve.

On the other hand, employees should be less stressed, and presumably more productive, knowing that at least some of their income will be protected when they have to take time off to deal with a family or medical situation.

Other states considering similar mandates should note that workers already have other opportunities to take time off. FMLA provides for workers to take up to 12 weeks of unpaid leave. And many employers already offer generous leave benefits and paid time off programs that enable workers to tend to family matters.

Benefits such as paid time off help employees balance their professional and personal lives. California's paid leave mandate has similar good intentions, but it also means a tough balancing act for employers.

401(k) reform needs attention

APOX ON BOTH THEIR HOUSES.

That aptly describes our frustration with the failure of lawmakers from both parties to decide what 401(k) reforms are needed in the wake of the Enron Corp. debacle, which cost thousands of Enron employees their retirement savings and made employees elsewhere question the security of their nest eggs.

Congressional action on 401(k) safeguards seemed likely earlier this year when the Republican-controlled House—with significant Democratic support—passed a reform bill.

Since then, the legislative scene has been all downhill. The Democratic-controlled Senate Health, Education, Labor & Pensions Committee passed, on a partisan vote, a bill with provisions so objectionable that even its sponsors must know it has no chance of passage.

In July, the Senate Finance Committee passed a bill similar to the House measure. But since then, Senate Democratic leaders—despite statements that the issue was a high priority—have yet to meld the two commit-

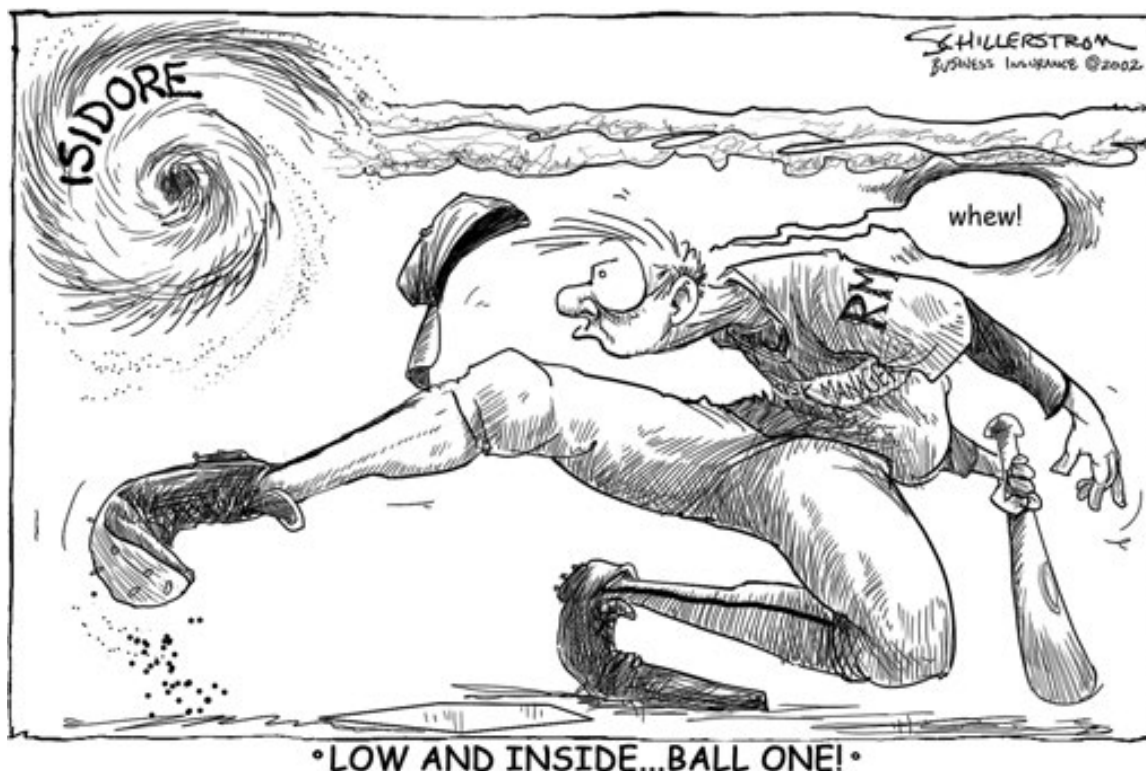
tee-passed bills into one measure. Even the full Senate passes a bill, it may be too late for House-Senate conferees to reach a compromise.

House Republicans have not helped matters much, either. For example, the House recently approved a resolution urging the Senate to act on 401(k) reform. The resolution has no force of law, and its only purpose is to embarrass Senate Democrats. If House Republicans' goal is bipartisan cooperation, pulling political stunts is hardly the best approach.

If proposed safeguards had been in place last year, such as one that would let employees divest after three years company stock contributed as a match, the financial devastation Enron's collapse wreaked on the retirement savings of its employees would have been reduced significantly.

It now is up to Congress to apply the lessons learned from that disaster to lessen the likelihood that the retirement savings of employees at other companies that fail are hit so hard.

Schillerstrom



Letters to the Editor

California's suspension of Segal surprising

To the editor: On Sept. 2, *Business Insurance* ran a story about our owner and former CEO, Michael Segal, fighting suspension of his personal agent licenses in the state of California.

As chairman of Near North National Group, I want to emphasize that no action has been taken against the company or any of its corporate licenses. The suspension applies only to Mr. Segal's personal producer license in the state of California.

I am surprised at the action taken by the California Department of Insurance, and feel it is my responsibility as a member of the insurance community to raise the question—under what precedent did the California Department of Insurance make this decision? Never before has a license been suspended based completely on unsubstantiated allegations.

The information cited in the their press release and suspension order was based on earlier complaints against Mr. Segal. The complaints were subsequently dropped back on Feb. 26 and Mr. Segal has asked for a judicial review of the suspension.

Once again, I want to point out that none of Near North's corporate licenses have been called into question. Despite the challenges facing our owner, Near North continues to grow in its different market segments and businesses. Our revenues for the first six months of 2002 are up 20%. We are fortunate the have the world's two largest insurance organizations as partners, Allianz/Fireman's Fund and American International Group.

There are more than 850 employees that contribute to the success of this company. We will celebrate our 40th anniversary this December and look forward to building on the foundation that has developed over our four decades.

Fred Foreman

Chairman of the Board
Near North National Group
Chicago

Need for federal backstop has not diminished

To the editor: The need for a temporary federal terrorism backstop is hardly fading, contrary to assertions reported in a Sept. 24 Daily News posting on www.businessinsurance.com, "Federal Terrorism Backstop Unnecessary: Think Tank."

Evidence that has been mounting since last year demonstrates that terrorism coverage is simply not available or it is prohibitively expensive. Within the last month, The Real Estate Roundtable, Building Owners & Managers Assn. International and the Risk & Insurance Management Society Inc. (*BI*, Sept. 16) have each published survey re-

See **LETTERS**/page 24

Business Insurance welcomes letters to the editor. The 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:

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Restructure PBM incentives to boost cost savings

By Robert I. Garis, Bartholomew E. Clark and Michael C. Makoid

Purchasers of prescription drug benefits continue to face sharply rising costs, and many plans have been forced to increase cost-sharing for employees' prescriptions. This tactic may help to curb



Mr. Garis

expenditures, but it can upset employees in the process. To get better value from the prescription drug benefit, an employer should select a prescription benefit manager that is rewarded for saving money.

Wait, didn't we already hire a PBM to save money? Yes, that's what a PBM is supposed to do. In reality, though, many PBMs are rewarded for the number of prescription transactions they process.

Here how that works. A human resources department or health care

consultant selects a PBM on based on several criteria: per-member, per-month administration charges; adequacy of the pharmacy network; discounts provided off drug prices; wellness programs; mail-order options; percentage of drug manufacturer rebates returned to the employer-purchaser; and the like. To earn a consultant's recommendation, a PBM may offer favorable terms that include: low per-member, per-month charges; discounts off prescription drug average wholesale price; deeply discounted mail-order options; and a "competitive" share of rebate dollars that will be returned to employers. Such provisions, however, offer scant savings on the cost of the prescription drug benefit.

Let's look a little further. To get your business, PBMs give up revenue from the following common components of pharmacy benefits: low per-member, per-month administration charges; discounts off the drug average wholesale price; and larger discounts for mail-order prescriptions. On its



Mr. Clark

face, such an arrangement with a PBM should save money because the manager has aggressively negotiated three very well-known components of the benefit. Yet, this is often not the case.

Grocers often sell soft drinks at deeply discounted

prices to increase store traffic. Likewise, PBMs use the per-member, per-month administration fee as a loss leader. Many health care consultants know that the administration fee is a loss leader, yet others can be misled by the seemingly better value the lower fee represents. If PBMs forgo revenue on the administration fee, they must make it up elsewhere. How do they do that? They do it with volume—by processing a large number of prescription claims transactions. Aggressive "management" of prescription claims may be compromised by a PBM's need to recover revenue given up elsewhere. Here are two ways PBMs might accomplish this.

The average wholesale price: A discount off what? Several studies have shown that prescription drugs often do not have standard prices, thus any discount off the average wholesale price is subject to considerable interpretation. The bottom line is, one cannot shop for a PBM solely on the basis of "discounts" off average wholesale drug prices. Many consultants know the fallacy of such discounts; unfortunately, many others use the average wholesale price as their primary basis for comparison. Therefore, if a PBM charges the employer one discounted rate and pays the pharmacy another, lower, average amount, that PBM realizes revenue from the difference.

Many PBMs offer a mail-order option in which the discount off average wholesale price is much larger than the terms offered at the employee's local pharmacy. For example, a PBM may offer a 20% discount off average wholesale price for prescriptions from their

mail-order facility and only 11% off average wholesale price for local pharmacies. The key is that the average wholesale price levels for the same drug product may not be equal. An entity with a certain license (e.g., a repacker license) may legally assign new national ID numbers to their repackaged drug items and then establish a new average wholesale price for each product. Therefore, a seemingly larger discount off average wholesale price from a PBM-owned mail-order facility may represent only the illusion of savings to the employer.

Not all PBMs use the revenue streams mentioned above. We know of so-called "second generation" PBMs that base their revenue solely on totally transparent per-member, per-month flat fees. Usually, the second-generation PBM charges higher per-member, per month administration fees—e.g., \$3 PMPM vs. 25 cents to 75 cents PMPM. Yet, this fee represents the only revenue for the PBM. Therefore, 100% of drug manufacturer rebates go to the employer client, and the PBM has no incentive to find ways to drive up the number of transactions as a way to increase its revenue. Second-generation PBMs truly manage employer benefit dollars without increasing their revenues through other means.

Robert I. Garis and Bartholomew Clark are assistant professors in the Department of Pharmacy Studies at Creighton University in Omaha, Neb. Michael C. Makoid is professor and chair of the department.

Workers comp benefits valid despite group health claim

A workers compensation claimant did not waive his claim to workers comp benefits by pursuing group health benefits, the Court of Appeals of Texas ruled.

Ten days after suffering a work-related injury, Timothy Austin verbally rejected all workers comp benefits. Several weeks after paying for his medical treatment and surgery with his wife's group health benefits, Mr. Austin sought workers comp benefits. The employer's insurer, Valley Forge Insurance Co., asserted that Mr. Austin had waived his right to workers comp benefits by pursuing the group health insurance benefits. The trial court ruled against the insurer.

On appeal, Valley Forge argued that Mr. Austin made an informed choice because, although he knew workers compensation benefits were available to him for what he knew was a work-related injury, he nevertheless decided to receive group health insurance benefits.

The court said that the common-law election-of-remedies doctrine was no longer a viable affirmative defense for an employer in a workers comp case where a claimant initially pursues group health insurance benefits. The court emphasized that amendments to the workers compensation law had effectually eliminated the possibility of an employee's double recovery. The trial court decision was affirmed.

Valley Forge Insurance Co. vs. Austin, Court of Appeals of Texas, Dec. 20, 2001. (BI/05/S.-\$10)

Court upholds change in retiree benefit plan

The reservation of rights clause contained in

Legal Briefs

the summary plan description for retiree medical benefits under the Employee Retirement Income Security Act unambiguously reserved the employer's right to modify the benefit plan at any time, according to the 8th U.S. Circuit Court of Appeals.

3M employed Edward and Dorothy Hughes until they retired at age 66. The Hughes both retired after attaining age 65 and received medical benefits under a Medicare supplement plan offered by 3M. Each retiree was provided with supplemental benefits after retirement. In 1998, 3M implemented a revised retiree medical plan, which resulted in additional cost sharing by retirees.

The Medicare supplemental insurance plan in effect at the Hughes' retirement included a clause under which 3M reserved the right to change or discontinue the benefits, if necessary. The Hughes contended that the "1991 Your Benefits" booklet was the relevant SPD under ERISA.

That booklet provided that if an employee retired with 15 years of pension service, the employee and his or her spouse would receive medical benefits for life at company expense. The Hughes sued 3M, alleging that 3M's unilateral change to the post-retirement medical benefits violated ERISA. The trial court ruled for 3M.

The appellate court concluded that the Medicare supplement plan booklet was the summary plan description in this case.

According to the court, that booklet was sufficiently comprehensive to apprise the plan's participants and beneficiaries of their rights and obligations under the plan. The court said that the booklet comported with ERISA's obligation-to-furnish provision, in that 3M disseminated the booklet to the Hughes within 90 days of their retirement. In addition, the court said that the booklet explicitly reserved the right to modify the retiree benefit plan at any time. The trial court decision was affirmed.

Hughes v. 3M Retiree Medical Plan, 8th U.S. Circuit Court of Appeals, Feb. 28, 2002. (BI/02/S.-\$10)

CGL policies don't cover patent infringement

Patent infringement was not arguably covered as an "advertising injury" under a comprehensive general liability insurance policy, according to the 6th U.S. Circuit Court of Appeals.

In 1984, the Patent Office granted State Industries Inc., a manufacturer of water heaters, a patent on the company's method of manufacturing insulated heaters. State Industries immediately sued Mor-Flo Industries Inc. for patent infringement. Mor-Flo was covered under CGL policies issued by St. Paul Fire & Marine Insurance Co. that provided coverage for "advertising injury claims resulting from your business activities."

Advertising injury was defined as "piracy, unfair competition, infringement or copyright, title or slogan" that resulted in interference with another's rights. Advertising claims that were the result of

"infringement of trademark, service mark or trade name" were excluded. The insurance company denied Mor-Flo's request for a defense.

Mor-Flo was sold to SABH Inc., and Walter Abt, the chairman of Mor-Flo, purchased the rights to Mor-Flo's duty to defend claim against the insurer. Mor-Flo lost the patent infringement suit and paid State Industries \$9.9 million in damages and \$2.2 million in fees and costs. Mr. Abt then filed this suit seeking a declaratory judgment that the insurer had a duty to defend Mor-Flo in the patent infringement suit and to indemnify Mor-Flo for the judgment against it. While the trial court ruled that the policies did not cover claims for patent infringement, they did hold that the insurer had a duty to defend Mor-Flo in the suit. Both parties appealed.

The appellate court said that the plain meaning of an "advertising injury" defined in the policies as "piracy" and "unfair competition" did not arguably cover the losses due to patent litigation. Therefore, the court said that the insurer had no duty to defend Mor-Flo in the patent infringement litigation. The trial court decision was reversed.

Weiss vs. St. Paul Fire & Marine Insurance Co., 6th U.S. Circuit Court of Appeals, March 18, 2002. (BI/04/S.-\$10)

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

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Comings & Goings: Buyers

Donald Watson has joined Bermuda-based ACE Ltd. as vp of enterprise risk management.

Mr. Watson, 42, previously spent 12 years with Standard & Poor's Corp., most recently as managing director in the North American Insurance Practice.

In his newly created position, he will be responsible for identifying and coordinating all risk management activities across asset, liability and operational lines for the Bermuda-based insurer. He will be based in New York at ACE Asset

Management Inc.

Mr. Watson reports to Brian Duperreault, chairman and chief executive officer of ACE Ltd.

Mr. Watson has a bachelor of arts in economics and political science from Illinois State University in Bloomington-Normal and a master of business administration from Duke University in Durham, N.C.

Gordon L. Adams has been promoted to senior vp and risk manager at MBK Real Estate Ltd.

Mr. Adams, 52, previously was a vp with the Irvine, Calif., real estate development company.

In his newly created position, Mr. Adams is responsible for the management of all corporate and subsidiary insurance and risk management matters. He also is responsible for managing the human resources and facilities departments of MBK.

He reports to Dale A. Kemp, senior vp and chief financial officer.

Mr. Adams has a bachelor of science in marine transportation from the U.S. Merchant Marine Academy



Mr. Adams

chapter of the Risk & Insurance Management Society Inc.

Marsha Bonner, 34, has joined Irving, Texas-based FelCor Lodging Trust Inc. as the hotel real estate investment trust's risk manager.

She formerly was director of risk

in Kings Point, N.Y., and an MBA from Pepperdine University in Malibu, Calif.

He is president of the Orange County

management for Wyndham Hotels in Dallas.

In her newly created position with FelCor, she is responsible for insurance, safety, loss control and claims handling. She reports to Les Johnson, senior vp and controller.

Ms. Bonner has a bachelor's degree in business administration from Northeast Missouri State University in Kirksville, Mo. She is a member of the Risk & Insurance Management Society Inc.

We'd like to report on staff changes in your risk management, safety and employee benefits departments. Contact Michael Bradford, Business Insurance, 473 Fairfield Ave., Gretna, La. 70056; 504-364-1908; fax: 504-364-1337; e-mail: mbradford@crain.com.

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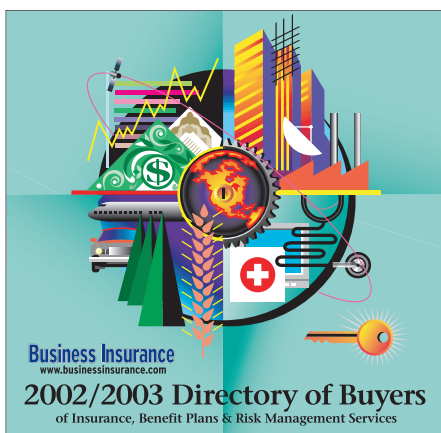
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Percentage of plan sponsors offering employer stock jumps, despite Enron fallout

More employers making contributions in stock

By ARLEEN JACOBIOUS

More companies are making, or matching, their employer contributions to defined contribution plans in company stock than they did a year ago, a survey by *Pensions & Investments* and Deloitte & Touche shows.

The survey shows a 23 percentage-point increase, to 76.5%. That jump is especially noteworthy following the uproar over Enron Corp., WorldCom Inc. and other companies, where 401(k) participants lost most of their account balances because of huge holdings in employer stock.

Of plan sponsors that do not allow participants to direct investments, 76.5% make contributions in company stock, up 23 percentage points from the 2001 survey. Also, of sponsors that do not allow participants to direct their profit-sharing or other discretionary employer contributions, 55.3% make the contribution in company stock.

Even so, fewer plan assets—20.1%—are invested in company stock, down from 26.3% last year.

Plan sponsors are waiting for some litmus test or guidance from Congress, the courts or federal regulators before they modify the way

company stock is treated in their plans, said Leslie V. Smith, a director at Deloitte & Touche L.L.P. in New York. "I think plan sponsors are afraid to make changes before they get more guidance, and I think there will be more guidance," she added.

"We're not seeing a lot of employers putting a cap on or loosening diversification of company stock matches, but I believe they will do it when they see the results of class-action suits, or (when the) regulators say something," Ms. Smith said. "No one will want to go out on a limb on that."

Still, 90% of the 823 plan sponsors surveyed indicated they do allow participants to direct the investment of matching contributions, up five percentage points from last year, she said.

Of the plan sponsors making their matching contributions in company stock, 20% allow participants to sell the stock only after they've held it for 10 years and reached age 55, and 14% don't allow participants to sell the stock before they retire. Only 12% allow participants to sell immediately.

Of plan sponsors making their profit-sharing contributions in company stock, 18.5% allow partic-

ipants to sell the stock immediately; 22.2% allow employees to sell after they've held it for 10 years and reached age 55; and 18.5% don't allow participants to sell before retirement.

Also, fewer sponsors—36.6%, down 7.7 percentage points from last year—are allowing immediate eligibility for plan participation, and more employers report having minimum age requirements—55.8%, vs. 50.8% a year earlier. That's because a tighter labor market and increased unemployment rates mean employers are less concerned with attracting and retaining employees, Ms. Smith said.

At the same time, participants in all income brackets are contributing less this year. Some 58.4% of highly compensated workers deferred more than 6% of their salaries this year, down 8.3 percentage points from last year. Two-thirds of participants with lower salaries deferred between 4% and 8%, 7.2 percentage points less than last year.

"In this economy, people should be investing more, but what they are doing is investing less," Ms. Smith said.

Employer stock is not the only asset class to decline in popularity. Domestic equities account for

27.7% of plan assets, down from 31% last year. "There's a lot less in equity funds, which could be the result of the stock market going down, but we're seeing a lot of people are transferring money to stable value and money markets," Ms. Smith said.

Meanwhile, plan sponsors are taking greater care than ever in selecting and monitoring the investments in their plans: 84.3% have formal fund selection procedures, up from 77.4% in the 2001 survey.

Some 71.5% have formal written investment policies, a 4.9 percentage point increase.

Most plans—58.7%—replace underperforming funds; 13.8% phase out underperforming funds over time; and 6.8% freeze them.

Two-thirds have replaced a fund because of performance, most within the last year.

"Employers are taking their fiduciary responsibility seriously," Ms. Smith said. "When things are turning down, everyone has a million questions and plan sponsors want to make sure they are doing the right thing or, at least, have an outside consultant to get another opinion."

Some 36% of plan sponsors use an outside investment consultant,

she noted, adding that the question wasn't asked last year. At the same time, half are selecting and monitoring investments through an internal investment professional or retirement committee.

Despite the fact that participants are getting more investment choices by plan sponsors who are doing more to monitor the investment options, participation rates dropped this year by two percentage points—to 73%. Meanwhile, fewer sponsors—82.6%—see 401(k) plans as effective recruitment tools, down 2.1 percentage points from last year. Even fewer—1.2%—view 401(k) plans as effective retention strategies, down 6.1 percentage points.

Use of automatic enrollment declined three percentage points to 10.8%, though 95.8% of the respondents that have automatic enrollment are satisfied with it. One survey respondent that did discontinue its automatic enrollment program said: "Plan participation improved very little (with automatic enrollment), not worth the confusion and administrative burden."

Arleen Jacobious is a reporter for *Pensions & Investments*, a sister publication of *Business Insurance*.



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Products & Services

Fiduciary, nonprofit coverages introduced

WILMINGTON, Del.—Rockwood Programs Inc. has introduced two new professional liability coverages, the Rockwood Protector Fiduciary Liability Plan and the Rockwood Guardian Not-For-Profit Liability Plan.

Rockwood, a Wilmington, Del.-based managing general agency, offers limits up to \$3 million under the fiduciary liability plan, which protects corporate and personal assets of a plan fiduciary against alle-

gations of breach of duty. A \$1,000 deductible is required for the coverage written by Gulf Insurance Group, and the minimum premium is \$650.

Limits up to \$5 million are available under the nonprofit liability plan, which provides directors and officers with coverage that includes protection against employment-related actions. A \$500 deductible is required, and the minimum premium is \$920. The coverage is written by Carolina Casualty.

"These new products offer cover-

age that both a plan fiduciary and directors in a nonprofit entity may believe they already have," said Glenn Clark, president of Rockwood Programs, in a statement. "However, purchasing the mandated ERISA bond will not protect the personal assets of a plan fiduciary, and many nonprofit officers incorrectly believe they have less exposure than their counterparts in private industry."

More information is available at www.rockwoodinsurance.com or by calling 800-365-0816.

Professional liability coverages offered

NEW YORK—The Navigators Group Inc. is offering a new profes-



sional liability product for attorneys and other professionals.

The New York-based company is offering the coverage through its Navigators Pro division of Navigators Management Co., an underwriting manager for Navigators Insurance Co. The errors and omissions insurance can be written to limits of \$5 million. A minimum

retention of \$15,000 is required, and the minimum premium is \$7,000.

The coverage is targeted to firms providing administrative, advertising, consulting, employment, legal, management, media, publishing, real estate and travel-related services.

"Professional services is a large, fragmented and growing market, both in the U.S. and internationally, providing profitable opportunities for insurance solution providers," Chris Duca, president of New York-based Navigators Pro, said in a statement.

More information is available at www.navigators-insurance.com.

Body Response targets ergonomic injuries

SPRINGFIELD, N.J.—Body Response Inc. has developed a program to prevent work-related musculoskeletal injuries.

The Body Response Program is designed to provide ergonomic solutions aimed at reducing workplace injuries partly through approaches similar to those that athletes use to avoid injuries. After an evaluation and analysis of the job site by Body Response experts to determine where particular body stresses are occurring, a program of stretching and strengthening is developed.

Education and training are part of a reactive approach under the program. When workers are hurt, their symptoms and injuries are discussed and they are given information on how to prevent recurrences, among other tactics for preventing future injuries.

A rehabilitative portion of the program involves range-of-motion testing, flexibility tests and recommendations for courses of action to rehabilitate damaged muscles and joints.

More information is available from Body Response, 12 Commerce St., Springfield, N.J. 07081; or by calling 800-817-0509.

Chubb offers cyber-risks guide

WARREN, N.J.—A new guide for financial institutions concerned about cyber risks is available from the Chubb Corp.

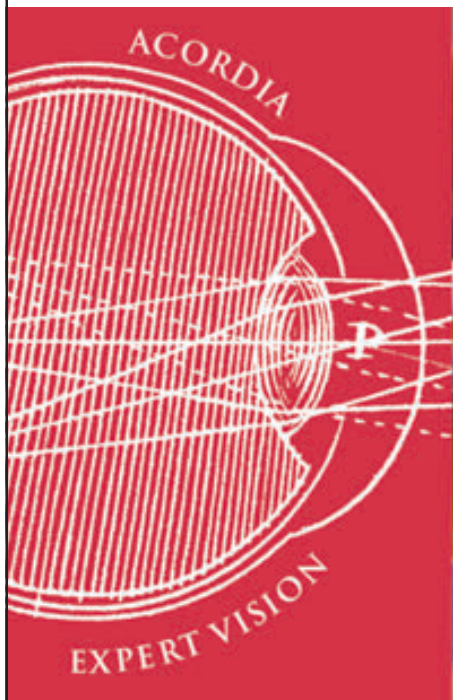
The Cyber Risk Needs Analysis provides risk managers, board members and information technology security professionals with a methodology for identifying and mitigating cyber exposures. A four-page checklist addresses such risks as security breaches, invasion of privacy, identity theft, intellectual property infringement, extortion, digital forgery and many others.

The guide provides an introduction to a broad range of cyber issues faced by financial institutions and outlines basic questions the companies should consider, such as:

- What must a disaster plan cover in case a hacker brings down systems?
- Are security measures such as encryption, antiviral procedures, firewalls and intrusion detection systems needed or in place?
- How can identity theft be thwarted?

A copy of the guide is available at www.chubb.com/businesses/dfi/cyber.

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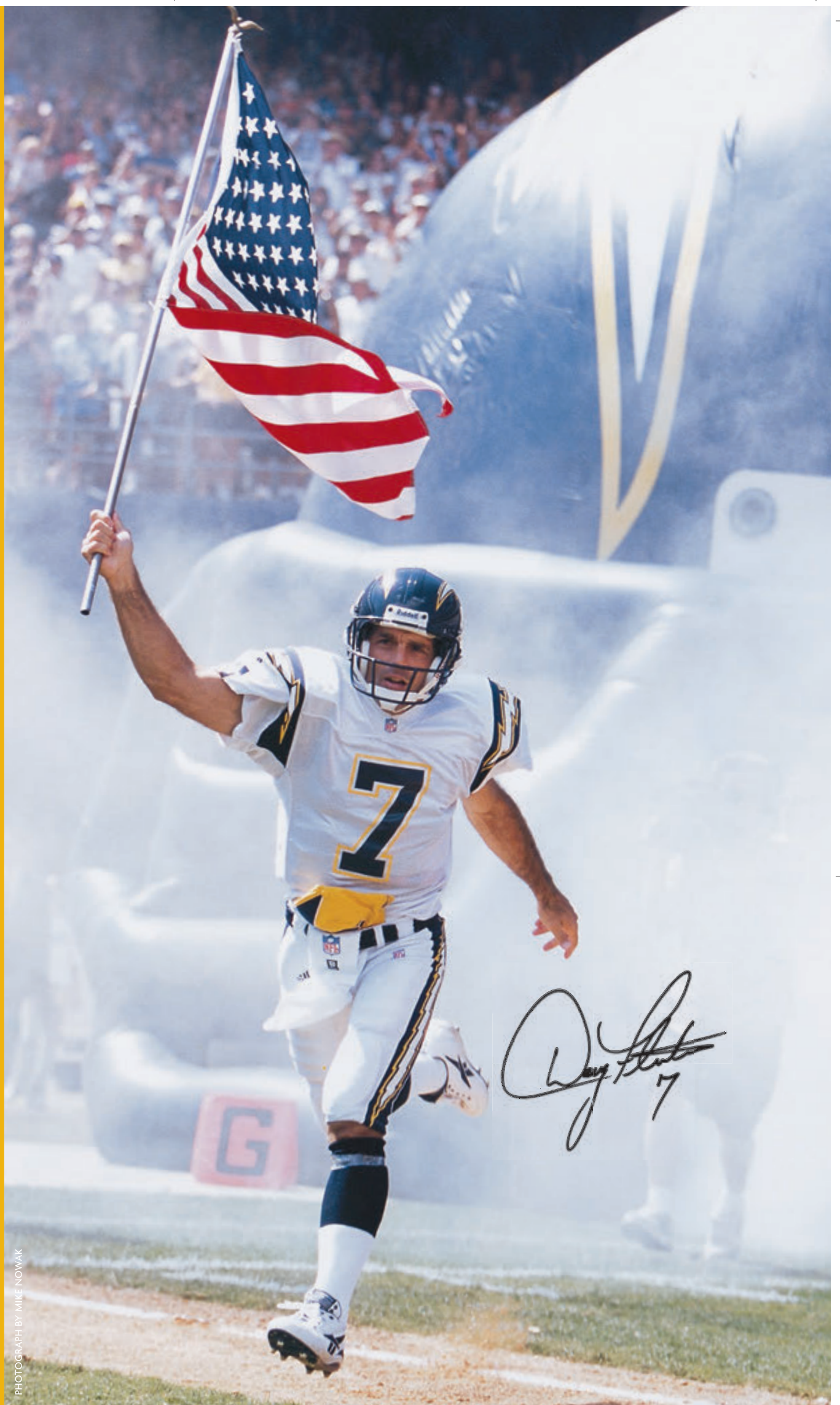
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September 30, 2002

International

21

Stock market volatility triggering concerns over insurers' investments

By EDWIN UNSWORTH

PARIS—A downturn in global stock markets is causing European insurers, and their risk manager customers, to re-examine their investment policies.

European insurers and reinsurers, which traditionally have placed more of their investments in equities than their U.S. counterparts, recently began announcing half-year results that illustrate the adverse affects of lower investment earnings on profits. These companies, their customers and insurer rating agencies are all becoming concerned about the consequences of lower investment returns and losses.

Until recently, insurers and reinsurers in continental Europe have placed between 20% and 25% of their investments in equities, though that percentage was as high as 80% for U.K. life insurance companies, according to Yann Le Pallec, a Paris-based analyst with Standard & Poor's Corp. This compares with the 1960s and 1970s, when insurer investment practices were "very conservative" with about 80% of assets invested in government bonds and most of the remainder in real estate rather than equities.

Now, however, "companies have already changed," with some having stopped investing all new cash flows in equities and others doing so at greatly reduced levels, he said. Events such as the Enron debacle have encouraged this "flight to quality" in investments, he noted.

In some cases, regulators are spurring insurers to make this change.



In Spain, the nation's top insurance regulator, Pilar Gonzalez de Frutos, has asked insurance companies to report on how their equities investments are impacting earnings and the value of claims reserves. If there is an adverse effect, she wants them to explain how they plan to replenish reserves.

Risk managers, too, are looking closer at how insurers and reinsurers handle their investments.

David Gamble, executive director of the London-based Assn. of Insurance & Risk Managers, said that insurers' falling investment income and

asset values is "a subject which everyone has learned about."

While he is confident that the regulatory authorities are watching the situation closely and will take appropriate action, Mr. Gamble said risk managers should "get expert advice." Not only should they have a relationship with their insurers, but also they should talk with brokers and the rating agencies to determine if insurers' investment practices are considered appropriate.

Olivier Sorba, vice chairman of the Assn. pour le Management des Risques et des Assurances de l'Entreprise, the Paris-based association representing French risk managers, strongly agreed.

Mr. Sorba, who is also risk director of Paris-based media group Lagerdere, said: "Obviously we are concerned about the solvency of our insurers....As a general safety net we tend to monitor the rating agencies....Collectively we can have talks with the various regulators (should risk managers become concerned)."

Falling asset values also mean insurers are having to raise more capital as not only their investments but also their own share prices weaken.

This month, Switzerland's Zurich Financial Services Group announced a \$2.5 billion rights issue to improve its capital base. ZFS last week also sold its \$100 million stake in Endurance Specialty Holdings Ltd., citing plans to reduce its exposure to equity investments. ZFS was a founding investor in the Bermuda startup last year.

Also this month, France's largest insurer, AXA Group, took the unusual step of issuing a state-

See **ASSETS**/page 23

Investors OK Fondiaria, SAI merger

By ROBERTA KEDZIERSKI

FLORENCE, Italy—Shareholder approval of a proposed merger between La Fondiaria and Societa Assicuratrice Industriale has paved the way for the companies to form one of Italy's largest insurers.

The merger between Florence, Italy-based La Fondiaria and Turin-based SAI was approved by both companies' shareholders earlier this month. Sources close to the deal stated that the companies hope to complete the merger by Jan. 1, 2003.

Still needed are approvals from ISVAP, Italy's industry watchdog, and the Italian antitrust authority.

The new Florence-based company, Fondiaria-SAI, would be among Italy's three largest insurers, along with Trieste-based Assicurazioni Generali S.p.A. and Milan-based Gruppo RAS. Fondiaria-SAI would have more than 8 billion euros (\$7.85 billion) in combined premiums.

Shares in both companies have dipped in the past week, though the wider market also has seen lower share prices. Falling stock-market values could further undermine the merged company's performance, an observer commented, by shrinking the value of their share portfolio.

The new company's main shareholders would be the Italian holding company Premafin, with 34.2%, and Milan-based Mediobanca, with just over 11%.

E.C. airline cover proposal raises questions, concerns

Minimum limits would include terrorism risks

By STACY SHAPIRO

BRUSSELS, Belgium—A European Commission proposal that would set minimum aviation liability coverage requirements for all airlines flying in and out of the European Union is laudable but flawed, some aviation experts say.

On Sept. 24, the European Commission published a proposed regulation designed to "facilitate the rapid return to market conditions and restore confidence both in the aviation and in the insurance sectors" following the Sept. 11, 2001, terrorist attacks, the commission stated in the proposal. In the wake of those attacks, commercial insurers canceled war risk third-party liability coverage, and governments had to step in and provide coverage guarantees to keep planes flying.

The proposed regulation would apply to air carriers domiciled in the European Union as well as to non-E.U. airlines that fly in and out of the 15 E.U. member states. It would establish minimum insurance requirements in covering liability for passengers, baggage, cargo, mail and third parties. In particular, the proposed regulation states that air carriers must have insurance for:

- A minimum passenger liability of 250,000 special drawing rights (\$329,200) per passenger. An SDR is an instrument that consists of a basket of currencies.

- A minimum cargo liability of 17,000 SDRs (\$22,385) per ton.



PHOTO: PAUL O'DRISCOLL/GETTY IMAGES

European airlines say that coverage requirements proposed by the European Commission in Brussels, Belgium, need revising.

- A minimum third-party liability of between 80 million SDRs and 600 million SDRs (\$105.3 million and \$790.1 million) per aircraft, depending on the maximum takeoff weight of each plane.

In addition, the minimum liability insurance would have to cover both standard risks as well as war and terrorism risks, says the proposed regulation.

The Assn. of European Airlines welcomed the European Commission's attempt to introduce uniform liability insurance requirements, but it expressed concerns about the possibility that the European Commission would pull the plug on government-provided coverage for airlines' third-party war risk liability.

See **E.C.**/page 24

World Updates

French insurers raise flood loss estimate

The French insurance association estimates that claims from recent flooding in the south of France will total 450 million euros (\$441.7 million). The Paris-based Federation Francaise des Societes d'Assurances said the flooding, which affected several areas of southeastern France on Sept. 8-9, would likely prompt more than 50,000 claims. The FFSA initially estimated 300 million euros (\$294.5 million) in claims. Earlier this month, the French government announced that insurers would have flood claim coverage from Caisse Centrale de Reassurance, a government-backed reinsurer for natural disaster losses.

Chubb opposes Hiscox offering

Hiscox P.L.C. said its £110.5 million (\$171.7 million) private stock issue will proceed despite opposition from Chubb Corp., its largest single shareholder. Chubb, with a 28.3% stake, said it will vote against the rights issue at a Sept. 26 shareholder meeting. Chubb unit Chubb Investment Services Ltd. also noted that it has "not made any advance commitment in respect of its entitlement to take up shares in the rights issue." London-based Hiscox said Chubb's opposition would not scuttle the offering, which has been fully underwritten. "We already have the requisite support from shareholders to go ahead," said Bronek Masojada, chief executive of Hiscox. A Chubb spokesman said the insurer had no comment.

U.K. life insurer switches pension plan

London-based Prudential P.L.C., one of the largest U.K. life insurers, has closed its defined benefit pension plan to new entrants. Prudential, which becomes the latest of several large U.K. companies to move away from defined benefit plans (*BI*, Sept. 23), said a defined contribution plan would offer better benefits to new employees. But Amicus, the U.K.'s biggest private sector labor union, slammed the move as "shameful." Amicus added that at the Labour Party annual conference in Blackpool this week it would call on the government to stem the trend away from defined benefit plans.

Hardy, Chaucer improve profits

Two Lloyd's of London companies last week announced improved half-year profits. Hardy Underwriting Group P.L.C. announced a £1.85 million (\$2.9 million) pretax profit for the first

See **WORLD NEWS**/page 24

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REQUEST FOR PROPOSALS

NOTICE

The Kansas State Employees Health Care Commission will issue a Request for Proposal (RFP) #05415 on October 1, 2002 for a fully insured, voluntary statewide student health insurance plan for students at Kansas Regents Institutions (Kansas University Medical Center, University of Kansas, Kansas State, Emporia State, Pittsburg State, Wichita State, and Fort Hays State Universities.)

If interested in receiving a copy of the RFP, please contact:

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 - Attn: Fran Welch
 900 S.W. Jackson Street,
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REQUEST FOR PROPOSALS

LEGAL NOTICE CITY OF NAPERVILLE REQUEST FOR PROPOSALS RFP 03-072

Workers' Compensation Excess Insurance Coverage

The City of Naperville, Illinois is requesting proposals for conventional excess workers' compensation insurance coverage for the upcoming year, beginning March 1, 2003.

Requests for market assignments are to be received no earlier than October 15, 2002, at 8:00 a.m., and will be on a first-received, first-granted basis. Proposals will be received at the City of Naperville, Purchasing Division, 400 South Eagle Street, Naperville, Illinois 60540 until 3:00 p.m., local time, on November 13, 2002.

Those desiring to submit proposals may obtain copies of the specifications between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday, in the Purchasing Division, at the above address.

The City reserves the right to reject any or all proposals.

Check the City's web site
<http://naperville.il.us>
 for this RFP and others.

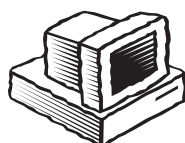
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Assets: Insurers seeking refuge from volatile stocks

Continued from page 21

ment that it has no plans to raise capital. It said that despite the drop in equity prices its solvency margins "remain more than adequate" and that first-half operating earnings are sufficient to cover any additional solvency margin needed to support growth. AXA stressed, too, that "technical reserves remain more than adequate to cover our commitments to policyholders."

Conversely, the confluence of rising insurance rates with a less attractive equities market is leaving

some Continental European insurers and reinsurers with the problem of what to do with their increasing cash flows, said S&P's Mr. Le Pallec.

Their response has tended to be to invest more in government bonds. But this also brings risk, as companies could have liquidity problems if interest rates rise and there are large-scale surrenders of life insurance policies, he noted.

So far, life insurers have felt the most serious impact of volatile equity markets. Mr. Le Pallec said that they tend to invest more heavily in

equities than do other insurers, with British life companies putting up to 80% of their investments into shares.

Only last week, the chief executive of Sydney, Australia-based insurer AMP Ltd., resigned after it emerged that falling equity values had caused the group's U.K. life insurance unit, Pearl Assurance P.L.C., to breach its minimum capital requirements.

Regardless of future stock performance, it is improbable that insurers and reinsurers would ever quit

them entirely and return to the high levels of investment in government bonds last seen 30 ago, S&P's Mr. Le Pallec said.

"Investment profiles need to be diversified," so that insurers don't end up with all their eggs in the same basket, he said.

French reinsurer SCOR S.A. has reduced its investment in equities over the past several months. The proportion of its investment in equities has fallen from around 4.8% to a current level of 4.0%.

François Reach, group executive

vp in charge of finance, explained: "Our philosophy is rather simple. We are reinsurers, we are not in the business of managing assets."

This means that SCOR's priority is to allocate capital to reinsurance and to match assets and liabilities. And "with an average life of liabilities of around 5-6 years, we do not have to have equities," he said.

He said "it is too early to come back to the equities market" and SCOR intends to keep exposure to equities "minimal" at between 0% and 5% of investments.

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LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
IN RE PETITION OF DAN YORAM SCHWARZMANN, AS ADMINISTRATOR OF
FOLKSAM INTERNATIONAL INSURANCE COMPANY (UK) LIMITED
CASE NO. 02-B-14070 (PCB)

NOTICE IS HEREBY GIVEN that in connection with the petition filed on August 21, 2002 pursuant to section 304 of the Bankruptcy Code (the "Petition") with respect to Folksam International Insurance Company (UK) Limited (the "Company"), the United States Bankruptcy Court (the "Bankruptcy Court") has entered a preliminary injunction order dated September 9, 2002 (the "Order"):

1. Enjoining all persons and entities from: (a) seizing, repossessing, transferring, relinquishing or disposing of any property of the Company in the United States, or the proceeds of such property, to third parties; (b) commencing or continuing any action or legal proceeding (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever), including by way of counterclaim, against the Company, or any property in the United States that is involved in the foreign proceeding, or any proceeds thereof, and seeking discovery of any nature against the Company; (c) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order, or arbitration award obtained against the Company, and commencing or continuing any act or action or other legal proceeding (including, without limitation, arbitration, or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) or any counterclaim to create, perfect or enforce any lien, attachment, garnishment, setoff or other claim against the Company, or any of its property in the United States, or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts; and (d) drawing down any letter of credit established by, on behalf or at the request of, the Company, in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established; and (e) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest in excess of amounts expressly authorized by the terms of the trust, escrow, or similar arrangement;

2. Requiring all persons and entities in possession, custody or control of property of the Company in the United States, or the proceeds thereof, to turn over and account for such property or its proceeds to the Petitioner;

3. Requiring all persons and entities that are beneficiaries of letters of credit established by, on behalf or at the request of, the Company or parties to any trust, escrow or similar arrangement in which the Company has an interest, to: (a) provide notice to the Petitioner's United States counsel of any drawdown on any letter of credit established by, on behalf or at the request of, the Company, or any withdrawal from, setoff against, or other application of property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest, together with information sufficient to permit the Petitioner to assess the propriety of such drawdown, withdrawal, setoff or other application, including, without limitation, the date and amount of such drawdown, withdrawal, setoff or other application and a copy of any contract, related trust or other agreement pursuant to which any such drawdown, withdrawal, setoff, or other application was made, and provide such notice and other information contemporaneously therewith; and, (b) turn over and account to the Petitioner for all funds resulting from such drawdown, withdrawal, setoff, or other application in excess of amounts expressly authorized by the terms of any contract, any related trust or other agreement pursuant to which such letter of credit, trust, escrow or similar arrangement has been established;

4. Providing, with respect to any claim, action, arbitration or other proceeding which may be commenced or become known to the Petitioner in the future, or the entitlement or alleged entitlement of any beneficiary of any letter of credit established by, on behalf or at the request of, the Company, or of any party to any trust or escrow agreement or similar arrangement in which the Company has an interest that is identified by the Petitioner in the future (each a "subsequent claim") that:

(a) when informed of a subsequent claim, counsel for the Petitioner shall serve upon the holder of such claim a copy of the summons, the Petition, the Verified Petition and the most recent injunction order entered by the Court;

(b) the holder of a subsequent claim will have twenty (20) days from service of the summons in which to file an answer or motion with respect to the Petition.

The order shall remain in effect pending a hearing scheduled to be held on March 4, 2003 at 2:30 p.m. (the "Return Date") before the Honorable Prudence Carter Beatty, United States Bankruptcy Judge, in Room 701 of the Alexander Hamilton Custom House, One Bowling Green, New York, New York. All papers submitted for the purpose of objecting to continuation of the Order after the Return Date shall be filed with the Bankruptcy Court, with a copy to the Chambers of the Honorable Prudence Carter Beatty and served on Chadbourne & Parke LLP (Attn: Howard Seife, Esq.) so as to be received at least fourteen (14) days prior to the Return Date.

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

Chadbourne & Parke LLP
Attorneys for the Petitioners
30 Rockefeller Plaza
New York, New York 10112
(212) 408-5100
Attn: Howard Seife, Esq.

LEGAL NOTICE

IN THE MATTER OF
**ANECO REINSURANCE
UNDERWRITING LIMITED**
- IN LIQUIDATION

AND IN THE MATTER OF
SECTION 99 OF THE COMPANIES ACT 1981

TAKE NOTICE that the Liquidators of Aneco Reinsurance Underwriting Limited - in Liquidation have declared a First Interim Dividend payable to Scheme Creditors, pursuant to the Scheme of Arrangement that became effective on 28 June 2002.

It is expected that the dividend cheques will be dispatched to Scheme Creditors on or around 1 October 2002.

Any enquiries regarding the above should be addressed to: The Joint Liquidators, Aneco Reinsurance Underwriting Limited - in Liquidation, PricewaterhouseCoopers, PO Box HM 1171, Hamilton, Bermuda, HM EX. Telephone 441-295-2000, Fax: 441-295-1242

PETER C.B. MITCHELL, Joint Liquidator
Dated 12 September 2002

LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF
DAN YORAM SCHWARZMANN AND
COLIN GRAHAM BIRD, AS JOINT
PROVISIONAL LIQUIDATORS OF
**BLACK SEA AND BALTIC GENERAL
INSURANCE COMPANY LIMITED,**
CASE NO. 98-B-46759 (CB)

NOTICE IS HEREBY GIVEN THAT ON SEPTEMBER 18, 2002, THE BANKRUPTCY COURT ENTERED AN ORDER (THE "ORDER") CONTINUING THE PRELIMINARY INJUNCTION ORDER PURSUANT TO 11 U.S.C. § 304 ORIGINALLY ENTERED IN THIS CASE ON OCTOBER 5, 1998. THE ORDER SHALL REMAIN IN EFFECT UNTIL MARCH 20, 2003. A HEARING TO CONSIDER WHETHER THE ORDER SHALL BE CONTINUED IS SCHEDULED TO BE HELD ON MARCH 19, 2003 AT 2:00 P.M. (THE "RETURN DATE") BEFORE THE HONORABLE CORNELIUS BLACKSHEAR, IN ROOM 601 OF THE ALEXANDER HAMILTON CUSTOM HOUSE, ONE BOWLING GREEN, NEW YORK, NEW YORK. ALL PAPERS SUBMITTED FOR THE PURPOSE OF OPPOSING CONTINUATION OF THE ORDER AFTER THE RETURN DATE SHALL BE FILED WITH THE COURT, WITH A COPY TO THE CHAMBERS OF THE HONORABLE CORNELIUS BLACKSHEAR AND SERVED ON COUNSEL FOR THE PETITIONERS LISTED BELOW, SO AS TO BE RECEIVED AT LEAST FOURTEEN (14) DAYS PRIOR TO THE RETURN DATE. ANY PERSON WISHING TO OBTAIN A COPY OF THE ORDER SHOULD CONTACT COUNSEL TO THE PETITIONERS.

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

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LEGAL NOTICE

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

IN THE MATTER OF THE LIQUIDATION)
OF AMERICAN HORIZON INSURANCE COMPANY) **02 CH 12796**

NOTICE OF CLAIM FILING DEADLINE AND PROCEDURES

PLEASE TAKE NOTICE, that on July 11, 2002, the Circuit Court of Cook County, Illinois, entered an Agreed Order of Liquidation With a Finding of Insolvency ("Agreed Order of Liquidation") against American Horizon Insurance Company ("American Horizon"). Nathaniel S. Shapo, Director of Insurance of the State of Illinois, is the statutory and court-affirmed Liquidator of American Horizon (the "Liquidator").

TAKE FURTHER NOTICE, that pursuant to the Agreed Order of Liquidation, all rights and liabilities of American Horizon and its policyholders, creditors and stockholders, and all other persons interested in its property or assets, are fixed as of July 11, 2002, unless otherwise provided in subsequent orders of the Court.

TAKE FURTHER NOTICE, that on September 10, 2002, the Circuit Court of Cook County, Illinois, entered an Order Providing for the Filing of Claims and the Setting of Claim Filing Deadlines ("Claim Filing Order"). Pursuant to the Claim Filing Order, all persons, companies or entities who have, or may have claims against American Horizon, its property or assets, or against an American Horizon insured or policyholder, shall have the right to present and file with the Liquidator proper proofs of claim on or before July 11, 2003 at 4:30 p.m. (C.D.T.).

TAKE FURTHER NOTICE, that any insured under an insurance policy issued by American Horizon shall have the right to present and file with the Liquidator a proper proof of claim setting forth a contingent claim on or before July 11, 2003 at 4:30 p.m. (C.D.T.). No contingent claim shall be allowed for purposes of participating in any distribution of estate assets that may be made at the fourth priority level, 215 ILCS 5/205(1)(d), unless such claim has been liquidated and the insured claimant has presented and filed evidence of payment of such claim to the Liquidator on or before July 12, 2004 at 4:30 p.m. (C.D.T.). Any contingent claim for which a proper proof of claim is filed on or before July 11, 2003 at 4:30 p.m. (C.D.T.), but which is not liquidated on or before July 12, 2004 at 4:30 p.m. (C.D.T.), may be estimated pursuant to 215 ILCS 5/209(4)(b) for purposes of participating in any distribution of estate assets that may be made at the fifth priority level, 215 ILCS 5/205(1)(e), unless otherwise directed by the Court.

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

THE LAST DATE FOR THE FILING OF PROOFS OF CLAIM WITH THE LIQUIDATOR IS SET FORTH ABOVE. NO PERSONS, COMPANIES OR ENTITIES HAVING OR CLAIMING TO HAVE ANY CLAIM AGAINST AMERICAN HORIZON, ITS PROPERTY OR ASSETS, OR AGAINST AN AMERICAN HORIZON INSURED OR POLICYHOLDER, SHALL PARTICIPATE IN ANY DISTRIBUTION OF THE ASSETS OF THE COMPANY UNLESS SUCH CLAIMS ARE PROPERLY FILED WITH THE LIQUIDATOR ON OR BEFORE JULY 11, 2003 AT 4:30 P.M. (C.D.T.)

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E.C.: Airline coverage rules proposed

Continued from page 21

In addition, an aviation insurance attorney said the the proposals could create conflicts with current international aviation liability law.

The AEA says it is concerned about European Commission indications that it does not plan to extend permission for member states to offer coverage for airlines' third-party war risk liabilities after those programs expire on Oct. 31. The programs have been extended several times, but the European Commission has said it believes that there now is sufficient coverage for such risks in the private market.

"We share the view of the European Commission that for aviation liability insurance there should be a harmonized approach," said a spokesman for the AEA in Brussels. But, the AEA is "disappointed" that the European Commission doesn't acknowledge that there is an insufficient commercial market for aviation war risk liability insurance, he said. It would therefore be "inconsistent" for the European Commission to eliminate state guarantees before setting up some vehicle to provide the coverage, such as an in-

ternational mutual insurer, he added.

The AEA's concerns stem from a "communication" that was released with the proposed regulation. In

'We must simultaneously favour the return to the private insurance market, and contribute to the current reflections at different levels advocating the creation of mutual alternatives.'

Loyola de Palacio
European Commission

that document, the European Commission states that there may be "the possible decision not to maintain the current state guarantees later than 31 October, 2002." E.U. transport ministers are expected to make a decision on the extension of the guarantees at an Oct. 3 meeting.

E.C. Vp of Transport Loyola de Palacio said in the communication that "facing the new threats, we

must simultaneously favour the return to the private insurance market and contribute to the current reflections at different levels advocating the creation of mutual alternatives, in particular in case of unexpected withdrawal of the main guarantees by the private sector."

However, European airlines are concerned that if the government guarantees are withdrawn and there is an outbreak of war in Iraq, private insurers would cancel war risk coverage, forcing airlines to ground their fleets (*BI*, Sept. 24).

The European Commission has expressed support for Globaltime, an airline mutual insurer for third-party war risk liability insurance, under the auspices of the International Civil Aviation Organization.

But, it will take time to set up Globaltime, and if there is not a sufficient insurance market in the meantime, "then we're in the same position as we were prior to Sept. 11," said the AEA spokesman. Airlines would have to pay big premiums for war risk coverage that would be canceled when there is a claim, and then the airlines would have to seek further government

guarantees, he said.

The European Commission's proposed regulation also "raises some interesting questions of conflict with international law," said John Balfour, partner with London-based aviation law firm Beaumont & Son.

Mr. Balfour said there is one major flaw in the proposed regulation. The proposal calls for minimum insurance requirements to cover liabilities as defined in the proposed 1999 Montreal Convention, which is not in force but is currently being ratified, and the 1929 Warsaw Convention, which is in force. An explanation accompanying the proposed regulation states that neither convention limits liability, but that statement is wrong, because the Warsaw Convention does limit liability, said Mr. Balfour.

The proposal to impose the regulation on non-E.U. airlines also could prove quite "controversial," as some countries have lower minimum passenger liability limits than those called for in the proposal, according to Mr. Balfour.

It will take at least a year for the regulation to become law, Mr. Balfour estimated.

World Updates

Continued from page 21

six months of 2002 compared with a profit of £913,000 (\$1.3 million) a year earlier. Chaucer Holdings P.L.C. made a pretax profit of £300,000 (\$467,600) for the first six months of 2002 compared with a loss of £6.1 million (\$8.6 million) in 2001.

Briefly noted

Paul Batchelor has resigned as managing director and chief executive officer of **Australian insurer AMP Ltd.** Andrew Mohl, currently chief operating officer-financial services at AMP, has been named acting CEO....Steve Johnson has been appointed director in the contracts and facultative team of London-based **The Miller Insurance Group.** Mr. Johnson was formerly head of the open market division and in charge of marketing binding authority business at Harman Kemp North America Ltd.

Letters to the Editor

Continued from page 8

sults depicting, respectively, the delay or cancellation of more than \$15.5 billion worth of real estate projects in 17 states, premium increases incurred by building owners at an average of 200% and an 84% respondent rate of "no" to the question: Do you feel confident that your company has adequate insurance coverage in the event of a future terrorist attack? The facts are there.

The RIMS survey further indicates that 50% of its member companies that responded own or lease a high-profile building or are located in an area at high risk for a terrorist attack. This demonstrates that "problematic" properties are more prolific than in obvious metropolitan areas. High-risk properties include power plants, recreational facilities, shopping malls and transit stations—not just tall buildings in New York City.

Although the lending market has made substantial progress since the beginning of the year, the costs of insurance coverage are still astronomical in many cases. What might have been a 400% increase in February is now a 200% increase in September. Even if the Hope Diamond was sold at half price, who could afford it?

Insurance is the underpinning of our economy, and if another attack were to happen before Congress finishes work on the terrorism insurance bill, the solvency of thousands of businesses could be in jeopardy. America needs a temporary federal terrorism insurance backstop immediately to safeguard our business community and our economy.

Christopher Mandel

President
Risk & Insurance Management
Society Inc.
New York

Education: Focus on savings

Continued from page 3

grades when it comes to education efforts to date: 31% gave their employer an A, and 29% a B.

Employers also provide more education to help workers reach a secure retirement, said Dano Bartolai, senior vp at Mellon HR Solutions in Chicago. "The last thing employers want is dissatisfied employees," he said.

Mr. Broecker said his company believes it has an obligation to educate employees as part of providing a retirement package. "It's kind of a continuation of offering the plan," he added.

In general, there are three levels of investor information: education, guidance and advice, Mr. Bartolai said.

Education covers the basics of saving and investing and is designed to be broad. Guidance is more specific and includes asset allocation strategies, such as what percentage of savings to invest in bonds and stocks. Advice tells people specifically what they should do

and in which funds to put their money, Mr. Bartolai explained.

Employers generally don't provide advice, however, as that could expose them to liability for the advice given. Therefore, they tend to stick to providing education to employees and sometimes guidance through plan administrators and outside benefit consultants.

Consultants say employees need clear information to clear up some persistent misconceptions. For example, people generally assume their returns will be much higher than is reasonable to expect, based on historic levels, consultants note.

This leads to another myth: plan participants' accounts will swell in the years to come, allowing many to retire early.

"They believe their plans are leading them to a golden future, when in fact the plans they have are not going to be sufficient," Mr. Metzger said.

A study by Merrill Lynch & Co. earlier this year showed that one of every four plan participants believe

they will receive an annual rate of return in excess of 15% on their retirement accounts. Historical returns are closer to 10% for stock funds.

"There is a gap of knowledge the companies are trying to fill with these education efforts," said Ken Groh, vp at Aon Consulting Inc. in Chicago.

Primarily, investor education today is offered online, often with interactive tools. While this is cost-effective and easy to supply, it requires the employee to take the initiative and go online. In addition, many of these tools take a long time for participants to complete. As a result, few people actually sit through an entire educational session.

Employers "spend lots of money to hook this up, but they can't get the horse to go to the trough," Mr. Bartolai said.

A better method is through face-to-face meetings, in a classroom setting, benefit experts suggest.

"That provides more education

than sending out a bunch of brochures," Mr. Groh said. This method is costly, however, and requires employees to take time out of their workday, he said.

More employers today are providing information tailored to specific groups of plan participants, such as those nearing retirement age.

"The more employers can tailor messages to different age groups, the more effective it is," said Amy Heiserman, a principal with Mercer Human Resource Consulting in Denver. "You really need to emphasize different things to different age groups," she said.

Just because advice is given, however, doesn't mean the message is being received.

Despite the added education, many employees still have too much of their savings invested in their own employers' stock and have not diversified their portfolio sufficiently, said Elaine Stevenson, vp, retirement and savings at MetLife Inc. in Jersey City, N.J.

"Even though they have had this education effort, employees still have not made the changes," she said.

Isidore: Storm brings flooding

Continued from page 3

Program through the insurer. Northbrook, Ill.-based Allstate did not release dollar amounts for those claims and said the number of claims would increase.

The flooding was most severe from the Gulf Coast through the New Orleans area, where flood waters swamped automobiles on the city's roadways and washed into homes. Two hurricane evacuation routes were closed when flooding made the roads impassable. In addition,

residents south of the city in the swampy region that stretches to the Gulf of Mexico were particularly hard hit. Authorities restricted access to towns in that area until the waters receded, and many residents used boats to paddle through the flood waters.

Isidore stalled over the Yucatan Peninsula three days before it reached the United States, arriving at the Mexican coast as a hurricane before being downgraded to a tropical storm as it moved across the

peninsula. The storm's high winds downed trees, tore away roofs and damaged boats along the Mexican coast.

"We have several clients with damage," said Guillermo Oliveros, technical director for property/casualty at Marsh Brockman & Schuh, a Mexico City-based brokerage unit of Marsh Inc. Most of the commercial damage was to small hotels and warehouses, he said.

Commercial losses are not expected to be heavy among Marsh

clients in the area, Mr. Oliveros said.

Keith L. Shroyer, senior vp and chief underwriting officer at Latin American Re in Hamilton, Bermuda, said last week that difficulties in reaching the affected areas of the Yucatan were slowing damage estimates.

"A lot of the damage will be by flooding," Mr. Shroyer noted. "Usually, that's an additional coverage," he added, which is not widely purchased by policyholders in the area.

"We may see a fairly substantial gap between the amount of damage and insured damage," Mr. Shroyer said.

September 30, 2002

Schools: Districts face growing number of claims

Continued from page 1

actuary at Chevy Chase, Md.-based United Educators, a Reciprocal Risk Retention Group. "I think the probability of parents filing lawsuits is much higher than it was five or 10 years ago. There is much less of a belief that teachers are performing in a manner in which they should."

There has been an increase in frivolous lawsuits characterized by "people looking to just get something for the sake of getting something," said Jim deSpelder, risk manager for Okemos, Mich.-based Middle Cities Risk Management Trust, an insurance pool and risk management organization.

The number of lawsuits filed against schools "ebbs and flows in the sense that new theories come down or new approaches, or something like Columbine happens and...a new bunch of lawsuits are prompted by those kinds of actions," said Martin Semple, an attorney with Semple, Miller, DeLay & Mooney in Denver, who defends school districts.

Dave Harcum, president of the Columbus, Ohio-based Harcum-Hyre Insurance Agency, said while

he does not have evidence schools are more of a litigation target than some other industries, "Our society is litigious, and when you're dealing with schools, you're dealing with kids, you're dealing with emotional kinds of things and (schools are) perceived as deep pockets," regardless of whether they in fact are.

"I think the frequency and severity of claims generally in the insurance industry is on the uptick again, so I can't think why schools should be immune from that," agreed Liz Chanzit, a principal with Tillinghast-Towers Perrin in Boston.

Sovereign immunity

Successfully suing schools is not necessarily easy for plaintiffs. Most states either grant public schools some degree of sovereign immunity from lawsuits or have caps, including prohibiting punitive damages, that may not make the expense of a lawsuit worthwhile to a claimant.

In the Florida school shooting verdict, for instance, Florida law limits each parent to no more than a \$100,000 award, said plaintiff attorney Adam Doner of Palm Beach

Gardens, Fla.-based Doner & Gordon. This means that even if the \$1.6 million jury verdict is upheld on appeal, the Florida Legislature would have to pass special claims relief bill for the award to be taken out of the school budget and collected, he said.

In Michigan, plaintiffs can sue an individual school district employee, but not the district itself, and even then the lawsuit must prove gross negligence, which is a difficult hurdle to overcome, said plaintiff attorney Norman Tucker, of Southfield, Mich.-based Sommers, Schwartz, Silver & Schwartz. Two exceptions are injuries involving school buses and claims involving defects in school buildings, he said, noting the latter is hard to prove.

Piercing the shield

Even in cases where schools may be shielded by sovereign immunity, however, there are still ways plaintiffs get around that protection.

"They've tried to chip away at some of the protections," said Cheryl Sullivan, executive director of the Denver-based Colorado

School Districts Self Insurance Pool, which insures 156 school entities in the state.

For instance, one of the exceptions to the sovereign immunity granted under Colorado law, is buildings that have a dangerous condition. But "some courts have broadened that to include playgrounds or athletic fields," so that a person injured at either such site falls under the sovereign immunity exception, said Ms. Sullivan.

In addition, attorneys often try to file lawsuits under federal law, "which takes it out from under the caps that you get in state courts and also isn't subject to governmental immunity," said Mr. Semple.

For instance, employment practices liability continues to be a major problem for schools and "a lot of those suits wouldn't be subject to sovereign immunity or tort caps because they would be brought in federal court," said Ms. Chanzit.

There are two legislative trends in this area "that seem to be moving in opposite directions, and what the exposure is at any given point depends on the particular mix," said attorney David Rubin, a

Metuchen, N.J.-based solo practitioner who defends school districts.

The first trend is state and federal legislation, such as in the area of employment discrimination, which has created an "expanding number of scenarios" that not only permit suits against schools, but attract and encourage them, said Mr. Rubin. On the other hand, tort reform efforts may limit school districts' exposure, he said.

Successfully defending such lawsuits can be difficult and expensive for schools.

In the case involving the Nevada student, for instance, "the school district had witnesses who were ready, if necessary, to dispute virtually all of his allegations about what happened to him," said the defense attorney in the case, Michael E. Malloy of Reno-based Walther, Key, Maupin, Oats, Cox & LeGoy.

However, bringing the case to trial "would have been very expensive" and even if the former student had won only a nominal amount in damages, he would likely have been awarded his legal fees, which could have amounted to more than \$1 million, said Mr. Malloy.

School districts must address unique liabilities

By JUDY GREENWALD

School districts face a wide range of potential liabilities.

Although such traditional exposures as playground injuries and school bus accidents remain primary concerns, schools must address a host of other liability issues. Some are the same risks any business owner or public entity faces, while others are unique to schools.

Discrimination, sexual harassment and bullying

"There seems to be an increase in employment-related claims, particularly those that claim emotional distress," said Jim deSpelder, risk manager for Okemos, Mich.-based Middle Cities Risk Management Trust, an insurance pool and risk management organization.

Employment liability accounts for 25% of the costs at Cerritos, Calif.-based Alliance of Schools for Cooperative Insurance Programs, said Donna Abersman, director of administration and risk services for the risk-sharing pool. "It's an expensive area," she said. "Even if there is no apparent liability, the defense of such cases is extremely expensive," and it is "frequently easier to buy your peace" through a settlement.

In addition, court decisions involving sexual harassment are "coming down all the time," said Martin Semple, an attorney with Denver-based Semple, Miller, DeLay & Mooney, who represents school districts. Students claim sexual harassment either by other students or by teachers, and they charge that the school either should have known about the harassment or did know about it and did nothing, Mr.

Semple said.

Barry Wasson, account executive in middle-market programs for Schaumburg, Ill.-based Zurich North America, said, "Certainly, the problems the Catholic Church has had recently have brought that into the real forefront of issues." Schools have to pay a lot more attention to sexual harassment now, "because if you have something go to litigation, it's going to be pretty expensive."

One new area of litigation that may grow involves suits filed by teachers claiming harassment by students. In March, teacher Janis Adams won a \$4.35 million jury verdict in a suit against the Los Angeles Unified School District after she charged she was the target of an obscene and harassing publication circulated by high school students.

The judge in the case decided to grant the school district a new trial, in part because he had made numerous errors in his jury instructions, said Ms. Adams' attorney, Gloria Allred of Allred, Maroko & Goldberg in Los Angeles. A new trial date has not been set.

Ms. Allred said she believes Ms. Adams' case was the first of its kind in the country, but she expects more such litigation. "Teachers want to teach, and they're not willing to suffer sexual harassment either from supervisors or from co-workers or from students," she said.

In a related area, lawsuits involving bullying have also become a "major area of concern," said Mr. Semple. Several states have enacted anti-bullying legislation, including New Jersey, where Gov. James E. McGreevey signed legislation this month that requires school districts to adopt policies prohibiting bullying. School districts that fail to

adopt and enforce the policies are "ripe for litigation," said David Rubin, a Metuchen, N.J.-based solo practitioner who represents school districts.

Special-needs children

Litigation involving the federal Individuals with Disabilities Education Act, whose most recent amendments were made in 1997, is a "huge area" of activity, said Mr. Semple. The IDEA guides how states and school districts provide special education and related services to more than 6 million children with disabilities.

"The claims for special ed or IDEA are very substantial," said Lee Lloyd, vp of underwriting and chief actuary at Chevy Chase, Md.-based United Educators, a Reciprocal Risk Retention Group. "That is a very litigious area. You have parents who are very passionate about their children getting an education and getting the quality which they feel their children should get."

Laws have been established to provide these children with additional resources, "but the reality is, it's a very difficult thing to implement, and emotions often override" pragmatic concerns about resources and "the type of progress that some of these children can hope to achieve," said Mr. Lloyd.

"The probability of threatening and pursuing lawsuits is much higher than in any other education population" in kindergarten through 12th grade, said Mr. Lloyd.

No Child Left Behind Act

Another new area of concern is the federal No Child Left Behind Act. The Act, which was signed into

law in January, imposes new testing requirements and accountability standards on public schools.

Such testing to determine whether children are receiving an adequate education may become an area "fraught with legal problems," said Liz Chanzit, principal with Tillinghast-Towers Perrin in Boston.

Middle Cities' Mr. deSpelder said, "It's just unclear at this point how, what and how much liability will come out of this legislation."

School violence, terrorism and security

In addition to schools being held potentially liable for actual incidents of school violence, another concern is situations involving preventive actions that lead to charges that schools violated students' rights, Ms. Chanzit said.

Terrorism is another area that has become a much larger concern in recent months, said Zurich's Mr. Wasson. "The larger the school, the larger the campus, the more worrisome it is."

Mr. Wasson said another potential liability concern is school security, and whether schools have policies and procedures to control who is coming into the building and whether they are escorted once inside. Schools should also have policies to react to problems once they occur. Such problems range from "a simple fight to how they're going to deal with something like Columbine," said Mr. Wasson, referring to the 1999 shootings at Columbine High School in Littleton, Colo.

Mold

Mold is another potential problem area, say observers. "Schools

certainly in Texas and Florida should be worried about it, but we're starting to see it in some other states as well," said Ms. Chanzit.

"We think mold is a very significant exposure, and we want to know before we go on a risk that we don't have mold problems there, and frankly we want to help them avoid them in the future," Mr. Wasson said.

There have already been situations in Michigan where schools have been closed temporarily because of "building sickness" that may or may not have been caused by mold, said Mr. deSpelder. "We are still exploring what the true risk is here and what are the true implications to our policy as well as a potential exposure."

Mold claims may become particularly important in the workers comp area, said Matt Hansen, director of business and risk management at San Diego Unified School District.

Construction

Construction is an issue "that wouldn't necessarily appear to be a core business for school districts," said Mr. Hansen. However, after San Diego voters approved \$1.5 billion in school construction funds in 1999, one "unintended consequence" was that although the district entered into multiple contracts with contractors and subcontractors, it never obtained an owner-controlled insurance program or established a safety, compliance and contract-review system.

"Involvement in the beginning of the process would have been key to negating some of these risks," said Mr. Hansen, who didn't hold his position when the project began.

Docket: High court to tackle punitive damages issue

Continued from page 3

punitive award was about 145 times greater than the underlying compensatory damages. The Utah Supreme Court said that the Bloomington, Ill.-based insurer's rights were not violated, a decision that angered insurers, employers and tort reform advocates.

"A case like this exposes" companies to something very much like a national class action suit without the safeguards available to defendants under such circumstances, said Charles J. Cooper, a founding partner of Washington law firm Cooper & Kirk P.L.L.C., at a Supreme Court briefing sponsored by the National Chamber Litigation Center earlier this month. The NCLC handles litigation for the U.S. Chamber of Commerce.

"This case is obviously of critical importance to business because of the tort reform crisis," he said. Mr. Cooper added that it gives the high court another chance to uphold the constitutionality of limits on punitive damages, which is a question the justices answered in the affirmative in the landmark 1996 decision *BMW of North America vs. Gore*.

The case also gives the court another opportunity to decide "whether a state can attempt to deter conduct within another state" through imposition of damages, he said.

The court has also agreed to tackle asbestos liability, which has been the subject of recent hearings on Capitol Hill.

Although an asbestos liability case from West Virginia—*Norfolk & Western Railway Co. vs. Ayres*—deals with a narrowly targeted federal law, the nearly century old Federal Employers Liability Act, the high court's decision could have larger implications. At question is whether FELA allows a damage award to railroad employees for negligent infliction of emotional distress based on a fear of cancer from asbestos exposure, even if they manifest no physical symptoms from that emotional harm. The case also asks whether holding the defendants jointly and severally liable violates FELA.

Carter Phillips, managing partner of Sidley Austin Brown & Wood L.L.P. in Washington, noted during the NCLC briefing that FELA "isn't quite a workers compensation statute," because it was enacted a few years before the first state workers comp system came into being. He also noted that it applies only to a few types of workers, primarily railway workers. But he pointed out that the rules adopted by the court will be based on common law, and thus have potential impact beyond FELA.

Both asbestos liability and the

ability of state courts to serve as venues for trials involving multiple out-of-state defendants and plaintiffs play a role in another case that could end up before the justices, predicted Walter Dellinger, a former acting U.S. solicitor general under President Clinton. Mr. Dellinger offered his comments during a Supreme Court briefing sponsored by the free-market oriented Wash-

The case involving punitive damages against State Farm 'is obviously of critical importance to business because of the tort reform crisis.'

Charles J. Cooper
Cooper & Kirk P.L.L.C.

ington Legal Foundation earlier this month.

Mr. Dellinger who is national chairman of the appellate practice group in the law firm O'Melveny & Myers L.L.P.'s Washington office, recently asked the Supreme Court to delay a massive asbestos liability trial that began in the Circuit Court of Kanawha County in Charleston, W.Va., last week. The case—*Mobil Corp. et al vs. Bruce W. Adkins et al*—originally involved hundreds of de-

fendants and about 8,000 plaintiffs, about 5,000 of whom have no connection whatsoever to West Virginia, said Mr. Dellinger, who represents Mobil, which is now part of ExxonMobil.

All but a handful of the defendant companies settled within hours of the beginning of jury selection last week (see story, page 2), but remaining defendants in addition to Mobil include such industrial giants as Westinghouse Electric Co. and Union Carbide, which is now part of Dow Chemical Co.

Although the high court rejected Mr. Dellinger's petition on Sept. 16, he said it is still possible that the Supreme Court will accept the case for review in the future.

Mr. Dellinger said that the question over whether certain class action cases should be moved to federal courts from state courts "is not a matter where one has to worry about states rights." Such arguments involve "false federalism," he said, because the framers of the Constitution, he said, did not intend the courts of one state to set the law for other states.

Several other cases of interest to risk managers and benefit managers have been accepted by the justices for review, and more are likely to follow as the court issues additional orders throughout the upcoming term. Notable cases include:

• *Sprietsma vs. Mercury Marine* is a pre-emption case that asks whether the Federal Boat Safety Act pre-empts a state common law claim that a recreational motorboat was defectively designed because it lacked a propeller guard. The Coast Guard does not require such guards.

• *Kentucky Assn. of Health Plans vs. Miller* revolves around the question of whether the Employee Retirement Income Security Act pre-empts a state's so-called "any willing provider" law. The 6th U.S. Circuit Court of Appeals held that such laws regulate insurance—a power vested largely in the states—and therefore do not conflict with ERISA.

• *Nevada Department of Human Resources vs. Hibbs* concerns the reach of the federal Family and Medical Leave Act. The case involves a Nevada state employee who used up state-granted leave, which was then counted against FMLA leave.

William Hibbs argued that his FMLA leave should have begun after his state "catastrophic leave" had been exhausted, and sued the state under FMLA. A U.S. district court said that the state enjoyed sovereign immunity in such cases, but the 9th U.S. Circuit Court of Appeals ruled that the FMLA took precedence over the state arrangement.

Asbestos: Liability reform efforts continue

Continued from page 2

month refused to delay the trial before it considers whether to hear the defendants' case (*BI*, Sept. 23).

As Mobil and Honeywell predicted, the defendants—including Honeywell—began settling en masse last week. Only five companies—including Mobil and Union Carbide Corp., a subsidiary of Dow Chemical Co.—remain as defendants in the case, which now has been consolidated into a single trial in one courtroom before two judges, said Bruce E. Mattock, a partner with Goldberg, Persky, Jennings & White P.C. of Pittsburgh. Mr. Mattock represents several hundred plaintiffs.

Mr. Mattock would not comment on the confidential settlements, but one attorney not involved in the litigation said the settlements minimally total hundreds of millions of dollars.

Meanwhile, on Capitol Hill, the U.S. Senate Judiciary Committee last week conducted a hearing on whether asbestos liability reform is necessary.

The committee heard testimony from reform proponents who both bemoaned the growth in asbestos liability claims by people who are not physically impaired and expressed concern that those claimants are diluting the funding available for seriously ill individuals. Witnesses cited studies by actuarial firms Tillinghast-Towers Perrin and Milliman USA estimating that ultimate asbestos liabilities will range from \$250 billion to \$275 billion and that insurance will cover

\$100 billion to \$150 billion of those claims.

Asbestos liabilities have cost business more than \$50 billion to date, have driven more than 50 companies into bankruptcy, and now are hitting thousands more, according to various estimates.

The day of the hearing, the non-profit think tank Rand Corp. released a study reporting that much of the asbestos liability awards over the past decade were paid to claimants who were not physically impaired. That trend and the rapidly growing pace of new claims raises doubts about whether there will be enough funds to cover all new claims, according to the study's authors.

A failed federal reform effort a couple of years ago would have established a compensation process under which claimants would receive a scheduled award based on their medical conditions.

Now, the insurer-backed Coalition for Asbestos Justice, the National Assn. of Manufacturers and the Asbestos Alliance—a broader industry group headed by the NAM—are seeking reforms that they say only prioritize claimants without limiting their potential recoveries.

The Washington-based NAM and the Asbestos Alliance want to limit court access to only claimants who meet certain medical criteria under a standard developed by the American Medical Assn., said Jan Amundson, senior vp and general counsel for the NAM and chair of the Asbestos Alliance.

The standard already is used in the Social Security system; to assess longshoreman claimants seeking federal compensation; and by some state workers compensation systems, noted plaintiffs' attorney Steven Kazan of Oakland, Calif.-based Kazan, McClain, Edises, Abrams, Fernandez, Lyons & Farris P.L.C.

Under the proposal, claimants

Some reform proponents want to limit court access only to asbestos injury claimants who meet criteria under a standard developed by the American Medical Assn.

who develop illnesses later would be able to file claims when their illnesses manifest.

The NAM and the Asbestos Alliance also want to either bar consolidated cases or allow only plaintiffs with similar illnesses to ban together. Additionally, the organizations want to limit court venues to either where a claimant was exposed or currently lives.

The Coalition supports a federal reform that some state judiciaries already have implemented, said Mark Behrens, co-counsel for the group and a partner with Shook, Hardy & Bacon L.L.P. in the Kansas City, Mo.-based law firm's Washington office.

State courts hearing asbestos lia-

bility cases in Baltimore, Boston and Chicago have streamlined the litigation by moving physically unimpaired claimants to inactive dockets, where those claims will remain dormant until the claimants develop physical problems allegedly triggered asbestos exposure, Mr. Behrens explained.

Unlike in the past, the plaintiffs' bar is split on the reform issue.

Indeed, Mr. Kazan, who represents seriously ill asbestos claimants, first suggested the AMA guideline approach. Mr. Kazan also implored the Senate committee last week to enact reforms that guarantee the greatest recoveries for sickest claimants.

In a separate interview, Mr. Kazan said that no reform measure would win the support of the majority of plaintiffs' attorneys. But, a "significant" portion of the bar agrees the current system "is real crazy," he said. "We have to do something."

"This is a major change and, I hope, something that will produce a real impact," Mr. Kazan said.

The Coalition's Mr. Behrens said that the reform effort's chances of success have been boosted by support from a portion of the plaintiffs' bar, the spread of litigation from a concentrated group of asbestos producers that are now bankrupt to a large portion of the U.S. business sector, and support for reforms that prioritize claimants rather than restricting their recoveries in advance.

But a spokesman for the Assn. of Trial Lawyers of America in Wash-

ington said the reforms would hurt ill claimants. "No one is being compensated who cannot prove both exposure and injury," the spokesman said.

Claimants with medical conditions created by their exposure to asbestos but who still can function are nonetheless ill, the spokesman said. Categorizing those claimants as healthy "is like saying someone with HIV but who hasn't developed full-blown AIDS is not sick. That's foolish and untrue."

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For the Record

This roundup of news from the previous week is generated by *BI's* daily news reporting. To get breaking news as it occurs, log on to www.businessinsurance.com, or sign up online for free *BI* Daily News by e-mail.

St. Paul revises IPO of reinsurance operations

RenaissanceRe Holdings Ltd. will own 9.9% of the common shares of Platinum Underwriters Holdings Ltd., the entity created to spin off the reinsurance business of the St. Paul Cos. Inc., following its initial public offering, according to an amended registration statement. In a private placement concurrent with the IPO, RenaissanceRe will buy 3.96 million shares for \$82 million to \$100 million. Public shareholders will own 75.1% of the outstanding shares, and St. Paul will hold the rest.

Tobacco companies to appeal class-action order

Tobacco companies plan to appeal a federal district court order that gave class-action status to a suit seeking compensatory and punitive damages for illnesses allegedly resulting from tobacco use. The class action includes anyone resident in the United States, or resident at the time of his or her death, who had been diagnosed with

various smoking-related diseases since 1993. "This certification flies in the face of the decisions by every other federal court and most state courts," said Charles A. Blixt, general counsel for R.J. Reynolds Tobacco Co.

Monocular vision not necessarily a disability

An individual who can see out of only one eye is not necessarily disabled and entitled to protection under the Americans with Disabilities Act, the 9th U.S. Circuit Court of Appeals ruled. The case was remanded to a lower court to determine whether monocular vision substantially limits an individual's overall ability to see for daily living. The case involves several UPS workers with monocular vision who want to drive small trucks and vans for UPS.

Panel resolves conflicting 'other insurance' clauses

A federal appellate court panel has ruled that a policyholder seeking a defense under two different coverages with conflicting "other insurance" clauses is entitled to coverage first from the insurer that requires a pro rata sharing of covered claims with other insurers. The second insurer from which the policyholder was seeking a defense

does not have to respond until the initial coverage is exhausted. The ruling came in a duty-to-defend dispute between International Business Machines Corp. and its workers compensation and employers liability insurers.

Fed. judiciary proposes class-action rule changes

The Judicial Conference of the United States has proposed the first significant changes to federal rules governing class-action lawsuits in more than 35 years. The changes recommended by the conference, which is chaired by Supreme Court Chief Justice William Rehnquist, cap a 10-year review. One major proposed change would allow class members a second opportunity to opt out of a settlement after its terms have become known.



Chief Justice Rehnquist

Briefly noted

XL Capital Ltd. has renamed two U.S. units that were formerly part of its Brockbank Insurance Services Inc. unit. The space and aviation operations will be called XL Aerospace, and the marine and offshore energy unit will be called XL Marine & Offshore Energy....Broker Lockton Cos. Inc. has formed a new San Diego office, which will be headed by James E. Skeen Jr. as president and chief executive officer. Mr. Skeen previously was with Marsh Inc.

Online Poll [9/23 - 9/27]

Does your company plan to offer a new consumer-driven health plan option for 2003?

Yes

10.5%

No

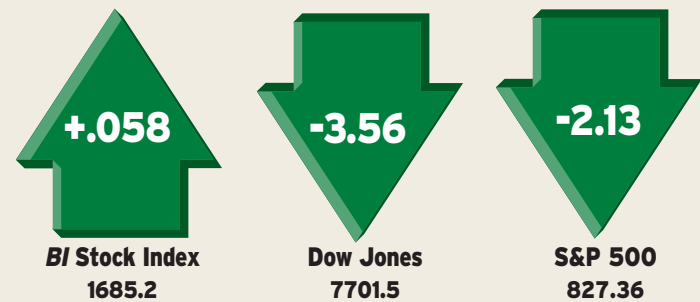
89.5%

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

BI Stock Index [9/23 - 9/27]

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



Largest gains

Brown & Brown 10.69
Clark Bards Holdings 9.87
Citigroup 8.16
Ambac Financial Group 6.32
Harleysville Group 5.84

Largest losses

Allmerica Financial Corp. -18.82
Unico American Corp. -12.09
Philadelphia Cons. Holding -10.82
SCOR -9.91
Chubb Corp. -7.61

Weekly change by market segment

Brokers	21.06%
Insurers/Reinsurers	27.59%
Managed Care Organizations	19.59%

Source: CNET Investor (investor.cnet.com)

Occurrence: WTC appeal sought

Continued from page 1

"It's a rare case where the party that stands to lose \$850 million says, 'We're ready to go,' and the party that's trying to collect \$850 million says, 'Not so fast,'" observed Barry Ostrager, a lawyer with Simpson, Thatcher & Bartlett in New York, representing Swiss Reinsurance Co. Swiss Re provided \$850 million of the program's limits.

Lawyers involved in the case say the appeal will likely delay the trial until next spring.

Meanwhile, Judge Martin's ruling in favor of the three insurers has prompted at least one other insurer—Chubb Corp.'s Federal Insurance Co.—to say it will request a similar summary judgment that it is liable for only one loss under the Willis form. Other insurers may follow suit, lawyers say.

"I think there is a totally different dynamic in the case today than there was" before the judge's ruling, said Stephen A. Cozen, a partner with Cozen & O'Connor in Philadelphia, representing Federal.

The battle between Silverstein and its insurers grew out of the fact that final policy conditions on the \$3.55 billion program had not been agreed to when two hijacked jets struck the twin towers on Sept. 11, 2001.

Willis, Silverstein's broker, initially marketed the program using its own manuscript property form but was in the process of shifting the program to a Travelers form at the time of the attack, Willis officials have said.

Silverstein has argued that the Travelers form governs the program and that its lack of an occurrence definition means that the loss should to be treated as two occurrences, entitling Silverstein to two policy limits.

In last week's ruling, however, Judge Martin found that three insurers that had requested summary judgment were bound under the Willis form.

The three insurers—Hartford Fire Insurance Co., Royal Indemnity Co. and St. Paul Fire & Marine Insurance Co.—collectively accounted for \$112.4 million of the program's \$3.55 billion limits.

In reaching his conclusion, Judge Martin focused on what terms the insurers had agreed to at the time of the attack.

"While there is evidence indicating that, had the terrorist attack of Sept. 11, 2001, not occurred, the insurers would all have ultimately agreed to policies that did not define the term 'occurrence,' that possibi-

ty is irrelevant," he wrote. "Under New York law, the question to be determined here is not, 'What were the terms to which the parties might ultimately have agreed to become bound?' but rather, 'What were the terms to which they were bound?'"

The judge analyzed the binders signed by each insurer's underwriter and communications between the underwriters and Willis to determine which policy form was in use when the terrorists struck.

The factual evidence varied for each of the insurers, the opinion shows.

Royal's underwriter, for example, specifically cited the "Willis manuscript policy form as submitted" in authorizing the insurer's participation and referred to the form in a subsequent binder, the judge found.

By contrast, St. Paul's underwriter never issued a formal binder and "apparently...did not even review" the Willis form before agreeing to a \$30 million participation, according to the ruling.

None of the insurers, however, had agreed to use the Travelers form at the time of the attack, and St. Paul was not even aware of Travelers' participation, Judge Martin concluded.

Having found that the Willis form

applied, the judge then ruled that the form clearly precludes treating the WTC's destruction as two events.

The Willis form defines "occurrence" as "all losses or damages that are attributable directly or indirectly to one cause or to one series of similar causes," he noted.

"While an academic may be able to come up with a strained meaning for the definition of 'occurrence' in the (Willis) form, 'common speech'...cannot," he wrote. "The ordinary businessman would have no doubt that when two hijacked planes hit the twin towers in a sixteen-minute period, the total destruction of the World Trade Center resulted from 'one series of similar causes.'"

Judge Martin has not yet ruled on summary judgment motions filed Allianz Insurance Co., which wrote \$432.6 million of the program's limit, and Zurich American Insurance Co., which wrote \$45.7 million.

Two other insurers, ACE Ltd. and XL Capital Ltd., which issued binders specifically citing the Willis form, settled with Silverstein earlier on a one-occurrence basis.

While Silverstein maintained last week that Judge Martin's ruling "does not have a material effect" on its ability to recover two policy limits from the rest of its insurers, the insurers countered the ruling shows that the Willis form, known as Wil-

prop, will govern the program.

"The intent of Willis and Silverstein was to have a common program," said Jacques Dubois, chairman and chief executive officer of Swiss Re America Holding Co. "This is going to lead inevitably to the conclusion that all of the insurers were bound under the Willis property form."

"We now have five carriers that are confirmed to be bound on Wilprop," including ACE and XL, added Michael H. Barr, a lawyer with Sonnenschein, Nath & Rosenthal in New York, who represents Royal.

Others, however, say the outcome is still far from certain.

Even if Judge Martin's ruling is upheld on appeal, the judge or a jury will still have to examine documents and testimony regarding each remaining insurer's understanding of the program's terms at the time of the attack, said Geoffrey W. Heineman, a partner with Ohrenstein & Brown in New York who is not directly involved in the case. "They've all got their own notations on their own binders," he observed.

And, if Silverstein wins a ruling that the Travelers form applies for some insurers, the leaseholder would still have to convince the court that the form allows for a double recovery, he added.

"You really cannot predict how it's going to go," Mr. Heineman said.

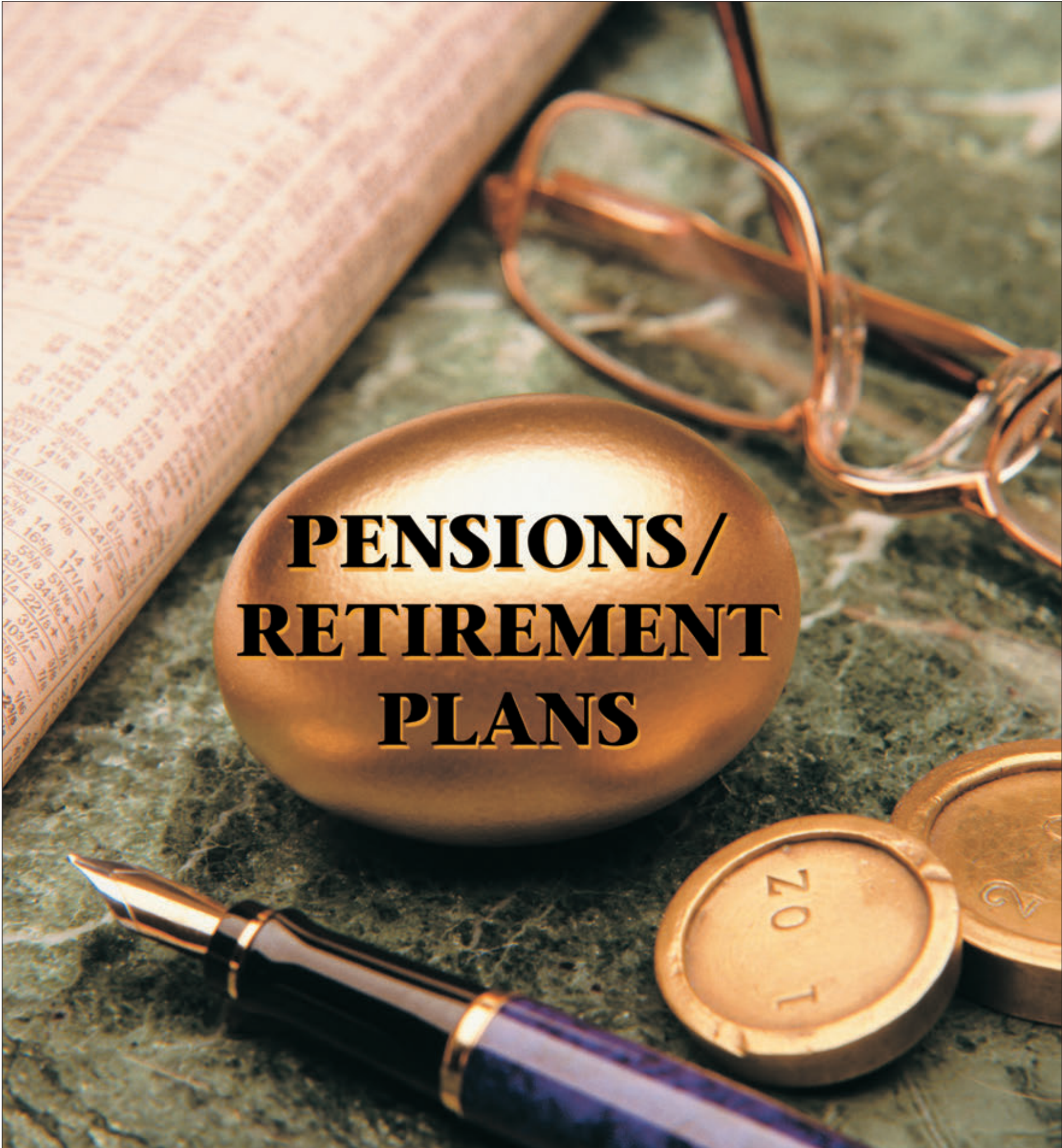
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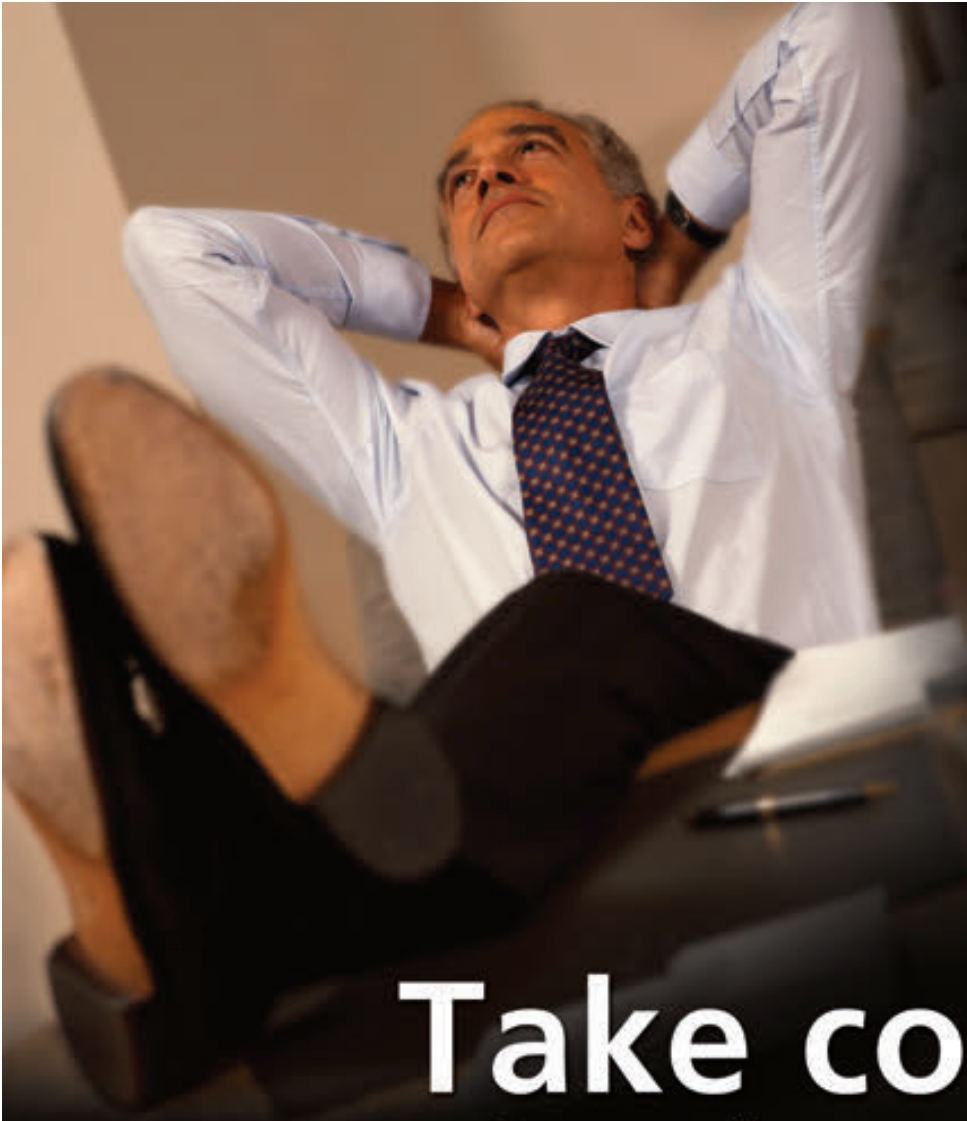
Benefits Management

September 30, 2002

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Inside



Cash balance plans may be poised for a comeback

New guidance from the Treasury Department could lead to renewed growth in employers offering the maligned but once-popular cash balance pension plan.

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Ireland enacts sweeping reforms to pension system

The Pensions Act 2002 and the Finance Act 2002, which took effect this year, are expected to usher in major changes to employer-sponsored retirement plans in Ireland.

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The 2002 Directory of 401(k) Administrators is available online in the Directories area of www.businessinsurance.com. Access to the online directory is free to *Business Insurance* subscribers. PDF copies of the directory can also be purchased at the BI Web site.



401(k)s still favored by employers, workers

Corporate debacles cause no dramatic changes

By JUDY GREENWALD

Although employers and employees are taking a fresh look at their 401(k) plans in light of the Enron Corp. bankruptcy and the falling stock market, the changes they are making generally have not been drastic.

Employers, for example, have made some plan design changes in the wake of the debacle at Enron, whose 401(k) participants lost more than \$1 billion as the company's share value sank, as the plan's design prevented many employees from selling their holdings in company stock. And the current volatility in the stock market has led some employees to adopt a more conservative approach to investing.

But these are adjustments only, not dramatic changes. For example, although employees are putting a somewhat greater percentage of their funds into more conservative investment options, there has been no overall decrease in salary

deferrals made to retirement plans.

And though many employers have eliminated restrictions on the sale of company stock that is given as a matching contribution—or are considering doing so—publicly traded employers generally are continuing to match employee contributions with company stock.

'The 401(k) participants and the companies have really not done much different over the last year than was previously done.'

David L. Wray
Profit Sharing/401(k)
Council of America

portive of 401(k) plans, and employees are still supportive of them. They're just a little more risk averse."

"The bottom line is, 401(k) plans are not going away," said Laura Philip, Columbus, Ohio-based

See PLANS/page T6

PBGC's losses are not likely to cause meltdown

By JERRY GEISEL

WASHINGTON—The Pension Benefit Guaranty Corp.'s future has never looked brighter than it did at the end of 2000.

Buoyed by record investment income, a strong economy and a dearth of losses from takeovers of underfunded pension plans, the PBGC concluded its 2000 fiscal year with its strongest financial position ever: a nearly \$10 billion surplus in its single-employer insurance program.

A PBGC surplus that reached nearly \$10 billion in 2000 has been roughly halved, as of June 30, 2002, to approximately \$4.8 billion.

Indeed, the agency's finances were so robust that then-PBGC Executive Director David Strauss said it was time for Congress to consider reducing the premiums that employers with well-funded defined benefit plans pay the agency, a position earlier endorsed by several business groups.

That the agency was so strong that a premium reduction could be considered was a remarkable change from a decade earlier, when massive losses from takeovers of underfunded plans led some to fear that only a bailout from the U.S. Treasury could save the PBGC from insolvency.

But the heady times of just two years ago are gone. The nearly \$10 billion surplus of 2000 has, as of June 30, been roughly halved, to about \$4.8 billion. And that amount is almost certain to fall further by the time the PBGC concludes its fiscal year on Sept. 30.

The drop in the PBGC's surplus has been no surprise, given its massive losses in recent months. In March, for example, the PBGC suffered its biggest loss ever—\$1.6 billion—when it took over the underfunded pension plans sponsored by failed steelmaker LTV Corp. In the last month alone, the PBGC has announced three major terminations—plans with at least \$100 million in unfunded liabilities—including the takeover of the pension plan and the assumption of more than \$300 million in benefit promises of bankrupt Polaroid Corp.

Given these losses and other factors, the PBGC is almost certain to record its worst year ever in 2002, as measured by a change in its net financial position.

And looking ahead, in light of current economic conditions and the extent of underfunding in pension plans sponsored by financially

See PBGC/page T8

What was Gorton's catch of the day?

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*Paul Ivankovics
Human Resource Manager - Benefits and Compensation, Gorton's*

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Universal Life Insurance policy 5596L-0894* (in ID 5596L-0894, in OR 5702L-0894, in TX 5606L-0894). Group Policy Form 7000GM-E2.

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All products are not available in all states. * Or state equivalent.

Plans: Accounting scandals cause few changes

Continued from page T3

vp with Aon Consulting. "They are still viewed as an important benefit by employees."

A key factor motivating many employers to reconsider their plan design is the collapse of Enron. Like many other companies, Enron made its matching contribution only in company stock, and it required plan participants to hold on to those shares until they had reached age 50. As a result, many Enron employees were unable to sell their shares as the company's stock price fell from a peak of \$80 to less than \$1.

A survey of employers released in April by Hewitt Associates Inc. found that 38% of respondents provided matching contributions entirely or partly in company stock. Of those, 86% placed some type of restriction that requires participants to hold onto the stock for some length of time. Lincolnshire, Ill.-based Hewitt surveyed nearly 300 companies, with an average size of 22,000 employees.

But most employers are now rethinking that approach. According to the Hewitt survey, of those employers with restrictions on investing in company stock, 62% either

have eased, or are very or somewhat likely to ease, such restrictions.

Companies that have already made such a change include Pittsburgh-based Mellon Financial Corp.; McLean, Va.-based Gannett Co. Inc.; Burbank, Calif.-based Walt Disney Corp.; New York-based AOL Time Warner Inc.; and Boston-based Gillette Corp.

Mellon, Disney and Gannett, which had all previously barred the sale of shares contributed as a match until employees reached age 55, now permit the sale of such shares at any time. Gillette eliminated its minimum age 50 require-

ment.

Pam Mrozek, vp, qualified and executive plans manager at Mellon, which lifted restrictions as of July 1, said preliminary indications are that there has been little sell-off of the company shares, despite the stock's sluggish performance over the summer. This may be attributable to an expectation the shares would rebound, or the result of participant education on issues including the unrealized appreciation associated with company stock, said Ms. Mrozek.

Other companies are awaiting expected federal legislation in this

area before making any changes.

A spokeswoman for New York-based Verizon Communications Inc., for instance, said: "We're not going to make some changes only to have legislation be passed that might be different from what we're doing. We're waiting to see what legislation is enacted." Verizon requires that employees hold their company matching stock until age 50.

"Companies are really backing off on having assets frozen in their company stock, and the reason why is they don't want to be the next poster child like Enron," said J. Michael Scarborough, chief executive officer of the Annapolis, Md.-based Scarborough Group, which advises individual 401(k) participants.

Placing restrictions on the disposal of company matching stock "is a class-action suit waiting to happen" said Bob Trethewey, vp at Willis in Bethesda, Md.

Employers are also taking a closer look at their investment options.

'Companies are really backing off on having assets frozen in their company stock, and the reason why is they don't want to be the next poster child like Enron.'

*Michael Scarborough
Scarborough Group*

Aon's Ms. Philip said many employers are "looking at their investment options that are offered under the plan, because participants are questioning the size of the losses they've seen and wondering whether they're experiencing even bigger losses, maybe, than would be necessary than if they were in different funds."

Frank Picarelli, senior consultant with Segal Advisors in New York, said that increased volatility in the stock market has prompted many companies "to realize that they should do the right thing, do some due diligence and bring in a professional to conduct a review of the investment options, to look at the current structure." Given the market's volatility, companies "want to make sure that the funds that they have in their programs are solid, quality options," he said.

Mike Peddicord, national marketing director for qualified retirement plans at Nationwide Financial in Columbus, Ohio, a major 401(k) plan administrator provider, said: "We're hearing questions from the more sophisticated plan sponsors like, 'Do I have a bad fund or do I have a good fund that's just in a bad market?' Because that's reality." Large capital growth funds that were generating 25% to 30% returns three years ago are now consistently down 20%, he said.

"What we're seeing is a return to more asset allocation, instead of just trying to pick the horse that's going to win the race," Mr. Peddi-

Continued on next page

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Continued from previous page

cord said. "We're seeing a return to diversifying your funds, having funds in all asset classes, because that way, you have a chance for higher returns, and you're going to reduce your risk."

At the same time, some employers are also rethinking whether they want to continue offering as many as 30 different investment options, Mr. Peddicord said. Given the complexity of monitoring that many options, companies are asking whether it would be prudent to offer fewer choices but help employees diversify, he said.

Observers say there also is more interest in offering so-called "lifestyle" funds. These professionally managed funds include different combinations of investments that take into account a plan participant's age and risk appetite. A 25-year old, for instance, is likely to select a fund that invests heavily in stock, while a participant nearing retirement is more likely to select one where more conservative assets predominate.

Lifestyle funds should appeal to participants who have been "whip-

sawed" by the stock market's performance, with rapid drops in share values depleting their account balances, said Ruth Hughes-Guden, executive director of Morgan Stanley Investment Management in New York.

'What we're seeing is a return to more asset allocation, instead of just trying to pick the horse that's going to win the race.'

*Mike Peddicord
Nationwide Financial*

There is also more interest on employers' part in offering investment advice. "You can't give people 22 funds to choose from and not give them any education," said Ms. Scalia. "You're giving people powerful tools. People have to have the wherewithal to manage that appropriately."

Willis' Mr. Trethewey said another issue is that some employers are afraid to change plan administrators because such moves entail a 30 to 45 day period, known as a blackout, in which plan participants cannot conduct transactions. Such moves have come under fire, as Enron imposed a blackout to change administrators at a time in which its share price was plummeting.

But this should not be a concern,

said Mr. Trethewey. The 401(k) plans are long-term savings vehicles, he said. "If you inherently think about the purpose of retirement planning, you shouldn't be interested in day-trading anyway," he said.

Meanwhile, there has been no significant decline in the funds employees put into their 401(k) plans, observers say. People are comfortable with having 3% of their salaries deducted from their paychecks, said Ms. Philip, and "it takes a lot for people to make changes."

Paul Henry, director of market planning and research for U.S. group pensions at Manulife Financial in Boston, a major 401(k) plan administrator, said: "What we've seen is that participants, by and

large, have shown a lot of common sense. What we haven't seen is a lowering of contributions, we haven't seen an abandonment of equities, we haven't seen participants really raiding their nest eggs, we haven't seen a big spike up in withdrawals or loans.

"And I think, critically, what we've seen is people still have a lot of faith in their 401(k) as a way to achieve a secure retirement," Mr. Henry said.

Ms. Philip said, "It seems as if education has worked to the point that when the market started going down, people were not bailing out extensively from equity funds.

"Now, certainly, some people have kind of rethought their strategy for future contributions, and are

putting some of those into less volatile options, but it hasn't been a huge, mass exodus, at least from our perspective."

Patricia Pou, a Tampa, Fla.-based consultant with Mercer Human Resource Consulting, agreed. "The investor education that the vendors have been doing has paid off," and there is much less movement out of equities than occurred during 1987's down market, she said.

Employees are showing, though, a growing conservatism in their investment decisions. This is particularly the case among participants nearing retirement, said Willis' Mr. Trethewey. "People are just trying to ride out the storm, for better or for worse."

George Dailey, corporate director

of benefits at Columbus, Ohio-based Schottenstein Stores Corp., said he has seen a slight increase in investments in conservative funds by his firm's 30,000 401(k) plan participants. "You've got the people who might be pouring money into the more aggressive funds, and you've got the people who are running scared, and they almost offset each other," said Mr. Dailey, whose firm operates Value City Department Stores and American Eagle Outfitters.

Employees are also showing greater willingness to diversify out of company stock, said Mr. Scarborough. "It usually was a wrestling match to get them to lighten up on their exposure on their company stock. Today, that's not true."



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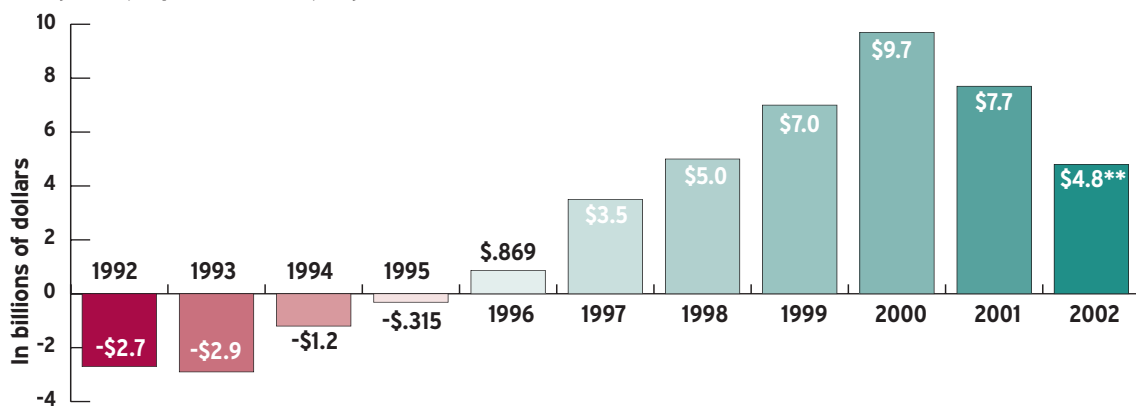
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PBGC'S CHANGING FINANCIAL POSITION

Single-employer insurance program



**Unaudited, through June 30, 2002
Source: Pensions Benefit Guaranty Corp.

PBGC: Agency meltdown unlikely

Continued from page T3

troubled companies, the PBGC could again slip into deficit, according to Steve Kandarian, the PBGC's executive director.

Mr. Kandarian said that the PBGC is in the midst of a "perfect storm" of negative forces, including:

- The economic recession, which has led to a growing number of corporate bankruptcies and the PBGC's takeover of those companies' pension plans.

- The stock market's plunge, which has eroded the value of assets held by pension plans, increasing the extent of underfunding.

- A low-interest-rate environment, which boosts the value of benefit obligations assumed by the PBGC.

Yet, although its current financial position is deteriorating, no one inside or outside the PBGC believes the agency is headed for a return to the dark days of the early 1990s, when predictions of a federal bailout were rampant.

"The PBGC is a financially strong agency, and it should be able to weather any storm," said Chris Bone, chief actuary of Aon Consulting in Somerset, N.J.

"The agency will have no problems fulfilling its obligations," noted Ron Gebhardt, senior pension fellow at the American Academy of Actuaries in Washington.

Just as the bull stock market and rapid economic growth that helped fuel the PBGC's surplus couldn't be expected to last forever, neither will the negative forces continue long into the future.

"It is highly unlikely that we would see all these factors that have come together to remain indefinitely," Mr. Kandarian said.

"Cycles are very normal and natural," said James Delaplane, vp-retirement policy with the American Benefits Council in Washington.

PBGC officials and others are confident the agency can weather the current forces chiefly because of legislative changes, most recently in 1994. Those changes included making it more difficult for employers to terminate underfunded plans and tightening funding rules so that employers with underfunded plans must accelerate contributions, which decreases the likelihood of the PBGC being exposed to big losses if those companies later fail.

"Those were very significant changes," said Mr. Bone of Aon Consulting.

In addition, lawmakers on several occasions raised the premiums paid to the PBGC, which were set at an annual rate of \$1 per plan participant when Congress created the agency in 1974 to protect benefits promised to plan participants. The current annual premium is \$19 per participant for employers with well-funded plans, while the premium for employers with underfunded plans is based on the size of their funding deficit. Employers with severely underfunded plans can pay several hundred dollars a year per plan participant in PBGC premiums.

The PBGC's premium volume, which generally is \$800 million to \$900 million per year, has covered benefit payouts to participants in terminated plans during eight of the last 10 years. In addition, in most years the PBGC earns considerable investment income on the assets it holds. About 70% of those funds is in cash and fixed-income

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Continued from previous page securities.

Although a return to the grim times of the early 1990s seems unlikely, Mr. Kandarian and others still say that further reforms may be needed.

For example, the PBGC is examining whether its standing as a creditor in bankruptcies should be improved. Mr. Kandarian noted that the agency has been hit with large losses from companies that substantially increased benefits while they were in severe financial difficulty and then ultimately failed.

"We are analyzing how big a problem that is," he said.

In addition, the agency is examining rules regarding its liability for so-called shutdown benefits, which are due to employees when a company closes plants. If a company shut downs all plants and goes out of business and the PBGC hasn't moved to terminate the plans before the shutdowns occur, the PBGC can be fully liable for benefits for which the employer never funded or paid premiums to the agency.

"Our view is that this is an unfair hit on the system," Mr. Kandarian said.

But despite its shrinking surplus, the PBGC has no plans to push for an increase in premiums. The agen-

cy, Mr. Kandarian said, must strike a balance with regard to premiums that ensures it can meet its obligations without discouraging employers from offering plans.

"Right now, that balance is pretty good," he said.

In fact, the biggest long-term threat to the PBGC is not the spate of losses during the current economic cycle, but the exodus of employers from the defined benefit plan system. Today, the PBGC insures just over 33,000 plans, a steep drop from the peak of 112,000 in 1985.

The popularity of the plans has waned as Congress, through a variety of laws, has made the plans much more complex to administer. In addition, employers increasingly have been drawn to 401(k) plans, which are easier to administer and, generally, have been favored by employees, particularly during the bull market when account balances soared.

But the stock market in recent years hasn't been kind to 401(k) plan participants and the account balances of those who invested heavily in equities have plummeted.

The volatility of 401(k) plans could lead to a resurgence of defined benefit plans in which benefits are guaranteed, Mr. Kandarian said. Companies, he said, may feel they need to offer a defined benefit plan to attract the best employees.

Cash balance plans may see resurgence

New federal guidance expected

By JERRY GEISEL

Although cash balance plans have been dogged by legal uncertainties and negative publicity, forthcoming federal guidance could spur renewed growth in the plans.

In the coming months, the Treasury Department is expected to issue guidance on cash balance plans, addressing many of the uncertainties that have deterred employers from introducing the plans in recent years.

Only a few years ago, cash balance plans were flourishing. Each year, dozens of employers, including many of the nation's biggest and best-known companies, were converting their traditional, final-average-pay plans to cash balance plans.

Employers and benefit consultants were singing the plans' praises, emphasizing that they combined the best features of defined benefit and defined contribution plans and were much more in tune with an increasingly mobile workforce compared to traditional plans.

But beginning in late 1998, the

tide turned, starting with a series of stories in The Wall Street Journal that were critical of cash balance conversions. Those reports suggested that the primary motivation behind employers' switch to cash balance plans was a desire to cut pension benefits and costs.

Growing negative publicity was accompanied by a wave of lawsuits over the plans. Some suits charged that the plans discriminated against older employees, while others claimed that vested employees terminating employment didn't receive the benefits to which they were legally entitled.

Federal lawmakers jumped into the fray as well, with some demanding that employers introducing cash balance plans offer all employees the right to choose between the new cash balance plan and the company's previous plan. Although the legal changes that resulted were modest, focusing on the communication of plan benefits, legislative threats to the plans continue.

The Internal Revenue Service also responded to the controversy, ceas-

See **GUIDANCE**/page T10

TOP 10 RETIREMENT PLAN TAKEOVERS

Company	Underfunding* (in millions)	Vested participants	Year taken over
1. LTV Steel	\$1,600 **	82,800	2002
2. Pan American World Airways	841	37,472	1991, 1992
3. Trans World Airlines	714	34,189	2001
4. Eastern Airlines	553	51,182	1991
5. Wheeling Pittsburgh Steel	495	22,144	1986
6. Polaroid	321 **	11,525	2002
7. Sharon Steel	291	6,886	1994
8. LTV/Republic Steel	222	8,208	1986
9. Kaiser Steel	222	8,403	1987, 1988
10. CF&I Steel	188	4,239	1992

* For PBGC-guaranteed benefits, ** Preliminary
Source: Pension Benefit Guaranty Corp.

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Guidance: New rules for cash balance plans

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ing to issue determination letters to employers converting their traditional plans to cash balance plans. An IRS determination letter is a kind of government seal of approval of a plan conversion.

Amid these developments, plan conversions plummeted. In the last two years the percentage of Fortune 100 companies with hybrid plans—including cash balance plans—has remained nearly constant, inching up to 33% from 32% in 2000. By contrast, between 1985 and 1998, the percentage of that corporate elite with hybrid plans leaped to 22% from just 1%, according to research by benefit consultant Watson Wyatt Worldwide.

Indeed, benefit consultants note that cash balance plan formations, which almost always entail conversions of existing traditional plans rather than the establishment of new plans, have slowed markedly.

Conversions continue "but at a reduced pace," said Larry Sher, a principal and director of research at Buck Consultants Inc. in New York.

"There has been little movement during the last two years," said Eric Lofgren, director of the benefits consulting group with Watson Wyatt in Philadelphia.

The legal and regulatory uncertainties have played a significant role in the slowdown. Those factors have "frozen cautious employers," Mr. Lofgren said.

"There has been a fear of what Washington will regulate or legislate," noted Ethan Kra, chief actuary for Mercer Human Resource Consulting in Washington.

Only a few years ago, employers were eager to discuss publicly their adoption of cash balance plans, which were seen as a cutting-edge way to provide retirement benefits.

"There was a time when employers and consultants found it energizing to describe what they were doing. They were seen as innovators and those who could anticipate the future," said Dallas Salisbury, president of the Employee Benefit Research Institute, a Washington-based benefits think tank.

But employer interest in publicizing plan conversions diminished as a result of some high-profile public relations disasters.

For example, International Business Machines Corp.'s 1999 plan conversion gave rise to massive negative publicity, with critics of the move charging that IBM didn't allow enough employees to choose between the old and new plans.

"There was an 180-degree turnaround after the IBM conversion. Why invite attention when the publicity, rather than being positive and complimentary, will be negative," Mr. Salisbury said.

"Where companies are doing this, it is being done quietly," said Richard Shea, a partner with the law firm of Covington & Burling in Washington and a former pension

regulator at the U.S. Department of Treasury.

But conversions have continued, and benefit experts say the current slowdown likely will be temporary. Many hope, for example, that forthcoming Treasury Department guidance on a variety of issues related to cash balance plans, such as how they can be established without violating age discrimination laws, will eliminate much of the uncertainty surrounding the plans.

"A lot will depend on the guidance. If the guidance truly clarifies things in a reasonable way, you will see more companies adopt these plans," said Scott Macey, a senior vp with Aon Consulting in Somerset, N.J.

"I'm optimistic that, ultimately, reason and good policy will prevail," said Buck's Mr. Sher. Treasury Department officials have said they expect to publish guidance early this fall, with the first round of guidance addressing age discrimination issues.

Assuming the guidance is favorable, benefit experts expect a new wave of cash balance plan formation for the very reasons the plans were set up in the first place.

"The logic, for many companies, of a cash balance plan is so great, and the illogic of traditional plans is so great," said Mr. Shea, the Covington & Burling benefits attorney.

Cash balance plans differ from traditional plans in several ways. Those differences include:

- In a cash balance plan, the benefit is expressed as an account balance similar to that of a 401(k) account. In a traditional pension plan, benefits typically are expressed as a monthly annuity payable in the distant future.

- Benefit formulas in a cash balance plan make it easier for employees to understand the benefits they are earning. Typically, the benefit is a percentage of pay, with a certain amount of interest added, such as the yield on the one-year Treasury bill rate. In a final-average-pay plan, the benefit formula often is a percentage of pay multiplied by years of service.

- The benefit accrual rate is smoother in a cash balance plan than in a traditional plan, where benefits tend to accrue very heavily only after many years of service. In cash balance plans, employees terminating employment after a few years of service will likely receive much greater benefits compared to traditional plans. At the same time, the benefits tend to be less rich compared with traditional plans for long-service employees, especially those who, under the old plans, would have qualified for company subsidized early retirement benefits.

Employers who have set up cash balance plans say a variety of factors prompted the move. In particular, many cite a desire to improve employee appreciation and understanding of their pension benefits, as well as noting an interest in pro-

viding a plan that would have greater value to shorter-service employees.

"We wanted a plan that would be easier to understand and would be valued by shorter service and mid-career employees," said Bob Stock, director of compensation and benefits at Raleigh, N.C.-based Progress Energy Corp., which set up a cash balance plan in 1999.

"It is a much better design for most employees," said Shirley Grill, vp-human resources with insurer Atlantic Mutual Cos. in Madison, N.J., which adopted a cash balance plan in 1997.

Employers say benefit redistribution—not cost savings—was a key motivation behind moving to a cash balance plan design.

"Cost was not a motivating factor in what we did," said Bob Lawrence, senior vp-human resources and services for Empire Blue Cross & Blue Shield in New York, which adopted a cash balance plan in 1999.

Some consultants say that the hammering employees' 401(k) account balance plans have received over the last couple of years could prompt renewed interest in defined benefit plans, in which benefits are guaranteed by the employer.

If there is such resurgence, cash balance plans, which are considered defined benefit plans under the law, may play a starring role.

"We won't have defined benefit plans as we once knew them. We'll have plans" much more geared to shorter-service employees, said David Wolfe, a partner with the law firm Gardner, Carton & Douglas in Chicago.

New laws introduce great change to Irish pensions

By SARAH VEYSEY

DUBLIN, Ireland—Two new laws that went into effect this year may radically alter employer-sponsored retirement plans, benefit experts say.

The Pensions Act 2002 and the Finance Act 2002 contain provisions that, among other things, introduce a new type of personal savings account, increase the amounts that workers can contribute to their plans and speed up vesting.

"Of the changes that were made in the Pensions Act, the most significant was the introduction of the Personal Retirement Savings Account," said Paul Kenny, a consultant at Mercer Human Resource Consulting in Dublin.

The PRSA is very much like the stakeholder pension in the United Kingdom, Mr. Kenny said. U.K. employers with five employees or more must offer their staff access to at least a low-cost stakeholder pension plan, which is funded by employee contributions. As with stakeholder pensions, employer contributions to PRSAs are voluntary.

Employers in Ireland must offer a PRSA to all newly hired workers within six months, Mr. Kenny said. In addition, employers sponsoring pension plans that do not offer employees the opportunity to make additional voluntary contributions "will have to offer a PRSA facility alongside the occupational pension

scheme," he said. "PRSAs will go hand-in-hand with pension schemes as if they were AVC arrangements," he noted.

"Because of its wider application, I think PRSA will be more significant in Ireland than stakeholder has been in the U.K.," said Michael Parker, a consultant at Towers Perrin in St. Albans, England. He said that the new PRSA was a "reasonably priced, reasonably flexible vehicle" that can be used in several different ways to enable people to better save for retirement.

PRSAs are expected to be administered by insurers and other financial services companies, similarly to how they now administer employer-sponsored pensions, Mr. Kenny said.

A trend in Ireland, as in many other economies, toward defined contribution pension plans and away from defined benefit plans will likely heighten the PRSA's appeal for workers, noted Mr. Parker.

And for smaller employers in particular, Mr. Parker suggested, the ability to offer a PRSA could be a less cumbersome mechanism to provide employees a way of saving for retirement than a traditional occupational pension plan.

There are limits on the transferability between pension plans and PRSAs, said Mr. Kenny. If an employee has been in an occupational pension plan for more than 15 years, he or she cannot transfer the

proceeds of that plan into a PRSA. "The government is) trying to prevent the wholesale migration of pensions assets into PRSAs," he explained.



And employers may find themselves facing a problem when people with existing PRSAs move into their employment, warned Mr. Kenny. "Do the employers agree to deduct contributions to those? Or do they say, 'We have got our PRSA provider selected and we are only prepared to deduct contributions that are going to that provider,'" he said. "One employer could find itself with 142 direct debits every month going to different providers for different people if he wasn't careful," he said. "So employers are going to have to think their way through that and decide what their attitude is going to be, because it could become ruinously expensive in terms of administration for employers."

The Pensions Act also provides for faster vesting for employees, which will benefit a more mobile workforce. The vesting period has been reduced to two years from five years and applies to all pensionable

service, whereas previously only benefits accrued after 1990 would have been eligible.

"That is a big change and it will be a fairly expensive one for employers, particularly if they have got a defined contribution scheme, where there might be a high turnover of staff. Up to now, employers were able to take refunds for contributions and habitually did so with less than five years' service, but now they will be only able to do so (for employees with) less than two years' service," said Mr. Kenny. Previously, employers could take back their pension plan contributions made on behalf of a worker who left before vesting.

But the changes to vesting laws may place an extra cost burden on employers, said Mr. Parker. "(It) will cause the traditional occupational scheme to be more expensive in terms of administration," he said.

The Pensions Act also imposes on employers a deadline on the remittance of contributions to pension plans. "All employee contributions to any kind of scheme must be remitted within 21 days of the end of the month of deduction, and they must be invested within 10 days of that," said Mr. Kenny. "Employers' contributions to PRSAs and defined contribution schemes must be remitted on the same timetable," he added.

Employees and trustees must also be informed of the level of employ-

ee contributions or the amount contributed on behalf of the employee. That is going to create an additional level of administration, said Mr. Kenny.

The new Pensions Act provides for greater transferability into overseas pension plans, and trustees' liabilities are discharged if an employee transfers his or her pension to an overseas plan, said Mr. Kenny. "It is really essential here because not only has there been a lot of overseas investment in Ireland, but there has also been a lot of immigration here in recent years," explained Mr. Kenny. The changes will allow overseas workers to export benefits accrued while working in Ireland, he said.

Mr. Parker noted that other changes introduced in the 2002 Pensions Act include the appointment of a pensions ombudsman to oversee complaints from pension plan members, and an annual actuarial review of occupational plans to be contained in a company's annual report.

The Finance Act also increases the maximum allowable contribution by an individual from 15% of salary to a sliding scale of nearly 30%, depending on age, said Mr. Kenny. The scale starts at 15% for workers up to age 30, 20% up to age 40, 25% up to age 49 and 30% for the age of 50 upwards, he said. This will enable workers to make "fairly massive" additional voluntary contributions, he added.

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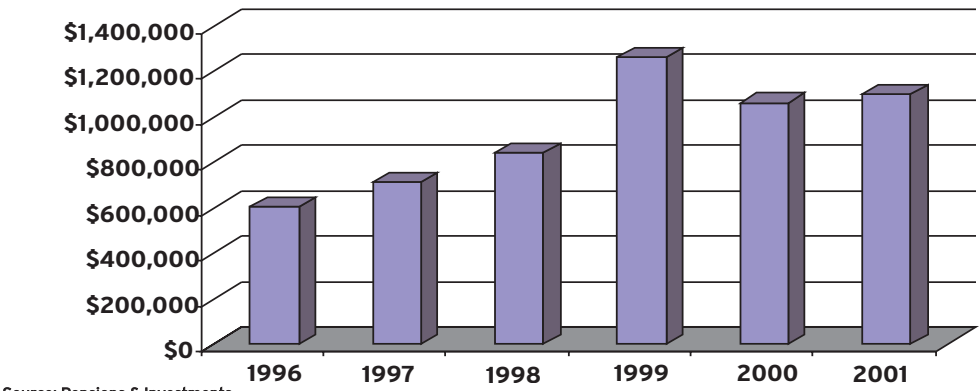
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TOTAL 401(k) ASSETS UNDER MANAGEMENT

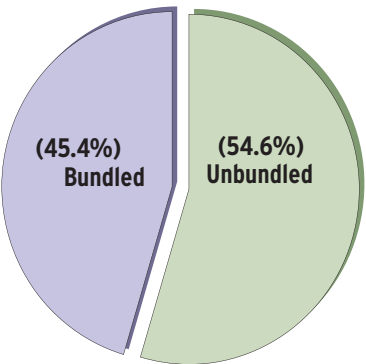
Figures in millions of dollars



Source: Pensions & Investments

BUNDLED VS. UNBUNDLED CLIENTS

Business division of top-10 401(k) administrators



Source: BI survey

Largest 401(k) plan administrators

Based on number of plan participants receiving services on an unbundled basis

Rank	Company/address	Phone/fax/Web site	Participants*	Clients*	Average participants per plan	401(k)staff**	Principal officer
1	Hewitt Associates Inc. 100 Half Day Road Lincolnshire, Ill. 60069	847-295-5000 847-883-9019 www.hewitt.com	3,700,000	119	31,634	2,000	Dale Gifford, CEO
2	Mellon HR Solutions 2100 N. Central Road Fort Lee, N.J. 07024	201-592-1300 201-592-9075 www.mellon.com	969,119	55	6,694	5,000	Jude Metcalfe, president/CEO
3	CNA Trust 3080 S. Bristol St., Second Floor Costa Mesa, Calif. 92626	714-437-4101 714-437-4065 www.cnatrust.com	277,715	2,404	100	125	Renate Renfro, president
4	Milliman USA 1301 Fifth Ave., Suite 3800 Seattle, Wash. 98101	206-624-7940 206-340-1380 www.milliman.com	262,000	703	400	400	Patrick J. Grannan, president/CEO
5	Swerdlin & Co. 5901 Peachtree Dunwoody Road, Building B, Suite 170 Atlanta, Ga. 30328	770-396-6601 770-698-9335 www.swerdlin.net	250,000 ¹	650 ¹	400	35	Dorn Swerdlin, president/CEO
6	Principal Financial Group P.O. Box 9397 Des Moines, Iowa 50306-9397	800-543-4015 515-248-2118 www.principal.com	200,000	3,007	70	1,844	Larry Zimpleman, executive vp
7	GoldK Inc. 1400 Main St. Waltham, Mass. 02451	781-693-4600 781-693-4777 www.goldk.com	109,573	1,463	75	88	Brian E. Boyle, chairman/CEO
8	The Great-West Family of Cos. 8515 E. Orchard Road Greenwood Village, Colo. 80111	303-737-2024 303-737-3030 www.gwla.com/benefits	100,000 ¹	780	126	725	Doug Wooden, executive vp
8	ADP Retirement Services 4 Becker Farm Road Roseland, N.J. 07068	973-974-2463 973-974-3035 www.adp401k.com	100,000	353	NA	650	Mark Phillips, senior vp/general manager- retirement services
10	CBIZ (Century Business Services Inc.) 6480 Rockside Woods Blvd., Suite 330 Cleveland, Ohio 44131	216-447-9000 216-447-9007 www.cbiz.com	77,770	972	80	260	Steve Gerard, CEO-CBIZ

Companies must offer 401(k) plan administration services, such as recordkeeping and handling of account activity, on an unbundled basis.
* Reflects unbundled business only **Reflects staff dedicated to 401(k) plan recordkeeping, administration or consulting ¹ Estimated NA=not available
Source: BI survey

The complete Directory of 401(k) Plan Administrators is available online in the directories area of www.businessinsurance.com. The searchable directory allows users to locate 401(k) plan administrators by company name, number of participants and clients, among other information. The online database is free to BI subscribers. In addition, PDF copies of the directory can be purchased online.